



**STOP Programme**

## **TRAFFICKING IN UNACCOMPANIED MINORS IN THE EUROPEAN UNION**



**Belgium, France, Germany, Greece, Italy, The Netherlands, Spain**

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**IOM International Organization for Migration**

This publication is the result of two projects funded by the European Commission's STOP Programme in 2000/2001 and 2001/2002. The first project, steered by the International Organization for Migration (IOM) in Brussels, consisted of studies on unaccompanied minors who were victims of trafficking in persons in four European Union Member States: Germany, Belgium, Italy and the Netherlands. It also received financial assistance from the governments of Belgium and Italy. The second project was co-ordinated by the IOM office in Paris. It conducted a further three studies in Spain, France and Greece and organised an International Conference held at the Institute of Advanced Studies on Policing and Public Safety (IHESI) in **Paris on 18 and 19 April 2002.**

The views expressed in this publication have not been adopted by the European Commission and should not be considered to be a statement by the Commission or the views of the Justice and Home Affairs DG.

IOM is committed to the principle that human and orderly migration benefits migrants and society. In its capacity as an intergovernmental organization, IOM works with its partners in the international community to meet the challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards a real respect for human dignity and the well-being of migrants.

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IOM works daily with these key partners to combat human trafficking. Without their participation, it would not have been possible to produce the studies presented in this publication.

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**Integral text of the studies are available on request to IOM Paris**

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The activities undertaken into 2000/2001 were coordinated by IOM Brussels who supervised the studies carried out in Belgium, Germany, Italy and the Netherlands and drew up a document including an exhaustive list of recommendations. The activities undertaken into 2001/2002, coordinated by IOM Paris made it possible to continue this work by the realization of three additional studies undertaken in France, Spain and Greece, a European conference and the publication of this document in partnership with IHESI.

## EXECUTIVE SUMMARY

This European project aims at highlighting the scale of trafficking in unaccompanied minors for the purpose of sexual exploitation, forced labour and/or slavery and any other form of economic exploitation. The research for the Belgium, Germany, Italy and Netherlands studies was conducted and co-ordinated by IOM Brussels. The research on France, Greece and Spain was carried out and co-ordinated by IOM Paris, which also organized the *International Conference on Trafficking in Unaccompanied Minors in the European Union* held at the Institute of Advanced Studies on Policing and Public Safety (IHESI) in Paris in April 2002. This publication is the result of two projects funded by the European Commission's STOP Programme in 2000/2001 and 2001/2002.

The main objective of this research was to evaluate the vulnerability of unaccompanied minors to traffickers, identify the practices and mechanisms of organised crime and define strategies to combat this phenomenon and assist its victims. In recent years, the European Union countries have witnessed a fresh upsurge in trafficking in women and children. Yet relatively little is known about the profile and living conditions of the victims.

Nevertheless, on the basis of recent reports and information provided by the public authorities and NGOs of the EU Member States in question, the studies presented here found that victims of trafficking are, in the vast majority of cases, either asylum seekers or irregular migrants.

Unaccompanied minors make up a small percentage of the total population of adult migrants and asylum seekers, who they follow through to their final destination. This is one of the main reasons for studying trafficking from the point of view of irregular adult migration and the asylum-seeking process. This phenomenon is common to all the Member States in question despite differences from one country to the next.

The key findings of the studies are:

- A lack of comprehensive data on trafficking in human beings;
- A definite increase in the number of minors trafficked for sexual exploitation despite the lack of accurate data;
- The exploitation of minors by traffickers in the informal sector;
- The disappearance of a large number of unaccompanied minors from reception centres.

Overall, the studies found that it is important to tackle the issues directly associated with the organised criminal networks to prevent and combat trafficking in unaccompanied minors. However, it is equally important to address the problem from the point of view of other ways of reducing the child's vulnerability to these criminal networks, such as improving socio-economic conditions in the countries of origin, and reception and protection measures in the countries of destination.

This project's recommendations are intended mainly for those working on combating trafficking in human beings and those working with the minors in question. They cover a range of points, including a call to the EU Member States to agree on a common definition of *unaccompanied minors* and ensure that their needs and rights are fully recognised under the terms of the international conventions and directives, such as the Convention on the Rights of the Child.

The recommendations also highlight the need to collect and exchange reliable information, and also to improve the statistical databases by stepping up research and strengthening co-operation among the different stakeholders.

Furthermore, the proposals focus on prevention and assisting and protecting unaccompanied minors in both countries of origin and destination by: launching information campaigns, supporting pilot projects on groups at risk, improving reception facilities, providing suitable care, and granting minors who are victims of trafficking special temporary or permanent residence permits in the country of destination.

A full list of recommendations can be found at the end of this report.

## PROJECT BACKGROUND AND OBJECTIVES

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Trafficking in human beings is of growing concern to the EU Member States and the international community. The European Union, the United Nations agencies and IOM have decided to develop practical legislative and policy initiatives and to provide assistance to the victims in a move to counter this thriving phenomenon. The STOP Programme is one of the main results of this work by the European Commission, EU Member States and IOM.

A further effort was made to combat trafficking in human beings with the signing by more than 120 nations of the *United Nations Convention Against Transnational Organized Crime* and its two supplementary protocols, the *Protocol Against the Smuggling of Migrants by Land, Sea and Air* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, in Palermo on 15 December 2000. With this move, the international community is setting up an international framework of legal instruments designed to combat one of the most serious threats to human rights and civil liberties. The convention brings together “best practices” developed worldwide and makes them available to policy-makers, investigators and civil society to put a stop to large-scale organised crime. The next step is the actual enforcement of the convention and its protocols when they are brought into force. For information, the French Parliament authorised the ratification of the convention in July 2002.

These texts make a distinction between *smuggling* people and *trafficking* in persons. The expression “*smuggling of migrants*” means “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident [...]” The expression “*trafficking in persons*” means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability [...]. The recruitment, transportation, transfer, harbouring or receipt of a child [meaning any person under eighteen years of age] for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in [...] this article.”

IOM uses this same definition.

Moreover, this set of international provisions sets forth guidelines for curtailing the constantly growing phenomenon of trafficking in human beings. For example, a targeted analysis is called for to improve the effectiveness of the fight against trafficking, especially for the exploitation of minors, who are the main focus of these studies.

In addition to developing a comprehensive policy on the subject, the overall purpose of this pilot project is to inform the EU Member States and their leaders of the growing phenomenon of trafficking in minors.

Trafficking in adults and minors for sexual exploitation has recently become a priority for the police and the judiciary in a number of EU Member States, such as the Netherlands and Belgium. The number of cases brought before the courts against traffickers has increased significantly as a result of growing police attention.

There is little systematic collection of information on trafficking in minors. One of the aims of these studies was hence to determine to what extent and in which form minors are trafficked: for the purpose of sexual and/or economic exploitation such as begging, pick pocketing and forced labour.

The research conducted by IOM and presented in this report hence addressed the following questions:

- What is the size and scope of the phenomenon?
- What are the trends and the main countries and regions of origin of the victims and the traffickers?
- What makes minors vulnerable to such forms of exploitation by criminal networks?
- To what extent do unaccompanied minors change as a result of the actions of criminal networks and to what extent do these links create new trends in the countries of origin and destination?
- What are the victims' typical living and working conditions?
- What form of assistance exists and what other type of help could be considered?

## **1. METHODOLOGY**

Researchers were recruited in each of the countries participating in the two projects, coordinated by IOM Brussels and then IOM Paris (Belgium, France, Germany, Greece, Italy, the Netherlands and Spain). These researchers conducted a study of their respective countries over a period of several months. Each study reviews and summarises the data available in the country: academic research, official reports, articles, NGO activity reports, statistics, etc. Interviews were also held with many professionals working on preventing and combating trafficking in human beings, and specifically protecting and assisting unaccompanied minors who are victims of trafficking: representatives from NGOs and ministries of social affairs, home affairs and justice in particular.

The researchers were asked to focus in particular on the following points:

- The legal framework defining the concept of “unaccompanied minor”;
- The arrangements for the protection and reception of minors;
- The different forms of trafficking and exploitation of minors;
- The policies implemented to respond to this problem/phenomenon.

The problematics of trafficking in human beings are hard to grasp, mainly due to the illegal and covert nature of the activities associated with this phenomenon. The information available may consequently differ from State to State and the findings of the national studies may also differ when taken separately. It is hence advisable to look at the national aspect, but above all at the more comprehensive approach, which, in the spirit of this European project, aims to define policies with a view to proposing sustainable solutions to combat trafficking in unaccompanied minors in all its forms in the European Union.

## **2. CONTEXT**

### **2.1. The Dynamics of Trafficking in Unaccompanied Minors**

The countries of origin of unaccompanied minors who arrive in the EU Member States are increasingly diverse. The main regions of origin are: Central and Eastern Europe (Moldavia, Romania and Ukraine), Africa (Nigeria and Sierra Leone) and Asia (China, Afghanistan and Sri Lanka). The reasons for this trend need to be identified so as to improve our knowledge and understanding of trafficking and its mechanisms.

### **2.2. Push Factors**

When addressing the issue of migration, it is important to draw up a list of causes and effects. However, these usually generic elements call for a balanced interpretation. The main reasons for fleeing to Europe are generally severe political crises, civil war, religious or ethnic conflicts, and persecution or discrimination of minorities. However, migrants can also be

driven by the death, disappearance or imprisonment of individual family members. In many cases, these shattered families endeavour to get their children and/or the weakest family members to relative safety. For instance, the rising number of unaccompanied minors arriving in Italy can be explained by the conflict in the Balkans: in 1999, nearly 90% of the 15,843 minors who arrived in Apulia came from the Balkans (9,958 were Kosovars, 2,815 Montenegrins and 1,084 Albanians). One of the main reasons given by Kurdish unaccompanied minors for immigrating to Germany is the fear of compulsory military service in Turkey. At the same time, tighter immigration controls on European Union external borders have prompted an increase in the number of asylum seekers and irregular migrants using trafficking/smuggling networks to reach the EU. The growing involvement of criminal networks has led to an increase in the level of violence, as well as the price for passage, making those concerned even more vulnerable to abuse.

Another major reason for migration can be put down to severe socio-economic crises in the countries of origin. The collapse of the Communist regimes in Central and Eastern Europe has caused the social fabric, community life, family structures and the legislative system to disintegrate. In Germany, unaccompanied minors come almost exclusively from the poorest, economically less developed and/or conflict-torn countries/regions such as Romania, Kurdistan, the NIS (Newly Independent States) and Africa. Most of them come from families whose structures have broken down or are in internal conflict due to high unemployment, low income, social insecurity and a high birth rate. Minors often experience a high level of violence, frustration or disappointment before migrating. In Belgium, the situation of unaccompanied Eastern European girls makes them particularly vulnerable to traffickers in human beings for sexual exploitation. In most cases, they come from broken homes. They have lost their point of reference in their own community and hence have little chance of leading a normal, balanced life.

These children often report that their parents readily accept – and sometimes actively encourage – their migration as a form of subsistence for the entire family. Family expectations, a sense of duty and short-term survival strategies often hamper their integration: it is not uncommon for these minors to drop out of school because they consider it a “waste of time” compared with the need to earn money. However, in other less frequent cases, the situation is the opposite since the parents’ main objective is to improve the minors’ chances of getting a better education and hence aspiring to a better future.

Another important push factor is that migrants returning to their country of origin are often inclined to embellish their accounts of life in their “host countries”, rather than admitting that their migration plans have failed. This is explained mainly by the fear of being rejected by their families and the shame of having failed. This is often the case with young girls who are sexually exploited. The victims prefer to lie about their living and working conditions, with the result that they give false expectations to potential migrants, who are often the most vulnerable.

The media also help to spread an unrealistic view of life in Western Europe, describing it as “an ideal and prosperous society” in which life is better and where it is easier to make a living. Moreover, it is important to note that the destination country assistance (social services, care, etc.) to which migrants are entitled has recently changed. There are consequently higher expectations of the services provided by the host society. This situation is also due to lies spread by traffickers. Hence, most potential migrants consider that the adverse conditions in their countries of origin are such that they have little to lose from trying their luck. They are generally unaware of the risks and uncertainties surrounding their migration to the destination country.

The researchers also observed that Eastern European girls tend to be more individualistic, thus facilitating the work of recruiters who promise better employment opportunities and “a better life”. In the case of the Albanians, particularly the boys, there is definite family pressure on

them to emigrate in order to work and send money back home. It could, therefore, be concluded that Albanian minors bear similar characteristics to adult migrant labourers. Moreover, as regards girls trafficked for sexual exploitation, there is evident involvement by family members in contact with the world of prostitution, especially in the case of Nigerian and Albanian nationals.

### **2.3. Pull Factors**

The increasing number of unaccompanied minors trafficked for sexual or economic exploitation in many European countries can also be explained by specific factors associated with sex-trade and informal-sector demand. For example, social workers working with victims of trafficking for sexual exploitation have noticed that there is a growing demand for young women and girls, coupled with a rising demand for unsafe sex. This is based on the customers' presumption that these young people are less likely to be infected with sexually transmitted diseases or HIV/AIDS. In addition, stepped-up sex tourism controls have led criminals to elude the legal barriers while continuing to satisfy demand.

However, demand should not be viewed as the only pull factor, since traffickers also target the most vulnerable groups for reasons such as: eagerness to migrate due to adverse socio-economic circumstances, breakdown of family structures, conflicts between generations, easier residence due to the special status granted minors in certain countries, and increasing family pressure to find better paid employment in the country of destination.

Moreover, despite more restrictive immigration policies on unskilled labour in the EU Member States, many economic sectors are seeking cheap casual labour. Migrants, including minors, are keen to seize these opportunities.

The presence of ethnic communities in the host country can also foster the migration of third nationals. "Chain migration" or "social network" theories claim that these communities can play a key role in the decision to emigrate due to the provision of information. Social networks can also play a support role, particularly during the settlement period in the host country. This represents a strong pull factor, since irregular migrants are far more dependent on such networks for information and basic needs (housing, work, etc.) than legal migrants. Historical and cultural links, as well as geographical proximity between countries of origin and destination, also encourage specific groups to migrate to a given destination (e.g. Albanians to Italy and Moroccans to Spain and France).

Unaccompanied minors may also be exploited by organised criminal gangs, which use them as drug dealers (Germany and Italy) or pickpockets (France and Germany), thus benefiting from the fact that, if caught by the police, they will be exempt from criminal proceedings as minors. For instance, in Italy, Moroccan children have been found to be involved in drug dealing. They are recruited by adults who use them for such activities to reduce their own risk of criminal charges and sentencing. The method used to enrol these minors is generally a mix of persuasion and deception: the children are told that they run no risk and that, even if they were arrested, they could only be put into a reception centre from which they could easily escape. It is also worth noting how the children perceive these offences. Many adolescents perceive certain forms of delinquency (such as drug dealing) as "minor" offences and even end up viewing them as a fully-fledged job, without ever appreciating the penal consequences.

Another destination country pull factor could be the protection system granted by certain EU Member States and the problems involved in organising the return of the minors in question to their country of origin. Unaccompanied minors have a significantly greater chance of obtaining a temporary or permanent residence permit than the average migrant. EU Member State immigration authorities maintain that such a policy encourages a growing number of adults to claim to be minors when applying for asylum. Social workers also think that many traffickers point these young people in the direction of the unaccompanied minors procedure.

In Italy, for example, the majority of children illegally entering the country seem to be well aware of the protective legislation and instruments available to them. Interviewees tell of minors arriving at social services centres and police stations with a prepared “list” of demands: residence permit, protection, admission into a reception centre and a job to help them enter the labour market. Currently, several EU Member States are moving towards changing their asylum policies and their legislation on minors in order to reduce the “appeal” of this particular status.

However, it could be argued that more a restrictive and repressive legislative stand on assistance, protection and asylum/migration policy in general could make minors more vulnerable to criminal networks. A strict migration policy combined with the lack of opportunities in countries of origin could give rise to adverse effects such as greater reliance on traffickers and, consequently, an increase in the use – voluntary or otherwise – of these channels.

### **3. CONCLUSIONS**

#### **3.1. Lack of comprehensive data**

The UNHCR/Save the Children *Separated Children in Europe Programme* reports that available statistics in Europe are limited to the EU Member States. Moreover, the hidden aspect of the phenomena of trafficking and prostitution makes data collection very difficult, especially as regards groups such as minors. The Netherlands has no reliable statistics on trafficking in minors. One of the organizational problems involved in combating trafficking in unaccompanied minors is the lack of a good recording system. Information is only available on the extent of trafficking for the purpose of prostitution without any details on the minors involved. Germany has no precise information since it has no centralised statistical collection system and each regional authority uses different recording methods. Defining the situation in Germany is hence a tricky business due to the lack of data. Moreover, the police provide few statistical data since they do not have enough criteria to classify cases of trafficking in children.

The system of data collection and information exchanges hence needs to be improved as soon as possible, since it is hard to estimate the extent of the phenomenon if cases of trafficking in human beings, especially minors, are not identified. This lack of statistical data makes it even harder for those involved in fighting this scourge to do their work, in terms of defining and implementing effective policies to combat trafficking and allocating suitable resources.

#### **3.2. Despite the lack of accurate data, the rise in the number of sexually exploited minors is obvious**

Public authorities and social workers agree that trafficking in minors for sexual exploitation is on the rise. Just some examples in the seven countries studied are the networks trafficking young Eastern European and Nigerian girls to prostitution rings, and young Romanian children used to steal from parking meters, to beg and sometimes for sexual exploitation.

However, it is still unclear even after investigating whether all the cases of child trafficking are down to criminal networks and mafia gangs. Although organised crime certainly plays a key role in trafficking, all the stakeholders (police, reception centre managers, social workers, etc.) warn of the danger of assuming that organised crime alone is at the heart of the problem. Their experience shows that it is not unusual for individuals, small criminal groups and occasional criminals to traffic and smuggle minors. Yet, irrespective of their form, these organizations interact with international organised crime sooner or later. The latter is concentrating increasingly on trafficking in human beings since this is a highly lucrative

activity that requires virtually no capital investment and, more importantly, still involves little or no risk in terms of existing legislation in Europe.

The study of the situation in the Netherlands comprises an in-depth analysis by nationality of the groups involved in the sex trade. In this country, sexually exploited minors have been coming from the same countries for a number of years now. Even though each nationality appears to follow a “standard model” when it comes to recruiting girls and forcing them into prostitution, it is important to bear in mind that there are individual cases that do not fit in with the general stereotype. The extent of force and/or deception differs from case to case. Moreover, since many traffickers do not work for organised networks, their methods are likely to vary and be quickly adjusted to changing circumstances (e.g. stricter border policies, asylum legislation changes, a tougher immigration policy in a given State, etc.).

In Italy, although the official figures released by the Ministry of the Interior show only 202 victims of child prostitution in 1999, the phenomenon is thought to be hugely underestimated. Social workers believe that minors account for 16% to 30% of the prostitutes they assist. Furthermore, nearly 70% of the interviewees reported that the majority of the girls trafficked for sexual exploitation come from Albania, followed by Nigeria and Moldova. It is interesting to note that these national groups are also prevalent in Belgium and the Netherlands (e.g., Nigerians).

### **3.3. Exploitation of minors in the informal sector**

In Germany, children are trafficked almost exclusively for the purpose of sexual exploitation. Although there are suspicions about trafficking for economic exploitation (market stalls, fast food, etc.), there is no evidence to support these allegations. In Italy, minors trafficked for economic exploitation are found mainly in the informal sector and on the “black labour market”, performing a variety of activities such as street peddling and begging. This is, for example, the case in France with young Romanians who are “recruited” to steal from city parking meters and young Asians (mainly Chinese) working in illicit clothing sweat shops.

Stealing and begging are the two main activities in which criminal networks are known to be exploiting minors. In Germany, for instance, police work has dismantled an organised ring of traffickers in Romanian minors. This action was taken following a sharp observed increase in the number of offences committed by Romanian minors in several cities in Germany. Most of the children involved came from poor areas in north-eastern Romania and had been handed over by their families to unscrupulous traffickers. Some of them were smuggled in from Poland, Ukraine, Slovakia and the Czech Republic. It is reported that nearly 250 children and adolescents were trafficked for economic exploitation from Romania to Germany in 1998 alone.

In Italy, begging is also virtually compulsory for minors, especially Slavs, Romanians and Albanians. These children – mostly boys – are forced to live in insalubrious dwellings in remote suburbs, often in inhumane conditions. They are exploited mainly by fellow adult nationals who force them to work over ten hours a day in city railway stations and at major road junctions. In the Netherlands, there is evidence that debt bondage by traffickers has forced minors to work in the informal sector in order to pay off their debts, which essentially take the form of the price of passage to the country of destination.

### **3.4. A large number of unaccompanied minors disappear**

The disappearance of minors from reception centres is a major concern for the associations providing assistance and the governments of the host countries. The inability to prevent trafficked minors from disappearing and returning to prostitution has effectively restricted their freedom of movement since they are placed in detention centres for minors. In the Netherlands, in 1996, social workers in asylum seeker centres noticed that many girls from

West African countries were disappearing soon after applying for asylum. The law enforcement authorities found some of them in brothels in the Netherlands, Belgium and Germany. It should also be noted that a significant number of asylum-seeking and irregular migrant minors disappear only because they are actually in transit to other EU Member States, such as Great Britain.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **BELGIUM**

**By Ms Chin Ling Pang (synthesis)**

## 1. METHODOLOGY

This report is based on interviews and discussions with Belgian social workers and government and police officials, whose work involves dealing with issues pertaining to unaccompanied minors (UAMs) asylum seekers and UAMs in an irregular administrative situation. This method was adopted given the relative paucity of available data and general literature on UAMs. Thus in introducing the UAM problem, the report also provides extensive descriptions of asylum and trafficking issues. In total, 22 people were contacted, eighteen of whom were interviewed at their centre/organization for at least 2 hours each. The remaining four people were contacted by telephone.

Through the case studies of UAMs, more insights can be gained into the dynamics of trafficking, the various forms of exploitation and the different actors involved in this process. These insights are a necessary tool for developing more effective and durable (immigration, integration and possibly return) policies relating to UAMs, asylum seekers and non-asylum seekers. Secondly, the available literature on migration, trafficking and UAMs with special reference to Belgium was consulted.

## 2. UNACCOMPANIED MINORS

### 2.1 DEFINITION

#### *2.1.1 General definition*

The term “non-accompanied minor” refers to “a subject of a country not located within the European Economic Space who has not reached the age of 18 and who enters Belgium or lives there without being accompanied by his/her father, mother, legal guardian or spouse”<sup>(1)</sup>. In this definition, a minor accompanied by his/her grandmother or aunt is regarded as an unaccompanied minor.

This working definition notwithstanding, Belgian legislation does not have a definition for “unaccompanied minor” and thus no legal provision apart from the application of Article 118 of the Royal Decree on Aliens of 8 October 1981 (and since modified), which stipulates that apart from a special decision by the Minister for Justice or his delegate, no order to leave the territory can be issued to an alien who is below the age of 18 or who is a minor according to his/her administrative status.

#### *2.1.2 Distinction between UAM asylum seekers and UAMs in an irregular administrative situation*

Unaccompanied minors filing an asylum claim are (temporarily) legal or regular asylum seekers awaiting the outcome of their asylum application, whereas unaccompanied minors in an irregular administrative situation consist of all the other categories including rejected UAM asylum seekers or those who have never applied for asylum and thus have never come into formal contact with any of the public authorities of the receiving country prior to interception by law enforcement agencies or by voluntarily reporting to an NGO. Minors abandoned by adults are also considered as migrants in an irregular administrative situation.

Similarly to the previous category of UAM asylum seekers, there is no specific legislative provision for UAMs in an irregular administrative situation except for Article 118 of the Royal Decree on Aliens of 8 October 1981.

## 2.2 INSTITUTIONAL FRAMEWORK

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<sup>1</sup> Hongenaerts and Van Coillie 2000: 106.

## **2.2.1 UAM asylum seekers**

### **a) Admission and status determination procedures**

As mentioned earlier, in Belgium there are no specific legal provisions for UAMs, asylum seekers and non-asylum seekers. In terms of competent ministries, authorities and specialised agencies, there is no specific unit dealing exclusively with UAM asylum seekers (and UAM non-asylum seekers).

Concerning the asylum claim, UAMs follow the same procedure as adults. The 15 December 1980 law on the admission to Belgian national territory, stay, establishment and expulsion of aliens stipulates the division of powers between the three public authorities dealing with asylum claims, notably the Aliens Office<sup>(2)</sup>, the General Commission for Refugees and Stateless Persons and the Permanent Commission for Appeals.

At the Aliens Office, the same staff interviewed adult and minor asylum seekers until September 2000. However, since then, four interviewers have been appointed to specialise in interviewing minors in keeping with the 1989 Convention on the Rights of the Child.

At the General Commission for Refugees and Stateless Persons, certain measures have been taken in accordance with the 1989 Convention on the Rights of the Child, as indicated in the internal note issued on 30 October 1995. Priority may be given to asylum claims of UAMs. In some cases, specific attention to minors' applications results in a longer procedure than the procedure for adults.

### **b) Guardianship and legal representation**

Under Belgian general law and in the framework of the law on aliens, the provision for legal representation or guardianship for UAMs filing for an asylum claim does not function adequately. In theory, the local public centres for social assistance, (OCMWs in Dutch and CPAS in French) are legally responsible for the guardianship of UAMs on their territory. However, in reality, most of these centres are either not aware of their responsibility, or simply lack the necessary financial means.

### **c) Reception**

At present, there is no uniform reception system for UAM asylum seekers. Except for very young children, all other UAM asylum seekers are sent by the dispatching service of the Red Cross and the Federal Ministry of Social Integration to the different reception centres, organised by the Federal Government and the Red Cross. In total there are 30 centres<sup>(3)</sup> with a total capacity of 5.580 beds.

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<sup>2</sup> The Aliens Office is part of the Ministry of Internal Affairs, while the General Commission is an independent administrative authority. The Permanent Commission for Appeals is an administrative tribunal. The Aliens Office is responsible for admission to the territory and decisions on the admissibility of the asylum claim, the first stage of the admission and determination procedures. When the Aliens Office turns down an asylum claim, the General Commission for Refugees and Stateless Persons takes over responsibility for the decision on the appeal against the decision on the inadmissibility of the asylum request. This urgent appeal has suspensive effects. The General Commission is responsible for the decision on the substance of the asylum request, whereas the Permanent Commission for Appeals is responsible for appeals against negative decisions on applications for refugee status issued by the General Commission. This appeal has suspensive effects.

<sup>3</sup> Reception Centres in Belgium: Argon, Bevingen, Charleroi, Ekeren, Florennes, Kapellen, Het Klein Kasteeltje/Le Petit Château, O.C.IV., C.I.R.E., Erezée, Rixensart, Sugny, Virton, Fraipont, Hastière, Nonceveux, Rendezvous, Yvoir, Alsemberg, Antwerp Left Bank, Bruges, De Foyer, Deinze, Foyer Selah, Lanaken, Lint, Menen, Overpelt, Steenokkerzeel and Wingene.

In terms of schooling, the universal compulsory condition for attending school until the age of 18 also applies to UAM asylum seekers. UAMs are enrolled in regular schools, which obtain additional funding for setting up ‘a reception school year’ for these youngsters.

Despite the good intentions of the actors in the field such as the social workers at the reception centres and the general political will to protect and assist UAMs in general, the current reception policy for UAMs is far from being adequate or comprehensive.

#### **d) Return**

In theory, the outcome of a negative decision means that the minor has to leave the territory or, according to Article 118 of the 8 October 1981 Royal Decree, ‘the order to leave is replaced by an order to be accompanied’. In practice, minors below the age of 16 remain in the country. Children under the age of 12 years are issued with an identity document, which allows them to be registered as aliens. Minors above the age of 12 receive a BIVR/CIRE or a certificate of registration in the Aliens’ register, a document renewable on an annual basis. The status of most of the minors is regularised when they reach the age of 18. As for those in the 16-18 age group, the Aliens Office, responsible for the implementation of the return process, considers this group as adults for the purpose of return. Moreover, despite the fact that the official adult age is fixed at 18 years, minors who are still in the asylum procedure when they reach adulthood are considered as adults.

In sum, there are no fixed criteria with regard to return. Return is the exception rather than the rule, and in the case of actual return, the procedure is conducted on a case-by-case basis and through an escorted return.

### ***2.2.2 UAMs in an irregular administrative situation***

#### **a) Admission and determination procedures**

The category of ‘UAMs in an irregular administrative situation’ comprises a heterogeneous group of minors, which encompasses all foreign minors, who do not fall under the status of unaccompanied minor asylum seeker. There is no specific legal status for UAMs in an irregular administrative situation or UAM non-asylum seekers.

The establishment of the special unit for UAM matters at the Aliens Office was prompted by the extremely vulnerable position of these minors and their steadily increasing numbers. In terms of residence status, every UAM in an irregular administrative situation receives an ‘arrival declaration’ document, which is valid for three months and is renewable. In case return is deemed impossible, then a temporary BIVR/CIRE or certificate of registration on the aliens’ register is issued. After two years, a permanent certificate replaces the temporary one. When the minor reaches the age of 18, the chances of his/her situation being regularised are high.

#### **b) Guardianship**

The inadequately functioning system of legal representation and guardianship applies to both UAM asylum seekers and UAMs in an irregular administrative situation.

#### **c) Reception**

UAMs in an irregular administrative situation can be placed in different institutions: regular youth institutions but also in special reception centres for UAMs in an irregular administrative situation.

However, given the shortage of adequate reception centres, in practice, some UAMs in an irregular administrative situation are sent by the Youth Tribunal to closed centre which contravenes the guidelines stipulated in the Convention on the Rights of the Child and the UNHCR guidelines. Other UAMs are sheltered in the different reception centres for adult asylum seekers with few formalised facilities and specialised staff to support them.

#### **d) Return**

There is no uniform return policy relating to UAMs, asylum seekers or non-asylum seekers. The decision is made on a case-by-case basis. Given the ineffectiveness of the existing mechanism to retrace the parents, most UAMs, both asylum seekers and non-asylum seekers, are not returned.

### **2.2.3 Co-operation or the lack of it between the relevant authorities**

Despite the good intentions and the recognition of the minor status of UAMs, there is a lack of coherence in policies and co-operation between the relevant authorities. The specific policies, on the one hand, the co-ordination of decisions on stay and asylum and, on the other hand, youth assistance measures, are not the same. This creates many inconsistencies and uncertainties for UAMs, both in a regular and irregular administrative situation.

Another obstacle to the formalisation of the current ad hoc practices concerning UAMs in reception, long-term assistance and integration programmes is the fear that a too favourable status might create a pull factor.

## **3. TRAFFICKING ISSUES**

### **3.1 GENERAL**

In December 2000, more than 124 of the UN's 180 member States signed the Convention on the Fight against Organized Transnational Crime in Palermo, Italy. 80 countries signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and 79 countries signed the Protocol on the Fight against the Smuggling of Migrants by Land, Sea and Air.

### **3.2 DEFINITION**

#### **3.2.1 IOM definition (*See Project background and objectives cf. p 7*)**

#### **3.2.2 Usage of the terms “smuggling in human beings” and “trafficking in human beings” in Belgium**

“*Trafficking in human beings*” as discussed in the report issued by the Parliamentary Committee on trafficking in human beings involves the following elements. Firstly, there is exploitation of the desire of migrants from less wealthy countries to start a new life in the West. Secondly, this exploitation implies that migrants are, in varying degrees, forced, lured or deceived with false promises into exploitation. Thirdly, trafficked women are often the victims of sexual exploitation. Whether this is based on free will or not, the status of ‘victim’ refers to the dependency and exploitation of the trafficked migrant. Dependency involves a variety of asymmetrical relationships resulting from the migrant’s lack of knowledge of the language(s) of the receiving country, debts, financial pressure from relatives in the country of origin, illegal stay, fear of the police, etc.

The term “*smuggling in human beings*” is also frequently used and refers to the organised trafficking of migrants who cannot obtain in their country of origin a legal residence permit for the target country. Others are legally or illegally (depending on the legislation of the host country) transported to their target country. Upon arrival in their target country, such migrants have relative freedom to organise their stay. The traffickers/smugglers only organise the journey from the country of origin to the host country, in most cases via other countries. The migrants pay a fee in return for the services provided by the traffickers/smugglers.

In the case of trafficking in human beings, the traffickers are not only in charge of organising the journey but also exploit the migrants in their host country for financial gain. In reality, it is often difficult to differentiate between trafficking and smuggling because smuggling is often an element in the trafficking process.

### **3.3. EXPLOITATION**

#### **3.3.1 General**

Despite the theoretical distinction between smuggling and trafficking in human beings, both practices involve exploitation of migrants, who need to be seen as victims rather than lawbreakers. Undoubtedly, trafficking in human beings involves a number of human rights issues. The migrants involved belong to vulnerable groups such as minors and women. Secondly, recruitment by traffickers frequently involves the use of force or deception, promises of well-paying jobs and marriage. Exploitation is usually sexual and/or economic.

Generally speaking, there are no systematic data available on victims of exploitation, both sexual and mostly economic. The only way to determine the migrant’s project, journey, financial cost, treatment, work conditions, etc., is on the basis of the declarations made by victims of THB. This evidently concerns only a small part of the reality. However, analysis of data related to asylum and the number of intercepted illegal minors indicates that the number of mostly UAM girls from Eastern Europe and West Africa (especially Nigeria), who are victims of THB, has increased.

#### **3.3.2 Economic exploitation**

Economic exploitation refers to illegal employment, illegal contracting and social fraud. Illegal migrants are exploited in the catering sector, sweat shops, Turkish bakeries, Pakistani night shops and other retail stores, in diplomatic circles as domestic workers, in commercial sports (e.g. football) by agents, as au pairs by host families, etc.

##### **a) Sweat shops and restaurants**

At present, the practices of human traffickers are relatively well documented. The economic mechanism in sweat shops operates as follows: a garment that retails at 100 USD is usually bought at 50 USD from a contractor, who has the garment made according to his/her instructions at 10 to 30 USD. Contractors can use sub-contractors and pay them less than 10 USD per finished piece. Most European countries including Belgium do not have joint liability laws that render designers and retailers jointly liable for immigration and labour law violations of agreements with contractors and sub-contractors.

Moreover, most of the intercepted UAMs in an irregular administrative situation on transit are boys and, to a lesser extent, girls aiming to go to Great Britain to work illegally.

Aside from exploitation by Asians, there are also known cases of economic exploitation in Turkish bakeries and Moroccan retailing shops.

### **b) Domestic workers in diplomatic circles**

Unlike the case of some countries in the Middle East and North-eastern Asia, one cannot enter Belgium or other European Union countries legally with the status of domestic worker. Yet the practice of employing domestic workers does exist in diplomats' homes. Economic exploitation in this category involves : wages lower than the legal minimum standard in Belgium and usually lower than the originally agreed salary, long working hours, poor living conditions in terms of food and accommodation and vulnerability, since these domestic workers live and work within the confines of a private home. Aside from economic exploitation, most are also subjected to torture and both verbal and physical threats.

### **c) Professional sportsmen**

There are known cases of exploitation of young football players from Africa and South America in this sector. They enter the country on a tourist visa and then the agent attempts to 'sell' their talents to football clubs. If successful, a contract is signed with a club for a minimal wage for the football player. However, these cases are still pending.

The agent will still try to promote the football player among smaller football clubs who will pay the player informally or in kind. Both cases show exploitation of foreign non-EU football players in varying degrees, and can be seen as forms of economic exploitation.

Article 9 of the Royal Decree of 9 June 1999 containing the implementation of the 30 April 1999 law concerning the employment of foreign workers, mentions new criteria for the 'professional sportsperson' category. For example, the sportsperson has to have reached the age of 18. Thus, minors can no longer enter legally under this category.

### **d) Exchange students and potential sexual exploitation**

There are very few known cases of exploited exchange students or students concerned by the smuggling/trafficking of human beings.

## **3.3.3 Sexual exploitation**

Trafficking in human beings for sexual exploitation is mostly linked to 'women and minors', as they both constitute highly vulnerable groups. However, boys are also currently being trafficked for the same purposes. In Belgium, like in the Netherlands, women who are victims of sexual exploitation are not repatriated immediately. They receive a temporary residence status to allow them to 'stabilise' themselves before they decide whether or not they want to press charges against their exploiters.

Despite the growing awareness of female THB victims, often, law enforcement agents at different levels are indifferent at best and at worst insulting towards these 'foreign prostitutes', adults and minors alike.

Moreover, there is also abuse of asylum by traffickers in human beings. Whereas nationals of Poland, the Czech Republic, Slovakia and Hungary are legally allowed to stay up to three months in an EU country without a visa, nationals of countries without this dispensation can use forged documents, provided by traffickers. Such abuse of asylum by traffickers takes place as follows: during the procedure of application for asylum, female pseudo asylum seekers are legally entitled to stay in the country. They live officially in reception centres but 'work' outside. The staff members of reception centres are well aware of this abuse, as are NGOs and other organizations and actors dealing with trafficking in human beings and prostitution.

Finally, some of the pseudo asylum seekers enter their target country via networks of smugglers/traffickers in human beings. Until intercepted/arrested, such migrants do not have any formal contact with any public authorities of the target country. The scope of this group is difficult to determine given the clandestine nature of their stay.

### **3.4 LEGAL MEASURES FOR COMBATING TRAFFICKING IN HUMAN BEINGS : PREVENTIVE / REPRESSIVE MEASURES AND PROTECTIVE MEASURES FOR VICTIMS**

#### ***3.4.1 Preventive/repressive measures***

The March 1993 law on the regulation of the activities of marriage bureaus aims to provide more protection of the quality of the rendered service.

The 18 March 1993 Royal Decree and the three ministerial decrees of 19 March 1993 contain amendments to the regulation on the employment of foreign workers, in particular, cabaret entertainers.

The 30 April 1999 law replaced the 1 June 1993 law, concerning the penalisation of employers, employing foreigners who stay illegally in the country.

The objective of the 4 May law concerning the circumstances in which a marriage official can refuse to marry a couple is to prevent 'fake' marriages.

The 13 April 1995 law containing the terms for combating the trafficking in human beings and child pornography.

The new Article 77bis, Paragraph. 1, added in the 15 December 1980 law on the access to the territory, stay, establishment and expulsion of foreigners. The importance of this new article is that it disassociates trafficking in human beings from the exclusive realm of sexual exploitation of women and secondly, disassociates trafficking in human beings from the illegal residence status of a foreigner.

It is worth noting that Article 8 of the chapter 'extraterritoriality' provides for prosecution of offences committed abroad, under the Belgian penal code, even without official notice or a complaint being filed by foreign authorities. This applies both to Belgian citizens abroad or foreigners on Belgian territory. This article is important in the fight against sex tourism, and more specifically child prostitution.

#### ***3.4.2 Protective measures for victims of trafficking in human beings***

##### **a) General**

The 11 May 1993 circular, later replaced by more elaborated ones of 7 July 1994 and 13 January 1997, provides for permission for persons, who find themselves in an illegal situation of stay, to stay legally in the country for 45 days after they have established contact with the recognised centres for victims of trafficking in human beings. During these 45 days, the victims have the opportunity to reflect on their illegal situation. Victims can either return to their country of origin, make an official statement or file a complaint against their traffickers and/or exploiters. In practice, victims have to give precise information about the journey, the traffickers and other useful information that would facilitate investigation of the organisers of trafficking.

Since the 1993 circular, exploited immigrants on illegal stay are no longer seen as law-breakers despite their illegal status but rather as victims because they are being exploited

economically and/or sexually. At the onset, this circular is not widely known among the different services dealing with victims of trafficking in human beings including the police services, public prosecutors, surveyors of social legislation, etc. Fortunately the situation has been reversed and thus at the current moment has a wider reach.

### **b) Data concerning application for the status of victim of trafficking in human beings**

The Unit responsible for Trafficking in Human Beings at the Aliens Office centralises the applications for the status of victims of trafficking in human beings introduced. In 1999, there was a total of 106 applications.

## **3.5 HITHERTO IDENTIFIED NETWORKS OF TRAFFICKERS IN HUMAN BEINGS: A PROVISIONAL ASSESSMENT**

The following assessment of networks of traffickers in human beings is based on the annual report of June 2000 on trafficking in human beings by the Centre for Equal Opportunities and the Fight against Racism.

Concerning the African continent, there is the network run by Nigerians or Nigerian criminal organizations.

Albanian networks are smaller, more informal, more loosely knit and highly adaptable to new situations. At first, Albanian girls were trafficked by deceit, threat or violence. Recently the Albanian networks have expanded their area of recruitment to other Eastern European countries. The victims are lured into going to Albania or they just want to escape from the dead-end prospects in their own countries.

It seems that Albanian networks by expanding their search for new recruits outside their own country are expanding their illegal activities and becoming one of the main actors in the lucrative business of international trafficking in human beings.

In the European context, there is clear proof of the existence of a Belgian-Turkish organization, specialising in fake marriages between Turkish immigrants and Belgians for a significant fee.

In Asian networks, the Chinese play a dominant role. Chinese criminal organizations traditionally engage in the drug trade, extortion of money and money laundering. However, recently these organizations have expanded to include the smuggling/trafficking of human beings among their activities, a move that has proved to be highly lucrative.

## **4. TRAFFICKING OF UAM ASYLUM SEEKERS AND NON-ASYLUM SEEKERS**

### **4.1 DATA FROM THE TRAFFICKING IN HUMAN BEINGS CENTRAL UNIT, CENTRAL OFFICE OF CRIMINAL INVESTIGATIONS**

This Unit provides two sets of data: administrative reports consisting of police checks of aliens and thematic checks.

The administrative reports are all the result of instances of interception by the police of an alien for verification of the legality of his/her stay or arrival. These reports are sent to the Aliens Office.

Furthermore, in 2000, on the request of the Minister of Internal Affairs, different 'thematic checks on illegal immigration' were organised.

On the whole, these data once again confirm the assumption that the nationalities and migration project of UAMs in an irregular administrative situation vary greatly from those of UAM asylum seekers. It is clear that most UAMs in an irregular administrative situation see Belgium as a transit country to Great Britain. The majority of the UAMs are boys between 15-17 years, who most likely will work illegally.

## **4.2 DISAPPEARANCE AS AN INDICATOR OF POSSIBLE INVOLVEMENT OF UAM ASYLUM SEEKERS IN TRAFFICKING IN HUMAN BEINGS**

Given their young age and lack of experience in life, it seems plausible to assume that when an UAM disappears, s/he will come into contact with traffickers. The disappearance of UAMs during the transfer from the dispatching centre to the reception centre and during their stay at the reception centre sheds some light on the scarcity of data on UAMs and their involvement in the trafficking in human beings for sexual purposes.

## **4.3 QUALITATIVE ASSESSMENT OF UAMS IN AN IRREGULAR ADMINISTRATIVE SITUATION AND TRAFFICKING**

### ***4.3.1 't Huis: A model reception shelter for UAMs in an irregular administrative situation***

't Huis is a reception centre for UAMs in an irregular administrative situation, located in Aalst, a town situated between Ghent and Brussels. The centre was initiated by a few people, who had previously worked on issues relating to trafficking in human beings at the Centre for Equal Opportunities and the Fight against Racism. One of the founding members is the current Director of the reception centre, which opened in September 1998. The objective of this small reception home for minors is to offer them shelter and different kinds of assistance, e.g., legal, psychological, social integration, reinsertion in the local schools and a return project on the explicit request of the minor. There are 9 social workers for a maximum of 15 minors. According to the centre's report of September 2000, the centre has information on 68 minors. Given the intensive support and the small size of the centre, the social workers succeed in securing the trust of the minors. Thus, the centre has relatively reliable information on the migration background of the minors and to what extent they are involved in practices of smuggling and/or trafficking in human beings.

### ***4.3.2 The three official reception centres/shelters for (adult and minor) victims of trafficking in human beings***

**a) Pag-Asa** : An intercepted minor is a priori entitled to the status of victim of trafficking in human beings and is thus supported by Pag-Asa. In contrast, adults need to provide information on the organisers of the trafficking and other details. In addition, the social workers at Pag-Asa inform the intercepted victim of trafficking about his/her rights. The information is apparently necessary since often victims are told by their traffickers to distrust law enforcement agents and organizations and therefore not to disclose any information. Once they have made up their minds to apply for the status of victim, victims of trafficking obtain legal assistance while staying elsewhere - in other shelters or living semi-independently or making use of the shelter facilities of the Pag-Asa. Although every case is highly personal and context-specific, certain broad trends can be detected. In terms of age, most UAM girls who were 15 at the time of registration were close to the adult age of 18 (16-18 year group).

The large number of Albanian and other Eastern European UAM girls is evidence of the increasing activities of an Albanian network, or more accurately, networks. These networks recruit in Albania and in other countries including Moldavia, Russia and Ukraine. Non-Albanian girls are contacted in their own country and arrive in Albania after passing through several intermediaries. From Albania, the girls are trafficked to Italy and France, where they

work in prostitution. From there, they are sent to other destinations including Antwerp, Brussels, Liège, Charleroi, etc.

**b) Payoke** : Payoke social workers indicated that their reception centre supports in the first place adult women but that they do have some experience with UAM girls as THB victims.

**c) Sūrya** : As in the case of Payoke, few minors have been registered at the reception centre/shelter.

Moreover, there are plans to open two additional specialised centres.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **FRANCE**

**By Ms Assia Ghrib (synthesis)**

## 1. INTRODUCTION

This document is the synthesis of a study carried out between February and April 2002. It aims at establishing an inventory of the current situation of unaccompanied minors trafficking in France.

## 2. UNACCOMPANIED MINORS, POTENTIAL VICTIMS OF TRAFFICKING

### 2.1. DEFINITIONS

For the French legislation, an unaccompanied minor is a foreign person under eighteen, willing to enter or already on the French territory, without any legal representative (father, mother or guardian). This definition refers to several legal provisions: Article 388 of the Civil Code as for minority, Ordinance of 2<sup>nd</sup> November 1945 on foreigners conditions of entrance and stay, and Article 373 of the Civil Code related to the absence of legal representative.

The French legislation is complete and very protective as regards to minor's protection. It is based on the ordinance 45-174 passed on 2<sup>nd</sup> February 1945 related to *delinquent childhood*, which normally applies to any foreign minor already present on the French territory. In addition, such a foreign minor cannot legally be deported from France as long as he is minor. This principle was also stated by the Hague Convention of 29<sup>th</sup> May 1993 on children protection. Consequently, a minor does not have to hold a residence permit. This shall change

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when he turns eighteen.

When a minor arrives at the French borders, the Ordinance of 2<sup>nd</sup> November 1945 here above mentioned applies, and no difference is made between minor and major persons. Indeed, as long as a minor is not legally located on the French territory, i.e. as long as he/she is retained in the retention area, ordinary law does not apply, but foreigner law. Consequently, his/her specificity related to minority is not taken into account.

Since a decision of the Court of Appeals of Paris given on 12<sup>th</sup> August 1998 and creating an almost unbroken line of precedents<sup>4</sup>, the duration of keeping in retention area cannot exceed 4 days for a minor (20 days for a major person). Until the law on parental authority was passed in March 2002, unaccompanied minors did not have capacity to sue and appear in court. The French Administration, which requested their maintenance in retention area at the end of the four days term, was in most cases dismissed by the judge on the basis of articles 117 and 120-2 of the New Code of Civil Procedure. Unaccompanied minors were consequently admitted *de facto* on the territory by the judge.

- **Minors in retention areas**

At the Roissy-CDG airport - where more than 90 per cent of reported unaccompanied minors arrive - the Administration arranged a wing of the building affected to the retention of foreigners (*zone d'attente des personnes en instance*, called "ZAPI 3"). Since January 2001, minors benefit from improved accommodation conditions<sup>5</sup>. However, many institutions, such as the Human Rights Advisory National Commission (CNCDH: *Commission nationale consultative des droits de l'Homme*) and the Defensor for the Children, recommend immediate admission of unaccompanied minors on the territory.

In addition, the retention of a minor is contrary to the International Convention on the Rights of the Child of 20 November 1989. It is also contrary to the recommendations made by the

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<sup>4</sup> There are some exceptions such as the *Irorere* judgement pronounced by the Supreme Court of Appeals in May 2001 and contrary to the above mentioned decision.

<sup>5</sup> Before this date, minors were not separated from majors and lived together in requisitioned hotel rooms, in regrettable conditions qualified of "Horror of the Republic" by MP Louis Mermaz in a parliamentary report.

UNHCR. They both condemn any minor's detention when he/she arrives on the national territory.

- **Foreign asylum seeking minors**

Unaccompanied minors are not all asylum seekers. Moreover, it is necessary to distinguish minors seeking asylum from minors having effectively applied for asylum to the French Office for refugees and stateless people protection (OFPRA: *Office français de protection des réfugiés et apatrides*).

- **The law of 4<sup>th</sup> March, 2002 on parental authority**

The law 2002-305 on parental authority was passed on 4<sup>th</sup> March 2002 by the Parliament. It provides for the creation of an *ad hoc guardian*, representing the minor as both parents or his/her legal guardian are absent or unheard.

This law is criticised by NGOs: minors could indeed be kept in retention area during 20 days<sup>6</sup>. They could also be deported insofar as the *ad hoc guardian* could notify them such a court decision. The CNCDH, in its above mentioned advisory opinion, recommends immediate admission of unaccompanied minors on the territory. This recommendation has not been taken into account.

## **2.2. Explanation of the phenomenon**

There are both political and economic reasons to major and minor people emigration. First, there is a direct link between the countries unaccompanied minors come from, and the countries or areas in war: the Balkans (successively Bosnia, then Kosovo), Iraq, Iran and Turkey (Kurdish minority), Sri Lanka (Tamil minority), Angola, Rwanda, Democratic Republic of Congo or lately Sierra Leone or Afghanistan. However, the economic factor is significant. In France, economic emigration mainly concerns people - including minors - coming from Central and Eastern Europe (Moldavia, Romania), Maghreb (in particular Morocco and Algeria), Western Africa and China.

- **Smuggling channels and trafficking networks**

In some cases, unaccompanied minors were involved from their country by smuggler channels. It is for instance the case of Chinese people coming from the port of Wenzhou. No difference is made between an "old minor" and a young major person, as long as he pays his right-of-way (between 20.000 and 30.000 euros) usually by working several years in the clandestine workshops.

As for Eastern Europe networks, particularly from Albania and Romania, smuggling channels are used to transporting trafficked people, including minors, towards Western Europe. Profits earned from smuggling are secondary. The final purpose of this traffic consists of the exploitation of these people, who are forced to prostitute themselves, to steal or beg, and then to bring to the traffickers the money collected.

- **Means and crossing points**

The Roissy-Charles de Gaulle airport is the main way of access for unaccompanied minors. As for the sea borders, the port of Marseille is the most concerned with this phenomenon. The ports of Sète and Boulogne-sur-Mer follow, as they are also international ports. Young Moroccans and Algerians mostly land in Marseille and Sète. As regards to terrestrial borders, the Schengen Agreement signed on 19<sup>th</sup> June 1990 and come into force on 26<sup>th</sup> March 1995

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<sup>6</sup> As well as major persons.

basically modified the rules of customs control for the signatory countries. People who cross their borders are not subject to customs control anymore. On the other hand, controls operated at the borders of third countries have been reinforced.

- **Some statistics available**

It is difficult to collect significant figures insofar as each ministry or organization uses different reporting standards. The figures provided by the Ministry of Interior only include the unaccompanied minors gathered in retention areas of ports and airports. They consequently do not take into account minors arriving by land. According to the Ministry of Interior, the Roissy airport adds up more than 90% of the reported unaccompanied minors entries in France.

- **The asylum seeking minor**

According to the Ministry of Interior, the figures related to unaccompanied minors requested asylum at the border are:

1997	1998	1999	2000	2001
122	332	602	849	789*

This figure only includes minors arrived at Roissy-CDG, it probably exceeds actually a thousand minors.

### 3. UNACCOMPANIED MINORS TRAFFICKING IN FRANCE

#### 3.1 What is unaccompanied minors trafficking?

France does not have any legal and official definition for trafficking in human beings yet. However, a bill filling this legal gap was recently passed by the *Assemblée nationale* (lower chamber of the French Parliament). This bill was inspired by both a parliamentary report on *Slavery in France today* published in December 2001, and the definitions stated by the international organizations involved in the fight against trafficking.

The International Organization for Migration (IOM) considers that trafficking is established “when a migrant is involved in an illicit way (kidnapped, sold or simply recruited) and/or is transported, either within a country, or to a third country. Intermediaries (traffickers) benefit from it, at some stage of the process are involved, in an economic or any other manner, by the fraud, coercion and/or other forms of exploitation, under conditions which violate the fundamental individual rights of the migrants”.

The additional protocols to the Convention of the United Nations against organised transnational crime (OTC) signed in December 2000 in Palermo, establish a distinction between smuggling and trafficking. The term *smuggling* means “assure, to draw directly or indirectly, a financial advantage or another material advantage, illegal entrance in a State of a person, who is neither a national nor a permanent resident of this State [...]. The term “trafficking” means the recruitment, transport, transfer, accommodation of a person, by the threat of recourse or the recourse to the force or other forms of constraint, by removal, fraud, authority abuse or situation of vulnerability [...]. The recruitment, transportation, transfer, accommodation of a child (that is any person under eighteen) for purposes of exploitation is considered as trafficking even though they do not call upon any the average statements in this article”.

In a Directive proposal recently passed<sup>7</sup>, the Council of the European Union requires the Member States of the EU to fight against trafficking.

### **3.2. Evaluation of unaccompanied minors trafficking**

Incomes earned from trafficking are significant: trafficking allegedly constitutes the third illegal activity after narcotics and weapon traffics. Interpol assesses profits to several billion US dollars a year, for Europe only. Various criminal organizations may exploit unaccompanied minors in France. The main interest is that minors are not liable to penalties when they are caught in the act (pick pocketing, theft of cars, parking ticket machines plunder). The ordinance of 2<sup>nd</sup> February 1945 is the basis of the justice for minors. It states two main principles: protection of childhood in danger and that educational measure prevails on sanction.

No sanction can be taken against a minor under thirteen. The “old minors” - i.e. between thirteen and seventeen - automatically benefit from mitigated responsibility, penalty mitigation and specific procedure rules (as regards to detention under remand for instance). The French legislation on minor protection is used by criminal organizations, which thus act with impunity, using children considered as a free and available labour.

### **3.3. Different forms of exploitation**

- **Pick-pocketing, burglary and begging**

Many minors wander in the streets and the public places of Paris or the big provincial cities, begging or pick-pocketing people. An investigation carried out by the Ministry of Justice near every minors public prosecution room indicates that more than 3000 unaccompanied minors were arrested in 2001, some of them several times.

Since 1999, several gangs coming from Romania have been identified. Their organization implies structured criminal networks, composed of smuggling, exploitation, forged documents channels, etc... They exploit very young children, specialised in parking ticket machines plundering in Paris and major provincial cities (Lyon, Marseille...). All these Rumanian minors come from the agricultural area of Maramures, located in the north of Romania and confronted with a serious economic crisis.

- **Economic exploitation: the clandestine workshops**

The clandestine workshops employ illicit foreign labour. Conveyed people actually pay their travel costs by working in the country of arrival. They must pay off a debt assessed on average to 20.000 euros per person. The Central Office for repression of illicit work and employment of foreigners without working permit (OCRIEST: *Office Central pour la répression du travail illégal et de l'emploi d'étrangers sans titre*) is the national police office in charge of breaking up clandestine workshops. According to its figures, few minors are concerned with this kind of exploitation. However the phenomenon exists and the OCRIEST indicates that Asian minors are mostly concerned.

- **Domestic exploitation**

Domestic exploitation of the children remains an invisible phenomenon, because it occurs within private residence, where children are confined far from their family. These children constitute for their employers a free and flexible labour

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<sup>7</sup> The European Commission approved on 11 February 2002 a Council proposal granting a temporary residence permit to the victims of trafficking who co-operate with the competent authorities.

Few data are available on this phenomenon in France, excepting 300 cases indicated by the Committee against Modern Slavery (CCEM: *Comité contre l'esclavage moderne*). This NGO, founded in 1994, is specialised in fighting against domestic exploitation. The victims of domestic exploitation, grown-up and children together, are mainly women (76 per cent), coming from Africa (65 per cent, mainly from Western Africa - Ivory Coast, Benin - and Madagascar) and from Asia (27 per cent - South-Eastern Asia and Indian sub-continent). One third of the victims was minor at the time they arrived in France, only girls. Nearly 80 per cent of these girls come from Western and Central Africa, which maintain, for historical reasons, privileged relations with France. Among these minors, more than 15 per cent was under ten years when they arrived in France, nearly 60 per cent of them was between ten and fifteen years, and 25 per cent was sixteen to eighteen years.

The children victims of domestic exploitation are often compelled to basic domestic tasks such as housework, washing, cooking, baby-sitting, etc... Their working day lasts on average from 13 to 18 hours, everyday of the week. In addition to strict domestic exploitation, as well as lodging conditions contrary to human dignity (children sleeping in the room of the employer's children or in a box room, sometimes on the floor), they undergo food deprivation and other punishments. Minors are particularly vulnerable.

As regards to employers, 80 per cent of them are foreigners, 20 per cent are French. There is a correlation between nationality of victims and employers. More than 20 per cent of the employers were diplomats or embassy officers. For this reason, they benefit from diplomatic and/or jurisdiction immunity.

Many victims refuse to bring an action against their employers as they fear reprisals on themselves or on their family. About thirty cases were or currently are under legal proceedings. Most cases were solved with amicable settlement or were non-suited, mainly because of jurisdiction immunity of diplomats or expired terms of limitation<sup>8</sup>.

- **Sexual exploitation**

There are no data available on sexual exploitation of unaccompanied minors in France. UNICEF currently assesses to 8.000 children under eighteen years who are victims of sexual exploitation in France. This figure relates to every form of sexual exploitation - prostitution, pedopornography... - and includes French and foreign minors.

The government as well as many institutions officially acknowledge the existence and the extent of the prostitution of unaccompanied minors involved in criminal networks from Eastern Europe (Albania and Romania) and from Western Africa (Nigeria, Ghana). This acknowledgement is strengthened by NGOs and media findings.

However, the figures provided by several police offices - for instance by the Central Office for repression of trafficking in human beings (OCRTEH: *Office central pour la répression de la traite des êtres humains*) and the police headquarters of Paris - remain unexpectedly low. They indicate marginal cases of "*occasional prostitution of survival*", or minors of sixteen or seventeen years looking older and incidentally exploited by criminal networks.

- **The wandering youngsters in Marseille**

For the last few years, an increasing number of unaccompanied minors wander in the streets of Marseille. They are for the majority between fourteen and sixteen years. They survive by stealing or committing petty offences. The police and NGOs lately noticed that some of them went on occasional prostitution.

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<sup>8</sup> 3 years for civil cases and 10 years for criminal cases

## 4. PROTECTION, CARE OF MINORS AND FIGHT AGAINST TRAFFICKING

In France, slavery was abolished in 1848. Since 1994, slavery has become a crime against humanity and consequently an imprescriptible crime.

### 4.1. Fight against economic and domestic exploitation

Several legal provisions condemn work exploitation, including domestic exploitation.

Articles 224-1, 224-2 and 224-3 of the Criminal Code prohibit sequestration or kidnapping. Articles 225-13 and 225-14 condemn vulnerability abuse for a work without counterpart, and working and lodging conditions contrary to human dignity. In accordance with the law, a minor is always considered as vulnerable because of his minority. In addition, articles 227-20 and 227-21 respectively prohibit the provocation of minors to beg or commit an offence or a crime. Article L 211-1 of the Labour Code prohibits the work of minors under sixteen years<sup>9</sup>. Finally, articles L 324-9 and L 324-10 prohibit illicit work and labour.

### 4.2. Fight against sexual exploitation

Article 16-1 of the Civil Code provides for that “Everyone is entitled to the respect of his/her body” and that “the human body is inviolable”. As for international sources of French law, Article 34 of the Convention on the Rights of the Child, which was passed on 20 November 1989 by the General Assembly of the United Nations, requires the signatory States - among which France - “to protect children from any form of sexual exploitation”.

- **Procuring**

Article 225-5 of the New Criminal Code prohibits procuring in all its forms. The law provides for aggravation when minors are involved in procuring.

- **Prostitution**

Until the law 2002-305 of 4<sup>th</sup> March 2002 related to parental authority was recently passed, the prohibition of prostitution only concerned minors under fifteen years. However, most of the infringements involved minors between fifteen and eighteen years. Article 13 of this law provides for that: “ minors prostitution is prohibited on the territory of the Republic” and “Any minor who prostitutes him/herself, even occasionally, is considered as in danger and requires legal protection in the framework of educational care and welfare”. The penalty of customers of a minor under eighteen was established, as it previously only concerned fifteen-year-old minors<sup>10</sup>.

### 4.3. Government mobilisation: implementing of several measures and limits

Along with the law on parental authority, the government implemented some measures in order to fight against children trafficking for sexual exploitation.

- Co-ordination between all the parties involved in fighting against minors trafficking was reinforced and several measures have already been implemented. For instance, Mr. Hervé Hamon, as presiding judge of the Children Court of Paris, implemented in September 2001 a specialised office intended to unaccompanied minors. The purpose of this office is the identification of each child, thanks to a single judge, who can then start an educational work with him/her.

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<sup>9</sup> In France, minors must go to school until they are sixteen at least.

<sup>10</sup> In France sexual majority is fifteen years old.

- A shelter dedicated to unaccompanied minors admitted on the territory via the Roissy airport has been opened in Taverny, a town close to Paris. This shelter shall care for children for a two or three-month duration. Such a period is indeed necessary to carry out a medical and psychological check-up, assess school level and take any useful measure in favour of the minor's best interest: return to the country of origin, asylum request, guardianship...).

- An additional protocol was signed on 7<sup>th</sup> January 2002 within the framework of the Local Contract for Security (CLS: *Contrat Local de Sécurité*) of the city of Paris. It particularly plans in a near future the creation of a ten-place-shelter for unaccompanied minors, either wandering, or exploited by criminal organizations.

- A system of connection magistrate was implemented in Morocco and Romania. Two French magistrates have been sent to these countries in order to assure a direct link with the local authorities. It both aims at setting up a justice protecting minors victims of trafficking, and possible opening of shelters for returned unaccompanied minors, in order to assist them and avoid they fall into trafficker's hands again.

#### **4.4. Impediments in minors care**

- **Institutional limits**

- The minors admitted de facto on the territory by the judge should normally be cared by Childhood Social Care (ASE: *Aide Sociale à l'Enfance*). However, it appears that many ASE shelters are overflowed, particularly in the Paris area, where the Roissy airport is located. This sometimes leads to an absence of immediate reception for the minors. They are then released from the Children courts of Paris and Bobigny.

- In addition, minors who were admitted into an ASE shelter do not always remain within. They may be trapped by traffickers when they run away. It is reasonable to think that the majority of these minors are in transit, France appearing as a privileged way of access to enter the European Union. However, the importance of criminal networks should not be underestimated. The Seine Saint-Denis Direction for Childhood and Family established that more than 40 per cent of the unaccompanied minors effectively cared in its shelters disappeared in 2000.

- The Boissy-Saint-Léger, Taverny and Paris shelters have specific educational teams which are specialised in taking care of unaccompanied minors. However, the number of places is limited (a total of 70 places). The other shelters are not adapted to unaccompanied minors who must be cared on a specific way. New specific shelters should be opened.

- Unaccompanied minors who are victims of trafficking and constrained to beg, steal or plunder ticket machines are most of the time considered by the police, the justice or many citizens as delinquent children. However, they are above all victims who must everyday collect money for the traffickers, as proved by the Romanian children *reconversion* to prostitution in August 2001.

- **Legal limits**

- Some public prosecutors have a restrictive interpretation of article 375 of the Civil Code as regards to protection of minors. Consequently, unaccompanied minors are not immediately cared by Childhood Social Care (ASE). In addition, judges do not systematically decide orders of provisional placement for unaccompanied minors, who are not immediately cared by ASE.

- In French ordinary law, the terms of limitation - particularly in civil cases - are unfavourable to trafficked victims. These terms are even more unfavourable when minors are concerned, insofar as they do not have the maturity, the capacity and the will necessary to institute proceedings against their traffickers.

- The French law provides no specific protection policy for the witnesses victims of trafficking. However minors should benefit from particular protection rules, as they are particularly vulnerable. The Code of Criminal Procedure only exonerates minors under sixteen years to take an oath before they testify in court.

- The co-operation between the Member States of the European Union should be reinforced, in particular through Europol and Eurojust. The effort should be put on connection of the means to fight against transnational networks, in particular in the field of infantile prostitution, which widely reaches unaccompanied minors. It is also convenient to encourage the co-operation with countries of origin, not only in a bilateral way as that is for instance the case between France on the one hand and Romania and Morocco on the other hand, but at the European level.

### **CONCLUSION: A BILL TO BE PASSED BY THE PARLIAMENT?**

After the parliamentary mission's report was published in December 2001, the *Assemblée nationale* unanimously passed on 24<sup>th</sup> January 2002 a bill related to the fight against modern forms of slavery and trafficking. The lecture of this bill before the Senate has been adjourned to autumn 2002 because of the electoral calendar. If the Senate passes this bill such as, or without substantial amendment, France would be in a position to endow with legal means to fight against trafficking in human beings, including unaccompanied minors.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **GERMANY**

**By M. Uwe Pollmann (synthesis)**

## 1. UNACCOMPANIED MINOR REFUGEES AND MIGRANTS AS VICTIMS OF CHILD TRAFFICKING

The number of cases involving the trafficking of unaccompanied minor refugees and migrants (UAMs) in Germany has risen sharply over the last 15 years as a result of the increase in incidents of criminal activity and statistics. The trafficking and exploitation of children and minors is exacerbated by the fact that traffickers can always find loopholes in the law.

### 1.1 UNACCOMPANIED MINOR REFUGEES AND MIGRANTS

According to different estimates, there are at present between 5 000 and 10 000 UAMs living in Germany. Of this total, 90-95% are male. It is recognised that, geographically speaking, the largest proportion live in the major cities, such as Hamburg, Berlin, Munich (Bavaria) and Frankfurt (Hesse).

The *Internationale Sozialdienst* (International Social Service) observes that compared to 1998, the number of unaccompanied child refugees under 16 years of age was seen to be “falling slightly” in 1999 (Internationaler Sozialdienst 1999).

Another reason for the decrease in the number of registered UAMs might be due to immigrants disappearing in order to live illegally in Germany.

When questioned about the whereabouts of the missing adolescents, the public authorities are equally incapable of providing answers.

### 1.2 THE COUNTRIES OF ORIGIN OF UNACCOMPANIED MINORS

The diversity of the countries of origin of unaccompanied minors in Germany has grown over the past 15 years. While in the middle of the 1980s, the UAMs mainly came from 5 to 10 different countries, this number has today grown to about 30. According to the International Social Service, in 1998 and 1999, the minors came mainly from Eastern European countries (i.e., Turkey, Yugoslavia, Romania, Moldavia and Ukraine), from African countries (i.e. Algeria, Ethiopia, Eritrea, Sudan, Guinea, Sierra Leone as well as from the Democratic Republic of Congo) and from Asian countries (i.e. Afghanistan, Armenia, Bangladesh, China, Sri Lanka, India, Pakistan and Mongolia).

It is a well known fact that a large number of these minors come to Germany with the help of traffickers (networks) crossing the “frontier traversing open country”. Most of these minors, however, are not allowed to stay in Germany for any length of time.

The main reasons for flight and migration to Germany are often long-lasting political crises, civil wars, conflicts on the grounds of religion, race or ethnic background as well as persecution or discrimination of minorities. Immigrants can also be driven by the death, disappearance or imprisonment of individual family members.

During the last few years, serious social or socio-economic crises in the countries of origin have been emerging as reasons for migration. These crises have led to the destruction of familiar systems as well as to the dissolution of traditional means of socialisation. Examples of this can be found in Ukraine or Romania.

### 1.3 LEGAL STATUS, RECEPTION AND ACCOMMODATION

Under a number of international agreements and national laws, UAMs entering Germany should be legally protected. In reality, however, they are restricted in their development by national laws and stipulations. Experts speak of a “gap in protection” or “insufficient

protection”, they even consider that refugee children in Germany are “only treated as children to a certain extent”.

Protection is first offered by the German Constitution, the Children and Youth Welfare Law as well as the agreements of the Geneva Convention on Refugees, the European Convention on Human Rights, The Hague Convention on the Protection of Juveniles, and the UN Convention on the Rights of the Child, all ratified by Germany.

But since 1992, Article 22 of the Convention on the Rights of the Child has been restricted by a Declaration on the Deposit of the Instrument of Ratification of UN Convention on the Rights of the Child through the former Federal Government and thus adapted to the German Aliens Act and the Asylum Procedure Act. According to these laws, minors between 16 and 17 years of age are in reality no longer protected by the Convention but are classified as adults and come under the nation-wide distribution proceedings.

For two areas relating to care, this age limit becomes the decisive criterion for all UAMs entering Germany. Since they often do not possess any identification documents, the authorities determine a fictitious age by an X-ray examination of the carpal bone. This assessment is carried out during a clearing procedure in the framework of which the minors are accommodated for some weeks or months in a clearing or first-reception facility.

The clearing procedure also serves to find a guardian as well as suitable care and accommodation possibilities while the future residence status awaits clarification. Accommodation in a clearing facility should normally not exceed three months but in reality, the stay in the community accommodation might extend to 8 months.

UNICEF criticises the “insecure residence status”. As a rule, UAMs only obtain a “tolerance” permit, which means only a suspension of deportation rather than a right of residence. With this permit, the young refugees can only leave their district or state when an application has been filed. In addition, the tolerance permit, which is often issued for only 3 or 6 months, can be revoked by the Immigration Office.

What makes things even harder for immigrant minors is that a painfully earned school education does not offer any prospects for the future. They are usually unable to start vocational training in Germany as few employers are ready to accept the insecure status of a tolerance residence permit. In addition, according to the German Vocational Education Act and the Employment Promotion Act, foreign adolescents need a work permit and must prove that no German, EU citizen, long-time foreign resident or recognised asylum-seeker who could do the job has been found and passed over.

An application for asylum often makes little difference to the immigrant minor. There is practically no recognition of asylum according to Article 16a of the German Constitution and it is rare that deportation impediments are granted.

In the past few years however, the Federal Office for the Recognition of Foreign Refugees has adapted its interviewing process to suit children and juveniles.

According to the German Asylum Procedure Act, the 16 to 17 year-olds are at that age unreservedly capable of acting like adults. So, they have to undertake their asylum procedures on their own. Unfortunately, sometimes those who immigrate at the age of fifteen may, despite having the right to a guardian, be left to fend for themselves.

When UAMs have reached the age of 16 years, access to basic benefits may no longer be available in Germany. At the age of sixteen, they may also be obliged to live in residential facilities for adults. According to the Asylum Seekers’ Benefits Act, they have only limited rights to medical care. Assistance is only granted in the case of acute illness.

There are obvious gaps in the care provided in the major cities. These gaps are only counter-balanced – if at all – by the commitment of local refugee groups, charity associations or small independent social relief organizations. There are still problems as far as the official recognition of such supportive measures is concerned, although many state and municipal authorities are already working closely with independent relief organizations.

Provision of the type of aid that goes beyond what the state services provide for UAMs is often solely found in the major cities and is less common in rural areas. Taking into consideration the fact that minors are abused and exploited wherever they are, this kind of support is extremely important.

## **2. TRAFFICKING IN CHILDREN AND MINORS**

The first signs of an increase in the level of trafficking in minors, mainly in very young children and infants from Asia or Africa to Germany, appeared as early as the 1980s with illegal adoptions. The opening of frontiers between the East and West, the breakdown of political, social and economic systems and the resultant social conflicts, has led to initial cases of trafficking in minors from Eastern Europe in addition to the trafficking in adult human beings (and in particular women).

This report aims to collate information about possible child trafficking from documents (newspapers, Internet), findings and impressions of police and investigative authorities, aid organizations, care facilities and counselling centres.

The basis for this was an intensive nation-wide investigation with interlocutors, primarily in the major cities of Germany. In addition, detailed meetings were held in Berlin, Hambourg and Cologne.

### **2.1 PROSECUTION OF CHILD TRAFFICKING**

The German Penal Code outlaws “child trafficking” in Paragraph 236 of its new edition of 26 January 1998 and refers in subparagraph 1 to children who “have not yet reached the age of fourteen”. This definition of children goes back to a number of German laws. Thus for Protection of Young Persons Act in its latest version of 28.10.1994, a child is “a person who has not yet reached the age of fourteen; an adolescent is a person who has reached the age of fourteen, but not yet the age of eighteen”.

In contrast, the UN Convention on the Rights of the Child defines children as human beings who have not yet turned 19. For this age group, Article 9, Article 11 and explicitly Article 35 of the Convention outlaw child trafficking.

It seems that here are no methods of assessing the nature of child trafficking. “The areas mentioned in the interviews – i.e. begging, stealing, illegal employment relationships and sexual exploitation of children – are not covered by the Police Criminal Statistics according to information given by the state criminal investigations department of Thuringia.

Criminal statistics currently provide information only about the number of persons sentenced in accordance with Paragraph 236 of the Penal Code. There are no indications about the ages or the number of the victims and detailed statistical data on this would be valuable.

Reports edited by the Federal Office of Criminal Investigations and state criminal investigations departments on trafficking provide initial information about child trafficking for the purpose of sexual exploitation. However, no detailed analysis of the situation of minors is available.

Only one police commission has made more detailed investigations into organised child trafficking, its main focus being on “Romanian organised crime”. After it was noted that several German major cities the offences committed by Romanians minors had increased drastically, the Berlin State Police Force Agency founded the working commission “Romanian gang crime” in 1998 (AG RumBa). It detected loosely connected different sized networks of Romanian child traffickers.

These children were bought from families in poor areas of North Eastern Romania. They were – after the traffickers had made flimsy promises to them – handed over to the traffickers by their families. The children were also recruited on the streets of Bucharest. In Romania, Ukraine and Poland, they were taught to be thieves and taken to Germany via different routes.

Prosecuting authorities know far less about the sexual exploitation of smuggled minors than, for instance, about the above-mentioned form of exploitation.

## **2.2 REASONS, MECHANISMS AND FORMS OF CHILD TRAFFICKING**

A number of informants of youth welfare departments and first-care facilities as well as public guardians are convinced that Romanian minors are still being smuggled into the country. Adolescents report that deported children have re-appeared or that they have heard about more immigrants. There is, however, no corroborative evidence of this. There also are indications that cases of child trafficking might also exist with minors of other nationalities.

Due to the information given by many interlocutors, it is clear that these children almost exclusively come from poor, economically less developed and/or conflict regions, such as Romania, Kurdistan, the NIS States or African countries. Most of them come from family structures that are breaking up or have already done so as a consequence of high unemployment, low wages, social insecurity, high conflict potential or child overpopulation. Often, the minors have experienced a high degree of violence, frustration or disappointment.

Some exceptions show that desolate social situations are not always the root of the problem. Some minors come from stable families or developed countries such as the Czech Republic or Slovakia. It cannot be assumed that all of these minors have not attended school regularly.

Because of their desperate social situation, these minors are easy prey for traffickers, child traffickers and smugglers. Certain factors in the countries of origin, such as corruption and relative tolerance of criminal acts, the decline of the public sector, and lengthy legislative procedures facilitate trafficking, child trafficking and smuggling practices. Moreover, organised crime meets with little resistance, thus contributing to the rising problem.

In several documented cases, traffickers have equipped minors with false passports and have smuggled them into Germany through Ukraine, Poland or Slovakia by pretending that the minors are their own children. In cases where it is not possible to enter a country without a visa, for example Germany, the route across the green border is used, and which the victims usually have to do unaccompanied. The procedure involves being taken to certain points along the border, obtaining information about secret paths and then being picked up again on the other side.

This information comes mainly from victims who have already reached their destination or via accounts given by others (e.g. victims' friends). However, in the border areas of the Federal Republic, little is known about the exact transition points or routes of child trafficking.

Even after these inquiries, it is still unclear whether there are always well organised criminal networks and hierarchically structured gangs behind cases of child trafficking. Although

organised crime undoubtedly plays a role, police investigators, care facilities, and aid organizations warn of the dangers of assuming that organised crime is at the heart of all trafficking. Their experiences suggest that it is not unusual for individuals, small criminal groups or occasional criminals to hold minors. Such individuals and groups frequently control the minors' contact with family or friends, thus rendering detection extremely difficult.

## **2.3 EXPLOITATION OF CHILDREN**

Although there are suspicions that minors are transported to Germany for the purpose of labour exploitation in weekly markets or in fast-food outlets, there is no evidence to support these suspicions. Cases of child trafficking in Germany seem to concern almost exclusively the exploitation of minors for petty offences or for sexual exploitation.

### ***2.3.1 Exploitation for Petty Offences such as Begging or Theft***

Frequently, cases of child trafficking are connected with children (in particular from Romania) as thieves. Information regarding the people behind the scenes has existed since the middle of the 1990s after a series of investigations into a growing number of cases of pick-pocketing.

Stuttgart, Hamburg and particularly the capital Berlin are also popular destinations for child traffickers. The smugglers or child traffickers first pretend to be caring mentors such as teachers, employers and guardians. They pretend to care about the children's future. They offer the children a life of luxury in their home environment including clothing, visits to restaurants and discotheques, thus enhancing the status of the minors.

On their stealing sprees, these children bring in up to 2 000 DM a day. In groups of two or three, child thieves take customers by surprise in department stores, at markets or in supermarkets. They also work under the supervision of adults. Those who refuse to steal and fail to escape can expect to be punished severely. First there was the threat of being beaten up, then came actual torture with lit cigarettes or razor blades, and also the threat of using knives or firearms. Psychological pressure is also prevalent.

### ***2.3.2 Sexual Exploitation of Unaccompanied Minors***

According to this research's findings, no precise figures are available regarding child trafficking for the purpose of sexual exploitation. However, youth care facilities have no doubt that Romanian girls are being forced to work as prostitutes. However, children and adolescents from other countries are also transported to Germany for the purpose of sexual exploitation.

However, these cases are assessed within the criminal act of "Trafficking in women", rather than as separate statistics relating to minors, according to information from several youth care and aid facilities. Among the registered victims are minors between 14 and 17 years of age. A report therefore concludes that the number of victims is decreasing, suggesting that the phenomenon of child trafficking in the field of sexual exploitation is decreasing too. There are others who subscribe to this point of view, such as the police headquarters in some cities.

Other sources of information, however, fly in the face of such a conclusion. According to many counselling centres, the statistics about victims only reflect the small known part of the phenomenon and they often cover only the Eastern European countries: Ukraine, Poland, Russia, Lithuania, the Czech Republic, Belorussia, Hungary, Bulgaria, Slovakia or Latvia. According to other sources of information, the victims come from a far wider range of countries.

How many of the victims of trafficking in women are actually under-age ? It is difficult to provide an accurate answer to this question, as a number of counselling centres are not able to give any information or know of very few cases.

The trade is not necessarily limited to girls. During the past few years, among the 500 adolescent prostitutes in the city of Frankfurt, there have also been boys from the Czech Republic, Poland or Romania who were victims of traffickers. Some of them were later sold to networks in Amsterdam. Recently, however, no new cases have been reported.

### ***2.3.3 Child Trafficking and Child Pornography***

It is not only the trade in older children and adolescents that is growing. The scandals regarding a Mafia group of Belgian, Dutch and German traffickers have made it very clear that trafficking in younger children and also small children for the purpose of sexual abuse is no longer limited to isolated cases. The contact and information centre “Zartbitter” in Cologne regularly deals with such cases.

A new method practised by the traffickers and/or paedophiles is the adoption of the children. Zartbitter knows of cases where Germans have targeted women from poor countries with children using catalogues issued by a marriage bureau. They have then married the women, adopted the children and begun to abuse them sexually. About six to seven times per year, such cases appear at the Cologne counselling centre.

The criminal paedophilia scene, which enjoys a high level of demand for its products, should not be underestimated. This trend is also evident in the increasing use of child pornography and the increasingly unscrupulous attitude of clients with regard to the escalating violence against children.

Does this also mean that child pornography rings transport minors to Germany to exploit them for their own purposes ? So far, the law enforcement authorities have no proof of such cases.

In order to combat the international sexual abuse of children, the Federal Government has, in co-operation with States set up a project to combat sex tourism by German criminals in the regions bordering the Czech Republic. This project aims to provide better protection for children and in particular to stop sex tourism aimed at the exploitation of children between Germany and the Czech Republic. Posters and postcards at the border have raised awareness of the problem of sexual abuse of children by German criminals in the Czech Republic. Potential criminals are deterred and the sense of responsibility and readiness to inform the police by the individual citizen is encouraged. The target group for the project are all individuals who cross the border from Bavaria and Saxony to the Czech Republic at certain transition points.

The results of investigations into child abuse scandals in Belgium, the Netherlands and Germany give rise to the conclusion that the extent of child trafficking and child pornography is greater than was suspected. There are many different criminal organizations in active connection with each other, networks and alliances that remain unrecognised and undetected. They operate like secret societies, according to a high commissioner for criminal investigations at the police headquarters in Ulm.

The paedophiles' disregard for children knows no bounds. The counselling centre Zartbitter in Cologne has for years frequently learned about the exploitation of minors in the framework of satanic rituals and the production of so-called “snuff-movies”. For the law enforcement authorities, such statements cannot be proven since the witnesses have often been drugged and give contradictory accounts of their experiences. Nevertheless, it can be considered that these statements are credible. Child traffickers and paedophiles use subtle means, such as

manipulating the appearances of rooms with slide projections, to create effects that the fearful children mistake for reality.

## **2.4 PHYSICAL AND PSYCHOLOGICAL DAMAGE**

The readiness of traffickers to resort to violence is, as is generally known, widespread. Romanian children picked up by the German investigative authorities report that beatings or burns with cigarettes are commonplace. Sometimes they have also been locked for several days in bare rooms and with little food.

Aid projects report that female minors who fall into the clutches of trafficking rings are often repeatedly raped, and as a consequence suffer from infections or diseases affecting the reproductive system. However, the physical injuries are only part of their problems. There is also the enormous psychological pressure, young people suffer : homesickness, the high level of insecurity associated with being in an unknown country, and their total dependence on the traffickers. The minors are constantly threatened that if they try to escape, their parents and families will suffer and will be informed that their daughter is a prostitute. Even if they managed to escape, they would be found if they returned to their home village.

## **2.5 RECEPTION, ACCOMMODATION AND EDUCATIONAL CARE**

Regarding the victims of child trafficking, the German law on Children and Youth Welfare is the most important legal basis. As a rule youth authorities take charge of these children. The minors transported to Germany by smugglers and traffickers come into contact with the youth welfare departments in different ways. Some of the minors are handed over to the departments after having been picked up by the investigative authorities and possibly after having been subjected to identification procedures (some older than 14 are found in police custody). Some give themselves up to the police, and unknown people who have met the children “by chance” hand others over to youth residential facilities. Others come into contact with organizations that care for victims of trafficking and trafficking in women.

If available, child and youth emergency services provide short-term educational care in the larger cities. Since child and youth emergency services are not properly equipped to deal with unaccompanied minors from abroad, mainly because of linguistic barriers, the victims are handed over to clearing centres.

If nobody can be found to take custody of those who are minors, they obtain a ‘tolerance’ or a right of residence permit. However, minors, who according to existing personal documents are 16 years old or are estimated by expert opinion to be 16 years or older, do not have this security. Often, they are urged into almost hopeless asylum application procedures just to obtain residence status. For those who are old enough for the asylum application procedure, youth welfare is only available to a limited extent.

Not surprisingly, the limited stay in a home and the threat of repatriation frequently lead the minors to withdraw their request for asylum. Thus the educational task of first-care and youth care facilities becomes a farce – more so for minors who have been lured or smuggled to Germany.

It is precisely in this situation that the committed employees of the public or private facilities need support by means of a secure residence status for the affected juveniles. Minors who depend on child traffickers are initially characterised by fear or lack of interest. One reason is their unwillingness to talk about themselves, another is their constant absenting/disappearing.

### **2.5.1 Witness Protection**

Nevertheless, carers believe that some of the affected minors do indeed wish to escape from their situation. “Witness protection programmes” offer minors the opportunity to do so. The premise for witness protection is the prospect of a successful investigation. It must be witnesses (or also co-accused) who can give decisive evidence in the criminal proceedings. Although it is the investigative authorities that decide on witness protection, youth protection authorities can make suggestions. In the guidelines for witness protection, however, there is no legal basis for this.

Minors who are willing to testify are given a new identity and are housed in residential facilities that are only known to the police officers responsible for witness protection. This accommodation is available throughout the investigation and the subsequent legal proceedings. Youth protection authorities or independent relief organizations are also integrated into these locations. Nevertheless, the witness protection programmes meet with mixed reactions. There are occasions when, in spite of detailed instructions, juveniles go back to their old criminal milieu and do not value the offers of education that are made to them.

Even when the victims do opt to enter the witness protection scheme, a successful prosecution is far from guaranteed. According to the Dortmund Midnight Mission, proceedings are unsuccessful because of the psychological pressure to which the minors are exposed for months. In this situation, they start to confuse when and by whom they were abused and thus their evidence loses credibility. If the proceedings and the witness protection measures are then suspended, the victims are in twice as much danger.

Frequently, witness protection is not provided because the German authorities are not interested in investigating the possible backgrounds of trafficking, child trafficking and trafficking in women or because possible witness statements are prevented by a hasty repatriation.

### **2.5.2 Repatriation**

According to the statements made by several employees in reception facilities, the repatriation procedure has serious flaws. The non-state International Social Service, which has its headquarters in Frankfurt/Main and which is responsible for the repatriation of UAM third nationals, has a network of employees and partner organizations in about 100 countries at its disposal. Thus it can be clarified within a few months how and by whom the minors have been received in their home country. According to the results of the inquiry, guardians can decide about repatriation. But the International Social Service claims that it is not always able to clarify the nature of the repatriation.

According to several sources, there have been cases where neither guardians, home staff, nor the International Social Service, have been informed by the immigration offices of imminent repatriations. Bearing in mind the lack of security on offer and the apparent inability of the authorities to co-ordinate their efforts, it is perhaps understandable that minors evade the possibility of deportation.

This is also hardly surprising when one considers the social situation in the immigrants’ home country, a deterrent in itself. Moreover, in the country of origin, there is a lack of youth care facilities and existing facilities often fail to accept the minors.

## **2.6 DEPARTURES – DISAPPEARANCE INTO ILLEGAL STATUS**

Although there is little information about the situation of UAMs living as illegal aliens, it is even more difficult to obtain information about the victims of traffickers in children and women who “disappear”. It is known, as mentioned previously, that minors repeatedly evade the control of the youth authorities during the different phases of their admission. Some disappear shortly after their compulsory admission to a clearing centre, others after more than

one year of school attendance and accommodation in a residential facility, and some shortly before an impending deportation. However, more precise information about this phenomenon is still not available.

There is certainly a suspicion that some minors are exploited by child traffickers again in other countries or that they manage to flee to a neighbouring country or further afield.

Reception facilities and aid organizations agree that in Germany, security for minors falls well below an acceptable level. The situation concerning the right of residence and the education on offer to minors are the most important aspects of care that need to be improved.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **GREECE**

**By Ms Evgénia Markova (syntesis)**

## MAIN OBJECTIVES OF THE STUDY

This study focuses on the extent of the problem of trafficking in unaccompanied minors for the purposes of their sexual exploitation and / or forced labour in Greece - a country of destination and / or transit.

*The main objectives of the research were:*

- to outline the main source countries of trafficked children in Greece together with the routes of trafficking to and within the country then,
- to assess the living and working conditions of trafficked minors,
- to identify assistance practices for children victims of trafficking or unaccompanied minors seeking asylum in Greece, including the provision of shelters for them,
- Finally, it was to examine safe repatriation strategies for unaccompanied minors from Greece.

The problem of trafficking in Greece is closely related to the transition of Greece from a country of emigration to a country of immigration after 1990 when legal and illegal immigrants coming from neighbouring countries, such as Albania and Bulgaria, as well as from countries situated as far away as the Philippines and Pakistan entered in large numbers. Over the last two years (2000-2001) in particular, illegal immigrants mostly from Asian destinations, fleeing war and poverty have been attempting to enter the country by sea with a view towards settling in Greece, Italy or other European countries.

## 1. METHODOLOGY

This research followed a ‘multi-methodological approach’: a combination between review of the relevant literature, documentary analysis, and an attempt for generating new data through interviews. The study used the so-called purposive sample – in-depth interviews with people in private and public organizations, who had the experience with children victims of trafficking were conducted. The snowball procedure for choosing the participants was followed. Moreover, the first participant not only suggested the others but actually recommended the interviewer to them. It proved to be very important for obtaining reliable data.

## 2. MAIN DEFINITIONS

According to Greek Civil Law, unaccompanied minors are the ones who reside in the country without his/her natural parents or without being accompanied by persons who have the status of legal guardianship, and who are under 18 years of age. In the Greek legislation, the terms “separated” and “unaccompanied” are identical. The Greek police, however, do not use the term “unaccompanied” for minors who reside in the country with relatives willing to undertake their protection/care. The social services though, in such cases, treat minors under 18 years of age as unaccompanied, even when their older siblings reside with them.

This report adopts the definition on trafficking agreed at Palermo in 2001 as part of the UN Convention on Organized Transnational Crime. Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation.

In this report, the children who have been trafficked for the purpose of different forms of exploitation were referred to as *trafficked minors or victims*.

Although, it is widespread the understanding in many Balkan countries that the equivalent English word is “*pimp*”, this term was not used in the report. The Greek law adopts the term “*procurer*” in cases of the supply of women and children for sexual exploitation. Both, the term “*procurer*” and “*trafficker*” were used in this report.

### 3. MAIN FINDINGS IN THE STUDY

- Albania appears to be the main source country for trafficked children in Greece. Poverty, ignorance and the law status are pointed out to lie at the heart of the trafficking problem.
- The majority of the unaccompanied minors-refugees that arrive in Greece are coming from Afghanistan and Africa, and they are usually boys in their 15-17s.
- Recently, an increasing number of unaccompanied minors from Iraq was recorded. It is important to underline the fact that an increased number of unaccompanied minors-refugees in Greece has been observed during the last 2,5 years as a result of political conflicts and civil wars in the above mentioned regions.
- What appears to be a haphazard collection of beggars in Athens and Thessaloniki (Greece’s second largest city), is actually an organized criminal racket.
- More than half of the children found on the streets of the big urban centers of Greece in the period 1998-1999 were living in the country without their families and in their vast majority they were brought to Greece by a third person, who had “rented” them from their parents. The “rent” usually amounted to a certain share of the child’s expected earnings in Greece.
- In the 1990s, after the fall of the Berlin wall and the abolishment of the exit visa requirements for the citizens of the former socialist bloc, the neighbouring countries of Bulgaria, Albania and the former Yugoslavia appeared to be the main source countries for trafficked minors to Greece.
- The trafficking “routes” pass through the valley of the river Struma and the mountains of Belles and Rodopi in Bulgaria, then pass through FYROM and end up in Greece. The South Bulgarian cities of Sandanski and Petritch are the “white slavery center” in the Balkans.
- Greek nightclub owners are the main intermediaries in the trafficking process.
- The first stop for young women brought from Bulgaria or other East European countries is the town of Thessaloniki in Greece while the city of Ioannina and the neighbouring cities of Kastoria, Veria, Katerini and Kalabaka are for those coming from Albania. The traffickers then decide how and where their victims will be exploited.
- The trafficking route for unaccompanied minors coming from Asian destinations crosses Turkey either from the river Evros or by sea. Usually, some of the children’s relatives or family members are already in Greece as asylum seekers or refugees. Needless to say that most children in this category enter Greece illegally.
- The traffickers in Greece, by the means of violence, force their victims in the sex industry to work many hours without being able to refuse a client. Sometimes they may work from morning till after midnight.
- There is an estimated 3,000 Albanian children who had been trafficked to Greece and Italy to beg for money.
- According to an Albanian NGO, some 80 per cent of the street children trafficked to Greece were either sexually abused or exploited. The street children over age 8 or 9, especially girls, were typically victims of rape, sexual abuse or forced prostitution.
- The safe repatriation of children from Greece is still very problematic especially in the case of the repatriation of Albanian children.
- Albanian response to trafficking was estimated to be very slow and quite ineffective. Some of the women trafficked for prostitution witnessed the involvement of the Albanian police in some aspects of the trafficking.
- Government officials support the idea that repatriation is much safer now for minors

victims of trafficking given that only deportation is implemented through INTERPOL and the Greek police. There is a good cooperation between the NGOs in both countries.

- The Special Professional School for Minors “Agia Varvara” is the first stop for children victims of trafficking. It runs a programme entitled “Care and Protection of Children on the Street”, which is designed to encounter the problems of trafficking in minors in Greece.
- There is a lack of suitable housing for those unaccompanied minors that have applied for asylum. According to the Presidential Decree Π2α/52/2671/5-3-2001, the Shelter (Guest House) in the Anogia of Crete is determined to provide shelter and lodging for unaccompanied minors that have applied for a refugee status in Greece. The lack of other Shelters of this kind creates serious problems given the urgent needs for these minors’ protection in Greece.
- A significant decrease was observed in the number of children, begging or selling things on the streets, usually at the traffic lights. It is argued that these children are subjects of other forms of sexual exploitation, forced theft, forced labour or services. Others support the idea that these children when with their parents in Greece are now back to school given the newly regularized parents’ status.
- Children found working or begging on the streets, in the metro, or selling flowers or napkins, were given the *phone number 1056, a SOS line*, sponsored by the Greek Telecommunications and operated by the Foundation “The Smile of the Child”. The line works free of charge from any phone booth for any information related to trafficking in children. The children can talk with the staff of the Foundation whenever they feel like wanting to share their fears with the social workers and ask them for support.
- There is a draft Law on combating trafficking in human beings in Greece which is a precedent in the legal practice in the country for the application of more complex measures in dealing with the problem.
- Before this draft of the Law, all minors arrested for involvement in prostitution were treated as criminals while the client was not affected in any way.

*\* The draft Law foresees the imprisonment of any person involved in any way with child prostitution.*

*\* The draft Law foresees that the possession, supply, sell or dissemination in any way of child pornographic material to be considered as a criminal act. The penalty includes imprisonment of maximum two years.*

*\* The draft gives a definition of “child pornography”*

*\* It includes also a paragraph on the safe repatriation of victims of trafficking*

#### 4. MAIN CONTRIBUTIONS OF THE RESEARCH

- It is an exploratory study which significantly contributes to the beginning of a knowledge-base building on the problem of trafficking in minors in Greece;
- The strength of the study is in its attempt to benefit from three data sources: overview of the existing literature -academic and journalistic surveys on trafficking in minors in Greece; data from police reports and in-depth interviews with people in private and public organizations, who had the experience with children victims of trafficking.
- The study adds up new knowledge to what was previously known about minors’ countries of origin and the peculiarities of the minors coming from certain countries of origin, which is a major issue for the success of the integration, even repatriation programmes for minors.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **ITALY**

**By Ms Annalisa Vicari (synthesis)**

## INTRODUCTION & METHODOLOGY

The present report deals with unaccompanied minors in Italy, with particular emphasis on child victims of trafficking in human beings for the purpose of sexual exploitation or other forms of labour exploitation.

After providing a brief outline of the history of the phenomenon, the report looks into how far it has developed, in both qualitative and quantitative terms.

The report then presents an overview of the applicable legal framework, followed by a description of the judicial and administrative bodies (at the international, national and local levels) in charge of the minors in question and the protective measures afforded to them under law from the time of their arrival at the country's border.

The second part of this report focuses on the trafficking in illegal minor aliens and on a critical analysis of currently applicable laws aimed at identifying the legal loopholes through which criminal networks infiltrate the system, to pursue their own ends.

Lastly, current trends and forecasts of future tendencies are analysed in the light of the National Plan for Children and the most recent draft legislation. The contents of this report are based on comparisons with the facts and figures used by other researchers involved in similar projects, as well as on data released during conventions and seminars, reports to technical parliamentary committees, on-line material and, most importantly, information provided during in-depth interviews with persons well-placed to observe the phenomenon, throughout Italy.

This overview revealed glaring discrepancies in the way care is provided to minors from region to region as well as the wide discretionary powers invested in the institutions in charge of dealing with the issue.

It must also be pointed out that the estimates presented in this report must not be merely “summed up” since there is no way of determining how far they are reliable (minors often use various *aliases*) or if, and to what extent these estimates contain repeated reports of the same minors by various institutions (border police, hospitals, “first reception centres”, etc.) or by bodies located in different regions.

For all these reasons, therefore, the figures must be considered merely as being indicative of the dimensions of a phenomenon that, in Italy, still needs to be fully defined.

### 1. THE FEATURES OF THE PHENOMENON

#### 1.1 THE HISTORICAL DEVELOPMENT OF THE PHENOMENON

An “unaccompanied minor alien present within the territory of the State”, is defined as “... a minor who, not being an Italian national or a national of another European Union Member State and not having applied for asylum, is for any reason within the territory of the State without assistance and representation by his/her parents or other adults legally responsible for him/her in keeping with the provisions applicable within the Italian legal system” (article 1(2) of Italian Presidential Decree no. 353/99<sup>11</sup>).

The definition used by the UNHCR is, in many ways, similar insofar as it refers to this type of minors as “*separated children*”. Despite this definition and the declaration regarding the right

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<sup>11</sup> “Prime Minister’s Decree, 9 December 1999, n. 535: “Regulation concerning the Committee for Alien Unaccompanied Minors’ tasks” on the basis of art. 33, par. 2 e 2-bis, of the Aliens Law of 25 July 1998, n. 286”

to asylum of minors affected by trafficking in human beings, in fact, in Italy, “*separated children*” or “*unaccompanied minors*” tend to opt for forms of protection other than asylum.

Although the presence of unaccompanied minor aliens is not a new phenomenon in Italy, it has undergone a drastic transformation over the past fifteen years. Up to the end of the 1980s, it was linked to movements of minors fleeing conflict situations in and around their countries of origin. In the second half of the 1980s, the phenomenon took on new dimensions: it was during these years that young adolescents started arriving in Italy from the Maghreb, in a migratory flux almost identical to the influx of adult migrants from the same countries.

The massive influx of minors from the Balkans – especially Albania – in the 1990s confirmed this tendency and triggered a fully-fledged “social alarm”.

Since Italian law no. 39/90 – known as the “Martelli law”, the first Italian law on the status of aliens – did not specifically address the issue of unaccompanied minor aliens, all related issues were governed mainly by the Convention on the Rights of the Child (that prohibited the deportation of minors), general statutes and a large number of circulars. Under this legal framework, all decisions regarding minors were entirely the responsibility of the courts (Tribunal for Minors and Guardian Judges).

## **1.2 STATISTICS AND FEATURES PERTAINING TO UNACCOMPANIED MINORS<sup>12</sup>**

As opposed to 12 123 new entries of minors in 1998, **24 708** new residence permits were granted to minors<sup>13</sup> in 1999, including **2 036** for employment, **129** for self-employment<sup>14</sup> and the rest divided into the categories described below by Mauro Valeri, Vice-Chairman of the Committee for Minors:

- Minors applying for asylum (and beneficiaries of temporary reception on humanitarian grounds)<sup>15</sup>
- Minors seeking reunification with their families
- Minors abandoned by their parents after arrival in Italy
- Illegal immigrants<sup>16</sup>
- Minors exploited in the sex trade

Besides the above categories, there is also the category of minors involved in criminal proceedings, either as victims or perpetrators. Irrespective of whether the minor is involved as a victim or an offender, a residence permit is issued “for judicial purposes”. In 1999, **2 275**<sup>17</sup> juvenile offenders came into contact with the Social Services of the penal system. Account must also be taken of other statistics provided by International Social Services regarding minors for whom assisted repatriation has been requested (in total **2 274** cases). Further

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<sup>12</sup> The present statistics appear in the Yearly Caritas Statistical Report on Immigration in Italy, 2000.

<sup>13</sup> These statistics refer to minors in general, not only to unaccompanied minors.

<sup>14</sup> In both cases, the number of residence permits issued can also relate to the recent regularisation. Therefore, the figures could not express totally new entries into the Italian territory. Regularisation was a measure taken in 1997 and aimed at providing a residence permit for those immigrants in an irregular administrative situation present in Italy who could prove that they were gainfully employed.

<sup>15</sup> The present figures do not necessarily relate to unaccompanied or “separated” minors and as such are not fully relevant with respect to a quantitative estimate of UAMs in Italy.

<sup>16</sup> This is precisely the category identified as unaccompanied/“separated” minors.

<sup>17</sup> It is necessary to emphasise that the statistics drawn up herein represent the number of *entries* and not the number of *people entered*. This means that those minors who came into contact with the Social Services more than once in the year were recorded each time they approached the Social Services (temporary movements are excluded).

<sup>8</sup> Note that the statistics do not distinguish between minors who are not accompanied and those who are.

indications of the dimensions of the phenomenon may be found in the statistics provided by emergency child protection centres in certain large cities.

Even allowing for the errors and repetitions that affect the reliability of such figures, there can be no doubt that the phenomenon has reached considerable proportions in Italy and that it is still increasing.

After an initial flux of minors from large cities, the current trend indicates that increasing numbers of young adolescents migrate from the more rural hinterland of their home countries.

These children often report that their parents readily accept – and sometimes actively encourage – their migration as a way of providing sustenance for the entire family.

Families consider sending their children abroad as a form of “protected” migration involving risks that are well worth taking in the light of the possible benefits that could be obtained in terms of well-being for the entire family unit. As a result, the emotional state of most of these minors seems to follow a rather standardised pattern that may be described as *departure, catching up with reality and the crunch*.

## **2. THE LEGAL FRAMEWORK AND THE SYSTEM FOR THE PROTECTION OF ALIEN UNACCOMPANIED MINORS**

### **2.1 THE LEGAL FRAMEWORK**

The Italian legal framework regarding minors is made up of a series of provisions covering a whole range of contexts and contained in various laws that do not always specifically refer to minors.

In particular, account must be taken of:

- International conventions (especially those ratified by Italy);
- Italian laws and articles of the Civil Code pertaining to the instruments of protection available to minors in general ;
- The Aliens Law, no. 286/98;
- Italian laws applicable to sexual exploitation and other forms of reduction into slavery (especially the already cited Italian law no. 269/98);
- Statutory provisions pertaining to minors involved in criminal proceedings.

Although the main reference point for a minor is his/her own natural family (article 1 of Italian law no. 184/83), in the absence thereof, it becomes the responsibility of the State to guarantee the aforesaid rights, and more specifically, the State within the jurisdiction of which the child comes under (article 2 of the New York Convention of 20 November 1989; The Hague Convention of 5 October 1961).

### **2.2 ENTRY INTO THE TERRITORY**

Under article 33 of Italian law no. 184/83, which governs adoption and the placement in care of minors, alien minors are authorised to enter Italy only if they are accompanied by at least one parent or relative up to the 4<sup>th</sup> degree, and if they possess valid identification, travel documents and an entry visa.

The sole instrument available, under article 8(5) of Italian Law no. 286/98, consists in a form of humanitarian aid at border posts. Apart from this, the border authorities are only required to report the case to:

- Commission for International Adoptions ;

- Tribunal for Minors enjoying territorial jurisdiction over the place in which the minor was found.

## **2.3 RIGHTS RECOGNISED**

In the case where the minor manages to elude border checks and succeeds in illegally entering the territory of the State, s/he immediately comes under the protection of the relevant institutions. After the moment of entry, s/he acquires the following rights:

### ***2.3.1 right to temporary residence***

In principle, minors in Italy are not subject to deportation. Deportation may be ordered “in the interest of public order”, only by the Tribunal for Minors at the express request of the relevant chief of police<sup>18</sup>.

### ***2.3.2 Reception in suitable structures***

Abandoned minors have the right to be immediately accommodated in a safe place until final measures may be taken for their protection. The Italian system provides for “first, second (and even third”) stage reception centres.

These centres organise activities aimed at educational projects that generally include Italian language courses, get-togethers on the traditions of the minor's home and host country, training courses, work scholarships. The aim is to promote the insertion of the minor into the local social fabric and assist the minor in the labour market.

### ***2.3.3 Healthcare and other social security benefits required under law***

Italian Aliens Law no. 286/98 requires the provision of urgent or in any case essential out-patient and hospital care, even over long periods of time, for diseases and/or accidents, in accredited private or public institutions. The minor furthermore has the right to be vaccinated, the right to treatment for infectious diseases and right to the safeguard of pregnancy and mother care.

### ***2.3.4 Education***

Both the Italian Constitution and the Aliens Law uphold the right of minors in Italy to receive compulsory education.

### ***2.3.5 Temporary reunification with families***

Aliens Law no. 286/98 empowers the Tribunal for Minors to authorise the entry and residence in Italy of a family member of the minor, “in the case of grave necessity linked to the development of the minor, in the light of his age and health”.

## **2.4 THE INSTITUTIONS IN CHARGE OF CHILD PROTECTION**

Four basic types of protection seem to be best suited to the various categories of unaccompanied minors analysed above.

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<sup>18</sup> It is necessary to underline that expulsion in the interest of public order is usually an exceptional measure often replaced by assisted repatriation.

### **2.4.1 Law enforcement agencies**

The police and other law enforcement agencies are bound to report the situation of the minor to the judicial authorities and to the Committee for Alien Minors as well as to remove the minor to a “a place of safety”.

Alien minors may not always correctly interpret the meaning of these measures: the presence of a uniform, the identification procedures to which they are subjected and their accompaniment to “first reception centres”, may be perceived less as protection and more as a form of punishment (a sort of “arrest”).

### **2.4.2 “Emergency units”**

Many Italian municipalities – at least all the larger ones – are equipped with operating units specifically entrusted with taking into care minors in conditions of serious deprivation. These administrative units are mainly placed in charge of co-ordinating and placing under one roof as it were, all the measures available in emergency situations. At the same time, these units are in charge of reporting cases to the judicial authorities, which then adopt suitable protective measures.

Social services initially responded to the growing demand for reception by increasing the number of beds available in structures offering accommodation. In the current political debate, this method of dealing with the problem is being questioned, since it risks being transformed into a factor encouraging the immigration of alien minors, without providing any long term solution for those already in Italy.

### **2.4.3 The institutions of Juvenile Justice: Public Prosecutor's Office, Tribunal for Minors, and the Guardian Judge**

Article 3 of Italian law no. 64/94 states that temporary and urgent measures must be adopted by the Tribunal for Minors enjoying jurisdiction over the minor's place of residence. After receiving a report from law enforcement agencies or emergency units, the judicial authorities may adopt one of the following measures “in the best interest of the child”:

#### **a) Adoption**

This is a little used measure with regard to alien unaccompanied minors, both because it is an “ordinary” and not an “urgent” measure, and because it is very difficult to adequately evaluate the actual condition of the minor. So-called “illegal alien” minors rarely fall into this category.

#### **b) Guardianship**

“Guardianship” is a measure ordered by the guardian judge if s/he deems it useful “in the best interest of the child”. Even in the absence of a formal order, guardianship is in any case exercised “in fact”, by the body entrusted with the care of the minor. The measure is formally adopted only after the Guardian Judge reports on the existence of one of the conditions stipulated in article 343 of the Italian Civil Code.

A recent circular opens the door to a risk, insofar as the indiscriminate placement under guardianship of all minors entering the country may be translated into a way of getting around the entry thresholds established under the new immigration law. Until very recently, placement under guardianship entailed a residence permit “for judicial proceedings” or “for family purposes” that allowed the minor to work and required the conversion of his/her residence permit into a fully-fledged work permit upon reaching majority. Currently, however, placement under guardianship only permits a residence permit because of the age of the minor, that cannot be converted into a fully-fledged work permit upon attaining majority,

therefore curtailing further residence in Italy and ensuring that assisted repatriation is the only option available.

### ***c) Placement in care (with families, individuals or bodies)***

Placement in care is not “compulsory” but is only one possible form of protection.

Placement in care may be ordered by the local social services in the case of the consent of the parents or legal guardian or by the Tribunal for Minors in the case where such consent cannot be obtained. Placement in care is a temporary measure; for the entire duration of the placement, social services must monitor the child's progress and report to the authority that ordered the placement.

At the moment, it is the sole measure that allows for the issuance of a residence permit that allows for the full integration of the minor in Italy.

#### ***2.4.4 The Committee for alien unaccompanied minors and instrument of assisted repatriation***

The Committee for alien minors is an administrative institution set up in 1994 within the Department for Social Affairs at the behest of the Italian Prime Minister's Office.

While the main function of the Committee has always been that of “protecting the rights of alien minors in keeping with the provisions of the Convention on the Rights of the Child<sup>19</sup>”, the tasks entrusted with the Committee have been extended and modified in recent years. The Committee was originally called upon to monitor the residence of alien minors temporarily permitted to stay in Italy within the framework of solidarity-based reception programmes promoted by Italian families, bodies or associations and to co-ordinate the tasks of the public administrations involved. With the promulgation of Italian Legislative Decree no. 113 dated 13 April 1999, however, the Committee's responsibilities were extended to also include alien unaccompanied minors in Italy “with regard to issues pertaining to the reception, assistance and assisted repatriation”.

The tasks of the Committee are laid down in even greater detail in the Italian decree no. 535/99.

### **3. TRAFFICKING IN HUMAN BEINGS ESPECIALLY MINORS**

#### **3.1 DEFINITIONS AND LEGAL FRAMEWORK**

“The term “trafficking in human beings” refers to a new criminal market consisting in the recruitment, unlawful transfer – and later introduction – mainly for profit, of one or more individuals from the territory of one State to another, or within the same State - [...] Such transfer may be followed by activities aimed at the sexual or economic exploitation of the migrants, brought about through force, fear or fraud<sup>20</sup>”. This phenomenon is usually divided into the categories of smuggling of migrants and trafficking in human beings.

In the case of smuggling, it is the potential migrant who first contacts the trafficker who, for payment, helps the migrant to illegally enter the country of his/her choice. In the case of

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<sup>19</sup> Art. 2 of Legislative Decree no.113 of 13 April 1999.

<sup>20</sup> Ministry of Interior, Chamber of Deputies, XIII legislation, Parliamentary Investigating Committee on the phenomenon of the *mafia* and other similar criminal associations, *Report on trafficking in human beings*, approved by the Committee on 5 December 2000, page 4.

trafficking, on the other hand, the migrants are recruited upon commission, by force, fear or fraud, so as to satisfy a market demand in the country of destination.

The distinction is justified both because of the features distinguishing the two phenomena, and by that the fact that in Italy they come under the jurisdiction of different institutional organs.

A full understanding of smuggling of migrants, trafficking in human beings and the later exploitation thereof – especially in the sex trade – requires an overview that places national legislation within the wider context of the international initiatives undertaken by the Italian government.

### **3.1.1 International initiatives**

The Italian government was party to the following major international initiatives aimed at counteracting trafficking in human beings:

- Universal Declaration of Human Rights (1948);
- World Congress Against the Commercial Sexual Exploitation of Children (1996);
- Amsterdam Treaty (1997);
- Inter-Ministerial Conference on Co-operation in the Fight against Trafficking in Human Beings, especially Women and Children for the purpose of Sexual Exploitation (1997);
- Agreement between Italy and the US that binds both governments to set up a bilateral task force and adopt measures necessary to combat the phenomenon of trafficking in women and children: in particular, exchange of information, awareness-raising campaigns in the countries of origin, joint training of law enforcement agencies (1998);
- At the behest of Italy, trafficking in human beings is included as a form of enslavement in the Statute of the International Criminal Court, and thus becomes a crime against humanity (1998);
- Entry into force of Convention no. 182 of the International Labour Organization on the worst forms of child labour (2000);
- Italy signed the Convention against transnational organised crime and the Additional Protocols on the smuggling of migrants and the trafficking in human beings (2000).

### **3.1.2 Domestic legislation**

#### Statutory provisions against the smuggling of illegal immigrants

Italian domestic legislation against the smuggling of illegal immigrants is consistent with the rest of the European Union, in terms of both views and co-operation<sup>21</sup>. Through the Aliens Law, the Italian government clearly signals its commitment to combating the phenomenon, providing for the penal conviction of offenders guilty of the illegal transport of migrants, even for purposes other than financial gain.

#### Provisions against trafficking in human beings

The situation in the case of "trafficking", on the other hand, is more complex since the offence is not specifically dealt with in any statutory provision. This offence is punishable under a series of provisions dealing with bodily harm and sexual offences, kidnapping, the exploitation of and abetting prostitution and living off the earnings of prostitution as well as other offences related to the phenomenon.

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<sup>21</sup> With regard to EU Member States, an important element of cohesion is the implementation of the Schengen Agreement (art. 27, Schengen, 19 June 1990).

The situation changes further when minors are specifically involved. Italy has in fact amended the legal framework applicable to sexual offences so as to improve the protection of children from this category of offence that is particularly odious and harmful to the physical and psychological well-being of children.

## **3.2 THE MECHANISMS OF TRAFFICKING IN HUMAN BEINGS**

### ***3.2.1 The structure and functioning of criminal organizations***

Illegal immigration and trafficking may in fact be viewed as "markets" featuring demand and supply. In the case of the smuggling of illegal immigrants, the demand is from illegal immigrants themselves who are the "subjects" of the services supplied by criminal organizations. In the case of trafficking in human beings, on the other hand, the immigrants are the "objects" of the demand in the countries of destination, for the unlawful services that, amongst other things, are highly profitable to their criminal suppliers.

With regard to Italy, the situation is largely dominated by Albanian, Russian, Turkish, Nigerian and Chinese criminal organizations, and features rising tensions between various foreign crime networks for control of the illegal market, especially for drugs and prostitution.

Criminal organizations specialising in trafficking in human beings generally feature the following main characteristics:

They are **modular**, featuring varying degrees of complexity that interact in a non-hierarchical manner so as to pursue their final goal, that is to say, profit. In particular, three basic levels may be identified:

High level (or ethnic-based) organizations that plan and manage the transport of their fellow citizens from their countries of origin to the country of destination. They specialise in transferring people from one continent to another. The members of these organizations generally live abroad and can avail of large amounts of cash, accumulated mainly through other criminal activities.

Middle level organizations that operate in strategic territories (on the borders of the countries of destination or other countries that must be crossed so as to gain access to the European Union). These organizations are in charge of travel operations that require excellent knowledge of the terrain as well as a consolidated network of criminal relationships.

Low level organizations: work both for higher level organizations and on their own, arranging for the passage of migrants for payment. They often include local operators.

They are also **specialised and flexible**.

The funds accumulated by these organizations are partly recycled within legal economic-financial circuits, partly re-invested so as to ensure that the illegal process is perpetuated (purchase of vehicles, recruitment of new traffickers, corruption of officials, diplomats, politicians, law enforcement officers) and in part re-invested in other illegal activities, especially drug and arms trafficking.

### ***3.2.2 Factors affecting the vulnerability of minors and methods used by traffickers to ensure their servitude.***

In order to generate profit from the "human commodity" available to them, traffickers must ensure the absolute obedience of their victims. This is generally obtained through:

**Force :** Physical, psychological and sexual violence is used mainly to compromise the dignity and physical-psychological independence of the victims. Force is also used to discourage any form of rebellion and to punish any failure.

**Fear :** Fear often takes the form of threats against family members in the country of origin. Furthermore, illegal immigrants are subjected to blackmail because of their illegal status.

**Fraud :** Fraud ranges from false information regarding the price of passage to incorrect information about the country of destination (the legal system, the behaviour of law enforcement agencies) and about the state of health and living conditions of family members back home.

All this is exacerbated by the critical condition of minors upon arrival in Italy. Special mention must be made of those minors who, to some extent, "accept" being exploited because of their need – or desire – to migrate. Many juveniles view certain forms of delinquency (such as drug dealing) as "minor" offences, and therefore end up considering their criminal activities as a fully-fledged job, without ever fully appreciating the penal consequences of their behaviour. In general, the degree of servitude to which illegal immigrants are subjected and their relationship with the trafficker, depends to a great extent on their bargaining power.

In order to complete the picture, one must bear in mind the significant proportion of minors whose "exploitation" and dependence on the criminal network, starts after they have arrived in Italy from their home countries by their own means: this form of recruitment is typical of minors involved in delinquent behaviour.

### **3.2.3. The trafficking routes**

Illegal immigrants cross the border either apparently legally (using false papers or temporary visas for tourism or study) or illegally, often undertaking very dangerous voyages broken into various stages during which the illegal immigrants – especially women destined to work as prostitutes – are subjected to all sorts of violence (hunger, beatings, rape...).

Entry into Italy is mainly gained through one of the following routes:

**The Italian-Slovene border :** Illegal immigrants crossing this border generally come from Central and Eastern Europe (Yugoslavia, Romania, Bosnia, Macedonia, Moldavia, Bulgaria), the Middle East (Kurds from Turkey and Iraq), the Indian sub-continent and Asia.

**The Italian-French border :** This border is used especially for the entry of North African or Sub-Saharan immigrants who entered Europe illegally by crossing the Strait of Gibraltar by bus or other vehicles with false walls to hide them. This route is also used by traffickers for the entry of young Nigerian women destined for prostitution.

**The Apulian coast :** Apulia and the Salento areas have always been involved in transnational crime because of their proximity to the Balkan coast. Besides serving as a transit point for arms, drugs and contraband cigarettes, the area is also a stepping stone for a large number of illegal immigrants, especially from Vlora in Albania. Apulia serves as the landing ground for a large number of women destined for prostitution. In particular, this coast serves as an entry point not only for young women from Albania, but also from Latin America, Africa (Ghana, Liberia, Nigeria), Eastern Europe (Georgia, Kazakhstan, Moldavia, Ukraine, Russia, Romania, Bulgaria, Hungary) and the former Yugoslavia (Slovenia, Macedonia, Montenegro, Kosovo).

**The Calabrian Coast :** Illegal immigrants reaching the Calabrian Coast are mainly Kurds from Iraq and Turkey.

**The Sicilian Coast :** The illegal immigrants come especially from North and Sub-Saharan Africa and, to a lesser degree from Arab countries.

### 3.3 THE EXTENT OF THE PHENOMENON

In 1999, **16 551** minors landed on the aforementioned Italian coasts, accounting for 33% of the overall number of new arrivals of illegal immigrants.

From a qualitative viewpoint, it is clear that there has been a drastic drop in the number of illegal migrants attempting to enter Italy through the country's southern coastline. However, although the number of arrivals in Apulia dropped dramatically, the Calabrian coast saw an increase, while arrivals via the Sicilian coast were almost exclusively adult men, with an insignificant number of women and children.

### 3.4 POSSIBLE FORMS OF EXPLOITATION

The main illegal markets on which victims of trafficking end are the "black labour market", prostitution and begging. While the last two forms of exploitation feature a strong presence of minors, the black labour market is more elusive and difficult to penetrate..

#### 3.4.1 *Sexual Exploitation*

The sex trade represents one of the most well-know forms of exploitation affecting a large number of women (including a percentage of minors) especially from Central and Eastern Europe, Africa and Latin America. It seems that the characteristic element of trafficking can be identified in the violent and/or psychological coercive actions carried out by one or more persons towards other people, generally women, aimed at forcing them to have sexual intercourse for money that the exploiters or pimps keep. It is a continual process of degradation of the women involved in this activity.

#### **a) The Censis estimates**

The most recent statistics on the subject suggest that there are currently between **20 000 and 30 000** foreign prostitutes in Italy<sup>22</sup>. Most (exactly 45.2%) operators, however, feel that minors account for between 16 and 30% of the prostitutes that they assist. The percentages for child prostitutes are based on the Final CENSIS Report on "Trafficking and sexual exploitation: an investigation through operators in Italy<sup>23</sup>". Although the official figures released by the Italian Ministry of Interior include only 202 victims of child prostitution in 1999, the phenomenon is widely regarded as vastly underestimated.

#### **b) The Parsec estimates**

Starting from the principle that any estimate can be questionable, what makes these estimates reliable is the transparency of the process for the extrapolation of results. The work carried out in the streets by social workers allows them to gain experience that enables them to "count" the girls working as prostitutes in the streets to evaluate the phenomenon.

The overall estimates, on the basis of the above criteria, can be broken down in the following table at the national level:

Geographical Area	1998	
	Min.	Max
North	7 700	10 130

<sup>22</sup> Yearly Caritas Statistical Report, 2000.

<sup>23</sup> Published by CENSIS Foundation, Rome, in the framework of the STOP programme.

Centre	5 587	6 989
South/Islands	1 470	2 170
<b>Total</b>	<b>14 757</b>	<b>19 289</b>

### **c) The figures of the National Hotline and projects of social protection**

In the autumn of 1998, the Inter-ministerial Commission for the implementation of art. 18 of the Italian Aliens Law launched a programme specifically targeting victims of trafficking with special attention to those sexually exploited. Such action includes the setting up of micro-credit projects as well as a toll free anti-trafficking hotline. During the 18 July 2000 – 22 March 2001 period, 187.705 calls were received out of which 39.916 (21.3%) were managed. Among the callers, there are victims of trafficking (10.8%), clients (11.20%), relatives (12.9%), citizens (46.3%) and police officers (9.6%).

All the described phases of the social integrated intervention should be supported by:

- information campaigns targeting the young women as well as their clients;
- vocational training initiatives for public administrators and social workers as well as law enforcement officials. Mixed sessions facilitate inter-relations among the different actors of the integrated intervention.

The Italian Aliens Law, which for the first time specifically addresses the issue of the protection of victims of trafficking in Italy through art.18, marks a milestone along the path towards understanding the phenomenon and pinpointing ways to adequately deal with it.

In the overall context of assistance to victims of trafficking, the International Organization for Migration has now implemented return and reintegration programmes for those who want to return to their countries of origin on a voluntary basis.

#### **3.4.2 Begging**

Besides a very large number of extremely poor Roma children, begging is also the forced profession of other minors, especially Slavs, Romanians and Albanians. Investigations carried out by organizations involved in combating the phenomenon have revealed that these children – mostly boys – are forced to live in abandoned farmhouses located in remote suburbs, under inhumanly unhealthy conditions. They are mainly exploited by adult fellow nationals who force them to work for more than ten hours a day at railway stations in large cities or at heavily frequented crossroads. Their daily job is to earn a pre-established amount either by begging or for simple tasks (such as wiping car windscreens) or through petty theft.

Recent investigations suggest that besides being subjected to sale and exchange between exploiters, these minors are often sexually abused and over time, become involved in other illegal activities, passing on to more developed forms of delinquency.

#### **3.4.3 Involvement in unlawful activities**

The information available is mainly gleaned from interviews with operators<sup>24</sup>.

Moroccan children are mainly involved in drug dealing. The method used to enrol these minors is generally a mix of persuasion and trickery.

Upon reaching Italy, these minors, who do not speak Italian, are totally disoriented and happily approach the first fellow nationals they come across. After having gained their trust,

<sup>24</sup> Many thanks to Mirela Lako and Noureddine Cherkaoui, cultural mediators at the Minors' prison in Milan "Beccaria", for the information regarding the mechanisms of the involvement of minors in unlawful activities.

these adult fellow nationals then obtain their collaboration, promising them easy money, the main reason for which most of the children came to Italy in the first place.

Albanian children seem to be mainly employed as carriers of large quantities of drugs. Current information suggests that the "exploiters" (between 20 and 30 years old), are not significantly older than their minor "victims" who perceive the exploiters as role models since they have managed to concretise the dream of getting rich quickly.

Lastly, a word about Roma children literally sold and forced to become thieves: these cases fall fully within the definition of enslavement since the children are literally sold – for payment or otherwise – to a third party who lives off their work (mainly theft).

#### ***3.4.4 Other forms of exploitation***

Investigations brought to light the sale of children for illegal international adoptions. Although no concrete evidence has as yet come to light, trafficking in human organs is still suspected. Although there is a strong suspicion that children are used for “snuff movies” in Italy, no concrete evidence of this has been uncovered so far.

### **3.5 INSTRUMENTS FOR THE PROTECTION AND REHABILITATION OF VICTIMS OF TRAFFICKING**

#### ***3.5.1 Article 18 of the Aliens Law***

Italy's particularly innovative approach to victims of trafficking is contained in article 18 of the Aliens Law. This article provides for the issuance of a special six-month residence permit that may be extended for a year or more, as required. The special permit allows the holder access to social and assistance services, education, as well as enrolment with the national employment agency, while also serving as an employment permit. It can also be converted into a permit for study or work.

Article 18 also provides for the allocation of public funds for the co-funding of projects managed by NGOs specifically involved in this field of social service.

#### ***3.5.2 Other initiatives at the central and local levels***

##### ***a) At the central level***

The Government has promoted a series of initiatives aimed at fully and effectively applying the laws against the sexual exploitation of minors. The central initiatives promoted by the Prime Minister's Office include the setting up of Commissions focusing specifically on trafficking in minors.

##### ***b) At the local level***

In May 1996, the Italian Ministry of Interior started implementing the "Rainbow Project", placed under the Department for Public Security. As part of the project, special offices dealing with cases regarding minors and their families and monitoring crimes against minors, have been set up within all Central Police Stations. Furthermore, "emergency" hotlines managed by staff especially trained to deal with emergencies requiring urgent measures for the protection of minors, have been set up. Other action includes the training of sector operators through specialist courses and the setting up of a special organizational unit within the Central Headquarters of the Criminal Police to monitor the phenomenon and deal with it in line with the policies of other countries. Specific initiatives have also been launched so as to combat pornography on the Internet.

## 4. UNRESOLVED ISSUES AND FUTURE PROSPECTS FOR THE PROTECTION OF UNACCOMPANIED MINORS

### 4.1 A CRITICAL OVERVIEW OF THE SYSTEM OF PROTECTION

The Italian Aliens Law, which for the first time specifically addresses the issue of foreign unaccompanied minors in Italy, marks a milestone along the path towards understanding the phenomenon and pinpointing ways to adequately deal with it. Despite this, the guidelines contained in this law have led to a rather problematic paradox. Italian Law no. 286/98, in fact, pursues two different goals at the same time: promoting the insertion of legal migrants while combating illegal immigration. The underlying problem in the case of minors is that they do not fall fully into either of the two groups: their immunity from deportation in fact renders them "anomalous" illegal immigrants.

### 4.2 FUTURE PROSPECTS

In order to adequately address some of the unresolved issues that beset the protection of unaccompanied minors in Italy, the Government has set up a National Action Plan for the Protection of Childhood. The long-term aims of the plan include collection of data on the condition of minors, a mapping out of the resources available in the field, setting up a network linking the various institutions in charge of the well-being of minors, defining the quality standards applicable to services targeted at minors as well as the re-funding of the projects provided for under Italian Law no. 216/1991 for the support and rehabilitation of minors facing an immediate risk of falling into juvenile delinquency. The plan also contains provisions specifically targeted at foreign unaccompanied minors. The plan also clearly highlights the tendency to view assisted repatriation as the preferential instrument to be adopted in these cases, providing for more permanent reception and later settlement in Italy, only in exceptional cases. The Plan also provides for the preventive action, to be implemented in the minors' home countries (Albania, Morocco, Romania, Bangladesh, etc.), as well as for "formal agreements with such countries *for the setting up of adequate repatriation procedures*".

A national agency will be set up under the plan to examine, on a case-by-case basis, whether the minor should be allowed access to integration in Italy or be repatriated.

Action will also be taken with regard to the other categories of foreign unaccompanied minors, described in this report. In particular, minors seeking asylum will be afforded all the benefits recommended in the Resolution passed by the Council of Europe on 26 June 1997, that provides for placement in care at reception centres or with families as well as a series of interviews with trained professionals with a view to clearly identifying the minor's personal problems and evaluating the minor's application for asylum, in the light of the minor's best interest. Towards this end, provision is also made for reuniting the minor with his family.

In the light of the priority placed on assisted repatriation in the guidelines discussed above, urgent action is required, not only to secure the "operational feasibility" of repatriation, but, far more importantly, to also ensure that none of the minor's rights are violated and that it is in the best interest of the minor. The Committee for Foreign Minors, in collaboration with the International Social Services, came up with the most interesting proposal with a view to promoting vocational training initiatives targeted at repatriated minors.

Although funded by the Committee, these vocational training courses<sup>25</sup> would be held in the minors' home countries. The idea is to give minors who have already followed the path towards integration in Italy (schooling, work, etc.), the opportunity to continue progressing in their home countries, with a view to returning to Italy later – equipped with the benefit of

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<sup>25</sup> The courses attended in Albania allow the issuance of a certificate from the Italian Labour Ministry.

vocational training as well as a valid visa falling within the immigration quotas fixed for each year. The main obstacle to this proposal is that so far, immigration policies have always been totally separated from policy regarding international co-operation.

With regard to the sexual exploitation of minors, besides specialist training courses, law enforcement agencies would like to see legislative reform affording investigators of these crimes the same investigative powers currently enjoyed by the Italian Drug Enforcement Administration, including the power to freeze all the assets of traffickers, so as to put them out of business.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **SPAIN**

**By Ms Ruth Maria Mestre (syntesis)**

# FOREIGN UNDOCUMENTED UNPROTECTED MINORS IN SPAIN

## 1. FOREIGN UNPROTECTED CHILDREN

The presence of unprotected foreign minors is relatively new in Spain. Approximately, since 1995, a new clandestine migration of minors is produced, although before 1997-1998 there was no awareness of the problem, or of a reality that could be considered alarming in most urban centres of the big cities. From that date onwards, the problem of unprotected immigrant minors is made visible and accounted for on the media, on denounce reports of several associations, and even on reports of the People's Ombudsperson. The situation of undocumented foreign minors starts to be not only a matter of *study*, but also an issue of social concern and denounce.

In 1996, two legal changes were introduced. On the one hand, the approval, on January 15<sup>th</sup> of the Organic Law L.O. 1/1996 on legal protection of minors; on the other hand, the reform of the detailed regulations of the Organic Law L.O. 7/1985 on rights and freedoms of foreigners in Spain. In 2000, the basic foreigner status regulations, affecting unprotected minors, were (twice) modified and in 2001, detailed regulations for this law were approved. These norms establish the basic legal framework, although other complete them.

The scheme proposed is the following: first of all, to establish the use of terms for this document, and a description of the group; secondly, to expose the evolution of the classification standard from 1996 until 2002, thirdly, to expose the socio-legal reality of the stated regulation: dysfunctions in practice, behaviours, problems and results, including fourthly an analysis of the host institutional framework, produced at the level of Autonomous Communities, and, last, to briefly analyse public assistance measures in situations of trafficking and exploitation in minors.

### 1.1. Use of Terms

This document will mainly give account for foreign undocumented unprotected minors, despite that in Spain, several terms are used (*unaccompanied immigrant minors, foreign minors in risk situation, foreign undocumented unaccompanied minors*); and despite that the *internationalised* term is UAM —UnAccompanied Minors—. We think it is the most convenient term, not only —nor mainly— because it is the term the foreigner status regulations consider but also because it permits establishing with greater clarity the problems of the situation, and the possible responses, both legal and other.

1. - What is relevant is not that they are immigrant minors, but that they are non-citizen, that is, subjects to which a restrictive regulation of fundamental rights applies. Immigration is a complex social phenomenon legally and politically confronted, or answered in terms of *foreigner status*. Thus, one of the main problems is the collision between the foreigner status regulations and the protection due to the minor in its fundamental rights. This collision generates legal and administrative practices that violate the *interest of the child*.

2. - The second problem is that they are foreign *undocumented* minors, and, therefore, on a situation of greater unprotection regarding their right and permanence within the state territory. Once again, the collision between the foreigner status regulations and the protection due to children produces situations and practices that can violate the rights of children, such as the right of the child to be documented (that is, to be identified, individualised as a person).

3. - Thirdly, they are children in situation of unprotection, that is, not only vulnerable since undocumented, but in situation of abandonment. It is considered as a situation of unprotection the one produced de facto, due to the non-compliance with the duties of protection and material and psychological assistance to a minor.

As signalled by the Public Prosecution Authority (Circular 3/2001 of the Public Prosecution Authority on actions in matters of foreigner status), this situation of abandonment can occur even in cases in which children arrive in the State with the company of persons who take care of them. However, in most cases, unprotected children are minors who arrived in the country without a family referent. But not all unaccompanied minors have been victims of trafficking, whereas the situation of unprotection includes those who have been trafficked and those who, no matter the circumstances, are unassisted. Both groups are vulnerable and we understand that this term is more extensive and considers all the situations. Lastly, the legal protection policies for minors respond to situations of unprotection or abandonment and not of trafficking, at least to the moment.

## **1.2. - Description of the group**

### ***Data: How many minors are we talking about?***

Most data come from secondary sources: they have been obtained from different studies and reports published during the past years in Spain. This is mainly due to two difficulties: on one hand, there is no centralised information available, despite of the foreseeable creation of a Register of foreign minors, dependent from the General Directorate of the Police, which, however, will only be operational to the effects of identifying foreign unprotected undocumented minors. Thus, there is neither a common register nor official and/or reliable specific data about these minors. Secondly, transference of competences in matters of children protection to the different Autonomous Communities obstacles the obtaining of data, not only because different permits are required in each of them, but also because each Autonomous Community collects data differently, and has different legal framework and regulations<sup>26</sup>.

So some clarifications concerning the data could be useful. In general, data refer to *entries* in public reception centres, not to *children*, and for that reason there can be an important increase in numbers, since the same minor can enter more than once in one or several centres. That is, they are *open files*, but not necessarily different minors. On the other hand there are unprotected children that, either lack the administration guardianship, or are under custody of reception centres or flats belonging to NGOs that signed an agreement with the corresponding administration<sup>27</sup>. These minors, although protected by the administration do not appear in the register of a public centre. Thus, data from different sources offer great differences and some data are very difficult to obtain.

Another difficulty encountered when gathering data in relation to entries into centres is the high mobility of the minors. It is calculated that 75% of foreign minors living in centres renew every six months, not only due to new arrivals, but also because of the constant entries and exits of the minors into and outside the centres. Thus, data can considerably vary depending on the period considered in a year.

### ***Profile***

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<sup>26</sup> For instance, some Autonomous Communities register *presentations* (the number of times a minor was presented to a centre, disregarding the answer) and not the effective entries on reception centres. In other, data are obtained from the schooling rate of foreign minors, including the specific centres for the attention of foreign undocumented unprotected children...

<sup>27</sup> For instance, in the Bask Country, the Asociación Bereber manages the programme of assistance and reception of foreign undocumented unprotected children, in the Valencian Country, the Asociación Valenciana de Ayuda al Refugiado (AVAR) manages some reception flats for foreign undocumented children...

Different studies point out that, despite being a little-homogeneous group, most foreign minors arriving to the Social Services have Moroccan nationality (90% of cases are minors coming from Mahgreb, of which 80% are Moroccan, boys and of ages between 12 and 17 years, although the ages of the newly-arrived decrease (9 years). On the other hand, among fostered children, there are some who arrived accompanied (Latin America, Eastern Europe), and as pointed out, some *girls* are starting to arrive.

However, for the most part, they are boys coming from the North of Morocco, from cities such as Tangier or Nador, although there are also some arriving from Casablanca and Fez. The main crossing places are the port of Tangier and the port of Ceuta. Many children start their migration before; they separate from their families in their cities of origin and migrate towards Tangier and Ceuta. From there, they hope to cross the Strait and arrive in the peninsula. Thus, in most cases, they are children who have lived for a while (around one year) on the streets of one of these two cities waiting for the moment to find some transportation means to cross the Strait of Gibraltar. Children coming from Tangier, even if they spend many hours on the street and the port, are not *street children*, since they keep contact with the family, and, in many cases, work informally and help maintaining the material needs of the family environment. Children arriving into Tangier or Ceuta with the idea of crossing as soon as possible the Strait *are street children* : they have separated from their families and environment, and live on the streets with other children who are also waiting to migrate towards Europe. In both cases, they have defined their migratory project in economic and labour terms: they consider themselves adults, able, and coming to work.

Unlike adult irregular immigrants, foreign minors habitually travel as stowaways, hidden under lorries or buses embarked to cross the Strait. They come alone and do not find their group of reference until they arrive in the peninsula. Their groups of reference are often other children with whom they have lived during their stay in Tangier or Ceuta, minors coming from their same neighbourhood or city, and, in some cases, there are relatives (cousins, brothers), which are also minors. Many of them have entered the state more than once.

Thus, we could differentiate, at least four groups of foreign unprotected undocumented children:

1. - Minors between 15 and 18 years, with a clearly defined migratory project. They are mainly Mahgrebian —Moroccan— children, who have migrated to obtain greater welfare for themselves and their families, with which they keep contact. Families of these minors wish them to stay in Europe, in Spain, for several reasons (socio-economic situation, to obtain studies, etc).

2. - Street children, from 9 to 17 years, without clear family references on the country of origin. Most of them come from Morocco, and are children who have lived on the streets of some big Moroccan city. They come from unstructured families and are *glue-sniffer children* and who made of the street their way of life. They live on gangs, with other children on their same situation. They survive in the country of origin working on the street or clandestinely, with little robberies, begging or prostituting themselves. Their migratory project is greatly similar to that of the previous group: economic migration on more or less labour-related terms.

3. - Minors with specific problems; either behavioural problems (mainly aggressive), or grave health problems. They usually belong to the second group (*glue-sniffer children*) when they are of Moroccan origin.

4. - Immigrant minors of the so-called “second generation”: children of immigrants that have been recently reunified after living many years with other relations, who barely know the authority of their parents or the parents of whom can not take care of them.

## 2. LEGAL FRAMEWORK APPLICABLE TO FOREIGN UNDOCUMENTED UNPROTECTED CHILDREN

### 2.1. Legal framework to protect children

On one side, Spanish Constitution imposes the creation of a wide and appropriated legal framework to protect children. This mandate was complied by partially reforming the Civil Code in 1981 and 1987, establishing the automatic assumption of the guardianship of an unprotected child by the competent public authority, and, finally, with the approval, on January 15<sup>th</sup> of the Organic Law L.O. 1/1996 on Legal Protection of Minors. The law expressly included foreign minors in article 1 and reiterated the assumption *ex lege* of the minor's guardianship by the competent public authority, both in situation of unprotection and in situation of personal or social risk. In addition, it recognised for "foreign minors" the right and duty of receiving education in the same conditions as Spanish minors: that is, compulsory education until 18 years, with access to the existing system of scholarships and grants. However, this is a state regulation for aspects related to civil and procedural law and the Administration of Justice, but the Autonomous Communities are the public entities in charge of the protection of minors, and thus, each Autonomous Community must regulate and specify the exercise of competences in matters of children protection, and the procedure applicable in each case, including those affecting foreign minors. Autonomic Laws for the protection of minors include for all cases of unprotection the *immediate* guardianship of the competent public administration without needing a court order. The public entity does not need to have formal judgement of unprotection given, and assumes guardianship because law automatically produces it as soon as unprotection is verified. That is, neither an administrative resolution nor a court resolution are necessary to obtain the administration guardianship of the minor.

### 2.2. Legal framework in matter of foreigner status

The Organic Law *L.O. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration* expressly describes the situation of unprotection of minors and the measures to be taken on this matter. For the cases in which the state security forces and bodies are made aware or locate an undocumented foreigner the minority of whom can not be surely stated, the services in charge of children protection will be informed to offer any assistance necessary according to the stated on the legislation for the protection of children, and inform the Office of Public Prosecutor. The Office of Public Prosecutor will arrange the determination of the age and, for the case of minors, will entrust them to the services competent for children protection. It is therefore understood that, from that moment onwards, the minor is automatically safeguarded by the competent public authority in each Autonomous Community and his or her residence is considered regular to all intents and purposes, regardless of, as signalled by the Office of Public Prosecutor, the administrative practice of a later documentation of constitution of guardianship. From that moment onwards, the minor cannot be repatriated, although the present regulations are not as explicit as art. 13 of the previous normative.

However, once the minors are entrusted to one administration, there are several problems. The administration in charge of the minor is responsible and must protect him or her, but the decision over his or her permanence or not in the state and regularisation or documentation is competence of the State Administration, the Ministry of the Interior and, in each Autonomous Community, the Government Delegate. The principle that rules all actions *from the point of view of foreigner status* is the family reunification of the minor, and, therefore, repatriation. The State General Administration is competent to implement the procedure, and, previous report to the services dedicated to the protection of minors, and after hearing the minor, will resolve the return of the minor or, *failing that*, his or her stay. This procedure is started *ex officio* or at the request of the entity in charge of the minor, and the government authority will inform the Office of Public Prosecutor. Public administrations in charge of minors must

facilitate all information available in relation to the minor, his or her family, address... and take appropriate measures to trace the family of the minor. During the time these actions last, the minor cannot be repatriated, and is understood to be under guardianship of the competent public administration, which holds his or her public representation during the entire procedure.

Once the family of the minor or the social services in charge of children protection in the country of origin are located, the repatriation is implemented **after verification** that there is no risk for the minor or the family and that the minor will effectively be assisted<sup>28</sup>. If after nine months the repatriation was not resolved and implemented, the minor must be documented with a residence permit the validity of which extends to the moment in which the situation of unprotection was detected de facto. Meanwhile, that is, within the nine months, the minor is *temporarily fostered* by the administration without any identity document. Means used are the temporary guardianship of some public or private administration, a foster family, a reception centre or other social resource.

The State Administration (which decides about the return of the minor) and the Social Services or public administrations in charge of the minors must orientate their actions according to the principle of family reunification, but mainly according to the principle of the best interest of the minor. Sometimes this second principle can tip the balance in favour of non-repatriation. As stated by the Public Prosecution Authority, repatriation of minors is not an aim in itself, but a means to guarantee their development and assistance, which not always implies living with their family in their country of origin.

### 3. SOCIO-LEGAL REALITY

We shall not pay now attention to the first measures taken when an unprotected undocumented child is found; the state security forces, when detecting a minor of such characteristics, have to entrust him or her to the Public Prosecutor Office; however, in practice this means for many cities that children are systematically retained by police officers. It is also true that the ways in which the determination of age are carried out are completely unappropriated. We shall focus, however in the problems found once the undocumented unprotected child has been entrusted to the competent public service who has the guardianship.

As explained, until the necessary procedures to make the decision of the repatriation or permanence of the minor (9 months) are implemented, he or she is on a sort of *juridical limbo*: the assumption of guardianship by a competent public administration is statutory and automatic, but there will not be resolution nor constitution of guardianship until after the nine months. Thus, despite the regulations are quite clear, the situation of unprotection and lack of assistance of a minor can last beyond months from the detection of effective situation of risk or unprotection<sup>29</sup>.

The first phase of identification of children is often long: distrust forces them to refuse offering data or *cooperating* with the social services that represent them. This is partially because often, along the procedure, the child is not informed of the steps to be taken, and his or her interests or needs are not heard, and therefore distrust does not usually diminish. Most of these minors arrive with high expectations regarding working and economic conditions well defined and do not accept a protection system which treats them as children, because they do not consider themselves children who need protection but adults who need work. This is why it is so important to start all measures departing from the child's perspective in order to

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<sup>28</sup> Repatriation will be at the expense of the family of the minor or the services of children protection in the country of origin. Otherwise, the diplomatic or consular representative of the country will be informed, or else the State Administration will assume the costs of repatriation. (Art. 35).

<sup>29</sup> Some people even talk of *foreign provisionally unprotected undocumented minors*, when unprotection is a situation de facto with right of protection, disregarding the time an administration takes to resolve or *recognise* it.

gain his or her trust, in order to know the expectations, projects and aims and then explain the social, educational and legal framework. If that close-up work is not well done from the beginning, minors usually do not co-operate with the social services.

On the other hand, minors know of companions who have been repatriated, and try not to offer data that could facilitate that repatriation. In many cases, the minors prefer running away from the reception and start procedures of new entries in a centre of another Autonomous Community. Repatriation is seen as a punishment imposed, because often, it does not respond to the expectations and needs of the minor. Repatriation re-starts in many cases the entire process: the child takes again the risk and re-enters the peninsula with the same objective.

When relevant data about the minor are obtained, such as name, identification, etc., start the procedures to trace the family, or failing that, of the social services to protect children in the country of origin, with the help of the corresponding embassies or consulates. Since the children do not have a passport and must be first granted some sort of document, they need to be documented before starting the whole procedure.

At present, repatriation is only implemented when the family is located, since the services to protect children in the country are saturated and cannot take charge of them.

During the time of the process of information and data collection, the child is fostered in a centre and the competent social services are responsible for the elaboration of the report on the situation of the minor, including, not only who he or she is, the place of origin, and whether the family has been located or not. The report informs about the sort of attention the child has obtained, if he or she was previously fostered or safeguarded by other public administration, his or her behaviour in the centre, whether he or she has health problems, what education measures should be implemented and, in some cases, what would be the appropriate measure to implement (repatriation or permanence), although in under no circumstance is this a ruling document. The report is sent to the Government Delegate, who decides about the situation of the child. The foreigner status law inverts the hierarchy of the principles, and instead of making the decision ensuring the best interest of the child, and, secondly, taking into account the principle of family reunification, the principle of family reunification is, too often, the ruling principle.

If after 9 months the detaining of a foreign undocumented minor and the assumption of guardianship by a public administration, and repatriation has not been implemented, the social services must start the process of documentation of the minor through the pertinent report to the Government Delegate, authorised body to decide, and if that is the case, dispatch the residence permit of the minor. This permit is retroactive, because it is understood that the residence of the minor is legal to all intents and purposes since the moment he or she was fostered by the public administration. Again, the process of documentation is long: for all those minors without documents, ID. cards that make the regularisation of the minor possible are dispatched. The problem of documentation is also, often, that he or she must be granted documents, identified, and given a passport or an ID. card to prove his or her identity. Only then, start the regularisation procedures to obtain the residence permit. Even for the case of minors, the obtaining of these permits takes an average of six months, that added to the nine precedent are a disproportionately long period of unprotection.

When the minor is above 16 years of age, and can, therefore, work, in some Autonomous Communities (Catalonia, Andalusia), the residence permit and work permit are being solicited at the same time. In these cases, the process and education activities of the minor are oriented to grant him or her the necessary and sufficient resources for socio-labour insertion, through work practices and vocational training contracts more and better adapted to the expectations of the minor. The (few) initiatives of incorporation to occupational or professional training courses have been positive.

#### 4. TRAFFIC AND EXPLOITATION IN MINORS : PUBLIC MEASURES AND PROGRAMMES

When clarifying the use of terms, the use of the term unaccompanied minors as indicators to determine possible situations of traffic and exploitation of minors was explained, since they are children that initiate a project and migratory journey without a family reference and are, therefore, more vulnerable. As has been seen, legal responses are directed —opportunistically— to unprotected minors, disregarding the circumstances that surrounded their arrival in the state, and, however, both at European level and at a state level, there is an increasing interest in matters related to the trafficking in persons, mainly related to women and minors. There is no intention of radically criticising the official discourse about international migration and the trafficking in persons, but of stating the reality of migration and disconnect all autonomous migration from forced migrations, that is, trafficking. That is, also when speaking about minors, difference must be made between *trafficking* and *smuggling*; between irregular entry and trafficking, and support network and gangs.

There are, at least, three sorts of networks: on one hand, there are *social and relation* networks that make possible the migration of persons, facilitating resources and goods (information, support, etc.). These networks have *commercial networks* to which they relate: a series of professionals at the service of the existing networks (travel agencies, money lenders, document forgers, etc.), and, finally, there are commercial networks that abuse, coerce, mislead, etc., which are *gangs*.

Regarding social networks of support, based on family, friendship, neighbourhood relationships, they are not produced by migrations, but are *activated* during the migration process, despite existing before, and constitute the *social capital* of immigrant persons. These relationships permit migration to take place, occur, and not only *individual* migration, *but that of the network*, in the sense that solidarity relationships are created on the destination countries and links and communication and information means between individuals *within the network*, disregarding the place in which they are. These relationships and networks do not limit nor *constrain* action and migration, but make it possible and feasible, since they offer information, resources, goods, contacts, etc. They are the framework or platform from which migrations and migration projects become real. In particular, this sort of support network is the most diluted one in relation to minors: the family nucleus is not the main reference framework for minors. Since they migrate alone, without adult referent, it is more difficult for them to make contacts on the reception society with a group of support of adults, with a network. However, the support network is the group of peers, the group of unprotected minors they find or already knew in the country of origin.

Being unprotected minors, that is, on a situation of important vulnerability, also obstacles the regular settlement of networks with adults. On one side, it is easier for them to find information and resources about housing, work or social relations but support mechanisms of adult networks do not work for the case of minors.

Many minors, once arrived in the state, are in contact with adults that, as exchange of a ridiculous *protection* show them to live on the street, induce them to small drug traffic or robberies (several reports outline it). However, these activities of *exploitation* of minors do not respond to the existence of gangs that traffic in minors and exploit them once in the state. Minors arriving with a migration project clearly defined in labour terms learn that work and documentation are impossible to obtain, because they are minors, and they look for income on informal, sometimes illegal, jobs, which permit them continue their initial project. This does not intend to deny the existence of situations of trafficking, however, there are no studies or reports referring to trafficking as an important phenomenon in relation to foreign undocumented children. In fact, all the reports point out that they are autonomous irregular economic migrations —aside the state interests— of minors; and that would explain the primacy of the foreigner status (that they are potential economic migrants) and not the age of minority.

However, the Ministry of Labour and Social Affairs elaborated on October 2001 an action plan against the sexual exploitation of minors, and it is the only specific document referred to the trafficking in minors for sexual exploitation. Actions are very generic and are not only directed to foreigners, but to all minors victims of crimes against sexual freedom. Data offered by the plan relate, therefore, to all minors, not only foreign undocumented minors: the victims of prostitution offences encountered were 30 minors in 1997; 34 in 1998; 42 in 1999 and 28 in 2000. None of the measures foreseen has been, to date, carried out: creation of a register of foreign minors, development of cooperation with third countries to prevent child trafficking...

Finally, in relation to the trafficking in persons, (mainly women), Fundación Esperanza is the institution that is giving legal support to the victims of gangs dedicated to trafficking for exploitation. In their report of 2001, where they gather data from their three years of activity, they only mention one minor victim of trafficking. For victims of trafficking, legislation only mentions the possibility of acquiring documentation, this is, residence permit, if the victim denounces those involved in the traffic. Unfortunately, for the minor this norm did not apply, since he or she was immediately taken care of by the minors protection system.

# **TRAFFICKING IN UNACCOMPANIED MINORS**

## **THE NETHERLANDS**

**By Ms Elisabeth Venicz (syntesis)**

## INTRODUCTION & METHODOLOGY

Since 1996, sexual exploitation of unaccompanied minors has been a focus of attention and concern in Dutch society. In 1997, the organization Terre des Hommes published a report in which different groups of UAMs were mentioned as victims of sexual exploitation in the Netherlands. Trafficking in minors and adults for sexual exploitation has recently become a nationwide priority of the police and judiciary. The number of cases against traffickers brought to court is rising as a result of this increased police attention.

Attention on trafficking is exclusively focused on trafficking for sexual exploitation and little is known about other forms of exploitation. In this report, the information available on trafficking in unaccompanied minors for both sexual and other forms of exploitation was collected and analysed.

All major research and policy reports on trafficking, sexual abuse of minors and the policy on unaccompanied minors were analysed. Newspaper articles covering the 1999-September 2000 period on juvenile prostitution and trafficking were analysed with a view to acquiring an overview of the most recent police and court cases. On the basis of this information, a questionnaire was formulated.

Key figures within the police, government organizations and social work organizations active in this field were selected and interviewed, 14 briefly and 21 others extensively. Of the 21 respondents, five were extensively interviewed by telephone and the remaining 16 were interviewed in person.

### 1. UNACCOMPANIED MINORS

#### 1.1 LEGAL FRAMEWORK

##### *1.1.1 Asylum seeking unaccompanied minors*

A special policy on unaccompanied minors has been pursued in the Netherlands since 1992. At the time, the Dutch immigration authorities were confronted with an increasing number of unaccompanied minors applying for asylum. The majority of those minors had little chance of obtaining asylum. As a consequence of the ratification of treaties on the rights of minors, these unaccompanied minors cannot be returned to their country of origin if adequate care is not available there. A policy on unaccompanied minor asylum seekers was designed.

Extra care is available under this regulation for unaccompanied minor asylum seekers. Only UAMs below 17 and a half years of age at the date of entry are entitled to this extra care. UAMs who turn 18 within less than six months of their arrival in the Netherlands are considered as adult asylum seekers. An UAM is considered unaccompanied when he or she is not accompanied or cared for by one or both parents or another blood relative or relative by marriage aged over 18 years old.

Asylum seeking UAMs under 12 years of age are not allowed to apply for asylum by themselves. The application has to be made by an official guardian, provided by the guardianship organization. Asylum seeking UAMs below the age of 12 are not interviewed about their asylum request. This is considered to be too burdensome for young children.

Asylum seeking UAMs over 12 years of age or above have to report to one of the three Application Centres (AC), just like adult asylum seekers. It is at the AC that the first interview takes place. In this interview, the major issues are age assessment and the whereabouts of relatives. If the asylum seeker is considered to be a minor and unaccompanied, he or she is sent to a Reception and Investigation Centre (OC). At this centre,

an extensive interview about the request for asylum is conducted. The objective is to have the minor interviewed by interviewers with specialised training in interviewing minors. After the interview, the Immigration and Naturalisation Services (IND) decide on the request for asylum. In practice, very few UAMs receive a refugee residence permit.

After the interview, the IND undertakes a search for the whereabouts of the applicant's family. If no family or other carer is located in the country of origin within six months, the unaccompanied minor receives a UAM residence permit valid for one year. This residence permit can be renewed if adequate care in the home country is still not available after that year. After three years, the residence permit for asylum seeking UAMs is changed into a residence permit on humanitarian grounds.

## **Age Assessment**

On the 1st of April 2000, the IND reintroduced an age assessment procedure for asylum seeking UAMs. An asylum seeking UAM, of whom the IND has serious doubts about his or her stated age, is asked for permission to take an x-ray of their collarbone. On the basis of this x-ray, the age of the person is estimated. If the UAM, according to this test, is definitely not a minor, he or she is inducted into the accelerated procedure for adult asylum seekers. If the UAM refuses to give permission for the x-ray, he or she will be considered to be an adult, unless he or she can prove to be a minor. Scientists criticize the reliability of the collarbone scans.

### **1.1.2 Legal situation of other unaccompanied minors**

All unaccompanied minors can apply for asylum although not all such minors are aware of this. It is somewhat unclear in which cases an illegal unaccompanied minor found elsewhere is sent to an Application Centre (AC) to request for asylum. The police seem to play an important role in deciding this. Sometimes the decision to request for asylum is made by the guardian.

An unaccompanied minor who reports trafficking for prostitution purposes is entitled to a residence permit of a duration of three months, as stipulated in the Aliens Act relating to victims of trafficking for sexual exploitation. If after this consideration period the victim decides to testify against the trafficker, a temporary residence permit is granted for the duration of the police investigation and trial of the traffickers. The duration of this permit can vary from a few months to several years. After the trial, or if the police investigation is cancelled, the residence permit is withdrawn. The victim then has to return to his or her country of origin. A residence permit on humanitarian grounds is hardly ever issued to victims of trafficking, even though the victim may have spent several years in the Netherlands in order to be a witness in the trial.

## **1.2 RECEPTION STRUCTURE**

### **1.2.1 Reception structure for asylum seeking unaccompanied minors**

Unaccompanied minors under twelve years of age are sent to one of the two special reception centres for young asylum seeking UAMs. During their stay there, a guardian is appointed. He or she decides on the appropriate follow-up care, e.g. placement in foster families or housing centres for young asylum seeking UAMs.

After their initial stay at the Application Centre (AC), asylum seeking UAMs over the age of twelve are sent to a special unit in a reception and investigation centre (OC). During their stay at the OC, the guardian decides on the appropriate follow-up care. UAMs can be sent to a

housing centre for asylum seeking UAMs to live collectively with other UAMs or given a room.

Due to the increasing number of asylum seeking UAMs, the follow-up care is not as readily available as before. Officially, a minor should stay no more than 3 months in the OC. In recent years, the average length of stay at the OC has risen to 6 months.

The special accommodation facilities are only provided for UAMs under 18. As soon as an UAM becomes 18, he or she has three months to look for accommodation elsewhere. While the application for asylum procedure is still underway, the UAM is entitled to a certain amount of money, but other types of assistance (e.g., provided by the mentor) are stopped.

All asylum seeking UAMs are entitled to an official guardian. The guardianship organization 'Opbouw' provides these guardians.

Asylum seeking UAMs are entitled to schooling whereas adult asylum seekers are not. If an UAM becomes 18 without having received a permanent residence permit, the right to schooling stops.

### ***1.2.2 Reception structure for other unaccompanied minors***

Unaccompanied minors who do not apply for asylum are also entitled to a legal guardian. The Child Welfare Council can provide provisional guardianship although in practice this does not always happen. Unaccompanied minors who report trafficking to the police are guaranteed housing (often in relief centres) and social benefits for the duration of their residence permit but are not allowed to work.

According to the Dutch Aliens Act, aliens can be placed in confinement while awaiting deportation. Though as a general rule minors are not to be deported, this does happen occasionally, especially when criminality or prostitution is involved.

## **1.3 NUMBER OF UNACCOMPANIED MINORS**

### ***1.3.1 Asylum seeking unaccompanied minors***

The number of asylum seeking unaccompanied minors in the Netherlands has been rising considerably in the last five years. 1 562 unaccompanied minors reported themselves in 1996. In the first nine months of 2000, this number rose to 4 835.

The increasing number of asylum seeking unaccompanied minors cannot be explained away by the increase in the influx of asylum seekers to the Netherlands. Every year, asylum seeking unaccompanied minors form a larger percentage of the total influx of asylum seekers. In 1996, unaccompanied minors constituted 7% of the total influx of asylum seekers. In 1999, this figure rose to 14%.

There are some striking differences between the countries of origin of the adult asylum seekers and those of the asylum seeking unaccompanied minors. Over the 1996-2000 period, the largest groups of adult asylum seekers came from Iraq, Afghanistan and Yugoslavia, while the largest groups of unaccompanied minors came from China, Somalia, Sierra Leone and more recently Angola.

It is not necessarily true that adults from those countries do not enter the Netherlands. It is known that adult Chinese nationals who come to the Netherlands do not apply for asylum because they usually do not have any chance of obtaining it. The chances of obtaining a residence permit are higher via the special regulation relating to asylum seeking UAMs.

In general, more men than women apply for asylum in the Netherlands. Over the 1995-1999 period, about one third of the asylum seekers were female.

The majority of asylum seeking UAMs, about 50%, were either 16 or 17 years old in 1999. Approximately 25% were between 12 and 16 years of age and 10% below 12 in the same year.

### **1.3.2 Other unaccompanied minors**

No figures or estimates are available on unaccompanied minors who do not apply for asylum.

## **2. TRAFFICKING IN UNACCOMPANIED MINORS**

### **2.1 LEGAL FRAMEWORK**

In the Dutch Criminal code, trafficking is exclusively defined in relation to prostitution and described in section 250a of the Criminal Code.

Under Dutch law, all forms of forced prostitution are considered as trafficking. If minors or immigrants are concerned, force does not have to be part of the recruitment process. Any person who provides an illegal immigrant or a minor with the possibility to work in prostitution is liable to prosecution for trafficking. The maximum penalties are higher when minors under 16 years old are trafficked or if severe physical injuries are inflicted.

Trafficking for other purposes than prostitution is not considered as trafficking under Dutch law. These cases can be prosecuted using two other sections of the Criminal Code: i.e. smuggling people into the country and abduction. In short, this could be described as assisting immigrants for profit to cross the border illegally or to stay illegally in the Netherlands or another Schengen State.

The person who is assisted (the smuggled person) is not punishable on the basis of the law. However, this person can be punished on the basis of another article, for instance if detaining a false passport.

Profit is an important factor in the definition of the smuggling of aliens. The consequence of this element is that smuggling for moral purposes (for example churches assisting illegal family reunification) is not punishable. The smuggling of minors is not seen as a separate crime, but it can come under the definition of article 278 on abduction. This article is used to fight cases of for example mail order brides or forced labour in domestic work.

### **2.2 OTHER FORMS OF EXPLOITATION OF TRAFFICKED MINORS**

#### ***2.2.1 Debt bondage***

Due to the intensified checks at European borders, a growing number of asylum seekers are resorting to the services of smugglers to enter the Netherlands. Respondents working with asylum seekers made the observation that the sums of money paid to smugglers seem to be rising. Smugglers are not always (entirely) paid beforehand. Some are paid after the smuggled person's arrival in the Netherlands. This means that the smuggled person has to work in the country of arrival to pay the debt. The repayment may be enforced by threats. These practices come close to the IOM definition of trafficking as expressed in the Palermo Convention.

In general, victims of these practices do not report these matters to their guardians and mentors and even less so to the police. Although some mentors or guardians have the impression that these things are happening to their clients, it is very difficult to make minors tell the truth because they feel threatened by the traffickers. Also, these minors know that they are not officially allowed to work. They fear being penalised if they admit to work.

### ***2.2.2 Bonded labour***

In the above-mentioned cases, the UAMs were forced to pay back large amounts of money. In cases of bonded labour, victims pay off their debts by working for the trafficker, often in a place that the trafficker chooses.

### ***2.2.3 Trafficking for criminal activities***

In 1997, the police in The Hague arrested a number of Chinese people who were trying to extort money from a Chinese restaurant owner. Among them were two Chinese unaccompanied minor asylum seekers. The Chinese restaurant owner, who had reported to the police that he had been threatened, was killed three days after the trial of one of the suspects. The minors worked for a Chinese criminal organization in order to pay their debts. They had disappeared from their residence unit in a city in the East of the Netherlands.

### ***2.2.4 Other forms of trafficking***

Dutch households do not have a tradition of employing au pairs, since the majority of the Dutch women did not work after the birth of their children. Over the last decade, this trend has slowly changed. Most au pairs working in the Netherlands are over 18 and stories of exploitation of minors are unknown. Last year, the military police accidentally found a gang smuggling Moroccan minors for household work, which can be described as trafficking.

Recently, a new form of trafficking has aroused attention. Dutch football clubs recruit successful football playing minors in Western Africa and Brazil. Some clubs, e.g. Ajax, train the minors in their home country and only bring them to Europe when they reach adulthood. Other clubs bring successful minor football players to the Netherlands. The Immigration and Naturalisation Services, together with public prosecutors' offices, have undertaken an investigation to ascertain whether the practices of certain football clubs regarding the recruitment of non-European players can be considered as trafficking in human beings.

### ***2.2.5 Trends***

So far, bonded labour by UAMs has not been systematically investigated. Social workers and the police are not always aware of this phenomenon. It is therefore difficult to say how widespread the phenomenon is. Most of the attention is now focused on sexual exploitation. The amount of pressure apparently put on minors in the cases of bonded labour mentioned above confirms that this phenomenon requires more attention.

Little is known about the type of work minors have to perform. Restaurants and shops owned by members of the ethnic communities of the minors are mentioned as exploiters of this type of labour. Chinese minors are most often mentioned as victims of this practice. Besides bonded labour, criminal activities are found to be conducted by Chinese minors as a way of paying their debts.

The connection between the recruitment of minor football players and trafficking is still to be investigated.

It is conspicuous that different respondents mentioned smugglers as the ones forcing the victims into bonded labour in order to pay their travel debts. This implies that the smuggling of aliens and bonded labour seem to be becoming more interwoven.

## **2.3 SEXUAL EXPLOITATION OF TRAFFICKED MINORS**

### ***2.3.1 Prostitution***

Minors trafficked to the Netherlands for the purpose of sexual exploitation (usually in prostitution) have been coming from the same countries for a number of years now. Though each nationality seems to have a standard pattern in which the girls are recruited and forced into prostitution, it is important to bear in mind that individual cases never comply totally with the general stereotype. Since most traffickers do not work in large gangs, their methods and the extent of force and deception they use differ. Traffickers also swiftly adapt their methods and routes to changing circumstances.

#### ***a) Nigerian and other West African girls***

The main reason why girls cooperate with the traffickers is the poor economic and unstable socio-political situation in Nigeria. It is difficult to get a good insight into the backgrounds of individual trafficked Nigerian girls. Most are very afraid and refuse to tell more than the standard story they are taught by their traffickers.

As both minors and young adult women are recruited, it is not always easy to determine who is a minor and who is not.

The Nigerian organization NDMN (Nigerian Democratic Movement, Netherlands) conducted research among victims, traffickers and families of victims in Nigeria. According to this research, parents often consent to their daughters being sent to Europe. In the countries of origin, many people know stories of women who have gone to Europe to work as prostitutes and who have been able to send money home to have their own house built and provide for the rest of the family. This is a strong incentive for both parents and girls.

For a number of years, the victims were brought directly to the Netherlands, often using false documents. In the Netherlands, the traffickers directed the women to Application Centres (AC) to apply for asylum as minors. In some cases, the women were advised to apply for asylum as nationals of another country e.g. Liberia or Sierra Leone, since nationals of those countries could not be deported.

A number of strategies are used to force girls into prostitution. Sexual violence is mentioned, especially in the beginning. Cases of physical violence are also reported. Different ritual practices are another common way of putting pressure on trafficked girls. The media and the police referred to the rituals as “voodoo practices”. However, it has to be pointed out that rituals are usually used in combination with more direct threats. Threats to the family are reported frequently.

Different police investigations have demonstrated that Nigerian traffickers do not operate in highly organised gangs. They are usually loosely organised individuals using different strategies of recruitment and different levels of force.

Most convicted traffickers are Nigerian men and women with Dutch passports or residence permits.

The number of Nigerian girls and women working as prostitutes in the Netherlands has risen considerably in recent years. Most respondents mentioned the difficulties involved in communicating with Nigerian girls. Girls found in brothels hardly ever make coherent

statements, and almost none report their traffickers to the police. Another trend is that Nigerian traffickers are broadening their recruitment area both in and outside the Nigerian territory.

### **b) Chinese girls**

It is difficult to get a good insight into the way in which Chinese girls are recruited. Like the boys, most Chinese girls tell a standard story in order to get access to the asylum procedure for unaccompanied minors. Their socio-economic backgrounds vary. Some of the girls appear uneducated, while others have had some form of education. Economic problems are thought to be the most important push factor. Another push factor would be the so-called second children factor, i.e. those born in a family with already one child. These second children have hardly any rights and are often not registered with the Chinese public authorities.

The journey to Europe is long and involves stop-overs in different countries. Almost all Chinese migrants mention that they have been in Moscow for a period of time. Some say they were forced to work in prostitution. Once the girls had worked long enough to pay for the next stage of the journey, they were sent to the Netherlands, usually via the Czech Republic.

An added problem is the fact that most Chinese minors cannot read anything but Chinese, which makes it difficult for them to identify in which country or city they are in.

Field workers dealing with the prostitution sector do not find Chinese prostitutes in the regular Dutch red light districts. Chinese prostitutes operate for example from Chinese barbers' shops in predominantly Chinese residential areas. Chinese girls also report to having worked in illegal Chinese brothels in private houses.

Girls request for asylum after they have managed to escape or after they have been thrown out onto the streets often because of becoming pregnant. According to social workers at centres for asylum seekers, a relatively large percentage of Chinese female asylum seeking UAMs become pregnant.

### **c) Eastern European girls**

The minor girls found working in prostitution in the Netherlands come from different Eastern European countries. In 1999, the largest groups of victims came from Russia, Ukraine and Poland. Their level of schooling varied. In general, the younger women had less schooling. Women from the former USSR more often tend to have completed their education in comparison with women from the other Eastern European countries. A considerable number of women had some experience of prostitution in their country of origin.

Besides a small number of women who had been kidnapped, the most important push factor was the economic situation in the country of origin. The younger victims in particular mentioned that they hoped to pay for their further education by working as prostitutes. The search for adventure is also mentioned as a reason for co-operating with traffickers. The level of force differs from trafficker to trafficker. Physical and sexual violence are reported frequently. Threats to family members still residing in the home country are mentioned frequently. The traffickers often operate in small flexible groups and the level of organization varies. Most traffickers tend to traffic girls of their own nationality.

Eastern European girls do not only work as prostitutes in the Netherlands but are often sent from one country to another. Germany and Greece are now often mentioned as countries in which these girls have worked before moving to the Netherlands.

### **d) Moroccan girls**

Pimping by mainly Moroccan boy friends has become a widespread phenomenon in Dutch prostitution. Field workers report that pimps use extensive force to keep the girls working for them. Threats by pimps to inform the victims' families about their prostitution work and to beat up members of their families are also mentioned, especially among Moroccan girls.

### **e) Trafficking in boys**

Cases of trafficking in boys come to light only occasionally.

North African boys have been working in the Dutch prostitution sector since the 1980s. Besides boys who have recently immigrated or who have been travelling as illegal migrants through Europe for some time, the sons of Moroccan immigrants are also recruited. Boys from Eastern Europe entered the male prostitution sector in the 1990s. An increasing number of mainly Latin American transvestites and transsexuals are working too.

For migrant boys, economic reasons are the most important push factor. Eastern European boys are looking for a better life in Western Europe, but find that money is not so easily available for illegal migrants. Prostitution can be used as a survival strategy.

Force is used in the trafficking in boys but differs somewhat from the force used in the trafficking in women. In general, it can be said that boys are not as easily bullied as girls. Boys who are confronted with violence will not easily admit it. Emotional manipulation is used as well.

Since it is less easy to say in which cases minor boys are trafficked, it is also not so easy to say who the traffickers are.

### **2.3.2 Child pornography**

Child pornography is produced in a very closed world. Most court cases on child pornography in the Netherlands are related to the possession of and not the production of child pornography.

### **2.3.3 Other forms of sexual exploitation**

Sexual exploitation of unaccompanied minors by individuals takes place but hardly ever leads to police investigations. Most girls refuse to speak about it or do so only in very vague terms. Respondents working in centres for asylum seekers mentioned that men come near asylum centres to approach young boys and girls for sex. Men offering a lift to or from the asylum centres, usually located in isolated industrial areas far from the cities, occasionally use the opportunity to abuse or rape unaccompanied minors.

## **2.4 THE EXTENT OF TRAFFICKING IN MINORS**

No hard statistics exist on the trafficking in minors. There are only indications of the extent of trafficking for sexual exploitation. There are no estimates of the number of minors in male prostitution, let alone the number of trafficked boys. However, it is known that the age of male prostitutes is on average below that of girl prostitutes. There are hardly any male prostitutes over 25.

It is difficult to say whether the number of minors in the Dutch prostitution sector is rising.

It is unknown though, how many of the asylum seeking UAMs who disappear each year are trafficked.

No statistics or estimates are available on bonded labour.

### **3. COMBATING TRAFFICKING IN MINORS**

#### **3.1 LEGISLATION AND NATIONAL POLICIES**

During the last five years, the Dutch Parliament has on several occasions discussed trafficking in minors for sexual exploitation. This increased attention has led to an increasing call for research on this topic by the Dutch Government.

In March 2000, the Dutch government published an action plan known as “Fighting sexual abuse of minors”. This action plan is the result of commitments made at the international conference on fighting sexual exploitation of minors in Stockholm in 1996. It combines research plans with more concrete plans such as improving the registration of trafficked minors and intensifying prevention activities. The action plan also mentions amendments to the law in order to improve the fight against sexual abuse of minors.

##### **3.1.1 New legislation on prostitution**

After 20 years of discussions, the Dutch parliament agreed to lift the ban on brothels on the first of October 2000. An important part of this new legislation is that brothels are not allowed to employ minor or illegal prostitutes. If the police find a minor in the brothel, it can be closed immediately. One of the aims of the statutory changes is to prevent minors from working in prostitution. This is why the parliament decided to prohibit sex between an adult client and a prostitute under 18. Before the 1st of October 2000, clients were not allowed to have sex with prostitutes under 16.

A direct consequence of the new legislation on prostitution is the increased control of prostitution businesses concerning illegal and minor prostitutes but social workers fear that especially the most vulnerable groups of illegal and minor prostitutes will move into an illegal prostitution circuit with worse work conditions and with a greater risk of abuse.

##### **3.1.2 New asylum laws**

According to the plans of the Ministry of Justice, the policy on asylum seeking UAMs will undergo substantial changes. Asylum seeking UAMs over 15 years old when they enter the Netherlands will lose their residence permit at 18, at which point they will have to return to their country of origin. The new legislation will make it possible to return unaccompanied minors over 15 to their country of origin if they are considered able to take care of themselves.

Officially, older UAMs will have to return to their country of origin once 18, but in practice so far, this has happened to few aliens. This situation can make the UAMs more vulnerable to abuse, for example, by people offering them housing.

### **3.2 TRACING AND PROSECUTION OF TRAFFICKERS**

#### **3.2.1 Organizational impediments**

Investigating cases of trafficking is a labourious and time-consuming exercise. As a result, many police authorities at regional level are not able to investigate all reports of trafficking. In order to give a nation-wide profile to investigations of cases of trafficking, trafficking for prostitution has been made a national priority of the police and judiciary. Also, there is a need to combine the knowledge that the different regional police authorities have on the issue. To prevent loss of information after an investigation is completed, a special unit (UMS) has been assigned the task of dealing with trafficking in Nigerian women and girls. Within the CRI, the

Central Criminal Investigations Information Service, a special trafficking unit compiles information on trafficking and endeavours to improve investigations on the issue.

Trafficking is also a priority for the judiciary. As a result, every prosecution service has a public prosecutor who is responsible for trafficking investigations.

Regional police authorities have autonomy over how they organise their activities. In 1999, a national police working group was established on prostitution and trafficking. The aims of this working group are: to harmonise the different local policies and activities, to increase the number of court cases brought against traffickers, to reduce the number of illegal and minor prostitutes working in the Dutch prostitution sector and to intensify cooperation between the different regional police authorities, since cases of trafficking tend to overlap regional police borders.

Another organizational problem consists of the differences in and sometimes lack of a proper registration. The different police authorities lack a uniform registration system.

It is not only the police that have registration problems. When the first cases of missing UAMs came to light, it appeared impossible to obtain reliable data on how many minors had disappeared. Every reception centre had its own policy on how to deal with the matter. Nowadays, a uniform policy on how to deal with missing minors exists. Missing asylum seeking UAMs are now systematically reported to the local police station, who report the case to the national service of missing persons (VPS), which registers all missing persons in the Netherlands (about 20 000 a year).

### **3.2.2 Other impediments**

Besides organizational problems, one of the main difficulties encountered by the police in bringing traffickers to court is the problematic communication with the victims. Most victims are very afraid of the police and traffickers usually reinforce this fear by telling stories of their co-operation with the police. Trafficking is officially a “victim’s crime”, i.e. the interest of the victim have to be given priority and taken care of.

Another problem is that traffickers can operate more flexibly than the police. Most traffickers can quickly adapt their strategies to changing police policy or are able to operate across regional and international borders in a way that regional police authorities are not allowed to.

Trafficking for other purposes than sexual exploitation is not a priority and not systematically investigated.

## **3.3 CARE AND FUTURE PROSPECTS FOR THE VICTIMS**

### **3.3.1 The Care Centres**

The care for trafficked minors takes place in reception centres for asylum seekers and in shelters that provide assistance for trafficked women and girls. A limited number of relief centres in the Netherlands take care of minor victims of trafficking<sup>30</sup>.

A number of impediments are encountered in the care of the victims. First of all, care is only provided for victims who report their trafficker and therefore, are entitled to the B17 regulation. If the victim is too scared to report the trafficker, she is not entitled to this care. The only way to evade this obstacle is to have victims apply for asylum. Apparently, this is happening more often. An added problem is that victims are provided with a temporary residence permit only if their report of trafficking leads to a police investigation. Another

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<sup>30</sup> Names of the centres are known by the STV but, in order to protect the victims, cannot be published.

problem is adequate protection for the victims. Though victims are usually placed in shelters at secret addresses, the traffickers could sometimes find them.

Like the police, social workers also mentioned communication problems with the victims. Chinese and the African girls especially are very difficult to communicate with. It is very hard for them to talk openly about their fears, expectations or problems.

A relatively recent phenomenon in the care of minor victims of trafficking is the tendency to limit the freedom of movement of girls in order to prevent them from returning to prostitution. Many researchers have mentioned the incarceration in juvenile prisons as one of the factors facilitating the so-called 'drift into prostitution'. For migrant girls, it can undermine even further their already feeble confidence in the Dutch authorities.

Another problem related to the adequacy of care for victims is the lack of future prospects. Residence permits on humanitarian grounds are hardly ever issued to victims of trafficking, even when the latter are minors.

### **3.3.2 Return**

Most trafficked minors initially do not want to return to their country of origin mainly because of fear of the traffickers. In many countries of origin, the authorities cannot offer adequate protection from the traffickers. In other cases, the reaction of the authorities forms an impediment to the safe return of the victim.

Another impediment to return is the lack of economic possibilities in the country of origin. Some of the victims still have debts that will be difficult to repay on income from work in the country of origin. As a result, some returnees choose to return to European prostitution in order to pay their debts.

Involuntary return of minors, mostly Eastern European, happens but not often. Though the immigration authorities (IND) claim that minors in principle are escorted up to their country of origin, in none of the cases mentioned by other respondents was a minor escorted any further than the Dutch national airport. Monitoring of returned minors does not take place systematically. As a result, in most cases, it is not known what happens with a minor after being returned.

Workers at AMOC's Eastern Europe desk have practical experience of the voluntary return of young male prostitutes who become tired of their lifestyle in the Netherlands. Involuntarily deported boys usually return to the Netherlands within a couple of days, while those who voluntarily return have tried to create a new life for themselves in their country of origin. AMOC co-operates with the IOM's Assisted Return office in The Hague. The organization has good contacts with NGOs in the countries of origin working to help the boys get started again. In some Eastern European countries, the project La Strada takes care of (some of the) returned victims.

### **3.4 PREVENTION**

Different measures have been taken to prevent the disappearance of asylum seeking UAMs. One of the measures was to speed up the procedure for guardianship. The procedure for official guardianship takes approximately three months. Initially, no organization was responsible for taking action if an UAM disappeared a few days after requesting for asylum. To avoid these problems, asylum seeking UAMs considered at risk can now be provided with a provisional guardian within 24 hours. The organizations responsible for the care of asylum seeking UAMs have developed profiles of 'asylum seeking UAMs at risk'. These 'at risk asylum seeking UAMs' receive extra attention and extra information from the workers.

So far, only NGOs have been trying to develop or support prevention activities in the countries of origin. The prevention activities of the Dutch government are limited to pre-boarding or gate checks in the sending countries and limiting the possibilities of the asylum procedure. Traffickers have reacted to these measures by changing their transport routes.

# RECOMMENDATIONS

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## 1. Definitions

1. There is a need for a common definition of “**unaccompanied minors**” in the EU Member States “as children under 18 years of age outside their country of origin and without parents or guardians to care for and protect them” - a definition inspired by the Separated Children in Europe Programme (SCEP). EU Member States would have to ensure that the needs and rights of unaccompanied minors are fully recognised ; they should abide by international conventions and guidelines, such as the Convention of the Rights of the Child, without any amendment that would endanger the well-being and safety of minors while the conventions and guidelines are integrated into the national legislation. The Convention on the Rights of the Child should not be restricted by laws or procedures which regulate third country nationals or any other national law in the countries of destination.
2. EU Member States should have a common definition of “*trafficking in human beings*” therefore it would be useful to ratify the UN “*Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Organized Transnational Crime*” and the “*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*”, supplementing the United Nations Convention against Organized Transnational Crime.

## 2. Information Gathering and Exchange on Trafficking in Minors

There is a need for :

3. Improving statistical data by **harmonising national registration systems** - collection, registration according to age, sex ratio, nationality, etc.
4. More information and research on the:
  - **Reasons for flight and migration**, as well as on the routes and mechanisms used for migration, with particular attention to the emergence of new countries or origin and destination ;
  - Multi-sited research on specific nationals and **target groups** of minors, such as Chinese asylum-seekers, Albanian and Moroccan irregular migrants, male prostitution, so as to better understanding the specificity of these groups and devise durable solutions ;
  - Different forms of **labour exploitation** of minors in the informal sector ;
  - Comparable data and **exchange of information among EU Member States** on trends, best practices and durable solutions ;
  - Cases of **disappearance** of minors in order to identify possible reasons and trends ;
  - **Psycho-social trauma** of trafficking and smuggling of unaccompanied minors in order to address the lack of information and responses to mental health issues.
5. More **co-operation between public authorities and social services (NGOs)**, at the local, national, and international level with the EU and the countries of origin. The establishment of specific contact points within the different institutions or organizations dealing with minors could improve the capacity to deal with trafficking in minors, since targeted information would be channelled directly to the appropriate services for action.

6. Countries of origin, in particular Candidate and Association countries, to be involved in EC initiatives on combating trafficking and other related issues, such as the **STOP** and **DAPHNE** Programmes, in order to reinforce and improve the rapid transfer of information and expertise related to trafficking in human beings, between all countries involved.
7. Increase exchange of information, expertise and best practices between **persons involved in counter trafficking activities** (i.e. law enforcement and border officers/guards, immigration and foreign affairs personnel, social services and NGOs) through technical co-operation programmes and exchange visits in order to strengthen their capacity to deal with trafficking in minors and foster co-operation between the different services, regions and countries.
8. Increase co-operation via training sessions and exchange of information between **embassy officials** and **local authorities** in countries of destination.
9. Information exchange pertaining to law enforcement issues in close co-operation with **Europol** and **Interpol**.
10. Strengthening co-operation and exchange of information between **interlocutors in countries of origin, transit and destination** working on counter trafficking such as, NGOs, IGOs working on migration issues and trafficking (such as IOM) and UN organizations working on children's issues, particularly child labour (such as UNICEF and ILO). The capacity and resources of NGOs and IGOs working with victims of trafficking in countries of origin, transit and destination should be strengthened/enhanced.

### 3. Prevention, information and reception in the Countries of Origin

11. Support funding for **pilot projects** aimed at strengthening organizations working with minors, thus promoting activities such as sports, recreation, vocational training and income generating activities which would enable minors to develop a positive sense of community, identity and self-esteem as well as their social and economic development. Reconstruction of youth social systems is imperative in order to develop a grassroots network of service providers who would assist the minors, thus decreasing the risk of the most vulnerable cases being recruited by criminal networks. Support and facilitate the development and implementation of economic projects aimed at small-scale income-generating activities for young people while directly involving family members, particularly parents or guardians.
12. Launch **information campaigns** in the countries of origin in order to raise awareness on the issues related to the risks of trafficking in unaccompanied minors for sexual exploitation or bonded/forced labour and slave-like practices. These campaigns should target young people, families (in particular parents and guardians, since in most cases they are the main instigators of this form of migration), NGOs (such as youth and women's organizations) governmental institutions (schools, law enforcement agencies, etc.) and journalists.
13. Increase the level of awareness of the target group regarding a **realistic migration** project via information dissemination so as to combat the "myths and misconceptions" spread by traffickers, returnees and the media. Involvement of returnees in the information dissemination process as a form of income-generating activity should also be considered whenever feasible.
14. Raising/strengthening the capacity of the **public authorities** in countries of origin to deal with this target group upon return, particularly those in the educational and social service sectors.

**15. Tracing, home assessments and follow-up** of returned UAMs need to be expanded and improved.

**16.** The establishment of **co-operation schemes** with the country of origin and the countries of transit might prove to be an effective tool in combating trafficking in human beings.

#### 4. Prevention, Assistance and Protection in the Countries of Destination

**17.** Facilitate **family reunification** in the EU Member States so as to avoid illegal family reunification and thus diminish the vulnerability of the minors to the trafficking and smuggling networks.

**18.** Launch an **information campaign** with regard to the general public in the countries of destination, in order to raise awareness on trafficking in minors for the purpose of sexual and other forms of exploitation.

**19. Rapid response**, such as rapid information exchange between the relevant services in the countries of origin, transit and destination, is necessary for combating trafficking in human beings.

**20.** Raise awareness among UAMs regarding the possibilities as to where to get help from the very beginning, while using **cultural mediators** (from the country of origin).

**21.** Encourage **multi-ethnic service providers** working in existing structures, thus facilitating/improving interpretation, cultural understanding and mediation.

**22.** Improve and strengthen the **skills of personnel responsible for dealing with minors**, such as the border police, interviewers working within the asylum process, social workers, lawyers, among others, could increase the overall possibility to detect cases of trafficking and exploitation at an earlier stage.

The experiment of recruiting **female police officers** in Ghent has enhanced communication between the law enforcers and the foreign women and girls working in prostitution. The partial feminisation of the personnel might generate better contact and communication with female THB victims, minors and adults.

**23.** More action is needed in order to **prevent disappearance from the care facilities**. Priority should be given by the police to investigating cases where UAMs disappear.

**24. Improve and strengthen reception facilities** – in-depth analysis of the needs of the child in order to curtail the disappearance of minors in social facilities is needed.

**25. Harmonisation of services** within the host countries and among EU Member States is necessary, not only to avoid “asylum or protection shopping”, but also to ensure the well-being of the children.

**26. Reception conditions** in EU Member States should respond to the needs of the minors. Therefore, smaller centres or private housing schemes should be implemented instead of lodging the minors in large centres without the appropriate facilities. Small centres or separate areas for minors within large centres could provide more individualised assistance and support for the minor, while more closely monitoring their movements, thus avoiding the need to restrict their freedom of movement.

**27. Appropriate guardianship** of minors must be established in order to diminish the risk of the child entering or remaining within the criminal networks. Within a workable notion of

guardianship, the number of children per guardian should be restricted as a way of ensuring a relationship of trust, while promoting the general well-being of the child.

**28. Assessment of cases of unaccompanied minors** in countries of destination must be dealt with within a reasonable length of time so as to determine the appropriate procedure to follow. This would assist in creating a distinction between minors in need of protection under the 1951 Convention on Refugees and those who fall under other categories.

**29. Detention of minors should be avoided.**

**30.** EU Member States should provide assistance and protection to victims of trafficking, while granting them **temporary or permanent stay** in the country of destination. This would also imply the support of local NGOs to work with victims. Special consideration should be well thought out regarding a residence permit for minors who are victims of trafficking, in which case their declaration should suffice for the granting of the permission on humanitarian grounds, as opposed to the permission being granted in exchange for collaboration in a judicial matter involving a criminal investigation. The age factor combined with the fear of testifying in court, as well as retribution against the minors themselves and their families should be strong considerations for such special request.

**31.** The high number of UAMs on transit to other EU countries, especially to Great Britain, highlights the need for **harmonisation of asylum policies** at the European level.

**32. Abuse of the asylum procedure** relating to UAMs should not lead to a reduction in the protection of and accessibility to the procedure, since this could render UAMs more vulnerable to traffickers. The effect on the well-being on older minors of the absence of future prospects to be provided for in the new legislations on asylum seeking UAMs should be carefully monitored.

**33.** The **right to education** for each minor according to his/her specific needs, should be implemented in accordance with the Convention on the Rights of the Child. Although the benefits of this measure are broad, with regard to counter-trafficking, this could help improve the prospects for the minor in terms of different options for the present and future, while helping to monitor the movements of the child.

**34.** Implement appropriate **voluntary return and reintegration programmes** targeting minors in accordance with the CRC and UNHCR guidelines as part of a durable solution, thus responding to the needs of the child. Monitoring and follow up of return cases is of crucial importance in order to create the necessary sustainability of the measure, as well as to avoid re-trafficking. In addition, whenever possible, return programmes must be combined with pilot projects on training or income-generating activities while involving the minors' family.

**Report on the workshops held at the European Conference  
on Trafficking in Unaccompanied Minors in the European  
Union,**

**Organised by the International Organization for  
Migration, in partnership with the Institute of Advanced  
Studies on Policing and Public Safety**

*Paris, 18 and 19 April 2002*

## **Workshop 1: International Co-operation**

*Chair and rapporteur:* Mr Jean-Michel Colombani, Head of OCRTEH (French Central Office for Action against Trafficking in Human beings).

This workshop looked into international co-operation methods to address the phenomenon of trafficking in unaccompanied minors. It covered the following main points:

### 1/. Harmonisation of European legislation:

Following a general review of the deviations between the different European States' legislation on the subject, the question of the lowest common legal denominator was raised: The Convention on the Rights of the Child was taken as a starting point, without prejudice to subsequent directives passed as part of the European construction process. The differentiation between trafficking and smuggling was, in particular, raised as a crucial point. Since the Palermo Convention provisions are not yet totally applicable in all the relevant countries, consideration of this course of action was postponed to be taken up again in due course.

It was pointed out that the current state of affairs means that only a single legal keystone could exist, which would necessarily be imperfect.

The need for a centralised data collection body was reiterated (creation of a supranational observatory provided with data by the national levels in keeping with predefined statistical indicators).

Last but not least, the participation of the NGOs in an initial assessment was reaffirmed.

The roles of Europol and Interpol were also mentioned, as were their positions in this mechanism. The need to work with what is currently in place was nevertheless reiterated.

### 2/. Creation of a standing European observatory to monitor the phenomenon of unaccompanied minors:

It was reiterated that such a body should be created. It would be responsible for adopting a specific methodology. It would necessarily view minors as victims, given that their situation of isolation could push them over the edge into "subsistence" delinquency.

This European observatory would, in particular, be responsible for finding and centralising information on trafficking in minors and exploitation systems and networks. It would collect all the figures available on this phenomenon.

It would also organise upstream preventive actions in all the source countries.

### 3/. National measures to be adopted:

A plan targeting all publics should be developed to raise awareness of these issues associated with unaccompanied minors. At the same time, a training programme should be developed at all levels for those players directly involved (judiciary, police, social workers, teachers, etc.).

A centralised information processing body should be set up at national level using existing capacities.

**To conclude**, it was considered necessary to improve the links between the different levels of the penal system. This could, among other things, be based on secure centres to accommodate foreign minors at risk.

## **Workshop 2: Prevention and Public Awareness Building Policies**

*Chair and rapporteur:* Mrs Eliza Tsakiri, International Organization for Migration, Geneva.

Highly vulnerable and exploited minors are not a uniform population in terms of profile. A number of categories of exploited minors can hence be identified. For example, there are those that have been brought into another country by a network of traffickers, those who are abandoned and are literally unaccompanied minors, those who have entered the country with their family, and those who belong to certain minority groups. In view of this observation, the following points were highlighted:

- The need for an awareness-raising campaign aimed at different target groups
  - In the countries of origin (potential victims, family environment, civil society and authorities)
  - In the countries of destination (public opinion, authorities and the victims themselves to make them realise that they are victims).
- The need to organise training to enhance the capacities of the different stakeholders (government and/or association players) to efficiently address all aspects of trafficking in minors.
- The assistance and intervention policies resulting from these policies should take into consideration minors' needs so as to develop suitable measures. It should also be stressed that it is of the highest importance to gain the minors' trust.
- The need to step up co-operation between the countries of origin, transit and destination as well as among the different counterparts (authorities, NGOs, international organizations, etc.) working in this field and in these countries.
- The need to set up a suitable judicial and legal framework in the countries of origin, transit and destination to effectively protect minors' rights.
- The need to support the economic development of developing countries in an attempt to eradicate the problems at source.

### **Workshop 3: Protecting and assisting unaccompanied minors who are victims of trafficking in human beings**

**Chair:** Mrs Georgina Vaz Cabral, Comité Contre l'Esclavage Moderne <sup>31</sup>

**Rapporteur:** Mr Farid Lamara, International Organization for Migration, Paris

#### ***Report on the debates:***

Most of the points addressed by this workshop relate to the situation in France.

The central issue was to define the best way to protect such victims.

- ***A certain number of dysfunctions were identified from the case study of the French Committee Against Modern Slavery (CCEM).***

The CCEM works with victims of domestic slavery. These are generally women under 21 years old. Yet they arrived as minors, especially those from West Africa. They are often recruited in their country of origin by their families or other agents who paint the Western “El Dorado” in glowing colours. They arrive with a passport and a tourist visa. They work 15 to 18 hours a day and are victims of maltreatment. They are only discovered by reports from outside parties. The procedure then consists of lodging a formal complaint or establishing mediation with the families. Yet the victims are often traumatised. CCEM works in this area on dealing with the legal aspect and initiating criminal proceedings. It often manages to obtain legal status for the victims.

. Legal status is dependent on the victim lodging a formal complaint. In the absence of specific legislation on the trafficking in human beings, legal status is not possible if no formal complaint is lodged. Moreover, shelters do not accept people without legal status and the CCEM only has five placings available in apartments.

. There is a close link between lodging a formal complaint and obtaining papers. Yet it is not easy for victims to lodge a formal complaint. Getting people out of the networks and giving them some leeway gives them the time they need to think and get themselves back together to be strong enough to lodge a formal complaint.

☞ In the bill adopted by the National Assembly on its first reading on 24 January 2002 to *step up the fight against the different forms of slavery today*, lodging a formal complaint is linked to obtaining a temporary residence permit. Note that the French bill does not provide for any other courses of action, like the Belgian system and unlike the Italian system.

☞ Legal status is always granted for humanitarian reasons, but the Ministry of the Interior deems it necessary for the victim to help the police and the legal system with their inquiries.

☞ The problem of the victims' fear is very real. Currently in the French system, only a statement made to a representative of the French Central Office for Action against Trafficking in Human Beings (OCRTEH) can result in a residence permit being issued.

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<sup>31</sup> Author of a European comparative study, “*Les formes contemporaines d’esclavage dans six pays de l’Union européenne – Autriche, Belgique, Espagne, France, Grande-Bretagne, Italie*” (contemporary forms of slavery in six European Union countries – Austria, Belgium, France, Italy, Spain and the United Kingdom), Collection Etudes et Recherches, CCEM/IHESI, Paris, January 2002.

.The many designations used to refer to trafficked/exploited minors pose a definition problem.

- ***Definitions of unaccompanied minors***

☞ French legislation defines an unaccompanied foreign minor as a person under eighteen years old, of foreign nationality, arriving or already on French soil, and unaccompanied by a legal representative (father, mother or guardian). This definition makes reference to various legal texts: Article 388 of the Civil Code on Minority, the ordinance of 2 November 1945 on the conditions governing the entry and residence of foreigners for alien status, and Article 373 of the Civil Code regarding the absence of a legal representative.

☞ The Save the Children/UNHCR Separated Children in Europe Programme (SCE) prefers the term “separated children”, because it does not cover solely children arriving alone in Europe, but also those who travel with guardians other than their parents.

☞ Not all unaccompanied foreign minors are asylum seekers. Yet among the asylum seekers, minors seeking asylum, for example at the border, should be differentiated from minors who have actually applied for asylum to OFPRA (French Office for the Protection of Refugees and Stateless Persons). These are minors for whom guardianship should be organised. They are consequently theoretically managed by youth welfare and placed in a structure or a host family.

☞ An accompanied child can be at risk. It is suggested to consider first and foremost the risk. Being separated is only one factor placing these children at risk. Minors at risk are the most vulnerable. It would therefore be more suitable to use the term minors at risk. Hence, when a minor at risk is taken in, regardless of how he or she is categorised (separated, unaccompanied, accompanied or foreign), the common denominator should be his or her level of risk.

- ***The types of exploitation differ, but the minors concerned are first and foremost victims.***

☞ The proper criterion would be to recognise unaccompanied minors as victims so that they could be provided with legal security in the form of a residence permit and be given effective assistance. The risks run by the victims are highly considerable, whereas the measures taken for them and their families’ safety are currently non-existent.

☞ The political and police issue should not be confused with the protection of fundamental rights.

- ***The protection of minors in France***

☞ French legislation on the protection of minors is relatively comprehensive and provides a high level of protection. All minors on French soil, irrespective of their nationality and status, are automatically protected by this legislation, at least in theory.

☞ From the institutional point of view, two bodies share the responsibility for protecting minors: Aide Sociale à l’Enfance (Child Welfare Service) and the Protection Judiciaire de la Jeunesse (Judicial Juvenile Protection Directorate). As regards justice, the juvenile court judge has jurisdiction when minors are involved.

The judge supervising guardianships may also become involved in judicial proceedings regarding unaccompanied foreign minors.

☞ The care and protection of minors differs enormously from one region to the next.

☞ Minors come under the jurisdiction of the *département* and foreigners come under the exclusive jurisdiction of central government.

☞ Legally, there is no conflict of jurisdiction. *Départements* are bound by law to take in all the minors therein. Yet Roissy is now experiencing an imbalance due to arrivals at Charles de Gaulle Airport.

☞ The imbalances foster considerable resistance in practice, causing a divergence from the legal provisions.

☞ There are problems with the protection measures for minors. Half of the minors disappear from where they have been placed by the Child Welfare Service. There are often attendant and trust (language) problems.

☞ A major problem is that their first contact with the system is with the police in a situation where they are deprived of their freedom. There is no difference made for the transition from the police to the educators. The circumstances surrounding their arrival on French soil make trust hard to re-establish with the minors. The initial deprivation of freedom in the retention areas is considered as rejection.

- ***The retention areas***

☞ At Charles de Gaulle Airport, where over 90% of reported unaccompanied foreign minors arrive, the authorities have specially fitted out part of the retention area building for foreigners (holding area “ZAPI 3” for persons awaiting a decision) for minors. Minors have hence been provided with better reception and accommodation conditions in this area since 15 January 2001.

☞ However, many institutions, such as the CNCDH (National Advisory Commission on Human Rights) and the Défenseur des Enfants (Ombudsman for Children), recommend the immediate admission of unaccompanied foreign minors onto French soil. Moreover, retaining a minor in a holding area contravenes the International Convention on the Rights of the Child of 20 November 1989 and the recommendations of the United Nations High Commissioner for Refugees, which condemn any detention of foreign minors on their arrival on another country’s soil.

☞ ZAPI 3 looks like a place that holds foreigners until they can be deported. There appear to be no enquiries made here to identify victims of trafficking.

☞ The number of reported incoming minors is growing: 602 minors in 1999, 849 in 2000 and 1,070 in 2001 (asylum seekers). The largest numbers are from Sierra Leone, Congo and Guinea. They arrive as groups of siblings, often comprising one-third of under-16s and two-thirds of over-16s.

☞ Article 35 d) of the ordinance of 1945 guarantees the right to request a lawyer, see a doctor, have an interpreter and receive visits. The law on parental authority creating the ad-hoc administrator aims to help minors in ZAPI 3.

- ***The law of 4 March 2002 on parental authority***

☞ In keeping with the opinion submitted by the 19 September 2000 National Advisory Commission on Human Rights meeting, the legislators recently decided to remedy the inability of unaccompanied foreign minors to appear in court. Law No. 2002-305 on parental authority was adopted on 4 March 2002. It provides for the creation of an ad-hoc administrator to represent minors in the absence of their parents or a legal guardian.

☞ Some associations have misgivings about this law. It could allow the retention of minors in a holding area to be extended by a period of 20 days. It could also authorise the deportation of minors placed in a retention area, with minors being informed of this decision by the ad-hoc administrator. In the above-mentioned opinion, the CNCDH recommended, in addition to the appointment of the ad-hoc administrator, the immediate admission of minors onto French soil. This recommendation has not been taken up.

☞ There is no guarantee that the ad-hoc administrator helps protect unaccompanied minors. The law does not provide for the possibility of referring a case to the protective authorities. How can an ad-hoc administrator assess a minor's situation in such a short space of time? The system appears to be lacking in its ability to guarantee protection for minors who are victims of trafficking.

### ***Conclusion***

☞ Special legislation on trafficking in human beings is required and a legal victim status needs to be recognised for trafficked/exploited individuals.

☞ There is a general protection system in place for minors in France. Separated or unaccompanied minors who are victims of trafficking should be entitled to this protection or be included in the general system. Special measures should be introduced for victims of trafficking (safety, treatment of the trauma suffered, etc.).

☞ It is important to develop a comprehensive protection policy for all separated minors, and then to take specific action as regards victims of trafficking.

☞ One measure that would frustrate the traffickers would be to remove their investment, the victims, by issuing residence permits, as provided for by a number of international legal instruments (in keeping with Austria, Belgium, Italy, the Netherlands, Spain, etc.).

☞ The prime concern should be the child's best interest.

☞ Steps should be taken to ensure that no provisions allow dispensation from the general legal provisions.