



FRA
Thematic Study on Child Trafficking
SPAIN

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Barcelona, Spain
July 2008

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Executive Summary

- [1]. In Spain the **number** of minors who are victims of trafficking by organised networks is not very high, although **qualitatively** speaking the problem is very significant. In most cases where a minor has been found to be a victim of this kind of crime, the network concerned did not dedicate itself exclusively to the traffic in minors, but as a rule to the traffic in adults and only occasionally to minors. The risks leading to the traffic in minors in Spain most frequently originate from the **family**. The minors are ‘exploited’ by their own families, finally turning into offenders themselves. These children are completely abandoned.
- [2]. Spain has **extensive and detailed legislation on child protection**, which includes regulations on the fight against child trafficking. Spain displays great activity concerning the social protection of minors, particularly regarding alien minors who are unaccompanied or who find themselves in a high-risk situation.

It is important to point out that the lack of availability of separate statistics and data on trafficking in minors hinders any attempt to quantify this phenomenon in Spain, in spite of our efforts described in section A.1.3. of this study. The competent authorities simply do not compile such statistics, At the same time, a small number of registered crimes relate to trafficking in minors (see the Appendix).

General anti-child trafficking framework

- [3]. In recent years, Spain has ratified various **conventions and protocols on child trafficking** and related issues. **Spanish Criminal Law** criminalises people trafficking for sexual or commercial exploitation or for adoption, and also the extraction of organs without the consent of the person concerned. In addition, all people trafficking, even without a specific purpose, is punishable under the *Código Penal* [Criminal Code].¹

It is important to highlight that in 2007 Spain passed additional legislation allowing Spanish courts to prosecute cases of trafficking that occur outside Spain’s borders (Spain/Ley Orgánica 13/2007 (19.11.2007)).

For the period 2006-2009, Spain has adopted Action Plan II against the Sexual Exploitation of Children and Adolescents. This Action Plan tackles the sexual exploitation of children and adolescents by introducing coordinated action between the political and social authorities at all levels, from supranational to local.

¹ Spain/Ley Orgánica 10/1995 (23.11.1995)

Also for the period 2006-2009, Spain has adopted the **National Strategic Plan on Children and Adolescents** to improve knowledge of the situation of children in Spain and to promote the rights and protection of children.

Prevention of child trafficking

- [4]. Part of the **campaign** on the **prevention of child trafficking** is the distribution of flyers and other informational material by specialist international organisations, for example the ILO, warning against false job offers. There are programmes to make children themselves **participate in measures** to protect them from trafficking and exploitation, for example, the *Protocolo sobre el uso de las nuevas tecnologías de la información* (TICs) [Protocol for the use of information and communication technologies (ICT)].

Appointment of a legal guardian

- [5]. The *Código Civil* [Spanish Civil Code] (Spain/Real Decreto 24.07.1889) provides for the appointment of a **guardian** for a minor in a 'vulnerable situation' (this also applies to cases of trafficking) by the competent court on the request of the *Ministerio Fiscal* [Public Prosecutor's Office]. The **competent youth welfare authority** of the respective autonomous community is responsible for the minor. Minor **asylum seekers** in a 'vulnerable situation' are represented throughout the asylum procedure by a guardian from the competent youth welfare authority. In all cases, the Public Prosecutor's Office monitors the care and protection given to these children.

Coordination and cooperation

- [6]. The implementation in Spain of the **DAPHNE Programme** has resulted in specific projects to combat the Traffic in Human Beings (THB). There is a collaboration agreement between the Ministry of the Interior and the *Fundación de Ayuda a Niños y Adolescentes en Riesgo* (ANAR) [Help to Children and Adolescents at Risk (ANAR Foundation)] for the prevention of and intervention in high-risk situations involving minors. Various institutions of the **State** and the **autonomous communities** maintain cooperation agreements with **NGOs**, for example the *Mesa de Trabajo Nacional* [National Working Table], in which NGOs and child professionals from the autonomous communities participated directly. This group elaborated concrete proposals to fight against child trafficking that were incorporated into Action Plan II against the Commercial Sexual Exploitation of Children and Adolescents.

- [7]. Spain has concluded several **cooperation agreements** on immigration, which also deal with people trafficking, with **non-EU countries** such as Bolivia, Peru and Mauritania. In 2005 a cooperation agreement between Spain and Romania was concluded.

Care and protection

- [8]. Unaccompanied children in Spain are placed as a **preliminary measure** under the care and protection of the *servicios competentes de protección de menores* [public entities for the protection of minors]. Placement under the care of the entity provides the minor with a residence permit (Article 35 of the Organic Law 4/2000 of 11 January on *Derechos y libertades de los extranjeros en España y su integración social* [Rights and Freedoms of Foreigners in Spain and their Social Integration, also known as the Spanish Aliens Organic Law]² and Article 92 of the corresponding statutory regulation (Royal Decree 2393/2004)³). In accordance with the principle of the best interest of the child, **repatriation** to the country of origin will only take place if the conditions of either reunification of the minor's family or appropriate care by the protection services of the country of origin are guaranteed.
- [9]. The Spanish Aliens Organic Law (Articles 12, 9, 20 and 22) and Article 10 of the Organic Law 1/1996 of 15 January on the *Protección Jurídica del Menor* [Legal Protection of Minors]⁴ [] guarantee any foreign minor residing in Spain the right to **healthcare, education and legal assistance** on equal terms to Spaniards.

Determination of best interests and long-term solutions, including social inclusion/return

- [10]. The Organic Law on the Legal Protection of Minors establishes that the **best interest** of the child is to be the guiding principle for the actions of the public authorities and that this should take precedence over any other legitimate interest concerned.
- [11]. There is no specific legal provision on granting **asylum** to trafficked children since the Law 5/1984 of 26 March *Reguladora del derecho de asilo y de la condición de refugiado* [Spanish Law on Asylum and Refugees]⁵ refers to the requirements established by the Geneva Convention and the additional New

² Spain/Ley Orgánica 4/2000 (11.01.2000)

³ Spain/Real Decreto 2393/2004 (30.12.2004)

⁴ Spain/Ley Orgánica 1/1996 (15.01.1996)

⁵ Spain/Ley 5/1984 (26.03.1984)

York Protocol. The public administration in charge of the receipt and control of the asylum applications have to place minor asylum seekers (under 18 years) in a vulnerable situation under the responsibility of the competent youth welfare authority notifying the Prosecutor's Office at the same time (Article 15 of the *Reglamento de Asilo* [Asylum Ordinance] adopted by Royal Decree 203/1995⁶

- [12]. The minor has **the right to a hearing**, both in family affairs and in any administrative or judicial procedure in which he/she is directly involved and which may lead to a decision that affects his/her personal, family or social life.
- [13]. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Official Journal L 261 of 06/08/2004) should have been transposed into internal law before 6 August 2006. However, it has not yet been transposed into Spanish law.

Prosecution

- [14]. The Law on *Enjuiciamiento Criminal* [**Criminal Procedure**]⁷ includes, subsequent to the amendments introduced in 1999, a number of important measures for the **protection of minors as victims of abuse**, for example, that statements from underage witnesses will be taken in a manner which avoids their visual confrontation with the accused.
- [15]. Although any criminal action may be pursued by any Spanish citizen in accordance with legal provisions (Article 101 of the Law on Criminal Procedure), Article 102 establishes that 'criminal proceedings may not be pursued by anyone who does not enjoy full civil rights'. This limit on the exercise of legal action by minors is to a certain extent corrected by the provisions of Article 10.2 of Organic Law 1/1996 of 15 February 1996 on the *Protección Jurídica del Menor* [Legal Protection of Minors],⁸ according to which a minor may, among other things, in order **to defend and guarantee his/her rights** request the protection and care of the competent public entity or inform the Public Prosecutor's Office of the situation. In accordance with the Criminal Code, any person injured by a crime or offence, adult or minor, national or alien, may demand **compensation** for material or moral damages.
- [16]. The available statistical data on the number of final convictions based on child trafficking cases demonstrates the small number of such cases in Spain. The following final convictions based on child trafficking have been documented: 0

⁶ Spain/Real Decreto 203/1995 (10.02.1995)

⁷ Spain/Real Decreto (14.09.1882)

⁸ Spain/Ley Orgánica 1/1996 (15.01.1996)

in 2000 and 2001; 3 in 2002; 7 in 2003; 3 in 2004; 11 in 2005; 1 in 2006 and 3 in 2007 (for more details, see the Appendix).

Miscellaneous

- [17]. In July 2008 the *Defensor del Menor de la Comunidad de Madrid* [Ombudsman for Minors of the Community of Madrid] presented a document entitled *Medidas para la protección de la Infancia frente a los actos de explotación y abuso sexual* [Measures for the Protection of Children from acts of sexual exploitation and abuse] in which he proposes an amendment **to the Criminal Code** introducing the obligation **for sexual offenders** to follow a **re-education programme** and the creation of a **register of child sex offenders**.

Good practice

- [18]. In his *Informe de 2005 sobre asistencia jurídica a extranjeros en España* [2005 Report on legal assistance to aliens in Spain], the *Defensor del Pueblo* [National Ombudsman] indicates **good practices related to legal assistance to minors**, for example, that the solicitor should use clear language during interviews with minors and seek to create an atmosphere of trust which allows the solicitor to become acquainted with the child's actual circumstances.

A. General anti-child trafficking framework

A.1. Preliminary Notes

A.1.1. Terminology

- [19]. In Spain, there is often confusion between the two concepts of *trata / tráfico de seres humanos* (trafficking in human beings) and *tráfico de inmigrantes* (trafficking of immigrants), probably due to translation from English. For the purposes of this study, we will distinguish between trafficking of immigrants that consists of facilitating the entry of people into a country avoiding the relevant law, known at the international level as people smuggling and defined in the Protocol against the Smuggling of Migrants to the UN Convention against Transnational Organized Crime.⁹ This concept is referred to within the Spanish police authorities generally as illegal immigration.¹⁰ On the other hand, when the aforementioned transportation of people occurs with the purpose of exploitation (sexual or commercial), it amounts to trafficking in human beings, one of the types of crime listed in the Protocol against the Smuggling of Migrants.
- [20]. This distinction is very important due to differences in police treatment of the persons involved. People smuggling is limited to the illegal transportation of the immigrant to a foreign country after which the relationship between the smuggler and the immigrant ends. The immigrant, in the great majority of cases, has requested the smuggler for help (in return for payment) in order to enter the destination country. These activities lead to a crime being committed against the State to which the immigrant is a party and has to answer to criminal or administrative law. In contrast, in the case of trafficking in human beings, the ‘transported’ person is always a victim, taking into consideration that the main characteristic is his/her exploitation irrespective of the degree of willingness at

⁹ UN Convention against Transnational Organised Crime, opened for signature by Member States in Palermo on 12-15 December 2000. The Convention is supplemented amongst others by the Protocol against the Smuggling of Migrants by Land, Sea and Air, which entered into force on 28 January 2004.

¹⁰ Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005, 2006 and 2007) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*. The reports were provided upon request for the purposes of this study.

the time of travel or regarding work. Trafficking in human beings is always a violation of human rights.¹¹

- [21]. Many international documents¹² remind us that there can be also cases of trafficking of immigrants without subsequent exploitation (illegal immigration), as well as of exploitation of persons who are not the object of trafficking (in the case of the exploitation of nationals or legally resident foreigners within a country) and finally the most complex crime, mostly committed by international criminal organisations: trafficking in human beings for the purpose of sexual or commercial exploitation. The Spanish Police Forces distinguish between these types of crime and different authorities are responsible. Thus, the *Servicios de Información, Marítimo y de Costas y de Fronteras* [Information, Sea, Coasts and Borders Authority] (deals with illegal immigration and the *Unidades de Policía Judicial* [Judicial Police Units] with trafficking in human beings.¹³
- [22]. There is no legal norm within the Spanish legal system which covers all these actions, so that in each case one or more articles of the Spanish Criminal Code may be applicable.
- [23]. Regarding the term ‘child’, the UN Convention on the Rights of the Child, in force from 2 September 1990, establishes that ‘child’ is to be understood as every human being under 18 years of age, except if the applicable law provides that the child attains full age earlier. Generally, the term ‘child’ is used for minors between 12 and 14 years old, and ‘adolescent’ for minors older than 14 years. We therefore refer to reports or policies regarding ‘children and adolescents’ in this study. Sometimes Spanish law takes into consideration the age of the minor when establishing the penalty for crimes committed against him/her (e.g. the penalty for sexual harassment of a minor under 13 years is higher than if the victim is a minor older than 13 years).

A.1.2. Topics discussed

- [24]. In Spain the number of minors that are victims of trafficking by organised networks is not very high, although qualitatively speaking the problem is very significant. In most cases where a minor was found to be a victim of this kind of crime, the network concerned did not exclusively deal in the traffic in minors, but as a rule dealt in the traffic in adults and only occasionally in minors. The

¹¹ See section A.2 for the legal provisions.

¹² E.g. the ‘Regional Standard for Anti-Trafficking – Police Training in SEE’ provided by the OSCE and published by the International Centre for Migration Policy and Development (ICMPD), written in 2005, available on www.icmpd.org and on www.anti-trafficking.net; or also the Report of the Experts Group on Trafficking in Human Beings of the European Union (December, 2004).

¹³ Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

high-risk situations than can lead to the traffic in minors in Spain most frequently originate from the family. The minors are ‘exploited’ by their own families, finally turning into offenders themselves. These children find themselves completely abandoned.

- [25]. Thus, this study deals not only with the legislation, action plans, policies and practices regarding trafficking in children, but also provides information on aid to families, protection of minors in a difficult family situation and of unaccompanied minors, as well as some aspects of sexual commercial exploitation, abuse etc., in view of the fact that in these cases the risk of trafficking is higher. Due to the small number of cases of trafficking in children in Spain (see Appendix), we have assumed that there was no other way to write this report.

A.1.3. Data collection activities

- [26]. We carried out a number of activities within the scope of this study in order to collect relevant data regarding child trafficking.
- [27]. First of all, we contacted the *Policía Nacional* [National Police] and the *Guardia Civil* [Civil Guard].¹⁴ They provided two reports containing very useful data for this study: *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)* [Criminological report on trafficking in human beings (with the purpose of sexual exploitation)] 2005, 2006 and 2007, produced by the *Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil* [Department of Criminal Analysis of the Technical Unit of the Judicial Police within the Civil Guard], and the *Informe sobre tráfico de menores* [Report on trafficking in minors] from 4 July 2008 produced by the *Policía Judicial de la Dirección General de Policía y de la Guardia Civil* [Judicial Police of the General Directorate of the Police and the Civil Guard]. Secondly, the authors of this study communicated with the *Observatori de la Infància i l'Adolescència de Catalunya* [Child and Adolescent Observatory of the Autonomous Community of Catalonia] and with the *Observatorio de la Infancia* [Child Observatory] of the Ministry of Labour and Social Affairs. These institutions provided most of the information on the action plans on child affairs cited in this study.

¹⁴ In Spain there are several police forces. At the state level there is the *Guardia Civil* [Civil Guard] and the *Policía Nacional* [National Police]. Both police forces are accountable to the Spanish Government, but there is an important difference between them: The Civil Guard is a military police, serving also in international missions (for example, in UN operations).

In Spain there are also police forces at the regional level, i.e. police forces of the autonomous communities (*Policía Autonómica*) [Police of the Autonomous Communities], which are accountable to the respective government of the autonomous community and which can only work in the respective territory.

- [28]. Thirdly, the recently created *Ministerio de Trabajo e Inmigración* [Ministry of Labour and Immigration] (until the new legislative period from April 2008 known as *Ministerio de Trabajo y Asuntos Sociales* [Ministry of Labour and Social Affairs] was contacted via e-mail. We were referred by the Ministry to the *Centro Estatal de Documentación e Información de Servicios Sociales* [State Centre on Documentation and Information of the Social Affairs Authorities] which provided information on specific legislation. Despite our request, no statistical data was provided because it does not exist.
- [29]. The authors of this study also contacted the *Dirección General de las Familias y la Infancia* [General Directorate on Families and Children] of the recently created *Ministerio de Educación, Política Social y Deporte* [Ministry of Education, Social Policy and Sports], but did not receive any response.
- [30]. The press offices of the Ministries of the Interior and Justice were contacted, but the information requested was not received until after this study had been finished.

A.2. General legal framework

- [31]. Over recent years, Spain has ratified various conventions and protocols on child trafficking and related issues:
- ILO Convention Nr. 182 on the worst forms of child labour from 17 June 1999, ratified by Spain on 14 March 2001 and published in the *Boletín Oficial del Estado* (BOE) [Official Journal of the State (OJS)] on 17 May 2001.
 - Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Children Prostitution and Child Pornography from 25 May 2000, ratified on 05 December 2001 and published in the Official Journal of the State on 31 January 2002.
 - UN Convention against Transnational Organized Crime of 5 November 2000, ratified on 21 February 2002 and published in the Official Journal of the State on 29 September 2003. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ratified on 21 February 2002 and published in the Official Journal of the State on 11 December 2003.
 - Council of Europe Convention on Action against Trafficking in Human Beings from 3 May 2005. The Council of Ministers authorised the

signature of the Convention on May 2008. On 9 July 2008, Spain has signed the Convention.¹⁵

- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007. In 2007 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was adopted and opened for signature on the occasion of the 28th Conference of European Ministers of Justice in Lanzarote, Spain. As of 1 July 2008 Spain had not signed and ratified this Convention. It is expected to do so soon, although no other country has yet ratified the Convention.¹⁶

[32]. The Spanish *Código Penal* [Criminal Code]¹⁷ provides that persons who encourage, induce or facilitate people trafficking from, in transit through or destined for Spain or another EU State for the **purpose of sexual exploitation** are subject to imprisonment for a period of five (minimum sentence) to ten years (Article 318bis(2) Criminal Code). If the victim of the trafficking is a minor, the minimum sentence is seven and a half years (Article 318bis(3) Criminal Code). The same applies if the trafficking is carried out through the use of violence, intimidation, deceit or abuse of the victim's state of need, if the life or health of the victim is endangered or if the offender is a member of a criminal organisation. Unlawful associations which promote illegal trafficking are subject to punishment (Article 515.6 of the Criminal Code). Persons involved in illegal **trafficking in labour** are subject to imprisonment of between two and five years and to a fine, with no distinction as to whether the victim is a minor or not (Article 312.1 of the Criminal Code). Persons who induce or facilitate the illegal immigration of employees into Spain or other EU States are punished in the same way. The same penalty is applied to persons who, simulating the existence of a contract or other employment relationship, or using a similar deception, induce or facilitate the immigration of another person to a foreign country (Article 313 of the Criminal Code). Further, Article 232 of the Spanish Criminal Code establishes that: '1. Persons who use or 'borrow' a minor to carry out mendicity, even when covert, are subject to imprisonment of between six months and one year. 2. If a minor has been trafficked or subject to violence or intimidation or if harmful substances have been given to the minor for the purposes of the preceding paragraph, a prison sentence of between one and four years will be applicable.'

[33]. Furthermore, the Spanish Criminal Code establishes that persons who deliver a minor to a third party and are not themselves related to the minor and avoid the legal procedures for custody and adoption in order to establish a relationship similar to that of filiation between the minor and the third party, are subject to

¹⁵ http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp (04.08.2008)

¹⁶ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=8&DF=&CL=ENG> (19/7/2008).

¹⁷ Spain/Ley Orgánica 10/1995 (23.11.1995).

imprisonment of one to five years (Article 221 Criminal Code). The same penalties apply to a person who receives the minor as to the intermediary even if the minor is delivered to a foreign country. In 2007, the Law 54/2007 of 28 December on *Adopción Internacional* [Law on International Adoption]¹⁸ was passed in order to better prevent the sale and trafficking of children for adoption. The Law prohibits inter alia adoption from countries undergoing armed conflict or from countries which lack a special adoption authority (Article 4(1)(b)).

- [34]. Regarding the **trafficking of organs**, it is important to point out that Article 149 of the Criminal Code punishes persons who remove or disable a major organ or bodily member of another person with imprisonment from six to twelve years. Furthermore, Article 150 of the Criminal Code stipulates imprisonment of three to six years if the removed or disabled organ is not a major organ. Article 156 of the Spanish Criminal Code declares null and void any declaration of consent by a minor or his/her legal representative to any physical harm including the removal of organs. The removal of an organ of a minor, with or without his/her consent, and with or without the consent of his/her parents or legal representative, always constitutes a bodily injury.
- [35]. Regarding **trafficking of children related to the trafficking of organs**, no special legal provisions exist, but Article 4 of the Law 30/1979 of 27 October on *Extracción y trasplante de órganos* [Removal and transplantation of organs]¹⁹ [prohibits the donation of organs by live minors. Nevertheless, the law allows a minor's organs to be donated if he/she is dead or brain dead, with the consent of the child's parents or legal guardian. Both the provisions of the Criminal Code and the Law on the removal and transplantation of organs are fully accepted both by Spanish politicians and Spanish society. The question of trafficking in organs is not discussed in Spanish politics.
- [36]. It is important to highlight that in 2007 Spain passed additional legislation allowing Spanish courts to prosecute cases of trafficking that have occurred outside Spain's borders. The Organic Law 13/2007 of 19 November *Para la persecución extraterritorial del tráfico ilegal o la inmigración clandestina de personas* [Organic Law on the cross-border prosecution of trafficking in human beings and illegal immigration]²⁰ amends Article 23.4 of Organic Law 6/1985 of 1 July on the *Poder Judicial* [Judiciary]²¹ to extend the jurisdiction of the Spanish courts so that they can judge crimes committed by Spaniards or foreigners outside Spanish territory. This legal norm applies to crimes punishable by the Spanish Criminal Code as 'crimes related to the prostitution and corruption of minors and persons without legal capacity' (Articles 187-190 of the Criminal Code), or as 'trafficking in human beings and illegal immigration, regardless of whether the 'transported' person is an employee or

¹⁸ Spain/Ley 54/2007 (28.12.2007).

¹⁹ Spain/Ley 30/1979 (27.10.1979).

²⁰ Spain/Ley Orgánica 13/2007 (19.11.2007).

²¹ Spain/Ley Orgánica 6/1985 (01.07.1985).

not’, ‘and other crimes which must be prosecuted in Spain in accordance with international treaties and conventions’.

- [37]. The Spanish Criminal Code also punishes the trafficking of children without a special purpose such as sexual exploitation. According to Article 318 bis para 1 of the Criminal Code, persons who, directly or indirectly, promote, induce or facilitate the illegal trafficking or clandestine immigration of persons from, in transit through or destined for Spain or another EU country, will be subject to a period of imprisonment of four to eight years. If the victim is a minor, the minimum sentence is six years. The exploitation of the victim is not a necessary condition for punishment.
- [38]. Generally, the Spanish *Constitución* [Constitution] of 27 December 1978²² provides that all international treaties ratified by Spain and published in the Official Journal of the State become part of the Spanish legal system (Article 96). Furthermore, the Constitution establishes in Article 39(4) that children enjoy the protection granted to them by international treaties on children’s rights. In addition, Organic Law 1/1996 of 15 February 1996 on the *Protección Jurídica del Menor* [Legal Protection of Minors],²³ establishes that minors enjoy the rights granted to them by the UN Convention on the Rights of the Child. The Organic Law 5/2000 of 12 January *Reguladora de la responsabilidad penal de los menores* [on the criminal responsibility of minors]²⁴ regulates the criminal responsibility of minors between 14 and 18 years.
- [39]. There is no case-law establishing direct applicability of international standards on child trafficking.
- [40]. The Organic Law on the Legal Protection of Minors regulating the right of the minor to respect, intimacy, the right to control the use of one’s own image, right to information, freedom of opinion and ideology etc., establishes the principle of the **primary consideration of the best interests of the child** in all actions by public authorities. Furthermore, the Organic Law 4/2000 of 11 January on *Derechos y libertades de los extranjeros en España y su integración social* [Rights and Freedoms of Foreigners in Spain and their Social Integration, also known as the Spanish Aliens Organic Law]²⁵ and the corresponding statutory regulation (Royal Decree 2393/2004)²⁶ also known as the Aliens Ordinance establish that the repatriation of an unaccompanied foreign minor will proceed only if this is in accordance with the principle of the priority of best interests of the minor.

²² Spain/Constitución (29.12.1978).

²³ Spain/Ley Orgánica 1/1996 (15.01.1996).

²⁴ Spain/Ley Orgánica 5/2000 (12.01.2000).

²⁵ Spain/Ley Orgánica 4/2000 (11.01.2000).

²⁶ Spain/Real Decreto 2393/2004 (30.12.2004).

- [41]. Circular 2/2006 of 27 July 2006 of the Public Prosecutor's Office on *Diversos aspectos relativos al régimen de los extranjeros en España* [Various issues relating to foreigners resident in Spain]²⁷ shows the extreme complexity of the legal treatment of unaccompanied foreign minors because, as stated in Instruction 6/2004 of 26 November 2004 of the same Public Prosecutor's Office on *Tratamiento jurídico de los menores extranjeros inmigrantes no acompañados* [Legal treatment of unaccompanied foreign minors],²⁸ to the problems inherent to the phenomenon of aliens are added those caused by the aspect of minority. The Public Prosecutor's Office confirms in this Circular that the legal treatment of minors and all legal measures adopted relating to them should at all times take into account the best interests of the child, as established in Article 3 of the Convention on the Rights of the Child.

A.3. Action Plans

- [42]. Through the *Acuerdo del Consejo de Ministros* [Agreement of the Council of Ministers] of 16 June 2006, Spain approved the *Plan Estratégico Nacional de Infancia y Adolescencia 2006-2009* [National Strategic Plan on Children and Adolescents (2006-2009)]²⁹ which has the following main objectives:
- to establish a permanent and shared information system in order to improve knowledge of the situation of children in Spain;
 - to promote the rights and protection of children with regard to mass media and new technologies;
 - to improve the attention and care given to vulnerable, unprotected and disabled children and adolescents as well as to those who are socially excluded, establishing shared quality standards and best practices which can be evaluated;
 - to strengthen schemes establishing mechanisms of prevention and rehabilitation in cases of high-risk social situations of children and adolescents;
 - to guarantee good quality education for all, including the teaching of values, the consideration of diversity and the promotion of gender equality, in order to enhance interculturality, respect for minorities, compensate for inequalities and ensure, through continued attention, the maximum development of children from the first years of their lives until adolescence.

²⁷ <http://www.fiscal.es/fiscal/public> (15.07.2008).

²⁸ <http://www.fiscal.es/fiscal/public> (15.07.2008).

²⁹

<http://www.mtas.es/sgas/FamiliaInfanc/infancia/PlanesInformes/PlanEstra2006Espa.pdf> (17.07.2008).

Child protection is both a competence of the central State and of the autonomous communities. The latter have also elaborated *Planes de Infancia* [Child Protection Plans].³⁰

Specifically with regards to child trafficking, Spain adopted the *Primer Plan de Acción contra la Explotación Sexual Comercial de la Infancia y la Adolescencia* [Action Plan I against the sexual commercial exploitation of children and adolescents] on 12 December 2001. *The II Plan de Acción contra la Explotación Sexual de la Infancia y Adolescencia 2006 -2009* [Action Plan II against the sexual commercial exploitation of children and adolescents] was adopted on 14 December 2005.³¹

³⁰ For example, *Plan Integral de atención a la Infancia de Andalucía. Junta de Andalucía. (2003-2007)* [Comprehensive Plan for child care in Andalusia. Andalusian Government (2003-2007)]; *Plan integral de infancia, familia y adolescencia 2004-2007 (Gobierno del Principado de Asturias)* [Comprehensive Plan on Children, Family and Adolescence 2004-2007 (Government of the Principality of Asturias)]; *Plan integral del menor en Canarias (Cabildo de Canarias)* [Comprehensive Plan on Minors on the Canary Islands (Council of the Canary Islands)]; *Plan de acción para la infancia y la adolescencia en Cantabria (Gobierno de Cantabria)* [Action Plan on Children and Adolescents in Cantabria (Government of Cantabria)]; *Plan integral para la infancia y la adolescencia en Castilla-La Mancha 1999-2003 (Junta de Comunidades de Castilla-La Mancha)* [Comprehensive Plan on Children and Adolescents in Castille-La Mancha 1999-2003 (Council of Castille-La Mancha)]; *Plan regional sectorial de protección y atención a la infancia de la Junta de Castilla y León 2000-2003 (Junta de Castilla y León)* [Regional Sectoral Plan on Child Protection and Care of the Council of Castille-Leon 2000-2003 (Council of Castille-Leon)]; *Pla Integral de suport a la Infancia i l'Adolescència de Catalunya (Generalitat de Catalunya)* [Comprehensive Plan for the Support to Children and Adolescents in Catalonia (Generalitat of Catalonia)]; *III Plan integral de apoyo a la familia 2002-2005 (Xunta de Galicia)* [III Comprehensive Plan on Family Support 2002-2005 (Council of Galicia)]; *II Plan Integral de Infancia. 2006 – 2009. Gobierno de La Rioja* [II Comprehensive Child Protection Plan 2006-2009 (Government of La Rioja)]; *II Plan de atención social a la infancia en la Comunidad de Madrid (Comunidad de Madrid, 2003)* [II Plan on the Social Care of Children in the Community of Madrid (Community of Madrid, 2003)]; *Plan de atención a la infancia y adolescencia en dificultad social de la Comunidad foral de Navarra (Gobierno de Navarra)* [Plan on the Care for Socially Disadvantaged Children and Adolescents in the Autonomous Community of Navarra (Government of Navarra)]; *Plan integral de la familia e infancia de la Comunidad Valenciana 2002-2005 (Generalitat Valenciana)* [Comprehensive Plan on Family and Children in the Community of Valencia 2002-2005 (Generalitat of Valencia)]; *Plan de Infancia para la atención de las situaciones de desprotección infantil. (Diputación Foral de Bizkaia, 2000)* [Plan on the Care for Disadvantaged Children (Council of Bizkaia, 2000)].

³¹ Plans adopted by the *Pleno del Observatorio de la Infancia* [Plenum of the Child Observatory], available at:

http://www.mtas.es/inicioas/observatoriodeinfancia/documentos/Evaluacion_Plan_Explo Sexual Infancia.pdf (01.08.2008)

http://www.mtin.es/inicioas/observatoriodeinfancia/documentos/IIPlan_contra_ESI.pdf (01.08.2008)

Action Plan I was originally in force for the period 2002-2003 but then extended for the next two years, 2004 and 2005. It constituted an important landmark in applying and making visible the Optional Protocol to the Convention on the Rights of Children on the Sale of Children, Child Prostitution and Child Pornography.³² In addition, Action Plan I included the commitments made in the Declarations and Action Plans approved by the World Congresses against the Commercial Sexual Exploitation of Children held in Stockholm in 1996 and in Yokohama in 2001.³³ The *Informe de Evaluación* [Assessment Report] of 2004 distributed by the Ministry of Labour and Social Affairs can be consulted for more details of the activities carried out by the different authorities under Action Plan I.³⁴ In the following paragraphs, we summarise the most important activities arising from the Plan's objectives, in the order that they are presented in the Plan.

The first general objective related to knowledge of the situation and the collection, exchange and distribution of information. This was reflected mainly in the activities of the *Unidades especializadas en delitos contra menores* (GRUMES) [Units specialising in crimes against minors] of the *Dirección General de la Policía* [General Directorate of the Police Office]. These units distributed information over the entire Spanish territory and exchanged information with the National Unit of INTERPOL. The report describes the work carried out by these units in distributing information and images of missing children and creating single registers (within only an hour) of unaccompanied foreign minors. The elaboration and translation of materials with the help of internationally active NGOs (ECPAT Spain,³⁵ Save the Children, UNICEF, etc.) is also highlighted.

The second general objective was awareness-raising, social mobilisation and prevention of sexual exploitation of minors, with special attention paid to high-risk groups. Numerous activities corresponding to this objective were carried out by the participating authorities, such as workshops, seminars and courses addressing various professional groups; campaigns; and other awareness-raising activities. Based on investigations and the results of the evaluation, the report concludes that there are still many prejudices regarding the sexual exploitation of children, partly due to lack of knowledge of this issue. This lack of knowledge is particularly serious in the case of the professionals whose work is related to children. Among the activities carried out in line with this objective, the report especially highlights the Spanish campaign against sex tourism, designed by UNICEF in coordination with the Ministry of Labour and Social

³² Published in the Official Journal of the State of 31 January 2002.

³³ <http://www.unicef.org/events/yokohama/outcome.html> (01.07.2008)

³⁴

http://www.mtas.es/inicioas/observatoriodeinfancia/documentos/Evaluacion_Plan_Exploit_Sexual_Infancia.pdf (12.07.2008)

³⁵ End Child Prostitution in Asian Tourism. The web page of the Spanish section is: <http://www.ecpat-esp.org/>.

Affairs and in collaboration with the *Secretaría General de Comercio y Turismo* [Secretary General of Business and Tourism], ECPAT-Spain and others. Several activities were organised as part of this campaign, for example the Code of practice for holiday companies, posters and leaflets were distributed, a translated version of the video ‘Souvenir’ produced by ECPAT was broadcast on various international flights and trainers for holiday companies were trained.

The third general objective was to improve existing mechanisms of detection and complaint and to create new ones. This objective was implemented by setting up information hotlines for minors by the autonomous communities and various NGOs, as well as by drawing up and distributing guidelines and handbooks aimed primarily at professionals on how to detect abuse and submit complaints. The report emphasises the use of new information technologies such as the internet for fulfilling this objective. It also highlights the role of the complaint hotlines such as the one set up by *Asociación Protégeles* [the Protect Them Association], which has contributed to the detection of several internet child pornography networks with the collaboration of the *Brigada de Investigación Tecnológica de la Dirección General de la Policía* [Technological Investigation Brigade at the General Directorate of the Police Office]. The report further highlights the web pages and campaigns on the safe use of the internet by children run by State authorities as well as several NGOs.

Action Plan II against the Commercial Sexual Exploitation of Children and Adolescents (2006-2009) aims to tackle the commercial sexual exploitation of children and adolescents by improving coordination among all levels, from supranational to local. The Plan was written by the Child Observatory, an independent institution under the Ministry of Labour and Social Affairs. (However, as we already mentioned, since the start of the new term of office on April 2008 there is a Ministry of Labour and Immigration and a Ministry of Education, Social Policy and Sports, which is currently competent for questions relating to children). The Central State Administration participates in the Child Observatory through the Ministry of Education, the *Ministerio de Sanidad y Consumo* [Ministry of Health and Consumption], the *Ministerio de Justicia* [Ministry of Justice], the *Ministerio del Interior* [Ministry of the Interior], the *Ministerio de Asuntos Exteriores y Cooperación* [Ministry of Foreign Affairs and Cooperation], the *Ministerio de Economía y Hacienda* [Ministry of Economy and Finance], the autonomous communities and at the local level, several representatives of the *Federación Española de Municipios y Provincias* [Spanish Federation of Municipalities and Provinces]. (For more details, please see A.4. below.) The three administrations (central, autonomous and local) carry out the activities and programmes provided by the Plan according to their respective competencies. The Plan refers exclusively to sexual exploitation understood as ‘the abuse and sexual exploitation of children and adolescents, the international trafficking of minors for the purpose of the sale of children, prostitution or their use in pornography’. Fundamental elements of the Action Plan II are knowledge of the phenomenon, training professionals, raising social

awareness and strengthening the coordination and cooperation between all parties involved in this area.

The most relevant objectives of Action Plan II, presently in force, are the following:

- Knowledge of the facts regarding the sexual exploitation of children and adolescents in Spain and the creation of detection and complaint mechanisms;
- Raising awareness, social mobilisation and prevention of sexual exploitation of minors;
- Establishment of an adequate legal framework to combat the sexual exploitation of minors, both at the national and international level;
- Protection and care of children and adolescents who suffer exploitation as well as treatment of offenders in order to avoid recidivism;
- Strengthening institutions and organisations, both public and private, that participate in the fight against the sexual exploitation of minors and in their protection.

When the implementation period for Action Plan II is over, a global evaluation of its results will be carried out, as has already been done for Action Plan I. Notwithstanding, we can present the following data (in the order of the objectives above):

- The Child Observatory produced two reports entitled *Infancia en cifras* [Childhood in Numbers] in 2006 and 2007 where it collected data on the situation of children in Spain generally. Some of its indicators refer to children in high-risk situations and to social exclusion, child poverty and immigration.³⁶
- The *Grupo de Trabajo sobre Maltrato Infantil* [Working Group on Child Abuse] of the Child Observatory wrote a report entitled *Maltrato infantil: detección, notificación y registro de casos* [Child abuse: detection, notification and register of cases], which proposed a unified set of criteria for child abuse and interventions in this area. The report also proposed a form for the notification of the cases detected in order to facilitate their handling and to keep track of the prevalence of child abuse. These forms use the same criteria and aim to provide deeper knowledge of child abuse.³⁷
- Furthermore, the application of the ‘Protocol on unaccompanied foreign minors’ has been extended to all public authorities in charge of

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<http://www.mtas.es/SGAS/FamiliaInfanc/infancia/AcuerdosConvenios/InfanciaCifras2.pdf>

³⁷ <http://www.mtas.es/inicioas/observatoriodeinfancia/documentos/HojasDeteccion.pdf>

unaccompanied minors. This Protocol has the objective of instituting coordinated action to detect high-risk situations for unaccompanied foreign minors. The Protocol establishes the following action guidelines:

As soon as the *Fuerzas y Cuerpos de la Seguridad del Estado* [State Police and Security Forces] or the *Policía autonómica* [Police Office of an autonomous community] or the *Policía Local* [Local Police] become aware of an unaccompanied foreign minor, the Public Prosecutor's Office has to be notified in order to:

- Ascertain the facts.
 - If the minority of the unaccompanied foreigner can be determined without medical examination, the Register of Unaccompanied Foreign Minors is notified and the minor automatically receives an 'Identification Number for Foreigners'.
 - Authorise a medical examination to ascertain the age of the foreigner if necessary. - Enter the minor into the Register of Unaccompanied Foreign Minors if the medical examination ascertains that the foreigner is under-age.
- The Public Prosecutor's Office adopted Instruction 6/2004 of 26 November regarding the Legal treatment of unaccompanied foreign minors (already mentioned) establishing guidelines for prosecutors in order to guarantee that the rights of these minors are respected and that they are protected as far as possible. As mentioned above, the *Cortes Generales* [Spanish Parliament] adopted the Organic Law on the cross-border prosecution of trafficking in human beings and illegal immigration³⁸ as an instrument to combat people trafficking, including minors.
 - On 22 November 2007, the Child Observatory adopted the *Módulo de referencia para el desarrollo de un Protocolo de actuación en casos de maltrato infantil* '[Model for developing an Action Protocol in cases of Child Abuse]'. The objective of this document is to improve the attention paid to victims of child abuse by ensuring that the competent authorities take coordinated and effective action that takes into consideration the particular rights and needs of girls and boys.³⁹
 - The *Código de Autorregulación sobre Contenidos Televisivos e Infancia* ['Self-regulation Code regarding TV contents and Children'] written by the Child Observatory in collaboration with the Ministerio de

³⁸ Spain/Ley Orgánica 13/2007 (19.11.2007).

³⁹ Document available at: <http://www.mtin.es/inicioas/observatoriodeinfancia/presentacion/index.html> (12.07.2008)

Presidencia [Presidential Office], UNICEF and the NGO ‘Childhood’, was published.⁴⁰

- [43]. One of the objectives of Action Plan I (2002-2005) and Action Plan II (2006-2009) against the sexual commercial exploitation of children and adolescents has been to establish an adequate legal framework to fight against the trafficking of minors. In this regard it should be pointed out that during the implementation period of Action Plan I, Law 34/2002 of 11 July *de Servicios de la Sociedad de la Información y de Comercio Electrónico* [on Information Society Services and Electronic Commerce]⁴¹ was passed, which represented the first legal instrument in Spain regulating online practices and included specific rules for the protection of minors on the internet. During this period, Organic Law 15/2003 of 25 November *de modificación del Código Penal* [modifying the Criminal Code]⁴² was also passed in order to increase the penalties for exhibitionism and sexual provocation. It also criminalised and introduced sanctions for child pornography. The overall effect was to make punishment more severe, tighten the description of punishable conduct and introduce new types of offences, such as the possession for private use of pornographic material showing minors and persons without legal capacity and virtual child pornography.
- [44]. Previously Organic Law 11/1999 of 30 April⁴³ had already modified the Criminal Code regarding offences against sexual freedom. The guidelines that oriented the drafting process of this law were those formulated in Resolution 1099 (1996) of 25 September 1996 on the Sexual Exploitation of Children, passed by the Council of Europe Parliamentary Assembly.⁴⁴ At the same time, the commitment laid out in the Joint Action of the European Union of 29 November 1996 was carried out by reviewing the national legislation in force regarding, inter alia, the sexual exploitation of children, the sexual abuse of children and child trafficking with the purpose of sexual exploitation or abuse, establishing for these offences effective, proportional and dissuasive punishments and expanding the basis for the competence of the courts beyond the strict principle of territoriality. The principal modifications introduced by Organic Law 11/1999 were the following (for an explanation of the relevance of this issue to this study, see section A.1.2. above):

⁴⁰ Document available at: <http://www.mtas.es/inicioas/observatoriodeinfancia/documentos/FolletoTV.pdf> (12.07.2008)

⁴¹ Spain/Ley 34/2002 (11.07.2002).

⁴² Spain/Ley Orgánica 15/2003 (25.11.2003).

⁴³ Spain/Ley Orgánica 11/1999 (30.04.1999).

⁴⁴ Council of Europe Parliamentary Assembly (1996) *Resolution 1099 (1996) of 25 September 1996 on the Sexual Exploitation of Children*, available at: http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_sexual_exploitation_of_children/4_international_instruments/Resolution1099.pdf (17.07.2008)

- Generally making more severe the punishments for offences against sexual freedom.
- Expanding the principle of universal justice, so that Spanish courts are able to judge (under certain procedural requirements) offences related to prostitution and the corruption of minors committed by Spanish or foreign citizens outside national territory. The trafficking of persons for the purpose of sexual exploitation that brings them into, or takes them out of, the national territory is criminalised. The age up to which a child's consent is considered immaterial is raised to 13 years. This means that when the victim is a child of under 13 years, the crime of sexual abuse has always been committed. In the cases where the victim is between 13 and 18 years old, it must be proven that the incident occurred without the consent of the minor and without deception on the part of the latter.
- The offence of corruption of minors is reintroduced. This legal norm punishes persons who induce, promote or facilitate the prostitution of a minor or of a person without legal capacity.
- The term 'rape' is re-established for certain sexual offences, defined as any form of penetration.
- The use of minors in pornographic material is criminalised, as well as the production, sale, distribution and exhibition of this kind of pornographic material, including its possession.
- For certain offences where the victim is underage (homicide, abortion without consent, bodily harm, mistreatment, kidnapping, torture and other offences against moral integrity, sexual freedom and intimacy), the limitation period does not start to run until the victim comes of age.
- The term 'sexual harassment' is also redefined in the area of labour relations, teacher-student relations and similar relations. Spanish law punishes sexual harassment more severely when it is committed by a superior or by somebody in a relationship of superiority to the victim.

In relation to the specific objective of developing a legal framework for the protection of children and adolescents living on the street (generally vulnerable alien minors) punitive legislative measures were adopted with regard to commerce and tourism. In this respect, Law 34/2002 on Information Society Services and Electronic Commerce includes penalties for companies that carry out illegal activities through the internet involving minors. For example, a website could have restrictions imposed on it to protect minors from harmful contents.

[45]. In relation to the objective of analysing the existing relationship between sexual exploitation and child trafficking, the *Comisión Mixta de Derechos de la Mujer* [Joint Parliamentary Committee on Women's Rights] published a *Informe sobre el tráfico internacional de mujeres, niños y niñas* [Report on the traffic in women, boys and girls] destined for sexual services.⁴⁵ This was the first report in Spain on the international trafficking of women, girls and boys and it proposed a *Plan Integral de Lucha contra el Tráfico Internacional de Mujeres, Niños y Niñas* [Integrated Plan for Fighting the International Trafficking of Women, Girls and Boys]. The report stated that the prevention and elimination of people trafficking, especially in women and children, necessitate public awareness of the origin, transit and destination countries, and also measures to prevent and reduce people trafficking, to punish the traffickers and protect the victims. The proposed Plan was based on five broad areas:⁴⁶

- The first area includes prevention measures to create public awareness of the seriousness of the issue and of the particular vulnerability of women and girls. It includes campaigns to promote zero tolerance of trafficking, information campaigns in the countries of origin regarding opportunities for legal immigration as well as information campaigns conducted by embassies, airports and ports.
- The second area contains education and training measures, which are without doubt essential, in order to develop educational models based on respect and equal opportunities between women and men, which is the Committee's central objective. It is worth pointing out the programmes introduced in educational institutions to promote an understanding of equality of opportunities from a gender perspective as well as special training programmes and courses designed for teachers, the security and police forces, judges, prosecutors etc. in order to help them better identify the causes of trafficking and respond to them adequately. Furthermore, it is necessary to inform, raise awareness and educate children, parents, teachers and other internet users on the use and abuse of the internet, emphasising complaint mechanisms.

⁴⁵ Report published in the *Diario de Sesiones de las Cortes Generales* [Official Journal of Parliament] of 16 September 2003, available at: <http://www.malostratos.org/images/pdf/DEBATE%20INFORME%20TRAFICO%20UJERES.pdf> (01.08.2008)

⁴⁶ These proposals can also be consulted in the Official Journal of Parliament of 16 September 2003, available at: <http://www.malostratos.org/images/pdf/DEBATE%20INFORME%20TRAFICO%20UJERES.pdf> (01.08.2008)

- The third area contains assistance and protective measures for victims such as the creation of special centres to help the integration of victims; protection of victims and witnesses in compliance with Organic Law 19/1994 of 23 December on *Protección a Testigos y Peritos* [Protection of Witnesses and Judicial Experts];⁴⁷ improved financing for NGOs working in these areas; and the elaboration of guidelines on the correct treatment of victims.
- The fourth area contains legislative and procedural measures such as the elaboration of an action protocol aimed at the State security and police forces; the continuation of efforts to harmonise European legislation on this issue and research into the possibility of allowing NGOs to act in court as private prosecutors defending the rights of the victims.
- The fifth and final area refers to coordination and cooperation measures, and includes activities such as studies and research to identify the scale of this phenomenon; coordination of all police departments and collaboration with Interpol and Europol in exchanging information and applying procedures to detect and eliminate trafficking networks; and creating a national committee or office to promote collaboration between the Police Office, prosecutors, judges, NGOs and relevant public authorities including the *Delegación del Gobierno para la Extranjería y la Inmigración* [Government Department for Foreigners and Immigration], the *Instituto de la Mujer* [Woman's Institute] and the youth welfare authorities of the autonomous communities.

This broad integrated plan for the fight against international trafficking in women and children and women's rights received the full support of the Joint Committee. However, the Plan has not yet been adopted. Thus, on 2 November 2004, the Spanish Parliament encouraged the Government to adopt as fast as possible the Integrated Plan against Trafficking, which was still pending from the previous legislative period.⁴⁸ Furthermore, in May 2005 the Joint Parliamentary Committee on Women's Rights presented a new proposal of the same tenor as the above-mentioned, incorporating some of the activities proposed in the report by the the Committee for 2003. In May 2005, the Government charged the Ministry of the Interior with the initial elaboration of the above-mentioned Integrated Plan and subsequent coordination with other Ministries involved.⁴⁹ In March 2007, the Joint Parliamentary Committee on Women's Rights presented again a proposal for a bill on the trafficking of women. The same Committee insisted to the Government that the Integrated

⁴⁷ Spain/Ley Orgánica 19/1994 (23.12.1994).

⁴⁸ For further information see: http://www.mtas.es/mujer/politicas/docs/Informe_spain.doc (10.07.2008)

⁴⁹ Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

Plan be adopted during that session. In May 2008, declarations by the *Vicepresidenta* [Spanish Vice President] were published in the press announcing that the next law on equal treatment between women and men would contain an integrated programme for the fight against the trafficking of women. Furthermore, the government plans a Plan on Human Rights to be ready by the end of the year 2008, containing an integrated programme for fighting against people trafficking with the propose of sexual as well as commercial exploitation.⁵⁰

A.4. Data collection mechanisms

- [46]. It must be noted that it is not always possible to obtain separate data from the Ministry of Justice on the traffic in minors as the available data either do not differentiate by age or do not specify the offences they relate to. (For more details about the activities carried out to collect data during this study, see section A.1.3. above.) On the other hand, Royal Decree 1184/2006 of 13 October⁵¹ gives the *Comisión Nacional de Estadística Judicial* [National Committee for Judicial Statistics] the duties of approving both the general and specific statistical plans to be implemented by the Ministry of Justice and establishing standard criteria to be applied by all parties for the collection, processing, transferral and use of statistical data from the Spanish legal system. It is to be expected that once the Committee is fully operational, detailed information will be available on this and other subjects. On 17 May 2007, the *Secretario de Estado de Justicia* [State Secretary for Justice] presided over the constitutive session of the National Committee for Judicial Statistics.⁵² The Minister of Justice affirmed during a hearing before the *Comisión de Justicia* [Parliamentary Justice Committee] on 25 June 2008 that several working groups

⁵⁰ <http://www.elmundo.es/elmundo/2008/05/12/espana/1210592861.html> (30.06.2008)

⁵¹ Spain/Real Decreto 1184/2006 (13.10.2006).

⁵² The National Committee for Judicial Statistics is an instrument introduced by the Plan for Judicial Transparency (based on the collection of credible statistical data from the Spanish judicial system that identifies its weak points in order to combat them). One of its main objectives is to evaluate the functioning of the Judicial Administration.

The Plenum consists of seven members: one representative of the Ministry of Justice, one representative of the General Judicial Council, one representative of the General State Prosecutor's Office and four representatives of four autonomous communities with competences in the domain of justice. The functions of the Committee are amongst others: to adopt the statistical plans of the Judicial Administration and to establish uniform criteria for the collection, processing, distribution and use of the statistical data from the judicial system.

<http://www.mjusticia.es/cs/Satellite?blobcol=urldocumento&blobheader=application%2Fpdf&blobheadername0=content-type&blobheadername1=content-disposition&blobheadervalue0=application%2Foctet-stream&blobheadervalue1=inline%3Bfilename%3D070517e&blobkey=id&blobtable=Documento&blobwhere=1161677938312&ssbinary=true>

have been created within the Committee to perform tasks which are fundamental to its functioning.⁵³ The Minister promised to support the work of the Committee, together with the rest of the authorities represented there. In order to collect data on child welfare, the Child Observatory was created in 1999,⁵⁴ which is, as we have already explained, a body under the aegis of the Ministry of Labour and Social Affairs in which various parties with responsibilities relating to children participate (see above section A.3.).

An important aspect of the Observatory is its composition, as it includes representatives of the State, the autonomous communities and NGOs specialising in child protection. Other members are the Ministry of Labour and Social Affairs, the Ministry of Education and Science, the Ministry of Health and Consumer Affairs, the Ministry of Justice, the Ministry of the Interior, the Ministry of Foreign Affairs and Cooperation, the Ministry of Economics and Finance, the autonomous communities, representatives of the Spanish Federation of Municipalities and Provinces, a representative from the Spanish Committee of UNICEF, a representative of the organization *Aldeas Infantiles* [Child Villages], a representative of Caritas Spain, a representative of the Spanish Red Cross, a representative of the *Federación de Asociaciones para la Prevención del Maltrato Infantil* [Federation of Associations for the Prevention of Child Abuse], a representative of the *Plataforma de Organizaciones de Infancia* [Platform of Children's Organisations] and a representative of the *Consejo de la Juventud de España* [Spanish Youth Council].

One of the main objectives of the Child Observatory is to maintain a central and shared information system to monitor children's wellbeing and quality of life and the development, implementation and effects of public policies targeting this group. In addition, the Observatory aims to set up coordination mechanisms for collecting and analysing data on children, especially between the different branches of public administration.

In order to establish this central information system, the Observatory has created working groups that concentrate on specific problems. Representatives of various public institutions and bodies as well as NGOs participate in these. These working groups are as follows:

⁵³<http://www.mjusticia.es/cs/Satellite?blobcol=urldocumento&blobheader=application%2Fpdf&blobheadername0=content-type&blobheadername1=content-disposition&blobheadervalue0=application%2Foctet-stream&blobheadervalue1=inline%3Bfilename%3D080625c&blobkey=id&blobtable=Documento&blobwhere=1161678673393&ssbinary=true>

⁵⁴ By *Acuerdo del Consejo de Ministros* [Agreement of the Council of Ministers] of 12 March 1999, in accordance to Law 6/1997 of 14 April on *Organización y Funcionamiento de la Administración General del Estado* [Organisation and Functioning of the General State Administration] Spain/Ley 6/1997 (14.04.1997). <http://www.mtin.es/inicioas/observatoriodeinfancia/contexto/antecedentes.html> (15.07.2008).

CARE FOR ALIEN MINORS IN SPAIN AND THEIR SOCIAL INTEGRATION	<i>Secretaría de Estado y Emigración — Dirección General de Inmigración y Dirección General de Integración de los Inmigrantes</i> [Secretary of State for Immigration and Emigration, Directorate General for Immigration and Directorate General for the Integration of Immigrants]
CHILD MISTREATMENT	Instituto Madrileño del Menor y de la Familia de la Comunidad Autónoma de Madrid [Madrid Institute for Minors and Families of the Autonomous Community of Madrid]
FOSTER FAMILIES AND ADOPTION	<i>Gerencia de Servicios Sociales de la Junta de Castilla y León</i> [Social Services Board of the Council of Castilla and Leon]
CHILDREN, ADOLESCENTS AND MASS MEDIA	<i>Plataforma de Organizaciones de Infancia</i> [Platform of Children's Organisations]
NATIONAL STRATEGIC PLAN ON CHILDREN AND ADOLESCENTS	<i>Dirección General de las Familias y la Infancia — Ministerio de Trabajo y Asuntos Sociales</i> [Directorate General for Families and Children of the Ministry of Labour and Social Affairs]
PEACEFUL COEXISTENCE AND SOCIAL INTEGRATION	<i>Instituto de la Juventud — Ministerio de Trabajo y Asuntos Sociales</i> [Youth Institute of the Ministry of Labour and Social Affairs]

Within the 'Child Mistreatment' group, two subgroups have been created that are relevant to the subject of this report. The first is the subgroup on 'Sexual Exploitation of Children during Travel' which works on detecting the sexual exploitation of minors by tourists during their travels. It is not specified if the target group are tourists travelling to Spain or Spanish tourists going abroad. Neither the creation nor the structure of the subgroup prohibit it from dealing with either target group. Participants in this subgroup are the Ministry of Labour and Social Affairs, the *Instituto de Calidad Turística Español* [Spanish Institute for Quality Tourism], the *Organización Mundial de Turismo* [World Tourism Organization], the Federation of Associations for the Prevention of Child Abuse, the *Associació Catalana per la Infància Maltractada* [Catalan Association for Abused Children (ACIM)], End Child Prostitution in Asian Tourism (ECPAT) Spain, the *Agencia Española de Cooperación Internacional* (AECI) [Spanish Agency for International Cooperation (AECI)], Save the Children, *Acción por*

las mujeres en situacion precaria [Action for Vulnerable Women] , the *Organización Internacional de Policía Criminal* [International Criminal Police Organization (Interpol)], the *Cuerpo Nacional de Policía - Comisaría General de Policía Judicial* [National Police Corps' National Crime Squad], and the *Fondo Internacional de Emergencia de las Naciones Unidas para los niños (UNICEF) - Comité Español* [Spanish Committee of the United Nations International Children's Emergency Fund (UNICEF)].

The second subgroup is the group for the 'Monitoring and Evaluation of Action Plan II against the Commercial Sexual Exploitation of Children and Adolescents' and aims to evaluate the results of the Action Plan II (2006-2009). The Observatory's website announces the creation of this subgroup, although its members are still to be appointed.⁵⁵ As mentioned above, as for Action Plan I, the evaluation will be take place at the end of the period for which the Plan is in force.

Some autonomous communities have also, within the sphere of their respective competences, created Child Observatories (namely Andalusia, Asturias, Catalonia, and Murcia). These Observatories operate in a similar way to the State Child Observatory and are made up of representatives of public bodies, NGOs and working groups in this field.

With regard to data collection, we should point out the implementation as of May 2008 of 'Operation Nemo', a system of information retrieval and control created by the *Unidad Central de Inteligencia Criminal* [Central Unit of Criminal Intelligence].⁵⁶ 'Operation Nemo' aims to establish who offenders against minors are by compiling and updating all the information available to any police service (using a file for each offender) and thus facilitate a possible investigation if this kind of crime is committed. This Operation focuses on all offences against sexual freedom in which the victim is a minor and/or offences against life and in case of disappearance of a victim, where the offender's motive is of a sexual nature. The Operation is divided into three categories depending on the age of the victim: NEMO '0' when the age of the victim is not known; NEMO '1' from 0 up to and including 12 years; and NEMO '2' from 13 up to and including 17 years.

- [47]. In the framework of the AGIS Programme⁵⁷ (2003-2007), which had a budget of 65 million euros, various NGOs financed projects for protecting victims of trafficking based on cooperation between different organisations and national institutions.

⁵⁵ http://www.mtas.es/inicioas/observatoriodeinfancia/grupos/maltrato_infantil.html (30.06.2008).

⁵⁶ Spain/Policía Judicial de la Dirección General de Policía y de la Guardia Civil (2008) *Informe sobre tráfico de menores..*

⁵⁷ See previous foot note.

http://ec.europa.eu/justice_home/funding/2004_2007/agis/funding_agis_en.htm

- [48]. The National Strategic Plan on Children and Adolescents 2006-2009 (cited in section A.3 and not to be confused with the Action Plans against sexual exploitation) was allocated a budget of 4.369.304 euros for the year 2005 and 4.648.289 euros for the year 2006 to the account of the Central State and 26.692.336 euros for 2005 and 29.508.779 euros for 2006 to the account of the autonomous communities.⁵⁸
- [49]. There is no data available that refers exclusively to the budget for programmes aiming to prevent the traffic in children as such programmes are included in social protection programmes and programmes for the care of disadvantaged families. Thus, although the budgetary funds detailed below do not refer specifically to child trafficking, we consider it relevant to mention them as they serve indirectly to protect the family unit and the child victims of abuse, thus preventing child trafficking and dealing with its consequences.

Specific funding is allocated to programmes to prevent high-risk situations and child abuse. In 2007 several budget items were approved for these purposes. The Programme for Family Education, Care for Disadvantaged Families, Families in a High-Risk Situation and Single Parent Families was approved with a budget of 9,055.500.76 euros.⁵⁹ The objective of these programmes is to provide individual and comprehensive assistance to families who are socially disadvantaged or at risk. (The relevance of these programmes for this study has been explained in section A.1.2., above.) These programmes cover socio-educational projects and assistance, as well as integration into the labour market. They may also target single parent families with children under 18 years of age who are experiencing difficulty. The purpose of these socio-educational projects is to enable adults performing parental roles to take care of themselves, to take care of and educate their children and to organise and run a household. The programmes to be carried out are selected by agreement between the Ministry of Labour and Social Affairs and the respective autonomous community.

In agreement with the autonomous communities, a grant of € 915.750 was also approved for experimental programmes in the area of abused children, with the aim of improving the protection system for disadvantaged children, especially in cases of child abuse. Moreover, the government funded experimental programmes that concentrate on prevention in high-risk situations and which target families where abuse is practised and where minors are vulnerable.⁶⁰

⁵⁸ <http://www.mtas.es/inicioas/observatoriodeinfancia/novedades/PLAN.pdf>

⁵⁹ Resolution of 14 March 2007 of the Technical Secretary General on the release of the Agreement of the Council of Ministers setting out for 2007 the criteria for the distribution of financial comprises adopted by the Sectorial Conference on Social Affairs regarding loans [funding?] for co-financing of social plans and programmes. (Official Journal of the State of 24 March 2007).

⁶⁰ Please see the previous footnote.

The programmes were carried out by the autonomous communities, including Ceuta and Melilla (which are autonomous cities, which co-financed the projects. Programmes were selected on the basis of their innovative and experimental nature in relation to the early detection by social services, schools, health services and police of high-risk situations regarding minors. Both administrations, central and autonomous, participated in monitoring and evaluating them. As a result of these programmes, programmes for the reporting and registration of cases of child abuse are currently being elaborated.

A.5. Ombudsman, Ombudsman for Minors and other monitoring mechanisms

- [50]. The Spanish Constitution (Article 54) created the post of the *Defensor del Pueblo* [National Ombudsman] as a guarantor of fundamental rights. The National Ombudsman has competence across the entire national territory to monitor public administration in all areas. The Ombudsman has dealt with children in several of his reports. Every year he presents a report to Parliament. Besides this Annual Report, the Ombudsman also publishes subject-specific reports. There are no specific reports on the traffic in minors, but the Ombudsman did draw up a relevant report in 2005⁶¹ on legal assistance to aliens in Spain in which he pointed out the importance of protecting the rights of foreign minors and of tackling the high-risk situations in which they might find themselves.
- [51]. The autonomous communities have created similar posts to that of the National Ombudsman with the power to monitor respect of fundamental rights by public bodies in their respective territories. These institutions prepare an Annual Report and sometimes special reports but none have referred to child trafficking.
- [52]. Moreover, the Autonomous Communities of Madrid and Andalusia have created a *Defensor del Menor* [Ombudsman for Minors] as an institution for monitoring and protecting the rights of children. It is an independent institution which produces annual reports as well as subject-specific reports. In Catalonia, the *Síndic de Greuges* [Ombudsman of Catalonia] has a special Deputy Ombudsman for minors.
- [53]. The *Informe Anual 2006* [2006 Annual Report] of the Ombudsman for Minors of the Community of Madrid points out that in Spain, child commercial exploitation is concentrated in the agricultural sector and that it is prevalent

⁶¹ Spain/Defensor del Pueblo (2005) *Informe sobre asistencia jurídica a los extranjeros en España*, available at: http://www.defensordelpueblo.es/documentacion/informesmonograficos/Informe_Assistencia_Juridica.zip (11.06.2008).

within families where school drop-out rates may reach 40%, social maladjustment 20% and lack of schooling 15%.⁶² This study refers to the reports of the latter two institutions in several places. However, of the reports of these institutions do not provide any specific data regarding trafficking in minors in the strict sense.

- [54]. With regard to the existence of a National Referral Mechanism, we can mention that the Ministry of the Interior coordinates measures against trafficking in human beings in general and works closely with the Presidential Office, the Ministry of Labour and Social Affairs, the Ministry of Justice and the Ministry of Education.
- [55]. In addition to this, the National Police tasked the *Comisaría General de Extranjería y Documentación* [General Commissariat for Foreigners and Documentation] with the prevention, prosecution and investigation of illegal immigration networks. Therefore, a *Unidad contra Redes de Inmigración y Falsedades Documentales* (UCRIF) [Unit against Immigration Networks and Counterfeit Documentation] was set up to investigate national and international criminal activities related to people trafficking and also to coordinate and provide technical support to local units. Every three months the regional offices of the National Police perform a review in order to establish objectives in the fight against trafficking in human beings and evaluate the objectives achieved over the past three months. There are also 65 *Servicios de Atención a la Familia* (SAF) [Family Support Service groups] with special competences concerning the fight against violence against women and minors. These SAF groups have been established in all the provinces and cities where their creation was necessary. The SAF groups specialise in crimes against women as well as in assistance to minor victims of crime. The SAF consists of 640 officials in the whole of Spain. Furthermore, the Civil Guard has a web page dedicated exclusively to informing children about possible crimes against them.⁶³
- [56]. As mentioned above in sections A.3. and A.4., there is also the Child Observatory, a body under the Ministry of Labour and Social Affairs, in which the central administration participates through the Ministry of Education and Science, the Ministry of Health and Consumption, the Ministry of Justice, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Economy and Finance; and in which also participate the autonomous communities and at local level several representatives of the Spanish Federation of Municipalities and Provinces.
- [57]. The government has financed and worked with NGOs that offer help to victims human trafficking. This collaboration was developed through the 'Child

⁶² Spain/Defensor del Menor de la Comunidad de Madrid/ *Annual Report 2006*, page 82, paragraph 6, available at:

<http://www.defensordelmenor.org/upload/documentacion/informes/informeAnual2006.pdf> (15.06.2008).

⁶³ <http://www.guardiacivil.es/infantil/index.jsp> (01.08.2008).

Observatories' and the *Consejerías de Familia y Bienestar Social* [Departments of Family and Social Welfare] of the autonomous communities. Furthermore, the autonomous and local governments offer assistance to children in high-risk situations either directly or through NGOs.

- [58]. As we have already explained in section A.3, as consequence of a report by the Joint Parliamentary Committee on Women's Rights, in May 2005 the Government tasked the Ministry of the Interior with the initial design of an integrated plan for fighting the international trafficking of women, girls and boys. A working group of experts was created but the Integrated Plan has yet not been adopted definitively.⁶⁴
- [59]. There is no evidence of existence of a specific **training strategy** for the professional actors involved in identification, care and protection of trafficked children. However, Spain has allocated budget items to promoting alternative measures to care for minors and specifically for the **training and education of professionals** in the autonomous communities who specialise in this area (see section E for further information on this issue). In addition to this, as already mentioned, the training of professionals is an essential element of the Action Plan II against the Commercial Sexual Exploitation of Children and Adolescents (2006-2009) (see section A.3).

A.6. Non-criminalisation

- [60]. There is no policy of non-criminalisation of trafficked children for example through legislation on prostitution, because in Spain prostitution is not legally regulated. Prostitution is neither regulated as a labour activity nor is completely accepted by society (opinion is divided between those who are in favour and those who are against). Nevertheless, prostitution is not an illegal activity, and it is not punished, with the exception of child prostitution. The major reform of the Spanish Criminal Code of 1995 implied the decriminalisation of some behaviour encouraging prostitution that was liable to prosecution before the reform. This led to the rapid development of the sex industry, so that as a consequence of the lack of labour regulation, an underground economic sector has been created. This sector has become more complex over recent years due to the inclusion of large numbers of women immigrants who are often illegally resident in Spain. Many of them are under the control of criminal organisations based in their home countries which introduce women into the Spanish sex market and exploit them.⁶⁵ Article 188 of the Criminal Code makes the sexual

⁶⁴ Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2007) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

⁶⁵ Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

exploitation of a person an offence: Paragraph 1 establishes that ‘Persons who induce a full age person to prostitute herself or continue with this activity, using force, intimidation or deceit, is subject to imprisonment from two to four years and a fine from 12 to 24 months. The same penalty applies to persons who gain financially from the prostitution of another person, regardless of the consent of the latter.’ The law prosecutes those who organise prostitution, including a higher punishment in case of child prostitution: Paragraph 3 of the Article establishes that ‘If the previously mentioned conduct refers to a minor or to a person without legal capacity, the higher penalty of the previous paragraph shall be applied.’

[61]. Article 187 of the Criminal Code refers especially to the prostitution of minors or persons without legal capacity and punishes persons who induce, promote, encourage or facilitate the prostitution of a minor or a person without legal capacity with imprisonment from one to four years and a fine from 12 to 24 months. Furthermore, Article 189 of the Criminal Code prohibits the sexual exploitation of minors and punishes this offence with imprisonment from one up to four years. The offence of sexual exploitation of minors consists of the following acts:

- The use of minors in pornographic shows;
- The distribution, sale or exhibition of pornographic material showing minors or persons without legal capacity or the possession of such material for those purposes even when the material originates from a foreign country or when the origin of the material is unknown.
- The use of pornographic material with the participation of minors or persons without legal capacity. In this case the penalty is from three months up to two years.
- No specific regulation concerning minors who are victims of trafficking exists, but child prostitution or pornography could be a consequence of trafficking.

B. Prevention of child trafficking

- [62]. As part of the **campaign** on the **prevention of child trafficking**, flyers and other informational material is distributed by international organisations, such as the International Labour Organization (ILO),⁶⁶ warning against false job offers. In Spain, these flyers are normally distributed by the Child Observatories (for example, the Child Observatory of Catalonia distributes information of this type). Furthermore, several campaigns and activities have been organised to prevent advertising for prostitution, mainly common in the press, especially when a minor is offered.
- [63]. There have been efforts to make children aware of the **measures** to protect them from trafficking and exploitation. In particular, we should mention the Protocol for the use of information and communication technologies (ICT) promoted by the Ombudsman for Minors of the Community of Madrid in collaboration with several telecommunication companies (Apple Computer Spain, France Telecom Spain, Hewlett Packard Spain, IBM, Microsoft Spain, ONO, Siemens, Telefónica, T-Systems ITC Iberia and Vodafone) in order to promote understanding of children's rights and develop control mechanisms and tools (filters) that protect minors from child pornography, abuse, violence, xenophobia and racism. (The relevance of these issues for this study has been explained in section A.1.2., above.)
- [64]. The **NGO** *Tierra de Hombres España* (*Terre des homes* in its original name) [Men's Earth Spain] has launched in 2004 an awareness-raising campaign in relation to child trafficking in the framework of an international campaign.⁶⁷ The three main objectives of this campaign were:
- Information campaign to make the general public aware of the problem of child trafficking.
 - To show that child trafficking is a problem that can be solved by helping the local authorities, detecting the criminals, assisting children and finding their families.
 - Demanding legal provisions criminalising child trafficking and the improvement of an international cooperation system.

⁶⁶ ILO (2003) *El tráfico de niños y niñas y su erradicación* (Trafficking in boys and girls and its eradication), available at: http://white.oit.org.pe/ipecc/documentos/unbearable_sp.pdf (01.08.2008).

⁶⁷ <http://www.tierradehombres.org/stop/> (15.09.2008).

<http://www.tierradehombres.org/stop/campanainternacional.htm> (15.09.2008).

There is no evidence of direct participation of **children** in the awareness-raising campaigns.

- [65]. Concerning the direct participation of minority groups in preventive efforts in Spain, Roma children have always required specific efforts from the public authorities as they are a vulnerable group. The national NGO *Fundación Secretariado Gitano* [Roma Secretariat Foundation] calculates the total Roma population in Spain to be 600.000 and estimates that in 2006 80% of Roma children did not finish compulsory secondary education. In the same year, the Roma Secretariat Foundation persuaded central and local government to adopt several important measures to improve the cultural acceptance and social welfare of the Roma population, such as providing assistance to several NGOs dedicated to improving the living conditions of the Roma population and providing assistance to Roma children in high-risk situations. In March 2006 the government created the *Fundación Instituto de Cultura Gitana* [Foundation Institute for Roma Culture] in order to develop and promote Roma history, culture and language.
- [66]. Furthermore, in 2007 a grant was approved for comprehensive social action projects for supporting Roma and their integration with a budget of € 3.065.160 (under the *Plan de Desarrollo Gitano* [Roma Development Plan]).⁶⁸ These funds were to be used to assist the most disadvantaged Roma groups and to promote the development of the Roma. In the framework of the Roma's constitutional rights and respect for their culture, projects for comprehensive social action are co-financed. The projects are to be designed and managed by the autonomous communities and by the autonomous cities of Ceuta and Melilla where these groups are strongly represented, by local NGOs and local public bodies. (The relevance of these issues for this study has been explained in section A.1.2., above.)
- [67]. To judge from the information obtained from the National Police (see section A.1.3. of this study), there is no proof of the existence of stable criminal organisations that focus exclusively on the traffic in minors for the purpose of sexual or commercial exploitation. The cases reported frequently originate within the family or occur at random, so that they cannot be attributed to any particular organisation. The police have reported cases where parents were arrested for selling their underage children for the purposes of crime and prostitution. For this reason, prevention is implemented through assistance to families and protection for minors in a vulnerable family situation.
- [68]. Action Plan II against the Commercial Sexual Exploitation of Children and Adolescents mentioned above includes specific policies to fight against child exploitation. The National Police actively participates in these prevention policies through three bodies:

⁶⁸ Official Journal of the State number 72 of 24 March 2007.

- *Comisaría General de Policía Judicial* [General Criminal Police Division] is authorised to establish quick and easy mechanisms for complaining about abuse or reporting suspected cases of sexual exploitation of children (SEC). It collects and stores information on SEC obtained through police informers and liaisons. It also gathers information on certain key indicators and enters this into databases. These are subsequently used to intercept illegal entrants into the country. The already mentioned (section A.3) police bodies who specialise in protecting minors, SAF (and GRUME, develop protective measures for minors in cooperation with NGOs in order to avoid their exploitation.
- General Division for Aliens and Documentation: carries out border controls and constantly reviews migratory flows; it designs and disseminates leaflets (in different languages) to prevent SEC; it establishes quick and easy mechanisms for complaining about or reporting suspected cases of SEC; and it uses information obtained through the interception of illegal entrants into the country. In all these activities, it cooperates with NGOs that work to protect both adults and children from sexual exploitation.
- The *Comisaría General de Seguridad Ciudadana* [General Division for Citizen Security] supervises recreational and juvenile places (pubs, etc.) during school hours; it monitors prostitution ‘hot spots’; it checks observance of legal regulations on the participation by minors in public performances and recreational establishments; it detects new methods used by perpetrators to enter into contact with minors; it encourages people working in the commercial sector to report any information or material relating to child pornography; and it cooperates with NGOs specialising in the protection of SEC victims.

These three National Divisions are coordinated by the General Directorate of the Police Office, which is responsible for determining their strategy, identifying indicators associated with the sexual exploitation of children and, through the International Coordination Unit, optimising police networks of informers and liaisons, which are key to collaboration with other countries.

C. Appointment of a legal guardian

- [69]. The *Código Civil* [Spanish Civil Code]⁶⁹ provides for the appointment of a guardian for a minor in a ‘vulnerable situation’ (a term which also applies to trafficking) by the competent court on the request of the Public Prosecutor’s Office. The **competent youth welfare authority** of the respective autonomous community is responsible for the minor (e.g. in the Autonomous Community of Catalonia, this is the *Direcció General d’Atenció a la Infància i a l’Adolescència* [General Directorate on Children and Adolescents]. According to the already cited Spanish Aliens Organic Law, if the State Police Forces locate an **unaccompanied child** (without distinguishing between victims of trafficking and other circumstances), the Public Prosecutor’s Office should place the minor under the care and supervision of the competent youth welfare authority of the autonomous community administration while the child remains in Spain. Furthermore, **minor asylum seekers** in a ‘vulnerable situation’ are represented in the asylum procedure by a guardian from the competent youth welfare authority. In all cases, the Public Prosecutor’s Office monitors the care and protection given to these children.
- [70]. In all cases mentioned in the previous paragraph, the **age limit** for qualifying for legal representation is 18 years old, the same as the age of majority. With regard to foreigners without legal documents whose age cannot be established, there is a specific procedure described with further detail in Section E: If the majority of an alien younger than 18 cannot be irrefutably proven in accordance with the law of his/her country of origin, he/she will be considered a minor for all purposes. This means that if there is any doubt, Spanish law grants a young foreigner the status of a minor and the protection to which minors are entitled under the Spanish legal system.
- [71]. Article 35 of the Aliens Organic Law states that when an alien who does not possess legal papers is encountered whose **minority cannot be established with certainty**, this should be reported to the Public Prosecutor’s Office, which shall: 1) take the necessary steps to determine the person’s age and 2) once minority is established, place the individual under the care of the competent services for the protection of minors. In this respect, Circular 2/2006 of 27 July 2006 of the Public Prosecutor’s Office on Various issues relating to foreigners resident in Spain establishes that public prosecutors who are notified of a supposedly unaccompanied minor are obliged to start the procedure for verifying the age of the presumed minor by using the *Registro de menores extranjeros no acompañados* [Register of Unaccompanied Foreign Minors] and medical tests for determining age. If the physical characteristics indicate that the

⁶⁹ Spain/Real Decreto (24.07.1889).

foreign minor is underage, he/she will receive the **benefit of the doubt** and he/she will be placed under the care of the public entities for the protection of minors, without any other test being carried out and without prejudice as to any later measures to determine the minor's exact age.

- [72]. There is no evidence of special training for guardians who are specifically appointed to trafficked children (see section E for further information on this point).
- [73]. There are neither legal provisions nor information on evidence of appropriate time for preparation of cases for the guardian of a trafficked child.

D. Coordination and cooperation

- [74]. Various coordination and cooperation initiatives are worth mentioning. The first is the implementation of the DAPHNE Programme, which aims to assist NGOs in developing programmes to prevent and combat violence against women and children and to protect victims and high-risk groups. This Programme has supported specific projects combating the traffic in human beings (THB).
- [75]. In April 2008 a collaboration agreement was signed by the Ministry of the Interior and the *Fundación de Ayuda a Niños y Adolescentes en Riesgo (ANAR)* [Help to Children and Adolescents at Risk (ANAR Foundation)] for the prevention of and intervention in high-risk situations for minors. This agreement allows to increase the operational and response capacity of both the State Security Forces and the ANAR Foundation concerning any situation that might put the security of minors at risk (mistreatment, abuse, physical or psychological violence, and bullying). Since 1994, the ANAR Foundation has operated the ‘ANAR Phone Line for Boys, Girls and Adolescents at risk’, a free and confidential help line, available 24 hours a day, every day of the year, which can be reached from anywhere in Spain. The line offers immediate psychological, social and legal help when minors have problems or when they find themselves in high-risk situations. The ANAR Foundation also operates a similar ‘Phone Line for Adults and Families’ (600 50 51 52) that targets adults who need guidance about children. The Foundation has collaborated with the State Security Forces by informing the police when it learns about situations that require intervention through the phone line. There is no statistical data available on the number of complaints.
- [76]. Some of the autonomous communities (Madrid and Valencia among others) have established hotlines for minors. In Madrid for example, there is a hotline for adults who are experiencing problems with their children (++34 91 726 01 01) and another one specially for children (++34 900 20 20 10).
- [77]. There are no cooperation agreements concerning child trafficking between the relevant Ministries because collaboration between Ministries has a permanent character and is not carried out through agreements.
- [78]. Some institutions of the State and autonomous communities maintain cooperation agreements with NGOs. In 2004 for example, the *Mesa de Trabajo Nacional* [National Working Table] ‘was run by Save the Children and the Ministry of Labour and Social Affairs, in which NGOs and child professionals from the autonomous communities participated directly. This group elaborated concrete proposals to fight against child trafficking that were incorporated into Action Plan II against the Commercial Sexual Exploitation of Children and

Adolescents. Furthermore, the ECPAT-Spain Consortium (an international network of organisations against the commercial sexual exploitation of children) was contacted, and drew up a report⁷⁰ listing proposals based on an analysis of current progress and issues in this area, following guidelines established at the international level. All in all, the most relevant agreements between the State and NGOs result from the adoption of these international guidelines by public bodies for the protection of children such as the Child Observatory of the Ministry of Labour and Social Affairs and the similar Observatories in the autonomous communities.

NGOs such as UNICEF, Caritas, Aldeas Infantiles SOS, the Red Cross, the Federation of Associations for the Prevention of Child Abuse and the Platform of Children's Organisations participate in the Child Observatory's working groups.

- [79]. Based on Article 18(4) of the Spanish Constitution, the right to the protection of personal data has been recognised, and this is extended to children. Organic Law 15/1999 of 13 December on *Protección de datos de carácter personal* [Personal Data Protection]⁷¹ extensively regulates the rights of individuals concerning the protection of their personal data. To enforce these rights, the *Agencia Nacional de Protección de Datos* [Data Protection Agency] has been set up. This is an independent body with competence in the entire State territory. There are also Data Protection Agencies in the Autonomous Communities of Catalonia, Madrid and the Basque Country, which are independent bodies that operate within their respective territories.

The Data Protection Agencies of both the State and the autonomous communities carry out information campaigns regarding children's right to the data protection. There are no specific legal provisions regarding data protection for child victims of trafficking.

Organic Law 15/1999 of 13 December on Personal Data Protection does not contain any specific provisions regarding the data of minors to whom the general rules are to be applied, although consent should be given and their rights defended by the person holding the parental authority.

On the other hand, identity protection, provided by the legal provisions on witness protection for persons who collaborate with the police and legal authorities to prosecute the crime of people trafficking and criminal organisations or networks involved in human trafficking, applies to minors. (This protection includes data but is more extensive than mere data protection.) Organic Law 19/1994 of 23 December on the Protection of Witnesses and Judicial Experts establishes that these persons must be granted special protection regarding their personal data but also regarding data about their

⁷⁰ <http://www.ecpat-esp.org/esci/index.htm> (01.06.2008).

⁷¹ Spain/Ley Orgánica 15/1999 (13.12.1999).

homes. Furthermore, when they appear before the court, special measures are to be adopted in order to avoid them being seen by the accused.

- [80]. Spain has concluded several cooperation agreements on immigration and related issues with non-EU countries, such as: Agreement between Spain and the Republic of Bolivia on adoption matters concluded in Madrid on 29 October 2001; Agreement between Spain and the Republic of Guinea-Bissau on immigration concluded in Madrid on 7 February 2003; Agreement between Spain and the Islamic Republic of Mauritania on immigration concluded in Madrid on 1 July 2003; Agreement between Spain and the Republic of Peru on cooperation in immigration matters concluded in Madrid on 6 July 2004; Cooperation Framework Agreement between Spain and the Republic of Gambia concluded ‘ad referendum’ in Banjul on 09 October 2006; Cooperation Agreement between Spain and the Republic of Guinea concluded ‘ad referendum’ in Conakry on 09 October 2006; Agreement between the Republic of Senegal and Spain on the cooperation in the prevention of the immigration of minors unaccompanied Senegalese, their protection, repatriation and integration, concluded in Dakar on 5 December 2006; Agreement between Spain and the Republic of Mali on immigration concluded in Madrid on 23 January 2007; Agreement between Spain and the Republic of Cape Verde on immigration concluded in Madrid on 20 March 2007; Cooperation Convention on adoption between Spain and the Socialist Republic of Vietnam, concluded in Hanoi on 5 December 2007; Cooperation framework agreement on immigration between Spain and the Republic of Nigeria concluded in Niamey on 10 May 2008. All these agreements deal with people trafficking.
- [81]. There are no support programmes as part of Member States’ international development assistance in countries of origin or within the EU-area, but on 15 December 2005 a Cooperation Agreement **between Spain and Romania** was concluded in Madrid, in order to protect Romanian unaccompanied minors in Spain against their exploitation and to facilitate their repatriation.⁷²

This agreement provided several measures to protect unaccompanied Romanian minors in Spain. Among them, the following should be highlighted:

- The competent Spanish authorities should provide assistance and protection to unaccompanied Romanian minors in Spain, should keep track of the number of such minors and review the situation of these minors. The assistance to be provided consists of: accommodation, medical assistance, repatriation and, if necessary, escort to Romania.
- Repatriation: Repatriation of the minor to his/her family or to the competent Romanian youth welfare authorities should be organised by the

⁷² Published in the Official Journal of the State on 16 August 2006, available at: <http://www.boe.es/boe/dias/2006/08/16/pdfs/A30512-30514.pdf> (01.07.2008).

Romanian authorities within a period of 30 days after the minor's family situation of the minor has been ascertained.

- Organising repatriation: The competent Spanish authority should take ex officio or upon request of the public authority responsible for the child all the necessary steps for the child to be repatriated in accordance with Spanish law and the international conventions referred to in the preamble of the Agreement.

E. Care and protection

[82]. According to Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings from May 2005: ‘Each Party shall provide in its internal law a recovery and **reflection period** of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. (...) During this period, the Parties shall authorise the persons concerned to stay in their territory.’ As stated in section A.2, Spain has recently signed this Convention. Furthermore, Article 46 of the already cited Aliens Ordinance provides the possibility of issuing a residence permit ‘under exceptional circumstances’. In addition to this, the Integrated Plan for Fighting the International Trafficking of Women, Girls and Boys proposed by the Joint Parliamentary Committee on Women’s Rights and not yet definitely elaborated (see section A.3) is expected to refer to this reflection period as well,⁷³ encouraging prostitutes to submit complaints regarding their sexual exploitation by means of establishing a reflection period, during which they should receive special assistance and protection.

[83]. There are no specific legal provisions concerning the **right to residence** of the victims of trafficking, but Article 35 of the Spanish Aliens Organic Law and Article 92 of the corresponding Aliens Ordinance refer in general to the residence of immigrant children.

Unaccompanied children in Spain are placed as a preliminary measure under the care of the child protection services. The State Administration, following the principle of reunification of the child with his/her family, gives the child a hearing and considers the report by the child protection services, then decides, applying the principle of the priority of the child’s best interests, whether to repatriate the child to the country of origin or to the country where his/her relatives live, or if this is not possible (because either the home country or the person or authorities responsible for the child are unknown), to allow him/her permanent residence in Spain. To all effects, the residence of children in shelters under the control of the public administration is regarded as legal. The residence of a minor is also regarded as regular if the minor is under the care of a Spanish public authority. Once it has been confirmed that it is impossible to repatriate the minor, he/she may be granted a residence permit upon the request of the authority. The residence permit has a retrospective effect from the moment when the minor was placed under the care of the competent authority (Article 35.4 of the Spanish Aliens Organic Law).

[84]. There are no special legal provisions on right to asylum of trafficked children. Asylum queries are processed according to the standards fixed in international treaties and in international recommendations concerning immigrant children

⁷³ <http://www.ugt.es/Mujer/informeprostitucionmarzo2007.pdf> (17.07.2008).

(Article 15(4) of the statutory regulation (*Reglamento de Asilo* [Asylum Ordinance] adopted by Royal Decree 203/1995)⁷⁴ developing the Spanish Law 5/1984 of 26 March *Reguladora del derecho de asilo y de la condición de refugiado* [Spanish Law on Asylum and Refugees]⁷⁵ According to Article 3 of this Act: ‘1. The refugee status of a person and as consequence her/his right of asylum shall be recognised in accordance with the requirements established by the International Instruments ratified by Spain and especially by the Convention relating to the Status of Refugees, adopted on 28 July 1951, and by the Protocol relating to the Status of Refugees, adopted in New York on 31 January 1967’. If minors request asylum, the provisions must be followed of Article 15(4) of the Asylum Ordinance, which establishes that asylum seekers younger than 18 who are abandoned are to be transferred to the competent services for the protection of minors, of which the Public Prosecutor's Office should be informed. The guardian who is legally assigned to the minor will represent him/her during the procedure. Asylum applications will be handled according to the criteria laid out in international conventions and recommendations applicable to minors requesting asylum.

- [85]. There is no available statistical data on the number of children being granted temporary permission to remain on the grounds of trafficking (2000-2007).
- [86]. There are no specific legal provisions regarding the **administrative detention/detention pending deportation for children**, but, as already mentioned (see section C), if the State Police Forces locate a foreigner without legal documents whose age cannot be established, he/she will be placed into the care of the competent child protection services, as established by child protection legislation (Organic Law on the Legal Protection of Minors).

The Public Prosecutor's Office has given precise instructions to all public prosecutors with regard to respecting the principle of the minor's best interest.⁷⁶ In order to comply with this principle, all public prosecutors must follow the following guidelines during their interventions:

- There should be a presumption that any alien pretending to be minor of less than 18 years old is in fact a minor. Medical tests normally do not determine an exact age but just a possible age range, so if there is no evidence to the contrary, the lower limit of this range will be presumed to be the person's real age.

⁷⁴ Spain/Real Decreto 203/1995 (10.02.1995).

⁷⁵ Spain/Ley 5/1984 (26.03.1984).

⁷⁶ Instruction number 2/2001 of 28 June 2001, of the General Public Prosecutor's Office, *Acerca de la interpretación del actual artículo 35 de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social* [on the interpretation of the current Article 35 of the Organic Aliens Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration].

- If the majority of an alien younger than 18 cannot be irrefutably proven in accordance with the law of his/her country of origin, he/she will be considered a minor for all purposes. This means that if there is any doubt, Spanish law grants a young foreigner the status of a minor and the protection to which minors are entitled under the Spanish legal system.
- Once the person's age has been established and the person without legal documents is shown to be a minor or it is uncertain whether he/she might be a minor, he/she should without delay be placed under the care of the competent social services for the protection of minors of the autonomous communities, sometimes with the intervention of the Public Prosecutor's Office.

The *Juez de Menores* [Juvenile Court Judge], after an affirmative report from the Public Prosecutor's Office, **may** authorise the child to be placed in a *centro de internamiento* [Centre for Foreigners] immediately after his/her arrival provided that his/her parents or guardians are there and request the presence of the child, and that the centre has accommodation that guarantees family intimacy (Article 62 of the Aliens Organic Law 4/2000). This measure will be taken only if this is in the interest of the minor. The Juvenile Court Judge and the Public Prosecutor's Office ensure that the rights and liberties of minors are observed.

[87]. By means of the Resolution of 14 March 2007 of the *Secretaría General Técnica* [General Technical Secretary] related to loans for co-financing social plans and programmes,⁷⁷ Spain has allocated budget items to promoting alternative measures to care for minors and specifically for the **training and education of professionals** in the autonomous communities who specialise in this area. As mentioned above, although these budgetary items are not especially linked to child trafficking, we consider it relevant to mention them because they indirectly serve to protect the family unit and child victims of abuse, so preventing child trafficking and alleviating its consequences. In the Resolution a funding of € 3.005.060 was approved for programmes based on agreements with autonomous communities that implement measures targeting underage offenders, such as encouraging the Juvenile Court to pass sentences other than detention and providing training for professionals in autonomous communities. The funding was distributed as follows:

Population between 16 and 17 years: 80 per cent.

Dispersion: 1.5 per cent.

Major cities: 1 per cent.

Files opened by the Prosecutor's Office: 12 per cent.

⁷⁷ Official Journal of the State of 24 March 2007.

Surface: 5 per cent.

Islands: 0.5 per cent. This percentage, which represented 15.025,30 euros, was distributed between the autonomous communities of the Balearic Islands and the Canary Islands in a proportion of respectively 25 and 75 per cent.

These programmes aim to help professionals effectively apply both prison and community sentences passed by the juvenile courts, as well as adequate evaluation and monitoring.

- [88]. Concerning the existence of a **family tracing programme** to allow for family reunification, in accordance with the principle of the best interest of the child, as already mentioned, repatriation to the country of origin will only take place if either reunification with the child's family or appropriate care by the protection services of the country of origin is guaranteed (Article 92.4 of the Aliens Ordinance).

Once the minor's family or, in its absence, the child protection services of the country of origin have been located, repatriation will take place by delivering the child to the country's authorities. Repatriation will not proceed if there has found to be danger to the minor or a risk of persecution of him/her or his/her relatives. The governmental authority is to inform the Public Prosecutor's Office of all actions carried out in this procedure (Article 35 of the Aliens Organic Law 4/2000 and Article 92 of the Aliens Ordinance).

In this context, Sentence 296/2006 of 12 October of the Number 1 Court on Contentious Administrative Matters of Huesca is worth quoting:⁷⁸

'The Court considers applicable in this case the principle of the best interest of the child as this principle is not only stipulated by general legal provisions such as the Organic Law on the Protection of Minors, but also by Article 92.4 of the Aliens Ordinance . Article 92.4 requires, in order to guarantee the best interests of the minor, the effective reunification of the foreign minor's family or appropriate care by the youth welfare authority of the home country. In this context, although the repatriation of an unaccompanied foreign minor is a stipulated legal consequence of his/her illegal residence in Spain, repatriation will only proceed if the effective reunification of the minor's family or his/her care by the youth welfare authority is guaranteed. In the present case, the files of the *Administración General del Estado* [State Administration] do not provide evidence that the above- mentioned conditions have been met, despite initial information regarding the domicile of the parents, which rightly caused the police authorities to initiate a repatriation procedure. However, according to reports from the youth welfare authority, the minor's father is imprisoned in a penal institution and his mother does not have a known domicile. Under these circumstances, the appropriate conditions for family reunification cannot be considered as met. Furthermore, there is no evidence of contact with the youth

⁷⁸ Huesca/Juzgado de lo Contencioso-administrativo número 1/296/2006 (12.10.2006).

welfare authorities of the Kingdom of Morocco that would guarantee appropriate supervision for the minor.’

Thus, the Court considers insufficient the allegations of the State Administration, concluding that there has been a violation of Article 92(4) of the Aliens Ordinance.

- [89]. Special shelters for trafficked children do not exist. As already mentioned, if a trafficked child is unaccompanied, he/she will be placed in a centre for vulnerable children and for children who are particularly at risk. These centres are mostly administered by the autonomous communities with the collaboration of specialist NGOs. Depending on the circumstances of each case, after initial residence in one of these centres, the child may be placed in a host family or in a centre administered by minors themselves under supervision by the competent public authorities. If nine months after the minor has been placed under the care of the competent youth welfare authorities, reunification with her/his family or his/her repatriation has not been possible, the minor will be granted residence in Spain. However, the lack of a residence permit does not stop the minor from accessing all the educational or training activities and programmes from which children should benefit according to the competent youth welfare authority (Article 92(4) of the Aliens Ordinance). If a minor under the care of the competent youth welfare authority attains full age before he/she receives a residence permit, and if the minor has sufficiently participated in the youth welfare authority’s education activities and programmes promoting social integration, the authority may recommend that he/she be granted a temporary residence permit due to special circumstances (Article 92(5) of the Aliens Ordinance). Furthermore, a minor, who at time of attaining full age has been continuously under the care of a Spanish public authority over the last five years, will be granted permanent residence in Spain (Article 72(3) of the Aliens Ordinance).

Many reports of different institutions (e.g. the Ombudsman of Catalonia in its report of 2005)⁷⁹ complain about the lack of places in these special centres, as well as the lack of attention paid to the children’s mental health and the shortage of professionals trained to deal with vulnerable minors.

- [90]. There are no available statistics on children who leave shelters with an unknown destination. Some of the minors flee from the shelters and foreign centres to avoid repatriation, but there is no evidence that they become victims of child trafficking.
- [91]. The Spanish Organic Law on the Legal Protection of Minors establishes that foreign minors who are in a high-risk situation or under the care of the competent Spanish public authority, should enjoy **full healthcare** as well as

⁷⁹ Spain/Síndic de Greuges, *Annual Report 2005*, available at: http://www.sindic.cat/site/unitFiles/2188/38_Informe%20a1%20Parlament%202005.pdf (01.08.2008).

other public services, even if they are illegally resident in Spain. Even more comprehensive is the wording of Article 12 of the Spanish Aliens Organic Law, which guarantees any foreign child of under 18 years residing in Spain the right to healthcare on the same terms as Spaniards.

There is no available statistical data on the number of children receiving such services.

[92]. Article 10 of the Organic Law on the Legal Protection of Minors establishes that any foreign child in Spain is entitled to **education**. Article 9 of the Spanish Aliens Organic Law specifies that all foreign children under 18 years have the right and duty to receive education on the same terms as Spaniards. This right implies the right to attend basic, free and compulsory schooling, to obtain the corresponding academic qualifications and to access the public system of scholarships and grants. With regard to infant education, which is not compulsory, the public administration should guarantee the existence of sufficient places to meet demand (Article 9(2) of the Spanish Aliens Organic Law).

Concerning non-compulsory education (after 16 years of age), foreigners are entitled to education on the same terms Spaniards, which also implies the right to obtain the corresponding academic qualifications and to access the public system of scholarships and grants.

It is interesting to point out that restricting this right to foreigners with residence permits has been declared unconstitutional by the *Tribunal Constitucional* [Spanish Constitutional Court] in its Decision 236/2007 of 7 November.⁸⁰ In Article 13(1), the Spanish Constitution allows the legislator great latitude in regulating the rights of aliens in Spain. The legislator can thereby establish several conditions for the exercise of these rights. However, if conditions are stipulated, the following should be taken into account: a) the degree of connection between this right and the guarantees of human dignity established by Article 10 of the Constitution; b) the content of the right according to the law if the same right is also granted by the constitution; and c) the content of the right as defined by the Constitution and by international treaties and agreements. Article 10.2. of the Constitution states that the legislator must observe the limits established by international treaties and agreements, which oblige it to interpret rights and liberties granted by the Constitution in terms of these same treaties and agreements. Regarding the rights of assembly, association, non-obligatory education (from 16 years of age) and of effective legal protection in the shape of free access to justice (i.e. without charge), there should be no distinction between legally and illegally resident aliens. Such a distinction was declared unconstitutional by the Spanish Constitutional Court as it violates the corresponding provisions of the Constitution interpreted

⁸⁰ Spain/Tribunal Constitucional/236/2007 (07.11.2007)

according to the Universal Declaration of Human Rights and to international treaties and agreements.

There is no available statistical data on the number of children receiving such education.

- [93]. Generally, a minor's parents and guardians are responsible for exercising his/her rights, but Article 10 of the Organic Law on the Legal Protection of Minors recognizes some possibilities in this context to the minor itself (see Section G on Prosecution for further details).

In addition, Articles 20 and 22 of the Aliens Organic Law establish that foreigners are entitled to **access to justice**. Article 22 establishes that foreigners who prove a lack of economic resources are entitled to free legal assistance on equal terms to Spaniards in all proceedings where they are a litigant, regardless of the applicable jurisdiction. The restriction of this right only to foreigners with the status of legal residence has been declared unconstitutional by the mentioned Spanish Constitutional Court (Decision 236/2007 of 7 November, see above). Furthermore, foreigners in Spain who lack sufficient economic resources are entitled to free legal assistance in administrative or judicial procedures that may lead to them being denied entry to or expelled from Spanish territory, and in any procedure regarding asylum. Foreigners are entitled to free assistance by an interpreter if they do not understand or speak the official language used in court.

There is no available statistical data on the number of children receiving legal assistance.

- [94]. There is no evidence that the particular needs of children who come from different ethnic backgrounds or the needs of children with disabilities have been taken into consideration in all the relevant contexts and legal procedures.
- [95]. As mentioned above, several information and assistance hotlines for minors as well as hotlines for adults who need help with children have been created. These hotlines respond to general issues related to minors and do not specialise in child trafficking or the sexual exploitation of minors.
- [96]. We know of no other mechanisms to report the exploitation of trafficked children.

F. Determination of best interests and long-term solutions, including social inclusion/return

[97]. Article 39 of the Spanish Constitution establishes the obligation of the public authorities to provide assistance to minors. According to this principle, as already explained in section E, the public administration must assume responsibility for an unaccompanied alien minor until a decision has been made on his/her return or residence in Spain.

Article 11.2.a) of Organic Law 1/1996 of 15 January on the Legal Protection of Minors establishes that the best interest of the child will be the guiding principle for the actions of the public authorities and Article 2 solemnly declares that the best interest of the child will take precedence over any other legitimate interest concerned. The importance of this principle was also duly stressed by the Constitutional Court (Decisions 124/2002 of 20 May⁸¹ and 221/2002 of 25 November,⁸² among others), by the *Tribunal Supremo* [Supreme Court] (Decisions 415/2000 of 24 April⁸³ and 548/1998 of 11 June⁸⁴ among others) and by the European Court of Human Rights (*E. P. versus Italy* of 16 November 1999, and *Bronda versus Italy* of 9 June 1998).

The Constitutional Court Decision 28/2001 of 1 February 2001⁸⁵ states in this respect that the best interest of the child has 'been ultimately raised to a rule of public order and must therefore be strictly observed by the Spanish legal system'. The principle has thus truly become a general principle of law, guiding its interpretation and supplementing any possible gaps.

The best interest of the child is, as a general rule, equated with the continued presence of the child within the family and the cultural environment that he/she originates from. As stated in the Resolution of the Council of the European Union of 26 June 1997 on unaccompanied third country minors (Official Journal n° C 221 of 19/07/1997) the illegal presence within the territory of Member States of unaccompanied minors who do not have the status of refugees should be provisional and the Member States should cooperate among themselves and with third countries of origin in order to return the minor to his/her country of origin or to a third country willing to receive him/her, without endangering the security of the minor, and so as to locate, as soon as possible,

⁸¹ Spain/Tribunal Constitucional/124/2002 (20.05.2002)

⁸² Spain/Tribunal Constitucional/221/2002 (25.11.2002)

⁸³ Spain/Tribunal Supremo/415/2000 (24.04.2000)

⁸⁴ Spain/Tribunal Supremo/548/1998 (11.06.1998)

⁸⁵ Spain/Tribunal Constitucional/28/2001 (01.02.2001)

the persons responsible for the minor and reunite the minor with them. Spanish legislation concentrates on the return of the minor to stable family life in all cases, including where the minor has been trafficked.

This preference for family reunification should however be compatible with the specific procedure for family reunification (see section E).

The Public Prosecutor's Office has given precise instructions to all public prosecutors with regard to respecting the principle of the minor's best interest.⁸⁶ In order to comply with this principle, all public prosecutors must follow the following guidelines during their interventions:

- There should be a presumption that any alien pretending to be minor of less than 18 years old is in fact a minor. Medical tests normally do not determine an exact age but just a possible age range, so if there is no evidence to the contrary, the lower limit of this range will be presumed to be the person's real age.
- If the majority of an alien younger than 18 cannot be irrefutably proven in accordance with the law of his/her country of origin, he/she will be considered a minor for all purposes. This means that if there is any doubt, Spanish law grants a young foreigner the status of a minor and the protection to which minors are entitled under the Spanish legal system.
- Once the person's age has been established and the person without legal documents is shown to be a minor or it is uncertain whether he/she might be a minor, he/she should without delay be placed under the care of the competent social services for the protection of minors of the autonomous communities, sometimes with the intervention of the Public Prosecutor's Office.

[98]. As already stated in section E, there is no specific legal provision on **granting asylum to trafficked children**.

[99]. An example of the importance that Spanish law places on the participation of minors in procedures that affect them can be found in Article 9(1) of Organic Law on the Legal Protection of Minors which provides that a minor has the right to a hearing, both in family affairs and in any administrative or judicial procedure in which he/she is directly involved and which may lead to a decision that affects his/her personal, family or social life.

⁸⁶ Instruction number 2/2001 of 28 June 2001, of the General Public Prosecutor's Office, on the interpretation of the current Article 35 of the Organic Aliens Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration.

The same article provides that during judicial procedures, appearances by a minor are to be organised in ways adapted to his/her situation and level of personal development, taking care that his/her privacy is preserved.

The second paragraph of Article 9 of Organic Law 1/1996 establishes that a minor has the right to have a hearing either directly or through a person appointed by him/her as his/her representative (the latter only if he/she has the necessary maturity to make such decision). However, when this is not possible or when this is not in the best interest of the child, his/her opinion may be heard through legal representatives, provided these representatives are not involved or have interests that go against the minor's, or through other persons who because of their profession or a special relationship of confidence can convey his/her opinion in an objective manner. When a minor requests a hearing directly or through his/her representative, a refusal must be justified and communicated to the Public Prosecutor's Office and the parties involved.

An example of the same issue, taken from case law, can be found in the decision of the Provincial Court of Barcelona of 27 April 2006⁸⁷ in which the testimony of two minors was essential in order to sentence the defendants who were accused of financing the travel of Romanian women to Spain based on the promise that they would find work in textile factories, only to be forced to work as prostitutes.

Council Directive 2004/81/EC (29.04.2004)⁸⁸ on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities which should have been transposed into internal law before 6 August 2006, has yet not been transposed into Spanish legislation.

- [100]. As mentioned above (see section E), trafficked children, as well as all foreign children in Spain, have access to full healthcare and education.
- [101]. There is no evidence of special integration programmes for trafficked children. Legal provisions related to minors cover the integration of minors in vulnerable situations or who are victims of exploitation, but there are no specific measures for trafficked children.
- [102]. There is no evidence that the special needs for children coming from different ethnic backgrounds or needs of children with disabilities have been taken into consideration in all relevant contexts and legal procedures.

⁸⁷ Barcelona/Audiencia Provincial (sección 8ª)/366/2006 (27.04.2006)

⁸⁸ Official Journal L 261 of 06/08/2004.

G. Prosecution

[103]. With regard to criminal law, the Law on *Enjuiciamiento Criminal* [Criminal Procedure]⁸⁹ includes, subsequent to the modifications introduced by Organic Law 14/1999 of 9 June on *Modificación del Código Penal en materia de protección a las víctimas de malos tratos y la Ley de Enjuiciamiento Criminal* [Modifying the Criminal Code of 1995 on the protection of the victims of abuse and the Law on Criminal Procedure],⁹⁰ a number of measures for protecting minors in this area:

- To hear ‘the accused minor it will not be necessary to appoint a guardian even when the case could be related to child trafficking (Article 409).
- Minors should always make statements in the presence of officials from the Public Prosecutor's Office and possibly experts. Those who have parental authority, responsibility or custody of the minor may be present, unless they are accused or when the judge exceptionally makes a justified decision to the contrary. The judge may decide to record the statement (Article 433).
- Underage witnesses should make statements in a manner that avoids visual confrontation with the accused, to which end any technical means can be used (Article 448(3)).
- Confrontations should not be held involving underage witnesses unless the judge considers it to be indispensable and not detrimental to the interests of these witnesses, as demonstrated by an expert report (Article 455).
- The Court may decide, as of right or at the request of a party, for reasons of security or public order or in cases where the appearance of a person involved in a criminal procedure as the accused, a witness, an expert or in any other capacity is problematic or detrimental, especially when a minor is concerned, that the intervention will be carried out by videoconferencing or another similar system that allows two-way and simultaneous communication of image and sound, according to the provisions of Article 229(3) of Organic Law 6/1985 of 1 July on the Judiciary (Article 731 bis).

[104]. The available statistical data on the number of final convictions based on child trafficking cases shows the small number of such cases in Spain. The following

⁸⁹ Spain/Real Decreto (14.09.1882)

⁹⁰ Spain/Ley Orgánica 14/1999 (09.06.1999)

final convictions based on child trafficking cases have been documented: 0 in 2000 and 2001; 3 in 2002; 7 in 2003; 3 in 2004; 11 in 2005; 1 in 2006 and 3 in 2007 (for more details, see Appendix).

[105]. First of all, it should be stressed that effective judicial redress is a fundamental right recognised in Article 24 of the Spanish Constitution in the following terms: ‘All persons have the right to the effective protection of the judges and courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence’.

According to Article 101 of the Law on Criminal Procedure ‘A criminal proceeding is public. It may be pursued by all Spanish citizens in accordance with legal provisions’. However, Article 102 establishes that ‘criminal proceedings may not be pursued by anyone who does not enjoy full civil rights’ (as is the case for minors). This legal limit on pursuing criminal proceedings is to an extent corrected by the provisions of Article 10(2) of the Organic Law 1/1996 on the Legal Protection of Minors, partially modifying the Civil Code and the Law on Civil Procedure, according to which:

In order to defend and guarantee his/her rights a minor may:

- Request to be placed under the protection and care of the competent public entity.
- Inform the Public Prosecutor's Office of situations which in his/her view violate his/her rights so that the Office may take the necessary action.
- Present his/her complaints to the National Ombudsman. To this end, one of the Deputies of the Ombudsman is to assume permanent responsibility for matters relating to minors.
- Request any available social services aimed at minors regarding education, healthcare, grants, benefits, etc., from the public administration.

In accordance with Articles 109 to 114 of the Criminal Code any person injured by a crime or offence, adult or minor, national or alien, may demand compensation for the material or moral damages suffered. This civil liability as a result of a crime can be claimed from the responsible perpetrators (offenders, accomplices, etc.) in the terms established by Articles 116 to 122 of the Criminal Code and can be exercised before the civil or criminal courts.

As for the possibility of receiving financial compensation, minors who have been victims of trafficking may benefit from the aid established by Law 35/1995 of 11 December on *Ayudas a Víctimas de Delitos Violentos y contra la Libertad Sexual* [Aid and Assistance to Victims of Violent Crimes and Crimes

against Sexual Freedom],⁹¹ to which Article 2.1 states the entitlement of ‘those who, at the time that the crime was committed, were Spanish citizens or nationals of another Member State of the European Union or those who, without being so, have their normal residence in Spain or are nationals of another State which attributes similar assistance to Spanish citizens in its territory’. Aliens who do not comply with those requirements do not have right to this compensation. It should be taken into account that, according to Article 4.2 of the same regulation, ‘the bodily injuries or harm to physical or mental health should be sufficiently substantial in order to give rise, in accordance with social security legislation, to a declaration of permanent incapacity of any degree or a situation of temporary incapacity for more than six months’.

- [106]. No statistical data exist on the total amount of compensation paid to trafficked children or to trafficked persons in general.

⁹¹ Spain/Ley 35/1995 (11.12.1995)

H. Miscellaneous

- [107]. The mass media have given extensive coverage to a proposal by the Ombudsman for Minors of the Community of Madrid.⁹² In July 2008, the said Ombudsman sent a document with suggestions to the *Asamblea de Madrid* [Madrid Assembly], the *Congreso de los Diputados* [Congress of Deputies] and the Ministry of Justice on ‘Measures for the protection of children from acts of sexual exploitation and abuse’⁹³ in which he advocates the creation of re-education courses for sexual offenders after their release from prison in order to avoid recidivism and the creation of a register of child sex offenders. This register would include details of the offender’s identity, genetic profile, criminal record, precautionary measures and any other measure aiming to prevent future offences. Access to this register would be given to the judicial authorities and to the police and security forces.

As far as legal proceedings are concerned, the document proposes that victim protection be improved by giving preference to procedures involving minors (the investigations and court proceedings related to minors should be given preferential consideration and be filed without unjustified delay), and also by establishing the obligation to inform the victim and his/her family of any potential danger (for example, the offender’s release from prison). It also proposes that the Law on Criminal Procedure be modified in order to reinforce protective measures for minors during procedures, for example by allowing recorded declarations to be used as valid evidence in all cases and stipulating that minors to be dealt with by specialists at all times.

⁹² <http://www.defensordelmenor.org/upload/prensa/notas/PropuestasMinistroJusticia.pdf> (01.08.2008)

⁹³ Spain/Defensor del Menor de la Comunidad de Madrid (2008), *Medidas para la protección de la infancia frente a los actos de explotación y abuso sexual*, available at: <http://www.defensordelmenor.org/upload/documentacion/interes/PropuestasPederastia.pdf> (01.08.2008)

I. Good practices

- [108]. In his 2005 Report on Legal Assistance to Aliens in Spain,⁹⁴ the National Ombudsman suggests a series of ‘good practices’ that should ideally be followed in his view with regard to minors. These recommendations also apply to trafficked children but do not relate specifically to them. Of these good practices, it is worth mentioning the following:
- [109]. A solicitor defending the interests of an adult and an accompanying minor or minors should ensure that the State’s obligation to protect the minor is compatible with the parent’s right to be informed of his/her child’s situation and location. If the solicitor deems there to be conflicting interests, he/she should inform the Bar Council so that it can appoint a new solicitor for the minor. This could be the case where, for example, the father is responsible for trafficking his child.
- [110]. If there are reasonable doubts as to the age of the minor, the solicitor should insist that the Public Prosecutor make an explicit statement on the minority status or not of the young alien once the necessary tests have been performed. The solicitor should also strive for the necessary actions to be taken to protect the minor where he/she does not agree with the decision taken, although the Ombudsman for Minors did not specifically outline these measures.
- [111]. During interviews and other meetings with the minor, the solicitor should use simple language that is suitable for the minor, seeking to create an atmosphere of trust which allows the solicitor to become acquainted with the child’s actual circumstances.
- [112]. If an administrative court decides the child should be repatriated and the solicitor believes that this is not in the child’s best interests, he/she should advocate that a precautionary suspension measure be adopted. As conclusion, the solicitor shall apply for the suspension of the repatriation when he/she considers the repatriation damaging for the minor.
- [113]. The solicitor should strive to remain informed of all the circumstances that arise during the execution of the repatriation in order to advocate actions favourable to the child’s rights and in case new circumstances arise that entail the suspension or even revocation of the decision to repatriate.

⁹⁴ Spain/Defensor del Pueblo (2005) *Informe sobre asistencia jurídica a los extranjeros en España*, available at: http://www.defensordelpueblo.es/documentacion/informesmonograficos/Informe_Asistencia_Juridica.zip (01.08.2008)

- [114]. In order to facilitate the integration of minors who will remain in Spain, the solicitor should defend their rights regarding residence and nationality as established by the legislation in force.

Appendix - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted permission to remain temporarily on grounds of trafficking								
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)								
Number of trafficked children receiving education/training, in particular secondary education and vocational training								
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)								
Number of final convictions based on child trafficking cases,	0	0	3	7	3	11	1	3

⁹⁵ The source for the data for the years 2003 and 2005 is the Ministry of the Interior Annual Book of Statistics (for 2003 and 2005), Technical Secretary General.

per year ⁹⁵								
Total of amount of compensation paid to trafficked children, per year								
Average of amounts of compensation paid to trafficked children, per year								
Range of amount of compensation paid to trafficked children, per year								

Data on child trafficking was requested from the Ministry of the Interior; the Ministry of Justice, the Ministry of Education, Social Policy and Sports; the Ministry of Labour and Immigration; and from the State Police Forces. For more details regarding our activities carried out to collect data, please see section A.1.3 above.

Other statistics relevant to child trafficking:

Because of their relevance, we have included some statistics drawn up by the National Police concerning offences committed against minors in 2007. (Source: Spain/Policía Judicial de la Dirección General de Policía y de la Guardia Civil (2008) *Informe sobre tráfico de menores*):

<http://www.mir.es>. These data refer to the National Corps of the Police Office, the *Guardia Civil* and the Autonomous Basque Police Office. The source of the remaining data is the Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005, 2006 and 2007) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

YEAR 2007	January	February	March	April	May	June	July	August	September	October	November	December	TOTAL
CHILD PORNOGRAPHY	1	4	7		5	10	2	1	6	2	3	5	46
CHILD PORNOGRAPHY MATERIAL		3	2	4	3	3	1	1	5	6	5	7	40
CORRUPTION OF MINORS		4	1			4	5	3	1	3	3	7	31
SEXUAL OFFENCES	1	7	3	1	6		2	2	4	2	1	1	30
SEXUAL ABUSE		3	4		4	5		1	5	1		2	25
DISTRIBUTION OF PORNOGRAPHIC MATERIAL	1	2	3	1			1	1	2			2	13
POSSESSION OF CHILD PORNOGRAPHY		1	1	1						2		1	6
SEXUAL HARASSMENT			1					1					2
ILLEGAL RECORDING OF IMAGES											1		1
COERCION			1										1
CORRUPTION OF PERSONS WITHOUT LEGAL CAPACITY						1							1
EXHIBITIONISM								1					1
TOTAL	3	24	23	7	18	23	11	11	23	16	13	25	197

Trafficking in Human Beings: Annual Crime Statistics

Ministry of Interior's Crime Statistical Programme
Jurisdiction of the Civil Guard

Year	2000	2001	2002	2003	2004	2005
Total crimes	257.618	291.543	302.493	284.210	286.610	295.622
Coercion prostitution / prostitution for financial gain of others (exploitation)	107	143	139	134	168	126
Trafficking / secret immigration/ sexual exploitation*	No data	No data	No data	No data	8	13
Corruption of minors	26	18	45	47	31	66
Child pornography	17	25	26	22	30	70
Exploitation of mendicity	11	19	27	17	24	24
Offences against the rights of workers	73	347	747	812	554	592
Child trafficking	0	0	3	1	3	2

* This category is included in the tables detailing exploitation in the 2004 Statistical Programme of Security due to the amendment of the Criminal Code (Article 318 bis 2).

Source: Spain/Departamento de Análisis Criminal de la Unidad Técnica de Policía Judicial de la Guardia Civil (2005, 2006 and 2007) *Informe criminológico sobre trata de seres humanos (con fines de explotación sexual)*.

Number of unaccompanied minors reaching Spain:

2001	2002	2003	2004
4.057	6.329	6.846	9.117

Source: Ministry of Labour and Social Affairs. *Dirección General de Inmigración* [Directorate General for Immigration] 2006 '*La infancia en cifras*' [Childhood in Numbers]. <http://www.mtas.es/inicioas/infancia01.htm> (01.07.2008)