



Annual Assessment  
Report

2018

# Trafficking and smuggling of human beings

Minors  
at major risk



Federal Migration Centre

# Inhoud

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## INTRODUCTION

### Protecting minors, at all costs

#### *Voodoo connection*

On 31 May 2018, the criminal court of Brussels convicted a large Nigerian network of sexual exploitation. 'Mama Leather', a well-known madam in the criminal world, as well as her accomplices, were found guilty of human trafficking. The acts were by no means insignificant: more than 30 victims of forced prostitution, including minors; victims recruited 'to order'; rough and inhumane treatment during the journey and upon arrival. Myria filed a civil lawsuit in this case, which may still be ongoing. This spectacular case, which made the headlines owing to its extent, is symptomatic of a far more discreet underground reality: the grip of the so-called Nigerian networks on the world of prostitution. Sadly, there are very many of these young - and sometimes very young - girls who believe in the promises made back home and embark upon a dangerous journey, where they are generally mistreated or raped and end up in forced prostitution networks. One of the most striking facets of this phenomenon is the extent to which these victims feel bound by a debt incurred in their home country through voodoo rites, which traps them not only financially but especially psychologically. In its recommendations, Myria suggests paying far closer attention to this phenomenon and providing the victims with psychological support - thus helping to relieve them from the burden of these rituals that entrap a large number of young women in a circle of violence that is unacceptable in 21<sup>st</sup> century Europe - chiefly with the assistance of former Nigerian victims who have broken free from these ties. We also recommend that

**People apprehended without a residence permit tend to be considered as illegal first, before being thought of as potential victims of human trafficking.**

police departments are made aware of the fact that they can question the age of these girls who claim to be adults and report them to guardianship services as unaccompanied foreign minors. These networks don't hesitate to resort to a certain cynicism either, requiring their underage victims to pretend they are of age, or inciting them to enter into the asylum procedure so that they may become legal - to better cover their forced activity. One of the figures we mention in this report gives an idea of the extent.

#### *Minors at major risk*

These Nigerian networks are characterised by their recourse to voodoo rituals and excessive violence. But another of their grim trademarks is their unscrupulous recourse to child victims. More generally, the theme of child victims of trafficking and smuggling is the chosen subject

of our focus. The issue is all the more topical since transit migration is causing an increasing number of minors to attempt to pass via Belgium: in 2017, 17 % of those arrested, of all nationalities, within the framework of transit migration, were reported to the guardianship service as an unidentified foreign minor (UFM). While the number of arrests within the framework of transit fell slightly between 2016 and 2017, the number of cases reported to the guardianship service following these arrests is increasing (1,108 in 2016 compared with 1,582 in 2017). Although Belgium is considered as a model in the fight against human trafficking, there is still considerable room for manoeuvre concerning minors, as GRETA pointed out in its report published in 2017. GRETA encourages the

authorities to proactively identify child victims, especially by providing extra training for frontline professionals. It also recommends solving the problem of the disappearance of unaccompanied minors by ensuring safe accommodation is available.

Furthermore, as regards potential trafficking victims who are adults or supposedly adult, it is regrettable that the persons apprehended without a residence permit tend to be considered as illegal first, before being thought of as potential victims of human trafficking. Local police units responsible for checking red-light districts should systematically consider things from this angle, and be better trained in the procedures and the status of victim of human trafficking; these units' resources should be developed towards this end.

### *Smuggling: getting the right target*

Many minors are also involved in smuggling cases; this is necessarily the case of the Nigerian networks, since the victims (both minors and adults) must be brought to Europe illegally in order to be exploited within the framework of human trafficking. But this is also true of smuggling in general, even when the purpose isn't exploitation; it is a means of a migration with Belgium as the destination, or the country of transit, as highlighted in the news over the past few months. The tragic case of little Mawda, which made the headlines in May 2018, raised many questions in this respect: why weren't the procedures to detect smuggling victims implemented correctly? What happened during the identification of the presumed victims? Has the expertise developed to combat smuggling in human beings, especially in the judicial districts of Flanders around the E40 highway, been correctly shared with all the districts, including those in Wallonia, where the smuggling now seems to be taking place? Besides the case of the death of a little girl, an aspect that doesn't

directly concern Myria, the stakes of this case do indeed reflect the fact that human smuggling could be counteracted more efficiently. This is why we filed a civil suit in this case: in the hope that answers can be found to these questions. In particular, we have to destroy the smugglers' business model, not only by drying up their financial resources, which requires greater international collaboration, but also by placing more emphasis on the criminal nature of the actions undertaken by the smugglers, who put their victims at risk, and by performing more checks at places where they can be caught red-handed. Finally, it is important to make a clearer distinction between the smugglers and their victims: efforts must be made to take firm action against smugglers, and not against the migrants who pay them. This requires much better investment in care for the victims, and improving the status of victim of smuggling, in order to be able to use their statements as weapons against the smugglers.

### *A phenomenon that is difficult to grasp*

Every year, we endeavour to improve the presentation and processing of the available trafficking and smuggling figures, despite the difficulty of the sources' diversity. This year, we are proposing a focus in figures on administrative arrests and their outcome, within the framework of transit, with details of the evolution in the number of arrests and outcomes per nationality. There are also more details in the data from the Immigration Office (IO) concerning unaccompanied foreign minors, and significant methodological work has been undertaken with the police on the quality of the data in order to better discern the offences within the framework of trafficking or smuggling.

Other than that, what do the figures tell us? The IO data on victims who have entered the procedure show an increase in the number



victims of sexual exploitation (37 in 2013 compared with 55 in 2017) and a decrease in the number victims of labour exploitation (79 in 2013 compared with 65 in 2017). We also noted an increase in smuggling offences, which doubled between 2013 and 2017, although we are unable to say whether this is actually a phenomenon that is on the increase or the result of greater attention and resources deployed by the police concerning this issue. It is interesting to note that 63 % of the victims who entered the procedure in 2017 for smuggling are Iraqi.

### *Reinforcing and sharing expertise*

We would like to emphasise, as we do every year, that even if progress has been made, the structural financing of the reception centres for victims is still insufficient and must remain a concern. This was particularly highlighted in the news this year: the expertise of these three

centres is crucial, and should be operational throughout the entire country. Among our recommendations, we also propose improving care for unaccompanied foreign minors by supporting and recognising the specialised Esperanto reception centre, and by opening a similar centre in Flanders. By the same token, as mentioned above, the expertise against smuggling present in Flanders and Brussels should be better shared in Wallonia. In the fight against trafficking, there are positive experiences and expertise on both sides of the linguistic border which should be better shared between them. The sustainable protection of minors is a priority that can and must allow the different institutional, administrative and cultural divisions to be overcome.

François De Smet

*Director*



## Part 1. Myria in action

Discover how Myria is organised, its budgetary situation and an overview of its main collaborations and publications. In 2017, Myria posted positive results, although the financial situation is still of concern and the imposed savings continue to be a major problem.

In 2017, Myria filed a civil lawsuit in several new cases: two concerning human trafficking and two concerning human smuggling. A final judicial decision was pronounced in 14 cases in 2017: four cases of sexual exploitation, five cases of labour exploitation and five cases of human smuggling.



## 1. Institutional situation

Myria, the Federal Migration Centre, is an autonomous public body which independently exercises its three complementary mandates: safeguarding the fundamental rights of foreign nationals, providing information on the nature and scale of migration flows, and stimulating the fight against the trafficking and smuggling of human beings. Myria was founded on 15 March 2014 and has a team of almost 20 people.

It is managed by a board of directors, appointed by the Federal Parliament, and its chief responsibility is to determine the general policy, approve the accounts, define the communications policy and decide whether or not to engage in legal proceedings. The director is responsible for day-to-day operational and budgetary matters, executing the board of directors' decisions and preparing recommendations.

The members of the Federal Migration Centre's board of directors on 1st October 2018

Dutch-speaking staff	Dutch-speaking alternates
Mrs Shaireen Aftab (chairperson)	Mrs Caroline Deiteren
Mr Yves Aerts	Mr Jan Theunis
Mrs Els Schelfhout	Mrs Jacqueline Goegebeur
Mr Herman Van Goethem	Mr Bernard Hubeau
Mr Jogchum Vrielink	Mr Selahattin Koçak
French-speaking staff	French-speaking alternates
Mr Louis-Léon Christiaens	Mr Daniel Soudant
Mrs Soti Ngo	Mrs Maïté De Rue
Mrs Christine Nina Niyonsavye	Mrs Christine Kulakowski
Mrs Bernadette Renaud	Mrs Claire Godding
Mr Thierry Delaval	Mr Patrick Wautelet

## 2. Accounts and financial situation

The balance sheet for 2017 shows a **surplus of € 200,925**. This surplus follows a deficit of € 28,784.29 in 2016.

This 'good' result needs to be explained and nuanced with regard to Myria's financial situation, which is always under pressure.

For several years now, Myria has been asking for the payback on austerity measures applied unfairly and unlawfully since 2014. After having made the government aware in March 2017, and in an attempt to put an end to the cutbacks in June when the 2018 budget was drafted, Myria sent a 30-page note in September to the

Chamber's Internal and Budget committees. Without success. Unfortunately, Myria has no options left - other than possible legal action against the Belgian state. It will continue, as soon as possible, when the budget cut controls take place.

Nevertheless, Myria's efforts to attempt to put an end to the cutbacks resulted in a number of positive elements in 2017:

- the indexation of the National Lottery grant not collected in 2016 (approximately € 15,000) was reimbursed by the state in 2017;

- the indexation of the 2017 grant was immediately posted;
- the increased cuts (-2 % more every year) seems to have come to an end in 2017;
- FPS Foreign Affairs intervened in the costs for the translation of the *2017 Trafficking and smuggling of human beings* report into English, which allowed Myria to save approximately € 11,000.

These different points add to the careful and rationed management of activities in 2017 (e.g.

staff on sick leave or maternity leave not replaced, limited investments in studies, no investment in communication campaigns, etc.). Overall, this explains the positive result, which allows us to anticipate a better year in 2018. However, we should be able to see the forest through the trees: Myria's situation is still very worrying, and the cuts continue to be a major problem in a context that is nonetheless strongly impacted by the migration debate.

Balance sheet as of 31 December 2017 (x € 1,000)			
Assets	1,438	Liabilities	1,438
<b>Fixed Assets</b>	<b>0</b>	Initial capital	835
		Cumulativ result	223
<b>Current assets</b>	<b>1,438</b>	<b>Debts</b>	<b>380</b>
Trade receivables	257	Suppliers	72
Financial assets	91	Social security debts	93
Cash investments	250	Other debts	215
Cash and cash equivalents	840		
Income statement 1 January 2017 – 31 December 2017 (x € 1,000)			
Revenues	1,647	Expenses	1,446
Subventions	1,483	Project expenses	128
Revenue from projects	155	Operating costs	379
Financial revenue	9	Staff costs	930
		Depreciations	9
		Result 2017	201

### 3. Myria and its network: at national level

#### Public authorities

Despite being autonomous in relation to the government, Myria is a public player that exercises its tasks on a completely independent basis. Its intention is to be able to discuss with all the stakeholders concerned with its tasks: public authorities, institutions, associations, interest groups, political parties, research centres and citizens. Much of the statistical and recommendation work is only possible thanks to contacts and relations maintained with numerous public authorities, in particular: the Immigration Office, the Commissioner General

for Refugees and Stateless Persons, Fedasil, FPS Interior, FPS Justice, FPS Foreign Affairs, FPS Employment, the Directorate-general Statistics, the Aliens Litigation Council and Committee P.

Contacts were also established with the police at Brussels Airport and the General Inspectorate of the Federal and Local Police (AIG) within the framework of writing the *MyriaDoc A return, at what cost?*

## Public authorities

Myria's relationship with the federal government is based on key issues, on which Myria endeavours to make its voice heard 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 and Equal Opportunities.

Besides the budgetary and institutional difficulties already mentioned above, 2017 led to new developments concerning the transposition of European Directive 2014/54<sup>1</sup>. After having unsuccessfully requested recurrent funding to meet the obligations of implementing the directive, Myria received an exceptional (and therefore one-off) subsidy in 2018 of € 200,000 from the Ministry of Employment to follow through with this implementation. Since this subsidy isn't recurring, Myria is examining how to use it in terms of investments that comply with improving the free movement of European workers.

New discussions also arose in 2017 concerning the probable move of Myria, Unia and their partners to a new building. The discussions should come to a close in 2018. Myria and Unia have developed specifications for this purpose to ensure that their duties' needs shall continue to be met in a new place.

## The 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 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 is occasionally asked to provide its expertise when a point that falls within its remit comes up:

- Myria made a presentation on child victims of human trafficking to the Chamber's Internal Affairs Committee on 24 January 2017;
- On 21 February 2017, Myria appeared before the same committee, with the Federal Mediator and other relevant stakeholders, regarding the medical regularisation procedure (Article 9<sup>ter</sup> of the Aliens Act);
- In July, the Interior Committee asked Myria to give an opinion on bills extensively modifying the asylum procedure, with an impact on the removal and detention procedure (DOC 54 - 2549/001 et 2548/001);
- Finally, it should be noted that the Senate allowed Myria to use its rooms to hold a closed seminar when it brought out its *Myriadoc A return, at what cost?*, relating to the return, detention and removal policy, published in November 2017.

## Unia

Unia, the Interfederal Centre for Equal Opportunities, is without a doubt 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 reflected through their strong collaboration, the shared use of cross-cutting

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<sup>1</sup> Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

services and valuable human relations. Furthermore, Myria's board members also serve on Unia's board of directors.

There are many collaborations with Unia concerning key issues, reflecting the common values that underpin both institutions:

- In 2017, Myria contributed to the elaboration of the *Socioeconomic Monitor*, by actively proofreading the chapter on the analysis of reasons for residence according to the people entering Belgium in 2010 and 2013;
- Myria and Unia also signed a memorandum of understanding in order to allow Unia to submit an application to the Sub-Committee on Accreditation, responsible for accrediting United Nations National Human Rights Institutions, with a view to recovering the status that was formerly held by the Centre for Equal Opportunities and Opposition to Racism;
- Finally, Myria actively participates in the Unia-Myria *Lunch talks*, where it presented various projects and studies based on its work.

### Contact meeting on international protection

Since January 2016, Myria has resumed the contact meetings bringing together the various asylum stakeholders, previously organised by the Belgian Committee for Refugee Aid. The objective remains the same: that asylum authorities and organisations active in the field of asylum, reception and voluntary return should continue to attend these meetings to share information in a spirit of dialogue and courtesy. These meetings are chaired by Myria's staff, who also take the minutes, which are available on its website<sup>2</sup>.

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<sup>2</sup> [www.myria.be/fr/reunions-de-contact-protection-internationale](http://www.myria.be/fr/reunions-de-contact-protection-internationale).

### Transit Group of visitors to the detention centres

In 2017, Myria participated, as an observer, in the political monitoring meetings of the Transit Group, which brings together organisations who visit detention centres and repatriation centres. Within this context, it provided support for the Transit Group's analyses of issues associated with the detention and removal of foreign nationals. It also provided legal support to visitors of detention centres and repatriation centres, especially within the framework of following up individual cases. Myria also provided the visitors with legal training (on the Dublin III Regulation, marriage, legal cohabitation and family reunification of persons detained in detention centres).

### Platform for a national human rights institution

Myria has been participating in a consultation platform since 2014, that was set up between Belgian institutions fully or partly exercising an institutional mandate for the respect of human rights.

It meets every month to exchange information, pending the possible establishment of a national human rights institution that would coordinate part of the activities of structures sharing the task of promoting and protecting human rights.

### Federal mediator

On 5 October 2017, Myria invited members of the Federal Ombudsman to share views on individual cases and structural problems common to both institutions.

### Minors in Exile Platform

In 2017, Myria participated as an observer in the Minors in Exile Platform's 'Families in

Migration', 'Detention' and 'UFM' work group meetings.

### Justice for All Platform

In 2017, Myria participated as an observer in the Justice for All Platform working sessions.

### Platform to obtain Belgian nationality

In November 2016, Myria organised a meeting for the various stakeholders in contact with people wishing to acquire Belgian nationality. Its purpose was to establish an initial state of play as regards the practices, interpretation problems and obstacles concerned with obtaining nationality since the reform of the Belgian Nationality Code in 2013. This work provided material for the recommendations set out in the Nationality chapter of the *Migration in figures and rights 2017* report. The findings will be communicated to institutional players.

### Training

- Myria participated in a training day on human trafficking and child victims for youth workers in the French-speaking Community, on 21 April 2017, where it made a presentation on *Trafficking of minors: case studies*;
- On 4 May 2017, Myria took part in a training day for judges on human trafficking, organised by the Judicial Training Institute. Myria gave a speech on *Human trafficking for the purpose of exploitation of begging*, in collaboration with a police department;
- Myria participated in a *Human trafficking and smuggling: policy and approach* training session at the Flemish Brabant police college on 18 May 2017;

- Myria created a training session on labour exploitation through social media for the Social Inspectorate on 14 December 2017;
- Myria gave a three-day training session on the *Demographics of migration* in Rabat in October 2017. This training is part of the development pillar of the *Regional Development Protection Programme (RDPP) in the North of Africa* project, funded by the EU and organised by the IOM;
- In collaboration with UNIA, Myria participated in a regional consultation on 26 June 2017 concerning refugees in Meetjesland, organised by the 'Agentschap Integratie Inburgering' (presentation of the new Myria-UNHCR project on the family reunification of beneficiaries of international protection).

### 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 bureau, and also provided secretarial support. The unit also held a meeting in October 2017. This mainly concerned the adoption of a new multidisciplinary circular on the victim referral mechanism. Myria also participated in the unit's monthly bureau meetings.

### Coordination meetings on human trafficking in the judicial districts

Myria actively participated in the meeting of the Ghent platform (September 2017), where it presented its 2017 annual report on *Trafficking and smuggling of human beings*, among other things.



## 4. Myria and its network: at international level

### UNHCR

In partnership with UNHCR, Myria launched a project on family reunification for beneficiaries of international protection (recognised refugees who benefit from subsidiary protection) in April 2017. Myria appointed a legal adviser, within the framework of this partnership, who manages the project and acts as the person of reference on this theme at Myria. The facilitation of family life is an essential element in the effective protection of refugees. Hence, the aim of this project is to facilitate family reunification for beneficiaries of international protection, and promote the quality of the family reunification procedure in Belgium. The target group not only concerns members of the nuclear family, but also members of the extended family whose right to family life is often at stake. The context for this project is the great number of requests for family reunification among beneficiaries of international protection, owing to the high recognition rate among certain nationalities over the past few years. The project was presented on Myria's website, by mail and at numerous events addressed to the various players working in the field: Unia, the International Committee of the Red Cross (ICRC) and the Commissioner for Human Rights, Nils Muižnieks, within the framework of a meeting organised by ENNHRI.

Within the framework of this project, Myria provides specialised legal and practical advice through its helpdesk. Myria also receives individual files based on requests for family reunification visas or humanitarian visas for members of the family, either through the

intervention of UNHCR or the governmental bodies concerned. The files are always followed up in collaboration with frontline players (such as lawyers, social workers, guardians, etc.). Within the framework of this project, Myria followed up 306 reports in 2017 and opened 26 files<sup>3</sup>.

It is also trying to support these players by making information as available as possible, and through training. In 2017, the Myria website was adapted so that all the information on the procedure is now available step by step. Myria ordered extra brochures from UNHCR so it could hand them out to visitors in 2018. Myria also shared two lists of questions and answers with the players concerned, for the attention of the Immigration Office and FPS Foreign Affairs, as well as the report of the meetings with these authorities.

Myria serves as a platform and spokesperson for these partners and also acts a mediator between the different players involved. In June 2017, Myria organised a meeting with the authorities concerned (UNHCR, IO and FPS Foreign Affairs). In November 2017, Myria also met with the Foreign Affairs office. In September 2017, Myria organised a meeting with a large group of partners (40 participants) and another one with lawyers (14 participants). Finally, Myria's goal is to defend this target group's right to family life by formulating policy recommendations concerning the authorities and governments involved. In 2017, the annual report focused on humanitarian visas, some of which concerned family reunification with members of the extended family. In 2017, an

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<sup>3</sup> Within the framework of this project, a case is only opened if there is extended support over a longer period, where Myria has an added value and with the possible intervention of UNHCR, competent authorities such as the IO, F.P.S. Foreign Affairs or embassies.

analytical paper was also updated in collaboration with UNHCR, which features the different obstacles and recommendations concerning this theme. It will be published in 2018.

The project is closely monitored in partnership with UNHCR. In 2017, Myria submitted several reports to UNHCR on content and the financial aspects. Five meetings were organised and Myria is also in daily contact with UNHCR Belgium to obtain updated information on the theme.

Outside the framework of this project, Myria also participated in several meetings in 2017 organised by UNHCR: two on legal aid, one on integration, and another on asylum.

### 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 EMN is ensured by a multi-institutional point of contact, which involves staff from four institutions: Myria, Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Fedasil and the Immigration Office. FPS Interior is responsible for coordinating the Belgian Point of Contact. Myria is a member of the steering committee for the Belgian Point of Contact and actively participates in day-to-day activities, in collaboration with the above-mentioned institutions.

The EMN was established by an EU Council Decision (2008/381/EC) in order to help provide up-to-date, objective, reliable and comparable migration and asylum data to support decisions in these areas in Belgium and within the European Union. It is also responsible for informing the general public<sup>4</sup>.

In June 2017, the EMN published its 2016 annual report on migration and asylum in the

EU (at Member State and European levels), as well as a series of reports on specific themes. The subjects covered by these thematic studies are approved every year by the EMN's steering committee. Every Member State produces a national report based on a joint list of questions. On the basis of these national reports, the EMN produces a comparative summary report at European level.

The thematic studies for 2017 related to:

- Changing influx of asylum seekers in 2014-2016 responses of (Member) States;
- Challenges and practices in establishing the identity of asylum seekers during the migration process;
- The efficiency of the return procedures in Member States: challenges and good practices associated with European regulations and standards;
- Unaccompanied minors after determining status.

As a member of the national advisory committee, Myria has actively contributed to the elaboration of the Belgian study on the efficiency of return procedures. Myria was also a member of the advisory committee both at European and national level, for a thematic study in 2016 on illegal work among third-country nationals.

In addition, Myria took part in various EMN events in 2017. First of all, a Myria member of staff gave a presentation at an expert seminar in Latvia in March 2017, on the situation of illegally staying migrants whose return or removal was deferred. Moreover, Myria participated in the EMN 'Group of experts on return' enlarged meeting in June 2017, during which possibilities of cooperation between (Member) States and civil society in the area of return were explored. Myria also took part in the Belgian point of contact's conference

<sup>4</sup> See the EMN website: <https://emnbelgium.be>.

devoted to illegal work among third-country nationals in Belgium and the EU, which was held in Brussels in October 2017. Furthermore, Myria's assistant director took on the role of moderator during the national conference organised by the Belgian point of contact in December 2017 in Brussels. Dedicated to the main developments in terms of migration and asylum in Belgium in 2017, this conference also provided a Myria expert with the opportunity to present developments in human smuggling and its impact on transit migration.

#### Informal network of national rapporteurs and equivalent mechanisms in the area of human trafficking

Myria actively participates in the meetings of the informal network of national rapporteurs and equivalent mechanisms on human trafficking. These meetings are co-organised by the EU Anti-Trafficking Coordinator, Dr. Myria Vassiliadou, and the EU presidency. The themes discussed at these meetings were, primarily, the European Commission's second report on the progress made by the States in terms of combating human trafficking, the trafficking estimation systems and the links between human trafficking and drug trafficking. During the meeting of 4 and 5 December 2017, Myria presented its 2017 annual report, on the use of the internet and social media within the framework of human trafficking.

#### European Network of National Human Rights Institutions (ENNHRI)

Myria is a member of ENNHRI, a regional network comprised of the national human rights institutions from the whole of Europe, with some 40 members. Its goal is to improve the promotion and protection of human rights in Europe, by supporting the development of

the national human rights institutions and by encouraging their cooperation on specific themes.

Within this context, it represented ENNHRI in February 2017 in the Council of Europe's Steering Committee for Human Rights' Drafting Group on Migration and Human Rights (CDDH-MIG), which works on the issue of alternatives to detention.

Myria also actively participates in the Working Group on Asylum and Migration set up in 2007, which it has chaired for several years in cooperation with the Deutsches Institut für Menschenrechte (German Institute for Human Rights). Within this framework, it has participated in a study on migrants' access to information on their rights in detention centres (see Myriadoc #5), which was conducted in 12 European countries. In October 2017, Myria also presented its work at a round table co-organised by ENNHRI and the Council of Europe's Commissioner for Human Rights, Nils Muiznieks, on the right to live as a family, in the margins of the working group's annual meeting. Myria presented its new Myria-UNHCR project on the right to family reunification among people benefiting from international protection. It also shared its expertise on disputes with the legal working group, to which it belongs. It attended the group's annual meeting organised in Utrecht in June 2017.

#### Council of Europe

Within the framework of a project supported by the Council of Europe, Myria co-conducted a workshop in Tunis on 4 and 5 October 2017, on drafting and preparing follow-up reports on human trafficking for the Tunisian national institution against human trafficking.

## 5. Publications and tools

Myria deploys a large part of its activities through its publications. These diverse and varied works focus on its three basic tasks. Since 2015, special attention has been given to the diversification of 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.

All of Myria's publications can be downloaded for free at [www.myria.be](http://www.myria.be). Some publications are also available in hard copy and can be ordered.

### Migration in figures and rights 2017 and 2018

Published in June 2017, the focus of the *Migration in figures and rights* report concerned humanitarian visas. The focus of the June 2018 report related to family reunification.

### Trafficking and smuggling of human beings 2017: Online

Published in October 2017, the *Trafficking and smuggling of human beings: online* report focused on the online aspects of trafficking and smuggling, and the policing and judicial means deployed to combat these phenomena.

### Myriadocs

Myria has been completing its range of publications since 2016 with the Myriadocs. These publications are less in-depth than the annual reports, providing thematic analyses of legal, political or topical subjects. They are only published in digital format. No less than four Myriadocs were published in 2017:

- Myriadoc 3: The legal status of stowaways;
- Myriadoc 4: Humanitarian visas;
- Myriadoc 5: Return, detention and removal 2017 (recurring annual publication);
- Myriadoc 6: Being a foreign national in Belgium in 2017 (recurring annual publication);
- Myriadoc 7: A foreigner in your commune.

### Myriatics

Myriatics are short studies with a demographic approach that Myria has been publishing since October 2015. Their goal is to focus on a specific theme, which is different every time. The aim of these mini studies is to be factual, precise, concise and accessible.

The Myriatics published in 2017:

- Myriatics 7: Migration in figures (complement to the Annual Migration Report);
- Myriatics 8: Migration flows and asylum flows: untangling the figures;
- Myriatics 9: Ageing and immigration: a major challenge for Europe.

## 6. Trafficking and smuggling of human beings

### 6.1. Myria in court - 2017

Every year, Myria files civil lawsuits in several 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. In this section, we shall present an overview of all the cases initiated in the past year, as well as cases that were closed during the same period.

Myria files civil lawsuits according to criteria based on selection as well as opportunity, set out 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 appointing Myria as its rapporteur, mentions filing civil lawsuits as being a source of expertise for the independent rapporteur in terms of human trafficking. In order to facilitate these choices, Myria adheres to the following guidelines: the symptomatic nature of the case, especially in view of Myria's reporting role, the importance of the hoped-for jurisprudence, and any action deemed necessary (e.g.: victim support).

### 6.2. New cases in 2017

In 2017, Myria filed civil lawsuits in four new cases: two concerning human trafficking and two concerning human smuggling

#### 6.2.1. Human trafficking

##### *Sexual exploitation -Brussels*

This subject concerns an extensive Nigerian human trafficking network active in the neighbourhood around Brussels-North railway station. The young girls were recruited 'to

order', upon the request of a 'madam' in Europe, by henchmen, mainly in the region of Benin City. After being subjected to a voodoo ceremony, during which they promise to obey their pimp, the young girls are transported, often in a group, to the Libyan coast by Nigerian smugglers. This journey lasts from several weeks to several months, is very risky and is full of hardships. Furthermore, the young girls are regularly raped on the way by the smugglers and their entourage. It isn't unusual for victims to die during the journey.

Once in Europe, they are almost immediately told what their work really is in the local red-light district and that they have to reimburse their so-called debt of EUR 45,000 by working as a prostitute. If they disobey or try to escape, the young girls' families in Nigeria are threatened, blackmailed, beaten up, kidnapped or even killed.

Around 30 victims were identified by the police and oriented towards the status of victim of human trafficking. Among them were several minors aged between 14 and 16 years old.

Brussels Criminal Court ruled on this case on 31 May 2018. This case is dealt with both in the focus and in the 'case law' chapter in this report.

##### *Labour exploitation - Night shops - Ypres*

This human trafficking case concerns acts of labour exploitation perpetrated by the manager of various night shops and clothes shops. Through his companies, he used various setups to exploit at least 15 Pakistani victims as bogus self-employed workers. He monitored them using cameras, 'fired' them if he wasn't satisfied with them, and took their shares. The accountant who helped with the setup is also being prosecuted.



This human trafficking case is also linked to an investigation into human smuggling concerning a criminal organisation involved in setting up sham marriages on an international scale.

Ypres Criminal Court ruled on this case on 8 January 2018. An appeal was made against this decision. This case is dealt with in the 'case law' chapter in this report.

### 6.2.2. Human smuggling

The first case was opened in Ghent and concerns Syrian victims. One of the main defendants was an employee at the Syrian Embassy in Paris, who sold fake papers to Syrian migrants between 2013 and 2015 at a high price. Eurojust played an important role in the coordination of the international investigation. The criminal profits are estimated at EUR 1,164,000 minimum.

Ghent Criminal Court ruled on this case on 16 October 2017 and this case is now closed as far as Myria is concerned. This case is dealt with in the 'case law' chapter of this report.

The second case concerns the acts of an Egyptian/Moroccan/Syrian network operating along the E40 motorway, aimed at smuggling people to the United Kingdom. A total of 495 human smuggling victims were identified, including 93 minors and 402 adults. Serious acts of violence were committed against the victims: they were beaten with metal rods as they were pushed into refrigerated lorries.

Termonde Criminal Court ruled on this case on 3 November 2017. An appeal was made against this decision. This case is dealt with in the 'case law' chapter of this report.

## 6.3. Cases closed in 2017

Some cases were also concluded and closed in 2017. Hereafter, are a series of cases for which a final decision was pronounced in 2017.

In 2017, 14 cases were closed: four cases of sexual exploitation, five cases of labour exploitation and five cases of human smuggling.

### 6.3.1. Sexual exploitation

An initial case was tried in Brussels. It concerns a Nigerian human trafficking and smuggling network with an international reach. A Nigerian woman recruited young girls whom she then forced into prostitution in different countries in Europe, including Belgium. The investigation revealed that the young girls were placed through intermediaries in Libya and Italy. The victims in this case, which included minors, were placed in three reception centres for trafficking victims. This case also shed light on the money transfer system particular to Nigerian networks. Brussels Criminal Court definitively convicted the six defendants in this case on 28 March 2017. This case is dealt with in the 'case law' chapter in the previous report<sup>5</sup> and in the 'case studies' part of the present report.

A second case was tried in Liège. It was amply dealt with in the 'case law' part of the previous report<sup>6</sup>. The appeal decision is dealt with in this report. This is an extensive case concerning human trafficking for the purpose of sexual exploitation and money laundering, involving several districts (Liège and Charleroi, in particular). 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 acts and

<sup>5</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 100-101.

<sup>6</sup> *Ibid.*, pp. 108-110.

the French one on the money laundering aspect: it transpired that the money resulting from the prostitution of the young Romanian women in bars was actually reinvested in French companies. The majority of the defendants were convicted by the Criminal Court of Liège on 14 September 2016. In a judgement of 12 September 2017, Liège Court of Appeal reduced the sentence handed down in the court of first instance regarding two of the convicted persons who had filed an appeal.

A third case concerns the exploitation of young women from Eastern Europe by two Bulgarian brothers and a person who hadn't yet been identified. The two brothers were convicted by the Criminal Court of Charleroi on 18 September 2013. Myria filed a civil lawsuit in relation to the part of the case aimed at identifying the third defendant. The latter was definitively acquitted by the Criminal Court of Charleroi on 24 April 2017. The court considered that the defendant's role was too limited to justify a conviction. It appeared that his role was limited to occasionally having driven some of the prostitutes to their place of prostitution.

Finally, a fourth case concerns Thai massage parlours, where 20 defendants were prosecuted. This case was amply dealt with in the 'case law' part of the previous report<sup>7</sup>. Two young Thai women were recruited in Thailand and were then exploited in a massage parlour in Belgium. The main defendant and his wife had set up the massage parlour. Other defendants were responsible for the practical and daily organisation of the massage parlour. Accountants were also prosecuted for having advised the owner on which financial constructions to use, as well as a lawyer who was paid in kind for his advice on residence regulations. The court convicted the majority

of the defendants, six of which in absentia. One of the defendants convicted after due hearing of the parties had appealed but their conviction was confirmed by Ghent Court of Appeal on 11 September 2017.

### 6.3.2. Labour exploitation

Five cases of labour exploitation concerning various sectors were closed: domestic work, transportation, horticulture, hotel & catering.

One symbolic case, the notorious so-called 'Conrad princesses' affair, was finally disposed of by Brussels Criminal Court on 23 June 2017. This case, which was widely covered in the previous report<sup>8</sup>, concerns the exploitation of young women of various nationalities, as domestic workers, by princesses from the United Arab Emirates staying in one of the top hotels in Brussels. The princesses were convicted of human trafficking.

A case concerning the transportation sector was finally disposed of in Liège. This case was dealt with in the 'case law' section of a previous report<sup>9</sup>, and concerned wide-scale fraud involving no less than 19 defendants. A road transport company illegally employed drivers, who were mainly Turkish and Bulgarian. Several drivers were in a precarious situation. Furthermore, four defendants were prosecuted for human trafficking. At first instance, Liège Criminal Court had retained the majority of charges in a judgement of 25 April 2016, i.e. forgery, social legislation violations and tax fraud among the natural persons. On the other hand, it acquitted the defendants of the charge of human trafficking, as it considered that the investigation hadn't managed to establish the evidence to the legal requisite standards. In a judgement of 14 December 2017, Liège Court of Appeal

<sup>7</sup> *Ibid.*, pp. 101-103.

<sup>8</sup> *Ibid.*, pp. 122-124.

<sup>9</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 169-170.

confirmed the acquittal of the defendants for acts of trafficking.

Two cases in the horticultural sector were also closed, one in Ghent and the other in Antwerp.

The first case concerned the exploitation of Bulgarian workers, including a minor, at a mushroom farm. This case, tried at first instance by Kortrijk Criminal Court on 16 February 2015, resulted in the conviction of 10 defendants for human trafficking among other things. The majority of the convictions handed down, including acts of human trafficking, were confirmed by Ghent Court of Appeal in a judgement of 19 January 2017. These decisions were presented in the 'case law' section of previous reports<sup>10</sup>. This case is also dealt with in the 'case studies' section of this report.

The second case involves two Belgian defendants, a manager and his wife, who exploited at least 39 Romanians to pick tomatoes. The victims were locked in greenhouses while they were picking, under the supervision of an aggressive guard dog. Their living conditions and accommodation were also precarious. Mechelen Criminal Court convicted the defendants in a decision of 10 February 2017, dealt with in the previous report<sup>11</sup>. Antwerp Court of Appeal broadly confirmed the convictions handed down at first instance in a judgement of 9 November 2017, which is presented in the 'case law' section of this report.

Finally, the last case to be closed concerns the exploitation of a worker in an Asian restaurant. This person received no wages, was housed in appalling conditions above the restaurant and was only allowed to eat the customers' leftovers. The manager and the company were

convicted by Bruges Criminal Court on 4 May 2016. This decision was broadly confirmed by Ghent Court of Appeal in a judgement of 11 October 2017.

### 6.3.3. Human smuggling

Five cases of human smuggling were finally disposed of in 2017.

One case relates to an international network of Albanian smugglers. This network had international ramifications in several European countries. They smuggled Albanian nationals who had arrived in Belgium into the United Kingdom, including minors. Eleven defendants were convicted, including several in absentia, by Brussels Criminal Court on 6 October 2015. One convicted person, who had filed an appeal, had their conviction confirmed by a judgement of the Brussels Court of Appeal on 17 May 2017. This case was dealt with in the previous report<sup>12</sup>.

Another case concerns a Nigerian human smuggling network. A defendant had set up a network to bring Nigerian students over to Belgium in a seemingly legal manner. He used student visas for this purpose, obtained on the basis of fake documents from a university or college. The defendant had been convicted for human smuggling by Leuven Criminal Court on 12 May 2015. Brussels Court of Appeal confirmed the majority of the judgement in a decision of 23 January 2017. This case was amply dealt with in the previous report<sup>13</sup>.

A third case concerns a British-Ukrainian gang of smugglers whose activities were brought to light following the murder of a lorry driver by several members of the gang. Fifteen defendants were definitively convicted for

<sup>10</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 120-121; 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 116-118.

<sup>11</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 118-119.

<sup>12</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 129-130.

<sup>13</sup> *Ibid.*, pp. 125-126.

human smuggling, among other things, by Ghent Criminal Court on 10 January 2017. This case was dealt with in the previous report<sup>14</sup>.

The fourth case relates to acts of human smuggling committed by a Kurdish network. The latter smuggled victims of predominantly Syrian, Iraqi, Iranian and Afghan origin into the United Kingdom, including minors, in refrigerated containers. The organisation's masterminds operated from the United Kingdom, but it was possible to arrest and extradite them thanks to good collaboration with the British authorities. One of the perpetrators behind this smuggling was a repeat offender, who had already been convicted in earlier human smuggling cases. The gang was convicted by Termonde Criminal Court on 25 April 2016. Ghent Court of Appeal broadly confirmed the convictions handed down at first instance in a judgement of 6 February 2017. This case was dealt with in both the 'case studies'<sup>15</sup> and the 'case law' sections<sup>16</sup> of the previous report.

Lastly, a final case, in which Myria filed a civil suit in 2017, was closed the same year. It concerned Syrian victims. One of the main defendants was an employee at the Syrian Embassy in Paris. Eurojust played an important role in the coordination of the international investigation. Ghent Criminal Court ruled on this case on 16 October 2017, which is now closed as far as Myria is concerned. This case is dealt with in the 'case law' chapter of this report.

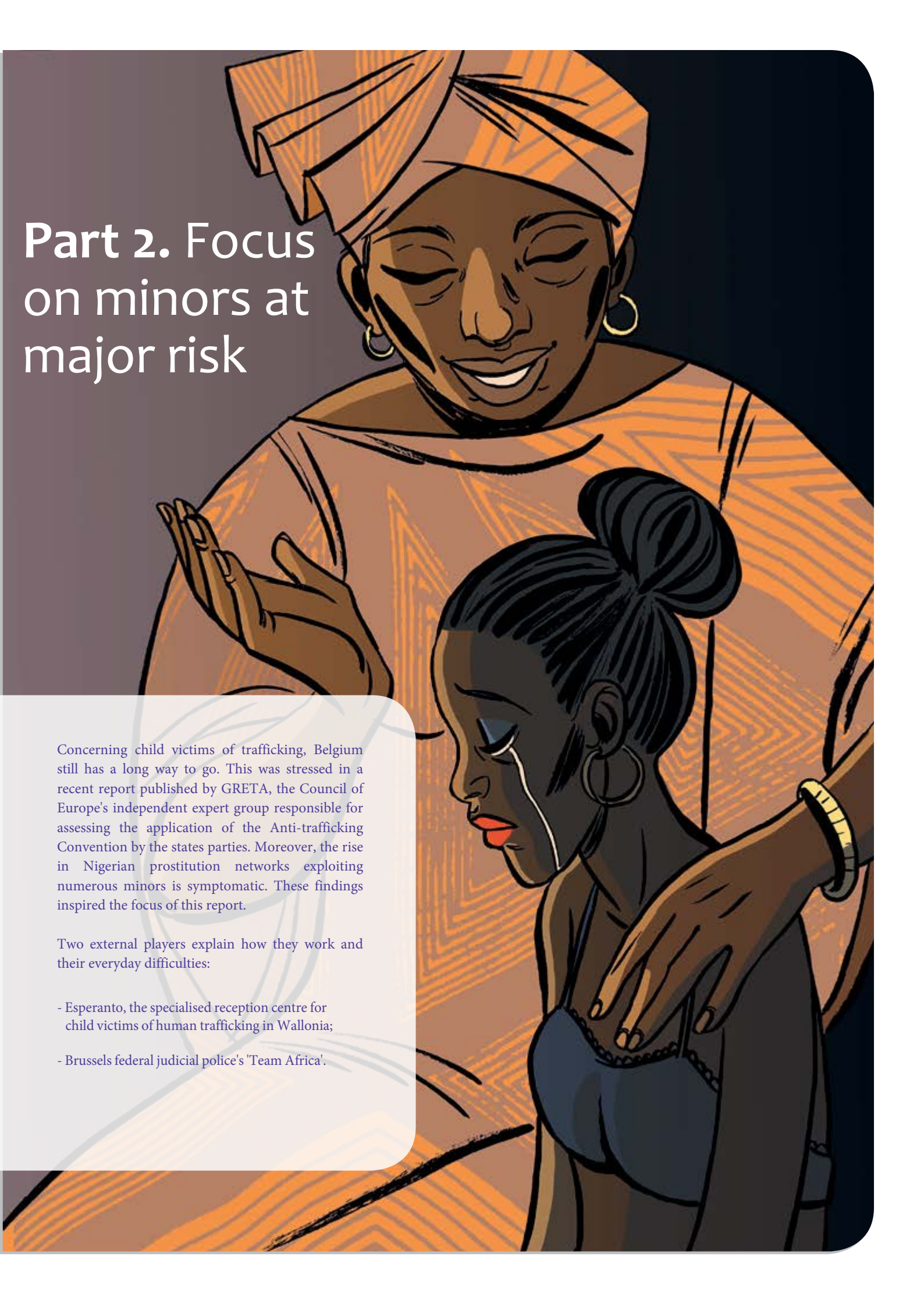
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<sup>14</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 127-128.

<sup>15</sup> *Ibid.*, pp. 88-95.

<sup>16</sup> *Ibid.*, pp. 127-128.





## Part 2. Focus on minors at major risk

Concerning child victims of trafficking, Belgium still has a long way to go. This was stressed in a recent report published by GRETA, the Council of Europe's independent expert group responsible for assessing the application of the Anti-trafficking Convention by the states parties. Moreover, the rise in Nigerian prostitution networks exploiting numerous minors is symptomatic. These findings inspired the focus of this report.

Two external players explain how they work and their everyday difficulties:

- Esperanto, the specialised reception centre for child victims of human trafficking in Wallonia;
- Brussels federal judicial police's 'Team Africa'.



This year, Myria has decided to dedicate the focus of its report to child victims of human trafficking and smuggling. One of the reasons that led to this choice is the recent report published by GRETA - the Council of Europe's independent expert group responsible for assessing the application of the Anti-trafficking Convention by the states parties - on the Belgian situation. This report particularly specified that progress was still expected concerning child trafficking victims.

Moreover, the rise in Nigerian prostitution networks exploiting numerous minors, also prompted us to pay special attention to these child victims of sexual exploitation.

In the first chapter, we shall begin by providing an overview of the profiles of child victims of human trafficking and smuggling (point 1) before examining the provisions of victim status and the reception of these minors (point 2). Within this framework, we shall also highlight the main difficulties that seem to exist

and that compromise the efficient protection of these minors. Finally, we shall elaborate several possible solutions.

The second chapter focuses more particularly on Nigerian child victims of human trafficking. Firstly, we shall look at the history and appearance of human trafficking in Nigeria before giving a few examples of Nigerian cases where minors have been exploited. Thirdly, we shall look at the problems inherent to this group of victims.

In this part, two external contributors also provide us with information:

- Esperanto, the specialised reception centre for child victims of human trafficking in Wallonia, explains how it works and the everyday difficulties it encounters in its support of these minors;
- Brussels federal judicial police's 'Team Africa' speaks to us about the Nigerian networks and the difficulty of detecting child victims.

# CHAPTER 1. GENERAL OVERVIEW

## 1. Profiles of child victims of human trafficking and smuggling

According to Frontex, the European Border and Coast Guard Agency, children are the second largest group of victims of human trafficking after women<sup>17</sup>:

"For the period between 2012 and 2014, child victims represented approximately 25 to 30 % of the total number of human trafficking victims<sup>18</sup>. The EU,

in particular, recorded a rise in the number of child trafficking cases reported over the past few years. According to the available statistics relating to this phenomenon for the period between 2013– 2014, 2,375 out of a total number of 15,846 victims recorded in the EU were children. The phenomenon has been exacerbated by the current migration crisis, during which the number of children arriving in the EU who are unaccompanied or separated from their family within the framework of the migration flow, has increased exponentially in recent years<sup>19</sup>.

Human smuggling networks contribute significantly in this respect. According to IOM, UNHCR and UNICEF reports, some 33,000 children arrived in the EU in 2017, almost 20,000 of which were unaccompanied foreign minors (UFM): "In 2017, **32,963** children arrived in Greece, Italy, Spain and Bulgaria, of which **19,858** (60 %) were unaccompanied or

separated children<sup>20</sup>. The overall influx of children in 2017 fell by 67 % compared with 2016 (100,264). Nevertheless, the proportion of unaccompanied or separated children arriving increased from 34 % in 2016, to 60 % in 2017"<sup>21</sup>.

The majority of children (almost 80 % of unaccompanied foreign minors) arrived in Italy in 2017 via Libya: "Of the **17,337** children who arrived in Italy in 2017, **15,779** (91 %) were unaccompanied or separated. This is a drop of 33 % compared with 2016 (25,846). This fall can be explained, above all, by an overall reduction in the number of people crossing the central Mediterranean since July 2017. The majority of children were from Guinea, the Ivory Coast, Gambia, Bangladesh and Nigeria"<sup>22</sup>. In 2016, this was even higher: "In the central Mediterranean, this figure was even higher: 92 % of all children arriving in Italy by sea in 2016 and the first few months of 2017 were deemed to be unaccompanied"<sup>23</sup>.

In Greece, more than 10,000 children also arrived in 2017 by the eastern Mediterranean migration route. "In 2017, **11,032** children arrived in Greece by sea, **1,458** (13 %) of which were UFM. Although this is an 83 % fall compared with 2016 (63,920), 72 % (8,014) of children arriving in 2017 were recorded in the

<sup>17</sup> FRONTEX, *Risk Analysis for 2018*.

<sup>18</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Global Report on Trafficking in Persons 2016*, p.25.

<sup>19</sup> FRONTEX, *Risk Analysis for 2018*.

<sup>20</sup> Explanation of IOM: "Separated children are children separated from both their parents or from persons who cared for them beforehand according to the law or custom, but not necessarily other members of the family. This definition can therefore include children

accompanied by other adult members of their family. Unaccompanied children are children who have been separated from both parents or other close relations and who aren't cared for by an adult who is responsible for them, in application of the law or custom."

<sup>21</sup> UNHCR, UNICEF and IOM, *Refugee and Migrant Children in Europe, Overview of trends 2017*.

<sup>22</sup> *Ibid*.

<sup>23</sup> UNICEF, *A Child is a Child, Protecting children on the move from violence, abuse and exploitation*, 2017.

second half of 2017. Between July and December 2017, the number of identified UFM (1,049) more than doubled compared with the first half of the year (409). The majority of children arriving in Greece by sea came from Syria, Iraq, Afghanistan or were stateless. The most common countries of origin of UFM were Syria, Afghanistan and Pakistan"<sup>24</sup>.

The IOM has developed several indicators that could serve as a barometer to determine the vulnerability of these minors faced with human trafficking. "Travelling alone, the long duration of the journey, the low or non-existent level of education, the high cost of the journey (more than USD 5,000) and the absence of close family in the destination country are just some of the elements that explain the high vulnerability of refugee and migrant children in relation to human trafficking and exploitation on the migration routes leading to Europe, according to a recent IOM<sup>25</sup> study<sup>26</sup>.

## 1.1. Human trafficking

In addition to the unaccompanied foreign minors brought to Europe, there are also many child victims of human trafficking from European countries. Roma children comprise one of the major groups of victims vulnerable to human trafficking<sup>27</sup>.

### 1.1.1. Sexual exploitation

#### a) Underage Nigerian girls

Nigerian girls comprise the main group of victims among unaccompanied foreign minors

outside the European Union. They are not only exploited sexually but are also victims of human smuggling, which means surviving a particularly dangerous migration route along the Mediterranean. This problem will be dealt with in detail in the second part of this focus. In the case studies, we shall also take a closer look at the Nigerian case. The specialised reception centres for victims supported three underage Nigerian girls in 2017 within the framework of the status of victim of human trafficking<sup>28</sup>.

#### b) Victims of loverboys from EU and Balkan countries

This profile involves underage foreign victims recruited through a loverboy's seduction techniques in order to exploit them sexually. In general, the minors are recruited in their country of origin, but also sometimes in Belgium. Our previous annual reports have dealt with different examples of these types of cases<sup>29</sup>.

The majority of victims come from European countries such as Romania, Bulgaria and Hungary, but there are also victims from countries outside the EU such as Albania<sup>30</sup>.

The Albanian child victims are subject to the procedure for unaccompanied foreign minors. This can also be the case, under certain

<sup>24</sup> UNHCR, UNICEF and IOM, *Refugee and Migrant Children in Europe, Overview of trends 2017*.

<sup>25</sup> E. GALOS, L. BARTOLINI, H. COOK and N. GRANT (2017) *Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes*. International Organisation for Migration (IOM), Geneva.

<sup>26</sup> UNHCR, UNICEF and IOM, *Refugee and Migrant Children in Europe, Overview of trends 2017*.

<sup>27</sup> CENTER FOR THE STUDY OF DEMOCRACY, *Child trafficking among vulnerable Roma communities*, Sofia, 2015.

<sup>28</sup> See part 4, point 1.6.

<sup>29</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p.104, p. 107; 2012 Annual Report Trafficking and smuggling of human beings, *Building trust*, p.19; 2011 Annual Report Trafficking and smuggling of human beings, *The money that matters*, pp. 89-91.

<sup>30</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016.

conditions, for Roma child victims from European countries<sup>31</sup>.

In a Romanian case<sup>32</sup>, minors were contacted and recruited through Facebook. One victim stated that she had had a relationship with a certain A. in Romania in April 2011, and that she had gone to Portugal with him to work in the agricultural sector. She was 16 at the time. In Portugal, a friend of A.'s convinced her to work as a waitress in a café to earn more money. The victim agreed and was taken to a bar. There, she was forced to accept sexual relations with the clients. She refused in the beginning, but she was threatened with a weapon and hit. It turned out that A.'s friend had bought her for EUR 3,000 and that she had to earn this amount. In March 2012, the victim was brought to Belgium and placed in a bar in Sint-Truiden.

It is striking to note that loverboys, just like Nigerian madams, force their victims to behave like adults (see further on in Chapter 2). In a Bulgarian case<sup>33</sup>, one defendant had a relationship with two underage victims, who had to work in prostitution in different countries. His victims were intercepted in Belgium, Netherlands and Germany. One of them had fake identity papers, stating that she was an adult. She was actually only 17. She also told the police she was married to the defendant.

**It is striking to note that loverboys, just like Nigerian madams, force their victims to behave like adults.**

The victims of loverboys from European countries don't require residence papers

straight away, because they are in another legal residence situation than nationals from third countries who need a visa, such as Nigerians. During the exploitation phase, they are sometimes drugged so that they can be more easily manipulated.

### c) *Belgian victims of loverboys*

This profile corresponds to Belgian minors seduced and sexually exploited by loverboys. In general, they are vulnerable girls who have run away from youth institutions and are recruited via Facebook<sup>34</sup>.

They aren't easily perceived as victims of human trafficking and don't generally consider themselves as such. Consequently, they aren't very inclined to make statements to the police. The local police's youth services aren't very familiar with the indicators of human trafficking. As a result, they aren't always inclined to consider underage victims of sexual acts as potential victims of human trafficking. Sometimes, underage victims are at risk of being stigmatised as problem children and are even considered responsible for indecent acts. Hence, the blame falls on them. Youth judges and the youth care sector must also be made aware of the indicators of human trafficking and the status of victim of human trafficking.

In one case<sup>35</sup>, the victims were underage Belgian girls aged between 14 and 16 years old. They had all run away from the same youth centre and remained in contact through Facebook. One

<sup>31</sup> In Belgium, unaccompanied minors from the European Economic Area (EEA) don't fall under the definition of 'Unaccompanied foreign minors'. However, they can be appointed a guardian, under certain cumulative conditions. In this case, they are referred to as European minors in a situation of vulnerability.

<sup>32</sup> MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, pp. 9-10, pp. 64-65 and 112; Louvain Crim. Court, 4 July 2013, 17th ch. (available at [www.myria.be/fr/jurisprudence](http://www.myria.be/fr/jurisprudence)).

<sup>33</sup> MYRIA, 2012 Annual Report Trafficking and smuggling of human beings, *Building trust*, pp. 80 and 17; Liège Crim. Court, 26 September 2012, 8th ch., confirmed by Liège, 23 April 2013. (available at [www.myria.be/fr/jurisprudence](http://www.myria.be/fr/jurisprudence)).

<sup>34</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, p. 30.

<sup>35</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 87-89.

young girl had already run away 53 times, and another 37 times. This type of runaway behaviour often leads these girls to be stigmatised by their entourage. The girls in question weren't at all independent, nor in a position to meet their living costs.

Hence, the loverboys used coercive methods. One young girl suffered serious violence. There is also a likelihood that fraudulent tactics were 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. The young girls became emotionally dependant on the loverboys. After the defendants were arrested, various young girls suddenly said that they weren't victims at all and that they didn't want to see their 'boyfriend' end up in prison.

The defendants drugged different young girls to make them dependant and to get rid of their sexual inhibitions. Two young girls stated that they used drugs to be able to endure the acts.

#### *d) Underage victims of prostitution from EU countries, recruited through the offer of work*

Some European underage victims are attracted by a job as a model, hostess or domestic worker and then find themselves being prostituted. For instance, they are recruited by a modelling agency in Belgium or in their country of origin<sup>36</sup>.

In one case<sup>37</sup>, one of the minors had been brought over by the defendants from Latvia to the Netherlands, to supposedly work as a nanny. As soon as she arrived, she was forced to prostitute herself. She was regularly taken to Belgian clients. She had only just turned 16

when she arrived in the Netherlands. She was threatened and hit by the main defendant.

#### *e) Early marriages*

Early marriages don't fall under the scope of the legal definition of human trafficking but can be taken into account as a method of recruitment for sexual exploitation, exploitation of begging or domestic work. According to an ECPAT study<sup>38</sup>, links have already been found between early marriages and underage victims of human trafficking in the specialised reception centres. The Esperanto centre, which specifically takes care of underage victims of human trafficking, has been confronted with different Roma girls over the past few years, who had been subjected to an early marriage between the age of 12 and 15. One of the guardians stated that they had dealt with between 20 and 25 cases of early marriage in the past few years. The victims came from Morocco, ex-Yugoslavia, and Afghanistan, as well as Roma from Eastern European countries.

According to the ECPAT study, Fedasil, the Federal Agency for Asylum Seekers, was also confronted with early marriages: "Since the significant arrival of migrants from Syria and Afghanistan in particular, staff at the Fedasil reception centres have also been faced with the arrival of minors, girls and boys, already married in the country of origin and arriving with their spouse (minor or adult). These marriages aren't recognised in Belgium but they raise a certain number of questions regarding care for these young girls and boys"<sup>39</sup>.

<sup>36</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 28-29; 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p. 23.

<sup>37</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p. 70.

<sup>38</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016.

<sup>39</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016.



The concept of transfer of control was also the starting point for a judgement handed down by Verviers Criminal Court<sup>40</sup>. The case involved an early arranged marriage and human trafficking with a view to sexual exploitation. In this case concerning the traditional marriage of two minors, where the girl was under 16 years old, the two couples of parents of these minors were mainly prosecuted for human trafficking for the purpose of sexual exploitation, rape, and indecent assault with violence and threats.

The two families wanted to control a romantic relationship between their children. The parents of the boy gave a sum of money to those of the girl, which depended on the state of the girl's virginity, according to tradition. A party was organised, after which sexual relations took place between the minors, in the boy's family home. The girl then went to live with the boy's family, where she did various domestic chores, which resulted in her missing school at certain times.

The court convicted the defendants for human trafficking among other things. It considered that it was indeed a matter of a transfer of control over the young girl, thus permitting the offences of rape, indecent assault with violence and threats, and corruption of youth to be committed against her. The transfer of authority was consolidated when the money was handed over and when the minor 'moved in' with the boy's family. Since every defendant was aware that the party they organised would lead to sexual relations between the children, the essential element relating to the purpose of allowing the offence to be committed was also established.

### 1.1.2. Labour exploitation

Frontline players, such as inspection services, don't usually detect many child victims of labour exploitation. However, a variety of victims are taken in by the specialised centres for minors.

#### a) *Unaccompanied foreign minors*

Within the framework of labour exploitation, unaccompanied foreign minors may find themselves in an activity such as domestic work, but also in itinerant trade, the hotel & catering industry and the retail trade. Esperanto has especially taken in underage Roma and Moroccan female victims active as domestic workers, and North African, Indian and Ecuadorian female victims active in itinerant trade. The Roma victims who do domestic work are often also bound by an early marriage.

The ECPAT study<sup>41</sup> also refers to the different specialised centres for minors. Minor-Ndako took in exploited victims who had to sort second-hand clothing or metal in the waste treatment sector. Esperanto also took in unaccompanied minors who were victims of exploitation in Chinese and Vietnamese restaurants, night shops, bakeries and butchers (North African victims) or as flower-sellers (Pakistani victims). These victims found themselves in a situation of debt bondage, whereby the victim has to work for free to reimburse the debt associated with their illegal journey<sup>42</sup>.

Several cases involving the exploitation of unaccompanied foreign minors are dealt with in the case law overview further on in this report. For instance, there is the case concerning a 12-year-old Congolese girl who was involved in domestic work. However, this

<sup>40</sup> Verviers Crim. Court, 30 January 2014 (available at: [www.myria.be/fr/jurisprudence](http://www.myria.be/fr/jurisprudence)).

<sup>41</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016.

<sup>42</sup> ESPERANTO, *Status report* 2017.

case ended in an acquittal for human trafficking.

According to a UNICEF study<sup>43</sup>, many unaccompanied foreign minors from migrant camps who are smuggled into England through Belgium in particular, are then used for the purpose of labour exploitation. Victims from Eritrea and Vietnam are used for domestic work, with the latter also often employed in sewing workshops. Albanian victims are more often exploited in the agricultural sector. Iraqi and Afghan children are subject to debt bondage: "During our interviews, some of the minors from Iraq and Afghanistan told us that once they have crossed the Channel, they have to work to reimburse the money lent by members of the family or the community living in England. While still only a few of these situations of labour exploitation are detected, the British authorities told us that in 2015, they observed situations of this type concerning Afghan and Iranian minors who had incurred considerable debts for their immigration. The places where this exploitation took place were restaurants (kebab shops and other fast-food restaurants), car washes, hairdressers and barbers"<sup>44</sup>.

#### *b) Accompanied foreign minors*

Interviews with the police revealed that Bulgarian and Romanian minors are exploited in the horticultural sector in rural areas in Limburg. The cases showed that child victims and their parents were exploited in the horticultural sector and the hotel & catering industry. The victims came from

**The exploitation of begging is sometimes the only visible activity in cases involving a range of different forms of exploitation.**

both European countries and countries outside the EU. In the case studies that appear further on in this report, one of them refers to the exploitation of a 17-year-old Bulgarian Roma boy who was identified by the Social Inspectorate along with his mother, working at a mushroom farm.

In the case law analysis, we shall also talk about cases of exploitation of accompanied foreign minors. This was the case of an Indian victim in a restaurant.

In another case<sup>45</sup>, a child victim was exploited with their mother in a factory that manufactured serviettes and packaging materials. During an inspection, the Flemish region's Labour and Social Economy Inspectorate found two people working and then discovered a living space where a 14-year-old Bulgarian was sleeping because one of the machines wasn't working. According to the inspection services, 11 Bulgarian workers were put to work, seven of whom were staying here illegally. Several workers were even bogus self-employed workers. The 14-year-old was also employed despite the provisions regarding child labour. 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.

#### **1.1.3. Exploitation of begging**

Esperanto took in several child victims of Roma origin, who had been forced by their families to

<sup>43</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>44</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>45</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 178; East Flanders Crim. Court, Ghent division, 20 April 2015, ch. G29 (appeal).

go and beg and give them the money they collected<sup>46</sup>. Nevertheless, the exploitation of minors for the sole purpose of begging is still uncommon in Belgium. In addition, it is often associated with other forms of human trafficking<sup>47</sup>. 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 or sexual exploitation. Often, these acts are only revealed after an investigation into child beggars is initiated. During the investigation's observation period, the police find that the children are forced to commit acts of theft<sup>48</sup>.

In a case in Ghent<sup>49</sup>, whose acts date 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 or welfare sectors. 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. In Romania, she was promised she would get a job as a nanny in Belgium. When she arrived, she was placed in insalubrious 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 clients. 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.

#### 1.1.4. Forced criminal activities

This profile includes Roma child victims who are forced to commit thefts, or North African and Vietnamese child victims forced into drug trafficking.

##### a) Coercion into committing theft

Various cases of theft can be linked to networks that exploit Roma child victims for the purpose of begging. The perpetrators are often small family groups of Roma origin specific to countries such as Romania or Bosnia, with whom other Roma groups don't wish to be associated. According to certain judges, these groups of perpetrators have significant international mobility. The victims are brought to Belgium 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.

##### Case concerning coercion to commit theft and exploitation of begging with children

This case in Antwerp<sup>50</sup>, 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

<sup>46</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016.

<sup>47</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 43.

<sup>48</sup> *Ibid.*, p. 47.

<sup>49</sup> *Ibid.*, p. 45; East Flanders Crim. Court, Ghent division, 19 November 2014 and Ghent Court of Appeal, 14 April 2015 (unpublished).

<sup>50</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 47, Antwerp Crim. Court, 27 May 2013, ch. 4C.

detect other invisible criminal activities. It involved a wide-scale international network with ramifications in Bosnia, France and Belgium that forced minors to commit acts of pickpocketing. The conversations recorded within the framework of wire taps and police observations confirmed that the minors had to pickpocket 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 article<sup>51</sup> 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 shoplifting. In 2011, she was promoted and, at the age of 13, she was collecting money from the beggars. She was then also involved in residential break-ins. The juvenile court judge sent her to a closed centre in Saint-Servais<sup>52</sup>.

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-Heembeek for the fifteenth time<sup>53</sup> and was intercepted for the forty-sixth time for pickpocketing. The public prosecutor's office and the police initiated an investigation into 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.

#### *b) Coercion to participate in drug trafficking*

The victims are unaccompanied foreign minors from North Africa or Vietnam, who are forced to work as pickers in cannabis plantations or as drug dealers. According to the police, there are also cannabis plantations in Limburg where minors are used for picking. Such acts are difficult to detect as acts of human trafficking.

The ECPAT study<sup>54</sup> mentions that a social worker met young Moroccan minors in 2013, who were used to sell drugs and travel between Spain, France, Belgium and the Netherlands. ECPAT also spoke to a guardian who had supported a young Moroccan who was forced 'to work' as a drug dealer<sup>55</sup>. This was a drugs case<sup>56</sup> where it wasn't a question of prevention of human trafficking, even though a child victim of the criminal organisation had been taken in by a specialised reception centre for victims of human trafficking. Several defendants were prosecuted for various drugs offences. The main Moroccan defendant was also prosecuted for human trafficking and importing, possessing and selling drugs with the aggravating circumstance of having used a minor to commit these offences, and for having been the leader of a criminal organisation.

<sup>51</sup> C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

<sup>52</sup> Institution Publique de Protection de la Jeunesse; decree of 4 March 1991 on youth care.

<sup>53</sup> The OOC Neder-over-Heembeek is one of the observation and guidance centres for unaccompanied foreign minors (UFM) in Belgium.

<sup>54</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016; SERVICE DROITS DES JEUNES, *Mineurs étrangers non accompagnés sans protection en Europe*, 2013.

<sup>55</sup> ECPAT, *La traite des enfants en Belgique, Identification et protection des victimes*, 2016

<sup>56</sup> MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, pp. 21-22.

Liège Criminal Court<sup>57</sup> based itself on the defendants' statements (some of whom made confessions), on phone analyses and phone taps, police observations and findings, as well as on numerous statements from customers featuring in the case, to accept the charges made against the defendants (except concerning one of them who was acquitted).

The court therefore considered that the interested parties had set up a real drug distribution network that was led and organised by the main defendant (he negotiated the drug purchases with Dutch suppliers, looked after the transportation of

the merchandise, hired and fired the dealers, etc.). The other defendants also had a specific role (right hand, taking care of the drugs, deliveries to designated customers, etc). The defendants received sentences of three to eight years in prison, the majority of which were suspended sentences.

According to a UNICEF study, unaccompanied Vietnamese minors from migrant camps are later exploited in cannabis farms in Great Britain. The majority of pickers are children: "96 % of people who work in cannabis farms in Great Britain are Vietnamese, 81 % of whom are minors"<sup>58</sup>.

## 1.2. Human smuggling

The case studies in the previous annual reports show that the majority of human smuggling cases involve numerous child victims<sup>59</sup>. These can also be unaccompanied foreign minors, toddlers or babies within the framework of smuggling families.

**The majority of human smuggling cases involve numerous child victims.**

In 2016, in the Syrian Sechmet human smuggling case, 495 human smuggling victims were identified. The majority were young men from Syria, Sudan, Eritrea and Egypt. Ninety-three of them were minors. It wasn't possible ascertain, through the case, exactly how many of them were unaccompanied foreign minors. The youngest human smuggling victim was a 19-month-old baby from Eritrea who was travelling with its mother. The families were generally intercepted several times. The majority of the human smuggling victims were unaccompanied foreign minors. Based on our

own reading of the case, we believe that there were about 50 Syrians, approximately 15 Sudanese, a dozen or so Eritreans and 10 or so Afghans. The majority were 17 years old but there were also a few 14- and 15-year-old Syrians who had been intercepted several times by the police.

Various child victims come from the migrant camps in the North of France, which have taken over the role of the former smugglers' safe houses. In a study, UNICEF examined the precarious situation of unaccompanied foreign minors, including numerous Afghans and Kurds, in these migrant camps.

### 1.2.1. Unaccompanied child stowaways

Unaccompanied foreign minors comprise the most vulnerable group of human smuggling victims.

<sup>57</sup> Liège Crim. Court, 8 January 2014, 11<sup>th</sup> ch. (final).

<sup>58</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>59</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 92-93; 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 115; 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p. 76.



*a) Precarious situation of unaccompanied foreign minors during the illegal journey*

According to UNHCR, UNICEF and IOM, it is unaccompanied foreign minors above all who risk finding themselves in a precarious situation during the illegal journey.

The journey is usually spread over several months, making their situation even more problematic:

**"If I'd have known, I would never have embarked on this journey. My mother sold all her jewellery to be able to offer me a future in England."**

**"Travelling alone** - 86 % of children travelling alone have stated they were subject to events described in at least one of the exploitation indicators, compared with 63 % of adults. This is the case for 75 % of the people interviewed in Italy and 27 % of those who arrived by the Eastern Mediterranean migration route. More boys (66 %) than girls (50 %) travelling without their family along the two routes have been the subject of some form of exploitation.

**Long duration of the journey** - children who reported that they had travelled for more than six months, were more inclined to have been subjected to a form of exploitation. Children who have taken the Central Mediterranean route, describe longer journeys starting from their country of origin (more than five months) than those who took the Eastern Mediterranean migration route (three months on average in more than 70 % of cases)"<sup>60</sup>.

A UNICEF study confirmed that children travelling alone who arrived in the migrant camps in the North of France, had been subjected to several hardships: "Several minors stated that they had been held by several criminal groups and that their families had been asked to pay a ransom. Some had had to work for several months in conditions close to

slavery to pay for their journey. Others had been detained for certain periods by the local authorities. Relations with the 'uncle' paid by the smugglers to take a group of minors from one point to another, are rarely well-meaning.

We were told of tales of minors being abandoned because they were walking too slowly in the mountains. In several cases, the sea crossing

between Turkey and Greece, or between Libya/Egypt and Italy, turned out to be traumatic (loss of close relations, feeling of imminent death). Sexual abuse also appears to be common, which is confirmed by the people encountered"<sup>61</sup>.

*b) Status of victim of human smuggling and UFM statements concerning the precarious situation during the illegal migration journey*

The findings of the UNICEF study also appeared in several human smuggling cases in which Myria filed a civil suit. Several UFM victims of human smuggling made statements and obtained the status of victim of human smuggling. In the Kurdish Delocation human smuggling case<sup>62</sup>, a 15-year-old Palestinian born in Syria (Damascus) stated that he had escaped with his family to Lebanon, where they found themselves in a refugee camp. The boy wanted to enter the United Kingdom illegally and left in March 2014, travelling through Sudan and Egypt to the Libyan coast. He arrived in Europe a year later: "The journey through the desert lasted seven days. We were in a convoy of 12 cars. The escorts were armed and also had anti-aircraft weapons. There were easily 50 of us in the pickup, and we were attached with a long rope so that we didn't fall

<sup>60</sup> UHCR, UNICEF and IOM, *Refugee and Migrant Children in Europe, Overview of Trends 2017*.

<sup>61</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>62</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, p. 89.

over the side. Sometimes, people fell from the lorry and were just shot by the smugglers and buried in the desert. We were all scared to death. Then the journey continued. Once in Libya (Ajdabiya), we were left with other smugglers and we stayed there for three days. From there, we went to Benghazi, on the coast, by lorry. We encountered a roadblock on the way. Everyone had to get out and we were taken to prison. The prison was called Rajma.

We stayed in this prison for six months and I was mistreated there, tortured with electric shocks on my hands and teeth, and hit on the head. Since then, I've got a headache all the time. I was tortured because I'm a Palestinian from Damascus (Syria), and therefore stateless with no rights whatsoever. I was set free after six months and I worked for two months to earn a bit of money. From Benghazi, I went to Tripoli, also along the coast. In Tripoli, I paid € 1,000 to get on a boat to Italy. I found the people who organised these crossings through the man I'd worked for in Benghazi. In reality, he was also a smuggler and I had met him in prison. Only a few children had a life jacket on board the boat. I don't know how to swim very well and I had also asked for a life jacket, but I would've had to have paid € 1,000 for it and I didn't have enough money. The boat I had to take was 10 metres long and was carrying 270 passengers. The smugglers forced me to get on it without any protection and all my identity papers were taken off me when I embarked. During the crossing, the Italians transferred us to a bigger boat and afterwards, we were taken to a camp. I left the camp, went to Rome, then from there to Berlin where a Palestinian put me in contact with an Arab smuggler who, in turn, gave me the name and number of a smuggler. He took a photo of me, which he sent to another smuggler. He put me on board a train that was going to Brussels via the Netherlands.

Another smuggler recognised me from the photo and took me by car to some woods, where we had to walk another half hour to a car park. There, he handed me over to two other men. There were also men in balaclavas who were opening the lorries. I got into a lorry using a ladder. I was the first on board; about half an hour later, a family also got in, then another boy who was travelling alone". The boy had obtained the status of victim of human smuggling and said: "If I'd have known, I would never have embarked on this journey. My mother sold all her jewellery to be able to offer me a future in England. I confirm that I was informed of the possibility of declaring myself a victim and of the rights inherent to this status. I declare myself a victim and I consider myself as a victim of human smuggling"<sup>63</sup>.

In the case law analysis<sup>64</sup>, we take a look at a judgement where a 17-year-old Iraqi made statements against his Algerian smuggler, who had mistreated him. He filed a civil suit during the trial and was probably an unaccompanied foreign minor when the acts took place. On 26 July 2017, a check was carried out on several people within the framework of a police action. A child transmigrant suddenly grabbed the arm of a female police officer in the maritime police offices in Zeebrugge. He admitted that he had already lost EUR 1,200 to a smuggler. According to him, this smuggler had also been caught during the action. After examination, it transpired that this person was indeed in the maritime police's offices. The victim was interviewed with the help of an Arab interpreter and admitted having been beaten with a stick by the smuggler's brother in the safe house in Brussels. The doctor confirmed the injuries and considered that they corresponded to being beaten with a stick, as the victim said. During his hearing, the victim stated that they had met the smuggler in

<sup>63</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, p. 93-94.

<sup>64</sup> See part 3, Chapter 4, point 3. Bruges Crim. Court, 21 Juin 2017, 17<sup>th</sup> ch.

Ankara (Turkey) in 2016. In Ankara, those people wishing to go to the United Kingdom were gathered together. The victim had to pay USD 200. He arrived in Charleroi via Romania. They were divided into groups of about 10 people so that they wouldn't be detected by the police. From Charleroi, the victims went to Brussels, and then to Knokke to go to Zeebrugge using the coastal tram. The smuggler remained with the group all the time. The victim was scared of the smuggler and was accepted as a victim of human smuggling. The victim was then interviewed several more times and gave a detailed description of the house where they were lodged and pointed out several accomplices. Phone taps confirmed the victim's statements. The case proves that the status of victim of human smuggling can offer the investigation greater added value, also in the case of minors.

### c) *Application of the UFM procedure*

The human smuggling cases reveal that various unaccompanied foreign minors were referred to the guardianship service and sometimes made statements within the framework of the status of victim of human smuggling. In an Indian-Pakistani human smuggling case<sup>65</sup>, two 17-year-old Iranians and a young Indian-Pakistani boy were intercepted by the police. They were entrusted to the guardianship service by the Immigration Office. In the phone taps, it was possible to establish that the smugglers were complaining about the fact that the minors had been intercepted within the framework of the UFM procedure. In a Kurdish smuggling network<sup>66</sup>, the main defendant explained that a minor had been put

in the wrong lorry and had been intercepted and sent to a youth reception centre.

Several minors then escaped from the reception centres where they had been placed and made contact with the network again to make a new attempt to reach the United Kingdom illegally. In the Sechmet case, a 16-year-old Syrian was intercepted no less than 14 times by the police. In an Albanian human smuggling case<sup>67</sup>, three people were extracted from a locked refrigerated container during an interception in Zeebrugge. The victims were an Albanian, a Pakistani and an 11-year-old Afghan boy who had already been entrusted to the guardianship service, but had escaped from the youth centre where he had been placed. The police contacted the Immigration Office and the guardianship service came to recuperate the unaccompanied minor again. However, the case revealed that the young boy had escaped again after two days.

The UFM procedures aren't always followed during human smuggling interceptions, as the court records also show. Case law reveals that Eritrean smugglers were smuggling victims from Eritrea and Sudan. There was probably an Eritrean minor among them, but the file didn't contain any documents such as an identity card or a birth certificate indicating their age<sup>68</sup>. Hence, after the interception, the registration required for the UFM procedure wasn't carried out. This is what had already been observed in the case studies of previous annual reports. In an Afghan human smuggling case<sup>69</sup>, various child victims had been intercepted by the police and should normally have been reported to the guardianship service as unaccompanied foreign minors. However, it isn't always clear

<sup>65</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p. 77.

<sup>66</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 123-130.

<sup>67</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 74-76.

<sup>68</sup> See part 3, Chapter 4, point 3, Liege Crim. Court, 30 January 2018.

<sup>69</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 82-88.

what do to following these interceptions, because the information or data concerning the follow-up of the normal procedure isn't in the file. One of the interceptions resulted in the opening of this legal case. On 8 December 2011, four smuggling victims, including a minor travelling alone, were placed in a locked container by the smugglers. The smuggling victims risked suffocating and were discovered after one of them called for help.

The smugglers also deliberately take advantage of the protection measures for unaccompanied foreign minors in order to make their operation more profitable. In recorded phone conversations in an Afghan human smuggling case, the smuggling leader boasted of the high number of minors among his clients<sup>70</sup>. He was able to transport 12 in one night. He considered smuggling minors as a lucrative business, since success was guaranteed owing to their vulnerable situation. The phone taps regularly revealed that they had nothing to worry about because if there was an interception, they would be released. In the case studies<sup>71</sup>, we shall discuss how smugglers used them as a counter-strategy in an Albanian case.

#### d) *Maximilien Park*

Various unaccompanied foreign minors passed via Maximilien Park to then be taken illegally to the United Kingdom via parking areas along the motorway. This is what was also observed in the Celebration case concerning a Kurdish human smuggling network. A group of six Syrians, including an unaccompanied minor, was extracted from a lorry by the police in 2015 after having been discovered when the cargo was unloaded. The on-duty judge gave the instruction to interview them as victims of human smuggling and to inform the

Immigration Office. Both the minor and the other victims stated that they had met a smuggler in Maximilien Park and that he was responsible for arranging their illegal transportation to the United Kingdom.

#### 1.2.2. Smuggling families

In the majority of human smuggling cases<sup>72</sup>, it isn't rare for families with young children to be transported in refrigerated lorries. Sometimes, three-year-olds or babies with a tendency to cry are given sleeping pills. Political decision-makers and players pay little attention to this group of victims. However, this group, which is extremely vulnerable and in a precarious situation, is subject to additional risks and deserves the necessary protection.

##### a) *Findings resulting from phone taps*

One example is an Afghan human smuggling case<sup>73</sup> where numerous families were transported illegally. It was highly lucrative for the Afghan smugglers. The travel costs for a family were indeed higher because the family had to leave and travel together. The risks were also far higher if children were present, as they could betray their presence if they cried.

This was discussed at length during the tapped phone conversations. A smuggler discusses it with the smuggling leader: "What shall we do with the two-year-old child? Should we also ask for the full amount?" To which the smuggling leader replies, "You have to ask for more money because the child is too young. That's what usually happens. If the child cries, things will get complicated. We can give it sleeping pills".

During a conversation, they also mentioned the transportation of a pregnant woman who could give birth at any moment: "She's eight or nine

<sup>70</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 85-88.

<sup>71</sup> See part 3, Chapter 2, point 2.4, *Counter-strategies*.

<sup>72</sup> MYRIA, 2015 Annual Report Trafficking and smuggling in human beings, *Tightening the links*, Part 2, Chapter 2, point 2.1.4.a., points 2.2.4.a. and 2.4.4.c.

<sup>73</sup> *Ibid.*, Part 2, Chapter 2, point 2.4.4.

months pregnant and has asked for only her husband to be sent". The smuggling leader: "Tell them it's better if she doesn't give birth here because it's more difficult with a newborn, ask them to go straight away".

The smugglers showed no respect for human life. This is what they said about a baby and its mother: "One of the mothers has a three or four-month old baby that cries all the time. Should I get rid of the baby in the forest? I'll tell her: go and get screwed by a black man and you'll have another baby".

The police also intercepted families with children in the United Kingdom: one of the smuggling acts which led to the case being opened concerned the journey of an Iranian family (father, mother and two children). They were discovered on 3 January 2012 in a locked container in Purfleet, on the outskirts of London. The driver was taking a break at the Grand-Bigard car park when the family climbed into his lorry.

#### *b) Status of victim of human smuggling*

In a Kurdish human smuggling case<sup>74</sup>, a family made statements within the framework of the status of victim of human smuggling. In October 2014, an anonymous intermediary contacted the local police in Schaerbeek concerning a Kurdish-Iranian family, including two little girls aged 3 and 5, who were victims of human smuggling. The police arranged to meet the family the next day at the entrance to a hotel. The father briefly explained the facts and handed over his mobile phone to the police. The family followed the police officers to the police station to make their statements and file a complaint. Once there, the police noticed that when checking the phone numbers, two of them had already appeared in two other smuggling cases. The police

contacted the reference judge in Brussels in charge of human smuggling, who agreed after the hearing to award the status of victim. The family had already been transported seven times by the smugglers and had a lot of information about them, the British organisers and their Facebook profiles.

#### *c) Maximilien Park*

In a Kurdish human smuggling case<sup>75</sup> in 2014, the investigation began when an Iranian woman and her 15-year-old daughter were intercepted in a car park and made statements. They came from the migrant camps in the North of France and had passed via Maximilien Park. There was also a text message on the mother's mobile phone giving instructions stipulating that the money had to be paid into 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.

#### *1.2.3. Minors in the migrant camps*

The migrant camps in the North of France were pulled down at the end of 2016, but new ones have since appeared. Numerous minors are still to be found in the remains of these migrant camps, which are an important stopping-off point for incoming human smuggling victims, who are transported illegally to the United Kingdom via parking areas along the Belgian motorways. The camps are managed by smugglers.

<sup>74</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 88-94.

<sup>75</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 122-130.



### a) *Human smuggling and migrant camp case*

In a Kurdish human smuggling case<sup>76</sup>, the main defendant was managing the Tétéghem migrant camp where he handed out covers. Human smuggling had been his full-time occupation for years. His victims were from Afghanistan, Syria, Turkey and Iran, and included families with children and pregnant women. Around 10 % of the victims were children.

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 had to work in the 'jungle' first, before having the chance to be transported to the United Kingdom.

The lead smuggler decided on the transport and those who could use it. The smugglers gathered up the victims before departure and chose the vehicles in which the victims would be illegally transported. 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 passenger 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 regular lorry or refrigerated lorry.

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, of course, many families with children in the camp. A conversation recorded during the phone taps revealed that families with children of all ages, even pregnant women, were among the victims.

### b) *Status of victim of human smuggling*

In this case, an unaccompanied Afghan minor made statements within the framework of the status of victim of human smuggling. The young girl had just turned 17 and was with her partner, 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 was staying at the Tétéghem camp, a sort of campsite where tents were pitched in a wood. She was also staying also in a tent. 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 were constantly changing it. They called us but we could never call them, they never picked up. I'm afraid of them and I'm 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 because I ran

<sup>76</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 123.

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 died. 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".

#### *c) UNICEF investigation into migrant camps*

From January to April 2016, UNICEF conducted an extensive survey on the situation of unaccompanied foreign minors in seven migrant camps in the North of France: Calais, Grande-Synthe, Angres, Norrent Fontes, Steenvoorde, Téteghem and Cherbourg. It was based on individual and group interviews with 61 unaccompanied minors: "Among the children and teenagers encountered, three children were 11 to 12 years old, nine were 13 to 14 years old, and 49 were 15 to 17 years old. They were Afghan, Egyptian, Syrian, Kurdish (Iran and Iraq), Sudanese, Eritrean, Ethiopian, Kuwaiti, Guinean and Vietnamese. The interviews lasted up to 90 minutes. According to their statements, they stayed an average of five months in the 'jungles'; some of them had been on the coast for nine months at the time of the interviews, and one of them for a year and two months. There were only a few solitary underage young girls, mostly Eritrean and Ethiopian, and very rarely Sudanese"<sup>77</sup>.

According to the UNICEF researchers, 2,000 unaccompanied foreign minors passed through the migrant camps between June 2015 and March 2016. They stayed five months on

average but a few of them had been there for nine months, even a year<sup>78</sup>.

#### *d) Sexual exploitation of young girls*

The UNICEF survey noted various occurrences of sexual exploitation among unaccompanied minors who presented themselves as adults<sup>79</sup>: "The interviews with the young Ethiopian, Eritrean and Kurdish girls allowed us to identify practices that consist of sexual services in exchange for the promise of transportation to the United Kingdom, or with a view to paying their transportation and access to certain areas. During our interviews at Norrent Fontes and Steenvoorde, the men and a few girls talked about it. Those with no money and no other choice, are obliged to prostitute themselves to pay the entrance fee (around EUR 500). Although they explained that they could refuse clients, the prices they charged (around EUR 5 a time), give an idea of the pressure they were under to collect the EUR 5,000 to 7,000 for transportation. While this exploitation doesn't essentially concern minors, the people we questioned explained that the minors who prostituted themselves all said they were adults during police checks. Several players in the field, especially CAP teams (from the temporary reception centres), also observed young girls who would occasionally leave and come back, supposedly for a rest in Paris. Parisian street teams who work with people who are prostituted, reported the presence of girls from the Horn of Africa saying they were from Calais and probably managed by Albanian pimps. The presence of Albanian organisations is plausible; the police had already dismantled an Albanian network in Calais in August 2015, involving both migrant smuggling and procuring. This form of coercion, which appears in different

<sup>77</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>78</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>79</sup> This is also the case among young Nigerian girls.

cases, is similar to debt bondage. Young girls (minors or adults) know that if they don't collect the amount required by the smugglers, it will be much more difficult for them to reach the United Kingdom. Since they have no money or relatives to fund their transportation, they are forced into sexual exploitation. Based on the information gathered, it would appear that two forms of prostitution exist on the coast: the first one is 'resigned' prostitution, which isn't necessarily organised, entered into by certain women wanting to gain access to a faster crossing; the second is associated with pimps who exploit the young women away from the coast (Paris, Lille)<sup>80</sup>.

#### e) Sexual exploitation of young Afghan boys

In the human smuggling cases where Myria filed a civil suit, it came to light that young Afghan boys were being sexually exploited in human smuggling camps by a smuggling leader who was operating out of Belgium. In an Afghan human smuggling case<sup>81</sup>, the smuggling leader also organised a free trip to France for a minor, a young boy who would then pay in kind. A team member called the smuggling leader and told him: "There are a few pretty boys, I can send them to you if you like." The smuggling leader answered: "Why not. Use Skype to show them to me and I'll pay the entire trip to France for one of them. Ok, give my number to one of those two minors, the most 'sophisticated' looking one."

The Afghan migrants are very young and not well informed, and put all their trust in their smuggler, thus making them vulnerable to abuse, including sexual exploitation.

This Afghan smuggling leader operated out of a smugglers' camp in Calais, where UNHCR also confirmed acts of sexual abuse against Afghan boys: "During individual interviews organised with our researcher in Calais, several very young boys implied that they had been subjected to physical and sexual abuse by their smugglers, but it is something young Afghans normally don't talk about through fear of stigmatisation and/or reprisals. In general, Afghan migrants are very young and not well informed, and put all their trust in their smuggler, thus making them vulnerable to abuse, including sexual exploitation"<sup>82</sup>.

The UNICEF study was able to learn more about this subject thanks to the interviews with Afghan children. "Among the Afghan minors met during the interviews, the main fear they expressed was rape. The statements collected spoke of them having to allow themselves to be sexually abused, especially when the smuggler and his friends were drunk.

Even though it is impossible to quantify the number of child victims, this form of exploitation, which is socially tolerated in Afghanistan, seems to be

relatively frequent at the various sites. The likely intervention of the police services in February 2016, concerning sexual assaults on some 20 Afghan minors in the Calais 'jungle', is a sad illustration of this<sup>83</sup>. Concerning boys, Afghan minors are particularly exposed to sexual violence through practices derived from *bacha bazi*. In Afghanistan, relationships

<sup>80</sup> UNICEF FRANCE, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>81</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, Part 2, Chapter, point 2.4, p. 86.

<sup>82</sup> UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017. [www.unhcr.org/uk/5909af4d4.pdf](http://www.unhcr.org/uk/5909af4d4.pdf).

<sup>83</sup> UNICEF survey: "In February 2016, even though this information couldn't be officially confirmed, several sources (police and associations) indicated that arrests took place following the gang rape of some 20 Afghan minors in the Calais jungle. According to our information, these arrests didn't lead to the implementation of protective measures for the young victims of the attack".

between boys and the girls are extremely coded. Some boys therefore serve as sexual objects through the practice of *bacha bazi*. In Afghanistan, men and women are never allowed to meet outside family relationships. During these meetings, where even prostitutes aren't admitted, young boys play the role of girls. Therefore, they have to be *bacha bareesh* (boys without a beard). There is a certain ambiguity, with participants giving them cakes and throwing them banknotes. (...) This form of paedophilia is nonetheless endemic, and more frequent in the Pashtun regions in the south, among the Uzbeks in the north, and in Kabul (...). Despite strong religious structures, *bacha bazi* is considered legitimate by the Afghans and isn't thought of as a bad or illegal habit. According to the migrants we questioned, these practices make the rape of underage boys more socially acceptable compared with that of girls, which is likely to trigger acts of vengeance. In general, the rapists are from the same ethnic group"<sup>84</sup>.

#### f) *Forced criminal activities*

According to the UNICEF survey, various unaccompanied foreign minors unable to pay their transportation were forced to commit offences:

"Unaccompanied children who have run out of money are forced to work for smugglers or to undertake dangerous activities (theft, drug dealing, prostitution). According to our interviews and observations among workers on site, Egyptian children are used to steal from other migrants or from various stakeholders present in the Calais jungle. The majority of stolen goods are sold in the evening on a makeshift market organised by the adults. While it wasn't possible for us to work out the nature of the links between the minors committing the acts of theft and the adults responsible for selling the goods, the human trafficking risk indicators are present. The sale of heroin was also identified among the Egyptian minors. CAP reported one of these situations to the police. It resulted in a police intervention during the weekend of 2 to 3 April 2016. The minors identified as dealers were accompanied by adults. While it wasn't possible to establish any form of coercion, minors are at risk of being used for drug dealing. Finally, concerning the situation of the Vietnamese people at Angres and Grande-Synthe, while it wasn't really possible to acquire a direct account during the survey, owing to the fact that the UFM's present at the site weren't allowed to say anything (which is a significant indicator of the risk of trafficking), several cases concerning the exploitation of Vietnamese minors in cannabis farms in the United Kingdom, Strasbourg and in the Paris region were identified"<sup>85</sup>.

<sup>84</sup> UNICEF France, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

<sup>85</sup> UNICEF France, *Neither Safe Nor Sound: Unaccompanied children on the coastline of the English Channel and the North Sea*, June 2016.

## 2. Victim status and reception of child victims of human trafficking

### 2.1. The protection of child victims of human trafficking in international and European instruments

Over the years, the international community has taken an interest in human trafficking and has adopted various legal instruments to help countries fight it. The protection of victims, especially children, is one of the major aspects of these instruments.

**Countries must take the appropriate measures to facilitate the physical and psychological rehabilitation, and social reintegration of all child victims of exploitation.**

Hence, in the United Nations protocol on trafficking in human beings, supplementing the United Nations Convention against Transnational Organized Crime<sup>86</sup>, the protection of victims concerns the assistance and protection to be granted them within the framework of criminal proceedings<sup>87</sup>, on the one hand, and the measures to ensure their physical, psychological and social rehabilitation<sup>88</sup>, on the other hand.

Children must be the subject of special attention and their specific needs taken into account (in particular, accommodation, education and suitable care). Furthermore, host countries must envisage taking measures

that allow victims to remain in their country, either temporarily or permanently<sup>89</sup>. Within this framework, these countries must take into account humanitarian and personal factors. Measures are also in place to facilitate the return of victims to their country of origin<sup>90</sup>.

As for the Convention on the Rights of the Child, it obliges States Parties to take "all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form"<sup>91</sup>.

This chiefly implies the proper identification of these children<sup>92</sup>. Countries must also take the appropriate measures to facilitate the physical and psychological rehabilitation, and the social reintegration of all child victims of exploitation. Furthermore, they must ensure that such "recovery and reintegration take place in an environment which fosters the health, self-respect and dignity of the child"<sup>93</sup>.

The Convention of the Council of Europe is another important instrument<sup>94</sup>. The measures taken to prevent and combat trafficking must especially take into account an approach based

<sup>86</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000.

<sup>87</sup> Art. 6, §1 and §2 of the Protocol. These are measures to protect privacy and information on the applicable legal and administrative proceedings and to provide assistance to enable the victims' views and concerns to be presented and considered at appropriate stages of the criminal proceedings. These measures also offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered (Art. 6, §6).

<sup>88</sup> See Art. 6, §3 of the Protocol. Note that the adoption of such measures is optional. Among other things, they concern appropriate housing, counselling and information in a language that the victims understand; medical, psychological and material assistance; employment, education and training opportunities.

<sup>89</sup> Art. 7 of the Protocol.

<sup>90</sup> Art. 8 of the Protocol.

<sup>91</sup> Art. 35 UN Convention on Children's Rights (hereafter: CRC).

<sup>92</sup> Committee on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, point 52.

<sup>93</sup> Art. 39 CRC.

<sup>94</sup> Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005.



on the rights of the child<sup>95</sup>. A large part of the Convention is dedicated to the protection of victims. Countries must therefore have qualified staff to properly identify the victims, especially children<sup>96</sup>. If a child is an unaccompanied foreign minor (UFM) who is identified as a victim, countries must provide representation (through legal guardianship, an organisation or an authority responsible for the child's best interests)<sup>97</sup>, establish their identity and nationality, and find their family when this is in their best interests<sup>98</sup>.

Contrary to the Palermo Protocol on human trafficking when certain assistance and support measures for victims were only envisaged as an option, the Convention of the Council of Europe makes them compulsory. Every country is therefore required to take measures to assist victims with their physical, psychological and social recovery<sup>99</sup>, such as suitable and safe accommodation, access to emergency medical care, advice and information on their rights in a language they can understand, assistance to ensure their rights and interests are taken into account during the criminal proceedings against the perpetrators, as well as access to education for the children. Furthermore, the

Convention specifies that assistance to victims can't be subject to their willingness to testify<sup>100</sup>. Children's rights must be taken into account within the framework of implementing measures in terms of accommodation, education and suitable care.

Victims are also often residing illegally in the country where they were exploited. According to the Convention, they will be granted a residence permit that can be renewed in certain cases<sup>101</sup>. As regards children, the Convention states that "when it is legally necessary, the residence permit for child victims is issued on the basis of their best interest and, if necessary, renewed according to the same conditions"<sup>102</sup>.

In terms of the EU, Anti-trafficking Directive 2011/36/EU<sup>103</sup> attaches great importance to the protection of child victims of trafficking:

- The child's best interest must be a primary consideration in terms of assistance, support and protection (Article 13);
- Children must receive the necessary support and assistance for their physical and psycho-social recovery in accordance

<sup>95</sup> Explanatory report of the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, §52.

<sup>96</sup> Art. 10 of the Convention.

<sup>97</sup> Art. 10, 4 a) of the Convention. In Belgium, UFM are appointed a guardian.

<sup>98</sup> Art. 10, 4 b) and c) of the Convention. Hence, locating the family won't be in the best interests of the child if it is responsible for the trafficking.

<sup>99</sup> Art. 12 of the Convention.

<sup>100</sup> Art. 11, §2 of the Convention.

<sup>101</sup> Art. 14 of the Convention. States may choose to issue these permits in one or both of the following situations: when the victim's stay is necessary, either owing to their personal situation, or owing to their co-operation with the competent authorities for the purpose of an investigation or criminal proceedings. The presumed victims must also be granted a recovery and reflection period beforehand of at least 30 days. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating or not with the competent authorities. They can't be expelled from the country and must benefit from support measures during this period.

<sup>102</sup> The terms "when legally necessary" were introduced in order to take into account the fact that some countries don't require a residence permit for children (*Explanatory report of the Convention*, §186).

<sup>103</sup> 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, replacing Council Framework Decision 2002/629/JHA (OJ L 101, 1 15.4.2011).

- with their personal situation, in order to find a durable solution (Article 14)<sup>104</sup>;
- Child victims of human trafficking must be protected within the framework of criminal investigations and proceedings (Article 15). These measures especially concern the child's hearing<sup>105</sup>, access to free legal counselling and free legal representation;
- Article 16 is devoted to the special case of unaccompanied child victims. The support and assistance measures must take due account of this personal situation<sup>106</sup>.

In addition, within the framework of measures aimed at combating illegal immigration, the European Union made provisions in Directive 2004/81/CE allowing non-European victims of human trafficking to be granted temporary residence permits if they cooperated with the competent authorities<sup>107</sup>. Member States can decide to extend this system to children<sup>108</sup>. It is essentially this directive that the Belgian legislator adapted with a view to creating the 'status of victim', which we shall examine later.

<sup>104</sup> Both child victims and children of victims who benefit from support must have access to the education system of the Member State concerned. Furthermore, Art. 14, §2, confirms the need to appoint a guardian or a representative for any child identified as a victim of trafficking in human beings, as a result of a conflict of interest between the child victim and the holders of parental responsibility.

<sup>105</sup> Among other things, the interviews must be conducted in appropriate facilities by trained professionals and their number must be reduced to a minimum.

<sup>106</sup> If necessary, a guardian must be appointed (Article 16, §3).

<sup>107</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ, L 261 of 6 August 2004.

## 2.2. Unaccompanied foreign minors in Belgium

Before we examine the status of child victims of trafficking, we thought it would be interesting to mention the number of unaccompanied foreign minors reported for the first time in Belgium in 2016 and 2017. The figures were provided by the guardianship service.

First UFM<sup>109</sup> reports<sup>110</sup> (Source: FPS Justice, Guardianship service)



Age of UFM (Source: FPS Justice, Guardianship service)

Age	2016		2017	
0-5	54	2%	49	2%
6-10	85	3%	74	2%
11-15	964	33%	891	29%
16-18	1,762	60%	2,053	66%
Undefined	58	2%	49	2%
<b>Total</b>	<b>2,923</b>	<b>100%</b>	<b>3,116</b>	<b>100%</b>

<sup>108</sup> Art.3, §3, paragraph 2 of Directive 2004/81/EC.

<sup>109</sup> This refers to the number of people who declare they are unaccompanied foreign minors when they are reported to the guardianship service by a police department, the Immigration Office or other authority. The number of people actually identified as an unaccompanied foreign minor is lower. Some will indeed be registered as adults following the identification process and others will disappear thus preventing their identification. See below for the number of minors under guardianship.

<sup>110</sup> One report corresponds to one person. The fact that a person can be reported several times isn't included in these statistics. The total number of reports is therefore much higher (approximately 30% or 1.4x higher).

Nigeria and the 15 most represented nationalities among the first to be reported to the guardianship service in 2016 and 2017, are as follows:

Nationalities of UFM (Source: FPS Justice, Guardianship service)

Nationality	2016	2017	Evolution 2016-2017
1 Eritrea	135	478	↗ x 3,5
2 Afghanistan	993	460	↘ x 0,5
3 Sudan	56	283	↗ x 5,1
4 Morocco	141	217	↗ x 1,5
5 Guinea	163	198	↗ x 1,2
6 Algeria	119	195	↗ x 1,6
7 Iraq	113	165	↗ x 1,5
8 Syria	271	112	↘ x 0,4
9 Albania	82	86	→ x 1,0
10 Romania	83	68	↘ x 0,8
11 Serbia	74	68	↘ x 0,9
12 DR Congo	61	54	↘ x 0,9
13 Libië	18	52	↗ x 2,9
14 Cameroon	15	47	↗ x 3,1
15 Somalia	76	43	↘ x 0,6
30 Nigeria	20	13	↘ x 0,7
Other	503	577	↗ x 1,1
<b>Total</b>	<b>2.923</b>	<b>3.116</b>	<b>↗ x 1,1</b>

### 2.3. The status of child victims of trafficking in human beings

In 2006, Belgium introduced the status of victim of trafficking in human beings in the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals (hereafter, Aliens Act)<sup>111</sup>, essentially within the framework of the implementation of its European obligations<sup>112</sup>. In reality, there were already provisions in Belgium to grant residence permits specific to victims of trafficking who cooperated with the

authorities, as from the beginning of the 1990s, but this procedure did exclusively feature in ministerial circulars at the time.

As permitted by European legislation, Belgium also decided to apply this system to unaccompanied foreign minors (UFM). However, Member States must ensure that the procedure is adapted to the child's age and maturity (in particular, by extending the reflection period)<sup>113</sup>.

This status is a sort of compromise between the need to combat criminal networks on the one hand, and the desire to protect the victims and offer them future prospects in Belgium on the other hand. The victims' statements often provide important pieces of information and evidence.

Furthermore, the procedure and national referral mechanism are detailed in a multidisciplinary circular<sup>114</sup>.

To benefit from this status, the presumed trafficking victim is required to respect three cumulative conditions, which must be respected throughout the judicial proceedings against the perpetrators:

- No further contact with the perpetrators of the offence;
- Support from a reception centre (PAG-ASA in Brussels, Payoke in Antwerp and Sürya in Liège);
- Cooperation with the law, by filing a complaint or by making relevant statements. Besides accommodation, the reception centres offer the presumed

<sup>111</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261 of 6 August 2004.

<sup>112</sup> One report corresponds to one person. The fact that a person can be reported several times isn't included in these statistics. The total number of reports is therefore much higher (approximately 30% or 1.4x higher).

<sup>113</sup> Art.3, §3 and 10 a) of Directive 2004/81/EC.

<sup>114</sup> Initially a circular of 26 September 2008. This was replaced by the Circular of 23 December 2016 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgian Official Gazette*, 10 March 2017. This circular also provides for the referral of Belgian victims to the specialised reception centres.

victim medical, psycho-social and legal help.

While assistance and protection don't initially depend on cooperation with the law, they are nonetheless very closely linked.

When it is question of a minor, support from a specialised reception centre is provided, if necessary, in collaboration with the centre that is looking after the minor, such as the Esperanto centre in Wallonia.

The system is based on multidisciplinary cooperation between the different players (police and inspection services, public prosecutor's offices and labour prosecutor's offices, specialised reception centres for victims, Immigration Office(10)).

### 2.3.1. Beneficiaries of the status

Article 61/2 of the Law of 15 December 1980 concerns two categories of beneficiary:

- foreign nationals, who are victims of trafficking in human beings (Europeans and non-Europeans, referred to in Article 433*quinquies* of the criminal code);
- foreign nationals, third-country nationals, victims of certain aggravated forms of human smuggling, i.e. those referred to in Article 77 *quater*, 1° to 5° of the Law of 15 December 1980. Among the aggravating circumstances enabling persons to benefit

from victim status, are the fact of being an unaccompanied foreign minor or the fact that the victim's life was put in danger<sup>115</sup>.

In some circumstances, migrants who used smuggling networks can indeed be victims of bad treatment or clear-cut abuse. Hence, their transport conditions - sometimes particularly life-threatening - or the treatment inflicted upon them during the journey by the smugglers, are sometimes downright abuses of their human rights. This is one of the reasons that pushed the legislator to extend protection to certain victims of human smuggling<sup>116</sup>.

### 2.3.2. The procedure and its conditions

There are several successive phases to the procedure, which is almost identical for adults and minors. Article 61/2, paragraph 2 of the Aliens Act does however specify that the child's best interests must be taken into account during the whole procedure. In addition, the public prosecutor must be attentive to the particular vulnerability of minors, who are less inclined to cooperate<sup>117</sup>. They must also contact the public prosecutor at the juvenile court charged with following up the minor<sup>118</sup>. At the same time, the prosecutor is required to bring in police officers specialised in human trafficking and interviewing minors, to help identify the child victim<sup>119</sup>.

<sup>115</sup> Besides the fact the victim is a child, other aggravating circumstances concern abuse of the victim's particularly vulnerable situation (Article 77*quater*, 2°); the use of fraudulent tactics, violence, threats or coercion (Article 77*quater*, 3°); giving or receiving payments or benefits to achieve the consent of a person having control over the victim (Article 77*quater*, 3°bis); endangering the victim (Article 77*quater*, 4°); the physical consequences of the offence for the victim (seemingly incurable disease, permanent physical or mental incapacity, complete loss of an organ the use of an organ or serious mutilation (Article 77*quater*, 5°).

<sup>116</sup> There was no obligation under European Directive 2004/81/EC. Furthermore, following the entry into force of the Law of 10 august 2005 which distinguishes between the offences of trafficking and smuggling of human beings, some migrants who were previously able to benefit from victim status under former Article 77*bis* of the Law of 15 December 1980 (which was applied to both trafficking and smuggling of human beings), could no longer benefit from it. See the preamble of the bill of 10 May 2006 amending the Law of 15 December 1980 on access to the territory, residence, establishment and repatriation of foreigners, *Parl. Doc.*, Chamber, 2005-2006, 51- 2478/001 pp. 26-28.

<sup>117</sup>

<sup>118</sup> Point 6.2.3.1. of the Circular of 23 December 2016.

<sup>119</sup> *Ibid.*

The reception centre is responsible for supporting the victim requesting temporary residence documents from the Immigration Office<sup>120</sup>. When the victim is a UFM, the guardian must be involved in all the steps<sup>121</sup>.

During the **initial phase**, the detection of victims by frontline services (police departments and the labour inspectorate) and their referral to a specialised reception centre are crucial<sup>122</sup>. The detection of a victim is based on findings in the field or statements<sup>123</sup>.

When one of these services has evidence that they are in the presence of a potential victim, they must inform the latter of the specific procedure for trafficking victims<sup>124</sup> and refer them to a specialised reception centre.

Furthermore, if the frontline service believes the person is a minor, it must check whether the person is a presumed victim of trafficking or aggravated smuggling, on the basis of the indicators in the relevant ministerial directives<sup>125</sup>. For this purpose, it must take into account the specificity of the minor's vulnerability when the investigations are carried out<sup>126</sup>.

If the person is a foreign national, the police department must also inform the IO by sending it the administrative control report for a foreign national, which contains a

'trafficking/smuggling in human beings' category<sup>127</sup>.

When the subject is a UFM, the specific measures applicable to them in terms of reporting and identification must also be respected<sup>128</sup>. A report must be sent to the guardianship service and the IO. A specific section concerns the presumption of trafficking or aggravated smuggling, which, considering the minor's vulnerability, gives them priority to the allocation of a guardian.

The table hereafter indicates the number of UFM who have benefited from a guardian. The figures concern all the UFM and not just those who are presumed victims of trafficking (or smuggling).

Number of ongoing guardianships, new appointments and guardianships cessations<sup>129</sup> in 2016 and 2017 (all unaccompanied minors) (Source: FPS Justice, Guardianship service)

	2016	2017
Ongoing guardianships	3.609	3.123
New appointments	2.439	1.364
Cessations guardianships	946	1.369

Coming back to the procedure, the first phase, i.e. the **reflection period**, should enable the presumed victim to escape from the

<sup>120</sup> Point 6.2.3.1. of the Circular of 23 December 2016.

<sup>121</sup> Article 110bis, §1 of the R.D. of 8 October 1981 stipulates that applications for a temporary residence permit are made by a reception centre specialising in the reception of victims, recognised by the competent authorities.

<sup>122</sup> Point 6.2.2.4. of the Circular of 23 December 2016. Note that in practice, a guardian is sometimes only appointed during a later phase of the procedure.

<sup>123</sup> Art. 61/2, §1 of the Aliens Act. Other frontline services can also play a role in the detection of victims, such as social services, legal services, hospital emergency services (Point 3.1, paragraph 5 of the Circular of 23 December 2016).

<sup>124</sup> Point 3.1. of the Circular of 23 December 2016. The latter specifies that the victim doesn't have to make statements to be considered as such. In this respect, the recognition of signs is sufficient.

<sup>125</sup> Point 3.2. of the Circular of 23 December 2016 specifies that this obligation to provide information also applies to other services entering into direct contact with presumed victims, such as the IO or the Office of the Commissioner General for Refugees and Stateless Persons.

<sup>126</sup> A list of indicators was developed alongside the COL 1/2015 directives on the investigation and prosecution policy regarding human trafficking and COL 4/2011 containing provisions to facilitate the crack down on human smuggling.

<sup>127</sup> Point 6.2.1.2. of the Circular of 23 December 2016.

<sup>128</sup> Point 3.3. of the Circular of 23 December 2016.

<sup>129</sup> See the Circular of 8 May 2015 on the reporting form for unaccompanied foreign minors and their care, Belgian Official Gazette, 20 May 2015.



perpetrators' influence, return to a state of calm and allow them to decide whether or not they wish to make statements or file a complaint against the persons who have exploited them. Or, if they so wish, to prepare for a voluntary return to their country of origin<sup>130</sup>. It is only this initial phase that differs from the procedure relating to adults. During this initial phase, the UFM receives a three-month residence permit in the form of an immatriculation certificate (A.I.)<sup>131</sup>. In comparison, the reflection period for adults is only 45 days. They are provided with an Annex 15 document.

If necessary, the reception centres can receive the victim at their reception house, located at a secret address. However, since these centres aren't specialised or equipped to care for or support child victims, it is more likely that they will be referred to a reception centre such as the Esperanto centre in Wallonia, or Minor-Ndako in Flanders<sup>132</sup>. Nevertheless, the specialised centre will take care of the legal and administrative support of the minor in collaboration with the centre hosting the young person. In addition, the guardian is associated with the different stages of the procedure. For instance, they must ensure the minor is properly supported, together with the specialised reception centre.

If the minor immediately makes statements, they will also be issued a three-month

temporary residence permit<sup>133</sup>, in the form of a immatriculation certificate (A.I.)<sup>134</sup>.

The decision to issue residence permits will then depend on **how the judicial proceedings progress**. Before the expiry of the temporary three-month residence permit<sup>135</sup>, the Immigration Office requests an opinion from the public prosecutor or labour prosecutor based on several questions<sup>136</sup>. The answers to these questions determine the issue of the six-month residence permit, which takes the form of a registration certificate entered in the register of foreign nationals (CIRÉ)<sup>137</sup>. These questions aim to ascertain whether the inquiry or judicial proceedings are still in progress, whether the person can be considered as a victim of human trafficking or an aggravated form of human smuggling, whether they are showing a clear desire to cooperate or whether they have broken off all ties with the presumed perpetrators of the offence. In addition, the presumed victim must not be considered as having the capacity to compromise public order or national security.

This document is extended or renewed when the public prosecutor's office or the labour prosecutor's office confirms that the person still satisfies the above-mentioned conditions, up until the moment when the court rules at first instance<sup>138</sup>. For this purpose, the Immigration Office regularly contacts the public prosecutor so that they are informed of

<sup>130</sup> Number of terminated guardianships in relation to Art. 24 and following of the programme act of 24 December 2002 (adulthood, disappearance, death, etc.) in particular.

<sup>131</sup> This voluntary return is organised with the help of organisations such as IOM.

<sup>132</sup> Art. 61/2, §2, paragraph 2 of the Aliens Act and Art. 110bis, §2, paragraph 2 of the R.D. of 8 October 1981. The UFM is also entered in the aliens register.

<sup>133</sup> Point 6.2.1.2. of the Circular of 23 December 2016. However Minor-Ndako recently decided to no longer take in minors who are presumed victims of trafficking.

<sup>134</sup> Art. 61/3, paragraph 1 of the Aliens Act.

<sup>135</sup> Art. 110bis, §3 of the R.D. of 8 October 1981.

<sup>136</sup> Neither the law nor the circular mention a minimum period to be respected, which can cause problems in practice, if the reception centre is informed at a late stage that the six-month document won't be issued.

<sup>137</sup> Art. 61/3, §2 and 61/4, §1 of the Aliens Act and point 5.2.4. of the circular of 23 October 2016.

<sup>138</sup> Art. 61/4 of the Aliens Act and Art. 110bis, §4 of the R.D. of 8 October 1981.

the outcome of the complaint or statement submitted.

Determining whether a person qualifies as a victim is therefore left entirely in the hands of the public prosecutor's examining magistrate. However, they must take into account the opinion of the other partners concerned (IO, reception centre, police department and/or inspectorate)<sup>139</sup>. Moreover, when the victim is a minor, the public prosecutor is required to take into account the particular vulnerability of the latter when they answer the five questions<sup>140</sup>.

The law also includes conditions for the non-renewal or withdrawal of the temporary residence permits<sup>141</sup>. If the decision is taken to end the procedure, the specificity of the UFM's vulnerability must be taken into account. Furthermore, the guardian must be informed of the decision to stop the procedure<sup>142</sup>.

Finally, the child victim can obtain a **permanent residence permit** after the judicial proceedings against the perpetrators, in the two following cases: either their statement or complaint has resulted in a conviction, or the senior crown prosecutor or labour prosecutor have accepted the charge of trafficking or smuggling in human beings in their summing-up<sup>143</sup>.

## 2.4. Difficulties associated with the protection of child victims of human trafficking

We have found that, in practice, very few presumed child victims of trafficking benefit from the procedure. Hence, in 2016<sup>144</sup>, out of the 133 victims of trafficking newly supported by the reception centres, only seven of them were minors. Six of them were young girls who were the victims of sexual exploitation (including four Nigerians, one Bulgarian and one British girl). A young Vietnamese man was the victim of labour exploitation<sup>145</sup>.

What is the reason for this low number? There appear to be several difficulties in the field.

### 2.4.1. Problems with detection

One of the main difficulties is detecting and identifying minors presumed to be victims of trafficking so that they can benefit from suitable protection measures.

This is why it is essential that frontline players are properly trained (police officers, guardians, youth care services, etc.).

The assessment of the 'minors' aspect of the national referral mechanism for victims<sup>146</sup> did however reveal that players in the field didn't really know which steps to take in the presence

**One of the main difficulties is detecting and identifying minors presumed to be victims of trafficking.**

<sup>139</sup> Art. 110bis, §4 of the R.D. of 8 October 1981.

<sup>140</sup> Point 5.2.4. of the Circular of 23 December 2016.

<sup>141</sup> Point 6.2.1.3. of the Circular of 23 December 2016.

<sup>142</sup> See articles 61/2, §3, 61/3, §3 and 61/4, §2 of the Aliens Act. These motives are as follows: deliberately taking the initiative to make active contact with the presumed perpetrators of the offence, risk of compromising public order or national security. In addition, as regards CIRE: ending cooperation as well as fraudulent cooperation or fraudulent or unfounded complaint.

<sup>143</sup> Note that there is no specific recourse against the judge's decision. The only existing types of recourse are the traditional types, i.e. seeking the annulment of the Immigration Office's decision by the Aliens Litigation Council.

<sup>144</sup> Art. 61/5 of the Aliens Act. They must also have presented their identity papers, or at least demonstrated that it was impossible to obtain this document in Belgium (Art. 110bis, §5 of the R.D. of 8 October 1981).

<sup>145</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, point 5.1., pp. 151-152.

<sup>146</sup> Assessment of the multidisciplinary circular of 2008. This assessment was conducted by the office of the interdepartmental coordination unit of the policy on the trafficking and smuggling of human beings.

of a UFM presumed to be a victim of trafficking. Furthermore, many professionals, besides those working on the problem every day, admitted they were unable to recognise trafficking indicators and had very patchy knowledge concerning the difference between trafficking and smuggling. A lack of awareness about the guardianship system and the specificity of victim status was also noted<sup>147</sup>.

Among the local police, teaching staff and youth care workers, there is also a tendency to confuse trafficking and child abuse<sup>148</sup>. Similar findings were established by GRETA, the Council of Europe's independent group of experts responsible for assessing the implementation of the Convention on Action against Trafficking in Human Beings by the States Parties.

Within the framework of Belgium's second assessment cycle, which took place in December 2016, GRETA emphasised that guardians, social workers, police officers and child protection specialists are often incapable of detecting trafficking indicators in children<sup>149</sup>.

This is also true concerning magistrates who aren't familiar with the subject (on-duty or juvenile public prosecutor): when they are required to intervene during the interception of a UFM, they aren't always aware of the fact

that they may be dealing with a trafficking (or smuggling) victim<sup>150</sup>.

For instance, there is the example of the on-duty prosecutor who reacted inappropriately when he was contacted by the local police in Brussels concerning a young Nigerian girl who had come to them, having just escaped from her pimp<sup>151</sup>. Instead of charging the police department to contact a specialised reception centre and guardianship service, the judge asked them to initiate legal proceedings for 'illegal stay'.

While efforts have been made by the authorities to solve these problems<sup>152</sup>, especially by organising training sessions and putting together a handbook for magistrates on handling UFM<sup>153</sup>, we have nevertheless noted that failures continue to exist in the field<sup>154</sup>.

In addition, if the person is an unaccompanied foreign minor, they must be reported to the guardianship service and the Immigration Office using the standard reporting form. This contains a specific category indicating whether the minor is a presumed victim of trafficking (or smuggling). In practice, however, this form isn't always filled in, especially owing to a lack of human resources, and the minor therefore isn't reported to the guardianship service<sup>155</sup>.

<sup>147</sup> MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, Chapter II, point 2.1.3., p. 70.

<sup>148</sup> ECPAT, *La traite des enfants en Belgique, identification et protection des victimes*, 2016, p. 21.

<sup>149</sup> GRETA, Report concerning the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings by Belgium, second assessment cycle, Strasbourg, 16 November 2017, §122.

<sup>150</sup> MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *op. cit.*, Chapter II, point 2.1.3., p. 70.

<sup>151</sup> See Part 2, Chapter 2, point 2.2.

<sup>152</sup> Hence, measures such as the organisation of specific training on trafficking for Fedasil staff, guardians, police departments and judges, as well raising awareness in the youth care sector, have been provided for in the National action plan to combat the trafficking of human beings (2015-2019). Some of the measures have already been implemented.

<sup>153</sup> Part of the handbook concerns child victims of trafficking. See Circular 15/2016 of the Board of Prosecutors General relating to the handbook on taking care of unaccompanied foreign minors (UFM).

<sup>154</sup> Also see ECPAT, *op. cit.*, p. 21 which emphasises that despite the authorities' efforts, many examples of disengagement by frontline services were reported during the research.

<sup>155</sup> In principle, this service provides continuous service 24/7 but, owing to a lack of resources, it is only available until 21:00. See also Part 3, Chapter 4, point 3.

Furthermore, the 'trafficking/smuggling in human beings' box is sometimes filled in differently by frontline players and depends on the personal interpretation of the situation by the person filling in the form. So, although we are witnessing an increase in the exploitation of young Nigerian girls, only 13 Nigerian minors were reported to the guardianship service in 2017. In six of these cases, there were clear indications of human trafficking from the beginning<sup>156</sup>. Similarly, in the Mawda case, according to the media, unaccompanied foreign minors were visibly in the van driven by one of the smugglers. And yet, none of these persons were reported to the guardianship service.

It would therefore seem crucial to continue the training efforts and to increase awareness of the obligation to inform the guardianship service through the 'trafficking/smuggling in human beings' box on the standard reporting form, even in case of doubt.

Another difficulty concerns determining a person's age. In Belgium, when an authority expresses doubt concerning the age of someone claiming to be a minor, the guardianship service carries out a triple medical test<sup>157</sup>. And yet, many people have long spoken out against this scientifically unreliable method, which doesn't taken into account psychological, cognitive or behavioural factors<sup>158</sup>. GRETA<sup>159</sup>, as well as Belgian players such as the platform *Mineurs en exil*<sup>160</sup> (Minors

in Exile) have subsequently asked Belgium to re-examine the procedures to determine a person's age. Incorrectly determining someone's age can prevent a minor, and more importantly a presumed victim, from benefiting from the proper protection.

Results of age examen carried out in 2016 and 2017 by the Guardianship service<sup>161</sup> (all UFM) (Source: FPS Justice, Guardianship service)

	2016	2017
Adult	902	479
Minor	394	196
Total	1.296	675

In addition, child victims frequently don't have any papers and/or they say they are adults because their exploiter has ordered them to say so<sup>162</sup>. This is especially the case for Nigerian victims<sup>163</sup>, who thus escape the child protection system, as this can be a hindrance to traffickers<sup>164</sup>. And yet, in practice, police officers don't always question their age, with the result that the presumed victim is treated as an adult. It is therefore important to raise awareness among frontline services about questioning the age of a presumed victim, who claims to be an adult, if there is a doubt they may be a minor.

As regards Belgian girls exploited by a loverboy who have run away from a youth institution and are the victims of sexual exploitation, they are first and foremost considered as problem

<sup>156</sup> Information received from the guardianship service during an interview in March 2018 concerning three child victims of sexual exploitation, one victim of labour exploitation and two 'unspecified'.

<sup>157</sup> An x-ray of the teeth, wrist and shoulder blade.

<sup>158</sup> See the declaration adopted by ENOC during its 17<sup>th</sup> annual general assembly held on 27 September 2013 in Brussels <http://enoc.eu/wp-content/uploads/2015/01/ENOC-2013-Statement-on-Children-on-the-Move-EN.pdf>.

<sup>159</sup> GRETA, *op. cit.*, §130.

<sup>160</sup> K. FOURNIER, *L'estimation de l'âge des MENA en question : problématique, analyse et recommandations*, 2017.

<sup>161</sup> These figures must be put into a particular context according to a certain number of doubts expressed, identification deadlines, obstacles preventing identification (e.g. linked to disappearances).

<sup>162</sup> See Part 3, Chapter 3, point 2.3., Part 2, Chapter 2, point 1. And Part 1, Chapter 1, point 1.2.1.a).

<sup>163</sup> See Part 3, Chapter 2, point 1.1. and Part 2, Chapter 1, point 1.1.1.a.

<sup>164</sup> IOM, *International trafficking through the central Mediterranean route: data, stories and information collected by the International Organization for Migration*, 2017. The Federal Judicial Police (FJP) of Brussels also confirmed that many Nigerian victims present themselves as adults, sometimes with fake papers.

children and not as child victims of trafficking who require special care.

In an effort to better protect them, the Flemish Minister for Well-being, Health and the Family adopted an action plan concerning the victims of loverboys, a particular form of human trafficking<sup>165</sup>. One of the points in this action concerns the protection of these girls by providing suitable care. A working group co-chaired by the Flemish Community and the Justice Federal Public Service has been set up to find an appropriate response to this phenomenon. An addendum to the federal action plan on human trafficking has been adopted, in which this aspect will be examined within the framework of victim status.

As for children forced to commit offences, they are rarely detected as trafficking victims. Considered as juvenile delinquents, they are treated as such and sent to public youth protection institutions (IPPJ), if necessary<sup>166</sup>. This was the case concerning a young girl forced to pickpocket by a network. She was placed in the Saint-Servais IPPJ<sup>167</sup>. The Esperanto association is nevertheless sometimes contacted for Roma girls who have committed break-ins. These thefts take place all over Belgium, but it seems there has been no investigation into who the adults are behind these youngsters or who is exploiting them.

#### 2.4.2. The need for special reception services

The identification of a minor as a trafficking victim is essential in order for them to be able to benefit from the proper assistance and protection measures. Within this framework, it is vital they are provided with suitable and safe accommodation<sup>168</sup>.

As regards UFM, the Belgian legislator has set up a reception system in three phases. Minors are cared for according to their specific needs<sup>169</sup>.

In principle, however, depending on the urgency of the situation, a UFM who exhibits signs of trafficking will be placed directly in a centre specially designed to receive them, such as the Esperanto centre in Wallonia. The multidisciplinary and multicultural team at this small centre offers youngsters individualised care and a reassuring environment. Specific security measures are in place (secret address, accompanied outings during the first month, mobile phones not allowed inside the centre, etc.), which help to limit the risk of escape, among other things<sup>170</sup>. Esperanto has also successfully cared for minors intercepted in refrigerated lorries.

The lack of recognition of this establishment as a specialised centre can cause problems in practice. This centre is unknown to certain players in the field, which means that it isn't always contacted in case of a minor who is a presumed victim of trafficking or smuggling.

<sup>165</sup> Actieplan voor een betere bescherming van slachtoffers van tienerpooiers, 25 January 2016: [https://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/persberichten/2016/20160125\\_pb-tienerpooiers.pdf](https://wvg.vlaanderen.be/jongerenwelzijn/assets/docs/persberichten/2016/20160125_pb-tienerpooiers.pdf).

<sup>166</sup> Placement in a Public Youth Protection Institution (PYPI) can be ordered by the juvenile court judge for minors who have committed an act considered as an offence, on the basis of Article 37 of the Law of 8 April 1965 relating to youth protection, care for minors having committed an act considered as an offence and compensation for the damages caused by this act.

<sup>167</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 2, Chapter 3, point 2, pp. 42-43.

<sup>168</sup> On this point, see Article 12.2 of the Council of Europe Convention which recommends taking into account needs in terms of the security and protection of victims.

<sup>169</sup> Law of 12 January 2007 on the reception of asylum seekers and certain other categories of foreign nationals, *Belgian Official Gazette*, 7 May 2007.

<sup>170</sup> See European Migration Network (EMN), *Policies, practices and data on unaccompanied minors in Belgium*, 2014 update, October 2014, Q46.



Official recognition would limit the risk of a potential child victim being referred to other services that aren't appropriate for their situation. It is also important to see things from the child's point of view and not the system's, therefore the interventions should only focus on the beneficiaries. Support for minors is indeed completely different than that for adults. It is essential for a child to be in a reassuring environment because their trust in adults is very fragile. An increased number of players is an extra stress factor and has an impact on the understanding of the child's situation. In addition, official recognition as a specialised centre would allow direct contact with the different authorities, not only to ensure better care for the victim overall, but also as regards the residence procedure. The duration of the support provided by Esperanto would thus be recognised, even if the youngster initially chooses another residence procedure, or if they are not in a position to quickly make statements, or if for one reason or another, the judicial proceedings can't go ahead. Lastly, this centre has special expertise in minors who are presumed victims and it cooperates with frontline players. This expertise should be recognised as a stakeholder in the fight against human trafficking. This would allow Esperanto to play an active role in the fight against human trafficking and to exchange with other players in the field. This means that the

Interdepartmental Coordination Unit against the Smuggling and Trafficking of Human Beings would have to take the necessary measures for this purpose (e.g. adaptation of the relevant Royal Decrees).

Furthermore, there is still no equivalent centre in Flanders despite various initiatives<sup>171</sup> and recommendations<sup>172</sup> from the Committee on the Rights of the Child<sup>173</sup> among others.

Centres such as Minor-Ndako don't offer the same guarantees of safety<sup>174</sup>.

Another difficulty concerns UFM, who are only in transit in Belgium, especially those present in Maximilien Park<sup>175</sup>, who are waiting for an opportunity to continue their journey to the United Kingdom. There are many questions concerning how to apprehend these youngsters in transit in our country, who aren't seeking either reception or support services<sup>176</sup>. Consequently, they need to have access to appropriate information on their rights and the existing procedures, and be suitably protected against the risks of trafficking. Adapted reception services are also necessary for them considering the high risk of them running away to join the smugglers again.

And yet, in practice, there appears to be a lack of coordination between the authorities responsible for taking charge of UFM: the Immigration Office has no solution to offer

<sup>171</sup> The former director of Minor-Ndako is prepared to help set up a centre such as this. The Flemish Parliament has given him its support. See *De Standaard*, 28 March 2018, p. 13.

<sup>172</sup> This is what essentially emerged from the assessment of the 'minors' section of the national referral mechanism for victims. On this subject, see MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *op. cit.*, Chapter 2, point 2.1.3, pp. 66-67.

<sup>173</sup> The Committee on the Rights of the Child had recommended that Belgium create residential structures for child victims of trafficking. See Committee for the Rights of the Child, *Examination of the reports presented by the States Parties in application of Article 44 of the Convention, Final observations: Belgium*, 18 June 2010, point 81.

<sup>174</sup> On this subject, see J. VANGENECHTEN, "SOS Child victims of human trafficking" in MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, Part 1, Chapter 2, pp. 44-47, esp. p. 46.

<sup>175</sup> Between 9 June and 7 September 2017, checks were carried out in Maximilian Park and the area around Brussels-North station on 592 migrants including 54 unaccompanied minors ([http://www.vivreici.be/article/detail\\_pres-de-600-migrants-controles-entre-juin-et-septembre-au-parc-maximilien-et-a-bruxelles-nord?id=134156](http://www.vivreici.be/article/detail_pres-de-600-migrants-controles-entre-juin-et-septembre-au-parc-maximilien-et-a-bruxelles-nord?id=134156))

<sup>176</sup> See Part 3, Chapter 3, point 2.

UFM who turn up but don't want to be given accommodation; it isn't possible for the guardianship service to have someone on duty after 21:00, and Fedasil has no-one on duty over the weekend and has difficulties taking in UFM on an emergency basis. Consequently, it is very risky if a youngster finds themselves on the street.

What is needed is a rapid tailor-made reception service. A short-stay transit centre could offer these minors a solution<sup>177</sup>. The existing structures have to adapt to the children's needs, and not vice versa. A 'risk assessment' would also help to determine a 'trafficking/smuggling' risk profile.

#### 2.4.3. Residence of unaccompanied foreign minors who are victims of trafficking: a balance to be found between the need for protection and children's rights

Very few minors benefit from the residence procedure as victims of trafficking in human beings<sup>178</sup>. One of the reasons relates to the procedure which depends on cooperation with the law and the strict requirements associated with it. Minors are afraid, they fear reprisals against themselves or their family back in the country of origin. Others would like to cooperate but aren't able to provide sufficient elements that would allow the exploiter to be identified. And others would prefer to go straight home. Furthermore, a minor exploited by their family and caught up in a conflict of

loyalty, often won't dare to file a complaint against them.

While this status might be protective in the long term, since it offers the chance to permanently regularise their situation when they reach adulthood, it is also subject to the uncertainties of the judicial proceedings and is consequently a source of insecurity for the child. At the same time, it must be possible to find the perpetrators in Belgium. This is why the guardian often chooses to submit another stay application, if this is in the child's best interests. A request for asylum - in which the 'trafficking' element comes into consideration - can reinforce the credibility of the youngster's account in the eyes of the asylum authorities<sup>179</sup>. The UFM also has the possibility of submitting a stay application within the framework of the UFM procedure<sup>180</sup>. This procedure enables them to obtain a temporary residence permit as long as a durable solution<sup>181</sup> in their interest hasn't been found, or if the Immigration Office considers that a durable solution is residence in Belgium. But this procedure is of no interest in the long term if the minor is close to adulthood, since it will end at this point.

Proper information in a language accessible to a foreign minor therefore seems essential, both on their rights as well as on the possibilities and limits of these different procedures, especially the requirements of the trafficking procedure. They must be able to decide with full knowledge of the facts whether

<sup>177</sup> On this subject, see Part 3, Chapter 3, point 3.

<sup>178</sup> In 2015, only 14 foreign minors who were victims of trafficking (out of 117 new victims) actually received a residence permit for the first time from the IO within the framework of this procedure. In 2016, six out of 119 victims received one. In terms of human smuggling, this concerned six minors out of 14 new victims in 2015 and four minors out of 13 victims in 2016. Also note that it isn't always UFM who are concerned but also children of victims (see : MYRIA, 2016 and 2017 Annual Reports Trafficking and smuggling in human beings, Part 4, point 4).

<sup>179</sup> See ECPAT, *op. cit.*, pp. 37-38. For an example of a decision where refugee status was granted to a trafficking victim: CCE, 2 June 2014, No. 125 148.

<sup>180</sup> Art. 61/14 to 61/25 of the Aliens Act. However, European UFM don't have access to this procedure. The Aliens Act still hasn't been adapted to the definition of a European UFM as described in the Guardianship Law. Furthermore, this procedure doesn't offer minors approaching adulthood a long-term perspective.

<sup>181</sup> A long-term solution would either be family reunification, or their return to their country of origin, or even staying in Belgium.

or not to make a statement. It is also in the interest of the minor to prosecute the persons who exploited them<sup>182</sup>. Consequently, the 'human trafficking' procedure should at least be applied in a flexible manner. This is indeed what happened in a case concerning a Nigerian girl, where six months of support and a relationship of trust were necessary before the girl was in a position to decide to make a statement.

It is also possible that returning a minor to their family or country of origin isn't in their best interest, especially when it was the family who was behind the trafficking. As stated by the Committee on the Rights of the Child, local integration should be the first option<sup>183</sup>.

More generally, what causes a problem within the framework of this procedure, is the obligation to cooperate with the law, which determines whether or not a residence permit may be granted following the period of reflection<sup>184</sup>. On this level, it doesn't appear to us to be compliant with the requirements of several international provisions, especially Article 14, §2 of the Council of Europe Convention on trafficking. The latter states that "the residence permit for child victims, when legally necessary, shall be delivered in accordance with the best interests of the child

and, where appropriate, renewed under the same conditions".

This is why several stakeholders have long been calling for the withdrawal of this obligation to cooperate with the law as a condition for granting a residence permit as a child victim of trafficking<sup>185</sup>. It is also one of the recommendations put forward by the Committee on the Rights of the Child to Belgium during the examination of the latter's periodic report<sup>186</sup>. In its recent assessment report on Belgium, GRETA also recommended that the Belgian authorities should "take extra measures to guarantee that child victims of trafficking actually receive a residence permit, in full conformity with Article 14(2) of the Convention"<sup>187</sup>.

**And it is time to re-examine the issue of a status of 'objective victimisation', which should be granted to minors who are presumed victims.**

Hence, it is time to re-examine the issue of a status of 'objective victimisation', which should

be granted to minors who are presumed victims. The terms relating to such a status should be discussed in an interdepartmental coordination unit working group. The status should thus be granted without the obligation to make a statement to the police or to file a complaint.

A detailed opinion on the status of victim of 'human trafficking' of a person (as is the case, for instance, for victims of trafficking by

<sup>182</sup> Even if a criminal investigation concerning the perpetrators shouldn't necessarily only depend on the victim's statements.

<sup>183</sup> Committee on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, point 89.

<sup>184</sup> Some EU Member States have opted for unconditional residence rights for child victims trafficking. On this subject, see the FRA's study, *Child Trafficking in the EU - Challenges, perspectives and good practices*, 2009, pp. 101-102.

<sup>185</sup> Proposals such as introducing the status of objective victimisation have been made. On this subject, see the 2007 Trafficking and smuggling in human beings report published by Myria (then known as the Centre for Equal Opportunities and Opposition to Racism), pp. 33-34.

<sup>186</sup> The Committee also recommends that Belgium should "fulfil its obligation to grant protection to all child victims of trafficking and issue them with a residence permit regardless of their nationality and their desire or ability to cooperate with judicial proceedings" (see Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Belgium*, 18 June 2010, point 81).

<sup>187</sup> GRETA, *op. cit.*, §147.

diplomats who can't be prosecuted) could be given by several stakeholders (centre specialised in the reception of child victims of trafficking, support worker at the centre where the youngster is residing if it is another centre, public prosecutor, expert psychologist, etc.). Categories could be determined such as children for whom it isn't possible to initiate a legal case against the perpetrators, owing to trauma, and because the youngster is too frightened to file a complaint, etc. It would be beneficial to examine examples of good practices in other countries.

As regards minors who have used smuggling networks, the situation seems to be slightly different. These minors are often driven by a plan to migrate to the United Kingdom, and don't wish to seek asylum in Belgium. They harbour – unjustified – fears of falling under the Dublin procedure<sup>188</sup>. What we have found is that these youngsters are very badly informed.

Even if they have been badly treated during their migration journey, they aren't, as such, comparable to victims of human trafficking. However, they are, above all, extremely vulnerable minors. The Committee on the Rights of the Child has specified that the non-discrimination principle applies to all stages of the treatment of separated or unaccompanied children. This requires states to differentiate according to specific needs in terms of protecting these vulnerable children, whether they are unaccompanied, separated, refugees, asylum seekers or migrants<sup>189</sup>. Consequently, they should be suitably protected. The guardian should therefore look for the most suitable procedure for the child in question. In

any case, a durable solution must be found in the best interests of the child.

## 2.5. Proposed plan of approach

A working group should be formed in order to develop a functional system for child victims of human trafficking, capable of managing a significant flow of victims. Within this framework, we are launching a possible line of thought associated with a concrete proposal concerning an integral plan of approach aimed at improving the detection, referral, victim status and reception of child victims of human trafficking. This is a first step aimed at initiating a discussion on the issue within the framework of which the concept of 'objective victimisation' of victims of human trafficking plays a major role. Consideration is given to the fact that an 'objective victimisation' system has a limited management capacity and will above all serve as a final stage for a more selective group.

### 2.5.1. Structural improvement of the incoming flow

As already mentioned, the main problem involves the detection of child victims of human trafficking. To solve this on a structural level, a system of local workers has to be set up, whose task would be to proactively identify child victims in the street. They could possibly support specialised police departments during their checks. Workers in the youth care sector and Fedasil can also take advanced training courses in order to be able to recognise the indicators of human trafficking among minors. These authorities' reception structures can expect several victims of human trafficking who haven't been identified in the past. When

<sup>188</sup> According to the Dublin procedure, it is the EU country the migrant first entered that must process their asylum application. If the asylum-seeker is in another European country, they may be sent back to the first country. However, this requirement isn't applicable to UFM.

<sup>189</sup> Committee on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, point 18.

indicators of human trafficking are detected in a minor, they must be put in contact with support workers from the specialised centres for child victims of human trafficking. In this respect, it is essential that the specialised centres for child victims of human trafficking are also recognised as being official stakeholders of the multidisciplinary collaboration in the domain of human trafficking, so that they also have the competence to request a temporary residence permit for child victims after their preliminary interview.

### 2.5.2. Referral mechanism

At their preliminary interview, the support workers from the specialised centres for victims of human trafficking, or centres for child victims of human trafficking, establish whether they are dealing with a case of human trafficking. They have to assess whether the acts of human trafficking took place here or in another country.

#### *a) Starting the 'objective victimisation' procedure in case of extraterritoriality*

If the victim evokes acts of human trafficking that took place abroad, the 'objective victim of human trafficking' procedure is immediately initiated. The victim is first given a temporary residence permit and, following the committee's positive opinion, a permanent residence permit if this is in the child's best interests.

#### *b) Start of the rest period in case of acts committed in Belgium*

If the acts of human trafficking took place in Belgium, a period of rest is initiated for the child victim. It can be applied several times in succession. This period of rest is crucial in order to break the tie between the victim and the exploiter and to earn the victim's trust. During this period of rest, the child victim is encouraged to cooperate with the law but can

in no way be obliged to do so. This cooperation with the law can take on several forms: providing the police with relevant statements, but also handing over relevant information to the police such as text messages on a smartphone. When a child or the family is threatened, it is necessary to find a solution associated with an offer of protection, insofar as it is possible. In this respect, it is necessary to cooperate with the country of origin and the possibility of family reunification in Belgium can be examined.

A child victim can't be forced to make a statement. Social workers must realise that it is sometimes in the child's interest to start an investigation as soon as possible, when traces of the acts committed are still easy to find and can still be used to obtain proof or objective testimonies. In this case, it is important for the minor to quickly make a statement or hand over data that could lead to an investigation. These elements may be essential for the child's protection. Consequently, earning the trust of the child victim is crucial in this respect. This approach also helps to prevent many of these cases being dropped owing to a lack of evidence.

Because a victim statement on its own isn't sufficient to obtain a conviction for human trafficking. It is also essential that, in the case of Belgian child victims of loverboys, they are encouraged to voluntarily cooperate with the law. This is a specific group of vulnerable victims that clearly doesn't require residence papers, but protection combined with support and specialised care within the framework of human trafficking.

A child victim who provides relevant information or makes statements, benefits from a permanent residence permit so that they can remain in Belgium until they reach adulthood. A victim who doesn't want to or



isn't in a position to cooperate with the law, will be in a later phase of this plan of approach.

### 2.5.3. Objective victim of human trafficking procedure

Child victims who, after a long period, don't wish to cooperate with the law, or who have reached the age of 17, are referred to the 'objective victimisation' procedure.

In this respect, it is necessary to take into account different groups of child victims who are in a precarious situation, which doesn't make them inclined to make declarations. This is above all the case of victims where the acts of human trafficking have been committed by members of the family, such as certain Roma child victims. The same is true of child victims involved in cases that are difficult to prove, such as forced criminal activities or labour exploitation in the domestic work sector.

In these cases, it is often difficult to find sufficient proof, as a result of which the cases are often dropped. The third group concerns child victims of loverboys who are often not

inclined to make statements because they remain in an emotionally dependent relationship. The fourth group relates to child victims who are in a very precarious situation of fear, and are too frightened to make statements. Often, these are underage Nigerian girls on whom pressure is exerted through voodoo rituals. But in this group of victims, it is especially in their interest to break the tie with the chief exploiter, i.e. the madam, with the help of support workers specialised in human trafficking.

### 2.5.4. Plan sufficient reception capacity

Better detection should result in an increased flow of child victims, for whom the reception capacity is currently unavailable. At the moment, Esperanto can take in approximately 15 minors a year<sup>190</sup>. A sufficient number of specialised reception structures adapted to child victims of human trafficking need to be organised. The need for protection is key, and a secure system such as Esperanto offers the best solution.

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<sup>190</sup> See the Esperanto Centre's external contribution hereafter.

## EXTERNAL CONTRIBUTION: ESPERANTO, A SPECIALISED CENTRE FOR UNACCOMPANIED FOREIGN MINORS WHO ARE VICTIMS OF HUMAN TRAFFICKING OR SMUGGLING

The Esperanto association team

### 1) *Esperanto: a unique type of centre*

At the beginning of the 2000s, the authorities noticed that an increasing number of UFM were disappearing from reception centres after their first hearing at the Immigration Office. It became apparent that human trafficking networks were recuperating these youngsters to take advantage of them. In order to remedy this situation, a secret centre was created in 2002 at the behest of the then Minister for Youth Welfare.

This marked the beginning of Esperanto with the primary aim of protecting minors and making them safe, as well as offering them the guarantee that they would no longer be in danger of the network that was exploiting them. In July 2006, Esperanto was approved as a Special Educational Project. As a service recognised and approved by the DGAJ (youth welfare agency), we are subject to the obligations relating to the Youth Welfare Decree of 1991.

We take in and protect **15 minors presumed to be victims of human trafficking in a secure environment, 24 hours a day and 365 days a year**. There is always a free space in order to accommodate a possible emergency. The director can always be reached via an emergency number.

Although each of the minors we take in has their own story, the majority have a common profile. They are insecure and have lost their reference points. In addition, there are also

communication problems in the majority of cases, associated with a lack of knowledge of the French language. The youngsters often have many gaps in the formation of their identity. In their relationships with adults, they generally position themselves as an object, placing their emotional experience at a distance. They present physical symptoms associated with their state of trauma (aches, motor restlessness, sleep problems, etc.).

The centre's task consists of taking in, reassuring and stabilising minors presumed to be victims of human trafficking, and ensuring the steps relating to the legal and judicial status are followed up. We also help them integrate socially and support them in their life plan, while respecting them and their culture.

The youngsters are referred by various partners (non-exhaustive list): guardianship service, youth care services; juvenile court judges; specialised centres for victims of human trafficking; police departments; Fedasil's observation and orientation centres (COO); guardians. After a quick analysis of the situation, and if the youngster corresponds to our target group, the decision to take them in can be made immediately and the youngster is taken to the association. Furthermore, if the youngster is already placed in a COO or other service, we can go and visit them there to assess the situation.

In general, we work with the youngster for more or less a year. This allows us to stabilise them and make them aware that they have been the victim of ill-intentioned people. When the youngster is safe and well on their way to obtaining residence in Belgium, we contact the principal, whether it is the Youth Welfare Service or the Juvenile Court, in order to envisage their referral to a youth welfare structure.

## 2) *Profile of the youngsters taken in*

Since our creation in November 2002, we have taken in 291 minors with a certain consistency in the number under our care. In 2017, we took on 25 new situations.

Over the years, we have seen a drop in the average age of those in our care. In 2016, it was 16. In 2017, it only just reached 14. Despite this, the average age over the past few years has remained relatively constant. As in previous years, our population is mainly female and varied. Of the 17 girls taken in, 12 are from Europe (10 of whom belong to the 'Roma' community), two are from Africa and three from Asia. The boys are always in the minority and represent a quarter of the youngsters in our care. Their country of origin varies. However, those from Europe all belong to the 'Roma' community.

As in previous years, the majority of our cases come from the judicial district of Brussels. The most common sectors of exploitation encountered are: sexual exploitation, labour exploitation, participation in criminal activities, begging or human smuggling.

However, forced marriage features predominantly among the majority of our female population. These youngsters are mainly young girls from the tzigane community. In most cases, they have been sold into marriage by their parents and arrive at their 'in-laws' in Belgium. Here, they are regularly mistreated and illegally confined. The situation of these minors is very precarious. They can neither go home, nor benefit from a residence permit on the basis of human trafficking. They don't meet the conditions to ask for asylum either and they have no identity papers.

Prostitution is the most well-known form of **sexual exploitation** associated with people trafficking. The prostituted girls have to work at

a fast pace and hand over a large part or all of their earnings to their pimp. What is more, the latter sometimes drugs them so that they can keep up, which also allows the exploiter to make their victim more dependent on them. We take in both girls from the East and victims of African networks (Nigeria).

As regards **labour exploitation**, we have taken in several minors (mostly Moroccan girls) who were victims of domestic slavery. The latter worked seven days a week, with no day off, as maids, cleaners or nannies. As well as their heavy workload, they were illegally confined and victims of physical and/or psychological abuse. When this form of exploitation takes place in a private family environment, the abuse is generally invisible or, at least, difficult to detect. Young girls from the Roma community are also victims of this exploitation after being subjected to a customary marriage.

A few years ago, we took in several Ecuadorian minors all from the same region, who were being exploited on markets. Recruitment took place in their country, often by family friends. They were obliged to work for several years to reimburse their journey. They slept on straw mattresses and worked day and night.

It is often Roma children who are **obliged to commit thefts** (pickpocketing, burglaries in houses and shops, stealing metal, etc.). Generally, the exploiters are from their own family or their 'in-laws' in the case of a customary marriage. In the last example, it can also be domestic exploitation. More rarely, some of these children are 'kidnapped' or 'sold' to a network. Although these minors are victims, they are often considered predominantly as delinquents in the eyes of the law. However, they are indeed victims from our point of view.

We have also taken in victims of **exploitation of begging**. These young girls are generally from the Roma community.

As for **human smuggling**, this essentially concerns young girls from Asia (Vietnam, China). In the majority of cases, they pay colossal sums before reaching Europe. Their end destination is nearly always England. Very few of them have concrete information on the networks.

### 3) *Methods of intervention*

The main objective of our intervention is to reinforce self-image and to consolidate the emotional security of the beneficiary in order to encourage their ability to rebuild bonds. Overall, the youngster is taken care of by a multidisciplinary team (psychologist, social worker, criminologist, psychomotor specialist, educators, nurse).

The youngster mainly benefits from psychological support: the psychologist performs individual interviews. These interviews are initially based on the construction of a relationship of trust and establishing a medical history. The psychologist then deals with identity issues as well as cultural difficulties, and finally works on possible traumas.

Esperanto's work is based on five key interdependent areas of intervention:

#### → Initial welcome

This involves welcoming the youngster in the living environment, explaining how the house works and presenting them to the rest of the group. An initial interview is carried out with the youngster, allowing us to collect information on their situation.

#### → Security

This involves ensuring the minor's physical and material integrity, providing them with a

structured living environment and a ritualised schedule so that they can find their bearings. The youngster can't make contact with the network that has exploited them and, initially, they must be accompanied by an educator when they go out. Literacy classes are taught at the institution before envisaging attendance at an external school. Security is key aspect of our work and for this purpose, we benefit from the special status of 'secret' centre in the Wallonia-Brussels Federation, so that the youngsters can't be found by the network of exploiters.

Phone contact is supervised by the members of staff and, if necessary, the presence of an interpreter. The youngsters aren't allowed to have a mobile phone when they are staying at the centre.

At the same time, our team is composed in such a way as to guarantee the notion of security (multicultural and multidisciplinary team). Over time, we observe the youngster acquiring a feeling of security. They will talk about their traumatic experience during individual interviews and through the relationships they establish with the adults. Little by little, they will become aware of what they have suffered; their guilty feeling will gradually lessen. From here, they can begin to construct or reconstruct their identity.

#### → Assessment and legal support

When the youngster arrives, they are given a presentation on their rights and duties, on how the Belgian legal system works, the procedure to recognise the status of victim of human trafficking, and the various possibilities open to them to define their choice.

Exploratory talks are then held in order to check whether the youngster can be

considered a victim of human trafficking according to the Law of 10 August 2005<sup>191</sup>.

Within this context, in agreement with the guardian, if the person is an unaccompanied foreign minor, and the specialised reception centre (Sürya, PAG-ASA or Payoke):

- we check with the youngster whether their statements are complete and sincere;
- we prepare the hearings with them, and we explain the stakes of their statements to them;
- we appoint a lawyer specialised in this domain;
- we support them throughout the procedure in order to maintain regular contact with the public prosecutor's office as well as the police unit in charge of the investigation.

If the minor doesn't meet the conditions relating to human trafficking to benefit from a residence permit (as is often the case), or if they don't wish to benefit from this, we try to refer them to another regularisation procedure adapted to their situation, with the guardian's and lawyer's agreement.

If the youngster wants to go back to their country of origin, we organise their return with the help of the International Organisation for Migration (IOM). All the precautions are taken by our partner to enable the youngster to return in good conditions and in complete safety. As regards minors, the IOM works with the child protection agency in the country of origin.

#### → Socio-educational guidance

This allows us to help the youngster choose their own path and to suitably support them in

the steps they have to take. For this purpose, an individualised education plan is established by the multidisciplinary team. The centre has a large team of varied and multicultural educators. This allows us to work in a far more individual manner with the youngsters, and to overcome the language and cultural difficulties. The work is based on three major projects, which are:

- An internal class, which is held every morning, where the youngsters go as soon as they arrive so that they can learn French as quickly as possible. A return to traditional schooling is the next objective.
- Afternoon activities, whose aim is to rapidly enable the youngsters to integrate into our country in the best way possible, and to learn about how it works and its particularities. But also to be able to share their culture, traditions and way of life with the rest of the group.
- To become autonomous, according to their plan. We can accompany the youngsters in a process to become autonomous through internal accommodation but also apartments external to our structure. We have four internal studio apartments that allow the youngsters to experiment with autonomy. To enable them to do this, a contract is established between the youngster and contract-holder in order to determine the stages to be achieved. At the end of this experience, the service can continue to monitor the youngster outside the structure.

#### → Integration

This is characterised by the emergence and recognition of the youngster's skills, the impetus of community life, participation in

<sup>191</sup> Law of 10 August 2005 amending the 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.



activities in the local network and referral to a partner service following the youngster's stabilisation.

Integration takes place through three types of activity:

- apprenticeship activities;
- community activities;
- external activities.

#### 4) *Difficulties encountered and tools implemented to solve them*

The team has acquired a great deal of experience in 15 years and the tools implemented allow the youngsters to be taken care of in a manner that is adapted to their life course and their difficulties.

The first is the **creation of a relationship of trust** with the youngster when they arrive. As they generally don't speak French, it is difficult to explain why they have been brought to the centre. One of the solutions to overcome this difficulty is the rapid use of an interpreter, as well as having an educational team comprised of educators of different nationalities or who speak other languages. The intervention of interpreters during the interviews allows a better understanding of the youngster's mother tongue, as well as a better perception of their culture.

Among the tools used, the educators also have a booklet explaining how the institution works translated into several languages.

There is also a meeting with the youngsters every Wednesday to sort out any conflicts, anything they don't understand, but also to create a group dynamic and spirit.

As for the psychologist, they position the beneficiary as an expert in their culture, their representations and their values. This allows a better understanding of the customs, as well as helping to build trust with these youngsters

who have been betrayed by their entourage. This technique also helps the person to find a compromise in order to integrate into our society, while maintaining their own representations.

Another significant difficulty that has to be managed at the institution is **cultural differences as well as the very different life trajectories**. For this purpose, the educational team organises cultural exchange activities and raises awareness about the different experiences. This is done through documentaries, workshops on 'customs', and cookery activities. The presence of educators from other cultures is a strength because this gives another perspective on the reactions the youngsters can have.

One of the techniques used by the centre's psychologist is conversational hypnosis (or trauma psychotherapy by reassociation (TPR)); it allows the youngsters' traumatic experiences to be dealt with more easily. This technique encourages and teaches the patient to speak, describe their state, and to try certain suggestions whose goal is to help them correct, master, and take control over their emotions and feelings.

**On a legal level**, the difficulties are more specific and generally separate from the work done by Esperanto.

We have found that over the years, only very few youngsters benefit from the procedure relating to victims. There are different reasons for this. We have encountered several situations where minors had to denounce a member of their family. Their loyalty towards their kin was preventing them from doing it. The recurring threats towards the family in the country of origin dissuaded them from filing a complaint with the police. In this case, they prefer not to take any risks and request

regularisation on the basis of the circular on unaccompanied foreign minors (UFM).

Several minors were victims of exploitation in another European Union country. Even though they were in the process of becoming one here, they couldn't benefit from this procedure.

Victims don't always have enough information or proof to be able to initiate legal proceedings. Some victims earn more than in their country of origin and aren't aware that they are being exploited. The victims of 'loverboys' aren't aware that they have been manipulated. Minors considered as delinquents aren't always identified as victims. Finally, some didn't need this status to reside here legally, while others preferred to return to their country of origin.

To conclude, working in partnership lies at the basis of the structure's work. Various stakeholders, each with their own specificity, revolve around the youngster in order to better assess their problem. The work is therefore personalised and the overall care meets the youngster's needs in a more specific manner.

## CHAPTER 2. NIGERIAN CHILD VICTIMS OF HUMAN TRAFFICKING

### 1. The history and appearance of human trafficking in Nigeria

In the beginning, Nigeria was only faced with human trafficking on an internal level. It was only at the beginning of the 1990s that it became internationalised, starting from Nigeria and spreading outwards. Migration from Nigeria to Europe then became feminised. The illegal migration flow transformed into a powerful and well-organised criminal trade, led by criminal networks mainly devoted to the exploitation of women. As from the 1990s, concern about the migration of Nigerian women increased in Europe. Trafficking women from Nigeria then became a mainly political issue. At the end of the 1990s, and the beginning of the 2000s, several national and international measures were adopted to support the fight against the human trafficking of Nigerians.

The feminisation of migration from Nigeria can be explained, above all, by the position of women in Nigerian society. Nigerian women often find themselves in more precarious situations than men. In many regions, they are still considered as second-class citizens, despite Nigeria's modern community where women are increasingly emancipated. Violence and discrimination towards women remain institutionalised in Nigeria. Young girls are often sent to rich families to become domestic slaves. On an economic and legal level, women are often in an inferior position. They are frequently illiterate, given that many families prefer to invest in the education of a son to the detriment of a daughter. Women are therefore less interesting for the legal labour market. Unless the economy stabilises in Nigeria, women will be the first to be affected by this instability.

Nigeria is also faced with extensive poverty. It is one of the poorest countries in West Africa, where social inequalities are also considerable. Poverty is omnipresent in the countryside, where women and children especially live. In the 1980s, oil exploitation destroyed vast swathes of farmland, which was an important source of income for many inhabitants. The latter therefore found themselves without any work and forced to find a new job. The expanding petroleum industry created a high demand for sex workers. Consequently, women were obliged to offer their sexual services to these many workers. The oil crisis caused oil prices to crash, and Nigeria was unable to repay its international debts, leading to sanctions from the IMF and the World Bank. These sanctions had a major impact on the economic situation of the Nigerian population and created a large-scale migration flow. Many women found work picking tomatoes or harvesting potatoes, or any other work that didn't require qualifications in Italy. The prostitution of Nigerian women developed informally in Italy to compensate for the low salaries of seasonal work. Initially, the clients were only African. The prostitution of African women increased considerably following the local demand of Italian clients looking for sex with foreign women. This element acted as an incentive for the other Nigerian sex workers who were still active in the oil fields in Nigeria. Traffickers in human beings also realised that large profits could be made by introducing Nigerian women onto the European sex market.

However, there is much more to the issues than just poverty and satisfying basic needs.

Sending your daughter abroad is, in the majority of cases, considered as a status symbol for families. This can be explained by the collapse of cultural and social values, the explosion of traditional family structures and the absence of credible effective social models. The collapse of values can be explained above all by the country's difficult economic situation. The economic problems have had a major impact on social services, such as healthcare, education and other public services. Children are increasingly taken out of school by their parents, who can't afford the costs. The majority of families who send their daughter(s) abroad, tacitly accept the idea of prostitution as a solution to their situation of poverty.

As well as the position of women and the country's economic situation, Nigeria's political problems also play an important role. Nigeria is considered as one of the most corrupt countries in the world. In 2017, it still ranked 148<sup>th</sup> out of 180 countries according to the Corruption Perceptions Index established by Transparency International. Since 2003, Nigeria has had an Independent Corrupt Practices Commission (ICPC). In February 2003, the senate unanimously ratified a new law to consolidate this commission. This gesture was rapidly considered as a disguised attempt to undermine the law and protect corrupt senators, leading to wide-scale public controversy regarding the ICPC and the senate's real motives. As a result, the law was repealed by the supreme court. Corruption in Nigeria isn't only a push factor, it has also stimulated trafficking in women. This can chiefly be explained by the porous borders and corrupt civil servants, who are often involved in networks or international organised crime groups. The civil servants often receive bribes

in exchange for the guarantee of a trouble-free passage. There also seems to be a lack of political will to solve the problem of trafficking in human beings.

As previously mentioned, the biggest draw for young Nigerian girls is the demand for paid sex in destination countries such as Italy, Belgium and the Netherlands. This situation is accentuated by modern media sources, which often paint an idyllic portrait of Europe. Madams, the traffickers in human beings who exploit the young girls in prostitution, are an example of success for other Nigerian women. As women, they have indeed achieved a social position of recognised power and authority thanks to their emigration to Europe. This is mainly the case among Binis, the ethnic group based in Edo State, which is very focused on status and luxury. When the madams return to Nigeria with their newly acquired wealth, they immediately build one or more houses. Nigerian society praises the rich, regardless of how this wealth was acquired. In Nigeria, people talk of the get-rich-quick syndrome. The emancipation of madams is an important tool to convince new young girls to trust the traffickers in human beings<sup>192</sup>.

### Developments

Despite the fact that Nigerian trafficking in human beings for sexual exploitation is an international phenomenon that has been under scrutiny for years, no change nor fundamental development seems to have occurred regarding the structure or functioning of the networks. They are always led by a woman who has often been exploited herself in prostitution. This woman is known as a madam. A swarm of players, each with a specific role, work for her. These networks often have international ramifications. The

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<sup>192</sup> M. WELCH, *Mensenhandel van Nigeriaanse vrouwen met het oog op seksuele uitbuiting: een analyse van het fenomeen en de aanpak ervan*, Thesis for Master in Criminology (unpublished), VU Brussel, 2018.

only major developments recorded over the years are the permanent changes to the itineraries to reach Europe from Nigeria.

The structure of the networks is similar from one country to another, even outside Europe. And the young girls are still lured in the same way. Over the years, we have seen a professionalisation of the Nigerian human trafficking networks, allowing them to exploit more victims, often also beyond the borders. To reduce the risk of interception, the madams are increasingly using an assistant madam abroad. With the intervention of an intermediary, there is no physical contact between the victim and the madam, which considerably complicates the identification of these perpetrators. In many cases, the victims don't know the full name of their madam and are only able to give their nickname. Often, international exchange programmes between madams take place. Exchange is the exact term, since the victim remains the property of the madam in Belgium. This method isn't only used in Nigerian human trafficking, it is also used in the Bulgarian networks. This means that the Nigerian human trafficking networks are learning criminal organisations, which copy and appropriate aspects from other networks.

However, certain contextual aspects have forced the traffickers in human beings to adapt certain parts of their tactics. For instance, 10 years ago, madams made more use of Belgian public services. At the time, the asylum procedure was much longer. The young girls had to go to the Office of the Commissioner General for Refugees and Stateless Persons themselves, with a completely fictitious story

and a fake nationality. They received an 'annexe 26bis' paper, which allowed them, from a legal point of view, to initiate an asylum procedure and to prostitute themselves on the street without any fear of being repatriated. If they were intercepted, the police simply contacted the Immigration Office, with no follow-up in general. This was ideal for madams, given that the procedure could take several years. So even though the young girls were refused the status of refugee, their debts to the madam had already been reimbursed.

**The majority of families who send their daughter(s) abroad, tacitly accept the idea of prostitution as a solution to their situation of poverty.**

Considering that the asylum procedure is now much shorter, this method no longer interests the madams. Furthermore,

there has also been a development regarding the transfer of money from prostitution. Fifteen years ago, all the funds from illegal prostitution were sent to Nigeria via Western Union. However, the networks quickly understood that the police could easily trace Western Union and use it in its investigation. That is why they changed to the *Black Western Union*. This finance system has nothing to do with the well-known Western Union company. It works with a similar banking system to transfer money to the country of origin without leaving any traces<sup>193</sup>. This system is considered as an equivalent system to the *hawala* system, mainly used in India and Pakistan<sup>194</sup>.

#### Developments regarding itineraries

Over the years, itineraries from Nigeria to Europe have clearly changed. These changes reflect increasing border controls and the restrictive migration policy in Europe. In view of the increased limitations applied to immigration, the dependence of victims on their exploiters has grown. In the 1990s, the

<sup>193</sup> The way Black Western Union works will be explained further on in Part 3, Chapter 2, point 1.1.

<sup>194</sup> M. WELCH, *Mensenhandel van Nigeriaanse vrouwen met het oog op seksuele uitbuiting: een analyse van het fenomeen en de aanpak ervan*, Thesis for Master in Criminology (unpublished), VU Brussel, 2018.



majority of Nigerian women travelled directly to Italy by plane with an 'official' ticket (valid or falsified or not). It was also common practice for the traffickers in human beings not to send the women from Nigeria directly to Europe, but via other countries in West Africa such as Ghana or Gambia. From there, they were sent by plane to a Western European town. The controls in Nigeria were too strict, and so there was too great a risk of interception. By going to Europe by plane via other regions, the young girls attracted less attention and the risk of interception was also considerably reduced. Air travel played a major role during this period.

Today, the majority of itineraries are overland or by sea. This change in itinerary is the consequence of increased migration checks and higher costs. The fall of Gaddafi also played a role in this development. Libya has been plunged into chaos, anarchy and the conflict between two different governments. Many Libyan refugees are also coming to Europe to escape their country's unstable situation. Nigerian traffickers in human beings are taking advantage of these itineraries to mix in with the refugees in an effort to reach Italy. As the women's 'sponsors' are experiencing increasing difficulties to obtain a visa, they have to reach the Mediterranean without papers and avoid flying. The majority of the victims of human trafficking who leave Nigeria and travel by land and sea, often do so in a supervised group. This supervision changes constantly throughout the various African and European countries. The journey sometimes lasts months and crosses the desert and the sea, on board small dangerous boats. The most common itinerary used passes via Agadez in Niger, and onto Zuwara, Sabha or Tripoli. This itinerary is described as particularly dangerous

by the majority of victims. When crossing the various African countries, the young girls are often faced with violence. If a young girl is considered too weak, she is abandoned on the way. The victims must then wait for weeks, and even months, in Libya before attempting a crossing to Europe. In Tripoli and the western coast of Libya, the victims are put on board boats going to Italy. It isn't unusual for these boats to sink. To pay their journey, the young girls have to work as sex workers during their trip across Africa. When they arrive in Belgium, the victims are handed over to their madam.

The itinerary via Libya isn't only easier, but also offers the best chance of success given that there is far less risk of interception. The cost of the itinerary is also far cheaper. For the itinerary by plane, madams would pay an average of EUR 10,000 per victim. For the itinerary via Libya, EUR 2,500 is sufficient to take a victim to Europe<sup>195</sup>.

### Voodoo

Voodoo is very commonly used in Nigerian trafficking of human beings to exert pressure over the victims. It is a form of mental coercion reducing the need to use physical violence. The adverse power exerted over the young girls is so great that they aren't disobey. This way, the Nigerian networks can control their victims from a distance and no additional person is required to supervise them. The ritual is based on a system of traditional African beliefs that can take on different forms. Rituals are organised on an almost daily basis in Nigeria and are mainly used for decision-making or major changes in someone's personal life. Initially, the rituals had a positive function in traditional Nigerian society and served to defend good. It is only later that they started to be used to intimidate or keep people under

<sup>195</sup> M. WELCH, *Mensenhandel van Nigeriaanse vrouwen met het oog op seksuele uitbuiting: een analyse van het fenomeen en de aanpak ervan*, Thesis for Master in Criminology (unpublished), VU Brussel, 2018.

control. Some African scientists state that superstition is institutionalised and has even been legalised in certain parts of the country. Voodoo even plays a determining role in mediation in Nigerian law and is considered legally valid by the courts. Before young girls leave for Europe, they are subjected to a whole range of occult and intimidating rituals. These rituals bind them to the madam, and oblige them to respect their promises before they leave. These promises are equal to a contract, which can't be broken, between the exploiter and their victim. It is a source of security and certainty for the trafficker in human beings.

The impact of voodoo in Nigerian human trafficking will probably diminish following the controversial speech by Ewuare II, the current Oba<sup>196</sup> of Benin City. On 9 March 2018, he made a notable speech that could have a major impact worldwide on Nigerian human trafficking. The Oba asked all the voodoo priests from the region to participate in a ceremony. During this ceremony, he put a

voodoo curse on anyone facilitating illegal migration. At the same time, he dismissed all the spells that traffickers had cast on their victims. If the voodoo priests refused to obey, the spell would lead them to a mysterious death, for instance. To prove the importance of the ceremony, the Oba exhibited several religious objects that hadn't been shown to the public for more than 800 years. This ceremony probably came about after the meeting between the Oba and the president of the National Agency for the Prohibition of Trafficking In Persons (NAPTIP)<sup>197</sup>. The contents of the speech were quickly disseminated among the Nigerian population, as well as among young Nigerian girls in Europe. The ceremony may well have a major impact on Nigerian trafficking in human beings. It could enable the victims to cooperate more quickly with the police without fear of death or being subject to other spells<sup>198</sup>.

## 2. Nigerian minors

According to the latest reports of the IOM (International Organisation for Migration) and a European project<sup>199</sup>, the number of young Nigerian girls passing via Libya and Italy to work as prostitutes in Western Europe has increased exponentially. The IOM's report on Nigerian human trafficking victims who use the Central

Mediterranean migration route, commonly called the Libyan itinerary, reckons that the majority of migrants arriving in Italy by sea in 2016 came from Nigeria. It is above all the number of women and unaccompanied minors that has increased (11,009 and 3,040 respectively in 2016, compared with 5,000 and

<sup>196</sup> In Nigeria, the Oba is a person with a very important religious function and moral authority. The Oba is the religious leader of the Edo culture in Nigeria and can be considered as the king of Edo State. The current Oba worked for the United Nations between 1981 and 1982, and then became the Nigerian ambassador in various countries, including Italy. During his role as ambassador in Italy, he also came into contact with Nigerian human trafficking for the purposes of sexual exploitation, given that Italy serves as a transit country.

<sup>197</sup> NAPTIP fulfils Nigeria's national obligation to commit to fighting human trafficking in accordance with the UN protocol on trafficking in human beings. NAPTIP is also the general point of contact for the police in other countries, including Belgium, in the fight against human trafficking.

<sup>198</sup> M. WELCH, *Mensenhandel van Nigeriaanse vrouwen met het oog op seksuele uitbuiting: een analyse van het fenomeen en de aanpak ervan*, Thesis for Master in Criminology (unpublished), VU Brussel, 2018.

<sup>199</sup> ACCORD - AUSTRIAN CENTRE FOR COUNTRY OF ORIGIN & ASYLUM RESEARCH AND DOCUMENTATION, *Nigeria: COI Compilation on Human Trafficking*, December 2017.

900 in 2015). The report notes that, considering the exponential growth of Nigerian women and children, it is clear that the number of potential victims of cross-border crime has more than doubled in one year<sup>200</sup>.

According to the Italian NGO Save the children, there are more and more young children among them. The NGO states that this clearly indicates a rise in the number of Nigerian girls arriving in Italy: an increase of 300 % between 2014 and 2015. The majority of the young girls are aged between 15 and 17, and the proportion of 13-year-old girls is constantly growing<sup>201</sup>.

These underage girls are deceived when they are recruited. The majority of them aren't aware that they are destined for prostitution. Not only do we see this in the cases where Myria has filed a civil suit (see the victim statements further on in the case studies)<sup>202</sup>, but also in the European Asylum Support Office (EASO) report<sup>203</sup>. It confirms that the recruitment of minors has increased because adult women, especially in towns, have become more aware of the dangers to which traffickers in human beings expose them. It is easier to seduce young girls with promises of rapid success<sup>204</sup>.

Several young girls are still virgins when they leave Nigeria. This is what is revealed in the statement of a 14-year-old victim, Rose (see further on), and is also confirmed by the IOM. The increasingly young age of the Nigerian underage girls who arrive by sea is inversely

proportional to awareness of their status of victim of human trafficking, as well as the violence and abuse to which they risk falling victim. Many teenage girls have confided in the IOM that they had never had sexual relations

before and that they know nothing about means of contraception or the risk of catching sexually transmitted diseases (STD). They aren't aware of everything that prostitution involves<sup>205</sup>.

A lot of these young underage girls are forced by their exploiters to pretend they are adults. This is often reflected in the victim statements made by these girls, and this was again observed by the IOM in 2017 among young girls going to Italy via the Libyan route. The IOM also observes that numerous young Nigerian girls who claim to be adults, are in reality children or teenagers who are obeying the human trafficker's instructions in order to escape child protection, which poses a threat to human trafficking<sup>206</sup>. The police also confirmed to Myria that Nigerian victims as young as 14 years old, for children without papers, were now being recruited. Supported by fake papers and a fake identity, these girls are obliged by their 'madam' to say they are adults.

Hence, underage Nigerian victims are often difficult to detect, as seen in the cases in which Myria has filed a civil suit.

**The IOM observes that numerous young Nigerians girls who claim to be adults, are in reality children or teenagers who are obeying the human trafficker's instructions.**

<sup>200</sup> IOM, *Human trafficking through the central Mediterranean route: data, stories and information collected by the International Organization for Migration*, 2017.

<sup>201</sup> SAVE THE CHILDREN ITALIA, *Tiny invisible Slaves*, September 2016, p. 7.

<sup>202</sup> Also see Part 3, Chapter 2, point 1.1.

<sup>203</sup> EASO, *Country of Origin Information (COI) report, Nigeria: Sex trafficking of women*, 2015.

<sup>204</sup> UNICRI, *Trafficking of Nigerian girls in Italy*, April 2010, p. 40.

<sup>205</sup> IOM, *Human trafficking through the central Mediterranean route: data, stories and information collected by the International Organization for Migration*, 2017.

<sup>206</sup> *Ibid.*

## 2.1. Nigerian child victims in the Madame J. case

In the case relating to the Mama M. and Madame J. network, extensively dealt with in the 'case studies' chapter<sup>207</sup>, four unaccompanied minors were identified and taken into care within the framework of the status of victim of human trafficking. One of them found refuge at Esperanto. Below, you will find the story of another young Nigerian girl, Lisanne<sup>208</sup>, who was only identified as an unaccompanied minor at a later stage.

### *Lisanne (16 years old) must apply for asylum using fake papers and as an adult*

Sixteen-year-old Lisanne's exploiters forced her to present herself as an adult. Provided with a fake passport by the defendants, she had to go to Paris to apply for asylum in France. According to her passport, she was 19 years old, i.e. three years older than her real age. She had escaped after having worked almost a year in prostitution as a minor for Madame J.<sup>209</sup>. Lisanne wanted to make a statement to the police and acquire the status of victim of human trafficking. The police came to fetch her at the reception centre for unaccompanied minors at Neder-Over-Heembeek where she was staying. They were welcomed by her guardian, who also attended her hearing.

The victim told how she was deceived during her recruitment in Nigeria. She had been promised a job in Europe as a domestic worker: "In January 2015, a member of my mother's family came to the house to tell us they could send me to Europe. The woman who could arrange all that was called Mama M. My mother replied that she first wanted to talk with this Mama M. before taking a decision. The discussion took place in February 2015. My mother told her that she didn't want me to end

up in prostitution. Mama M. replied that that wouldn't happen and that I would be looking after children. My mother agreed to the job. Mama M. said that I would be looking after her daughter's children in Belgium (Madame J.). She never gave her daughter's name".

Lisanne was subjected to voodoo rituals, arousing her mother's suspicions, but she nevertheless agreed in the end: "In April 2015, my mother and I were invited to go to Mama M's house. When I arrived, Mama M. said that I first had to go to a place where I would be cut to protect me during my trip to Europe, especially along the Libyan road. In fact, we went to a voodoo priest. I had to swear to him that I wouldn't report Mama M's daughter to the police. I also had to swear that I wouldn't answer any of the police's questions about her daughter. My mother was there and got angry. We left, feeling sheepish. Two weeks later, Mama M. came to our house again to try and convince me to go to Europe all the same. She finally managed to convince my mother to let me make the trip. It was agreed that I would leave on 1 May 2015. It was Mama M. herself who cut my back, chest and head. When I arrived at Mama M.'s, I noticed that three other girls were there".

During her journey to Europe, Lisanne quickly understood that she wasn't going to look after children as she was originally told. Hence, she had to sleep with a trafficker to get everything she needed (food, lodging, etc.) in Libya. "He slept with the girls. If we refused, we got nothing to eat. I also slept with him. He didn't use condoms. In fact, he raped us all. We didn't have any choice, because it was the only way to get something to eat".

Regarding the journey via the Libyan itinerary, Lisanne stated: "We left the Libyan town of

<sup>207</sup> Also see Part 3, Chapter 2, point 1.1.

<sup>208</sup> Pseudonym, as well as the other first names mentioned.

<sup>209</sup> Also see Part 3, Chapter 2, point 1.1.

Sabah for the trafficker's house, where we had to stay another week. Then we went to another man's house, whose name I don't know. From there, we were taken to a camp in Zuwara where we took the boat for Italy. We stayed about a week in the camp. There were more than 100 people in the dinghy. We spent three days at sea. Then we were saved by an Italian boat. First, I went to hospital, then I was taken to a camp where I stayed for about a week.

The underage girl was put under a lot of pressure. To protect herself, she didn't say anything about the real role of her exploiters and invented fictitious perpetrators. It was only later that she told the whole truth: "The hearing was paused between 12:40 and 12:52 because it was too much emotionally for the victim. I would like to change my statement. I'm really stressed. [...] I'll tell you the truth. In Pescara, fake passports were made for the four young girls. The documents were made by Mama M.'s son. I wasn't able to see the identities used on the passports. They all arrived in Belgium by the route I mentioned earlier. [Madame J.'s boyfriend] was waiting for us. At the airport, we took a bus to a railway station, where we took the train for Antwerp".

When Lisanne arrived at Madame J.'s house, she immediately made her understand that she had to work as a prostitute and not as a domestic worker. She had to repay the initial EUR 35,000, plus EUR 1,500 for the travel costs and the possible fake papers to apply for asylum in France. "The day I arrived, I had to go to work straight away, like the other girls. I had to work in cafés on De Coninckplein in Antwerp. I received 'work clothes' from Madame J. I worked for about a month in the café, but it didn't go well because I was too shy. Madame J. forced us to ask for EUR 30 for 15

minutes with a client. She also provided us with condoms".

Lisanne was then sent to France with adult fake identity papers to apply for asylum and thus work 'legally' in a bar. "After a month, I was sent to Paris with another girl for documents concerning an application for asylum. When we returned, [Madame J.'s boyfriend] spoke with an acquaintance of his to find me a club. Finally, they found me an address in Sint-Niklaas. It was a normal house, where people were received privately, belonging to a Nigerian who placed adverts on the internet himself. I worked there alone. The clients phoned him and he informed me when a client was arriving". Lisanne worked there from July to December 2015 and earned more than EUR 10,000. Between January and March 2016, she worked in a bar in Turnhout.

The minor was also forced to transport other victims, which meant she was committing punishable acts. Of course, the police and the law immediately applied the principle of non-punishment. "Madame J. forced me to go and fetch five other girls in Paris [including the minors Destiny, Symphorosa, Ifeoma and the adult Breana<sup>210</sup>]. I came back to Belgium with the girls in a 'black taxi'. The girls had taken the bus from Italy, because they had previously been arrested. Two of the girls had been arrested by the police in France. The intention was that all these girls would work in prostitution in Belgium for Madame J. I can't tell you exactly when, but there was a regular influx of girls arriving on a frequent basis".

Lisanne had run away from her 'madam' owing to numerous acts of violence against her because she didn't earn enough money (approximately EUR 12,000). She was beaten, had acid thrown on her body and her family was threatened: "I haven't heard anything from Madame J. or her boyfriend since March

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<sup>210</sup> Pseudonyms. Also see Part 3, Chapter 2, point 1.1.



2016, but I have heard from Mama M. She called me on my mobile. Mama M. threatened my mother in Nigeria, probably on the orders of Madame J. and her boyfriend".

## 2.2. Nigerian child victims in the Mama L. case<sup>211</sup>

In another case, Mama L., a well-known Nigerian 'madam' in prostitution circles, exploited young Nigerian girls who had already been working in prostitution for many years.

Several testimonies reported minors. Informants told police that Monsieur L., Mama L.'s accomplice, had brought three Nigerians girls back from Italy and that he had been seen the same day in the area around the African red-light district. The appearance of two of these girls clearly indicated that they were minors. Furthermore, one of these informants stated that the same Monsieur L. had taken a 16-year-old Nigerian girl with him to France. This young girl was one of the seven girls he had brought back from Italy at the request of Nigerian 'madams'. He had made her pregnant<sup>212</sup>.

The victims brought from Italy to Mama L. were generally sent to the asylum centre in Lille (France) to begin an asylum procedure in France so that they could be temporarily protected from expulsion to their country of origin.

One of the child victims who was able to escape from her 'madam' made statements. She had already received the clear instruction in Italy to present herself as an adult. The local police had taken her to the Nigerian embassy, where an employee was in contact with Mama L. The on-duty judge played a significantly negative role in this case by not intervening in the correct manner. The young girl then escaped in France.

Her story is an example of bad practice in the detection and referral of a (child) victim of human trafficking within the framework of victim status.

### *Problematic detection of Rose (14 years old) as a victim of human trafficking*

Young Rose, a minor, spontaneously went to the local police in Brussels on the night of 16 November 2016 at 00:45. She only spoke English but the police officers only understood French. She nevertheless managed to make them understand that she had arrived in Belgium through a Nigerian network and that Madame L. was forcing her to work as a prostitute. She also stated that she had been physically abused. During her hearing at the police station, she frequently received calls from a specific number. She didn't answer these calls but she didn't give any further explanations. The police took the victim's photo and her fingerprints.

The police contacted the on-duty judge, who initiated an 'illegal stay' procedure and wrote an information report. The same night, at 02:21, the police faxed the Immigration Office (IO) an administrative control report for a foreign national. At 05:14, the IO sent a fax to the department on duty at the local police station for the area indicating its decision: "Rose is considered as an unaccompanied foreign minor. An identification sheet must be filled in and sent to the guardianship service of the Ministry of Justice, and to the Immigration Office. The young girl must be retained while waiting for a decision from the guardianship service. Rose must be given written notification so that she can present herself at the Immigration Office in Brussels no later than 18/11/2016." Rose was given a copy of the notification for the IO by the responsible police

<sup>211</sup> See Part 3, Chapter 4, point 2.2.1. Dutch-speaking Criminal Court in Brussels, 31 May 2018.

<sup>212</sup> The French authorities later found this young girl at the defendant's place, but they let her go.

department. Brussels local police wrote a report for illegal stay<sup>213</sup>.

Rose said she wanted to go back to Nigeria. The same day at 09:30, the police entrusted the young girl to members of the Nigerian diplomatic services, specifying that she had to go to the IO two days later. Later checks revealed that the young girl never went to the IO. She never made contact with the guardianship service either: "Today we contacted the guardianship service to find out if they had received a document or notification relating to a young girl named Rose between 16/11/2016 and today. There is no trace of her in their registers".

An in-depth investigation revealed that Rose escaped from the Nigerian embassy to go to France (Lille) and apply for political asylum. A comparison between the fingerprints taken in Belgium and Lille confirmed this. Later, a comparison in the Eurodac system revealed that the young girl was born in 2001 and that she was only 14 years old when she was exploited.

Rose had left the local police in Brussels two phone numbers. In the meantime, the federal police had initiated an investigation into Mama L. At the start of January 2017, the federal police first tried in vain to contact the young girl by phone with the help of a Nigerian interpreter, in order to find her and summon her to their offices. Later that day, the victim herself called back and explained to the interpreter that she was staying in a refugee centre in France where she had applied for asylum. During the conversation, she confirmed that she was a minor. When the interpreter asked her to come to Belgium within the framework of an ongoing investigation into her 'madam', the conversation was cut off. In the meantime,

phone taps set up within the framework of another Nigerian case revealed that Mama L. had contacts at the Nigerian embassy through another Nigerian pimp, who blocked repatriations and also bought girls from him.

*Statement of the victim Rose (14 years old), who had to pretend she was a 19-year-old*

At the beginning of October 2017, Rose was heard by the French police following a request for international legal assistance, with the help of the Brussels federal police. The hearing revealed that she was recruited in Nigeria in June 2016 by a man who convinced her mother to let her go to Europe. The man hadn't specified that it was for prostitution. At the time, Rose was just over 14 and a half years old. The man told her he had a sister in Belgium who could help her. This sister was Mama L.

When she left Nigeria, Rose was subjected to a voodoo ritual. Even though Mama L.'s brother spoke of her flying there, she was forced to get to Europe by crossing the country via the Libyan itinerary. Once on the Libyan coast, Mama L. called her on her mobile phone to ask for her date of birth. She told her she was almost 15. Mama L. asked her not to reveal her age and to pretend that she was born in 1998, making her 19 years old.

On 5 October 2016, Rose landed in a refugee camp in Genoa in Italy. She stayed there for three days. In the camp, she called her mother in Nigeria to tell her where she was. Her mother told Mama L.'s brother, who was therefore able to send an accomplice to fetch her and accompany her by train to go to an apartment in Turin. Surprised by her very young age, this accomplice hesitated for a moment. He told Rose that 'bad things' could happen to her in Belgium. But when she asked what he meant, he didn't answer.

<sup>213</sup> We also found out that Rose spent the night in a police transit cell, which destroyed her trust.

From Paris, she was taken to a house in Brussels with two other girls by an illegal taxi. They were given something to eat, after which, Mama L. spoke to Rose. "Here, E. will be your 'madam'. (...) You're pretty, you already have to start working tonight". When she asked Mama L. what the work was, she replied: "We'll see". She then drove Rose in her own car to the red-light district in Brussels behind Brussels-North station, to a Nigerian accomplice who also prostituted herself in a window. Mama L. told her that she had to give her place in the window to Rose that night, because she wanted to put her to work straight away. But Rose refused, resulting in Mama L. striking her violently on her back. Then Mama L. said: "You haven't got any choice, you have to do it". The Nigerian prostitute asked Rose why she had refused. Rose told her that she didn't know she had to prostitute herself. The Nigerian prostitute then told her how to work, the prices, how to use a condom, etc. Rose received a lot of clients that night. As she was still a virgin, she suffered a lot of pain and bled a lot. The Nigerian prostitute suggested she rest for a while. Rose took advantage of her break to phone her mother in Nigeria and tell her everything. Her mother then complained to Mama L.'s brother that she hadn't agreed to her daughter prostituting herself and that she was far too young for that. When Mama L. found out about the call, she assaulted Rose again. Rose earned EUR 700 on her first night.

Mama L. then informed her that she had to repay her debt of EUR 35,000. It was the same for all the girls. She paid Mama L. EUR 1000 in total. Following an argument between Mama L. and the 'madam', the girls started to talk about Mama L., but the latter entered the house at this point and heard everything. She told the girls that they couldn't hope for help from anyone because she had contacts with the police.

Rose called her mother again in Nigeria to tell her she couldn't stand it anymore. Her mother advised her to escape and come back to Nigeria. One night, around 12 November 2016, Rose escaped from the window where she was supposed to prostitute herself. She went to the police for help. Unfortunately, her contact with the police officers didn't turn out as she hoped, and she remembered what Mama L. had said about her contacts within the police force. Rose said nothing and was then dropped off at the Nigerian embassy in Brussels by the police. Thanks to third parties, she ended up in Lille where she applied for asylum and was taken care of in a French reception centre for minors. During the first few weeks of her stay, she found out that she was pregnant from a client for whom she had had to prostitute herself in Belgium, owing to a torn condom. She had an abortion in Lille on 14 January 2017. She was ready to enter the status of victim of human trafficking in Belgium.

#### *A phone recording reveals reprisals and the death of a family member*

During phone taps, the investigators learnt that Rose's mother had been severely beaten by corrupt Nigerian police officers. These officers had been paid by Mama L.'s brother.

Conversations were recorded where Mama L. can be heard in a rage giving the order - and free rein - to her accomplices in Nigeria to beat the hell out of Rose's mother (and the other children) to make her pay for her daughter's escape. Rose's mother was imprisoned and tortured. Further conversations were recorded in which Mama L. was informed that Rose's mother was dead. It turned out later that it was her brother. On 15 February 2017, Mama L. phoned her brother and his henchmen in Nigeria at 16:55. The police summarised the phone conversation in its report: "Mama L. appears to be furious that Rose has run away. She urges her brother to do everything he can

to make Rose's mother, in Nigeria, convince her daughter to return to her". Below is an extract of a phone conversation between Mama L. and an accessory in Nigeria:

*Accessory:* "We're at the police station here."

*Mama L.:* "How many of them came?"

*Accessory:* "Rose's mother, her husband, the girl's father and the brother of the girl's father."

*Mama L.:* "I'd like to ask the girl's father and mother a question: did they want me to transport their daughter for free?"

*Accessory:* "Everyone said that the girl's mother was bad, because she asked her daughter not to present herself."

*Mama L.:* (to her brother and his associates): "Have fun! [...]. Do what you want with the child, the father, the mother and the family. [...] You can do whatever you like."

*Accessory:* "We'll start with the first stage. [...] Before she knows what's going on, the answer might be death..."

According to the context of the conversation, we can deduce that Mama L.'s brother and his henchmen began by fighting with Rose's mother and that she, and the members of her family - after receiving Mama L.'s consent - were locked up by bribed Nigerian police officers. The rest of the conversation supports this:

*Mama L.:* "Now that she's in a cell, she needs a good beating. (...) She wanted to hurt me, so she'll see who she's dealing with."

The accessory replies that to do this, the mother will have to be taken to another police station, where she can be beaten for a bribe. "That's not possible here. (...) She can only receive a good beating (...) at the State CID (crime squad) as soon as they (police officers) have received the money."

*Mama L.:* "Do as you see fit. It doesn't matter whether she dies or not, as long as she can't stand up anymore (...) Go on. We've already done worse than that. (...) If I were in Nigeria, it would be worse than that..."

The police then heard on the phone recording that Rose's mother had been beaten to death. Conversation of 15/02/17 at 17:48. One hour after the above-mentioned conversation, a call between Mama L. and her partner was recorded. Mama L. tells him that she has just learnt that Rose's mother had died. Her partner answers: "It serves her right". He asks: "Did she die at the police station?" Mama L. replies that she doesn't know. "She died for her sins, that's what happens to bad people..."

Later, the police learnt from Rose in person that it wasn't her mother, but her brother who had died in circumstances that weren't clear.

### 3. Management of problems inherent to the Nigerian group of child victims

For Nigerian minors, the main problem is detecting the victims. This is reflected in several ways. It is important to note that there is only one chance to intervene to extract a Nigerian victim from the grip of her madam and the prostitution network. The Nigerian networks operate on an international level and

move their victims to Spain or Sweden as soon as the police have them in their sights. That is why a negative intervention generally leads to the victim's disappearance. Subsequently, it is necessary to ensure, when taking these victims into care, that they don't fall back into the hands of the Nigerian prostitution network.

### 3.1. The Nigerian networks complicate the detection of minors

The pimps force the underage girls to pretend they are adults and possibly apply for asylum so they can work 'legally'. The guardianship service is only contacted when it is certain that the young girl is a minor.

However, the young Nigerian girls don't always know when they were born. They have no birth certificate and no identity papers. Therefore, the police have to base themselves on their

statements. In Nigeria, girls can already get married at 16 years old and are therefore considered as adults at that age. Consequently, they don't look like minors either. They wear make-up, a wig and look older than 18 so that you can't tell that they are minors.

The bone age test of a Nigerian minor doesn't really provide any proof. In general, the result is compared with young European girls and the differences are enormous. The margin of error in terms of age for an official result is a year and a half. This means that many young girls whose age is estimated at 19, could actually be minors.

It is essential to raise awareness among the police concerning the methods and counter-strategies used by the Nigerian networks, otherwise there is a huge risk that only very few Nigerian child victims will be detected.

### 3.2. Detection problems during police checks

At night, police officers in Brussels specialised in human trafficking regularly check the windows rented out to Nigerian prostitutes for extortionate sums of money. According to their

contract, only the tenant of the room is authorised to sit in the window. It is forbidden to sublet. However, the costs and the pressure on the women is high and since they can't work 24/24, they rent their window when they are

asleep to other women through the 'Yemeshe' system<sup>214</sup>. According to the police, a hundred or so prostitution victims under contract rent out their window at night to very young victims who are prepared to hand over half of their income to the official tenant, generally an adult Nigerian victim. There are a lot of candidates for very few places, which makes them even more vulnerable. It isn't easy for the police to earn their trust. During raids, the police manages to reach one or two (child) victims with two or three special officers within a very tight time frame, because an alarm is immediately triggered in the windows and everything in the street closes down. There are probably a lot of minors without papers among these girls who present themselves as adults. They are distressed by the voodoo rituals and the threats hanging over the heads of their families in Nigeria. Since winning the victims' trust requires a great deal of time and effort, it is impossible for the police to deal with 20 girls

<sup>214</sup> This is a typical *modus operandi* in Nigerian prostitution circles, whereby a young girl who doesn't have a fixed place of prostitution is offered the window of a prostitute under contract, in order to prostitute herself there for a few hours. The young girl has to pay a sort of rent which involves handing over 50 % of her earnings to the prostitute under contract.



at a time. A wide-scale police check of the windows is therefore very difficult in practice.

Besides checking the windows, the police endeavour to trace the private prostitution of Nigerian (child) victims by monitoring adverts on the internet. But after a search, it is still difficult to convince a Nigerian victim because of the voodoo. This is especially the case concerning child victims, who are even more vulnerable in this respect.

Some victims are intercepted in a bar for prostitutes; this is a case of secondary exploitation through the manager of the bar, who receives half of the victim's income. Often, the madam's role as primary exploiter remains in the shadows, because the victim doesn't dare speak about her through fear of the voodoo oath. And yet, it is crucial for the victim to also talk about her primary exploiter when she is detected in a situation of secondary exploitation. Otherwise, she will remain under the control of her madam, she will be further exploited and she will continue to repay her debts. Expertise in human trafficking is therefore necessary, especially in frontline services.

Often, the checks are carried out by local police officers with little or no expertise in human trafficking, and no knowledge of the status of victim of human trafficking. Their attitude is often limited to targeting people without papers, in order to transfer them to a detention centre with a view to repatriating them or to issue them with an order to leave the territory. It is precisely in the case of Nigerian victims with no identity papers that police officers don't ask any questions about their age. At the same time, the madams and their accessories aren't bothered about checks because they have (fake) identity papers.

**The local police must apply the directive on the status of victims of human trafficking.**

The local police must apply the directive on the status of victims of human trafficking and mustn't consider

potential victims of human trafficking with no documents as migrants without papers

to be expelled from the country as soon as possible. When a potential victim of human trafficking is found, the local police units who patrol the red-light district must immediately inform the local police's specialised unit in human trafficking so that they can take over and ensure the case is followed up. This means that these specialised units must be provided with sufficient resources and not have them restricted. In practice, however, officers who leave the service aren't always replaced. Expertise in the subject of human trafficking is essential to detect victims. This is certainly the case for Nigerian victims, who are under the influence of voodoo rituals.

The local authorities of towns and municipalities have to be informed that, in accordance with the regulations in force, potential victims of human trafficking must be able to benefit from the status of victim of human trafficking, and mustn't be treated like a migrant without papers in the context of illegal residence. Even if human trafficking is a federal matter, the local authorities can't simply focus on combating disturbances.

### 3.3. Voodoo rituals and establishing a climate of trust

The police cells specialised in human trafficking have developed expertise to win the trust of victims and break the voodoo rituals. For instance, when they detect a Nigerian victim, they use the interpretation services of a former Nigerian victim. With the expertise gained through her experience, she knows how to approach the victims and what problems and personal dilemmas they are faced with. She is

one of the few interpreters who master the Bini language and she impresses the Nigerian girls with her presence and attitude. She is able to talk to the girls about voodoo and show them that it hasn't had an impact on her. It is vital that the girls immediately notice that the police is aware of voodoo practices and their impact. Secondly, it is important that the Nigerian victims are placed together in a specialised centre for victims of human trafficking. This way, they are in contact with other victims who are doing well and prove that the voodoo ritual hasn't done anything to them after their statements. This is how their trust can be won.

In the case of Mama M., we saw how a former victim came across a Nigerian child victim in the street and gradually succeeded in convincing her to go to a specialised centre for victims of human trafficking<sup>215</sup>. This was a coincidence, but it should be developed structurally. It can be useful to create or subsidise a support organisation composed of former Nigerian victims who have overcome voodoo and who can proactively spot Nigerian victims. They set an example and often win the victims' trust. These specialised teams, along with social workers, serve as local teams and join the police during window checks in an effort to approach and convince the victims through empathy. It goes without saying that this way of working should also be subsidised.

The cases show that a positive vicious circle can cause a chain reaction. For instance, in the case of Mama M., one underage young girl took another minor to Payoke<sup>216</sup>. The victims enter and sometimes stay in contact with each other thanks to Facebook. These new victims no longer need to be convinced because they already have been by their friends. They are no

longer frightened of voodoo or the Belgian police. The introduction of new victims through other victims has already led to a new case being opened. A young victim convinced three friends and took them to Payoke so they could meet the police there. In this case, the victim had also met the other girls in the street.

Examples of bad practices also exist in cases, which could lead to a negative downward spiral. In the Mama L. case, an English-speaking Nigerian minor who had escaped and went to the local police on her own initiative, wasn't understood by the French-speaking officers, who locked her up in a transit cell for the night before dropping her off at the Nigerian embassy<sup>217</sup>. The local police didn't know anything about the status of victim of human trafficking. This example can lead to significant mistrust and dissuade Nigerian victims who communicate with each other to go to the police.

### 3.4. Reception structure

Several Nigerian minors were taken in by Esperanto, a centre specialised in the reception of child victims of human trafficking<sup>218</sup>. In the Mama M. case, the minor didn't dare make statements to the police anymore after her family was threatened the week after she was

taken into care<sup>219</sup>. When Pakoke supported her within the framework of the status of victim of human trafficking immediately

after she was reported, she was ready to speak to the police straight away. After a period of reflection of more than five months in an environment that gave her the necessary confidence, the victim made some important statements. This flexibility in the application of the period of reflection is an example of good

<sup>215</sup> Also see Part 3, Chapter 2, point 1.1.

<sup>216</sup> Also see Part 3, Chapter 2, point 1.1.

<sup>217</sup> See Part 2, Chapter 2.

<sup>218</sup> See Esperanto's external contribution above, Part 2, Chapter 1.

<sup>219</sup> Also see Part 3, Chapter 2, point 1.1.

practice among minors. The police came to the Sürya reception centre where the young girl, in cooperation with her guardian, was helped by a social worker from Payoke. The Esperanto social workers managed to win her trust. This prevented her from returning to her madam and disappearing. For this reason, it is important to observe Esperanto's existing secure structure, which allows the best individual approach to be found for each victim. The use of smartphones and other phones is forbidden within the structure, to prevent any contact with the exploiters. Initially, the minor must be accompanied by an educator when they go out.

It is important to recommend an existing structure such as Esperanto's, for the reception of Nigerian minors in order to protect them from their madam trying to make contact with them or manipulate them with the support of new voodoo rituals or threats against their families in Nigeria.

The reception of Nigerian minors requires a flexible approach focused on specific target groups of child victims of human trafficking. By specialising in the reception of this group, it is possible to more efficiently meet the training needs of social workers, on the subject of voodoo for instance. It is important to protect vulnerable child victims, sometimes against themselves, but a victim should never be completely locked up. Not only is this contrary to the rights of the child but it is also counter-productive, because their trust can never be won in this way. On the other hand, the solution could be to use a secure system which, in an effort to protect the victim, doesn't allow them to go out (initially) unless they are accompanied, or to have a personal phone.

Finally, a working group should closely examine the problems concerning the detection, reception and referral of Nigerian minors to the status of victim as well as possible solutions.

This working group's field of research could even be extended to other groups of child victims. Nevertheless, this working group needs to include a sufficient number of experts active in the field.

## EXTERNAL CONTRIBUTION: YOUNG NIGERIAN VICTIMS (MINORS) OF HUMAN TRAFFICKING

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### 1) *Brussels federal judicial police's 'Team Africa'*

Created within our unit in 1994, 'Team Africa' leads exclusive investigations into Nigerian prostitution circles. This initiative came about owing to the sudden realisation of a constantly increasing presence of young Nigerian prostitutes in the world of prostitution in Brussels. Over the years, this team has led long and intensive investigations into Nigerian criminal networks, which bring young girls to Europe with the intention of exploiting them in prostitution. The routes used by these networks for their trafficking change all the time. The team is composed of solid know-how and vast expertise through the contacts it has had over the years with hundreds of victims, perpetrators and people concerned, its permanent presence in Nigerian prostitution circles and several international letters rogatory conducted in Nigeria. This expertise not only relates to the structure of the Nigerian networks, but also to their specific *modus operandi*, their way of thinking and attitudes inherent to the culture and history of the country, best practices in terms of care for the victims, the deeply-rooted belief in voodoo and the particularities of the Nigerian community.

In 2013, the ETUTU project was launched, within the framework of Europol-EMPACT, whose goal is to intensify the fight against Nigerian human trafficking networks and to offer European Member States the opportunity to share operational expertise, circulate information more quickly and more efficiently, and set up effective operational cooperation.

Brussels federal judicial police's 'Team Africa' is the co-leader of this project for the 2017-2021 period, which currently includes 20 European countries. Right from the start of the ETUTU project, the Brussels federal judicial police's (FJP) years of experience turned out to be a precious source of expertise for those Member States who had invested nothing or very little in this criminal phenomenon up until then.

### 2) *Nigerian human trafficking*

Nigerian human trafficking is characterised by the ruthless approach and treatment of (very) young Nigerian girls, devoid of any respect and aimed exclusively at making the maximum financial gain. These young girls are currently recruited in Benin City (in Nigeria's Edo State) or in the surrounding regions. They are recruited according to the explicit request of a Nigerian 'madam' (procurer) living in Europe, who literally places her 'order' with her entourage living in Benin City (number of girls, preferences in terms of physique and age, etc.).

Owing to the crippling widespread poverty, and considering women's very lowly status in Nigerian society – in the community of Edo, girls traditionally don't benefit from the same opportunities as boys –, young girls in large families are often considered by parents as the only opportunity to possibly escape from their dire existence. These parents are therefore easy prey for the 'recruiters', who paint a fantastic picture of their daughter's future in Europe, sometimes promising work as a nanny. However, most of the time, they talk quite openly about a job in prostitution.

Even if the parents know very well that their daughter will initially be exploited, they hold onto the hope that one day, she will be able to 'buy her freedom' and independently earn 'a

fortune' by prostituting herself in Europe. And, of course, she will send the money to her family left behind in Nigeria. In the Nigerian community, the idea of prostituting yourself to climb up the echelons of society isn't taboo. The Nigerians' concept of sexuality is also completely different to that of Europeans. In Nigerian society, it is socially acceptable for young girls to have sexual relations with married men in exchange for money or gifts. What is more, the Bini (the inhabitants of Edo State) attach more importance than other Nigerian ethnic groups to prestige and wealth. Their ambition is to accumulate as much money as possible as fast as they can.

The girls the networks try to recruit are often very young (between 14 and 18 years old), and in many cases, completely illiterate because they have never had the chance to go to school. The fact that the victims are often (still) minors when they are recruited is absolutely no problem for the perpetrators of human trafficking. In Nigeria, girls become adults far more quickly than in our society and often have regular sexual relations as soon as they have started menstruating. For us, they are still children, but for the Nigerian community they are considered adult women. Of course, the young girls know absolutely nothing about the destination the network will send them to illegally. A young girl arriving in a European country is often unable to tell whether it is Belgium, Spain, Sweden or the Netherlands.

For the Nigerian networks, borders are of no importance. Their great mobility means that they have operating bases all over Europe (and the rest of the world). Above all, the girls know Europe through the stories of Nigerians who have returned home, who describe it as a land of plenty. In the Bini community, a real myth reigns concerning life in Europe, and Nigerians who have come back home are the subject of great respect. Once recruited, the young girls must undergo a ritual in one of the many

voodoo temples in Benin City or the surrounding area, before setting off for Europe. She then embarks on a perilous journey that will take her to the Mediterranean via Niger and the Libyan desert.

Throughout the 25 years that 'Team Africa' has been fighting against the Nigerian criminal networks, it has detected several itineraries used to bring young girls into Europe. During the first few years, air travel was the most popular means of transportation, using fake or forged passports and visas (via Schiphol, Paris, etc.). With the arrival of terrorism and the resulting reinforcement of passenger and document checks, this led the networks to opt for overland transportation: via Morocco to Spain and, of course, the route crossing Libya since the fall of the Gaddafi regime end 2011.

While the 'madam' living in Europe asks her entourage in Benin City to take care of the 'recruitments', she will contact the Nigerian network specialising in human trafficking for their transportation to Europe. Over the past few years, probably hundreds of Nigerians have set up a network composed of intermediaries, drivers and staging posts to take people (generally young girls) to the Libyan coast. The Nigerian 'madam's' choice of network depends on her previous experiences (good or bad), the price, the operation's chances of success, the reputation of those involved, etc. The fact is, the young girls (destined for one 'madam' or several) are sent off in a group. The journey from Benin City to the coastal region of Tripoli lasts between several weeks and several months, on average. The young girls are first transported by bus or lorry to the Nigerian border (Kao), after which the rest of the journey is often in a Toyota or HILUX type of pickup truck. It is quite common for 20 or so young girls to be crammed into the back of the pickup, crossing the desert for days from one resting point to another. The entire itinerary is controlled by Nigerians and Arabs,

who consider the transported young girls as game. The young girls are entirely dependent on and at the mercy of the transporters, who are always men. The numerous accounts we subsequently obtain from the victims, reveal that nearly all of them have been systematically raped and mistreated.

On the way, some girls are kidnapped and locked up, and are obliged to sexually satisfy their kidnappers. Imprisonment following a kidnapping sometimes lasts for weeks, even months, and only comes to an end when the young girl manages to escape or when the 'madam' who is waiting for the young girl in Europe pays a 'ransom'. The girls who dare to rebel against their treatment or the rapes are mercilessly thrown off the pickup and left to their fate in the middle of the Libyan desert, which will inevitably be their graveyard.

Since the same accounts are corroborated by our colleagues in other police forces in Europe who are investigating the same phenomenon, and considering the significant number of Nigerian girls and women who take this route every year (more than 20,000 in 2016), we can conclude that there is a high death rate (dark number) associated with this smuggling route.

Once they arrive in the coastal region of Tripoli, the young girls are placed in a women's camp. Under the supervision of the Nigerian network, they have to survive here until a suitable boat is found and the necessary places obtained to cross the Mediterranean to Italy's territorial waters. Some girls stay in these camps for several weeks, while others are there for up to 12 months because of discussions between the trafficking network and the 'madam' in Europe regarding extra payments for the stay, food, transport, etc.

At a given moment, the young girls get on board the illegal vessel. Often, it is a Lappa-Lappa, a large dinghy that can carry at least 100

people. The smugglers intentionally arrange for the boat to get into difficulty so that the Italian coastguards or the NGO active in the Mediterranean come to their rescue. They generally give one of the male migrants a crash course in how to steer the boat in the right direction, and provide just enough fuel so that the boat breaks down once it has left Libya's territorial waters.

It goes without saying that these methods all too often end in tragedy, resulting in all or part of the passengers - usually women and children - drowning. The accounts of the victims we subsequently take care of are always filled with a deep-rooted anxiety and terror when they talk about the crossing. The majority of victims don't know how to swim and often narrowly escape death, leaving them traumatised by this experience.

After transiting through one of the many Italian refugee camps, the young girls are relatively easily picked up from there by the Nigerian networks and taken to their destination country, where their 'madam' is waiting for them. And, unfortunately, the hardships they have just endured during their several month-long journey are only a foretaste of what is to come. Once delivered to their 'madam', they are destined for sexual exploitation.

As soon as the young girl reaches her 'madam', the latter wastes no time and sets her up as soon as possible in a window or on the corner of a street, so that she can profit from her 'investment'. Often, the young girl has to start work on the first night of her arrival. Those who refuse are severely beaten until they give in. To get a return on her 'investment' as quickly as possible and reduce the risk of the young girl being sent back to Nigeria, the 'madam' forces her to work as much as possible and for as long as possible. The girls work seven days a week, even when they are ill or have their period. Any pregnancies are terminated as quickly as



possible, usually by administering traditional remedies that induce an abortion. One day is the same as the next for these victims, lasting for months or even years. During the day, they usually sleep in a filthy and squalid safe house which they share with other girls, before going to the place where they prostitute themselves at night.

As soon as they are recruited, the young girl and her parents are informed of the amount of the 'debt' that the young girl has to pay back her 'madam'. The amounts vary between EUR 35.000 and 65.000 on average. And yet, in the red-light district in Brussels, a young Nigerian prostitute asks a maximum of EUR 20 for a sexual act with a client, and often only EUR 10 or 5 (so as not to finish the night without having earned anything). As well as reimbursing the enormous debt she owes her 'madam', she also has to give 50 % of her income to the contractual African prostitute whose window she has used to prostitute herself at night.

In addition, the young girl has to pay her 'madam' all the 'extra costs' out of her income from prostitution, such as the rent for the safe house, food, medication, etc. A quick calculation is all it takes to work out that at an average price of EUR 20 per 'trick', the victim has to 'service' 1,750 clients in order to earn the EUR 35,000 to cover her debt. In reality, this figure is closer to 3,500 clients considering that she has to give 50 % to pay for her place, the 'extra costs', etc. However, many young girls manage to settle this enormous bill in the space of one and a half to two years.

The dreadful ordeal the young Nigerian girls have to endure for years, from their recruitment up until they finally 'buy back' their freedom, leads us to conclude without a doubt that the Nigerian prostitution networks practice the purest form of 'human trafficking'. The reality is often worse still, and the label of

'pure 21st century slavery' would perhaps be more appropriate.

### 3) *The voodoo aspect*

Voodoo - which the Nigerians call *juju* - is one of the essential components of Nigerian human trafficking. Traditional voodoo beliefs have been inherent to Nigerian society for centuries, in every strata of the population. The Bini believe in the existence of a parallel universe where (negative or positive) events are orchestrated by the gods. Several gods play different roles in their lives. Hence, in everyday life, Nigerians frequently call on these gods to obtain happiness and prosperity, protect themselves from sickness and accidents, and settle differences with third parties. In the Nigerian community, people nearly always consult a voodoo priest before taking an important decision or to obtain help in case of problems.

Consulting the gods through a voodoo priest is always accompanied by offerings (mostly small farm or domestic animals). In general, these ceremonies take place in temples (shrines) where the traditional priests talk to the gods. 'Contracts' are also concluded between two parties in these shrines. This is also where the young Nigerian girls must undergo a ritual before leaving on their journey to Europe.

During these ceremonies, officiated by the voodoo priest and attended by the 'madam's' representatives and often members of the young girls' family, the young girls have to swear to respect the law of silence and blindly obey the organisers. Otherwise their parents, brothers and sisters remaining in Nigeria risk being killed, while they risk being subject to the worst punishments.

This oath is accompanied by a series of rituals, which mainly consist of drinking certain liquids, eating raw chicken hearts and cola nuts, and collecting bodily materials (fingernails and

toenails, pubic hair, hair and underarm hair, menstrual blood), photos and underwear from the young girls. A spell is cast on all these objects during the ceremony and they are placed in recipients that are kept in the voodoo temple. The young girls' chests are also cut with a razor blade, after which a powder and a liquid are rubbed into the wound. This process obviously leaves specific scars and, according to traditional belief, aims to protect the young girls from all sorts of ills (the police, to be specific), but also to allow them to attract the largest possible number of male clients.

Considering that all the victims have been educated since birth in traditional voodoo worship, and that this religion dominates the entire Nigerian community, this oath obviously had an enormous psychological impact on the young girls. This reality explains why the young girls once in Europe, often adopt a particularly arrogant, hostile and even hysterical attitude towards the police. This aggressive behaviour is a sort of shield they put up in the hope of hiding their fears and being able to defend themselves.

However, there are three aspects behind the reason why it is so difficult for the police to convince a young Nigerian victim to explain her story and denounce the perpetrators responsible for her exploitation. To begin with, there is of course the considerable psychological pressure of the voodoo oath, although the social pressure exerted by the parents shouldn't be underestimated either. Seeing as the parents consider their daughter as the only way to escape their hopeless existence one day, the repatriation of a victim to Nigeria (after an illegal stay in Europe) is often perceived as a complete failure. Added to that are the threats and the physical violence inflicted by the Nigerian perpetrators on the young girl's family in Nigeria. Young girls who don't toe the line with their 'madam' are usually abused (blows, bites and scratches),

burnt with an iron or scalded with boiling water, or deprived of whatever might satisfy their basic needs.

It is therefore completely understandable that the young Nigerian victims prefer to suffer the living conditions and inhuman treatment, and thus pay back their 'debt' to their 'madam'.

#### 4) *Detection of child victims*

Even though we know that the Nigerian networks don't hesitate to recruit very young girls in their country of origin, it isn't always easy to detect them as minors during their exploitation in prostitution in Europe. In the investigations conducted over the past few years, we discovered on several occasions that the young girls were recruited in Nigeria at the age of 14. Therefore, they weren't even 16 when they arrived in Europe. Of course, their 'madam' orders them to say that they are about 20 years old. The fact that young girls in Nigeria become 'adults' more quickly than in Europe owing to sociocultural customs means that at this age, they can already get married and are very sexually active. This reality is also conveyed through a different attitude which can in no way be compared to that of European teenagers. Added to that is the difference in morphological terms (corpulence and development), which means that an African teenage girl acquires the morphology of an adult woman earlier.

The fact is that during the checks carried out in the prostitution sector, it isn't always easy to determine there and then if a young girl is under or over 18. To begin with, these initial contacts with the victims are generally established at night in badly-lit places. Furthermore, the young girls are heavily made up and wear all sorts of wigs and hair extensions, not to mention their clothes which are typical of the world of prostitution. Moreover, the young girls often have an assertive attitude bordering on aggression and

arrogance, which gives the impression of 'maturity'.

The majority of victims enter Europe illegally, in other words, with no official identity papers. Even later attempts to obtain (reliable) data from the country of origin regarding their identity or their age turn out to be completely useless (their date of birth is often unknown, there is no birth certificate or it is quite simply drawn up and issued upon request in return for payment).

During this initial contact phase with young Nigerian victims, the instinct of the civil servants involved is often critical. Hence, we detected young girls who were underage judging by their juvenile physiognomy, and especially their corpulence (not entirely developed feminine form).

The subsequent hearing with the young girl is of utmost importance and must be focused on the fact that she could potentially be a minor. In this case, it is important to endeavour to bring to light all the elements that might confirm this hypothesis (the young girl isn't usually aware that the fact she is a minor or not, is an essential element in the investigation).

A bone age assessment performed at a later stage in an approved medical centre doesn't always offer the desired certainty since the bone structure of a young Nigerian girl is compared with European criteria, even though there are probably morphological differences between European and African subjects.


Taking this fact into account, it is likely that Nigerian victims aren't immediately identified as minors. Subsequently, there is a greater chance of detecting them through data that is already available within the framework of the investigation (phone taps, witnesses, etc.) or through a certain amount of cooperation from the young girl (hearing).

## 5) Conclusion

A demographic study by the United Nations anticipates that Nigeria will be the third most densely populated country in the world by 2050, after India and China. With a population close to 380 million inhabitants, there will be more Nigerians than Americans.

In any event, Nigeria is already an enormous breeding ground where the Nigerian networks recruit their victims. Therefore, the future doesn't bode well unless we continue to lead a consistent and relentless fight. This fight must be conducted in a multidisciplinary manner, beyond the limits of Belgium's districts, and by placing the emphasis on an intense collaboration between the various European Member States.





## Part 3. Evolution of the phenomenon and the fight against trafficking and smuggling in human beings

As an independent national rapporteur, Myria assesses the evolution and results of the fight against trafficking and smuggling in human beings. Within the framework of this task, it follows the latest developments within the legal and political framework in Belgium and Europe.

Myria analyses the legal cases for which it has filed a civil suit. It also presents the relevant case law from 2017 up to the start of 2018 based on cases for which it filed a civil suit, decisions received from the specialised reception centres for victims and decisions issued by public prosecutors and stakeholders in the field.

How can the smugglers' business model be destroyed? Myria recommends placing the emphasis on a criminal law approach to smugglers and not on the fight against victims of smuggling. Belgium has had the necessary instruments for this purpose for the past 20 years. The model can't be disrupted by political choices that simply aim to shake up the smuggling market by engaging in a combat against illegally transported migrants, within the framework of 'hunting down illegal immigrants'.

## CHAPTER 1. RECENT EVOLUTIONS IN THE LEGAL AND POLITICAL FRAMEWORK

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

### 1. Developments in the European legal and political framework

At European level, two major reports were published in 2017. The first one is the assessment report compiled by GRETA (Group of Experts on Action against Trafficking in Human Beings) concerning Belgium's implementation of the anti-trafficking convention<sup>220</sup>. The second one is published by the European Commission on the follow-up of the European strategy on human trafficking<sup>221</sup>.

#### 1.1. GRETA report concerning the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings by Belgium

On 16 November 2017, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) published its second assessment report on Belgium. This report assesses the events that have occurred since

the publication of the first assessment report in September 2013.

The report notes the progress achieved in the further development of the legal and institutional framework of the fight against trafficking<sup>222</sup>, the adoption of a new national anti-trafficking action plan and training for professionals. It also underlines the numerous convictions handed down, accompanied by the confiscation of the criminals' assets.

However, the report notes that further progress has yet to be made in some areas. Hence, the low number of children identified as victims of trafficking (13 in the 2013-2015 period). GRETA would therefore encourage the Belgian authorities to intensify their efforts to proactively identify child victims<sup>223</sup>, especially by providing extra training for frontline professionals. According to the report, we must also solve the problem of the disappearance of unaccompanied minors by ensuring safe accommodation is available. At the same time,

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<sup>220</sup> GRETA, Report concerning the implementation of the Council of Europe's Convention on Action against Trafficking in Human Beings by Belgium, second assessment cycle, adopted on 7 July 2017 and published on 16 November 2017 (<https://rm.coe.int/2nd-rd-rpt-bel/1680766bdb>).

<sup>221</sup> Communication from the Commission to the European Parliament and the Council, *Report on the follow-up to the EU Strategy towards the eradication of trafficking in Human Beings and identifying further concrete actions*, 4 June 2017, COM(2017) 728 final. <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52017DC0728&from=en>

<sup>222</sup> In particular: the multiplication of the fine by the number victims, the appointment of guardians for unaccompanied foreign minors from the EU or EEA, a new joint circular from the board of prosecutors general and the minister of justice on counteracting trafficking, and the integration of representatives from the three reception centres specialised in trafficking victims in the composition of the interdepartmental policy coordination unit.

<sup>223</sup> See §§117 to 130 in the report.

according to GRETA, the Belgian authorities must take extra measures to guarantee that child trafficking victims actually receive residence permits<sup>224</sup>.

Another point for improvement concerns the victims' access to compensation<sup>225</sup>. According to GRETA, progress has yet to be made in terms of systematically informing victims of their right to compensation from the traffickers. In addition, victims must be allowed to exercise this right by providing them with free legal aid to help them make a claim for compensation early on in the procedure.

GRETA also urges the Belgian authorities to provide adequate funding for the specialised reception centres for trafficking victims so that they can operate unimpeded<sup>226</sup>. It should be noted that since the publication of GRETA's report, measures have been taken by the federal government with a view to ensuring funding for the centres in 2017, 2018 and 2019<sup>227</sup>. However, this funding still isn't recurrent.

## 1.2. Follow-up report on the European anti-trafficking strategy

To complete and support the application of the European Union's law and actions in terms of trafficking in human beings, the Commission

adopted a European strategy (2012-2016) in June 2012 that provides for the implementation of a series of measures to combat this phenomenon<sup>228</sup>.

The five priorities defined were as follows:

- to detect, protect and provide assistance to victims of trafficking;
- to reinforce the prevention of human trafficking;
- to increase prosecutions against traffickers;
- to improve coordination and cooperation between the main stakeholders and the coherence of the policies;
- to better define the latest concerns relating to various forms of human trafficking and respond to them efficiently (improvement of knowledge).

In October 2014, the Commission published a mid-term report on the implementation of this strategy<sup>229</sup>.

Considering that it had implemented the actions provided for in the strategy's five key priorities, the Commission proposed, in December 2017, to increase the efforts undertaken in the EU with a view to preventing human trafficking. It subsequently proposed three targeted priorities:

<sup>224</sup> In full compliance with Article 14(2) of the Convention. This article states that "the residence permit for child victims, when legally necessary, shall be delivered in accordance with the best interests of the child and, where appropriate, renewed under the same conditions". However, according to the current Belgian system, child trafficking victims are subject to the same conditions as adults to obtain a residence permit (i.e. cooperating with the judicial authorities). For more detailed information on this procedure, see this report's focus, Part 2, point 2.3.

<sup>225</sup> §§ 149-159 of the report.

<sup>226</sup> §§ 209-2012 of the report.

<sup>227</sup> On 23 November 2017, the Council of Ministers decided to grant the three reception centres in 2017, 2018 and 2019 a total annual amount of EUR 498 000: <http://www.presscenter.be/fr/pressrelease/20171123/fi-nancement-des-centres-specialises-daccueil-des-victimes-de-la-traite-des-etr>.

<sup>228</sup> 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* for the period 2012-2016, 19 June 2012, COM(2012)286 final. On this subject, see MYRIA, 2011 Annual Report Trafficking and smuggling of human beings, *The money that matters*, pp. 71-72.

<sup>229</sup> 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. Concerning this mid-term report, see MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 56-57.



- to increase the fight against organised criminal networks, by undermining their economic models and unravelling the trafficking chain, among other things. The Commission would especially like to encourage EU Member States, that haven't already done so, to charge people who knowingly use the services demanded of victims of human trafficking;
- improve the access of trafficking victims to their rights and consolidate them. The Commission therefore proposes, in collaboration with the European Union Agency for Fundamental Rights (FRA), to elaborate practical guidelines, among other things, in order to reinforce inter-agency and transnational cooperation with a view to preventing trafficking affecting children in the EU;
- ensure a more coordinated and consolidated reaction, both inside and outside the EU. In collaboration with the Member States and the European External Action Service, the Commission would

especially like to examine and list priority countries and regions with a view to an anti-trafficking action.

### 1.3. Other measures

We should also mention that in March 2018, the Commission presented a proposal with a view to setting up a European Labour Authority (ELA)<sup>230</sup>. Even though it doesn't have a specific competence in human trafficking, the ELA aims to support the Member States in the area of intra-EU labour mobility, for instance, concerning the rules for posting workers and the coordination of social security systems. Another objective is to improve cooperation between Member States in the effort to counteract undeclared work. The ELA will also collaborate with other EU agencies if need be, for instance, Europol and Eurojust, on problems associated with criminal activities in the area of mobility in terms of labour, such as human trafficking. The Commission's objective is to ensure this new body can be set up and operational in 2019.

## 2. Developments in the Belgian legal and political framework

Besides the adoption of a new residence document within the framework of the unaccompanied minors reflection period<sup>231</sup> and a new circular concerning multidisciplinary cooperation<sup>232</sup>, dealt with in the previous report<sup>233</sup>, it should be noted that the three specialised reception centres have been

approved again for a period of five years<sup>234</sup>. They also work with other organisations, such as OR.C.A. (whose name has just changed) which takes care of undocumented workers. OR.C.A. is now known as FAIRWORK Belgium<sup>235</sup>.

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<sup>230</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority*, Strasbourg, 13 March 2018, COM 2018 (131) final: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52018PC0131&from=EN>.

<sup>231</sup> The 45-day OLT was replaced by annex 15. See the Law of 30 March 2017 amending Article 61/2 of the Law of 15 December 1980 on access to the territory, residence, establishment and repatriation of aliens in order to replace the order to leave the territory by a temporary residence document within the framework of the human trafficking procedure, *Belgian Official Gazette*, 10 May 2017.

<sup>232</sup> Circular of 23 December 2016 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgian Official Gazette*, 10 March 2017.

<sup>233</sup> Myria, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 76-77.

<sup>234</sup> Royal decree of 22 June 2018 on granting recognition to the centres specialising in the reception and support of victims of trafficking and certain aggravated forms of human smuggling, and consent to go to court, *Belgian Official Gazette*, 5 July 2018.

<sup>235</sup> <http://fairworkbelgium.be/>.

There are also other measures that aren't specifically devoted to human trafficking but can be associated with this phenomenon.

For instance, a new 'business and human rights' action plan was adopted by the Council of Ministers in June 2017<sup>236</sup>. The objective of this action plan is to implement the directives adopted by the United Nations Human Rights Council. Among other things, this plan aims to promote decent work for everyone, prevent human rights violations within companies and allow victims access to effective redress. Within the framework of this plan, certain measures are likely to reinforce the fight against human trafficking. For instance, envisaging a revival of the 'social label' that guarantees respect for standards in terms of work and respect for workers' rights. At the same time, in compliance with the due

diligence principle, companies will be encouraged to elaborate action plans and information in connection with respect for human rights.

Finally, on 30 June 2017, a new regulation on procurement contracts came into force<sup>237</sup>. These laws, which aim to increase the efficiency of these contracts, also reinforce the fight against social dumping. In addition, respect for obligations in terms of environmental, social and labour law is being advanced as a general principle within the framework of public procurement. Operators must also ensure their subcontractors respect the obligation. Grounds for compulsory exclusion have been expanded. Areas also explicitly targeted are child labour and trafficking in human beings<sup>238</sup>, and employing illegally-staying third country nationals<sup>239</sup>.

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<sup>236</sup> [https://www.sdgs.be/sites/default/files/publication/attachments/20170720\\_plan\\_bs\\_hr\\_fr.pdf](https://www.sdgs.be/sites/default/files/publication/attachments/20170720_plan_bs_hr_fr.pdf)

<sup>237</sup> See the Law of 17 June 2016 on procurement contracts, *Belgian Official Gazette*, 14 July 2016. This law falls within the framework of the transposition of European directives in this area.

<sup>238</sup> Article 67, §1, para. 1, 6° of the Law of 17 June 2016. Note that the law refers to "child labour and other forms of human trafficking".

<sup>239</sup> Article 67, §1, para. 1, 7° of the Law of 17 June 2016.

## CHAPTER 2. CASE STUDIES

In this chapter, Myria analyses legal cases concerning human trafficking and smuggling where it has filed a civil suit, thus allowing us to have a complete view. This provides a clear picture of how an investigation is actually initiated and conducted in the field. In addition, this chapter gives an illustration of the phenomenon of human trafficking and smuggling for each form of exploitation. This year, we focused on cases that include minors.

The analysis is based on the official police reports of these cases and focuses above all on the criminal system and the victim's point of view. First of all, we shall thoroughly and critically examine the report summaries, in which the investigators summarise the case: A great deal of attention is also given to the initial police reports, which indicate on what basis the case was actually initiated and whether the victims were intercepted and detected at that moment. In addition, 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 specific cases is a cornerstone of the policy assessment. It sheds light on the implementation of the investigation and prosecution policy in the field, as well as the associated sticking points. Once gathered together, these findings also provide an important source of information for the annual report's focus, and an essential basis for the formulation of recommendations.

### 1. Human trafficking

To protect the identity of the victims and perpetrators in this case and not impede the ongoing legal work, their names of those concerned have been changed.

#### 1.1. Sexual exploitation

##### *Nigerian network of Mama M. and Madame J. in Brussels*

In this case, which was also mentioned in this report's focus<sup>240</sup>, the human trafficking and smuggling acts were committed between 2014 and 2016 and were dealt with by the public prosecutor's office in Brussels. The defendants were convicted for human trafficking, criminal association and money laundering<sup>241</sup>. The defendants weren't prosecuted for human smuggling.

The network smuggled dozens of young girls, including several minors, from Nigeria to Belgium and other European countries in order to exploit them in prostitution. The perpetrators were operating at an international level and moved the victims when they knew the police were onto them. In addition, several 'madams' exchanged victims between Belgium, Italy, Spain and Sweden. This case focuses on the case of Madame J., the 'madam' in Belgium. The other cases, including that of Mama M., were split up, because the defendants in the present case were in custody. Had they not been, they could have been freed and then fled.

The network used voodoo rituals to keep the victims under control and make them dependent. During the phone taps, the

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<sup>240</sup> See part 2, Chapter 2, point 2.

<sup>241</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, p. 100: Brussels Dutch-speaking Crim. Court, 28 March 2017, 60<sup>e</sup> ch. (final).

suspects spoke every day about the voodoo rituals performed on the victims. They regularly phoned a man in Benin City, the Nigerian boyfriend of one of the defendants. He was told to get in contact with his father, a voodoo priest, on several occasions, so that he could perform voodoo rituals in Benin City in order to intimidate and threaten disobedient or unprofitable victims, as well as their families.

These types of voodoo rituals are the typical basic ingredient of the Nigerian networks and their goal is to:

- make the victims obey;
- positively influence the number of clients they have to satisfy every day;
- ensure these clients pay generously;
- oblige the victims to pay back the suspects for the cost of their transportation from Nigeria to Europe. In this case, this debt was EUR 35,000 for the majority of victims.

#### 1.1.1. Structure of the network

The key figure in this network was Mama M., who operated out of Benin City in Nigeria. She recruited the young victims and forced them to undergo voodoo rituals. She also paid for their transportation via the Nigeria - Libya - Italy - Belgium itinerary. She benefited from the help of family members or contact people in several stopover countries to smuggle the girls. Hence, she collaborated with a smuggler in Libya for the boat crossings, and with her own sons in Italy.

When they arrived in Belgium, the girls were 'delivered' to the Nigerian 'madams' who had 'ordered' one or more girls beforehand. Reception and delivery of the girls in Belgium took place in an 'Africa shop', an African hairdressing salon managed by Mama M.'s son, who handed out his mother's contact details in Nigerian prostitution circles for the delivery of new girls. He mainly worked with his sister,

Madame J., the main defendant in this case and the daughter of Mama M. In turn, Madame J. benefited from the help of her boyfriend, who photographed the victims and advertised them on a sex website. An aunt was responsible for money transfers to Nigeria through *Black Western Union*.

For the victims in Belgium, they were not only subject to primary exploitation by the 'madam' with voodoo spells, but also to secondary exploitation by the managers of the hotels or bars where they had to prostitute themselves. They received half of the takings from the prostitution, while the other half had to be handed over to the 'madam'. As for the victims, they didn't get anything.

#### *Mama M., the pillar of the family network*

In this case, Mama M., is the key figure. She set up her criminal network in Belgium, Italy and perhaps in other countries, with a few close family members:

- two sisters who lived in Belgium and regularly made money transfers via Black Western Union to Nigeria, among other things; the father of the boyfriend of one of the sisters is the voodoo priest who performed voodoo rituals on several of the girls in this case;
- her daughter, Madame J., who managed the network in Belgium with her brother and her boyfriend;
- two sons, representing the network in Italy, who arranged transportation of the victims to Belgium. They are being prosecuted by the Italian courts.

#### *Victims in Italy*

The phone taps revealed that girls who didn't earn enough or who disobeyed were 'transferred' to Italy. In one conversation, we hear Mama M. discussing Anett, a girl whose prostitution in Brussels and Antwerp didn't earn enough and who was sent to Italy to work

the streets. She mentions that the new voodoo rituals had been very helpful in Anett's case, because she was now making money, which she had to send to Mama M.

Sometimes, the victims first had to prostitute themselves in Italy, even though they were heading for Western Europe from Nigeria. The phone taps revealed that two new Nigerian victims were held up in Italy after having taken the Libyan route. During the phone conversation, Madame J. said that the girls were not to call her and shouldn't hope for any money: "They first have to earn money themselves (prostitution), and only then will Aunt C. contact them to bring them over from Italy."

The phone taps also revealed that there were too many girls in Libya. The defendants consequently decided to no longer bring the girls to Belgium, but to leave them to work in Italy, even if they only earned EUR 5 to 10: "Mama M. said that he was right, it's better to make the girls work in Italy."

#### *Human smuggling*

Mama M. organised the itinerary from Nigeria to smuggle the young girls. First, they were taken by bus and by Jeep to the Libyan coast (Tripoli) via Niger. When they arrived in the desert, they were raped. If they resisted, they were abandoned there and then, thereby signing their death warrant. A young girl left in the desert with a friend later said that they saved themselves thanks to drinking their own urine and later coming across a group of Bedouins who helped them.

In Tripoli, the girls were taken to a safe house by an Arab smuggler, who also arranged for an illegal boat crossing to Italy. However, the smuggler first had to be paid by Mama M. One of the victims had to wait four months in a hiding place before the payment was made. It was a dangerous crossing. The 14-year-old

Symphorosa's dinghy burst, thrusting her into the water. She was saved by an Italian coastguard, as were the other victims who were able to testify. Another victim also fell off the boat twice during the crossing and was sent to hospital after being saved by an Italian coastguard.

After the Italian coastguard transferred the girls to a refugee camp, Mama M. arranged for one of her sons who lived in Italy to go and fetch the girls from the camp, and bring them back to his place in Pescara. From there, he paid for their transportation to Belgium.

#### *1.1.2. Investigation*

##### *Start of the investigation*

In a case in Brussels in 2015, the main defendant had already made statements concerning the role of Mama M. and her network. During a new hearing within the framework of this case, three victims from the same case also confirmed that they had been recruited by Mama M, and spoke of her role in the voodoo rituals.

Based on these elements, the police were able to confirm that a new Nigerian network was active under the direction of the same Mama M., who was recruiting young Nigerian girls in their home country to send to Belgium via several intermediaries. The girls were delivered to Nigerian 'madams' who exploited them as prostitutes in Brussels.

##### *Social media*

The police used the internet and social media for its investigation. The investigators consulted open sources on the internet to find online adverts for young Nigerian girls on sex websites. They called the number given, pretended they were clients and made an appointment. When they arrived, the police officers immediately showed them their badge.

Screen shots of the online adverts were taken and added to the file as evidence.

During the interception, the police found a Nigerian victim locked in a room. Thanks to the interpreter, she agreed to cooperate and provided the name of another victim through her Facebook profile: "The victim also states that another girl, called Breana, who travelled with her from Nigeria, was working with her at that time as a prostitute in an X club. She knew this because she was still in contact with Breana on Facebook. These details about this other victim, Breana, led to a raid on the bar in question by the federal criminal police. During the check, conducted on 15 March 2016 at 16:48, a Nigerian prostitute was indeed found; she was apparently staying illegally in Belgium, but was actually called Olise."

In the case of another victim, the police used social media and the internet during the hearing in order to obtain more information on the perpetrators and other victims. "I'll show you my Facebook profile. Let me show you a few photos of the people I named in my hearings, i.e. Breana, Hope, Lisanne and Symphorosa (victims), as well as K. (perpetrator). Together, we've found my pimp's website."

### 1.1.3. Financial investigation

#### *Criminal earnings*

The defendants invested their income in real estate in Nigeria. Various recorded phone conversations revealed that Mama M.'s son was in the process of having a house built (block of flats) with the money he was earning from his criminal activities. He also said he wanted to start building a second house in May. He planned to go to Nigeria himself in July or August to continue the works there.

He also spoke of a bank account he had opened in Nigeria for himself, into which he regularly

paid money. During the conversations, he and his mother confirmed that the money would start to arrive quickly.

#### *Black Western Union*

Given the current possibilities of tracing identities, amounts and recipients, the Nigerian criminal world avoids official money transfer companies. It has its own system to transfer cash to beneficiaries in their country of origin without leaving a trace: a system commonly known as Black Western Union.

The phone taps revealed that an Africa shop was used as a hub to send cash to Nigeria on a very frequent basis. Beauty products and toiletries, as well as food, were sold there mainly to African customers. It also served as a hairdresser's and was located just next to the Brussels-North red-light district, where mostly Nigerian prostitutes serve their clients in 'windows'.

In concrete terms, this means that these people from the Nigerian underworld make contact with Mama M.'s son or his aunt to hand over cash in this Africa shop, and ask for the corresponding sum to be transferred to a beneficiary in Benin City. The son noted down the amounts and informed the interested parties of the exchange rates, according to which the amount would be paid to the beneficiary in euros or in naira, the Nigerian currency. The amount was then sent through this Africa shop. The recorded conversations also revealed that the son went to fetch sums of money (especially in Antwerp) upon the aunt's request.

The aunt or her boyfriend frequently (very likely every two weeks) travelled with the collected cash (probably sums of EUR 25,000 to 35,000, hidden in their luggage) to Nigeria. She managed an office there where the beneficiaries of the funds would come to



receive the agreed sum. She would take a 10 % commission on every amount sent.

The court accepted the charge of money laundering through *Black Western Union* based on the recorded phone conversations: "The accepted relevant phone conversations show that the first defendant (Madame J.), the second defendant, the third defendant, the fourth defendant and the fifth defendant transferred huge amounts of money to Nigeria and that the services of the second defendant (the aunt of Madame J.) were called upon for this purpose. The factual elements in the criminal case indicate that the above-mentioned defendants knew or must have known the illegal origin of the funds transferred. In any case, they were unable to establish any legal origin for these funds. The fact that the transferred funds resulted from illegal activities was undeniable. If all the money hadn't been dirty, the defendants wouldn't have needed to use *Black Western Union* and would have opted for the official system to transfer funds to their country of origin. Furthermore, the first, fourth and fifth defendants had no official income. On the contrary, they enriched themselves by sexually exploiting young Nigerian girls, a fact largely supported by the contents of the phone recordings. The frequency (every two months, almost monthly) with which the second and third defendants (two aunts of Madame J.) travelled between Belgium and Nigeria with large sums of cash in their luggage also proves that this was far more than just doing a friend a favour, and that the two women indulged in the illegal practice of money laundering on a large scale. The phone recordings also revealed that this transferred money was used to buy and build houses, clearly with the aim of laundering these illicitly gained funds."

This *Africa shop* wasn't the only Nigerian money transfer agency. In the building housing this *Africa shop*, another office was also

actively involved in money laundering through *Black Western Union*. Madame J. also worked closely with them. This office was managed by a Nigerian transporter of funds, whose name regularly reappears in the illegal transfer of funds to Nigeria (*Black Western Union*) and in different cases of exploitation of prostitution/human trafficking in Nigerian circles, according to the police reports. "[The aunt] is apparently an independent colleague who exercises exactly the same activities as the one with a counter located in the same building. They help each other out when one of them is momentarily short of cash. In a conversation with her employee in Benin City, [the aunt] says she begged [the other transporter of funds] (to help her out with cash) and told them that her sister would bring them the cash on Saturday. She continued, saying that her sister doesn't know how she hid the money in her luggage. They would have to wait for her sister to arrive in Nigeria to find out where she would pick up the money. When her sister arrives at the Nigerian shop, [the aunt] gives instructions to her employee and to her sister by phone as to how to find the money in her luggage (bag of rice). There are more than four packets with the name (of the other transporter of funds) written on it. These must be sent unopened by the employee (their 'office' is in the same building in Benin City)."

#### *Report from the anti-money laundering unit in 2012*

A few years before the interception of the victims and the detection of the acts, the anti-money laundering unit had already reported Madame J. for laundering: "In a letter dated 10 April 2012, the Financial Intelligence Processing Unit informed the senior crown prosecutor of Brussels that the first defendant exhibited serious indications of money laundering. It was thus established that between 15 March 2010 and 27 October 2011, she made several money transfers to Nigeria

through the company (...) for a total amount of EUR 5,010.43. The funds were for her mother [Mama M.]."

The court decided to acquit Madame J. of this charge based on the following argument: "Apart from the payment referred to by the above-mentioned unit in the criminal case, these transfers weren't the subject of any investigations. Furthermore, the first defendant [Madame J.] has never been heard on this subject. Therefore, the court can't confirm that the funds transferred to Nigeria between 15 March 2010 and 27 October 2011 represent financial profits from criminal activities."

#### 1.1.4. Victims

Thanks to the phone taps, the police were able to trace some 20 victims in this case. Twelve of them were identified in Belgium. They were referred to the status of victim of human trafficking.

##### *Detection of victims*

Several Nigerian victims were identified thanks to the help of other Nigerian victims who were still in contact with them via Facebook, or who regularly bumped into them in the street. They decided to meet up at one of the centres specialised in the reception of human trafficking victims. The centre contacted the police upon their request. In addition, some former Nigerian victims approached other young Nigerian girls in the street who had problems, or they had met them within the Nigerian community and had referred them to the centre.

The police were also able to intercept several young Nigerian girls in a bar or hotel after arranging to meet them through a sex website, or following searches. But it wasn't easy to win these young girls' trust.

The interceptions sometimes led to problems or examples of bad practice. The girls who were intercepted during the evening were therefore obliged to spend the night in the local police's transit cell because the interpreter was only available for the hearing the following day.

##### *Victim status*

Several victims received this status, including four minors. Nevertheless, the victims encountered several problems during the procedure.

One victim, who was staying at the Payoke reception centre, bumped into Madame J. by chance in the street and had to justify her absence on the spot: "I'm taking this opportunity to report that on a Saturday about two weeks ago, I bumped into Madame J. in Antwerp. She asked why I hadn't been in touch with the people who had smuggled me (she was talking about Kaomi and Breana), because they were cross with her. I told her that I didn't have a mobile phone so I couldn't contact them. I also told her that I was in a deportation camp and that I was going to be deported (which wasn't true). Madame J. then said she would pray for me."

Situations such as these can be a real danger for the victim: "In answer to your question as to whether I would like to add something to my statement, I would like to say that I find it very awkward not to be able to walk in the street, here in Antwerp, without running the risk of bumping into someone I know, such as Madame J. I'm also afraid that my pimp or Breana will follow me if they know I'm here. You advise me to talk about it with my support worker first and to keep you informed". They then looked for a solution to this problem.

In the meantime, the victim's family in Nigeria was put under pressure. "There are nevertheless problems with my family in Nigeria. My father is regularly harassed by

Mama M. This harassment consists of going to see him or calling him to ask him to come by. From time to time she asks him if I've run away and why, but my father tells her that I haven't run away and that I was arrested by the police. Her son called my father about two weeks ago: he said he was phoning from Italy, that he had sent his girlfriend Breana packing because she hadn't behaved properly and he asked if I wanted to come back to him. My father kept telling him that he had no news from me."

Another victim, taken in by PAG-ASA, stated that her 'madam' had contacted her and had tried to force a lawyer on her: "You've told me about the status of victim of human trafficking. I consider myself to be a victim and would like to have this status. I will cooperate fully with the investigation. You're asking me if I wish to state anything. I'd like to tell you that X. contacted me on my mobile phone. First, I received a lot of text messages, to which I didn't react. In the beginning, it was to ask if I'd been released. Then, she told me that she had sent someone to the police and they told her I'd been released and that I could go back to work for her. Mama, as I always call her, then called me and I answered. She told me I could come back to work for her, to which I replied that I no longer wanted to. So she asked me if I didn't want to earn money anymore. She also told me she'd hired a lawyer to help me and when she pointed out that I'd have to pay them myself, I replied that it wasn't necessary. 'Mama' also spoke of a new system to work: she would put my photo on the internet with a mobile phone number, which would allow me to manage my appointments myself."

However, this victim feared the reactions and threats following her statements: "You're asking me if I'd like to state anything else. I'm afraid for myself and my family in Nigeria if Madame J., her boyfriend or Mama M. were to find out I'd made a statement against them. I never want to see those people again."

### *Statement of a child victim later considered an adult*

An 18-year-old victim first submitted an asylum application as a minor in France, but came back to Payoke after wandering off several times, to file a complaint and be taken care of within the framework of the status of victim of human trafficking. She turned 18 a few weeks before leaving Nigeria.

She stated that Madame J. and her boyfriend had been rather rough with her, especially physically, because she didn't earn anything: "In the street, clients told me I was far too young for this job. I called Madame J. and told her what the clients were saying, that I was too young for this job. She couldn't have cared less and that's when the trouble started between us. Seeing as I didn't earn anything - the clients thought I was too young -, I didn't pay her anything either. When I arrived, Madame J. hit me with the heel of her shoe and her boyfriend whipped me with a belt. They pulled my hair. They screamed at me. Madame J. got a pair of scissors and cut strands of my hair. Her boyfriend did the same thing. I started screaming but that didn't make them stop. My friend Ifeoma (a minor) saw everything and left the house. She warned Destiny, who in turn warned my boyfriend. He tried to contact me, but I couldn't get to my phone. My boyfriend called again and again, until Madame J. answered. He threatened to call the police if they didn't stop abusing me. But that didn't stop them either. Afterwards, they stopped, but Madame J.'s boyfriend watched over me. I couldn't even go to the toilet alone. The abuse and supervision lasted three days. The police came but Madame J. made me hide. I was in the bathroom with Ifeoma (a minor) and Madame J.'s boyfriend (perpetrator). Madame J. let the police in and told them there was nothing to report. The police didn't find me. The police got the address from my boyfriend, who got it from Destiny."

Then, they made her get in a bus to Italy. On her way there, she was checked by the police twice and each time, she was deported from the country. Despite all, she arrived in Italy where, following a check by the Italian police and because of her very young appearance, she was placed in a youth reception centre. She was then placed in another reception centre, from which she ran away. Her boyfriend, who lived in Belgium, convinced her to take the bus to Belgium and to make a statement to the police.

She also made statements about voodoo rituals she had undergone in Nigeria: "Several people were already present at the voodoo temple. I saw three girls, including Destiny (a minor) and Hope. The voodoo priest told us that a member of our family had to be present. So I called my older sister and asked her to come to the voodoo temple. Once she arrived, there was apparently another problem because my sister couldn't replace my parents. As the voodoo priest was starting to cause problems, Mama M. begged him until he accepted just the presence of my older sister. Then we had to take an oath, each of us in turn, that we wouldn't steal our 'madam's' boyfriend under any circumstances. We also had to swear that we would never denounce our 'madam' to the police. We also had to swear that we would never go out with a black man over there. We also had to swear that we would reimburse our debts in full. After having sworn all that, we had to eat a raw chicken liver, as well as a cola nut. The voodoo priest then forced us to drink alcohol. We were stripped during the voodoo ritual. At the end of the voodoo ritual, the voodoo priest told us to get dressed. We then had to take our personal belongings and go to Mama M.'s house. The next day, we began our journey around 5 o'clock. We were taken in a small car. There were seven girls in total: me, Destiny and Hope were for Madame J., and the four others were for another 'madam' in Italy."

The victim told how she had started to rebel against the voodoo rituals because the 'mama' wasn't respecting the agreements. "The girls then talked to each other. We told the others about us being raped in Italy. Some of them then raised the fact that this reason alone was enough to free us from our obligation to reimburse the debt. What I mean by that is that in Nigeria, we had to swear to Mama M. that we wouldn't go out with a black man. And the first thing that happened in Italy, was that we were raped by one of her sons and his friends. It was totally contrary to what Mama M. made us swear to. Some of the girls said that seeing as the oath was broken, no-one could force us to reimburse the debt. We couldn't even be forced to work the streets since she herself broke the oath she made us take. Following this conversation, Anett and several other girls ran away."

#### 1.1.5. Unaccompanied child victims of human trafficking

Four Nigerian child victims appear in this case. These four victims were detected and were offered the status of victim of human trafficking in different ways.

##### *Detection of child victims*

The child victims were found during searches or were reported by former or other victims through a specialised centre.

One of them was found in a bar that was searched by the police. She was 17 years old and had been prostituting herself for almost a year. Example of bad practice: at the end of the search, the minor was handcuffed and taken away in the car because she didn't have a residence permit. The police report states the following: "The interested party is called Ifeoma and has no identity or nationality documents. We have decided to take her to Brussels. She makes no objection (in English, which she speaks a little). She doesn't cause

any problems during the transfer. Since the interested party was arrested administratively for illegal residence, she was transferred while being handcuffed in front in accordance with security recommendations. Through the interpreter, the girl tells us that she is the victim of human trafficking. Our services contact the public prosecutor's office in Brussels and receive the order to hand the case over to a specialised centre that can support her."

*Destiny (16 years old) acquires victim status*

Lisanne<sup>242</sup>, a child victim, also reported Destiny to Payoke. The reception centre put her in contact with the police, who had interviewed Destiny in the Payoke offices. She had worked in prostitution as a minor for about a year. At her hearing, she had just turned 18, which explains why no guardian was involved.

In May 2015, when she was only 16 years old, she wanted to go and work in Europe. She lived near Mama M., who promised her that she would only have to pay back the EUR 35,000 in travel costs after school. The young girl had no idea what this amount meant: "I thought this was the equivalent of NGN 35,000 (Nigerian currency). When you told me that EUR 35,000 was equivalent to NGN 18,550,000, I was very scared."

When she left, she had to undergo a voodoo ritual and cut off all contact with her parents. She arrived in a safe house with other victims, including the young 14-year-old Symphorosa (see below). After a seven-day bus journey, she arrived in Libya where she stayed in a safe house for two weeks. At the end of these two weeks, they were transferred to a camp near the sea. Fifty to 60 people were staying at the camp. The victim said, "After about a week, they told us we were going to do the crossing. On the day of the crossing, there was a young

girl behind me waiting to get on board. The young girl started to make a noise. One of the Arabs there thought it was me. He kicked me right in the stomach and I fell to the ground. To punish me, I wasn't allowed to cross that day. That's when I was separated from Symphorosa (the 14-year-old girl). I was only able to make the crossing a week later. The following week, I made the crossing with a girl called Olise whom I had got to know (another of Mama M.'s victims). We crossed on an open boat with more than 20 people on board of various nationalities. We left at night and the next day, we were rescued at sea around 11:00 by the Italian coastguard. We were transferred to a camp in Pistoia."

After two days, they phoned Mama M. and were ordered to leave the camp. One of Mama M.'s sons then gave them the instruction to come to his place in Pescara by public transport. They stayed there for three months and also saw other victims pass through, on their way to other 'madams'. The son then provided the victims with documents so that they could continue their journey.

The underage girl testified to the violence inflicted by the perpetrators in Belgium when she visited a young black man during her prostitution activities, something the 'madam's' boyfriend heard about: "He ordered me to take the train to come and see him immediately. When I got there, he took his belt and started to whip me. He then pushed me against the wall with a plank, which he then put on the floor and forced me to kneel on it. It was my punishment. It wasn't the first time he hit me. He usually slapped me. The same day, he told me to go and cut off some of my hair and public hair. He wanted to send them to his mother, probably for a voodoo ritual. That's the day I ran away. It was Christmas 2015. I can also tell you that he regularly beat up Anett. He

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<sup>242</sup> See Part 2, Chapter 2, point 2.



sometimes threatened to take me to a car park or football ground to bash me up. He was always showing off, saying that no-one would question him about this. After I ran away, I lived on the streets for about four days before finding refuge at a white man's place, where I still live now. I'll send you other photos of some of the perpetrators and other victims. I'd like to repeat that I consider myself as a victim of human trafficking." The victim was taken care of by PAG-ASA in Brussels within the framework of victim status.

*Symphorosa (14 years old) acquires victim status*

On 10 November 2015, a former Nigerian victim brought a young 14-year-old Nigerian girl to Payoke. She had found her crying in the street. During her interview with Payoke staff, it transpired that the young girl was a child victim of Nigerian prostitution. She had worked the streets of Antwerp for two months. Everything led them to believe that she was only 13, or only just 14 when she left Nigeria. The victim was taken care of by Esperanto and the guardianship service assigned her a guardian.

The defendants used voodoo rituals to threaten the victim and her family. She was worried about talking to the police. The initial police report from March 2016 concerning the police's contact with Payoke states: "During her interview, Symphorosa said she agreed that the police should be informed. Up until now, all of our services' attempts to make an appointment with Symphorosa have failed. This may well be linked to a threatening text message Symphorosa received from Madame J.'s boyfriend. The victim Symphorosa is nevertheless currently being supported by Esperanto's services and, since she is a minor, she will also benefit from the help of a guardian. The staff at Payoke later informed us that they paid Symphorosa a visit on 18.11.2015 and that she told them that she no

longer wanted to talk to the police. The reason for this decision is because she says something serious could happen to her or her parents, because of voodoo."

In April 2016, the victim was prepared to speak to the police at the specialised centre Sürya. This took place in consultation with her guardian and in the presence of a psychosocial specialist from Payoke.

She explained how she had been deceived during her recruitment in Nigeria: "When I went to visit my grandmother in 2015, Mama M. was also visiting her. At one point, I was alone with Mama M. and she asked me if I wanted to study in Europe. I told her that I was interested. When I went home later on, I told my mother about Mama M.'s proposal. My mother told me this was a pack of lies and that I certainly wasn't going over there to go to school, but rather to do another kind of job. I retorted that I personally believed Mama M. I also told her that I was young and that by going to school in Europe, I would be in position to get my family out of poverty."

Regarding her trip, she said: "Two days later, Mama M. summoned everybody for the departure. Several of us were going, both boys and girls. In answer to your question as to whether I had a passport before leaving, I can tell you that I left with nothing. I crossed the country with the others. We crossed the desert towards Libya. When we arrived in Libya, a man gave us accommodation. In answer to your question regarding how long we stayed with him, I don't really know. Between three weeks and a month, I think. I don't really know anymore. After that, we all left for Lampedusa in Italy on board a dinghy. The boat broke before we reached the Italian coast. I fell into the water. However, some white people rescued us and we were taken to the coast of Lampedusa. When we arrived, we were taken to a camp. I stayed there for two weeks and I



contacted Mama M. through my mother. When Mama M. called me, she was angry that I had informed her so late about my arrival in Europe. I received a call from a lady the same day, who told me that I was intended for her. She then told me that she was going to give the number to her brother in Italy, who would contact me later. He came to fetch me near the camp. I stayed about three months in Italy in total, in different places with different people."

In Italy, she was intercepted at the airport. She wasn't intercepted as a minor but received an order to leave the territory: "At the end of the three months, the goal was to go to Belgium by plane with four other girls. For this trip, we received documents with our photo on them. The name X was on my document. We were nevertheless arrested and received an order to leave the territory. I contacted the brother of my madam again. He told us we had to come back to him. I took the bus with V a few days later. At the end of the journey in France, a certain Lisanne (a child victim) was waiting for us. This Lisanne is also one of my madam's girls. She put us in a Black taxi. She gave the driver the address in Antwerp."

In Belgium, the young girl was immediately put to work as a prostitute, and suffered a great deal of physical abuse when she didn't bring in enough money: "My madam, who was waiting for us there, presented herself as J. and showed us the apartment before going through our bags. She took our address books containing telephone numbers. We could only keep our parents' number. She then stunned us with the news that we owed her EUR 35,000. And there was another EUR 1,500 for travel costs between Italy and Belgium. She also wanted us to start work the same day. We therefore told her that we were exhausted from the journey, that we wanted to rest and start working the next day. She put us on the street (street prostitution) around the Sint-Jansplein in Antwerp. It was the other girls who told me

how much to ask clients. I had to work every day. The goal was to ask clients for EUR 40. As I didn't have enough clients who agreed to this price, I'm sometimes took two for half the price and told Madame J. that I only had one client. Madame J.'s boyfriend came to collect the money at the end of our work day. I didn't manage to get clients every day. He beat me when I didn't earn any money. And I wasn't the only one to be beaten by him. He would whip us with his belt. He would also kick us when he was angry."

The young girl also explained how she was helped in the street and how she came to Payoke: "A Nigerian woman noticed me one day. She saw that I was young. I saw this lady again a few days later. This time, she was accompanied by someone called X. This person came over to me and asked me if she could help me. I told her my story. She told me that she could help me and explained how. She told me to think about it and that she would call me the next day with a private number. The next day, she called me and we agreed to meet in a café in Antwerp. She then took me home with her. Before going to her place, X. asked me to call Madame J.'s boyfriend and tell him that I'd been arrested by the police. I followed her instructions and told him that the police had arrested me. Then I hung up. He tried to call me several times the same day, but I didn't pick up. The next day, X. took me to the people at Payoke and that's how I finally came here, to the police."

## 1.2. Labour exploitation

### *Mushroom farm in Kortrijk involving a child victim*

In this case in Kortrijk, Bulgarian, Romanian and Polish pickers were exploited at a mushroom farm. Numerous victims were illegally employed without an employment contract.

Others worked as normal or posted employees, or as bogus self-employed workers.

One of the victims of human trafficking was a minor. They weren't an unaccompanied foreign minor. They were replacing their father who was sick, and was accompanied by their mother. Two underage girls were also intercepted with their parents during a shoplifting incident. As they received no wages, the victims had no choice but to steal to survive.

The acts date back to 2008 but the court decision took a long time. In 2017, the court of appeal confirmed the court of first instance's decision, which convicted 10 defendants, including several companies, for human trafficking for labour exploitation, slum landlord activities and numerous social legislation infringements<sup>243</sup>.

#### 1.2.1. Structure of the network

S., the main defendant of Belgian nationality, was a mushroom farmer with several businesses where he employed foreign workers under an employment contract. He also subcontracted part of the work to other companies and left the foremen to recruit cheap pickers from abroad, and arrange their work and accommodation in Belgium. This led to a Polish company recruiting Polish pickers as posted workers in the mushroom farm in Belgium. The same company also employed pickers in Poland, but also from other companies based in Germany and France.

The mushroom farmer also used a Romanian foreman who recruited pickers from his home region. These pickers were employed as posted

workers or as regular employees with an employment contract. He also subcontracted activities from a Bulgarian firm managed by O., a Bulgarian foreman. This is how the pickers were recruited in Bulgaria and illegally employed without a contract. O. was responsible for their accommodation and their working conditions.

During the inspections conducted in connection with the pickers from one of his businesses, the mushroom farmer - in an effort to proclaim his innocence - argued that the Bulgarian company, or the foremen who worked for him as subcontractors, were to blame.

#### 1.2.2. Investigation

##### a) Opening the investigation

##### Shoplifting

The investigation began following statements made concerning food that was shoplifted from a supermarket on several occasions. The perpetrators of the acts were Bulgarian. During their hearing, they stated that were employed illegally and that their employer provided them with accommodation. There were also two underage girls, aged 16 and 17 respectively, as well as their parents among the perpetrators. These people were stealing food to survive because their employer didn't pay them. One of the Bulgarian women stated: "I live in Roeselare with my husband and two other families. O., the foreman, regularly gives us a bit of money. O. brought us here to work in one of the mushroom farms belong to S. (the main defendant). O. hasn't paid us for quite a while,

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<sup>243</sup> Ghent Court of Appeal, 19 January 2017, 3rd ch.; West Flanders Crim. Court, Kortrijk division, 10th ch., 16 February 2015. See MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 117-118; 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 122-123. These decisions are available at [www.myria.be](http://www.myria.be)

so we have no more money and I was obliged to steal food."

#### Statement of an underage girl

The 17-year-old Bulgarian girl who was intercepted with one of her parents also made statements. She hadn't worked at the mushroom farm herself. She was 16 when she arrived in Belgium: "I've been in Belgium since July 2007 and I've been living in Roeselare for a month now with my two sisters, an aunt, my father and my mother. There are 30 of us in total living in our accommodation, all Bulgarian. For now, we're all working in the black, at least 30 people. Everyone works on a mushroom farm except for me. I don't know the address or where it is. We all came to Belgium by car, except my mother and aunt who arrived after us. I can't give you my exact address in Roeselare, but I can show you where it is. Our aim is to find legal work here. Today, I left at 13:00 to go to the GB in Roeselare with my aunt and sister. [...] The shop took back all the stolen goods, except the perishable food worth EUR 13.88. I can pay back this amount. You have informed me that you have contacted the Immigration Office because we don't have valid identity papers. This is the first time I've stolen and I'm sorry I did it. I'm aware of my arrest requested by the public prosecutor's office with a view to a fast track procedure."

#### Slum landlords

The Bulgarians showed the local police the rental accommodation where they were living, which was uninhabited according to the national register. The officers noted that the situation in which they were living indicated slum landlord activities. The occupants stated that their employer, the mushroom farmer, was the landlord. On the basis of these findings, the local police decided to draw up a police report for slum landlord activities and to contact the housing department in Roeselare. The owner stated that they bought the property in 2005 for EUR 25,000 with the aim

of renovating it and not to occupy it until then. The mushroom farmer was a friend who had contacted them to ask if he could rent the property, which the owner accepted. Despite not being allowed to sublet it, the mushroom farmer rented the property to some 30 of his workers at an unfair price. The occupants had to pay a monthly rent that ranged from EUR 30 to 600 per person. According to a rough estimation, the mushroom farmer made a profit of approximately EUR 4,000 every month on this property. He applied the same technique in other buildings, which earned him about EUR 14,000 a month.

#### Inspections

The workers showed the place where they worked when they made their statements. On the basis of this information, the Social Inspectorate carried out a workplace inspection in collaboration with the local police. It found 15 Bulgarian workers, including a minor. All of them were interviewed at length. A few hours later, the police noticed that new workers had arrived on board a vehicle. The inspection revealed seven Poles who worked for a Polish subcontracting firm.

A few months later, the police and the Social Inspectorate carried out a coordinated inspection of all the mushroom farmer's businesses and the places where he lodged the pickers. Several dozen Bulgarian workers, 30 or so Poles and 59 Romanian victims were discovered and interviewed within the framework of this action.

#### *b) Financial investigation*

The financial investigation revealed that the mushroom farmer (the main defendant) had accumulated illegal assets amounting to EUR 269,637.34, with another EUR 158,971.55 from the salaries and EUR 131,288.00 from social contribution fraud. He didn't respect Belgian wage and social security regulations with

regard to employing casual Romanian workers, and paid below-average wages to the workers who worked for one of his companies. The financial benefit calculated for O., the foreman, was EUR 68,415.44.

### 1.2.3. Victims

The majority of victims were Bulgarians, Romanians and Poles: 33 poles and 13 Romanians were working as posted workers, and 46 Romanians as regular employees. The Bulgarian victims were employed as employees or bogus self-employed workers, or worked illegally without an employment contract. None of the victims were informed by a frontline service about the status of victim of human trafficking. They were referred to the Immigration Office and all received an order to leave the territory.

#### *a) Victim statements regarding essential elements of human trafficking*

##### *Working for a salary below the minimum wage*

The pickers wages were paid at irregular intervals, in cash and without a payslip. The Bulgarian victims, who were employed through O., the foreman (recruiter in Bulgaria), received advance payments and actually didn't know exactly how much they were earning. They had to do a trial period first before pay was discussed. Sometimes, they weren't paid at all.

Various statements from the Romanian and Bulgarian victims revealed that the rent was immediately deducted from their wages. The lists of names found during a search revealed as much: next to a Romanian worker's signature was the amount he was supposed to be paid, with the rent (EUR 100) deducted.

A Bulgarian victim who was illegally employed without an employment contract stated: "Our pay depends on the size of the mushrooms. We're paid per punnet. If I work well, I think I can earn EUR 50 for a 10-hour working day.

During this working month, I only received an advance payment of EUR 300 from O. the foreman. My wife and I both worked for 22 days. Sometimes long days, sometimes shorter days. We also regularly work at night. My wife and I have difficulty making both ends meet. Sometimes, O. gives us a bit of food."

One Romanian victim who was registered as an employee stated: "I earn EUR 4.00 an hour. I came here with my family and I want to continue working here as long as possible to earn money. I know that the normal wage here in Belgium is higher. One day, we asked S., the mushroom farmer, for a EUR 1.00 increase – from EUR 4.00 to 5.00 – but he told us we could go back to Romania. I don't speak this country's language, so I can't do anything about the fact I'm paid so little (according to Belgian standards) for working this much."

##### *Working hours*

The victims stated that the working hours were irregular and unpredictable. They also had to work at the weekend and at night. Some victims worked seven days a week, and in extreme cases, more than 24 hours in succession, with only a few 15 to 20 minute breaks. No extra wages were paid for weekend or night work. Documents seized revealed that a worker had worked 12 days in succession, for 10 to 18 hours a day, with breaks lasting from 15 to 45 minutes.

One Romanian victim who was registered as an employee stated: "This Monday morning, I came home from work at 06:00. I started on Saturday at 11:00 and I worked until this morning. I therefore worked for more than 40 hours, I nearly fainted. I regularly work for about 40 hours. We're not really forced to but we have to work for a very long time to earn a bit of money."

#### No social cover

The victims weren't entitled to any sort of intervention in case of sickness. Several Romanian and Bulgarian victims testified to this. The testimony of a Bulgarian victim who was illegally employed without an employment contract, says it all: "While I was working for one of the companies belonging to S. (the mushroom farmer), I suffered a work accident. It was the place where the punnets were packed. My hip and back were blocked and I couldn't move anymore. O. took me to the hospital where I was operated on. I've heard nothing more from S. The social assistance centre (CPAS) covered the costs. I couldn't work anymore for a long time. While I was unfit for work, I didn't receive any compensation. I went back to Bulgaria after this accident. Because of the pain, I can only work two days out of four, which means my wife has to work every day to earn enough."

#### Vulnerability of the victims

In several cases, there was no employment contract. Sometimes, the victims didn't know whether they had an employment contract or not because they had been promised that everything would be in order. When there was an employment contract, it was written in Polish or in a language the workers didn't understand.

Their status and their complete dependence placed the Bulgarian and Romanian victims in a vulnerable situation. The Bulgarians weren't officially registered with the municipal services and were therefore staying illegally. Some Romanians were registered with the municipality, others not. As for accommodation, the victims depended entirely on the mushroom farmer and his foremen. The victims only understood their own language and weren't able to seek accommodation by themselves.

One Bulgarian victim who was illegally employed without an employment contract stated: "I have no contract and I didn't have to sign any documents either. I also don't have a work permit but O. said that he was sorting everything out. I knew we couldn't work in Belgium without a work permit, but we need money. One of my acquaintances called O. in my presence. He said that I could do a trial period and that I could stay if I worked well. You're asking me if we're fired if we don't meet the requirements. Yes, that's already happened. In the meantime, O. was sorting out the documents to allow us to work here. We've been working for eight or nine days and we still haven't received any wages. That said, O. has already given us some money to buy bread."

One Romanian victim who was registered as an employee stated: "We don't get anything to eat at the place of work. The boss doesn't even offer us a glass of water, a cup of coffee or anything. We only eat and drink what we've brought ourselves."

#### Threat of job loss

The workers were never sure whether they would be able to keep their job or not. In addition, the managers were always putting pressure on them to meet the demands. One Bulgarian victim who was illegally employed without an employment contract stated: "O. the foreman is a relative through marriage. He told me he had a company that belonged to him and offered me work. He said that we could go to Belgium with him and that we would have to do a one-week trial period. Those who didn't work well would be fired and wouldn't receive any wages. Those who worked well could stay and be paid." One Romanian victim who was registered as an employee stated: "We can't refuse because if we do, we're fired without any pay."



*b) Child victim of human trafficking*

During the inspection of one of the mushroom farmer's companies, a young Bulgarian boy was intercepted by the police with his mother. He hadn't received a separate order to leave the territory from the Immigration Office, but was mentioned as the child of his mother, so the order they received concerned both of them.

Regarding their journey and their accommodation, the minor stated: "I've been in Belgium for two and a half months. I came with my parents. We left Omurtag (Bulgaria) and drove to Rotterdam. My parents wanted to work in the Netherlands or Belgium. There were seven of us in total, in two vehicles. We first stayed with people we know in Rotterdam for about a week. It's my parents who decided to move to Roeselare. In Roeselare, we were welcomed by O. the foreman who took us to the accommodation. We met O. in Omurtag. I think that my parents pay EUR 50 to 60 a month in rent. I don't know who they pay the rent to. At the moment, there are four families living in the property, 14 people in total, I think."

He stated that he was replacing his father who was sick: "My parents have been working for about two months at the mushroom farm. The boss is S. who employs O. the foreman, who in turn hires the workers. I was at the site today because my father is ill. I replaced him today for the first time. I went to Roeselare this morning with my mother and six other people, including O. the foreman who was driving the vehicle, to go to the place where you found me this morning. I was passing the empty punnets to my mother. My parents were planning to return to Bulgaria at the beginning of next month. My sister is getting married next month in Bulgaria. Actually, my parents came to Belgium to work and save money to pay for the wedding. They never intended to stay in

Belgium. My father is a shepherd in Bulgaria and my mother helps him."

His parents were illegally employed without an employment contract. The mother stated: "I'm married and we have two children, a 17-year-old son and a 16-year-old daughter. My son is with us at the moment and my daughter stayed behind in Bulgaria. She is married and lives with her husband. My husband hasn't come to work today because he's sick. We met O. the foreman through our family in Bulgaria. We asked him to give us work. He said that we could do a trial period first and that we could stay if we worked well. Then, we would be told how much we would earn... I've already worked in several places, there where you found me this morning and another place I don't know. I don't know how much I earned in total, each time we received an advance payment of EUR 100 or 200. I don't keep count... You're asking me if these advance payments were for the three of us. Only two of us work. My son doesn't work, he's here by chance today. You're asking me how long I work. It depends: sometimes, we start work at midday, sometimes early morning until late at night. Sometimes, we only work a few hours a day. We've also worked at night and at the weekend on occasion. You're asking me if I received a contract. O. the foreman said he would make sure our papers were in order, but I don't know if he's done it in the meantime. I still haven't had to sign any papers. O. said he would make copies of our identity papers, but he hasn't done it yet. We still aren't officially registered at the address in Roeselare. I haven't got a work permit. I heard about it and I know that I can't work here without the necessary papers, but we need money. In Bulgaria, we had a flock of sheep to earn our keep. We were in need."



## 2. Smuggling in human beings

### *Albatex smuggling case in Brussels*

A network of Albanian smugglers managed from the United Kingdom with international ramifications in Belgium, Germany, the Netherlands, France and Italy, was convicted by the Criminal Court of Brussels for smuggling in human beings and criminal organisation<sup>244</sup>.

The defendants were also prosecuted for fraud and deception because they abused the victims' trust or gullibility. The acts took place between November 2013 and June 2014. There were also many minors among the Albanian smuggling victims.

This wasn't the first time for several of the defendants. One of them had already been convicted in 2004 for human smuggling, and another one for murder. In 2014, during the investigation, a smuggling leader was repatriated to Albania twice for administrative reasons. Every time, he came back as quickly as possible (illegally) to continue his smuggling. During his hearing, he described his role as a sort of helpline for Albanians without papers who were in difficulty: "I don't remember what I said. I talked about refugees every day in the Albanian café. It was my job, the routine. In Albania, it's an honour to help someone, and it's a disgrace not to. [...] All I can say is that I helped people. Regardless of the money, and regardless of the law."

### 2.1. Structure of the smugglers' network

The criminal organisation illegally smuggled Albanians into the United Kingdom by crossing through Belgium. When they arrived in Brussels or Ghent, the victims were met by the smugglers and housed close to Midi railway station in Brussels, in hotels or in apartment blocks belonging to the network. From there, they were taken to different motorway parking areas, such as those on the E40 at Grand-Bigard, Gentbrugge and Ghent-Drongen, where they were put into lorries. Another option for the smugglers consisted of going to fetch the Albanian victims in France. Part of the network was also active in Germany, transporting customers from there to Brussels. Other members of the gang ensured that the victims were transferred from Brussels to the Netherlands, where they stayed in hotels in Rotterdam before travelling illegally to the United Kingdom. When they left, the victims had to leave behind their luggage and mobile phone, which were later sent to them by post if the transportation succeeded.

#### *Guaranteed transportation*

The smuggling organisation also maintained contacts with lorry drivers who offered guaranteed transportation, especially for victims travelling with fake Romanian identity papers. Guaranteed transportation means that the lorry driver is aware and assists in the operation by accepting payment and authorising people to illegally board his vehicle. The smuggled people are either hidden in the

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<sup>244</sup> Brussels Dutch-speaking Crim. Court, 6 October 2015, 51st ch. and Brussels Court of Appeal, 17 May 2017, 13th ch. (available at [www.myria.be](http://www.myria.be)). See MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 184-185 and 2017 Annual Report Trafficking and smuggling of human beings, Online, pp. 129-130.

cargo space of the articulated lorry, or – and this is the most expensive method of transportation - in the tractor unit cabin. The victims pay between EUR 2,500 per person for non-guaranteed smuggling and EUR 5,700, or even GBP 6,000, for guaranteed transportation.

#### *Lithuanian lorry driver*

One of the main defendants was a Lithuanian lorry driver who also recruited other lorry drivers himself for smuggling purposes. The Dutch transportation company for which he worked was implicated several times during interceptions, also abroad. In April and June 2014, people were found on board one of this company's lorries, in the Netherlands, on two occasions. Each time, Lithuanian lorry drivers were involved. This time, the company was implicated a few weeks later in June during an interception in Cherbourg, France, when three Albanians (including two minors) were arrested.

The investigation revealed that the lorry driver was the only one in contact with the organisation's figureheads. The decision whether or not to smuggle people depended on his roadmap. When a date and a time were set, the smuggler received confirmation from one of the gang leaders that he could proceed.

#### *New operating procedure*

The criminal organisation also showed proof of innovation by developing a new operating procedure. It was noted that several Albanian smugglers living in the United Kingdom had elaborated a plan with one of the main Belgian defendants, which consisted of using a removal lorry. A smuggler had to take care of the logistics support for this operation from the United Kingdom. The lorry had to go to Belgium with two drivers, to the main Belgian defendant's home. The objective was to hide the largest number of people possible in the cargo space during the night, while the drivers

were resting. According to the conversations recorded within the framework of the phone taps, the drivers themselves weren't aware of anything. This meant the profits were greater. However, even though these drivers weren't involved in the smuggling, they nevertheless ran the risk of being arrested if intercepted, despite their innocence.

#### *Counter-strategies*

The criminal organisation used various counter-strategies to prevent the police from detecting its activities, in particular by regularly changing phone numbers. The lorry driver also benefited from the protection of the organisation's leaders. A smuggler monitored the police's activities. According to the phone taps, he pretended to be a lorry driver when the police came to the site where the smuggling was taking place. The 'passengers' also had to turn off their mobile phones during the transportation. One of the gang leaders asked all the people transported illegally to delete their details from their phones.

The phone taps revealed that they successfully used a product to deceive the police dogs during checks. "Smuggler S. gives the orders. They have to hide between the cardboard boxes. S. says he has distributed 'medication'. The person in the lorry has to spread this substance around the cover, for the dog. They will remain in contact by text message. At 06:12, S. is still there, he has spread an extra dose of 'medication'. No-one saw anything. At 16:25, X. calls S. and says that the journey went well. S. says that there might have been a check but that the dog didn't notice anything thanks to the 'medication' which he had spread to trick it."

## **2.2. Investigation**

#### *Start of the investigation*

The investigation began on 13 November 2013, after an organised inspection carried out at

night by the traffic police, with dogs, on lorries parked in parking areas along the E40 motorway in the direction of the coast. Four Albanians were intercepted on this occasion, including an unaccompanied minor, on board two lorries that were parked in the Grand-Bigard parking area. The smuggling victims were transferred to the federal judicial police in Asse, where the on-duty judge, who is also the reference judge in Brussels responsible for human smuggling, ordered the police to interview the smuggling victims. An Albanian interpreter was contacted during the night and came over to the police. Two victims declared that they had benefited from the help of a Kurdish smuggler with whom the Albanian smugglers collaborated. The two other victims, one of which was the minor, denied any contact with a smuggler.

The victims had mobile phones which put the investigation on the right path. They contained several relevant text messages exchanged with the smugglers. Several analyses of phones, call traffic between mobile phone masts, taps and observations were carried out, which were linked to a series of interception cases within the framework of human smuggling. The detailed investigation within the framework of the information revealed that an organisation of Albanian smugglers established in Brussels was active in the E40 parking areas. The production of evidence largely relied on the phone taps. The investigators managed to link a certain number of phone numbers with the suspects, and the contents of the tapped conversations turned out to be particularly relevant.

#### *Social media*

The investigators analysed the messages exchanged between the smugglers on social media, which they used to have fake papers sent by an Italian supplier.

It also turned out that the smugglers contacted their clients on Skype. For instance, concerning the smuggling of a minor, they had a conversation on Skype with the boy's family: "X. asks what has been arranged for today. The unknown person says they might try with the Kurd. X. then immediately calls Y. and asks if the boy staying at the hotel is next to him. Y. has just left the boy at the hotel. X. says he heard that the boy will go with the Kurd. Y. replies that they say a lot of things but that nothing is certain. X. has just talked to the boy's family on Skype."

#### *Financial investigation*

One of the smuggling leaders wanted to receive the money from the illegally transported people immediately after their arrival in Belgium, or in cash at the parking areas before hiding them on board the lorries. If he trusted the contact persons enough, he also used the system according to which the money was deposited in Albania or England. If a transportation fails, the client recuperates their money. When a transportation succeeds, the money is sent to him through a Western Union or MoneyGram transfer in the name of one of his acquaintances, who goes to get the money. According to a tapped conversation involving smuggler S.'s cousin, the client had to pay more in this case: "The guy knows about a boy from Tropoje who wants to come. The smuggling leader says that the boy must have the money on him and come and see him. The cousin asks for the price and S. replies: as much as possible. The boy's family has a car wash in England. The family knows S. because he already had one of the boys brought over. S. says that the boy must have 250 new Albanian leks [approximately EUR 2,500] on him. He repeats that the people who come to see him must have the money with them, otherwise he won't do anything. If they want to give the money to L. (the person of trust) in England,

they must pay '4' (EUR 4,000) because L. must also have his 'coffee' [his share]."

The smugglers arranged it so that they had all their clients' passport and contact details, in order to be able to recuperate the money afterwards from the clients or their family if they hadn't been paid. In the phone conversation, two smugglers were discussing the details of a more expensive guaranteed transportation, which their client could also pay afterwards by Western Union: "Smuggler A. told B. that he had just sent the boy, B. must have GBP 750 on him. A. asked the boy to transfer the rest by Western Union in two or three days' time. In total, this passenger has to pay EUR 6,000, plus GBP 500. According to A., he will certainly pay because he has a copy of his passport and his address."

The smugglers regularly returned to Albania to recuperate the money from the clients. Smuggler A. talked about it on the phone: "A. contacts his mother. He tells her he'll be coming to Albania to collect the money from clients who haven't paid. A. talks about an amount of GBP 10,000 that is owed to him, especially by clients from Tirana. He has the phone numbers and addresses of the people who still owe him money."

According to other phone taps, the families still in Albania were threatened if the client hadn't paid: "According to the smuggler, one of the people who had reached the United Kingdom was B. The smuggler wants the money from B., an agreed amount of EUR 5,000. He's trying to find out where B.'s family lives in Albania and is sending threats by text message to force them to pay. The smuggler gives the details to an Albanian leader based in the United Kingdom, who will sort out the matter when he goes to Albania."

## 2.3. Victims of smuggling

Victims of smuggling were often in a precarious situation. Sometimes, they had to hide in cardboard boxes on board lorries. People were also put in the empty tanks of lorries transporting liquids. Smugglers extorted money from victims by taking advantage of their trust or gullibility. Some of the defendants pretended they were high-ranking officials or embassy employees to extort money from their victims. Among other things, they made some people believe, including pregnant women, that they would be taken illegally with a group of Kosovan tourists, thus managing to squeeze GBP 1,500 out of them.

### *Phone taps*

On 31 May 2014, three Albanians reached England illegally from Calais. The smuggling was organised in collaboration with a French smuggler. When they arrived, the subcontracted smuggler contacted them from Belgium to find out how the journey went. The migrant replied that it was tiring, a real ordeal. He had to keep still for eight hours. According to the police, he was probably transported in the cabin of a lorry.

### *Victims who died after being sent back following an interception in England*

On 24 February 2014 in Harwich, United Kingdom, 15 illegally transported migrants (11 Albanians and four Vietnamese) were intercepted. They had come from Holland (Hook of Holland) in order to get to England. After their discovery, these people weren't admitted to England, with the exception of two Vietnamese minors. The group was immediately sent back to where they came from, i.e. Rotterdam. On the way back, two Albanians jumped in the water. They were never found and they probably died.

The Belgian police later discovered that two of the Albanian migrants sent back were

intercepted again a few weeks later during a transportation operated by the Albanian defendants in this case. During this transportation, 16 Albanians in total were found on board an empty tanker used to transport liquid foodstuffs. At least eight of the illegally transported migrants had been provided by the organisation's Belgian branch.

*Statement of the smuggling victims sent back to the Netherlands*

Following an interception of migrants transported illegally to Harwich in the United Kingdom, on 10 April 2014, five Albanians were sent back to Rotterdam by the British authorities. A man and a woman were hospitalised in England and then ran away.

After the migrants returned, the Dutch police (*Marechaussee*) opened an investigation. All the Albanians who were sent back were interviewed and their mobile phones were analysed. It turned out that the lorry driver in question worked for the Dutch transport firm that had already been implicated in the past.

A few relevant photos were found on the mobile phone of an Albanian smuggling victim, which allowed the journey between Belgium and the Netherlands to be traced. The migrant had taken photos of overhead road signs on the motorway during the journey. He was willing to cooperate in order to locate the place where they had got on board the lorry. He was first shown photos of public parking areas and service stations that were likely possibilities. These photos, combined with a visit to the places, led to the identification of the embarkation point as being a parking area along the A1/E30 motorway to Amsterdam.

In the account he gave the Dutch investigators, the illegally-transported migrant stated that it was very cold during the journey and that he had the impression of being treated like a dog. He and the other illegal passengers were

shouted at. He made relevant statements to the Dutch police and was able to give a detailed report on the smuggler.

He explained that he had left Italy, where he had lived for 20 years. He left the country because of problems with the authorities owing to his involvement in drug smuggling. For his transportation to England, he got in contact with a Belgian smuggler whose phone number was in his wallet. His smuggler had ordered him to write down the number and memorise it. In Belgium, the user of the number in question ordered him to go to a certain budget hotel. The next day, his smuggler came to fetch him. The migrant had discussed several options with this man on how to get to England. In his opinion, the first scenario was nothing more than a con. He would be taken to a hotel in Brussels where supposed priests would come and fetch him. He would also be disguised as a priest. That way, he could get to England because priests weren't checked. There would be six of them in a van. The migrant realised that he had been tricked. The smuggler has asked him for EUR 3,000 in advance and GBP 2,500 after the transportation, i.e. GBP 5,000. The victim had already paid the EUR 3,000 and attempted to recuperate his stolen money over the phone. The smuggler had deceived him, but finally proposed the second option, which consisted of getting to England on board the lorry from the Dutch transport firm that had previously been implicated.

The victim described the place where the smuggling took place in the Netherlands as being a parking area with a service station and a sort of restaurant, close to the parking area for lorries. The lorry parked close to the trees in the parking area. When the lorry was in place, he saw people run to the vehicle in groups of two or three. (...) The smuggler ordered them to switch off their phones when they got on board. He only had a small bottle



of water and had to remain in the lorry for the entire night crossing on the ferry. He couldn't get out because the cover was closed on the outside. The lorry's cargo was composed of a few barrels containing a liquid. The migrant said in his statement that it was very cold. He stated that after the interception in England, the women and children were taken first. He was finally sent back to the Netherlands with the others. The British police also took the driver.

## 2.4. Minors

Approximately 30 minors were among the smuggling victims<sup>245</sup>. There were families with young children, but also a few unaccompanied foreign minors. The majority of victims had never been intercepted but were found thanks to the phone taps. Parents travelling with young children were asked to give them medication during the journey to keep them calm.

### *Phone taps*

In the tapped conversations, the smugglers often discussed the smuggling of families with children and agreements regarding the price: "The smuggler says he has a mother with three children aged 7, 10 and 13 respectively. The uncle also wants to travel with them. The mother and the children all want to travel in the cabin of the lorry. The price was settled in England and is GBP 21,000. The uncle suggests paying half now and the rest in a month. He'll provide all his necessary contacts in Albania and England. The smuggling leader agrees and says that the transportation will probably take place next Thursday, but that it could also be earlier. At 14:37, the smuggling leader informs his partner and speaks to the woman with three children aged 7, 10 and 13. The partner thinks it will be difficult because the children

will cause problems. The smuggling leader says that everything has already been settled and that the GBP 21,000 are already with the partner."

Another smuggling leader also talked about the role of minors in case of a possible interception and gave the order to administer medication to young children: "A smuggler says a woman wants to come with her four-year-old child. It's a bit young. A man might accompany the woman. According to his contact person - a smuggling leader - they can't be sent back if they're accompanied by a minor. They have to stay seated until they get there because the children don't know how to jump into the bushes. The smuggling leader orders the mother to take sleeping tablets with her. A total amount of EUR 7,500 is agreed for the three of them. The smuggling leader reminds him that the woman and the little boy mustn't jump from the lorry seeing as they won't be sent back anyway."

For minors and their family, the smugglers arranged for a suitable escort for the journey. In a tapped conversation, a smuggler informed the smuggling leader that a man was coming with his son to discuss the terms and settle everything. The smuggling leader said that he "would make sure that the boy could travel with someone and that the father could decide whether to trust him or not."

### *Smugglers' counter-strategies*

As a counter-strategy, the smugglers consciously abused the protection measures in favour of minors<sup>246</sup>. During an interception at the port of Calais, the smuggler pretended to the police that he was the 17-year-old boy's cousin. Thanks to this they let him go. The two other Albanians were arrested with the aim of repatriating them. In a tapped phone

<sup>245</sup> Also see the focus in this report, Part 2, Chapter 1, point 1.2.

<sup>246</sup> On this subject, also see the focus in this report, Part 2, Chapter 1, point 1.2.

conversation, the smuggling leader got annoyed with one of the victims: "X. (the smuggling victim) acted in his own interest and told the police that smuggler A. wasn't the minor's cousin. The two who weren't released will have to make a statement. Smuggler A. hopes that they won't say anything stupid." ». When the minor's uncle contacted them afterwards: "The smuggling leader says that the person is on their way back in the company of his friend [smuggler A.]. The smuggling leader says that since the minor hasn't been sent back, he always makes sure that they are accompanied by an older person."

During another attempt, the smuggling leader had fake papers made in order to establish a link between the smuggler who wanted to go to the United Kingdom and a minor. This is what is revealed in the police's analysis of the phone tap: "The conversations reveal that S. (the smuggling leader) established a document himself proving that the minor is under the responsibility of A. (the smuggler). This ensures that the minor isn't locked up separately. During the previous smuggling attempt, A. also pretended he was the minor's cousin. This trick allowed them to avoid incarceration in France." Several conversations on this subject were recorded within the framework of the phone tap: "On 21-04-2014 at 10:46:34, smuggler A. contacts the smuggling leader S. Smuggler A. talks about the document he wants to draw up for the 'youngster' so that he falls under A.'s responsibility. (...) On the day of the transportation, the smuggling leader informs a contact that he'll be working that evening. At 17:45, the smuggling leader contacts smuggler A., who tells him he is ready, and that he hopes the operation will succeed tonight. Smuggler A.

says he met two of the smuggling leader's boys. Smuggler A. talks about the boy who has received his document and paid EUR 40 to obtain it. The smuggling leader says that another boy will be travelling tonight, but that he still has to find him."

#### *Unaccompanied foreign minor*

At the start of the investigation, during an interception at the Grand-Bigard parking area on the night of 13 November 2013, there was an unaccompanied foreign minor in possession of his passport among the four illegally transported Albanians. After the administrative arrest, the police superintendent gave the order to contact the Immigration Office and to follow the instructions, register the interested parties in the register of arrests and take their fingerprints. The people arrested were handcuffed, put into a police van and transferred to the police cells.

Upon the request of the judge responsible for human smuggling, the minor was also heard but denied any contact with a smuggler. At 05:15, the police sent the *Administrative control report for a foreign national* to the Immigration Office. This report indicated that the interested party didn't want to file a complaint for human smuggling. The Immigration Office took the following decision: "At 10:51, the guardianship service was also informed given that the victim is a minor. This service suggests (...) meeting him on 18/11/2013 at 08:00 in order to offer him the necessary protection." The file report contains no information on what became of this minor<sup>247</sup>.

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<sup>247</sup> On this subject, also see the focus in this report, Part 2, Chapter 1, point 1.2.

## CHAPTER 3. HOW CAN THE SMUGGLERS' BUSINESS PLAN BE SHATTERED?<sup>248</sup>

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 prosecutors specialising in human smuggling (and human trafficking) and specialised police units are involved. Belgium is one of the rare countries to offer victims of human smuggling victim status if the smuggling is accompanied by aggravating circumstances (especially in cases involving extremely dangerous and life-threatening situations, such as transportation in refrigerated lorries). Every year, approximately 20 or so victims of human smuggling apply for this status.

The Belgian model is based on a criminal law approach to human smuggling, with the emphasis on combating the smugglers and not the illegally transported migrants. The goal must be to dry up the funds and dismantle the international human smuggling network. This is the key to shattering the smugglers' business model.

There is an effective way to combat human smuggling. This model mustn't be destabilised

by bad political choices only aimed at disrupting the smuggling market by engaging in a combat against illegally transported migrants, within the framework of 'hunting down illegal immigrants'. Subsequently, there is no use in simply combating the problems with the aim of maintaining order to the detriment of the fight against human smuggling, as this would be counter-productive to the criminal law approach to human smuggling.

The Belgian model definitely still has room for improvement, especially regarding implementation by frontline players and prosecutors. Within this framework, the interdepartmental unit for the coordination of the fight against the smuggling and trafficking of human beings should set up a "human smuggling" working group to elaborate measures aimed at improving the system to combat human smuggling in the field without upsetting the system's foundations. Special attention requires a better application of the status of victim of human smuggling without necessarily reinforcing the associated legal framework.

**The Belgian model, which is based on a criminal law approach to human smuggling, mustn't be destabilised by bad political choices that only aim to disrupt the smuggling market.**

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<sup>248</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 2, Chapter 2, points 2.1, 2.2, 2.4 and 2.5.

## 1. Criminal law approach to smugglers

Within the framework of a criminal law approach to human smuggling, emphasis must be placed on the collection of evidence against the smugglers. Police checks must be aimed at the places where smugglers can be caught red-handed. This is the case, for example, at motorway parking areas where the smugglers hide migrants in regular lorries and refrigerated lorries.

### 1.1. Opening the investigation

How should a human smuggling case begin? What data should be collected for this purpose? These are questions that must be asked before starting an investigation.

The phone data of the human smuggling victims are crucial to opening an investigation into human smuggling. During an interception 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<sup>249</sup>.

If necessary, the data will be analysed providing the required authorisation is given. By looking through the mobile phone records, the police can check all the phone contacts retroactively. The collaboration of the human smuggling victim, in this case, can also be of added value to the investigation.

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 an 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.

During interceptions conducted within the framework of human smuggling, it is therefore necessary for the police to have sufficient investigative resources to read the mobile phones that contain crucial data on the phone's usage and social media. This often hasn't been the case as the police also had to be available for other interventions at the same time.

Once it has begun, the investigation has to be constructed and developed with the help of objective evidence such as phone taps, social media, data exchange, searches, interviews with the suspects and victims of human smuggling, letters rogatory and more in-depth international collaboration agreements. The arrest of suspects, both on a national and international level, is the culmination of the investigation. It minimises thus the risk of release if a suspect is held in pre-trial detention for too long.

### 1.2. Social media

The law and the police also use social media and the internet as a method of investigation within the framework of their investigations<sup>250</sup>. The court uses the results as objective material evidence in the motivation for its judgements.

#### *Analysis of smartphones*

In various cases, the federal police's computer crime unit 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. Thanks to the analysis of a smuggler's iPhone,

<sup>249</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 2, Chapter 2, points 2.1, 2.2, 2.4. and 2.5.

<sup>250</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.4 c.

it was possible to determine the exact places where he had stayed. The smugglers clearly left from the French migrant camp to go to the Belgian parking areas before going abroad (Netherlands, Barcelona, etc.)<sup>251</sup>. In a Kurdish human smuggling case<sup>252</sup> in Ghent, the messages found provided important data regarding the main defendant. During the analysis of his computer, it was possible to recuperate Facebook conversations on illegal transportations and financial management. It was also possible to identify the contacts' Facebook profiles.

#### *Identification of the smugglers through Facebook and Google Image*

In various human smuggling cases, the police were able to determine the true identity of one of the main defendants who was operating under an alias, based on photos found on Facebook. Through searches in open sources, the police were able to find the profile the smuggler used under an alias, and confirm that the photo on his profile resembled that of a suspect in their database<sup>253</sup>. For instance, using Google Image, it is possible to compare the photo of a person within the framework of a surveillance operation with existing photos on websites, and thus find the Facebook profile of the person concerned. This approach allows the suspect to be identified and a myriad of extra data to be found in their profile.

#### *Google Maps*

The police used Facebook and Google Maps as tools during the defendants' hearings. 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<sup>254</sup>.

#### *Collaboration of social media companies*

Collaboration with social media companies is also important. Over the past few years, Belgian cases have revealed the possibility of requesting data from social media companies. In January 2015, within the framework of an Iraqi human smuggling case in Termonde, the police informed the competent magistrate of the possibility of requesting data from Facebook<sup>255</sup>: "*Facebook mission request*: We are referring to the initial report which reveals that we requested information concerning X.'s open Facebook profile so that we could determine where 'S.' might be staying. ». They [another police department] have told us that the following crucial information is visible on the open Facebook profile (...). In an effort to be thorough, we can report that it is possible to ask Facebook for a history of the connections to the Facebook profile concerned during a given period of time. The e-mail address used to create the Facebook profile can also be requested. In the next phase, the IP identifications can lead to certain addresses/people."

Within the context of looking through mobile phone records, the magistrate sent Facebook a request to obtain the identification and

<sup>251</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.2 c.

<sup>252</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 2, Chapter 2, point 1.3.

<sup>253</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 2, Chapter 2, point 3.1.

<sup>254</sup> *Ibid.*, Part 2, Chapter 2, point 5.

<sup>255</sup> EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: "As to cooperation with online service providers, only 7 out of 17 responding Member States (CZ, DE, EE, ES, FI, HU, UK) have some form of cooperation with online service providers to prevent and fight migrant smuggling, but in the majority of cases (CZ, DE, EE, ES), these are not formalised."



location of the suspected smuggler. The Facebook investigation provided important data which allowed the smuggler to be identified. The European Migration Network (EMN) questionnaire<sup>256</sup> showed that different European countries have made an informal collaboration agreement with private companies that manage social media. In Belgium, collaboration agreements were also concluded with respect to investigations into human smuggling and trafficking. This is what the case studies and our interviews reveal. In the meantime, standard forms have even been created for the magistrates' requests. The majority of them have already been filled in and only certain details still need to be added. However, it is Facebook who decides whether or not to collaborate, which the EMN also confirmed within the framework of counteracting smuggling in human beings<sup>257</sup>.

The request is in the form of a legal assistance request sent to a liaison officer, who is the country's point of contact. This allows the relevant Facebook profiles to be frozen in time, without the suspect noticing anything. The person in question can then no longer delete his/her own profile. This is also the case for Instagram and WhatsApp, two Facebook applications.

### *Information exchange and arrests at international level*

The Facebook examination also helps to stimulate international collaboration and conduct international arrests. In an Iraqi human smuggling case in Termonde<sup>258</sup>, the police managed to identify a Syrian smuggler based in London (United Kingdom) through Facebook, who supplied Syrian victims by going through Belgium. He was prosecuted and convicted as co-defendant and was also the main defendant in a human smuggling case in Brussels.

### **1.3. International cooperation**

International cooperation plays a crucial role in the fight against human smuggling, given that the criminal networks nearly always operate beyond borders. The smuggling leaders often coordinate their smuggling activities from the destination country, such as the United Kingdom, and different branches are active in different countries. Consequently, after the arrest of part of the smuggling network, the remaining smugglers reorganise themselves into a new smuggling organisation that will become more professional in criminal organisation as it has learnt lessons from previous mistakes. In order to dismantle the whole smuggling network, it is necessary to go after the smuggling leaders on an international

<sup>256</sup> *Ibid.*: "Service providers like Facebook, Twitter or Google have their own internal policy about shared content. In the case of Facebook, activities related to human smuggling are not allowed and Facebook has its own team of legal experts and law enforcements officers to make sure the rules of their platform are not breached, they primarily react to referrals from users of content deemed inappropriate, which they subsequently remove. Nevertheless, Facebook also indicated that the monitoring of content related to migrant smuggling is not always prioritised as compared to other crime areas, for example child pornography, and could be further improved."

<sup>257</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 2, point 2.

<sup>258</sup> A JIT is a partnership between the competent authorities of two Member States or more, in order to carry out a criminal investigation into punishable acts where there are links between suspects 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 thus formed by the legislation and regulations in force in the country where the team is operating. At the end of the investigation, the case is brought before the prosecution service of the most diligent Member State. In Belgium, the joint investigation teams' methods 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*, 24.12.2004).

scale, as well as those providing the funding and all the branches of the network, and the people concerned must be arrested.

There are different examples of initiatives to improve international cooperation. At European level, there are joint investigation teams (JIT)<sup>259</sup>. Their intervention is based on the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>260</sup>. The countries must have a shared interest in the cases. In concrete terms, the police officers work together on each other'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 were based on a JIT agreement. In the Splinter smuggling case<sup>261</sup>, the Belgian, French and British authorities took part in a JIT investigation concerning a Kurdish smuggling organisation active in a migrant camp in the North of France. A JIT investigation was also initiated in a case in Ghent<sup>262</sup>, regarding a Czech/Albanian gang of smugglers who smuggled Albanians into the United Kingdom. Twenty-eight defendants, both men and women, were prosecuted. The

criminal case was formed on the basis of the criminal investigation conducted in Belgium, France, the United Kingdom and the Czech Republic.

However, in practice, magistrates are still reluctant to consider setting up a joint investigation team. The preference is for rapid processing (at local level), even though the network isn't always fully dismantled.

#### 1.4. 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 investigation are the most efficient ways to reach and financially dry up the smugglers' networks. 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. The smuggling leaders frequently live in the United Kingdom, a destination country, where they invest the proceeds from their criminal activities in companies such as car washes or the hotel & catering industry.

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<sup>260</sup> 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, *O.J.*, 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

<sup>261</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.5.

<sup>262</sup> East Flanders Crim. Court, Ghent division, 2 January 2017, ch. G28m. See MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 3, point 3, p. 131.

Another of the smugglers' strategies consists of securely transferring the fruits of their criminal activities to their countries of origin<sup>263</sup>.

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 warrant<sup>264</sup>. If the payments are made under another name, the police can then identify the person by analysing the messages exchanged<sup>265</sup>. 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 particular case, the police were able to make a link between different financial transactions and a smuggling organisation, based on an investigation and phone taps<sup>266</sup>. 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 by text message to a woman in charge of finances living in the Netherlands, who played a key role<sup>267</sup>.

It should be noted that the people of trust on a financial level, who settle the payments between smugglers and their clients, often live in the destination countries. In practice, this is often the United Kingdom. Payments are made through the *hawala* system<sup>268</sup>. 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<sup>269</sup>. 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, this doesn't always lead to prosecution, which means a missed opportunity<sup>270</sup>. In the Delocation smuggling case<sup>271</sup>, a smuggler stated during his hearing that the Syrian smuggling organiser had built an economic empire composed of various car washes and restaurants in the United Kingdom.

In this respect, quality international collaboration is the key link to drying up the smuggling network's financial resources. Within the framework of international cooperation, it is important that necessary financial seizures are requested and executed in the United Kingdom, which is a destination country. Some magistrates don't always apply these international procedures owing to a lack of time. However, they are necessary if we want to turn off the financial tap and dismantle the smuggling network because the smuggling leaders invest the fruit of their criminal activities in the United Kingdom, the destination country where they also live and from where they organise their smuggling activities. To smash the smugglers' business model, all their criminal assets must be taken from them. This way, the smugglers will be hit where it hurts them the most: in their wallet.

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<sup>263</sup> MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 94-95.

<sup>264</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.2.

<sup>265</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, points 2.1 and 2.3.

<sup>266</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.2.

<sup>267</sup> *Ibid.*

<sup>268</sup> 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.

<sup>269</sup> MYRIA, 2011 Annual Report Trafficking and smuggling in human beings, *The money that matters*, Part 1, Chapter 1, point 2.

<sup>270</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.3.

<sup>271</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 2, point 2.

## 2. Status of victim of human smuggling

A human approach to victims of human smuggling can offer the investigation a greater added value. The phone data of human smuggling victims is crucial to open an investigation into human smuggling. A humane approach to human smuggling victims is essential in the event 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. They can provide the smugglers' phone numbers or additional information regarding messages.

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 status. It is equally necessary to raise awareness among the police and prosecutors regarding the application of the status of victim of human smuggling.

### 2.1. Importance of victim statements

In an Iraqi-Kurdish case<sup>272</sup>, a victim of human smuggling obtained victim status after having provided relevant information regarding a smuggler's phone details. In an Albanian case examined in the case studies section<sup>273</sup>, it was possible to reconstruct the migration route from Belgium to the Netherlands based on a few relevant photos taken on the mobile phone of a victim of Albanian smuggling. During the journey, the victim took photos of the road signs on the motorway and was

prepared to cooperate in order to locate the embarkation point.

This proves that smuggling victims are prepared to make statements that can play a decisive role in the investigation. In some cases, the victims' statements were even initiated a smuggling investigation. In a Kurdish-Palestinian smuggling network in Bruges<sup>274</sup>, the Zeebrugge maritime police discovered three smuggling victims in a lorry. One of the victims made relevant statements

on the role played by the smugglers in the last part of the migration route and also handed over the mobile phone the smuggler had given him to contact him during the journey. This information helped to start a fruitful smuggling investigation and lead to the conviction of the smugglers. The Kurdish Delocation case<sup>275</sup> was initiated chiefly on the basis of statements of victims of an Iranian family which, through an anonymous intermediary, contacted Schaerbeek local police's special human trafficking unit. The police consequently contacted the reference prosecutor in Brussels in charge of human smuggling, who agreed after the hearing to award victim status. The family had already been transported seven times by the smugglers and had a lot of information about the smugglers, the British organisers and their Facebook profiles. This enabled a huge international smuggling network to be dismantled.

<sup>272</sup> MYRIA, 2015 Annual Report Trafficking and smuggling in human beings, *Tightening the links*, Part 2, Chapter 2, point 2.3

<sup>273</sup> See Part 3, Chapter 2, point 2.

<sup>274</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.1.

<sup>275</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 2, point 2.

## 2.2. Collaboration of victims of human smuggling

It is important to have the victims' collaboration. The attitude of frontline players towards human smuggling victims plays a crucial role in this respect. It is clear that these victims must be approached with empathy.

Police services mustn't consider victims of human smuggling as illegal residents who must be removed from Belgium as quickly as possible, but rather as people who are a source of important information in the fight against smugglers. When police officers have the choice between arresting a smuggler who will then be convicted or only arresting illegal immigrants with a view to possible expulsion, they immediately give priority to arresting the smuggler, regardless of whether the victims of human smuggling have already been intercepted several times. This can sometimes lead to the irritation and demotivation of certain police officers, and a negative attitude towards human smuggling victims. These repeated illegal attempts to cross can equally be the source of an irritation among human smuggling victims, eroding their trust in the smugglers and increasing their propensity to make statements. Therefore, these situations should be perceived by frontline players as an opportunity to collaborate with a victim of human smuggling.

This means a paradigm shift must take place in the approach of frontline players and certain political decision-makers, with the emphasis placed on a positive attitude towards victims of human smuggling. It is counter-productive to the fight against smuggling to create a social atmosphere of 'fighting against illegal immigrants' within the framework of an approach aimed at disrupting the smuggling market on the demand side (illegal clients).

## 2.3. Encouraging trust

The keyword behind the collaboration of human smuggling victims is trust. The interceptions conducted within the framework of human smuggling mainly take place at night. Following their administrative detention, the victims of human smuggling are taken handcuffed to the police station where they spend the night in the cellar, behind the bars of the transit cells. This approach isn't conducive to the creation of a climate of trust with a view to obtaining relevant statements.

The conditions necessary for this purpose have to be created. During interceptions carried out within the framework of human smuggling, the police should be accompanied by social workers and interpreters. The latter must be easily recognisable so that the smuggling victims can immediately distinguish them from the police, whom they tend to mistrust. With the help of interpreters, the social workers can speak to the human smuggling victims and identify those who can be considered for victim status. It is important to win the trust of these human smuggling victims from the start and, following the agreement of the competent prosecutor in human smuggling matters, to take them to a specialised centre for victims straight away, where they will be supported.

It is important that these social workers pay the necessary attention to certain human smuggling victims who, owing to their experiences with their smuggler, will be more easily inclined to collaborate. For instance, there are victims of human smuggling who, after having experienced a situation of duress or a conflict with their smuggler, have taken the initiative to make a statement following their detection. In a case of smuggling dealt with in the case law section, a migrant in transit hailed a police officer himself, following an interception, in order to denounce his



smuggler<sup>276</sup>. It is essential that such victims of human smuggling can immediately be identified as victims and referred to the reception centres specialised within the framework of the national referral mechanism. In other cases, there are human smuggling victims who were threatened with a weapon and forced to get into a refrigerated lorry. Any feeling of loyalty these victims may have had towards the smuggler has long since gone and they are more inclined to make statements.

## 2.4. Destroying the loyalty towards the smuggler

During a human smuggling interception, some of the human smuggling victims may be arrested with the smuggler and then incarcerated with them for several hours. Victims of human smuggling have a feeling of loyalty towards this smuggler, even finding themselves dependent on them because they hope to have another chance to reach the United Kingdom illegally. In these circumstances, the smuggler will have plenty of time and the leisure to exert influence or pressure over the victims of human smuggling. They can instruct them not to reveal anything about their role and not to give any explanation regarding the information on their smartphone. It is therefore unlikely, in this case, that victims of human smuggling will make relevant statements.

In some cases, the smuggler even manages to manipulate the police during an interception conducted within the framework of human smuggling. In the Kurdish Celebration human smuggling case<sup>277</sup>, during the interception of a group of illegal migrants, including an unaccompanied foreign minor, it transpired that there was only one of them who could speak English. He acted as the group's

spokesperson and played the role of intermediary with the police.

He gave them his version of the facts and, owing to his intervention, the majority refused to give their fingerprints. We should point out here that one victim of human smuggling agreed to give their fingerprints and was then shouted at by the group and the English-speaking spokesperson. It later transpired in the case that this English-speaking person was the smuggler. We can therefore conclude that all the information provided within the context of this interception was manipulated by the smuggler. We should also take into account the fact that the victim of human smuggling who distanced themselves from the smuggler would have probably been inclined to make relevant statements. It is therefore crucial, during the initial observations of an interception concerning human smuggling, that the police pay attention to the presence of the smuggler among the people intercepted. This can help avoid their negative influence and thereby win the trust of the human smuggling victims, so that they make statements and obtain the status of victim of human smuggling.

## 2.5. Few victims of human smuggling obtain the status

It has to be said that few of the victims of human smuggling obtain the status. In this respect, various factors are at play. An extensive study on this subject could lead to a better application of the status of victim of human smuggling. We can already list some of the factors we observed ourselves.

There is an interaction between factors as regards the experience of the human smuggling victim and the conditions of the system to combat human smuggling.

<sup>276</sup> See Part 3, Chapter 4, point 3, Crim. Court of Bruges, 21 June 2017.

<sup>277</sup> Brussels Dutch-speaking Crim. Court, 13 October 2016, 60<sup>th</sup> ch. (unpublished).

Victims of human smuggling become dependent on the smugglers. If they are released with an order to leave the territory, they will want to maintain their chances of attempting a new illegal passage to the United Kingdom. Sometimes, they are threatened by the smugglers, as is their family in their home country. Phone taps have also revealed that, for financial reasons, smugglers encourage their clients to illegally enter the United Kingdom because this brings in the most money if they succeed. Smugglers also spread stories about migration that are untrue. For instance, various human smuggling victims wrongly believe that the United Kingdom doesn't apply the Dublin agreements.

Victims of human smuggling also have family or acquaintances in the United Kingdom and there are the same ethnic communities there as those to which they are attracted. Some

human smuggling victims understand English, an international language. They believe that people without papers can easily find illegal employment there but don't realise that they can end up being exploited. They assume that there are fewer identity checks in the United Kingdom.

As regards the anti-smuggling system, there are a variety of problems which means it isn't always easy to win the trust of victims of human smuggling. These problems are reflected by the attitude of frontline players, a lack of awareness among the police and prosecutors, the way in which human smuggling victims are sometimes locked up with their smuggler after their interception, and the lack of interpreters and social workers who can help win the trust of the human smuggling victims.

### 3. Organising processing differently and in a structural manner following an interception conducted within the framework of human smuggling

During an interception conducted within the framework of human smuggling, the administrative processing of people who are the subject of human smuggling is very time-consuming for the police. It already takes them hours to manage a small group of people and this processing occurs at night, requiring the migrants to spend the night in a cell. Currently, there is a risk that, owing to a lack of time, none of the human smuggling victims' mobile phones or smartphones are examined.

As regards minors, no file is established, in general, during interceptions of unaccompanied foreign minors. Or the identity of these minors isn't well established by the police, who haven't been trained to do this. Minors are sometimes locked in police transit

cells like adults. They are transferred the next morning by another police team to the Immigration Office's MINTEH unit (for minors) where they adopt a negative attitude following their incarceration. They have lost all trust and no longer show any interest in being taken in. The minors then find themselves in the street and it isn't unusual for frontline players to receive a missing person's report for the minor they have just thrown out.

This means that in a working group dedicated to human smuggling, it would be necessary to think about alternative ways to organise processing following a human smuggling-related interception. One of the possibilities would be to create a regional reorientation centre where the people intercepted would be

taken, and the victims separated from the smugglers straight away. A test could be organised in West Flanders where there are numerous interceptions. The problem is that no mayor is prepared to open such a centre in their commune. And, of course, there is also the cost associated with providing permanent availability.

This reorientation centre could employ members of the federal police and various branches of several services who play a role in the identification and reception of illegally transported migrants. Their collaboration on site could lead to a high level of interaction between these services. In concrete terms, these branches could be composed of people from Office C at the Immigration Office, as well

**We can expect human smuggling networks to increase their operations in Wallonia in the future.**

the MINTEH unit, the guardianship service, interpreters and social workers from Fedasil and/or possibly the specialised centres in human trafficking. A point of contact for the prosecutor specialised in human smuggling could also be organised there. This way, more time could be devoted to the victims of human smuggling, which would enable the social workers to gradually attempt to win their trust. This would encourage the victims to make relevant statements within the framework of the status of victim of human smuggling. After the identification procedure carried out by the competent staff from the various branches, minors could be directly transported to an adapted reception centre where they would benefit from adapted support for their own protection.

## 4. Raising awareness, building expertise and improving dialogue

The police and prosecutors in Flanders and Brussels have a great deal of expertise in human smuggling. Human smuggling networks have been active along the E40 motorway in the direction of the Belgian coast for more than 20 years. The smugglers use parking areas that go from Leuven to Jabbeke, to the coast. For the past few years, the Antwerp motorway has also been a favourite among smugglers. Police services and prosecutors in these regions have therefore accumulated the necessary expertise for this purpose. They have also developed an appropriate attitude, according to which they automatically consider a runaway car as a potential means of illegal transport for migrants.

The human smuggling networks are criminal organisations that learn lessons from their mistakes and adapt to constantly evolving contextual factors. Smugglers now know they run a greater risk of being intercepted on this

traditional illegal migration route along the E40, owing to the expertise accumulated by frontline players and prosecutors in these regions. Consequently, we are witnessing a shift in the illegal migration route towards Wallonia, which has little experience in the fight against human smuggling and therefore no relevant expertise. This is what the Mawda human smuggling case revealed, where a child was killed by a police bullet. The police department in question wasn't at all aware of the fact that this van was being used for illegal transportation and the on-duty judge didn't apply victim status in this case either.

In the future, we can expect human smuggling networks to increase their operations in Wallonia. Therefore, it is essential that the police and prosecutors in Wallonia receive continuous training as soon as possible on the fight against human smuggling in order to avoid future human smuggling tragedies,

insofar as it is possible. Frontline services and prosecutors from all regions in Belgium must be involved in the existing human smuggling collaboration platforms, such as the E40 collaboration. This way, the existing best practices and case law can be shared more easily and expertise can be formed more quickly in Wallonia.

It should also be noted that victim status is too seldom applied. Some local police departments

still aren't sufficiently informed of the existence of the status of victim of human smuggling. Local and federal police departments and prosecutors must therefore be made more aware of the application of victim status and of an appropriate approach to win the trust of human smuggling victims. An important asset is, above all, the multidisciplinary collaboration with the reception centres specialised in victims of human trafficking, which must be increased.

## 5. Maintaining public order

As a matter of social interest, the police ensure the maintenance of public order and they must do so in a humane way. In some cases, this can be necessary to combat certain problems such as the prevention of the appearance of migrant camps, but maintaining public order should never replace an anti-smuggling approach since it is completely ineffective. Within the framework of maintaining order, a policy that only targets the disruption of the smuggling market is counter-productive in the criminal law approach to smugglers.

It is useless in terms of combating smuggling to launch an action plan to check and detect migrants transported illegally in public transport and places of transit. Illegally transported migrants do indeed use public places of transit and public transport, but this doesn't provide sufficient evidence to initiate a criminal investigation into the smugglers. In smuggling cases, there is proof that the smugglers give the migrants instructions regarding which trains and buses to take to get to a meeting point located in the immediate

vicinity of the parking area or place of transit, such as Maximilien Park<sup>278</sup>. This data from their smartphone can only be used as criminal evidence if a link can be established with an interception conducted within the framework of human smuggling in the case of flagrante delicto. Sometimes, during such law enforcement actions, the people intercepted have been subjected to administrative detention and afterwards released with an order to leave the territory. In one criminal case, it later transpired that the person intercepted was a smuggler.

Such law enforcement actions in trains and places of transit cause a feeling of intimidation among victims, which is counter-productive to the fight against human smuggling. The feeling of loyalty towards the smugglers is sometimes strengthened, which makes it more difficult to win their trust. The acts of violence committed by some police officers against smuggling victims are also particularly harmful. The police's investigation capacity is also limited and must be used as efficiently as possible.

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<sup>278</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 2, point 2.2 b, p. 117.

## CHAPTER 4. CASE LAW OVERVIEW 2017 - START 2018

### 1. Trends

In this chapter, Myria provides an overview of the relevant case law from 2017 to the beginning of 2018 concerning cases of human trafficking and human smuggling<sup>279</sup>. This year, the overview is based on cases in which Myria filed a civil suit, decisions received from the specialised victim reception centres as well as decisions provided by prosecutors and social inspectors. There is also a presentation of a recent judgement by the European Court of Human Rights.

Myria was informed of 65 decisions rendered by the judicial authorities. Hereafter, is a presentation of the most interesting decisions, i.e. 41 decisions relating to 39 cases in the country's various jurisdictions:

- 13 decisions (including five appeal decisions) relating to 11 cases concern acts of sexual exploitation. They were pronounced in the jurisdiction of the Courts of Appeal of Antwerp (Antwerp division), Brussels (French-speaking and Dutch-speaking), Ghent (West Flanders (Bruges)), Liège (Court of Appeal of Liège) and Mons (Charleroi, Court of Appeal of Mons).

As regards **sexual exploitation**, we have noted, as we did last year, a further increase in underage victims, essentially from Nigeria. Note that a 14-year sentence was handed down in one of these cases, as well as the confiscation of windows. A new concept concerns Chinese prostitution in private places. Two large cases, dealt with in the previous report, went to the court of appeal: one of them concerns Thai escorts, with a significant

international dimension. The other one, a joint French/Belgian investigation team.

- 21 decisions (including 6 appeal decisions, one of which was rendered by the Labour Court) concern labour exploitation cases. The decisions pronounced relate to a wide range of sectors and are presented per sector of activity (construction, hotel & catering, night shops, horticulture, poultry farming, transport, riding schools, sewing workshop and domestic work). These decisions were pronounced in the jurisdiction of the following courts of appeal: Antwerp (Antwerp (Antwerp, Turnhout and Mechelen division)), Brussels (French-speaking), Ghent (East Flanders (Ghent, Termonde), West Flanders (Bruges, Ypres)), Liège (Namur, Liège, Luxembourg (Neufchateau division)).

As regards **labour exploitation**, it is important to mention the presence of minors among the victims, especially in a night shop and in several cases of domestic work. A judgement was also pronounced concerning a catering business. The Labour Court of Brussels re-examined a domestic work case involving a diplomat and his wife formerly posted in Brussels. An acquittal for human trafficking in the road haulage sector was upheld on appeal.

As evidence 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,

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<sup>279</sup> Note that these decisions will also be published on Myria's website: [www.myria.be](http://www.myria.be)

derisory wages, no day of rest), bad housing conditions, wage deductions under various pretexts, dependence on the employer (such as withheld passport). Note that the reaction of one employer towards a work accident was interpreted differently at the court of appeal than at first instance.

- 1 decision concerns exploitation of begging. It was pronounced in Brussels and by default.
- 6 decisions relate to cases of human smuggling. They were rendered in the

jurisdiction of the courts of appeal of Brussels (Dutch-speaking), Ghent (East Flanders (Ghent, Termonde) and West Flanders (Bruges)), and Liège (Liège division).

In terms of **human smuggling**, there are numerous developments in active networks: Syrian, Chinese and Eritrean networks. Of particular note is a judgement that was pronounced in the French-speaking part of the country (Liège).

## 2. Human trafficking

### 2.1. European Court of Human Rights, judgement V.C. against Italy, 1 February 2018

The European Court of Human Rights delivered an interesting Chamber judgement in a case concerning the prostitution of a minor who was 15 years old at the time of the acts<sup>280</sup>. This young girl, who was dependent on alcohol and drugs, was the victim of a child prostitution network and gang rape. The interested party complained of not benefiting from all the necessary protection measures provided by the Italian authorities.

The court considered that the abuses suffered by the young girl fell within the scope of Article 3 of the Convention (prohibiting inhuman and degrading treatment) and constituted interference in the rights of the latter with respect to her physical integrity, such as the guarantee by Article 8 of the Convention (right to respect for private and family life). It

considered that the authorities hadn't taken all the necessary measures to prevent the abuses to which the young girl was exposed and protect her physical integrity. The national authorities were indeed aware of the minor's vulnerable situation and the real and immediate risk she faced. The authorities were indeed aware of the irregular conduct of the minor, who was found in possession of alcohol and drugs. The public prosecutor's office for children had been alerted to this situation. Furthermore, the minor's parents had also informed the authorities of their daughter's dire situation. With evidence in hand, they also mentioned the risk she faced of falling victim to a prostitution network. While the criminal courts acted quickly, the juvenile court and social services, on the other hand, took no immediate protective measures, even though they knew that the young girl was vulnerable and that proceedings regarding her sexual exploitation as well as an investigation into gang rape were in progress. Hence, the

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<sup>280</sup> ECHR, judgement V.C. against Italy, 1 February 2018, appeal No. 54227/14. For the details of the case, see: [https://hudoc.echr.coe.int/fre#{%22fulltext%22:\[%22V.C.%20contre%20Italie%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-180487%22\]}](https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22V.C.%20contre%20Italie%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-180487%22]}).



authorities didn't carry out any risk assessment of the young girl's situation.

The court ruled that articles 3 and 8 of the Convention had indeed been breached.

## 2.2. Sexual exploitation

### 2.2.1. Nigerian networks

As in the previous case law overview, several decisions concern Nigerian networks that also exploited minors.

#### *Asylum-seeker victim in France*

This case, judged by **the Criminal Court of Antwerp on 21 March 2017**<sup>281</sup>, concerns two Nigerian defendants. They were convicted in absentia for the charge of human smuggling. The first defendant was also convicted in absentia for human trafficking for the purpose of the sexual exploitation of a person, with the aggravating circumstances that the offence was committed in association, for having abused the victim's vulnerable situation and having used coercion.

The case was brought to light after the Nigerian victim filed a complaint. In June 2015, she was smuggled from Nigeria to Europe for the amount of EUR 35,000. The smuggling was organised from Nigeria by the first defendant's brother-in-law. At her final destination, she was supposed to work for a 'madam' to reimburse her debt.

Before being smuggled, a voodoo ritual was organised in Nigeria, during which she had to undress and wear a white tunic. Her perilous journey from Nigeria to Europe only began after that. She stayed for several weeks in different places in Italy before applying for asylum in France and continuing her journey to Belgium.

Two weeks after her arrival in Antwerp, her 'madam' ordered her to work in a café. She had to solicit clients and convince them to have sexual relations with her to reimburse her debt. She had to ask for EUR 100 an hour. The victim always worked from 16:00 until closing time and then had to walk the streets. If she spent the night with a client, her 'madam' forbade her from sleeping and she was obliged to immediately begin preparing the meal in the morning. She had to deliver it to two shops, where she had to explain that the 'madam' was her aunt. When the victim didn't earn enough money, she was showered in insults.

The investigation showed that the victim's statements were consistent with the retroactive examination of the phone investigation based on information from the transmitting antenna. The consultation of several money transfer agencies revealed that the second defendant had made three money transfers to the man with whom the victim had stayed in Italy. The victim had also recorded (phone) conversations on a USB stick. The various witness statements also had significant probative force.

Consequently, the first defendant was convicted in absentia and given a five-month prison sentence, and a fine of EUR 1,000. The second defendant was convicted in absentia and given a 30-month prison sentence, and a fine of EUR 1,000. When the judgement was handed down, an order was given for the immediate arrest of the two defendants.

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<sup>281</sup> Antwerp Crim. Court, Antwerp division, 21 March 2017, ch. AC5 (in absentia).

### *Escort agency involving African women*

A case tried in Turnhout<sup>282</sup>, which was dealt with in a previous report<sup>283</sup>, concerns young African girls, several of whom were still minors. They were brought over with false papers to then be put to work as escorts in an agency, through adverts on the internet, which a Nigerian woman managed with her Belgian boyfriend and a third Nigerian defendant. The Belgian boyfriend took care of the photos for the website, transporting the girls and collecting the money.

**The Court of Appeal of Antwerp** re-examined the case in a decision of **31 May 2017**<sup>284</sup>.

Only the Belgian defendant appealed against the first judgement. The court confirmed that he was in a position of force, with his girlfriend, in relation to the Nigerian victims. He also exploited the prostitution of the victims. With his girlfriend, he controlled the actions of the victims in such a way that they were no longer able to take decisions by themselves, thereby seriously affecting their integrity.

The court nevertheless reduced the sentence: instead of a 30-month prison sentence, it was reduced to two years. The fines were confirmed.

### *Child victims*

**The Criminal Court of Bruges** pronounced a judgement on **20 September 2017**<sup>285</sup> against eight Nigerian defendants who appeared for human trafficking with the purpose of sexual exploitation, with the aggravating circumstances of abusing the victims' vulnerable situation, using coercion, endangering the victims' lives, participating in a criminal organisation and the fact that the

activity was a habitual activity. Dozens of young Nigerian women were victims of this offence, including a minor. Three victims, including a minor, filed a civil suit, as did the PAG-ASA and Payoke reception centres.

The acts were uncovered thanks to an investigation led by the local police in Ostend. A meeting was arranged following a response to an advert. The investigation (composed primarily of phone taps, surveillance and statements) quickly revealed that it was an organised gang, that different young girls were forced to prostitute themselves and that they had to hand over at least 40 % of their income to the first defendant. Certain girls also had to hand over an extra percentage of the remaining amount to the other defendants. Some of the victims also had to pay rent for their apartment. The girls had to be available at all hours and the defendants told them which sexual acts they had to perform. One victim even had to have an abortion. The young girls were threatened with voodoo practices (especially the fact that they would continue to be harassed for years if they dared to report the defendants).

Several girls also stated that the first defendant regularly used physical violence and psychological coercion against them, ranging from various acts of violence to attempted rape, and a refusal to provide work if he didn't obtain exactly what he wanted. The other defendants also threatened the victims in case of non-payment.

One of the defendants had initially been a victim of human trafficking herself, as a result of the same organisation. This is a common phenomenon in the Nigerian world of

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<sup>282</sup> Antwerp Crim. Court, Turnhout division, 9 December 2015, ch. TC1.

<sup>283</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 4, point 2.2, p. 157.

<sup>284</sup> Antwerp, 31 May 2017, 14<sup>th</sup> ch.

<sup>285</sup> West Flanders Crim. Court, Bruges division, 20 September 2017, 17<sup>th</sup> ch. (final).

prostitution, i.e. prostitutes who, after a certain time, form a relationship with their pimp and thereby climb the ladder to exploit other women in turn and make them work in prostitution.

Various searches were organised, different financial transactions were checked as were mobile phones. Two videos of extreme child pornography were found on several of the defendants' mobile phones.

According to the court, the criminal case clearly reveals that this was a particularly well organised international network that smuggled young girls from Nigeria to Belgium in order to exploit them in prostitution. The young girls' vulnerable situation was clearly exploited.

Several defendants were also prosecuted for smuggling Nigerian women from Nigeria to Belgium, via Italy, to then exploit them sexually in prostitution and as escorts. Also, within the framework of smuggling, the women were subjected to voodoo rituals during which pubic hair, hair and a pair of knickers had to be handed over. One of the victims arrived in a house in Libya where she was exploited as a sex slave. Another victim was still a minor when the acts occurred.

The eight defendants were all convicted and given prison sentences varying between an 18-month suspended sentence and a fixed nine-year sentence, together with fines of 3 x EUR 8,000 and 16 x EUR 8,000<sup>286</sup>.

Exhibits and sums varying between EUR 360 and 407,020 per defendant were confiscated.

The three civil parties obtained damages ranging between EUR 6,500 and 12,000. The associations PAG-ASA and Payoke each received EUR 2,500.

Another case was judged by the Dutch-speaking **Criminal Court of Brussels on 23 January 2018**.<sup>287</sup> One of the victims was under 16 years old at the time of the acts. Two Nigerian defendants appeared for human trafficking for the purpose of exploitation of prostitution and for exploitation of debauchery or prostitution. One victim filed a civil suit.

The two Nigerian victims had left Nigeria for Europe believing that they had been recruited to study in Belgium and work there. All they had to do was pay back the travel costs amounting to EUR 21,800 in total. Before leaving, the girls had to go to a voodoo temple where they promised the voodoo priest they would reimburse the defendant, not run away and not report the defendant to the police. During the ceremony, hair, pubic hair and fingernails were taken from the young girls. One of their fingers was then pricked to draw blood. The girls then had to wash themselves with voodoo water before putting on white trousers and a white bra.

The investigation revealed that the girls were strongly influenced by these voodoo practices and that the defendants counted on them to encourage the girls to do their best. The girls had to work as prostitutes to reimburse their travel costs. The victims were also subject to physical violence if they came back empty-handed.

During the examination of the phone taps, it transpired that the defendants and their sister were concerned about the reimbursement of the debts. These conversations almost exclusively related to the exploitation of two young girls, regarding their disobedience and the fact that they didn't earn enough.

The court considered that the acts of human trafficking were established as regards the two

<sup>286</sup> According to Article 433*quinquies*, §4, the fine must be multiplied by the number of victims.

<sup>287</sup> Brussels Dutch-speaking Crim. Court, 23 January 2018, 60th ch. (final).

defendants and placed the emphasis on the aggravating circumstances. In particular, the court accepted as aggravating circumstances the abuse of the victims' vulnerable situation, the fact that the activity was a habitual activity and the fact that one of the victims was a minor. It was also emphasised that the use of coercion, under false pretences, voodoo rituals and physical violence were omnipresent. The offence of exploitation of prostitution was also declared established by the court.

The two defendants were sentenced to six years in prison and a fine of 2 x EUR 6,000.

One of the victims filed a civil suit and obtained material damages worth EUR 2,110 and moral damages worth EUR 5,000.

A third case concerns five Nigerian defendants who appeared on **16 June 2017** before the **Criminal Court of Antwerp**<sup>288</sup>. The second and third defendants were prosecuted for human smuggling. The first, second, fourth and fifth defendants appeared for human trafficking. Charges of rape and participation in a criminal organisation also feature in the case. In particular, two managers of an establishment and a landlord were involved in the case. A child victim filed a civil suit.

The facts were revealed during a police action within the framework of concealed prostitution. A police officer made an appointment with a woman by calling a phone number published on a website. When the woman opened the door, the police officer introduced himself. When the place was searched, the police found a prostitution parlour there. While the woman's personal belongings were being removed, another victim was discovered, as well as one of the

defendants who was in the process of taking a mobile phone apart.

The victims all came from Nigeria, and some of them had been smuggled into the country by the defendants. One of the victims explained that she had been promised she would be able to work as a nanny in Belgium. Voodoo practices were organised before the start of the journey, and one of the victims had razor cuts on her body. Another victim was splashed with water that would have a positive influence on her life. These voodoo practices were used on several occasions as a means of pressure on the victims in order to intimidate them. During the journey to Belgium, the victims were continuously given instructions.

The victims were obliged to prostitute themselves. Three minors were also among the victims. They had to give the money they earned to the defendants. Two victims were raped by the second defendant, and one of them was still a minor when it happened. Several searches took place, during which the police discovered tablets and mobile phones containing photos, lists of contacts and messages supporting the victims' statements. There was no in-depth phone investigation.

Among the defendants were two taxi drivers, but the court considered that the charge of human trafficking couldn't be declared as established in their case, because it was impossible to clearly determine the frequency with which these defendants transported the victims or whether they knew they were victims of human trafficking.

As regards the other three defendants, the court decided that they were part of an international criminal organisation that attracted girls and women in Nigeria in order to transport them to Belgium and then prostitute

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<sup>288</sup> Antwerp Crim. Court, Antwerp division, 16 June 2017, ch. AC5.

them there. Financially, the victims were totally dependent on the defendants and were living here illegally. The victims were consequently in a vulnerable situation, which the defendants abused.

The first defendant was given a six-year prison sentence and a fine of 2 x EUR 6,000. The second defendant was given a seven-year prison sentence and a fine of 3 x EUR 6,000. Finally, the third defendant was given a 30-month prison sentence and a suspended fine of 2 x EUR 6,000. The public prosecutor also asked for the establishment where the acts took place to be closed down. However, the court considered that there weren't sufficient reasons to justify its closure. Several goods were confiscated. As regards the first and second defendants, an amount of EUR 4,000 was also confiscated.

A child victim filed a civil suit through their guardian and asked for material and moral damages amounting to EUR 2,500. The court accepted this request.

This judgement was the subject of an appeal brought before **the Antwerp Court of Appeal on 8 February 2018**<sup>289</sup>. The sentence of the first convicted person was reduced from six to five years in prison. The second convicted person's sentence was confirmed.

#### *Heavy sentences and confiscation of windows*

A judgement delivered on **31 May 2018 by the Dutch-speaking Criminal Court of Brussels**<sup>290</sup> involved 11 defendants, including people of Nigerian, Haitian, Togolese, Belgian and Turkish nationality, who appeared mainly for human trafficking for the purpose of

exploitation of prostitution or other forms of sexual exploitation. Added to this were the following aggravating circumstances: the fact that the victim was a minor, abuse of the victim's vulnerable situation, use of coercion, endangering the victim's life either deliberately or through serious negligence, and habitual activity. Several defendants also appeared for hotel pimping and involvement in a criminal organisation. The Nigerian network in question was particularly well organised. Myria filed a civil suit in this case.

The federal judicial police of Brussels learnt that in the African world of prostitution, a very well-known Nigerian prostitute known as Mama L. (first defendant), was exploiting about 15 Nigerian girls in prostitution, some of whom were probably minors. The situation had been going on for several years. She also unofficially managed several rooms for which she had a personal agreement with the owners. The police also learnt that she was sexually exploiting several girls according to the Yemeshe system<sup>291</sup>. The organisation was responsible, on the one hand, for bringing young girls from Nigeria to sexually exploit them and, on the other, for the exploitation of prostitution of a great many young girls in the red-light district in Brussels.

The first defendant had recruited the majority of girls from Nigeria with the help of his brother who lived there. They were attracted by false promises such as studying. The victims were smuggled from Nigeria to Italy via the Libyan route. In Italy, they stayed in refugee camps. From Italy, the young girls were driven through Europe by a man who came to fetch them by car. However, they had to go via the asylum

<sup>289</sup> Antwerp, 8 February 2018 (not available).

<sup>290</sup> Brussels Dutch-speaking Crim. Court, 31 May 2018, 60<sup>th</sup> ch. (appeal set 10 October 2018).

<sup>291</sup> This is a typical modus operandi in Nigerian prostitution circles, whereby a young girl who doesn't have a fixed place of prostitution is offered the window of a prostitute under contract, to prostitute herself there for a few hours. The young girl has to pay a sort of rent which involves handing over 50 % of her earnings to the prostitute under contract.

centre in Lille, in France, in order to initiate an asylum procedure and benefit from temporary protection against possible repatriation to their country of origin.

The various victim statements revealed that they had already undergone a voodoo ritual in Nigeria, during which they had promised not to run away and to pay back the total sum of the journey to the first defendant, amounting to about EUR 35,000. One of the victims was still a minor and wasn't allowed to reveal her age under any circumstances. Once the victims arrived in Brussels, they were immediately taken to their place of work and forced to prostitute themselves. If they refused, they were subjected to physical violence. The first defendant came by the girls' house every day to collect the money and always checked they weren't hiding anything.

The investigation also related to different witness statements which revealed that the first defendant (Mama L.) exerted enormous pressure on the girls. The members of their family in Nigeria were also threatened by her entourage. Violence and psychological coercion were subsequently used against the girls. The second defendant was a 'black taxi' driver.

The phone taps confirmed what has just been described. The first defendant threatened serious reprisals if the girls were to run away and not reimburse their debt. For instance, it transpired that the child victim's mother had been locked up and severely punished. This victim later stated that her brother had died in mysterious circumstances<sup>292</sup>.

When the court assessed the facts, it appeared that the first defendant held a leading position in an extremely well-organised criminal network. The following elements allowed the

court to reach this conclusion: the international context, the large number of victims, the collaboration between different people, the constant dialogue to organise the girls' travel and sort out the prostitution activities, the frequent change of phone numbers, the use of a coded language and the incitement to stay silent during the various interviews. All the defendants were found guilty of different charges, except for one defendant who was acquitted. All the aggravating circumstances cited in the charge of human trafficking were consequently upheld.

During sentencing, only the identified victims were taken into account to avoid them being counted twice.

The first defendant was given a 14-year prison sentence and a fine of EUR 240,000 (30 identified victims). A sum of EUR 624,250 was also confiscated. The second to seventh defendants were sentenced to between 14 months and eight years in prison together with fines ranging from EUR 8,000 to 128,000. The three other defendants who owned rooms were each given a two-year suspended prison sentence and a fine of EUR 4,000.

For the first defendant, a sum of EUR 624,250 was confiscated, as well as the car she was using to get to the red-light district within the framework of her criminal activities. As regards the other defendants, sums ranging between EUR 1,880 and 63,100 were confiscated. In this case, the confiscation of three properties was also pronounced. However, only a small part of each property (the 'rooms') could be confiscated given that only this part of the property was rented for the purposes of prostitution with the goal of making an abnormal profit.

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<sup>292</sup> On this subject, see the focus in this report: Part 2, Chapter 2, point 2.2.



Myria filed a civil suit in this case and received material and moral damages worth EUR 500.

### 2.2.2. Chinese prostitution in private

In this case judged by the **Criminal Court of Bruges on 17 May 2017**<sup>293</sup>, a Chinese and a Belgian defendant were prosecuted for human trafficking for the purpose of exploitation of prostitution. They were also faced with charges of attempted rape, indecent assault and arbitrary detention, as well as charges concerning social criminal law. The victims were all Chinese nationals. One victim filed a civil suit.

The facts were brought to light when the local police were performing other investigative duties after having received information. It subsequently transpired that unidentified Asian women were working as prostitutes at two addresses on the Belgian coast. These apartments were rented from two real estate agents by the current first defendant, who mentioned every time that the rental was intended to house family members from China. However, it was suspected that the defendants were placing Chinese women, who were potentially staying here illegally, in a prostitution network. The police also found online adverts for private escort services.

After the phone and neighbourhood investigation, which allowed the police to establish that men were going in and out of the properties, the two defendants were questioned. The first defendant asserted her right to remain silent. The second defendant spontaneously stated that he had been asking his wife for quite a while "to stop with these illegal immigrants and this prostitution", but that she hadn't wanted to listen, that he had warned her that she was going to get into trouble and that she was responsible for five

Chinese girls staying here illegally. He later confirmed that he had helped to create an advert and that he only went to the apartment concerning a number of practical issues.

The police learnt nothing more during the interviews with the four victims. They said they had come to Belgium to find a suitable partner and possibly get married, that they were only staying here for a short while, that no men came to the apartment and that they certainly hadn't been involved in paid sexual services. Regarding their passport, they stated that it was elsewhere in Belgium.

During a later search, the four Chinese passports were found. A boarding card was also found for one of the victims, indicating that she had been staying here far longer than she said. A notebook containing 215 phone numbers was also discovered.

One month after the first hearings, PAG-ASA contacted the local police to report the following facts concerning the two defendants: attempted rape, arbitrary detention and indecent assault.

The victim in question then gave another version of the facts that was completely different from the first one. In China, she got in contact with a person who promised to take her to Europe to work in massage salons. It was going to cost her EUR 10,000. This person threatened to kill her if she didn't pay everything. Once she had reached the Belgian coast, she was told she had to prostitute herself and the first defendant suggested that the second defendant show her what she had to do. When the victim refused, she was taken to a room and was fondled all over. The victim refused to go further and managed to hold back the second defendant. She succeeded in escaping and locked herself in another room. A

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<sup>293</sup> West Flanders Crim. Court, Bruges division, 17 May 2017, 17<sup>th</sup> ch. (appeal).

few days later, she was taken to another apartment where the other girls were working as prostitutes. As she refused to prostitute herself, she was forced to sleep on two chairs.

The defendants denied the accusations. In addition, the first defendant was subjected to a phone investigation that determined she was also offering women in Dubai and was discussing prices with men. According to her, it was simply a question of helping friends, and not at all human trafficking. A bank investigation was then conducted among financial establishments and money transfer companies in Belgium and during searches, the mobile phones and computers found were examined.

The court considered that the two defendants were guilty of the offence of human trafficking with a view to the sexual exploitation of the Chinese nationals, having abused their precarious social and residency situation. The first defendant clearly organised the transportation of the Chinese nationals to Belgium through her contacts back home and in Dubai. By confiscating the Chinese women's passports, they were entirely in her power, which partly explains why the four women had invented a story during their first hearing. The fact that the second defendant tried to minimise his role, also completely lacked credibility according to the court. Different messages were discovered on one of the mobile phones clearly concerning the organisation of prostitution, and the level of Dutch quite obviously surpassed that of the first defendant. The second defendant was therefore also considered a guilty party.

Concerning the charges of attempted rape, indecent assault and arbitrary detention, the court acquitted the two defendants, considering the lack of objective evidence

supporting the victim's statements. As for the social law offences, they were declared established.

The first defendant was given a three-year prison sentence and a suspended fine of 4 x EUR 6,000. The second defendant was given a suspended 18-month prison sentence and a suspended fine of 4 x EUR 6,000. The court also confiscated several exhibits and pronounced a confiscation of EUR 5,260. The victim, who filed a civil suit, received material and moral damages amounting to EUR 10,000.

### 2.2.3. Loverboy technique

In a case tried by the **French-speaking Criminal Court of Brussels on 22 March 2018**<sup>294</sup>, an Albanian defendant was prosecuted for human trafficking for the purposes of sexual exploitation, recruitment and exploitation of prostitution of a young Albanian woman, and carrying a forbidden weapon (a flick knife). He had met a very poor young woman in Albania. He had seduced her by making promises of a better life. He told her that several women had already prostituted themselves for him. When she refused to prostitute herself, he started to hit her and put her under pressure. She finally accepted, providing that he helped her to get her children, and that the money earned would be sent to her father in Albania. They travelled via Turkey and Germany to get to Belgium where she began to prostitute herself in an establishment. They lived in several hotels. When she didn't want to work anymore one day, he hit her and threatened her, as well as her family, in particular by brandishing a knife. He was continuously checking up on her, by phone or through WhatsApp. None of the money transfers were made to the victim's family.

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<sup>294</sup> Brussels French-speaking Crim. Court, 22 March 2018, 47<sup>th</sup> ch. (appeal).

The victim's statements were confirmed by the evidence in the file (witness interviews, zoller, phone taps).

The court declared all the charges established. It sentenced the defendant to four years in prison and a EUR 6,000 fine. It pronounced the confiscation of assets equivalent to the sum of EUR 13,050, of which EUR 655 were seized, corresponding to the earnings from the victim's prostitution. It granted the victim EUR 15,000 *ex aequo et bono* as compensation for both moral and material damages. It also awarded her the sums confiscated from the defendant, in application of Article 43bis of the Criminal Code. It awarded EUR 1.00 to the reception centre that supported the victim and filed a civil suit.

Another case, tried by the **Criminal Court of Charleroi on 21 September 2017**<sup>295</sup>, concerns a Bulgarian repeat offender who exploited young women by becoming romantically involved with them. He was prosecuted for human trafficking for the purposes of sexual exploitation, recruitment and exploitation of prostitution of five young Bulgarian women. He was also prosecuted for the arbitrary detention of one of these young women.

The court accepted all the charges, except that of arbitrary detention. The defendant recruited women in Romania, housed them, drove them to their place of prostitution in Charleroi, and collected their money. He also used violence and threats against them. The court based itself on the victims' statements, phone taps, surveillance, and the information provided by the Bulgarian authorities. The court also accepted several aggravating circumstances associated with the offences (abuse of a

vulnerable situation, use of violence or threats, habitual activity), except for association.

Regarding the charge of arbitrary detention, the court considered that the strong psychological pressure exerted by the defendant wasn't sufficient to establish the charge of arbitrary detention.

The court sentenced the defendant to six years in prison and a EUR 40,000 fine. It also pronounced the special confiscation of the sum of EUR 26,400 as assets derived directly from the offence.

In a **decision of 12 June 2018, Mons Court of Appeal**<sup>296</sup> confirmed the judgement pronounced at first instance. However, it increased the prison sentence from six to eight years. Concerning the charges made, the court stressed that the defendant had taken control of the victims through romantic involvement and by pushing them into prostitution. He then kept them under control by letting them stay at his home, constantly monitoring them, especially by phone, and by adopting an authoritarian and threatening attitude towards them. Furthermore, the way in which the five victims were drawn into prostitution in Belgium, their emotional and economic dependence as well as their social and administrative situations allowed the court to establish that they had no other real choice than to submit to the defendant's behaviour.

#### 2.2.4. Thai escorts

A case of trafficking and smuggling Thai women using a well-tried and organised mechanism, largely dealt with in the previous report<sup>297</sup>, went to the appeal court. The young women, with difficult family and/or financial circumstances, were recruited in Thailand. They knew that were going to have to

<sup>295</sup> Hainaut Crim. Court, Charleroi division, 21 September 2017, 10<sup>th</sup> ch. (appeal).

<sup>296</sup> Mons, 12 January 2018, 4<sup>th</sup> ch.

<sup>297</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 3, point 2.2.3, pp. 103-105.

prostitute themselves. They had to reimburse their travelling costs by working as a prostitute, through adverts placed on the internet.

At first instance, four defendants (two Thai women, a Pakistani man and a Romanian man) were prosecuted and convicted for various charges. The first three for trafficking and smuggling of human beings, recruitment and exploitation of prostitution regarding several young Thai women, and for distributing adverts offering sex services (adverts published on a sex website, under the section 'escorts and massages'). Both the Romanian defendant and the Pakistani defendant were prosecuted for these charges (except the charges relating to smuggling and advertising), but it was in relation to two young Romanian girls.

Four Thai victims filed a civil suit.

At first instance, the Criminal Court of Liège had accepted all the charges against the defendants in a judgement of 16 November 2016<sup>298</sup> containing an extremely detailed motivation.

Two of the convicted persons appealed: the main defendant, against the criminal and civil provisions of the judgement, and the convicted Pakistani man against the penalty rate. The public prosecutor had followed the appeals and also questioned the calculation made by the first judges regarding the amount of the confiscations.

In a **decision of 1 June 2017, the Court of Appeal of Liège**<sup>299</sup> confirmed the main defendant's guilt, especially on the basis of the victims' precise and coinciding statements, the partial confessions of one of the convicted parties, the contact maintained between the

convicted parties through a messaging system, and the money transfers made.

However, the court reduced the sentences from six to five years in prison, part of which was suspended for the convicted Pakistani.

The court also confirmed the civil convictions pronounced at first instance. It confirmed the calculations made by the first judges concerning the amount of the confiscations, as well as the attribution of the confiscated amount to the civil parties but in proportion to their respective debts.

#### 2.2.5. Joint investigation teams

A case concerning a joint French/Belgian investigation relating to acts of exploitation of debauchery within the framework of human trafficking, dealt with in the previous report<sup>300</sup>, went to the appeal court. During an inspection of prostitution parlours in Liège in 2008, the attention of police services was drawn to prostitution parlours owned by a French national. After contacting their French counterparts, it transpired that an investigation into aggravated pimping had been opened with regard to the suspect. The matter was referred to a Belgian investigating judge and a joint investigation team was set up. From 2008 to 2013, numerous inquiries were made (investigations of websites, phone tracking, surveillance, searches, investigations into assets).

In this case, 15 defendants were prosecuted at first instance. Twelve of them, including the main defendant and numerous female defendants, were prosecuted for human trafficking with regard to numerous young Romanian women, as well as for criminal organisation.

<sup>298</sup> Liège Crim. Court, Liège division, 16 November 2016, 19<sup>th</sup> ch.

<sup>299</sup> Liège, 1<sup>st</sup> June 2017, 18<sup>th</sup> ch.

<sup>300</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 3, point 2.2.6, pp. 108-110.

All the defendants, except for one, were prosecuted for running a brothel: the majority of them ran the brothels where the prostitution took place.

Charges of inciting debauchery and exploitation of prostitution were also made against the majority of the defendants.

Two brothel-keepers filed an appeal. In a judgement of 14 September 2016<sup>301</sup>, the Criminal Court of Liège had convicted them of human trafficking, managing a brothel, incitement and exploitation of prostitution, but had acquitted them of the charge of criminal organisation.

In a **decision of 12 September 2017**<sup>302</sup>, the **Liège Court of Appeal** confirmed the conviction of the two defendants. Concerning one of them, the court considered that guilt was established on the basis of several elements: the victims' convergent statements; the recruitment by the defendant and main convicted party (no appeal) of young girls in Romania with difficult family and/or financial circumstances; the reception, accommodation and monitoring of these young girls in places of prostitution, whose management was entrusted to various people, including the defendant; initiation into prostitution and the copious amount of advice given to them by the defendant; the young girls subordinate relationship with the principal convicted defendant and the managers (including the defendant); the fee paid by the latter for management services, based on the earnings

from prostitution, to various people, including the defendant; the defendant's partial confessions.

The defendant also put forward the argument of invincible error, although this wasn't accepted by the court. The court considered that the only finding the defendant was able to consider as misleading owing to the behaviour of the administrative or police authorities, wasn't sufficient to justify an invincible error in her case.

A similar motivation was developed by the court concerning the other defendant. She also pleaded an invincible error. In this respect, the court noted that the only finding that the defendant continued to practice prostitution while still managing one of the establishments wasn't sufficient to justify an invincible error in her case, since she didn't claim to have taken the necessary precautions to be sufficiently and fully informed.

However, the court pronounced an order suspending the sentence regarding the two defendants.

## 2.3. Labour exploitation

### 2.3.1. Construction

In this sector, court rulings were made in several cases<sup>303</sup>.

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<sup>301</sup> Liège Crim. Court, Liège division, 14 September 2016, 19<sup>th</sup> ch.

<sup>302</sup> Liège, 12 September 2017, 18<sup>th</sup> ch.

<sup>303</sup> Besides the decisions presented hereafter, we should also mention the appeal decision of the Antwerp Court of Appeal on 26 April 2018 in a case tried by Turnhout Criminal Court on 22 April 2015. This case was dealt with in Myria's 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 115-116. The appeal related to two civil party victims who were granted no material damages at first instance. The court awarded one of them material damages. The other victim only contested the amount of the non-material damages but the court didn't reverse the judgement on this point.

One of the first cases, tried by the **Criminal Court of Neufchâteau on 20 April 2017**<sup>304</sup> concerns a defendant prosecuted for having exploited four workers, one of whom filed a civil suit, at several construction sites for Chinese restaurants in Belgium. The defendant was prosecuted for trafficking and smuggling in human beings, facilitating unlawful stay and several charges concerning social criminal law.

The case was opened following suspicions of undeclared work in a disused building. The building site was inspected. Several people were there including three workers. The latter had no work equipment and slept at the site on mattresses on the ground. There was only one small heater for a huge hangar, a makeshift kitchen and a shower made out of recuperated materials. Two of the three workers gave an initial explanation which raised suspicions of exploitation. They were taken to a specialised reception centre. Interviewed in the proper conditions, they explained how they arrived there. They paid a smuggler a lot of money and arrived in Belgium illegally. They worked at various construction sites for the defendant on many occasions and had been doing so for several years, always in difficult conditions. Either they lived at the actual building sites or off-site in more or less insalubrious apartments. The working hours were very long (nine to ten hours a day, six days a week) and the salary paid was half the minimum wage in Belgium. Furthermore, it wasn't always paid. When it was, it was in hand without a pay slip.

The workers' statements were corroborated by other hearings and objective elements in the case. There were also two other cases concerning the same defendant in other judicial districts, with a similar *modus operandi*.

The court convicted the defendant in absentia for all the charges made against him and sentenced him to one year in prison and a EUR 24,000 fine, as well as the payment of EUR 1 to the civil party as provisional compensation.

Another case, tried by the **Criminal Court of Liège on 2 October 2017**<sup>305</sup>, concerns two defendants, a brother and sister, prosecuted for trafficking in human beings for the purposes of labour exploitation and for various breaches of criminal social law. They were accused of making two Romanian workers, who filed a civil suit, work in conditions contrary to human dignity (substandard pay, insalubrious accommodation, abnormally long working hours, dependence of the workers on external aid to obtain food, lack of medical care in case of a work accident).

Following a phone call from neighbours reporting the work of a Romanian couple who lived in dreadful conditions in a building in Huy, the local police went to the site and took photographic evidence. Two Romanian workers were interviewed. Among other things, they explained that they worked long hours every day, that they weren't paid, that they had been living on the site for several months, that only one room was heated by a gas convector, and that there was one toilet that wasn't working in the beginning. The defendants were in possession of their identity papers. After their hearings, the workers were taken in by a specialised reception centre for trafficking victims.

One of the workers worked for the male defendant's parents in Romania. This defendant brought him to Belgium where he worked in his house without being paid. He then worked in the sister's house with his wife.

<sup>304</sup> Luxembourg Crim. Court, Neufchâteau division, 20 April 2017, 14<sup>th</sup> ch. (in absentia).

<sup>305</sup> Liège Crim. Court, Liège division, 2 October 2017, 18<sup>th</sup> ch. (appeal).



The male defendant, who was given the benefit of the doubt, was acquitted by the court of all the charges against him. Indeed, the criminal court record doesn't establish the fact that the worker worked at his home. No searches or findings were made in his home. Furthermore, his role in the renovation of the house in Huy wasn't established either. The victims' statements were contradictory on this point and the only objective elements in the investigation couldn't confirm his involvement.

On the other hand, the court accepted all the charges made against the female defendant. The court emphasised that even though it was necessary to relativise the victims' statements (especially in relation to the exact state of the house before the works and the extent of the works carried out), there was no doubt that the house was insalubrious and the fact of living there for several months was contrary to human dignity. Moreover, the promised salary of EUR 1,000 or 1,500 for the work was in no way proportionate to the work carried out and was also contrary to human dignity.

The court sentenced the female defendant to a 12-month suspended prison sentence. It also ordered the confiscation of the building as well as the confiscation of assets equivalent to the sum of almost EUR 24,000 from the female defendant. It sentenced her to pay each of the civil parties the provisional sum of EUR 10,120 in material damage and the final sum of EUR 1,250 in moral damage.

It also awarded the confiscated sums to the civil parties as a matter of priority.

In another case tried on **21 March 2018 by the Criminal Court of Bruges**<sup>306</sup>, a defendant of Belgian nationality was prosecuted for trafficking a Ghanaian victim for the purposes

of labour exploitation and for social law offences concerning three victims.

The police were called by a very distraught man asking for help. The man spoke in broken English and explained that he was put into a car with someone who wanted to kill him. There was a bogus interview with the defendant and he explained that he worked for him in the construction sector. This defendant was linked to a real estate company that had already been the subject of an investigation for a long time. A more in-depth investigation revealed that the victim received board and lodging in return for his services (tidying up construction sites, decorating, etc.). He had to hand over his papers to the defendant and therefore had no residence document. Later on, the victim was taken to PAG-ASA, where he panicked, begged not to be killed and explained that he didn't want to be deported to Africa.

An examination of the victim's mobile phone allowed the police to discover several messages revealing that the defendant was often in contact with him concerning tasks that had to be executed and the place where the victim slept. The victim stated that the defendant had convinced him to come and work for him and that in exchange, he was going to help him obtain papers. There were also two witnesses who confirmed his account to a large extent.

The defendant contested all the facts. The court therefore had to determine whether there was sufficient evidence to convict him. The court stressed that this was the case owing to the findings of the police officers who took the statements, the victim's credible account, the objective results from the examination of the mobile phone and the witness statements. On the basis of the above, the court decided that the victim had indeed been made to work

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<sup>306</sup> West Flanders Crim. Court, Bruges division, 21 March 2018, 17<sup>th</sup> ch. (appeal).

in conditions contrary to human dignity and that the victim, owing to his highly precarious situation in terms of residence rights and social law, had no other real option than to accept the working and living conditions unilaterally imposed on him.

The defendant was given a 30-month prison sentence and a fine of EUR 6,000. On a civil level, the victim received EUR 7,500 in moral damages.

### *Handyman*

In a case tried by **the French-speaking Criminal Court of Brussels on 26 June 2017**<sup>307</sup>, a Belgian company manager, as well as his company, were charged with human trafficking for the purposes of labour exploitation regarding a Tunisian worker, who filed a civil suit. They were also prosecuted, with another defendant, the co-manager, for various charges concerning social criminal law.

The company, managed by the main defendant, is active in building renovation and rentals, especially in the form of apartment hotels. This defendant has always been the ipso jure or de facto manager of the company, but when he was temporarily unable to work, he appointed other managers. The other defendant, a temporary co-manager, never actually exercised a decision-making role, which is why the court acquitted him of all the charges brought against him.

The case began with a visit from the Social Inspectorate to the company's premises following 'information' it was given. The worker was present and the inspectors noted the precarity of the accommodation (premises that served as a workshop and a shed, a sofa for a bed, no water supply or toilet, no kitchen,

damp throughout, old and dangerous electrical wiring).

The worker explained that he worked as a handyman in the apartment hotels rented out by the main defendant (applying insecticide, carrying luggage or furniture), had been living in this accommodation for a year and had to go to the local swimming pool to wash.

The defendant explained that he met the worker, who had no residence or work permit, at a time when he himself was living in the same building in precarious conditions and offered to house him rent-free in an empty office which he himself had lived in.

The court found that the living environment didn't provide suitable living conditions. Furthermore, the worker, who had to be available whenever he was asked to do something, wasn't paid and occasionally received EUR 100. The workload then began to increase (maintenance works).

The court subsequently accepted the charge of human trafficking brought against the defendant and his company. He was obviously aware that he was subjecting the worker to work conditions contrary to human dignity by housing him in an insalubrious place and by asking him to perform services that weren't paid in accordance with the statutory tariffs, with no consideration for health and safety in the workplace, no social protection and no fixed working hours, and expecting him to be available each time he was asked to provide a service. The court also accepted the charges concerning social criminal law brought against the defendant and his company.

The court sentenced the main defendant to a 20-month suspended prison sentence and a fine of EUR 6,000. The company was fined EUR

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<sup>307</sup> Brussels French-speaking Crim. Court, 26 June 2017, 89<sup>th</sup> ch. (appeal).

12,000. It also ordered the hearings to be reopened at a later date to rule on the civil claims (filed by the worker and the reception centre that took him in) insofar as the defendants provided no explanations in the submissions regarding the civil claims.

#### *Abuse of the posting procedure*

**On 20 October 2017, the Criminal Court of Termonde pronounced<sup>308</sup>** a judgement concerning a case of abuse of the posting procedure. The defendants had set up various construction companies in Bulgaria. The companies were barely active, merely hiring staff whom they then posted. The three defendants included a Bulgarian, a Belgian and a private limited company. Various social criminal law charges, as well as a charge of human trafficking for the purposes of employing persons to work in conditions contrary to human dignity were brought against them. The last charge also contained the aggravating circumstances of abuse of authority, abuse of the particularly vulnerable situation of the victim and coercion. Two Bulgarian victims filed civil proceedings.

The exploitation was brought to light when police units organised various actions at different construction sites. It transpired that several workers didn't have Limosa documents. This was one of the social criminal law offences.

The investigation and the workers' statements revealed that the latter had little or no knowledge of the mother company in Bulgaria, that they had never worked in Bulgaria but had been explicitly recruited to come to work in Belgium, that there was often no contract, that they worked between eight and ten hours a day (six days a week) for a promised salary of EUR 200 to 250 a month.

After these actions carried out by the police units, two victims also filed a complaint against their employers. One victim stated that in his opinion, no activity took place in Bulgaria and that it was only a matter of hiring staff with a view to posting them. They also living in substandard housing. The goal was that they would renovate the housing themselves. These statements revealed that the workers had never been paid and that they had been promised that they would be paid later, once they returned to Bulgaria. The victims stated that no safety measures were ever put in place when they had to work at a height.

The Bulgarian inspectorate found that the company didn't exercise any activity in Bulgaria. The criminal case consequently revealed that none of the workers were subject to the Bulgarian social security system.

The court sentenced the two defendants to one year in prison (suspended for the first defendant) and a 7 x EUR 6,000 fine.

Two victims filed a civil suit, with each of them awarded EUR 4,125: EUR 3,125 in material damages and EUR 1,000 in moral damages.

In another case dealt with by the **Criminal Court of Mechelen on 22 March 2018<sup>309</sup>**, four defendants, including two Belgians, a Dutchman and a Hungarian, appeared in court on various charges: human trafficking for the purposes of labour exploitation (with the help of a fraudulent posting system), human trafficking for the purposes of sexual exploitation, slum landlords (making abnormal profits by providing a property in conditions contrary to human dignity) and participation in criminal organisation. The victims were mainly Romanian and Hungarian. Myria filed a civil suit in this case.

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<sup>308</sup> East Flanders Crim. Court, Termonde division, 20 October 2017 (appeal).

<sup>309</sup> Antwerp Crim. Court, Mechelen division, 22 March 2018, ch. MC1 (appeal).

It all began with a traffic check. The passengers of a vehicle were trying it out with a view to buying it. Romanian nationals were on board the car. As they had no identity cards on them, the police proposed going to their home where other Romanian nationals were discovered. They all seemed to be working as posted staff for a demolition and earthworks company.

The building where the victims were staying appeared damaged on the outside, and was dilapidated inside. Mould and damp stains were everywhere and the ceiling showed signs of collapse. When the victims reported the state of their housing, nothing was done about it. Every victim had to pay EUR 200 every quarter for their accommodation, which was directly deducted from their salary. The situation was similar in a second building. The victims stated they didn't have to pay any rent but that they had been promised quality accommodation.

As regards their job, the victims stated that they had to hand over their identity papers to the boss when they arrived as he was going to take care of the Limosa declaration. No work contract was drawn up and the hours worked weren't recorded. They didn't receive a pay slip either. They had been promised EUR 8 an hour. According to one of the victims, they worked from Monday to Saturday inclusive, and the amount of EUR 8 wasn't correct because they said they earned EUR 1,000 a month. According to this victim, the defendants kept the money owed to them for their own benefit. He felt like he was treated as a slave. They worked between 12 and 15 hours a day. The case is particularly voluminous: letters rogatory mainly organised in Hungary and Romania, confrontations and phone taps, and interviews with the defendants on several occasions. The investigation revealed that the workers weren't registered with the Hungarian companies responsible for their posting. One of the workers had an accident (he fell and broke

his wrists, nose and suffered several cuts) and he was only taken to the defendant's farm four hours later, where he was taken to the doctor after another two hours. Another worker was also injured when loading a tractor and had to continue working. The workers weren't insured.

Women were also employed in a sort of champagne bar where they provided sexual services. The posting system was also applied in this case and the women weren't, at any moment, reported as employees of the companies responsible for posting them. One of them stated that she earned EUR 10 an hour and when customers were present, she also received a percentage from the drinks they consumed. She worked from 20:00 to 06:00 and felt abused because she had been lied to.

The court considered that all the charges were established, except the existence of a criminal organisation. The court also stressed that the fact that certain workers considered their work conditions as normal or hadn't filed a complaint or indicated that they worked 12 hours a day to earn as much money as possible, didn't detract from the criminal nature of the acts. The essential elements of the offence must indeed be assessed in light of the Belgian legal provisions.

During sentencing, the court had to take into account that a judgement had not been given within a reasonable time, following which an adapted reduction had to be applied to the sentence of each defendant. The defendants were given sentences varying between one year and a fine of EUR 5,500 to a three-year prison sentence and a EUR 27,500 fine. The court also pronounced the special confiscation of amounts ranging from EUR 340 to 3,895 and assets ranging from EUR 5,000 to 20,000.

Myria filed a civil suit in this case and received EUR 1.00 in compensation.

### 2.3.2. Hotel & catering industry<sup>310</sup>

In a case tried by the **Criminal Court of Namur on 22 November 2017**<sup>311</sup>, an Indian defendant was prosecuted for human trafficking for the purposes of labour exploitation regarding three fellow countrymen whom he exploited in his restaurant. These three workers filed a civil suit. One of them was a minor (16 years old) when some of the acts occurred. The defendant was also prosecuted for human smuggling and various charges concerning social criminal law (in particular, not paying the salaries, not declaring the work to the NSSO, lack of insurance to cover occupational accidents). He was also prosecuted, with another defendant, for assisting people to reside illegally (housing eight Indian nationals).

The restaurant was inspected three times by the Social Inspectorate (once in 2012 and twice in 2015). During the first inspection, two people ran off, clearly following the instructions given by the defendant. These were two of the three workers who filed a civil suit, and who were present in the kitchen during the subsequent inspections. The third worker (who was a minor during the first inspection) served the customers. The families of the two workers (including the minor) lived in the basement of the restaurant.

The court considered all the charges established. As regards human trafficking, the court considered human dignity had indeed been violated: the salaries paid were ridiculous (EUR 500 a month for working six days a week, 15 hours a day, with the minor being paid EUR 10 a month), the accommodation of the workers and their families was insalubrious (in

an uninhabitable and dangerous cellar), the food consisted of the customers' leftovers, and the passports of the civil parties were hidden in a chimney flue. The court also noted that it was irrelevant that the defendant and his family had previously chosen to live in these premises or that this accommodation was acceptable in relation to the living conditions the civil parties were accustomed to in their country of origin.

The court sentenced the defendant to an 18-month suspended prison sentence and a fine of EUR 54,000, half of which was suspended. The other defendant was given a four-month suspended prison sentence.

The court granted two of the workers moral damages worth EUR 5,000 and material damages corresponding to the difference between the net pay they should have been paid and the net pay of EUR 500 that was actually paid to them, i.e. EUR 37,763.73.

As regards the third worker, he worked in the restaurant every day while he was living at the defendants' home even though he was a minor. Afterwards, he came to live with his family in the restaurant basement and adapted his working hours according to his school hours. He worked every weekend as a bartender. He also worked as a waiter. In addition, he would sometimes work in the restaurant during the week on busy days. He was also responsible for taking the table linen to the cleaners. His work schedule was initially 38 h/week then 19 h/week when he and his family moved into the basement. He only received EUR 10/month for these tasks. The court subsequently assessed his non-material

<sup>310</sup> Besides the decisions presented hereafter, we should also mention that a decision handed down by Bruges Criminal Court on 4 May 2016, dealt with in the previous report (2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 117-118) was re-examined by Ghent Court of Appeal on 11 October 2017. The latter reduced the sentences and the amounts granted to the civil parties.

<sup>311</sup> Namur Crim. Court, Namur division, 22 November 2017 (appeal).

damages at EUR 5,000 and his material damages at EUR 33,318.53 on the basis of what he should have received and what he actually received.

### *Catering business*

A case tried in Liège concerns a catering business. A defendant and his company were prosecuted for human trafficking for the purposes of labour exploitation regarding a Moroccan woman, who filed a civil suit, and for various social criminal law charges. They were also prosecuted, alongside a third defendant, for human trafficking regarding five other workers, four of whom filed a civil suit. The first defendant was also accused of having wrongfully obtained a social integration allowance after submitting an incorrect or incomplete declaration, i.e. he claimed health insurance benefits while continuing to work and organise weddings during this period.

The defendant had a catering business and, within this framework, organised traditional family gatherings such as wedding or circumcisions. In order to manage this activity, he formed a company.

In its **decision of 27 March 2017, the Criminal Court of Liège**<sup>312</sup> accepted all the charges brought against the main defendant. As regards human trafficking, the court took the following points into account: the staff were employed with complete disregard for a set of basic employee declaration rules; the wages were very low in relation to the considerable number of consecutive hours the employees had to work (EUR 100 per wedding, sometimes only EUR 50 to 80 for working 10 hours in a row); precarious situation on an administrative level; promise of regularisation; disrespect shown towards the workers; no responsibility

taken for work accidents; confiscation of certain identity documents.

The court stressed the concordance of the workers' statements regarding the proposed wages and the duration of their working hours.

The court also accepted the charge of human trafficking as regards the other defendant but only in relation to three workers. He was involved in the hiring of several workers and was omnipresent. He also knew the context in which these people would be working.

On the other hand, the court acquitted the company of the charges brought against it. The court considered that it didn't have the judgement or the free will required to commit the offences it was accused of in an informed manner. Indeed, the organisation was such that the main defendant ran the business for his private gain and the legal person wasn't allowed to oppose the offences that were committed.

Since the period of reasonable time was exceeded, the court reduced the sentences. Hence, the main defendant was sentenced to 18 months in prison with suspension for the period exceeding remand and a fine of EUR 27,500, half of which was suspended.

The other defendant was sentenced to six months in prison (with complete suspension) and a fine of EUR 5,500 (with suspension for half of it).

The court granted the civil parties material damages varying from EUR 1,776.24 to 10,138.24 and non-material damages of EUR 500 (for one victim) and EUR 2,000 (for the others).

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<sup>312</sup> Liège Crim. Court, Liège division, 27 March 2017, ch. 18 (appeal).



### 2.3.3. Night shops

A major case involving night shops and sham marriages was judged by the **Criminal Court of Ypres on 8 January 2018**<sup>313</sup>. Two cases were linked. The defendants, including four Pakistanis, a Frenchman, a Belgian and three companies, had set up different businesses in which the victims were employed. However, these victims had the status of self-employed workers, making them bogus self-employed workers. The defendants were convicted for human trafficking for the purposes of labour exploitation, but also for other charges such as money laundering, forgery, misappropriation of assets, attempted sham marriage, attempted fraudulent legal cohabitation, participation in a criminal organisation, social criminal law offences and human smuggling. Six victims filed a civil suit, including an Indian woman, four Pakistani women and a Polish woman. The company's receiver and Myria also filed a civil suit.

Furthermore, the first defendant was a repeat offender and had already been sentenced by the Court of Appeal in Ghent<sup>314</sup> to an 18-month prison sentence and a EUR 5,500 fine for human trafficking, by taking advantage of the victim's particularly vulnerable situation, and for organising a sham marriage.

The case was brought to light following an initial report concerning money-laundering practices. A subsequent investigation showed that the first defendant made a profit especially from the organisation of sham marriages. The criminal investigation was opened following suspicions of relationships of convenience which sought to gain advantages in terms of residence rights, as well as suspicions of bogus statuses in companies obtained through forgery.

During the investigation into assets, a minimum of EUR 288,765 and USD 15,890 of suspicious cash transactions was discovered among the natural and legal persons concerned. These transactions mainly concerned sending cash through money transfer companies, paying in substantial amounts in cash to bank accounts, etc.

As the investigation progressed, more and more victims made statements. A woman stated that she worked from Monday to Saturday in one of the defendant's shops from 17:00 to 02:00, and on Sundays from 12:00 to 00:00. She only earned EUR 700 a month. It was also agreed that the defendant would take care of the social contributions, but the victim nevertheless received reminders from the social insurance agency as these contributions weren't paid.

Another victim, a man, stated that he felt exploited and had asked to work as an employee, which the defendant refused. He complained that he had to live with his family in a single room measuring 6 m x 3.5 m. He had to live, sleep and eat there with his wife and their two and a half-year-old child. They had access to a small shower and a toilet.

As regards the proposals for a sham marriage, the defendant offered the potential victim to do what was required to legally stay in Belgium by entering into a sham marriage. The fact that the man was already married wasn't a problem. It would cost EUR 7,000 to 8,000.

The interviews with the victims also revealed the fact that the defendants exerted considerable pressure on their victims. During a chance encounter at the police station between the defendant and a victim, they were firmly told in their mother tongue what story

<sup>313</sup> West Flanders Crim. Court, Ypres division, 8 January 2018, 19<sup>th</sup> ch. (appeal set 10 October 2018).

<sup>314</sup> Ghent, 26 March 2010.

they had to tell. The seventh defendant was the most aggressive during the interview.

The situation of bogus self-employed workers was revealed in the statements of the victim who worked as a sales assistant in one of the shops. He worked there six days a week and owned 10 % of the shares. He hadn't paid anything for these shares but he didn't have the equity book and had to hand over all the receipts.

The court considered that the judge wasn't bound by the classification mentioned by the parties in the contract, at least not when its execution doesn't correspond in any way to its essential nature. In this case, the judge may proceed with a reclassification. It transpired that the so-called independent partners actually did nothing more than practical work under authority, management and control, leading to the right to a salary, and that they consequently fulfilled the conditions of an employment contract.

However, the status of bogus self-employed worker doesn't amount to labour exploitation in the sense of human trafficking. Conditions contrary to human dignity are required. The court considered that these conditions concerned everything that related to the essence of human nature. According to the court, the violation of human dignity is equal to the reduction of the humanness of a person or a group of persons. It is the destruction of that which characterises human nature, i.e. a person's physical and mental capacities.

Physical capacity refers to the possibility of moving freely, being able to meet one's needs, take care of oneself and others, in other words, the physical ability to meet one's essential needs freely and equally. Mental capacity

refers to the ability to mobilise oneself on both an intellectual and social level in society.

Taking this into account, the court considered that the bogus self-employed workers were indeed employed in conditions contrary to human dignity, particularly owing to the fact that they were given no right to social security, that they didn't benefit from any cover in case of occupational accidents, that they were generally underpaid, that they were threatened, that they were in a precarious situation in terms of social law and/or residence rights, and that they were totally at the mercy of the defendants' goodwill. Furthermore, victims were housed in dreadful conditions and often worked very long hours.

The three aggravating circumstances (abuse of a vulnerable situation, habitual activity and criminal organisation) were also accepted.

The defendants were given sentences varying between one year in prison and a fine of EUR 24,000, both with a suspension, to four years in prison and a EUR 176,000 fine. The companies were sentenced to fines varying between EUR 600 and EUR 612,000. Several properties, EUR 60,000 from money-laundering practices and funds seized in the shops were all confiscated. An order was issued to close down the private limited companies. The civil parties were granted compensation. Myria was awarded EUR 2,500 in material and non-material damages. The receiver was awarded EUR 1.00. The victims respectively received EUR 750, EUR 25,000, EUR 5,000, EUR 1,500, and EUR 1.00 (two victims).

#### 2.3.4. Horticulture

A case of labour exploitation in the horticultural sector, tried by the **Criminal Court of Mechelen**<sup>315</sup> and dealt with in the previous

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<sup>315</sup> Antwerp Crim. Court, Mechelen division, 10 February 2017.

annual report<sup>316</sup> was re-examined by the **Court of Appeal of Antwerp on 9 November 2017**<sup>317</sup>. Myria filed a civil suit in this case.

At first instance, the court convicted the two defendants, of Belgian nationality, for the exploitation of 20 Romanians in their horticultural business. The victims were forced to work in inhumane conditions. They were beaten when they didn't work fast enough, they weren't allowed to drink outside the authorised breaks and were often treated roughly. The court sentenced both defendants to an 18-month suspended prison sentence and a suspended fine of EUR 120,000.

The court of Appeal considered that the recruitment aspect implied that people were appointed for a job. It therefore confirmed the reasoning of the judge at first instance. The court explained that the fact that the workers asked the defendant to come and work as pickers every year and that the defendants didn't take any initiative to hire people in Romania, didn't in any way affect the interpretation of the concept. It also stressed that consent is irrelevant when the job is contrary to human dignity. The court subsequently considered that the charge of human trafficking concerning all the workers was established, whether or not they agreed to work under such circumstances.

The defendants' sentences were reviewed by the court. The first defendant was given an 18-month prison sentence and a fine of EUR 234,000. The second defendant was given a 15-month prison sentence and a fine of EUR 234,000. Both were suspended sentences. Confiscation was confirmed by the court and concerned EUR 8,403.62 for each defendant.

The symbolic euro awarded to Myria at first instance was also confirmed.

### 2.3.5. Poultry farming

In a case tried by the **Criminal Court of Turnhout on 20 December 2017**<sup>318</sup>, the charge of human trafficking for the purposes of labour exploitation (work in conditions contrary to human dignity) was declared as established concerning seven defendants (one Belgian, four Bulgarians and two companies). The acts occurred between 31 December and 1 July 2012. Sentences were also handed down for different social law offences and the rental of rooms failing to comply with requirements. One victim and Myria instituted civil proceedings.

This case was brought to light following a multidisciplinary inspection carried out in Belgian poultry farms. This poultry farm employed approximately 40 Bulgarians. They were often employed illegally, but the managers had set up various constructions, including the status of bogus self-employed worker and false posted workers. They attempted to have some semblance of legitimacy through companies.

The people working as self-employed workers were registered as partners in one of the Belgian companies. It later transpired that the first defendant was the initiator. They generally knew in which company they were partners, but didn't know where the head office was, what the social purpose was or how many shares from the company they had. The defendants also used fictitious forms for posted workers. The workers generally spoke little or no Dutch, and this lack of knowledge was exploited.

<sup>316</sup> MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, Part 3, Chapter 3, point 2.3.3, p. 118.

<sup>317</sup> Antwerp Crim. Court, 9 November 2017, 19<sup>th</sup> ch.

<sup>318</sup> Antwerp Crim. Court, Turnhout division, 20 December 2017, ch. TC1 (appeal).

The main defendant insisted that he was the victim of a lack of suitable regulations concerning poultry farming and that he was therefore obliged to commit social legislation offences. He stressed that it was indeed illegal employment, in breach of social legislation, but there was no exploitation.

The case also revealed that the main defendant and/or members of his family specifically looked for Bulgarians to come and work for him or one of his companies in Belgium. The workers, who had to pay rent, lived in housing that was later declared unfit by the housing inspectorate. They were often employed illegally or posted (bogusly) from Bulgaria, or worked as bogus self-employed workers.

The statements made by the victims concerning wages were contradictory. One group claimed they earned EUR 12 an hour and that they worked approximately 17 hours a week. Others stated that they earned EUR 10 an hour and that they often weren't paid because there was no more money. The court consequently considered that these were clearly concerted accounts. An external poultry farmer stated that in his opinion, the workers earned approximately EUR 6 an hour. The documents found at the defendant's place during the search, revealed that the workers had to work much longer hours than they had said. The actual work was quite physical and hazardous owing to the ammonia smell of the chickens, and often had to be done at night.

When handing down the sentences, the court took into account the fact that the workers didn't consider themselves as victims, owing to their precarious living conditions in their home country and their cultural affinities with it. Another element that appeared was unfair competition, considering that the defendant's

company always turned out to be the cheapest. The court also noted that the period of reasonable time had been exceeded concerning the procedure.

The main defendant was given a five-year prison sentence (partly suspended) and a fine of EUR 110,000. The other defendants were given suspended prison sentences ranging from 18 months to three years, and fines of EUR 5,500 to 13,750. The companies were sentenced to fines of EUR 11,000 and EUR 13,750 respectively. Sums ranging from EUR 50,849.95 to 1,423,798.73 were confiscated.

Myria obtained a symbolic euro. One victim filed a civil suit and received EUR 200.

### 2.3.6. Road transport

A large-scale fraud case in the road transport sector, dealt with in the previous report<sup>319</sup>, was judged at **Liège Court of Appeal on 14 December 2017**<sup>320</sup>. This case involved no less than 19 defendants (including six companies), concerning a series of offences (forgery, social legislation breaches, tax fraud) on various grounds. The two main defendants were prosecuted for having been the leaders of a criminal organisation, and the other natural persons 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 purposes of labour exploitation regarding three workers, two of whom instituted civil proceedings. The NSSO and the Professional Union for Transport and Logistics also filed a civil suit, as did Myria. In the appeal court, one of these two workers who filed a civil suit didn't appear.

The case was opened when a Turkish lorry driver, staying illegally in Belgium, filed a

<sup>319</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 4, point 2.3.3, pp. 169-170.

<sup>320</sup> Liège, 14 December 2017, 6<sup>th</sup> ch.

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. Through the investigation it was possible to establish that well-known Belgian road transport companies subcontract road haulage activities to other companies under Belgian law. At this point, the names of several companies that were prosecuted in this case appeared. Some of these Belgian companies actually gave subcontracting work to companies registered abroad (Bulgarian or Slovak). However, these companies weren't actually in activity and served as a screen for the true activities of the Belgian companies.

The court of appeal confirmed the large majority of the sentences handed down at first instance by the Criminal Court of Liège<sup>321</sup> concerning the charges of forgery, social legislation offences and tax fraud. The court also confirmed the acquittals pronounced at first instance concerning the charge of human trafficking. It considered that social criminal law offences had indeed been committed but that this wasn't enough to substantiate the act of human trafficking, since the work conditions didn't involve conditions contrary to human dignity.

Contrary to the criminal court, the court of appeal also acquitted the defendants of the charge of criminal organisation of which they had been convicted at first instance, considering that it wasn't proven that the defendants had participated knowingly and with full knowledge of the facts in the activities of such an organisation.

The court also confirmed the acquittals pronounced at first instance concerning the legal persons.

### 2.3.7. Riding schools

On **13 June 2017**, the **Criminal Court of Antwerp**<sup>322</sup> ruled on a case of human trafficking at a riding school/stud farm. The defendants, both of Belgian nationality, were prosecuted for human trafficking and social legislation offences. The victim filed a civil suit.

The victim had filed a complaint against the first defendant for exploitation and abuse of their precarious situation, working in inhuman living and professional conditions as well as for outstanding wages. The victim was living illegally in Belgium and began to work for the first defendant through someone he knew. The worker was responsible for taking care of the animals and had to do various tasks such as cleaning out the stables. He also had to ride the horses and lived on site in a mobile home that had no bathroom plumbing or proper heating. He also had to be available at all times.

The investigation revealed that the victim had been employed in inhuman work and living conditions. The victim worked more than 40 hours a week, with no kind of compensation. He received EUR 500 a month and had to be available at all times. He wasn't given any time off or a holiday allowance, and no work insurance had been arranged. The caravan where the victim lived didn't comply with the basic safety, health or habitability requirements. The victim had to shower at the neighbour's and was later able to do so at the defendants' home if he paid them.

The victim clearly worked under the authority of the defendant, in a relationship of subordination. The second defendant also

<sup>321</sup> Liège Crim. Court, Liège division, 25 April 2016, 18<sup>th</sup> ch.

<sup>322</sup> Antwerp Crim. Court, 13 June 2017, ch. AC1 (final).

participated in the exploitation by taking economic advantage of it.

The court considered that it was a matter of serious labour exploitation and exploitation of the victim. It consequently convicted the two defendants for human trafficking. The first defendant was also convicted for social law violations. He was given a six-month prison sentence and a fine of EUR 1,500. The second defendant was given a suspended six-month prison sentence and a suspended fine of EUR 1,000. The first defendant was also subject to an operating ban and closure of the business for three years.

The victim filed a civil suit. The first defendant was sentenced to pay the wages owed, i.e. EUR 48,540.16, provisional compensation of EUR 1.00 for medical costs and EUR 750 in moral damages. The second defendant was sentenced to pay the victim EUR 250 in moral damages.

In another case that was brought before **the Court of Appeal in Brussels on 20 March 2018**<sup>323</sup>, two defendants, a woman and her partner, were prosecuted for human trafficking. They were accused of employing an illegally-staying Brazilian worker at their riding school in disgraceful conditions. They were also accused of social criminal law offences concerning this worker as well as a second Brazilian worker. In a judgement of 4 November 2015, the Court of First Instance of Walloon Brabant<sup>324</sup> had convicted the defendant and her partner of trafficking on the basis of the following elements: pay that wasn't commensurate with the services provided (EUR 650 to 750 per month for 12 to 14 hours of work per day) and the way a work accident suffered by the worker was handled (in particular, the fact that he was sacked as a result). The court also convicted the defendant

concerning social criminal law charges regarding the same worker. On the other hand, she was acquitted of the charges concerning the second worker. The court had also acquitted the defendant of all the social criminal law charges brought against him, considering that he wasn't the workers' employer.

The court of appeal confirmed the conviction of the first defendant for the social criminal law offences. It also confirmed the acquittals pronounced at first instance. However, contrary to the criminal court, the court of appeal also acquitted the two defendants of the charge of human trafficking. The worker, who filed a civil suit, had a private room in the family house equipped with a shower in the corner and a toilet. He had free access to the house and to the kitchen and the fridge. He ate at their table in the evening and shared the same food. As for the work he had to do, these were tasks that the defendants did themselves outside competition periods (in particular, cleaning out the boxes and feeding the horses). The working hours were the same as the defendant's, i.e. a maximum of 12 hours a day.

Like the first judge, the court considered that the Brazilian worker's work conditions (undeclared, illegal residence, no social cover and wages not commensurate with the services provided) amounted to the labour exploitation of this worker and were one of the indications of work in conditions that were possibly contrary to human dignity. Although the living conditions were decent, the court also noted that the version of the facts given by the defendants concerning how the work accident was dealt with was corroborated by the elements in the case. An ambulance was immediately called and the worker was taken to the hospital. He then returned to the stud

<sup>323</sup> Brussels French-speaking, 20 March 2018, 11<sup>th</sup> ch.

<sup>324</sup> Walloon Brabant Crim. Court, 4 November 2015 (unpublished).



farm where he attended a horse show as a spectator and spent the night there. According to the court, it was established that the defendant had paid the ambulance costs and, apparently, the defendants received no other bills relating to the civil party's care. Furthermore, the case also revealed that it had been agreed between the defendant and the worker that the latter's employment would come to end after the show. The court considered that even if the accident the worker suffered wasn't covered by work accident insurance, since the female defendant hadn't taken out any such insurance, the defendants did actually take action to help the civil party, make sure he was cared for and took responsibility for the costs.

Regarding the female defendant, the court ordered the suspension of the sentence. Moreover, it appointed an expert to examine the consequences of the work accident suffered by the worker.

#### 2.3.8. Sewing workshop

In a case tried on **7 March 2018 by the Criminal Court of Ghent**<sup>325</sup>, two Belgian defendants appeared for different social law offences and human trafficking for the purposes of labour or services, as the de facto manager and assistant manager of a company (an alterations shop). Three victims also filed a civil suit. The case was brought to light when several victims reported acts of bogus self-employment, relating to themselves, to the labour auditor through their lawyer. It transpired from the investigation conducted by the Social Inspectorate upon the request of the labour auditor, that several victims thought they were going to work as employees for the company. Others knew that they had been recruited as self-employed workers but had no idea what that meant. The Social Inspectorate examined five different

criteria within the framework of the review on the nature of the work relations for each of the victims: the willingness of the parties, the freedom of organisation of work time, the freedom of organisation of work, the possibility of exercising hierarchical control and other elements indicating the status of employee.

The workers had to make clothes, repair them, alter them, wash them, etc., for a salary of EUR 1,250 a month. They had to work six and sometimes even seven days a week, from 08:00 to 18:00, and sometimes also from 17:00 to 00:00. They couldn't go home until the work was finished and they always received the same salary. However, they hadn't been paid for the past few months. They had no contact with the customers, no power over the bank account and didn't benefit from any share in the profits. This allowed the employer to avoid paying any social contributions. The assets calculated by the Social Inspectorate amounted to EUR 347,137.02, composed of EUR 150,584.74 in owed social contributions and EUR 196,552.28 in taxable salary. The final amount was EUR 322,331.32.

The court considered that the defendants should be acquitted of the acts of human trafficking, even though it accepted that the wages were clearly low and that there was a lot of overtime during busy periods. However, nothing proved that the workers had to provide their services in conditions contrary to human dignity. According to the court, the investigation revealed few objective factual elements to conclude, beyond all doubt, that it was a question of human trafficking. The two defendants were convicted of the other charges and given a one-year prison sentence and a fine of EUR 600 x 8 workers. A special confiscation of EUR 100,000 was also pronounced for each of the defendants.

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<sup>325</sup> East Flanders Crim. Court, Ghent division, 7 March 2018, ch. G29w (appeal).

### 2.3.9. Domestic work

Several interesting decisions in the domestic work sector were pronounced. One striking fact: the majority of victims were minors.

#### *a) Customary marriage*

The first case, judged by **the Criminal Court of Antwerp on 7 February 2017**<sup>326</sup> concerns a customary marriage. In this case, an ex-Yugoslav couple was prosecuted for various charges regarding a Macedonian minor, who was their de facto daughter-in-law: rape assisted by violence of a minor who was then 14 years old, inciting the debauchery of the same minor, human trafficking for the purposes of labour exploitation.

The couple was also prosecuted, with their son, for inhumane treatment, i.e. having brought over the young Macedonian girl for the purposes of customary marriage to their son according to the Roma tradition, and having thus deprived her of any form of education, individual freedom or personal development, and only allowing her to do housework and isolating her socially. All three of them were also prosecuted for the indecent assault of this minor, who was under 16 years old at the time.

As for the son, he was also prosecuted for attempted murder, threats, deliberate assault and battery regarding the young girl (his future wife) and for attempted trafficking for the purposes of labour exploitation as well as for indecent assault regarding another young girl, also a minor.

He was also prosecuted with his mother for failure to assist a person in danger with respect to the young Macedonian girl.

The two young girls filed a civil suit through their guardian.

The case was initiated when the local police was called by the sister of the young man (the first defendant) to intervene in a knife attack on a young girl. Once there, the police discovered a seriously wounded underage young girl in a room, who didn't speak Dutch. They called a doctor. The different protagonists were then heard on several occasions. It turned out that the stabbings occurred after the young man got angry, having just learnt from the young girl that she was cheating on him with his father (the third defendant). They had argued several times already because the young man had another girlfriend he had brought over to Belgium from Germany (the other victim in question).

Apparently, the young girl had already been living with her in-laws for three years. She was married to the defendant at the age of 12, according to the Roma tradition, with the consent of her father and the defendant's parents. They had full sexual relations and she had already had two miscarriages. She didn't want the defendant to go to prison but she didn't want to marry him either because she was scared of him. She had never been to school and had to take care of all the domestic chores (except for cooking). She was abused several times by her father-in-law, the defendant's father, the third defendant.

The court amended the charge of attempted murder to deliberate assault and battery and accepted the charge against the young man, the first defendant. It also accepted the charges against him of threats and failure to assist a person in danger as well as deliberate assault and battery.

It accepted the charge of human trafficking against the parents-in-law based on the findings of the police officers and the various statements: the young girl was brought to

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<sup>326</sup> Antwerp Crim. Court, Antwerp division, 7 February 2017, ch. ACS (appeal).

Belgium with the purpose of marrying her to their son and she was then made to do domestic chores instead of going to school and taking part in activities relating to the normal development of a young girl of her age. The court noted that this work was carried out in conditions contrary to human dignity and that the fact that she didn't complain about her fate wasn't relevant, just like the context in which the acts took place.

On the other hand, it acquitted the parents-in-law of the charge of indecent assault but accepted it as regards the young man.

The court also acquitted the parents-in-law of the charge of rape but accepted the charge against them of inciting debauchery. It also considered that the essential elements of the charge of inhumane treatment weren't met and acquitted both the parents-in-law and the young man of this charge.

Finally, the court acquitted the young man of the charge of human trafficking regarding the other young girl and that of the indecent assault of the same young girl, owing to a lack of solid and objective evidence.

The court sentenced the young man for the acts of attempted murder (amended as deliberate assault and battery), threats and failure to assist a person in danger to 15 months in prison and a EUR 600 fine, and for the acts of indecent assault and assault and battery, to a two-year prison sentence.

It sentenced the mother to a four-year prison sentence (with probation) and a fine of EUR 600.

As for the third defendant, the father, the court sentenced him to a 30-month prison sentence, also with probation, and a fine of EUR 600.

The court sentenced the young man to pay the young Macedonian girl compensation worth EUR 10,000 and the other two defendants to pay her EUR 2,500 each.

On the other hand, it stated that the civil suit filed by the other victim was unfounded, considering the acquittal of the defendant for the charges brought against him.

#### *b) Work for a private individual*

Two other cases were tried by the Criminal Court of Brussels.

The first case concerned a Congolese woman. It was tried by **the French-speaking Criminal Court of Brussels on 24 November 2017**<sup>327</sup>. The defendant was prosecuted for human trafficking for the purposes of labour exploitation and various social criminal law charges regarding a young girl who was a minor when the acts took place (12 years old when they began). This girl lived with her and was exploited by her. She was also prosecuted for acts of violence at work, illegal child labour and deliberate assault and battery.

In April 2014, the police were called out to investigate a minor in difficulty who was in the street. There they found the young 15-year-old Congolese girl, in tears and accompanied by a friend. The young girl, who had escaped, explained that she lived with the defendant, to whom she had been entrusted three years earlier by her father. She had no residence permit. The defendant suspected her of witchcraft and this is why she had been violent with her for the past month. That morning, she had forced her to remain on the balcony even though it was cold. She was taken to the hospital by the police, where the doctor noted multiple painful bruises. Traces of aggression were also visible on the photos taken of the young girl by the police. Six months later, she

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<sup>327</sup> Brussels French-speaking Crim. Court, 24 November 2017, 59<sup>th</sup> ch. (appeal).

was heard at length within the framework of a video recorded hearing. She has been taken in by the Esperanto centre.

She explained that she came to Belgium to continue school after having finished her primary education in Congo. She had been staying with the defendant since her arrival, who was the friend of a friend of her father's. Her father had stayed for three weeks, then went back to Congo. She went to the same school (secondary section) as the youngest daughter of the defendant's four children, who was in the primary section. She had to take care of household chores, wash this child, feed her and take her to school, which is why she didn't have time to study during the exams and arrived late at school. If she didn't obey, the defendant became abusive and hit her. She slept on a mattress on the floor in the bedroom of the defendant and her youngest daughter.

As for the defendant, she explained that she wasn't able to work owing to her family circumstances, and received benefits from social assistance. When the young girl's father left, he had promised to come back with the money necessary to pay for boarding school fees, but he didn't keep his promise. The defendant stated that the young girl didn't cook and helped with household chores, just like the other children.

The court acquitted the defendant of the charge of human trafficking. While the material evidence of the offence was established (the young girl had been living there for the past three years), the court considered on the other hand that there was a doubt concerning the purpose of exploitation. It was proven that she was made to work. The young girl had to look after the defendant's youngest daughter to an extent that exceeded the norm. This girl suffered from severe anaemia and required

special care. The defendant thus gave all the tasks associated with her daughter's education to the young girl instead. Furthermore, the young girl's participation in the household tasks also turned out to be considerable, which was confirmed by a witness.

On the other hand, the court considered that there was a doubt concerning conditions contrary to human dignity: the condition of the housing was commensurate with the defendant's means. It didn't appear unusual that the defendant had the young girl's passport considering her young age, and the precarity of the young girl's residence did nothing to facilitate her social life or healthcare.

However, the court accepted the social criminal law charges, illegal child labour, as well as deliberate assault and battery. On the other hand, it acquitted the defendant of the charge of violence at work.

It sentenced the defendant to a one-year suspended prison sentence and to pay the young girl who filed a civil suit, the sum of EUR 2,000 in non-material damages and EUR 38,414 in material damages.

The second case concerns a Romanian couple. It was tried by **the Criminal Court of Brussels on 22 March 2018**<sup>328</sup>. A couple was prosecuted for human trafficking for the purpose of labour exploitation and various charges concerning social criminal law. They were accused of having successively exploited two Romanian domestic workers. The first was a minor (15 years old) at the time of the acts and was exploited for five years. The second one, who was an adult with a slight intellectual disability, was exploited for several months. The latter filed a civil suit.

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<sup>328</sup> Brussels French-speaking Crim. Court, 22 March 2018, 59<sup>th</sup> ch. (appeal).

The defendant worked in the building while his wife did the cleaning in various places.

The court accepted all the charges. As regards human trafficking, the court considered that it was indeed question of receiving a person with a view to making them work in conditions contrary to human dignity. The defendants did indeed receive the two victims in their home. Furthermore, the first victim arrived in Belgium at the age of 15, at an age when children are obliged to attend school, at least part time. However, no steps were taken to enable her to enrol in Belgium or to put her in school. The victim took care of the two young children and helped the defendant do other housework. She would get up at 07:00 to wake up and dress the children and take them to school. She would then go home to do the housework and later join the defendant to help her at her various places of work. In the evening, she would go and fetch the children and put them to bed. This schedule was confirmed by the other victim, who was subjected to the same hours. She wasn't ever paid, even though promises of EUR 150 or EUR 250 were made. The young victim was quickly deprived of any contact with her family, was subjected to insults by the defendant, and had no free space. Her identity card was taken away from her. She shared a bed with one of the children and could only take a shower twice a week, whereas the family washed every day.

The victims' statements corroborated each other.

Since the reasonable time frame had been exceeded, the court reduced the sentences. The defendants were given one-year

suspended prison sentences and a suspended fine of EUR 6,000.

The court sentenced the defendants to pay the civil party the provisional sum of EUR 600 in material damages as part of the damages estimated at EUR 1,482.57, and the sum of EUR 1,000 in non-material damages.

### *c) Former diplomat*

Finally, a case concerning a diplomat was tried by the **Labour Court of appeal in Brussels on 4 September 2017**<sup>329</sup>. The case was dealt with in a previous report<sup>330</sup>.

A worker 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.

The husband was vice-consul at the Moroccan embassy in Brussels when the acts took place. The worker had been contacted in Morocco through the wife's sister to come and look after the couple's children (one of whom is autistic), for a salary of EUR 150 a month. Initially, she received a special passport. She lived with the family and looked after the 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, which she was granted despite the

<sup>329</sup> Brussels Labour Court, 4 September 2017.

<sup>330</sup> MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, Part 3, Chapter 4, point 2.3.11, p. 180. The Brussels French-speaking Labour Court handed down a decision on 18 June 2015.

case being dropped owing to her employer's diplomatic immunity.

The employer claimed immunity from suit before the labour court in first instance and the labour court of Appeal. While the labour court in first instance rejected the objection to jurisdiction, the labour court of Appeal ruled otherwise, in a detailed reason, considering that it didn't have the power to examine the worker's action against her ex-employer. On the other hand, it considered that the consul's ex-wife didn't benefit from any immunity from suit.

Initially, the court noted that as a consular officer, the employer's immunity from suit was limited to the acts accomplished within his consular functions<sup>331</sup>. The acts he was accused of were committed within the framework of private life. Furthermore, the Vienna Convention on consular relations doesn't grant immunity from suit to family members of a consular officer. The court therefore noted that the employers had no immunity from suit in this context.

The court later considered that the employer did however benefit from immunity from suit as a diplomat, in accordance with Vienna Convention on Diplomatic Relations of 18 April 1961. He held the position of diplomatic agent during his assignment in Belgium. This immunity also covered the acts that took place within the framework of acts committed in private life<sup>332</sup>. On the other hand, immunity from suit only lasts until a diplomat leaves the receiving country at the end of their mission. He could therefore be summoned before the

Belgian courts for acts relating to the worker's job, which the worker didn't do even though her request hadn't lapsed. She summoned him while he still benefited from immunity from suit. The labour court of appeal therefore adopted a different stance to that of the labour court. The latter believed that it was necessary to consider the time of the judgement to determine whether someone who is summoned can benefit from immunity from suit. The labour court of appeal didn't agree. It considered that this immunity not only forbids judging the person who benefits from this immunity, but also initiating and launching legal proceedings against them.

The worker considered that the immunity from suit violated her right of access to a court. However, the court noted that the worker didn't establish that the immunity which her ex-employer benefited from, disproportionately limited her access to a judge in violation of Article 6 of the European Convention on Human Rights. The court consequently recognised that her ex-employer did indeed benefit from immunity from suit and declared that it had no power to take cognizance of the action taken against him.

As for the diplomat's ex-wife, the court emphasised that the diplomat's family members only benefited from immunity from suit if they were part of his household. The couple were divorced and the ex-wife was no longer a member of the household at the time of the summons.

The court considered that the ex-wife should compensate the worker for the damage caused

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<sup>331</sup> In accordance with Article 43 of the Vienna Convention on Consular Relations of 24 April 1963.

<sup>332</sup> Subject to three exceptions not relevant in the present case. Furthermore, Article 38.1 of the Vienna Convention, which limits immunity to official acts accomplished as part of diplomatic functions when a diplomatic agent has the nationality of receiving state or has their permanent residence there, can't be applied in this case. The vice-consul did indeed have Moroccan nationality and his permanent residence wasn't established in Belgium.



by the non-payment of the salary as well as the amount of EUR 2,500 in non-material damages as a result of human trafficking.

It considered that both the diplomat and his ex-wife could be considered as employers. Furthermore, the salary owed hadn't been paid. The court also considered that human trafficking was established: the worker had indeed been recruited, harboured and received by the couple with the aim of making her work in conditions contrary to human dignity: approximately 90 hours a week for a salary of EUR 150 a month, no social cover and no private space (she had to sleep in the children's bedroom and attend to them at any time during the night). The court noted that for the offence to be considered as such the person didn't need to be the victim of violence, false imprisonment or other abuse.

However, the court ordered the reopening of the proceedings regarding the amount of compensation owing to the non-payment of the salary. It also sentenced the ex-wife to guarantee half of the sentences handed down to her ex-husband.

## 2.4. Exploitation of begging

In a case tried by the **Dutch-speaking Criminal Court of Brussels on 29 June 2017**<sup>333</sup>, a Romanian defendant was convicted in absentia for human trafficking with the purpose of exploitation of begging.

The acts were brought to light when a police patrol discovered a confused woman with seriously handicapped legs and feet in a café in Aalst. The woman was taken to a reception centre but fled the next day, at which point she was stopped by the police again. She seemed to come from Romania and no longer had her parents.

Her lower limbs were completely deformed and she had two club feet. She also looked very unkempt and seemed to have a mental impairment. The defendant, who was obviously her uncle, had brought her to Belgium from Romania. She had to beg and give him the money she collected. It also transpired in a later video-recorded hearing that she had also been raped several times.

The court considered the acts as very serious, given that a highly vulnerable person had been so wickedly abused. Consequently, the defendant was convicted in absentia and given a 40-month prison sentence, and a fine of EUR 3,000. An order was issued to arrest him immediately.

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<sup>333</sup> Brussels Dutch-speaking Crim. Court, 29 June 2017, 60<sup>th</sup> ch. (in absentia).

### 3. Human smuggling

Numerous decisions pronounced regarding human smuggling concern underage victims.

#### *Smuggling via the port of Zeebrugge*

In a judgement delivered **on 21 June 2017 by the Criminal Court of Bruges**<sup>334</sup>, three defendants of Algerian nationality were convicted for human smuggling. The underage victim filed a civil suit.

The police noticed that an increasing number of North Africans had been arriving in Zeebrugge for a while and that consequently, Algerians were now also active as smugglers. During a police check, an Iraqi transmigrant child grabbed a police officer by the arm and explained that he had already lost a lot of money because of a smuggler, EUR 1,200 to be more specific, and that according to him, this smuggler had also been intercepted during the action. The victim also admitted that he had been beaten by this smuggler (second defendant). These injuries were confirmed by a doctor.

The victim said that he had met the second defendant in Ankara and that those who wanted to go to the United Kingdom had been gathered there. At the time, he paid USD 200. He passed through Romania and arrived in Charleroi, where the people were divided into groups of less than 10 people who were then sent to Zeebrugge via Brussels and Knokke. In Brussels, the victim spent the night with the brother of the second defendant and was beaten with a stick.

During the second investigation into human smuggling at the port of Zeebrugge, it turned out that the other defendants had links with the second defendant. The investigations were therefore combined. The victim was interviewed several times. His statements were coherent and he even gave a more detailed description of the house where he had stayed. He also recognised the other defendants and pointed them out in photos; they were the ones who had accompanied him from Brussels to Zeebrugge. A confrontation wasn't organised with the defendants because the victim feared for his safety. The court considered that the victim had always maintained his version of the facts during the various interviews and that there were no substantial contradictions or exacerbations in his account.

The defendants denied any involvement in human smuggling. One of the defendants even recognised his voice in the recordings but continued to deny any link to human smuggling.

The court considered that it was obvious that the defendants, who were staying illegally in the country, filled the void created in Zeebrugge in terms of human smuggling and had proceeded with the illegal transportation of the victim. He was still a minor when the acts occurred and owing to his precarious administrative situation, he had no other choice than to accept the situation of abuse, not to mention the circumstances under which he was beaten with a stick and deprivation of freedom of movement. Finally, the court also decided that it was an act of participation in the activity of association.

The three defendants were given a three-year prison sentence and a suspended fine of EUR 6,000. The court awarded the victim EUR 2,500 as compensation for non-material and material damages.

#### *Syrian smuggling networks*

Two cases concerning Syrian networks were tried, one in Ghent and the other in Termonde.

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<sup>334</sup> West Flanders Crim. Court, Bruges division, 21 June 2017, 17<sup>th</sup> ch. (in absentia).

On **16 October 2017**, a case involving 12 defendants, mainly Syrian, was tried by **the Criminal Court of Ghent**<sup>335</sup>. Several charges were brought against the defendants, including: running or participating in a criminal organisation and human smuggling with aggravating circumstances, abusing the vulnerable situation of persons, the fact that one victim was a minor, the fact that the activity was a habitual activity and participating in a criminal organisation. Myria filed a civil suit in this case.

Police information revealed that the first defendant, with his brother, the fourth defendant, was clearly involved in the organised smuggling of people mainly of Syrian origin. A route from Turkey to Crete and Belgium was used. In addition, fake or forged identity papers were systematically used. It was on this basis that an investigation was carried out into money transfer companies.

In the more in-depth investigation, which included searches, chat messages and communication tracking, it transpired that the first defendant received money to organise the journey to Belgium (between EUR 1,500 and EUR 4,500) and that the victims were often frightened of the defendant. During the examination of the first defendant's iPhone, numerous 'chat' messages that appeared to relate to human smuggling, as well as photos of identity papers and photos were discovered. The chat messages revealed that there were frequent requests to find a lookalike for the photos and coded language was used.

The first defendant was also known to other police departments. He seemed to be in contact with people who were known for being Syrian fighters or potential Syrian fighters. This was evidently an organisation active in human smuggling. The clients were apparently recruited in Syria by the second defendant and his brother, and the third defendant operated from Belgium in the company of the first defendant. The twelfth defendant, a former girlfriend of the first defendant, stated that they frequently stayed in Crete, in the second defendant's house, and that strange things happened there. For instance, one person had used the papers of the first defendant to continue their journey and had also had to look after money for him. They also went to Paris with the first defendant, where they had transported unknown people. In the defendant's statements, it frequently appeared that they only wanted to help their friends and that they weren't paid. The investigating judge sent requests for international legal assistance to France, Greece and Sweden. The objective was to investigate a specific defendant, a safe house and interview two presumed victims.

During the discussion on the issue of guilt, the court further examined the concept of criminal organisation, given that the twelve defendants were being prosecuted for their participation in it and that the first defendant was its leader. According to Article 324*bis*, first paragraph of the Criminal Code, a criminal organisation meets three essential elements, i.e. the structured association of more than two persons, established over a period of time, who act in concert with a view to committing offences that are punishable by detention of three years or a more serious penalty, in order to obtain material benefits directly or indirectly. Considering these elements, and according to the court, the criminal investigation didn't sufficiently demonstrate that the acts of the various defendants in this case could be explained in this way.

For the court, it was obvious that the first defendant was in charge of smuggling refugees from Syria, his country of origin, and often asked friends for help within this framework. 'Lookalike' papers were used. The first defendant asked to be paid and some of the defendants also benefited from this. The

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<sup>335</sup> East Flanders Crim. Court, Ghent division, 16 October 2017, ch. G28m. The case was finally disposed of as regards Myria.

presumed victims were all friends of the first defendant, or at least acquaintances or members of the families of friends, and therefore were mainly Syrian nationals. The first defendant hadn't used secure transportation to transport his mother, only a dinghy. The court decided that the factual findings extracted from the contents of the chat messages showed that the acts went far beyond simply helping friends and acquaintances in return for payment.

The court considered on the one hand that the acts fell within the scope of the provision of illegal aid by the first defendant, who went further and further and also asked for financial interventions. The help he received from certain defendants can't be considered as an organisation designed to execute certain acts of human smuggling, but rather as something **fragmentary in nature** and, depending on the specific demand which the first defendant was subject to, he asked for the help of friends or acquaintances whom he thought or hoped would be able to help him. Furthermore, the chat messages between the first defendant and the second, sixth and ninth defendants revealed that their mutual activities had taken on a **structured form** and that they consistently related to the smuggling of persons/families in the West in violation of the law. During the organisation of these transportations, the first, second, sixth and ninth defendants acted within the framework of a criminal organisation, a structure organised with international ramifications in which tasks were clearly distributed. The court then decided to assess the individual participation of each defendant in a criminal organisation. This charge was accepted for four of the defendants.

The court convicted six of the 12 defendants for different charges, and six defendants were fully acquitted. The sentences pronounced vary from four months to 30 months in prison and a suspended fine of EUR 54,000. The court awarded Myria compensation of EUR 1.00.

The case tried by the **Criminal Court of Termonde on 3 November 2017**<sup>336</sup> was described by the federal judicial police as human smuggling with a very high frequency and a considerable number of victims. The police had never seen anything like it in Belgium. The defendants were mainly Syrian and Egyptian, even though there were also two Belgians, two Moroccans and one Lebanese person among them. They were prosecuted for human smuggling with several aggravating circumstances. The victims came from Syria, Eritrea, Sudan, Ethiopia and Afghanistan. Myria filed a civil suit in this case.

The federal traffic police had noticed that smuggling activities were taking place in a parking area along the E40. It had also received a call from a lorry driver concerning the presence of migrants in transit in the trailer. Three people were discovered there. Some of them had already attempted to reach the United Kingdom. After several reports, the federal traffic police reached the conclusion that a group of perpetrators were using the Wetteren parking area to smuggle migrants in transit to the United Kingdom. It requested traffic data from the mobile phone mast for analysis. The suspects' numbers were then tapped and nine observations were also carried out. The various phone taps revealed that the smugglers threatened the victims and their family with violence if the victims failed to pay. People were even struck with a wrench. Young children were also smuggled. The smugglers motivation was clearly to make money out of them. Refrigerated lorries were also used. A phone tapped conversation revealed that a victim had contacted the smuggler so that he could come and let them out because they were suffocating, and that the smuggler had done nothing to help them. The indicative prices for an illegal transportation ranged between GBP 1,000 and 3,000, depending on nationality and the family

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<sup>336</sup> East Flanders Crim. Court, Termonde division, 3 November 2017, ch. vac. (appeal set 17 September 2018).

composition. The smugglers promised that every client would get to England. The money always had to be given as a guarantee first. The operations centre was in the Calais 'jungle'.

In total, the human smuggling activities took place on 154 different nights, involving a total of 1,994 acts of human smuggling. These human smuggling operations were performed by a constantly changing group. For each defendant, the court examined the number of acts they had participated in. This number varied from 38 acts of human smuggling to 1,994.

The statements revealed that certain defendants denied any involvement and even said they were victims, while others admitted being smugglers motivated by financial gain. It was found that some of them were already active in France. Several of the defendants had first been a client before becoming a smuggler. It also transpired that organised transportation had also taken place (with the complicity of the driver) and that GBP 6,500 were requested for this type of transportation.

The court considered that all the aggravating circumstances of human smuggling cited by the public prosecutor had been committed by all the defendants. They were: several child victims; abuse of the vulnerable situation of the victims; direct or indirect use of fraud, violence, threats or some form of coercion; use of kidnapping, abuse of authority or deception; endangering the life of the victim deliberately or through serious negligence; habitual activity and finally, act of participation in the main or secondary activity of an association.

Every defendant had a specific role in the system, as a recruiter, collateral taker, car park manager, implementer, escort or driver, all with a common goal: to manage to place as many migrants as possible on board a lorry in order to earn money. The court considered that the money flows must have been enormous. They were estimated at a minimum of EUR 594,000, but in reality, this was probably a multiple of the figure. Four hundred and ninety-five victims were identified, including 93 minors.

The court handed down heavy sentences to the 25 defendants, i.e. from a three-year suspended prison sentence and a EUR 288,000 fine to 10 years in prison and a fine of EUR 11,964,000. A total sum of EUR 594,000 was also confiscated. Fourteen of the convicted persons filed an appeal.

The court awarded Myria compensation of EUR 5,000.

#### *Multi-criminal Chinese network*

On **12 January 2018, the Dutch-speaking Criminal Court of Brussels<sup>337</sup>** tried eight defendants of Chinese nationality who were summoned to appear for various charges. These were mainly human trafficking charges for the purpose of exploitation of prostitution, human smuggling, extortion, attempted extortion, leading a criminal association, active corruption, drug possession, decisions in a criminal organisation, forgery and use of forgeries, money laundering, participation in a criminal organisation and illegal residence. One victim and PAG-ASA filed a civil suit.

The court considered that there wasn't enough proof for the charges of human trafficking, attempted extortion and participation in a criminal organisation. The other charges were declared as established, but not for all the defendants. Two of the defendants were fully acquitted.

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<sup>337</sup> Brussels Dutch-speaking Crim. Court, 12 January 2018, 46<sup>th</sup> ch. (final).

The charge of human trafficking related to a young Chinese girl aged 15. However, this was only based on a conversation between the defendants and the court considered that this didn't provide sufficient evidence.

At the beginning of 2015, several acts led to the opening of an investigation into a human smuggling network concerning illegally-staying Chinese and Tibetan nationals who had been illegally transported from China to Belgium through several European countries. In January 2015, the customs' inspection services intercepted a DHL parcel containing two authentic Chinese passports. This package was addressed to the first defendant. A victim of human smuggling then turned up and several Chinese people presented themselves to the municipality with a fake identity card. A later investigation revealed that the victims were smuggled to Belgium and had had to pay considerable sums for this purpose. Once the victims were in Belgium, they worked as staff in restaurants, illegal food workshops, massage parlours, the construction sector or child-minding, generally to reimburse their debts. The victims were subjected to physical and verbal threats. The perpetrators had the victims entirely under their control.

The court considered that this wasn't a criminal organisation, as there was no evidence of the required persistent nature and the more complex form of organisation of a criminal organisation. In particular, the investigation revealed that there was no fixed distribution of roles nor any clear agreement, that the defendants knew each other according to the circumstances, and that they worked together to commit offences when it suited them.

During the assessment of the aggravating circumstances of human smuggling, the vulnerable position of the victims was accepted. The court didn't accept the aggravating circumstance of criminal organisation, but amended it to criminal association. This was because of the clear existence of links between the defendants concerned with a view to committing the offence of human smuggling.

The charge of human smuggling was accepted by the court owing to the coherent, consistent and detailed nature of the nuanced account of one of the victims. The victim also provided the police with a copy of the document that the first defendant had given them relating to their stay in Belgium and a copy of the falsified identity card. The victim also handed over a list of phone numbers all belonging to the first defendant. The victim stated that they had paid the first defendant EUR 1,000 so that he could help them get a job and a place to stay in Belgium, and then EUR 5,000 to obtain a Belgian residence permit (this was a falsified document) and another EUR 5,000 for a Belgian identity card, also falsified.

Another victim had to pay the first defendant a sum so that he could intervene to help them get into a specialised centre for victims of human trafficking. For EUR 500 and RMB 16,000 (renminbi, Chinese currency), the first defendant took care of this as well as an employment contract, a teaching certificate and letter of recommendation, among other things.

A third victim stated in a detailed, coherent and consistent manner how they had paid the first defendant EUR 21,000 to obtain a Romanian identity card, which then turned out to be fake.

The court also considered as established that the first and fifth defendants rented out identity cards to generate greater income, which the phone taps and observations confirmed. The first and seventh defendants were also involved in renting out rooms where the illegal immigrants were taken.



The court accepted all the aggravating circumstances concerning the first defendant, i.e. the vulnerable situation, the habitual nature and criminal association. The habitual nature wasn't established for the other two.

The other defendants were acquitted of the charge of human smuggling, but convicted of other charges. Only the fourth and the eighth defendants were fully acquitted.

The charge of money laundering was declared established regarding the two defendants. The criminal case revealed that the first defendant had generated more income than he had stated. An amount had also been sent through money transfer agencies and after an analysis of the accounts, three transfers to China were identified. The first defendant made contradictory statements concerning the origin of these funds. There were also suspicious transactions regarding the second defendant that were qualified as money laundering practices by the court.

The first defendant, a leading figure in the human smuggling activities, was given a four-year prison sentence and a fine of EUR 54,000. The fifth and seventh defendants were sentenced to 18 months in prison and a fine between EUR 6,000 and 30,000, both suspended. The other defendants were handed sentences ranging from six to 11 months in prison, 100 hours of community service and a fine of EUR 600. A sum of EUR 75,585.07 was confiscated from the first defendant and EUR 28,964 from the second defendant.

The non-profit association PAG-ASA was awarded EUR 500 in compensation. One of the victims instituted civil proceedings and obtained material damages worth EUR 13,000 and moral damages worth EUR 500. The court considered that the sums seized should be released and awarded to the victim who filed a civil suit.

### *Iraqi network*

In this case tried by **the Dutch-speaking Criminal Court of Brussels on 6 February 2018**<sup>338</sup>, four Iraqi defendants were summoned to appear for organised human smuggling. One Afghan victim and the non-profit association PAG-ASA filed a civil suit.

This human smuggling was brought to light when the police went after a van one evening, which had driven down part of the road the wrong way and made a U-turn on the motorway before zigzagging down the road. During the chase, the driver attempted to drive several police vehicles off the road. Each time, they only just avoided collision. The driver then lost control of the van, the vehicle was thrown into the air and turned over several times before landing on the side, at the edge of the road. It turned out that 16 people were on board. They were all taken to hospital. Thirteen of them were seriously injured and three sustained minor injuries. Two children were in a critical condition. There was an Iraqi family, an Iraqi couple, four Afghans, an Iraqi minor and an unknown person. They were all migrants in transit who wanted to go to the United Kingdom.

It immediately became clear that the transportation involved four smugglers, with 12 people being transported from the Dunkirk camp to Belgium to board a lorry for the United Kingdom. Equipment necessary to open the doors of the lorry were also found in the vehicle.

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<sup>338</sup> Brussels Dutch-speaking Crim. Court, 6 February 37, 51<sup>st</sup> ch. (final).

After various interviews, the role of each person in the transportation became clear. The victims stated that they wanted to get to the United Kingdom. One of the victims stated that they paid EUR 2,000 for this purpose. Another one stated that they had paid between USD 8,000 and 9,000 per person. Several victims had already made one or several attempts to get to the United Kingdom. One of the victims was still a minor, which was an aggravating circumstance. It appeared that the vehicle had already stopped to place several people in lorries. However, there were no more suitable lorries so the remaining people got back in the van. The victims' statements were unambiguous regarding the identity of the smugglers and their involvement in human smuggling.

When they were arrested, the defendants stated that they had nothing to do with human smuggling and that they were victims. Four of them exercised their right to remain silent. The investigation revealed that the first defendant was an assistant to the smugglers. He mostly had to check whether the lorries were accessible or not. The second defendant accompanied people in the woods, helped them get in the lorry and checked it as well. The third defendant drove the van, which he firmly denied. During the interviews, he behaved very arrogantly and it turned out that he spoke French and English. The fourth defendant was identified as the main smuggler, the leader. The other smugglers had to report to him. The investigation also involved phone taps and a DNA analysis of hair found in a wig worn by the driver. The results were compared with the defendants' reference profiles. This sample confirmed that the third defendant was indeed the driver.

The court considered that the charge of human smuggling was established, as well as several aggravating circumstances, i.e. the fact that three victims were minors, abuse of the victims' vulnerable situation, participation in a criminal organisation and the fact that the activity was a habitual activity. Other charges were also declared established, such as the charge of dangerous driving against the third defendant.

Different sentences were pronounced according to the various roles of the defendants. The first defendant, who played a more limited role in the human smuggling activities, was given a 40-month prison sentence and a fine of 11 x EUR 8,000. The second defendant, considered as an implementer, and someone who would readily commit acts, was given a four-year prison sentence and a fine of 11 x EUR 8,000. The third defendant, who clearly played a leading role and bore the overwhelming responsibility for the serious traffic accident, was given a six-year prison sentence and a fine of 11 x EUR 8,000. The fourth defendant, also considered as an implementer, was given a four-year prison sentence and a fine of 11 x EUR 8,000. The three defendants were convicted for another charge and given a three-month prison sentence.

On a civil level, PAG-ASA received EUR 1,000 in material and non-material damages. The court sentenced all the defendants to pay one victim material and non-material damages amounting to EUR 5,000. He was also awarded material and non-material damages worth EUR 4,475 for the injuries he sustained and his hospitalisation. Finally, the court sentenced the third defendant to pay material and non-material damages amounting to EUR 1,000 for rehabilitation.

### *Smuggling of Eritreans*

A case tried by the **Criminal Court of Liège on 30 January 2018**<sup>339</sup> concerns two defendants, a woman and a man, prosecuted for human smuggling regarding 16 foreign nationals, mainly Eritrean (as well as a few Sudanese), with aggravating circumstances, criminal association and illegal stay.

The case was initiated by the federal judicial police of Liège who had noted an influx of migrants at the Bettincourt (Waremmé) motorway parking area over the past few months. These migrants were taking the train in small groups from Brussels-North station to Waremmé and then going on foot to the parking area in question, with the aim of getting into lorries going to England, after paying the smugglers. Checks were carried out by the police in May 2017 and on 24 July 2017, and Fedasil had conducted an information operation in order to dissuade migrants from coming to the parking areas, by handing out leaflets on the subject. On 25 July 2017, a large-scale operation was organised by the federal police at Waremmé railway station and at the Bettincourt parking area. Sixteen illegally-staying people (with no valid papers) and two with a residence document issued abroad (the defendants), were intercepted that day both at the motorway parking area and at Waremmé railway station, and on the path between these two places. Among these people, a lady, identified as being the defendant, was questioned by the police at Waremmé railway station in the company of another person. She was Eritrean but had been recognised as a refugee in Greece. Among other things, the police found numerous rolls of banknotes on her, as well as a smartphone linked to a Greek phone provider. As for the other defendant (also recognised as a refugee in Greece), he was questioned at the Bettincourt parking area, where he was found in the trailer of a heavy goods vehicle with five other migrants. He had a smartphone on him, EUR 336 and a train ticket for Brussels to Waremmé.

The defendant was interviewed several times by the police and once by the investigating judge. She changed her statements several times.

The police investigated Western Union and analysed the CCTV cameras at Brussels-North railway station. The two defendants' mobile phones and a migrant's phone were examined.

The court accepted the charge of human smuggling but only regarding the female defendant. It stressed that the notion of 'contributing' to transit refers, in particular, to situations such as paying travel costs, booking transport tickets, etc. The intention at the outset isn't to exploit the victim but to permit a non-EU national to illegally cross the border or stay illegally in an EU member state. As for the moral element, this requires special intent and refers to the desire to enrich oneself at the expense of the victim or their family. The court considered that the female defendant was indeed the perpetrator/co-perpetrator of the smuggling based on the following elements: statement of one of the female migrants, who indicated the female defendant as the contact person and the one who had to be given the money before getting in the lorry; significant sums of money found on the defendant in small notes (EUR 3,615); acknowledgement by the female defendant during her interviews that this money came from the victims (the sum demanded ranged from EUR 600 to 1,000 per person); contradictory and changing explanations, sometimes lacking credibility, given by the female defendant regarding several points.

The court also accepted the charges of the aggravating circumstances of abuse of a vulnerable situation and association made against the female defendant (she didn't act alone and each of the co-

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<sup>339</sup> Liège Crim. Court, Liège division, 30 January 2018 (appeal).


perpetrators, even those who weren't identified, had a specific role). On the other hand, it acquitted her of the aggravating circumstance of acts committed against a minor, as it considered that this wasn't sufficiently established by the evidence in the case. This minor wasn't actually interviewed in the case; no identity document and/or birth certificate or any other paper establishing beyond a reasonable doubt their birth date, and therefore their minority, was submitted to the case. The court also acquitted the female defendant of the circumstance of habitual activity.

On the other hand, the other defendant (who failed to appear) was given the benefit of the doubt and acquitted of the charge of smuggling (and, consequently, criminal association): he contested the smuggling charge and, furthermore, he wasn't interviewed by the police and only very briefly by the investigating judge. He wasn't implicated by the other female defendant either or by anyone else as having participated in these acts. The phone analysis and the CCTV images didn't reveal anything relevant.


The court also acquitted the two defendants of the charge of illegal stay, as they had a valid residence permit issued in Greece as well as a travel permit allowing them to travel within the Schengen area.

The female defendant was given a three-year prison sentence (with a five-year suspension for serving half of the prison sentence) and a fine of EUR 128,000 (with a three-year suspension for paying half of the fine).

## Part 4. Data



After analysing the human trafficking data, Myria examines the human smuggling data. The focus is on the administrative arrest figures within the framework of transit. These figures are provided by the six stakeholders likely to play a role in a human trafficking or smuggling case in Belgium: the police, NSSO inspectorate (ECOSOC units), the Board of Prosecutors General (prosecutions by public prosecutors' offices), the Immigration Office (IO), centres specialising in the reception of victims (PAG-ASA, Payoke and Sürya), the Criminal Policy Service - FPS Justice (convictions).



# Introduction

This part presents the key figures given to Myria by the six stakeholders likely to play a role in a human trafficking or smuggling case in Belgium. First of all, the human trafficking data is presented, followed by the human smuggling data, with a focus on the administrative arrest figures within the framework of transit.

The six stakeholders at the basis of these figures are:

- the police, with information from the National General Database (NGD);
- the NSSO inspectorate (ECOSOC units);
- the Board of Prosecutors General, with information relating to prosecutions made by the public prosecutor's offices;
- the Immigration Office (IO);
- PAG-ASA, Payoke and Sürya: the specialised victim reception centres;
- the Criminal Policy Service (CPS) - FPS Justice, with information relating to convictions.

There is a lack of harmonisation between these figures from the various stakeholders. Therefore, they aren't sufficient as a basis for policy evaluation or to support strategic analyses. This lack of harmonisation also significantly restricts the possibilities of reporting to the European institutions. Myria works with these different stakeholders every day in order to obtain figures of the best possible quality.

## Warning

- The figures presented in this report don't bear witness to the true extent of the phenomenon of trafficking and smuggling in human beings. They only present the facts and victims who were identified by the authorities. Currently, there is no estimation concerning unidentified acts and victims.
- These figures and their evolution provide more information on the action taken by the authorities to counteract trafficking and smuggling in human beings, than on these phenomena as such.



The figures available on trafficking and smuggling in human beings only show the visible part of the iceberg. The true extent of the phenomenon is unknown.

## 1. Human trafficking

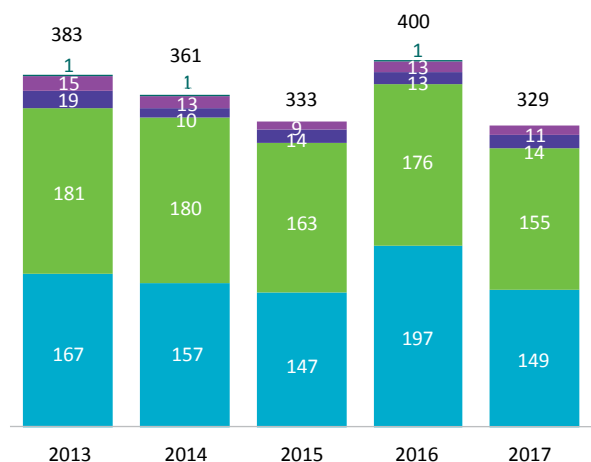
### Human trafficking offences (police data)

#### Change in methodology

The figures presented here were compiled differently to the previous report. After consultation with the police and in order to target the initial reports associated with trafficking and smuggling in human beings, the decision was taken to present only the figures linked to 'acts' rather than 'phenomena'. The figures presented in the previous reports included categories that weren't directly linked to these areas, such as 'exploitation of debauchery' in the

case of sexual exploitation. Consequently, the figures presented here are lower than those presented in the previous reports. Following this modification, the figures concerning the offences recorded by the police are now of the same order as those concerning cases dealt with by the public prosecutor's office.





■ Organ trade  
 ■ Forced criminality  
 ■ Exploitation in begging  
 ■ Labour exploitation  
 ■ Sexual exploitation

#### In 2017

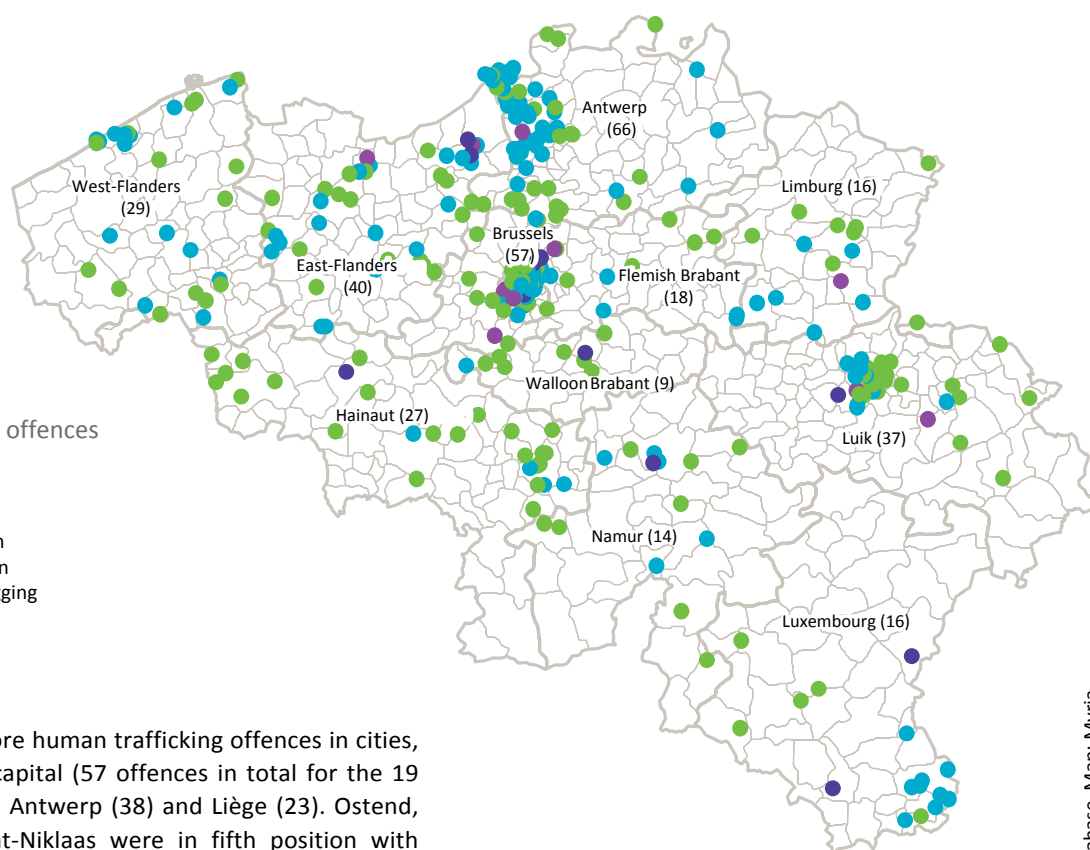
- A total of 329 human trafficking offences were recorded by the police: 149 for sexual exploitation, 155 for labour exploitation, 14 for exploitation of begging and 11 for offences or crimes committed under coercion. There were no organ trafficking offences in 2017.

Between 2016 and 2017, following the new methodology, we observed:

- an overall drop in the number of human trafficking offences recorded by the police (-18%). Offences concerning sexual exploitation fell more (-24%) than labour exploitation offences (-12%).

Human trafficking offences (police data)

● Sexual exploitation  
 ● Labour exploitation  
 ● Exploitation in begging  
 ● Forced criminality



#### In 2017:

- There were more human trafficking offences in cities, mainly in the capital (57 offences in total for the 19 municipalities), Antwerp (38) and Liège (23). Ostend, Ghent and Sint-Niklaas were in fifth position with nine offences each. In Brussels and Antwerp, the majority of the offences were linked to sexual exploitation (63 % in the capital and 84% in Antwerp) while in Liège, the majority of offences concerned labour exploitation (70 %).
- We noted that the offences concerning sexual exploitation were mainly recorded in the province of Antwerp and in the capital. More than half of the offences recorded nationally for this type of exploitation occurred in these two cities. As for labour exploitation

offences, they were mainly recorded in the provinces of Antwerp, Liège and in the Hainaut region. As regards exploitation of begging, the offences were chiefly recorded in Brussels (five of the 14 offences, i.e. 36 %).

## Reports from the NSSO inspection service (ECOSOC units)

In 2017, according to the NSSO inspection service (ECOSOC units):

- **39** reports were compiled concerning **65** workers.
- **48** workers were identified as presumed victims of human trafficking.

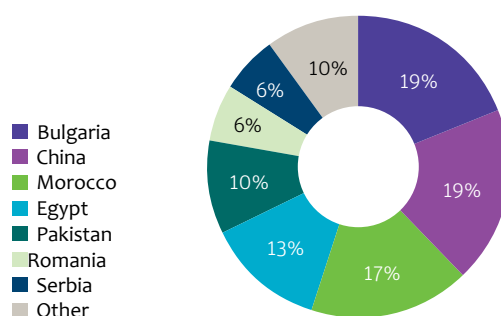
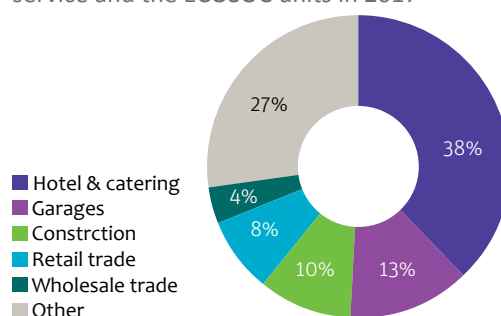
	2011	2012	2013	2014	2015	2016	2017
Official reports	33	38	29	37	58	32	39
Number of workers	46	123	69	48	425	52	65

Note: 2015 was marked by exceptional cases of reports compiled in the road haulage sector concerning cases of social dumping (in association with human trafficking) by lorry drivers.



This data results from 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, the judicial reports sent to the labour prosecutor, the prosecutor or the investigating judge when the investigation was conducted by the latter.

Economic sectors and detected employees as presumed victims of human trafficking by the NSSO inspection service and the ECOSOC units in 2017



Economic sectors and nationalities of detected employees, presumed victims of human trafficking by the NSSO inspection service (ECOSOC units) in 2017

	Hotel and catering	Garages	Construction	Retail trade	Wholesale trade	Domestic help	Other	Total
Bulgaria							9	9
China	8						1	9
Morocco	3	1			2		2	8
Egypt	6							6
Pakistan		4		1				5
Romania			1	1		1		3
Serbia			3					3
Ivory Coast				1				1
Afghanistan				1				1
Netherlands		1						1
Slovakia			1					1
Togo	1							1
Total	18	6	5	4	2	1	12	48

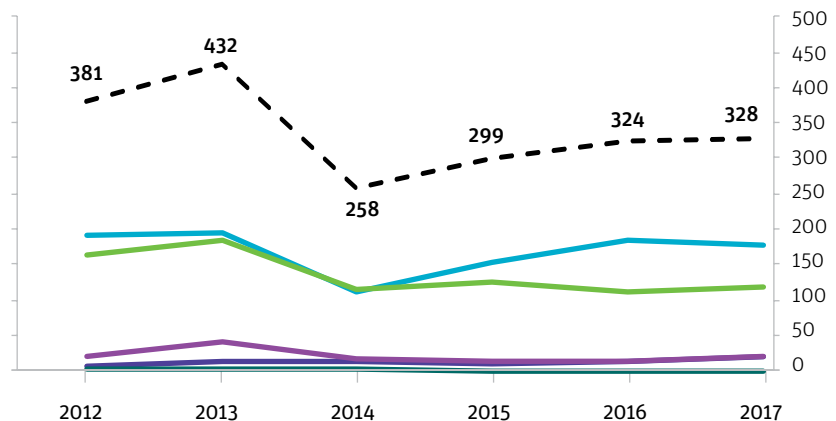
Source: NSSO inspection service, ECOSOC units

## Human trafficking cases dealt with by the public prosecutor's office

- In 2017, **328** human trafficking cases were dealt with by the public prosecutor's office.
- Stability compared with 2016.

- 54 % of cases concerned sexual exploitation and 35 % labour exploitation, 5 % exploitation of begging and 5 % offences or crimes committed under coercion.
- Antwerp is the jurisdiction where the most cases of human trafficking were presented in 2017 (82) ahead of Ghent (76), Brussels (75), Liège (73), Mons (21) and the federal prosecutor's office (1).

A **new case** is opened on the basis of an initial police report (subsequent reports won't lead to the opening of a new case). A case can also be opened on the basis of a complaint or a civil suit.



Sexual exploitation	190	196	111	151	184	176
Labour exploitation	164	184	115	124	112	116
Exploitation of begging	7	12	14	10	14	18
Forced criminality	18	39	17	14	14	18
Organ trade	2	1	1	0	0	0
<b>Total</b>	<b>381</b>	<b>432</b>	<b>258</b>	<b>299</b>	<b>324</b>	<b>328</b>

### Methodological remarks

- This data corresponds to the status on 8 January 2018 and comes from the Board of Prosecutors General database.
- It represents the number of cases submitted to the crown prosecution service (including the federal prosecutor's office) in 2017.
- It is limited to crimes committed by adults and doesn't include cases dealt with by the labour auditor. The cases submitted to the public prosecutor's office of Eupen aren't included either (no translation of the system in German).
- There is a risk of twice counting the cases sent to another district or when they are sent to another division in the same judicial district.
- Every criminal case can involve one or more defendants.

### Difficult to make human trafficking prosecutions

Cases submitted to the public prosecutor's office in 2017 and dropped on 8 January 2018

	Dismissed cases	Total	Dismissed cases
Sexual exploitation	43	176	24%
Labour exploitation	19	116	16%
Exploitation of begging	10	18	56%
Forced criminality	8	18	44%
<b>Total</b>	<b>80</b>	<b>328</b>	<b>24%</b>

- **24 %** of cases of human trafficking submitted to the public prosecutor's office in 2017 were dropped on 8 January 2018.
- A particularly high proportion of cases were dropped concerning the exploitation of begging (56 %) and offences or crimes committed under coercion (44 %).
- 39 % of the total number of cases were dropped owing to insufficient charges, 24 % because the perpetrator was unknown, 15 % for 'another priority'.



**Jurisdiction:** Extent of the territorial competence of a jurisdiction. Belgium is divided into five major jurisdictions which each have a court of appeal. Every court of appeal is responsible for several judicial districts.

- Antwerp → Antwerp and Limburg
- Brussels → Brussels (Brussels and Halle-Vilvoorde), Leuven and Walloon Brabant
- Ghent → East Flanders and West Flanders
- Liège → Liège, Eupen, Namur and Luxembourg
- Mons → Hainaut

#### Jurisdiction of Antwerp

- Majority of cases opened for sexual exploitation (61%).
- Overall stability compared with 2016 but increase in labour exploitation cases and slight fall in sexual exploitation cases.

#### Jurisdiction of Brussels

- Majority of cases for sexual exploitation (55%) but reduction in the latter compared with 2016.
- Drop overall compared with 2016.
- Increase in cases of exploitation of begging and offences or crimes committed under coercion.

#### Jurisdiction of Ghent

- Majority of cases opened for sexual exploitation (63%).
- Overall drop associated with a considerable fall in labour exploitation cases.
- Slight increase in sexual exploitation cases and fall in cases for offences or crimes committed under coercion.

#### Jurisdiction of Liège

- Majority of cases for sexual exploitation (45%).
- Significant increase in the total number of cases submitted in the jurisdiction of Liège for human trafficking (29 in 2016, 73 in 2017). The number of cases submitted in this jurisdiction doubled or more for each type of exploitation between 2016 and 2017.

#### Jurisdiction of Mons

- Majority of cases for sexual exploitation (57%).
- Number of cases far lower than those submitted in other jurisdictions.
- Overall stability compared with 2016 but increase in labour exploitation cases and slight fall in sexual exploitation cases.

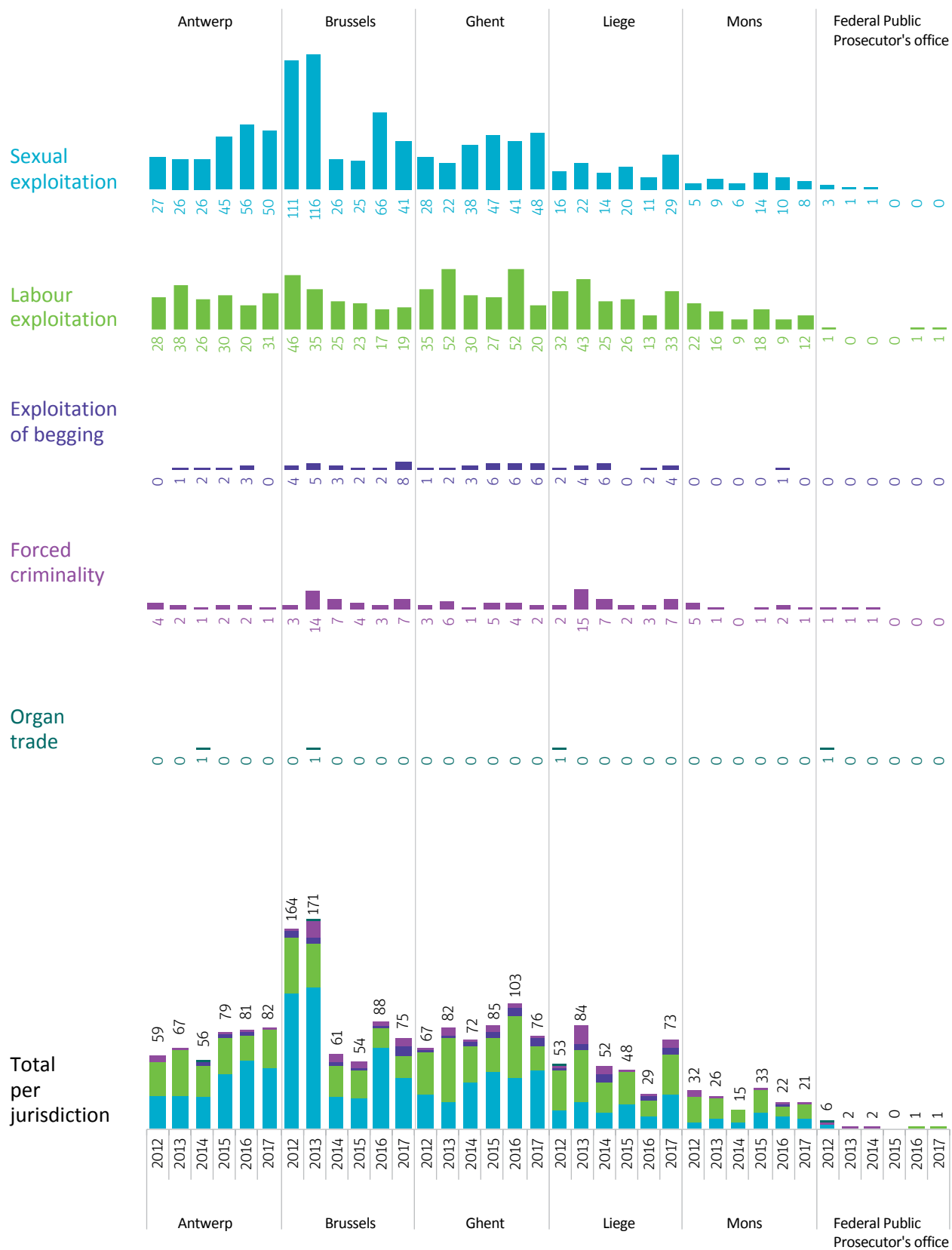
#### Federal prosecutor's office

- A case in 2017 for labour exploitation.
- Stability compared with 2016.

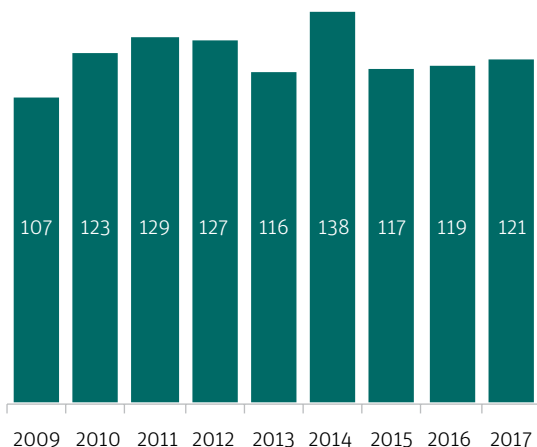


#### Classification of charges

Sexual exploitation	37L	art. 433 <sup>quiquies</sup> § 1 1°CC
Labour exploitation	55D	art. 433 <sup>quiquies</sup> § 1 3°CC
Exploitation of begging	29E	art. 433 <sup>quiquies</sup> § 1 2°CC
Forced criminality	55F	art. 433 <sup>quiquies</sup> § 1 5°CC
Organ trade	55E	art. 433 <sup>quiquies</sup> § 1 4°CC



## Victims of human trafficking involved who entered the special procedure (Immigration Office data)



In 2017:

- **121 victims** of human trafficking were entered the special procedure (stability compared with 2016).
- 36 % of these victims are **Nigerian**: 42 victims of sexual exploitation and two victims of labour exploitation. Victims of other nationalities include **Moroccan** (15 labour exploitation and two sexual exploitation), and **Hungarian** with 10 victims of labour exploitation and two victims of sexual exploitation.

### 5 child victims of human trafficking entered the procedure involved in proceedings in 2017

- 4 accompanied child victims of labour exploitation
- 1 unaccompanied child victim of sexual exploitation



Hungary



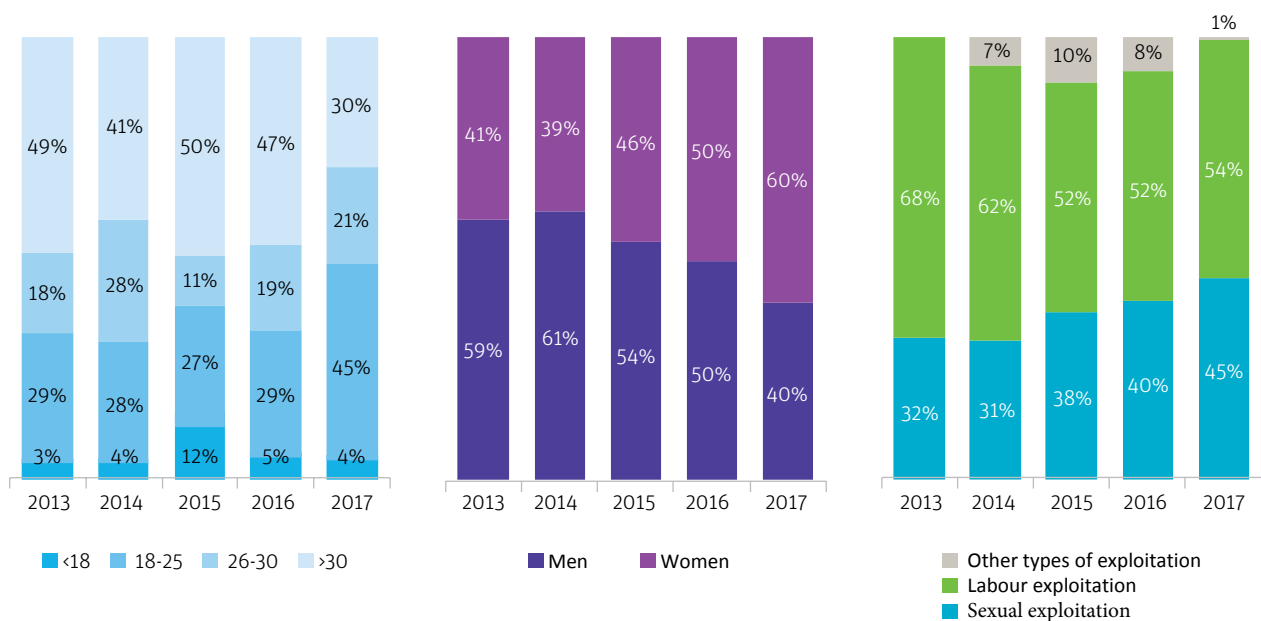
Roumania



Roumania

	Sexual exploitation	Labour exploitation	Other forms of exploitation	Total
Nigeria	42	2		44
Morocco	2	15		17
Hungary	2	10		12
Egypt		6		6
Cameroon		4		4
India		4		4
Roumania	1	3		4
China		3		3
Pakistan		3		3
Albania	2			2
Ivory coast		2		2
Ghana		2		2
Portugal		2		2
Senegal		2		2
Bangladesh		1		1
Bosnia and Herzegovina			1	1
Bulgaria	1			1
Burkina faso		1		1
Italie		1		1
Kosovo		1		1
Poland		1		1
Czech Republic	1			1
Sierra Leone	1			1
Suriname	1			1
Thailand	1			1
Togo		1		1
Tunisia		1		1
Indefinite	1			1
<b>Total</b>	<b>55</b>	<b>65</b>	<b>1</b>	<b>121</b>





The **"Other types of exploitation"** category corresponds to cases for which the type of exploitation hadn't yet been clearly identified when the first request for documents was made.

Evolution of the victims' profiles over the period 2013-2017:

- The victims involved in proceedings in 2017 were, on average, younger than those in previous years (70 % under 30 years old).
- Increase in the proportion of victims of sexual exploitation (32 % in 2013 and 45 % in 2017).
- Increase in the proportion of women.
- The proportion of victims of labour exploitation fell from 68 % in 2013 to 54 % in 2017.

Age	Sexual exploitation					Labour exploitation					Other types of exploitation					Total				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
<18	4	1	5	4	1	0	1	3	2	4	0	3	6	0	0	4	5	14	6	5
18-25	15	19	22	23	40	19	18	9	9	13	0	1	1	2	1	34	38	32	34	54
26-30	8	12	7	7	12	13	26	6	13	14	0	0	0	3	0	21	38	13	23	26
>30	10	11	10	14	2	47	41	43	38	34	0	5	5	4	0	57	57	58	56	36
Total	37	43	44	48	55	79	86	61	62	65	0	9	12	9	1	116	138	117	119	121
Men	1	5	2	0	1	67	74	52	51	47	0	5	9	8	0	68	84	63	59	48
Women	36	38	42	48	54	12	12	9	11	18	0	4	3	1	1	48	54	54	60	73

Type of exploitation	Nationality	Men				Total men	Women				Total women	Total
		<18	18-25	26-30	≥30		<18	18-25	26-30	≥30		
Labour exploitation	Morocco			3	7	10		1	2	2	5	15
	Hungary		2			2	3	4		1	8	10
	Egypt			2	4	6						6
	Cameroon		1		2	3				1	1	4
	India			1	3	4						4
	China			1	1	2				1	1	3
	Pakistan		1	1	1	3						3
	Romania	1			1	2				1	1	3
	Ivory Coast		2			2						2
	Ghana			2		2						2
	Nigeria				1	1			1		1	2
	Portugal				2	2						2
	Senegal				2	2						2
	Bangladesh				1	1						1
	Burkina Faso			1		1						1
	Italy		1			1						1
	Kosovo		1			1						1
	Poland				1	1						1
	Togo				1	1						1
	Tunisia									1	1	1
	Sub-total	1	8	11	27	47	3	5	3	7	18	65
Sexual exploitation	Nigeria			1		1		30	10	1	41	42
	Albania							2			2	2
	Hungary							1		1	2	2
	Morocco							1	1		2	2
	Bulgaria							1			1	1
	Czech Republic							1			1	1
	Romania						1				1	1
	Sierra Leone							1			1	1
	Suriname							1			1	1
	Thailand							1			1	1
	Not specified							1			1	1
	Sub-total			1		1	1	40	11	2	54	55
Other	Bosnia and Herz.							1			1	1
	Sub-total							1			1	1
Total		1	8	12	27	48	4	46	14	9	73	121

## Documents issued by the Immigration Office to victims of trafficking and smuggling of human beings

		2012	2013	2014	2015	2016	2017
Order to leave the territory 45 days		36	30	33	17	10	3
Annexe 15							20
Certificate of immatriculation (AI)		143	117	139	115	119	112
Extension of AI		12	15	11	23	27	31
Human trafficking	Temporary BIVR (Card A)	106	100	85	90	84	97
	Extension Card A	441	461	450	426	421	383
	Unlimited BIVR (Card B)	35	46	33	6	49	50
Humanitarian	Temporary BIVR (Card A)	4	2	2	29	3	
	Extension Kaart A	51	31	31	36	20	29
	Unlimited BIVR (Card B)	11	26	22	36	21	23
Annexe 13 (Order to leave the territory)		7	11	14	2	2	4
Total		846	839	820	780	756	752

The data presented here concerns both the victims of **trafficking and smuggling of human beings**.

The **752** decisions to issue or extend a residence permit concern both new victims from 2017 as well as those from previous years, who are in the process of being granted victim status and with regard to whom one or more decisions were previously taken.

There is a fall in the total number of documents issued to victims of trafficking and smuggling of human beings (846 in 2012, 752 in 2017).

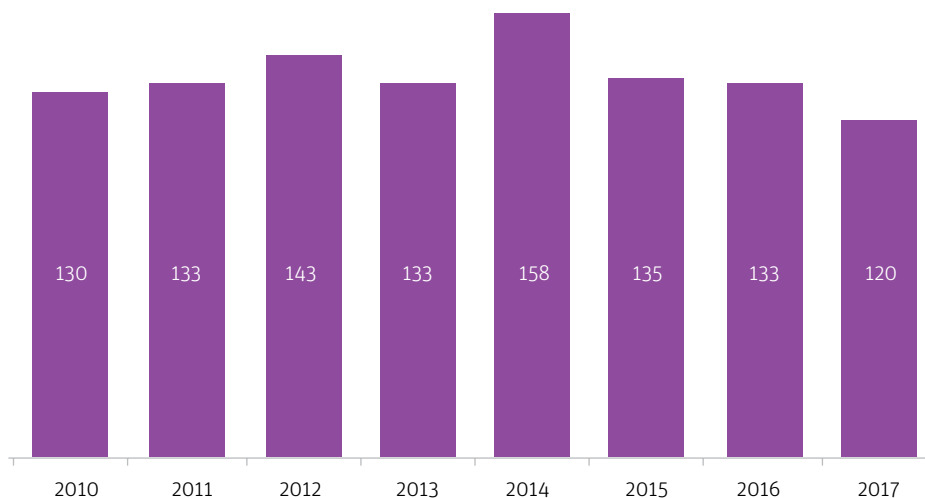


A certificate of inscription in the alien's register (CIAR), which can be temporary and/or extended, is always a CIAR for a period of six months. Normally, the victims receive two a year as long as they have this status.

		Men			Women		
		<18	≥18	Total	<18	≥18	Total
Order to leave the territory (OLT) 45 days						3	3
Annexe 15			12	12		8	20
Certificate of immatriculation (AI)		1	48	49	2	61	112
Extension of AI			4	4		27	31
Human trafficking	Temporary BICVR (Card A)	1	41	42	2	53	97
	Extension Card A	3	244	247	5	131	383
	Unlimited BIVR (Card B)		26	26		24	50
Humanitarian	Temporary BIVR (Card A)						
	Extension Card A	1	14	15		14	29
	Unlimited BIVR (Card B)		13	13		10	23
Annexe 13 (OLT)						4	4
Total		6	402	408	9	335	752

## New support for victims of human trafficking initiated by the specialised reception centers

120 victims of human trafficking were given support in a specialised reception centre in 2017



- 10 % drop compared with 2016.
- 35 % of these victims are Nigerian. Followed by Moroccan (14 %) and Hungarian (6 %) victims.
- Among these victims, there are **61 victims of labour exploitation** and **59 victims of sexual exploitation**. In 2017, there was no new support for victims of exploitation of begging, offences/crimes committed under coercion or organ trafficking.

It isn't possible to form a picture of all the support activities or the centres' reception capacity based on the data for new support.

- The support duration indicator isn't dealt with here. The Immigration Office figures relating to the extension of documents, within the framework of the human trafficking procedure, do however offer a potential indicator.

► See Documents issued by the Immigration Office to victims of trafficking and smuggling in human beings.

- Reports of persons for whom no support was initiated aren't mentioned here either.

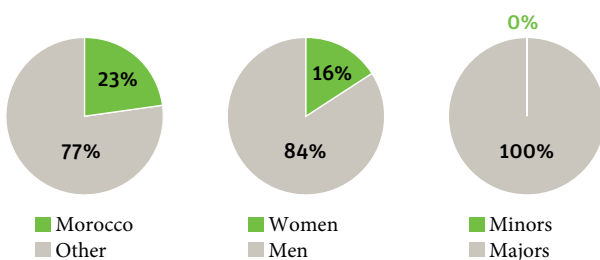
► For more information, please refer to PAG-ASA's, Payoke's and Sürya's annual reports.

Nationality	Total
Nigeria	42
Morocco	17
Hungary	7
Egypt	6
India	5
Romania	5
Albania	4
China	4
Pakistan	3
Belgium	3
Cameroon	3
Ghana	2
Senegal	2
Czech Republic	2
Tunisia	2
Germany	1
Bangladesh	1
Bosnia and Herz.	1
Bulgaria	1
Burkina Faso	1
Ivory Coast	1
Guinea-Bissau	1
Italy	1
Portugal	1
Sierra Leone	1
Suriname	1
Thailand	1
Togo	1
<b>Total</b>	<b>120</b>

Nationality	Labour exploitation				Total
	Women		Men		
	<18	≥18	<18	≥18	
Morocco		4		10	14
Egypt				6	6
Hungary		3		2	5
India		1		4	5
Romania				4	4
China		1		3	4
Pakistan				3	3
Cameroon				3	3
Nigeria				2	2
Ghana				2	2
Senegal				2	2
Tunisia		1		1	2
Albania				1	1
Germany				1	1
Bangladesh				1	1
Burkina Faso				1	1
Ivory Coast				1	1
Guinea-Bissau				1	1
Italy				1	1
Portugal				1	1
Togo				1	1
Total	0	10	0	51	61

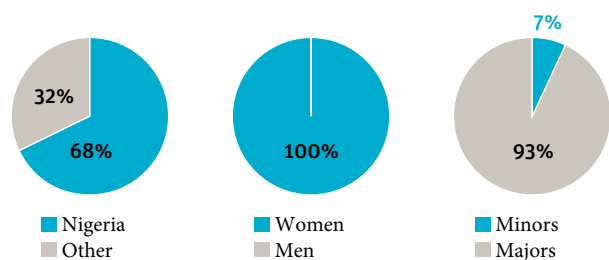
**Support** is initiated once the initial phase (period of reflection) has begun, i.e. as soon as an order to leave the territory or, since 20 may 2017, Annex 15 has been issued.

Nationality	Sexual exploitation				Total
	Women		Men		
	<18	≥18	<18	≥18	
Nigeria	3	37			40
Morocco		3			3
Albania		3			3
Belgium		3			3
Hungary		2			2
Czech Republic		2			2
Romania	1				1
Bosnia and Herz.		1			1
Bulgaria		1			1
Sierra Leone		1			1
Suriname		1			1
Thailand		1			1
Total	4	55	0	0	59



Among the victims of **labour exploitation** for whom support was initiated in a specialised reception centre in 2017:

- 23 % were Moroccan, followed by Egyptians,
- Hungarians and Indians.
- Women are in the minority (16 %).
- There were no minors among these victims.

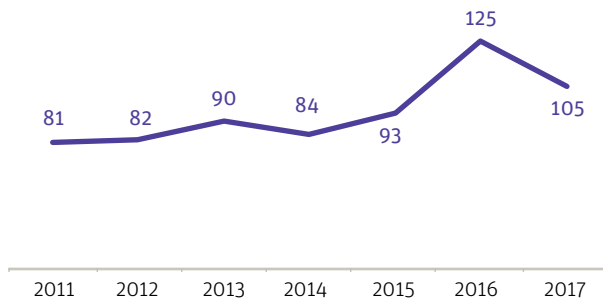


Among the victims of **sexual exploitation** for whom support was initiated in a specialised reception centre in 2017:

- 68 % were Nigerian.
- They are exclusively female (100 %).
- There were four minors: three
- Nigerians and one Romanian.

## Convictions for human trafficking (Justice department data)

Convictions



Every **conviction** concerns a convicted person (convictions are different from judgements, which can include several convictions).

**1 conviction = 1 person**

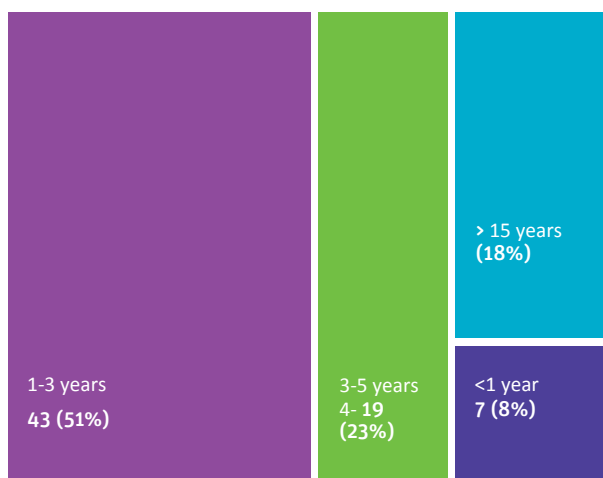
**Sentences** correspond to the decisions of the convictions. For one conviction, several sentences may be pronounced at the same time (prison, fine, etc.). Subsequently, one category doesn't exclude another (with a few exceptions) and the total of the sentences is higher than the number of convictions.

2017:

- **105** convictions were pronounced.
- These convictions led to 293 decisions regarding sentences, 89 of which were suspended. Among these decisions were 97 fines, 84 prison sentences, 72 withdrawals of rights, 35 confiscations, 3 deferments and 2 community service sentences.
- The prison sentences pronounced in 2017 were mostly of a duration of 1 to 3 years (51 %), half of which were suspended.

Sentences	Rulings	Suspended (full or partial)
Fine	97	48
Prison sentence	84	41
Deprivation of rights	72	
Confiscation order	35	
Deferment	3	
Community service sentences	2	
<b>Total</b>	<b>293</b>	<b>89</b>

Duration of prison sentences pronounced



■ <1 year ■ 1-3 year ■ 3-5 year ■ >5 year

### Methodological remarks

- These figures show the number of final convictions, i.e. the convictions that couldn't be taken to the court of appeal.
- The database doesn't provide the type of exploitation for all the convictions. Only 30 % of the information is available according to the type of exploitation (according to the latter, at least 24 perpetrators were involved in acts of labour exploitation, 17 in acts of sexual exploitation and 3 in acts of exploitation of begging).
- The data was extracted in March 2018.



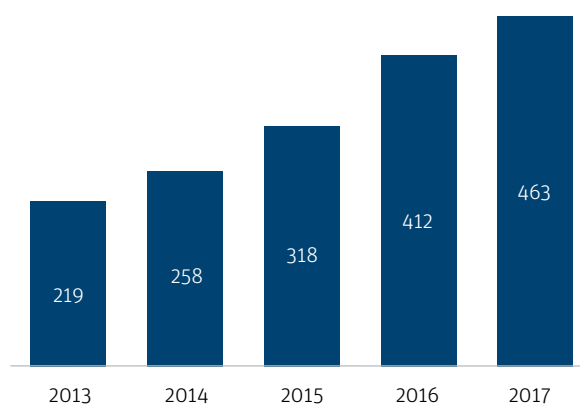
## 2. Smuggling in human beings

### Human smuggling offences (police data)

#### Change in methodology

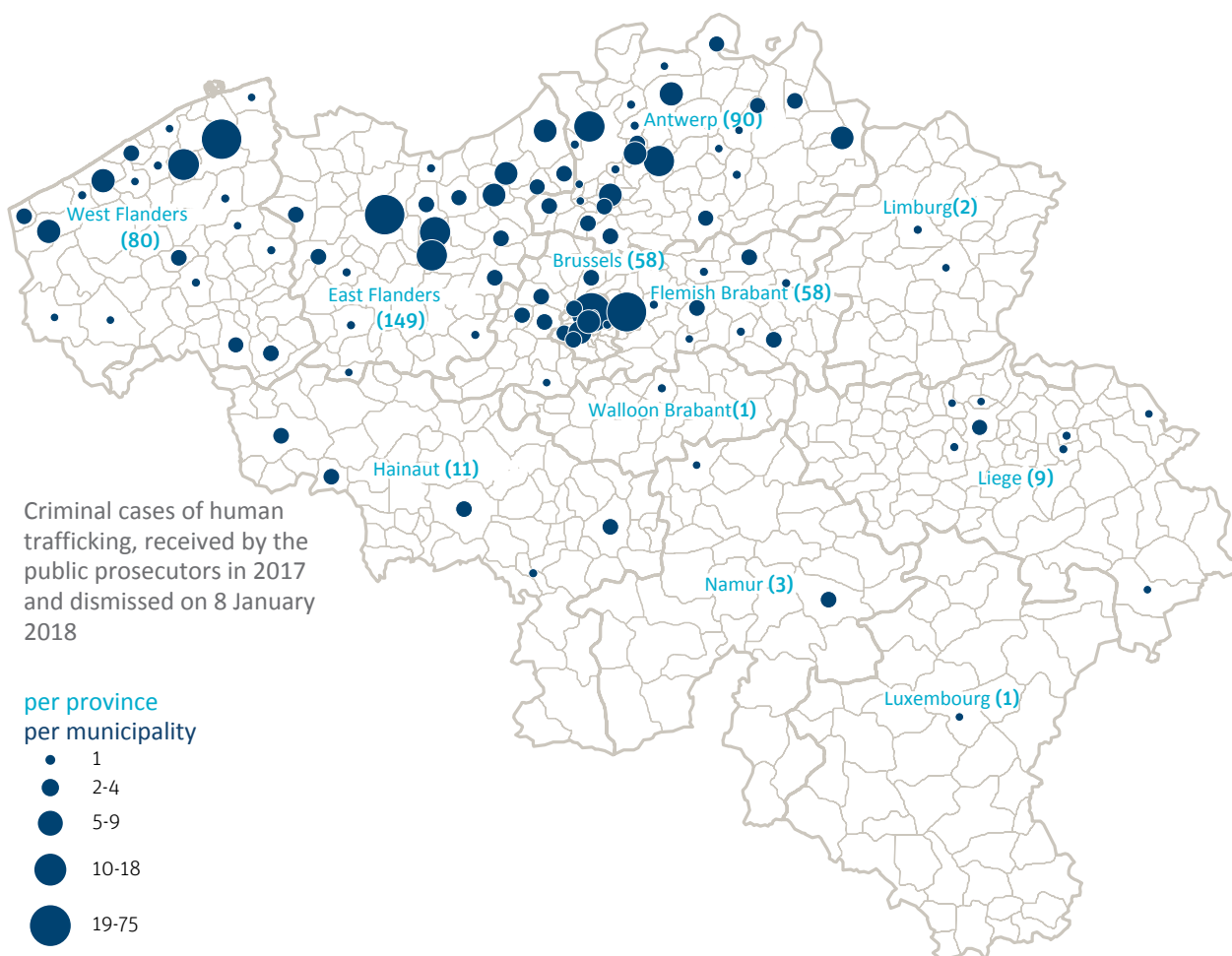
Contrary to what was presented in our previous reports, the data presented here only relates to offences associated with human smuggling in the strict sense. They aren't added to offences associated with assisting illegal entry or stay, as was the case in our previous reports.

Between 2013 and 2017, the number of offences linked to human smuggling recorded by the police doubled, increasing from 219 in 2013 to 463 in 2017.



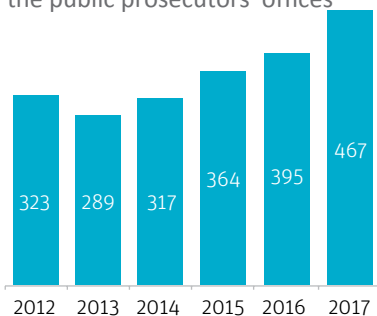
In 2017

- 75 % of human smuggling offences were recorded in Flanders, 19 % in Brussels (Brussels Airport included) and 5 % in Wallonia.
- At municipal level, Ghent is in first position (75 offences) ahead of the City of Brussels (37), Brussels Airport (32), Bruges (31) and Wetteren (18) (East Flanders).

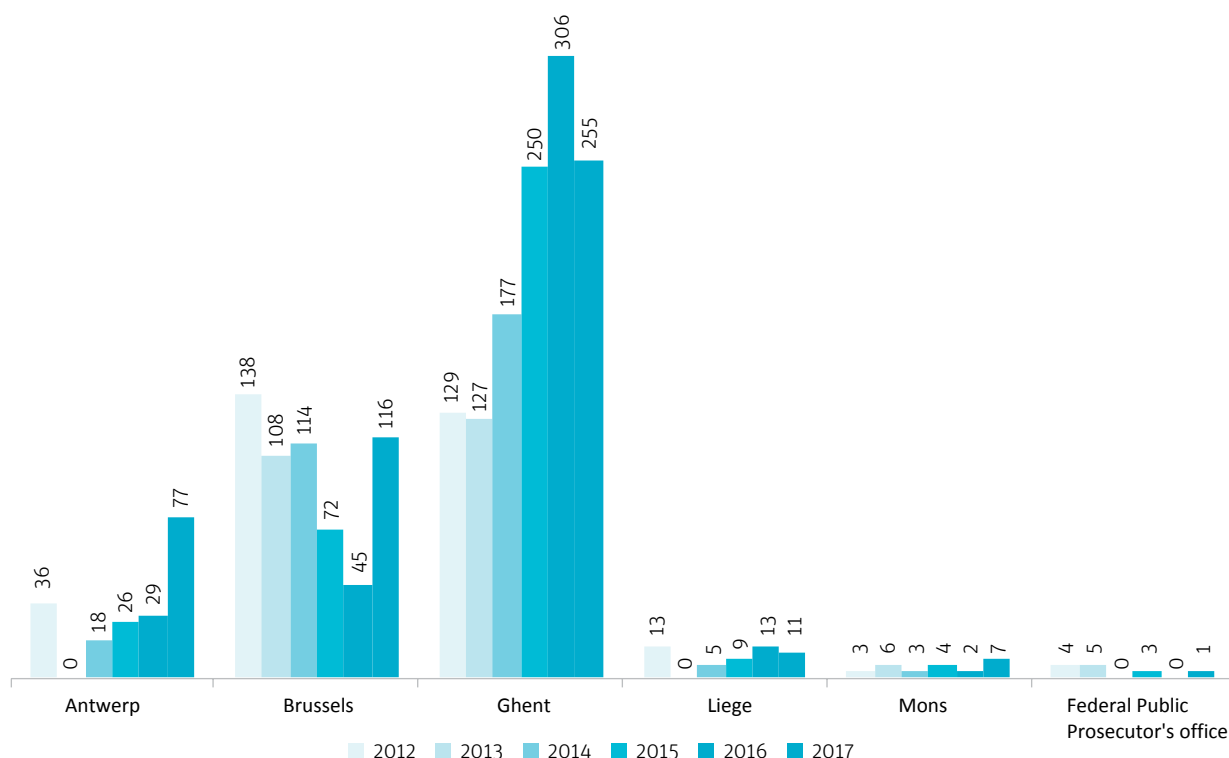


## Human smuggling cases submitted to the public prosecutor's office

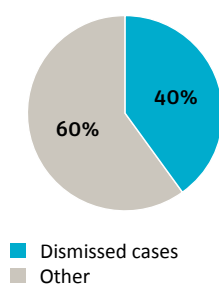
Total number of criminal cases for human trafficking brought before the public prosecutors' offices



- **467** human smuggling cases were submitted to the public prosecutor's office in 2017. Continuous increase since 2013.
- More than half of the cases submitted to the public prosecutor's offices in 2017 were in the jurisdiction of Ghent (55 %) (East and West Flanders).
- Followed by the jurisdiction of Brussels (25 %), Antwerp (17 %), Liège (2 %), Mons (1.5 %) and the federal prosecutor's office (0.2 %).
- Increase in the number of cases in the jurisdictions of Brussels and Antwerp but a decrease in that of Ghent.
- Even if the number of smuggling cases submitted in the jurisdiction of Mons remains low on a national level, they have significantly increased: 2 in 2016 and 7 in 2017 (i.e. 3.5 times more).



Criminal cases of human trafficking, received by the public prosecutors in 2017 and dismissed on 8 January 2018



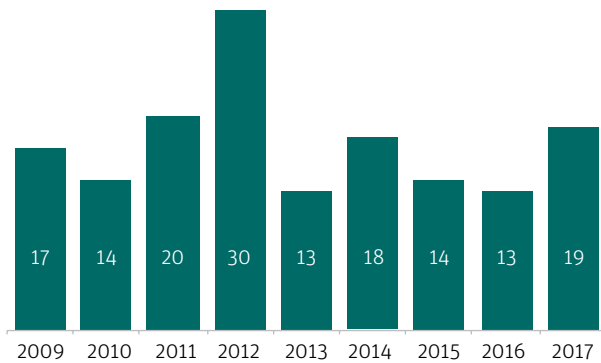
Out of the 467 cases submitted to the public prosecutor's offices in 2017 for human smuggling, 188 were dropped on 8 January 2018, i.e. 40 %. Among these 188 cases that were dropped, 71 were on discretionary grounds and 117 for technical reasons (73 of which because the perpetrator(s) was(were) unknown and 39 owing to insufficient charges).

Human smuggling:

- Art. 77bis, 77ter, 77quater and 77quinquies of the Aliens Act
- Classification code 55G



## Victims of human smuggling who entered the special procedure (Immigration Office data)



4 minors entered the special procedure in 2017 for aggravated smuggling:

■ 3 accompanied Iraqis ■ 1 Albanian UFM



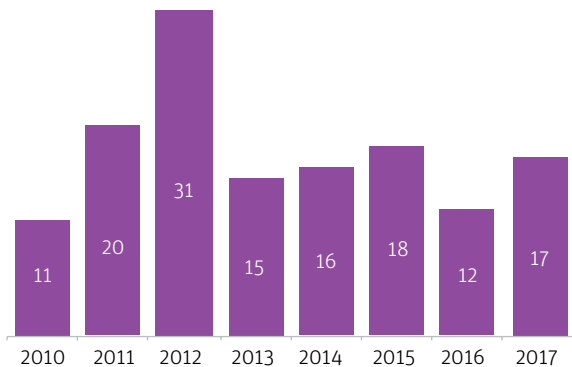
In 2017, among the 19 human smuggling victims involved in the procedure:

- **12** Iraqi victims (i.e. approximately 6 out of 10)
- A majority of male victims (approximately 7 victims out of 10 are men)
- **4 child victims** (i.e. approximately 2 out of 10)

Nationality	Men				Total men	Women				Total women	Total
	<18	18-25	26-30	≥30		<18	18-25	26-30	≥30		
Iraq	2	1	3	2	8	1		1	2	4	12
Albania	1	2			3						3
Afghanistan		2			2						2
Cameroon								1		1	1
Nigeria							1			1	1
Total	3	5	3	2	13	1	1	2	2	6	19

Source: IO

## New support for victims of human smuggling initiated by the specialised reception centres



4 child victims of aggravated human smuggling began receiving support in a specialised reception centre in 2017:

- 3 accompanied Iraqis
- 1 unaccompanied Albanian



### 2017

- 17 victims of aggravated smuggling began receiving support in a specialised reception centre in 2017.
- Increase compared with 2016.
- Majority of men (approximately 8 victims out of 10).
- Large proportion of Iraqis (approximately 6 victims out of 10).
- 4 minors, all male, 3 Iraqis and 1 Albanian.

Nationality	Women		Men		Total
	<18	≥18	<18	≥18	
Iraq		2	3	5	10
Albania			1	2	3
Afghanistan				1	1
Iran				1	1
Cameroon		1			1
China		1			1
Total		4	4	9	17

► For more information on new support provided by the specialised centres, see 'New support for victims of human trafficking initiated by specialised centres' earlier in this chapter/

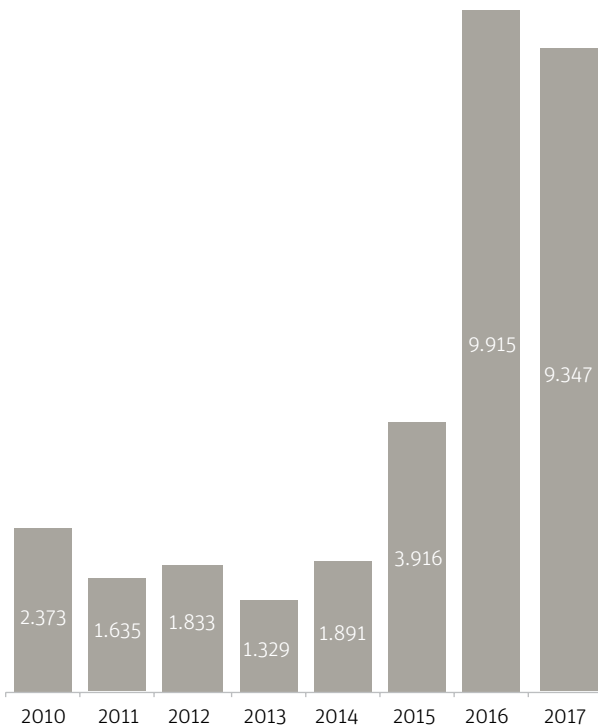
Source: Specialised reception centres, calculations: Myria

## Convictions for human smuggling (Justice department data)

The computer system concerning the public prosecutor's offices, courts and criminal records is currently being upgraded and as the various departments have to modify and even rewrite the programs to produce

statistics, the figures for human smuggling convictions in 2017 weren't available when this report was written.

## Administrative arrests in Belgium following transit migration

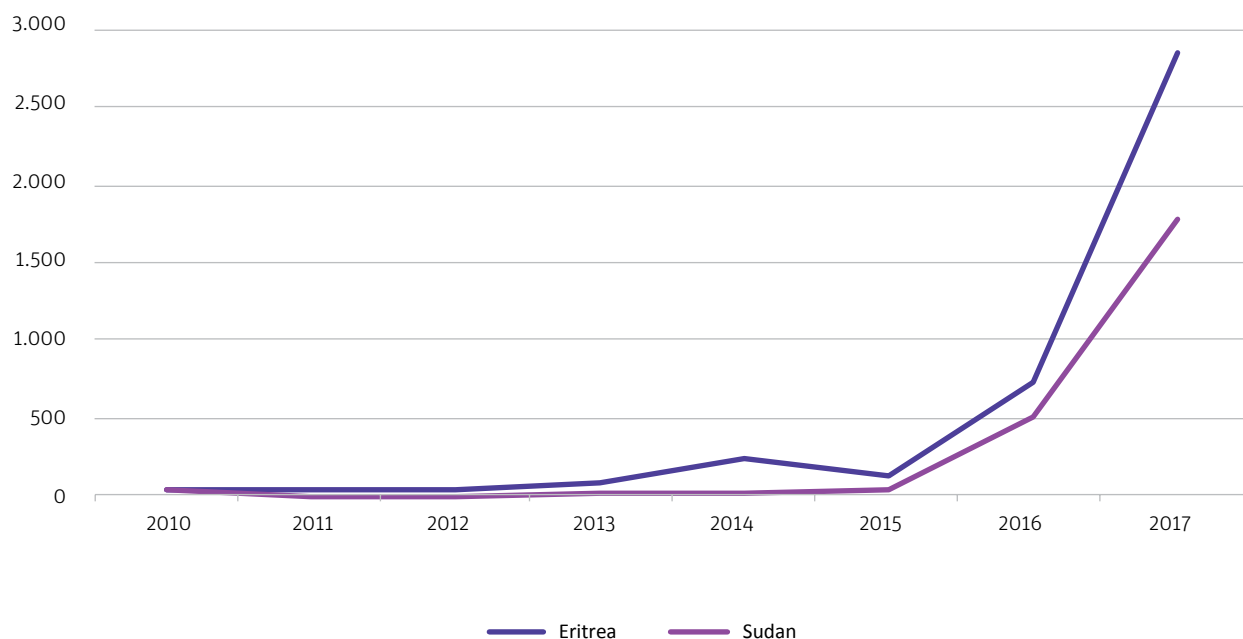


In 2017, there were 9,347 administrative arrests in Belgium following transit migration.

- We noted a high increase in the number of arrests within the framework of transit until 2016 and a slight decrease between 2016 and 2017 (-6%).
- Note that the same person can be arrested several times in the course of the same year, which makes the analysis of the phenomenon more complex.
- Between 2016 and 2017, the number of Eritreans arrested within this framework quadrupled and the Sudanese tripled. These two nationalities topped the ranking in 2017.
- The number of arrests of Ethiopians within the framework of transit also increased significantly (x 6). To a lesser degree, we noted an increase in Libyans (x 2) and Moroccans (x 1.4).
- As for Iranians, who were at the top of the list in 2016, there were 10 x fewer arrests within the framework of transit in 2017. There was also a 50 % reduction in arrests of Syrians and Afghanis. We also noted a fairly significant reduction as regards Iraqis.

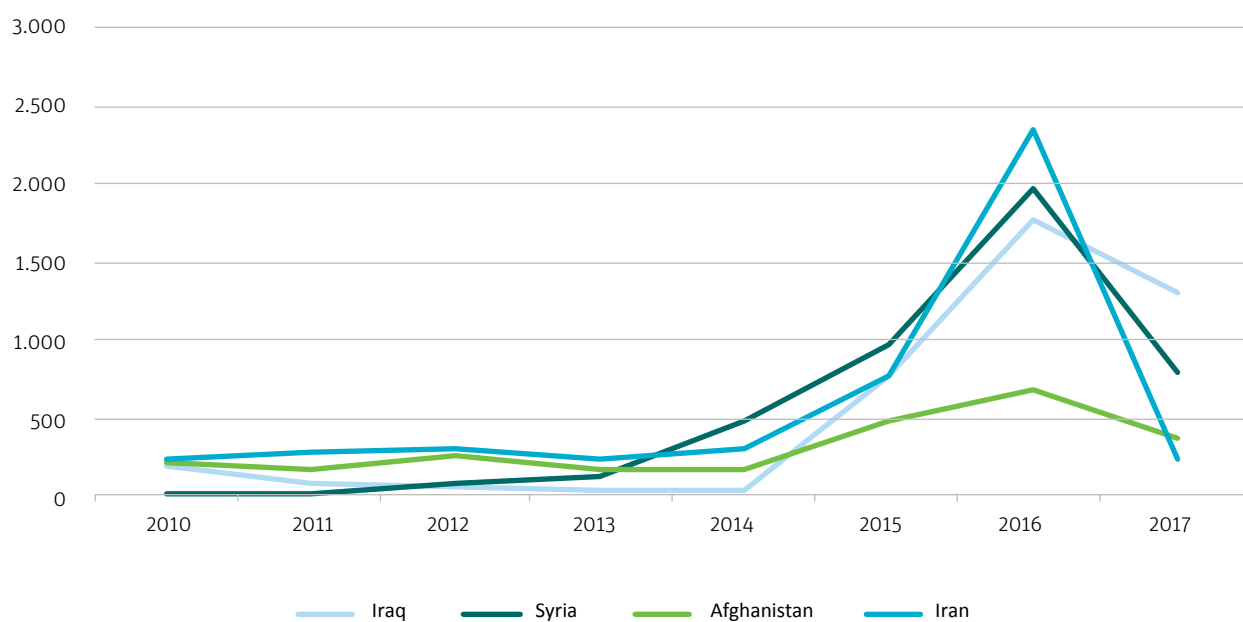
## Administrative arrests in Belgium following transit migration by nationality

Nationality	2016	2017	Evolution 2016-2017
Eritrea	727	2.847	↗ x 4
Sudan	508	1.770	↗ x 3
Iraq	1.758	1.305	↘ x 0,7
Syria	1.960	789	↘ x 0,4
Afghanistan	681	367	↘ x 0,5
India	488	333	↘ x 0,7
Libya	129	303	↗ x 2
Algeria	281	270	x 1
Morocco	170	237	↗ x 1,4
Iran	2.354	234	↘ x 0,1
Albania	205	223	↗ x 1,1
Ethiopia	24	137	↗ x 6
Egypt	108	81	↘ x 0,8
Not specified	39	71	↗ x 1,8
Pakistan	137	68	↘ x 0,5
Palestine	84	61	↘ x 0,7
Vietnam	82	51	↘ x 0,6
Tunisia	60	45	↘ x 0,8
Somalia	33	44	↗ x 1,3
Kuwait	19	25	↗ x 1,3
Lebanon	4	16	↗ x 4
Turkey	13	15	↗ x 1,2
Chad	2	13	↗ x 7
Kosovo	8	11	↗ x 1,4
Yemen	3	10	↗ x 3,3
China	10	8	↘ x 0,8
Ukraine	4	7	↗ x 1,8
Mauritania	0	4	↗
DR Congo	8	2	↘ x 0,3
Bangladesh	10	0	↘
Liberia	3	0	↘
Angola	1	0	↘
Armenia	1	0	↘
Nepal	1	0	↘
<b>Total</b>	<b>9.915</b>	<b>9.347</b>	↘ x 0,9



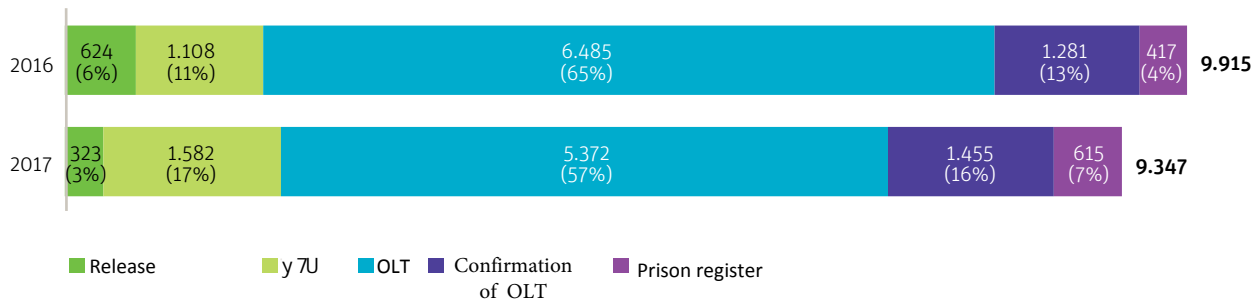
Two trends stand out:

- A considerable increase in the number of arrests within the framework of the transit of persons from Africa, particularly in terms of Eritreans and Sudanese, but also to a lesser degree Libyans, Moroccans, Ethiopians, Somalis, etc.
- Following a high increase up until 2016, there was a significant fall regarding Asian nationalities (Iraqis, Syrians, Afghanis, Iranians, etc.).





Data concerning arrests associated with transit migration contd.



Between 2016 and 2017, we observed:

- Number of releases halved
- An increase in the proportion of persons declaring themselves as UFM.
- An increase in the proportion of people entered on the prison register.

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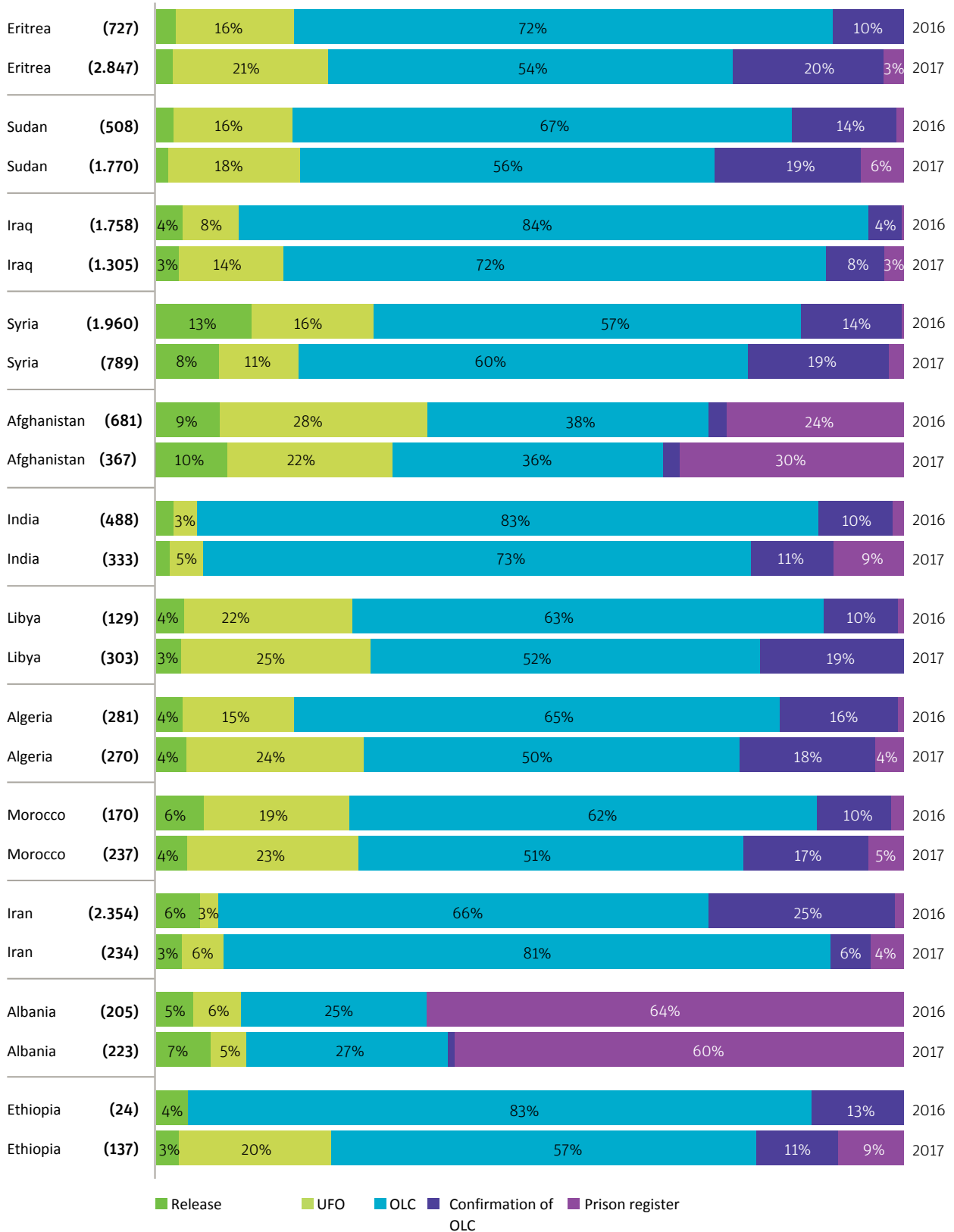
- On average, 17 % of arrests resulted in person being reported as a UFM to the guardianship service. However, for some nationalities, this number exceeded 20 %. For instance, Libyans, Algerians, Moroccans, Afghanis, Eritreans, Ethiopians and Somalis. The proportion of people who state they are UFM is particularly high among the Vietnamese (51 %).

Self-declared UFM			Evolution 2016-2017	
Nationality	2016	2017		
Eritrea	116	592	↗	x 5
Sudan	81	311	↗	x 4
Iraq	133	185	↗	x 1,4
Syria	323	84	↘	x 0,3
Afghanistan	189	81	↘	x 0,4
Libia	29	77	↗	x 3
Algeria	42	64	↗	x 2
Morocco	33	54	↗	x 2
Ethiopia	0	28	↗	NA
Vietnam	28	26	↘	x 0,9
Other	134	80	↘	x 0,6
<b>Total</b>	<b>1.108</b>	<b>1.582</b>	<b>↗</b>	<b>x 1,4</b>

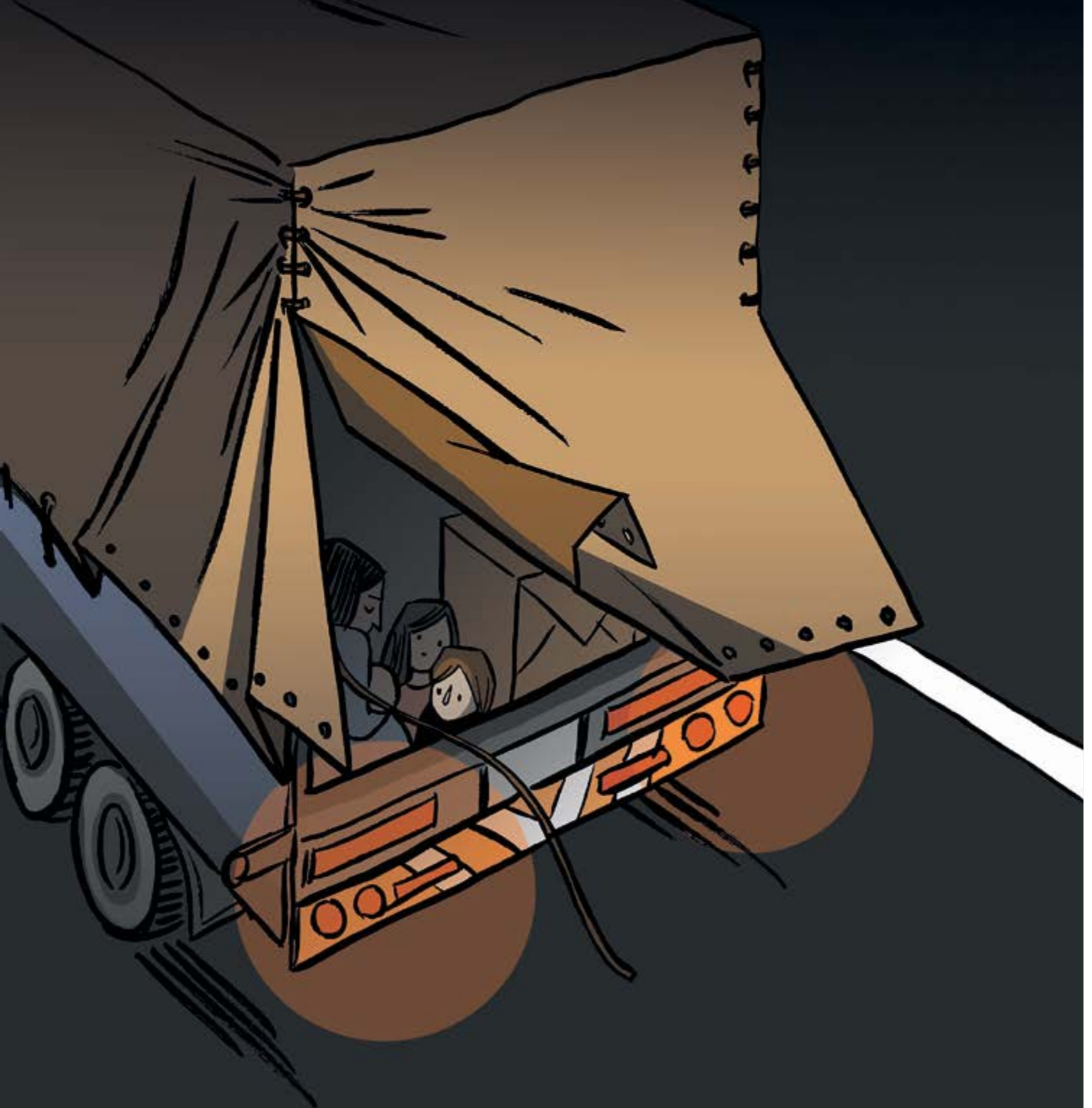
- . . . . .
- Between 2016 and 2017, we noted an increase in the number of people entered on the prison register for nearly all nationalities (except in the case of Libyans and Albanians).

- **Release:** People for whom the Immigration Office decides not to issue an administrative decision after arrest and subsequently lets them go.
- **UFM:** People who declare they are unaccompanied minors and are referred to the guardianship service.
- **OLT:** People who receive an order to leave the territory (OLT) and who aren't yet (or no longer) the subject of an OLT, or when the person is already the subject of an OLT but numerous elements justify the issuing of a new OLT.
- **Confirmation of OLT:** People who are the subject of at least one unimplemented OLT, issued less than one year earlier, whose deadline to leave the country has been exceeded, and since which time, no new element has been observed.
- **Prison register:** People in administrative detention following an arrest with a view to deportation.

Proportion of the arrests associated with transit migration contd. following nationality (top 12 nationalities in 2017)



# Part 5. Recommendations



## Part 5. Recommendations

### 1. Human trafficking: improving the detection and protection of child victims

#### 1.1. Continue, intensify and diversify training efforts for frontline players, prosecutors, guardians and youth support services regarding the trafficking of minors

One of the main difficulties is detecting and identifying minors presumed to be victims of trafficking so that they can benefit from suitable protection measures. This is why it is essential that frontline players are properly trained (police officers, guardians, youth support services, etc.).

It would indeed seem that despite the training efforts made, the players in the field don't really know which steps to take in the presence of a unaccompanied foreign minor presumed to be a victim of trafficking. Furthermore, many professionals, besides those working on the issue every day, aren't in a position to recognise the indicators of trafficking. In addition, they only have very limited knowledge concerning the difference between trafficking and smuggling. The guardianship system and the specificity of victim status are also unknown.

Moreover, if the person is an unaccompanied foreign minor, they must be reported to the guardianship service and the Immigration Office using the standard reporting form. This contains a specific category indicating whether the minor is a presumed victim of trafficking (or smuggling). In practice, however, this form isn't always filled in, especially owing to a lack of human resources, and the minor therefore isn't reported to the guardianship service. Furthermore, the 'trafficking/smuggling in

human beings' box is sometimes filled in differently by frontline players and depends on the personal interpretation of the situation by the person filling in the form.

It is therefore crucial to continue the training efforts and to increase awareness of the obligation to report to the guardianship service through the 'trafficking/smuggling in human beings' box on the standard reporting form, even in case of doubt.

#### 1.2. Improve care for unaccompanied foreign minors who are presumed victims of human trafficking by officially recognising the 'Esperanto' reception centre as a specialised reception centre, and by creating an equivalent structure in Flanders

The Esperanto centre, located at a secret address in Wallonia, is an example of good practice in the secure reception of unaccompanied foreign minors who are presumed victims of trafficking. The multidisciplinary and multicultural team at this small centre offers youngsters individualised care and a reassuring environment. Specific security measures are in place (secret address, accompanied outings during the first month, mobile phones not allowed inside the centre, etc.). This especially helps to limit the risk of escape. Esperanto has also successfully cared for minors intercepted in refrigerated lorries.

However, Esperanto isn't officially recognised as a specialised centre for child victims of trafficking, which is a problem in practice and can harm the child's interests. This centre is

indeed unknown to certain players in the field, which means that it isn't always contacted when there is a minor who is a presumed victim of trafficking or smuggling. Official recognition would limit the risk of a potential child victim being referred to other services that aren't appropriate for their situation. In addition, it is important to limit the interventions in favour of the beneficiary. Support for minors is indeed completely different than that for adults. It is essential for a child to be in a reassuring environment. An increased number of players is an extra stress factor and has an impact on the understanding of the situation. In addition, official recognition would allow direct contact with the different authorities, not only to ensure better care for the victim overall, but also as regards the residence procedure. The duration of the support provided by Esperanto would thus be recognised, even if the young person initially chooses another residence procedure, or if they are not in a position to quickly make statements, or if for one reason or another, the judicial proceeding can't go ahead. Lastly, this centre has special expertise in minors who are presumed victims and it cooperates with frontline players. This expertise should be recognised as a stakeholder in the fight against human trafficking. This would allow Esperanto to play an active role in the fight against human trafficking and to be able to exchange with other players in the field. Myria recommends that the Interdepartmental Coordination Unit against the Smuggling and Trafficking of Human Beings take the necessary measures for this purpose (e.g. adaptation of the relevant Royal Decrees).

Furthermore, there is still no equivalent centre in Flanders despite various initiatives and recommendations, especially from the United

Nations Committee on the Rights of the Child. Centres such as Minor-Ndako don't offer the same guarantees of safety. Myria therefore recommends supporting the existing initiatives with a view to creating an equivalent centre to Esperanto in Flanders.

### 1.3. Adapt victim status for minors and develop a child-friendly information tool for minors on the 'human trafficking' procedure

Very few minors benefit from the residence procedure as victims of human trafficking. In 2015, only 14 foreign minors who were victims of trafficking (out of 117 new victims) actually received a residence permit for the first time from the IO within the framework of this procedure. In 2016, six out of 119 victims received one<sup>340</sup>. One of the reasons relates to the procedure which is dependent on cooperation with the law and the strict requirements associated with it. Minors are afraid, and they fear reprisals against themselves or their family back in the country of origin. Others would like to cooperate but aren't able to provide sufficient elements that would allow the exploiter to be identified. And others would prefer to go straight home. Furthermore, a minor exploited by their family and caught up in a conflict of loyalty, often won't dare to file a complaint against them.

Proper information in a language accessible to the foreign minor is therefore essential, concerning both their rights as well as the possibilities and limits offered by the requirements of the trafficking procedure. They must be able to decide with full knowledge of the facts whether or not to make a statement. It could be useful to develop a child-friendly information tool. It is also in the interest of the minor that the persons who

<sup>340</sup> Note that those concerned weren't only unaccompanied foreign minors but also sometimes the children of adult victims.

exploited them be prosecuted. Consequently, it should at least be possible to apply the 'human trafficking' procedure in a flexible manner.

Furthermore, both the Committee on the Rights of the Child and, more recently, GRETA (the Council of Europe's independent group of experts responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings) recommend that Belgium grant child victims of trafficking residence permits without any obligation to collaborate with the law. In its last assessment report from November 2017, GRETA also recommended that the Belgian authorities "take extra measures to guarantee that child victims of trafficking actually receive a residence permit, in full conformity with Article 14(2) of the Convention".

The Interdepartmental Unit should set up an independent group of experts, which examines the issue of child victims of human trafficking. In concrete terms, this group of experts would examine issues in terms of detection, victim status and the reception of child victims of human trafficking, as well as the measures to be adopted. A functional system for child victims of human trafficking should be developed within this framework, which is capable of detecting a large flow of these victims and receiving them in accordance with international obligations. The issue of an 'objective victimisation' status, for minors who are presumed victims, and its terms, should also be discussed within this work group<sup>341</sup>. The status should thus be granted with no obligation to make a statement to the police or to file a complaint.

#### 1.4. Pay particular attention to the special situation of Nigerian child victims

1.4.1. Raise awareness among the various police departments and prosecutors concerning the specific vulnerable situation of Nigerian minors. In general, there is only one chance to detect them as victims. The pimps force them to say that they are adults. Police departments must be made aware of the fact that they can question the age of majority of these girls and report them to the guardianship services as unaccompanied foreign minors.

In the case of the Nigerian minors, it is above all the detection of victims that poses a problem for a variety of reasons. The minors are obliged by their pimp to present themselves as adults and sometimes ask for asylum so that they can be 'put to work' legally. The guardianship service is sometimes only contacted when the police are certain that the young girl is a minor. However, many young Nigerian girls don't have a birth certificate or identity papers and don't always know when they were born. Therefore, the police base themselves on their statements, in which they assert that they are adults.

It is also important to be aware that there is only one opportunity to intervene to extract a Nigerian victim from the hands of her 'madam' and the prostitution network. The Nigerian networks are active on an international scale and move their victims to Spain or Sweden when they are caught in the police radar. If the intervention is negative, the victim usually disappears. When taking in these victims, it is therefore necessary to ensure that they don't fall into the hands of the Nigerian prostitution network again.

<sup>341</sup> Above, Part 2, Chapter 1, point 2.4.3 and point 2.5.



#### 1.4.2. Build a relationship of trust with the Nigerian victims in order to break the voodoo spells, by involving former victims (in a local team), among other things.

The specialised human trafficking unit of Brussels federal judicial police has acquired expertise in obtaining the trust of victims and breaking voodoo spells. When a Nigerian victim is detected, the unit can contact a former Nigerian victim to act as interpreter.

As expert in terms of experience, she knows how to approach these victims and knows the problems and personal dilemmas they face. She can talk about voodoo with the girls and explain that these rituals have no impact on them. It is important that the girls immediately realise the police know about the voodoo practices and their impact.

The second phase takes place when the Nigerian victims arrive at a specialised centre, where they can be put in contact with former Nigerian victims who have been able to overcome voodoo and now help to proactively detect Nigerian victims. They serve as an example and often benefit from the victims' trust.

Besides that, specialised teams composed of social workers could also accompany the police, in the form of a sort of field team, during checks on 'rooms' where various minors are exploited, in order to approach the victims with empathy and convince them. Obviously, this form of work must also be subsidised.

#### 1.4.3. Set up a task force responsible for examining the problems associated with the particularly vulnerable situation of Nigerian child victims of human trafficking.

A work group should examine the problems that occur during detection, the referral to victim status and concerning the reception

structures for Nigerian child victims, as well as the possible solutions. This work group's field of study could even possibly be extended to other groups of child victims. It is essential that this work group is composed of a sufficient number of experts in the field.

#### 1.5. Ensure better application of the status of victim of human trafficking by the local police services in cities like Brussels. During the interception of a potential human trafficking victim, they must inform the unit specialised in human trafficking so the case can be followed up. Within this framework, the units specialised in human trafficking must be provided with the necessary investigative resources and the local authorities must be made aware of victim status.

Checks are often carried out by local police officers who have little or no expertise in human trafficking. They often don't know about the status of victim of human trafficking. Their attitude often pushes them to target people without papers and send them to a detention centre with a view to repatriating them or issuing them with an order to leave the territory. In the case of Nigerian victims without any identity papers, officers regularly don't bother asking them about their age. At the same time, 'madams' and their accessories aren't concerned by the checks because they have (fake) identity papers.

The local police must apply the directive on the status of victim of human trafficking and not consider potential victims of human trafficking with no residence permit as people without papers who should be expelled from the country as quickly as possible. If the local police units that patrol the red-light district are in the presence of a potential victim of human trafficking, they must immediately inform the

(local) police unit specialised in human trafficking so that it can take over from there. This means that these specialised units must have sufficient means. However, in practice, it would appear that officers who leave the service aren't always replaced. Expertise in human trafficking is an absolute necessity during the detection of victims. This is certainly the case for Nigerian victims under the influence of voodoo spells.

Local authorities often have to fulfil their duties with limited resources. Nevertheless, this

doesn't exonerate them from their responsibility.

It is essential that local governments of towns and municipalities are also informed of the fact that, in accordance with current regulations, potential victims of human trafficking must be referred to the specialised reception centres and can't be treated as illegally-staying persons without papers. Even if human trafficking is a federal matter, local governments can't limit themselves to simply combating disturbances.

## 2. Human smuggling: destroying the smugglers' business model

**2.1. Within the framework of the fight against human smuggling, the emphasis must be placed on the criminal law approach to smugglers and not on combating the victims of smuggling. For this purpose, the police must have sufficient investigative resources.**

The Belgian model is based on a criminal law approach to human smuggling, with the emphasis on combating the smugglers and not the illegally transported persons. The goal must be to dry up the funds and dismantle the international human smuggling network. The law and the police use social media and the internet for this purpose, as a means of research in their investigative work. This will enable the smugglers' business model to be undermined.

An effective way to combat human smuggling does exist. This model mustn't be disrupted by bad political choices only aimed at upsetting the smuggling market by engaging in a combat against transit migrants, within the framework of 'hunting down illegal immigrants'. Subsequently, there is no use in simply combating the problems with the aim of maintaining order to the detriment of the fight against human smuggling, as this would be

counter-productive to the criminal law approach to human smuggling. Police services shouldn't consider victims of human smuggling as illegal residents who must be removed from Belgium as quickly as possible, but as people who are a major source of information in the fight against smugglers.

Within the framework of a criminal law approach to human smuggling, the emphasis must be placed on the collection of evidence against the smugglers. Police checks must above all be aimed at the places where smugglers can be caught red-handed. During interceptions conducted within the framework of human smuggling, the police must have sufficient investigative resources available to read the mobile phones that contain crucial data on the phone's usage and social media. However, this is seldom the case since the police also have to be available for other interventions at the same time.

**2.2. Dry up the human smuggling networks' funding through an international chain approach**

Human smuggling networks are run by criminal entrepreneurs who organise and run their criminal activities like a multinational. Good

international collaboration and a vast financial investigation are the most effective methods to affect and financially dry up the smugglers' networks. 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. The smuggling leaders frequently live in the United Kingdom, a destination country, where they invest the proceeds from their criminal activities in companies such as car washes or the hotel & catering industry. Another of the smugglers' strategies consists of securely transferring the fruits of their criminal activities to their countries of origin.

Within the framework of an international cooperation, it is important that necessary financial seizures are requested and executed in the United Kingdom, which is a destination country. Owing to a lack of time, some prosecutors don't always tend to apply these international procedures. However, they are necessary if we want to close the financial tap and dismantle the smuggling network. To break the smugglers' business model, all their criminal assets must be taken from them. This way, the smugglers will be hit where it hurts them the most: in their wallet.

### 2.3. Set up a 'human smuggling' work group in an effort to improve the system, especially the application of the status of victim of smuggling. Victim statements play a crucial role in the investigation. However, the necessary conditions must be created to encourage trust among victims of smuggling so that they are inclined to collaborate.

The Belgian model can certainly be improved, especially regarding implementation by frontline players and prosecutors. To achieve this, a 'human smuggling' work group should be

created to elaborate measures aimed at improving the anti-smuggling system in the field without unsettling the foundations of the system and without necessarily reinforcing or relaxing the victim status conditions.

As regards the anti-smuggling system, there are a variety of problems which means it isn't always easy to win the trust of victims of human smuggling. These problems are reflected by the attitude of frontline players, a lack of awareness among the police and prosecutors, the way in which human smuggling victims are sometimes locked up with their smuggler after their interception, and the lack of interpreters and social workers to win the trust of the human smuggling victims.

A human approach to victims of human smuggling can offer the investigation a greater added value. The phone data of human smuggling victims is crucial to opening an investigation. A human approach to human smuggling victims is therefore essential 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. They can provide the smugglers' phone numbers or additional information regarding messages, or make statements.

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 status. The keyword behind this collaboration with human smuggling victims is trust.

We mustn't forget that victims of human smuggling often have a feeling of loyalty towards the smuggler. During interceptions conducted within the framework of human smuggling, it is important to separate the

smuggler from the victims as quickly as possible. Currently, smuggling victims are often arrested with the smuggler and then locked up together. The latter then has plenty of time to influence them. During interceptions carried out within the framework of human smuggling, the police should be accompanied by social workers and interpreters. The latter must be easily recognisable so that the smuggling victims can immediately distinguish them from the police, whom they tend to mistrust. With the help of interpreters, the social workers can speak to the human smuggling victims and identify the victims of human smuggling who can be considered for victim status. It is important that these social workers pay the necessary attention to certain human smuggling victims who, owing to their experiences with their smuggler, will be more easily inclined to collaborate. For instance, there are victims of human smuggling who, after having experienced a situation of duress or conflict with their smuggler, have taken the initiative to make a statement after their detection. It is important to win the trust of these human smuggling victims from the start and, following the agreement of the competent prosecutor in human smuggling matters, immediately take them to a specialised centre for victims where they will be supported.

#### **2.4. Raise awareness and build up expertise in terms of human smuggling**

The police and judges in Flanders and Brussels have a great deal of expertise in human smuggling. For more than 20 years, human smuggling networks have been active along the E40 motorway in the direction of the Belgian coast. These networks are criminal organisations that learn lessons from their mistakes and adapt to constantly evolving contextual factors. Smugglers now know they run a greater risk of being intercepted on this

traditional migration route along the E40, owing to the expertise accumulated by frontline players and prosecutors in these regions. Consequently, we are witnessing a shift in the migration route towards Wallonia, which has little experience in the fight against human smuggling and thus has no relevant expertise in the matter. Therefore, police and judges in Wallonia must receive continuous training, as a matter of urgency, on the fight against human smuggling in order to avoid future human smuggling tragedies, insofar as it is possible. Frontline services and prosecutors from all regions in Belgium must be involved in the existing human smuggling collaboration platforms, such as the E40 collaboration. This way, the existing best practices and case law can be shared more easily and expertise can be formed more quickly in Wallonia.

It should also be noted that the status of victim of aggravated smuggling is too seldom applied. Some local police services still aren't sufficiently informed of the existence of this status. Local and federal police services and prosecutors must therefore be made more aware of the application of victim status and of an appropriate approach to win the trust of victims of human smuggling. An important asset is the multidisciplinary collaboration with the reception centres specialised in victims of human trafficking and smuggling, which must be increased.

## Annex: Recommendations

### HUMAN TRAFFICKING: IMPROVING THE DETECTION AND PROTECTION OF CHILD VICTIMS

		Recipient
<b>2018/32</b>	Continue, intensify and diversify training efforts for frontline players, prosecutors, guardians and youth support services regarding the trafficking of minors.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> <li>Guardianship service</li> </ul>
<b>2018/33</b>	Improve care for unaccompanied foreign minors who are presumed victims of human trafficking by officially recognising the 'Esperanto' reception centre as a specialised reception centre, and by creating an equivalent structure in Flanders.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit (policy level)</li> </ul>
<b>2018/34</b>	Adapt victim status for minors and develop a child-friendly information tool for minors on the 'human trafficking' procedure.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> </ul>
<b>2018/35</b>	Raise awareness among the various police departments and prosecutors concerning the specific vulnerable situation of Nigerian minors; make police departments aware of the fact that they can question the age of majority of these girls and report them to the guardianship service as unaccompanied foreign minors.	<ul style="list-style-type: none"> <li>Police</li> <li>Judiciary's Trafficking and Human Smuggling network of expertise</li> <li>Interdepartmental coordination unit</li> </ul>
<b>2018/36</b>	Build a relationship of trust with Nigerian victims in order to break the voodoo spells, by involving former victims (in a local team), among other things.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> <li>Police</li> </ul>
<b>2018/37</b>	Set up a task force responsible for examining the problems associated with the particularly vulnerable situation of Nigerian child victims of human trafficking.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> </ul>
<b>2018/38</b>	Ensure better application of the status of victim of human trafficking by local police services and, when a potential human trafficking victim is intercepted, inform the unit specialised in human trafficking so the case can be followed up. Within this framework, the units specialised in human trafficking must have the necessary investigative resources and the local authorities must be aware of victim status.	<ul style="list-style-type: none"> <li>Local police departments in cities like Brussels</li> <li>Local authorities in cities</li> </ul>

## HUMAN SMUGGLING: DESTROYING THE SMUGGLERS' BUSINESS MODEL

		Recipient
2018/39	Place the emphasis on the criminal law approach to smugglers and not on counteracting victims of smuggling. For this purpose, the police must have sufficient investigative resources.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> <li>Federal political bodies (Justice and Interior Ministers) and local ones (governors and mayors)</li> </ul>
2018/40	Dry up the human smuggling networks' funding through an international chain approach.	<ul style="list-style-type: none"> <li>Judiciary's Trafficking and Human Smuggling network of expertise</li> <li>Federal prosecutor's office</li> <li>Human smuggling reference judges</li> </ul>
2018/41	Create a 'human smuggling' work group in order to improve the system and, in particular, the application of the status of victim of smuggling. Victim statements play a crucial role in the investigation. However, the necessary conditions must be created to encourage trust among victims of smuggling so that they are inclined to collaborate.	<ul style="list-style-type: none"> <li>Interdepartmental coordination unit</li> </ul>
2018/42	Raise awareness and build expertise in terms of human smuggling.	<ul style="list-style-type: none"> <li>Judiciary's Trafficking and Human Smuggling network of expertise</li> <li>Police training services</li> </ul>



# COLOPHON

*Assessment report 2018, Independent National Rapporteur on Trafficking in Human Beings*

*Minors at major risk*

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Myria, the Federal Migration Centre, is an independent public institution. It analyses migration, defends the rights of foreign nationals and combats human trafficking. Myria advocates a government policy based on factual knowledge and respect for human rights.

The purpose of the report on Human Trafficking and Smuggling is to provide an independent assessment of the evolution and results of the fight against human trafficking and smuggling.

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