



## Second European Meeting Of Child Justice Practitioners

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# CHILD PORNOGRAPHY ON THE INTERNET

## *A. EXTENT OF THE PROBLEM*

Although all the participants at the meeting of 3 March 2003 agreed that the phenomenon of pornography involving children on the Internet is a matter of considerable concern, it is difficult to measure with any precision the extent of the problem in Europe. An approximate estimate may be obtained only by means of examples.

The INTERPOL database in this matter includes 150,000 photographs which have enabled 143 victims to be identified thanks to international co-operation. The permanent working group on criminality with child victims now includes 30 countries.

The first entries of child pornographic data began in 1997, in a case where a distributor had sent material to 12 countries by e-mail. Since then, several international operations have been carried out. At present an international operation is being carried out at the initiative of Germany to combat a network of child pornographers and child abusers. Thirty persons have been arrested and thousands of photographs found and victims identified in France, Belgium, Germany, United Kingdom, Spain, Italy, Australia and the United States. In Sweden, an investigation is at present being carried out concerning a million pictures. Old pictures continue to be circulated and new ones are discovered every day.

These few examples give an idea of the extent of the phenomenon, its trans-national character and the fact that the clients of a network are not simply people who like pictures; they are also potential offenders.

## *B. LEGAL ASPECTS*

### *B.1. OFFENCES AND CRIMINAL SANCTIONS*

In all the countries concerned it is an offence to produce, distribute, publish, trade, export, import or possess pornographic material representing children. These offences vary in accordance with the national law's notion of pornography and are affected by the following factors: the age of the child victims, the particular nature of transmission by the Internet, the international nature of the trade and the punishment and aggravating circumstances provided by the law.

#### The notion of indecency

Most of the national laws considered do not define pornography. France states that it is not a legal notion and that the term covers several offences. Holland talks of representations of sexual acts. Under the Finnish Penal Code it is an offence to produce, publish or trade in pictures representing children, violence or bestiality of an obscene nature. In general, the word is mentioned in statute law and one must therefore conclude that it is for the courts to determine, on a case-by-case basis, whether any particular document or image is pornographic.

The German Federal Court of Justice (*Bundesgerichtshof*) has held that an image may be considered as pornographic when it is intended exclusively or mainly to attract the desire of the spectator for a sexual act without other reference, highlighting the sexuality of the act in an indiscrete and provoking manner. Child pornography is pornography which represents sexual acts with children.

Article 207 of the Austrian Penal Code applies to representations of sexual acts committed on a child or by a child on himself, another person or an animal.

Article 383 bis of the Belgian Penal Code refers to sexual positions or acts involving or presenting children.

In Spain, pornography has not yet been defined either by the law or the courts. However, ratification on 5 December 2001 of the optional Protocol of the Convention of Child Rights concerning the sale of children, child prostitution and the use of children in pornography enables the definition given by the Convention to be considered as constitutionally valid: representation of a child engaged in sexual activities. A reform of the Penal Code will be required for the necessary criminal sanctions to be provided.

In Greece, any description or representation of the body of a child for sexual purpose or indecent acts carried out with the same purpose by or with a child is considered pornographic.

In Ireland, a representation is pornographic when the person represented as a child is engaged or described as engaged in an explicit sexual relation or as taking part in such relation between any other persons, or when its dominant character is the representation for sexual purposes of the sexual or anal parts of a child.

In the United Kingdom, where pornography covers all photographs or pseudo-photographs of children, the courts have established five levels of indecency :

1. Images representing erotic positions without sexual act
2. Sexual activities between children or solitary masturbation by a child
3. Sexual relations without penetration between adult and child
4. Sexual relations with penetration between adult and child
5. Sadism and bestiality.

These levels, as we shall see, may play a role in determining the criminal sanctions.

### **Age of the child**

Child pornography punished as a sexual offence also concerns child protection. Clauses dealing with child pornography form part of the German Criminal Code in the chapter on "Crimes against sexual self-determination", in Ireland of the "Child Trafficking and Pornography Act" and in Great Britain of the "Protection of Children Act". It is therefore a matter where the question of age is of particular importance, since a child is presumed to be unable to give valid consent to sexual relations.

In order to be an offence, the pornographic image therefore must represent sexual acts or attitudes, or parts of the body relating to sexuality, concerning persons below a certain age. But this age varies according to the national law concerned.

In Belgium, Italy, Luxemburg, the Netherlands and Sweden, the age is fixed at 18, whereas Spain and Greece refer to children without specifying any age. Similarly, in France, Article 227-24 of the Penal Code refers to "children" without further explanation. The International Convention on Child Rights considers a child to be any person that has not reached the age of 18.

Other national laws, however, have fixed a younger age : 14 in Germany, Austria and Portugal, 15 in Denmark and Finland, 17 in Ireland, and 16 in the United Kingdom. Perhaps it is more a question of bringing the age into line with the age of puberty. This interpretation is supported by the fact that certain national laws use a notion of "apparent age": as in Finland (apparent age according to the appearance of biological maturity), Ireland (17 or represented as less than 17), the Netherlands (a person who has not apparently reached the age of 18), and Sweden (a child is a person who has not reached puberty or not appearing, according to the image or the circumstances, to have reached the age of 18).

### **Distribution on the Internet**

In the countries considered, the distribution of pictures on the Internet is an offence. Certain national laws do not make special provisions, but are sufficiently general for all methods of distribution to be taken into consideration. This is the case in Austria, Belgium (Art. 383 bis P.C. §1: "or other visual supports"), Denmark, where § 325 of the Penal Code punishes the possession or distribution of photographs, films or "similar products" of an obscene nature. Under Article 189 of the Spanish Penal Code it is an offence to produce or distribute pornographic material by "any means", in Greece (Art. 348 a P.C.), "by any means" in Finland, Ireland (any visual representation), Luxemburg (images or other objects), the Netherlands (images or carriers of such images), Portugal (Art. 174 of the Penal Code) photos, films or recordings by any means, in the United Kingdom (photos or pseudo-photos), and in Sweden (any other manner).

On the other hand, Section 11-3 of the German Penal Code, concerning terminology, provides that audiovisual recording, or other means of storing data, illustrations and other images are to be included in the term "written" (*Schrift*) as used the subsection, including § 184 concerning pornographic written matter. Article 227-23, paragraph 2 of the French Penal Code makes distribution by means of telecommunications networks an aggravating circumstance in the distribution of pornographic images. In Italy, Article 600 ter of the Penal Code expressly provides for the distribution by "telematic means".

Internet distribution gives rise to two problems which do not arise in the case of distribution by more traditional means: the problem of the virtual image and that of the responsibility of the server.

The web does not only enable images to be transmitted, it also permits the creation of **synthetic images** without any relation to reality. What is the situation when an image transmitted is a virtual image, completely artificial, but obscene in appearance ?

Most of the national laws considered do not, by reason of the generality of the terms employed, appear to recognise this problem. The German Penal Code, in Section 11-3, refers to "illustrations and other images". In Austria, where no case of "morphing" has yet been detected, it would be an offence provided that confusion was possible with a real image.

In Belgium, a distinction is made between infant pornography and pseudo-pornography which shows images of children created by computer techniques which substitute images of children for images of adults. The French Penal Code employs the term "message", the Greek law refers to "real or virtual representation" and Luxemburg law to "images or other objects". In Ireland, the law refers to "any visual representation" and, in the United Kingdom, "pseudo-photos".

Switzerland states that although virtual images may be the subject of prosecution under Article 16 § 10 of the Penal Code there has not yet been such a case. In the Netherlands, virtual images have been covered since 1 October 2002. In Denmark and Portugal, virtual images are not yet covered (in Portugal, a reform of the Penal Code is planned to bring virtual images within the scope of law against pornography), and in Finland there has as yet been no case on this matter. In Spain, "morphing" is not yet been covered by the law, but such a provision is to be included under a planned reform of the Penal Code.

**Criminal liability of the Internet server** is determined in most countries on the basis of criminal intention. The server can be prosecuted if it knowingly possesses or distributes the data in Denmark and the United Kingdom (aware of the illicit nature). Section 5-1 of the Irish Law of 29 June 1998, prohibiting the production, distribution or possession of child pornography, employs the term "knowingly".

In other countries, the server may be liable if it comes within the definitions of the law (Luxemburg) or by decision of the courts (Finland). Italy simply indicates that it is an offence but there are grounds for considering that here again the decision lies with the courts.

In Germany, under the law on computer technology service (Teledienstgesetz), the server is responsible for the data it provides. This is not a general liability and the server is not liable for data stocked and accessible on its site unless such data is under its control. It is not liable for data which is not provided by it to which it offers access, if it has neither caused the transfer nor chosen the recipient and, in addition, if it has neither chosen or changed the information which it transmits.

In Austria, the server is liable only if it has been notified of the illicit character of the contents of the server and nevertheless continues to diffuse it.

In Belgium, the server may be covered by Article 383 bis of the Penal Code as distributor or importer.

In Spain, in the absence of any special legal provision, it is considered that the server may be liable under ordinary criminal law for complicity and under the civil liability of spoken, written or visual communication enterprises for offences committed by their dependents.

In France, the server is not liable if in the opinion of the trial judge it does not control the contents of the message which it transmits (Law of 1 August 2000).

In certain countries, the law imposes liability on the server for the breach of certain special obligations: in Sweden, the law obliges the server to withdraw messages in certain cases including infant pornography (Article 5 Act on Liability of Bulletin Board Service, 12/3/98).

Finally, in the Netherlands where the server is at present not liable, a Bill, if accepted, will make it liable if, aware of the pornographic messages exchanged on its system, it fails to make them inaccessible to third parties. Greece and Portugal state that their law does not cover the server.

## **Range of sanctions, causes of aggravation, mitigation or exemption**

In the European countries which replied to the questionnaire, the punishment of child pornography on the Internet includes a wide range of sanctions, from 1 month to 14 years imprisonment resulting from the differences in the legal systems of these countries and, in certain cases, the period when the law was passed. Despite this diversity it is, however, possible to identify certain trends :

### **1. In general, possession of pornographic images representing children is less severely punished than production, trading and distribution**

In Germany, possession is punished by a maximum of 1 year's imprisonment and fine, whereas production and distribution may be punished by 3 years' imprisonment and 10 years where there are aggravating circumstances. In Austria, possession is punished by a maximum of 6 months or fine, whereas production and commerce may be punished by a maximum term of 2 years.

In Belgium, the punishment is 5 to 10 years for production and 1 month to 1 year for possession. In Spain, the minimum sentence applicable for use of children in pornographic enterprises, or production or commerce is applied for possession. In Finland, the possession of obscene images of children is punished by 6 months' imprisonment and fine, whereas distribution of descriptions of obscenity may be punished by to up to 2 years imprisonment and fine.

In France, the maximum punishment for possession of pornographic images of children is 2 years and fine, and up to 3 years for recording for the purpose of distribution and sale. In Ireland, possession is subject to 12 months' imprisonment and fine under the "summary conviction" procedure, and up to 5 years on "indictment", whereas distribution and commerce under the same procedures are liable to 12 months' and 14 years' imprisonment and fine.

In Italy, the maximum punishment for possession is 3 years and fine, whereas distribution may be punished by 5 years and production and commerce by up to 14 years imprisonment and fine. In Luxemburg, possession is an offence subject to 1 month to 2 years' imprisonment, whereas the producer-possessor for the purpose of commerce etc. may be liable to up to 5 years, with a fine in both cases. In the United Kingdom, the sentencing policy of the appellate courts has increased the maximum terms of imprisonment from 6 months to 5 years for possession and from 3 to 10 years for production. In Sweden, a maximum 6 months is provided in the event of "petty crime", which can go to 4 years in the event of "gross crime", including commerce.

In the Netherlands, punishment for production, commerce and possession is 4 years, in Greece at least 1 year, in Portugal from 6 months to 5 years. Denmark did not supply any information on this matter.

**2. Aggravating circumstances vary according to the countries.** They can however be classified in several groups :

#### **a) the nature of the act represented**

In Germany, punishment is increased if the image represents real acts or acts closely depicting reality. In the United Kingdom, the punishment depends on the nature of the obscene act, according to the degrees mentioned above, the most serious being bestiality and sadism. In Sweden, the offence is qualified as "gross crime" if the image represents children submitted to particularly violent treatment.

**b) habitual act or trading for the purpose of profit**

Germany, Austria, Belgium (offence committed within an association), Sweden.

**c) the position of the perpetrator: ascendants or persons in authority**

Italy, Ireland (a person in authority allowing a child to be used for the production of pornographic material).

**d) participation of the perpetrator in a criminal movement**

Germany (member of a gang), Austria (member of a criminal association), Spain (membership of an organisation or association, including temporary, for the purpose of such activities); a French Bill will, if adopted by Parliament, make membership of an organised gang an aggravating circumstance, in Sweden (participation in a criminal activity carried out on a large scale).

**e) age of child**

Italy (14 years)

**f) degree of implication of the perpetrator**

In the United Kingdom, the liability for and original act of child abuse and possession of a great number of images.

**g) use of violence or threats**

Italy

**3. Certain countries recognise mitigating circumstances or justification**

In Italy, punishment may be reduced by a third to a half for persons who make a positive act to enable minors under 18 to recover their independence and liberty (active repentance). In Ireland and Sweden, it is stated that there is no offence in the event of custody in good faith, for example for professional reasons (censorship, prosecution..) or if the act is justifiable in view of the circumstances.

## ***B.2. JUDICIAL AND POLICE ORGANISATION - COMPETENCIES***

The judicial organisation in European countries varies by reason of the diversity of the legal systems to which they are attached and the nature of the State concerned and the same applies to the organisation of the police. When jurisdiction is being considered, account must be taken of the fact that child pornography is an offence against morality, an offence against children and a sign of international criminality. Questions may therefore arise concerning the attribution of cases to specialised services and territorial or extra-territorial jurisdiction in the case where the elements of the offence are committed in different countries. This last question is particularly acute as regards distribution by Internet, as considerable distances can separate the places where the image is produced, introduced in the system and distributed.



## **Austria**

Austria is also a federal State. Cases of this sort come within the jurisdiction of the ordinary courts. For child courts to have jurisdiction, the perpetrator must be a child. There has not yet been any such case.

The criminal police of the Ministry of the Interior centralises research at a national level and the Federal Bureau of Criminal Investigation carries out searches and co-ordinates investigations of the provincial services. The Austrian law applies only to Austrian citizens and to acts committed on Austrian territory.

## **Belgium**

The investigations are carried out at the request or under the authority of the Office of the King's Counsel. Proceedings are carried out in the criminal chambers of the *Tribunaux de Première Instance*. Appeals from the decisions of these courts lie to the Courts of Appeal.

The Belgian police has been considerably reorganised since the affairs of 1996. The local police forces, Gendarmerie and the Police Judiciaire have been replaced by a single structure, the National Police, which is divided into two levels: a local level, which deals with administration and policing, and a federal level, where specialised services assist the local services and deal with more difficult cases. In matters of Internet criminality, the Federal Computer Crime Unit is the general policy body for investigation on the Internet, whereas the "Computer Crime Units" undertake Internet crime investigations at a regional level (2 or 3 districts).

## **Denmark**

In Denmark, 54 police districts have jurisdiction to carry out investigations and prosecute offences in the district courts. At national level, a National Information Technology Crime Unit has been set up to provide the districts, at their request, with support in computer matters and assistance in cases such as child pornography. Punishment in Denmark of acts committed abroad is possible in certain circumstances.

## **Finland**

The police undertake investigations. Prosecution is carried out by the State Counsel Offices : 72 public prosecutor offices and the services of the General Prosecutor. Prosecution is carried out in courts. There are three levels of courts in Finland : 66 Local Courts, 6 Appeal Courts and the Supreme Court. The same person prosecutes at all levels.

Police investigations concerning child pornography are not carried out by a special service. Investigations concerning sexual crimes against children are in general carried out by police officers specialising in violence. The National Bureau of Investigations (N.B.I.) is responsible for centralising investigations on a national level.

## France

Prosecution is initiated by the State Counsel in the *Tribunal de Grande Instance* of the place where the person committed the offence such as storing or diffusing illicit images. It can also be the place where the web user consulted or noted the existence of an illegal site, the place of the server hosting the site, if it is situated in France, or the place of domicile or arrest of the offender. Prosecution is carried out in the criminal courts (*tribunaux de Grande Instance*) with appeal to a court of appeal and, where applicable, to the *Cour de Cassation*.

Investigations are carried out by the services of the Police and the *Gendarmerie*, under the supervision of the State Counsel or the Examining Magistrate in the event of judicial proceedings. Within the *Direction Centrale de la Police Judiciaire*, (Central Criminal Police Department) there is a *Office Central de Lutte contre la Criminalité liée aux Technologies de l'Information et de la Communication* (Central Office for Combating Criminality related to Technologies of Information and Communication) which deals with the descriptions, identification, localises the site concerned, notes the identities reported by the persons responsible for the sites and classes the sites in a database used by the Police and the *Gendarmerie*.

Article 113-1 of the Penal Code provides that French law is applicable to offences committed on French territory. Under Article 113-2, an offence is deemed to be committed on this territory where one of the elements of the offence takes place in France. French law applies therefore to information available on Internet, wherever the source of such information in the world, provided that it is accessible in France. It also sanctions acts committed abroad, for example by a French person or on a French victim (Art. 113-6 and 113-7 of the Penal Code).

## Germany

Germany is a federal State. Prosecution and judgment of offences comes within the jurisdiction of the federal State authorities (Länder). In each Land, there is a central office for the suppression of violent or pornographic material which maintains contacts with other States and at a federal level. The state counsel offices of the Länder generally include a state counsel specialising in this type of affair. In addition to the ordinary courts, juvenile courts also have jurisdiction in this type of affair where the victim is under 18.

As regards police, at federal level there is a Federal Police Office (*Bundeskriminalamt*) with a central office dealing with child pornography. It liaises with the national and international police services and is responsible for analysing and assessing information. The *Bundeskriminalamt* also searches for data of a criminal nature on the Internet. This search is carried out by a central service for research in data networks (ZaRD). § 184 III and IV of the German Penal Code

German law applies to the distribution of child pornography, regardless of the place where the offence was committed, the law of that country or the nationality of the perpetrator (§6-6 C.P).

## **Greece**

Child pornography is dealt with by the normal procedure; it is prosecuted and judged as an ordinary offence. The relevant service carrying out the investigations is the Sub-Department for child protection in collaboration with the Department of criminal investigation. Prosecution for production, distribution in other countries is possible.

## **Ireland**

The Office of the Director of Public Prosecutions is responsible for prosecuting offences concerning child pornography. This prosecution may, in certain less serious offences, be carried out in the district court (a judge without jury) or under the indictment procedure before a judge with jury with more severe sentences.

The Irish national police is the Garda Síochána. Investigations can therefore be co-ordinated at national level. The Garda Research Unit co-operates with independent researchers such as the Department of Applied Psychology, University College Cork, (C.O.P.I.N.E. project see below) and centralises researches.

It is also an offence to organise or facilitate the leaving of the country or the passage through the country of a child for the purpose of its sexual exploitation. Engaging or forcing a child to engage in the production of child pornography is covered. The place where the pornography was produced is irrelevant.

## **Italy**

Prosecution is undertaken by the State Counsel Offices in the courts. The most important Offices have specialised departments. On the police level, there is a computer police department which carries out investigations.

Italian law applies if the process of manufacture-distribution is carried out in another country by an Italian, to the detriment of an Italian, or by a stranger in complicity with an Italian national (Art. 604 I.P.C.).

## **Luxemburg**

The State Counsel's Office is responsible for deciding whether to prosecute. Searches may be ordered by the Examining Magistrate upon application by the State Counsel's Office. Cases of this type are generally judged by police courts. Generally the Police Youth Protection services are responsible for the investigations.

Manufacturing and distribution in another country is not an offence as such. However, Article 5 § 2 of the Criminal Investigation Code punishes any Luxemburg citizen who, outside the national territory, has committed an act qualified as an offence under Luxemburg law if the act is an offence under the legislation of the country in which it was committed.

## **The Netherlands**

All state counsel offices and local courts of First Instance have jurisdiction. A judge, specialising in vice cases and attached to each regional state counsel office, ensures that cases are handled with sufficient speed and professionalism in the interests of the children. A state counsel committee determines policy in this matter. It communicates its opinions to the General State Counsel. The chairman of this committee also chairs the meeting of the regional state counsels specialising in vice cases which discusses cases and working methods.

The department of the Dutch national police specialising in vice cases also deals with child pornography cases. It concentrates on cases of an international nature. Once it clearly appears that such a case has occurred in any region, it is transferred to the local police. This service also centralises information from local vice services at regular meetings. Under Article 5-1 §2 of the Dutch Penal Code, any act committed abroad is liable to punishment if the perpetrator is Dutch and if the act is considered as an offence against the law in the country where it was committed.

## **Portugal**

The services of the State Counsel's Office have jurisdiction to prosecute this type of case in the criminal courts. Investigations are carried out by the police. There is no specialised service, nor any special training for the police and judges dealing with this type of criminal investigation. Elements of the process of production or distribution committed abroad are not liable to criminal sanction.

## **Spain**

There are no special provisions concerning prosecution and judgment of these offences, proceedings therefore takes place according to ordinary law. At police level, certain services specialise in computer investigations, in each of the police forces: National Police, Civil Guard, and the independent police forces. It is an offence to produce, sell, distribute or exhibit pornographic material even if the origin is foreign or unknown. Under Article 190 of the Penal Code, convictions by foreign courts may be taken into consideration in sentencing.

## **Sweden**

Analysis of pornographic films and images relating to children is carried out by the Swedish national police which determines the methods of investigation to be used. Prosecution is initiated by the National Swedish Prosecution Service in the courts. Acts committed in another country may be punished in Sweden if they are acts of production and if the perpetrator has committed a serious sexual offence on a child. Acts of distribution abroad are not liable to prosecution in Sweden.

## **United Kingdom (England and Wales)**

Proceedings are carried out according to the adversarial system. The police investigate and prosecute with the Crown Prosecution Service. For this purpose it has a service specialising in high technology crime (National Hi Tec Unit) and a National Crime Squad. The National Criminal Intelligence Service collects and analyses information on criminal matters for the use of police services and other services responsible for applying the law. The courts are the Magistrates' Court, Crown Court, Court of Appeal (Criminal Division) and the House of Lords.

The Sex Offender Act 1997 provides for extensions of jurisdiction for certain offences, including child pornography provided by the Protection of Children Act. These extensions are subject to certain conditions : that the act constitutes an offence in the United Kingdom and in the country where it was committed, and the perpetrator is a British citizen or resident.

## **C. PRACTICAL ASPECTS**

### **C.1. THE INVESTIGATIONS**

Discussions during the Athens meeting of 3 March 2003 were centred on the presentations made by five delegations (Greece, Sweden, Belgium, France and the United Kingdom) and by representatives of the O.I.P.C. - INTERPOL. The general theme was national practices and the participants highlighted the main difficulties facing the investigating services, the methods employed to solve such difficulties and the needs which must be met to obtain better results.

In all countries, the purpose of the investigations is more than finding the perpetrators of the offence itself. The research and analysis of information tends to produce evidence of sexual abuse on children and check that the distribution network of pornographic material are not mixed up with networks of paedophiles likely to commit offences. In this respect, it is interesting to note the information given by the United Kingdom delegation in relation to an operation named "Landslide" which concerned 7222 suspects, 95% of which had already been investigated for abuse on children.

#### **Detection, collection of information**

The first question which arises is that of the sources of information. Numerous countries have telephone lines or emergency "Hotline" sites allowing web users and, more generally, the public, to report the existence of illegal sites. These lines can either be provided by the investigation services or non-governmental organisations acting in partnership with the authorities. Sometimes the two co-exist. Thus, in Austria, the Austrian Internet Providers Association receives reports and liaises with the police. Belgium provides a website to receive information from citizens. It allows information to be exchanged with other hotlines. In addition, Childfocus has developed a civil site which works with the authorities. In France, an inter-ministerial site has been set up and a report form made available to the public which can report any suspicious material by e-mail to the Office *de Lutte contre la Criminalité liée aux Technologies de l'Information et de la Communication*. In Finland, the police opened a hotline site to receive reports from the public. In Greece, a new site has been set up which gives details allowing the State Counsel's Department to open a preliminary investigation. In the Netherlands, a site has been set up under a partnership of public and private authorities, any information received being transmitted to the police (Vice Division). If the information concerns foreign countries, it is transmitted to the relevant country according to the normal procedure. In Sweden, a line has been opened by Save the Children Sweden, which informs the relevant police service. Management of information obtained by these lines or sites requires perfect co-operation or partnership between the relevant organisations and the authorities responsible for investigation and prosecution.

Naturally, there are also private accusations, in particular by women in the course of separation in order to obtain custody of the children. Such accusations may be successfully exploited as in the affair notified in Sweden. However, such exploitation must be handled with special care to safeguard against malicious accusation.

In France, the Ministry of Justice has suggested that State Counsel encourage police officers to take advantage of searches carried out in the homes of persons suspected of rape or attacks on children to look for pornographic material. This concern is reflected in a remark made by the Swedish representative, that paedophiles rarely get rid of their pornographic material, in spite of being taken in for questioning by the police.

Attention has also been drawn (Belgium) to the difficulties which may result from development of computer software programs which are aimed at deleting, upon starting up or stopping the computer, any traces of the previous use of the machine. It is therefore necessary, according to the elements discovered during the search, to envisage the examination of the hard disk on another machine. It may also prove necessary to stop the computer immediately during the search if an icon appears on the toolbar showing the existence of such software program.

During the meeting the question arose of police infiltration of paedophile rings through Internet chat forums. This technique has been used in certain countries (Germany, where 50% of cases have been discovered by this means). However In other countries (Austria, Spain, France and the United Kingdom) this technique is not permitted as it is considered to be incitement. Belgium underlined in this respect that since incitement was forbidden, only existing material could be exploited.

### **Management of data : exploitation of information**

Most of the European countries have services specialising in the detection and management of offences relating to information technology. Generally, they are run by the police at a central, national or federal level. Thus in Germany, where prosecutions are carried out at Land level, the ZaRD (*Zentralstelle für anlassunabhängige Recherchen in Datennetzen*) works within the *Bundeskriminalamt*, that is to say at federal level.

In Belgium, the Federal Computer Crime Department is also at federal level but there are also specialised services are regional level. In Denmark, the work is carried out by the IT Criminal Unit, in Finland the National Crime Bureau, in France the *Office Central de lutte contre la Criminalité liée aux Technologies de l'Information et de la Communication* which is a service of the Central Criminal Police Department. In Italy, the Information Technology Police Department is part of the national police, as in the Netherlands, the specialised office being the Digital Detection Unit of the Dutch national police. In the United Kingdom, it is the NCIS which, through a National Hi Tec Unit, collects and analyses criminal information which it transmits to various police services. In Sweden, a specialised group operates in the National Criminal Investigation Department.

As they exist at present, these specialised services have to meet a number of difficulties: first the **sheer amount of data to be processed**. In its presentation at the Athens meeting, the Swedish delegate related how a group of four civil servants dealt with one affair concerning one million images. She said that several years ago, cases concerned several thousand images and video sequences ranging from several seconds to seven or eight minutes, whereas today it is not unusual to find cases with several hundreds of thousands of images and sequences lasting up to one hour.

This example illustrates the extent of the IT police's task which requires the fulfilment of certain technical (efficient software programs) and human conditions (increase in manpower but also training of specialised personnel) to make the services even more efficient.

It should also be underlined that the problem of training does not only concern the specialised services, but all police personnel required to deal with information technology material during searches.

Finally, the **sorting of images**. Old pictures and new pictures circulate ceaselessly on the sites. New series are discovered in Sweden almost every week. This implies creation of databases allowing the characteristics of the image to be noted for identification purposes as for fingerprints. The images examined one by one should then, if they haven't been identified on national level, be treated internationally.

This sorting should take into account all details with a view to **identifying the perpetrators**. It is not only a matter of identifying the various individuals who visit the site, but also of finding the producers and distributors and providing evidence of actual acts of indecency on children. However this involves the comparison of pornographic images and "innocent" images which provide details on the family and social background. The question then arises as to what should be kept for the purpose of future comparison.

## ***C.2. INTERNATIONAL CO-OPERATION***

All operations described above include an international aspect. The Internet allows the free exchange of data across frontiers. It is therefore indispensable that an image discovered in one country may be examined in others, that the perpetrators be identified wherever they may be, prosecuted and judged according to the procedures provided by national law, or extradited according to international law. It is therefore indispensable, especially in matters relating to high technology, that international co-operation, whether police or judicial, be speedily and effectively exploited.

### **Police co-operation**

Police co-operation can occur in international organisations (INTERPOL, EUROPOL) or between countries, on a case-by-case basis, through bilateral contacts. All countries concerned mentioned participation in EUROPOL and INTERPOL. Certain mentioned their participation in workgroups organised by EUROPOL on high technology crime (Finland, Sweden) or by INTERPOL regarding children (Ireland).

The working procedures set up by INTERPOL appears to be specially taken into consideration. On the one hand, in each country there is a National Central Bureau, generally run by the same administrative entity that manages the specialised services responsible for information technology investigations (*Bundeskriminalamt* in Germany, Central Criminal Police Department in France, Garda Siochana in Ireland, etc...). In addition, over the last years, a special procedure has been set up which was described by the representative of the Organisation during the Athens meeting:

1. A team of specialised investigators in a group responsible for fighting the trade in human beings operates in the General Secretariat at Lyon (France).
2. A workgroup on crimes with child victims has already met 20 times; another workgroup deals with investigation in matters of high technology.
3. Crime analysis groups including investigators from different countries interested by the same affair, meet to pool their information and analyse the results.
4. An international database has been set up at the Organisation headquarters; it includes 150,000 unduplicated photos which have enabled 143 victims to be identified.
5. A securitised site has been set up to enable police of member countries to access more specific information, to download a photo and to compare it with those which they possess.

### **Judicial co-operation**

All countries considered that this co-operation was indispensable, especially between the bodies responsible for prosecution. This co-operation already exists at a bilateral level for certain affairs, but the United Kingdom notes the need to send requests for judicial assistance in order to obtain evidence from abroad and sometimes the necessity to negotiate jurisdiction in matters in matters of extradition. Denmark states that this co-operation is possible through the Ministry of Justice and Sweden notes that co-operation is above all desirable where rapid decisions are necessary.

## ***D. PREVENTION***

Prevention work carried out in the countries is directed less towards prevention of child pornography than the prevention of paedophilia, or the actual committing of offences and recruiting of children for criminal acts by way of the Internet. It is implemented in two main ways: analyses of behaviour of the perpetrators and measures to avoid their contact with children and teaching children how to use the Internet without danger. It is the latter area where collaboration between the justice and police services and the non-governmental organisations can be particularly effective.

### **Study of behaviour of perpetrators**

There are no special services in the relevant countries responsible for analysing the behaviour of perpetrators of sexual acts against children which could be responsible for the study of members of groups exchanging information of a pornographic nature on the Internet. However, certain countries have reported interesting measures taken mainly by official organisations.



Thus, in Belgium, the investigators take into account the profiles of possessors of pornographic material, classed as abstinent and active, neurotic immature, egocentric or perverse. In Finland, where this assessment work is carried out within the N.B.I., a new method of prevention has been recently experimented, where employers require an extract of the criminal record of all job applicants in order to detect persons that have already committed sexual offences ; in the Netherlands, where there is no specialised service responsible for evaluation, the information technology police tries to carry out assessments on a case-by-case basis with the aid of profilers.

After arrest, efforts are made to analyse the personality of the perpetrator on the basis of any discovered documents. It is reported, however, that the experiment is only beginning and it would be premature to attach any scientific value to this method of work. In Ireland, a programme called "COPINE Project" (Combating Paedophile Information Network in Europe), set up in 1997 at university level, is developing and implementing therapeutic measures for perpetrators. It works in close liaison with the police services. In the United Kingdom, links have been created recently with the behavioural science department of the F.B.I. to list the nature and content of empirical research existing, being undertaken or planned. Moreover, the multi-disciplinary strategic group has just taken over the probation service, which implies that special attention will be given to post-penal treatment.

It was stated during the meeting that a classification of perpetrators by occupation had been carried out during the operation "Landslide" which has already been referred to. Disqualification procedures can be taken to prevent persons having past history of criminal acts against children from holding employment which puts them in contact with children. Measures have been taken to protect vulnerable witnesses and prevent their intimidation during trial. Victims are consulted before the liberation of perpetrators. Sweden reports that it is undertaking projects with an N.G.O. Save the Children Sweden.

It is interesting to note that in Spain, the law of 2002 on telecommunications made the Ministry of Science and Technologies responsible for verifying whether companies (Internet servers) were complying with their legal or statutory obligations.

### **Prevention aimed towards the children**

It is in this area that the role of the N.G.O. and their co-operation with official services is especially noticeable in setting up prevention programs and public information campaigns especially for families and the children themselves.

Germany states that this sort of prevention is undertaken by associations. In Belgium Child Focus has organised various campaigns to inform children about the Internet: "Surfsafe" having the slogan "danger-free surfing" addressed to 10 to 13 year olds in 2000, with distribution of posters and an e-mail address. Since then, other campaigns have been launched: "Child Focus net alert" and "Clicksafe" in 2002.

In Denmark, the action of Save the Children, Denmark is emphasised. In France, an inter-ministerial site was set up. It gives advice to parents and children on the use of the Internet, outlines the relevant French law and gives some useful addresses (Ministries, Interpol, Associations, Defender of Children), provides a report form and an e-mail address. In Finland, the "Save the Children Finland" action is emphasised and the "Mannerheim League for Child Welfare".

In Greece, the child protection service co-operates with the N.G.O.s. In Italy, when the perpetrators have been identified, the children are protected by means of proceedings in child courts. Any money seized is paid into a fund to finance prevention and assistance.

In Luxemburg, monitoring and protection of children involved is carried out under the child protection law of 10 August 1992; there is also an E.P.C.A.T. section.

In Ireland, the Internet Advisory Board distributes information on the use of the Internet. The N.G.O.s also play a role. The COPINE Project, referred to above, deals with child victims.

In the Netherlands, Cibertipline with E.P.C.A.T. has begun a campaign to draw attention to the existence of child pornography on the Internet. This campaign, called "Surfsafe", is addressed to young children, adolescents and parents.

In Portugal, in addition to the role played by the Child Protection Commission, the action of the N.G.O.s such as the Portuguese Association for Support of Victims, the Child Support Institute, the Family and Child Support Programme and the Chao de Meninos Association is emphasised. Studies are carried out at university level.

In the United Kingdom, a Home Secretary task force has launched an information campaign indicating how and where assistance may be received. In Sweden, child protection may be ordered, for a short time, when there has been abuse. Prevention is the area of N.G.O.s.

# CONCLUSIONS

The conclusions of the Athens meeting, set forth by Professor Calliope Spinellis, moderator of the discussions on this subject, perfectly summarise the main themes of the discussions and the replies to the questionnaire:

1. Paedophilia is a worldwide problem of society which requires multidisciplinary co-operation, both at national and international level, between police, authorities responsible for prosecution, judges and international organisations such as INTERPOL.
2. It is mainly a problem concerning civil society. The role of the N.G.O.s, both in the fight against paedophilia and its prevention, is therefore extremely important.
3. The problem is accentuated by the use of advanced technology. Solutions must therefore be technological and require training and educating children about the Internet and assistance to parents.
4. The question of distribution of knowledge and know-how is also fundamental. Each country cannot discover everything. International exchange of *modus operandi* is therefore indispensable. Only by co-operation can the difficulty of collecting indispensable material be overcome.
5. It is necessary to set up databases accessible 24 hours out of 24, and to establish permanent sites enabling complaints and accusations to be filed.
6. It is also very important to provide an evaluation of prevention methods and to ensure their distribution.

# SEXUAL EXPLOITATION OF CHILDREN FOR COMMERCIAL PURPOSES

## A. GENERAL ASPECT OF PROBLEM

Child pornography is only one aspect of a larger phenomenon: the sexual exploitation of children for commercial purposes. This is a major and long-established criminal phenomenon, which has at present reached considerable proportions. According to U.N.I.C.E.F., quoted by the German delegation during its presentation at Athens, the number of children sexually abused since an early age is estimated at two million. This is a phenomenon which exceeds that of prostitution. Several delegations reported on the shock caused to the public by the discovery of affairs in which children had been used to satisfy the sexual needs of well-known persons whose role in society requires that they be above all suspicion.

This is a difficult area both from a legal point of view - it concerns prostitution, trade in human being, sexual self-determination and occasionally incest - and from the practical point of view of investigation: identification, determination of age of the children in question, importing of children, sexual tourism, intervention of organised crime, are problems facing national laws, services responsible for investigations and organisations set up to ensure international co-operation.

In addition, and perhaps above all, prevention and psychological monitoring and support of child victims play a decisive role.

## B. LEGAL ASPECTS

### B.1. OFFENCES AND SANCTIONS

#### Sexual relations with a child

In the European countries concerned, most sexual relations with children constitute criminal offences which are punished more or less severely according to the nature of the acts and the age of the victim. These offences concern not only sexual exploitation for commercial purposes but also what is more generally known as paedophilia.

In Germany, sexual abuse of children and sexual abuse of adolescents are distinguished. The former is aggravated when actual sexual relations occur, a union of persons or where the child has suffered physical or moral damage. The latter implies exploitation or financial reward. It should be noted that in Germany provisions concerning sexual acts on children are included in the chapter of the Penal Code dealing with Crimes against sexual self-determination. This notion, which is found in other laws, reflects the fact that the child, as other persons without capacity, is deemed to be unable to give valid consent.

In Austria, Article 207 of the Penal Code also distinguishes between sexual abuse on children and sexual abuse on young persons. A distinction is also made between sexual acts without penetration and sexual acts with penetration. Sexual abuse on a young person also includes acts carried out with a person incapable of discernment. This is also the idea prevailing in Belgium where, together with indecent assault with or without violence, rape is defined as "any act of sexual penetration of any nature whatsoever and by whatever means on a non-consenting person" (Article 375 P.C.). It is stated that "is deemed to be rape with violence, any sexual penetration of any sort whatsoever by any means whatsoever committed on the person of a child under the age of 14". There can be no question of consent by such children.

In Spain, children and other persons lacking legal capacity are treated in the same manner as regards prostitution. In the Netherlands, sexual relations with minors under 16 is an offence even if the child consents. In Portugal, sexual abuse of a child (under 14) is an offence under ordinary law, but where the child is between 14 and 16, the courts verify whether there has been abuse of the inexperience of the child or the commission of homosexual acts.

In Denmark and in France, sexual relations with minors under 15 is covered by criminal law and the client is criminally liable from the moment that he is aware or should be aware of the age of the child. The client of a child prostitute is also liable in Luxembourg.

In Finland, where it is an offence to purchase sexual services of a child (Section 8 P.C.), sexual abuse is constituted either by sexual relations properly speaking (intercourse), or by touching or other sexual acts. In France, in addition to crimes of rape and sexual aggression on minors under 15, the Law of 4 March 2002, punishing prostitution of children, created an offence of "recourse to prostitution of a child". In Greece, the client of the child is punished.

In Ireland, it is an offence to solicit any person for the purpose of any sexual activity with a child. A sexual act with a child under 17 is in any case an offence. In Italy, subject to more serious offences, Article 600 bis of the Penal Code punishes the sexual act with a child in exchange for money or economic advantage.

In the United Kingdom, the Sex Offenders Act 1997 distinguishes between rape, sexual relations with child girls from 13 to 16 and acts of sodomy. All are offences.

In Sweden, sexual relations with a child under 15 is an offence in all circumstances (Section 4 P.C.).

In short, the following trends can be identified in relation to repression of sexual acts against children :

1. The child is never prosecuted, is considered as a victim, and under certain national laws, is incapable of giving valid consent below a certain age.
2. The client of a child prostitute is always liable to prosecution.
3. Most national laws distinguish between different levels of seriousness of offences by distinguishing between sexual acts with penetration and other sexual acts, the former being more seriously punished.

## **Notion of exploitation**

All the national laws of the European countries concerned contain provisions concerning sexual exploitation of children for commercial purposes. They refer mostly to the notion of prostitution and procuring. But it cannot be said that exploitation of children is a simple aggravating circumstance of procuring, although this notion often exists. Considerable attention is given by legislators to the notion of recruitment and "training" with a view to prostitution. In addition, certain countries are concerned by the international character of trade in children.

### **a) Recruitment for and incitement to debauchery and prostitution**

*All the countries that provided explanations in this matter punish the incitement of children to prostitution.*

In Germany, § 180 P.C. punishes the act of promoting sexual activities involving a child and resulting in minors under 18 carrying out sexual acts with third parties in return for remuneration. Section 236 punishes sale by natural or adoptive parents of minors under 14 for the purpose of their sexual exploitation. In Austria, §§ 213 *et seq.* the offence of encouragement consists in having a relationship with the victim and through such relationship persuading the victim to accomplish a sexual act with a third person. The commercial intent is an aggravating factor, as is persuading children to take up professional prostitution. Under Articles 379 and 380 of the Belgian Penal Code it is an offence to encourage or facilitate sexual immorality, corruption or prostitution of children, the hiring, training or abduction of children or incitement of children to sexual immorality in a public place.

In Spain, it is a criminal offence to incite, promote or encourage prostitution of a child and (Article 189) to use children in public performances. In Finland, incitement or intimidation for the purpose of prostitution constitutes a form of procuring, as in France (Article 225-5 3° P.C.) where corruption of children is an offence (Article 227-22 P.C.). In Ireland, the use of children for the purpose of sexual exploitation implies incitement or forcing the child into prostitution. Article 600 bis of the Italian Penal Code makes it an offence to bring a person to prostitution. In Luxemburg, under Article 379 P.C., incitement to sexual immorality, corruption or prostitution of children are offences. In the Netherlands, Article 250 P.C. covers incitement to prostitution, the use of force and abuse of authority for this purpose, and recruitment with a view to prostitution. In Portugal (Article 172), incitement of a child to sexual immorality includes obscene acts or conversation in the presence of children and the act of causing the prostitution of children. In the United Kingdom, incitement is referred to and it is proposed to introduce aggravating circumstances according to the age of the child. In Sweden, incitement is a sexual offence, as is constraint.

### **b) The notion of exploitation**

The actual notion of prostitution implies an idea of profit and procuring constitutes the exploitation of prostitution. All the countries consider, in one manner or another, exploitation of sexual immorality or child prostitution to be a serious offence.

Most of the countries consider the age of the victim as an aggravating circumstance in procuring. Austria reports that, although not referred to in statute law, it is taken into account at the time of sentencing. The same applies in the United Kingdom. In Denmark, age is not considered to be an aggravating circumstance. In Greece, the younger the child, the more severe the punishment.

Several national laws contain special provisions concerning sexual exploitation of children. They refer to notions such as the intermediary, "creation of opportunity" (Germany), running prostitution establishments or provision of the premises, the provision, offer or promise of an economic or financial benefit (Belgium), organisation or facilitation (Ireland), favouring and taking advantage of (Italy), facilitating and encouraging (Luxemburg), trade in persons (the Netherlands), control of prostitution activity (United Kingdom).

### **c) The notion of international trade**

The international dimension of trade in human beings is taken into account in several national laws concerning the sexual exploitation of children. This is the case in Germany (Art. 180 P.C.), in Austria (Art. 217 P.C.), in Spain (Art. 188 P.C.), in France (Art. 227-26 P.C.), in Ireland (Child Trafficking and Pornography Act 3-1), in Luxemburg (Art. 379 bis P.C.), and in the United Kingdom (Bill).

### **Age of child**

As in matters of pornography, the age of the protected child varies according to national laws. The question is made more complex by the fact that, in the same country, the ages may vary according to whether it is a child with whom sexual acts have been carried out, the child has been incited or brought into prostitution, or the exploitation itself.

It has therefore appeared more convenient to synthesise this in the form of the table below and then to draw conclusions.

COUNTRY	SEXUAL ABUSE	PROVOCATION TO PROSTITUTION	EXPLOITATION
GERMANY	Sexual abuse on minors under 14 years Sexual abuse on minors under 16 years	Promotion of sexual acts : 16 years Incitement: 18 years Sale of children: 14 years	18 years 21 years
AUSTRIA	Sexual abuse on minors under 14 years Sexual abuse on minors under 16	14 years	
BELGIUM	14 years	Minor Aggravation : 15 years	Prohibition of protection: 16 years and more Aggravation: less than 16 years
DENMARK	15 years		
SPAIN	Sexual relations = Abuse: 13 years old Sexual relations with prostitution: 15 years.)	Minor	Child
FINLAND	16 years (18 if parent)	Purchase of sexual services: 18 years	
FRANCE	15 years	Corruption of children: 15 years	Child (18 years) Aggravation Proc.
GREECE			Child: aggravating circumstances of procuring.
IRELAND	17 years	17 years	17 years
ITALY	14 -16 years	18 years	18 years
LUXEMBURG	18 years (Aggravation based on age: 14-11 years)	18 years (Aggravation based on age: 14-11 years)	18 years (Aggravation based on age: 14-11 years)
THE NETHERLANDS	18 years (Aggravation based on age: 12-16 years)	18 years (Aggravation based on age: 12-16 years)	18 years (Aggravation based on age: 12-16 years)
PORTUGAL	14 years (16 if inexperienced)	14 years (if inexperienced)	16 years
UNITED KINGDOM	13 years - 16 years	18 years (13 years ➔ Bill )	18 years (13 years ➔ Bill)
SWEDEN	15 years (8 if parent)	18 years	Minority: aggravating circumstance of procuring



In view of the above, it seems that the following conclusions can be made, subject to certain precautions:

1. abuse of children based upon protection of sexual self-determination, implies generally that the victim's age is close to that of puberty or a capacity to understand the nature of sexual advances and to resist them where possible.
2. under the influence of shocked public opinion following several particularly scandalous affairs, certain national laws have modified this age in order to extend the protection to a greater number of children. Thus in Belgium, the age was raised from 10 to 14.
3. the age provided in cases of incitement to prostitution is also lower than that of aggravation of procuring. The problem here is to protect young children from their lack of discernment and to prevent their future from being irremediably compromised by being enrolled at a very early age into a prostitution network.
4. concerning exploitation properly speaking, the problem is to provide a law which discourages procurers by aggravating the punishment when a child is concerned. This is reflected in Belgian law which lays down the principle of prohibition of prostitution of minors under 16.
5. harmonisation of ages is desirable in Europe, but we all know it is extremely difficult.

### **Sanctions, causes of aggravation and mitigation**

The sanctions provided by different national laws of the countries vary considerably. They apply also to very different situations. This is the reason why, as in the foregoing paragraph, we will try to summarise them in a table, as follows.

COUNTRY	SEXUAL RELATIONS WITH CHILDREN	INCITATION TO PROSTITUTION	EXPLOITATION
GERMANY	Relations with minors under 14 : 6 months to 10 years Rape + death: life imprisonment	6 months to 10 years	6 months to 10 years
AUSTRIA	Relations with minors under 14 : 6 months to 5 years Aggravation (penetration) : 6 months to 10 years Serious injury : 15 years		Proc.: 6 months +fine
BELGIUM	Touching: 6 months + fine Act without violence: 5 to 10 years Penetration-14 years : 15 to 20 years Death of victim : 20 to 30 years	Child 5 to 10 years Child under 16: 10 to 15 years Child under 14: 15 to 20 years	Child : 10 to 15 years -16 years 15 to 20 years
DENMARK			
Spain	S. prostitution -15 years: 1 to 4 years	1 to 4 years Aggravation : 18 months to 4 years If violence : 3 to 4 years	4 years
FINLAND	Abuse on minors under 16: 4 years	Purchase of sexual services: 6 months	Proc.: 3 years
FRANCE	Rape of child: 20 years Sexual aggression on child: 7 years Sexual relations with child prostitute : 3 years (Aggravation : 5 years) With child under 15 : 5 years (Aggravation : 10 years)	Corruption of child: 5 years	Proc. aggr. 10 years
GREECE			
IRELAND	Use of child : 14 years	14 years	14 years
ITALY	6 to 12 years	6 to 12 years	6 to 12 years Trade in children 6 to 20 years
LUXEMBURG	1 to 5 years If child is under 14 : 2 to 5 years If child is under 11 : 5 to 10 years	Id.	Id.
THE NETHERLANDS	6 years + fine	6 years + fine If child is 16 years : 8 years	6 years + fine If child is under 16 : 8 years
PORTUGAL		6 months to 5 years	6 months to 5 years
UNITED KINGDOM	Bill ➡ 7 years	Bill ➡14 years	14 years
SWEDEN	Act on child : 4 years (Aggravation : 8 years)	6 years	Proc. 4 years (Aggravation 6 years)

## Grounds of aggravation and mitigation

The table above shows not only the diversity but also the severity of European laws concerning exploitation of children for sexual offences. This severity has been reinforced by recent legislation passed in several countries following the shock to public opinions caused by several particularly scandalous affairs. The causes of aggravation permit us to underline the areas where the legislators especially wish to provide protection.

The **age of the child** constitutes, as we have seen, an aggravating circumstance in procuring. But is also is an aggravating circumstance in sexual abuse of children so that the younger the victim, the more severe the penalty (Germany, Austria, Finland, Italy, Luxemburg, the Netherlands, United Kingdom). In Spain, although the Penal Code does not expressly make the distinction, the criminal sanction is more severe when the child is under 16. On the other hand, Italian legislation (Art. 600 bis P.C.) recognises a mitigating factor if the perpetrator is under 18.

The circumstances of the act may constitute aggravation in abuse on children: use of violence, abuse of authority or especially humiliating attitudes (Spain, Finland, France, Sweden). It should be noted in this respect that sexual penetration is more seriously punished than simple touching (Austria, Belgium, France, Sweden) and that, in all national laws, rape is a very serious offence. Thus sadistic practices of certain clients are especially severely punished. Among the aggravating factors more specially encountered in the area of incitement and exploitation, can be noted:

1. The position of the perpetrator : parent, person in authority, persons holding certain functions : Germany, Austria, Belgium, Spain, France
2. Abuse of authority or use of coercion : Germany, Austria, Belgium, Spain, France, Luxemburg, the Netherlands
3. Several victims : Austria, France, Sweden (on a large scale), the Netherlands
4. Several perpetrators especially in the form of association, even temporary, or in an organised band: Germany, Austria, Belgium, Spain, France, Ireland. France reports in this respect that its legislation on criminal liability of legal entities enables not only the officers but also the company itself to be held criminally liable.
5. Trade in human beings : Germany, France (draft).

It should be noted that French law now recognises the **use of a communication system** to enter into contact with the child as an aggravating circumstance.

Under mitigating circumstances **active repentance** in Italian law should be mentioned. This applies to a person who makes efforts to help the child victim to escape from its situation.

## **B.2. ORGANISATION OF COURTS AND POLICE – JURISDICTION**

### **Bodies responsible for prosecution and judgment**

In general, in all European countries, cases of exploitation of children for sexual purposes are prosecuted and judged under ordinary law. There are no special courts in this matter nor any centralisation of procedures as in matters of terrorism or organised crime. There are, however, in certain laws, special provisions intended to give better protection to child victims.

Thus, in Germany, certain cases may be judged by children's courts. Particular precautions are taken in hearing children. Minors under 16 may be questioned only by the President of the courts. The hearing of children may be carried out by audiovisual means or replaced by films taken by a judge.

In Belgium, although prosecution and judgment are subject to the rules of ordinary law, a college of General State Counsels has been set up with national jurisdiction to co-ordinate the actions of the police. The Federal State Counsel Office deals with cases involving organised crime and a judge specialises in cases of trade in human beings. Liaison judges have been appointed and an expert network has been created for questions relating to trade in human beings.

In Spain, prosecution is the responsibility of specialised State Counsel. Italy reports that the State Counsel of the children's court and the court itself play a role in the protection of children victims. In France, the Law of 17 June 1998 provides for hearing children victims by audiovisual recording with their consent or that of their legal representative.

### **Services responsible for investigations**

In all the European countries, the police carry out investigations; in certain cases, they may centralise information and co-ordinate searches, especially in matters of trade in human beings and organised crime. In Germany, at federal level, the *Bundeskriminalamt* manages a database of A.D.N. records.

In Austria, a specialised service of the federal Police deals with trade in human beings, including "imports" of children.

In Belgium, a task force, reporting directly to the Private Office of the Prime Minister, includes representatives of all ministries and services concerned. In Denmark, investigations are carried out in the 54 police districts and there is no specialised service. Similarly, in Sweden investigations are carried out at local level.

In Spain, there are within the National Police and the Autonomous Community Police, specialised Children Groups (GRUME) which centralise information about child victims.

In Finland, centralisation is carried out within the National Bureau of Investigations (N.B.I.). In France, the Central Office for the Prevention of Trade in Human Beings (*Office Central pour la répression de la traite des Êtres Humains*) has been set up in the Central Criminal Police Department. In Greece, the department of children is responsible in collaboration with the Police.

In Ireland, the Garda Síochána (National Police) centralise investigations and the Garda Research Unit centralises researches. In Italy, a special unit of the Police has been set up in the "Squadra mobile" to investigate exploitation of children.

In addition, in each Police Préfecture a specialised squad collects information and co-ordinates them with European colleagues. At national level, the operative central Service analyses and co-ordinates information in cases involving the more dangerous criminal organisations. In Portugal, under the law of 10 August 2000, investigations of this type of offence punishable by not less than 5 years' imprisonment when the perpetrator is unknown or the victim is a child under 16, are the responsibility of the Police. In the United Kingdom, it is the N.C.I.C. which centralises the information.

### **Extra-territorial jurisdiction: prevention of sexual tourism**

The 15 European countries taking part in this study have made provisions for the prosecution and punishment of cases of sexual tourism, that is to say prosecution of perpetrators of sexual offences committed in another country.

In Germany, the Penal Code (Sections 5-8) distinguishes between offences against self-determination committed against prisoners and sexual abuse against children and young persons. For the latter, German law applies if the perpetrator is German or resident in Germany, whereas in the former case the victim must also be German.

In Austria, Austrian law applies if the perpetrator is Austrian and if the offence is an offence under Austrian law.

In Belgium, Article 10 ter of the Preliminary Title of the Penal Code extended extra-territorial jurisdiction in cases of acts against minors under 16 : whatever the nationality of the perpetrator in Belgium and whatever the place of commission of the offence, Belgian courts have jurisdiction over cases of child corruption, child prostitution, indecent assault, rape, sexual mutilation and trade in human beings where the victim is a child.

In Denmark, sexual tourism is an offence under certain conditions.

In Spain, under Article 23.4 of the Judicial Power Implementing Act, Spanish courts (*Cour Nationale*) have jurisdiction over acts classified as offences of prostitution or corruption of children, committed outside Spanish frontiers by Spaniards or foreigners; the decisions of foreign judges are taken into account in the same manner as those of Spanish judges in cases of repeated offences.

In Finland, the law applies to offences committed by or against Finns. Dual criminal liability is not required in the case of sexual offences against children.

In France, the Law of 17 June 1998 extended extra-territoriality of French criminal law, which now applies to all sexual offences committed against children abroad, not only by French nationals, but also by persons normally resident in France. Tour operators in their capacity of legal entities may also incur criminal liability.

In Greece, sexual tourism may be prosecuted under Article 11.2 of Law 3064 /2002.

Under the Irish Sexual Offences (Jurisdiction) Act of 1996, sexual tourism outside Ireland is an offence if the perpetrator is Irish or normally resident in Ireland and if the offence is an offence in both countries concerned.

In Italy, sexual tourism outside the country is an offence if committed by an Italian, on an Italian, or with the help of an Italian.

In Luxemburg (Article 5 of the Criminal Investigation Code), sexual tourism committed abroad by a Luxemburg citizen or a person resident in Luxemburg is an offence even if it is not an offence under the law of the country where it was committed, including in the absence of any accusation or complaint from such country.

Legislation of the Netherlands has, since 2002, adopted a radical position: sexual relations with a child is always an offence, whatever the law of the country where they were committed.

In Portugal, sexual tourism is an offence if the author or victim is Portuguese or if the author, resident in Portugal, refuses to be extradited (Article 5 No.1 a and b P.C.). In the United Kingdom (Sex Offender Act, 1997, Sexual Offences Act 1996) the perpetrator may be prosecuted if he is a British citizen or resident and if the offence is an offence in both countries concerned. Sweden reports that sexual tourism is an offence, without providing further details.

## ***C. PRACTICAL AND TECHNICAL ASPECTS***

### ***C.1. DIFFICULTIES OF INVESTIGATION***

According to the debates at the Athens meeting, the presentations by Germany, Belgium, Greece, Italy, the Netherlands, Portugal and the replies to the questionnaire by the 15 participating countries, the main features of the trade in children for sexual purposes in Europe are as follows.

The origin of the infant victims may be national or foreign. In where the origin is national or local, the children are generally delivered into prostitution by persons of their family or by immediate relations (Portugal notes the case of children placed in institutions, Belgium mentions exploitation of runaways and precarious situations).

Where the children are of foreign origin they come from four main geographical areas :

1. firstly, the countries of **Central and Eastern Europe** : Bulgaria, Romania, Ukraine, Hungary, Moldavia, Baltic Countries and Russia.
2. **African countries** : Western Africa (Nigeria), Central Africa (reported by Italy), Eastern Africa (Kenya, Madagascar reported by Germany), South Africa (Germany).
3. **Asian countries** : Philippines, Sri Lanka, Cambodia, Thailand (Germany, Italy, Belgium).
4. **Latin-American countries** : Brazil, Nicaragua, Paraguay (Germany), Argentina, Mexico, (Spain).

In all these cases, the role of criminal organisations is reported, whether mafia groups (for example Albanian) or local groups, smaller and in a more precarious situation. The Netherlands reports that children coming from abroad arrive in the country either as refugees, in the hope of finding legal work, or are directly recruited for the sex industry.

Emigration, secrecy and the influence of criminal groups are therefore the causes of the two main difficulties encountered during investigations: firstly the identification and determination of the age of the children and secondly the difficulty of identifying the networks and fighting against the influence of organised criminal groups.

## Identification and determination of the age of children

The prevalence of wandering, running away and children without identities makes it particularly necessary to have reliable methods of identification of child victims, especially in view of the fact that the criminal groups specialising in this trade habitually deprive their victims of their passports, provide them with false papers and keep them mobile in order to discourage searches and prevent young prostitutes from being linked in any durable manner with an inhabitant of the place where they carry out their activity.

The identification of children is therefore a particular difficulty in investigations and is underlined by all countries. There is, in law, no special identification procedure (Italy). Identification is therefore carried out by traditional methods (fingerprints, photos, descriptions, etc.). Germany reports that although it is legally possible to oblige someone to open their mouth in order to carry out a dental examination, it is not possible to carry out an X-ray examination. In Portugal, there is no systematic treatment of information. Greece underlines the difficulty of establishing the authenticity of foreign identity papers.

The debates concerning child pornography (see preceding chapter) show the interest of exploiting pornographic images for identification of child victims and establishing a possible link between trade in pictures and trade in children. The INTERPOL representative indicated the scope of the problem : the database of his Organisation, which includes 188 member countries, includes 150,000 images in the archive. Only 150 children have been identified.

Determination of the age of the victim is of particular importance since in all legal systems it determines the existence of the offence and the seriousness of the punishment. Countries which took part in the discussions at Athens, however, deplored the lack of reliability of the scientific methods used, in particular the method which consists in using examination of bone development. This was described in detail in the presentation of the Belgian delegation. This examination is based in the comparison of X-rays of the left wrist of the subject with a geographical atlas established in the 1930s according to a sample of white North American children. In this respect, several difficulties have arisen :

1. The legality of X-ray examinations in the absence of medical necessity
2. Accuracy of the method: the older the child, the less accurate the method; the bones of the wrist are knitted at 17 for girls and 19 for boys (subject to a variation of one year). A young girl may have bones knitted at 16 to 18. It is precisely at this age that most laws fix sexual minority.
3. Certain pathological conditions can modify the process of ossification.
4. Bone maturity can be modified according to climates and ethnicity.

In view of this lack of reliability, other methods are being developed. Sweden has mentioned the use of endocrinological expertise. It seems that more global methods are preferred. In Italy, any examinations consistent with health can be carried out.

In the United Kingdom, paediatricians' opinions are used and Spain resorts to reports of medical specialists on bone development completed by physical and psychological examinations. In Germany, use of A.D.N. is reported and a databank is managed by the Federal Police. In France, at Trousseau Hospital and Hôtel-Dieu at Paris, there are services where clinical examinations can be carried out in order to determine the physiological age and not only the bone age. A programme of research on children without identity papers has been reported by Belgium. A working group has been set up, which is at present studying this question.

Finally, it seems useful to mention that Ireland uses a legal notion of "physical appearance", the child being presumed to be under 17 if it appears to be younger than 17. Medical examination may be carried out if the child is available and accepts, but is only an element of appreciation.

### **The fight against organised criminal groups**

The fact, reported by the Belgian delegation, that two or three million children are actually engaged in prostitution, indicates the enormous profits generated by this trade. Organised groups of criminals mafia groups or local are therefore present everywhere. The methods used [by such groups] (Belgium) range from the most utter barbarism with rapes, wounds and reduction into slavery to more subtle actions, such as seduction, emotional blackmail and threats against families remaining in the country of origin. These methods vary according to the network : the Albanians and Romanians, for example, constantly supervise their victims, whereas the African networks use ritual practices.

The organisation of these groups also varies from family networks to mafia networks using corruption.

Italy has drawn attention to the fact that the groups manage the entry of their victims in the territory, deprivation of identity documents being one of the means of forcing them into prostitution. Equally, it reported the prevalence of the law of silence, and the threat of vengeance in the countries of origin. Recruitment can also be accompanied by violence (Germany).

Faced with this situation and in addition to special provisions intended to combat organised crime in general (anti-mafia laws, aggravating circumstances of "organised gang", etc.), the strategies developed by the European countries may be grouped in three categories :

1. Measures intended to counter threats against victims or their families. In Germany, a special victim protection programme has been set up with increased use of witnesses and means of proof (ADN). In France, it is possible to appoint an *ad hoc* guardian for a child at the beginning of the investigation, and it is the guardian who decides whether to bring a civil action and chooses the lawyer. In Italy, in order to break down the law of silence, a temporary residence permit may be issued subject to verification of the existence and gravity of the danger, the degree of participation of the victim and the identification of the guilty party. It is renewable for one year according to the requirements of the investigation and revocable if the conduct of the child is incompatible with its purposes.
2. Measures intended to facilitate infiltration of the networks. The question has already been considered in the preceding chapter regarding infiltration of paedophile circles. In certain countries (Germany, Greece), this practice is accepted by the courts; in others (Austria, the United Kingdom, Spain, France), it is considered as incitement.
3. International co-operation : which will be the subject of the following paragraph.



## **C.2. INTERNATIONAL CO-OPERATION**

### **Police co-operation**

All the European countries concerned are members of INTERPOL and EUROPOL, and most co-operation takes place within these organisations, both as regards operational co-operation through the strategic exchange of information (Italy) and by participation in work and study groups. Thus, Germany notified that INTERPOL had organised a study group on trade in human beings involving children and EUROPOL had prepared a plan of action against this trade with a view to intensifying co-operation.

Direct co-operation also takes place between police forces in the countries concerned by the same aspects of the trade. Germany reports that it has direct relations with Lithuania and a workgroup has been set up with the Czech Republic. Such co-operation would be necessary with Lithuania, Byelorussia and the Ukraine. Italy gives special attention to Albania for essentially geographical purposes.

Sweden mentioned the "Baltic Sea task force" project aimed at reinforcing co-operation of countries of the region with INTERPOL, EUROPOL and the N.G.O.s. Trade in human beings is one of the priorities of this project.

Liaison officers also work in foreign countries in the area of sexual abuse and sexual tourism (58 German and Italian officers in East European countries). Contact are also maintained with United Nations specialised agencies (Austria).

This co-operation takes place normally and does not give rise to any particular criticism. Germany reports that the pooling of information from databanks of different organisations, customs authorities, tax authorities and SCHENGEN authorities offers new possibilities in the fight against crime. This data should be of the same quality. Portugal would like national databanks to be created and interconnection with international databanks.

### **Judicial co-operation**

This has given rise to little comment. For Spain, it is necessary and is exercised under bilateral and multilateral agreements. Italy judges it as a priority. The United Kingdom notes the interest for the prosecuting authorities of the procedure developed by INTERPOL, allowing requests for judicial assistance to be sent before the evidence has been collected (red notices).

## **D. PREVENTION**

Prevention in matters of child pornography, as we have seen in the preceding chapter, is essentially a matter of preventing offences from being committed. A certain amount of data already mentioned, including data concerning the behavioural study of the perpetrators, is therefore also relevant here.

The same applies to co-operation between the police, judicial authorities and N.G.O.s. Although Italy reports that there is no official co-operation between these bodies, other countries generally mention good co-operation which may take various forms (in Belgium, for example, Child Focus plays a role in investigation and both administrative bodies and N.G.O.s form part of a National Committee of Child Rights) but in general is implemented by a partnership in setting up prevention programmes or the use of child assistance institutions by judicial bodies. In France, the Ministry of Justice has drawn the attention of judges to the accompaniment of children and the need for co-operation between services. In the Netherlands, the public-private partnership of national and international organisations seeks to give more information on the signals of potential victims, analyse problems, establish a budget for contracts with partners and measure and assess results. In the United Kingdom, a national body including police, courts and N.G.O.s has been set up to prepare a plan to safeguard children against exploitation.

The special nature of prevention of sexual exploitation of children for commercial purposes lies in the fact that it may be a local or family problem or a manifestation of international organised crime or migrations caused by economic disparities between countries. Prevention therefore is obliged to adapt to these very different conditions.

### **Prevention in law**

Several countries emphasise that punishment is an integral part of prevention: Germany considers that penalties discourage the trade. A 2003 Bill proposes to extend the existing provisions to minors under 16 and to persons incapable of resistance. Under another Bill it will be an offence not to report sexual abuse on a child. Children who accept to give evidence may be allowed to continue to reside in the country, even without a residence permit. The Netherlands also considers that it is impossible to separate prevention and punishment.

Laws of procedure, which have been mentioned above, can also play a preventive role, especially where they allow the person of the child to be taken more into consideration and protect the child against re-offending or being recuperated by criminal organisations (Germany, Belgium, Italy).

### **Prevention in the countries of origin**

Several delegations (Germany, Belgium, the Netherlands) mention the interest of measures taken in favour of the country of origin of the children, whether in the form of aid or information especially about the phenomenon of sexual tourism. In Germany, the Government is working with approved tourist agencies on the publication of information brochures and better organisation in airports to fight against the trade. Portugal reports that one of its N.G.O.s, "CONFIAR", is an observer with the World Tourist Organisation. The Netherlands delegation stated that each category of migrant children requires a different and special approach.

### **Information, education, training**

Several of the countries have developed prevention programmes in partnership with official N.G.O.s for the purpose of informing future victims and the general public and especially in order to train personnel involved in the fight against the trade.

In Germany, an action plan for child protection should enable the public to be better informed and improve links between the services concerned. The Government gives its support to E.P.C.A.T. In October 2001, a conference was organised in Berlin by the Organisation for the Security of Co-operation in Europe, on the theme: Europe against the trade. Private initiatives were made against sexual tourism, by associations for the protection of children, feminist associations and religious associations.

In Belgium, prevention campaigns are aimed at informing the general public and potential victims and public agents and social workers in the country and abroad. Importance is given to informing young persons in schools and the media. A detailed study of the phenomenon was launched and study is considered necessary as regards aid to potential clients to prevent the commission of an offence.

In Luxemburg, the approved N.G.O.s co-operate with the Ministry of the Family, and a sexual tourism prevention programme has been developed. In the Netherlands, two programmes : "Beauty and the Beast" and "Pretty Woman" organise sessions in schools in order to identify and inform potential victims, the information sessions being conducted by police, former prostitutes and social workers, self-defence workshops, giving practical help to victims, increasing the knowledge of the phenomenon, organising simulations and developing alternative behavioural attitudes.

In Portugal, where there is a Child Protection Commission, several projects and studies have been undertaken by universities, care units for mistreated children in hospitals and the National Police Institute; a plan for the elimination and eradication of child work has led to the formation of street teams (Caixa Magica). Finally, Portuguese representation in ECPAT is being prepared. In Sweden, the police are involved in training immigration service officials.

### **Taking into care**

In Germany, a child protection programme has been set up. Children who have managed to escape from prostitution are taken into care by charitable institutions and can receive therapeutic aid.

In Belgium, the action is aimed at re-establishing the confidence of children in the police, justice and care institutions. They need also to be protected against any attempts to bring them back into prostitution. The need has been felt for specialised structures. Three specialised centres have been created by Child Focus.

In Denmark, efforts are made to restore the confidence of the child, to take into account what it says, and to fight against its feeling of shame and bring it to talk with others.

In Italy, an assistance and social integration programme is being developed for foreign victims. The policy of residence permits mentioned above also plays a role in this matter.

In Portugal, an N.G.O., CONFIAR, is offering treatment and help for victims and perpetrators.

# CONCLUSIONS

Mr Yvon TALLEC, State Counsel, head of the Paris State Counsel Office for Minors, moderator of the session concerning sexual exploitation of children for commercial purposes, presented the following conclusions at the end of the debates>

1. Penal legislation concerning sexual exploitation of children for commercial purposes is becoming more detailed and more repressive, both in the area of prostitution and that of sexual tourism.
2. The Courts and police constantly encounter difficulties mainly due to the international character of the trade which makes world co-operation necessary, especially with the countries of the origin of the children.
3. Prevention requires a partnership between European institutions, national bodies and the N.G.O.s. Supervision of migration movements and information of families on the treatment of their children should be developed together with financing and aid in the countries of origin to avoid displacement of exploitable children.
4. Child prostitution is a multi-form phenomenon, linked mainly to economic precariousness, running away and the need to survive. It calls for different responses.
5. The identification of children is hampered by technical problems and the reliability of the methods employed, such as that of measurement of bone age. Other methods are based on the study of different samples but this type of study cannot be generalised due to lack of resources.
6. It is important to create or improve specialised units, both in the police and in the courts.
7. Judicial co-operation requires means of international exchange of information.

# GENERAL CONCLUSIONS

Child pornography on the Internet and sexual exploitation of children for commercial purposes are two sides of the same criminal phenomenon : exploitation of the child as a sexual object, whether in picture form or in person. This is a manifestation of large-scale international criminality which generates considerable profits and caters for a potentially or immediately dangerous paedophile clientele.

Public opinion in the European countries has been alerted by a number of very serious and scandalous affairs and laws have been adopted aggravating the punishment and giving clearer definitions in several areas, including the notion of indecency and sexual relation, making the prostitute's client or the possessor of pornographic images criminally liable and extending the application of national laws to offences committed abroad, covering practices such as the use of servers situated outside the frontiers or sexual tourism. This represents considerable progress in the area of Penal Law.

These laws lack homogeneity and in the regrettable absence of any prospect of harmonisation, a comparison of laws such as that attempted during this study, can only contribute to an improved knowledge of the way in which other countries approach the problem of procedures and the customs of practitioners called upon to co-operate.

In all European countries, these cases are prosecuted, investigated and judged according to ordinary law. However, sections of the State Counsel Office and specialised police units have been created to deal with technical difficulties.

To overcome these technical difficulties (investigations on the Internet, identification and determination of the age of children) the competent services must be equipped with the resources to meet the large number of cases. The fight against Organised Crime also encounters problems of a legal nature, many courts restricting the infiltration of criminal associations by refusing to accept certain techniques of investigation that are considered as incitement.

Prevention makes a partnership necessary between the courts, police and non-governmental organisations, especially in the area of information, training and care of children. Several countries mention the need of prevention in the countries of origin of the children that are the subject of the trade. There are few institutions which enable the perpetrators to be treated therapeutically for the purpose of avoiding repeated offences. Fundamental research should be encouraged in this area.

The trans-national aspect of the phenomenon renders international co-operation indispensable. In police matters, international co-operation is encouraged within INTERPOL and EUROPOL at a European level. All the countries belong to, and declare that they are satisfied with, these organisations.

As regards judicial co-operation, the debates have shown the need for judicial co-operation, especially in the matter of prostitution. It should probably be institutionalised. EUROJUST, mentioned by the French Minister of Justice during the debates, could be used as a framework for this future development. If improved international co-ordination of judicial services is desired, one should not lose sight of the fact that child protection concerns not only criminal law but also civil law, family law and that most countries of origin, as regards images and children, are situated outside the European Community