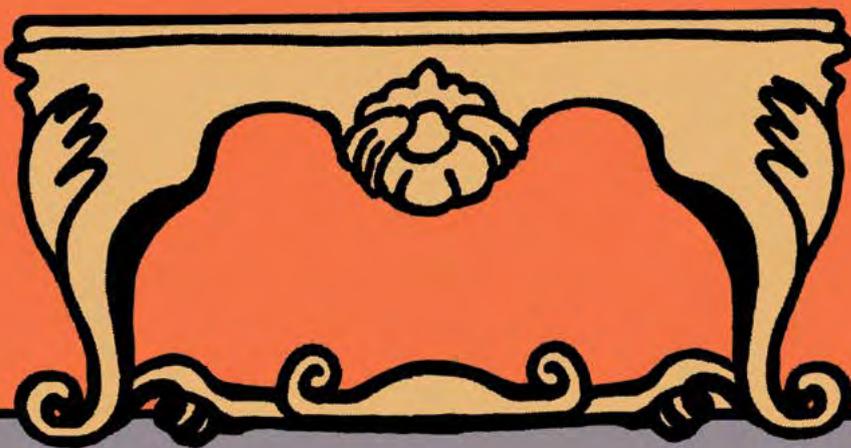




Part 1: Focus:
Exploitation of
domestic staff



This year, Myria has dedicated the report's focus to a problem that is difficult to detect: the exploitation of domestic staff. Domestic work takes place in the private sphere and as a result, escapes spot checks by the labour inspectorate.

The focus successively examines the general legal aspects of domestic work (Chapter 1), human trafficking cases in this sector (Chapter 2) and the charge of human trafficking within the context of domestic work (Chapter 3). It is also supported by an external contribution by Bruno Devillé, social inspector and head of the NSSO Inspection Department's ECOSOC/THB team, which deals with the phenomenon in Brussels.

Chapter 1

Domestic work: legal framework

1. Status

Domestic work can take various forms: cleaning, cooking, gardening, childminding, etc. The worker may be working for one family (internally or externally) or different families. Their work status can also be very different (domestic worker, household staff, service cheque employee, diplomatic domestic staff). Furthermore, au pairs, who aren't workers, are also required to carry out certain domestic chores.

1.1. | Domestic workers and household staff

A domestic employment contract is a "contract by which a domestic worker undertakes, in return for payment, to carry out mainly manual household tasks, under the authority of an employer, for the needs of the employer's household or family"¹. For instance, cooks, cleaners and nannies in the private service of an employer are considered domestic workers². On the other hand, a worker who doesn't perform tasks considered as housework (driver, gardener, carer, etc.) or who performs

mainly intellectual work (nurse, tutor, etc.), isn't a domestic worker but household staff, which is defined as "a worker who is mainly engaged in manual or intellectual tasks within the property, inside or outside the home, for the private needs of the employer or their family"³. Both the domestic worker and salaried household staff have an employment contract with their employer.

The employer of a domestic worker has several social obligations, and in particular, since 1 October 2014, the obligation to register them with the social security system⁴. Exemptions that previously existed for household staff have now been restricted⁵. These amendments were adopted in order to comply with the ILO Domestic Workers Convention⁶. The aim was to provide domestic staff with social protection similar to that enjoyed by other workers.

1 Art. 5 of the Employment Contracts Act of 3 July 1978 and Art. 353bis/11, para. 3 of the framework legislation (I) of 24 December 2002.
2 In September 2019, the social partners of joint committee 323 - on which domestic workers depend - signed a collective labour agreement establishing a new job classification and pay scale for domestic workers. This status is now divided into three different categories: cleaning, housework and childminding. The main task performed by the worker determines the category to which they belong. See Fairwork Belgium, *Travailleurs sans papiers, rapport annuel 2019*, pp. 24-26.

3 Art. 353bis/11, para. 2 of the framework legislation (I) of 24 December 2002.
4 Royal Decree of 3 July 2014 repealing Articles 5 and 18 and amending Article 16 of the Royal Decree of 28 November 1969 in implementation of the Act of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning social security for workers, *O.B.*, 28 July 2014.
5 Exemption from social security contributions is now limited to workers who carry out 'occasional' work. This means the activity or activities carried out for the needs of the employer's household or their family, except for manual household work, as long as the employee doesn't perform these occasional activities in this household professionally and in an organised manner, that they only receive limited compensation and that the activity doesn't exceed eight hours a week with one or more employers. These are services of an intellectual nature (e.g. baby-sitting, accompanying elderly persons, shopping for persons with reduced mobility, driving for persons with reduced mobility). See the report to the King of the R.D. of 3 July 2014 and: <https://www.ucm.be/Actualites/Personnel-de-maison-assujetti-aux-cotisations-sociales-a-partir-du-01-10-2014>
6 ILO, Convention No. 189 of 16 June 2011 concerning decent work for domestic workers, adopted in Geneva on 16 June 2011 by the International Labour Conference at its 100th session. This Convention was ratified by Belgium on 10 June 2015 and came into force on 10 June 2016.

Any private person who employs domestic staff for household services - on whatever scale - of a mainly manual nature (cleaning, ironing, laundry, gardening, etc.) is now considered an employer and is therefore required to pay social security contributions to the NSSO. From a social security point of view, there is therefore no longer any distinction between the status of domestic worker or household staff.

1.2. | Service cheques

The majority of home helps working a few hours a week for several private families in Belgium do this work under the service cheque system. It was originally designed to combat undeclared work in the domestic economy, to create additional jobs for the low-skilled and to make home help accessible to a wider part of society⁷. In this framework, the employer is an approved company, with the client (or user) being the family using the home help's services. The service cheque system is specific to each region⁸. The client has to register and order service cheques, which enable them to have household chores carried out at a favourable rate.

Home helps working under the service cheque system sign a written employment contract with an approved company. This guarantees them a minimum wage and social protection. Both Belgian and foreign workers can be employed under a service cheque employment contract. However, if necessary, they must have valid residence and work permits⁹.

1.3. | Au pairs

Legally, au pairs¹⁰ aren't considered as workers. These are young foreigners between 18 and 25 years of age, hosted by a host family for a maximum of two years. The aim is to enable them to broaden their cultural horizons and improve their language skills. They receive board and lodging as well as some pocket money (EUR 450/month)¹¹ in exchange for childminding and light housework. The participation of the au pair in family chores can in no way be the main purpose of the stay. They may not work more than 20 hours a week and four hours a day¹². Au pairs don't have any social protection. However, host families must take out insurance that covers medical, pharmaceutical and hospitalisation costs in the event of accident or illness, as well as repatriation insurance.

If the young person is from a country that isn't a member of the European Economic Area or Switzerland, then it may be necessary to fulfil certain formalities to obtain a work authorisation, work permit or visa¹³.

In the event of non-compliance with the conditions associated with the specific status of au pair, it is assumed that the latter is bound by an employment contract as a domestic worker, as referred to in Article 5 of the Employment Contracts Act of 3 July 1978, vis-à-vis the host family¹⁴. The regional labour inspectorate is competent in this area. However, the procedures are long and complicated¹⁵.

Regulations were tightened several years ago to combat abuse. Nevertheless, in practice, this particular regulation seems to allow some families to recruit a domestic worker or nanny at low cost¹⁶. One of the problems relates

7 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 15 : http://www.orcasite.be/userfiles/file/ORCA_Domestique_FR.pdf

8 <https://www.titre-service.brussels> ; <https://titres-services.wallonie.be> ; <https://dienstencheques.vlaanderen.be>

9 See <https://www.titre-service.brussels>.

10 See Articles 24 to 29 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999, O.G., 26 June 1999.

11 Art. 26, 4° of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

12 Art. 27 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

13 <https://emploi.belgique.be/fr/themes/international/travailleurs-etrangers/travail-au-pair-en-belgique> et https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Les_jeunes_au_pair.aspx

14 Art. 29 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

15 According to an interview with Fairwork Belgium. More often than not, it is a question of recuperating unpaid pocket money.

16 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 17 : http://www.orcasite.be/userfiles/file/ORCA_Domestique_FR.pdf

to the fact that host families aren't considered as employers, whereas in practice, they sometimes are¹⁷.

There are therefore calls for the abolition of this regulation due to ongoing abuse¹⁸ and the introduction of legal alternatives for regular child-minding at home¹⁹.

1.4. | Diplomatic domestic staff

It is estimated that there are 303 diplomatic missions and consular posts in Belgium, employing more than 8,000 people²⁰.

A special category of domestic workers is therefore composed of domestic staff in the private service of diplomats. These are persons employed exclusively in the private domestic service of a member of the diplomatic mission, other than employees of the sending state²¹. A distinction must be made between the domestic staff in the private service of a diplomat and members of service staff, such as drivers, gardeners or cooks, sent to Belgium and who work in the domestic service of the mission or post of the sending state²².

These domestic workers are generally from third countries, and are sometimes the same nationality as their employer.

Special identity card

These domestic workers don't need a work permit; instead, they receive a special diplomatic identity card through their employer²³.

Before the worker comes to Belgium, the employer and the worker conclude an employment contract for domestic staff, which will be executed in Belgium and subject to compliance with Belgian labour law. The Protocol Directorate of FPS Foreign Affairs offers standard employment contract²⁴ – which is outdated in terms of wages²⁵. The worker must also meet certain conditions, such as not having Belgian nationality and not residing illegally in Belgium²⁶. The employer must also fulfil a number of obligations that must be included in the employment contract, such as paying the agreed wage and providing the employee with accommodation in a clean and decent place.

In addition, since 1 October 2016²⁷, the salary mustn't be paid in cash. It must be paid in book money (into the worker's bank account) and in euros²⁸.

The diplomatic mission concerned asks the Protocol Directorate of FPS Foreign Affairs for its agreement to the principle of hiring a private domestic worker. This request is accompanied by certain documents, including the employment contract²⁹.

As soon as the domestic worker arrives in Belgium, an application for a special identity card must be submitted by the diplomatic mission to the Protocol Directorate of FPS Foreign Affairs. In principle, the worker is required to go and collect their card in person

17 *Ibidem*.

18 The Flemish labour inspectorate, in particular, (Vlaamse Inspectie Werk en Sociale Economie). Or.c.a (now: Fairwork Belgium) refers to the 2008 annual report of this inspection department.

19 In this sense, ORCA, Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 17.

20 Good Offices Commission (hereafter: GOC), *Personnel des ambassades*, December 2018, p. 3, available at: <https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices>

21 See Article 1, h) of the Vienna Convention on Diplomatic Relations of 18 April 1961, Article 1, i) of the Vienna Convention on Consular Relations of 24 April 1963, as well as point 2.7.1.1. of the guide to the protocol on immunities and privileges, published by FPS Foreign Affairs, available on its website: https://diplomatie.belgium.be/fr/Services/Protocole/guide_du_protocole/guide_du_protocole_immunites_et_privileges

22 Art. 1, g) of the Vienna Convention on Diplomatic Relations and Art. 1, f) of the Vienna Convention on Consular Relations. These people may also receive a special identity card under certain conditions.

23 Art. 4, 7° of the R.D. of 30 October 1991 concerning the residence papers of certain foreigners in Belgium, *O.G.*, 17 December 1991. However, this special identity card will only be issued if the domestic worker is in the service of a head of a diplomatic mission, a career head of a consular post or a head of a recognised international organisation with diplomatic status (see GOC, *Personnel des ambassades*, December 2018, point 7.1.1.).

24 See Annex 3 of Chapter 2 of the protocol guide: "immunities and privileges", p. 34.

25 While the protocol guide is regularly updated (last update: April 2020), unfortunately, just like Fairwork Belgium, the indicated salary scales (dating from 2013) are out of date. See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, p. 16.

26 For the whole procedure, see point 2.7. of the guide to the protocol on immunities and privileges.

27 Act of 23 August 2015 amending the Act of 12 April 1965 on the protection of workers' wages regarding payment of wages, *O.G.*, 1 October 2015.

28 GOC, *Personnel des ambassades*, December 2018, point 7.1.5.

29 *Ibid.*, point 7.1.2.

from the Protocol Directorate. It is valid for a year and the worker must renew it in person. This is an opportunity for the worker to be informed of their rights as a worker and to report any possible problems.

During interviews, Myria discovered that this check has been carried out less systematically over the past few years. What sometimes happens is that the diplomat's driver goes to fetch the domestic worker's special identity card, thus preventing the worker from having face-to-face contact with the Protocol Directorate. Nevertheless, the necessary improvements have apparently been made regarding this point.

Good Offices Commission

In the event of a dispute over the execution of the contract, the Good Offices Commission³⁰ may intervene at the request of the worker or the employer. This Commission was created by the ministerial circular of 23 May 2013 for staff employed in diplomatic missions³¹. Its main objective is to seek to solve problems that may arise between such staff and their employer. However, its role is limited to formulating an opinion in order to reach an amicable settlement in the event of a dispute³². The Commission also informs diplomatic missions and consular posts of their obligations³³.

This Commission is composed of representatives from the Directorate for Supervision of Social Legislation of FPS Employment, the Protocol Directorate of FPS Foreign Affairs, the NSSO, the International Relations Department of FPS Finance, FPS Social Security and trade unions³⁴.

According to some of the parties interviewed, the results of this Commission are mixed. It is indeed particularly difficult to reach a solution when the employer refuses to cooperate. According to other stakeholders, its intervention is useful, especially for the calculation of wages in the event of an amicable settlement.

30 See <https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices>.

31 Circular of 23 May 2013 on the creation of a Good Offices Commission, available at: <https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices>.

32 Art. 4, 1 of the Circular of 23 May 2013 on the creation of a Good Offices Commission, the employee may apply to the courts and tribunals.

33 In particular, it published an information leaflet on embassy staff: Offices Commission. If the attempt at conciliation between the parties GOC, *Personnel des ambassades*, December 2018, available at: <https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices>.

34 Art. 5 of the Circular of 23 May 2013 on the creation of a Good Offices Commission.

Social security

Workers holding a special S-type identity card, such as domestic workers, should in theory not be subject to Belgian social security except in certain situations³⁵. Fairwork Belgium has been advocating for a number of years that the private domestic staff of diplomats should automatically be subject to Belgian social security³⁶.

Domestic staff recruited locally

If the domestic worker is recruited locally³⁷, the Protocol Directorate of FPS Foreign Affairs doesn't issue a special identity card. Belgian labour and social security legislation applies in this case³⁸. This staff doesn't benefit from a special status in accordance with the Vienna Conventions on diplomatic relations³⁹ and consular relations⁴⁰. Since 15 February 2018, diplomatic missions, permanent representations and foreign consular posts established in Belgium employing locally recruited staff are obliged to respect the work and wage conditions laid down in the collective labour agreements concluded by the joint committee(s) (JC) to which they belong⁴¹: usually JC 337 (non-market sector) except for workers mainly engaged in gardening work (JC 145 for horticultural enterprises) or

35 Especially if they are subject to Belgian social security law in accordance with an international agreement or if they are not exempt from Belgian social security law in accordance with the Vienna Conventions on diplomatic and consular relations. For more details, see GOC, *Personnel des ambassades*, December 2018, Chapter VII: Personnel domestique, point 7.1.6 and Chapter III: Sécurité sociale.

36 See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, p. 16.

37 The Protocol Directorate defines locally recruited staff as: "staff recruited locally by diplomatic missions, permanent representations and consular posts who are in a position to work in Belgium and are subject to the provisions of Belgian labour law and Belgian social security laws".

38 GOC, *Personnel des ambassades*, December 2018, point 7.1.14.

39 Vienna Convention on Diplomatic Relations of 18 April 1961.

40 Vienna Convention on Consular Relations of 24 April 1963.

41 This amendment was made in Article 2 of the Act of 15 January 2018 containing various provisions in terms of employment, *O.G.*, 5 February 2018, known as the "Epis Act". This article amended Article 2, § 3 of the Act of 5 December 1968 on collective labour agreements and joint committees. According to Fairwork Belgium and Intersyndicale Missions Diplomatiques (collaboration between the ACV-CSC and ABVV-FGTB trade unions), these provisions on joint committees also apply to workers with a special "S" type identity card, including the private domestic workers of diplomats. See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, pp. 14-17. However, this stance isn't shared by the Protocol Directorate of FPS Foreign Affairs.

JC 323 for workers recruited according to a domestic employment contract⁴².

2. Abuse of domestic staff

It appears that a significant proportion of domestic work is carried out illegally by foreign domestic staff⁴³. However, the employment of illegal workers is subject to heavy penalties, which sometimes leads employers to restrict the freedom of domestic workers for fear of such penalties⁴⁴. They are sometimes also reluctant to make use of the possibilities to regularise the situation of the domestic worker, for fear that the earlier illegal situation will be discovered⁴⁵.

During Fairwork Belgium's French and labour law information classes for domestic workers on Sundays, stories of abuse are common but victims often don't want to take any action⁴⁶.

As for diplomats, members of the diplomatic mission benefit from criminal, civil and administrative immunity, the extent of which varies according to the category of staff⁴⁷. This immunity presents an additional obstacle in the fight against abuse.

3. Conclusion

This chapter highlights the extensive fragmentation of the legal status of domestic work, which is liable to facilitate abuse. It is also very difficult to gather data on domestic staff in Belgium. According to Fairwork Belgium, there is a lack of knowledge about the true situation of domestic workers. A study would therefore be useful in order to have a better view of needs (who and how many people need domestic staff?), the current legal offering, people who want to be domestic workers (internal) and the reality of domestic work.

In addition, there is also a need to enhance the value of domestic work and raise awareness among clients. Some, such as Fairwork Belgium, are also advocating the abolition of the separate status of domestic worker and the development of a new system of employment of full-time domestic staff and home-based childminders⁴⁸.

For diplomatic domestic staff, Myria recommends that the Protocol Directorate of FPS Foreign Affairs effectively and systematically interview the domestic worker when issuing or renewing their special identity card in order to prevent or detect possible abuse. Similarly, the indicative salary scales in the standard employment contract for diplomatic domestic staff should be regularly updated.

42 GOC, *Personnel des ambassades*, December 2018, Chapter II: Personnel local-réglementation du travail en Belgique.

43 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 34.

44 *Ibid.*

45 *Ibid.*

46 According to an interview with Fairwork Belgium in March 2020.

47 Diplomatic agents and members of their family enjoy full immunity. These immunities are more limited for other categories of staff working for diplomatic missions, such as administrative and technical staff. Officials of international organisations have immunity from criminal, civil and administrative jurisdiction. International civil servants generally have functional immunity, i.e. for acts performed within the scope of their functions. See Articles 31, 32, 37, 38 and 39 of the Vienna Convention on Diplomatic Relations of 18 April 1961, Articles 43 and 53 of the Vienna Convention on Consular Relations of 24 April 1963 and points 5.2, 10.5.7, 10.7 and 12.7 of the protocol guide on "privileges and immunities".

48 Fairwork argues for an unsubsidised system similar to service cheques that meets the specificities of recruiting full-time domestic workers or childminders, which it calls the third-party system. See Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, pp. 19 and 65.

Chapter 2

Domestic work and human trafficking

The most serious cases of abuse of domestic staff are sometimes considered as human trafficking, although there are very few cases. The victims' profiles are also varied.

For instance, in Brussels, the labour prosecutor's office deals with some 20 to 25 cases a year, barely 10 % of which involve domestic exploitation.

In the past three years (2017, 2018 and 2019), PAG-ASA, the specialised reception centre for trafficking victims in Brussels, organised support for seven new cases of victims of domestic exploitation out of a total of 101 new victims of labour exploitation⁴⁹.

In 2018, the NSSO's inspection department identified just two offences of human trafficking in the domestic sector⁵⁰.

The exploitation of domestic workers relates to situations that occur within the framework of private life and is therefore difficult to identify. Detection of a victim of human trafficking is thus sometimes complicated because a direct link with exploitation can't be established. Coincidence sometimes plays a role, such as if a random check takes place or information is obtained from neighbours or hospital staff.

According to the NSSO's inspection department, detection has become even more problematic owing to the coronavirus situation:

domestic workers have become exceedingly isolated and invisible during the lockdown and left entirely at the mercy of their employer⁵¹. In order to better detect these victims, it is therefore necessary to inform the general public of the existence of these human trafficking situations through awareness-raising campaigns. This increases the likelihood that frontline services will receive reports from neighbours, individuals and the field. In the following examples of cases, we see that many of the acts were brought to light by informed external persons.

Which human trafficking cases concern domestic staff? The main categories are domestic workers in private homes and domestic staff working for diplomats. In addition there are child victims of child marriages⁵².

1. Female domestic workers in private households

Cases of human trafficking in private households mainly involve female domestic workers employed outside any legal framework. Often, these victims don't have a residence permit. In some

⁴⁹ In 2017, PAG-ASA began providing support for 45 new victims of human trafficking, including one victim of domestic exploitation out of the 18 victims of labour exploitation; in 2018, it started providing support for 68 new cases, including five victims of domestic exploitation (two of the situations concerned diplomats) out of the 45 victims of labour exploitation; in 2019, support began for 63 new cases, including one victim of domestic exploitation out of the 38 victims of labour exploitation.

⁵⁰ Myria, 2019 Annual Report Trafficking and smuggling of human beings: *Empowering victims*, p. 152.

⁵¹ See the external contribution by Peter Van Hauwermeiren and Stéphanie Schulze: Impact of the COVID-19 pandemic on labour exploitation - Experiences and observations of the NSSO inspection department's ECOSOC teams" in part 2, Chapter 1 of this report.

⁵² On this subject, see Myria, 2018 Annual Report Trafficking and smuggling of human beings: *Minors in major danger*, p. 24 (profiles) and p. 151 (case law); Also see the focus of the 2015 annual report: Myria, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 13-22.

cases⁵³, the exploited person has escaped from their "private workplace". The victim is often alone and doesn't speak either French, Dutch or English. Detection of these victims is particularly difficult owing to their isolation. They have little contact with the outside world: they only go out on rare occasions, sometimes to go shopping or to take the children to school. Their isolation is sometimes reinforced by their ethnic origin, similar to that of their employer⁵⁴, which can be used as a means of pressure on them. In addition, there is a procedural difficulty of access to the home, which can only take place with the authorisation of an investigating judge (home visit or search).

The victims are often adults but, sometimes, minors are also involved⁵⁵.

Child victim

One example perfectly illustrates this situation: the case is discussed in detail in the case law section and is also mentioned in the external contribution⁵⁶. Informed external persons had asked the police to intervene in the case of a young girl - a minor - who was found in difficulty on the street. The police discovered a 15-year-old Congolese girl, in tears, accompanied by a friend. The girl, who had escaped, had no residence permit. She said she was living with the defendant, to whom her father had entrusted her three years earlier. She was taken to the Esperanto centre for child victims of human trafficking.

Adult victims

In the "Conrad hotel princesses" case⁵⁷, the investigation started on the basis of the statements of a victim of Moroccan nationality, who had run away and was taken in by a family. At her hearing, she said she worked as a cook for a princess

from the United Arab Emirates, who was staying in a prestigious hotel in Brussels. The working conditions there were particularly difficult. They worked seven days a week and 24 hours a day. They were nicknamed "bitches". The mother and seven of her daughters were staying at this hotel, each with two maids. The majority of the workers were of Filipino origin, but there were also Moroccan, Indonesian and Tunisian workers, as well as a Chinese worker and an Eritrean. The work conditions were as follows: available at all times, for seven days a week, some of them 24 hours a day and others with working hours well in excess of eight hours a day, with no weekly day off. The domestic workers couldn't leave the hotel, except in the company of the princesses, with their freedom of movement consequently limited to that of the princesses. The purpose of the security guards was to exert control. Lastly, the staff passports were withheld by the butler.

In another case⁵⁸, a British defendant was convicted of human trafficking. The Congolese victim filed a civil suit. The court awarded her EUR 1,500 in non-pecuniary damages and EUR 62,625 in pecuniary damages. The court based its decision on the victim's statements.

The defendant had recruited the worker in Kinshasa to take care of her seven-year-old mentally handicapped son. She regularly came to Belgium before moving here permanently. The worker accompanied the defendant during these stays on a tourist visa, requested on the basis of the care provided to the young boy. She continued to look after the young boy, even after the defendant settled permanently in Belgium. The worker also had to do the housework (cleaning, cooking, washing up and laundry). 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). According to the social inspectorate's calculations, her wages were therefore only 11 % of the amount to which she would have been entitled on the basis of full-time work, i.e. EUR 1,604.45. She had no social protection and lived in the laundry room, located in the cellar, on a couch and with no access to a bathroom. She had to fetch water in a bucket from upstairs to wash herself. Her passport was also confiscated when she came to stay in Belgium. The court also pointed out that "the possible consent of the civil party -

53 Interdepartmental Coordination Unit for the Fight Against Trafficking and Smuggling of Human Beings, *La lutte contre la traite et le trafic des êtres humains, Plan d'action 2012-2014*, point 3.3.: http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf.

54 For examples see: Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p.127 (Romanian victims) and this report, Part 2, Chapter 3 (Case Law Overview), point 2.3.8. (Chinese victim).

55 This aspect was discussed in the profiles of the minors in the 2018 annual report: Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 24-25.

56 See further on, Part 2, Chapter 3 (Case Law Overview), point 2.3.8 and the external contribution by Bruno Devillé "Slavery behind the door - labour exploitation of domestic staff" at the end of this focus.

57 Brussels French-speaking Crim. Court, 23 June 2017, 59th ch. (final); Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online*, pp. 122-124. The decision is available at www.myria.be (case law).

58 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p.136. The decision is available at www.myria.be (case law).

underpinned by a need for money and/or, as the case may be, by the hope of a better future in Europe - has no bearing whatsoever on the perpetration of the offence".

2. Domestic staff working for diplomats

According to the interviews conducted by Myria, the cases concerning the human trafficking of domestic staff exploited by diplomats, concern both diplomats from third countries and European officials who recruit domestic staff in the countries where they are based (Africa, Asia) and who then come to Belgium with this domestic staff.

Sometimes, the victims have already worked for the diplomat on a previous assignment. In some cases, the victims have the same nationality as the posted diplomat, which may reinforce their fears of threats against their family back home, due to the influential position of their employer.

Moreover, the employer generally invokes diplomatic immunity when a domestic worker reports the acts.

Invoking diplomatic immunity

The following is an example of human trafficking where domestic staff were exploited by a diplomat and diplomatic immunity was subject to discussion⁵⁹. This case was dealt with by the Labour Court of Brussels⁶⁰.

A worker summoned her former employers, a Moroccan couple who had divorced in the meantime, to pay her damages equal to her wage arrears and a sum estimated at EUR 2,500 *ex aequo et bono* by way of compensation for the damages she had suffered as a result of the crime of human trafficking.

At the time of the events, the husband was vice-consul at the Moroccan embassy in Brussels. The worker had been contacted in Morocco through the wife's sister to come and take care of the couple's children (one of whom was autistic), in return for a salary of EUR 150 a month. She initially received a special passport. She lived with the family where she took care of the children, the cleaning, the cooking, the laundry and the ironing. Her employer had contacted the Protocol Directorate in Belgium to obtain a special residence permit for her (special identity card)⁶¹, which was refused because vice-consuls don't benefit from such a privilege. The worker then submitted an application for a residence permit, which was also refused (absence of exceptional circumstances allowing the application to be made in Belgium). Finally, she filed a complaint with the social inspectorate, exposing her work conditions and asking to benefit from the status of victim of human trafficking, which was granted despite the case being dropped owing to her employer's immunity⁶².

Her employers invoked immunity from jurisdiction before the labour tribunal and the labour court. While the labour tribunal rejected the plea of lack of jurisdiction⁶³, the labour court declared, in a detailed statement of reasons, that it had no jurisdiction to examine the employee's claim against her former employer. On the other hand, the court held that the consul's wife didn't have any immunity from jurisdiction.

Initially, the court found that as a consular officer, the employer's immunity from jurisdiction was limited to acts conducted in the exercise of consular functions⁶⁴. However, the acts in question were conducted in the context of private life. Moreover, the Vienna Convention on Consular Relations doesn't grant immunity from jurisdiction to family members of a consular officer. The court therefore found that the employers didn't enjoy any immunity from jurisdiction in this context. Secondly, the court held that the employer did however benefit from immunity from jurisdiction.

⁵⁹ For older examples, see Brussels Lab. Trib., 20 April 2001 and Brussels Lab. Court, 25 November 2002 and 28 April 2003; Brussels Crim. Court 16 May 2003 in Myria (formerly CECLR), *Rapport annuel Traite des êtres humains 2003, Plaidoyer pour une approche intégrée, analyse de la législation et de la jurisprudence*, pp. 75-78: <https://www.myria.be/files/Traite-rapport-2003.pdf>

⁶⁰ Brussels Lab. Court, 4 September 2017 (available on the Myria website (case law): www.myria.be). Also see Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 154-156.

⁶¹ See above, this part (focus), Chapter 1, point 1.4.

⁶² See below.

⁶³ Brussels French-speaking Lab. Trib., 18 June 2015 (available on the Myria website (case law): www.myria.be). See also Myria, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 182-183.

⁶⁴ Under Article 43 of the Vienna Convention on Consular Relations of 24 April 1963.

as a diplomat under the Vienna Convention on Diplomatic Relations of 18 April 1961. He had the status of diplomatic agent during his mission in Belgium. This immunity covers both acts carried out in the context of his mission and in private life⁶⁵. On the other hand, when the diplomat leaves the host country at the end of their mission, immunity from jurisdiction only applies within the framework of their diplomatic functions. It was therefore possible to summon him before the Belgian courts for acts relating to the worker's employment. However, the worker didn't do this even though her application wasn't yet time-barred. In fact, she summoned him while he still had immunity from jurisdiction. The court therefore took a different stance to that of the labour tribunal. The tribunal held that it was necessary to consider things from the moment the judgment was handed down in order to determine whether or not a summoned person benefits from immunity from jurisdiction. The court didn't agree with this and considered that this immunity prevents not only the person in question from being tried but also the filing and pursuit of a civil suit against them.

The worker also considered that immunity from jurisdiction also adversely affected her right of access to a court of law. However, the court noted that the worker didn't establish that the immunity invoked by her former employer disproportionately restricted her right of access to a court in breach of Article 6 of the European Convention on Human Rights. Consequently, the court granted her former employer the benefit of immunity from jurisdiction and declared that it had no jurisdiction to hear the action against him.

As for the diplomat's ex-wife, the court emphasised that members of the diplomat's family only benefit from immunity from jurisdiction if they are part of his household. However, the spouses divorced and the ex-wife was no longer a member of the household at the time of the summons.

The court held that the ex-wife had to compensate the employee for the damage she had suffered as a result of the non-payment of her salary, as well as EUR 2,500 in compensation for the non-pecuniary damage as a result of the human trafficking.

65 Subject to three exceptions not relevant in this case. Moreover, Article 38.1 of the Vienna Convention on Diplomatic Relations, which limits immunity to official acts performed as part of the diplomatic functions where the diplomatic agent is a national or has permanent residence in the receiving state, also doesn't apply in this case. The vice-consul was indeed of Moroccan nationality and Belgium wasn't his permanent place of residence.

According to the court, both the diplomat and his spouse could be considered as employers. Moreover, the owed wages hadn't been paid. The court also considered that human trafficking was proven: the couple had recruited, accommodated and received the worker in order to make her work in conditions contrary to human dignity: approximately 90 hours a week for a salary of EUR 150 a month, with no social security and no private living space (she had to sleep in the children's bedroom and attend to their needs at any time during the night). The court also pointed out that the person concerned didn't need to be the victim of violence, deprivation of liberty or other abuses as well for the offence to be established.

However, the court ordered the reopening of the proceedings regarding the amount of the compensation owing to the non-payment of the salary. Furthermore, it ordered the ex-husband to stand surety for his ex-wife for half of the convictions handed down against her.

Residence status for victims of human trafficking in the private domestic service of diplomats

Several stakeholders highlighted the effectiveness of the Belgian system to protect victims of human trafficking working in the service of diplomatic staff. It can certainly be considered as an example of good practice. It is defined in the multidisciplinary circular on victims of human trafficking⁶⁶.

Besides the checks carried out by the Protocol Directorate of FPS Foreign Affairs when a domestic worker employed by a diplomat has their special identity card renewed every year⁶⁷, Belgium has also set up a specific system relating to the residence status of these victims. When it appears that one of these domestic workers is the victim of human trafficking, they will be referred to a specialised reception centre. If they are willing to make statements, to have no further contact with the presumed perpetrator and to accept the support offered by the specialised reception centre, they will be able to benefit from this special procedure. In this case, they are obliged to give up their status as a domestic worker and return their special identity card, if they have one, to allow the approved

66 Point 6.1. of the Circular of 23 December 2016 on the implementation of multidisciplinary cooperation regarding victims of human trafficking and/or certain aggravated forms of human smuggling, O.G., 10 March 2017.

67 See above this part (focus), Chapter 1, point 1.4.

specialised reception centre to apply to the Immigration Office for a residence permit. However, the issuing of residence permits within the framework of the "human trafficking" procedure is linked to the outcome of the criminal proceedings against the perpetrator. In view of the criminal immunity they enjoy, this is ruled out in practice in the case of diplomats. In this case the system has provided for the possibility of the prosecutor giving a favourable opinion on the reality of the situation of exploitation and human trafficking. The prosecutor compares the victim's statement with other specific elements in the case file, instead of simply checking whether or not the employment contract has been complied with. The prosecutor can take all useful initiatives in collaboration with the Protocol Directorate of FPS Foreign Affairs to prove the existence of the offence of trafficking in human beings, in compliance with the rules of diplomatic immunity. They then inform the Prosecutor General that a case is being opened, of the steps taken and the progress of the case.

Despite the absence of judicial proceedings, the system allows the victim to obtain a permanent residence permit on humanitarian grounds.

For instance, this special procedure was applied in the case of a domestic worker in the private service of a Sri Lankan diplomat and his wife⁶⁸, and for the Moroccan worker whose case is mentioned above.

However, during the interviews, another shortcoming came to light: one of the cases didn't fall within the scope of the multidisciplinary circular, thus complicating the issuing of residence permits to the victims concerned by the Immigration Office.

Why does this happen? The perpetrator is sometimes offered an amicable settlement, especially when prosecution is impossible owing to diplomatic immunity. This happened in a case concerning a diplomat from an African country, who applied the wage standards of his country of origin. The condition for the amicable settlement was to compensate the worker for her wage arrears. This worker was supported by a specialised reception centre. However, the amicable settlement didn't address the offence of human trafficking, which was a stumbling block for the Immigration Office.

Myria suggests that this point should be addressed in the evaluation of the multidisciplinary circular. An extension of the possibilities for issuing permanent residence permits should indeed be considered when a criminal case involving foreign victims ends in an amicable settlement, providing that the magistrate has confirmed that they are victims of human trafficking.

⁶⁸ The worker subsequently summoned her former employers before Brussels Labour Tribunal: see Myria, *2017 Annual Report Trafficking and smuggling of human beings*, Online, p. 124.

Chapter 3

Prevention of human trafficking in the domestic sector

This chapter deals with the prevention of human trafficking in the domestic sector. By prevention, we mean any measures aimed at preventing the exploitation of domestic staff. Why are domestic workers vulnerable to human trafficking (point 1)? A distinction is made between migrant workers who work as domestic staff and diplomatic domestic staff. All the prevention measures are reviewed according to four categories (point 2): raising awareness among the general public, empowerment of domestic staff, control mechanisms and the role of trade unions. For every category, examples from other countries are given and compared with Belgian measures. Point 3 deals with prevention measures specific to diplomatic domestic staff. To conclude, Myria makes its recommendations based on the information provided.

1. Vulnerability of domestic staff and the importance of prevention

Domestic staff are highly exposed to exploitation because their workplace is located in a private residence, which prevents the usual monitoring and checks from being carried out. Therefore, another approach is required to detect bad practices in the sector. To achieve this, the domestic work sector must benefit from clear regulations, combined with an efficient control mechanism. Another problem is the recognition of domestic work as a profession in itself. Often, domestic work

isn't considered as a "real" job. As a result, domestic staff don't always benefit from the same rights as other workers⁶⁹. A large part of domestic work is done by migrant workers. This group runs a bigger risk of becoming a victim of human trafficking and often opts for informal work for practical reasons⁷⁰. For instance, language isn't important when it comes to getting a job. Undocumented persons or those whose papers are being processed, can find informal work and receive their salary in cash. The downside is that the worker isn't paid if they don't work, for instance, during the holidays. The wages of domestic workers in the informal sector are very low and often below the minimum wage. In addition, the informal sector isn't "burdened" with labour agreements or employment contracts. The work is negotiated orally with the employer; therefore, the latter may impose certain tasks that weren't agreed to in the beginning⁷¹. The employer can easily exploit their domestic staff since there is no written contract clearly describing the activities and wage conditions. In some cases, there is a contract, but it is written in a language the worker doesn't understand⁷².

The first at-risk group is composed of *migrant workers*, recruited as live-in domestic staff, making them dependent on their employer for board and lodging. And even in precarious conditions, it is precisely because of this dependence that domestic staff continue to work

69 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude*, 2010: <https://www.osce.org/files/f/documents/1/f/97443.pdf>

70 J. Michielsens, ILO, International migration paper no. 116, *Promoting integration for migrant domestic workers in Belgium*, 2013.

71 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude*, 2010: <https://www.osce.org/files/f/documents/1/f/97443.pdf>

72 J. Michielsens, International migration paper no. 116, *Promoting integration of migrant domestic workers in Belgium*, 2013.

for the employer, for fear of ending up on the street⁷³. Illegally staying workers are often told they will be repatriated if they don't continue to work. The result is a power struggle in which the employer can easily abuse their position.

If a worker does long hours or works in appalling conditions, they can ask the union for advice and file a complaint with the labour authorities. Domestic staff who are bound to the employer (especially live-in domestic workers) are prevented from exercising their rights⁷⁴. Several factors are responsible for this. These workers are frightened of losing their job and are financially dependent on their employer. Employers often threaten their domestic staff to make them stay and to prevent them from going to a workers organisation. Those who do are often disappointed, because they aren't offered any help in a language they master. In addition, migrant workers don't always know who to turn to in case of a problem, because employers often provide false information and isolate their staff. As a result, they have little knowledge of labour rights and they are unable to ensure they are respected. This isolation also prevents workers from accessing training in order to improve their skills⁷⁵. Hence, they can't take any language courses and are trapped in this situation.

Diplomatic domestic staff are a second at-risk group. Diplomats can request a visa or a special card so that their domestic staff can work. Once again, it is a matter of dependence between the employer and the worker, because the employer has a direct link with the residence status of their staff⁷⁶. When the domestic worker stops working for the diplomat, the visa or special card expires. In addition, domestic staff can't change employer. Another aspect that makes diplomatic domestic staff vulnerable is their employer's immunity. Diplomats benefit from criminal immunity: their home can only be searched if

their immunity is lifted⁷⁷. A final risk factor is the nationality of the diplomat and the domestic staff. Diplomats are often influential and can abuse this power. Diplomats with the same nationality as their domestic staff can use their position of power in their country of origin to put pressure on their staff⁷⁸.

Domestic workers who are victims of human trafficking aren't always detected. The vulnerability of these workers makes them an easy target for abuse. It is therefore important to ensure that these people don't find themselves in a vulnerable position. It is essential to reduce vulnerability in the domestic sector in order to prevent exploitation. Prevention of human trafficking in this sector is addressed by raising awareness, empowerment and a monitoring mechanism. The measures are detailed below. The role of trade unions is discussed separately because they play an important part in the various preventive measures.

2. Preventive measures for migrant workers

In this section, the various preventive measures are presented alongside examples of good practices. The measures taken at national level are also discussed.

2.1. | Raising awareness among the general public

The first category consists of making the general public aware of the existence of human trafficking in the domestic sector. In particular, awareness is raised by sharing international information. Within this framework, countries share their good practices in terms of prevention regarding domestic staff. The aim is to improve the situation of these workers worldwide thanks to cooperation and an exchange

73 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014: <https://www.osce.org/handbook/domesticservitude?download=true>

74 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude*, 2010: <https://www.osce.org/files/f/documents/1/f/97443.pdf>

75 J. Michielsen, International migration paper no. 116, *Promoting integration for migrant domestic workers in Belgium*, 2013.

76 ILO, *Decent work for migrant domestic workers: moving the agenda forward*, 2016: https://www.ilo.org/global/topics/labour-migration/publications/WCMS_535596/lang--fr/index.htm

77 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014: <https://www.osce.org/handbook/domesticservitude?download=true>

78 Interview with Pag-Asa.

of good practices on an international level. A broad definition of awareness-raising can also include training and coaching of people in the field.

The *Esclavage domestique* project⁷⁹ led by the *Comité Contre l'Esclavage Moderne* (CCEM) in France is an example of an awareness-raising campaign. The campaign's objective is to make the general public aware of the exploitation of domestic staff. The project consists of a photo exhibition of places in France where acts of human trafficking were committed against these workers. The victims' accounts were placed beneath the photos. The CCEM also organises information sessions aimed at people likely to come into contact with (potential) victims. It is also active on social media, where it posts information on the human trafficking of domestic workers⁸⁰. And on an international level, CCEM has launched a series of projects together with international organisations and foreign authorities. The organisation aims to tackle human trafficking in the domestic sector at global level through the exchange of good practices with other countries.

In the United Kingdom, the Kalataan organisation is a key player. This charity offers training focusing on the detection of human trafficking in the domestic sector⁸¹. Kalayaan also organises campaigns in the interest of domestic staff. For instance, concerning the right for domestic staff to change employer and the right to permanent residence.

Belgium

In 2013, the NGO FOS, Centrale Vlaams ABVV (the Socialist union), Socialist mutual insurance associations, the not-for-profit association Thuiszorg and the Socialist party, got together to launch a campaign entitled "Recht op Waardig Huishoudwerk"⁸² (Right to Decent Domestic Employment). The aim was to raise awareness and mobilise the general public, and encourage politicians to ratify and implement ILO Convention 189⁸³, which Belgium did on 10 June 2015. During the campaign, several problems in the domestic sector were highlighted: long working hours, no time for a private life, low wages and a lack of social protection⁸⁴.

In addition, the government at the time took initiatives within the framework of the 2012-2014 action plan against trafficking in human beings⁸⁵. As a result, a letter was drafted to inform social services and hospitals about human trafficking and how to react to signs of human trafficking.

2.2. | Empowering domestic staff

Empowerment is the second prevention measure. It consists of reinforcing the position of domestic workers through emancipation. As such, the International Labour Organisation (ILO) suggests that campaigns should be held to inform domestic workers of their rights⁸⁶. Since the target group is difficult to reach, these campaigns must be launched at an appropriate moment, for instance, on national holidays. The media can be used to distribute information. That relating to the rights

79 Filigranes, *Esclavage domestique*: <https://www.filigranes.com/livre/esclavage-domestique/>

80 CCEM, *Rendre visible l'invisible*, 2018: <https://www.esclavagemoderne.org/wp-content/uploads/2019/04/RAPPORT-D-ACTIVITE-2018.pdf>

81 M. Lalani, *Ending the Abuse: Policies that work to protect migrant domestic workers*, 2011: <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

82 Vlaams ABVV, *Veeg hun problemen niet onder de mat!*: <https://www.vlaamsabvv.be/art.cfm?pid=27211>

83 ILO, Convention no. 189 of 16 June 2011 concerning decent work for domestic workers, adopted in Geneva on 16 June 2011 by the 100th ILC session.

84 FOS, *Veeg hun problemen niet onder de mat!*, 13 mars 2013: <https://www.11.be/artikels/item/veeg-hun-problemen-niet-onder-de-mat>

85 *Plan d'action : La lutte contre la traite et le trafic des êtres humains* (2012-2014) : http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf

86 ILO, *Effective protection for domestic workers: a guide to designing labour laws*, 2012: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173365.pdf

of domestic workers must be easily accessible in several languages. Call centres, helplines and websites can also be used. The ILO suggests information campaigns aimed at employers⁸⁷. The goal of these actions is to inform potential employers about what human trafficking is and its consequences. Employers can also find help here for administrative tasks, including drafting an employment contract and how to apply for a work permit. This ensures that everything is organised on a regulatory and legal basis.

The ILO also points out that it is difficult for domestic workers to leave their employer. According to the ILO, there should be a body where these workers can lodge a complaint. This complaint procedure must be available in several languages and extra help must be provided if necessary. Furthermore, a mediation body must also be set up to resolve minor disputes between employers and employees. As regards serious situations, legal proceedings must always be brought before the courts.

For instance, in Great Britain, in cooperation with the British National Referral Mechanism (NRM), potential victims have access to support and protection, especially the police, a phone helpline on work and wages and labour tribunals⁸⁸. Besides the labour inspectorate and the NRM, the Kalayaan organisation also strives to empower domestic workers. It advises, acts as a mediator and provides support to domestic staff. Kalayaan also organises training for migrant workers active in the domestic sector, on well-being and labour law, as well as English classes⁸⁹.

87 ILO, *Labour inspection in domestic work (Module 16)*, 2016: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_308907.pdf

88 Home Office, *Modern Slavery Bill, Factsheet: Overseas Domestic Workers*, 2014: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/372794/OverseasDomesticWorkers.pdf

89 M. Lalani, *Ending the Abuse: Policies that work to protect migrant domestic workers*, 2011: <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

Belgium

In Belgium, the not-for-profit association Fairwork focuses on the prevention of exploitation in the domestic sector. Fairwork's services and activities are good examples of empowerment. For instance, Fairwork has compiled a leaflet aimed at domestic staff, available in Dutch, French, English, Spanish, Portuguese, Arabic and Russian⁹⁰. This way, domestic workers can learn more about their rights, especially the minimum wage. The leaflet also contains advice on the best way to protect yourself against future exploitation. For example, the advice recommends keeping a written record of the working hours and the wages paid, and filming yourself while executing tasks. As well as the leaflet, information is posted on the website in Dutch, English, French and Spanish.

Since 2010, Fairwork has been specifically focusing on the empowerment of domestic workers. *Fairwork for domestic workers*⁹¹ is a project devoted to the vulnerability of domestic workers in order to prevent their exploitation. The Fairwork project consists of a two-pronged approach to prevention: a secure helpline and activities on a Sunday. The secure helpline allows domestic staff to ask for help. If necessary, it offers help to file a complaint with the labour inspectorate. The secure helpline can be reached by email, phone, Facebook and WhatsApp in Dutch, English, French and Spanish. Fairwork points out that domestic workers often have general knowledge about labour law, but the organisation underlines the fact that residence status is of little importance here. Fairwork also works with au pairs and notes a big difference between the two groups. Au pairs don't come to Belgium as workers. They come especially to take care of children and can change host family. Hence, there is no relationship of dependence with the host family that would prevent them from making a complaint. On the other hand, domestic workers come to Belgium specifically to work and risk losing their

90 The O.R.C.A. passport, *WORK*: <http://orcasite.be/index.php?id=256>

91 Fairwork Belgium asbl, Annual Report 2018: *Travailleurs sans papiers*: <http://orcasite.be/userfiles/file/FAI%20jaarverslag%202018%20FR%20site.pdf>

job if they file a complaint. This is why Fairwork emphasises the need for domestic workers to gather evidence to enable them to prove the work they do if necessary.

Sunday activities form the second part of the prevention project. On Sundays, participants can take part in activities such as French lessons, basic training in labour law, exchanges about empowerment and discussion tables. Fairwork Belgium's project therefore aims to ensure that domestic workers are aware of their rights and are able to assert them. The Sunday activities allow participants to build a network and develop their skills. Fairwork is also active on Facebook to inform anyone asking for help, but it also has a proactive approach⁹². In addition, the organisation contacts people who want to work as an au pair in Belgium through Facebook groups dedicated to au pairs. This provides Fairwork with the opportunity to provide information on exploitation with a focus on the legitimacy of agencies. Au pairs can therefore be informed if they aren't reliable. This is a *good practice* to prevent trafficking among au pairs.

Initiatives have also been taken within the framework of the "Trafficking of human beings" action plans at federal level. For instance, in some Belgian embassies, an information flyer is given to people applying for a work visa⁹³. The flyer explains what human trafficking is. It also contains advice on important elements that should be checked before leaving. Among other things, it includes the details of useful points of contact in case of a dispute.

2.3. | Control mechanisms aimed at preventing abuse

The final prevention measures fall under the category of control.

ILO and Fairwork would like to see the introduction of an alternative system in the domestic sector. The idea is to introduce a third-party system⁹⁴, whereby domestic staff work for an organisation. The latter is the third party and takes care of communication and placing workers. This means that a person in need of home help can contact this organisation, which will assign someone to do this work. This could be linked to a government registration system⁹⁵ that would keep track of the employment of domestic workers. In concrete terms, workers could register with the labour inspectorate and social security before starting their job and when they finish it. This way, domestic staff and the place of work would be registered, thus allowing targeted checks to be carried out. In addition, labour inspection services can provide examples of employment contracts, pay slips, work schedules and other documents, thus allowing employers to keep records and workers to have proof of possible exploitation. Making written contracts compulsory can help to regularise the domestic sector so that workers' rights are better protected.

In addition to an alternative system, there must also be clarity as regards employment contracts for domestic workers. In Belgium, it is compulsory to conclude a written contract with a migrant domestic worker. The employment contract must be drawn up before leaving the country of origin. The contract must be available in a language that the worker understands. The agreement must contain clear information on the terms of the accommodation for the domestic staff. According to the ILO, these terms must meet a number of conditions, such as a separate room with its own key and sufficient good quality meals that respect the worker's culture and religion⁹⁶. Finally, it is important that the labour inspection services

92 Interview with Fairwork.

93 *Plan d'action : La lutte contre la traite et le trafic des êtres humains* 2012-2014 : http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf

94 J. Michielsen, Promoting integration for migrant domestic workers in Belgium, International migration paper, No.116, Geneva, ILO, 2013.

95 ILO, *Labour inspection and other compliance mechanisms in the domestic work sector*, 2015: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_542992.pdf

96 ILO, *Text of the recommendation concerning decent work for domestic workers: provisional record of the 100th session of the International Labour Conference*, 2011, p. 10.

clearly communicate their purpose: the protection of labour rights. Many migrant workers continue to work in appalling conditions out of fear of being deported if they lose their job. In order to protect them and win their trust, it is recommended they be given all the necessary information before their departure and upon their arrival. An example is a project in Romania that involves the collaboration of the German government on the *European Job Mobility Portal* (EURES)⁹⁷. Romanian workers are informed of job vacancies and the requirements before their departure. Within this context, a handbook was written for Bulgarian and Romanian workers, with information on their labour rights, the labour markets and the main institutions.

Another prevention programme in Germany is the "Open for young women" project, which targets minors, young people and women. In cooperation with Romania, Ukraine and Russia, applicants are informed of jobs in Germany and the status of au pair. Applicants also benefit from information on safe and legal employment, the prevention of labour exploitation and the contact details of emergency services. In Germany, the Centrum für internationale Migration und Entwicklung (CIM - Centre for international migration and development) plays a preventive role by preparing potential workers. The CIM is a national organisation in Germany that contributes to international cooperation on the labour market. CIM's most important partner is the Federal Employment Agency. In terms of preparation, the CIM offers German lessons, to put the interested party in touch with the company where they will be working and to help them draw up their employment contract. Although these are general measures applied to migrant workers, these practices could also be of interest to the domestic sector.

In the United Kingdom, on the other hand, a link is made between the labour inspectorate and the employment contract. The employer must prove that it already has an employment relationship with the worker by including clear information on the salary, working hours, tasks to be performed and accommodation arrangements in the employment contract. Without this contract, the worker can't obtain a visa. When the migrant worker receives their visa, they are informed of their rights in the United

Kingdom. They also receive information on the support services. In the United Kingdom, there is also the *Neighbourhood Watch*⁹⁸ scheme. People get together to ensure the safety of their neighbourhood by cooperating with local police networks. The members of the *Neighbourhood Watch* meet and share their ideas to fight local crime. *Neighbourhood Watch* encourages everyone to build relationships with their neighbours in order to more quickly detect possible exploitation in the domestic sector. Members provide social monitoring by reporting suspicious behaviour to the police. They are trained to detect signs of exploitation during their patrols. Findings of concern, such as never being allowed to eat with the family and not having a private room, are immediately reported to the police.

Finally, the ILO stresses the importance of the employers' responsibility⁹⁹. Singapore is a good example. Persons convicted of the human trafficking of domestic workers can no longer recruit such workers. Furthermore, employers who have replaced four different migrant workers in one year, are required to follow an orientation programme before they can employ domestic workers again. If there is a new change in the workforce, there will be an interview with a member of the Ministry of Manpower. Not only must the employers be made to take responsibility, but also the agencies that recruit the workers. In 2015, the ILO launched the *Fair Recruitment Initiative*¹⁰⁰, which is still running today. With this project, the ILO aims to prevent human trafficking for labour exploitation, protect labour rights, reduce the costs of labour migration and improve outcomes for migrant workers. Special attention is paid to fraudulent and abusive practices during the recruitment and placement of workers. The initiators advocate the protection of vulnerable groups such as migrant workers and domestic staff. Under the Fair Recruitment Initiative, governments must establish specific procedures and minimum standards

97 U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*, 2014: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

98 West Yorkshire Police, *Domestic servitude*, 2020: <https://www.westyorkshire.police.uk/advice/modern-slavery/modern-slavery-human-trafficking/domestic-servitude>

99 ILO, *Labour inspection and other compliance mechanisms in the domestic work sector*, 2015: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_542992.pdf

100 ILO, *Fair recruitment initiative. Fostering fair recruitment practices, preventing human trafficking and reducing the costs of labour migration*: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_461325.pdf

for recruitment agencies¹⁰¹. Those who meet the requirements, will be allowed to recruit and place domestic staff. They will be monitored and sanctioned if they don't comply with the regulations. In South Korea, the *National House Managers Cooperative* is an agency that connects its members with employers on the internet. The agency also provides training for its members. Another example is the *Nirmana Society* in India, which offers assistance and training. The authorities must also ensure that recruitment and placement costs aren't deducted from the salaries of domestic workers. Lastly, Indonesia has developed a promising initiative called *RecruitmentAdvisor*¹⁰². This project enables workers in Indonesia, Nepal and the Philippines to share their experiences with recruitment agencies. The platform is also a form of empowerment, as it provides information on labour rights and looking for employment abroad.

Belgium

The inspection role of labour inspectorates is less widespread in Belgium compared with what is provided for in the ILO proposals. Hence, potential workers aren't subject to checks and aren't questioned about their employment contract. In some cases, it isn't compulsory to declare domestic staff to the National Social Security Office (NSSO). This is because of the status of domestic workers¹⁰³. So, even if domestic workers must always be declared, this isn't always the case for other household employees. Besides domestic workers, there are two other categories of household staff: persons providing services of an intellectual nature (e.g. tutors) and those offering services of a manual nature (e.g. gardening). The second category must always be declared, just like domestic workers. On the other hand, no declaration is required for occasional services of an intellectual nature of up to eight hours a week¹⁰⁴.

2.4. | Role of trade unions in prevention

Myria discusses the role of trade unions in a separate part, since they are an important player in the field of prevention. Trade unions can inform workers of their rights and detect unlawful conduct. The ILO's recommendations, as well as the in-depth analysis of the contents of its "*Decent work for domestic workers*" report, are discussed first. We will then turn our attention to an EU project, including an explanation on the way other countries use trade unions to prevent human trafficking in the domestic sector.

The ILO stresses that domestic workers have the right to organise themselves and to join the union of their choice, regardless of their residence status. Countries must support workers' organisations in order to protect workers' interests. There are a number of ways in which trade unions can contribute to the prevention of human trafficking in the domestic sector. For example, they can encourage domestic workers to participate in vocational training to increase their chances in the labour market. Raising awareness among domestic workers about all rights and how to enforce them also helps with their empowerment. Through campaigns, trade unions can put the problem of the exploitation of domestic workers on the political agenda. By lobbying, they can also emphasise the interests of domestic workers and encourage the authorities to take measures. The achievements of trade unions in Ireland and the Netherlands are good examples and are discussed in more detail below.

The "*Decent work for domestic workers*"¹⁰⁵ report focuses on the interaction between domestic workers and trade unions, with Ireland and the Netherlands as good examples of good practices.

Ireland

The *Services, Industrial, Professional and Technical Union* (SIPTU) is the biggest trade union in Ireland. SIPTU doesn't conduct any actions related to the domestic sector, but it does collaborate with the *Domestic Workers*

101 ILO, *General principles and operational guidelines for fair recruitment and definition of recruitment fees*, 2019: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_568730.pdf

102 FRA, *Protecting migrant workers from exploitation in the EU: workers' perspectives*, 2019: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf

103 On this subject, see Chapter 1 of this part.

104 R.D. of 13 July 2014 repealing Articles 5 and 18 and amending Article 16 of the R.D. of 28 November 1969 (social security decree), O.G., 28 July 2014.

105 K. Carls, *Decent Work for Domestic Workers: The state of labour rights, social protection and trade union initiative in Europe*, 2012: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_218133.pdf

Action Group (DWAG) and the *Migrants Rights Centre Ireland* (MRCI). DWAG organises meetings for domestic staff in Dublin in the presence of MRCI and SIPTU. DWAG is an independent group of domestic workers who wish to organise the sector, set up campaigns, conduct public actions, as well as provide a social network, collective defence and mutual support. It is supported by MRCI which provides it with political support, advice and infrastructures by participating in public actions and lobbying politicians. SIPTU is a legal partner and, thanks to its expertise in labour rights, and its lobbying in terms of balance of power in the labour market, it is also a source of help. Cooperation exists to increase the visibility of both domestic workers in society as well as the trade unions for domestic staff. Public campaigns have been launched to raise widespread awareness among the population.

Netherlands

In the Netherlands, the FNV Bondgenoten trade union is a major player in the prevention of exploitation in the domestic sector. It was set up in 2006 and the majority of its members are undocumented. FNV Bondgenoten organises awareness-raising campaigns and defends the rights of domestic workers. In 2012, it took part in a large-scale strike with the cleaning sector that lasted 105 days and increased the visibility of the domestic sector. The union considers domestic workers as employees in the cleaning sector and advocates a common statute. FNV Bondgenoten also promotes the interests of domestic workers and tries to involve them in this. The emphasis is on horizontal interaction through different channels such as Facebook groups, websites, emails and text messages. The idea is also to promote communication by organising cultural events. The FNV also offers training to domestic staff to help them negotiate with employers by placing emphasis on mutual respect and support. Lastly, awareness-raising is achieved through cooperation with partners such as churches, political parties and artists, and campaigns are organised to raise awareness among the police.

In many cases, domestic workers are prevented from joining trade unions and remain out of reach. In Berlin, efforts are being made to solve this problem by handing out

posters or flyers in different languages¹⁰⁶. Information is placed discretely on the packaging of certain household goods so that they reach potential victims without the employers' knowledge.

European project

The *European Federation of Food, Agriculture and Tourism Trade Unions*¹⁰⁷ wrote a report on the domestic sector with the contribution of certain Member States, including Belgium, France, Italy, the Netherlands and Germany. Switzerland also collaborated on this project. It examines the prevention measures set up to combat human trafficking. Trade unions play an important role here and can help prevent exploitation. It is difficult to persuade domestic staff to join a union because they don't always see the interest. For example, membership fees can be a barrier because their income is too low or because they don't have a bank account. In Belgium, France, Italy, Spain, Sweden and Switzerland, services are available to domestic staff for free in the beginning, and then for a fee. These services focus on advice and individual guidance. Another form of support is the standard contract, available online or in hard copy.

In Italy, the trade union FILCAMS has *patronati*, where workers can meet with their families. *Patronati* are support centres that provide workers with free advice on pension and healthcare rights. Migrant workers are helped through information campaigns where flyers in different languages are handed out. Meetings are also held every Sunday.

In Switzerland, SIT is a union committed to undocumented migrant workers in the domestic sector. The union provides free advice, information and individual guidance in several languages. Other services are available after workers join the union and pay the membership fee. *Respekt* is another independent organisation

¹⁰⁶ U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*, 2014: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

¹⁰⁷ EFFAT, *Domestic workers in Europe Getting Organised!*, 2015: https://www.effat.org/wp-content/uploads/2018/11/effat_booklet_domestic_workers_in_europe_en.pdf

dedicated to the domestic sector. It meets once a month for a discussion around a meal. This provides alleviation for the isolation caused by domestic work and the fear of reprisals is reduced. During these meetings, information on labour rights is shared and methods of empowerment discussed. Respekt also offers workers involved in legal proceedings the possibility of receiving legal assistance from a lawyer.

Belgium

In the past, trade unions in Belgium have helped to represent the interests of domestic workers. The "right to dignified domestic work"¹⁰⁸ is discussed in the section on awareness-raising. Within the framework of this campaign, the trade union endeavoured to raise awareness among the general public and politicians. The Confederation of Christian Trade Unions (CSC) also works closely with the International Trade Union Confederation and supports the latter's actions. One of the major campaigns on this subject was undoubtedly the domestic workers' "12 by 12" campaign¹⁰⁹. Conducted in 2011, it focused on the application of labour and social protection legislation to domestic workers. In Belgium, it is compulsory to declare domestic workers, but this isn't the case everywhere. In November 2019, the Belgian trade unions ACV, CSC and FGVB Horval conducted a wide-scale action. They demanded more subsidies for the sector and an increase in the price of service cheques¹¹⁰. In addition, an action was carried out on social media with hashtags, Facebook covers, posters and photos. All this information was also made available in public mode so that the population could share the documents. This increased the campaign's visibility among the general public.

108 Vlaams ABVV, *Veeg hun problemen niet onder de mat!*: <https://www.vlaamsabvv.be/art.cfm?pid=27211>

109 CSC, International actions: <https://www.lacsc.be/la-csc/europe-international/mondial/actions-internationales>

110 COLOMBI, *Domestic workers: time for a fair collective agreement for 140.000 in Belgium*, 2019: <https://www.effat.org/featured/domestic-workers-time-for-a-fair-collective-agreement-for-140-000-in-belgium>

3. Prevention for diplomatic domestic staff

Point 1 already laid out the reasons why diplomatic domestic staff form a specific risk group. Their vulnerability therefore requires special measures to be taken. The Organization for Security and Co-operation in Europe (OSCE) has issued recommendations. They relate to the Protocol Directorate and the preventive measures it can take to prevent the trafficking of diplomatic domestic staff¹¹¹. It can thus raise awareness about national regulations among embassies and international organisations. In addition, it should issue explicit guidelines on the employment of diplomatic domestic staff to avoid abuses. The service should also develop a system of immunity for diplomats that allows a temporary suspension to be requested from sending states. The sending state is the country the embassy represents and isn't always the worker's country of origin. In such cases, the lifting of immunity relates to situations in which the employer has committed a serious offence. Lastly, an approach is advocated whereby diplomatic domestic staff receive information about their rights and obligations, and about the places they can go for support, when applying for a visa in the sending state. Domestic staff would also receive this information on arrival in the country of employment. The Protocol Directorate is responsible for monitoring compliance with the regulations and following up on any violations.

3.1. | Roadmap for the employment of diplomatic domestic staff

The OSCE has developed a two-stage strategy to regularise the employment of diplomatic domestic staff and prevent human trafficking.

111 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014: <https://www.osce.org/handbook/domesticservitude?download=true>

The first step concerns policy, in particular developing regulations and procedures for the employment of domestic staff. The OSCE stresses that employers must be informed of their obligation to comply with the regulations; this information is often distributed through circulars. Before a person can be recruited, the employer must be assessed to check their suitability. Then, a registration system is proposed, whereby the employee registers with the Protocol Directorate at the beginning and at the end of employment. This way, the Protocol Directorate has an overview of the people working as diplomatic domestic staff. In order to reduce the risk of human trafficking, many countries examine the worker's profile because they can't be related to the employer. Some countries have specific requirements, such as proficiency in the official language of the country of employment. A diplomatic domestic worker, who is the victim of trafficking, will be reluctant to report this if their work visa is dependent on a specific employer and they can't change employer. This is why some countries have chosen to offer the possibility of changing employer. As mentioned above, it is important that the worker can understand the information. Therefore, information leaflets and employment requirements must be available in the worker's language. The OSCE also mentions that the Protocol Directorate can conduct an individual interview to check the worker's living conditions. Domestic staff must renew their visa or work permit by going to the Protocol Directorate in person. The latter can then carry out an assessment. Lastly, the OSCE stresses the need to establish a body to which diplomatic domestic staff can turn to in order to file a complaint. Disputes with the employer would then be resolved through mediation. The OSCE also points out that this doesn't replace the legal procedure to be followed when an employer commits an offence.

The second stage of the roadmap concerns the development of rules and procedures for recruiting domestic staff. The OSCE has elaborated measures to be taken to prevent exploitation. As is the case for ordinary migrant workers, it is possible to check whether the domestic worker concerned has understood the employment contract, for instance, by going through it with them during the interview. This also allows the contents of the contract to be assessed in terms of completeness and accuracy.

Information on trade unions and the competent authorities can be provided when the worker comes to fetch their visa/work permit. Domestic staff are registered with the diplomat employing them. The employer must take out an accident and health insurance policy and open a bank account in the worker's name, into which their salary will be paid.

3.2. | Preventive measures aimed at diplomatic domestic staff abroad

An example of a good practice is a German project initiated by the German embassy in Sofia and the German government¹¹². Workers who go to Germany to work there are informed about safety at work. The United Kingdom also has several good practices. For instance, the Kalayaan organisation recommends that border personnel interview diplomatic domestic staff before issuing a visa, with the aim of protecting them. Such an interview allows them to check whether the worker has read the employment contract and understands all the conditions. During the interview, a leaflet containing information on the rights of the persons concerned is also handed out. This leaflet has been criticised because it is only printed in English and therefore has little effect. Kalayaan wants to tackle the problem of the invisibility of exploitation and suggests bridging visas, like in Canada and Ireland¹¹³. A bridging visa is a temporary document that gives illegally staying persons three months to find a new job and then regularise their situation by applying for a migrant worker visa. However, their illegal stay must be due to an external cause.

112 U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

113 M. Lalani, (2011). *Ending the Abuse: Policies that work to protect migrant domestic workers*: <http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf>

Belgium

Under Belgian law, diplomats must apply to the Protocol Directorate, through their diplomatic mission, consular post or a recognised international organisation, for authorisation to recruit domestic staff¹¹⁴. The Protocol Directorate then decides whether the person can be recruited. According to the regulations¹¹⁵, the employer must ensure that the worker receives a copy of the contract in a language they understand properly. In addition, it is the Protocol Directorate that processes visa applications for domestic staff. Once the worker has arrived in Belgium, the employer must apply for a special identity card for their household staff. Again, this is done through their diplomatic mission, consular post or a recognised international organisation, which provides the Protocol Directorate with the necessary documents. In Belgium, the residence status of diplomatic domestic staff is linked to the length of the employer's stay: the worker must leave the country at the end of their contract. The person can't change employer and there is no temporary residence permit. In the event of a dispute over the execution of the employment contract, both the employer and the worker can apply to the Good Offices Commission. In Belgium, diplomatic domestic staff must renew and collect their identity card in person every year¹¹⁶. During this appointment, they can be asked in private about their job. This allows the Protocol Directorate to carry out a check and detect any signs of possible exploitation.

4. Recommendations

Recommendation 1:
increase awareness-raising campaigns

Greater awareness needs to be raised concerning the problem of human trafficking in the domestic sector. Awareness-raising must target both domestic workers and employers by providing information on how to prevent exploitation. In order to better reach domestic staff, the information must be printed on the packaging of household goods. Employers can be prepared before recruiting domestic staff by providing them with administrative support, such as a standard contract.

Recommendation 2:
raise awareness at municipal level

Municipalities can launch awareness-raising campaigns to raise the population's awareness of this issue. In addition, neighbourhood officers can be made aware of the signs of human trafficking in the domestic sector so that they can recognise them in the event of a complaint concerning abuse.

Recommendation 3:
actively engage trade unions

As mentioned earlier, trade unions are far more active abroad than in Belgium. At national level, they need to draw greater attention to the position and interests of domestic workers.

114 Also see Chapter 1 of this part.

115 Circular note, *Private employer: conditions and procedure for granting a special identity card*, 3 August 2015.

116 Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *O.G.*, 10 March 2017.



External contribution: slavery behind the door - labour exploitation of domestic staff

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Myria already opened the pages of its annual report to me in 2010, to discuss the subject of "human trafficking and the exploitation of live-in domestic staff"¹¹⁷.

In this article, I wrote that the two main categories of investigation we had to deal with in the jurisdiction of the judicial district of Brussels were:

1. domestic staff employed in the service of diplomats posted in Belgium;
2. domestic staff employed by "private employers", in particular "nannies" (childminders also doing domestic chores).

Unfortunately, nothing has changed since the article was published 10 years ago. We are still faced with the same types of investigation for these two categories of staff (although there has been a fall in the number of reports of cases of exploitation of domestic staff in the service of diplomats).

As regards domestic staff exploited in diplomatic circles, the remarks and considerations made in the 2010 article are still valid. They are as follows:

1. these investigations are especially difficult to conduct considering that, more often than not, finding material evidence of exploitation is rendered impossible owing to the immunity granted by the Vienna Conventions to employers who benefit from diplomatic status;

2. more often than not, the investigation is the result of the victim fleeing and the situation being reported, sometimes quite a long time after the period of exploitation, by third parties or associations who put the victim in contact with a specialised reception centre;
3. these investigations are often closed after the victim's hearing and, insofar as it is possible, the gathering of information (witness hearings, neighbourhood investigations, etc.) to prove the exploitation, by applying the measures provided for in the circular of 2016¹¹⁸ and granting the special status of "trafficking in human beings without summoning the perpetrators before a court.

Two elements should be highlighted in the context of our investigations into the exploitation of domestic staff in diplomatic circles:

- The considerable pressure/intimidation that diplomatic employers sometimes exert on the family of the victim in the country of origin and sometimes also on the Belgian state, using "national security" as an argument, in order to find out what has become of the worker who has fled, their address and to portray them as someone who must absolutely be sent back to their country. This pressure is accompanied by "wanted notices" that some diplomats circulate informally among their compatriots living on Belgian soil in order to locate the domestic worker who has fled.
- Almost total lack of reports of exploitation by the Good Offices Commission. This commission was set up in 2013 and is presided over by the Director of the Social Legislation Inspectorate of FPS Employment, Labour and Social Dialogue. It is composed of representatives of the Protocol Directorate of FPS Foreign Affairs, FPS Finance, FPS Social Security, the National Social Security Office, and trade union representatives. Its mission, in the context of the employment of staff by diplomatic or consular missions established in Belgium, is to "inform employers and workers recruited locally about Belgian social and fiscal regulations, their rights and obligations, to help solve individual or collective problems through information, conciliation or mediation, and to provide opinions in order to find amicable arrangements, and make proposals to improve staff working conditions".

¹¹⁷ Myria (then Centre for Equal Opportunities and Opposition to Racism), *Annual Report 2010, Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 118-121.

¹¹⁸ Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, O.G., 10 March 2017.

Concerning domestic staff employed by "private employers", we found that the investigations mostly involved young girls or women, sometimes minors, recruited as home-based childcare workers. However, their activities would ultimately involve all household chores and sometimes even involvement in their employers' professional activities.

Here are four examples:

1. An underage girl who had come from Africa to attend school in Belgium. She was sent to a "host family" who vaguely knew her father. This girl was indeed enrolled in school, the same one as that of the family's children, but arrived late every day because she had to take care of the family's youngest child. The girl didn't have a bedroom and had to sleep with the other children in the living room. She wasn't allowed to contact her father, who had returned to Africa, and was entirely under the control of her "host family", who also sometimes subjected her to violence¹¹⁹.
2. A woman in her 40s who worked for a family in Africa with severely handicapped children. As the children had to come to Belgium for treatment, she was asked if she would accompany them to continue caring for them. While the mother and the children settled in Belgium on humanitarian grounds, the child carer came over on a simple tourist visa. As soon as she arrived, she was taken to the family's flat and her passport was taken from her. Throughout her stay, she had to be available around the clock to care for the two handicapped children, and also for household chores. To ensure she could be permanently available, even during the night, she had to sleep on a mattress on the floor next to the bed of the most severely affected child. She wasn't allowed to have any contact with her children in Africa, as her employer considered the cost of phone calls to be exorbitant. She wasn't paid a salary for her work in Belgium, since the agreed salary of USD 300 was to be paid directly to her children in Africa, according to the promise made by the employer. Her employer gave her €15 a month in Belgium to cover certain needs, such as buying soap or warm clothing¹²⁰.
3. A couple from Eastern Europe came to live in Belgium and worked as a builder (man) and a cleaner (woman). As the couple had two young children, they decided to get a child carer, who was a minor when she was recruited. The girl fled after a few months and made statements, as she was tired of the violence and insults inflicted on her by her employers. While our services were conducting the investigation, we learnt that a second young girl had been recruited by the couple in their country of origin, during the holidays. It turned out that this girl (an adult this time) was from an orphanage and suffered from mental disabilities. The two victims' accounts of their exploitation were identical. They both explained that as soon as they arrived in Belgium, their identity papers were confiscated by their employer. They were promised a salary of €250 a month. They had to look after the children (take them to and from school, supervise them at home, etc.) and do household chores in the flat where the family lived. While the children were at school, they had to help the mother with her cleaning jobs, who took public transport to go to work while she made the girls go there on foot. They didn't share meals with their employers and had to be satisfied with what they deigned to give them. The girls had no private space of their own and had to sleep with the couple's children, in the same bed. They were repeatedly insulted, bullied and sometimes beaten by their employer¹²¹.
4. A wealthy couple moved into a house in quite an affluent neighbourhood. They returned from a mission abroad accompanied by the child carer, recruited over there so that she could continue to look after the children. The couple obtained a Belgian residence permit for the worker. Even though the house they were living in had enough bedrooms, the child carer was put in a room in the basement, next to the garage and the laundry. The room was kitted out and a hose with a shower head was installed in an area in the basement that was practically in the open air. The child carer's services were duly declared to the social security office by her employer and, when the employer was obliged to do so, they paid her salary, in accordance with Belgian rates, onto a bank account opened in the worker's name. The years passed and the children gradually left the family home. When the parents were offered a new mission abroad, they decided to let the child carer go. They told her she had to return to her country of origin with a small provision, i.e. a few

119 This case was tried by the French-speaking Criminal Court of Brussels on 24 November 2017 and by Brussels Court of Appeal (in absentia) on 2 December 2019. See www.myria.be, case law section.

120 This case was tried by the French-speaking Criminal Court of Brussels on 22 January 2013 and by Brussels Court of Appeal on 12 May 2015 (see www.myria.be).

121 A final judgment was handed down by Brussels French-speaking Criminal Court on 22 March 2018 (see www.myria.be).

thousand euros, which they decided to give her as a reward for her good and loyal services. Completely panicked about this situation, the child carer took fright and told a number of acquaintances about her situation.

The investigation revealed that the worker was unaware that her services had been declared in Belgium, thus giving her rights, in particular, unemployment benefit and a retirement pension as well as long-term residency in Belgium. It was also revealed that during all the years of uninterrupted employment in the family's service, including when they went on holiday abroad, the worker had never received her salary; she was simply given small sums. In fact, the bank account into which her salary was paid was entirely controlled by the wife of the couple employing her. This person was in possession of the debit card associated with this account and used the money mainly to make personal purchases in luxury shops.

Besides these situations worthy of a Dickens novel, we are also currently looking into another type of work that could be the subject of labour exploitation. For some time now, we have been seeing more and more adverts offering the services of carers for elderly or dependent persons, so that the latter wouldn't have to be placed in a retirement or nursing home. Those we consulted are keen to stress that the staff is available round the clock, seven days a week, for a daily fee paid to the agency for which they work. What surprises us in the adverts we consulted, or in the information given to the people who have approached these agencies, is that it is the actual user who becomes the official employer of their carer. The user is obliged to have the carer sign a contract in their name and to register them as such with the NSSO. However, in practice, the carer is under the authority of the agency that recruited them. The agency takes care of "all the necessary steps for their journey to Belgium" and promises that "if the person provided isn't suitable, they will be immediately replaced by someone else".

Finally, it isn't hard to imagine that, after the health crisis our country is going through, and especially the lockdown as a consequence of COVID-19, it is highly likely that reports of exploitation of domestic staff will increase, since being confined with one's exploiters - as also illustrated by the rise in domestic or intra-family violence - can only further worsen already difficult situations.