

Annual Report

2016

**Trafficking and smuggling
of human beings**

Beggars in the hands of traffickers



Federal Migration Centre

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Introduction

Beggars in the hands of traffickers

This is the nineteenth 'Human trafficking and smuggling' report. Every year, Myria offers an independent assessment of human trafficking and smuggling policy. Besides its tasks concerning fundamental rights and information on migration flows (see our Migration Report 2016), Myria has the specific task of encouraging the fight against this scourge and has been explicitly appointed as the independent National Rapporteur on Human Trafficking for Belgium. This work takes on a great many and generally low-profile forms, and this annual report is only one of the facets. Besides its usual sections (case analyses, legal and political developments, best practices and experiences, case law, focus, analyses in figures, recommendations), this report will also now include a summary of the various interventions, civil proceedings, training sessions and tasks that Myria conducts every year, allowing it to develop and maintain its expertise, including the development and maintenance of an important national and international network. For instance, Myria instituted civil proceedings in six new cases in 2015 (three concerning trafficking and three smuggling). As mentioned in previous reports, these civil proceedings are instituted for the following reasons: to examine the cases, the need to put our weight behind a case owing to its symptomatic nature, and to support the victims. The relative increase in cases related to smuggling is of course linked to the migration crisis Europe experienced in 2015.

As for figures, which are widely expanded upon in this report, it is important to note that there is a lack of harmonisation between the data from the different stakeholders. Therefore, they aren't sufficient as a basis to assess the policy or to support strategic analyses. This lack of harmonisation also significantly restricts the possibilities of reporting with regard to the European institutions.

Major developments

The fight against human trafficking and smuggling has been marked by significant developments over the past year, especially in Belgium. A law was adopted to finalise the transposition of the European directive on human trafficking, allowing the related legislation to be coordinated with the provisions relating to sexual abuse and exploitation of prostitution at the same time. This law also improves the measures to protect victims. Furthermore, the government adopted an ambitious 2015-2019 action plan to combat human trafficking. It includes several advances, primarily linked to synergies with the federated entities, frontline stakeholders, and measures in terms of awareness raising and information. Significant emphasis is placed on the protection of victims in the plan; on this subject, Myria would like to emphasise that the best investment in this area would be to maintain and stabilise the structural financing of the three specialised reception centres - PAG-ASA, Payoke and Sürya - whose expertise and efficiency has been proved, since they are confronted with the withdrawal of the FIPI (funds to promote immigration policies) and no long-term solution at this stage, despite the considerable efforts of Secretary of State, Elke Sleurs, to find a temporary solution.

Despite these advances, Myria also has several concerns. The introduction of a 'guilty plea' procedure within the framework of criminal law reform and criminal procedure, considering its broad scope, could have negative consequences on trafficking cases, as shown in our analysis on legal developments further on in this report. According to Myria, it would have been preferable for this procedure to be explicitly excluded for acts of human trafficking for the purpose of sexual exploitation and for the most serious forms of trafficking. Moreover, we fear that there is less guarantee for the rights of victims within this framework than within the

framework of normal criminal procedure. Just like the specialised centres and O.R.C.A. (Organisation for Undocumented Workers), Myria is also very concerned about the punishment of people working illegally, adopted in May 2016 through an amendment to the Social Criminal Code. From now on, anyone working illegally is committing an offence and will receive an administrative fine as punishment. And yet, this measure seriously affects potential human trafficking victims, who often work illegally. Myria considers that this measure goes against the principle of non-punishment, included in several international texts, which allows victims to be considered as not having acted independently, despite having committed an offence, and thus sparing them from legal proceedings.

Among recent developments worth noting is the adoption of a 2015-2018 action plan to combat trafficking in human beings. This government initiative is a response to the current context of the migration crisis, which puts many migrants in the grip of smuggling networks and in an extremely vulnerable position. As also highlighted by the cases in which Myria has instituted civil proceedings, it is important to remember that Belgium is a transit country for smuggling, which is particularly prevalent along the E40 highway. In addition, Belgium, is also one of the rare European countries to have a network of judges specialised in the fight against smuggling. While the adoption of such a plan is obviously a positive move, Myria insist that we must continue to continue to keep watch on the victims.

Begging, a discreet but real form of exploitation

This year, we have decided to focus on the difficult theme of human trafficking for the purpose of exploitation of begging. It provides us with the opportunity to examine a tricky and multifaceted subject. Of course, not all begging is the subject of human trafficking but part of trafficking does indeed involve elements of

exploitation of begging. As such, begging hasn't been an offence in Belgium since 1993, even though certain communes are attempting to reinstate begging as an offence in a roundabout way through communal administrative penalties. Nevertheless, the exploitation of begging and acts of trafficking committed for this purpose are still punishable. However, it is still necessary to work on better defining begging and its exploitation, for instance, through a related criminal policy directive.

In this focus, we have chosen to pay particular attention to the Roma, because they are the subject of numerous stereotypes linked to their practice of begging, which is common to certain groups within this heterogeneous community. We thought it would be useful to examine the subject more closely and dispel some of the generalities, based in particular on the contribution of Judit Geller and Adam Weiss from the European Roma Rights Centre on the particular vulnerability of this group. The Roma are Europe's largest ethnic minority; but as we shall read, this term encompasses a wide variety of people, comprising a disparate group. According to the Council of Europe's Commissioner for Human Rights, there are approximately 25,000 Roma migrants in Belgium.

In some Roma groups, begging is considered a survival strategy, essentially carried out by the women. As we shall see, Roma people often demonstrate a strong feeling of internal loyalty, which has consequences on the attitude of victims towards their exploiter, who is generally from the same community. And it is in this link that the exploitation of victims by their exploiters takes root, through trafficking: recruited in their country of origin by an exploiter with the promise of a job and a better life in Belgium, these victims find themselves in a situation of dependency, and victims of trafficking, among other things, through begging. The situation of minors, within this framework, is particularly worrying. Myria considers it crucial to adopt a uniform

approach to begging, especially when it comes to stating the facts. This also requires the police and judges to consider beggars, who show signs of exploitation, as potential victims, above all else, rather than people who cause a nuisance; these people must also be referred to specialised centres, which have the skills to more easily win their trust. We also believe that judges could pay greater attention to cases of trafficking for the purpose of exploitation of begging, by giving priority to cases involving minors. As regards minors, begging is sometimes the only visible activity, revealing other forms of exploitation such as forced criminal activities. Myria is therefore delighted about the future adoption of a directive on the investigation and prosecution of the exploitation of begging, and insists on the importance, both for judges and police officers, of being more familiar with the diversity inherent to the Roma community.

A continuing challenge

Belgium already has a good record in the fight against human trafficking and smuggling. Our legislation, seems more or less capable of dealing with this phenomenon. But we could still do better in some areas. We still need to raise awareness among frontline services dealing with victims; there are cases where the victim referral mechanism hasn't been applied. The issue of false posted workers should be given far greater attention. And, because this involves smuggling, the effort to combat it could be more efficient if a more humane approach to the victims was adopted thus turning them into rapid allies against the smugglers, and if international cooperation, especially regarding financial aspects, was intensified. Let us not forget that the best way to tackle human smuggling is to open more legal and safe migration routes. In many respects, the fight against trafficking and smuggling is a bottomless pit: it is an endless, multifaceted task that must constantly adapt to changing crime, victim profiles that are very different from one environment to another, whose

only point in common is the exploitation of vulnerability or human distress in common. By forcing so many people onto the road, the current situation could lead to a growing number of potential trafficking and smuggling victims. Therefore, it is important to share the experience and expertise our country has garnered over the years and deploy it at national and international levels, so that we can profit from our partners' cooperation. Because in this field, as in many others, no-one is capable of winning alone.

François De Smet

Director



PART 1: MYRIA IN ACTION

Officially founded on 15 March 2014, 2015 was the Federal Migration Centre's first 'full' year. Its new name - Myria - was unveiled on 3 September 2015, at Botanique in Brussels. Myria has approximately 15 people on its team, a new board of directors since August 2014 and its first director, François De Smet, since 15 March 2015. In this section, you will find out how it is organised, its budgetary situation and an overview of its main collaborations and publications.

1. Myria, a Federal Migration Centre in full working order

In September 2015, the Federal Migration Centre became Myria

The Federal Migration Centre unveiled its new name - Myria - on 3 September at the Botanique in Brussels. Myria also used this opportunity to hold a debate on migration policy with several key figures including the State Secretary for Asylum and Migration, to whom the 2015 annual report was officially handed. This demonstrated the Federal Migration Centre's desire to use its reports on figures and rights, but also human trafficking and smuggling, as an opportunity to hold a societal debate with all the stakeholders concerned.

The Federal Migration Centre's new name is Myria. This name makes it easier to identify and therefore more accessible to authorities, associations, research centres and citizens. Its logo and corporate identity are associated with those of Unia, the new name for the Interfederal Centre for Equal Opportunities, with which it wishes to maintain its special links.

Myria was launched within an exceptional international context. Since the summer of 2015, we have been witness to the worst humanitarian crisis since the Second World War. Since then, the 'asylum' crisis has monopolised a large part of the political, economic and social news. Myria has endeavoured to fulfil its task by responding to numerous requests for clarifications, explanations and to put things into perspective. Hence, since September 2015, Myria has frequently been in the news, either because it has been approached concerning developments in the asylum crisis, or on its own initiative. The institution's main challenge is to combine this new availability with the expertise it has acquired over the years.

2015, the Federal Migration Centre's first 'full' year

Myria, the Federal Migration Centre, has approximately 15 on its team. It was founded on 15 March 2014, has had a board of directors since August 2014 and its first director, François De Smet, since 15 March 2015.

Myria is managed by its board of directors. Its main responsibilities involve determining the general policy, approving the accounts, defining the communication policy and deciding whether or not to engage in legal proceedings (in cases of human trafficking or smuggling, or to recuperate salary arrears for undocumented workers).

The director is responsible for managing it on a daily and budgetary basis, as well as for executing the board of directors' decisions and preparing recommendations. He reports on its day-to-day management to the board of directors and a specific procedure allows him, in case of an emergency, to take decisions that are necessary on an operational level and within the framework of Myria's tasks.

This task-sharing is defined by the Royal Decree of 29 July 2014 (Art. 3§2) establishing Myria's organic statute. It is completed by the internal regulations of the Federal Migration Centre's board of directors, published in the Belgian Official Gazette (Moniteur belge) on 18 November 2014.

Since 24 April 2014, Myria's board of directors has been composed of 10 members, appointed by the Federal Parliament. Appointed by royal decree, they are also part of the federal chamber within Unia's board of directors, whose other members are now directly appointed by communities and regions. Gender equality and language parity are respected.

The members of the Federal Migration Centre's board of directors on 1 June 2016

Dutch-speaking staff	Dutch-speaking alternates
Mrs Shaireen Aftab (chairperson) Mr Yves Aerts Mrs Els Schelfhout Mr Herman Van Goethem Mr Jogchum Vrielink	Mrs Naima Charkaoui Mr Jan Theunis* Mrs Jacqueline Goegebeur Mr Bernard Hubeau Mr Selahattin Kocak*
French-speaking staff	French-speaking alternates
Mr Louis-Léon Christiaens Mrs Sotieta Ngo Mrs Christine Nina Niyonsavye Mrs Bernadette Renauld Mr Thierry Delaval	Mr Daniel Soudant* Mrs Maité De Rue Mrs Christine Kulakowski Mrs Claire Godding Mr Patrick Wautelet

* Appointments to be confirmed by adoption of a royal decree not yet published when this report was written.

When the Executive Board was set up in August 2014, it was down to Myria to bring in new leadership. This was in accordance with the SELOR procedure prescribed by the royal decree of 29 June 2014. Following the procedure and the Executive Board decision, François de Smet came in on 15 March as the first director of the Federal Migration Centre.

Myria has acquired the tools required for its mission:

A **staff plan** that establishes the framework, job profiles and wage conditions of Myria's staff. The conditions are largely the same as those applicable to the former Centre for Equal Opportunities and Opposition to Racism. The team is perfectly balanced in terms of language. Several new things have been implemented through the execution of this plan:

- the post of management assistant was created;
- the post of secretary and administrative assistant was changed from part time to full time;
- the structural partnership agreement with the Centre de recherche en démographie (DEMO) at the Université catholique de Louvain (UCL), through which the Federal Migration Centre carried out a large part of its demographic work, wasn't renewed. The decision was taken to reinforce

internal competences in this area within Myria itself. An extra part-time member of staff was therefore hired to process statistical and demographic data.

Myria also welcomes a certain number of interns throughout the year.

A **2016-2018 three-year strategic plan**, focusing on Myria's three statutory tasks:

- legal advisory work within the framework of dealing with individual queries and analyses within the framework of themes such as the right to family life, residence status, nationality, administrative detention including the issue of monitoring forced removals, statelessness ("ensuring that the fundamental rights of foreigners are respected");
- demographic and statistical analysis of the figures available in terms of migration, setting up and following up research projects on the reality of migration, longitudinal follow-up and cohort-based work on the administrative status of migrants and their socioeconomic future ("inform the public authorities of the nature and extent of the migration flows");
- analyse the phenomenon of human trafficking and smuggling on the basis of court records, informal interviews, analysis of the developments in the

approach to human trafficking and smuggling and the assessment of the anti-trafficking and anti-smuggling policy ("stimulate the fight against human trafficking and smuggling").

A **communication plan**, essentially relating to Myria's strategy to assert its identity and its tasks in relation to the outside world, including the launch and development of its new name and the definition of its communications policy, also on the internet and social networks.

An **operational plan 2016**, whose objectives are as follows:

- the consolidation of Myria's identity;
- the execution of its three statutory tasks in the most complementary way possible;
- the reinforcement of its resources (website, new tools);
- the reinforcement of the support service for individual queries;
- a greater contribution to societal debates.

2. Accounts and financial situation

In October 2014, the federal government decided to impose cost-saving measures on federal bodies. This decision had a considerable impact on the Federal Migration Centre. These budgetary restrictions raise questions, both in terms of their principle and their implementation.

Instead of differentiating between staff costs (-4%) and operating costs (-20%), as is the case with other public bodies, a linear reduction of 20% was applied to the part of Myria's subsidy directly charged to the federal state. Despite repeated requests to the state secretaries concerned, the budget minister and members of the Kern, it was not possible to have this situation rectified.

These savings also raise questions regarding the guaranteed subsidy of EUR 1,500,000 expressly mentioned in Myria's organic statute and the fruit of a political will to guarantee its independence. Reducing its means so drastically while the institution is just starting up, seems to be a clear contradiction with the political will that existed prior to the centre's creation. This linear saving places Myria in a difficult situation in the short term: the line of budgetary savings will worsen its situation in 2016, 2017, 2018 and 2019, by adding a further 2% every year to a 20% saving that shouldn't really have been imposed on it.

However, Myria has succeeded in keeping its budget balanced in 2015, by not replacing any departures or absences, for instance. Below is a summary of the main figures from the balance sheet on 31 December 2015, and the profit and loss accounts from 2015. These accounts were checked by the auditor and were approved by Myria's board of directors on 12 April 2016.

Balance sheet on 31 December 2015 (x € 1,000)			
Assets	1,152	Liabilities	1,152
Fixed assets	17	Start-up capital	835
		Cumulative result	50
Current assets	1,135	Debts	267
Trade receivables	30	Suppliers	190
Financial assets	66		
Investments	250	Social debts	51
Disposable assets	789	Other debts	26
Profit and loss account 1 January 2015 – 31 December 2015 (x € 1,000)			
Income	1,445	Expenses	1,441
Subsidies	1,381	Project costs	44
Project income	62	Operating costs	423
Miscellaneous income	2	Personnel costs	965
Financial revenues	0	Depreciation	9
		Result 2015	4

3. Myria and its network: on a national level

Public authorities

Myria occupies a special place. A public stakeholder, yet autonomous with regard to the government, it exercises its tasks on a completely independent basis. Its intention is to be able to discuss with all the stakeholders concerned by its tasks: public authorities, institutions, associations, interest groups, political parties, research centres and citizens. This central position is of great value. A large part of the statistical work and recommendations is only possible thanks to contacts and relations maintained with numerous public authorities, in particular: the Immigration Office, Commissioner General for Refugees and Stateless Persons, Fedasil, FPS Interior, FPS Justice, FPS Foreign Affairs, FPS Employment, Directorate-general Statistics, Aliens Litigation Council. Let us also not forget that Myria was explicitly appointed independent National Rapporteur for Human Trafficking in Belgium.

Federal government

Myria's relationship with the federal government is based on fundamental issues. Its task is to voice its opinion regarding the human rights of foreigners and the fight against human trafficking and smuggling. The federal government is the first to receive the annual and thematic reports that directly concern several of its competences: Asylum and Migration, Justice, Internal Affairs, Foreign Affairs, Employment, Equal Opportunities.

Exchanges with the government in 2015 and 2016 related to themes as diverse as humanitarian visas, the European directive relating to the reception of asylum seekers, managing the reception and pre-reception of asylum seekers as well as the reforms linked to residence status and family reunification. The two annual reports - on migration and on human trafficking and smuggling - were sent to all government

members, with an emphasis on the recommendations concerning them.

In 2015 and 2016, as mentioned above, Myria also conducted institutional and budgetary discussions with the federal government aimed at guaranteeing its independence, in the short and the long term. The government took cost-saving measures in October 2014 that put a strain on Myria's budget. These savings, both in principle and in application, raise serious issues concerning the federal government's supposed independence. Thanks to the legislator and the executive power, the institutional development of the Federal Migration Centre has brought it greater independence. While this fully applies to its management, recruitment and stances, this is clearly not the case when it comes to controlling its budget.

Considering its status and its tasks, the Federal Migration Centre considers itself as a body that contributing, alongside other stakeholders in Belgium, to the existence of a National Institute of Human Rights (NIHR) in the sense of the Paris Principles¹.

This independence is demonstrated by:

- an objective attitude towards the recruitment of the board of directors by the Federal Parliament (based on a call for applications)

¹The Paris Principles are international standards that establish the minimum conditions an NIHR must satisfy to be considered as credible by equivalent institutions and in the United Nations system. NIHR are organs of the state with a constitutional or legislative mandate giving them the task of protecting and promoting human rights. They are an integral part of the state apparatus and are financed by public funds. To find out more: http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_fr.pdf.

and management (by the board of directors based on a selection made by SELOR);

- the lack of a government commissioner;
- the granting - in principle - of a EUR 1.5 million subsidy, as mentioned in its organic royal decree: "Art. 15. For the execution of its tasks, the Centre's funding can be ensured by (...) 2. an annual amount of EUR 1.5 million, indexed on 1 January of every year on the basis of the health index. The reference index is that of 1 January 2014"². This provision follows a political agreement concerning the distribution of resources allocated to both centres.

The granting of such a high level of independence is the result of a political will, which should be recognised and honoured, to equip Belgium with independent public institutions that meet the Paris Principles. However, it doesn't appear to be fully recognised, as shown in the extract from the federal government agreement of 11 October 2014, which stipulates that "The Federal centre for the analysis of migration flows is attached to the minister responsible for asylum and migration". This notion of 'attachment' seems strange and lacking a legal basis.

All the more so since, in fact, the Federal Migration Centre's subsidy is dependent on the powers of the State Secretary for the Fight against Poverty, Equal Opportunities, the Disabled and Science Policy, with

² Royal decree fixing the organic statute of the Federal Centre for the Analysis of Migration Flows, the protection of the fundamental rights of foreigners and the fight against human trafficking implementing Article 5 of the Law of 15 February 1993 creating a Federal Centre for the Analysis of Migration Flows, the protection of the fundamental rights of foreigners and the fight against human trafficking.

responsibility for Large Cities. It is difficult to understand why it is in this situation, other than because of its 'traditional' link to the Interfederal Centre for Equal Opportunities' funding, in accordance with the FPS Employment's budget line.

Furthermore, both institutions receive half of the funding from a recurring National Lottery subsidy, and the other half from a direct line of funding from the federal state. This is also a legacy from the past. At one time, the entire budget for the Centre for Equal Opportunities and Opposition to Racism was dependent on the budget of the Prime Minister's Office, then on the National Lottery. And yet, it is important that the organisational autonomy of both centres also concerns their funding. Considering the centres' tasks, it would seem difficult to exercise these tasks completely independently - as they are regularly open to criticism from public and political bodies - if there is continual negotiation with these very authorities concerning the budget. Instead, the centres' budgetary status, which still depends on the government, risks being a burden for the ministers and state secretaries responsible for these budget lines.

Consequently, Myria appealed to the federal government throughout 2015:

- for the requested savings to be corrected in line with the other institutions;
- to stabilise the situation of both centres, and guarantee their independence, by placing their budget line on the subsidy line, as is the case for the other institutions which, like Myria and Unia, are independent and linked to Parliament, such as the Federal Ombudsman or the High Council of Justice.

At the time these words were written, none of these requests had received a concrete response from the federal government, despite various letters, meetings and phone calls. This is highly regrettable and could well call into question the independence of these institutions as desired by the legislator, especially in Myria's case.

Federal Parliament

Myria has strong links to the Federal Parliament, since the latter is responsible for appointing the members of its board of directors. This link with Parliament is a consequence of the vague desire to guarantee the institution's independence as regards government actions. All members of Parliament receive a copy of both reports when they are published.

Myria regularly holds discussions with Parliament, to which it regularly presents its reports (Committee on the Interior), during sessions where discussions with deputies are fruitful. It is also regularly called to provide its expertise when a point that falls within its scope is broached, as was the case in January 2016 during the Senate's work on statelessness. Myria was also heard by the Committee on the Interior, during a hearing on 10 May 2016 on the legal provisions in terms of family reunification.

Unia

Unia, the Interfederal Centre for Equal Opportunities, is unquestionably Myria's closest partner; they were both formerly part of the Centre for Equal Opportunities and Opposition to Racism. This common root continues to be conveyed through their strong collaboration, the sharing of horizontal services and valuable human relations.

Unia's internal management department (human resources, logistics and ICT department) offers its expertise to support Myria's operational side. These services are invoiced. In accordance with Myria's three-year plan, the financial aspects of this collaboration will be subject to an assessment in 2016.

There are many collaborations with Unia concerning fundamental issues. For instance, in 2015 and 2016, Unia and Myria collaborated on access to basic banking services (for people without a residence permit and for EU citizens), access to services for irregular residents (for instance, winter shelters for the homeless, social services, etc.) and access to services for EU citizens. For the focus of the 2016 annual report on human trafficking, Myria benefited from the contribution of a Unia staff member.

International Protection contact meeting

The Belgian Refugee Council (CBAR-BCHV) has been working for many years to improve asylum policies through, for instance, the organisation of contact meetings between the various stakeholders in the sector (public services and authorities, NGO, international institutions, etc.). At the end of 2015, the withdrawal of subsidies placed the organisation in a very difficult situation. Myria suggested taking over the organisation of these contact meetings and chairing them, as its independence could suit all parties and relieve the CBAR-BCHV. Since January 2016, the contact meetings take place at Myria's offices. The objective remains the same: that asylum bodies and organisations active in the area of asylum and reception continue to come together at this meeting to share information in a spirit of dialogue and courtesy. It is Myria's members of staff who are responsible for leading these meetings and writing the minutes, which are available on its website.

Groupe Transit - visitors to detention centres

Myria took part in meetings in 2015 organised by Groupe Transit, which brings together organisations that visit detention centres and repatriation centres. Within this context, it provided support for Groupe Transit's analyses of questions associated with detention and the expulsion of aliens. It also provided legal support to visitors to detention centres and repatriation centres, especially within the framework of following up individual cases. In October 2015, Myria also provided training - in partnership with PAG-ASA - to members of Groupe Transit on human trafficking and tools to detect potential victims in detention centres.

NIHR platform

Myria has been participating in a consultation platform since 2014, set up for Belgian institutions with a partial or full mandate as an institution responsible for the respect of human rights (Unia, Federal Ombudsman, Privacy Commission, Committee P, Institute for the Equality of Women and Men, Ombudsman for Wallonia and the Wallonia-Brussels Federation, Ombudsman der Deutschsprachigen Gemeinschaft, the Kinderrechten-commissaris and the General Delegate for the Rights of the Child, the National Commission for the Rights of the Child, the Combat Poverty, Insecurity and Social Exclusion Service, the High Council of Justice, the Central Prisons Supervisory Council and Committee R). It meets every month to share information and relevant cases, while awaiting the possible creation of a National Institution for Human Rights (NIHR), whose mission would be to coordinate part of the activities of the structures sharing the task of respecting human rights.

Myria seized the opportunity of the Universal Periodic Review (UPR), which Belgium was subject to in January 2016, to make a series of recommendations, along with the other institutions participating in the platform³.

Minors in Exile Platform

In 2015, Myria participated in the meetings involving the Families in Migration and Detention work groups of the Minors in Exile Platform. Within this context, it monitored the analyses the platform carried out on the detention of accompanied minors in Belgium⁴.

Justice for All Platform

In 2015, Myria took part in the Justice for All Platform work meetings and in the morning event held on 26 November 2015 to support access to justice within the framework of the current reforms in the areas of justice and legal aid.

Training

Upon the request of a certain number of operators, and in line with its resources, Myria held a number of training sessions. In 2015 and 2016, Myria held training sessions on the fundamental rights of foreigners for Bon (Brussels reception agency for civic integration), ADDE (association for the rights of foreigners) and the federal police. Myria also provided training on how to detect victims of trafficking aimed at lawyers, legal advisers and support workers for asylum seekers within the framework of a master class entitled "Women in the

³ Universal Periodic Review, compilation of the contributions, http://www.myria.be/files/epu_plateforme_fr.pdf

⁴ Plateforme Mineurs en exil, *Detentie van kinderen in gezinnen in België: analyse van de theorie en de praktijk*, December 2015, available at: <http://www.mineursenexil.be/fr/la-plateforme/nos-actualites/rapport-detention-2015.html>.

asylum procedure", organised by Vluchtelingenwerk Vlaanderen, with the support of the Institute for the Equality of Women and Men.

Finally, we should also mention Myria's participation in 2015 and 2016 in the work of the National Commission for the Rights of the Child, in an advisory capacity, and the Advisory Council on Labour and Employment.

Interdepartmental Unit for the Fight against Trafficking and Smuggling in Human Beings

Myria continued its role of participating observer within the unit and at its office, and also provided secretarial support. The unit held two meetings in 2015 (one in April, the other in December). Both mainly concerned the adoption of national action plans, one relating to human trafficking and the other to human smuggling. The preparation for and execution of the action plan takes place at the unit's office, where a meeting takes place every month. Within this framework, Myria also contributed to the elaboration of various awareness-raising or information brochures.

Coordination meetings with the judicial districts on human trafficking

Myria actively took part in the meeting of the Ghent platform (March and November 2015) by presenting its 2015 annual report on human trafficking and smuggling, among other things. It also participated in the national meeting of the network of expertise in human trafficking and smuggling (March 2015), which brings together all the relevant reference judges, as well as the main external stakeholders.

4. Myria and its network: on an international level

European Migration Network (EMN)

Myria is one of the partners of the Belgian point of contact for the European Migration Network (EMN). In Belgium, participation in the EMN is ensured by a mixed point of contact, which involves four institutions. Myria is a member of the point of contact's steering committee and actively takes part in its daily running, in collaboration with the Commissioner General for Refugees and Stateless Persons (CGRS), Fedasil and the Immigration Office, which is responsible for its coordination.

The EMN was established according to a decision of the EU Council (2008/381/EC) in order to help provide up-to-date, objective, reliable and comparable information on migration and asylum with a view to supporting decisions in these areas in Belgium and within the European Union. It also aims to inform the general public.

In June 2015, the EMN published its annual summary report on immigration and asylum in 2014, regarding the EU and the Member States, as well as a series of reports on specific themes. A joint work programme defines the subjects of the thematic studies every year. Every Member State produces an annual report based on a joint list of questions. On the basis of these national reports, the EMN produces a comparative summary report on a European level.

The 2015 reports related to:

- *Determining labour shortages and the need for labour migration from third countries in the EU*
- *Dissemination of information on voluntary return: how to reach irregular migrants not in contact with the authorities*
- *Changes in immigration status in Belgium and the in the EU*
- *Integration of beneficiaries of international protection into the labour market*

In 2015, an additional study relating to human trafficking was also published, entitled *A study on the smuggling of migrants: characteristics, responses and cooperation with third countries*. Myria was consulted within the framework of this study. In addition, it actively participated in the EMN's annual conferences, organised in collaboration with the Dutch Presidency of the European Union on 12 and 13 January 2016. This year's conference focused on human smuggling and was entitled *Promoting the multidisciplinary approach in addressing migrant smuggling*. Among other things, the results of the EMN study were presented and discussed.

Informal network of National Rapporteurs and equivalent mechanisms on human trafficking

Myria actively participates in meetings of the informal network of National Rapporteurs and equivalent mechanisms in the area of trafficking in human beings, co-organised by the EU Anti-Trafficking Coordinator, Dr. Myria Vassiliadou, and the EU presidency. These meetings took place on 9 and 10 June 2015 and on 19 and 20 October 2015. The themes tackled during these meetings primarily concerned the prevention of trafficking for the purpose of sham marriages, the existing links between human trafficking and human smuggling, and data collection.

Myria also took part in the *Anti-Trafficking Day* organised by the EU presidency on 20 October 2015. In addition, Dr. Vassiliadou was invited to a discussion on 27 January 2016.

European Network of National Human Rights Institutions (ENNHRI)

ENNHRI is a regional network comprised of NHRI from the whole of Europe and has some 40 members. Its goal is to enhance the promotion and protection of human rights in Europe, by supporting the development of NHRI and by encouraging their collaboration on specific themes. In June 2007, the network set up the Asylum

and Migration working group that Myria presided over for several years in collaboration with the Deutsches Institut für Menschenrechte, and which it actively participates in today. Within this context, it also participated in the Belgrade Conference in November 2015, organised by the Serbian Ombudsman on the theme of *Challenges associated with human rights within the framework of the migration/refugee crisis*, after which the participants adopted a declaration⁵. It also offers its expertise regarding disputes to the legal working group, of which it is a member. Myria has also actively contributed to the *Human rights guidelines for practitioners* document, which was developed at ENNHRI for frontline services and judges combating human trafficking. It was published on 21 December 2015.

European Union Agency for Fundamental Rights (FRA)

The Agency for Fundamental Rights (FRA) is responsible for the three following tasks: collecting and analysing data, advising European institutions and Member States, and collaborating with intermediaries and raising awareness among the general public. The Federal Migration Centre is actively involved in several projects and research carried out by the FRA. In particular, it participated in the support committee for the FRA study on severe forms of exploitation⁶ which it presented in Brussels on 2 June 2015.

⁵ Ombudsman/National Human Rights Institutions, Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, November 2015, available at: www.myria.be/files/4429_2_Declaration_english_language.pdf.

⁶ Agency of Fundamental Rights, *Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights*, 2015. Available at: http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf.

European Network of Equality Bodies (Equinet)

Myria was invited to give a speech at the Equinet (European Network of Equality Bodies) conference on 8 December 2015, on the European directive aimed at facilitating the enjoyment of the rights of workers within the context of the free movement of workers (2014/54/EU), on the theme *Equality bodies and the new freedom of movement directive – challenge or opportunity?*

In January 2016, Myria also participated in the meeting, organised by the FRA, of the FRA-Council of Europe-Equinet-ENNHRI Platform on the rights of migrants and asylum seekers.

United Nations

On 19 February 2015, Myria received a visit from Ms. Urmila Bhoola, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. It also participated in the consultation organised by the Special Rapporteur by means of a questionnaire on debt bondage (January 2016)⁷.

On 18 January 2016, Myria received a courtesy visit from Ms. Philippa Candler, the new Assistant Representative of the Office for Western Europe of the United Nations High Commissioner for Refugees.

OSCE

Myria continued its collaboration with the OSCE:

- On 2 June 2015, it received Ms. Madina Jarbussynova, the OSCE's Special Representative and Co-

ordinator for Combating Trafficking in Human Beings.

- On 27 and 28 April 2015, Myria was invited, for the second time, to contribute to a workshop co-organised by the OSCE and Council of Europe on the application of the non-punishment clause aimed at public prosecutors and judges from various countries.
- On 6 and 7 July 2015, it participated in the conference organised annually by the OSCE on the theme "People at risk: combating human trafficking along migration routes".

Council of Europe

Myria actively participated in the round table organised in Brussels on 3 December 2015 by GRETA, the group of experts responsible for assessing the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.

On 20 and 21 January 2016, it was invited to contribute to the international conference on the fight against trafficking in human beings: "experiences shared between Tunisia and Europe", co-organised by the Council of Europe, the IOM and the Tunisian Ministry of Justice. It presented the Belgian experience concerning the identification of trafficking victims.

European Union

Myria was invited, as an independent National Rapporteur on human trafficking, to participate in and actively contribute to the conference organised by the presidency of the European Union in Amsterdam, on 17, 18 and 19 January 2016, on the theme "TeamWork! against Trafficking of Human Beings for labour exploitation".

Myria was also invited to present the smuggling part of its annual report on 19 February 2016, during a meeting of the European Commission's contact group on irregular migration.

⁷ The response to the questionnaire is available at www.myria.be.

5. Publications and tools

Myria deploys a large part of its activity through its publications. These diverse and varied works focus on its three basic tasks. Since 2015, special attention has been given to diversifying their target audience: not only partners and professionals in the sectors of migration and the fight against trafficking and smuggling, but also a wider public. Their format is also varied and their accessibility has been increased now that all the publications are available on the website in several languages.

By making the publications, analyses of figures and recommendations available online, the myria.be website is also on its way to becoming a frontline communication tool. Two newsletters, *Myriade* and *Myriatics*, were established to increase access to information that is available to everyone. An educational portal called Myriapolis was also developed.

All of Myria's publications are available free of charge. Hard copies can be ordered or they can be downloaded at www.myria.be.

Migration in figures and rights 2015

Published in September 2015, the "*Migration in figures and rights 2015*" report continues the philosophy of the Annual Migration Reports, published by the Centre for Equal Opportunities and Opposition to Racism since 2007. From now on, these reports will include the year of their publication in their title and will stick as closely as possible to the current situation, without losing any of the expertise and observational work expected of Myria.

Trafficking and smuggling of human beings: Tightening the links

The 2015 Annual Report on *Trafficking and smuggling of human beings: Tightening the links*, published in October 2015, aims to give a strong signal, as the independent National Rapporteur on human trafficking. In this annual report, Myria places the emphasis on minors and young adults who are victims of two situations where they are particularly vulnerable: the victims of early marriage and forced marriage, and the victims of loverboys. Myria also recommends actions regarding human smuggling.

Myriatics

Myriatics are short studies with a demographic approach that Myria has been publishing every three months since October 2015. Its goal is to focus on a specific theme, which is different every time, based on Myria's competences. The aim of these mini studies is to be factual, precise, concise and accessible. The point of view is deliberately limited to a single subject and to presenting a focus based on reliable figures and clear definitions. The *Myriatics* are designed to be used by all parties in the sector, and all those (journalists, teachers, citizens, etc.) who deal with migration issues on a scientific and objective basis every day, or every now and again.

Published *Myriatics*⁸:

- 1) *Crise de l'asile de 2015: des chiffres et des faits* – October 2015
- 2) *Immigré, étranger, Belge d'origine étrangère: de qui parle-t-on?* – December 2015
- 3) *Nouvelles migrations des pays de l'Est: Focus sur les Roumains, Polonais et Bulgares* – March 2016
- 4) *La migration en chiffres - July 2016.*

⁸ The *Myriatics* are available at <http://www.myria.be/fr/donnees-sur-la-migration/myriatics>.

Myriapolis

Myriapolis is Myria "in the city". This is a portal that offers educational tools, provided by Myria and a series of partners. It will also include a calendar of cultural activities that is kept up to date thanks to a collaboration with UITinVlaanderen and Agenda.be. A glossary offering definitions on the notions and terms used in Myria's works and publications is gradually being developed.

In December 2015, Myria made the following available to the public as part of International Migrants Day:

- A portal for educational publications provided by partners
- A portal for cultural events linked to migration
- Its own teaching tools, including *Citoyens du monde*, an update of the *Suis-je un migrant?* document, published by the Centre in 2008

6. Human trafficking and smuggling

Research

Myria was consulted within the framework of several research studies, in particular, EMN's research on human smuggling and Child Focus' study on loverboys.

Another of Myria's tasks is to raise awareness about good practices concerning the fight against human trafficking. Within this framework, Myria received various international delegations (Iraqi, Thai, Saudi Arabian) in 2015, whose visit was organised by the International Organisation for Migration.

Myria and justice - 2015

Every year, Myria institutes civil proceedings in a number of cases involving human trafficking and smuggling offences. This competence is a direct result of its organic law, which explicitly authorises it to take action based on the Law of 13 April 1995 containing provisions with a view to repressing human trafficking and smuggling. From now on, we shall offer an overview of all the cases initiated in the past year in this section, as well as the cases that were closed during the same period.

It is important to remember that Myria institutes civil proceedings according to selection criteria, which have been established in its three-year plan and operational plan.

When instituting civil proceedings, Myria is completely independent and must constantly take decisions when necessary. The royal decree attributing Myria its role of rapporteur, mentions instituting civil proceedings as being a source of expertise for the role of independent rapporteur human trafficking. In order to facilitate these choices, the following markers are followed: the symptomatic nature of the case, especially in view of Myria's reporting function, the importance of the hoped-for judicial decision, an action considered necessary (e.g.: victim support, etc.).

In order to facilitate the analyses, Myria is pleading with the court clerks to obtain (hard or soft) copies of the files free of charge. In principle, it is entitled to them as a public institution; the Minister of Justice will be contacted for this purpose.

Furthermore, the outcomes of the civil proceedings will trigger openings on a more regular basis in terms of communications with the press: what can be learnt from such a case, what conclusions can be drawn, what message should be conveyed to the general public in terms of fighting trafficking and smuggling?

New cases in 2015

In 2015, Myria instituted civil proceedings in six new cases: three cases of human trafficking and three cases of smuggling.

1. Sexual exploitation and money laundering - Liège

This case of human trafficking for the purpose of sexual exploitation and money laundering covers several districts (Liège and Charleroi, in particular). The acts took place between 2001 and 2009.

Young Romanian women were recruited for the purpose of being exploited in bars. A joint investigation team was set up between Belgium and France. The Belgian investigation focused on trafficking while the French investigation concentrated on the money laundering aspect. The money resulting from the prostitution of the young Romanian women in bars was actually reinvested in French companies. The case involved 15 defendants. None of the victims instituted civil proceedings.

2. Loverboys - Antwerp

Two cases were brought to Myria's attention following its focus on loverboys in its 2015 report on *Trafficking and smuggling in human beings: Tightening the links*. These two cases both share the following particularities: the phenomenon of loverboys, Belgian victims (and therefore less identifiable as trafficking victims) and minors who attend youth institutions (hence, particularly vulnerable).

The first case concerns acts of human trafficking for the purpose of sexual exploitation. An underage girl, who had escaped from a youth institution, was coerced by loverboys to prostitute herself.

The second case also reveals acts of sexual exploitation concerning four underage girls. The defendants consciously and exclusively approached underage girls between the ages of 14 and 16. These girls were recruited at a youth institution in Flanders through techniques associated with loverboys, and with the help of Facebook, and forced into prostitution.

3. Smuggling E40 - Ghent and Bruges

Two cases concerning acts committed in 2014 and 2015 along the E40 highway in the direction of the coast, were opened by the public prosecutor's offices in Ghent and Bruges.

The Ghent case concerns a network that transported victims of Syrian and Afghan nationality, including minors, to the United Kingdom. The Bruges case concerns a smuggling network that transported Iraqi, Iranian, Syrian and Afghan victims, among others, including minors, in refrigerated containers to the United Kingdom. These cases interest Myria because they demonstrate how important it is to take the victims into account, many of whom are minors, in the fight against human smuggling and the international approach in the fight against this phenomenon.

The third case, which is being handled in Ghent and whose investigation is still ongoing, is linked to a case involving an assassination within the framework of a settling of scores between smugglers. It is one of the only smuggling cases of this type. Myria's participation in the civil proceedings shall contribute to the societal debate on human smuggling.

In 2015, Myria also saw the conclusion of some cases and their closure. Hereafter, we shall only refer to cases where a final decision was pronounced in 2015: either because there was no appeal concerning the first instance decision, or because the case was closed during the appeal proceedings in 2015.

Cases closed in 2015

In 2015, 16 cases were closed: nine cases of sexual exploitation, five cases of labour exploitation (three of which related to the same case) and two cases of human smuggling.

1. *Sexual exploitation*

Four cases were tried in Liège. Three of them were dealt with in the "case law" part of the previous report⁹.

The first case concerns the sexual exploitation of girls in a precarious situation by five defendants, including a company. This case was of interest primarily because the majority of the victims were Belgian. The defendants were convicted by Liège Criminal Court for human trafficking in a judgement of 19 November 2014. The company was sentenced in absentia and, despite filing an opposition, the court confirmed its conviction in a judgement of 3 June 2015. The other defendants didn't lodge an appeal.

The second case concerns acts of human trafficking within the framework of prostitution parlours, where companies were set up to conceal the profits made. Five defendants were prosecuted. At first, Liège Criminal Court accepted the charge of trafficking on 20 March 2013, but only regarding the natural persons. In a judgement of 13 January 2015, Liège Court of Appeal also convicted the legal persons. An appeal was lodged and rejected by a judgement pronounced on 25 November 2015.

The third case concerns acts of polycriminality, in which several defendants were prosecuted for trafficking for the purpose of sexual exploitation regarding Belgian girls. Some of them were also prosecuted for trafficking for the purpose of forced criminal activities, i.e. forcing a person placed in court order administration to commit acts of theft. The interest of this case was its "mixed" nature. Finally, the court only charged the defendants with trafficking for the purpose of sexual

exploitation in a judgement of 7 January 2015. No appeal was filed against this judgement.

The fourth case concerns the sexual exploitation of a young Russian woman by four defendants. The point of interest in this case concerned the young woman's journey from Russia and the sometimes difficult collaborations with this country. Only those who were part of the final link in the chain, i.e. those who received the young woman, could be prosecuted and convicted. An initial judgement was delivered on 19 June 2013, in which three of the four defendants defaulted. One of the convicted persons appealed and was convicted again on 20 May 2015. He then lodged an appeal against this judgement. Liège Court of Appeal confirmed his conviction in a judgement of 25 September 2015.

Two cases concern victims of loverboys that were tried in Antwerp. These were cases where the decision to institute civil proceedings was taken in 2015 (see above). These cases were the subject of final verdicts in December 2015 and are dealt with in the Case Studies and Case Law chapters in this report.

Finally, three cases concern Thai massage parlours, where several women were sexually exploited. These cases were tried in Ypres, Antwerp and Mechelen respectively. These cases are dealt with in the Case Studies part of this report.

The Mechelen case, in particular, involves acts of corruption. The first judgement, in which the defendants were convicted for human trafficking and smuggling and criminal organisation among other things, was rendered on 9 April 2014 and dealt with in an earlier report¹⁰. This decision was confirmed during the appeal by Antwerp Court of Appeal on 19 February 2015.

⁹ See Annual report 2015, *Trafficking and smuggling of human beings: Tightening the links*, pp. 110-113. The decisions are also available on Myria's website: www.myria.be.

¹⁰ Annual Report 2013, *Human Trafficking, Building Bridges*, p. 107. The judgement is also available at www.myria.be.

In a case tried in Antwerp, the defendant was convicted for human trafficking in a judgement of 31 March 2015; there was no appeal. The decision was dealt with in the previous annual report¹¹.

Finally, in the case tried in Ypres, the defendants were convicted for human trafficking and smuggling, among other things. The judgement of 23 March 2015, which was dealt with in the previous report¹², didn't lead to an appeal. The defendants had already been tried in 2011 for similar acts.

2. *Forced labour*

Five cases of forced labour, three of which are part of the same case, were closed in 2015 in the following sectors: construction and cleaning.

The first case in the construction sector concerns a case that was dealt with in Charleroi. A Moroccan national legally brought over fellow countrymen whom he then exploited in his renovation company. At first instance, the defendant was convicted by Charleroi Criminal Court Charleroi on 18 March 2011 for human trafficking. Mons Court of Appeal confirmed, in a judgement of 26 June 2015, the criminal conviction handed down at first instance. This case is dealt with in the Case Law part of this report and an earlier report¹³. It was also analysed in the Case Studies part of an earlier report¹⁴.

The second case in the construction sector concerns a case tried in Antwerp. The Centre (for equal opportunities) decided to intervene to help a victim supported by Payoke.

This worker was obliged to carry out various works in several places for people who also took advantage of him by using his identity, without his knowledge, to sell and resell various buildings by taking out various bank loans. These people also took advantage of his lack of knowledge of Dutch. This resulted in a massive debt for this person. However, the judicial authorities preferred not to pursue the 'trafficking' aspect of this case (working conditions contrary to human dignity and coercion into committing offences). As a result, the investigating judge refused the additional investigations requested by the Centre.

Furthermore, the worker was actually prosecuted, tried and convicted for forgery, fraud and money laundering himself, alongside those persons he accused of exploiting him. However, in its judgement of 11 June 2015, the court recognised that the worker had received instructions to purchase or sell these buildings and had been guided by the main defendant (who was one of the people who had exploited him).

Myria and this worker had directly accused the two people who had exploited him with a view to them being convicted for human trafficking. However, in another judgement of 11 June 2015, the court declared the direct accusation inadmissible. This was indeed almost the same as the lawsuit which the Centre and the worker had previously filed against these persons, which had led to the dismissal of the charge. According to the court, after the final dismissal of a charge, the case can only be examined again by the court through a direct accusation.

¹¹ Annual report 2015, *Trafficking and smuggling of human beings: Tightening the links*, p. 109. The judgement is also available at www.myria.be.

¹² Annual report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 108 The judgement is also available at www.myria.be.

¹³ See Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, p. 76.

¹⁴ Annual Report 2011, *Trafficking in and smuggling of human beings, The money that matters*, pp. 97-98.

Finally, three cases relate to the emblematic affair concerning the cleaning of restrooms at service stations. Only one of these cases finally ended in a judgement. This judgement rendered by Ghent Criminal Court on 5 November 2012 acknowledged the joint responsibility of the contracting company. As regards the two related cases concerning the same contracting company, they were dismissed in another district, one of them by the public prosecutor's office and the other by the labour prosecutor's office. The final case was dropped in 2015.

In the case tried in Ghent, the managers of the cleaning company, the cleaning company itself and the contracting company that subcontracted the cleaning of the restrooms in its restaurants, were prosecuted and convicted. This decision handed down in 2012 was final as regards the cleaning company and the principal (who were present and didn't lodge an appeal). The managers, convicted in absentia, opposed the judgement. They filed an opposition but were convicted on 19 November 2015 and didn't appeal against the decision.

This case was dealt with at length in the Case Studies¹⁵, Case Law¹⁶ and New Trends¹⁷ parts of earlier reports.

These cases also served as the basis for the focus in the 2010 annual report on the exploitation of secondment carousels within the framework of human trafficking¹⁸. This subsequently resulted in this phenomenon

becoming a top priority, in the field, among inspection services and was an important added value for political discussions relating to the government's action plan in terms of trafficking, and for the State Secretary for the Fight against Social Fraud.

The court decision rendered in this case contrasts significantly with the decision rendered in another case concerning subcontracted cleaning, in which Myria also instituted civil proceedings. This other case, dealt with in the Case Law chapter in this report, concerns the subcontracted cleaning of mainly franchised restaurants in a fast-food chain. The court considered that neither the parent company nor the franchisees could be held liable.

3. *Human smuggling*

Two cases concerning acts of human smuggling were finally disposed of in 2015. These were cases where the decision to institute civil proceedings was taken in 2015 (see above). These cases are dealt with in both the Case Studies and Case Law chapters of this report.

The first case concerns a Kurdish-Palestinian gang of smugglers; the protagonists were convicted by Bruges Criminal Court on 21 October 2015. There was no appeal.

The second case, tried at first in Ghent on 1 June 2015, concerns a Kurdish-Afghan gang of smugglers. This also resulted in convictions for human smuggling. One of the convicted persons appealed but their conviction was confirmed by Ghent Court of Appeal on 3 November 2015.

¹⁵ Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 47-49.

¹⁶ Annual Report 2012, *Trafficking in and smuggling of human beings, Building trust*, pp. 72-73.

¹⁷ Annual Report 2009, *Trafficking in and smuggling of human beings, In a haze of legality*, p. 30.

¹⁸ Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 86-88.



PART 2: HUMAN TRAFFICKING FOR THE PURPOSE OF EXPLOITATION OF BEGGING

This year, Myria has chosen to devote its focus to one of the forms of human trafficking that hasn't yet been tackled, i.e. the exploitation of begging. First of all, we should point out that we aren't dealing with begging as such. Myria was given the statutory task of stimulating the fight against human trafficking. Therefore, the focus is approached from this angle. Furthermore, this focus doesn't aim to be exhaustive. The idea is to provide an outline of this form of exploitation.

After a brief explanation of the Belgian legal framework (Chapter 1), we shall examine a particularly vulnerable group within the framework of the exploitation of begging: the Roma. Regarding this group of people, we shall first dispel some of the stereotypes concerning this highly diverse community (Chapter 2). We shall then provide an overview of the phenomenon of trafficking for the purpose of exploitation of begging in Belgium (Chapter 3) before briefly dealing with the approach to this phenomenon in other EU countries (Chapter 4). Finally, this focus will conclude with several suggestions concerning the criminal law approach to this form of exploitation (Chapter 5).

This part also includes input from three external contributors who have provided us with two contributions:

- the **European Roma Rights Centre**, which sheds light on a study it conducted on trafficking within Roma communities;
- the **Research Group Fundamental Rights & Constitutionalism (FRC)**, Vrije Universiteit Brussel, and the **Romanian National Agency against Trafficking in Persons**, for a general approach to forced begging in Belgium and Romania.

CHAPTER 1: BELGIAN LEGAL FRAMEWORK

The international instruments that tackle human trafficking, such as the United Nations Palermo Protocol¹⁹ or the Council of Europe Convention²⁰, don't explicitly include forced begging as an explicit form of human trafficking. On the other hand, Article 2 of European Directive 2011/36/EU on human trafficking²¹ explicitly cites begging among the possible forms of forced labour or services, as a component of human trafficking, alongside the action and the means²².

In Belgium, begging as such isn't a punishable offence. The offence of begging

was actually abolished in 1993²³. Therefore, the communes cannot actually forbid begging²⁴. However, some of them prohibit it or control it on the basis of their police powers in terms of hygiene, safety and public peace²⁵. For instance, the city of Ghent introduced it as an administrative offence that can be punished by a municipal administrative sanction, in application of Article 119bis of the new municipal law²⁶.

Regarding the offence of exploitation of begging, it was significantly amended by the Law of 10 August 2005 on trafficking in human beings²⁷. The same law also introduced exploitation of begging as a

¹⁹ Additional protocol to the United Nations Convention against Transnational Organized Crime, aimed at preventing, suppressing and punishing trafficking in persons especially women and children, New York, 15 December 2000.

²⁰ Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, Warsaw, 16 May 2005.

²¹ European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 concerning the prevention of trafficking in human beings and combating this phenomenon as well as protecting the victims, replacing the Council's framework-decision 2002/626/JAI, O.J., L101 of 15 April 2011.

²² Article 2, 3 states that: "Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging (...)". Preamble 11 specifies that "Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur". Note that as regards minors, they are considered trafficked even without recourse to means (coercion, exploitation of a vulnerable situation, etc.).

²³ The Law of 12 January 1993 containing an emergency programme for a more supportive society (*Belgian Official Gazette*, 4 February 1993) repealed the Law of 27 November 1891 on the repression of vagrancy and begging as well as articles 342 to 347 of the Criminal Code relating to offences against public safety committed by vagrants or beggars.

²⁴ Also see Chapter 2 hereafter.

²⁵ Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Bruxelles, Larcier, 2013, pp. 339 et 379-388.

²⁶ Written question No. 881 of 19 April 2013 from Deputy Karin Temmerman to the Deputy Prime Minister and the Minister of the Interior and Equal Opportunities, DO 2012201312442, *Bulletin des questions et réponses*, Chamber, QRVA of 24 June 2013, 53-118, pp. 200-201. Ghent's municipal rules on begging are available via the following link: <https://stad.gent/reglement/politiereglement-op-de-bedelarij>.

²⁷ Law of 10 August 2005 amending various provisions with a view to reinforcing the fight against trafficking and smuggling in human beings and the practices of slum landlords, *Belgian Official Gazette*, 2 September 2005. For an analysis, see M.A. BEERNAERT and P. LE COCQ, "La loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil", *Rev.dr. pén.*, 2006, spéc. pp. 354-359.

specific form of human trafficking²⁸. The term exploitation of begging is more commonly used in Belgium than forced begging.

Subsequently, two almost similar offences concerning the exploitation of begging²⁹ currently co-exist: the one provided for in Article 433ter of the Criminal Code (exploitation of begging) and the one provided for in Article 433quinquies (trafficking for the purpose of exploitation of begging).

However, the key notion of begging hasn't received a legal definition. In this respect, the (future) criminal policy directive on the exploitation of begging should provide some answers, specifying behaviours that can be associated with begging (musicians, for instance).

1. Exploitation of begging (Article 433ter of the Criminal Code)

The offence of exploitation of begging, referred to in Article 433ter of the Criminal Code, aims to punish recruitment and incitement to beg (433ter, 1°) on the one hand, and the exploitation of begging (433ter, 2°)³⁰ on the other. Here, there is no mention of human trafficking.

As regards recruitment with a view to begging (Article 433ter, 1°), a person who "recruited, induced, misled or retained a

person with a view to making them beg", or who "incited them to beg or to continue doing so", or who "made them available to a beggar so that the latter could use them to arouse public compassion"³¹, will be punished. In this case, this is an act of general fraud and the crime is punished regardless of any hoped-for or actual profit³².

As for the charge of exploitation of begging (Article 433ter, 2°), there must be exploitation, i.e. a profit is made from someone else begging³³. This charge would also allow "the person who has determined the places or public transport where the begging will take place, who takes the beggars there and who collects their earnings"³⁴ to be prosecuted.

Article 433quater provides for three aggravating circumstances relating to the offence of exploitation of begging: when the victim is a minor, when the perpetrator has exploited the victim's vulnerable situation or when violence, threats or a form of coercion have been used. We should point out that the last aggravating circumstance can also have been applied to the victim's family and not necessarily the actual victim³⁵.

²⁸ For a detailed analysis, see Ch.-E. CLESSE, *op. cit.*, pp. 331-388 and F. KURZ, "L'exploitation de la mendicité", in Ch.-E. CLESSE and crts., *La traite des êtres humains et le travail forcé*, Brussels, Larcier, 2014, pp. 30-42.

²⁹ A draft ministerial directive relating to the investigation and prosecution policy in terms of exploitation of begging is in the process of being finalised by the Board of Prosecutors General. It hadn't yet been finalised when this report was concluded (June 2016).

³⁰ For an analysis of this charge, see Ch.-E. CLESSE, *op. cit.*, pp.346-348.

³¹ Note that the Law of 10 August 2005 withdrew Article 82 from the Law of 8 April 1965 relating to child protection and punishing the exploitation of a minor for the purpose of begging. However, Article 433ter captures the spirit of it.

³² Ch.-E. CLESSE, *op. cit.*, p. 347.

³³ CH.-E. CLESSE considers that in this case, the offence requires special deceit, (*op.cit.*, p.348). Compared with: M.-A. BEERNAERT, "L'exploitation de le mendicité", *Les infractions, vol.2, Les infractions contre les personnes* (H.D. BOSLY et C. DE VALKENEER, dir.), Brussels, Larcier, p. 590 for whom general fraud is sufficient, since the legislator did not demand a special intention for this offence.

³⁴ Preamble of the bill amending various provisions with a view to reinforcing the fight against human trafficking and smuggling, *Parl. doc.*, Chamber, 2004-05, 51-1560/1, p. 15.

³⁵ *Ibid.*, 23.

As regards minority, this aggravating circumstance seems to be very broad.³⁶ For instance, what about a parent who gets their child to beg while begging with them? In this respect, the minister of justice at the time pointed out that a parent who uses their own child to beg (i.e. they are begging together) isn't committing an offence³⁷. Therefore, such acts shouldn't be dealt with from a criminal point of view. However, this is not the case for parents who make their child available to a beggar. In this instance, they will be punished by law.³⁸

2. Human trafficking for the purpose of the exploitation of begging (Article 433quinquies of the Criminal Code)

Treating human trafficking as a crime, when exploitation of begging is one of the purposes, was introduced in the Criminal Code by the Law of 10 August 2005. It is referred to in Article 433quinquies of the Criminal Code. The Law of 29 April 2013³⁹ then modified the charge, in particular to render it more compliant with Directive 2011/36/EU on human trafficking⁴⁰.

For human trafficking to be considered as such, there must be a combination of two elements: a material element: "the recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring control exerted over them" and a moral element whose goal is to benefit from the person's exploitation. One of these forms is the exploitation of begging (Article 433quinquies, 2°). In this case, this means benefiting from someone else's begging.

This raises questions concerning the scope of this article and Article 433ter, 2° (exploitation of begging). For instance, a person who recruits or takes control of a beggar to exploit their begging, can be charged twice⁴¹. Parliamentary work isn't very explicit on this issue. However, it does mention that the exploitation of begging can be envisaged from the angle of human trafficking. The public prosecutor's office would have to take into account the circumstances of the case (for instance, the number of victims) to choose the appropriate charge⁴².

Few cases have been opened by the public prosecutor's office in the past few years. It is indeed difficult to establish all the

³⁶ In this sense, see M.A. BEERNAERT and P. LE COCQ, *op. cit.*, p.356.

³⁷ Report by the Senate's Justice Commission, 10 May 2005, Parl. doc., Senate, 2004-2005, Doc 3-1138/4, p.17. Also see M.A. BEERNAERT and P. LE COCQ, *op. cit.*, pp. 356-357, especially note 68.

³⁸ Report by the Senate's Justice Commission, 10 May 2005, Parl. doc., Senate, 2004-2005, Doc 3-1138/4, p.17. Also see CH.-E. CLESSE, *op. cit.*, pp. 363-364 and note 1203.

³⁹ Law of 29 April 2013 aimed at modifying Article 433quinquies of the Criminal Code in order to clarify and extend the definition of human trafficking, O.J., 23 July 2013.

⁴⁰ As regards the charge of human trafficking, this law deleted the explicit reference to Article 433ter and replaced it with the term 'exploitation of begging'. The final elements to bring the law fully in line with the directive were introduced by the Law of 31 May 2016 completing the implementation of the European obligations in terms of the sexual

exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *O.J.*, 8 June 2016. On this subject, see Part 3, Chapter 1, point 2.1.1.

⁴¹ In a decision of 1 April 2011 (*Rev. dr.pén.*, 2012/2, pp. 230-239 and note Ch.-E. CLESSE, "L'incrimination de la mendicité: 433ter or 433quinquies, *that's the question!*"), the act of making someone recruited by another person engage in begging, initially described as human trafficking, was amended by Brussels Court of Appeal as an infringement to Article 433ter of the Criminal Code. On this subject, see F. KURZ, "L'exploitation de la mendicité", in Ch-E. CLESSE and *crts.*, *La traite des êtres humains et le travail forcé*, Brussels, Larcier, 2014, p. 41.

⁴² Preamble of the bill amending various provisions with a view to reinforcing the fight against the trafficking and smuggling of human beings, *Parl. doc.*, Chamber, 2004-05, 51-1560/1, p. 16.

evidence concerning the infringement and to identify those responsible⁴³.

The possible confusion between exploitation of begging (433ter) and human trafficking for the purpose of exploitation of begging (433quinquies) leads to different interpretations. This can give rise to arbitrary legal situations in the country's various jurisdictions. The new criminal policy directive (COL) should solve this problem and determine the difference between the two articles. A response could be found in the acts that serve as a basis for human trafficking (433quinquies), i.e. recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring the control exerted over a person. Contrary to Article 433ter, these acts indicate the organised nature of the acts. Here, "organised" nature could determine the difference between human trafficking (433quinquies) and simple exploitation of begging (433ter).

3. Child begging⁴⁴

The act of begging with a child isn't punishable in itself. What is punishable, is incitement to begging and exploitation of begging. What is more, the law makes no distinction depending on whether the person who makes the child beg is the parent or not. Hence, a parent who incites their child to actively beg or who supplies them to a third party for the purpose of begging could be prosecuted on the basis of Article 433ter (therefore, not within the framework of human trafficking)⁴⁵.

⁴³ See Question no. 886 from Ms Temmerman of 19 April 2013 to the Minister of Justice, DO 201220131442, Bulletin des questions et réponses, Chamber, QRVA of 10 June 2013, 53-116, p. 173. See also Chapter 3 hereafter.

⁴⁴ For analysis of this issue, see CODE, *Recherche relative au développement d'une réponse sociale à la question de la mendicité des enfants en Belgique, 2003*, available on CODE's website: www.lacode.be.

⁴⁵ See Ch-E. CLESSE, *op. cit.*, p. 355. However, this author considers that a parent who supplies their

On the other hand, mothers who beg (passively) with their child in their arms or are accompanied by young children, as is the case with certain young Roma mothers⁴⁶, aren't considered to be acting unlawfully. Therefore, we find ourselves outside the context of exploitation (Article 433ter) and human trafficking (Article 433quinquies). This is what was decided by the Brussels Court of Appeal in a judgement of 26 May 2010⁴⁷. This case concerned a young Roma mother who was begging with her two young children aged two years and seven months, one of which appeared to be "apathetic". The police called her in for questioning several times. At first instance, this young mother was sentenced to 18 months in prison and a fine of EUR 4,125 on the basis of Article 433ter (exploitation of begging), on the grounds that she had used her child to arouse pity among users at stations, principally to obtain money. She was even imprisoned⁴⁸.

child to a beggar should be prosecuted on the basis of Article 433quinquies.

⁴⁶ Begging in certain Roma groups in Brussels represents a survival strategy. But this is far from being a practice among all Roma people, or even a phenomenon inherent to the Roma culture. On this subject see Centre régional d'intégration Foyer, *Les Roma de Bruxelles*, 2004, pp. 139 and 163. The study is available online on the website of the non-profit organisation Foyer: http://www.foyer.be/IMG/pdf/Les_Roma_de_Bruxelles.pdf. In the same sense, see F. VAN HOUCKE, *Recherche d'une réponse sociale à la mendicité des mineurs*, October 2005, Coordination des ONG pour les droits de l'enfant (CODE), pp. 5-6; CODE, *La mendicité des enfants: questions-réponses*, October 2010 (documents available on CODE's website: <http://www.lacode.be/>). CODE also compiled other studies on child begging and made many recommendations in an effort to find answers (see <http://www.lacode.be/la-mendicite-des-enfants-questions.html>).

⁴⁷ Brussels, 26 May 2010, 14th ch., J.T., 2010/26, No. 6402, p.454.

⁴⁸ See, especially, the trauma suffered by the oldest girl following her mother's imprisonment: CODE, *Analyse des observations finales 2010 du Comité des droits de l'enfant relatives à la mendicité des mineurs*, October 2010, pp. 4-5.

The Court of Appeal completely reversed this decision, considering that "no element in the case proved that the defendant made her children beg" nor had she "supplied one of her children to a beggar" "so that they could use them to arouse pity among the general public". It subsequently concluded that the case's facts and didn't fall under the scope of 433ter and quater of the Criminal Code. In fact, this judgement was misunderstood, in particular by the United Nations Committee on the Rights of the Child⁴⁹. In its concluding observations to the Belgian state⁵⁰, the Committee expressed its concern about the decision, which didn't forbid the use of children to beg insofar as the adults involved are the parents. Furthermore, it requested that Belgium expressly forbid the use of children to beg in the street. After being better informed, the Committee clarified its position, stating that it wasn't calling for the punishment of begging and that parents shouldn't be imprisoned for begging with their children⁵¹. The Committee pointed out that any law or individual decision affecting children should be taken in line with the best interests of the children and that every child has the right to remain with its parents and grow up

in a family and social environment favourable to its development.

It appears that the profile of families who beg with children is not consistent; some of them come to settle permanently in Belgium, while others sometimes stay temporarily to collect money through begging before going back to their home country⁵².

Some have raised questions about the existence of exploitation networks behind the begging of Roma families with children⁵³. And yet, begging is above all a survival strategy for these families. The exploitation of children for the sole purpose of begging appears to be only a minor reality in Belgium⁵⁴, even if this problem doesn't necessarily receive sufficient attention from the authorities, allowing all avenues of suspicion to be examined⁵⁵.

However, the same isn't true of children who, besides begging, are also involved in acts such as committing offences. In these cases, there is immediate suspicion of acts of human trafficking. On this point, please refer to Chapter 3 of this focus.

⁴⁹ The United Nations Committee on the Rights of the Child is responsible for examining the progress made by the Member States regarding the execution of their obligations resulting from the Convention on the Rights of the Child. The Committee was not aware of the details of the judgement when it made its observations. On this subject, see J. FIERENS, hearing at the Senate, 21 May 2013, in "Vers une pénalisation de la mendicité des mères avec enfant(s)", *J.D.J.*, 2013, No. 326, p. 23, note 1.

⁵⁰ Committee for the Rights of the Child, Examination of the reports presented by the States Parties in application of Article 44 of the Convention, Concluding observations: Belgium, No. 72-73: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BEL/CO/3-4&Lang=En.

⁵¹ CODE, *Pénalisation de la mendicité: le Comité des Nations Unies remet les pendules à l'heure*, 20 June 2013, see <http://www.lacode.be/penalisation-de-la-mendicite-le.html>.

⁵² CODE, *Mendicité avec enfants, l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose*, Analyse, 2013, p.3.

⁵³ On this subject, see, especially, CODE, *La mendicité des enfants: questions-réponses*, October 2010, pp. 9-10.

⁵⁴ CODE, *La mendicité des enfants: questions-réponses*, October 2010, p.9; Centre régional d'intégration Foyer, *op. cit.*, 164-165, CH-E. CLESSE, *op. cit.*, p.387 citing status report 2006-2007 of Committee P (standing police monitoring committee); hearing at the Senate on 28 May 2013 of the General Delegate for the Rights of the Child, in "Vers une pénalisation de la mendicité des mères avec enfant(s)", *J.D.J.*, 2013, No. 326, p. 26.

⁵⁵ On this subject, see, especially, CODE, *La mendicité des enfants: questions-réponses*, October 2010, pp. 9-10.

CHAPTER 2: OVERVIEW OF THE INTERNAL DIVERSITY WITHIN ROMA COMMUNITIES

The title of this chapter may raise questions among readers, which we shall answer without further delay. The first question - and the most important one - that the reader may ask, is why this text on the exploitation of begging within the framework of human trafficking, is only devoted to the Roma. Both the cases that we follow ourselves and those that are brought to our knowledge through the courts, seem to confirm that this particular phenomenon practically only concerns the most recent generations of Roms from Eastern Europe, whether they are perpetrators or victims. Other cases of exploitation of begging aren't known to us or to other experts in this field, which doesn't however mean that they don't exist.

We are aware that this position may be stigmatic. It seems to reinforce old stereotypes according to which only Roms beg or that all Roms are beggars. Regardless of their ethnic origin, people who find themselves in extreme poverty beg, whether they are from Flanders, Wallonia or Brussels. Rom or not, no-one begs for the pleasure of it, but because they are on the lowest rung of the social ladder. These are desperate people in need. Begging remains synonymous with a social stigma no-one wishes to bear. People who beg are calling on the solidarity of their fellow citizens who are faring better on a socioeconomic level. And these people have a right to do so because this isn't a punishable act, all the more so since in 1993, a provision of the Belgian Criminal Code of 1891 concerning beggars and vagrants was withdrawn. Since then, beggars in our country are considered as people in need of social welfare⁵⁶.

⁵⁶ See especially: S. PLEYSIER (Criminologist, KUL), *Verboden te bedelen – De steriele stad* (2015) (*Interdiction de mendier-la ville morte*);

To be specific, we aren't going to tackle begging in the broad sense of the term. We already explained this in the first chapter, where the legal concept of exploitation of begging was clarified. However, we are obliged to briefly mention begging in general, all the more so since it is the subject of many myths that place begging *through need* on the same level as what we described as "exploitation of begging within the framework of human trafficking". Here, we are going to deal with the Roma, because the biggest ethnic minority in Europe is, stereotypically, linked to begging. At the beginning of 2015, the Council of State declared a complaint made against a general ban on begging in the town of Namur⁵⁷. Namur had already adopted municipal rules concerning begging in 2014, also introducing provisions imposing a general ban on the town's entire territory, such as a ban on begging with a child under the age of 16 and a ban on "begging accompanied by an animal that is

The biggest ethnic minority in Europe is, stereotypically, linked to begging.

<http://sociaal.net/opinie/verboden-te-bedelen/>, or different points of view of the League of Human Rights (LHR): <http://www.liguedh.be/2014/2157-le-mendiant-est-il-un-delinquant->; http://www.liguedh.be/2013/17_60-pour-un-projet-de-ville-avec-tou-te-s-les-citoyen-ne-s-.

⁵⁷ The complaint was made by the LHR, <http://www.liguedh.be/2015/2239-le-conseil-detat-suspend-partiellement-le-reglement-anti-mendicite-a-namur>. A complaint by the Flemish counterpart of the LHR, the *Liga voor mensenrechten*, against a similar rule introduced by the city of Ghent in 2011, was however considered inadmissible by the Council of State in 2014. The Council of State did not comment on the substance of its decision but considered that the complaint made by the *Liga voor mensenrechten* against the rule did not justify sufficient interest. Download the Council of State's decision via the following link: http://www.mensenrechten.be/index.php/site/nieuwsberichten/raad_van_state_verwerpt_beroep_tegen_gemeentelijke_politiereglementen.

potentially dangerous or likely to become so". The Council of State immediately suspended these two provisions.

The first one because the Council couldn't see how this fact alone could incur a risk to public order, and the second one because it was too vague. However, the Council suspended the duration of the measure for 12 months because "the limit for the case exceeds the limits usually accepted for measures with a comparable purpose"⁵⁸. The Council of State clearly indicated in its decision that begging couldn't be considered as an element that disrupts public order, and subsequently couldn't be banned. However, the Council emphasised that certain begging practices, such as the fact of begging at road junctions or the fact of begging with physical or verbal aggressiveness could perhaps justify a limited ban, but not an overall ban.

This decision is important because in the recent past, several towns in Belgium, such as Antwerp, Aalst, Ghent, Leuven and Blankenberge, in summer 2016, also imposed similar bans on begging, and because the Council of State clearly considers that these bans must be legally limited. One may wonder if the towns concerned aren't trying to reintroduce the former ban on begging through the back door by implementing municipal administrative sanctions. In Blankenberge, the planned ban relates to large areas of the territory, including the historic centre and everything in a 100-metre radius of any publicly-accessible institution, including

stores⁵⁹. One might also wonder if begging by socially disadvantaged people isn't becoming criminalised again. Sometimes, the local authorities even establish a direct link between crime and begging⁶⁰.

However, further explanations regarding the Roma are required. There is no other ethnic group about which so little is known, whether it be in Belgium or in a multitude of other countries. People of Roma origin who have become famous rarely reveal their background. For instance, did you know that Charlie Chaplin, Pablo Picasso and Eric Cantona have Roma origins?

There are certain negative stereotypes that have been maintained over the centuries, and the Roma are still directly and extensively rejected. The confusion starts with the name: the collective name Roma has only existed since the first World Romani Congress on 8 April 1971. During this congress, the delegates decided to get rid of the abundance of traditional, often pejorative names, such as the most well-known one: gypsies. Considering themselves as activists of citizens' rights, the delegates opted for the term Roma, in a gesture of empowerment. To illustrate the difficulty surrounding this title: a group of participants didn't feel the name Roma applied to them and the Congress therefore decided to use another traditional name besides Roma: Sinti, or Manush in French-speaking countries. But besides these two

⁵⁸ Full text of the decision at: http://www.luttepauvrete.be/jur_ce_20150106.htm; the League of Human Rights' point of view on the decision: <http://www.liguedh.be/2015/2239-le-conseil-detat-suspend-partiellement-le-reglement-anti-mendicite-a-namur>.

⁵⁹ Statement by Mayor Patrick De Klerck in the local newspaper: *Krant van Blankenberge*, *Stad Blankenberge wil bedelaars uit het straatbeeld* (15/06/2016) (*The town of Blankenberge does not want beggars on its streets anymore*); http://www.krantvanblankenberge.be/nieuws2016/krantvanblankenberge_01488.html.

⁶⁰ One example is an article published online by the police in Leuven in 2012, explaining the introduction of the limited ban on begging. The article stipulates that for some people, begging serves as a cover for bag snatching or shoplifting: <http://www.lokalepolitie.be/5388/nieuws/867-bedelen-op-bepaalde-plaatsen-verboden>.

terms, self-descriptions are also legion within the community. It is clear that the names have been chosen, above all, in the interest of those who don't belong to the Roma community, in order to facilitate their participation in society. In any case, since then, 8 April has been International Romani Day, in commemoration of the first international meeting.

In the broad sense, Roma refers to all those once referred to as 'tsigans', now known as Roma strictly speaking, Sintis and travellers. They arrived in Belgium in earlier centuries. In the narrow sense of the term, the Roma are those who arrived here after the Second World War. The majority of them are sedentary and not travellers. To our knowledge, the cases of human trafficking don't concern travellers⁶¹.

Therefore, the Roma, travellers and Sintis are part of different communities. There is a common geographic origin in a distant past, somewhere in northern India. It was from here that the first migrants came to Europe, the Middle East and North Africa, more than 10 centuries ago. They have also been living on the territory of present-day Belgium since the 15th century. The Sinti, one of the different groups of Belgian travellers, originate from this initial migratory movement.

Romany, the Roma language, also originates from India. It is an Indo-Aryan language, which developed independently from other languages in north and central India more than 800 years ago. This development

The groups of migrants of Roma origin who recently arrived from Eastern Europe are anything but a homogeneous ethnic group.

occurred in a far from uniform manner in the different regions of Europe and the Arab countries. The result? Today, Romani is more the name of a linguistic group rather than that of a language alone. This means that a Rom from Finland who speaks Romani, wouldn't necessarily understand a Rom speaking Romani from Kosovo. And to complicate things further: not all Roms speak Romany.

The groups of migrants of Roma origin who recently arrived from Eastern Europe are anything but a homogeneous ethnic group. It is true that there are certain common cultural traditions, but what makes a Rom a real Rom is an awareness rooted in a both historical and contemporary experience, which makes the non-Roma world a hostile and negative place. Subsequently, the term Rom often, and sometimes above all, comes from the outside: it is non-Roma who define those who are Roma and those who, based on this observation, are also sometimes discriminated against. In the recent past, Belgian police notices still collectively referred to gangs of itinerant thieves from Eastern Europe as gypsies, whether the people concerned were Roma or not. For the police, this term had two different meanings above all: a foreign itinerant gang and people whose physical appearance could mostly be found in the Balkan regions. In the perpetrators' description, the term lacks precision. Many people could fit the description. This is why this term

can't really be used by the police. But worse still: the term also collectively criminalises an ethnic group. Police notices, warning people against gypsy-type perpetrators, like the one published by the police in Leuven in 2015⁶², suggest that all Roms are potential

⁶¹ CENTRE DE MÉDIATION DES GENS DE VOYAGE ET DES ROMS EN WALLONIE, <http://www.cmgv.be>; KRUISPUNT MIGRATIE-INTEGRATIE, infofiche *Roma, woonwagenbewoners, rondtrekkenden: wanneer gebruik je welke term?*, beschikbaar op http://www.kruispuntmi.be/sites/default/files/bestanden/documenten/infofiche_roma_def_20130313.pdf.

⁶² <http://www.lokalepolitie.be/5388/nieuws/2284-daders-gebruiken-list-om-handelaars-leuven-te-bestelen>.

suspects in the eyes of the majority of the population. In 2015, the Belgian police withdrew the use of the word 'gypsy' to describe perpetrators from its General National Database (GND). This gesture is the result of an actual police initiative, as some officers were starting question this practice. But it is above all due to pressure from the press that the term, evoking strong connotation with the genocide of the Roma in the 1940s, was indeed withdrawn⁶³.

The genocide by the Nazi regime was the paroxysm of the segregation and secular discrimination of the Roma and their predecessors, affecting nearly all European countries. The fact that the majority of society, but also the public authorities, could potentially be dangerous and hostile, is rooted in the collective memory of the Roma throughout the whole of Europe. Roms refer to non-Roma as *gadje*, a term with a pejorative connotation. According to tradition, Roms should avoid contact with non-Roma and certainly the public authorities, who can't be trusted. Even within the framework of current hate crimes, and even murders, committed against Roms, the Roma believe that the perpetrators are from their

Even within the different countries of origin of the Roma migrants, we see major disparities between Roms, whether on a religious, cultural or economic level.

immediate *gadje* environment and that the police or the law aren't always ready to take effective legal proceedings⁶⁴.

Therefore, it is mainly the outsiders' views of this ethnic group that has given the Roma a sort of unity that actually doesn't exist. And there is no denying its existence if we look at how the Roma have evolved in Europe: the Roma and their predecessors migrated over the centuries from South-East Europe to other regions in the continent. Contact between the Roma of the north and south, east and west was therefore lost. The split between Eastern and Western Europe, which occurred after the Second World War, further strengthened the distance between the Roma and these countries. Today, Belgian travellers of Roma origin feel there are few or no bonds at all with the Roma who have recently arrived in Belgium from Eastern

Europe. To our knowledge, the cases of human trafficking do not concern travellers. However, the Belgian press makes little difference when talking about the Roma, travellers, or Sintis. They paint an image of poor people from Eastern

Europe, who live in a caravan and have criminal links. In reality, there are approximately 200,000 travellers in Belgium many of whom have no Roma origin. The majority of Roma are actually sedentary and don't live in a caravan. Some of them, including the Sinti, have been living here for

⁶³ All elements that encouraged the director of Minderhedenforum (Minorities Forum), Wouter van Bellingen, to get things moving. See different articles in the press in April 2016, such as the opinion piece by Yves Delepeleire published in De Standaard, "Het is gewoon geen plaats voor het woord 'zigeuner'", 15/04/2015: http://www.standaard.be/cnt/dmf20150414_01630507; see the opinion piece by the director of Minderhedenforum (Forum des minorités), Wouter van Bellingen.

⁶⁴ For instance, there was a series of Roma murders involving the deaths of six people in Hungary in 2008-2009. Different international stakeholders were highly critical of serious errors in the investigation and during the prosecution of the perpetrators and the punishments handed down. See in particular: Amnesty International: *Violent Attacks Against Roma in Hungary – Time to investigate racial motivation*, 2010: https://www.amnesty.nl/sites/default/files/public/ap_hungary_violent_attacks_against_roma.pdf.

centuries. To this number, we must add some 30,000 Roma recently arrived from Eastern Europe. These figures are crude estimates, since the public authorities have never attempted to obtain a realistic image of the Roma population living in Belgium. The people concerned have very diverse profiles. There are as many highly qualified people as there are people living in extreme poverty, people who have decided to flee following acts of hate or violence against their ethnic group, such as the Roma of Kosovo after 1999, or because their country didn't offer sufficient development or employment opportunities⁶⁵.

In terms of religion, there are Muslims, Protestants, Catholics and Orthodox Christians. Even within the different countries of origin of the Roma migrants, we see major disparities between Roms, whether on a religious, cultural or economic level. Hence, there are Roms who have (or had) a relatively prosperous profession and Roms who, after the fall of communism, were the first to lose their jobs and have never had the opportunity since to be part of economic life⁶⁶. Some popular surnames among Romanian Roma, such as Caldarari

(metalworker) or Ciurari (sieve maker), refer to traditional crafts. Some Roma also use these names for the purpose of social categorisation, thus providing a means of ethnic self-identification⁶⁷.

All elements indicating that every stereotype concerning the Roma is problematical. Only a small minority beg, and they do it through necessity. The idea that the Roma *massively* indulge in begging should therefore be put into perspective. The ones who do beg, often did so in their country of origin, and are in a situation of inherited structural poverty. According to the information provided by the Centre Régional d'Intégration 'Foyer', the majority of beggars known in Brussels come from Romania, for instance, whereas the Roma from Slovakia are hardly every involved in begging.

Which doesn't mean that all the Roma from Romania tend to beg. According to Foyer, we should also emphasise the fact that a relatively large number of Roma beggars come from a single district in Romania: Giurgiu, in the south, on the Bulgarian border. It would be interesting to examine the socioeconomic situation in this district in order to find out the cause.

The Council of Europe Commissioner for Human Rights notes that according to estimations, the number of Roma migrants varies between 7,000 and 10,000 in Brussels and is close to 10,000 in the whole of

Only a small minority beg, and they do it through necessity. The idea that the Roma *massively* indulge in begging should therefore be put into perspective. The ones who do beg, often did so in their country of origin.

⁶⁵ The work of the German photographer and journalist, Rolf Bauerdick, offers a good impression (unorthodox but very informative) of the diversity among the Roma. *Zigeuners, Ontmoeting met een onbemind volk (Gypsies - Encounters with Unloved People)* (2013, traduction néerlandaise 2014).

⁶⁶ You will find an interesting insight into the rich socioeconomic diversity of the Roma in Romania in: GÁBOR FLECK/COSIMA RUGHINIȘ, *Come Closer. Inclusion and Exclusion of Roma in Present-Day Romanian Society*, Bucharest 2008; brief introduction to the socioeconomic situation of the Roma in Kosovo: FRAUKE DECOODT, STIJN DE REU, *Kosovaarse Roma in het Waasland – 10 jaar beleid met Roma in Temse en Sint-Niklaas*, 2009 (*Kosovan Roma in Waasland - 10 years of politics with the Roma in Temse and Sint-Niklaas*).

⁶⁷ KOEN GEURTS, *Roma in beweging. Diverse groepen en evoluties in Brussel*, asbl Foyer, 2014 (*The Roma in action, various groups and evolutions in Brussels*).

Flanders and 8,000 in the Walloon region⁶⁸. Foyer believes that approximately 200 of them beg in Brussels. It points out that for these people, begging is a survival strategy, and that it is mainly women who do it. When they earn enough from economic activities, they stop begging. They generally beg in the neighbourhoods in Brussels where they live⁶⁹.

Among the survival strategies principally used by Roma men in a precarious socioeconomic situation is the sale of street newspapers, selling flowers in cafés, washing windscreens at junctions (less frequently than a few years ago) or playing music in the street.

This strong cohesion between the socioeconomic situation and begging in Brussels was also recognised by the police: in 2003, the West police district created a special youth brigade in Molenbeek, in reaction to a major influx of Roma with an uncertain residential status.

It was initiated with the goal of combating begging, but quickly changed its focus to fighting for the level education, a view adopted by the police after direct and

intensive contact with the local Roma community⁷⁰.

We don't have any information concerning begging for other Roma groups. This is especially the case regarding the Roma from Kosovo, who mainly live in Sint Niklaas and Temse. According to the stewards for the Roma neighbourhoods in the town of Sint Niklaas, no member of the local Roma community, which includes approximately 900 people, begs. This Roma community, which has been living in Sint Niklaas since 1999, has undergone a distinct change in habits: school absenteeism among Roma children has considerably decreased and some Roma have found jobs that seemed inaccessible to them in the past. For instance, one Rom has become a bus driver for De Lijn. Such success stories have a background to them. A proactive local authority and a committed civil society have worked to integrate the Roma. It has taken a long time: the Roma must first of all learn that they have the opportunity to participate in Belgian society but that these opportunities are of course linked to their education⁷¹.

The strong loyalty that reigns within the different Roma communities also has consequences on the attitude of Roma victims regarding exploiters, who are also generally members of the Roma community.

The late Professor Eycken, from the Université catholique de Louvain (KULeuven), had a doctorate in anthropology on the Vlasika Roma of Prague, with whom he lived. He later extended his research to Roma communities in Slovakia, Hungary and

⁶⁸ Report by Nils Muiznieks, Council of Europe Commissioner for Human Rights, visit to Belgium from 14 to 18 September 2015, Strasbourg, 28 January 2016, point 141. The report is available in French and English on the Commissioner for Human Rights' website: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2016\)1&Language=lanFrench&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2016)1&Language=lanFrench&direct=true).

⁶⁹ Information from a meeting between Myria and the non-profit organisation Foyer, on 1 March 2016.

⁷⁰ K. GEURTS, *De Roma van Brussel (les Roms de Bruxelles)*, 2ème éd. révisée, 2006, p. 146, http://www.foyer.be/IMG/pdf/Les_Roma_de_Bruxelles_Actualisations-doc.pdf; C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

⁷¹ Information given to Unia by stewards in the Roma neighbourhood in the town of Sint Niklaas, June 2016.

Romania. According to him, some of these Eastern European Roma communities are based on compulsory solidarity, not through charity, but through pure necessity: if you don't help others, don't expect to receive help when you have problems. And without the support of the community, a Rom is nothing. This elaborate form of solidarity doesn't exist in Western culture, for instance, where the individual occupies a key position⁷².

The strong loyalty that reigns within the different Roma communities also has consequences on the attitude of Roma victims regarding exploiters, who are also generally members of the Roma community. This situation often leads to a strong relationship of dependence with the exploiter and partly explains why the victims are particularly mistrustful and reticent about the idea of making a statement to the police. Past negative experiences with the police only further reinforce this situation.

As in other ethnic groups, a sort of code of honour exists within the Roma community. Traditionally, honour is of great importance to those who move in larger family configurations. This isn't a written code, but an evolving concept of what might endanger a family's honour. But this doesn't mean that every Rom feels bound to this code. As with other migrants, certain cultural traditions have also become diluted among Eastern European Roma. Values change, above all among the young Roma born in Belgium. The famous myth according to which the Roma's code of honour approves the theft of non-Roma is complete fabrication.

⁷² MAURITS EYCKEN, *Roma-zigeuners. Overleven in een industriële samenleving*, Acco, 2006 (*Roma gypsies. Surviving in an industrial environment*).

However, it is true that in some minority groups in Roma communities, certain customs, such as early marriage, still exist. This is a subject that was dealt with in our previous annual report in the part devoted to early marriages⁷³.

Many of the problematic situations between non-Roma and Roma are based on a socioeconomic rejection rooted in direct discrimination and segregation. In Belgium too, acts of discrimination and segregation have come to light.

For the time being, the European Commission has instituted three infringement proceedings⁷⁴ against three European countries: the three proceedings were initiated because the Member States concerned were implement structural and systematic discrimination against the Roma in education through segregation. Roma children are often put in schools for mentally handicapped children suffering from a mental handicap. The infringement proceedings against Slovakia, the Czech Republic and the latest one against Hungary, are based on an infringement of the Racial Equality Directive (2000/43/EC), banning any discrimination on the basis of racial or ethnic origin⁷⁵. In the three cases, a long preliminary investigation took place, conducted by civil society organisations,

⁷³ Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 1, Chapter 1, pp. 11-25.

⁷⁴ Infringement proceedings are legal steps the European Commission takes against a European country that does not comply with its obligations in accordance with European Union legislation. They are only instituted if a country does not remedy the deficiencies observed during the transposition of the European legislation following an informal procedure.

⁷⁵ See the European Commission press release concerning the opening of the infringement proceedings against Hungary on 26 May 2016: http://europa.eu/rapid/press-release_MEMO-16-1823_fr.htm.

independent anti-discrimination organisations and the law. The Czech Republic was already convicted for the segregation of Roma children in a famous judgement handed down by the European Court of Human Rights⁷⁶. Based on the investigation, the Court considered that Roma children in the Czech Republic were placed 27 times more often in special schools for mentally handicapped children and that, in the Ostrava region, more than half of all Roma children were placed in these types of schools⁷⁷. Even though we have known of these abusive practices for years, they still continue. This is why the European Commission has also instituted infringement proceedings.

But in Belgium, it has also been revealed that there is a disproportionately high presence of Roma children in special education⁷⁸: for instance, the city of Ghent observed that Slovakian Roma children were six and a half times more often to be found in special education. The city is aware that this phenomenon needs to be carefully examined because the same isn't true of Bulgarian or Romanian Roma children. In other towns, where neighbourhood stewards and other people acting as a

bridge have noted possible indications of the segregation of Roma children in special education, no investigation relating to this phenomenon has been initiated.

Many Roma, who are the victims of discrimination in their country of origin, are in despair about their situation and have lost all illusions. Some are recruited in their home country by their exploiters with the promise of a job, and find themselves dependent on their exploiter and confronted with human trafficking practices. This is the only link between the fact of being a Rom and the phenomenon of exploitation of begging dealt with in this document.

Therefore, the goal of this chapter is to focus essentially on a single fact, that appears to be obvious: the Roma form a group that is just as heterogeneous as any other. Hence, we don't want to reinforce the stereotype of the begging Roma victim. The exploitation of begging within the framework of human trafficking is a phenomenon that is rarely dealt with, and deserves greater attention, especially considering the vulnerable position of the victims. However, the extent of the phenomenon isn't comparable to that of sexual and labour exploitation. As regards human trafficking as a whole, it is clear that Roma victims are often victims of sexual exploitation. We have already dealt with various cases of sexual exploitation with a Roma link in greater detail in previous annual reports. A Hungarian case⁷⁹ alone involved 40 Hungarian Roma victims.

⁷⁶ European Court of Human Rights, Grand Chamber, *D.H. and Others v. Czech Republic*, Application No. 57325/00; within this framework, the European Roma Rights Centre (ERRC) prepared and supported the complaint and put links on its website to the judgement and other important documents concerning this case: <http://www.errc.org/article/ostrava-case-dh-and-others-v-the-czech-republic/2945>.

⁷⁷ Besides the ERRC website, the Open Society Foundation (OSF) website also has information on this case. The OSF also supported the complaint against the Czech Republic thus bringing it to fruition. Information available at <https://www.opensocietyfoundations.org/litigation/dh-and-others-v-czech-republic>

⁷⁸ On this subject, also see the report by Nils Muizneks, Council of Europe Commissioner for Human Rights, visit to Belgium from 14 to 18 September 2015, Strasbourg, 28 January 2016.

⁷⁹ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 60.

CHAPTER 3: THE PHENOMENON IN BELGIUM

Little is known about the phenomenon of human trafficking for the purpose of exploitation of begging in Belgium. The public prosecutor's offices initiate very few cases concerning human trafficking for the purpose of exploitation of begging⁸⁰, as illustrated in the table below. These cases are spread between the jurisdictions of Brussels, Ghent and Antwerp. According to basic estimations, approximately half the cases are dropped.

The public prosecutor's offices initiate very few cases concerning human trafficking for the purpose of exploitation of begging.

Ghent and Antwerp is to draw up a report for begging, but everything also depends on the police's method of approach. The Minister of Justice said on this subject: "The number of findings is limited. It doesn't correspond to reality. A sample of reports from a police district often faced with begging (exploitation of begging as a form of human trafficking or not)

shows that officers react differently to begging. If they aren't looking specifically for possible signs of exploitation, officers book the beggars on the basis of the highway code (for obstructing traffic), for instance. Others arrest beggars administratively, on the basis of causing a nuisance; they free them a few hours later or ask the beggars to move on. The sample showed that out of 184 'begging' interventions, 85 begging reports were drawn up. Only four reports relate to the exploitation of begging - human trafficking. In all four reports it was question of an adult beggar accompanied by a child⁸²". When a report reaches the public prosecutor, it is also up to the public prosecutor's office to determine whether an investigation into human trafficking should be initiated.

Human trafficking (HT) for the purpose of exploitation of begging	2010	2011	2012	2013	2014	2015
HT case opened by public prosecutor's office	5 (1.5%)	8 (2%)	7 (2%)	12 (3%)	14 (5%)	10 (3%)
HT case dropped by public prosecutor's office				7	5	

The police established several reports for offences relating to the exploitation of begging. In answer to a parliamentary question, the Minister of Justice, in 2015, broke down the recorded offences for the period 2010 to 2013, according to whether they related to human trafficking or not (see above)⁸¹. The usual procedure in Brussels,

Offences - police	Exploitation of begging	Human trafficking for the purpose of exploitation of begging	TOTAL
2010	61	6	67
2011	34	20	54
2012	18	29	47
2013	15	25	40

⁸⁰ Concerning the legal framework, see Chapter 1 above.

⁸¹ Question No. 76 from Deputy Kristien Van Vaerenbergh of 19 November 2014 to the Minister of Justice, DO2014201500813, *Bulletin des questions et réponses écrites*, Chamber, session 2014-2015, QRVA 54- 024 of 11 May 2015, p. 141.

⁸² *Ibid.*, p. 142.

The number of victims exploited for the purpose of begging who have been provided with new support by specialised centres, within the framework of victim status, is also limited. Out of the 16 victims, there were six Romanian men and five Romanian women, three Slovak men, one Serbian woman and one Egyptian woman (victim from 2013). Three underage Romanian girls were taken in as victims of human trafficking.

Human trafficking for the purpose of exploitation of begging	2010	2011	2012	2013	2014	2015
New support	2	0	6	1	3	4
Children	1				2	

Few statistics are available concerning the involvement of child victims. The following answer was given in 2008 to Senator Schelfhout's parliamentary question addressed to the State Secretary for Disabled Persons and Deputy to the Minister for Social Affairs and Public Health at the time: "Child begging is a complicated problem. The Coordination des Organisations non-gouvernementales (ONG) pour les Droits de l'Enfant (CODE) has published several studies on the subject. According to these studies, the number of networks that exploit children through begging is currently very limited. The majority of children who beg are accompanied by their parents or family members, often of tzigane origin⁸³". In 2013, the State Secretary for Asylum Policy and Migration answered: "Over the past few years, we have been witness to renewed interest in the phenomenon of

⁸³ Written question No. 4-1926 from Els Schelfhout on 29 October 2008 to the State Secretary for Disabled Persons and Deputy to the Minister for Social Affairs and Public Health, Senate, 2008-2009 session, 28 October 2008.

mothers begging with children. There is also interest in the problem of mothers begging with children⁸⁴ on a European scale (DG Home and DG Justice)". A study coordinated by ECPAT⁸⁵ noted this phenomenon of women beggars accompanied by children in Brussels, but concluded that this had nothing to do with human trafficking⁸⁶; however, it considered this to be an attack on children's rights since this prevented them from going to school. As regards acts of human trafficking, we especially find child beggars who are the victims of human trafficking in mixed cases, i.e. those concerning different forms of exploitation within the framework of human trafficking (exploitation of begging, sexual exploitation, forced criminal activities), which we shall deal with further on.

Based on the interviews and findings from cases and case law, we can separate the existing human trafficking cases into 'Roma' cases involving the exploitation of disabled adult Roma victims and 'Roma' cases with a mixture of different forms of exploitation within the framework of child and adult Roma human trafficking victims. This type of trend can also be found in various international studies⁸⁷. These are structured family networks. The victims live with their exploiters and find themselves in a slum landlord situation. There is also the matter of stolen identity, which considerably complicates the identification of the victims by the police. The core of the exploiters is

⁸⁴ Written question No. 5-8931 from Dalila Douifi on 3 May 2013 to the State Secretary for Asylum Policy and Migration, Social Integration and the Fight against Poverty, and Deputy to the Minister of Justice, Senate, 2012-2013 session, 3 May 2013.

⁸⁵ DE WITTE & PEHLIVAN, *Vulnerability of Bulgarian and Romanian Children to Trafficking in the Netherlands and in Brussels*, Mario project, Budapest, December 2014.

⁸⁶ On the issue of child begging, also see this part, Chapter 1.

⁸⁷ RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013.

generally composed of four to five people, who work together and share information in a flexible manner, from a regional family base.

1. Adult disabled Roma victims

In these cases, adults are exploited and they must hand over their earnings from begging. The victims are usually Roma⁸⁸. In general, it is only a matter of begging, but sometimes, other forms of exploitation are associated with it within the framework of human trafficking. When it is only a question of exploitation of begging, the proceeds from criminal activity must be sufficient to maintain its existence as a criminal activity. One of the specialised centres for victims of human trafficking explained, during an interview, that they had learned of a victim being intentionally mutilated⁸⁹ with the aim of arousing compassion and thus generating more income from begging.

The perpetrators are often small family groups of Roma origin specific to Eastern European countries such as Romania⁹⁰ with whom other Roma groups don't wish to be associated. These groups of perpetrators have considerable international mobility and recruit their victims on site or in the country of origin. Neither the perpetrators nor the victims want to have contact with local support organisations, not even Roma mediators. When they find themselves in the police's sight, they disappear abroad. Roma mediators have confirmed this. One

of them also noted the presence of disabled beggars who weren't interested in making contact with the Roma support organisation and subsequently disappeared.

In a case in Brussels, where the disabled Roma victims were exploited and sometimes taken to towns in other countries, the proceeds from criminal activity were close to EUR 40,000 in a good year. The Roma perpetrators sent this money to their family in Romania. When the perpetrators realised the police were onto them, they disappeared abroad and the judgement was pronounced in absentia⁹¹.

In another case, a Romanian was convicted for having recruited a compatriot with a crippled left leg to work as a beggar in Brussels⁹². The father of the suspect had paid the bus ticket from Romania and had confiscated some of the victim's papers (birth certificate, disability certificate and proof of pension payment). The suspect accompanied the victim to the place where they obliged to beg every day, and came to fetch them every evening. They earned between EUR 17 and 25 a day, which they had to hand over to the suspect and his wife every evening.

⁸⁸ ERRC, *Breaking the Silence*, A Report by the European Roma Rights Centre and people in need, 2011.

⁸⁹ See also OSCE Resource Police, *Training Guide: Trafficking in Human Beings*, TNTD/SPMU Publication Series Vol. 12, 2013.

⁹⁰ In the German and Austrian press and various studies (see previous footnotes), there is also mention of similar cases of Romanian Roma victims exploited as disabled beggars: see this part, Chapter 4.

⁹¹ See further on in this chapter and Part 3, Chapter 4 (Case Law); Brussels Dutch-speaking Crim. Court, 3 March 2015: Annual Report 2015, *Trafficking in and smuggling of human beings, Tightening the links*, pp. 124-125.

⁹² Brussels Crim. Court, 2 June 2010, 54th ch.; Brussels Crim. Court, 21 September 2010 (the convicted person appealed against the default judgement delivered on 2 June 2010) and Brussels, 1 April 2011; Also see: Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, p. 78 and Annual Report 2011, *The Money that Matters*, p. 139. The court of appeal's decision is available at www.myria.be.

In 2013, the Minister of Justice, in their answer to a parliamentary question relating to the federal approach to the exploitation of begging, referred to the following case as an example of a case where the legal provisions concerning human trafficking were successfully applied⁹³. The case of human trafficking for the purpose of exploitation of begging was judged by Nivelles Criminal Court⁹⁴. International police information revealed that the defendant had also been investigated in Germany and Slovenia for similar acts. A Slovak defendant had exploited disabled compatriots through begging. The defendant had come to fetch them from the institution in which they were placed in Slovakia, saying that they would be better with him. Once he had brought them to his home, they were obliged to share their room with other disabled persons. The defendant also took all the benefits they were paid in Slovakia. The court considered that trafficking was established: the defendant had recruited disabled compatriots, lodged them in his house, dropped them off at different car parks and came to fetch them in the evening. He took all the money they collected for himself. The court attached a great deal of importance to the victims' statements, corroborated by other elements in the case (police reports stating the presence of the defendant or the victims on various occasions in Belgium, international police information, a large sum of money found in the defendant's possession).

⁹³ Question No. 886 from Deputy Karin Temmerman on 19 April 2013 to the Minister of Justice, DO 2012201312442, *Bulletin des questions et réponses écrites*, Chamber, 2012-2013 session, QRVA 53-116 of 10 June 2013, pp. 171-173.

⁹⁴ Nivelles Crim. Court, 25 January 2013, 6th ch. This decision is final; <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-nivelles-25-janvier-2013>; Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 90-91.

Example of a case of exploitation of disabled beggars in Brussels

In March 2016, four Romanian defendants convicted the previous year in absentia for human trafficking for the purpose of exploitation of begging, were arrested in Romania and returned to Belgium on the basis of a European arrest warrant. They lodged an appeal and were once again convicted by the Criminal Court of Brussels⁹⁵. The acts took place between May 2011 and October 2012. Myria instituted civil proceedings.

1. Small-scale family network

The four Romanian defendants belonged to the same family and organised and exploited the begging of Romanian compatriots with a physical disability. This exploitation took place in a systematic and organised manner during a relatively long period. The defendants and the victims would go to a very busy public area. The defendants used public transport to move around, but never in the company of their victims. The defendants constantly kept an eye on the victims from the bench at a bus or tram stop. The victims would meet up with the defendants after a certain amount of time to discreetly give them their earnings before returning to beg. They sometimes received something to eat or drink in exchange.

2. Opening the case

After receiving a warrant from an investigating judge, the police initiated the investigation with surveillance in July 2012. The photos from these observations provided important evidence. They established how the beggars handed over

⁹⁵ See Case Law chapter; Brussels Crim. Court, 19 May 2016, 60th ch. (final); Brussels Crim. Court, 3 March 2015, 60th ch. (in absentia). See Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 124-125.

their earnings, hidden in a cigarette packet, to a third party, the defendant.

The observations conducted showed that the defendants were all living at the same address and that several of the beggars lived with them too. During the search carried out in October 2012, the police noted that the various victims of begging lived in dreadful living conditions. The search led to several arrests and hearings.

3. *Investigation*

The police requested information from low-cost Romanian travel agencies and airline companies at Zaventem airport regarding the international mobility of the defendants and the victims. Based on the analysis of the results, the investigators were able to ascertain that considering the movements of some of the victims, the begging didn't only take place in Brussels, but also probably in other European towns and cities, such as Rome, Coni (Italy) and London. The analysis of their movements also showed that the defendants would go and fetch the beggars in Romania to allow other members of their family to exploit them through begging.

The defendants also made contradictory statements concerning their family relations/ties, their arrival in Belgium, their trips between Belgium and Romania, their stay in Belgium and their begging activities.

4. *Financial investigation*

At the beginning of the investigation, the police, who had received a warrant, carried out a bank investigation and asked various money transfer agencies to cooperate regarding international transactions. The police, in possession of a warrant from the investigating judge, also asked for an

investigation into assets in Romania, through letters rogatory.

This financial investigation revealed that the four defendants, who had no legal income in Belgium, had transferred the earnings from begging to different members of their family in Romania. Between May 2011 and July 2012, the defendants sent no less than EUR 39,568 to their family in Romania.

During their hearing, the defendants asserted that they hadn't kept any of the earnings from the begging, but once they were confronted with the results of the bank investigation, they were incapable of explaining the origin of the large money transfers.

5. *Victims*

During the search, the police were able to identify three Roma begging victims. They had been recruited at Brussels-North railway station. There was no family link between the defendants and the victims. However, during the trial, the defendants' referred to strong family links with the victims and the importance of solidarity within the Roma community.

The court rejected this argument since the related statements in the criminal case were contradictory. The victims didn't know the defendants' names and were incapable of providing information regarding family links. At the first hearing, one of the defendants explained that he had found the victims at Brussels-North railway station. The court concluded that the defendants exploited their Romanian compatriots as beggars in a completely tyrannical and egotistical manner, with no respect for their dignity or integrity. They generated excessive earnings which they kept exclusively for themselves, which the money transfers proved.

Within the framework of human trafficking, begging is generally the only visible activity in cases concerning a mixture of different forms of exploitation, which are less visible, such as forced criminal activities or sexual exploitation.

During its observations, the police also detected several unidentified Roma victims. It wasn't possible to intercept any of the victims owing to a police operation conducted within the framework of combating disturbances in the street, organised on the mayor's orders, who of course wasn't aware of the criminal investigation in progress. A few days before the local council elections on 14 October 2012, all the beggars were intercepted within the framework of a clean-up operation. During its observations, the team of police officers responsible for the investigation witnessed the interception of the Roma beggars concerned by another team of police officers.

2. Mixture of different forms of exploitation within the framework of human trafficking

Within the framework of human trafficking, begging is generally the only visible activity in cases concerning a mixture of different forms of exploitation, which are less visible, such as forced criminal activities or sexual exploitation. Often, acts such as forced criminal activities only come to light once the investigation concerning child beggars has been initiated. For example, this was the case during the surveillance organised within the framework of an investigation, where the police found that children were made to commit acts of theft. Some of the stakeholders questioned don't recommend combating forced begging, but would prefer to use it as a method to bring invisible offences, such as forced criminal activities.

The perpetrators are Roma family groups from certain regions in Bosnia and Romania. Other Roma groups don't want to be associated with them in any way. According to some of the judges questioned, it is a question of international networks. The victims are brought over from another country where they were recruited. The exploiters are scattered around Belgium and abroad. For instance, there are cases concerning criminal organisations with ramifications in Bosnia, France and Belgium,

and others with ramifications in Romania, Italy, France and Belgium. A European study conducted by RACE organisations (Anti-Slavery International, ECPAT, La Strada, etc.), financed by the European Commission, concerning forced criminal activities and the exploitation of begging, also gives a few examples of these types of cases⁹⁶.

In these family groups of perpetrators it is often a question of strong internal differentiation within the group. The members are subdivided according to their main activity: begging, theft, and prostitution. They use counter strategies to mislead the police⁹⁷. With the help of false and authentic identity papers, they use several identities and nationalities, thus complicating the police's work. When they suspect that the police are onto them, the whole family disappears very quickly.

This situation is very demotivating for justice. A police superintendent from Brussels had the following to say: "It is extremely arduous and difficult to collect all the material evidence and links in a solid case in time, that could lead to convictions. They are so difficult to detect and so mobile that many investigators and judges don't even want to bother. They believe there is a very high likelihood that the perpetrators will be long gone even before the case has been put together⁹⁸".

⁹⁶ RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013; See also Council of the Baltic Sea States and Child Centre, Expert Group for Cooperation on Children at Risk, *Children trafficked for exploitation in begging and criminality: A challenge for law enforcement and child protection*, 2013.

⁹⁷ C. ROELANDTS en G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

⁹⁸ *Ibidem*.

Case concerning exploitation of begging in the company of a child, forced to commit acts of theft and the sexual exploitation of minors

In a case in Ghent⁹⁹, with acts dating back to 2014, which concluded in an acquittal owing to a lack of evidence, nine Romanian Roma victims filed a complaint for human trafficking through the Romanian embassy. It concerned exploitation of begging, sexual exploitation and coercion to commit acts of theft. The defendants were also prosecuted for the aggravating circumstance of criminal organisation.

The victims were lured to Belgium under the false promise of a job in the construction sector or welfare sector. In Romania, the defendants' family was known for the recruitment of job-seekers willing to work abroad.

The victims accessed victim status and were divided between the three specialised centres for human trafficking victims. One 16-year-old girl was taken in by Minor Ndako, a reception centre for vulnerable unaccompanied foreign minors. In Romania, she was promised she would get a job as a childminder in Belgium. When she arrived, she was placed in substandard accommodation with another Romanian Roma girl and they had to go and beg. She was also raped by the defendants and forced to prostitute herself. The defendants went in search of customers. Furthermore, a 40-year-old Roma victim, supervised by a defendant, was obliged to commit acts of theft in a department store. Among the victims, there was also a seven-year-old child who was forced to beg.

The victims stated that the defendants came to pick them up from their place of residence at 07:30 in the morning in a minibus, and that they were then dropped off at different sites in Ghent, Kortrijk and Zelzate to beg there for 10 hours a day. At the end of their day, they were picked up again. According to the victims, they begged against their will. By begging, they were controlled by members of the defendants' family. The young seven-year-old girl not only had to beg with her mother, but also had to do so alone on Sundays. The day's earnings, varying between EUR 10 and 517, were taken by the main defendant upon their return, who didn't hesitate to search the victims. If they didn't make anything or very little, they were threatened with a weapon and/or violence. The victims had no financial resources to pay for their basic needs. They had to live off leftovers and waste from bin bags. These living conditions were responsible for health problems among six of the victims.

When two 30-year-old victims were ordered to steal materials from a building site, they refused. The victims were threatened and beaten, and one of the victims suffered two broken teeth. The victims called emergency services. Owing to language problems, the emergency team referred them to the Romanian embassy.

Case concerning coercion to commit offences and exploitation of begging with children

This case in Antwerp¹⁰⁰, with conviction for acts that took place in 2010, is an example of an investigation where the exploitation of begging, the only visible criminal activity, was revealed and used by the investigators to detect other invisible criminal activities. It involved a wide-scale international network with ramifications in Bosnia, France and

⁹⁹ West Flanders Crim. Court, Ghent division, 19 November 2014 and Ghent Court of Appeal, 14 April 2015 (unpublished).

¹⁰⁰ Antwerp Crim. Court, 27 May 2013, ch. 4C.

Belgium that forced minors to snatch bags. The conversations recorded within the framework of wire taps and police observations confirmed that the minors had to snatch bags in different European towns and cities, report back and hand over their loot to the defendants. The majority of the thefts took place in France. In Belgium, the acts took place in Brussels and Antwerp.

A police superintendent from Brussels was involved in the investigation. She explained in an article¹⁰¹ that several children were known in Brussels for begging and were then involved in thefts. One of the children had also evolved in the family clan's hierarchy. She was begging in Rue Neuve in Brussels in 2004, at the age of six. She was then intercepted with 12 other Roma children for stealing in shops. In 2011, she was promoted and, at the age of 13, she was collecting money from the beggars. She was also involved in residential break-ins. The juvenile court judge sent her to a centre in Saint-Servais¹⁰².

In this case, another minor was officially recognised as a victim by the court. The superintendent explained that they had noticed the 15-year-old girl for the first time in Brussels in 2010. She had escaped from the reception centre in Neder-over-Heembeek¹⁰³ for the 15th time, and was intercepted for the 46th time for bag snatching. The public prosecutor's office and the police initiated an investigation on the principals. This investigation required a huge amount of work, since all those actively involved had to be identified, the family links assessed and the structure of

the clan exposed. For this purpose the police were involved in tailing, observations, various searches, and wire taps. International money flows were traced and the international nature of the gang revealed.

Case concerning sexual exploitation and exploitation of begging

A Roma case in Brussels¹⁰⁴, involving a criminal organisation active in the period 2004-2005, revealed a mixed form with underage Roma girls forced to prostitute themselves on the one hand, and adult disabled beggars who had to beg and hand over their earnings, on the other.

The victims were recruited in Romania, in the clan's home region. Even actual family members weren't spared. For instance, the pimp forced his own niece to prostitute herself. The majority of young women were offered a job as a babysitter or a cleaner. Some knew they were going to work in prostitution but they weren't aware of the conditions. Another girl was first seduced by the pimp, a loverboy. The young women, including minors, worked as prostitutes in streets adjacent to Avenue Louise in Brussels. According to a victim, the family was known for buying and selling young women, sometimes for barely more than EUR 500. According to the victim, the pimp was previously active in drug smuggling in Spain.

¹⁰¹ C. ROELANDTS en G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

¹⁰² Public Youth Protection Institution; decree of 4 March 1991 relating to youth support.

¹⁰³ The Neder-over-Heembeek COO is one of the observation and guidance centres for unaccompanied foreign minors (UFM) in Belgium.

¹⁰⁴ Annual Report 2006, *Trafficking in human beings, Victims in the spotlight*, pp. 32-33; Brussels Court of Appeal, 21 February 2007, 11th chamber; <http://www.myria.be/fr/jurisprudence/cour-dappel-de-bruxelles-21-fevrier-2007>.

The criminal organisation was composed of two families, one of which earned its income through prostitution, but also the exploitation of begging. The case included different testimonies concerning the exploitation of disabled beggars who had to hand over their earnings in the evening and were searched. Sometimes, the beggars also had to check the child victims of child prostitution.

Every member or couple of the family clan had its own prostitutes. Some also had a beggar. The defendants threatened the victims and their family in Romania, and didn't hesitate to use violence when the victims refused or didn't bring in enough money.

CHAPTER 4: APPROACH TO FORCED BEGGING IN OTHER EUROPEAN COUNTRIES

For this focus, Myria spoke to the other national rapporteurs. It wanted to find out about the experiences in other European countries regarding the fight against forced begging. Myria asked them five questions relating to the following aspects:

- the status of begging in their country;
- the explicit inclusion (or not) of trafficking for the purpose of exploitation of begging within the context of trafficking;
- how cases of exploitation of begging in the country were dealt with, the results obtained and, if necessary, the profiles of the perpetrators and victims;
- examples of best practices and experiences concerning the approach to this form of exploitation;
- the existence of interesting articles or reports on forced begging.

Out of the 27 Member States questioned, 15 replied to the questions asked, which bears witness to a good collaboration between national rapporteurs. We should point out that Scotland answered for the United Kingdom and that Romania, which contributed to this report, did not explicitly reply to the questions asked¹⁰⁵.

The answers come from countries of origin as well as destination countries.

¹⁰⁵ It is included in the total number of countries that replied but since the answers were dealt with in the framework of the external contribution provided, they were not dealt with again here. On this subject, please refer to the end of this focus (See the following external contribution: *Experiences of exploitation for forced begging in Belgium and Romania*).

Myria is therefore presenting a summary of the answers received in this chapter. Special attention, although limited, will also be paid to minors, because they are the ones who appear to be particularly affected by this form of trafficking in several countries¹⁰⁶.

1. The status of begging

As is the case in Belgium, begging is not an offence in several countries. Nevertheless, it is banned in some cases, for instance, when it implicates children or in the case of aggressive begging. This is particularly the case in France¹⁰⁷, Spain¹⁰⁸, Sweden¹⁰⁹, Scotland¹¹⁰, and Hungary¹¹¹.

¹⁰⁶ A major study was conducted on this subject in several European countries, within the framework of the European Commission's ISEC project. On this subject, see: Report for the Study on Typology and Policy Responses to Child Begging in the EU, December 2012: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_for_the_study_on_typology_and_policy_responses_to_child_begging_in_the_eu_0.pdf. However, owing to the limited framework of this chapter, we were not dealing with it here.

¹⁰⁷ Article 312-12-1 of the Criminal Code (aggressive begging), Article 227-15 of the Criminal Code (minors, assimilation with the unlawful denial of care).

¹⁰⁸ Article 232 of the Criminal Code (it is an offence to use minors for the purpose of begging).

¹⁰⁹ Begging is legal as long as it does not disrupt public order or offend the public.

¹¹⁰ In Scotland, the police and public prosecutors have the power, through existing legislation, to deal with aggressive begging, e.g. through section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Scottish legislation also allows people who use children for begging to be prosecuted.

¹¹¹ It is forbidden to beg in the company of minors, or participate in active begging by approaching passers-by on a public thoroughfare (Article 185 of Act II of 2012 on infractions, infraction proceedings and the registration system of infractions).

Furthermore, local authorities often have the power to control begging in their area (in the Netherlands¹¹² or in the Czech Republic¹¹³ for instance, by using their police power in case of public disorder (France).

For instance, in Austria, there are no country-wide regulations concerning begging. Passive begging is therefore not illegal but every federal province ('Bundesländer') is authorised to control begging geographically or according to the type of begging. Moreover, the towns and municipalities also have this power. Consequently, in certain provinces, aggressive begging, organised begging or begging with children under the age of 14 is forbidden.

In Germany too, it is the local authorities who decide where begging is forbidden or restricted. For example, in Munich, passive begging is permitted but intrusive, aggressive, or organised begging is forbidden¹¹⁴.

In other EU countries, begging is forbidden. Hence, in Greece, Bulgaria, Lithuania, and Malta, begging is illegal. The Greek Criminal Code¹¹⁵ punishes anyone begging with a six-month prison sentence and a fine of up to

EUR 3,000¹¹⁶. In Bulgaria, both a person systematically practising begging¹¹⁷ and a person using someone they are responsible for to beg¹¹⁸, are punishable by law. In Malta, begging is also considered a criminal offence¹¹⁹ whereas in Lithuania, it is considered a violation of the administrative provisions.

Begging is an offence in Croatia. Parents and legal guardians can be held responsible if their child begs. As for forcing a child to beg, this is punishable under the Criminal Code¹²⁰.

2. Forced begging as a distinctive form of human trafficking

In the majority of countries that answered, forced begging is, as is the case in Belgium, just one of the purposes specific to human trafficking, separate to that related to labour exploitation. This is the case in France¹²¹, the Netherlands, Austria¹²², Greece¹²³, Bulgaria¹²⁴, Lithuania, and Malta.

¹¹² Hence, while begging has been decriminalised since 2000, it is the municipalities that decide whether or not to set up local bans.

¹¹³ Begging is not a criminal offence, but it can be forbidden by municipalities in certain places.

¹¹⁴ M. CISSEK-EVANS, "Begging and the exploitation of criminal activities", in KOK, *Human Trafficking in Germany, an overview from a practical standpoint*, 2015, p. 119.

¹¹⁵ Article 407.

¹¹⁶ Likewise, anyone who encourages or fails to discourage other people they are responsible for from begging or who provides minors or mentally or physically disabled persons to others for the purpose of eliciting pity among the public with a view to making a financial gain, is also punishable. (Article 409 of the Criminal Code).

¹¹⁷ Article 329 of the Criminal Code (Chapter 10: crimes disrupting public order or the peace).

¹¹⁸ Article 189 of the Criminal Code (Chapter 4, section two: crimes against children).

¹¹⁹ As a result, three Bulgarian nationals were summoned to court for begging. They were conditionally released after having pleaded guilty, stating that they did not know begging was prohibited in Malta.

¹²⁰ Article 177. This offence features among the behaviours relating to negligence and abuses of children's rights.

¹²¹ Article 225-4-1 of the Criminal Code. Like Belgium, the French Criminal Code provides for a separate charge for the exploitation of begging (article 225-12-5 Criminal Code).

¹²² §104a of the Criminal Code.

¹²³ Article 323A of the Criminal Code.

Germany should also soon define it as a particular form of human trafficking.

In other countries, however, forced begging - whether explicitly mentioned or not - is considered a form of forced labour. This is the case in Spain¹²⁵, Sweden¹²⁶, the Czech Republic, and Croatia¹²⁷.

As for Hungary, it makes no reference to specific purposes of exploitation in its definition of trafficking, since the key factor is the attempt to gain from abusing a victim's vulnerable situation, whether the benefit is financial or not¹²⁸. This definition is completed by other provisions, such as those on forced labour¹²⁹. Forced begging can therefore fall under the definition of trafficking within this framework.

Scotland recently adopted new anti-trafficking legislation, regardless of the purpose of the exploitation. However, begging is not specifically mentioned among the forms of exploitation¹³⁰.

As is the case in Belgium, begging is not an offence in several countries. Nevertheless, it is banned in some cases, for instance, when it implicates children or in the case of aggressive begging.

3. Experiences of cases of trafficking for the purpose of forced begging

The majority of countries that responded have already had to deal with cases of trafficking for the purpose of exploitation of begging, albeit a limited number.

For instance, in Spain in 2014, there were four cases of presumed trafficking for the purpose of exploitation of begging. One of them was taken to court but resulted in an acquittal. The people concerned in these cases were of Roma origin above all.

In Sweden, since 2009, the Swedish courts have tried five cases of trafficking with regard to forced begging, three of which led

to convictions.

The Swedish government also believes that some 4,700 people, mainly from Romania and Bulgaria, have arrived in Sweden within the framework of the free movement of persons, in order to beg, and that their number has significantly increased in the past five years.

In February 2016, two Bulgarian brothers were convicted of trafficking, after having exploited several poor and disabled persons who were promised work in Sweden. Their victims included a retired 69-year-old, a young illiterate person in a wheelchair, and a 62-year-old blind man. These victims were given nothing for the long days they spent begging. Two other people, a Macedonian who housed the victims and a Bulgarian woman who helped with the logistics were also convicted, although they received lighter sentences¹³¹.

In the Netherlands, there have not been any cases of forced begging; however, court

¹²⁴ Article 159a of the Criminal Code.

¹²⁵ In Spain, begging features explicitly among the purposes of trafficking but is listed among the forms of forced labour (Article 177bis of the Criminal Code).

¹²⁶ The term begging is not mentioned but can fall under the definition of trafficking as forced labour or as a situation involving distress for the victim (Chapter 4§1 of the Criminal Code).

¹²⁷ Begging is not explicitly mentioned in Article 106 of the Criminal Code, which defines human trafficking.

¹²⁸ Act C of 2012 on the Criminal Code.

¹²⁹ Section 193 on forced labour.

¹³⁰ Human Trafficking and Exploitation (Scotland) Act 2015.

¹³¹ The Local, *Sweden jails Bulgarian for begging rings*, 13 February 2016: <http://www.thelocal.se/20160213/swedish-court-jails-bulgarian-for-human-trafficking>;

decisions concerning Romanians being forced to sell newspapers in the street resulted in convictions of trafficking¹³². A major study regarding the exploitation of child begging was also coordinated by the NGO ECPAT¹³³ and Défense des Enfants, but no evidence was found¹³⁴.

In Austria, in 2015, within the framework of investigations aimed at identifying possible trafficking victims, the police identified approximately 1,500 Romanian nationals begging in Austria (especially door-to-door)¹³⁵. In Vienna, approximately 100 Romanian and 260 Bulgarian nationals were identified as being active in begging. They were there for several months (poverty begging) and used classic forms of begging (with a bowl, selling newspapers, etc.).

In 2014, 2015, and 2016¹³⁶, two cases concerning acts of trafficking for the purpose of exploitation of begging were tried in Vienna. One concerned three Romanian perpetrators (September 2014) including one man and two women, the victim being a man. The other case concerned Bulgarian perpetrators (three men and four male victims). Other investigations are still in progress.

¹³² <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2014:10096>.

¹³³ ECPAT is the acronym for End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes. Its mission is to combat any form of commercial sexual exploitation of children.

¹³⁴ DE WITTE and PEHLIVAN, *Vulnerability of Bulgarian and Romanian children to trafficking in the Netherlands and in Brussels*, Mario project, Budapest, December 2014: <https://www.kis.nl/publicatie/vulnerability-bulgarian-and-romanian-children-trafficking-netherlands-and-brussels>.

¹³⁵ However, it is not possible to say whether these people are completely dependent on begging to survive, or whether begging is used to commit offences or if they are exploited within the framework of begging.

¹³⁶ Figures from the justice's criminal investigation department.

The Austrian press widely publicised the case of September 2014, in which the three perpetrators were convicted for trafficking with the purpose of forced begging. They had brought a severely disabled man over from Romania: he had lost both legs and an arm in a serious accident. He was forced to beg, was constantly under surveillance and kept locked away, in dreadful conditions. The case was brought to light when the police discovered him sleeping in a car boot.

The press also mentioned the existence of an extensive begging network in Vienna. The gang had been under observation for several months. In total, 80 victims were identified, especially elderly people, some of whom had a disability, who had come directly from Romania. The victims had to earn EUR 80 a day, and if they did not, they were abused and subjected to violence. They lived in appalling conditions and also had to beg for hours during the coldest days of winter. The investigation led to the arrest of 16 gang members, both in Austria and Romania. The trial took place in Romania.

The German press¹³⁷ also reported on a case of forced begging concerning a Romanian national of Roma origin. It would appear that this type of exploitation even takes place in full view of the local authorities. This man was lured to Hamburg by a fellow citizen, with the promise of being able to work in Germany. In Hamburg, he had to beg to pay off his debts, which constantly increased because of the interest. This man was a victim of a network composed of one person and several members of his family who served as drivers and supervisors. He recruited the victims in his village. The victims were put under pressure because their leader (the exploiter) came from the same village and because they had to pay

¹³⁷ Der Spiegel, *Der Boss der Bettler*, 13/2014, pp. 53-56: <http://www.spiegel.de/spiegel/print/d-126149122.html>

him back debts they had incurred. The victims handed over their daily earnings to the leader at the end of the day. This allowed him to earn EUR 800 to 900 a day. If the victims did not do their work properly, the supervisors would use violence. The victims were afraid of their bosses.

The victims lived in a winter shelter set up by the city of Hamburg, in the municipalities on the outskirts of the city. Every day, the victims were taken to the centre by bus, paid for by the authorities. The authorities were therefore well aware of what was happening. Begging is not punished by law in Germany, unlike Romania. On the other hand, organised begging, which could be considered as human trafficking, is punishable.

Most of the time, the perpetrators are expelled and prosecuted in their country of origin. The public prosecutor's office in Hamburg has not intervened in a single case of forced begging for the past six years.

In Greece, the exploitation of forced begging is the second most significant form of trafficking. The majority of the victims are minors of Roma origin from Greece, Bulgaria,¹³⁸ and Romania. In the majority of cases, the trafficking takes place in a home environment¹³⁹. Sometimes, begging is

¹³⁸ Also see on this subject, K. DIMITROVA and Y. ALEXANDROVA, *Countering new forms of Roma children trafficking: participatory approach (CONFRONT)*, *Child trafficking among vulnerable groups, country report Bulgaria*, 2015, pp. 32-33.

¹³⁹ In this respect, a study showed that the growing involvement of parents and close relations in the extended family, rather than third parties, in the transportation of their children to Greece to beg there or sell small objects in the street, created ambivalence among the authorities. This ambivalence relates to the issue of knowing whether to consider these as acts of trafficking or whether a criminal law approach would be more appropriate. The fact that exploitation can take place within the family, even involving the parents, is very often not

associated with other forms of minor offences. In 2015, the Greek police investigated three cases of forced begging; nine victims were identified (including three minors); nine people were arrested and prosecuted for forced begging.

In Hungary, country of origin and transit for trafficking, this form of exploitation has a very high latency rate. Internal trafficking is a growing phenomenon. Sometimes, homeless people are used for forced begging. Seven criminal proceedings concerning cases of forced begging were however officially recorded under the term 'duress', with two investigations initiated in 2015.

In Croatia, according to the statistics, some cases of forced begging were listed as forced labour. One of these cases led to a conviction of five years in prison and the confiscation of HRK 600,000 (approximately EUR 80,000).

In Bulgaria, several cases of organised exploitation of begging were reported to the National Commission for Combating Trafficking in Human Beings. These cases were informally identified as cases of human trafficking. Most of the time, the acts involve adult male victims, who sometimes also have mental disabilities. In certain cases of sexual exploitation reported to the commission (these cases concern 70 % of cases), the victims were also exploited in other ways, including begging.

recognised or even investigated. The issue of knowing how the legal and social services can detect, assess and deal with intrafamily exploitation is extremely complex and is still a major challenge to be dealt with from the angle of the child's best interests. On this subject, see D. ANAGNOSTOU AND A. KANDYLA, *Countering new forms of Roma children trafficking: participatory approach (CONFRONT)*, *National report: Greece*, 2015, pp. 5, 9, 11-12, 31-32.

The Bulgarian National Agency for Child Protection dealt with 19 cases of trafficking for the purpose of begging in 2015, involving 12 boys and seven girls (all minors), recorded in Austria, Sweden, Greece, Spain and France¹⁴⁰. One local NGO also reported cases of internal trafficking for the purpose of begging.

4. Best practices and experiences

Investigations

Several respondents underlined the difficulty of combating trafficking for the purpose of forced begging. In the majority of cases, the perpetrators and the victims move around, making it very difficult to monitor and prosecute the phenomenon. This particularly concerns minors (Greece). Greece also emphasised that it was difficult to establish the existence of exploitation when members of the family are involved, especially where minors are concerned. Consequently, these types of cases are dealt with as cases of negligence. Austria emphasised that children exploited by their parents would not testify.

The links between begging and forced criminal activities also sometimes make it difficult to identify beggars as victims (Spain). Furthermore, the victims often do not see themselves as victims (Austria).

The importance of advisers and specialists conducting the investigations, and even the operational involvement of liaison officers from the victims' country of origin, have also been reported as best practices (Austria).

It is difficult to combat trafficking for the purpose of forced begging. In the majority of cases, the perpetrators and the victims move around, making it very difficult to monitor and prosecute the phenomenon.

As regards investigations, Sweden underlined that in cases that have resulted in convictions, the victims suffered from physical or mental disabilities. In this type of investigation, the same methods and techniques used to combat trafficking for the purpose of sexual exploitation should be employed (collecting information on the perpetrators, physical surveillance and camera surveillance, and phone tapping). When information has already been collected on the case, it is also easier for the victims to make statements. It is important for the police to learn to work behind the scenes.

In Croatia, the police are often present in the streets, which helped to identify the victims of trafficking for the purpose of forced begging. Furthermore, the ombudsman for minors took measures concerning child beggars. This included the publication of an information brochure.

Prevention, awareness-raising, and training

Many respondents emphasised the importance of improving awareness-raising and training at all levels.

The reason for this is to prevent beggars from being treated as criminals in countries where begging is illegal, such as Malta, if the police and the law are not sufficiently aware of this form of exploitation.

Campaigns incorporating forced begging have been conducted by organisations in Greece, thus increasing the public's awareness and the reporting of

¹⁴⁰ Concerning the profile of previously identified minors, see: K. DIMITROVA and Y. ALEXANDROVA, *op. cit.*, p. 65.

relevant cases to the authorities¹⁴¹. In particular, there have been campaigns targeting the prevention of child trafficking. One NGO works on the ground in Athens, Thessaloniki, and Patras, with an emphasis on unaccompanied minors and trafficking victims¹⁴².

Emphasis was placed on the importance of reinforcing efforts to increase awareness among the various stakeholders, including the media, around child begging, in order to prevent stereotypes concerning Roma communities¹⁴³.

In Austria, round tables were organised in certain towns, for the purpose of analysing the problem of migrant beggars and begging families. These round tables included political representatives from the municipalities, local authorities, NGO and social services suppliers, academics, and Roma organisations¹⁴⁴.

Several projects relate more specifically to child trafficking. For instance, France organises prevention actions in the countries of origin. In 2013, the Regional Technical Adviser led a prevention project concerning the trafficking of Roma children in Bulgaria, in partnership with the 'Children's rights' attaché for Romania, Bulgaria and Moldavia. One project in particular focused on the prevention of child begging in Romania and raising awareness about families selling children.

¹⁴¹ Educating and training not only the competent authorities but also teachers and students are equally part of the Greek anti-trafficking policy.

¹⁴² On this subject, see D. ANAGNOSTOU AND A. KANDYLA, *op. cit.*, p. 41.

¹⁴³ H. SAX, A. WINKLER, *Countering new forms of Roma child trafficking: participatory approach (CONFRONT)*, National Report: Austria, 2014, p. 17.

¹⁴⁴ See for instance Salzburg and Linz: Center for the study of Democracy, *Countering new forms of Roma children trafficking, participatory approach: Compendium of good practices*, CONFRONT, 2015, pp. 7-8.

Multidisciplinary approach

The importance of a multidisciplinary approach (Spain) was also emphasised, including the multidisciplinary training of public prosecutors, investigators, and police officers (Bulgaria¹⁴⁵) and cooperation with civil society (Spain, Czech Republic¹⁴⁶), as well as ground work (Czech Republic). Austria emphasised the importance of establishing information networks (security police, well-being of children and young people, interpreters, NGO, informers).

Social response to begging

In Sweden, there are some 5,000 beggars, 1,000 of which come from Bulgaria, the majority being of Roma origin. For this reason, the authorities must distinguish between those who beg out of necessity and organised groups who wish to profit from other people begging, thus making themselves guilty of human trafficking. An action program for the period 2016-2017 as well as a letter of intent to cooperate with the social policy sector, aiming to improve the living conditions of vulnerable groups, were signed between the Bulgarian Minister of Employment and the Swedish Minister for Children, the Elderly, and Gender Equality¹⁴⁷.

¹⁴⁵ Within this framework, all aspects of trafficking are dealt with, including concrete cases such as forced begging. A report previously revealed various shortcomings at all levels regarding the recognition of indicators of child trafficking for the purpose of begging. In particular, specific attention should be paid to the differentiation between begging as a survival strategy and the exploitation of families and children by third parties. On this subject, see K. DIMITROVA and Y. ALEXANDROVA, *op. cit.*, p. 69.

¹⁴⁶ The Czech Republic also underlined the importance of the collaboration between NGO specialised in supporting victims of trafficking and those specialised in helping the homeless.

¹⁴⁷ Nivinite.com, *Bulgaria agrees joint action to curb organised begging in Sweden*, 5 February 2016, <http://www.novinite.com/articles/172976/Bulgaria+Agrees+Joint+Action+to+Curb+Organised+Begging+in+Sweden>.

Measures concerning children

There are some measures that specifically concern children. For example, the Czech Republic developed detailed instructions to be implemented by the authorities regarding forced child begging. A guidebook was thus developed that detailed the procedures to be followed by all the authorities when they came into contact with a child (especially a migrant) who is begging. They must assume that the child is a victim of trafficking, unless proved otherwise¹⁴⁸.

Reception and support structure for migrant children living in poverty were set up in Austria¹⁴⁹. For example, the Caritas day-care centre in Linz also aims to teach children basic reading, writing, and mathematical skills. Parents drop off their children in the morning before going to beg and leave their contact details in case of an emergency.

A specialised crisis centre that receives unaccompanied minors was also established in the municipality of Vienna more than 10 years ago. Some of the children that came to the centre were child beggars from Romania and Bulgaria.

¹⁴⁸ See in particular on this subject, RACE, *Trafficking for forced criminal activities and begging in Europe, Exploratory study and good practices examples*, 2013, p. 52.

¹⁴⁹ For the details of the good practices implemented, see: Center for the Study of Democracy, *Countering new forms of Roma children trafficking, participatory approach (CONFRONT): Compendium of good practices*, 2015, pp. 7-13. Other good practices concerning the other participating countries also feature in it.

CHAPTER 5: CRIMINAL LAW APPROACH TO HUMAN TRAFFICKING FOR THE PURPOSE OF EXPLOITATION OF BEGGING

In this chapter, we shall focus specifically on the criminal law approach that targets the criminal networks involved in human trafficking for the purpose of begging. It is important not to create confusion with ordinary beggars, residing lawfully in Belgium, who have no criminal links and for whom a social policy may be implemented.

During interviews with judges, the police, specialised centres for the reception of human trafficking victims, support organisations for the Roma, and cultural mediators, several problems and dilemmas came to light: no clear picture of the phenomenon, difficulty in collecting sufficient evidence on a closed cultural community, insufficient means to carry out investigations, lack of interest among public prosecutors who show no readiness to initiate an investigation given the low chance of a conviction, the court's lack of knowledge about the cultural context of this vulnerable group. In its 2013 report on Belgium, GRETA (Council of Europe's group of experts) pointed the finger at Belgium for its policy failures regarding forced begging¹⁵⁰. In its national reports, GRETA comments on forced begging in 22 European countries¹⁵¹.

It is important not to create confusion with ordinary beggars, residing lawfully in Belgium, who have no criminal links and for whom a social policy may be implemented.

Following up cases of human trafficking for the purpose of exploitation of begging requires specific investigation techniques, such as surveillance and a financial investigation. Investigating judges are not very inclined to work on these types of cases, though their involvement is necessary to obtain a conviction. Cases involving perpetrators and victims of Roma origin are not popular with the police, because they often require complex investigations: large families with complicated names and genealogy, a multitude of addresses and house moves, a closed culture, etc. Obtaining sufficient clues is very difficult because material evidence in the case of exploitation of begging is often entirely lacking. In this form of exploitation, there is less reliance on modern means of communication or on money flows that are difficult to trace. Furthermore, assets are often placed abroad.

Some judges plead in favour of a more proactive approach in these investigations, because they believe that a traditional reactive investigation, based on victim statements, has little chance of succeeding. The victims, often of Roma origin, have little confidence in the police and refuse to make statements, make contradictory statements, or retract their statements under pressure. In many cases, the investigation is already doomed because the perpetrators were able to take the necessary measures and probably already removed any evidence. Groups of perpetrators such as these are also particularly mobile. Consequently, we often see victims being moved to another

¹⁵⁰Group of Experts on Action against Trafficking in Human Beings (GRETA), 2013, *Report concerning the implementation of the Council of Europe Convention on actions against trafficking in human beings by Belgium*, p.24. Available at: http://www.emnbelgium.be/sites/default/files/publications/greta_2013_14_fgr_bel_w_ith_comments_fr.pdf.

¹⁵¹ Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Spain, France, Luxembourg, Moldavia, Montenegro, Norway, Poland, Portugal, Romania, the United Kingdom, Serbia, Slovakia,

Slovenia, Sweden. The countries where forced begging is not yet recognised: Cyprus, Denmark, Georgia, Ireland, Latvia and Malta.

town, even abroad, after which they completely disappear from view.

For the time being, discussions are in progress to establish a circular stipulating the method of approach to human trafficking for the purpose of begging. In any case, it is a powerful social signal. A new circular of this type from the Board of Prosecutors General containing a procedure to follow and a model for police reports, could lead to a uniform approach and renewed interest in the phenomenon¹⁵². There must also be a fluid exchange of information between police departments, from local level to federal level, both on a national and international scale. But cooperation and an efficient information flow between the different public prosecutor's offices (youth court and ordinary, district and federal public prosecutor's offices) are also necessary.

A fruitful approach to human trafficking for the purpose of exploitation of begging must be based on the correct perception. According to some judges, when possible exploitation of begging has been observed, the victims cannot be directly intercepted. Instead they are monitored within the framework of an observation mission so that the exploiter can be identified when the earnings are handed over and their car registration plate identified, for instance. Subdivided into stages, this approach can be reduced to three key aspects: perception, opening the investigation and approach to it, and the court's sufficient contextual knowledge.

1. Perception

In order to be able to detect forms of exploitation, it is necessary to have the correct perception of begging. It is highly variable and can encompass different categories: street musicians, selling newspapers, washing windscreens, begging, petitions asking for a contribution etc.

Begging is not an offence, but when problems with an aggressive beggar are observed, police officers will file a police report or draw up an information report. This they will do so according to their own position and experience in the offence category. For example, for traffic police, it will be a traffic offence, while for other police departments, the same acts will be qualified as a nuisance or public disorder issue. Begging is sometimes registered as a municipal administrative sanction, street music, or an itinerant trade, and is given a different registration code every time. Consequently, it is often not recorded as begging, thus leading to a loss of valuable information. We are therefore faced with the problem of an incorrect and incomplete record. This problem produces a distorted image: the number of records is under-representative of the true situation. However, this data is crucial in order to establish the urban and international movements of the exploited beggars at a later date.

Exploitation of begging, mostly involving minors, also occurs as a mixed structure of exploitation associated with human trafficking, where the exploitation of begging is the only visible criminal activity. This is why some police officers, for example, use a police report to book aggressive beggars under begging/human trafficking, thus sending out a signal for other possible invisible criminal acts. Sometimes, these acts are not linked to the exploitation of beggars, or the police reports are not detailed enough and do not contain relevant data. Therefore, we are also faced with police reports on human

¹⁵² C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

trafficking and begging that cannot be used later on within the framework of an investigation on human trafficking and begging.

This leads to the conclusion that, in terms of detection, there is a problem regarding the records made by the police¹⁵³. It is crucial to harmonise the reporting of acts linked to begging. Therefore, providing the police with instructions and raising awareness are essential. Giving possible scenarios and common threads (questions) per situation could be useful in this respect. In this case, it would be necessary to create uniformity for the purpose of better communication and perception (in statistical terms).

Police reports must be as complete as possible and at least include all useful elements in order to be able to determine whether or not the acts fall under the scope of human trafficking with the purpose of exploitation of begging. Knowledge of the phenomenon is necessary, but also the ways in which groups of perpetrators abuse cultural customs to place victims in a position of dependence and thus easily exploit them. Precise findings must be noted in police reports on the basis of formally agreed indicators, established in a circular. An important factor, in this respect, will be the presence and role of minors. Transfers of the money collected are also a key factor in determining whether or not it is a question of human trafficking.

It must be possible to centralise and consult all this data in a national database. Entering the data consistently in the National

General Database(ANG)¹⁵⁴ is therefore crucial. Sharing information is a vital basic principle when examining acts linked to the exploitation of begging. This is a target group with great flexibility and mobility. The victims' movements in towns could therefore be identified. Furthermore, by finding parallels with other police reports, it may be easier to detect whether other acts can be linked to the exploitation of begging and if, for instance, a group of perpetrators active in forced crime appears.

2. Opening the investigation and the approach

It is useful to know that when an investigation opens, the judge always carries out a cost-benefit analysis for the purpose of obtaining a conviction. Resources are limited and must be used as efficiently as possible, especially when there is a terrorist threat. In addition, as we have already indicated, it is difficult to obtain objective evidence in this type of case. The judge therefore works in a social context, where it is necessary to take into account the fact that justice is intrinsically linked to efficiency: everything must go quickly and give results. An important element, which is relevant on a social level in order to take the decision to initiate an investigation, is the presence of minors. In its European study on child begging relating to 15 European countries, financed by the European Commission, the International Centre for Migration Policy Development (ICMPD) refers to clear indicators showing the presence of human trafficking¹⁵⁵.

Knowledge of the phenomenon is necessary, but also the way in which groups of perpetrators abuse cultural customs to place victims in a position of dependence and thus easily exploit them.

¹⁵³The International Labour Organization notes that forced begging is not properly recorded and that this is an international problem: ILO 2012 Global Estimate of Forced Labour Regional Factsheet European Union.

¹⁵⁴ See Part 4 (figures): police statistics.

¹⁵⁵ ICMPD, *Report for the Study on Typology and Policy Responses to Child Begging in the EU*, December 2012.

Observations

When opening an investigation, the judge first orders the police to observe the (alleged) victims of begging. Surveillance photos are a determining factor for the court in terms of material evidence. Cases reveal¹⁵⁶ that it is possible to shed light on the perpetrators' working methods through observations. Surveillance can help establish whether the suspects have been active in a systematic and organised manner for a relatively long period, but can also establish the possible involvement of minors, how the victims move around and their discreet method of control, how money transfers are organised, where they are housed (at the suspects' home) and the type of accommodation. The place of residence or car registration plate also helps to identify all the parties involved. Surveillance can also possibly help to discover other associated criminal acts. All elements that can, for instance, lead to the detection of a group of perpetrators involved in forced criminal activities.

Financial investigation (and phone investigation)

Following the identification of the parties concerned, a financial investigation can be initiated. If necessary, a phone investigation can be initiated in order to identify the exploiters in question. A designated investigating judge can also order a phone investigation.

The financial investigation is essential proof in the investigation. An important factor that helps to determine whether human trafficking for the purpose of exploitation of begging is concerned, is the moment when the victims of begging have to hand over their earnings (up to the last cent) to a third party. During surveillance conducted within

the framework of an investigation, the police were subsequently able to discover that the beggars gave their earnings to a third party, hidden in a cigarette packet¹⁵⁷.

The perpetrators send the money to their family in the country of origin and use cash smugglers or well-known money transfer agencies. If the police have a warrant from an investigating judge, they can question money transfer agencies regarding money transfers made by the concerned parties to other countries. This approach helps to demonstrate that inexplicably high sums of money are sometimes sent to the family, even though the perpetrators have no legal income in Belgium. In the above-mentioned case, the defendants had sent almost EUR 40,000 to their family in Romania, even though they did not have any official income in Belgium.

The financial investigation must also determine the damages suffered by the victims. This way, if they institute civil proceedings, they may be able to obtain compensation. This type of investigation into criminal assets can also be used by the court as serious burden of proof. The importance of seizures and requests for international letters rogatory regarding an investigation into assets, must also be highlighted to allow effective confiscations later on.

International movements

The international movements of perpetrators and victims may conceal important data concerning the group of perpetrators and their modus operandi. They can provide information on the international movements of victims of begging by the exploiters and give an idea of their international scope, indicating that it is not only a purely local phenomenon but that there are ramifications in other countries. When the victims of begging

¹⁵⁶ See in this part, Chapter 3, the phenomenon in Belgium. Example of a case of exploitation of disabled beggars in Brussels.

¹⁵⁷ *Ibidem*.

travel with the exploiters, this means that the victims are under their control.

In a case in Brussels, the police, who had a warrant from an investigating judge, questioned low-cost Romanian travel agencies and airlines at Zaventem airport. After analysing the results, the investigators were able to conclude with certainty that victim X had travelled at least once in the company of the defendant's family. Considering the movements of some of the victims, the begging did not only take place in Brussels, but also in other European towns and cities, such as Rome, Coni (Italy), and London¹⁵⁸.

Searches

While searching the exploiters' and victims' homes, great attention must be paid to potential acts of identity theft and slum landlord situations. Victims can find themselves dependent on their exploiters due to identity theft. The police's findings, which revealed that the victims lived in dreadful living conditions, are an important indicator of human trafficking.

The suspected exploiters are arrested and heard. During their hearing, the suspects must be confronted with the criminal earnings they have transferred abroad and their official financial status as having no income. During the searches of the suspects' home, any criminal earnings and goods concerned must be seized so that the victims can be compensated in case of a later court decision to confiscate and compensate.

Victims

Arresting the suspected exploiters allays the fear of the victims of begging or helps to break down their dependency on the

exploiters. It is therefore crucial to win their trust and not to proceed with their hearing until their exploiters have been arrested. The victims must be heard on the basis of the circular's criteria in order to guarantee uniformity.

The beggars must be considered by the police and judges as victims and not as people causing a significant nuisance by begging. They must be put in contact with a member of staff from a specialised centre for victims of human trafficking. This person is the best placed to win their trust, offer them the status of victim of human trafficking, and draw their attention to its importance.

When the offences are found to be forced, the perpetrators of the offences must be considered as victims. Their statements can be a determining factor for the rest of the investigation, allowing key people in the network, or criminal organisation, as the case may be, to be pointed out and identified. As already mentioned, the exploitation of begging is often the only visible criminal activity in cases involving several offences. In this case, the victims' statements can be crucial for the investigation. An audiovisual recording should be made of a minor's hearing and it must be organised in compliance with the indicators in the new circular.

The beggars must be considered by the police and judges as victims and not as people whose begging causes a significant nuisance. exploit them.

¹⁵⁸ *Ibidem.*

A European study conducted by RACE organisations (Anti-Slavery International, ECPAT, La Strada, etc.), financed by the European Commission, concerning forced criminal activities and the exploitation of begging, showed that in European countries, these victims were generally considered as perpetrators¹⁵⁹. And yet, according to this report, it is a major form of exploitation within the framework of human trafficking in different EU countries.

According to the findings and identifications, victims who are unaccompanied foreign minors must be redirected (through the guardianship service) to the specialised centres for unaccompanied minors that work with the specialised centres dealing with the reception of victims of human trafficking.

International cooperation

International points of contact do exist in the home countries of many of the victims exploited through begging and the perpetrators. Cooperation agreements have also been concluded with Romania, Bulgaria, Moldavia, Albania, Russia, and Serbia.

Thanks to the creation of Joint Investigation Teams (JIT)¹⁶⁰ with the countries of origin, it is possible to conduct a campaign against criminal networks on an international scale. This is certainly the case regarding criminal organisations involved in forced criminal

activities. Joint investigation teams have already been set up by the authorities in Romania, the United Kingdom, and Austria in the past. Not only were these teams able to dismantle various networks, but evidence also showed that these were indeed criminal networks that were exploiting children¹⁶¹.

3. Court

Courts do not always have sufficient knowledge of the phenomenon or the cultural contexts through which the victims of begging fall into a relationship of dependency with their exploiters. We can draw a comparison with Nigerian networks, which exploit voodoo rituals to push their Nigerian victims into a relationship of dependency so that they are completely under their control. The public prosecutor's office dealt with these cases by asking the police to establish a police report on the role of customs and their misuse. Therefore, in begging cases involving Roma victims, it would be useful to also establish a police report on the cultural contexts and abuse of Roma victims. This also explains the victims' mistrust of the police and their mistaken loyalty towards their exploiters.

In their defence speech, the defendants' lawyers sometimes play the card of family ties and the loyalty of the Roma community and point out that the victims are also members of the defendants' family. This is why the investigation into defendants' family ties and genealogy is also a crucial argument of persuasion for the court. In the previous case in Brussels¹⁶², the defence speech of the defendants' lawyer was

The investigation into defendants' family ties and genealogy is a crucial argument of persuasion for the court.

¹⁵⁹ RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013.

¹⁶⁰ For more information on the JIT, see Part 3, Chapter 3 (Best practices and experiences); RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013.

¹⁶¹ C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

¹⁶² See in this part, Chapter 3, the phenomenon in Belgium. Example of a case of exploitation of disabled beggars in Brussels.

demolished when the victims' hearings revealed that they were unknown to the defendants' family. They were met and recruited at Brussels-North railway station and did not even know the defendants' names.

In cases of begging associated with forced criminal activities, the court must apply the non-punishment clause¹⁶³ and recognise the people forced to commit thefts as victims of human trafficking.

Method of approach

1. Level of detection: perception
 - a) Recording
 - b) Detailed police report: distinction between exploitation and human trafficking
 - c) National police database: indications of other criminal acts
 - d) Sharing information on national movements of victims
2. Opening the investigation and the approach
 - a) Opportunity assessment by the judge: obligation to achieve a result/resource management
 - b) Surveillance: indications of other forms of exploitation
 - c) Financial investigation: international money transfers
 - d) Monitoring phone records
 - e) Questioning low-cost travel agencies: international movements
 - f) Searches and slum landlords
 - g) Victim statements
 - h) Victims of forced criminal activities and minors must be heeded
 - i) International cooperation
3. Court
 - a) Police report on the context (and perception) of a group of vulnerable victims and how their relationship of dependence with the exploiters is facilitated
 - b) Forced criminal activities and the principle of non-punishment must be heeded

Myria's main recommendations concerning human trafficking for the purpose of exploitation of begging are mentioned in Part 5, further on in this report.

¹⁶³ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 9-35; RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013; OSCE Resource Police Training Guide: *Trafficking in Human Beings*, TNTD/SPMU Publication Series Vol. 12, 2013; ERRC, *Breaking the Silence*, A Report by the European Roma Rights Centre and People in Need, 2011.

External contribution: Breaking the silence: Trafficking in Romani communities

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Introduction¹⁶⁴

Roma constitute the single largest ethnic minority group in Europe.¹⁶⁵ There is a dearth of official statistical data disaggregated by ethnicity in Europe, and wide disparities exist between official and unofficial data on the numbers of Roma. The European Commission contends that there are around 12,000,000 Roma living in the European Union.¹⁶⁶ Although the Roma are often described as leading a nomadic way of life, 95% of European Roma is sedentary.¹⁶⁷ Their level of poverty and social exclusion remains high across Europe that renders Roma being more vulnerable to different forms of racism and discrimination.

Trafficking in human beings, a serious crime and a gross violation of human rights, affects especially socially and economically excluded people globally, such as Roma in Europe.

Although it is difficult to gather reliable statistics on the occurrence of trafficking in human beings in general due to its latency, and this is especially true with regard to ethnic minorities such as Roma due to the absence of data disaggregated by ethnicity, according to the European Commission the estimated number of people trafficked to or within the European Union amounts to several hundred thousand a year.

Despite the lack of concrete official data about trafficking and exploitation akin to trafficking of Roma, the European Roma Rights Centre's (ERRC) research documented widespread perceptions that Roma are affected by trafficking in human beings and that Roma are significantly overrepresented among trafficked persons in some countries.¹⁶⁸ The findings also indicate a lack of targeted action by State authorities to tackle this issue.

Roma as victims of trafficking

Roma are often stereotyped and portrayed as criminals in today's societies and they are often reported as traffickers in the media. The issue has become politicised. For example, former French President Nicolas Sarkozy in his statement in July 2010 linked

¹⁶⁴ This article is legally based on the research conducted by the European Roma Rights Centre: *Breaking the silence: trafficking in Romani Communities* (2011); available at: <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>.

¹⁶⁵ The term "Roma" refers to a variety of groups of people who describe themselves as Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti, as well as other titles. See: The European Union and Roma, available at: <http://ec.europa.eu/social/main.jsp?catId=518&langId=en>.

¹⁶⁶ See: <http://ec.europa.eu/social/main.jsp?catId=518&langId=en>.

¹⁶⁷ <http://www.womenlobby.org/spip.php?article1174>.

¹⁶⁸ In the study and in this article, over-representation refers to the fact that the number of Roma affected by trafficking is larger than their share of the general population, either officially or unofficially.

Roma to trafficking.¹⁶⁹ The image of Roma as victims of trafficking for forced begging has also been recorded, for example, in the European Commission's 2016 report on human trafficking in the EU,¹⁷⁰ based on reports from Member States. This can create difficulties for the vast majority of Roma who have exercised their free movement rights within the EU and who of course not been trafficked.

At the same time, in relation to that minority of Roma who are victims of trafficking, little or no attention has been paid to their vulnerability to trafficking due to their social and economic exclusion. This is the case despite the introduction in 2011 of an EU Directive on Combating Trafficking (Directive 2011/36). In particular, the Directive introduced the notion into international anti-trafficking law a definition of the notion of a "position of vulnerability", the abuse of which can be a constitutive element of human trafficking. Little has been done, however, to understand how discrimination against Roma may leave them in such a position.

In order to raise awareness on the issue of trafficking in Romani communities but to avoid politicisation and stereotyping, the ERRC conducted a multi-country research in five European countries (Bulgaria, the Czech Republic, Hungary, Romania and Slovakia)

¹⁶⁹ "Communiqué faisant suite à la réunion ministérielle de ce jour sur la situation des gens du voyage et des Roms," 28 July 2010, available at: <http://www.elysee.fr/president/les-actualites/communiqués-de-presse/2010/juillet/communiqué-faisant-suite-a-la-reunion.9381.html>.

¹⁷⁰ Report on the progress made in the fight against trafficking in human beings (2016), COM(2016) 267 final, 19 May 2016, page 7, available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf.

to explore the phenomenon and the impact of trafficking on Romani communities.

The ERRC research had its own limitations since due to its illegal nature, trafficking in human beings is an extremely difficult phenomenon to quantify in general. Most of the cases go to latency, therefore the real number of cases and victims can go much higher than the actual estimates. Data disaggregated by ethnicity is not gathered with respect to trafficked persons in most of the European countries, including those where the ERRC conducted its research. Therefore throughout the countries of the study, anti-trafficking service providers, police and Government officials were asked to estimate the proportion of Roma among trafficked persons based on their experiences and perceptions. The source of the interviewees' perceptions was self-identification or informal assessments based on living conditions or location, colour of skin, etc. Although it was not explicitly stated by any interviewee, widespread public prejudice concerning the involvement of Roma in criminal activities may have influenced the answers of some interviewees. A number of interviewees refrained from providing estimates.

However, in all five countries where the research was performed, respondents perceived that trafficking was an issue that affected Roma. Furthermore, several respondents considered Roma to be significantly over-represented among trafficked persons: the estimates provided for the perceived representation of Roma among trafficked persons are several times higher than the proportion of Roma in the general population. While Roma constitute between 3% and 10% of the population of the target countries, research in 2010 for the study indicated that Roma represent 50-80% of victims in Bulgaria, up to 70% in

parts of the Czech Republic, at least 40% in Hungary¹⁷¹, around 50% in Romania¹⁷² and at least 70% in Slovakia.

Sexual exploitation, domestic servitude and labour exploitation, begging and trafficking for illegal adoption were the most common purposes for trafficking that were identified during the research. In Bulgaria for example according to various police officials interviewed in Bulgaria, Roma constitute over 80% of persons trafficked for sexual exploitation.¹⁷³ In contrast, according to some NGOs the proportion of Roma among persons trafficked for the same purpose is 50%¹⁷⁴. At the same time Roma constitute only approximately 10% of the total Bulgarian population.¹⁷⁵

Since 2005 Roma have received an increasing amount of attention from international anti-trafficking actors. For example in the US Department of State Trafficking in Persons (TIP) reports in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia in the last 10 years (up to the latest 2015 reports), Roma are referenced as victims of trafficking, and the reports highlighted the vulnerability of especially Romani women and children to different forms of trafficking, including

sexual exploitation, begging, petty crimes, and forced labour.¹⁷⁶

Vulnerability Factors leading Roma to become victims of trafficking

Trafficking can affect anybody regardless of ethnicity, social status or country of origin. However, there are a number of push factors that make individuals more vulnerable to trafficking.

The ERRC research on trafficking did not establish any significant differences between generally known vulnerability factors and the vulnerability factors present in Romani communities. Interviews conducted with a broad range of respondents and consultation with Romani and anti-trafficking organisations also refute the widely-held perception that trafficking is a cultural practice of Roma.

Poverty and social exclusion, limited or lack of education, illiteracy, growing up in state care; being indebted to usurers and family environments in which violence and/or drug abuse were present are all vulnerability factors that were identified during the research and are not “Roma specific” factors. Gender and ethnic discrimination were also found to be important vulnerability factors. Additionally, another important factor contributing to vulnerability to trafficking was previous involvement in prostitution/sex work.

Field research found that, in most cases, desperation in the household and/or the country of origin compels people to migrate and take great risks: for example, trusting unknown people and agreeing to travel with them for work without a contract. In these situations, people may fall into trafficking.

¹⁷¹ Estimates ranged up to 80% in Hungary.

¹⁷² As concerns forced labour. Roma were perceived to be less represented among persons trafficked for sexual exploitation.

¹⁷³ Interview with a police officer from the Combating Organised Crime Directorate, Regional Department of the Ministry of Interior. Northeast Bulgaria: 23 March 2010. Interview with a police officer of the Border Police Department. Central Bulgaria: 19 March 2010.

¹⁷⁴ Interviews with a representative of the Animus Association Foundation. Sofia, Bulgaria: 9 March 2010. Interview with a psychologist at the Crime Prevention Fund. Pazardžik, Bulgaria: 16 March 2010.

¹⁷⁵ Claude Cahn and Professor Elspeth Guild, *Recent Migration of Roma in Europe*, (OSCE/CoE, December 2008), available at: http://www.osce.org/documents/hcnm/2008/12/37164_en.pdf

¹⁷⁶ See for example the report for Hungary: <http://www.state.gov/documents/organization/243559.pdf>

Push factors are often particularly acute in the case of Roma. Indeed, there is a striking overlap of the most significant factors that contribute to human trafficking and those that contribute to the marginalisation of Roma in general. These are social and economic exclusion and furthermore, throughout Central and Eastern Europe, Roma are often the target of discrimination. Vulnerability factors are significantly worsened in the case of Roma due to the failure of national social systems to reduce and eliminate the vulnerable situation in Romani communities and barriers preventing Roma from accessing public services such as schools, health services, employment services and other social services. The essence of successful anti-trafficking initiatives is to provide a safety net for people vulnerable to trafficking, to reduce their chances of falling into risky situations that may lead to trafficking (such as usury) and re-trafficking. The provision of effective social work to combat trafficking in Romani communities is essential given the high levels of poverty and unemployment in these communities. However, various studies on the effectiveness of social work in Romani communities are worrisome.

Despite the limited involvement of Romani civil society on anti-trafficking activities, Roma NGOs have been actively engaged in general measures to improve the living standards of Romani people, such as educational support, school desegregation activities, etc. However, although improving the overall living situation of Roma is likely to lead to a decrease in vulnerability to trafficking, there is a risk that the lack of focus on trafficking may leave the key vulnerability factors unaddressed.

Ethnic discrimination and gender discrimination

Apart from social and economic exclusion, discrimination against Roma creates a vulnerability factor in the field of human trafficking on several levels. Discrimination against Roma, Romani women, Romani children and poor or rural people limits their employment, educational and economic opportunities, rendering them more vulnerable to traffickers as they seek better opportunities.

Due to the feminisation of poverty, the lower status of women in patriarchal societies and various forms of gender discrimination, women constitute a large proportion of trafficked persons worldwide, particularly for the purpose of sexual exploitation. According to the United Nations, 79% of trafficked persons worldwide are trafficked for sexual exploitation; 66% of trafficked persons are women, and an additional 13% are girls.¹⁷⁷ Field research for the ERRC study showed that this pattern is mirrored among Roma. Of the 37 trafficked persons interviewed during the ERRC research 23 were female and 14 male. 17 of the 23 female respondents had been trafficked for sexual exploitation. Romani women are often the target of multiple forms of discrimination in a wide range of fields which further deepens their vulnerability to trafficking.¹⁷⁸ Statistical data by the Fundamental Rights Agency reveals that in the five countries of

¹⁷⁷ United Nations Office on Drugs and Crime (UNODC), *Global Report on Trafficking in Persons* (2009), pp. 49-50, available at: http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

¹⁷⁸ European Roma Rights Centre, Written Comments For Consideration by the United Nations Committee on the Elimination of Discrimination. Serbia: <http://www.errc.org/cms/upload/media/03/7C/m0000037C.pdf>. Hungary: <http://www.errc.org/cms/upload/media/03/7A/m0000037A.pdf>.

the research, Romani women have less access to employment or self-employment compared to Romani men while they are over-represented among homemakers and in unpaid work as compared to Romani men.¹⁷⁹

The vulnerability of Romani children

The ERRC study revealed that Romani children are especially vulnerable to trafficking. Several of the most important factors that increase the vulnerability of children to trafficking include being subjected to domestic violence, placement into State care or dropping out of school.

Although many of the Romani trafficked persons interviewed for the study provided vague information about the age at which they were trafficked or entered the exploitative situation that led to trafficking, seven out of the 37 were clearly minors at the time they were trafficked. Their ages ranged between 15 and 17 years old and all were subjected to commercial sexual exploitation with the exception of one that was subjected to non-commercial sexual exploitation and domestic servitude. The overwhelming majority of respondents were just over the age of 18 or in their early 20's.

Conclusion

Although official data does not exist as to the real number of Roma victims of trafficking, Roma are highly vulnerable to become victims of trafficking due to their social and economic exclusion and the widespread discrimination. Gender discrimination renders Romani women even more vulnerable: of the trafficked persons

interviewed during the ERRC research, Romani women were the most represented regardless of the purpose of trafficking: the exception was trafficking for labour exploitation. Romani children were also reported to be particularly vulnerable to trafficking, and 20% of the trafficked persons interviewed for the study were minors at the time they were trafficked. Despite these estimates suggesting the overrepresentation of Roma as victims of trafficking, none of these countries collect data on the ethnicity of perpetrators or victims of trafficking. This has a clear negative impact on the effectiveness on anti-trafficking efforts and policy development.

There are a number of factors that make individuals more vulnerable to trafficking, many of which can be attributed to the general failure of national social welfare systems. The ERRC research did not establish any significant differences between generally known vulnerability factors and the vulnerability factors present in Romani communities; there is no unique "Roma vulnerability factor," and no indication that trafficking is a "cultural practice" of Roma. The impact of widespread negative prejudice and discrimination against Roma, poverty and social exclusion (including lack of employment and usury), ethnic and gender discrimination, lack of education, growing up in State care, domestic violence and substance abuse are the main factors that increase the vulnerability of Roma to fall victims of trafficking.

¹⁷⁹ European Union Agency of Fundamental Rights. *European Union Minorities and Discrimination Survey: Main Report* (2009), available at: http://fra.europa.eu/fraWebsite/attachments/eumidis_mainreport_conference-edition_en.pdf.

External contribution: Experiences of exploitation for forced begging in Belgium and Romania

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In January 2016, Europol reported that 10,000 unaccompanied foreign minors have gone missing and may be at increased risk of being trafficked for the purposes of sexual exploitation and labour exploitation.¹⁸⁰ Increasingly concerns have been raised regarding the exploitation of children; in particular, human trafficking for forced criminality and human trafficking for forced begging.¹⁸¹ The latter, human trafficking for forced begging constitutes 1.5% of globally trafficked persons,¹⁸² and is the most cited when determining the number of persons trafficked for “other purposes.”¹⁸³ From a legal perspective, there are varying approaches to the inclusion of forced begging as an explicit form of exploitation and a number of legal principles to contend with, including the non-prosecution of victims of human trafficking. From a sociological point of view, forced begging is the social process describing trafficking in general, involving different actors, stages, roles and norms, governed by the same economical incentive “low risk-high profit”.

Human trafficking is generated and supported by a plethora of factors, including social exclusion, poverty, discrimination and

lack of alternatives, which are particularly cited when it comes to forced begging. In addition to the vulnerability of children, Roma adults and children and adults with a physical disability are also particularly vulnerable to forced begging because they are perceived as capable of earning more money.¹⁸⁴ Older people and people with a mental disability are also at risk to forced begging due to their limited capacity to react to the threats¹⁸⁵ and abuses of the traffickers, perceived by the traffickers as “tools”, easy to be manipulated.

In Europe, human trafficking for forced begging is an increasing trend.¹⁸⁶ Clear barriers exist to interrupting this form of exploitation, primarily based upon the domestic legal approach to begging. For instance, from the perspective of the trafficker the non-criminalisation of begging, in the absence of force, reduces the risk of apprehension. Similarly, law enforcement agencies will need to adapt victim identification methods in light of a

¹⁸⁰ <http://www.theguardian.com/world/2016/jan/30/fears-for-missing-child-refugees> [accessed 8 February 2016];

¹⁸¹ http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/child_trafficking_for_exploitation_in_forced_criminal_activities.pdf [accessed 8 February 2016].

¹⁸² Global Report on Trafficking in Persons (2014), p. 62, https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf [accessed 23 March 2016].

¹⁸³ *Ibid.*, p. 37.

¹⁸⁴ European Roma Rights Centre and People in Need, “Breaking The Silence. Trafficking in Romani Communities”, p. 71, <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf> [accessed 23 March 2016].

¹⁸⁵ National Agency against Trafficking in Persons, (2013) Trafficking in persons for begging-Romania study, pp 31-33, available at: http://www.anitp.mai.gov.ro/ro/docs/Proiecte/PIP/Studiu_cersetorie_PIP_engleza_B5_17.12.2013.pdf [accessed 23 March 2016].

¹⁸⁶ Vassiliadou, M., ‘Current trends and policies in trafficking in human beings in the European Union’ *Migration Policy Practice*, Vol II, Number 3, June-July 2012, p.4, http://publications.iom.int/system/files/pdf/migrationpolicypracticejournal_10july2012.pdf [accessed 23 March 2016].

domestic legal framework that does not criminalise begging. Furthermore, when it comes to forced begging of children, traffickers consider this particular form of trafficking to be high-profit and low-risk as children below the age of criminal responsibility cannot be prosecuted (18 years old in Belgium and 14 in Romania¹⁸⁷).

Research in Romania: The majority of victims (81%) were trafficked outside of the country. There is also often a higher living standard outside of Romania which increases profits and finally, because of the newness of this type of trafficking, authorities are unaware and have not yet developed strategies to combat it.¹⁸⁸

This contribution will consider human trafficking for forced begging, by considering the legal approaches in two EU Member States, Belgium (a country of destination) and Romania (a country of destination and country of origin), bearing in mind the observed criminal trends in terms of victims' profile and exploitation.

1. Legal approach to human trafficking for forced begging

Internationally, the Palermo Protocol does not include forced begging in the enumeration of types of exploitation under the definition of trafficking in human beings. A similar approach is adopted by the Council of Europe Convention on Action against Trafficking in Human Beings (2000), which mirrors the Palermo Protocol and does not explicitly include forced begging as a type of exploitation. However, both instruments

stress that the types of exploitation are not exhaustive and constitute "a minimum." It has been recognised that the definition has been expanded to include forms not included in original definition, including forced begging.

This broader approach was adopted in the EU Human Trafficking Directive 2011/36/EU, which extends the enumerated forms of exploitation to begging and the exploitation of criminal activities.¹⁸⁹ The Directive's Preamble states that forced begging should be understood as a form of forced labour or services as a form of forced labour or services as defined in the 1930 ILO Forced Labour Convention. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur.¹⁹⁰ However, it is important to note that a child can be a victim of trafficking even in cases where no means of force or coercion have been used against the child.¹⁹¹

When considering the best approach to dealing with human trafficking for forced begging, it is important to take into account the difficulty in practically distinguishing between exploitation of voluntary begging and trafficking in persons with the purpose of exploitation through forced begging, as the situations are somewhat similar. This difficulty could impact upon the ability to make a proper identification of, and

¹⁸⁷ According to the Romanian Criminal Code the minor's legal responsibility starts at 14 years old, but it is taking into consideration the free consent to the crime till the age of 18.

¹⁸⁸ Swiss-Romanian Cooperation Programme, Trafficking in persons for begging – Romania study, 2013, p. 15 & p. 62, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_persons_for_begging_-_romania_study_0.pdf [accessed 23 March 2016].

¹⁸⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Article 1(3).

¹⁹⁰ Ibid., Preamble, para. 11.

¹⁹¹ Ibid., Article 2(5); Council of the Baltic Sea States (CBSS), 2013, Children trafficked for exploitation in begging and criminality: A challenge for law enforcement and child protection, p.13-14, p. 16, http://www.childcentre.info/public/Childtrafficking_begging_crime.pdf [accessed 23 March 2016]

assistance to, the victims of trafficking.¹⁹² In particular, despite the distinction between forced begging and criminal activities, it is important to note that some victims of forced begging are often exploited for criminal activities such as petty theft, shoplifting, pickpocketing, as well as in some instances forced prostitution.¹⁹³

This latter point must be taken into account when developing anti-trafficking safeguards, including the non-prosecution of victims of human trafficking.¹⁹⁴ The close connection between forced begging and other criminal activities means that Member States must tackle exploitation for begging from a human rights approach so as to distinguish victims from criminals.¹⁹⁵ Research conducted by Anti-Slavery International noted 'that victims are not being identified as such and are instead being treated as criminals, this discrepancy was noted, not only in instances of human trafficking for forced begging, but also for trafficking for

forced criminal activities.¹⁹⁶

The full implementation of this principle at national level is of great importance, as it is recognised that secondary victimisation not only breaches rights as victims of a crime, but also denies victims of their rights to support and assistance.¹⁹⁷ Furthermore, the non-recognition of such coercion not only facilitates the low risk and high profit paradigm, but also means that trafficked persons are less likely to cooperate with law enforcement, hampering effective prosecution.¹⁹⁸

2. Forced begging in Belgium

In Belgium, begging was decriminalised in the Law of 12 January 1993, abolishing the Law of 27 November 1891 which criminalised vagrancy and begging.¹⁹⁹ Begging in public places including with children is no longer punishable.²⁰⁰ Trafficking in human beings for the purpose of exploitation of forced begging is criminalised, as detailed in Article 433 quinquies, paragraph 1, of the Criminal Code, which was amended by the Law of 29 April 2013.²⁰¹

In the past, Belgium authorities has been criticised for not adequately dealing with trafficking for the purpose of exploitation of begging, and in particular, with regard to

¹⁹² Kirchofer.C.P., (2010). Organized Begging in Vienna: Austria, Right-Wing Propaganda, Benevolent Necessity, Illicit Business, Human Smuggling or Human Trafficking. Vienna: Webster University. Cited in Swiss-Romanian Cooperation Programme, Trafficking in persons for begging – Romania study, 2013, p. 12, https://ec.europa.eu/anti-trafficking/publications/trafficking-persons-begging-%E2%80%93-romania-study-0_en [accessed 23 March 2016].

¹⁹³ Ibid., p. 54.

¹⁹⁴ Article 26, Council of Europe Convention on Action against Trafficking in Human Beings, 2000; Article 8, EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

¹⁹⁵ Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings (2013) Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking' <http://www.osce.org/secretariat/101002?download=true> [accessed 23 March 2016]; Swiss-Romanian Cooperation Programme, Trafficking in persons for begging – Romania study, 2013, p. 7, https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/trafficking_in_persons_for_begging_-_romania_study_0.pdf [accessed 8 February 2016].

¹⁹⁶ Anti-slavery International, Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples, 2014, p.5.

¹⁹⁷ Ibid., p.76.

¹⁹⁸ Ibid.

¹⁹⁹ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1993011234&table_name=loi

²⁰⁰ Brussels Court of Appeal, (14e chambre) du 26 mai 2010; Question écrite n° 5-7147 de André du Bus de Warnaffe (cdH) du 9 octobre 2012 à la ministre de la Justice, http://senate.be/www/?Mlval=index_senate&LANG=fr.

²⁰¹ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2013042915

minors.²⁰²

The low identification of child victims has been attributed to specific structural issues, including the lack of capacity for receiving unaccompanied minors and inappropriate accommodation facilities leading to an increased risk of children absconding and falling into the hands of traffickers.²⁰³ Whilst acknowledging that unaccompanied minors children can go missing for reasons not connected to human trafficking, it is important to note that i) a quarter of unaccompanied children disappear within the first 48 hours²⁰⁴ and ii) a high proportion of child victims of trafficking who subsequently go missing from the accommodation in which they have been placed.²⁰⁵ Despite this high-risk of flight, Belgium has a fixed 'no action' period before the start of local police investigations for missing unaccompanied migrant minors, who may or may not have fallen into the hands of traffickers.²⁰⁶ Furthermore, the disappearance of an unaccompanied migrant minor from the "observation and research centre" is only reported to the police when it is considered alarming.²⁰⁷

The National Action Plan 2015-2018 recognises that despite the criminalisation of human trafficking for the purposes of forced begging, it is necessary to take further action to ensure that this form of exploitation is tackled. As such, a new Directive on the investigation and prosecution of human trafficking for forced begging will be adopted in 2016.²⁰⁸ It will be important that the Directive recognises the need to protect victims of forced begging by focusing upon non-punishment and ensuring that social support is provided to the individuals whose vulnerability has been increased by lack of access to social protection.²⁰⁹ The need to prioritise awareness raising and training of professionals involved in children protection will assist in the improved detection and identification of child victims.²¹⁰

Despite the focus the exploitation of minors for forced begging, the majority of children begging in Belgium are accompanied by their parents or extended family members, from central and eastern Europe with a

²⁰² GRETA(2013)14 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium First evaluation round, paras 71-72, https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_14_FGR_BEL_with_comments_en.pdf [accessed 23 March 2016]; FRA, Social Thematic Study The situation of Roma 2012, p.10, <http://fra.europa.eu/sites/default/files/situation-of-roma-2013-revised-be.pdf>.

²⁰³ GRETA(2013)14 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium First evaluation round, para. 134, https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_14_FGR_BEL_with_comments_en.pdf [accessed 23 March 2016].

²⁰⁴ Terre des Hommes, Disappearing, departing, running away A surfeit of children in Europe?, 2010, p. 32.

²⁰⁵ Anti-slavery International, Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples, 2014, p.32.

²⁰⁶ European Commission, Missing children in the European Union Mapping, data collection and statistics, 2013, p. 21.

²⁰⁷ Ibid., p. 16.

²⁰⁸ Belgian national action plan 2015-2018, p.14, http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf [accessed 25 April 2016].

²⁰⁹ Coordination des ONG pour les droits d'enfants, Mendicité avec enfants : l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose, Analyse Juillet 2013, p.3, & p. 5, http://www.lacode.be/IMG/pdf/Analyse_CODE_mendicite_juillet_2013.pdf [accessed 23 March 2016].

²¹⁰ GRETA(2013)14 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium First evaluation round, para. 134, https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_14_FGR_BEL_with_comments_en.pdf [accessed 23 March 2016]; Van Houcke, F., Recherche d'une réponse sociale à la mendicité des mineurs, Jeunesse et Droit, JDJ n°245 - mai 2005, p.12, http://www.ieunesseetdroit.be/jdi/documents/docs/Mendicite_mineurs_jdjb245.pdf [accessed 23 March 2016].

Roma background.²¹¹ Whilst noting, begging is not inherent to the Roma culture, it is often a consequence of the social exclusion and poverty they face,²¹² which are two of the risk factors that increase the vulnerability of children, as well as discrimination and lack of social protection.²¹³ An additional factor, particularly experienced by Bulgarian or Romanian nationals, has been the restrictions in access to the labour market.²¹⁴ Further, other categories of victims must also be captured by anti-trafficking measures, including the forced begging of persons with disabilities.²¹⁵

3. Forced begging in Romania

Romania formally criminalised human trafficking for forced begging in 2010. Despite a decrease in recorded number of victims for forced begging since the peak in 2007, when the Romanian authorities

identified 146 Romanian victims trafficked in internally or in other countries,²¹⁶ it is still important to maintain forced begging as a form of exploitation for trafficking on the public and institutional agenda. Also, in 2014, changes in the Criminal Law, proscribed several variations of this crime as: 1) “exploitation of begging”-the act to determine a child or a person with a disability to beg is sentenced with maximum 3 years or a fine and 2) “the use of a minor for begging purpose”- the act of an adult to repeatedly ask material help from the public, in this purpose using a minor is sentenced with maximum 2 years or a fine.

Forced begging is the third form of exploitation encountered, among the identified victims per year, by Romanian authorities, with a share of 6.45% for the years 2009-2013²¹⁷ and a share of 6.31% for the years 2013-2015²¹⁸

Despite the global observation that forced begging especially impacts children,²¹⁹ in Romania, minors and adults are equally victimized for forced begging, minors being trafficked usually together with their parents while some adults present particular vulnerability (low level of education and/or disability). A correlation between the presence of a disability and exploitation through begging among the Romanian identified victims in 2015 has been observed.

²¹¹ Coordination des ONG pour les droits d'enfants, Mendicité avec enfants : l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose, Analyse Juillet 2013, p.2, http://www.lacode.be/IMG/pdf/Analyse_CODE_mendicite_juillet_2013.pdf [accessed 23 March 2016].

²¹² Van Houcke, F., Recherche d'une réponse sociale à la mendicité des mineurs, Jeunesse et Droit, JDJ n°245 - mai 2005, p.5, http://www.jeunesseetdroit.be/jdj/documents/docs/Mendicite_mineurs_jdjb245.pdf [accessed 23 March 2016].

²¹³ Coordination des ONG pour les droits d'enfants, Mendicité avec enfants : l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose, Analyse Juillet 2013, p.3, http://www.lacode.be/IMG/pdf/Analyse_CODE_mendicite_juillet_2013.pdf [accessed 23 March 2016].

²¹⁴ Coordination des ONG pour les droits d'enfants, Mendicité avec enfants : l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose, Analyse Juillet 2013, p.3, http://www.lacode.be/IMG/pdf/Analyse_CODE_mendicite_juillet_2013.pdf [accessed 23 March 2016].; FRA, Social Thematic Study The situation of Roma 2012, p.4 & p. 19, <http://fra.europa.eu/sites/default/files/situation-of-roma-2013-revised-be.pdf> [accessed 23 March 2016].

²¹⁵ MYRIA, Federal Migration Centre, Annual report 2015 Trafficking and smuggling of human beings Tightening the links, p.124.

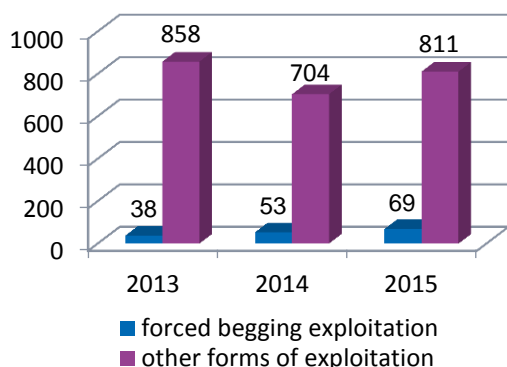
²¹⁶ National Agency against Trafficking in Persons, 2008, Annual Report regarding Trafficking in Persons in Romania in 2007.

²¹⁷ Constantinou et al, (2015), Report on the relevant aspects of the trafficking act (geographical routes and modus operandi) and on its possible evolutions in response to law enforcement, Trafficking as a Criminal Enterprise Project, p. 19, http://trace-project.eu/wp-content/uploads/2015/03/TRACE-D2.1_FINAL.pdf [accessed 23 March 2016].

²¹⁸ Data from the National Integrated System for Evaluation of Victims in Romania, system administered by Romanian National Agency against Trafficking in Persons.

²¹⁹ Global Report on Trafficking in Persons (2014), p. 37.

Graphic regarding the victims identified in the period 2013-2015²²⁰



Victims older than 61 years old have also been identified in trafficking for forced begging or labour exploitation²²¹. Older adults are also particularly vulnerable due to their special medical needs (medicines, therapies²²²) social needs (lack of social support network, loss of life partner²²³) they find themselves provided with an “opportunity” of making money or even benefiting from medical assistance for their health specific problems.

At the same time, the risk of re-trafficking is higher for forced begging in comparison with other forms of exploitation, reaching 8%²²⁴. According to the Romanian study on begging, this situation is due to multiple factors, conditions and/or situations like, among others, lack of real or viable alternative to begging (due to socio-

economic background) which seems to be perpetuating from a generation to another and a failure or limitation of the authorities to properly address the victims’ support and protection needs²²⁵.

Romania has addressed anti-trafficking actions for this particular type of trafficking by amending the anti-trafficking Law and through specific raising awareness national campaigns. As an example, one campaign developed in 2015, “Do not beg ask for help” developed by the ANITP with other partners has aimed at raising awareness of forced begging, to identify vulnerable persons and to find the appropriate measures to reduce this phenomenon. The campaign visibility message was “The begging hand receives no help, but is collecting money for traffickers”²²⁶

Anti-trafficking public policy has constantly acknowledged the specific vulnerability of children and persons with disability toward forced begging, encouraging general and specific actions to reduce the condition of vulnerability including: anti-poverty actions in small socio-economically disadvantaged communities, specific assistance and protection for children in need, and measures to prevent the school dropout.



²²⁰ Source of data: National Agency against Trafficking in Persons-National Integrated System for Monitoring and Evaluation of Victims of Trafficking, Romania.

²²¹ Constantinou et al, (2015), Report on the relevant aspects of the trafficking act (geographical routes and modus operandi) and on its possible evolutions in response to law enforcement, Trafficking as a Criminal Enterprise Project, p. 29, http://trace-project.eu/wp-content/uploads/2015/03/TRACE-D2.1_FINAL.pdf [accessed 23 March 2016].

²²² National Agency against Trafficking in Persons, (2013) Trafficking in persons for begging-Romania study, pp 31-33, available at: http://www.anitp.mai.gov.ro/ro/docs/Proiecte/PIP/Studiu_cerșetorie_PIP_engleza_B5_17.12.2013.pdf [accessed 23 March 2016].

²²³ Ibid.

²²⁴ Ibid, p.71.

²²⁵ Ibid., p. 71.

²²⁶ More information about the campaign, available in Romanian at: <http://www.anitp.mai.gov.ro/programs/cere-ajutor-nu-cersi/>

4. Conclusion

In light of the current refugee crisis experienced by Europe, it must be acknowledged that the vulnerability of minors who are exploited for forced begging and unaccompanied foreign minors is extremely high. Therefore, it is important for child protection systems and integration programme to take into account the high risk of absconding and re-entering exploitative situations.²²⁷ Preventing re-trafficking will require addressing deficiencies in the current system, such as lack of adequate accommodation and secure facilities and developing commonly agreed safety and protection standards for the placement of children who are suspected or known to be trafficked.²²⁸

Equally, it is important to ensure that anti-trafficking measures take into account the vulnerability of other categories, including adults, older persons, and persons with disabilities. In this regard, it will be important to share knowledge between countries with more experience of tackling forced begging and countries now beginning to address the issue. This approach could guide a proper and rapid reaction to this new form of exploitation, implementing measures based on lessons learned.

Furthermore, it is important to raise awareness of human trafficking for forced begging,²²⁹ as victims very often do not

identify themselves as such, as they do not realise that their situation amounts to trafficking.²³⁰ Despite the application of general measures for discouraging, preventing, and combating trafficking as a whole to the case of forced begging, it is important that specific actions are undertaken to reduce this phenomenon. Given the low level of self-recognition of victims' status, outreach activities should focus on identification of forced begging in public areas where the specialists could distinguish between situations of and forced begging in order to i) help the victims to identify themselves as such and ii) access programmes aimed at assisting their social and legal recovery. Also, the role of the general public is of vital importance, awareness raising campaigns should inform the public that offering money to beggars may lead to secondary victimisation as it reinforces dependence on the act.

Finally, when determining the best legal and policy framework to combat forced begging, it is important to note that the non-criminalisation of begging could potentially act in the favour of traffickers, who adapt their approach according to legal and policy loopholes.²³¹ Therefore, law enforcement agencies and social services, through increased training and awareness raising, will need to adopt strategies that recognise those who are potentially being exploited into forced begging, and those who are, due to a poor socio-economic position, begging for survival.

²²⁷ Swiss-Romanian Cooperation Programme, Trafficking in persons for begging – Romania study, 2013, p. 61-62 & p. 72, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_persons_for_begging_-_romania_study_0.pdf [accessed 23 March 2016].

²²⁸ Anti-slavery International, Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples, 2014, p.32.

²²⁹ Swiss-Romanian Cooperation Programme, Trafficking in persons for begging – Romania study, 2013, p. 76, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_persons_for_begging_-_romania_study_0.pdf [accessed 23 March 2016]

²³⁰ Anti-slavery International, Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples, 2014, p.58.

²³¹ Ibid., p.8.



PART 3: EVOLUTION OF THE PHENOMENON AND THE FIGHT AGAINST HUMAN TRAFFICKING AND SMUGGLING

This part deals with the phenomenon and the fight against human trafficking and smuggling in four chapters:

- the latest developments within the legal and political framework at a European and Belgian level;
- the analysis of legal cases in which Myria instituted civil proceedings thus providing it with a complete view;
- best practices and experiences based on case analyses and informal meetings with the local and federal police, the specialised centres for victims of human trafficking, references judges in human trafficking and smuggling, labour prosecutors and the Social Inspectorate;
- the relevant case law from 2015 to May 2016 based on cases in which Myria instituted civil proceedings, decisions received from specialised reception centres for victims, and decisions issued by judges and stakeholders in the field.

The contribution 'Smuggling in human beings, an organised crime' is written by an external author: Ann Lukowiak, a reference judge in human trafficking and smuggling - migration fraud, in the judicial district of East Flanders.

CHAPTER 1: RECENT DEVELOPMENTS IN THE LEGAL AND POLITICAL FRAMEWORK

In this chapter, Myria presents the most recent developments in the legal and political framework in terms of human trafficking and smuggling both on a European and a Belgian level.

1. Developments in the legal and political framework

1.1. Human trafficking

In 2012, the European Commission adopted its human trafficking strategy for the period 2012-2016²³². In October 2014, the Commission published a mid-term report on the implementation of this strategy²³³. Myria presented them in previous annual reports²³⁴.

The five priorities defined in the strategy are as follows:

- to detect, protect, and provide assistance to the victims of trafficking;
- to reinforce the prevention of human trafficking;
- to increase prosecutions against traffickers;

The European agenda on security and migration adopted in 2015, provides for the adoption of a new European strategy on this matter, which should be adopted by the end of 2016.

- to improve coordination and cooperation between the main stakeholders and the coherence of policies;
- to better define the latest concerns relating to various forms of human trafficking and respond to them efficiently.

The mid-term report presented the efforts made relating to the first four priorities; the fifth one was covered by each of the key priorities.

Since then, several studies have been published. Concerning detection, protection, and assistance to victims, a comparative study on the regulation of labour market middlemen and the role of social partners within the framework of trafficking for the purpose of labour exploitation was published in April 2016²³⁵.

In terms of prevention, the study concerning the impact of prevention measures in terms of trafficking was published in October 2015²³⁶. Again in October 2015, the Commission also published a study on risk groups²³⁷. In May

²³² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, 19 June 2012, COM(2012) 286 final.

²³³ Commission Staff working document, *Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings*, Brussels, 17 October 2014, SWD(2014)318 final, COM(2014) 635 final.

²³⁴ For the strategy, see: Annual Report 2011, *Trafficking in and smuggling of human beings, The money that matters*, pp. 71-72 and for the mid-term report. Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 56-57.

²³⁵ This study was executed by Eurofound (European Foundation for the Improvement of Living and Working Conditions) and is available at the following link: https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/regulation_of_labour_market_intermediaries_and_the_role_of_social_partners_in_preventing_trafficking_of_labour.pdf.

²³⁶ https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/study_on_prevention_initiatives_on_trafficking_in_human_beings_0.pdf.

²³⁷ https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/study_on_children_as_high_risk_groups_of_trafficking_in_human_beings_0.pdf.

2016, a study on gender as a factor in human trafficking was published²³⁸.

Concerning the 'investigation and prosecution of traffickers' part of the strategy, the Commission published a study on the case law and practices regarding trafficking for the purpose of labour exploitation in October 2015²³⁹.

A handbook for experts, presented in January 2016,²⁴⁰ should also be acknowledged. It was compiled within the framework of the European *TeamWork!* project on multidisciplinary cooperation in the fight against human trafficking for the purpose of labour exploitation, under the Dutch presidency.

Through its European Anti-Trafficking Coordinator, Ms Myria Vassiliadou, the Commission began a major written consultation among other things, as part of its preparatory work, with the Member States and the National Rapporteurs, on the priorities to be implemented within the framework of a new strategy to combat human trafficking. The European agenda on security and migration adopted in 2015²⁴¹, provides for the adoption of a new European strategy on this matter, which should be adopted by the end of 2016.

²³⁸ https://ec.europa.eu/anti-trafficking/eu-policy/study_gender-dimension-trafficking-human-beings_en.

²³⁹ https://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/study_on_case-law_on_trafficking_for_the_purpose_of_labour_exploitation_2.pdf.

²⁴⁰ This is a joint project between the Netherlands, Luxembourg, Slovakia and Malta. The handbook can be accessed via the following the link: <http://english.eu2016.nl/documents/publications/2016/01/18/manual-for-experts-on-multidisciplinary-cooperation-against-trafficking-in-human-beings-for-labour-exploitation>.

²⁴¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European agenda on migration*, 13 May 2015, COM(2015) 240 final.

Myria made several suggestions within this framework.

Finally, on 19 May 2016, on the same day the meeting of the National Rapporteurs and Equivalent Mechanisms concerning trafficking was held, the Commission published its first report on the progress made by the Member States regarding the fight against human trafficking²⁴². This report, which must be compiled every two years in accordance with Article 20 of the European directive on human trafficking²⁴³, presents the trends within the framework of this fight, examines the progress made, and emphasises the key challenges the EU and the Member States still face.

1.2. Human smuggling

Following the dramatic events in the Mediterranean, the European Commission presented a series of measures in May 2015 in reaction to the current challenges around migration²⁴⁴. One of these is the 2015-2020 action plan against migrant smuggling²⁴⁵, dealt with in our previous annual report²⁴⁶. In the past few months, the European

²⁴² Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016), 19 May 2016, COM(2016) 267 final. The report is accompanied by a staff working document.

²⁴³ European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing the Council Framework Decision, 2002/629/JHA, O.J., L 101 of 15 April 2011.

²⁴⁴ http://europa.eu/rapid/press-release_IP-15-5039_fr.htm. For Myria's opinion on this subject, see the 2015 Annual Report: *La migration en chiffres et en droits*, Chapter 3, *Accès au territoire*, available at www.myria.be.

²⁴⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Action Plan against migrant smuggling (2015-2020)*, Brussels, 27 May 2015, COM(2015) 285 final.

²⁴⁶ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 52.

agenda has indeed been strongly focused on the management of the asylum crisis²⁴⁷, where the fight against smugglers is only one of the factors.

The action plan defines concrete measures to prevent and counter migrant smuggling on four levels: enhanced police and judicial response; gathering and sharing of information; prevention of smuggling, and assistance to vulnerable migrants, through stronger cooperation with third countries.

Several of the action plan's measures have already been implemented. For instance, a European Migrant Smuggling Centre (EMSC) has been set up within

Even if Belgian legislation largely complied with the European directive, there were, however, some remaining gaps in its criminal law and criminal procedure that the new law intends to fill.

Europol, and a theme group has been created within Eurojust. At the same time, operational points of contact should be appointed in the Member States. In Belgium, the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in Human Beings was designated.

According to Europol, human smuggling was the fastest-growing criminal activity in Europe in 2015. A whole series of services - transport, accommodation, supply of false papers - are offered to migrants and refugees at exorbitant prices. Europol believes that these criminal networks made a turnover in the region of EUR 3 to 6 billion in 2015 alone, and that this amount could double or triple in 2016²⁴⁸. Europol and

Interpol also expect an increase in the sexual or labour exploitation of these migrants in the coming years, mainly in destination countries, owing to the fact that they are obliged to pay the smugglers for the debts they have incurred²⁴⁹.

Between January and April 2016, the Commission undertook a public consultation to support the assessment in progress and the impact analysis of the European legislation on migrant smuggling, and to gather different points of view on possible legislative improvements²⁵⁰. One of the European action plan's points does indeed consist of improving the current European legal framework for combatting migrant smuggling.

2. Developments in the Belgian legal and political framework

However, in Belgium, the most significant developments occurred in 2015 and at the beginning of 2016, regarding the legal and political framework, both in terms of human trafficking and smuggling.

2.1. Human trafficking

The most significant developments in human trafficking in 2015 and at the start of 2016, were the adoption of a law aimed at finalising the transposition of the European directive on human trafficking (point 2.1.1.) as well as the adoption of a new 2015-2019 action plan (point 2.1.2.).

In addition, there are several other recently-adopted measures worth taking into

²⁴⁷ For a detailed and critical analysis of this issue, see the 2016 annual report, *La migration en chiffres et en droits*, focus: l'Europe en crise (de l'asile), pp. 26-54.

²⁴⁸ Europol, *Migrant Smuggling in the EU*, February 2016. Available at: <https://www.europol.europa.eu/>.

²⁴⁹ Joint Europol-Interpol Report, *Migrant smuggling networks*, Executive summary, May 2016: <https://www.europol.europa.eu/content/europol-and-interpol-issue-comprehensive-review-migrant-smuggling-networks>.

²⁵⁰ http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting_0031_en.htm.

account; while they do not specifically relate to human trafficking, they are nevertheless likely to have an impact on this area. On the one hand, there is the justice reform currently being led by the Minister of Justice²⁵¹. One of these measures, the 'guilty plea' (initial admission of guilt), may well have an effect on the fight against human trafficking, especially victim protection (point 2.1.3.).

On the other hand, there is the recent amendment to the Social Criminal Code, which aims to sanction undeclared workers (point 2.1.4.).

2.1.1. Finalisation of the transposition of European Directive 2011/36/EU on human trafficking

On 4 May 2016, parliament adopted a bill during a plenary session completing the implementation of the European obligations, especially in terms of human trafficking²⁵². The law was published in the Belgian Official Gazette of 8 June 2016²⁵³. There are three parts to this law. The first one aims to complete the compliance of Belgian legislation with European Directive

After the 2008-2012 and 2012-2014 action plans, Belgium adopted its third action plan, setting out the working framework for the years 2015 to 2019.

2011/36/EU on human trafficking²⁵⁴. It also sets out to bring greater coherence to the legislation on human trafficking relating to sexual abuse and the exploitation of prostitution. The second part - which we will not be dealing with here as it exceeds the framework of this report - aims to pursue the transposition of the directive relating to the fight against the sexual abuse and sexual exploitation of children, as well as child pornography²⁵⁵. In particular, it adapts the criminalisation of pornography and plans for Child

Focus to have the role of 'facilitator'. As for the third part, which concerns attempts to facilitate illegal immigration, we shall deal with this in the point dedicated to legal and political developments in human trafficking (see below, point 2.2.1.).

Even if Belgian legislation largely complied with the European directive, there were, however, some remaining gaps in its criminal law and criminal procedure that the new law intends to fill:

- As regards aggravating circumstances of the charge of trafficking: Article 433septies of the Criminal Code, relating to the *modi operandi* is completed, integrating the *modi operandi* mentioned in the European Directive: the abduction, deception, the abuse of power, giving or receiving of payments or benefits to allow for a

²⁵¹ See the justice plan on the Minister of Justice's website: <http://www.koengeens.be/fr/>.

²⁵² Bill completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Parl. doc.*, Chamber, 2015-2016 session, 54-1701/005.

²⁵³ Law of 31 May 2016 completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Belgian Official Gazette*, 8 June 2016.

²⁵⁴ European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing the Council Framework Decision, 2002/629/JHA, *O.J.*, L 101 of 15 April 2011.

²⁵⁵ European Parliament's and Council's Directive 2011/92/EU of 13 December 2011 on combating sexual abuse, sexual exploitation of children and child pornography, replacing the Council Framework Decision 2004/68/JHA, *O.J.*, L 335 of 17 December 2011.

- person having control over another person²⁵⁶.
- The extraterritorial responsibility of the Belgian judge regarding human trafficking (Article 10ter of the preliminary title of the Criminal Procedure Code) extends to simple forms of human trafficking and attempted human trafficking²⁵⁷.
 - The 15-year limitation period is prolonged when the victim reaches adulthood in the case of attempted trafficking with a sexual purpose (amendment to Article 21, para. 1, 2nd point of the preliminary title of the Criminal Procedure Code)²⁵⁸.

The law has also provided for special protection measures for victims (in the interests of harmonisation with the legal provisions concerning prostitution and sexual abuse):

- a ban on publishing or distributing elements revealing the identity of a victim of trafficking for the purpose of sexual exploitation²⁵⁹ in the absence of the latter's written authorisation or the consent of the crown prosecutor or investigating judge for the needs of information or investigation (new Article 433novies/1 of the Criminal Code)²⁶⁰;
- the possibility for the victim of trafficking for the purpose of sexual exploitation (or its attempt) to ask the court to handle the case in camera (amendment to Article 190 of the Code of Criminal Procedure)²⁶¹.

The right to speak, covered by article 458bis of the Criminal Code for certain professionals whose main activity consists of working with children, is now specifically provided for in cases of trafficking (and attempted trafficking), and for all forms of trafficking²⁶². This right to speak allows these professionals to inform the crown prosecutor in case of the trafficking of a minor, either if there is a serious and imminent threat to the child's physical or mental integrity, or if there are indications of a serious and real threat that other minors are victims of trafficking and that the professional is unable to protect their integrity by themselves or with the help of a third party. During parliamentary debates, a member reiterated that caregivers are not always in favour of the right to speak because they are afraid that the victims will be less willing to give a statement²⁶³.

Finally, the law also makes certain amendments regarding ancillary penalties, whose application is extended (Article 433novies of the Criminal Code). Hence, the deprivation of rights will be pronounced in the case of a conviction for the simple form of trafficking (and no longer only for aggravated forms). At the same time, all the convictions for forms of trafficking committed against minors will now be combined with a ban on operating an establishment and a ban on exercising an activity²⁶⁴.

²⁵⁶ See Article 8 of the law; *Parl. doc.*, Chamber, 54-1701/005, p. 5 and the commentary on the bill's articles, *Parl. doc.*, Chamber, 54-1701/001, p. 20.

²⁵⁷ Article 12 of the law.

²⁵⁸ Article 13 of the law.

²⁵⁹ This ban also applies in the case of attempt.

²⁶⁰ Article 10 of the law.

²⁶¹ Article 14 of the law.

²⁶² Article 11 of the law.

²⁶³ Report of the Justice Commission of 28 April 2016 on the bill completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Parl. doc.*, Chamber, 2015-2016 session, 54-1701/003, p. 7.

²⁶⁴ See Article 9 of the law and the comments on the articles, *Parl. doc.*, Chamber, 54-1701/001, p.20.

There is also a technical amendment linked to Article 11, §1, 1 of the Law of 13 April 1995 containing provisions with a view to cracking down on human trafficking and smuggling. This article concerns the follow-up and execution of the law, especially reporting tasks and the capacity of various organisations to engage in legal proceedings. This article has been amended in such a way that it now only refers to articles 433quinquies to 433octies of the Criminal Code. Indeed, given the existence of the specific offence of human trafficking since the Law of 10 August 2005²⁶⁵, there was no longer any need to also refer to articles 379 and 380 of the same code, relating to various offences in terms of prostitution²⁶⁶.

2.1.2. New action plan to combat human trafficking 2015-2019

After the 2008-2012 and 2012-2014 action plans, Belgium adopted its third action plan, setting out the working framework for the years 2015 to 2019²⁶⁷. While it is essentially a continuation of the previous action plans, it also introduces a few new proposals for initiatives in areas that are, as yet, relatively unexplored.

As with previous action plans, this new action plan deals with various aspects: the legislative and regulatory infrastructure,

training, protection of victims, international attention to the phenomenon, awareness raising and providing information, and coordination. A new - and no less important - aspect consists of also supporting initiatives in the federated entities. The Royal Decree of 21 July 2014²⁶⁸ does indeed extend the composition of the Interdepartmental Coordination Unit against the Smuggling and Trafficking of Human Beings to the federated entities. Therefore, it is logical that one of points in the action plan should concern them in particular.

Let's look at the main points of this new action plan:

a) Legislative and regulatory aspects: As the current legislation is particularly complete, it did not require any more major changes apart from a few modifications in order to guarantee optimum compliance with the 2011 European Directive. This point was achieved through the adoption of a new law²⁶⁹ (on this subject, see point 2.1.1. above).

We should also mention that the question of a text providing for the joint responsibility of the principal, specific to human trafficking, features on the agenda of the successive action plans but has not yet received a response,

²⁶⁵ Law of 10 August 2005 amending various provisions with a view to reinforcing the fight against human trafficking and smuggling and the practices of slum landlords, *Belgian Official Gazette*, 2 September 2005. On this subject, see the 2005 Annual report on human trafficking, *Belgian policy on trafficking in human beings: shadows and lights*, pp. 10-21. For comments on this law, see M.A. BEERNAERT and P. LE COCQ, "La loi du 10 août modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil", *Rev. dr. pén.*, 2006, pp. 335 and foll.

²⁶⁶ Article 18 of the law.

²⁶⁷ http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf.

²⁶⁸ Royal Decree of 21 July 2014 amending the Royal Decree of 16 May 2004 relating to the fight against human smuggling and trafficking, *Belgian Official Gazette*, 1 September 2014. For an analysis of this extension, see: Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, pp. 53-57.

²⁶⁹ Law of 31 May 2016 completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Belgian Official Gazette*, 8 June 2016.

owing to a lack of political agreement²⁷⁰.

A directive relating to the exploitation of begging should also soon appear²⁷¹.

Similarly to previous ones, this action plan also highlights the importance of financial investigations in terms of human trafficking. In this respect, the important role played by the Financial Intelligence Processing Unit (CTIF-CFI) is reaffirmed²⁷².

b) Training: the organisation of training sessions is provided for in the action plan for frontline players on the basis of cycles, as well as the elaboration of a handbook (also available electronically) for training sessions on human trafficking for professionals.

c) Protection of victims: victim reception centres do not always benefit from structural funding to cover their tasks. Their subsidies were also reduced, especially following the withdrawal of the immigrant policy support fund (FIPI) at federal level following the sixth state reform. In line with the action plan, Myria would like a solution to be found to this - recurring - problem, once and for all.

The action plan also aims to improve the victim protection procedure on the one hand, by replacing the document granted during the period of reflection (order to leave the territory within 45

days) with another document and, on the other hand, updating and adapting the multidisciplinary circular of 2008²⁷³ to also include Belgian victims. Discussions on these two points were still ongoing when this report was concluded.

d) International attention to the phenomenon: the action plan includes updating the flyer intended for Belgian diplomatic posts and elaborating a summary sheet featuring basic information on the protection of victims in Benelux. The last point has already been addressed through the publication of a brochure²⁷⁴.

e) Raising awareness and informing both professional parties and civil society players and citizens: the action plan provides for measures as varied as the creation of a learning tool for basic training, the elaboration of an information sheet for guardians in order to improve the detection of child victims²⁷⁵, continued awareness-raising in hospitals, and the elaboration of an information booklet relating to domestic work.

f) Coordination of actions and development of knowledge on the phenomenon: the action plan provides for the improvement of statistics, especially by better distinguishing the forms of exploitation in the conviction data, as well as the disaggregation of

²⁷⁰ The last text submitted for consideration provides for penalties as regards criminal and civil responsibility when the principal knew or must have known that the middleman they employed was exploiting people in work conditions contrary to human dignity.

²⁷¹ This new COL still had not yet been adopted when this report was concluded (June 2016).

²⁷² On the role of the CTIF, see: Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, pp. 9-10.

²⁷³ Circular of 26 September 2008 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human trafficking, *Belgian Official Gazette*, 31 October 2008.

²⁷⁴ <http://www.benelux.int/fr/publications/publications/cooperation-benelux-en-vue-de-lacceuil-des-vistimes-de-la-traite-des-etres-humains>.

²⁷⁵ This point was implemented in 2015.

the available information according to the 'gender' aspect.

g) Projects concerning the federated entities: reinforced synergy with the federated entities primarily aims to raise awareness among the regional labour inspection services and develop prevention and raise awareness in civil society such as in the school sector and among other stakeholders such as youth welfare services²⁷⁶.

2.1.3. The guilty plea: the forgotten victims of trafficking?

Within the framework of the reform concerning criminal law and criminal procedure implemented by the Minister of Justice - better known as the "Potpourri Act II"²⁷⁷ - a new procedure, inspired by British law, has just been introduced in the Code of Criminal Procedure: the guilty plea²⁷⁸. It

²⁷⁶ The issue of loverboys could be dealt with within this framework. On this subject, see this report, Part 3, Chapter 3 (best practices and experiences) as well as the focus in the previous report: Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 1, Chapter 2.

²⁷⁷ See the Law of 5 February 2016 amending the criminal law and criminal procedure and containing various provisions in terms of the law, *Belgian Official Gazette*, 19 February 2016, p. 13130. We should mention that this law has, among other things, amended the aggravating circumstance of incapacity for a series of offences. This is particularly the case concerning human trafficking (Article 433septies, 5° of the Criminal Code) and human smuggling (Article 77quater, 5° of the Law of 15 December 1980 on foreign nationals). The new law extended the scope because the terms 'permanent physical or psychological incapacity' were replaced with: 'minimum four months' work incapacity'.

²⁷⁸ New Article 216 of the Code of Criminal Procedure, introduced by Article 97 of the Law of 5 February 2016. The guilty plea came into force on 29 February 2016. For a detailed analysis of this new procedure, see. M. FERNANDEZ-BERTIER and M. GIACOMETTI, 'La "reconnaissance préalable de culpabilité" ou "plaider coupable": une révolution dans notre arsenal procédural?', *Rev. dr. pén.*, 2016/4, pp. 268-301.

aims to provide a solution to the concern for faster and more efficient criminal justice: the criminal court's workload would thus be lightened and the duration of the criminal proceedings reduced. It also aims to support a more efficient execution of the sentences since the suspect has already accepted their sentence.

The public prosecutor can propose that this procedure either be applied automatically, or on the suspect's, the defendant's, or their lawyer's request. However, several conditions must be met:

- the acts do not appear to be of the sort to be punished by a primary prison sentence of more than five years: this is not the penalty set by the legislator *in abstracto* but the one the public prosecutor's office would request *in concreto* if the case were brought before the judge²⁷⁹;
- the suspect or the defendant plead guilty for the acts of which they are accused;
- if the case was referred to an investigating judge, this procedure can only be proposed after the ruling or decision of referral to the trial judge;
- if the case has already been referred to the trial judge, no ruling or final judgement can have already been made on a criminal level;
- the suspect's or defendant's guilty plea must be made in the presence of a lawyer;
- the defendant or the suspect benefit from a 10-day period of reflection before informing the crown prosecutor of whether or not they are pleading guilty to the acts they are accused of

²⁷⁹ Taking into account the possible admission of mitigating circumstances, see the preamble of the bill amending the criminal law and criminal procedure and containing the various provisions in terms of the law, *Parl. doc.*, Chamber, session 2015-2016, 54-1418/001, p. 90.

and whether or not they accept the charges and the proposed penalties.

However, the procedure is excluded in four cases:

- if the acts, not transmuted into offences, were punishable with a maximum sentence exceeding 20 years in prison. In practice, the most serious offences are excluded (for instance: the kidnapping or detention of a minor that caused their death);
- regarding the acts referred to in articles 375 to 377 of the Criminal Code, i.e. rape and the most serious forms of indecent assault (such as torture, false imprisonment, or incest);
- for the acts referred to in articles 375 to 387 of the Criminal Code if they are committed against minors or with the help of minors. These are offences concerning corruption of the youth, prostitution, and gross indecency (including child pornography);
- for the acts referred to in articles 393 to 397 of the Criminal Code (murder and assassination).

This guilty plea is officialised in an agreement, signed by the parties. It is only at this stage that the possible victim will be contacted: the crown prosecutor will then send a copy of the signed agreement to the known victims. At this moment, the victim and their lawyer have the right to access the file.

The agreement must then be approved by the court, which hears the defendant and their lawyer regarding the agreement made and the recognised acts. The court can also hear the victim and their lawyer regarding the acts and compensation. The victim can institute civil proceedings and claim compensation at the court hearing, which must officialise the agreement made.

Therefore, compensation will be assessed during court proceedings²⁸⁰.

The public prosecutor can, in the case of a guilty plea, offer a reduced sentence but the final decision always lies with the trial court, which is required to officialise the agreement made²⁸¹.

Parliamentary debates showed that there are many questions and queries regarding this procedure and that opinions are divided over it, even though it seems compatible with Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial)²⁸². Hence, while the public prosecutor's representatives showed they were logically in favour of this

Myria also wonders what impact the guilty plea will have on human trafficking cases.

²⁸⁰ Preamble, *op. cit.*, Doc 54-1418/001, p. 95. Please note that the text was adapted following the remarks of the Council of State, which considered that draft Article 216 was not very clear concerning the role of the victims and the fact that the way the civil action was handled was no different to the normal procedure (see the opinion of the Council of State on the draft bill amending the criminal law and criminal procedure, containing various provisions in terms of the law, *Parl. doc.*, Chamber, session 2015-2016, 54-1418/001, pp. 298-299, §§ 75, 79 and 80.)

²⁸¹ This raised criticisms especially from the League of Human Rights which considered that reduced sentences should become compulsory, regardless of the defendant who could just as well be given a shorter sentence by the court, and even benefit from an 'autonomous punishment'. See the report from the Justice Commission's first reading of, among other things, the bill amending criminal law and criminal procedure, containing various provisions in terms of the law, *Parl. doc.*, Chamber, 2015-2016 session, 54-1418/005, p. 274.

²⁸² On this subject, see the Council of State's opinion on the draft bill, *op. cit.*, Doc 54-1418/001, pp. 280-281. Also see M.-A. BEERNAERT, "Transactions, accords de plaider coupable et autres procédures judiciaires simplifiées - Quelques considérations sur la jurisprudence de la Cour européenne des droits de l'homme en matière de justice pénale consensuelle ou négociée, en marge de l'arrêt Natsvlshvili et Togonidze c. Géorgie du 29 avril 2014", *Rev. Trim. D.H.*, 2015/101, pp. 207-218.

new procedure²⁸³, the bar voiced strong criticisms against it²⁸⁴, while the trial judges were rather mitigated. The role of the trial judge also raised queries. Some parties spoke of the risk of this role becoming more restricted and limited to purely formal power²⁸⁵, even if the minister confirmed that this was out of the question²⁸⁶.

On the other hand, since the approval decision must have a motivation, others wondered whether this would not require a full examination of the case, which, in practice, would not really save any time²⁸⁷.

Myria also wonders what impact the guilty plea will have on human trafficking cases. While, as the preamble specifies²⁸⁸, this new procedure seems above all intended for cases where the acts are clear and the perpetrator has confessed²⁸⁹, we cannot however exclude the fact that the public prosecutor may well wish to apply it to

other, more complex cases. The scope is indeed very large²⁹⁰.

Since this procedure was explicitly excluded for the most serious acts, in particular those of a sexual nature, why did the legislator not do the same for acts of human trafficking for the purpose of sexual exploitation and the most serious forms of trafficking? Was this an oversight? We may well wonder, especially since the law expressly excludes this procedure for offences concerning prostitution when minors are concerned.

Another concern expressed by Myria is as follows: in an effort to be efficient, will the public prosecutor not tend to put aside the charge of 'human trafficking' in favour of other charges, which the defendants will accept more easily (such as criminal social law infringements), but which would have an impact on the victim, since the latter would no longer be able to benefit from the special status?²⁹¹ And what of cases where several defendants are concerned, as is often the case with human trafficking? Much as a member of parliament would do so, Myria questioned a possible violation of the principle of equality according to which the perpetrator pleads guilty and benefits, as the case may be, from a reduced sentence and other defendants, who wish to maintain their innocence, are likely to be more severely punished or acquitted: how

²⁸³ Report of the first reading on behalf of the Justice Commission, *op. cit.*, Doc 54-1418/005, p. 184.

²⁸⁴ Especially the risk of pressure regarding the suspect who wishes to avoid a public trial, despite their innocence. See the report of the first reading on behalf of the Justice Commission, *op. cit.*, Doc 54-1418/005, pp. 265 and 269.

²⁸⁵ *Ibid.*, especially pp. 38 and 293.

²⁸⁶ *Ibid.*, p.120.

²⁸⁷ *Ibid.*, especially pp. 56 and 220.

²⁸⁸ Preamble of the draft bill amending the criminal law and criminal procedure, containing various provisions in terms of the law, *Parl. doc.*, Chamber, 2015-2016 session, 54-1418/001, p. 89.

²⁸⁹ The College of Public Prosecutors and the College of Senior Crown Prosecutors underlined the interest of such a procedure for relatively simple cases, where the culpability is not contested (see the report of the first reading done on behalf of the Justice Commission, *op. cit.*, Doc 54-1418/005, p. 184).

²⁹⁰ One party asks if it would not have been better to limit it to minor infractions and assess it thereafter. On this subject, see the report of the first reading on behalf of the Justice Commission, *op. cit.*, Doc 54-1418/005, p. 258.

²⁹¹ This status consists, in particular, of the possibility of obtaining specific residence permits according to certain conditions: the alleged victim has to break contact with their exploiters, accept support from a specialised reception centre and cooperate with the judicial authorities. On this subject, see article 61/2 to 61/5 of the Law of 15 December 1980 on foreign nationals.

should the trial judge proceed?²⁹². Will this not have a negative impact on how the case is handled overall?

We might also question whether the victims' rights in this procedure are really preserved: they are indeed far less well guaranteed than within the framework of a plea agreement for instance²⁹³, where the approval of the agreement is dependent on preliminary compensation for damages or, at the very least, for the uncontested part. However, the preamble specifies that this procedure must be applied, regardless of the defendant's financial situation. Nevertheless, the victim will benefit from the procedure in case of approval of the agreement because they could take advantage of the admission of guilt that features in the agreement attached to the case²⁹⁴. In order to decide upon the approval of the agreement, the judge also takes into account the defendant's desire to compensate for the damage suffered.

A speaker in parliament did, however, point out that it would have been preferable, in terms of procedural efficiency, for civil interests to be settled at the time of approval. This way, the civil party would be sure of receiving compensation²⁹⁵. Myria is aware of the problems encountered by trafficking victims to obtain effective compensation for the damage suffered and shares this point of view.

²⁹² See the intervention of Mr. Stefaan Van Hecke in the report of the first reading on behalf of the Justice Commission, *op. cit.*, Doc, 54-1418/005, p. 292.

²⁹³ Article 216bis, §4 of the Code of Criminal Procedure.

²⁹⁴ Preamble, *op. cit.*, Doc 54-1418/001, p. 95.

²⁹⁵ Report of the first reading done on behalf of the Justice Commission, *op. cit.*, Doc 54-1418/005, p. 121.

2.1.4. Punishment of undeclared workers: the principle of non-punishment of trafficking victims at risk

Since May 2016, anyone who does undeclared work is committing an offence, punished by an administrative fine²⁹⁶, if they are knowingly and willingly doing this work in the knowledge that it is not declared, and that a police report has been established against the employer for this undeclared work. This follows a recent amendment to the Social Criminal Code²⁹⁷.

In partnership with the centres specialising in the reception of victims of human trafficking and OR.C.A. (Organisation for Undocumented Workers), Myria expressed grave concerns, before the adoption of the law, regarding the introduction of this sanction. This particularly affects (potential) human trafficking victims as well as illegally staying workers²⁹⁸ insofar as it risks creating an additional barrier to asserting their rights (especially at work) if they are not respected.

²⁹⁶ This is a level 1 sanction. A level 1 sanction consists of an administrative fine of EUR 10 to 100 (Art. 101 of the Social Criminal Code). This amount is multiplied by six (current indexation value). For more information see: <http://www.emploi.belgique.be/defaultNews.aspx?id=36145>.

²⁹⁷ Art. 32 of the Law of 29 February 2016 completing and amending the Social Criminal Code, containing various provisions of social criminal law, *Belgian Official Gazette*, 21 April 2016. This article inserted a new article 183/1 in the Social Criminal Code.

²⁹⁸ On this aspect see the 2016 annual report, *La migration en chiffres et en droits*, p. 192. Indeed, undocumented workers will be all the more afraid of the consequences that may arise owing to the discovery of their irregular or precarious situation (being ordered to leave the territory, receiving an entry ban, or being detained or removed). This will also make support work for this group more difficult.

As regards (potential) victims of trafficking, this measure goes against the principle of non-punishment, which the latter should benefit from. The idea behind the concept of non-punishment is that, despite committing an offence, the victim has not in fact acted independently, either because of the level of control exercised by the traffickers or the methods used by the latter²⁹⁹. This is why the principle of non-punishment of victims was included in various international and European instruments. Hence, an explicit provision features in the Council of Europe's Convention on Action against Trafficking in Human Beings³⁰⁰. The recognition of a non-punishment obligation was also enshrined in Article 8 of Directive 2011/36/EU on human trafficking³⁰¹. The European directive seems to go even further than the Council of Europe convention since it establishes an express obligation to not prosecute.

Non-punishment is part of the human rights approach to trafficking. The criminalisation of victims not only constitutes negligence on the part of the state when taking into consideration offences committed against

the victim by the traffickers – who should be investigated – but also a failure to acknowledge the victim as a victim of a serious crime, thus increasing their trauma or victimisation by imposing an unfair punishment on them³⁰². The principle of non-punishment therefore consists of states guaranteeing that the victims are not punished for offences committed within the framework or as a result of the process of human trafficking.

Even if new Article 183/1 of the Social Criminal Code states that the worker must do this undeclared work knowingly and willingly, which can be difficult to prove in the case of trafficking victims, this measure is nevertheless likely to be an additional means of pressure for unscrupulous employers. The latter could use this argument to further intimidate their employees and reinforce the exploitation which these workers may be victim to.

2.2. Human smuggling

In Belgium, the two major new items regarding human smuggling concern, on the one hand, the harmonisation of certain provisions concerning human smuggling with those relating to human trafficking, implemented within the framework of the finalisation of the transposition of the European directive on trafficking (see above, point 2.1.1). On the other hand, the government adopted a specific action plan concerning human smuggling for the first time.

²⁹⁹ For a detailed analysis of this principle, see the Annual Report 2012, *Trafficking in and Smuggling of Human Beings, Building trust*, pp. 9-35.

³⁰⁰ Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005. This article stipulates that 'each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so'.

³⁰¹ Article 8 of the directive (titled: 'Non-prosecution or non-application of penalties to the victim') states that 'the Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that the competent national authorities are titled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to one of the acts referred to in Article 2' (i.e. of being the victim of the offence of human trafficking).

³⁰² OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 22 April 2013, p. 4.

2.2.1. Harmonisation of certain provisions regarding human smuggling

Via various amendments made regarding human trafficking, the legislator sought to harmonise the criminalisation of human smuggling³⁰³:

- The aggravating circumstance linked to the *modi operandi*, provided for in Article 77quater of the Law of 15 December 1980 on access to the territory, stay, establishment, and return of foreigners (see hereafter: law on foreigners) is completed in the same way as for trafficking³⁰⁴.
- The deprivation of civil and political rights is extended to the simple form of migrant smuggling³⁰⁵;
- The extraterritorial powers of the Belgian judge are extended to simple forms of migrant smuggling and attempted smuggling³⁰⁶.

Moreover, the charge of facilitating illegal immigration should also be acknowledged. This amendment follows an analysis carried out on behalf of the European Commission, which reveals the non-conformity of Belgian legislation with Council Directive 2002/90/EC of 28 November 2002, defining

Belgium is one of the rare European countries with specialised judges, who have been active for almost 20 years in investigations concerning the fight against human smuggling.

the facilitation of unauthorised entry, transit and residence, and with the Council Framework Decision of 28 November 2002 aimed at reinforcing the criminal framework to crack down on the facilitation of unauthorised entry, transit and residence³⁰⁷. This non-conformity relates to a particular point: that of the clear non-criminalisation of the attempt in Article 77 of the Aliens Act. However, the draft bill's preamble³⁰⁸ specifies that the Belgian position was based on the principle that Article 77 of the Aliens Act complied with the European instruments considering the broad interpretation given to this article ('crime preparation'). Nevertheless, considering the Commission's position and the case law which followed the same line, the government preferred to amend this article for reasons of legal safety. Subsequently, the attempted facilitation of illegal entry is not explicitly criminalised in Article 77 of the Aliens Act.

However, the Minister of Justice explicitly specified that the humanitarian clause could continue to be applied, whether the crime is committed or attempted³⁰⁹.

³⁰³ Law of 31 May 2016 completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Belgian Official Gazette*, 8 June 2016.

³⁰⁴ Hence, the abduction, deception, the abuse of power, giving or receiving of payments or benefits to achieve the consent of a person having control over another person, have been added. See Article 16 of the law.

³⁰⁵ Article 17 of the law.

³⁰⁶ Article 12 of the law.

³⁰⁷ These two instruments were published in the Official Journal (O.J.) L328 of 5 December 2002.

³⁰⁸ The bill's preamble completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Parl. doc.*, Chamber, 2015-2016 session, Doc 54-1701/001, pp. 6-7.

³⁰⁹ Report of the Justice Commission of 28 April 2016 on the bill completing the implementation of the European obligations concerning the sexual exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *Parl. doc.*, Chamber, 2015-2016 session, 54-1701/003, p. 7.

2.2.2. New action plan against human smuggling 2015-2018

In the current context of the migration crisis, where many migrants use smuggling networks and find themselves in a highly vulnerable situation, the government considered it necessary to elaborate and adopt a specific action plan to fight human smuggling. Belgium is traditionally a transit country, and sometimes a destination country for human smuggling. The E40 highway is known for being a route used by smugglers, with parking areas or their surrounding area along the highways serving as embarkation points. Designed as a sort of addendum to the action plan against human trafficking, this action plan against human smuggling was adopted in December 2015. It exists in its own right but must be read alongside what has already been provided for in terms of human trafficking, of which certain planned measures may also concern human smuggling³¹⁰. In this respect, we should also mention that Belgium is one of the rare European countries with specialised judges, who have been active for almost 20 years in investigations concerning the fight against human smuggling. Hence, despite Belgium's broad range of expertise in this area, this is the first specific action plan concerning this particular subject.

This action plan focuses on repressive measures, better knowledge of the phenomenon, training, prevention and attention to migrant victims. The emphasis is therefore on the fight against smugglers and not against migrant victims.

The following repressive measures are envisaged:

- modification of the legislation so that it is possible to use special investigation techniques for 'non aggravated' forms of human smuggling. Myria questions the need for such a measure given that wide-scale smuggling cases involve all the aggravating circumstances. It is these smuggler networks that must be made a priority and phone taps should subsequently be limited to these specific cases.
- updating the circular relating to the investigation and prosecution of acts of human smuggling;
- better identification of smuggling situations through cash flows and money laundering, by developing information tools on human trafficking and smuggling for the attention of the financial community;
- continuation and increase in the number of law enforcement actions conducted within the framework of the itineraries used by smugglers.

The action plan also aims to provide better knowledge of the phenomenon, especially by ensuring the improved entry of conviction data regarding human smuggling, and by collecting more case law reports³¹¹ on the subject.

Care will be taken to ensure more aspects concerning human smuggling will be included in the training provided for the various stakeholders (police officers, judges, Immigration Office, guardians, etc.). It is a shame that these training projects have not been extended to the different stakeholders involved in receiving unaccompanied foreign minors (UFM) and asylum seekers: the Red Cross, Caritas, private players, as

³¹⁰ Action plan against smuggling in human beings 2015-2018, p. 5, available at: <http://www.dsb-spc.be/doc/pdf/TEH%20Plan%20action%202015-18%20FR.pdf>.

³¹¹ Myria would like to point out that there are already a large number of case law decisions concerning human smuggling. On this subject, see this part, Chapter 4, point 3. The decisions presented in Myria's reports are also published on its website: www.myria.be.

well as social services staff at detention centres where potential victims of smuggling (by air, land or sea) maybe housed, at first.

Prevention will be developed for the countries of origin, in particular through an information leaflet on the risks associated with human smuggling. The action plan also plans to examine how to inform the communities concerned in Belgium.

Finally, adults who are the subject of serious forms of human smuggling, as well as minors, must be properly guided. Under certain strict conditions, they can indeed benefit from assistance applicable to trafficking victims. Information tools will therefore be developed by the different stakeholders; a third assessment component of the 2008 multidisciplinary circular³¹², specifically aimed at aggravated human smuggling, will be set up and a handbook on referring UFM will be finalised.

Myria considers that it would also have been useful to include a specific section on social media and communication networks in order to better detect and identify human smuggling networks³¹³.

³¹² Circular of 26 September 2008 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgian Official Gazette*, 31 October 2008.

³¹³ See this part, Chapter 3 (best practices and experiences). On this subject, also see EMN, *A study on smuggling of migrants. Characteristics, responses and cooperation with third countries*, general summary:
http://www.emnbelgium.be/sites/default/files/publications/study_on_smuggling_of_migrants_executive_summary_french_091115_pdf.pdf.

CHAPTER 2: CASE STUDIES

In this chapter, Myria analyses legal cases concerning human trafficking and smuggling where it has instituted civil proceedings and therefore has a complete view. This provides a precise image of the way in which an investigation is initiated and conducted in reality on the ground. Furthermore, this chapter gives an illustration of the phenomenon of human trafficking and smuggling for each form of exploitation.

The basic analysis is based on the police reports of the cases and focuses above all on the criminal system and the victim's point of view. We shall first examine the report summaries - in which the investigators summarise the case - in detail and from a critical viewpoint. A great deal of attention is also paid to the initial police reports, which indicate on what basis the case was actually initiated and whether the victims were intercepted and detected at this moment. Furthermore, the case includes the police reports from the hearings of victims, suspects and witnesses, information reports, folders including transcriptions of phone taps, observation reports and, finally, reports of letters rogatory.

The study of concrete cases is a cornerstone of the policy assessment. It sheds light on the implementation of the investigation and prosecution policy on the ground, as well as the tricky issues associated with it. Once gathered together, these findings also provide an important source of information for the annual report's focus, and an essential base to formulate recommendations.

Myria primarily uses these case studies to determine best practices and experiences of the various stakeholders on the ground. They are listed in the *Best practices and experiences* chapter. Texts from the case studies that are relevant to this chapter are accompanied by a footnote.

1. Human trafficking

1.1. Sexual exploitation

1.1.1. Loverboy³¹⁴ in Antwerp involving minors from a youth centre

In this case in Antwerp, several underage victims who had escaped from a youth centre were forced by loverboys to prostitute themselves³¹⁵. The court convicted the loverboys for human trafficking and rape³¹⁶.

The defendants were two Kosovars and a Belgian of Kosovar origin. They operated as a gang. The main Kosovar defendant was the loverboy, the first one to seduce the young girls. He then passed the victims onto his brother-in-law and half-brother, the other defendants, as well as to loverboys from other cases. His victims did not know he had a wife and two children. The main defendant officially received benefits from the CPAS³¹⁷, while earning money as a pimp.

a) Opening the investigation

This criminal case was initiated based on the statement of a 16-year-old Belgian girl who had escaped from a youth centre and had been imprisoned by other loverboys.

³¹⁴ We prefer the term 'loverboy' to a pimp for teenagers because the victims recruited through seduction techniques are not only underage Belgian girls. Many adult victims are also recruited in Belgium and many child and adult victims recruited in their country of origin to be exploited in Belgium.

³¹⁵ Also see the following chapter on best practices and experiences, and the Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, part 1, Chapter 2 (Victims of loverboys).

³¹⁶ On this subject, see Chapter 4 in this part, devoted to case law.

³¹⁷ See benefits fraud in: Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, part 1, Chapter 3, point 1.

The latter were prosecuted and convicted in another criminal case in which the same girl was also a victim³¹⁸. During her hearing, she stated that loverboys had already forced her to prostitute herself in the past and she also gave the names of three other underage victims. These acts formed the basis of this criminal case regarding human trafficking.

The police examined the first victim's phone contacts and were able to identify one of the perpetrators. The competent reference judge for human trafficking appointed an investigating judge, who ordered the police to carry out phone taps.

b) Investigation

The investigation was based on phone taps, searches, hearings involving the defendants and clients as witnesses, filmed hearings of the victims, evidence of flagrante delicto and on the use of social media. The sum of EUR 5,000, which the defendants had on them when they were arrested, was seized so that the court could confiscate it³¹⁹.

The phone taps clearly revealed that the conversations related to sexual services and that it was openly a question of earning money through prostitution. One of conversations listened to between the pimp and a client led to a police intervention in a hotel where this client was caught in the act with the 14-year-old girl. The police confirmed that the photos published on sex websites had been taken in this hotel. "The young victims were still wearing the same underwear".

The investigation concerning the client also confirmed this. A client who wanted to make a statement confirmed that he was

given an appointment for sexual services with the underage girls through a website: "He thought they were adults. A man, to whom he gave EUR 700 in cash, opened the door to the hotel room. He pointed to photo X (suspect) showing the pimp. He was under the impression that he was staying in the room next door".

*Internet and social media*³²⁰

One defendant stated that he had met one of the underage victims on Facebook. The defendants were identified by the first victim through Facebook, who was also able to provide their phone numbers. It was possible to identify the defendants by comparing the images with police photos.

c) Victims³²¹

The victims were Belgian girls aged between 14 and 16 years. They had all run away from the same youth centre and remained in contact through Facebook.

The victims were in an extremely vulnerable position. Every time, it was a case of young girls who were unhappy at the centre where they had been placed and who regularly ran away from it. A young girl had already run away 53 times, and another 37 times. This type of runaway behaviour often leads these young girls to be stigmatised by their entourage. These young girls were not at all independent, nor in a position to meet their living costs, and were coerced. One young girl was a victim of serious violence. Fraudulent tactics were also certainly used. The loverboys played on these young girls' romantic feelings and had complete control over them. However, they were only interested in making money out of them.

³¹⁸ See this part, Chapter 4 (case law).

³¹⁹ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter II, point 1.2 (Focus on the financial approach: the use of financial investigations in cases of human trafficking).

³²⁰ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter II, point 1.3. (approach based on the evidence: the victim has a key role).

³²¹ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter I, point 2 (Profiles of human trafficking victims).

The young girls became emotionally dependant on the loverboys. After the defendants were arrested, other young girls suddenly said that they were not victims at all and that they did not want to see their 'boyfriend' end up in prison.

The defendants drugged various girls to make them dependant and to get rid of their sexual inhibitions. Two young girls stated that they took drugs in order to be able to go through with the acts.

Victim statements

[14-YEAR-OLD GIRL THROWN INTO PROSTITUTION AT THE AGE OF 13](#)

The 14-year-old girlfriend of the main defendant stated that she had been in a youth centre since the age of 10 because her parents were alcoholics. She regularly ran away from the centre. She had already done so 53 times. She arrived in Antwerp a year ago through the Facebook friends of another girl at the centre. Every time she ran away from the centre, she looked for places to sleep, which she obtained in exchange for sex with men. The main defendant was first her boyfriend before pushing her into prostitution at the age of 13. He offered her services through sex websites and asked his half-brother to drop her off at hotels or at clients' homes. At the time, she gave part of the money earned through prostitution to the defendant. Later on, she found out that he was married and had children. She had also been to his house and his wife had given her clothes. This woman knew about everything and explained that he had already done this with a lot of girls. She also knew that her friends at the youth centre had worked for him.

Through the main defendant, she had met his brother-in-law - the third defendant - four months earlier. She described him as her current boyfriend. The main defendant's half-brother (the second defendant) told her that she also had to prostitute herself for her current boyfriend (the third

defendant) for money, otherwise he would do his utmost to make her lose him. So she did it and gave the money earned to the second and third defendant. On the evening before the police intervention at the hotel, she had taken part in a threesome. The client paid the defendant EUR 700. She took care of the client in room 320 while her current boyfriend, the third defendant, was staying in room 318, which was their own room.

The third defendant had no income. They lived off prostitution, but the victim explained that he was a good person, because he had never hit her and he respected her. She knew that he was a loverboy and that he was using her, but she loved him all the same.

[14-YEAR-OLD GIRL SUBJECTED TO VIOLENCE](#)

This victim had also run away from a youth centre. She met up with the loverboys after having met the second defendant over Skype; they would talk to each other every day and he seduced her so that she would fall in love with him. She was not able to resist. One evening, he came to visit her in Verviers, in a café, and he then took her to Antwerp.

She was frightened: she had been reported as a runaway minor and was afraid that she would be put in a youth detention centre. She had nowhere to go. She had spent the day in the defendant's mother's flat, and the police had come to fetch her. However, the defendant told the police to go away.

The defendant then became firmer, telling her that he would kill her if she left him or if he went to prison because of her. He also beat her. He had hit her in a jealous rage during an argument in Waasmunster, causing her nose to bleed, breaking her jaw and injuring her head. He then put her in the car and intimidated her, threatened her verbally, and humiliated her. Later in the evening, he struck her twice more, without any apparent reason.

Three weeks after they first met, they went together with another defendant and his girlfriend to a hotel used by prostitutes in Antwerp, where they spent several days. At one point, the defendant kindly asked her if she was prepared to work for him as a prostitute because he did not have any money and his brake pads needed replacing. Blinded by love, she accepted. Up until then, she had never had to prostitute herself. The defendants took photos and advertised the young girl. They received the clients in the hotel or the defendant drove her to the client.

She worked alone in the beginning, and was very nervous. She took drugs when she met with clients and to forget everything. In Turnhout, she had a dangerous incident with a client. She had had to take drugs and nearly died. Later, she systematically worked with another underage victim (see the previous victim's statement). Together, they earned between EUR 5,000 and 6,000 the previous month, but had always given everything to the defendants. She now knew he did not love her and was simply taking advantage of her. Now that she had reported him, she was afraid he would take revenge when he came out of prison.

Victim status

The underage girls were sent back to the youth centre from which they had run away³²².

1.1.2. Loverboy case in Liège with adult Belgian victims

In this case in Liège, the events of which date back to 2012 and 2013, various young Belgian women were pushed into prostitution by a loverboy. He was the main defendant in an Albanian/Italian gang.

³²² Also see the following chapter on best practices and experiences.

The victims were not only obliged to hand over all their earnings from prostitution, but also their unemployment benefit and their bank card, after having been threatened. The court convicted this gang of 10 defendants, among others, for acts of human trafficking³²³. Two victims instituted civil proceedings during the trial. One of the Belgian women had already been a victim in another case of human trafficking for the purpose of sexual exploitation and offences committed under coercion³²⁴.

The loverboy (main defendant) was a recidivist. He had been provisionally released from prison in 2011 and had to wear an electronic bracelet around his ankle. According to a witness, he was already recruiting female victims during parole. He had also been convicted for attempting to organise various sham marriages. The price charged was EUR 13,000. Within the framework of one of these sham marriages, he attempted to marry another defendant to one of the victims so that this defendant could obtain a Belgian residence permit. He was an Albanian paracommando who had served in Afghanistan. According to the Belgian liaison officer in Albania, this paracommando unit from Tirana had a bad reputation.

This was not the first time for the second defendant either. In June 2009, he was part of an Italian/Albanian drug dealing gang in Italy, composed of 17 perpetrators who sold cocaine.

³²³ Liège Crim. Court, 12 February 2014, 8th ch. (final): see Annual Report 2013, *Trafficking in human beings, Building bridges* and Myria's website: <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-liege-12-fevrier-2014>

³²⁴ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 108-109.

a) Opening the investigation

In January 2013, the local police in Liège was informed that a young girl was in danger. She was kept locked up and regularly moved around. The police found her at the home of the one of the defendants. The victim informed the police that another victim was also locked up. The police decided to set up an operation to free the victim. It transpired from her statements that she had worked as a prostitute for the defendant in Seraing and Brussels.

b) Investigation

Searches were organised. The hearings of the victims, perpetrators, and witnesses revealed that violence played a key role. Any young women who did not earn enough money or who did not want to listen were beaten or threatened. The main defendant pointed a gun at the victim several times. Just like his friend, he liked to see the look of fear on the victims faces. The victims who had suffered considerable violence did not dare go to the hospital. One witness stated that they had seen the main defendant attempt to strangle a co-defendant with a scarf because she would not listen.

c) Social media

A neighbour decided to warn the mother of the disabled victim, by sending her a message on Facebook, telling her that her daughter had been beaten by two men and a woman.

d) Victims

The victims were Belgian women in their early 20s, who were in a vulnerable situation. According to a medical certificate, one victim suffered from a 66 % mental disability. Another victim had already spent her whole life with a foster family or in care. According to a witness who had refused the offer of sex, the main defendant had also approached two underage girls to work as prostitutes.

*Recruitment: Loverboys*³²⁵

The modus operandi of the main defendant, which had also been adopted by other defendants over time, was as follows: the defendant looked for young Belgian girls to recruit, who were in need and often without an income or work. He then pretended to begin a romantic relationship with them (loverboy) to make the women dependant on him both emotionally and financially. They finally ended up in prostitution, where he monitored everything they did. The young girls were gradually estranged from their family and had to give him their bank cards and identity papers. Their mobile phone was taken from them and destroyed.

Victim statements

DISABLED VICTIM

The victim was living with her father before she began her relationship with the main defendant. Her father was against this relationship but when she turned 19, she decided to break all ties with her father and go and live alone. The main defendant then did everything to ensure all the debts from his café were put in her name even though she was 66% disabled. She had to take over the café in her name. Her father received the invoices at his address because it was still his daughter's official address.

The main defendant threatened her mother several times when she decided to take her daughter in to protect her. He demanded that she allow her daughter to come out otherwise something would happen to her family, because he knew a lot of Albanians and Chechens.

The victim had already ended up in hospital several times after having been beaten up. She was given a certificate of proof of

³²⁵ On loverboys, see Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 1, Chapter 2.

violence. The accident and emergency department at the hospital then refused any further treatment, telling her that they had had enough and that she had to go to her family doctor, who would be better able to help her.

VICTIM WITH A HISTORY IN NUMEROUS RECEPTION CENTRES

Owing to her mother's alcohol problems, this victim had been directly placed with a foster family after her birth, whom she stayed with until the age of 18. She then went from one reception centre to another.

She was illiterate and incapable of remembering information such as a date or a place. She was very easily influenced and had already been a victim in another case of human trafficking³²⁶.

She continued to send love letters to the main defendant while he was in prison in Lantin on remand for serious acts of human trafficking committed against the victim. During the trial, his lawyer used these love letters in his defence.

She initially withdrew her first victim statement but then confirmed it a few days later. She explained that she initially withdrew it due to pressure from the main defendant who was perfectly aware of the contents of her first statements. She testified that he was perfectly aware because an officer from the local police in Seraing informed him. The main defendant asked her to adapt her statements so that they did not concern him but another.

Victim status

Belgian victims were put in contact with specialised reception centres and acquired

victim status³²⁷. The centres also contributed to the investigation by providing the police, with the victims' agreement, with extra information obtained from them.

1.1.3. Albanian pimp and sham marriages in Brussels

In a judgement of 17 October 2014, the Dutch-speaking Criminal Court of Brussels convicted an Albanian pimp primarily for human trafficking for the purpose of sexual exploitation and money laundering. The judge also ordered a confiscation amounting to EUR 60,000³²⁸. The defendant used fraudulent tactics to recruit victims and put them to work in Belgium as prostitutes. For instance, he organised a sham marriage between the victim and a Belgian national, which made the victim's stay completely dependent on the success of the sham marriage.

a) Opening the investigation

On 23 February 2009, the local police went to the victim's flat after a call concerning an assault. The police noted serious injuries, including burns. The victims stated that she worked in a bar in Ghent as a prostitute, that she was beaten up by her pimp, and that she had to give him all her money. She initially stated that her husband was her pimp but later admitted that it was the Albanian defendant and that she had not

³²⁶ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 108-109.

³²⁷ See the following chapter relating to best practices and experiences; Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter II, point 2 (aid and support for victims, point 2.2).

³²⁸ Brussels Dutch-speaking Crim. Court, 17 October 2014, ch. 46bis (final): see Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 109 and Myria's website: <http://www.myria.be/fr/jurisprudence/correctionnel-e-rechtbank-brussel-nl-17-oktober-20144>; Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter I, point 2 (Profiles of human trafficking victims), p. 12.

said anything through fear. She refused to make other statements, for fear of reprisals against her child and her family.

The examination of the police checks confirmed that the victim had been active in prostitution since at least the beginning of June 2005, at the mercy of the defendant. The victim had primarily worked as a prostitute in Rue Aarschot in Brussels, then later in a bar in Ostend, followed by Ghent.

b) Investigation

The victim's phone contacts were the subject of an investigation between 1 December 2008 and 25 February 2009 inclusive. Two numbers that were regularly dialled at night were clearly linked to the defendant. The numerous calls clearly showed someone who wanted to know where she was and what she was doing at all times. The two numbers, linked to the defendant, showed that he exercised control over the victim's prostitution activities. These findings extracted from the phone taps were confirmed by the witness statements and the results of the searches.

The checks also revealed that other victims had been under the defendant's control since 1999, and they had also been the subject of a sham marriage. However, these victims were not accepted by the court due to insufficient objective evidence.

Sham marriage

The spouse, initially wrongly accused by the victim, stated in his hearing that his relationship with her was actually a sham marriage. The defendant had met the victim in Italy in 2007 and had been her steady boyfriend since then. He got to know the future husband in a café and suggested a sham marriage in order to bring the victim to Belgium from Albania. The spouse stated that the sham marriage with the victim was carried out in Albania in 2008 and that she officially went to Belgium within the framework of family reunification. They moved into a flat in Schaerbeek, organised

by the defendant who also paid the costs. The defendant came to live there in August 2008, and the spouse left the flat. He only had contact with the defendant to sort out the victim's residence papers. The victim had already got married in 2002 with another Albanian, which whom she had a child. It was a customary marriage, not an official marriage, in Albania.

The defendant also married an Albanian woman using fake Portuguese identity papers in 2002, within the framework of a sham marriage. In 2004, he also arranged a sham marriage between an Albanian prostitute using fake Greek identity papers, and an older Belgian man. The police intercepted the two of them in a bar on Rue Aarschot in Brussels, where she worked for the defendant.

Financial investigation

The police used the analysis of the money transfers to show that the defendant had been active as a pimp since 1999. On the basis of the checks, the police were able to determine that the defendant was the pimp of one of the victims of prostitution in Rue Aarschot. At the same time, the police noted that this victim had sent a total of EUR 18,468.06 to two people in Albania, between October 1999 and December 1999. The Belgian liaison officer informed the police that they were the defendant's parents.

The defendant had also transferred EUR 1,900 to his parents in Albania himself. With no legal income, he was not able to explain the source of the funds to the police. The money came from his last victim.

c) Victims

There were three Albanian victims who ended up in prostitution in Belgium, after a sham marriage. Only the last victim, the most recent one, was recognised as a victim of human trafficking by the court. It was only possible to gather sufficient objective evidence for her.

Victim statements

The victims lodged various complaints against the defendant for assault and battery.

The defendant's first wife, who was not recognised as a victim by the court, was still active in prostitution in Saint-Trond in 2004. She had ended the marriage against the defendant's wishes and had lodged a complaint after being beaten by the defendant. The defendant then attacked her six-year-old daughter on several occasions. Within this framework, the police opened a case for assault and battery. This is what the case mentioned: "Based on our experience with prostitution circles, this is a known modus operandi among Albanian pimps to force prostitutes to return to work when they do not want to work anymore." Following these acts, the victim fled with her daughter. Since then, they have not been reported in Belgium again.

Victim status

The last victim was taken to a centre specialising in the reception of human trafficking victims in February 2009, but refused to accept victim status. She was not interested in the support conditions imposed and refused to make other statements, through fear of reprisals against her child and her family. However, in 2011, she lodged a complaint against the defendant for threatening her.

Following a check in Milan on 24 March 2004, Europol data on the same victim revealed that she had already registered in Italy as a victim of exploitation of prostitution and slavery³²⁹.

³²⁹ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter II, point 2 (aid and support for victims), point 2.2.

1.1.4. Thai massage parlour in Mechelen

In this case in Mechelen, where the acts took place between 2007 and 2010, several women were sexually exploited in Thai massage parlours. Ten defendants, including a legal person, were convicted of human smuggling, human trafficking for the purpose of sexual exploitation, criminal organisation, and facilitation of illegal immigration³³⁰. Every defendant played a particular role (recruitment of women and putting papers in order, massage parlour manager, etc.). Two defendants were also convicted for money laundering. There were six civil parties: four victims, Myria and PAG-ASA. The court granted the civil parties damages varying from EUR 4,000 to 8,000. Confiscations (suspended) were also ordered for amounts of EUR 51,861 and 20,598.40. In the meantime, the defendants' lawyer was prosecuted for human smuggling because he negotiated tourist visas for Thai girls in exchange for sexual services (judgement of 11 October 2016, Mechelen Criminal Court).

During the trial, the public prosecutor criticised the fact that the two main defendants were still in Thailand, that the investigation was being held up over here and that subsequently, it had not been possible to question the two defendants. The public prosecutor added that "our letters rogatory were ready to leave, but we did not receive an authorisation from Thailand". "It is obvious that these two people benefit from political support in Bangkok".

³³⁰ Antwerp Court of Appeal, 19 February 2015, 18th ch. and Antwerp Crim. Court, Mechelen division, 9 April 2014, 9th ch. See Annual Report 2013, *Trafficking in human beings, Building bridges*, pp. 18-107 and Myria's website: <http://www.myria.be/nl/rechtspraak/correctionele-rechtbank-antwerpen-afdeling-mechelen-9-april-2014>

The two leaders of this Thai criminal organisation appeared in various cases involving some 10 Thai massage parlours in Mechelen, Antwerp and Termonde. They recruited the women in Thailand and promised them a better life in Europe by offering them a job as a masseur or in the hotel and catering industry. Some of the victims even received an offer of a cohabitation agreement. They had to pay between EUR 10,000 and 15,000 for this. For this amount, they obtained travel documents, visas and transport to Europe. Since many of them could not pay such a sum, they worked on credit. Their income in Belgium first went to their creditor, thus creating a link with them through debt³³¹. Some victims who were intercepted by the police were then sent to Spain where the defendants also had massage parlours.

Corruption

In the victim statements, reference was also made to contact people at the Thai embassy in Brussels. These two same contact people had already appeared in a case of human trafficking concerning a Thai massage parlour during the same period³³². One of them had been convicted because they took care of the documents required for false cohabitation contracts.

The victim explained that it was this contract that had brought her to the massage parlour: "The next day, I contacted someone working for a group that helps Thai women and has links with the Thai embassy. This woman is called X. She helps Thai women who have problems. This person sent me to the Thai massage parlour where I now work".

³³¹Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter I, point 2 (Profiles of human trafficking victims).

³³²Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, part 2, Chapter 2, point 1.2.5.

Another victim referred to two contact people who gave her help over the phone: "Y, whose number is xxxx, is a man who works for the Thai embassy who, along with X, put me in contact with a lawyer who drew up a document that proved my cohabitation".

The victims' statements also show indications of corruption within one of the local police departments. At one point, the victims received an order to leave because the owner was warned that the police were going to carry out a raid that day.

a) Opening the investigation

The case opened on the basis of checks and searches in massage parlours by the inspection services and the police in 2009, within the framework of other cases of human trafficking involving Thai massage parlours. Each time, victims of human trafficking were discovered and heard. Different victims who had instituted civil proceedings in this case were discovered in the Thai massage parlour in Berchem. This was again the case in 2013, which led to a new case being opened³³³. In the massage parlour in Mechelen, complete accounts showing amounts and names were discovered. The police noted that different massage parlours were managed by the same company and that it was involved in human trafficking as a legal person.

b) Investigation

Through the analysis of the phone contacts, it was possible to identify the main defendant and his travel agency. Advertisements in newspapers and various websites were also checked. On the basis of the information contained in these advertisements, some massage parlours were put under surveillance.

³³³ See the following case.

Internet and social media

The federal police's central department for human trafficking in Brussels looked on websites for the opinions of clients of prostitution about their experiences in the above-mentioned massage parlours. Extracts of the comments mentioned on these websites clearly indicate that sexual services were also offered besides massages. New victims were discovered on the websites.

*Financial investigation*³³⁴

The investigation into money laundering revealed three types of transaction: money sent to different recipients in Thailand, through the defendants; cash payments; and the purchase of a house in Thailand.

On 2 October 2009, the Financial Intelligence Processing Unit (CTIF-CFI) gave the senior crown prosecutor of Mechelen a report concerning an investigation relating to the defendant. The CTIF-CFI report referred to various suspicious transfers of funds made through an agency (Goffin), between 2005 and 2009, to different people in Thailand for a total amount of EUR 48,838.50. Funds totalling almost EUR 50,000 were also regularly sent through Western Union. Between 2008 and 2009, the defendant's wife paid a total amount of EUR 20,598.40 to beneficiaries in Thailand. The CTIF-CFI noted that the economic justifications for the transfer of funds were not known but there were suspicions that these funds came from human trafficking and/or the exploitation of prostitution. The CTIF-CFI also reported that the defendant, as well as his wife, their massage parlour and the company were also mentioned in unconfirmed information concerning

human trafficking for the purposes of sexual exploitation and advertising for sexual services.

A criminal investigation was opened on the basis of this information, whereby the defendant's and his family's financial situation was examined. The police also found various photos of a building site, supervised by the defendant and his wife, on the defendant's computer. When confronted with the photos, the defendant explained that his wife had had eight houses built in Thailand with a view to renting them out.

Here is the court's conclusion in its judgement: "If we compare the defendants' cash payments with their income, it is clear that, particularly in 2007, 2008 and (partly) 2009, large amounts were transferred to Thailand, and we can in no way assume that these funds were lawfully earned. It is also clear in the court's eyes that the aim of the cash transfers to people in Thailand, in particular the defendants' (step)children, was to hide their illegal source. The use of a travel agency system such as W., offers the 'advantage' of making the source and the ultimate use of the funds more difficult to trace. On the other hand, the transfer of funds to Thailand apparently allowed the defendants to benefit from their illegal earnings there, without raising suspicion in Belgium. The defendants also bought various properties in Thailand, in particular a house in (...), in the Province of Nakom Si Tamarat as well as eight houses to rent out".

c) Victims

The victims were Thai women. They were lured to Belgium under false pretences and ended up in massage parlours where they had to perform sexual services for payment. They had to give half their earnings to the owner. The entire earnings were taken if they still had debts. A sum was also deducted for accommodation. Furthermore, they had to hand over their passport until the whole of their debt had been paid off.

³³⁴ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter II, point 1.2 (Focus on the financial approach: the use of financial investigations in cases of human trafficking).

Victim statements

One victim explained how she had been recruited in Thailand and then exploited in Belgium. Two defendants had bought large plots of land in their village in Thailand, where they owned rubber plantations. They employed several people. In their village, there were rumours that the third and fourth defendants were going to open a restaurant in Belgium; they proposed to the victim to first come to Belgium with a tourist visa to visit the premises. She would be able to work there as a cook. When she arrived in Belgium, she asked the defendant to show her where she was going to cook, and he replied that she was going to have to work in a massage parlour to reimburse her 'travel debts' of EUR 10,000. Her earnings were kept by the defendant and deducted from her travel debts. Her passport was confiscated and would remain so until she had reimbursed her debts. She worked in three of the defendant's parlours, from Monday to Saturday, from 10:00 to 22:00, and received two to five clients every day. After these statements, Payoke, who received her within the framework of victim status, informed the police that her parents had been threatened in Thailand by the criminal organisation linked with the travel agency. The victim added further declarations: "I have not asked for your help yet because I'm afraid of problems between the families in Thailand. My parents have already told me that the defendant said that I had told the police everything and that was why there were problems. My family now thinks I'm the black sheep. However, I can not tell my family that I was obliged to work in a massage parlour. They do not believe me or accept it". She also added that the defendants were fully aware of her statements and suspected one of the other victims of spying for the defendants. Apparently, this victim was also threatened and told that "when she returns, she will not get further than the airport".

Victim status

Different victims acquired victim status. This status was withdrawn for one of the victims for not respecting the conditions. She had had phone contact with a defendant whose family knew hers. The police confronted her with the recordings of the conversations and heard her, concerning this matter, in the presence of two staff members from the centre specialising in the reception of human trafficking victims.

This is what the victim stated during her hearing: "The defendants know very well how the system works once the girls are intercepted. They told me that what I would say during the first hearing was very important. Either I could be sent back to my country or sent to the Payoke centre... The defendant told me that if I was intercepted, I had to say that I wanted to go home. The main defendant could then bring me back to Belgium if I paid another EUR 10,000. When victim X (threatened victim, see victim statements) was intercepted by your services, the defendant admitted that she was lucky she was not in Thailand, because over there, a human life is not worth more than that of an ant... After calling the defendant, I realised my mistake. I revealed everything, especially the way she was making money out of me. The defendant also offered to draw up a cohabitation contract, for EUR 10,000, so that I could continue to live here. I did not want to pay another EUR 10,000... During another phone conversation, A. (member of the defendant's family) told me that I had to ask the other girls what statements they'd made to the police and asked me to gather up the copies of the hearings to give them to her. She then called me from another number. That's when I realised she had used me. I changed my phone number so that she could not call me anymore".

Another victim was intercepted twice by the police in a massage parlour. The first time, she said she did not work in the massage parlour and was repatriated. This is what she said in later statements: "While I was in

the repatriation centre, a couple went to see my mother and when I returned to Bangkok, the same couple came to see me to tell me that my debt was now EUR 25,000 and that I had to pay it if I did not want to have any trouble". The main defendant then sent her back to Belgium. The second time the victim was intercepted in a massage parlour in Belgium, she did actually obtain victim status after having made detailed statements concerning the organisation linked to the main defendant and their travel agency. Other victims did not trust her and thought that she was a spy because her new boyfriend, a former client, had close relations with the co-defendant who ran the massage parlour.

1.1.5. Thai massage parlour in Berchem (Antwerp)

In this case in Antwerp, the events of which date back to 2013, several women were sexually exploited in a Thai massage parlour in Berchem. The court convicted a Thai woman, who ran this massage parlour, for human trafficking³³⁵. The same Thai massage parlour had already appeared in the above-mentioned case in Mechelen, where the owner convicted.

a) Opening the investigation

Three Thai women were discovered in a massage parlour in Berchem during a social inspection check in February 2013; they were working there without valid papers. Two months later, the massage parlour had another inspection. The inspection services discovered three new Thai women there. Although they stated in the beginning that they had come to Belgium on their own

initiative and that they voluntarily worked in the massage parlour, one of the victims stated that they were indeed victims of human trafficking³³⁶.

b) Investigation

Besides the victims' statements, the investigators found that the defendant always managed to find Thai women without residence papers to work in her massage parlour equipped with three massage rooms. This happened twice over a period of barely two months, underlining the organised and professional nature of the activity. An extra element is the judgement from Mechelen filed by the lawyer from Myria, which reveals that this was not the first time for the defendant and that she had already been convicted for similar acts.

c) Victims

Victim statements

During a second hearing, one of the victims stated that she had arrived in Belgium through a smuggler for the sum of EUR 15,000. She worked in a massage parlour to pay off her debt. When she began working there, she was told her debts amounted to EUR 30,000. The massages went hand in hand with sexual relations. She had to give half of her earnings to the defendant. Once these debts had been paid off, the owner offered to put her residence status in order through a sham marriage, which would cost her an extra EUR 10,000.

Victim status

The victims acquired victim status and were received by a centre specialising in the reception of human trafficking victims.

³³⁵ Antwerp, Antwerp division, 31 March 2015, ch. AC4 (final): see Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 106 and Myria's website: <http://www.myria.be/fr/jurisprudence/correctionele-rechtbank-antwerpen-31-maart-2015>.

³³⁶ Also see the following chapter on best practices and experiences.

1.1.6. Thai massage parlour in Ypres

In this case in Ypres, whose events date back to 2013, several women were sexually exploited in Thai massage parlours. Three defendants, including a legal person, were convicted for acts of human trafficking, human smuggling and for various infringements of the Social Criminal Code³³⁷. The defendants had already been tried in 2011 for similar acts. Consequently, the judge handed down a prison sentence. The company, which rented the buildings housing the massage parlours, and where the two other defendants acted as agents, was also given an EUR 18,000 fine. The court also ordered the special confiscation of EUR 3,750 and EUR 12,000 for the first and second defendant respectively.

a) Opening the investigation

The investigation began when the owner of the building in Ypres, which housed the massage parlour, filed a report and made a statement. Two weeks earlier, his family had noticed an advertisement in the paper for Thai massages at his property's address. He had not been told about this. When paying the rent, the tenant had told him she was a make-up artist.

The police checked the information and did indeed find an advertisement on the internet where the tenant offered Thai massages at the address in question. She was known to the police for inciting acts of indecency on several occasions, and running a brothel.

b) Investigation

A few months later, the police and inspection services were given a warrant by the investigating judge so that they could carry out a search in two Thai massage parlours belonging to the defendant in Ypres. Several victims and secret accounts were found there. The bad working and living conditions in the house were confirmed by photographic evidence. When questioned, the clients of the massage parlour confirmed the exploitation. The defendants also partly confessed during their hearing.

*Setting up bogus self-employed workers*³³⁸

During a search, frontline services discovered different identity data for asylum seekers and a series of false papers. A Belgian defendant was involved with various companies linked to massage parlours before also setting up a company in London. The Social Inspectorate first drew up a report for setting up bogus self-employed workers. In his hearing, the defendant stated that he recruited asylum seekers so that they could become partners. They were Romanians and Georgians whose asylum claim had been dismissed. They had to pay EUR 2,000 to become a partner, after which the defendant could submit a request for a self-employed permit to regularise their residence status. The defendant had already received an advance payment of EUR 9,550 from the interested parties.

³³⁷ West Flanders Crim. Court, Ypres division, 23 March 2015, 17th ch. (final): see Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 106 and Myria's website: <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-flandre-occidentale-division-ypres-23-mars-2015>.

³³⁸ Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, Part 1, Chapter 3, point 1, pp. 44.

c) *Victims*

The victims were Thai and Nigerian women who had been recruited by a defendant through several Nigerian points of contact in Antwerp. These Nigerian pimps received a EUR 100 commission per girl if she worked for at least a month. The victims were also recruited through advertisements.

*Victim status*³³⁹

None of the victims were offered the status of victim of human trafficking. The victims with Italian residence permits received an order to leave the territory, while the Nigerian victim, who did not have a residence permit, was sent back to Nigeria.

The official 'Foreign National Check Report', which the frontline services added to the police report on the interception of the victims, confirmed that there were no indicators of human trafficking and that no centre specialising in the reception of victims of human trafficking had been contacted.³⁴⁰ The report also mentioned the following regarding the circumstances: 'massage parlour - brothel check', concerning the facts: 'undeclared work, no work permit'; concerning the purpose of the stay: 'prostitution, economic reasons'.

The local police had initially established a report for illegal residence³⁴¹. In the report concerning the repatriated victim, this is what the police wrote: "X was kept at the Immigration Office's disposition in Brussels so that she could be repatriated to Lagos because she was staying in the Schengen area without a valid visa. She does not

comply with the rules. It is therefore unlikely that she will follow up on the order to leave the territory that she will be given. Seeing that the interested party can be prosecuted for inciting indecent behaviour, there is a risk of new attempts to disrupt public order. Seeing that the interested party was working without a self-employed permit, there is a risk that she will continue her illegal practices".

1.2. Labour exploitation

1.2.1. Chinese restaurants Liège

The case was heard at the Liège Criminal Court on 28 April 2014.³⁴² The five defendants were found guilty of a number of offences, including human smuggling, human trafficking for the purposes of labour exploitation and for a number of violations of the social penal code and non-compliance with social security regulations. The perpetrators received custodial sentences ranging from six months to two years, and various fines, up to 45,000 EUROS. One victim acted as civil party during the trial and got a moral compensation of 5000 euro and a material compensation of 15.000 euro³⁴³.

The case concerned the exploitation of Chinese irregular migrants who were working in Chinese restaurants and businesses across Belgium between May 2003 and February 2010. The organisational structure involved was extremely elaborate, not only throughout Belgium, but extended across Europe, to Spain, Portugal, Poland, Czech Republic and Hungary. In Belgium, the main perpetrators were principally connected through family connections.

³³⁹ Also see the following chapter on best practices and experiences.

³⁴⁰ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter I, point 3 (The gap between 'presumed' and 'identified' victim), point 3.2.

³⁴¹ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, Part 1 (Non-punishment of victims of trafficking in human beings).

³⁴² Annual report 2013; www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-liege-28-avril-2014.

³⁴³ Annual report 2013 *Building bridges*, part 2, point 1.2. focus on the financial approach p. 42.

The main perpetrator, who owned a restaurant, facilitated the entry and movement of irregular Chinese migrant workers into Europe, with the purpose of placing them in Chinese restaurants in Belgium. He had, before coming to Belgium, lived in the Czech Republic and made contacts there with Chinese smugglers. Together with his accomplice, a Chinese businessman who had previously managed a restaurant, but at the time of the investigation lived and worked in Guarda, Portugal. The defendants were held to conspire to commit the offences of human trafficking and smuggling, in conjunction with three other defendants who were aware of and knowingly involved in the smuggling and employment of irregular migrants.

a) Smuggling

During the course of the investigation, a number of key modus operandi were identified that facilitated the functioning of the network without detection from authorities. A lot of victims outlined in their statements that their entry into Europe was facilitated via a travel agency.

Student visas

The networks connections with China meant that three of the victims had entered Europe using Student visas for a high school in Charleroi. The exact same modus operandi appeared also in another Chinese smuggling case³⁴⁴ in the same period. The visas had been obtained via an agency that charged 12,000 EUROS.

The victims then arrived either in Eastern Europe (Poland) and then travelled overland to Belgium or directly to Belgium, either accompanied or unaccompanied. Once the

visas had expired the perpetrators promised assistance in regularization including legal assistance and support.

Look alike system

The movement of the three victims from Belgium to Portugal was facilitated by the use of passports from the perpetrator's sister. The identity documents are also being used to facilitate the residence of irregular migrants in Luxembourg. For instance, following searches, it was discovered that the identity documents of two of the perpetrators and their daughter were being used by three irregular migrants who were working in their place in a Chinese restaurant in Mondercange, Luxembourg.

Classical smuggling route via Russia

It became clear that the use of a more "classical" smuggling route is also used by the perpetrators. Entry into Europe would be arranged by flying from China to Russia, then travelling overland in lorries through Ukraine, Hungary, Slovakia and Czech republic. Borders are crossed on foot over mountains or through forests. Upon arrival in Schengen state, they are left outside a refugee reception center, where they present themselves to authorities in order to seek asylum. At that moment they are registered in the EURODAC. This means that should they be stopped at any later stage in a different EU country, then they will be deported back to the Schengen state and not to China. The journey would continue overland to Belgium, once the migrants had received registration documents.

³⁴⁴ Annual report 2011 p.18-19 and p.121; Corr brussel, 3 november 2011, 47^e ch.; <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-bruxelles-3-novembre-2011>.

For the investigation, the use of these *modus operandi*, either simultaneously or in succession explains the rapid adaptation of the networks to overcome the different regulation of local administrations. Original citation: « l'emploi succesif ou simultané de ces modes opératoires s'explique par l'adaptaton rapide des réseaux face aux modifications législatives locales (accueil massif d'étudiants, période de régularisation dans un pays). »

In addition to the use of these *modus operandi* to overcome the irregularity of the migrants in Europe, there was also an assurance from the perpetrators that efforts would be made to regularise their migrant status as soon as possible, using a number of different means. Including : requests for asylum, extraordinary legalisation and family reunification.

b) Opening the case THB-smuggling

In January 2009, a victim who had been exploited by the main perpetrator in his Chinese restaurant identified himself to the Liège Judicial Federal Police, denouncing his employer and a number of others who have strategic roles in the network³⁴⁵. The victim provided the police with information including the names of individuals involved in the smuggling network spreading from China, Czech Republic, Luxembourg, Belgium, Spain and Portugal, the *modus operandi* for placing the irregular Chinese migrants in different restaurants, the restaurants he worked in during the previous 5 years (in Luxembourg and across Belgium), the corresponding police controls where he had been arrested, and details of his own exploitation - and in particular the recognition of the debt owed by the perpetrators for non-payment of wages.

Based upon this information, the police conducted a preliminary investigation, which corroborated with the statement of the victim.

c) Investigation

The investigation, led by a Juge d'instruction, consisted of a number of vital elements that established the probable cause of the involvement of the perpetrators in a criminal organization. The main perpetrator's phone was tapped between May and June 2009. Subsequent analysis of this data showed that he had a large number of contacts within Belgium who were aware of his smuggling operations, and assisted him by, for example, carrying passports and copies of identity documents back to China or knowingly employing irregular Chinese migrants. Many of those individuals, residing in Belgium, who were connected to the case originate from the same region in China as the defendants and victims - the Zhejiang Province.

The main piece of evidence that came to light during the phone taps was the transportation of three of the victims (including a minor aged two years old at the time), by the main perpetrator from Belgium to Portugal. The accomplice of the main perpetrator had employed one of the victims in a shop in Belgium, and then offered to assist with regularization of their migration status if they would go and work in Portugal.

Based upon the evidence from the phone tap and additional evidence from examination of phone contacts, the Federal Judicial Police, in collaboration with ONSS inspectors, immigration office and other law enforcement divisions, conducted 7 searches on 14 February 2010 on commercial premises across Belgium. Simultaneous searches took place, led by the Police from d'Esch/Azetter in the Grand Duchy of Luxembourg. The Belgian searches resulted in a total of 17 arrests of irregular migrant workers who were found to be present at the business premises and could not provide the relevant identity

³⁴⁵ Also see the following chapter on best practices and experiences; Annual report 2013, *Building bridges*, Chapter II, point 1.3. Evidence-based approach: the victim plays the central role, p. 59.

documents, proof of work or residence: six were released, seven were given an order to leave the country, three were placed in a detention centre to await deportation and one was sent to Centre 127 in Zaventem for direct deportation. At the time of the searches, two more victims were identified. In addition, the financial assets of the perpetrators were seized, (5,605 EUR and 2,800 EUR) and deposited with OCSC (Organe Central pour la Saisie et la Confiscation).³⁴⁶

International collaboration

At the beginning of the investigation, the Belgian police requested assistance from Spanish police authorities to identify the residence status of two possible perpetrators as well as the Portuguese police authorities to identify persons who were registered with three Portuguese numbers.

The evidence from the searches further corroborated the information provided by the victim, during his first statement, and led to a Rogatory Commission in collaboration with the Portuguese police. In September 2010, a number of searches were carried out in business and residential premises in Guarda, Portugal, where the three victims who had been transported from Belgium to Portugal were identified. In addition, 21 migrant workers were identified - all without the relevant identity documents and administrative paperwork. The perpetrator was arrested with a European arrest mandate and immediately extradited to Belgium.

The police also contacted Interpol in Warsaw for a telephone number found in the diary of one of the restaurants searched. Interpol was also contacted in order to identify the persons registered with

telephone numbers from the Czech Republic. These elements confirmed the statements of the victims and proved the international links from the defendants.

d) Victims

The police identified 6 victims who were then included in the final case, and an additional 2 victims were given victim status following their statements to the police. All victims came from the same region in China, the Zhiejiang province, and spoke the same Qingtian dialect.

The victims appeared to rely upon the assistance of the perpetrators to assist with the regularization of their migrant status, including the provision of employment contracts and legal advice etc. The irregularity of the migrant workers very often did not present much of an obstacle, as even if they had been subject to previous controls, inspections, or arrests, then the perpetrators would re-connect with them upon release and move them to a different restaurant. After a certain moment in Belgium, it is possible for the irregular workers to be moved to other European countries, most notably, in the present case, to Portugal and Spain.

Most victims lived on site at the restaurant where they worked and were unable in many cases to inform the police of the names of their co-workers or their employers. The victims were provided with access to sanitary facilities, and food.

Victim statement

The promise of a job was based upon the notion that it would be possible to earn 1000 EUROS net per month, including food and accommodation. Many of the victims were informed that they would work 6 days a week from 11- 15 and 17-22. In reality, many found that they were to set to work non-stop, without any annual leave or rest days, working long hours, up to 12 hours a day.

³⁴⁶ Annual report 2011, *The money that matters*, part 1 chapter 2, Go for the money, p.37.

“ I was in contact with students who told me over the internet that I could earn 1000 euros from working in kitchens of Chinese restaurants, which meant I would be clean, housed, and fed... On the internet I saw that the owner of a FLERON restaurant was looking for someone to work for him. I contacted him directly by telephone..”

One of the victims received their salary in cash on a regular basis, which was then sent back to China via Western Union. However, other victims were not paid a salary or received only money for expenses such as phone cards (which would be repaid once they found work in the formal economy). One victim received 50 EUROS a month, with the remainder being retained by the perpetrators who promised that once he had earned enough money he could marry the perpetrator’s sister and return to china with his money. When asked for his money, the victim was informed he had received his money and was physically abused. The search of the commercial premises identified a document that was signed by the victim and the perpetrator’s wife and sister that acknowledge a debt to be owed of 15,500 EUROS for non-payment of wages.

Additional instances of debt-bondage emerged from the victim who had been transported to Portugal, once there he received legal support from a lawyer suggested by the perpetrator. It was understood by the victim that the legal fees for this support would be paid once the resident permit had been arranged.

Victim status

The victims who were given victim status were supported by Sürya. When the police intercepted a victim, the labour auditor ordered the police to contact Sürya.³⁴⁷

Minor smuggling victim

When examining the involvement of the perpetrators in the smuggling process, the court held that the presence of a minor (a two year old) should be considered as an aggravating factor. The child was not exploited, but nevertheless, was transported with her parents from Belgium to Portugal by the perpetrator.

1.2.2. Businessman Brussels

The court³⁴⁸ held a Moroccan businessman guilty of trafficking human beings for the purpose of economic exploitation. The case involved the economic exploitation of seven Moroccan victims (two female and five male, all civil parties) who were made to undertake either domestic and construction work in the perpetrator’s home or to work on his business premises. The perpetrator owned a number of businesses in Brussels including: three driving schools, a café, a snack bar, a grocery, a restaurant, and a mobile phone shop.

The working and living conditions of the seven victims were found to be contrary to human dignity for a number of reasons: lack of fixed working hours, non-payment of wages and precarious living conditions with no access to sanitary facilities or heating. A number of aggravating circumstances were recognised by the court, including the perpetrator’s abuse of the vulnerability of the victims’ irregular migration status, as well as the abuse of a position of authority.

The case also involved two additional civil parties who were not victims of human trafficking. They had complaints that they had not been paid. PAG-ASA and MYRIA were both civil parties in the present case.

³⁴⁷ Also see the following chapter on best practices and experiences.

³⁴⁸ See further, Chapter 4: case law, point 2.3.4.: Brussels Crim. Court , 19 June 2015, corr. 59^e ch.

The court held that the perpetrator was guilty of human trafficking for the purpose of economic exploitation; he was given a 20 month prison sentence and fined 2,000 euros. In addition, the perpetrator was ordered to pay a total of 215,189,99 euros in compensation to all civil parties.

The businessman had a successful status and contacts with a political party. He had links with candidates of a political party in local elections and arranged events to support their campaigns. A victim declared: “ I was told that X (the businessman) was someone rich and powerful and I blindly trusted him”.

When questioned by the police, the businessman provided character testimonies from a number of dignitaries, including the Moroccan Ambassador to the EU, police inspectors, civil servants, etc. One witness had seen a victim massaging the feet of the businessman in the presence of the local mayor and chief of police.

a) Opening the case

The investigation began in October 2006, when two workers reported the non-payment of their salaries to local police (thus, at this time there was no reference to possible offences of human trafficking).

Subsequently, the labour auditor ordered the Social Inspection to investigate the non-payment of wages and other possible violations of employment law, relating to the employment of illegal workers and non-registration of workers in the social security system. In October 2006, a number of inspections were carried out at the business premises of the suspect where it was established that there had been violations in relation to labour law. This concerned the non-THB-victims.

Subsequently, a total of seven declarations were made by potential THB-victims, between March 2007 and January 2011 regarding human trafficking for the purposes of economic exploitation. At that moment the investigation on THB started.

b) Investigation

The timeframe of the case is extremely lengthy, with the first complaints received by the local police in April 2006 regarding allegations of non-payment of wages. An investigation was conducted by social inspectors, who inspected the business premises of the perpetrator to gather evidence regarding allegations of several labour law violations.

In October 2010, the suspect was interviewed and was cognisant of the charges against him regarding non-payment of wages, but refused to pay for additional employment benefits.

In March 2007, the first declaration of a victim was made indicating possible offences of THB for the purpose of labour exploitation. Subsequent declarations were made: three between March - July 2007, one in June 2009 and two in January 2011.

As a result, from June 2007 onwards, the investigation, also focused upon identifying elements of economic exploitation. But the labour auditor didn't appoint an investigative judge, which consequently limited the tools at the disposal of the investigation team. The investigation, instructed by the labour auditor, comprised determination of the suspect's tax and personal estate situation. (August 2007), calculation of back-pay owed to victims (September 2007), a 5 day observation of the suspect's home to see if there was any evidence of domestic workers being used by the family (end of 2007), further inspection of the suspect's business premises (September 2007 - September 2008), witness statements (March 2009), investigation of business premises to determine the working and living conditions of victims (September 2009 & December 2009).

It must be noted that in December 2009, due to the prolonged absence of the suspect, who remained abroad due to ill-health, it was suggested that “It would be appropriate to leave the document pending new information.” At the same time he figured in an election folder of a political party. Upon his return to Belgium, the suspect was interviewed again in March and June 2010, where he acknowledged connections to some of the victims, but not to all. The initial case against the suspect was further corroborated with three additional victim declarations, in October 2010 and January 2011. After 2010 there was not much movement in the investigation. The investigation then interviewed further witnesses (October 2011, May 2012, August 2012) and gathered further evidence checks on the social security and employment status of the victims (October 2014).

The victims made their declaration with the support of PAG-ASA.³⁴⁹ Taking into account the timeframe of the victim declarations (spanning a period of 4 approximately years), it is also important to note that the chronological employment of the victims shows that the economic exploitation was in fact on-going whilst the investigation into the non-payment of wages and social security contributions was underway (in particular, between December 2008 and December 2010 - four victims were exploited by the perpetrator).

Consequently, the court noted that the length of the investigation had in fact adversely impacted upon the final decision: 20-month prison sentence. Indeed, as the facts of the case spanned 2004 -2010, it was necessary for the judge to take this into account when passing the sentence. Additionally, despite the victims being awarded significant sums of compensation

in back-pay, it appears that the perpetrator had sufficient time to ensure that there were no assets remaining that could have obliged him to pay the compensation ordered by the court. And no seizures had been made.

c) Victims

Recruitment

All victims were recruited by the perpetrator personally. The victims were informed by friends, family, and acquaintances that the perpetrator had employment opportunities within his different businesses, e.g. cleaners in driving schools or waiters in a bar or restaurant. All were aware of his status within the local Moroccan community as he was considered to be a successful businessman.

Victim declarations

WORKING CONDITIONS

The working conditions were held to be contrary to human dignity for a number of reasons. For those who were required to conduct domestic work, tasks included making breakfast, dressing the perpetrator, cleaning, shopping, and running errands for the perpetrators’ family. There were no fixed hours and the victims had to be at the disposal of the perpetrator and his family at all times, according to when they were needed. Victims who worked in the perpetrator’s bar were required to work long hours (9.00 - 3.00), with no rest days or annual leave. Some victims were required to provide cleaning services for the driving schools and to be at the perpetrator’s disposal for additional tasks. A number of victims worked as handymen for the perpetrator: doing construction work in his residential premises, providing assistance when he hosted parties and events, working in the restaurant, doing tasks for the perpetrator’s family, including shopping, cleaning and administrative tasks such as recharging mobile phones and sending faxes.

³⁴⁹ See next section on victims.

NON-PAYMENT OF WAGES

None of the victims received the salary promised to them by the perpetrator upon recruitment. Furthermore, witness statements confirmed that it was well known that the perpetrator did not pay his employees as promised.

For one victim, who had been promised 500 euros a month for domestic work, her salary was paid for the first two months, and then only 250 euros per month.

The victims working in the bar had been promised 25 euros per day - regardless of number of hours worked. One victim received 100 euros for the first month and 50 euros for the second month. Another victim did not receive any wages, and received 400 euros when he confronted the perpetrator upon dismissal. Both victims attempted, on numerous occasions, to obtain their back pay but without success.

One victim (a cousin of the perpetrator) was told that he would receive 1,500 euros per month but that this was being kept for him in a bank account. He never received the money owed to him.

Abuse of vulnerability: irregular migration status

All victims had an irregular migration status and did not possess the necessary residence permit to work in Belgium. The successful status of the perpetrator in the Moroccan community meant that the victims believed he would be able to assist them in regularising their migration status. In fact, the vulnerability created by their irregular migration status was abused by the perpetrator, either by withholding the identity cards of the victims, or telling them to use false identity cards. One witness, during his interview, denounced that the businessman and his nephew were making false identity documents: "les documents falsifiés sont confectionnés par X (the businessman) ou par son neveu au moyen des trois ordinateurs contenant les

documents vierges ainsi que différents cachets d'administrations communales ou de services de police." (The forged documents are produced by X (the businessman) or by his nephew using three computers containing blank documents and stamps from various municipal governments and police services.) A victim declared: "Il m'a dit qu'une fois qu'il serait élu, il pourrait arranger ma situation et me trouver un faux mari pour que je puisse avoir des papiers. Il m'a dit qu'il connaissait beaucoup de monde (bourgmestre, police) et savait où s'adresser pour obtenir quelque chose." (He told me that once he was elected, he would be able to fix my situation and find me a fake spouse so that I could get my papers. He told me that he knew lots of people (mayors, police) and knew who to contact in order to get certain things.) A victim stated off the record in 2007 that the businessman arranged for the entry of young girls into Belgium using illegal immigration or arranged marriages, in order to make them work for 20 euros a day.

Violence, threats, and abuse

All victims were subjected to threats and abuse by the perpetrator, either verbally and/or physically. One victim was threatened that if she told anyone 'he would kill her and send her back to Morocco in a coffin'. Two victims suffered physical violence at the hands of the perpetrator, who would beat them - usually on the head - and threatened them with knives or guns. A victim's medical records show ecchymosis on the left eye, scratches on her nose, and abrasions on her neck, these injuries had been inflicted by the businessman: "When he arrived at the garage, X (the businessman) insulted me right away and then he threw himself on me. He wanted to take out my left eye and he tried to strangle me." Other victims stated that they had received significant verbal abuse from the perpetrator, which was also corroborated by a number of witnesses. The perpetrator's threats were often accompanied by reference to his possession of a gun. He humiliated the victims systematically: "He

frequently insulted us during work, for him I did not have a name, he always called me 'son of a bitch'".

Sexual exploitation: inciting debauchery

Both victims and witnesses alluded to the perpetrator's requirement that his staff, (predominantly those who worked as administrators in the driving school) should have sexual relations with his clients. Statements were heard that confirmed that the perpetrator's staff were expected to flirt, seduce, and accompany clients. One human trafficking victim stated that the perpetrator had, on four occasions, suggested that she should have sexual relations with him. On another occasion, the perpetrator's father sexually assaulted her and lifted her skirt up with his cane whilst she was cleaning. The court did not convict the businessman for this act because there were not enough objective elements of proof.

Living conditions

All victims were encouraged to live either at the perpetrator's house or on his business premises (in garages and cellars). The accommodation was not equipped with hot water, cooking facilities, sanitary facilities, or heating, nor were they furnished. As a result, victims were required to build their beds.

Victim status

The investigation into allegations of human trafficking was the result of information received by the labour auditor from PAG-ASA stating that the victims would like to make a statement regarding their economic exploitation. One victim was referred to PAG-ASA via a local CPAS (Public Centre for Social Action) office.³⁵⁰ Once the victims had

been interviewed by the labour auditor, they were given a human trafficking victim status.

However, the on-going investigation into allegations of non-payment of wages potentially failed to identify possible victims of human trafficking. The inspections predominantly focused on the business premises of the suspect but four possible victims were not identified. This is in spite of an overlap between the period of exploitation and the date of inspections, as well as the victims' testimonies stating that they were accommodated at the business premises.³⁵¹ Another missed opportunity to identify a victim was when the local police controlled their place of work - grocery - on two separate occasions. Enquiries into possible indicators of economic exploitation could have been made, as an investigation following three victim statements had already begun. Subsequently, the individual concerned made a declaration in October 2010.

Overall, the support of PAG-ASA provided helpful support, which demonstrated that the reflection period is useful, as well as demonstrating the importance of providing socio-legal support.³⁵²

³⁵⁰ Also see the following chapter on best practices and experiences.

³⁵¹ Annual Report 2013, Human Trafficking, *Building Bridges*, chapter 1, point 3 p. 28.

³⁵² *Ibidem*.

1.2.3. Road haulage sector in Bruges

In this case, several defendants and a road haulage company were convicted for acts of human trafficking by the criminal court³⁵³. However, when they appealed, they were acquitted of this charge³⁵⁴.

The main defendant had set up a fraudulent structure, whereby a Bulgarian road haulage company provided services for a Belgian firm using posted drivers and mechanics. In reality, this involved undeclared work and the illegal employment of Bulgarian and Romanian workers in Belgium with no work permit. His wife was also convicted for her bogus role as managing director of the road haulage company, as well as a third defendant, whom was found during searches and identified by the victims as being the ringleader.

The Belgian road haulage company was also prosecuted and convicted for having actively taken part in the exploitation, serving as a link in the fraudulent structure and having earned illegal income through labour exploitation. The court was very clear on this point: "The fourth defendant is considered, as a legal person, criminally responsible for the infractions intrinsically linked to achieving his goal or the defence of his interests, or those whose concrete facts show that they were committed on his behalf".

a) Opening the case

The case was opened in 2009 based on the victims' statements³⁵⁵. A Bulgarian driver

spontaneously went to the maritime police in Zeebrugge, situated close to the road haulage company's site, and filed a complaint for having been fired after refusing to drive Belgian heavy goods vehicles. He knew it was forbidden and did not want to be complicit. He had not received any severance pay or wages. During his hearing, he spoke of other Bulgarian drivers who were employed there. In the hours following his statement, the Social Inspectorate directly carried out a check at the road haulage company's site, and found Bulgarian drivers who had been posted there. They were heard by the Labour Inspectorate upon the request of the labour prosecutor's office and made relevant statements in turn, complaining about the payment of their salary and the work conditions.

b) Investigation

The police and the Social Inspectorate carried out new checks in 2009 and 2010 on the road haulage company and heard the people concerned. The Social Inspectorate then examined whether the Bulgarian drivers fulfilled the necessary conditions to be considered international road haulage drivers, working for a foreign company, all within the framework of the relevant European rules on posting.

In concrete terms, the inspectors checked whether it was question of an 'independent' Bulgarian company with its own economic activities in Bulgaria. They concluded that this was not the case and so the Bulgarian workers in question were subject to Belgian social security. The infrastructures, administrative and technical equipment, and the facilities a road haulage company requires were not in Bulgaria but in Zeebrugge, where the company's policy was also drawn up. The invoices were not sent to the Bulgarian 'head office' but to Zeebrugge, where the accounts were held.

³⁵³ Bruges Crim. Court, 26 March 2014, 17th ch.: see Annual Report 2013, *Human Trafficking, Building Bridges*, p. 119 and the Myria website: www.myria.be/nl/rechtspraak/correctionele-rechtbank-brugge-26-maart-2014.

³⁵⁴ Ghent, 7 January 2016, 3rd ch.: on this subject, see this part, Chapter 4 (Case Law), point 2.3.3.

³⁵⁵ Also see the following chapter on best practices and experiences.

International cooperation

The Bulgarian authorities confirmed that on 11 August 2010, this Bulgarian company did not have any economic activity in Bulgaria³⁵⁶. The drivers also stated that only the recruitment took place in Bulgaria and that none of the company's trucks were on the road.

*False posted workers*³⁵⁷

There never was an independent Bulgarian road haulage company in Bulgaria, nor even the least activity of any kind. The drivers and mechanics received their orders from Zeebrugge. It was a P.O. box company that was set up by the main Belgian defendant with the sole purpose of employing cheap labour to offer his road haulage activities at very competitive prices.

According to the Social Inspectorate, so-called P.O. box companies are a real problem as regards posted workers. "This kind of company is set up in a sending country, with the goal of purposefully circumventing the social security legislation and labour law in a very specific host country in general. It is therefore obvious that this type of structure has absolutely no place in the ideology of the European legislator and completely erodes the principle of the free movement of services. This bogus form of posting implies that the posting is false; in reality, the workers only provide their services for a Belgian company. Therefore, this means that these workers must be covered by Belgian social security".

In its report, the Social Inspectorate explained that posting is forbidden when the Belgian principal exercises authority

over the posted worker of a foreign employer: "The work must be supplied under the authority of another person and this authority is another essential element of the employment contract. This authority is composed of a combination of a series of elements. None of these elements can preponderate over another one. The authority indicators are all principles taken from case law:

- obligations relating to the organisation of work (respecting working hours, guidelines regarding physical organisation of work);
- employer monitoring of the actual execution of the work and respect for the labour regulations;
- the employer is responsible for the financial and economic organisation".

Human trafficking: degrading work conditions

In its report, the Social Inspectorate interpreted the notion of "work conditions contrary to human dignity", a determining factor according to our law to establish human trafficking for the purposes of labour exploitation.

"Deriding human dignity is equal to debasing everything that characterises human nature, i.e. a person's physical and mental abilities. By physical ability, we mean the ability to satisfy one's basic needs freely and fairly. So where does the limit of incompatibility with human dignity lie? The notion of exploitation in circumstances contrary to human dignity is not limited to material conditions (such as wages); it concerns every element of a worker's status that could be contrary to human dignity. Work conditions can also become contrary to human dignity when several workers are employed under a contract that does not respect the standards provided for in the Law of 4 August 1996, relating to the well-being of workers during the execution of their work. An unpaid or poorly paid employee is an indication of labour exploitation".

³⁵⁶ Also see the following chapter on best practices and experiences.

³⁵⁷ On posting and associated fraud, see Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking*, Part 2.

The Social Inspectorate's investigation reveals that human trafficking indicators were clearly present: the drivers were promised a (low) salary, which they generally did not receive at all or only partly. Salary arrears were increasingly frequent. Wage deductions were made for any reason (vehicle repairs, excessive consumption of petrol, etc.). The drivers received restricted advance payments to make them dependant, and what they received was not enough to live properly (e.g. EUR 70 for three weeks' full-time work, EUR 90, 200 and 600 for a full month's work, etc.). Some victims had to work long hours on end: 110 hours of work in 11 days, 12 to 13 hours a day. Some victims came to Belgium and had to work a trial shift without pay.

But according to the Social Inspectorate, it was not only the salary that was inhuman, it was also the living conditions. The drivers had to sleep in their lorry. The workers therefore had to also stay at their place of work, in Zeebrugge's industrial zone, during their free time and days off. They did not even have a room and a bed; they had to sleep in their lorry in the car park. Even though the majority of lorries used for international road haulage are equipped with a decent sleeper cab, it is unacceptable that workers have to make do with that to rest and have some privacy.

The Social Inspectorate concluded its report as follows: "The practices used can be described as human trafficking for the purpose of labour exploitation within the context of the free movement of people and services within the European Union".

c) Victims

There were 18 victims, who worked as drivers or mechanics for the road haulage company. They were mainly Bulgarian, with one Romanian.

Recruitment

The workers were lured to Belgium through advertisements in the newspaper or on the internet, claiming to offer work with a Bulgarian company. They signed a contract,

but the contact person in Bulgaria made them believe that they would earn up to 10 times more in Belgium. Once in Belgium, the drivers had to drive for longer than the authorised number of hours and were very badly paid, when they were actually paid.

Victim statement

The fired Bulgarian victim, whose complaint sparked the investigation, stated:

"I left Bulgaria by bus on 25 March 2009 and arrived here on 28 March. There was an advertisement in a Bulgarian newspaper offering a job as a driver. Applicants had to contact a Bulgarian woman in her sixties for an interview and bring a short CV. After a few days, they contacted me to say that I fulfilled all the conditions. Once here, I was given the keys to a vehicle with a Bulgarian registration plate. Then, four or five days later, I was forced to drive a vehicle with a Belgian registration plate otherwise I would be fired. Guessing that it was illegal, I once again asked for a lorry registered in Bulgaria. When I again refused to drive a Belgian lorry, I was fired on the spot. The Bulgarian contract I was given and signed supposedly came with BGN 300 (EUR 150) as assurance for the promised monthly salary of EUR 1,550. For the whole month I worked, I only received EUR 90. I could not even buy myself anything to eat the last four days. If the company was inspected, we had to continue our journey and stop elsewhere. We had to work a lot more hours and were told to destroy the discs. So we sometimes drove for 24 hours non-stop. We were promised more at the time. Some people were told they would receive EUR 1,500, which was to be paid in Bulgaria. These people subsequently received less than they were promised. The boss always found an excuse to pay less (either he had to do repairs on the vehicles, or fuel consumption was too high, etc.). ».

Victim status

The victim referral system was not applied³⁵⁸. All the victims were repatriated, even those who had initiated the investigation. None of them were offered victim status. The day following the interception, all the victims were repatriated to their country of origin. Bruges' local police force even transferred the Romanian victim to a transit cell, before taking him to a detention centre in Bruges with the intention of repatriating him to Romania.

2. Human smuggling

2.1. Kurdish-Palestinian human smuggling network in Bruges

In the case in Bruges, where the acts took place between November 2014 and January 2015, a Kurdish-Palestinian network was mostly involved in smuggling Syrian and Kurdish victims to the United Kingdom. This case was tried by Bruges Criminal Court³⁵⁹. It is closely linked to the next human smuggling case mentioned in this chapter.

a) Human smuggling network

The two main defendants were an Iraqi Kurd and a Palestinian from a refugee camp in Lebanon. Their two co-defendants were Palestinians, one from Palestine and the other also from a refugee camp in Lebanon.

The police established that over a two-month period, they had crossed the border fraudulently at least 23 times. They operated from Brussels and in parking areas in Rotselaar and Heverlee, but some of the transportations went via Zeebrugge. They recruited their clients in the area around Midi railway station. The smugglers went to

cafés and shops mainly frequented by people who spoke Arabic.

They also had a lot of contact with other smugglers in Belgium and abroad. The main Kurdish defendant also had his own contact people in France, Belgium and Italy. These smuggling activities took place within the framework of an international network of human smugglers who occasionally helped each other out.

This is what also transpired from a phone conversation in January 2015 between smugglers: "A. told me that things have become difficult in Italy and that he was now passing via Germany or 'Namsa' (Turkey). A. wonders if D. (Kurdish smuggler) knows someone who can take care of them in 'Namsa' and take them to Finland, Sweden, England or Germany. D. is prepared to do it".

The services offered also included passports. During a phone conversation, a smuggler asked a contact person if they knew someone who was going to Lebanon so that they could bring back a passport with them. According to the police, the passport was for someone who had already received their residence papers but who still needed a passport. It then transpired from a phone conversation between the contact person and this person that a third person had, in the meantime, brought back the passport from Lebanon and was going to come by Brussels to hand over the passport and have their residence permit adapted.

The smugglers also provided asylum statements. This is what transpired from phone conversations: "At 15:10, D., the main defendant, calls smuggler S.³⁶⁰ and tells him that a boy from 'Darban' (town in Kurdistan) had called him from Italy asking for help. It was agreed that EUR 2,500 would be transferred to the account within

³⁵⁸ Also see the following chapter on best practices and experiences.

³⁵⁹ West Flanders Crim. Court, Bruges division, 21 October 2015 (final): see this part, Chapter 4 (Case Law), point 3.

³⁶⁰ The main defendant in the smuggling case is closely linked to this case.

24 hours for the file/statement. The file is the asylum statement given to the Immigration Office within the framework of an asylum application".

The travel costs varied depending on the services provided. Phone taps revealed that the smuggling victims had to pay an amount varying between EUR 1,000 and 3,500 to fraudulently cross the border. A special rate of GBP 6,000 was applied to bribe people in the United Kingdom and thus guarantee the success of the transportation.

b) *Opening the investigation*³⁶¹

On 25 November 2014, the maritime police in Zeebrugge discovered three smuggling victims in a lorry. During their hearing, one of the victims stated that they had contacted a Kurdish smuggler two days earlier at Brussels Midi railway station, who had guaranteed transportation to the United Kingdom for EUR 1,000. The victim accepted and received a mobile phone number from the smuggler, which was given to the police.

c) *Investigation*

The public prosecutor's office was immediately informed and asked for the case to be investigated. A criminal investigation, led by an investigating judge, was thus conducted. Thanks to a phone investigation, it was possible to obtain the main Kurdish defendant's phone number. The investigating judge then established a phone tap and surveillance was carried out. Based on the analysis of this data, the police were quickly able to identify the human smuggling organisation.

The police also conducted a neighbourhood investigation, heard witnesses and carried out searches. They were thus able to obtain additional evidence.

³⁶¹ Also see the following chapter on best practices and experiences.

*Social media*³⁶²

The phone taps revealed that the smugglers relied heavily on social networks. Delicate subjects, such as financial matters, could not be discussed over the phone. Therefore, they would agree to talk using Skype or Viber: "Smuggler X says that smuggler Y still has money from three people sent on Thursday 04.12. Smuggler Y is in the Netherlands for the moment and does not want to talk about it on the phone, but over the internet instead".

The smugglers regularly changed mobile phone numbers to make phone tapping difficult, and shared their new numbers via Facebook. They used Facebook to extend their international network with potential clients. At the beginning of their investigation, the police established in a report that a Facebook group had been set up for this purpose:

"We have also found out that there are different user groups speaking Arabic on the social media site Facebook. Their aim is to put people who want to get to Europe without valid papers in contact with each other and with smugglers. In these user groups, questions can be asked regarding the situation in European towns and countries, with a view to collecting information in order to go to these areas. Users can also ask for the details of people who can help. These details are then sent in a private message to those who have requested them. Some members also sometimes inform other users whether transportation to the United Kingdom has been successful or not".

The investigators also used social media as a method of investigation within the framework of their research. Thanks, in

³⁶² Also see the following chapter on best practices and experiences.

particular, to photos on Facebook, they were able to determine the true identity of the main defendant. During the phone taps, the police noticed that the main defendant was using an alias on social media. The police checked the national register but they were not able to find this person. However, searches through open sources on Facebook allowed the police to find the profile of the smuggler created using his alias and confirm that his Facebook profile photo resembled that of the Iraqi, M., the real identity of the main defendant, whose details were in the police database.

Financial investigation

The phone taps revealed that the criminals were making huge profits. The main Kurdish defendant mentioned during a conversation that he had earned USD 17,000 in one month alone. However, the income could fluctuate significantly: a week earlier, he had earned EUR 6,000 but nothing the following week. Two of the defendants received CPAS (public social welfare centre) benefits, besides their criminal earnings³⁶³.

Phone conversations revealed that money was also sent to the country of origin. The main Kurdish defendant explained that in the space of two months, he had sent almost USD 10,000 to Kurdistan and had bought a house for EUR 40,000. He transferred money to Iraq through Western Union, using the name of a friend with a Spanish identity card. He then sent a text message to Iraq mentioning the name³⁶⁴.

The main Palestinian defendant did not keep the money from smuggling on himself

but entrusted it to a friend and was able to use the latter's wife's bank card.

d) Victims

During the two months of phone tapping, the police counted more than 100 victims of smuggling. They were mainly Kurds from Syria, Iraq and Iran. There was also a large group of Palestinians and a few Albanians. Some of the victims were transported in refrigerated lorries, a more dangerous process.

In their phone conversations or messages, the smugglers referred to their victims as sparrows, creatures, animals, or sheep. They were therefore completely dehumanised, as indicated in the following conversation:

"On 7 January 2015, the main Palestinian defendant indicated that the boys were at his place again after having been checked at Dunkerque. The main Kurdish defendant does not want to see them and says they're animals, the sons of animals. He put them in a lorry but they would not stop making a noise".

*Victim statements*³⁶⁵

One of the three intercepted smuggling victims, whose statement initiated the investigation, explained to the police that after staying in Calais for a few days, they went to Brussels Midi railway station via Paris. They came into contact with the main Palestinian defendant in the immediate surroundings of the station, who guaranteed them transportation to the United Kingdom in exchange for a minimum of EUR 1,000. After paying in cash, the victim was taken by one of the main defendant's contacts to a bus going to Leuven town centre and instructed to then

³⁶³ See benefits fraud in: Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, Part 1, Chapter 3, point 1, p. 44.

³⁶⁴ Also see the following chapter on best practices and experiences.

³⁶⁵ Also see the following chapter on best practices and experiences.

take a taxi to the E40. At the Oud-Heverlee parking area, they had to cross the bridge over the E40 to reach the car park for heavy goods vehicles, on the petrol station side. Another member of the human smuggling organisation was waiting for them to put them in the loading space of a lorry heading for Zeebrugge. The victim had to stay in direct contact with the main defendant during the whole journey via the mobile phone provided by the smuggler. It was this mobile phone that the victim gave to the police³⁶⁶.

Smuggling families

Financial gain is all that counts for the smugglers. In one phone conversation, the main Kurdish defendant explained "there was also a Syrian family, with an important (rich) doctor and a girl. Smuggler D. made them pay more".

In general, the main Kurdish defendant did not want families as clients owing to the problems they cause. They had a bad experience with an Iranian family:

In the night of 14 January 2015, seven smuggling victims were put in a lorry at the Heverlee parking area: two Albanians, two Arabs and an Iranian couple with a child. This lorry was stopped by the police in Calais. The following night, a new transportation was organised for this family, in the company of an Iranian man. This time, they were intercepted on the boat in Calais. On 20 January, a new attempt to transport them was organised, on board a refrigerated lorry this time. On 21 January, the main Kurdish defendant and smuggler S. had several phone conversations about this. They were informed that the lorry had dropped off its load in Zeebrugge: "The family wants to get out because it's too cold for the child, and D. (main Kurdish

defendant) asks smuggler S. to tell them not to do it. Smuggler S. asks D. to do it himself. In another conversation, S. and D. agreed that this was the last time they would transport the Iranian family".

Unaccompanied foreign minors

The phone taps also revealed that various unaccompanied minors were the victims of smuggling:

"On 18 December 2014 at 00:58, X. reports that the 'little boy' was abandoned by the driver and doesn't know what to do. The little boy is in the jungle. D. explains that the man must call the boy himself".

2.2. Kurdish human smuggling network in Ghent

The acts concerned in this case in Ghent took place between October 2014 and January 2015, and involved a Kurdish network mostly active in smuggling Kurdish victims to the United Kingdom. This case was tried in 2015 by the Criminal Court and Court of Appeal in Ghent³⁶⁷. It is closely linked to the previous human smuggling case mentioned in this chapter.

The main defendant had recently served more than seven years in prison in France, and had come to Belgium. He was also known to French police services for an act of rape against Iraqi minors in 2006.

a) Human smuggling network

An Iraqi Kurd headed the criminal organisation. His two co-defendants were an Iraqi Kurd and an Afghan. He didn't really trust the latter, who played a subordinate role.

³⁶⁶ Ibidem.

³⁶⁷ Ghent Crim. Court, 1 June 2015 and Ghent Court of Appeal, 3 November 2015: see this part, Chapter 4 (Case Law), point 3.

The smugglers organised their transportations from the parking areas in Rotselaar, along the E314 highway to Leuven/Brussels. The smuggling victims were concealed in lorries or refrigerated lorries in order to cross the British border illegally. Furthermore, the human smuggling organisation used abandoned cottages in the area surrounding the parking area to hide them prior to transportation.

The Kurdish victims were gathered in cafés or restaurants in Brussels and brought there by international contacts active in human smuggling, or came from the camps in Calais and Dunkerque (Grand-Synthe). These cafés, camps, and accommodation rented by the main defendant sometimes served as temporary accommodation (safe house) for the victims. The victims were taken from Brussels to the parking area by public transport or by a driver for an extra EUR 100.

The parking areas had become the criminal territory of the Kurdish smugglers, who considered them their property. The statements of a defendant made during their hearing were very telling: "A. is Afghan and it's difficult for him to get people. The parking area is Kurdish and belongs to Kurdish smugglers. Because he's Afghan, he can't send Afghan clients from this place. B. is a Kurd and the parking area belongs to him. The Arabs can't work there. B.'s clients weren't Kurdish, they were Syrian and Egyptian. There are a lot of them at the car park. Weapons, like kalashnikovs, are stored there. B. can sell or rent a parking area as he sees fit. He knew there was a client that was willing to pay EUR 120,000 for it. There are some Albanians who'd really like to have the parking area, but they can't have it. B.'s car park is in operation at least three days a week. At least 30 people are transported illegally. Which is more than EUR 60,000 a week for 30 people. And that's a minimum".

The smugglers also used counter-espionage techniques against the police. They monitored the police closely at the parking

areas, and knew when the way wasn't clear. With the help of their Dutch contacts, they assessed the possibility of moving their human smuggling activities to Roosendaal (Netherlands). The smugglers were perfectly aware of the fact that their calls were being tapped by the police. They used targeted techniques to complicate the phone taps. For instance, they used the victims' mobile phones or SIM cards. The smugglers also regularly used other names so that anyone external would have difficulty identifying who was speaking.

International network

The organisation had numerous contacts with other smugglers including people in the Netherlands, the United Kingdom, France, Germany, Italy and Iraq, who took care of people who wanted to illegally cross the British border.

One important contact person was the Iranian woman H. who lived in Rotterdam (Netherlands). According to the police, she was high up in the hierarchy. She was responsible for the financial aspects and supplying victims from the Netherlands. She kept a tally of which transportations were successful and which ones had failed. The main defendant also regularly went to stay in Rotterdam within the framework of his human smuggling activities.

They also had contact with Albanian smugglers who took care of the supply of Albanian clients. The latter were treated with the utmost care. This was also revealed in the phone taps:

"Four Albanian human smuggling victims contacted their contact person to complain of their accommodation. The Kurdish smugglers contacted T., the Albanians' middleman, who had sent the four Albanian human smuggling victims. It was then agreed that the Albanian human trafficking victims would be moved to K.'s room. The Albanians were gathered up and grouped together".

The third defendant, sentenced in absentia, was a Kurdish smuggler who lived in the United Kingdom. While he was staying in Belgium, he worked for an organisation to help the homeless in Brussels. During his hearing, the main defendant described him as follows: "Z. is on the second photo you showed me. He looks after the money and Kurdish smuggler B.'s people. He was also illegally transported over the border by B. a long time ago. He lives in England. The Syrians and Egyptians also come from him. The money and the people come from him. No-one knows him apart from B. He's Syrian. He receives approximately GBP 3,000 to 4,000 from the human smuggling victims. GBP 2,000 are for B. He keeps the rest for himself. I consider him a bank rather than a smuggler. He doesn't go to the parking areas in person. B. is above Z. because Z. can't give the human smuggling victims to any other smugglers. If B. has people himself, they have priority over Z.'s."

Guaranteed transportation

The smugglers also offered special services, such as providing false papers. During the hearing of the main defendant, he answered the police's questions in detail on this subject:

"Question: we found several photos of people's passports on your iPhone. What are they and why take photos of them?"

Answer: Q. knows someone in Europe who can provide false passports so people can travel from Iraq to Europe. The man on the photo is my nephew, also a friend of Q.'s. The woman on photo 6 is the wife of the man on photo 5. These people were smuggled two to three days before I was intercepted. I heard Q. talking about smuggling them, but they were having problems agreeing on a price.

Question: What was the price?

Answer: Between EUR 7,000 and 8,000 per person. There was a fake visa on their passport. That's Q.'s job. He works with a black Pakistani friend. I think the passports are made in Portugal".

The smugglers also offered guaranteed transportation. The payment was only made after the smuggling had succeeded. The smugglers also worked with a Pakistani smuggler from an internet shop who, for EUR 4,000, and the help of a contact person at the airport, organised guaranteed transportation to the United Kingdom within three days. In turn, the Pakistani smuggler had a contact person in London who provided fake passports in two days.

The main defendant's hearing revealed that in the Dunkerque (Grande-Synthe) camp, smugglers offered guaranteed transportation to the United Kingdom with the help of lorry drivers: "As a smuggler in Dunkerque, he works with a few others. They work as smugglers offering guarantees, in collaboration with the young man who has Belgian papers. They ask for GBP 7,000 per person to travel to England. The driver knows about the smuggling. A group works for them in Dunkerque, and they sort everything out here, in Brussels, in a hotel".

b) *Opening the investigation*³⁶⁸

On 3 October 2014, a lorry driver found three people in the cargo space of his articulated lorry in a car park in Gentbrugge on the E17, direction Antwerp. He contacted the traffic police and chased the people out of his vehicle. The Aalter/Oost-Vlaanderen traffic police found the three people at the parking area, sitting on the edge of the pavement. There was an Iraqi man, an Iranian woman, and her 14-year-old daughter. The traffic police questioned the interested parties, who could speak a bit of English. They explained that they had come from Brussels and had slipped into the lorry in the car park in order to be smuggled into the United Kingdom. The police noted that the Iraqi man had a smartphone with

³⁶⁸ Also see the following chapter on best practices and experiences.

10 missed calls from the same number in Belgium³⁶⁹.

The traffic police contacted the public prosecutor who ordered the examination of the mobile phones and a hearing of the Iraqi man. The man, the mother, and the daughter said they didn't know each other and were travelling together by chance, which didn't correspond to the findings. The police suspected the Iraqi man of being a smuggler who was accompanying the woman and her daughter.

The police analysed the phone contacts and noted that the smartphone's Belgian number also appeared in other human smuggling interceptions made by police patrolling the Ghent road and the maritime police in Zeebrugge. There was also a text message on the mother's mobile phone giving instructions stipulating that the money had to be paid to the account within 24 hours and that her brother had to act as guarantor. Another message contained clear instructions concerning a site in Brussels, not far from Maximilien Park, where foreign nationals in transit regularly stay. The analysis of the phone number revealed that the Kurdish co-defendant was a contact who was common to several people.

c) Investigation

The investigating judge requested phone taps so that the whole human smuggling organisation could be identified through the intercepted conversations and messages. End January 2015, the federal police (PJF), the West Flanders (Bruges), Leuven and East Flanders (Ghent) police forces organised a national action involving various searches and arrests.

*Social media*³⁷⁰

The phone taps revealed that the smugglers relied heavily on social networks. More sensitive subjects, such as financial arrangements, were dealt with over the phone but via Skype or Viber: "On Saturday 24 January 2015 at 11:47, the user of 796 (smuggler) calls the person looking after finances in the Netherlands and explains that he sent her a name the day before. The woman (779) explains that she hasn't received anything. The smuggler tells her that he will send the name by Viber. The person looking after the finances most likely has to pay the smuggler".

In their communications with clients or other smugglers, they shared their new phone numbers via Viber or Facebook: "At 14:17, the smuggler (796) calls the user of the Iraqi phone number (...). He asks after a boy (unknown) who, according to 788, was staying in Bulgaria. The user of 788 was going to send the smuggler's (796) number to the boy so that he could call him. The smuggler explains that he also has a few other numbers and that he will send them all by Viber".

The smugglers regularly changed phone number to complicate the phone taps: "The two smugglers agreed to change their phone number and send their new number by the social media site Facebook".

The investigators also used social media as a method of investigation within the framework of their investigations. The police investigated the Facebook profile of the main defendant through open sources. It turned out that he had published four photos of himself with a replica gun in his left hand. These photos were added to the report as evidence.

³⁶⁹ Ibidem.

³⁷⁰ Ibidem.

The federal police's computer crime units analysed all the data on the smartphones and computers that were seized or checked during a human smuggling interception, or a search of a smuggler's home. The messages found on the smartphone contained important information regarding the main defendant. During their hearing, the defendants also showed photos of other smugglers saved on their smartphone. During the analysis of the computer, 51 conversations were recuperated. They had taken place via Facebook and the police were able to trace the Facebook profiles of those involved in the conversations. The information was of little relevance to the investigation. However, this process showed how conversations on Facebook can sometimes be traced.

The police used Facebook and Google Maps as tools during the defendants' hearings. Thanks to Google Maps, it was possible to trace a number of important places regarding human smuggling activities, such as safe houses. During his hearing, one defendant willingly gave his Facebook password and cooperated fully. The police started up Facebook in his presence and asked him to show them the people mentioned in his statement. With the help of the photos on Facebook, he was able to provide more detailed information concerning other smugglers. The defendant showed the hotel where he had stayed with another smuggler, which was used for human smuggling activities: "A. told me I could stay with him at the X. hotel. I can look for it on Google Maps with you so you can take a screenshot of the entrance to the (...) hotel. Note from the police officer doing the report: a screenshot of the hotel mentioned is attached to the present hearing as annex 01".

Financial investigation

During his hearing, the main defendant confirmed that the profits from human smuggling were enormous: "I know that X (Kurdish smuggler) keeps the money from human smuggling at someone's house in

England. I know that he has GBP 110,000 in ready cash. He smuggles about 20 people a week. They're Kurds from Syria. The supplier is also Kurdish. X also transferred GBP 6,000 to Iraq. to F.'s family, and GBP 6,000 to his own family in Turkey".

The smugglers transferred a great deal of money to other countries through money transfer agencies, which have always cooperated fully with the Belgian courts, following a formal request supported by warrant³⁷¹. Western Union replied that the smugglers in question received money from Iraq, the United Kingdom, Sweden, the Netherlands and France at the end of 2014 and the start of 2015. At the start of January 2015, they sent funds from Belgium to Afghanistan themselves.

Based on the investigations and phone taps, the police managed to link different financial transactions with the human smuggling organisation. Many of the financial transactions, which were made through money transfer agencies using other people's identity papers, were from or to the Netherlands. In the Netherlands, H., the Iranian woman responsible for financial matters, also played a key role.

d) Victims

The smuggling victims were mainly Kurds from Iraq, Iran and Syria, with a few Albanians.

Smuggling families

The same Iranian family as in the previous human smuggling case features in this one too. The smugglers in both cases worked closely together. The phone taps revealed that the family could no longer benefit from any extra services because it didn't have any more money: "The smuggler calls H. (the Iranian women in the Netherlands

³⁷¹ Ibidem.

responsible for financial matters) and asks what's happening with the family. The smuggler replies that the family is with them and has already started asking for cigarettes. H. says that they mustn't be too kind to the passengers and that if they want extras, they have to pay extra. The passenger has already spent 12,000 and is currently in their hands, without much money".

Unaccompanied foreign minors

Transportations of unaccompanied foreign minors were organised. The main defendant explained in a phone conversation that a minor was put in the wrong lorry and was intercepted and sent to a youth reception centre.

2.3. Afghan human smuggling network in Ghent

In this case in Ghent, whose acts date back to 2012, an Afghan network organised illegal entry to the United Kingdom. This case was tried by Ghent Criminal Court³⁷². There were three defendants. The main defendant was also reported for rape in a case in Antwerp and awaiting a hearing, on the judge's orders.

a) Human smuggling network

The human smuggling network used the Drogen parking area along the E40, in the direction of the coast, as a base for its human smuggling activities. It offered two types of illegal border crossing: with and without guarantee.

For ordinary transportation without guarantee, victims waiting at the parking area were placed in a lorry or refrigerated lorry without the driver's knowledge. Hence, the success of the transportation

wasn't guaranteed. In general, there was only one smuggling attempt and victims had to pay the human smuggling organisation in cash in advance. The phone taps revealed that this type of transportation to the United Kingdom cost approximately EUR 1,200.

As for transportation with guarantee, success was guaranteed and the payment was only made upon arrival, at the destination. A visa could also be easily obtained for air travel. The smugglers collaborated with lorry drivers for illegal border crossings.

The main defendant had various foreign contacts, especially in Greece and Afghanistan. Phone taps brought to light conversations with a contact person in Greece. They spoke of a human smuggling option with a plane ticket and a student visa:

"N. (Greek phone number) explains that he has found a way to obtain a visa for Europe from Afghanistan, so that interested persons can leave from the airport. N. explains that this is a one-year visa which is valid for the whole of Europe. It is a student visa valid for a year. N. explains that he has already sent seven people and asks Z. (the main defendant) to find clients". There is another call a few days later saying that far more clients have already been found: "Z. explains that he has found three people with a diploma in Afghanistan and asks what they can do. N. explains that it is a long procedure and that a request has to be made for a student visa. Z. asks how long it will take. N. explains that it will take about a month for everything to be sorted out".

The phone taps revealed that the smugglers were working with a French lorry driver, with whom they organised a meeting in Antwerp. According to the conversations, the driver was then intercepted with his lorry by the British police. There were two human smuggling victims on board. The police therefore concluded, on the basis of other conversations, that several lorries were probably used and that there were several transportations.

³⁷² Ghent Crim. Court, 19 June 2013 (final): see Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 126 and Myria's website: <http://www.myria.be/fr/jurisprudence/3-tribunal-correctionnel-de-gand-19-juin-2013>.

The smugglers apparently also had contact with a Bulgarian ambassador, mentioned in phone conversations about money in relation to clients. According to the agreement, they would get their money back because the services weren't provided. A financial middleman and the main defendant also referred to the ambassador in their conversations: "114 (financial middleman in Pakistan) explains that everyone got their money back and that the smugglers returned the money to those who didn't go. 114 explains that the woman is lying when she says she hasn't got her money back. 114 speaks about different passengers and the fact that their money was still in the hands of 114 but that he has paid everything back and settled everything and the money was reimbursed through Kabul or Iran. 114 explains that he had the passengers' money but that he gave the money back to those concerned so as not to have any problems with them. 114 explains that the money of approximately 34 to 35 people (probably passengers who weren't transported) was reimbursed. 114 also explains that the Bulgarian ambassador came over and they had a conversation about the fact that the people concerned had to be paid back personally and not through someone else seeing as this procedure always caused problems... 114 explains that the money was given back to the people and that in Pakistan, he received 50 people a day in the shop (...) who had come to get their money back. 114 asks Z. (main defendant) not to give his number to anyone. Z. (main defendant) explains that he will join 114 on the boat".

b) Opening the investigation

The police intercepted two Afghans at the Drongen parking area along the E40 (direction Ostend) during the night. They seemed to be waiting for a vehicle. The police suspected that the two people were part of a smuggling network, which was later confirmed. The parking area and road running parallel where the two people were intercepted do indeed have a reputation for being a meeting place for smugglers.

One of the two, who would later become the second defendant, had two mobile phones that were seized. These phones were later examined and the phone contacts checked. Various relevant mobile phone numbers appeared. It transpired that two of the numbers were no longer active when the two above-mentioned Afghans were intercepted. On the investigating judge's orders, the mobile phone number that was still active was tapped and many of the conversations in coded language referred to the transportation of people abroad.

On 17 October 2012, six human smuggling victims were intercepted. They came from Iran, Afghanistan and Sri Lanka. There were several mobile phone numbers linked to the mobile phone numbers of the smugglers in this case, on the mobile phone of one of the victims³⁷³.

c) Investigation

The phone taps revealed the whole human smuggling network and enabled other relevant phone numbers to be tapped. Based on one of the conversations, it was possible to identify the main defendant after he agreed over the phone to visit an actual person in a detention centre in Bruges. After consulting the list of visitors on that day, the police were able to determine his identity.

During the search and arrest of the main defendant, it transpired that he had hidden his mobile phone at home, behind a shelf in the bathroom, and his SIM cards were in the toilet.

³⁷³ Also see the following chapter on best practices and experiences.

*Financial investigation*³⁷⁴

There was a lot of mistrust between the smugglers, their contact people, and the clients concerning financial matters. For instance, they refused to give money in cash and preferred money transfer agencies such as Western Union to send money. They sent a text message giving the exact identity of the person who could collect the money.

One striking fact is that during a human smuggling interception, a Ukash receipt was found. This is a money transfer agency that works completely anonymously, where neither the issuer nor the beneficiary can be traced by the courts or by the police. This agency was used for payments of guaranteed illegal border crossings. It was taken over in 2014 by Paysafecard and works online, on a mobile phone or through shops. The process is simple:

- 1) a person (anonymously) gives cash to a Ukash subsidiary;
- 2) this person receives a receipt stating the amount paid;
- 3) the number on the receipt allows either the same person or a third party to collect the money.

There is no financial data, and no bank card or credit card is used in this system. Consequently, it is practically impossible to identify the issuer or the beneficiary. The issuer and the beneficiary can therefore be one and the same person. The receipt only mentions minimal information (not the amount).

The financial investigation revealed that the dependants spent far more than their 'official' income. The main defendant received CPAS welfare benefits and the second defendant unemployment benefit. As well as acquiring more criminal assets

through human smuggling, they were also involved in benefits fraud³⁷⁵.

d) Victims

The smuggling victims were mainly Afghans who the smugglers sent to the Drogen parking area via Ghent. From here, the victims were taken to Great Britain. When they were hidden in lorries, they had to hide themselves in plastic, which some refused to do.

Smuggling families

Families were also part of the human smuggling victims. In the phone taps, an Iranian family composed of a father, a mother, and two sons was mentioned.

Unaccompanied foreign minors

The phone taps also revealed the process used to smuggle two minors from the Dunkerque camp. A contact person at Dunkerque phoned the main defendant and asked for information regarding the procedure and the cost of transport to the United Kingdom:

"Z. (main defendant) explains that the transport costs EUR 1,200 and that the caller doesn't need to know about the procedure. The caller asks if they will be transported by car, to which Z. answers no. He explains that heavy goods vehicles will be used. During the conversation, the caller is heard speaking to someone and telling them that the cost is EUR 1,200. The caller tells Z. that he probably has two 'passengers'. Z. says they can come, after which the caller explains that they are minors and tries to negotiate the price. In the end, Z. agrees to transport them for EUR 1,000 but can't go any lower than that. The

³⁷⁴ Ibidem.

³⁷⁵ See benefits fraud in: Annual Report 2011, *Trafficking and smuggling in human beings, The money that matters*, Part 1, Chapter 3, point 1, p. 44.

caller asks when Z. can transport them, to which he replies that he will send them the evening they arrive. The anonymous caller says he will keep him informed". A few hours later, they speak on the phone again: "Z. asks for their exact location and the anonymous caller says they are in Dunkerque. Z. says they have to come and the anonymous caller is asked to contact them and tell them what they have to do next". Then they talk about financial arrangements: "The boys' money is being kept in Kabul. According to Z., it is also possible to keep their money in Greece. The anonymous caller agrees and explains that the boys prefer to leave the money in Afghanistan. Z. explains that they can leave the money in Puli Khumri or Mazar".

2.4. Kurdish human smuggling network in the Tétéghem camp

In this case in Bruges, whose acts took place between 2010 and 2013, a Kurdish network organised illegal entry to the United Kingdom from the camp in Tétéghem, not far from Dunkerque, via parking areas located along the E40. This case was tried by the Criminal Court in Bruges and the Court of Appeal in Ghent³⁷⁶.

There were eight defendants in this case, three of whom were convicted in absentia after they were released from custody. The defendants were Kurds from Iraq and Iran. Only one defendant was Afghan and he played a minor role in the human smuggling network.

This wasn't the first time for the defendants. The main defendant had

already been convicted in France for similar acts, but under a different name. He was universally feared and settled his conflicts with firearms.

The investigating judge issued a European arrest warrant for the main defendant, which led to his arrest in Croatia on 11 June 2013. His extradition was then requested, but it took a long time.

This human smuggling case is closely linked to the Indian-Pakistani human smuggling case dealt with hereafter, where a competing human smuggling network was operating from the camps. The investigators were able to consult this case in Brussels, which involved threats with firearms and reprisals between different human smuggling gangs.

a) Human smuggling network

The first defendant was clearly the head of the criminal organisation that held the reins in the Tétéghem camp, located not far from Dunkerque in the north of France. Human smuggling had been his full-time occupation for years. He took decisions concerning transportation and the people who could go or not.

The Kurdish smugglers were very professional and well organised. The smugglers didn't always take their victims to the parking areas themselves; instead, they sometimes let them go on ahead in order not to be intercepted. The human smuggling victims often waited for a long time at the parking areas before the smugglers began looking for the right lorry, a search that could also sometimes last several hours.

The smugglers supplied all the necessary equipment at the parking areas: wooden pallets to cross ditches, ladders to climb into the lorries, safety gloves, glue and adhesive tape to open and close the lorries, sticks and rods to force the human smuggling victims into the lorries or threaten the lorry drivers or anyone in the parking area trying to oppose their actions.

³⁷⁶ West Flanders Crim. Court, Bruges division, 2 April 2014 and Ghent Court of Appeal, 21 October 2014: see Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 127 and Myria's website: <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-bruges-2-avril-2014> and <http://www.myria.be/fr/jurisprudence/cour-dappel-de-gand-21-octobre-2014>.

They knew the parking areas and surrounding areas, access routes, emergency exits, public transport itineraries, etc., inside out.

The smugglers were also extremely violent and authoritarian. They would even bang on the police vehicles when they were stopped and intercepted. In the parking areas, they would threaten the lorry drivers with weapons. The members of the organisation also had to obey the leader's orders. During the investigation, a co-defendant was beaten, hit, and tasered. Even a passing police vehicle was not sufficient to stop his assailants.

The smugglers are power-hungry and are prepared to do anything to acquire territory and protect it. They consider the Belgian parking areas to be their property and don't allow any other organisation to be active there. Conflicts are settled with weapons, leading to serious incidents in the camps: on New Year's Eve 2012-2013, another shoot-out took place and several people were hit in the chest and in the hand.

After arresting the main defendant, the phone taps revealed that a battle for power was in full swing. There was tough competition between the different human smuggling organisations and the fact that the main defendant was out of the game meant that the organisation's market segment was under threat.

Itineraries

The smugglers organised numerous illegal border crossings without guarantee, for a price varying between EUR 1,000 and 2,000. Sometimes, they provided guaranteed transportation for an amount varying between EUR 6,000 and 7,000.

During transportation without guarantee, the human smuggling victims, including several families with children from the 'jungle', were taken to parking areas in Belgium and placed in a lorry heading for England. The main defendant explained the

procedure during his hearing. Ten to 15 human smuggling victims would leave the Tétéghem camp in vans. One or two smugglers would go on ahead to check out the parking areas in a special car. They would then phone to say that the people to be smuggled could come. These people had to get out of the van in the surroundings of the parking areas and hide in the fields or bushes. Then the smuggler who was at the parking area would ask them to come over and he would hide them in a lorry or refrigerated lorry.

The main defendant managed the Tétéghem camp where he was also staying. Phone conversations revealed that the smugglers made sure the human smuggling victims stayed in the refugee camp or the 'jungle' before being able to go to the United Kingdom. The smugglers themselves were present in the camp and took care of the food and shopping. Clients who didn't have enough money first had to work in the 'jungle' before having the chance to be transported to the United Kingdom. There were so many prospective clients that the smugglers couldn't take care of all the transportations by themselves and subsequently contacted other smugglers to subcontract them. When an actual attempt was made from the camp to illegally cross the border, the smugglers were also the contact people for those wishing to illegally cross the border, or when transportation failed and the victims had to come back to the 'jungle'. The smugglers gathered up the human smuggling victims before departure and chose the vehicles in which the victims would be placed.

During a conversation with an associate, the main defendant admitted that they would have to be on guard because someone from the camp was speaking to the police. He admitted that he was aware the police were on his heels because he had been working for far too long in the camp. That is why he was letting his nephew take care of the work: he was a new face, unknown to the police. During his hearing, the main suspect

admitted that he entrusted the daily management of the camp to his nephew and a few of his 'regular employees': "When he arrived in Tétéghem, I told the other smugglers that X. (my nephew) was going to take over from me. X. knew how I operated, I had explained to him. I think that X. had only been active for about three weeks when he was intercepted by your officers. It is true that I worked with X. I called him regularly and gave him instructions concerning people who would be sent or the money he was going to receive".

The main defendant also worked with smugglers from other camps. This is what he said about this in his hearing: "I have always been a smuggler in the Tétéghem camp, because I couldn't work from Grande-Synthe (Dunkerque camp). Other people and other nationalities dealt with human smuggling there. I remember a conversation concerning the problems encountered by the smuggler Y. at Grande-Synthe. As I already said, I knew Y. as a smuggler. He worked in the Grande-Synthe camp. He had had problems there with someone from Grande-Synthe and called me to ask if he could come and work at Tétéghem. Seeing as other smugglers also worked at Tétéghem, I had to ask them if they agreed to Y. coming to work at Tétéghem. In the end, I didn't speak to any of the other smugglers. I didn't have any objection to Y. being here. I presume that Y. spoke to the other smugglers himself and obtained their approval".

During guaranteed transportations, the human smuggling network worked with lorry drivers who asked for USD or EUR 4,000 or 4,500, leaving between EUR 2,000 and 3,000 for the smuggler. The clients were taken to a house in Brussels where they were transferred to another Kurdish smuggler.

b) *Opening the investigation*³⁷⁷

In February 2013, one human smuggling victim was intercepted at one of the parking areas along the E40, in the direction of the coast. There was a British phone number on their mobile phone that had already appeared many times in the past during human smuggling interceptions and on a smuggler who was already known and been convicted for these acts in 2012. The latter had contacted this number no less than 47 times. The phone investigation showed that the person whom this British number belonged to was often at the parking areas in West Flanders, along the E40, when the lorry drivers were resting. It was at this moment that the human smuggling victims were hidden in the lorries.

Two months later, the traffic police intercepted a human smuggling victim at this parking area. They gave their mobile phone to the police who found the same British number again.

c) *Investigation*

In the meantime, the public prosecutor's office had already handed the case to an investigating judge in March 2013. They ordered phone taps to be set up during which the human smuggling activities and the role of the main defendant were clearly established. During the conversations, the main defendant admitted he had been doing 'this job' for seven or eight years already. The phone taps also revealed that the smugglers went to check out the parking area first and carried out counter-observations, and that on New Year's Eve, a gun battle had broken out between rival human smuggling organisations. When one of the defendants was intercepted, he took apart his mobile phone and removed the

³⁷⁷ Also see the following chapter on best practices and experiences.

battery so that his phone couldn't be checked.

*Social media*³⁷⁸

The federal police's computer crime unit was able to analyse the iPhone of an intercepted smuggler. They were thus able to establish several exact sites where he had stayed. The smugglers clearly left from the French camps to go to the Belgian parking areas before going abroad (Netherlands, Barcelona, etc.). These elements discovered during the investigation were included as evidence in the court's judgement.

Financial investigation

The smugglers made a considerable profit from their criminal activities. One smuggler who also organised guaranteed transportations said he earned between EUR 2,000 and 5,000 per client. During his hearing, the main defendant confirmed that he had already sent USD 30,000 to his family in Kurdistan.

The tariffs for illegal border crossings led to various discussions that were recorded during the phone taps: "A. explains that he will send the woman and man for EUR 900 per person. U. explains he doesn't want to collaborate like this. U. says it is a question of money. U. explains that he doesn't want to work for this price as regards the others or B. A. answers that he will ask for EUR 2,000. U. explains that he has to ask for EUR 2,400 for these two people. In the end, U. explains that he will do it for EUR 2,000 because it has been a long time since A. sent anyone. U. doesn't want anyone to know, especially not B. Otherwise, U. is worried about having problems with A. U. explains that if other passengers arrive, the price will have to be discussed next time... U. says that he has a lot of people and

wants to know who is who. U. says that he doesn't want to work for EUR 1,000 or 900 for people who want to leave. U. won't let the price drop to EUR 800 or 700 for anyone. According to U., working like this implies a lack of respect and will ultimately pose a threat to their work".

Many payments are made through the 'hawala' system. According to this system, a guarantor in the country of origin stands as surety for a hawala banker in the destination country, who proceeds with the payment.³⁷⁹

Phone taps reveal that a major hawala banker was operating from a Kurdish restaurant in London. His references were known to the authorities but he hadn't been prosecuted³⁸⁰. When the main defendant was questioned on this subject, he gave more details: "It is a Kurdish restaurant in London. Someone I know personally works in this restaurant. He is a Kurd called S. He is about 26 or 27 years old. Various human smuggling victims who we don't know go the 'jungle' (the camp). They usually have family or friends in England. We ask these people to tell their family or their friends to contact the restaurant and S. The latter receives the money for the transportation and holds onto it. S. informs us of the people who have paid so that we know that we can smuggle them to England. You asked me whether the human smuggling victims' money is paid onto S.'s or the restaurant's account. This isn't the case. The payments are always made in cash. As soon as S. informs me that someone has paid, I ask him to pay the money to my mother, in Kurdistan, through the hawala system. You're asking if there are other places, other people like S. who receive money linked to

³⁷⁸ Ibidem.

³⁷⁹ Annual report 2011, *Trafficking in and smuggling of human beings, The money that matters*, p. 15.

³⁸⁰ Also see the following chapter on best practices and experiences.

smuggling? There are several Kurdish restaurants in England that use the hawala system. If we find out that the human smuggling victims have family in a town in England, we check whether a Kurdish restaurant using the hawala system is active in the region. We then send the family to this Kurdish restaurant, as in the case of the (...) restaurant".

a) *Victims*

The victims were from Afghanistan, Syria, Turkey and Iran. There were also families with children and pregnant women. Hence, 10% of the victims were children.

They were perceived as nothing more than goods, so little attention was paid to their safety. For instance, transportation was organised in a tarpaulin-covered lorry, a container or in a refrigerated lorry. As long as the human smuggling victims arrived at their destination, it didn't matter what means were used to get them there. It was also of little importance that they were put in the middle of the load, between the axles or in pallet stacking normally used to hold transport pallets. They didn't check whether the load was properly fastened or whether there was a risk of it tipping over during the journey, seeing as the illegal passengers were hidden so quickly in the lorry that nothing was checked inside it. The victims were placed in spaces that were barely big enough for them.

The risks taken by the smugglers, who played with the victims' lives, were enormous. But the human smuggling organisation couldn't have cared less. This is also what transpired from the victims' statements and the phone taps, during which the victims phoned in a panic, fearing for their lives, while the smugglers attempted to reassure them. It was a problem for the main defendant when the victims attempted to get out of their delicate situation. During a conversation, he explained that he had found out that they had been intercepted in Dover. They were in a refrigerated lorry and someone knocked on the door, thus revealing their presence.

The smuggling victims also received the instruction to avoid the police at all costs. If fingerprints were taken, this could hamper any future requests for a residence permit in other countries. They were explicitly told to run away if the police were present at the parking areas and to cross the motorway, in the hope that the police wouldn't follow them in this highly dangerous move. At the parking area in Jabbeke, eight lanes in total have to be crossed, which the victims did blindly, according to the smugglers' instructions.

The smuggling victims were also well aware that their smugglers were armed with knives, guns and pepper spray, and that they had to do whatever they told them to do. Once their transportation had been organised, there was no question of refusing to get into the lorry chosen by the smugglers. The police found their guns during their interventions. They were loaded and ready to be used.

Victim statements

Some victims made relevant statements during their interception by the police. Several of them were able to obtain victim status but, in general, they weren't interested because they wanted to go to the United Kingdom as quickly as possible³⁸¹.

A male Indian victim was injured while crossing the motorway, which the smugglers had ordered him to do if the police appeared. He ended up in the hospital. According to his statement, he had left India five months earlier. A friend in Delhi introduced him to a smuggler whom he had paid EUR 10,000 in cash. He had borrowed the money from his family. He ended up in a camp through the smugglers, where he stayed for two days. One night, he was taken with a group of fifteen human smuggling victims, to a parking area in

³⁸¹ Also see the following chapter on best practices and experiences.

Jabbeke, in order to be hidden in a lorry. He explained: "The group was waiting for a lorry when the police arrived. The escort ordered us to cross the motorway".

A Pakistani victim described his journey. His uncle had put him in contact with smugglers. He had paid EUR 4,000 for the journey from Pakistan to Greece. They left Pakistan in the car for Iran, where they crossed the border into Turkey on foot before getting into another car. From Turkey, they went to Greece on a smugglers' boat. He paid EUR 3,000 to be smuggled to Sicily by boat. The journey between Pakistan and Sicily lasted between 40 and 45 days. He then looked for work in Sweden, in vain, and arrived at the camp in Tétéghem in order to illegally cross the British border. This is what he said when he was asked to explain why he chose the United Kingdom: "I wanted to go to England. The crossing was agreed on as well as being dropped off at a non-specified destination. Nothing had been arranged for my reception once there. Only the crossing had been arranged. I haven't got any family there, only people I know from my region. Most of the people I know live in Birmingham. I don't know anything about their living conditions".

He authorised the police to look at his two mobile phones in case they contained important information regarding the smugglers³⁸².

Smuggling families

Smuggling families from the Tétéghem camp was far more lucrative for the smugglers, which is why the smugglers were particularly interested in this target group of human smuggling victims. There were many families with children in the camp. A recorded phone tapped conversation

revealed that the smugglers asked for EUR 1,100 to transport a woman, compared with only EUR 900 for a man. A smuggler said the following during his hearing: "It costs more to transport a child or a woman. This is because the children and their parents are taken separately to the parking areas. This involves a supplement of USD 300 in general".

The various phone taps revealed that families with children of all ages were among the human smuggling victims, even pregnant women. In a conversation relating to smuggling, there was mention of no less than three complete families.

At another moment, it was a matter of transporting a girl, a boy and a family with two children, one of which was a year old. This wasn't a problem for the main defendant.

The young age of the children was also a subject in other conversations. In one of these conversations, they mentioned a family (father, mother, two children aged 12 and four years old) that was in Germany and was coming to the camp. They would then be transported to the United Kingdom and had to pay GBP 4,000.

The police confronted the main defendant with other phone conversations the smuggler admitted to: "X. called you. X. has a family (a man, woman and two children), and you are being asked to take care of them because there will be many other families after this one. Another family has arrived in the 'jungle' (the camp). The conversation continues and the subject of the price comes up. "There is a 10-year-old and a five-year-old child. You will ask for EUR 4,500 and EUR 1,500 will go to X." ».

Unaccompanied foreign minors

The traffic police intercepted a group of four people, one of whom later became the defendant. The smuggler seemed perfectly at ease and continued to speak to the others even though he was forbidden to do so. Two others appeared to be unaccompanied minors of Afghan origin.

³⁸² Ibidem.

They made relevant statements and were given the chance to acquire victim status³⁸³.

The girl had just turned 17 and was part of a couple with an adult Afghan man. They had paid EUR 60,000 for guaranteed transport from Afghanistan to the United Kingdom. Her boyfriend's family had paid for everything. She had fled Afghanistan because her life was in danger.

She stated that she stayed in the Tétéghem camp, where tents were pitched in a wood. She also stayed in a tent. Her journey to the camp had taken three months, with several stops. In Afghanistan, she had taken the plane to Dubai and then to Mali. In Mali, she was helped by Kurdish smugglers. From Mali, she flew to Portugal, before continuing her journey by train, passing through Spain.

This is what she said about being smuggled through Belgium: "We left the camp in two passenger cars. There were seven of us in the car. Two of the people were actually in the boot. The smugglers never gave out their number and constantly changed it. They called us but we could never call them, they never picked up. I am afraid of them and I am telling you everything I know, but I don't know their names, and I couldn't really describe them. When we arrived in the United Kingdom, we were supposed to go to the police and ask for asylum. I don't have any family there. My brother lives there, but since I ran away with my boyfriend, I can't go to his house".

She added that she nearly died the last time they attempted to smuggle her across. "I made a similar attempt a week ago; we were placed in a refrigerated lorry at the same parking area. The police didn't intervene. But we were able to alert the

driver who opened the door. If we hadn't, we would have been dead. I don't know the name of the person who put us in the lorry. He pressured us to get in. There are different smugglers all the time".

The other human smuggling victim - an Afghan minor - was, according to his statements, also 17 years old but didn't have any identity papers. He filed a complaint against the smugglers. This is his statement: "I left Afghanistan a year ago. I stayed in Athens, in Greece, first. I stayed there for two months. I took a boat from Greece to Italy, where I spent two to three months in Rome. Then I went to Paris and ended up in Calais. I came here by train. I travelled alone until I reached Rome. After that, I was accompanied by another Afghan. I didn't stay in Calais for long. Other people took me to a wood in the surrounding area. They promised that I would get to England. Last night, I slipped into the boot of a passenger car with another person. It was a car that was slightly bigger than normal. I don't know the make or the colour. There were already several people in the car when we arrived. I don't know how many exactly. I didn't know any of the other people in the car. I don't know at what time we left. It was dark. We drove for about an hour before being stopped by the police. I confirm that I want to file a complaint against the three masked smugglers for human smuggling and trafficking. However, I don't know these people or their names. It was the first time I had met them. And I don't know what language they were speaking or where they are from. I don't know what they were wearing. It was too dark. I can't remember anyone wearing a white t-shirt that night. Upon your request, I am authorising you to look through my mobile phone. It is a black Nokia. I don't know my mobile phone number. It is an Italian SIM card. Someone in Italy gave it to me. It is card you can top up".

³⁸³ Also see the following chapter on best practices and experiences.

2.5. An Indian-Pakistani splinter human smuggling network in Brussels

The acts in this Brussels' case date back to 2012 and 2013, and involve an Indian-Pakistani network that organised smuggling to the United Kingdom. This case was tried by the Criminal Court and Court of Appeal in Brussels³⁸⁴. As a result, a Joint Investigation Team (JIT) was set up, composed of Belgian, French and British investigators.

a) Human smuggling network

Thirteen defendants were convicted in this case. The majority were Indian-Pakistani smugglers, although one Afghan and one Russian smuggler were also involved.

The main defendant was an Indian-Pakistani smuggler who didn't run the human smuggling network in a traditional way, with a pyramid structure, but rather as a flexible structure composed of cells acting more or less independently and in competition, and with whom he maintained contact. The human smuggling network had ramifications in the United Kingdom, the Netherlands, France, Italy and India.

The main defendant was described in certain phone conversations as an 'agent', a person acting on behalf of other smugglers or in their place, and was responsible for accomplishing the activities for a third party. He had as little physical contact as possible with the victims.

In order to establish his contacts, he used several phone numbers (unknown) and an email address, and went to phone shops. He arranged appointments in night shops in Brussels, which served as a meeting point where he could organise and manage his activities. These night shops were run by Indian-Pakistani Sikhs, who sent worshippers who had arrived illegally, to the Sikh temple in Vilvoorde.

Sikh temples are known worldwide and serve as a meeting place for many Indians and Pakistanis who practice Sikhism. They are also a stopping point for illegal Indians who use the temples all over Europe. The smugglers are therefore able to easily recruit potential clients in the temple or in the immediate vicinity. This situation forced the authorities to close the temple after 21:00. In 2012, this meant that the Sikh victims in transit spent the day in these temples to receive food and maintain social contacts, but had to leave them in the evening. That is why, at the time, the human smuggling victims spent the night in an empty warehouse close to the temple.

Smuggling couriers³⁸⁵

The leader of the Indian-Pakistani smugglers used 'smuggling couriers' who carried out all sorts of tasks for the smugglers in order to earn enough money for their own transportation. One of the defendants had been a smuggling courier. He first wanted to go to Canada and had contacted a human smuggling organisation for this purpose but didn't have enough money. He had to help the smugglers in exchange for his own transportation. He did the shopping, collected clients at the station and moved them around. His role evolved during the investigation and he became the

³⁸⁴ Brussels Crim. Court, 6 November 2013 and Brussels Court of Appeal, 12 March 2014: see Annual Report 2015, *Tightening the links*, pp. 127-128 and Myria's website: <http://www.myria.be/fr/jurisprudence/tribunal-correctionnel-de-bruxelles-6-novembre-2013> et <http://www.myria.be/fr/jurisprudence/cour-dappel-de-bruxelles-12-mars-2014-1>.

³⁸⁵ Annual Report 2015, *Tightening the links*, Part 2, Chapter 2, point. 2-4. Afghan human smuggling network in Brussels, p. 82.

middleman between the smugglers and the clients. He had to convince the 'boys/clients' to go to the United Kingdom, distribute messages regarding imminent smuggling operations, collect travellers who had just arrived, and receive and take care of them. He also informed the smugglers of the identity of the people who had arrived or not.

He learnt the tricks of the trade, began to have his own contacts and to take more and more initiatives. He wanted to have his own clients and asked his family to find people in his home country who wanted to come to Europe. He knew smugglers who asked EUR 7,300 and envisaged asking EUR 8,300 in order to keep EUR 1,000 for himself.

Itineraries

Most of the illegal border crossings were guaranteed. In this case, the driver is aware and cooperates. The Indian organisation used different itineraries and worked with other human smuggling networks.

One of these itineraries went via the Netherlands in order to reach the United Kingdom. Indian-Pakistani smugglers established in the Netherlands looked after this one. These transportations used passenger cars, some of which were transformed or adapted to hide the victims. The cars were registered in the Netherlands and driven by Dutch nationals who went to fetch the victims in the Brussels region to then take the boat to Scotland from the Netherlands. Victims who weren't hidden in the car or the boot received fake identity papers. As soon as they arrived in Scotland, they were taken care of by a member of the organisation. The transportation cost varied between EUR 550 and 750 per person.

A second itinerary was managed by an Indian organisation, whose leader operated out of the United Kingdom. The passengers were collected in Vilvoorde. Many victims were staying in the vicinity of the Sikh temple. During the day, they could go to the temple and at night, they slept in a nearby

warehouse. They were transferred to lorries, whose drivers were aware of the smuggling, thus allowing them to make the crossing to the United Kingdom.

A third itinerary was managed from France by an Afghan-Kurdish organisation staying in both Belgium and France. These were transportations without guarantee. The victims took the train from Brussels to De Panne, where they took the bus for Dunkerque. From there, they walked to Tétéghem. They stayed in a camp there, known as the 'jungle', dealt with in detail in the other human smuggling cases, while awaiting transportation. One of the Indian-Pakistani smugglers went to this camp every three days, where he was frequently in contact with a Kurdish smuggler who provided travellers for transportation without guarantee. In this camp, the Sikhs, accompanied by victims of other nationalities, were put in vans registered in Great Britain and taken to parking areas along the E40 in West Flanders. From there, the Kurdish smugglers hid them in lorries in order to get into the United Kingdom. Unlike the Indian organisation, mainly established in the Brussels region, the Kurdish smugglers regularly moved between Belgium and France.

The fourth itinerary was organised by a Russian, in collaboration with a Lithuanian organisation whose drivers, who were fully informed, allowed the victims to climb into the lorry in order to smuggle them into the United Kingdom.

At the end of August 2012, the main defendant also organised smuggling from the Netherlands to Italy, owing to the legislation on regularization that was in force at the time. There were also transportations to Canada and Australia using fake or forged travel documents.

For this purpose, the smugglers had a contact at the embassy. In a phone conversation with the main defendant, a smuggler asked if he had heard from his Indian contact regarding a payment for abroad. The options for the smuggler were

"Australia, New Zealand, Canada, England, not Europe". The main defendant was going to sort everything out through his older brother for Canada or Australia, and added: "My brother has a friend who was an advisor at the embassy and he will take care of everything".

b) *Opening the investigation*

The investigation began after the interception of several Indians at the Grand-Bigard parking area, along the E40. The analysis of their mobile phone contacts led to an Indian human smuggling organisation active in an empty warehouse close to the Vilvoorde Sikh temple³⁸⁶. The investigation led to several players who were higher up in this market and established in Brussels. These people were responsible for contact with the smugglers in Great Britain. They paid for the transportations and worked out the most efficient smuggling itineraries. When an itinerary became inefficient or dried up, other sources were used in order not to have to interrupt the human smuggling activities.

c) *Investigation*

The phone taps were the source for the majority of evidence, offering an enormous amount of information including a few hundred one-way conversations. It was possible to identify the main defendant by analysing the phone calls. Nearly all his conversations relating to human smuggling, price negotiations, money for transportations that needed collecting and paying, profits and banking operations, and money transfers.

Smugglers on the smuggling itinerary leading to the camp were also put under surveillance. The observation reports

describe the smugglers' movements in detail: "Smuggler S. also appears in the Tétéghem camp, for transportations without guarantee using a third itinerary. We can hear him in the phone taps, but there are also observations that confirm his activities on this itinerary. He kept the clients in the warehouse close to the temple while they waited to be transported, and then took them to Tétéghem. He took the clients to Brussels-North railway station, bought tickets for the train to De Panne, where they had to take the bus to Dunkerque. From there, they walked to Tétéghem. S. then handed over his clients to A. (a Kurd) and his organisation. He wasn't responsible for the rest of the transportation".

Financial investigation

Based on the numerous phone conversations, the police were able to determine that the main defendant used his family in India to settle the finances associated with human smuggling, to receive deposits and payments. He then paid the profits to his family in India.

International investigation

The Belgian, French and British authorities signed memoranda of understanding in order to create a joint investigation team (JIT) within Eurojust, the European Union's judicial cooperation unit, to investigate this international-scale human smuggling network³⁸⁷.

The French police informed their Belgian colleagues within the framework of this joint investigation team that they were in the process of conducting a criminal investigation into an organisation composed mainly of Kurdish smugglers active in the

³⁸⁶ Also see the following chapter on best practices and experiences.

³⁸⁷ Also see the following chapter on best practices and experiences.

Téteghem camp, which was used intensively as a meeting place for people wanting to be smuggled into Great Britain. Here is their report: "Different camps were set up in the countryside by one or more smuggling organisations. Téteghem is a former parking area located along the E40 in the direction of Calais. The parking area was closed by the French authorities but the lake behind it and the lush surroundings made it an ideal place for these smugglers. The clients (wanting to go to the United Kingdom) had to gather there and stay several nights in makeshift tents, abandoned wooden huts and the like. In the evening, the smugglers gathered the people up in order of payment. They were hidden in vans which the smugglers used to cross the Belgian border, and dropped off at the various parking areas along the E40. The investigation shows that these vans did up to three return journeys a day. Once all the human smuggling victims were at the parking areas in question, the smugglers ensured that they got into the lorries of drivers who were spending the night there. The investigation shows that this organisation used the Mannekensvere, Oudenburg/Westkerke and Jabbeke parking areas above all. Several of these Kurdish suspects were staying in Belgium. British phone numbers and vehicles were often used".

The French police also provided reports established within the framework of smuggling interceptions: "Loon-Plage, France, around 12:00, 16 people of Iranian, Syrian, Iraqi and Vietnamese nationality were intercepted in an articulated lorry registered in Germany (...) and driven by (...). The intercepted people are (...). The articulated lorry is a refrigerated lorry. When the victims were intercepted, the temperature was 5 degrees. The driver had stopped off as usual at the Jabbeke parking area. According to the victims' statements, they were taken to the parking area in a van".

On the basis of fruitful legal cooperation with the Netherlands, the Belgian courts

collected information regarding smugglers who were active in the Netherlands. This led to their identification and arrest. In a phone conversation, a smuggler confirmed that he 'knew someone in the Netherlands who worked for the immigration office and bribed the security guards".

d) *Victims*

The victims were mainly male Indian Sikhs. There were also a few minors.

Smuggling families

In their phone conversations, the smugglers indicated that the families had to pay more: "703 asks 124 if he has room in Belgium for the families, to which 124 replies yes. 703 asks about the price, 124 says that families are more expensive because children are more difficult". Another conversation concerned the smuggling of four people, including a child of 10.

Unaccompanied foreign minors

A report mentions a fight between a smuggler and three minors. A 15-year-old minor was hit with a belt because he owed the smuggler money.

In a phone conversation, the main defendant gave more details about girls who had been abandoned on the way following a conflict with a smuggler:

"124 (main defendant) is furious because the others often called these girls and bothered them. 124 explains that he will go and fetch them again and if this fails, they will go home. 901 explains that they took the girls in the van to the 'jungle' so that they could be transported but the girls had threatened to call the police. He was furious and subsequently abandoned them somewhere along the motorway. 124 explains that X. threatened to cut their heads off, but 901 says this isn't true".

External contribution: smuggling in human beings, an organised crime

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Human smuggling is an illegal form of immigration. Every country in the world is faced with this problem, whether they are countries of origin, transit countries or destination countries.

And the European Union Member States are no different. In 2015, an unprecedented number of refugees headed for Europe. Some European Union Countries were even forced to close their borders to try and maintain a minimum control over this migration flow of unprecedented proportions.

The way legal and/or illegal migration is tackled differs significantly from one country to another. This is why the European Union has attempted to set up a comprehensive transnational migration and asylum policy within its boundaries.

Frontex has been coordinating a European mechanism along Europe's external borders. It is true that this harmonised approach to the problem 'only' applies to Europe's external borders. National borders, within the Union, are still subject to differences from one country to another. In light of the events of 2015, the disparities of this two-speed policy became all the more obvious. Therefore, it is of utmost importance to shed new light on the problem and adopt the appropriate approach.

Until the relevant European policy is in place, every Member State must, of course, take the necessary measures on a national level in an effort to avoid, seek and pursue internal irregularities.

The phenomenon of human smuggling

In order to effectively combat human smuggling, it is necessary to have in-depth and precise knowledge of the phenomenon above all.

The smuggling of human beings isn't limited to simple illegal migration and illegal migrants. It is an extremely well-organised criminal phenomenon, with its own structures and networks. Furthermore, these organisations show absolutely no respect for any form of human dignity whatsoever and are only driven by financial gain.

Human smuggling networks are flexible, dynamic and very opportunistic.

The notion of human smuggling and related terms

Human smuggling, facilitation of illegal immigration, illegal migrants, irregular migrants, illegal aliens, human smugglers, facilitators, etc. All these terms have a nuance and different connotations. It is important to make a distinction between the process of human smuggling, which is a criminal act, and the people who are the subject of this smuggling. Migrants who become involved in the smuggling process initially do so of their own free will, and it is they who seek it, but this doesn't prevent them from becoming victims along the way, owing to the risks they face, the inhuman conditions of their journey, the violence and exploitation they are sometimes faced with, the theft of their identity papers and their personal property. The smugglers don't consider them as human beings, but as goods allowing them to make a maximum amount of profit.

Migration and human smuggling

Human smuggling is an illegal form of migration.

Migration

Migration has always existed and is driven by push and pull factors. Push factors refer to conflict and war zones, extreme poverty, famine, natural disasters or other environmental problems. As for pull factors, they refer to a better economic situation, the positive image a migrant has of another continent/country, political and social stability, the presence of family and compatriots in the destination country. At the same time, other aspects also affect migration, such as political and historical factors and migration networks.

When legal migration seems impossible, irregular migration appears to be the best solution, with or without recourse to human smugglers.

Considering the complexity and the extent of the migration phenomenon overall, I shall limit myself to the framework of my contribution, i.e. illegal migration within the framework of human smuggling.

Illegal migration and human smuggling

Human smuggling can appear in various forms. Neske's typology³⁸⁸ provides a clear overview of the different forms on which its organisation is based. This leads to the following distinction:

- *individual smuggling with a high degree of self-responsibility*: the migrant mainly relies on their own resources to travel, generally using public transport, and once at the border, calling on a local smuggler to cross this border and thus

continue their journey: they don't have any valid travel or residence documents.

- *covered smuggling (through the abuse of documents)*: the migrant calls upon a smuggling network to obtain fake documents such as a passport, a birth certificate and other authentic documents, and then travels by their own means to the destination country.
- *pre-organized stage-to-stage smuggling*: the migrant entrusts the entire organisation of their journey to an organised smuggling network.

This underground aspect prevents us from having an exact idea, based on precise figures, of illegal migration and human smuggling, or the number of perpetrators and victims.

To have an idea of the extent of the phenomenon, please refer to the figures supplied by Frontex³⁸⁹ regarding the illegal crossing of the European Union's external borders.

2010	104,06
2011	141,051
2012	72,437
2013	107,365
2014	282,962
2015	1,822,337

The figures are perhaps far higher since we are dealing exclusively with detected border crossings here. According to Europol³⁹⁰, 90% of migrants resorted to human smuggling services to reach Europe in 2015.

³⁸⁸ M. NESKE (2006), "Human smuggling to and through Germany", *International Migration*, vol. 44, No. 4.

³⁸⁹ Frontex, Annual Risk Analysis 2016, 28 April 2016, www.frontex.europa.eu.

³⁹⁰ *Migrant Smuggling in the EU*, Europol, February 2016, 28 April 2016, www.europol.eu.

Legal definition of the phenomenon of human smuggling

Owing to the cross-border nature of human smuggling, the phenomenon must have a definition that is recognised internationally in order to favour an international approach.

Belgium³⁹¹ satisfies the European and international definition, with the key elements of border crossing and financial benefit.

However, it isn't sufficient to have a criminal provision, an effective and efficient policy is essential to fight this phenomenon.

Human smuggling and trafficking

Human trafficking³⁹² and smuggling are two different offences³⁹³. In some cases, human trafficking may be preceded by human smuggling.

Human smuggling is, by definition, a cross-border infringement. Whereas human trafficking can also be national in nature. As soon as it is a matter of taking control of another person with the aim of exploiting them, this is referred to as 'human trafficking'. For example, there is the problem of loverboys and pimping teenagers. Even if this method is also used internationally regarding human trafficking, it is largely a local phenomenon. The victims are recruited and exploited at a local level.

Unfortunately, it is clear that there is still confusion between the two offences.

Several elements³⁹⁴ allow us to distinguish between the crime of human trafficking and that of human smuggling:

Element	Human trafficking	Human smuggling
Type of offence	Offence against a person, both on a national and cross-border level	Offence against public order, always cross-border
Push factors	Poverty, conflicts and wars, ecological disasters, etc.	Poverty, conflicts and wars, ecological disasters
Illegal entry to the destination country	Entry can be illegal or irregular	Always irregular and an infringement of the Aliens Act
Relation	Exploitation	Commercial with usurious profit
Financial benefit	Continuous, resulting from exploitation	Only regarding transportation and the facilitation of illegal entry
Consent	None, possible consent in the beginning but rapid recourse to coercion, deceit and abuse	Departure entirely voluntary
Characteristics of the victim concerned	Goods Upon arrival in the destination country, a sort of bond may be created through the debt, it may concern labour exploitation, emotional coercion, etc.	Goods The person is free upon arrival in the destination country

³⁹¹ Article 77bis and following of the Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners, *Belgian Official Gazette*, 31 December 1980 (Aliens Act).

³⁹² Article 433quinquies and following of the Criminal Code.

³⁹³ A.H. BAJREKTAREVIC, *Trafficking in and smuggling of human beings – linkages to organized crime – international legal measures*, <http://hreak.srce.hr/file/138747>, consulted on 23/09/2013.

³⁹⁴ S. BATSUKOWA, "Human Trafficking and Human Smuggling: similar nature, different concepts", *Studies of Changing Societies: Comparative and Interdisciplinary Focus*, Vol. 1 (1) 2012, 39-49, <http://www.scsjournal.org>, consulted on 03/09/2013.

Human smuggling in the form of a black market

The number of migrants wanting to reach a destination country illegally has increased so dramatically that a black market has appeared in the area of services such as the creation and allocation of fake papers, transportation, facilitating border crossings, accommodation, etc. This means that cross-border criminal organisations provide illegal goods and services at extortionate prices and thus indirectly become partners in the global economy. This market is driven by offer and demand, and there is never a shortage of potential clients ready to take risks in order to lead a better life.

Salt and Stein³⁹⁵ refer to human smuggling as an element of international migratory business responsible for facilitating movement between the country of origin and the destination country. In their opinion, there are different types of smuggling organisations, but their model applies to both small and large organisations. There is clearly an input and output in the systems. The most important input concerns the migrants themselves and the main objective of smuggling is moving them. The system's output consists of integrating the migrant in the country of destination's society. Input and output are bound to each other by a whole series of tasks linked to smuggling, right along the geographic routes that link the different transit countries to each other. The smuggling process is composed of three successive phases: mobilisation, the journey and delivery to the destination country. According to Salt and Stein, human smuggling doesn't only affect the fundamental rights of the migrants involved, it must also be placed in a larger

whole, where human smuggling represents an international business with its own rules and copious profits.

It is still difficult to know today what sums and what financial flows are involved in human smuggling. When a human smuggling network is dismantled or destabilised, it is difficult to record all the financial flows or to seize the income resulting from it. Here too the networks are inventive and work with service providers from the global economy, who often remain in the shadows.

According to Europol's calculations, the turnover from human smuggling was between EUR 3 and 6 billion in 2015.

The digital black market

Human smuggling networks also use the digital black market, which can be found on the dark web using the Tor browser. This digital black market lives off its reputation, and it is clearly very buoyant. The dark web is an anonymous market, which complicates the identification of criminals.

Besides the dark web, human smuggling networks also use social networks to offer their services, to such a point that they have even developed specific applications (apps) in order to provide 'their' migrants with up-to-date travel information concerning weather conditions at certain border crossings, the presence of checks, etc.

The social organisation of human smuggling

Schloenhardt³⁹⁶ distinguishes three categories of human smugglers: amateurs, small groups of organised criminals and international human smuggling networks. Amateurs are active locally and provide specific services, such as crossing the border in their own car or boat. These amateurs can work on demand for large smuggling

³⁹⁵ J. SALT and J. STEIN, "Migration as a business: The case of Trafficking", *International Migration*, volume 35, Issue 4, www.onlinelibrary.wiley.com, consulted on 18/09/2013.

³⁹⁶ A. SCHLOENHARDT, "Organized crime and the business of migrant trafficking", *Crime, Law and Social Change*, 1999, vol. 32, issue 3, pp. 203-233.

networks. Small groups of organised criminals specialise in the transportation of migrants via known routes between country A and country B. International human smuggling networks are capable of organising the entire smuggling process themselves.

Cooperative relationships within human smuggling networks

Ethnicity, shared cultural origins or roots play a major binding role in cooperative relationships. Collaborative relationships exist on known smuggling itineraries³⁹⁷ between nationalities other than that of the transit country, which provide the services necessary for the smuggling of migrants who come from the same country.

Coordination and distribution of tasks

It is possible to distinguish two organisational structures in transnational human smuggling networks. One is characterised by a restricted number of people active in collaborative relationships and no clear differentiation between tasks, with a relatively high amount of non-initiated people who provide a very limited number of services for the collaborative relationship. In this case, we are talking about ethnic homogeneity. The other one is characterised by a large number of people active in the collaborative relationship, where everyone performs a restricted number of tasks separately. In this case, there are less non-initiated people involved. These collaborative relationships are hierarchical. It is mostly a question of ethnic differentiation, with smugglers coming from different countries of origin.

³⁹⁷ Socta threat assessment 2013, www.europol.europa.eu/sites/default/files/publications/socta2013.pdf, consulted on 21/09/2013.

Logistics process and tasks

In the human smuggling process, we can distinguish a variety of tasks: Kleemans³⁹⁸ makes a distinction between the bridge builders and the facilitators. The bridge builders are people who owe their position to their ability to build geographic and social bridges. They operate on an international and inter-ethnic level, and therefore on the border between crime and legality. They adopt a key role in organised crime. The facilitators³⁹⁹ are providers of all sorts of services and accomplish relevant and essential tasks in the human smuggling process, such as:

- *recruiters* of potential migrants wanting to settle in the West and ready to pay the price. They are often from the same community and have the same culture as the migrants in question; for smugglers, recruitment is a separate sales business and they use advertisements on the internet and brochures to offer their services.
- *coordinators* organise the smuggling operations and harmonise the sub-processes between them. For this purpose, they have a whole string of contacts and they endeavour to buy the right services at the best price.
- *transporters and guides* take people to the other side of the border, regardless of the distance that has to be covered.

³⁹⁸ R. STARING, G. ENGBERSEN, H. MOERLAND, N. DE LANGE, D. VERBURG, E. VERMEULEN, A. WELTEVREDE, *De sociale organisatie van mensensmokkel*, Erasmus Universiteit Rotterdam, 1 juli 2004, <http://www.godfriedengbersen.com/wp-content/uploads/De-sociale-organisatie-van-mensen-smokkel.pdf>, consulted on 18/08/2013.

³⁹⁹ A. H. BAJREKTAREVIC, *Trafficking in and smuggling of human beings – linkages to organized crime – international legal measures*, <http://hreak.srce.hr/file/138747>, consulted on 23/09/2013.

- *document forgers* play an important role, on an increasingly frequent basis, in the logistics of human smuggling. They forge all sorts of documents or have contacts who lend passports or other travel documents.
- *escorts* accompany and help migrants during their journey, usually for a restricted part of a journey.
- *safe house managers and supervisors*: during the smuggling process, the migrants must be housed for a certain amount of time.
- *debt collectors*: both in the country of origin and in the transit or destination country.

Some of these facilitators offer services to various networks of smugglers without being part of a smuggling network, such as document forgers, debt collectors or guarantors.

Composition of the collaborative relationship

Cooperative relationships are flexible and decentralised⁴⁰⁰ and can be quickly reorganised. The decentralised operating method of dividing the tasks between different groups, reinforces the system if a component has to opt out owing to a legal intervention or an incident. Only this element becomes visible and the rest of the organisation remains in the shadows. By incorporating small specialised groups, it is also possible to quickly jump on new market opportunities.

Collaborative relationships help to diversify activities and aren't limited to human smuggling.

Conclusion

Human smuggling is an organised criminal phenomenon and must be treated as such, with the knowledge that cooperation inside and outside Belgium is crucial.

⁴⁰⁰ A.A. ARONOWITZ, *Smuggling and trafficking in human beings: the phenomenon, the market that drives it and the organization that promotes it*, <http://mensenhandelact1112.wdfiles.com/local-files/in-woord/artikel>.

CHAPTER 3: BEST PRACTICES AND EXPERIENCES

In this chapter, we shall look at a number of experiences and good practices. By best practices, we mean exemplary practices for national and international partners. As for experiences, they relate to practices that are less good, and even bad, but which are nonetheless a valuable resource for other partners.

This chapter is based on the analysis of cases in which Myria instituted civil proceedings and on interviews with the local and federal police, specialised centres for human trafficking victims, reference judges in human trafficking, labour prosecutors and social inspection services. Confidentiality was maintained throughout these interviews.

1. The fight against human trafficking

On an international and European scale, the Belgian system is broadly considered a model in the fight against human trafficking. Of course, this fight isn't always plain sailing - the system has its failings or mistakes can occur during its application in the field. However, this doesn't alter the fact that dozens of legal cases concerning human trafficking for the purposes of sexual and labour exploitation are successfully dealt with every year. Different victims who have been given the status of victim of human trafficking can subsequently institute civil proceedings before and after the trial and entrust the defence of their interests to a lawyer. You will find a selection of these legal cases in the chapter relating to case law⁴⁰¹.

This successful approach can be explained, above all, by the vast range of tools at Belgium's disposal. Belgium's legislation is

flexible. We should also mention the reference judges specialised in human trafficking and frontline services which, thanks to their expertise in the field and their advanced training, have a great deal of experience in the fight against human trafficking. As regards the Social Inspectorate, human trafficking is one of its priorities, besides social dumping. On a regional level, coordination meetings are organised every six months under the leadership of the judge. Frontline services and other possible partners such as the centres specialising in the reception of human trafficking victims take part. These meetings relate to policy, human trafficking cases and checking operations.

Specialised centres have existed in Belgium for the past 20 years, and they receive or provide support for some 200 victims of human trafficking every year. When they are intercepted by frontline services, these victims are referred to specialised centres within the framework of victim status, after the judge's intervention. Or, it was the victims who went to a specialised centre first and, following a period of reflection, made relevant statements to a frontline service. This is all part of a multidisciplinary collaboration between frontline services and reference judges and the specialised centres established at the beginning of the 1990s.

1.1. Opening the case: victim status

Opening the case is crucial for the investigation and important for the detection of victims. According to findings, many recent human trafficking cases were initiated on the basis of a report from a

⁴⁰¹ See the following chapter in this part.

property owner⁴⁰².

This was the case in the past concerning a complaint about disturbances⁴⁰³, a complaint about threats⁴⁰⁴, control over a bogus self-employed worker⁴⁰⁵ or false posted workers⁴⁰⁶, a slum landlord situation⁴⁰⁷, an argument between tenants and their landlord⁴⁰⁸ or the interception of a person in possession of false documents⁴⁰⁹. Such facts aren't always linked to human trafficking but turn out to be upon further investigation.

The process used by frontline services when an observation is first made often determines how the investigation will evolve (successfully or not). As for findings regarding slum landlords, frontline services must, for instance, ask the occupants how they have to pay their rent and check the possible lessor/boss relationship. They must also examine the professional situation, in order to detect possible cases of human trafficking for the purposes of labour exploitation.

It may be important to appoint an investigating judge, who has various options as regards leading an investigation with a view to gathering sufficient evidence. In

some cases, if an investigating judge isn't appointed, this may have consequences on the court decision.

Opening the case is crucial for the investigation and important for the detection of victims.

In the Belgian system, multidisciplinary collaboration between frontline services (police and inspection services) and staff

at specialised centres is essential, as confirmed in various cases⁴¹⁰. Subsequently, frontline services pay greater attention to potential victims, and no longer consider them as illegally staying persons who have to be repatriated as quickly as possible. An atmosphere of mutual trust has emerged, in which it is possible to convince victims to opt for victim status. However, we noted that in several cases, victims of human trafficking, who were also recognised as such by the court, didn't obtain victim status⁴¹¹. Often, the victims aren't interested in the status offered to them. This was the case within the framework of the many actions conducted as part of the Joint Action Day Labour Exploitation (see the following point), during which none of the victims showed an interest in victim status following an interview with a social inspector. Staff from the specialised centres for human trafficking victims can play an important role in this respect, considering their ability to create a closer relationship of trust with the victims.

The victim referral system isn't always properly applied in some cases. In the massage parlour cases, the victims were treated in a different way. While in one case⁴¹², several victims were given victim status and instituted civil proceedings

⁴⁰² See this part, Chapter 2, point 1.1.6. (Thai massage parlour case).

⁴⁰³ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 60-62.

⁴⁰⁴ *Ibid.* pp. 52-55.

⁴⁰⁵ Annual report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, p. 56-67.

⁴⁰⁶ *Ibid.*, pp.54-56

⁴⁰⁷ Annual Report 2009, *Trafficking in and smuggling of human beings, In a haze of legality*, pp. 114-119.

⁴⁰⁸ Annual Report 2011, *Trafficking in and smuggling of human beings, The money that matters*, pp. 105-108.

⁴⁰⁹ Annual Report 2013, *Trafficking in human beings, Building bridges*, pp. 10-11.

⁴¹⁰ See this part, Chapter 2, points 1.1.2, 1.1.4., 1.1.5., 1.2.1 and 1.2.2.

⁴¹¹ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 60-64, 68-71.

⁴¹² See this part, Chapter 2, point 1.1.4.

during the trial, in another case⁴¹³, none of the victims were referred and they were repatriated. When the victims were intercepted, their 'foreign national check report' contained negative answers every time to the questions concerning the presence of evidence of human trafficking, or the need to contact a specialised reception centre for victims of human trafficking. In the case of one victim, the police even initially drew up a report for illegal residence: "X. was held at the Immigration Office's disposal in Brussels in order to be repatriated to Lagos, since she was staying in the Schengen area without a valid visa. She isn't respecting the rules. It is therefore unlikely that she will follow up on the order to leave the territory that she will be given. Considering that the interested party could be prosecuted for inciting debauchery, there is a risk that she will infringe public order again. Considering that the interested party was working without a work permit, there is a risk that she will continue her illegal practices".

In the case relating to the road transport sector⁴¹⁴, all the victims were also repatriated, even those that initiated the investigation. None of them were offered victim status. The victims were repatriated to their country of origin the next day. A Romanian victim was even first taken to the local police's transit cell, and then sent to a detention centre before being repatriated to Romania.

1.2. International approach to labour exploitation: Joint Action Day Labour Exploitation⁴¹⁵

Between Saturday 28 May and Saturday 4 June 2016, joint action days were organised in 21 Member States. Targeted checks

within the framework of labour exploitation were organised in high-risk sectors. These actions were part of the European Joint Action Day (JAD) Labour Exploitation initiative, supported by Europol and led by the Netherlands, which held the presidency of the European Union.

In Belgium, 12 actions, spread throughout the whole country, were also organised during this period.

The Social Inspectorate of FPS Social Security organised checks, in collaboration with the federal judicial police. Both the Central Department for the Fight against Serious and Organised Crime and the provincial federal judicial police agencies actively supported this action. According to the sector and the site concerned, other departments were also involved during the checks: the Social Legislation Inspectorate and the Inspectorate for Well-being at Work, the Housing Inspectorate, Customs and Excise. The local police also helped during many of the actions. In addition, the labour prosecutors were informed and provided active support for these initiatives during numerous actions. The centres specialising in the reception of human trafficking victims were also informed in advance.

The majority of the checks were organised in the road transport sector⁴¹⁶ as well as hand car washes. In both sectors, indications of labour exploitation were revealed. In total, 57 sites and 187 workers were checked. At seven of the sites (11 companies concerned), labour exploitation indicators were discovered. In these cases, a report was drawn up for the labour prosecutor and the investigation was taken further. In two of the cases, the business was sealed upon the orders of the labour prosecutor. In one case, a building was also sealed after having been declared

⁴¹³ See this part, Chapter 2, point 1.1.6.

⁴¹⁴ See this part, Chapter 2, point 1.2.3.

⁴¹⁵ Social Inspectorate press release, 8 June 2016.

⁴¹⁶ According to case law in the road transport sector, few cases lead to convictions for human trafficking.

uninhabitable by the Housing Inspectorate. The manager of a car wash was detained by order of the labour prosecutor.

In the Netherlands, a similar action also took place on 29 May 2016 in the road transport sector. This time, the checks were carried out at 10 big parking areas, where lorries mainly driven by Eastern European drivers were often parked for longer periods. Considering the international nature of the road transport sector, it is also crucial to tackle the issue from a European point of view.

The participating European countries agreed, above all, to use several new methods, within the framework of this initiative, with Europol's active support. During a preparatory coordination meeting held at Europol, which the Belgian Social Inspectorate also participated in, several innovative international collaboration methods were mentioned.

Hence, two Romanian labour prosecutors were also present during the checks on Romanian road transport companies, thus favouring the preparation, execution and follow-up of the checks.

A coordination centre was active within Europol, in The Hague, for the duration of the entire action. A representative of the Belgian Social Inspectorate actively worked on the harmonisation of the actions and the facilitation of information exchanges between the participating countries. Each country had the opportunity to send special requests to another Member State, asking them for information or to ask the inspection services to carry out investigations. This information exchange wasn't just limited to the JAD period, because even after it, information continued to be exchanged regarding the companies that were checked.

Besides the findings concerning social fraud and labour exploitation, this European Joint Action Day Labour Exploitation also enabled close cooperation between the different services in our country and, above all, between the police and inspections

services. Furthermore, this initiative showed that collaboration between the inspection services in the countries of origin and the destination countries was possible and efficient. Europol's role as facilitator must be emphasised in this respect. It extended its traditional scope, by offering the Social Inspectorate a role during the coordination of actions to combat labour exploitation.

1.3. Victims of loverboys

Loverboys were the central theme in Myria's previous annual report, *Tightening the links*. This year, the subject features again in order to specify the context and explain some of the practices. The information mainly comes from the Netherlands, which has advanced expertise in the subject. We also referred to recent studies and study days on loverboys organised in Flanders⁴¹⁷.

We still have no overall picture of the loverboy problem. However, it is necessary to understand the nature and the extent of it in order to develop an adequate approach. What is therefore needed is a

⁴¹⁷ Payoke, Loverboys case, 6 May 2014, <http://www.payoke.be/websites/52/uploads/file/InfoMag%20Loverboys.pdf>; vzw Zijn and the town of Mechelen, loverboys study day, 13 October 2015; CHILD FOCUS, "Slachtoffers van tienerpooiers in Vlaanderen", *Exploratief onderzoek naar het bestaan van het fenomeen en de mogelijke aanpak ervan in Vlaanderen*, 2015, (Teenage victims of pimps in Flanders, an exploratory investigation concerning the existence of the phenomenon and the possible approach to it in Flanders, 2015) www.childfocus.be/sites/default/files/rapport_tienerpooiers_en_hun_slachtoffers_1.pdf; vzw Zijn and the Province of Antwerp, *Studiedag Tienerpooiers en hun slachtoffers* (Study Day on Teenage Victims of Pimps), 7 June 2016.

comprehensive record of the victims and perpetrators⁴¹⁸.

This incomplete picture is mainly the result of a detection problem. The phenomenon still isn't fully understood. More specifically, we are lacking knowledge concerning the practices and profiles of loverboys. And it can be equally difficult to recognise the victims.

The victims of loverboys are often considered as problem children (e.g. chronic runaways) and not victims of human trafficking. We should also mention the lack of knowledge, especially among victims and social workers, concerning the (legal) procedures.

This lack of knowledge can be observed among all the stakeholders present in the field: parents, peers, teachers, the youth care sector, the medical world, the police, the youth court, etc. Besides detection, knowledge must also be improved concerning the stages that victims may go through.

Hence, there is an overall need to increase competences concerning risk factors, the profiles of victims and perpetrators, and the signs⁴¹⁹. In this respect, awareness campaigns such as *Beware of*

As regards how victims are received and dealt with, no consensus has yet been reached.

*loverboys*⁴²⁰ and the *We Can*⁴²¹ youth campaign, are essential.

The fact that loverboys are active in an illegal circuit and that statements are rare, makes the problem of detection even more complex. The Ministry of Security and Justice in the Netherlands subsequently formulated a number of suggestions in order to increase willingness to make statements⁴²².

The involvement of citizens is increasingly suggested. Examples include, raising awareness among the clients of prostitutes and the insertion of information banners on pornographic websites. Belgium suggested organising a meeting with the managers of websites offering sexual services in order to discuss control measures aimed at combating the abuse of minors. These companies turned out to be very cooperative in this respect.

A lack of knowledge concerning all the existing work tools was also observed. In the Netherlands, for instance, there is a risk assessment tool: "prevention of sexual abuse". The need to have this type of risk assessment tool in Belgium concerning loverboys should be examined⁴²³.

⁴¹⁸ NEDERLANDS JEUGDINSTITUUT, "Hun verleden is niet hun toekomst", *Actieplan Aanpak meisjesslachtoffers van loverboys/ mensenhandel in de zorg voor jeugd*, p. 21 ("Their past isn't their future", action plan concerning the approach to female victims of loverboys/human trafficking in youth care, Dutch Youth Institute), <http://www.nji.nl/nl/Download-NJi/Publicatie-NJi/Actieplan-Hun-verleden-is-niet-hun-toekomst.pdf>.

⁴¹⁹ NEDERLANDS JEUGDINSTITUUT, "Hun verleden is niet hun toekomst", *op. cit.*, pp. 19-20. ("Their past isn't their future").

⁴²⁰ Campaign organised by Scharlaken Koord, the Netherlands, http://www.preventiescharlakenkoord.nl/_beware-of-loverboys/home.

⁴²¹ The aim of the campaign is to enable young people to defend themselves against unwelcome sexual behaviour and to teach them how to manage conflicts and relationships. The consolidation of the sexual resilience of young people is the best way to deal with the loverboy problem <http://www.wecanyoung.nl/english>.

⁴²² Ministerie van Veiligheid en Justitie, *Rijksbrede aanpak loverboyproblematiek, Actieplan 2011 - 2014* (Ministry of Security and Justice, national approach to the loverboy problem, action plan 2011-2014), p. 10, www.defenceforchildren.nl/images/13/1650.pdf.

⁴²³ NEDERLANDS JEUGDINSTITUUT, *op. cit.*, p. 23.

Besides the necessity of having a reporting system for the problem, the need for a systematic approach to this problem has also been established. On the one hand, support for victims and, on the other hand, approaching the problem within the framework of the administration of criminal justice.

As regards how victims are received and dealt with, no consensus has yet been reached. Views vary greatly concerning which procedure to follow, the composition of the ideal group and the place of safety in the care provided.

In the Netherlands, some recommend that safety should come first⁴²⁴. They consider that it intervenes at all levels: objective/subjective, physical/mental and preventive/repressive. Preference is therefore given to receiving victims in closed centres. According to this philosophy, the focus lies on the victim's likelihood of running away. Others consider that support organisations offer a greater chance of a normal life. For instance, the Asja care programme, included in the Databank Effectieve Jeugdinterventies (database of effective youth interventions) in the Netherlands, recommends support in an open framework⁴²⁵. In order to guarantee their safety, they recommend receiving victims outside their own region, preferably in anonymous reception centres (address unknown). They aren't opposed to the use of protection technologies, such as video surveillance, but the focus should be more on protecting rather than repressing the victims.

⁴²⁴ *Ibid.*, p. 27.

⁴²⁵ NEDERLANDS JEUGDINSTITUUT, "Interventie Asja", *Databank Effectieve Jeugdinterventies*, p. 5 ("Asja Intervention", database of effective youth interventions) <http://www.nji.nl/nl/Slachtoffers-loverboys/Aanpak/Opvang-en-behandeling-van-slachtoffers-van-loverboys>.

In Flanders, the Van Celst residential section of the Emmaüs non-profit organisation has the necessary experience with underage victims of loverboys, who have repeatedly run away from youth institutions. It specialises in supporting chronic runaways and is able to refer minors to the appropriate place. Its varied target audience is composed of young people with different problems and therefore isn't limited exclusively to the victims of loverboys. During a study day, Emmaüs examined the issue with the youth sector, a member of the cabinet of the Flemish Minister for Welfare, Public Health and Family, the police, a youth judge, a reference judge in human trafficking, Payoke and Child Focus⁴²⁶.

Besides the help offered, the criminal justice system also plays a role in the fight against loverboys. In its 2015 annual report, Myria already mentioned a change in the law⁴²⁷ allowing loverboys acting individually to be prosecuted for human trafficking⁴²⁸. Child Focus also adhered to the recommendation to prosecute loverboys for human trafficking rather than for corruption of the youth and prostitution⁴²⁹. As regards the latter, victims don't have access to the status of victim of human trafficking, which offers certain benefits. The prosecution of loverboys for human trafficking has already been implemented, in practice, by the public prosecutor's office in Antwerp in

⁴²⁶ Vzw Zijn and the Province of Antwerp, *Studiedag Tienerpooiers en hun slachtoffers* (pimps of teenagers and their victims) 7 June 2016.

⁴²⁷ Law of 29 April 2013 aimed at modifying Article 433quinquies of the Criminal Code in order to clarify and extend the definition of human trafficking, *Belgian Official Gazette*, 23 July 2013.

⁴²⁸ The law now clearly stipulates that human trafficking doesn't have to be part of a network to be considered human trafficking. Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, pp. 24-26.

⁴²⁹ CHILD FOCUS, *op. cit.*, p. 48.

particular⁴³⁰. The case in question involved victims who were recruited after running away from a youth establishment where they were staying. Owing to the lack of a specialised approach, the victims were first sent back to the same establishment.

The Centrum voor Criminaliteitspreventie en Veiligheid (CCV - centre for crime prevention and safety) in the Netherlands, considers that the involvement of the care sector or criminal law alone isn't sufficient to tackle the problem. To improve the approach, a chain approach was proposed: awareness, prevention, reporting, intervention and follow-up⁴³¹. This means the Netherlands now has an approach in the form of a barrier model⁴³². It offers a way to determine the barriers that security partners can erect against criminal activities. The entire criminal process is identified and, in every part, any player that can intervene is identified⁴³³.

1.4. Administrative approach

The administrative approach can also be applied beyond the loverboy problem. The Netherlands has more experience than Belgium in this area. The Centrum voor Criminaliteitspreventie en Veiligheid (CCV) in the Netherlands believes that criminal prosecutions aren't the only way to deal with the perpetrators. It also refers to municipal and administrative measures⁴³⁴.

The Netherlands, Italy, England and Wales have already elaborated an administrative policy concerning organised crime. However, there has been no structural implementation in Belgium⁴³⁵ so far. In Ghent, a pilot project has already been initiated concerning an integral administrative approach to crime. It involves cooperating with the competent legal authorities every time, but also with the federal police's human trafficking unit. Night shops, betting shops and the hotel & catering industry are the focus of this project. The objective, which involves making findings regarding all the (municipal) regulations and existing orders, has already been achieved: spatial planning, housing, fire safety, social and economic legislation⁴³⁶. Furthermore, screening can be used when granting subsidies, buildings can be closed⁴³⁷ or expropriated, licences (for bars, etc.) can be withdrawn and the tax department can organise investigations on money laundering, for instance.

The administrative approach can be used for checks on massage parlours. There are clear rules concerning the regularisation of massage parlours. If certain conditions are lacking (possession of an approved diploma in company management and massage techniques), the establishment can be closed on legal grounds. However, this only

⁴³⁰ See this part, Chapter 2, point 1.1.1. and Chapter 4 (case law), point 2.2.

⁴³¹ CENTRUM VOOR CRIMINALITEITSPREVENTIE EN VEILIGHEID NEDERLAND, "Aanpak loverboyproblematiek", *Handreiking 2012*, p. 10 (Approach to the loverboy problem, Handbook): <https://www.rijksoverheid.nl/documenten/rapportage/2012/05/31/handreiking-aanpak-loverboyproblematiek>.

⁴³² <https://hetccv.nl/onderwerpen/loverboys/praktijk-voorbeelden/haalbaarheidsonderzoek-loverboy-problematiek-in-limburg/>.

⁴³³ www.barrieremodellen.nl.

⁴³⁴ CENTRUM VOOR CRIMINALITEITSPREVENTIE EN VEILIGHEID NEDERLAND, *op. cit.*, p. 66.

⁴³⁵ L. KERSTEN, E. ROEVENS, *Een evaluatie van de invoering van de bestuurlijke aanpak van georganiseerde criminaliteit in stad Genk*, 2015, p. 25, (An assessment of the introduction of the administrative approach to organised crime in the town of Genk) https://lirias.kuleuven.be/bitstream/123456789/498714/3/Summary_English_Administrative+approach+Genk.pdf.

⁴³⁶ BI-PROVINCIALE VEILIGHEIDSCONFERENTIE, *Bestuurlijke aanpak georganiseerde criminaliteit*, 2015, p. 13 (Administrative approach to organised crime) http://www.cathyberx.be/content/dam/cathy-berx/veiligheidsconferentie/Bi-provinciale%20veiligheidsconferentie_20012015.pdf.

⁴³⁷ The city of Antwerp applied it: see this part, Chapter 4 (Case Law), point 4.

rarely happens in practice. The criminal investigation of the massage parlour in Berchem⁴³⁸ was preceded by a closure measure by the city of Antwerp.

2. The fight against human smuggling

Belgium has more than 20 years' experience in the fight against human smuggling. Every year, dozens of criminal cases concerning human smuggling are successfully dealt with. Reference judges specialising in human smuggling (and human trafficking) and specialised police units are involved. They get together for the so-called 'E40 meetings', during which they coordinate their policy and cases concerning the continuous human smuggling operations organised along the highway, a major smuggling route in Belgium. Belgium is one of the rare countries to offer victims of human smuggling the possibility of obtaining victim status if the smuggling is accompanied by aggravating circumstances (especially in cases involving extremely dangerous situations, such as refrigerated lorries). Some 20 victims qualify every year.

2.1. Opening the case: humane approach to victims/status

The phone details of human smuggling victims are crucial to opening an investigation into human smuggling. During an intervention conducted within the framework of human smuggling, it is important for the victims to show their mobile phone to the police so that they can read the messages and look at relevant phone calls and contacts.⁴³⁹ The police can copy the SIM card in order to proceed with an analysis of the data. By looking through the mobile phone records, the police can check all the phone contacts retroactively.

By comparing all this data with other interceptions conducted within the framework of human smuggling, it is possible to establish a link between the phone numbers and a smuggler, and thus uncover the smuggling network. Once the investigating judge has been appointed, they can authorise the surveillance of these phone numbers using phone taps. The main evidence for a future conviction in a trial is often based on conversations recorded during phone taps.

A humane approach to human smuggling victims is crucial in case of interception. Thanks to this approach, the victims will more readily allow the police to check their mobile phone and give their PIN code, if necessary. In human smuggling cases, the victims are nearly always willing to hand over their mobile phone⁴⁴⁰. By creating a climate of trust, the victims are sometimes also prepared to make statements, bringing an added value to the investigation⁴⁴¹. In the case of human smuggling with aggravating circumstances, the victim must be given the opportunity of being referred to a specialised reception centre, within the framework of victim status⁴⁴². The victims generally say they aren't interested because they are hoping to get to the United Kingdom as quickly as possible.

⁴³⁸ See this part, Chapter 2, point 1.1.5.

⁴³⁹ See this part, Chapter 2, points 2.1, 2.2., 2.4. and 2.5.

⁴⁴⁰ *Ibidim.*

⁴⁴¹ See this part, Chapter 2, points 2.1 and 2.4.

⁴⁴² See this part, Chapter 2, point 2.4.

2.2. Social media

The phone taps revealed that the smugglers made significant use of social networks⁴⁴³. Delicate subjects, such as financial matters, couldn't be discussed over the phone. Therefore, they would agree to discuss such matters using Skype or Viber. The smugglers regularly changed mobile phone numbers to make phone tapping difficult, and shared their new numbers via Facebook.

They also used Facebook to extend their international network regarding potential clients. For instance, a group was set up where questions could be asked regarding the situation in European towns and countries, with a view to collecting information in order to go to these areas. Users can also ask for the details of people who can help. These details are then sent in a private message to those who have requested them. Some members also sometimes inform other users whether transportation to the United Kingdom has been successful or not.

The police also used social media as a method of investigation within the framework of their investigations⁴⁴⁴. The results were considered as objective evidence by the courts in their judgements.

With the help of photos posted on Facebook, the police were able to determine the true identity of one of the main defendants who was operating under an alias. Searches using open sources on Facebook allowed the police to find the profile of the smuggler created under an alias, and confirm that the photo on his Facebook profile resembled that of a suspect in their database. In another case, the police found damning photos (a photo

with a replica firearm) on the main defendant's Facebook profile.

The federal police's computer crime units analysed all the data on the smartphones, iPhones and computers that were seized or checked during a human smuggling interception or a search of a smuggler's home. Thanks to the analysis of a smuggler's iPhone, it was possible to determine the exact places where he had stayed. The smugglers clearly left the French camps to go to the Belgian parking areas before going abroad (Netherlands, Barcelona, etc.). The messages found on the smartphone also contained valuable information concerning the main defendant. During their hearing, the defendants also showed photos of other smugglers saved on their smartphone. During the analysis of the computer, Facebook conversations were recuperated and it was possible to find the Facebook profiles of those involved.

International collaboration plays a crucial role in the fight against human smuggling.

Within the framework of the defendants' hearings, the police used Facebook and Google Maps as tools. Thanks to Google Maps, it was possible to track down a number of important places regarding human smuggling activities, such as safe houses. During his hearing, one defendant willingly gave his Facebook password and cooperated fully. The police started up Facebook in his presence and asked him to show them the people mentioned in his statement. With the help of the photos on Facebook, he was able to provide more detailed information concerning other smugglers.

2.3. Financial investigation and international chain approach

Human smuggling networks are run by criminal entrepreneurs who organise their criminal activities and run them like a multinational. Good international collaboration and a vast financial

⁴⁴³ See this part, Chapter 2, points 2.1 and 2.2.

⁴⁴⁴ See this part, Chapter 2, points 2.1., 2.2 and 2.4

investigation are the most efficient ways to reach and dry up the smuggling networks' finances. This type of approach falls under the scope of an international chain approach in which all the links have a role to play. A failure or a weak link will cause the chain to collapse. Hence, in practice, the smugglers ensure that the profits from their criminal activities are safely transferred and deposited in their country of origin⁴⁴⁵.

The cases also show that the Belgian authorities collaborate efficiently with money transfer agencies, which always cooperate fully with the Belgian law following a formal request supported by a warrant⁴⁴⁶. If the payments are made under another name, the police can then identify the person by analysing the messages exchanged⁴⁴⁷. This kind of financial data can also be used as a detection tool to identify certain people who are in charge in these organisations. In one case, the police were able to make a link between different financial transactions and a smuggling organisation, based on an investigation and phone taps⁴⁴⁸. Numerous financial transactions were made to and from the Netherlands through money transfer agencies, using other people's identity papers. The identity of these people was sent via text message to a woman in charge of finances living in the Netherlands, who played a key role.

It has been found that regarding finances, the people of trust who settle the payments between smugglers and clients, often live in the destination countries. In practice, this is often the United Kingdom. Payments are

made through the 'hawala' system⁴⁴⁹. According to this system, a guarantor in the country of origin stands as surety for a hawala banker in the destination country, who proceeds with the payment⁴⁵⁰. During an investigation into human smuggling, hawala bankers can sometimes be traced back to the United Kingdom through phone taps, underlining the possibilities and importance of phone tapping. However, as seen in one case, there aren't always prosecutions, and the opportunity is missed⁴⁵¹. In this respect, quality international collaboration is the link required to dry up the smuggling network's financial resources.

2.4. International collaboration through a Joint Investigation Team

International collaboration plays a crucial role in the fight against human smuggling considering the criminal networks' activities are nearly always cross-border. There are several examples of initiatives aimed at improving international collaboration.

On a European level, there are joint investigation teams⁴⁵² whose action is based

⁴⁴⁵ Annual Report 2015, *Trafficking and smuggling of human beings, Tightening the links*, p. 94.

⁴⁴⁶ See this part, Chapter 2, point 2.2.

⁴⁴⁷ See this part, Chapter 2, points 2.1 and 2.3.

⁴⁴⁸ See this part, Chapter 2, point 2.2.

⁴⁴⁹ A hawala type system can be considered as a parallel banking system to transfer money from one country to another without leaving any trace of the transaction. The system is completely anonymous.

⁴⁵⁰ Annual Report 2011, *Trafficking in and smuggling of human beings, The money that matters*, p. 15.

⁴⁵¹ See this part, Chapter 2, point 2.4.

⁴⁵² A joint investigation team is a partnership between the competent authorities of two Member States or more, in order to carry out a criminal investigation into punishable acts attributable to gangs, with defendants in several Member States. Under the direction of a single Member State, a joint investigation team will be responsible for carrying out the criminal investigation. Its legal framework is determined by the legislation and regulations in force in the country where the team are intervening. At the end of the criminal investigation, the case is brought before the prosecution service of the most relevant country. In Belgium, the methods

on the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁴⁵³. Both countries must have a joint interest in the cases. In concrete terms, police officers work together on everyone's territory. Letters rogatory aren't necessary. A simple phone call is sufficient to receive the required information. There are two copies of the file.

Various Belgian cases, including the splinter⁴⁵⁴ human smuggling case, rely on a joint investigation team agreement. However, in practice, judges still don't resort to setting up a joint investigation team often enough. The preference is for rapid processing (at local level), even though the network isn't always fully dismantled.

Regarding the European collaboration of police forces, Europol manages the EIS database which also includes human trafficking and smuggling cases. Different countries don't always respect their obligations, which sometimes leads to disastrous consequences. For instance, it was only after the Charlie Hebdo attack that France began transferring its data.

concerning joint investigation teams are defined in Chapter 3 of the Law of 9 December 2004 on the international transmission by the police of personal data and information for legal purposes, international mutual legal assistance in criminal matters, amending Article 90ter of the Code of Criminal Procedure, *Belgian Official Gazette*, 24 December 2004.

⁴⁵³ Council Act of 29 May 2000 establishing, in accordance with Article 34 of the treaty on the European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, *Belgian Official Gazette*, C197 of 12.7.2000, and Council Framework Decision 2002/465/JHA of 13 June 2002, on joint investigation teams, *O.J.*, L 162 of 20.06.2002, p. 1.

⁴⁵⁴ See this part, Chapter 2, point 2.5.

CHAPTER 4: CASE LAW OVERVIEW (2015- MAY 2016)

1. Trends

This chapter provides an overview of the relevant case law from 2015 to the beginning of 2016 (May 2016) concerning cases of human trafficking and human smuggling⁴⁵⁵. This year, the overview focuses on cases in which Myria instituted civil proceedings, decisions received from the specialised victim reception centres as well as decisions provided by judges and stakeholders in the field. We are also presenting a decision recently made by the European Court of Human Rights. Finally, a decision made by the Council of State, concerning the temporary administrative closure of an establishment where acts of trafficking took place, is also mentioned.

Myria was informed of 83 decisions rendered by the judicial authorities.

Here, we are presenting the most interesting decisions relating to 50 cases in the country's various jurisdictions:

- 15 decisions relating to 14 cases concern acts of sexual exploitation. They were pronounced in the jurisdiction of the Courts of Appeal of Antwerp (Antwerp, Turnhout), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent) and West Flanders (Bruges)).

As regards **sexual exploitation**, many of the decisions concern minors, some of whom are very young. They are primarily Belgian girls who have run away from youth

institutions and been recruited by loverboys. The Nigerian girls are also very young. There is one decision that took into account acts committed abroad, as well as a decision concerning the sexual exploitation of two men, in which human trafficking wasn't, however, retained.

- 26 decisions relating to 25 cases concern labour exploitation. The decisions pronounced relate to a wide range of sectors and are presented per sector of activity (construction, agriculture/horticulture, road haulage, hotel & catering, bakery, meat processing industry, shops, riding schools, cleaning, paper serviette manufacturer and domestic work). These decisions were pronounced in the jurisdiction of all the courts of appeal: Antwerp (Turnhout division), Brussels (French-speaking Brussels, Walloon Brabant, Leuven), Ghent (East Flanders (Ghent, Termonde)), Liège (Liège and Namur) and Mons (Mons division).

In terms of **labour exploitation**, Myria was informed, for the first time, of a decision concerning the labour exploitation of a minor, pronounced in a sector other than domestic work.

To conclude the existence of working conditions contrary to human dignity that bear the attributes of human trafficking, the judges took into consideration the presence of several of the following elements: work conditions and work environment (excessive working hours, derisory wages, no day of rest), bad housing conditions, wage deductions under various pretexts, dependence on the employer. It is also interesting to note that, for one worker, the fact of having been the victim of a work accident which the employer attempted to hide, was considered a determining factor in concluding the existence of work conditions contrary to human dignity.

⁴⁵⁵ Please note that these decisions will also be published on Myria's website: www.myria.be. Several case law decisions from the beginning of 2015 also feature in the previous report (Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, part 2 chapter 4).

As in previous years, we also noted the existence of fraudulent structures intended to conceal exploitation: cascade subcontracting, fraud in terms of posted workers or bogus self-employed workers. Here, we should emphasise the difficulty of obtaining convictions for trafficking in an atypical sector such as road transport.

Furthermore, in a major case concerning the subcontracted cleaning of fast-food restaurants, the court considered, based on its reading of the case, that the principals weren't sufficiently aware of the facts to be declared complicit in the acts of human trafficking.

Finally, we should mention an interesting decision pronounced by Brussels Labour Court concerning domestic work and a former diplomat and his wife. The court considered that human trafficking was established and awarded the worker damages.

- a decision relating to acts of exploitation of begging was rendered, on opposition, by the Dutch-speaking Criminal Court of Brussels. The decision pronounced in absentia was presented in the previous report.
- 11 decisions relating to 10 cases concern cases of human trafficking. They were rendered in the jurisdiction of the Courts of Appeal of Antwerp, Brussels (Brussels, Leuven) and Ghent (East Flanders (Ghent) and West Flanders (Bruges)).

As regards **human smuggling**, the organisations are usually well structured. Note that in one case, victims instituted civil proceedings and were awarded compensation. The charge of smuggling was also used to prosecute defendants who put people to work under a false identity, i.e. their own.

2. Human trafficking

2.1. European Court of Human Rights, case L.E. c. Greece, 21 January 2016 (application no. 71545/12)

In a case concerning a Nigerian national forced into prostitution in Greece, the court concluded a violation of Article 4 of the ECHR prohibiting slavery and forced labour⁴⁵⁶.

The woman entered Greece in 2004 with the help of a man, thus contracting a debt of EUR 40,000. A voodoo ritual was performed before she left. Once in Greece, he confiscated her passport and forced her to prostitute herself. She was arrested several times for prostitution and violation of laws on the entry and stay of foreign nationals. In November 2006, while in detention prior to her expulsion, she filed a complaint against this man and his wife. In return, she received the help of a non-governmental organisation, with which she stayed in contact for approximately two years. The director of this organisation was heard and corroborated the applicant's statements. However, it was only nine months after she filed a complaint that the court acknowledged the status of victim of trafficking.

The court stated that human trafficking falls under the scope of Article 4 of the Convention (§58) and that it charges the Member States with a series of positive obligations relating in particular to the protection of trafficking victims as well as the prevention and suppression of trafficking (§64).

⁴⁵⁶ Concerning this judgement, see CH-E. CLESSE, "Fugit irreparabile tempus", note under ECHR (1st section), 21 January 2016, *Rev. Dr. pén.*, 2016, pp. 701-707.

The court found that the operational measures taken to protect the applicant weren't swift enough, considering the amount of time that had passed since the complaint was filed and the applicant's recognition as a victim. This delay was due to the fact that the statement of the NGO's director wasn't included in the file in due time owing to an oversight by the police authorities.

The court also found numerous delays and shortcomings regarding procedural obligations relating to Greece, especially concerning the efficiency of the preliminary investigation and the investigation of the case.

2.2. Sexual exploitation

Victims of loverboys, including Belgian underage runaways

Several decisions concern the victims of loverboys.

Antwerp Criminal Court reached a verdict within the framework of four cases of sexual exploitation of minors who had run away from youth centres⁴⁵⁷. Several underage victims were involved in different cases.

One of the cases (involving the same victim at the basis of other cases)⁴⁵⁸ was opened when the police were informed that an underage girl, who had been reported missing, was being held in a house. Both the victim and one of the defendants were intercepted in the house. The victim stated to the police that she had to participate in

sexual acts against her will. The intercepted defendant admitted he had kept the victim in his house for the past three weeks, on the request of two other defendants, who were her pimps.

The girl was able to provide a great deal of information regarding the perpetrators as well as other victims, which allowed the police to initiate other investigations. More facts were revealed through phone taps, searches through mobile phone records, statements from victims, witnesses and defendants, and data from a GPS.

The defendants approached (Belgian) underage girls, aged between 14 and 16, who were in a precarious situation. The girls had been placed in youth centres but had run away. They had been reported as missing. The young men made contact with the girls mostly via Facebook. They first took the girls to their home and then obliged them to prostitute themselves. The girls had run away from the youth centre and they didn't know where to go, or have anywhere to stay, which made them easy prey for the perpetrators. Some of them were in love with their pimp. They were taken to hotels where they had to have sexual relations with men. They were put under pressure because they didn't have anywhere to live and didn't have any money. Violence was sometimes used if the girls refused to prostitute themselves. In one case, a girl was even raped by a defendant. In one of the cases, the pimps' partners were also aware of the facts.

In all four cases, several defendants were prosecuted for human trafficking with aggravating circumstances (especially regarding minors). In the first case mentioned above, five defendants were prosecuted, three of whom for human trafficking. In a second case, three defendants were also prosecuted for human

⁴⁵⁷ Antwerp Crim. Court, 15 December 2015, ch. AC4 (final), 22 December 2015, ch. AC4 (final because the defendant lodged an appeal too late and it was declared inadmissible), 21 March 2016, ch. AC4 (no. 1397, appeal) and no. 1398 (final). Concerning the decision of 15 December 2015, see also this part, Chapter 2 (Case Studies), point 1.1.1.

⁴⁵⁸ Decision of 22 December 2015.

trafficking⁴⁵⁹. In a third case, six defendants were prosecuted, five of whom for human trafficking⁴⁶⁰, and in a fourth case, one defendant was prosecuted⁴⁶¹.

Some of the defendants were also prosecuted for (attempted) rape, detention and supplying drugs to minors.

The court accepted the acts of human trafficking in all four cases and handed down heavy sentences, with prison sentences varying between 30 months and eight years, as well as fines.

In several of these cases, Myria and Child Focus instituted civil proceedings and received a symbolic euro as compensation. The victims who instituted civil proceedings received provisional compensation while awaiting a medical assessment to determine the damage suffered by these very young girls.

In a case judged in Brussels on 25 June 2015⁴⁶², an Albanian defendant was sentenced to four years in prison and a fine of EUR 18,000 for trafficking and exploitation of the prostitution of his wife, who was also Albanian. The victim had met her husband in Albania when she was barely 18 and in a precarious social and family situation. The court primarily based its judgement on a note written by the reception centre supporting the victim, explaining the loverboy technique. The defendant made her believe in a wonderful future but then forced her to prostitute herself in Greece. She had to give him the money she earned. He told her he loved her but only married her so that she could

obtain a document allowing her to go to Belgium and continue working as a prostitute. She hadn't been able to stay in Belgium in the past and had been deported to Albania.

The case was opened following police information according to which the defendant was exploiting his wife. In particular, the defendant was demanding that she bring in EUR 3,000 so that he could rent out a building in order to set up a cannabis farm. She was also the victim of violence. He didn't work and lived entirely off the victim's earnings as a prostitute.

The defendant contested these charges, saying that his wife's statements weren't true and contradicted by the evidence he brought to the case. However, the court pointed out that the case hadn't been opened on the basis of the victim's complaint but based on police information. This information was supported by information received from Albania and other evidence collected during the investigation. The victim's statements only later confirmed the evidence the police already had.

The court pronounced the confiscation of sums seized during searches and the confiscation of the sum of EUR 157,000, less the amount of the sums seized.

The victim also asked that the defendant be ordered to pay her for pecuniary and non-pecuniary harm evaluated *ex aequo et bono* at EUR 60,000, corresponding to the 'wages' earned which she didn't receive as she had to give everything to the defendant. She also asked that she be given the amount she requested from the confiscated amounts, in application of Article 43 of the Criminal Code.

However, the court considered, without giving any reasons, that it didn't fall within its remit to grant her the equivalent of the sums she had earned as a prostitute. On the other hand, it awarded her non-pecuniary

⁴⁵⁹ Antwerp Crim. Court, 15 December 2015. On this subject, see this part, Chapter 2 (Case Studies), point 1.1.1.

⁴⁶⁰ Antwerp Crim. Court, 21 March 2016, no. 1398.

⁴⁶¹ Antwerp Crim. Court, 21 March 2016, no. 1397.

⁴⁶² Brussels French-speaking Crim. Court, 25 June 2015, 47th ch. (final).

damages of EUR 15,000. However, it refused to give her priority when awarding her the confiscated sums in application of Article 43bis of the Criminal Code since, in order to return or award the confiscated money to the civil party, the latter would have to be the owner of it, which wasn't actually the case. The fact that the defendant was sentenced to compensate the civil party, does indeed create a debt but it doesn't make the civil party the owner of the confiscated sums by equivalent, since these are two different notions.

In another case that was also tried in **Brussels on 21 May 2015**, the **criminal court**⁴⁶³ confirmed the default judgement pronounced against the defendant. Two defendants (one of whom was a recidivist) were sentenced in absentia for human trafficking for the purposes of sexual exploitation regarding two young Albanian women, and for the exploitation of prostitution of the one who was their friend⁴⁶⁴. The two young women had both been recruited by Albanian loverboys (one of them via Facebook). They were gradually led into prostitution, in particular through the promise of a better life. They worked as prostitutes in the Netherlands and Germany, where they were expelled because that had fake passports supplied by the defendants. They were then taken to Brussels where they worked as prostitutes in Rue d'Aerschot. They had to give their earnings to the defendants and were also victims of physical and psychological abuse.

Although one of the defendants filed an opposition, the court confirmed the conviction pronounced, especially on the basis of the victims' corroborating statements. They both appeared frightened when they made their first statements; they

were afraid of the defendants' reaction following their decision to leave prostitution.

A confiscation order of EUR 105,000, equivalent to the assets derived directly from the offences, was pronounced against the defendant.

Wide-scale sexual exploitation in Thai massage parlours

A major case, in which Myria instituted civil proceedings, concerns acts of sexual exploitation in massage parlours.

In a judgement of 27 January 2016, Brussels Criminal Court⁴⁶⁵ reached a verdict on a case of human trafficking for the purposes of sexual exploitation and other offences relating to prostitution, concerning different Thai massage parlours. These parlours were in fact hidden brothels. The acts took place from 2005 to 2009. The case was initiated when several Thai women attempted to commit suicide in a short period of time. The criminal case was instituted on the basis of phone taps, observations, searches and statements from the defendants and victims.

Six defendants were prosecuted, one of whom was the main defendant, a Belgian accountant living in Spain. He was the accountant of the Thai massage parlours but also the manager or partner of various companies. The criminal case revealed that through his accounting firm, he had significant contact with other Thai brothels, for which he did the accounting as well as taking care of the social obligations. It was thus possible to establish a link with some 30 massage parlours. An officially registered 'clean' company was to be found behind every massage parlour.

⁴⁶³ Brussels French-speaking Crim. Court, 21 May 2015, 47th ch. (final).

⁴⁶⁴ Brussels French-speaking Crim. Court, 19 February 2015, 47th ch. (in absentia).

⁴⁶⁵ Brussels Crim. Court, 27 January 2016 46th ch. (appeal in progress).

The other main defendant was the owner, on paper or in practice, of different parlours in Flanders.

The massage parlours were generally owned by Thai women. The defendants had begun a romantic relationship with some of them. In reality, the parlours were managed behind the scenes by Belgian men who benefited from the income. The women only received EUR 300 or 500 a month, or 800 in the best case. The administrative and financial matters were dealt with by the defendant who was the accountant. Business was conducted in ordinary houses, by women who barely spoke Dutch or English and didn't understand anything about administrative matters. The massage parlours were advertised online.

The women were lured from Thailand on the basis of false promises, such as marriage or work. They arrived in Belgium on a tourist visa. A marriage or sham marriage was then organised, thanks to which the girls obtained papers and could work. Other girls were staying illegally. The majority of them didn't know that they had to work in prostitution. The case also revealed that money had been paid for girls brought from Thailand to Belgium: EUR 9000 per girl supplied.

As soon as they arrived in Belgium, their papers were confiscated and they had to work six or seven days a week, and often for long hours. On paper, they received a minimum wage but in reality, they received much less. They only earned money if they had clients and had to hand over half of their earnings to reimburse the costs of their visa and residence papers. They were in a vulnerable position owing to their precarious situation, because they were pregnant, had no financial resources, didn't master the language and knew nothing about social legislation. They often lived in the massage parlours and hardly went out. Several girls were also addicted to gambling, and were subsequently faced with financial difficulties.

A Belgian-Thai couple who owned various massage parlours were also prosecuted. It

was the accountant who advised them. The Thai wife was responsible for supplying girls. She would leave papers in Thai bars and restaurants to incite the girls to come and work with them. She also looked for men who were prepared to act as guarantors for the girls. Once the girls had the papers, the men would receive 15 % of the girl's income as well as a reduction on the services offered in the massage parlour. The wife was pressured by her Belgian husband, who ensured that the recruited girls worked enough. She played the role of intermediary between the girls and her husband.

The victim who instituted civil proceedings was employed in one of the couple's massage parlours. She was enticed to Belgium by another defendant under the false promise of a better life. Contact with the father of her child, a Belgian 'sex tourist', were re-established. The child was entrusted to her family-in-law. The victim had to work in one of the massage parlours to be able to reimburse her costs for the visa and the journey, and to pay 'taxes'. She hardly saw her child. She was able to make very detailed statements regarding the false documents and her very low income. The victims had to pay for their own condoms and then dispose of them by burying them in the garden. The girls had to pay to cover the cost of their accommodation and food, as well as pay 'taxes'. There was no physical violence, just psychological coercion. They were threatened by being told the police would be brought in, thus leading to their expulsion from the country. When the victim finally stopped working in the massage parlour, she was threatened and followed on the orders of the owner. She obtained the status of victim of human trafficking.

The six defendants were prosecuted for human trafficking for the purposes of sexual and labour exploitation in conditions contrary to human dignity, with various aggravating circumstances. The court stated that the majority of charges were established, except against two of the defendants, where it couldn't be proven that the activities were regular activities.

They were also prosecuted for exploitation of debauchery and prostitution, forgery, receiving undeclared income and avoiding compulsory social security and tax contributions (false work contracts, false worksheets, false VAT returns, false payslips, etc.), running a brothel and harassing the victim who instituted civil proceedings.

The defendants were given partly suspended prison sentences ranging between 18 months and three years. The Belgian-Thai couple were sentenced in absentia. Various large sums of money and cars were confiscated. Myria and one victim instituted civil proceedings. The victim received more than EUR 8,000 covering the material and moral damages suffered. Myria received EUR 500 (even though it had asked for EUR 2,500).

Escort agency involving African women

In a ***case tried in Turnhout on 9 December 2015***⁴⁶⁶, three defendants were prosecuted for trafficking for the purpose of sexual exploitation and various prostitution charges regarding underage Nigerian girls and an adult woman.

The defendant, who was also Nigerian, had African girls brought over, several of whom were minors, with false papers, in order to make them work as escorts in the agency she managed with her Belgian boyfriend. These services were advertised on the internet. The girls and their family in Nigeria were threatened and put under pressure through voodoo rituals. The boyfriend took care of the photos for the website, transporting the girls and collecting the money. The third defendant, a Nigerian, was the adult victim's former boyfriend and had helped to set up the escort agency. He

received money from the young women and created several websites.

The police were informed of the case by the PAG-ASA reception centre. Two victims instituted civil proceedings.

The court terminated the prosecution regarding the defendant, who had died in the meantime, and convicted the other two defendants for the charges made against them, except as regards a minor.

Cash courier

In a ***decision of 25 March 2016***, the ***Brussels Court of Appeal***⁴⁶⁷ completely reversed the judgement pronounced at first instance by ***Brussels Criminal Court***⁴⁶⁸. At the end of a detailed explanation, a defendant active in the transport of goods, people and cash between Belgium and Bulgaria, was acquitted.

The court began by emphasising the fact that in terms of principles, the act of transporting a woman coming to Belgium to work as a prostitute isn't a human trafficking offence, even if she was exploited, if it hasn't been established that the defendant knew or must have been aware of this actual or planned exploitation. The acts concerned no less than 113 people. And yet the majority of girls were never heard and the court considered there was no evidence proving that their activity was exploited by a third party. Concerning the girls who were identified and questioned, the court considered that neither their statements, the observations made or the intercepted conversations were sufficient to

⁴⁶⁷ Brussels, 25 March 2016, 12th ch.

⁴⁶⁸ Brussels Crim. Court, 7 May 2014, 54th ch. The judgement is available on Myria's website: www.myria.be. and was dealt with in the previous report: Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1-1., p. 107.

⁴⁶⁶ Antwerp Crim. Court, Turnhout division, 9 December 2015, ch. TC1 (appeal).

deem established beyond all doubt that the defendant transported young women in order to allow offences to be committed against them in terms of prostitution. Subsequently, the court acquitted the defendant, owing to a lack of sufficient material evidence and no established mental evidence (knowledge) regarding the cases where exploitation of prostitution occurred.

However, the court ordered the sums seized by the police be returned to the three young women; they had given this money to the defendant but it belonged to them.

Extraterritoriality

In a ***case tried in Brussels on 6 November 2015***⁴⁶⁹, a Nigerian defendant living in Spain was principally prosecuted for trafficking for the purpose of sexual exploitation, and hiring and exploitation of prostitution. The girl in question, a minor at the time of the acts, instituted civil proceedings.

The court first asserted its jurisdiction to examine the acts committed in Spain, relating to the trafficking and exploitation of prostitution of the girl. Indeed, they are the expression of the same criminal intent that took place in Belgium, i.e. charges of extortion and money laundering, for which the defendant was also prosecuted. According to the case law of the Court of Cassation, this is a case where the authority of the Belgian judge can be extended (see Article 10ter and 12 of the Preliminary Title of the Code of Criminal Procedure).

The acts were revealed following checks on the 'rooms' in St. Josse. A number of African girls stated that they were victims of a Nigerian organisation. During a check at the address of the property they gave, the police discovered the girl. She was living there with her daughter. Heard by the police, she stated that she had been made

false promises and brought over from Nigeria to Europe (Spain) in 2002, within the framework of the network organised by the defendant and his wife. She was forced into prostitution through coercion (voodoo) and threats. She was 15 years old at the time. She had to give all her earnings to the defendant (a total of EUR 10,000). At the beginning of 2004, she fled to Italy (where she got pregnant) but pressured by the defendant through voodoo and threats to her family, she quickly returned to Spain to work as a prostitute again. At the beginning of 2010, she decided to escape to Belgium. As she had no other means of subsistence, she turned to prostitution. Coerced by the defendant, she made a series of payments to the defendant through Western Union. Although she was taken in by a specialised reception centre, the defendant continued to call her incessantly.

Letters rogatory were sent to Spain. During a search at the defendant's home in Barcelona, a suitcase was found containing the victim's personal belongings. The defendant was arrested in Spain on the basis of a European arrest warrant and extradited to Belgium.

The court accepted all the charges, on the basis of the victim's detailed and repeated statements, confirmed by the results of the letters rogatory, payments made via Western Union and the statement of a support worker at the reception centre that had taken her in, confirming the phone calls the victim had continued to receive.

The defendant was given a six-year prison sentence, together with a EUR 2,750 fine (EUR 500 multiplied by the 'décimes additionnels' (a coefficient of six)). Concerning the defendant, the court also ordered the confiscation of EUR 16,000, equal to the benefits derived directly from the offences. It sentenced the defendant to pay the civil party EUR 16,200 in terms of pecuniary damages and EUR 1,000 in non-pecuniary damages. The court also ruled that the confiscated sums be allocated to the civil party, first and foremost.

⁴⁶⁹ Brussels Dutch-speaking Crim. Court, 6 November 2015, 46th ch. bis (final).

Control and subcontracting from inside a prison

On **17 June 2015**, the **Criminal Court of Bruges**⁴⁷⁰ examined a case of human trafficking for the purpose of sexual exploitation involving an Albanian gang. Six defendants were prosecuted. The main defendant was in prison for other offences when the acts took place. Mobile phone records revealed that he was still running his business from prison, using a mobile phone that had been smuggled in, and was firmly in control.

The criminal case revealed that several girls who were working in the main defendant's bar had to provide various services such as drinking with the clients, dancing and stripping, 'bedroom' activities (erotic massage and sexual relations) and escort services. The main defendant's girlfriend, in whose name the club was registered, was the manager. She was behind the counter and co-founder/shareholder. The criminal case clearly revealed that the main defendant was actually the real owner of the nightclub. His mistress had to follow his instructions and implement them in the workplace. She had to report back to him. He also gave instructions to his wife. The two women were in his grip.

A fourth suspect, a girl working in the bar, was also actively involved in the exploitation. She acted as a link between the waitresses and the boss. But the boss set the price a client had to pay and the duration of the services. He controlled his entourage, to ensure the girls had worked sufficiently and to check how much they had earned. He checked the accounts every week. The salary stipulated in the employment contracts wasn't what was actually paid. He used allocation keys (50/50 or 60/40) and didn't pay any salary if the girls hadn't drunk with the clients or

organised 'bedroom' activities with them. The girls had to work long hours (from 20:00 to 09:00 in the morning). There was little or no social security cover. He wasn't afraid of using threats or exerting significant pressure on them. The girls were in a precarious situation regarding residency and were financially dependent. Besides his wife and regular girlfriend, he had relations and children with different girls. It was clear to the court that the girls were exploited and had no other choice than to accept their fate.

Two prison guards were also prosecuted. Through passive corruption, the main defendant was able to continue his criminal activities from inside the prison. The guards warned him if the cell was going to be inspected and turned a blind eye to the mobile phone and drug use. The criminal case revealed that the two prison guards regularly went to the main defendant's nightclub. In exchange for their services, they could go and drink there and enjoy the girl's services.

The main defendant, his regular girlfriend and manager of the nightclub, and another girl that was working there, were prosecuted for human trafficking for the purpose of exploitation of prostitution with aggravating circumstances. They were also prosecuted for pimping and running a brothel, forgery and breaches of the Social Criminal Code. The court declared the charge of human trafficking established, except in the case of the girl.

The main defendant was a repeat offender. He already had some 30 convictions, especially for exploitation of prostitution and human trafficking. The court handed him a four-year prison sentence. The main defendant's girlfriend was given a partially suspended 18-month prison sentence. The court took into account the pressure exerted on her by the main defendant. The other waitress in the nightclub was given a six-month suspended prison sentence for running a brothel. The main defendant's wife was given a four-month prison sentence. The court considered that she

⁴⁷⁰ West Flanders Crim. Court, Bruges division, 17 June 2015, 17th ch. (appeal).

actively participated in the disgraceful practices since she took care of the fake work contracts, thus attempting to make the activities appear legal. Furthermore, different sums of money discovered in safety deposit boxes were confiscated.

One of the prison officers was given a six-month suspended sentence. The other one was acquitted owing to a lack of evidence. However, the court considered that his presence in the main defendant's bar was debatable from an ethical point of view.

Myria instituted civil proceedings and received EUR 2,500 in compensation.

Exploitation of Hungarian girls in prostitution windows

On 13 May 2015, Ghent Criminal Court⁴⁷¹ ruled on a case concerning the prostitution of Hungarian girls in windows in Ghent. Three defendants were prosecuted.

The defendants would go and fetch girls in Hungary, who were living in poverty, in order to bring them to Ghent. They worked 12-hour shifts in the prostitution windows, seven days a week. They gave the money they earned to the main defendant. The girls received EUR 20 a day to eat as well as the rent for the windows. The second defendant, who was the wife of the main defendant, supervised the girls. She monitored their work and their income. They all stayed in the same hotel. The defendants kept some of the girls' identity papers. The main defendant used physical violence against the girls on several occasions and threatened their family in Hungary.

The defendants were prosecuted for human trafficking for the purposes of sexual exploitation with aggravating circumstances. They were also prosecuted for exploitation for the purposes of

debauchery and prostitution. The court considered that both the material element (recruitment, transportation, harbouring, reception, control) and moral element (with the goal of sexually exploiting the girls) of the crime of human trafficking were established. Aggravating circumstances were also declared as being established.

The main defendant and his wife were both given a suspended sentence of two years and 10 months respectively, and heavy fines. EUR 100,000 were confiscated.

A third defendant was acquitted of the charges. The court considered that the fact that he also benefited from the income of his fiancée's prostitution wasn't punishable. The couple had a relationship and were engaged. They were saving together to buy a house in Hungary. As regards the defendant, there was no question of a punishable economic benefit.

Sexual exploitation by a Nigerian gang

On 5 February 2016, Brussels Criminal Court⁴⁷² ruled on case concerning offences committed between end 2013 and 2015 by a criminal gang active in Nigerian prostitution circles. The investigation was conducted with the help of phone taps and searches.

Several defendants smuggled Nigerian girls into Europe, who arrived in Belgium via Italy. The girls had to make the extremely dangerous crossing from Libya, across the Mediterranean. Several of them were rescued at sea by the Italian maritime police. They were received in Italy and taken to Brussels. They were given false identity papers with their own photo. Upon arrival, they had to work as prostitutes, to reimburse their travel costs above all. The amounts varied between EUR 35,000 and 40,000. The girls were recruited with the help of the defendants' family in Nigeria.

⁴⁷¹ East Flanders Crim. Court, Ghent division, 13 May 2015, 28th ch. (final).

⁴⁷² Brussels Dutch-speaking Crim. Court, 5 February 2016, 46th ch. (final).

They had to work as prostitutes in windows in the area around Brussels-North railway station. They had to hand over the majority of their earnings to their 'madam' (female pimp). They **Yemeshe system** was often used. It is a *modus operandi* that is frequently used in the world of Nigerian prostitution whereby the girl has no fixed place of prostitution but is offered the possibility of using a regular prostitute's window for a few hours. In exchange, the girl must give 50 % of her earnings from prostitution to the regular prostitute.

The girls are threatened with voodoo rituals. These rituals were organised in Nigeria before their departure or used at a later date to bring difficult girls in line. The girl's families in Nigeria were also held accountable if the girls didn't do as they were asked. The girls didn't dare go to the police. They were in a vulnerable situation, without money or a legal residence permit, had nowhere to stay and were entirely at the mercy of their pimps.

The investigation also revealed that three other girls had arrived in Italy in order to be taken to Belgium and that in Nigeria, three new girls were waiting to be smuggled and exploited.

During the searches, some sort of the accounts were discovered, demonstrating that the 'madams' earned between EUR 12,000 and 14,000 a month thanks to prostitution. Documents were also found concerning payments to accounts in banks in Italy and Nigeria.

The defendants were prosecuted for human trafficking for the purpose of sexual exploitation and for attempted human trafficking, both with aggravating circumstances. They were also prosecuted for exploitation of prostitution, laundering money from prostitution, and managing and participating in a criminal organisation.

In particular, the court considered the charges of human trafficking with a view to sexual exploitation established. Aggravating circumstances were also declared as being established, especially the fact of having

endangered the victims' lives by making them embark upon one of the most dangerous journeys across the Mediterranean. The charge of attempted human trafficking for the purpose of sexual exploitation of three new girls in Nigeria was also declared established. The court considered that it was a question of prostitution in a larger framework, on an international scale, and that all the interested parties were clearly coordinated, communicated with each other and offered to assist one another to make as much profit as possible from the prostitution of their victims. For three of the defendants, the court considered that they held the role of leader within the criminal organisation.

The defendants were given prison sentences ranging from 12 months to five years, and heavy fines. Several large sums of money were also confiscated.

Sexual exploitation of young men in hotels

On **9 February 2016, Bruges Criminal Court⁴⁷³** ruled on a case concerning the sexual exploitation of two young men.

After the police were alerted by a hotel owner, two male victims, one Russian the other Brazilian, were intercepted in a hotel room. They confirmed that they were sexually exploited by the defendant. He obliged them to have sexual relations with clients or massage them. Sometimes, they were forced to take drugs. The defendant took care of the clients and the hotel rooms. The victims had to give half of their earnings to their boss every time.

The defendant was prosecuted for human trafficking for the purposes of exploitation of prostitution or other forms of sexual exploitation with aggravating circumstances. He was also prosecuted for exploitation of debauchery and prostitution,

⁴⁷³West Flanders Crim. Court, Bruges division, 9 February 2016, 14th ch. (final).

computer fraud and identity theft. The court considered that the material element of the offence of human trafficking wasn't sufficiently established. The victims were already living in Belgium and already working in prostitution before meeting the defendant. The criminal case also doesn't sufficiently emphasise the control the defendant exercised over the victims. According to the hotel owner's statements, the victims regularly went there, even without the defendant. Hence, he was acquitted of the charge of human trafficking.

However, the acts of exploitation of prostitution, identity theft and computer fraud were accepted. The defendant took photos of the clients' bank cards when they were in the bathroom and then used their bank details to buy products online. The court considered that the defendant didn't hesitate to get people to work in prostitution for him. Furthermore, he didn't respect the terms of his parole and had continued his escort activities. He was sentenced to two years in prison and had EUR 6,000 confiscated. The two victims, who instituted civil proceedings, each received compensation worth EUR 1,000.

2.3. Labour exploitation

2.3.1. Construction

In a case, tried at first instance by **Arlon Criminal Court** and presented in the previous report⁴⁷⁴, two defendants were prosecuted for human trafficking for the purpose of labour exploitation with respect to illegally staying foreign workers and, for one of the defendants, Belgians too. They were accused of having made the victims

work on renovating houses seven days a week, more than nine hours a day, with no appropriate work or safety equipment, no bathroom facilities and low wages. Some of the workers slept on site in precarious conditions.

The court declared the charge of trafficking established but only regarding the foreign workers. It didn't accept this charge regarding the defendant who was also prosecuted for these acts committed against Belgian workers.

In a **judgement of 14 January 2016, Liège Court of Appeal**⁴⁷⁵ confirmed the decision overall at first instance: the versions of the civil parties are coherent and corroborated by the testimonies gathered. Based on a judgement of the Court of Cassation, the court reiterated that in this respect, making employees work in such a way that they are exploited economically is contrary to human dignity and considered an act of human trafficking. It found that this was indeed the case: the insalubrity of the place where the foreign workers were staying, the derisory wages, the very difficult conditions, and no heating or facilities regarding the workers' well-being, sufficiently established the fact that these workers were made to work in conditions contrary to human dignity.

However, despite the sentences handed down at first instance, the court ordered suspended sentences. It confirmed the material damages awarded at first instance, i.e. the salary arrears. Contrary to the Court of First Instance, it also awarded the civil party non-pecuniary damages. The first judge had refused to award non-pecuniary damages because the workers hadn't been deprived of their freedom of movement and had led each other into illegal employment. The court, on the other hand, considered that the violation of the human dignity of each of the civil parties entitled them to

⁴⁷⁴ Arlon Crim. Court, 8 May 2014. Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1.2.1., p. 113. This judgement is available on Myria's website: www.myria.be.

⁴⁷⁵ Liège, 14 January 2016, 6th ch.

compensation for non-pecuniary damages. It subsequently awarded non-pecuniary damages of EUR 1,500.

Another case, that was also tried at first instance, by *Charleroi Criminal Court*⁴⁷⁶ this time, concerned a Moroccan national who legally brought over fellow countrymen to then exploit them in his renovation company. He was prosecuted for both human trafficking and human smuggling. The workers had to work without being paid and without a day off when the job had to be finished. The defendant also put pressure on the workers by threatening to use a document signed by each worker authorising him to take action against them if they broke the contract. He also retained some of the workers work permits and residence permits.

The defendant was convicted at first instance for human trafficking and various charges regarding social criminal law. On the other hand, he was acquitted of the charge of human trafficking because the workers had arrived in Belgium with a visa, and therefore legally. Hence, one of the elements constituting the offence wasn't met.

In a *judgement of 26 June 2015, Mons Court of Appeal*⁴⁷⁷ confirmed the criminal conviction in first instance. On a civil level, it awarded the final sum of EUR 1,500 in non-pecuniary damages, as well as the final amounts of salary arrears, upon the request of the civil parties.

⁴⁷⁶ Charleroi Crim. Court, 18 March 2011. See Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, Part 1, Chapter 4, point 2.4., p. 92. This judgement is available on Myria's website: www.myria.be.

⁴⁷⁷ Mons, 26 June 2015.

Work accident

On **9 September 2015, Brussels Criminal Court** pronounced an interesting decision within the framework of a serious work accident⁴⁷⁸. Two brothers, working as building contractors, were chiefly prosecuted for trafficking for the purposes of labour exploitation with regard to a worker who instituted civil proceedings, with the aggravating circumstance that the victim's life was put at risk.

The victim, an Algerian undocumented worker, had fallen from badly installed scaffolding while cementing a house and suffered a serious head injury, fracturing his skull in several places. He disappeared suddenly from the hospital where he was receiving treatment but then returned to the same hospital's A&E department several times, before being operated. As a result of the fall, he was left with lifelong injuries.

The court accepted the charge of trafficking against the defendant who regularly used undocumented and illegally staying workers to work on building sites that he managed as a partner or on his own account. This practice was confirmed through observations, searches and phone investigations conducted within the framework of this case. The hired workers were taken on for the day for the sum of EUR 50. The court considered that the defendant had indeed recruited the worker who was the victim of a serious work accident, and who was staying illegally in Belgium under precarious circumstances, to work for him illegally and exploit him, in conditions contrary to human dignity, on a building site where the conditions were so bad that the worker nearly died. Furthermore, he did all in his power to cover up the matter, thus endangering the

⁴⁷⁸ Brussels French-speaking Crim. Court, 9 September 2015, 54th ch. (appeal).

victim's life and thrusting him back into an illegal situation, denying him the medical treatment he required.

On the other hand, the court acquitted the other defendant who was the manager of the companies and took care of design, technical calculations, finding clients, business relations and quotes. In view of his position as manager and actual authority within the companies, the court considered that he must have known of his brother's activities involving the hiring of illegal workers, especially on behalf of one of the companies. Nevertheless, concerning the recruitment of the victims and his work in dangerous conditions at the building site where the accident happened, there didn't appear to be any objective element in the case to establish his participation for certain. Indeed, the convicted defendant admitted to conducting undeclared building projects in the company's name, which he actually did on his own account without his brother knowing, and he was the one who signed the quote for the building project where the accident occurred. The court subsequently gave him the benefit of the doubt and acquitted him.

The victim was awarded a provisional sum of EUR 10,000 out of total damages amounting to EUR 250,000. Moreover, a medical expert was appointed to assess the injury.

Bogus self-employed workers

A case concerning Polish and Romanian bogus self-employed workers was tried by **Turnhout Criminal Court on 22 April 2015**⁴⁷⁹. The case was opened following the findings of the Financial Intelligence Processing Unit (CTIF - CFI) concerning a

company's suspicious transactions. The acts took place between 2005 and 2009.

The main defendant managed a company specialising in building works. He had set up two British companies which, in turn, set up two other companies. Romanians were then employed as limited partners or associates in the structure of these last two companies. They worked mainly as subcontractors for the main company.

The Romanian workers were barely aware of their role as managers-partners of the companies and were therefore employed as self-employed workers. They earned an hourly rate of EUR 8 out of which they had to pay social and tax contributions. The workers signed documents written in a language they didn't understand and fake signatures were used. They were also regularly intimidated and threatened by the main defendant, who had confiscated some of the workers' residence permits. They only got them back after having signed a contract for a loan. The post addressed to them from the social secretariat, among other things, was held back or ripped up by the main defendants. The rent was also often deducted from their 'wages'. They stayed in accommodation which, according to the Housing Inspectorate, didn't meet minimum housing standards. Within the framework of their activities, the main defendants benefited from the advice and collaboration of their accountants.

Several of them were prosecuted, including the main principle and his wife, two companies and three accountants. The main defendants were prosecuted for human trafficking for the purpose of labour exploitation (conditions contrary to human dignity), with aggravating circumstances. Just like the two companies, they were also prosecuted for participation in a criminal organisation as a leader, decision-maker or co-member. As well as the accountants, they were prosecuted for forgery and use of forgeries, breaches of the income tax code, money laundering and fraud.

⁴⁷⁹ Antwerp Crim. Court, Turnhout division, 22 April 2015, ch. TC1 (appeal).

In particular, the court considered the charge of human trafficking established, except for the aggravating circumstance of participation in a criminal organisation. The court also considered that the work performed by these Romanian workers was tantamount to labour exploitation and that it was contrary to human dignity. The main defendants wanted to make as big a profit as possible, to the detriment of the foreign labour. The victims were completely dependent on them for their job, their accommodation and, in some cases, also for the return of their residence permits. The court considered that even if the defendants had acted together in some way, there was nothing to prove that they formed a criminal organisation. There wasn't sufficient structure, stability or hierarchy to prove it.

The main defendant and his wife were given a four-year and two-year partially suspended prison sentence respectively, and very high fines. They were also handed down a 10-year professional ban. Both companies received fines. The accountants were given suspended prison sentences. Special confiscations were pronounced against the two main defendants and the companies.

Myria instituted civil proceedings, as did several of the victims and the trustees appointed to administer the companies' bankruptcy. Myria received a symbolic euro as compensation. The trustees received a provisional amount of one euro. The victims each received non-pecuniary damages varying between EUR 2,500 and 2,600. There wasn't sufficient evidence concerning material damages.

A similar case was judged by ***Mons Criminal Court on 21 April 2016***⁴⁸⁰.

Three defendants and a company were prosecuted for human trafficking for the purpose of labour exploitation regarding numerous Romanian workers. The main defendant was also prosecuted for forgery and as a slum landlord. Three workers and Myria instituted civil proceedings.

The case was initiated following a complaint lodged with the police by a Romanian worker who complained of the work conditions, as did several other Romanians. They had responded to an advertisement in a Romanian newspaper, with a view to working in Belgium. The second defendant acted as a middleman for the recruitment process. They were promised EUR 7 an hour the first month and then EUR 8. Accommodation would be provided, with rent costing EUR 150. The travel costs and the first month's rent would be deducted from the salary after a full month of work.

Once in Belgium, they were faced with appalling work and living conditions: six days a week and eight to twelve hours a day; in addition, the promised wages were never paid. The workers had the status of associate, of which they hadn't been informed, and were completely unaware of the consequences of this status, since they

⁴⁸⁰ Hainaut Crim. Court, Mons division 21 April 2016, 8th extraordinary ch. (final).

didn't understand the documents they were asked to sign. The main defendant was responsible for all the managerial tasks, while the Romanian workers were restricted to simply executing the tasks, under his authority. The court therefore concluded that the status of associate was a status that bore no relation to reality, since the workers who had come from Romania were clearly bound by an employment contract.

The court accepted all the charges brought against the main defendant: The salary offered fell well below the minimum wage, and the long hours worked and a failure to pay the wages constituted work conditions contrary to human dignity. The court also pointed out that it was of little importance that the Romanian workers consented to this salary, which appeared more than satisfactory to them considering Romania's well-known poverty at the time of the acts.

The charge of trafficking regarding the co-defendant was also accepted: she served as an intermediary for the recruitment of labour in bad conditions on behalf of the main defendant, with full knowledge of the facts, and therefore allowed the recruited workers to work in conditions contrary to human dignity. As for the third defendant, he was also convicted: he was chiefly responsible for transporting the workers and supervising the building site.

The charge of slum landlord was also declared established: the buildings rented were overcrowded and squalid: they were made available to some of the workers in conditions contrary to human dignity. The intention of making an abnormal profit results from demanding rent even though the building isn't fit for rent, and the large amount of rent received.

The civil party present was awarded EUR 2,000 in damages associated with the charge of human trafficking. Myria received one final euro.

2.3.2. Agriculture/horticulture

In a case tried in Brussels, a defendant, who was a company manager, and his company, were prosecuted for human trafficking regarding a Moroccan worker, hiring illegally staying labour and various breaches of the social criminal law concerning several other foreign workers as well.

The worker contacted a specialised reception centre, which had then got in touch with the labour prosecutor's office. The worker was then heard several times by the Social Inspectorate. He had come from Morocco and entered Belgium illegally in 2003. Recruited several years later by the defendant in the 'petit château' neighbourhood, he was then exploited for several years by the defendant in a market garden. The work consisted of planting various vegetables and herbs (in greenhouses) as well as treating them with chemical products without the proper protection. He was forced to work seven days a week and 12 to 14 hours a day for a salary of EUR 40 a day. The defendant also promised him a better salary and the regularisation of his situation, but he never kept his promises. He also only received part of the promised salary.

In its decision of **1 April 2015, Brussels Criminal Court**⁴⁸¹ accepted all the charges. As regards human trafficking, the court made it clear that the circumstance of the person concerned being the victim of breaches of social legislation, isn't actually sufficient to accuse the perpetrator of these breaches of the offence of human trafficking. The worker had indeed been recruited by the defendant. The court then examined whether the aim of recruiting the worker was to make him work in conditions contrary to human dignity. The wages paid were significantly lower than those paid for

⁴⁸¹ Brussels French-speaking Crim. Court, 1 April 2015, 69th ch. (final).

this type of activity according to Belgian law: the defendant admitted paying a flat fee of EUR 50 a day regardless of the number of hours worked, which corresponds to EUR 6 instead of EUR 8.18 an hour, as long as the number of hours is approximately eight hours a day for 75 % of the legal working week. However, the court then pointed out that it wasn't at all established that the duration of the work was 'only' eight hours. Other workers confirmed working long days (10 hours). The hygiene conditions in the labourers' place of work were very basic (toilets in a terrible state, no place to wash hands properly, even though the labourers used highly toxic products and had only basic protection). The exploitation of the worker, whose illegal situation the defendant was well aware of, did indeed occur in conditions contrary to human dignity.

On the other hand, the court acquitted the company, since it had no will or awareness of its own separate from that of its one and only manager. In this case, it can have no individual criminal responsibility of its own. The court also didn't declare it responsible on a civil level for the fine or the costs its manager was ordered to pay, because the actions taken by the latter were done so in his capacity as the main agent and not as a representative or employee of this company.

The worker who instituted civil proceedings was awarded salary arrears of EUR 25,000 *ex aequo et bono* and definitively, as well as non-pecuniary damages of EUR 500⁴⁸².

PAG-ASA, which instituted civil proceedings, was awarded EUR 1 definitively.

On the other hand, in another case concerning horticulture, ***Liège Criminal***

⁴⁸² Note that perpetrator paid the victim the damages in full.

Court acquitted a Belgian employer and his horticultural company (picking apples, pears and strawberries) of all charges in a ***decision of 29 June 2015***⁴⁸³. He employed Indian, Pakistani and Polish workers.

The defendants first put forward the argument of the violation of the presumption of innocence and the right to a fair trial (Article 6, ECHR), owing to the fact that investigators and journalists openly spoke of 'contemporary slavery' in RTBF's programme *Devoir d'enquête*. During this programme, the defendant and his workers were questioned and extracts from the first few moments of the police investigation were broadcast. The court dismissed this argument and declared the legal proceedings admissible on the grounds that even if the investigators and/or journalists wrongly expressed views without the required reserve, they alone weren't of a nature to mar the judgement of the case by a professional, independent and impartial judge with a violation of Article 6 of the ECHR. They didn't actually deprive the defendants of their right to a fair trial.

The defendant used the ALE (local employment agency) system⁴⁸⁴ to hire and pay workers of Indian and Pakistani nationality. The workers didn't have a residence permit and not all of them had the right forms. The defendant had paid a significant amount for ALE cheques.

The court considered that the charge of trafficking wasn't sufficiently established:

⁴⁸³ Liège Crim. Court, Liège division, 29 June 2015, ch. 18A (appeal).

⁴⁸⁴ The Local Employment Agency (ALE), present within every commune or group of communes, has the task of organising and checking, in collaboration with the National Employment Office (ONEM), activities that don't fall under the category of regular work. The ALE system puts ALE workers in contact with private individuals or legal persons, in order to carry out specific activities. See: www.cheque-ale-onem.be.

the Indian and Pakistani workers' pay conditions were correct. As for the Polish workers, they paid social security contributions and were given payslips, which elicited no criticisms. The working hours weren't excessive, the accommodation for the Polish workers was basic but not precarious and the workers weren't threatened, subjected to violence or have their papers retained. The court also considered that transporting the workers in a covered truck couldn't be considered alone as an act contrary to human dignity. Even though this form of transport was neither suitable nor in line with the rules, the journeys were short.

Non bis in idem

In a case presented in the previous report⁴⁸⁵, **Mechelen Criminal Court**⁴⁸⁶ convicted the head of a company at first instance, who acted as a middleman for labour in the horticultural sector. He was convicted for human trafficking for the purpose of labour exploitation regarding at least nine Romanian seasonal workers. The criminal case revealed, among other things, that the workers hadn't signed a lease agreement with the defendant but that they paid him approximately EUR 200 a month, per person, all the same. The dormitories were in barely habitable buildings, with no conveniences, and the workers were piled in there for the night. For transportation to and from the workplace, they had to pay EUR 200 a month.

The defendant appealed against the judgement. He alleged a violation of the *non bis in idem* principle. The defendant had already been convicted in 2013 by Antwerp

Court of Appeal for illegal employment and prohibited employment services. He considered that the judgement of 21 January 2015 related to the same acts. In its **judgement of 4 February 2016, Antwerp Court of Appeal**⁴⁸⁷ considered otherwise. The court considered that the **non bis in idem** principle relates to "acts that are identical and substantially the same, i.e. a collection of concrete factual circumstances that are inextricably linked to each other in time and space". The judgement of 2013 related to acts that occurred between July and October 2011, whereas the conviction of 2015 related to acts that occurred between January 2008 and May 2011. According to the court, it was subsequently not a matter of "acts that are identical and substantially the same", "even though they were the successive and continuing expression of the same criminal intent".

The court handed down a suspended 12-month prison sentence and a heavy fine. It also reversed the confiscation pronounced at first instance. The court considered there wasn't enough data to determine that the assets resulted directly from the offence, but rather that the income resulted from investments.

2.3.3. Road transport

False posted workers

Within the framework of a case touched upon in the case law overview of the previous report⁴⁸⁸ and in this report's case studies⁴⁸⁹, several defendants and a road haulage company (legal person), were convicted at first instance for human

⁴⁸⁵ Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point 1.2.2., p. 118. 118.

⁴⁸⁶ Mechelen Crim. Court, 21 January 2015. This judgement is available on Myria's website: www.myria.be.

⁴⁸⁷ Antwerp, 4 February 2016, 14th ch.

⁴⁸⁸ Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter 4, point 2.5., p. 119.

⁴⁸⁹ See this part, Chapter 2 (Case Studies), point 1.2.3.

trafficking by Bruges Criminal Court⁴⁹⁰. **Ghent Court of Appeal** adopted another point of view in its judgement of **7 January 2016**⁴⁹¹.

The main defendant had set up a fraudulent structure, whereby a Bulgarian road haulage company provided services for a Belgian firm using posted drivers and mechanics. In reality, this involved undeclared work and the illegal employment of Bulgarian and Romanian workers in Belgium with no work permit.

At first instance, the court considered that the charge of human trafficking had been established. The three defendants were given prison sentences ranging between 18 months and 3 years. As for the company, it was fined. The court also ordered the company's complete closure for two years. Myria, which instituted civil proceedings, received EUR 2,500 in damages.

During the appeal, the defendants challenged the jurisdiction of the Belgian court, saying that there was no link between the charge and Belgium: it isn't because the instructions were given in Belgium that the offence is located in Belgium, considering that no professional service took place in Belgium. The court wasn't of this opinion. The Belgian courts have the jurisdiction to rule on an offence if one of the essential elements is situated in Belgium. According to the indivisibility theory, they also have jurisdiction if the acts committed in Belgium and abroad form an indivisible whole.

According to the court, the Bulgarian company had only contributed to the construction of an illegal structure for false

posted workers. The Bulgarian company provided road haulage services as a subcontractor on behalf of the company in Belgium by using posted Bulgarian drivers. However, management and the operational base was in Belgium. These acts were established concerning the main defendant and his wife but also regarding the Belgian company. A third defendant was acquitted of the charges.

As regards the charge of human trafficking, the court considered a doubt remained concerning the essential element of employment 'contrary to human dignity'. The criminal case wasn't able to determine the exact salary paid to everyone. Furthermore, the public prosecutor didn't instigate proceedings for non-payment or late payment of the salary. Therefore, it wasn't possible to sufficiently support the argument of labour exploitation. The statements made by the drivers on the subject weren't coherent and no complaint was made in this respect. Neither was a complaint filed concerning living and work conditions contrary to human dignity. The court therefore acquitted all the defendants of this charge. The two defendants had their sentence reduced to a 12-month suspended sentence. The company, as a legal person, was given a fine. The court also ordered the complete closure of the company for a year.

Since the defendants were acquitted of the charge of human trafficking, Myria's request for compensation was declared unfounded.

Criminal organisation of bogus subcontractors

A wide-scale fraud case in the road haulage sector involving no less than 19 defendants (including six companies), concerning a series of offences (forgery, social legislation breaches, tax fraud), was tried by **Liège**

⁴⁹⁰ Bruges Criminal Court, 26 March 2014, 17th ch. This judgement is available on Myria's website: www.myria.be.

⁴⁹¹ Ghent, 7 January 2016, 3rd ch.

Criminal Court on 25 April 2016⁴⁹². The two main defendants were prosecuted for having been the leaders of a criminal organisation, and the other private individuals and two companies for having been part of it. In addition, four defendants (including the two main defendants) were prosecuted for human trafficking for the purpose of labour exploitation regarding three workers, two of whom instituted civil proceedings. The National Social Security Office (NSSO) and the Professional Union for Transport and Logistics also instituted civil proceedings, as did Myria.

The case was opened when a Turkish lorry driver, staying illegally in Belgium, filed a complaint with the police because he had just been fired by his employer, which he said was a Bulgarian company. In reality, he thought he was working for a Belgian company because he had never worked in Bulgaria and had never even transported goods to or from Bulgaria. He transported goods and worked 17 to 18 hours a day without being declared. The two main defendants had instructed him to destroy the work contracts for the day and the tachograph discs at the end of every workday. He also stated that a great many more illegally staying drivers were employed by this company. He was supposed to be paid EUR 500 a week but he was never paid in full for his work. He declared himself a victim of human trafficking and instituted civil proceedings.

Observations and searches were then carried out, which revealed that some well-established Belgian road haulage companies subcontract haulage activities to other Belgian companies. This led to the appearance of the names of several companies that were prosecuted in this case. One of the two main defendants confirmed that he was the *de facto*

manager of these different companies. Some of these Belgian companies actually gave subcontracting work to companies registered abroad (one of which was also prosecuted). These companies functioned and were managed with complete disregard for the legal rules. Indeed, none of these foreign companies had effective and genuine activities in the country where they were registered and it was later established that they were, in fact, managed by one of the main defendants from his home in Belgium. Hence, the searches and hearings gathered showed that, for instance, this defendant established the invoices at his home in Belgium, which a Slovak company was supposed to send to one of the Belgian companies.

The court therefore observed that it wasn't disputing the fact that the Belgian companies had indeed performed the haulage activities for the end-customer. It was the fact that the work was subcontracted to foreign companies that raised questions from a legal point of view. The defendants had indeed set up a method whereby the companies abroad appeared to be the employers of the drivers driving these lorries, which wasn't the case.

The court accepted the majority of the charges regarding forgery, social legislation breaches and tax fraud concerning the accused natural persons but acquitted the legal persons.

As regards human trafficking, after recalling the essential elements, the court stated that since the conditions were contrary to human dignity, it was question of a subjective assessment of the situation thanks to a body of evidence such as the wages, the working hours, the failure to declare the work and the working conditions.

The court observed that while the lack of a DIMONA declaration, the failure to declare the workers to the NSSO, and hiring workers with no valid residence or work permits (all sufficiently proven by the case-) can be

⁴⁹² Liège Crim. Court, Liège division, 25 avril 2016, 18th ch. (appeal).

considered evidence of human trafficking, they alone aren't sufficient, in this case, to establish this charge. As regards pay, the court based itself on an interim report from the Social Inspectorate and on the statements made by many of the identified workers. It deemed that it wasn't low enough to be considered serious evidence of working in conditions contrary to human dignity.

As regards the working hours, the court considered that the two workers who had instituted civil proceedings had given conflicting statements. Furthermore, the court considered that there was no argument to be raised, in support of a human trafficking charge, concerning the fact that international lorry drivers were made to sleep in the cabin of their lorry.

Besides the driver who reported the matter to the police, another Turkish worker, who also instituted civil proceedings, was actually the only one to state that he worked every day, except at weekends and on national holidays, that he drove for at least nine hours a day, that he received EUR 150 a week cash-in-hand with no payslip, while the other drivers were paid EUR 450 to 500 a week, because they were in training and non-European. He had to tamper with his work hours in order to arrive in time when deliveries were made. In particular, he would use a magnet in order to be able to continue driving without taking a compulsory break.

The court concluded that the investigation hadn't established to the requisite legal standard the essential elements of human trafficking, and declared this charge not established thus giving the accused the benefit of the doubt.

The court accepted the charge of criminal organisation except for one of the three natural persons and the legal person, which it acquitted of this charge. It appeared that for almost two years, drivers, either with a residence permit but receiving benefits, or staying illegally, were hired as undeclared

workers and paid in cash to ensure the success the road haulage business, which was supposed to generate maximum profit while paying the least amount of social charges and taxes. In order to hide the true identity of the employer, several companies were involved in the set-up, with front men at the head of them or the involvement of people on the ground serving as intermediaries between the organisation's kingpin and the customers or the workers. Everyone had a role to play in this criminal organisation led by the two main defendants.

The applications of some of the civil parties were declared (partly) founded.

2.3.4. Hotel & catering industry

Two cases were recently tried by *Brussels Criminal Court*. The first one, which was mentioned in the Case Studies part of this report⁴⁹³, concerns a defendant who owned various establishments and businesses both in his own name and in the form of companies, including a café, a snack bar, a grocery shop, a restaurant, various driving schools and a hairdresser's. He was prosecuted for human trafficking for the purposes of labour exploitation regarding seven people and for various social criminal law charges. Nine workers instituted civil proceedings, as did Myria and PAG-ASA.

The workers were entrusted with a variety of tasks according to the defendant's needs. The majority of these tasks consisted of housework and cleaning at the defendant's home, cleaning the driving schools and the café, and works in the defendant's house.

The majority of the workers had no Belgian residence permit or had a temporary permit. The defendant had promised to regularise their situation. Furthermore, he

⁴⁹³ See this part, Chapter 2, point 1.2.2.

had political contacts, which seemed to reassure the workers.

In its *judgement of 19 June 2015*⁴⁹⁴ the court accepted the charge of human trafficking for the acts committed after the Law of 10 August 2005⁴⁹⁵ came into force: the workers' testimonies establish that the defendant took advantage of the administrative precariousness of these people to hire them in circumstances that proved to be contrary to human dignity: no schedule or wages, available to their employer at all times, precarious accommodation. The workers were sometimes housed at the defendant's home, or in a room located in a cellar or attic, or in a garage, where there was no heating or bathroom facilities.

In addition, the defendant was insulting, threatening and even denigrating.

Myria and PAG-ASA received one euro. The workers who instituted civil proceedings were awarded salary arrears and non-pecuniary damages.

The second case, *judged on 4 September 2015*⁴⁹⁶, concerns a couple who owned a Moroccan snack bar. The couple was prosecuted for employing four illegally-staying workers, various breaches of the social criminal law, as well as for human trafficking regarding two of them. Their

failing company was held civilly liable. The case was opened following a complaint from one of the workers to the Social Inspectorate. They contacted a specialised reception centre for victims of trafficking to complain of their working conditions.

The defendants referred to the inadmissibility of the legal proceedings, since the initial home visit was ordered by a judge without jurisdiction (the police court and not the investigating judge). However, the court rejected this argument, considering that even if this home visit was irregular, it didn't invalidate the initial findings. Indeed, Article 32 of the Preliminary Title of the Criminal Procedure Code, which came into force in 2013, i.e. after the acts were committed and with immediate effect, doesn't provide for nullity in case of a breach of essential procedural requirements affecting the organisation of the courts. None of the other causes of nullity prescribed by this article were considered to have been met. The court concluded that the home visit wasn't irregular to the point that it should invalidate the acts that followed, especially the irregularity of all the legal proceedings.

Regarding the facts, the court first found that the various workers were indeed employed by the defendants, as corroborated by their statements, which were consistent and therefore considered credible. Some of the testimonies also confirmed their employment. The defendants denied having employed them.

As regards human trafficking, the court found that it was certain that the two workers in question had been paid very little or not at all. The court therefore considered that the simple fact of not paying a worker their due, and to consider that they have been 'paid' by offering them free accommodation and food, was sufficient to prove that the conditions in which these workers were required to work were contrary to human dignity. In addition, the defendants were well aware that these two people were staying here illegally, a

⁴⁹⁴ Brussels French-speaking Crim. Court, 19 June 2015, 59th ch. (final).

⁴⁹⁵ The labour prosecutor requested the recharacterisation of the acts committed before the Law of 10 August 2005 came into force, on the basis of (former) Article 77bis of the Law of 15 December 1980. However, since the court considered that the defendant hadn't contributed to the entry or stay of the workers in question, he was acquitted of these charges. This point of view is questionable, given that it can be considered that someone who illegally employs another person, automatically contributes to their stay.

⁴⁹⁶ Brussels French-speaking Crim. Court, 4 September 2015, 69th ch. (appeal).

particularly precarious situation because it made them dependant on the defendants' good will, in order to avoid expulsion. It is of little importance, in this respect, that the workers continued to work for them for several years.

The company wasn't convicted as being civilly liable, since the offences weren't committed by the agents or employees.

The worker who was the victim of trafficking, was awarded EUR 500 in non-pecuniary damages and EUR 25,000 *ex aequo et bono* in salary arrears.

Namur Criminal Court also tried a case in this sector on **29 June 2015**⁴⁹⁷. It convicted two defendants, a father and a son and their company for trafficking and smuggling in human beings, facilitating unlawful stay and various charges concerning social criminal law. They exploited several Chinese workers in their restaurant. Two workers instituted civil proceedings and each received the provisional sum of one euro in material damages and one euro in non-pecuniary damages.

The case began with the testimonies gathered by Liège Social Inspectorate, of two workers who had been taken in by a specialised reception centre and who had instituted civil proceedings. The workers spoke of their journey from China to Belgium, involving middlemen whom they had to pay. One of them had come here with the aim of studying but was then obliged to work to reimburse the loans taken out by his family to fund his trip to Belgium. He worked as a cook in the defendants' restaurant. The work and living conditions were very difficult: food consisted of what the boss decided to give them or the customers' leftovers, working 12 to 14 hours a day six days a week, for EUR 550 a month.

The court considered that it was indeed question of accommodation with a view to making someone work in conditions contrary to human dignity: salary below the Belgian minimum wage, accommodation on site, long hours, withholding a passport, quality of the food, lack of social protection, threats, etc.

Interestingly, the court emphasised that it had been established that what the people had to say, after they had been taken in by specialised structures, evolved over time. "The confidence and safety they feel thanks to their new status allows them to speak about what they have gone through and their living conditions". The court thus observed a marked difference between the first hearings that took place during the police interventions when the 'threat' was still there, and subsequent hearings following the intervention of the specialised structures.

On the other hand, in a case tried by **Leuven Criminal Court on 23 February 2016**⁴⁹⁸, the defendant was given the benefit of the doubt and acquitted. The court ruled on acts of human trafficking by the owner of various restaurants in Leuven and Ghent. Two victims made damning statements. They were employed as cooks or waiting staff. They had to work long days (up to 11 hours), for which they were paid very little. The owner had promised to take care of their residence papers and asked them for EUR 500 for this service. As they had an employment contract, they hoped to be regularised, which is why they didn't dare complain. In the end, their applications were rejected.

The main defendant was prosecuted for human trafficking for the purpose of labour exploitation (conditions contrary to human dignity), with aggravating circumstances. The victims obtained the status of victim of

⁴⁹⁷ Namur Crim. Court, Namur division, 29 June 2015, 12th ch. (appeal set for October 2016).

⁴⁹⁸ Leuven Crim. Court, 23 February 2016, 17th ch. (final).

human trafficking based on the information they were able to provide within the framework of the investigation.

The court considered that the facts weren't established. The case didn't contain sufficient evidence that the defendant exploited the two people. Testimonies from other people who worked for him contradicted the victims' statements. The Social Inspectorate didn't make any findings. Furthermore, the victims' regularisation procedure was rejected.

We shall also look at a recent decision taken by **Mons Court of Appeal**, which was required to re-examine a case tried at first instance by Charleroi Criminal Court⁴⁹⁹. A couple of restaurant owners were prosecuted for human trafficking for the purpose of labour exploitation and various breaches of the social criminal law. They were also prosecuted for rape and hiring with a view to prostituting a compatriot. A third defendant was prosecuted for the rape of this worker.

At first instance, the court acquitted the defendant of the rape charge, as it considered the victim's accusations to be insufficient and not corroborated by any unambiguous element of guilt.

The court accepted the charge of trafficking and social criminal law breaches: the victims worked for six days a week and at least 10 hours a day, and cleaned the kitchen, for an hourly rate of EUR 3.07, and were housed in precarious conditions.

In its **judgement of 10 February 2016, the court**⁵⁰⁰ confirmed the first instance judgement, albeit with a few minor corrections. It pointed out that in this

respect, the notion of recruitment must be understood in the usual sense of 'hiring'. This doesn't imply that the person hired must be approached for this purpose and doesn't exclude that it was the person hired who asked for the work.

2.3.5. Bakery

In a **judgement of 9 February 2016, Namur Criminal Court**⁵⁰¹ convicted two defendants (Turkish brothers), for human trafficking and smuggling, as well as facilitating unlawful stay and various social criminal law breaches regarding several workers whom they exploited in their bakery. They also had a shop and a delivery service in other points of sale. The workers had to make between 2,000 and 2,400 loaves of bread a night.

Four victims, including two claimants who were the children of a worker who died, instituted civil proceedings.

In addition, the defendants had substandard accommodation on the floor above, which was rented out to the civil parties for EUR 400 a month. The four of them slept in a room above the flour silo, and didn't even have a bed, only a mattress that had been recuperated from the street on the day large items are left out for the rubbish collectors. The housing conditions were squalid both in terms of cleanliness and hygiene, to the point where the floor was sticky with filth in order to increase the dependence of the civil parties, the defendants deducted the rent from their meagre salary. They also deducted the purchase of bread and various supplies that the victims were required to make in a neighbouring grocery store, which the defendants also owned.

The work conditions were appalling in terms of both health and safety. The wage conditions were also disgraceful: the salary

⁴⁹⁹ Charleroi Criminal Court, 21 March 2014, 7th ch. Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter 4, point 2.2., p. 118. This judgement is available on Myria's website: www.myria.be.

⁵⁰⁰ Mons, 10 February 2016, 4th ch.

⁵⁰¹ Namur Crim. Court, Namur division, 9 February 2016, 12th ch. (appeal set for November 2016).

varied between EUR 2.30 and 3.50 an hour for a 16- to 17-hour day, seven days a week.

The defendants were also violent and intimidating towards the victims. They also had no scruples concerning the victims' children (one defendant refused to allow one of the children to see a doctor), who didn't go to school.

One civil party was awarded EUR 5,000 ex aequo et bono in non-pecuniary damages and a provisional sum of EUR 56,263.77 in material damages; the three children of the deceased worker (one of whom was an adult): EUR 2,500 in non-pecuniary damages and the provisional sum of EUR 31,722.17 in material damages. Finally, the last civil party, i.e. the husband of the deceased worker, was awarded EUR 5,000 in non-pecuniary damages and a final gross sum of EUR 127,124.70 in material damages as well as salary arrears of EUR 11,099.32 equal to the holiday bonus.

2.3.6. Meat-processing industry

On **27 February 2015, Termonde Criminal Court** convicted a defendant and his company for human trafficking and various breaches of the social criminal law⁵⁰². The latter employed numerous Romanian nationals in his meat-processing firm. Besides his own staff, he called upon the services of two subcontractors for posted workers. Numerous irregularities were found (no LIMOSA declaration, no A1 form for posted workers proving regular posting from Romania, non-compliant and unpaid wages, etc.).

As regards human trafficking, the court referred to an earlier decision rendered by Ghent Criminal Court which said that the employment of foreign workers without a work or residence permit for a minimum

and variable salary, with no social cover is equal to arbitrary forced subjugation and can be considered as human trafficking.

In this case, the unskilled workers had to work a minimum of 45 hours a week for a salary of EUR 100 a week, which is equal to an hourly rate of EUR 2.22. The workers also had to pay a deposit which they lost if they withdrew.

The defendants were also prosecuted for slum landlord activities but the court acquitted them of this charge.

2.3.7. Shops (night shops / second-hand shops)

On **5 May 2015, Namur Criminal Court**⁵⁰³ sentenced a Bangladeshi defendant in absentia for human trafficking and various social criminal law breaches. At the hearing, the civil parties explained how they came to Belgium and their disastrous living conditions (they slept on a mat, had their television confiscated, could only eat the leftovers from the restaurant, had no emergency medical help when it was required, were only allowed one shower a week) even though they had to work long hours (more than 12 hours a day, seven days a week) for a derisory sum and were prevented from going out or having any contact with the outside world. The defendant put them under enormous pressure and they lived in fear of reprisals, against themselves and their family back home. The defendant's company was declared civilly liable. The two civil parties were each awarded EUR 54,000 in material damages and EUR 10,000 in non-pecuniary damages.

In a decision of **8 February 2016, Liège Criminal Court** also convicted a defendant (and his company), who sold second-hand

⁵⁰² East Flanders Crim. Court, Termonde division, 27 February 2015, 13th ch. (final).

⁵⁰³ Namur Crim. Court, Namur division, 5 May 2015, 12th ch. (in absentia).

furniture, for human trafficking and various social criminal law breaches⁵⁰⁴. A Guinean worker and an Algerian worker were exploited in this company.

After recalling the essential elements, the court stated that since the conditions were contrary to human dignity, it was question of a subjective assessment of the situation, as regards human trafficking, thanks to a body of evidence such as the wages, the working hours, the failure to declare the work and the working conditions. As for the moral element, with regard to the recruiter, it was sufficient to demonstrate that the work conditions were contrary to human dignity for the offence to be complete.

While social criminal law offences (such as unpaid or partly paid wages, failure to declare workers to social security, etc.) were sufficiently established in the case, they weren't however sufficient to establish human trafficking.

The court considered this charge sufficiently established by additional elements. For this purpose, it based itself on the workers' coinciding and credible hearings, the material findings made during a police intervention, and the photos taken by the workers that were handed over to the Social Inspectorate.

The additional elements were as follows: abnormally long working hours (almost 63 hours a week, with no day off), wages that didn't correspond to the amount of work or the minimum rate for the sector of activity (EUR 20 a day), wage deductions supposedly for the application for a work permit; wilfully hiding the workers by shutting them in the warehouse while they were doing their work; accommodation on site in particularly unhygienic and dirty conditions; the workers' dependency regarding external help to get food; the existence of an escape

route and instructions on what to do if there was an inspection; lack of medical care in case of work accidents.

One of the workers who instituted civil proceedings was awarded the provisional sum of EUR 10,000.

2.3.8. Riding schools

In a **judgement of 13 January 2016, Mons Court of Appeal**⁵⁰⁵ confirmed the judgement rendered at first instance by Charleroi Criminal Court⁵⁰⁶. The latter convicted two defendants for human trafficking for the purpose of labour exploitation and various social criminal law breaches. They exploited a couple of Brazilian workers at their riding school. However, the court reversed the sentences and order them to be deferred.

The court stated that in this respect, the term 'recruit' must be understood in the usual sense of 'hire', which doesn't imply that the person hired must be approached and doesn't exclude that the hired person asked for the work, as was the case. The court once again emphasised that the charge doesn't require the acts to take place within the framework of a work contract and that it isn't necessary to demonstrate the existence of a link of subordination before seeking evidence of a violation of human dignity. According to the Court of Cassation, 'work performed' falls within the scope of the incrimination of trafficking when the dignity of the person doing the work is violated, regardless of the duration of this violation.

⁵⁰⁴ Liège Crim. Court, Liège division, 8 February 2016, 18th ch. (appeal).

⁵⁰⁵ Mons, 13 January 2016, 4th ch.

⁵⁰⁶ Charleroi Crim. Court, 26 April 2013. See Annual Report 2012, *Trafficking in human beings, Building trust*, Part 2, Chapter 3, point 2.1.2., p. 88. This judgement is available on Myria's website: www.myria.be.

In this case, the husband had to clean out around 27 boxes and look after and feed almost 30 horses. He worked six days a week and ten hours a day for a starting salary of EUR 500 a month, going up to EUR 750. The court calculated his hourly salary as varying between EUR 1.86 and 2.79 an hour. He also had to ask his wife to help, who therefore did unpaid work so that her husband could finish his day at a reasonable time.

2.3.9. Cleaning

On **25 May 2016**, **Brussels Criminal Court** ruled in an important case in the cleaning sector, concerning subcontracted work for a well-known fast-food restaurant⁵⁰⁷. In this case, no less than 20 defendants were prosecuted. The managers of the cleaning firms, as well as the companies themselves, were the perpetrators and co-perpetrators of various social criminal law breaches (illegally employing foreign workers with and without a residence permit, no DIMONA declaration); some of them were also prosecuted for human trafficking regarding several workers. Six defendants, who were franchisees of the fast-food chain, were prosecuted as accessories to the social criminal law breaches and several of them regarding the offence of human trafficking as well. As regards the fast-food company itself, it was only prosecuted for complicity in human trafficking. Two workers instituted civil proceedings.

The Social Inspectorate carried out inspections across the whole country for several years. These inspections concerned the cleaning staff in various restaurants belonging to the fast-food chain. They

discovered various social breaches. In the majority of cases, the restaurants where the inspections took place were franchised.

The court accepted the sole responsibility of the legitimate or effective managers of these cleaning companies. Concerning one of them, the court discovered the existence of an elaborate system by which undeclared labour was systematically used, involving persons with no residence or work permit, which allowed them to pay particularly low wages.

Owing to the precariousness of their residency status, some workers were exploited in conditions contrary to human dignity. One worker explained that the work was particularly arduous and difficult on a physical level, that there was an unpaid trial period and that deductions were made from the wages for sick days and to supposedly pay taxes.

The court acquitted the cleaning companies owing to the lack of a moral element, considering that since they were following the will of their shareholders/managers, they weren't in a position to oppose their decision or express their personal and independent will.

As regards the liability of the franchisees, as accessories, and the fast-food company itself, the court considered, according to its reading of the case described in a detailed explanation, that it wasn't established.

The labour prosecutor argued that the managers of the franchised restaurants aided and abetted the perpetrators regarding the preparation, execution and perpetration of the crimes for which they were prosecuted. The position taken was essentially based on the conditions laid out before the contracts were concluded: the prices set clearly didn't allow the cleaning companies to respect their social obligations and therefore imposed an abnormal reduction in staff costs. The exploitation system discovered following

⁵⁰⁷ Brussels French-speaking Crim. Court, 25 May 2016, 59th ch. The judgement was final, except in the case of the defendants convicted in absentia. One of them filed an opposition and will be retried in October 2016.

the inspections was maintained thanks to the networks of principals comprised of the franchisees, who subsequently became accessories to the system.

As for the fast-food company, it was inevitably aware of the offences observed in the franchised restaurants because it was the company itself that had subcontracted the cleaning at abnormally low prices for the restaurants it personally owned. It had put an end to it following various articles that were published in the press after a wide-scale investigation in 2007. The company reacted half-heartedly by strongly advising its franchisees not to use subcontractors. The labour prosecutor also criticised it for not having taken more serious action before the investigations which took place in 2011.

Complicity requires the combination of three elements: the existence of a primary offence in which a person cooperates, the desire to be part of it and the execution of one of the acts of participation listed by the law. The court recalled that in certain cases, abstention can nevertheless constitute an act of participation.

However, in this case, the court found that, on the one hand, the margin between the calculation proposed by the labour prosecutor and the sum paid by the franchised restaurants to the cleaning companies wasn't particularly significant. Therefore, it can't be reasonably concluded, on the basis of this calculation alone, that the managers were necessarily aware of the social breaches committed. On the other hand, the court also considered that the managers of the franchised companies weren't sufficiently aware of the social breaches committed, after the first inspections, and that they became accomplices by continuing to execute the contract. They were neither officially warned nor heard concerning the first inspections carried out or the infringements that were identified, even though articles were published in the press and a meeting

was organised by the fast-food company aimed at warning the franchisees of the dangers associated with subcontracting.

As for the fast-food company itself, it was only prosecuted for complicity regarding several human trafficking charges. The court considered, on the one hand, that the company had acted cautiously, probably in the interest of its reputation, by ending the cleaning contracts in the restaurants it personally managed. On the other hand, based on the information the company had when the acts took place, the court considered that there wasn't any reason to end the franchise contracts at that time or give formal notice to the managers of the franchised restaurants to end the subcontracting contracts which they freely concluded. Indeed, the only information gathered by the company at that time came from the press and a meeting the company itself arranged with the Social Inspectorate. The reports drawn up by the Social Inspectorate were addressed only to the subcontracted cleaning companies and their manager.

However, the court found that following the investigation, the various meetings and initiatives taken by the company may seem somewhat limited and inadequate, but they appear to be in line with the information the company had at its disposal.

Consequently, the court acquitted both the managers of the franchised restaurants and the parent company of the charges of which they were accused.

It sentenced the managers of the cleaning companies who didn't appear in court to prison terms varying between 18 months and 3 years, some of them suspended, and fines from EUR 82,500 to EUR 165,000. For those who appeared in court, their sentences were suspended.

The workers who instituted civil proceedings were awarded material and moral damages.

2.3.10. Paper serviette and packaging products factory

This is the first time that Myria heard of a judgement where a minor was the victim of labour exploitation in a sector other than domestic work.

In this case tried at ***Ghent Criminal Court on 20 April 2015***⁵⁰⁸, two defendants and a company (fourth defendant) were prosecuted for various breaches of the social criminal law. They were also prosecuted for human trafficking for the purpose of labour exploitation regarding nine people, including a minor. The main defendant and a third defendant were also prosecuted for forgery. Four workers instituted civil proceedings. The company's corporate purpose is the manufacturing, purchasing and selling of serviettes and packaging products.

The case was initiated following an inspection by the Flemish region's Labour and Social Economy Inspectorate, which found various machines, including one in operation, two people working and a living space in the back of the factory, where a 14-year-old Bulgarian was sleeping because one of the machines wasn't working. The factory manager was heard several days later. According to the inspection services, 11 Bulgarian workers were doing undeclared work, seven of whom were staying here illegally. The 14-year-old was also employed despite the provisions regarding child labour. One of the families (three people) employed here had to live in a space in the middle of the factory, which wasn't suitable as a living space. The case was sent to the investigating judge and searches were then carried out, as well as hearings for all the interested parties.

Some of the employees were working as bogus self-employed workers. In a detailed reason, the court showed that there was indeed a work relationship between the defendants and these workers and, therefore, they weren't associates.

The court accepted the various charges concerning the social criminal law. The minor explained that his father and mother also worked in the factory, that he too had been working there for about a week, seven days a week, nine hours a day and that he earned EUR 35 to 40 a day like his parents. They lived for free in the factory.

The court accepted the charge of human trafficking based on a combination of elements. The Bulgarian workers were recruited by the main defendant, who was their boss. They had to work all week and at weekends, but also at night, often more than 12 hours a day, six days a week. The hourly rate (EUR 2.89) was well below the minimum wage; moreover, the workers weren't paid regularly and had no social rights whatsoever. They were housed in the factory or in a nearby house in precarious conditions. The defendants also took advantage of the fact they couldn't speak Dutch. Furthermore, the workers were dependant on the company and the main defendant; the latter exerted a subtle pressure on them in the sense that they had to work for free to pay for their rent and the supposed contributions to the company. The court also accepted the aggravating circumstances of the offence, i.e. the fact that one of the workers was a minor.

The charges concerning trafficking and social criminal law were accepted against the main defendant and the company. On the other hand, the court acquitted the second defendant, owing to a lack of concrete evidence proving that he was the de facto manager of the company during the period in question. The third defendant was convicted of forgery.

⁵⁰⁸ East Flanders Crim. Court, Ghent division, 20 April 2015, ch. G29 (appeal).

The workers who instituted civil proceedings were awarded damages varying between EUR 21,963.5 and EUR 88,241.79.

At the appeal, *Ghent Court of Appeal* confirmed the convictions pronounced at first instance in a *judgement of 19 May 2016*⁵⁰⁹, but reduced the sentences. It did indeed confirm that two of the workers weren't associates but employees working as bogus self-employed workers. The defendants continued to dispute the facts but this was rejected by the court.

2.3.11. Domestic work

Several interesting decisions, including one concerning a former diplomat, were rendered in a case relating to domestic work.

On *2 April 2015*⁵¹⁰, the *Walloon Brabant Criminal Court* ruled in a case where a couple was prosecuted chiefly for human trafficking and the degrading treatment of a Portuguese woman it employed as a domestic worker. The couple was also prosecuted for the offence of slum landlord concerning a building which it owned in Brussels.

The court accepted the charge of slum landlord: the defendants rented out the cellar in the building and several rooms. The ceilings in these spaces were too low and there were several serious faults directly resulting in a human safety and/or health risk (damp, no bathroom, no heating, rats, etc.). The court therefore considered that these were conditions contrary to human dignity and that the defendants had made an abnormal profit from renting this accommodation (EUR 200 and 550 for the

cellar and EUR 250 to 350 for the other rooms). The victims were all people in a precarious social situation (illegally staying, dependant on welfare, etc.).

The court also accepted the charge of human trafficking. The victim, who had worked for the defendants for several years, didn't receive any pay; she worked long hours (working in the evening after a day's work as a cleaner for private individuals, as well as at weekends and national holidays; no social security cover, work that was partly damaging to her health). The victim had to do the laundry, iron, clean the house where 10 dogs lived as well as clean out several cages containing birds. She had lung problems caused or aggravated by having to clean the birdcages.

Furthermore, the victim was in a precarious situation from an administrative and social point of view.

The court relied on the victim's statements, various testimonies as well as the victim's mobile phone, confirming the threats and pressure she received. The court considered the explanations provided by the defendants as neither credible nor true concerning a number of points.

On the other hand, the court acquitted the defendants of the charge of degrading treatment, since some of the behaviour in question didn't reach a level of severity whereby it could be said that the victim, in her opinion or in that of others, suffered humiliation or serious degradation.

The victim was awarded the provisional sum of EUR 5,000 in material damages. PAG-ASA also instituted civil proceedings but the court deferred the ruling.

⁵⁰⁹ Ghent, 19 May 2016, 3rd ch.

⁵¹⁰ Walloon Brabant Crim. Court, 2 April 2015, 6th ch. (appeal set for February 2017).

In a case dealt with in a previous report⁵¹¹, **Brussels Court of Appeal** confirmed, in a **judgement of 12 May 2015**⁵¹², the decision rendered at first instance by Brussels Criminal Court⁵¹³. The latter had convicted a Congolese defendant for human trafficking and various breaches of the social criminal law. She had exploited a compatriot who was responsible for looking after her handicapped son. The victim wasn't paid for her work and slept on the floor in the children's bedroom. She took care of the child but also the housework and the shopping. When she arrived in Belgium, she was forced to hand over her passport to the defendant.

The court emphasised that the statements of the civil party, especially regarding her living conditions, were confirmed by the Social Inspectorate's findings. As regards holding back the victim's passport, the court specified that the defendant thereby prevented any steps from being taken to regularise the situation of the person whom she wished to present as her friend. She completely prevented her free movement, which was already complicated by the lack of pay for the services rendered.

However, the court reduced the prison sentence and the fines pronounced at first instance, but confirmed the amounts awarded to the civil party.

Former diplomat

Brussels labour court was required to examine a case concerning domestic work for a former diplomat and his wife⁵¹⁴. A worker appeared in court through her union

representative. She summoned her former employers, a Moroccan couple now divorced, to appear in court to order them to pay her damages equal to her salary arrears and a sum of EUR 2,500 *ex aequo et bono* in damages as compensation for the offence of human trafficking.

When the acts took place, the husband was vice-consul at the Moroccan embassy in Brussels. The worker was contacted in Morocco through the wife's sister to come and look after the couple's children (one of whom was autistic), for a salary of EUR 150 a month. Initially, she received a special passport. She lived with the family and looked after children, did the cleaning, the cooking, the laundry and the ironing. Her employer had taken steps in Belgium to obtain a special residence permit for her, which was refused because vice-consuls don't have this privilege. The worker then applied for a residence permit, which was refused (lack of exceptional circumstances justifying the application in Belgium). She then lodged a complaint with the Social Inspectorate concerning her work conditions and asked to benefit from the status of victim of human trafficking.

The labour prosecutor informed the Immigration Office that its office was issuing a favourable opinion regarding the recognition of the status of victim of human trafficking for the worker, since the case had been closed owing to the diplomatic immunity her employer benefited from at the time, and the impossibility of a criminal prosecution.

The employers claimed immunity from suit as a diplomatic agent and member of the family of a diplomat, thus obliging the court to decline jurisdiction. After a detailed examination of the Vienna Conventions and periods during which the employer (and his wife) had immunity, the court overruled the objection to jurisdiction. Indeed, the court must check whether the courts have the power to entertain the application when it gives a ruling, not when the summons is

⁵¹¹ See Annual Report 2012, *Trafficking in human beings, Building trust*, Part 2, Chapter 3, point 2.1.2., pp. 88-89. This judgement is available on Myria's website: www.myria.be.

⁵¹² Brussels, 12 May 2015, 11th ch.

⁵¹³ Brussels Crim. Court, 22 January 2013, 58th ch.

Brussels French-speaking Lab. Court Brussels French-speaking Lab. Court, 18 June 2015, 4th ch. (appeal lodged by one of the employers).

served. In this case, the employers returned to Morocco and the husband no longer held the position of diplomat. Therefore, neither he nor his (ex-)wife could claim immunity.

The court considered that human trafficking was established: while the worker was initially supposed to take care of the couple's children, she also had to do the cleaning, the shopping, prepare meals, do the laundry and the ironing. She slept in the children's bedroom. She received EUR 150 a month, had no social cover, and had to be available at all times. There were no fixed working hours and she was given very little free movement. In this respect, the court stated that the confiscation or not of the worker's passport when she arrived, and the ban or not from leaving the apartment, weren't circumstances required to conclude the existence of the offence of human trafficking. The court thus considered that the worker had indeed been recruited, harboured and received by the interested parties in order to make her work in conditions contrary to human dignity.

The court declared the application for damages for human trafficking admissible and grounded. It consequently awarded the worker non-pecuniary damages. The court also ordered the reopening of the proceedings to allow the worker to calculate the amount of salary arrears she could claim in the form of damages, taking into account the number of hours worked as calculated by the court, and to allow her former employees to discuss the calculations made.

2.4. Exploitation of begging

In a default judgement presented in last year's annual report⁵¹⁵, **Brussels Criminal Court** convicted four defendants for human trafficking for the purpose of exploitation of begging⁵¹⁶.

The four Romanian defendants belonged to the same family and organised and exploited the begging of Romanian compatriots with a physical disability.

Their modus operandi was discovered through observations. The defendants would take the victims to busy public places and keep a constant eye on them from the bench at a bus or tram stop. The victims sometimes went over to the defendants to discreetly hand over their earnings. In exchange, they sometimes received something to eat or drink. They lived with the perpetrators in precarious conditions. The defendants also brought other beggars over from Romania. These people were exploited by other members of the family.

The four perpetrators were all sentenced in absentia to five years in prison. The court also order the confiscation of EUR 39,868. This is the amount the family earned in 15 months from begging. Myria, which instituted civil proceedings in this case, received a symbolic euro as compensation.

The defendants raised an objection and the **court** ruled once again in a **judgement of 19 May 2016**⁵¹⁷. They contested the fact that it was a question of exploitation of begging. They argued everyone supported each other in the Roma culture. They formed a community, a family. Begging is dictated by

⁵¹⁵ Brussels Crim. Court, 3 March 2015, 60th ch. Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1-3., pp. 124-125.

⁵¹⁶ On this subject, also see the focus in this report (Part 2).

⁵¹⁷ Brussels Crim. Court, 19 May 2016, 60th ch. (final).

human suffering and the need to survive. They claimed there was a strong family link with the victims.

However, the court considered that the criminal case contained sufficient elements to prove that victims had been exploited. The court didn't accept the arguments of a supposed family link. The relative statements in the criminal case were contradictory. The victims weren't able to provide information concerning family ties and one of the defendants admitted, at a first hearing, that he had approached the victims at Brussels-North railway station. The court considered that solidarity had its limits. The criminal case revealed that the defendants recruited Romanians in dire straits, with serious physical disabilities, brought them or had them brought to Belgium where they were housed and made to work in conditions that were particularly contrary to human dignity.

The defendants exerted control over them and were given the earnings from begging. They kept the money and left the victims with nothing. The financial investigation revealed that the defendants transferred large sums to their family in Romania. Subsequently, the court considered as established the fact that the defendants had made their activities a habit. However, they didn't have sufficient proof to establish that the begging activities fell within the framework of an association. The defendants were indeed organised as a family, which doesn't necessarily mean an association in the sense of the criminal code. As a result, this aggravating circumstance was rejected.

The court reduced the sentence to a 44-month partly suspended prison sentence, with heavy fines. Significant amounts resulting directly from the offences declared established were confiscated.

Compensation of a symbolic euro awarded to Myria was confirmed.

3. Human smuggling

Vietnamese criminal organisation involved in smuggling

In a decision of **22 April 2016, Brussels Criminal Court**⁵¹⁸ convicted five defendants of Vietnamese nationality, three in absentia, for human smuggling, especially regarding minors. It also convicted them, as well as a sixth defendant, for having been active, in different capacities, in a criminal organisation.

The defendants were part of an international smuggling network. People from Vietnam were brought mainly to Great Britain in return for a large sum of money. Half of the journey was paid before leaving Vietnam and the rest was paid by the family when the journey was completed. The rate was approximately EUR 20,000 for Belgium or France, with an additional EUR 5,000 to 6,000 for England. The money was paid to the main defendant's parents. He was the leader of the organisation. Another defendant was the treasurer of the organisation and also took care of logistics. One of the others was a driver.

Those who wanted to go to England were housed in safe houses in Brussels and were then taken to the Grand-Bigard parking area where they got into lorries heading for Calais and Great Britain (either in the lorry's cab with the driver's cooperation, or hidden in trailers, in the middle of the load, sometimes risking their lives).

Members of the organisations were posted in the countries crossed by the prospective immigrants. They took care of establishing contacts allowing the progression of the illegal immigrants either across Eastern Europe, or Southern Europe via Ukraine.

⁵¹⁸ Brussels French-speaking Crim. Court, 22 April 2016, 47th ch. (final for the convicted defendants after due hearing of the parties).

The acts were brought to light following the discovery of several illegal immigrants in lorries, at Grand-Bigard and Calais. The various protagonists and the *modus operandi* were identified thanks to phone taps. Observations were also carried out. The bank investigation revealed Western Union-type money transfers, from Belgium and other western European countries to Vietnam.

The leader of the organisation was sentenced in absentia to 10 years in prison and a EUR 90,000 fine.

PAG-ASA and Myria, who instituted civil proceedings, each received a euro.

Kurdish-Palestinian smuggling gang

On 21 October 2015⁵¹⁹, ***Bruges Criminal Court*** examined a case, dealt with earlier in this report⁵²⁰, concerning a Kurdish-Palestinian smuggling gang who smuggled people into the United Kingdom via Bruges and the port of Zeebrugge. The acts took place between the end of 2014 and the beginning of 2015. The case was initiated when Zeebrugge maritime police discovered refugees in a lorry. After questioning the victims, the police were able to use the information they acquired to carry out a criminal investigation through phone taps and observations.

The victims were placed in lorries heading for Zeebrugge. Refugees were able to get in contact with the smugglers through a Facebook group. The people had to pay EUR 1,800 for one attempt and EUR 3,500 for several. For GBP 6,000, it was possible to bribe certain people in order to guarantee successful transportation.

Two main defendants were considered as the leaders of the gang and the human smuggling activities were their main occupation. The first defendant was the organiser. He decided who would be transported and how much they had to pay. The second defendant took the refugees to the parking areas where they would look for suitable lorries. Sometimes, they also acted as drivers for other smugglers. Both of them were very disdainful towards the victims (referring to them as animals).

Two other defendants offered their support and assistance. One was a motor mechanic who took care of temporarily housing the victims and advertising the smuggling activities. The other one acted as an intermediary between potential customers and the organiser. He accompanied the victims and briefed them. The latter even admitted he was a former victim of the smugglers' practices. Owing to his precarious situation, he had no choice but to commit these acts.

The defendants were prosecuted for human smuggling with aggravating circumstances. The court sentenced the main defendants to four- and five-year prison sentences respectively, along with heavy fines. The other two perpetrators were acquitted of some of the aggravating circumstances. They were each sentenced to one year in prison. Large sums and various belongings were also confiscated. The investigation revealed that part of the money was sent back to the country of origin.

Myria instituted civil proceedings and received EUR 2,500 in compensation.

⁵¹⁹ West Flanders Crim. Court, Bruges division, 21 October 2015, 17th ch. (final).

⁵²⁰ On this subject, see Part 1, Chapter 2, point 3.1.

Kurdish-Afghan smuggling gang

In another case, also dealt with in this annual report ⁵²¹, **Ghent Criminal Court**⁵²² ruled, on **1 June 2015**, on acts of human smuggling which took place at parking areas located along certain highways. The investigation into these acts was primarily based on mobile phone records, aerial support and heat detection, the examination of mobile phones and observations made on site by the police.

Three defendants were prosecuted for human smuggling with aggravating circumstances. The first and second defendant were prosecuted for acts that took place between December 2014 and January 2015. The third defendant was prosecuted for acts that occurred one evening in December 2014. The acts took place at the E17 parking area in Gentbrugge. The defendants helped the illegal immigrants to climb into the lorries heading for the United Kingdom. The victims, who were Kurdish and Albanian, had to pay between EUR 1,500 and 2,200 for the journey. The first defendant told the second and third defendants what to do. He was clearly in a superior hierarchical position and was the manager and organiser of the parking area. The first defendant was part of a far bigger international human smuggling structure and received instructions from an Iranian woman in the Netherlands. She also took care of supplying illegal immigrants for transportation. She was the one who was contacted when transportation succeeded. She worked through several intermediaries, all smugglers. She also took care of financial transactions and the earnings were distributed between the various smugglers. There was also a safe house in Brussels where the illegal immigrants stayed.

Contact was often established in a café in Brussels, which served as a meeting place. The second and third defendants stayed in a wooden hut situated at the edge of the parking area. They received the illegal immigrants here and gave them food and covers while they waited for a lorry. They observed the police's presence in the area and chose lorries - often Hungarian ones - on the orders of the first defendant. They opened the lorries so that the illegal immigrants could slip inside. The second defendant had attempted to leave the structure at one point but was threatened with death, beaten up and scalded with boiling water by one of the intermediaries. The information contained in the criminal case revealed that the third defendant was also awaiting transportation to the United Kingdom and provided services to pay for it. In total, there were at least 11 transportations in which 43 victims were involved.

The court considered the acts of human smuggling established for each defendant, as well as the aggravating circumstances. The court handed down heavy fines multiplied by the number of victims: there were 43 people for the first defendant, 37 for the second and three for the third. The first defendant was also given a 40-month prison sentence. He was already convicted for similar acts in France in 2005. The second defendant was given an 18-month prison sentence, and the third one, a one-year sentence in absentia. The court also ruled the confiscation of sums of money. Myria, which instituted civil proceedings, received EUR 2,500 in compensation.

The first defendant lodged an appeal against the judgement, but **Ghent Court of Appeal**⁵²³ confirmed the court's decision.

⁵²¹ On this subject, see Part 2, Chapter 2, point 3.2.

⁵²² Ghent Crim. Court, 1 June 2015, 28th ch. (appeal).

⁵²³ Ghent Court of Appeal, 3 November 2015, 4th ch.

Albanian smuggling gang

This case concerned a well-structured gang of smugglers with international ramifications in the United Kingdom, Germany, the Netherlands and France. Phone taps were the main source of evidence. ***Brussels Criminal Court*** ruled on this subject in a ***judgement of 6 October 2015***⁵²⁴.

The defendants were part of a criminal organisation which organised smuggling to the United Kingdom of Albanian nationals who had arrived in Belgium. The victims were met by smugglers when they arrived in Brussels or Ghent and taken to buildings located around Brussels-South railway station. From here, they were taken to different parking areas located along the highways in Flanders, where they were loaded onto lorries. Other gang members ensured the victims arrived in Belgium via the Netherlands, and were then smuggled to the United Kingdom. The acts took place between the end of 2013 and mid-2014. The gang also maintained contacts with lorry drivers who would transport people (with guarantee). The victims had to pay between EUR 2,500 and 5,700 (sometimes GBP 6,000) per person, depending on whether the transportation was guaranteed or not. Sometimes, they received false Romanian identity papers. Depending on how much they paid, the victims were smuggled in the cabin or in the lorries' cargo space. They sometimes had to hide in cardboard boxes in the lorries. Some people were also hidden in the empty tank of a lorry that carried liquids. Other the victims were disguised as priests. The victims' luggage and mobile phones were confiscated and sent by courier to the United Kingdom once the transportation had succeeded. Several minors were among the victims. Parents with young children had

to be given them medication so that they would remain calm during the journey. The smugglers were able to extract money from the victims by betraying their trust or taking advantage of their gullibility. Some of the defendants pretended they were high-ranking officials or that they worked at an embassy in order to obtain money from their victims.

Eleven defendants were prosecuted, some for organising and others for executing the smuggling activities, mainly for human smuggling with aggravating circumstances (including the presence of child victims). This wasn't the first time for the defendants. One of the defendants had already been convicted in 2014 for human smuggling and another for murder. The 11 defendants were all given prison sentences ranging between six years, five years, three years and two years, along with heavy fines.

Myria instituted civil proceedings and received one symbolic euro in compensation.

Iranian smuggling gang

On ***31 March 2015, Antwerp Criminal Court***⁵²⁵ ruled in a case of human smuggling between Iran and Belgium. The acts took place in 2011. Three victims instituted civil proceedings.

The defendant had got the three victims into Belgium from Iran via Turkey, Greece and Italy. He asked for astronomical amounts of money, sometimes up to EUR 16,500. False identity papers were used. He assured the victims that he could get residence papers for them, and helped them to submit a fake asylum application. Moreover, the defendant didn't hesitate to use threats and violence. One of the victims was obliged to steal. The criminal case was compiled on the basis of mobile phone records, statements and other elements.

⁵²⁴ Brussels Dutch-speaking Crim. Court, 6 October 2015, 51th ch. (appeal set in December 2016).

⁵²⁵ Antwerp Crim. Court, 31 March 2015, ch. AC4 (final).

The court found the defendant guilty of human smuggling with aggravating circumstances. The court also found that he was helped by a complete network in Iran, Turkey and various countries in Europe. Only the aggravating circumstance of abusing the vulnerable situation of the victims wasn't established. According to the court, the victims' precarious situation wasn't established. It wasn't proven that they were in a precarious administrative situation for social and economic reasons before entering into contact with the defendant.

The court sentenced the defendant to 40 months in prison, along with a fine. The defendant was also sentenced to compensate each of the civil parties with a fixed amount of EUR 2,500 in material and moral damages.

Human trafficking and human smuggling using a student visa

In this case, tried by **Leuven Criminal Court on 12 May 2015**⁵²⁶, the defendant was prosecuted for acts of human trafficking and human smuggling between 2009 and 2010. The defendant had set up a network to bring Nigerian students over to Belgium in a seemingly legal manner. He used student visas to ensure that the various Nigerian nationals received a Belgian residence permit as prospective students, by presenting fake documents to a university or college of higher education. The fake documents served as a basis to compile a file for a student visa. The 'students' received a declaration of intent and a provisional student visa which allowed them to stay for a year in Belgium to enrol at a university or college of higher education, and take Dutch lessons if necessary. The victims paid EUR 2,300 for this. None of the prospective students actually enrolled at a

university or college of higher education. The practices were revealed when the Belgian embassy in Nigeria noticed an astonishingly high number of applications for a student visa: 62 students in total. It was established that 19 people actually went to Belgium. The defendant was helped by other people who had also arrived in Belgium through him. He used them as smuggling couriers and to settle matters on his behalf. One person made their bank account available to him, while another submitted the application files to colleges, etc. The defendant used the earnings from these activities to invest in property in Lagos, Nigeria. He also used intermediaries in order to stay off the radar as long as possible.

The criminal investigation was conducted with the help of phone taps, searches, statements from the 'students' and student administration offices, letters rogatory to Nigeria and a financial investigation.

The defendant was prosecuted for human smuggling with aggravating circumstances. He was also prosecuted for human trafficking for the purpose of coercing the victims to commit an offence against their will, with aggravating circumstances. The defendant also sexually abused several prospective students, especially when it transpired that they didn't have the means to pay. Apparently, he threatened to send them back to Nigeria. He took advantage of the vulnerable situation of these people and obliged several of them to have homosexual relations with him. He was also prosecuted for using false names, forgery and the laundering of money from criminal activity.

He also forced people to provide him with help and assistance. He used smuggling couriers essentially to collect, send, legalise and keep documents, receive money, and meet 'students' at the airport. One of the victims instituted civil proceedings. She confirmed that the defendant had sexually abused her for years. However, the judge's chambers had already ruled a nonsuit for the acts of rape, indecent assault and assault and battery.

⁵²⁶ Louvain Crim. Court, 12 May 2015, 17th ch. (appeal).

The defendant didn't challenge the facts, only their criminal nature. He wanted to help compatriots and acted through humanitarian reasons or friendship.

According to the court, the boundary between human trafficking and human smuggling is rather vague and human smuggling can turn into human trafficking when free will is jeopardised. The court considered the charge of human smuggling established. However, the aggravating circumstance of human smuggling concerning the abuse of a vulnerable situation was sufficiently established for the court. The criminal case revealed that the victims (or their parents) had contacted the defendant themselves and negotiated with him concerning the price and the procedure (adoption, sham marriage, etc.). It also wasn't possible to directly establish the sexual abuse of the various students on the basis of the criminal case.

The court declared the acts of human trafficking as not established. Within the framework of the status of victim of human trafficking, several victims made damning statements in this respect. According to the court, there wasn't enough objective evidence that the people had been put under pressure by the defendant to participate in criminal activities. They had also benefited from them.

In the past, the defendant had already been sentenced to community service for human smuggling. However, the court sentenced the perpetrator to two years in prison, along with a heavy fine and the confiscation of sums of money.

Myria also instituted civil proceedings and received one symbolic euro in compensation. The victim's application was rejected. The acts of human smuggling and trafficking concerning this victim weren't considered as established.

Employment fraud

Antwerp Criminal Court tried various cases of employment fraud⁵²⁷.

These were different unrelated situations where the defendants 'lent' their identity to persons staying illegally in Belgium, in exchange for payment, so that these persons could work. These people worked for several periods, mainly through interim agencies, for different companies. The defendants were prosecuted for human smuggling with a view to obtaining pecuniary benefits, with aggravating circumstances. In the four cases, the court considered the facts established and convicted the defendants.

4. Administrative Jurisdiction Division of the Council of State: judgement relating to Article 134quinquies of the new municipal law

A company and the manager of a café located in Antwerp's red-light district had urgently brought a motion for a stay before the Council of State. The purpose of this motion was to obtain the stay of the execution of the ban, issued by the mayor of Antwerp, to exercise any activity or business in this café for a period of three months, or be forced to pay EUR 3,000 a day for non-compliance.

This decision was taken by the mayor on the basis of Article 134quinquies of the new municipal law. This article stipulates that "when there are strong indications of human trafficking taking place in an establishment as referred to in Art. 433quinquies of the Criminal Code or acts of

⁵²⁷ Antwerp Crim. Court, 5 January 2016, ch. AC4, no. 56 (in absentia); Antwerp Crim. Court, 5 January 2016, ch. AC4, no. 57 (in absentia); Antwerp Crim. Court, 1 March 2016, ch. AC4, no. 1070; Antwerp Crim. Court, 1 March 2016, ch. AC4, no. 1071.

human smuggling as referred to in Art. 77bis of the Law of 15 December 1980 on access to the territory, residence, settlement and expulsion of foreigners, the mayor may, after first discussing the matter with the judicial authorities and after having heard the manager present his defence, decide to close this establishment for however long he/she deems appropriate. (...). The mayor has the power to affix seals if the order to close the establishment isn't respected. (...). However, the closure can't exceed six months. The mayor's decision is lifted at the end of this period".

The applicants had already been heard two years earlier on this subject by the mayor, who informed them of his intention to close the establishment on the basis of this article. In the end, he decided not to but the applicants were given an official warning and they were explicitly asked to put an end to any behaviour in the establishment that could disrupt public order and safety. They were also told that if new acts relating to human trafficking were discovered, measures would certainly be taken. This is what happened following the mayor's decision of 29 April 2016. The latter had previously asked the senior crown prosecutor if they had any objections. The prosecutor stated they had none, given that they were currently dealing with two criminal cases concerning this establishment. Investigations were being carried out concerning the smuggling of young Nigerian women. As soon as they had arrived in Belgium, they were taken by their exploiter to the establishment in question, in order to work as prostitutes and recruit clients, and then hand over the money earned to the pimp.

The applicants referred to several means supporting their claim. The first one referred to an infringement of the rights of the defence during the handling of the administrative procedures regarding the closure of the establishment. Another one referred to fact that the contested decision wasn't adequately reasoned. In its

judgement of 17 May 2016, the Council of State⁵²⁸ rejected these two arguments. As regards the reasons for the contested act, it also emphasised, in reference to extracts from the said act, that there were numerous elements clearly showing that the owner collaborated in illegal practices by facilitating the work 'conditions' of the young African women in his establishment, which made money for her and contributed to her reputation.

The applicants also referred to a third argument according to which the measure taken is disproportionate to the objective pursued, an argument also rejected by the Council of State, since the decision taken didn't contain the maximum duration possible, i.e. six months. Moreover, the applicants had already been warned that if the acts reoccurred, the commune would close the establishment. There was a fear that the acts would recommence. Instead of taking measures to combat the problem of trafficking taking place in their establishment, the applicants played it down, or even denied it.

The Council of State subsequently rejected the emergency motion to stay.

⁵²⁸ Administrative Jurisdiction Division of the Council of State, judgement of 17 May 2016, no. 234.755.



PART 4: KEY FIGURES CONCERNING THE STAKEHOLDERS IN HUMAN TRAFFICKING AND SMUGGLING

Introduction

This part presents the key figures given to Myria by the six stakeholders likely to play a role in a human trafficking case in Belgium. Figures concerning human smuggling are also provided if these stakeholders are active in this area. These figures and their evolution between 2011 and 2015 allow us to have a certain view of the approach adopted by the authorities in terms of human trafficking and smuggling.

These six stakeholders are:

1. the police, with information from the General National Database;
2. the Social Inspectorate;
3. the Board of Prosecutors General, with information relating to prosecutions conducted by the public prosecutor's offices;
4. the Immigration Office (IO);
5. PAG-ASA, Payoke and Sürya: specialised victim reception centres;
6. the Department of Criminal Policy (DCP), with information relating to convictions.

For each of these data sources, we have provided:

- a description of the nature and origin of the data;
- a presentation of the data, together with a short commentary;
- if necessary, an analytical commentary of this data or additional information.

However, there is a lack of harmonisation between these figures from the various stakeholders. Therefore, they aren't sufficient as a basis to assess the policy or to support strategic analyses. This lack of harmonisation also significantly restricts the possibilities of reporting to the European institutions.

1. Police data

1.1. Description

The federal judicial police provides information in the form of maps, created by strategic analysts from the department involved in the fight against crimes against persons, based on the data available in the police's general national database (GND).

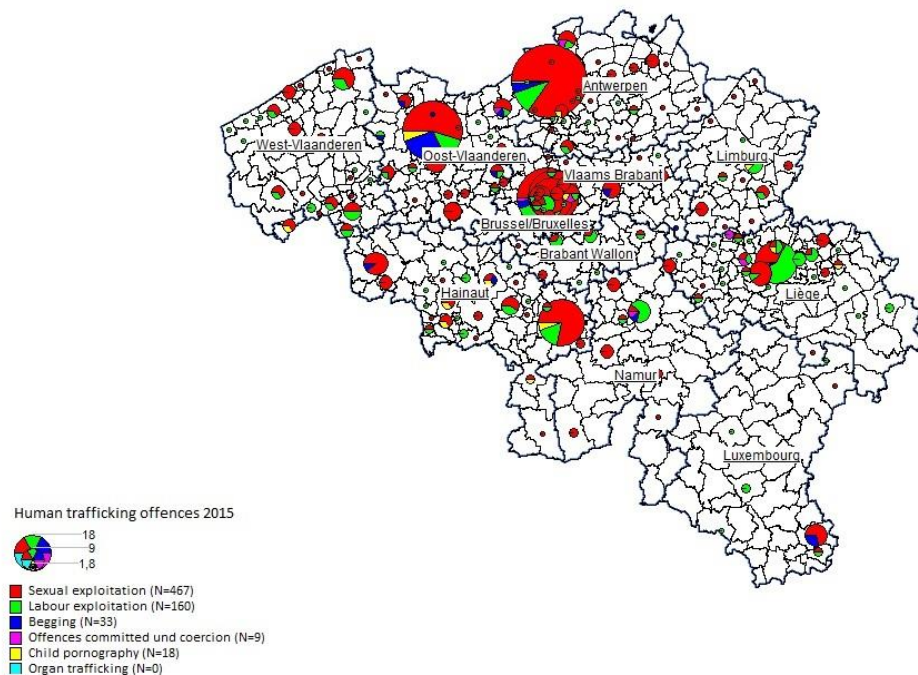
This data gives an idea of the evolution in police interventions in the past five years (as long as the same syntax is used).

For the part relating to human smuggling, besides the GND data, we have chosen to use the data from the Directorate of Operation of Administrative Police (DOA).

Data relating to human trafficking

Figure 1. Human trafficking offences per commune and purpose of exploitation (Source: Police's general national database)

Human trafficking offences 2015
per commune (N=687)
Source: GND



DJSOC/ Human trafficking
ASA Nicolas CALLANT

Table 1. Human trafficking offences per year and per form of exploitation (Source: Police's general national database, [ASA] Nicolas CALLANT)

Year	Sexual exploitation	Child pornography	Labour exploitation	Begging	Offences committed under coercion	Organ trafficking	Total
2011	481	85	333	47	10	1	957
2012	466	51	321	44	13	1	896
2013	586	201	273	33	14	1	1,108
2014	460	13	166	38	15	1	693
2015	467	18	160	33	9	0	687

Findings and trends

- The most widespread forms of exploitation are still sexual and labour exploitation, but only offences associated with sex (sexual exploitation and child pornography) showed a slight increase between 2014 and 2015. For all other forms of exploitation, there was a slight fall. Overall, the total in 2015 is the same as in 2014.
- The reduction in offences of human trafficking for the purpose of labour exploitation reinforces the impression of a shift towards the Social Inspectorate.
- For the first time in years, no acts of human trafficking for the purposes of organ trafficking were reported.
- Regarding significant fluctuations in findings establishing a link between human trafficking and child pornography, please refer to the 2013 Annual Report, Building bridges.
- Note the increase in the number of findings in the region of Kortrijk and Tournai.
- In any case, 2015 appears to be the year with the lowest number of findings since the GND's current syntax has been in use.

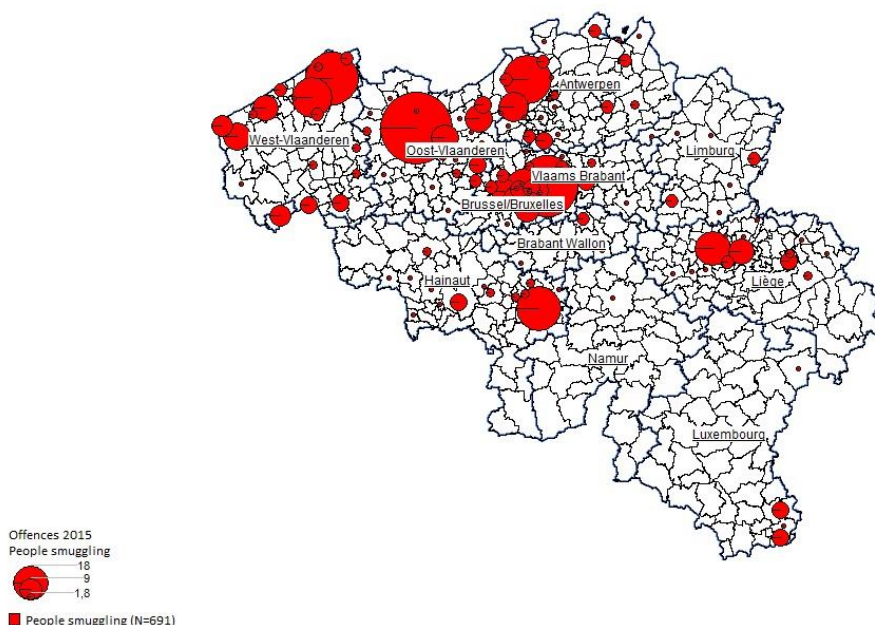
1.2. Data relating to human smuggling

All the data below comes from the GND. The following map shows the total of several figures for human smuggling. This total not only encompasses human smuggling offences, but also those associated with facilitating illegal entry or illegal residence (Article 77 of the Aliens Act), as well as situations where illegal residence was reported in combination with an element of smuggling or exploitation.

This map shows the extent of the number of human trafficking acts in 2015 thanks to well-defined syntax that reaches beyond the actual offence. The map presents the extent of the phenomenon and Table 2 its evolution in the past five years.

Figure 2. Extent of the phenomenon of human smuggling per commune (Source: Police's general national database)

Offences People smuggling per commune 2015
(N=627)
Source: GND



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Table 2. Evolution in the number of human smuggling acts (Source: Police's general national database)

Year	Number
2011	268
2012	233
2013	597
2014	627
2015	691

1.3. Data relating to interceptions of illegally staying foreign nationals

The data presented in this part is based on the Immigration Office's administrative reports for the police. These reports are written after police interceptions, when the police request permission from the Immigration Office to open an investigation.

This data is one of the many indicators of the evolution in the number of foreigners found to be staying here illegally. Even if it is difficult to link them with human smuggling in the strict sense of the term, they are nevertheless one of the indicators that need to be carefully monitored.

Table 3. Number of intercepted persons (Source: federal judicial police)

Nationality	2011	2012	2013	2014	2015
Afghanistan	455	669	649	400	803
South Africa	9	5	5	5	3
Albania	399	647	772	693	840
Algeria	6,337	6,384	4,897	3,726	2,666
Germany	16	10	18	47	28
Andorra	0	0	0	0	1
Angola	63	58	59	76	81
Antigua and Barbuda	0	1	0	0	0
Stateless	15	26	23	4	20
Argentina	2	9	4	9	4
Armenia	299	272	273	253	157
Australia	6	5	2	5	4
Palestinian Authority	864	582	395	318	186
Austria	1	3	3	11	6
Azerbaijan	16	11	20	18	28
Bangladesh	84	77	118	123	114
Barbados	0	1	0	0	1
Belgium	20	21	12	15	1
Benin	13	15	20	33	43
Bhutan	10	14	4	3	1
Belarus	18	36	22	16	13
Bolivia	3	3	7	4	3
Bosnia-Herzegovina	151	241	254	130	88
Brazil	578	432	389	378	308
Bulgaria	673	727	610	357	303
Burkina Faso	26	31	42	28	34
Burundi	31	24	19	24	18
Cambodia	0	4	2	2	2
Cameroon	136	179	261	263	301
Canada	7	6	6	5	2

Cape Verde	7	5	2	6	9
Chile	19	24	24	26	6
China	236	216	215	198	182
Cyprus	0	0	0	1	0
Colombia	10	18	24	17	17
Comoros	1	2	0	3	0
Congo-Brazzaville	3	5	7	55	26
Congo-Kinshasa	242	316	372	367	322
North Korea	9	6	2	1	1
South Korea	2	0	3	2	0
Costa Rica	1	1	0	0	2
Ivory Coast	50	44	68	65	78
Croatia	159	120	164	124	161
Cuba	28	31	25	22	13
Denmark	0	0	1	1	2
Djibouti	5	2	5	5	5
Dominica	0	0	0	4	6
Egypt	162	110	158	155	112
United Arab Emirates	3	3	1	2	5
Ecuador	44	32	33	22	22
Eritrea	94	66	124	452	192
Spain	39	58	59	41	65
Estonia	7	6	6	7	9
United States	22	19	30	23	10
Ethiopia	13	16	6	24	34
Finland	1	2	6	0	1
France	146	128	199	175	270
Gabon	13	13	30	15	24
Gambia	38	47	51	44	50
Georgia	164	226	183	254	201
Ghana	89	120	103	154	128
Greece	9	6	6	15	9

Guatemala	5	5	1	2	5
Guinea	192	198	259	315	296
Equatorial Guinea	4	3	2	1	3
Guinea-Bissau	7	11	5	9	5
Guyana	2	4	1	3	7
Haiti	1	1	3	2	2
Honduras	2	0	1	0	4
Hungary	35	27	29	50	39
Marshall Islands	0	0	0	0	1
Mauritius	4	5	9	5	6
American Virgin Islands	0	0	0	2	0
India	654	592	633	493	385
Indonesia	9	2	4	3	4
Iraq	573	403	328	313	1,251
Iran	472	492	397	455	945
Ireland	7	8	7	15	8
Israel	21	16	26	24	19
Italy	54	33	75	57	75
Jamaica	6	4	10	5	3
Japan	5	3	6	0	0
Jordan	16	14	28	15	10
Kazakhstan	10	8	25	8	6
Kenya	12	26	19	20	22
Kyrgyzstan	17	12	14	6	6
Kiribati	0	1	0	0	0
Kosovo	309	230	238	235	216
Kuwait	27	11	12	32	20
Laos	1	1	0		
Latvia	25	40	17	2	0
Lebanon	100	82	88	37	18
Liberia	24	39	40	71	79

Libya	212	217	195	34	34
Lithuania	107	65	65	197	182
Luxembourg	0	1	3	87	91
Macedonia	146	170	139	2	0
Madagascar	1	0	2	122	140
Malaysia	3	2	1	4	1
Malawi	1	1	0	2	2
Mali	16	41	37	1	0
Malta	4	1	1	36	41
Morocco	4,580	4,562	4,320	1	1
Mauritania	68	89	85	4,259	3,528
Mexico	7	6	7	69	59
Moldavia	62	38	46	15	13
Monaco	0	0	0	53	56
Mongolia	140	194	125	0	1
Montenegro	15	9	16	111	96
Mozambique	0	0	0	17	10
Myanmar	1	3	2	1	0
Namibia	0	0	1	4	6
Nationality unknown	443	581	665	0	0
Nepal	43	56	69	566	239
Nicaragua	0	2	3	58	49
Niger	14	22	37	1	1
Nigeria	209	231	266	37	35
Norway	3	0	1	265	265
New Zealand	0	0	1	3	2
Oman	0	1	1	3	1
Uganda	4	6	5	0	0
Uzbekistan	7	7	6	6	5
Pakistan	455	478	489	9	7
Panama	1	0	2	454	416
Paraguay	6	4	3	2	1
Netherlands	35	27	25	7	4
Peru	6	7	12	38	63
Philippines	29	32	20	9	5
Poland	392	487	482	28	22

Portugal	20	40	36	470	468
Refugee	0	1	2	30	30
Central African Republic	3	3	4	0	0
Dominican Republic	16	19	21	6	22
Romania	2,555	2,256	2,472	10	15
United Kingdom	26	25	13	2,023	1,782
Russia	279	296	283	23	34
Rwanda	17	27	26	274	193
Western Sahara	4	1	1	48	45
El Salvador	0	0	4	2	2
American Samoa	0	0	0	5	3
São Tomé and Príncipe	2	1	2	1	0
Senegal	94	101	115	1	0
Serbia	598	659	698	127	117
Sierra Leone	31	30	33	506	582
Singapore	0	0	1	46	63
Slovakia	116	107	123	0	0
Slovenia	7	5	6	127	130
Somalia	189	150	170	7	11
Sudan	33	52	56	217	233
South Sudan	0	0	0	97	108
Sri Lanka	22	47	22	0	1
Sweden	7	0	4	33	12
Switzerland	1	3	4	5	8
Surinam	40	39	45	0	0
Swaziland	0	0	0	92	67
Syria	150	376	504	1	0
Tajikistan	7	1	1	1,039	1,636
Taiwan	0	0	1	5	1
Tanzania	15	13	26	0	0
Chad	13	13	17	25	19

Czech Republic	60	67	65	16	33
Thailand	15	17	17	52	51
Togo	31	25	41	22	21
Trinidad and Tobago	2	0	0	44	61
Tunisia	1,459	1,215	1,023	0	1
Turkmenistan	0	1	0	999	855
Turkey	301	348	276	0	0
Ukraine	153	188	161	303	229
Uruguay	0	2	1	243	265
Venezuela	12	8	5	0	2
Vietnam	80	125	63	11	11
Yemen	8	7	7	55	90
Zambia	0	0	0	0	0
Zimbabwe	2	0	5	1	3
TOTAL	27,820	28,014	26,556	24,874	24,037

Table 4. Number of intercepted persons per year (Source: Administrative Police Operations Department)

Year	Number of interceptions
2007	24,573
2008	25,678
2009	27,952
2010	25,551
2011	27,820
2012	28,014
2013	26,556
2014	24,874
2015	24,037
2016 (Jan-May)	12,752

2. Social Inspectorate data

Description

Inspections are carried out on a continuous basis by the Social Inspectorate of FPS Social Security, and the police (federal or local), and sometimes also by the Social Legislation Inspectorate of FPS Employment, in certain sectors (exotic restaurants, cleaning companies, horticultural and gardening businesses, sweatshops, garment factories, prostitution)⁵²⁹. Sometimes, the inspections target certain places where people are made to work (building sites, scrap metal, forestry businesses, markets, etc.), when the police or inspection services were informed of potential exploitation (e.g. information from the labour prosecutor).

As of 2016, human trafficking offences and social dumping practices have been more than ever a priority for the Social Inspectorate. This was probably already noticeable in the findings relating to 2015. The data provided by the Social Inspectorate has five parameters: the victims' country of origin, economic sector, type of offence, number of offences, and the number of workers involved in the reported offences.

This data is the result of the statistical analysis of all the police reports: on the one hand, the *pro justitia* sent to the senior crown prosecutor and/or the labour prosecutor and, on the other hand, judicial reports sent to the labour prosecutor, the prosecutor or the investigating judge when the investigation was authorised by the latter.

⁵²⁹ See: Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, Chapter 8. Combating human trafficking, www.emploi.belgique.be.

Presentation of the data relating to human trafficking

Table 5. Reports concerning offences of human trafficking for the purpose of labour exploitation (Source: Social Inspectorate)

	2011	2012	2013	2014	2015
Reports	33	38	29	37	58
Number of workers	46	123	69	48	425

In 2015, the Social Inspectorate drew up 58 reports concerning offences of human trafficking for the purpose of labour exploitation⁵³⁰.

Table 6. Reports regarding human trafficking in 2015 (n=58) according to the economic sectors concerned (Source: Social Inspectorate)

Sector	Report
Construction	14
Hotel & catering industry	14
Retail trade	11
Road haulage	9
Garages	2
Wholesale trade	2
Cleaning	1
Other	5
Total	58

⁵³⁰ Among these 58 reports, 19 *pro justitia* concerning 372 workers and 39 judicial reports concerning 53 workers.

Table 7. Reports regarding offences of human trafficking for the purpose of labour exploitation, according to the main sectors and nationalities of the workers concerned (Source: Social Inspectorate)

170 Bulgarians	of which 168 in the road haulage sector
140 Slovaks	of which 139 in the road haulage sector
24 Croatians	all in the construction sector
18 Moroccans	of which 8 in construction and 5 in hotel & catering
11 Indians	of which 10 in hotel & catering
8 Estonians	all in the road haulage sector
8 Czechs	all in the road haulage sector

Compared with previous years, there was an abnormally high number of workers in 2015 (425). The Social Inspectorate explains this figure as follows: Out of the 425 workers involved in the acts of human trafficking found by the Social Inspectorate in 2015, no less than 329 were employed in the road haulage sector. There were 168 Bulgarians and 139 Slovaks. The findings were made while bringing several complex cases of fraud in the road haulage sector to a close. The social dumping cases demand in-depth investigations that require a great deal of time and resources. There is increasing evidence of indicators of labour exploitation in these social dumping cases, where the victims are often drivers from Eastern European countries.

Finally, these high figures also result from restricted priorities and this approach, which focuses more specifically on human trafficking/labour exploitation by the Social Inspectorate.

To better understand the situation, it is also important to know that these are cases that were concluded in 2015 but opened earlier, relating to acts that were spread over several years.

Of the 425 workers affected by the offences reported in 2015, the Social Inspectorate referred 74 of them to a centre specialising in the support of human trafficking victims. Their nationalities are listed below.

Table 8. Workers concerned by human trafficking acts that were reported in 2015 and who were referred to specialised centres (n=74) according to nationality (Source: SI)

Country	Workers
Morocco	17
Croatia	13
India	11
Tunisia	6
Pakistan	4
Poland	3
Romania	3
Bulgaria	2
China	2
Turkey	2
Other	11
Total	74

Findings and trends

- As in 2014, the majority of victims found in the Social Inspectorate reports in 2015 were Moroccan;
- Many Croatians are also present for the first time, which coincides with Croatia's entry into the EU, and the high number of victims from EU countries in the construction sector;
- There are only a few Slovak and Bulgarian workers in these victim referral statistics, despite their significant presence in the reports, especially in the road haulage sector.

Table 9. Number of reports according to the sector and the nationality of the victims: Human trafficking, labour exploitation, Art. 433quinquies, 3° (Source: Social Inspectorate)

Country	Sports and leisure	Postal and courier activities	Road haulage	Domestic work	Wholesale and retail trade	Hotel & catering industry	Construction	TOTAL
Algeria					1			1
Bulgaria						2		2
Burkina Faso					1			1
China						2		2
Guinea					1			1
Hungary						1		1
India					1	10		11
Croatia							13	13
Lesotho				1				1
Morocco		2		1	2	4	8	17
Nigeria	1							1
Pakistan					4			4
Poland						1	2	3
DRC				1				1
Slovakia						1		1
Romania			2				1	3
Russia				1				1
Slovenia							1	1
Tunisia					1	1	4	6
Turkey							2	2
Other							1	1
TOTAL	1	2	2	4	11	22	32	74

3. Data from public prosecutor's offices

Description

The data below results from the statistical analyses of the Board of Prosecutors General. They reflect the information that was published regarding the cases submitted to the crown prosecution service in the course of 2015.

This data is characterised by two 'classic' intrinsic restrictions: these are cases dealing exclusively with adults and the data from the public prosecutor's office in Eupen is missing.

The new legal landscape came into force on 1 April 2014, which explains why the presentation of the figures for this year

complies, for the first time, with the new judicial breakdown into 14 public prosecutor's offices at first instance: 13 for the courts of first instance and the federal prosecutor's office.

A major failing was noted concerning cases dealt with by the labour prosecutors. Despite the fact that the labour prosecutor's offices can save the data in the REA/TPI system, this isn't done systematically. This is why the data relating to the cases submitted to the labour prosecutor's offices is missing from the tables below. This under-reporting is a significant failing.

The cases included in these tables may concern cases involving one or more perpetrators, but also cases where the perpetrator hasn't (yet) been identified.

Presentation of the data relating to human trafficking

Table 10. Cases submitted to public prosecutor's offices in 2011, 2012, 2013, 2014 and 2015 for cases of human trafficking, according to jurisdiction and type of exploitation (Source: Board of Prosecutors General, statistical analyses)

HUMAN TRAFFICKING	Year	37L:	29E:	55D:	55E:	55F:	TOTAL
		Sexual exploitation (Art. 33quinquies §1, 1°)	Exploitation of begging (Art. 433quinquies §1, 2°)	Labour exploitation (Art. 433quinquies §1, 3°)	Illegal organ harvesting (Art. 433quinquies §1, 4°)	Coercion to commit an offence (Art. 433quinquies §1,5°)	
ANTWERP	2011	31	2	41	0	3	77
	2012	27	0	28	0	4	59
	2013	26	1	38	0	2	67
	2014	26	2	26	1	1	56
	2015	45	2	30	0	2	79
BRUSSELS	2011	99	5	30	1	1	136
	2012	111	4	46	0	3	164
	2013	116	5	35	1	14	171
	2014	26	3	25	0	7	61
	2015	25	2	23	0	4	54
GHENT	2011	15	1	42	0	0	58
	2012	28	1	35	0	3	67
	2013	22	2	52	0	6	82
	2014	38	3	30	0	1	72
	2015	47	6	27	0	5	85
LIÈGE	2011	21	0	25	0	4	50
	2012	16	2	32	1	2	53
	2013	22	4	43	0	15	84
	2014	14	6	25	0	7	52
	2015	20	0	26	0	2	48
MONS	2011	4	0	27	0	5	36
	2012	5	0	22	0	5	32
	2013	9	0	16	0	1	26
	2014	6	0	9	0	0	15
	2015	14	0	18	0	1	33
FEDERAL PROSECUTOR'S OFFICE	2011	0	0	0	0	1	1
	2012	3	0	1	1	1	6
	2013	1	0	0	0	1	2
	2014	1	0	0	0	1	2
	2015	0	0	0	0	0	0
TOTAL	2011	170	8	165	1	14	358
	2012	190	7	164	2	18	381
	2013	196	12	184	1	39	432
	2014	111	14	115	1	17	258
	2015	151	10	124	0	14	299

Findings and trends

- The 299 cases submitted in 2015 reveal an increase, which is slight yet significant compared with 2014, which had the lowest figures since 2008;
- This increase was particularly prevalent in cases of sexual exploitation, which had fallen dramatically in 2014, mainly in the jurisdiction of Brussels;
- Nevertheless, this increase was observed in all the other jurisdictions, except for Brussels. In Antwerp, there was even a significant increase, in absolute rather than relative terms.
- The slight increase in the number of cases of human trafficking for the purpose of labour exploitation that were submitted, must be considered with all due reserve because the cases of the labour prosecutor's offices aren't included, which prevents us from having an overall picture of the phenomenon.

Findings and trends

- The number of cases submitted increased considerably in 2015, compared with relative stability of the previous years.
- With all the cases of smuggling in East Flanders and West Flanders, the jurisdiction of Ghent comes out on top regarding incoming

Presentation of the data relating to human smuggling

Table 11. Cases submitted to public prosecutor's offices in 2010, 2012, 2013, 2014 and 2015 for cases of human smuggling and other offences (Source: Board of Prosecutors General, statistical analyses)

55G		
HUMAN SMUGGLING	Year	Human smuggling (Art. 77bis, 77ter, 77quater and 77quinquies Aliens Act)
ANTWERP	2010	21
	2012	36
	2013	29
	2014	18
	2015	26
BRUSSELS	2010	61
	2012	138
	2013	108
	2014	114
	2015	72
GHENT	2010	228
	2012	129
	2013	127
	2014	177
	2015	250
LIÈGE	2010	13
	2012	13
	2013	14
	2014	5
	2015	9
MONS	2010	2
	2012	3
	2013	6
	2014	3
	2015	4
FEDERAL PROSECUTOR'S OFFICE	2010	0
	2012	4
	2013	5
	2014	0
	2015	3
TOTAL	2010	325
	2012	323
	2013	289
	2014	317
	2015	364

4. Immigration Office data

Description

The Immigration Office (IO) has extensively reported on the intervention of its unit for minors and victims of human trafficking (MINTEH) in the past, in its activity reports. This reporting was considerably limited in 2015. However, the unit established specific reporting for Myria, with a view to establishing this section devoted to the figures in the annual report.

In this part, we shall first examine the information on the victims of human trafficking and smuggling who received a residence permit for the first time in 2015. We shall then present the total number of residence permits issued in 2015 to all the victims involved in proceedings. Victims may also receive a residence permit if there are aggravating circumstances.

Data relating to victims of human trafficking in 2015

Table 12. Victims of human trafficking who received a residence permit for the first time in 2015 (Source: Immigration Office, MINTEH unit, Coralie Craeye)

2009	107
2010	123
2011	129
2012	127
2013	116
2014	138
2015	117

For 2015, there were 117 victims, i.e. far less than in 2014.

Table 13. Victims of human trafficking who received a residence permit for the first time in 2015, according to gender, age and the form of exploitation (Source: Immigration Office, MINTEH unit, Lionel Brackman)

Age		<18	18-25	26-30	30<	Total	Men	Women
Sexual exploitation	2013	4	15	8	10	37	1	36
	2014	1	19	12	11	43	5	38
	2015	5	22	7	10	44	2	42
Labour exploitation	2013	0	19	13	47	79	67	12
	2014	1	18	26	41	86	74	12
	2015	3	9	6	43	61	52	9
Other forms of exploitation	2013	0	0	0	0	0	0	0
	2014	3	1	0	5	9	5	4
	2015	6	1	0	5	12	9	3
Total	2013	4	34	21	57	116	68	48
	2014	5	38	38	57	138	84	54
	2015	14	32	13	58	117	63	54

Findings and trends

- For the first time since 2011, a year during which 15 child victims of human trafficking were recorded, their number has risen again. Compared with three child victims in 2014, the number increased to 14 in 2015, five of whom were subject to sexual exploitation and six exploited in another manner (for the purpose of begging or offences committed under coercion).
- The number of men who opted for victim status fell again, after reaching a high point in 2014, both in absolute (63) and relative (54%) figures.
- The overall reduction is mainly due to a fall in the number of victims of labour exploitation.
- The proportion of new victims of sexual exploitation has risen again, while that of victims of labour exploitation has been falling since 2013.

Table 14. Victims of human trafficking who received a residence permit for the first time in 2015, according to nationality and the most frequent forms of exploitation (Source: Immigration Office, MINTEH unit, Lionel Brackman)

Nationality	Sexual exploitation	Labour exploitation	Other	Total
Romania	5	8	10	23
Morocco	0	11	0	11
India	0	10	1	11
Nigeria	9	1	0	10
Hungary	6	2	0	8
Albania	5	1	0	6
Thailand	5	0	0	5
Bulgaria	2	3	0	5
Benin	0	4	0	4
Cameroon	3	0	0	3
Bangladesh	0	3	0	3
Algeria	0	3	0	3

Findings and trends

- For the fourth consecutive year, Morocco and Romania have the greatest number of victims. However, Romania shares second place with India this year.
- The table shows a higher number of victims from India and Nigeria than in 2014.
- No less than 10 Romanians were the victim of a form of exploitation other than sexual or labour (begging and offences committed under coercion).

Table 15. Residence permits issued in 2014 and 2015 (Source: IO)

	2012		2013		2014		2015		Total			
	M	W	M	W	M	W	M	W	2012	2013	2014	2015
	M&W	M&W	M&W	M&W	M&W	M&W	M&W	M&W	M&W	M&W	M&W	M&W
OLT 45 days (THB)	18	18	18	12	22	11	11	6	36	30	33	17
Certificate of inscription (CI)	70	73	69	48	86	53	64	51	143	117	139	115
CI extension	4	8	8	7	6	5	9	14	12	15	11	23
Temporary CIAR (THB)	61	45	62	38	57	28	59	31	106	100	85	90
CIAR extension (THB)	285	158	293	168	300	150	304	122	441	461	450	426
Indefinite CIAR (THB)	15	20	25	21	16	17	0	6	35	46	33	6
Temporary CIAR (humanitarian)	2	2	1	1	1	1	12	17	4	2	2	29
CIAR extension (humanitarian)	17	34	10	21	14	17	24	12	51	31	31	36
Indefinite CIAR (humanitarian)	7	4	14	12	10	12	19	17	11	26	22	36
Annex 13 (OLT)	3	4	7	4	5	9	1	1	7	11	14	2
Extension Annex 13	0	0	0	0	0	0	0	0	0	0	0	0
Total	482	366	507	332	517	303	503	277	848	839	820	780

This table is currently the only overview offering an indication of the number of people who have acquired the status of victim of human trafficking. A certificate of inscription in the alien's register (CIAR), which can be temporary and/or extended, is always a CIAR for a period of six months. Normally, the victims receive two a year as long as they have this status. The 426 CIAR (THB) extensions concern 213 individual victims.

Findings and trends

- The 780 decisions to issue or extend a residence permit therefore concern both new victims from 2014 and victims prior to 2013, who are in the process of being granted victim status and with regard to whom one or more decisions have been taken.
- The number of authorisations for indefinite residence for humanitarian reasons is the highest it has been in the past few years.
- The number of 'status initiation documents' (45-day order to leave the territory and certificate of inscription) has fallen significantly, indicating that this practice is happening as frequently.

Data relating to victims of human smuggling in 2015

Victims of human smuggling with aggravating circumstances can also request victim status. In the case of these victims, a residence permit will only be issued if, for instance, they have been subjected to violence or if the victims are minors.

Table 16. Victims of human smuggling with aggravating circumstances for whom a residence permit was issued for the first time in 2015 (Source: Immigration Office, MINTEH unit)

2009	17
2010	14
2011	20
2012	30
2013	13
2014	18
2015	14

There were 14 victims in 2015: seven girls and seven boys. Six of them (one boy and five girls) were minors. Of these six minors, four were from Afghanistan.

The nationalities are as follows:

- Afghanistan: 6
- Albania: 3
- Iran: 2
- India, Nigeria and Ghana: 1

Figures from the Immigration Office which are useful as human smuggling indicators

Table 17. Nationalities of the people arrested in Belgium following transit migration (Source: Immigration Office)

Nationality	2010	2011	2012	2013	2014	2015	2016 to 31/5
Afghanistan	201	164	255	157	167	474	352
Albania	8	53	105	151	155	213	67
Algeria	678	508	490	159	113	138	83
Angola	1	0	0	0		18	1
Armenia		0	0	0			1
Bangladesh	2	21	7	6			1
Cameroon		0	2	0		0	
China	6	1	4	0	4	9	9
Colombia			3	0		0	
DRC	1	0	0	0		2	2
Egypt	2	20	4	6	9	5	32
Eritrea	34	52	49	89	236	126	178
Ethiopia	1	0	1	0	5	2	5
Georgia	2	0	1	0	1	0	
India	429	138	94	191	94	56	136
Indonesia		4	0	0			
Iraq	181	70	58	30	37	775	979
Iran	235	267	302	229	290	758	1,747
Kosovo		0	1	4	4	12	6
Kuwait		14	5	5	23	16	5
Lebanon	2	0	0	0	3	4	1
Liberia	1	0	0	0			37
Libya	8	18	10	10	10	6	
Mali	2	2	0	0			
Morocco	96	74	71	74	121	106	67
Mauritania	4	2	1	0		1	
Moldavia	3	0	0	0			
Myanmar			1	1		0	
Nepal		0	3	0		0	1
Nigeria		0	0	1		0	0
Ukraine		0	4	1		6	3
Unknown	11	4	8	10	9	10	12
Pakistan	4	9	76	22	42	39	43
Palestine	204	78	48	15	11	9	37
Russia		1	0	0			
Serbia		0	2	0		0	
Somalia	15	24	0	6	8	25	25
Sudan	33	2	4	11	17	45	26
Sri Lanka	3	0	15	1	4	4	
Syria	2	13	74	123	483	972	622
Tanzania		4	2	0		0	
Tunisia	44	43	21	8	23	22	26
Turkmenistan			1	0		0	
Turkey		7	16	10	9	9	6
Vietnam	160	42	95	9	13	54	25
TOTAL	2,373	1,635	1,833	1,329	1,891	3,916	4,535

Table 18. Number of IO decisions in reaction to police administrative reports following people climbing over fences of outlying car parks (Source: Immigration Office)

Year	Acquittals	OLT	Imprisonments
2015	1,063	2,602	251
2016 (until 31/05/2016 inclusive)	1,324	3,048	163

5. Data from the specialised victim reception centres

Description

In this section, we shall report on the number of victims for whom the specialised centres initiated support in 2015. The figures relating to new support programmes correspond to the typology established in the circular of 26 September 2008⁵³¹. Once the initial phase (period of reflection) has begun, meaning an order to leave the territory has been issued, support is then organised. The type of psychosocial and legal/administrative support varies according to the centre.

This annual report only includes integrated tables: one for human trafficking and one for human smuggling mentioning age, gender, nationality and purpose of the exploitation. Every specialised centre provided the necessary figures, which Myria put into a table.

It isn't possible to form a picture of all the support activities or the centres' reception capacity based on the tables hereafter. The duration of the support, which is a very

⁵³¹ See: Circular of 26 September 2008 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling.

important indicator, isn't shown here because it is preferable to deal with it within the framework of an analysis and description of the support process. The Immigration Office figures relating to the extension of documents, within the framework of the human trafficking procedure, do however offer a potential indicator of the evolution between 2011 and 2014, which is reflected in **Table 14**.

It also isn't possible, within the framework of this annual report, to report on or analyse reports on persons for whom no support was initiated, even if this would have been relevant to the policy and knowledge of the phenomenon of trafficking and the exploitation of persons. Processing all the reports represents a huge workload and responsibility for the centres. For more information, please refer to the centres' annual reports.

The Belgian system is a closed one. The figures relating to support initiated by the specialised centres and the residence permits issued (IO) obviously reflect those of the IO, as illustrated in Table 20.

Table 19. New support programmes initiated by the specialised centres for victims of human trafficking and human smuggling between 2006 and 2015 (Source: centre's annual reports on human trafficking and smuggling)

2006	172	2011	153
2007	179	2012	174
2008	196	2013	148
2009	158	2014	174
2010	141	2015	153

Presentation of the data relating to victims of human trafficking

Table 20. New support programmes initiated by the specialised centres, exclusively for the victims of human trafficking

2010	2011	2012	2013	2014	2015
130	133	143	133	158	135

Table 21. New support programmes initiated for victims of human trafficking, according to the type of exploitation, gender and age range (Source: specialised centres, processed by Myria)

Nationality	Sexual		Begging				Labour				Organ trafficking				Offences committed under coercion				Total	
	Women		Men		Women		Men		Women		Men		Women		Men					
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.				
Romania	0	6	0	0	0	1	0	2	0	2	0	7	0	0	0	0	1	0	0	19
Morocco	0	0	0	0	0	0	0	0	1	2	0	10	0	0	0	0	0	0	0	13
India	0	0	0	0	0	0	0	0	0	3	1	8	0	0	0	0	0	0	1	13
Nigeria	2	8	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	11
Hungary	0	7	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	10
Thailand	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
Belgium	0	5	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	6
Albania	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Bulgaria	0	2	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	5
Benin	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0	0	4
Algeria	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Bangladesh	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Brazil	0	2	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	3
Cameroon	0	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Pakistan	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Tunisia	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	0	3
Ecuador	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	2
Egypt	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Iran	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	2
Bolivia	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Burkina Faso	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
DRC	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Ivory Coast	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Kazakhstan	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Madagascar	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Netherlands	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Ukraine	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Poland	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Russia	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Senegal	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Serbia	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Slovakia	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Spain	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Syria	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Togo	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Czech Republic	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Turkey	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
SUBTOTAL	2	51	1	1	0	2	0	2	1	9	1	63	0	0	0	0	0	1	0	1
TOTAL	55		4				74				0				2				135	

Findings and trends

- For the fifth consecutive year, Romania and Morocco had the greatest number of human trafficking victims. However, in 2015, India reached the same level as Morocco.
- Nigeria and Hungary, with 11 and 10 victims respectively, complete the top five.
- Among the five child victims of human trafficking, two of them were Nigerian girls.

A Presentation of the data relating to victims of human smuggling

Table 22. New support programmes initiated for victims of human smuggling, according to nationality, gender and age range (Source: specialised centres, processed by Myria)

Nationality	Smuggling				TOTAL
	Women		Men		
	Min	Max	Min	Max	
Afghanistan	3	1	0	2	6
Iran	0	2	0	2	4
Albania	0	1	0	2	3
Ghana	0	0	0	1	1
India	0	0	0	1	1
Nigeria	0	0	0	1	1
Pakistan	0	0	0	1	1
Somalia	0	0	1	0	1
TOTAL	3	4	1	10	18

6. Judicial data

Description

At Myria's request, the Department of Criminal Policy provided information relating to convictions for the trafficking and smuggling of human beings. The statistics were compiled on the basis of data from the central criminal records. The *res judicata* are recorded here; they are submitted to the criminal records by the court and tribunal clerks. The records are still compiled by hand (whereas the police and public prosecutor's offices use automated data processing).

Presentation of the data on human trafficking

The figures presented here reflect the number of final convictions, i.e. the convictions that couldn't be taken to the court of appeal. A conviction refers to judgements or decisions where one or more people appeared in court. The forms of exploitation weren't sufficiently recorded and therefore can't be included in this annual report

Table 23. Convictions for human trafficking in 2015 (Source: Department of Criminal Policy, according to findings of 15 December 2015)

Year	Convictions
2011	81
2012	82
2013	90
2014	84
2015	50

As regards these 50 judgements and decisions with a conviction for human trafficking: there are 50 final judicial decisions concerning 93 convicted persons. Among them, 30 concern cases of sexual exploitation, 17 labour exploitation and three offences committed under coercion.

Table 24. Aggravating circumstances among the 50 convictions pronounced in 2015 for acts of human trafficking (Source: Department of Criminal Policy)

Type of aggravating circumstance	Number
Through the use of fraudulent tactics, violence, threats or some form of coercion	26
Through the abuse of the victim's particularly vulnerable situation	30
When the activity concerned is a habitual activity	25
When it involves participation in the main activity or accessory to an association, whether or not the guilty party is the leader	29
The victim is a minor	30

Table 25. Sentences handed down among the 93 convictions pronounced in 2015 for acts of human trafficking (Source: Department of Criminal Policy)

Decision	Number
Prison sentence	88
Suspended prison sentence	52
Fine	79
Suspended fine	32
Confiscation	50
Deprivation of rights	52
Professional ban	3
Community service	1

Table 26. Main nationalities of the persons convicted for acts of human trafficking (Source: Department of Criminal Policy)

Nationality	Number
Belgium	32
Unknown/Not mentioned	13
Afghanistan	7
Romania	7
Albania	4
Bulgaria	3
France	2
Hungary	2
India	2
Iraq	2

Table 27. Gender of the persons convicted for acts of human trafficking (Source: Department of Criminal Policy)

Gender	Number
W	17
M	71
Not mentioned	5
Total	93

Presentation of the data relating to victims of human smuggling

Table 28. Presentation of the convictions for human smuggling (Source: Department of Criminal Policy, according to findings of 16 March 2016)

Nationality	Number
Belgium	21
Albania	8
Bulgaria	5
Iraq	5
Afghanistan	4
Iran	3
Romania	3
Somalia	3
Other	18
Unknown/Not recorded	20
TOTAL	90

There was a minimum of 90 final convictions for human trafficking in 2015.

Conclusion

Several sections show that progress was made this year regarding the targeted and exhaustive nature of the information.

At the same time, the Interdepartmental Coordination Unit didn't take any more initiatives to coordinate the production of data or achieve greater harmonisation among the stakeholders, even in the reporting to the European institutions.

This is why Myria is urging the unit to find more efficient and coordinated means to produce data concerning the phenomenon of human trafficking and human smuggling, and to promote action among public authorities and all the stakeholders concerned.



PART 5: RECOMMANDATIONS

1. The fight against human trafficking

a) *Raising awareness among frontline services regarding victim status is still required*

Continuous training for frontline services, relating to the referral system within the framework of the status of victim of human trafficking, must be pursued.

We noticed in various cases that when the referral system was brought into play, it wasn't properly applied. The victims weren't offered victim status and were repatriated. In one case, a victim who was awaiting a decision, was locked in a transit cell by the local police. Nevertheless, the victims were granted the status in most of the other cases.

The multidisciplinary cooperation of frontline services with staff in specialised centres plays a key role in the Belgian system. We would like to repeat that relevant statements are sufficient. The victims must be put in contact with the specialised reception centres for victims of human trafficking, which must remain at the disposal of frontline services for this purpose and place the victims within a framework of basic trust so that they can reap the benefits.

b) *Victim protection: the reception centres must be able to benefit from the means required for them to perform their tasks*

The victim reception centres don't always benefit from structural funding allowing them to perform their tasks. Their subsidies have also been reduced, especially after the withdrawal of the Fonds d'impulsion à la politique des immigrés (FIPI - funds to promote immigration policies) at federal level following the sixth state reform. In line with the government's action plan, Myria would like a solution to be found for this - recurring - problem, once and for all.

c) *International cooperation is required in the case of labour exploitation in order to dismantle false posted worker structures that can lead to human trafficking⁵³²*

The international fight against fraudulent posted worker operations, several of which have led to human trafficking practices, must be strongly encouraged. Several positive initiatives have been conducted this year to this effect. Following on from the discussion relating to Brexit, there has been growing interest in this type of approach to human trafficking, which has benefited from considerable social support.

The Labour Inspectorate must be able to collaborate more easily on an international level in order to carry out the necessary inspections and thus effectively combat the many abuses that can lead to human trafficking.

In our 2010 annual report⁵³³, we already strongly recommended that priority be given to tools that lead, on a structural level, to better information exchange and a better collaboration between the authorities of the Member States.

- elaboration of a European electronic recording system for posting documents;
- better agreements between Member States regarding verifications in case documents are checked;
- creation of a 'social Interpol', as already supported and expressed by the former senior crown prosecutor of Liège in his opening address to the Liège labour court: "there is every reason to dream of the creation of a social Interpol

⁵³² Also see http://www.myria.be/files/Migration2016-5-Libre_circulation_et_migration_economique.pdf.

⁵³³ Annual report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, Part IV: Recommendations.

uniting all the European authorities concerned".

The first steps were taken, showing that cooperation between inspection services in the country of origin and the destination country was possible and could be effective. End May 2016, joint action days were organised in 21 EU Member States, during which targeted inspections were conducted in risk sectors in search of acts of labour exploitation. Joint inspections were also carried out in Belgium by different inspection services and the police. The participating European countries agreed beforehand to use several new methodologies within the framework of this initiative, with the active support of Europol. During a preliminary coordination meeting at Europol, which the Belgian Social Inspectorate also attended, several innovative international cooperation methods were agreed upon.

Hence, two Romanian labour inspectors were also present during the inspections on Romanian road haulage companies, which favoured the preparation, execution and follow-up of the inspections.

During the entire action period, a coordination centre was in operation at Europol in The Hague, where a representative of the Belgian Social Inspectorate also worked on the harmonisation of the actions and the facilitation of information exchange between the participating countries. Every country could send 'special requests' to another Member State, asking for information or inspection services to carry out investigations. These information exchanges weren't limited to the duration of these action days: information will continue to be exchanged regarding the companies that were inspected.

d) Myria requests that the Belgian authorities develop the reporting of data concerning human trafficking and smuggling, in order to be able to meet the needs of national and European policies

Objectives established in consultation are lacking in the reports written by the stakeholders. There is no consultation platform to harmonise data needs or the offering in terms of information, even though regular consultation is required. Therefore, there is an urgent need for information and analyses that form a link between police reports and prosecutions, or prosecutions where the victims have been identified. In other words, the multidisciplinary model used by our country hasn't yet shown any added value at this level.

e) It is necessary to improve the detection and identification of victims of human trafficking for the purpose of exploitation of begging

Beggars who show potential indications of human trafficking must be considered by the police and judges as victims and be treated as such, and not as people whose begging causes a nuisance. We must take into account their relationship of dependency regarding a potential exploiter, who has forced them into it by abusing their 'cultural loyalty'. The victims must be put in contact with staff from a centre specialising in the reception of human trafficking victims, because this staff is the best placed to win their trust. These employees are in the best position to offer them the status of victim of human trafficking and to underline its importance.

If offences committed under coercion have been found, the perpetrators of these offences must be considered as victims based on the principle of non-punishment⁵³⁴. Their statements can be a determining factor in the continuation of the investigation and lead to the identification of key persons in the network or criminal organisation, as the case may be.

⁵³⁴ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 9-40.

f) *The judges must pursue cases of human trafficking for the purpose of exploitation of begging, especially when children are concerned*

The victims of this form of exploitation of human trafficking represent a highly vulnerable target group, which requires a good approach to this theme. The investigation will ideally be initiated by a discreet observation team, in order to catch sight of the exploiter when money is handed over and to be able to identify them through their car registration plate, for instance. The financial investigation is therefore a key element in the investigation as burden of proof for human trafficking, when the victims of begging have to hand over the money (down to the last coin) from begging to a third party.

Within the framework of human trafficking, the exploitation of begging can sometimes be the only visible activity in cases involving a range of different forms of exploitation, such as offences committed under coercion. This is certainly the case with minors. Often, acts such as offences committed under coercion are only revealed after an investigation has begun concerning child beggars. During the investigation's observation period, the police may find that the children are forced to commit acts of theft. This is why the fight against the exploitation of begging is an essential method to deal with invisible crimes such as those committed under coercion.

g) *Judges and police officers must take into account internal diversity within the various Roma communities.*

Eastern European Roma who came to Belgium after the Second World War are a very heterogeneous community. Some Roma groups aren't involved in begging activities and want nothing to do with them. This is certainly the case of young Roms born in Belgium, who have changed their values.

Roma is a term encompassing very different populations, mainly living in Europe, whose ethnicity is anything but homogeneous. There are of course certain shared cultural

traditions (that have also become diluted over time), but what really characterises the Roma community is an awareness based on the historical and contemporary experience that the non-Roma world can be hostile.

This powerful loyalty within the different Roma communities also has consequences on the attitude of Roma victims regarding their exploiters, also often from this community. We frequently see that this creates a strong relationship of dependency with the exploiter, which partly explains the significant mistrust of external persons and the refusal to make statements to the police. Their past negative experiences with the police have simply reinforced this attitude. Sometimes, the court has insufficient knowledge of the case and the cultural context that facilitates this relationship of dependency the victims of begging have with their exploiter.

h) *The new criminal policy directive (COL) on human trafficking for the purpose of exploitation of begging should clarify the distinction between the respective scopes of Article 433ter of the Criminal Code (exploitation of begging) and Article 433quinquies (human trafficking for the purpose of exploitation of begging)*

This would allow a better standardisation of the approach to human trafficking for the purpose of exploitation of begging, thus demonstrating to judges and the police that these cases are important and not simply a nuisance. The possible confusion between exploitation of begging (Article 433ter) and trafficking for the purpose of exploitation of begging (Article 433quinquies) can initiate different interpretations and can lead to arbitrary legal situations in the country's different jurisdictions. The new COL should take care of this problem and determine the difference between these two articles. A response could be found in the acts that serve as a basis for human trafficking (433quinquies), i.e. recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring the control exerted over a person. Contrary to Article 433ter, these acts indicate the

organised nature of the acts. Here, the 'organised' aspect could determine the difference between human trafficking

2. The fight against human smuggling

a) *A humane approach to the victims during the interception of persons subject to smuggling brings an important added value to the investigation*

Smuggling victims' phone data is crucial to open an investigation for human smuggling. A humane approach to the victims of smuggling when intercepted is therefore crucial. They will more easily surrender their phone to the police and give them their pin code if necessary. By winning their trust, victims of smuggling are sometimes willing to make a statement and thus bring an added value to the investigation. In the case of human smuggling with aggravating circumstances, the victim must be offered victim status and be received in a specialised centre. Most of the time, the victims aren't interested because they only want one thing: to reach the United Kingdom as quickly as possible.

b) *The use of social networks as a method of investigation must be encouraged*

The cases reveal that the police actually use social networks as a method of investigation. They are able to get information from open sources or the analysis of data from the smartphones given to them by the victims. They even used Facebook and Google Maps during the defendants' hearings. The elements discovered were used as objective evidence by the courts to motivate their decisions. This is revealed in the analysis of the investigation methods used in smuggling cases and the good practices dealt with in this report. Investigators should use social media more often during investigations.

c) *Financial investigations based on an international chain approach are required*

A vast financial investigation is an efficient way to tap into and financially exhaust the

(433quinquies) and simple exploitation of begging (433ter).

smugglers' networks. This kind of approach works well in an international chain approach, where all the links have a role to play. If a link goes missing or doesn't function, then the chain is broken. Hence, in practice, the smugglers ensure their criminal proceeds are safely transferred to their country of origin (for instance, Iraq, Afghanistan and the Indian-Pakistani region) by the hawala system. In some cases, we observed that these hawala bankers settled the payments in the destination country using the underground banking system. They are difficult to apprehend. Occasionally, it was possible to trace them back to the United Kingdom using phone taps, although it wasn't possible to arrest them. Here, good international collaboration is essential to effectively run the smuggling network dry on a financial level.

d) *It is necessary to stimulate international collaboration through joint investigation teams*

Some judges still don't make sufficient use of joint investigation teams (JIT) because they prefer to give priority to the rapid (and local) processing of cases, which means that the network isn't always fully dismantled. On the other hand, there are several smuggling cases that were successfully dealt with in Belgium, based on a JIT agreement. International cooperation plays a crucial role in the fight against human smuggling, where criminal networks largely exceed the borders. On a European level, it is conveyed through the existence of joint investigation teams (JIT). There is one essential condition: that the countries have a shared interest in the cases. In concrete terms, the police therefore work together in their respective countries. That means we no longer require letters rogatory.

COLOPHON

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