



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 12 September 2005
[...*Conference 2005/Documents7*]

MG-RCONF (2005) 7
Original : French

**Regional Conference on “Migration of unaccompanied minors:
acting in the best interests of the child”**

Torremolinos, Málaga - Spain
27-28 October 2005

**THE SITUATION OF UNACCOMPANIED MINORS
IN FRANCE**

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Unaccompanied foreign minors are a definite part of the French scene, and indeed a political issue, but little research has been done on them, and some aspects of the problem, e.g. the special situation of under-age girls, have barely been considered. In what follows, we shall be relying on the studies regarded as basic in France, and particularly two reports, one prepared for the Directorate of Population and Migration (DPM) by Angelina Etiemble in 2001, and the other submitted to the Government by the General Inspectorate of Social Affairs (IGAS) in January 2005, as well as surveys and research based on field-workers' activity.

We shall do our best to give an accurate picture of the situation of unaccompanied foreign minors in France. We shall start by describing them in general terms, and then look at the laws which apply to them. Next, we shall discuss the procedures and facilities which have been set up to help them. Finally, we shall focus on some of the issues which are now being discussed, and which make this whole question politically sensitive and controversial.

I. Unaccompanied foreign minors in France – characteristics

There is nothing new about foreign minors' coming to France, but their numbers have been growing in recent years. They come from countries where war and its aftermath, political tensions, poverty and family problems are spurs to emigration. Travelling by air, sea or land, they take hours, days or weeks to reach France. Some are stopped at frontiers and placed in holding areas, others enter undetected. Some are accompanied, others arrive on their own.

Different countries apply different terms to them, reflecting different approaches to dealing with and protecting them. "Unaccompanied foreign minor", chosen as being neutral and legal, is the one most used in France today. The concepts it subsumes put them at the nexus of the law on endangered minors and the law on aliens – which, as we shall see, seem to apply successively.

1. Getting figures – the problems

The presence of unaccompanied foreign minors in France is a fact, and their number is definitely growing, but counting them remains very difficult, if not actually impossible.

The IGAS survey starts by warning readers that "giving a figure for unaccompanied foreign minors raises definite problems of method".

Similarly, Angelina Etiemble¹ says: “The figures we have for unaccompanied minors are vague and contradictory. Apart from the local figures provided by various authorities (social, judicial, police, administrative), it is hard to say reliably how many of them there are in France”.

To get some kind of general picture, we have to start by collating information from a wide range of sources. ‘Statistics’ tend to be haphazard: unaccompanied minors may be registered when they are placed in holding areas, when they ask for asylum at frontiers or within the country, or when schooling and/or crime prevention measures are applied to them. This means that some may be counted several times, others never.

Assessing the number of unaccompanied foreign minors raises other problems too. One is a tendency to use figures loosely to produce a shock effect, reflecting the public’s growing interest in this problem (which may be deliberately played up or down for political reasons). The use of different definitions is another.

In short, unaccompanied foreign minors are hard to quantify. The work done so far suffers from a lack of properly systematized data, transfrontier studies, individual monitoring, and multidisciplinary teams.

2. Quantitative estimates

It is estimated that a total of 4,000-5,000 unaccompanied minors enter France every year.

The figures we have come from the asylum and immigration authorities, the frontier police, the Directorate of Public Liberties and Legal Affairs (Ministry of the Interior) and the Ofpra (Ministry of Foreign Affairs).

In 2001, it is estimated that 1,416 unaccompanied minors were detained in the holding area at Roissy², that 1,152 applied for asylum at frontiers and that 1,100 of these were allowed to enter the country. In 2004, there were only 231 asylum applications.

In 2004, according to the Ministry of the Interior, 728 unaccompanied foreign minors who had arrived at Roissy-Charles de Gaulle by air were placed in the holding area for persons awaiting processing (*Zone d’attente pour personnes en instance* = ZAPI). Only 165 of these were subsequently allowed to enter the country.

Figures are also available from the child welfare services (*Aide Sociale à l’Enfance* = ASE) and *Protection Judiciaire de la Jeunesse*, which deal with unaccompanied minors from the schooling or crime prevention angle.

¹ *Quelle protection pour les mineurs isolés en France ?* Angelina Etiemble, *Hommes et Migrations* No. 1251 Sept.-Oct. 2004

² Estimate by the General Inspectorate of Social Affairs, *Analyses et propositions relatives à la prise en charge des demandeurs d’asile*, IGAS Report No. 2001-150, December 2001.

In 2000, some 2,700 unaccompanied foreign minors - 60% of them over 16, and 80% of them boys - were referred to the courts. Unfortunately, prosecutors' offices and *Protection Judiciaire de la Jeunesse* do not keep regular figures, and this makes changes and trends hard to spot.

In an attempt to get some detailed figures, questionnaires³ were sent to the Regional Councils (*Conseils Généraux*), which are responsible for child welfare (ASE). Not all were equally diligent in replying, but the figures supplied do give us a fuller picture of unaccompanied minors in France.

The Regions (*Départements*) report that they took charge of 1,974 unaccompanied minors in 2001. Some 3,100 were covered by ASE in 2003, and 2,300 in the first nine months of 2004, and over 3,600 are currently being followed by the social services. According to the DPM survey, the number of minors trebled between 1999 and 2001.

3. Uneven distribution

In 2001, over 50 of France's 100 Regions took in unaccompanied foreign minors, but the actual numbers varied greatly. Concentration is heavy in certain areas, rendered attractive by airports or ports, or proximity to the capital. In 2001, 50% of such minors were concentrated in Paris and Seine-Saint-Denis (Paris region). Marseilles is another major centre.

In recent years, a trend towards wider distribution has gradually emerged. Twenty-five Regions are responsible for 90% of unaccompanied foreign minors, and some ten had placed over 50 at 30 September 2004.

The distribution pattern reflects migration flows, and also differences between local policies, some of which are more favourable to unaccompanied foreign minors and protect them better. In other words, Regions which treat them generously get more of them.

4. Unaccompanied foreign minors in France - who are they?

The various studies and surveys conducted in France give us some idea of the main trends for unaccompanied foreign minors.

As the number of such minors has increased, so has the range of their nationalities: some 30 in 1999, 75 in 2001.

³ In connection with the DPM and IGAS surveys.

In 2001, the Etiemble report identified five main nationalities⁴

- **Romania** (16.76% of all unaccompanied minors)
- **China** (12.83%)
- **Morocco** (11.05%)
- **Albania** (7.19%)
- **Congo** (6.52%).

Geopolitical events in home countries or regions are often the cause of unaccompanied minors' coming to France. This explains, for example, the high figure for **Angolans** in recent years.

The main countries of origin cited in the IGAS survey are the **Congo, Angola** and **China**, followed by Romania, Morocco and Albania.

Different areas get minors from different countries. Most of those who make for Marseilles, for example, are Moroccans. In the Paris region, origins are extremely varied, reflecting the wide range of migrants who enter via Roissy. In 2003, 62 nationalities were represented in applications received by the Paris ASE. Romanian and Chinese minors are particularly numerous in the Paris region. A significant proportion of the minors registered in the Rhône-Alpes Region come from the Congo - which may have something to do with the presence of Congolese communities and churches in Lyons and Grenoble.

In 2001, 15-16 year-olds accounted for nearly 40% of minors, 17-18 year-olds for 34%, 13-14 year-olds for 16%, and under-12s for 8%.

A very large majority of foreign minors (approximately 80%) seem to be boys, and this applies particularly to those involved in petty crime. However, the DPM survey shows that some nationalities – Romanian, Angolan, Congolese – have more girls. Most minors who get involved in prostitution are girls.

5. Their stories

Unaccompanied foreign minors have very diverse backgrounds, and follow very diverse paths on arriving in France. Each has his/her own story, and these stories cannot be summed up in a few lines, particularly since – as we have seen above – our data are fragmentary.

The people who deal directly with young migrants can best understand their reasons for leaving home. Their information on this point is not collated regularly, but emerges from specific surveys, studies or initiatives. In 2003, the Marseilles association,

⁴ It should, however, be noted that most nationalities (76%) are represented by fewer than ten or so minors – which makes it even harder to look after them.

“Jeunes Errants”, produced a typology of the minors it deals with, and we shall use part of it below.

Also worth noting is “Casa Marseille Inch’Allah”⁵, a book and documentary film on the lives of four Moroccan children illegally resident in Marseilles, where “Jeunes Errants” looks after them. Bruno Ulmer, who made the film, brings out the motives, dreams and constraints which led them to cross the Mediterranean - and also the problems and disappointments they encountered on arrival.

In her 2001 study for the Directorate of Population and Migration, Angelina Etiemble divided these minors into five categories, and her typology has been generally adopted by French writers and researchers.

Her categories are not watertight, since minors may move from one to another at different times and in different circumstances. Without proper care and supervision, they can fall prey to exploitation by networks or individuals.

The five main types identified and described by Angelina Etiemble are:

a) Exiles – fleeing wars, or ethnic or religious conflicts

“Their parents have been killed or have vanished. Some have been in refugee camps. Some have been taken in by relatives or religious or humanitarian organisations, and placed on ships or aircraft, in an effort to ‘get them to safety’. Others are fleeing conscription by government or rebel forces.”

b) Emissaries - sent abroad by families to get money or succeed there

“Impoverished families encourage them to get away and go to Europe. Some are expected to find work and send money home. Others are expected to study and learn a trade or profession, with social and economic success as their goal. The latter were already at school in their home countries, but political and economic crises disrupted their studies. Well-off to start with, their families have spent all their savings on the journey.”

This category includes many Chinese and Indian children.

Concerning these ‘emissaries’, “Jeunes Errants” notes: *“At the age of 13 or 14, when people at home count as semi-adult, they launch into the unknown, at risk to their lives. Invariably, by the time we get to know them, they are traumatised by the discrepancy between France as they imagined it and France as they find it, and by the journey, which may have taken weeks, and exposed them to violence and ill-treatment.*

⁵ Images en Manœuvre éditions, Arte, extracts from a documentary film made by Bruno Ulmer.

They may seem to accept their situation, but actually need help badly, since homesickness, and often the debts incurred by their families and the secrecy surrounding their arrival, are real problems for them. They have been told to say nothing, and this frustrates the authorities' efforts to contact their families, and obtain the identity papers they need to regularise their situation temporarily. Following a code of their own, they make a show of co-operating with the people who are trying to help them, but nothing comes of it. They need to be dealt with jointly by the welfare services and by the police, who must try to seal the channels they used to reach France."

c) Victims - of trafficking for purposes of prostitution, domestic slavery, crime, etc.

"These minors are in the hands of traffickers of all kinds, sometimes with their parents' connivance and even before they reach France. There are many forms of exploitation: prostitution, illegal labour, begging and crime. Children's vulnerability makes them a prime target for traffickers."

Most minors in this category come from eastern Europe and the Balkans.

Jean-Marie Rolland⁶, author of a parliamentary report on unaccompanied minors, says: *"There is much discussion as to whether there really are Mafia-type networks (of people-smugglers and/or exploiters of young people for criminal purposes) in France, and as to what they actually do. [...] (Specialists believe) that these networks are often more family and clan-based than Mafia-related. For example, in the case of girls from eastern Europe who get involved in prostitution, it is hard to distinguish those who have genuinely been misled or indeed kidnapped by traffickers, from those sent more or less knowingly abroad by their families, and those who have simply gone astray"*⁷.

d) Transfrontier runaways

"Some minors run away from their homes or orphanages because of conflict with their families (or institutions), or because of ill-treatment, and end up in other countries."

As far as "Jeunes Errants" is concerned, *"these children are no different from the others who are normally housed and cared for in child welfare centres. Now that travel and trade are globalised, a child who might have gone 50 kilometres 50 years ago can easily go several thousand today. In recent years, a very high percentage of the young people we deal with have been in this category."*

Many of these minors come from North Africa.

⁶ Opinion on the 2005 Finance Bill, submitted by Mr Jean-Marie Rolland, member of the National Assembly, on behalf of the Committee on Cultural, Family and Social Affairs.

⁷ He does insist, however, that "uncertainty concerning the extent to which the networks which smuggle and exploit minors are criminally structured must not be taken as a pretext for failing to provide havens for those who are trying to escape them, and particularly prostitution rings. Such havens are cruelly lacking today."

e) **Vagrants** - who are already vagrants in their own country and remain vagrants in the new one

“Some minors were already vagrants in their own countries, sometimes for months or years before leaving. They lived on begging, odd jobs, and even prostitution, before deciding to try their luck in one of the rich countries. Essentially, they are ‘children in the street’, not ‘street children’ (the latter live entirely on the streets from the age of five or six, lack purpose and drive, and rarely go abroad}. Vagrants hang out ‘in the street’ when they leave orphanages, or when their parents cannot afford to send them to school or feed them. Going abroad is just another stage in the process. A few become ‘full-time vagrants’, switching towns and countries in short order. Many are into drugs and crime.”⁸ .

The historical background, and the tradition of migration to France from certain regions, are also part of the picture. In many North African countries, the example set by fathers and grandfathers, who went to France (often to join the army in wartime, later to work) has turned that journey into something akin to a rite of passage. Crossing the Mediterranean is seen as a constructive stage in the life – and particularly the working life – of young people. Many social workers speak of the fascination which the West holds for young Moroccans, Algerians or Tunisians, who see it as a place where they can get away from community supervision, and lead comfortable lives.

Countries like Romania and China have a long tradition of emigration, and specific regions (Wenzhou in China, Satu-Mare in Romania) have developed the habit of sending their children to France.

Unaccompanied foreign minors in France are a heterogeneous group, with very different backgrounds, motives and stories – which are reflected in varied attitudes to the French authorities and the help offered them

⁸ Typology of minors cared for, “Jeunes Errants”, Marseilles, 2003.

II. The legal framework: the laws on help for unaccompanied foreign minors

? Under the current laws on **the right of aliens to enter and reside in France, and on the right of asylum** (Order of 2 November 1945, amended, on conditions of entry and residence for aliens in France, and Act of 25 July 1952 on the right of asylum), foreign minors have no absolute right to enter France.

? For minors as for adults, conditions of return must be carefully looked at and the right to request asylum be respected. To make that right effective, an ad hoc administrator is appointed to act as the minor's legal representative in the holding area. This function was introduced by the **Act of 4 March 2002 on parental authority**. It should be noted that the Act is not concerned with unaccompanied minors who have entered France, but only with under-age asylum-seekers in holding areas.

? Once they actually enter France, foreign minors may not be deported. Article 26 of the **Order of 2 November 1945** provides that "foreign minors below the age of 18 may not be served with deportation orders or removed".

Foreign minors on French territory are not required to have residence permits.

? In emergencies, Article L223-2 of the **Social Welfare and Family Code** provides for administrative protection of unaccompanied minors who lack legal representatives. These children are provisionally taken into care, pending a court decision.

? Article 228-5 of the **Social Welfare and Family Code** covers care for foreign minors in special cases. Thus the state may fund care for minors with major humanitarian problems in their home countries.

? French law treats unaccompanied minors as, above all, endangered minors, and makes no distinction between foreign and French children. Under **Article 375 of the Civil Code**, danger exists "when health, safety, morals and schooling are seriously compromised". Articles 375-3 and 375-5 explain that danger may come, not just from the child's family, but also from his/her environment.

? Unaccompanied foreign minors are thus covered by the **ordinary laws** on:

- **public order and juvenile courts;**
- **social welfare;**
- **child welfare.**

The ordinary child welfare services are legally responsible for assisting unaccompanied foreign minors.

? The **international texts** recommend that unaccompanied minors receive special attention and assistance. Minimum measures include: establishing their identity, trying to locate families and arrange reunion, providing them with basic protection and care, and suitable representation, and giving them the right to apply for asylum.

After ratifying the UN Convention on the Rights of the Child, France passed various laws to make it applicable internally, although some provisions have still to be incorporated into French law - which means that courts may differ on them.

Article 20 of the Convention states, for example, that “a child temporarily or permanently deprived of his or her environment [...] shall be entitled to special protection and assistance provided by the state”. In practice, this article is not uniformly respected in France, since, as we shall see, the country has no general policy on unaccompanied foreign minors.

The **Act of 2 January 2004 on help and protection for children** introduces the concept of the “**overriding interest of the child**” in its provisions on court decisions: juvenile court judges are now expressly required to take account of the child’s interest in the matter of educational assistance.

? A necessary part of promoting **the overriding interest of the child** is giving him/her genuine access to law, health, schooling, training and contacts with the home country. Among other things, Article 24 of the Convention on the Rights of the Child lays down the principle that children must enjoy the highest obtainable standard of health, and also medical services and health education. This article is genuinely respected in France, where universal health cover has given children fuller access to care. However, other rights, such as the right to training, are less effectively guaranteed.

III. Reception facilities for unaccompanied foreign minors in France

One of two things may happen to unaccompanied minors when they reach France: they may be arrested while trying to enter, or they may succeed in entering illegally (in which case they may, of course, be arrested later).

1) Minors arrested by the frontier police

a) Holding areas

Minors arrested without passports or visas by the frontier police are placed in holding areas (at airports, ports or railway stations) – and may be kept there if they apply for asylum.

In France, conditions in holding areas are the same for minors as for adults⁹. This is incompatible with the international treaties ratified by France¹⁰. Many associations and officials, such as the National Association to Assist Foreigners at Frontiers (*Association nationale d'assistance aux frontières pour étrangers* = ANAFE) and the National Child Protection Commissioner, have complained of the dangers this presents to unaccompanied minors, who receive no special protection in practice¹¹. They can be kept in holding areas for up to 20 days.

At any point during that period, the authorities may decide to send them back, not to their home country, but to the last country passed through on their way to France. The danger here is that, lacking connections in that country, they may fall into the clutches of mafia-type networks.

The placing of minors in holding areas is a highly contentious political issue, and a major source of disagreement between those for whom children's rights are all-important, and those for whom the laws on admission and residence of aliens take precedence. The Advisory Committee on Human Rights and the National Child Protection Commissioner suggest that minors in this situation are endangered by definition, and should be admitted automatically under the child welfare laws and the UN Convention. Other people fear that the child welfare laws may be used to evade the laws on admission and residence of aliens, and attract more unaccompanied minors to France. At the moment, this is the dominant view.

⁹ The Act of 6 July 1992, which introduced holding areas, makes no distinction between minors and adults.

¹⁰ Including the Convention on the Rights of the Child, ratified in 1990.

¹¹ The National Commission to Monitor Detention Centres and Holding Areas, provided for in the Act of 26 November 2003, has yet to be established,

b) Ad hoc representatives

Unaccompanied minors in holding areas have no legal status. To overcome this problem, ad hoc representatives may be appointed to help them to apply for asylum.

Under the Act of 4 March 2002 on parental authority, an ad hoc representative must be appointed as soon as an unaccompanied minor is placed in a holding area. Appointed by the Public Prosecutor, these representatives are responsible for protecting minors and representing them in all administrative and judicial proceedings concerned with keeping them in the holding area or with applications for asylum. These responsibilities cease once a minor is allowed to enter France.

These ad hoc representatives have been operating since 2003. Although this counts as a definite advance, many of those involved feel that the conditions in which they work could be improved. The IGAS Mission takes the view, for example, that they should be given more methodological support, and also more time to do their job properly.

An expert may be asked to confirm that a young person is indeed under-age.

If this is confirmed, the public prosecutor's office normally (see below) notifies the juvenile court that a minor is in the holding area. The court may then decide to provide him/her with educational support and involve the child welfare services (ASE).

Young people who are not under-age, and apply for asylum, are covered by the normal laws on asylum. If they do not seek asylum, they may be deported.

2) *Minors who succeed in entering France*

Young people who enter France without being arrested by the frontier police may be questioned by the ordinary police (whether or not they have committed an offence), or spotted and approached by the (public or private) social welfare services. They may not be deported, but are dealt with by the child welfare services (endangered minors) or crime prevention services (young offenders).

Whatever the circumstances which first bring young people into touch with the authorities, experience shows that, if future assistance measures are to work, the latter must approach them in the right way, win their confidence and initiate dialogue.

All too often, marginalised minors on the loose in France get arrested by the police and referred to the public prosecutor, appear before the juvenile courts, are placed in approved schools and then run away. Some may go through this whole process several times, exclusion having reached a point where normal support measures cannot help.

Long and patient efforts are needed to identify these minors, protect them and put them in touch with the authorities. All of this is done in piecemeal fashion today, principally by voluntary workers, who bring special skills and working methods (street-work, night-work, etc.) to bear on the problem.

Since 1995, “Jeunes Errants” in Marseilles has been running a preventive monitoring scheme, the aim being to spot and “catch” minors on the loose in problem areas, and offer them “alternatives to hand-to-mouth survival and petty crime”. Winning their trust starts on the streets, and can then be taken further at a special day centre.

In Paris, help facilities for unaccompanied foreign minors, established by the State Secretariat for Action against Poverty and Exclusion, led, in June 2003, to the conclusion of a framework agreement between the Paris Directorate of Health and Social Welfare and a number of local associations. This scheme received 2.1 million euros from the state in 2004, and provides help and guidance for some 300 minors every year.

In principle, it operates before the child welfare services intervene, and has four emphases:

- identifying unaccompanied minors: this is done during the day and at night by street operatives. The associations involved, *Hors la Rue*¹² and *Arc 75*, sometimes ask other associations (*Samu Social*, *Bus des femmes*, etc.) to help;
- winning their trust, chiefly with the help of day-centre activities; *Hors la Rue* and *Enfants du Monde–Droits de l’Homme* are involved here;
- providing temporary shelter: *Enfants du Monde–Droits de l’Homme*, *France-Terre d’Asile* and *Arc 75* have 15, 10 and 3 beds respectively. At Kremlin-Bicêtre, *Enfants du Monde–Droits de l’Homme* runs a hostel which is open round-the-clock and has night accommodation for 16 young people; an average of 25 to 40 young people are dealt with every day, and most of them are given social and educational assistance. The average period covered is three weeks. The hostel has a staff of 18;
- helping minors to obtain aid from normal sources (ie. the child welfare services). Their health, psychological, educational and legal situation is assessed for several days or weeks, with a view to steering them in the right direction.

¹² An association particularly familiar with Romanian children.

a) Help from the normal sources

The associations involved set out to help unaccompanied foreign minors, who are excluded and marginalised, to obtain educational and other help from the so-called normal sources.

“Unaccompanied foreign minors spotted in France must be referred to the courts, be given the same protection as other endangered children, and be placed in normal support structures”, says Ms Lodwick, Director of “Jeunes Errants”.

b) Provisional care by the child welfare services

The regulations¹³ provide that, in emergencies, the child welfare services may provisionally take charge of minors who have no legal representatives (for not more than five days): this also applies to foreign minors. Those services must notify the courts at once and involve them officially when five days have passed – although provisional care may sometimes be extended in certain regions.

c) Referral to the public prosecutor’s office

Minors may be referred to the public prosecutor’s office by the child welfare services, the police (who took them into custody, whether or not they were breaking the law) or specialised associations.

The prosecutor’s office may consult an expert to establish that the child is indeed under-age, or may make rapid enquiries to find out more about him/her.

It may then order an emergency protection measure. This sometimes prompts the child to abscond, and so serves no purpose. Practices also differ: some prosecutors’ offices still make provisional placement orders (Article 375-5 of the Civil Code), while others refuse to do so in any but special cases.

d) Consulting an expert to determine age

Bone examination is sometimes used in an effort to determine a minor’s age.

¹³ Article 223-2 of the Social Welfare Code.

Many experts question whether this technique, sometimes combined with examination of the teeth, can determine age reliably. It involves comparing the subject's wrist with x-rays, dating from the 1930s, of white, well-off North Americans. There is no reference material for young people from France or other countries today, and no allowance can be made for the effects of malnutrition or the different rates at which the bones of girls and boys mature. There is reportedly an 18-month margin of error.

Courts are not bound by the results of these tests, but must weigh them against other evidence and the statements made by those concerned.

e) Rapid enquiries

The prosecutor's office may ask for rapid enquiries to obtain more information on the young person concerned: identity, nationality, background, possible connections in France, etc. This helps it to decide whether he/she is in danger, and select a course of action.

These enquiries may be carried out by the educational services attached to the courts, although these often lack the resources and specialised staff needed to do the job thoroughly. They may also be entrusted to approved associations with investigation departments, like "Jeunes Errants" in Marseilles.

It is vital to have socio-educational data on unaccompanied foreign minors, but collection is too often skimmed or hasty.

f) Referral to the juvenile court by the prosecutor's office

The prosecutors' offices surveyed by the IGAS Mission proceed differently, depending on how they view the respective roles of juvenile court and guardianship judges.

Whether or not they have made prior placement orders, most refer these cases rapidly to the juvenile courts, feeling that unaccompanied foreign minors need support measures, insofar as "their health, safety or morality are jeopardised, or conditions for their education seriously compromised".

Some prosecutors' offices leave the child welfare services to refer these cases to the guardianship courts, feeling that support measures should apply only in cases where parents are a danger to their children. The guardianship courts are the right authority to deal with minors who are unaccompanied and have no legal representative s.

Others rarely deal with unaccompanied foreign minors, and simply ask the services which are helping them, or have taken them into care, to refer them directly to the juvenile courts.

g) Inconsistency of judicial practice

France's administrative and judicial arrangements for dealing with unaccompanied minors are clearly very varied, not to say haphazard. For one thing, there are no judicial or administrative regulations, and this makes for discrepancies in treatment. Every prosecutor's office has its own views on whether to apply the law on support measures, on whether to involve the juvenile or guardianship courts, and on what a "dangerous situation" is.

The IGAS Mission accordingly recommends "that a circular should remind prosecutors' offices that there is a general obligation to protect children, and standardise their practice by:

- insisting that minors must not be left in "provisional care"
- laying down clear rules on ordering and using age estimates
- devising, when this seems useful, special systems for the collection of socio-educational data,
- clarifying the criteria for referral to the juvenile or guardianship courts."

h) Decisions by the juvenile courts

In cases referred to them by prosecutors' offices, minors themselves or the social services, juvenile court judges normally order placement via the child welfare services.

Some judges realise that ordinary placement is not necessarily best for these minors, and may seek to place them in special facilities, when these exist.

i) State guardianship

Unaccompanied minors lack legal capacity, and so guardianship measures are needed when enquiry shows that they have no legal representatives. In the absence of relatives, guardianship passes to the Regional Council, which entrusts it to its child welfare service¹⁴. This ensures that such minors are legally represented.

j) Emergency aid on arrival and evaluation to determine the right course of action

The arrival of unaccompanied foreign minors often places an excessive burden on emergency aid services - already stretched in most major cities. Having to cope with

¹⁴ State guardianship of this kind is provided for in Article 433 of the Civil Code.

these newcomers may interfere with their work for other endangered minors, and so generate an unfortunate rivalry between the two groups.

Places in medium-stay facilities are also hard to find, so stays in emergency centres may last longer than planned. In such cases, when there are reasons, practical or legal (e.g. connected with changes in a young person's status), why ordinary care cannot be arranged, these centres must continue to take charge, but without losing sight of their primary task¹⁵.

Assessing and counselling these minors raise special problems - language difficulties, ignorance of their background, distrust on their part, etc. - and special skills are needed to solve them. People working for the ordinary child welfare services do not necessarily have these skills: some acquire them and others adjust, e.g. by establishing partnerships with specialised associations.

This phase is vital, but is handled more effectively in some places than in others.

k) At national level, two assessment and guidance centres

In 1999, the French Government responded to the influx of unaccompanied foreign minors in the Paris region, and to the need to provide assessment and guidance for minors discharged from holding areas or seeking asylum, by setting up a reception and guidance centre for under-age asylum seekers (*Centre d'accueil et d'orientation pour mineurs demandeurs d'asile* = Caomida) at Boissy-Saint-Léger (Val-de-Marne), and in 2002, a reception and guidance facility (*Lieu d'Accueil et d'Orientation* = LAO) at Taverny (Val-d'Oise).

The LAO, which is run by the Red Cross, provides accommodation only for minors leaving Roissy. Its maximum capacity is thirty, and minors normally remain for two months.

Apart from providing accommodation, and health, schooling and medical facilities, the LAO has the task of assessing each minor's situation and finding the right solution for him/her. The first stage is to explore the possibility of restoring the child to his/her family, in the home country, in France or in some other European country. This involves making enquiries in the home country, and the International Migration Office is asked to help if all the parties agree to a return. If family reunion proves impossible, the minor's needs and skills are assessed, covering health, psychology, schooling, legal situation, etc. The next stage is arranging an ordinary placement, so that he/she can remain in France.

Of the 78 young people who left the centre between September 2003 and September 2004, 59 were successfully "guided" (the others "vanished", i.e. absconded): four were sent back to their country of origin, eleven handed over to their families in

¹⁵ The reception and guidance centre for young people discharged from the holding area at Roissy has this problem. Officially set at two months, length of stay averages 102 days in practice.

France or the Schengen Area, two placed in establishments close to their families, and 42 placed by the juvenile courts. Placement is effected by direct placement order in a specific establishment (negotiated with the Regional Council).

In its first year (September 2002 to September 2003), the LAO catered mainly for young Chinese (60%) and Africans (25%). The number of Chinese has now fallen sharply, and Africans, particularly from Congo-Kinshasa, are the dominant group.

The state makes an operating grant of 1.533 million euros.

The **Caomida** was established at Boissy-Saint-Léger in November 1999. It is run by *France Terre d'Asile* and caters only for young asylum-seekers who have been in France for less than three months. It works with various partners in assessing them, and its legal experts help them to prepare asylum applications and find fall-back solutions if these are unsuccessful.

Minors stay for twelve months (maximum) in theory, but the average is fifteen in practice.

Caomida has some fifteen staff and 33 places. Since 1999, it has helped some 110 adolescents from 22 countries and three continents. Of these, 73 were boys, and 83 came from Africa, principally Angola and Sierra Leone. Its annual budget of 1.327 million euros comes mainly from the state, but also from the Regional Councils¹⁶.

l) Provision of aid by the Regional Councils, which are responsible for child welfare

Apart from these two state-funded structures, the Regional Councils are responsible in practice for assessment and guidance, and for helping unaccompanied minors. Child welfare is part of their remit, and they have gradually extended it to include these minors.

The IGAS Mission noted that “some Regional Councils are more open than others: most do all they can to protect these young people, like others, and help them to integrate; others take them on reluctantly, often in smaller numbers, fearing they will aggravate any structural problems the relevant services may have, or place added financial strain on the community”¹⁷.

¹⁶ State: 1.115 million euros, Regional Councils: 140,000 euros.

¹⁷ IGAS Mission, p. 12.

Some Regional Councils have set up special units, with staff specifically trained to deal with these minors' problems. An example is the help unit for unaccompanied foreign minors (*Cellule d'Accueil des Mineurs Isolés Etrangers* = CAMIE) in Paris, which has been operating since October 2003, and has five social workers, a part-time psychologist, an administrator and a socio-educational assistant. It takes charge of these minors on arrival and, over a two-month period, assesses their situation and co-ordinates examination of medical, educational, legal and other aspects. After this assessment/guidance phase, the child welfare services, for which the Regional Council is also responsible, take over.

Other Regions rely on partnerships with specialised associations, such as "Jeunes Errants" in Marseilles, which has multidisciplinary and multicultural teams, and is particularly good at investigation and guidance. To reconstruct migrant children's background, it makes extensive enquiries in home towns (Algiers, Oran, Annaba, Casablanca, Tangiers) and transit countries (Spain and Italy).

"Children don't fall from the trees. Most of them have families and parents, either in their own country or in France. How can you help them if you don't know their background? Until we know why they are here, and what's behind it all, we can't start to put them on the right track", says Dominique Lodwick, director of "Jeunes Errants".

"Jeunes Errants", which is authorised to carry out investigations and provide educational guidance by *Protection Judiciaire de la Jeunesse*, mediates between the various partners involved in helping young people, within the child welfare or judicial protection services. As deputy prosecutor Emmanuel Merlin puts it, "Jeunes Errants' helps to fill the gaps left by the courts and the child welfare services"¹⁸, which have neither the resources nor the social workers needed. "There's nothing we can do for these young people", says Catherine Richardson of the ASE. "The child welfare inspectors and the Regional Council's education officers are not used to working with children who don't speak French, particularly when the parents aren't around".¹⁹

The Regional Council has concluded an agreement with "Jeunes Errants" on looking after these young people in its hostels. In fact, as Dominique Lodwick emphasises, "If we don't help them, particularly at the beginning, they just run away".

Whatever their legal arrangements and structures, the Regional Councils' experience shows that operational partnerships, and a broad range of skills, are needed for investigation and assessment.

¹⁸ Quoted in *Le Monde*, see ref.

¹⁹ Ibid.

According to the IGAS Mission “all the institutions concerned have the greatest difficulty in reconstructing these young people’s background, trying to put them back in touch with their families, working on their possible return and, by elucidating the family context, putting the educational work on a solid foundation. At this stage, **international investigation** is the biggest problem. In spite of the Franco-Romanian agreement, which provides for enquiries in Romania at the request of local authorities, in spite of the efforts made to mobilise the international networks of the Red Cross (LAO) or the SSAE (SSI), and in spite of the help with contacts which the French diplomatic network may be able to provide, this international dimension remains a weak point”.²⁰

m) After emergency action, longer-term care

We need to remember that the ordinary child welfare services are legally responsible for looking after unaccompanied foreign minors. Nonetheless, care in this case is special, since it has to allow for the extreme diversity – cultural, linguistic, historical – of this group and, in effect, adjust from case to case. Providing socio-educational support for these minors is a challenge for social workers trained to handle children at risk with very different problems. This is why extra training, and partnerships with specialised educators and practitioners, may prove necessary.

? Accommodation

It is often hard to find accommodation for unaccompanied minors discharged from emergency centres – mainly because the ordinary facilities are already saturated. Moreover, these minors have certain special characteristics which make some centres unsuitable and/or unwilling to take them.

Many of these children run away, and people often say that this destabilises support teams by preventing them from doing their job. It also highlights the special problems of these young people, many from eastern Europe, who are marginalised and reluctant to accept long-term help. This is where the contact-making and confidence-winning process, referred to above, becomes really important.

Centres which provide accommodation *and* vocational training are probably best suited to the needs of these young people, who – as we shall see - often learn trades. When normal structures are either unsuitable or saturated, there are also associations which can provide suitable accommodation, by agreement with the Regions concerned.

²⁰ IGAS Mission, p. 37.

Other types of non-institutional accommodation are also possible:

- Placement in host families. This is favoured by certain Regions, but often hard to organise.
- Hotels. Widely used in certain Regions, this solution runs the risk of marginalising and excluding these minors even further, unless there is solid day-centre backing.

Some unaccompanied minors, mainly young offenders, are accommodated in facilities run by the judicial protection services.²¹

? **Schooling – Training**

Unaccompanied foreign minors have very different levels of schooling, ranging from illiteracy to partial completion of a school course. Obviously, whether they know French depends on their country of origin.

Integrating them into the French school system is often difficult, since there are few places in suitable classes. They have special needs, and these call for special measures, like those devised for first-generation immigrants.

School integration is even harder for the over-16s, this being the age at which compulsory schooling ends.

Because of language problems or gaps in their earlier schooling, vocational training seems the best answer for many over-16s. Until recently, however, this was not available to them, since apprenticeships, sandwich courses and skills contracts are all based on the assumption that those they cover will be allowed to work. Lacking the status needed to secure a work contract, they could lay no plans for a career. Among other observers, the UN Committee of Experts highlighted this failing in the French system in June 2004.²²

On 2 May 2005, after years of protest by field workers, the Minister of the Interior sent the *Préfets* a circular, asking them to look carefully, case by case, at the files on minors covered by integration measures. This circular allows them to issue foreign minors or young adults, who are on the child welfare services' books - "having regard to their integration process" - with one-year, renewable residence permits, marked "student" or "wage-earner".

²¹ Ministry of Justice.

²² <http://www.dei-france.org>

Although its effects have yet to be felt, this circular seems to mark an advance on the previous, chaotic situation. These minors can now complete training or schooling begun as part of the assistance given them in France.

? **Legal status: what happens at age 18?**

On reaching 18, unaccompanied foreign minors have three main options: refugee status, acquisition of French nationality and obtention of a residence permit. A fourth option, the young adult's contract, is highly precarious.

Up to November 2003, unaccompanied foreign minors dealt with by the child welfare services were entitled to apply for French nationality on reaching the age of 18. But the Act of 26 November 2003 on controlling migration flows (the so-called Sarkozy Act) has put an end to this: on reaching the age of majority, young people may apply for French nationality only if they have been on the child welfare services' books for three years, i.e. came to France below the age of 15. However, as we have seen, most unaccompanied foreign minors are between the ages of 16 and 18 on arrival. The circular of 20 January 2004 on application of the Act explains that the change is intended to restrict the "illegal immigration of unaccompanied minors".

Some field workers claim that making nationality at 18 conditional on a previous period of residence has the undesired effect of attracting ever-younger children to France. Above all, says the IGAS report, it has "profoundly shaken the teams who look after these young people", by making it harder to plan training for people who, on turning 18, at once become illegal residents.

Some Regional Councils offer young people a "young adult's contract", which allows them to complete an integration programme and acquire a diploma or recognised qualification²³. Officially, these young people are illegally resident, but the contract ensures that they are treated with some leniency. In certain cases, the judicial protection services may take over from the child welfare services and provide judicial protection measures for young adults.

Under the circular issued in May 2005, some young people who are following training programmes may be given one-year residence permits which, though renewable, remain precarious. Fear of being left without papers, and the long, uncertain wait for a decision - which remains discretionary - on regularisation of their situation, do not make integration any easier.

²³ (at 30 September 2004, over 1,200 such contracts had been concluded with young adults who had arrived as unaccompanied foreign minors.

Interviewed by *Le Monde*²⁴ when this circular was published, an official from the Ministry of the Interior explained that “It is not a question of replacing an automatic right to nationality with an automatic right of residence. Entering France must be no easier for a minor than an adult”.

C. Unanswered questions, current issues

Regardless of political or professional position, most French commentators agree that present arrangements for unaccompanied foreign minors in France are inadequate and/or unsuitable.

Since the figure for these minors does not exceed 5,000 (highest estimates), looking after and protecting them should not present insoluble problems. The relevant French laws and measures may need adjusting and strengthening, but are still, on the whole, very effective, and France should be able to comply fully with its commitments under the UN Convention on the Rights of the Child.

However, political decision-makers and institutional protagonists are facing a dilemma. They want to solve the problems - but not to spark a new influx. They fear that providing better protection for minors may play into the hands of the people-smugglers and traffickers. Some are even afraid that extending the child protection system to unaccompanied minors may allow criminals to abuse it for their own purposes. Jean-Pierre Rosenczeig, President of the Bobigny Juvenile Court says: “The people-smugglers are the problem! They see that children are well looked after here – and they’ll use that to send us even more”.²⁵ Conversely, the Deputy Mayor of Marseilles in charge of crime prevention²⁶ denies that his city’s new measures are attracting more unaccompanied minors: “Today, the results are plain. In effect, these young people have stopped committing crimes, and we don’t get them hanging about in the streets. And Marseilles itself isn’t the target for the people-smugglers it used to be”.

If France is now getting more unaccompanied foreign minors, is this due to “better” facilities on arrival, or to a worsening of the political and economic situation in the home countries? Only genuine pluri-annual, inter-institutional research, tracing what happens to individuals, can really answer that question.

²⁴ Article, *Une circulaire autorise l’attribution de titres de séjour aux mineurs «insérés»*, Laetitia Van Eeckhout, *Le Monde*, 31 May 2005.

²⁵ Quoted in *Témoignage Chrétien*, No. 3088 of 23 December 2003.

²⁶ *Le Monde*, 31 May 2005.

a) On what level should a policy for unaccompanied minors in France be framed?

As we have seen, the task of looking after unaccompanied foreign minors essentially falls to the Regional Councils, which are responsible for child welfare. This brief is a recent one, and some Councils tackle it more conscientiously than others. As we have seen, the result is practices which vary, and sometimes contradict one another, from Region to Region. Moreover, since these minors are unevenly distributed, some Regional Councils have more to do than others. This is why they are calling for national solidarity and looking to the state for funds. But the need to ensure equal treatment throughout France is the main reason why associations, elected representatives and social workers want a policy which is genuinely national, comprehensive and consistent. This policy should cover the administrative and judicial treatment of unaccompanied minors, and put an end to the huge discrepancies which exist between the approaches followed by different prosecutors' offices and Regional Councils.

In a parliamentary report submitted in November 2004, Jean-Marie Rolland, a parliamentarian (UMP) from the Yonne, says that he was "struck by the lack of any sign of an overall political vision. Horizons are narrow, and most government authorities seem to deal with unaccompanied foreign minors from their own angle only: the welfare authorities think only of reception facilities, the Ministry of the Interior thinks only of papers, and so on".²⁷

Like the associations, the public authorities have come up with various answers to the problem of unaccompanied minors in France, but those answers are still incomplete.

The only way of solving that problem is to put child protection measures in a new territorial and institutional framework. New synergies and partnerships are needed to allow for the mobility, and sometimes illegality, which are characteristic of this group.

It is also because it is responsible for immigration policy and frontier control that the state is regularly required to deal with unaccompanied foreign minors.

b) A final issue – lack of a European strategy

It is regrettable that the European Union regards harmonising juvenile court systems as more important than harmonising asylum systems, since this would make it possible to guarantee equal protection throughout the EU and co-ordinate field initiatives more effectively.

²⁷ Opinion on the 2005 Finance Bill (No. 1800), Employment, Labour and Social Cohesion, Anti-Exclusion Measures and Cities, submitted by Mr Jean-Marie ROLLAND, member of the National Assembly, on behalf of the Committee on Cultural, Family and Social Affairs.

The problem is essentially international, but the solutions adopted so far have always been national, and indeed regional. International co-operation has mainly focused on sending minors home (cf. A); today it needs to focus increasingly on stopping them from leaving (cf. B) and on co-ordinating help measures.

We still have to decide on what level to co-operate. National initiatives, such as the agreement negotiated by the French and Romanian Governments, might be usefully complemented by contacts between the regional and local authorities directly involved in looking after minors.

This was the thinking which led a number of European local and regional authorities²⁸ to get together, with the support of various specialised associations and the European Forum for Urban Safety, and set up the Euro-Mediterranean Isolated Minors Network (*Réseau euro-méditerranéen pour la protection des mineurs isolés* = REMI).

The participants at the launching conference for the REMI network²⁹ suggested several areas for decentralised co-operation. These include practical co-operation between professionals, the training and setting-up of teams on both sides of the Mediterranean to look after children, and harmonisation of procedures to make the action taken more rapid and effective. The interest roused by the network has already shown how necessary it is to involve local and regional authorities in all parts of Europe, and help them to overcome national institutional obstacles in “the overriding interests of the child”,

c) Organised return

The first priority is to intercept, protect and help unaccompanied minors, ensuring that they do not become vagrants or fall into the hands of criminal networks, but another is to pave the way for a “dignified and happy” return to their home country and family³⁰. Tracing parents, and possibly restoring children to them in a manner consistent with their “overriding interests”, is the medium or long-term objective of all those who today take care of unaccompanied minors in France.

²⁸ The local and regional authorities which signed the REMI Charter at the launching conference were: the Provence-Alpes Côte D’Azur Region, the Region of Tuscany, the Region of Campania, the Generalidad de Catalunya, the Regional Council of the Bouches-du-Rhone, the Regional Council of Vaucluse, the Council of Paris, the Province of Lucca, the City of Rome and the City of Marseilles. Others joined them later.

²⁹ REMI launching conference, jointly organised by the Provence-Alpes Côte D’Azur Region, “Jeunes Errants” and the European Forum for Urban Safety.

³⁰ Article 22 of the International Convention on the Rights of the Child specifically covers family reunion for unaccompanied children.

However, return can be envisaged only when the child's safety and protection are guaranteed. This must be separately assessed in each case, and return must be voluntary, both for children and families. UNICEF makes the point that automatically sending a child home without trying to establish his/her reasons for running away, with no alternative and with no protection, is inconsistent with the standards and principles of the UN Convention.³¹

As we have seen, public authorities and associations have great difficulty in establishing strong, operational links with their counterparts in countries of origin and with minors' families. This lack of effective international co-operation makes it hard to organise the return of unaccompanied minors. The IGAS report notes that "Even for Romanian minors, the special arrangements based on the governmental agreement of 4 October 2002³² have led to only a very limited number of repatriations. When families can be found, the investigations carried out by the welfare authorities are mediocre and rarely give a reliable picture of conditions on arrival. In the case of minors sent abroad by their families, organised return often leads only to their leaving again".³³

Even when they are not compelled to leave, it is vital that young people take "something" home with them – ideally training, which then helps them to reintegrate in their own country.

d) Preventing departure

International co-operation is needed, not just to help minors to return, but also to stop them from leaving. To achieve lasting effects on the situation of unaccompanied minors in France, we need an intensive preventive policy, based on co-operation between the towns, regions or states of departure and arrival.

In this spirit, officials from the Seine-Saint-Denis Region (France) and the Satu-Mare Region (Romania) met in May 2005.³⁴ Satu-Mare is the prime "supplier" of emigrants to France, while Seine-Saint-Denis gets - with Paris - the greatest number of unaccompanied foreign minors. Preventing departure was recognised as the issue on which co-operation between them was most needed. Gilles Garnier, Vice-President of the Regional Council, which is responsible for the welfare of mothers and children, said that: "All the children who come knocking on our door must have a right to our protection - but we must also be able to warn them of the risks they run by turning up here without any safeguards". Claude Roméo, Director responsible for children and

³¹ Making children count: implementing the Convention on the Rights of the Child, UNICEF, Geneva, 1999.

³² Inter-ministerial partnership with countries of origin is intended to make it easier to eliminate mafia-type or paedophile networks in France, but also to reduce the influx and "promote the return of children in good conditions".

³³ IGAS Mission, p. 58.

³⁴ Quoted in *l'Humanité*, 24 May 2005.

families on the Seine-Saint-Denis Regional Council, insisted on the importance of “making people understand that France is not an Eldorado”.³⁵

Stefan Szabo, President of the Satu-Mare Region, connected this preventive policy with wider issues of development: “Children feel the lure – it is hard to stop them going. We can try to make things better for them, but we can’t protect all the groups who are likely to leave. I hope that economic growth and Romania’s imminent admission to the EU will allow the ones who have gone to come back - and stop further haemorrhaging.”³⁶

³⁵ *Le Monde*, 31 May 2005.

³⁶ Quoted in *l’Humanité*, 24 May 2005.

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