AGIS PROGRAMME

FOREIGN DELINQUENT MINORS
JUDICIAL PROCEEDINGS AND REHABILITATION MEASURES

(Germany, Belgium, Bulgaria, France, Italy)

December 2006

TABLE OF CONTENT

A printed version of the report in English or French is available upon request addressed to IOM Paris
By email : iomparis@iom.int
By post : OIM Paris - 14, Boulevard Morland - 75004 Paris
By phone : +33.(0)1.40.44.06.91.
By fax : +.33.(0)1.40.44.04.85.

I- GENERAL PRESENTATION

This publication is the result of a project funded by the European Commission's AGIS Programme in 2005/2006. The project, steered by the International Organization for Migration (IOM) in Paris, and supervised by the International Organization for Migration in Brussels, consisted of the realization of studies regarding the judicial treatment of delinquent foreign minors in four European Union Member States: Germany, Belgium, Italy and France; and of a country which, during the implementation of the project, was still a candidate country: Bulgaria.
The project has also benefited from the financial support of the governments of Germany and France, and the Italian NGO «SOS Il Telefono Azzurro Onlus».

The views expressed in this publication are the ones of the authors and have neither been adopted by the European Commission, nor by IOM or the other partner institutions in the project.

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

a) Acknowledgments

IOM Paris and IOM Brussels would like to thank the European Commission in particular for its financial support. IOM also gratefully acknowledges the financial contributions by the French Ministry of Justice, the German Ministry of Family, Seniors, Women and Youth and the Italian NGO «SOS Il Telefono Azzurro Onlus».
IOM Paris and IOM Brussels also wish to thank the Italian Ministry of Justice, the Italian NGO «SOS Il Telefono Azzurro Onlus», the Belgian Ministry of Justice (National institute of criminology), the Bulgarian National Investigation Service for their co-operation and support regarding the realization of the Italian, Belgiana and Bulgarian national reports. IOM also thanks the members of the Steering committee for their inputs to all five national reports.
Finally, IOM Paris also would like to thank UNESCO for accommodating the international workshop, held on November 24th 2006, in their premises in Paris.

Deepest acknowledgements and special thanks to the six researchers/ experts who wrote the country reports:
Mr. **Mickael KUBINK** for Germany, Mrs. **Fabienne BRION** for Belgium, Mr. **Roumen KIROV** and Mr. **Rumen Georgiev GEORGIEV** for Bulgaria, Mr. **Luc-Henry CHOQUET** for France and Mr. **Giovanni Battista CAMERINI** for Italy.
IOM Paris also thanks Mr. **Luc-Henry CHOQUET** for the synthesis report.

b) Composition of the Steering Committee and the working group of experts

Steering Committee
- Luc Henry Choquet, Expert for France, Direction of the Legal Protection of the Youth (DPJJ)
Ministry of Justice, France
- Florian G. Forster, Chief of Mission, OIM Paris
- Maraki Seye, Project Coordinator, OIM Paris
- Allonsius David, Magistrate, In charge of international relations, Direction of the Legal Protection of theYouth (DPJJ), Ministry of Justice
- Xavier Thierry, Researcher, National Institute of Demographic Studies (INED)
- Nonna Goasguen, Chargé de mission, Direction of the Legal Protection of the Youth (DPJJ), Action and Support Fund for Integration and Fight against Discriminations (FASILD – ACSE)
- Fabrice Leturcq, Chargé d'études, Penal Statistics, Direction of the Criminal Affairs and Mercy - Ministry of Justice (DACG-Justice)
- Bruno Aubusson, Researcher, Sociological Research Center on Law and Penal Institutions (CESDIP)
- Lorraine Tournyol-du-Clos, Chargé d'études, National Institute for High Security Studies, Ministry of Interior (INHES)
- Jacques Bourdais, Lawyer

Researchers/ Experts

- Luc-Henry Choquet, Expert for France, Direction of the Legal Protection of Youth (DPJJ) Ministry of Justice, France
- Fabienne Brion, Expert for Belgium, Professor and President of the School of Catholic Criminology University of Louvain, Belgium
- Charlotte Vanneste, Chief of the department of Criminology, National Institute of Criminology- Ministry of Justice, Belgium
- Roumen Kirov, Expert for Bulgaria, Deputy Manager of the National Investigation Service, Bulgaria
- Rumen Georgiev Georgiev, Expert for Bulgaria, Deputy Manager of the National Investigation Service, Bulgaria
- Michael Kubink, l Expert for Germany, Ministry of Justice, Germany
- Giovanni Battista Camerini, Expert for Italy, Associated Professor with the University of Modena, Italy
- Isabella Mastropasqua, Represent of the Italian Ministry for Justice, chief of the Office of Studies and Research, Department of Justice for Minors, Ministry of Justice

II- WORKING LANGUAGE OF ORIGINAL REPORTS AND TRANSLATION

	Working language	*Translation language*
Synthesis report	French	English
National reports :		
Belgium	French	English
Bulgaria	English	French
France	French	English
Germany	English	French
Italy	English	French

SYNTHESIS REPORT

- By Mr Luc-Henry Choquet [1]-

[1] Research pole of the Direction of Legal Protection of Youth (DPJJ), in collaboration with the International Section, Ministry of Justice (France)

SUMMARY

- Realisation of the programme
- Questions of method
- Penal law of minors among the partners
- The legislation of nationality
- Recent history of successive arrivals of populations of foreign origin / context of migrations
- What over-representation of foreign delinquent minors?

REALISATION OF THE PROGRAMME

AGIS is a fusion of former European programmes such as Grotius, Stop, Falcone and Oisin. Its purpose is to help legal practitioners, law enforcement officials, member state organisations and representatives of EU Member States and Candidate Countries to set up Europe-wide networks as well as to exchange information and best practices. This framework has been adopted on the 22nd of July 2002 and was installed by the European Commission in 2003. It allows for the funding of projects with the purpose of improving professional competences of practitioners, intensified cooperation between different authorities and instances participating in the prevention and repression of cross-border crime and serious criminal activities as well as developing the protection of the rights of victims and the prevention of infractions. The project "Delinquent foreign minors - Judicial proceedings and measures of rehabilitation" thus fits into the framework proposed by the European programme AGIS. [2]

This programme has been conducted in five countries: four counties which are members of the European Union have participated, Germany, Belgium, France and Italy, as well as Bulgaria, Candidate Country to Accession. It was organised by the International Organisation for Migration (IOM) in Paris in coordination with the Direction of Justice and Interior Affairs of the European Commission.

The objective of the programme was the realization of a study destined to collect information on legislation and practices in the participating countries, with the goal of identifying and analysing new tendencies on the European level in the field of rehabilitation and re-education of delinquent foreign minors.

It also aimed at promoting and intensifying the judicial co-operation in the field of the legislation applicable to delinquent minors while encouraging the sharing of information and the exchanges on a transnational level between governments, public institutions, non-governmental organizations and international bodies.

Firstly, it seemed advisable to establish a handover certificate to ascertain how the problem of foreign minor delinquency is handled in the different Member States and the accession state.
A comparative study should also allow for the identification of best practices with regards to judicial measures of rehabilitation, especially as regards minors accused and sentenced.

National experts, members of the Ministries of Justice of various countries and complementary collaborations such as members of the Executive Committee, who have safeguarded the continuation of the programme and the proofreading of the drafts of every one of the national reports for advice and observations.[3]

[2] The European programmes AGIS are co-financing transnational projects of cooperation between judicial systems and services of prosecution of member states involved in the fight against organized crime and the protection of victim's interests.
[3] See list of participants before (I – General Presentation)

Project category:	Technical cooperation in the field of migration
Project subcategory:	Re-enforcement of institutional capacities
Executive agency:	International Organisation for Migration
National counterpart:	French Ministry of Justice
Geographic coverage:	Member states of the European union: Germany, Belgium, France and Italy Candidate Country to Accession: Bulgaria
Place of management:	France
Target-groups:	Delinquent minors, delinquent foreign minors, juvenile delinquents of foreign origin
Duration:	15 months

This project had a duration of 15 months (October 2005-December 2006) and was composed of three phases:

I - The first phase (3 months, October-December 2005) was evolved around the identification of the members to the Steering Committee, composed of lawyers from the competent national institutions (Ministry of Justice), sociologists, ethnologists and/or demographers, representatives from civil society and collaborators of the International Organisation for Migration (IOM) in Paris, the identification of experts and national collaborators in charge of the study within the institutes of reference in each of the participating countries. A reunion has been held in Brussels on 8 November 2005 in the presence of national experts and collaborators for an exchange of preliminary information on behalf of the respective national context and approval of the methodology applied.

II - During the second phase (10 months, January to October 2006), two reunions of the
Steering Committee have resulted in an approval of the methodology (adopted beforehand by national experts) as well as of the action plan, the common terminology and of the statistical resources employed. The following activities have been implemented:

- Revision of the national reports,
- Presentation of the drafts to the national reports in Rome (23-24 May 2006) in the presence of experts and representatives of national collaborations. The structure of the final report, including the profile of each of the national reports taking into consideration the formal constraints (amount of pages, graphic charts etc.). Content of final synthesis report: Compilation of five national reports within a report of synthesis underlining the importance of a comparative transnational approach on behalf of the analysis of juvenile (foreign) delinquency.

III - The third phase (2 months, November-December 2006) has evolved around the international workshop taking place in Paris on 23 November 2006. This meeting has been intended for competent national institutions of the EU member states and the Candidate States to Accession as well as specialists working on the subject of delinquent minors / foreign delinquent minors for a presentation of the studies` methodology and its results to strengthen the reality of effective international cooperation in this matter and to establish a network between national decision makers. The national reports have previously been handed in to members of the Steering Committee. The discussion amongst the participants has been conducted along three major axes outlined within the work**:** *problematic of the field; unaccompanied foreign minors and foreign delinquent minors; introduction of ethnic characteristics within studies and the perspectives of a European study on behalf of penal law*.

IV - The last phase corresponded to the production of a document of synthesis exposing the comparative methodology adopted and the points of comparison selected, collecting and analysing data and national studies, developing operational perspectives on behalf of the acceptance of foreign juvenile delinquents who, in consideration of the new context of migrations, find themselves often confronted with the judicial dimension. It has lead to contemplating the application of appropriate statistic tools, which are common to those countries volunteering for an experiment and which could be beneficial to all members of the European Union and countries associated (MA). This based on an evaluation of the process which delinquent minors are going through from the beginning of the chain, with the criminal act until the implementation of the penal or educative response. [4] However, contacts established during the implementation of the programme have led a

[4] The question of foreign isolated minors has an impact on all European countries, but the decision has been taken to not proceed with a particular examination of this item as a special programme AGIS 138 has been dedicated to this matter,

number of countries (Finland, Japan, Poland, Portugal) to consider joining the programme. Their own contributions are currently elaborated and could be published at a later stage in a different format.

QUESTIONS OF METHOD

Law, judicial and administrative practices and educative interventions cross borders with the purpose of an exchange of ideas, of decisions and of practices serving a certain "judicial sociability" and that kind of soft governance that actually appears on the European level. Still, the methodological limits and constraints to European comparisons need to be carefully evaluated and require adequate solutions.

The objective would thus be of a methodological nature adverting to multiple questionings on behalf of approaches, categories, variables departing from the national context of the five countries (France, Italy, Belgium, Germany and Bulgaria) and, consequently, including an overview of recent legislative, educative and judiciary advancements and the political and scientific controversies over the subject.

Nevertheless, the aim could not be attained without an interrogation on behalf of observational practices and the collection of data regarding foreign delinquent minors. As a matter of fact, our project could not be limited to taking stock alone. From the beginning, we have underlined the advantages which a consideration of factors would bring about, which were so far ignored or left in a sphere of invisibility, namely as regards the three dimensions which are at the base of the project and justify its pertinence: delinquent minors, delinquent foreign minors and delinquent minors of foreign origin.

The impact of the principle of territoriality leads to an evaluation of the question of discrimination

A first difficulty has resulted from the fact - in a word - that penal law ignores nationality. This is the well known principle of territoriality which called for a different orientation of the project and has driven the participants of the programme to consider the question of discrimination and to examine the "filtering effects"[5] that lead to an over-representation of juveniles of particular origin amongst the juveniles appearing before the magistracy of the public prosecutor and furthermore amongst those deferred to the juvenile tribunals as well as among those minors placed in public institutions of youth protection or detainees.

Penal law is the quintessential expression of sovereignty of the State. This sovereignty is established on the foundation of a notion of space - essential attribute to this sovereignty - in unison with the concept of time, which allow to maintain that there can be no penal law without the state and vice versa.

The space mentioned is defined as the space of national territory, as implied by the territorial principle of penal law, which maintains that national law is applied to all infractions committed inside a country's borders. [6]

In fact, in its classical conception and as a result of the reflections of enlightenment, penal law in its territorial essence has been conceptually designed as an instrument of protection to the other rights issued from civil law. A system at the heart of which, for example, theft is being punished as an attack to the rights of the proprietor and bigamy as an attack on the civil institution of marriage.

Even if this principle of territoriality is not expressly manifested in the French Code of 1810, it may be deduced from Article 3 1st paragraph: "*the laws of the police and security are obliging all who live on the territory*". Since then, it has unequivocally appeared in Article 113-2 of the Penal Code: "*French Penal Law is applicable to every infraction committed on the territory of the Republic."*

This principle of territoriality subsists, although it has been subjected to truly elaborate interpretation. Consequently, national law is not merely applied to infractions wherein all of the constitutive elements can be localised on the territory but additionally to all infractions where at least one of the constitutive elements can be found on the territory.

---

which should lead to the emergence of a common definition of the concept of "foreign isolated minors" by way of comparing the relative judicial situation.

[5] See below for the report of the Belgian expert.

[6] Cf. Van De Kerkhove (M.), „Eclatement et recomposition du droit pénal », (Fragmentation and recomposition of penal law »)

The consideration of nationality is not essential with a view to the force of attraction of the territorial principle within penal law; for instance, every person situated on French territory [7] is submitted to the provisions of Penal Law just as well. Consequently, all infractions committed on French territory are subject to French Penal Law, independent of the nationality of perpetrators or victims[8]; even provided that they are not reprimanded in the perpetrators' country of origin.

Penal law has in the same way, progressively and in response to the development of trans-national flows, created cases of extra-territorial competence. Under certain condition, these cases allow for the application of national law to infractions committed by a French national on foreign territory. This constitutes a revalidation of the criterion of nationality.

Apart from these cases, situations exist in which French jurisdiction (and French law) is passing judgment on behalf of foreigners who have committed infractions on foreign territory. In the application of the so-called principle of universal competence[9], the attraction of the territorial principle can be seen in its abundance.

Does not this situation bear more likeness to one of "deterritorilisation", as the French territory is not directly menaced? The persecution of crimes against humanity is an application of this principle of universal competence. One law of 2 February 1995 allows for the persecution and judgement of individuals in France "*presumed responsible of serious violations to humanitarian international law committed on the territory of former Yugoslavia after 1 January 1991*" (1st Article) if they "*are traced in France*"(Article 2).

In the given situation, the question to the durability of the pertinence of the territorial principle has to be asked. This holds true especially with regards to regional structures of integration, such as the European Union, which has opted for the abolition of its borders to guarantee free circulation to Member State citizens.

Freedom of circulation and settlement allows to easily turn away from national penal law. Actually, the limit imposed by valid penal provisions may be avoided without difficulty by entering or residing in a country which consents to (or punishes less severely) the acts prohibited in the state of nationality.

Which way to proceed, given the limitations to the classic conception of territoriality?
How to provide for an adequate setting – and to apply what kind of methods to look for different solutions? 3 different types of response to this question may be envisaged:

In consideration of the passive personality, one may turn to the law of the State, protective of the values endangered as well as of the person subjected to the infraction;[10] the nationality of the passive personality is the operating criterion for a reattachment to the law of the state.

On the other hand, the principle of universality legitimises the penal law of a State to operate on behalf of all the infractions considered in its statutes; this is valid regardless of the perpetrator's nationality or the scene of crime. In this context, nationality is of no particular importance, quite on the contrary, while the principle of universal competence, by way of attribution of extensive validity, strongly reaffirms the concept of territoriality. The abolition of the borders within the European Union has not weakened the latter as much as might be suspected.

Finally, in consideration of the active personality or nationality, it would be possible to decide on always applying the law of the perpetrator's [11] country of affiliation, even if the illicit act has been committed on foreign territory. This hypothesis places the point of gravity on the perpetrator, thus weakening the territoriality of the country where the crime was committed.

As for European countries, it seems difficult to suggest which legal choice would be favoured. In a regional context of economic and social integration, pursuing the implementation of common jurisdiction, it seems appropriate to harmonise national penal laws.

[7] Diplomatic immunity constitutes an exception to the principle of territoriality
[8] Crim.1 March 2000, B., n° 101and Crim. 29 March 2000, B., n° 146
[9] Also called principle of universality
[10] The victim
[11] Also called active subject

Territoriality *vs.* nationality? Created to be the perfect affirmation of national sovereignty and unconditional independence of the law of the State at the hand of all exogenous influences, the principle of territoriality seems to gradually lose its legal effectiveness. This loss results in questions relating to the effective application of penal rules to all citizens.

Re-enforcing the element of general prevention pertaining to penal norms may be effected by placing greater emphasis on the principle of perpetrator and exposing perpetrators in line with their nationality to unknown punitive responses – or responses which might be known, but still contain a substantial element of risk – on the scene of crime. Thus, nationality would constitute a stronghold for the State to maintain the mandatory nature of national penal law, in particular with a view to crimes committed under foreign jurisdiction of greater lenience.

Alessandro Bernardi writes that "certainly, it is necessary to face up to the malaise (discomfort) currently experienced in the European Union due to penal provisions centred on the principle of territoriality. On the one hand, the abolition of borders seems to imply a harmonisation between rules (even laws), bearing witness of a return to common considerations; on the other hand, the diversity of normative choices on questions of frequently fundamental scope shows the persistence of different concepts from one country to the next, with manifold consequences on the penal level (…). It is also advisable that such an unfortunate situation may be progressively eased due to a harmonisation of European penal law, even with a view to decisions of very different ethical predominance, apparently influenced by different national traditions. (…) it is realistic to assume that future developments will favour a greater likeness for penal solutions (…) owed to recent developments of judicial comparison (or) on grounds of adapting perspectives of a common nature, or at least, less heterogeneous."[12]

This requires, as we have observed, to direct the programme towards an evaluation of the question of discrimination This analysis should be able to favourably take into consideration the diversity of national experiences on behalf of the chosen subjects and make use of the effect specific to the comparative dimension as it fortunately combines conversion and approach. Nevertheless, there are several other difficulties that have to be taken into account right away.

The difficulties inherent in the comparative approach

Among the difficulties of the project are in first line those related to the comparative approach. The European institutions have implemented international comparisons as a point of passage requiring research in the fields of economics, the judiciary and social science, but several examples have shed some light on the difficulties inherent in these comparisons.

Among these, one report from 1999 may be quoted which has considered these questions in detail[13].

Once the necessary level for an analysis of the practicalities has been assumed, problems that appeared similar, related or at least comparable at first sight have in fact frequently turned out to be disparate. With respect to our focus on foreign delinquent minors and delinquent minors of foreign origin, this disparity has become particularly clear with a view to the differences and the changing considerations regarding benefits to citizens who resettle from one country to the next within the heart of Europe.

Confronted with this variety, we have concerted to beware of adopting extreme attitudes:

-The first extreme attitude would have been to remain set apart and to do without useful approaches for the sake of thinking in the communitarian space of these questions.

-The second consists in the opposite – to not account these disparities at all and propose methodological reflections that would even out or eradicate national situations completely.

With regards to the works of Procuste - the famous villain of mythology who took away travellers and attached the tall ones to a small bed and the small ones to a large bed, cutting the limbs of the victims who exceeded the size of the bed and stretching the limbs of those travellers too short for his measure - our project is expected to remain on the opposite side.

In fact, we have seized the difficulties within the five member states in a transversal manner.

---

[12] Cf. Bernardi (A.), "Europe sans frontière et droit pénal", (Europe without boarders and penal law) Rev.sc.crim. (1) janv.-mars 2002.

[13] Alain Supiot, *Au dela de l'emploi: transformation du travail et devenir du droit du travail en Europe*, Flammarion, 1999 (Beyond employment : transformation of work and labour law in Europe)

The differences between national situations have without a doubt complicated the task in as far as convergence between terms did not always correspond to judiciary identities or procedures and in cases where the inherent substance differed. In spite of all this, the convergence between different countries has provided the possibility of seizing, by way of comparison, the practices and concepts employed and the criteria retained in this field and furthermore to confront the question of a relative harmonisation between them.

Another difficulty of the comparative approach should result from the fact that the group of countries represented does not comprise more than four member states of the Union and one accession state and the fact that the Anglo-Saxon example has not been represented.

The group has in a deliberate way refrained from taking into account the situation of the countries not represented, as it was not deemed possible to encounter this task in a serious and sufficiently systematic and detailed manner within the stipulated period. This has resulted in the report (and conference) being composed exclusively of analysis and information communicated by the members of the five groups on behalf of each of the national situations.

Given the wish of members, the orientations proposed in the report allow for - simply but unequivocally - the opening of a debate for the sake of enriching approaches in the field of foreign juvenile delinquency, and, in line with what has been proposed by Max Weber, for an examination of social actors' subjective evaluations of reality and the purposes they attribute to their actions.

The difficulty related to the initial subject is that penal law on behalf of juvenile delinquency is for the most part governed by principles which do not take any account whatsoever of the nationality or origins of minors. From the legislators' point of view, the situation of the foreigner is not to translate into a different judicial treatment. Accordingly, the consideration of directed recommendations via a set-up of indicated objectives whether or not to accord a special treatment to foreign delinquent minors or even delinquent minors of foreign origin constitutes a real difficulty.

The debates in this field that have been tackled are combining political, ideological and scientific aspects and are not without impact on practices. This knowledge has been shared while refraining from too strong a reduction - differently put, a cover-up of disparities between national situations or, a contrario, a hypertrophy of difficulties, in a word, the risk of abstraction or proliferation of the phenomena studied.

Bearing these difficulties in mind, we can only let an attitude of caution prevail within the orientation of our work and in formulating the results thereof. This methodological imperative should guide the organisation of this study evolving from comparisons and confrontations, principally consisting in a reflection conducted among the group members and, all along the mission, in the request for opinion provided by a broad range of representative expert advisors of institutions of research, statistics and social affairs of the five partners. The evaluation of legal, judicial and educational opinions should provide for the establishment of connective factors between the representations of these questions and the propositions publicly on display.

From the very start, it has been obvious that in spite of attempts to put them in context, an adequate presentation of results with respect to the range of difficulties - which is at best to be presented in an orderly and controlled manner - would be a difficult task especially with regards to the relatively short period of time we have been conceded. Nevertheless, results have originated from the collective character of reflections by the group and exchanges realised and confronted with the multitude of expertise which has accompanied the implementation and allowed for the formulation of considerations in a more or less diffuse and escalating manner within the French, Italian, Belgian, German and Bulgarian contributions.

PENAL LAW OF MINORS AMONG THE PARTNERS

At the beginning of the 21st century, a growing necessity may be felt by a number of states, European or not, to attend to specific rules on behalf of delinquency of minors.[14]
The more the states provide for a specific legislation on behalf of minors in their legal systems, the more a comparative reflection will gradually ensue. For a long time, the French system of judicial protection of minors

[14] It is interesting to reveal, for example, that Switzerland, where the federal law has ruled the penal condition of minors from 20th of June 2003 onwards, did not have any particular law respective of delinquent minors; the applicable dispositions were part of the penal code.

has largely inspired a certain number of foreign legislation (Belgium, South America, African states). The reversal has become reality; generally speaking, the foreign countries gain by conducting or partaking in acts of cooperation, by juridical, legal and educative foreign experiences.

This movement is inseparably linked to the construction of a real corpus of elaborated principles on an international scale, on grounds of a collective reflection, within the framework of international institutions between governments such as the UN or the Council of Europe. Composed of conventional binding instruments but also of non-binding texts (resolutions and recommendations), this corpus calls for the installation of material and procedural rules, which take into account the specificities of this particular category of persons subjected to the law, which constitute the minors. [15]

Affirmation of penal responsibility of minors: age limitations and discernment

The international convention of children's rights (CIDE) establishes the principle of providing an age limitation to the penal responsibility of minors. Nevertheless, it leaves the decision on behalf of a definition to this age limitation to the State.[16]

France has preferred not to provide for an age limitation within the law and keeps to the notion of discernment as the foundation to penal responsibility of minors. [17] Germany and Bulgaria keep to an age limitation of 14 years, Belgium of 16 years. On behalf of Italy, a relative responsibility can be attributed to minors from 14 to 18 years if an assessment of discernment is being undertaken.

Even if an age limitation is provided, the notion of discernment or the notion of the "capacity of the will", in accordance with the Italian formula, may re-enter considerations: in Germany, the penal irresponsibility of minors from 14 to 18 years is presumed while their responsibility may nevertheless come into account if their maturity advances their age. Between the ages of 18 and 21 years of age, young delinquents may benefit as well from this treatment, requiring assessment of discernment. It is noteworthy that two thirds of the youngsters from 18 to 21 years benefit from this application. In case of doubt, the Federal Supreme Court of Germany requests the application of penal law to minors of this age group.

Educational law

All of the countries participating in the study apply measures on behalf of minors that are essentially educative and disciplinary. All of these measures, whatever designation they may hold, are intended to provide socio-educative help, largely in the domain of educative work and within open institutions. It is to this effect that in Germany, only the sentence of imprisonment constitutes a penal sanction, but it is never applied to minors of an age below 16.[18]

---

[15] As it is, up to this day, the normative international production of the United Nations includes a compulsory instrument (in the following C) and seven non-compulsory instruments (in the following NC) , namely:

1-The International Convention on the Rights of the Child (CIRP) adopted on the 20th of November 1989 (C)

2-United Nations Standard Minimum Rules for the Administration of Juvenile Justice („Beijing Rules"), 33 of the 29th of November 1985 (NC).

3- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) GA 45/110, 14th of December 1990 (NC)

4- Guidelines for the Prevention of Juvenile Delinquency, „Riyadh Guidelines"), GA resolution 45/112 of 14 December 1990 (NC)

5- United Nations Rules for the protection of Juveniles Deprived of their Liberty, resolution GA 45/113 of 14 December 1990 (NC)

6- Administration of Juvenile Justice, resolution 1997/30 of the Economic and Social Council of the Untied Nations of 24 July 2004

7- Basic Principles on behalf of the application of programmes of restorative justice in penal law, resolution 2001/12 of the Economic and Social Council of 24 July 2002

8- Guidelines on Justice for Child Victims and Witnesses of Crime, resolution 2004/27 of the Economic and Social Council of 21 June 2004.

[16] The general observation n°10 of the Committee of the Rights of the Child of the United Nations of February 2007 expresses that a definition of the age of criminal responsibility of under 12 years is not internationally acceptable.

[17] Article 122-8 of penal law

[18] In Portugal, the law does not provide for any penal measure applicable to minors. Only educative measures may be pronounced.

In the same way, Belgian legislation establishes that only minors of an age over 16 may be subject to the application of measures other than "supervision, protection and education". The system evolves around the notion of depenalisation: in so far, it does not keep to the penal qualification of the infraction, but merely designates the facts qualified as an infraction. Meanwhile, the judge may renounce from protection in order to refer minors over 16 to appear before a jurisdiction of communal law. In France, the educative approach is promoted; it accentuates the necessary responsibility by way of apprenticeship on behalf of social norms and values.

Educative measures, *lato sensu*, combine public intervention (stately authorities) and the role incumbent to civil society - to which French jurisdiction refers, in Anglo-Saxon terms, as "community" (in the geographical sense or with reference to an ethnic group).

In Italy, a decree of September 1988 has provided for sanctions of substitution destined to avoid incarceration of minors.

It convenes to note that, even if generally the upper limit for specific intervention regarding minors remains fixed at the age of 18, adaptations are possible. A very large number of European countries provide for the judicial protection of majors; this protection encompasses majors of up to 21 years in Germany and Bulgaria, of up to 23 years in Belgium; in France, the protection may be pronounced for a period of time which may not exceed five years, and within this limit may be exercised beyond majority without an age limitation. [19]

Texts combining different models

Historically, law and justice for minors are detached from both adult penal law as well as the classic retributive system in favour of a concept of individual response to the particular conditions in causal relationship with minor delinquency while preventing relapses. The different countries have pondered several modes of intervention in pursuit of an aim to education and support, the "protectionist" system of the "Welfare State" (Belgium, France, Portugal, Italy, Spain) and a system traditionally more penalistic (European Union, England).

However, it is difficult to affirm the emergence of a single model of justice with respect to minors today. In fact, major international texts such as the International Convention on the Rights of the Child and the Beijing and Riyadh Rules, which are to inspire national legislators, do not reveal preference of a particular model.

In return, all of the texts do insist on the ethic duty of response by affirming the necessity of procedural guarantees (with respect to the concept that a minor should not be treated with more severity than an adult), in calling attention to the fact that imprisonment is a measure of last resort, to the interest in developing alternative measures to proceedings and incarceration, taking into account the interests of the victim, avoiding the stigmatisation of penal judicial intervention.

The reforms engaged (Belgium, France) are proposing the cohabitation of the protectionist, sanctional, restorative and "classical" penal model of retribution. In fact, it is no longer a case of opposing models but instead of finding suitable resources to dynamise the responses to be engaged on behalf of minors. The introduction of the notion of restorative justice[20] allows doing justice with a priority in orientation towards the reparation of the injury and damage inflicted upon the victim. Thus, the question is no longer that of protectionist justice - to know what to do with the delinquent - but the question is what to do to repair the damage and restoring the victim while working for a reestablishment of social relations.

Recent developments in the field of justice for minors in Europe

In spite of certain converging elements, the actual state of affairs does not reveal a single model of justice for minors in Europe. Nevertheless, common tendencies may be revealed:

-Necessary responsibility on the part of minors in placement for communal tasks
-Increased resort to closed structures of institutions for young delinquents
-Development of alternative measures to judicial proceedings (mediation, reparation etc.)
-Increased sensibility to incivilities broadcasted heavily by the media
-Effectiveness of recognition of the rights of minors (minor object becomes subject)
-Acceleration of judicial response
-Increased responsibility of parents and civil society

[19] Article 16 a, order of February 2nd 1945.

[20] The Anglo-Saxon concept of „restorative justice" is not met with one translation only; it is sometimes rendered as "reparative justice"(in Canada) in comparison to "restorative justice" or "restorative justice" (France, Belgium)

THE LEGISLATIONS OF NATIONALITY[21]

A legislation of nationality is constituted by elements such as the role of the place of birth or the procedures of naturalisation or the acquisition of nationality by marriage, or also the specific provisions for second- and third-generation migrants: the *jus soli* (the fact of being born in a territory), the *jus sanguinis* (citizenship is the result of the nationality of one parent or other more distant ancestors, marital status (as marriage to a citizen of another country can lead to the acquisition of the spouse's citizenship)[22]; the residence inside the borders crossed may be a condition to acquisition, as well as knowledge of the language of the country.

Traditionally, a distinction is made between "countries of immigrants" where the majority of citizens are immigrants or descendants of immigrants (example: United States), "countries of immigration" where foreign population has settled permanently, such as France since the XIX century and progressively all other Western European countries such as Germany, for a long period, which has also - until 1989 - been "country of emigrants" with part of the core population located outside the boundary of the state. Finally, there are "countries of emigration" to which parts of the population have emigrated to build a new life.

As can be seen from the table of comparison on the following page, which recapitulates modes of access to nationality from the vantage points of nationality of origin, naturalisation and specific dispositions for second-generation migrants, a certain convergence of laws on nationality is resulting from recent amendments to a large number of laws.

As Patrick Weil underlines, who, on behalf of stabilised borders and the incorporation of democratic values, perceives how *jus soli* becomes slowly more restrictive while the countries applying *jus sanguinis* are opening up towards *jus soli*: "In the first place, the access to nationality has been restricted when the law was perceived as permitting easy access to residence without passing through immigration laws. In the second place, all provisions that did not provide for the facilitated integration of second- and third-generation immigrants were progressively overturned: access to citizenship has become an option for long-term residents and their children".[23]

RECENT HISTORY OF SUCCESSIVE ARRIVALS OF POPULATIONS OF FOREIGN ORIGIN – CONTEXT OF MIGRATIONS

Since the second half of the XX Century, migratory flows become ever more expansive and varied: migrations of work force and competences, familial reunions, the flight from areas of catastrophe or war zones. Countries sometimes see their functionality transformed or move through phases of differing function, such as country of origin, of transit and immigration.

Every country has a different historical setting, which accounts for particularities in its reception of immigration, revealing its history as well as its relation to the countries of origin in the way that migrants are accepted. Every representative opinion - more or less influenced by medial and political exploitation of this particularly sensitive subject - is expressed differently, be it on behalf of the presence of migrant minors who become the focus of public attention or on behalf of the difficulties they encounter in their daily life at the core of the social question.

Germany: After Polish immigration in the XIX century on behalf of the coalmines since the 1950ies, Western Germany (FRG) has signed economic contracts with Turkey, Morocco, Italy and Yugoslavia. After 1989 and the fall of the Berlin wall, more than 2 million Germans returned onto reunited territory so that Germany received, besides Turkish immigration, immigration from Central European countries: Poland, the Baltic States, former Yugoslavia and Romania. It is being estimated that 7,2 million foreigners live in Germany, in the majority of Turkish origin. They represent more than 9% of the population. 7,3 million of foreign residents have been registered for 2004, constituting 8,8 % of the population; estimations on behalf of the population of foreign origin are at 17 % and the percentage of immigrants is estimated to be at 23% within the age group of 7-17 years. The German expressions "Gastarbeiter" (guest worker, beneficiary of hospitality) or "Ausländer" ("out of the country") describe how foreigners were offered merely a limited share in German society in the

[21] This paragraph originates from the national reports, texts of the section on behalf of juridical cooperation of the Directorate General I (Legal Affairs) of the European Council, by Weil, (P.), "Access to citizenship- A comparison of twenty-five nationality laws"

[22] In many cases, countries have abrogated the disposition allowing for the automatic acquisition of nationality by marriage, such as Belgium in 1984, France in 1973, Italy in 1983, by introducing a delay before foreigners may apply for the nationality of his spouse. This suppression has often corresponded to the concern on behalf of sham marriages.

[23] Cf. Weil (P.), op.cit.

middle of the 1970ies at a time of plummeting demand for workers on the German market. In the beginning of the 1990ies, the first political reaction towards these developments has been to modify the law and restrict the right to asylum.

Belgium, on 1 January 2005, has counted a total in population of 10.445.882 individuals of which 9.574.990 were Belgians and 870.892 foreigners (8,3%), of 9.574.990 Belgians, 699.613 were foreigners at birth; of 699.613 Belgians who had been foreigners at birth, 332.474 have been born in Belgium (3,2%) and 367.139 born abroad (3,5%). The share of francophone Moroccans represented 2% of its total population and explained a rise in population of 20%. The Moroccan population has settled in Brussels where 51% of those of Moroccan origin live today. The majority of Turkish immigrants have settled at Flanders or Brussels and constitute 25% of the total of Turkish origin. After periods of Italian, Spanish or Greek immigration in the middle of the century, the migrant flows of major actual importance, besides those originating from France and the Netherlands, are today starting from Morocco and to a lesser extent from Turkey and Poland. In addition, former Yugoslavs - Romanians, Bosnians or Croatians - have to be taken into account, of whom some probably are part of the Roma. To a large extend, the Flemish extremist right wing party "Vlaams Blok" ("Flemish Block") has been dominating political debates. This formation pursues registration of the origins of those arrested, subjected to proceedings or sentenced and respective subsequent public information as part of their political and scientific agenda. At stake is the promotion of a genetic (*genos*) and laicistic (*laos*) concept of the Flemish people by specifying particular blemishes respective of the immigrated population and likewise the attribution of criminogenic aspects to groups of population who are defined in terms of strangeness or ethnicity. The interpellation of the delegate F. Dewinter in May 1990 has been the first in a long row of questions asked by senators and delegates of the Blok with respect to the problem of foreigner and immigrant criminality and solutions relative to these questions. After being sentenced for "permanent instigation of segregation and racism," this formation of the extreme right has taken to the name of "Vlaams Belang"("Flemish Interest") and, in addition to their political efforts, turned to science. In 2005, the delegate G. Annemanns - who presides over his own research services - and criminologist M. Bodein publicized a book that intends to "do away with the stupid taboo" which forbids to acknowledge that, according to the authors, immigrants contribute excessively to various forms of crime. With respect to elections, this discourse has been worth their while; even if no major municipalities have been won, the formation has consolidated its position in the communal elections of 8 October 2006.

Bulgaria

Country of emigration, Bulgaria hosts 40 000 foreigners, that is 0,5% of the population in 2002.[24] Several tens of thousands Bulgarians have emigrated into the Occident since the fall of communism in November 1989, especially into Greece and Portugal. But Bulgaria, positioned between a world Greek and Turkish to the South and Romanian to the North, is also a country of Turkish or Roma immigration. The Roma population is evaluated at 750 000, at about 10% (Source: Council of Europe, international courier, July 2003, but the report (§5.2) mentions 12,2% of Turks and 8.4% of Roma among those aged 8-17 years (Source: NSI); some Turks of Bulgaria return back home to Turkey. [25]

[24] Cf. Withol de Wenden (C.), *The Europe of migrations*, Agency for development of intercultural relations, ed. French documentation, 2002.

[25] Cf. Withol de Wenden (C.), Atlas of migrations, Autrement, 2005, pp.46-47.

Overview on legislations regarding nationality

Constituents	Characteristics	Germany	Belgium	France	Italy	Bulgaria
Nationality of origin	*Jus soli*	Yes (With condition: dual citizenship)	Yes (For the 3rd generation: double *jus soli)*	Yes (For the 3rd generation: double *jus soli)*[26]	No	Yes
	Jus sanguinis	Yes	Yes	Yes	Yes	Yes
Immigrants of second generation	Existence of a particular provision	In case born in Germany, yes	Yes	Yes	Yes	Without object if born in the territory (*jus soli)*
	Residence	Yes	Yes	Yes	Yes	
		Parents residents for 10 years	5 years (not continued)	Parents permanent residents	Continuous since birth	
	Age	At birth	Before 12 years, between18 and 30 years	After 13 years	Majority	
Naturalisation	Residence	Permanent 8 years	3 years	5 years	10 years	5 years
	Knowledge of history					
	Knowledge of language	Yes		Yes		Yes
	Loyalty oath					
	Sufficient income	Yes		Yes		Yes
	Good character			Yes		
	Absence of conviction			Yes		Yes
	Renouncing nationality of origin	Yes				Yes
Marriage	Existence of a specific provision	Yes	Yes	Yes		Yes
	Residence	5 years	3 years			3 years
	Delay			1 year		
	Other requirements			Naturalisation facilitated by declaration		

[26] Are French: natural or adopted children, born in France, if at least one of the parents has also been born there. Birth alone in France does not suffice to get French nationality, unless for children born of unknown parents or of stateless parents or of foreign parents who do not transmit their nationality to the child. See Code civil, art. 19 and following.

France: This is a country where immigration is ancient, essentially due to low birth rates in the middle of the XVIII century and the scarcity of the work force that resulted in a conceivable difference in comparison to other European countries with contrastingly higher birth rates and emigration in the second half of the XIX century. The strongest migratory flows (1920-1930 and 1956-1973) have corresponded to periods of economic growth and scarcity of the work force. In 1974, preoccupied by the slowdown of economic growth, the French government decided for an official halt to immigration other than the right to asylum, with the exception of familial reunions and specific demands, but the entry of immigrants has never ceased.
From that time on, however, immigration as a result of familial reunions has been predominant in the statistics. Actual immigration flows are considerably weaker than the levels of immigration attained in the 1960ies or those affecting Germany or Southern parts of Europe today. Still, a contrastive prejudice is held by some who maintain that local concentrations can lead to increased levels of immigrant population in certain municipalities. In 2004, 4,5 million immigrants aged 18 years or older have been residing in the French motherland, relating to 9,6% of the total population of the same age, against 8,9% in 1999. The proportion of adult immigrants who have acquired French citizenship is growing and has attained 41%. The geographical origin of immigrants becomes more and more varied. The share of immigrants from European countries among immigrants has been at 41% in 2004, with a decrease relative to Southern European countries (Spain, Greece, Italy and Portugal) and an increase in the rest of the European Union, particularly on behalf of the United Kingdom. The share of immigrant population from Africa is evaluated at 42%, resulting from the progressive numbers of immigrants of Maghreb (plus 15%) and the rest of Africa (plus 39%).[27] The contribution of each wave of migration to every single generation shows postponements. Maghreb, which does not represent more than 22% of the total of the population of foreign origin, has the biggest share in the generation of immigrants (at 30%) and in the group of minors of the first generation born in France (41%). Together with recent inflows of population from Sub-Saharan Africa and Turkey, this adds up to 60% of the first generation born in France of less than 18 years of age. On the contrary, in the age group of 60 years and over, it is the migrants from the South of Europe (Spain, Italy, Portugal) who are clearly prevalent (43% of male and 48% of female immigrants). Issues related to questions of origin and the introduction of ethnic variables to statistics have resulted in intense polemics at the end of the 1990ies, being checked by the fear of seeing the French extreme right amplified, of which the Front national is the principal formation. Today the question of "ethnical statistics" became a very important topic of discussion among researchers, representatives of institutions active in the statistical field (CNIL) or active in the field of fight against ethnical and racial discriminations (HALDE), among politicians, unions, companies, employers' associations and antiracist NGOs, as well as in the media. Even the principle of identifying individuals according to standards other than nationality or country of origin is disputed, in particular on behalf of the memory of using files during Vichy regime (1940-45) in tracking down Jews. In effect, today the use of random sampling makes for a difference when it comes to the application of files, given that the questions asked are relevant on behalf of the declared aim of the study, given that participants consent to the anonymous evaluation of data which are serving general interest, and finally, provided that the file management system is permanent.

Italy: During the last two centuries, Italy has known considerable movements of population, starting with seasonal emigration in the modern age, then, between the end of the XIX and the middle of the XX century, a substantial European emigration. From 1950 onwards, the migratory movements have to a large extent been effected inside the country with an orientation from the South to the North. After having been a country of emigration particularly on behalf of France and Belgium during the 1960ies, the countries' economic development during the 1960ies has progressively made Italy one of the countries of immigration, particularly on behalf of workers of the ancient Italian colonies (Somalia, Ethiopia, Eritrea) but also with respect to Morocco; then, after the 1990ies, for numerous refugees originating from former Yugoslavia, and Kosovars. At the same time, the share of immigrants from Albania became important. In 2004, Italy has counted 2,6 million immigrants, relating to 4,5% of the population. Each migratory movement has added a little more momentum to the ongoing debate until recent separatist and xenophobe action in many cities of the north proved this assumption.

Two particular points
At several stages of the programme, a key position was occupied by the idea that delinquency committed by foreign minors might be pure supposition. In other words, the context may enter on a large scale as one of the factors that preside within the phenomenon. An illustration for this can be found in the example of Turkish

[27] Cf. Borrel (C.), Durr (J-M.), "Enquêtes annuelles de recensement ; premiers résultats de la collecte 2004 Principales caractéristiques de la population et des logements" ; Insee Première, n° 1 001- January 2005.

minors. In Bulgaria, they rarely commit delinquencies, a fact attributed by local researchers to the predominance of patriarchal values within the family and the early insertion of minors into the labour market. In Germany, *a contrario*, an overrepresentation of delinquent Turkish minors is prevalent among delinquent minors. This can be attributed either to the increased level of Turkish migrants installed in Germany with an income below or next to the poverty threshold, as the Centre for Turkish Studies in Essen pointed out, or to an increased occurrence of situations of maltreatment between children or parents within Turkish families as revealed by C. Pfeiffer and P. Wetzels. The authors of this study note that Turkish minors do accept an increased level of violence as part of their regular daily life.

The absence of an overall view on this subject on a European scale constitutes a second point of relevance; every one of the Member Countries remains preoccupied by their respective interior situation, the care for their sovereignty, the dependence of a changing public national opinion. Nevertheless, Europeanization constitutes one part of medium term duties within the politics of receiving foreigners, the path chosen by the signatories of the treaties, but the discrepancy between these aspirations and real life represents the cornerstone of many evaluations.[28] This situation evokes the debate for a depiction of the origins of immigrant populations / populations originating from migrations, accompanied by the need for instruction. Researchers justify their methods with their desire to describe and measure the degree of integration of migrant populations and those originating from migration according to their geographic origins. This is to be effected within a comparative evaluation of respective behaviour patterns, among singular groups and in relation to one another, within society.

DELINQUENT FOREIGN MINORS?

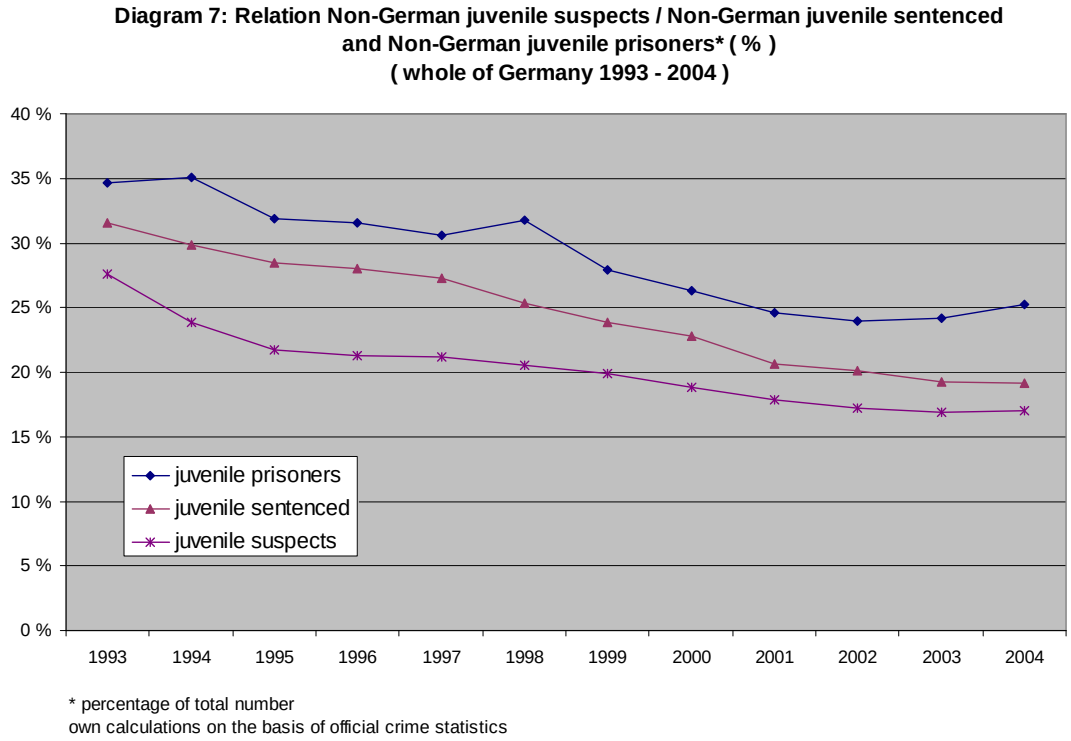
In recent years, the question of an over-representation of foreigners among delinquent minors or of youngsters originating from rather recent migration has received a certain amount of attention. The notion of over-representation is defined as a situation in which a specific group within a given context is represented to a larger extent than the extent legitimate on behalf of its real share within the population. As for our concern, the field under scrutiny is that of the different phases in the process of passing justice on behalf of minors. In this sense, the present analysis concerns the size of the number of minors of a specific group in every procedural phase, from the public space or the residence of the minor to the space of educational assistance or detention.

1. Control
2. Arrest
3. Placement under guard
4. Filing of action
5. Institution of legal proceedings
6. Temporary detention
7. Court transfers
8. Judgment by the court
9. Execution of a sentence
10. Sentence modifications - Alternatives to detention
11. Application of educational measures
12. Resorting to services of:
    a. health
    b. schooling
    c. insertion (into the work force, professional training, etc.)

Diagram n° 7 of the German report illustrates an increasing over-representation of young foreigners during the course of procedures, showing elevated levels within three phases on behalf of suspects, sentenced minors and incarcerated minors.

[28] Cf. Withol de Wenden (C.) 2002, op. cit.

Diagram n° 7 of the German report: Levels of young foreigners (14-17 years) among suspects sentenced and incarcerated (1993-2004)



Another illustration can be found within the table of paragraph 5.2 of the Bulgarian report (Delinquent Activity of Minors – the perspective of ethnicity), which underlines the marked proportion of Roma among interrogated and sentenced minors. In its third report on Bulgaria against racism and intolerance (ECRI), implemented by the European Council, adopted on 27 June 2003 and publicised on 27 January 2004, the European Commission places emphasis on the problems encountered by the Roma community on several levels: housing in slum quarters, denied access to a minimum of public or social services in spite of entitlement, bad state of health, segregation in school etc.; calling attention to the measures approved in the European Council's General Policy Recommendation n° 3, having regard to the fight against racism and intolerance directed against Roma and also calling attention to its General Policy Recommendation n° 7 on national legislation in the fight against racism and racial discrimination.

The other reports present data of the same context, minors deferred to public prosecutors /district attorneys, minors within detention centres, reception camps, centres of rehabilitation etc.; as for Italy, results of national data and research of the record, for France, data resulting of participant observation or research of the record as in the case of Belgium.

The idea according to which an analysis of the reasons for a possible over-representation is a complicated matter is generally accepted today, in line with another assumption according to which this possible over-representation may result from extrinsic factors such as separate practices of the actors involved, contributing to the levels within cases under scrutiny and also, in one way or the next, to prejudice. The same German report indicates that German fellow citizens are ever the more willing to carry an accusation against minors if these are foreign. From this results the fact that after an offence has been committed, "ethnicity" becomes the decisive factor in the choice in favour or against prosecution.[29] Such approaches are frequently employing statistics rendering precise data on behalf of the categories in question. Nevertheless, to employ these characteristics relevant to sustain such approaches, that is to say the application of "sensitive" variables, gives way to a consideration of the limitations introduced in statistical evaluations by the legislative provision of European countries concerned with the processing of personal data.

[29] Cf. Mansel (J); Suchanek (J.); Günther (A.), „Anzeigeverhalten und die Ethnie des vermeintlichen Täters: Befunde einer Pilotstudie", Kriminologisches Journal, Jg. 33, Nr. 4, 2001, S. 288-300

The limitations to statistical research

On 24 October 1995, the European Parliament and Council have issued the Directive 95/46/EC for the protection of natural persons with a view to the processing of personal data and their free circulation, installing a series of harmonised rulings on the European level, on behalf of the sector traditionally described as "data protection". Article 29 of the (EU Data Protection) Directive has set up an advisory body on data processing and privacy, called the Working Party of Article 29, representing all of the programmes' participant countries and communicating to the Commission as well as to the European Parliament and Council, an annual report on the state of protection of natural persons with a view to the processing of personal data within the community and third countries, with particular regard to transcripts of European texts in national legislation effected at the end of the 1990s in these four Member States.

In Belgium, for example, the limitation to statistical research is formalised by the law of 8 December 1992 with regards to the protection of private life on behalf of the processing of personal data[30], modified by the law of 11 December 1998 transposing the European Directive mentioned beforehand. The law provides two articles that are directly addressed to these questions, with the supplement of a few dispositions on behalf of the role of police, inserted to the law of 5 August 1992 with regard to the function of police, as well as articles 3 and 4 of the law of 8 August 1997 on behalf of the central criminal record. Article 6 of the law from 1992 prohibits the *"processing of data of a personal nature which reveal racial or ethnical origin, political opinion, religious or philosophical convictions, membership in trade unions as well as the processing of data relative to sexual life"*, and proceeds with the definition of twelve situations within which this prohibition is not valid, among them the following regulations: *"g) if processing is necessary to establish scientific research and is effected under conditions determined by the King, by issue deliberated within the Council of Ministers and after consulting the Commission of private life "*, or *"i) if processing is effected in execution of the law of 4 July 1962 on behalf of public statistics"*, or else, "*k) if processing is effected by associations which are legal entities or by institutions of public utility with the major social aim of safeguarding and promoting human rights as well a fundamental rights and freedoms of the individual, on behalf of the realisation of this aim,* [in analogous manner to those mentioned under g])".

The limitation to statistical research can be illustrated by another example taken from France, formalised by a law n° 51-711 of 7 June 1951 with respect to obligation, coordination and secrecy in matters statistic, under provision of more than 20 laws, orders and decrees, deleting Article 5 in 1962, adding Article 7 a in 1986 and two Articles 6 a et 7/3 in 2004 and of which no other of the original articles has been left without modification; the other text fundamental to French public statistics is law n° 78-17 of 6 January 1978 on behalf of computing science, data files and freedom according to which " the evolution of computing science shall be in service to every citizen, shall not be harmful neither to human identity nor to human rights or private life nor to individual or public liberties", modified by law n° 2004-801 of 6 August 2004 on behalf of the protection of natural persons with respect to the processing of personal data. Texts of this order are valid in Germany and Italy.

German statistic has been organised by the Federal Law of 20 December 1990 on behalf of protection of data, recently modified, which replaces the law of 21 January 1977 in pursuit of protection against abusive employ of personal data within the framework of processing of data.

The Italian statistic does not provide any law on behalf of the protection of personal data in advance to the transposition of the Directive 95/46/EC, realised for the sake of gradually implementing the laws 675 and 676 of 31 December 1996 on behalf of the protection of individuals as well as public and private organisms with respect to the processing of personal data, modified by several decrees in 1997, 1998, 1999. Legislative dispositions respective of the protection of data have been adopted by Bulgaria in December 2001, and in Sofia a Commission for the protection of personal data has been set up.

The Community of Commissioners charged with the protection of personal data of Central and Oriental Europe has conducted cooperation since 2005.

Synthesis of preceding phases

At this stage, departing from the elements of comparison and in order to resume the essentials of the programmes' phases, it seems adequate to emphasise three principle components:

1) Penal law is the quintessential expression of sovereignty of the state and is consequently established on the basis of a geographic dimension. This essential characteristic to sovereignty is national territory, as implied by the principle of territoriality provided by penal law. This principle establishes that national law is applied to all offences committed inside a country's borders.

The consideration of nationality is thus not essentially linked to the application of the principle of territoriality within penal law. Penal law is obliging every individual on the territory, regardless of nationality, even if the

[30] Cf. *Moniteur belge*, 18 March 1993.

offences are not reprimanded in the perpetrators' country of origin. This is why the programme has been oriented towards a consideration of the question of discrimination and the examination of "funnel effects", resulting in disclosure of an over-representation of minors of particular origin among those minors controlled, appearing before the public prosecutor / district attorney, also those deferred to youth tribunals as well as among those minors placed in public institutions of youth protection or detained minors.

2) By way of taking into consideration national statistical dispositions and related data, an over-representation of foreign delinquent minors has become unequivocally obvious. To this effect, though, several perspectives have to be taken into account.
- In Germany, it is a case of progressive over-representation of young foreigners during the course of proceedings, with elevated levels on behalf of three phases among suspects, sentenced and incarcerated minors;
- In Bulgaria, it is chiefly the major share of Roma among minors interrogated and sentenced that is concerned;
- In Belgium, analogous results have been obtained by research via participant observation and research of data files and lacking statistical data that specify age and national origin of those individuals that are object to police intervention or judicial intervention:
- In Italy, similar results are obtained as a result of statistical data on behalf of minors deferred to the public prosecutor, those in detention centres for minors, centres of reception, rehabilitation centres etc.
- In France, data originating from the criminal record, from the files of criminal research (S.T.I.C.) of the Police Nationale for the sake of more precise results.

3) However, these conclusions may be supplemented by additional observations.
On behalf of the French situation, very variably illustrated according to the type of infraction, complementary work has been encouraged by the margin of elasticity within the offence-punishment parameter, that is to say, the relative variability of the scope of punishment as well as measures applied on behalf of the variation within the determining or explicative variable of the infraction.
The factors within this margin of elasticity are proceeding from several orders, and the difference in the distributions of sentences may be due to a combination of characteristics of which:
- The seriousness of an offence or aggravating circumstances within one and the same offence,
- The age of the accused
- Multiple offenders or - on a broader scale – the fact of having been convicted to criminal sentence
- The type of judgement (contradictory, contradictory "à signifier", in default of,)
- Social conditions which may evoke the consideration of a more severe penal response as the only conceivable response, bearing in mind the necessities of representation or characteristics of insertion.

Approaching matters of discrimination on the street level, but also with regard to the police and judiciary as well as in the educative and post-sentential field is warmly recommended with a view to the implementation of communitarian politics in pursuit of an adequate response. Such an evolution has to be effected on the basis of reliable and comparable statistics. In this a way, a sub-system of judicial statistics could be established with the aim of providing comparable statistics on a European level as well as on behalf of Accessing States. Co-ordination between the statistical services of the Ministries of Justice, which collect the official statistics within Member States, is deemed necessary with regards to the promotion of harmonisation of these statistics. This is being effected by interim regulations between nomenclatures applied by Member States in all stages of proceedings, from the public sphere to the provision of measures or institutions of detention and by realising common statistical research on a fundament of harmonised methods, the collection, analysis and diffusion of implemented statistics.

IMPLEMENTATION OF STATISTICAL RESEARCH ON BEHALF OF AN OVER-REPRESENTATION OF FOREIGN DELINQUENT MINORS?

All of the participants to this programme - dedicated to foreign delinquent minors who are generally vulnerable and often in situations of uncertainty – have been sensitized on behalf of the fight against discrimination, taking origin and real / supposed affiliations into account as well as compensatory policies to these dissimilarities in pursuit of overcoming the gaps within processing and implementation. The fight against discrimination is supported by the approach of representing prejudice and practices employed. Compensatory policies are applied to every person affected. Every participant has underlined how important it is to acknowledge these phenomena of over-representation within the process under scrutiny and emphasized the importance of an endeavour to create methods of regulation on this behalf.

Questions linked to introducing characteristics of ethnicity as well as studies with the vantage point of family names / surnames and of regulatory evaluation of over-representation and discrimination arise from this perspective. These questions are taken into closer consideration within the national reports.
In reality, the majority of the participants in this debate are more or less in agreement on the following two points.
-Firstly, several studies realised in different European countries have demonstrated that is has been possible to evaluate the subject of over-representation relying on public data and, consequently, to draw conclusions on behalf of phenomena of discrimination; in addition, studies may explore the origins of individuals and thereby bring about the collection of sensitive data, on the premise that the principle of pertinence to the declared aim of the study is adhered to and given the necessary transparency on behalf of those interested, whose consent should be secured. This does not hold true for data of national census or administration operating on a permanent, exhaustive and nominal basis: analysis resulting from this kind of enquiry often presents effects of nationality with "all other considerations left aside" and should integrate other elements besides of origin to distance themselves from the temptation of attributing character traits to individuals on behalf of the variable of origin which are in fact linked to different factors.
-Secondly, there is an ongoing debate between Anglo-Saxons on behalf of the employment of the attributive term "ethnic", who frequently regard the singular reference to the immigrants' country of birth sufficient, and on the other hand, there are researchers for whom questions on behalf of nationality of origin, parents' country of birth, the first language of the child do not correspond to ethnical categories and who take reference to the socio-cultural definition of the Commission of Human Rights of the United Nations: *"A human group of a particular density is called an "ethnical group" ("ethnie") if it has not had access to the status of a State but who nevertheless and for a long period of time represents the following characteristics: a territory (bordering / not bordering several states), its own language, a collective name (sometimes imposed by neighbouring societies, frequently directed towards the group and assumed by the group itself), a particular history (frequently tragic in border territory), original cultural traits (architecture, cuisine, music, oral or written literature) and finally, an identity claimed and, more or less, assumed. For a community to become an "ethnie", it does not have to show all of the characteristics, but it is evident that one alone will not suffice, a certain density of exchange is required."*[31] These questions constitute the framework to the arguments exchanged in favour or against the implementation of ethnical categories for an evaluation of the phenomena of over-representation. The arguments in favour of an application of ethnical categories refer to the example of foreign countries, existing discriminations and the necessity for an assessment of discriminations as well as demands to identity made by groups who wish to be considered in line with the history of their ancestors or their course of integration. The arguments against such application of ethnical category underline the limitations to the scientific perspective and the inherent simplification of that approach. Dangers linked to an approach of historical examples as well as reservations on the part of countries having applied the like are further arguments against this application.
In order to evaluate the effect of individuals in the course of police inquiry or proceedings, some researchers are proposing studies that do not adhere to the vantage point of origin or the country of parents' birth, but departing from studies employing patronymic data: family names and surnames. Presented in the French report was the example of a study on behalf of sentences pronounced by a tribunal belonging to the Court of Appeal in Paris, in opposition to individuals accused of offences to legal entities of public authority or agents of police (1989 – 1st semester 2006). The results of this study suggest an absence of discrimination in this case.[32]
In general, scientific literature on behalf of this question enumerates the arguments in favour of research effected with a perspective to patronyms and the limitations or obstacles related to such approaches.[33]

[31] Cf. Héran (F.), Atelier "Ethnique ta statistique ? ", *Statistiques sans conscience n'est que ruine…* Colloquium of 4 November 1998, unions CFDT and CGT, INSEE, France. http://cgtinsec.fre.fr/Kolok/kolok2/Dossier%20colloque2.htm
[32] Cf. Jobard (F.), Lotodé (H.) (coll.), "Les mineurs jugés pour infractions à personnes dépositaires de l' autorité publique (1989-2005)", CNRS-CESDIP, 2006. (Minors sentenced on behalf of infractions to legal entities of public authority (1989 – 2005))
[33] Cf. Fabien Jobard (F.), Zimolag (M.), "Quand les policiers vont au tribunal – Analyse d'un échange de jugements rendus en matière d'infraction à personnes dépositaires de l'autorité publique dans un TGI parisien" (1965-2003), (unofficially rendered as: "When police agents go to court - Analysis of an exchange in sentencing on behalf of offences to legal entities of public authority in a Parisian TGI (1965-2003)"; Etudes et données Pénales, 2005, n° 97 où les auteurs présente l'étude d'un échantillon en effectuant des regroupements par lieux de naissance et patronymes ; Felouzis (G.), "Ethnical segregation in college and its consequences ", French Revue of sociology n° 44-3, p.413-447, in which the author on the basis of 144 000 students of 333 colleges of the Academy of Bordeaux distinguishes two categories of "autochthones" and "allochtones". For the sake of measuring what he calls "cultural origin" of students, he applies the surname as a marker linked to religion and country of origin (418)

Conclusion

The community of participants to this programme (which is) dedicated to foreign delinquent minors has expressed its interest in a continuation of the analysis of the process which also differentiates minors according to origin in order to seize the impact of public action on their behalf and, in the concern for the promotion of public quality action, to get to know, understand and reduce inequalities of treatment, shedding light on possible factual discriminations in order to be really equipped with the means to combat them more effectively. Nevertheless, it appears just as important that statistical treatment of this order should not be inattentive of other characteristics of those minors concerned. Analysis focused on the characteristic of origin does only make sense if this aspect is paralleled with an observation of the structural mechanisms that constitute the future framework for youngsters originating from migration. The particular positions they will hold within this context should just as well be taken into consideration, as it is these positions that expose them more than others to an involvement in illegal activity and to a more relentless reaction on the part of police and judiciary which can be perceived throughout every phase of the process, right up to the execution of measures taken on their behalf. A whole series of criminological research, effected with respect to certain fields within the execution of the penal system and also on behalf of the justice of minors, has indicated that these structural factors do significantly influence the proceedings from the criminal act to the implementation of the penal response. To skip these variables could lead to labour under a misapprehension due to questions situated in the background which would thus be distanced even further from the focus, such as the socio-cultural background of minors, their living conditions and the size of their brotherhood. Nevertheless, these factors do not contribute automatically, as has been demonstrated by comparisons between populations of each gender. This position has been called to mind the debate on occasion of the closing session of the programme.[34]

[34] Cf. Vanneste (C.), Intervention, Paris, 23 November 2006.