



# MAFIA MINORS

Final Report



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# MAFIA MINORS

final report

ITALY

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# Introduction

by Alessandro Padovani

Mafia Minors, an expression that provokes reaction and curiosity for the impression of incompatibility of the two shown terms: from here the project was born, financed by the Program AGIS 2004 of the European union, from the desire to understand as these two words meet in the experience of organizations that work within the juvenile criminal justice in various Countries.

A background verification has allowed the initial construction of the planning idea: more and more many minors and young people have involved, used in the circuits of the organized crime and in the mafias of the various Countries, as “operators” with full rights in illegitimate activity that asks for answers of contrast, guardianship and protection.

Each Project is delineated and articulates in a team of job, in objective, activity and products that allow to organize a job of search, analysis and of cooperation.

The team of job has involved various organizations and professionals of some European Countries and extra-european: in Italy the “Istituto Don Calabria”, applicant of the Project, the “Scuola di Formazione del Personale per i Minorenni di Messina – Dipartimento per la Giustizia Minorile del Ministero della Giustizia”, the “Istituto Psicoanalitico di Ricerca Sociale (IPRS)” di Roma, the “Associazione Apriti Cuore di Palermo”, the “Istituto per il Rinascimento Siciliano di Palermo”, the “Settore Servizi Sociali del Comune di Verona”, the “Christlichen Jugenddorfwerk Deutschlands (CJD)” – Eutin , in Germany; ; in Spain, the “Grupo Inter Disciplinar (GID)” in Madrid; “Fundatja S. Ioan Calabria” of Racaciuni in Rumania; the “Institute for Policy and Legal Studies” of Tirana, Albania; the “Pontificia Università Javeriana” of Bogotá, Colombia.

Objectives: the first one consists in the realization of a general photo of the phenomenon of the involvement of the teen-agers in the mafias and in the organized crime: in the mafia of the south Italy, in the organizations that manage the clandestine immigration of the not accompanied young persons, like Rumanian, Albanian, Moroccan, Slavic in the regions of the north; the matter of the Russian outsiders inserted in the criminal activities in Germany; the use of the autochthonous minors and foreigners in the criminal activities connected to the commerce of the drug in Spain and in Colombia; the manners of involvement in the illegitimate activities in Romania and Albania, point of transit for many minors destined to criminal careers in Europe.

The second objective, that more meaningful, consists in the constitution and activation of a first net of collaborations and exchanges between organizations and professionals, necessary net for an operational reference for the search to level of the single Countries and for further developments in activity of European cooperation.

The job of analysis and comparison has allowed besides the production of single reports spread to national level and the publication of the present conclusive dossier.

A hope is alive at the end of the Project: to have worked for developing greater awareness of the specific phenomenon and to offer a contribution that the various initiatives of search sustain of guardianship and of the young persons' protection involved in the mafias in the European Countries.

This final Report was arranged by the Project manager Dr Alessandro Padovani and by the Project Coordinator Dr Silvio Masin.

## Chapter 1

# Mafia, minors and law enforcement in Italy

Silvio Ciappi and Raffaele Bracalenti

## Introduction

The Italians call them 'baby killers' - not because they kill babies, but because they are trained to kill while they are still legally minors, and therefore cannot be punished as adults. Seventeen year old Vincenzo Trubia from Gela - a Mafia-dominated town in the Southeast corner of Sicily - has admitted to Police that he is a trained Mafia hitman. He has been carrying a gun since his uncle gave him one for his eleventh birthday, he told prosecutors. Vincenzo is now under police protection somewhere in Italy, one of more than 4,000 former Mafia criminals who are taking part in a huge government-run witness protection programme.

Giovanni Tinebra, chief prosecutor at Caltanissetta in central Sicily, raised the alarm when he gave details of the 'school' near Gela for teenage killers. Pupils at the 'school', he said, are taught to shoot, strip down pistols, and become expert moped and scooter riders to enable them to take part in hit and run attacks on designated individuals. "At 11 or 12 they are taken into the countryside to learn to shoot. They are given a mission to kill - which they are unfortunately able to carry out with great skill. The 'school' run by the Mafia is an alternative to ordinary compulsory schooling for many Sicilian children." Vincenzo became one of Italy's youngest official turncoats during police investigations into a series of Mafia murders in Gela last July. Four people were shot dead - the latest in a series of family vendetta killings that have been going on for years. Vincenzo was employed as a lookout, he did not actually take part in these killings, but he was part of the scene and got scared. The use of child killers by the mafia is not new. What has shocked Italian public opinion is the extent of the phenomenon, and the brazen attitudes of Mafia bosses towards the exploitation of children as accomplices to adults in crime, as confirmed by law enforcement officers. Caterina Chinnici is in charge of the office for the prosecution of minors in Caltanissetta. "If someone kills his father in Verona or a wealthy jeweller in Milan (in Northern Italy) the Italian State mobilises," she says. "If the baby-killers shoot in Gela, as they have been doing for 10 years now, nothing happens." "There are only three specialist social workers dealing with child criminals in Gela, they are competent and scrupulous, but too thin on the ground," she added.

Another law official, Patrizia Martucci said it was almost useless to try to rehabilitate young people once they had fallen into the clutches of the Mafia. "We have an experimental probation system which appears to work for children who travel on the buses without tickets, or who damage public property, but we feel that its too late for young adults like Vincenzo" she said. Vincenzo's father Nunzio owns a flock of 400 sheep from whose milk he makes cheese, the main source of family income. "I've always tried to keep my boys away from their uncles in the Mafia," he said. But Vincenzo said he decided to help his uncles Pietro and Emanuele despite his father's warning. "They asked me to spy on members of a rival Mafia family and I felt I couldn't say no", he explained.

Three of the seven Trubia sons are now enrolled in the Italian government's witness protection programme. The authorities claim some successes in their battle against Mafia crime. In the past six months 98 people were arrested and charged with Mafia related crimes in the Gela area. But the extortion of regular protection payments by all businesses in Gela, small and large, is so deeply rooted that practically no shop keeper dares to say no. Tano Grasso, a veteran campaigner against extortion rackets who has many times been threatened with death by Mafia tax collectors says: "There will never be true economic freedom in Sicily until Gela's shopkeepers decide to cooperate with the Police."

When we talk about juvenile gangs in Italy the relationship between organized crime and non organized bands of youths and immigrants is a central topic. While juvenile delinquency here is largely an individual phenomenon there are urban bands which, if not well structured, are active in many urban areas. In some cases, these bands have a political rather than criminal ideology (the neo-

anarchist squatter movement or the Nazi skins) and yet operate without formal organizational structures.

These loosely knit groups have their origins in the seventies, and like other political groups of the period (the Red Brigades and Neofascists), tend toward extremist ideologies and even acts of terrorism. Yet most individual members of these bands do not have a history of criminal behavior. Unlike their more violent predecessors, the gangs of today limit their activity to a most occupying abandoned public houses or staging general demonstrations against the government and public figures. During the seventies criminal groups as Red Brigades or Neofascist movements employed terror, by attacking the symbols of the state, i.e., blowing up governmental buildings, sabotaging transportation systems, and assassinating political leaders: terror was directed against selected governmental agents and administrators. The use of crime was perceived as the only means available to create a better society, correct perceived injustices, and change the nature of society. Indeed, these groups did not, and still don't, define their behavior as criminal.

Instead, there are bands of youths directly implied with criminal activities. These bands do not share a political ideology, nor an organized structure. Nevertheless, they are constantly in touch with major criminal organizations, especially in southern regions of the country.

In the South, levels of criminality are higher than in the rest of the country. There are 3.8 homicides for every 100.000 people in southern Italy, three times than the mean national rate of 1.3 (Traverso and Ciappi, 1998; the Authors also show that in southern regions the main homicidal pattern is organized murder rather than random killings). The same holds for robberies, property crimes and extortions. Southern Italy is also characterized by the strong presence of criminal organizations: The *Mafia* in Sicily, The *Camorra* in Campania, *'Ndrangheta* in Calabria, and *Sacra Corona Unita* in Puglia are all part of the fabric of life.

There is extensive literature on the various criminal organizations in Italy, and the research is specialized further according to the type of criminal activity (drug trafficking, smuggling, prostitution and so forth). The Italian literature is abundant (see Arlacchi, 1986, Gambetta, 1993). In addition there are numerous international studies on the fight against organized crime and techniques of law enforcement (see in the most recent literature, Brodeur, 1997; Abadinsky, 1990; Albanese, 1995; Hagan, 1983).

Differences in these criminal organizations are related to their internal structures. Mafia, for example, has a *pyramidal* structure (Falcone e Padovani, 1993; Gambetta, 1993); Camorra, instead, has an *horizontal* structure. Within Mafia organization, the leaders at the top of the structure have an absolute power of decision and can impose their will on lower-level 'mafiosi' (Bocca, 1993). We can combat the Mafia by prosecuting individuals at the top of the organization, forcing them to collaborate with criminal justice agencies and assuring them and their relatives adequate protection against acts of revenge (Arlacchi, 1986). A different approach is required when combatting the Camorra, which unlike the Mafia, is merely a wide association of bands in different territorial areas. The resiliency of this horizontal structure was felt when, during the eighties, the efforts by one of Camorra's most influential bosses (Mr. Raffaele Cutolo) to vertically organize the divergent bands led to a significant number of internal homicides. The goal of this work, then, is to evaluate the dominant theoretical patterns of relationships between criminal organizations and juvenile bands.

## **A global overview of crime in Italy**

Organized crime conducts illegal activities over portions of the territory in at least three regions: Sicilia (Mafia), Calabria (N'drangheta) and Campania (Camorra). Although each organization has a different history, structure and modus operandi, their main illegal activities (which often involve violent crime) are similar, ranging from extortion and drug trafficking to corruption. (Art. 416 of the Penal Code defines these activities in detail. For example, criminal association of the mafioso type providing severe penalties of up to 15 years in prison for involvement in the association alone. The law also has special prosecuting and sentencing provisions for this type of crime, which includes kidnapping and drug offenses. In prosecuting these cases, some evidence obtained from outside sources may be admitted, including evidence gathered during the trial or in the pre-trial investigation stage. The pre-trial investigation stage and pre-trial incarceration can extend past the limits normally



provided by the law. Convicted defendants of this crime also are allowed less privileges than other convicted criminals. However, the accused is entitled to a penalty reduction and other privileges if he or she decides to cooperate with the justice system by producing evidence that can be used to effectively fight organized crime.) The Penal Code defines these activities in detail and provides for a 15 year maximum prison sentence for such crimes.

A specific form of rural criminality can be found in the central-eastern mountainous area of inner Sardinia, which has a high rate of violent crime that includes homicide, assault, bombing, rustling and ransom kidnapping.

More recently, the crime rate in Italy was medium compared to other industrialized countries. According to the United Nations Seventh Annual Survey on Crime, crime recorded in police statistics shows the crime rate for the combined total of all Index crimes in Italy to be 2913.32 per 100,000 inhabitants in 2000 (noting that burglary was not reported by Italy). This compares with 1951.92 for Japan (country with a low crime rate) and 4123.97 for USA (country with high crime rate). For purpose of comparison, data were drawn for the year 2000 for the seven offenses used to compute the United States FBI's index of crime. Index offenses include murder, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. For intentional homicides, the rate in year 2000 was 1.29 for Italy, 0.50 for Japan, and 5.51 for USA. For major assaults, the rate was 50.38 for Italy, compared with 34.04 for Japan, and 323.62 for USA. (Note these data for Japan and Italy are for total recorded assaults, since Japan and Italy did not report a figure for major assaults.) For rapes, the rate was 4.05 for Italy, 1.78 for Japan, and 32.05 for USA. For robberies, the rate was 65.38 for Italy, 4.07 for Japan, and 144.92 for USA. For automobile theft, the rate was 422.69 for Italy, 243.81 for Japan, and 414.17 for USA. The rate of burglaries for 2000 was not reported for Italy. The rate for thefts was 2369.53 for Italy, compared with 1434.27 for Japan and 2475.27 for USA.

## **Juvenile delinquency and Organized crime in Italy.**

Many scholars today agree with the definition of criminal organizations as illegal societies characterized by three basic elements: a capital, the systematic use of violence and the fight against institutional controllers as police and magistrates (Dwight-Smith, 1980). The factors that give an 'organized' structure to a series of offences are: 1) continuity over time of a series of unlawful acts; 2) interrelation of the offences, revealing a specific pattern; 3) the authors of the offences are a group of people who share the same objectives; 4) violence and intimidation are used to obtain unlawful gains. (Brodeur, 1997; Beare, 1996)

In Italy, criminal organizations as the Mafia, or the Camorra, have been studied taking into account characteristics and dynamics of basic units of such organizations, known as "famiglie". Many "famiglie" are the connections between the largest criminal organization and the lower-level forms of urban criminality, that can be defined as "gangs".

Arlacchi (1990) distinguishes two groups: juvenile bands, characterized by their temporary location and by their social disorganization, and gangs composed of professional adults operating in metropolitan areas in a more organized way.

One of the most powerful criminal agencies in Italy, the D.I.A (*Direzione Investigativa Antimafia*) has recently pointed out the problem of the incorporation of juvenile delinquents into the structure of bigger criminal organizations, such as Mafia (DIA Report, 1997). This fact reveals dramatically how juvenile delinquents are becoming increasingly competent at using 'adult' criminal techniques.

An explanation of this phenomenon begins with a look at the alternatives available to youth, particularly their present and future job prospects. In Italy there is an overall unemployment rate of about 11,3%, but this value is not geographically homogeneous: in the North and Center is reduced to the value of 7,2%, while in the South it jumps to 20%. A further division of the statistics shows that more than 50% of juveniles in the South are unemployed. This situation is compounded by a high school drop-out rate. More than just statistics, these are risk factors for criminal activities, and the beneficiaries are criminal organizations, which have a cheap and available work force.

A typical case is that of a *baby-camorrista*, a boy who had been recruited by local bosses to control a particular urban area and to collect the proceeds of drug trafficking. He was paid with

various gifts (motorcycle, walkman, etc..) and if did well, the boy was promised that at age seventeen, he would receive a monthly 'salary' of 150 Euros (about 200 \$US) for drug dealing and weapons concealment. This baby-camorrista told the prosecutors that he felt protected inside a major organization and furthermore that it gave him a sense of belonging and identity.

Another phenomenon linked to the use of juvenile gangs by criminal organizations is *immigration*. Immigration in Italy can be historically divided into two main historical periods: 1) from the end of the Second World War to the breakup of the Soviet Union and 2) from then to now. In the first period immigrants, especially people from North Africa and East Easia, integrated well in the culture and in the labour market, and over time there has been no significant increase in rates of criminality among them. In the second period Italy became –because of its geographic location – the preferred destination of migrants from the countries of the former Soviet Union. In Europe, southern Italy is confirmed as the geographic area with the highest presence of illegal immigrants. This is probably due to the difficulty police have in controlling that area, and also to the ease with wich illegal immigrants can reach the mainland because of the long coastlines. These new immigrants do not have a greater propensity for criminal activity than italians, but surely some social facts (their not perfect integration in the labor market, their statute of non registered people, and so forth) can lead to a greater exposure to involvement in crime (Criminalpol, 1994). The relationship immigrants have to criminality is made worse by the marginalized conditions in which many of them live.

## **A Theoretical Pattern of relations between organized crime and juvenile gangs.**

The relations between criminal organizations and juvenile gangs can be reduced to three ideal types: 1) incorporation; 2) concession (or franchising); 3) contracts (Arlacchi, 1988).

### *1) Incorporation.*

The first ideal type occurs when both the demand for illegally produced or trafficked goods and the potentially available criminal work force are in expansion, both within a more general institutional context characterized by crisis of law enforcement agencies. In this way, criminal organizations will tend to build up strategies of incorporation of juvenile gangs, as happened in Sicily when Mafia incorporated many juvenile gangs and urban gangsters into its ranks. This phenomenon requires *a)* a large and healthy criminal organization, *b)* the impermeability of such organization to police investigations, *c)* a large and available criminal work offer coupled with demand for criminal goods and services.

Usually this kind of incorporation occurs when there is a need to employ 'amateur' criminals for activities as organized homicides, robberies and drug dealing. This form of recruitment takes place in a highly organized economic and criminal framework. This theoretical model is useful in evaluating criminal association between bands in southern Italy, where criminal organizations are deeply rooted culturally, socially and economically. In areas where criminal organizations are absent, incorporation will be substituted by the formation of mega criminal organization, which absorbe juvenile bans and appears similar to the Mafia in that its members employ violence and have a policy of territorial expansion. This territory is expanded trough involvement in black markets as racketeering, extortion, contraband, pornography, dope, gambling and so forth. This form of recruitment operates in a booming economic and criminal framework, as happened in the Italian region of Campania and in some areas of North Italy.

### *2) Concession (Franchising).*

This situation occurs within a context where the demand for illegal goods and services is greater than the criminal work force and where the activity of law enforcement agencies is increasing (more efficient crime policies, more law enforcement agencies, more sophisticated methods of investigation, etc.).

In this context, major criminal organizations will delegate to juvenile bands and urban gangs a series of minor criminal activities (robberies, larcenies, petty extorsions and street drug dealing). Other, more economically rewarding activities such as international drug business, major extorsions and corruption will remain in the hands of the 'Famiglie'. The large criminal organization will give gangs protection and the benefit of the larger organization's ability to manipulate agencies of formal

control. In return, juvenile gangs are obliged to pay some of their criminal profits to the organization, and to comply with the larger organization's decisions regarding activities and the 'promotion' of gang members to higher ranks in the structure. In this model, major organizations have the absolute power to regulate the activities of minor organizations. For example, the former can use violence against the latter when the criminal activities of the gangs go beyond the limits authorized by the major organizations. This model occurs mainly in North Italian regions, where traditional criminal organizations like Mafia or Camorra are absent or, more specifically, do not have their 'headquarters' *in loco*.

### 3) *Contracts*.

The system of incorporation can be used in contexts where major criminal organizations operating *in loco*, that is, in areas where Mafia or Camorra have their principal domain. This system functions most effectively in areas where there is a rising demand among the population for criminally produced or trafficked goods, and therefore gangs become particularly useful to the larger organization. This relationship changes, however, in areas where there is a higher level of social integration and consequently a lower demand for such goods and services (This occurs in 'non traditional areas' such as Tuscany in Central Italy). In this context the relations between criminal organizations and urban gangs will take on a contractual dimension in which urban gangs have a central position and more autonomy from major criminal organizations.

Having more 'power' relative to large organizations than their counterparts operating under concessionary conditions, urban gangs will tend to diversify their contracts with the larger criminal organizations in order to avoid a strict dependence from them. As in the concessionary type agreements, in a contractual arrangement the major criminal organizations will give minor organization protection against criminal law agencies, and will provide the necessary criminal services such as the 'front operations' to cover up the profits of illegal transactions (money laundering, cyberlaundering, etc..).

## Foreign minors and Deviance

The presence of "foreign unaccompanied minors", that is, minors deprived of the guardianship by a family or other adults, constitutes one of the most critical aspects of the current international migrations. When analysing the foreign minors present in Italy, it is essential to consider foreign unaccompanied minors, since they represent one of the most numerically and socially significant sections of this population. The exponential growth of the phenomenon of these unaccompanied minors is a problem that, in recent years, has come to concern all the European Union member states; but, in a short period of time, Italy has been affected by this phenomenon with particular characteristics and dimensions, in such a way that Italy has become an emblematic case and required the adoption of more specific and adequate approaches to intervention.

There is a great variation among the age groups of these minors and the countries from whence they arrive: not only do they come from territories that are geographically nearby, that is, from the Mediterranean area, but by now, they also come from a wider variety of places. Even more heterogeneous are the motivations that induce them, or impose them, to attempt the migratory experience: life-threatening situations; forced territorial displacement; precarious economic and social conditions or even actual exploitation; ill-treatment in the family-setting; the loss of adult relatives; a spirit of adventure that pushes them toward a kind of "exploration" of new contexts; a plan developed together with their parents, as is the case with "anchor children" (minors who emigrate with their parents consent, hoping to act as an "anchor" for the future insertion of the entire family unit in the country of arrival); incitement or coercion by criminal organisations (by now, human trafficking and smuggling due to requests from the criminal market of the countries of arrival constitutes a sizeable part of the illegal migration flows of minors). The definition established by Italian law – D.P.C.M. 535/99 – substantially referring to the definition provided by the Resolution of the European Union's Council on 26 June 1997, identifies the foreign unaccompanied minor as "a minor without Italian citizenship or a citizen from other European Union member states that, who has not presented a request for asylum, finds him/herself in the State territory for any reason whatsoever without assistance or representation by parents or other adults legally responsible for the minor according to

the laws in use in the Italian legal system". Each foreign unaccompanied minor must be brought to the attention of the Committee for Foreign Minors – instituted by article 33 of the Decree Law, 25 July 1998 n. 286 – that then decides whether the minor should be repatriated or whether he/she should remain in Italy. While awaiting the outcome of this decision, the minor receives a permit to stay for "minor age", which can not be converted to a work or study permit once the minor reaches adulthood at the age of 18. Moreover, all the laws regarding the rights of minors are applied to the foreign unaccompanied minors (the right to protection, to education, to health assistance, etc.).

The Committee for Foreign Minors, in carrying out a unified policy of intervention, in cooperation with the various authorities competent in this area, considers of utmost importance all actions related to understanding: the phenomenon of foreign minors in order to verify its numerical make-up; the methods of managing the phenomenon; and the problems that emerge from it. The following data was the product of the committee's analysis of the presence of unaccompanied minors in the year 2003/2004:

- 1) The number of unaccompanied minors reported to the Committee has increased from 7,440 in June 2003 to 7,841 in June 2004; an increase of 401 units.
- 2) Romania, Morocco and Albania are the countries from which the greatest number of unaccompanied minors arrive (representing about 70% of all reported unaccompanied minors). In particular, the Romanians represent the citizenship that is numerically most consistent, passing from 1,462 reported in June 2003 to 3,041 in June 2004; an increase of 108%. The number of Moroccan unaccompanied minors reported remained fairly stable (1,602 in June 2003, 1,639 in 2004), while the number of Albanians decreased by 729 units, passing from 2,122 to 1,393, representing a 34.3% decrease.
- 3) As far as the distribution by age, the unaccompanied minors reported continue to be concentrated above all in the group between 16 and 17 years old and above all are male rather than female. Still, compared to June 2003, an increase of the minors from 16 to 17 years old increase from 3,859 (54.8% of the total of those reported) to 5,137 (65.5% of the total of those reported). In addition, the portion of unaccompanied minors who are under 14 years old remains considerable in size. The analysis carried out makes apparent that the presence of foreign minors and minors of foreign origin in Italy is experiencing a period of rapid growth. Looking more specifically at the whole of foreign minors to which we are referring, as we have observed that this consists of a variety of legal profiles and personal histories. The category includes babies and children who emigrated to follow their family members or to be reunited with them, as well as children born to immigrant citizens in the country of arrival. In addition to these, there are the children and adolescents who arrive "unaccompanied".

Just as the make-up of the category of foreign minors is diverse, the opportunities and difficulties of the path to integration for these minors are equally varied. The literature on the subject explains that the second generations of immigrants are more exposed to particular problems, which can take the form of slow development in school, personal or family hardship, or of the contiguity to the risk of deviance. Therefore, the condition and the needs represented by foreign minors make them a category that is easily exposed to a series of risks and problems which affect the minors psychologically (particularly in terms of the development of an identity), culturally (leading the minor to feel suspended or conflicted between two worlds that act as benchmarks), socially (the integration in the host context and exposure to forms of exploitation) and finally, in terms of their legal identity (the recognition and conferment of rights). In fact, migration represents an experience that interrupts the contiguity of the sense of belonging to a community and to a place (geographical and cultural). In addition, since the first and second socialization of immigrant minors are verified in different contexts, her/his cultural background, while surely representing a richness to be valued, also constitutes an element of disadvantage, or rather, a specific risk factor. When, to this group of factors, one adds the absence of a stable or adequate nuclear family of reference (as is the case with unaccompanied minors or minors far from the nuclear family but received by networks of relatives, or in the case of minors with family problems) the complexity of the conditions – in terms of material and psycho-affective precariousness and vulnerability – are amplified, leading to disintegration of the social and family ties, to conditions of poverty and marginalisation, to elevated possibility of involvement in criminal phenomena and/or insertion in circuits connected with labour and/or sexual exploitation. Difficulty in integration, inability or impossibility to realise ones goals, unsatisfying desires and roles, negated

dignity, for someone who is both a minor and a foreigner, can cause identity crises, crises in social adaptation and integration of the foreign adolescent within an unfamiliar socio-cultural context. For the immigrant adolescent, who encounters obstacles to the realization of her/his objectives and who does not find satisfactory role models with whom she/he can identify, certain processes of affirmation in opposition to those in which they find themselves can be traced.

An initial reflection may be summed up by the following: “What are the risk factors that lead foreign minors or minors of foreign origin towards deviance?” There are two fundamental hypotheses: the first connects deviance to the condition of being foreign; the second to the specific ethnicity or nationality. Existing studies have still not devised adequate elements for evaluating which of the two variables has greater importance. Looking at the first hypothesis, certainly the condition of being a foreigner is a disadvantageous factor. The “foreigner”, as a subject that does not fit into the autochthonous population, implicitly tends to slide into the category of “deviants” in the measure in which he/she is placed in a regime of particular control according to his/her status. Or rather: he/she is intrinsically suspected by the judicial authorities. Such peculiarity, signifying limitations of liberty of movement and more frequent controls by the police (it is enough to think about the obligations conditioned by the norms of the residency permit) increases the risk of breaking the law, and therefore of being involved in the cycle of deviance. In confirmation of this, many authors underline how in statistics and data referring to the deviance of foreigners there is a significant amount of crimes committed at the entrance and within the context of illegal residence in a country. These and other factors are basically used to give evidence of the fact that the foreigner tends more easily to enter into contact with the mechanisms of the judicial system (understood as a system of social control) precisely because the opposition between citizen/foreigner has been historically constructed in order to exalt the solidarity between the state and its citizens in opposition to the “enemy” foreigner.

In arriving at the second hypothesis, it has likewise been true that, beyond the condition of the foreigner *tout court*, minors are predisposed to deviance because of belonging to certain immigrant minorities (or those of immigrant origin) in which what is undoubtedly questionable both a mass involvement in illegal activity as well as the development of true criminal phenomena on an ethnic and/or national basis.

What has therefore emerged is a framework characterized by deviant profiles that may vary according to territorial specificity and that confirm the need for readings that are articulated and anchored to the multiplicity of factors in which the phenomenon takes root. The over-lapping of the two realities (the most represented nationalities in terms of their contact with the juvenile justice system and the pervasiveness of unaccompanied foreign minors) makes it possible to delineate three main typologies of deviant paths:

- Unaccompanied minors of the age 15-17 that live in conditions of extreme marginalization, without adults serving as reference points and who are recently immigrated, primarily from Eastern European countries (for example, the extremely young Romanians);
- Unaccompanied minors, with extended family present in the state and inserted in a kind of deviant ethnic network (for example Moroccan youth);
- Nomadic minors whose family are present in the state seem to go towards a progressive redefinition of the normal life-styles and traditional expressions of deviance (culturally determined within a group, such as petty theft and pick-pocketing).

Variables connected to the modes in which people migrate have instead become more relevant. In this regard, the migration process can be interpreted from three different perspectives. The first regards the migratory chain in which the minor inserts her/himself: This is perhaps the most important aspect, since migratory chains that are more contiguous to deviance do, in fact, exist. The second perspective puts the accent on the conditions of the minor’s departure. In this case, the minor departs from contexts characterized by hardship; a factor which exposes the minor to, in an equally significant manner, the risk of falling into illegality. Here again a migratory chain contiguous with deviance is created, but unlike the first example, the fundamental element appears to reside in the individuality of the context of the country of origin. The third perspective focuses on the condition of illegality upon entrance, in other words, the presence of channels geared towards easing the entrance of minors in violation of the national norms of the host country (as with the emblematic case of immigrant minors from Albania). In this sense, the typologies identified come to represent diverse conditions of risk that take form within the dynamics of migratory phenomena.

The case of nomadic teens involved in the migratory phenomenon creates a situation that does not appear to be connected to the way in which minors participate in immigration, but very connected to one aspect in particular: the customs and habits of a particular group. In the same way, the condition of unaccompanied Romanian young people seems to be in the first place, an expression of another particularity: the critical moment that the country of origin is passing through that leads to a higher degree of social problems. For these young people, poverty is combined with a strong element of disconnection from their country of origin (for example: of family ties, weakened by social cohesion). Even in this case, there is not a direct connection with a migratory cycle structured in a stable way according to pathological modes (in other words, contiguous with deviance). What instead differs is the condition of Moroccan adolescents, in which it is possible to ascertain both the context of extreme poverty and marginalization (rural areas of countries of origin) as well as a migratory path that follows courses that are structurally orientated towards marginalization, which in the end guarantee few resources in the successive phase of integration. These minors, who often leave and travel unaccompanied, have relatives in the host countries. The path of illegality is a perceived tool for modifying situations of neediness and extreme poverty. It already had its beginning with irregular immigration (in and of itself a path of illegality) and sometimes continues with drug-dealing and theft. As is known, such a “choice” is then favoured by the existence of a kind of deviant network within a group of compatriots present in Italy, providing it with support.

Deviance amongst Moroccan minors may therefore be reduced to risk factors and elements of intrinsic marginalization to the migratory process of which the said national group is protagonist. Certainly being Moroccan in and of itself does not necessarily lead to deviance. But the pathological effect of the migratory process is confirmed in certain tendencies of the second generation, which have emerged where this national community found forms of consolidation and stability. As with the case of Turin, in which the structures of the Juvenile Justice system meet adolescents that had been born in Italy, who appear to be exposed to a high risk of deviance because of anger over poor integration.

In synthesis, it can be said that the place of origin and the condition of weak subjects influence the predisposition towards deviance, but they are above all the characteristics of the migratory process that determine the path towards a path of integration and construction of deviant paths. In this light, the risk of deviance is strictly connected to the level of “health” and “ethnic network. The section of foreign minors that encounters the criminal circuit – the part that is being examined here – represents an environment that is particularly delicate due to the multiplicity of the connections that it entails. In reality, it is a matter of taking into consideration both each minor’s need to be protected and safeguarded and the general need to prevent criminality, promote security, and protect people from exploitation by criminal organisations. Thus, to read the situation of foreign minors well, all the aspects of the situation must be compared to the same aspects among Italian children.

The study of the current available data, from 2002 as far as minors charged with crimes and from 2003 as far as foreign minors present in the various structures of the Juvenile Justice system, reveals a very complex picture that seems to confirm, in some aspects, the tendency of the previous years<sup>1</sup>.

In short, the picture that emerges from the data relative to 2003 can be characterized by the following aspects:

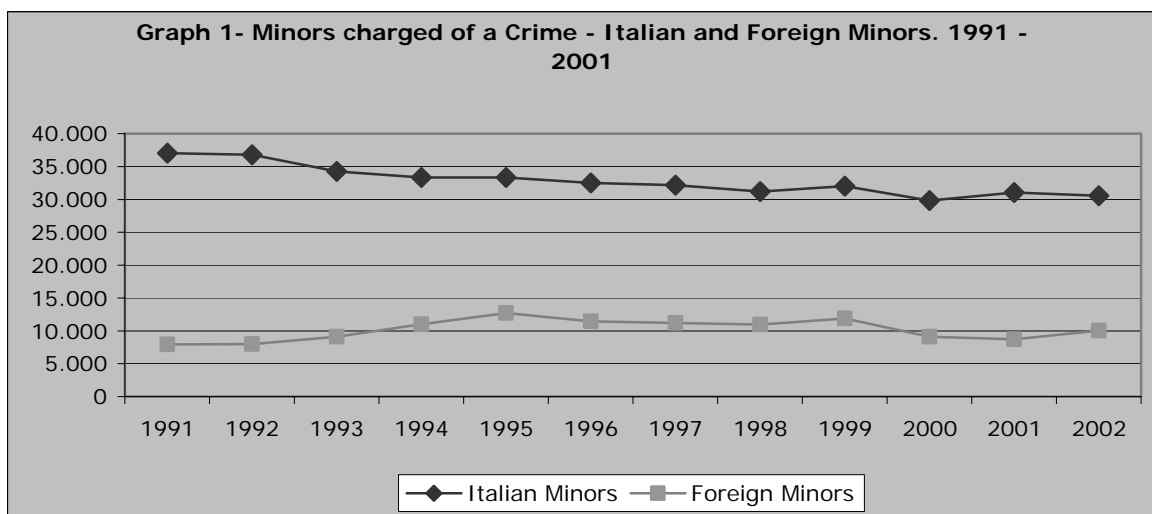
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<sup>1</sup> The data relative to the flows of clients in the Juvenile Justice system’s services, updated in 2002, demonstrated a number of changes. It confirmed a general decrease in the number of entries into the Retention Centres (CPA), as well as a decrease in the number of entries in the Juvenile Penal Institutions (IPM). Within the IPM there is a gradual increase of the size of the foreign component and the girls constitute 9% of all minors detained and are prevalently not Italian. In terms of geographical distribution, it is mostly in northern Italy that there is a prevalence of foreign minors involved in the Juvenile Justice system and these come primarily from the former Yugoslavia, Romania, Albania, and the countries of North Africa. The average age is 17. Contrarily, in the IPM of the southern Italian regions the average age is 18.2 years old and the minors are predominantly Italian. Most clients of the Juvenile Social Service Offices, USSM, (the majority of whom are minors charged with a crime, reported to the Judicial Authorities by the Public Prosecutor’s office and assisted by the Social Services) are Italian. Also here the data regarding foreign and nomadic minors is showing a steady increase. The other data that is increasing is that concerning the average daily number of minors in the communities, due to the use of these by the Juvenile Courts as a form of pre-trial retention of minors. In these cases, the minors are mostly Italian (57% in 2002), but the percentage of foreign and nomadic minors is also growing.

- a) Regarding foreign minors charged of crimes, in 2001 (see graph. 1), the Italian minors charged with a crime represented 0.32% of Italian minor residents in Italy while the foreign minors charged of a crime represented 3.0% of foreign minor residents in Italy.

It is also interesting to note that the component of under 14 year olds in the population of foreign minors charged of a crime is proportionally larger than the same component in the population of Italian minors charged of a crime. In addition, the percentage of foreign minors under 14 years old out of the total of the foreign minors charged with a crime went from an average of about 50% to about 25% in ten years, while the percentage of Italians maintained an average of 13.37% with much less variation over the years.

There is a noteworthy rise in numbers of foreign minors charged with a crime from 1991 to 1995 and the steady decrease in numbers beginning in 2000. In addition, from 1997 until 2001 the percentage of foreign minors charged with a crime out of the foreign-minor-resident population shows a steady decrease from 11,192 minors charged with a crime representing 8.9% in 1997 to 8,720 representing 3.0% in 2001.



Source: Data from the Ministry of Justice and ISTAT, processed by IPRS

- b) In terms of the geographical areas and countries of origin of the minors charged of a crime: there is a fairly constant decrease in the number of minors from non-EEC European countries (from 9,441 in 1996 to 6,594 in 2002). Nonetheless, this geographical area continues to represent the highest number of minors charged of a crime compared to the other geographical areas of origin. In fact, some countries that express a high rate of deviance in Italy continue to grow, such as Romania (from 1.6% to 18.5%) and Albania (from 9.9% to 13.1%) while Yugoslavia decreases (from 70% to 31.1%) yet still represents the number 1 country in terms of presences in each of the years represented in the table, compared to the other countries of origin.

Instead Africa, Asia and the Americas (which, in Italy, are largely represented by people from South America) are all increasing in terms of presences of foreign minors charged of a crime. In 1996 minors from African countries represented 12.6% of all foreign minors charged with a crime (that is, 1,443 minors), while in 2002 they represented 24.6% (or 2,467 minors). As we see in table 6, out of the top six countries represented by foreign minors charged with a crime, three countries are African, with Morocco demonstrating the highest in terms of presences.

Minors from Asia and the Americas represent smaller percentages but they are still increasing: minors from Asia increased from 1.1% in 1996 to 2.7% in 2002 while those from the Americas went from 1% to 3.5% during the same period.

- c) In terms of the typologies of crimes minors are charged of, as we will see subsequently when analyzing the presences in the IPM, the data relative to 2002 highlight that the Italian minors as much as the foreign minors are prevalently charged of property crimes, with the difference that a large part of the foreign minors charged of property crimes are under 14 years old (about

34% of the total all foreign minors charged of property crime were under 14 years old in 2002). Instead, the percentage of Italian minors who were charged of personal crimes is higher than the same percentage of foreign minors (in 2002, Italian minors charged of personal crimes was 28% of all Italian minors charged of a crime while the foreign minors charged of personal crimes were only 9% of all foreign minors charged with crimes).

- d) Regarding foreign minors charged of crimes, whose cases have been opened, there is a notable prevalence of the non-EEC citizens from Europe, followed by minors from Africa. Also important is the significant increase, even if less consistent in absolute values, of the Asian component, both in the total and regarding minors.
- e) Still looking at foreign minors charged of a crime whose cases have been opened: in this category almost exclusively citizens from countries of Maghreb, Sub-Saharan Western Africa and Eastern and Balkan Europe appear, with a noteworthy increase of the Romanian presence. The fact that Morocco, Albania and Romania appear among the principal countries of origin of minors charged of a crime whose cases have been opened, but the number of minors from the former-Yugoslavia decreases between 2000 and 2002 is due to increase in the number of minors from the former-Yugoslavia who are under 14 years old and therefore not of the age of criminal responsibility.
- f) One aspect which it is useful to reflect upon is that of foreign minors' involvement in crimes connected to the laws on illegal substances. In the first semester of 2003, 490 drug-using subjects came into contact with the Juvenile Justice System's services, the majority having Italian citizenship (71%). Compared to the same period of the previous year, the numbers had decreased by 13%. Instead, the analysis of the geographical origin of the foreign minors involved in these kinds of crimes demonstrates a predominance of North-Africans, in particular Moroccans (10%), followed by minors from Eastern Europe (about 6%). These two groups constitute the majority of the foreign clients who pass through the penal circuit of the Juvenile Justice System. As far as the crimes committed, that of possession and dealing of illegal drugs turned out to be the most frequent (50%). Cannabis remains the substance most frequently consumed since it was consumed in 81% of the cases, followed by opiates and cocaine (both at 7%).

In addition, in terms of percentages, there is a notable increase in the consumption of alcohol and cocaine by foreigners (respectively 4% and 8% of the total) compared to Italians (3% and 7%). With reference to the sex and age groups, the data echo the characteristics of Italian juvenile delinquency: therefore, there is a prevalence of male subjects between 14 and 17 years of age (83% of the total), a quota that grows to 89% for foreigners, and the category of over-18 years old is slightly decreasing. There is also an increase in the consumption of opiates, passing from one age category to the one above it; on the other hand, the consumption of cannabis and cocaine remains very high among eighteen year-olds. 29% of the total consume an illegal drug daily, confirming the growing tendency of this category, already noticed the previous year. Occasional consumers are in net decrease (32%, or rather 4 percentage points less than the last period) while the data on weekly use is increasing (39% compared to 37%).

- g) Regarding the 1,423 minors placed in communities, 770 were Italian and 539 were foreign. This measure was applied predominantly as a precautionary measure (it is numerically second to the suspension of the trial and probation of the minor). The geographical breakdown of the data reveals that in Northern and Central Italy there is a predominance of foreign minors placed in the communities (precisely: in central Italy 54 Italians and 182 foreigners; in the North, 182 Italians and 322 foreigners) while in Southern Italy and the Italian Islands the report appears to be turned around: 534 Italians placed in communities, compared to 35 foreigners.
- h) The analyses of the flows of clients in the IPM show that, of the 1,581 entries in the year 2003, 686 were Italian minors and 895 were foreign minors. Thus the majority of this population is composed of foreign youth who are new entries, arriving from the CPA, where they were held during an arrest or investigative stop. Regarding the data on the female population shows even more decisively the prevalence of the foreign component in the IPM: 27 Italian girls entered and 229 foreign girls. An analysis of the geographical distribution



reveals once again the prevalence of foreign minors in the Northern and Central-Italian Institutions and of Italian minors in the Southern and insular Italian Institutions. In addition, the number of minors actually present in the IPM at the end of the year 2003 amounted to 442 individuals, of which about 54.5% were from non-EEC countries, the majority being citizens of non-EEC European countries, followed by those from Africa. The two countries with the largest presence are Romania and Morocco, both with 60 minors in the IPM as of 31 December 2003 (see Table 2). It is also important to note that the non-Italian females in the IPM are all from non-EEC European countries and they represent the majority of the females in the IPM (out of 54 females in the IPM, 43 are from non-EEC European countries).

**Table 2 - Number of presences in the Penal Institutions for Minors (IPM) as of 31 December, 2003, divided by gender and country of origin**

Country	GENDER		TOTAL
	Male	Female	
<b>European Union</b>	<b>190</b>	<b>11</b>	<b>201</b>
Italy	190	11	201
<b>Non-EEC European Countries</b>	<b>100</b>	<b>43</b>	<b>143</b>
Albania	22	-	22
Bosnia-Herzegovina	1	2	3
Bulgaria	1	-	1
Croatia	-	12	12
Serbia-Montenegro	25	16	41
Macedonia	2	1	3
Moldova	1	-	1
Romania	48	12	60
<b>Africa</b>	<b>76</b>	<b>-</b>	<b>76</b>
Algeria	10	-	10
Morocco	60	-	60
Tunisia	6	-	6
<b>the Americas</b>	<b>9</b>	<b>-</b>	<b>9</b>
Chile	2	-	2
Colombia	2	-	2
Ecuador	3	-	3
Dominican Republic	2	-	2
<b>Asia</b>	<b>13</b>	<b>-</b>	<b>13</b>
People's Rep. of China	12	-	12
Palestine	1	-	1
<b>Total</b>	<b>388</b>	<b>54</b>	<b>442</b>

*Source: from Ministry of Justice, Department of Juvenile Justice, Statistics and Research Services, processed by IPRS*

### Example #1: the involvement of morocco minors in criminal organizations

In the analysis of the risk factors that predispose the foreign minors to the deviant careers, the condition of foreigner certainly, constitutes a factor of disadvantage.

The “foreigner”, as a subject not homologous to the autochthonous population tend to slip in the category of the “deviant”, in the measure in which is submitted to a regime of particular control in reason for his/her status. Or rather: it is intrinsically “suspect” to the judicial authority. Such particularity, makes more frequent the risk to break the law, therefore, to have involved in the circuit of the deviance<sup>2</sup>. In the case of the under age foreigner, it could be objected that the most greater part

<sup>2</sup> To confirmation of this, many authors as Marzio Barbagli, underline as in the statistics and in the data that refer to the deviance of the foreigners there is a remarkable quota of crimes jointed to the entry and the illegal permanence in the Country: “The analysis of the differences among the national groups not only has a certain importance because it points out that, in every country, that of the immigrants is a great deal a layer of the population heterogeneous respect to the deviant behaviors, but also because it can furnish profits explanatory

of the states European tend by now to guarantee a title of stay (and the relative degree of protection) independently from the formalities of entry and permanence of the young person in every national territory. Nevertheless it is evident that the extension of this level of guardianship to the foreign young persons doesn't succeed in fully resolving the conflict intrinsic to the condition of "not citizen", meaning as a "subject that doesn't fully belong" to the community of landing. In fact, such conflict not only resurfaces to the attainment of the legal age, but above all, in all the cases in which the guaranteed guardianship to the "irregular" young person cannot obviously include the family. Nevertheless, beyond the condition of foreign tout court, as it was observed, the affiliation to some immigrated minorities play a decisive role to predispose the minor to the deviant career, in which a strong involvement in illegitimate activity both the development of criminal phenomenologies on ethnic and/or national basis is undoubtedly verifiable.

The sociological analysis on the Moroccan juvenile immigration has allowed to put in evidence as the organization on ethnic basis of the Moroccan minors is more accented in comparison to that of other foreign minors amply represented in our Country. This ethnic net seems more involved processes connected to the irregularity both for the elevated number of clandestine entries, both for the tall presence of Moroccan adults in the Italian penal circuit<sup>3</sup>. Moreover, the fact that the Moroccan young persons, on the basis than the available data on the crime juvenile foreigner in Italy have allowed to point out, results particularly implicated in crimes joint to the drugs, would seem to confirm their implication in an organized and articulated system of management of the crime. The investigation for typology of committed crime is in fact very interesting above all if considered to the light of the reflections that can spring from it about a different involvement of the foreign young persons in the deviant circuits. The so-called crimes against the patrimony (as theft, extortion or fraud, for instance) can be the result of behaviors and actions that correspond to individual infringements of the rules from subjects marked by the social uneasiness and that, however well structured, remain expression of demands dictated by specific needs. Otherwise, those connected to the use and traffic of drugs imply a rigorous plan and a rationalization of assignments and roles that are codified in activity that instead must have developed from individuals that make part of criminal organizations created to such purpose.

These considerations bring however to the formulation of two different interpretative hypotheses of the approach to the deviant career of the Moroccan young person.

The first. The Moroccan minors are recruited in the context of arrival from criminal organizations that use the unskilled labour of the acquiescent minors. The young persons arrive in the Country destination deprive of knowledges suitable to the satisfaction of the primary needs and they have approached from of the same nationality that they can offer them that they require at that time. The being in an unknown foreign Country, the void of affective references, the fear to be detected, stopped and expelled, determine a condition of extreme brittleness that makes easy the enticement.

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hypothesis. [...] Searches conducted in various countries have shown besides that the national groups that violate less often the penal norms are those less economically and socially disadvantaged... but not always this is true. [...] The analysis of the differences among the national groups in the control of the market of the drug has put on the other hand in light the importance assumed from the crime organized international or from the informal nets of the immigrants that devote to the illegitimate activities. In Switzerland, for instance, this market was been reserve of hunting before of the Turks, then of the Albanian, finally of the nordafricanis and of the Lebanese ones. In Germany the part of the lion in this market was acted, for a long time, by the coming from Senegal and from the Gambia. Weakened theme for the numerous interventions of the police, these groups have left the place to the nordafricanis and the Kurdish ones" [2002, p.33-4].

<sup>3</sup> In the last relationship on the State of the Safety in Italy 2004 :“For wath that concerns to the crime organized of origin Maghrebi, despite the signals of the involvement of some individualities in the traffic of drugs within criminal factions multiethnic active in Italy, the organizational ability of this etnia results subordinate to a necessary associations contiguity foreigners or Italian of greaterimportance. Often the north African, above all Moroccan, legally residents in Italy are organized in associations finalized to the assistance to the fellow countrymen that come in our Country and they offer them one “coverage” for the aiding and abetting of the clandestine immigration usually carried out with the use of articulated vehicles in which the clandestine are hidden for crossing the frontiers.”

The families, distant, receive part of the incomes of these activities but their fears and the desire that his/her children return, not much engraves on the decisions of the same.

The second. That of the Moroccan minors is a migratory project built since the origin, even before the departure, from the ethnic net that make itself “entrepreneur” of a form of deviance in which the young person has involved and in which the connivance of the family and the tendency to delinquere overlap. In this second case, is therefore the criminal organization, formed by inside and external elements to the family group, to detail the various phases of the route of the young person, that it becomes integral and operational part of a structured system that answers with determined rules and in which every position is already predestined<sup>4</sup>. The minors, chosen by the criminal group for their qualities (intelligence, ability, courage, ambition), know in advance what type of activity expects them and are partially aware of the risks that will race. In this case, the characteristics of the migratory trial besides jeopardises the least levels of the minor well-being and to behave a serious loss of guardianship, make more complexes not only the attempts to separate the destiny of the young person from that of the deviant net in which he is inserted, but destructure also the mechanisms that are at the basis of its good interest that corresponds to the re-insertion in the family of origin, that are directly implicated in the route of the illegality.

## Example #2: Italian minors and mafia in South Italy

To know how to recognize what passes in that “conjunction”-teen-agers and mafias- is crucial to intercept and to face the phenomenon’s of Mafia handing down and changing themselves; because that means more than the simple transmission of knowledge and competences for the criminal professions; it means that hands down the Mafia’s vision of the world, of the affections, of the institutions, of the ethic, of the affaire. Then you discover that the first victims of the mafia are really the *minors of the mafias*, called, without appeal, to make team, to make army, to use without their youth to be ready to everything and without the uncertainty of the encumbrance of the emotions, of the fear. Also to these minors, despite the amplexness of the challenge that the mafias have brought and they bring to the order of the democratic liberties, have the duty to offer a convincing educational answer/proposal able to face up together to all that needs of growth to which the mafias don’t know or can only partially answer. There is one “human certainty” that guide the acting and the accompanying of those who are approaching to the histories of this minors: to the neglected needs follow, neglected existences; to the distorted needs follow lived altered; to the violated needs follow violent life.

We try here to advance only some hypotheses:

1. Despite numerous representations and the proximities with the official culture systems, the phenomenon of mafia remains always also characteristic from a certain mystery, a mimetic and changing mystery.
2. The affiliation to the mafia defines a way of: therefore the illegal behaviors of their components confirm coherence, not a deviance, an error, a fail or a crisis.
3. Finally, the affiliation to a mysterious world weakens the traditional tools of the social intervention (agreement in the communication, sharing of horizons of value, activation of relational resources formai and informal...), so much to almost exclusively invest the solutions of containment.

The search:

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<sup>4</sup> On the occasion of the reunion of the 10<sup>a</sup> Committee of the magistrates’ Governing Council on a specific theme like the «Verification of the evolution of organized crime in Milan and relative answers of the State institutions» the President of the Juvenile Court in Milan, dott. Livia Pomodoro, has illustrated the worrying phenomenon, connected to new forms of organized crime, tied up to the migratory tides, of Moroccan minors who are conducted in Italy and privacies of the documents. “There is the founded suspicion that there ia a recruitment of such young people since their Country of origin for the small drug trafficking.” “These are serious facts that show as such minors is a tool in the hands of whom uses them for the own illegitimate traffics. Difficulty is the activity of prevention or recovery of the foreign young persons because everything is complicated from the fact that the support of the families misses; this thing makes the interventions set in to be from the social services insufficient, especially in the comparisons of Moroccan young persons and Tunisian that usually have not much less than 18 years.” Compare, Report on the problems set to the administration of the justice by the organized crime (Proposed to the plenum - fasc. n. 2/99 - rapporteur Iacopino Cavallai)

Approaching to the search in his appearance as a reemergent phenomenon in our urban societies, however marked by a bond of affiliation to contexts and cultures, what can give the measure of this phenomenon and what can we say about that affiliation? Where has the search go to look for the knowledges that it haven't?

The sources have been:

- a) **the picked data** (quantification of the recordings of teen-agers in the registers of the investigated for crimes of affiliation **to the mafia**- 416bis; of the sentences; of the entries and of the takings in load at the Services of the Juvenile Justice)
- b) **the observations and the readings connected to them through the meeting** and the listening of the operators of the Juvenile Justice that have recognized and “built” the phenomenon and the theme of the affiliation, beginning from their special point of observation;
- c) **the representations on the affiliation** that the same minors have repeated and product. This has involved, according the number, the start of an exploration able to pick up “data” useful to quantify the importance of the phenomenon and, according to the histories, the mass in field of useful devices to express or to make to express and to record the meeting with histories connoted from the bond of the affiliation to contexts of mafia.

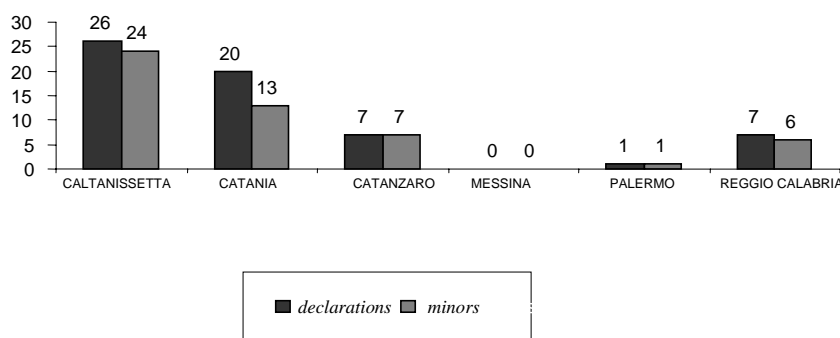
First of all, the available data that has furnished by the examining Magistracy, since, reality through the bond, for definition more recognized -the law- the Court is the first subject that produces attributions about the affiliation to the mafia, according to investigations, inside a defined legislative purview (art. 416bis of the Penal Code, *crime of criminal conspiracy of mafia-style*). To succeed to quantify the number of the procedures started with this charge, at the Proxies of Sicily and Calabria, has allowed us to immediately have a data of the emergency of the phenomenon “uncovered” really beginning from its more evident demonstration: the crime. A second “data” worthy of attention has appeared the number of the young persons that reach the Services of the Juvenile Justice according to the attributed art. 416bis. This data has immediately allowed to clarify how much part of the dimension of the phenomenon “intercepted” by the Court is taken in load from the services of the Juvenile Justice and invested with psico-educational interventions.

This second data has started to furnish not only numerical readings, as methods of recording and anamnesis used by the Services immediately allow to pick up a certain quantity of information around the boys taken in load (age, scolarità, geographical origin, connected crimes...), useful undertake a first “recognition” of the teen-agers and of their personalities. To measure the entity of the phenomenon, however, the only data of the numerosness of the charges and the sentences in base to the art. 416bis, enriched by some other anamnestic data, has appeared too much small, in comparison to the perception that “generally” the operators have (and not only!) of the same phenomenon. It is enough presumable, in fact, that not all the affiliations are transiated in criminal evidences, such to allow the Court to intercept and to recognize the affiliation and sanction its with the correspondent article of crime. In this sense, according to the aim of the search, we have not simply explored the mafia in itself, but, rather, as the operators, in their position of privileged witnesses of the histories of the minors, recognize the affiliation to the mafia (in diachronic and synchronic ways), because it's a trait that characterize the deviant story of some of the minors transiting through the Services of the Juvenile Justice. So, the search direct!y turns to those people who have daily experience of this phenomenon, the operators of the Juvenile Justice that daily work with the minors belonging to..., in the figure of privileged witnesses. The sense of the developed job, as already specified, starts from the definition of the subject, that is the juvenile deviance connoted by the affiliation to the organized crime, inside the services of the Juvenile Justice of Sicily and Calabria. The observed period has gone since July 2002 to January 2003, while the arc of time for the quantitative analysis of the considered phenomenon has been 1990- 2001 (12 years). Thirty operators have participated to the search, among Educators, Social Assistants, Psychologists, to which the quality of the effected job is owed. The

emerged data underline that within the last (2002/2004) period taken in examination the young persons signalled at the power of attorney (art. 416bis) have been n. 61, while the signalings of crime art. 416bis at the Juvenile have been n. 51. The phenomenon, currently, as it will be seen, is in phase of numerical decrease.

Table 1: DECLARATION AT THE POWER OF ATTORNEY (2002 – 04)

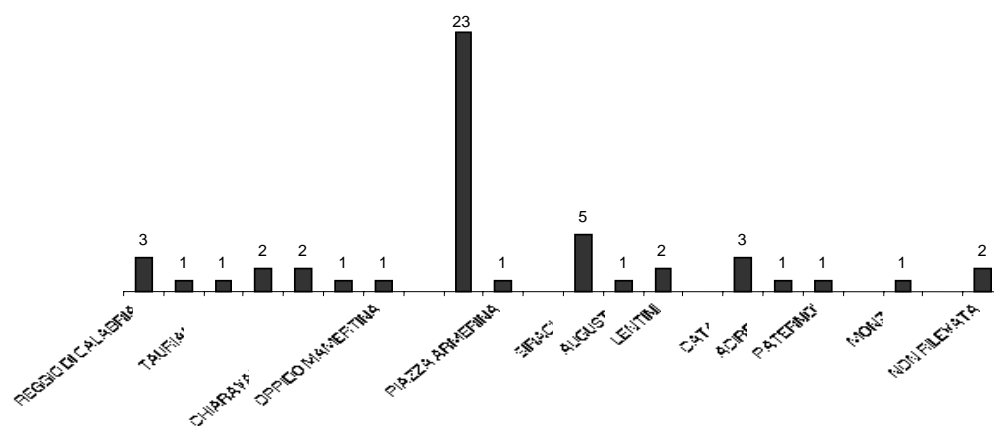
<b>DECLARATIONS</b>		<b>MINORS</b>	
CALTANISSETTA	26	CALTANISSETTA	24
CATANIA	20	CATANIA	13
CATANZARO	7	CATANZARO	7
MESSINA	0	MESSINA	0
PALERMO	1	PALERMO	1
REGGIO CALABRIA	7	REGGIO CALABRIA	6
<b>TOTALE</b>	<b>61</b>	<b>TOTALE</b>	<b>51</b>



The middle age of the signalled boys is attested around the 16/17 years. The territorial distribution of the phenomenon points out irregularity and concentrations that immediately makes evident peak represented by Gela, followed by Catania in Sicily, while in Calabria Reggio Calabria and Vibo Valenzia constitute the more meaningful numerical realities. But it is as many evident that deals with numbers “small” that don't make the invasive trait submerged of a phenomenon that, as already says before, better define itself “alone” effect.

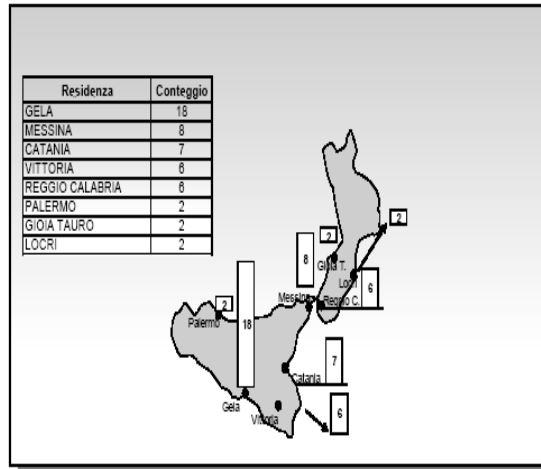
The structure of the search immediately distinguishes two “subjects”: the accused according to the art. 416bis of the Penal Code and relative taking in load of them from the Services of the Juvenile Justice; the minors that are recognized belonging to the contexts of mafia. The phenomenon, so, can be recognized both from the emergency of the criminal actions, both directly in the meeting with the histories of the minors. The space of time to which the search references is of twelve years ago, from 1990 to 2001. Besides the respect of an “interesting” space for the numbers that can furnish, the choice has intentionally made to immediately coincide the beginning of the period with that following to go into effect of the new Code of Juvenile Penal Procedure.

**NUMBER OF DECLARATIONS FOR MUNICIPALITY**



<b>CALABRIA</b>	REGGIO DI CALABRIA		3
	LOCRI		1
	TAURIANOVA		1
	CROTONE		2
	LAMEZIA TERME		2
	CHIARAVALLE CENTRALE		1
	OPPIDO MAMERTINA		1
<b>SICILIA</b>	<b>CL</b>	GELA	23
		PIAZZA ARMERINA	1
	<b>SR</b>	SIRACUSA	5
		AUGUSTA	1
		LENTINI	2
	<b>CT</b>	CATANIA	3
		ACIREALE	1
		PATERNO'	1
	<b>OTHER</b>	MONZA	1
NON RILEVATA		2	
<b>TOTAL</b>			<b>51</b>

## Distribution of the minors for Municipality



The employment of the 14 year-old young people person is often tied up to the fact that is a non imputable subject. Also in this case, the young persons generally develop an activity that not it always jeopardizes the scholastic frequency: in fact generally, the young person work together or replaces your parents in the afternoon or evening job. Well more serious they are the other two typologies of exploitation, where the employment of the minor, to specifically be determined by imputability, are inserted further inside dangerous criminal organization.

- a. type of juvenile exploitation refers to the use of the young person for small thefts (thefts in apartment, thefts of mopets, etc..) and in other crime.
- b. Involvement of the foreign young persons in the shop of drugs, enough recent phenomenon but that, especially in some cities it has assumed anxious dimension. It generally concerns young persons north-Africans, present in Italy without residence permit, covertly entered at times, but often submitted by their parents to relatives or to friends of family that live in Italy.
- c. Exploitation concerns the prostitution of foreign minors.

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## Chapter 2

# Organised crime and legal framework on juvenile justice in Albania

Ilir Bicja

## Introduction: The Issue

Albania difficult and long transition from a centralized to a market economy has been closely linked, *inter alia*, to increased activities in organized crime and juvenile delinquency. While, juvenile justice has been a growing concern in Europe, USA and elsewhere for over many years, in Albania it has attracted the attention of society, NGO-s and government only in recent years, mainly because of steadily increases in the number of offences committed by juvenile offenders.

The most disturbing development observed in recent years, which has been reported in many countries, is the fact that children under the age of criminal responsibility or minors are increasingly being orchestrated by organized criminal groups to carry out front line criminal activities, in the knowledge that they cannot be prosecuted or will usually be treated favourably by the criminal courts. These activities may range from robbery and housebreaking to the transportation or distribution of illicit drugs. Even though there is some unofficial information or data that links, though unclear, between organised crime and juvenile delinquency already exist in Albania, no proper studies have been conducted and there is no official information or data available which will shed some light on the issue, despite some reports and data focused more on child rights in general and less on juvenile justice in particular. The links possibly exist in the fields of drug supplying (to schoolchildren), prostitution, housebreaking, or car theft. Such illegal activities are organised on the order of adults who in turn are members of organized criminal groups. Although, the fight against organised crime is treated as a high priority by the Albanian Government, there are no specific strategies or tools to deal with juvenile delinquency. Furthermore, knowledge and reliable information on the nature and scope of organised crime in Albania is limited. However, its impact on Albanian society and governmental institutions is becoming evident at worrying rates.

The purpose of this descriptive research is to explore and examine the involvement of minors/children in criminal activities with the final purpose of discerning any possible direct or indirect link with organized crime. The study will also provide a brief description of organised crime and its activities and explore the current status of juvenile justice in Albania. In addition a list of governmental institutions and NGO-s focused in the area of juvenile justice, in particular, and children rights in general will also be provided.

The title used in this study may seem inappropriate in Albanian context. Therefore, for the purposes of this study the following terms will be used:

- a) **“Organized crime”** will be used, instead of **“Mafia”**, according to the definition provided for by article 28 of the Albanian Criminal Code.
- b) **“Minor”** means a person who has attained the age of criminal responsibility but is below the age of majority according to the definition provided for by Article 12 of the Criminal Code. The terms **“Minor”** and **“Juvenile”** will be used interchangeably.
- c) **“Delinquency”** shall mean for the purposes of this study actions which are dealt with under criminal law.
- d) **“Juvenile Justice System”** shall mean the formal components for tackling youth crime, encompassing juvenile court, police, prosecution and legal profession, probation and penal institutions, health, education, social and welfare services and non-governmental bodies.

## Brief Description of Organised Crime and Relevant Legislation in Albania

The original structure of Albanian criminal groups was non-hierarchical and almost always organised along family ties similar to the structures of Calabrian mafia cells. Subsequently, they evolved into typical hierarchical groups with ethnic based structures, often associated with an extreme use of violence, especially when in competition with other groups.<sup>5</sup> Most of the networks are based on 'loyalty', with strict codes of conducts, 'honour' and clan traditions and are relatively 'old fashioned'. In recent years, some criminal organisations that are less hierarchical and more flexible have emerged. These organisations change their structure according to the different criminal activities they carry out and therefore their members are not permanent and change frequently.<sup>6</sup> Albanian criminal groups are now evolving into more sophisticated structures. They have not only developed networks and increased contacts with other regional criminal groups, but also have extended their operations outside the borders of their country and are operating in various EU and Non-EU countries and in the United States of America. Their members do not hesitate to use violence and threat of violence to obtain absolute unity and silence from their members.<sup>7</sup> Albanian organized criminal groups have become a point of reference for almost all main types of criminal activities. Their main criminal activities appear as follows:

**Drug trafficking** is a significant organised crime activity in the country, and internal drug consumption is also increasing.<sup>8</sup> The most common illegal drugs trafficked throughout the country are heroin, marijuana and cocaine. The heroin is generally produced in Afghanistan and it is trafficked to Albania through the Balkan route via Turkey, Bulgaria, FYR of Macedonia and Kosovo. Subsequently, from Albania the illegal drugs are then smuggled, mostly in Italy and Greece, and distributed in Western Europe, where Albanian organised crime groups have gained considerable powers.

Albanian criminal groups also are involved in the trafficking of cocaine from South America that is destined for Western European markets.<sup>9</sup> The drug is trafficked from Italy and Greece to Albania, where it passes into the hands of the Albanian groups and is then distributed to the various markets.

Albanian government efforts in the fights against illegal drug trafficking are testified by numerous policy actions taken in the field. It is worth to mention, *inter alia*, the enactment of a specific law on the "Prevention and Fight against Narcotic and Psychotropic Substances" by Albanian parliament in 2001.<sup>10</sup> The law empowers law enforcement agencies to use "simulated buying", "controlled delivery" and "undercover police agents" in the fights against drug trafficking. The law also establishes the National Committee of Coordination in the Fight against Drug Trafficking with the participation of various ministries and experts in the field.<sup>11</sup> However, the implementation of the law in the fight against drug trafficking leaves much to be desired because police lack equipment, training, determination and experience.

**Trafficking in human beings** is one of the most profitable organised crime activities in Albania, despite law enforcement efforts, after the summer of 2002, which have reduced human trafficking via speed boats to almost zero. Increased controls at borders and better equipments have also reduced the number of illegal emigrants travelling on falsified documents. However, due to its favourable geographic position, Albania continues to play a fundamental role in a very lucrative trafficking chain, which seems to unite many countries in Eastern Europe to numerous Western

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<sup>5</sup> See United Nations Office on Drugs and Crime, Results of a Pilot Survey of Forty Selected Organized Criminal groups in Sixteen Countries, September 2002. Europol, European Union Organised Crime Report, Luxembourg, 2003.

<sup>6</sup> See Transcrime Report on Data Exchange Country profiles – Albania.

<sup>7</sup> Ibid., United Nations Office on Drugs and Crime, Results of a Pilot Survey of Forty Selected Organized Criminal groups in Sixteen Countries, September 2002.

<sup>8</sup> Commission of the European Communities, Albania. Stabilisation and Association Report 2004, Commission Staff Working Paper, COM(2004) 203 Final, p. 33.

<sup>9</sup> U.S. Department of State, International Narcotics Control Strategy 2004, March 2005.

<sup>10</sup> See law no. 8750 dated 26.03.2001.

<sup>11</sup> Ibid, see article 3 of the law.

European States. Albania is both an origin and a transit country as far as this form of crime is concerned. From time to time, police seize speed boats attempting to enter illegally to Italy through Adriatic Sea and arresting the traffickers.<sup>12</sup>

The victims of such activities are mainly women and young girls from Albania, Romania, Moldova, Bulgaria and the Ukraine.<sup>13</sup> The victims are trafficked to various EU countries, especially Italy, Greece, Belgium, The Netherlands and the United Kingdom. Albanian victims aged 14-32 are mainly trafficked for sexual exploitation and some children are exploited as beggars and for other criminal offences.<sup>14</sup> According to the Ministry of Public Order, there were 4,000 children trafficked from the country between 1992 and 2000.

Over the last few years, however, there has been an overall decrease in the number of trafficked Albanian minors to Italy and Greece, mainly because of improved security and economic conditions in the country. The means of trafficking have also been changed in order to overcome the tightened maritime controls over Adriatic crossing points.

**Arms smuggling** is another allegedly widespread trafficking offence occurring in Albania. Albania is an originating, transit and destination country of arms and weapons smuggling. The traffickers have exploited the surplus of weapons left over from decade long conflicts in Balkans and have flourished their illegal trade. Trafficking of weapons is still a problem at present time in Albania. Recently police arrested a group of people trafficking weapons from Montenegro and seized three anti- aircraft rockets in Tirana.

**Trafficking of stolen vehicles** is another illegal activity where Albanian criminal groups are also involved in.<sup>15</sup> It is estimated that in 2002 there were 6 000 to 8 000 stolen Mercedes cars<sup>16</sup> in Albania. Stolen luxury four-wheel drive cars can be bought in Tirana for as low as one fourth of the normal selling price. Tirana is the final stop on a trafficking route that starts in Germany and Italy, goes through Bulgaria and FYRoM and finishes in Albania. Legal vacuum in the area is also a contributing factor to this illegal activity. Albanian Criminal Code provides no offence in relation to handling of stolen goods. It becomes difficult for the police authorities to seize a car from the “legal” owner who can produce a contract to prove that he has bought the car, although at undervalue.

Albanian organized crime is also involved in **smuggling of goods subject to excise duty** such as cigarettes, petrol, coffee etc. Although no official figures are available, it is estimated that Albanian government loses huge amount of money because of cigarette smuggling only every year.<sup>17</sup>

**Corruption** appears to be widespread in Albania and it is perceived to be the major problem in the country, undermining its development and also difficult to eradicate because of social acceptance of graft. Organised crime and corruption are often linked, because corrupting public officials, law enforcement and customs officers, who are badly paid for their public services and thus easy targets, reduces the risk of criminals being arrested and brought to trial. There are only few cases when high police officers are arrested for assisting such criminal groups. However, recently, a high police officer was arrested, charged and convicted for being a member of criminal group trafficking cocaine from Latin America.<sup>18</sup>

**Laundering the proceeds of criminal activities**, whether generated within or outside Albania is easily done by organised criminal groups because of favourable conditions provided for by weak government controls and financial structures, which are unable to implement the laws in place to fight the phenomenon. The economy, about 80%, is still based on cash and according to the Central Bank of Albania, 26% of the money in circulation is outside of the banking system and informal channels of remittance transfers offer opportunities to criminal organisations to launder their profits from drug

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<sup>12</sup> See “Korrieri” Newspaper dated 26 March 2005, available at: <http://www.korrieri.com/index.php?k=1&i=13273>

<sup>13</sup> U.S. Department of State, Trafficking in Persons Report 2004.

<sup>14</sup> See Transcrime Report on Data Exchange Country profiles – Albania cit.

<sup>15</sup> See Alberto Maritati “Organised crime in the Balkans with reference to Albania”.

<sup>16</sup> A. Bala, ‘Car Dealers in Albania Threatened by Smugglers’, in the Balkan Times, 07 August 2002.

<sup>17</sup> Albanian Centre for Economic Research, Albanian Empirical Report, Tirana, 2000. A few days ago police in the town of Durres seized US\$ 4 million worth smuggled cigarettes. See newspaper “Korrieri” dated 02 April 2005, available at: <http://www.korrieri.com/index.php?k=1&i=13654>.

<sup>18</sup> The police officer was arrested on 14 March 2001 in Tirana after being on the run for a month.

trafficking and the prostitution of trafficked women.<sup>19</sup> As far as the integration stage is concerned, criminal assets are generally reintroduced into the Albanian economy through the purchase of real estate, tourist agencies, nightlife services, construction industry and business investments.

## Albanian Criminal Law

Albania has in recent years ratified all the relevant international and European instruments against organised crime.<sup>20</sup> Consequently, the Albanian Criminal Code has been amended frequently with the purpose of criminalizing all main forms of organized criminal activities and, at the same time, harmonizing its criminal offences with European and international standards.

The latest amendments to the Criminal Code were introduced by law no. 9275 dated 16.09.2004, which harmonises articles 28, 333, 333/a of the Criminal Code with the United Nations Convention against Transnational Organised Crime and its Protocols. Article 28 of the Code provides the definitions of Special Forms of Collusion, such as criminal organisations as the highest form of organisation, terrorist organisation, armed gang and structured criminal group.<sup>21</sup> The article also criminalises simple participation in any of the criminal associations stipulated above and members are also liable for all the offences committed by the criminal association. Article 333, under the Special Part of the Code, criminalises creation, organisation and leading of criminal organisation, whereas, article 333/a criminalises creation, organisation and leading of structured criminal groups. Participation in a criminal organisation with the goal of cultivating, producing, fabricating or trafficking of narcotics is also punished under articles 284/a of the Code.<sup>22</sup>

Main drug related offences are dealt with under article 283 (Producing and selling of narcotics), article 283/a (Trafficking of Narcotics) and article 284 (Cultivating Narcotic Plants) of the Criminal Code.

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<sup>19</sup> See US Department of State Report on Money Laundering and Financial Crimes- 2004.

<sup>20</sup> UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Single Convention on Narcotic Drugs 1961, amended to by the 1972 Protocol; European Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; International Convention for the "Suppression of the Financing of Terrorism; UN Convention against "Transnational Organized Crime" and its two additional Protocols; Criminal Law Convention on Corruption; European Convention "On the Suppression of Terrorism".

<sup>21</sup> Article 28 of the Criminal Code provides:

"1. Criminal organization is the highest form of cooperation that are composed of three or more persons and that can be distinguished by the special degree of organisation, structure, stability, duration, the purpose of committing one or more offences to gain material or non material benefits.

2. The terrorist organization is a special form of the criminal organization that aims at performing violent acts for terrorist purposes, such as the toppling of the constitutional order, of the serious troubling of the public order, of the provocation of massive fear and insecurity.

3. The armed gang is a special form of cooperation that, by possessing arms, military armaments and other necessary means, aims at the commission of criminal acts provided in Chapter V, VI and VII of the Special Part of this Code.

4. The structured criminal group is a special form of cooperation which participate three or more persons, with the purpose of committing one or more crimes, that aims at achieving material as well as non-material benefits.

5. Creation and participation in a criminal organization, terrorist organization, armed gang, or structured criminal group constitute a crime and is punished according to the provisions of the special part of this law or other special criminal provisions.

6. Members of the criminal organisation, of the terrorist organization, of the armed gang, or of the structured criminal group are liable for all the criminal offences committed by them in fulfilling their criminal activity.

<sup>22</sup> Article 284/a of the Criminal Code provides: "Organizing, leading and financing criminal organizations with the goal of cultivating, producing, fabricating or illegal trafficking of narcotics is punished with imprisonment from 10 to 20 years.

Creation of conditions or facilities for such activities by persons with state functions is punished with imprisonment from 5 to 15 years.

Article 283 punishes the offence of ‘selling, offering for sale, giving or taking in any form, distributing, trading, transporting, sending, delivering and possessing, except for personal use, any sort of narcotic drug or psychotropic substance in contravention of the law’, and imposes a punishment from five to fifteen years of imprisonment. The conduct of ‘organizing, managing or financing’ this activity is more severely punished, from ten to twenty years of imprisonment.

Article 283/a punishes the offence of “importing, exporting, transiting and trading of narcotic or psychotropic substances in contravention of the law”. The offence carries a sentence of imprisonment from seven to fifteen years. The offence of “organising, leading or financing” this activity carries a sentence of not less than 15 years imprisonment.

Article 284 punishes the offence of “cultivating plants that serve to produce narcotic or psychotropic substances without permission and authorisation conform law”. The offence carries a sentence of from three to seven years imprisonment. The conduct of “organising, leading or financing” this activity carries a sentence of from seven to 15 years imprisonment.

Another important article which is relevant for the purposes of this research is article 286 of the Criminal Code, which under paragraph two punishes the conduct of “abetting the use of or forced injection of narcotic or psychotropic substances to children or penitentiary, education or sportive institutions or institutions of any social activity”. The offence carries a sentence of not less than 15 years of imprisonment. No person has been tried or convicted for this offence during the last four years.

The offences of trafficking in human beings provided for under article 110/a, trafficking of women for prostitution, article 114/b<sup>23</sup> and trafficking of children, article 128/b<sup>24</sup> of the Criminal Code have been amended very recently too.<sup>25</sup> The amendments were seen as necessary in order to bring the Albanian Criminal Code more in line with the definition envisaged in the UN Protocol on Trafficking. A distinctive feature of all offences of trafficking in human beings is that they carry very severe imprisonment sentences in conjunction with mandatory fine sentences that run from US\$ 20 thousand to 100 thousand.<sup>26</sup> The basic offence of trafficking punishes the conduct of “recruiting, transporting, transferring, hiding or picking up of person using threat, force or other forms of coercion, abduction, deceiving, abuse of power or taking advantage of social condition or mental or physical state for the purpose of exploitation”. Exploiting minors for prostitution is stated as an aggravating circumstance under Albanian Criminal Code and is punished from seven to fifteen years imprisonment.

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<sup>23</sup> Art. 114/b “The recruitment, transport, transfer, hiding or reception of women through threat or use of force or other forms of compulsion, kidnapping, fraud, abuse of office or taking advantage of social, physical or psychological condition or the giving or receipt of payments or benefits, in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from seven to 15 years and with a fine of from three million to six million lek. The organization, management and financing of the trafficking of woman is punished with imprisonment of from ten to 15 years and with a fine of from five million to seven million lek”.

<sup>24</sup> Art. 128/b “The recruitment, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from seven to 15 years and with a fine of from four million to six million lek.

The organization, management and financing of the trafficking of minors is punished with imprisonment of from 10 to 20 years and with a fine of from six million to eight million lek”.

<sup>25</sup> See law no. 9188 dated 12.02.2004.

<sup>26</sup> Art. 110/a “The recruitment, transport, transfer, hiding or reception of persons through threat or use of force or other forms of compulsion, kidnapping, fraud, abuse of office or taking advantage of social, physical or psychological condition or giving or receipt of payments or benefits in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from five to 15 years and with a fine of from two million to five million lek”. The organization, management and financing of the trafficking of persons is punished with imprisonment of from seven to 15 years and with a fine of from four million to six million lek”.

The offence of trafficking in motor vehicles is provided for under article 141/a of the Criminal Code. The offence punishes the conduct of “importing, exporting, transiting and trading of stolen motor vehicles in contravention of the law for the purpose of profiting”.

In addition, Albanian Criminal Code also provides for the criminalisation of money laundering under the recently amended article 287. The provisions were amended in 2003 in order to bring it in line with the forty recommendations of the Financial Action Task Force on Money Laundering (FATF). The new provision is very wide and covers the proceeds derived of any type of crime. The opening of anonymous bank accounts or under fictitious names is also criminalised. The basic offence carries a maximum sentence of 10 years, and where there are aggravating circumstances, a sentence of 15 years can be imposed. Furthermore, Albania also passed a new special Law on the Prevention of Money Laundering, which imposes a duty on several financial institutions such as, banks, insurance companies, exchange bureaus, investment funds, postal services, accounting firms etc, to report to the “responsible authority” suspicious financial transactions valued at or above US\$ 20, 000.<sup>27</sup>

Following the adoption and ratification of international and European instruments against organised crime, Albanian Criminal Procedure Code has also been amended to harmonise it with international and European standards and provide new tools for law enforcement agencies in the fight against organised crime. The following provisions are of particular relevance:

i) The adoption of special means of investigation, such as interceptions of telephone conversations, fax and internet transmissions, audio and video recording of events taking place in private premises for all intentional offences which provide for a sentence higher than seven years imprisonment.<sup>28</sup> Therefore, interception pertaining to all serious offences such as, drugs, human beings and motor vehicle trafficking, fall under the ambit of the provisions. Whereas, interceptions in public places, is permitted for all intentional offences, which provide for a sentence higher than 2 years imprisonment.<sup>29</sup> In addition, the recent amendments made by Law no.9187, dated 12.02.2004, on Section IV ‘Interceptions of Conversations or Communications’ of the Criminal Procedure Code, extended the scope and changed the whole section IV, including Articles 221 to 226 re-named ‘Interceptions’. It provides detailed procedures for interceptions, means, authorisation, documentation, appeals etc. In case of interceptions carried out in private places, the authorisation is issued by the court while, in case of interceptions carried out in public places the authorisation is issued by the prosecutor.<sup>30</sup>

ii) The adoption of a confiscation regime characterised by an ‘all crimes approach’, which means that it is possible to confiscate the proceeds derived from all types of crimes, even when they are mixed with legitimate property. Article 36 of the Criminal Code<sup>31</sup> (Confiscation of the instruments and proceeds of the criminal offence) establishes that confiscation is mandatory issued by the court for the instruments used in the commission of the offence and proceeds derived from it. Not only ‘property confiscation’ but also ‘value confiscation’ is allowed.<sup>32</sup>

Recently, Albanian parliament enacted a very important piece of legislation pertaining to the confiscation of proceeds of crime in the fight against organised crime. The new law, drafted in comparison with Italian Anti-Mafia law, provides for the identification, seizure and confiscation of proceeds of crime of persons suspected as being involved in organised crime, such as trafficking of human beings, trafficking of weapons, trafficking of motor vehicles, trafficking and dealing in drugs, criminal organisations and offences committed by the latter.<sup>33</sup>

Criminal conviction is not a pre-requirement for confiscation provisions to apply under the new law. The property of a suspected member of a criminal organisation or perpetrator of one of the offences stipulated into the law can be subject to confiscation procedures, even though there is no sufficient evidence to try and convict him. However, there is a very important condition that the

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<sup>27</sup> See article 3 & 4 of the law n. 8610 dated 17.05.2000 “On the Prevention of Money Laundering”.

<sup>28</sup> See art. 221 (1)a of the CPC.

<sup>29</sup> See art. 221 (2) of the CPC.

<sup>30</sup> See art. 222(1) of the CPC.

<sup>31</sup> Amended by law no. 9086 dated 19.06.2003.

<sup>32</sup> See Art. 36(3) of the CC.

<sup>33</sup> See articles 3 and 9 of the law.

suspicion must be based on evidence and not just on the whims of a prosecutor or judge. Furthermore, according to the law<sup>34</sup> it is not necessary to establish a direct link between the criminal offence committed and the proceeds of crime. In fact, what the prosecutor has to prove in court is that there is an unjustified disproportion between the legal income and assets owned by the suspect. The burden of proof is then reversed to the defendant or suspect to justify the legal origin of his assets in order to avoid confiscation. Moreover, it is also possible to confiscate assets that are not registered under the name of the defendant or suspect. This kind of confiscation regime is fully consistent with international and European standards. These are the main differences between the confiscation regime provided under article 36 of the Criminal Code and confiscation regime provided under the new law.

iii) The adoption of witness and justice collaborators protection law<sup>35</sup> which entered into force on May 1<sup>st</sup> 2004. Following the enactment of the law, relevant changes were also introduced in the Criminal Procedure Code to provide for the implementation of the law.<sup>36</sup> However, it must be said that the implementation of the law has been very slow due to lack of expertise in this area, funds and political determination.

## Some Statistics on Organised Crime Related Offences in Albania

The table below presents the number of offenders convicted for offences related to organised crime during the period 2001-2004.

	<b>Offences</b>	<b>Art</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
1	<b>Trafficking in Human Beings</b>	110/a			6	3
2	<b>Trafficking in Women</b>	114/b			26	27
3	<b>Trafficking in Children</b>	128/b			8	14
4	<b>Trafficking in Motor Vehicles</b>	141/a			12	6
5	<b>Smuggling in goods subject to excise duty</b>	172	22	30	38	2
6	<b>Trafficking of Weapons</b>	278/a		295		1
7	<b>Producing &amp; Selling of Narcotics</b>	283	112	116	144	82
8	<b>Trafficking of Narcotics</b>	283/a		7	41	36
9	<b>Organising &amp; Leading Criminal Organisation</b>	284/a				1
10	<b>Money Laundering</b>	287				4
11	<b>Creation of Criminal Organisation</b>	333	8	2	2	6
12	<b>Offences committed by Criminal Organisation</b>	334		1		

The number of offenders convicted on offences related to organised crime, as it appears on the table above, does not represent the real picture of criminal activities. It is thought that the number of offences related to organised crime is much higher. The main reasons for such low number of convictions are, first, that law enforcement agencies lack the capacity to investigate, gather evidence and prosecute offences related to organised crime and secondly, corruption runs high at political levels, thus shielding criminals away from facing justice.

<sup>34</sup> See article 8 of the law.

<sup>35</sup> Law no. 9205 dated 15.03.2004.

<sup>36</sup> See article 37/a of the CPC.

## General Legal Framework on Juvenile Justice

Albanian Constitution,<sup>37</sup> Criminal Code<sup>38</sup> and Criminal Procedure Code<sup>39</sup> guarantee to all individuals, including minors, accused of an offence all the elements of a due process of law. Some of its elements come into play prior to the trial itself: the right to be informed clearly of the exact charges being levelled against an accused in a language which the accused understands; the right to be presumed innocent until proven otherwise; the right not to be forced to confess or to give incriminating evidence; the right to legal assistance in preparing for trial; and the right to having the matter dealt with “without delay” by a competent and impartial authority. The trial itself cannot be deemed ‘fair’ if any of these rights have previously been violated. The elements of a fair trial include the right to cross-examine witnesses and to present one’s own witnesses, with the burden of proof laying on the prosecution.

In addition to the rights mentioned above enjoyed by all accused persons, minors accused of an offence are afforded special treatment under Albanian legislation during three stages: investigation, trial and execution of a sentence.

Thus, the **Constitution of Albania** enshrines under Article 54 the right of children for a favourable treatment. The Article stipulates as follows:

*“Children, youngsters...have the right to a special protection by the state”.*

*“Every child has the right to be protected from violence, mistreatment, exploitation and employment for work... that may harm his health, moral or endanger his life or normal development”.*

**Albanian Criminal Code** contains several provisions which clearly stipulate a favourable treatment for minors accused of committing a criminal offence. The age of criminal responsibility is set at 14 for crimes and 16 for contravention.<sup>40</sup> Under article 31 it is provided that no life imprisonment may be issued against a person who at the time of committing the offence had not reached the age of 18 years. Moreover, under article 51 a sentence of imprisonment issued against a person younger than 18 years old for committing a criminal offence, may not be longer than half of the sentence provided for by law. The court is also empowered under article 52 of the Criminal Code to exempt a minor from punishment based on such grounds as insignificance of the offence, previous conduct of the minor and actual circumstances of the case. When a minor is exempted from punishment according to article 52 or the child is under the age of criminal responsibility, the court under article 46 of the Criminal Code may order the minor to be confined in a rehabilitation or education institution. In addition, article 33 of the Code, under paragraph 3 provides that minors shall serve their sentences in places separate from adult inmates.

Under **Albanian Criminal Procedure Code**, a minor enjoys the right to legal counsel and the assistance of a psychologist or social worker at any stage of the proceedings. He has the right to have the presence of his parent, guardian or any one else requested by him and at the same time accepted by the proceeding authority.<sup>41</sup> The latter may carry out investigating acts without the attendance of the persons requested by the minor, only when that is in the interest of the minor or when delay may seriously prejudice the investigation. Moreover, a minor may not be detained into custody for a criminal offence punished up to two years imprisonment<sup>42</sup> and no process may be served to a minor under 14 years old.<sup>43</sup> When a minor is arrested or detained the authorities are bound to inform without delay his parent or guardian and may order him to be detained in his house or another appropriate

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<sup>37</sup> See Articles 25 to 34.

<sup>38</sup> See in particular articles 1-11.

<sup>39</sup> See articles 1 to 10.

<sup>40</sup> See article 12 of the Criminal Code. The distinction between a crime and contravention lies in that that the latter is punished with imprisonment up to two years.

<sup>41</sup> See article 35 of the Criminal Procedure Code.

<sup>42</sup> See article 230/4 of the Criminal Procedure Code.

<sup>43</sup> See article 140/3 of the Criminal procedure Code.



place.<sup>44</sup> When issuing a remand order against a minor the court should take into account not to interrupt his ongoing education, if any.<sup>45</sup>

The proceeding authority is bound under article 42 of the Criminal Procedure Code to gather information on the character of a minor charged with an offence. The information relate to his personal, family and social life in order to ascertain his mental capacity and understanding, criminal responsibility and for the purposes of issuing the appropriate sentence. The information is gathered from persons who have had previous relation with the minor and from experts.

A minor who has committed a criminal offence enjoys the right to be tried by a juvenile division established in ordinary district court.<sup>46</sup> A very important privilege afforded to minors is that provided under article 81 of the Criminal Procedure Code. The provisions deal with the jurisdiction of juvenile court division in cases of offences committed by a minor in collusion with an adult. In such cases the competent court is the juvenile court, unless the trial of the adult offender can be separated from that of the minor. Moreover, the juvenile court is still the competent court to try a defendant who has reached the age of majority at the time of trial but committed the offence when he was a minor.<sup>47</sup> However, this right has recently been eroded with the establishment in Albania of Serious Crime Court which has jurisdiction to try minors who have committed offences falling under its jurisdiction.<sup>48</sup> A minor may be questioned as a witness by the presiding judge with the assistance of a family member or an expert in children education. He may be questioned by the parties as a witness only when it is established that it does not harm his psychological state and always in the presence of a parent or a social worker.<sup>49</sup> Furthermore, it is prohibited to make public personal details and photographs of witnesses, accused persons or victims who are minors.<sup>50</sup>

As it can be seen from the above, Albania lacks a developed system of justice for juveniles in line with international standards and practices, including appropriate means of dealing with children under 14 years old. However, the law contains some general principles, though not adequate, which offer to juveniles accused of criminal offences a favourable treatment compared to adult offenders. Nevertheless, the biggest problem remains non-implementation of the juveniles' rights already provided in the law.<sup>51</sup> Thus, many of the provisions in the criminal legislation, relevant to minors have remained in paper only. Instances where the provisions of the law are disregarded are many.

The Criminal Procedure Code provides that minors shall be judged in a juvenile court, whereas, in practice this is not implemented because no such courts have been established by the government for lack of funds and trained personnel in juvenile justice issues, among other reasons. Others have even questioned the will of the government to make provisions for the juvenile justice. Moreover, juveniles accused of committing criminal offences, are handled by police, prosecutors and tried by judges who have no education in juvenile justice and are frequently handled just like adult offenders in common criminal courts.

Studies show that usually minors have access to legal counsel, but lack the assistance of a psychologist or social worker, regardless of the fact that this right is expressly provided for in the law. Furthermore, there are reports that judicial police questions minors without the presence of the parent or a social worker. In some cases, the police do not even notify their parents when they arrest them, which is mandatory under the law or when they do so, it is usually done late. Separate detention centres for minors are foreseen in the law, but not available due to the shortage of funds. Therefore, minors share their detention cells with adult detainees where overcrowding is a serious problem. To make things worse, often judges are happy to order minors to be detained in pre-trial detention centres, in total disregard of the juvenile education needs and the law which requires that juvenile be kept under supervision in his house or another place.<sup>52</sup> The judiciary justifies its stand on the fact that usually the minors are accused of very serious offences and Albania lacks other structures such as re-

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<sup>44</sup> See article 255 of the Criminal Procedure Code.

<sup>45</sup> See article 229/3 of the Criminal Procedure Code.

<sup>46</sup> See article 13/4 of the Criminal Procedure Code.

<sup>47</sup> See article 81(2) of the Criminal Procedure Code.

<sup>48</sup> See article 75/a of the Criminal Procedure Code.

<sup>49</sup> See article 361(5) of the Criminal Procedure Code.

<sup>50</sup> See article 103(4) of the Criminal Procedure Code.

<sup>51</sup> See the concluding observation of the UN Committee on the Rights of the Child: Albania, available at:

<sup>52</sup> See article 255(3) of the CPC.

education institutions for the juveniles and therefore, they have no other options but to order juveniles to be detained in such centres.<sup>53</sup> Minors spent months and even years in detention centres waiting trial as legal proceedings in Albania are a long drawn out affair.

In addition, often minors are subject to physical, psychological, emotional mistreatment and sexual abuse by adult detainees and staff as has been reported in several occasions.<sup>54</sup> Therefore, there are cases where minors have been compelled to confess to the alleged offence. Physical and sanitary conditions of pre-trial sites generally are very poor and are far from accepted international standards.<sup>55</sup> Furthermore, in a clear contravention of the criminal legislation, names or photos of minors arrested or suspected for different offences are made public in the media.<sup>56</sup>

Situation of juveniles in Albanian prisons is not better off either, although some improvements have been noted over the years. First of all, Albania has neither prison particularly designed for juveniles nor re-education or rehabilitation centers/institutions for post conviction reintegration of juveniles in the society. Several NGOs have tried to fill the vacuum with limited success. Only in 2000 the government opened a separate wing for juveniles in the prison of Vaqarr in Tirana. In the same year the government offered formal education to the juveniles consisting of language, history and geography courses. Though, this is a step in the right direction, education leaves much to be desired. There are reports that juveniles at the prison of Vaqarr mix with adult prisoners for showers and leisure activities. As a result, there have been several reports of sexual abuse of juveniles by adult inmates and violence by prison personnel.<sup>57</sup>

There are different factors contributing to this situation. One is that alternative punishments to detention, such as, community service or intervention of restorative justice find no application in Albania. Community service as a punishment is provided for under article 63 of the Criminal Code, but is not applied by the courts because there are no agencies to execute or monitor its execution and the judicial system is not familiar to such alternative punishments. Restorative justice finds no application in Albania too.<sup>58</sup> Furthermore, there is not any comprehensive and systematic data gathering on juvenile delinquency in Albania as well as on the value/merits of particular projects and programmes. There is also no hard data on juvenile links with organized crime. No one today in Albania can give systematic and reliable information on the issue of juvenile delinquency and the way it is dealt with formally and informally. Such data is crucial for policy and assessment purposes.<sup>59</sup> It is not the case that nothing is being done in Albania -rather that there is a lot being done but it is not coordinated. There is a great need for an audit of just what is being done in Albania and by whom so that a coordinated approach can be taken in the strategic planning of development.

## Offences Committed by Juveniles and their Trends

Many countries in Europe have seen a significant increase in the number of juvenile offenders. Albania is not different and the number of juvenile offenders has seen a steady increase over the years. Factors contributing to the increase of the number of juvenile offenders can basically be explained by the long and difficult transition period Albania is going through, polarisation of the society, decrease

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<sup>53</sup> As of 2 June 2003 there were 79 minors in pre-trial detention centres throughout Albania. See OSCE report on Pre-trial detention situation survey.

<sup>54</sup> See Children's Human Rights Centre of Albania "No one to care" p. 21.

<sup>55</sup> See "Pre-trial detention situation survey in Albania" conducted by OSCE presence in Albania; Children's Human Rights Centre of Albania "Waiting Trial".

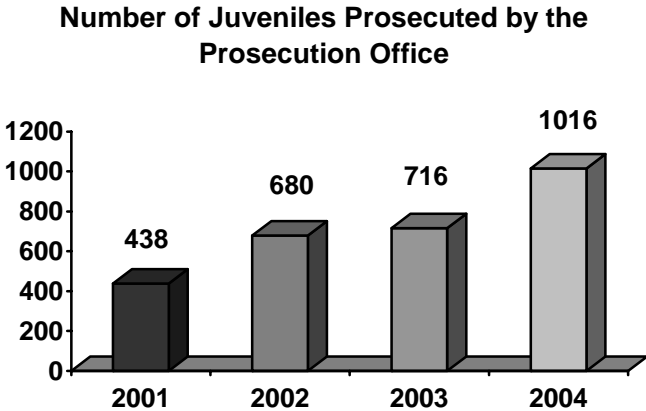
<sup>56</sup> See article 103(4) of the CPC.

<sup>57</sup> See Children's Human Rights Centre of Albania "Juveniles in Albanian prisons", p. 16, see Children's Human Rights Centre of Albania "Alternative report on the situation of children rights and the implementation of the Convention on the Rights of the Child in Albania", p. 26.

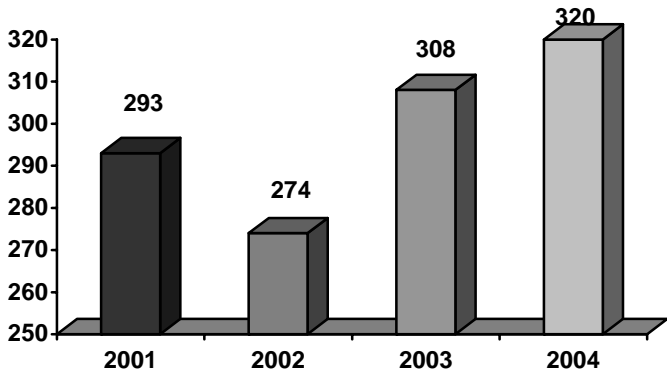
<sup>58</sup> Restorative justice provides alternatives to court proceedings and is intended to avoid detention. It brings together all the parties involved in a particular offence to resolve collectively the aftermath of an offence and its implications. The crucial element in restorative justice is that the juvenile takes responsibility for his/her illegal act by apologising to the victim and repair the harm caused. The offender is supposed to come out of the process more competent than before since he has take responsibility for his mischief, has repaired the harm, and has remained a member of the community, therefore, strengthening an effective re-integration process.

<sup>59</sup> See "Observations of the UN Committee on the rights of children- Albania" in 2005

in the family and school control and values. The number of juvenile offenders prosecuted in Albania for different offences has seen a steady increase during the years 2001 to 2004. The graph below shows the number of juvenile offenders prosecuted by the prosecution office.<sup>60</sup>



As the graph above shows there is a steady increase, from year to year, in the number of juveniles prosecuted for different offences. The biggest increase in the number of juvenile offenders is seen during the year 2004, indicating an increase by almost 42% from 2003. The graph below represents the number of juvenile offenders convicted during 2001-2004 period.<sup>61</sup>



The table below shows the distribution of juvenile offenders convicted according to main judicial districts<sup>62</sup> from 2001 to 2004.

	<b>District</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>1</b>	<b>Berat</b>	17	5	18	19
<b>2</b>	<b>Dibra</b>	9	9	0	2
<b>3</b>	<b>Durres</b>	24	56	102	71
<b>4</b>	<b>Elbasan</b>	7	13	17	29
<b>5</b>	<b>Fier</b>	23	16	20	11
<b>6</b>	<b>Kavaja</b>	8	3	9	3
<b>7</b>	<b>Korca</b>	26	15	16	21
<b>8</b>	<b>Kukes</b>	20	16	12	0

<sup>60</sup> Source from Albanian General Prosecutor’s Office statistics. See Annex 1 on the distribution of juvenile offenders according to judicial districts.

<sup>61</sup> Source, Albanian Ministry of Justice, Statistic Year Book.

<sup>62</sup> Albania is divided in 29 judicial districts of first instance.

<b>9</b>	<b>Lushnja</b>	13	18	9	9
<b>10</b>	<b>Shkodra</b>	7	10	31	19
<b>11</b>	<b>Tirana</b>	41	56	36	77
<b>12</b>	<b>Vlora</b>	16	16	3	13
<b>13</b>	<b>Others</b>	<b>82</b>	<b>41</b>	<b>30</b>	<b>46</b>
	<b>Total</b>	<b>293</b>	<b>274</b>	<b>308</b>	<b>320</b>

## Initiatives for the future

Albanian Ministry of Justice has drafted a new law on juvenile justice, which is very comprehensive and introduces changes on several laws in the area of criminal justice. The new draft law, pending the approval of the government, is based on a report drafted by several UNICEF international experts in the area of juvenile justice and it incorporates many, if not all, of the recommendations made in the report. This proposed legislation incorporates international and European legal standards pertaining to children's rights and is prepared, taking into account the national context. The purpose of this draft law on juvenile justice is to develop the personality and moral responsibility of the minor as a citizen, increase his role in the community and facilitate his reintegration in the society. The amendments aim to improve the legal protection of minors who are in conflict with law throughout the three stages of legal proceedings: pre-trial, trial and execution or post conviction stages. In addition, the law not only seeks to ensure the rehabilitation or reintegration of children in conflict with the law, but also makes it its priority. Furthermore, the draft law takes into account the best interest of the child. It could be said that the draft law, when enacted by Albanian parliament, will fill the legal vacuum experienced in the area of juvenile justice system. The law may be in force by the end of 2005 and it will be a significant step forward for Albania in the area of juvenile criminal justice if it is correctly and fully implemented. The new draft law on juvenile justice introduces many changes to the criminal legislation. The main changes are presented as follows:

### i) In the Criminal Code:

- All minors in conflict with the law, irrespective of the age, based on such factors as nature of the offence or minor or actual circumstances of the case, may be excluded from punishment and be subjected to education or rehabilitation sanctions;
- A new article has been proposed which stipulates different types of education sanctions;
- Different types of education institutions have been proposed;
- The court may suspend the execution sentences for offences punished with up to 5 years imprisonment or fine;
- A new offence has been added in the Criminal Code which punishes up to two years with imprisonment and fine those who make public the personal details and photographs of minors whether as witnesses, victims or offenders.

### ii) In the Criminal Procedure Code

- Detention or imprisonment of minors in conflict with law is seen as a last resort in the absence of other appropriate sanctions;
- In the absence of a juvenile court, the minor in conflict with the law must be tried by a judge trained in the area of juvenile justice;
- It makes mandatory the attendance of a social worker or psychologist throughout the criminal proceedings. Non compliance with this provision make null and void the proceedings;
- Pre-detention period is reduced to half of that of an adult offender.

**iii) In the law on the “Organisation of Judicial Power in the Republic of Albania”**

- Prohibits the designation of judges trained in juvenile justice in either civil or criminal chambers.

**iv) In the Law on “Execution of Criminal Decisions”**

- Establishes institutions for rehabilitation for minors under the subordination of the Ministry of Justice.

**v) In the law on the “Rights and Treatment of Prisoners”**

- Introduces specific requirements for individual programs for minors based on their nature and age. Stipulates specific rules on medical and psychological treatment for minors, their general and professional education, meetings with the family etc.
- Introduces a requirement that the personnel involved with the minors must have the relevant expertise in the area of juvenile justice.

**vi) In the law on the “Organisation and Functioning of the Prosecution Office”**

- Establishes a new juvenile sector at the General Prosecutor’s Office with the task of gathering data and proposing measures for efficient investigation of offences committed by minors.

**vii) In the law on the “Organisation and Functioning of Judicial Police”**

- Requires the establishment of police sections specialised in criminal proceedings against minors who commit criminal offences.

**viii) In the law on the “Organisation and Functioning of the Ministry of Justice”**

- Proposes the establishment of a new department for minors and rehabilitation institutions at the Ministry of Justice with the overall responsibility for conducting research, setting priorities in the area of juvenile justice, drafting policies for the improvement of juvenile justice etc.

## **Conclusion**

This study showed that typical Albanian organised criminal groups are hierarchical in structures and based on family ties. They adhere to a strict code of conduct and “honour” and are known for being very violent. They have established their strong presence not only in the country but also have created networks in several EU countries, where they carry out their different illegal activities. They are involved in almost all major offences with international impacts. Illegal trafficking in heroin, marijuana and cocaine as well as trafficking in human beings are the two most profitable illegal activities conducted by Albanian organised criminal groups. Drugs are trafficking through the well established Balkan route: Turkey-Bulgaria-Macedonia-Albania. Albanian criminal groups have made the most out of their country favourable geographical position, connecting East with the West, in trafficking in human beings, where Albania is both a country of origin and transit. However, significant improvements have been noted in recent years in this area.

Albanian organised criminal groups are also involved in trafficking stolen vehicles in EU countries and selling them in Albania at much lower prices. Other criminal offences where they are involved in are smuggling in goods and weapons and money laundering. Organised crime is also closely connected with corruption in order to ensure their activities are carried out uninterrupted and to protect themselves from being investigated and prosecuted from law enforcement authorities over their illegal activities.

In spite of Albanian government numerous efforts in enacting laws to fight the organised crime, doubtless insufficient in itself, law enforcement authorities have not produced any concrete

results and remain weak still in the fight against the phenomenon. They lack special investigation means, training, determination, experience and political support to combat the organised crime.

In relation to minors, the study showed that Albania lacks a juvenile justice system. However, Albanian constitution, criminal code and criminal procedure code provide for a favourable treatment of minors accused of committing criminal offences. Sadly, there is a total disregard of laws related to treatment of minor offenders. The special treatment offered by law to minors is not being implemented in practice by the judiciary and other authorities, which treat minors as adult offenders. Even though there is a national strategy for children, there is no program to prevent juvenile delinquency, and the strategy has largely remained in paper only.

Therefore, an increasing number of minor offenders are convicted for very grave offences. The major offences committed by minors are property and life offences and unlawful crossing of state borders. In addition, Albanian judges who lack juvenile training, have been very repressive against minors and sentenced them to very severe punishments. Alternative punishments have not found any application, as the judges have issued only two types of sentences against minors: long term imprisonment sentences and fines. The judiciary has justified its attitude on the lack of juvenile justice in the country and agencies to monitor the execution of alternative punishments. Even though this study could not show any direct link between organised crime and minors, it must be treated with caution. The high number of minors prosecuted and convicted for the offences of using forged identification documents and illegal crossing of state border in the border regions of Durrës, Korça, Shkodra etc, coupled with the well known fact that Albanian organised criminal groups are involved in the trafficking and smuggling of human beings, including minors, may indicate an indirect link between organised crime and the offence of children smuggling. Furthermore, the fact that Albanian police usually do not go beyond the mere fact of arresting the minors for the said offence, to investigate and find out who are the organisers of such illegal activities, make it difficult to ascertain any clear or direct link between organised crime and minor offenders. In addition, it is clear that organised criminal groups have their strong presence in the country, thus, creating the potential for the involvement of minors in organised crime, if not currently, in the near future.

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## Annex 1: Table of Offences Committed by Minors, 2001-2004

	<b>Offences</b>	<b>Article</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
1	Murder	76	7	6	5	9
2	Pre-meditated Murder	78	4	1	2	2
3	Threat	84	8	3	1	2
4	Intentional Grievous Hurt	88	3	4	1	5
5	Negligent Grievous Hurt	89	3	3	8	0
6	Intentional injuries	90		2	1	0
7	Sexual or homosexual relation with minors	100	2	1	1	1
8	Unconsensual sexual or homosexual relation with minors	101	0	2	1	0
9	Indecent acts	108	0	1	2	1
10	Kidnapping	109	1	0	0	0
11	Illegal Detention	110		1	0	7
12	Prostitution	113	2	3	0	0
13	Exploitation of Prostitution	114	0	6	0	1
14	Insult	119	0	0	2	0
15	Theft	134	140	129	129	191
16	Robbery	139	21	3	1	12
17	Armed Robbery	140	13	7	10	4
18	Death as a consequence of robbery	141	0	3	1	2
19	Providing means for theft	142	2	0	1	0
20	Fraud	143	0	1	0	3
21	Arson	151	0	2	0	1
22	Destruction of Property	152	0	2	2	0
23	Destruction of Roads	155	0	1	0	0
24	Destruction of Electric Cables	156	0	0	1	1
25	Smuggling with other goods	174	0	0	3	1
26	Dealing with smuggled goods	178	2	0	0	0
27	Forgery of Documents	186	7	0	0	3
28	Forgery of Birth certificates or visas	189	0	4	11	14
29	Forgery of seals, stamps or forms	190	0	2	2	7
30	Forgery of documents of birth registration office	191	0	0	2	1
31	Producing means for forgery	192	0	0	1	2
32	Unlawful logging	205	0	0	2	2
33	Objecting public order police personnel	236	0	0	3	4
34	Assaulting because of duty	237	3	3	2	0
35	Threat because of duty	238	4	0	0	0
36	Leaving the site of accident	273	2	0	1	0
37	Breaching public peace	274	0	1	2	0
38	Self-made justice	277	0	0	1	1
39	Production and Possession of	278	27	41	51	20



	weapons or ammunition without permission					
40	Production and Possession of bladed articles	279	0	2	0	3
41	Production and Possession of hunting and sporting weapons without permission	280	0	2	2	0
42	Production & Selling of Narcotics	283	3	1	1	0
43	Trafficking of narcotics	283/a	0	0	2	0
44	Growing Narcotic Plants	284	2			
45	Possession, production & transportation of chemical substances	285	2			
46	Breaching Traffic rules	290	5	6	4	4
47	Driving a vehicle in a state of drunkenness or without license	291	2	2	4	1
48	Unlawful crossing of state border	297	0	0	23	0
49	Assistance in unlawful crossing of border	298	1	1	0	0
50	Failure to report a crime	300	1	9	18	8
51	Acts that prevent the discovery of truth	301	1	1		1
52	Supporting the author of a crime	302	1	1	1	0
53	False Criminal Information	305	7	3	2	1
54	False Testimony	306	0	6	2	1
55	Threatening voters	329		1		
56	Criminal organization	333	1			

## Chapter 3

# The role of children and juveniles in organised crime in Germany

CJD - Germany

## Introduction

The public debate and the media are connecting the phenomena of “organised crime” to migration and illegal immigration. Organised crime is considered as a problem of “foreigners”. Official statistics, kept by the police, reveal that indeed a high percentage of foreigners are involved in organised crime. Our report is questioning the reliability of these statistics. Results are: There is a lack significant empirical survey on the subject. A major problem still is that there is no clear definition of the term “organised crime” and therefore statistics may fail to classify crimes under the heading “organised crime”, so the existing data on the subject are far from a realistic estimation of what is going on in reality.

Our report is then providing a scenario of the criminal subjects and groups and the various main fields of criminal activities in organised crime in Germany. We are concentrating on the involvement of children and minors with the intention to reach conclusions for social services to improve their ways to tackle on the problem. These children are offenders and victims as unscrupulousness criminals trafficking human beings control them. Once recruited for the organisation they dependent completely on the leader (“Patron”). Most of these children are younger than 14 years, or, when captured by the police, they pretend to be, which, according to German law, means they are not yet at the responsible age to be liable for crimes.

In our report, we include a critical discussion of the German youth penal law.

The juridical construction of Germany as a Federation is another problem for the efficient fight against internationally operating criminal organisation. The laws on asylum and on foreigners are different from one “Land” to another. Police forces are operating under the authority of the “Länder”. Regarding the patterns of social life of potential new recruit’s, it is striking that access to schooling for children of refugees is as well different in each of the “Länder”, so the government could do better to prevent organised crime by offering access to education and schooling.

The major subject of our report is the reasons how minors can end up in organised crime. Mostly they belong to groups that are excluded from German society or live illegally in the country. To a large extend they have a migration background. They don’t have equal chances and access to education, vocational training and professional prospects. So there is a correlation that renders them vulnerable for criminal temptations. In this respect the group of young male “Aussiedler” is of particular interest as they are the first ones German public associates with organised crime. “Aussiedler” are migrants coming from the former Soviet Union and Eastern Europe, belonging to the German minority there. They are considered to be victims of the results of World War Second and therefore entitled the right to “resettle” to Germany, as they are part of the Nation. By entering Germany they are entitled citizenship and full rights and access to the social system. Nevertheless, in particular young males often fail to integrate. They account for an over proportionate share of inmates in the German youth juvenile prisons. Observations inside the prisons indicate that there are “sub cultural“ patterns of behaviour among the young “Aussiedler” which may indicate that there are structures of organised crime inside the German detention system. These findings are of high significance for social work projects aiming to reintegrate these young offenders after having served their terms in prison as some of these young people not only need to cope only with the difficulties of reorientation in education, work etc, but need to find a way out of the criminal organisation and subculture they belonged to in prison. A best practice example is the project “Bridge”<sup>63</sup> which we present in our report. The project “Bridge” is concentrating on integration in education and work for the group of young Aussiedler.

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<sup>63</sup> „Brückenstelle“ in German

Another group often implicated in the structures of organised crime are minors living in Germany illegally or in an unclear status. Many of those minors left their home countries to escape existential suffering. They came with the hope and expectation to find a better life here. Quite often they are already victims of human traffickers in their home countries. Those criminals are selling them to Germany where they are forced into criminality. In some cases parents are selling their own children to criminal organisations. Children who come on their own to Germany and plead for asylum are referred to as “unaccompanied minors”. Partly this report is describing their difficult situation. An example, which is provoking high interest in public and in the media is the case of the Romanian children, gangs which are called the “thief children”. As this subject is of high concern in Germany we selected the project “Schaworalle” in Frankfurt as a “Best practice” example. “Schaworalle” is offering assistance to children of Roma origin and their families from mostly Romania.

## **The notion “Organised Crime”**

The notion organised crime first emerged in Chicago in 1919 in the US discussion on criminality. Nevertheless there still is no unique and precise definition for the complex and ever changing phenomena.

In Germany, a joint group of police and juridical experts, concluded on an official definition in May 1990, based on a practical approach. This definition is describing organised crime as “planned commitment of crimes in order to make profits or to gain power. The single crimes or the entity of crimes committed need to be particularly severe and carried by at least two subjects which are working jointly on long term perspective using:

- a) business of similar profession structures
- b) violence or other means to intimidate or oppress others, or
- c) means to influence or manipulate politicians, the media, the authorities, justice or the economic system for their criminal goals

This definition is explicitly not referring to terrorism. Criminal behaviour is seen as “organised crime” if it fits the general criterion and at least one of the headings a) to c) of the above definition.

Characteristics of organised crime are:

- highly specialised operations
- hierarchy and order in the organisation
- intention to make money and profits
- over regional network and contacts
- Invisibility and camouflage (control inside and outside the organisation, absolute commitment of the members to keep secrets)
- Legalisation of profits of criminal origins (“Washing of money”)

The most important types of organised crime in Germany are:

- Dealing and smuggling of illegal drugs
- Trafficking of human beings, criminal structures for illegal immigration
- Illegal trafficking of arms and weapons
- Red light district criminality (prostitution, trafficking of women, hazardous gambling, etc.)
- Theft and illegal export of motor vehicles
- Blackmail
- Corruption in the construction industry, often organised illegal work
- White collar crimes in economy, for example fraud with public subventions and tax evasion
- Housebreaking and organised selling of the stolen items
- Use of false money, credit card falsification, computer criminality, etc.

After the break down in Eastern Europe and reunification in 1990, organised crime became a severe problem in Germany. The open borders allowed the criminal organisations to operate in Germany and Western Europe.

In order to react upon it, the German Penal Law was changed to have better tools for investigation and more severe punishment for crimes committed by criminal organisations. In 1992 the law on “dealing with illegal drugs and other forms of organised crime” enables courts in their verdicts to seize the property of the offenders. The intention is to make a reinvestment in criminal structures

impossible. The investigation tools of the police were enhanced as all offences related to organised crime are considered to be major crimes. Police therefore is allowed to use “screening”, observation of all movement of suspects, use of under cover agents, etc.

Even if at first glance such measures seem to be adequate to tackle on organised crime, they are as well conflicting with basic right of the constitution. It is questionable if the property of a person can be seized by the virtues of a verdict without a proof that it is of criminal origin.

## **The German youth penal law**

Our report is explaining the existing German youth penal law in detail.

For the concern of this study it is most relevant, that according to German law, children below the age of 14 years are not liable for crimes. In public debate on the subject of the Romanian “theft children” this is giving rise to strong emotions.

Persons aged between 14 and 18 years are subjected to the youth penal law, which can be enhanced to the age of 21 years. To summarise the findings in our report the following conclusions can be made:

As many of the young offenders are of migrant origin, the system of German youth assistance needs to adapt the tools to these clients. Pedagogical measures such as social training can only be successful when responding to the background of the juveniles. Therefore intercultural training should be provided for the professionals in the system. Furthermore there is a need for interpreters to assist lawyers. During the penal procedure the families, the social environment and the individual migration background needs to be better taken into consideration.

## **The structure of Germany as a Federal Republic as obstacle for the battle on organised crime**

In respect to the problem of deviance and delinquency among children and young people, the access to schooling and education for refugees is of particular interest. The laws on schooling are in Germany matter of the 16 federal states. In seven of them there is no obligation for pupils of refugee status to attend school. The most extreme is one federal state, which even does not ascribe them a right for schooling. Compulsory schooling for refugees exist in nine federal states.

Education is a basic right to develop a personality and a way out of social isolation. Children who are not attending school are likely to start a criminal career. As well, at some time it is too late to catch up and to achieve the basic knowledge necessary for life. Refugees should have the right to attend schools, even if they are not likely to stay in Germany, as they and their home countries will benefit from the knowledge gained in Germany. In this respect all of the German states are requested to grant a right for education to the children of refugees.

The following table is given a short overview on the total number of suspects, split to age and gender for the year 2003. In 2003 a total number of 3.486.685 criminal investigations were successfully carried out in the Federal Republic of Germany. About 2.355.161 suspects were involved. This is an increase of 1,2% (+29.012) compared to the previous year. The percentage of children under 14 years decreased by 6.1% (total: 126.358). The group of juveniles, aged between 14 and 18 years, accounting for 293,907 suspects did almost not change (-1,3%). The same applies to the group of young adults between 18 and 21, with a total number of 247.456 suspects, which increased slightly (+0,7%).

Suspects by age	Suspects						
	Total	Change to previous year in %	Share In %	Male		Female	
				Total	in %	Total	in %
<b>Children</b>	<b>126.358</b>	<b>-6,1</b>	<b>5,4</b>	<b>90.632</b>	<b>71,7</b>	<b>35.726</b>	<b>28,3</b>
under 6 years	1.457	-14,6	0,1	1.111	76,3	346	23,7
6- to 8 years	3.923	-8,3	0,2	3.135	79,9	788	20,1
8- to 10 years	10.887	-15,7	0,5	8.714	80,0	2.173	20,0
10 to 12 years	30.505	-4,3	1,3	23.080	75,7	7.425	24,3
12 to 14 years	79.586	-5,0	3,4	54.592	68,6	24.994	31,4
<b>Juveniles</b>	<b>293.907</b>	<b>-1,3</b>	<b>12,5</b>	<b>218.181</b>	<b>74,2</b>	<b>75.726</b>	<b>25,8</b>
14 to 16 years	140.155	-2,7	6,0	98.533	70,2	41.622	29,7
16-to 18 years	153.752	-0,1	6,5	119.648	77,8	34.104	22,2
<b>Young adults</b> (18-to 21 years)	<b>247.456</b>	<b>0,7</b>	<b>10,5</b>	<b>198.010</b>	<b>80,0</b>	<b>49.446</b>	<b>20,0</b>
<b>Adults</b>	<b>1.687.440</b>	<b>2,4</b>	<b>71,6</b>	<b>1.293.239</b>	<b>76,6</b>	<b>394.201</b>	<b>23,4</b>
21-to 23 years	150.290	1,7	6,4	119.856	79,7	30.434	20,3
23 to 25 years	129.343	4,3	5,5	103.028	79,7	26.315	20,3
25 to 30 years	256.718	1,6	10,9	202.935	79,0	53.783	21,0
30 to 40 years	475.699	-0,1	20,2	369.258	77,6	106.441	22,4
40 to 50 years	344.233	5,0	14,6	260.263	75,6	83.970	24,4
50 to 60 years	183.906	3,3	7,8	136.021	74,0	47.885	26,0
60 and older	147.251	4,2	6,3	101.878	69,2	45.373	30,8
<b>Total number of suspects</b>	<b>2.355.161</b>	<b>1,2</b>	<b>100,0</b>	<b>1.800.062</b>	<b>76,4</b>	<b>555.099</b>	<b>23,6</b>
Suspects <b>without</b> children younger than 14 years (non-labile for crimes committed)	2.228.803	1,7	94,6	1.709.430	76,7	519.373	23,3

Source: Criminal statistics of police 2003

In 2003 there was a total number of 637 investigations against organised crime in Germany. 310 of them were already running since a longer time. 327 investigations started in 2003. This means a decrease of 8%, but is no indicator that the criminal activity of organised crime has in reality declined.

An analysis of the structure of suspects by nationality is giving the following results: Germans account for 38,8% of the suspects. The second important group are the Turkish with a share of 6,9%, followed by Polish, Italians, citizens of the Community of Independent States (former Soviet Union), which accounts for 6,4%) and suspects holding the nationality of one of the Baltic Republics (4,4%). In certain fields some criminal organisations of Vietnamese origin can be found, as for example in cigarette smuggling and in illegal drug dealing (Heroin). Apart from these major groups, subjects of Serbia and Montenegro are of significance in the scene of organised crime in Germany. What needs to be mentioned in order to understand the relation between suspects and migration is the fact that among the German suspects 14,8% have a migration background. This points directly to the "Aussiedler" and their over proportionate vulnerability for criminality and all ways of deviancy.

Organised crime in Germany can be found in many criminal activities. The most important field is dealing with illegal drugs such as heroin for example. This includes the trafficking of drugs and the effects of drug related crimes such as prostitution etc. Another important field is criminality against the property of others and white-collar criminality in business life. Than there's trafficking of human beings (illegal immigration), criminality in the "red light" districts, tax and customs

defraudation, violence, falsification of documents or use of false money, trafficking and dealing with weapons and arms.

## **Children and juveniles in criminal organisations**

The involvement of children and juveniles in criminal organisations is the major concern of the study. On the following pages we want to draw a picture of the recent situation in our country. Once in touch with organised crime, it is difficult to find a way out of the criminal organisation and into a legal existence. Therefore it is a matter of priority for youth social assistance, police and the juridical system, to improve prevention and work on concepts to respond to this urgent need. As already explained a high share of the young victims has a migration background. What are the reasons for this? A quite important part of the young migrants has bad access to education and professional life. They are subjected to social exclusion and isolation, so in turn they account for higher criminal rates. Often those who have an uncertain residence permit are excluded from legal opportunities to make a living.

Of particular significance in Germany are two groups: Young Aussiedler and unaccompanied minors, which now will be discussed in detail.

### *Organised crime inside the youth prisons*

Staff in youth prisons report that there is an increase of deviant behaviour among inmates. In particular young Aussiedler leaves them almost helpless. This problem has been subject of several articles in criminological research and gained recognition by the media. The sub cultural group of young Aussiedler in prison is showing the following characteristics:

- a tight organisation and hierarchical structures
- absolute barriers to the environment
- order, obedience, secrecy and disguise of weakness
- enormous pressure to adapt to the norms of the group
- “countrymen” in prison are forced into the system
- Obligation to take part in the “Abtschak” system, which is a fund for mutual assistance for members in need
- A network similar to mafia structures, which exists outside prison as well

This is backed by testimony of relatives of inmates who report that they were victims blackmail or subjected to threat by “countrymen”. So the system is in fact functioning outside prison inside the Aussiedler community. Another typical feature is the initiation of new inmates. Through certain rites they become part of the organisation, which means they are forced to obey to the rule of secrecy, they have to take part in illegal business (smuggling of drugs and money inside the prison) and the acceptance of hierarchy and oppression. The ideology of the group consists of obedience, solidarity and collectivism: Violence and sexual abuse are the sanctions, which are used in case an order will not be carried out correctly. The most important goal is to gain a high rank inside the organisation. Because of the tight group structure it is almost impossible to gain access to the individual inmate and so they cannot benefit from long lasting re-socialisation and training opportunities. The observed enclosure of the group is the main reason for an increase of violent actions and discipline infringements against the rules of the prison.

### *A value system based on collectivism*

In order to better understand the above-described phenomena, it is useful to look at the process of socialisation in their former home countries. Sociological investigations revealed that in particular young people of “Russian-German” origin stick to a much higher extend, compared to local youth, to principles of collectivism in their peer groups. It is quite obvious, that the reason is their education in the former Soviet Union and the social rules in their families. Tight social and family networks were necessary to maintain the economic existence but were as well indispensable as an emotional shelter. This applied to the “German” minority in particular, as they not only had to cope with the everyday struggle for survival but also were often subjected to anti-German hate and discrimination. They were perceived as the “Nazis” and therefore the soviet propaganda gave an image of them as if they were

betraying their country in the war. Before World War II the Russian-Germans had their own Republic at the banks of the Volga, which were dissolved and they were deported to the Central Asian Republics Kazakhstan, Kirgisia etc. This might be part of an explanation why extremist right wing parties easily tempt them. Their education in the families and in the institutions of the Soviet Union was authoritarian. The principle values were collectivism, diligence, honour and discipline. The image of manhood they had been taught includes the dimension that a man is in certain situations allowed to use violence.

*Best practice: Example one: “Brückenstelle”*

What had been explained so far makes it clear, that social services are urgently requested to respond to the needs of these “newly emerged” groups of offenders in their effort for reintegration and re-socialisation. It is necessary that Justice, the penal system and Youth Social Work closely together in this endeavour.

A particular successful example is the project “Brückenstelle” in Hameln, close to Hannover.

Their clients are young offenders of Aussiedler origin in the local youth prison. Brückenstelle (“Bridge”), started to operate in 1998, initiated by the Federal Ministry of Women, Seniors, Families and Youth. The Catholic Youth Social Work, region north, is running the institution, now on behalf of the federal state “Niedersachsen”. The main task of Brückenstelle is to integrate the young offenders after release from prison into education and vocational training in order to re-integrate them into society and separate them from the criminal social environment. Since 2003 the Federal Ministry is now funding Brückenstelle as coordination facility to disseminate this successful approach throughout Germany.

The main activities of Brückenstelle are:

- Youth social work in cooperation with the young offenders assistance
- “preparatory assistance for integration” for Aussiedler Youth
- Orientation and contact to the assistance facilities available in their cities and districts
- Assistance and counselling inside the youth prison in personal, vocational and schooling matters
- Arrangements of schooling and vocational training courses
- Counselling of their relatives and families

In the years 1999-2002 each year about 85 young offenders were assisted by Brückenstelle inside youth prison Hameln. The assistance focusses on vocational, schooling, juridical, health and personal matters mainly, but as well language problems, criminality and drug addiction are subjects in which the young offenders can be offered help.

*Federal project “Youth social work and the justice system”*

The federal project “Youth social work and the justice system” was established with the goal to disseminate the experience and the successful approach of Brückenstelle throughout Germany and to adapt them to the structures of the various federal states. Another aspect is analysing the laws and regulations on the topic in each of the 16 federal states, to define the needs for action and the adequate approach. Another duty is a consulting function for the juridical system, organisations active in this field and assistance for single projects in planning of measures and projects for the target group of young offenders of Aussiedler origin. Another main purpose is training and for staff in youth social work and justice officials. Furthermore the project is expected to generate new ideas, to give input into new projects and to create and improve pedagogical approaches on the basis of the collected experience.

## **Unaccompanied minors in Germany**

Data and statistics on the situation of unaccompanied minors in Germany don’t allow a clear-cut picture of the life circumstances of the group. Despite this lack of reliable information, when gathering information in the field of youth criminality and criminal child gangs one often is faced with reports on the subject of young unaccompanied minors.

Unaccompanied minors are refugees, which entered the territory of the Federal Republic of Germany without their parents or other adults in charge of them. They flee from war and civil war in their home countries, or from violence, threat of human rights, poverty or social and family crisis. Often they make their way to Germany with the help of relatives or of organised human trafficking. The total number of unaccompanied minors in Germany is estimated to be between 5.000 and 10.000. With the changes in the law on asylum in 1994 the number of new unaccompanied minors started to decline. Statistics by the Federal Office on Migration and Refugees for the year 2002 give figures, that one third of the unaccompanied minors asking for asylum were younger than 18 years. 873 (5,2%) of the 16.894 newly submitted applications for asylum were made by minors of less than 16 years. The main countries of origin of unaccompanied minors asking for asylum were Afghanistan, Vietnam, Ethiopia, Angola, Iraq, Turkey, India, Syria and China.

### *Laws and regulations on unaccompanied minors*

Unaccompanied minors under the age of 16 years are subject to the Kinder- und Jugendhilfegesetz (KJHG) (Law on children and youth assistance), as German children and minors with a migration background. At the place of arrival they are directed towards a "First Aid Facility" or a clearing office. They are put under tutelage by a guardian court. Children and young people who are illegally on German soil are in principle excluded from the benefits of the above-mentioned law (KJHG), with the exception of protection, in case of danger to the well being of a child. So this part applies to all children regardless their official status.

The situation is becoming more difficult once the age of 16 years is reached. Above this age refugees are considered by the law to be fully capable of acting responsible. So the law on asylum and the regulations applies to them in the way as it does to adults. They are treated as fully mature individuals, so they don't get tutelage and cannot benefit from the KJHG. In opposite to the below 16's they have to apply for asylum themselves. They get housing in Youth Assistance Facilities or in homes for refugees. As they don't get assistance by youth workers they are left on their own with their daily problems. The way unaccompanied minors at the age of 16 and older are treated is since several years a matter of criticism, as it is not in line with UN convention on the rights of children and the Convention of the protection of children of The Hague.

Critic is focussing on the following points:

- often there is no tutelage and no legal assistance in the asylum procedure
- the clearing system is not harmonized in all of the Länder
- the cooperation between the clearing facilities, the youth authorities, the guardians and the deciders of the Federal Office for Migration and Refugees and the Judges in the Administrative Courts are not clearly organised
- to keep minors in deportation prisons
- the procedures to estimate the real age (teeth analysis and hair screening) which are used in case no identity documents can be found, are questionable if they are legally acceptable

Access to schools and vocational training is limited for young refugees.

They are not granted a right to work and this applies as well for vocational training. This makes integration, even temporary, difficult. So, more or less left on their own, suffering from a lack of financial means to fulfil more than just basic needs, they are easy prey for organised crime structures which use them for their ends.

Organised crime is particular interested by children below the age of 14 as they are not liable for committed crimes according to German Law. Often these children are not in just a simple dependency relationship to the leader of the gang. They feel that they get shelter and security in a friendship relation. In turn they fulfill obedience and acceptance of their adult leader. The absolute power the gang leader has over these children becomes obvious if the children are failing to produce the profits expected from them or even tempt to leave the gang. Than they are subjected to violence and torture in order to make them obey.

To face the organised crime exploiting the malaise of unaccompanied minors it is necessary to stop immediate deportation and to run witness protection programmes in order to protect them so they would feel secure and able to help the authorities to detect the adult leader and heads of the criminal organisations exploiting children and to bring them to justice.



## Romanian Theft Children

The phenomena of the Romanian Children and Youth gangs in Germany, the so called “Theft Children”, turned up in the media and in police reports from the mid of 1990’s. The children are unaccompanied minors with preliminary or illegal status in Germany. But on this subject as well there are only insufficient data, so the real seize of their activities cannot be estimated. Reports refer to children between 12 and 14 years from South East Europe or of Romanian origin. It can be guessed that most of them belong to the minority of the Roma. They become “recruited” in their home country and get smuggled into Germany. Here they are forced to break into houses and apartments and to act as thefts. They have to hand all the goods they have stolen to their leader, the so-called “Patron”. These children are not only offenders but also victims at the same time. In case they dare to disobey, they face violence and get trashed. These child gangs are of high mobility. One day they commit their robberies in a particular town, to move to another next day, all throughout Europe.

In Baden-Württemberg, a prosperous federal state in the south of Germany, an increasing number of so-called “mobile” child gangs were observed. They consist mostly of young girls from South East Europe. They are not as tall as boys their age. In public they are not recognised, they are subjects of suspicion. They leave in nearby Alsace in France. Their leaders send in pairs, by using the railway system, to the cities located on the banks of the River Rhine. They break into houses and apartments and steal goods, which they can transport easily such as jewellery or money. Then they go back to their head quarters on the other side of the River in France. If they get trapped and captured by the police they don’t face more than to be brought for a short time to a home of the children and youth authorities, from which they escape easily.

### *Best practice example two: “Schaworalle”*

Even if most of the Roma children who live in Germany are subjected to compulsory schooling they often go to school only from time to time or not at all. So many don’t get any degree. In 2001 Romania and Germany signed a treaty in which Romania accepts as its duty to accept Romanian subjects deported by Germany. Since that the Roma families in Germany live with the permanent fear of being deported. They often make their living “on the streets”, with begging, thefts, illegal selling of merchandise, etc. The children get involved in these activities at an early age. Parents and grand parents distrust whatever institution or authority, which is not part of the Roma community. This is amplified by their deteriorating situation as a result of the changes in the law on foreigners. Nevertheless most of the parents wish that their children were getting a good school education. But only in few cases the command of German is sufficient to follow the lessons in school.

It is this problem the project “Schaworalle” is dedicated to. The project started in 1996. The name derives from the language of the Roma, the Romanes. The meaning is “Hello Children”. The project has a capacity for 50 children in the age between 3 and 16 years. It is funded by the school authorities of the City of Frankfurt jointly with the municipal youth authority and the Youth Authority of the Land Hessen. The project was initiated to take care of the Roma children who are subject of compulsory schooling but does not attend schools and appear in public as members of the gangs of “street children”, which means they are begging and stealing or prostitute themselves. In 1999 “Schaworalle” became a pilot project on the federal level. The pedagogical work comprises a Kindergarten, schooling, lunch and leisure activities in the afternoon. But central concern is teaching.

## Chapter 4

# Juvenile affiliation in organised crime in Spain

Domingo Comes Arnau

## What is Organised Crime?

Although the definition of organized delinquency expressed in the Agreement of Palermo would have to be enough, it is certain that by organized delinquency the majority of social agents suppose, by implicit form, that we are referring to, more or less, extensive “global” organizations created to manage crimes like drug trafficking, contraband, money laundering, arms, human trafficking and stealing luxury vehicles<sup>64</sup>. On the other hand the university analysts and investigators emphasize the fact that “the organized delinquency to be able to be identified as so it requires that it has capacity to protect itself from the action of the State by means of intimidation and corruption” (Resa, 2001). In this sense it is considered in addition that organized delinquency is extending everywhere as a result of the expansion of the liberal model and the increasing deregulation of ample economic sectors which, in an unequal world, facilitates the appearance of situations in which the organized delinquency can be profitable (Resa, 2001). Another element to consider is its capacity to intimidate and to corrupt, and the political bonds that establish this route, constitute as a serious threat for the stability of democratic systems.

Perhaps for this reason any Spanish citizen (including political journalists, analysts, NGOs, institutions and all the way to the police except for those very specialized in international legislation) that supposes that the organized crime is different from the “gangs of delinquents” who are formed by a reduced group of people who, during a period of limited period of time, organize themselves to commit crimes like hold-ups, different authors consider that the “gangs” do not correspond to the scheme of organized delinquency because the delinquents that constitute them do not form a hierarchic<sup>65</sup> organization.

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<sup>64</sup> In Spain the notion of “organized delinquency” even appeared until very recently in texts of the Department of the Interior reserved to the international components of these organizations. It is to say in Spain there is no organized delinquency, since the “Mafias” come from other countries. Even when it was evident that in Spain a powerful structure of delinquency organized in connection with the Colombian cartels had settled down, the Spanish authorities when they talked about a Spanish member of such organizations they preferred to call it a “member of the network” and reserved expressions like “Mafia” or “criminal organization” for the foreign members of the same (Rubio, 2004). This reinforced the idea, that we are going to deal with head-on, that there was no organized delinquency and all those that could accede to this category were foreign

<sup>65</sup> In any case the possible boundary between both concept is not easy. Of a side we have a typical delincencial organization like can be the piramidal structure of the dependent drug trafficking of the Colombian posters and that represent with clarity the notion of “organized crime”. Of other we were with the small group of delinquents who organizes itself in form of band to be able to commit one or several crimes and in which it does not appear a “permanent head” but you lead occasional, although these bands can comprise of a “delincencial culture” who acts like an ample network of independent individuals and small bands, is to say that it is organized without being an organization. If when speaking of crime organized in strict sense we spoke of first we are indicating to a reduced number of organizations, but if we included, according to it anticipates the own definition of UN, to the seconds we are speaking of a majority part of the delinquents who act in Spain. As consequence actually all form of crime is “organized crime” reason why the possible advantages are lost to identify (and to try to fight) this specific form of delinquency. It is to say if, as tries the Agreement of Palermo, we establish a strict conceptual equivalence between an international poster of narcotics traffickers and three pals who dedicate themselves on sale to by minor in a district we offer an undeniable advantage to the poster. Simultaneously, and with the object of this Report, when not being able to delimit the group to which we did not refer when we spoke of “organized delinquency” it is impossible to delimit the volume or the type of crimes committed by the same one

But simultaneously the axis that passes from the great international mafia organizations to the individual and solitary delinquent, this crossed by the axis of the type of crime, the necessary cooperation and the strategies of complementariness. It happens that certain crimes (for example trafficking human beings) imply the necessity of a complex organization, but many parts of the task can be entrusted, or be subcontracted to a single person. Let us take the case of sexual exploitation of children: thus a child can be kidnapped by a criminal organization, but later exploited by an individual pimp that had "acquired" it from an organization with which it had never had a previous relation.

Also the same crime can be committed by an organized delinquency or an individual delinquent, just like the case of the sexual exploitation of children, it could be prostitution by a criminal organization or an individual pimp. Which means that only one part of the children who are exploited sexually are done so by a criminal organization. Also we can suppose that when this sexual exploitation is done in another country, and therefore affects foreigners in this country, the majority depends on a criminal organization who in addition will be tied to "human trafficking". But not all, because it is strange to find foreign minors exploited by their family or a person in solitaire that has "bought" or "exported" them from their country of origin.

Simultaneously we cannot ignore the question of the type of demand, that is to say, what implies the action, the necessity of the children? How can it be the case of the sexual exploitation since the condition of the children of age is an exigency of the user, or by the opposite, there is only one form of work, taking advantage of the facilities that offer the children, the criminal organizations, as it is, for example, the use of children in the networks of drug retail.

Questions that nobody has finished answering and that prevent us from formalizing data and reaching concrete conclusions.

## **Minors and Criminal organisations**

All the children retained by the police or given to the Juvenile Courts do not appear tied to the organized crime. We have the numbers of children who appear before the courts, those who are object of measures, but cannot know the weight of the organized crime on this set of children.

But still in the case of those children with ties to organized crime, for example in the case of human trafficking, the relation is very complex. This is the case of the "younger immigrants abandoned or not accompanied" many by which live in the street. Most have arrived in Spain on the hand of the organizations who traffic people, which places to them under the category of "young victims of trafficking by organized crime". But in general the majority, - of Maghrebi origin -, does not have later ties to organized crime, although this does not seem to be so certain between the children coming from Eastern Europe and the Balkans. In any case a part of such commit crimes and maintain difficult relations with the judges and the children centers (Citizen Platform, 2000). Are these unaccompanied children the object of our study? Then partly yes and partly no, because the bond with the organized crime seems circumstantial, obviously we would have to study which maintain relations with organized crime, but which ones? how do we differentiate them? In addition we cannot speak of the application of the children's legislation without considering this important subgroup.

It agrees to retain the fact that most of reflections on this question have like protagonists to young immigrants. For that reason the summer course comes to the case on "Immigration in European societies", which organized the Basque Institute of Criminology in July of 2002 and which presented a comparative and exhaustive analysis on the delinquency of children and their bond with immigration in Europe. The main conclusions of this analysis are the following ones: a) there is some type of relation between immigration and youth delinquency in Europe, but that the characteristics of this relation are very controversial, b) that the sources of data vary between countries and even within the same country, c) that the explanations offer a multi-causal perspective of enormous complexity, d) that most of the experts attribute youth delinquency "to situations of social conflict" between which the immigration and the presence of the organized crime in the origin country suppose a larger conflict.

## Organised crime in Spain

The organized crime (or the equivalent to "Mafia") has never had a great presence in Spain (Comas, 1998). In the difficult conditions of life of pro-Franco Spain the more underprivileged social sectors developed a culture characterized by the "worthy poverty" in a context in which it prioritized a identifying feeling bound to "honesty". The strong police control centered around politics and very little respect for human rights clipped any development of stable and ample criminal structures. The first criminal organizations appeared in Spain in the second half of the 1960s, in the heat phase of the economic cycle of "development policy". But this was economic delinquency, bound to the local political corruption, especially in the construction sector and the tourist zones. As we will see these organizations have stayed in the scope of mere economic corruption, at least until the mid 90s, moment in which, and in certain zones, they began to collaborate with multinational organized crime and entered to form part of their activities<sup>66</sup>.

Also it is certain that if we used the definition from the Agreement of Palermo in the history of Spain, like the history of any country, it appears like a narration filled with "groups of three or more people that during a certain time arranged to commit one or more crimes punishable by at least four years of imprisonment". But if we take care of the factors with which we have characterized above for organized crime, it seems that this it is an infrequent phenomenon up until now in Spain. We can analyze it by the sectors in which this type of delinquency usually is present.

Beginning with prostitution it is necessary to indicate that one stayed legalized until 1951<sup>67</sup> and its structure reflects the persistence of a model very individualized with "independent workers" and "houses of prostitution" with very few "pupils" to the front of was "one in charge". Pimps, many of them women, controlled one of these "houses" or one of these "independent workers" without the existence of a hierarchic organizations. There were no foreigners, nor is there known data of "human trafficking" related to the activity of prostitution. The well-known picture of Pablo Picasso called "Les demoiselles del Avignon" that in its origin was titled "the young ladies (prostitutes) of Aviño street "" provides a very precise graphical image of one of these small "so typical brothels" of the Spanish culture. In the case of drugs the situation is a little different, but also recent since Spain lived at least to the margin of the modern phenomenon of the additions until the first half of the 70s in the century XX, and until 1980 structures dedicated to drug trafficking in the country did not even exist. Between 1970 and 1980 most of the heroin crossed the Spanish border in small amounts that only the addict ones or individual dealers bought, first in Amsterdam and later in Bangkok. The trafficking of cannabis was also (at least until the end of the 80s) quite an artisan business that made individual people who "lowered to the Moor" and the cocaine market was satisfied from the intense relations of Spain with Latin America, from mutual familiar visits, the joint music and folkloric tours, the world of the bulls, the joint cinematographic productions and of course the tourism (Comas, 1985; Comas, 1990; Comas, 1994 and Comas, 2000).

Nevertheless as of 1980 the situation began to vary. But to understand the change first it is necessary to talk about the phenomenon of the "contraband". It is a located in the threshold of crime but accepted activity, as normal and honest, in many territories (Caro Baroja, 1986). In Spain the tradition of the "smuggler" goes back to the Middle Ages and lived for centuries in splendor in the context of a State with a traditionally very protectionist economic policy.

Zones like the Field of Gibraltar, the Portuguese border (especially the zone of Galicia) identified in the language as "the line", the Pyrenees, as well as the Balearic Islands and the Canary Islands, have

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<sup>66</sup> In fact it has been precise so that a certain "generational substitution" took place so that this outside possible one. Although we do not have studies on the subject, seems that the old organized delinquency local adjusted to a "moral model" very little compatible with activities like the prostitution or the drug traffic. Their areas of interest were the urban speculation, the favors of the local public administrations and perhaps the contraband, perfectly accepted things in its social surroundings, but "to kidnap to a minor to prostitute" or "to fix the discords to him by means of murders" were something rejectable and highly improbable.

<sup>67</sup> After three years of blockade international the UN countermanded in 1950 the sanctions on Spain and the pro-Franco regime very eager to accede to the international recognition tried to apply at that moment and with singular it disciplines some agreements of the UN, this it was the case of the "Agreement for the repression of the traffic of people and the other people's prostitution" that took effect in 1951 and which Spain I apply strictly.

had contraband as one of their main economic activities throughout history. An important part of the contraband was done by the fishing fleet, which has always been one of the best in the world in number of boats and presence in all the oceans. The contraband was always an activity that required a certain organization although it prioritized "the local and familiar" relation informal.

The only exception was the Balearic Islands where Juan March created a gangster organization, to the Sicilian style since he maintained numerous contacts with this island, between 1920 and 1936. After this date, and by its support to the pro-Franco rebellion, the organization became a legal Bank that enjoyed the favor of the regime. During the 1970s the historical tradition of the contraband entered crisis due to the rate in which the Spanish economy liberalized. The entrance of Spain into the EU in 1986 certified its death. Nevertheless in some zones, particularly in Galicia and Andalucia, these structures stayed thanks to the "tobacco contraband". This was a more hierarchical activity that made possible the creation of true criminal organizations, who acquired force when extending or when replacing the "business of the tobacco" with that of illegal drugs. Thus the old Galician organization (and Colombian) of tobacco smugglers have become the most important criminal organization in Europe in scope of the cocaine traffic and the Andalucian (and Moroccan) organization has become the most important criminal organization in Europe in scope of the trafficking of Cannabis. It is to say that of multinational criminal organizations didn't exist in Spain, we count for, since the early 90s, two of most powerful in Europe.

Also it is certain that in the descriptions of the presence and structures of the organized crime in Spain, the groups dedicated to drug trafficking are 90% of the total and 10% distribute the rest like sexual exploitation, luxury vehicles, industrial robberies,... in this last case an important presence of organizations Albanian-kosovar, with almost no presence of Spaniards (Gomez, 2005). In all this historical trajectory so individualized and fragmented there appeared children, but where there didn't exist a criminal organization its presence can be attributed to nearer factors, including a possible "sustained own decision" in economic reasons or for sexual direction, although the situations of "familiar exploitation" were frequent or of a third party that acted by its account and to the margin of any criminal hierarchy.

How has it affected the epidemic of drugs and the irruption of the organized drug trafficking organized in Spain to minors? Then in fact not too much since it is certain that some adolescents begin specially in the consumption with Cannabis, the problematic consumptions usually does not appear until a later age. Most of children with drug problems in Spain have smaller problems with their behavior and delinquency, "in addition they consume drugs in a more or less experimental form", but except for rare occasions the drug is not the cause of these problem.

An important problem in Spain has begun it to take hold of the children of addict. The rate of fecundity of addicts (and many pairs of addict) has been superior to the average Spanish, which has produced an important group of children of drug addicts in active-duty, or orphaned as a result of the high mortality that took place between 1978 and 1993, almost the totality of these children, which we considered to be about 150,000 in 2001, is in charge of grandparents or uncles (Comas, 2001). Nevertheless all these elements do not seem, until now, to have at least caused the presence of these children in criminal activities, in a great measure because its massive welcome with other relatives protects them partly and because they were never the objective of the organized crime of the narcotics traffickers, although some commentators indicate the appearance of a new generation of delinquents "open" to this and to other "possibilities of business".

The case of the Gypsies deserves separate mention, since Spain has maintained since the end of the XV century the most important population of Gypsies in western Europe. Its "informal economy" has been bound very much so to the traditional form of small criminal activities. But although the Spanish Gypsies move in their daily life in a "criminal culture" they do not form a "organization"<sup>68</sup> in a strict sense, although indeed we found many gypsy children committing crimes

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<sup>68</sup> If they are the perspective of the Agreement of Palermo, until the point that a certain reading of the same would allow us to maintain that, at least in Spain, the gypsies constitute, as a group, a criminal organization. Obvious such affirmation hits front on the Universal Declaration of Humans Rights and the different Agreements against racism, which would force us to review the Agreement of Palermo.

like part of a "familiar tradition". It is a complex subject of which we are not going to worry ourselves with in this Report.

## History of the Spanish Legislation

The legislation on children begins in Spain with the Penal Code of 1822 that established the legal age of an adult as 17 years old. As far as the orphanages to take in the abandoned children that existed since the Middle Ages and that had a great development in the XVIII century. In 1890 the first Patronage to take care of the petty violators was created, many of which, although they were considered as petty legally they ended up in the prison. In 1902 the Council for Superior Protection of Childhood was created and in 1918 the Guardianship of Children Courts were created with whom a series of establishments (Reformatories, asylums, agricultural colonies and family home) for "delinquent youth" started up. When the beginning of the Civil War in 1936 the Spanish situation in this subject was not any different from the one in the rest of the developed countries. In 1947 all the legislation was reissued in a Law of Guardianship Courts of Children that stayed effective until 1992, sixteen years after the Democratic Transition, when the Constitutional Court declared it unconstitutional, which forced the Parliament to promulgate, with "urgent and provisional" character of the Law of the children 4/1992 that by its urgency left many aspects pending, like for example the regulation of the children between 16 and 18 years of age<sup>69</sup>. In any case the inconsistencies of the Law of 1992 caused deep changes in judicial practices judicial that, with different points of view to adjust to the proposal of a "dual model" of an educative/penal type for all children less than 18 years of age<sup>70</sup>.

Finally Statutory law 5/2000 was promulgated "regulator of the criminal responsibility of children" that has established a very novel<sup>71</sup> frame and that very has been controverted, since there is a great social rejection to the little rigorous treatment of serious crimes, especially murder, but simultaneously many defending organisms of human rights and the rights of children consider it insufficient.

The Law establishes that they are "minors", in agreement with the Convention on Children's Rights of 1989, and all the effects of those that have not turned 18 years old, in addition too that they will not be able to have penal measures applied to them, but if rehabilitated and educated, between which put in regime closed (with a maximum of two years if he is less than 16 years old and five years if he is over this age) for those behaviors are included in what the Penal Code describes as serious crimes. Such measures will only be able to be applied when they are over 14 years of age. An important question, that we will return to take on more head on, is that the State left the competition of the application of such measures into the hands of the Autonomous Communities<sup>72</sup>, that they have had to create specialized services starting from nothing and without budgetary support on part of the State. In any case we will analyze the question of the measures to apply to children and the forecasts of development of the Law a little more head on With the object of visualizing the size of the population which we are speaking table 1 informs us of the number of Files seen by the Juvenile Courts in the last 40 years.

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<sup>69</sup> The fact is that there was no urgency on part of the Spanish people who maintained a legislation promulgated 50 years before by an Authoritarian State and afterwards ratified the Convention on Children's Rights of 1989 in which existed flagrant contradictions.

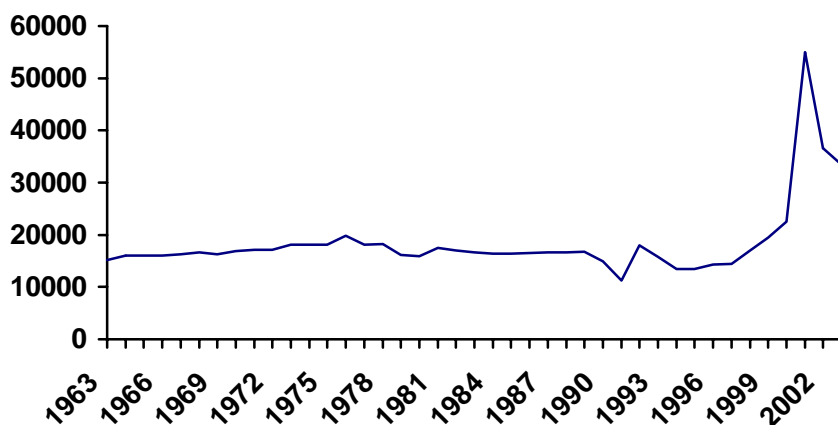
<sup>70</sup> Like all "constitutional" periods in which "a law is being developed", many debates took place in the sphere of minors between 1992 and 2000 in Spain, experimenting began and a very creative moment lived a little. Nevertheless the object subject of this report

<sup>71</sup> To our effects this frame must be complemented with the modifications of the Penal Code of 1995, which includes new features like article 189 on "use of minors in pornographic material" or the Immigration Law of 2003 which has modified article 318 of the same Penal Code to introduce the crime of illegal human trafficking.

<sup>72</sup> Is necessary to consider that Spain is a country with a federal structure formed by Independent Communities and very decentralized

We can see that during these forty years and until the year 2000 activity of the Juvenile Courts stayed stable around 16,000 files a year, with a maximum of 19,857 files in 1976 and a minimum of 11,243 in 1991. This means that, for the population of 12-18 year olds, the volume and the proportion of files have varied very little in this period, although, since we have seen, the ages in the proceedings of the Juvenile Courts have been varying throughout the time and in addition they depended on the type of behavior to judge.

Table 1  
Evolution of the number of registered files in the juvenile courts 1963/2003



Source: Instituto Nacional de Estadística, años citados.

In any case, table 2 shows us that the number of files has stayed stable with a certain tendency to the decrease, from a 0.47% in 1960 to a 0.30% in 1991. Nevertheless in 1998 it rose from 0.67%, to 0.72% in 1999, to 0.83% in 2000 and to 2.03% in 2001 as a result of Law 4/2000 taking effect and to the extension of the ages to the group 16/18 years. We will return to the evolution of the data in the last five years.

Table 2  
Spanish population 12/18 years in the mentioned censuses and files of children in every year

	POPULATION	FILES
1960	3.188.000	0,47%
1970	3.421.000	0,49%
1981	3.999.000	0,43%
1991	3.940.000	0,30%
2001	2.702.000	2,03%

Source: INE, años citados.

With Spain lacking its own organized crime, an "installation" of criminal organizations from other countries took place. Until the end of the 1980s organized crime used Spain as a refuge, in front of the laziness and the disinterestedness of the judicial and police authorities. In fact it was considered that the delinquents contributed capital and in addition they were not going to take part in criminal activities in the welcoming country which assumed that "they had retired".

The first important group that adopted this guideline was the organized English crime that chose Malaga and the Costa del Sol as its place of retirement since the 1970s, where it remained

protected from English claims. Later arrived the Colombian<sup>73</sup> and later the Italian<sup>74</sup>. More ahead already in 90 years refuge in Spain one is left very important from the organized crime coming from the European countries of the East and in individual from Russia, to the time that was reduced the presence of "delinquents retired" coming from the countries of the EU and Latin America, although its money and their investments followed presents in Spain.

Nowadays these criminal groups are strongly based, specially in the coastal zones of the Mediterranean and although it is certain that until now they have continued acting according to the notion of a "place of refuge", living in the country but without acting in the same one is what has protected them from extradition (although there are not too many demands of extradition from East Europe), the things are changing very fast. There are many reasons for the change:

1. First it is necessary to consider the low threshold of conscience that these subjects have on the Spanish society that perceives itself as a prosperous society, the fastest growing in Europe since at least the first half of 1980s and very well integrated<sup>75</sup>.
2. Second place we cannot avoid that this high degree of satisfaction induces you to think that the possible problems related to the organized crime you have to look at "external groups" of immigrants and in which rarely Spaniards participate. In addition still the idea that stays in vigor is the criminal organizations contribute many investments to Spain and they do not commit other types of crime in the country. Which explains a certain laziness of the authorities. In some Parliamentary Commissions some Deputies have raised the subject and the gravity of money laundering in local spheres. Finally on the 2nd of November 2004 the parliament approved unanimously a proposal not of Law to ask the Government for the development of an "Integral Plan against the trafficking of women and children" in the "shortest time possible", and in which it was spoken of the necessity of a policy against international criminal organizations. It is excellent that this initiative has taken from the "Commission of the rights of the woman and the equality of opportunities" formed exclusively by Deputies. In any case this "short time" that was considered in the debate of three to six months has passed and the Government has not reacted.

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<sup>73</sup> At first the Capos of the Colombian cartels were viewed as "causi-nationals" and in fact they argued that they were in their country of origin by condition of Creoles or descendants of Spanish immigrants and for that reason they were not going to deal in Spain. With this argument they managed to get away from the demands of extradition by the U.S.A. But the most famous case being known as the "Ochoa case", the Cabinet preferred to extradite the leader of the Medellín cartel to Venezuela by irregular export of cattle instead of giving him to the U.S.A. for trafficking cocaine. When cocaine consumption and trafficking began to be a serious problem in Spain the attitude of the authorities change.

<sup>74</sup> The attitude towards the Capos Italian always was harsher. Its presence was not tolerated, the collaboration with the Italian judicial authorities was always very high and perhaps for this reason Spain never was a refuge for the Italian Mafia at the same level it was for English and Colombian, to cite the most well known examples of the 1980s. Partly this attitude had to do with the image of Italians being a "greater danger" and for the popularity of anti-mafia actions of Italian judges.

<sup>75</sup> Serving as an example the data of a recent study: in the EU-15 the Spaniards are the Europeans who, tied with the Danish, perceive less social exclusion in their society (Bohnke, 2004). In concrete they are third in the lowest percentage of people that consider themselves exclusionary, surpassed only by Denmark and Slovenia, they to Slovenia in the smallest percentage of population with economic difficulties that considers themselves excluded, the Spaniards are Europeans who contribute a smallest percentage of population that considers that have problems of familiar integration and share with Denmark and Sweden the smallest percentage of Europeans of that say they lack networks of social support. Obvious the data indicates that this perception is somewhat ambiguous, since in rates of poverty and social exclusion, Spain locates itself over the average in the EU, but the certain thing is that the Spaniards feel very self-satisfied with their social and economic situation, perhaps that is why it has been indeed the EU country that has progressed the most in comparative terms in the last 20 years.



3. In this context and throughout the year 2005 subject has begun to receive a certain rank of public attention. When the accomplishment of this Report were considered (at the beginning of year 2005) the influencing presence of the subject was little, but in just a few months it has become a journalistic subject of scale, partly because they have increased the spectacular police operations against transnational organized crime and in particular in June 2005 with operation "White Whale" has dismantled a powerful Spanish organization, the largest European organization dismantled until now, dedicated to money laundering, with dozens of prisoners, amongst them untouchable figures until now like notaries and lawyers of prestige in the local spheres.
4. The appearance of criminal organizations originating to a large extent from the Balkans that deal directly in Spain, poses a threat to the status quo and the legal businesses laundering money of the criminal organizations who had taken refuge in Spain in the previous decades. Thus Bosnian and Kosovians, without the lack of ethnic components in the conflict, threatens the calm status quo of the Russians and these do not know well how to compete in the sphere of direct crime or to remain to the margin of these groups that in addition have begun to attack the economically very powerful "retired Russian criminals".
5. The old specialized Spanish organizations in local economic crime, made contact with organized crime that came to launder money and to retire in Spain, and at first only worried themselves with these exploitations. But the new context is leading them towards more and more active participation in the organized crime, by the high volume of economic resources mobilized especially in the construction sector and tourism (Gomez, 2003)<sup>76</sup>
6. For this reason it seems that Spain has become a "land of opportunities" for the criminal organizations as a result of several factors: an economic growth continuous and superior to the average of the EU; a judicial procedure very respectful of individual rights<sup>77</sup>; the greatest rate of immigration in the EU in the last 10 years; the continuity of the phenomenon of the massive tourism that comes to Spain with a "transgressor attitude" conforming a peculiar "market of the vice"; the high volume (around 1,000,000) of secondary residences of citizens of the north of Europe; the inefficiency of a slow and sluggish judicial system; the disinterestedness of the political people in charge of all these events

Without a doubt some the key factor that in addition explain the others could be the immigration, reason why we are going to take it on extensively, knowing very clearly that the immigrants are the main victims of this situation.

## **The impact of immigration in Spain**

Ten years ago in Spain as soon as there were immigrants and the most important nucleus of foreigners was composed of pensioners from European countries (around 600,000) that had chosen Spain to live for its climate, services and prices.

In the last 10 years almost 4,000,000 immigrants have settled in Spain, which represents a 10% of the population. The main characteristic of immigration in Spain is its enormous variability, without there being a determining origin. There are five great groups and in order of importance are Latin Americans, magrebis, eastern Europeans, sub-Saharanans and Asians. But simultaneously each one of

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<sup>76</sup> Highway 304 Cadiz/La Junquera is about 1,400 kilometers in length, crossing parallel the entire Mediterranean coast except for areas of the "natural parks" this is almost entirely urbanized. Also it passes by important cities like Barcelona, Valencia, Malaga, Alicante, Murcia, Elche, Marbella... Some call it "street 340" and on its sidewalks live almost fifteen million people, but at the moment it has capacity, in houses and hotels, for another fifteen million and the estimations of the promoters for the immediate term (2010) and with the initiated constructions reflect a capacity of housing and lodging for about forty million people.

<sup>77</sup> That is specially certain in the general judicial field and especially with children. Although Spain has received some calls of attention from International Organisms in relation to its antiterrorist legislation

these groups is subdivided into multiple nationalities and ethnic groups. Thus in the Latin American group to emphasize, in descending order are Ecuadorians, Colombians and Peruvians, but simultaneously they surpass the 50,000 Dominicans, Mexicans, Bolivians, Cubans, Argentineans, Uruguayans and the Venezuelans, with important populations from the rest of the Hispanic countries.

Magrebis are essentially Moroccans and Algerians, but the individual citizens coming from the Middle East are mainly Lebanese, Turkish, Syrian and Armenian. The Iraqi population has always been an important one. Nevertheless in Spain, on the contrary to that of other Western Europe countries, there is hardly a presence of Kurds. Between the countries of the East it emphasizes the presence of Rumanians (the second nationality in importance after the Ecuadorians), but also important colonies of Poles, Ukrainians, Russians and Bulgarians. The immigrants coming from the former Yugoslavia and Albania are few but very important to our effects. It is also important to emphasize the massive presence of gypsy immigrants coming from these countries.

The greater contingent of sub-Saharan is formed by the Guineans, which form one of the most important groups of immigrants (although many have Spanish nationality) and in the last years there have appeared nuclei of caboverdianos, Nigerians and Guyanese. There is a lot of confusion as far as it goes for the Asian immigrants but we can emphasize an important Philippine nucleus (by its knowledge of the Spanish), Chinese of different provinces and a Japanese proportion higher than in other countries of the EU. Nevertheless in Spain there are hardly any Hindu or Pakistani immigrants, except for a small nucleus of these last ones in Barcelona. The common thing of this diversity of origins is that so much is a formed by "legal" immigrants like "illegal" but tolerated immigration with regularization procedures a posteriori<sup>78</sup>, which, according to most of the sources, has facilitated the development of an important structure of organizations you dedicate to the traffic of immigrants. It is in any case independent structures organized in the respective countries of origin, by local criminal organizations, although also the collaboration of some Spaniards of origin is required.

Nevertheless other sources deny this "to-legal" fact and emphasize that the immigration is not organized by criminal organizations, but that it is an individual procedure, group or familiar, that can require or not require the support of groups more or less organized for concrete acts and especially for making the transfer between borders, by which they receive a certain amount of money<sup>79</sup>, but that later the immigrant continues on its own account without any relation with the group that helped him in exchange for its payment (Rubio, 2004).

The debate, more implicit than explicit, seems to have as protagonist two different spheres, part of a majority of authors who come from the academic sphere (Aja, 2000; Rubio, 2004; Resa, 2002) that denies the presence of organized crime in the migratory processes<sup>80</sup> and that alleges that this is an association induced on the part of the Department of the Interior (and EUROPOL) to explain its inefficiency<sup>81</sup>, which generates problems by ricochet against the immigrants as well. On the other hand the NGOs, specially those that belong to the "women's" sphere and a part of those of the "children's" sphere think the opposite: many undocumented emigrants arrive at the country at the

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<sup>78</sup> The successive processes of regularization have allowed most of the immigrants to be legalized. The Spanish Social Security person in charge of the last one of these processes calculates that between 85% and 90% of the immigrants at the moment are regularized and legalized. Its rate of activity is very high, around 70% and the proportion of unemployed is similar to the average Spanish of 9,3%. In fact the Spanish System of Pensions handles an increasing surplus due to the increasing number of immigrants quoting.

<sup>79</sup> For example some view the "Mafia of the pateras" that crosses illegal immigrants from Morocco to the peninsula and the Canary Islands as a "criminal organization" whereas others view it as a set of independent "patterns of boats" that limit themselves to receiving exorbitant amounts for crossing the Strait of Gibraltar. You can say the same for the visa falsification in Latin America or the "tourist trips in bus" can be said of from Eastern Europe, to mention the most well-known cases.

<sup>80</sup> In one recent revision of international Literature around this phenomenon it has been established that the dominant argument between scientific publications made reference to the fact that the "organized crime in the migratory processes is a creation of the control agencies" (Resa, 2002)

<sup>81</sup> Some social sectors think that this "police inefficiency" has been caused by some political groups with the purpose of modifying the market of work in Spain and diminishing the salary costs.

hand of organized Mafias that later exploit them (Bedoya, 2000; Bonelli, 2001). The most important of these criminal organizations would be the Moroccans (who includes transport of citizens morocco, of sub-Sahara citizens and hashish), but those of greater incidence are those from Eastern Europe, the Caribbean and Colombia that include the trafficking of women (voluntary, deceived or kidnapped) with prostitution aims. The presence of children in this situation also seems important although there are no specific data and only some "well-known"<sup>82</sup> or alluded to cases.

As a result of all these processes we can say that there has been established a synergy between money laundering, prostitution and trafficking of immigrants which has allowed the to forming of important global criminal organizations, with presences in the country of origin and Spain, in which accomplices of Spanish origin have integrated themselves (although these almost always occupy themselves with economic side) and that in addition can cause conflict among them.

A very novel component and one that has quickly been gathered in Spanish Mass media has been the appearance of the "Latin Kings", the "Ñetas" and other equivalent organizations which began to express themselves in Barcelona and later have expanded to other cities. Like "youth gangs"<sup>83</sup> that were born in Chicago several decades ago has been being an organization and that the main nucleus of delinquency amongst Hispanics nowadays in the U.S.A. It has also become a serious problem in Central America in particular in Costa Rica, Guatemala, Nicaragua and Panama. They have hundreds of thousands of members and in addition they act in a very disciplined manner with components that approximate themselves to the sect definition.

The Spanish bands are formed basically by young people coming from Ecuador and at the beginning of this report there was not much information on it. Nevertheless hardly six months later the subject has become one of the important subjects of the political agenda and the gangs have viewed an intense way in cities like Madrid<sup>84</sup>.

It happens that "Latin Kings" and "Ñetas" make activities that fit very precisely with the content and objectives of this Report, since the people in charge and lead of the gangs are of legal age, but all the caught subjects are children and most of the victims of their crimes (or at least the most visible) are also children in school, although in Spain, already they have begun to take on another types of activities like drug traffic, robbery and extortion.

There is hardly any experience of work on part of the children institutions or the NGOs with this recently implanted group in Spain.

## Statistics

The data available on this question is very fragmentary and in addition it still does not reflect the new situation that we are describing because the legal and police action hardly has begun to be developed. But we are going to facilitate them to contextualize our conclusions.

In the first place we have the referred data to crimes and offences in the familiar sphere (table 3). There are 83,394 cases, which represents (although some talk about the same person several times and therefore are repeated) that approximately in 0.6% of the Spanish families these crimes committed occurred in 2003. Most (69.8%) were committed against spouses which implies that they have been crimes that affect emancipated adults. In 7.3% of the crimes were committed by the father/mother of the victim, a 6.8% have been the sons or daughters, and 14.4% have been another relative. An important familiar confliction exists therefore, although very diversified.

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<sup>82</sup> Spain shares with Italy the lowest world-wide rate of fecundity which has produced an extraordinary development of international adoptions (legal and illegal). Although once in a while the subject is alluded to in "trafficking of babies with adoption aims" seems to be controlled well on the part of the Spanish authorities, but the number of adoption is so elevated, the volatileness of the "so intense market" and the such high amounts that the parents pay, that the subject seems to lend itself to diverse corruptions.

<sup>83</sup> Although they are called gangs they are in fact "criminal organizations" of gangster cut structured and with an intense sense of loyalty and rituals. Although they are only formed by young people the Spanish society does not visualize them as "Mafias" but as "violent youth gangs".

<sup>84</sup> At the beginning of the Report the Government Delegation in Madrid, that takes responsibility for the coordination of the forces and security bodies, hardly had information on this question. When it is finished there will exists a document that identifies all these gangs in the city and an important part of it components, that show an unexpected size, a remarkable aggressiveness and a high rate of criminal activities.

Nevertheless table 3 indicates several things to us. First of which is the main victims are women, second, that the proportion of foreign women (but not boys) is higher than its population weight and, third, that the proportion of younger women (not boys) is not as high as we could hope. Possibly because aggressions of minors and, in particular, sexual aggressions are not well known since constantly appear denunciations made by adults referred to the past and the difficulties to denounce the situation.

TABLE 3

VICTIMAS OF CRIMES AND OFFENCES IN THE FAMILIAR SPHERE 2003

<b>WOMAN</b>	<b>Total</b>	<b>Spanish</b>	<b>Foreign</b>	<b>Children</b>
Homicides and aggressions	46.250	36.782	9.468	2.129
Kidnappings and threats	15.385	13.465	1.920	392
Sexual aggressions and abuses	1.189	899	290	438
Other	1.220	1.138	82	26
<b>TOTAL</b>	<b>64.044</b>	<b>52.285</b>	<b>11.759</b>	<b>2985</b>
<b>MAN</b>	<b>Total</b>	<b>Spanish</b>	<b>Forenign</b>	<b>Children</b>
Homicides and aggressions	12.795	11.960	835	1.775
Kidnappings and threats	5.815	5.380	435	188
Sexual aggressions and abuses	93	77	16	60
Other	647	624	23	13
<b>TOTAL</b>	<b>19.350</b>	<b>17.603</b>	<b>1.747</b>	<b>1.959</b>

Source: Secretaria de Estado de Seguridad. Datos internos

In addition there is the statistic in which the crimes are 22,424 (27% of the total) whereas the offences are the rest. The image that offers to us is that in Spain there are few minor victims of crimes committed by their relatives.

Such image appears to be confirmed by other sources in addition. Thus Statutory law 5/2000 taking effect on criminal responsibility of the children, has produced a series of statistics on the application of this Law, created by Circulating 5/2001 of the General Police station of Police have given rise to individual "Memories of Children" of annual character whose results we summarized next<sup>85</sup>.

Thus we see as from 2001 a continuous reduction in the number of children detained by the police takes place (table 4) that affects in addition all sections of age, although the greatest reduction appears amongst children less than 14 years old from 1,363 in 2001 to 432 in 2003 on account that the Law declares exempt of responsibility in any circumstance.

TABLE 4

DETAINED CHILDREN AND FILES OF CHILDREN

YEARS	HALTINGS	FILES	%	
1999	-	19.515	1,06	
2000	-	22.476	1,22	
2001	20.969	54.922	1,14	2,99
2002	19.605	36.605	1,07	1,99
2003	16.710	33.470	0,91	1,82

<sup>85</sup> The different statistical sources do not agree, because in some cases they are only data of the Police Department and they are not including those of the Guardia Civil and the Autonomous Police Department, but the tendencies described here are the same ones in the data of these other sources. The police and judicial sources always have shown remarkable discrepancies of which we are not going to talk here.

Source: Secretaría de Estado de Seguridad e INE.

Nevertheless in same table 4 we can see how the juvenile courts have seen an increase in the number of its files, as a result of the new Law and when including the group of 16-17 years olds. In 2001 the number of files has reached an historical level although surely the result of the regularization of previous situations (minors less than 16 and 17 years old with prison sentences previous to the promulgation of the Law). The following years the numbers show a diminution similar to the data of the police<sup>86</sup>. In relative terms, and for the population 14 to 18 years olds, the percentage of children stopped by the police is around 1% and the ones on file in the juvenile courts are around 2%. At this point we must raise the issue on what proportion of files of the Juvenile Court give rise to adopt some type of measurement on children? Table 5 indicates several things to us, first that the take effect of Law 5/2000 has not only supposed an increase of the number of files but of the number and the proportion of measures dictated by the judges, which is logical because the group of 16-17 year olds accounts for more criminal conducts than the group of 14-15 year olds.

Second that the irruption of Law 5/2000 has distorted the data so much that it seems impossible to determine the "sanctioning degree of effectiveness" of the Juvenile Court. Although it seems to be, according to the passage of time, that 1% of children 14-18 years old are, every year, object of a judicial measure.

TABLE 5  
CHILDREN TO WHOM MEASURES ARE APPLIED

YEARS	FILES	MEASURES	% MED	% POB
1999	19.515	6.781	34,7	0,37
2000	22.476	7.506	33,3	0,40
2001	54.922	5.400	9,8	0,29
2002	36.605	12.829	35,0	0,70
2003	33.470	16.702	49,9	0,91

Source: Secretaría de Estado de Seguridad e INE.

As far as the weight of the delinquency of children in the set of the delinquency it is possible to observe as it also has been reducing to represent nearly 9% in 2001 that has dropped to 7.18% in 2003.

As far as the type of crimes committed by children (table 6) refers only to the years 2002 and 2003, most of detentions made by the police correspond to crimes against property (thefts and robberies) that accounts for 85% of the prisoners, the most frequent being "robbery with violence" (26%), the "theft of vehicles" (25%) and the "robbery of things with force" (20%). As far as the data provided by the Juvenile Courts the scheme is very similar although the data does not agree absolutely.

Most of the prisoners are men and little more than 10% are women, although in the data of the Juvenile Courts the women represent less than 10%. Altogether, 22% are foreign, which would confirm a greater specific weight on this group.

TABLE 6  
CRIMES COMMITTED BY CHILDREN

	2002	2003P	2003M
Robberies of things with force	4.625	3.996	7.933
Robberies with violence	4.497	3.865	

<sup>86</sup> The differences of data between the Police Department and the Court House is due to the Police Department not reporting the detentions of the Guardia Civil and the Autonomous Police Departments.

Thefts	2.396	2.115	2.141
Purse snatching	666	611	-
Theft in vehicles	1.850	1.484	-
Theft of vehicles	5.038	4.161	2.073
Others against property	1.382	1.317	-
Homicide/murder	66	72	38
Injuries	935	995	2.236
Others against people	127	161	218
Drug trafficking	667	592	387
Sexual	239	261	188
Other	4.182	4.679	3.149
Non categorized	-	-	130
Men	24.153	22.012	16.844
Women	2.517	2.297	1.492
TOTAL	26.670	24.309	18.493

Source: Secretaria de Estado de Seguridad e INE

In its information the police indicates that violent crimes and sexual offences by children have increased, and by remarkable form, crimes against property have diminished. Nevertheless the global data does not seem to confirm these tendencies.

Six cities that represent little more of 20% of the Spanish population concentrate most of crimes committed by children. They are Madrid (20%), Barcelona (11%), Valencia (9%), Alicante (7%), Seville (5%) and Malaga (5%). 80% of the rest of the Spanish population, including great cities like Bilbao, Zaragoza and Palma of Gran Canaria, only account for 40% of youth crime. The strong specific weight of Madrid is attributed to the presence of an ample colony of unaccompanied Moroccan children and who cannot be sent back to their country for lack of familiar support there. The rest are cities on the Mediterranean coasts.

The result of the police activity indicates that 49% of them were made available to the judicial authorities, while 51% were set free or given to their parents or guardian. 8% of the first group entered into a reform center. It is hard to say that 4% of the prisoners were committed to some type of center.

In another order of things in the year 2003 15,783 disappearances of people were denounced in Spain. Of them 60% were of children (9,468 cases). After a year 1,336 cases remained missing (14.1%) of which 504 corresponded to Spaniards and 832 to foreigners. By gender 917 of them were men and 419 women. It agrees to clarify that in the case of Spanish nationals the number of missing women found (253) does not surpass the number of men (250). The rest were located and/or returned to the family.

As far as the information on prostitution goes it is much more incomplete and solely constituted by the Guardia Civil who guards 75% of the Spanish territory, specially in rural areas where only 38.5% on the population lives, manageable numbers that seem quite trustworthy. Thus in 2004 there were 19,000 women registered who exerted prostitution in these spheres and in what is called "Highway Clubs" (approximately the same as in 2000), of them 18,600 were foreign and hardly 400 were of Spanish origin (in the year 2000 they were respectively 16,800 foreigners and 2,400 Spaniards, which seems to indicate that the Spaniards are being replaced by immigrants<sup>87</sup>). Between the foreigners the majority (59%) are Latin American, followed by immigrants of Eastern Europe (34%) and some African (7%).

<sup>87</sup> In a great measurement because the Spaniards already had a certain age and many had evident physical deterioration from addiction because they came from the epidemic stage of heroin. Apparently Spanish young people who begin now in prostitution are few and in addition they concentrate themselves in the circle of contacts by means of press announcements, that is to say, the Spaniards "get rid" of the most intense forms (and sales) of sexual exploitation that yield foreigners.

We can extrapolate the data of the Guardia Civil to the set of the country supposing that the phenomenon of the Highway Clubs represents between half and one third of the total prostitution in Spain. This would provide us with between 40,000 as a minimum and a maximum of 80,000 women dedicated to prostitution in Spain, most of them foreign. Such estimates are very far from that and they elevate up to 300,000 and even up to 500,000 as the number of women which are dedicated to prostitution, which are very unreal numbers since the potential demand is incapable to absorb such supply<sup>88</sup>. As far as the presence of children there are no numbers, although the intense rejuvenation of the group from the immigration seems to mask it, specially between which "do not have papers" or that have had them falsified, for many minors. The Police and the Guardia Civil are informed once in a while of some exploitations that imply children, but isn't a clear statistic on the same ones and in any case they are including in the data on mentioned children above. The most general opinion is that the owners and persons responsible for clubs and networks of prostitution prefer not to have children because this avoids problems in an activity that this legalized by de facto.

As far as masculine prostitution and in particular children there is no data and even they have disappeared in the plot of the great cities the zones in which existed the traditional form of this activity. In any case this does not avoid the tho ught ofthe existence of networks and underground systems, than have escaped police control and in which takes place a supply and a demand of children with prostitution aims. Although it agrees to consider the fact that in Spain they have been discovered and dismantled different dedicated networks from the infantile pornography by Internet and that in all the cases the photos and the films were obtained by three routes, the majority of countries in which this material takes place (specially in Eastern Europe), the sexual tourism in Asia and the Caribbean and in some cases photos were robbed by means of deceits to the families or their own children and that in addition has been detected by the social families, schools or services, are to say in all this material as soon as there were children located in Spain and the few had to do with these "deceits" or with abuses in the own family.

As consequence we can affirm that ther does not exist one organized structure of child prostitution of in Spain. On contrast there is a constant frequent practice of the sexual tourism on the part of Spaniards<sup>89</sup>, specially in Cuba, where many Spanish tourists go every year and between them

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<sup>88</sup> In Spain there are around 16 million heterosexual adult men, 3.5 of children, almost a 1 million of prevented (the majority old) and the homosexual community is considered in about 800.000. Sometimes a 40% of men (less than 7 million) recognize in trustworthy samples "to have used the services of prostitution" (Commission for the Investigation., 2002). In Spain the popular figure of the "putero" (the man that resorts to the services of prostitution with a certain habitualidad) is well well-known, identified and even tolerated in its social and familiar context. Although in general one is unmarried about certain age, separated and divorced or widowers. In any case less of 15% of men they have adopted east behavior at some moment of its life and less of 5% (it is to say one of each 20),they can be considered "puteros" in a while determined. On the other hand in Spain he has around 1 million immigrants single men (although the number is descending by the "familiar regroupings) and in the rural scopes has around 500,000 unmarried single men of a certain age and in phase of retirement that have remained to take care of earth while the women of the towns emigrated to the cities. Supposing that all these men, independently of age, physical state and moral attitude, demand a sexual service to the week, which is much supposition, we have a **potential demand in hypothesis maxima** of 2,500,000 weekly sexual services. On the other hand the lent operating frequency goes from evidently exaggerated 20 newspapers of some news articles of the press (what it can be certain in isolated cases), to the 3.8 daily services (in "contact floors the cities") of some studies (Commission, 2002). Some estimations for the Clubs of highway speak of up to 10 daily services. For us we had a **hypothesis minimum or average** of 5 daily services. The crossing of both data provides a Maxima demand to us possible for Spain of 71,000 women exerting prostitution in an average day. Since I have optimized to the maximum the numbers of the potential demand the estimation of the number of women who exert prostitution in Spain must be necessarily below this number. In my experience "the excessive" numbers to quantify a problem and that assumes "help to sensitize" have a paradoxical effect since the citizens think that "if they are so many not he can do nothing". However one more a more realistic number allows to demand responsibilities to the institutions with competitions in the matter.

<sup>89</sup> This is the position of the Spanish section of ECPAT, the international network of organizations against commercial the sexual exploitation of children, in its report of the year 2002, it does not communicate internal cases but there is the presence of Spaniards in the sphere of the international tourism. Also it indicates the low threshold of conscience on these facts in the Spanish society.

there usually circulates, in a context of social tolerance, an infinity of stories that include prostitution of children. In fact the Spanish televising channels (all the way to the cinema) have made numerous news articles, investigative journalism and even films on this subject<sup>90</sup>. As far as child labor (in Spain the legal age to begin to work is 16 years old) it practically seems eradicated and even the rates of domestic work and "familiar aid" in very traditional sectors like agriculture, fisheries or retail commerce are very low. In a recent study by UNICEF and by using the indicated barrier of work of 15 hours of a week one detected that only 3.5% of the children (and some children) of 10 to 15 years surpassed this number in "aid to domestic work". Also they surpassed a 0.86% of children who "helped in traditional sectors" (IUNDIA, 2000). On the other hand the Encuesta of Poblacion Activa (EPA) from the 2nd Quarter of 2005, indicates that between 16 and 19 years<sup>91</sup> 20% of the young people of these ages work legally, there was in unemployment of 9% and a 71% were studying.

Such numbers indicate a society in which the labor exploitation of the children is little, prioritization is on studying, at least until the age of 20 years, and in addition all form to labor exploitation of the children is socially looked upon socially very badly. In fact some groups of immigrants (in individual gypsy coming from Eastern Europe) with a begging style that implies the presence of children have had to leave this strategy in Spain by the social rejection that it provokes and to replace it with other practices. We have not detected any concrete reference in Spain on the question of use of children in the trafficking of organs.

In summary the data seems to confirm a tendency towards the diminution of the legal problems between the children in Spain, but at the time diverse commentaries and information insist Spain happens to be an important scene in the activities of the new organized delinquency and in particular to which it talks about to sexual or criminal exploitation of children.

## Conclusion

In a systematic revision of scientific Literature on "the explanations for the affiliation of organized crime" (Resa, 1997), the presence of two theoretical currents was indicated to explain this relation, one of them had to do with the frustration, is to say the people were affiliated with a delinquent organization because of economic, social and cultural deprivation which they faced or expressed other terms why they became delinquents to be able to survive in an adverse atmosphere. The second theoretical line has more to do with the rational election, is to say that the people were affiliated with the criminal organization by the advantages that they reported to them, that is to say, and also expressed in other terms, it was not a question of survival but of an increase in the quality of life.

Nevertheless in the case of the children almost all the findings came to confirm that its affiliation had to do with frustration situations that sometimes were caused by the own criminal group to catch and/or to exploit the children. Assuming this model we can affirm that although in Spain a tradition of organized crime has never existed and although at certain moments important problems with children have existed, the certain thing is that the bond between organized crime and child exploitation or affiliation has been a precise and isolated fact. Nevertheless in the last years the globalization, the conversion of Spain into a country of destiny for the emigration, the disappearance of the European borders, the existence of an "internal market" (including the massive tourism) of enormous possibilities and the lack of experience and capacity of institutional answers before new

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<sup>90</sup> The information about Cuba has been developed by Spaniards and it is very loaded with folkloric elements. But the most recent data relative to Mexico and in particular to the State of Quintana Roo (also an important destination for Spanish tourists) have shown the important numbers of prostitution of children bound to the phenomenon of the tourism (Azaola, 2000). If the numbers of Quintana Roo are certain, and we extrapolated them to the greater popularity of Cuba, the hypothesis that can be maintained in Spain that the prostitution of children is residual because the supply and the demand is focused on the phenomenon of the other sexual tourism.

<sup>91</sup> The EPA does not release the data of 16 and 17 years which prevents us to make one more a more exact comparison, but in other sources we see like the proportion of young people who work between 16 and 17 years he is inferior to 6%, the unemployed are a 7% and the students a 87%. (Comas, 2005).



challenges supposes that child exploitation is on part due to organized crime, which is causing a certain expansion of this phenomenon. It does not turn out preposterous to think that in Spain "an opportunity window has been opened" that is a necessary condition so that the organized crime penetrates in a country (Resa, 2000). Simultaneously they have begun to detect the first indications of complicity of some political actors, which, according to all the authors is the best indicator that this is taking place this incorporation of the organized crime in political, social, cultural and economic structures of the country at issue. Some works even indicate that the window would have been half-opened with the drug trafficking between 1980 and 1995, opening itself absolutely with prostitution from 1996/97 (Comission, 2002). Nevertheless the statistical data coming from judicial and police spheres still does not seem to have caught this implantation of the international networks of trafficking and exploitation of children and the volume of children with legal problems seems to become stabilized around 1% and of them less than half are object of some punitive or educative measurement and hardly 0.07% require some type of internment. Perhaps for this reason and in relation to the policies with the children a little opposed have appeared visions, between the Defensor del Pueblo, the Office of the public prosecutor of the Supreme Court and the General Police station of the Police. The Circular emitted by each one of these institutions throughout 2003 and 2004 and that we have mentioned and transcribed in the text, reflect somehow, the lack of a complete and consensus vision on the child problem. But if the problem is time to descend were growing, as affirm by their information in all these institutions, these discords could be lethal.

In the case of the NGOs it appears the increasing preoccupation that it obstructs to all of them before the emergency of a phenomenon in which Spain, until now, had stayed somewhat to the margin. In this sense some NGOs projects an immediate future in which the phenomenon "mafia/children" is going to be very excellent in Spain from the perspective of an important market for the exploitation of children and the associated delinquency (from drug trafficking to money laundering, happening through extortion and other crimes).

The theoretical vision of the "window of opportunity" would reinforce this projection, in a context in which the "buyers" of the services that the organized crime offers, using the children, non are they Spanish citizens, but also of other countries of the EU with secondary residence or who come to Spain of vacations, which implies increasing difficulties to confront the possible corruption related to all these behaviors.

The expectations are not, therefore, too explicit, although the risk seems certain, but its expression depends, in a great measure on the capacity of institutional answer, that depends as well on which we obtain reliable data.

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## Chapter 5

# Juvenile delinquency: a reality of the Romanian society

Georghe Ion Ciciu

### The Legislative frame

In the Romanian specific literature and in the Romanian legislation also, the acts of delinquency are considered acts concerning the social standards, which violate the social and individual security, and they are considered as being part of the criminal sphere.

Delinquency means that the persons under 18 years old are involved in acts that are part of the criminal sphere. 'Mafia'-type nets are the organizations that are made in order to commit offences. These nets have a very solid organization, a person who coordinates and manages the entire activity, they commit offences in every domain, and sometimes they have the support of the politicians and even the protection of the authorities.

This is one of the definitions that are met in the Romanian specific literature but is hard to say that in Romania exist such organizations. A real fact is the one that there are groups committing offences in the big cities of Romania, which can be under the impact of this definition, but they are under the influence of the foreign 'Mafia' webs (Arabian, Russian, and Chinese).

The problem is that these groups use minors with antecedents in the sphere of the offences just for achieving their purpose. Now, the authorities cannot confirm the existence of some 'Mafia'-type groups in Romania and the involving of the minors in such activities. On the other hand, the mass media is involved in this subject by pointing out cases of minors who are involved in 'Mafia'-type organizations. The minor's deviant behavior, which is reflected in delinquency actions, has negative effects upon the child, family and the social environment.

A minor's delinquency act brings about the marginalization by both the society and community: neighbours, friends, family. A minor can criminally respond if he is 14 years old and if he is considered to have discrimination.

He is not imprisoned when he commits the first criminal act but if he does it again he is judged and imprisoned. If the minor commits a criminal offence he is judged by a law court and, depending on the gravity of the act, he is imprisoned, starting with the age of 16.

The Romanian prisons for minors are separated from the ones for adults and the minors benefit of different treatment from the adults. Not long time ago, in Romania did not exist the concepts 'conditional discharge' and 'probation'. These alternative services regarding the minor's imprison started to develop only in the last 5 years. Now, these services are at their beginning and the Social Rehabilitation and Supervising Center was set up at national level since 2002 as an alternative to the prison.

After the minor is released, he does not benefit of reintegration services and specific help and he is not helped to start a new life. Therefore, the forms of the delinquency are:

- drug taking by the minors;
- drug trafficking by the minors;
- prostitution;
- human being traffic when minors are trafficked and also traffickers;
- vagrancy, beggary;
- theft;
- robbery;
- rape;
- manslaughter.

The minors commit these delinquency acts against the adults and minors.

## Delinquency: an increasing phenomenon

The delinquency registered great changes in Romania in the latest years because a large number of children are implied in manslaughters and violent offences. Children committed 7.2% of the offences from 2002, a similar percentage (7.1%) was registered in 1999. 90.6% of the violent offences committed by minors were against the human beings, and the authors were from 14 to 17 years old. The offences against the property had a large percentage (70 % of all the offences committed by the minors).

Prostitution and the human being international trafficking become an ominous phenomena in Romania. In 1998 were reported 112 cases of prostitution and in 2000 their number decreased at 85. The number of the victims who are recovering with the help of the integration projects at non-governmental organizations is larger. The condition of the children involved in drug trafficking is graver from year to year. If in 1993, there were reported 14 cases of minors who committed such offences, in 2000 were reported 35 cases. Now, Romania was turned into a market where are sold drugs. The number of drug-users who are under 18 years old is increasing. The age when they start to use drugs is somewhere between 13 and 14. Studies made by the organization 'Save the children' highlighted that 10% of the high school students took at least once drugs. The number of the researching on this topic is not sufficient or representative for the actual situation of this phenomenon. The data are not sufficient and sometimes superannuated. But there is some considerable researching regarding the drug-trafficking and drug-using for all kind of ages and the result is the minors' number and percentage involved in drug trafficking and use.

The Researching and Preventing Delinquency Institute gave a material where it exposed the results of a research made in 2000 regarding the offences committed by minors.

25 470 offences were committed in 2000 by minors and they were:

- Manslaughters 26 cases;
- Very serious manslaughters 5 cases;
- Manslaughter attempt 26 cases;
- Infanticide 2 cases;
- Blows causing death 10 cases;
- Severe bodily harms 57 cases;
- Theft 17 406 cases;
- Robbery 700 cases;
- Outrage 17 cases;
- Outrage against manners and disturbance against public order -57 cases.

The children under 16 years old committed 957 offences (3.7%).

The total number of the minors who committed sexual offences is 295:

- 119 cases of rape;
- 25 cases of sexual relation with minors;
- 52 cases of sexual relation with persons of the same sex (we must say that at the time when this study was made this kind of relationships was criminal deeds and were condemned by the laws);
- 56 cases of sexual perversity;
- 34 cases of sexual corruption;
- 7 cases of incest;
- 85 cases of prostitution;
- 39 cases of whoremongering.

The number of drug trafficking offences committed by minors was of 35 cases. Types of abuses committed against the minor, which were reported and solved:

- 185 cases of sexual corruption;
- 127 cases of sexual relation with minors;
- 16 cases of bad treatment against the minor.

The organization 'Save the children' published a study named 'Teenagers and drugs' in March 2001. The team of the Supervising Center of Teenage and Young Drug Users from Bucharest made the material. We are presenting now some statistic data as results of the study made by the team of this

supervising centre regarding the drug use: in 2001, there were offered 294 consultations to those 112-drug addicts who appealed to this center. The statistics of these persons according to some criteria is:

The situation on age groups:

- 12- 14 years - 3 cases (3%);
- 15- 18 years - 40 cases (36%);
- 19- 25 years - 62 cases (55%);
- 26- 29 years - 7 cases (6%).

As you can notice, a large percentage is the one of the minor drug users, the most of the ones taking drugs being from 19 to 25 years old. These studies were made in 2000 and 2001 and they reflect the situations found out then. There were not published other studies regarding this topic.

Romania is confronting now with another phenomenon: the homeless children. It has a smaller proportion, but it still exists. A large delinquency is manifested between these children because they are not supervised and controlled by anybody. Between these children were committed delinquencies as theft, robbery, prostitution, drug using, rape, vagrancy and beggary.

## **Involved organizations**

The organizations and institutions, which are involved in the work with the minors who commit delinquencies, are of two kinds: governmental organizations and institutions and non-governmental and non-profit organizations. The governmental organizations are financed by the state and are subordinated to some boards and state institutions. The non-governmental organizations are the associations and non-profit establishments, which are auto financed or financed through programs by the European Union.

These two intervention spheres (governmental and non-governmental) cooperate because they want to elaborate some interventional strategies and to intervene upon the minors who commit offences. We will present some organizations and institutions, which activate on this topic:

a) governmental institutions

- The Ministry of Home Affairs which activates through The Researching and Preventing Delinquency Institute- its activity is to prevent, to stop and to eliminate the delinquency;
- The Ministry of Justice, which activates through the law courts for minors, which are an innovation for the Romanian juridical system (the minors are judged for their actions starting with the age of 14). Every young people investigated for breaking the law is first psychologically or psychiatrically examined. This ministry activates through The Social Rehabilitation and Supervising Centre, which activates in the county law courts.
- The Experimental Centre of Probation, a specialized organism, set up from the order of the Minister of Justice;
- The Ministry of Education, which activates through the County School Departments having as partners the County Police Departments subordinated to The Ministry of Home Affairs.

b) non-governmental organizations

- 'Social Alternatives' from Iași, which collaborated to the foundation of the probation service in Romania;
- the organization 'Save the children';
- 'The Association of the Volunteers who are working with the children of the street' from Bucharest;
- 'Family and Child's Protection Establishment' from Bucharest;
- 'The Informational and Cooperation Centre of Protecting the Homeless Children';
- 'Betania' Association from Bacău.

These are only some organizations that develop projects or partnerships regarding delinquency. I am mentioning that I had information concerning this activity only from these organizations. The information is taken from their web sites or other sources.

## The organizations working instruments

The main interventional means of the organizations and institutions, which deal with delinquency cases, is the interventional project about this topic. The projects generally refer to preventive custody and less to intervention because that is stipulated for the constitutional laws of the state, the delinquencies are stipulated for the Criminal Code, the interventional means are illiberal, and they do not admit interpretations. The continuous increasing number of the teenagers who adopt an unhealthy life style based on delinquencies required the developing of some services for the criminal minors and leads to the developing of those projects, which refer to the preventive custody of this phenomenon.

We will synthesize forward the projects and the working instruments of some organizations and institutions regarding the actions described. The Institute of Researching and Preventing Delinquency develops some preventive programs between students.

**The prevention caravan** has as purpose the students' education in the field of offences, the increasing of the measures of self protection, the prevention of drug using, supervising actions on looking for and getting a job. It develops in Bucharest and in some counties of Romania. The activity is based on the partnership with the county departments, which prevent the offences.

**Dura lex** is a program, which modeled the character. The purpose is the teenagers' education in the field of offences, the developing of a right civic behaviour and the forming of a system of values concordant with the legal and moral laws. It develops in Bucharest and other counties of Romania. The partners of the program are: County Police Departments, The Ministry of Education through The School Departments.

**Teenage – no delinquency** has as purpose the prevention of the minors' involving in offences committing. It develops in Bucharest and other counties of the country. Partner is The Ministry of Education.

**Let's Expelled the Violence** has as purpose the prevention of committing offences in the school area. It develops in Bucharest and in other counties of Romania. The partners are The County Police Departments, Public Order Departments and the Ministry of Education.

**Education- between Decalogue and Criminal Code** has as purpose the achievement of a non- victim and non- offence education between students from secondary schools and high schools. It develops in the schools from Bucharest.

**School- informative and educative liaison between students, parents, community** has as purpose the prevention of school and family abandonment and of the offences from the school area.

*The Experimental Centre of Probation* functions as a specialized organism and was founded by the order of The Ministry of Justice № 2922/2001.03.11 as well as based on the protocol between The Ministry of Justice, RGDHR (Romanian Group for Defending the Human Rights), The Family, and Child Defense Settlement.

The objectives of the centre: the increasing of the safety degree of the community, the decreasing of the delinquencies committed by the minors, the decreasing of the risk of second offence, the social reintegration of the persons who committed offences, the client's assisting to adopt a pro-social behaviour, the involving of the community in preventing and controlling delinquency.

Partners are Helsinki Committee from Netherlands, the Probation Centre from Netherlands, Law Courts and Judge Courts.

Specific activities:

- it works out evaluation reports regarding minor defendants when the judge instances asks them ( reports of interrupting the implementation of the punishment, of preventive custody);
- these evaluation reports have a guiding and a consulting character, giving data about the person who committed the offence in order to individualize the punishment;
- if the person who committed the offence or the law court asks, the Probation Centre can assure supervising and assistance in order to reintegrate that person in the society;
- it has the role to supervise the implementation of the measures and of the duties stipulated for the Criminal Code and of the obligations given by the judge instances to the minors and young offenders younger than 21.

- These reports have a guiding and a consulting character, giving data about the person who committed the offence in order to maintain or drawing out the person from the criminal pursuit.

The Probation Center's equip is formed from social reintegration and supervising advisors specialized in social assistance, psychology, law and sociology. This model of The Probation Centre was adopted through constitutional law and it is set up in every county of Romania in Social Reintegration and Supervising Centers that develops the same type of activity.

Concerning the phenomenon of the children of the streets with risk to commit offences, there were taken some measures. We will present forward some measures taken by the authorities of the country as well as by some establishments and associations:

- the setting up of some establishments for the children of the streets;
- the setting up of some day-centers for them;
- the setting up of a data system with these children;
- the setting up of a Cooperation and Informational Center which realized some informative booklets for the children of the streets and which deals with some topics about prostitution, violence, family and sexuality;
- the setting up of the Street Social Service by drawing a map with the areas where live the children of the streets;
- monitoring projects;
- the organizing of some activities with these children in different cities of the country;
- some programs made to implicate the public sense in the topic;
- the celebration of the children of the street's international day.

We must say that there is a tight collaboration between the governmental and non-governmental organizations according to the issue of intervention against the delinquency. We will explain this through the partnership between The Supervising and Social Reintegration Centre and 'Betania' Association from Bacău, having as collaborators The County Center for Psycho pedagogic Assistance and The Children's Protection General Board.

The purpose of the project is the developing of a community center strategy to prevent the delinquency using existent resources from the city of Bacău, involving the students, the teachers, the parents and the representatives of the local institutions. The objectives of the project aim to the permanence of the activities of preventing the delinquency through:

- the report of the punishments stipulated for the Criminal Code and the consequences of breaking the criminal law to almost 5000 students from 8 schools and 3 unities of The Children's Protection General Board;
- the setting up of a preventive local center with a data system concerning the evolution of the delinquency and the working out of some working instruments.

The main activities of the project are the making-up of some courses for the school advisors and form masters which analyze specific aspects of delinquency, preventive strategies, working methods and techniques with those children who have a delinquent behaviour, the making of some programs and projects for the teenagers.

This program has as simultaneous activities the publishing of a monthly magazine where there are published the students' articles as well as the teachers' and experts' articles. They are also making some advertising materials having as topic: 'Is alcoholism a disease?', 'How to be not an offender', 'How to avoid being a victim', 'Drug using-necessity or fashion?'. On long term, the project proposes the improvement of the relationship between the implied institutions and proposes to make some local strategies to tackle the phenomenon.

As a conclusion, we may say that the main working instruments of the implicated institutions (non-governmental organizations) are the projects, which aim to the prevention among students. The governmental institutions activates under the existent constitutional laws.

## **The Juvenile Court Law. An innovation in the Romanian criminal system**

With the law courts from different counties, there have been settled on specialized instances for minors. The chairperson of the law court for minors is a judge. This instance keeps its sessions once a week. The most common cases are the car robbery and housebreakings. Others, more serious, refer to group robbery. The minors respond for their acts starting with the age of 14. Every teenager investigated for breaking the law is first psychologically and psychiatrically examined. The minors aggressed by the family cannot address to this instance.

The children who are not already 14 years old cannot be investigated by this instance, but for their acts respond their parents or those who take care of them. The law court for minors from Iași is a good example. Here has been initiated the first law court for minors in 2001. This example has been implemented in other cities of Romania in the last months of 2004.

In Iași there was initiated a transparent system of treating the offences committed by the minors. Helped by some Phare funds, the instance will be endowed with close-circuit television, the police departments will have mirror-type windows to protect the abused minors. The next cities where this project will be settled up are Vaslui and Botosani. The Law Court for Minors from Iași opened the way in the field of juvenile justice. Its purpose is to comply with the children's rights according to the UNO Convention and other international conventions ratified in Romania. This instance became an example to the judges, especially because The Ministry of Justice decided to imply itself in the application of the European example and to set up specialized law courts in all counties of Romania up to 2008. In addition, the new law regarding the children's protection requires the setting up of specific institutions for the minors' cause.

During the last 3 years, The Experimental Center of Probation has proved its efficiency. Now, the mechanism has been extended also in other cities, with Phare funds. In October 2004, The Embassy of Great Britain decided to finance the expanding of this project in other counties (Vaslui and Botosani). This decision comes in order to be respected, on a wider scale, the intern and international law norms regarding the developing of the trials having minors as both offenders and victims. Judging the minors' cases by the juvenile instance from Iași there has been had in view the diminution of the consequences suffered by the minor victims and their families.

Within the framework of this project, there are also been scheduled two preparatory seminars for the implicated staff regarding the dealing with, judging and assistance for those children being victims and of those children being offenders. The Embassy of Great Britain in Bucharest finances the project. The 'Social Alternatives' Association succeeded in getting the necessary financial resources for the developing of this unique project in Romania: 'The Instance for Minors in the County of Iași'. Project suggests the extension of the mechanism in other three towns within the County of Iași, and it includes, besides the organization of the Courts, the improvement of the police officers's, public prosecutors' and judges' working means against the victims and offenders. Project proves that this association knows very well the juridical system and it has a great capacity to be connected with the institutions of the state, which have the power to set up this project. Having a great impact, the project earned the attention of the European institutions and of the central authorities to be extended at a national level. The partners are: The Law Court from Iași, 'Social Alternatives' Association, The Prosecutor's Office from Iași, The County Police Department from Iași, The Magistrates' Association from Iași, 'Save the Children' Organization (the branch from Iași), The Forensic Clinic of the Security of the Community Center from Iași, The Reintegration and Supervising the Offenders Service from the Law Court of Iași. The Prosecutor's Office commissioned seven prosecutors for this project. The Magistrates' Association from Iași realized some informing booklets regarding the working of the investigatory and judging mechanism for the minors, it also supported the arrangement of the judging-room, and it brought the working techniques to the international standards. 'Save the Children' Organization gave the location and three specialized persons (two psychologists and a social assistant) to supervise the victims of the physique, psychic and sexual abuses. The Forensic Clinic from Iași in collaboration with the instance for minors provides for juridical assistance. The Police Department of Iași gave them the examination room where the victims and the offenders would be examined. This department also commissioned 12 officers for this project.



For a good working of this instance, there had been decided the setting up of a Coordinative Council, on 1 December 2000. The composition of this council is judges, prosecutors, attorneys, police officers and representatives of the non-governmental organizations. The 'Social Alternatives' Association and its partners created an instance for minors in 2001, where the minors are protected having as model the occidental example. The objectives of the project were to assure a good climate for audiences and judgments of the cases, to form a specialized team, to judge the cases in which the minors are implicated and to diminish the consequences suffered by the minor victims and their families. Thirty-three specialized persons were prepared through two preparatory seminars to know how to deal with both victims and offenders. The Establishment for the Developing of the Civil Society financed the extension of the project. 'Social Alternatives' Association and its partner thought of the extension of the working mechanism of this Law Court for Minors from the county of Iasi. They want to provide for and comply with the international standards concerning the developing of the trials for minors (victims and offenders). The formation of the staff, the endowing of the institutions involved in the minors' investigation, hearing, judging and assistance leads to safety trials and comply with the international laws. The second part of the project implies the Magistrates Association from Iasi, the police departments, the prosecutor's offices and the Law Courts from the towns where the project was set up, the Mediation and Community Safety Center, 'Save the Children' Organization and the Social Reintegration Service. During the inquiries, they could get some audio-video evidence thanks to the substantial funds invested when they endowed the centers. Therefore, the child would not come anymore in front of the instance to describe the deeds committed or the deeds he had to abide. The minor will not suffer again because of those deeds. The institutions also thought that a close-circuit television is appropriate. They could examine the victims and the witnesses in other room because they want to avoid a front meeting between the aggressor and the victims or witnesses. When they arrive at the jail, the minor offenders are evaluated, overseen and helped. The specialized staff of the organizations implicated in the project will psychologically help the children who were victims of offences. The minors are often charged of some small deeds. The robberies and the thefts are the most common offences among children. Nevertheless, they are victims of body harms, crimes, rapes and other offences regarding the sexual life. From March 2004 up to September 2002, there were known 256 offenders and 286 criminal acts (from these 60% were robberies). The persons involved in the developing of the project asked for help to the Ministry of Resort, to the police, to the law courts.

The new law regarding the children's rights does not also set up the necessary institutions to apply it properly. For the moment, there are no financial resources for the training of the implicated staff. These Law Courts for Minors will have many cases, with not only victims and offenders, but also adoptions or cases of committing the child after the divorce. In this Law Courts will be judged different cases: from cases of abused children to cases with children who want to change their learning way. The Contingent of the European Commission in Romania, the Ministries of Justice from Romania and from France launched an institutional fraternity project having the title 'Support for the improvement of the minors' justice in Romania'. The main objective is to create the institutional and legislative frame for the improvement of the minors' justice in Romania, helped by the expert examination offered by experts from France, Austria, Belgium, Italy and Portugal. The expert examination will contribute to the creation of some administrative and judiciary structures, and to the making of a secondary legislation in the minors' justice. Romanian experts (magistrates, court clerk, social reintegration helpers, jail workers, police officers) will benefit for the preparative activities (seminars in Romania and preparative probation periods in the countries that are members of the European Union). Objectives of the project:

- to analyze the legislative and institutional frame in the minors' justice and the making of recommendations;
- to create teams made of judges, prosecutors, court clerks, police officers, social assistants, jail workers;
- to create local and central administrative structures having as competences the minors' judiciary protection;
- to form almost 700 magistrates, social reintegration helpers, court clerks, jail workers, police officers and social assistants;
- to create a documentation center where the professionals have access.

The purpose of the project is to create a system that is compatible with the European usage, which must sustain the improvement of the justice and assure the celerity of the judging processes throughout a multidisciplinary and integrated approach. They will consider the experience gained in the pilot-project from Iasi. The institutional solution will be adjusted to the Romanian system.

## **Conclusion**

Through this work, I wanted to highlight that nowadays, in Romania, the delinquency is a wide phenomenon that requires to be carefully studied and upon which we must efficiently intervene. Regarding the study and the observation of this phenomenon, the interfering methods are diversified and there are some organisms and organizations that include in their activities such cases, taking into account the specific features of this phenomenon. Now, in Romania, we can associate the delinquency with the mafia-type webs just in some isolated cases, there where are concrete evidences that the minor who committed an offence is a member of such web.

The legislative frame allows the development of those projects that aim to the delinquency. In addition, they want to intervene in these cases and the proof is the settle up of some law courts for minors, a novelty in the Romanian criminal system. The European Union supports these law courts. I consider the projects working instruments because through them we can intervene upon the prevention and the fighting against this phenomenon, proposing interventional solutions and methods. The punitive measures are now on the second place because the specialized persons think they are somehow inefficient and the prison is not a good solution to solve the problems. The proof is that the jailed minor continues his activity even at a higher level, the jail being considered a real school of delinquency.

## Chapter 6

# MINORS INVOLVED IN ORGANIZED CRIME COLOMBIA

Julia Isabel Eslava Rincón<sup>92</sup> Fernando Ruíz Gómez<sup>93</sup>

## ORGANIZED CRIME IN COLOMBIA

### Origins and Characteristics of Organized Crime in Colombia

Studies and research done in Colombia on organized crime have not only analyzed the processes of the appearance and evolution of this phenomenon, but also have focused on going into detail on the concepts, ambits in which it is carried out, and the scope of the crime classification in the context of definitions such as “organized crime”, “criminal organization”, “organized delinquency” or “the mafias”. In all cases, there is emphasis on the fact that the function of criminal organizations is not committing an offense per se but the economic benefits derived therefrom. Criminal action and violence are the instruments and the means to guarantee and increase profits, influence, and security for such organizations. But this does not mean that their actions are exclusively restricted to the illegal ambit; they are in conditions to act legally in political activities as well as economic ones to increase their power<sup>94</sup>. There is also acknowledgment that the phenomenon is not static but that it boasts broad mobility both spacewise and timewise, of illegal goods and services, of resources, and of individuals who produce, merchandize, and demand. As Professor Juan Gabriel Tokatlian<sup>95</sup> wrote, “organized crime is acquiring global dimensions (geographically speaking), transnational dimensions (ethnically and culturally speaking), multiform dimensions (in the agreements that it forges with political and social sectors), and pluri-productive dimensions (regarding the gamut of products that it trades at distinct levels of participation; that is, production, intermediation, sales, etc...)”. Regarding organized crime and the consolidation of mafia structures, Colombia has represented a special niche for analyzing such phenomena in the Latin American context and even worldwide. Some analysts adduce that organized crime in Colombia originated in the political corruption and clientelism, the heritage of Colonial days, factors that determined weak State institutionalization. According to a Corporación Excelencia para la Justicia (Corporation Excellence for Justice) report, Colombia holds 72nd place in the list of most corrupt countries in the world. According to the National Attorney General’s Office, the political and administrative corruption in Colombia has consolidated into a true structure of organized crime whose purpose is to loot the public treasury<sup>96</sup>. At the end of the 60s and during the 70s, to the corruption and clientelism, we must add criminal violence and drug trafficking, which found a propitious terrain in which to expand on a large scale. During the 80s and 90s, they increased, also favored by the inapplicability of the justice system, the relative abundance of resources that infiltrated political and economic spaces, thus consolidating different structures to support the development of drug trafficking from State agencies as well as from illegal groups (guerrilla and paramilitary)<sup>97</sup>.

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<sup>96</sup> Corporación Excelencia para la Justicia report on the criminal justice reform, Volumes 1 and 2.

<sup>97</sup> Bagley, Bruce Michael. *Narcotráfico, violencia política y política exterior de Estados Unidos hacia Colombia en los Noventa (Drug Trafficking, Political Violence, and United States Foreign Policy towards Colombia in the Nineties)*. Revista Colombia Internacional (Numbers 49/50). Political Science Department – School of Social Sciences. Universidad de Los Andes. Banco de la República, Biblioteca Luis Angel Arango.

Therefore, the factors that explain the peculiar organized crime in Colombia and the situation of violence are attributed to drug trafficking, to the guerrilla groups, and to the paramilitary groups. “The fact that the highest levels of homicidal violence in the continent exist precisely in the country where organizations devoted to drug trafficking worldwide have arisen, the fact that violence has spread throughout the continent in a consistent manner with what we believe has been the pattern for the relocation and alliances of such organizations with groups in other countries, the fact that the headquarters of the so-called drug cartels and the cities with most violent deaths are precisely in the interior of Colombia are factors that it is not prudent to ignore when attempting to explain Colombian criminality”<sup>98</sup>.

Notwithstanding, as Gustavo Duncan affirmed, the phenomenon of the mafia in Colombia, in its traditional meaning, is rather recent, as it occurred after the boom of the drug cartels in Medellín and in Cali. “It is in reality the evolutionary process of the drug traffic cartels to organized crime networks that, using violence, coercion and protection, base their power on a series of economic, political, and social transactions that have a high strategic value for those cities. Their main objective is to achieve a monopoly of coercion and protection of a series of activities susceptible to control by organized crime, such as wholesale food and grocery supply markets, non-formal trade centers, drug trafficking, among others, and as a higher level achievement, appropriating the political power in the cities”<sup>99</sup>.

The consolidation of the Colombian mafia was favored by the lack of State presence in certain territories, in which organized delinquency, through the use of violence, threats and cohesion installed its markets, strengthened its relations of power and domination. But this happened thanks to the coalition between drug trafficking, the paramilitary, and the guerrilla, to the point that nowadays it is affirmed that such organizations have reached the “symbiotic” phase of development of organized crime<sup>100</sup>, that is to say, the last level in which the political and economic system and organized crime are mutually dependent for their expansion and strengthening. So, organized crime arises as a new actor with strong political and economic power whose interest is to legitimize its presence in society through different means: violence, threats, the use of force, corruption, and even cohesion and consensus. “Colombian processors and traffickers have all used violence as their preferred jeans, but it is not their only one. Some segments of the national drug criminality employ very bloody stratagems whereas others opt for less virulent tactics; but all have deployed and deploy an immense capacity to intimidate and corrupt. In the case of Colombia, the trademark of the illegal drug processors’ and traffickers’ behavior has been the establishment of agreements, pacts, and transactions with a vast gamut of government and non-State, institutional and para-State, civilian and military, public and private sector agents”<sup>101</sup>.

Large efforts have been made in the past ten years to equip the justice system with tools that will enable converting it into a true ally in the fight against organized crime. This has been done through numerous modifications to the criminal code that classifies new offenses such as punishing different activities and giving stricter penalties, creating specialized bodies and measures for witness protection. Among the most relevant aspects we mention the creation of the National Anti-narcotics Agency, air control, chemical precursor control, the submittal to justice policy, confidentiality of the identity of prosecutors and judges, confidentiality of the identity of witnesses, confiscation of goods, punishing acting in concert to commit a crime, administrative search, wiretapping, the witness protection program, actions against money laundering, the legislation against kidnapping, etc...

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<sup>98</sup> Rubio, Mauricio. CRIMINALIDAD URBANA EN COLOMBIA. Programa de Estudios sobre Seguridad, Justicia y Violencia (CRIMINALITY IN COLOMBIA. Program of Studies on Security, Justice and Violence), CEDE, Universidad de Los Andes, Work Document No. 2, May 1997.

<sup>99</sup> Duncan, Gustavo. Del campo a la Ciudad en Colombia: La infiltración urbana de los señores de la Guerra (From the Rural to the Urban in Colombia: The Urban Infiltration of the War Lords). CEDE 2005-2. ISSN 1657-7191. Electronic Issue. January 2005.

<sup>100</sup> Tokatlian, Juan Gabriel. Universidad Nacional de Colombia Associate Professor of Political Studies and International Relations. Drug Traffic in Colombia KOALA RENEE’S sexy (1996) - <http://www.derechos.org/xi/1/toka.html>

<sup>101</sup> Tokatlian, Juan Gabriel. Drogas, dilemas y dogmas: Estados Unidos y la narcocriminalidad organizada en Colombia (Drugs, Dilemas, and Dogmas: the United States and Organized Drug Criminality in Colombia, Santafé de Bogotá: C.E.I., Universidad de los Andes/Tercer Mundo Editores, 1995.

### *Definition of Organized Crime*

Our jurisprudence does not have an explicit name for the “organized criminality, criminal organization or organized delinquency”. The criminal code classifies and punishes the offense of *agreement to commit the crime* and establishes criminal measures and procedures, regarding how to fighting, try and treat organized crime.

*Acting in Concert to Commit a Crime* is defined as: “When several persons act in concert for the purpose of committing offenses”. Prison sentences of three to six years are established for this offense, but, when acting in concert is to commit felonies such as genocide, forcible disappearance of persons, torture, forced displacement, homicide, terrorism, drug trafficking, extortive kidnapping, extortion or when it is to organize, promote, arm or finance illegal armed groups, the penalty is from six to 12 years<sup>102103</sup>. Likewise, the penalty is increased 50% for the persons who organize, encourage, promote, direct, constitute or finance acting in concert or associating to commit a crime<sup>104</sup>. Also, the criminal procedural code gives the tools to combat criminal organizations, through specific investigation and infiltration operations of their structures in order to dismantle them<sup>105</sup>. A definition of the term “organized crime” is also derived from March 2003 Law 800 through which the Colombian State approves the United Nations Convention against Transnational Organized Crime. This convention defines organized criminal group: “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. “Serious crime means conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

## **Types of Organized Crime Offenses in Colombia**

The attribution and punishment of crimes in our country has been reactive, to the extent that they have developed to the point of generating political, social or economic instability. It is a fact that the criminal actions of criminal organizations have been aimed at **drug trafficking**, "that is like the mother of most of the criminal conduct in Colombia carried out by the drug cartels, the guerrilla, and the paramilitary"<sup>106</sup>, leading to the birth of different criminal organizations whose most recurring actions and other associated actions have been classified in our country as high impact offenses:

- Extortion
- Extortive kidnapping
- Forcible disappearance of persons
- Asset laundering
- Illegal enrichment
- Terrorism
- Forced Displacement
- Genocide
- Homicide
- Front companies
- Bribery
- Organization, promotion, provision of arms or financing illegal armed groups.

According to the National General Prosecutor’s Office, of the most impacting offenses denounced in March 2005, acting in concert to commit a crime held second place (17%), after extortion (22.5%). In order followed homicide attempts (12.45%), forced displacement (10.7%), and

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<sup>102</sup> Criminal Code, Article 340.

<sup>103</sup> 2004 Law 906.

<sup>104</sup> 2000 Law 599.

<sup>105</sup> 2004 Law 906.

<sup>106</sup> Colombian National General Prosecutor Luis Camilo Osorio Interviewed by Luis Alegre, newspaper La Reforma de México journalist, October 2003.

forcible disappearance (10.3%)<sup>107</sup>. All of these are fundamentally related to actions attributed to organized crime in the context of the internal conflict that Colombia is suffering. The National General Prosecutor's Office also states that minors are entering into organized crime as informers and later become perpetrators of serious crimes, among which the most common are hired assassination, kidnapping, terrorism, homicide, forcible disappearance, extortion, and torture.

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<sup>107</sup> National General Prosecutor's Office. Statistical Bulletin No. 11, January to March 2005.

## How minors become involved in organized crime

The particular situation of armed conflict in Colombia, the alliance between drug traffickers and illegal groups, and the multiplicity of crimes to which these criminal organizations are devoted all determine a certain complexity when we attempt to detail and precise recurring schemas and more standard characteristics and mechanisms associated with the brunt of our analysis: minors becoming involved in organized crime groups. To understand this phenomenon, it is necessary for us to start by acknowledging a historical process, in which traditionally not only many explanatory factors have meshed derived from the social, economic, and political environment, but also factors of an individual nature that are difficult to exclusively classify as cause or effect, which, from different broadly documented ambits, are indicated as triggers for the involvement of minors in criminal circles. To synthesize, there are two basic hypotheses using which the analysis of the determining factors for minors becoming delinquents is made. One of the two hypotheses is related to the macro-environment; it refers to structural factors of an economic, cultural, and political nature; specifically, it refers to the attribution of causes that is made including poverty, exclusion, marginality, the lack of State presence, little governability, and, of course, the armed conflict that the country is suffering. The other hypothesis is related to the micro-environment and individual factors, such as family conditions, ties, the close networks and relationships on an everyday level in criminal surroundings in which a series of learned values and behaviors are determined.

In Colombia there are an estimated 17,000,000 minors under 18 years of age, out of which 39% live in poverty and 17.5% live in absolute poverty. From 1995 to 1999 650,000 minors suffered forced displacement<sup>108</sup>. The information that exists on the profile of juvenile delinquents, of minors involved in the armed conflict as combatants, and of those who form bands of hit men, reveals that most of them have low educational levels, come from rural zones or from regions that are highly vulnerable. The family history reveals a typology of dysfunctional families or families marked by unemployment and poverty<sup>109110</sup>.

In the urban context, juvenile delinquents are mainly involved in minor offenses that are primarily due to satisfying economic needs; there is a great relationship between a low socioeconomic origin and juvenile delinquency. However, the way out is very narrow and does not precisely lead to legality. On one hand, it leads them to organized crime, whose logic is very different and the relationship between expectations, needs, and economic and social conditions is a little higher than in common delinquency. On the other hand, there is the road to indigence, where even the area of action to commit a crime is significantly restricted<sup>111</sup>. Some analysts argue that the factors generated from criminality are NOT related to poverty or to the lack of basic services but rather to inequality and impunity, especially in regions with fast economic growth or a potential for wealth but without a clear State presence<sup>112</sup>. Along the same lines, the thesis on the learning and transmission processes from adults to youths, regarding the opportunities and “profitability” that criminal activities offer, the possibility of getting money fast, of being promoted, acknowledged, and gaining power become more

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<sup>108</sup> SITUATION OF THE CHILDREN IN COLOMBIA. The data was taken from: People’s Ombudsman’s Office, State of Colombian Children’s Rights, 1998, and Consultoría para los Derechos Humanos y el Desplazamiento CODHES, Bulletin No. 20, May 1999.

<sup>109</sup> PRESENT AND PROSPECTIVE SITUATION OF CHILDREN AND YOUTHS IN COLOMBIA. Universidad Nacional de Colombia, Colombian Family Welfare Institute, Presidential Campaign Colombia Joven (Young Colombia), United Nations Children’s Fund (UNICEF) and German Technical Cooperation Agency (GTZ). November 2004.

<sup>110</sup> National Attorney General’s Office. **Children in the Colombian Armed Conflict**. “Follow-up and Monitoring System for Children’s Human Rights in Colombia”, 2001. [www.procuraduria.gov.co](http://www.procuraduria.gov.co)

<sup>111</sup> UNIVERSIDAD NACIONAL DE COLOMBIA PROGRAM OF RED BOGOTÁ AND INSTITUTE OF POLITICAL STUDIES AND INTERNATIONAL RELATIONS (IEPRI). RESEARCH PROGRAM FINAL REPORT: “THE CAREER OF DELINQUENCY IN BOGOTÁ: THE CASE OF JUVENILE DELINQUENCY.” Contract No.039/01 signed between Universidad Nacional de Colombia Instituto de Estudios Políticos (IEPRI) and the Bogota Secretariat of Government. Bogota D.C., December 2001. Director: Professor Julián Arturo L.

<sup>112</sup> Klevens, Joanne. Restrepo, Ofelia. Roca, Juanita. Los Caminos de la Delincuencia, Posibilidades de Prevención (The Paths of Delinquency, Possibilities of Prevention).

and more relevant. In his study on violence and criminality in Colombia, researcher Mauricio Rubio states, “Both the evolution of Colombian criminality in the past two decades and its spatial structure at present do not appear to follow the pattern, deep-rooted in Latin American criminology, that poverty, inequity, the lack of education and of opportunities are the factors that determine crime... beyond the differences in educational indicators, or patterns of abandoning school, or those of child labor... in Colombia there seems to be very close nexus between adult criminality and juvenile delinquency”<sup>113</sup>.

Juvenile delinquents’ decisions seemingly are also very marked by the fact that the “profitability of criminal activity” pulls more weight than the punishment for breaking the law. Indeed, nowadays there are some who affirm that in many regions throughout Colombia, especially where drug trafficking activities continue to be carried out, the minors involved generally have distinct socioeconomic conditions from those seen in common delinquency. In fact, many analysts emphasize that one of the greatest “incentives” for minors committing criminal actions, whether individually or as part of organized crime, is their condition of being non-accusable, that is to say, the fact that they are not considered responsible for their criminal actions and that they are not treated under a criminal system as such. In this sense, several studies have shown positive associations among criminality, legal disorder, and more minors getting involved in criminal activities. These elements have led to the present-day discussion in Colombia regarding the creation of the “Juvenile Criminal System”, about which we will speak later on. So, in our analysis we have opted to focus our attention on two phenomena that have marked the history of juvenile delinquency in our country: “**hit men**” and minors in the armed conflicts.

### *From Gangs of Hit Men to Disposable Peons in Drug Trafficking*

In all of this criminal complexity, it is difficult to establish the interrelations and causal dependencies. What is certain is that the different criminal organizations throughout the past three decades have used one another, and at the same time have become a “circuit” for the production and reproduction of other criminal actions and organizations needed to accomplish their objectives. In this scenario, boys, girls, adolescents and youths have been the target and objective of the organized crime groups, to support diverse criminal actions and, in many cases, replace the casualties caused by State combat actions. One of the most famous relations, especially since the 80s, has been the appearance of the famous *gangs of hit men*, organizations made up of youths from poor areas in Medellín at the service of drug trafficking.

Sustained by the economic power of drug trafficking, these groups became real armies that committed murders and terrorist acts, with hierarchical structures and a promotion system based on extreme cruelty and greatest exposure top risk when executing their *cruces* (hits - criminal acts). To characterize this situation, they use expressions such as *the no-future generation* and *the culture of death*.

*“By the time he was 16, Carlos already had 30 hits to his credit. He had killed them all using a knife. Not using bullets was his seal, and he boasted it among his own in northern Valle. “I always wounded them in the lung. I looked them in the eye as they were dying and that made me feel powerful, like I was God””*<sup>114</sup>

Within drug trafficking organizations, minors occupy the lowest operating level. Very few of them and only thanks to their skills ever become *capos* (big-time hoods). They enroll at a tender age and very few of them are still alive at 30 because they are identified as “disposable peons” inside the criminal organization and most of the time they do not die on their *cruces* (during their criminal acts) but at the hands of other hit men, other links of the chain, hired to eliminate any hint of a connection to the intellectual authors.

In the mid 90s, this phenomenon spread to cities such as Cali, always tied to drug trafficking. However, more recently we have identified a new boom, in Bogota and in other cities, where they are

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<sup>113</sup> Rubio, Mauricio. CRIMINALIDAD URBANA EN COLOMBIA (URBAN CRIME IN COLOMBIA). Programa de Estudios sobre Seguridad, Justicia y Violencia (Program of Studies on Security, Justice, and Violence), CEDE, Universidad de Los Andes, Work Document No. 2, May 1997.

<sup>114</sup> *El tiempo* newspaper.



not only linked to drug trafficking. They also do selective hits for illegal groups. So they espoused another type of action after the relative dismantling of the Medellín and Cali cartels. "In Medellín, in the 80s and 90s these bands of youth hit men did mafia and cartel account rendering. In Bogota, not paying an IOU for 200,000 pesos may mean your death". The authorities have confirmed the existence of "Youth Hit Men Schools" both in Medellín and in the Valle del Cauca zone. As arrested minors said and as was certified in their files, they are motivated by "revenues".

*"Daniel, 9 years of age, is one of the most dramatic cases. He went to a school for youth hit men thanks to a schoolmate. To get permission from home, he told his mom that he had been hired to work on a farm during harvest time. "They started us out killing dogs on the farms and that's how they would check us out ". To graduate from hit men's school we had to kill a person, anybody; the condition was that there had to be some risk and exposure involved ... Daniel lasted seven years. One afternoon in 2003, armed men entered his home and shot him down in front of his mom ... "*<sup>115</sup>

These gangs of youth hit men operate through what are called "oficinas de cobro" (collection offices). They "have the facade of a legal business and provide security to "traquetos" (drug and contraband mafia) and merchants in two large sales centers in the city. They handle security for the transfer of millions in moneys collected or of drug loads". They also sell forged documents and support kidnappings<sup>116</sup>.

#### *Children Combatants: Victims or Murderers?*

The armed conflict in Colombia is a very complex topic that, beyond what a "war" process entails, involves components related to the fight for territorial and economic power and in the least of the cases political power. One of the critical effects has to do with **recruiting minors** into the ranks of armed groups. The State's regular forces as well as illegal armed groups have led their youth recruiting actions, violating international norms that expressly state that minors less than 18 years of age must be excluded from the conflict and that recruiting is only permitted for those who are of legal age<sup>117</sup>. It was not until the end of the year 1999 that the national government issued the set of laws that prohibits that practice and that regulates mandatory military service only for those of legal age, also classifying such action as a crime and incorporating it into the criminal code. This did not happen with the illegal armed groups. They continue using the practice, taking in minors not only into their ranks and having them participate in combat actions or in urban militias, but also involving them in other types of activities, every bit as dangerous and defiling, associated with the criminal actions that these illegal armed groups carry out in parallel to finance themselves. There are no exact figures on how many minors are in the ranks of illegal groups. There is much information, it is dispersed and not very consistent, according to the sources, the interests, and the methods used to establish it. We do not know exactly how many youths enter the ranks and reach legal age as combatants, how many are there since they were children or how many entered when they were minors and died trying to get out before reaching legal age. According to the People's Ombudsman's Office report on the State of Colombian Children's Rights in 1998, at least 6,000 boys and girls are in the combatant ranks of the armed conflict. Also, in the year 2000 the Colombian Army denounced that near 3,000 minors were in the ranks of terrorist groups and that another 8,000 had become adults in the ranks<sup>118</sup>. The Colombian Family Welfare Institute (ICBF) indicates that at least

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<sup>115</sup> *El Tiempo* newspaper. *El Universal* newspaper. Monday, October 18, 2004.

<sup>116</sup> *El Tiempo* newspaper, December 11, 2004.

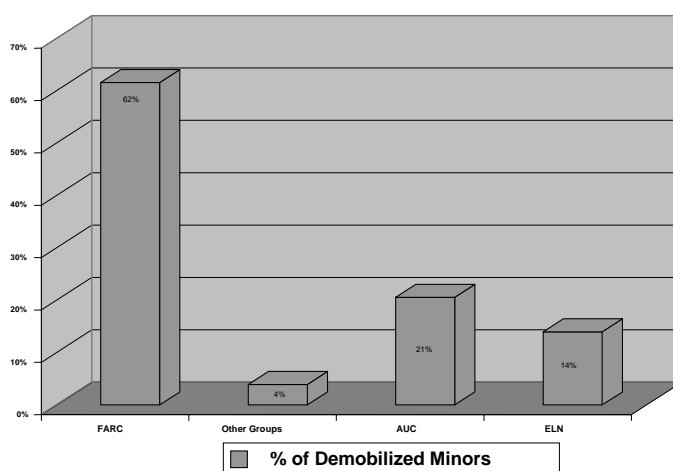
<sup>117</sup> PRESENT AND PROSPECTIVE SITUATION OF CHILDREN AND YOUTHS IN COLOMBIA.

Universidad Nacional de Colombia, Colombian Family Welfare Institute, Presidential Campaign Colombia Joven (Young Colombia), United Nations Children's Fund (UNICEF) and German Technical Cooperation Agency (GTZ). November 2004.

<sup>118</sup> Entre el temor y la incertidumbre (Between Fear and Uncertainty). Menores vinculados a grupos terroristas (Minors Who Belong to Terrorist Groups). November 20, 2004 Special Report. Armed Forces News Agency.

16,000 minors are in the ranks of these illegal armed organizations<sup>119</sup>. According to a Human Rights Watch report, on September 18, 2003, more than 11,000 children fought – obliged – in the Colombian armed conflict. Out of them, 80% belonged to the FARC and to the ELN and the remaining 20% belonged to the self-defense groups (AUC) and other small groups. To these figures we must add minors who participate in organized crime, fundamentally drug trafficking, extortion, kidnapping and hired assassinations (hit men), which represent several thousand more<sup>120</sup>

According to UNICEF, “in Colombia there are around 38,000 members of the diverse illegal armed groups, 24,000 of which are men and women from 14 to 24 years of age. Recent figures estimate that 7,000 boys, girls, and adolescents are involved in the illegal armed groups, mostly 15 to 17 years of age, and there are no less than 7,000 minors in the urban militias that operate in the country”. The most recent studies on the situation of the children and youths in Colombia reflect that, of the minors who have left the armed conflict, most have left guerilla groups and, to a lesser extent, the paramilitary (AUC), as can be seen on the graph below.



## Incorporation and Recruiting: Forced or Voluntary?

Beyond the figures, this is still a phenomenon that seriously questions the State’s and the society’s capacity to guarantee, at all costs, the integrality and protection of minors’ rights. What factors determine these minors joining these groups? What mechanisms do the illegal groups use? What consequences and effects do they determine for their development? Questions such as these would seem to have obvious answers if we consider the consequences that in general a development model can bring, which has not been able to overcome poverty and in a country that has been at war for more than 50 years. Nonetheless, if we look at the reality of the thousands of boys, girls, adolescents, and youths who have left the armed conflict (whether voluntarily or because they were captured or because they were handed over by the illegal groups themselves), while they still belonged to the opposition groups, their stories are similar. “The males are seduced by the economic support that they can give their family, the thirst of adventure, and the fantasy of war and weapons, getting to know the world, and no longer being poor, etc... whereas for the females we have to add sentimental

<sup>119</sup> LOS GRUPOS IRREGULARES Y LOS DERECHOS HUMANOS, COLOMBIA 2002 (ILLEGAL GROUPS AND HUMAN RIGHTS, COLOMBIA 2002). A study by COLOMBIA EN MARCHA (COLOMBIA AHEAD). (Bogota, October 2002).

<sup>120</sup> Human Rights Watch, United Nations Children’s Fund (UNICEF), Area Office for Colombia and Venezuela. Aprenderás a no llorar: los niños combatientes en Colombia (You’ll Learn Not to Cry: Children Combatants in Colombia). April 2004, ISBN: 1564322882.

reasons”<sup>121</sup>. Only 14% of minors under 18 years of age stated that they were forced to join the illegal armed groups. The rest did so “voluntarily” for the following reasons: attraction to weapons, the respect and recognition that they can give (33%), poverty and “the remuneration” that they receive (33%), for the daily relationship with these groups or because they had lived all of their lives in environments where armed groups were present (16%) and last, out of love or lost love (8%)<sup>122</sup>.

If we consider the age at which the minors join the illegal armed groups, the average of which is 13.8 years of age, ranking from 7 to 17 years of age<sup>123</sup>, the alleged “voluntary nature” hides within diverse conditions that push the minors to making that decision. In reality there are scarce “options to choose from” because they do not find the opportunities for development and growth that guarantee a different life quality and respond to their expectations in the environment where they grow up. Most minors come from towns and regions that are predominantly rural, characterized for many years by scarce State presence; they are places where guerilla groups arose and spread, groups that at the beginning were full of ideological and political motives. They are places where drug trafficking established its territories of coca plantations and laboratories for the storage of raw materials and the production of illegal substances.

Diverse studies on the topic confirm that, although most minors were going to school when they were recruited or entered the illegal groups, they decided to abandon their studies because they did not like school, they did not feel satisfied with the conditions that the educational institutions offered, they did not see that studying was useful to the extent that in their towns and villages they could not see any real future possibilities of getting a job. Indeed, existing data reveals that only 5% of the minors did not have access to the school system and that 68% had done some elementary school grade; most abandoned school when they reached Fourth Grade. “The motives that the adolescents stated for abandoning school were several: joining the armed group (25%), not liking school (25%) because they did not understand what was being taught, because there was no place to play or for recreation, because they were bored or because they weren’t any good at studying. “The school was really old and there was no place to play soccer”, a 15 year-old in fourth grade<sup>124</sup>.

Others live more complex conditions. In addition to the school situation, they did not like their family situation; cruel treatment, sexual abuse, abandonment and inner-family violence influenced their decision. According to the National Attorney General’s Office, near 90% of the minors involved in the armed conflict lived at home before entering the illegal armed groups and “at least 86% were victims of cruel, inhumane, and degrading treatment at the hand of their own families”<sup>125</sup>.

*“Jessica, who entered the FARC-EP when she was 15 years of age, said, ‘My parents had divorced and my mom had another husband. I left home because I had problems with him, he tried to molest me. My mom didn’t believe me when I told her.’ Another former woman guerrilla fighter explained, ‘when I was 12, my cousin raped me. I was so mad, I wanted revenge; I wanted to hurt everybody who had hurt me’”<sup>126</sup>.*

For yet others, in addition to all of these conditions, due to poverty these minors have an urgent need to bring money home or to assume their own economic sustenance as well as their

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<sup>121</sup> PRESENT AND PROSPECTIVE SITUATION OF CHILDREN AND YOUTHS IN COLOMBIA. Universidad Nacional de Colombia, Colombian Family Welfare Institute, Presidential Campaign Colombia Joven (Young Colombia), United Nations Children’s Fund (UNICEF) and German Technical Cooperation Agency (GTZ). November 2004.

<sup>122</sup> UNICEF. State of Children in Colombia: Armed Conflict. (Estimated figures due to the illegality of the activities).

<sup>123</sup> Entre el temor y la incertidumbre (Between Fear and Uncertainty). Menores vinculados a grupos terroristas (Minors Who Belong to Terrorist Groups). November 20, 2004 Special Report. Armed Forces News Agency. Document prepared from the experience shared by 86 adolescents in the ICBF National Care Program for Children Who No Longer Belong to Illegal Armed Groups.

<sup>124</sup> National Attorney General’s Office. **Children in the Colombian Armed Conflict**. “Follow-up and Control System for Children’s Human Rights in Colombia”, 2001. [www.procuraduria.gov.co](http://www.procuraduria.gov.co)

<sup>125</sup> National Attorney General’s Office. **Children in the Colombian Armed Conflict**. “Follow-up and Control System for Children’s Human Rights in Colombia”, 2001. [www.procuraduria.gov.co](http://www.procuraduria.gov.co)

<sup>126</sup> Rights Watch Interview with “Jessica”, Bogota, May 31, 2002 and interview in Bucaramanga, June 7, 2002.

families. There is labor exploitation: some of them work at harvesting licit or illicit crops or at other jobs. But the money and benefits that the illegal groups offer are much better. “Diego left his parents when he was nine years old and went to work on a coffee plantation. ‘My parents used to beat me. My father drank a lot and when he was drunk he would hit me with a stick. I was very little; they only paid me 4,000 pesos [1.50 dollars] a day on the coffee plantation but it was enough to live on. The FARC would go to the plantation once in a while. I had a friend who worked with them. He helped me get in later. I was tired of working on the plantation”<sup>127</sup>.

“ ‘After school I would go work as a helper at a bakery. It was hard work and the pay was bad’, said Leonel, who entered at age 14. ‘I went to work on a farm but the work was tough too, so I finally joined the “paras”. I had friends on the inside. They pay 300,000 bucks [100 dollars] a month. It seemed like an easy life”<sup>128</sup>.

Indeed, the guerrilla as well as the paramilitary use other minors who are in the urban militias where they organize awareness sessions to attract new members with promises of wellbeing, protection, money or study and even taking advantage of the population’s fear of the harassing group, guerrillas or paramilitary as the case may be, and of their need to protect themselves or to feed their thirst for vengeance. They win their trust with the testimonies of these minors who have been very astutely trained, whom they keep in the cities living in good conditions, in order to reflect a convincing image. Another phenomenon parallel to the situation of violence is forced displacement. Entire villages, mainly in the rural zones, are obliged by the illegal groups to leave their belongings and life style because of the lack of security. *Information System for Forced Displacement and Human Rights in Colombia (SISDES) calculated that in 1998 the displaced population was near 308,000... Boys, girls and youths up to 19 years of age represented 70% of the total displaced population”<sup>129</sup>. Today, this figure has risen significantly; the displaced officially registered exceed 1,500,000 persons but CODHES estimates that there are actually near 3,000,000 displaced persons. The displaced arrive at other places without food, lodging or work, without any opportunity to survive. These conditions are breeding cauldrons for illegal armed force incorporation and recruiting. “For many displaced youths the decision to join the guerrilla or the militia is a “rational economic choice dictated by the group that dominates in a particular area or region. The lack of adequate government programs and resources to handle the problem of the masses of displaced persons literally does not leave many persons any other realistic economic alternative”<sup>130</sup>. Also, forced recruiting has its own characteristics. Often at the “awareness camps” families are obliged to hand over their young children or specific outings are made visiting peasant family homes and taking the minors by threatening the minors themselves or their families, or the minors are simply kidnapped when they are out on the street. “Some are simple kidnapped and others are held against their will in exchange for payment of “taxes” or reimbursement of family debts”<sup>131</sup>.*

“Luz Dary, a 17-year old guerrilla fighter reinstated into civilian life in 2002 stated that one day she was walking along the riverbank along with an uncle who was a soldier, “When the guerrilla appeared. They killed my uncle. I was 10. After they killed him, a guerrilla fighter

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<sup>127</sup> Entrevista de Human Rights Watch con “Diego”, Bogotá, June 3, 2002.

<sup>128</sup> Entrevista de Human Rights Watch con “Leonel”, Bogotá, June 1, 2002.

<sup>129</sup> Consultoría para el Desplazamiento Forzado y los Derechos Humanos / CODHES. UNICEF, Area Office for Colombia and Venezuela. Un país que huye “Volumen 2” (A Country That Is Fleeing “Volume 2”).

DESPLAZAMIENTO Y VIOLENCIA EN UNA NACIÓN FRAGMENTADA (DISPLACEMENT AND VIOLENCE IN A SPLIT NATION). Santafé de Bogotá, D.C., Colombia – March 2003. ISBN 33-4528-8.

<sup>130</sup> Bagley, Bruce Michael. *Narcotráfico, violencia política y política exterior de Estados Unidos hacia Colombia en los Noventa (Drug trafficking, Political Violence, and United States Foreign Policy in the 90s)*. Revista Colombia Internacional (number 49/50). Political Science Department – School of Social Sciences. Universidad de Los Andes. Banco de la República, Biblioteca Luis Ángel Arango.

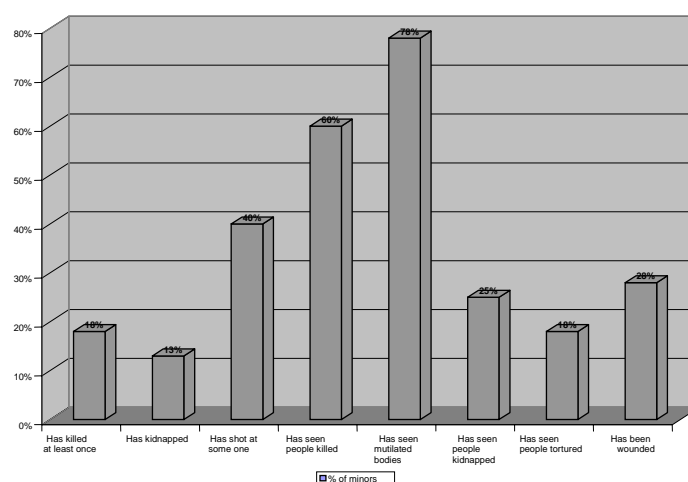
<sup>131</sup> Bagley, Bruce Michael. *Narcotráfico, violencia política y política exterior de Estados Unidos hacia Colombia en los Noventa (Drug trafficking, Political Violence, and United States Foreign Policy in the 90s)*. Revista Colombia Internacional (number 49/50). Political Science Department – School of Social Sciences. Universidad de Los Andes. Banco de la República, Biblioteca Luis Ángel Arango.

*asked me if I wanted to die like him or go with them. I fell to my knees in front of him and cried. I told him that I didn't want to die, that I wanted to live; so I went with them”*<sup>132</sup>.

## Activities and Operations: “Captured or Lawbreakers”

The minors that enter the illegal armed groups are turned into true lawbreakers; this violates all of their rights. They directly participate in kidnappings and in combat, they act as security guards for kidnapped persons and hostages, they transport weapons and place explosives, participate in ambushes and attacks on the population, in selective assassinations, in collecting extortions and security quotas for drug traffickers or cocaine producers, they work as spies and informers, as human shields, as sexual objects, as bodyguards for smalltime bosses, and they work as guards and security guards, etc.... The minors who have left the conflict have told their stories to the Army, to the ICBF, to international human rights protection organizations, to the National Attorney General’s Office, to researchers and officials in NGOs that carry out protection programs or to public agencies. They all have the same constants. We cannot ignore the fact that guerrilla groups and paramilitary groups alike “train the minors to be criminals” and they progressively incorporate them into the different illicit activities. Under the shield of “political struggle” or “protection of the poor” or “protection of State security principles”, they are indoctrinated and their understanding of the value of preserving life is diminished.

Once they are in the groups, all of the promises and dreams dissolve. The guerrilla does not really pay salaries or benefits; they only receive the base necessities for survival. The paramilitary usually pay some economic bonus and retribution for special missions. In both cases they are submitted to tough treatment, exposed to violence and suffer reproachable abuse. After they face reality, the possibilities of deserting are minimum; they are caught and usually the only way out is death in the ranks and, even when they are able to escape death, out of the ranks. According to UNICEF data, 13.3% of the boys and girls that have been tried for crimes of rebellion because they belonged to guerrilla groups have wound up murdered<sup>133</sup>.



Minors go through a training phase in which they are forced to kill other minors who must die for their treason or for not complying with the rules and regulations or those who belong to the opposition group or who are accused of being spies. On some occasions, as a “graduation test”, they are also forced to kill friends or relatives. In addition to having to do all of this, the girls and female

<sup>132</sup> ILLEGAL GROUPS AND HUMAN RIGHTS, COLOMBIA 2002. a study by COLOMBIA EN MARCHA (COLOMBIA AHEAD). (Bogota, October 2002).

<sup>133</sup> UNICEF. State of Children in Colombia: Armed Conflict. (Figures are estimated because of the illegality of the activities).

adolescents must submit to being “sexually” used and to abortions, on an apparently voluntary basis because forced sex is considered a grave violation of the rules and regulations.

*“Training lasted four and a half months’, said Ramiro who joined FARC-EP Front 10 at 15. ‘I learned to keep up the pace, how to attack a Police Quarters and how to ambush. I learned to handle an AK-47, a Galil, an R-15, mortars, pineapple grenades, M-26 grenades and tatucos [homemade devices that launch several grenades at one time]”.*<sup>134</sup>

So, for the distribution of “duties” and the process of “promotion in crime” within the group, the minor’s age and the “guts” shown during the training phase are taken into account. They start out as spies, informers, kitchen helpers, weapons transporters, and guards. As of age 11, they can be assigned other duties such as direct participation in combat or they are assigned to selective assassination missions even to be carried out on their own buddies sentenced for different faults to the regulation, to kidnappings, and to capturing civilians who are alleged collaborators for enemy groups.

*“Laidy, who joined the paramilitary when she was 14, said that she was the only female and the only minor in a special unit devoted to murder. ‘We got 500,000 pesos [167 dollars] per month every six months. We got a bonus of 200,000 to 300,000 pesos [67 to 100 dollars] for killing some one. I was with the Special Unit for 16 months’ ”*<sup>135</sup>.

*“Dagoberto, who joined the militia at age 9 and who was a full-fledged commander at 13, stated that some victims were even kept kidnapped in their own homes, ‘We had a bunch of kidnapped persons, lots: four or five a month. Sometimes we would grab them at roadblocks, or in Cali, where we would break into the rich guys’ houses. We would take them to the camps. Each of us had to guard two persons all the time, in two-hour shifts. The families would pay up to 40,000,000 or 50,000,000 million pesos (17,000 to 22,000 dollars) to rescue them. I remember one whose family had to pay 100,000,000 pesos (44,000 dollars)”*.<sup>136</sup>

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<sup>134</sup> Human Rights Watch Interview with “Ramiro”, Bucaramanga, June 7, 2002.

<sup>135</sup> Human Rights Watch interview with “Laidy”, Bogota, May 31, 2002.

<sup>136</sup> Human Rights Watch interview with “Dagoberto”, Medellín, June 5, 2002

## INSTITUTIONAL RESPONSES

*Political, Penitentiary, and Legislative Control Ambit*

### ***Lawbreaking Minors Cannot Be Accused***

The treatment of minors who break the law in Colombia has been traditionally based on the notion of "non-imputability". For the Colombian criminal justice system, minors are not responsible for their acts and, therefore, require special treatment. This orientation of criminal policy regarding minors is supported by the idea that juvenile delinquency is an expression of fallacies in the immediate family and social context but also of the limited State policies. Indeed, this starting point has marked the different interventions for the treatment of lawbreaking minors, with measures that presume prevention components and coaching but also repression. From this optic, minors are considered to be not subject to duties because they are not attributed any full criminal responsibility for the acts that they commit and a treatment is prescribed but not of a penal or penitentiary nature. In turn, and contradictorily, such condition of non-imputability does not guarantee them their rights either.

### *International Legislation*

Colombia committed itself to protect its boys and girls when it adopted regulations such as:

- Convention on the Rights of the Child, regulated through Article 44 in the Colombian Political Constitution, which states that the fundamental rights of children are prevalent, which implies that they must be immediately granted.
- Optional Protocol to the Convention on the Rights of the Child.
- Minimum United Nations Rules on the Administration of Juvenile Justice or the Beijing Rules.
- United Nations Guidelines for the Prevention of Juvenile Delinquency or the Riyadh Guidelines.

### *Intervention Models: Prevention, Re-education, Rehabilitation, Integral Protection?*

The institutional responsibility regarding lawbreaking minors lies on the Colombian Family Welfare Institute (ICBF). It is a public agency with autonomous budget and capital, financed through parafiscal contributions linked to the payroll of workers in the formal sector of the economy.

ICBF was created through 1968 Law 75; its function is "To provide protection to minors and, in general, improve the stability and wellbeing of Colombian families ....". The Institute was created with the capacity to issue regulations in its areas of competence, to give assessment to the Office of the President of the Republic, to promote the education of specialized personnel including juvenile court judges and protectors of minors, to create and manage specialized establishments, to encourage and direct programs, to file complaints against juvenile court judges, to collaborate in regulating police codes, to create forms of human rights. The functions of ICBF include actions beyond the protection of lawbreaking minors. A very important part of its intervention is related to programs aimed at the family, to nutrition, community homes and nurseries, food services for indigent populations, and child abuse prevention.

The intervention that the ICBF has for lawbreaking minors may be found in its attention policy called "Adolescents in Conflict with the Law". It is mainly carried out through formal structures called "Re-education Institutions" that are aimed at boys and girls in conflict with the law, due to breach and violation of the Code for Minors.

The ICBF response is divided into two types of institutions: open institutions and closed institutions. In the category of open institutions there are:

- Receiving Centers
- Observation Centers
- Post-treatment Residences.

On the other hand, the closed institutions are located in closed or semi-closed centers. The former have special physical security measures and external security. In the latter special security conditions are not necessary. The interventions with the adolescents are organized through an Individual Action Plan with therapy, socio-family integration, academic leveling, interviews with parents and intervention for the family. The ICBF has a national mission; however, it does not have total territorial coverage. In the municipalities where there are no ICBF institutions, the treatment for the minors must be done in specialized annexes or pavilions set up in reclusion establishments. In fact, the institute has 10 open institutions and 28 closed institutions. Its capacity to respond is less than the demand and a very high percentage of the intervention is subcontracted to private organizations, mainly NGOs.

#### *Attention to Minors Demobilized from the Armed Conflict*

As a projection of its attention to youths who have left the armed conflict or those who are threatened by it, in 1999 the ICBF opened its first center specialized in demobilized youths. This institution was created through 1999 Law 548 and 2002 Law 782 and reinforced through the creation of 643 spaces in 2003, with international cooperation support. The characteristics of the Colombian conflict include involving youths in the conflict under battle, intelligence or logistics conditions. There is also the situation of youths who are threatened, such as those who are in danger for being witnesses to armed actions or for participate in infractions or for being military targets or for being exposed to recruiting actions.

The focus that this program has is one of social investment. It includes aspects of social and community participation, education and skills for revenue generation, semi-institutionalization in temporary homes, where the minor stays during 45 days, specialized attention centers where the integration actions start and Juvenile House where finally entry strategies are developed. The program also provides the existence of future substitute homes, with families who are first interviewed and trained to handle minors.

#### *Re-education and Assistance to Victims or Integral Protection?*

The attention program for demobilized youths was created as an alternative model to re-education to compensate for the existence of a crisis in the re-education model which occurred as a result of the massive focus, the semi-closed model and the difficulty in attending the needs of each youth, given the diversity of intervention factors. The conflict arose basically between an exogenous institutional approach that came from the massive application of a State policy, in which coverage is the dynamic that configures the programs and an ethical approach towards the youths, in which entry and enabling potential are the dominant elements. The closed and semi-closed institutions, and massive attention are important, given that they generate scale economies and a pro-causality in which the organization controls the means, assuming a determining cause-effect ratio. However, the needs that the Colombian conflict has created, the different ends desired by different Colombians, and the different regional conditions may be aspects that invalidate the cause-effect ratios expected in the intervention. Furthermore, a therapeutic approach transmitted to education has limitations. This methodology was developed to treat addicts, more urbane, adult persons. According to statistical reports “out of 521 youths attended from November 1999 to August 2002, 243 continue in the program, 298 have completed it; out of those who went back home, 114 are in the National Family Welfare System support network, 3 has the sentence changes as they became of legal age, and 98 have abandoned the program”.<sup>137</sup> The dimension of the conflict during recent years is a factor that the institutional response argues and it deepens the institutionalization approach. From 1999 to 2004 a

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<sup>137</sup> <http://derecho.uniandes.edu.co>



total of 1,538 minors deserted illegal armed groups. Other statistics gathered from August 2002 and March 2004 recorded that out of 3,736 persons who surrendered, 20.3% (759) were minors.

In this manner, the State policy and its functioning in compliance with the Colombian Political Constitution and with international agreements present an additional void related to the protection policy and strategy regarding youths who have been displaced due to conditions of armed violence. That population is calculated at somewhere from 1,500,000 to 3,000,000 Colombians in the past ten years.

## **FUTURE PERSPECTIVES: IMPUTABILITY OR GUARANTY OR RIGHTS?**

### *Reform of the Code for Minors: Juvenile Criminal Responsibility?*

Given the legal condition of non-imputability of minors, recently the national government started processing a reform to the criminal code, in order to implement a juvenile criminal responsibility system, in which the imputation of criminal responsibility is proposed, in concordance with the criminal code for adults, for minors 12 years old or over who break the law. There are many debates and stances regarding this proposal. On one hand, we have those who argue that our present legislation regarding the criminality of minors does not concord with international measures or with the national Constitution because it does not acknowledge that minors are subject to duties and rights. They also emphasize that the present legislation disregards guarantees for boys and girls because there are no policies for protecting children, for the full acknowledgment of their social rights or for generating opportunities for them. On the other hand, we have those who argue that although these conditions are certain, the situation of juvenile crime reflects that, contrary to the assumptions held a decade ago, **the main cause** of delinquency is no longer based on needs unattended by the State. Indeed, recent figures reflect an increase in delinquents “**having a choice**” and opting for this life voluntarily. Criminal organizations (drug traffickers and armed groups) are taking advantage of this new trend, protected by the minor’s condition of non-imputability. They use ever more innovative strategies to “enlist them”, making the minors think that they are voluntarily entering the group.

In addition, those who defend the new criminal system argue that it would at the same time constitute a measure for protecting the minors, precisely because they would no longer be a population group “targeted” by organized crime.

## Conclusion and suggestions

The research suggests that we have to empower the connections of knowledge about the involvement of minors in illegal activities in all the EU (and candidate members) countries. The reason is that criminal boundaries do not have the same extensions as the geographical ones. One provisional conclusion is that the project help to define a global vision about the concept of criminal organisation and try to build up a common ground for empowering law enforcement strategies against illegal organisations throughout the world.

Different model of approach to the problem came up in the collective discussion during international meetings. Furthermore the different piece of research in this book outlines different ways for youths to enter into illegal activities, both for young indigenous individuals and for strangers. A particular problem raised about the common situation of unaccompanied minors, special category of youths that seem to be more attractive for criminal organisations.

The study shows how important could be having in each country common legal framework, procedures, and intervention models. Furthermore it is clear that we have to build a common european space for developing best practices and monitoring/evaluation strategies.

This project has been but the first step towards a construction of a new international network on studying the case of involvement of minors in Mafia-type organizations. This is particularly true that in the project participated some non EU institutions like some Colombian Universities of Bogotá, country where the phenomen is particular impressive and significant for its dimensions.

This study and the website ([www.prosb.it](http://www.prosb.it)) it is an useful tool to connect all the important and more significant information on the phenomenon. These tools could be the general basis for developing new strategies, new partnerships, new knowledge and best practices.

Furthermore the team work discuss new form of criminal activities as international terrorism which is becoming one of the most important risk factors for many youths, as recent facts of bombing in London testimony.

Finally it is clear from this study that a multi-disciplinary and global working is essential to the success of a project like this.

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