FOREIGN DELINQUENT MINORS

JUDICIAL PROCEEDINGS AND REHABILITATION MEASURES

BELGIUM

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INTRODUCTION

Given all foreign delinquent minors or juvenile delinquents of foreign origin in Belgium, the following questions ensue: How is this group defined in the framework of jurisdiction by the State? How is it described in the national census? Are there any particular features to the treatment on behalf of foreign delinquent minors? If so, how can they be explained? The following report constitutes an attempt to provide answers to all of these questions. Section A, entitled "*Legal and Regulatory Context*," provides the definition of the target group. In Section B, titled "*Historical Context*," an effort is made to establish the characteristics which account for the difficulty inherent in the registration of data of national origin that is data relating to ethnicity. In Section C, actual limitations in the processing of sensitive data are evoked and the statistics at practitioners' disposal are described. Section D evaluates particular characteristics of the population of foreign origin in Belgium. After taking into account selections and orientations which may be applied by the administrative system of juvenile justice, this section contains an approach to seize and explain the consequences of these applications for juvenile foreign delinquents or delinquent juveniles of foreign origin. An indication of the anticipated effects to the newly valid[1] dispositions of modified legislation on behalf of juvenile protection - the laws of 15 May 2006[2] and of 13 June 2006[3] - would have been possible but has not been effected.

A - LEGAL AND REGULATORY CONTEXT

How is the group of foreign delinquent juveniles or delinquent juveniles of foreign origin defined in Belgian jurisdiction? This question will be answered on two levels: one on behalf of a definition in consideration of all foreign delinquent minors by way of the specific treatment they are subjected to; the other provides for a definition to the totality of foreign minors or minors of foreign origin by seizing the transformations of national law.

1. Minority

Almost a century ago, Belgium has decided to opt for the depenalisation of juvenile delinquency.[4] Depenalisation "*by law*"[5] has been established for the first time in the law of 15 May 1912 on the protection of children and for the second time by the law of 8 April 1965 on youth protection. "*Subjective"* depenalisation is not aiming at "*specific behaviour, whoever might be the person responsible",* but moreover at "*particular individuals, whatever behaviour they might have resorted to*".[6] "*Absolute"* depenalisation is applied to these particular individuals; "*suppression of all punishment*", as well as "*the suppression of the quality of an offence in the plenary sense of the term (speaking of "facts characterised as offences*").[7] This is "*automatic*" depenalisation inasmuch as the law principally does not provide for "*any discretionary powers on behalf of the adequacy of resorting to it*".[8] Depenalisation is related to a negative definition of minority. Being minor equals to not having reached the age of penal majority, the age at which, in terms of the law, an individual is considered capable of fulfilling the conditions of accountability – free will, culpability, responsibility – as the subjective conditions to penalty; at the same time, being minor equals to not being of an age that allows for an individual to be considered as the author of an offence. Conception of minority as of non-majority: depenalisation requires no other particularity besides the one of which ensues the impossibility to penalise the individual.
On behalf of the other part, if the laws of 15 May 1912 and 8 April 1965 do away with this impossibility to penalize, it is only to ensure another way of filling the void which is defined in the measures for control of

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[1] The laws of 15 May 2006 and 13 June 2006 establish – the first under article 28, the second under article 65 – that, with the exception of the articles mentioned, "(...) the King determines the date of the entry into force of each of the dispositions of the given law" and stipulates that those dispositions "enter into force at the latest on 1 January 2009". Articles 7, 9, 11, 13, 14, 16, 17, 19, 21, 23, 24, 25, 26 and 27 of the law of 15 May 2006 and articles 2, 3, 4, 6, 8, 9, 10, 12, 15, 16, 17, 18, 19, 23, 27, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 of the law of 13 June 2006 have come into force on 16 October 2006 (royal decree of 28 September 2006 executing the law of 15 May 2006 modifying the law of 8 April 1965 on behalf of youth protection, the Criminal Procedure Code, the Penal Code, the Civil Code, new communal law and the law of 24 April 2003 reforming matters of adoption and executing the law of 13 June 2006 modifying legislation on behalf of youth protection and care for minors having committed an act qualified as an offence (*Moniteur belge,* 29 September 2006*).*
[2] Law of 15 May 2006 modifying legislation with respect to protection of the youth and care for minors having committed an act qualified as an offence, *Moniteur belge* ,17 July 2006.
[3] Law of 13 June 2006 modifying legislation with respect to protection of the youth and care for minors having committed an act qualified as offence, *Moniteur belge* ,19 July 2006.
[4] On behalf of the treatment of delinquent minors before 1912, see Tulkens, Moreau, 200, 15-34.
[5] Van de Kerchove, 1987, 323.
[6] Van de Kerchove, 1987, p.322.
[7] Van de Kerchove, 1987, 319-320..
[8] Van de Kerchove, 1987, p. 329

(deviant) behaviour by the State. Juvenile delinquents become delinquent juveniles, considered a sub-group among a larger entity, that of endangered juveniles: both laws are not aiming at the punishment of children and juveniles, but rather at their protection; neither are they promoting penal sanctioning, but instead measures which are destined to compensate familial crises. Measures that may be applied to parents are the withdrawal of paternal authority, which may turn into the withdrawal of parental authority, as well as guardianship on behalf of family benefits. Measures applied to juveniles are reprimands, surveillance and committal to institutions.

Protection is related to a positive definition of minority. The juvenile is member to multiple groups, with the most important groups on behalf of his education being, in the words of Émile Durkheim, "*the family into which he is born, his native country or his political affiliation, and humanity*". All three constitute "*moral goals worthy of being pursued*". Nevertheless, a hierarchy is established among them: "*family goals are and should be subordinate to national goals, for the only reason that the native country is a social group of a higher order*."[9]

The conceptualisation of minors is constituted as follows: if the accent is on their protection, they are part of the population; if the focus is on their education, it is education which assures their socialisation, i.e., their individual and familial usefulness in accord with their social utility. In this report, the State is the principal and the parents are its agents; at the beginning of the 20th century, the family becomes "*a secondary organ of the State*."[10]

These choices of criminal politics do have an organisational corrolary: apart from penal courts/tribunals, the law of 15 May 1912 has created children's courts; the law of 8 April 1965 transforms these courts into juvenile courts. (The concept of) Depenalisation requires that no other individuals are deferred to these courts *qua* delinquents but the individuals who are accused of having committed a crime qualified as offence before reaching penal majority; these same individuals may, *qua* endangered minors, be deferred to them up to the age of majority.(The concept of) Protection requires that only the *"rejetons*" - consequent generation of the population is confided to these courts, whose particular situation justifies their socialisation. Legal and social definitions to the children's courts' jurisdiction, or on behalf of the youth *ratione aetatis,* the elasticity of the scope provided by a combination of these two definitions allows to consider all of the members in the groups of both minors to be punished and minors to be protected. Two examples:

The law of 15 May 1912 establishes penal majority at 16, but entrusts the children's judge to try, on the one hand, minors under 18 years of age who practise vagrancy or mendicancy or who give their parents - due to their unseemly conduct or disorderliness - serious reason for concern; on the other hand, children's judges are entrusted with the trial of juveniles under 16 who have either committed an act qualified as an offence or have fallen to prostitution or debauchery or who look for their means of subsistence by gambling, trafficking or occupations which expose them to prostitution, to mendicancy, vagabondage or criminality. From a penal perspective, the first group is constituted of adults and not of delinquents; the second group is constituted of minors and hence of individuals lacking discernment. Both groups are at risk, but their socialisation is expected. Accordingly, both groups are to be protected.

The law of 8 April 1965 raises the age of penal majority to 18, but disposes that "if the person deferred to the juvenile court, on behalf of an act qualified as an offence, was over 16 by the time the act was committed and the juvenile court estimates that measures of guardianship, protection or education are inappropriate, it may end the procedure and refer the matter, on behalf of a justified decision, to the public prosecutor / district attorney for the purpose of prosecution under the provisions of common law, if need be."

This measure of exception is justified by the refusal to "let the concern for education go as far as to allow a dimension of fraud"[11]; this measure is applied on behalf of juveniles who are already "fixed in particularly antisocial attitudes".[12]

From a penal perspective, they are constituted of minors, therefore lacking discernment. They are equally at risk – but their socialisation is not expected. Hence, they are not to be protected[13].

Indication of a transformation of social definitions to the ages of life? Premises of a mutation of modes of articulation on behalf of protection and penalisation? As the law of 19 January 1990[14] lowers the age of civil majority from 21 to 18 years old aligning the definition of all juveniles at risk with the definition of all juvenile delinquents, other connections between protection and penalisation are reconstituted. The law of 24 December

[9] Durkheim, (1902), 1963, 67.
[10] Durkheim, (1902), 1963, 67.
[11] Constant, in: Tulkens, Moreau, 2000, 663.
[12] Parliamentary Document, Chamber of Belgian representatives, session 1962-63, n° 637-1, 243.
[13] Up to the reform of 1994, ending the removal of persecution has been effected *in rem*: the court was no longer considered competent on behalf of certain facts; it remained competent if the juvenile again committed acts assessed as offences after having been subject to a decision of referral and consequent sentencing by penal jurisdiction. After 1994, this measure "was gradually and more frequently applied "in personam": the children's court is thus no longer competent if the juvenile repeatedly commits acts assessed as offences after having been subjected to a decision of referral and sentencing under penal jurisdiction".
[14] Law of 19 January 1990 lowering the age of civil majority to 18 years, *Moniteur belge*, 30 January 1990.

1992 [15] stipulates that the juvenile courts have jurisdiction over requisitions from the public ministry as regards individuals being tried for committing an act qualified as an offence before reaching 18 years of age - whether they are minors or adults when the case is referred to court. The law of 2 February 1994[16] grants them the possibility of taking particular provisional or protective measures which end at the age of majority.[17] The law of 15 May 2006[18] extends this possibility, by raising the age-limit at which these measures must end, from 20 to 23 years of age. Under particular conditions of the law, a minor may be penalised as soon as he is 16 years old and an adult may benefit from protection until the age of 23.

2. Legal situation of foreigners

In 1922, 1926, 1927 and 1932, Belgium has adopted a series of laws on behalf of acquisition, loss and reacquisition of Belgian citizenship which were harmonised on 14 December 1932[19]. Rejecting the principle of *ius soli* as the over-riding criterion for the assignment of Belgian nationality[20] and ratifying the inequality of the sexes and the diversity of legal foundations to descent[21], these laws attribute Belgian citizenship to children whose father is Belgian. This law remained in effect until 1 January 1985 when the law of 28 June 1984 entered into force, containing provisions on behalf of particular aspects to the juridical position of foreigners and establishing the code of Belgian citizenship.[22] In this period, the group of foreign minors has been particularly numerous, while the group of Belgian minors of foreign origin has been particularly small: the majority of children and grandchildren of immigrants are/remain foreigners although born in the country and even under the premise that the parents were equally born in Belgium.
The law of 28 June 1984 marks a turning point in Belgian politics of immigration. The code of citizenship installed by this law pursues three objectives: *"to consider developments in the law of domestic relations, to avoid conflicts of nationality and to promote the integration of foreigners"*[23] With respect to developments on behalf of family law, the concern is to *"suppress inequalities between men and women as well as between legitimate and illegitimate children on behalf of access to citizenship by descent (ius sanguinis)"*[24]. As regards the integration of foreigners, an effort is made to suppress or reduce inequalities between Belgians and foreigners of the second or third generation who may not exercise the rights accorded exclusively to Belgian citizens.
The code establishes that "the obtainment of citizenship is called acquisition or attribution, in line with the circumstance whether subordinated or not to a voluntary act of the applicant". Acquisition concerns adults. If acquisition is perceived as a right, the act in pursuit of this obtainment takes the form of a declaration; if acquisition is perceived as a favour, the act is an application for naturalisation. Attribution concerns minors; it may be brought about by either the child's birth in Belgium or the Belgian nationality of his father, mother, or adoptive parent(s), or as a collective effect consequent of an act of acquisition. Two dispositions aim specifically at foreigners of the second or third generation. A foreigner born in Belgium has the option to obtain Belgian citizenship between the age of 18 and 22 years old if he has, on the one hand, had his principal residence during the last twelve years in Belgium or, on the other hand, resided there during at least nine years or from the age of 14 to 18 years old. The child born in Belgium of a parent born in Belgium obtains Belgian citizenship if this parent makes a declaration requesting the attribution of Belgian citizenship to the child before it reaches the age of 12.
For foreigners who are born of a Belgian mother, have been adopted by a Belgian or are stateless, the code has retroactive effects: a provision establishes that the entry into force of the code *"does not result in the attribution of Belgian nationality to foreigners who have been over 18 when the code came into force"*, but moreover, *a*

[15] Law of 25 December 1992 modifying articles 36, 4° and 37 and abrogating article 37 a of the law of 8 April 1965 for juvenile protection and inserting article 43 a, *Moniteur belge*, 31 December 1992.
[16] Loi du 2 février 1994 modifiant la loi du 8 avril 1965 relative à la protection de la jeunesse *Moniteur belge*, 17 septembre 1994.
[17] On this question, see Tulkens, Moreau, 2000, 698-703. On behalf of individuals prosecuted in line with the motion of an act assessed as offence committed before the age of 18 who are referred to juvenile courts over the age of 20, the only measures which may be pronounced are reprimands and the referral to another court.
[18] Law of 15 May 2006 modifying legislation on behalf of juvenile protection and the care of minors who have committed an act assessed as offence, *Moniteur belge*, 17 July 2006.
[19] *Moniteur belge*, 17 December 1932.
[20] Verwilghen, 2002, 517. One law of 8 June 1909 settled that Belgian nationality was to be acquired by a foreigner at the age of 22 if the individual had not declared to maintain his nationality of origin and has been born of a foreigner who himself/herself was born in Belgium or had been resident in Belgium for the last six years without interruption; this law has been replaced by the law of 15 May 1922.
[21] Verwilghen, 2002, 518.
[22] *Moniteur belge*, 12 July 1984.
[23] Verwilghen, 2002, 521.
[24] Carlier, Rea, 2001, 27.

contrario, it should naturalize foreigners of less than 18 years of age. On 1 January 1985, *"several thousands"*[25] of these individuals have switched from the group of foreign minors to the group of minors of foreign origin. On the other hand, with respect to foreigners of the second and third generations, the reform will only have future effects. Progressively, on behalf of both attribution of nationality due to birth in Belgium as well as due to the collective effects of acts of acquisition, the group of foreign minors diminishes while, simultaneously, that of minors of foreign origin becomes larger.

The law of 13 June 1991[26] accelerates these changes by consolidating the importance of *ius soli.* On behalf of acquisition, this law extends the period during which the foreign adult - born in Belgium with primary residence in this country since birth - may acquire Belgian nationality. The law raises the age until which this choice must be declared from twenty-two to thirty years. In terms of attribution, the law automatically confers Belgian Citizenship to a child born in Belgium of a parent also born in Belgium and who has had his primary residence in the country for five of the 10 years preceding the birth of the child. In addition, the law provides that the child born in Belgium becomes Belgian if his natural or adoptive parents make a declaration claiming the attribution of Belgian nationality to the child until he reaches 12 years of age, on the premise that the natural or adoptive parents have had their primary residence in Belgium for the ten years preceding the declaration and the child has resided there since birth.

Subsequent modifications only affect acquisition; thus, they do not concern foreigners of less than eighteen years of age, except for the fact that they permit some of them to move from the group of foreign minors into that of minors of foreign origin, through the attribution of nationality as a collective effect of an act of acquisition. The laws of 13 April 1995[27] and 22 December 1998[28] modify and simplify the procedure of nationalisation. The law of 1 March 2000[29] allows three new categories of foreigners to benefit from the procedure of making a declaration in order to obtain citizenship - those born in Belgium and having had their principal residence in Belgium since birth; those born abroad of one parent Belgian at the time of the declaration; those who have established their primary residence in Belgium for at least the last seven years, and who, at the time of declaration, have been permitted and authorised to reside in Belgium for an unlimited period of time, or to establish themselves in this nation.

In a period of fifteen years, the concept of Belgian and foreign nationality has shifted from the idea of nationality as a hereditary attribute to one of nationality aligned to the criteria of place of birth and duration of residence in Belgium. On a demographic scale, these changes to citizenship law "*affect adversely the growth of the foreign population."*[30] In the same way, they depopulate the group of foreign minors: on 1 January 1991, foreign minors represented 11,1 % of minors and 28,5 % of foreigners, which constituted 9,1 % of the surveyed population; on 1 January 2001, they represented 6,6 % of minors and 16,5 % of foreigners, of which the latter constituted 8,4 % of the surveyed population. This effect of depopulation is particularly relevant on behalf of nationals of those states bordering Belgium and states with which Belgium has settled bilateral agreements to organize work-related and family-related immigration: such agreements have been concluded with Italy in 1946, with Spain in 1956, with Greece in 1957, with Morocco and Turkey in 1964, with Tunisia in 1969 and with Algeria in 1970.[31]

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[25] Verwilghen, 2002, 522. According to T. Eggerickx (2006, 51), 75629 juveniles of less than 18 years of age, foreigners on 31 December 1984, have become Belgian on the 1st January 1985; the retroactive attribution of Belgian nationality due to the nationality of the mother has "primarily affected young foreigners whose origin is in a bordering country and young foreigners of Italian origin, and to a lesser extent young people from Maghreb or Turks."

[26] Law of 13 June 1991 modifying the Code of Belgian Nationality and articles 569 and 628 of the judicial code, *Moniteur belge*, 3 September 1991.

[27] Law of 13 April modifying the procedure of naturalisation and the Code of Belgian Nationality, *Moniteur belge,* 10 June 1995.

[28] Law of 22 December 1998 modifying the Code of Nationality on behalf of the process of naturalisation, *Moniteur belge*, 6 March 1999.

[29] Law of 1 March 2000, *Moniteur belge*, 6 April 2000.

[30] Eggerickx, 2006, 53.

[31] The calculations effected by T. Eggericks (2006, 65) on the basis of data of the population census in 1970 and data collected by the national Institute of statistics in 2003 show that minors of less than 15 years of age represent 30,9 % of Germans 26,8% of French et 29,7% of Dutchmen/Dutchwomen in 1970, but 14,3% of Germans, 11,3% of French and 12,3% of Dutchmen/Dutchwomen in 2003. They are constituting 34,2% of Italians, 36,5% of Spaniards, 40,2% of Greek, 43,5% of Moroccans, 46,1% of Turks, 26,3% of Tunisians and 47,3% of Algerians in 1970, but 5,1% of Italians, 7,0% of Spaniards, 7,9% of Greek, 16,1% of Moroccans, 15,2% of Turks, 10,0% of Tunisians and 13,2% of Algerians in 2003. An agreement has been concluded between Belgium and former Yugoslavia in 1970; in this context, the proportion of minors of less than 15 years of age among former Yugoslavs has, contrarily to what has been stated beforehand, risen between 1970 (26,2%) and 2003 (28,8%). In general, minors under 15 represent 22,8% of Belgians and 33,5 % of foreigners in 1970, but 17,9 of Belgians and 12,2% of foreigners in 2003.

B - HISTORICAL CONTEXT

On 1 January 2005, the total population of Belgium counted 10 445 882 individuals of which 9 574 990 were Belgian and 870 892 of foreign nationality; of 9 574 990 Belgians, 699 613 were foreigners at birth; of these 699 613 Belgians who had been foreigners at birth, 332 474 were born in Belgium and 367 139 born abroad.[32] T. Eggerickx, A. Bahri and N. Perrin have observed that these figures are sufficient proof of the fact that due to recent modifications to the Code of Belgian Nationality, *"studies on behalf of processes of integration and discrimination cannot be limited to foreign population only."*[33] Should therefore the necessity to register and distribute data relative to national origin be inferred, owing - with particular emphasis - to the fact that processes of integration and discrimination are considered problematic due to youths who are qualified as delinquents? The demographers cited beforehand do not dare to cross this line.

In order to determine what is at stake, it is worthwhile recalling that it was the *Vlaams Blok ("Flemish Block")*, the Flemish extreme right-wing party, which has taken up he matter of registration and publication of information - relating to the origin of individuals who have been arrested, criminally prosecuted and sentenced - and added these issues to their political and scientific agenda. Since 1990, the party has been engaged on behalf of four issues: immigration, criminality, antipolitics and the independence of Flanders. Immigration has been the dominating subject and still remains the topic which unifies the largest number of voters. Criminality, the subject which has become an issue by itself, had initially been regarded as merely one facet to immigration: in 1991, "*Vlaams Blok voters simply equalled immigrants with crime and didn't bother to mention crime as a separate issue motive."*[34]

The same thing applies to the creation and transmission of police, judiciary and penitentiary statistics aligned with the criterion of origin. From the start, the argumentation is employed on two levels. On the "antipolitics" level, what is at stake is to increase the value of the *Blok* and to devalue its adversaries by suggesting that the political faultiness of the extreme right differs from the correctness of other parties like the refusal to cover one's face with a veil differs from the refusal to face reality. On the anti-immigration level, the goal is to promote a genetic (*genos*) and lay (*laos*)[35] conception of the people of Flanders by establishing categories on behalf of the population originating from immigration, describing them as having inherent character flaws of a criminogenic nature which are defined in terms of strangeness or ethnicity.

F. Dewinter, a member of Parliament at that time, goes on the offensive a few days after what he calls the "*racial unrest of Saint-Gilles and of Forest*." On 16 May 1990, he asks whether *"the Ministry of Justice, the Minister of Justice or any other authority prohibits the publication of data, information and statistics on behalf of foreign criminality by the various police forces"*[36]. It is the first in a long row of questions asked by members of Parliament and ministers of the *Blok* with respect to problems of criminality and foreigners / immigrants and also on behalf of solutions suggested to these problems. These questions and solutions are noteworthy in as far as the problem of criminality related to immigrants and their children is conceived in terms of culture and ethnicity, and in as much as the solutions to these problems are developed in terms of status and nationality. On the one hand, these members of the Blok search for quantitative and qualitative attributes specific to the group; on the other hand, they provide answers via incarceration, deportation and revocation of citizenship.

Specific quantitative particularities: on 16 August 1994, Parliament member F. De Man wonders about a possible connection between an increase in theft in a certain neighborhood and the installation of the office for immigrant registration in the same area.[37] On 5 October 1999, Parliament member J. Mortelmans requests information on the number and nationality of arrested minors: *"According to the magistrates of the Public Ministry, nine of ten individuals arrested are minors of foreign origin. The Brussels police holds against this assertion. Which are, on behalf of Brussels, the definite numbers for the first semester of that year, with respect to a) offences committed; b) the age group; c) according to nationality of the person arrested?"*[38] On 7 January 2004, the Parliament Member B. Laeremans calls to mind a discussion in which *"the counselor of the Prime Minister has affirmed that 80 % of crimes are nowadays committed by foreigners and 20 % by Belgians, when some ten years earlier, it has been the other way around."* Is it possible for this assertion to be *"concretely supported by figures"*[39] *?*

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[32] Eggerickx, Bahri, Perrin, 2006, 2.
[33] Eggerickx, Bahri, Perrin, 2006, 1.
[34] Walgrave, De Swert, Dandoy, 2004, 12.
[35] Cf. on behalf of this point the four modalities of the population - —*demos*, *plebs*, *genos* et *laos*— distinguished by J.-L. Nancy (2004). According to this philosopher, if the words *demos* and *plebs* describe the people of those who have the territory in common (*demos*) or the humble condition (*plebs*), *genos* refers tot he people inasmuch as it collects the individuals originating of one and the same sphere, and *laos* to the people — "*unit*" or "*assembly*" — inasmuch as it collects individuals united by the same beliefs and convictions defended.
[36] *Written questions and answers*, House of Representatives, 47th legislative assembly, bulletin B116, n° 0455.
[37] *Written questions and answers*, House of Representatives, 48th legislative assembly, bulletin B123, n° 0691.
[38] *Written questions and answers*, House of Representatives, 50th legislative assembly, bulletin B001, n° 0014.
[39] *Written questions and answers*, House of Representatives, 51st legislative assembly, bulletin B116, n° 0125.

Specific qualitative particularities: on 21 January 1994, Parliament member F. Van den Eynde asks if it is true that "the Turks are less involved in petty crime (for example theft) as people from Maghreb, but that they are by far more involved in matters of violence"[40]. On 19 January 1995, Parliament member F. De Man informs himself on the nationality of drug users and sellers, questioned by the police department in the urban district of Brussels-Hal-Vilvorde.[41] On 13 March 1995, Parliament Member F. Dewinter requests precise information on the groups of foreigners for whom special police units have been created.[42] On 24 January 2005, Senator N. Jansegers asks whether in Belgium, as in the Netherlands, "two thirds of all responsible persons for collective rapes are young allochtones" *(= persons of foreign origin)* and whether over here as over there "the victims are always young women and in three quarters of all cases autochthones."[43] On 3 June 2005, she continues: "Are the agents of police of our country receiving instruction on crimes of honor and their prevention?"[44] On 24 February 2006, Senator A. Van dermeersch asks the following question: "How many individuals have been sentenced per year on behalf of terrorism during the last ten years?" She proceeds on whether she may, as regards these defendants, obtain "for every year a classification effected between Belgian autochthones, (other) Europeans, Belgians of ethnic origin other than European and non-European?"[45]

Incarceration: On 7 January 2004, B. Laeremans asks if it is possible to *"give an overview of the population incarcerated between 1993 and 2003 with a distinction made between Belgian and non-Belgians. »*[46] On 30 December 2004, A. Van dermeersch wants to know *"1. according to category of offence, the number of cases in which the magistrates of the Public Ministry have persecuted [foreigners arrested] ; 2. according to nationality, the number of foreigners that have been incarcerated (…) ; 3. according to nationality, the number among these who have been placed in a closed institution (…) ; 4. according to nationality, the number among these who have been repatriated?"*[47] On 2 February 2006, Senator J. Ceder wants to know, among those who have been sentenced to imprisonment for life "the proportion of individuals of Belgian origin, foreigners originating from other countries of the European Union (EU) and foreigners from outside the EU," and if the data can be sorted into groups according to *the "number of years in prison that these detainees have already done."*[48]

Deportation: On 5 April 1993, Parliament Member F. Wymeersch expresses his interest in Romanians who have been arrested as a consequence of theft: are they *"political refugees", "those who have applied for refugee status"* or *"illegal immigrants"* and *"have they been expelled?"*[49] On 19 March 2004, A. Van dermeersch brings up the topic of overcrowded prisons and asks if *"sentenced individuals who are not of Belgian nationality shall be, in line with prevailing international treaties and given that they are not to be permanently established in the country and have no lasting social relations, handed over to the authorities of their native country and serve their sentence there."*[50]

Revocation of citizenship: On 3 August 2004, J. Ceder says he wants to know when and how the two Belgians detained at Guantanamo Bay acquired Belgian citizenship and to be informed of their original nationality.[51] On 2 September 2004, A. Van dermeersch asks if the three minors of Palestinian origin who were prosecuted for robbery and had been charged with strangulation are *"Belgian," "newly Belgian," or "presumed refugees or not"*[52] The only Senator of the francophone party of the extreme political Right, *le Front national*, asks a similar question in his turn: has the public ministry *"already requested the revocation of citizenship"* on behalf of individuals who have *"received"* Belgian citizenship and have been sentenced because of an attack or an attempted attack? Does the Minister of Justice know how to *"apply his right to positive instruction?"*[53]

Next to the political sphere, the *"Vlaams Belang"* became engaged in the sphere of science. In 2005, Parliament member G. Annemans, who presides at his own research service, and the criminologist M. Bodein, published a book entitled *"The stupid taboo. A meta-analysis of international and national studies on behalf of criminality and ethnicity"*. According to the Parliament member, their objective is to get rid of the "stupid taboo" which prohibits recognition of the fact that immigrants contribute disproportionately to diverse forms of criminality. He proposes the remedy that statistics on crime should be broken down into groups according to ethnicity; as a matter of fact, due to the developments of Belgian citizenship law, *"about 250 000 foreigners have become "Belgian" and have disappeared out of statistics "*[54], contributing to the need for the taboo to be broken.

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[40] *Written questions and answers*, House of Representatives, 48th legislative assembly, bulletin B95, n° 0682.
[41] *Written questions and answers*, Chamber of Belgian representatives, 48th legislative assembly , bulletin B141, n° 0814.
[42] *Written questions and answers*, Chamber of Belgian representatives, 48th legislative assembly, bulletin B144, n° 1024.
[43] *Written questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-39, n° 3-2134.
[44] *Written questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-50, n° 3-2801.
[45] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-27, n° 3-3905.
[46] *Written questions and answers*, Chamber of Belgian representatives, 51st legislative assembly, bulletin B116, n° 0125.
[47] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-45, n° 3-1905.
[48] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-77, n° 3-4219.
[49] *Written questions and answers*, Chamber of Belgian representatives, 48th legislative assembly, bulletin B54, n° 0357.
[50] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-27, n° 3-319.
[51] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-40, n° 3-1278.
[52] *Questions and answers*, Belgian Senate, sess. 2004-2005, bulletin 3-17, n° 3-835.
[53] Questions and answers, Belgian Senate, sess. 2004-2005, bulletin 3-26a, n° 3-3929.
[54] Bodein, Annemans, 2005, 6.

The argument is developed by M. Bodein. He thinks it harmful not to align the statistics of the police and judiciary as well as penitentiary statistics with the criterion of ethnicity — a decision taken *"for political reasons and out of fear of an unnecessary stigmatisation"*[55] — this is considered detrimental by M. Bodein for two reasons: On the one hand, this decision makes it impossible to find evidence for a possible bias on the part of the police or the judiciary system.[56] On the other hand, he elaborates that because of the fact that criminality is an *"indicator to the degree of integration"*[57] , the decision not to examine this criterion would result in remaining unaware of *"important signals of alert"*[58]*;* that data including origin would facilitate the process of identifying groups in the population which contribute to a disproportionate degree to various forms of criminality and delinquency, to define "*ethnical profiles of criminality"*[59] and to *"map particular tendencies."*[60]
The authors recommend the registration of the "ethnical-cultural position with the vantage points of name, nationality, nationality at birth, country of birth, considering these factors up to the third generation, both on the mother's and father's side."[61] The authors consider this information to be indispensable. If nationality is the indicator to ethnicity, "the crucial group of youngsters of the second generation is abusively considered as autochthon"[62] and "research on behalf of the criminality of allochtones [becomes] impossible."[63]
From the electoral point of view, this discourse pays: with every new election, the *Vlaams Blok* gains more votes; at the same time, the issues invested are receiving ever more coverage in the media.[64] Certainly, the party is detested. Of course, as other parties have agreed not to form a coalition with the extreme right, it has become a *"pure opposition party"*[65] with a set of issues instead of a real agenda. It is also certainly true that the party was dissolved in a congress organised on 14 November 2004, following the conviction of its satellite organisations, based on the law of 30 July 1981 which punishes particular acts inspired by racism and xenophobia – to rear its head once more and soon afterwards under the name of *Vlaams Belang, "Intérêt flamand"*. According to S. Walgrave, K. De Swert, and R. Danoy,[66] it is no less dominating in the political discourse, both in the North and the South of the country — the other parties have taken to the same issues, although under the pretext of *"fighting against the ideology of the extreme right."*[67]

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[55] Bodein, Annemans, 2005, 33.
[56] Bodein, Annemans, 2005, 35.
[57] Bodein, Annemans, 2005, 35.
[58] Bodein, Annemans, 2005, 35.
[59] In Dutch, "*etnische criminaliteitsprofielen"*». on this point, see Bodein, Annemans, 2005, 31.
[60] Bodein, Annemans, 2005, 31.
[61] Bodein, Annemans, 2005, 208.
[62] Bodein, Annemans, 2005, 35.
[63] Bodein, Annemans, 2005, 32.
[64] On this point, see Walgrave, De Swert Dandoy, 2004, 21 : "*The chart makes it absolutely clear that the media-attentive public at large, newspaper and television watchers, were progressively more confronted with antipolitics and crime in their news. They were exposed to almost a double amount of these Vlaams Blok ingredients in the 1996-1999 period, than in the period before. (…) Although we cannot prove causality, all these figures suggest at least a firm correlation between issue exposure and party success. (…).* "
[65] Walgrave, De Swert, Dandoy, 2004, 2.
[66] Walgrave, De Swert, Dandoy, 2004, 1.
[67] On this point, and on the questions treated in this report, see the declaration of Anne-Marie Lizin, Senator of the socialist party, who presides the Senate: "*Whatever one may think of the Vlaams Blok, the party exists and has progressed in each of the last twelve elections. (...) For some time, it has been prohibited to publicize crime statistics as they were showing that numerous offences had been committed by allochtones. Today, they indicate that our incarcerated population is constituted by foreigners with a proportion of more than two thirds (sic!) The way in which the Vlaams Blok has called attention to this situation is intolerable, as the party establishes a direct connection between the origin of individuals and criminal acts. In the beginning, the other parties have masked these statistics although it would have been better to acknowledge the existing problem and to mark the socio-economic and cultural difficulties of the young allochtones. We are concluding that public opinion as expressed by the political democratic parties differs in each of the regions on behalf of the fight against crime".*
All of the Flemish parties, for example, consider that the root of the problem has to be attacked and that penal law on behalf of the youth has to be reviewed, while the francophone part is of a different opinion in this matter. Moreover, all of the Flemish parties consider that the law allowing for the rapid attribution of Belgian nationality needs to be modified, while the French speaking part has a different opinion. The French speakers have the right to a different opinion, but they need to be conscious of the fact that they keep us from fighting effectively against the ideology of the extreme right. » (Annual Review, Belgian Senate, session 2004-2005, Brief summary, Bulletin of the Commission, 20 January 2005, 3-93,p.16).

C - STATISTICAL SOURCES

Are number and proportion of foreign minors - or minors of foreign origin- belonging to the group of protected or sentenced minors known? The question has two sides. On the one hand, there are limitations to the evaluation of statistical data. In Belgium, what measures are taken to control the processing of data? On the other hand, the availability of statistical information is also problematic: what pieces of information are handled throughout the formal process of determining the delinquency of certain groups of the population which are defined by their immigrant status?

1. Limitations

The limitations to statistical evaluation have been formalized in Belgium by the law of 8 December 1992 relating to the protection of private life on behalf of the processing of data of a personal nature[68], modified by the law of 11 December 1998, in application of the directive 95/46/CE of 24 October 1995 by the European Parliament and the Council on behalf of the protection of natural persons concerning the processing of data of a personal nature and free circulation of such data[69]. Two of the articles directly concern the processing of data on behalf of which some would like to establish "*ethnic profiles of criminality*"; others would like to use these data in order to determine the particularities of the judicial processing of juvenile delinquents of foreign origin. In addition, there exist particular dispositions added to the law of 5 August 1992 concerning the role of the police, as well as Articles 3 and 4 of the law of 8 August 1997 related to the central register of convictions.

The law of 8 December 1992 stipulates that "data of a personal nature encompass all information on behalf of a natural person, identified or identifiable (...) a person is deemed identifiable who may be identified, directly or indirectly, especially with reference to a number of identification or one or more specific elements, owing to physical, physiological, psychic, economic, cultural or social identity". "Processing" relates to "every operation or total of operations effected or not via automatic processing and applied to data of a personal nature, such as the collection, registration, organisation, conservation, adaptation or modification, extraction, consultation, utilisation, communication by transmission, diffusion or any other form of provision, approach or interconnection, as well as to protection by code, and erasure or destruction of data of a personal nature."

In its article 6, the law prohibits "the processing of data of a personal nature which reveal racial or ethnic origin, political opinions, religious or philosophical convictions, affiliation to trade unions, as well as the processing of data relating to sexual life", before elaborating on behalf of twelve situations for which this interdiction does not hold true.[70] This is the case in "g) if processing is necessary to establish scientific research and this is effected under conditions determined by the King, by issue deliberated within the Council of Ministers and after consulting the Commission for the Protection of Private Life," or " i) if processing is effected in execution of the law of 4 July 1962 on behalf of public statistics," or also "k) if processing is effected by associations of natural persons or by institutions of public utility with the principal social aim of safeguarding and promoting human rights as well as the fundamental rights and freedoms of the individual, on behalf of the realisation of this aim, and on the premise that this will be effected under conditions determined by the King, determined by a royal decree, deliberated within the Council of Ministers and after consulting the Commission for the Protection of Private Life."

Article 8 of the law equally prohibits the processing of data of a personal nature "relating to matters of controversy submitted to a court of justice or tribunal as well as on behalf of administrative jurisdiction, on behalf of suspicions, judicial prosecution and sentences having been effected due to offences or administrative sanctions or measures of security" before specifying the processing of data to which this interdiction is not applicable. The same applies to processing effected "a) under the control of a public authority or of an official of the Ministry under provisions of the Judicial Code, if the processing is necessary to the exercise of their tasks" or " b) by third parties if the processing is necessary for the realisation of aims established by the law or

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[68] *Moniteur belge*, 18 March 1993.

[69] *Moniteur belge*, 3 February 1999.

[70] In its original version, article 6 defines in greater detail the nature of personal data with a limited processability; instead of prohibitions and additional provisions for cases of exception, processing is generally prohibited unless it is to pursue aims established by the law or by virtue of the law. Its four paragraphs have been formulated as follows: "The processing of data of a personal nature relating to racial or ethnic origins, sexual life, political, philosophical or religious opinions or activities, trade union affiliations or to affiliations to cooperative societies is not permissible unless it is to pursue aims established by the law or by virtue of the law.

If the aims considered under article 1 are determined by virtue of the law, the Commission for the Protection of Private Life provides the applicant with a preliminary expertise.

Paragraph 1 does not prohibit an unincorporated association or an association of natural persons to keep a database of its own members.

The King may, determined by a royal decree, deliberated within the Council of Ministers and after consulting the Commission for the Protection of Private Life, provide for particular conditions with respect to the processing of data considered under paragraph 1.»

by virtue of the law, a decree or a direction / injunction" or "e) for the needs of scientific research, in respect of the conditions established by the King, determined by a royal decree, deliberated within the Council of Ministers and after consulting the Commission for the Protection of Private Life."
Article 44/1, added to the law of 5 August 1992 (the "Police Functions Act") on behalf of the tasks of police by a law of 2 April 2001[71] provides that the forces of the police may, for the sake of complying with their judicial and administrative missions, *"collect and process - in line with the provisions defined by the King and after consulting the Commission for the Protection of Private Life - personal data as regards article 6 of the law of 8 December 1992 (...)*» The recipients / receiving entities to whom these data may be communicated - authorized by Article 5 of the law concerning the functions of the police and police services, general inspection by the federal and local police, intelligence and security services as well as international organisations for the cooperation of police - are specified in the laws of 2 April 2001, 26 April 2002, 3 May 2003 and 10 July 2006. The law of 26 April 2002 stipulates that other public authorities, determined by a royal decree, deliberated in the Council of Ministers and after consulting the Commission for the Protection of Private Life, may be added to this group.
The law of 8 August 1997 concerning the Criminal Records Office re-establishes articles 389 to 399 of the Code for Criminal Instruction, repealed by the law of 10 July 1967, in a revised text. The provision contained in Article 589 defines the nature and goals of the Criminal Records Office; it specifies that in application of Article 8, §1 of the law of 8 December 1992, information registered by the offices of courts and tribunals or through the services of the Criminal Records Office of the Ministry of Justice "*may serve as a foundation to the statistics established and diffused at the instigation of the Ministry of Justice.*" The provision contained in Article 590 modifies the provision contained in the original version of Article 8, §1 of the law of 8 December 1992 and specifies the nature of information registered for each individual. Concerning decisions made in application of the law of 8 April 1965 relative to the protection of youths, this information is defined as follows: "*7° the withdrawals of parental authority as well as the reintegrations and the measures pronounced on behalf of minors (which are) enumerated in Article 63 of the law of 8 April 1965, as well as the repeals or modifications of these measures decided by the juvenile courts in application of Article 60 of the same law.*"[72]

2. Data

It must be admitted: current results of statistical data do neither allow for "*ethnic criminal profiling*" nor for a definition of particular decisions taken on behalf of juvenile delinquents of foreign nationality or foreign origin. The only legitimate resultant hypothesis would consist in the assumption that political honesty may gradually come to accept a situation in which an over-representation of foreign minors and minors born abroad among the juveniles detained is a fact, proven by the prison statistics, which cannot be explained in terms of processes and mechanisms – and certainly will not be explained by the "*stupid taboo*" evoked by G. Annemans and M. Bodein. This is the "*statistical void*" which "has to be (...) put on record by everyone who sets out to evaluate Belgian data on the issue of registration of juvenile delinquency and norms of social control in application to this group" [73], according to C. Vanneste.
From 1994 to 2000, the results of police screenings have been collected and statistically analyzed.[74] Besides notes on behalf of the police department effecting registration and the number of the charge sheet, information encoded comprises the type of infraction, gravity of the infraction as well as location of the offence, the purpose of the offences' location, as well as, on behalf of particular offences, the inducement of the crime. No information was collected on behalf of the suspects: the "*Integrated Crime Statistics of the Police Services"* (SCII) has been "*the accounting department of offences*."[75] Since 2001, police departments have contributed to the national general collection of data (abbreviated "BNG",) and also effected registration of data on behalf of suspects; nevertheless, to this day, this information doesn't enter police statistics. Belgium still belongs to "*the minority of countries (...) where the statistics of the police do not provide any information related to the age group of minors*."[76]

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[71]Law of 2 April 2001 modifying the law on the role of the police, the law of 7 December 1998 establishing an integration process on behalf of the police forces, with a structure comprising two levels, and other laws relating to the provision of new structures of police, *Moniteur belge*, 14 April 2001.
[72] The original version of article 8, §1st of the law of 8 December 1992 stipulates that "The processing of data of a personal nature" is only permissible in pursuit of aims established by the law or by virtue of the law, unless they aim at : (...) *8° measures taken on behalf of minors in application of the law of 8 April 1965 relating to the protection of the youth or decrees and orders on behalf of youth protection taken by the organs concerned in Article 59 a, §§ 2 a and 4 a of the Constitution; 9° the withdrawal of parental authority as well as measures of educational assistance pronounced and ordered by the youth tribunals or the divisions of the criminal court at the court of appeal, in application of the law of 8 April 1965 relating to youth protection.*
[73] Vanneste, 2004, 119.
[74] On this point, see de Troch, Klinckhamers, Vandendriessche, 2005, 95-100.
[75] Vanneste, 2004, 125.
[76] Vanneste, 2004, 123.

Since 1995, "*statistical data relating to sentencing, suspensions and detentions*" have been provided annually by the Department of Constitutional Affairs of the Ministry of Justice[77] obtained from the data of the Criminal Records Office. Information obtained from conviction reports and transmitted by the single penal judges and the courts of criminal jurisdiction are registered and processed; the information which is taken from reports transmitted by juvenile courts is registered, but not processed[78]. Consequently, "*statistical data*" indicate both the number of minors of over 16 years of age who have been convicted due to traffic offences[79-] as well as the number of minors whose cases have been subjected to referral - from the juvenile court to jurisdiction under common law - and who have been subjected to a conviction or suspension, but they do not give any indication in numbers as concerns those minors on behalf of whom a measure of supervision, protection or education has been ordered.

Statistics could be established on the basis of data transmitted by the juvenile courts; these could then be grouped according to age, nationality, and gender.[80] Nevertheless, they would only be of a "*very limited interest*."[81] On the one hand, pursuant of Article 3 of the law of 8 August 1997 on behalf of the Criminal Records Office,[82] the registration of data would be limited to measures pronounced in application of Article 37 of the law of 8 April 1965; referral, interpreted as a decision within proceedings, is not mentioned. On the other hand, this transfer depends on a decision, effected by means of a judgment; a considerable number of these prove to be court orders[83].

For almost thirty years, the penitentiary administration registers information on behalf of incarcerated minors. In its statements of account, the penitentiary administration presents the figures relating to minors who have been incarcerated and detained, also specifying the figures on behalf of those minors who have been incarcerated or detained in application of Articles 41 and 53 of the law of 8 April 1965 - which have later been partly or fully abrogated. Apart from relying on published figures, statistics could be created by employing data concerned with the newly admitted population as well as data related to the daily average population, supplied by the penitentiary database "SIDIS". In line with this aim, it would be possible to establish cross-references between penal and penitentiary data, taking the criteria of infraction, legal and civil status, date and place of birth, nationality and gender into account.

In the same way, the figures relating to Belgian juveniles may be processed - as well as figures relating to incarcerated or detained foreign juveniles and foreign-born minors - in application of the laws of 20 July 1990 on behalf of preventive or precautionary detention, as well as in application of the law of 15 December 1980, relating to access to national territory, residence, establishment, and expulsion of foreigners or to other laws. Similarly, it is possible to evaluate the figures and proportion of groups of Belgian, foreign and foreign-born minors who have been consigned to the federal centre at Evenberg in application of the law of 1 March 2002 concerning the provisional placement of minors who have committed an act labeled as an offence.

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[77] On this point, see Willems, Deltenre, Hendricx, De Pauw, 2004.

[78] Willems, Deltenre, Hendricx, De Pauw, 2004, 1033.

[79] Article 36 a of the law of 8 April 1965 disposes that it is primarily the courts with jurisdiction according to common law who are competent on behalf of motions of the public ministry regarding individuals between the age of 16 and 18 at the time of the offence who are persecuted for infractions to dispositions of laws and provisions of the traffic police. If it becomes apparent during the hearing of the case that a measure of supervision, protection or of education would be more appropriate, the courts may refer the case to the public prosecutor via motions tabled before the juvenile court.

[80] The first of four databases constituting the foundation for data of the Police Crime Statistics contain - apart from file number, references of age, nationality, gender, civil state and profession – information on behalf of whether a sentence, a suspension of sentence on probation or a suspension of proceedings have been effected or whether an order of detention has been passed (Willems, Deltenre, Hendrickx, De Pauw, 2004).

[81] Vanneste, 2004, 125.

[82] The disposition incorporated into Article 3 of the law of 8 August 1997 stipulates that data covered on behalf of youth protection include the following: "the withdrawal of parental authority and reintegrations (with regards to nationality as well as rights), measures on behalf of minors enumerated under Article 63 of the law of 8 April 1965 as well as repeals or modifications of these measures decided upon by the youth courts in application of Article 60 of the same law". In terms of Article 63 of the law of 8 April 1965, the decisions covered by the criminal case record for juveniles are - in application to juveniles - the measures pronounced in application of Articles 37 and 39 of the law of 8 April 1965. As concerns the law of 2 February 1994, having repealed Article 39 of the law of 8 April 1965 aiming at individuals who have committed an act labeled as offence, only the measures pronounced in application of article 37 are covered.

[83] For example, this is the case in more of 90% of decisions which result in detention of the individual in a public institution of youth protection (Vanneste, 2004, 125).

D - SELECTIONS, ORIENTATIONS, DISCRIMINATIONS

Can any particular qualities be assessed on behalf of the treatment of foreign juvenile delinquents or of juveniles' foreign origin? If so, what kind of qualities can be established and furthermore, how can they be explained? These questions will be answered in four sections: The first outlines the characteristics of the population of foreign origin. The second mentions the various orientations that the juvenile justice system may take when dealing with a case. The third describes the various choices made in the procedures on behalf of juvenile delinquents who are foreigners or of foreign origin. The fourth tries to explain these choices.

1. Migration

According to T. Eggerickx, A. Bahri and N. Perrin[84], immigrants, those immigrated with a right of residence and their descendants made up to 15 % of the surveyed population of Belgium in 2005. Among them, 45 % - 699 613 - were of Belgian nationality, 55 % - 870 862 - of foreign nationality; 32 % - 505 569 - were born in Belgium, and 68% - 1 064 906 – born abroad. The population of foreign origin is growing rapidly; its growth is the principal cause of the growth of the total population: the authors cite, for the years between 1991 and 2005, 458 877 additional individuals, of which 17 % — 78 325 — are of Belgian origin and 83 % — 380 552 — of foreign origin. The sources are natural growth as well as a positive migratory influx, despite the limits set by immigration politics in 1974, developed by the state firstly due to economic reasons - beginning in 1946 - and later for demographic reasons, starting in 1964. Influx originating from Italy, Spain and Greece has slowed down, but the influx from countries in Central and Eastern Europe has increased; the number of new immigrants from Maghreb has doubled between 1991 and 2005.

Regions of immigrant settlement vary according to the period of immigration; they are a product of the economic history of Belgium. Where do immigrants settle after two generations, their children and grandchildren? 44 % in Wallonia, 30 % in Flanders, and 26 % in Brussels. Where do new immigrants settle down? 40 % in Flanders, 37 % in Brussels, 23 % in Wallonia. The first bilateral convention regulating Italian immigration dates from 1946; 75 % of Italian immigrants, their children, and their grandchildren live in Wallonia. The conventions which regulate Spanish and Greek immigration follow after 1956, the year of the catastrophe which took the lives of 262 miners, among these, 121 Italians; the majority of Spanish and Greek immigrants and their descendants live in Brussels. Conventions regulating Moroccan and Turkish immigrants were concluded at a time when the coal mines in Wallonia were already severely depleted; the majority of Moroccan francophone immigrants settle in Brussels, where 51 % of Moroccan origin reside today; the majority of Turkish immigrants settle in Flanders or in Brussels, where 25 % of the population of Turkish origin reside.

The population of Moroccan origin represents 2 % of the total population, but accounts for 20% of population growth: T. Eggerickx, A. Bahri, and N. Perrin have counted, between 1991 and 2005, 91 478 additional individuals of Moroccan origin. In terms of flux, the authors note a reduction of the proportion of children under five years of age - 12% in 1991, 5% in 2005 - and the increase of the proportion of individuals older than sixty-five years among new arrivals. In terms of "stock", three evolutions can be observed. Firstly, the population of Moroccan origin is getting older: young adults of under 20 years of age and individuals over sixty-five represent, respectively, 51 % and 1 % of individuals of Moroccan origin in 1991, but 27 % and 5 % in 2005; this factor of ageing is a result of the transformations in age distribution on behalf of the flux and of a decrease in fertility as concerns the "stock". Secondly, the family structure is changing: the percentage of families with at least six members has diminished from 31 % in 1991 to 16 % in 2005; on the other hand, the percentages of individuals living alone as well as single-parent families have increased, from 25 % - about 9,500 - to 27% - about 23,000 - and from 8,4 % - about 3,200 - to 11,4 % - about 10,000 respectively. Thirdly, individuals with Belgian citizenship are becoming more and more numerous; the authors evaluate 9 575 Belgians of Moroccan origin in 1991, but 161 484 in 2005.

2. Orientations

The magistrate, appointed by the director of public prosecutions to exercise the functions of the public prosecutor at the juvenile court, evaluates the opportunity to prosecute individuals - both minors and adults - who are suspected of having committed an act labeled as an offence before reaching the age of majority. If need be, the evaluation takes the results of the inquiry and investigations into account. The inquiry, although rarely instituted, is concerned with the acts constituting the offence; it is confided to the investigating magistrate, pertaining to the jurisdiction of the juvenile court, and is officially seized - in case of a flagrant offence - or brought before the magistrate of the Public Prosecutor, "*in exceptional circumstances and in case of absolute necessity*."[85] Investigations, which are optional, are concerned with "*the personality of the concerned person [and] the social class in which he has been raised*" and seek to *"determine his interest and the means*

[84] Eggerickx, Bahri, Perrin, 2005.

appropriated to his education or to his treatment"[86]; they are confided to the juvenile judge, who is called either by the summons of the Public Prosecutor or by a court order given by the investigating magistrate.
Assuming the responsibility in evaluation of the necessity to prosecute, the magistrate - effecting the tasks of the Public Prosecutor - decides on one of the following four orientations: to dismiss the case without further actions, to refer the juvenile to the Special Juvenile Services or to the Special Youth Care Committee, to propose a diversionary measure or to refer the case to the juvenile court[87]. Research effected under supervision of C. Vanneste shows that the options chosen at this stage are particularly important: of 4546 decisions[88] registered between September and December 1999 by the Public Prosecutors in eight judicial districts[89], 71% have been deciding in favour of a dismissal of the case without further actions[90]. Decisions to refer the individuals to Special Juvenile Services or to the Special Youth Care Committee are marginal (4,5%), just as the observations on behalf of diversionary measures: alternatives suggested by the judge (4,2%), mediations (0,6%), measures of rectification (3,6%). Referrals to the juvenile court are the option of choice in 20 % of decisions.
The Juvenile Court intervenes in each of the four phases of the protective trial. During the first, optional phase, the juvenile court is summoned upon the motion of the Public Prosecutor, or, in cases of exception, upon an order issued by the investigating magistrate on behalf of effecting investigations and deciding to carry out the measures of protection described in Article 52 of the law of 8 April 1965.[91] During the second phase, the juvenile court is summoned to appear in line with the voluntary appearance of the parties following a writ of summons by the public prosecutor, with the aim to give judgment on the main issue or to back out of the action.[92] In the third phase, it intervenes in official function or at the request of the Public Prosecutor to report or modify the measures taken; the parents or guardians of the minor as well as the minor himself may also invoke it.[93] In the fourth phase, which is optional, the juvenile court is summoned at the request of the minor or, in cases of persistent misconduct or dangerous behaviour, by summons of the Public Prosecutor, with respect to a decision on behalf of the prolongation of measures in application beyond the age of majority[94].
The juvenile court disposes of a limited range of measures of supervision, protection and education.[95] Two of these measures allow for the individuals referred to the juvenile court to remain within their respective sphere: censure, as well as surveillance on behalf of responsible social services. Two other measures remove them from this sphere: the measure of placement with a trusted person or placement in an appropriate institution, as well as

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[85] Article 49, paragraph 1 of the law of 8 April 1965 on behalf of youth protection. On this point, see Tulkens, Moreau, 2000, 805-806. Among other examples, the authors evoke the impediment of the juvenile judge or decisions to inquiry as well as coercive methods, for which the intervention on the part of the judge is absolutely indispensable - such as the warrant to take a person to the courtroom, as well as search warrants.
[86] Article 50, paragraph 1 of the law of 8 April 1965 relating to Youth Protection.
[87] The Articles 45a, 45b,45c and 45d incorporated in the law of 8 April 1965 on Youth Protection (Federal Youth Protection Act) from the law of 13 June 2006 diversify the orientations that the magistrate charged with the exercise of the functions of the Public Prosecutor at the Juvenile Court may provide on behalf of the case. A provision has been effected for these articles to come into force at the latest in 1 January 2009, the date remains undetermined.
[88] The magistrates exercising the functions of the Public Prosecutor at the juvenile court within the 8 judicial districts affected have, between September and December 1999, established 11219 decisions on behalf of acts labeled as offence, as provided in article 36,4° of the law of 8 April 1965 on youth protection. 7673 among these are preliminary provisions which prepare or execute a decision of orientation or acts of transmission towards other districts on behalf of territorial matters. On this point, see Vanneste, 2001,6.
[89] Anvers, Bruxelles, Charleroi, Gand, Malines, Namur, Nivelles, Termonde. The choice of judicial districts was effected in line with the principle of diversification; with the following variables to diversification: importance of the district, the structure of the district as well as the predominant language.
[90] On this behalf, see Poulet, 1990, 212.213: the author demonstrates that in 1986, 70% of the decisions taken by the magistrates in exercise of the functions pf the Public Prosecutor at the Juvenile Court de Charleroi have been orders to dismiss a case or resort to the youth tribunals.
[91] Article 45.2a of the law of 8 April 1965.
[92] Article 45.2b of the law of 8 April 1965 on youth protection
[93] Article 60 of the law of 8 April 1965 on youth protection
[94] Article 37, §3, paragraph 2, 1° of the law of 8 April 1965 on youth protection.
[95] The new version of Article 37, introduced by the law of 13 June 2006, diversifies the measures which may be ordered by the youth tribunals on behalf of individuals who are deferred there, as well as conditions to which their maintenance in their personal surroundings may be submitted. In the same way, the new version diversifies the ways in which the choice of measures may be determined: individuals being persecuted on behalf of having committed an act labeled as offence while they were younger than 18 years of age, may from now on issue proposals on behalf of measures to be applied; in compliance with circular order n°1/2006, "*valid by 16 October 2006, the instruction already applicable will be (...) the one in favor of the written proposal and favored by the juvenile judge or the youth tribunal with respect to the application of a measure*"(*Moniteur belge*, 50810). Article 37a, incorporated by the law of 15 May 2006, establishes that the juvenile judge or youth court may, under conditions determined on their part, issue a restorative offer of mediation and of restorative concertation in groups. The majority of dispositions originating from Article 37, §2 have been in effect since 16 October 2006, it is envisaged that dispositions relative to mediation and restorative dialogues in groups will enter into effect on the 1 April 2007 (on these points, see the ministerial order n°1/2006 on behalf of the laws of 15 May 2006 and 13 June 2006 modifying legislation on youth protection and care of minors having committed an act labeled as offence, *Moniteur belge*, 28 September 2006, 50809-50818).

the measure of placement in a public institution of guarded supervision and education, providing open and closed educational subdivisions. If need be, the interest to maintenance of the juvenile within his respective sphere is subjected to conditions, such as regular school attendance, the implementation of educational training or community services as well as taking advantage of pedagogic and medical instructions at the hand of centres for educational counseling or mental health.[96] Access to public institutions is, except for "*circumstances of particular exception*," reserved for youths of 12 years and over.[97]

The supervisory measures employed by the juvenile court during procedures, effected in the form of measures of supervision, protection and education, are of the same nature as those applied on behalf of the subject matter of the action. Until 1 January 2002, Article 53 of the law of 8 April 1965 provided the court, among other conferred powers, with the authority to order that individuals being prosecuted for an act labeled as an offence committed before the age of eighteen years, may be detained in prison for a period not to exceed fifteen days if it has been *"factually or financially impossible"* to find an appropriate individual or institution who can set them up immediately. Since this paragraph has been abrogated with respect to minors[98], these individuals may be remanded to the federal centre for temporary placement in Everberg by the juvenile courts, within the scope of a "*temporary measure of protection to society.*"

If a measure of supervision, protection or education appears inappropriate and the individual referred to the juvenile court because of an act qualified as an infraction has been over sixteen at the time of this act, the juvenile judge may end the procedure and refer the case to the public prosecutor, for the matter to be pending and prosecuted, where appropriate, before a penal court[99]. Since 27 September 1994, the scope of this decision implies even more serious consequences, as every individual whose case has been subjected to a transfer "*is subject to the jurisdiction of common law*"[100] Apart from the case which effected its application, the measure also results in the "*transformation of the penally irresponsible minor into a penally responsible person*."[101] Furthermore, it cannot be ordered except by judgment after a hearing in open court during the second phase of the protective trial**.**

Table 1 shows the distribution of 888 measures applied by juvenile judges, registered between September and December 1999 as part of the random sample "*judges*"[102] collected within the study carried out by C. Vanneste.

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[96] Article 37, § 2, 2° of the law of 8 April 1965, replaced.

[97] Article 37, §2, 4° of the law of 8 April 1965, replaced.

[98] Even if abridged on behalf of minors persecuted for having committed an act labeled as offence by a law of 4 May 1999, Article 53 of the law of 8 April 1965 has remained in effect until 1 January 2002. It remains applicable to major individuals persecuted due to having committed an act labeled as offence before completion of their 18.year.

[99] Article 38 of the law of 8 April 1965, abridged. The law collects all dispositions pertaining to matters of referral 57a, ever since it has been incorporated by the law of 13 June 2006. Existing dispositions - ancient dispositions of articles 38 and 50, §1, paragraph 4 and § 2 - are enriched by new regulations. The essential novelty is the installment of specialised chambers within the youth tribunals, applying penal common law as well as the common penal procedure; these specialized chambers have jurisdiction on behalf of minors suspected to have committed acts labeled as offences or degradable crimes. It is provided for that modifications on behalf of referral enter into force within the third quadrimester of 2007 (on this point, see the ministerial order n°1/2006 relating to the laws of 15 May 2006 and 13 June 2006, modifying legislation on behalf of youth protection and care of minors charged for having committed an act labeled as offence, *Moniteur belge*, 28 September 2006, 50805).

[100] The version of Article 38, having been incorporated to the law of 8 April 1965 by the law of 3 February1994 which entered into force on 27 September 1994, stipulates in its third paragraph that every individual who has been subjected to a decision of referral "becomes subject to common jurisdiction on behalf of matters of persecution relating to acts committed from the day after the day of final sentencing by responsible jurisdiction". Article 57a, § 5 incorporated into the law of 8 April 1965 by the law of 13 June 2006, provides for the definition that these individuals become subject to common jurisdiction starting with the day when the decision of transfer has become definite, on behalf of persecutions relating to acts committed after the day the transfer has been pronounced.

[101] Moens et Verlynde, *in* Tulkens, Moreau, 2000, 664.

[102] The random sample comprises 888 decisions on behalf of "measures" taken by thirty juvenile judges in the judicial districts of Anvers, Brussels, Charleroi, Gand, Malines, Namur, Nivelles and Termonde. 267 decisions have been excluded from the sample; these consist of decisions to acquittal and decisions to sequels, to oral negotiations, orders to abrogate measures, referral of families, decisions to medical-psychological examinations as well as requests for social studies relating to referral. On this point, see Vanneste, 2001, 7.

Table 1. Distribution of measures taken by the juvenile judges

	% Judgments	% Court Orders	% Total	Total (C.A.)
Censure	35%	0%	14,0%	125
Supervision	16%	18%	17,0%	151
Supervision & guidance	1%	2%	1,5%	13
Supervision & community service	28%	8%	16,2%	144
Placement, trusted person	1%	1%	1,0%	9
Placement, private institution	11%	23%	18,0%	160
Placement, public institution	4%	41%	26,4%	234
Placement, psychiatry	0,3%	1%	0,7%	5
Placement, house of correction	0%	7%	4,0%	35
Transfer	3%	0%	1,2%	11

Source : Vanneste, 2001, 7.

The proportion of measures varies according to whether they were employed by judgment or by orders, and certainly in relation to the phase of the protective trial. Censure, which ends the judges' intervention *in rem*, and transfer of the case, ending this intervention *in personam*, constitutes respectively 35% and 3% of measures taken via judgment; these two measures are not represented among measures taken by court orders. Placement in a house of correction, which is a temporary measure, constitutes 7% of the decisions made on behalf of court orders; this measure is not represented among decisions made as a consequence to judgment. Placement in public institutions evaluates to merely 4% of measures taken via judgment, but to 41% of the measures effected as a result to court orders.

3. Choices

Is there a particularity to the treatment of minors of foreign origin? Various studies suggest that they are over-represented: among those minors directed to the magistrates who exercise the functions of the public prosecutor at the juvenile courts, as well as among minors referred to the juvenile court, those minors placed in public institutions for the protection of juveniles as well as those minors whose cases are returned to the public prosecutor to effect prosecution before a penal court. Penitentiary statistics show that they are similarly over-represented among incarcerated minors. This over-representation increases *"with every phase of proceedings in application of youth legislation and in reducing the distance towards the dimension of penal law »*"[103], while the *"funnel effect"*[104] increases as this distance is cancelled out.

Over-representation among reported minors and minors put on trial

Foreign minors and minors of foreign origin are over-represented among minors affected by decisions in the samples "parquet" [public prosecutor] and "judges," which were collected randomly in the scope of research, carried out by C. Vanneste[105], on decisions of the public prosecutor and juvenile judges.

Table 2. Citizenship of minors put on trial (Samples 1999)

	Belgian Nationality	EU Nationality	Non-EU Nationality	Total (known info)	Data Unknown
Sample Parquet	494	15	116	649	24
	79%	2%	19%	100%	
Sample Judges	342	17	115	474	2
	72%	4%	24%	100%	
Belgian Population	91,7%	5,5%	3,2%	100%	
Belgian, -18 Years	92,4%	3,2%	4,4%	100%	

Source : Vanneste, 2005.

From the "Parquet" (pertaining to the Public Prosecutor) to the juvenile judges, the percentage of minors of European origin decreases: it diminishes from 67 % to 53 % for minors of Belgian origin, from 4 % to 3 % for minors originating from a member state in the European Union and from 6 % to 5 % for minors originating from Eastern Europe. On the contrary, the percentage increases for minors originating from other countries: the percentage accelerates from 14 % to 21 % for minors of Maghreb origin, it rises from 4 % to 7 % for minors of Turkish origin and from 3 % to 7 % for minors originating from Sub-Saharan Africa.

[103] Nuytiens, Christiaens, Eliaerts, 2005, 288.
[104] Nuytiens, Christiaens, Eliaerts, 2005, 288.
[105] On the effectuation of the samples, see above.

Table 3. Origin of minors put on trial (Samples 1999)

	Belgian Origin	EU Origin	Non-EU Origin	Total (known info)	data Unknown
Sample Parquet	414	26	174	614	35
	67%	4%	28%	100%	
Sample Judges	234	15	196	445	31
	53%	3%	44%	100%	

Source : Vanneste, 2005.

The proportion of decisions taken by the public prosecutors varies indeed in line with the origin of the minor on trial. If they originate from a State which is not a member of the European Union, the proportion of orders to dismiss a case as well as the number of referrals to Special Juvenile Services and to the Special Youth Care Committee is of lesser importance, and alternative measures as well as invocations of the juvenile court judge are more frequent.[106] The differentiation of decisions according to the origin of the minor concerned can obviously not be explained by other particularities which could be related: the *odd-ratio* calculation reveals that the probability of being remanded to the juvenile court is twice as high for minors who do not originate from Member States of the European Union, with all other factors being equally of no concern[107].

Table 4. Orientations of the Public Prosecutor. Origin of the minors (Samples 1999)

	Belgian Origin	Non-EU Origin	Total
Alternatives	5%	10%	6%
Case Dismissal	79%	65%	75%
Returned to the Judge	13%	24%	16%
SAJ/CBJ	3%	2%	3%
Total	100%	100%	100%
	67%	28%	614

Source : Vanneste, 2500.

Just as it holds true for the proportion of decisions taken by the Public Prosecutors, the proportion of measures applied by juvenile judges varies likewise according to the origin of the minors concerned. If they are originating from a state which is not a member of the European Union, surveillance in combination with educational or community service and placement in a public institution for the protection of minors are the most frequent forms of supervision and placement. In the words of C. Vanneste, "*The determining repercussions of the fact that the minor affected is of foreign origin act in a cumulative form during two stages of procedure, both times advancing decisions of the most restrictive nature*."[108]

Table 5. Measures taken by the judge. Minors' origin (Sample 1999)

	Belgian Origin	Foreign Origin Non-EU	Total (known)
Censure	25%	19%	23%
Supervision	21%	16%	19%
Supervision and Service	9%	26%	12%
Private Institution	19%	11%	16%
Public Institution	22%	29%	25%
Other Measures	4%	9%	5%
Total	100%	100%	100%

Source: Vanneste, 2005.

Over-representation among minors placed in a public institution for the protection of juveniles. In a study carried out by M. Born which researches the trajectories of minors placed in a public institution for the protection of juveniles has shown that foreign and Moroccan minors represent respectively 44 % and 23 % of the sample.[109] Their over-representation varies in line with age and judicial district and also with the public

[106] On behalf of other results, see Poulet, 1990, 145-156. The analysis of records pertaining to the juvenile judge - which the author has effected in the judicial district of Charleroi - reveals "the existence of a significant relation between national origin and the phase of proceedings put down in the records on behalf of boys "; nevertheless, minors of Belgian and Maghreb origin are equally more often deferred to the court », while minors of Italian and Turkish origin come up with - "in most cases and in an equal manner, records which state that their case has been ordered to be dismissed". It is possible that the relation between the origin of the minor and the decisions of the magistrate varies in time from one decade to the next, and in space, from one judicial district to the next.

[107] On this point, see Vanneste, 2005, ***.

[108] Vanneste, 2005, …

[109] On this point, see Born, Chevalier, Demet, Humblet, 1996. In a study on resilience, the authors have statistically ascertained 792 placements in public institutions of youth protection on behalf of 605 youths in 1987, as well as 1008

institutions for the protection of juveniles in which they are placed. Age: 83 % of minors of twelve to thirteen years old are foreigners; in this age-group, there are more Moroccans to be found (41 %) than Belgians (17%)[110]. Relating to the factor of judicial district, Moroccan juveniles are more numerous (43 %) than Belgian juveniles (32 %) among minors subjected to placements by judges in Brussels, but less numerous (11 %) than Belgian minors (66 %) among minors subjected to placement by judges in Liège. Concerning the public institutions for the protection of juveniles, foreign minors and Moroccan minors are particularly over-represented in Jumet, where the average duration of placement is long, and in Braine-le-Château, where adolescents placed here are characterised by adding "*serious delinquency" to a "familial situation of high risk."*[111]

Over-representation among minors whose cases are referred to the public prosecutors to be tried in a penal court. Minors of foreign origin and minors of Maghreb origin represent respectively 83 % and 48 % of the 210 minors affected by 279 decisions of transfer analysed by A. Nuytiens, J. Christiaens and C. Eliaerts[112]. Table 6 illustrates the extent of what is called "the funnel effect"; it combines data collected during the research directed by C. Vanneste on the process of implementing decisions on the part of public prosecutors and youth judges and data pertaining to their own evaluations.

Table 6. Measuring the "funnel effect"

	Juvenile Parquet	Delinquents Juvenile Courts	Delinquents Youth	Seized Juvenile Delinquents
Boys	84%	89%	94%	
Nationality: non-EU	19%	24%	43%	
Origin: non-EU	28%	44%	75%	
Schooling: no general education	76%	89%	99%	

Source : Nuytiens, Christiaens, Eliaerts, 2005, 288.

Over-representation among juveniles who are to be incarcerated. Analysis of penitentiary statistics shows that foreign minors and minors of foreign origin are over-represented among incarcerated minors, and particularly over-represented among minors who have been imprisoned according to the law of 20 July 1990 concerning preventive detention.

Table 7 shows that the abrogation of parts of Article 53 of the law of 8 April 1965 has divided the number of minors entering prison four times over and raised the proportion of accused minors among those who are entering prison. Table 8 reveals that this development has similarly resulted in an increase of the proportion of foreign minors among minors entering prison.

Table 7. Minors entering prison. Development in line with the title of detention.

	Article 53	Preventive Detention	Other	Total	Total (C.A.)
1999	83%	15%	2%	100%	531
2000	84%	15%	1%	100%	645
2001	81%	17%	2%	100%	551
2002	0%	90%	10%	100%	136
2003	0%	93%	7%	100%	88
2004	0%	93%	7%	100%	111
2005	0%	96%	4%	100%	92

Sources : data SIDIS

placements in public institutions of youth protection on behalf of 675 youths in 1992. Their sample has been constituted by 363 youths placed in public institutions of youth protection in 1987 and in 1992, representing 28,4% of the population of reference. The over-representation of foreign and Moroccan minors has become obvious: on 1 January 1992, 11% of those juveniles statistically ascertained in the age group from 10 to 19 years of age in Belgium have been foreign, and 3% Moroccan.

[110] Born et al., 1996, 54.

[111] Born et al., 1996, 122.

[112] On this point, see Nuytiens, Christiaens, Eliaerts, 2005. The intention of the authors was to study the total of records in relation to referrals pronounced in 1999, 2000 et 2001 within five judicial districts, Anvers, Mons, Brussels, Charleroi et Malines, adding up to 287 records; 8 records could not be accessed.

Table 8. Minors entering prison. Development according to nationality.

	Belgians	Foreigners	Total	Total (C.A.)
1999	48%	52%	100%	531
2000	50%	50%	100%	654
2001	52%	48%	100%	551
2002	14%	86%	100%	136
2003	16%	84%	100%	88
2004	22%	78%	100%	111
2005	20%	80%	100%	92

Sources : data SIDIS

Table 9 shows that a considerable part of male minors[113] who have been imprisoned in application of the law of 20 July 1990 on preventive detention are identified as former Yugoslavs, Romanians, Bosnians, or Croatians; it is likely that a certain number of them belong to the Roma. The number and proportion of minors having the nationality of a North African country increases in a disturbing way after the abrogation of parts of Article 53 of the law of 8 April 1965.

Table 9. Minors detained as a preventive measure. Development according to nationality

	Belgian	Nationality of a North African country	Jug./Romanian	Other	Total	Total (C.A.)
1999	17%	35%	20%	28%	100%	69
2000	20%	15%	27%	38%	100%	75
2001	27%	21%	12%	40%	100%	81
2002	17%	31%	29%	23%	100%	101
2003	18%	36%	21%	25%	100%	72
2004	24%	33%	8%	35%	100%	93
2005	24%	36%	5%	35%	100%	76

Sources : data SIDIS

This finding is all the more alarming because they are represented to a lesser extent among the inmates of the National Centre for the Temporary Placement of Minors: those minors having the nationality of a North African country and also born in a North African country represented 9 % of the juveniles placed in Everberg in 2002 and 2003, and 10 % in 2004 and 2005. It may certainly be possible that more minors with ancestors from Maghreb stay in Everberg who are not characterised in line with their origin and thus do not become apparent in the statistics. The same effect may apply on behalf of minors who have been subjected to preventive placement. It is also evident that the over-representation of minors of Maghreb origin among minors who have been subjected to a transfer of jurisdiction may explain their over-representation among minors who are subjected to preventive placement, but this cannot possibly explain the fact that they are over-represented to an ever greater extent from 2003 onwards.

In the same way, it must be feared that the abrogation of Article 53 of the law of 8 April 1965 has entrained an inappropriate consequence: it has incited officials to create a junction between the administration of the juvenile justice system and the administration of the penal system. The following question ensues: why, on behalf of minors of Maghreb origin, aren't the measures of social protection, brought into effect by the law of 1 March 2002, considered and employed as a functional equivalent to the measures of remand or pre-trial detention envisaged in Article 53?

Are the cumulative conditions, which provide limited access to the Closed Centre for the temporary placement for minors who have committed an act qualified as an offence, causing a destructive effect?[114] Are the magistrates convinced that the only language comprehensible to minors is that of punishment and prison? An urgent question: did L. Walgrave not recently complain that the adequacy of the judiciary measures of rehabilitation and restitution is being challenged by North-African juveniles and families, on grounds of the

[113] The majority of the few minors who are accused are identified as "Ex-Yugoslavs": 6 of 8, in 1999; 18 of 19 in 2000; 13 of 15 in 2001; 17 of 22 in 2002; 8 of 10 in 2003; 10 of 10 in 2004; and 10 of 12 in 2005.

[114] The law of 1 March 2002 limits the access to the centre to boys older than 14 at the time of the act assessed as offence for which they are persecuted and submits them to several cumulative conditions: "serious indications of culpability" ; "*prevalence of an act of such a nature as, if [the individual] had already attained penal majority, to ensue {…) a punishment of a) detention from five to ten years or one more severe, or b) a sentence of corrective imprisonment of one year or a more severe sentence if the individual has beforehand been subjected to a definite measure of the juvenile court for an act labeled offence that has been punished with the same sentence;* existence of "*urgent, serious and exceptional circumstances attached to requirements of public security"* ; impossibility of "*admission of the individual, via a temporary measure, to a public institution dedicated to that effect (…), and under the condition that placement is effected in a closed educational section (…),for reasons of a lack in capacity"*.

fallacious pretext that Muslim tradition and culture *"do not favour the acknowledgement of culpability, excuses or asking for forgiveness"* and *"would be unfit to profit from restorative measures?"*[115]

4. Explanations

How can one explain the "*funnel effect*?"[116] Why are minors of Maghreb origin over-represented among minors taken before the public youth prosecutors and, to an even greater extent, among minors remanded to the juvenile courts? Why are they over-represented among minors placed in public institutions for the protection of juveniles and youths who have been subjected to a measure of custodial seizure? Why are they over-represented among minors who have been detained in application of the law of 20 July 1990 on preventive detention? Why are minors classified as "Yugoslavs," in the same way as these other groups, over-represented in prison? C. Vanneste has shown that foreign origin works *"in a strongly independent manner irrespective of other factors, even contradicting an impression that would have been favorably on behalf of the prevalence of several other positive characteristics."*[117] In line with her argument, the hypothesis of intentionally discriminatory or discriminating decisions can nevertheless be ruled out; the author calls attention to the gap between the "*declared reasoning on behalf of decisions*"[118] of the public prosecutor and the youth courts and the reasoning which governs their actions without their notice.

Declared reasoning on behalf of decisions: For each of the decisions considered in the samples collected at the levels of public prosecution and the youth courts, the magistrates were invited to indicate the nature and importance of the elements which they had taken into consideration. The criteria defined as determinant or important, named the most frequently by the magistrates in exercise in the functions of the Public Prosecutor, are the following: "type of infraction" (57%), "circumstances surrounding the infraction" (56%) and "criminal record" (41%); 24% named the decisions aimed at family dynamics, and 11% called attention to the resources of the family.[119] Criteria defined as determinant or important which are the most often mentioned by juvenile judges are the behaviour of the minor during the case (48%), family dynamics (43%), the circumstances surrounding the crime (40%), the type of the infraction (39%), and the criminal record (39%). Schooling is regarded as a determining or important factor in 35%, of cases, previous interventions of official authorities in 29%, and resources of the family in 25%.[120]

The "observable decisional reasoning": Minors of foreign origin are over-represented among the population of minors remanded to the juvenile courts, although they show *"no particular characteristic of delinquency which would justify their throwing back more frequently before the judge"* and they are *"to no lesser or increased extent (...) originating from poor families*" than minors of Belgian origin. They are over-represented among the population of minors on behalf of whom juvenile judges have implemented measures of supervision, education or protection, although nothing indicates that they have a greater need than other juveniles to be protected. With fewer cases of *"multifaceted delinquency"* and less infractions of a serious criminal nature on a symptomatic level, as well as fewer problems relating to school and family, to problematic behavior and drug consumption on the etiological level, over-representation can not explained by a high level of risk. It is true that minors of foreign origin show a slightly increased probability to have been previously subjected to judicial intervention, but *"this indication of a possible return into the judicial circuit can only be an artefact pertaining to the phenomenon of selectivity constituted."*[121]

Two hypotheses may help to explain the gap between declared decisional reasoning and observed decisional reasoning. The first of these examines the process of effecting decisions by agents engaged in the filtering process of the police force, compared to the decisional practices of magistrates, both regarded as agents of judicial filtering. A study effected by L. Walgrave and C. Vercaigne has shown that juveniles taken before the magistrate designated to exercise the functions of the Public Prosecutor on behalf of the juvenile courts *"all enter (...) without exception into the judicial circuit"*, while other juveniles who are suspected of having committed an act qualified as an infraction *"have a real chance to a withdrawal of the charge."*[122] In certain judicial districts, it is possible that the *"increased risk"*[123] of being remanded to the juvenile court can be explained in part by the *"increased risk"* of being detained and taken before the public prosecutor.

Almost twenty years ago, C. De Valkeneer has made a study of participant observation at a police department in Brussels and provided evidence for a double-targeting which particular groups originating from immigration are the object. On the one hand, they are targeted as individuals: the collected data, based on more than twenty-thousand interventions shows that male juveniles of Maghreb origin constitute 47% of individuals subjected to

[115] Walgrave, 2005, 761.
[116] Nuytiens, Christiaens, Eliaerts, 2005, 288.
[117] Vanneste, 2005, 643.
[118] Vanneste, 2003, 238.
[119] On this point, see Vanneste, 2003, 239.
[120] On these points, see Vanneste, 2003, 241.
[121] On these points, see Vanneste, 2005, 643-644.
[122] Walgrave, Vercaigne, 2001, 105.
[123] Walgrave, Vercaigne, 2001, 108.

identity controls. Not only are they more frequently subjected to interrogations, but they are moreover also interrogated in the absence of flagrant offence or suspicious events: their appearance proves their origin and seems sufficient to cause suspicion. On the other hand, districts are targeted: police patrols give priority to neighbourhoods characterised by "*a higher density of population and a considerable proportion of immigrants*."[124]

Twelve years later, V. Francis came to the same conclusion within the framework of his participant observation in a Brussels brigade of the Gendarmerie. Despite transformations in police strategy — changes which, according to J.-M. Chaumont, should have established *"discrete surveillance and identification of individuals perceived as possible leaders of unrest*" instead of "*putting youths indiscriminately under pressure,*"[125] the police continues to target male Maghreb youngsters and districts with a high-density of Maghreb population of Moroccan origin. If need be, they justify their interventions at the hand of suspicious events while engaging in the creation of such events themselves by applying police techniques worked out to perfection[126].

The canonical analysis on discrimination directed by L. Walgrave and C. Vercaigne on the basis of 2580 protocols on proceedings before the public juvenile prosecutor in the judicial district of Brussels between April and October 1998, shows, among other findings, that juveniles of Moroccan origin are at a greater risk than other juveniles, after having been subjected to police interrogation as well as the record of the evidence, to be arrested and put before the Public Prosecutor for the sake of the immediate application of temporary measures. This "*higher risk*" can neither be explained by "*the fact that Moroccans commit more criminal acts"*[127], nor because they commit more serious offences. It may be related to the "*behaviour of youngsters during the report of the evidence*"[128]; this question remains unanswered due to insufficient information.

The second hypothesis is related to the suppositions which become part of the law and result in distortions to the law[129]: on behalf of delinquent minors, the option of penalisation is an option of default. It is the option of abandonment, whether the reasons to this abandonment are powerlessness or indifference. It is possible that these feelings and attitudes, as well as maybe a certain amount of clumsiness, originate in the social perceptions of the magistrates - put more precisely, it is possible that these attitudes and feelings result from the magistrates' perceptions on behalf of youth protection and equally of their perceptions on behalf of minors and families of foreign origin. The subject of the protection of children and juveniles is the minor, inasmuch as he is imagined to be of a particular nature.

The measures of protection rely on three basic notions[130]: firstly, the minor is considered to be "*offspring population*" i.e., as "*a being in transition*", who, apart from belonging to the "*family into which he is born*", is a part of the "*political unit*" which Émile Durkheim called "*one's own country*" and who thus is subjected to a process of socialisation for the sake of his social adaptation and social utility; parental authority is conceived as "*an instrument given by the State which may thus be taken away by the State*", and parents "*exercise their functions only in authority transferred from the State and may only effect their functions under its surveillance"*[131]; delinquency is conceived to be a symptom of parental failure, of parents not fulfilling their duty to socialise the children of the family - which equally represents offspring population.

To explain the over-representation of minors of Yugoslavian origin among minors who have been detained according to the law of 20 July 1990 on preventive detention, some magistrates argue that the minority status of these juveniles is inappropriate and that penal minority may not in all cases be certified by adhering to the parameter of bone growth. In the case at bar, this argument must be labeled justification instead of explanation - as these same juveniles had been over-represented among minors detained in a house of correction before the partial repeal of Article 53 of the law of 8 April 1965 entered into force – at a time when this temporary custodial measure was applied as a "*punitive sanction to the offence."*[132] In case the juveniles identified as Yugoslavian belong to the Roma people, it may be perceived on the part of the magistrates that the implicit conditions of protection – such as belonging to a family which is part of the established national population residing on the territory of the State and included in the census, as well as enjoying parental education which seeks to align individual and familial utility with social utility – are not fulfilled. Hence, they intervene by attributing function to the intimidation of these minors at the hand of short periods of detention.

The social conceptions are different when it comes to juveniles of Maghreb origin. They are perceived as individuals being part of the established population included in the census, but likewise as "beings in transition", who belong to families considered incapable of providing for the adequate socialisation of their sons

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[124] De Valkeneer, 1988, 169.
[125] Chaumont, 2000, 240-241.
[126] Francis, 2001, 194.
[127] Walgrave, Vercaigne, 2001, 108.
[128] Walgrave, Vercaigne, 2001, 106.
[129] Brion, 2003, 74.
[130] Brion, 2003.
[131] Meyer, 1977, *in* Brion, 1993.
[132] D'Huart, 1985, *in* Tulkens, Moreau, 2000, 766.

and daughters.[133] This perception results in "*paradoxical dialectics*"[134] which increase the probability of placement.

In unison with social control, these measures of protection do away with the traditional model of parental reference which is still applied today, aligned to the concept of paternal authority.

The most important aspect to these considerations is constituted by the fact that these measures of protection impose a framework of interpretation which attributes the source of delinquency to the family instead of to society. This disqualifies the family and likewise the total of Moroccan parents - a disqualification of a perpetuative quality, as it presents the presumed parental incapacity as a premise to the situation; hence, cases of delinquency on the part of some of their children will only work in support of this premise.

The intervention of the juvenile judge - as the final interrogation in proceedings - carries social destitution, the corollary of immigration, into the heart of the family: this sensation is shared by parents originating from the Maghreb. At the same time, it is the family that justifies the adventure and the sacrifice of emigration. The judges intervention therefore constitutes and institutes a "*fundamental"* violation of "*the sphere of intimacy",* while the traditional model requires that this domain would remain sealed; it provides that "internal dissent, failures and insufficiencies *[should] not be, in no case whatsoever, be unveiled to someone alien to the community*."[135] The intervention of the juvenile judge simulates a relation between the judge and the father which is homologous to the relation between father and mother in the traditional Maghreb sphere; the intervention puts the father, intentionally or without consideration, in a "*situation of devirilisation*"; whereas, "*in his family, he engages in social considerations pertaining to him as a result of a set of normative values and providing him with respect and authority.*"[136]

This is why the intervention of the juvenile judge may provoke incomprehension, shame and humiliation.[137] Given that the situation is not handled with caution, the consultation of the child may be conceived as an insult, and the consultation of the mother will be regarded as a violation of social rules[138]. In the same way, this accounts for the reserve as well as the refusal of juveniles of Moroccan origin to be speaking of their families and of the way the family reacts to the judicial intervention.[139] Likewise, this accounts for the fact that some parents will feel such powerlessness at the hand of the writ of summons - which they conceive as an effort to revocation of their parental authority - that they prefer to accept a custodial placement of their children, at least if this occurs for the first time.[140]. This feeling of powerlessness is sometimes shared on the part of the intervening practitioners, whose commitment relies on the feeling of being pertinent.[141] Without any intention of the parties involved, the "*paradoxical dialectics*" trigger an increased probability of familial conflict, which in turn becomes more likely to last due the measure of placement, also increased in likelihood for the sake of the same effect. Far from putting an end to social marginalisation, the measures induced have the effect of depriving particular youngsters of familial solidarity which constitutes a fundamental pillar of strength in situations of great vulnerability prevalent within society.[142]

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[133] Brion, 1993, 2000 and 2003. It seems as if the parents of minors originating from Central Africa are equally " *perceived as inadequate educators"* as well as **"***disqualified in their parental role"*, their educative methods being "identified as physical and psychological maltreatment". On this point, see Spitz, 2005, 454. The social conceptions of the magistrates can be found in certain scientific publications which add more momentum to these ideas. The same holds true for the authors defining the criteria of risk of delinquency in such a way as; *de facto*, the majority of young Moroccans originating from immigration and residing in Brussels are regarded as an example to these criteria. (Born, Chevalier, Demet, Humblet, 1996) This applies also where in reporting the results of a study effected on behalf of social workers who are convinced that young girls of Muslim tradition are victims to particular forms of violence – forced marriages, isolation, refusal to an active participation in daily life, intense observation on the part of their brothers, pressure to prevent loss of virginity, threats of return to their home country as well as threats of murder – they attribute the proportion in the way they indulge in these convictions to an equal proportion in the phenomena evoked. (Born, 2005).

[134] Brion, 1993.

[135] Bourdieu, 1972, *in* Brion, 1993.

[136] Selosse, 1978, *in* Brion, 1993.

[137] Brion, 1993.

[138] Brion, 1993 ; Delens-Ravier, 2001.

[139] Brion, 1993 ; Delens-Ravier, 2004.

[140] Brion, 1993 ; Delens-Ravier, 2001.

[141] Flahaux, 2001. Research shows that the members of services of education and charity have been convinced that this measure is a failure in application to young Turks, and evaluates at the hand of records that this conviction is unfounded, explains the gap between conceptions and the results of the study in respect to effectivity and effectiveness by the deception felt on behalf of youngsters who attribute in the way they are expected to, but show reluctance to speak of themselves or their family. .

[142] Delens-Ravier, 2001.

CONCLUSIONS

Two statements in conclusion:
Indeed, in Belgium, the judicial treatment of delinquent foreign minors or minors of foreign origin presents certain particularities, and they seem to concern two groups in particular: on the one hand, minors who belong to the Roma people, and on the other, minors of Maghreb origin. Recent studies have called attention to a third group: the group of delinquent minors originating from Central Africa.
These particularities have been highlighted without disposing of statistical data on behalf of the age and national origin of individuals who are subjected to police or judicial intervention; in the given case, the lack of statistical data has been compensated by participant observations and research of case files.

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