



Annual Evaluation Report

2019

Trafficking and smuggling of human beings

Empowering victims



Federal Migration Centre

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INTRODUCTION

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is the title of Myria's 2019 annual report on the trafficking and smuggling of human beings. As the Belgian independent rapporteur on human trafficking, Myria fulfils its legal mandate by compiling an independent and public report.

The fight against human trafficking and smuggling is assessed and the phenomena are examined in detail.

At the beginning of the 1990s, Belgium embarked on the fight against human trafficking. It has played a pioneering role. Innovative fieldwork with exploited sex workers, a landmark book by a passionate investigative journalist, the commitment of the Royal Family and the well-structured work of a parliamentary committee of inquiry undeniably played a role in creating this impetus.

There have been numerous occasions – and there will be more in the coming years – to review a quarter century of fighting human trafficking. But if we look at what is happening around us, it is clear that this fight is threatened by stagnation.

Several factors explain this situation. The fight against human trafficking is no longer really a priority. The specialised centres for victims have been fighting in vain for many years to obtain structural funding and the various stakeholders – either together or separately – haven't succeeded in developing an overall picture of the phenomenon of human trafficking.

For the past ten years or so, this annual report has been gathering key figures from the six stakeholders. The data is reliable and offers a relatively faithful picture of the evolution of the official response to the phenomenon, but that is all. What you see, is what we get. Myria is often questioned about the indications and data concerning many at-risk groups and phenomena in the context of human trafficking, but it is generally difficult to give an answer.

The development of comparable data, and the expansion and intensification of the analytical capacity to better grasp and interpret the phenomenon of human trafficking are major challenges, without being a priority on today's political agenda.

To the extent possible, Myria aims to provide an accurate image of the phenomena of human trafficking and smuggling, thanks to the unique and proven manner in which this report is constructed.

It involves a combination of three work methods:

- Myria is constantly listening to what is happening in practice, to the men and women who lead the battle every day;
- Myria carefully examines every case for which it is involved in judicial proceedings;
- Myria follows the development of the legal instruments with a critical and very attentive eye. This is the keystone.

This approach leads us to focus once again on the issue of victims. Myria endeavours to demonstrate to what extent the right to legal assistance, participation in criminal proceedings and the right to protection are closely linked. The battle for justice for victims is far from won.

For those who wish to have an idea of how human trafficking works and the implications of an approach that protects, helps and delivers justice to the victims, please refer to the case mentioned on page 74 of this annual report. It concerns a case of labour exploitation in a pallet company and covers all the aspects: the obligation to provide information, the role of victim support centres, participation in criminal proceedings, the right to protection and compensation, as well as the time factor. All in all, a long and complex procedure that must also empower victims.

And it is precisely this empowerment of victims that Myria wishes to contribute to through this annual report.

I wish you a stimulating and enlightening read,

Koen Dewulf,
Acting director

Part 1:
Myria in
action



1. Situation institutionnelle

Myria, le Centre fédéral Migration, exerce en tant qu'organisme public autonome en toute indépendance, trois missions légales complémentaires : veiller au respect des droits fondamentaux des étrangers, informer sur la nature et l'ampleur des flux migratoires et stimuler la lutte contre la traite et le trafic des êtres humains. Myria est né le 15 mars 2014 et dispose d'une équipe de 16 équivalents temps plein.

Myria est géré par un conseil d'administration, nommé par le parlement fédéral, chargé notamment de déterminer la politique générale, d'arrêter les comptes, de définir la politique de communication et de décider ou non d'ester en justice dans des dossiers de traite ou de trafic des êtres humains. Le directeur assure la gestion journalière et budgétaire ainsi que l'exécution des décisions du conseil d'administration et la préparation des recommandations.

Les membres du conseil d'administration du Centre fédéral Migration au 1^{er} septembre 2019

Effectifs néerlandophones	Suppléants néerlandophones
Mme Shaireen Aftab (présidente) M. Yves Aerts Mme Els Schelfhout M. Herman Van Goethem M. Jogchum Vrielink	Mme Caroline Deiteren M. Jan Theunis Mme Jacqueline Goegebeur M. Bernard Hubeau M. Selahattin Kocak
Effectifs francophones	Suppléants francophones
M. Louis-Léon Christiaens Mme Sotieta Ngo Mme Christine Nina Niyonsavye Mme Bernadette Renauld M. Thierry Delaval	M. Daniel Soudant Mme Maïté De Rue* Mme Christine Kulakowski Mme Claire Godding M. Patrick Wautelet

* Démission acceptée le 16 avril 2019.

2. Comptes et situation financière

Le bilan 2018 affiche un **boni de 46.000 euros**. Ce boni succède à un boni 2017 de 200.925 euros. La succession de ces « bons » résultats doit être relativisée : ils reposent largement sur une gestion rationnelle et mesurée de nos moyens et sur des privations importantes (études et campagnes de communication).

Bilan au 31 décembre 2018 (x € 1.000)			
Actif	1.626	Passif	1.626
Actifs immobilisés	0	Capital de départ	835
Immobilisations corporelles	22	Résultat cumulé	269
Actifs circulants	1.604	Dettes	522
Créances commerciales	96	Fournisseurs	146
Actifs financiers	77	Dettes sociales	114
Placements de trésorerie	250	Autres dettes	262
Valeurs disponibles	1.173		
Actifs circulants	8		
Compte de résultats 1 janvier 2018 - 31 décembre 2018 (x € 1.000)			
Produits	1.821	Charges	1.775
Subventions	1.596	Frais de projets	152
Revenus de projets	221	Frais de fonctionnement	477
Revenus divers	4	Frais de personnel	1.135
		Amortissements	11
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3. Le plan stratégique triennal 2019-2021

Myria a terminé en 2018 la dernière année de son plan stratégique triennal 2016-2018 et a donc procédé à la rédaction de son nouveau plan, pour les années 2019 à 2021. À cette fin, l'équipe de Myria s'est attelée à la rédaction d'un plan stratégique triennal 2019-2021 qui tient compte de l'ensemble de ses obligations :

- Réalisation de ses missions
- Maintien d'un haut niveau d'expertise
- Attentes de toutes les parties intéressées
- Soutien individuel conservé comme priorité
- Rôle d'information vis-à-vis du grand public

Myria a souhaité réaliser ce plan de manière participative et ouverte. Deux processus parallèles ont été développés, tout au long de l'année 2018, à cette fin :

- d'une part un processus interne participatif. L'équipe de Myria s'est réunie par groupes thématiques, dans une série de mises au vert, afin de travailler sur ses priorités durant les trois années à venir. Il en est ressorti un certain nombre d'axes qui ont été discutés lors d'une mise au vert de deux jours.

- d'autre part une enquête commanditée auprès d'un prestataire privé concernant les attentes et la perception de Myria chez nos différents partenaires (ONG, institutions, monde politique, ...).

Sur cette base, l'équipe de Myria a réalisé ce plan triennal 2019-2021, assorti directement du plan opérationnel 2019. Neuf axes stratégiques ont été identifiés :

1. Pérenniser l'institution
2. Rationnaliser la réalisation de nos publications
3. Optimaliser le travail politique
4. Investir davantage encore dans l'aide aux personnes
5. Davantage utiliser et valoriser le travail judiciaire
6. Continuer à investir le rôle de Myria comme plateforme
7. Optimaliser la communication, davantage vers le grand public
8. Travailler spécifiquement sur la migration de transit
9. Travailler davantage sur la migration économique et la liberté de circulation

Le plan stratégique triennal a été approuvé par le conseil d'administration de Myria en date du 29 janvier 2019.

4. Myria en réseau : au niveau national

Gouvernement fédéral

L'année 2018 a été celle du processus d'écriture et d'adoption du désormais célèbre Pacte des Nations-Unies sur les migrations. En Belgique, le travail a été confié à la coordination de l'Ambassadeur et Envoyé Spécial Migration et Asile, M. Jean-Luc Bodson qui contribue à ce rapport (p. 25). Ce dernier a largement consulté l'ensemble des autorités ainsi que la société civile. Dans ce cadre, Myria a également été sollicité et a pu faire valoir ses remarques, propositions et critiques sur les projets de textes, dont certaines ont été prises en compte. Myria souligne la qualité du processus participatif développé à cette occasion et se réjouit que le Pacte ait in fine été adopté par la Belgique.

Par ailleurs, le 24 novembre 2018, Myria a été entendu par la Commission chargée de réfléchir aux conditions de rapatriements de personnes étrangères, présidée par M. Marc Bossuyt, afin de présenter l'institution, ses rapports en lien avec la politique d'éloignement, les chiffres les plus récents en la matière ainsi que ses recommandations principales. La Commission a publié un rapport intermédiaire en février 2019 spécifiant ne pas devoir répondre aux 19 recommandations du rapport de Myria « Retour, détention et éloignement des étrangers en Belgique » 2017, car ces dernières ne sont pas spécifiquement adressées à la Commission. Myria prévoit, dès lors, d'adresser des recommandations spécifiques à la Commission.

Parlement fédéral

Myria possède un ancrage fort au sein du Parlement fédéral, puisque les membres de son conseil d'administration sont désignés par celui-ci. Ce lien avec le Parlement est une conséquence de la volonté de garantir l'indépendance de l'institution vis-à-vis des actes du gouvernement. Tous les parlementaires reçoivent un exemplaire des deux rapports lors de leur parution.

Myria est ponctuellement appelé à livrer son expertise lorsqu'un point relevant de sa compétence est abordé :

- La 6 mars 2018, Myria a été auditionné par la Commission de la Justice au sujet du projet de loi « Droit civil et résolution des litiges ».

- Le 16 octobre 2018, Myria a été auditionné par la Commission de l'Intérieur pour donner un avis sur la proposition de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et visant à interdire l'enfermement de mineurs accompagnés (DOC 54 3045/001). Dans ce cadre, Myria a rappelé, à l'instar de nombreux spécialistes et institutions internationales, son opposition à la détention des enfants pour des raisons liées au statut migratoire de leur parent. En accord avec trois autres institutions indépendantes (le Médiateur fédéral, le Délégué général aux droits de l'enfant et le Kinderrechtencommissaris), Myria a également rappelé sa recommandation de réaliser une évaluation des mesures alternatives à la détention qui n'impliquent pas l'enfermement d'enfants. Enfin, Myria a souligné sa recommandation de prévoir plus de moyens humains et matériels pour les alternatives à la détention.

Unia

Unia, le Centre interfédéral pour l'égalité des chances, est sans conteste le partenaire le plus privilégié de Myria, avec lequel il formait jadis le Centre pour l'égalité des chances et la lutte contre le racisme. Cet ancrage commun se traduit encore aujourd'hui par une collaboration forte, un partage de services transversaux et des relations humaines précieuses. En outre, les membres du Conseil d'administration de Myria siègent également au Conseil d'administration d'Unia.

Sur les dossiers de fond, les collaborations avec Unia sont nombreuses et reflètent un socle de valeurs communes partagées par les deux institutions. En 2018, Myria a ainsi pris part à l'élaboration du monitoring socio-économique à la demande du SPF Emploi et d'Unia pour son expertise sur les données liées à l'intégration socio-économique des étrangers. Myria se félicite de l'avancée des connaissances des données et pour le débat public qu'offrent les données sur la position socio-économique selon le motif de délivrance des titres de séjour.

Réunion de contact Protection internationale

Depuis janvier 2016, Myria a repris l'organisation des réunions de contact réunissant les différents acteurs en matière d'asile organisées auparavant par le Comité belge d'aide aux réfugiés (CBAR).

L'objectif reste que les instances d'asile et les organismes actifs dans le domaine de la protection internationale, de l'accueil et du retour volontaire continuent de se rencontrer à l'occasion de cette réunion pour y échanger des informations dans un esprit de dialogue et de courtoisie. Les collaborateurs de Myria assurent l'animation de ces réunions et en rédigent les procès-verbaux, accessibles sur son site internet¹.

Groupe Transit des visiteurs en centre fermé

Myria a continué de participer en 2018, en tant que membre observateur, aux réunions (monitoring et politique) du Groupe Transit qui rassemble les organisations qui visitent les centres fermés et les maisons de retour. Dans ce contexte, il a soutenu le travail d'analyse du Groupe Transit sur les questions liées à la détention et l'éloignement des étrangers. Il a également fourni un soutien juridique aux visiteurs des centres fermés et des maisons de retour notamment dans le cadre du suivi de dossiers individuels. Myria a aussi interpellé les autorités compétentes suite à des interpellations des visiteurs sur des thématiques plus structurelles (entre autres sur les conditions de détention et d'accès à l'aide juridique).

Plateforme institution nationale des droits de l'homme

Myria participe depuis 2014 à une plateforme de concertation instaurée entre les institutions belges exerçant partiellement ou entièrement un mandat d'institution chargé du respect des droits de l'homme.

Elle se réunit chaque mois pour échanger des informations pertinentes, dans l'attente d'une éventuelle création d'une institution nationale des droits de l'homme. Cette institution aurait pour vocation de coordonner une partie des activités des structures partageant la mission de promouvoir et protéger les droits humains.

Myria a assuré en 2018 la présidence tournante de cette plateforme, durant six mois. Il a aussi activement contribué à son animation en y présentant notamment son rapport « Traite et trafic des êtres humains » le 6 novembre 2018.

Plateforme Mineurs en exil

Myria a participé en 2018 en tant qu'observateur aux réunions des groupes de travail « familles dans la migration », « détention » et « MENAS » de la Plateforme Mineurs en exil.

Plateforme Justice pour Tous

En 2018, Myria a participé en tant qu'observateur aux réunions de travail de la Plateforme Justice pour Tous.

Plateforme sur l'acquisition de la nationalité belge

Myria a poursuivi en 2018 son travail de plateforme avec différents acteurs en contact avec des personnes souhaitant acquérir la nationalité belge. Une réunion a été organisée le 6 novembre 2018 pour faire le point sur les récentes modifications du Code de la nationalité belge. Auparavant, Myria avait assisté à une réunion des opérateurs de la Commission communautaire française au sein de la Région bruxelloise (Cocof) concernant notamment la problématique des cours d'intégration pour le public bruxellois francophone. Par ailleurs, Myria entretient des contacts réguliers et constructifs avec le service nationalité du SPF Justice. Ce travail de plateforme nourrit les recommandations formulées dans le chapitre nationalité du rapport *La migration en chiffres et en droits 2018 et 2019*.

Comité P

En 2018, Myria et le Comité ont signé une convention visant à formaliser et améliorer leurs échanges d'informations. Elle prévoit notamment les modalités de leurs échanges d'informations et la tenue d'une rencontre annuelle au minimum.

Cellule interdépartementale de lutte contre la traite et le trafic des êtres humains

Myria a poursuivi son rôle d'observateur participant au sein de la Cellule et de son bureau, dont il assure également le secrétariat. Une réunion de la cellule a ainsi eu lieu le 14 juin 2018. Elle a concerné principalement l'examen d'un addendum au plan d'action sur la traite des êtres humains, portant spécifiquement sur les mineurs. Par ailleurs, Myria a participé aux réunions du bureau de la cellule qui se tiennent mensuellement.

Réunions de coordination sur la traite des êtres humains au niveau des arrondissements judiciaires

Myria a participé aux réunions de coordinations tenues à Charleroi (janvier 2018) et à Gand (mars 2018).

¹ www.myria.be/fr/reunions-de-contact-protection-internationale.

Plateforme de circonstance ad hoc entre Médecins du Monde, Humain vzw et le Comité P

En février 2018, Myria a été sollicité par le Comité P. Ce dernier cherchait des informations pertinentes sur les droits fondamentaux des migrants de transit, dans le cadre de son enquête de contrôle portant sur le contrôle et la détention de migrants de transit par la police à l'occasion d'arrestations administratives massives. Myria a estimé pertinent de mettre le Comité P en contact avec deux ONG très actives sur le terrain : Médecins du Monde et l'asbl Humain. Tout en faisant part de ses propres constats et recommandations au Comité P (tant en matière de droits fondamentaux que de lutte contre le trafic d'êtres humains), Myria a facilité les contacts pour que ces associations puissent communiquer leur expertise et les résultats de leurs observations aux enquêteurs du Comité P, au cours de deux réunions (20 mars et 13 juin 2018). Le Comité P a publié son rapport en février 2019².

5. Myria en réseau : au niveau international

UNHCR

En partenariat avec l'UNHCR, Myria a lancé depuis avril 2017 un projet de regroupement familial avec les bénéficiaires d'une protection internationale (réfugiés reconnus et protections subsidiaires). Ce projet a été prolongé en 2018. Dans ce cadre, un juriste de Myria est personne de référence en la matière. Faciliter la vie familiale est un élément essentiel pour une protection efficace des réfugiés. L'objectif est de faciliter le regroupement familial avec les bénéficiaires d'une protection internationale en Belgique et de promouvoir la qualité de la procédure belge de regroupement familial et des visas humanitaires. Le projet se déroule dans un contexte où les demandes de regroupement familial avec des bénéficiaires d'une protection internationale sont nombreuses, en raison des taux élevés de reconnaissance de certaines nationalités au cours des dernières années. Myria prodigue des conseils par e-mail et par téléphone via son Helpdesk spécialisé les mardis et vendredis après-midi. Les questions peuvent également être posées aux permanences générales. Myria suit également les dossiers

individuels de regroupement familial et les demandes de visas humanitaires pour les membres de la famille, que ce soit ou non par l'intermédiaire de l'UNHCR ou des autorités compétentes. Le suivi des dossiers est toujours réalisé en collaboration avec des acteurs de première ligne (partenaires) comme des avocats, des assistants sociaux et des tuteurs qui soutiennent une demande sur le terrain. Myria a suivi 379 familles en 2018 par le biais des demandes d'information, dans le cadre desquelles 594 « activités » ont été enregistrées (e-mails et coups de téléphone). Myria a, en outre, ouvert 44 dossiers dans le cadre desquels 1.018 activités ont été enregistrées. Myria s'efforce également de soutenir ces acteurs en diffusant le plus largement possible l'information, si possible également par des formations et des présentations. Myria a également aidé l'UNHCR à mettre à jour ses brochures destinées aux usagers afin de les distribuer dans le courant de 2019. Myria a régulièrement communiqué des informations à ces partenaires, notamment deux listes de questions/réponses à l'attention de l'OE et des Affaires étrangères, ainsi qu'un rapport sur les réunions avec ces derniers.

En outre, Myria est une plateforme qui agit comme porte-parole de et comme personne de contact entre les différents acteurs concernés et les autorités publiques. En février 2018, Myria et l'UNHCR se sont entretenus avec le ministère des Affaires étrangères. En juin 2018, Myria a une nouvelle fois, en collaboration avec l'UNHCR, organisé une réunion annuelle avec les administrations concernées (OE et ministère des Affaires étrangères). En avril et octobre 2018, Myria a organisé une réunion de partenaires, réunissant respectivement 20 et 28 partenaires. Myria et l'UNHCR ont également organisé une réunion avec l'OIM pour échanger sur les activités en cours et la coopération future. Enfin, Myria tente de défendre le droit à la vie familiale de ce groupe cible en faisant des recommandations politiques aux institutions et autorités concernées. En 2018, le rapport annuel mettait l'accent sur le droit à la vie familiale et en particulier celui des familles de réfugiés. Lors de la présentation du rapport annuel en juin, Myria a également organisé et coordonné une table ronde sur ce thème avec une collaboratrice de l'UNHCR, des représentants de la Commission européenne, de Caritas, un universitaire et un avocat. En 2018, le document d'analyse conjoint UNHCR Myria a également été publié, reprenant les obstacles et les recommandations. Le projet fait l'objet d'un suivi étroit en partenariat avec l'UNHCR. Myria et l'UNHCR tiennent régulièrement des réunions de consultation, de coordination et de suivi. En dehors de ce projet, Myria a participé à plusieurs réunions organisées par l'UNHCR en 2018, notamment sur l'assistance juridique et la protection internationale.

² <https://comitep.be/document/onderzoeksrapporten/2019-02-06%20transmigrants.pdf>.

Enfin, le directeur de Myria a été invité en juillet 2018 par la *Refugee Law Initiative* (Londres) pour exposer les fruits du partenariat entre Myria et l'UNHCR en matière de regroupement familial des personnes bénéficiant d'une protection internationale.

Réseau Européen des Migrations (REM)

Myria est l'un des partenaires du Point de Contact belge du Réseau Européen des Migrations (REM). Au niveau belge, la participation au REM est assurée par un point de contact multi-institutionnel, qui réunit des collaborateurs de quatre institutions : Myria, le Commissariat général aux Réfugiés et aux Apatrides (CGRA), Fedasil et l'OE. Le SPF Intérieur est chargé de la coordination du Point de Contact belge. Myria est membre du comité directeur du Point de Contact belge et prend activement part à son fonctionnement quotidien, en collaboration avec les institutions mentionnées ci-dessus.

Le REM a été établi par une Décision du Conseil de l'UE (2008/381/CE) afin de fournir des informations à jour, objectives, fiables et comparables sur la migration et l'asile en vue de soutenir les décisions dans ces domaines en Belgique et au sein de l'Union européenne. Il vise également à informer le grand public³.

En 2018, le REM a publié son rapport annuel 2017 sur la migration et l'asile dans l'UE (au niveau des États membres et au niveau européen), ainsi qu'une série d'études sur des thématiques spécifiques. Les sujets de ces études thématiques sont approuvés chaque année par le Comité directeur européen du REM. Sur la base d'une liste commune de questions, chaque État membre produit une étude nationale. Sur la base de ces études nationales, le REM produit une étude de synthèse comparative au niveau européen.

En 2018, les études thématiques ont couvert :

- l'intégration des ressortissants de pays tiers sur le marché du travail
- l'impact de la libéralisation du régime des visas sur les pays de destination
- les bénéficiaires de protection internationale qui voyagent dans le pays d'origine et la fin éventuelle du statut de protection
- l'attraction et la conservation des étudiants internationaux

Myria a activement contribué à l'élaboration de deux études : celle sur l'intégration professionnelle des ressortissants de pays tiers et celle sur les bénéficiaires d'une protection internationale se rendant dans leur pays d'origine. Pour cette dernière, Myria a également été membre du comité consultatif, tant au niveau européen que national.

En 2018, Myria a également participé aux activités et manifestations du REM. Myria était partie prenante au comité d'accompagnement pour l'élaboration d'une étude nationale complémentaire sur l'intégration socioéconomique des personnes bénéficiant d'une protection internationale entre 2001 et fin 2014, réalisée par le *Centre de Recherche en Démographie* (UCLouvain). En décembre 2018 s'est tenue la conférence nationale annuelle du REM organisée par le Point de contact belge. Elle était consacrée aux développements les plus importants dans le domaine de la migration et de l'asile en Belgique en 2018. Lors de celle-ci, deux experts de Myria sont intervenus en présentant un aperçu des statistiques récentes sur les migrations légales et un point sur la situation des mineurs victimes de la traite et du trafic des êtres humains. Le directeur adjoint de Myria était modérateur de la conférence.

Réseau informel de rapporteurs nationaux et de mécanismes équivalents dans le domaine de la traite des êtres humains

Myria participe activement aux réunions du réseau informel des rapporteurs nationaux et mécanismes équivalents dans le domaine de la traite des êtres humains. Ces réunions sont co-organisées par la coordinatrice européenne de la lutte contre la traite des êtres humains, Mme Myria Vassiliadou et par la présidence de l'UE. Les thématiques abordées lors de ces réunions en juin et décembre 2018 ont notamment concerné la collaboration des agences de l'UE en vue de lutter ensemble contre la traite des êtres humains, la coopération avec les Balkans et la présentation du second rapport de la Commission européenne sur les progrès faits par les États membres en matière de lutte contre la traite des êtres humains.

Réseau européen des organisations nationales des droits de l'homme (ENNHRI)

Myria est membre de ENNHRI, un réseau régional qui réunit les institutions nationales pour les droits de l'homme de l'Europe entière et qui compte environ une quarantaine de membres. Il a pour mission d'améliorer la promotion et la protection des droits de l'homme en

³ Voir le site du REM : <https://emnbelgium.be>.

Europe, en soutenant le développement des institutions nationales pour les droits de l'homme et en suscitant leur collaboration sur des thématiques spécifiques.

Dans ce contexte, il a participé à l'Assemblée générale et à la Conférence annuelle (General Assembly Meeting and Annual Conference 2018), qui se sont tenues à Athènes les 24 et 25 octobre 2018. Il a accueilli une réunion de travail du Asylum and Migration Working Group, dans ses bureaux, à Bruxelles, les 13 et 14 novembre 2018.

Comité des droits de l'enfant

Dans le cadre de l'examen des 5ème et 6èmes rapports périodiques soumis par la Belgique au Comité des droits de l'enfant des Nations Unies, Myria a déposé, en collaboration avec Unia et le Service de lutte contre la pauvreté, un rapport parallèle (1er mars 2018). Myria a également participé, au nom des trois organismes, à la pré-session qui réunissait ONG et INDH en juin 2018.

6. Trafficking and smuggling of human beings

6.1. | Myria in court - 2018

Every year, Myria files civil lawsuits in cases of human trafficking or smuggling. This competence is enshrined directly in its organic law. The latter explicitly authorises Myria to take action based on the Law of 13 April 1995 containing provisions with a view to repressing the trafficking and smuggling of human beings. In this section, Myria 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 and opportunity, in line with its three-year strategic and operational plan.

When instituting civil proceedings, Myria is completely independent. Filing civil lawsuits is a source of expertise for the role of independent rapporteur on human trafficking, as explicitly mentioned in the royal decree granting it this role. The following criteria are used to guide these choices: the symptomatic nature of the case, especially in the context of Myria's reporting mission, the importance of the hoped-for case law, and the necessity of the legal action (to support the victims, for instance).

6.2. | New cases in 2018

In 2018, Myria filed civil lawsuits in six new cases: two concerning human trafficking and four concerning human smuggling.

6.2.1. | Human trafficking

Labour exploitation

The two new cases of human trafficking for which Myria filed a civil suit concern the road haulage sector.

Road haulage sector - Antwerp (Mechelen)

The case concerns acts of labour exploitation by a Belgian road haulage company, which exploited 30 to 50 posted workers from Ukraine and Poland. Their working and living conditions were contrary to human dignity: unpaid wages, obligation to execute transport assignments for weeks on end with no days off; obliged to sleep in their lorry or in the haulier's depot, often in unhygienic conditions.

The company set up a letterbox company in Poland, which acted as a subcontractor. The same Belgian entrepreneurs were active in it as directors.

Road haulage sector - Liège

This case from the federal prosecutor's office concerns social dumping acts in the road haulage sector. While the case is primarily about the fight against social fraud, it also contains a 'human trafficking' component. This well-known road haulage company employs many drivers from Eastern European countries. They mainly come from Romania and Slovakia, and although they are working in Belgium, they are officially paid the rates of their country of origin and are subject to their country's social security system.

The charge of human trafficking is associated with the drivers' accommodation, a serious work accident concerning one driver and wages considerably lower than the Belgian rates. Deductions were also taken from their wages.

6.2.2. | Human smuggling

Three of the four human smuggling cases for which Myria filed a civil suit were opened in Dutch-speaking judicial districts.

The first case was opened in Ghent (Dendermonde). It concerns the human smuggling of 95 victims (including 10 minors from Sudan and Eritrea). As well as smuggling via parking areas on the motorways to the coast in an effort to reach the United Kingdom, this Egyptian human smuggling network also organised transportation to Canada with the help of fake papers. The migrants were mainly transported in refrigerated lorries. In this case, volunteers at Maximilian Park who hosted migrants and helped the smugglers, were also prosecuted for human smuggling and criminal organisation, just like the main defendants in the case.

Myria filed a civil suit against nine of the 12 defendants. It considered that the three others (three of the four people hosting migrants weren't guilty of human smuggling, as they hadn't personally received any financial advantage. Myria only has the power to engage in legal proceedings concerning human smuggling (Art. 77 bis of the Law of 15 December 1980 on the access to the territory, residence, establishment and removal of foreigners) and not, for instance, helping and abetting illegal immigration whose main purpose isn't principally humanitarian (Art. 77 of the Law of 15 December 1980). During the hearing at Dendermonde Criminal Court, the defendants asked to be tried in French. The court upheld this in a judgment of 4 June 2018. The case was then referred to the French-speaking Criminal Court of Brussels. This court rendered a judgment on 12 December 2018, except with regard to one defendant whose case was dealt with separately. The court made a ruling regarding this defendant on 14 March 2019. This case is now closed for Myria, who didn't appeal, contrary to the public prosecutor's office. This case is discussed in the 'Case law' chapter of this report.

The second case concerns the 'human smuggling' component of the case linked to the tragic death of Mawda. The police engaged in a car chase with a van belonging to Kurdish smugglers along the E42 motorway between Namur and Mons. During this car chase, the two-year-old girl was fatally injured by a bullet fired by the police. Numerous victims of Kurdish human smuggling were in the van. Myria filed a civil suit in the smuggling case heard in Liège. As for the acts associated with the death, they were the subject of another criminal investigation in Mons. Myria also referred the matter to Committee P, concerning several aspects associated with this police action.

The third case was heard in Bruges. It concerns acts of human smuggling committed by an Albanian smuggling network active along the E40 motorway in the direction of the Belgian coast, with a view to reaching the United Kingdom. Hundreds of Albanians were smuggled in refrigerated lorries by an international network. The three Albanian leaders of this network collaborated with Eastern European lorry drivers. The three smuggling leaders coordinated the illegal transportation from the United Kingdom. They were arrested there and extradited to Belgium on the basis of a European arrest warrant. This is an exemplary case in terms of international cooperation with the United Kingdom. It was tried by the Criminal Court of Bruges on 14 March 2018. The judgment was opposed and an appeal was filed. This case is discussed in the 'Case law' chapter of this report.

Finally, the last case was dealt with by the federal prosecutor's office. A joint investigation team (JIT) worked on the case, concerning a network that was dismantled in EU countries. In Belgium, the smugglers used cheap hotels as safe houses. The final destination was always the United Kingdom. The Afghani and Iraqi leaders of the international network lived in Turkey and the United Kingdom. The drivers, who were accomplices to the smuggling, were generally recruited in the parking areas along Belgian motorways. The smugglers operating in Belgium were tried by Ghent Criminal Court on 25 March 2019. An appeal was made against this judgment. This case is discussed in the 'Case law' chapter of this report.

6.3. | Cases closed in 2018

Five cases were closed by a final judicial decision: a case of sexual exploitation and four cases of labour exploitation. No human smuggling cases were definitely closed in 2018.

6.3.1 | Sexual exploitation

A wide-scale case of sexual exploitation in Thai massage parlours was concluded. Thai women were lured to Belgium on the basis of false promises, such as marriage or work. They arrived here on a tourist visa. A marriage (sham marriage, if necessary) was then organised, thanks to which the girls obtained papers and could work. Other girls were staying illegally. The majority of them were unaware they would have to prostitute themselves. As soon as they arrived, their papers were confiscated and they had to 'work' six or seven days a week, often for long hours. Six defendants, including a Belgian accountant living in Spain and an owner of several parlours in Flanders, were prosecuted. As soon as they arrived, their papers were confiscated and they had to 'work' six or seven days a week, often for long hours. Six defendants, including a Belgian accountant living in Spain and an owner of several parlours in Flanders, were prosecuted. The defendants were convicted at first instance by Brussels Criminal Court on 27 January 2016. In a judgment of 13 November 2018, Brussels Court of Appeal found that the acts were time barred. Myria was compensated with the amount the perpetrators were sentenced to pay (€ 500 + € 220 in legal costs). This case was discussed in a previous report.⁴ It is also discussed in the 'Case law' chapter of this report.

6.3.2. | Labour exploitation

Four cases of labour exploitation were closed. Three of them concern the construction sector. The fourth one concerns the night shop sector.

The first case involved several defendants who had exploited Romanian workers in their demolition company. The workers were made to work in appalling conditions: long working hours, very low wages, substandard accommodation.

The defendants were definitively convicted by Mechelen Criminal Court in a judgment of 22 March 2018. This case was discussed in a previous report.⁵

The second case concerns a Belgian company that exploited Bulgarian and Croatian workers. These people were recruited in their country of origin and thought they would be working as employees. In reality, they were working as bogus self-employed workers. Their working conditions were contrary to human dignity and they were also threatened. One worker was also the victim of a serious work accident. The defendants were convicted for human trafficking by Tongeren Criminal Court on 9 February 2017. Antwerp Court of Appeal generally upheld the first judgment in a judgment of 13 September 2018. This case is discussed in the 'Case law' part of this report.

The third case concerns Polish and Romanian workers exploited as bogus self-employed workers. The case was opened following the findings of the Financial Intelligence Processing Unit (CTIF) concerning a company's suspicious transactions. The workers were regularly intimidated and threatened, and the rent for their insalubrious accommodation was also deducted from their wages. The defendants were convicted by Turnhout Criminal Court in a judgment of 22 April 2015. Two civil party victims filed an appeal. One of them disputed the fact that the court had denied them compensation for material damage, while the other one disputed the amount awarded for non-material damage. In a judgment of 26 April 2018, Antwerp Court of Appeal awarded the civil party compensation for material damage, thus modifying the court's decision on this point. On the other hand, it didn't review the amount of the compensation for material damage disputed by the other civil party. The case was discussed in the 'Case law' section of a previous report.⁶

Lastly, the fourth case concerns acts of labour exploitation by the owner of various night shops and clothes shops. Through his companies, he used various setups to exploit at least 15 Pakistani victims. He controlled them using cameras and 'sacked' them if he wasn't happy with them by taking back their shares, etc. The accountant who helped with the setup was also prosecuted.

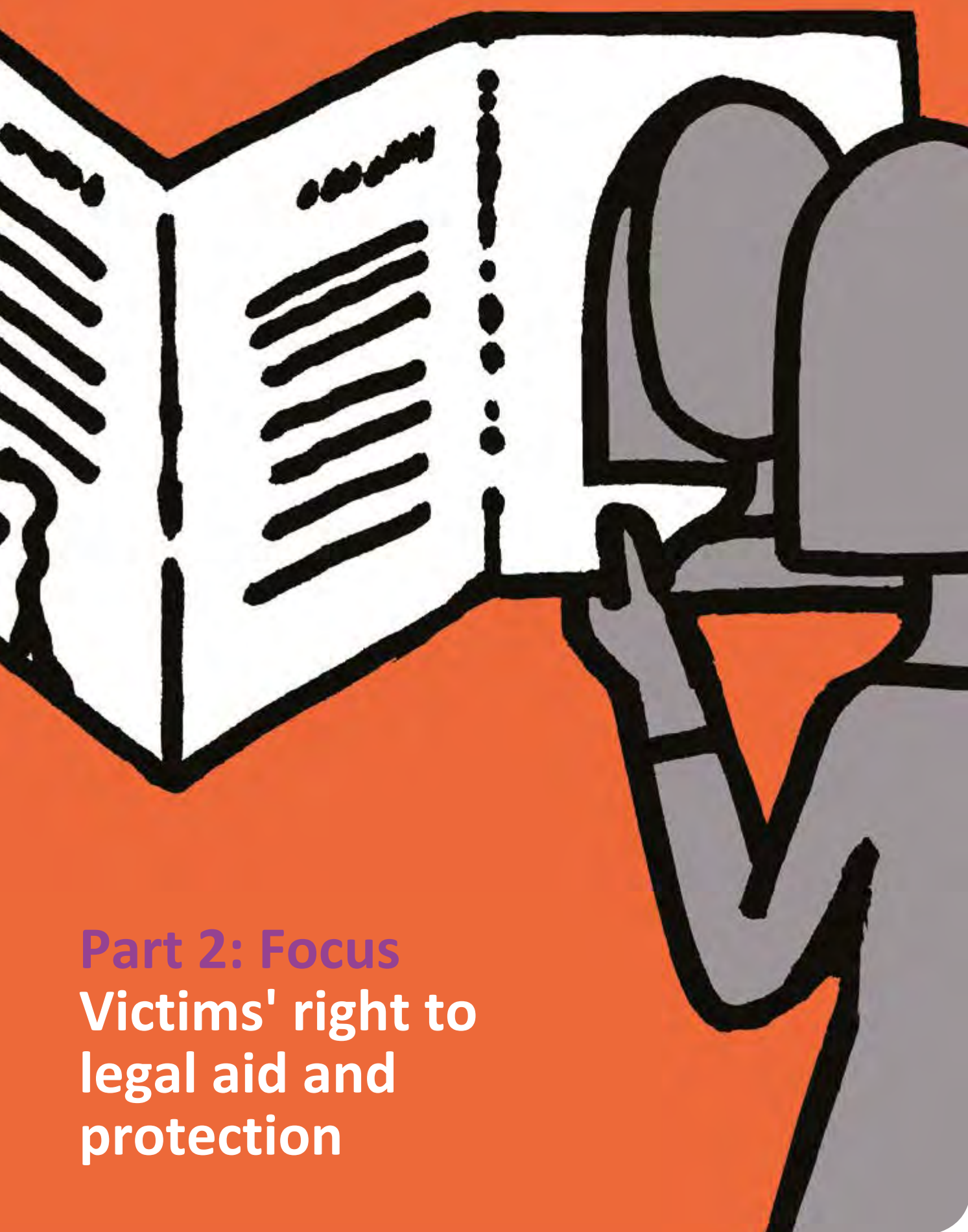
⁴ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 156-158.

⁵ MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 140-141.

⁶ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 165-167. Also see note 303 in the 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 144-145.

Ypres Criminal Court convicted the defendants chiefly for human trafficking in a judgment of 8 January 2018. The decision was upheld overall on appeal by Ghent Court of Appeal in a judgment of 28 November 2018. This case was discussed in the previous report.⁷ The appeal decision is dealt with in the 'Case law' section of this report.

⁷ MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 117-118.



Part 2: Focus
Victims' right to
legal aid and
protection

For this year's report, Myria has chosen legal aid for victims of human trafficking as its focus. This choice is in line with that of GRETA (Council of Europe expert group responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings⁸), which has placed it at the centre of the Convention's third evaluation round.⁹ Belgium will be assessed in 2021.¹⁰

Myria has nevertheless decided to examine this theme in greater depth by also looking at the principle rights of victims (associated with criminal proceedings) that feature in the European anti-trafficking directive of 2011¹¹, the 2012 directive on victims of crime¹², as well as the Council of Europe convention on human trafficking. European Directive 2004/81/EC on the residence permit issued to victims of trafficking in human beings who cooperate with the competent authorities¹³ was also taken into account.

Myria referred to several sources for this focus: existing literature interviews with the specialised reception centres for victims and two lawyers, concrete examples from case law and legal cases where a civil suit was filed.

This focus includes the following chapters:

- An overview of the rights provided for in the legal instruments serving as a basis for the focus and the Belgian support system for victims of human trafficking (Chapter 1);
- A practical analysis of the trafficking victims right to information and access to support services (Chapter 2);

- A presentation of the legal aid system in Belgium and how it affects the participation of trafficking victims in criminal proceedings, as well as their protection within this framework (Chapter 3)
- Special attention is given to the compensation of victims of human trafficking (Chapter 4) and the importance of financial investigations (Chapter 5)

The focus concludes with a concrete example of a case illustrating the points examined in the previous chapters.

It is also enriched by three external contributions. One of them, written by the director of a specialised reception centre, illustrates how the victims who are supported only represent the tip of the human trafficking iceberg. The second one, written by those in charge of the NSSO's ECOSOC teams, examines the duty of the NSSO's specialised inspection services (formerly the Social Inspectorate) to inform trafficking victims. The final one was written by a prosecutor from the federal prosecutor's office and discusses the importance of financial analysis in investigations relating to human trafficking, with a view to facilitating the compensation of victims, among other things.

8 Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005.

9 This evaluation is in the form of a questionnaire sent out beforehand, to which the state replies. It is called "Access to justice and effective remedies for victims of trafficking in human beings": <https://rm.coe.int/greta-2018-26-en/16808f0990>. An evaluation visit then takes place

10 <https://rm.coe.int/timetable-greta-3rd-evaluation-round/1680925834>.

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

12 European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA, O.G., L315 of 14 November 2012.

13 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, O.G., L261 of 6 August 2004.

Chapter 1

Overview of the rights of human trafficking victims

1. The provisions in the Council of Europe Convention and in the EU directives

Just like all victims of crime, victims of human trafficking benefit from specific rights. At European level, these rights are defined in several instruments: Directive 2011/36/EU on trafficking in human beings¹⁴ and Directive 2012/29/EU on the rights of victims of crime.¹⁵ A special system for granting residence permits to victims of trafficking who are third-country nationals and who

Another objective of the EU's 2011 anti-trafficking directive is to reinforce the protection of victims. cooperate with the authorities, is also provided for in Directive 2004/81/EC.¹⁶ As for the Council of Europe Convention on Action against Trafficking in

Human Beings¹⁷, it aims to be a global instrument in order to develop a comprehensive plan aimed at protecting and assisting victims of trafficking.

Although the two specific directives on trafficking were completely transposed into to Belgian law¹⁸, this is not the case for the directive on victims of crime.¹⁹

The objective of the anti-trafficking directive of 2011 is not only to ensure European harmonisation of the legal provisions allowing the traffickers to be prosecuted but also to reinforce protection of the victims. Countries are subsequently required to take the necessary measures to provide assistance and support before, during and after the criminal proceedings, so that they can effectively exercise their rights.²⁰ This support and assistance must be provided as soon as a person is presumed to be a victim of trafficking²¹, after they have been adequately informed and have agreed.²² Among other things, the support measures include appropriate and safe accommodation, material assistance, necessary medical treatment, counselling and information and, if necessary, translation and interpretation services.²³

¹⁴ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, O.G., L101 of 15 April 2011.

¹⁵ European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA, O.G., L315 of 14 November 2012.

¹⁶ 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, and who cooperate with the competent authorities, O.G., L261 of 6 August 2004.

¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

¹⁸ See Law of 10 August 2005 amending various provisions with a view to intensifying action to combat trafficking and smuggling in human beings and slum landlords, O.G., 2 September 2005 and articles 64 to 68 in the Law of 15 September 2006 modifying the Law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners, O.G., 6 October 2006.

¹⁹ See Law of 26 October 2016 completing the transposition of European Parliament and Council Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation within the framework of criminal proceedings and European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing minimum standards regarding rights, support and the protection of victims of crime, and replacing Framework Decision 2001/220/JHA, O.G., 24 November 2016 and the decree of the German-speaking community of 26 September 2016 on support for victims and specialised support for victims, O.G., 19 October 2016. Belgium also considered that many appropriate provisions already existed in our legal (especially the Code of Criminal Procedure) or practical arsenal (victim support services within houses of justice).

²⁰ Art. 11, § 1 and recital 18 of Directive 2011/36/EU. ²¹ Art. 11, § 2 of Directive 2011/36/EU.

²² Art. 11, § 5 of Directive 2011/36/EU.

²³ Art. 11, § 5 of Directive 2011/36/EU; Art. 12, § 1 of the Council of Europe Convention; Art. 7, of Directive 29/36/EU.

Similar measures are provided for by the Council of Europe Convention on human trafficking.²⁴ In principle, granting support and assistance can't be dependent on the victim submitting an official complaint to the authorities²⁵ or on their cooperation in the investigation.²⁶ However, if the victims are staying illegally, countries can link obtaining a residence permit with cooperating with the authorities, providing they are given adequate information and a period of reflection.²⁷

Trafficking victims must have access to legal advice without delay and, depending on the role attributed to the victims in the relevant judicial system, to legal representation, including for the purpose of claiming compensation. This is free if the victim doesn't have sufficient financial resources.²⁸ Ideally, the legal advice should be provided by someone with the appropriate legal training, but this person doesn't have to be a legal professional.²⁹ The information and advice must be using simple and accessible communicated language and, if possible, by using different types of media.³⁰

States must ensure that the victim is advised, as soon as possible, of their right to receive information relating to the criminal proceedings initiated following the complaint concerning a criminal offence they have suffered, and to receive this information if they request it. This chiefly concerns decisions to close the case without further action or information that would allow them to know the status of the criminal proceedings.³¹ It is for the victim to decide whether or not to receive this information.³²

States are also required to ensure that trafficking victims benefit from special protection within the framework of investigations and criminal proceedings by providing specific treatment to prevent secondary victimisation, among other things.³³ Avoiding unnecessary repeated interviews is part of this.

Victims of crime have the right to obtain a decision within reasonable time limits on compensation from the offender within the framework of the criminal proceedings.³⁴

Finally, trafficking victims must have access to the existing compensation schemes for victims of violent intentional crime.³⁵ Furthermore, states are encouraged to use seized or confiscated instruments and products of human trafficking in particular to compensate the victims.³⁶ Similar requirements are provided for by the Council of Europe Convention.³⁷

There are special measures - not mentioned here - for child victims of trafficking.³⁸

2. The Belgian support system for human trafficking victims

Belgium has opted for a specific support system for victims of human trafficking.

This system, which has been in existence since the early 1990s³⁹, was incorporated in 2006 in the Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners (hereafter, Aliens Act).⁴⁰ This involved transposing the provisions of Directive 2004/81/EC. It enables foreign victims who cooperate with the judicial authorities to benefit from a specific type of residence permit.

²⁴ Art. 12 of the Council of Europe Convention.

²⁵ Art. 8, § 5 of Directive 2012/29/EU.

²⁶ See Art. 8, § 5 of Directive 2012/29/EU, Art. 11, § 3 of Directive 2011/36/EU and Art. 12, § 6 of the Council of Europe Convention. The latter states that each party is required to adopt the measures necessary to ensure that assistance to a victim isn't dependent on their willingness to testify.

²⁷ Art. 11, § 3 of Directive 2011/36/EU; Art. 5 and 6 of Directive 2004/81/EC and Art. 13 and 14 of the Council of Europe Convention.

²⁸ Art. 12, § 2 of Directive 2011/36/EU. See also Art. 7 § 4 of Directive 2004/81/EU.

²⁹ Preamble 19 of Directive 2011/36/EU.

³⁰ Preamble 21 of Directive 2012/29/EU.

³¹ Art. 6, § 1 and 2 of Directive 2012/29/EU.

³² Art. 6, § 4 of Directive 2012/29/EU.

³³ Art. 12, § 4 of Directive 2011/36/EU and Art. 18 and 20 of Directive 2012/29/EU.

³⁴ Art. 16, § 1 of Directive 2012/29/EU.

³⁵ Art. 17 of Directive 2011/36/EU.

³⁶ Preamble 13 of Directive 2011/36/EU.

³⁷ See esp. Art. 15, § 4: victim compensation must be guaranteed, for instance, through the establishment of a victim compensation fund or other measures or programmes aimed at assistance and the social integration of victims. For example, these can be financed by the assets resulting from the confiscations ordered against the traffickers.

³⁸ See. art. 13, 14, 15 and 16 of Directive 2011/36/EU.

³⁹ At the time, it was only provided for in ministerial directives and circulars.

⁴⁰ See art. 61/2 to 61/5 of the Law of 15 August 1980, introduced by articles to 68 of the Law of 15 September 2006 amending the Law of 15 64 September 1980 on the access to the territory, residence, settlement and removal of foreigners, O.G., 6 October 2006.

What are the main phases of this particular procedure?

As soon as a presumed victim is identified, a specialised reception centre will offer them specific support. While assistance and protection don't initially depend on cooperation with the law, they are nonetheless very closely linked. After a period of reflection, victims are indeed asked to cooperate with the judicial authorities by filing a complaint or making relevant statements. Victims must also promise to break all contact with the perpetrators of the offence and accept the specific support offered by one of the three specialised reception centres. These conditions must be respected throughout the legal proceedings against the perpetrators.

The three reception centres are located in each of the country's regions with competence on a national level. Hence, they can welcome victims regardless of where they were detected. These three not-for-profit reception centres are PAG-ASA in Brussels, Payoke in Antwerp and Sürya in Liège. These centres offer victims accommodation if necessary, and medical, psychosocial, administrative and legal support. If the victims are minors, accommodation will be provided by other centres in principle, such as the Esperanto centre in Wallonia⁴¹, which is specially designed to take in and take care of presumed child victims of human trafficking.

Legal support consists mainly of informing presumed victims of their rights in the criminal proceedings which may be brought against the perpetrator if necessary, of accompanying them during the hearings with the judicial authorities, and of following the evolution of the case. They will also be offered the assistance of a lawyer with a view to requesting compensation. If necessary, the reception centres work with interpreters.

The reception centres take care of trafficking victims as referred to in Article 433 quinquies of the Criminal Code.⁴² They can be both foreign and Belgian victims. They also take in third-country nationals (non-EU) who are victims of certain aggravated forms of human smuggling, as referred to in Article 77quater of the Law of 15 December 1980.⁴³

The system is based on multi-disciplinary cooperation between the various players (police and inspection services, public prosecutor's offices and labour prosecutor's offices, specialised reception centres for victims, Immigration Office (IO)).

The procedure and national mechanism for referring victims to the support services are detailed in a multidisciplinary circular.⁴⁴

There are several successive phases to the procedure. During the initial phase, the detection of victims by frontline services (police and labour inspection services) and their referral to a specialised reception centre are crucial.

When a frontline service has evidence that they are in the presence of a presumed victim, it must inform the latter of the existence of the specific procedure for victims of trafficking and refer them to a specialised reception centre. The victim will then benefit from a 45-day period of reflection.⁴⁵ This time frame should enable them to escape the 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.⁴⁶

In practice, many victims are referred to the specialised reception centres after having already made statements to the authorities. In this case, they move directly onto the next phase of the procedure. As soon as the victim has made statements, they benefit from a three-month residence permit (certificate of immatriculation or CI⁴⁷). The issuing of residence permit and, hence, the support of the victims by the specialised reception centre, depends then on the evolution of the judicial proceedings.

41 On this subject, see the contribution from the Esperanto centre in Myria's *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 56-61.

42 These are people who were recruited, transported, harboured, etc., for the purposes of exploitation. Purposes are listed exhaustively and include sexual exploitation, work or services in conditions contrary to human dignity, exploitation of begging, organ trafficking and forced criminal activities.

43 Among other things, these aggravating circumstances include the fact the victim is a child, abuse of the victim's vulnerable situation or endangering their life.

44 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, O.G., 10 March 2017.

45 An Annex 15 document is issued in relation to this period.

46 This voluntary return is organised with the help of organisations such as IOM.

47 Art. 110bis, §3 of the R.D. of 8 October 1981.

Before the expiry of the temporary three-month residence permit, the Immigration Office requests an opinion from the public prosecutor or the labour prosecutor in charge of the case, based on a number of questions.⁴⁸ The answers to these questions determine the issue of the six-month residence permit, which takes the form of a certificate of immatriculation entered in the register of foreign nationals (CIRE).⁴⁹ This document will be renewed up until the end of the judicial proceedings, as long as the victim still satisfies the conditions. During the last phase of the procedure, after the judicial proceedings against the perpetrators, the victim can obtain a permanent residence permit. This means that either their statement or complaint has resulted in a conviction, or the senior crown prosecutor or labour prosecutor have accepted the charge of trafficking in human beings in their summing-up.⁵⁰

The victim has a right to social aid from the start of the first phase (45-day period of reflection). They can also work as soon as they receive their three-month residence permit.⁵¹

48 Art. 61/3, §2 and 61/4, §1 of the Aliens Act and point 5.2.4. of the Circular of 23 December 2016. 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 and whether they have broken off all ties with the presumed perpetrators of the offence. In addition, the latter must not be considered as having the ability to compromise public order or national security.

49 Art. 61/4 of the Aliens Act and Art. 110bis, §4 of the R.D. of 8 October 1981.

50 Art. 61/5 of the Aliens Act.

51 I.e. the immatriculation certificate, without the need for a work permit. On this subject, see Part 3, Chapter 1, point 2.1.3.

Chapter 2

Right to information and access to specialised support services

A presumed victim of human trafficking must be adequately informed of the existing support measures, while remaining free to make use of them or not. The above-mentioned European instruments specify the content of this information. Hence, Directive 2011/36/EU specifies that this obligation to inform covers, if necessary, the communication of information on a period of reflection and recovery as well as on the possibility of being granted international protection.⁵² When those concerned are third-country nationals, the information must relate to the possibility of obtaining a residence permit by cooperating with the competent authorities and of benefiting from certain rights within this framework.⁵³ This information can also be supplied by a non-governmental organisation or an association expressly designated for this purpose by the Member State concerned.⁵⁴

As for Directive 2012/29/EU on victims of crime, it states that Member States must ensure that victims of crime receive information on the type of support they can obtain as soon as they come into contact with a competent authority. This information must include the procedures to follow to file a complaint for a criminal offence and the role of the victim, and the terms and conditions for access to legal advice, among other things.⁵⁵ However, the extent or level of accuracy of the information can vary according to the specific needs and personal situation of the victim, as well as the type or nature of the offence. Extra information can also be provided later depending on the victim's needs and the relevance of this information at each stage of the procedure.⁵⁶

In Belgium, for trafficking victims, Article 61/2, §1 of the Aliens Act and the multidisciplinary circular of 23 December 2016 specify the content of the information to be provided to a presumed victim at the moment of detection. The latter must be informed of the possibilities offered by the specific procedure for victims of human trafficking. The circular indicates the services bound by this obligation to inform. These are police and social inspection services as well as any other service that comes into contact with presumed victims, such as the Immigration Office (IO) or the Commissioner General for Refugees and Stateless Persons (CGRS). This information is provided in a multilingual leaflet.⁵⁷ It aims to help the victim identify themselves as such and to agree to be put in contact (or to later make contact) with a specialised reception centre.

Myria examines below how this duty to inform is put into practice and identifies good and not so good practices. It depends on how the victim was identified or brought to the authorities' knowledge. According to Myria, there are two types of cases: firstly, when the presumed victim is identified by frontline services (police or inspection services) and interviewed, so the period of reflection is rarely applied (point 1). Secondly, when a victim is referred to a reception centre by other services or when a victim spontaneously goes to a reception centre (point 2). Finally, Myria raises two particular problems associated with the access of presumed victims to the support services provided by the specialised reception centres: on the one hand, when the victim hasn't been properly identified and has been put in a detention centre; on the other hand, the problem of transporting victims and their access to support services when checks are carried out far from the towns where the reception centres are based (Point 3).

⁵² Art. 11, § 6 of Directive 2011/36/EU.

⁵³ Art. 5 of Directive 2004/81/EC.

⁵⁴ Art. 5 of Directive 2004/81/EC.

⁵⁵ Art. 4, § 1 of Directive 2012/29/EU. See also Art. 15, § 1 of the Council of Europe Convention: the state parties are required to guarantee victims, as soon as they enter into contact with the competent authorities, access to information on the relevant judicial and administrative procedures in a language they can understand.

⁵⁶ Art. 4, § 2 of Directive 2012/29/EU.

⁵⁷ <https://www.myria.be/en/publications/multilingual-brochure-for-victims-of-human-trafficking>.

1. Detection of victims and the obligation of police and the labour inspection services to inform them

1.1. | Use of the multilingual leaflet

Both police and inspection services are key players in identifying potential victims of human trafficking and offering them the assistance of a specialised service. Therefore, informing the victims is crucial. The NSSO inspection service has in fact paid particular attention to this obligation to inform in its priorities regarding human trafficking.⁵⁸

Within this framework, the use of the multilingual leaflet⁵⁹ is certainly an added value.

The leaflet is generally used for the frontline services' initial contact with the victim, but it could also be a useful instrument for hospitals and social services. According to the specialised centres, the

The use of the multilingual leaflet by frontline services is an added value in terms of informing victims. leaflet is a means to make the victim aware of the situation of exploitation. An interpreter isn't always present during the initial contact. In this case, the multilingual leaflet is

often the only source of information for the victim. One of the centres acknowledged that the leaflet was an important tool but that it could be improved by including more information on the different forms of exploitation.

During an initial interview with the victim, the police simply give general explanations about victim status, often referring to the leaflet. However, the role of frontline services doesn't consist of explaining the victim status procedure to victims in detail, because they aren't in the right position to do so. Police and inspection services often don't benefit from the victims' trust owing to their negative experiences with police and inspection services in their country of origin, or because of their residence status.

Frontline services don't have any experience either in the way in which the system works in practice, which sometimes gives rise to false promises.

During its analysis of the court cases in which it filed a civil suit, Myria noted that frontline services do use the multilingual leaflet and mention it in their reports.

In a case concerning a **construction company involving bogus self-employed Romanians**⁶⁰, a Romanian worker had filed a complaint with the local police concerning his poor working conditions, i.e. the non-payment of his wages, the long working hours and the squalid living conditions. The victim also referred to five other Romanian victims. An investigating judge was immediately appointed to open an investigation into human trafficking. The five other victims were found the next day during the search. Several of them received a multilingual leaflet when they were interviewed by the police at a specialised centre, which was a familiar environment for these victims. One of the victims who instituted civil proceedings was awarded EUR 2,000 in compensation.

In a **Romanian case of sexual exploitation**⁶¹, several victims were initially resistant to the ideas of making real statements. They were afraid they would suffer reprisals from the defendants and/or find themselves in a situation of dependence with regard to their loverboy. In the end, several victims filed a complaint, without showing any interest in the support offered to them by the specialised victim support centres. The majority of them wanted to continue working as a prostitute and therefore didn't want to benefit from the status of victim. The police gave them the multilingual leaflet containing the details of the specialised victim centres in case they changed their mind.

⁵⁸ See external contribution by P. Van Hauwermeiren and S. Schulze.

⁵⁹ <https://www.myria.be/en/publications/multilingual-brochure-for-victims-of-human-trafficking>.

⁶⁰ MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online p. 86; MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 165-167; Hainaut Crim. Court, Mons division, 1 April 2016, 8th ch.

⁶¹ CECLR, 2012 Annual Report Trafficking and Smuggling of Human Beings, *Building trust*, pp. 51-53.

When the reception centres are contacted about a potential victim, they start with an assessment of the situation. Are there indications that the person is probably a victim? If there are, an interview will then take place with the presumed victim, with an interpreter if necessary.

During the first interview with the victim, the team member from the specialised centre clearly explains the difference between their role and that of the police. As an introduction, they give details about the organisation, reception and support that the centre can offer. The victims can then tell their story. At this point, they should also have the chance to talk about everything, such as the way they experienced the situation and, if relevant, how they felt during the police check. The team member from the specialised centre will react to this, gradually try to win their trust and explain little by little that as of this moment, the victim can take a decision to change their future.

Once the victims have told their story and are eligible for victim status, another interview takes place, during which the entire victim status procedure and conditions for support are explained. The implications for the victim's potential plans for the future are assessed. The team members must ensure that the victim understands them properly, is aware of the situation in order to decide whether or not to engage in the procedure, and that they meet the support conditions. The status is only explained in this phase to prevent victims from adapting their story to the criteria.

1.2. | The duty to inform in practice

The way in which the victim is informed depends on the circumstances in which they were referred to the specialised centres. During the identification phase, there are various situations in which victims can and must be informed by frontline services: for example, during checks by frontline services, when a victim is identified in a slum landlord situation, a complaint is filed or an emergency call is made.

The various situations in the detection phase are key moments to inform and properly guide the victims. The success of the multidisciplinary collaboration between frontline services and the specialised centres for victims of human trafficking is a basic condition essential to the execution of the duty to inform victims.

a) *Checks performed by frontline services*

When frontline services carry out checks, several victims are often identified. The police first conduct an initial interview with the victim. When team members from specialised centres arrive, the police first inform them about the victims and the situation in question. Another possibility - if the team members from the centres aren't able to be present - consists of frontline services transporting the victims to the specialised centres, where an intake interview is conducted with the victim.

Some victims don't wish to immediately enter into contact with team members from the specialised centres. Furthermore, interventions by frontline services often take place at night, when the victims are exposed to a whole range of facts, and are rarely put in contact with the centres. They aren't aware of the other advantages of victim status, such as legal support. This is why they are often no longer interested in this status. However, victims who feel ill-treated and want to go home as quickly as possible, may require legal assistance to seek compensation. Other victims may be afraid to ask for the status of victim of human trafficking and refuse to make relevant statements.

Identifying and informing victims during checks can be fruitful but also sometimes problematic.

Sometimes, planned checks take place. The specialised centres are informed beforehand to ensure someone is on duty and to be able to offer the necessary support in case potential trafficking victims are detected.

The centres then go to the scene and act as a second line of action to win the victims' trust. West Flanders federal police already asked a specialised centre in the past to offer support on a specific day during a check because there was a chance a lot of victims would be detected.

The evening before the check, it was agreed that the specialised centre would inform the police about how many spaces it had available and in other centres. This type of collaboration during a planned check already exists within the NSSO inspection service in Brussels.

In practice, it has to be said that detecting and informing victims during checks has proved to be successful in certain cases, but difficult and even very problematic in many other cases. Here are various examples of the approach in cases of human trafficking for the purposes of labour or sexual exploitation.

In a **case of sexual exploitation concerning a Ukrainian network**⁶², victims were detected following a check carried out in one of the apartments where the young women were forced to prostitute themselves. The victims were interviewed by the police and referred to the specialised reception centres. It was possible to open an investigation thanks to the victims' statements. One victim filed a civil suit during the trial and received compensation of EUR 7,500. On the other hand, the police were unable to identify 17 victims traced through phone taps.

In a **Nigerian case**⁶³, the investigators consulted 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.

During the interception, the police found a Nigerian victim locked in a room. She was offered victim status and thanks to the presence of an interpreter, it was possible to convince her to be referred to a specialised reception centre. She indicated another victim through her Facebook account. In this case, a number of Nigerian victims filed a civil suit during the trial and received compensation. There were also several bad practices involved in this case. One of the victims, who was a minor, 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. At the end of the search, the minor was handcuffed and taken away in the car because she didn't have a residence permit. This approach isn't conducive to building trust. The police report states the following: "The interested party is called I. and has no papers indicating identity or nationality. We decide 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 handcuffed in front and transferred in accordance with security recommendations. The girl tells us through her interpreter 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." Another problem was that girls who were intercepted during the evening had to spend the night in the local police's transit cell, because the interpreter was only available for the interview the following day.

In one **case concerning a second-hand clothes sorting workshop**⁶⁴, several victims were identified, interviewed and referred to the specialised centres on the basis of an operation involving observations, checks and searches. One of the workers, who later filed a civil suit, gave the investigators a detailed statement. He explained that the defendant had two work systems depending on whether or not the workers were staying legally in the country. The electric heating in the warehouse was insufficient and it was cold in the building in winter. The defendant also supervised the workers from his home using a camera system. According to the court, the victim's statement was confirmed by the evidence in the case. The defendant was convicted and had to pay the victim compensation of EUR 1 for non-material damage.

62 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 110.

63 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger, p. 94.

64 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online p. 121.

A Thai case⁶⁵ is an example of bad practice. Following a check, the victims weren't offered the opportunity to obtain victim status and were detained for illegal stay, and then transferred to a detention centre for removal. The official 'Foreign National Check Report' was attached by the frontline services to the police report concerning the interception of the victims. In the latter, a negative answer was given to the questions relating to the presence of indicators of human trafficking and contacting a centre specialising in the reception of victims of human trafficking. The report also mentioned the following regarding the circumstances: 'check of massage parlour - brothel'; concerning the nature of the facts: 'undeclared work, no work permit'; concerning the purpose of the stay: 'prostitution, economic reasons'.

The same bad practices can clearly be found in cases of human trafficking involving victims of labour exploitation. In a **poultry farming case⁶⁶**, exploited posted workers weren't informed of the victim status procedure. They were detained following a check by frontline services and immediately transported to a detention centre for their removal. They had, however, made statements for an investigation into human trafficking but hadn't been informed of the victim status procedure.

There are also several examples of projects aimed at properly informing victims about existing support. For instance, PAG-ASA participates in an outreach pilot project.

Outreach pilot project in Brussels

In its 2018 annual report, Myria recommended that specialised teams should act as outreach teams and join the police when checking the windows where Nigerian minors are exploited. These teams can win the trust of the victims by approaching them with empathy and convincing them to ask for victim status. This work must also be funded, of course.

A new outreach pilot project recently started up in Brussels. Cooperation agreements were established within this framework with several frontline services, so that they could accompany them during checks. The outreach workers and a team member from a specialised centre intervene together with the federal police, who organise the checks. The project doesn't specifically target the Nigerian network, but it is part of the target audience. The goal is to inform potential victims of the existence of specialised centres for victims of human trafficking. The project's main objective consists of **motivating potential victims to contact the support organisation**. They also sometimes ask for an appointment themselves. But the project is in its early stages. Within the framework of the Dutch Querido outreach project⁶⁷, which has already been in operation in Amsterdam for some time, more experience has already been acquired in this domain.

b) Slum landlord situations

In slum landlord situations, frontline services may identify indicators of human trafficking and thus detect potential human trafficking victims. In this type of case, these services must ask the occupants how they pay their rent, and assess whether it is possible to ascertain the type of relationship between the landlord and the employer of these occupants. They must also assess the work situation in order to identify cases of human trafficking for the purpose of labour exploitation.

In a slum landlord situation, frontline services may identify indicators of human trafficking and thus detect potential human trafficking victims.

If this is the case, the occupants must be considered by frontline services as potential victims of human trafficking and be properly informed about this. A correct identification of human trafficking indicators in a situation such as this is a crucial prerequisite for informing the victim about the status of victim of human trafficking. This is clearly demonstrated in the example taken from the following case, which shows bad practice regarding the treatment of the victims.

⁶⁵ MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 101 and 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 99.

⁶⁶ MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 146-147, Turnhout Crim. Court, 20/12/2017.

⁶⁷ <https://hvoquerido.nl>.

Example of bad practice:

In a case concerning a mushroom farm⁶⁸, an investigation was launched following statements concerning food that was shoplifted from a supermarket on several occasions. The perpetrators of the acts were Bulgarian. During their interview, they stated that they 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. The Bulgarians showed the local police the building they were renting, 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. None of the occupants were considered as potential victims of human trafficking.

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. None of the victims were informed by a frontline service about the existence of the status of victim of human trafficking. These people were referred to the Immigration Office and all received an order to leave the territory.

c) Complaint filed by victims and emergency call to frontline services

Often, victims go in person to a frontline service to file a complaint. If there are sufficient indicators of human trafficking, they must be considered by frontline services as potential victims of human trafficking. They are given information based on the multilingual leaflet and referred to a specialised centre. In general, the police take the victim to the specialised centre where the intake interview takes place. In some cases, this was done by the local police who aren't specialised in human trafficking. But there are also examples of bad practices.

In a **Chinese hotel & catering case**⁶⁹, a victim spontaneously presented themselves to the federal judicial police of Liège. After having informed the labour prosecutor, the police were asked to contact a specialised centre. The victim filed a civil suit and obtained compensation of EUR 5,000 for non-material damage and EUR 15,000 for material damage. The victim not only gave the police the names of people involved in the smuggling network, which stretched across China, the Czech Republic, Luxembourg, Belgium, Spain and Portugal, but also information relating to the placement of irregular Chinese migrants in various restaurants; the restaurants in which he had worked for the past five years (in Luxembourg and Belgium); the police checks during which he had been arrested; and details of his personal exploitation.

Belgian victims of sexual exploitation aren't easily identified as victims of human trafficking, even if they go to the police to file a complaint. In a case associated with **poly-criminality in prostitution circles**⁷⁰, the person who filed the complaint wasn't initially considered as a potential victim of human trafficking. The victim went to the local police of their own accord to file a complaint concerning acts of harassment, but not sexual exploitation. She had been threatened by her pimp. The victim wasn't initially informed about the leaflet for human trafficking victims, but was referred to a specialised centre later on. An important point in this case: flexible, tailored support for all victims by a specialised centre. The support offered was adapted to the victims' needs. The victim who had filed a complaint, and had no home or income, benefited from legal support and aid from the specialised centre owing to her precarious administrative situation, even during the trial. The two other victims, who feared reprisals from the defendant, agreed to be sheltered by the specialised centre.

In a **loverboy case involving adult Belgian victims**⁷¹, the local police in Liège were informed that a young girl was at risk. She was kept locked up and regularly moved around. The police found her at the home of the one of the defendants. The victim informed the police that another victim was also locked up.

68 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk, pp. 99-104.

69 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers, pp. 101-105; Liège Crim. Court, 28 April 2014, 14th ch. (final): CECLR 2013 Annual Report Trafficking and smuggling of human beings, Building bridges, p. 113.

70 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, pp. 80-84.

71 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers, pp. 90-95.

The police decided to set up an operation and freed the victim. The Belgian victims were referred to the specialised reception centres.

One of the specialised centres informed Myria that some local police departments weren't complying with their legal obligation to report a victim of human trafficking to the specialised centres, even after the victim had made a statement. Hence, one victim arrived at a specialised centre after it had closed, but luckily for her, a team member was still there. The victim had made statements three weeks earlier and filed a formal complaint for human trafficking with a local police department in West Flanders. This police department wasn't aware of the existence of the specialised centres and hadn't ever contacted any of them, even though it is an obligation. The victim managed to get to the specialised centre by herself, taking several days to do so.

In a case concerning domestic work for private individuals⁷², the police were called out to investigate a minor in difficulty who was in the street. There they found a 15-year-old Congolese girl in tears, accompanied by a friend. The young girl, who had run away, explained that she lived with the defendant, to whom she had been entrusted three years earlier by her father. She was sheltered by the Esperanto centre, which is responsible for child victims of human trafficking. The defendant suspected her of witchcraft and had therefore behaved violently towards her for the past month. She was taken to the hospital by the police, where the doctor noted pain in multiple places as a result of bruising. Traces of aggression were also visible on the photos taken of the young girl by the police. Six months later, she was audiovisually heard at length. The court acquitted the defendant of the charge of human trafficking but accepted the charges concerning social criminal law, illegal child labour, as well as deliberate assault and battery. The victim filed a civil suit and obtained compensation of EUR 2,000 for non-material damage and EUR 38,414 for material damage.

Frontline services are also obliged to help vulnerable child victims, especially if they are in a precarious situation. Minors must be informed and referred to a specialised centre. In the case of unaccompanied foreign minors, additional protective measures apply, such as informing the guardianship service.⁷³ These people must be sheltered by a specialised centre for minors.

2. Reporting by other services, on their own initiative and application of period of reflection

Presumed victims of human trafficking can be referred to a reception centre by services other than the police or inspection services. Those chiefly involved in informing victims of the centres' existence are hospitals, public welfare centres, social services and unions. Victims are also referred to the centres by clients (of prostitutes), neighbours, lawyers and former victims. Sometimes, victims also go to the reception centres on their own initiative. In this type of situation, the period of reflection will usually be applied if the presumed victim hasn't already been in contact with the authorities.

In some cases, the specialised centres are also contacted by the police for the application of the period of reflection, because there are indicators of human trafficking but the victim isn't ready to make statements yet. The team members can therefore try to win the victim's trust and work with them.

In several cases, the specialised centres put the victims in contact with frontline services in order to make statements, after first having given them enough time to recover and feel calm again.

⁷² MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 152.

⁷³ MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 39-55.

In a case concerning **Nigerian escorts in Turnhout**⁷⁴, the police were informed about the case through a specialised centre. A few Nigerian child victims went directly to a specialised centre and then made statements to the police. Two victims filed a civil suit.

In the **Nigerian Mama M. case in Brussels**⁷⁵, several Nigerian victims, including minors, went to a reception centre after having been supported and encouraged by other Nigerian victims still in contact with them via Facebook. Some former Nigerian victims had also approached other young Nigerian girls in the street who had problems, or had met them within the Nigerian community. They referred them to the specialised centres. Twelve Nigerian victims, including four minors, obtained the status of victim of human trafficking after being reported and later made statements to the police. One victim filed a civil suit during the trial.

In a case concerning a **businessman in Brussels**⁷⁶, a victim was referred to by the public welfare centre (CPAS) to a specialised centre. After the hearing with labour prosecutor's office, the victim was granted the status of victim of human trafficking. Initially, only an investigation into the non-payment of wages was launched. The specialised centres provided a lot of support: this demonstrated the usefulness of the period of reflection and the importance of social and legal support. The investigation into human trafficking only began when additional information concerning the victims was given to the labour prosecutor's office by the specialised centre.

Hospital staff inform a specialised reception centre

In hospitals, there are sometimes patients who are likely to be potential victims of human trafficking and who should be referred to the specialised centres. Thanks to various campaigns, hospital staff have been made aware of the need to contact the specialised centres when they have patients who are potential victims of human trafficking.⁷⁷ As a result of their close contact with the centres, they will discuss the matter with them over the phone and arrange an initial assessment.

In a case concerning a work accident in the construction sector⁷⁸, a nurse from the hospital informed the police of the disappearance of their patient. The victim, an undocumented Algerian worker, was found and referred to a specialised centre. His statements revealed that he had fallen from badly installed scaffolding while cementing a house and suffered a serious head injury, fracturing his skull in several places. He disappeared suddenly from the hospital where he was receiving treatment but returned to the same hospital's A&E department several times and then had to be operated. He was left with lifelong injuries as a result of the fall. The defendant did everything in his power to cover up the matter, thus endangering the victim's life and forcing him back into an illegal situation, denying him the medical treatment he required. The victim filed a civil suit and was awarded a provisional sum of EUR 10,000 out of total damages amounting to EUR 250,000. A medical expert was also appointed to assess the injury.

Cooperation after social actions or a union complaint

Victims can be informed of victim status through a union or following social actions, and referred to a specialised reception centre. This is usually done through frontline services, who have been notified by civil society organisations or bodies

⁷⁴ MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 158: Antwerp Crim. Court, Turnhout division, 9 December 2015, ch. TC1 (confirmed by Antwerp Court of Appeal in a judgment of 31 May 2017: see 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 127).

⁷⁵ MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 94.

⁷⁶ MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 105-109.

⁷⁷ www.dsb-spc.be/doc/pdf/Mensenhandel-Ziekenhuis-FR.PDF

⁷⁸ MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 164-165.

In a **case concerning the construction sector**⁷⁹, the acts in question were brought to light when the union filed a complaint for one of its members. On the basis of this complaint, the federal judicial police carried out a check on site with the Social Legislation Inspectorate and the Social Inspectorate. An investigation into trafficking was initiated, the victims were informed about victim status and referred to a specialised reception centre. The victims were mainly Romanians and Bulgarians who didn't speak Dutch and weren't aware of the procedures in terms of social legislation and residence rights. Their statements revealed that they were paid very little and that they lived in caravans or in a bus parked on the defendant's land, sometimes without water or electricity. When a work accident occurred, the defendant deprived the victim of the necessary medical care. The defendants were convicted but none of the victims filed a civil suit.

In another **case concerning the construction sector**⁸⁰ **involving posted bogus self-employed workers**, an investigation into human trafficking was initiated following a collective protest by Bulgarian and Bosnian workers. Even the embassy intervened and advised them to file a complaint with the police. The victims were informed and referred to a specialised centre. Five victims filed a civil suit during the trial. There were 19 known victims in total but according to the court record, there had been more victims over the years. The victim statements revealed that they were only paid in part and had to work long hours. When some of the workers confronted the employer about this, he threatened to send some men over to punish them and evict them from the accommodation. When a serious work accident occurred, the employer also refused to provide the necessary help and to declare it.

3. Problems accessing specialised support services

3.1. | Detection of victims in detention centres

When a trafficking victim fails to be detected, they run the risk, as a third-country national, of being placed in a detention centre in order to be repatriated. This problem essentially falls within the framework of police checks and was discussed earlier.⁸¹

Nevertheless, there are positive examples of the detection of presumed victims in detention centres.

The specialised centres are sometimes contacted about presumed victims of human trafficking, who have been detained with a view to repatriation. The source of the reporting can vary depending on the detention centre. This practice of reporting is applied in certain detention centres, but not everywhere, and the information is more likely to come from an organisation, an individual visitor or a lawyer.

When someone has been reported, the specialised centre assesses the situation just like any other spontaneous notifications and will send a team member over with an interpreter if there are indicators of human trafficking.

Good practices have already been observed in some cases: victims of human trafficking were detected in a detention centre and referred to a specialised reception centre.

In a **case concerning a wok restaurant**⁸², several Chinese victims were intercepted during a check by frontline services. The victims gave the local police detailed statements but spent the night in a police transit cell. After the intervention of the Immigration Office, they were taken to the Vottem detention centre the following day.

79 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 112.

80 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 113.

81 See above, point 1.2. The duty to inform in practice.

82 CECLR, 2008 Annual Report Trafficking and smuggling of human beings, Enlisting people and resources to combat the phenomenon, p. 82.

The team members from this detention centre took the initiative to contact a specialised centre for human trafficking victims as they suspected potential victims of human trafficking among these Chinese people. Good practice: staff at the detention centres are trained to identify and detect victims of human trafficking and work closely with the reception centres for this purpose.

In a **Nigerian case**⁸³, one of the victims was intercepted in the Netherlands and risked being sent back to Nigeria. The responsible prosecutor therefore contacted the IO to transfer the victim to Belgium and place them under Belgian victim status. Police phone taps revealed that one of victims was in administrative detention with a defendant in the Netherlands. In the beginning, they were detained in prison, then in a closed asylum centre within the framework of Dutch law on foreign nationals. Through EPICC⁸⁴ (the Euroregional Police Information and Cooperation Centre), the two people were identified as well as the location of the detention centre in the Netherlands where the victim was being held. Belgium sent letters rogatory to the Netherlands twice in order to interview the victim. Thanks to one of the team members at a specialised reception centre and the discussions with them, the victim was finally convinced to go to Belgium to access victim status.⁸⁵

3.2. | Transport and access to the specialised centres

Another problem is that of the victims' effective access to support services owing to the distance between the place where the victim was detected, and the location of the reception centres.

Victims of human trafficking detected within the surrounding area of a specialised centre quickly benefit from physical access and aren't faced with an extra obstacle with regard to obtaining victim status owing to transport problems. Victims detected in remote areas must benefit from an equal opportunity to be referred to the specialised centres. In practice, there can sometimes be discussions between frontline services and the specialised centres regarding transportation. According to some, victims who are detected far from the centres have less chance of obtaining victim status than those identified in Brussels, Antwerp or Liège, where these centres are based. This is what some of the cases clearly show.

In **two comparable cases concerning Thai massage parlours in Ypres and Mechelen**, the victims were treated in a completely different way. Contrary to the case in Mechelen⁸⁶, where the majority of the victims obtained victim status and four of them filed a civil suit, all the victims in the case in Ypres⁸⁷ were repatriated to their country of origin.

A **case concerning the hotel & catering industry**, discussed in more detail in the case studies section⁸⁸, provides an example of good practice regarding the transportation of a victim. The victim made relevant statements and the police put them in contact with PAG-ASA in Brussels. The police took them from Bruges to PAG-ASA in Brussels, where the centre was able to win their trust. Consequently, the person was identified as a victim of human trafficking and was granted victim status.

83 CECLR, 2011 *Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 94-95.

84 "Euregionales Informations- und Kooperationszentrum – EPICC" (Euroregional Police Information and Cooperation Centre). This joint centre is responsible for cross-border cooperation. The centre aims to improve cooperation between the different participating countries and greater security of citizens in the Meuse-Rhine Euroregion (MRE). EPICC focuses on information exchange and the support of wide-scale cross-border actions (road checks, observations, apostils, joint patrols, etc.). The Meuse-Rhine Euroregion is a cross-border partnership cooperation created in 1976, the oldest in Europe of its kind. The following provinces are part of it: the southern part of the province of Limburg in the Netherlands, the Belgian provinces of Limburg and Liège, and the German regions of Aachen, Düren, Euskirchen and Heinsberg. (Source: <https://euregio-mr.info/be/themen/sicherheit/nebedeagpol.php>). Also see the Centre's 2008 *Annual Report Trafficking and smuggling of human beings, Enlisting people and resources to combat the phenomenon*, p. 97.

85 CECLR, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 75.

86 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 95-99.

87 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 105-109.

88 See Part 3, Chapter 2 (Case studies), point 1.2. Labour exploitation – Hotel & catering case, point 1.2.5. Victim status.

According to the specialised centres, it is the responsibility of frontline services to transport the victim to the premises of the specialised centres in Brussels, Antwerp or Liège. This is generally the case, but sometimes there are problems concerning resources because transportation from the coast or Limburg and back takes a whole day. Team members at the specialised centres can no longer come out at night either for security reasons, the only exception being if it has been planned.

The specialised centres can't act as a flying squad either that is active throughout the country, considering their insufficient staff numbers. According to one of the specialised centres, the best solution would be to have a centre with capacity for 200 presumed victims who bear the primary indicators of human trafficking. According to a witness account, half of those reported in 2018 presented indicators of human trafficking. However, owing to a lack of human resources and capacity, they couldn't accommodate all of these presumed victims and begin a period of reflection. This problem still exists. As a result, the specialised centre is obliged to select victims on a pragmatic basis, according to the available capacity, which it deeply regrets. It is mainly presumed victims of labour exploitation, which can sometimes be interpreted very broadly or very strictly, who may suffer the consequences. According to other specialised centres, capacity certainly isn't a criterium in the discussion concerning the reception of presumed victims and the start of the period of reflection.

A major problem that explains why so many victims still don't have access to victim support organisations is the lack of awareness among some frontline services, such as local police departments in remote areas. The specialised centres sometimes find out through the newspapers that a check has taken place involving the detection of victims, but they haven't received any reports. In some cases, it was painfully clear.

In a **case concerning sexual exploitation**⁸⁹, the local police in a remote area had organised a check and proceeded with the administrative detention of a Nigerian victim. The local police had initially established a report for illegal residence. In the report concerning the repatriated victim, this is what the police wrote: "X was handed over to the Immigration Office in Brussels so that she could be repatriated to Lagos because she was staying in the Schengen area without a valid visa. She doesn't comply with the rules. It is therefore unlikely that she will follow up on the order to leave the territory that she will be given. Since the interested party may be prosecuted for inciting indecent behaviour, there is a risk of new attempts to disrupt public order. Given that the interested party was working without a self-employed permit, there is a risk that she will continue her illegal practices."

Conclusions

This chapter has highlighted how victims are informed of the existence of specialised support services and the specific procedure for victims of human trafficking. The added value of the multilingual information leaflet was emphasised. While the obligation to inform is effectively put into practice by the services accustomed to working in this domain, police departments or inspection services that aren't specialised, or are located far from the reception centres, won't always follow the procedure. Consequently, the victim is deprived of their right to access a support service and, all the more so, legal assistance.

Myria recommends pursuing and intensifying training efforts among all services potentially in contact with presumed victims.

⁸⁹ MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 100-101.

This obligation to inform obviously goes hand in hand with the existence of sufficient

The obligation to inform goes hand in hand with the existence of sufficient human and financial resources for the police and inspection services. resources and budgets for the police and inspection services. However, these have been sorely lacking for several years now. Owing to staff shortages, police departments are no longer able to assist the social inspection services during checks.

The NSSO inspection service's ECOSOC units don't have sufficient resources either.

For several years now, staff members who leave these services are no longer replaced.

This observation is shared by a federal prosecutor. When asked whether combating the smuggling and trafficking of human beings was still a priority in practice, the prosecutor recently replied in the *Juristenkrant*⁹⁰:

"In practice, it's a little more complex. In the past few years, we've suffered terrorist attacks which means a great deal of staff was involved, which is entirely understandable. But the transferred police officers aren't replaced. If people and means are limited, priorities must be defined, and I fear that the fight against human trafficking has become the main victim. Human smuggling is very visible. The problem is clear to see in parking areas, Brussels-North railway station, etc. However, this is far less true of human trafficking. It's something that takes place in secret. Therefore, you have to go looking for it. But you mustn't forget that humans tend to consider something invisible as non-existent. The opposite is true as well. The time has come for us to focus on this problem again."

"Let's not forget that the federal police's central services are suffering greatly from cuts. Capacity is significantly limited. This means you no longer have the expertise that allows you to have a clear idea of things. Despite staff shortages, those present continue to do their best. But, obviously, we can only move forward with the means available."

Myria recommends that the government provide a budget and allocate sufficient human and financial resources to police and inspection services, so that the fight against human trafficking is a real priority and not just on paper.

It is also necessary for frontline services to have better knowledge of the multidisciplinary circular concerning their obligation to inform. It could be useful to develop a practical tool.

Myria recommends that the interdepartmental coordination unit develop a practical tool for frontline services relating to the obligation to inform presumed trafficking victims and its content.

⁹⁰ Interview with Ann Lukowiak by Dirk Leestmans, *De Juristenkrant*, No. 391, 12 June 2019.

Chapter 3

The right to legal aid, participation in the criminal proceedings and the right to protection

Chapter 3 opens with the subject of legal support for trafficking victims and their access to the Belgian legal aid system (point 1). It then looks at how trafficking victims can assert their rights during criminal proceedings (point 2). Lastly, Myria analyses the protection of victims against secondary victimisation during these proceedings (point 3). This chapter also uses concrete examples to demonstrate the difficulties encountered by the late appointment of a lawyer.

1. Right to legal aid

Trafficking victims must have access to legal advice without delay and, depending on the role attributed to the victims in the judicial system concerned, to legal representation, including for the purpose of claiming compensation. This is free if the victim doesn't have sufficient financial resources.⁹¹

Trafficking victims must have access without delay to legal advice.

Legal advice, allowing victims to be informed and advised about the possibilities available to them, should ideally be provided by someone with the appropriate legal training, however, this person doesn't have to be a legal professional.⁹²

1.1. | Importance of the legal support provided by the specialised reception centres

In Belgium, when a victim of human trafficking is detected and referred to a reception centre, where they agree to the support and the conditions, they may benefit from legal aid. Within each of these three centres, social workers or criminologists explain to the victims what their rights are and the conditions associated with the specific procedure for trafficking victims. They will help them to reveal the facts and explain their rights to them within the framework of the criminal proceedings. They also follow the investigation, inform the victim of how it is progressing and accompany them during the interviews. They will also offer the assistance of a lawyer with a view to claiming compensation. As specified in the multidisciplinary circular of 23 December 2016, this assistance lies within the framework of cooperation and dialogue with the competent police and social inspection services, and competent prosecutors.⁹³

91 Art. 12, § 2 of Directive 2011/36/EU. Also see Art. 7, § 4 of Directive 2004/81/EC.

92 Preamble 19 of Directive 2011/36/EU.

93 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, O.G., 10 March 2017.

The specialised centres prepare the victim for the interviews and explain what will happen. Team members from these centres play the role of a person of trust, providing moral support for the victim.⁹⁴

If necessary, the interview can take place in the premises of the specialised centre. As observed in one case⁹⁵, this is a familiar environment for the victim. In the presence of more vulnerable people, it can be useful to hold an audiovisual interview with specialised police officers. This is the case for child victims, but it can also apply to vulnerable adults.⁹⁶

The importance of this legal support was especially highlighted in a case of trafficking for the purposes of labour exploitation in a Chinese restaurant. In its reasoning, the court noted that the statements of the people taken in by the specialised structures changed while they were being cared for: "the confidence and safety they feel thanks to their new status allows them to speak about what they have gone through and their living conditions." The court observed a significant difference between the first interviews that took place during the police intervention when the 'threat' was still there, and subsequent interviews following the intervention of the specialised structures.⁹⁷

1.2. | Appointment of a lawyer

In the past, two of the three reception centres⁹⁸ chose to devote a specific budget to paying the lawyers appointed to represent the victims. Sadly, this is no longer the case as there is no budget for it. Consequently, the three reception centres use lawyers acting within the framework of legal aid, as long as the victim meets the conditions to benefit from it.

1.2.1. | How the legal aid system works in Belgium⁹⁹

People with a low income can benefit from a legal aid service that exists in every bar.

Article 23 of the Constitution guarantees everyone the right to lead a life in keeping with human dignity. Within this framework, it guarantees the right to legal aid.¹⁰⁰

The law¹⁰¹ recognises two types of legal aid:

- Primary legal aid consists of on-duty lawyers who are available for short consultations: initial legal counselling, request for information, etc. Anyone, regardless of their income, has access to this form of legal aid.
- Secondary legal aid allows people who meet certain financial conditions or who are in certain situations, to be allocated a lawyer to assist them within the framework of judicial proceedings, among other things. Depending on the situation, this aid can be completely or partly free. This aid is organised by the Legal Aid Office (LAO), with staff on duty in every judicial district.

94 This right to be accompanied by a person of trust features in Directive 2012/29/EU (Art. 20, c), concerning victims. In Belgium, this right is explicitly recognised for both minors and vulnerable adults, who are the victims or witnesses of certain offences, including human trafficking (Art. 91 bis of the Code of Criminal Procedure [hereafter: CCP]).

95 MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, p. 86; MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 165-174; Also see above, Chapter 2 of this focus (right to information and access to specialised support services).

96 Under Article 15, §4 of Directive 2011/36/EU on trafficking, Member must take the necessary measures to ensure that provision is made for the possibility of making a video recording of the interviews of child victims of human trafficking. This possibility also features in Directive 2012/29/EU (Article 24) concerning victims. In Belgium, Article 92 of the Code of Criminal Procedure provides for the possibility of holding this type of interview, both for minors and vulnerable adults, who are victims or witnesses of certain offences, including human trafficking.

97 Namur Crim. Court, 29 June 2015: www.myria.be/fr/traite/jurisprudence/tribunal-correctionnel-de-namur-29-juin-2015. Also see MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 174 and *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 117-118.

98 The third reception centre has always used the system of pro-Deo lawyers, who intervene within the framework of legal aid.

99 Sources: www.avocats.be; www.aidejuridiquebruxelles.be.

100 Art 23, §3, 2° of the Constitution.

101 See articles 508/1 to 508/25 of the Judicial Code.

The majority of the person's livelihood is taken into account (professional income, personal property, savings, signs of affluence, etc.).

In order to have the right to completely free legal aid, a single person must have a net monthly income less than EUR 1,026. If they live with someone, the net monthly income of the household must be less than EUR 1,317.¹⁰²

Partially free legal aid is granted to a single person whose net income is between EUR 1,026 and EUR 1,317. If they live with someone, the net monthly income of the household must be between EUR 1,317 and EUR 1,607.

In addition, a number of people are considered for completely free legal aid owing to their particular situation.¹⁰³ For instance:

- beneficiaries of the integration allowance or welfare: a person in this situation is presumed not to have a sufficient livelihood, unless proved otherwise.
- children: the aid is completely free, regardless of their situation.
- foreign nationals, for a residence permit or to appeal against a decision relating to access to the territory, stay, establishment and removal of foreign nationals: a person in this situation is presumed not to have a sufficient livelihood, unless proved otherwise.
- asylum seekers or those with displaced person status: they are also presumed not to have a sufficient livelihood, unless proved otherwise.

A trafficking victim with the right to welfare from the start of support, falls under the first category mentioned above.

However, since 2016, it has been tougher to access legal aid in terms of the conditions and the procedure.¹⁰⁴ The withdrawal of the irrebuttable presumption of need, except for minors, implies that the applicants must present a whole range of documents to establish this state of need. Whereas proof of income was previously sufficient, such persons are now asked for proof of all the means of support and income they receive.

In concrete terms, the applicant must compile a file in which they have to declare their income and the property they own (house, car, bank account), as well as the income of the person who helps them or houses them. This is why the 'Justice for All Platform'¹⁰⁵, in which Myria participates as an observer, is demanding the in-depth reform of primary and secondary legal aid and an effective right of access to justice for all.

Furthermore, a financial contribution or minimum amount has been introduced, even for those with a right to completely free legal aid.¹⁰⁶ Following an appeal by associations, the Constitutional Court ruled, in a judgment of 21 June 2018, that this minimum amount was contrary to the Constitution.¹⁰⁷ It considered it contradictory to ask for a financial contribution from persons requesting a pro-Deo lawyer precisely because they don't have the necessary means to pay for a lawyer themselves.

1.2.2. | Policy for the appointment of a lawyer by the reception centres

The three specialised centres each have their own work method and their own schedule for putting a victim in contact with a lawyer. The victims therefore have the chance to choose their own lawyer. If not, the specialised centre will look for an appropriate lawyer for them.

It could be that a victim who was referred to a reception centre already has a lawyer (e.g.: for an asylum application). In this case, either the lawyer who has already been involved will also ensure the follow-up of the criminal aspect, or another lawyer will be appointed for this specific part.

¹⁰² Amounts in force in September 2019.

¹⁰³ See Art. 1, § 2 of the R.D. of 18 December 2003 determining the conditions for complete or partial free access to secondary legal aid and legal assistance.

¹⁰⁴ For more details see MYRIA, *Myriadoc 6, Être étranger en Belgique en 2017*, December 2017, pp. 37-39 and *Myriadoc 2, Être étranger en Belgique en 2016*, December 2016, pp. 23-28.

¹⁰⁵ This platform is a de facto association bringing together players from Belgian civil society and the legal world: <https://pjpt-prvi.be/fr?lang=fr>.

¹⁰⁶ Certain categories of people are exempt from this contribution, in particular : in criminal matters, persons receiving secondary legal aid completely free of charge, asylum seekers, foreign nationals who have initiated proceedings against a repatriation decision or a ban on entry or someone who "has no means of subsistence" (see Art. 508/17 §4 of the Judicial Code).

¹⁰⁷ Constitutional Court, judgment no. 77/2018 of 28 June 2018 www.const-court.be/public/f/2018/2018-077f.pdf.

In order to ensure optimum follow-up of the case, some centres encourage and help the victim to register in advance as an 'injured party', i.e. as a person who declares having suffered damage as a result of an offence.¹⁰⁸ This declaration can be made in person or through a lawyer. The person who claims to be an injured party is entitled to: have any document they consider useful to be attached to the file, be informed of the dismissal of the proceedings and the reasons for it, and to be informed of the fact that the investigation has been opened and the day fixed for the hearing at the investigating and trial courts. The injured party also has the right to ask to consult the file and obtain a copy of it.

One of the centres emphasised during the interview that declaring oneself an injured party doesn't always guarantee, in practice, that this person is kept informed of the case's progress and the day fixed for the hearing owing to organisational problems and a lack of resources at the public prosecutor's office.

Normally, the centres offer victims the assistance of a lawyer when the case is in the closing phase: either because the investigation is coming to an end and a hearing in chambers has been scheduled for the settlement of the proceedings, or even when the case is set to go before the court.¹⁰⁹ The latter occurs mainly when the case hasn't been investigated by an investigating judge or when the victim hasn't been informed of the referral of the proceedings.

In one of the centres, the appointment of a lawyer sometimes depends on the progress of the investigation. If the suspects have been arrested and remanded in custody,

The royal decree on the conditions of secondary legal aid must be modified to enable trafficking victims to benefit from it. the centre immediately appoints a lawyer for the victim. If a case has been going on for years, a lawyer can be appointed to attempt to accelerate the process. This also sometimes happens

right at the beginning of the criminal investigation phase. By appointing a lawyer at this point, it is possible to ask for access to the file and to carry out further investigations (see further on). Another centre acknowledged the interest of appointing a lawyer more quickly in certain cases.

If the victim meets the conditions for legal aid, they will be offered the assistance of a pro-Deo lawyer. In general, it is the centre that is responsible for collecting the necessary documents to prove a lack of sufficient means (in particular, a CPAS certificate if the victim still receives welfare). Owing to the requirements of the different legal aid offices, this can sometimes be rather time-consuming. On the other hand, if the investigation and the proceedings have been going on for several years, it is likely that the victim has found work. This means that they often no longer meet the conditions to benefit from free legal aid (total or partial). The fact of having to pay a lawyer can therefore discourage them from attending the trial and acts as a pitfall in claiming compensation¹¹⁰, even if the centres try to negotiate a social tariff or flat fee with the lawyer.

The Belgian system is thus different from the Dutch system where presumed victims of trafficking can benefit directly from the assistance of a lawyer within the framework of legal aid, if they so wish. The lawyer will intervene in the different aspects linked to human trafficking (criminal proceedings, residence rights, etc.).¹¹¹

A recommendation formulated both by a reception centre and a lawyer who was interviewed, is to adapt the royal decree concerning the conditions of secondary legal aid to allow trafficking victims to benefit from it throughout the criminal proceedings, regardless of the development in their financial status, owing to the particular vulnerability of victims of human trafficking.

¹⁰⁸ Article 5 bis of the Preliminary Title of the Criminal Procedure Code.

¹⁰⁹ On filing a civil suit, see below point 2.3 (right to compensation for the damage suffered).

¹¹⁰ For more details, also see point 2.3.3 hereafter (filing a civil suit) and Chapter 4 (compensation of victims of human trafficking).

¹¹¹ <https://www.wegwijzermensenhandel.nl/organisatieprofielen/RaadvoorRechtsbijstand.aspx>. The Dutch system combines elements of the Belgian plaintiff system and an approach based on needs: in the Netherlands, the victim is considered as a witness with a privileged position owing to the damage suffered and the resulting vulnerability and needs. See FRA, Victims' rights as standards of criminal justice, Justice for victims of violent crime, Part I, pp. 41-42: <https://fra.europa.eu/en/publication/2019/justice-victim-crime-standards>.

In addition, there are situations where the centres should have appointed a lawyer for a victim in the initial phase of the case or well before the referral of the proceedings. The importance of making this appointment quickly was also stressed by the lawyers questioned.

An early appointment not only allows access to the file, but also to request the investigating judge for additional investigative measures (see below). This also avoids a situation where the lawyer discovers at the hearing in chambers that they are faced with a colossal case involving several defendants, and that they haven't had the time to sufficiently familiarise themselves with it in order to best represent the victim's interests. More generally, this allows the victim to be suitably represented at all stages of the proceedings and to position themselves, among other things, when a request for a confrontation is made by the perpetrator. Since a recent legislative amendment¹¹², anyone who is heard, in any capacity, has the right, if they so wish, to take the initiative to be assisted by a lawyer at the hearing.¹¹³

Support of a lawyer in case of confrontation

The role of the lawyer and the moment when they should come into play are critical. One prominent example concerns a case of sexual exploitation¹¹⁴ where the victims were recruited over the internet. A Palestinian victim was prepared to face her exploiters after the defendant's lawyer officially submitted the request to the investigating judge. The specialised centre supporting the victim informed her that she could refuse the confrontations at any time. However, they should have explicitly advised her against it. The two confrontations, which took place the same day, didn't go as she had expected. The perpetrators denied everything, which made the victim powerless. During the second confrontation, she started shouting because she couldn't stand it any longer. The police had to stop the confrontation early because the victim was no longer able to react. She later said that she was shocked by her own reaction. This situation could have been avoided if the victim had been appointed a lawyer. There was only one team member from the specialised centre to support the victim psychologically.

Consequently, the victim didn't benefit from any support from a lawyer. On the other hand, the exploiter was indeed assisted by a lawyer, which means that the exploiters were fully supported at that time.

If a lawyer had been appointed, the victim's interests would have been better defended. Discussions with the specialised centres revealed that two of the three centres don't usually appoint a lawyer before the end of the proceedings.

In practice, however, victims of sexual exploitation are rarely exposed to a confrontation with their pimp because the majority of investigating judges consider it inadvisable. If this happens despite all, the victims must be given maximum protection. In cases concerning labour exploitation, confrontations between victims and defendants can be more frequent, as shown in the case studies.¹¹⁵ It was also noted in these cases that the victim wasn't appointed a lawyer

Voluntary return of the victim to their country of origin

Some victims wish to return to their country of origin as quickly as possible, either after their interception or in the short term. This is particularly true for EU citizens who aren't always aware that victim status also enables them to obtain legal assistance and, if necessary, compensation. The role of the specialised centres is to inform the victims and put them in contact with a (pro-

Deo) lawyer, who can defend their interests in Belgium so that they can go home. Nevertheless, staff at the specialised centres expressly explain to victims that it is their responsibility to keep in contact

with their lawyer and that the centres have no further role to play in this respect. The problem is that the proceedings are often spread out over many years and the victims lose contact. They lose interest too because there is often only a small chance of obtaining actual compensation in the future.

Victims who return to their country of origin must be put in contact with a lawyer who can continue to defend their rights in Belgium.

¹¹² Law of 21 November 2016 on certain rights of persons subjected to questioning, O.G., 24 November 2016.

¹¹³ Art. 47bis, §6, 7 C.i.Cr. See M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 406.

¹¹⁴ MYRIA, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 105-106; Also see below, point 3 (right to protection against secondary victimisation).

¹¹⁵ See Part 3, Chapter 2, point 1.2 (case studies: hotel & catering case).

In some cases, it turned out that the specialised centres had appointed a lawyer for the victims, but they put an end to the support because they were returned to their country of origin. The case in the example (see below) had a positive outcome with effective compensation granted to the victims. However, this isn't always the case.

In a **case concerning labour exploitation in the construction sector** tried in 2016¹¹⁶, the victims were supported and taken care of by Sürya and Payoke. Two victims requested a voluntary return to Romania. However, their participation in the judicial proceedings was guaranteed by the appointment of a lawyer, who represented them as a civil party during the rest of the investigation and trial. The victims thus had access to justice, even if they were no longer living in the country where the exploitation took place. It is regrettable that the company in question went bankrupt during the proceedings and that no significant confiscation was ordered, thus preventing the victims from receiving effective compensation.

Victim protection in the event of discussion during the status procedure

Victims may sometimes be excluded from the procedure because they haven't complied with the conditions. In some instances, these may be cases in which the specialised centre itself is involved (for example: non-compliance with the support agreement). In this type of case, the victims' interests could be better guaranteed by a lawyer than by a team member from a specialised centre.

In a **sexual exploitation case concerning a Thai massage parlour**¹¹⁷, one of the victims was excluded from the status for violating the conditions. She had made contact by phone with one of the defendants, whose family were friends with her own family. The police confronted her with an audio fragment of the phone taps and questioned her about it in the presence of two staff members from the specialised reception centre.

Manipulation of the suspect through the appointment of a lawyer

Sometimes, victims are contacted by their exploiter after their interception. They claim to be trying to help them through a lawyer. Of course, in such a case, the lawyer is only serving the exploiter's interests and not those of the victim. The following example further demonstrates the importance of appointing a lawyer quickly to avoid any risk of manipulation.

In the **Mama M. case**¹¹⁸, a Nigerian victim, taken in by PAG-ASA, stated that her 'madam' had contacted her and had tried to force her to see a lawyer: "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."

2. Participation in the criminal proceedings

A trafficking victim, like any victim of crime, benefits from rights within the framework of criminal proceedings. Some of them are detailed below.

¹¹⁶ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online, pp. 84-88: point on victim status p.88.

¹¹⁷ MYRIA, 2016 *Annual Report Trafficking and smuggling of, in the hands of traffickers*, p. 98.

¹¹⁸ MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 95-96.

2.1. | Victim's right to be heard and to give information

Article 10, §1 of Directive 2012/29/EU states that Member States must ensure that the victim can be heard during the criminal proceedings and give evidence.

In Belgium, under Article 3bis of the Preliminary Title of the Criminal Procedure Code, victims of offences and their relatives must be treated properly and conscientiously, in particular by providing them with the necessary information and, if required, by putting them in contact with specialised services. Victims must also be provided with relevant information on how to file a civil suit and make a declaration as an injured party.¹¹⁹

A joint circular of the minister of justice and the Board of Prosecutors General on the reception of victims at the public prosecutor's office and the courts¹²⁰, also mentions the main rights of victims, including the right to receive and give information.

During their police interviews, victims of human trafficking often give information that can be used as evidence, and even provide the evidence themselves. It can be the recording of a conversation on Skype, a USB stick containing messages or even photos on Facebook.

In a **loverboy case involving adult Belgian victims**¹²¹, a specialised centre contributed to the investigation by giving the police additional information provided by the victims with their consent. In a **Nigerian case**¹²², the victim had recorded (telephone) conversations and put them on a USB stick.

In a **Hungarian human trafficking case**¹²³ in Ghent, one victim was able to prove via Skype that her pimp had made false statements. She consulted a friend who had recorded the oral conversation on Skype with the pimp. The police asked her friend for this Skype conversation and checked the content. This element was later included in the judgment¹²⁴ as evidence against the pimp.

In a **Belgian loverboy case**¹²⁵, associated with multiple crimes, one victim gave the investigators a USB stick during a new interview, which contained Facebook messages and photos. She was thus able to prove that one of the defendants had threatened her after her complaint. Based on the photos and messages, it was possible to detect and identify new victims. In the same case, a child victim showed a Facebook message to the police during her interview, proving that the accused had attempted to contact her through another victim's profile, which is absolutely forbidden owing to the possibility of manipulation.

2.2. | Right to the return of property

Article 15 of Directive 2012/29/EU states that Member States must ensure that recoverable property seized in the course of criminal proceedings is returned to the victim without delay.

The return of personal belongings to the victim can play an important role in the victim's psychological healing process. This is especially the case for Nigerian victims.

Many Nigerian girls swear an oath in Nigeria before a voodoo or juju priest prior to their departure, an oath by which they or their family promise to pay the travel costs and debts to their 'madam'. This swearing of an oath is combined with a series of rituals. The woman has to give fingernails, blood, hair and other intimate items that are carefully stored in a packet. The criminal network keeps control of this packet. If the woman doesn't or no longer fulfils her obligations, juju or voodoo is inflicted on the victim. According to voodoo beliefs, it is possible to use this packet to make someone fall sick or go mad, and even cause their death. The madams are therefore able to terrorise their girls and create a bond that the girls can't break without being punished. In order to protect themselves and their family, many victims prefer to continue to work as prostitutes and reimburse their debts.

¹¹⁹ Article 5 bis of the Preliminary Title of the Criminal Procedure Code.

¹²⁰ Joint circular of the minister of justice and the Board of Prosecutors General no. 16/2012 of 12 November 2012 on the reception of victims at the public prosecutor's office and the courts.

¹²¹ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 91-95.

¹²² MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 126.

¹²³ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 109-110.

¹²⁴ East Flanders Crim. Court, Ghent division, 31 March 2017, ch. G28 (appeal).

¹²⁵ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, p. 80-84.

The woman only feels free of the curse when she gains control of her own packet. This means that during the investigation, the police should try to get hold of this packet so that the woman knows that she can free herself from this grip. This will allow the police to win the victim's trust. Myria noted in the Nigerian cases that the victim had asked the court to retrieve her packet from the clerk's office so that she could destroy it and thus lift the curse.¹²⁶

2.3. | Right to compensation for damage suffered¹²⁷

Article 12, § 2 of Anti-trafficking Directive 2011/36/EU provides that victims must have access to legal advice without delay and, depending on the role attributed to the victims in the judicial system concerned, to legal representation, including for the purpose of claiming compensation. Article 16, §1 of Directive 2012/29/EU concerning 'victims' rights stipulates that the latter have the right to obtain a decision on compensation from the offender, within a reasonable time, within the framework of criminal proceedings. As for the Council of Europe Convention on Action against Trafficking in Human Beings, it specifies in Article 15, §3, that each party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

In Belgium, if the victim of an offence wants to claim compensation for damages before the criminal court, they must acquire the status of plaintiff by filing a civil suit. The victim therefore becomes a party to the criminal proceedings and, in many respects, has the same rights as the accused or the defendant.¹²⁸

Trafficking victims who wish to file a civil suit usually do so when the prosecution has already been instituted by the public prosecutor. This is what is known as filing a civil suit by intervention.

This is the cheapest procedure. Such an action is accepted when the criminal proceedings have been instituted and up until the closing of the proceedings before the trial judge ruling at first instance.¹²⁹ A victim can therefore bring a civil action before the investigating judge when the matter is already under criminal investigation concerning the alleged acts, when the proceedings are settled at the end of the investigation before the investigating court (in chambers) or during the hearing at the trial court.

The plaintiff, as a party to the proceedings, has certain rights. During the investigation, they can request access to and obtain a copy of the file¹³⁰ as well as the fulfilment of additional investigative measures.¹³¹ At the end of the investigation, they also have the right to access and obtain a copy of the file, as well as the right to request additional investigative measures.¹³² At the judgment stage, the victim has the right to access the file and benefits from the rights granted to the parties to the proceedings.

Human trafficking cases are generally investigated by an investigating judge after the initial information phase under the authority of the senior crown prosecutor or labour prosecutor. The victim then has the chance to file a civil suit at the beginning of the investigation. However, some labour prosecutors, responsible for processing cases of trafficking for the purpose of labour exploitation, are sometimes unfamiliar with how criminal justice works. Hence, they prefer to hold onto the case without handing it over to an investigating judge, or they consider that the production of evidence doesn't require it. The law doesn't lay down general criteria to determine the type of cases that should be investigated by an investigating judge.¹³³ If they decide that the case is in order, they then proceed with a direct summons before the criminal court. In this case, if the victim is an injured party, they may submit a request to access the file or obtain a copy of it, at any time, from the senior crown prosecutor or the labour prosecutor, depending on the progress of the proceedings.¹³⁴ On the other hand, they can't request additional investigations to be carried out (see below).

126 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 26. The restitution is made on the basis of Article 43bis, paragraph 3 of the Criminal Code, which provides that when confiscated property belongs to the civil party, it will be returned to them.

127 Also see Chapter 4 hereafter (compensation of victims of human trafficking).

128 M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 286.

129 Art. 67 C.I.cr.

130 Art. 61ter C.I.cr.

131 Art. 61quinquies C.I.cr.

132 Art. 127, §2 and 3 C.I.cr.

133 M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 636.

134 Art. 21bis C.I.cr.

2.3.1. | Case dropped

Article 11 of Directive 2012/29/EU on victims of crime, sets out several victims' rights in the event of a decision not to prosecute, advising them in particular about their right to receive sufficient information to decide whether or not to have such a decision reviewed.

In some instances, the case is dropped during the information phase and the victim risks being excluded from the status of victim of human trafficking. According to one of the centres, this is more likely to be the case for labour exploitation cases, with the margin of interpretation inherent to the concept of "work contrary to human dignity", than for sexual exploitation cases. In such cases, there is often insufficient evidence to prosecute the perpetrators of the human trafficking. It is likely the case will be dropped and team members should prepare the victims for it. Often, the reason is very general and the centres have to contact the labour prosecutor for further explanations.

Another problem is associated with the fact that prosecutors sometimes only make known their decision to drop the case at the last minute. In one case, the centre had to terminate their support for the victim the following day.

Sometimes, there are shortfalls in the investigation and/or the reference prosecutor in question has little experience in investigations into human trafficking. If the decision to drop the case isn't justified, the centre will offer to appoint a lawyer for the victim. The lawyer can then look through the file and/or consult with the prosecutor in order to back up the elements in it. If there are justified reasons to support this, the victim will be offered the chance to have the case reopened by bringing a civil suit before an investigating judge, with the possibility of requesting additional investigative acts at a later stage.

2.3.2. | Request to carry out further investigative measures

In addition to the right to request access to the investigation file, the parties are granted the possibility of asking the investigating judge to carry out an additional investigative act.¹³⁵ This notion should be understood in the broad sense: it includes all acts aimed at collecting data on the facts or at determining the guilt or responsibility of the accused or the credibility of a witness or victim.¹³⁶

The interviews revealed that one of the three centres is quicker to appoint a lawyer during the investigation compared with the others. This lawyer may then consult the file to identify any shortfalls and, in consultation with the victim, ask the investigating judge to conduct an additional interview with the victim. According to this centre, the investigating judge nearly always agrees.

Another centre always receives a negative response from the investigating judge. According to this centre, there is no point in appointing a lawyer for the victim during the criminal investigation (i.e. before a date has been set for the case in chambers).

A third centre appoints a lawyer when the case is dragging on. By requesting access and additional investigations, the latter endeavours to resume the investigation. This centre rarely uses this procedure but, if necessary, it is willing to learn from it, as it realises that perhaps greater attention is required, especially in cases with a high likelihood of success. The lawyers questioned also mentioned the interest of appointing a lawyer as early as possible in order to have access to the file in order to request additional investigations to be carried out, if necessary.

The rapid appointment of a lawyer allows access to the file and to request additional investigations be carried out, if necessary.

A late appointment no longer allows such duties to be requested. The evidence to assess the damage suffered by the victim is therefore definitive. A lawyer gave the example of a young Albanian prostitute who informed him that the defendant had bought a hotel in Albania with the proceeds from her prostitution.

¹³⁵ Art. 61quinquies, §1, C.I.cr.

¹³⁶ M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 838.

With an early appointment, it is possible to check whether this aspect has been investigated (for instance, if letters rogatory have been sent to Albania).

Some cases, in which Myria filed a civil suit, show that the investigating judge responded positively to several requests made by the plaintiff (a victim and/or Myria) for additional investigative acts. However, in some cases, the result didn't meet expectations.

In the **case of the Emirati princesses**¹³⁷, the victims were exploited as domestic slaves in a luxury hotel in Brussels. An entire floor of the hotel was rented exclusively to the princesses for months.

They were convicted of human trafficking. They had hired a security firm to monitor their domestic staff. The victims systematically went through the hotel reception area accompanied by their security guards. The hotel staff must have noticed. The hotel manager, for whom this was a lucrative activity and who, according to the plaintiffs, must have been aware of the abuses, was never prosecuted. During the investigation, the lawyers of Myria and one of the victims, i.e. the plaintiffs, asked the investigating judge, on the basis of specific questions, to question the hotel manager, the head of the security company and certain witnesses.

The investigating judge agreed and instructed the police to do so. In the meantime, several witnesses had gone abroad with the princesses or had been dismissed by the hotel. Interviews with those involved didn't reveal much new information. The investigators hadn't received any other assignments either within the framework of this part of the investigation. Besides the requested interviews, no other inquiry was made regarding the role of the hotel's manager in this case.

Recourse to additional investigative acts proved successful in the **case of an illegal textile workshop**.¹³⁸ It involved Syrian victims. The manager was convicted of human trafficking. Within the context of a request for further investigative acts, Myria asked that experts be able to testify. This allowed significant additional evidence to be obtained, in addition to the hearings, the phone investigation ('zoller'¹³⁹ and messages) and financial analyses. Based on their experience, these experts stated that there was clearly a heavy workload resulting in a situation of exploitation. Normally, five to six people are required to sort 2,000 kilos of clothes a day; in this case, just one person had to do the work.

2.3.3. | Filing a civil suit

A certain number of victims file a civil suit and are represented by a lawyer, especially with a view to receiving compensation (see Chapter 4). This can be seen in several examples from case law, mentioned in this focus. According to one of these centres, it is usually victims of labour exploitation rather than sexual exploitation. In addition, there are considerable stumbling blocks preventing victims from filing a civil suit.

Stumbling blocks

Some victims of sexual exploitation, but sometimes labour exploitation as well, fear reprisals because the perpetrators come from the same region as their loved ones. They don't want to risk putting their family in danger in their country of origin. In countries like Nigeria and Thailand, there are hardly any protective measures.

The financial aspect is also a major stumbling block. Victims who have found a job no longer have access to the pro-Deo system and have to pay for the lawyer themselves, knowing that the defendant will no longer be able to compensate them. This is highly discouraging.

137 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 122-124.

138 CECLR, 2012 *Annual Report Trafficking and smuggling of human beings, Building trust*, pp. 58-59 and 76; Mons Crim. Court, 26 June 2012, 10th ch.

139 The network operator provided the investigating judge with a list of phone numbers: those dialled by a certain phone (landline or mobile) and numbers that contacted this phone. The content of these incoming and outgoing calls wasn't recorded. The recorded phone numbers can be up to a year old.

Other victims don't wish to file a civil suit because they want to distance themselves emotionally from the traumatic experience as quickly as possible.

In a **labour exploitation case in the construction sector**¹⁴⁰, several victims stated that they weren't interested in pursuing the case because they wanted to close this chapter and forget about their involvement with the Belgian businessman: "I'm now working as a P.E. teacher and I'm (...) married. I'm no longer in contact with [X] and I don't want to hear about him anymore".

There are also victims who abandon participation in the civil proceedings and who are no longer represented by a lawyer at the trial. This is due to the length of the proceedings, with the trial taking place many years later and/or all the defendants having been released, leaving the victims feeling even more threatened.¹⁴¹

The specialised centres confirm that the victims should at least have the chance to file a civil suit. It is also important for the defence of their interests at the trial. The opposing counsel often uses arguments that don't always stand up in its pleadings. If there is no plaintiff, there is no counterweight, so the court only hears one side of the story.

One of the specialised centres indicated that, in some cases, it would be better to appoint a lawyer more quickly in order to file a civil suit for a victim. According to this centre, the conditions of access to legal aid for victims of human trafficking should be more flexible.

Victim without official victim status as a plaintiff in a trial concerning human trafficking

Sometimes, there are victims who haven't benefited from the procedure associated with the status of victim of human trafficking and who, years later, are plaintiffs in a trial concerning human trafficking, as shown in the last point of the case illustrated at the end of this chapter.¹⁴² There are also several other examples taken from case law.

In a case of **labour exploitation in a sewing workshop**¹⁴³, several victims reported acts of bogus self-employment associated with human trafficking to the labour prosecutor, through their lawyer. The investigation, conducted by the social inspectorate and the labour prosecutor, revealed that several victims thought they were working for the company as employees. In reality, they were bogus self-employed workers. Three victims filed a civil suit during the trial but the court only accepted the social criminal law offences. Nevertheless, it ordered the special confiscation of EUR 100,000 from each of the two convicted parties. The court awarded the provisional sum of EUR 1 to the plaintiffs and ruled a stay of proceedings in order to judge the civil interests.

In a case of **labour exploitation in a paper serviette and packaging material factory**¹⁴⁴, the main defendant and his company were convicted of human trafficking. Four workers filed a civil suit and didn't benefit from the specific procedure related to the status of victim of human trafficking. The court awarded them damages of between EUR 21,963.50 and EUR 88,241.79. The case began following a check by the Flemish Region's labour and social economy inspectorate. The latter made the following observation: "Several machines, one of which was running, operated by two people and, at the back of the factory, a living area where a 14-year-old Bulgarian boy was sleeping because one of the machines wasn't working." According to the inspectorate, 11 Bulgarian workers were employed without having been declared to social security, including seven who were in the country illegally. The 14-year-old boy was also employed, in violation of all the provisions relating to child labour. Furthermore, one of the workers' families (three people) were housed in an area located in the middle of the factory, which wasn't at all suitable as a living space for people.

140 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 96.

141 See following point on secondary victimisation.

142 See below: example of a case (pallet factory).

143 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 150.

144 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 180-181.

3. The right to protection against secondary victimisation

What comprises secondary victimisation of adults, minors and other vulnerable groups? The following examples help to define the problem.

3.1. | Secondary victimisation

Secondary victimisation means that victims become victims of the same offence for a second time, as they are faced with negative social reactions, civil servants and authorities who can't or won't help them, as well as lengthy exhausting, bureaucratic and costly legal proceedings. For the victim, this secondary victimisation accentuates victimisation the suffering or prejudice suffered as a result of the initial offence (primary victimisation). In essence, it involves a feeling of new victimisation.¹⁴⁵

Different factors influence the victim's actual additional suffering; firstly, the intervention of the authorities concerned in the criminal process. Secondly, the nature and the severity of the offence, the victim's personal characteristics and the presence of a supportive social network also play a major role.¹⁴⁶

It is essential to be familiar with the factors that increase (risk factors) or reduce (protection factors) the risk of secondary victimisation. For instance, adequate information and legal and psychological assistance reduce the risk, while unnecessarily long criminal proceedings or confrontations with the perpetrators increase it. Studies and literature reveal¹⁴⁷ that these factors can be subdivided into four main themes: predictability, safety, management/control

and justice. Predictability means that the victim knows what to expect. Control means knowing whether or not the victim feels they can have an influence on their own situation. Safety chiefly refers to physical safety. When the victim is afraid of reprisals from the exploiter or a confrontation with the perpetrator, they don't feel safe. As regards emotional and social security, other factors must be taken into account such as respect for the victim's privacy and their respectful treatment. Factors with a negative score in relation to the above-mentioned themes reinforce the likelihood of secondary victimisation. Consequently, they can have a negative impact on trust, traumatise a second time, hamper recovery, cause further trauma or a loss of trust in the judicial system. Lastly, victims may lose faith in a just world.¹⁴⁸

Example

A 14-year-old Belgian girl became the victim of a loverboy after running away from a youth centre. She fell in love with a loverboy who sexually exploited her. After the trial, the young girl was sent back to the same centre.¹⁴⁹ This was a form of secondary victimisation by the law, because there was no other available alternative. The victim ran away from the centre several times, an obvious sign of a problematic situation. It was bad practice to send her back to the same place.¹⁵⁰

Another form of secondary victimisation is the confrontation between a victim and their exploiter. In principle, according to the Belgian system, victims don't have to appear in court during the trial to testify in the presence of the defendant. However, in some cases, there have been confrontations between defendants and victims. Each time, this has been at the exclusive request of the defendants' lawyer to the investigating judge.¹⁵¹

145 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*.

146 M. WIJERS, M. BOER, *Een keer is genoeg: verkennend onderzoek naar naar secundaire victimisatie van slachtoffers als getuigen in het strafproces*, Research and Documentation Centre (WODC) of the Ministry of Justice and Security (Netherlands), 2010, pp. 135-147.

147 F.W. WINKEL, *Post traumatic anger. Missing link in the wheel of disfortune*, Wolf Legal Publishers: Tilburg University, 2007.

148 M. WIJERS, M. BOER, *Een keer is genoeg: verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafproces*, Research and Documentation Centre (WODC) Ministry of Security and Justice (Nederland), 2010, pp. 135-147; U. ORTH, *Secondary Victimization of Crime Victims by Criminal Proceedings*, Social Justice Research, 2002, N° 15(4), pp. 313-325.

149 On this subject, see this report, Part 3, Chapter 2 (Case studies), point 1.1.

150 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 91 and 144-147.

151 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 58-59.

Myria questions the added value of confrontations between victims and defendants in problematic cases. This question is certainly valid as regards victims of sexual exploitation, who have been traumatised psychologically and physically by their negative experiences. As victims, they risk being dragged into a 're-victimisation' process. The often very specific sociocultural context of the victims is sometimes decisive. For Nigerian victims, confrontations are likely to result in the defendant putting a new voodoo spell on the victim. And so the victim is cursed once again. In practice, these requests by the defendant for a confrontation aren't objective requests for further investigation, but rather an attempt at manipulation by the defendant to intimidate the victim and/or encourage them to withdraw their statements. It is essential that the investigating judges be sufficiently aware of this, and avoid granting such requests straight away. Such confrontations are often pointless and even counterproductive to the investigation, and the

A defendant's request for a confrontation is often an attempt to manipulate and intimidate the victim.

additional psychological damage to the victim is usually significant. According to Myria, victims of sexual exploitation can never be forced to agree a confrontation. Today, if the lawyer of a defendant sends a request for a confrontation, the majority of investigating judges immediately give a negative response in the case of sexual exploitation. It is an example of good practice that has given rise to a general practice. In the case of labour exploitation, this issue rarely arises. Caution should also be exercised, as observed in a hotel & catering case.¹⁵² A specialised centre explained that in some labour exploitation situations, the victim can also experience significant trauma. In this case, it is important that a team member from the specialised centre inform them that the confrontation isn't compulsory. For this purpose, the victims must also be given a lawyer (free of charge) in order to inform them of their rights within the framework of a confrontation.¹⁵³

Examples

In a case concerning the sexual exploitation of victims recruited online¹⁵⁴, a Palestinian victim was prepared to participate in a confrontation with her exploiters, after the defendant's lawyer made an official request through the investigating judge. The specialised centre supporting the victim explained to her that she could decline the confrontation at any moment. However, the centre should have explicitly advised against it. The confrontation didn't go as expected. The perpetrators denied everything, which made the victim powerless. During the confrontation, the exasperated victim verbally abused them. The police should have stopped the confrontation earlier because the victim was no longer able to react. She later admitted that she was surprised by her reaction. The specialised centre should have appointed a lawyer beforehand to advise her against the confrontation and to defend her interests during the hearing.¹⁵⁵

In a Romanian case¹⁵⁶, the defendant had formally denied the victim's accusations and had asked for a confrontation, which the investigating judge had immediately authorised during the defendant's hearing. The victim was therefore contacted and invited to go to the police station for a confrontation. This resulted in the victim modifying certain points in their statements, which meant they no longer benefited from any protection.

The reaction of the victim's own family is also a major factor that can cause a new feeling of victimisation. In some cultures, prostitution is considered shameful, even if the victims were forced into prostitution or influenced through fraudulent tactics, and were subjected to appalling situations.

Example: in an Albanian loverboy case concerning sexual exploitation, the victim suffered secondary victimisation owing to her family. She was forbidden from returning to her country of origin because she had left her husband to then earn a living as a prostitute under the influence of a loverboy.

¹⁵² See below in this report, Part 3, Chapter 2 (Case Studies), point 1.2.

¹⁵³ MYRIA, *2013 Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 58-59. Concerning the rights of victims of crimes, Directive 2012/29/EU of the European Parliament and Council of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA, O.G., L315, 14.11.2012 November 2012, p.57.

¹⁵⁴ MYRIA, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 105-106. This victim never filed a civil suit.

¹⁵⁵ On this subject, see this chapter, point 1 (right to legal aid).

¹⁵⁶ MYRIA, *2012 Annual Report Trafficking and smuggling of human beings, Building Trust*, pp. 54-55.

As a result, her family wanted no more contact with her. In addition, the young woman was still in love with her loverboy. The clan in which the loverboy was active had a grip over an entire region in Albania, both on a criminal and political level. The perpetrators in custody in Belgium were all released during the proceedings. The victim felt threatened and had no social safety net. She needed money to pay her loverboy's lawyer. She was therefore forced to work for another pimp from the same family clan.

Example: in one case¹⁵⁷, several Thai victims were exploited. Lured to Belgium by false promises, they ended up in massage parlours where they were paid to perform sexual services. Enticed under the pretext of a job as a cook, one of the victims made the following statement: "My parents have already told me that the defendant claims I told the police everything and that's why they now have problems. I'm now considered the black sheep of the family. However, I can't tell my family that I was obliged to work in a massage parlour. They won't believe me or accept it." This is another blatant example of secondary victimisation by the family."

Example: in another case¹⁵⁸, Moroccan victims were sexually exploited and forced to prostitute themselves. The biggest fear of one of the victims was that her parents should discover she had had to work as a prostitute. The circumstances were of no interest to them. One of the victims stated: "If my family were to find out what type of work I did, I would be in danger. What I mean is, in my culture, it isn't uncommon for someone to be killed for that type of thing."

Another blatant example of secondary victimisation in Hungary illustrates this phenomenon. During an interview with a reference prosecutor, Myria learnt, in relation to a case of sexual exploitation¹⁵⁹, that Belgium had launched a reintegration programme for victims in Hungary.

This Belgian-Dutch-Hungarian initiative led directly to the European RAVOT project.¹⁶⁰ The Belgian prosecutor concerned noted that only one Hungarian woman (without children) was prepared to participate in this reintegration programme. After having obtained information from other victims, it transpired that the women were punished if they joined the programme. Prostitution is punishable in Hungary. The Hungarian authorities considered the victims of prostitution following the programme as unfit mothers and removed their children from them.¹⁶¹ When the Belgian prosecutor was informed, she threatened to put an end to the project and the Hungarian authorities changed stance. The intervention of the prosecutor is a good practice.

3.2. | Protection against intimidation by the exploiters

To avoid secondary victimisation, the victims must be protected against intimidation by their exploiters. The latter are often in a position of power in relation to the victim. For instance, a specialised centre mentioned in an interview that there were sometimes victims with serious mental or physical disabilities. This is why, in some cases, the centre has to take a decision for the victim as they are unable to do so. The exploiters make full use of their position of strength towards these people. Based on a variety of cases, good and bad practices concerning the protection of victims are listed hereafter.

During an interview, Myria learnt that, in an Albanian case of sexual exploitation, an Albanian victim received death threats after the Belgian police asked for information about the exploiters through letters rogatory. The victim was supported by a specialised reception centre. As a protective measure, the victim went to fetch her child in Albania and brought it back to Belgium through the family reunification procedure.

157 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 98.

158 MYRIA, 2011 *Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 96-97.

159 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, p. 64.

160 Referral of and Assistance for Victims of Human Trafficking, ISEC project, under the direction of the Hungarian Ministry of the Interior, in which the NGO Payoke participated as the Belgian partner.

161 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, p. 92.

In one **case**¹⁶², two Albanian girls were victims of loverboys. The case was brought to light because the police found the victim in a state of shock with broken ribs. Her pimp had beaten her up. During the investigation, the main defendant continued to threaten the victim and her family in Albania. They all received death threats. He had threatened the victim's father to the point where the latter came to Belgium, accompanied by the main defendant's father, to tell the police that his daughter was lying. The man was completely disoriented and after having made his statements, the police helped him organise his return to Albania. The threats against the victim and her family continued. Fearing the defendant, the victim went into hiding with the help of a specialised reception centre.

In the **Mama M. case**¹⁶³, a former Nigerian victim took a 14-year-old Nigerian victim to a specialised centre for victims of human trafficking. She had found her crying in the street. It turned out that she was a Nigerian child victim who was being exploited as a prostitute. She worked the street in Antwerp as a prostitute for two months. She was probably only 13, or had just turned 14, when she left Nigeria. The defendants had threatened the victim and her family using voodoo rituals. Through fear, the victim was only prepared to speak to the police later and to make a statement after Esperanto, a specialised centre for child victims of trafficking, succeeded in gaining her trust. The police organised an interview in the familiar surroundings of the specialised centre Sürya, in consultation with her guardian. The victim was accompanied by a psychosocial worker from a specialised centre.

This section concludes with final painful example of the extreme intimidation of a victim. In the Nigerian Mama L. case¹⁶⁴, the 14-year-old victim R. escaped from the window where she had to work. R.'s mother advised her to run away and come back to Nigeria. Mama L., R.'s pimp, was furious about R.'s disappearance.

Investigators learnt from the phone taps that R'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 R.'s mother (and the other children) to make her pay for her daughter's escape. R.'s mother was imprisoned and tortured. Conversations were recorded in which Mama L. was informed that R.'s mother was dead. The police later learnt from R. that it was her brother and not her mother who died in mysterious circumstances.¹⁶⁵

We can conclude from the examples and cases cited that secondary victimisation is very frequent. The exploiters not only intimidate victims in Belgium but often their families as well in their country of origin. In many cases, the victim's family is also at the source of the secondary victimisation. Consequently, it is even more difficult for the victim to process such events, which are often highly traumatic.

Conclusions

The legal support for victims provided by the specialised reception centres is vital: it allows victims to be explained their rights and to provide them with support within the framework of criminal proceedings (hearings, information on the follow-up, support, etc.). The centres also offer victims the assistance of a lawyer with a view to claiming compensation. With no budget to pay the lawyers, the reception centres rely on lawyers acting in the context of legal aid. The victim can benefit from a pro-Deo lawyer if they fulfil the conditions (e.g. if they are on welfare, which is the case at the start of the support).

162 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online, pp. 106-107.

163 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings*, *Minors at major risk*, p. 98.

164 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings*, *Minors at major risk*, p. 70-71.

165 In the 2018 focus, the theme of vulnerable child victims of human trafficking was discussed in detail.

Normally, the centres offer victims the assistance of a lawyer when the case is in the closing stage: either because the investigation by an investigating judge is coming to an end and a hearing in chambers has been scheduled for the settlement of the proceedings, or even when the case is set to go before the court. Sometimes, a lawyer is appointed earlier if necessary (e.g.: when there are prisoners and when the case will probably be rapidly closed).

However, human trafficking investigations take time. Sometimes, a case will only be closed after several years. In such cases, it is likely that the victim has found a job and no longer qualifies for legal aid to benefit from a pro-Deo lawyer. The victim may also now wish to turn the page or have other financial priorities.

Furthermore, the rapid appointment of a lawyer means they have access to the file and can ask the investigating judge for additional investigative measures, if necessary, if there appear to be gaps in the investigation. This also avoids a situation where the lawyer discovers at the hearing in chambers that they are faced with a colossal case, and that they haven't had the time to sufficiently familiarise themselves with it in order to best represent the victim's interests. More generally, this allows the victim to be

A lawyer should be appointed without delay.

represented at all stages of the proceedings and to position themselves, among other things, when a request for a confrontation is made by the perpetrator.

At the same time, when there are reasons to reopen a case, such as shortcomings in the investigation or an investigation capacity problem, it is important that the victim is assisted by a lawyer. If necessary, they can file a civil suit with the investigating judge and then ask for additional investigative measures.

This is why Myria recommends that the specialised reception centres appoint a lawyer for the victims they are supporting, in a timely manner.

This appointment must be made quickly after the case has been put under the responsibility of an investigating judge. In some cases, such an appointment can also be useful after the first interview with the victim within the framework of the first stage of the criminal procedure (the "information").

An amendment to the multidisciplinary circular of 2016 could be envisaged for this purpose.

Myria also recommends that for each victim of human trafficking, a registration as "injured party" be systematically introduced, in order to guarantee their rights within the framework of the criminal proceedings.

Furthermore, trafficking victims, just like other categories of persons such as asylum seekers, are in a particularly vulnerable situation at the beginning of the proceedings.

Myria therefore recommends adapting the Royal Decree of 18 December 2003 on secondary legal aid in order to allow human trafficking victims, whose status was initially recognised after the first statements they made to the judicial authorities, to benefit from secondary legal aid until the end of the criminal proceedings against the perpetrators.

In addition, a list of **voluntary lawyers specialised** in assisting victims of human trafficking, should be established at the main legal aid offices in Belgium.

Another important issue dealt with in the European directives and the Council of Europe Convention is the prevention of secondary victimisation.

It is advised not to confront victims of sexual exploitation with the defendants in order to avoid the risk of secondary victimisation. In the case of victims of labour exploitation, caution should be applied and a lawyer must be appointed for the victim in case of confrontation.

Myria questions the added value of confrontations between victims and defendants in problematic cases. This is certainly the case for victims of sexual exploitation, traumatised by their negative psychological and physical experiences, who risk becoming victims again in a secondary victimisation process. In practice, the goal for requesting a confrontation is rarely to obtain additional objective information, but rather an attempt by the defendant to manipulate and intimidate the victim or to incite them to withdraw or modify their statement. It is important that the investigating judges are sufficiently aware of this and in no way grant such requests for a confrontation straight away.

Such confrontations are often pointless and even counterproductive to the investigation. The potential additional psychological damage to the victims shouldn't be underestimated. According to Myria, victims of sexual exploitation should never be forced into a confrontation. In the case of sexual exploitation, the majority of investigative judges now immediately refuse a request from a defendant's lawyer to organise a confrontation.

A confrontation is more often requested in the case of labour exploitation. Here, caution should also be exercised. Some victims experience labour exploitation as a major trauma.

Victims must also benefit from the (free) services of a lawyer to inform them of their rights and assist them in the event of a confrontation.

Chapter 4

Compensation of victims of human trafficking

This chapter takes a detailed look at compensation, an aspect that is particularly useful to victims of human trafficking. The possibilities for victims in general to access compensation are first put into context (point 1) before looking at how compensation can be obtained through the courts (point 2). The intervention of the Social Legislation Inspectorate (a division of FPS Employment, Labour and Social Dialogue, which could help victims of labour exploitation recover their wage arrears) and the role of the NSSO inspection department (formerly the Social Inspectorate of FPS Social Security), as regards human trafficking will then be analysed (points 3 and 4). Fedris, the Federal Agency for Occupational Risks, is also discussed as a potential means to compensate victims for work accidents in the event of labour exploitation (point 5). We also take a look at the Commission for Financial Assistance to Victims of Acts of Deliberate Violence and Occasional Rescuers¹⁶⁶, as a compensation body for victims of human trafficking, whether appropriate or not (point 6), before a few final words on the FRA's recent international study on the compensation of victims of violent crimes (point 7).

Any victim of human trafficking who wishes to obtain compensation must file a civil suit. This way, they can claim damages. A decision such as this is dependent on good quality and timely legal representation.

Although obtaining compensation isn't a priority or an end in itself for all victims, its importance shouldn't be underestimated. A conviction combined with compensation can strengthen the victim's trust in the judicial system. Furthermore, compensation can enable the victim to build a new life for themselves or give them a helping hand.

Compensation can also reduce the risk of becoming a trafficking victim again.¹⁶⁷

Depending on the victim's situation and the form of exploitation, the interest of compensation can vary. Some victims of forced sexual exploitation can, for emotional and financial reasons, be more reluctant to ask their exploiters for damages. Victims of sexual exploitation in a so-called win-win situation¹⁶⁸ and victims of labour exploitation, can have a completely different point of view. Their initial objective was indeed to earn money and it was only later that they became victims of trafficking. The victims are women who initially make the conscious and willing choice to go into prostitution because they want to earn money quickly. They often have to work in very bad conditions, but they come to terms with this situation. It is these bad working conditions, as well as the exploiter's abuse of power, that determine whether the charge of human trafficking can be accepted.

Hence, interest will often depend not only on the victim's personal situation, but also on the information they receive about it. A case concerning the construction sector provides a good example of a victim interested in compensation. A Moroccan man, who was a victim of labour exploitation, stated during his interview: "I swear I came here to work. I don't want to cause any problems. I just want to continue to earn money by working. It's impossible for me to return to my country without money. My parents have given up everything for me."

¹⁶⁷ Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, 2011, p. 86.

¹⁶⁸ For more information, see MYRIA, *2013 Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 25.

¹⁶⁶ Occasional rescuers are people who voluntarily offer their help to victims.

I can't go home empty-handed. The [exploiter] must at least pay me what he still owes me.. That way I can go home without losing face¹⁶⁹."

However, there are many obstacles to actually obtaining compensation. Consequently, the actual payment of the damages awarded will depend to a large extent on the perpetrator's solvency and the traceability of the financial flows, seizures and confiscations - with or without attribution to the plaintiff.

1. Access to compensation for human trafficking victims

Access to compensation for victims of intentional acts of violence is provided for in a variety of international instruments. These are specifically aimed at combating human trafficking, organised crime and victims of violent acts.

The United Nations Convention against Transnational Organized Crime expects its signatories to set up appropriate procedures to give victims access to reparation and compensation, as well as allowing them to be different stages of the criminal proceedings.¹⁷⁰ The supplementary protocol on human trafficking specifies that every signatory state must ensure that its legal system provides for measures allowing a victim of human trafficking to obtain compensation for the damage suffered.¹⁷¹

As regards the Council of Europe, the European Convention on the Compensation of Victims of Violent Crimes provides for a subsidiary system of compensation for victims of deliberate acts of violence. The state, bound by the Convention, must contribute to the compensation if it can't be fully covered by other sources.¹⁷² This Convention's principle of solidarity can also be found in the Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers (see point 6). More specifically for victims of human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings requires each Contracting Party to take the necessary legislative or other measures to ensure the compensation of victims in accordance with the conditions provided for by its national law (e.g. by creating victim compensation funds or social support and integration measures or programmes). It adds that the proceeds of the seized assets can contribute to their financing.¹⁷³

There are many obstacles to obtaining actually compensation.

As for the European Union, the directive on the compensation of victims of crime¹⁷⁴ and Directive 2011/36/EU on trafficking in human beings, are two instruments to be taken into consideration. The preamble of the latter clearly establishes the link between the seizure and confiscation of the proceeds of crime and their use to compensate victims.¹⁷⁵ This directive requires Member States to ensure that victims of human trafficking have access to the existing compensation schemes for victims of deliberate acts of violence.

A directive laying down minimum standards on the rights and protection of victims of crime is also in force at European level.¹⁷⁶ This directive reinforces the rights of victims in the European Union. Article 16 gives victims the right to a decision on compensation by the offender within the framework of criminal proceedings. The victim has the right to obtain a decision on compensation by the offender in the context of criminal proceedings, within a reasonable time, unless national law provides that such a decision shall be taken within the framework of other judicial proceedings.

171 Art. 6, § 6 of the Supplementary Protocol to the United Nations Convention against Transnational Organized Crime, aimed at preventing, suppressing and punishing trafficking in persons especially women and children, New York, 15 November 2000.

169 MYRIA, 2011 Annual Report Trafficking and smuggling of human beings, *The money that matters*, pp. 49 and 103-105; See case law: 2010 Annual report Trafficking and smuggling of human beings, *Combating social fraud to prevent trafficking in human beings*, p. 90. Charleroi Crim. Court, 18 March 2011, 7th ch. (confirmed by Mons Appeal Court, 26 June 2015) (available at www.myria.be).

170 Art. 25 of the United Nations Convention against Transnational Organized Crime.

172 Art. 2 of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.

173 Art. 15 in combination with Art. 23 of the Council of Europe's Convention on Action against Trafficking in Human Beings.

174 Council Directive 2004/80/EC of 29 April 2004 on compensation for victims of crime O.G. 6 august 2008, L261/15.

175 Preamble 13 of the European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing the Council Framework Decision, 2002/629/JHA, O.G., 15 April 2011, L101.

176 European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards on the rights, support and protection of victims of crime, replacing the European Parliament and Council Framework Decision 2001/220/JHA, O.G., 25 October 2012, L315/57.

To what extent do victims of human trafficking actually have access to these services? What obstacles are they likely to encounter before being able to obtain actual compensation? This is the subject of the following points.

Joëlle Milquet is Special Adviser to President Juncker for the compensation of victims of crime. In March 2019, she published a report entitled *Strengthening victim's rights: from compensation to reparation*.¹⁷⁷ The report shows that the victims often experience difficulties obtaining justice and reparation owing to the absence or lack of information, insufficient support, strict admission criteria or procedural obstacles. People who are victims of offences in countries other than their country of origin, usually experience greater difficulties in obtaining compensation.

Mme Milquet says that a strategic approach is needed to address the issue of compensation. If victims don't have access to judicial proceedings because, for instance, they are afraid to report a crime, or can't claim compensation through civil action because they don't have the means, or if they are unaware that they have a right to compensation, their access to compensation will always be hampered. The special adviser therefore suggests a holistic approach.

She proposes four changes:

- A shift from compensation to reparation. It is necessary to take into account the formal compensation of a victim and to approach compensation from a broader perspective, i.e. recognition of the victim, compensation, support and, lastly, care.
- There must be a shift towards the state making an immediate payment, which means that the state pays the victim directly and, in turn, it endeavours to obtain compensation from the perpetrator.
- There should also be a shift from inequalities and a lack of cooperation to closer cooperation, coordination and harmonised minimum standards.
- Lastly, the shift from a needs-based approach to a rights-based approach is essential. It is the victim's right to obtain compensation and the state must ensure rights are respected.

¹⁷⁷ https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf.

2. Compensation through judicial proceedings

The same act may give rise to both public action, in the event of a breach of criminal law, and civil action, for instance, an action for damages in accordance with Article 1382 of the Civil Code. It is also possible to bring a civil suit before the labour court to recover wage arrears.

However, the fundamental difference between these actions is their purpose. Hence, the goal of public action is to apply criminal law and not to compensate the victim.¹⁷⁸ Civil action, on the other hand, aims to compensate the damage resulting from the offence.¹⁷⁹ In the Belgian legal system, the damage resulting from the offence can be compensated both in the civil court and in the criminal court by filing a civil suit.

Providing the victim with good quality and timely legal assistance is essential when choosing whether or not to file a civil suit. However, if a separate application is made to the civil court, the civil action is suspended until a final decision has been taken on the criminal action brought before or after the civil action.¹⁸⁰

In a case of human trafficking, the victim usually seeks reparation by filing a civil suit in the criminal proceedings. By filing a civil suit, the victim has the advantage of being able to contribute to how the proceedings and criminal investigation are conducted, especially by asking the investigating judge for additional investigative actions.¹⁸¹ However, it isn't always easy to file a civil suit. The victims sometimes have to overcome certain obstacles.

¹⁷⁸ Art. 1 of the Preliminary Title of the Code of Criminal Procedure.
¹⁷⁹ Art. 3 of the Preliminary Title of the Code of Criminal Procedure.
¹⁸⁰ In particular, the application of "le criminel tient le civil en état" (criminal action takes precedence over civil action), Art. 4 of the Preliminary Title of the Criminal Procedure Code.
¹⁸¹ Art. 61 quinquies of the Code of Criminal Procedure. On this subject, see Chapter 3 of this focus, point 2.3.2.

According to the three specialised centres, the main stumbling blocks for a victim who is filing a civil suit are the fear of reprisals against themselves and their family, and the lack of protective measures in their country of origin. The financial aspect is also a major problem because lawyer's fees can be high.¹⁸²

The European directive on human trafficking¹⁸³ also includes measures relating to the treatment of victims for the prevention of secondary victimisation and the obligation to give them access to legal advice. The directive also stipulates that, depending on the role attributed to victims in the judicial system, Member States must guarantee the legal representation of victims, also in the context of bringing an action for damages. In Belgium, legal advice is currently provided either by social workers in the specialised reception centres, or by a lawyer appointed by the reception centre or the victim.

The victim can claim compensation for material and non-material damage in court. In its 2006 annual report, Myria stressed that people who were convicted of human trafficking very often feigned their insolvency, making effective compensation rarely possible. Ten years later, the 2016 annual report¹⁸⁴ tackled this issue again, which is still relevant today. It is therefore important to open a financial investigation at the beginning of an investigation in order to obtain a complete picture of the exploiter's financial situation.

Example

In one case, a Moroccan businessman was forced to pay his victims substantial damages. The amount was EUR 215,189.99 in total. Although the victims were awarded a significant amount as compensation, the perpetrator had enough time to ensure he no longer had any property. All the same, he could have been forced to pay the compensation ordered by the court. No seizure was made. This would indicate that the compensation was never paid to the victims, because the businessman declared his company bankrupt.

The case law analysis shows that victims are sometimes awarded a considerable amount of compensation. For instance, three Nigerian victims of sexual exploitation were awarded compensation for non-material damage ranging from EUR 6,500 to 12,000 in a judgment handed down by Bruges Criminal Court on 20 September 2017.¹⁸⁵ In a case concerning Chinese private prostitution, the victim was awarded compensation for material and non-material damage worth EUR 10,000.¹⁸⁶ In a case of labour exploitation in the hotel and catering industry, Namur Criminal Court awarded the victim EUR 5,000 for non-material damage and EUR 37,763.73 material damage.¹⁸⁷

However, there is always the possibility that the convicted party won't actually compensate the victim, despite the court's decision. This is also what the interviews with the specialised centres reveal. Once the decision is final¹⁸⁸, the bailiff can be called to execute it. If necessary, the property of the convicted party can then be seized. However, this procedure is time-consuming and costly for the victim. This is why some victims give up.

According to the specialised centres, victims whose exploiters are Belgian or who have been living in Belgium for a long time, have a better chance of actually being compensated.

182 On this subject, see also Chapter 3 of this focus, points 1 and 2.3.3. 183 European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, O.G., 15 April 2011, L101.

184 MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, pp. 105-106.

185 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, p. 128.

186 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, pp. 132-133.

187 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, p. 142: Namur Crim. Court, Namur division, 22 November 2017, 12th ch. (appeal).

188 In other words, it has entered into force *res judicata*.

Example

One of the specialised centres gave the example of a Belgian exploiter who paid the full compensation of EUR 200,000. The house of the convicted party was seized. The victim had paid a bailiff because the defendant didn't want to pay the compensation. On the day of the final bid, just before the sale of the house, the convicted party turned up and paid the victim in full. This happens very rarely.

Example

In a labour exploitation and slum landlord case, the main defendant was the director of a pallet factory, which was also prosecuted.¹⁸⁹ The victims were paid a minimum salary of EUR 135 per month and worked 12 hours a day, six days a week. They were housed in dreadful conditions. The acts date back to 2009-2011 but the sentences were only finally disposed of in 2019. In its judgment, Antwerp Court of Appeal¹⁹⁰ awarded the victims a considerable amount of compensation. Two victims were granted EUR 4,000 each for material damage and EUR 750 for non-material damage; the third victim received EUR 2,199 for material damage and EUR 500 for non-material damage. Although the convicted party made the trial last as long as possible, the company still exists. As it is a Belgian company, this increases the chance of the victims actually receiving the compensation¹⁹¹.

When a confiscation is ordered, the judge can award the plaintiff the confiscated property to which they are entitled or the equivalent in money from the confiscated sums (Article 43bis, para. 3 of the Criminal Code).

Restitution is a civil law measure that can be claimed by filing a civil suit. In principle, it is compulsory, especially when it is compensating for the damage caused by the offence.¹⁹² In order to protect the rights of third parties, Article 43bis, paragraph 3, provides that: "When the confiscated property belongs to the plaintiff, it will be returned to them. The confiscated property shall likewise be attributed to them when the judge orders its confiscation on the grounds that they comprise property or assets substituted by the convicted party for property belonging to the plaintiff or because they are equivalent to such things in the sense of paragraph 2 of the present article."

The preamble¹⁹³ provides more details: "It has been deemed appropriate to allocate the confiscated property as compensation for the victim, when this property is the substitute or equivalent of the property of which the latter was deprived during the offence."

This is also the case for seized sums of money that can be awarded to the plaintiffs - at least in part - by way of compensation. There are several examples in case law relating to this article.

Example

The judgment of Liège Criminal Court of 2 October 2017 is a good example: the confiscated sums of money were allocated in priority to the victim.¹⁹⁴ In this labour exploitation case in the construction sector, the victims were paid abnormally low wages (below the legal minimum for abnormally long working hours. The workers depended on outside help for food and received no medical care in the event of a work accident. The court decided to confiscate a building and ordered the confiscation of this defendant's assets equivalent to the sum of approximately EUR 24,000. Furthermore, they were sentenced to pay a provisional sum of EUR 10,120 for material damage and the final sum of EUR 1,250 for non-material damage.

189 Also see this focus, example of a case (pallet factory).

190 See part 3, Chapter 3 (Case law overview): Antwerp Court of Appeal, 24 January 2019, chamber C6.

191 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online p. 115.

192 E. FRANCIS, *Algemene principes van de bijzondere verbeurdverklaring en het beslag in strafzaken*, T.Strafr. 2011, vol. 5, p. 319.

193 Preamble of the bill amending Articles 42, 43 and 505 of the Criminal Code and inserting an Article 43bis in this code, Parl. doc., Chamber, session 1989-1990, no. 987/1, p. 6.

194 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 137-138. This judgment is final.

Myria encourages recourse to the possibility of allocating the confiscated property and the financial advantages to the plaintiff in order to compensate them for the damage suffered.

For victims who decide not to access the status and/or victims who go home or are no longer in Belgium, it is difficult to obtain reparation. Although the victim can, in theory, be assisted by a lawyer to defend their interests, the threshold is too high for many of them if they don't receive legal aid, contrary to victims who access the status and receive assistance.

Some specialised reception centres, where victims are supported, endeavour to continue the legal support when the victim returns home. These are mainly victims for whom the judicial proceedings are well advanced and who are often still waiting for compensation to be granted and for its payment to be enforced. For victims who wish to go home, and who therefore no longer benefit from the status, other specialised reception centres will provide them with the necessary details so that they can be assisted by a lawyer.

However, it is the victim's responsibility to take concrete measures and remain in contact with the lawyer. This threshold may mean that the victims' interests and rights aren't defended by a lawyer or that they lose contact with the appointed lawyer.

3. The role of the Social Legislation Inspectorate in the recovery of salary arrears

The mission of the Directorate-General Social Legislation Inspectorate (hereafter SLI) of FPS Employment, Labour and Social Dialogue is to defend the individual and collective rights of workers, especially basic work conditions, the right to a salary and other pecuniary benefits, and compliance with legal, regulatory and contractual work conditions.

Just like the other services, the SLI collaborates in the fight against social fraud and trafficking in human beings. The SLI's legal function is more based on an approach to social law infringements. As regards human trafficking, it is mainly the NSSO inspection department that leads investigations in the field in practice.

Recuperation of wage arrears¹⁹⁵

One of the SLI's main tasks is the recuperation of wage arrears. If wage arrears are identified, an attempt is made to regularise the situation by asking the employer to pay the arrears. In this case, the employee won't have to file a civil suit and will be able to obtain the wages more quickly.

The labour prosecutor can always prosecute, whether the offence has been regularised or not. The regularisation of the found offences therefore has no effect on criminal proceedings, but may have an impact on the level of the sanction imposed on the defendant.

Once the employer has agreed to pay the wage arrears, a variety of scenarios may arise. Depending on the victim's nationality (third-country national or EU citizen) and residence status, it can be more difficult to have the wages paid. If the persons are staying legally in Belgium, there is no difficulty in obtaining the recuperated wages. If the workers have no residence permit, then it is far more difficult. Often, employers won't agree to pay outstanding wages. The loss of contact with the worker makes it almost impossible to pay back the wages.

If the employer wants to pay back the wages but is unable to find the worker, he has to report it to the SLI. The latter can use the Internal Market Information System (IMI)¹⁹⁶ to find EU citizens in order to obtain the contact details of the person concerned in their country of origin. If this is the case, they will be sent a letter asking them for their details so their wage arrears can be paid. If the SLI doesn't manage to contact the EU citizen through the IMI, or if the person is a third-country national whose contact details aren't available, the SLI will ask the employer to make the payment to the Deposit and Consignment Office.¹⁹⁷

¹⁹⁵ The SLI also has a specific prerogative in accordance with the sanction directive (Law of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals, O.G., 22 February 2013).

¹⁹⁶ For more information on the Internal Market Information System, see http://ec.europa.eu/internal_market/imi-net/index_fr.htm; Also see: MYRIA, 2010 Annual Report Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings, p. 106 and 2011 Annual Report Trafficking and smuggling of human beings, The money that matters, p. 57-58.

¹⁹⁷ The Deposit and Consignment Office is one of the five operational departments of the General Administration of Treasury (AGTrés), a general administration of FPS Finance. For more information on the Deposit and Consignment Office, see <https://finances.belgium.be/fr/pai>.

When the employer makes a payment at the office, they must indicate who is the principal for the payment (e.g. SLI), and provide the worker's details and the reason for the payment. These funds usually remain there (and are handed over to the state after 30 years) as the Deposit and Consignment Office doesn't take any steps to locate the rightful claimant. The FAIRWORK Belgium annual report for 2017 mentions that at a certain moment, 35 Polish workers were employed in Belgium through the posting system. Only four of them recuperated their wage arrears. The 31 others had already returned to Poland. The total sum of the wage arrears amounted to EUR 61,739.08. FAIRWORK Belgium worked with an inspector and contacted their Polish counterpart through the PICUM network. This collaboration enabled 25 workers to be found and paid.¹⁹⁸

4. The role of the NSSO inspection department

The NSSO inspection department also plays a role in the recuperation of wage arrears. It regularly provides the labour prosecutor with calculations of financial benefits, informing them of the benefits the employer received from the victims' illegal employment. They chiefly consist of unpaid wages and social security contributions. In the court rulings, judges often use these calculations as a basis to assess the victim's material compensation. On this basis, it is possible to deduct the amount the victim should have received. The NSSO inspection department also pays significant attention to human trafficking. In 2018, the NSSO Inspection department's Central Thematic Directorate for Trafficking in Human Beings provided its non-specialised inspectors with basic training. The teams dedicated to the fight against human trafficking within the NSSO inspection department (some 40 inspectors are trained and have a great deal of experience. The aim of these basic training sessions is to raise awareness among the other inspectors

about labour exploitation, to familiarise them with the indicators and inform them of the best measures to take when they are confronted with potential trafficking victims during their inspections. During these sessions, they also focus on the compensation of victims. Hence, they insist on collecting as many elements as possible so that the damage suffered by the victims can be calculated with a view to subsequent financial compensation. Finally, they also highlight the need to provide potential victims with as much information as possible concerning their situation and their rights. They encourage the inspectors to do their utmost to ensure that victims are referred to a reception centre, as the department is convinced that this type of referral is the best guarantee of recovering wage arrears. The NSSO inspection department's Thematic Directorate for Trafficking in Human Beings has also provided non-specialist inspectors from other inspectorates with this basic training, especially inspectors from the Brussels-Capital Region (Social Inspectorate and Housing Inspectorate), the Flemish Social Inspectorate and the inspectorate of the National Institute for the Social Security of the Self-Employed (NISSE).

5. Federal Agency for Occupational Risks (Fedris)

Fedris is a public institution for social security. The agency was created on 1 January 2017, as a result of the merger between the Fund for Occupational Accidents and the Fund for Occupational Diseases.¹⁹⁹ In the past, an undocumented worker who was the victim of a work accident had to file a complaint with the Social Inspectorate. Now, they have to go to Fedris. The procedure changed on 1 July 2017.

¹⁹⁸ FAIRWORK BELGIUM, *Jaarverslag Werknemers zonder wettig verblijf* 2017, p. 9.

¹⁹⁹ Extra information on Fedris is available at <https://fedris.be/nl/over-het-fonds/wie-zijn-we>.

Procedure

Someone who is the victim of a work accident and whose employment isn't established, must first make an appointment with the Well-being at Work (WW) inspectorate in Brussels, regardless of where the work accident occurred in Belgium. The file is then sent to the local WW inspectorate of the employer's place of work. Another WW inspector will then lead the investigation. The declaration must be submitted within three years of the work accident.²⁰⁰

If a victim of human trafficking wanted to obtain compensation for a work accident, they first had to bring a separate action before the labour court. This was a requirement of the former Fund for Occupational Accidents. This separate action resulted in a long and time-consuming period for the victim. With Fedris, this is no longer necessary. The judgment from the Criminal Court simply has to contain relevant evidence of a work accident during the recognised period of employment. In some cases, the victims are heard but not systematically.

This method has been used more recently and therefore has certain advantages for victims of human trafficking. A decision can be taken more quickly and the victims paid faster by Fedris. Unnecessary and time-consuming judicial proceedings can be avoided, thus limiting legal and court costs. Two specialised centres have already received positive decisions from Fedris.

6. Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers

A final possibility for victims of human trafficking to receive effective compensation for the damage suffered is to seek financial aid from the Commission for Financial Assistance to Victims of

of Acts of Deliberate Violence and Occasional Rescuers (hereafter referred to as 'the Commission'). The financial aid it can grant through the Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers (hereafter 'the Fund') is subsidiary²⁰¹ and is subject to various conditions. Information relating to the Fund is provided by victim support centres or by lawyers, at the end of the judicial proceedings.

The Law of 1 August 1985²⁰² introduced the financial aid system. The law specifies who can request financial aid, the different types of aid and the conditions. This issue is dealt with in more detail hereafter. The law deliberately refers to aid and not compensation. The authorities' limited financial intervention in favour of the victim (or their survivors) isn't based on the state's presumption of guilt because it couldn't prevent the offence, but on the principle of collective solidarity between members of the same community. The same idea underpins the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.²⁰³ The law requires the perpetrators sentenced by law to a principal criminal or correctional sentence to pay a certain sum of money as a contribution to the Fund. This compulsory contribution isn't a penalty and is always imposed. The contribution is currently EUR 25, to be increased by the coefficient relating to criminal fines, which means that the amount in 2019 must be multiplied by eight.

Who can request financial aid?²⁰⁴

For a victim to be eligible for financial aid, they have to prove three things: a deliberate act of violence was committed, they have suffered serious physical or psychological damage and the damage is the direct consequence of this deliberate act of violence.²⁰⁵

201 All other possibilities must be exhausted first. It is only when other possibilities of obtaining compensation have been exhausted that the Fund can be called upon to intervene (see below).

202 Law on fiscal and other measures, O.G., 6 August 1985.

203 P. VERHOEVEN and L. VULSTEKE, *Het Fonds voor Financiële hulp aan slachtoffers van opzettelijke geweldsdaden en occasionele redders*, Library strafrecht, Larcier, nr. 4, Ghent, 2011, p. 27.

204 Art. 31 and Art. 31bis of the Law of 1 August 1985 on fiscal and other measures. FPS Justice, *L'aide financière aux victimes d'actes intentionnels de violence et aux sauveteurs occasionnels*, 2019, available at www.justice.belgium.be. Since a Law of 15 January 2019, special provisions have been introduced for victims of terrorist acts (Art. 42 bis to sedecies of the Law of 1 August 1985).

205 Consequently, criminal negligence or recklessness (such as traffic offences) and property offences (such as theft without violence or threats) aren't admissible.

The law has made a distinction between the different eligible parties.

- First of all, there are **direct victims**, person has personally suffered an act of violence. The relatives of a deceased victim and the relatives of a living or missing victim can also apply to the Fund.
- Then there are **occasional rescuers** people who voluntarily offer their help to victims. Hence, this aid isn't the result of someone exercising a profession associated with security or participation in a structured association that provides help and assistance to third parties. Financial aid is granted to occasional rescuers (and their relatives) if they acted in Belgium; and if they suffered damage, for instance, by voluntarily rescuing a victim of a deliberate act of violence.
- Finally, **victims of unsolved cases** can also apply to the Fund. These can be direct victims or relatives of deceased or living victims of acts committed by a perpetrator who is still unknown. These are acts for which no decision to discontinue proceedings (decision not to proceed or to no longer proceed) or to dismiss the case was taken because the perpetrator couldn't be identified and there is still doubt concerning the case. In such cases, exceptional aid can be requested for exceptional damages resulting from long-term uncertainty regarding the identity and motives of the perpetrator(s).

Initially, the scope was limited to victims who were in possession of Belgian nationality or had the right to enter, stay or settle in Belgium when the act of violence occurred. In 2004, the scope was extended to victims who were subsequently granted a permanent residence permit by the Aliens Office as part of an investigation for trafficking in human beings. Since a new legislative amendment in 2009²⁰⁶, there is no longer any distinction between legally staying victims and those who aren't.²⁰⁷

From now on, people staying illegally can also apply to the Fund. In practice, very few illegally staying people would be likely to apply, principally because of a lack of awareness of the Fund and the difficulties in meeting the formal conditions, including those relating to the obligation to file a complaint with the police or to file a civil action.

What sort of aid?²⁰⁸

Four types of aid can be granted: primary, emergency, additional and exceptional. Aid is only granted by the Commission if the damage exceeds EUR 500. This applies to both physical and psychological damage.

- **Primary aid** is the amount that the Commission grants as financial aid for the damages suffered. The amount of this aid has increased from EUR 62,000 to a maximum of 125,000 since the amendment to the law in 2016. The aid can be granted to the victim or to their relatives.
- **Emergency aid** can be granted when a delay in granting primary aid risks causing the applicant considerable damage²⁰⁹. To award emergency aid, the Commission doesn't need to wait until the end of the criminal investigation and the judicial proceedings. Emergency aid can be requested as soon as a civil suit or a complaint has been filed. The Commission takes into account the fact that criminal prosecution isn't always possible, for instance, when the perpetrator is a minor. An emergency is always presumed when the victim has an accumulation of medical costs. The emergency aid ceiling has risen from EUR 15,000 to 30,000.
- **Additional aid** can be granted when the damage suffered by the victim increases after primary aid has been granted. New costs for medical care don't amount to actual proof that the damage has worsened. The increase in damage must be confirmed by medical documents or expert opinions. The ceiling for additional aid is EUR 125,000.

206 Art. 1 of the Law of 30 December 2009 laying down various measures relating to justice.

207 This legislative amendment occurred after the turmoil caused by the Van Themsche case. In addition to the prison sentence, he was ordered to compensate the (families of) three victims. Following his insolvency, the families were able to request the intervention of the Aid Fund for Victims in order to receive compensation, with the exception of O's family. They weren't able to apply to the Fund because at the moment of her death, O was staying illegally in our country. Also see the annual migration report 2011, Les ayants-droits d'une personne en situation de séjour illégal peuvent-elles percevoir une indemnité après le décès ? pp. 161-162.

208 FPS Justice, *Financial aid for victims of deliberate acts of violence and occasional* www.justitie.belgium.be.

209 For instance, if the applicant has a modest income and faces high medical costs owing to the deliberate act of violence.

- **Exceptional aid, reserved for victims of unsolved acts**, can be requested by a victim if more than 10 years have passed since the acts and if primary aid has already been awarded. The ceiling for exceptional aid is EUR 125,000.

For minors, the Commission sets the terms for granting aid. It can request that the aid granted, or part of it, be blocked in a savings account opened in the child's name. As soon as the child becomes an adult, they will be able to have access to the savings account.

Aid for the damage suffered by a direct victim can be requested for moral damage, medical costs and temporary or permanent invalidity, the loss or reduction of income following temporary or permanent unfitness for work, cosmetic damage, procedural costs, material costs, damage resulting from the loss of one or more years of schooling.²¹⁰

Conditions²¹¹

The Commission can grant aid on an equitable basis, but doesn't guarantee full compensation. The law provides for a number of conditions that must be met before being able to benefit from the Fund.

- The **principle of territoriality** implies that the act of violence was committed in Belgium. There is also a procedure for victims of acts committed in a Member State of the European Union. This procedure aims to avoid any practical and linguistic problems the victim could encounter as an applicant for financial aid. If a deliberate act of violence was committed in Belgium and the applicant is usually a resident in another Member State of the European Union, they can be assisted by an authority specifically designated by the Member State concerned.

- A second condition relates to the **criminal proceedings**. The investigation must be completed before a request for primary aid can be submitted. Hence, there are two possible avenues, the first one involving a known perpetrator. In the first case, if the perpetrator is known, aid can be granted after their conviction by the judicial authorities. The decision must be final, i.e. with no further possibility of appeal. In the second case, the perpetrator is unknown, in which case aid may be granted after the decision has been taken to drop the case for this reason, as long as the applicant has already filed a complaint or has the status of injured party. It can also be granted after a year from the date on which the civil claim was filed.

- The third condition sets **the date by which the application must be submitted**. The victim must submit an application for primary aid within three years from the date of the final judicial decision. The same deadline applies in the event the case is dropped if the perpetrator or perpetrators are unknown.

- The fourth condition is that, if **the perpetrator is known**, the victim must have done everything in their power to attempt to obtain reparation. Proof must be provided that the victim has filed a civil suit, brought an action before a civil court or possibly made a direct summons.

- The final **condition is subsidiarity**. In this case, the applicant must not have had any other opportunity to obtain compensation. Different factors are taken into account here. First of all, the perpetrator's solvency and any possible repayments made by them. Secondly, the intervention of the health insurance fund and, finally, the intervention of the various types of insurance (work accident insurance, family insurance, etc.). However, the condition of subsidiarity isn't absolute. The applicant is expected to exercise their rights to the greatest possible extent regarding the person responsible or the insurance company. However, the Commission insists on the fact that the victim mustn't wait until the end of long and costly proceedings to request financial aid. However, the condition of subsidiarity isn't absolute. That said, a court decision granting compensation isn't enough. The victim must also prove that they have reasonably taken the necessary steps to obtain effective compensation, using all useful means of enforcement, such as precautionary and enforceable attachment.²¹²

²¹⁰ Art. 32, § 1 of the Law of 1 August 1985.

²¹¹ Art. 31bis of the Law of 1 August 1985. FPS Justice, Financial Aid for Victims of Deliberate Acts of Violence and Occasional rescuers, 2019, available at www.justice.belgium.be.

²¹² P. VERHOEVEN en L. VULSTEKE, op. cit., p. 71.

However, when the perpetrator is clearly insolvent, the victim isn't expected to enforce the claim first.²¹³

The Commission also specifies that, in the majority of cases, it won't wait until a financial contribution has been paid if the perpetrator can only make small repayments that are disproportionate to the total claim. Nevertheless, the Commission expects the applicant to make every effort to obtain compensation from the perpetrator, even if the repayments are more modest.

An adequate means of compensation for victims of human trafficking?

Since 2004, victims of human trafficking have also been able to apply to the Fund. However, the law specified that these were victims who had subsequently been granted a permanent residence permit by the Aliens Office in the context of an investigation into human trafficking. Hence, only victims who had attained victim status could apply to the Fund (with the exception of victims who were entitled to enter, reside or settle in Belgium or who had Belgian nationality at the time the act of violence was committed).

With the extension of the scope brought about by the Law of 30 December 2009, illegally staying persons may also turn to the Fund. This means that even victims of human trafficking who haven't benefited from the status²¹⁴ can apply to the fund. In addition, the above-mentioned conditions must also be fulfilled.

Nonetheless, the requirement of subsidiarity is an obstacle for victims who haven't filed a civil suit through fear of reprisals. These victims are therefore not eligible for support from the Aid Fund for Victims.

The subsidiarity requirement is an obstacle for victims who haven't filed a civil suit through fear of reprisals.

The condition linked to the act of filing a civil suit can thus be problematical in certain cases of human trafficking.

Examples

In a case of sexual exploitation, underage girls were recruited online through classified ads for a job as a hostess. Once they arrived, they were manipulated into selling sexual services.²¹⁵ In total, there were more than 25 victims. However, only one victim filed a civil suit: the one who was a minor. Fear of the perpetrators often plays a major role and discourages the victims from filing a civil suit. The other victims never had the opportunity to obtain compensation even though it could have helped them to have a better life.

Another example is the case of the Nigerian prostitution network centred around Mama L. It involved serious acts: more than 30 victims, often minors, were forced to prostitute themselves. They were threatened and kept under control through voodoo practices.²¹⁶ None of these victims filed a civil suit.

The applicant must be a victim of a deliberate act of violence and as a result, suffer from serious physical or psychological damage. However, 'act of violence' isn't defined in any preparatory or legal document. The Commission bases its assessment on Article 483 of the Criminal Code, which defines violence as "acts of physical coercion against persons".²¹⁷ This requirement is a major stumbling block for victims of labour exploitation. This is what can also be inferred from the Commission's decisions. The Commission informed Myria of five anonymous decisions from 2015 to 2018.²¹⁸ Aid was granted in three cases of sexual exploitation (see below), rejected in one case of labour exploitation and also in a case of smuggling. It is difficult to prove the element of deliberate violence in a case of labour exploitation; this is confirmed by Myria's interviews with the three specialised centres.

²¹³ The Commission can conduct or order all the necessary investigations to analyse the perpetrator's financial situation. It can ask all the authorities for information concerning the perpetrator's professional, financial, social and fiscal circumstances, without the authority in question being able to cite professional secrecy to withhold information. P. VERHOEVEN en L. VULSTEKE, op. cit., p. 69.

²¹⁴ Hence, not having obtained a permanent residence permit as part of an investigation into human trafficking.

²¹⁵ MYRIA, 2017 *Annual Report Trafficking and Smuggling of Human Beings, Online*, p. 29.

²¹⁶ MYRIA, 2018 *Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, p. 62.

²¹⁷ P. VERHOEVEN en L. VULSTEKE, op. cit., p. 99.

²¹⁸ The Fund's database contains the classification code 'trafficking in human beings. Nevertheless, this code is seldom used because there are few human trafficking cases. However, the main reason seems to be that only one classification can be given and it is the code pertaining to the most important facts that prevails. Hence, an assassination related to human trafficking will be coded as death/assassination or murder and not as a case of human trafficking. Furthermore, the wrong classification is also sometimes used.

Examples

In a decision of 2018²¹⁹ relating to acts of domestic exploitation at an embassy, the Commission found that the victim's application was unfounded. The applicant, a national of Burkina Faso, had been the victim of abuse while working for an ambassador. The criminal investigation established the existence of essential elements of human trafficking and making the applicant work in conditions contrary to human dignity. He had to work from 06:00 in the morning to midnight, seven days a week, wasn't paid, lived in an unheated cellar without a bed or bedding, and wasn't given sufficient food. His passport had been confiscated. He was subjected to threats and insults. The case was dropped owing to the ambassador's diplomatic immunity and the impossibility of a criminal prosecution.

The Commission considered that "without wishing to minimise the damage suffered by the applicant as a result of the aggression to which he was subjected, the Commission's customary case law considers granting financial aid once a medical expert report has duly established the existence of a permanent disability or incapacity directly related to the nature of the aggression". However, in the present case, there were no documents on file that showed any permanent disability or incapacity. The Commission therefore took the view that, since the applicant wasn't suffering from any permanent after-effects confirmed by an expert opinion, he wasn't a victim within the sense of Article 31, 1 of the Law of 1 August 1985.

In another decision dating from 2005, also concerning a case of labour exploitation, the Commission also found the victim's application to be unfounded. It stated that "the facts pertaining to the applicant's exploitation at work, which are reprehensible and with serious consequences for the applicant, aren't, however, sufficient to establish the existence of a deliberate act of violence within the sense of Article 31, 1 of the Law of 1 August 1985".²²⁰

The Commission must always consider whether the acts to which the person has been subjected can be characterised as "acts of physical coercion committed against persons causing serious physical or psychological harm". However, equating the offence of trafficking in human beings with a deliberate act of violence in order to overcome this obstacle seems difficult for the Commission, given its interpretation of "act of violence".

After all, the existence of a deliberate act of violence doesn't necessarily imply the existence of an offence. Mutatis mutandis, the Commission, **Myria calls for openness in the interpretation of the notion of 'deliberate act of violence' for victims of labour exploitation.**

however, infers that the infringement of a provision punishable under criminal law doesn't actually constitute a deliberate act of violence. Myria calls for a certain openness in the interpretation of the notion of 'deliberate act of violence' for victims of labour exploitation.

In practice, it seems that victims of human trafficking rarely apply to the Fund. In addition, there are no concrete figures. 'Trafficking in human beings' was more visible when Article 31bis, § 1, 2° provided for an exception to the condition of "legally residing in / gaining legal access to Belgium" for victims who had obtained an permanent residence permit in the context of an investigation into human trafficking, even though there were already very few victims who made use of the Fund then. The condition was abolished by the Law of 30 December 2009, meaning that a person doesn't have to be legally staying in Belgium to be able to apply to the Fund.

Another shortfall of the Fund lies in its budgetary capacity following the terrorist attacks. An interview with a specialised centre indicates that after the terrorist attacks at Brussels Airport and Maelbeek metro station, victims of sexual exploitation received very little compensation. Despite the dreadful circumstances, the victim was only paid EUR 5,000, whereas in similar cases, other victims received a much higher sum. According to the specialised centre, this low level of compensation could be due to the moment at which the request was submitted, i.e. just after the attacks. At the time, many victims of terrorist acts were compensated, so the amount of compensation for the victims of sexual exploitation may have been exceptionally lower. The specialised reception centres confirm that the procedure to obtain financial aid from the fund is time-consuming and represents a psychological burden for the victim. However, the three specialised reception centres consider that the procedure - if it is successful - is worth it.

219 Commission, 3 July 2018, no. M17-2-1450, www.juridat.be.

220 Commission, 26 July 2005, no. M3778, www.juridat.be. The case concerned a Bulgarian victim who had been granted a permanent residence permit by the Aliens Office in the context of an investigation into human trafficking. The Liège Court of First Instance had sentenced the perpetrator to six months' in prison and compensation worth EUR 7,355.54 for the exploitation of illegally staying workers.

At the same time, they point out that it is an adequate means of compensation for sexual exploitation only, not for labour exploitation. So far, Myria is only aware of applications from victims of sexual exploitation that have been accepted, and not from victims of labour exploitation.

Examples

In a decision of 2018, the Commission granted EUR 45,000 to a Georgian applicant who had fled her country. When she arrived in Belgium, she was forced into prostitution by Albanian nationals. The latter had sold her and she was regularly subjected to violence²²¹.

The same year, the Commission granted EUR 20,000 to a Belgian victim of sexual exploitation. She had been recruited by one of the perpetrators to be exploited in prostitution in the Liège region. She was taken to various workplaces and was constantly monitored. She was regularly subjected to threats and violence.²²²

On the other hand, as mentioned above, the Commission only granted EUR 5,000 for moral damage in 2017 to a Romanian applicant forced into prostitution by her boyfriend, a loverboy. She was regularly beaten, resulting in a premature birth. She was also made to have an abortion.²²³

This type of mechanism doesn't exist for victims returning to non-EU countries. Filing an application is thus made more difficult by the Royal Decree of 18 December 1986 on the Commission for Financial Aid to Victims of Deliberate Acts of Violence and Occasional Rescuers, which requires the choice of domicile to be in Belgium.²²⁵

Conclusion

The Belgian legal framework provides various possibilities for victims of human trafficking to obtain compensation. However, there are legal limits to claiming damages or applying to the Fund for financial aid. Actually obtaining compensation will also depend on the solvency of the perpetrator and the effective enforcement of the judgment. Furthermore, victims seeking compensation through the courts will often have to wait a long time before a court decision includes or excludes their claim. Owing to its subsidiary nature, the Fund's intervention will take even longer (except for the granting of emergency aid). Victims may be discouraged and, as a result, lose interest in the possibility of obtaining compensation. The interviews with the various centres confirm this.

For victims no longer residing in Belgium, it is practically impossible to obtain compensation from another country. In principle, they can pursue their interests through a Belgian lawyer. For instance, one of the specialised reception centres for victims appointed a lawyer for a victim.²²⁶ They were informed by their lawyer and came back to Belgium during the trial. As a result, they were granted compensation, which is good practice. Without proper guidance or information, victims will find it difficult to know what to do. Furthermore, the financial costs involved are a major obstacle.

Victims who no longer wish to stay in Belgium

In principle, a victim who isn't interested in the status and no longer wishes to remain in Belgium, can apply to the Fund. However, the situation differs depending on whether the victim lives in the EU or a third country. If the applicant normally lives in another EU Member State, they can submit their request to the Commission through the body specifically charged by the Member State concerned to assist the victim with their request, by using a standard form from the European Commission.²²⁴

221 Commission, 24 September 2018, no. M17-2-0243, www.juridat.be.

222 Commission, 19 October 2018, no. M14-4-0674, unpublished.

223 Commission, 23 January 2017, no. M13-2-0998, unpublished.

224 Art. 40bis of the Law of 1 August 1985 on fiscal and other measures.

225 Art. 49 of the R.D. of 18 December 1986 on the Commission for Financial Aid to Victims of Deliberate Acts of Violence and Occasional Rescuers.

226 For more information on this case, see MYRIA, 2016 Annual Report *Trafficking and Smuggling of Human Beings, Beggars in the hands of traffickers*, pp. 165-167: Hainaut Crim. Court, Mons division, 21 April 2016, 8th ch. (final); For the analysis of this case, see MYRIA, 2017 Annual Report *Trafficking and Smuggling of Human Beings, Online*, pp. 84-88.

On the other hand, some victims who return to their country of origin at a later stage in the proceedings, continue to benefit from legal assistance from the specialised reception centre in order to complete the judicial proceedings and receive the compensation awarded.

Recourse to Fedris as a means of compensating victims of labour exploitation who have suffered a work accident is, according to some centres, a success. Two of the three specialised centres have already pursued this option and have so far received several positive decisions. They were satisfied with the amounts. Although the procedure initially took some time, this is no longer the case today, as Fedris can intervene on the basis of a judgment by the criminal court.

In light of these findings, Myria would like to examine other compensation options, so that all victims of human trafficking can be eligible for effective compensation. The time-consuming processes associated with some alternative compensation schemes also need to be reviewed.

The mere existence of possibilities to obtain compensation isn't sufficient in itself to enable victims to have effective access to it. In order to ensure effective access, it is necessary to ensure that victims are informed from the outset of relevant possibilities in a language they understand. Arranging legal assistance provided by a lawyer as quickly as possible can also help to ensure that the victim is properly informed of the possibilities, the chances of success and the associated time frames.²²⁷

Victims who aren't interested in the status and don't want to 'enter' into it, are usually left by the wayside. In theory, the victim can be assisted by a lawyer to defend their interests, but for many of them, the threshold is too high if they don't benefit from the legal support given to victims who adopt the status. Therefore, it is now a matter of endeavouring to improve the defence of the rights and interests of victims who reject the current status.

7. International comparative perspective on compensation for victims of violent crime

The European Union Fundamental Rights Agency (FRA) has written a report on judicial systems for victims of violent crime. In practice, there is little knowledge of the application of victims' rights. The report is based on previous surveys, such as a 2017 FRA study on the situation of the rights of victims of violent crime in the criminal justice system in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. Various interviews were also conducted. A brief comparison of victim's position in the criminal justice system in the above-mentioned countries is made before discussing compensation and the main findings of the FRA.²²⁸

The criminal justice systems are subdivided into three different models or types, with each participating country categorised accordingly. Every model has its own view of the concept of 'victim of crime'. Even if the objective of criminal law in types 2 and 3 is identical, the difference lies in the different positions of the victim.

In Belgium, a victim of crime is a person who has suffered damage caused by a crime.²²⁹ A victim of violent crime is defined as someone who has suffered physical or psychological harm as a direct result of a deliberate act of violence.²³⁰ In Belgium, victims have the right to participate in criminal proceedings as a civil party. Belgium most closely resembles Type 3.

228 FRA - European Union Agency for Fundamental Rights, *Victims' rights as standards of criminal justice - Justice for victims of violent crime Part I*, Publications Office of the European Union, 2019, pp. 42-43. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf.

229 Art. 3 of the Preliminary Title of the Criminal Procedure Code.

230 Law of 1 August 1985 on fiscal and other measures, O.G., 6 August 1985.

227 On this subject, see the previous chapters of this focus.

Characteristic	Type 1	Type 2	Type 3
Objective of criminal law	Protect the rights of individuals	Protect public interests	Protect public interests
Definition of a victim of violent crime	A wronged person: an individual whose rights the offender(s) violated	A person with specific needs due to the harm suffered as a consequence of the violent crime	A person who suffered harm as a consequence of the violent crime
Position of the victim	Entitled to act as a party to the criminal proceedings	Can be called as a witness	Can file a civil suit
Countries covered by the research	Austria, Germany, Poland and Portugal	Netherlands and United Kingdom	France

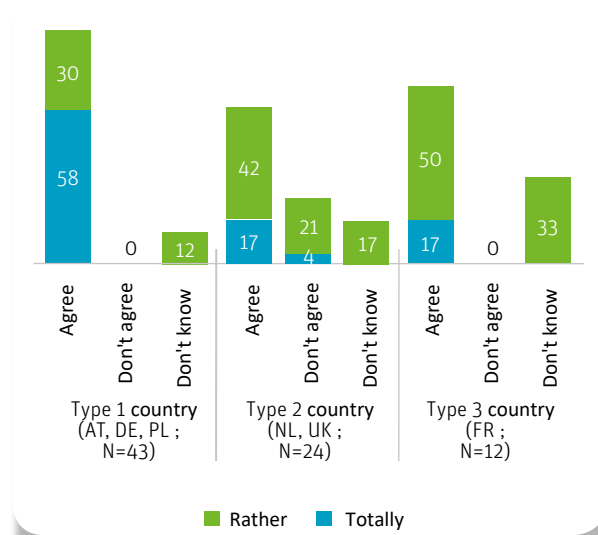
Source: FRA, 2019

Victim compensation and the main findings of the FRA's investigation are detailed here, allowing the identification of problems in other countries and the FRA's recommendations.²³¹ The possibilities and difficulties in Belgium were discussed earlier. They largely correspond to the difficulties listed by the FRA.²³²

One major problem is due to the fact that damages aren't recognised as being part of criminal law. Perpetrators are obliged to compensate their victims on the basis of Article 13 of the European Convention on Human Rights (ECHR).²³³ According to the FRA, damages should be part of criminal law and not civil law. Criminal courts should demand damages and the competent public authorities should enforce the courts' decisions. Public authorities must ensure that victims actually receive compensation for all (non-)financial damage resulting from the act of violence. The expectations of the victims interviewed are an essential aspect of what criminal law means from their point of view.

Victims who ask the courts to ensure they are compensated by the perpetrator (%)

Source FRA, 2019



The public authorities treat the victim's damages as a private matter. For instance, the victim must claim damages through the civil court or become a plaintiff in the criminal proceedings. Instead, it should be possible to decide automatically, through a criminal judgment, on damages in proceedings concerning offences against a person. Inspiration could be drawn from recently adopted legislation that has entered into force in Poland and Portugal.²³⁴ These reforms have gradually separated damages from their civil basis and converted them into an instrument of criminal conviction. This can be compared to the model that exists in the United Kingdom. Hence, in both countries, the burden on victims of filing a civil suit has been eased.²³⁵

231 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, pp. 9-11: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part_3-sanctions_en.pdf.

232 See the first points of this chapter.

233 Article 13 of ECHR deals with effective remedy. It states that "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority".

234 Hence, the FRA suggests drawing inspiration from the legislation adopted in Poland, to consider strengthening the position of compensation as a criminal sanction by adding punitive damages. This would simplify the calculation of damages.

235 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, p. 27.

In the course of criminal proceedings, criminal judges should decide on damages for victims of violent crimes. When considering an action for damages, Member States may take into account the experience acquired in other Member States, including the United Kingdom, Poland and Portugal.

Another difficulty is linked to the fact that Member States must make greater efforts to ensure that victims are informed of the possibility of obtaining compensation from the perpetrator. The information provided must also be clear. For instance, victims in Austria and Germany receive an information leaflet on compensation.²³⁶ However, there is considerable doubt as to whether victims can understand the leaflet. In the United Kingdom, it depends on the region: in some regions, police officers sometimes provide additional information on claiming compensation, whereas in others, the belief is that it isn't up to police officers to supply this information.

The following problem relates to claiming compensation. One of the main reasons victims fail to obtain damages is because relatively few of them file a claim. According to the interviews with victims and experts, the main reasons for not filing a claim are:

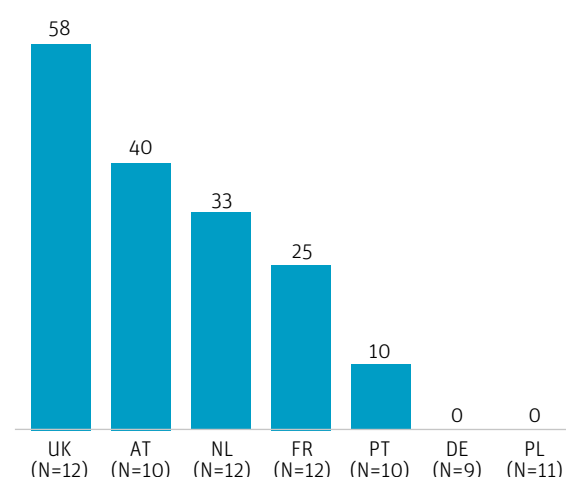
- Victims aren't effectively informed of the possibility of filing a claim for damages. This is by far the main reason among all the Member States taking part in the study;
- Long bureaucratic procedures that discourage the victim;
- Some victims are afraid of reprisals as proven in this extract from an interview with a Portuguese victim: "No, why would I ask for it, for what reason? I would be further confronted with them [...] and that would make things worse, not to mention the reprisals." (Victim, Portugal);
- Strict basic conditions: in some cases, victims of violent crimes aren't eligible for compensation, as pointed out by participants in the survey in Austria, Germany and Poland.

²³⁶ These types of leaflets also exist in Belgium.

In Belgium, interviews with the specialised centres confirm that victims of labour exploitation could only rarely, or never, seek compensation from a public organisation. In this case, the notion of 'violence' isn't sufficiently demonstrated, even if the victim is already considered as a victim of human trafficking.²³⁷

Victims who have submitted a claim for state compensation (%)

Source: FRA, 2019



Finally, obtaining compensation from the perpetrator is also a major difficulty. In practice, victims rarely receive damages from the perpetrator and usually with considerable delay. According to the FRA, all victims of violent crime should benefit from effective and fast access to state compensation in this case. This should be an advance payment of the damages owed by the perpetrator. When a victim reports the offence to the police, they should be informed immediately of their right to damages from the perpetrator, or even from the state. If the victim submits a claim for compensation, the period leading to effective compensation shouldn't be too long.

The court must recuperate the amount the state has paid to the victim from the perpetrator. The state will then recuperate the payment of the rest of the compensation owed to the victim.

²³⁷ On this subject, see point 6 in this chapter.

According to the victims interviewed during the study, lengthy waiting times prior to obtaining damages must be avoided. The state must intervene if the perpetrator doesn't quickly compensate the victim. The public authorities should ensure that the payments are actually paid and not leave this responsibility to the victims.

"Having spoken to the [...] enforcement courts,
[...]

she said I'd be lucky to receive anything because
you only get it if he pays

[...] That to me says he has influence on my life,
and he does, because I've got no money [...]

I think there should be a fund where it's paid to
me and he pays back the fund. »

(Victim, United Kingdom)²³⁸

238 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, p. 30: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part_3-sanctions_en.pdf.

Chapter 5

The importance and purpose of a financial investigation

Even if the court regularly awards damages to victims, this decision is often futile. As illustrated in the previous chapter, in practice, the defendant is often without resources (or becomes so). To enable the effective compensation of victims, it is essential to seize the suspects' criminal assets right from the start.

Drying up financial flows is the ultimate weapon to dismantling the criminal system and ensuring the effective compensation of victims.

This is the only way the court can award the confiscated money, when judgment is passed, as compensation to the victims who have filed a civil suit. It is therefore essential that a

thorough financial investigation is also carried out during the judicial proceedings. The latter is one of the basic pillars of a good criminal investigation and has four different purposes, in addition to confiscating money:

1. ensure the victim is compensated²³⁹
2. dry up the financial network
3. map the entire network
4. obtain certain pieces of evidence to make a conviction for human trafficking.

1. Collecting the money for compensation and to dry up funds

The main driver for traffickers is profit. Often, they are powerful criminal entrepreneurs managing their illegal activities as a business. These large-scale networks operate like multinationals.

In the world of organised crime, human trafficking is a lucrative business. In order to combat human trafficking effectively, it is necessary to target the heart of the system, i.e. the financial flows. A thorough financial analysis is essential. It allows the criminal network to be scrutinised in detail and neutralised. Drying up the analysed financial flows is therefore the ultimate weapon to strike at the heart of the criminal system and paralyse it. It is also a crucial way to award effective compensation to victims.

²³⁹ This point was dealt with in the previous chapter.

1.1. | Notification of money laundering prior to the start of the financial investigation

As an administrative body, the Financial Intelligence Processing Unit (FIPU)²⁴⁰ plays an important role, prior to the detection of criminal assets, in the financial analysis of human trafficking cases. In the preventive part of the fight against money laundering, the FIPU is responsible for centralising, processing and, if necessary, transferring information to the judicial authorities for the fight against money laundering. When serious indications of money laundering emerge from the operational analysis, the FIPU must forward all the information it has to the competent senior crown prosecutor.

In the case of offences related to the smuggling of illegal labour or human trafficking, the FIPU also informs the labour prosecutor.²⁴¹

Several human trafficking cases and financial investigations were initiated on the basis of a money laundering notification from the FIPU and subsequently resulted in court rulings of confiscation and compensation for the victims. This happened in a case of sexual exploitation involving a Thai massage parlour.²⁴²

It contained suspicious money transfers reported to the FIPU by Western Union. The court subsequently ordered confiscations of EUR 51,861 and EUR 20,598.40, and awarded damages to the four victims who filed a civil suit, ranging from EUR 4,000 to EUR 8,000.

A case concerning labour exploitation²⁴³, involving Polish and Romanian bogus self-employed workers and posted workers in the construction sector, was initiated following the FIPU's discovery of a company's suspicious transactions. The FIPU noticed that a significant amount of cash had been withdrawn from the account of a construction company.

During the criminal investigation, the FIPU issued an additional notification after having identified more suspicious transactions. The court ordered the confiscation of a total amount of EUR 359,877.29 from two managers and two companies. Three victims who filed a civil suit received EUR 2,500 in damages.

1.2. | Launch of the investigation

At the start of a human trafficking case, a financial investigation must be launched immediately. As soon as suspects believe that an investigation is under way, they try to conceal or move their assets, or let their company go bankrupt so that it becomes

impossible to seize their assets at a later stage of the proceedings. It is therefore important to involve a 'plukteam' at the start of an investigation²⁴⁴ and to seize the maximum amount of assets.

At the start of a human trafficking case, a financial investigation must be launched immediately in order to avoid the criminal assets disappearing or being moved.

The term 'plukteam' comes from the Dutch word 'kaalplukken', which literally means stripping criminals of their finances. This term is derived from kaalplukwetgeving, the law on the seizure and confiscation of criminal assets. More specifically, this team is responsible for making an inventory of criminal assets for subsequent seizure.

The involvement of a plukteam in an investigation of assets increases the seizures of the proceeds of crime. Right from the start, the plukteam will try to trace all movable and immovable property. In addition, it must be able to examine all traces of criminal assets on the spot during the initial searches and freeze them so that the suspects no longer have the opportunity to make them disappear. This approach allows a maximum number of seizures to be organised. The usefulness of plukteams has been demonstrated in several cases, such as in a case analysed earlier concerning Hungarian Roma.²⁴⁵

240 J.-C. DELEPIERE and P. DE COSTER, "Le rôle de la cellule de traitement des informations financières (CTIF) et le dispositif préventif dans le cadre de la lutte contre le blanchiment d'argent et le financement du terrorisme — analyse opérationnelle et grandes tendances du blanchiment de capitaux

241 CECLR, 2011 Annual Report Trafficking and smuggling of human beings, *The money that matters*, p. 9.

242 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 96-97.

243 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 164-166.

244 MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, pp. 42-58.

245 MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 60-65.

A Romanian case²⁴⁶ involving a confiscation of EUR 512,066 clearly illustrates the role and added value of the plukteams for an investigation into assets. Here is an excerpt from the report drafted by the investigators of this team to the investigating judge:

"According to these findings, the existence of criminal assets seems to be very real. With your agreement, our services will conduct an additional financial investigation into the relevant entities in this case. In order to obtain an overview of the extent and location of the criminal assets as quickly as possible, with a view to making a seizure to prevent them from being removed by the suspects, we believe the following inquiries would be useful:

- checking the land registry regarding the existence of properties in the name of B.,...;
- checking the tax records to check if B.,... has any legal income;
- questioning all financial institutions to find out whether they have one or more accounts in the name of B.,...;
- checking with cash transfer agencies to see if there are any traces of money received or sent;
- checking through official channels to see whether B.,... has money or securities in Romania and Portugal."

1.3. | Looking for the money

The suspects' criminal assets can be detected through investigative means such as phone taps and the analysis of money transfers.

Phone taps can be used to trace property and illegal cash couriers. For instance, the professional Nigerian networks use their own financing system. The Nigerian criminal world avoids official money transfer companies, owing to the possibility of tracing identities, amounts and recipients. They have their own system to transfer funds to beneficiaries in the country of origin without a trace: the "Black Western Union" system.

In the Mama M. case²⁴⁷, phone taps revealed that an 'Africa' shop (selling typical African products) was being used as a hub to send cash to Nigeria on a very frequent basis. In concrete terms, this means that these people from the Nigerian underworld contacted 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 possible 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 paid through this Africa shop. The recorded conversations revealed that the son went to fetch sums of money upon the aunt's request. The aunt or her boyfriend travelled frequently (probably every two weeks) with the collected cash (likely 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. Based on the phone taps, the court found that money had been transferred illegally at least three times: "in particular, EUR 11,000 (phone tap of 19 March 2016), EUR 15,000 (phone tap of 19 March 2016) and EUR 25,000 (phone tap of 19 March 2016)".

The court subsequently ordered the confiscation of EUR 27,500.

Several 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.²⁴⁸ Victims are sometimes involved in the transfer of illicit funds. Their statements play an important role in the detection of these illicit funds, an aspect that also emerged from the Hungarian Roma case. One of the victims explained how they had to transfer money to Hungary for the defendant through an agency: "I did it in my own name and not always in his name, sometimes for his sister or sometimes for a relative or an acquaintance. These amounts were clearly for the defendant. In the evening, he beat me because according to him, I was lying because I hadn't sent him money for his return journey".²⁴⁹

²⁴⁶ MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13, 51 and 108.

²⁴⁷ MYRIA, 2018 *Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, p. 92.

²⁴⁸ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 97-98.

²⁴⁹ MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 60-65.

In the case of sexual exploitation concerning the above-mentioned Thai massage parlour, information on property abroad was obtained thanks to the analysis of a computer.²⁵⁰ The police found photos of a building site on the defendant's computer, which the defendant and his wife were supervising. When confronted with the photos, the defendant admitted that his wife had had eight houses built in Thailand with a view to renting them out. The court made reference to this in its judgment for laundering the proceeds of prostitution.

1.4. | International cooperation

Good international collaboration and a far-reaching financial investigation are the most efficient ways to affect and financially dry up criminal networks. This type of approach is part of an international chain approach in which all the links have a role to play. If a link fails or is weak, the chain will collapse.

Joint Investigation Team

A Joint Investigation Team²⁵¹ (JIT) can be a vital tool in this respect.²⁵²

In the same Hungarian Roma case²⁵³ where the plukteam was brought into play, Belgium, the Netherlands and Hungary signed a JIT agreement end 2013. At the beginning of 2014, an investigation into the same Hungarian network was also initiated in the United Kingdom. The investigators managed to identify the perpetrators' movable and immovable assets in Hungary and to quickly and efficiently seize their criminal proceeds thanks to the JIT agreement.

250 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 96-98.

251 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 (O.G., 24.12.2004).

252 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp.66-67.

253 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 60-65.

The defendants earned EUR 198,240 per month thanks to their activities in prostitution. The court used these figures to justify its confiscation order for a total amount of EUR 405,980. The investigators analysed the financial modus operandi of the prostitution network based on information from phone tapping, observations and money transfers. The escorts checked how much the victims were 'bringing in' according to the number of condoms used. They entrusted the cash takings to cash couriers who took them to Hungary where they were mainly placed in real estate. Among other things, the perpetrators made international money transfers to Hungary in the names of the victims using regular money transfer agencies. One of the objectives in the JIT agreement was the victims' interests. In addition to gathering evidence of involvement in human trafficking and money laundering, and seizing criminal assets, the JIT also had the following objectives:

- to get the prostitutes out of the forced prostitution;
- to ensure that the suspects had their illegally acquired benefits withdrawn through the courts;
- to ensure that the victims were compensated and/or benefited from financial compensation;
- to prevent the women from becoming victims of human trafficking again.

1.5. | Camden Asset Recovery Inter-agency Network

The network Camden Asset Recovery Inter-agency Network (CARIN)²⁵⁴ is known (though not well enough) as an international instrument that can provide insight into a suspect's assets abroad. It can make international collaboration more efficient, especially in terms of information exchange between competent authorities, the organisation of joint investigations and the detection, freezing and confiscation of illegal assets.

254 Carin stands for 'Camden Asset Recovery Inter-agency Network'. This informal regional network, which was established in 2004, brings together the authorities responsible for asset recovery. It is responsible for all aspects associated with the fight against the proceeds of crime. The network is composed of investigative and law enforcement officers, mainly from Europe but also from North America. It aims, on an inter-institutional basis, to achieve greater efficiency in the actions undertaken by the network's members, whose goal is to cut off criminals' access to illegal income.

In the above-mentioned Romanian sexual exploitation case²⁵⁵ involving a plukteam, the financial investigation, with the help of CARIN, led to the dismantling of an international prostitution network. The report drawn up by the police (plukteam) for the investigating judge, is a concrete example of how the investigation was carried out through CARIN: "The hearings and additional inquiry show that the suspects invest the proceeds of the prostitution network in real estate abroad. Within the framework of locating the criminal assets, we make a request via the CARIN network. The investigation shows that once recruited, the victims are taken to Belgium via Portugal. In Portugal, the suspects have a place where they house the victims. The request is therefore addressed specifically to Romania and Portugal, since the suspects in this prostitution network have their contacts there. We inform your office that we are sending the following information to the COSC²⁵⁶, the intermediary in the event of an investigation via the CARIN network.

The following questions were asked for each suspect:

- Full identity of the persons involved, as well as their current place of residence;
- Do the suspects and/or their family have real estate in Romania and Portugal?
- Do the suspects have movable goods, bank accounts, valuables in their possession?
- Do the suspects have a criminal record?
- Are the suspects involved in companies? If so, in what capacity and in which sector of activity?

The Belgian judiciary thus managed to gather important information on criminal assets both individually for each suspect and as a whole (EUR 512,066).

2. Analysis of the network

A financial investigation can also be useful when the suspects' financial assets have already disappeared and can no longer be seized. It serves as a financial instrument to identify the entire network and dismantle it.²⁵⁷ On the basis of financial analyses of the system, the criminal human trafficking network and its periphery can be analysed and, if possible, paralysed. In some cases, this type of analysis increases the prosecutions against the traffickers.

In the above-mentioned Romanian Roma case²⁵⁸, the bank investigation revealed that nearly all the profits from the exploitation of prostitution were transferred by the exploiters to their father in Romania, who then

invested this money in Romania.

The phone taps also confirmed this. The financial investigation carried out allowed not only the exploiters in Belgium to be prosecuted but also one of the main organisers based in Romania.

A financial investigation can be useful when the suspects' financial assets have already disappeared and can no longer be seized.

The criminal organisation's payment methods were also uncovered: "The proceeds of this prostitution network are sent to the main defendant's relatives in Romania through money transfers in the names of other members of the criminal organisation. This money is invested in real estate in the region of Târgu-Jiu, capital of the province of Gorj in Romania, either in the names of the defendants, or in the names of their parents or other members of their family."

Financial analysis is an important method for identifying those responsible and uncovering links between the criminal network and the legal world. By tracking the relationships between the financial transactions, it is possible to find the leaders of the criminal networks, who are situated in the background, and their contacts in the legal world. In the Bulgarian A. case²⁵⁹ concerning a large-scale prostitution network, the financial investigation demonstrated how the organisation used commercial structures for its criminal activities.

255 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13, 51 and 108.

256 The Central Organ for Seizure and Confiscation (COSC) is an organ of the public prosecutor. It was created by the law of 26 March 2003 and has been operational since 1 September 2003. The COSC acts as a knowledge centre for the judicial authorities in criminal matters, within the framework of seizing assets. It provides assistance in the context of public action, in relation to confiscation, and assumes the role of facilitator as regards the execution of judgments and orders involving confiscation (source: www.confiscaid.be).

257 CECLR, 2005 *Annual Report, Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, pp. 101-102 and 2011 *Annual Report, The money that matters*, p. 158.

258 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13 and 53-54 and 114-115; Brussels, 13 November 2013, 13th ch.

259 CECLR, 2003 *Report on human trafficking, In favour of an integrated approach*, pp. 25-27 and 2005 *Annual Report, Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, pp. 101-102.

Thanks to the financial investigation, it was possible to identify and convict the leaders of the Bulgarian network.

Commercial structures are sometimes used to facilitate or camouflage the criminal activities, or to create (inter)national money laundering networks. This interweaving of legal and illegal activities allows the most visible part of the financial flows to be hidden, thus offering organised crime good protection.²⁶⁰ In a case in Lige involving prostitution parlours, companies were set up to hide the profits from prostitution.²⁶¹

3. Evidence

Financial investigations are a way to gather objective evidence and are a major added value, even if the criminal assets have disappeared and can no longer be seized. In their decisions, the courts regularly refer to evidence from the financial investigation to convict the defendant. For certain forms of human trafficking, the financial investigation can even be the main evidence. This is true in cases of human trafficking for the exploitation of begging. An important element that helps determine whether this is the case, is when the victims hand over their earnings to a third party. During a surveillance operation in Brussels in a case of exploitation of begging involving a disabled person²⁶², the police were able to determine how the beggars handed over their earnings to a third party: they hid them in a packet of cigarettes. The surveillance photos were an important piece of evidence. At the beginning of the investigation, the police, who had received a warrant, carried out a bank investigation and asked various money transfer agencies to cooperate regarding international transactions. Here is the judgment's conclusion: "The court thus considers that on the basis of the results of the financial investigation, it is clear that the parties exploited their victims. The bank investigation showed that the parties who had no legal income in Belgium had, together, transferred no less than EUR 39,868 to various family members in Romania. Such an amount can only be explained by the centralisation of the assets of other beggars by the defendants."²⁶³

In an Albanian case²⁶⁴, it was possible to extend the period of criminalisation of the criminal acts of human trafficking by a few years, on the basis of a financial investigation. The police used the analysis of the money transfers to show that the defendant had been active as a pimp since 1999. On the basis of the checks in 2005, the police were able to determine that the defendant was the pimp of one of the victims working as a prostitute in Rue d'Aarschot. At the same time, the police noted that this victim had sent a total of EUR 18,468.06 to two people in Albania, between October 1999 and December 1999. The Belgian liaison officer informed the police that they were the defendant's parents. The defendant had also transferred EUR 1,900 himself to his parents in Albania. With no legal income, he wasn't able to explain the source of the funds to the police. The money came from his last victim. In a judgment of 17 October 2014, the court convicted the Albanian pimp primarily for human trafficking for the purpose of sexual exploitation and money laundering. The judge also ordered a confiscation amounting to EUR 60,000.²⁶⁵

In the above-mentioned case concerning a Thai massage parlour²⁶⁶, the financial investigation provided additional evidence for the acts of human trafficking committed. Here is the court's conclusion in its judgment: "If we compare the defendants' cash payments with their income, it is clear that, especially in 2007, 2008 and (partly) 2009, large amounts were transferred to Thailand, and we can in no way assume that these funds were lawfully earned. It is also clear in the court's view that the aim of the cash transfers to people in Thailand, in particular the defendants' (step)children, was to hide their illegal source. The use of a travel agency system such as W., offers the 'advantage' of making the source and the ultimate use of the funds more difficult to trace. In addition, the transfer of funds to Thailand apparently allowed the defendants to benefit from their illegal earnings there, without raising suspicion in Belgium. The defendants also bought various properties in Thailand, in particular a house in (...), in the Province of Nakorn Si Thammarat as well as eight houses to rent out."²⁶⁷

260 MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, p. 48.

261 MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 109-110.

262 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 28-30 and 60-61.

263 Corr. Brussel, 19 mei 2016, 60ste Kamer, (definitief).

264 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 115.

265 Brussels Dutch-speaking Crim. Court, 17 October 2014, ch. 46bis (final).

266 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 107-109.

267 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 107-109.

EXAMPLE OF A CASE: PALLET FACTORY

This case demonstrates the importance of the different aspects of legal aid for victims of human trafficking and their protection. In this case²⁶⁸, several defendants were convicted for human trafficking for the purpose of labour exploitation as well as for slum landlord activities. The main defendant was the manager of a pallet factory. His company was also prosecuted as a legal person. The acts date back to 2009-2011. The entire judicial proceedings didn't end until May 2019, when the defendant's appeal to the Supreme Court of Appeal (Court of Cassation) was dismissed. Both Payoke, Myria and several victims filed a civil suit. Among the victims, there was one who had never asked for victim status or been in contact with a specialised centre.

The Belgian manager had set up a legal construction and created a PO box company in Bulgaria that had no substantial activities. He illegally posted Polish and Bulgarian workers in Belgium. He also worked with Polish and Romanian subcontractors who provided him with cheap labour. These subcontractors were also convicted as co-defendants.

1. Duty to inform

On 26 February 2010, four Bulgarians spontaneously went to the local police to file a complaint against their employer: he had tricked them and was withholding a large part of their back pay. After an initial brief interview with these four people, it transpired that they were fed up with their degrading living and working conditions and were demanding justice. This is why they wished to obtain the status of victim of human trafficking.

The police listened to the Bulgarians who told their story in broken German. One of the Bulgarians had a hand-written letter stipulating that they were asking for help and were victims of human trafficking. They were living in awful conditions, in a house belonging to the employer, and an intermediary would come and fetch them to take to the pallet factory. They had to work for EUR 3 an hour, 12 hours a day, and EUR 215 was withheld from their wages every month for the rent. The letter bore the signatures of 11 identifiable people. The police contacted the Social Legislation Inspectorate to ask whether one of the people who had made the complaint was registered with Dimona²⁶⁹ by the company, which wasn't the case. The local police then contacted the human trafficking unit of the federal judicial police (FJP), to pursue the rest of the investigation, as well as the reference prosecutor for human trafficking. It also brought in a Bulgarian interpreter for the rest of the interviews with the victims. Thanks to the list on the back of the hand-written letter, the local police managed to identify some of the people who had signed it and was able to contact them.

The victims were mainly Bulgarian, but there were also some Romanian and Polish victims. According to their statements, some Polish workers also contacted the Polish embassy in Bulgaria.

With the help of the multilingual leaflet for victims of human trafficking²⁷⁰, the victims were informed about the status of victim of human trafficking. They were interested in this status. Twelve victims wanted to cooperate with the authorities by filing a complaint for human trafficking. They also wished to be referred to the specialised centres for victims. Owing to other priorities, the FJP's human trafficking unit wasn't able to interview the victims at the time of the statement. It informed the reference prosecutor for human trafficking and the specialised centres.

²⁶⁸ Myria, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 85-86, 115-116; Antwerp Crim. Court, Turnhout division, 18 January 2017, ch. TC1; Antwerp Court of Appeal, 24 January 2019, ch. C6 (see below part 3, Chapter 3 (case law), point 2.3.1.).

²⁶⁹ DIMONA (immediate declaration of employment) is an electronic reporting that enables employers to inform the National Social Security Office when they employ a worker or when a worker leaves the company.

²⁷⁰ See this part, Chapter 2, point 1.1.

2. Support and access to victim support centres

At the time, the FJP contacted the specialised centres. Owing to a shortage of space, they were unable to provide accommodation.²⁷¹ All the Bulgarian workers concerned who were interested in the status of victim of human trafficking, were accommodated in a crisis centre by the CPAS, in an establishment at a holiday park. A week later, Payoke was able to take in eight victims and Sürya the other four. They had cut off all contact with the company and were prepared to accept the compulsory support offered by the specialised reception centres.

The victims' interviews were held in the premises of the specialised centres, an environment offering the victims the trust they required. A team member from the specialised centres was able to assist the victims during their interview. The Bulgarian victims stated that they had been recruited in Bulgaria to come and work in Belgium, on the basis of false promises, through an advertisement placed online by an employment agency. At the company's head office in Bulgaria, they were shown a promotional film depicting an amazing workshop, new machinery and a house that they would actually never see. In reality, their accommodation was substandard: there were at least 15 of them staying in housing that wasn't at all suitable.

3. Participation in the criminal proceedings

3.1. | Legal aid and voluntary return to the country of origin

Several Bulgarian victims wanted to return to their country of origin as quickly as possible. They didn't need legal support but they didn't realise that without it, they were reducing their chances of obtaining compensation.

They had been informed about victim status through the multilingual leaflet on trafficking but they didn't want to apply for it. They didn't have enough money for their return journey and couldn't appeal to any authority to help them.

The police had received a fax from the Bulgarian embassy in Brussels stating that the interested parties had presented themselves as victims. The police first attempted to repatriate them with the help of Payoke, through the IOM (International Organisation for Migration), but they didn't meet the conditions. The Immigration Office was then contacted to find another solution. In the end, the police could only advise them to go to the Bulgarian embassy to try to get back to Bulgaria.

Other victims who asked for the status also expressed their desire, after a while, to return to their family in Bulgaria. The specialised centres informed the police and the reference prosecutor in writing that their support had ended as the victims had gone back to Bulgaria. It also emerged from the interviews with Myria that the centres had put the victims in contact with a pro-Deo lawyer, before their departure, so that they could be represented during the rest of the proceedings. Almost 10 years later, several victims subsequently filed a civil suit during the trial.

3.2. | Victim without the formal status of victim of human trafficking as a civil party

An interesting example from the same case relates to a repatriated victim, identified through acts committed in another case but who had never obtained the status of victim of human trafficking. Almost 10 years later, in 2017, they became a civil party in the trial by appointing their own lawyer. In the end, the victim wasn't recognised by the court owing to flaws in the case: a major part of the other case wasn't included in it.

²⁷¹ See this part, Chapter 2, point 3.2.

This part of the case began after the arrest of several Romanians for theft. They were staying in a house belonging to the same employer and travelled in the employer's car. The police drew up a report for illegal stay and the suspects were repatriated to Romania.

The police had interviewed the suspects. It emerged that they had been exploited by a Romanian labour supplier who worked as a subcontractor for the Belgian manager. In their investigation, the police found indications that the labour supplier was drawing Romanian workers to Belgium on a large scale through his Romanian company, and that he was acting as an intermediary in the assignment of Romanian workers to professions where there was a shortage. One of the Belgian companies where he posted his workers was the Belgian manager's pallet factory. On the basis of this information, an investigation into human trafficking was started and the suspects in the theft case were identified as the victims in the pallet company human trafficking case. The theft case was partly added to the pallet company human trafficking case. One of the Romanians involved in this case, who had the status of victim of human trafficking, later filed a civil suit during the trial against the pallet company.

The court had to reject this victim's civil suit because the interviews of the Romanian victims were missing from the original theft case. Hence, no link could be established with the acts of human trafficking. The act of theft didn't play any role in it. Here is the court's reasoning: "On 7 November 2009, the Romanians N., C. and H. were caught stealing a barbecue set in Rijkevorsel. They were staying in (...) without being registered there and were working for the defendant X. These persons had clearly been interviewed within the framework of another criminal case, but there were no such interviews in the present case. Following the theft, the Noorderkempen local police force drew up an initial report for human trafficking. Based on the summary of the interviews of the workers concerned in the theft case, the court was unable to conclude whether these people were employed or housed in conditions contrary to human dignity (documents 769-772, general file 3, part 1). The current assertion of plaintiff N. that they [the workers] had to work and live in appalling conditions isn't supported by any element in the criminal case file. For the rest, no other investigations have been carried out and there is no evidence to the contrary."

The victim, who had never been referred to a specialised centre, subsequently never received any compensation from the defendant and never had access to the procedure associated with victim status. This problem could probably have been solved if they had taken the opportunity to ask the investigating judge for additional investigations²⁷². The parts missing from the theft case could thus have been requested, i.e. the interview of the interested party referring to human trafficking. Another lesson to be learnt from this is that, when putting a case together, all the detailed elements and indications of human trafficking must be added.

4. Right to protection

Some victims were reported as missing and became vagrants. One of the victims even died.

4.1. | A victim reported as missing becomes a vagrant and ends up in a squat

On 10 September 2009, the local police in Retie received a fax from the Polish consulate regarding a Polish worker whose last address was one of the houses belonging to the main Belgian defendant. He had left his personal belongings there. The victim's family reported him as a missing person to the Polish consulate. He had been working in the pallet factory before he went missing. The son tried unsuccessfully to contact his father for three weeks. After an investigation, the Polish victim was found in a dilapidated building that was used as a squat. According to the police, he had become a vagrant.

The police considered him as a "vagrant Polish worker from the company for which he had probably only worked for a short period of time and which probably found him unsuitable, as a result of which he was thrown out onto the street."

²⁷² See this part, Chapter 3, point 2.3.2.

He didn't have enough money to get back to Poland. [...] Owing to their precarious social situation in Belgium (no employment contract with the Bulgarian company, paying for their journey to Belgium themselves, no registration with the municipality, payment for their stay, minimum salary or none at all, dismissal or replacement by another worker if they don't work enough), some of the workers concerned have no other choice but to live as 'vagrants'."

4.2. | Death of victims

According to the police at least two workers from the pallet company died while they were in Belgium. Several statements made by victims testify to two deaths, and one of the victims even spoke of the deaths of four Polish colleagues in their statement. One of these deceased Polish workers whom the court referred to in its judgment was identified and found. There is no other known information on the other deceased victims.

The FJP reported a suspicious death of a Polish worker in a report. Their wage calculations for the Belgian pallet company were found on the company computer of a subcontractor. He suffered from a severe form of diabetes, and owing to a lack of money, he wasn't able to buy himself the necessary food or medication. When he died, he was staying in the building belonging to a defendant, an intermediary who was a subcontractor. As his wages weren't paid, or not on a regular basis, he was unable to go to a Polish hospital around 20 December 2008 to get treatment. He didn't have enough money to pay for the bus journey to Poland. He was found dead on 11 January 2009.

5. Compensation

Three Bulgarian victims filed a civil suit during the trial. They had obtained victim status and, after returning to their country of origin, a lawyer continued to defend their interests. The court awarded two victims EUR 4,000 for material damage and EUR 750 as compensation for non-material damage. The third victim received material compensation worth EUR 2,199 and non-material compensation worth EUR 500.²⁷³ The Belgian manager has no financial problems and his company, which was also convicted, still exists. Therefore, the victims can expect to be compensated.

6. Empowering victims

Two Bulgarian victims who had filed a complaint with the local police in Belgium, took the initiative of raising awareness among other potential workers regarding the misleading promises and abuses of the pallet company and the subcontractors concerned. This is what emerged from the victims' statements.

Apparently, one of the Bulgarians set up a website on which he warned Bulgarian workers about the company's practices. He hadn't received any reactions about these warnings but he knew that several Bulgarian workers had filed a complaint in Bulgaria.

Another Bulgarian who had filed a complaint, also set up a website to unite all the misled workers, upon the initiative of his sister who was a lawyer in Bulgaria. He gave his sister's identity so the police could contact her.

²⁷³ See this part, Chapter 3, point 2.3.2.



External contribution: The number of victims taken in is only the tip of the iceberg

Sarah De Hovre

Director

Non-profit association PAGASA

Introduction: the mission of the specialised centres for victims of human trafficking

Since the 1990s, the Belgian government has officially recognised three organisations²⁷⁴ as specialised centres for the support of persons within the framework of the 'protection procedure for victims of human trafficking'. These are women and men, children and adults, whose nationality is Belgian, European or other, who have been exploited as modern slaves in Belgium.

The 'protection procedure' is an integral part of the Belgian multidisciplinary approach to combating human trafficking. This chain approach involves close cooperation between various partners²⁷⁵, who each have a very specific and essential mission, which is complementary to everyone else's mission.

Victims who choose to engage in the 'protection procedure' undeniably contribute to this fight. It requires a great deal of courage and strength to take this step! Thanks to the support and guidance of the support workers from the specialised centres, many victims manage to do it. It often boosts their self-confidence, because thanks to their testimonies, the Belgian authorities can act and prevent other people from becoming victims of the same criminals.

The specialised centres offer integral and holistic assistance, adapted to the needs of each victim. At first, victims are temporarily accommodated in one of our shelters, located at discrete addresses for security reasons, where they can stay for a few months before moving to a rented studio or apartment.

In addition, the victims benefit from long-term support (composed of three parts: administrative, legal and psychosocial) spread over three to five years, depending on the person's context and the length of the judicial proceedings against the perpetrators of human trafficking. The specialised centres support between 500 and 600 victims every year.

However, their mission isn't to go and look for victims in the field; their purpose is to actively ensure that the frontline services in contact with at-risk groups and potential victims are sufficiently informed in order to recognise the signs of a human trafficking situation. By 'frontline services' we mean the police and social inspection services, but also (and increasingly) stakeholders belonging to the vast 'social sector' (such as: Fedasil or Red Cross migrant centres, social services, legal advice services, youth care, hospitals medical centres or NGO). When a frontline service is faced with a possible human trafficking situation, it contacts one of the specialised centres to clarify the situation and then we refer the (potential) victim so that they are taken care of if necessary, and if they so wish.

For example: The work carried out by the 3 specialised centres in 1 year in 4 key figures

- 700 to 900 reports processed
- 100 to 150 victims housed in one of our shelters
- 500 to 600 victims receiving support
- 1,000 to 3,000 professionals trained or informed

1. Reports are the first step towards specialised support and therefore deserve a quality response

By 'report', we mean any request for help that reaches one of the specialised centres, by phone, fax, email or by someone coming to our offices. Every report is treated with care because anyone seeking help deserves an attentive ear: whether it is the (potential) victim who has had the courage to ask for help, or a professional who has taken the time to listen to the victim and contact us, or a private individual who is concerned about the fate of another human being in a difficult situation. Our mission involves offering an initial warm and humane welcome, so that everyone is listened to with respect and that each request for help receives a quality response (even when we can't offer the requested support ourselves).

²⁷⁴ PAG-ASA in Brussels founded in 1994, Payoke in Antwerp founded in 1987, and Sürya in Liège founded in 1995.

²⁷⁵ In the field, these partners include: the local and federal police, regional and federal social inspection services, public prosecutor's offices and labour prosecutor's offices, reception centres for foreign unaccompanied minors, and the three specialised centres.

As regards these reports, we would like to clarify several misunderstandings or 'myths'.

Myth 1: every report concerns a human trafficking situation

Not all the reports concern human trafficking situations. In many cases, it is clear from the first contact that it is another problem, such as social law disputes (e.g. non-payment of wages or long working hours), intra-family problems (e.g. violence or abuse), questions about residence procedures, questions about emergency overnight accommodation, etc.

In these cases, we also endeavour to help the person to look for a solution, and don't leave them to fend for themselves. We try to refer them to another relevant service. For this purpose, we have a very extensive social map and a network of (local) organisations with which we cooperate.

Myth 2: it only takes one conversation to process a 'relevant' report

The majority of reports aren't limited to a single moment but cover a series of different stages. During the first contact, the main objective is to draw up a general picture of the situation in order to assess whether the request for help falls within our field of action; this involves screening or filtering before we decide whether or not to launch our intake process.

For every 'relevant' report, i.e. with a potential indication of human trafficking, or when the situation is unclear after the first contact, we take various steps to further clarify the situation of the (potential) victim. The intake process begins with an intake interview, which is preferably scheduled in the agenda, so that the person and the worker from the centre concerned have enough time to go through everything and book an interpreter²⁷⁶ if necessary. An intake interview usually lasts between 1.5 and 2 hours. Sometimes, it is necessary to organise several in the interest of the (potential) victim as it isn't always easy to determine whether or not it is a case of human trafficking.²⁷⁷ It is therefore essential to create a relationship of trust so that the person involved feels comfortable enough to describe what happened. And it takes time to create this trust.

In addition to one or more intake interviews, it is sometimes necessary to contact the person who made the initial report again or to contact other services. Contact is only made with the consent of the victim concerned.

Myth 3: every reported human trafficking situation leads to the victim being taken into care

A large number of 'relevant' reports don't lead to the victim concerned being taken into care. There are various reasons: for instance, the victim isn't interested in our offer; the acts are time-barred or occurred abroad (subsequently, the victim can't access the protection procedure); the person's account contains too few concrete or verifiable elements (the chances of a criminal case are therefore nil); the reference judge for human trafficking issues a negative opinion; the person doesn't get in touch with us again despite various attempts by the centre to contact them; or, the person decides to return to their country of origin.

Our support is organised on a voluntary basis, which means that the victims decide for themselves whether or not to accept our offer. We like to give them absolute freedom and autonomy - it is a conscious methodological choice based on empowerment: for weeks, months or even years, these victims have lived in a situation of exploitation and control, without being able to make their own choices or take their own decisions. If the person doesn't wish to benefit from our support, we carefully refer them to other services, which may not offer 'specialised trafficking-oriented' assistance, but do have the necessary expertise to provide assistance in other areas.

²⁷⁶ Interpreters are an essential link in our work since the majority of victims are foreign and have little or no command of Dutch, French or English.

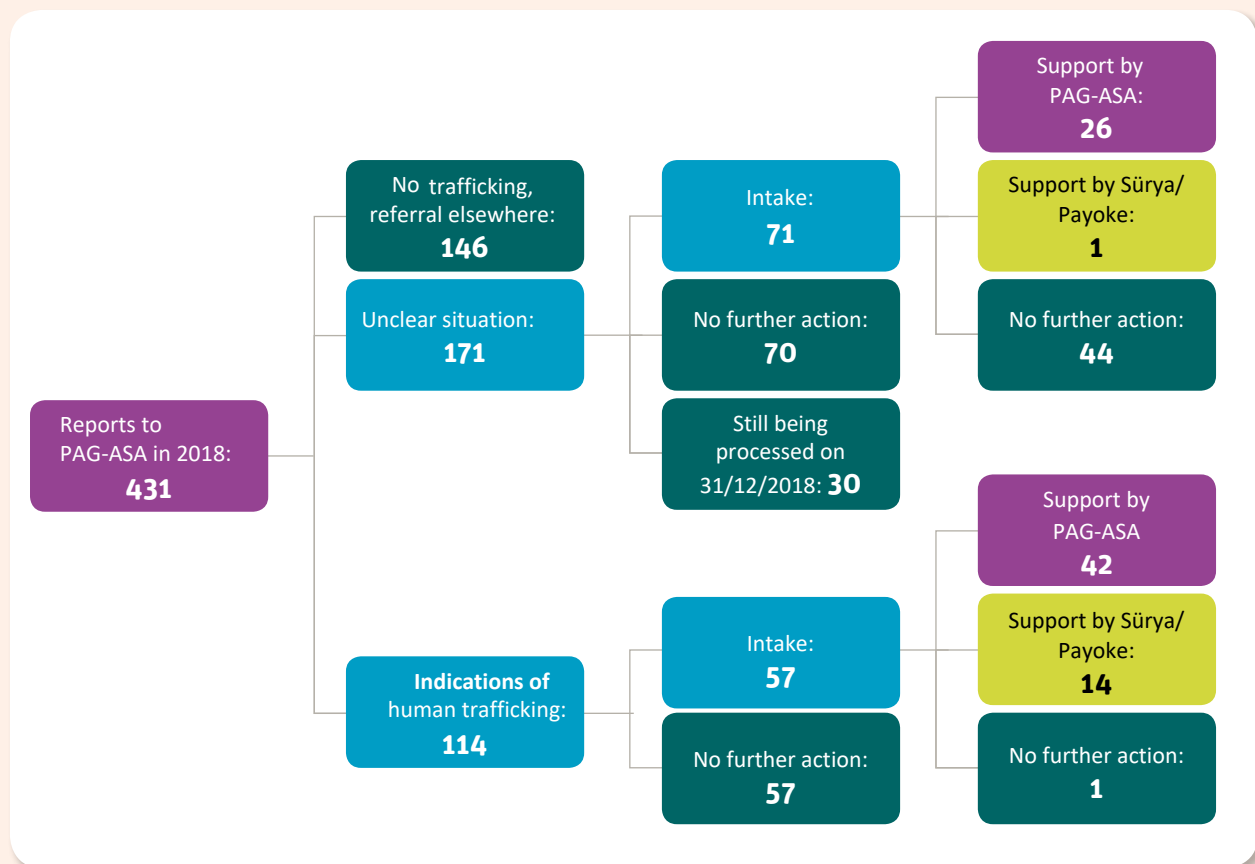
²⁷⁷ Ultimately, it is always the reference judge for human trafficking who is competent to classify certain acts as human trafficking.

For example: an analysis of PAG-ASA figures

In **2018** PAG-ASA dealt with **431** reports. After the initial contact, **146** of the situations clearly had no indications of human trafficking and the persons concerned were referred to other services. For the **171** reports where the situation was unclear, and for the **114** reports with indications of human trafficking, we suggested to each person concerned to start the intake process. An intake interview was only organised if the (potential) victim agreed to it.

In the end, **83** reports resulted in those concerned being taken care of and the start of support: **68** at PAG-ASA and **15** at Payoke or Sürya after being referred²⁷⁸ by PAG-ASA.

Furthermore, on 31 December 2018, **30** reports were still in the process of being examined: it will become clear at the start of 2019 whether it is a question of human trafficking and whether support will be initiated.



2. The number of victims supported by the specialised centres is only the tip of the iceberg

The exact extent of the phenomenon of human trafficking and the number of victims in Belgium (and elsewhere in the world) is unknown. The main obstacle is that human trafficking takes place under the radar, in hidden conditions. On the one hand, the criminals are well organised and find creative ways to deal with new realities. For instance, we have found that exploiters are increasingly offering sexual services through 'invisible' channels; in addition to the windows in the red-light districts where the police regularly patrol, they use the internet, social media, escort agencies and receiving clients at home, where it is more difficult for the police to detect exploitation and victims.

Furthermore, the victims are often too frightened to speak: fear of reprisals by the exploiters, also fear that the authorities will send them back to their country of origin. In addition, shame and feelings of guilt are a major obstacle when it comes to speaking out.

According to an estimate of the International Labour Organization²⁷⁹, there are 1.5 forced labour victims for every 1,000 inhabitants in European Union countries. With a population of 11 million inhabitants, that would mean 16,500 victims of labour exploitation in Belgium alone.

²⁷⁸ A referral was necessary because in 14 situations, there was no room at our shelter and in one situation, the person couldn't stay in Brussels for security reasons.

²⁷⁹ ILO, Global Estimate of Forced Labour 2012: Results and Methodology, June 2012, p. 15.

According to an estimate of the Global Slavery Index.²⁸⁰ These figures are therefore very different from the figures available in our country. Every year, Myria, the Federal Migration Centre, quite rightly states in its annual report that the figures available don't reflect the true extent of the phenomenon of human trafficking, but only the recorded acts and the victims detected by the authorities. The figures available on human trafficking only show the visible part of the iceberg.

We are also aware of the fact that the figures from the specialised centres aren't representative of the true number of human trafficking victims in Belgium. Our annual figures for 'support started' only concern victims who have begun the special protection procedure. However, many victims have also chosen not to go through this procedure for various reasons (as mentioned above). Moreover, our annual figures for 'registered reports' don't include all the (potential) victims either. The registration system is currently organised in such a way that only the victims referred to one of the specialised centres are registered. However, many victims have never been reported to us; therefore, they aren't registered anywhere.

This finding leads us to two other misunderstandings or myths that we would like to clear up.

Myth 4: victims are mainly reported by the police and social inspection services

While most reports were still coming in through the police and social inspection services at the start of this century, this hasn't been the case for several years now. More and more reports are reaching us through other stakeholders (as mentioned in the introduction). In addition, more and more private individuals are also finding their way to the specialised centres to report a human trafficking situation.

In the last few years, the share of reports from the police and social inspection services has varied between 15 % and 25 % of the total number of reports reaching the three specialised centres. Of the 898 reports processed by the specialised centres in 2018, 158 came from the police and social inspection services.

Given that these services have teams specialised in combating human trafficking, their reports are always relevant and very often lead to the initiation of support.

Myth 5: all detected victims are referred to the specialised centres

In 2018, the police identified 358 cases with elements of human trafficking and 301 cases were sent to the public prosecutor's office for acts of human trafficking.²⁸¹ At least one victim must be involved in each of these findings and in each one of these prosecutions because human trafficking can only be considered as such if a person has been exploited. However, when comparing these two figures with the number of victims who were reported to the specialised centres by the judicial authorities in 2018 (158), we can only surmise that many victims of human trafficking are never reported (and therefore not registered) in Belgium.

This reality is confirmed by the fact that we are regularly faced with judgments issued by Belgian courts and tribunals in which victims are mentioned who have never been supported or even seen by one of the specialised centres.

The offence of 'human trafficking' doesn't exist without a victim. Hence, where are the victims of these recorded and prosecuted acts? Various factors can explain why the (potential) victims aren't reported or referred to one of the specialised centres. As regards frontline services: insufficient knowledge on the issue of human trafficking and insufficient human resources to detect invisible forms of human trafficking (which implies that many victims are never detected). As regards the victims: after receiving information from the police or the social inspection services, they don't wish to be referred to one of the specialised centres (owing to a fear of reprisals against themselves and their families, a lack of knowledge of social services, a lack of trust in the public authorities, the fear of being deported because they don't have a residence permit, or simply because they don't consider that they are victims). However, it is essential and compulsory²⁸² to contact one of the specialised centres for each human trafficking situation.

²⁸¹ These figures appear in the present Myria report. They don't include the findings made by the social inspection services, or the cases opened by labour prosecution offices.

²⁸² This obligation to make contact and refer victims is explicitly stated in two texts: Article 61/2 of the Aliens Act and Chapter 3.3. of the Ministerial Circular of 23/12/2016 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated smuggling in human beings.

²⁸⁰ Walk Free Foundation, *Global Slavery Index 2018*, p. 180.

We are aware and regret that the police and social inspection services throughout the country are faced with a serious shortage of human resources to combat human trafficking. In addition, training and raising awareness of human trafficking doesn't seem to be a priority within these services. However, this situation has a direct impact on the number of recorded acts and the number of victims detected.

3. Reflection and taking action: a new reporting and referral policy with a central point of contact as the next stage?

As long as the extent of the phenomenon of human trafficking and the number victims is unknown, it is difficult for stakeholders in the field, policymakers and politicians to assess the investments that need to be devoted to combating human trafficking. However, it is clear that the current trend of investing less and less in this fight is having a negative impact on the entire multidisciplinary chain: there are too many cases for too few investigators; questioning is delayed in some cases; evidence may diminish or disappear because of these delays; some investigations take more time which can, in turn, jeopardise the reasonable time limit; criminals have the feeling that 'everything is possible and everything is allowed'; and the victims are demotivated and even disappointed by the law, or feel ill-treated by system.

Every partner in the multidisciplinary 'chain' approach has a vital mission, which is complementary to everyone else's. This chain is as strong as its weakest link. This means that every partner must have enough resources to be able to fulfil their mission and that the government must invest sufficiently in this respect at all levels of action.

Human trafficking is the third most lucrative criminal activity in the world after drugs and arms trafficking.²⁸³ If human trafficking isn't seriously addressed, the way is wide open for traffickers to continue their trade in human beings and all their other illegal activities. Therefore, it isn't only a question of the individual rights of each victim, but also of a general societal interest.

From our hope for a better life for every victim and a society in which human trafficking will no longer exist, PAG-ASA would like to put some food for thought on the table. We are convinced that an adapted reporting and referral policy will help to better understand the extent of the problem in Belgium. We believe this step is necessary to be able to make better political choices. We would like to work with all the relevant partners to develop a uniform and rigorous reporting and referral policy, with the obligation for all stakeholders to report all (potential) victims of human trafficking, possibly anonymously, even when they don't seem to want help, or wish to be referred to a specialised centre, or when they are already supported by other services. This obligation would also help to ensure that each victim detected is at least informed of their rights and offered the choice to accept, or not, the offer of the protection procedure.

Such a reporting and referral policy would be greatly facilitated by establishing a central point of contact (with a single phone number, preferably free of charge) where all (potential) victims of human trafficking should be reported and registered. This central point of contact²⁸⁴ could make an initial analysis of the situations and refer the (potential) victims to the appropriate services. Hence, basic information could be gathered, such as: type of exploitation, sector of exploitation, place of exploitation, country of origin, age, gender. This information is necessary to be able to establish a clear picture of the type and extent of human trafficking in Belgium. The data could be used for in-depth analysis by our National Rapporteur on Trafficking in Human Beings (Federal Migration Centre, Myria), as well as for reports, analyses, investigations, and to perhaps result in a proactive prosecution policy one day.

A uniform and rigorous reporting and referral policy, facilitated by a central point of contact for the whole country? A dream or a realistic and achievable possibility of better understanding the extent of the phenomenon of human trafficking, in Belgium, so we can then make better political choices in the fight against human trafficking?

283 FATF-GAFI Report, *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011.

284 Ideally, this central contact point would be managed by the specialised centres which have the required expertise and years of experience, as long as the authorities provide the necessary human and financial resources.



External contribution: Initiatives of the Thematic Directorate for Trafficking in Human Beings NSSO Inspection Department and the role of social inspectors in informing potential victims of their possibilities for assistance

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Detection and referral of victims: increased attention but a constant sore point

Our ECOSOC teams have been paying special attention to the effective referral of detected victims to approved reception centres for victims of human trafficking for several years. Our inspectors have been informed of this over the past few years, and have been asked to pay more attention to the interests of victims and their referral to an approved reception centre. In doing so, the NSSO intends to meet the government's expectations within the context of interdisciplinary cooperation in the fight against human trafficking, especially for the purpose of labour exploitation. Circular 01/2015 of the Board of Prosecutors General on the investigation and prosecution policy concerning trafficking in human beings, and the Circular of 23 December 2016 on the introduction of a multidisciplinary cooperation regarding victims of human trafficking and/or certain aggravated forms of human smuggling, are also important documents for the Thematic Directorate for Trafficking in Human Beings.

Integration of the Social Inspectorate into the NSSO Inspection Department

Following the integration of the former Social Inspectorate of FPS Social Security into the Inspection Department of the National Social Security Office (NSSO) on 1 July 2017, the activities of the Social Inspectorate's ECOSOC teams concerning the fight against human trafficking were included in the mandate of the NSSO's newly created inspection department.

Over the past few decades (since the mid-1990s), the Social Inspectorate has made great efforts to detect and establish facts relating to human trafficking, especially for the purpose of labour exploitation, to cooperate with other players in this field (labour prosecutors, police services, reception centres, the Immigration Office, the Housing Inspectorate, other inspection services, etc.) and to report these facts to the labour prosecutor. The ECOSOC teams have thus become an essential partner in Belgium's multidisciplinary approach to human trafficking, especially for the purposes of labour exploitation, an approach that has also been welcomed at international level.

The NSSO would like its newly established inspection department to continue to play this role in an expert manner. The NSSO's aim is to make its inspection department a pioneer in the fight against labour exploitation, thus responding to national and European trends of increased exploitation in a growing number of sectors of activity. In the new vision of the NSSO's inspectorate, it is stipulated that the service wants to excel in the fight against labour exploitation. Workers who are potential victims of exploitation are considered as stakeholders of the NSSO's inspection department: our inspection department will inform them during checks, about their social rights and the protection procedure for presumed victims of human trafficking and refer them to a specialised centre for the reception of human trafficking victims.

In order to consolidate this commitment, in addition to continuing the work of the specialised ECOSOC teams in the 10 provincial directorates (approximately 40 inspectors), a central thematic directorate on human trafficking has been created: it determines policy in this area, maintains the network in which research activities are organised and coordinates and supports the running of the ECOSOC teams.

The priorities of the Thematic Directorate for Trafficking in Human Beings within the NSSO inspection department are to detect the illegal employment of foreign workers, by focusing on defined risk sectors, and to detect the situations of human trafficking described in Article 433quinquies of the Criminal Code. The checks carried out by our inspectors, who are responsible for detecting and investigating human trafficking offences, are aimed at detecting cases of labour exploitation in cooperation with the judicial authorities, police forces and other relevant services.

They clearly indicate that help for victims of human trafficking is the subject of special attention and that the approach of social inspectors and police officers in the field must be appropriate. In our Thematic Directorate for Trafficking in Human Beings in general and within the provincial ECOSOC teams, the attention paid to the interests and protection of victims in investigations of labour exploitation has been significantly increased.

As regards quantitative results, only the following data is mentioned in this contribution: in the cases closed in 2018, 56 reports on acts and indicators of human trafficking, in which 65 potential victims were mentioned, were forwarded to labour prosecutors and investigating judges. Thirty-nine presumed victims were supported by a specialised reception centre (Sürya, Payoke, PAG-ASA). It should be noted that some of the 39 presumed victims were already receiving support from a centre when our investigation began (interviews of these people and/or further investigation of the exploitation).

However, in general, the detection of potential victims of human trafficking remains a matter of concern. Many situations in which workers are exploited aren't detected in time. This is due, on the one hand, to insufficient knowledge of the problems encountered by the various players in the field and, on the other hand, to a capacity problem that can't be solved fast enough. This is all the more true since the capacity of the police to deal with this phenomenon has been reduced - it is no longer always easy to obtain police assistance for our ECOSOC actions. One stumbling block that may result from this is that the transfer of victims detected in the field to a reception centre is in some cases problematic because the police don't have the ability or the means to transport them.

Hence a call for greater awareness of the issue of labour exploitation, both within inspection and police services, so that more attention can be paid to indicators of human trafficking during on-site inspections, and for increased resources and capacity to be allocated to specialised teams such as ECOSOC within the NSSO inspection department, so that detected situations of exploitation can be thoroughly investigated.

There are a variety of reasons why detected potential victims aren't referred to one of the three accredited centres. One of the main reasons for this is that victims found during a workplace inspection in a situation considered by the inspector to be a situation of presumed exploitation are, in many cases, reluctant to accept a proposal to be put in contact with a specialised reception centre. The reasons for this refusal, which are rarely given to the inspector, vary: the person is satisfied with their professional situation and accepts the sometimes appalling work and living conditions, their current situation is often better than their previous one, they don't see their situation as exploitation at all, they don't want to lose their job, they are afraid of being deported from the country because they are staying illegally, they consider their employer as an ally rather than an exploiter, but at the same time they are also sometimes afraid of them, they fear reprisals, they have received instructions from the employer on what to do during an inspection, they are ashamed and refuse to admit that they are being exploited, they distrust the inspectors who are usually accompanied by the police, they perceive the centre as something unknown and sometimes far from the place where they live and work, etc.

Furthermore, inspections often take place at irregular times, which means that some reference judges can't or can no longer be reached in time and the inspectors are forced to contact the judge on duty. The latter isn't always familiar with offences of human trafficking for the purpose of labour exploitation, or with the procedure in place for potential victims of trafficking. If the judge on duty is unfavourable to the idea of considering a worker as a potential victim of human trafficking, it is difficult for the inspector to contact a reception centre, even if the circular of 23 December 2016 allows it. In many cases, the discovered worker makes no statement to the inspectors, making it difficult to refer them to a centre, especially if the indicators established during an initial inspection aren't obvious.

Obligation of the social inspector to inform potential victims

It is therefore of the utmost importance that an inspector, who is confronted with workers during an inspection whom they suspect of being victims of labour exploitation in the sense of Article 433 quinquies, properly informs the potential victims about their situation, their rights and the assistance they may receive and, in particular, about the possibility of legal aid for the recovery of unpaid wages.

As the Thematic Directorate for Trafficking in Human Beings, we urge ECOSOC inspectors to be sufficiently proactive in this area, as we are aware that if the victim is not referred to a reception centre, their chances of obtaining non-material and material compensation may be non-existent.

If there are clues that could indicate an exploitative situation through observations in the field or statements that have been made, it is essential to immediately report the potential exploitative situation to the reference judge and contact one of the reception centres. During these checks, our inspectors also pay special attention to the social status of the workers found and to the declaration of their working hours and salary to the NSSO. Indeed, many foreign workers and victims of labour exploitation are often bogus self-employed workers.

It isn't necessary to formally question the victim during the inspection to consider them a presumed victim. On the other hand, the failure to make a statement isn't a reason for not referring a potential victim to a reception centre. A victim who doesn't consider themselves a victim (which is often the case) must also be informed and referred. If the inspector believes they have sufficient evidence (indicators) to consider a worker as a presumed victim of human trafficking, they should inform the worker about the special protection procedure for presumed victims of human trafficking. Inspectors and police officers aren't sufficiently aware that it is compulsory to provide this information as described in the circular of 23 December 2016.

Our inspectors use the multilingual leaflet for victims of human trafficking for this purpose, but they can also pass on the information by other means. In this respect, we would like to underline the importance of using an interpreter. In addition, we generally aim to create conditions that are likely to induce trust in potential victims and encourage them to provide information on their working conditions. Inspectors should make it clear that they are monitoring the employer and that they want to protect victims of exploitation by the employer by guiding them towards the specific protection procedure. If possible, they will do so in a quiet environment without the employer, so that the latter can't exert any pressure on the workers. It is also recommended that no other workers be present at the first interview, which should preferably take place somewhere other than the workplace. In practice, this isn't always easy to do. Our inspectors are also advised to give their business card to workers they suspect of being victims of exploitation, but who refuse to contact a reception centre, so that they can contact them later if necessary.

The importance of the duty to provide information and the inspector's obligation to make every effort to put potential victims in contact with one of the three specialised reception centres (PAG-ASA, Sürya or Payoke) can't be overemphasised. An inspection of a workplace is often the first and only chance for a victim of exploitation to receive assistance. Experience shows that it is extremely difficult for victims of labour exploitation to obtain adequate compensation and, in particular, to obtain payment of the wages owed to them, if they aren't referred to a specialised reception centre. Victims who aren't supported by a centre don't have access to either criminal or civil proceedings because they are too expensive, complex and time-consuming. The victims also often return to their country of origin.

On the other hand, in our opinion, the referral of presumed victims to a specialised reception centre is the best guarantee of recuperating wage arrears. In particular, the centre can take care of appointing a lawyer and filing a civil suit in the criminal case following the investigation.

Underpaid or unpaid wages: an indicator of exploitation

Our role as frontline players and investigators of human trafficking also involves the recovery of victims' wages. What is crucial is that we consider the payment of unacceptable wages as an indicator of exploitation rather than as a violation of social law (which, of course, is also the case). We look for this indicator, we identify it and we use it as proof of exploitation. Although we aren't competent for the law on the protection of workers' wages and salaries and therefore aren't in a position to compile an official report on the subject, we are qualified to establish that workers are working in conditions contrary to human dignity and, consequently, to identify the indicators that show this is the case.

Hence, the payment of salaries that are clearly too low is one such indicator, as is the non-payment of salaries, which we report to the labour prosecutor. The same reasoning applies to excessively long working hours (for instance, 12 hours a day, seven days a week). We have no authority over the regulations concerning working hours, but we shall of course use this proof as an indicator in our evidence of exploitation. The same applies to substandard housing and other areas such as safety and well-being, where indicators of an unacceptable quality of life for workers or unacceptably high levels of dependency on their employer/exploiter can be found. We aren't going to compile an official report on these various issues, but we shall gather evidence to demonstrate these facts and thus prove that there are sufficient indicators to conclude that we are dealing with work or services contrary to human dignity, and therefore human trafficking for the purpose of labour exploitation. In other words: we consider all the above-mentioned offences from the point of view of common law (Criminal Code / offence of trafficking in human beings, for which we are declared competent by Article 81 of the Residence Act) rather than from the point of view of special or social criminal law (Social Criminal Code / offence of non-payment of worker's wages). Of course, that doesn't prevent the competent services (Social Legislation Inspectorate, Well-being at Work Inspectorate, Housing Inspectorate, etc.) from compiling official reports for offences that fall within their specific competences. These official reports can thus considerably strengthen the basis for the offence of human trafficking.

Financial approach

We would also like to highlight another aspect relating to the quest for the effective compensation of victims. Increasingly, and often at the labour prosecutor's request, our attention is focused on the exploiter's available assets when we carry out the first inspection, with a view to subsequent seizure and confiscation by the criminal court. Ideally, the confiscated assets should be awarded to the victims.

At the labour prosecutor's request, we then make a calculation of the financial benefit that will allow us to carry out the seizures and confiscations.

Ideally, our calculation of the financial benefit illegally acquired by the exploiter is accompanied by a financial investigation that can be carried out by the police.

At the same time, ECOSOC inspectors collect as much information as possible in the course of their investigations, with a view to ulterior financial compensation, in order to be able to estimate the damage suffered by the victims. This will mainly involve a thorough investigation of the nature and extent of the services provided (period of employment, number of working days and hours), in order to be able to determine the wages due. Indeed, regardless of the status of the exploited workers, even if they were staying illegally in the country, the employer must pay them a wage equivalent to that which he would pay to a legally employed worker in a comparable work relationship.

The inspectors will also report to the NSSO on the services provided and the wages owed to the exploited workers. The employer of the exploited worker obviously has to pay the social security contributions that they should have paid had the work been declared, including late payment fines and possible administrative fines. This also enables victims of labour exploitation to acquire social rights from their work.

Growing interest in other services to raise awareness

To conclude, we would like to emphasise a positive evolution: in 2018, we noted a growing interest among other inspection services in the problem of labour exploitation. At the end of 2018 and in 2019, we (the Thematic Directorate for Trafficking in Human Beings of the NSSO) provided awareness-raising sessions and basic training on human trafficking to the Social Inspectorate and Housing Inspectorate of the Brussels-Capital Region, to inspectors of the National Institute for the Social Security of the Self-employed (NISSE) and to the Flemish authorities' Social Inspectorate. This shows that the management of these inspectorates is paying attention, even if they aren't authorised to detect the offence of trafficking in human beings. However, they do wish to make their inspectors aware of exploitation indicators. In our training sessions, we give advice on what these inspectors should do when they are faced with a possible situation/victim of human trafficking.

In 2018, we offered the same training sessions to inspectors from teams other than ECOSOC, also in our own inspection department in each provincial directorate. Any inspector is likely to be faced with a situation, during an inspection, where workers are being exploited. In such cases, it is important to act quickly and properly. Initial findings and initial contact are essential for investigations to be carried out and, above all, for the protection of the exploited victims.

Conclusion

Just like the integration of the Social Inspectorate into NSSO's inspection department, the subject of human trafficking has found its place in the new inspection department: the fight against labour exploitation is part of its main activities.

Despite the increasing attention paid to the interests of victims, the detection of presumed victims remains problematic and there is no clear explanation for this.

Properly informing potential victims is a difficult, delicate, but crucial role for social inspectors, especially since referral to a specialised reception centre is the best guarantee for the victim to be compensated. Within this context, financial investigations into the assets of employers/exploiters, the calculation of their proceeds and the seizure of assets are also particularly useful, so that confiscated assets can possibly be used to compensate victims.

The awareness-raising and training efforts of all social inspectors, which began in earnest in 2018, must be continued.



External contribution: Business model as an investigative tool in international human trafficking

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In this contribution, I shall briefly describe how human trafficking reaches far beyond the relationship between the victim and the exploiter at the place of exploitation. A broader view of the offence not only allows all the players involved in the offence at a given time to be identified and prosecuted, but also to identify the criminal proceeds with a view to their confiscation and subsequent compensation of the victim. International cooperation plays an essential role in this respect.

Introduction

The trafficking of human beings isn't an isolated act but a complex series of associated acts. It is therefore essential to approach human trafficking as a complex offence, which isn't limited to the exploitation aspect. The offence must be considered as a whole, so that all the players can be identified.

Human trafficking can be considered as a process, in which the victims pass through different phases and where different people can be involved each time.

The first phase is recruitment, with the aid of pretexts, or even the kidnapping of a victim. The second phase relates to the transportation of the victim and their entrance into another country. The third phase is exploitation during which the victim is forced to commit sexual acts or work in inhumane conditions. The fourth phase is getting rid of the victims, because their value has dropped.

Human trafficking can also be accompanied by many other offences. They can be instrumental, i.e. committed to facilitate the offence of human trafficking (use of forged documents, violence with a view to exercising control over the victim), or secondary, in which case they are the result of the activity of human trafficking (money laundering, tax evasion, etc.).

Offence motivated by profit

Those involved in human trafficking assess the opportunities, the profit, the risks and the possible costs, and then make the necessary decisions.

The players within the organisation

It is essential to understand how these players work. There are different sorts of organisational structures in the realm of human trafficking. At one end is the soloist, who recruits one or more victims alone, with a view to their exploitation. At the other end are well-structured organisations, with different members, each with their own role to play.

It is precisely this organisational structure that must be brought to light in order to have an idea of the potential players involved. The following table can be used for this purpose:

Phase 1	Phase 2	Phase 3
Recruit	Transport	Exploit
Where?	From where to where?	Where?
Who?	Who?	Who?
By whom?	By whom?	By whom?
How?	How?	How?
Costs?		
Cash flows		

For each column in the table, it is possible to determine the best way to proceed and the investigative opportunities available. The following example illustrates this.

Operation popcorn

This investigation began when a large number of very young Czech women were found on a website featuring classified ads of a sexual nature. An examination of these classified ads revealed that the women were always photographed in the same room. The text under the ads was identical and two phone numbers were given.

If we were to focus only on exploitation, we would examine where the women provide their sexual services (place of exploitation) and who controls them (who exploits them). After identifying and interviewing these victims, those in their direct entourage were identified. When the victims were interviewed, it was quickly possible to determine their income and how much they had to pay to cover mainly the rent for their place of work (necessary to calculate the illegal financial benefit).

However, it was also possible to go further than the actual exploitation in Belgium. The victims were all from the Czech Republic. Therefore, this raised the question of how they all arrived in the same place in Belgium and who was responsible (the victims' statements revealed that they were recruited either in a nightclub or by a photographer in Prague). The manner in which the exploitation is maintained (in this investigation, it was established that cameras had been installed in the entrance and the living room where the victims were to receive their customers, and a subsequent investigation established that the cameras had been monitored from the Czech Republic. Furthermore, the Czech organisation used a Belgian facilitator who managed the Belgian branch of the organisation, in collaboration with the members of the organisation). There is also the question of what happens to the illegally obtained money.

If we place the known elements in the table, this is what we obtain:

Phase 1	Phase 2	Phase 3
Recruit	Transport	Exploit
Czech Republic	Czech Republic to Sint-Niklaas	House in Sink-Niklaas / flat in Antwerp
Girls barely 18 years old in a precarious social and financial situation	Identify the victims	Which victims?
By a photographer, spotters in a nightclub in Prague	By whom?	By whom?
Promise of work as a model abroad	Low-cost plane tickets-	Monitored in the Czech Republic through cameras Monitored in Belgium by accomplices
Costs Plane tickets, rental of a house and a flat, camera system and maintenance, etc.		
Revenue stream The cash is handed over to an accomplice in Belgium, but where does it go?		

The table clearly indicates that there was much more than the actual exploitation in Sint-Niklaas and Antwerp. It was obvious that close cooperation with the Czech authorities was required in this case. It rapidly transpired that the photographer was known and that the nightclub in which he recruited people was in the hands of various people known for acts of human trafficking in the Czech Republic. A financial investigation revealed that large sums of money had been transferred to different people in the Czech Republic. We had to intervene early in Belgium because it was likely that an abducted child victim was involved. The prosecutions in Belgium finally focused on the actual exploitation in Belgium by different persons who were in Belgium (one Belgian and three Czech nationals). With the help of Belgian investigative elements, the Czech Republic has continued the investigation of the criminal organisation based in Prague. We are clearly dealing with a well-organised criminal organisation here.

Human trafficking as a criminal market

When we talk about human trafficking as a criminal market, it is impossible to calculate the turnover, even approximately. Nor do we know the consequences of this underground economy, or the moment when it joins the legal economy. Human trafficking is an offence with a low risk of detection and a high profit. Victims of human trafficking don't know how much their exploiters earn, let alone what happens to that income. In most cases, a victim will only be able to disclose their own income and the person to whom they had to give some (or all) of it. This is why a financial investigation must be initiated right at the start of an investigation into human trafficking.

A financial investigation can be three-dimensional:

- An examination of the past, by reconstructing the offence with a view to calculating the illegal gains in order to confiscate them.
- An examination of the present, by analysing data obtained during the financial investigations (e.g. financial intermediaries, bank accounts, businesses, etc.) on a Belgian, European and international level, can possibly lead to new investigations into human trafficking and enable us to trace the entourage that launders the criminal funds and assets, or that takes care of 'transport' or the 'compensation' of funds.

- An examination of the future, by detecting indications of criminal activities, identifying the *modus operandi* that should lead to a better understanding and knowledge of the offence.

In this contribution, I shall limit myself to the use of financial investigations for the calculation of the illegally acquired financial advantage and the detection of the financial advantage with a view to its confiscation.

When setting up the investigative team within the framework of an investigation into international human trafficking, it is crucial to directly include a financial investigator in the team. The latter doesn't focus on reconstructing the human trafficking offence with a view to identifying the exploiters, but rather on detecting the facilitators who make the offence possible, generate expenses and assets, and on identifying assets that can be seized and confiscated. The elements of the investigation are approached from a financial point of view and the financial elements will be put together, like a jigsaw puzzle, to form a whole. The following example clearly illustrates this.

Operation Galaton

This investigation uncovered a criminal organisation in Belgium involving 11 people who sexually exploited 41 young Hungarian women identified in Ghent between February 2013 and March 2014. Several members of this organisation also sexually exploited victims in the Netherlands.

Initially, a team of investigators was temporarily set up in Belgium, composed of members of Ghent police zone's local investigation team and Ghent's Federal Judicial Police, to which a financial investigator was added. A joint investigation team (JIT) was created with Hungary and the Netherlands at a later stage. Hungary was a key partner, given that the perpetrators and the victims came from Hungary. The investigation quickly revealed that a large part of the income from human trafficking had been sent to Hungary.

The financial elements of this investigation and the close collaboration with Hungary led to the identification of the assets in Hungary that could be seized with a view to their confiscation:

- Different vehicles, including the new Audi A4, A8 and S8;
- HUF 6,880,000 (approximately EUR 21,000) were found in the side door of the Audi A8;
- Bank accounts
- Real estate;
- High-tech electronic equipment.

The financial elements of the investigation allowed us to understand:

- the amounts generated by the sexual exploitation: a total amount of EUR 406,040 was seized;
- the way in which the victims were brought to Belgium (by car and using low-cost airlines in the Netherlands);
- the limited proportion of income that the victims could keep (one victim initially stated that during the three months she was in Belgium, she had saved EUR 1,500, and the investigation showed that in three months, the organisation had earned approximately EUR 40,000 thanks to her);
- the way in which these funds were returned to Hungary (especially through Moneytransmitters, where victims sent money or used third parties to send money; through parcel delivery companies, whereby the money was concealed among baby clothes, jeans, shoes; by means of money couriers who were sent to Budapest on an aeroplane with a suitcase full of money, without knowing the contents).
- the way in which these funds were invested (the investigation revealed that the money was placed on bank accounts in the name of children belonging to members of the organisation);
- the cost structure of the organisation (rental of hotel rooms and apartments to house the victims, the small proportion of their income that the victims could keep, the amount they had to pay for their window (EUR 120 per 12-hour period), condoms, an allowance for their accommodation, cigarettes, sexy clothes, etc.).

The necessary certificates were sent to Hungary in view of the application of the principle of mutual recognition to confiscation orders (Article 4 of Council Framework Decision 2006/783/JHA).

Hungary also opened an investigation into money laundering.

Conclusion

We need to be aware of the fact that human trafficking is a complex and constantly shifting offence. Investigations into human trafficking are mainly focused on the exploitation of victims. However, financial investigations offer a real added value to the destabilisation and possible dismantling of criminal organisations. The reconstruction of the illegally acquired assets is also essential for the victims. The court can award these illegal assets to the victims.

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Part 3

Evolution and fight against the phenomena of trafficking and smuggling of human beings



Chapter 1

Recent developments in the legal and political framework

The recent European and Belgian developments are summarised hereafter.

1. Developments in the European legal and political framework

1.1. | Trafficking and smuggling of human beings: Global Compact for Migration

In December 2018, the UN Global Compact for Migration²⁸⁵, better known as the Marrakech Migration Pact, was adopted. Along with 152 other countries, Belgium finally signed the much debated United Nations Global Compact for Safe, Orderly and Regular Migration. This non-legally binding instrument is the first international framework for cooperation on migration. It sets out 23 objectives. Two of them relate more specifically to the smuggling of migrants and trafficking in human beings. On the one hand, the signatory states undertake to strengthen transnational action against migrant smuggling through a series of measures.

On the other hand, the aim is also to prevent, combat and eliminate trafficking in persons in the context of international migration. Key measures include strengthening existing capacities and international cooperation, improving the identification of migrants who have become victims of trafficking, and the protection and assistance offered to them.

285 <https://undocs.org/en/A/CONF.231/3>.

1.2. | Trafficking in human beings

Joint statement of commitment to combat trafficking in human beings

On 13 June 2018, 10 EU agencies, including EASO, Europol, Eurojust, Frontex and the FRA signed a joint declaration of commitment to work together to combat trafficking in human beings.²⁸⁶ This is one of the main action points of the Commission's 2017 communication on the follow-up of the EU Strategy on combating trafficking in human beings.²⁸⁷ This joint statement stresses an inter-institutional and multi-agency approach, combating the culture of impunity and improving attention to prevention.

Second Commission report on the progress made by the Member States in the fight against trafficking in human beings

On 3 December 2018, the European Commission published its second report on the progress made by the Member States in the fight against trafficking in human beings.²⁸⁸ This report must be compiled every two years under Article 20 of the EU directive on trafficking in human beings.²⁸⁹

289 https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_agencies_joint_statement_of_commitment_to_working_together_to_address_thb.pdf.

287 Communication from the Commission to the European Parliament and Council Reporting on the follow-up to the EU Strategy towards the eradication of trafficking in human beings and identifying further concrete actions, 4 December 2017, COM(2017) 728 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0728&qid=1590596446481&from=EN>.

288 Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2018), 3 December 2018, COM(2018) 777 final: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_com-2018-777-report_en.pdf

289 European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, O.G., L101 of 15 April 2011.

The report²⁹⁰ presents the trends in this fight, the actions undertaken within the framework of the EU strategy to combat this phenomenon and the progress made in the implementation of the 2017 Communication. Statistical data provided by Member States²⁹¹ and an update on the implementation of Directive 2004/81/EU on residence permits for victims²⁹² are also included.

Sexual exploitation remains the most widespread form of human trafficking: 56% of victims. Internal trafficking, within the territory of a Member State, is on the increase, while the age of the victims is on the decrease. Furthermore, the migration crisis has increased the risks of human trafficking.

In an effort to combat impunity and for the purposes of prevention, the Commission is calling upon Member States to criminalise those who knowingly make use of the services provided by a trafficked person. At the same time, it is encouraging the development of cross-border cooperation and joint investigations, as well as awareness-raising and training efforts.

The Commission also stresses that the chance for victims to effectively exercise their rights should be further improved, in particular by rapidly identifying victims through referral mechanisms including asylum systems, ensuring a multidisciplinary approach and ensuring effective access of victims to compensation opportunities.

Other reports

In 2018, again in line with the 2017 Communication and European Anti-Trafficking Day on 18 October, the Commission published a report on gender-specific measures in anti-trafficking actions, in collaboration with the European Institute for Gender Equality (EIGE).²⁹³ A gender-based approach is applied as an analytical tool to examine the provisions and obligations of the anti-trafficking directive (Directive 2011/36/EU) and the directive on victims' rights.²⁹⁴ The analysis aims to identify strengths and opportunities to improve protection and respond to the needs of victims of sexual exploitation. The report provides guidelines for Member States on gender-related measures with a view to better identifying, helping and assisting victims of human trafficking.

Finally, we should also mention another report published on 11 March 2019, compiled by Ms. Joëlle Milquet, Special Adviser to the President of the European Commission. It relates to the compensation of victims of crime and especially victims of trafficking.²⁹⁵ It shows how victims often experience difficulties in accessing justice and in obtaining compensation, owing to a lack of information, sufficient help or procedural obstacles.²⁹⁶

290 The report is accompanied by a staff working document: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_swd-2018-473-commission-staff-working-document_en.pdf.

291 The data relates to 2015 and 2016: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf. Quantitatively, some of the Belgian data is much lower than that of other states (mainly concerning identified victims). As the Commission stresses, not every Member State records this data in the same way, which strongly limits their comparability.

292 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, and who cooperate with the competent authorities, O.G., L261 of 6 August 2004.

293 <https://eige.europa.eu/publications/gender-specific-measures-anti-trafficking-actions-report>.

294 European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JAI, O.G., L315, of 14 November 2012.

295 https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf.

296 For a detailed analysis of access to compensation for victims of trafficking and the main features of this report, see the focus of the present report, Part 2, Chapter 4.

1.3. | Other measures

Although not directly related to human trafficking, two recent measures deserve to be mentioned:

European Labour Authority

In its previous report²⁹⁷, Myria mentioned the Commission's proposal, in March 2018, to set up a European Labour Authority (ELA).²⁹⁸ In February 2019, the EU managed to reach a provisional agreement on its creation. This initiative reflects the increased attention paid within the EU to improving the rules on social rights. The Authority should be created in 2019 and be fully operational by 2023. Even though it doesn't have a specific competence in terms of 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 fight against undeclared work.

Revision of the directive on posting workers

In May 2018, the European Parliament approved the revision of the current directive on posting workers. The European Employment and Social Affairs Ministers gave their green light on 21 June 2018. The revised directive²⁹⁹ came into force on 29 July 2018. Member States have two years - until 30 July 2020 - to transpose the new rules into their national legislation. The major change is that posted workers are not only subject to the minimum salary of the host Member State, but also to all the others rules concerning pay. If the workers are posted to another EU Member State for more than 12 months, this country's labour law rules also apply. The fact that many cases of human trafficking concern fraudulently posted workers, it is hoped that these new rules will help to put an end to it.

2. Developments in the Belgian legal and political framework

2.1. | Trafficking in human beings

2.1.1. | Addendum to the action plan on trafficking in human beings concerning minors

In August 2018, the Interdepartmental Unit for the Fight against Trafficking and Smuggling in Human Beings adopted an addendum³⁰⁰ to the National Action Plan on Trafficking in Human Beings 2015-2019. Actions were indeed undertaken within the framework of the national action plan with the French Community and the German-speaking community, and with the Flemish Community. However, different issues emerged during the work.

Hence, in Flanders, the work focused on the 'loverboy/teenage pimp' problem and, more specifically, Flemish victims. Upon the request of the Flemish minister for Welfare, Public Health and Family, Child Focus conducted an exploratory study in 2015 on the problem of loverboys/teenage pimps in Flanders.³⁰¹ The study specifically focused on an action plan for victims. Based on the report's recommendations, an action plan for a better protection of victims of teenage pimps was drafted.³⁰² A steering group was created to coordinate and ensure the follow-up of their implementation. As well as drawing up a new Flemish action plan³⁰³, adaptations also had to be made at federal level. It was thus decided to include them in this addendum to the National Action Plan on Trafficking in Human Beings 2015-2019.

297 MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 85.

298 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/ENG/TXT/PDF/?uri=CELEX%3A52018PC0131&from=EN>.

299 European Parliament and Council Directive (EU) 2018/957 of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, O.G., L173 of 9 July 2018.

300 www.dsb-spc.be/doc/pdf/Addendum-plan-action-teh-FR.pdf.

301 <https://www.childfocus.be/fr/exploitation-sexuelle/victimes-de-proxenetes-dados>.

302 <https://jongerenwelzijn.be/professionelen/assets/docs/jeugdhulpaanbieders/mensenhandel/actieplan-tienerpooiers-2016.pdf>. This action plan includes actions in four areas: advanced prevention, adapted reception of victims, prosecution of perpetrators and cooperation between the welfare, justice and police sectors.

303 <https://jongerenwelzijn.be/professionelen/jeugdhulpaanbieders/mensenhandel-tienerpooiers>.

In the French Community and within the framework of the 2015-2019 Action Plan, an initial training course for staff in the youth care sector was organised in April 2017. The decision was taken to pursue this type of initiative and to form a workgroup responsible for its implementation.

Discussions within the two workgroups showed that there were gaps and/or different working methods in the flow of information between players such as youth care service providers, the judiciary, and the police, etc.

This is why it was considered necessary to draft an addendum to the action plan, specifically devoted to minors. This addendum makes several proposals for actions to improve the detection, identification, referral and protection of all child victims of trafficking. It focuses on initiatives that fall within federal jurisdictions or on issues involving collaboration between federal/federated entities.

Action points include establishing an information flow where the role of each competent player must be defined, organising interdisciplinary training, as well as examining the adaptation of the status of victim of human trafficking to the specific situation of minors.

2.1.2. | The principle of non-punishment of trafficking victims enshrined in law

On 25 April 2019, Parliament adopted a bill in plenary session on trafficking in human organs and on the principle of the non-punishment of victims of human trafficking.³⁰⁴ Through amendments to an initial bill on organ trade³⁰⁵, the federal government wished to have new provisions adopted by Parliament.³⁰⁶ This is a draft prepared by a workgroup of FPS Justice and Public Health, responsible for preparing the compliance of Belgian law with the Council of Europe Convention against Trafficking in Human Organs of 25 March 2015. The law was published on 21 June 2019 and came into force on 1 July 2019.³⁰⁷ There are two parts to the law. The first one falls within the framework laid out by the Council of Europe Convention against Trafficking in Human Organs.

304 Bill of 9 April 2019 on trafficking in human organs and on the principle of non-punishment of victims of trafficking in human beings, Parl. doc., Chamber, session, 2018-2019, Doc 54 - 3537/005.

305 Bill of 7 February 2019 criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, Session 2018-2019, Doc 54 -3537/001.

306 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002.

307 Act of 22 April 2019 on trafficking in human organs and on the principle of non-punishment of victims of trafficking in human beings, O.G., 21 June 2019.

It is the first legally binding international instrument that condemns organ trafficking, and is complementary to the international instruments used to combat human trafficking.

The adopted text thus introduces a new chapter in the Criminal Code, relating to trafficking in organs, which includes a (long) article 433 novies. Even though the Belgian legislative arsenal already includes a series of applicable offences that are useful in combating this form of crime (especially trafficking in human beings for the purpose of organ harvesting³⁰⁸), the legislator wished to add new offences to the Criminal Code combined with severe penalties. The aim is to combat all the acts that comprise the criminal chain of organ trafficking (e.g. brokering, organ removal and use for purposes other than research or transplantation, transport, storage).

The second part enshrines in the Criminal Code the principle of non-punishment of victims of trafficking for offences committed as a direct result of their exploitation. And this, regardless of the type of exploitation suffered (sexual or criminal exploitation, removal of organs, exploitation of begging, labour exploitation, etc.). This principle of non-punishment is enshrined in the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005³⁰⁹ and in the European anti-trafficking directive 2011/36/EU.³¹⁰

Two amendments have therefore been made to Article 433 quinquies of the Criminal Code on trafficking in human beings.³¹¹ The first one amends the description of the purpose of exploitation for the purpose of organ trafficking (Article 433 quinquies, 4°)³¹², by reference to exploitation through the removal of organs and no longer by reference to specific laws.³¹³

308 Article 433quinquies, § 1, para. 1, 4°, of the Criminal Code.

309 Article 26 of the Convention stipulates that "each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so".

310 Article 8 of Directive 2011/36/EU states that "the Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to one of the acts referred to in Article 2".

311 Art. 2 of the bill of 9 April 2019 on trafficking in human human organs and on the principle of non-punishment of victims of trafficking in human beings, Parl. doc., Chamber, session, 2018-2019, Doc 54 - 3537/005, p. 3.

312 It is a criminal offence to recruit, transport, transfer, harbour, receive, take or transfer control over a person (...) 4°: for the purpose of exploitation through the removal of human organs or biological material.

313 Note: The Law of 13 June 1986 on the removal and transplantation of organs, or human biological material and the Law of 19 December 2008 on the procurement and use of human biological material intended for human medical applications or for the purposes of scientific research.

According to the legislator, "the concept of exploitation will allow the judge to reserve the classification of trafficking for abusive situations where human dignity isn't respected".³¹⁴

The second amendment completes Article 433 quinquies with a paragraph 5 applicable to all forms of exploitation constituting human trafficking to expressly include the principle of non-punishment, in the form of absolutive causes of excuse. According to this principle, the responsibility of the perpetrator is established but no penalty can be imposed on them.³¹⁵

The new paragraph thus states that "a victim of trafficking in human beings who takes part in offences as a direct consequence of their exploitation shall not be punished for those offences".

It should be noted that, contrary to the Convention and the European Directive, it doesn't refer to the notion of coercion, which is understandable, particularly because the offence itself doesn't refer to the notion of coercion.³¹⁶

The purpose of such a clause is threefold: to safeguard the human rights of victims deprived of their free will, to prevent re-victimisation and to establish a relationship of trust so that they agree to collaborate in the criminal investigation against the perpetrators.³¹⁷

Indeed, committing offences may be a way for traffickers to maintain control over the victim. By adopting a specific provision in its legal arsenal, Belgium is thus following the example of other countries.³¹⁸

As pointed out by the legislator, the cause of excuse applies to criminal or administrative offences provided for in the Criminal Code (use of forged documents, theft, etc.), in the Social Criminal Code (especially undeclared work referred to in Article 183/1) and in special laws (such as the Law on Narcotic Drugs).

Myria is delighted that this principle has been enshrined in law. It hopes that this will strengthen protection for victims. Nevertheless, this provision will hopefully only be applied when the prior safeguards relating to the principle of discretionary prosecution haven't worked.³¹⁹ The joint circular of the College of Prosecutors General and the competent ministers on the investigation and prosecution of acts of trafficking (COL 2015)³²⁰ draws the attention of the prosecutors specialising in this area to this particular situation, in the interests of the victims (without, however, clearly referring to the European non-punishment clause). In a previous report, which focused on the non-punishment clause,³²¹ Myria had recommended that a new criminal policy directive should include an open and non-exhaustive list of offences typically linked to trafficking, in respect of which victims would be protected from prosecution.³²²

In practice, the principle of non-punishment has already been used by the public prosecutor's office and trial judges in several cases, but it is still relatively unknown and seldom applied, to the detriment of the victims concerned.³²³

314 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002, p. 26.

315 It should be noted that the original draft bill provided for grounds of non-liability, along the lines of Article 71 of the Criminal Code on coercion. The Criminal Code Reform Commission amended it, in its draft code, to absolutive causes of excuse. In practice, the courts have a strict interpretation of Article 71, and very rarely apply it in favour of trafficking victims. On this subject, see the report of the Committee on Public Health, the Environment and Social Renewal of 9 April 2019 on the bill criminalising trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 - 3537/004, p. 6.

316 Under Belgian law and contrary to international and European instruments the *modus operandi* (including coercion) isn't an essential element of the offence of trafficking for adults, but is an aggravating circumstance. The legislator therefore considered that it wouldn't be coherent to require proof of coercion in order not to punish a victim of trafficking for offences committed in direct connection with the exploitation suffered, when such proof isn't required in order to convict the perpetrator of trafficking. For a detailed explanation, see the justification for the amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, Session 2018-2019, Doc 54 -3537/002, p. 28.

317 *Ibid.*, p. 27.

318 According to information from GRETA (Group of Experts on Action against Trafficking in Human Beings), 14 countries (including Luxembourg, Spain and the United Kingdom) have included the non-punishment clause in their legal arsenal (*Ibid.*, p. 27).

319 Moreover, the legislator considers that, in accordance with this principle, the inclusion of the non-punishment clause in the Criminal Code wasn't strictly necessary to meet European obligations (*Ibid.*, p. 29).

320 COL 01/2015 on the policy of investigation and prosecution regarding trafficking in human beings. This COL is completely confidential. For an outline of this COL, see Myria, *2015 Annual Report Trafficking and smuggling in human beings, Tightening the links*, p. 57.

321 MYRIA (formerly the Centre for Equal Opportunities and Opposition to Racism), *2012 Annual Report Trafficking and smuggling of human beings, Building trust*, Chapter 1.

322 *Ibid.*, p. 104.

323 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002, p. 29. For concrete examples, see Myria's *2012 annual report*, op. cit., spec. pp. 14-22 (forged documents, forced criminality, etc.).

Explicitly providing for it in the Criminal Code can therefore only strengthen the awareness of players in the field, even if it will ultimately be up to the public prosecutor's office and the trial judge to make a sovereign assessment of the existence of the direct link between exploitation and the commission of offences perpetrated by the victim.

2.1.3. | Abolition of work permit C and automatic access to the labour market

As part of the complex and late transposition of the European directive on the single permit³²⁴, Belgium abolished work permit C, which was available to victims of human trafficking (or aggravated smuggling). Now, as soon as these victims have a temporary residence permit of at least three months (immatriculation certificate³²⁵ or a certificate of registration in the aliens register³²⁶), they can immediately have access to the labour market, on the basis of this temporary residence.³²⁷ This residence permit also contains information on access to the labour market.³²⁸

328 The federal government remains responsible for legislation concerning access to the labour market for foreigners who have migrated to Belgium for reasons other than economic migration (i.e. when the initial reason for migration wasn't work-related). However, it is the Regions (Wallonia, Flanders and Brussels-Capital as well as the German-speaking Community) that are responsible for the implementation of legislation in this field. Similarly, following the 6th state reform, it is also the Regions that are responsible for economic migration.

324 European Parliament and Council Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, O.G., L.343/1 of 23 December 2011. For full and detailed information on the transposition of these measures into Belgian law, see MYRIA, *Migration in Figures and Rights 2019*, pp. 87 and seq.

325 A three-month IC is issued to victims who have broken off contact with their exploiters, accepted support from a specialised reception centre and made statements or filed a complaint against the perpetrators (Art. 61/2, §2, para. 3 and Art. 61/3, §1, para. 1 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (hereinafter: Aliens Act)).

326 A six-month certificate of registration in the Alien's Register (CRAR) is granted to the victim when the prosecutor in charge of the judicial file has answered favourably to five questions asked by the Aliens Office (is the victim a victim of trafficking or aggravated smuggling? Is the investigation or legal proceedings still ongoing? Does the foreigner show a clear willingness to cooperate? Have they severed all ties with the presumed perpetrators? Are they considered a threat to public order or national security?) See Art. 61/4, §1 of the Aliens Act of 15 December 1980.

327 Art. 18, 2° (RC) and Art. 10, 9° (CRAR) of the Royal Decree of 2 September 2018 implementing the Law of 9 May 2018 on the occupation of foreign nationals in a particular residence situation, O.G., 17 September 2018. The Law and the Royal Decree came into force on 24 December 2018.

2.2. | Human smuggling

2.2.1. | Updating the action plan on human smuggling

In April 2019, the Interdepartmental Unit for the Fight against Trafficking and Smuggling in Human Beings adopted an update to the 2015-2018 action plan on human smuggling for the year 2019.³²⁹ It must therefore be read in conjunction with this plan. Given the proximity of the federal elections and possible new political orientations thereafter, it didn't seem like the right time for the government to draft a new action plan on this issue.

The main measures in this action plan relate to:

- The identification of smuggling situations via money flows and money laundering: the 2015-2018 action plan provided for the development of information tools for the financial sector, in particular banks. An ad hoc working group was set up, and a leaflet with transaction indicators potentially related to smuggling and trafficking of human beings was compiled and distributed by Febelfin to the banks' compliance departments in August 2018. As a follow-up to this work, there are plans to organise an interactive meeting between police officers, prosecutors and representatives from the banking sector in order to keep the latter abreast of developments in the practices of traffickers and smugglers. In addition, the working group will also consider how to expand the distribution of the leaflet to the money transfer agency sector, which, unlike banks, doesn't have an umbrella organisation.
- The continuation of control and diversification actions: the action plan emphasises a comprehensive approach to controls. However, the actions carried out across the entire territory (MEDUSA) are more focused on transit migration. The action plan quite rightly specifies and insists on the verification of elements of human smuggling during such controls, so that the national referral mechanism can be applied if the presence of victims of aggravated forms of human smuggling is established. The action plan therefore specifies that training and information tools should include this aspect.

329 www.dsb-spc.be/doc/pdf/ACTIEPLAN_MS_2019_FR.pdf.

It is also a matter of taking into account the criminal investigation and victim protection aspects, within the framework of referral to the Steenokkerzeel administrative detention centre, set up in September 2018. The creation of such a centre is part of the Minister of the Interior and the then State Secretary for Asylum and Migration's joint action plan against illegal transit migration.³³⁰

The action plan therefore insists on the proper application of the criminal policy directives and the multidisciplinary circular of 23 December 2016³³¹ and on the existence of these provisions within the framework of organising control operations. The working group on 'transit migration', set up within the COTER (return coordination) platform in June 2015, should include representation of the players in charge of criminal policies and the 'judicial investigation' aspect, in particular the network of expertise on 'trafficking and smuggling of human beings' and the Federal Public Prosecutor's Office.

- The continuation of training efforts: as part of police training, an accreditation package will be submitted to the provincial police academies for new training programmes on smuggling (and trafficking). Similarly, thematic training days for the police following the adoption of the new circular on human smuggling (see below) will be organised.

There are also plans to improve the entry of data on human smuggling convictions, to conduct another awareness-raising campaign for the road haulage sector as part of the information and awareness-raising campaign on human smuggling, and to assess the multidisciplinary circular of 23 December 2016 in 2019-2020. A specific section on human smuggling should also be included.

330 On 10 September 2018, the (former) Minister of the Interior and the (former) State Secretary for Asylum and Migration presented a 10-point action plan to combat irregular transit migration. In addition to the creation of this coordination centre for the administrative processing of migrants in transit, set up in a wing of the detention centre 127bis in Steenokkerzeel, the other measures include: doubling the capacity of detention centres intended primarily for migrants in transit, increasing controls on transit routes, stepping up cooperation with the United Kingdom, necessary efforts to systematically consult and, if possible, confiscate the mobile phones of transmigrants, improving the security of motorway parking areas. See general policy note on asylum and migration, 26 October 2018, Parl. doc., Chamber, DOC 54 3296/021, pp. 10-11: www.lachambre.be/FLWB/PDF/54/3296/54K3296021.pdf.

331 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, O.G., 10 March 2017.

2.2.2. | New criminal policy directive (COL 13/2018) on human smuggling and the facilitation of unauthorised entry, transit and residence

On 15 December 2018, the Ministers of Justice and the Interior, the Secretary of State for Asylum and Migration and the College of Public Prosecutors adopted a new criminal policy directive on smuggling in human beings and the facilitation of unauthorised entry, transit and residence (COL 13/2018).³³² This COL replaces both COL 4/2011 containing provisions for combating smuggling in human beings (confidential) and COL 10/2010 relating to Article 77 of the Act of 15 December 1980 on Access to the territory, stay and removal of foreign nationals.

The revision of COL 4/2011 was foreseen in the 2015-2018 action plan on human smuggling. In particular, it established specialised prosecutors in each judicial district and provided for regular coordination meetings at local level. It also contained practical tools for investigators and prosecutors in the form of annexes.

Just like the former COL 4/2011, the new COL 13/2018 is completely confidential. Consequently, Myria can only provide very general information about it. It was given this information by the relevant coordinator of the network of expertise on 'smuggling and trafficking of human beings'.

The development of the phenomenon of human smuggling in the field has indeed justified a revision of Directive 4/2011, taking into account its assessment. The application of the operational guidelines contained in this COL and its annexes had become problematic owing to a number of factors, in particular the *modi operandi* used, the scale of the means employed by the perpetrators, the violence used by the latter, the difficulty in distinguishing between victims and perpetrators, the number of victims concerned and the interaction between criminal organisations at the different stages of smuggling. The proliferation of *modi operandi* aimed at making a foreigner's stay appear legal (forged documents, fake diplomas, fake work certificates, etc.) also justified a revision of the COL.

332 Joint circular of the Ministers of Justice and the Interior, the Secretary of State for Asylum and Migration and the College of Public Prosecutors of 15 December 2018 on the investigation and prosecution policy in terms of smuggling in human beings and the facilitation of unauthorised entry, transit and residence (COL 13/2018).

In addition, COL 10/2010 has provided public prosecutors with guidelines for the application of Article 77 of the Law of 15 December 1980. It refers to the facilitation of the entry, residence or transit on Belgian territory of unauthorised foreigners. However, this article contains an exoneration from liability clause, which is applicable when the aid is provided for primarily humanitarian reasons. The importance of this provision is highlighted by the situation experienced in the main places where illegal migrants are grouped together, assisted by citizens' platforms.

The College and the competent ministers therefore considered that the coherence of the legislative system established by Articles 77 and 77bis of the Law of 15 December 1980 justified a single COL incorporating the directives applicable to smuggling in human beings and facilitation of entry, residence and transit of foreigners in an illegal situation.

Hence, the aim of the new COL is to provide clear guidelines for the investigation and prosecution of human smuggling, taking into account the evolution of this phenomenon and to provide investigative services with tools to facilitate the identification of perpetrators and victims of the offence of human smuggling.

It also provides the magistrates with guidance to identify the existence of predominantly humanitarian reasons exempting those assisting persons residing illegally in the territory from criminal liability.

Chapter 2

Case studies

1. Trafficking in human beings

1.1. | Sexual exploitation

Case of loverboy A

In this case, an underage Belgian girl ran away from an institution for minors. A loverboy forced her to prostitute herself.³³³ The acts took place in Antwerp in May 2015. The Criminal Court of Antwerp convicted the defendants in a judgment of 22 December 2015³³⁴ for the gang rape of a minor, human trafficking for the purpose of sexual exploitation and illegal and arbitrary detention. The victim's statements led to the detection of other victims in the hands of other loverboys. These perpetrators were also convicted by the court.³³⁵

The child victim's ad hoc guardian³³⁶ filed a civil suit. They received compensation of EUR 1,500 for the victim. Myria and Child Focus also filed a civil suit. They each received symbolic compensation of EUR 1 and procedural compensation of EUR 165.

1.1.1. | Network structure

The case involves five defendants: one loverboy, who seduced the victim; a pimp, who received the money; a supervisor who imprisoned the victim and two other defendants convicted by the court for gang rape. Four of the defendants were Kosovan and the fifth Macedonian. They were very young; approximately 18 years old at the time of the acts. Apart from the supervisor and one of the rapists, the other perpetrators had a criminal record, mainly for theft and assault and battery. The pimp was married and his wife was pregnant. Unbeknown to her, he was also the lover of a minor. He took advantage of her religious beliefs and justified his attitude on the basis of his own manipulative interpretation. According to him, Islam authorised him to maintain a relationship with two women. One of the rapists was also a father and was married. The five defendants were youths who had left school and lived on benefits.³³⁷

333 Myria prefers the term loverboy to teenage pimp, which is too often subject to a variety of interpretations. Loverboys use seduction techniques to attract their victims in order to sexually exploit them in Belgium. Their victims can be minors or adults, and Belgian or foreign. They are no longer exclusively underage girls from Belgian youth institutions.

334 Antwerp Crim. Court, 22 December, 46th ch. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings 2016, Beggars in the hands of traffickers*, p. 154. This decision is also available on Myria's website: www.myria.be.

335 Antwerp Crim. Court, 15 December 2015, ch AC4. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 88-90. This decision is also available on Myria's website: www.myria.be.

336 Ad hoc guardian: sometimes, the parent(s) isn't(aren't) able to adequately represent the child's interests. In the event of conflicting interests between the child and their parents, the court may appoint an ad hoc guardian to represent the child in financial proceedings.

337 For further explanations on benefits fraud, see MYRIA, *2011 Annual Report trafficking and smuggling of human beings, The money that matters*, p. 46.

According to their *modus operandi*, the minor was first shown love and affection. Shortly afterwards, she had to prostitute herself 'in return', under the pretext of building a life together thanks to the money earned, which was almost entirely managed by the pimp. When the victim realised that she had been abused by the defendants in another loverboy case mentioned in the introduction³³⁸, the loverboy in that case offered to help her, out of love and affection. He then pushed her into prostituting herself again by arguing that she had already done it. In this case, communication was mainly through Facebook and other social media. The victims were offered on a website like goods for sale.

1.1.2. | Opening the case

The case started when the victim sent a text message to her mother explaining that she was being held in Antwerp. She described the place in her emergency message. Her mother informed the emergency services who carried out a search, with the agreement of the defendants. They discovered the victim under a bed, in tears and shaking with fear. The police took the persons present to the police station to interview them.

The victim was also able to describe the suspects' vehicles and had several phone numbers. She explained that a neighbour below had been threatened and was forced to keep quiet about her presence. During a short car journey, she was able to point out where the loverboy was registered as living, and she identified him as being one of the suspects.

1.1.3. | Investigation

The investigation was based on a phone investigation, a search and interviews. Thanks to the interview with a neighbour, the police were able to identify different defendants associated with the building where the victim had been held. The police also carried out a medical test to establish sexual assault (rape kit). The location of the mobile phone mast and the examination of the victim's mobile phone, as well as the statements made by the defendants and another victim, confirmed her account. The defendants largely admitted their role, with the exception of the pimp who, despite the evidence, denied everything.

During a confrontation between the pimp, the loverboy and the supervisor, it emerged that the loverboy and the supervisor were in the same cell. According to the pimp, this explained their corresponding accounts. Placing the defendants in the same cell isn't good practice. The victim was able to identify one of the rapists via Facebook, as well as other child victims. She had met her loverboy through Facebook. Contact mainly took place through social media.

The detective chief inspector who found the victim called the victim support service to provide first aid. The police wanted to conduct a video interview, but this wasn't possible owing to the circumstances. Instead, they carried out an ordinary interview. A second interview only took place a month later, in the form of a video interview this time. This was particularly difficult for the victim on an emotional level, because she was right in the middle of processing her experience and had to relive everything. However, a support worker from the youth centre managed to convince her of the importance of her participation. The interview took place without the support worker, who was in an adjacent room. The involvement of the victim support service and the organisation of a video interview are good practices. However, the video interview could only be held much later, which caused the victim to experience negative feelings. This is a bad practice.

The multidisciplinary collaboration between services is another example of good practice in this case. In particular, the police superintendent asked the crisis reception centre for minors ('Opvangcrisiscentrum voor minderjarigen')³³⁹ to organise the victim's reception. They also tried unsuccessfully to contact the minor's youth centre. The local police took care of the minor, who spent the night in a centre. She was then taken back to the youth centre.

1.1.4. | Victim

The victim was a 16-year-old Belgian girl who had run away from a centre. She said that she had been made many promises but that none of them had materialised. She was at a centre where victims can stay for a year but she had been there for two years already.

³³⁸ For more details on this loverboy case, see: Antwerp Crim. Court, 15 December 2015, ch. AC4. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 88-90: www.myria.be.

³³⁹ An orientation and observation centre (OOC) approved by the Flemish government. An OOC takes in children and teenagers who can't return home or can't appear directly before the juvenile court judge.

The victim was in a highly vulnerable situation. She was a minor, she had run away and had a difficult family history. The fact that she was a 'runaway' meant that she couldn't ask the police or acquaintances for help. She had nowhere to go and was prepared to do anything to have a place to sleep. The defendants dominated her by intimidating, threatening and locking her up. They used her for the purpose of sexual exploitation. Not only was she confined, but also coerced. The defendants also denied the existence of numerous text messages in which the victim begged her exploiters to put an end to her exploitation owing to the serious pain from which she was suffering and the fear she had of some of her clients.

Victim's statement

The victim's statement is telling. The 16-year-old victim had already been through a lot before ending up with the defendant. Her mother was a prostitute and drug addict. Her father regularly beat her but the authorities didn't react despite her many statements. She had been staying in centres since the age of nine.

It was through a friend who was also staying at the centre that she came to Antwerp, to the home of one of this girl's friends. She left the place because they were drug users. The victim then fell into the arms of the exploiters present in this case.

The loverboy attracted her by promising a 'better world'. He asked her to spend the evening with him. When she got into the car, the pimp was there as well. The latter asked her almost immediately to prostitute herself. If she refused, he would drop her off 750 km from here. She had to switch off her mobile phone otherwise they would 'beat her up'. They then entered the destination in the GPS and took her away, before returning via the E19. Completely intimidated, she had to engage in paid sexual relations with three unknown men on the first evening. The pimp threatened her with a hammer that was in the car. She was then exploited and kept in the supervisor's house, where there were also iron bars. She was frightened of being attacked. She had to work every day from 20:00 until after midnight. She also had to buy a new SIM card twice, losing all her contacts and finding herself cut off from the outside world. The iron bars used to threaten her were found during the search.

At night, the victim's pimp and loverboy went out looking for clients. She had to earn EUR 300. All the money went to the defendants. She didn't see a penny of it. The victim also stated that when she had to earn the last EUR 50 for the pimp, she was suffering from severe pain. She asked the last client not to say they hadn't had sexual relations, which he refused to do.

When the pimp found out, he was not pleased and forced her to have sex with him instead. The victim pleaded with him several times but he didn't listen to her. He raped her. After this event, she had earned the EUR 300, enough to be finally freed from her pimp. However, her loverboy wanted her to continue working and refused to free her. She refused and decided to send a message to her mother asking for help.

The victim was terrorised by the pimp and emphasised several times during the video interview that he had to be arrested as soon as possible. Her mother found the pimp's telephone number in the victim's statement and called him, in a rage, to which the pimp replied: "Be careful, or you'll be working with your daughter".

Victim status

The victim was sent back to the centre from which she had run away, which is bad practice.³⁴⁰

1.2. | Labour exploitation

Hotel & catering case

1.2.1. | Introduction

This case concerns acts of human trafficking for the purpose of labour exploitation. The acts took place between May 2010 and November 2011. The defendants were a Pakistani restaurant manager and a private company that owned the restaurant. The case involved a very long procedure: it began in 2011 and the final decision was only pronounced in 2017.³⁴¹

The Criminal Court of Bruges ruled in 2016³⁴² that the offence of human trafficking was proven. The Tibetan victim worked in disgraceful conditions. The court also considered the acts of human smuggling established.

³⁴⁰ See Part 2, Chapter 2, point 2.1. (Secondary victimisation).

³⁴¹ Ghent Court of Appeal, 11 October 2017.

³⁴² Bruges Crim. Court, 4 May 2016: see MYRIA, 2017 Annual Report *Trafficking and smuggling of human beings*, Online, pp. 117-118.

The court broadly interpreted the concept of human smuggling as an extension of the debt bondage situation: "The court also considered the charge of human smuggling as proven: the illegal stay had indeed been facilitated and a lucrative purpose established, owing to the profits made by the restaurant; the victim didn't receive any pay."

Ghent Court of Appeal pronounced a final judgment on 11 October 2017. However, it acquitted the defendant of the offence of human smuggling. It reduced the period of criminalisation, resulting in a reduction of the compensation owed to the victim.

The victim filed a civil suit. The Court of Appeal awarded them compensation of EUR 16,953.40, EUR 15,703.40 of which for material damage and EUR 1,250 for non-material damage. These amounts were never paid.³⁴³

1.2.2. | Structure

The restaurant manager came from Pakistan. The defendant worked with his wife and son in the restaurant.

1.2.3. | Launch of the investigation

On Sunday 6 November 2011, the Social Inspectorate carried out a check in a restaurant in Roeselare, after having noted social legislation infringements in January the same year. The victim (a man) was working when the check took place. He presented his expired work permit to the inspectors. In addition, he wasn't registered as an employee of the company. Since he didn't have any valid identity papers, the Social Inspectorate deprived him of his freedom on an administrative basis, and took him to the police station in Bruges to interview him. It then emerged that this person was a victim of human trafficking for the purpose of labour exploitation. A police report was initially established for human trafficking against the manager (labour exploitation). This is an example of good practice regarding the identification of victims of human trafficking.

In the report, the victim stated - through his interpreter - that he had arrived in Belgium in 2009. Between May 2010 and September 2010, he worked 30 hours a week for the said restaurant owner, for wages of approximately EUR 900 to 1000 per month plus fresh meals. His payslips were attached to the file. At the time, he paid EUR 200 a month for a room above the restaurant, where he slept on a mattress on the floor. After this initial period, he was exempted from paying rent but was no longer paid for his work. He had to supervise the restaurant, open it at midday and close it in the evening. He also served customers. He received no more fresh meals and had to make do with the customers' leftovers. These elements indicate a situation of debt bondage. Hence, he had to reimburse his debt, his stay in the flat and his meals by working for the owner for free. The victim wasn't able to see a doctor when he was ill and had to buy medication himself. The interview revealed that the victim's employer had subjected him to moral, physical and labour exploitation. The latter abused the victim's particularly vulnerable position owing to his illegal stay and administrative precarity.

1.2.4. | Criminal investigation

The investigative actions carried out include interviews and searches of the manager's home and his company. The defendant denied everything he was accused of. He considered that he had helped the victim by providing food and shelter. The defendant asked that witnesses who confirmed his version of the facts should be heard. According to them, the victim used an alias and had even lied about his family situation. During the confrontation between the witnesses and the victim, all parties stuck to their statements and contradicted each other.

It emerged from the accountant's interview that the defendant was a 'person of power' in Pakistan, thus making the victim's fear plausible and reinforcing their position of dependence. This information also aroused mistrust among the witnesses and implied a risk of secondary victimisation³⁴⁴ of the victim in a confrontation with the defendant. This is what this extract from the statement also reveals: "The accountant started to reprimand the police by saying that the defendant only wanted to help the Tibetan and couldn't accept the fact that they had dared to imprison him."

³⁴³ Concerning the compensation of victims, see this report, Part 2, Chapter 4.

³⁴⁴ See Part 2, Chapter 3, point 3 (right to protection against secondary victimisation).

He continued, explaining that the defendant's brother was a prominent and powerful figure in Pakistan, that he was a brigadier general and particularly angry with the law in Bruges and the police. This brother called the Belgian embassy to account and, allegedly, Belgians were also thrown out because of this. Owing to the investigations carried out by the police and the measures taken by the law, demonstrations might occur (he repeated this three times). Pakistan is a military regime. The brother in question is under the orders of the President. Furthermore, according to the accountant who meets with the brigadier general brother when he comes to Belgium, the latter is accompanied by four bodyguards and state security."

1.2.5. | Victim status

The victim declared that he was born in Shigatse, in Tibet. He was single with no children. At about the age of five, he moved to Nepal with his parents. On 10 December 2010, he had to leave Belgium after his asylum application was rejected. He didn't initially feel he was a victim of human trafficking, considering he had somewhere to live, a mattress to sleep on and food to eat. However, he admitted that he was bound to the restaurant and the place where he slept. The victim was afraid of the defendant.

The victim made relevant statements. He was put in contact with PAG-ASA by the police, the specialised reception and support centre in Brussels for victims of human trafficking and smuggling. The police took him from Bruges to PAG-ASA³⁴⁵, which was able to win his trust. Here, he was identified as a victim of human trafficking and obtained the status of victim. The successful multidisciplinary collaboration between the different players is good practice. This case is also exemplary in terms of detection. The Social Inspectorate examined the offences from a social fraud point of view and the police focused on processing and referring the victim to a specialised reception centre.

³⁴⁵ See Part 2, Chapter 2, point 3.2.

2. Human smuggling

International Ukrainian smuggling gang

In this case, an international human smuggling network was revealed following a murder case. The network was based in the United Kingdom and Ukraine, and used Belgium as a transit country. The acts took place between 1 January and 29 January 2016. In a decision of 10 December 2017³⁴⁶, the Criminal Court of Ghent convicted 15 defendants for smuggling in human beings with aggravating circumstances. Two defendants were also convicted of murder. The murder case was dealt with separately and the judgment was pronounced by the Criminal Court of Ghent on 21 February 2017.

Myria filed a civil suit in the human smuggling case as well as in the murder case. The civil suit in the murder case was declared inadmissible.

2.1. | Smugglers' network

Belgium served as a transit country where the network temporarily housed its victims. Based on the accounting found, it emerged that the smuggling network had taken several hundred people to their destination. The organisation systematically smuggled Ukrainian nationals to Great Britain illegally and in return for payment. The victims who wanted to get to Great Britain were recruited in Ukraine. The organisation then made sure that these people obtained a visa (Schengen) allowing them to travel 'legally' to Belgium. In Belgium, these people received authentic Polish identity papers that allowed them, as a European citizen, to cross the French-British border. The organisation charged between EUR 3,000 and 5,000 per person according to the statements. On top of this amount were costs for a passport, a visa, transport from Ukraine to Belgium, meals and accommodation in Belgium. Part of the money was paid in Ukraine and the rest upon arrival in the United Kingdom.

³⁴⁶ East Flanders Crim. Court, Ghent division, 10 January 2017, ch. G28bis: www.myria.be.

Every week, one or two vehicles left Ukraine for Belgium, with around 14 people in total. The victims were transported in large vans belonging to a regular delivery service, equipped with one or two rows of seats for the victims.

Once in Belgium, the victims were taken to safe houses where they stayed while awaiting their final transportation to Great Britain. There were large amounts of Polish identity papers available here. The victims received an identity document whose photo most closely resembled the victim concerned. If necessary, the victim's hair was adapted to increase the resemblance. Finally, the organisation checked to see whether the identity papers on the point of being used hadn't been reported as stolen.³⁴⁷ For the final transportation from Belgium to the United Kingdom, the smugglers used international drivers, mainly Poles. They transported the victim to the other side of the border in return for payment.

As soon as a driver was available, the leaders sent the driver's phone number and the place and time of departure to their safe-house gang members. It was usually a parking area between Antwerp and the ports in the North of France. Once in the United Kingdom, the victims were intercepted by the smugglers who wanted to recuperate the remainder of the payment. They also wanted to recuperate the Polish identity papers given to the victims. The latter then used their Ukrainian identity card to ask for asylum in the United Kingdom.

The smugglers used fraudulent schemes and commercial or other structures to conceal or facilitate their offences. To maximise the chances of their enterprise succeeding, they used alternative communication channels, such as Skype, Viber and others that allowed them to avoid traditional, traceable channels as much as possible. The leader T. appeared to be a respectable citizen with a traditional travel agency in Ukraine. The leader S. was at the head of a company active in property development. The defendant B., a middle manager, was the head of a regular delivery service. They also used authentic Polish papers, regular road haulage companies in the EU, the principle of free movement of persons and goods within the EU and camouflage techniques (adaptation of hair and possibly make-up).

2.2. | Hierarchical organisation

The investigation was able to show that the network had a hierarchical structure: senior management, middle management and purely a purely executive one. The leadership role was assumed by two Ukrainian men, the above-mentioned T. and S. They ran the system, collected the revenue, made payments and therefore also generated considerable profits. The two leaders were in contact with their 'subordinates' and gave them instructions. They regularly received or demanded explanations on the state of progress and intervened when necessary.

T., the first leader, operated from Ukraine. He recruited the victims, ensured they had a passport and a visa (Schengen) and put them in contact with the person who would take care of their journey to Belgium. He then checked to see whether the authentic Polish identity papers hadn't been reported as stolen. He received an initial part of the amount the victims had to pay for their transport to the United Kingdom. He was responsible for paying the rent of the safe houses.

S., the second leader, worked in the United Kingdom. In addition to T., he was in contact with the Belgian unit on the one hand, and with a number of international drivers on the other hand. As soon as a driver said he was available, S. sent the essential pieces of information to the Belgian unit. These essential elements chiefly related to the time and the place to which the victim had to be taken to get across the border. In England, S. or one of his local gang members met the victim to recuperate the outstanding amount and the Polish identity papers used. He ensured that the identity papers were sent back to the Belgian unit so they could be used again.

Middle management was composed of members who took care of the victims' accommodation in Belgium. They were in charge of managing the Polish identity papers, the choice of document for the various victims, possible changes in appearance (hair) for a victim to ensure as close a resemblance as possible with the photo on the identity papers used. The victim was then taken to the place where they were handed over to a complicit international driver.

³⁴⁷ The way in which they operated will be further detailed in point 2.2.

Among the purely executive members were the international drivers who transported the victims over the French-British border. The two leaders also had local members in the country where they were active. In view of the investigation's limits, this case only focused on the leaders and the gang members active in Belgium.

2.3. | Opening the case

The investigation into the smugglers' network stemmed from a murder investigation. A Lithuanian lorry driver was found murdered in the cab of his lorry. The acts took place in the night of 6 to 7 May 2015, in the parking area along the E40 in Drongen. The victim was stabbed several times and was strangled. During the investigation, it emerged that the perpetrators were part of an 'organisation' whose main activity was human smuggling. On the night in question, the suspects had to hand over a large sum of money (more than EUR 10,000) to the driver for the leader T. This amount served as compensation for the services rendered to the organisation. He illegally transported Ukrainian victims to the United Kingdom. However, the perpetrators, who were part of middle management, kept the money and killed the driver. They made the organisation believe that they had paid the driver but that he had been murdered and robbed by a rival group. Hence, they attempted not to compromise their activity in the organisation. They then continued with their human smuggling activities. In the end, it was this element that led to their arrest. They continued to use the same mobile phone numbers as those used the night of the murder. This helped determine that the perpetrators had been in contact with the victim and each other. Phone taps were put on these two numbers, according to the identification and location of the users (they were considered as potential suspects in the murder case). A whole range of relevant conversations concerning human smuggling were recorded through the phone taps. On 12 May 2015, a conversation was recorded where the user of one of the crucial numbers appeared to be in a police station. Perpetrator P. had been caught in the act of suspected smuggling with smuggler Po., on the night of 11 to 12 May 2015, in the parking area along the E40 in Drongen. This situation later formed the basis for the present investigation.

P. had been arrested the same day in connection with the murder investigation. A day later, the perpetrator Z., user of another crucial phone number, was also arrested. It emerged that he was living in a safe house where 13 Ukrainian victims were found. One of these people was still in possession of Polish identity papers. In the murder investigation, both P. and Z. admitted to human smuggling.

2.4. | Investigation

2.4.1. | Investigative actions

The investigation was carried out in detail on the basis of the telephone investigation, phone tapping, findings made during the various searches, examination of laptops, iPads and mobile phones, analyses of conversations on social networks, analyses of data from the tachograph and the truck tracking system, surveillance, images from car park surveillance cameras, bank investigation, statements from the defendants and the victims, etc., as well as the flagrante delicto observed by the police patrol.

Thanks to the phone investigation, the police identified two suspects in connection with the murder case. Z.'s home was searched during his arrest. Thirteen people of Ukrainian nationality were found there, along with Polish identity papers and a diary containing possible transportation accounts. Thanks to the phone investigation and surveillance, various people, potentially involved in illegal transportation, were identified.

On 29 January 2016, searches were carried out in three potential safe houses. During these searches, different suspects and victims were found. Three of them were in possession of the Polish identity papers of another person. More than 300 identity papers (mainly Polish) were also found, as well as a diary containing probable transportation accounts. V.B. was arrested in Poland the same day. Thanks to the data from the phone investigation and phone taps, it emerged that he was a potential haulier from Ukraine. The police found six people in V.B.'s vehicle, who all made a similar statement.³⁴⁸

³⁴⁸ See below point 2.6.2. Victim statements.

The investigation and the statements of the various people concerned revealed a certain I. (in Ukraine) and M. (in the United Kingdom) as the organisers and coordinators of the transportations. M. was arrested by the police in Great Britain. During the search, a large quantity of cash and the accounts for transportations were seized. I. wasn't found.

2.4.2. | Social media

Social media was used by the criminal network, the victims and the investigators. The smugglers planned and organised their smuggling activities through social media, which they used to conduct confidential conversations. They intentionally switched from a mobile phone conversation to Skype when it was a question of customers. In one of the smugglers' smartphones, the police found Skype and Viber messages in which the locations (mainly parking areas) and addresses of safe houses were given. The smugglers' network took care of operations via Skype. The police analysed the Skype messages and noted that they mainly related to two subjects. On the one hand, passing on Polish phone numbers as well as an amount in euros and a time. These were possibly the phone numbers of drivers who took victims across the border between France and Great Britain, the amount to be paid and the time at which the drivers had to be contacted. On the other hand, the messages also related to Polish names, dates of birth and alphanumeric contact details, i.e. data from Polish identity cards whose usefulness had been verified (i.e. that their holders were not on file). An OK was sent or not in response. The *modus operandi* revealed that the organisation used Polish identity cards bought from their owners.³⁴⁹ After a time, the owners reported the loss of their identity papers, thus making them unusable by the organisation.

The relationship between the two leaders and a middle manager (K) was proven through Skype; the Skype account of the latter had been used. The relationship between them was confirmed through the iPad, especially owing to the fact that the three men were in the same Skype group, which allowed them to follow the whole communication. This element also placed smuggler K. at a certain level. Through these conversations, it was possible to connect the men to a safe house in Antwerp, and to the Polish identity papers used by the organisation, etc.

349 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online, pp. 40-41.

The internet analysis revealed that the two defendants were talking about a 'hen coop' in a conversation. This referred to the small sleeping space located above the lorry driver's cab. It was used to conceal people who didn't have any identity papers. The word 'hen coop' says it all about the conditions in which the victims were transported.

2.5. | Financial analysis

The aim of the organisation was to earn money. The victims had to pay approximately EUR 3,000 to 5,000, to which was added the cost of transport, accommodation and food to reach the United Kingdom illegally. The average monthly salary in Ukraine is EUR 150 to 200.

2.5.1. | Quality of the financial investigation

In this case, the federal public prosecutor's office requested and executed the seizures in the United Kingdom. More than GBP 150,000 were seized from the leader S. A safe was found in his home. Belgian police officers were given the authorisation to assist the National Crime Agency in the assessment and analysis of the seized objects. The aim was to select the elements that were important for the Belgian investigation in order to include them as quickly as possible in the ongoing proceedings in Belgium.

In this investigation, the federal public prosecutor's office had also requested a special operation ('plukonderzoek')³⁵⁰ to determine the movable and immovable property of leader S. This would allow them to proceed with the immediate removal and seizure of his property, should it emerge that it had been acquired through criminal activities that were the subject of the ongoing money-laundering investigation. The two investigations are examples of best practices. Leader S. owned a house, a vehicle, EUR 64,448 in cash and several personal and business bank accounts. A request was also made to ascertain whether the suspect or his relatives had accumulated criminal assets and, if so, to seize them. As a result of the investigation, several shared accounts were revealed.

350 On this subject, see the focus: Part 2, Chapter 5 (The importance and purpose of a financial investigation); MYRIA, 2011 *Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 53-54.

At the trial, the public prosecutor's office requested the confiscation of significant amounts on the basis of the financial investigation. The amounts varied between a minimum of EUR 2,950 and EUR 1,084,000. The court partly complied with the request of the public prosecutor's office but still ordered the confiscation of considerable amounts, ranging from EUR 920 to 632,500. The calculations were based on the victims' and defendants' statements. Several defendants even revealed the amount they earned for certain transportations. The victims' statements served as a basis to calculate the amounts to be confiscated.

2.5.2. | International cooperation

The collaboration between the Belgian judiciary, the United Kingdom, Europol Poland and Interpol Kiev was optimal. On the basis of a European arrest warrant, leader S. was located and arrested in Great Britain. A search involving seizures was carried out. International letters rogatory were sent to the United Kingdom (London) in order to conduct a hearing/interview with S., among other things.

2.6. | Analysis concerning the victims

2.6.1. | Victims

For each defendant, the court assessed the number of people who had definitely been smuggled. When calculating the number of victims, the court took into account the period of offence per defendant, the material findings of the police officers who took the statements, including the accounts found, and the statements of the defendants and victims. The organisation had smuggled several hundred victims using this *modus operandi*.

2.6.2. | Victim statements

The victims essentially came from Ukraine. None of them obtained victim status: on the one hand, because they weren't really interested in this status and, on the other hand, because the interception happened abroad. The majority of victims intercepted denied that they wished to be smuggled to the United Kingdom. A few victims made relevant statements but didn't wish to declare themselves as an injured party. The two victims (men) who were interviewed made similar statements corresponding to the *modus operandi* explained hereafter.³⁵¹ One victim explained that he wanted to go to the United Kingdom to lead a better life with his family. The man worked in Ukraine, in the construction sector, and only earned EUR 50 a month. He had borrowed the money for the journey from his family. He admitted that he feared reprisals and that as a result, he hadn't dared give any names. He had a wife and children in Ukraine and wanted to avoid anything happening to them. Another victim refused to proceed with the payment of EUR 3,000 because he didn't resemble the photo on the identity papers. He then found out that his father had been threatened in his country of origin because he refused to approve the payment.

³⁵¹ Point 2.1. trafficking network.

Chapter 3

Case law overview 2018 - start 2019

1. Trends

What are the main trends in case law in 2018 and at the beginning of 2019 concerning cases of trafficking and smuggling in human beings? In this report, the overview is based on cases in which Myria filed a civil suit, decisions received from the victim reception centres as well as decisions provided by prosecutors. There is also a presentation of a recent judgment by the European Court of Human Rights.

Myria was informed of 48 decisions rendered by the judicial authorities. Hereafter, is a presentation of the most interesting decisions, i.e. 38 decisions relating to 37 cases³⁵² in the country's various jurisdictions:³⁵³

- 11 decisions (including four appeal decisions) relating to 10 cases concern **acts of sexual exploitation**. They were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division), Brussels (Dutch-speaking), Ghent (East Flanders (Ghent), and Liège (Liège division). Besides two judgments rendered in Liège, the nine other decisions were rendered in the Dutch-speaking part of the country or by Dutch-speaking courts in Brussels.

In terms of **sexual exploitation**, we noted, as we did in the last two years, a further increase in underage victims, essentially Nigerian girls. The majority of these cases were tried in Antwerp. In several decisions concerning these cases, some of the defendants were former victims. One decision concerns transsexual prostitutes and another, Belgian victims. Finally, the non-punishment clause was applied in a case concerning the exploitation of young Romanian women.

- 18 decisions (including nine appeal decisions) concern **cases of labour exploitation**. The decisions rendered relate to a variety of sectors. They are presented by sector of activity (construction, hotel & catering, night shops, car wash, bakery, butcher's, riding schools, cleaning, domestic work). These decisions were rendered in the jurisdiction of the following courts of appeal: Antwerp (Court of Appeal), Brussels (Brussels French-speaking, Walloon Brabant and Court of Appeal), Ghent (East Flanders (Ghent, Dendermonde)), West Flanders (Kortrijk), and Liège (Liège division and Court of Appeal).

As regards **labour exploitation**, fraudulent structures such as abuse of the posting procedure or bogus self-employed workers are always very much present to mask the exploitation. It appears to be the construction sector that is mainly concerned.

As evidence of work conditions contrary to human dignity that bear the attributes of human trafficking, the judges took into consideration the presence of several of the following elements: work conditions and work environment (excessive working hours, derisory wages, no day of rest), bad housing conditions, wage deductions under various pretexts, dependence on the employer (such as promise of regularisation).

³⁵² It should be noted that several cases already ruled on at first instance were discussed in previous reports.

³⁵³ These decisions will also be published on Myria's website: www.myria.be.

In many cases, the courts give a great deal of credit to workers' statements, as long as they are accurate and consistent. It is also a shame that on several occasions, the reasonable time limit for being tried was exceeded. Finally, there are regular prosecutions based on both the charge of human trafficking and human smuggling. While one court found that the facts brought before it had to be examined solely from the point of view of human trafficking, other courts generally accepted both charges. They consider that the illegal employment of illegally staying workers is equivalent to assisting illegal residence with a view to profiting from it.

- 1 decision concerns the **exploitation of begging**. It was rendered in Brussels and concerns a case decided on opposition. Unlike the first judgment convicting the defendant in absentia, the court acquitted them on this occasion owing to a lack of evidence other than the -sometimes contradictory - statements of the victim.
- 8 decisions relate to cases of **human smuggling**. They were rendered in the jurisdiction of the courts of appeal of Brussels (French-speaking Brussels and Dutch-speaking court of appeal), Ghent (East Flanders (Ghent, Dendermonde) and West Flanders (Bruges)).

As regards **human smuggling**, this often involves well-structured and even criminal organisations active in several countries. In a few cases, the organisers were based in the United Kingdom. A joint investigation team (JIT) was set up in a case involving an Afghan network. Note: a Chinese poly-criminal network active in providing fake papers, against payment, to facilitate the stay, employment or residence of compatriots in Belgium. Finally, a (non-final) decision was handed down by the French-speaking Criminal Court of Brussels in a case in which citizens active in helping migrants were also prosecuted, alongside other defendants.

2. Trafficking in human beings

2.1. | European Court of Human Rights, judgment S.M. v. Croatia, 19 July 2018

The European Court of Human Rights delivered an interesting chamber judgment relating to acts of internal trafficking in human beings for the purpose of the sexual exploitation of a young Croatian woman.³⁵⁴ However, this case isn't final.³⁵⁵

The applicant, Mrs. S.M., is a Croatian national born in 1990 and living in Croatia. Owing to family problems, she lived with foster parents for four years before being placed in state home for children and teenagers. She lived there until she had finished her professional training as a waitress.

In September 2012, she filed a criminal complaint, claiming that a man had coerced her into prostitution for months, as of mid-2011. This man, a former police officer, took her to clients and forced her to hand over half of her earnings for sexual services. He threatened to punish her if she didn't comply with his demands.

At the end of 2012, the man was charged and the applicant was officially recognised as a victim of human trafficking. In 2013, following an investigation, the man was tried for forcing the applicant into prostitution, but was acquitted. The courts found the young woman's testimony to be inconsistent and unreliable. They concluded that there was insufficient evidence to support a conviction and that the applicant had provided sexual services of her own free will.

The public prosecutor's office filed an appeal but it was rejected in January 2014. The applicant filed a constitutional appeal the same year, which was declared inadmissible.

³⁵⁴ ECHR, judgment S.M. v. Croatia, 19 July 2018, application no. 60561/14 (case pending). The chamber's judgement is available at: www.echr.coe.int

³⁵⁵ This case was re-examined by the Grand Chamber.

Referring in particular to Article 4 (which prohibits slavery and forced labour), the applicant complained about the lack of an adequate legal framework in Croatia to deal with the issues in question and the authorities' reaction to her allegations.

In its Chamber judgment of 19 July 2018, the Court found that Article 4 of the European Convention on Human Rights had indeed been violated. The Court points out that Article 4 is applicable in cases such as that of the applicant, which involves human trafficking and exploitation of women for the purpose of prostitution, even though the case has no international dimension. It also considers that there is an adequate legal framework in Croatia for the suppression of human trafficking, forced prostitution and the exploitation of prostitution. Furthermore, the Croatian authorities acknowledged that the applicant was a victim of human trafficking and provided her with various forms of assistance and support, including the right to psychological support and free legal aid.

However, the investigation conducted by the authorities was flawed. In particular, the Court notes the authorities' failure to interview all possible witnesses (especially clients). In addition, they made no effort to investigate the applicant's allegations when she claimed to be threatened or financially dependent on the accused. They also didn't assess the possible impact of the psychological trauma on the applicant's ability to give a clear and coherent account of the circumstances in which she was exploited, and simply disregarded her testimony owing to its lack of reliability.

Finally, by establishing that the applicant had provided sexual services of her own free will and by acquitting the accused, the Croatian authorities, in the Court's view, also failed to comply with international standards applicable to human trafficking, which provide that the victim's consent is irrelevant.

On 3 December 2018, the College of the Grand Chamber accepted the request of the Croatian government to refer the case to the Grand Chamber.³⁵⁶

On 15 May 2019, the Grand Chamber convened to hear this case. However, the judgment still hadn't been pronounced when this report was finalised.³⁵⁷

³⁵⁶ The parties can ask for the case to be referred back to the Grand Chamber for further consideration within three months of the Chamber judgment's delivery. This request is accepted in exceptional cases. It is the College of the Grand Chamber that decides whether or not to refer the case back to the Grand Chamber for further consideration.

³⁵⁷ July 2019.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

As in the two previous case law overviews, several decisions concern Nigerian networks that also exploited minors. Furthermore, two cases discussed in the 2018 report went to the appeal courts.

Asylum-seeker victims in France

Two cases, both tried in Antwerp, concern Nigerian victims who had applied for asylum in France.

In the first case, **the court** ruled on an opposition to a judgment rendered in **absentia on 21 March 2017** discussed in the previous report.³⁵⁸ Two Nigerian defendants were convicted in absentia for the charge of human smuggling. The first defendant had also been convicted in absentia for human trafficking for the purpose of sexual exploitation.

The case came 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 had been organised from Nigeria by the first defendant's brother-in-law. A voodoo ritual was organised prior to the illegal transportation. The victim then set out on her perilous journey that would take her from Nigeria to Europe. She stayed in different places in Italy for several weeks 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.

³⁵⁸ Antwerp Crim. Court, Antwerp division, 21 March 2017, ch. AC5. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*.

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, explaining that the 'madam' was her aunt.

The investigation established that the victim's statements were consistent with the retroactive phone investigation conducted with the help of base station data. 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.

The defendants were convicted in absentia and given a 30- to 50-month prison sentence, and a fine of EUR 1,000.

One of the defendants lodged an opposition to the judgment. In its **judgment of 12 July 2018, Antwerp Criminal Court**³⁵⁹ once again found that he was guilty of human smuggling, on the basis of the evidence resulting from the criminal investigation. He had accompanied the victim during the first part of her journey to Belgium and maintained phone contact with her during her journey. The court upheld the sentence but granted a suspended sentence for the time exceeding the duration of the pre-trial detention.

In the second case, **Antwerp Criminal Court** ruled on the acts of human trafficking for the purpose of sexual exploitation and human smuggling in a **judgment of 7 November 2018**.³⁶⁰ Two defendants were prosecuted as perpetrators and co-perpetrators of trafficking and smuggling in human beings. One victim filed a civil suit.

The victim had been approached in Benin City in Nigeria by the sister of one of the defendants to go and work for her sister in Belgium. Once in Belgium, the victim had to reimburse her debt of EUR 30,000 for her travel expenses by working as a prostitute. Before her journey began, she had to undergo a voodoo ritual. She had to eat chicken liver and ingest a highly alcoholic drink. She made the crossing on a dinghy and was finally rescued by an Italian ship. Once in Italy, she was given instructions on how to get to Belgium. In Belgium, she had to pay to sleep on an armchair.

She first worked as a prostitute in Brussels and Antwerp. She was then forced to apply for asylum in France, under a fake identity, and to hand over the benefits she received. The two defendants stated that they had also travelled from Nigeria and (still) worked in prostitution.

The defendants were convicted for trafficking and smuggling of human beings with respective prison sentences of four years and 36 months, partly suspended, together with fines of EUR 8,000. The victim obtained EUR 18,150 for material damage and EUR 2,500 for non-material damage.

Child victims

Another case concerning a Nigerian prostitution network was re-examined by **Ghent Court of Appeal**. It was previously judged by **Bruges Criminal Court** in a decision of 20 September 2017³⁶¹, discussed in the previous annual report.³⁶² In this case, eight Nigerian defendants appeared in court for human trafficking for the purpose of sexual exploitation with aggravating circumstances. The victims were comprised of dozens of young Nigerian women, including a minor. Three victims, including a minor, filed a civil suit, as did the PAG-ASA and Payoke reception centres.

The acts were revealed 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 a large part of their earnings. The young girls had to be available at all hours and the defendants forced them to engage in sexual acts. They were threatened using voodoo practices.

Several young 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.

359 Antwerp Crim. Court, Antwerp division, 12 July 2018, ch. ACV3.

360 Antwerp Crim. Court, Antwerp division, 7 November 2018, ch. AC10 (final).

361 West Flanders Crim. Court, Bruges division, 20 September 2017, 17th ch.

362 MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 127-128.

One of the defendants had been a victim of human trafficking herself as a result of the same organisation. This is a common phenomenon in the Nigerian world of prostitution, i.e. prostitutes who, after a certain time, form a relationship with their (male) pimp and then climb the ladder to exploit other women in turn and make them work in prostitution.

Searches were organised, different financial transactions were checked as were mobile phones. Two videos of extreme child pornography were found on the mobile phones of several of the defendants.

According to the court, the criminal case clearly revealed that this was a particularly well organised international network that smuggled young girls from Nigeria to Belgium in order to exploit them in prostitution. 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. In order to smuggle them, the women were also subjected to voodoo rituals. 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 at first instance 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. Exhibits and significant sums were confiscated.

The three civil parties obtained between EUR 6,500 and EUR 12,000 for non-material damage. The associations PAG-ASA and Payoke each received EUR 2,500.

Several defendants and the public prosecutor lodged an appeal. In its judgment of **1 June 2018, Ghent Court of Appeal**³⁶³ upheld the convictions almost in their entirety, including the charge of human smuggling. The court didn't accept the argument of one of the defendants according to which the smuggling of the young girls should be dissociated from their subsequent sexual exploitation. It found that the girls had been smuggled to Belgium for the purpose of sexual exploitation. It also rejected the argument that the girls had made incriminating statements in order to obtain the status of victim of human trafficking. One of the defendants, the partner of another defendant with whom she also had a child, was also identified as a victim in the case. However, the court found that this didn't in any way detract from the fact that she also later committed the offences.

³⁶³ Ghent Court of Appeal, 1 June 2018, 10th ch.

The damages of the three civil parties were also confirmed. In the absence of precise documents supporting the damage, the compensation awarded to PAG-ASA and Payoke was reduced, in equity, to EUR 1,500 for material damage. According to the court, non-material damage wasn't sufficiently demonstrated.

In a **judgment of 14 November 2018, Antwerp Criminal Court**³⁶⁴ ruled on another case regarding the branch of a Nigerian prostitution network active in Antwerp. Six people were prosecuted but several of them failed to appear. Some of them were staying in Italy. They were prosecuted for human trafficking for the purpose of sexual exploitation and for human smuggling, both with aggravating circumstances. One of the victims was a minor.

At the beginning of March 2016, the police were contacted by the Payoke reception centre. One victim of forced prostitution, who had been brought from Nigeria to Belgium even though she was only 16 years old, made several statements. She had been approached by one of the defendants to travel to Europe in order to go to school there. She travelled from Benin City to Libya via Niger, before taking a boat to Europe. She, and the other passengers, were rescued in the Mediterranean by an Italian ship. Four other girls on the same boat drowned. In Italy, one of the defendants was waiting for her and she was told she had to reimburse a debt of EUR 35,000 for her journey to Europe. She also had to undergo a voodoo ritual. Another defendant took her from Italy to Antwerp, Belgium. She was taken to the apartment of one of the defendants, which she shared with another young girl who was in the same situation as her. She had to give the money she earned from prostitution to her landlady, one of the defendants, to reimburse her debt. In addition, she was charged EUR 25 a month for food and drinks. When she made her statements to the police, she mentioned another victim, the young girl with whom she shared the apartment. This girl was found and made similar statements.

In the beginning, these two young girls were threatened repeatedly because they didn't earn enough, and then because they refused to continue to hand over their money. Their family in Nigeria was also threatened.

The court found that the acts were established because the statements of the two victims were consistent, detailed and similar, and therefore credible. Furthermore, their statements were supported by objective elements.

³⁶⁴ Antwerp Crim. Court, Antwerp division, 14 November 2018, ch. AC10 (appeal).

During the investigation, the Eurodac database was consulted, as well as Belgium's airports. The journey taken (from Italy to Belgium) by the defendants could therefore be traced. It was perfectly consistent with the victims' statements. Data from the base stations also made it possible to determine the presence of the defendants in certain places at certain times, which was also perfectly consistent with the victims' statements. Retroactive phone and financial investigations were also used to confirm the victims' statements. During the search, an envelope containing the objects used during the voodoo rituals was found. Voice messages and text messages were found. In addition, it emerged that one of the defendants was the subject of an Italian investigation and was one of the key players in an organisation involved in the trafficking of human beings from Nigeria to Europe.

The defendants were handed prison sentences - some in absentia - ranging from two to six years, together with fines ranging from EUR 6,000 to EUR 15,000. They were all stripped of their rights for five years and amounts were confiscated. Their immediate arrest was ordered during the court hearing.

One victim filed a civil suit. She received EUR 13,000 for non-material and material damage. She was awarded the confiscated amount.

Heavy sentences and confiscation of windows

Brussels Court of Appeal re-examined a case judged on 31 May 2018 by Brussels Criminal Court, and discussed in the previous annual report.³⁶⁵ Eleven defendants appeared at first instance for human trafficking for the purpose of exploitation of prostitution or other forms of sexual exploitation, among other things. One of the aggravating circumstances was the fact the victim was a minor. Several defendants also appeared for hotel pimping and involvement in a criminal organisation.

It was a particularly well-organised Nigerian network, in which a known Nigerian prostitute exploited 15 or so young Nigerian girls in prostitution, among whom were several minors. The organisation was responsible for both bringing these young girls over from Nigeria and for exploiting them in the red-light district in Brussels. The majority of them had been recruited by the first defendant in Nigeria, with the help of his brother who lived there. They were often enticed by false promises such as studying. The victims were smuggled from Nigeria to Italy via the Libyan route, before reaching Belgium. They then had to reimburse their travel debt, amounting to about EUR 35,000. The young girls and their family were put under pressure and threatened through voodoo rituals. One of the underage girls managed to escape, after which her mother, in Nigeria, was locked up and severely punished. This victim later stated that her brother had died in mysterious circumstances.

The defendants were handed heavy prison sentences at first instance, ranging from two to 14 years, together with fines. Large sums of money, as well as the 'windows' in buildings where the prostitution took place, were confiscated.

Myria filed a civil suit in this case.

Five of the defendants and the public prosecutor lodged an appeal against the decision.

In its **judgment of 3 April 2019, Brussels Court of Appeal**³⁶⁶ confirmed the judgment with some amendments (for some defendants, the court limited the charges in relation to certain acts and certain victims) and reduced the prison sentences. The main defendant's 14-year prison sentence was reduced to 10 years, the third defendant's to five years and the other defendants' sentences from two years to a one-year suspended sentence. The judge had ordered the confiscation of three buildings at first instance. However, it was only possible to confiscate a small part, i.e. the part that had been rented for prostitution purposes with the aim of making an abnormal profit. The court confirmed the confiscations of different sums of money and parts of the real estate.

³⁶⁵ Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 130-131.

³⁶⁶ Brussels Court of Appeal, 3 April 2019, 13th ch.

Perpetrators and former victims

In a case involving an extensive Nigerian prostitution network, tried by **Antwerp Criminal Court on 14 August and 27 November 2018**³⁶⁷, two defendants were prosecuted for human trafficking for the purpose of sexual exploitation and for human smuggling. Other members of the same network had been convicted before for human trafficking by the court of West Flanders³⁶⁸ and the Ghent Court of Appeal³⁶⁹, within the framework of other legal proceedings.

The case began when seven young Nigerian girls without a residence permit were found in a caf in Antwerp in January 2017. During the same period, within the framework of another case, the police went to a hotel in Ostend, based on advertisements on a website, where they found young Nigerian girls forced to prostitute themselves. Both cases had ramifications. Two victims were identified in this case, and one of them filed a civil suit.

The young girls had been recruited in Nigeria by a friend of the first defendant and arrived in Italy via the dangerous Libyan route, which involved crossing the Mediterranean. From Italy, they were brought to Belgium, where they were told they had to reimburse a debt of EUR 35,000 through forced prostitution. Voodoo rituals were organised, putting pressure on the young girls and their family. The first defendant held a higher rank than the second defendant. The latter regularly received the money earned by the young girls, which she gave to the first defendant.

The investigation involved searches, a financial investigation, reading mobile phones and SIM cards, analyses of phone traffic at base stations, statements from victims and clients and confrontations with a selection of photos.

The two defendants were convicted of the charges. The first defendant was considered as the pimp of the young girls, some of whom were minors. She had organised at least part of their journey from Nigeria. One of the victims was rescued by the Italian coastguard after having drifted for days. The aggravating circumstance of human smuggling with endangerment of the victim's life was also accepted. The second defendant provided support and assistance.

According to the court, it was of little importance that the defendants had originally been victims of a similar network.

The two defendants were sentenced to six and three years in prison respectively, and were given fines of EUR 16,000 and EUR 6,000. The two were stripped of their civil rights for five years. The second defendant was convicted in absentia and lodged an opposition. In the judgment handed down on opposition, the court granted her a five-year suspended sentence for part of the prison term.

One victim and the non-profit association PAG-ASA filed a civil suit. The victim was awarded EUR 10,000 for material and non-material damage, and PAG-ASA EUR 250 in compensation.

2.2.2. | Thai massage parlour

In a **judgment of 13 November 2018, Brussels Court of Appeal**³⁷⁰ ruled in a case of Thai massage parlours. The defendants were convicted at first instance by Brussels Criminal Court on 27 January 2016.³⁷¹ The acts of human trafficking and other offences relating to prostitution already dated back to 2005-2009. Six defendants were prosecuted, one of whom was the main defendant, a Belgian accountant living in Spain. He was the accountant of the Thai massage parlours but also the manager or partner of various companies. The criminal case revealed that through his accounting firm, he had significant contact with other Thai brothels, for which he did the accounting as well as taking care of the social obligations. It was thus possible to establish a link with some 30 massage parlours. An officially registered 'clean' company was to be found behind every massage parlour.

The other main defendant was the owner of various parlours in Flanders, on paper or in practice.

³⁶⁷ Antwerp Crim. Court, 14 August 2018, ch. ACV3. The defendant convicted in absentia lodged an opposition and was retried by the same court on 27 November 2018.

³⁶⁸ West Flanders Crim. Court, Bruges division, 20 September 2017, 17th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 127-128.

³⁶⁹ Ghent Court of Appeal, 1 June 2018, see above.

³⁷⁰ Brussels Court of Appeal, 13 November 2018, 15th ch.

³⁷¹ Brussels Crim. Court (Dutch-speaking), 27 January 2016, ch. 46. See MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 155-158.

The massage parlours were generally owned by Thai women. The defendants had begun a romantic relationship with some of them. In reality, the parlours were managed behind the scenes by Belgian men who benefited from the income. The women only received EUR 300 or EUR 500 a month, or EUR 800 in the best case. The women were lured from Thailand on the basis of false promises, such as marriage or work. They arrived in Belgium on a tourist visa. A marriage or sham marriage was then organised, thanks to which the young women obtained papers and could work. Other young women were staying illegally. The majority of them didn't know that they were going to have to work in prostitution. The case also revealed that money had been paid for young women brought from Thailand to Belgium, i.e. EUR 9,000 per young woman supplied.

As soon as they arrived in Belgium, their papers were confiscated and they had to work six or seven days a week, and often for long hours. They were in a vulnerable position owing to their precarious situation, because they were pregnant, had no financial resources, didn't master the language and knew nothing about social legislation. They often lived in the massage parlours and hardly went out.

The defendants were given partly suspended prison sentences ranging from 18 months to three years. Large sums of money and cars were confiscated. One of the victims and Myria filed a civil suit and received EUR 8,000 and EUR 500 respectively as compensation. Several defendants lodged an appeal.

The Court of Appeal considered that the acts, the most recent of which dated from 2009, were time-barred and acquitted the defendants.

2.2.3. | Transsexual victims

In a **case decided on appeal in Liège**, a French defendant was prosecuted with another defendant (not on appeal) for human trafficking for the purpose of sexual exploitation of young transsexuals from Latin America, human smuggling, recruitment and exploitation of prostitution. He was also prosecuted for advertising sexual services. He posted advertisements on websites for sexual services by transsexuals.

In a **judgment of 21 December 2016** at first instance³⁷², Liège Criminal Court sentenced him to four years in prison and a fine of EUR 18,000 for human trafficking and other prostitution-related offences. However, the court acquitted him of the charge of smuggling.

Ruling in absentia on a judgment of 23 May 2017³⁷³, Liège Court of Appeal upheld the first judgment, except with regard to the charge of human smuggling, for which it had also convicted the defendant.

Upon re-examination of the case following the defendant's opposition to the first judgment, the Court followed the same reasoning as in its judgment delivered in absentia. In a **judgment of 17 May 2018**, it upheld the first judgment, except with regard to the charge of human smuggling, for which it convicted the defendant.³⁷⁴

As for the human trafficking and charges concerning prostitution, the Court of Appeal found them to be established. Just like the court at first instance, it accepted the objective elements of the criminal court record demonstrating the defendant's guilt. He had indeed recruited three transsexuals of South-American origin, over the internet, who were living abroad. He met them as soon as they arrived in Belgium and provided them with accommodation of which he was the lessee, taking advantage of their precarious administrative situation. These transsexuals worked as prostitutes in these lodgings. Their activities were advertised on websites by the defendant. The latter was also responsible for the contact with potential clients, as well as taking the transsexuals to other properties and places of work. He was paid for the services provided by the transsexual prostitutes, and thus received half of the earnings from their services. The defendant's father-in-law regularly served as a driver for his son-in-law's business, in particular to fetch the transsexuals from the airport and to meet the owners of the properties rented by the defendant.

Regarding the charge of smuggling, the Court of Appeal found that the defendant did indeed recruit and accommodate the three transsexual victims who were in a precarious situation in Belgium, in particular by providing them with apartments which he rented to enable them to prostitute themselves.

372 Liège Crim. Court, Liège division, 21 December 2016, unpublished.

373 Liège Court of Appeal, 23 May 2017, 18th ch. (in absentia), unpublished.

374 Liège Court of Appeal, 17 May 2018, 18th ch.

In exchange for his services, he received part of their earnings. The Court based itself on the victims' converging statements, corroborated by the investigators' findings during visits to their homes and searches, testimonies, analysis of the defendant's phone and Facebook profile, and bank searches. The Court noted that the criminalisation of smuggling punishes the act of aiding or assisting the illegal entry or illegal stay of third-country nationals in Belgium for profit. It therefore considered that the act of providing accommodation, in return for payment, for non-European Union nationals residing and working illegally in Belgium constitutes smuggling in human beings in the sense of Article 77 bis of the Law of 15 December 1980.

2.2.4. | Belgian victims

In a decision of **29 June 2018**³⁷⁵, **Ghent Criminal Court** examined a case of human trafficking for the purpose of the sexual exploitation of various women, including Belgian minors and women.

The case came to light when an organisation helping prostitutes provided the police with worrying information about a man allegedly inciting several young girls and women into prostitution. The man apparently promised the girls that they would be able to earn a lot of money very quickly. He took naked photos of them, which he then used for advertising purposes on a website where extreme acts were offered. He kept them under pressure by threatening to make the photos of them public and to show them to members of their family. The defendant took care of making the appointments for the young girls with the clients. These girls had to hand over 40 % of their earnings, and could keep the rest. His IP address was linked to advertisements of some 70 young girls. Minors were also concerned. He especially targeted young girls with financial difficulties. Acts of child pornography and indecent assault on a six-year-old girl were also revealed. The investigating judge appointed a psychiatry and psychology expert.

As well as acts of human trafficking, the defendant was also prosecuted for acts of rape, child pornography, public indecency, etc.

The court acquitted the man of the charge of human trafficking. Even if he chose women with financial difficulties and exerted pressure on them in different ways, it wasn't possible to determine whether or not the women had a choice. They were responsible for their own transportation, collected the money, weren't housed by him and weren't under his physical control. There was no physical violence, only moral blackmail. Several women decided not to agree to his proposal. Consequently, the court considered that, in this sense, the circumstances in which the women worked as sex workers weren't contrary to human dignity.

However, the defendant was sentenced to six months in prison for other charges, among other things.

2.2.5. | Application of the non-punishment clause

This case, tried by **Liège Criminal Court on 13 Juin 2018**³⁷⁶, concerned acts of human trafficking for the purpose of the sexual exploitation of young Romanian girls. Within the complex framework of this case, a young woman and three men, including the young woman's boyfriend, were prosecuted for human trafficking as well as for recruiting and exploiting the prostitution of the young Romanian girls.

The case began in April 2009, date on which the local police in Liège carried out a check on a young Romanian girl soliciting on the public highway in the Cathédrale Nord neighbourhood, well known for prostitution. She claimed to be staying at the hotel alone and had been working as a prostitute in Belgium for two days, after arriving from Spain. In the following months, checks were also carried out on other young Romanian women with similar stories. The defendant was one of these young women: she explained that she had just arrived in Belgium, from Spain, where she was obliged to work as a prostitute for someone. These young women were sometimes accompanied by Romanian men. Each time, the signs of prostitution were blatant.

Following various checks, the Romanian girls changed phone numbers and hotel, then left for Brussels.

³⁷⁵ East Flanders Crim. Court, Ghent division, 29 June 2018, ch. G28 (final).

³⁷⁶ Liège Crim. Court, Liège division, 13 June 2018, 19th ch. (opposition to the judgment of Liège Crim. Court of 11 January 2017).

An in-depth phone analysis was carried out. This especially helped to identify certain people, who were then interviewed as witnesses, and to establish the existence of bonds of submission between the protagonists. Among other things, it emerged that the two mobile phone numbers attributed to the defendant were linked to all the perpetrators in the case, and were often the first numbers contacted by the girls after a check. Other tasks were also carried out such as investigations into the hotels frequented by the young women and the defendants, and letters rogatory in Italy and in Romania.

After months without any particular findings, one of the young women was checked again. She said she worked as a prostitute without a pimp. As she didn't consider herself a victim of trafficking, she was transferred to a detention centre with a view to repatriating her to Romania. However, following the intervention of a specialised reception centre, she agreed to make a new statement end 2009, which differed from the initial ones. She subsequently stated that she had met a man in Romania whom she fell in love with and whom she was supposed to marry. This person then sold her to the couple formed by the defendant and her boyfriend, with a view to making her work as a prostitute. From then on, she had to prostitute herself in Paris with the defendant, who told her the rates and terms of the work. She then went to Italy where she prostituted herself under the surveillance of the defendant. After the interviews, she wanted to go home.

The *modus operandi* described by the investigators was as follows. Young women were recruited in Romania (or even bought). They were generally pushed into prostitution by the loverboy system. 'Managers' took these girls to European countries, where they had to work as prostitutes (Italy, France, Belgium). They were subjected to threats and violence if the work or money they brought in was insufficient. The perpetrators gave them a mobile phone to keep in contact, control them and recuperate the money (a mobile phone that often changed hands). Sometimes, the men who accompanied them served as observers for the pimps, to keep a look out and warn them if the police were coming. They didn't stay long in the same place to avoid investigations. Numerous links existed between the people in question. The girls stayed in the same places, and sometimes at the same time. They were together at their place of work. The mobile phones were regularly swapped between people and the phone numbers were consecutive, which implied that they had been purchased in bulk and all deactivated at the same time.

The case was investigated by an investigating judge, but none of the defendants were ever located or interviewed in detail during the investigation. However, three of the defendants, including the defendant in question, were convicted in absentia in a judgment of 11 January 2017, with the court separating the case against the fourth.

Having opposed the judgment, the defendant was heard at the court hearing. She contested the charges against her. She explained that she had met her boyfriend in Romania when she was 19 years old. He had suggested she go and work in Italy and she said she had accepted for financial reasons, and for her daughter. She stated that she had to work the streets in Italy and have sexual relations with this 'boyfriend'. He started to beat her and threatened her family, which prevented her from filing a complaint. They then went to Germany and Spain. Other girls were also present in her entourage. She stated that she had to give all her money to her boyfriend. When she arrived in Belgium with him in 2009, she said she knew the girls who were victims but didn't give them orders. She lived in the same place and they went to work together but she didn't supervise them. It was her boyfriend who gave the instructions in the house and ordered her to talk to the other girls about prostitution. She also stated that she was the only one who was beaten and that she protected the other girls. She contested having worked with the victim taken in by a reception centre, as she was no longer in Belgium at that time but in France.

She filed a complaint in France in 2012 after having again been threatened, sequestered and raped for a long time. She pointed out that she was the only one to be beaten in Belgium. However, in France, her boyfriend beat all the other girls because they didn't bring in enough money. In support of her claims, the defendant submitted a judgment from the Paris Court of First Instance of 4 March 2015, convicting several people, including her boyfriend, of human trafficking, aggravated pimping, and criminal association against the girls who were victims, including herself. This related to a period from January 2011 to 25 March 2013, i.e. after the acts committed in Belgium.

In a detailed statement of reasons, the court established the existence of acts of human trafficking and of the presence of all the constitutive elements of this offence. The young women had indeed been recruited, received, harboured, transported and controlled for the purpose of exploitation of prostitution.

The court chiefly based itself on the following elements: the victims' statements, police observations of the victims, phone analyses (establishing links between the girls and the defendants, and monitoring their activity), witness interviews and investigators' findings (including the girls being put up in hotels by and with the defendants). The court also declared several aggravating circumstances (including a form of coercion) to be established.

The court then examined the issue of attributing the acts to the defendant. In a detailed statement of reasons, it considered that the defendant's participation in the acts wasn't as simple or as significant as stated and concluded by the investigators in their summary report, nor in relation to that which the public prosecutor's office tried to maintain with regard to the period of the offence and the content of the acts of participation. The court also noted that the same material evidence of participation by the defendant in no way prevented her from being considered as a human trafficking victim of the same network in France. Moreover, in the French investigation, unlike the Belgian one, the majority of the defendants and the girls who were victims were interviewed in detail. Most of them didn't implicate the defendant as co-perpetrator of the acts but, on the contrary, described her as a girl who had suffered the same fate as the other girls.

Subsequently, while acts of participation in the offence were committed by the defendant, the court considered that she was herself, and above all, a victim. The perpetrators also took advantage of her vulnerable situation. She acted under coercion. In this respect, the court chiefly based itself on the investigators' findings that showed she was a prostitute just like the other girls; her interview during the investigation; the phone calls that indicated a dependence on her loverboy, and her surveillance by the latter.

As regards the coercion, the court therefore considered that she didn't have enough control over the other victims to encourage their debauchery and prostitution. She was in a state of submission and dependence and was also 'put on the market' for prostitution by her boyfriend. The court therefore considered that the charge of trafficking wasn't established in her case. It also noted that the non-punishment clause should be taken into account in such a case.

More specifically, in the absence of a specific provision³⁷⁷,

377 Since then, a new § has been inserted in Article 433 quinquies of the Criminal Code, concerning the non-punishment of trafficking victims. On this subject, see Part 3, Chapter 1, point 2.1.2.

the court considered that Article 71 of the Criminal Code should be applied: a person who is coerced by an overpowering force at the time of the events, can't be accused of the offence. It therefore considered that the defendant's actions were the result of coercion by her boyfriend and the other co-perpetrators.

For her own security, and her physical and psychological integrity (and that of her family members), she therefore had no other option than to participate in the offence through certain acts against other girls. The court therefore acquitted her of the charge of human trafficking and the other charges in terms of prostitution.

2.3. | Labour exploitation

2.3.1. | Construction

Several cases in this sector resulted in court rulings, some of them on appeal.

In a case in which **Dendermonde Criminal Court ruled on 25 June 2018**³⁷⁸, four people, two managers and two legal persons were prosecuted for human trafficking for the purpose of labour exploitation with aggravating circumstances, the illegal employment of foreign workers and non-payment of wages. The case came to light after a staff inspection by the Social Legislation Inspectorate, in collaboration with the National Social Security Office, the Social Inspectorate and the 'Toezicht en Handhaving' (supervision and control) department³⁷⁹ of the Flemish Community.

The company employed Europeans (Portuguese and Spanish) and non-Europeans (Brazilian, Bissau-Guinean), sometimes as paid employees, sometimes as posted workers.

Site visits were organised at different times by the Social Inspectorate, the Housing Inspectorate and the police. The interviews revealed that the people concerned had been enticed by advertisements in Portuguese newspapers. They were promised an hourly wage of EUR 8/hour. Accommodation, transport and food were free. Once in Belgium, they had to work up to 50 hours a week in construction work, Saturdays included.

378 East Flanders Crim. Court, Dendermonde division, 25 June 2018, ch. (opposition)

379 The 'toezicht en handhaving' section was integrated into the Flemish social inspectorate in 2017

They were housed in conditions contrary to human dignity, sharing a house between 10 and 18 people. They had signed a backdated employment contract, received a small cash advance and were then no longer paid. They had been deceived, causing unrest and arguments. No-one stayed to work there for more than three months and, in the end, none of the workers received their money. The first defendant was often physically violent and threatened to withhold the wages. The defendants deliberately chose labour from Portugal because of the poor economic situation there. Owing to their weak financial position, the workers were dependant on their employer.

In some cases, a Limosa declaration had been made, but no declaration regarding posted workers (form A1) or a Dimona. The company wasn't active in Portugal. The Social Inspectorate asked them several times to send the A1 forms. The requested documents were never sent.

The first defendant was given a two-year prison sentence and a fine of EUR 56,000 (EUR 1,000 x victims x surcharges) and the second defendant a one-year prison sentence and a fine of EUR 8,000.

Bogus self-employed workers

In this case, Antwerp Court of Appeal considered the **judgment of the Tongeren Court of First Instance of 9 February 2017**, discussed in a previous annual report.³⁸⁰

Several defendants and the public prosecutor lodged an appeal.

At first instance, eight defendants, including two companies, had been tried i.a. for acts of human trafficking for the purpose of labour exploitation, committed between 2011 and 2015. They were also prosecuted for social law and money laundering offences.

Myria and five victims filed a civil suit.

With the help of the other defendants, the main defendant used his companies to hire people from Central and Eastern Europe in the construction sector. The defendants made the victims believe that they had the status of salaried employees whereas, in fact, they were working as bogus self-employed workers.

Some victims worked as active partners in the companies. Furthermore, they worked in and under bad conditions. Unaware they had to pay social contributions, the workers accumulated an enormous social debt.

The case came to light following a collective protest by the workers. Even the embassy intervened and advised them to file a complaint with the police. An employee from the social insurance agency also began to suspect a situation involving bogus self-employed workers and informed the NSSO.

The court considered the majority of acts established. It found the five defendants guilty of human trafficking, with aggravating circumstances.

In its **judgment of 13 September 2018, Antwerp Court of Appeal**³⁸¹ confirmed the decision overall. However, some of the defendants were acquitted for certain specific acts. One of the defendants, i.e. the main defendant's son-in-law, was acquitted for the acts of human trafficking. For the other defendants, the court upheld the conviction for the acts of human trafficking with aggravating circumstances, except for that of the abuse of the workers' vulnerable situation. The court considered that it wasn't established given that the workers could travel freely or look for another employer. The fact that the victims experienced financial difficulties wasn't sufficient to conclude that they were in a vulnerable situation.

Several defendants were sentenced to prison at first instance, with sentences ranging from 18 months to three years, and fines between EUR 81,000 and EUR 336,000. A sum of EUR 56,400 was confiscated. The court upheld the sentences of the various defendants, but granted some of them a stay of execution.

The damages were confirmed: Myria received symbolic compensation of EUR 1. The victims received EUR 500 for non-material damage and a provisional sum of EUR 1 for material damage.

³⁸⁰ Limbourg Crim. Court, Tongeren division, 9 February 2017, 9th ch. See MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 113-114.

³⁸¹ Antwerp Court of Appeal, 13 September 2018, ch. C6.

Abuse of the posting procedure

Ghent Court of Appeal re-examined a case of human trafficking for the purpose of labour exploitation and abuse of the posting procedure. **Dendermonde Court of First Instance** ruled on this subject in a **judgment of 20 October 2017** in the previous annual report.³⁸² The defendants had set up various construction companies in Bulgaria. The companies were barely active, merely hiring staff whom they then posted in Belgium. The three defendants, including a company, were prosecuted for various social criminal law charges, as well as for human trafficking for the purpose of employing persons to work in conditions contrary to human dignity. Two Bulgarian victims filed a civil suit.

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, and had been explicitly recruited to come and work in Belgium. There was rarely a contract, they worked between eight and ten hours a day (six days a week) for a promised salary of EUR 200 to EUR 250 a month.

The court sentenced the two defendants to one year in prison and a 7 x EUR 6,000 fine. Two victims filed a civil suit. The each obtained compensation.

One of the defendants and the public prosecutor lodged an appeal.

In its **judgment of 7 February 2019, Ghent Court of Appeal** partly confirmed the judgment.³⁸³ Concerning the charge of human trafficking, the court considered that the investigation hadn't been conducted in sufficient detail. Proof was lacking and was insufficient from a legal point of view regarding certain charges, including that of human trafficking. In view of the scant evidence in the criminal file, there was reasonable doubt regarding the acts and the guilt of the accused. Furthermore, the reasonable time limit had been exceeded. The investigation was halted for approximately two years, although this wasn't attributable to the defendant. He was therefore acquitted of certain charges, including that of human trafficking, but convicted of offences under the Social Criminal Code.

The court reduced the sentence to a fine of EUR 3,000. The claims of the civil parties were declared unfounded.

Pallet factory

Another case discussed in a previous report³⁸⁴ concerned a pallet factory.³⁸⁵ Antwerp Court of Appeal examined the **judgment of Tongeren Criminal Court of 18 February 2017**.³⁸⁶ Several defendants were convicted for human trafficking for the purpose of labour exploitation as well as for slum landlord activities. The main defendant was the manager of a pallet factory. The company was also prosecuted as a legal person. The acts date back to 2009.

The case came to light after the natural death of a Polish worker at the pallet factory. Polish and Bulgarian workers had filed a complaint with the police. A criminal investigation was opened. The prosecuted firm repaired pallets for other companies. For this purpose, it used subcontractors who hired Polish, Bulgarian and Romanian posted workers. These subcontractors were Polish and Bulgarian companies. It emerged that one of these companies was a PO box in Bulgaria, with no substantial activities, created solely to circumvent Belgian social security and labour law obligations. The workers were enticed to Belgium with the promise of an attractive salary whereas, in reality, they only earned EUR 400 to EUR 600 a month, according to the number of pallets repaired, the equivalent of EUR 3 an hour. The rent was also deducted from their salary. Officially, according to their employment contracts, they were only earning the Bulgarian minimum salary of EUR 135. The rest had been paid unofficially to also circumvent Bulgarian social security. The workers had to work very long days, in dreadful conditions and without any protective clothing. They were housed in very bad conditions.

The defendants were given prison sentences ranging from 18 months to four years, as well as heavy fines. A large sum of money was also confiscated. The victims obtained compensation for non-material and material damage.

Payoke and Myria each received EUR 1 as compensation. Several defendants and the public prosecutor lodged an appeal.

³⁸² East Flanders Crim. Court, Dendermonde division, 20 October 2017. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 140-141.

³⁸³ Ghent Court of Appeal, 7 February 2019, 3rd ch.

³⁸⁴ See Myria 2017 *Annual Report Trafficking and smuggling of human beings, Online*, p. 115.

³⁸⁵ This case is presented in detail as an example at the end of this report's focus (see Part 2).

³⁸⁶ Antwerp Crim. Court, Turnhout division, 18 January 2017, ch. TC1.

In its **judgment of 24 January 2019, Antwerp Court of Appeal acquitted one of** the defendants.³⁸⁷ He was a worker for the company and received instructions from one of the other defendants. According to the court, it couldn't be concluded from his duties that he had assisted the acts of human trafficking in any way. He had no decision-making power and was in a position of subordination. He was therefore acquitted as a co-perpetrator of the acts of human trafficking. Another defendant was acquitted solely for the slum landlord acts.

The court also considered that the reasonable time limit had been exceeded. The time between the defendants' knowledge of the threat of criminal prosecution in February 2010 and the court's decision in January 2018 wasn't reasonable in the court's view.

The court reduced the defendants' sentences to suspended sentences and partially suspended fines.

The damages were confirmed in favour of the civil parties, Payoke and Myria, except vis-à-vis the acquitted defendant.

2.3.2. | Hotel & catering industry

Snack bars

Several cases concern snack bars.

The Brussels Court of Appeal re-tried a trafficking case in which a couple running a Moroccan snack bar was prosecuted for employing four illegally staying workers, various social criminal law offences, as well as the human trafficking of two of the workers. The case was opened following a complaint from one of the workers to the Social Inspectorate. They contacted a specialised reception centre for victims of trafficking to complain of their work conditions.

In a judgment of 4 September 2015 discussed in a previous report, Brussels Criminal Court had convicted the defendants for human trafficking.³⁸⁸

It was confirmed that the two workers weren't paid or were paid very little. According to the court, the simple fact of not paying a worker their due and considering that they have been 'paid' by offering them free accommodation and food, was sufficient to prove that the work conditions were contrary to human dignity. In addition, the defendants were well aware they were staying here illegally, a precarious situation that made them dependant on the defendants' goodwill in order to avoid expulsion. It is of little importance, in this respect, that the workers continued to work for them for several years.

In its **judgment of 16 October 2018, Brussels Court of Appeal** took a completely different stance and reversed the court's decision on this point.³⁸⁹ It considered that there was nothing in the case to establish that the two workers were in any way deprived of their freedom to come and go. Furthermore, it considered that the conditions of employment didn't, as such, appear to be indicative of conditions contrary to human dignity. Although the working hours were indeed long, they didn't appear to be totally out of step with the normal working hours in the catering sector. Similarly, while the conditions of the accommodation on the first floor of the establishment appeared relatively basic, this accommodation didn't seem to be bereft of the strict vital minimum that would have made it contrary to human dignity. Finally, the court considered that although the defendants didn't pay the workers adequately for the services rendered, this alone wasn't sufficient to establish that they were employed in conditions contrary to human dignity.

As a result, it acquitted the defendants of the charge of human trafficking. On the other hand, it maintained the social criminal law charges.

Considering that the reasonable time limit had been exceeded, the court sentenced both defendants and gave an order suspending the sentence. It confirmed the amounts awarded to the civil party at first instance (EUR 500 for non-material damage and EUR 25,000 ex aequo et bono in arrears) while declaring itself incompetent to hear the application relating to the charge of trafficking, in view of the acquittal of the defendants on these counts.

³⁸⁷ Antwerp Court of Appeal, 24 January 2019, ch. 6C.

³⁸⁸ Brussels French-speaking Crim. Court, 4 September 2015, 69th ch. MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 172-174.

³⁸⁹ Brussels Court of Appeal, 16 October 2018, 11th ch.

In another case, also in Brussels, a Moroccan defendant was prosecuted as a natural person and manager of a snack bar for social criminal law offences and human trafficking against a compatriot. The snack bar was checked several times by the police (initial check, following the denunciation of a worker who claimed to have worked there without receiving her pay), and by inspection services (Social and Social Legislation Inspectorate). During the last check, in March 2015 by the Social Legislation Inspectorate, accompanied by the police, a man tried to flee. This is the worker who filed a civil suit. He stated that he had been living in Belgium since 2006, had been present at a check in 2013, during which he had fled as he had no papers, and was staying illegally in Belgium. He said he had been working at the establishment for four years, eight to nine hours a day (from 17:00-18:00 to 02:00), seven days a week without any days off, for a daily salary of EUR 30 a day paid in cash. He cooked and served meals. The defendant had never taken any steps in his favour to obtain a work permit.

In a **judgment of 11 December 2018, Brussels Criminal Court** considered the work conditions to be contrary to human dignity, with the defendant also taking advantage of the worker's precarious situation. The latter hadn't dared go to the police through fear of repatriation.³⁹⁰

The court sentenced the defendant to 15 months in prison (fully suspended) and a fine of EUR 12,000. It awarded substantial compensation to the civil party, namely EUR 10,000 for material damage and EUR 5,000 for non-material damage.

The **Criminal Court of Liège** also tried a case of trafficking on **5 November 2018**.³⁹¹ Five defendants, including a woman and a company were prosecuted for human trafficking for the purpose of labour exploitation of four Bangladeshi workers. They were mainly accused of exploiting them in a snack bar. The company was set up by the main defendant and his brother. The main defendant was appointed as manager before his girlfriend, the female defendant, became the sole manager. The purpose of this company was to run two snack bars, one in Namur and the other in Liège.

The first three defendants, as well as the company, were also prosecuted for the human smuggling of three of these workers and another Bangladeshi worker.

Furthermore, the defendants were prosecuted for various other charges: forgery, social criminal law offences concerning the Bangladeshi workers and other nationals, and benefit fraud.

Two workers, who were victims of trafficking and smuggling, filed a civil suit.

The case was opened following a social inspection at the snack bar in Liège in October 2013. On this occasion, two people from Bangladesh were found working there. They couldn't present either an employment contract or a valid residence permit for Belgium. They said they lived in a studio apartment located in the same street. A third person fled.

The next day, the investigators visited the establishment again in order to fetch the key to the studio apartment inhabited by the two Bangladeshi workers, and to seize their personal belongings. They found two other Bangladeshis there, including the one who had fled the day before, with no valid employment contract or Belgian residence permit.

In November 2013, a check was carried out at the snack bar in Namur. Three people were found to be working there.

Inquiries were made: interviews, searches and examination of the documents seized. Some were carried out in France with the help of the French authorities.

The court accepted the social criminal law and forgery charges. It also accepted the charge of human trafficking but only as regards the main defendant, his partner and the company. The court reiterated the essential elements of this offence: an action and a purpose, in particular for the purpose of work or services in conditions contrary to human dignity. It also stressed that these unfit work conditions were subject to a subjective assessment of the situation based on a body of evidence such as pay, working hours, failure to declare the work, and work conditions. It considered the charge founded in the case of two of the four Bangladeshis, those who filed a civil suit. They were indeed employed by the company in breach of the social criminal law rules. Their interviews were consistent regarding the essential points of their work conditions, making them credible.

390 Brussels French-speaking Crim. Court, 11 December 2018, 89th ch. (appeal set for February 2022).

391 Liège Crim. Court, Liège division, 5 November 2018, 18th ch. (final).

Hence, they were in an irregular situation when they were hired. In return, they were promised that their papers would be sorted out so that their situation could be regularised. Instead, they were given fake residence permits, with the recommendation to use them in the event of an inspection. In addition, the defendants presented one of these two workers as posted by a French company previously managed by the female defendant, but this wasn't true.

Their daily working hours were from 10:00 in the morning to 22:00 or 23:00 in the evening (i.e. 12 to 13 hours a day), and they had to clean the snack bar after it had closed. They weren't paid the wages they were supposed to receive and they were given no day off. They could only eat one of the cheapest sandwiches available at the snack bar during the day, and drink tap water. For the rest, they had to justify every need to possibly receive money from one or other of the defendants. They were housed in very basic conditions. Their accommodation was provided by the employer, right next to the place of work, allowing constant surveillance. The main defendant also asked them not to discuss their personal situation among themselves.

The court noted that some of the assertions were supported by other objective elements in the criminal case file, including statements by other workers, defendants and the findings of the investigators. The court also accepted the aggravating circumstances of abuse of the illegal or precarious administrative situation, the use of fraudulent means and a form of coercion and authority. However, it didn't accept the aggravating circumstance of usual activity.

Furthermore, the court acquitted these defendants of the charge of human trafficking regarding the two other workers. They had indeed been employed to work for the company without being declared. However, they weren't interviewed and therefore weren't able to provide any elements regarding either the terms of employment or their actual working conditions. The court subsequently considered that there was a doubt as to whether they worked in conditions contrary to human dignity.

In addition, the female defendant invoked diminished responsibility owing to her mental state on the basis of Article 71 of the Criminal Code. The court ordered a medical assessment whose findings excluded this hypothesis. The female defendant also invoked the state of dependence or submission regarding the main defendant, owing to the special relationship between them. In her opinion, it was equivalent to coercion or a force that she couldn't resist, again based on Article 71 from Criminal Code.

The court didn't follow her on this point either. It considered that the defendant's free will wasn't suppressed, that she was aware that she was guilty of criminal offences and that she had the chance to avoid committing such offences.

Concerning the company, the court explained, in a detailed statement of reasons, why it considered it criminally responsible, just like the defendants who worked within the company.

Regarding the charge of human smuggling, the court considered that the conduct adopted must be analysed from the point of view of human trafficking but that it didn't sufficiently meet the essential elements of human smuggling, particularly with regard to its moral element. It therefore acquitted the defendants of this charge. The workers were of Bangladeshi origin and staying illegally. They were recruited in Paris in order to be brought to Belgium by one of the defendants. Although they were indeed employed in breach of social legislation, the court considered that the willingness to derive a financial advantage wasn't sufficiently demonstrated. The perpetrator must have obtained or sought to obtain a profit as a result of allowing illegal entry or residence. In addition, the act of human smuggling is usually linked to a demand for illegal immigration, from which the smugglers profit. Hence, the court considered that the defendants' intention was to recruit cheap and easily exploitable labour. However, it wasn't sufficiently established that the smuggling was set up with a view to obtaining a financial advantage, demonstrating that the smuggler intended to enrich himself at the expense of the victim or their family, since the workers didn't show a desire to immigrate illegally to Belgium.

Taking into account that the reasonable time limit had been exceeded, the court sentenced the main defendant and his girlfriend to 24-month suspended prison sentences and a fine of EUR 12,000. It also ordered the confiscation of assets equivalent to the sum of EUR 10,535 from the main defendant. It handed the company a suspended fine of EUR 36,000.

The court awarded one of the workers the provisional sum of EUR 22,500, i.e. EUR 2,500 for non-material damage and EUR 20,000 for material damage, and the other worker the provisional sum of EUR 7,500, i.e. EUR 2,500 for non-material damage and EUR 5,000 for material damage.

Finally, **Dendermonde Criminal Court** rendered a decision in absentia on **16 November 2018** concerning a pita bar.³⁹² In this case, the manager was prosecuted, as an servant or agent of the company, for human trafficking for the purpose of labour exploitation and social criminal law offences. The company, as an employer, was cited as being civilly liable.

The acts came to light when a victim lodged a complaint with FPS Social Security about wage arrears. They declared that they were staying illegally and had worked for almost a year at a pita bar. They allegedly worked long days, seven days a week, without a single day off. They lived in a room above the establishment. They were promised a salary of EUR 50 a day but only received EUR 25 a week. The employer had promised to pay them the rest in one lump sum. However, the promised payment was never made.

A visit to the establishment was organised with the Social Inspectorate, the Housing Inspectorate, the food inspection service and the police. This resulted in a number of findings. They found another person working there. The accommodation was declared unfit and uninhabitable. The other person was interviewed by the police, and they made similar statements regarding their job at the pita bar.

The court found the defendant guilty of human trafficking and other offences. It found that the defendant systematically exploited illegally staying persons by employing them for a pittance, which was never paid, and by housing them in substandard accommodation.

The two defendants were convicted in absentia. The first one was sentenced to one year in prison and a fine of EUR 16,000 and forfeiture of their rights for 10 years.

The court considered that, according to the Social Criminal Code, the company and the employer were civilly liable for the criminal fines handed down to the servant or agent. In the event of unity of purpose between breaches of the Social Criminal Code and general criminal law, the general law sentence is the heaviest. Consequently, only general criminal law applies here. Therefore, civil liability stemming from the Social Criminal Code

is no longer applicable to the legal person. Under general law, the company can only be held civilly liable for costs and not for fines.

In the end, the two victims received the status of victim of human trafficking and were supported by Payoke. They filed a civil suit and received compensation of EUR 67,625 and EUR 42,125 respectively.

Chinese restaurant

In a **judgment of 25 June 2018, Kortrijk Criminal Court** ruled in a case of human trafficking and human smuggling concerning a Chinese restaurant.³⁹³ The case began when PAG-ASA filed a complaint with the police end 2010, on behalf of a victim, against the owners of a restaurant in West Flanders. The victim stated that they worked in the restaurant for EUR 800 a month, from 06:30 to 01:00 or 02:00. They had paid more than EUR 10,000 to come to Belgium. They were able to give detailed information about their experiences in the restaurant.

This allowed an investigation to be launched. Dimona declarations were requested, phone investigations conducted, and checks carried out by the Social Inspectorate. Searches took place and an investigation into financial transactions was organised. During each inspection, workers without a valid residence permit and/or work permit were found in the restaurant. There was no Dimona declaration either, among other things.

The defendants were prosecuted for human trafficking for the purpose of labour exploitation, human smuggling, forgery and various breaches of the Social Criminal Code.

The court found that the defendants were guilty of human trafficking but that violence, coercion and deprivation of liberty weren't a constituent element of the basic offence of human trafficking, only an aggravating circumstance. With regard to the concept of recruitment provided for in Article 433 quinquies of the Criminal Code, the court considered that, within the context of this provision, the term 'recruit' doesn't imply an active approach on the part of the person hiring a worker. The mere finding that the defendants had hired the victims was sufficient to conclude that recruitment was involved.

³⁹² East Flanders Crim. Court, Dendermonde division, 16 November 2018, ch. D13V. (in absentia)

³⁹³ West Flanders Crim. Court, Kortrijk division, 25 June 2018, 11th ch. (appeal).

The court also clarified what was meant by the term 'conditions contrary to human dignity'.

"They relate to the essence of human nature. The fact of belonging to humanity must be specified and is presented as the symbolic collection of all the elements common to mankind. To violate human dignity thus means to 'diminish' the human quality of a person or group of persons and amounts to 'destroying' that which characterises human nature, namely physical and mental capacity. Physical capacity means being able to move around freely, to meet one's needs, take care of oneself and others; in other words, the physical capacity to meet one's essential needs freely and equally. Mental capacity means the equal social and intellectual capacity that can be mobilised within a society.

Certain work conditions, which may result in the workers concerned no longer being able to meet their basic needs freely and equally, may be contrary to human dignity. Various elements may be taken into account in determining work conditions contrary to human dignity. As far as wages are concerned, a wage that is clearly not commensurate with the extensive number of hours worked, possibly without a day of rest, or the (compulsory) provision of unpaid services can be defined as work conditions contrary to human dignity. Where a wage is lower than the average monthly minimum wage, as stipulated by a CLA, the trial judge may use it as an indication of labour exploitation. Work conditions that are contrary to human dignity can also be said to exist when one or more workers are working in a professional climate that clearly doesn't comply with the imposed standards of well-being at work.

The work conditions that foreign workers have to make do with in their country of origin should - of course - not be used as the benchmark to consider a job as contrary to human dignity or not. It is the work conditions in force in Belgium that serve as the basis, and with which the situation of foreign workers must be compared."

The court considered that it was clearly a question of labour exploitation. Victims made credible, detailed and consistent statements. The Chinese victims were significantly underpaid, entirely at the mercy of the defendant, and worked long hours for practically seven days a week. They slept in dreadful conditions. They were completely dependent on the defendants owing to their precarious residence situation and the fact that they had been forced to hand over their residence papers. In this context, they had no choice but to submit to the unilaterally imposed living and work conditions.

Concerning human smuggling, the court found that even though the defendants weren't responsible for the victims' journey from China, the facilitation of illegal residence in Belgium by harbouring and employing them was also punishable.

The court found that the reasonable time limit had been exceeded and took this into account when determining the sentence. The investigation had been interrupted or had only advanced slowly at various times. The acts date back to 2010-2013.

The defendants were given a 12-month prison sentence and a fine of EUR 6,000, both suspended.

One of the victims filed a civil suit and obtained EUR 5,000 for non-material damage and EUR 5,900 for material damage.

2.3.3. | Night shops

In a case tried in Liège, a Belgian defendant was prosecuted for exploiting a Bangladeshi worker in his night shop.

Following a violent robbery in the defendant's shop, the investigators noticed the worker who was employed as a sales assistant. The latter had no identity papers and was living in the back of the shop. The police noted that the worker slept on a mattress on the floor, had no heating and no bathroom facilities. There was no kitchen either and he prepared his meals on a small electric hot plate and a microwave placed on cardboard boxes. The worker later stated that he was responsible for looking after the night shop and worked there alone, six days a week, 15 hours a day, until 02:00. He was paid EUR 600 - 700 a month.

In a judgment of **10 January 2019, Liège Court of Appeal**³⁹⁴ confirmed the judgment rendered at first instance by the Criminal Court of Liège on 4 September 2017.³⁹⁵ The court accepted the various social criminal law charges and the charge of human trafficking.

With regard to the human trafficking, the court noted that the first judge had pointed out that the work was performed in conditions contrary to human dignity. The victim was in a vulnerable situation as they weren't authorised to stay in the country. The defendant knew the worker was staying illegally because he had taken steps to 'employ' him as a self-employed worker, which of course was impossible. The victim worked a minimum of 11 hours a day without being declared and with no social cover, and wages well below official rates. The court found that his living conditions were contrary to human dignity: he lived at his workplace in precarious conditions that flouted the standards for washing and eating.

The court confirmed the sentences pronounced at first instance: two years in prison with a three-year suspended sentence and a EUR 1,000 fine. However, it extended the suspension to the fine. It confirmed the award of EUR 500 to the civil party for non-material damage and set the final amount for material damage at EUR 9,285.48.

Ghent Court of Appeal also had to retry a case concerning a night shop.

This was a case in which **Ypres Criminal Court ruled on 8 January 2018**³⁹⁶, where two cases were linked. Six people and three companies were prosecuted at first instance. The main defendants and the three companies filed an appeal. The defendants had set up various companies, i.e. night shops, where the victims were employed as bogus self-employed workers. The defendants were convicted of human trafficking for the purpose of labour exploitation, but also of other charges such as human smuggling, money laundering, forgery, misappropriation of assets, attempted sham marriage, attempted fraudulent legal cohabitation, various social criminal law offences, etc. Six victims filed a civil suit, including the administrator of a company and Myria.

Furthermore, the first defendant was a repeat offender as regards human trafficking, having abused the victim's particularly vulnerable position, and entering into 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. During the financial investigation, suspicious cash transactions were identified. As the investigation progressed, more and more victims made statements.

The court found that the status of bogus self-employed worker didn't, as such, amount to labour exploitation in the sense of human trafficking. Conditions contrary to human dignity are required. The court considered that the bogus self-employed workers were indeed employed in conditions contrary to human dignity, especially owing to the fact that they acquired no right to social security, that they didn't benefit from any cover in case of occupational accidents, and that they were significantly underpaid. In addition, they were threatened. The bogus self-employed workers were in a precarious situation in terms of social law and/or residence rights, and they were completely at the mercy of the defendants' whims. Furthermore, the victims were housed in dreadful conditions and often worked very long hours.

³⁹⁴ Liège Court of Appeal, 10 January 2019, 6th ch.

³⁹⁵ Liège Crim. Court, Liège division, 4 September 2017, unpublished.

³⁹⁶ West Flanders Crim. Court, Ypres division, 8 January 2018, 19th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 140-141.

The defendants were given prison sentences ranging from one to four years, and fines of EUR 24,000 to EUR 76,000. The companies were fined between EUR 600 and EUR 612,000. Several real estate assets and cash were confiscated. An order was also issued to close down the private limited companies.

Myria was awarded compensation of EUR 2,500 for material and non-material damage. The victims received amounts between EUR 1 and EUR 25,000.

In its **judgment of 28 November 2018, Ghent Court of Appeal**³⁹⁷ upheld the court's argument on labour exploitation. According to the court, the combination of imposing the status of bogus self-employed worker and withdrawing it at will, without providing basic content in the interim, or offering sufficient social protection, is to be regarded as a form of labour exploitation affecting human dignity.

In addition, in relation to all those employed, there were allegedly substantial violations of certain standards and the essential commitments of the law on working conditions, such as working hours, workers' well-being, wage protection, etc.

The court also upheld the conviction for human smuggling. According to the court, the defendant doesn't have to have actively recruited and/or deprived the victims of their freedom. They simply have to have employed the persons under the terms of labour exploitation in order to obtain a financial advantage from them. Moreover, by putting these people to work, they contributed to their illegal stay and its extension.

The court adjusted the sentences to a limited degree. In particular, it reduced the main defendant's prison sentence to 40 months. The damages awarded to the three civil parties were confirmed practically in full.

2.3.4. | Carwash

Dendermonde Criminal Court tried a case of trafficking concerning a car wash in the region of Ninove on **1 December 2017**.³⁹⁸

This case was opened following a check by the Social Inspectorate, assisted by the federal judicial police and the local police's intervention service. During this check in March 2016, illegally employed persons without a valid Belgian residence permit were found, as well as employment contracts and documents. Various sleeping places were also discovered on site at the car wash, where the workers were staying.

A few months later, a search was carried out on the orders of the investigating judge. Several people present during the search were questioned. A few people stated that they only worked a few hours a day for payment, accommodation and a small extra amount. They washed cars and did a few extras. Even though the employer was in order regarding a number of documents, the workers' statements nonetheless revealed shortcomings. In view of the car wash's advertised opening hours (between 08:00 and 19:00), it was impossible that only a few people worked a limited number of hours each day. Other workers stated that they did indeed work long days and that the working conditions were bad. They had no breaks, no days off and had to be available seven days a week. Furthermore, the employer had promised to take care of their residence papers. Owing to their precarious situation, they were heavily dependent on their employer's goodwill and weren't at all aware of their rights.

The Housing Inspectorate had also declared several living spaces uninhabitable.

The manager and the company were prosecuted for human trafficking and various offences under the Social Criminal Code.

The court held that the acts of human trafficking for the purpose of labour exploitation were established. The workers were made to work in conditions contrary to human dignity: the salary wasn't proportional to the high number of working hours, there were no days of rest, the services provided weren't paid and the work conditions didn't comply with the welfare at work regulations.

The manager was finally sentenced to one year in prison and a fine of EUR 24,000 (EUR 6,000 x four victims) and was deprived of his civil rights for 10 years. The company was sentenced to a fine of EUR 72,000 (EUR 18,000 x four victims) with a three-year suspension.

³⁹⁷ Ghent Court of Appeal, 28 November 2018, 3rd ch.

³⁹⁸ East Flanders Crim. Court, Dendermonde division, 1 December 2017, ch. 13V (final).

2.3.5. | Bakery

In a case in which **Ghent Criminal Court ruled on 27 June 2018**, a bakery and its two managers were prosecuted for human trafficking, illegal employment of workers, unintentional harm and injury, failure to assist a person in danger and various offences under the Social Criminal Code and breaches of the welfare regulations.³⁹⁹

The case in Ghent was brought to light when the emergency services received a call early one January morning in 2017, concerning two people lying unconscious in a supermarket car park. In the beginning, the emergency services didn't know what had happened. There was no-one around. It then transpired that the two men had been the victims of CO2 poisoning, which is highly dangerous. Their lives were in danger for several days. It emerged from the police investigation, interviews and an analysis of the camera footage that the two men had been working in a bakery close by.

During their night shift, they were exposed to CO2 that had leaked from the oven. Camera footage revealed that one of the managers had found the unconscious men in the bakery and moved them with the help of a customer who was there. They dumped the bodies in the car park and the customer called emergency services. They then fled. The manager failed to inform the emergency services what had happened to the two men. Hence, the two victims weren't immediately given the correct treatment.

During an interview with the two victims and the managers, it emerged that the two victims were illegally employed. They had no official Belgian residence permit and had been recruited through an illegal labour circuit.

Furthermore, it transpired from the investigation carried out by the fire brigade, an expert and the welfare at work inspectorate, among others, that the oven hadn't been properly installed. There wasn't sufficient ventilation, no written instructions or handbook for the oven, and no installation report. No risk analysis had been made, and neither had prevention measures been adopted.

Both managers were found entirely guilty, especially of human trafficking for the purpose of labour exploitation.

The court considered that the acts made it possible to establish that the victims had been employed in conditions contrary to human dignity. Originating from Morocco, the victims worked long nights, six days a week (48 and 54 hours respectively per week), and weren't sufficiently paid (EUR 6.1 and 7.5 respectively per hour). They slept on a mattress on the floor. The managers had got the oven installed unofficially by amateurs who weren't recognised installers and weren't approved. The occupational safety of the workers was the least of the managers' concerns. And after the CO2 poisoning, the victims were dumped in a car park without informing the emergency services.

Aggravating circumstances were also found to be established by the court, namely, abuse of the workers' vulnerable situation and the fact that their lives had been endangered owing to gross negligence. They had been recruited from an illegal foreign labour circuit, with the knowledge that because of their precarious administrative situation, they would be prepared to work for low wages. The first defendant was also found guilty of failure to assist a person in danger.

The defendants were handed partly suspended prison sentences of 30 months and nine months respectively, together with fines of EUR 20,800. They were also given a three-year ban on running a business.

The company was also held liable and sentenced to a partly suspended fine of EUR 96,000. An order was issued to close down the business.

The victims were supported by the non-profit association Payoke and received the status of victim of human trafficking.

One victim filed a civil suit. They received provisional compensation of EUR 10,000. A medical expert was appointed to assess the victim's exact physical injury.

2.3.6. | Butcher's shop

Liège Criminal Court tried a case of trafficking concerning a butcher's shop on **3 September 2018**.⁴⁰⁰ A defendant and his company were prosecuted for social criminal law charges regarding workers employed in their butcher's shop.

399 East Flanders Crim. Court, Ghent division, 27 June 2018, ch. G29W (final).

400 Liège Crim. Court, Liège division, 3 September 2018, 18th ch. (final).

They were also prosecuted for the human trafficking of one of the workers, a Moroccan national. Two of the defendant's brothers were also prosecuted for obstructing organised surveillance in accordance with the Social Criminal Code.

The case began after checks were carried out by the Social Inspectorate. During the last one, the worker was cutting up chicken in the workshop. He had fled twice during previous checks. He stated that he was here illegally and worked six days a week, from 08:00 to 21:00, for EUR 180 to 200 a week. He didn't receive proper care when he injured his finger, and was allegedly physically abused by the main defendant's brothers. The defendant contested these statements, but the court considered his explanations to be lacking in credibility.

However, the court found that on the basis of the criminal court record, in its current form, it wasn't possible to establish that the number of hours worked and the remuneration of the worker were contrary to human dignity. Indeed, the worker's statements weren't supported by any other objective element in the record or by any objective witness statements.

As a result, the court gave the defendants the benefit of the doubt. On the other hand, it accepted the social criminal law charges regarding the main defendant and the butcher's shop. It sentenced the former to a partly suspended fine of EUR 21,600, and the latter to a suspended sentence.

2.3.7. | Riding schools

In a case tried in Liège and discussed in a previous report⁴⁰¹, two people who ran a riding school (a man, the managing director, and a woman, the director) and their company, the owner of the riding school, were prosecuted for trafficking, smuggling and various social criminal law charges (some of which also concerned Belgian workers). They were accused of illegally employing and exploiting two Moroccan workers. The latter were required to take care of the horses and general maintenance of the riding school.

In a judgment of 21 November 2016, Liège Criminal Court accepted the social criminal law charges. On the other hand, it acquitted the defendants of the charges of trafficking and smuggling in human beings.⁴⁰²

In a **judgment of 14 March 2019, Liège Court of Appeal** confirmed the social criminal law charges, as well as the acquittals for the charges of trafficking and smuggling.⁴⁰³

With regard to human trafficking, the court considered that although it was established that the workers were recruited and harboured for the purpose of work, this activity wasn't performed in conditions contrary to human dignity. Hence, the court observed, among other things, that the promised wages weren't lower than the legal minimum, that the apartment provided was clean and heated, that the working hours weren't abnormal taking into account the days of rest and the nature of the caretaker services, that the clothing was suitable for the work and that no infringement of the legislation on well-being at work had been found. Furthermore, the workers were free to come and go as they pleased, and to communicate with their family or third parties.

As regards the charge of smuggling, the Court of Appeal also found that it wasn't clear if the defendants had acted with the aim of obtaining an economic advantage by avoiding the payment of social security contributions and by underpaying the workers for the services performed.

It confirmed the (suspended) fines rendered at first instance, as well as the civil sentences. However, it also ordered the confiscation of assets equivalent to the amount of EUR 15,394.07, to be borne by the company. The court awarded this amount to the civil parties as compensation for their loss corresponding to the unpaid wages, i.e. EUR 6,050.98 for one civil party and EUR 9,343.09 for the other. A preventive attachment order was also exercised during the investigation, and the funds transferred to the account of the Central Office of Seizure and Confiscation (COSC).⁴⁰⁴

401 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, pp. 120-121.

402 Liège Crim. Court, Liège division, 21 November 2016, 18th ch.

403 Liège Court of Appeal, 14 March 2019, 6th ch.

404 The Central Organ for Seizure and Confiscation (COSC) is an organ of the Public Prosecutor Office. Created by the Law of 26 March 2003, it has been operational since 1 September 2003. The COSC acts as a knowledge centre for the judicial authorities in criminal matters, within the framework of the seizure of assets. It provides assistance in the context of public action, related to confiscation, and assumes the role of facilitator for the execution of judgments and orders involving confiscation (source: www.om-mp.be/fr/politique-gestion/ocsc).

2.3.8. | Cleaning

A case tried in Brussels concerned an extensive case in the cleaning sector, relating to subcontracted work for a well-known fast-food restaurant. No less than 20 defendants were prosecuted at first instance. The managers of the cleaning firms, as well as the companies themselves, were the perpetrators and co-perpetrators of social criminal law offences (illegally employing foreign workers with and without a residence permit, no DIMONA declaration⁴⁰⁵). Some of them were also prosecuted for the human trafficking of workers. Six defendants, who were franchisees of this fast-food chain, were prosecuted as accomplices to the social criminal law offences and several of them of the offence of human trafficking as well. As regards the fast-food company, it was only prosecuted for complicity in human trafficking. Two workers filed a civil suit.

The Social Inspectorate had carried out inspections at night throughout the country for years, in relation to cleaning staff in restaurants belonging to the chain. This led to the discovery of social offences.

In a judgment of 25 May 2016, Brussels Criminal Court accepted the sole responsibility of the legitimate or effective managers of these cleaning companies⁴⁰⁶. Owing to the precariousness of their residency status, some workers were also exploited in conditions contrary to human dignity.

One of the managers, convicted of human trafficking, illegal employment of foreign workers without a residence permit and no Dimona declaration, and sentenced to an 18-month suspended prison sentence and a fine of EUR 82,500, appealed against his conviction. Since the defendant didn't appear on appeal, **Brussels Court of Appeal** confirmed in absentia, in a judgment of **4 March 2019**, the sentences pronounced against him at first instance.⁴⁰⁷

With regard to trafficking in human beings, it considered that the investigation proved the substandard work conditions of certain workers (excessive night-time working hours, very low wages in view of the hours worked, lack of social security cover owing to a failure to declare the workers to the NSSO, etc.). However, it handed the defendant additional sentences: a six-month suspended prison sentence and a EUR 77,000 fine owing to a previous conviction subsequent to the judgment of the present case but whose acts also concerned the exploitation of human beings.

The court also confirmed the civil sentences pronounced at first instance.

2.3.9. | Domestic work

Brussels Court of Appeal had to retry a case of trafficking in the domestic work sector, discussed in a previous report.⁴⁰⁸ It rendered its judgment on **2 May 2018**.⁴⁰⁹

A couple was prosecuted for human trafficking and the degrading treatment of a Portuguese woman, employed as a domestic worker. The couple was also prosecuted as a slum landlord concerning a building it owned in Brussels.

In a judgment of 2 April 2015, the Criminal Court of Walloon Brabant accepted the slum landlord charge⁴¹⁰: the defendants rented out the building's cellar and rooms. The ceilings in these spaces were too low and there were serious defects posing a risk to the persons' safety and/or health (damp, no bathroom facilities, no heating, rats, etc.). The court therefore considered that these were conditions contrary to human dignity and that the defendants had made an abnormal profit from renting the accommodation (EUR 200 and 550 for the cellar and EUR 250 to 350 for the rooms). The victims were all people in a precarious social situation (illegally staying, dependant on welfare, etc.).

⁴⁰⁵ Dimona (immediate declaration of employment) is an electronic message used by employers to notify the NSSO of employees joining and leaving its staff. It is compulsory for all employers in the public and private sectors.

⁴⁰⁶ Brussels French-speaking Crim. Court, 25 May 2016. See MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 178-179.

⁴⁰⁷ Brussels Court of Appeal, 4 March 2019, 11th ch.

⁴⁰⁸ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 181.

⁴⁰⁹ Brussels Court of Appeal, 2 May 2018, 11th ch.

⁴¹⁰ Walloon Brabant Crim. Court, 2 April 2015, 6th ch.

The court also accepted the charge of human trafficking. The victim, who had worked for the defendants for years, didn't receive any pay; she worked long hours (working in the evening after a day's work as an undeclared cleaner for private individuals, as well as at weekends and national holidays; no social security cover, work that was partly damaging to her health). The victim had to do the laundry, the ironing, clean the house where 10 dogs lived and clean out several birdcages. She had lung problems caused or aggravated by having to clean these birdcages.

The court relied on the victim's statements, various testimonies and an analysis of the victim's mobile phone, confirming the pressure she was under and the threats she received. The court considered the explanations provided by the defendants as neither credible nor true on a number of points.

While the Court of Appeal confirmed the conviction of the defendants for the slum landlord charge, it adopted a completely different reading of the case than the court of first instance regarding the human trafficking charge. It considered that the testimonies collected during the investigation were questionable not only because of the ties but also because of the state of relations between the witnesses and the defendants. It was therefore necessary to assess them with care and caution.

The court also considered that while it couldn't be excluded that the defendants took advantage of the plaintiff's kindness, subservience and a certain idleness, the plaintiff's allegations weren't credible or excessive regarding certain points.

It especially noted the number of hours worked every day at the defendants' after a 10-hour day in private homes (which wasn't credible), and the intensity of the work, which involved cleaning up after the 10 dogs (which would only have been intensive during a very limited period). At the same time, photographs testified to the plaintiff's genuine participation in family events.

As to whether the defendants were guilty of human trafficking, the court subsequently considered that there was a slight but reasonable doubt and acquitted them of this charge.

It also confirmed the acquittal at first instance concerning the charge of degrading treatment.

It therefore declared itself incompetent to rule on the claims of the civil parties, i.e. the worker and the centre that had supported her.

Another case was judged by the **Criminal Court of Walloon Brabant** on **2 October 2018**.⁴¹¹ A British defendant was prosecuted for social criminal law charges and for human trafficking with aggravating circumstances against a Congolese woman, who filed a civil suit. She had recruited the worker in Kinshasa to look after her seven-year-old son, suffering from a mental disability. She regularly visited Belgium before settling here permanently. When the defendant came to stay, the worker accompanied her under a tourist visa, requested on the basis of the care required for the young boy. She continued to look after the young boy after the defendant settled permanently in Belgium. The worker also had to do household chores (cleaning, cooking, washing up and laundry).

The court accepted the social criminal law offences and the charge of human trafficking. The victim had to work seven days a week, from 06:00 to 23:00 for a monthly salary of USD 200 (i.e. a daily wage of USD 6.6 a day). According to the Social Inspectorate's calculations, her wages only represented 11 % of the amount she had a right to based on a full-time job, i.e. gross earnings of EUR 1604.45. She had no social protection and lived in the laundry room, located in the cellar, with a sofa and no access to a bathroom.

She had to fetch water in a bucket from upstairs to wash herself. In addition, her passport was confiscated when she came to stay in Belgium. The court also pointed out that "the possible consent of the civil party - underpinned by a need for money and/or the hope of a better future in Europe - had no bearing whatsoever on the commission of the offence".

The court gave considerable weight to the victim's statements. It handed the defendant a five-year suspended sentence and sentenced them to pay the plaintiff EUR 1,500 for non-material damage and EUR 62,625 for material damage.

411 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal).

2.4. | Exploitation of begging

Brussels Criminal Court reviewed its judgment rendered in absentia on 29 June 2017, in a judgment on opposition of **12 April 2018**.⁴¹² A defendant had been convicted of human trafficking for the purpose of exploitation of begging.⁴¹³

The case began 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 appeared to be from Romania and no longer had her parents.

She also looked very unkempt and seemed to have a mental impairment. The defendant, who appeared to be her uncle, had brought her to Belgium from Romania. She had to beg and give him the money she collected. She later stated that she had also been raped several times by the latter. The defendant was prosecuted for various charges: human trafficking for the purpose of exploitation of begging; recruiting, encouraging, misleading or keeping a person in order to make them beg; exploiting the victim's begging, each time with aggravating circumstances.

The defendant was convicted in absentia and given a 40-month prison sentence, together with a fine of EUR 3,000. An order was also issued for his immediate arrest.

The defendant was extradited by Romania and lodged an opposition to the judgement. Ruling on opposition, the judge acquitted the defendant. According to the judge, it wasn't possible to determine from the court record whether the defendant had brought over the victim with the purpose of exploiting her in begging.

In the absence of other objective elements, guilt was only established on the basis of the victim's statements, which were very confused and contradictory on several points. Furthermore, there were two people with the same name in the case: the defendant and another person. During an interview, the victim spoke of the defendant. However, when shown photos, she seemed to recognise the other person.

Even though the court found the defendant's statements to be lacking in credibility, it was impossible to ascertain the truth about what had happened, based on the victim's statements.

⁴¹² Brussels Dutch-speaking Crim. Court, 12 April 2018, 60th ch.

⁴¹³ Brussels Dutch-speaking Crim. Court, 29 June 2017, 60th ch. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 153-154.

3. Human smuggling

Afghani smuggling network - joint investigation team (JIT)

On **25 March 2019**, **Ghent Criminal Court** tried an extensive human smuggling case involving an Afghani network.⁴¹⁴ The Belgian case concerned the Bulgarian middle management of this smuggling network.

In this case, 16 people were prosecuted for human smuggling within the framework of a criminal organisation with a large network active in several European countries. Myria filed a civil suit.

At the beginning of 2017, the Belgian police received information through international information exchanges, on a criminal organisation involved in wide-scale human smuggling. It had an extensive network in Europe and smuggled people of different nationalities into the United Kingdom.

Several transportations were intercepted in ports in the Netherlands, France and the United Kingdom but also in Croatia, Greece, Bulgaria, Hungary, Serbia and Austria. The organisation illegally transported people in vans and small lorries, containing hidden compartments. Sometimes, a support car accompanied the transportations. During a number of interceptions, it was possible to establish links with Belgium through documents that were found and the analysis of phone data, among other things. A criminal investigation was launched in Belgium on the basis of this information. When it became apparent that there was also regular contact with Bulgaria and the United Kingdom, a joint investigation team (JIT) was set up within the framework of a criminal investigation to enable European cooperation in terms of the police, the public prosecutor's office and the investigating judge. These investigations revealed that an organisation had been created, that it had mainly been facilitated by Afghans and that it was led by two specific people in the United Kingdom and Bulgaria. The network especially smuggled people from Afghanistan, Syria and Iraq to the United Kingdom. Belgium acted as the crossroads where people were loaded into vehicles containing hidden compartments. The migrants had to pay EUR 10,000 for the entire journey.

⁴¹⁴ East Flanders Crim. Court, Ghent division, 25 March 2019, 28th ch. (appeal set on 17 September 2019).

During the investigation in Belgium, the network cell that operated out of Lovech, in Bulgaria, was studied in detail. An extensive phone investigation was conducted, where phone numbers were recorded and surveillance was carried out. It emerged that the first defendant ran the cell in Lovech. He was responsible for the logistical aspects of transporting migrants: recruiting and dispatching drivers, buying and transforming vehicles and accompanying the transportations. He was sometimes assisted by the second defendant. Both of them were in direct contact with the supposed leaders of the organisation in the United Kingdom and Bulgaria. The other defendants were also involved in the activities in one way or another, either in Belgium or in Bulgaria. Some of them ran a garage in Belgium.

The victims were placed in hotels and safe houses. They were transported in extremely dangerous conditions in hidden compartments in the vehicles, often without the possibility of getting out of them without help.

Fifteen intercepted transportations and two attempted transportations in Belgium and abroad between July 2016 and October 2017, demonstrating an obvious link with Belgium, were accepted in the Belgian criminal investigation.

Following the concerns about the safety of one of the transportations, an action was organised, whereby several suspects were detained in Belgium and abroad. This also led to the extradition of certain defendants from Bulgaria and the United Kingdom to Belgium.

One of the defendants pleaded that the rights of the defence had been violated since the police reports and investigative acts that led to the opening of the criminal investigation weren't included in the criminal case file. The documents from the JIT file and, at the very least, the documents within the framework of the JIT agreement, should have been in the criminal case file. The court held that there was no question of the violation of the defence's rights because the police information was only entered and used as information to open the criminal investigation and wasn't used as evidence.

The two main defendants and a few other defendants were found guilty - of being the leader and co-perpetrators respectively - of a criminal human smuggling organisation with aggravating circumstances: presence of minors, abuse of the victims' precarious situation, usual activity, endangering the victims' lives by smuggling them in dangerous conditions in hidden compartments in the vehicles, thus running the risk of a lack of oxygen. The court took into account the very dangerous and inhumane conditions in which the victims were smuggled, often in ill-ventilated and confined spaces under the floor or even under the bonnet. There was absolutely no regard for the victims' health. The goal was to place as many people as possible in cramped spaces to generate the maximum amount of profit. Seven defendants were given prison sentences ranging between four, five and seven years, and fines between EUR 24,000 and EUR 760,000. Two others were handed eight and 30-month prison sentences and fines of EUR 40,000 and EUR 96,000 (EUR 1,000 x victim x surcharges).

Other defendants were acquitted owing to insufficient evidence.

The federal public prosecutor's office had requested the special confiscation of large sums. In the end, the court only pronounced a confiscation against the main defendant of EUR 71,250 (a minimum of EUR 750 of financial advantage per migrant). For the other defendants, a concrete financial advantage couldn't be proven and the confiscation was therefore rejected.

Despite the opposition of the defendants, who claimed that a token sum of EUR 1 in compensation could be awarded, Myria received a lump-sum of EUR 2,500 in compensation.

Syrian smuggling network

In a **judgment of 17 December 2018, Ghent Court of Appeal**⁴¹⁵ examined the judgment of Dendermonde Criminal Court of 3 November 2017⁴¹⁶ rendered in a case of human smuggling involving 25 defendants, which was discussed in the previous report.⁴¹⁷ The defendants, of Syrian and Egyptian nationality, were smuggling victims from Syria, Eritrea, Sudan, Ethiopia and Afghanistan to the United Kingdom. They were mostly active in the parking areas along the E40. Myria filed a civil suit in this case.

This was a very active network. In total, the human smuggling activities took place on 154 different nights, involving a total of 1,994 acts of human smuggling. The investigation was conducted by analysing mobile traffic collected from base stations, surveillance and phone taps. It emerged that the smugglers threatened the victims and their family with violence if the victims failed to pay. Violence was indeed used. Young children were also smuggled. 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 GBP 3,000, depending on nationality and the family composition. The smugglers promised that every client would get to England. The operations centre was apparently set up in the Calais 'jungle'.

Some defendants denied any involvement and said they were victims themselves, while others admitted working as a smuggler to earn large sums of money. Several of them had evolved from customer to smuggler.

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 place a maximum number of migrants in transit on board a lorry in order to earn money. The court held 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. Myria received EUR 5,000 in compensation.

Fourteen of the convicted persons filed an appeal.

One of the defendants was acquitted. He was the driver who regularly drove the other defendants to the parking areas. The court found that it wasn't established that this person was aware of the human smuggling activities of the other defendants.

For the other defendants, the court followed the first judge but partly reduced the prison sentences to between three and eight years.

Albanian network

In a **judgment rendered on 14 December 2018, Bruges Criminal Court** focused on the acts of human smuggling committed by an Albanian group active along the E40 highway in the direction of France.⁴¹⁸ The case was opened when the police received information about the probable smuggling of human beings in a refrigerated lorry, which was going to take place on a specific night at a parking area. Surveillance was carried out on this basis. On that particular night, several smugglers and 13 victims were indeed found.

Those arrested were interviewed, a phone investigation was conducted as well as the analysis of mobile phones, phone taps and information exchanges with the British police.

It emerged that the organisers of the human smuggling were based in the United Kingdom. It was from here that they set prices, searched for drivers, etc. The victims were recruited in Europe, either in Albania or in a hotel in the Ghent region. The organisation specialised in guaranteed smuggling, meaning that the lorry drivers were often involved. Prices ranging from GBP 8,000 to 13,000 were charged. Three of the defendants were lorry drivers. Dangerous transportations in refrigerated lorries were also organised.

⁴¹⁵ Ghent Court of Appeal, 17 December 2018, 6th ch.

⁴¹⁶ East Flanders Crim. Court, Dendermonde division, 3 November 2017, ch. vac

⁴¹⁷ MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p.157-158.

⁴¹⁸ West Flanders Crim. Court, Bruges division, 14 December 2018, ch. B17 (appeal).

Child victims were found. The investigation revealed that the organisation had been active in smuggling for five years. Several members of the group were from the same family.

Fourteen defendants were prosecuted for human smuggling or for being co-perpetrators (Art. 66 of the Criminal Code). Three defendants were arrested in the United Kingdom but opposed an extradition to Belgium. Another defendant was arrested in Hungary.

The court held that in order to be convicted as a co-perpetrator or accomplice in an offence (Articles 66 and 67 of the Criminal Code), it isn't necessary for all the elements constituting the offence to be present in the acts of participation. The participant simply has to have consciously and willingly contributed to the execution of the offence, in accordance with Articles 66 and 67 of the Criminal Code.

The defendants were declared co-perpetrators of human smuggling with aggravating circumstances. The main defendants were given prison sentences of four to ten years, and the others defendants, 30-month prison sentences. Heavy fines (EUR 1,000, to be multiplied by the number of victims), which were partly suspended, were pronounced.

One of the defendants, who was the girlfriend of another defendant, was acquitted owing to a lack of evidence. GBP 910,500 were confiscated.

Myria filed a civil suit and received EUR 5,000 for material and non-material damage.

Iraqi network

Brussels Court of Appeal examined the judgment of the Dutch-speaking Criminal Court of Brussels of 6 February 2018, discussed in the previous annual report.⁴¹⁹ In this case, four Iraqi defendants were summoned to appear for human smuggling.

The case was launched when the police went after a van one evening, which had driven the wrong way down part of the road. During the chase, the driver attempted to drive several police vehicles off the road. The driver then lost control of the van, the vehicle was thrown into the air and turned over several times before landing on its 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. They were all transit migrants who wanted to go to the United Kingdom.

It immediately became clear that this was a transportation involving four smugglers, taking 12 people from the Dunkirk camp to Belgium to board a lorry for the United Kingdom.

After various interviews, the role of each person in the transportation became clear. The victims stated that they had paid between USD 2,000 and 9,000 per person to reach the United Kingdom. Several victims had already made one or more attempts to get there.

When they were arrested, the defendants stated that they had nothing to do with human smuggling and that they were victims. 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 the people in the woods, helped them get in the lorry and checked them as well. The third defendant was the driver of the van, which he firmly denied. 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 suspects' reference profiles. This sample confirmed that the third defendant was indeed the driver.

The court found 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 usual activity.

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 last three defendants were convicted of another charge and given a three-month prison sentence.

⁴¹⁹ Brussels Dutch-speaking Crim. Court, 6 February 2018, 51th ch., See MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, pp. 162-163.

On a civil level, PAG-ASA received EUR 1,000 for material and non-material damage. The court sentenced all the defendants to pay one victim, who had filed a civil suit, the sum of EUR 5,000 for material and non-material damage. He was also awarded EUR 4,475 for material and non-material damage, for the injuries he sustained and his hospitalisation. Finally, the court sentenced the third defendant to pay him compensation for material and non-material damage amounting to EUR 1,000 for rehabilitation.

Several defendants and the public prosecutor lodged an appeal against the decision.

In its **judgment of 27 September 2018**, the **Court of Appeal** didn't follow the defendants who also claimed to be victims of smuggling.⁴²⁰ One of the defendants maintained in his defence that he had in no way derived, directly or indirectly, any financial advantage from his activities. However, the court found that he had made his services available to the criminal organisation in exchange for free transportation to the United Kingdom. The court nevertheless found that he had played a less important role than the other smugglers since he had no decision-making power.

As regards the sentences, the court confirmed the sentences of the first judge, with the exception of the third defendant. For the latter, the sentence handed down at first instance was deemed insufficient in view of the context. His sentence was increased to seven years in prison.

Chinese poly-criminal network

Brussels Court of Appeal had to retry a smuggling case involving a Chinese poly-criminal network.

In this case judged at first instance by Brussels Criminal Court on 12 January 2018 and discussed in the previous report⁴²¹, eight defendants of Chinese origin were prosecuted in various capacities for different offences. Three of them were prosecuted for the attempted human trafficking of unidentified underage girls for the purpose of sexual exploitation. Six of them for various human smuggling charges with aggravating circumstances (abuse of the vulnerable situation, usual activity and criminal association). They were accused of going to fetch and transporting mainly Chinese and Tibetan nationals, or providing them with fake or forged documents (European identity cards, employment contracts, documents relating to social security or taxes, employment or a place of residence). The intention was to provide them with a residence permit or the possibility of staying or working without having the necessary work authorisations. These 'services' were provided for a fee that was sometimes substantial. A Chinese national, who filed a civil suit, paid a total of EUR 11,000 over a 10-year period in order to be provided with a place of residence, a job (as a dishwasher in a restaurant) and fake papers (a fake Romanian identity card, among other things). Another Chinese national paid EUR 1,600 for an employment contract, a school certificate and two letters of recommendation. In return for the payment of EUR 2,100, she was also supposedly presented as an alleged victim of trafficking to a specialised reception centre. Several other Chinese nationals were also put to work in a massage parlour.

The other charges concern extortion and attempted extortion, participation as a leader or member in the activities of a criminal organisation, corruption, possession of narcotics, forgery and use of forgeries, money laundering and illegal residence.

At the beginning of 2015, a series of acts led to the launch of an investigation into a human smuggling network. Chinese and Tibetans were reportedly being smuggled from China via European countries to Belgium.

420 Brussels Court of Appeal, 27 September 2018, ch. vac.

421 Brussels Dutch-speaking Crim. Court, 12 January 2018, 46th ch. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 196-202.

In January 2015, the customs inspection services discovered a DHL parcel containing two authentic Chinese passports. The contents, which came from China, were addressed to the first and main defendant. Shortly after, a victim came forward, identifying this defendant as the person organising the documents to enable them to stay and work in Belgium. Other facts relating to the use of fake documents were subsequently brought to light. While investigating the data from the objects found, the analysis of the subsequent statements made by victims and witnesses, and the facts associated with the fake identity papers, the police discovered persons who smuggled mainly Chinese nationals into Belgium.

The smuggling activities were conducted in Belgium by people of Chinese origin in contact with the first defendant, who played a key role. The victims paid exorbitant sums to be smuggled into Belgium. Once here, they were put to work in restaurants, illegal food workshops, massage parlours, the construction sector or as babysitters in order to repay their debts. The victims were also employed in commercial firms set up by gang members and third parties looking for illegal workers. As well as selling fake identity papers to victims, identity papers were also provisionally used by the victims against payment of a rental guarantee or guarantee.

The investigation revealed that the victims were physically and verbally threatened, so that they didn't dare reveal their situation to the authorities. Apparently, contact was made with Belgian municipal staff and the Chinese embassy in order to obtain residence permits for the victims.

The gang members arranged for the victims to stay and work. As they didn't speak any European languages, they were completely under their control.

Payments for the stay and residence permits were made in various ways.

The court found that the charge of attempted human trafficking wasn't established owing to the lack of sufficient objective evidence in the case. Indeed, the only elements were two phone conversations between the defendants concerned. The conversations related to the arrival of young Chinese women but there was no evidence in the case demonstrating that this had actually begun.

Of the many smuggling offences, the court considered some to be established in the case of three defendants. It acquitted the other three defendants of the charges. In order to convict the three defendants in question, it based itself especially on the phone investigation, observations, phone taps, material findings, the victims' statements and documents found during searches.

It thus declared the acts of smuggling committed against the civil party to be established, based on the detailed, coherent and consistent statements, which were supported by other objective elements in the case. The main defendant had made this victim stay in Belgium using fake papers, providing places to stay and working without authorisation, with a view to obtaining considerable financial advantages.

At the same time, the court considered as established the smuggling acts relating to the Chinese national presented to the specialised reception centre as an alleged victim.

On the other hand, it acquitted the defendants concerned for making people work in a massage parlour. According to the court, there was doubt about the illegal residence status of the persons who supposedly worked there, despite this being an essential element of the human smuggling charge.

For the three defendants convicted of human smuggling, the court accepted the aggravating circumstances of abuse of a vulnerable situation and criminal association. It also accepted the aggravating circumstance of usual activity but only as regards the main defendant.

The court considered as established the acts of extortion allegedly committed by the two defendants against one victim. It convicted the main defendant and another defendant for the acts of attempted extortion against another victim.

The court declared the acts of active bribery as established regarding the main defendant. Based on the recorded conversations, it emerged that he was in contact with a woman employed by the City of Brussels, or so she claimed. He allegedly tried to buy a passport through her.

The court considered the acts relating to forgery and money laundering partly established. It declared the acts concerning narcotics and illegal stay to be established.

The court found that there was no question in this case of criminal organisation in the sense of Article 324bis of the Criminal Code. For instance, it didn't emerge that the defendants really shared roles and fixed agreements on the expected gains. The defendants knew each other and collaborated according to the circumstances, when it suited them. The court therefore requalified the acts of criminal association.

In this respect, the court acknowledged the key role of the main defendant as coordinator. He had a large network which he could call on regarding the falsification of documents, employing illegally staying persons, places to stay and contacts at the registry office. He was subsequently convicted of this charge, as well as two other defendants.

The defendant was given a four-year prison sentence and a EUR 54,000 fine, as well as a confiscation order for EUR 75,585.07, part of which the court awarded to the civil party as compensation for the damage suffered.

The other convicted defendants were handed prison sentences of three to 18 months, some of which were suspended, and fines of EUR 600 to EUR 30,000.

The court sentenced the main defendant to pay the civil party EUR 13,000 for material damage and EUR 500 for non-material damage. It also sentenced the three defendants convicted for human smuggling to pay EUR 500 in compensation to the reception centre that filed a civil suit.

The appeal concerned five defendants, including the main defendant and another defendant, convicted of human smuggling at first instance.

In its judgment of **25 June 2018, Brussels Court of Appeal**⁴²² noted that owing to the (limited) scope of the public prosecutor's appeal, it didn't have the jurisdiction to rule again on the acquittals pronounced at first instance for the acts of attempted trafficking in human beings, or for certain acts of human smuggling.

It confirmed the judgment handed down at first instance overall, subject to certain modifications, additions and clarifications.

The Court of Appeal confirmed the sentences handed down at first instance for the acts of human smuggling brought before it, except for the acts relating to the presentation of a Chinese national to a specialised reception centre as a presumed victim in return for payment. In the court's view, there was no evidence of the main defendant contributing to the illegal stay of this person in Belgium.

It confirmed the acquittals of the main defendant and a co-defendant pronounced at first instance for the acts - qualified as human smuggling - relating to the employment in a massage parlour of persons named in the summons. There was indeed an element of doubt concerning these persons' illegal residence status. On the other hand, the appeal court reversed the court's decision concerning the employment in the same massage parlour of other persons, including a Tibetan national, who appeared to be residing illegally in Belgium. It based this on the recorded conversations and on the co-defendant's statements.

The court also reversed one of the smuggling charges, declared not established at first instance, to attempted smuggling and declared it established.

It increased the sentences of the first defendant: five years in prison (and not four), as well as a EUR 66,000 fine (instead of 54,000). It also increased the sentences of several other defendants.

It confirmed the amounts of the damages awarded to the victim who filed a civil suit. In addition, in view of the new convictions relating to several acts of human smuggling, the court awarded a total of EUR 1,100 to the reception centre that filed a civil suit.

⁴²² Brussels Court of Appeal, 25 June 2018, 13th ch (appeal).

Employment under a false identity

In a case tried by **Brussels Criminal Court** on **3 January 2019**, a Belgian defendant from Cameroon was prosecuted for human smuggling and fraud in relation to a Cameroonian national.⁴²³ He was accused of having contributed to the latter's stay by making him work under his identity in a supermarket and thus using a false name in order to appropriate his salary.

The salary of the worker, who didn't have a Belgian residence permit, was paid to the defendant's account who only paid him back part of it and from time to time.

The court found that the material element of the charge of smuggling was established: by allowing the Cameroonian national to work under a false identity, the defendant made it easier for him to stay in Belgium even though he had no residence permit.

On the other hand, it found that the purpose of obtaining a financial advantage couldn't be accepted: none of the financial analyses were able to determine the amount withheld by the defendant from the salary received as a result of the worker's services. However, the defendant admitted having withheld EUR 300 a month so that he could pay the additional taxes he was paying as a result of the extra pay.

The court considered that it couldn't be ruled out that the defendant wanted to help the worker by allowing him to work under his identity while avoiding the financial consequences associated with this additional commitment. It therefore considered that it was not sure that the defendant sought a financial advantage by facilitating the worker's stay.

As a result, it acquitted the defendant of the smuggling charge. It also acquitted him of the fraud charge.

Human smuggling and aiding illegal immigration

In this case, which **Dendermonde Criminal Court** ruled on **26 February 2019**, a person was prosecuted for both human smuggling (Article 77bis of the Aliens Act and aiding illegal immigration, as these acts weren't carried out for humanitarian reasons (Article 77 of the Aliens Act)).⁴²⁴

The defendant was suspected of regularly transporting people, mainly of Turkish nationality, from Turkey to Belgium, in his own vehicle, or lorries or buses. He gave them fake identity papers with a visa for the EU and driving licences. These people sometimes presented themselves as the second lorry driver. In some cases, the fake visas were obtained through embassies. He charged very high sums for the journey, up to EUR 7,000 per person. He gave advice on how they could regularise their stay in Belgium.

There were two parts to the investigation, with the acts dating back to 2009-2010 and 2013-2014. However, it had to be interrupted because of the police's changing priorities.

It was chiefly conducted using phone investigations, surveillance and interviews. International letters rogatory were sent to Turkey and a financial investigation was also organised to analyse the banking operations. The defendant received a disability allowance and his wife had no income, even though they owned various properties in Turkey and in Belgium and were paying a mortgage. The public prosecutor was also informed by the Financial Intelligence Processing Unit (FIPU) of suspicious transactions that were a serious indication of money laundering relating to human trafficking (sic). The defendant was also spotted during border checks at Zaventem. It was possible to link him to people who had been detained at the border because they didn't have the right documents.

The victims also filed complaints against the defendant, especially within the framework of marriages of convenience. Another victim was threatened with death if they filed a complaint against the defendant. They eventually filed a civil suit.

The court found that the acts concerning the charge of human smuggling and aiding illegal immigration were identical. It requalified the acts as human smuggling. The distinction between the two charges is that in the case of human smuggling, an explicit pursuit of profit is required ("with a view to obtaining, directly or indirectly, a financial advantage"), whereas aiding illegal immigration involves unpaid support. Subsequently, the two offences can't occur at the same time, for the same acts. According to the court, the transportation of persons from Turkey to Belgium was a 'professional activity' of the defendant, who clearly acted with a view to making a profit.

⁴²³ Brussels French-speaking Crim. Court, 3 January 2019, 59th ch (appeal).

⁴²⁴ East Flanders Crim. Court, Dendermonde division, 26 February 2019, ch. D19M (final).

The court found that the investigation had exceeded the reasonable time limit, referring to the case law of the European Court of Human Rights. It took this into account during sentencing.

The defendant was given a three-year prison sentence, with a five-year suspension, and a fine of EUR 30,000, with a three-year suspension for half of it.

An amount of EUR 222,000 (EUR 6,000 x 37 victims) was confiscated, half of which was suspended.

The victim who filed a civil suit obtained EUR 12,100 for material damage and EUR 1,000 for non-material damage.

Human smuggling and humanitarian aid

A major human smuggling case also involving citizens active in helping migrants was tried by **Brussels Criminal Court on 12 December 2018**.⁴²⁵

Twelve defendants of Syrian, Egyptian, Sudanese, Eritrean, Tunisian and Belgian nationality were prosecuted for acts of human smuggling with aggravating circumstances: in particular, endangering the lives of victims, some of whom were children, and participating in the activities of a criminal organisation. Among the defendants were people who harboured migrants and were active within the Citizen's Platform for Migrant Support.

The defendants were initially summoned before the Criminal Court of Dendermonde but asked for a change of language, which they were granted. The case was subsequently referred to the French-speaking Criminal Court of Brussels.

The investigation began following an initial report drawn up by the police in May 2017. It revealed that the Wetteren motorway parking area was an assembly point for migrants who were put into lorries by human smugglers bound for the United Kingdom, unbeknownst to the drivers and in extremely dangerous conditions. The analysis of the masts located near the Wetteren parking area helped to identify the call numbers and phones.

Following an initial analysis of the numbers and phones, an investigation was launched with a view to setting up phone taps. Other police observations took place that demonstrated the use of this parking area for the purpose of human smuggling. Phone numbers were tapped. One night in August, one of the defendants boarded a lorry himself at this parking area and reached the United Kingdom. At the end of August, another defendant was caught with five other people in a trailer loaded with rugs and was taken to a detention centre. Another defendant met the same fate in October 2017. That month, the police caught three other defendants red-handed at the parking area in Waasmunster, along the E17. They were placed under arrest. Following these arrests, searches were carried out at the home of the four defendants who were harbouring migrants, and at the Caricole and 127bis transit centres.

The investigation revealed a relatively constant modus operandi. Illegally staying persons who wanted to go to the United Kingdom contacted one of the defendants, either by phone or directly through acquaintances. The price of the transportation was negotiated and arrangements were made to meet at a railway station. They travelled by rail and then on foot to the parking areas. Another smuggler took over and put them in 'the right lorries' (those going to the United Kingdom) and closed the doors. The price of the transportation, ranging from a few hundred euros to EUR 2,000/2,500, was paid in cash or part was paid as a guarantee to a third party, who paid the balance of the transportation when the migrant arrived at the destination.

Phone taps, records of who was present at the motorway parking areas, police surveillance and surveillance cameras, established that the defendants were in regular contact.

The court pointed out that some defendants played a role in the human smuggling by taking victims from a railway station to the parking areas, opening and closing lorry doors, helping victims to board with their luggage, inquiring about the situation at the motorway parking areas, or collecting money from the victims.

Noting that all defendants were being randomly charged of smuggling at least 95 victims, the court observed that this number of victims couldn't be charged indiscriminately to all the defendants. It was necessary to ascertain on an individual basis and to what extent the defendants had committed acts of human smuggling against persons identified by name in particular, or at least against persons whose existence could be established with certainty, even without formal identification, by means of phone tapping.

⁴²⁵ Brussels French-speaking Crim. Court, 12 December 2018, 47th ch.

As the public prosecutor's office wasn't satisfied with the judgment, it appealed against all the provisions of the decision. Besides legal reasons, it seemed to have a completely different reading of the case than the court. Hence, some pieces of evidence weren't taken into consideration.

In addition, the court found that it was necessary to change the charge of criminal organisation to criminal association. The investigation demonstrated the organisation of the transportation of the victims and the distribution of tasks between the perpetrators of the acts, even though this distribution was variable, since it wasn't always the same person performing the same task every time. However, there was no real structure or hierarchy. It wasn't sufficiently established that this association was particularly lucrative. The court thus noted that the price charged to victims for their transportation to the United Kingdom rarely exceeded a few hundred euros and that the defendants weren't found in possession of large sums of money. The court noted that the aim of some of the prosecuted smugglers was to finance their own transportation to England, or even to obtain it free of charge in return for 'services rendered', and not to participate in a criminal organisation. However, the case hinted at the actions of other unidentified persons, who appeared to have made a real profession out of organising illegal travel to the United Kingdom and to have benefited from the assistance of certain defendants in this case.

The court then examined the individual responsibility of each defendant in the alleged acts. It considered most of the acts of human smuggling established as regards the majority of the defendants: those who were present at the motorway parking areas in order to illegally embark migrants, those who took them to the parking areas to be picked up by another defendant, or those who acted as their guide. This charge was also accepted as regards one defendant who put the victims in contact with the smugglers and collected or guaranteed the money. He had previously been a smuggler himself in Calais. For these defendants, the court considered that it was a question of either direct financial advantage when the defendants received the money directly, or indirect financial advantage. The latter consists of financing personal transportation to the United Kingdom in kind, in exchange for participation in the human smuggling. Several of the defendants did indeed attempt to get to the United Kingdom themselves, some of whom were found on board lorries on several occasions.

For the defendant who reached the United Kingdom and was tried in absentia, the court noted that "although the criminal court record doesn't contain formal proof of the financial advantage he received, the fact remains that he inevitably received such an advantage since the very functioning of the association

was such that all the participants were paid or benefited from the promise of being transported free of charge or at a lower cost, which constitutes material aid. It was established that (...) was transported to England himself in August 2017. From England, he continued to monitor the situation of 'his' parking areas in Belgium, which showed that it wasn't simply a matter of him paying a smuggler to get him to England.

As regards certain defendants, the court accepted the aggravating circumstances of usual activity and/or criminal association.

On the other hand, the court acquitted the four defendants who had been active in helping migrants.

In the court's view, apart from the fact that these defendants didn't derive any financial advantage, their complicity in the acts couldn't be established.

With regard to one of the defendants, who was accused by the public prosecutor's office of having lent her phone and computer to a co-defendant whom she was harbouring and with whom she was having a romantic relationship, the court found that it wasn't established that she had made her phone or computer available to the persons she was harbouring, especially the co-defendant, for the purpose of enabling them to engage in any illegal activities. It considered that it wasn't established that she knew that her phone or computer would be used for that purpose and, in any case, wasn't intending to participate in any human smuggling or criminal association.

The court split the case for a defendant convicted of similar acts in another case. It didn't grant the public prosecutor's request of confiscation of assets of equivalent value. It handed down suspended prison sentences ranging from one year to 40 months. Only the defendant who reached the United Kingdom and was tried in absentia was sentenced to three years in prison.

As for the fines, they ranged between EUR 48,000 and EUR 360,000 and were suspended, except for the defendant tried in absentia.

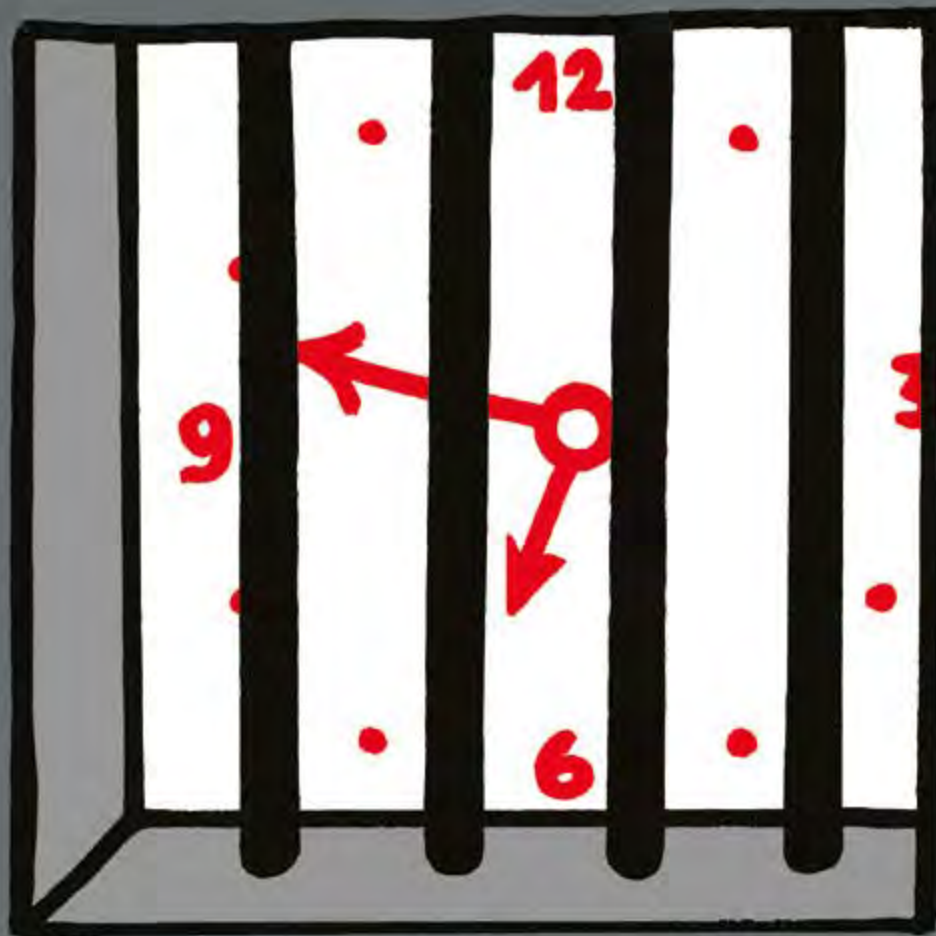
Myria, who only filed a civil suit against the defendants for whom it appeared clearly established that they had derived a financial advantage⁴²⁶, had its claim declared admissible and partly founded. It received a symbolic euro.

In a judgment of 14 March 2019, the French-speaking Court of First Instance of Brussels sentenced the defendant, for whom the prosecutions had been split, to an additional suspended fine of EUR 640,000. He had indeed been sentenced to five years in prison and a fine of EUR 160,000 by the Dutch-speaking Criminal Court of Brussels, in a judgment of 8 November 2018, in a similar case of human smuggling.

⁴²⁶ Myria is competent to file a civil suit only for acts of human smuggling (Art. 77bis of the Aliens Act) and not for aiding illegal entry, transit or residence (Art. 77 of the Aliens Act).

Part 4

Data



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 the human trafficking data is presented, followed by the human smuggling data. This part ends with an external contribution written by the NSSO inspection services (Thematic Directorate for Trafficking in Human Beings).

The six stakeholders responsible for these figures are:

- the police, with information from the National General Database (NGD);
- the NSSO inspection services (Thematic Directorate for Trafficking in Human Beings, ECOSOC teams);
- 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 of 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 on a daily basis in order to obtain figures of the best possible quality.

Warning

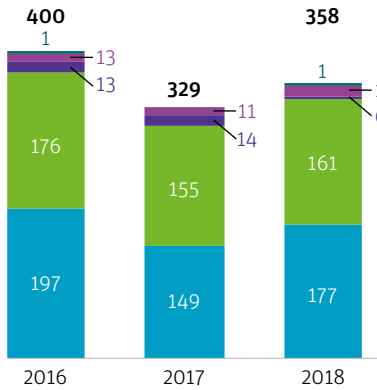
- The figures presented in this report don't bear witness to the true extent of the phenomenon of trafficking and smuggling in human beings. They only present the facts and the victims identified by the authorities. Currently, there is no estimation concerning unidentified acts and victims.
- These figures 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. Trafficking in human beings

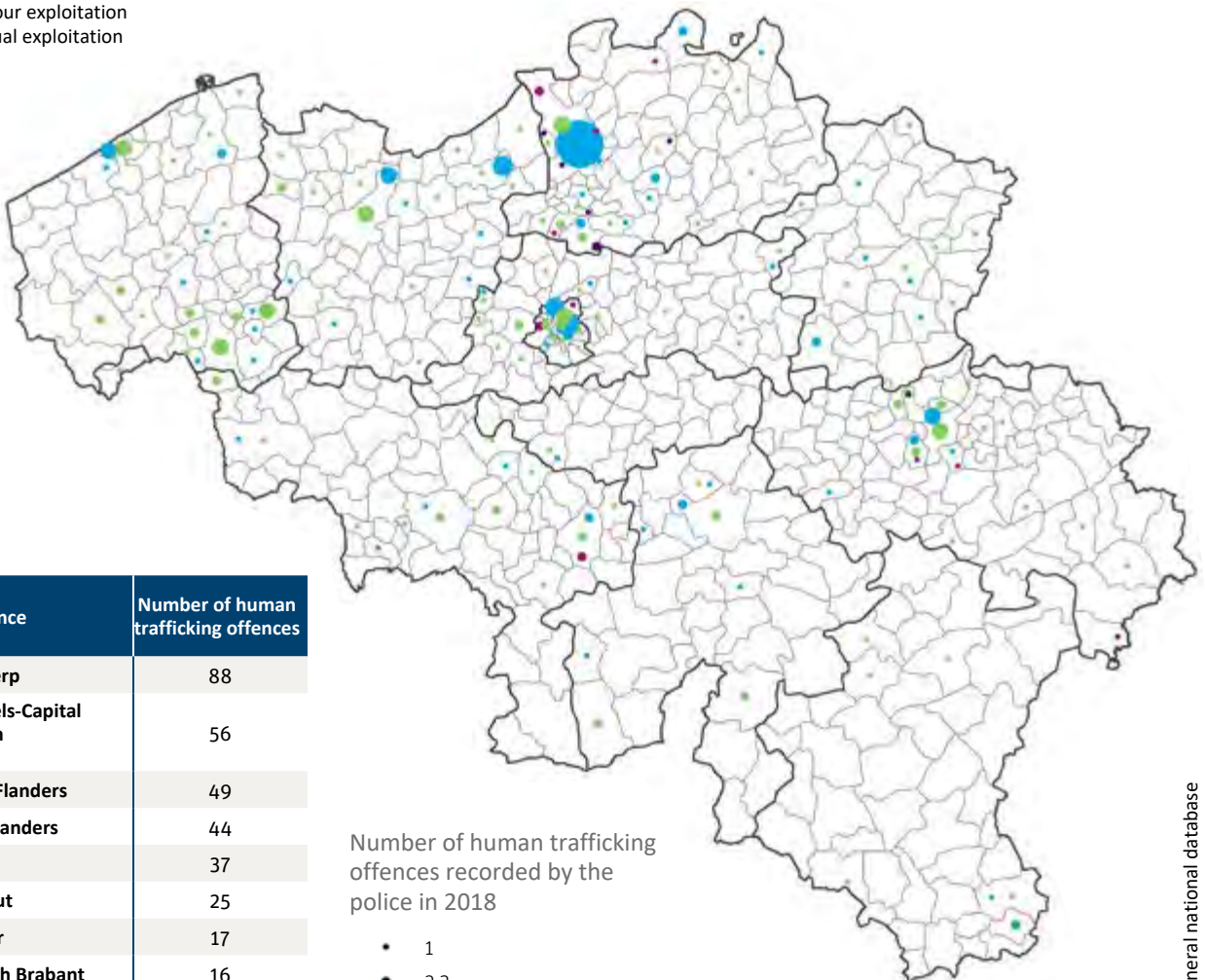
Human trafficking offences (police data)



In 2018, a total of 358 human trafficking offences were recorded by the police: almost half (177) concerned sexual exploitation, 161 labour exploitation, 13 a forced offence or crime, 6 exploitation of begging and a single case of organ trafficking.

- There is a slight rise compared with 2017.
- There were more human trafficking offences in major cities, mainly in Antwerp (with 60 offences, which is 58 % more than in 2017) and in the capital (a total of 56 offences in the 19 municipalities).
- As shown in the map below, more than half of the offences associated with sexual exploitation at national level concern the Province of Antwerp and the Brussels-Capital Region.

■ Organ trafficking
 ■ Forced criminality
 ■ Exploitation of begging
 ■ Labour exploitation
 ■ Sexual exploitation



Province	Number of human trafficking offences
Antwerp	88
Brussels-Capital Region	56
West Flanders	49
East Flanders	44
Liège	37
Hainaut	25
Namur	17
Flemish Brabant	16
Limburg	14
Luxembourg	10
Walloon Brabant	2
Total	358

Number of human trafficking offences recorded by the police in 2018



Reports and criminal reports of the NSSO inspection services (ECOSOC teams)

In 2018:

- The NSSO Inspection Department drew up 14 reports and 42 criminal reports regarding human trafficking;
- 65 presumed victims of human trafficking (Art. 433 quinquies of the Criminal Code) were referred to the judicial authorities through criminal reports or reports.

► For more information, see the external contribution written by the NSSO Inspection Department at the end of this part.

Sector of activity and nationality of workers identified as presumed victims of human trafficking by the NSSO Inspection Department in 2018

Country	Agriculture and horticulture	Food industry	Construction	Garages	Wholesale trade	Retail trade	Hotel & catering industry	Cleaning	Domestic activities as employers of domestic staff	Others	Total
Afghanistan				10							10
Poland			7								7
China							5			1	6
Morocco			1	1		2	2				6
Pakistan				3		2			1		6
Bulgaria	5										5
Ukraine			3								3
Brazil	2		1								3
India				2					1		3
Egypt							2				2
Italy							2				2
Belgium	1						1				2
Romania			1	1							2
Cameroon		1									1
Togo										1	1
Congo								1			1
Guinea							1				1
Northern - Macedonia				1							1
Senegal					1						1
Tunisia							1				1
Vietnam										1	1
Total	8	1	13	18	1	4	14	1	2	3	65

Source: NSSO inspection service (ECOSOC teams)

Human trafficking cases dealt with by the public prosecutor's office

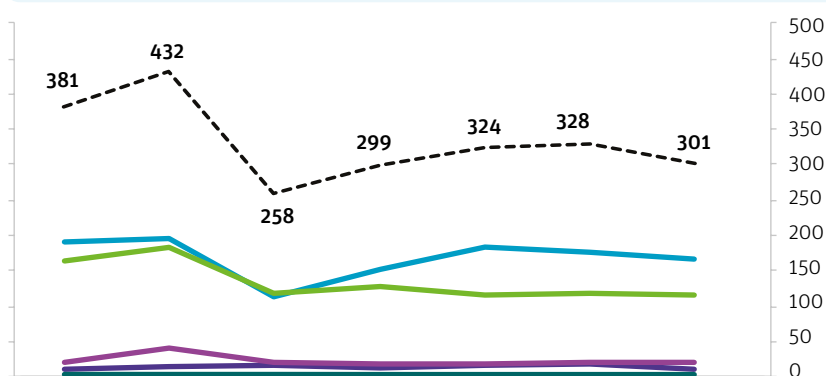
In 2018, 301 human trafficking cases were dealt with by the public prosecutor's office:

- 55% for sexual exploitation;
- 38% for labour exploitation;
- 5% for forced criminality;
- 2% for exploitation of begging.

Slight fall compared with 2017.

In absolute figures, there has been a fall in cases associated with sexual exploitation. Their number fell from 184 in 2016 to 165 in 2018.

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.



	2012	2013	2014	2015	2016	2017	2018
Sexual exploitation	190	196	111	151	184	176	165
Labour exploitation	164	184	115	124	112	116	113
Exploitation of begging	7	12	14	10	14	18	7
Forced criminality	18	39	17	14	14	18	16
Organ trafficking	2	1	1	0	0	0	0
Total	381	432	258	299	324	328	301

Methodological remarks

- This data corresponds to the status on 5 May 2019 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 2018.
- It is limited to crimes committed by adults and doesn't include cases dealt with by the labour prosecutor.
- The cases submitted to the public prosecutor's office of Eupen aren't included either (no translation of the system in German).
- As regards cases sent to another district or sent to another division in the same judicial district, there is a risk of counting them twice.
- Every criminal case can involve one or more defendants.

Cases submitted to the public prosecutor's office in 2018 and dropped on 5 May 2019

	Cases dropped	Total
Sexual exploitation	50	165
Labour exploitation	23	113
Exploitation of begging	6	7
Forced offence/crime	6	16
Total	85 (28%)	301

- 28% of cases submitted to the public prosecutor's office in 2018 were dropped on 5 May 2019.
- Out of the 85 cases dropped, 50 concerned sexual exploitation.
- 49% of the total number of cases were dropped owing to insufficient charges, 24% owing to the fact the perpetrator was unknown, and 12% for reasons of expediency.



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

- **Antwerp is the jurisdiction in which the most human trafficking cases were entered in 2018.**
- Increase in the number of cases entered in the jurisdiction of Antwerp, essentially owing to the recent rise in the number of cases concerning sexual exploitation (from 50 cases in 2017 to 73 in 2018).
- Majority of cases opened for sexual exploitation (73%).

Jurisdiction of Brussels

- Overall decrease since 2016 related to the significant fall in the number of sexual exploitation cases since that year.
- Increase in labour exploitation cases.
- In 2018, for the first time since 2012, there were more cases concerning labour exploitation (28) than sexual exploitation (24).

Jurisdiction of Ghent

- 45 cases of sexual exploitation and 30 cases of labour exploitation.
- Stability compared with 2017.
- Stability compared with 2017.
- No cases in 2018 for any other form of exploitation of human beings.

Jurisdiction of Liège

- Overall significant decrease compared with 2017. The number of cases went down from 73 to 43.
- Practically as many cases of sexual exploitation (18) as labour exploitation (22)

Jurisdiction of Mons

- Of the 24 cases entered in the jurisdiction of Mons, 13 were for labour exploitation, 6 for forced criminality and 5 for sexual exploitation.
- Status quo since 2016.

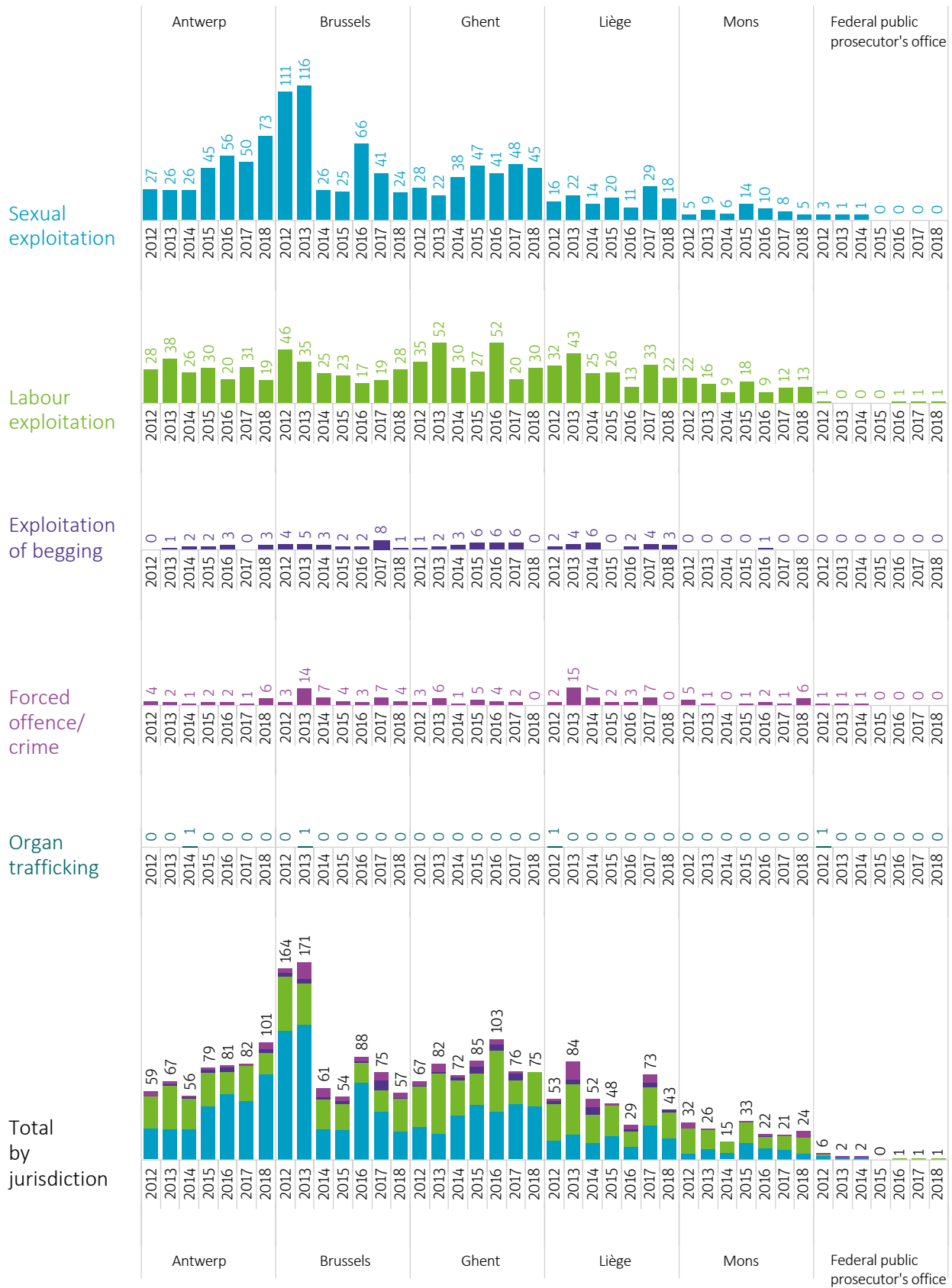
Federal public prosecutor's office

- In 2018, there was only one case of labour exploitation. This has been the case every year since 2016.



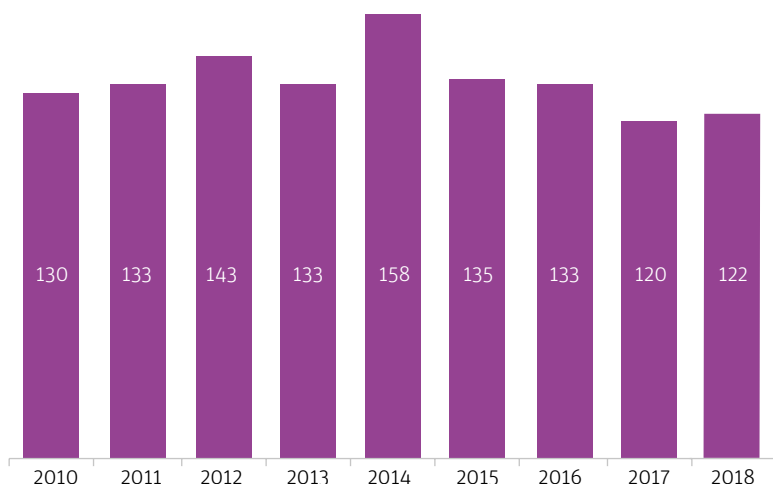
Classification of charges

Sexual exploitation	37L	Art. 433quinquies § 1 1°C. CC
Labour exploitation	55D	Art. 433quinquies § 1 3°C. CC
Exploitation of begging	29E	Art. 433quinquies § 1 2°C. CC
Forced offence/crime	55F	Art. 433quinquies § 1 5°C. CC
Organ trafficking	55E	Art. 433quinquies § 1 4°C. CC



New support for victims of human trafficking initiated by the specialised reception centres

122 victims of human trafficking began receiving support in a specialised reception centre in 2018



- Stabilisation compared with 2017
- Of the 122 victims, **79 were victims of labour exploitation** and **38 were victims of sexual exploitation**
- Among the new cases of support there were also 4 victims who were the subject of exploitation of begging and one forced criminality. No new support was organised for victims of organ trafficking.

- There were 21 Moroccan victims and 20 Nigerian victims. These are the two main nationalities of victims of human trafficking who began receiving support at one of the specialised centres in 2018.
- The number of Nigerian victims was divided by two between 2017 and 2018.

Support comes into place once the initial phase (period of reflection) has begun, i.e. as soon as an Annex 15 has been issued

The data on new support doesn't make it possible to assess the extent of the work of the specialised centres

- The indicator for the duration of the support isn't discussed 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 of human beings.
- Reports of persons for whom no support was initiated aren't mentioned here either.
 - For more information, see the PAG-ASA, Payoke and Sürya annual reports.

Among the 79 victims of **labour exploitation**:

- 21 were Moroccan nationals and 12 Egyptian nationals;
- Women were in the minority;
- There were 2 minors among these victims.

Among the 38 victims of **sexual exploitation**:

- Half of them were Nigerian nationals;
- They were exclusively female;
- Among the 19 Nigerian women, there were 4 minors.

Nationality	Sexual exploitation	Labour exploitation	Exploitation of begging	Forced criminality	Total
Morocco	0	21	0	0	21
Nigeria	19	1	0	0	20
Romania	5	5	4	1	15
Egypt	0	12	0	0	12
Belgium	5	1	0	0	6
Venezuela	2	3	0	0	5
Afghanistan	0	4	0	0	4
Albania	2	2	0	0	4
China	0	4	0	0	4
India	0	4	0	0	4
Algeria	0	3	0	0	3
Burkina Faso	0	3	0	0	3
Brazil	2	0	0	0	2
Greece	0	2	0	0	2
Hungary	2	0	0	0	2
Mexico	0	2	0	0	2
Moldavia	0	2	0	0	2
Tunisia	0	2	0	0	2
Colombia	0	1	0	0	1
DR Congo	0	1	0	0	1
Spain	0	1	0	0	1
Ethiopia	0	1	0	0	1
Ghana	1	0	0	0	1
Guinea	0	1	0	0	1
Northern Macedonia	0	1	0	0	1
Panama	0	1	0	0	1
Rwanda	0	1	0	0	1
Vietnam	0	0	0	0	0
Total	38	79	4	1	122

Victims of human trafficking who entered the procedure (Immigration Office data)



- In 2018, **115 victims** of human trafficking entered the procedure (slight decrease compared with 2017).
- More than **2/3** were victims of labour exploitation and nearly a 1/3 of sexual exploitation.
- No exploitation within the framework of organ trafficking or forced criminality were listed in the IO data.

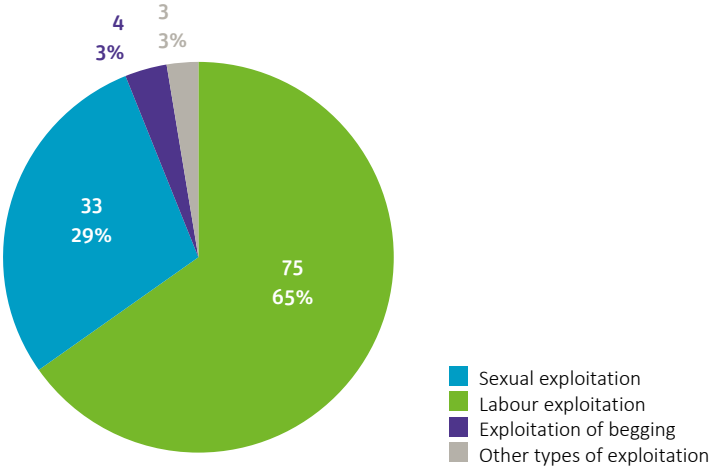
- In 2018, Moroccans and Nigerians were the two main nationalities of victims of human trafficking who entered the procedure.
- All the Moroccan victims (20 in total) were the subject of labour exploitation.
- Between 2017 and 2018, there was a decrease in the number of Nigerian victims. They fell from 44 to 19. Among these 19 victims, 18 of them were victims of sexual exploitation.

In Belgium, foreign victims of trafficking who agree to cooperate with the judicial authorities can benefit from a specific residence status.

Classification of main nationalities of victims of trafficking in Belgium

Country	2018
Morocco	20
Nigeria	19
Egypt	16
Romania	11
India	5
Albania	5
Others	39
Total	115

Victims of human trafficking who entered the procedure per type of exploitation



Age	Sexual exploitation		Labour exploitation		Exploitation of begging		Other types of exploitation		Total	
	2017	2018	2017	2018	2017	2018	2017	2018	2017	2018
<18	1	3	4	1	0	3	0	0	5	7
18-25	40	20	13	14	0	1	1	0	54	35
26-30	12	7	14	25	0	0	0	0	26	32
>30	2	3	34	35	0	0	0	3	36	41
Total	55	33	65	75	0	4	1	3	121	115
Men	1	0	47	66	0	2	0	3	48	71
Women	54	33	18	9	0	2	1	0	73	44



In 2018, 60% of trafficking victims were men the majority of whom were the subject of labour exploitation.

- In 2018, there were 71 male victims and 44 female victims. In 2017, it was the opposite, with more female victims.
- Victims of labour exploitation were the most common (75 out of 115) and mostly concerned men, half of whom were over 30 years old (35 people).
- The victims of sexual exploitation were women (33). Among them, 20 were between 18 and 25 years old, and 3 were minors.

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 was made.

7 child victims of human trafficking entered the procedure in 2018:

- 4 accompanied foreign minors and 3 unaccompanied foreign minors (UFM)
- 3 victims of sexual exploitation, 3 victims of exploitation of begging, and 1 victim of labour exploitation

Documents issued by the Immigration Office to victims of trafficking and smuggling in human beings

		2012	2013	2014	2015	2016	2017	2018
OLT 45 days		36	28	32	17	10	3	0
Annex 15		0	0	0	0	0	20	44
Certificate of immatriculation (CI)		140	117	133	114	116	112	113
CI extension		12	15	11	22	26	31	19
Human trafficking	Temporary CIAR (Card A)	104	98	84	90	84	97	91
	Extension Card A	437	458	443	425	413	383	348
	Temporary CIAR (Card B)	35	44	33	36	49	50	61
Humanitarian	Unlimited CIAR (Card A)	4	2	2	6	2	0	3
	Extension Card A	44	31	30	29	20	29	20
	Indefinite CIAR (Card B)	11	24	21	36	22	23	18
Annex 13 (OLT)		7	11	14	2	2	4	0
Total		830	828	803	777	744	752	717

The data presented here concerns both victims of **trafficking** and of certain aggravated forms of **smuggling** of human beings.

The **717** decisions to issue or extend a residence permit concern both new victims from 2018 as well as those from previous years, who are in the process of being granted victim status and for whom one or more decisions were taken in the past.

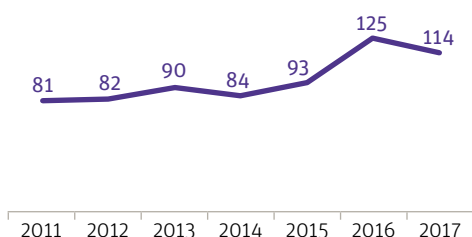
There is a reduction in the total number of documents issued to victims of trafficking and smuggling in human beings.

- A certificate of inscription in the alien's register (CIAR), which can be temporary and/or extended, is always issued for a period of six months. Normally, the victims receive two a year until the end of the legal proceedings.
- Annex 15 has replaced the 45-day OLT, since 21/05/2017. The legal basis and the requirements haven't changed, only the type of document. This document is issued during the period of reflection. If the victim lodges a complaint directly or makes statements against the perpetrators, this document won't be issued. The victim will directly receive a Certificate of immatriculation (CI).



Convictions for human trafficking (Justice Department data)

Number of convictions



- In 2017, **114** convictions were pronounced. This is slightly less than in 2016.
- These convictions led to 317 judgments, 100 of which were suspended. Of the 317 sentences handed down, 109 were fines, 93 were prison sentences, 68 were deprivations of rights, 38 were confiscations, 2 were community service sentences and 5 were other bans.
- The prison sentences pronounced in 2017 were mostly of a duration of 1 to 3 years.

Top 5 nationalities of those convicted of human trafficking in 2017

Nationality	2017
Belgium	32
Unknown	17
Bulgaria	12
United Arab Emirates	8
Nigeria	5
Total	114

Every **conviction** concerns a convicted person (convictions are different from judgments, 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.). As a result, one category doesn't exclude another (with a few exceptions) and the total number of sentences is higher than the number of convictions.

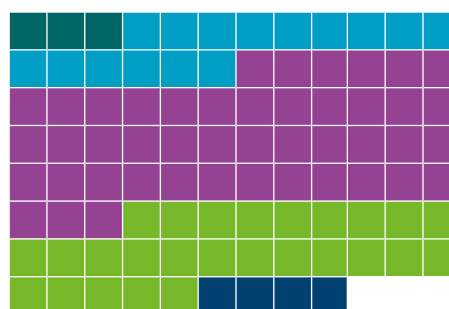
The nationality of the main convicted parties in 2017 was Belgian (28%) and Bulgarian (11%). However, in 17% of cases, the nationality of the convicted parties was undetermined.

Sentences	Decisions	Suspended (completely or partly)
Fine	109	51
Incarceration*	93	49
Deprivation of rights	68	n.v.t.
Confiscation	38	0
Community service	2	n.v.t.
Professional ban	2	n.v.t.
Other bans	5	n.v.t.
TOTAL	317	100

Methodological remarks

- These figures show the number of final convictions, i.e. convictions that couldn't be taken to the court of appeal.
- The database doesn't provide the type of exploitation for all the convictions.
- The Department of Criminal Policy - FPS Justice corrected its data for 2017.
- A certain number of cases are only entered in the database after several months, which explains why the data for 2018 isn't available yet.

Duration of prison sentences pronounced*



*1 square = 1 person

■ 3-6 months ■ 6 months - 1 year
■ 1-3 year ■ 3-5 year ■ 5-10 year

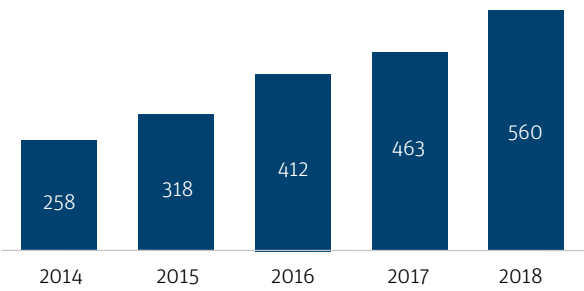
2. Human smuggling

Human smuggling offences (police data)

In 2018, 560 human smuggling offences were recorded by the police. 81% of these cases were in Flanders.

- In 2018, 81% of human smuggling offences were recorded in Flanders, 12% in Wallonia and 7% in the Brussels-Capital Region (Zaventem airport included).
- On a municipal level, Zaventem (56) is in first position. The police recorded almost all the offences on site at the airport (55). Ghent (44) and Antwerp (34) are second and third respectively in the ranking, followed closely by Wetteren (32).
- In Wallonia, the municipality with the most offences is Liège (13).

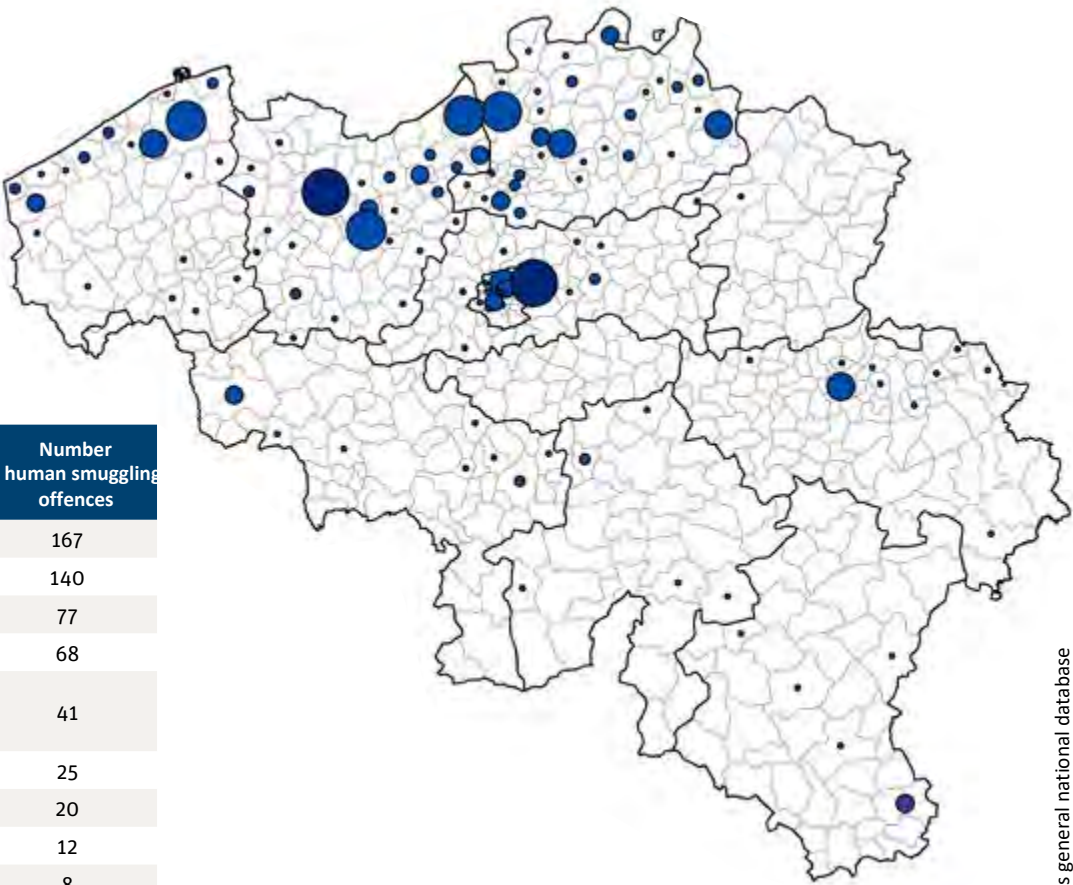
In the space of 5 years, the number of offences recorded has more than doubled (x 2.2), reaching 560 in 2018. There was an increase of 201% between 2017 and 2018.



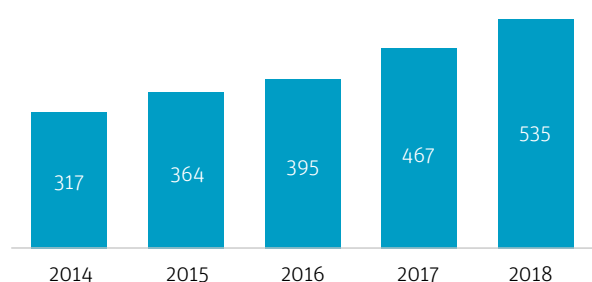
Number of human smuggling offences recorded by the police in 2018



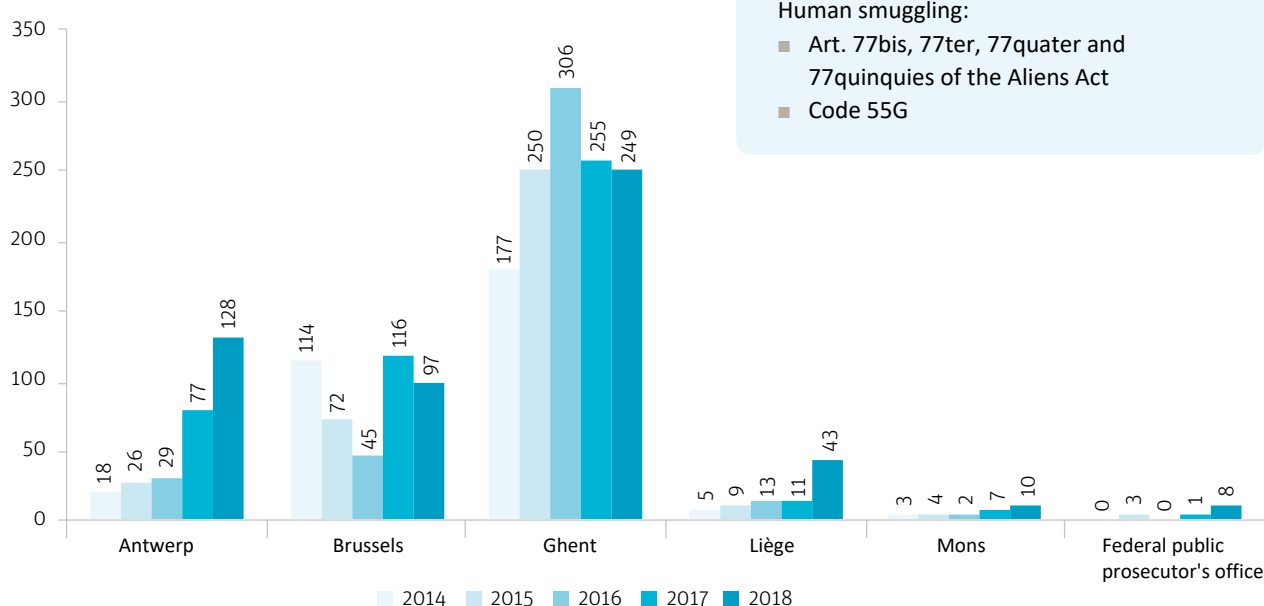
Province	Number human smuggling offences
East Flanders	167
Antwerp	140
West Flanders	77
Flemish Brabant	68
Brussels-Capital Region	41
Liège	25
Hainaut	20
Luxembourg	12
Namur	8
Limbourg	2
Walloon Brabant	0
Total	560



Human smuggling cases submitted to the public prosecutor's office

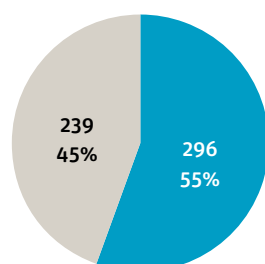


- In 2018, **535** human smuggling cases were submitted to the public prosecutor's office.
- More than half of the cases submitted to the public prosecutor's offices were in the jurisdiction of Ghent (47%). Followed by the jurisdictions of Antwerp (24%), Brussels (18%) and Liège (8%).
- The number of cases submitted to the jurisdictions of Antwerp (+66%) and Liège (x 2.9) have increased compared with a decrease in that of Brussels.
- Since 2013, there has been a continuous increase in the number of human smuggling cases submitted to the public prosecutor's office.



Difficulty in bringing successful prosecutions for human smuggling

Cases submitted to the public prosecutor's office in 2018 and dropped on 5 May 2019



■ Cases submitted to the public prosecutor's
■ Other

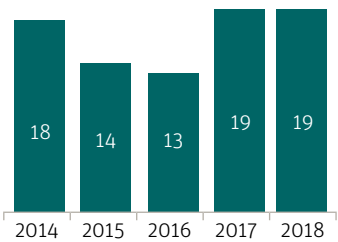
- Out of the 535 cases submitted to the public prosecutor's offices in 2018 for human smuggling, 296 were dropped on 5 May 2019, i.e. 55%. That is 15% more than in 2017.
- Among the 296 cases that were dropped, 58 were on discretionary grounds and 238 for technical reasons (174 of which because the perpetrator(s) was(were) unknown and 53 owing to insufficient charges). Note that the number of cases dropped because the perpetrator(s) of the acts is(are) unknown has more than doubled compared with 2017 (73).

Victims of human smuggling who entered the procedure (Immigration Office data)



Just like victims of human trafficking, victims of an aggravated form of human smuggling can apply for victim status.
Aggravated forms of human smuggling are referred to in Article 77 quater, 1° to 5° of the Law of 15/12/1980. They mainly concern the fact that the victim is a child and that their life is endangered, etc.

In 2018, there were **19 victims of human smuggling** with aggravating circumstances for whom a residence permit was issued for the first time by the IO.



8 child victims of human smuggling entered the procedure in 2018:

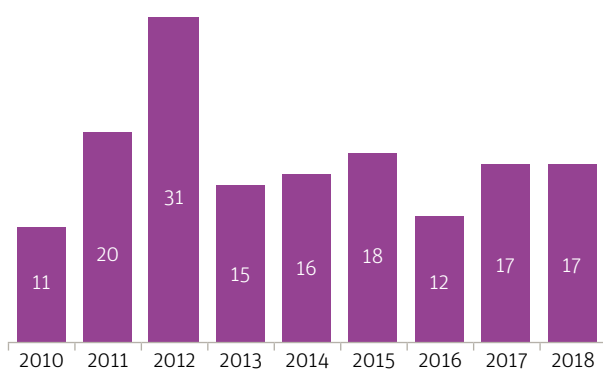
- 4 accompanied foreign minors and 4 unaccompanied foreign minors (UFM).

Among all the victims of smuggling, there were:

- 12 men and 7 women;
- 8 victims under 18 years old (double the amount in 2017);
- 9 Iraqis and 3 Vietnamese (in 2017, Iraq was already the top nationality in the classification of victims of an aggravated form of human smuggling).

Human smuggling	<18	18-25	26-30	≥30	Women	Men	Total
2017	4	6	5	4	6	13	19
2018	8	5	4	2	7	12	19

New support for victims of human smuggling initiated by the specialised reception centres



3 child victims of smuggling began receiving support in a specialised reception centre in 2018:



■ 2 Iraqi



■ 1 Vietnamese

- In 2018, **17** victims of aggravated smuggling began receiving support in a specialised reception centre in Belgium. This is the same amount as in 2017.
- Most of these victims are men (13 out of 17) and a larger proportion of Iraqis (7 out of the 17).

Nationality	Women		Men		Total
	<18	≥18	<18	≥18	
Iraq	2	1		4	7
Afghanistan		1		1	2
Eritrea				2	2
Vietnam			1	1	2
Cameroon				1	1
Guinea				1	1
India				1	1
Iran				1	1
Total	2	2	1	12	17

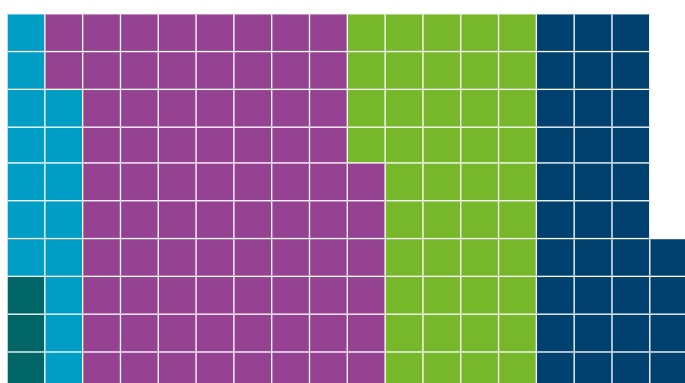
Source: Specialised reception centres,

Convictions for human smuggling (Justice Department data)

- In 2017, **175** convictions were pronounced. This is a significant increase compared with 2015 (minimum 90 convictions) and 2016 (minimum 127 convictions).
- These convictions led to 578 judgments, 122 of which were suspended. Among the 578 sentences handed down, the number of prison sentences (174) was very close to the number of fines (172). The number of confiscations was also significant (101).
- The length of the prison sentences pronounced in 2017 were mostly 1 to 3 years.

Sentences	Decisions	Suspended (completely or partly)
Incarceration*	174	51
Fine	172	70
Deprivation of rights	130	n/a
Confiscation	101	1
Community service	1	n/a
TOTAL	578	122

Duration of prison sentences pronounced*



*1 square = 1 person

■ 3-6 months ■ 6 months - 1 year ■ 1-3 years ■ 3-5 years ■ 5-10 years

Methodological remarks

- The Department of Criminal Policy Service of FPS Justice has improved its data for 2017.
- These figures show the number of final convictions, i.e. convictions that couldn't be taken to the court of appeal.
- A certain number of cases are only entered in the database after several months, which explains why the data for 2018 isn't available yet.

Top 5 nationalities of those convicted of human smuggling in 2017

Nationality	2017
Unknown	43
Iraq	18
Belgium	14
Syria	13
Algeria	10
Total	175

The nationality of a large number of convicted parties in 2017 isn't known (25%). Iraq (10%), Belgium (8%), Syria (7%) and Algeria (6%) are the top 5.

3. Explanation of the statistics relating to the investigations into human trafficking conducted by the NSSO Inspection Department's ECOSOC teams in 2018

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Beings*

3.1. | Introduction

This report concerns the NSSO Inspection Department's services (Thematic Directorate for Trafficking in Human Beings, ECOSOC teams).

Besides the purely statistical data, this contribution aims to provide qualitative information on the performance of the NSSO Inspection Department's ECOSOC teams in 2018.

The data included in this report comes from two sources:

1. The internal file management system (Pegasis), from which the data relating to the cases closed in 2018 was extracted. This data concerns 65 potential victims.
2. The analysis of the checklists drawn up by social inspectors in 2018 in accordance with Chapter VIII of COL 01/2015 on the policy of investigation and prosecution regarding trafficking in human beings. (Appendix 5 of COL 01/2015). NSSO inspectors are responsible for writing these checklists:
 - as soon as a potential victim is taken in by a reception centre or could have been (for instance: all the elements were present but the potential victims refused to be referred);
 - as soon as the investigation in progress indicates that there is sufficient evidence of potential human trafficking.

In 2018, 78 checklists were created, which means that 78 potential victims were discovered. This difference with the 65 potential victims from the Pegasis source is due to the fact that the cases for which a checklist was drawn up in 2018 weren't necessarily closed in 2018.

A specific analysis report based on these checklists is submitted annually by the Thematic Directorate to the Department of Criminal Policy, FPS Justice.

Other source of qualitative information: consultation of the human trafficking cases processed in the 10 provincial departments in 2018 and communication with ECOSOC team leaders on the completed investigations.

3.2. | Statistics from reports and criminal reports (Pegasis)⁴²⁷

According to the statistics received (internal departmental statistics – Pegasis) concerning the **investigations closed in 2018** (investigations begun in 2018 or before 2018):

- **During 2018**, the NSSO compiled **14 reports (R)** (20 potential victims concerned) and **42 criminal reports (CR)** (45 potential victims concerned) relating to human trafficking (HT - Art. 433quinquies of the Criminal Code). In addition, following investigations carried out in collaboration with other inspection or police services, the reports or criminal reports on HT were sometimes compiled by another service; 13 criminal reports or reports were written by other services within the framework of a collaboration with the NSSO..

⁴²⁷ These statistics are based on closed investigations.

Provincial departments	R/CR compiled by the NSSO	R/CR compiled by another service ⁴²⁸
West Flanders	0	0
East Flanders	8	2
Antwerp	8	1
Limburg	0	1
Hainaut	10	2
Namur-Luxembourg	9	2
Liège	3	0
Flemish Brabant	4	2
Brussels	14	3
Walloon Brabant	0	0
Total	56	13

- 65 presumed victims of HT were referred to the judicial authorities by the NSSO Inspection Department through criminal reports or reports.
- The most represented nationalities are: Afghanistan (10 people), Poland (7), Ukraine (6), Morocco (6), Pakistan (6), Bulgaria (6). Also note that among these 65 presumed victims, 18 were EU nationals, 2 of whom were Belgian.
- The most represented sectors of activity were garages (car and truck wash), hotel & catering, construction and trade (retail).

Geographic distribution by sector of activity

	Namur-Luxembourg	Brussels	Liège	Hainaut	Limburg	Waals-Brabant	Walloon Brabant	Antwerp	East Flanders	West Flanders	Total
Retail trade	3	3	1					2			9
Hotel & catering	7	11					2	7		2	29
Prostitution									3		3
Construction				2		1					3
Car wash and truck wash	1		2	2			1	1	2	3	12
Domestic staff		2					1				3
Garage			1								1
Bakery	1										3
Hairdressing & beauty		3							2		3
Agriculture/ Horticulture					4						4
Selling animals							1				1
Sorting objects/ clothes (recycling)		2					5				7
Total	12	21	4	4	4	1	10	10	7	5	78

3.3. | Analysis of the checklists

Introduction

Taking into account the stipulations of COL 01/15, a checklist was completed in **2018** as soon as there were **sufficiently precise indications** of a potential situation of human trafficking, whether the investigation was ongoing or closed.

In total, **78 checklists** were established (1 checklist per potential victim; hence, several checklists may concern the same employer); they are distributed as follows:

Provincial departments	
West Flanders	5
East Flanders	7
Antwerp	10
Limburg	4
Hainaut	4
Namur-Luxembourg	12
Liège	4
Flemish Brabant	10
Brussels	21
Walloon Brabant	1
Total	78

⁴²⁸ Within the framework of an investigation in collaboration with the NSSO.

Distribution according to age, gender and nationality of the presumed victims

Nationality	Men	Women
Afghanistan	9	0
Albania	2	0
Bangladesh	1	0
Belgium	2	0
Brazil	1	0
burkina Faso	2	0
China	6	0
Colombia	0	1
Congo	1	0
Egypt	5	0
Greece	1	1
Hungary	1	0
India	5	0
Italy	1	1
Morocco	12	3
Mexico	0	2
Nigeria	0	3
Pakistan	3	0
Poland	0	2
Rwanda	1	0
Syria	6	0
Tunisia	2	0
Ukraine	0	1
Vietnam	1	2
Total	62	16

Age	Men	Women
Minors (-18 years)	0	2
Between 18 and 30 years	33	7
Between 30 and 40 years	16	4
Between 40 and 50 years	7	2
More than 50 years	6	1
Total	62	16

A quick analysis of the table above leads to the conclusion that almost 80% of potential victims of labour exploitation are men (62/78). As regards age, half of the presumed victims are between 18 and 30 years old, and a quarter between 30 and 40 years old. It should be noted that women are essentially active in the hotel & catering industry and prostitution. The two exploited minors (Vietnamese) were employed in a nail bar in Brussels. They were 17 years old at the time of the check.

As regards the nationality of the victims, the great majority (69/78) are from third countries (outside the EU). Among the 9 EU nationals, it should be noted that 2 are Belgian.

Circumstances in which human trafficking occurred and aggravating circumstances

Appendix 5 of COL 01/2015 includes several human trafficking indicators under the point 'Circumstances'. Analysis of the checklists received in 2018 led to the following findings:

Identity papers

In the large majority of cases, the potential victims were staying illegally in Belgium. Either they had national identity papers (passport), or they had a copy of identity papers.

In approximately 25% of cases encountered, the potential victims didn't have their own identity papers or travel documents.

Financial aspect – social security – social documents

In terms of income: in almost all the situations encountered, pay was low, very low, and even non-existent. Sometimes, the potential victim had to hand over part of their wages or they were promised wages they were never paid. One of the victims even said she had to reimburse her travel expenses. Another one was paid into a bank account opened in her name, but she was unaware of its existence. The exploiter had power of attorney over it and made regular withdrawals. Here are several other concrete examples encountered in 2018: €30/9h; €50/9h or €60/9h; €60/15h; €5-10/d; €2.25-5/h; €3,000 for 2 years of work, 12h/d and 7d/wk; €200 for 2 months work, 9h/d and 7d/wk; €150/70h work per week, €80/91h work per week, etc.

In terms of social security and social documents: about 15% of workers were informed about Dimona. The others were employed illegally and no steps were taken in terms of social security, social documents, work permit or professional card.

Circumstances of the exploitation

The checklist includes the indicators listed below. Some indicators are recurring, such as squalid housing conditions or excessive work hours. Details and examples are provided below for each one.

- **The victim has no appropriate equipment/work clothes**
- **The victim works in dangerous/squalid conditions**
Indicators relating to work protection (health and safety of workers: hygiene measures, clothes and workplaces, etc.) concern approximately 25% of the presumed victims encountered.
- **The victim isn't allowed to be in contact with the outside world**
- **The victim's freedom of movement is limited**
Approximately 25% of the presumed victims encountered had no contact with the outside world and had limited freedom of movement. Some of them knew no lingua franca (Dutch, French or English).
- **The victim lives in squalid conditions**
In a large number of potential HT situations, the victims are housed in substandard or insanitary accommodation. This was the case for 32 people, i.e. 41% of the presumed victims.
- **The victim is deprived of medical care**
Two presumed victims were deprived of medical care.
- **The victim works for long periods**
Almost 60% of the presumed victims encountered worked for abnormally long periods. Here are a few examples encountered in 2018: working 10-12h/d, 7d/wk; 12h/d, 6d/wk; 15h/d; 9h/d, 7d/wk; 13-14h, 7d/wk; 70h/wk; 84h/wk; etc.

Aggravating circumstances

Appendix 5 of COL 01/2015 includes several aggravating circumstances of human trafficking. Several were noted in the cases encountered in 2018:

- **Relating to the victim's situation**
Among the victims listed, two 17-year-old Vietnamese girls were exploited in a nail bar. Relating to the perpetrator
- In the majority of cases, the perpetrator abuses the victim's vulnerable situation, has authority over them or abuses their position. None of the checklists describe a perpetrator as a law enforcement officer exercising their role. Nevertheless, 2 presumed victims were employed by diplomats.
- **Relating to the circumstances and consequences of trafficking**
Among the 78 victims concerned by the 2018 checklists, 18 explained they had suffered threats, acts of violence or coercion at the hands of the perpetrator. The lives of 6 presumed victims was put at risk. Among these 6 people, one of them is permanently unable to work as a result of their exploitation.

In the large majority of cases, the activity concerned is a usual activity. However, one case concerns the illegal farming and sale of cannabis.

Referral of victims to a specialised reception centre

Among the 78 checklists recorded, **39** concerned presumed victims who had been put in contact with or taken in by a specialised reception centre (Sürya, Payoke or PAG-ASA).

Some of them were already there; the investigation therefore focused on interviewing these people and/or on more in-depth searches into HT.

Among the 39 presumed victims, 2 minors were taken in by Esperanto.

The distribution per provincial department is as follows:

Provincial departments	Number of presumed victims referred	Nationality and gender
Namur-Luxembourg	3	1 Chinese (W) 1 Tunisian (M) 1 Congolese (M)
Brussels	17	8 Moroccan (7M and 1W) 4 Egyptian (M) 1 Vietnamese (M) 1 Indian (M) 1 Turkish (M) 2 Vietnamese (W)
Liège	4	1 Moroccan (M) 2 Afghan (M) 1 Indian (M)
Hainaut	1	1 Brazilian (M)
Walloon Brabant	1	1 Burkinabé (M)
Antwerp	0	
Flemish Brabant	3	1 Burkinabé (M) 1 Chinese (M) 1 Bangladeshi (M)
East Flanders	3	2 Moroccan (M) 1 Nigerian (W)
West Flanders	3	2 Mexican (W) 1 Afghan (M)
Limburg	4	2 Albanian (M) 2 Albanian (M) 2 Greek (1M and 1W)
TOTAL	39	

3.4. | Joint Action Days labour exploitation

In May 2018, the Belgian social inspection services took part in the Joint Action Days (JAD) labour exploitation for the third consecutive year.

This EU initiative is part of the European EMPACT project (European multidisciplinary platform against criminal threats), with human trafficking as one of its priority areas of crime. The EMPACT project is part of the EU action plan against human trafficking. Europol offers its infrastructure and expertise to allow social inspection services in the different Member States to implement this initiative.

The new Thematic Directorate for Trafficking in Human Beings within the NSSO Inspection Department steered Belgian cooperation in the right direction for the Joint Action Day labour exploitation 2018, with targeted checks on labour exploitation in high-risk sectors.

Besides the NSSO Inspection Department, the federal and local police as well as the Social Legislation Inspectorate, the regional social inspection services, the housing inspectorate and labour prosecutors also played an active role.

In the 149 workplaces checked, the inspectors were attentive to the detection of labour exploitation indicators. Indicators of this type were identified especially in the hand car wash sector, which is the focus of this initiative in Belgium.

Nine potential victims of human trafficking were identified. These workers were employed in inhumane conditions and, in some cases, housed by the employer in appalling conditions. One of them was referred to Sürya, the specialised reception centre in Liège.

The action was also important on an international level. The Dutch and Belgian inspection services worked together closely during the three border controls. The emphasis was mainly on workers from Dutch interim agencies who work at dumping rates in Belgian construction companies. A check was also carried out to ascertain whether workers employed in Belgium were receiving benefits in the Netherlands.

Europol extended its traditional scope by including the social inspection services in the coordination of actions to combat labour exploitation. Throughout the JAD action period, Europol maintained a coordination centre in The Hague, where an NSSO representative was also present to facilitate the coordination of the actions and the exchange of information between the different countries. The participating Member States could address special requests to another Member State for information or investigation by the inspection services. Hence, an investigation into labour exploitation was launched in collaboration with the Spanish, Polish and Hungarian labour inspectorates. Additional information was also exchanged in several cases after the JAD period.

The fact that a Belgian JAD check of a hand car wash in 2016 resulted in the conviction of the car wash owner for human trafficking in 2017, illustrates that a multidisciplinary approach such as this bears fruit.

During the JAD actions in 2019 (9-14 April), collaboration between the inspection services, the police and Dutch, Portuguese and Slovenian immigration services also proved fruitful. Dutch and Slovenian labour inspectors were present during the inspections in Belgium. In six of the 52 workplaces checked, the inspectors found indicators of labour exploitation. Six potential victims of human trafficking were identified. These workers were employed in inhumane conditions and, in some cases, housed by the employer in appalling conditions.

3.5. | Investigation techniques

The ECOSOC teams' social inspectors increasingly use specific investigation techniques such as:

- aerial reconnaissance, which enabled the detection of two victims of HT among seven illegal workers discovered at a building site;
- phone investigations (within the framework of a mini-investigation or an investigation);
- using video-surveillance images;
- using mobile phones;
- searches of 'open-source intelligence' (internet, social media).

These investigation techniques are employed in collaboration with the federal police's specialised services, usually upon the request of the labour prosecutor. Techniques such as these can help to identify and interview potential victims, identify potential witnesses, corroborate victims' statements and also ascertain the employment of other workers/victims, identify perpetrators and reveal links between individuals or companies.

3.6. | Conclusion

The cases of exploitation in 2018 generally occurred in urban areas and involved mostly men.

In the large majority of cases, only one person was concerned. Nevertheless, several investigations led to the detection of a number of potential victims exploited by the same person or network. This was particularly the case in:

- an asparagus farm in Limburg: 4 presumed victims;
- a hotel in West Flanders: 2 presumed victims;
- sorting materials in Brussels: 2 presumed victims;
- nail bars: 2 presumed victims;
- sorting clothes in Flemish Brabant: 5 presumed victims;
- a Chinese restaurant in the Province of Namur: 3 presumed victims.

It should be noted that some of the presumed victims encountered, who are included in this summary, weren't taken in by a specialised reception centre mainly because they were happy with their situation and refused any kind of support.

The sectors of activity most commonly encountered in the analysis of the 2018 checklists were the hotel & catering industry, garages (car and truck wash), retail trade (including night shops and tobacconists) and sorting recyclable goods. It should be noted that the HT Thematic Directorate's specific focus in 2018 was the hand car wash sector.

The most common practices were: undeclared work (no DIMONA), illegal employment of foreign workers and illegal stay.

Among the indicators, the most common were:

- low wages or none at all;
- abnormally long working hours;
- squalid housing conditions;
- abuse of the vulnerable situation;
- use of threats / violence;
- limitation of freedom of movement and contact with the outside world.

Part 5

Recommendations



Recommendation 1: make human trafficking a priority in the field once again, by allocating the necessary human and material resources to frontline services

Myria would like the police, the judiciary and inspection services to have sufficient human and technical resources to be able to combat human trafficking more efficiently. Frontline services should also be better trained to detect victims of human trafficking.

The federal government must budget for and allocate sufficient human and financial resources to the police and inspection services, so that the fight against human trafficking is a real priority and not just on paper.

This condition is essential to detect and inform presumed victims of trafficking. The frontline services' obligation to inform goes hand in hand with sufficient resources and budgets for police and inspection services. However, these have been sorely lacking for several years now. Owing to staff shortages, police departments are no longer able to assist the social inspection services during checks. The NSSO Inspection Department's ECOSOC teams don't have sufficient resources either. For several years now, staff members who leave these services are no longer replaced. The federal public prosecutor's office has also raised the alarm on this matter.

Recommendation 2: promote better knowledge of the multidisciplinary circular on human trafficking and especially frontline services' duty to inform

Better knowledge of the multidisciplinary circular among frontline services concerning their duty to inform is required. It could be useful to develop a practical tool.

Myria recommends that the Interdepartmental Coordination Unit develop a practical and dynamic tool for frontline services on their duty to inform presumed victims of trafficking.

Recommendation 3: quickly offer victims of human trafficking the assistance of a lawyer

The legal support for victims provided by the specialised reception centres is vital. It allows victims to be explained their rights and to provide them with support within the framework of criminal proceedings (hearings, information on the follow-up, support, etc.. The centres also offer victims the assistance of a lawyer with a view to claiming compensation. A lawyer is usually appointed when the case is in the closing phase: either because the investigation by an investigating judge is coming to an end and a hearing in chambers has been scheduled for the settlement of the proceedings, or even when the case is set to go before the court. Sometimes, a lawyer is appointed earlier when necessary (e.g. when there are prisoners and the case will probably be closed quickly.

However, the rapid appointment of a lawyer not only gives access to the file but also makes it possible to ask the investigating judge to carry out additional investigations, if necessary, if the investigation appears to be flawed. It also avoids a situation where the lawyer discovers at the hearing in chambers that they are faced with a colossal case, and that they haven't had the time to sufficiently familiarise themselves with it in order to best represent the victim's interests. More generally, the victim is thus represented at all stages of the proceedings. This allows them to position themselves, among other things, when a request for a confrontation is made by the perpetrator.

Once a victim has been given the chance to acquire victim status, an appointed lawyer can better defend the victim's interests in case of problems, during the proceedings, that are inherent to the status, or during the period preceding the trial. This should also allow victims to decide, with full knowledge of the facts, whether or not to file a civil suit and to seek redress.

Myria recommends that the specialised reception centres appoint a lawyer in due course for the victims they are supporting. This appointment must be made quickly after the case has been put under the responsibility of an investigating judge. In some cases, such an appointment can also be useful after the first interview of the victim within the framework of the first stage of the criminal procedure (the 'information'). An amendment to the multidisciplinary circular of 2016 could be envisaged to this effect.

Myria also recommends that for each victim of human trafficking, a registration as "injured party" be systematically introduced in order to guarantee their rights during the criminal proceedings.

Recommendation 4: allow victims of human trafficking to benefit from secondary legal aid until the conclusion of the criminal proceedings against the perpetrators, by adapting the royal decree in question

With no budget to pay the lawyers, the reception centres for victims rely on lawyers acting in the context of legal aid. The victim can benefit from a pro-Deo lawyer if they fulfil the conditions (e.g. if they are on welfare, which is the case at the start of the support).

However, human trafficking investigations take time. Sometimes, a case will only be closed after several years. In such cases, it is likely that the victim has found a job and no longer meets the conditions for legal aid to benefit from a pro-Deo lawyer. The victim may also want to 'turn the page' or have other financial priorities.

Furthermore, victims who are entitled to the free assistance of a lawyer as long as they aren't employed, no longer meet the financial conditions to benefit from this legal assistance as soon as they re-enter the labour market. This generates considerable costs. According to Myria, victims of human trafficking should receive free legal assistance until the end of the criminal proceedings against the perpetrators.

At the beginning of the proceedings, trafficking victims are in a particularly vulnerable situation, just like other categories of litigants such as asylum seekers. Myria therefore recommends **amending the Royal Decree of 18 December 2003 on secondary legal aid** so that victims of human trafficking, whose status was initially recognised after their first statements to the judicial authorities, can benefit from secondary legal aid until the end of the criminal proceedings against the perpetrators. In addition, a list of voluntary lawyers specialised in helping victims of human trafficking should be drawn up at the main legal aid offices in Belgium.

Recommendation 5: structural funding for the specialised reception centres to enable them to fully carry out their duties, especially as regards legal support for victims.

The three specialised reception centres received official recognition for the first time in 2013, through the adoption of the Royal Decree of 18 April 2013. It was renewed in 2018 by the Royal Decree of 22 June 2018. However, as stated in Article 7 of the Royal Decree of 2013, this doesn't entail the right to subsidies.

And yet the centres are faced with the recurring problem of their structural funding. This point, mentioned in the national action plan 2015-2019, was the subject of proposals by the bureau of the Interdepartmental Coordination Unit. However, it still hasn't been resolved, despite the recommendations of international assessment bodies such as GRETA, the group of experts responsible for monitoring the Council of Europe Convention on Action against Trafficking in Human Beings, which Belgium has ratified.

Myria hopes that a permanent solution can be found for this financial dilemma during the next term of office.

Recommendation 6: prevent secondary victimisation of victims by avoiding confrontations between victims of sexual exploitation and their exploiters

In an effort to avoid the risk of secondary victimisation, it isn't advisable to confront victims of sexual exploitation with the defendants. In the case of victims of labour exploitation, caution should be applied and a lawyer must be appointed for the victim in case of confrontation.

Myria questions the added value of confrontations between victims and defendants in certain problem cases, certainly as regards victims of sexual exploitation, who are traumatised by their negative psychological and physical experiences and risk becoming victims again in a secondary victimisation process. In practice, the goal of the defendant's request for a confrontation is rarely to obtain additional objective elements; instead, it is more of an attempt to manipulate and intimidate the victim or to incite them to withdraw or modify their statement. It is important that the investigating judges are sufficiently aware of this and in no way comply with such requests for a confrontation straight away. These confrontations are often unnecessary and even counter-productive to the investigation.

The additional psychological damage suffered by the victim is usually considerable. According to Myria, victims of sexual exploitation should never be forced into a confrontation. In the case of sexual exploitation, the majority of investigative judges now immediately give a negative response to any request for confrontation from the defendant's defence.

A confrontation is more frequently requested in the case of labour exploitation. Caution should also be exercised, because in some situations of labour exploitation, the victim may also suffer significant trauma. Victims must also have access (free of charge) to the advice of a lawyer to inform them of their rights and assist them in the event of a confrontation.

Recommendation 7: encourage recourse to the possibility of allocating confiscated property and financial advantages to the civil party with a view to compensating them for the damage suffered

Myria encourages recourse to the allocation of confiscated property and financial advantages to the civil party in order to compensate them for the damage suffered. When confiscations are pronounced and concern the replacement or equivalent of the property the victim was deprived of as a consequence of the offence, the judge may, pursuant to Article 43bis, paragraph 3 of the Criminal Code, attribute them to the civil party as compensation for the damage suffered. This measure should be applied, in practice, at least for material damage.

Recommendation 8: provide all victims of human trafficking with effective access to Financial Aid Fund for Victims of Deliberate Acts of Violence

Myria asks the Commission for Financial Aid to Victims of Deliberate Acts of Violence and Occasional Rescuers to show some openness in interpreting the notion of a 'deliberate act of violence' as regards victims of human trafficking for the purpose of labour exploitation.

The applicant must be a victim of a deliberate act of violence who, as a result, has suffered serious physical or psychological damage. However, 'act of violence' isn't defined in any preparatory or legal document. This requirement is a major obstacle for victims of trafficking for the purpose of labour exploitation. Myria calls for reflection on a better definition or amendment of the law so that all victims of human trafficking can have effective access to the Fund.

Recommendation 9: conduct in-depth financial investigations in order to be able to compensate victims, collect additional objective evidence and dismantle networks

As many seizures as possible should be carried out at the beginning of the investigation in order to obtain effective confiscations later.

An in-depth financial investigation provides a detailed picture of the financial capacity of perpetrators of human trafficking. A financial investigation must be immediately launched at the start of a human trafficking case. As soon as suspects believe an investigation is under way, they try to conceal or move their assets, or they let their company go bankrupt, making it impossible to seize assets at a later stage of the proceedings. This is why it is important to seize as many assets as possible at the start of an investigation and to cooperate at international level. These seizures are a guarantee of effective confiscations at a later date.

Financial investigations can also be useful if the criminal assets of suspects have already disappeared and can no longer be seized. It is an important tool to gain an overview of the network and to have it dismantled. In addition, they are a means of collecting objective evidence. In their decisions, the courts regularly refer to evidence from the financial investigation to convict defendants.

Summary of the recommendations

	Recommendation	Recipient
2019/12	Make human trafficking a priority in the field once again, by allocating the necessary human and material resources to frontline services	Federal government
2019/13	Promote better knowledge of the multidisciplinary circular on human trafficking and especially frontline services' duty to inform	Interdepartmental Coordination Unit
2019/14	Quickly offer victims of human trafficking the assistance of a lawyer	Reception centres for victims
2019/15	Allow victims of human trafficking to benefit from secondary legal aid until the conclusion of the criminal proceedings against the perpetrators, by adapting the royal decree in question	- Interdepartmental Coordination Unit - Minister of Justice
2019/16	Structural funding for the specialised reception centres to enable them to fully carry out their duties, especially as regards legal support for victims	- Interdepartmental Coordination Unit - Federal government
2019/17	Prevent secondary victimisation of victims by avoiding confrontations between victims of sexual exploitation and their exploiters	Human trafficking reference prosecutors and investigating judges
2019/18	Encourage recourse to the possibility of allocating confiscated property and financial advantages to the civil party with a view to compensating them for the damage suffered	Courts and tribunals
2019/19	Provide all victims of human trafficking with effective access to the Financial Aid Fund for Victims of Deliberate Acts of Violence	- Interdepartmental Coordination Unit - Minister of Justice
2019/20	Conduct in-depth financial investigations in order to be able to compensate victims, collect additional objective evidence and dismantle networks	Magistrates (public prosecutor and investigating judges)

COLOPHON

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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 'Trafficking and Smuggling of Human Beings' is to provide an independent assessment of the evolution and results of the fight against human trafficking and smuggling.

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