



FRA
Thematic Study on Child Trafficking

France

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Executive summary

- [1]. France's commitment to fighting child trafficking can first of all be seen in its legislation. France has ratified most of the international agreements related to child trafficking, in particular:
- The ILO Worst Forms of Child Labour Convention (in 2001);
 - The 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (in 2003);
 - The 2000 United Nations Convention Against Transnational Organised Crime (in 2004);
 - The 2005 Council of Europe Convention on Action against Trafficking in Human Beings (in 2008).
- [2]. Some of the provisions of these international agreements are directly applicable.
- [3]. Behaviours related to child trafficking are largely rendered offences by French penal law. The legal arsenal is composed of:
- General provisions, including the prohibition on engaging into human trafficking;
 - Provisions specific to minor victims of crimes. Even though there is no specific legislation to combat child trafficking, the provisions applicable to minors are numerous and also protect child victims of trafficking.
- [4]. When a child victim of trafficking is identified, the main objective is the respect of his or her best interests. To facilitate the protection of and assistance to minors, a Défenseur des enfants [Children's Ombudsman] was established in 2000 in France. The aim of this body is to protect and promote the rights of the child as defined in national law and international agreements.
- [5]. The fight against child trafficking is also conducted through awareness-raising campaigns with the support of a number of associations. A freephone number has been set up specifically for the detection and protection of endangered minors.
- [6]. Child trafficking cannot easily be apprehended from a statistical perspective, especially since the gap between statistical data and reality cannot be evaluated precisely.

[7]. Organisations complain on a regular basis of the lack of funding for the fight against child trafficking. Nevertheless, they play a role which is complementary to that of the state services.

[8]. France needs to amend its legislation in various respects and, in particular:

- Concerning the waiting areas where minors are sometimes detained. On 15.10.2007, the UN Committee on the Rights of the Child expressed grave concern about the situation of unaccompanied children in the waiting facilities of French airports.
- Concerning the protection of minor victims of trafficking who are sometimes viewed as the perpetrators of misdemeanours.

A. General anti-child-trafficking framework

- [9]. The Convention on the Rights of the Child was signed on 26.01.1990. The Parliament authorised its ratification on 02.07.1990 and it was finally ratified on 07.08.1990. It came into force on 06.09.1990. France has been particularly active in supporting the adoption of two optional protocols to the Convention – on children in armed conflict and on the sale of children, child prostitution and child pornography. Both texts were adopted on 25.05.2000 and the Parliament authorised their ratification on 26.02.2002. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified on 15.04.2003 and France reported on its implementation to the Committee on the Rights of the Child on 26.09.2007. The United Nations Convention against Transnational Organised Crime was ratified on 19.05.2004. The ILO Worst Forms of Child Labour Convention was ratified on 11.09.2001. And finally, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings was ratified on 09.01.2008. The 2007 CoE Convention on the Protection of Children against Exploitation and Sexual Abuse has not yet been ratified.
- [10]. Article 212-1 of the *Code Pénal* [Penal Code] establishes that slavery is a crime against humanity and can be punished by life imprisonment.
- [11]. French penal law prohibits child trafficking in different ways. Article 225-4-1 of the Penal Code prohibits trafficking in human beings and defines it as ‘the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put him at his own disposal or at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour’. Article 225-4-2 of the same Code specifies that trafficking in human beings is punishable by deprivation of liberty for a maximum of seven years and by a fine of €150,000. When committed against a minor, it is punishable by deprivation of liberty for a maximum of ten years and by a fine of €1,500,000. The words ‘at his own disposal’ were added by Law n°2007-1631 of 20.11.2007¹ in order to permit the punishment of the perpetrators of exploitation. In the previous version of the text, only the recruiter could be convicted.

¹ France/Loi 2007-1631 (20.11.2007) *relative à la maîtrise de l'immigration, à l'intégration et à l'asile* [on the control of immigration, on integration and on asylum], *Journal Officiel* [Official Bulletin] n°270 of 21.11.2007, p.18993, available at: http://legifrance.gouv.fr/affichTexte.do;jsessionid=914BD7EF7F5B525E7EB6347C54B94CBA.tpdjo11v_2?cidTexte=JORFTEXT000000524004&dateTexte=

- [12]. Until the revision of Article 225-4-1, other provisions in the Penal Code were used to punish child trafficking. Article 227-12 of the Penal Code punishes the incitement of the parents or one of them to abandon a child, born or unborn, as well as acting for pecuniary gain as an intermediary between a person desiring to adopt a child and a parent desiring to abandon his or her born or unborn child. The penalties applied in this case range from six months to two years of imprisonment and from €7,500 to €30,000.
- [13]. In terms of sexual exploitation, the Penal Code prohibits indecent sexual exposure (Article 222-32 of the Penal Code – imposing on the view of others in a public place sexual intercourse or a sex organ); sexual offences (Articles 227-25 to 225-27 of the Penal Code – touching someone without their consent); sexual aggressions (Article 222-22 of the Penal Code – any sexual assault committed with violence, constraint, threat or surprise); and rape (Article 222-23 of the Penal Code – any act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise. These criminal behaviours are now punishable by 15 years of criminal imprisonment and by up to 20 years of imprisonment if they were committed against a minor under the age of 15 years, against a particularly vulnerable person, or if they are committed by an ascendant, by a person misusing the authority conferred by his or her position or by a person using or threatening to use a weapon. A safety period (i.e. a fixed period during which no early release is possible) is applied to the most serious sexual offences and particularly in the case of murder (Article 221-3 of the Penal Code) or murder committed on a minor under the age of 15 (Article 221-4 of the Penal Code) and preceded by or accompanied by rape, torture or acts of barbarity.
- [14]. Under Articles 225-5 and 225-7 of the Penal Code, the procuring of minors is punished by ten years of imprisonment and a fine of €1,500,000. When committed against a minor under the age of 15, it is punished by 15 years of imprisonment and by a fine of €3,000,000 (Article 225-7-1 of the Penal Code). Sexual exploitation of minors is also prohibited by Articles 227-22 ff of the Penal Code. Article 227-27-1 derogates from the territorial scope of French penal law by stipulating that such offences, when committed by a French citizen abroad, can be punished as if they had been committed in France.
- [15]. The exploitation of begging is prohibited by Article 225-12-5 of the Penal Code. In cases where a minor is being exploited, the penalty is five years of imprisonment and a fine of €75,000 (Article 225-12-6 of the Penal Code).
- [16]. Obtaining the performance of unpaid services or services against which a payment is made which clearly bears no relation to the importance of the work performed from a person whose vulnerability or dependence is obvious or known to the offender is prohibited under Article 225-13 of the Penal Code. Article 225-14 condemns the submission of such persons to working or living conditions incompatible with human dignity. When committed against a minor, these offences are punished by seven years of imprisonment and a fine of €200,000 (Article 225-15 of the Penal Code). When committed against a group of people including one or more minors, they are punished by ten years of imprisonment and a fine of €300,000.
- [17]. As a rule, a minor under the age of 16 is not allowed to work (there are some exceptions, in particular concerning apprenticeship and the entertainment industry). In application of Council Directive 94/33/EC of 22.06.1994 on the protection of young people at work, work by

adolescents (between 14 and 16 years old) between 8 p.m. and 6 a.m. is prohibited, as well as work by minors between 16 and 18 years old between midnight and 4 a.m.

- [18]. Law n° 2006-399 of 04.04.2006 reinforcing the prevention and punishment of acts of violence between spouses or committed against minors created new offences concerning child pornography. It added a new Article 227-28-3 to the Penal Code: ‘Making offers or promises to a person, or offering donations, gifts or any benefit so that this person will commit against a minor a felony or misdemeanour under articles 222-22 to 222-31, 225-5 to 225-11, 27-22, 227-23 and 227-25 to 227-28 is punished, when the offence has been neither committed nor attempted, by three years of imprisonment and a fine of €45,000 if it constitutes a misdemeanour or by seven years of imprisonment and a fine of €100,000 if it constitutes a felony’. Following a Committee on the Rights of the Child recommendation² and in order to combat forced marriages, this law also establishes 18 as the minimum age for marriage for both women and men.
- [19]. Under Article 113-2 of the Penal Code, French penal law only applies to offences committed on French territory. Nevertheless, there are some exceptions, in particular concerning sexual offences (see above).
- [20]. Since the *Conseil Constitutionnel* [Constitutional Council] does not monitor the conformity of laws with international provisions, ordinary judges must establish the direct applicability of treaties. To be applicable by the ordinary judge, a provision from an international treaty must have been written in order to give rights to individuals and must be sufficiently precise (self-executing). For example, the United Nations Convention on the Rights of the Child led to a conflict of interpretation between the *Conseil d’Etat* [State Council] and the *Cour de cassation* [Supreme Court]. Contrary to the Supreme Court, the State Council soon admitted that some of the Convention’s articles were directly applicable. The Court finally aligned itself with the Council in a ruling on 18.05.2005.³ In this ruling, the Court applied Articles 3-1 and 12-2 of the Convention, together with Articles 388-1 of the *Code Civil* [Civil Code] and Articles 338-1 and 330-2 of the *Nouveau Code de Procédure Civile* [new Code of Civil Procedure], to invalidate a *Cour d’appel* [Court of Appeal] judgement, on the grounds that it did not consider the request for a hearing formulated by a child whose residency had been established in the United States where the mother lived and whose father had started a procedure to change this residency. The Supreme Court considered that “in all decisions affecting children, the best interest of the child should be primarily taken into consideration; that when a minor capable of judgment requires to be heard he or she can make the request at any time of the procedure and even, for the first time, during appeal; and that his or her hearing can only be refused by a special statement of reasons”. Both the State Council and the Supreme Court now apply self-executing provisions of the Convention on the Rights of the Child.

² Comité des droits des enfants, 30 juin 2004, Examen des rapports présentés par les Etats parties en application de l’article 44 de la Convention (CRC/C/15/Add.240).

³ Civ. 1, 18 mai 2005, JCP G, 2005, II, 10081.

- [21]. French legal provisions establish the principle of the best interests of the child, which can be found in the UN Convention on the Rights of the Child. The direct applicability of Article 3-1 of the Convention has been admitted⁴. Law n° 2007-293 of 05.03.2007 reforming child protection clearly established the principle of the best interests of the child. Article L.112-4 of the *Code de l'action sociale et des familles* [Social Action and Family Code] now states that 'the interest of the child, the taking into account of his or her fundamental needs, be they physical, intellectual, social or emotional, as well as the respect for his or her rights must guide any decision affecting him or her'.
- [22]. There have been no national plans of action against trafficking either in general or relating to children.
- [23]. Nevertheless, France has taken part in a number of events and campaigns indirectly linked to child trafficking. During the 1996 Stockholm World Congress against Commercial Sexual Exploitation of Children, France made the commitment to fight sexual delinquency involving minors. The protection of mistreated children was declared a national cause in 1997. An inter-ministerial committee, established by decree n°97-216 of 12.03.1997, was put in charge of determining the direction of the government in terms of combating sexual assault and mistreatment of children. In addition, France was particularly active during the second World Congress against Commercial Sexual Exploitation of Children held in Yokohama in 2001. Furthermore, on 20.11.2000 Paris hosted the First European Day for Children's Rights which was attended by European ministers with responsibility for childhood and dealing with the reception of unaccompanied foreign minors, the fight against paedophile and pornography networks and the fight against sex tourism.
- [24]. There are no statistics at national level. Initiatives have been taken, in particular by NGOs and other organisations, to gather data. However, this cannot be relied on, for it is neither scientific nor representative.
- [25]. The total budget for 2008 for the Children's Ombudsman is €2,428,000.
- [26]. There is no designated budget to support research on child trafficking.
- [27]. The Children's Ombudsman an important monitoring role (see para. 28 below).
- [28]. The law of 06.03.2000 established the Children's Ombudsman.⁵ This independent administrative body charged with defending and promoting the rights of the child established either by law or by international agreements. One of the particular features of this institution is that children can contact it directly. Unfortunately, no phone number is mentioned on the website of the Children's Ombudsman and children only have access to an online contact form.
- [29]. The Children's Ombudsman can take minor victims of trafficking into care. The Children's Ombudsman can also suggest changes to be made to rules and laws and publishes two annual reports.

⁴ See, for instance, CAA Bordeaux, 06.11.2007, Papaphai c/ Préfet de l'Aude, req. n° 07BX01277

⁵ <http://www.defenseurdesenfants.fr/>

- [30]. The Children's Ombudsman is nominated for a six-year, non-renewable term by a Council of Ministers decree. The current Children's Ombudsman is Dominique Versini who was appointed in 2006.
- [31]. Other agencies which do not specifically address the rights of children sometimes deal with issues related to child trafficking:
- The *Office Central pour la répression de la traite des êtres humains (OCRTEH)* [Central Office for Combating Human Trafficking], under the auspices of the Ministry of the Interior, is in charge of establishing and enforcing the law in relation to any offence linked to procuring; centralising all information likely to facilitate the search for humans trafficked for prostitution; and coordinating all operations related to combating such trafficking throughout the territory of France. It almost exclusively deals with prostitution.
 - The *Office central de lutte contre le travail illégal (OCLTI)* [Central Office for Combating Illegal Work].
 - The *Office central de lutte contre la criminalité liée aux technologies de l'information et de la communication (OCLCTIC)* [Central Office for the Fight against Crime linked to Information and Communication Technologies].
- [32]. No training strategy for professional bodies involved in the identification, care and protection of trafficked children has been established.
- [33]. There is no specific policy of non-criminalisation of child victims of trafficking. The child victim of trafficking and perpetrator of an offence can nevertheless benefit from certain ordinary law provisions:
- The 1945 ordinance establishes that the penal law applicable to minor offenders includes more favourable provisions (non-liability due to a lack of judgement, priority given to educational action, reduced penalties...).
 - Article 122-2 of the Penal Code establishes that, 'A person is not criminally liable who acted under the influence of a force or constraint which he could not resist'.
 - Under Article 132-78 of the Penal Code, a person who has attempted to commit a felony or a misdemeanour but, 'having alerted the legal or administrative authorities has enabled the offence to be prevented and, where relevant, to identify the other perpetrators or accomplices', can be exempted from penalty. This only applies to certain felonies and misdemeanour listed in the Penal Code.
 - Under the same article, an individual's penalty may be reduced if he or she 'has enabled the offence to be ended, damage resulting from the offence to be prevented, or the perpetrators or accomplices to be identified'.

B. Prevention of child trafficking

- [34]. Various ministries, and in particular the *Ministère du Travail, des Relations sociales, de la Famille et de la Solidarité*, the *Ministère de la Justice* and the *Ministère de l'Éducation nationale* [Ministry of Labour, Labour Relations, Family and Solidarity, Ministry of Justice and Ministry of Education], conduct awareness-raising and education campaigns. Due to an increase in reported sexual assaults, in January 2002 the French government launched an awareness-raising and prevention campaign in order to enforce the rights of the child, to outline the responsibilities of all citizens and to provide information on the law and on the penalties incurred. The campaign consisted of advertisements shown on television and in cinemas.
- [35]. In 2007 the French government launched an awareness-raising campaign, consisting mainly of television advertisements, on child pornography and the risks of the internet.
- [36]. Many NGOs undertake information or discussion campaigns to look at the implementation of the rights of the child in France and abroad. Among the most active in this field are ECPAT-France,⁶ the Planète enfant association,⁷ the Terre des homes association⁸ and ANAFE.⁹
- [37]. No evidence could be found of direct participation in preventive efforts by local communities and/or minority groups, such as Roma and Travellers.
- [38]. Many organisations, such as Hors la rue¹⁰ or the Auteuil Foundation,¹¹ try to identify and follow up vulnerable children. In Marseilles, the organisation Jeunes errants¹² identifies and seeks to initiate contact with roaming minors with the purpose of finding alternatives to the survival economy and to petty crime. These NGOs do not specifically combat child trafficking but regularly take into care child victims of trafficking.
- [39]. Dominique Versini, Minister of State with responsibility for combating social insecurity and exclusion in 2002, created a similar system in Paris. With the purpose of identifying child victims of trafficking, it coordinates different specialised associations and is based on patrols, gaining the minor's confidence, sheltering and providing him or her with support.

⁶ <http://www.ecpat-france.org>.

⁷ <http://www.planete-enfants.org/site/fr/index.php>.

⁸ <http://www.tdh.ch/website/tdhch.nsf/pages/HOMEPAGEE>.

⁹ <http://www.anafe.org/index.php>

¹⁰ <http://www.horslarue.org>.

¹¹ <http://www.fondation-auteuil.org>.

¹² <http://www.jeuneserrants.org>.

C. Appointment of legal guardian

- [40]. The law of 04.03.2002¹³ complemented the law of 25.07.1952 on the right to asylum by providing that the public prosecutor must designate an ad hoc administrator for any unaccompanied minor claiming refugee status. The ad hoc administrator is not a guardian. He or she is simply in charge of the protection of the minor in the waiting facility. For instance, the administrator can check the identity of anyone claiming to be a parent. The administrator helps the minor and represents him or her for the purpose of undergoing the administrative and judiciary procedures related to the refugee status claim. Ad hoc administrators work closely with social services and relevant NGOs.
- [41]. Article L221-5 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* [Code of Admission and Residence of Foreign Persons and the Right to Asylum] makes provision for unaccompanied minors coming to France to benefit, during their stay in a waiting facility, from the help of an ad hoc administrator appointed by the public prosecutor. This ad hoc administrator is responsible for assisting and representing them for the purpose of undergoing the administrative and judiciary procedures related to their stay and to their entry into France. Concerning the procedures relating to the entry, it is stipulated that the minor should be assisted by an attorney chosen by the ad hoc administrator or, in the absence thereof, by a court-appointed lawyer. The administrator can also ask the president of the court of first instance for the assistance of an interpreter and for the file to be made available.
- [42]. There are no specific provisions on the age limit for qualifying for legal representation and no provisions specific to child trafficking. Under ordinary law (Article 488 of the Civil Code), guardianship automatically ends when the individual comes of age. Nevertheless, individuals over the of age of 18 can still be protected, in the same way as young adults until the age of 21 (Decree n° 75-96 of 18.02.1975 stipulating that the children's judge can grant or extend judiciary protection for minors facing major difficulties in their social integration; Decree n° 75-1118 of 02.12.1975 establishing that the *département* can be asked for appropriate fostering or educational action in the case of grave difficulties in social integration due to a lack of resources or of sufficient family support).
- [43]. Since the passing of Law n°2007-293 of 05.03.2007, Article L112-3 of the Social Action and Family Code specifically provides that the childhood protection system can also apply to 'any adult under the age of 21 encountering difficulties likely to gravely endanger his or her stability'. Article L222-5 of the same code provides that 'emancipated minors and adults under the age of 21 encountering difficulties in their social integration due to a lack of resources or of family support can also be taken, on a temporary basis, into the care of the service for childhood social welfare'. These provisions apply to all minors and young adults and can be of help to child victims of trafficking.

¹³ France/Loi 2002-305 (4.03.2002)

- [44]. Age is usually assessed through a bone examination, with an 18-month margin of error. The information found in identification documents, if it contradicts the examination results, prevails if it is in the child's interest. The Supreme Court is rather reluctant in recognising any conclusive value in bone examination¹⁴. The judge is free to determine the validity of the bone examination and the child is given the benefit of the doubt if the age range extends below 18 years old.
- [45]. No evidence of specialised training for legal guardians employed for the representation of trafficked children could be found.
- [46]. There are no general or special provisions to ensure that the appropriate time is given for preparation of cases for the legal guardian.

¹⁴ See Civ. 1, 23.01.2008.

D. Coordination and cooperation

- [47]. The Ministry of the Interior delegation for crime victims is currently working on human trafficking, including child trafficking. The delegation's goal is to evaluate how human trafficking is tackled in France, to assess the impact of the current legislation and to put forward proposals for reform. The results of the working group should be made available by the end of 2008.
- [48]. There are no cooperation agreements concerning child trafficking between relevant ministries.
- [49]. There are no per se cooperation agreements between state agencies and non-governmental actors. However, NGOs play an important and legally recognised role in the handling system for unaccompanied children. For instance, they can be authorised to act as tutors or to run care centres. They always work closely with the judiciary.
- [50]. The Commission nationale de l'informatique et des libertés (CNIL) [National Data Protection Authority]¹⁵ is in charge of monitoring the protection of personal data. There is no evidence that it has specifically implemented the protection of personal data of trafficked children.
- [51]. An agreement was signed on 04.10.2002 with Romania, now part of the European Union, relating to 'cooperation to protect Romanian minors facing difficulties on French territory and their return to their country of origin as well as the fight against exploitation networks'. A new agreement was signed with Romania on 01.02.2007 but has not entered into force. There are no other similar agreements.
- [52]. There are no support programmes as part of France's international development assistance in countries of origin or within the EU.

¹⁵ Commission nationale de l'informatique et des libertés, <http://www.cnil.fr/>

[53].

E. Care and protection

- [54]. Decree n°2007-1352 of 13.09.2007 on permission to reside, protection, accommodation and housing of foreign nationals who are victims of human trafficking and procuring establishes a period of reflection. This decree transposes into national law Council Directive 2004/81/EC of 29.04.2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities.
- [55]. Under Article R316-2 of the Code of Admission and Residence of Foreign Persons and the Right to Asylum, applicable to the admission and residence of foreign victims of human trafficking and procuring who cooperate with the judicial authorities, the period of reflection is 30 days. During this period no deportation measures can be taken. These provisions are not specific to minors.
- [56]. The right of residence is subject to cooperation with the police. See para. 33 below on the deportation of minors.
- [57]. There is no statistical data on the number of children being granted temporary stay on grounds of trafficking (2000-2007).
- [58]. Under Article L521-4 of the Code of Admission and Residence of Foreign Persons and the Right to Asylum, there is no deportation of unaccompanied minors from French territory. Nevertheless, the situation in certain waiting facilities (in particular at Paris Charles de Gaulle airport) seems to be in violation of France's international commitments. Waiting facilities in airports are not considered, under French law, as being part of French territory. As a consequence, minors who remain there are not protected against deportation. On 15.10.2007, the UN Committee on the Rights of the Child expressed its grave concern about the situation of unaccompanied children in the waiting areas of French airports. Apart from the appointment of a guardian, there is no specific protection for minors.
- [59]. Under Article 20-2 of the 1945 ordinance,¹⁶ detained minors spend their time in specific quarters or in specific centres. Ever since the law of 09.09.2002,¹⁷ they can also be detained in closed educational centres.

¹⁶ France/Ordonnance 45-174 (2.02.1945) *relative à l'enfance délinquante*.

¹⁷ France/Loi 2002-1138 (9.11.200) *d'orientation et de programmation pour la justice*.

- [60]. Family tracing is very unusual. There is no specific policy in place, but the children's judge can request a birth certificate abroad in order to find the family of a minor.
- [61]. There are no specialised facilities for trafficked children. Consequently, child victims of trafficking are kept in ordinary facilities for children.
- [62]. There are no statistics on children who leave facilities. Associations consider that there are a substantial number of children who leave facilities. They are sometimes approached close to the facilities and reintegrated into exploitation networks. There is no formal policy to prevent disappearances of children.
- [63]. The law of 17.06.1998 on the prevention and combating of sexual offences and on the protection of minors provides that the necessary care is fully taken in charge by Social security. More generally, Articles L251-1 ff of the Social Action and Family Code states that these minors can benefit from state health care. There are no specific provisions for child victims of trafficking.
- [64]. Minors under the age of 16, whether of French or foreign nationality, are subject to compulsory schooling under Article L131-1 of the Education Code. The circular letter n°2002-063 of 20.03.2002 on the enrolment and schooling of foreign children in primary and secondary schools provides that, 'no distinction can be made between French and foreign pupils in the access to the state education service'. Educational provision is usually put in place by local authorities for young people aged 16 and above. The Law n°2005-32 of 18.01.2005 setting up a programme for social cohesion stipulates that apprenticeships are available to foreign minors who have been taken into the care of the service for childhood social welfare before they turned 16.
- [65]. Article 3 of the law of 10.07.1991 on legal aid provides that, 'foreign nationals living habitually and regularly in France can benefit from legal aid [...]'. Legal aid is granted under no condition of residency to foreign minors'. Article 9-1 of the same law stipulates that, 'in any procedure concerning him or her, the minor heard under the conditions mentioned in article 388-1 of the Civil code, if he or she chooses to be heard with an attorney or if the judge appoints one, will benefit de jure from legal aid'. Nevertheless, there is no legal aid in the administrative courts. Often associations then have to bear the costs linked to representation.
- [66]. A number of legal instruments establish the right to an interpreter for non-French-speaking people in most judiciary procedures. It can be found in particular in Articles L111-7 and L111-8 of the Code of Admission and Residence of Foreign Persons and the Right to Asylum and, concerning custody, in Article 63-1 of the Code of Criminal Procedure.
- [67]. A freephone hotline, Allô Enfance en Danger "119" was established by the law of 10.07.1989. Its three objectives are:
- to answer the calls from endangered children, from children at risk of being put in danger and from any person dealing with such a situation in order to help detect them and to facilitate the protection of endangered minors.

- to pass on worrying information about these children to the competent services in the *département* councils, in order to evaluate their situation and determine the appropriate help when needed. To directly contact the public prosecutor when the gathered information justifies it.
- to seek to prevent mistreatment of children.

[68]. No service specific to child victims of trafficking has been put in place. The “11 6000” phone number is yet to be set up.

[69]. Other situations of exploitation of trafficked children can be reported to the Children’s Ombudsman or by using the emergency number 112.

F. Best interests determination and durable solutions, including social inclusion/return

- [70]. The return of the child to his or her country of origin is extremely rare. It is usually difficult to determine whether or not this would be in the child's best interests.
- [71]. Asylum and subsidiary protection can be granted to child victims of trafficking. In order to claim asylum or subsidiary protection, the child needs to be represented by a guardian (Article L751-1 of the Code of Admission and Residence of Foreign Persons and the Right to Asylum). Minors must claim for asylum with the help of an ad hoc administrator.
- [72]. The child usually participates as much as possible in various procedures, such as the procedure to obtain a residence permit or the procedure for being put in foster care, in particular, in order to take into account his or her best interests. The organisations which are involved as guardians, ad hoc administrators or on an occasional basis, pay great attention to involving the child in the process, even though it is sometimes made difficult by linguistic issues or distress.
- [73]. Organisations which may also intervene as guardians or as ad hoc administrators, usually take care of submitting the asylum application to the *Office français de protection des réfugiés et apatrides* [Office for the Protection of Refugees and Stateless Persons]¹⁸ and of the application for a residence permit.
- [74]. There is no specialised integration programmes for trafficked children.
- [75]. The housing expenses of children with disabilities are supported by the state or by social security. These children can be accommodated in specialised centres, such as medical and educational institutes, sensory and motor education or re-education institutes, or in some national education structures such as school integration classes in primary schools, regional secondary schools with adapted teaching methods or integration teaching units in secondary schools.

¹⁸ Office français de protection des réfugiés et apatrides (OFPRA), <http://www.ofpra.gouv.fr/>.

G. Prosecution

- [76]. Article 706-52 of the Code of Criminal Procedure provides that the hearing of a child victim of sexual abuse is recorded by audiovisual means so that the child will not have to recount again the violence he or she was subject to. There are no other specific provisions and especially nothing specific to the fight against child trafficking.
- [77]. Articles 706-57ff of the Code of Criminal Procedure can also be used in order to ensure witness protection, either by preventing the disclosure of their address or by permitting anonymous testimonies.
- [78]. On 02.02.2007 the Tribunal correctionnel [criminal court] of Bobigny imposed one of the only convictions linked to child trafficking and based on Article 225-4-1 of the Penal Code. The Bulgarian traffickers, procurers from the Gypsy community, had set up a system to bring pregnant women to France, most of whom were prostitutes. The children were then sold for sums of between €3,000 and €8,000 to French couples. In most cases the 'fake' father managed the civil status fraud by recognising the child as his own. In other cases, the biological mothers participated themselves in the fraud by giving birth under the name of the 'fake' mother, using her social security 'Vitale' card. The perpetrators in this so-called 'Bulgarian babies' case were sentenced to imprisonment without parole (the sentences ranged from two to six years of imprisonment for the traffickers).
- [79]. There are no specific legal provisions granting trafficked children access to justice, including the right to compensation. Under ordinary law, a legal guardian can press charges and claim compensation when a child is a victim of trafficking.
- [80]. There are no available data on the total amount, average amount and range of amounts of compensation paid to trafficked children per year (2000-2007). All the relevant authorities confirmed the absence of such data.

H. Miscellaneous

[81]. NTR.

I. Good practice

- [82]. Concerning adoption, the law of 05.07.1996 aimed at organising international adoptions in conformity with the Convention on the Rights of the Child and The Hague Convention of 1993, in particular by stipulating that the persons wishing to adopt need to have an official authorisation to receive the child, by providing that international adoption organisations need to be authorised and by creating a mission for international adoption. France recently changed its legislation on the adoption of foreign children by French parents as the law n°2005-744 of 04.07.2005 on the reform of adoption created the *Agence française de l'adoption* [French Agency for Adoption] with the specific purpose of avoiding any risk of trafficking.
- [83]. The law of 10.07.1989 on the prevention of maltreatment of minors and on the protection of childhood establishes that each *département* Council President has a general duty to prevent maltreatment, to locate and protect mistreated children and to coordinate all the relevant services. In order to improve the efficiency of the search for mistreated children and child victims of trafficking, each *département* must put in place a system to gather information related to mistreated minors and to respond to urgent situations in close contact with the judiciary and other services of the state (police, education, hospitals).
- [84]. The important role played by various organisations must also be underlined. Some are given a mandate by the public authorities and yet do not hesitate to condemn certain situations or to put forward proposals for reform. Their political activism and commitment to the protection of children needs no further proof. For example, they instigated the creation of the online network InfoMIE¹⁹ dedicated to the taking into care of unaccompanied foreign minors. Lastly, a collective to combat human trafficking was created by 24 French organisations directly or indirectly involved in supporting victims in France and in countries of origin and transit.²⁰

¹⁹ <http://www.infomie.net/-infoMIE-net-.html>.

²⁰ <http://www.contrelatraite.org>.

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	N/A							
Number of trafficked children receiving education/training, in particular secondary education and vocational training	N/A							
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	N/A							
Number of final convictions based on child trafficking cases, per year	N/A							
Total of amount of compensation paid to trafficked children, per year	N/A							
Average of amounts of compensation paid to trafficked children, per year	N/A							
Range of amount of compensation paid to trafficked children, per year	N/A							

Annex 2 – Supreme Court Decision, 18.05.2005

Cour de cassation
chambre civile 1
Audience publique du mercredi 18 mai 2005
N° de pourvoi: 02-20613
Publié au bulletin **Cassation**.

M. Ancel., président
Mme Vassallo., conseiller rapporteur
Mme Petit., avocat général
la SCP Nicolay et de Lanouvelle., avocat(s)

REPUBLIQUE FRANCAISE

AU NOM DU PEUPLE FRANCAIS

AU NOM DU PEUPLE FRANCAIS

LA COUR DE CASSATION, PREMIERE CHAMBRE CIVILE, a rendu l'arrêt suivant :

Sur le moyen unique, après avis donné aux parties en application de l'article 1015 du nouveau Code de procédure civile ;

Vu les articles 3-1 et 12-2 de la convention de New-York du 26 janvier 1990 relative aux droits de l'enfant, ensemble les articles 388-1 du Code civil et 338-1, 338-2 du nouveau Code de procédure civile ;

Attendu que dans toutes les décisions qui concernent les enfants, l'intérêt supérieur de l'enfant doit être une considération primordiale ; que lorsque le mineur capable de discernement demande à être entendu, il peut présenter sa demande au juge en tout état de la procédure et même, pour la première fois, en cause d'appel ; que son audition ne peut être écartée que par une décision spécialement motivée ;

Attendu que l'enfant Chloé X..., née le 31 août 1990, dont la résidence a été fixée chez sa mère au Etats-Unis, a demandé, en cours de délibéré, par lettre transmise à la cour d'appel, à être entendue dans la procédure engagée par son père pour voir modifier sa résidence ;

que l'arrêt attaqué ne s'est pas prononcé sur cette demande d'audition de l'enfant ;

Attendu qu'en se déterminant ainsi, alors que la considération primordiale de l'intérêt supérieur de l'enfant et le droit de celui-ci à être entendu lui imposaient de prendre en compte la demande de l'enfant, la cour d'appel a violé les textes susvisés ;

PAR CES MOTIFS :

CASSE ET ANNULE, dans toutes ses dispositions, l'arrêt rendu le 30 septembre 2002, entre les parties, par la cour d'appel de Rennes ; remet, en conséquence, la cause et les parties dans l'état où elles se trouvaient avant ledit arrêt et, pour être fait droit, les renvoie devant la cour d'appel d'Angers ;

Condamne Mme Y..., épouse Z... aux dépens ;

Vu l'article 700 du nouveau Code de procédure civile, rejette la demande de M. X... ;

Dit que sur les diligences du procureur général près la Cour de Cassation, le présent arrêt sera transmis pour être transcrit en marge ou à la suite de l'arrêt cassé ;

Ainsi fait et jugé par la Cour de Cassation, Première chambre civile, et prononcé par le président en son audience publique du dix-huit mai deux mille cinq.

Annex 3 – Administrative Court of Appeal of Bordeaux, 06.11.2007

Juge des reconduites à la frontière
M. Hervé VERGUET, rapporteur
Mme VIARD, commissaire du gouvernement
LASPALLES, avocat

lecture du mardi 6 novembre 2007

REPUBLIQUE FRANCAISE
AU NOM DU PEUPLE FRANCAIS

Vu la requête, enregistrée au greffe de la Cour le 19 juin 2007 sous le numéro 07BX01277, et le mémoire, enregistré au greffe de la Cour le 22 octobre 2007, présentés pour Mme Petcharat X, de nationalité thaïlandaise, demeurant au centre de rétention de Cornebarieu (31700), par Me Lasपालles, avocat ;

Mme X demande à la Cour : 1°) d'annuler le jugement du 30 mai 2007 par lequel le magistrat désigné par le président du Tribunal administratif de Toulouse a rejeté sa requête tendant à l'annulation de l'arrêté du préfet de l'Aude du 26 mai 2007 décidant sa reconduite à la frontière et des décisions du même jour fixant la Thaïlande comme pays de destination et ordonnant son placement en rétention administrative ; 2°) d'annuler les décisions du 26 mai 2007 susmentionnées ; 3°) d'enjoindre au préfet de l'Aude de lui délivrer un titre de séjour portant la mention « vie privée et familiale » sous astreinte de 150 euros par jour de retard à compter d'un mois suivant la notification de l'arrêt à intervenir ; 4°) d'enjoindre au préfet de l'Aude d'examiner sa situation sous astreinte de 150 euros par jour de retard à compter d'un mois suivant la notification de l'arrêt à intervenir ; 5°) de condamner l'Etat à lui payer une somme de 1.500 euros en application de l'article 37 de la loi du 10 juillet 1991, et ce entre les mains de son conseil ;

Les parties ayant été régulièrement averties du jour de l'audience ;

Après avoir, au cours de l'audience publique du 23 octobre 2007, présenté son rapport et entendu les conclusions de Mme Viard, commissaire du gouvernement ;

Considérant que Mme X, de nationalité thaïlandaise, demande l'annulation du jugement du 30 mai 2007 par lequel le Tribunal administratif de Toulouse a rejeté sa requête tendant à l'annulation de l'arrêté du préfet de l'Aude du 26 mai 2007 décidant sa reconduite à la frontière et des décisions du même jour fixant la Thaïlande comme pays de destination et ordonnant son placement en rétention administrative ;

Sur la légalité des décisions critiquées :

Sans qu'il soit besoin de statuer sur les autres moyens de la requête :

Considérant qu'aux termes de l'article L.511-1 II du code de l'entrée et du séjour des étrangers et du droit d'asile : « L'autorité administrative compétente peut, par arrêté motivé, décider qu'un étranger sera reconduit à la frontière dans les cas suivants : 1° Si l'étranger ne peut justifier être entré régulièrement en France, à moins qu'il ne soit titulaire d'un titre de séjour en cours de validité (...) » ; qu'il est constant que Mme X est entrée irrégulièrement sur le territoire national et qu'elle n'a pas sollicité son admission au séjour ; qu'elle se trouvait ainsi dans la situation

où, en vertu des dispositions précitées, le préfet peut légalement décider de reconduire un étranger à la frontière ;

Considérant qu'aux termes de l'article 3-1 de la convention internationale des droits de l'enfant du 26 janvier 1990 : « Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées de protection sociale, des tribunaux, des autorités administratives ou des organes législatifs, l'intérêt supérieur de l'enfant doit être une considération primordiale » ; qu'il résulte de ces stipulations que, dans l'exercice de son pouvoir d'appréciation, l'autorité administrative doit accorder une attention primordiale à l'intérêt supérieur des enfants dans toutes les décisions les concernant ;

Considérant que Mme X a vécu en concubinage avec une personne de nationalité française et que de cette union est né, le 3 avril 2003, un enfant ; que si le couple s'est séparé et si, depuis cette séparation, l'enfant vit exclusivement au domicile de son père, compte tenu notamment de ce que Mme X, qui ne dispose pas de ressources financières stables, ne peut subvenir à ses besoins matériels, il ressort des pièces du dossier que l'appelante a conservé des relations intenses avec son fils, auquel elle rend régulièrement visite, et participe ainsi à son éducation ; que, dans ces conditions, l'exécution de la mesure de reconduite à la frontière aurait pour effet soit de priver l'enfant de Mme XXX est fondée à soutenir que l'arrêté du 26 mai 2007 a été pris en méconnaissance des stipulations précitées de l'article 3-1 de la convention internationale des droits de l'enfant et doit, par suite, être annulé ; que l'illégalité dont est entachée cette mesure entraîne, par voie de conséquence, celle de la décision fixant le pays de destination et celle de l'arrêté de placement en rétention du même jour ;

Considérant qu'il résulte de ce qui précède que Mme X est fondée à soutenir que c'est à tort que, par le jugement attaqué, le magistrat désigné par le président du Tribunal administratif de Toulouse a rejeté sa requête tendant à l'annulation de l'arrêté du préfet de l'Aude du 26 mai 2007 décidant sa reconduite à la frontière et des décisions du même jour fixant la Thaïlande comme pays de destination et ordonnant son placement en rétention administrative ;

Sur les conclusions à fin d'injonction :

Considérant qu'aux termes de l'article L. 911-2 du code de justice administrative : « Lorsque sa décision implique nécessairement qu'une personne morale de droit public ou un organisme de droit privé chargé de la gestion d'un service public prenne à nouveau une décision après une nouvelle instruction, la juridiction, saisie de conclusions en ce sens, prescrit, par la même décision juridictionnelle, que cette nouvelle décision doit intervenir dans un délai déterminé » ; qu'en vertu de l'article L. 512-4 du code de l'entrée et du séjour des étrangers et du droit d'asile : « Si l'arrêté de reconduite à la frontière est annulé, il est immédiatement mis fin aux mesures de surveillance prévues au titre V du présent livre et l'étranger est muni

d'une autorisation provisoire de séjour jusqu'à ce que l'autorité administrative ait à nouveau statué sur son cas » ;

Considérant qu'à la suite de l'annulation d'un arrêté de reconduite à la frontière, il incombe au préfet, en application des dispositions précitées de l'article L. 512-4 du code de l'entrée et du séjour des étrangers et du droit d'asile, non seulement de munir l'intéressé d'une autorisation provisoire de séjour mais aussi, qu'il ait été ou non saisi d'une demande en ce sens, de se prononcer sur son droit à un titre de séjour ; que, dès lors, il appartient au juge administratif, lorsqu'il prononce l'annulation d'un arrêté de reconduite à la frontière et qu'il est saisi de conclusions en ce sens, d'user des pouvoirs qu'il tient de l'article L. 911-2 du code de justice administrative pour fixer le délai dans lequel la situation de l'intéressé doit être réexaminée au vu de l'ensemble de la situation de droit et de fait existant à la date de ce réexamen ;

Considérant que l'annulation de l'arrêté du 26 mai 2007 implique nécessairement que le préfet de l'Aude, après avoir délivré une autorisation provisoire de séjour à Mme X, se prononce à nouveau sur sa situation dans le délai d'un mois suivant la notification du présent arrêt ; qu'il n'y a toutefois pas lieu d'assortir cette injonction d'une astreinte ;

Sur les conclusions tendant à l'application des dispositions des articles 37 alinéa 2 de la loi du 10 juillet 1991 et L. 761-1 du code de justice administrative :

Considérant que Mme X a été admise au bénéfice de l'aide juridictionnelle totale ; que, par suite, son avocat peut se prévaloir des dispositions des articles 37 alinéa 2 de la loi du 10 juillet 1991 et L. 761-1 du code de justice administrative ; qu'il y a lieu, dans les circonstances de l'espèce, et sous réserve que Me Laspalles, avocat de Mme X, renonce à percevoir la somme correspondant à la part contributive de l'État, de mettre à la charge de l'État, qui est dans la présente instance la partie perdante, la somme de 1.000 euros au profit de Me Laspalles au titre des frais exposés et non compris dans les dépens ;

DECIDE :

Article 1er : Le jugement rendu le 30 mai 2007 par le magistrat désigné par le président du Tribunal administratif de Toulouse, l'arrêté du préfet de l'Aude du 26 mai 2007 décidant la reconduite à la frontière de Mme X, ensemble les décisions du même jour fixant la Thaïlande comme pays de destination et ordonnant son placement en rétention administrative, sont annulés.

Article 2 : Il est enjoint au préfet de l'Aude, après avoir délivré une autorisation provisoire de séjour à Mme X, de se prononcer à nouveau sur sa situation dans le délai d'un mois suivant la notification du présent arrêt.

Article 3 : L'Etat versera la somme de 1.000 euros à Me Lasपालes, avocat de Mme X, en application des articles 37 alinéa 2 de la loi du 10 juillet 1991 et L. 761 □1 du code de justice administrative, sous réserve que Me Lasपालes renonce à percevoir la somme correspondant à la part contributive de l'Etat.

Annex 4 – Supreme Court Decision, 23.01.2008

Cour de cassation
chambre civile 1
Audience publique du mercredi 23 janvier 2008
N° de pourvoi: 06-13344
Publié au bulletin **Rejet**

M. Bargue, président
Mme Trapero, conseiller rapporteur
M. Sarcelet, avocat général
SCP Piwnica et Molinié, avocat(s)

REPUBLIQUE FRANCAISE

AU NOM DU PEUPLE FRANCAIS

LA COUR DE CASSATION, PREMIÈRE CHAMBRE CIVILE, a rendu l'arrêt suivant :

Sur le moyen unique pris en ses quatre branches, tel qu'annexé à l'arrêt :

Attendu que M. X..., en possession d'une attestation de naissance le disant né le 3 mars 1989 à Kinshasa (République démocratique du Congo), a fait l'objet d'une mesure de placement auprès du service de l'aide sociale à l'enfance du département de la Moselle pour une durée de deux ans par décision du juge des enfants du 22 septembre 2003 ; que, le 10 octobre 2005, le même magistrat a refusé de renouveler cette mesure et a dit n'y avoir lieu à assistance éducative au motif que M. X... devait être considéré comme ayant plus de 18 ans, son acte de naissance

n'étant pas probant ;

Attendu que le département de la Moselle fait grief à l'arrêt attaqué (Metz, 23 janvier 2006), d'avoir infirmé cette décision et décidé que le placement de M. X... à l'aide sociale à l'enfance devait se poursuivre jusqu'à sa majorité ;

Attendu que c'est dans l'exercice de son pouvoir souverain d'appréciation que la cour d'appel a constaté d'une part, que l'attestation de naissance produite par M. X... avait été établie en conformité avec les formes requises par la loi étrangère applicable, d'autre part, qu'aucun élément extérieur à l'acte ne permettait de douter des énonciations y figurant, l'examen radiologique pratiqué sur M. X... ne pouvant être retenu en raison de son imprécision, et qu'elle a déduit de ces constatations, que l'acte d'état civil produit faisait foi de l'âge de l'intéressé, que la cour d'appel a ainsi, hors toute dénaturation, légalement justifié sa décision ;

PAR CES MOTIFS :

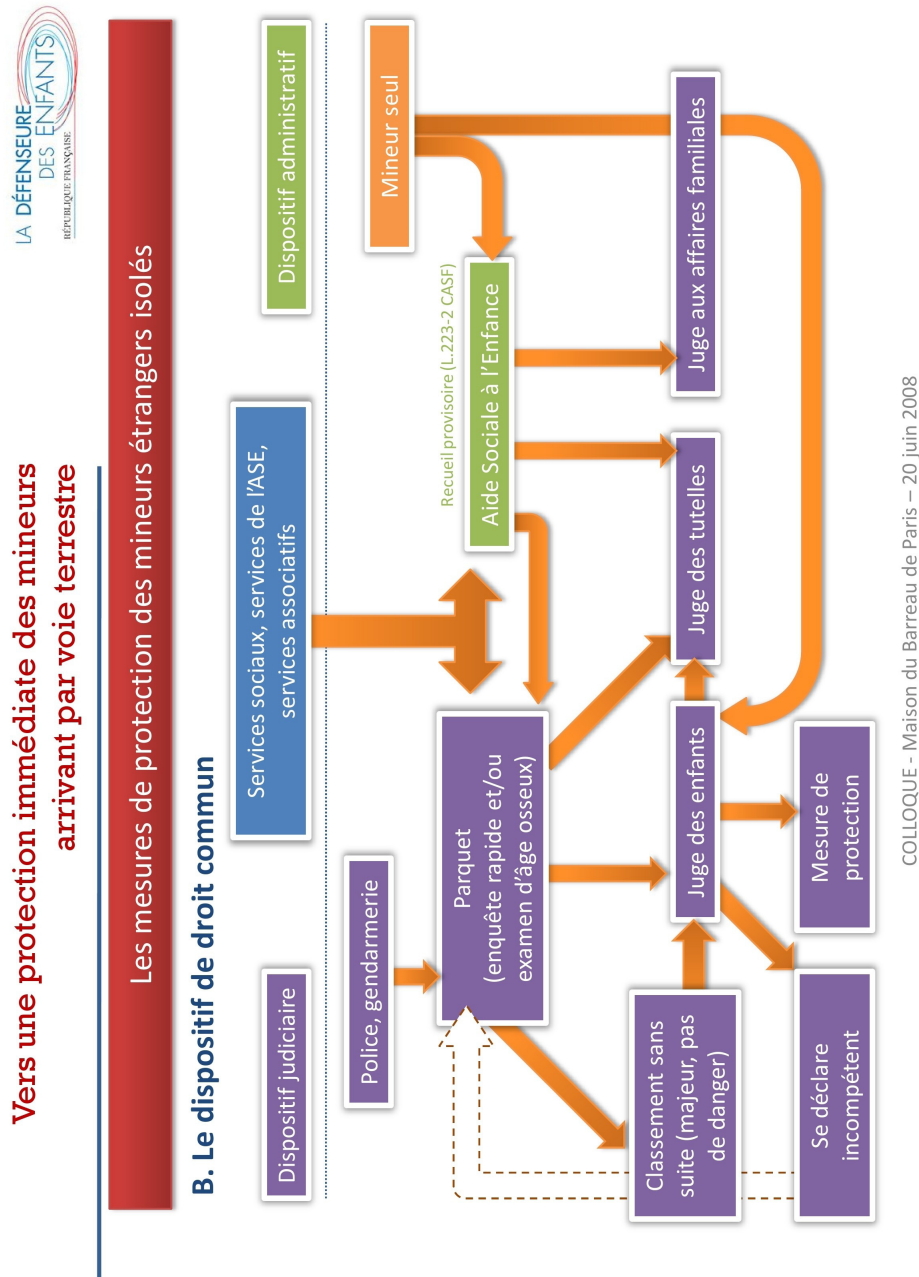
REJETTE le pourvoi ;

Condamne le département de la Moselle aux dépens ;

Ainsi fait et jugé par la Cour de cassation, première chambre civile, et prononcé par le président en son audience publique du vingt-trois janvier deux mille huit.

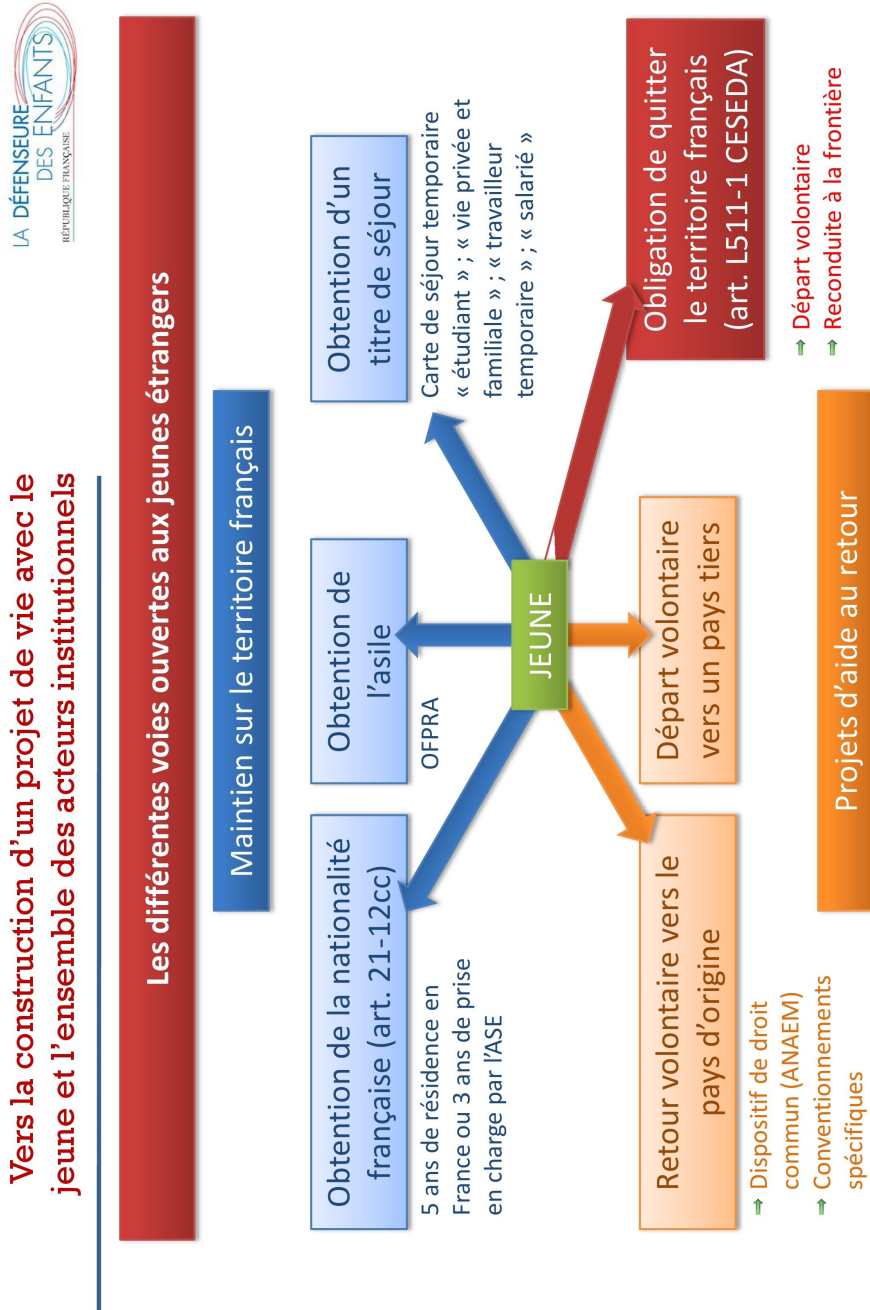
Annex 5 – Protection of unaccompanied foreign minors

Presented by the Children’s Ombudsman on 20.06.2008 on the occasion of a seminar on ‘Unaccompanied foreign minors, towards the harmonisation of practices in the best interests of the child’.



Annex 6 – The future of foreign nationals coming of age

Presented by the Children’s Ombudsman during the seminar on 20.06.2008.



COLLOQUE - Maison du Barreau de Paris – 20 juin 2008