

Trafficking in children for sexual purposes

Update Country report

Belgium

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Introduction

Trafficking of human being remains an issue of great importance on the political agenda in Belgium. As stated in the National Plan against commercial sexual exploitation of children (CSEC)¹, Belgium realized that the country had not been spared from the worldwide scourge of trafficking of children for sexual exploitation. Not only do Belgians commit sexual offences against minors outside the country, but many children, both Belgian and foreign, are sexually exploited in Belgium itself.

Both the government and NGOs made great efforts to improve the legislation and the prevention systems, and to provide care, recovery and reintegration for minors, victims of trafficking. It is important to recall the structure of the Belgian State and the breakdown of responsibilities between the various levels of authority.² Belgian governmental policy on CSEC including trafficking of children is therefore broken down into several parts. On the one hand, the Federal State is responsible for justice and foreign affairs matters. On the other hand, the Communities are responsible for prevention, awareness and aid to victims.

1. Legislation

The most important progress on the federal level has been made in the field of legislation by reinforcing the existing laws and regulations.

On 23 March 2000, the Belgian Parliament adopted a **new constitutional provision** (Article 22 bis) on children's rights in order to guarantee respect for the moral, physical and sexual integrity of children. This provision gives concrete expression to the objective of ensuring the recognition of the child as a subject of rights in the Belgian Constitution.

Belgium also adopted a **new law on the protection of minors in the criminal justice system**, dated 28 November 2000. This completes the provisions already added to the Belgian Criminal Code in 1995 concerning commercial sexual exploitation. The law reinforces the protection of minors, particularly with regard to trafficking, prostitution and pornography. (See Annex 1). In the light of the implementation of the Palermo Protocol, the provisions of the law on human trafficking will soon be modified.

The law of December 1980 on access to the territory, residence, establishment and expulsion of foreigners, makes it an offence to facilitate the entry, residence and, in future, the transit, of a foreigner in Belgium by using fraudulent means, violence, threats or constraints, or to abuse the vulnerability of a foreigner. A new article in the law of November 2000 adds minority to

¹ The national plan of Belgium against CSEC adopted in November 2001 set following objectives:

1. Developing expertise to improve knowledge of the problem
2. Reinforcing the laws and regulations targeting protection of children's rights in general and the fight against sexual exploitation in particular
3. Improving coordination of existing actions, collaboration between the various parties involved and centralization of information
4. Fighting computer crime
5. Paying particular attention to the problem of unaccompanied foreign minors
6. Setting up an assessment and monitoring process
7. Intensifying awareness and prevention needs
8. Actively participating in European and international policy-making

² Belgium is a federal State. As a result of various reforms, certain fields of competence which used to be exercised by the (centralized) State have been transferred to the Communities and Regions. The Communities are responsible for matters of culture, education, use of languages and for what is referred to as "personalized" questions, those being notably assistance to persons. Urban planning, housing, agriculture, the economy, energy, employment, public works ... all fall under the responsibility of the Regions. The Federal State reserves exclusive competence, among other things, for finance and financial matters, financial policy, justice, defence, police, social security, etc. There are also areas of shared competence with the Communities and Regions.

the criteria by which a foreigner could be vulnerable, so that the fact of being a minor is automatically considered a position of vulnerability.

2. Ratification and implementation of international treaties

- In 2001 Belgium ratified the **Optional Protocol to the Convention on the Involvement of Children in Armed Conflict** and in 2002 Belgium ratified **ILO Convention 182** on the Worst Forms of Child Labour.
- The Council of Ministers agreed a legislative proposal in November 2003 which makes the ratification of **the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography** possible. The current legislation in Belgium has to be harmonized with the legal requirements of the Convention. The legislation doesn't make a sufficient distinction between trafficking and smuggling. There are no special provisions for cases in which the trafficked person is a minor. Therefore the law has to be adapted before ratification is possible.
- **The Committee of the Right of the Child**, in reaction to **the second governmental report on behalf of Belgium**, and despite the Belgian national plan against CSEC giving special attention to the problem, raised the issue of unaccompanied foreign minors on Belgian territory. Unaccompanied minors (UAMs) are considered an important group at risk, both for trafficking and for CSEC. The Committee urged Belgium to take the necessary steps to protect the rights of UAMs. One of the recommendations was to expedite efforts to establish special reception centres for UAMs, with special attention to those who are victims of trafficking and/or sexual exploitation. The government was also asked to approve as soon as possible the draft law on the creation of a guardianship service, in order to ensure the appointment of guardians for UAMs from the beginning of the asylum process, and thereafter as long as is necessary. The government was asked to make sure that this service is fully independent, allowing it to take any action it considers to be in the best interests of a minor.
On 24 of December 2002 a law was passed in the Belgian Parliament which creates a system of guardianship, allowing for the appointment of a guardian to every unaccompanied foreign minor on Belgian territory.

Special reception centres specialising in the reception of victims of trafficking of human beings already exist for several years in Belgium. Since 2000 three **specialised centres for the reception of minors who are victims of trafficking and unaccompanied minors** were opened in both regions of the country. Those centres are financed by the regional governments. The centres offer temporary reception while efforts are made to find a long-term solution for the young people.

The regional governments dedicated more resources to **street social work** as an important instrument in the detection of and care for young foreign prostitutes. The objective is to take steps so that the victims of prostitution – whose unstructured, underground lifestyle are an obstacle to any initiative – come into contact with social assistance, by approaching them in their environment during their hours of activity. For example, in Antwerp, the non-profit association, Payoke, provides assistance, among other things, to young people who are involved with prostitution in one way or another (e.g. a group of prostitutes who are just starting up, a group of very young

pimps, the children of prostitutes, and young street children in red light districts) most of whom are from former Yugoslavia and have no papers. There are similar associations in the two Communities.

3. Law Enforcement, coordination and prevention

In implementing the section on trafficking of human beings of the Federal Plan for security and penal policy³, a **working group** was created in September 2000 under the chairmanship of the Criminal Policy Department (Ministry of Justice), in which all sectors participated (justice, internal affairs, judges, police, "*Office des étrangers*" (the Foreign Office), etc.). The sectors comment in this working group on the process of the internal action plans. A working document was established on the basis of recommendations made in various reports (Federal Plan for security and penal policy, the annual report of the Centre for Equal Opportunities and the Fight against Racism, the report of the Senate Committee on "trafficking of human beings and prostitution", the report of the Senate Committee on "Organized crime" and the security plans of major cities). Working meetings took place every month for several months and gave rise to an **inventory on the trafficking of human beings**, with a special place for the situation of children. This inventory is revised periodically.

A **network of expertise in the field of trafficking of human beings** is being prepared by the College of General Prosecutors. Liaison magistrates are appointed for each judicial district and made responsible for the issue of trafficking. A **national magistrate in the Public Prosecutors Department** is tasked with coordinating the work against trafficking at national level. Its purpose is to contribute, by means of concrete projects, to the development and implementation of a criminal policy in this field. One of the objectives is to optimise the implementation of the Ministerial Directive of 31 May 1999 on the policy for investigation and prosecution of cases involving trafficking of human beings and child pornography (see below), while correcting any loopholes or shortcomings that may have been shown up.

Ministerial Directive COL 12/99 of 31 May 1999 on the policy for investigation and prosecution of cases involving trafficking of human beings and child pornography is an important instrument in the fight against CSEC and trafficking. During 2002 the Directive was evaluated. In 2004 it will be modified and will apply the definitions of the UN Protocol in relation to human trafficking. The age of the victims is one of the criteria for priority with regard to an investigation and prosecution. The directive recommends not losing sight of the objective, which is to allow prosecution of persons who organize trafficking of human beings and child pornography or who benefit from such crimes. Forms of control that would penalise the victims, or the prostitutes, or that would result in disadvantages out of proportion to this objective are to be avoided. The directive sets out the tasks of liaison magistrates appointed for each judicial district and each prosecution service, in so far as trafficking of human beings is concerned. It provides for the holding of periodical coordination meetings with all the services involved in combating the trafficking of human beings, including sexual exploitation of children for commercial purposes.

In 2003, 18 Federal Prosecutors were appointed. They will handle, lead and prosecute every

³ In execution of the government agreement called "La voie vers le 21^e siècle" (Towards the 21st century), and particularly under point 3 referring to a "secure society", the Minister of Justice was appointed by the federal government to draft a Federal Plan for security and penal policy. This plan was adopted unanimously by the government on 31 May 2000.

sub-local and/or international criminal investigation. Four Federal Prosecutors specialise in human trafficking cases.

In December 2000, the Prime Minister set up a **Taskforce on "trafficking of human beings"** in which all departments dealing with this problem, as well as the Centre for Equal Opportunities and the Fight against Racism, are involved. The mission of the Taskforce is to set up, in the short term, the conditions for an integrated policy covering both the administrative aspects and the pillars of social welfare law, criminal law, and assistance to victims. One of the basic conditions for a multidisciplinary, integrated and global approach is a common understanding of the phenomenon. In January 2003, the Taskforce prepared a Royal Decree on the functioning and coordination of the struggle against trafficking of Human Beings.

A concrete plan for organizing the exchange and processing of information on the trafficking of human beings has been developed. The objective of this **information and analysis centre (IAMM-CIATTEH)** is to find a structural solution to the need for coordination and integration of information. The IAMM-CIATTEH is used by police forces, NGOs and social services in order to harmonise their policies. It will be established by Royal Decree. The same Decree will also set up a multi-agency co-ordination structure on human trafficking which will advise the government on policy in relation to such trafficking.

Various **prevention campaigns, awareness actions and distribution of information** have been subsidised by the regional governments in both regions of the country. They were carried out by specialised NGOs and child care organisations. Young people can ask questions free of charge and anonymously by means of a **telephone line** ("kindertelefoons") and **Youth centres** are available to them if they want to get more personalised information or assistance. Victims of trafficking make only occasional use of this general service.

After the Second World Congress in Yokohama, the government decided to focus actively on the demand side of the child prostitution and trafficking issue. **A prevention project is being developed with ECPAT in Belgium involving different target groups.**⁴

4. Data collection

All the studies done in the last two years on child trafficking involving Belgium (IOM, Save the Children, UNICEF) agreed that no reliable data is available on the number of trafficked children involved in CSEC in Belgium. This lack of data is due to the illegal and criminal aspect of trafficking, but also to the lack of coordination between the different services responsible for the reception of victims.

In Belgium no distinction is made in the official statistics between adults and minors, although minors are given a special legal status.

The '*Office des étrangers*', or Foreign Office (FO), registers 1,000 UAMs every year. In 2002, 15 new cases of trafficking in minors were started in the courts. In 11 of those cases, trafficking for sexual purposes was explicitly mentioned. The centres for the reception of

⁴ A national campaign with ECPAT Belgium/Federal police and other partners (National Transport Federation, National Railway, NMBS, Child Focus, Ministry of Foreign Affairs, Army, National Tourism Industry, ...) directed towards lorry drivers, army personnel, embassy personnel, NGO personnel Information leaflets and posters in all train stations and police stations, a code of conduct for Belgians working abroad, training courses for all embassies and army personnel. A renewed effort towards tour operators and travel agencies. A 6 month campaign directed towards the public in general will be launched in March 2004 (posters in railway stations, police posts, airports and embassies abroad). A national hotline will be created.

victims of trafficking accounted for more than 45 minor victims of trafficking for sexual purposes in that year.

<u>Figures for Unaccompanied Minors registered by the FO</u>		
	UAM asylum seekers	UAM illegal immigrants
2000	848 *	852 *
2001	747 *	473 *
2002	913 *	1135 *
599 after bone scan carried out		

* based on the declaration of age made by the minor when intercepted at the frontier or by the police.

1 November 2003

Annex 1

The law of 28 November 2000 reinforces the protection of minors particularly with regard to trafficking, prostitution and pornography.

- Maximum protection (15 to 20 years imprisonment) against anyone who excites, promotes or facilitates debauchery, corruption or prostitution of a minor (Art. 379 of the Criminal Code) is given to minors under 14, whereas this protection was previously reserved to those under 10.
The new law extends prohibition of exploitation in any form of debauchery or prostitution of minors, to minors 16 and over (Art. 380 of the Criminal Code).
The aggravated circumstances associated with the age of the victim are reinforced: in the event of exploitation of debauchery or prostitution of a minor under 16 (and no longer under 10), the sentence incurred by the perpetrator will be imprisonment from 15 to 20 years.
- A client of an underage prostitute ("anyone who has obtained debauchery or prostitution from a minor by remitting, offering or promising a material or financial advantage") is now also incriminated.
- A new offence has been created: it concerns "anyone who has attended the debauchery or prostitution of a minor". This refers to consciously and willingly attending an act of paedophilia (a person that attends this kind of display unwittingly is not liable to punishment).
- With regard to child pornography (Art. 383 of the Criminal Code introduced by the law of 13 April 1995), the prohibition is extended up to the age of 18.
This provision therefore meets the requirements of the United Nations Convention on the Rights of the Child, Article 34 c), which is binding on Member States to protect the child against any form of sexual exploitation, and requires that they take all appropriate measures to prevent children from being exploited for pornographic shows or materials, a child being defined as a human being under 18.
- The extraterritorial competence of the Belgian courts, laid down in Art. 10 ter of the preliminary title of the Code of Criminal Procedure, is extended to minors of 16 and more.
This provision therefore allows a Belgian Judge to investigate acts of corruption of youth and prostitution, child pornography, indecent exposure, rape, sexual mutilation and trafficking if the victim is underage, whatever the nationality of the perpetrator of the offence found in Belgium, and wherever that offence may have been committed (universal competence).
- The law of 28 November 2000 extends the field of application of Art. 21 bis of the preliminary title of the Code of Criminal Procedure which sets the starting point of the limitation period for certain moral offences at the date when the victim reaches majority, and in the case of the reduction of a crime to an offence ("correctionalization"), the limitation period for moral offences covered by this provision continues to be the period applicable to other crimes, namely 10 years.
- A new law added a series of provisions concerning audio-visual recording of the testimony of minors who were victims of or witnesses to certain offences (debauchery, corruption, prostitution of minors, child pornography, ...).
The concern of the legislature was to allow for accurate recording of the child's words and to avoid secondary victimization of the child by repeated hearings and personal appearances before the court.
- A ministerial circular was adopted on 16 July 2001 to implement the principles of the new law, and standardize the use of audio-visual recordings of the testimony of minors.
- The law now provides that, for certain prescribed offences (indecent exposure, rape, debauchery, corruption, prostitution of minors, ...), the judge is obliged to seek the advice of a service specialized in treating sex offenders, before ordering a probationary sanction (followed by supervision or treatment) or the final release or trialrelease of a prisoner.
The competent service or the competent person chosen for the supervision or treatment of the offender must regularly send a progress report to the probation (or social defence) committee and inform the committee whenever the supervision or treatment is interrupted.
- Art. 77 bis of the law of 15 December 1980 on access to the territory, residence, establishment and

expulsion of foreigners, makes it an offence to allow the entry, residence and, in the future, transit, of a foreigner in Belgium by using fraudulent means, violence, threats or constraints, or to abuse the vulnerability of the foreigner.

- This article adds minority to the criteria which make a foreigner vulnerable, in keeping with the suggestion made in the annual report to the government on the fight against the trafficking of human beings, so that the fact of being a minor is automatically deemed a position of vulnerability.
- A new article in the Criminal Code makes sexual mutilation of female genital organs an offence under the provisions on assault and battery.
- Finally, the law introduces an exception to the rule of professional confidentiality by providing for the possibility for any person who, by condition or by profession, is in a position of trust, and as a result is aware of an offence (rape for example) committed on a minor, to inform the King's Prosecutor. The provision is subject to the condition that he/she has examined the victim or has the victim's confidence, that there is a grave and imminent danger to the mental or psychological integrity of the person in question, and that the person is not in a position to protect that integrity him/herself or with the help of a third party. The inclusion of this limited and conditional right of disclosure, is an innovation and corresponds to the recommendations of the National Committee against sexual exploitation of children and the recommendations of the Council of Europe on the protection of minors.

Annex 2

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

UNDER ARTICLE 44 OF THE CONVENTION

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD: BELGIUM

1. At its 782th and 783th meetings (see CRC/C/SR. 782 and 783), held on 23 May 2002, the Committee on the Rights of the Child considered the second periodic report of Belgium (CRC/C/83/Add.2), which was received on 7 May 1999, and adopted* the following concluding observations.

With respect to unaccompanied minors (UAMs) the Committee welcomes the creation of a special bureau for UAMs in the Aliens Office for handling the requests to stay of these persons. It also notes a number of other activities, among others, concerning the establishment of special reception centres for UAMs; a draft law for the creation of a guardianship service, access to education, and missing persons, which contains provisions on UAMs. But there is not yet, as the Government acknowledges, specific regulations for UAMs, asylum-seeking or not.

In accordance with the principles and provisions of the Convention, especially articles 2, 3 and 22, and with respect to unaccompanied persons under 18, the Committee recommends that the State party:

- (a) expedite efforts to establish special reception centres for UAMs, with special attention to those who are victims of trafficking and/or sexual exploitation;
- (b) to ensure that the stay in those centres is for the shortest time possible and that access to education and health is guaranteed during and after the stay in the reception centres;
- (c) approve as soon as possible the draft law on the creation of a guardianship service in order to ensure appointment of a guardian for the UAM from the beginning of the asylum process and thereafter as long as necessary and make sure that this service is fully independent allowing it to take any action it considers to be in the best interests of this minor;
- (d) ensure they are informed of their rights and have access to legal representation in the asylum process;
- (e) improve cooperation and exchange of information among all the involved actors, including the Aliens Office and other relevant authorities, police services, tribunals, reception centres and NGOs;
- (f) ensure if family reunification is carried out, it is done in the best interests of the child; and
- (g) expand and improve follow-up of returned unaccompanied minors.

Sexual exploitation and trafficking

27. The Committee reiterates its satisfaction for the numerous measures, including those described above, taken by the State party to combat the sexual exploitation and trafficking of children. It is nevertheless concerned that trafficking for the purposes of sexual or other exploitation is still a problem.

28. The Committee recommends that the State party:

- (a) fully implement the recommendations of the national commission of experts;
- (b) continue to implement policies and programmes in accordance with the Declaration and Agenda for Action, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children;
- (c) continue to recruit female police officers to improve communication and contacts between foreign women and girls working in prostitution;
- (d) ensure that adequate resources (e.g. human and financial) are allocated to policies and programmes in this area;
- (e) continue to undertake awareness-raising campaigns in origin-countries;
- (f) expand cooperation with origin and transit-countries; and
- (g) continue to cooperate with the International Organization for Migration.