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In a Kafkaesque catacomb: the killing of Ihor Homenyuk by the Portuguese customs and immigration bureaucracy

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ABSTRACT

Bureaucracies, especially state bureaucracies, are typified as rational-legal organizations. We study how one such bureaucracy acted as neither rational nor legal but proved to be a space of exclusion. Ihor Homenuyk, a Ukrainian citizen, was 'retained' and then killed by the Portuguese foreigners and borders service. Police abuse has been much in the news in recent times, as a result of the Black Lives Matter movement. The issues are wider than those of racial injustice, however; they go to the nub of what it means to protect both the citizen and the honour of these organizations that engage with them in a way that is required to be legally rational. We use the case to open the black box of abuse and advance an explanation of how vicious dynamics happen.

1. Introduction [1]

The most famous theorization of bureaucracy, as well as the most influential, positioned it as a legal-rational ideal type of organization (Weber 1978), freed from the shackles of past vices of patrimony and privileged access. For Weber, bureaucracy that was legal-rational in design was a technical and ethical instrument. Technical, in that it decided matters by reference to rules rather than personal whim, favoritism or prejudice. Ethical, in that in the ideal type, it was assumed that the rules were to be applied universally to all that were to be subject to them. In this sense, bureaucracy could be represented as a tool designed for a moral project (du Gay, 2015; Perrow 1986) or, at least, it can be said that there is an 'ethics of bureaucracy' (Huber and Munro 2014, p. 261). Thus viewed, state bureaucracy is inherent to the practical achievement of democracy; it ensures that all are equal before the law and that all are to be dealt with according to rule. For this reason, when the moral order of the bureaucracy is violated in advanced, consolidated democracies, such violation represents a shocking failure, not only ethically but also of design: when the affordances of state bureaucratic tools are used unethically, democratic purpose is violated.

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Such violations are not unusual, however; when rules, rather than being means to ethical ends, become an object of rule tropism (Merton 1936) or an ideological project of systematic discrimination and extinction (Bauman 1989), legal rationality suffers. Members of organizations that lose sight of that organization's legal constraints and that lack ethical purpose can use its means to serve illegitimate ends disconnected from any legal or ethical moorings. In a worst-case scenario, they can become sites for illegal-irrational occurrences. To describe these not so uncommon moments of deviance, Robert Solomon introduced us to the idea of the Kafkaesque catacomb (Solomon 2004). The Kafkaesque catacomb refers to being entombed in the edifice of the bureaucracy, as a mausoleum of officialdom, in a powerful metaphor for bureaucratic sites not subject to oversight. The double metaphor is important here: Kafkaesque refers to the irrational labyrinth of rules (Clegg *et al.* 2016, Huber and Munro 2014: see also Pope 2017 for understanding how even an organization like the UK National Health Service may be Kafkaesque); catacomb refers to the organizational *bas fond*, the depths of bureaucratic practices inaccessible to the public, being officially enclosed.

In this article we analyze the killing of Ihor Homenyuk at the hands of the Portuguese *Serviço de Estrangeiros e Fronteiras* (SEF, the Foreigners and Borders Service), an example of security forces mobilizing gratuitous violence in an organizational system that failed to avoid such outcomes. We study this case to explain the dynamics that can lead bureaucracies from dispassionate rule-abiding to criminal abuse of force. Hence, in more general terms we ask: *how and why do state bureaucrats act illegally and irrationally*? With this research goal in mind, we organize the article in the following way. First, we briefly provide a theoretical background by discussing two bureaucratic extremes that pervert the bureaucratic ethos of legal rationality. Then we present our methodological approach. The empirical data is in the public domain; we use this data in the findings to *narrate* the facts leading to the killing of Ihor Homenyuk; hence the methodology is essentially a combination of the historical organization studies methodologies of narrating and conceptualizing a condensed and concentrated historical event and the circumstances surrounding its occurrence (Maclean *et al.* 2016). Subsequently, in the discussion we abstract the mechanisms that provide an answer to our research question.

We contribute to the literature on the perversion of a bureaucratic ethos of by presenting three mutual influencing mechanisms: (1) a tolerance for (rather than a correction of) excess, (2) lack of a relational understanding of ethics and (3), what Gittell and Douglass (2012) term a non-relational bureaucracy. We suggest that when individuals rely on violence to regulate organizational relationships with public with whom they deal they do so not as the result of norm-breaking but out of a sense of entitlement that it is morally right to do so in a form of 'virtuous violence' (Rai and Fiske 2012) or 'ethical violence' (Huber and Munro 2014). Violence that is regarded as positive by those that use it is rooted in specific informal organization norms embedded in affiliations learnt on the job (Gordon *et al.* 2009). Gordon *et al.* (2009) found the existence of a widespread organizational culture in policing, one which is based on informal organizational actor networks whose social integration is frequently more powerful in practice, as sources of action, sometimes violent and often unethical, than are formal rules. In this case these norms were based on difference in identity between officers and publics, interpreted as excluding aliens that could be treated as a lesser form

of life to those whose identity was certified by the state. In an exemplary case, we discuss how these officers doing this breached the apparent norms of a rational legal state bureaucracy and draw lessons in legitimacy from the case.

2. The state and bureaucratic extremes

To lay the groundwork for the analysis of the empirical case, we consider opposite visions of bureaucracy and the bureaucratic ethos. In Weberian terms, bureaucracy was typified as a legal-rational form of organization, an organization that should work *sine ira et studio*, without passion and prejudice. The expectation was that, as an ethos of character, state bureaucrats could be expected to display impartial impersonality and thus serve citizens in efficient and technically rational ways. A rational-legal bureaucracy would be designed as a place of merit in which positions in the office would be held for reasons of certifiable competence rather than motives such as orientation to kin and patrimony or to what markets might be thought to want.

Bureaucracy plays a major role in the workings of state organizations: a well-functioning bureaucracy is one of the pillars of the state (du Gay 2020). The state's legal-rational bureaucracy is supposed to guarantee equality in front of the law. For the official, the ethos that each person is to be regarded as equal before the law and deserving of legal treatment is one of the great (legal, rational and ethical) strengths of bureaucracy. For the technically rational bureaucrat, every case is to be treated dispassionately in the same way, impersonally without fear, favor or prejudice of the persons implicated in the case in question. Impersonality, rather than a failing of bureaucracy, is its chief virtue: we are, ideally, all equal before the law, without regard for person.

Bureaucratic rule, as an ideal type, is open to perversion by two extreme behaviors: calcification and corruption. First, bureaucrats can lose a sense of mission and responsibility, a sense of vocation and ethical character, by becoming committed to means rather than the ends these means are designed to serve; in such circumstances, following due process creates the tropism of which Merton (1936) wrote. The rules, designed to serve the fulfilment of a mission, become an excuse for avoiding accountability, leading to the calcification of bureaucracy (Hamel and Zanini 2020). Calcified bureaucracies are not only distant from the public they are expected to serve but can also project a lack of care for the substantive matter of the cases considered. An excess of obeisance to the rules of process, regardless of the anticipated consequences, often leads to the implementation of technical irrationality. Second, it is well-known that bureaucracies can be corrupted (Gordon *et al.* 2009). Such corruption can happen at several levels of the state apparatus as its officers become entangled with the tentacles of organized crime. The most persistent causes of this occurring are ossification in office holding, posing the possibility of the corruption of long-serving public officials by bribery and intimidation. These officers, by virtue of their incumbency (Kirby *et al.* 2020) are capable of informally cultivating corruption and misconduct as common features of police forces around the world (Newburn and Webb 1999), leading to public stigmatization and imputations of illegitimacy to the police (Gonzalez and Pérez-Floriano 2015). While perversion of the rational-legal order can consist in the use of petty powers to obtain material gains,

such as taking bribes or providing false evidence, it can also entail corruption of mission and process, such as when police forces use their power inappropriately and with a sense of impunity, as a show of force.

Officers other than police can also cultivate an informal ethic that, while not criminally corrupt, leads to unlawful conduct. For instance, it is established that elite armed forces can develop a 'warrior culture' in combat that can lead to extreme acts of violence, including murder of innocent civilians and covering up the evidence of their behavior (Inspector-general of the Australian Defence Force, Afghanistan Inquiry Report, known as the "Brereton Report 2020). While inexcusable, such behaviour in the heat of battle in a dangerous context such as Afghanistan, where the SAS crimes were committed, is at least explicable as such behaviour that for the most part is social action conducted according to an informal ethos that personnel cultivate and protect. When violence practised by officers working as low-level bureaucrats leads to the death of a person, neither for reasons of corruption nor for an ethos fused in the rites of a battalion and the heat of war (Thornborrow and Brown 2009), the mundanity of such violence may appear organizationally puzzling. Lowly bureaucratic officers, especially those working in conditions immune to public inspection, often deal with the management of those matters that maintain the 'purity' of a social order. Frontline workers 'serve as the boundary between the sanitized social order and marginalized social groups', amongst whom are those constituted as 'other' who become subject not to rational legal precepts but 'informal social norms' and 'individual preferences' (Nisar and Masood 2020, p. 884) in their decision-making.

The corruption of state officials may thus take different shapes. In some cases, the bureaucracies that form a part of state apparatuses play the role of vigilantes, being able to act unethically by virtue of ineffective state regulation and restraint (Breuil and Rozema 2009, Warburg and Jensen 2020); police violence in various jurisdictions against discriminated people, notably in the USA but not unusual elsewhere, is a case in point (Cherry 2017, Lett *et al.* 2021). In cases that are not low-level institutionalized expressions of racism, the use of violence is more perplexing. Confronted with such a case, we felt compelled to analyze it in search of an answer to our research question about how and why bureaucracies could become illegal and irrational.

3. Constituting the other as alien

The state, notionally, has a monopoly on the means of violence. As Malešević (2021, p. 364) has argued,

> "The most influential social organisation in the contemporary world, the nation-state, has attained its near hegemonic position through monopolising the legitimate use of violence over the territory it controls. Thus, violence is embedded in complex and durable social organisations that maintain their organisational power through the incessant accumulation of coercive capacity. Having a sizable coercive capacity is a precondition for social influence and effective control of a population. The fact that much of this coercive power is often invisible to the public eye has led some analysts to overlook its centrality to the modern social condition."

Reviewing the history of state violence using coercive powers, Morrow (2020, p. 14) observes that the rational-legal categories of the state's bureaucratic apparatuses contribute 'to the creation of invidious social categories [and] the progressive marginalisation and persecution of persons placed in those categories.' It is this process that we will focus on empirically in this paper, taking a specific case. Although the case may be specific, the general point is not. As Malešević (2021, p. 368) writes,

> All durable and complex social organisations rely on the use of coercive power [...] as all complex organisations involve task-oriented and regulated activities, social hierarchies and the division of labour, they have to control and sanction any behaviour that undermines the core activities of the respective organisation. Hence coercive power underpins the very existence of organisational capacity. The fact that many social organisations are popularly perceived to be legitimate only enhances their coercive power.

The state is represented in everyday life by organizational routines that exercise degrees of control over bodies that inhabit a specific territory. These bodies are usually represented as republican 'citizens' (or 'subjects' in monarchical systems). Mostly, the controls are matters of state statistics, tracking the population in terms of births, marriages and deaths, eligibility for certain benefits, violation of certain laws, careers as students and taxpayers and so on. A panoply of rules, norms and mores refer to citizens' benefits and contributions. Citizens can expect to be treated fairly under the law and, when they are not, it can become a matter for social mobilization in search of social justice (Hattery and Smith 2021, Özbilgin and Erbil 2021). However, under certain circumstances, we need 'to investigate carefully how – that is, thanks to what juridical procedures and political devices human beings could have been so completely deprived of their rights and prerogatives to the point that committing any act toward them would no longer appear as a crime' (Agamben 1998, p. 40). Agamben argues that only those deemed sovereign can suspend law (creating an exception to the law) while remaining within the law itself (since the law is represented by those sovereign). 'The exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception. The particular "force" of law consists in this capacity of law to maintain itself in relation to an exteriority' (Diken and Laustsen 2006, p. 447). The border of the state is such an exteriority, a zone of exclusion that only some may cross, those authorized to do so. Those that do not appear to have *prima facie* rights to do so may be held in a particular space that is defined by law but is in some respects outside the law. Those that are not citizens, those that are detained at the border have yet to enter the state, if they have not been authorized to do so; they are detained in a space that is 'outside' the state to which they seek admission because it is a space not *in* the state but *on* the border, a space of exclusion and exception. Banning an individual from entering the society defined by the state and controlling that individual in a particular space, creates a state of exception.

Within this state of exception, the question of rational legality becomes more complex in view of the findings to be discussed. The fact that an organization is a state bureaucracy does not ensure legal rationality and a lack of violence in dealing with those that come into its domain and are held in a state of exception. Those that enter the domain of control of a country's border authorities may well do so based on strong normative

convictions in not only the ethical appropriateness of what they do but also its legality. These include the ethical conviction that is right and proper to travel to a European Union country from another country, for instance, Ukraine. Since the early 2000s, Ukraine has been a major source of immigrants to Portugal.[2] The Ukraine is party to the Ukraine–European Union Association Agreement and the Deep and Comprehensive Free Trade Area (DCFTA). Ukraine is a priority partner within the Eastern Partnership and the European Neighbourhood Policy (ENP) such that search for employment without a specific visa to do so is allowed.

Normatively, the responsibility of the state is to ensure that its borders must be protected. Being seen as non-citizens, visitors that arrive without a visa are neither guests nor residents but have a liminal status, as potential incursions into the body politic, until normatively as well as legally ordered. The most notable categories of such persons are asylum seekers and refugees, those who are provisionally categorised as illegal aliens. Literally, they are not people recognized by the procedures of the state as falling within the remit of its legal order. Those persons categorized as 'Other' are, by definition, outside of the legal order of things; while they may be human, they lack human rights. In the case we will discuss, someone arrived at an airport in a country other than his own, someone entitled to do so without a visa, someone who, nevertheless, was apprehended for the lack of one, someone subsequently murdered by state officials.

How could such a murder be possible? The concept of 'virtuous violence' may be in play. Malešević (2021) notes that when individuals rely on violence to regulate existing social relationships, they do so not as the result of norm-breaking but out of a sense of entitlement that it is morally right to do so in a form of 'virtuous violence' (Fiske and Rai 2014, p. 1; see also Rai and Fiske 2012) rooted in specific cultural norms, such as keeping out aliens and meting out 'justice' to them on behalf of the state being served, while being in a space that excludes the other's access to the state, enabling them to do so in a state of exception.

Our narrative centres on Ihor Homenyuk but we concentrate our analytical attention on the SEF as the object of case study. Ihor Homenyuk was a Ukrainian citizen who died at Lisbon airport on 12 March 2020. Ihor Homenyuk was banned on entry on March 10 from staying in Portugal despite, as a Ukrainian, being exempt from a tourist visa. The local officers of the SEF refused entry on the grounds that he had come to work, which he was legally entitled to do. He died after violent assault and restraint by three SEF officials. What was established as a 'crime committed against the Ukrainian citizen was not an isolated event,' Amnesty International's Portuguese branch chief Pedro Neto said, considering other incidents of abuse against foreigners arriving in Portugal had occurred before (Demony and Waldersee 2020). As Mr. Homenyuk's family subsequently said, through a lawyer, he had travelled to Portugal to look for a job and therefore did not need a visa. He had worked in traffic management and in construction, the lawyer said (Kawai and Anglès 2020). Being regarded as an illegal alien was enough to result in his death. Our data analysis proceeded as follows. First, we established the facts of the matter, in order to develop a detailed understanding of the process. Then we focused on the different participants in the process, in order to make sense of their respective participation. We seek to explain how different actors playing different roles participated, actively or passively, in the process.

4. Method

The members of our research team residing in Portugal have followed various news sources since the case that we will discuss first became public on 12 March 2020. The scandal became public in the midst of the Covid-19 pandemic and was initially treated as a matter of important but secondary urgency, given the general crisis. By the end of the year, it was subject to widespread discussion in the media. Political pressure on the Minister of Internal Affairs was significant, with the director of SEF being forced to resign and the continuity of the SEF also being called into question. Even though these parts of the process are important, we focus on the events of March 12, without ignoring antecedents and consequences that might help to interpret the case. We analyse the singular case by grounding theorizing in the evidence. While the case is singular, theorizing abstracts more general features from events in order to build theory from a case that is exemplary of the issues involved in violation of legal rationality at street level (Lipsky 1980).

To analyse the case, we followed a narrative inquiry approach (Josselson *et al.* 2011) which has commonalities with grounded theory given its iterative nature and use of codes of different orders. After the event gained our empathic interest, we constructed the timeline of the events (see Table 1). This was based on media sources. Due to the political sensitivity of the case and because detention centres remain difficult places for researchers to access (Esposito *et al.* 2020), we decide to use public sources. As a reliability check, we consulted the executive director of Amnesty International in Portugal in order to check if our interpretation of the data made sense. Press articles are not necessarily neutral or unbiased, but when collected from a variety of sources and authors they offer abundant information that can be used to establish the facts by initially following what Eisenhardt (1989) termed a 'courtroom' approach. In this first phase we tried to collect the available evidence as the basis for subsequent analysis and interpretation.

In a first stage, we developed first-order concepts (see Figure 1), covering the most important categories characterizing the case. As we organized the process chronologically, we extracted categories that we considered relevant for the case. This led us to a total set of 24 stabilized first-order codes, corresponding to reported facts that explain the case. As we created these open codes (Strauss and Corbin 1990), we also considered their articulation. At this stage, we consulted as many sources of evidence and created as many codes as we could until we felt the case had become factually saturated. In this case, we define factual saturation as, as far as possible, constructing a detailed and complete picture of the case from the outside, using reports of what occurred.

In a second stage, after composing a complete understanding of the sequence of events, we moved to the creation of second-order themes, a phase that consisted of axial coding that abstracted higher order codes from the initial open codes. In the process of interpretation, given the difficulties and biases of direct access, we worked in two sequences. First, one of the Portuguese authors composed an analysis of the main actors and their participation. Second, the same author asked another fellow national author to do the same work independently. The emerging interpretations were then shared and compared, allowing us to validate common interpretations and to discuss disagreements. In a third moment, the resulting interpretations were submitted to the remaining two

Table 1. Timeline of events (12 March 2020; Main source: Almeida 2020).

2:00 to 2:42 AM	• First aider A tells that Ihor Homenyuk (IH) presents with a 'superficial excoriation' on his face. She left for a smoke and when she returned the patient was immobilized with tape. Nurse A did not observe any wounds expect the one on his face. When he returned IH was immobilized, laying on the ground.
4:23 to 4:36	• Security A moves to the doctor's room, smiling at IH. Security B and Security C present good mood.
4:48	• SEF Inspector A explains that IH did not present any wound expect the one on his face. He moved and breathed normally.
4:55	• SEF Inspector B corroborates the previous descriptions.
8:21	• Security D explained that she did not observe any signs of aggression. SEF coordinator corroborates the point.
8:32	• SEF Inspector C returns and closes the door. One of the inspectors says that 'the names are not to be registered. We are not here'.
	• Security C reported that SEF Inspector D carried a bat with which he bet the palm of his hand.
	• One of her colleagues asked the name of the inspectors and received 'That is not necessary as an answer' (Security B).
	• Security E told that 'since the inspectors arrived, we started hearing Ihor screaming'.
	• 'Many screams from inside the room as a consequence of the aggressions of the inspectors' (Security D).
	• 'Saw. Ihor standing, agitated, immobilized by the inspectors' (SEF coordinator).
8:36	• 'One of the inspectors immediately told: this is not for anyone to see' (Security F).
	• SEF Inspector D was there but could not say if he had his foot over Ihor 's head or if he was threatening to kick him on his head. (Security F).
	• Screams of pain were heard, attribute to Ihor. His screaming lasts for some time (Security B and Security C).
8:55	• SEF Inspector D puts his foot over Ihor's head and makes his head hit the floor. Tells the security guards that he wants nobody there (Security E).
	• SEF Inspector E did not observe any injury.
	• Inspector are sweating and one tells 'Today I don't have to go to the gym' (Security D).
9:00	• Security G enters the medical room for the first time since the departure of the inspectors.
	• Saw the evident signs of aggression: swollen face, hematomas, some blood on his nose.
	• When they helped Ihor to move from the wall he expressed signs of pain.
9:38	• Security D enters the medical room for the first time after the inspectors left.
	• Security guards hear him talking softly. Then he was got silent. Guards thought he was sleeping (Security H).
10:00	• Gradually he started talking with low volume, consequence of the aggressions. Before the arrival of the three inspectors the citizen talked loudly and aggressively (Security I, security)
10:32	• Security G (security) brings water to Ihor.
	• Security D brings medicine.
	• Security H enters the room.
	• Ihor talked very low, as if he was praying (Security H).
12:45	• Security G (security) enters the medical room for the last time.
	• Asks Ihor if he wants something to eat. He answered negatively nodding his head.
16:48	• Security G explains that Ihor has stayed quiet, sleeping.
	• Security H and SEF Inspector F enter the medical room.
	• Ihor urinated himself.
16:59	• Hematomas and ecchymoses in his arms, swollen face and legs. Looked choked, like trying to expel something out of his mouth (SEF Inspector F).
	• He was faint, telling that his body seem to have no strength, his head falling to the side (SEF Inspector G).
17:30	• Arrival of the paramedics.
	• Movements of thoracic expansion (Nurse B).
	• He was breathing, with hematomas over his body and with sphincter incontinence (Paramedic A).
18:00	• Arrival of the doctor.
	• Cardiorespiratory arrests could not have taken place long ago (Physician A).
18:40	• Official hour of death.

non-Portuguese authors who played the role of devil's advocate (Schweiger *et al.* 1986) in order to search for inconsistent or implausible interpretations. After this phase we stabilized our analysis of the narrative. One important factor for the external validation of our theorizing is the fact that all the evidence consulted and used is public.

Detention space
- Administrative-bureaucratic space
- The marginal of the legal order: VISA is assessed but not mandatory

Legal voids
- Difficulty of access to legal support
- No human support (e.g., family, translator)

Rule violations
- Staff using a forbidden weapon
- Uncertified nurse

Entangled hierarchies
- Security staff and inspectors have different hierarchical lines
- Lines were blurred and entangled

During: conformity
- Orders to avoid registering names
- Orders to stay outside

After: cover up
- No complaint (security staff)
- No complaint (INEM; "National Institute of Medical Emergency)

Low felt accountability
- Acceptance of no responsibility
- No apparent attempts to avert the situation

Passivity
- Acceptance of orders by several members of the security staff
- No attempt to interrupt beatings

Beatings
- Violation of law
- Use of unauthorized weapon (see also "rule violations")

Lack of assistance
- Homenyuk lies handcuffed for hours
- Passivity continues (prolonged)

Ministry
- Late reaction
- Superficial response

SEF (Foreigners and Borders Service)
- Director stays silent
- No information about the case in the SEF' website

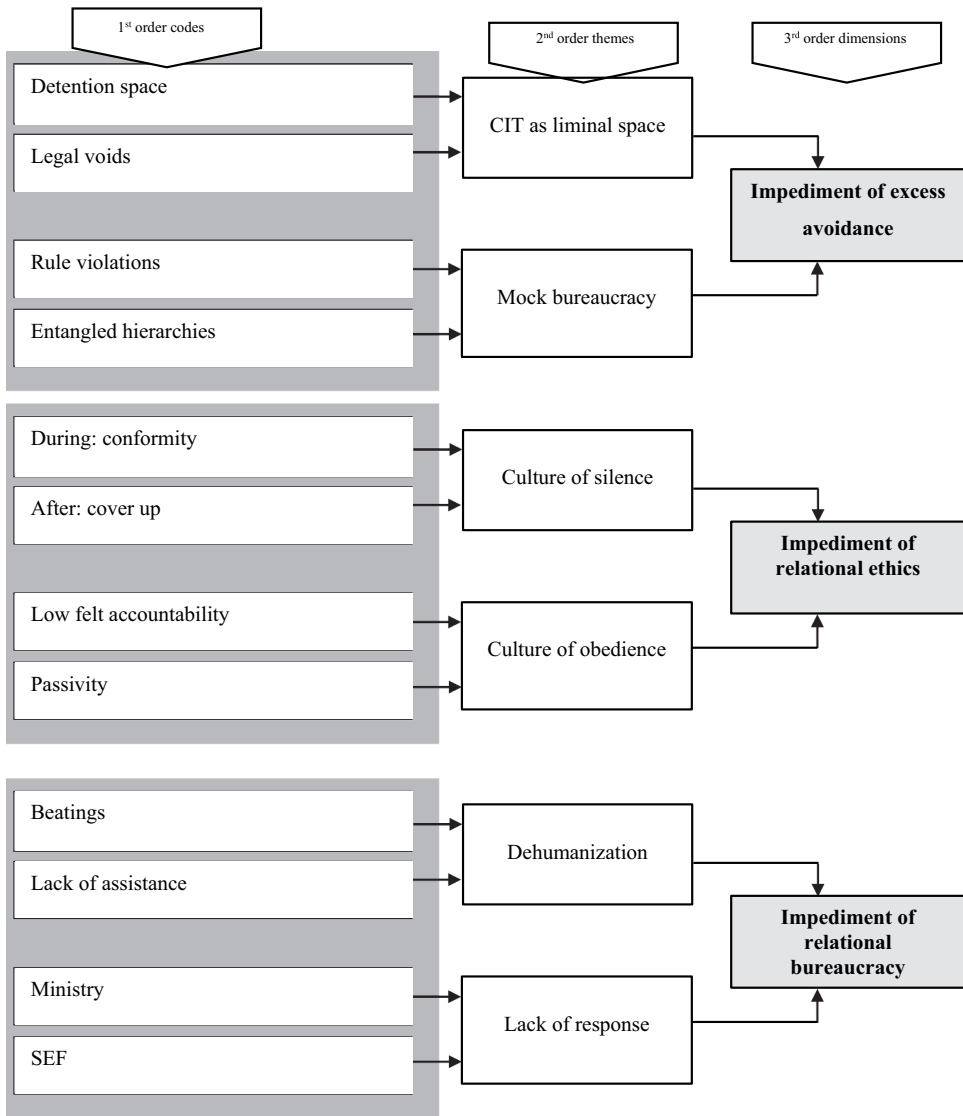**Figure 1.** First-order codes and their main content.

Figure 2. Data structure.

In a third stage, we organized the second-order codes into three main aggregate dimensions. The process, graphically depicted in Figure 2, led us in the direction of a more abstract interpretation of the case, offering a theoretical but grounded understanding of the events (Gioia *et al.* 2013).

5. Findings

In this section we first present the case by focusing on the participants in the event, by order of appearance, in a narrative presentation. Next, we present the findings of our thematic analysis of the case.

5.1. Retained in a non-detention centre

Our case starts when Ihor Homenyuk, aged 40, lands at Humberto Delgado Airport, Lisbon, on the 10th of March 2020, flying from Istanbul. Upon landing, based on the absence of a visa (which, as we have noted, was not legally required), he was detained (a chronology of the process is presented in Bernardino 2020). A description from the news TV channel SIC explains:

> "Ihor Homeniúk landed in Lisbon on the 10th of March at 11AM. He arrived from Istanbul and was immediately stopped in the first line of control. Seven hours later, in the absence of a lawyer, he would declare that he came to work. He did not have valid documentation and entering national territory was denied. As he only spoke Ukrainian the translation was done by a staff member with no qualifications, as the inspector of the SEF didn't speak the language. The Ministério Público considers the possibility that Ihor never declared that he wanted to work in Portugal and that he arrived as a tourist only, which means that the visa was waived. The return to Istanbul was planned to take place at 4PM, but for unknown reasons he refused to travel. He was shackled with adhesive tape around his ankles and arms by two security guards until the SEF inspectors arrived". (https://sicnoticias.pt/pais/2020-12-11-Caso-SEF.-Primeira-certidao-de-obito-refere-que-morte-de-Ihor-Homeniuk-se-deveu-a-causas-naturais)

Homenyuk was retained in a centre that does not legally *detain* people. As Guerreiro (2020) explained, a retention centre is not a place of detention and the condition of such a bureaucratic *dispositif* is ambiguous. It is not a place where order prevails in the context of the law but a site that 'because of its very situation, nature and function, it is easily attracted to the margins of public law' (p. 30). Such a retention centre is potentially an anomic space, outside the legal boundaries in which the 'retained' can have difficulties accessing a lawyer (as the law demands) and may be retained for flexible periods while being impeded in contacting their families and having access to a translator. In this sense, in contrast with refugee camps, these are 'invisible' spaces (Tazreiter 2017) outside public attention and the regular legal order. It was such a space in which Homenyuk was detained.

Between his arrival, detainment and killing, Homenyuk was taken to the Santa Maria Hospital, in the company of two SEF inspectors, with complaints of pain in his abdomen. On the 11th of March, he was released from the Hospital, after inconclusive diagnoses. He returned to the *Centro de Instalação Temporária* (CIT; 'Temporary Installation Centre'). At 11:49 PM he was isolated in the room labelled '*Médicos do Mundo*' ('Doctors of the World'). At 1.06 AM of March 12, two inspectors entered the room with a nurse and a Red Cross assistant and administered a tranquilizer, Diazepam. Homenyuk showed signs of agitation, perhaps because of abstinence on the part of an alcoholic, for which the authorities did not provide appropriate medicine (Franco and Gustavo 2020). SEF inspectors entered the room at 4:41 and left at 4:52. Homenyuk was immobilized with adhesive tape on his ankles and then handcuffed. He stayed handcuffed for at least 15 hours and immobilized for 8 hours, with his trousers at the knees, as he urinated himself (Henriques, 2020).

The events of March 12 are presented in Table 1. On the 14th the results of the autopsy were known. **The TV channel TVI reported the death of a foreign citizen on the 29th of March. The cause of death at the hands of the officials was advised to** *Polícia Judiciária* (PJ; the national criminal investigation police agency of Portugal), **by an anonymous person and the coronial doctor who made the autopsy** (Branco 2020)**; until then, the death has been treated as 'natural'** (Câncio and Marcelino

2020). On the 30th the three inspectors were detained. Minister Cabrita announced the closing of the CIT on April 8th and it reopened on August 1st with panic buttons installed. On September 30th the inspectors were formally accused of causing Homenyuk's death.

The inspectors had told the security staff to stay away from the scene. As reported by journalists, in the CCTV images, one of the inspectors uses an extensible *bastão*, a form of truncheon. When they were detained, 18 days after the alleged crime, two of the inspectors had in their possession this type of object, considered a class A weapon that is not authorized as a part of SEF's kit and which requires a special license from the *Polícia de Segurança Pública* (PSP, 'Public Security Police'); hence, the inspectors were also accused of illegal possession of a weapon. The security staff, who were secondary actors in the process, were kept outside the detention area and told to stay away and be quiet. They accepted their subordinate position and did what they were told. In a culture with a clear hierarchy and in organizations with quasi-military attributes, such respect for obedience is not surprising.

Two days after the death, the doctor who conducted the autopsy informed the *Departamento de Investigação e Ação Penal* (DIAP; 'Department of Criminal Investigation and Prosecution'), in Lisbon that evidence revealed 'death by homicide by mechanical asphyxiation' and appealed for 'clarification by the competent police authority' (*Notícias ao Minuto*, 2020). The Director of the SEF remained silent until November 15th, when she spoke in response to significant media pressure (Câncio and Marcelino 2020). Between claims of her ignorance about the case and counterclaims that she had been aware of the facts since the very beginning of the case, the director failed to express decisive action. The Minister, Cabrita, took some measures, such as closing and reopening the CIT after it had been equipped with panic buttons. The panic buttons were the subject of vigorous political comments: obviously, they tackled the symptom but not the root problem. On November 26th, the physician who conducted the autopsy saw his contract with the *Instituto de Medicina Legal e Ciências Forenses* (INMLCF; 'National Institute of Legal Medicine and Forensic Sciences') rescinded on the grounds that he violated the internal regulation of the Institute because he published a scientific article with photographs of the face a corpse in the facilities of the INMLCF (Ramires 2020).

Subsequently, José Gaspar Schwalbach, **the lawyer for Ihor Homenyuk's family argued that cases of violence against immigrants at Lisbon airport were not isolated acts**. Schwalbach added that he had been threatened by inspectors of the SEF and that, two years before the case, he had submitted a 'complaint' to the *Provedora de Justiça* ('Ombudsperson'), stating the facts of the abuse (SIC Notícias 2020a). Despite this, after the death of **Homenyuk**, SEF created **an 'isolation room' at the airport, against** recommendations of *Provedora de Justiça, Ordem dos Advogados* (the Portuguese lawyers association; Ordem dos Advogados 2020).

5.2. A conceptual frame to make sense of the data

We now frame conceptually the events discussed in the previous section. Bureaucracy in practice is dependent on the behaviour of its officers. The facts allow us to establish a nexus of practices that, given their intertwinement, produced a tragic outcome. In the

process, several participants played important roles – actively or passively. Grounding our analysis in the data, we uncover three overarching mutually reinforcing themes that provide a conceptual analysis of the case (see Figure 3 for a general overview). These themes articulate three conceptual domains: the bureaucratic ethos, a duty of care, and organizational relationality. These three themes need to work in tandem as hard and soft organizational dimensions, with recent work showing that mismatches tend to be problematic, creating gaps between the theory of organization and the practice of organizing. The case reveals dysfunctions at three levels: a tolerance of excess, a formal rather than a relational understanding of ethics, and a non-relational conception of bureaucracy which, instead of buffering, amplified the effects of the previous factors.

5.3. A tolerance of excess

A first structural explanatory mechanism refers to the organizational ethos, its deep normativity. Ethical bureaucrats and bureaucracies are an important asset for any state apparatus (du Gay 2020). The case suggests that, in state organizations, in terms of legal and ethical practice, violations of the law will potentially be attributed to deviant individuals rather than to the organization itself, the well-known 'bad apples' thesis (Trevino
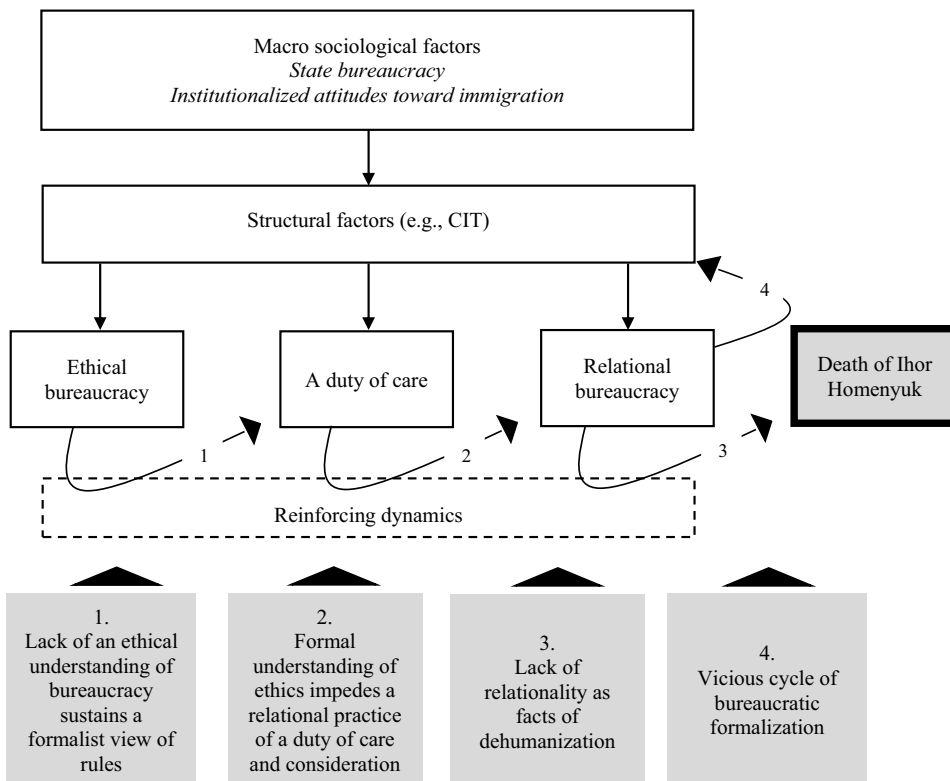

Figure 3. A model explaining the interplay of factors leading to death of Ihor Homenyuk.

and Youngblood 1990). Our analysis points in another direction: the factors elaborated here are indicative of a bureaucracy with many dysfunctions, creating liminal structures and incubating a mock sort of bureaucracy. The tolerance for excess is indicative.

These organizations tend to be perverse because they trap people in vicious organizational dynamics that may be extremely hard to dissolve, given the sense of solidarity expected of all insiders (even those working for different, supposedly independent, organizations). The organization was complacent about deviations and failed to express due diligence. Even in the face of homicide, the cultural and organizational response did not suggest a vigorous reaction to reform the organization. The most visible response were the panic buttons, an unintendedly ironic response to a serious problem of institutional degradation.

CIT as a liminal site. The CIT, working as a retention space, is an organizationally undefined place. It is not a legally regulated police space but an administrative-bureaucratic site where several legal rights are in a limbo. People can stay there for 'flexible' periods of time. They have no easy access to legal or family support. There is evidence that access to lawyers is made difficult. In the case of Ihor, there was no qualified translator. As the above makes clear, Ihor was alone, in a hostile place with no human support. He was out of the world, with limited rights, in an invisible place. No official translator was available, his powerful interlocutors could not understand him and had already assumed his identity as an illegal immigrant in search of work, although this was never his legal status.

The nature of the CIT makes it, to quote Guerreiro (2020), a place at the margin of the legal order, rich in legal voids and ambiguities. At the margin, events can take unusual turns. For example, a visa was requested by the inspectors despite the legal treaty between Portugal and Ukraine waiving tourist visas. While it is not clear if Ihor was a tourist, it is equally unclear that how the statement that he had said he had come to work was obtained. The CIT is an institutional grey area, with important voids. One of the originating causes of the problem of liminality in organizational ethics derives from the practical and intersubjective nature of ethics (Clegg *et al.* 2007). What is ethical and what is not, in part, derives from the calibration of one's behaviour with the expectations and behaviours of others. In legally liminal places, zones of exclusion as well as states of exception, abuse and violence can be unseen and easier to normalize than in more transparent settings (Ashforth and Anand 2003, Palmer 2008). An appearance of normalcy attaches to practices that, observed from outside, are obviously wrong. In the case of the SEF, in addition to the ambiguous status of the CIT itself, there is evidence suggesting that administrative obstacles were used to maintain exclusion by limiting access to legal support.

A mock bureaucracy. The CIT-SEF had all the appearance of a mock bureaucracy, in which rule violations seemed to occur and where hierarchies were entangled. The notion of the mock bureaucracy was introduced by Gouldner (1954) to describe a system that had the superficial appearance of a bureaucracy but which lacked its defining principles. Mock bureaucracies use rules in a way that subverts the rationality and/or the legality of the system that is supposed to be driven by a respect for these two organizational pillars. As Hynes and Prasad summarize (1997) mock bureaucracy describes a situation in which both managers and workers are aware of certain rules but make few attempts to adhere to them because they do not hold any legitimacy for either group. It is clear from Gouldner's (1954) study that a given legal rationality –

the rules of the organization – have different shadings of legitimacy depending on the situations in which they are enacted. Where community norms dominated organization rules, legal rationality assumed the contours of a mock bureaucracy: legitimacy resided in beliefs endemic to the community, not inherent in the rational legality of the organization. According to Gouldner's (1954, p. 185) analysis, 'a rule must be legitimated in terms of the group's values and will be more readily accepted if it is seen as furthering their own ends'. This description seems to fit the case of the SEF. As established in SEF's mission (sef.pt), the organism is ruled by the law:

> The Portuguese Immigration and Borders Service (SEF) is a security service within the Ministry of Internal Affairs (MAI) that, in the context of internal security policy, is responsible for carrying out checks on persons at the borders, monitoring aliens inside national territory, preventing and fighting organized crime involving illegal immigration and trafficking in human beings, decide upon asylum applications, issuing passports and identification documents to foreign nationals, in order to safeguard internal security and individual rights and freedoms within the global context of the migratory phenomenon.

> As a criminal police body, in the terms of criminal procedural law, SEF acts in the process under the direction and operational dependence of the competent legal authority, implementing the measures determined by that authority and the acts delegated by the same authority.

> SEF is responsible for promoting, coordinating and implementing the measures and actions related to these activities and to migratory movements. Internationally, it is responsible to ensure, as required by the Government, the representation of the Portuguese State in the working groups of the European Union, as well as at international organizations or events related to its expertise area."

All the language of the SEF is legal-institutional but in practice the law and its spirit were ignored by the three inspectors, who constituted a normative community outside the law. While the assault on Homenyuk is the most flagrant example of action that constituted deviations from the rule, other evidence is available. The inspectors were using weapons that were not allowed, while the nurse that administered Diazepam was not certified. These small deviations suggest that rule violations were not exceptional – as the executive director of Amnesty International in Portugal told us (email message):

> It appears to have a kind of profiling (I don't know if conscious or subconscious for the part of the services) that approaches people and create them difficulties. To our knowledge, a case of death in [Portuguese] airports is unique. However, cases of violence and prolonged detention are not unique. We even had children detained at the airport with their parents

The deviations were not intended to be for the benefit of the organization's substantive rationality (Mainemelis 2010). As a normal practice, rules were circumvented or ignored.

Entangled hierarchies. The types of interactions between the different actors, namely the inspectors and the security staff, are indicative of a hierarchical type of relationship in which the inspectors are above the security service providers. Instead of responding to well delineated hierarchies, with well-defined responsibilities, the services seemed to be coordinated along the lines of one single hierarchy. It was this that made it easier for the inspectors to remove the guards from the scene. Expanding their space for action in practice, in fact it worked against the common interests of the SEF as the presence of

witnesses could have, in principle, helped to assist the inspectors in their emotional self-regulation. Organizational research suggests that emotional regulation can be a socially distributed process (Vuori and Huy 2020). By taking 'strangers' out of the scene, the inspectors were now free to act in the absence of vigilance.

5.4. Lack of a duty of care

A second structural explanatory mechanism refers to the lack of understanding of ethics as a relational accomplishment entailing a duty of care for the other. Collectively, the participants in the process failed to use relationality to maintain bureaucracy integrity. Relational ethics are an intersubjective agreement (Clegg *et al.* 2007), a social, rather than objective, fact. Such an expression of mutual ethical adjustment seemed to be absent in our focal case. The ethical stance of other participants was corroded by the dominant group of inspectors, the ones doing the dirty work. In consequence, instead of collectively elevating the ethicality of the service, these others managed collectively to confirm its degradation. Instead of affirming legal-rational values, they were collectively counter-acted. In the absence of a translator, Ihor's ethical protestations that he was legally entitled to enter the country went unheard.

Culture of silence. A culture of silence prevailed at the CIT. Silence is often required from members of stigmatized organizations. Given that they have dirty work to do, they must ensure mutual protection when they interpret the job as sometimes requiring questionable behaviours. Cultures of silence create passive complicity. When one notices something and stays silent, one becomes part of the process. Once the process starts, the spiral of silence tends deepen each time. As per the accusation, some security staff

> approached the medical room and having opened the door were reprimanded by inspector (...), who sent them away with the warning: **'This is for nobody to see'**. Homenyuk's widow laments 'So many people saw what happened and nobody helped. I still don't understand. He was not a criminal, a terrorist or an assassin'. (SIC Notícias 2020a).

The security guards were impeded from entering the room. As their testimonies indicate, however, it is very likely that they knew that something was happening that should not have been. The episode was a variation on a theme – as some evidence suggests (Franco and Gustavo 2020), the CIT has some attributes of a liminal place (Cunha *et al.* 2010), a place where the line demarcating what is legal and what is illegal gets blurred.

The case reveals an insufficiency of structural checks and balances, which made the cover-up of the situation easier to conduct. The cooperation between different organiza-tional bodies (the State SEF inspectors and the security staff) could, in theory, instil a sense of independence and oversight, introducing checks and balances in the system, stimulating socially distributed regulation of emotions. The importance of checks and balances for socially distributed emotional regulation has been discussed in the context of strategic change (Vuori and Huy 2020) and it should also be considered in routine situations as well. The fact that the two bureaucracies were, psychologically if not formally, entangled, however reveals that the independence was compromised. What could be a governance mode rich in a healthy, even cooperative distance, became in practice a vertically integrated hierarchy. The inspectors gave orders that were obeyed to people who were their subordinates – apparently without much resistance.

Even the *Instituto Nacional de Emergência Médica* (INEM; 'National Institute of Medical Emergency') doctor who declared the death of Homenyuk did not declare anything unnatural. In summary, all the evidence suggests that the culture created was one of mutual protection, more than one of felt accountability. Instead of protecting the mission, the participating actors were apparently more interested in protecting one another than in protecting their institution from organizational wrongdoing. The culture of secrecy and mutual protection was broken only because of the action of the doctor who conducted the autopsy. Had he behaved differently, the case would have probably been classified as an unfortunate accident.

In fact, the culture of silence was also a *culture of blind obedience*. On the fatal hours of March 12th, the security staff were treated as subordinates. They were impeded from entering the room and told not to register the names, a weak defense against trouble as security guards overheard events on the other side of the door. What is telling, however, is the attitude of the inspectors towards security as people that could be commanded and treated like subordinates. For this reason, the illegitimate orders of the inspectors were accepted; the security staff did not feel accountable in face of the unfolding aggressions audible beyond the door. Obedience was perhaps a reason for passivity: in the absence of contra-orders, one does nothing.

Blind obedience is no stranger to bureaucracy and crimes of obedience have been characterized as not atypical to its workings (Blass 1999, Beu and Buckley 2004, Carsten and Uhl-Bien 2013). Security staff obeyed when they were told not to enter the room and not to record the names of the inspectors involved in the beatings. As support members to the service, this culture was perhaps internalized, in a process of normalization (Vaughan 1996) that has been explored. Ethics was thus viewed as rule-bound and relationally blind. When those who can do something to exercise a duty of care do nothing, the ethos of bureaucracy cannot flourish.

5.5. (Non) relational bureaucracy

A third structural explanatory mechanism refers to the lack of understanding of the bureaucracy as a relational as much as a rule-based process. The notion of the relational bureaucracy has been introduced by Gittell and Douglass (2012) to express the relational-interactional nature of bureaucracies. In this perspective, what makes a well-functioning bureaucracy is not the rule set but the quality of relationships as these are supported by good rules. Good rules and their application create good relationships. These relationships, when respectful and purpose-driven, create responsible organizations. When a bureaucracy is taken as a nexus of rules, it potentially deprives itself of the rich conversations (Gratton and Ghoshal 2002) that are imperative for creating better organizations. Good rules falter in the absence of good conversations. A legal apparatus translated as a rule book or as a legislative system offers no guarantees regarding the quality of a bureaucracy or its approximation to the ideal typical representation. For this reason, instead of making use of bureaucracy's strengths to create an ethic of service, the logic of powerful inspectors prevailed, with orders being followed with a position of subordination being assumed.

6. Discussion

Astonished by the case of Igor Homenyuk we asked: *how and why do state bureaucrats act illegally and irrationally*? The findings associated with this research question led to our main theoretical contributions. We found the absence of an intolerance of excess, of an ethics founded on a duty of care and a relational bureaucracy critical when deployed in a state of exclusion. Constituting a human being as other, as being not one of us, while excluding them, makes the exercise of violence normatively more possible, as discussed earlier. When these three absent elements are present in combination, the limits of the dynamics of abuse and submission projected on to categories of person categorically stigmatized as outside the law, as illegal, as alien, can be potentially avoided.

The above factors conspired to create a space of *dehumanization*. Homenyuk was immobilized, beaten and abandoned for hours, possibly as many as fifteen hours. Passivity continued from those that could help. As happens in quasi-military organizations, expressing care can be perceived as weakness rather than humanity (Wenzel *et al.* 2019). Homenyuk suffered without assistance and proper medical care. The service not only breached its mission as it violated basic human rights and did so with contempt for the honour of serving the state and representing the country. The role of a customs system should involve a paradoxical demand of universal hospitality and cosmopolitan law (Kant 1795) but it does not always do so (Tsoukas 2020).

There was also a blatant *lack of structural response*. The SEF director stood quiet for months. The prevalent culture of silence seemed to reach to the very summit of the organization. The data suggests that silence was a result of mutually reinforcing processes. In part, the culture of silence was imposed hierarchically. As the timeline of events makes clear, the inspectors exerted their hierarchical power over the security staff keeping them out the room in which the violence was inflicted. Evidence also suggests that there was a sense of group solidarity typical of uniformed forces of the law: given the danger and the demands of the job, officers protected themselves from an often-hostile outside world by affirming their group solidarity. SEF members created a 'little secret group' (Henriques, 2020, p. 18) to support their colleagues. For insiders, toughness in several forms may be a coping mechanism (Beehr *et al.* 1995) and the everyday fulfilment of mission tasks may imply cultures of institutionalized secrecy (Arellano-Gault and Lepore 2011). Even the director of SEF kept silent. The minister's reaction was also timid – the panic button expressing a dubious response to a severe problem; moreover, it was nonsensical: who would have allowed Ihor to press the button?

From the case, we develop in summary the model depicted in Figure 3 and abstract three types of structures that increase the transferability of the findings. The model shows how macro-sociological factors, such as institutionalized attitudes and responses to immigration create a hostile response materialized in spaces such as the CIT. Places such as the CIT nurtured three structural dynamics that became mutually reinforcing: a poor understanding of ethics as a relational phenomenon which hollowed out rules. The ethical project of bureaucracy was allowed to lapse, as the rules were reduced to vain statements, bureaucratic paraphernalia, that could easy be discounted. Unsurprisingly, poor relational patterns resulted (Dutton 2003). Poor relationships neutralize the best in people, creating toxic organizational environments (Padilla *et al.* 2007). In combination with a spatial zone of exclusion, these elements produced structural failures that

propitiated excess. The timid response of the authorities further aggravates the process, creating even more defensiveness and mutual solidarity in face of external 'attacks', as predicted by the groupthink hypothesis (Turner and Pratkanis 1998).

The dynamics of our model may lead to the prediction that, instead of trying to address the problem head on, the involved may try to shield it from the hostility of outsiders who do not understand the hardship of the service – an illustration of a vicious circle at work. The case was obviously embarrassing for the service: a search of 'Homenyuk' on SEF's website returned no results. An additional indicator of such embarrassment is that the government subsequently initiated a process of extinguishing SEF, replacing it by the *Serviço de Estrangeiros e Asilo* (SEA: 'Foreigners and Asylum's Service'), and reallocating some of its competencies to other state bodies, a process that started on April 14th, 2021 (see Resolution of the Council of Ministers no. 43/2021, https://dre.pt/application/conteudo/161386481).

6.1. Implications for policy

For policy and management, the case suggests that understanding the existence of a legal apparatus as sufficient to create legal organizations is far from reality. Being legal does not insure legitimacy. 'Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions' (Suchman 1995, p. 574). What is ambiguous in this definition of legitimacy is that it does not define whose socially constructed system of norms, values, beliefs and definitions sustain that legitimacy. Legitimacy in practice depends upon organizational practitioners' definitions in and of situations. From a simple presupposition that a person is illegal then an ethical consideration of that person as an outsider tapped into an ethical frame that was grounded, situated and differentiated from the overarching legal rational framework. Normal levels of hostility towards non-Portuguese see Eastern Europeans facing discrimination on account of ethnic and national differences, albeit to a lesser extent than post-colonial and black subjects (Buettner 2020). As guardians of the borders of the state, the SEF is not immune to normal levels of community hostility; indeed, these may well be heightened by the nature of the work and the creation of an in-group culture that explicitly defines itself against the outgroup of those that are 'other' together with a tolerance for 'virtuous violence' (Rai and Fiske 2012). The boundaries of generalized assumptions can in specific places be drawn quite tightly.

We offer an important contribution: a relational understanding of ethics and their legitimacy, the need to cultivate ethical bureaucracies that have a duty of care, as well as the crucial role of relationships in their practice. A logic of service implies that the effort to create decent organizations imposes a clear sense of public accountability even in the organizational underbelly, with its zones of exclusion.

6.2. Implications for theory

For theory the case discusses how, paradoxically, the abundance of rules and a dense legal framework may not preclude the development of highly unethical organizations lacking legitimacy in practice. We conceptually integrate ethics and relationality to present ethics as a deeply relational process. More precisely we studied how structural aspects have

influenced the quality of relational patterns that recursively influenced the quality of the structure in a vicious circle of bureaucratic degradation. Ignoring this dimension will significantly limit our understanding of the state bureaucracy. Future research may continue the exploration of topics discussed here, namely the interplay of governance and relational issues: how can designers create organizations that use independence of roles and participants to create a culture of mutual felt accountability and exigency? The importance of felt accountability has been pointed out (Higgins *et al.* 2022), but more research is needed to explore how it can be nurtured. How can independence and governance contribute to de-stigmatizing police forces?

6.3. Limitations

We studied one event that took place over two days in the life of an organization and constructed a narrative of its events from the reportage that occurred. It could be argued that the event was an extreme occurrence. We would argue that extreme events have a way of making the underlying and implicit rules of practice more explicit, as a naturally occurring breaching experiment (Garfinkel 1967, Flyvbjerg 2006). Moreover, in practice an event of an extreme nature often indicates the sudden irruption of a slow process normalizing deviance over a longer time. The episode was serious enough to warrant close examination as an exemplary case and as a breaching experiment. It resulted in the death of a person, criminal charges for the agents, reputational loss for the SEF and an embarrassing episode for the Portuguese state. We consider that extreme cases should be studied, as they open important windows on the reality of organizations. Studying extreme cases also allows understanding how the *extreme* often emerges as the consequence of an ongoing and somewhat hidden process not being continuously monitored before *the extreme* happens. Such phenomena can be important sources of theorizing (Ployhart and Bartunek 2019); issues, such as organizational abuse, are too important to be ignored by organizational scholars. Studying such processes will contribute, we hope, to protect not only the public but also those that serve in bureaucracy.

7. Conclusion

We analysed the case of the killing of Ihor Homenyuk at the hands of the SEF, the Portuguese customs and immigration services. A state organization designed under the aegis of legal-rational paradigm became an example of illegal irrationality, practised in a state of exclusion. The case exposes the worst of bureaucracy, offering an extreme opportunity to explore the inner workings of what Solomon (2004) called the Kafkaesque catacomb, a space in which principles of legality are buried. Ihor, a man who died alone, a stranger in a strange land, suffocated in a space that the authorities came to blame because it lacked a panic button . . .

Notes

2. Research looking at Eastern European immigration to Portugal has found that it is relatively more racist that the European average in opposing immigration and that this racism sometimes even assumes extreme attitudes (Mendes 2007), such as attributing alcoholism as a characteristic of Slavic Eastern Europeans.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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