

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/339147424>

# Deaths at the Borders: Gaining access to civil registries. Research notes from Spain

Article · January 2016

DOI: 10.4474/DPS/05/01/DMM219/08

CITATIONS

2

READS

21

3 authors:



**Marta Perez**

Complutense University of Madrid

14 PUBLICATIONS 56 CITATIONS

[SEE PROFILE](#)



**Ignacio Urquijo**

Complutense University of Madrid

2 PUBLICATIONS 38 CITATIONS

[SEE PROFILE](#)



**Tamara Last**

University of the Witwatersrand

14 PUBLICATIONS 66 CITATIONS

[SEE PROFILE](#)

Some of the authors of this publication are also working on these related projects:



Migration governance in southern Africa [View project](#)



Acceso Abierto / Open Access [View project](#)

Marta Pérez, Ignacio Urquijo and Tamara Last

## *Deaths at the Borders: Gaining access to civil registries.*

Research notes from Spain

### 1. Introduction

The Deaths at the Borders Database used death registries as the primary source of data for people who have died attempting to cross the Southern EU external borders without authorization from 1990 to 2013. Death registries are official collections of death certificates – a public legal document issued as proof of death for the purposes of burial, inheritance, remarriage, and custody arrangements – archived by civil registries (*Registro Civil*) in each municipality. Although run by civil servants, in Spain, civil registries are headed by the judge of a court of first instance and/or instruction (*Juzgado de Primera Instancia y/o de Instrucción*) or a court of peace (*Juzgado de Paz*), and therefore fall under the judicial pillar of the state. A pilot study determined that “strict rules about registration made it highly unlikely if not impossible that sea-border deaths would be registered in any non-coastal jurisdiction”.<sup>1</sup> The selection of civil registries for data collection was possible, therefore, by identifying the places where migrant bodies may be found. By the end of data collection in Spain, researchers had visited 171 civil registries of which only six denied access.<sup>2</sup>

After an attempt to get a general permit valid for all civil registries, researchers realized that access was going to be determined through negotiations on a case-by-case basis. Extracting, analyzing and systematizing data on the best way to file a request for access, and on the things to take into account while negotiating it on the ground was crucial. This constituted a research on its own: it was an exploration of the social life of norms and regulations – those concerning access to data regarding deaths, guarded by civil registries – for which researchers had to pay close attention to institutional factors and daily practices and discern how the relationship between the two transpired in particular situations, formed by concrete subjects. Norms and regulations occupied a space around which other micro powers aggregated.<sup>3</sup>

With this perspective in mind, we first examine the process of trying to get a general permit. Second, we describe and analyze the process of negotiating access to 171 civil registries in Spain; negotiations in which the issue at stake – border deaths – was marginal compared to other factors we discussed with civil servants and judicial workers, and observed in civil registries and the broader judicial setting. Finally, we conclude with a reflection on the absence of the issue of border deaths in negotiations at the civil registries, which leads us to ask questions about another absence, that of statistics on migrants dying in the Mediterranean.

### 2. The quest for a general permit

In February 2014 we conducted a pilot research project in Málaga, Castellón and Valencia, in the southern and eastern coast of Spain. In Spain, a border death falls under the category of “judicial death” (*muerte judicial*), which calls for a judicial investigation (*diligencia*). Actors intervening in that process include: 1) the judicial commission, formed by the judge, the secretary to the judge, and a coroner; 2) the judicial police, which helps the judge in the investigation; and 3) *Guardia Civil*, which is not part of the judicial

---

<sup>1</sup> T. LAST, *Methodology*, 12 May 2015, [http://www.borderdeaths.org/?page\\_id=7](http://www.borderdeaths.org/?page_id=7) (last access January 25, 2016)

<sup>2</sup> San Sebastian de la Gomera, Las Palmas, Palma de Mallorca, Marbella, Villajoyosa and El Ejido. See T. LAST, *op. cit.*

<sup>3</sup> A. HUNT, *Foucault and Law: Towards a Sociology of Law as Governance*, Pluto Press, London 1994.

investigation per se but works in sea rescue operations and is therefore often involved when a dead body is found along the coast. During the pilot study, we collected information from civil servants at civil registries, judges and secretaries of civil registries and/or courts, and coroners, as well as from a Red Cross sea rescue team, the Police and *Guardia Civil*<sup>4</sup>. The information they provided led us to conclude that death certificates were the most reliable and homogenous source of data for the Database: border deaths must be registered in death certificates books; the death certificates' format is the same everywhere; and, if they document a judicial death, it is stated in a paragraph at the bottom of the document, which allows for clear and fast identification of a potentially relevant death certificate.

While confirming that civil registries offices were the place to request access for death certificates, we learned that a 1994 court order prohibited the cause of death to appear on death certificates.<sup>5</sup> Cause of death was to be found in other documents, called *legajos*, which are restricted judicial documents containing protected, private data. The *legajo* is a file of documents related to the judicial death and its investigation: the coroner's report, instructions from the court of instruction to the civil registry, and the burial permit. The *legajos* were also archived by civil registries.

Coroners have data on the border deaths they investigate, but the format and reliability of archives can vary significantly from one office to another. Judicial archives contain files on the judicial deaths that each court of instruction investigates, but they are not easy to locate from among other kinds of case files and are not stored indefinitely (at the time of the pilot study, files dating back to the period 1990-1993 had been destroyed in Málaga, for instance). Our inquiries into other sources of data were not fruitful: the press unit of the Ministry of Interior informed us that they did not have statistics on border deaths;<sup>6</sup> the two times we asked for meetings with local *Guardia Civil* offices (*comandancias*) we obtained refusals;<sup>7</sup> to obtain relevant data for the project from the National Institute of Statistics (*Instituto Nacional de Estadística*, INE), an agreement had to be signed that would take between six to eight months, longer than the planned fieldwork period would allow.<sup>8</sup>

For its part, the Ministry of Justice directed us to the General Direction of Registries

<sup>4</sup> We had phone interviews with 10 civil registries in Málaga region, 13 in Valencia region, three courts of instruction in Vélez-Málaga, and two in Castellón, as well as with the Police and *Guardia Civil* of Málaga. We visited and had meetings with responsables at the judicial archive in Málaga as well as at civil registries in Málaga, Vélez Málaga, Castellón, Benicassim, Peñíscola and Valencia. We interviewed coroners in Málaga, Castellón, and Valencia. We also had encounters with the Red Cross sea rescue team in Málaga, with the President of the Provincial Court in Málaga region (Audencia Provincial), with the secretary to the Dean of Justice in Málaga, and with the Dean of Justice in Valencia.

<sup>5</sup> *Orden de 13 de octubre de 1994 por la que se modifica la de 6 de junio de 1994 sobre la supresión del dato relativo a la causa de la muerte en la inscripción de defunción*, "Boletín Oficial del Estado", 252, 21 October 1994, p. 32948. The text reads: "in order to avoid interference in personal and family privacy, the Order of the Ministry of Justice and Home Affairs of June 6, 1994 has removed the cause of death as data to be recorded on death registrations". In several civil registries we were informed that this change was due to requests from relatives of people dying due to HIV health complications so that this cause was not contained in a public document such as a death certificate.

<sup>6</sup> Phone conversation, February 2014.

<sup>7</sup> We asked for interviews with local *Guardia Civil* offices (*comandancias*) in Ceuta and Melilla. Both were denied aducing reasons of working load and the constant requests those offices receive (email correspondence with the Office of Media and Social Relations of the Head Office of the *Guardia Civil* – *Oficina de Relaciones Informativas y Sociales del Estado Mayor de la Guardia Civil* –, June 2014 about Ceuta and September 2014 about Melilla).

<sup>8</sup> INE has statistics on deaths aggregated by cause – for example, drawing – but that does not show if deaths are border deaths or not. Ad hoc studies can be requested – we asked for data on judicial deaths of non Spaniards in all the municipalities of interest to the project – but these studies have a cost and require the aforementioned agreement (email correspondence with INE, March 2014).

and Notaries (*Dirección General de Registros y del Notariado*, DGRN). Although civil registries are located in courts and the judge and the judicial secretary of the court are responsible for them, civil registries are administrative offices under the command of the DGRN. However, the DGRN does not assist the public – it was not among its duties, as they informed us – so a meeting to explain the project was not possible.<sup>9</sup>

In order to remove the obstacle of gaining access for data collection, making the work easier and more regular, we considered the possibilities of obtaining a general permit. The president of the Provincial Court of Málaga (*Audiencia Provincial de Málaga*) suggested that we request such a general permit from the High Court of Justice of Andalusia, Ceuta and Melilla, whose Board of Governors agreed to forward the request to the General Council of the Judiciary (CGPJ), the governing body of the judiciary in Spain.<sup>10</sup> However, the Permanent Commission of the Council considered that there were no grounds for granting a general permit and referred to the Regulation 1/2005 on accessory aspects of judicial proceedings,<sup>11</sup> according to which we would have to obtain a permit from each individual civil registry.<sup>12</sup>

Regulations on civil registries state that access to data can be granted exceptionally if the research is shown to have a legitimate interest.<sup>13</sup> As we will describe in more detail below, the researchers created a package to be sent to each civil registry demonstrating the legitimate interest of the research. But this clause also offered the grounds for a last attempt to get a general permit, an attempt made while data collection was ongoing.

The researchers came to know, through conversations with civil servants, that there had been a previous study which had managed to obtain a general permit to examine death certificates. In 2008, after numerous researchers filed complaints about being

<sup>9</sup> The person responsible for the section called “Civil State Area” of the Sub-Direction of Nationality and Civil State of the DGRN informed us that, according to the law – *Real Decreto 453/2012 de 5 de marzo, por el que se desarrolla la estructura orgánica básica del Ministerio de Justicia y se modifica el Real Decreto 1887/2011, de 30 de diciembre, por el que se establece la estructura orgánica básica de los departamentos ministeriales*, “Boletín Oficial del Estado”, 56, 6 March 2012, pp. 18842-18858 – the institution did not have “any attribution in issues regarding general information to citizens”, directed us to the information phone number of the Ministry of Justice, informed us that we would have to request access in each civil registry, and suggested for us to check the data published by the National Institute of Statistics INE (email correspondence with the DGRN, January 2014).

<sup>10</sup> According to the definition appearing in its website, the General Council of the Judiciary is “a constitutional, referee, and autonomous body, composed of judges and other jurists that exercises government functions of the judicial order to ensure the independence of judges in the exercise of the judicial function”, <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/> (last access January 22, 2016). When the CGPJ referred to courts, it meant *Juzgados de Primera Instancia*, the basic courts of civil jurisdiction appointed to judicial districts and the type of courts that are responsible for the civil registries. In small towns, courts are called *Juzgado de Paz*. The *Juzgado de Primera Instancia* has jurisdiction over the *Juzgados de Paz* of its judicial district. For example, the province of Málaga, in the south of Spain, is divided in 11 judicial districts. One of the judicial districts is led, for instance, by the *Juzgado de Primera Instancia* of the city of Estepona, which is in charge of the *Juzgados de Paz* of the areas of Casares and Manilva, so in total there are three Civil Registries in the area of Estepona. To find more information about the jurisdiction of the *Juzgados de Primera Instancia* in Spain, visit: <http://www.mjusticia.gob.es/cs/Satellite/es/1288774671469/DetalleCartojus.html> (last accessed January 31, 2016).

<sup>11</sup> *Acuerdo de 15 de septiembre de 2005, del Pleno del Consejo General del Poder Judicial, por el que se aprueba el Reglamento 1/2005, de los aspectos accesorios de las actuaciones judiciales*, “Boletín Oficial del Estado”, 231, 27 September 2015, pp. 31859-31886.

<sup>12</sup> *Administración de Justicia, Asuntos varios nº 000114/2014*, Diego Medina García, Secretario de la Sala de Gobierno del Tribunal Superior de Justicia de Andalucía, Ceuta y Melilla, 10 de marzo de 2014; y Madrid 1 de abril de 2014, *Nº de Referencia: Sección de Régimen Jurídico, Consejo General del Poder Judicial, Servicio de Personal Judicial, Comisión Permanente del Consejo General del Poder Judicial, S-2014010994, 05WSTRA, 09/04/2014*.

<sup>13</sup> *Ley 20/2011, de 21 de julio, del Registro Civil*, “Boletín Oficial del Estado”, 175, 22 July 2011, Sec. I, pp. 81468-81502.

refused access to death certificates in several civil registries across the country, the DGRN issued an Instruction granting access to research projects investigating deaths during the Civil War and Franco repression.<sup>14</sup> The Spanish judge, Baltasar Garzón, supported this research, the Law of Historical Memory (*Ley de Memoria Histórica*) had been recently passed in the Parliament, and governments were dedicating funds to do research on deaths during that period of recent Spanish history.<sup>15</sup> Although researchers continued to face some problems of access during that study,<sup>16</sup> they were gathering data with perceived legitimacy given the political controversy surrounding ongoing investigations into the human costs of the civil war and dictatorship. But the study of border deaths currently does not enjoy the same perceived legitimacy in Spain. During the summer of 2014, we filed three complaints at the DGRN, after facing outright refusals by the civil registries of La Gomera, Palma de Mallorca and Marbella. The complaints renewed our previous request for a general permit, now on the basis of the 2008 Instruction. The DGRN responded that the Instruction we cited was only for research on deaths during the Civil War and the dictatorship and that that legitimacy could not be extended, at least normatively, to our research project.<sup>17</sup>

In sum, the collection of data from death certificates required us to deal with a situation that was explicitly discretionary: granting access to data was a question of exceptionality, subject to the understanding of legitimacy of those who had (or claimed) responsibility for the archives. On the ground, that space of exception was filled by other issues related to the daily operation of the office, rather than an explicit evaluation of the legitimacy or importance of the research project itself.

## 2. Negotiating access

In the absence of a list of those who have died attempting to cross the border, and given the objective to collect data on every deceased border-crosser that had been managed by Spanish authorities from 1990 to 2013, it was necessary to access directly the archives of every one of the selected civil registries in order to retrieve all the relevant pieces of information. Therefore, we undertook to exhaust all options to gain access, which meant that negotiating access became at least as time consuming as searching through the archives.

Our legitimate interest for accessing the archives of the civil registries was that they contained official data on border deaths, a subject about which there is remarkably little available information. All our requests to access the civil registries were made with the aim of gathering this data. To expedite the negotiation process and emphasize our

---

<sup>14</sup> *Instrucción de 4 de noviembre de 2008, de la Dirección General de los Registros y del Notariado, sobre acceso a la consulta de los libros de defunciones de los registros civiles, dictada en desarrollo de la disposición adicional octava de la Ley 52/2007, de 26 de diciembre.*

<sup>15</sup> M. ALTONANO, “Garzón lanza la mayor investigación sobre los desaparecidos del régimen de Franco”, *elpais.es*, 2 de Septiembre de 2008, [http://elpais.com/diario/2008/09/02/espana/1220306401\\_850215.html](http://elpais.com/diario/2008/09/02/espana/1220306401_850215.html) (last accessed September 11, 2015). F. VALERA, “Autorizan a los investigadores a investigar en los registros civiles la represión franquista”, *www.lavozdegalicia.es*, 23 de enero de 2008, [http://www.lavozdegalicia.es/galicia/2008/01/23/0003\\_6502816.htm](http://www.lavozdegalicia.es/galicia/2008/01/23/0003_6502816.htm) (last accessed 11 September, 2015).

<sup>16</sup> P. LA PARRA MARTÍN, *Un proyecto de investigación en los registros civiles castellano-manchegos: testimonio documental de nuestras víctimas*, paper presented at the conference “I Congreso de Víctimas del Franquismo”, Rivas Vaciamadrid, April 2012, <http://congresovictimasfranquismo.org/wp-content/uploads/2011/12/13.-Pilar-Laparra.-Un-proyecto-de-investigación-en-los-registros-civiles-castellano-manchegos.pdf> (last accessed January 25, 2016).

<sup>17</sup> Subdirección General de Nacionalidades y Estado Civil, DGRN, email correspondence of 14 January 2014. *Y Oficial jr 6.2.2.1. – 182612014, 6 agosto 2014, Consulta libros de defunción R.C., Ministerio de Justicia, salida 11 agosto 2014, Subsecretaría, Dirección General de Registros y del Notariado, Subdirección General de Nacionalidad y Estado Civil.*

legitimate interest, we prepared a set of documents to be sent to each civil registry in advance. The request package contained a letter by the University explaining the study, formally requesting access to records, and specifying the dates we were planning to visit the registry; a letter from the researchers concerning our ethical considerations regarding privacy of data; the resolutions by the High Court in Andalusia and the CGPJ stating that it was the duty of each civil registry to decide on the request; and letters of support for the study from the UN Special Rapporteur on the Human Rights of Migrants and from the Director of the Bureau in Europe of the United Nations High Commissioner for Refugees. We sent this package by post, followed by phone calls and, finally, by a personal visit which could result in 1) accessing the data, 2) an appointment for another day or 3) refusal of access.

The importance of researching and counting border deaths was the focus of our introduction each time we explained the project to civil servants or judicial officers. The subject of our research was met with understanding by some of the civil servants, judicial secretaries and judges. Particular comments expressed directly to us, such as “these deaths should not have happened from a human point of view”, or “this research deserves the Nobel prize”,<sup>18</sup> showed that in certain occasions explaining the legitimacy of the study was enough to gain access to the relevant archives.

However, we also found cases in which judicial secretaries, judges and civil servants expressed doubts about our intentions. Immediately after accepting our request, one judicial secretary asked: “But why do you really study this topic? Is there any political reason behind the study?”,<sup>19</sup> illustrating that the legitimacy of our research was susceptible to subjective interpretation by those responsible for making the determination, and that it was not always the main reason to accept or deny access. Nevertheless, there is insufficient data – because it was not the purpose of our research – to draw concrete conclusions about how the topic of the research influenced in the final decision to gain the access to the archives.

Many civil servants and judicial officers suggested alternative sources of data to challenge the methodology – and thereby the legitimacy – of the study. The Police, *Guardia Civil*, the INE, the coroners, or the Ministry of Interior would be better sources of information, we were told. However, these suggestions were never substantiated with evidence that these bodies recorded such data or would provide us with access to it. So we had to explain that it was at civil registries where the relevant data for our study was kept. On the one hand, such a diversion to other authorities may be related to how civil registries are situated within the complex structure that straddles the judiciary and the administration of justice. Others have commented on how dealing with bureaucracy reveals a state that, rather than being a unitary entity, is fragmented in diverse branches and levels through which norms develop their social life.<sup>20</sup> On the other hand, our insistence that none of the authorities were collecting data on border deaths surprised many civil servants, illuminating the value of the data contained in the archives they maintained. We sometimes encountered civil servants who were responsible for a particular aspect of civil registry work that contributed to the archives, yet who did not know about the relationship between a death certificate and its *legajo*, or that the *legajo* contained information on the cause of death. On some occasions, watching us collect data on each possible border death, observing how the deaths of migrants were counted

---

<sup>18</sup> Both comments were made by civil servants and were recorded by Ignacio Urquijo in his logbooks.

<sup>19</sup> Extract from the research notes recorded by Ignacio Urquijo in his logbooks.

<sup>20</sup> A. GUPTA, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India*, Duke University Press, Durham and London 2012.

and their stories pieced together with information contained in public records,<sup>21</sup> elicited a shift in attitude from the civil servants towards the legitimacy of our research.

Most often, the negotiations over access were focused on the practicalities of conducting research without disrupting the daily bustle of civil registry work. As soon as data collection began, we started to develop strategies (“a systematic and deliberated plan for achieving a long-term goal”)<sup>22</sup> and tactics (“regularly used to describe immediate actions which are meant to achieve more specific, ad-hoc or short-term aims”)<sup>23</sup> that aided us in getting access to the death certificates and *legajos*. As seen in the previous section of this paper, the negotiation of the access for our research had to be made in every single civil registry, restarting the process with each new request or appeal. This allowed us to observe the daily work of civil registries in Spain and develop a keen understanding of how they operated. Our strategies and tactics took these daily goings-on into account and used them to facilitate access, even when they first appeared as another complication. The information we gathered about civil registries was extremely useful for articulating a request in such a way that downplayed the exceptionality of our research and made it appear as another routine task for the civil registry. Identifying and retaining key qualitative information was crucial to our success in collecting the quantitative data we were principally after.

One of the first factors that we encountered was the significance of hard copies. It was convenient and sometimes necessary to present a letter to the judicial secretary and/or the judge of the court responsible for the civil registry, informing her/him about our intentions. However, this led us to another practical obstacle: on many occasions the judicial secretary or the judge did not get the chance to read our letter requiring the access to the civil registry. This could happen for several reasons, including: civil servants in charge of the mail usually received more letters than they can handle; some civil servants decided not to prioritize our request;<sup>24</sup> the letter sometimes got delayed in one of the other departments of the judicial building; and other common problems associated to sending a letter, such as getting mislaid along the way, being delivered to a wrong address, etc. The solution we found was to call the civil registry directly, using the phone number given for members of the public, and ask the civil servant in charge of the phone whether there was any other means of communication to reach the judicial secretary. Normally, civil registries are accustomed to working with faxes, thus this was one of the most effective options. Nevertheless, in many cases the initial problem persisted with the document sent by fax. For example, in one of the main civil registries of the southeast of Spain, the document we sent by fax was only found after we went personally to the civil registry. Until then the document was just left at the printer, but nobody took the responsibility to pick it up. To ensure that the letter or fax would be read, we learned it was necessary to call the court again and ask for a direct conversation with the judicial secretary, to explain the research and emphasize the normality of the request, enumerating the previous civil registries where data collection had already been completed.

Reaching the judicial secretary by phone was not easy either as a result of another important factor in the daily work of civil registries of Spain: the hierarchical

<sup>21</sup> M. PÉREZ, “D.E.P. *Inmigrante N° 7*”, Blog Asaltar los Cielos (Fundación de los Comunes) in *Periódico Diagonal*, June 24, 2015, <https://www.diagonalperiodico.net/printpdf/blogs/fundaciondeloscomunes/dep-inmigrante-no-7.html> (last accessed January 31, 2016).

<sup>22</sup> B. KALIR, *The field of work and the work of the field. Conceptualising an anthropological research engagement*, in “Social Anthropology”, 14 (2/2006), p. 238.

<sup>23</sup> IBIDEM.

<sup>24</sup> As described by Hiemstra, there is a gap between “policies as envisioned and set by policymakers” and how “policies actually develop in practice”. N. HIEMSTRA, *Geopolitical Reverberations of US Migrant Detention and Deportation: The View from Ecuador*, in “Geopolitics”, 17 (2012), pp. 293-311.

organization of the personnel and the difficulties in passing one of the steps in the chain of transmission. Many times we met civil servants who blocked the transfer of information to the judicial secretary or judge. It emerged that there was an internal, informal rule among civil servants in charge of the phones not to direct calls to the judicial secretary. In some civil registries, civil servants ignored the phone altogether; according to one civil servant, “the civil registry has to deal with too much work to take care of the phone”.<sup>25</sup> In these circumstance it was necessary to find another way to reach the judicial secretary by phone. For example, contacting another court from the same judicial building or calling any of the courts of peace<sup>26</sup> from the same judicial area, trying to find somebody who has a fluent relation with the judicial secretary of the civil registry and could either transmit a message or provide the researchers the phone number or email address of the judicial secretary. When communication could not be established by any of these tactics, the most effective solution was to go personally to the court to hand over the package directly.

The hierarchical organization of the civil registries introduced another critical factor: it was often not clear who was in charge of taking the decision to grant access to the civil registry archives. It was imperative for us to know to whom we should address our request. In some civil registries, asking the civil servant who answered the phone to whom we should direct this kind of request was sufficient to learn the answer. In others, it was necessary to experience the particular workings of that civil registry<sup>27</sup> to observe who was taking the practical decisions and therefore would be in a position to facilitate our access. We found civil registries where the decision to grant access to archives for research was taken by the judge, by the judicial secretary and even by civil servants who had some influence over the judge in these matters. We even found civil servants with enough internal authority in the civil registry that they did not even need to ask or obtain permission from the judge to let us work in the archives. As one such civil servant told us, “judges and judicial secretaries come and go, the civil registry is not their main concern, but civil servants stay here at the registry and we do know better than them the procedure for getting the access to the archives”<sup>28</sup>. In civil registries where this responsibility was unclear, judges and judicial secretaries could make opposing decisions: in one we were granted a permit to search the archives as long as we were discrete and hid our presence from the judge.

In the case that our request was rejected by phone or by letter, the strategy was to visit the civil registry and talk to the judicial secretary in person. This was undesirable due to the investment of time and budget without any guarantee of result. But as a result of the obstacles relating to phone calls addressed above, this strategy was used often. If the refusal remained steadfast after appealing the decision in person – which only happened in a few cases during the whole research – the only option left was to make a formal

<sup>25</sup> Transcription from a conversation recorded in the logbook of Ignacio Urquijo during the fieldwork.

<sup>26</sup> Courts of peace, or *Juzgados de Paz* in Spanish, are situated in small towns where there is not a main court. The main court has jurisdiction over the courts of peace of its judicial district. For example, the province of Málaga, in the south of Spain, is divided into 11 judicial districts. One of the judicial districts is led, for instance, by the court of the city of Estepona, which is in charge of the courts of peace of the areas of Casares and Manilva, so in total there are three civil registries in the area of Estepona. To find more information about the jurisdiction of the courts in Spain, visit: <http://www.mjusticia.gob.es/cs/Satellite/es/1288774671469/DetalleCartojus.html> (last access January 28, 2016).

<sup>27</sup> Knowing intuitively the rules of the game in which we are playing, what Bourdieu calls practical sense, was one of the main tools used to succeed during the field research. In P. BOURDIEU, *The logic of practice*, Stanford University Press, Standford 1990.

<sup>28</sup> Extract from the research notes recorded by Ignacio Urquijo in his logbooks.



complaint to the DGRN, which we did in three occasions, unfortunately without positive result.

The researchers had considerable success at turning around a refusal by appealing the decision in person. Once at the civil registry, a series of tactics were used to overcome the practical obstacles that most civil servants and judicial officers were concerned with. It was very helpful to emphasize that we did not need any assistance that would divert a civil servant away from their work. Physical space was another important factor relevant to the negotiation of access: In some civil registries, the lack of spare physical elements – chairs, tables, an empty space at the facilities, etc – constituted a reason for rejecting our request. In these cases, we demonstrated to judicial secretaries and civil servants that we did not need anything to carry out the research: we had our own paper and pens, we did not need to use the photocopier,<sup>29</sup> and, if necessary, we offered to work standing up or sitting on the floor.

Further along in the data collection period, one of the most useful tactics for gaining access quickly was to demonstrate that our request was not as exceptional as it first appeared. Presenting the permits issued by judges in other municipalities where we had finished data collection was an extremely persuasive counter-argument when faced with a reluctant judge, judicial secretary or civil servant. In many situations, the written approval of a fellow judge changed the mind of a judge who had initially refused our request. A permit from one municipality could be used as a template for a permit from another. However, we had to be careful to avoid starting an argument about the legal right to undertake such research: in general, such a tactic did not lead to access but rather triggered a defensive position from the judges and judicial secretaries.

Defensive positions could also be evoked in relation to the heavy workload that characterizes daily routines in the majority of courts and/or civil registries. For example, in the East coast of Spain there is a large civil registry that has jurisdiction over a small piece of coast. This civil registry has another small one depending on it that has a jurisdiction over mainly coastland. We obtained the access to the latter from the former. Then, we realized that, if we wanted to cover the whole coast of that region, we had to request access for the big office as well. When we called there, we had a conversation with the secretary to the judge that oscillated between an attempt to not take charge of our request and the duty to do it. We were told that the civil registry did not cover any coastland. When we proved the contrary, we were told that we should send a request letter, which we had already sent. When we offered to send it again, we were told that that was not necessary, as it was the work of the secretary to take charge of the correspondence addressed to her. Later, we were told to send a letter requesting access only to the big registry, as the one we had sent requested access only to the small one. Then, we were told that the secretary would be recommending that the judge refuse our request because death certificates were private. We explained the clause establishing an exception for research purposes, and were told that maybe we would get access after all. During the whole conversation, the secretary repeatedly told us that our request was disturbing her – already very busy – workload, but that, at the same time, it was her job and her duty to assist us.

Finally, a brief vignette illustrates the specificity of working with records at the civil registries and how getting access to them is a process formed by institutional alignments, hierarchies, and daily work routines and practices. In one of the municipalities in Andalusia, death certificates books were guarded in part at the civil registry and in part in a judicial library. In the first one, we followed the regular procedure to get access as we

---

<sup>29</sup> “Visitors are not allowed to use the photocopier” was a typical announcement seen in the civil registries. As explained by a civil servant in an occasion, this is due to the lack of resources of the civil registries.

were asking to examine administrative and judicial records archived by a civil registry. In the second one, even though we had a permit from the civil registry, we were not asked to show it as we were at a public judicial library. In contrast with our experiences in civil registries, where we were used to working among the shelves of books and files, at the library we were placed in a separate room into which we could bring only one book at a time. After some minutes working, the person in charge entered the room and asked us if we could pass the pages slower. Speed was a positive tactic at civil registries, so we had become used to passing the pages extremely fast, given that we were able, by that time in the data collection, to recognize easily a possible border death certificate. However, at the library, while our access to the records was not questioned, they were concerned with conservation and care for the books themselves. In civil registries, books were very much in use; civil servants wrote in them as part of their daily work, and their concern was instead with issues related to the privacy of the data the books contained.

### 3. Concluding Observations

Data collection in Spain for the Deaths at the Borders Database involved negotiating access to 171 civil registries, of which only six refused access altogether. This paper has presented the researchers' experiences of this negotiation process, from pursuing a general permit for access, to navigating the particular interests and demands of the civil servants in each registry office. Negotiating access to public death certificates and private *legajos* required persistence and bureaucratic know-how. The researchers developed a wide range of negotiation strategies and tactics to achieve access, which included advance preparation – sending letters, faxes and phoning – and making on-the-spot arguments, carefully selecting and adapting their strategies depending on the arguments presented by judges or civil servants for resisting the request. Interestingly, although the researchers were always upfront about the subject of the research they were conducting, the subject of border deaths featured very rarely in these 171 negotiations.

One of the arguments for refusal that researchers faced in civil registries was that data on border deaths was some place else: *Guardia Civil*, the Police, the National Institute of Statistics, the Ministry of Interior. But, in truth, useful data was contained in the books stored on the shelves of civil registries for decades, although systematic aggregation of this data was needed in order to construct an intelligible narrative from it. While a mode of governmentality functions by regulating population by knowing its biological processes and risks, and putting them in relation to wealth and territory,<sup>30</sup> there are processes that simply are not counted. Irregular border crossings are counted in state statistics. Border deaths are not. As anthropologist Didier Fassin states, rather than a mere effect of government, absence of statistics does indicate specific operations of government. This absence is an “indication on the politics of life”: “technologies of government” – such as border policies – “produce inequalities of life” and absence of statistics “simultaneously erase(s) their traces”.<sup>31</sup> The Deaths at the Borders Database is, in this sense, an investigation on what technologies of government erase the traces of those deaths, and an affirmative action to narrate them for everybody to know.

---

<sup>30</sup> M. FOUCAULT, *Seguridad, Territorio, Población*, Akal, Madrid 2008.

<sup>31</sup> D. FASSIN, *Another Politics of Life is Possible*, in “Theory, Culture and Society” 26 (5/2009), p. 44-60.