

Part 2

Evolution of the phenomena and the fight against the trafficking and smuggling of human beings



Chapter 1

Recent developments in the legal and political framework

Recent European and Belgian developments are summarised hereafter.

1. Developments in the European legal and political framework

1.1. | Human trafficking

There were no particular developments in the European anti-human trafficking policy in 2019. The mandate of Ms. Vassiliadou, the EU Anti-Trafficking Coordinator, expired end February 2020. At the close of this report¹²², the Deputy Director General of the Directorate-General Migration and Home Affairs, Mr Olivier Onidi, had taken up the position.

COVID-19 and human trafficking

The start of 2020 was characterised by the measures taken on a global, European and national level to deal with the coronavirus pandemic. Several international and European agencies have drawn the authorities attention to their repercussions on human trafficking.

United Nations Office on Drugs and Crime (UNODC) warned states about the adverse effects of the coronavirus measures

on victims of trafficking and the fight against it¹²³. While, at first sight, their entry into force and the increased police presence at borders and in public spaces may have appeared to deter crime, they may also have driven criminals further underground. Criminals have adapted to the "new reality" created by the pandemic, especially through the misuse of new communication technologies. At the same time, the pandemic is having an impact on the ability of public authorities and non-governmental organisations to provide essential services to trafficking victims. The pandemic has also highlighted the systemic and deep-rooted economic and societal inequalities that are among the root causes of human trafficking.

UNODC therefore fears that the pandemic and its preventive measures will further complicate the identification of trafficking victims, increase their exposure to contracting the virus and limit their access to healthcare for the treatment of the disease. The pandemic has increased the precariousness of these already vulnerable people, with low incomes or working in the informal sector (illegally staying migrants, seasonal workers, sex industry workers, etc.). There is a risk of greater exploitation in sectors where trafficking is frequently detected, owing to the reduction in production costs caused by the economic difficulties encountered, as well as the drop in checks by the authorities. Similarly, for victims who are held by traffickers, the measures against COVID-19 are likely to worsen their situation, increase their isolation and reduce their chances of being identified.

Consequently, the mechanisms to identify and refer trafficking victims and give them access to their rights, have slowed down or have ceased to function. This

122 September 2020.

123 UNODC, *Impact of the COVID-19 pandemic on trafficking in persons: Preliminary findings and messaging based on rapid stocktaking*, May 2020: https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf

has also been observed in Belgium by the specialised reception centres. They noticed an abnormal drop in the number of reports of potential victims of human trafficking during the lockdown.

Other obstacles exist preventing access to services, assistance and support owing to the stay-at-home lockdown rules and the resulting closure of NGOs and government services. Identified victims who were receiving support from government services or NGOs may face difficulties, such as the renewal of their residence permit.

Furthermore, inspection services such as labour inspectorates or the police may also be affected. For instance, the police is required to enforce the lockdown or social distancing measures, which affects their normal operational capacity. Therefore, there is a risk that investigations into human trafficking will become less of a priority and that there will be fewer inspections of suspected sites and cases. This observation applies to Belgium, as shown by several players in the external contributions on the impact of the health crisis on human trafficking¹²⁴.

As a result, here are some of UNODC's recommendations to states:

- continuous monitoring of responses to COVID and the necessary adjustments to be made when they have a negative impact on vulnerable groups such as victims of trafficking;
- vigilance on the part of frontline services and magistrates regarding new crime patterns and their evolution;
- flexibility of support services;
- systematic collection and analysis of data on the impact of COVID-19 on human trafficking.

Europol has also analysed the effects of the pandemic on organised crime. The agency assesses the short-, medium- and long-term consequences of it. For human trafficking, it believes that if, in the long term, the pandemic is followed by a recession, it is likely that there will be an increase in the demand for sexual exploitation and labour exploitation, as well as a rise in intra-European trafficking¹²⁵. The closure of businesses

124 See below.

125 EUROPOL, *Beyond the pandemic: how COVID-19 will shape the serious and organised crime landscape in the EU*, 30 April 2020: <https://www.europol.europa.eu/publications-documents/beyond-pandemic-how-covid-19-will-shape-serious-and-organised-crime-landscape-in-eu>

with reduced profit margins owing to an economic crisis, is indeed likely to open up the market to those offering illegal or cheap labour.

Moreover, the closure of establishments offering legal sexual activities can lead to an increase in the number of acts of illegal sexual exploitation. Similarly, travel restrictions complicate seasonal work in agriculture, likely increasing the demand for third-country migrants who are the victims of trafficking in this domain¹²⁶.

1.2. | Human smuggling

COVID-19 and human smuggling

Measures to combat COVID-19 also have an impact on migrant smuggling.

UNODC¹²⁷ therefore believes that restrictions on travel and movement don't impede the migration of people fleeing conflicts or violence. Often, these people have no other choice than to resort to smugglers. Migrant smuggling is therefore likely to increase owing to the closure of borders and the even greater need to use smugglers to cross them. These closures and restrictions also risk leading to more dangerous conditions and the use of more hazardous routes, as well as higher prices.

Europol has observed that smugglers adapt their *modi operandi* to border closures.

As a result of increased border control measures and travel restrictions within the EU, Europol has seen a shift in smuggling activities¹²⁸: among other things, an increase in the use of the

126 European Migrant Smuggling Centre, *4th Annual Report*, 2019: <https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report-%E2%80%93-2019>

127 UNODC, *How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America*, research brief, May 2020: <https://www.unodc.org/documents/data-and-analysis/covid/Covid-related-impact-on-SoM-TiP-web3.pdf>

128 European Migrant Smuggling Centre, *4th Annual Report*, 2019: <https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report-%E2%80%93-2019>

Central Mediterranean route¹²⁹ and the use of small boats to cross the Channel.

2. Developments in the Belgian legal and political framework

2.1. | Trafficking and smuggling of human beings

As the federal Belgian government has been in a state of flux since the political crisis of 2018, no major new political initiatives could be taken in 2019 (or at the beginning of 2020).

However, in the previous report, Myria mentioned, among other measures, the enshrinement of the principle of non-punishment of victims in the criminal code¹³⁰ and the updating of the 2015-2018 action plan on human smuggling in 2019¹³¹.

In June 2020, the Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings adopted, in writing, through a silent procedure, an update of the 2015-2019 action plan on trafficking in human beings for 2020 and 2021.

As a result of the federal government being in a state of flux, it wasn't possible to adopt a new action plan. However, a detailed draft, covering the period 2020 to 2025, was drawn up by the bureau of the interdepartmental unit.

In order to ensure the continuity of the work started and to establish the perspectives during this transitional period, the previous action plan was subsequently updated. It takes into

¹²⁹ For this purpose, Europol has used figures provided by the IOM, showing a significant increase in the number of migrant arrivals by this route (3 366 arrivals on 25 April 2020, compared with 667 arrivals for the same period in 2019).

¹³⁰ Act of 22 May 2019 on organ trafficking and the principle of non-punishment of victims of human trafficking, *O.G.*, 21 June 2019. See Myria, *2019 Annual Report, Trafficking and smuggling of human beings, Empowering victims*, pp. 99-101.

¹³¹ https://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MS_2019_FR.pdf. See Myria, *2019 Annual Report, Trafficking and smuggling of human beings, Empowering victims*, pp. 101-102.

account the initiatives already launched with the federal entities. The emphasis is on continuing training and awareness-raising activities, especially for the police, money transfer agencies and bank compliance departments.

2.2. | Other measures

Even if they don't directly concern the fight against human trafficking, new measures adopted for the posting of workers and the fight against social dumping can nevertheless have an impact on it.

Transposition of the European directive on the posting of workers

The new Directive 2018/957 on the posting of workers¹³² was supposed to be transposed by the Member States by 31 July 2020 at the latest. The Belgian law transposing the new directive on the posting of workers came into force on 30 July 2020¹³³.

The principle of the former directive on the posting of workers was that a posted worker could be sent by their employer to another Member State (host country) to work there for a certain period, within the framework of the free movement of services, but according to the conditions and rules of the country of origin. However, a hard core of mandatory minimum protection rules in the host country had to be respected. Now, posted workers who are doing the same work in the same company as their local colleagues, must benefit from the same working conditions and remuneration.

The directive introduces several important changes, such as the term "minimum wage" replaced by "remuneration". Hence, the remuneration of posted workers must not only comply with the minimum wage conditions, but also with the other binding rules on remuneration in the host Member State.

¹³² Directive (EU) 2018/957 of the European Parliament and Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *OJ*, L173 of 9 July 2018.

¹³³ Act of 12 June 2020 laying down various provisions concerning the posting of workers. See Myria, *La migration en chiffres et en droits, Les cahiers du rapport annuel 2020, Libre circulation, migration économique et étudiants*, pp. 35-36.

Fight against social dumping

In 2019, the Belgian government took various measures to combat social dumping and fraud¹³⁴. As a result, a cooperation agreement concerning the fight against social fraud was concluded on 12 November 2019 between the police, the judiciary and the social inspectorates (of the NSSO, NISSE, FPS Employment, ONEM, INAMI). This agreement aims to jointly set up social fraud investigation teams throughout the country. Up until now, this has only existed in East Flanders. These joint investigation teams involving the police and social inspectorates, known as "MOTEMS", can be organised per district and cooperate in individual cases to combat social dumping, undeclared work, bogus self-employed persons and organised bankruptcies¹³⁵.

A 2020 federal action plan to combat social fraud was also approved by the Council of Ministers on 20 December 2019. Special attention will be paid to social dumping with the aim of controlling and penalising both illegally-posted workers and self-employed persons, and compliance by the foreign employer with the terms and conditions of employment imposed by law¹³⁶.

3. Impact of the COVID-19 crisis on human trafficking

Stakeholders active in the fight against human trafficking and in support and assistance to victims are concerned about the impact of the COVID-19 crisis on human trafficking.

This is why Myria would like their voices to be heard on this specific issue. The following external contributions were made by the NSSO's Inspection Department, a labour prosecutor, a police department and a reception centre for victims.

134 See Myria, *La migration en chiffres et en droits, Les cahiers du rapport annuel 2020, Libre circulation, migration économique et étudiants*, pp. 35-36.

135 <https://www.siod.belgie.be/fr/signature-de-laccord-cadre-sur-les-motems>

136 Federal action plan to combat social fraud 2020, p. 69, see: <https://www.siod.belgie.be/fr/publications/plan-daction-2020>



External contribution: impact of the COVID-19 pandemic on labour exploitation

Experiences and observations of
the NSSO Inspection
Department's ECOSOC teams

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The COVID-19 pandemic is having a considerable impact on our society and our economy. The scale and impact of the coronavirus crisis may only be apparent later. It will undoubtedly have consequences on labour exploitation and especially on the fate of victims. It is currently likely that vulnerable people are at greater risk of exploitation and that this crisis represents an "opportunity" for unscrupulous employers. This fear is all the more justified since the police and inspection services are also feeling the effects of the current crisis.

On the one hand, this contribution aims to provide a picture of the extent of the impact of the COVID-19 pandemic on the nature and the scale of labour exploitation in our country. We have monitored the situation in the field insofar as it is possible. We are trying to establish whether this fear is justified, in particular through feedback from the inspectors on our ECOSOC teams. On the other hand, we want to use this critical view of the present moment to detect new developments in our economy and our labour market in good time, and to respond appropriately.

Limited detection capacity

In the weeks following 16 March, the NSSO Inspection Department's ECOSOC teams¹³⁷ only carried out limited checks in the field. The usual checks in risk sectors didn't take place. On the one hand, the majority of companies were closed owing to the coronavirus control measures. On the other hand, it was important that checks be carried out safely. However, all the types of protective equipment — such as face masks, disinfectant gel and gloves — were unavailable at the time. Moreover, it often proved impossible to obtain help from the police, who had other priority tasks (ensuring respect for the lockdown and social distancing). The use of interpreters was also problematic.

In addition, the other teams of the NSSO Inspection Department were also less present in the field during this period. Hence, all the non-urgent and non-essential control actions within the framework of the district units were suspended until mid-March.

Inspection and cooperation were also difficult to achieve at international level. The Joint Action Day Labour Exploitation, scheduled for May 2020, during which the EU's Member States were to jointly set up coordinated controls in certain risk sectors, was postponed owing to the coronavirus crisis. The usual communication channels disappeared. Preparatory consultation meetings, exchanges between inspectors, etc., were made impossible by travel restrictions and border closures.

However, this hasn't prevented ECOSOC teams from effectively conducting control actions in several provinces, especially in night shops and pita restaurants or pizzerias that have stayed open for the collection or delivery of meals. Sometimes, we have done this on our own initiative or at the request of the local police, who have asked us to help them during "corona" checks. In addition, checks were conducted

¹³⁷ An ECOSOC team is operational within every provincial department of the NSSO's Inspection Department. Their main task is two-sided and consists of investigating the illegal employment of foreign workers and detecting situations of human trafficking. They carry out targeted checks in high-risk sectors. In their investigations into human trafficking, and especially labour exploitation, when collecting evidence of criminal activity, they pay special attention to the interests of potential victims of human trafficking, who they try to refer to specialised reception centres.

in the horticultural sector, the construction sector (small building sites), in several second-hand clothing recycling companies, car washes, service stations, delivery companies, in the food distribution sector and transport sector. Necessary and urgent on-site checks still take place, especially when we receive information about possible labour exploitation.

As of 7 May, the NSSO's Inspection Department began systematic checks in every province of companies that weren't obliged to close but had decided to close completely and which, thanks to a sworn statement, were able to defer their NSSO payments. The purpose of these checks was to verify whether these employers met the regulatory conditions allowing them to pay their social security contributions outside the legal deadlines. If failings regarding safety or social distancing were observed during these checks, the inspectors informed the Inspectorate for the Supervision of Well-Being at Work (Contrôle du bien-être au travail - CBE) of FPS Employment, Labour and Social Dialogue. At the same time, CBE inspectors also reported potential situations of labour exploitation in certain cases.

During these inspections (several hundred on-site visits per province), NSSO inspectors were explicitly instructed to be attentive to any signs of labour exploitation and to take appropriate action if necessary.

Regarding the checks that were carried out, the inspectors pointed out that it was particularly difficult to work efficiently in these circumstances. It was often difficult to maintain social distancing, and not touching the documents submitted wasn't easy either. It was difficult to talk to employers or workers while wearing a face mask. The hearings generally didn't take place, unless it was possible to hold them in safe conditions in the office. It was often impossible to organise a conventional briefing and debriefing. On top of that were the purely practical inconveniences: the inspectors had no access to sanitary facilities, and often couldn't wash their hands, etc.

Protective equipment was distributed to inspectors in the second week of May, thus allowing them to carry out more checks. Priority was given to the above-mentioned "COVID-19 checks".

In June, the number of checks almost reached the usual level again, especially in risk sectors where a large number of cases were pending at that time.

Police forces were increasingly available to assist us in our checks, even though there were still problems in several places.

In Brussels, the waiting list for hearings of presumed victims of human trafficking was still long, also because of a shortage of specialised inspectors. This problem isn't new, but it has become more acute during the coronavirus crisis (lack of rooms available to safely hear the numerous victims often accompanied by an interpreter, a lawyer, a representative from a reception centre, etc.). Currently, the ECOSOC team in Brussels has to organise between 50 and 60 hearings, mainly presumed victims, but also a certain number of other persons involved in illegal employment or human trafficking offences. Considering the number of inspections in the field that will further increase and the holiday period, the backlog of necessary hearings of human trafficking victims will rise again.

Almost no reports

During the period described, our service only received a very small number of reports of labour exploitation. These came from the labour prosecutor, the workers directly concerned, third parties or the point of contact for fair competition. The few reports received led to an on-site check, even during the first few weeks of the lockdown.

Labour exploitation findings

Below are several cases where ECOSOC teams detected indicators of human trafficking/labour exploitation during the period described. Besides these cases, inspectors were also confronted with potential situations of exploitation where they were unable to find sufficient indicators on the first visit. In these instances, a second inspection was planned and the contact details of the inspector were given to the workers. After that, the workers were contacted by the inspectors in their own language and the teams sought other sources likely to provide information on the situation.

In April 2020 already, indicators of the labour exploitation of a Romanian worker were detected at a **building site**. He was staying at the building site seven days a week and 24 hours a day, right in the middle of the coronavirus pandemic, in a caravan, in extremely basic and unhygienic conditions. There was no running water and he had to make do with a plastic toilet cubicle used by all the workers.

Inspectors had to give him a face mask during their inspection of the building site. The man had been staying there for several months and after working 50 hours as a labourer, he was also responsible for supervising the building site, and was therefore de facto available 24 hours a day, seven days a week. It turned out he was extremely isolated and didn't have a car. In any case, it was difficult for him to leave the building site because he didn't have the key for the caravan. He was alone on the site for several days. No authorities were informed of his stay.

In May and June, checks were carried out in several provinces in **nail bars**, which reopened on 18 May. Of the 19 nail bars checked, 18 were noted as violating social legislation and seven as employing illegal Vietnamese workers. Labour exploitation indicators were observed in two establishments concerning three Vietnamese victims. In both cases, the labour prosecutor was informed of acts suggesting human trafficking. A presumed victim was referred to a specialised reception centre. This 18-year-old Vietnamese boy was living in very basic conditions in the basement of the nail bar where he worked. He had no papers, was barely paid for his work from Monday to Saturday, had no bathroom or shower and not even any hot water. A young woman was found in another nail bar, who had arrived in Belgium following the closure of a nail bar in Budapest, where she was working, owing to the anti-coronavirus measures.

Another victim was found in a **car wash**. This Indian man was housed in a caravan parked inside the car wash. The owner forced the man to work during the lockdown. The car wash was only closed after a police check. He had to go back to work on 11 May, when car washes were able to open again. He worked long hours for a pittance, and wasn't declared to the social security office. He didn't have any protective equipment either, such as clothing, shoes or gloves. The man had no access to washing facilities or hot water, and had no identity papers or a residence permit.

A check was also carried out at a **farm**, following a "tip-off" about the possible exploitation of a Moroccan worker with no valid residence permit. It was found that the worker was housed on the farm in appalling conditions. His "living room" was actually a storeroom, which was extremely insanitary, dangerous and unfit for habitation (no electricity, no smoke detectors, no hot water, a smell of excrement and unstable stairs).

The worker was put in contact with a reception centre and the magistrate awarded him the status of presumed victim of human trafficking.

International road transport is a sector where exploitation is omnipresent. Drivers from outside the EU often drive for European transport companies. In general, they have contracts in Eastern Europe. They drive for several months at a time and sleep in the cab of their lorry. Following the coronavirus crisis, their hours have become even longer and their already low wages have been further reduced. As a result, their quality of life has deteriorated to an unacceptably low level.

During the month of June, our service checked and heard two drivers. A Ukrainian driving for a Lithuanian transport company with branches throughout Europe, was informed by his employer that his salary had been cut by a third. Workers who disagreed could leave, which was impossible owing to border closures during the coronavirus pandemic. In addition, the driver risked a fine if he abandoned his lorry without another driver taking over. After working non-stop for more than four months and living in his lorry, this driver was forced to continue driving as no replacement could be sent. The reduced salary wasn't even paid. Deductions and fines were far from exceptional. There was no protective gear, even for loading and unloading in northern Italy at the height of the coronavirus crisis. This driver was exhausted and said he couldn't continue to work.

A second driver, a Belarusian, found himself in a similar situation: extremely long work periods, reduced salary, non-payment of wages, isolation, harassment, and exhaustion, which made him a danger on the road.

Thanks to the intervention of the Social Legislation Inspectorate's Transport Unit, the wage arrears of these two drivers were paid.

We also received a report of the possible exploitation of a **Filipino au pair**, who couldn't leave the family with whom she was staying during the lockdown. We are expecting a wave of reports of exploitation of **domestic workers**, especially in Brussels. These workers have been very isolated and invisible during the lockdown and are therefore at the complete mercy of their employer.

Detecting exploitative situations is particularly difficult in this sector as the work is carried out in private homes.

In some cases, we found indications that human trafficking victims had arrived in Belgium through **human smuggling** (especially from Vietnam and India).

In several cases, it wasn't possible to refer the potential victims to a reception centre. Several factors made it difficult to contact the workers concerned and to refer them to a centre: it was impossible to find an interpreter, the workers didn't consider themselves as victims, they were satisfied with their situation, considered that were earning a decent living (even though they were paid below Belgian wage standards), and often refused to be put in contact with a centre.

One of the above-mentioned victims left the reception centre in the night after they had been admitted. In another case, a presumed victim who had made contact and supplied information on their exploitation during the lockdown, was no longer reachable afterwards. Several visits were made to a company (recycling of second-hand clothes), which ceased its activities in the meantime.

Conclusion

The more limited presence of inspections in the field and the reduction in proactive checks in high-risk sectors considerably reduced the possibility of detecting potential situations of exploitation during coronavirus crisis. Furthermore, we didn't receive any reports of possible cases of labour exploitation.

It has therefore been extremely difficult to get a sense of the reality in the field, so that the overall picture of the extent, the nature or the possible increase of labour exploitation during the COVID-19 period is somewhat vague. One thing is certain, this situation has taught us that a proactive and permanent presence of inspection services in risk sectors is essential.

Although the exact impact of the COVID-19 pandemic isn't yet clear, we can deduce from several observations from inspections in various sectors that the pandemic has indeed had an impact on the phenomenon of labour exploitation, especially on the fate of the victims. Many have been

forced into their situation (of exploitation) and have found no way out. Their precarious working and living conditions have often become more dangerous and unhealthy. Keeping their distance in their cramped homes or on the way to work has been difficult, and the lockdown has made them even more isolated, thus making them more dependent on their employer and even less visible to inspection services. Detection, which is already very difficult in normal circumstances, has become even more complex.

In the exploitative situations observed, our inspectors found that the workers were required to do their work in circumstances where government measures to control the coronavirus were being violated. We believe that these findings, when added to the classic indicators, will provide further evidence that these are cases of human trafficking. It is highly likely that in the course of their investigations after the lockdown and the COVID-19 pandemic, our inspectors will find that in several cases, some employers abused the situation to make their employees work in unacceptable conditions.

After the coronavirus crisis, companies will be faced with economic difficulties. The pandemic could lead to an economic recession. For some employers, there will be an increasing temptation to save on wages and social contributions. The demand for cheap illegal labour and the accompanying risk of exploitation will increase. At the same time, the impending economic downturn will make those in a precarious situation even more vulnerable. They will even more easily agree to work in inhuman conditions.

Inspections will have to take this new socio-economic situation into account and adapt their strategy. It is essential that ECOSOC teams are quickly and once again present proactively and sufficiently frequently in sectors at risk. The challenge is to further increase detection capacity and to be able to detect more exploitative acts, so that perpetrators can be prosecuted and victims protected.

Finally, we believe it is of the utmost importance that the fight against human trafficking, and against labour exploitation in particular, remains a national political priority, in order to ensure that those who exploit others don't continue their criminal activities with impunity and that victims receive the protection they deserve. Policy-makers must provide adequate resources to specialised services in this area to enable them to continue their work under the special conditions created by the pandemic and its consequences.



External contribution: is non-compliance with the measures to tackle the coronavirus an additional indicator of human trafficking for the purpose of labour exploitation?

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It may seem surprising at first sight to ponder on the impact that a pandemic, which has confined millions of people to their homes, has had on trafficking for the purpose of labour exploitation. All economic activity in most European countries, and especially in Belgium, which is of particular interest to us, has been at a standstill for more than two months. Workers who couldn't work from home became unemployed owing to force majeure.

However, this lack of activity hasn't put an end to undeclared labour and, in some cases, human trafficking.

After giving an overview of the impact of the pandemic on human trafficking at global level, and a reminder of the basis on which trafficking indices for labour exploitation is assessed in Belgium, we shall see how the COVID-19 crisis may have had an impact on the victims of trafficking and, finally, why it will undoubtedly be difficult to firmly confirm this observation.

1. | The impact of the COVID-19 crisis on trafficking at global level

Lockdowns, travel restrictions, work limitations and cuts in resources have a negative and often dangerous impact on the lives of these already vulnerable people.

According to the Executive Director of UNODC, Ghada Waly, "While Covid-19 restricts movement, diverts law enforcement resources and reduces social and public services, trafficked persons are even less likely to escape and find help. As we work together to defeat this global pandemic, countries must keep shelters and hotlines open, protect access to justice and prevent the most vulnerable from falling into the hands of organized crime. UNODC assists governments and non-governmental organization (NGO) partners around the world to enable anti-trafficking units to continue doing their vital work safely and to ensure that trafficked persons can get the assistance they need".

Partners working with UNODC have reported that in some countries, more children are forced to take to the streets in search of food and income, thus increasing their risk of exploitation.

According to Ilias Chatzis, chief of UNODC's Human Trafficking Section, "At the same time, new opportunities for organized crime to profit from the crisis are emerging. This means that traffickers can become more active and target people who are even more vulnerable than before because they have lost their source of income due to measures to combat the virus (...) We know that people in vulnerable situations are more likely to contract the virus and have less access to health care in case of illness. It is therefore alarming to hear that, in some places, trafficked persons no longer have access to shelters, with some refuges even having closed down because of the virus and others lacking protective equipment - putting victims and staff at risk".

The pandemic has clearly had a global impact on the labour exploitation of women, men and children.

2. | Trafficking for the purpose of labour exploitation in Belgium: can non-compliance with health regulations be an indicator of human trafficking?

As is well known, Belgium has diverged from international standards to criminalise, to a very large extent, trafficking for the purpose of work or services contrary to human dignity¹³⁸. The violation of dignity, the cornerstone of the definition, must be sought especially in the case of non-compliance with social regulations. This particularly includes remuneration that doesn't comply with Belgian wage scales, working hours that exceed the rules in force, and a failure to declare the work thus preventing the worker from benefiting from social security.

However, the violation of human dignity may also be expressed through a serious breach of certain rules relating to work conditions. Case law holds that it is contrary to human dignity to work in a storage facility that is cold and smells strongly of mould, or in a warehouse covered in plastic to protect the clothes sorting tables from the rain¹³⁹, or to be forced to pick up the muck in a butcher's shop with bare hands and on all fours¹⁴⁰, or to be forced to remove asbestos from a yacht without any protective clothing¹⁴¹.

Violation of a worker's dignity also includes that of their health: being forced to work when sick¹⁴² or with a fever¹⁴³ or only receiving meat not suitable for sale in a butcher's shop as food¹⁴⁴.

Based on this case law, we can therefore say that the violation of human dignity can also consist of the obligation of working in conditions that don't allow compliance with the health obligations relating to COVID-19, such as the fact of being forced to work in places where there is no possibility of complying with social distancing, with no individual protection (mask) or collective protection (plexiglas). This point of view is in line with certain judicial decisions that base their assessment of the violation of a worker's dignity on evidence such as the absence of work equipment or work

clothes¹⁴⁵, a helmet and safety shoes¹⁴⁶ or gloves and a protective apron to clean griddles and deep fat fryers¹⁴⁷.

Of course, the mere fact of exposing a worker to the risk of COVID-19 is insufficient proof of labour exploitation. This element must be supported by a body of consistent evidence demonstrating a violation of human dignity in the work performed.

3. | The impact of the COVID-19 crisis on trafficking for labour exploitation

As we have seen, UNODC highlights the global impact of human trafficking. In its communication of 2 April 2020, GRETA "draws attention to the particular difficulties faced by victims of trafficking in human beings, who generally find themselves in a situation of great insecurity and vulnerability. In addition to the psychological trauma and crippling physical injuries suffered, many of these women, men and children have no means of subsistence, and sometimes find themselves in situations of illegal migration or employment, without medical or social protection, and without documents or resources to enable them to return to their countries of origin. During the COVID-19 pandemic, their situation can only deteriorate and criminals can actively use this global crisis to exploit their vulnerability in order to increase the financial profit generated by human trafficking".

What is the situation in Belgium, especially with regard to trafficking for labour exploitation? Foreigners living illegally or precariously in Belgium, which constitutes a situation of vulnerability, have certainly been significantly affected by the pandemic. With no resources, and especially more vulnerable than Belgian citizens, they are forced to accept any work (conditions) to survive.

However, this state of affairs is not unique to this category of foreign nationals. Belgian workers have also faced unemployment due to force majeure such as we have never experienced before.

138 On this notion of dignity, see our article: "La notion de dignité humaine et son application pratique en matière de traite économique des êtres humains", *R.D.P.C.*, no. 9-10, 2013, pp. 854 to 877.

139 Mons Crim. Court, 26 June 2012, www.myria.be

140 Brussels, 12 January 2011, www.myria.be

141 Bruges Crim. Court, 25 April 2006, www.myria.be

142 Brussels, 26 October 2011, *unpub.*, Clerk's Office no.: 2011/BC/470. 143 Liège, 31 October 2005, *unpub.*, index no. 2848/05.

144 Brussels Crim. Court, 28 April 2010, www.myria.be.

145 Antwerp Crim. Court, Turnhout division, 18 January 2017, Myria, 2019 *Annual Report, Trafficking and smuggling in human being, Empowering victims*, p. 125; Arlon Crim. Court, 8 May 2014, www.myria.be

146 Charleroi Crim. Court, 7 January 2011, *unpub.*, Clerk's Office no.: 62. In this case, these clothes were provided, which reinforced the absence of human trafficking in the court's view.

147 Charleroi Crim. Court, 10 December 2010, www.myria.be. In this case, one of the worker's forearm's was burnt.

More than 500,000 workers were laid off in the early days of the pandemic and another 1,313,127 between the start of the lockdown and 25 May 2020 (the start of phase 2 of the end to the lockdown). Unemployment benefit depends on the worker's income and is capped at EUR 1790.62 gross¹⁴⁸ per month, an amount increased by EUR 5.63 per day by ONEM (national employment office) when the worker is temporarily unemployed due to force majeure (in this case, "coronavirus"). Hence, many workers found themselves in a vulnerable situation - since they have loans to pay, children to feed, etc. - which may have led them to seek undeclared work where they could be exploited.

Admittedly, the vast majority of economic activity was at a standstill. However, internal building work was able to continue without attracting the attention of inspectorates or the police. Bakeries and butchers (where several cases of trafficking for labour exploitation have been discovered in recent years) were able to continue to employ illegal workers in their back rooms, etc. And as we shall see in point 4, these activities were unlikely to be controlled.

The health crisis has inevitably had an impact on human trafficking and has increased or aggravated the exploitation of certain workers. However, we will only really be able to assess the extent of the crisis in a few months' time, when testimonies are collected in the context of court cases. Nevertheless, it would be surprising if Belgium were not to be affected by this phenomenon. So much was at stake financially that the exploiters had every interest in taking advantage of the pandemic to "optimise" their profits from illegal activities.

4. | A finding difficult to confirm but a real risk

Our approach is difficult to confirm in practice, and the figures are difficult to interpret. In 2019, the labour prosecutors' offices in Belgium had 164 cases¹⁴⁹ of human trafficking for labour exploitation. These were distributed as follows:

Ghent (47), Antwerp (34), Halle-Vilvoorde (3), Louvain (5), Brussels (14), Hainaut (6), Walloon Brabant (9), Liège (46), Eupen (0).

Between 1 January 2020 and 30 May 2020, 20 acts of human trafficking were discovered. They are distributed as follows: Ghent (5), Halle-Vilvoorde (2), Brussels (1), Walloon Brabant (1), Liège (10), Eupen (1).

During the lockdown, evening of 13 March to 18 May 2020, five acts were discovered: Ghent (1), Antwerp (1), Liège (2), Eupen (1).

This shows that we have gone from 1.36 acts per week (15 acts discovered between 1 January and 12 March) to 0.55 acts per week (from 13 March to 18 May). The average in 2019 was 3.15 acts discovered per week.

The figures certainly don't reflect the reality in "the field" because the inspection services and the police were also disrupted by the pandemic. Hence, labour inspectorates were subject to the lockdown at the start of the crisis. The few checks they carried out in the field focused on social dumping. The ONEM and INASTI inspection services were called upon to answer the many questions from employers and the self-employed and to support internal services. When ONEM resumed its field inspections on 4 May, they focused on fraud concerning unemployment due to force majeure.

Added to this was the cancellation of all the checks carried out by district units, which were no longer operational until the beginning of May. Only emergency cases were dealt with.

The police were called upon to supervise compliance with the various special powers decrees ordering the lockdown, social distancing, working from home, the closure of shops, etc. Any other offences, which fell sharply as a result of the lockdown - except for domestic violence, which sadly increased - were incidental.

With all the inspection services virtually at a standstill, many exploiters inevitably fell through the (very large) gaps.

¹⁴⁸ A withholding tax of 26.75% applies.

¹⁴⁹ We looked at acts entered under code 55 - labour trafficking in MACH. We took into account the date of the discovery of the act of trafficking and not the date the court case was opened. These figures don't necessarily reflect reality as a reclassification may occur in the course of the case.

Conclusions

What conclusions can be drawn from these two months of pandemic? The figures show a fall in human trafficking acts regarding labour. However, we can't draw any conclusions from this as there have been no checks, so the statistics are biased.

We are therefore left with the following feeling: that of having certainly overlooked victims who are the subject of exploitation owing to a lack of checks. As we write¹⁵⁰, the lockdown is coming to an end, and the inspection services and the police will certainly discover situations of exploitation that began during the pandemic.

¹⁵⁰ May 2020.



External contribution: checks on (private) prostitution and human trafficking during the coronavirus

Johan Debuf

First Chief Inspector of Police

Brussels-North police district

Prostitution was also partly brought to a halt during the lockdown. With the exception of private prostitution via online adverts. It therefore seems necessary to carry out checks on this type of prostitution. Even though a case is rarely opened for human trafficking, a situation of (exploitation of) vulnerability is potentially lurking behind every working prostitute.

1. | Start of measures — ban on prostitution

Prostitution has been banned in our police district since the measures to tackle the coronavirus came into force. Prostitution parlours and windows have been closed. As these are known places of prostitution, it is relatively easy to check whether or not this ban is being respected.

On the other hand, compliance with the measure is far more difficult to control and impose on private prostitution through adverts on websites and other media. And the very wide range of forms this activity assumes is one of the reasons:

- Massage parlours, with several sex workers. These places are often well known and most are closed.
- Escort services, in hotels or at clients' homes. As they aren't linked to a place, they are particularly difficult to control.
- Home reception. The sex worker receives clients in a private apartment; this practice can be controlled thanks to agreements made by specialised police services, followed by a standard prostitution check and a check on compliance with the measures to

tackle the coronavirus. This type of double check is entirely possible, but would seem difficult owing to the large number of adverts in the Brussels-Capital Region. In normal times, there are about 1,200 a day, and about 700 since the beginning of the measures, according to the figures provided by the manager of website A¹⁵¹.

2. | Checks performed by the Brussels-North police district — Observations and results

During April 2020, the human trafficking section of our police district verified 21 adverts on website A, offering business in our area. During these checks, 30 % of requests for an appointment by SMS went unanswered. On the other hand, 70 % of requests for physical contact within the framework of prostitution, i.e. 15 reactions to adverts, received an answer by SMS. Among the people involved in these 15 adverts, 40 % provided an address for an appointment outside our area. Another 20 % broke off contact just before the appointment. The addresses were in apartment buildings equipped with camera systems or where an open space made our arrival visible. This left six adverts where the address for the appointment was in our area and where a physical meeting took place. In these cases, a check was duly carried out. Five of the six adverts were deactivated after the check. An advert was probably put online again in a slightly modified form (different phone number, inversion of first name and surname, language of message changed from English to French, content of message slightly modified).

Strikingly, the majority of the prostitutes still active are of Latin American origin. They claim to be badly informed about the COVID-19 pandemic in general and about the specific measures taken in Belgium in particular. Apart from a few exceptions, there is no evidence that the sex workers usually active in street or window prostitution have moved into the private circuit.

After the check, hardly any new adverts were posted for two weeks. However, since 23 April, a few new ones were noted, 22 in Schaerbeek, 11 in Saint-Josse-ten-Node

¹⁵¹ Out of respect for the privacy of the persons concerned, a series of websites and a location were made anonymous in this contribution. The websites range from A. to E. The meeting place was changed to X.

and 23 in Evere. In view of these findings, it is recommended that we continue to look through the adverts on website A. and other similar websites, and carry out the necessary checks.

3. | Checks in other police districts in Brussels

We contacted our fellow colleagues working in human trafficking in the other police districts in Brussels to find out about their orders, actions and requirements in terms of checks on private prostitution as long as the coronavirus measures are in place. For instance, the Brussels-Capital/Ixelles district would like nothing better than to carry out checks, but would like orders to be given to the entire judicial district of Brussels regarding procedures. The Montgomery district also shares this point of view. The other districts don't carry out checks and/or don't request such checks.

4. | Opinion of the crown prosecutor's office in Brussels, reference magistrate

On the advice of the crown prosecutor's office in Brussels, the reference magistrate for trafficking in human beings, the judiciary established the principle that a first offence should only be followed by an administrative sanction or a standard report for non-compliance with the measures to combat coronavirus. **A case for human trafficking will only be opened if it concerns minors or if there is a threat to physical integrity** as a result of findings or complaints. However, in case of recidivism, the offences will be put to an end and an official report drawn up bearing note number 62, for immediate summons.

5. | Proposal

In order to ensure compliance with the measures taken by the National Security Council, the Brussels-Capital Region and the various municipalities, it would seem useful and even necessary to organise some form of control of private prostitution. All the more so since **the fact that a prostitute who is continuing to work willingly or forcibly during this health crisis is a potential indicator of the exploitation of her situation.**

Carrying out checks on a sample basis may already be sufficiently dissuasive, but this effort must be both consistent and generalised.

6. | Example

To illustrate the current online prostitution activities in the Brussels-Capital Region, a few sexual services websites have been examined below.

6.1. | Website A.

Representatives of the authorities contacted the webmaster to ask them to (temporarily) close down the website or, at least, to take as many measures as possible in view of the crisis. They weren't able to close it down, for various reasons — mainly economic — but they ensured that all possible measures were taken, both "online" (see later) and "offline" (e-mails sent to all the users. Users and visitors were made aware of the risks inherent to sexual contact during the pandemic. On the homepage, the header clearly mentioned the ban on physical encounters. Visitors were explicitly asked never to request this, let alone respond to such requests.

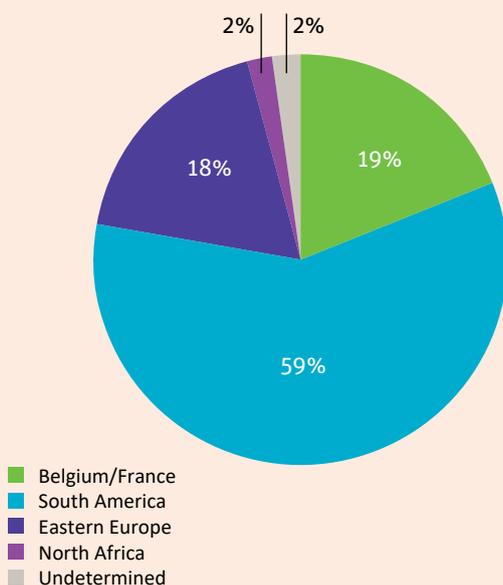
In addition, the webmaster specified under each advert on the homepage that the services offered were part of an adapted and virtual offer. The adverts were all accompanied by a caption indicating that the service was provided online, via Skype, WhatsApp or links. Nevertheless, when the website provided a link to activate an appointment directly via webcam, the prostitute's telephone number remained visible in most cases. The client could therefore call and arrange a physical meeting. In any case, there were very few adverts that only contained webcam links. As regards these adverts, there is another threat: various forms of computer fraud.

In any case, for someone who knows the website, it is very easy to bypass the homepage - which still shows a certain willingness to respect the measures - and quickly find the more classic prostitution adverts. The majority of them explicitly offer physical appointments. The webmasters don't block these adverts, but - it would appear - have activated filters so that they aren't too visible. Very few prostitutes say anything about COVID-19. And when they do, it is with a certain naivety.

In order to assess trends at user level, a representative sample of 122 profiles that posted an advert was examined on 7 April 2020. It is important to note that out of the 122 adverts examined, 82 were marked "gold". These are adverts for which the customer has paid in advance to receive automatic, daily updates for one month. However, it is likely that the proportion between "automated" and "voluntary" updates is about 50 %. All in all, we suspect that in at least 40 of the adverts in our sample, there is a clear willingness to post them and a real intention of receiving clients. These cases are also the most "interesting" in the fight against human trafficking and the exploitation of prostitution.

Is it a question of economic uncertainty or exploitation of a vulnerable situation? For instance, when we count girls working on a stormy night or on 31 December, we consider them to be the most exploited. The same applies to this period of crisis.

Then there is the question of the origin of the prostitutes currently active. On website A., there are mainly adverts for prostitutes from Latin America or Eastern Europe (Moldavia, Ukraine and, more so, Romania). Chinese girls have also been active on the website for several months. Added to this are Belgian prostitutes, occasionally or regularly, as well as young girls — sometimes minors — who have run away or are exploited by urban gangs. The latter group is a minority, but is an absolute priority.



This figure shows that many of the prostitutes currently active on website A. are from Latin America. The number of adverts for girls from Eastern Europe has clearly decreased. Several Moldovan, Romanian and Ukrainian groups of women may have ceased their activities or have even left. The same is true — and even more so — of the Chinese women.

During our "scan" of 7 April 2020, we found no trace of adverts involving underage presumed victims among the 122 profiles analysed. Barely 15 adverts were offering virtual services in accordance with the webmaster's request. In one profile, the prostitute astonishingly used the coronavirus as a "selling point", presenting her services as a remedy against the virus.

Thankfully, other prostitutes informed their clients that they were temporarily suspending their services.

Prostitutes from other sectors

Among the prostitutes currently present on the website (except for the 122 profiles scanned), only one was known for walking the streets or prostituting herself in a window before the implementation of the measures to tackle the coronavirus. She was a prostitute from Hungary who worked in Brussels red-light district. The exploitation of the interested party is currently the subject of an investigation by the Brussels-Capital police district. The information was sent to their services.

6.2. | The other websites

Website B.

The activity on this website was more difficult to analyse because the adverts posted weren't dated. Nevertheless, it was clear that activity had decreased considerably. For instance, in the "private massage" category — which generally contains a dozen or so adverts — there were barely 10 adverts on 7 April. No announcements or messages concerning the health crisis featured on the website. For the sake of completeness, it should be noted that it is well known "in the community" that this website is used less and less.

Website C.

Just like website B., the analysis wasn't easy because the adverts weren't dated. Likewise, there was a significant reduction of activities compared with the months preceding the coronavirus crisis. In addition, it is striking to note that different prostitutes who post adverts on website A. post the same advert on website C. While several "brothels" usually advertise here, only one of these adverts featured the "VIP" label. It concerned X. We aren't aware of the location of this "house" or "agency", just as we don't know whether the adverts are "automatically" renewed or whether they are posted deliberately because activity is continuing. A positive point to conclude: the website administrators have nevertheless posted a certain number of warning banners.

Website forums such as D. and E.

Prostitutes' clients use these forums to share "advice", "comments" and "evaluations". These comments are sometimes useful to assess the activity of residual prostitution in Brussels. On this point, the main observation is that the only part of this forum that is still active is entitled "Brussels region: independent escorts and masseuses". This is a reference to private prostitution, especially via the internet. Very recently, comments were made about several prostitutes who work in Brussels. It quickly became clear that a brothel in Woluwe-Saint-Lambert was still open. It is also possible, based on the comments posted by the users, to "detect" the prostitutes who are continuing to work despite the health crisis.

6.3. | Conclusion of the scan operation

Since the start of the measures to tackle the coronavirus, prostitution activity via the internet hasn't increased. On the contrary, the amount of adverts has fallen significantly and some websites have clearly reacted to this situation. There doesn't seem to be a large-scale shift from street or window prostitution to the internet. Girls from Eastern countries and especially China seem more conscious of the risk than the Latin American girls. In any case, we must remain vigilant because no-one seems willing to temporarily take these websites offline. And it is precisely behind these residual adverts that situations of exploitation of vulnerable people sometimes lurk.



External contribution: exploitation and slavery, the dangers of the impact of the economic crisis

Christian Meulders,

Director

Non-profit association Sürya

We have been faced with a new scourge since March 2020 that is affecting the whole planet: the spread of COVID-19. With the arrival of the pandemic, it would appear that the phenomenon of trafficking and smuggling of human beings has come to a halt, as though this form of crime no longer existed thanks to the appearance of this virus. Should we therefore rejoice at the fact that our specialised reception centres in Belgium didn't receive any requests for help during the lockdown? Are the exploiters so respectful of the social distancing measures that the victims have suddenly regained their rights?

Sürya has been active in Liège for the Walloon Region since 1995. We are involved in the humanitarian side of the fight against the trafficking and smuggling of human beings as a second-line service, just like our colleagues at Pag-Asa in Brussels and Payoke in Antwerp. Our mission is to receive, support and shelter presumed victims, and to raise awareness about exploitation. Our institutions support the police at both federal and local levels, inspection services (National Social Security Office, Social Legislation Inspectorate, the Walloon Region, etc.), social services in hospitals, Fedasil and Red Cross networks, etc.

In light of this health crisis, I would like to share a general reflection with you on the issue of exploitation and its economic stakes, as well as an overview of our social work during this somewhat turbulent period.

A consensus has emerged during this crisis: our society is changing or has changed, and our consumption habits are now focused at local level. But what about labour, and the profit to be made? The lockdown and the ban on the movement of workers have led to labour shortages in the agricultural sector, among others, even though a significant number of people have become temporarily unemployed

in Belgium. This lack of "cheap" labour brings to mind the dozens of Romanian workers we met in the fruit sector. These people disagreed with the intermediary who had recruited them for an hourly wage well below the current rates and in conditions contrary to human dignity.

And then there are the pimps and clients who take advantage of the sexual exploitation of women and men in our country. This very lucrative business has increasingly been taking place out of view since the closure of all the prostitution parlours and windows.

Unfortunately, the reception centres for victims of trafficking and smuggling of human beings have no influence on the production methods and consumption habits of citizens, or on the organisation of work in society. In the face of this crisis, we believe it is important to mobilise and support the forces involved in order to put the fight against this scourge back at the centre of our concerns. A scourge that we are certain is constantly gaining ground, in all impunity.

All the work carried out by frontline staff has been delayed following the lockdown measures imposed by the National Security Council. Therefore, it is quite conceivable that new proactive initiatives will not be envisaged in the coming weeks, or even months.

During the lockdown, workers in the reception centres had to adapt or reinvent social work. Working from home has led to new practices for workers, both on a social and educational level, to the advantage of people who have been given shelter and/or support. For instance, there were the French lessons that were taught remotely, via WhatsApp, to compensate for the lack of face-to-face classes. These were useful and necessary for the people we support.

It was also important to continue to support these people, the majority of whom were alone, confined and finding it difficult or even impossible to cope with their situation. Workers were thus able to stay in permanent contact with victims over the phone or via social media, in order to be able to explain the National Security Council's measures on the one hand, and to continue supporting them or even bringing them food, medication, masks or hand sanitiser, on the other.

Access to information in a language that is easy to understand was a primary necessity in order to ensure that people were applying the various measures, making them active rather than passive during this entire period.

Being in lockdown at the shelter, without any possibility of organising activities either internally or externally, wasn't always easy for people to deal with every day. The fact that staff weren't present on a regular basis also had an impact on their well-being.

However, after the adaptation of our work and the checks on compliance with the compulsory measures in force in Belgium, we fortunately didn't have any COVID-19 victims.

As we gradually came out of the lockdown, social workers alternated face-to-face work and homeworking. The return of the whole team will be envisaged after the various holiday periods.

This crisis has therefore led us to adapt our work tools as well as our way of thinking and understanding the world. We remain convinced that it is of the utmost urgency to put the fight against the trafficking and smuggling of human beings back at the forefront of the political and legal agenda so that this doesn't become the number one crime in Belgium.

CONCLUSION: corona-virus and human trafficking

This chapter features several external contributions about the impact of the coronavirus crisis on human trafficking. The focus is both on the consequences for the victims and the fight against the phenomenon. Different players in the field gave their points of view including a labour prosecutor, the NSSO Inspection Department and a specialised reception centre for victims of human trafficking.

In terms of labour exploitation, certain worrying signs have already been noted. Myria fears that vulnerable people are at greater risk of labour exploitation during the coronavirus crisis. This period is a "golden opportunity" for unscrupulous employers who want to exploit people in a precarious situation. The number of vulnerable workers (unemployed) will increase and it is likely that some of them will end up in the grey economy or with employers who wish to circumvent coronavirus-related measures. Some unscrupulous employers may take advantage of this, replacing regular workers with people in a precarious situation. In recent months, it was already demonstrated that there was no way for cheap labour, including undocumented migrants employed illegally and undeclared, to work in a safe and healthy environment, with respect for social distancing. There is also a fear that, in the midst of the coronavirus crisis, several unscrupulous entrepreneurs continued their economic activities despite the protective measures imposed, and that the workers concerned were unable to defend their rights precisely because of their precarious situation.

This situation has since been confirmed in several European countries where new lockdown measures have been announced following the identification of new outbreaks. The link between the coronavirus and labour exploitation has been clearly established, because these new infections have occurred in economic sectors where foreign workers were employed and/or housed in precarious conditions, and where the health regulations associated with the coronavirus weren't applied. This was the case in slaughterhouses in Germany, in the textile sector in England (Leicester) and in the fruit-picking sector in Spain (Catalonia).

Businesses' failure to apply the measures to combat the coronavirus can also be considered as an additional indicator of human trafficking. If unscrupulous employers employ vulnerable workers during the coronavirus crisis without any guarantee of social distancing, they are seriously endangering the health of workers (and those around them) and potentially making them work in conditions contrary to human dignity, one of the essential elements of human trafficking for the purpose of labour exploitation.

During this health crisis, social inspectors from the NSSO's ECOSOC teams, who are specialised in human trafficking, weren't able to perform their checks as usual. Their capacity was severely limited, especially because they were unable to use law enforcement to the same extent as before the crisis, with police being deployed for other obvious tasks (checking compliance with the coronavirus measures). In addition, proactive checks performed by social inspectors were cut back and reduced as much as possible to remote checks. Workplace checks were avoided wherever possible and hearings reduced to a bare minimum. Consequently, the social inspectors' ability to detect potential victims of human trafficking was severely limited.

Since March 2020, several frontline services have checked for compliance with the necessary measures to combat the coronavirus in the workplace¹⁵². Whereas this was the sole competence of the Supervision of Well-Being at Work inspectorate (FPS Employment, Labour and Social Dialogue), many services were given this competence following amendments to the regulations¹. In addition to their priority tasks, social inspectors from certain social inspection services have been authorised by the government to check, within companies, for compliance with the obligations laid down within the framework of the urgent measures aimed at limiting the spread of the coronavirus.

¹⁵² Legal and statutory references:

- Chapter 6 — Special Powers Order No. 37 issued in implementation of Articles 2 and 5 of the Act of 27 March 2020 granting powers to the King to take measures in the fight against the spread of the COVID-19 (II) coronavirus, aimed at supporting workers, signed by the King on 24 June 2020.
- Article 54 of the Social Criminal Code "Communication of information by social inspectors to other public services".
- Ministerial Order of 30 June 2020 on emergency measures to limit the spread of the COVID-19 coronavirus, *O.G.*, 30 June 2020.
- Ministerial Order of 22 August 2020 amending the Ministerial Order of 30 June 2020 on emergency measures to limit the spread of the COVID-19 coronavirus, *O.G.*, 22 August 2020.

In concrete terms, social inspectors from the Social Legislation Inspectorate (CLS), the Supervision of Well-Being at Work Inspectorate (CBE), the National Employment Office (ONEM), the National Social Security Office (NSSO), the National Institute for the Social Security of the Self-employed (INASTI), the National Institute for Health and Disability Insurance (INAMI) and the Federal Agency for Occupational Risks (Fedris) were authorised to check on the following:

- compliance with the rules concerning physical distancing;
- the application of appropriate prevention measures;
- the provision of a register containing identification data, place of residence, phone number and, if necessary, the names of the persons with whom the salaried or self-employed worker is working, by all employers or users who temporarily use a salaried or self-employed worker living or residing abroad to carry out activities in the building, cleaning, agriculture, horticulture, and meat sectors (Art. 2, § 1, para. 3 M.O. 22/8/2020);
- to ensure employers or users are complying with the obligation to fill out the *Passenger Locator Form* at the latest when the employee or self-employed person living or residing abroad starts working in Belgium in the building, cleaning, agriculture, horticulture and meat sectors (Art. 2, §2 M.O. 22-08-20).

A number of these frontline services aren't competent and have no expertise in the field of human trafficking. Myria urges inspection services to also be attentive to indicators of human trafficking during their checks.

In sectors at risk of human trafficking such as car washes and nail bars, but also the building industry, this problem will become even more acute and the importance of checks for human trafficking will become even greater. **The NSSO Inspection Department and the Social Legislation Inspectorate (FPS Employment), which are competent for human trafficking, must also have the resources, support and necessary protection equipment.** It is also essential that non-compliance with these protection rules be considered as an additional indicator of working conditions contrary to human dignity (human trafficking for the purpose of labour exploitation).

As regards sexual exploitation, we noted that several police departments couldn't carry out systematic checks on private prostitution. Prosecutors in cities instructed the police to only open an investigation for human trafficking if a child victim was involved and/or a person was physically threatened. In the meantime, the specialised centres for victims of human trafficking have alerted several authorities, because they have received proportionally too few reports during the coronavirus crisis, and therefore fear that many victims of sexual exploitation (but also labour exploitation) are going unnoticed. **It is therefore essential that police forces have sufficient resources to carry out checks to detect presumed victims of human trafficking.** Hence, for the police, the fact that sex workers are continuing to work during the coronavirus crisis (in private prostitution) is an indication of economic vulnerability and, in some cases, serious exploitation of their situation (and therefore human trafficking for the purpose of sexual exploitation).

Chapter 2

Case studies

In this chapter, Myria analyses the court cases concerning the trafficking and smuggling of human beings for which it filed a civil suit and thus has a complete view. This gives an accurate picture of the way an investigation is initiated and conducted in the field. In addition, this chapter provides an illustration of the phenomenon of trafficking and smuggling of human beings for each form of exploitation.

The analysis is based on the police reports of the cases and focuses above all on the criminal system and the victim's perspective. We shall first take an in-depth and critical look at the summary reports, in which the investigators sum up the case file. A lot of attention is also paid to the initial reports, which indicate on what basis the case was actually initiated and whether the victims were intercepted and detected. In addition, the case file includes the minutes from the hearings of victims, suspects and witnesses, information reports, files containing transcripts from phone taps, observation reports and, lastly, reports of rogatory commissions.

The study of concrete cases is a cornerstone of policy evaluation. It provides better insight into the implementation of the investigation and prosecution policy in the field as well as the thorny issues that accompany it. Once gathered, these findings also constitute an important source of information for the focus of the annual report and an essential basis to formulate recommendations.

1. Human trafficking

1.1. | Sexual exploitation

Nigerian Mama Leather case

The network led by Mama Leather (her nickname in the community) exploited young Nigerian girls for years in Brussels' red-light district. The defendants mainly focused on girls "ordered from Nigeria", including minors. The period during which the criminal acts featured in the case were committed was between 2013 and 2017, even though the network had probably already been active since the 2000s.

The 11 defendants were convicted of human trafficking and several of them also for criminal organisation¹⁵³. It was a family network whose main figures were relatives of Mama Leather and her assistant. They operated internationally and had contacts in Nigeria, Niger, Libya, Italy, France, the Netherlands, Germany, Spain, Denmark and Sweden, which facilitated their operational activities.

¹⁵³ Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch.; Brussels Court of Appeal, 3 April 2019, 13th ch. (available at www.myria.be); Myria, 2019 Annual Report, *Trafficking and smuggling of human beings, Empowering victims*, p. 118.

1.1.1. | Network

a) *Structure of the network*

As leader of the international network, Mama Leather was in charge of ordering and organising the recruitment and transportation of the girls from Nigeria to Belgium. She managed 26 *windows*¹⁵⁴ in Brussels' red-light district next to Brussels-North railway station, and also sublet them to other Nigerian madams in a position of strength. She worked with two Nigerian madams who were sisters. Madame B. operated in Brussels and Spain before being extradited to Spain on the basis of a European arrest warrant. Her sister, Madame L., operated in Brussels and Germany, and was extradited to Belgium.

Mama Leather owed her nickname to the black leather outfits she invariably wore during her prostitution activities, and to her "specialisation" in sexual services in the "sodomasochistic circle". Between 2000 and 2017, the Brussels federal police had already heard several rumours about this from the community, but didn't have sufficient concrete evidence to carry out an investigation. Owing to her many years of presence and experience in the red-light district of Brussels, she often presented herself as a leading and influential figure in the Nigerian prostitution scene. This regularly gave rise to discussions, quarrels and mutual settling of scores. These incidents were almost never reported or revealed, owing to the closed nature of the Nigerian community.

Mama Leather had several accomplices. A. was her direct assistant and was responsible for receiving the girls from Italy, accompanying them in their prostitution activities, placing them in the prostitution windows and collecting the money from their activities. It was also her responsibility to supervise the girls, acting as the "eyes and ears" and reporting everything to her superior. In consultation with Mama Leather, she also collaborated with other madams and with a male pimp in Germany.

Another important accomplice was Lo, a cocaine dealer and friend of Mama Leather, who housed the girls in his safe house. He took them to the windows, sorted out their residence papers and supervised their work. He worked with an expert in Spain for the residence permits.

154 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-73.

Entourage for smuggling and transporting the girls

Mama Leather, with the help of various accomplices, also organised the recruitment and smuggling of the victims from Nigeria via the "desert route", which crosses Libya in the direction of Europe. For the smuggling from Libya to Italy, Mama Leather paid her henchmen EUR 20,000 per girl, and EUR 2,000 per girl for the transportation to Italy.

In Nigeria, J., Mama Leather's brother and local support, recruited the young victims. He paid voodoo priests to perform rituals on the chosen victims. He also exacted reprisals, on behalf of Mama Leather, against family members and/or runaway girls who didn't repay their debts. This could range from extortion to homicide, destruction of property, assault and battery, and kidnapping. His entourage in Nigeria usually had free rein to do so thanks to significant corruption and even "accommodating police forces"¹⁵⁵. According to phone taps, all this cost Mama Leather a lot of money: "The money I have to collect is used to pay for fights".

The victims' perilous journey from Nigeria to Libya and the boat crossing to Italy were organised by the brother of assistant A. in collaboration with Mama Leather. They organised the smuggling of the girls by the desert route and made agreements with different smugglers. They worked not only for Mama Leather, but also for other Nigerian madams.

Mama Leather had several other henchmen to transport the girls across Europe. The most important one was "Mister Lyca". He got his nickname from the fact that he always sold the girls Lyca prepaid cards. He transported the Nigerian victims using a "black taximan" company¹⁵⁶ on behalf of several madams. He was one of the defendants who picked up the girls in refugee camps in Italy and then drove them to Lille (France), where he had a house, before taking them to Belgium and the Netherlands. Phone conversations revealed that he also regularly made appointments in Sweden to pick up Nigerian girls and that he also sent girls to Denmark.

155 Myria, *2018 Annual Report Trafficking and smuggling of beings, Minors in major danger*, pp. 72-73.

156 An unofficial taxi company that allows its drivers not to declare their work.

According to the testimony of his ex-girlfriend, Mister Lyca had brought three girls to the Netherlands at least once in his car to find a place for prostitution. His car was then stopped by the Dutch police in October 2016 following a traffic offence on the A4 motorway heading towards Vlissingen, which led to the identification of three young Nigerian women working in the Brussels-North district. Another time, according to the same witness, he accompanied two girls on a train to the Netherlands. One of the victims and his ex-girlfriend also stated that an underage Nigerian girl, whom he had made pregnant, was living at his home in Lille. The 16-year-old girl was one of the seven girls he had picked up in Italy for the madams in the Brussels-North district, but he had "kept" her.

b) *Corruption at the embassy*

Phone taps revealed that Mama Leather regularly paid bribes to various corrupt members of the Nigerian embassy in Brussels¹⁵⁷. The Nigerian V., who formed a couple with the Nigerian madam B., was an important intermediary who operated both in Brussels and in Spain. He was a pimp from Brussels who owned a *window* and collaborated with Mama Leather. Thanks to his export company dealing in communication equipment, he was in contact with numerous members of the Nigerian embassy. He even revealed the names of these corrupt embassy officials in his conversations. The ambassador's personal guard was his best friend. In addition, he arranged his shady business with the embassy liaison officer and the consul.

During one of the conversations, Mama Leather promised to sell a girl to V. if he managed to block her deportation procedure to Nigeria thanks to the embassy's intervention, by not sending the deportation documents. In one conversation, Mama Leather asked V.: "A girl has been intercepted and will be repatriated to Nigeria. Can you arrange for this girl not to be deported?" His answer was clear: "Yes, I can block the procedure. Do you know how many deportations of girls I've already blocked?"

Mama Leather then offered: "I'll sell her to you. She isn't expensive. She's on her way. It's 5,000 (euros). She's 19-20 years old. She'll be brought over there (to the embassy) on Friday". V. responded positively to her proposal: "Give me the girl's name, I'll ask the consul to block her return. The deportation document won't be issued, the girl will be freed

instead". This is how the girl ended up having to work as a prostitute for her new pimp, V.

Mama Leather had to pay embassy staff numerous bribes and complained about it in a discussion with her friend Lo., when the latter was arrested and threatened with deportation to Nigeria. Mama Leather said: "These people (at the embassy) are always asking me for money. I told them I'd already given them enough". Lo. replied: "The boss (...) (at the embassy) doesn't need to worry. I'll give him more (bribes)". To which Mama Leather emphatically retorted that he should pay for it out of his own pocket: "I said I wouldn't given any more money... I've already spent 5,000 (euros) in one month. That's enough".

1.1.2. | Investigation

a) *Start of the investigation*

In January 2017, informers informed the federal judicial police (FJP) of Brussels that in the African prostitution community, a well-known Nigerian prostitute, nicknamed Mama Leather, was exploiting about 15 Nigerian girls in prostitution, some of whom were probably minors. An investigation was initiated on the basis of this information.

Two months earlier, one of the child victims had already gone to the local police in Brussels during the night but, owing to language problems and a lack of expertise, she wasn't referred to a specialised centre for victims of human trafficking and she fled to France¹⁵⁸. It was only several months later that FJP was able to question her thoroughly in the place she had found refuge and where, according to our information at the beginning of 2020, she was still living.

On the basis of phone taps and international rogatory commissions, the investigation was able to demonstrate that Mama Leather's network was a criminal organisation. It turned out that the network had many contacts and collaborations worldwide, with a large number of victims. The defendants were constantly consulting each other by phone to organise the girls' itineraries and set up prostitution activities. They often changed phone number to make phone tapping more difficult, used coded language and advised radio silence about sensitive subjects during calls.

157 No further action was taken in this case.

158 Myria, 2018 Annual Report Trafficking and smuggling of human beings, *Minors in major danger*, pp. 70-71.

b) Financial investigation

Phone taps revealed that criminal proceeds were being invested in real estate in Nigeria. One of Mama Leather's accomplices made some very enlightening statements on this subject: "People who bring girls over from Nigeria to Europe don't build more than four buildings". Mama Leather was also investing, according to her conversations: "I'll send money if you find a piece of land, I'll send money in installments to Nigeria".

The police phone taps also revealed that the defendants were using the services of a cash courier, who was transferring money to Nigeria through the *Black Western Union*¹⁵⁹. This financial system has nothing to do with the Western Union company. It is based on a system that allows money to be transferred to the country of origin without leaving a trace. The cash courier would travel to Nigeria, on a very regular basis, with the collected cash (hidden in his luggage; probably sums between EUR 25,000 and 35,000). In Nigeria, the cash courier ran a shop/office where the beneficiaries of the funds would come to collect the agreed amount. A 10 % commission was charged on each amount sent.

The federal police's specialised *plukteam*¹⁶⁰, whose objective was to dry up the criminal network as much as possible with the help of a vast financial investigation, calculated the illegal assets of this criminal network. The criminal earnings were estimated at a minimum of EUR 2,931,099.60. The *plukteam* also carried out an investigation into assets based on information provided by financial institutions, the special tax inspectorate and the land registry. It led to the seizure of several of the defendants' properties in Belgium, a large part of which was confiscated¹⁶¹ by the court.

c) Social media

The defendants used social media to organise their criminal activities. At the same time, social media also served as a (search) tool for the judiciary and the victims when giving evidence.

The defendants used social media to recruit their victims. This is what transpired from the phone taps of conversations between Mama Leather and her brother in Nigeria: "I don't need an old lady... First send me their photos on A.'s WhatsApp (her assistant and co-defendant)... I want to see their photos first".

The criminal network had also developed an alternative method of communication via social media to offset the phone taps. The conversations recorded during the phone taps were clear about this: "Everything we say is tapped, so WhatsApp is the only solution. Call me when you're online on WhatsApp".

The police succeeded in identifying a defendant thanks to a search program whereby photos from their database can be compared with those from Facebook profiles. The report describes it in detail. "When we looked on Facebook, we found the profile of X. The man behind this profile appears on several photos linked to this profile. When we compared the man on the photos of the Facebook profile with the man on the photo in the national general database (NGB), it was clear that this was one and the same person. We can therefore be sure that X is (...)".

Victims can forward messages from social media to the police as evidence. Payoke, one of the three specialised centres for victims of human trafficking, informed the police that one of its victims was threatened via Facebook. This victim was a relative of Mama Leather and had discovered that her own aunt had posted her picture on Facebook with the following caption: "This girl has put a large part of her family in jail". Some 200 people were identified in this photo. The day it was posted on Facebook, the victim also received threatening phone calls from Germany.

The same victim shared the Facebook profiles of the members of her family involved in her exploitation. This information was successfully verified by the police and one of them appeared as a defendant at the trial.

159 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 92-93.

160 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 61.

161 Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch.; Brussels Court of Appeal, 3 April 2019, 13th ch. (available at www.myria.be); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 118.

1.1.3. | Victims

The police managed to detect a total of 57 Nigerian victims as presumed victims of human trafficking¹⁶². They were found during house searches and were traced through phone taps and information from foreign police forces. According to recorded phone conversations, several girls were still on their way. The police determined the true identity of 38 victims. Several victims had French or Spanish residence permits.

Several victims refused to make statements or provide relevant information for fear of reprisals against themselves or their families in Nigeria. According to the case file, Payoke took care of at least one of the victims within the framework of victim status. Some of the victims were also supported by the organisation *Mouvement du Nid* in France. For the sake of completeness, it should be added that in Belgium in 2017, a total of 42 new Nigerian victims of sexual exploitation were supported by the specialised centres within the framework of victim status, which is exceptionally high (68 % of new victims of sexual exploitation in 2017)¹⁶³. This was probably linked to the dismantling of a vast criminal network, like *Mama Leather's*, which also managed the victims of other Nigerian madams.

a) *Girls to order, smuggled by the Libyan route*

The summary report of the case details how Nigerian victims were recruited and smuggled into Europe. "The girls were actually recruited "to order" by henchmen at the request of the madam in Europe, mainly in the region of Benin-City (Edo State). They were offered a bright future in a Europe that was paradise in their eyes. Before their departure, the girls had to attend a ceremony at a local voodoo shrine¹⁶⁴. During this ceremony, they had to swear to an oath of silence or face deadly reprisals if they didn't obey their madam. They had to promise to repay their madam an agreed sum of money, that varied between EUR 35,000 and 65,000, before they could go their own way.

During these ceremonies, the girls were stripped of their clothes and had to hand over bodily items (nails, hair, menstrual blood, pubic hair) so that the voodoo priest could cast a spell on them and keep them in the sanctuary".

"After taking this oath, the girls (destined for several madams) were usually transported in groups by Nigerian smugglers (*connectionmen*) via the Nigeria-Niger-Libya desert route, to the Libyan coast. This journey, involving a succession of hardships and mortal dangers, took several weeks. Once they had arrived at the Libyan coast (usually in Tripoli), the girls were housed in ghettos, managed by Nigerians once again. They provided them with board and lodging until a suitable "refugee boat" was found to take them to Italy. If they were rescued by the Italian coastguard and put in a refugee camp in Italy, the girls had to contact their madam or a *connectionman* to confirm their arrival and where they were staying. The madam's henchmen would then take the necessary steps to collect the girls from the various refugee camps and transport them to the madam in their final destination country. Once there, they were almost immediately taken to the local red-light district and had to give their madam the full amount of the prostitution fee initially agreed upon."

The phone taps revealed that the defendants were well aware that people's lives were at risk, of the appalling journey and the complete lack of respect for the victims. *Mama Leather's* friend, the defendant Lo., told her: "More people die on the way. For instance, E. (defendant) said that this isn't a route (Libyan route) you'd want to take twice. They (the girls) know what they went through there. Anyone who falls in the water is eaten by the fish, or rather the sharks."

The victim who filed a complaint and was granted victim status at Payoke spoke about her departure and her experience on the Libyan route. "On 6 May 2016, early in the morning, D. took my smartphone and gave me a small Nokia phone instead. She also replaced the SIM card. She told me that this phone was to be used to contact her or G. (defendant), later on, when I arrived at the refugee camp in Italy." "I went with several other girls by bus and by car to Abuja and Kano, where we were taken across the border to Niger by an Arab smuggler after a phone call. In Niger, other Arab smugglers took us by truck (Hilus) on the desert road via Agadez (Niger) and Sebha (Libya), then by car to Tripoli."

162 Myria (formerly Centre for Equal opportunities and Opposition to Racism), *2013 Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 28.

163 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 179.

164 *Ibid.*, pp. 66-67.

"We travelled several long days across the desert with neither food nor water. Arab men raped some of the girls, including my friend B. I wasn't raped because I was on my period. They don't touch girls who are on their period. However, they hit me with a blade. I've still got a scar on my right arm". "I stayed in a ghetto in Tripoli for a month, where more than 400 people were living, including Nigerian, Senegalese, and Gambian women. We were regularly beaten. My friend B. found a "boyfriend" to bring us food. I didn't want to because I was a virgin."

"At the end of August 2016, we all had to board inflatable boats for the crossing to Europe. There were 271 of us on my boat. There were women, men and children from different countries. We spent three days at sea. The boat was taking on water. I was sick and I stayed near B. A baby and two pregnant women lost their lives on the boat because we were all squashed together. An Italian rescue boat spotted us after three days. But our boat sank before it reached us. We were all in the water. My friend B. and I knew how to swim, but many people drowned. The rescuers dived in to get us out of the water. Only 70 of us survived."

b) Forced abortions during the illegal transportations

Girls who became pregnant on the way, often following a rape or a possible fling (to survive) (see the victim's statement), were forced to have an abortion in Libya before being authorised to cross the Mediterranean to Italy by boat. Mama Leather spoke about it to her brother J., the key person in Nigeria, telling him that "the girl M., who almost drowned and was taken back to Libya, was pregnant". To which her brother replied: "If she (M.) is pregnant, her pregnancy will be terminated as soon as she arrives there (in Libya)". Before adding: "Wasn't the one pregnant too? Didn't we terminate it?"

One of the victims said that one of the defendants, who had picked up the girls from the refugee camps in Italy, had received an additional sum to pay the smuggler in Tripoli to have the pregnant girls forcibly aborted. "He received between EUR 2,000 and 5,000 from the madams for each girl. The price depended on the girl's physical condition, I mean whether she was pregnant or not. If she was pregnant, the madam had to send money to F. (defendant) who, in turn, transferred it to the smuggler K. in Libya. This money was to pay for the abortion to be performed. The girl could only make the crossing once it was done."

c) Asylum procedure for victims in France

The victims brought to Mama Leather from Italy were usually taken to an asylum centre in Lille to start an asylum procedure in France, in order to temporarily protect them against the risk of deportation to their country of origin. This strategy was used deliberately by the network, as confirmed by the phone tap following the check and administrative arrest of some of the Nigerian girls. During a conversation, Mama Leather can be heard trying to reassure her assistant A. on this point: "The girls will return soon because they're in possession of *French documents*."

Mister Lyca's role was to bring young girls from an Italian refugee camp to the asylum centre in Lille and to collect their asylum seeker's allowance. The girls received a bank card from the French government when they applied for asylum, so they could benefit from the asylum seeker's allowance, i.e. EUR 320 per month. According to the victim's statements, Mister Lyca kept these bank cards, including the PIN code. When he was arrested in France a few months later, he was found in possession of several bank cards and their corresponding PIN codes, belonging to these asylum seekers.

d) Violence and threats

The victim who had filed a complaint within the framework of victim status, stated that she had often been beaten before finally admitting that she began to work as a prostitute after G. (defendant), still active in prostitution, had "initiated" her. "I was still a virgin. When a client arrived, I had to follow them and she told me to observe them. She performed fellatio before going onto the sexual act. I looked away because I felt uneasy and angry. After the man left, G. told me I had to do that. I told her that I couldn't. She then hit me again and returned to her window". "When another client arrived, G. pushed me in the room with him. He got undressed and asked me to do the same. I refused. He spoke to me, insisted, but I continued to refuse. In the end, he left. G. hit me and wanted to throw boiling water on me. However, it only reached my left arm. I still have a scar. The next morning, we returned to G.'s place. She refused to give me anything to eat for two days."

A witness who knew the Nigerian girls emphasised the impact of Mama Leather's threats. "The mother of the young Nigerian girl B. begged me on the phone to bring her daughter back to Mama Leather, "because people are going to kill me if my daughter doesn't come back".

I heard on the phone that the woman was beaten by a third person and shouted at. The same day and the following days, I was called again and again by the same Nigerian number. But I didn't pick up because I didn't want to be involved in Mama Leather's affairs."

Even after her arrest, Mama Leather continued to threaten the victims. She phoned the Nigerian victims active in prostitution in Brussels from prison, and threatened to have their family kidnapped in Nigeria if they said anything against her. Many Nigerian girls were "scared stiff" even though she was in prison. When she phoned, Mama Leather spoke in her mother tongue so the wardens present couldn't understand what she was saying on the phone.

1.1.4. | Victims of human trafficking: unaccompanied minors

Several testimonies mentioned victims who were minors. For example, informants told the police that Mister Lyca had brought three Nigerian girls from Italy and that he had been spotted the same day in the immediate vicinity of the red-light district in Brussels. The appearance of two of these girls clearly suggested they were minors.

Madame B., who also operated in Spain, worked with Mama Leather and had placed underage girls in her windows in Brussels. A 16-year-old girl filed a similar complaint in another Nigerian case. The explanations of said Madame B. about the minors speak volumes. During one phone call, she said: "The little witches (young girls) are already in the window." To which the other one replied: "The girls are no more than 14 years old."

The other madams were able to use the "Yemeshe"¹⁶⁵ system to place their girls, including minors, in the windows at night when the usual girls were sleeping. There were a lot candidates for few places, which made them even more vulnerable. In return for this "favour" from the contractual tenants, most of whom were adult Nigerian victims, the girls had to hand over 50 % of their earnings, which was a win-win situation for both parties, certainly for the madams to whom they had to pay their earnings from prostitution.

¹⁶⁵ Myria, 2018 Annual Report Trafficking and smuggling of human beings, *Minors in major danger*, pp. 74-75.

Mama Leather was thus able to make extra money off the backs of underage girls from other madams. She was constantly on the look-out for "Yemeshe" girls to make them work for her at night so that she could make the most out of her *windows*.

Many of these underage girls were still virgins and their exploiters made them pretend to be adults. These assertions appear again and again in the victim statements. One of the child victims who had escaped from Mama Leather confirmed this in her statements. She had already received clear instructions in Italy to say she was an adult. It was difficult to detect the victim owing to the lack of knowledge of the local police and the duty magistrate. The local police took her to the Nigerian embassy where certain employees had been corrupted by Mama Leather. The 14-year-old girl then escaped to France where she was given shelter. Her mother was seriously mistreated by order of Mama Leather in a police station in Nigeria, and her brother was killed. Her statements and the acts of violence were widely detailed in a previous annual report¹⁶⁶.

1.2. | Labour exploitation

Horticultural case

The case concerns acts of human trafficking for the purpose of labour exploitation, committed by an intermediary involved in the recruitment of Romanian seasonal workers. They took place between 1 January 2008 and 11 May 2011 in various horticultural businesses. They led to a conviction for human trafficking¹⁶⁷.

¹⁶⁶ Myria, 2018 Annual Report Trafficking and smuggling of human beings, *Minors in major danger*, pp. 70-73.

¹⁶⁷ Myria, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, p. 118; Myria, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 169; Mechelen Crim. Court, 21 January 2015, Antwerp Court of Appeal, 4 February 2016, 14th ch.

1.2.1. | Structure

The defendant was a Romanian businessman who ran three one-man businesses, and was active as a middleman for the recruitment of seasonal Romanian workers in 15 horticultural businesses in the region of Lier, Mechelen and Sint-Katelijne-Waver. The defendant employed a large number of seasonal workers. The organisation operated on a large scale with the recruitment of 100 seasonal workers in 2009, 206 in 2010 and 225 in 2011.

In addition, the defendant provided these Romanian workers with various services for which fees were charged. The services provided were: employment in various companies in the horticultural sector, accommodation in small, insanitary buildings - where many people lived together in "dormitories" -, transport to and from the workshop or warehouse, administrative assistance, help with translations and "reserving" continued employment in return for bribes. The workers came to Belgium expecting to find work to support their families in Romania, but once they arrived, they were charged ridiculous sums for the services rendered. The wages were rarely laid down in a contract.

1.2.2. | Opening the case

During a joint inspection by the social inspectorates and the local police on 10 May 2011, nine workers were found and identified as victims of human trafficking. The police also heard the defendant at the time. During the inspection, the police found that the Romanian workers' identity papers were in the possession of the defendant. This allowed the defendant to keep control of the victims since they simply couldn't escape.

The workers' hearings revealed that they had to pay EUR 200 per month for transport to and from the workshop, even those who travelled there by bicycle. In addition, the defendant demanded money for transport to the warehouse (EUR 100 per month), interpretation and administration (EUR 100 per month). If the workers wanted to come back the following year, they had to pay "bribes" (EUR 140 per month). The victims earned EUR 6.5/7 per hour, paid directly by the employer, the owner of one of the horticultural businesses. After deducting the various payments, the workers were left with only half of their monthly salary, i.e. around EUR 500.

The defendant used the pretext of administrative assistance to put pressure on his compatriots and abused their precarious social situation.

1.2.3. | Judicial investigation

On 3 October 2011, a judicial investigation was initiated, based mainly on observations and the hearings of the victims and the defendant, who denied most of the facts. The observations focused on the defendant and on one of the places where the victims were housed.

The defendant's accounts were frozen and proved to be totally unclear. The accounting figures didn't match the defendant's own statement. In his accounts, EUR 200 were always allocated to rent collection, whereas this amount varied between EUR 100 to 200 in his statements. A financial analysis was carried out to calculate the minimum amount of illegal assets for 2009, 2010 and 2011. The result was EUR 79,900, EUR 165,059 and EUR 145,500 respectively.

The housing where the Romanian workers lived in large numbers was declared unfit by the housing inspectorate. It emerged from the hearings that the workers hadn't signed a rental contract with the defendant, but that they were paying approximately EUR 200 a month per person.

1.2.4. | Victims

The Romanian victims came from the same region as the defendant, which made it easy for the defendant to put pressure on them. They were recruited in the context of personal contacts, through family members and friends of the defendant who were looking for victims in Romania. In Belgium, the defendant was involved in all aspects of the victims' lives, thus making them completely dependent.

Several victims reported being afraid of the defendant. They would have been sent back to Romania if they had told the truth about him. They had been threatened with reprisals against their families in Romania. Some victims stated that they would only tell the truth if they were assured that the defendant would no longer pose a threat. The conditions under which the Romanian workers were working were contrary to human dignity.

During a hearing, one victim first stated that their employer, the owner of the horticultural business where they were employed, had paid them in cash for overtime for undeclared work (EUR 5/hour). The defendant informed the owner of the horticultural business, who was furious. The victim then asked to be questioned again in order to change this statement and suddenly claimed that all the payments had been officially declared. The victim justified this by saying that they didn't want to lose their job and that they wanted to show the defendant that they hadn't said anything about the undeclared work in order to win back their trust. In addition, other victims also repeatedly said that they didn't want a copy made of their contracts and invoices for fear that the defendant would no longer help them and would subsequently fire them.

The police informed the victims of their status before every hearing, but they didn't express the wish to be put in contact with a staff member of a specialised reception centre. None of the victims acquired victim status.

2. Human smuggling

Sechmet case

In this case, a Syrian-Egyptian human smuggling network was smuggling victims from Syria, Eritrea, Sudan, Ethiopia and Afghanistan to the United Kingdom in 2016. The smugglers were mainly active along the E40. The defendants were convicted of smuggling and criminal organisation¹⁶⁸. Some of the defendants denied any involvement and claimed to be victims themselves, while others admitted that they were indeed active as smugglers to earn large sums of money.

¹⁶⁸ East Flanders Crim. Court, Dendermonde division, 3 November 2017, ch. vac.; Ghent Court of Appeal, 17 December 2018, 6th ch. (cf. www.myria.be); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 139; Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 159.

2.1. | Smuggling network

The smuggling network operated from the camps in Calais. The smuggling victims were put on a train to Brussels-North and Brussels-South railway stations, where they were picked up by the smugglers. The latter would then take them to the Wetteren, Drongen, Heverlee or Groot-Bijgaarden parking areas along the E40, where they were loaded at night, and in secret, onto (refrigerated) lorries bound for the United Kingdom.

The police found that this criminal organisation often carried out simultaneous night-time actions in the different parking areas along the E40 and sometimes up to six nights a week, in every parking area. The number of victims per parking area and per night was particularly high. This unusually high frequency of smuggling and the large number of acts of smuggling, characteristic of this group of perpetrators, had never been observed in Belgium before. This is an important conclusion of the summary report, which was reiterated by the court in its judgment.

The smugglers worked on the basis of an obligation to achieve a result, according to which victims could come back to the network after a failed attempt, to make a new one. Once successful, the smugglers were paid in the UK.

Indicative prices for a crossing ranged from GBP 1,000 to GBP 3,000, depending on nationality and the composition of the household. One smuggler said at his hearing: "We were trying to get as high a price as possible. The Sudanese, for example, have less means than the Syrians. These are the indicative prices: GBP 1,200 for Egyptians, GBP 2,000 to 3,000 for Syrians and GBP 1,000 for Sudanese. Very exceptionally, we sometimes granted a slightly lower rate. We never offered our services for free. (...) The price was higher for families: EUR 3,000 or more per person. This is because they never want to be separated." If the money had been guaranteed in Belgium, it was in euros, and in Great Britain, it was in pounds sterling (see below).

a) Structure of the smuggling network

The smuggling network was a professional organisation whose composition and leaders would change. Every defendant had a specific role in the system, as a recruiter, collecting the

guarantee, head of the parking area, enforcer, escort or driver, with the common goal of earning as much money as possible. At Brussels-South station, unlicensed taxi drivers also had to transport clients in "black taxis". All the defendants had made human smuggling a habitual activity and their livelihood. Some of the defendants had already been active in this domain for several years. It even emerged that some had been active in France.

There were four network managers: two parking area managers, a coordinator for international transport routes and one to collect the guarantee.

b) Smuggling leaders / parking area managers

Two smuggling leaders managed the motorway parking areas as their criminal territory and regarded them as their property, which they had to protect by force. If other smugglers wanted to use them, they had to pay rent or were chased away. This was also the case for anyone wanting to illegally cross the border, who was attempting to board a lorry by themselves.

These smuggling leaders already had a lot of experience in this field and had previously been active in France. Like some of the other leaders, they were appointed by other smugglers. They also used the Drongen parking area as a training facility for new smugglers.

During his hearing, one smuggler explained the instructions he received when some Algerians wanted to use one of the parking areas for smuggling activities without their authorisation: "There were six of these Algerians. They tried to seize the parking area. What I mean is, they wanted to use it for their human smuggling activities. They were armed with knives and sticks. I waited for help from (...) among others. Not everyone was at the parking area yet. It wasn't that late. The clients present also had to help us push back these Algerians. We all grabbed sticks and went for those Algerians as a group. They ran off and they never returned to the parking area."

During his hearing, (S.) one of the network managers, who had threatened victims who were suffocating in a refrigerated lorry (see below), initially presented himself as a victim: "I'm originally from Syria, I fled the war. I left Syria to come here. First I went to France, where I tried to get to England several times. I'd heard from friend that it was easier to get to England from Belgium."

I lived on the street in Brussels for almost four months. Since then, I've been trying to leave every day but I haven't succeeded yet. (...) I've got nothing to do with the human smuggling. I'm a victim. I tried to get to England, like the other victims. The others are also victims. I had contact with smugglers. By phone. The agreed places were Brussels-North railway station or a park not far from there." (Also see below concerning the recruiters). During a later hearing, he admitted: "It's true. I've decided to make a confession. I'm aware of the evidence in your possession. I'm aware of (co-defendant X's) statement in particular. I don't want to lie anymore."

c) Leader of smuggling / transportation routes

Another smuggling leader, who also claimed to be a victim during the hearing, dealt with the transportation of clients from Europe and North Africa to the camps in Calais. This involved maintaining international contacts with other smuggling networks and picking up clients in Spain, Germany and Italy, where he was regularly located and conducted his operations. He also stayed at a camp in Calais and Maximilian Park for a while.

During his hearing, he was confronted about his conversation concerning smuggling human beings from Egypt to Italy. "X. (his contact person) is my best friend in Egypt. He lived in Greece with me. I prefer not to say anything else. You say that this conversation is about developing human smuggling activities between Egypt and Italy. I'd rather not say anything about this." The police then played him the recording of the conversation: "M. (the smuggling leader) said, 'Call these people, so they come to talk to you to arrange everything. Maybe the people could still leave this week'." X. asks: "Where to? Italy or Greece?" M. answers: "Italy." M. asks X to make sure that everything is okay and wants to be kept informed. X. says that everything will be all right. M. says: "And the money? Ask the people to guarantee their funds. You have to know where the money is, because you're responsible for it." X. says: "They don't know anyone in Italy except for you." "You're going to take them and drive them to the place where they're staying. None of them leave there until they've paid." M. says: "You know where they're arriving." X. says: "They're arriving in the south." M. explains that Italy isn't like Greece. M. explains that these people will probably be taken by the Red Cross as soon as they arrive. They will be put in a camp where they will have to prove that they are Syrian. M. therefore considers that it is important that these people acquire some knowledge of Syria, so they can pass as real Syrians.

d) The smuggling leader / guarantee collector

The smuggling prices were determined by the guarantee collector in Brussels, who owned a restaurant located behind Brussels-North railway station. The people recruited in Maximilian Park for smuggling were sent to the restaurant. The guarantee collector received and kept the money paid by these people. He paid the smugglers their share once the crossing had succeeded.

Based on the phone taps, the police found that the guarantee collector in Brussels played a major role in the smuggling organisation. His restaurant served as a meeting place for the smuggling leaders and for the smugglers and their clients. He also dealt with the lawyers in case of legal problems. According to one defendant's statement, he recruited the smugglers and also paid Belgian and Egyptian lorry drivers to obtain guaranteed transportation with the obligation to achieve a result, for a price varying between EUR 5,000 and 8,000 per client.

The smuggling organisation also worked with a guarantee collector in France and one in the UK. The brother-in-law of smuggling leader M. was, for example, the guarantee collector in the United Kingdom. According to the system, the guarantee collector, i.e. the middleman, keeps the client's money and pays the smuggler once the illegal transfer has succeeded.

e) Recruiters

The recruiters were active in the camps in Calais, at Brussels-North station and Maximilian Park in Brussels.

During his hearing, a smuggler stated that: "The operations centre is located in the Calais jungle. If you have money and you want to go to England, you just have to go to the jungle. That's where you'll find us. There were women, children and whole families with babies. (...) I confirm that I recruited people in the camp. (...) A. is a Syrian who stayed in the camp. He regularly sent clients to be smuggled to England. I know A. from the 'jungle'."

A driver from the smuggling network confirmed this for Brussels: "I know that the smugglers also had recruiters in the area surround Brussels-North station. These recruiters looked for clients there who wanted to be smuggled to England. I was witness to this."

According to his statement, one of the smugglers who recruited clients, stayed in Maximilian Park for several months: "There's a park close to Brussels-North where I often sleep. I don't sleep there alone. People bring us things to eat and drink. I've been sleeping there for 5 to 6 months. I don't always sleep in the same place."

During the hearing, he denied the charges against him: "I tried to get to the United Kingdom myself, and I helped people who wanted to do the same. I put them in contact with smugglers who could help them. My goal wasn't to make money from smuggling human beings. I confirm that I had meetings with the smugglers G., Y., A., S. and H."

During the trial, his lawyer subsequently requested a recharacterisation of the acts of smuggling of human beings under Article 77 of the Alien's Act (aiding illegal immigration). However, according to the court, it clearly appeared that "the defendant was involved in the human smuggling system and was making money out of it. The phone investigation revealed that he was active or involved on no less than 47 nights in 771 acts of human smuggling, including 13 times at the Wetteren parking area and 34 times at the Groot-Bijgaarden parking area. He was also identified as a smuggler by several other defendants." Based on the calculations of the financial investigation, this smuggler made a personal financial profit of more than EUR 200,000.

Some of the other defendants with executive functions were former smuggling clients. A recruiter from Maximilian Park explained this at his hearing: "I was a client before I became a smuggler because I needed money. I'm aware there is evidence. So I admit that I quickly moved onto the role of smuggler. My initial goal was to reach the United Kingdom. However, I didn't succeed, I found myself without any money. So I slept at Brussels-North station. When it wasn't raining, I also slept in the park near the station. Hence, a lot of people got to know me, people who wanted to enter the United Kingdom illegally. That's how I gradually became a smuggler. I did it for the money. Money I need to live on. I slowly became addicted to the money I made." According to the court, he was involved in 63 acts of human smuggling and, based on the calculations of the financial investigation, had made a personal financial profit of almost EUR 200,000.

2.2. | Investigation

a) *Opening the investigation*

On 21 July 2016, the East Flanders traffic police detected human smuggling activities at the E40 parking area in Wetteren, in the direction of Ostend. That same night, the police received a call from a lorry driver who was located on the paying part of the parking area. The police found three victims of human smuggling in the trailer. A few days earlier, the police had received notifications from lorry drivers about the same parking area that people were attempting to slip into their lorries. On the basis of this information, the federal judicial police concluded that a group of perpetrators were using this parking area to smuggle people to the United Kingdom. Based on this evidence, the police analysed the base station traffic around this parking area. A few suspicious numbers were revealed. This discovery led to a phone investigation, various observations of the suspects and a criminal investigation into human smuggling.

b) *Financial investigation*

According to the investigators, the smugglers made a profit of at least EUR 594,000, although probably a multiple of this figure. The calculation was based on various parameters. For the Groot-Bijgaarden, Wetteren, Drogen and Heverlee/Leuven parking areas, the police analysed the minimum number of nights during which the smugglers were active at the parking areas and the minimum number of victims per night and per parking area. The result indicated at least 1,994 acts of human smuggling for the group of perpetrators, multiplied by the lowest amount paid for the smuggling.

c) *Social networks*

The defendants used social media to organise their criminal activities. It was also a (investigative) tool for the judiciary and the victims when they testified.

One of the smuggling leaders used WhatsApp to manage the human smuggling activities. A smuggling leader had contacted an expert to subcontract the production of fake or falsified travel documents. This expert used photos of look-alikes for travel documents and sent them via WhatsApp. This is what emerged from a recorded conversation: "110 (expert) explains that he will also look through the identity photos he has. He asks whether he should transfer

the photos of the documents he has. 143 (smuggling leader) says that he agrees: "send". The same day, several other conversations are recorded which reveal that 110 (expert) sent messages via WhatsApp to 143 (smuggling leader)."

The smugglers were aware of the fact that the police could listen to them so they used social media as a counter-strategy against the police and judicial investigations, in order to better protect their human smuggling activities. The smuggling leaders gave clear instructions to communicate via social media instead of by phone. They gave preference to Viber or WhatsApp, which can't be tapped. This is what emerged from a conversation in which X. explained that he didn't have Viber on his new phone and that Y. should use WhatsApp instead. The smugglers also took into account the investigations that the judicial authorities could carry out on smartphones. For instance, they received the following instruction from a smuggling leader: "The photos you've got on your phone, from G. and A., you have to delete them. And if A. has photos on his phone, he has to delete them." Y. replied OK and explained to someone next to him: "Ask A. to delete the photos on his phone."

The police and the judicial authorities examined the messages on the smugglers' social media to collect evidence. In the Viber and WhatsApp messages, a defendant asked for EUR 6,000 to smuggle two people.

One victim stated having met a smuggler through Facebook, without having met them before. The smuggler insisted that they delete this message so that the police couldn't ever find it on their smartphone, which they didn't actually do. The police asked the victim for their written consent to carry out a network search¹⁶⁹ in the cloud so they could read the conversation, which they accepted. The suspect had a Facebook profile under the name (...). The interpreter confirmed the victim's account and that the user of the Facebook profile was asking for EUR 3,000 to smuggle the person to the United Kingdom. The police found that the photo of the user of the Facebook account looked very similar to the arrested smuggler (...).

169 Myria, 2017 Annual Report Trafficking and smuggling of human beings, , Online, p. 57.

2.3. | Victims

The police were able to determine the identity of 495 victims. Among them were many minors and women with children, as well as a large group of young men from Syria, Sudan, Eritrea and Egypt. Victims traced in France through phone tapping weren't taken into account. The police had already come across most of the identified victims three times, during previous interceptions associated with human smuggling. Ninety-two of them had already been intercepted four times, or even more.

Clients who had made agreements with a smuggler then belonged to that person and weren't allowed to have contact with any other smugglers. One smuggling leader made this clear in his hearing: "I confirm that I said during a conversation that clients couldn't speak to another smuggler, as I would find out about it and I would tell that smuggler to leave it."

a) Violence towards the victims

The investigation revealed that it was common to threaten the victims and their families in the countries of origin: both regarding their actions in the parking areas and when they didn't pay or not enough. The smugglers didn't limit themselves to threats but also used violence.

One of the smuggling leaders admitted during their hearing that they had hit a victim on the head with a spanner. He spoke about it in a recorded conversation: "It doesn't matter who it is, whether they're Egyptian or Sudanese, if anyone makes a mistake in the parking area they have to pay for it. There's a discussion or they get punished." But that's not all: "If I see them again, I'll behead them." He confirmed in his hearing that he had added the following: "I hit him because I was frustrated."

Clients can't go to a parking area by themselves to hide in a lorry. The same smuggling leader admitted to the police that he had threatened these people: "I'm here talking to a client of smuggling leader S. who is already in the parking area. He says that there are already two clients in the parking area. I confirm that I told the client that S. would come and take care of them. Within the context of the conversation, "taking care of them" should be understood as the use of violence. When S. arrived, these people ran away because they understood what was going to happen to them. I witnessed it.

b) Threats in a life-threatening situation in a refrigerated lorry

The smugglers used life-threatening refrigerated lorries. Certain conversations were recorded, which revealed that the victims were at risk of death. During his hearing, the smuggling leader concerned confirmed that the victims had warned him that they were dying and that he had threatened them: "I confirm that I forced them to stay in this refrigerated lorry. It's correct that I threatened them. I regret it now. We regularly used refrigerated lorries. These lorries were good because there weren't checked so often. They don't go through the scanner and it's also much more difficult for the sniffer dogs. I acknowledge that afterwards, there were sometimes problems with a lack of oxygen in these lorries."

Regarding this incident, another smuggler stated that he had found out afterwards that "the smuggling had almost ended badly: they had almost died. They were found in the port of Bruges."

It was possible to trace the conversations about this incident thanks to the phone taps. They speak for themselves. A smuggling leader (S.) made a phone call to a victim in the refrigerated lorry that was in the vicinity of Saint-Josse-ten-Noode (Brussels). To illustrate the smugglers' complete disregard for human life, this conversation is given in full.

"A man can be heard in the background. He's speaking English on another phone. The man can be heard saying, "We are in the trucks. We are in one truck". Throughout the conversation, we can also hear loud banging inside the refrigerated lorry. S. asks, "Who called the police?" 492 (victim in the refrigerated lorry) says, "The fair-haired Syrian". S. asks 492 to pass the phone to the man who is warning the authorities. S. gets angry and shouts, "Pass me that bastard!" Another man comes to the phone. S. says, "Are you the one who's talking to the police?" The victim replies, "They all told me I had to call". S. shouts and swears, "Which bastard told you you had to call the police? Who? Bastard!" The victims replies, "They were cold and they were crying". S. shouts, "Who was cold? Bastard! Bastard! Do you think I spend EUR 1,000 a day just so that you can stop the lorry?" The victim talks to the people next to them in the lorry and explains, "It's not my fault". He picks up the call again and says, "Everyone is asking me to call the police. Everyone!" S. asks, "Who's everyone? Who?" The victim repeats, "Everyone" and begs, "Come and open the door, we're dying! Open the lorry door".

The victim talks to the people next to him and tells them, "Talk to him. This man's crazy. Talk to him, we're dying". S. reacts, "Make sure they don't make any noise. You inside, don't call the police and stay in the lorry. Anyone who stops the lorry will have me to deal with. I swear, I'll get them! I swear I'll tie them up and beat them to death". The victim replies, "Ok". Someone is heard saying in the background, "People are dying". S. repeats, "Tell them what I said. If the lorry stops, they day will get difficult for you. I swear, I'll take all your money. I'll tie you up until you give me all your money. The cooling system has been activated and you're not going to die. You're not going to die. It will just be cold, that's all". In the meantime, Banging can be heard in the lorry. S. shouts, "Why is there noise?! Get them and hit them. Hit them". S. asks 492 (victim) to give the phone to the person who is making a noise. S. asks, "Why are you making a noise?" The victim answers, "Open the lorry. We're dying". S. shouts, "What, dying?! You escaped the bombs in Syria you know". The victim starts to beg him but is interrupted by the smuggling leader. S. says, "Do not stop the lorry and do not make any noise. Stay where you are until you reach your destination". The victim answers, "What?! No, I don't want to. I don't want to. Take what I gave you and let me out. Do what you want, I'm ready for anything. Please let me out. We're dying. People are dying". Another man comes to the phone and says to S., "What's your problem? Are you nuts or what? Open the lorry, open it!" People are talking in the background in the lorry. One of them says, "He wants to kill us". Another man begs for the door to be opened. S. hears that the man has asked for the door to be opened and says, "Hit the bastard! Tie him up! Tie him up so that he doesn't make any noise. You're going to be ok". S. then says, "I asked him again beforehand if he was frightened, and he answered no. I asked him if he was frightened of getting in the lorry and he said no". S. says, "Tell this man: if you make any noise, I'm taking GBP 10,000 off you". S. swears at this man for a moment. End of the conversation".

c) A victim's statement and offer of victim status

The 25-year-old Syrian victim (a man), who had made statements after another smuggling-related interception and had given permission for his Facebook account to be examined, was offered victim status but wasn't interested in being put in contact with

a specialised centre for victims. He also wanted to get to the United Kingdom as quickly as possible, where his family was living.

An audiovisual recording was made of the victim's hearing, during which the victim stated using Facebook to arrange to meet smuggler B. at Brussels-North station, where he contacted him by Messenger. After waiting for two hours, the smuggler came to fetch him and he had to wait outside with a group of men. They were mainly Syrians from the same region as the victim. After a while, the smuggler took the train in the direction of Ghent with the group. They got off at the wrong station and had to walk for about an hour to the parking area, where someone was coming to get them. On the way, a second smuggler joined the group. Based on photo recognition, the victim identified the two smugglers and through a two-way mirror, he confirmed the role of another arrested smuggler.

During his audiovisual hearing, the victim explained the method of payment: "My brother lives in England and there, he got in contact one of B.'s (smuggler) middlemen. I think this person received EUR 50 for their work. My brother was supposed to pay EUR 3,000 upon my arrival in England. My brother had to pay B.'s middleman this sum who, in turn, had to send it to smuggler B. after deducting a commission of EUR 50. My brother got in touch with B.'s middleman because I gave him his number. It was B. who gave me the number of his contact in England via Facebook. B.'s middleman in England is called (...)."

d) Minors

One smuggler stated that their clients included women, children and entire families. The police managed to identify 93 child victims. It wasn't possible to determine from the case file exactly how many unaccompanied foreign minors were involved. The youngest victim of a smuggled family was a 19-month-old baby from Eritrea, who was travelling with its mother. Families were usually intercepted several times. The majority of the smuggling victims were foreign unaccompanied minors. Based on Myria's analysis of the case, the numbers were estimated at about 50 Syrians, approximately 15 Sudanese, a dozen or so Eritreans and about a dozen Afghans. The majority were 17 years old but there were also several Syrians aged 14 and 15 who were intercepted several times by the police. For instance, a 16-year-old Syrian was intercepted no less than 14 times.

Chapter 3

Case law overview

2019 - start 2020

1. Trends

What were the main trends in case law in 2019 and at the start of 2020 in cases concerning the trafficking and smuggling of human beings? In this report, the overview is based on cases in which Myria filed a civil suit, on decisions it received from the victim reception centres and on those provided by prosecutors. Myria also presents two decisions of the European Court of Human Rights, including one from the Grand Chamber.

Myria was informed of 58 decisions rendered by the judicial authorities. Following, is a presentation of the most interesting ones, i.e. 42 relating to 41 cases¹⁷⁰ in the country's various jurisdictions¹⁷¹:

- 13 decisions (including 4 appeal decisions) relating to 12 cases concern **acts of sexual exploitation**. They were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division and Court of Appeal), Brussels (French-speaking and Dutch-speaking), and Ghent (East Flanders (Oudennaarde) and Court of Appeal). Besides a decision of the French-speaking Criminal Court of Brussels, the 12 other decisions were rendered in the Dutch-speaking part of the country or by the Dutch-speaking courts of Brussels.

Regarding sexual exploitation, as in recent years, there have been a large number of decisions concerning Nigerian networks. Most of these cases were judged in Antwerp. Several decisions relate to young women from Eastern Europe recruited through the *loverboy* technique. One case deals with

the forced marriage of a Somalian minor, where the judges convicted her husband for human trafficking, among other things. Lastly, a customary marriage also led to the exploitation of an Albanian victim in prostitution.

- 19 decisions (9 rendered in a court of appeal) concerning **labour exploitation cases** in various sectors. They are presented per sector of activity (construction, hotel and catering industry, retail trade, car washes, poultry farming, bakeries, second-hand clothes sorting, domestic work, football). Decisions were also rendered in atypical sectors: lumber industry and newspaper delivery. One decision concerns acts committed within a religious congregation. These decisions were rendered in the jurisdiction of the following courts of appeal: Antwerp (Court of Appeal), Brussels (Brussels French-speaking and Dutch-speaking, Walloon Brabant and Court of Appeal), Ghent (East Flanders (Ghent) and Court of Appeal), Liège (Namur (Namur division) and Court of Appeal) and Mons (Court of Appeal).

Regarding **labour exploitation**, it appears that in order to conclude that working conditions are contrary to human dignity - which is an element of human trafficking - courts have to consider several elements: working conditions and environment (excessive working hours, very low wages, no rest days), bad housing conditions, wage deductions under various pretexts, dependence on the employer. In many cases, the court lends considerable weight to workers' statements, as long as they are accurate, consistent and supported by other objective elements. Unfortunately, the reasonable time for trial was exceeded on several occasions. One court of appeal even had to rule that the acts were time-barred.

¹⁷⁰ Several cases were already decided at first instance and discussed in previous reports.

¹⁷¹ These decisions will also be published on Myria's website: www.myria.be.

- One decision concerns the **exploitation of begging**. Rendered in Brussels in a case judged in absentia, it involves a young woman who exploited her nephew, a minor.
- One decision concerns **forced crime**. Rendered in Antwerp, it refers to the exploitation of a Belgian victim by a family.
- 8 decisions concern **cases of human smuggling**. They were rendered in the jurisdiction of the courts of appeal of Brussels (Dutch-speaking Brussels), Ghent (East Flanders (Ghent, Dendermonde) and Court of Appeal) and Antwerp (Antwerp division).

Regarding **human smuggling**, the organisations are often well structured and even criminal. In several cases, migrants who wish to be smuggled actively participate in the smuggling in order to pay for their passage to the United Kingdom. Courts consider this as an indirect financial advantage, one of the essential elements of human smuggling.

2. Human trafficking

2.1. | Judgments of the European Court of Human Rights

2.1.1. | European Court of Human Rights, judgment of the Grand Chamber, S.M. v. Croatia case, 25 June 2020

In this case, the Grand Chamber of the European Court of Human Rights ruled that there had been a violation of Article 4 of the European Convention on Human Rights, which prohibits slavery and forced labour¹⁷².

The applicant, Ms. S.M., is a Croatian national born in 1990 who resides in Croatia. In September 2012, she lodged a criminal complaint alleging that a man, a former police officer, had forced her into prostitution for several months in mid-2011. He had first contacted her via Facebook, presenting himself as a friend of her parents and promising to help her find a job. He allegedly took her to clients to perform sexual services and forced her to give him half of her earnings. He apparently threatened to punish her if she didn't comply with his demands.

At the end of 2012, the man was charged and the applicant was officially recognised as a victim of human trafficking. In 2013, following an investigation, the man was tried for forcing the applicant into prostitution, but was acquitted. The courts found the applicant's testimony to be inconsistent and unreliable. They concluded that there was insufficient evidence to support a conviction and that the applicant had provided sexual services of her own free will.

The public prosecutor's office appealed against the decision, but the appeal was rejected in January 2014. The same year, the applicant filed a constitutional appeal, which was declared inadmissible.

Referring in particular to Article 4 of the European Convention on Human Rights, the applicant claimed that the authorities had failed to provide an adequate procedural response to her allegations.

In its Chamber judgment of 19 July 2018, the European Court of Human Rights found that there had indeed been a violation of Article 4 of the Convention. On 3 December 2018, the panel of the Grand Chamber accepted the Croatian government's request to refer the case to the Grand Chamber.

The Court took the opportunity to clarify its case law on trafficking in human beings for the purpose of the exploitation of prostitution. It reiterated that trafficking in human beings falls within the scope of Article 4 of the Convention. However, according to Article 4 of the Convention, for an act or situation to qualify as trafficking in human beings, the three elements of the international definition (action, means and purpose) must be present. The definition in international law must therefore be used as a basis for deciding whether Article 4 of the Convention can be applied to the particular circumstances of a case.

¹⁷² ECHR, Grand Chamber judgment SM. v. Croatia, 25 June 2020, application no. 60561/14. The Grand Chamber judgment definitively closes this case. The judgment is available at: <https://hudoc.echr.coe.int>. A first Chamber judgment was rendered on 19 July 2018: see Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 114-115.

In addition, the Court states that "forced or compulsory labour", within the meaning of Article 4 of the Convention, is intended to provide protection against cases of serious exploitation, such as cases of forced prostitution, irrespective of whether or not, in the particular circumstances of the case, they have occurred in the specific context of trafficking in human beings.

The Croatian government argued that the case didn't fall under the scope of human trafficking, as the person concerned had not, for example, been subjected to threats, use of force or other forms of coercion, which would fall within the notion of "means" as envisaged in the international definition.

The Court disagreed and rejected the government's argument on the applicability of Article 4 of the Convention. The man had indeed contacted the applicant via Facebook, a channel often used by traffickers to recruit their victims. He had allegedly promised to get her a job. He also found accommodation for her to provide paid sexual services, thus evoking one of the "acts" that constitute trafficking. In addition, the personal situation of the applicant (a child in care from the age of 10) suggests that she belonged to a vulnerable category, while the position of the alleged perpetrator (a former police officer) suggests that he was in a position to dominate her and abuse her vulnerability.

The Court therefore considered that the applicant had presented an arguable complaint of treatment contrary to Article 4. In addition, there was prima facie evidence to indicate that she had been subjected to such treatment, namely trafficking in human beings and/or forced labour.

The Court considered that this situation placed the domestic authorities under an obligation, in accordance with the Convention, to investigate the applicant's allegations. This implies initiating and carrying out an investigation to establish the facts, identify and - where appropriate - punish those responsible. However, the prosecuting authorities (the police and the competent public prosecutor's office) neglected certain obvious leads in their investigation, such as looking into the exchanges between the applicant and the man on Facebook, or hearing all possible witnesses. On the contrary, they relied to a large extent on the applicant's statements. The judicial proceedings therefore took the form of a confrontation between the applicant's words and those of the alleged perpetrator of the acts.

In conclusion, the Court considered that these shortcomings in the handling of the case had fundamentally undermined the domestic authorities' ability to determine the true nature

of the relationship between the applicant and the alleged perpetrator and whether the latter had genuinely exploited the applicant. Consequently, there had been a breach of the state's procedural obligation under Article 4 of the Convention.

The Court awarded the applicant EUR 5,000 for non-pecuniary damage.

2.1.2. | European Court of Human Rights, judgment T.I. and others v. Greece, 18 July 2019

The European Court of Human Rights also ruled that there was a violation of Article 4 of the European Convention on Human Rights in another case of human trafficking for the purpose of sexual exploitation involving three Russian nationals¹⁷³.

The three applicants arrived in Greece in 2003 after obtaining visas through the Greek Consulate-General in Moscow. According to them, employees of the consulate were allegedly bribed by Russian traffickers and issued visas to enter Greece for the purpose of sexual exploitation. All three were recognised as "victims of human trafficking" and the authorities initiated two criminal proceedings against those suspected of exploiting them. Proceedings concerning the issuing of the visas were also initiated. Some of the presumed perpetrators were convicted and others acquitted. In particular, criminal proceedings were initiated against several persons, including three consulate employees, for human trafficking.

Referring in particular to Article 4 (prohibition of slavery and forced labour), the applicants alleged a failure by Greece to fulfil its obligations to criminalise and prosecute acts of trafficking in human beings. They also complained about the inadequacy and shortcomings of the investigation and the judicial proceedings, which were particularly lengthy.

The Court ruled that there had been a violation of Article 4 of the Convention, holding that the legal framework of the proceedings had proved ineffective and insufficient to punish the traffickers and to ensure the effective prevention of trafficking in human beings. In particular, the Court noted that the competent authorities hadn't dealt with the case with

173 ECHR, judgment T.I. and others v. Greece, 18 July 2019, application no. 40311/10. The judgment is final and available at: <https://hudoc.echr.coe.int>

due diligence and that the applicants hadn't been involved in the investigation to the extent required by the procedural aspect of Article 4. The criminal proceedings had in fact lasted more than seven years regarding one of the applicants. Two other applicants had been subjected to nine years of criminal proceedings concerning two accused persons. Moreover, the proceedings were still suspended 15 years after the accusation of a third person. The Court therefore considered that the two applicants hadn't benefited from an effective investigation and that there had been a violation of the procedural aspect of Article 4.

Similarly, as regards the effectiveness of the proceedings concerning the issuing of visas, the Court considered that an effective investigation should have been carried out to determine whether the competent authorities had carried out a rigorous check of the applicants' files before issuing the visas. However, this was not the case owing to certain shortcomings.

The Court ordered Greece to pay each of the applicants EUR 15,000 for non-pecuniary damage.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

As in previous case law overviews, there are several decisions concerning Nigerian networks that exploited minors, among others.

Child victims

A case involving a Nigerian network, discussed in the 2019 report¹⁷⁴, was re-examined by the Antwerp Court of Appeal. In a judgment of **14 November 2018, Antwerp Criminal Court** had examined the case involving a branch of a Nigerian prostitution network active in Antwerp¹⁷⁵. Six people were prosecuted but several of them failed to appear. Some of them were staying in Italy.

One of the victims was a minor. Brought from Nigeria to Belgium when she was only 16 years old, the victim made several statements. She had been approached

by one of the defendants to go to Europe to attend school. She travelled from Benin City to Libya, via Niger, before taking a boat to Europe. She and other passengers were rescued from the Mediterranean Sea by an Italian ship. Four other girls on the same ship drowned. In Italy, one of the defendants was waiting for her and told her that she had to repay a debt of EUR 35,000 for her journey to Europe. She had also had to undergo a voodoo ritual. Another defendant drove her from Italy to Antwerp, Belgium. She was taken to the flat of one of the defendants, which she shared with another young girl who was in the same situation. She had to hand over the money she earned from prostitution to her landlady, one of the defendants, to pay off her debt. In addition, she was charged EUR 25 a month for food and drinks. In her statements to the police, she mentioned another victim, the girl with whom she shared the flat. The latter was found and made similar statements.

Initially, the two girls were threatened repeatedly because they didn't earn enough, and then because they refused to continue handing over their money. Their family in Nigeria was also threatened.

The defendants were sentenced, some in absentia, to prison terms ranging from two to six years together with fines ranging from EUR 6,000 to 15,000. They were deprived of their rights for five years and funds were confiscated. At the hearing, their immediate arrest was ordered. One victim had filed a civil suit. She received non-pecuniary and pecuniary damages of more than EUR 13,000. She was awarded the confiscated amount.

Two defendants and the public prosecutor's office appealed. In its **judgment of 3 October 2019, Antwerp Court of Appeal** acquitted one of the defendants¹⁷⁶, namely, the person who had sublet a room to the two girls after being contacted by a friend. According to the court, it was possible that, at the beginning of the tenancy, this person was unaware of the girls' activities and that they were victims. This defendant was acquitted because there was still some doubt as to whether their intention was conscious and deliberate. Moreover, they didn't make an abnormal profit.

For the other defendant, the charges were upheld. It appears from the case file that he collected payments from the victims, was present when the victims were threatened and also made threats himself. It was clear to the court that he was part

¹⁷⁴ See Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 117-118.

¹⁷⁵ Antwerp Crim. Court, Antwerp division, 14 November 2018, ch. AC10 (available at: www.myria.be (case law)).

¹⁷⁶ Antwerp, 3 October 2019, ch. C6.

of an association of human traffickers, together with his partner and family members, who had remained in Italy. His six-year prison sentence was confirmed, as well as the fine of EUR 15,000. Compensation of the victim amounting to EUR 13,280 was also confirmed.

Another case of smuggling and trafficking of human beings for the purpose of sexual exploitation led to a decision rendered by **Antwerp Criminal Court on 20 November 2019**¹⁷⁷. Six defendants appeared in this case. Two victims filed civil suits.

The investigation began following a message sent to the police by a French NGO that was supporting a victim.

Both victims were recruited in Nigeria by the mother of the main defendant. They had to pay EUR 25,000 and EUR 20,000 respectively for their journey to Europe. Before leaving, they had to undergo a voodoo ritual. The first victim was barely 17 years old when she began her journey. They left Nigeria in mid-2016 for Niger and Libya, from where they crossed the Mediterranean by boat. One of the victims was picked up in Italy by a man, the second defendant, and immediately put to work as a prostitute in order to pay off her debt. After a few months, he decided to send her to Belgium. Once there, she was lodged in a house in the Antwerp region. It was there that she saw the second victim again. She worked in the Antwerp flat and in various other places in Belgium. In Brussels she worked in a window, for which she had to pay rent. She had to hand over her earnings to the first defendant and the second defendant, who were sister and brother.

At a certain point, she was sent to France to apply for asylum and receive a monthly allowance of EUR 350, all of which she had to hand over. When she was thrown out of the flat by the first defendant, she was lodged with acquaintances of the defendants in France. It was there that she came into contact with the NGO. In Nigeria, her family was repeatedly threatened by the second defendant. He demanded a monthly reimbursement of EUR 1,000. The story of the second victim is fairly similar. During the investigation, the victims were approached by one of the defendants to make false statements.

One of the defendants was a prostitute, who rented her window to the first victim. Another defendant made their lodgings available to them.

The investigation was carried out on the basis of an analysis of a dating site, a phone investigation, transmitting antennas, a house search, a bank investigation, the formal recognition of the victims and the defendants' implausible statements.

The court found that the facts were proven. The defendants were part of a network that lured Nigerian girls to Belgium and forced them into prostitution. Each defendant made a crucial contribution, to varying degrees, to the development of human trafficking. The court also found that the dangerous smuggling of girls from Nigeria had been proven.

The main defendants were sentenced to five and four years in prison and fined EUR 16,000. The other defendants were sentenced to prison terms of 20 to 40 months and fines of EUR 16,000.

Several sums of money were confiscated. The civil parties received EUR 21,679 and EUR 8,500 respectively in compensation (pecuniary and non-pecuniary).

Collaboration with Greece

Antwerp Criminal Court ruled in a **judgment of 30 March 2020**¹⁷⁸ on a case in which a defendant was prosecuted for human trafficking for the purpose of sexual exploitation. The acts date from mid-2015 until the beginning of 2016. In 2013, the victim came into contact with smugglers in Nigeria who could take her to Europe. For this, she would have to repay EUR 52,000 over six months. Before her departure, she had to undergo a voodoo ritual. She flew to Turkey with her own passport. Smugglers then transported her by boat to Greece. At the beginning of February 2015, she was taken off the boat by the Greek coastguard and ended up in a reception camp. There she was picked up by the defendant and her boyfriend. She lived in their flat in Athens and had to work the streets at EUR 10 per client to pay off her debt. As repayment was taking too long, she was advised to go to Belgium where she could earn more. She was regularly threatened via the voodoo ritual.

In Belgium, she lived on the outskirts of Antwerp with an acquaintance of the defendant. She had to transfer the money she earned to a bank account opened in Greece in the name of her "madam's" friend.

¹⁷⁷ Antwerp Crim. Court, Antwerp division, 20 Nov. 2019, ch. AC10 (appeal).

¹⁷⁸ Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1876 (appeal).

She was forced to do this as they threatened to kidnap her children in Nigeria if she didn't comply.

During the investigation, a request for mutual legal assistance was sent to Greece in order to obtain more information about the defendant and the persons with whom she lived. A bank investigation also confirmed the transfers to the Greek bank account. A Belgian friend of the victim was also questioned. He proved that he had made several payments for his friend, the victim, to her family in Nigeria and to her "madam" in Greece.

During the investigation, the victim's sister in Nigeria, with whom the victim's children were living, was threatened to repay the debt. If she defaulted, something bad would happen to the children. A retroactive phone investigation was carried out and information was also obtained from an examination of the defendant's mobile phone, as well as from discussions on Facebook and Badoo.

The court found the victim's statements to be consistent, detailed and credible, and that they could be objectified using a number of elements from the criminal case file. Furthermore, the defendant provided no plausible explanation as to the presence of the victim at her side and the reasons for providing her with board and lodging when there were no ties of friendship or family. The defendant was assisted by several people, but the investigation was unable to identify them. The defendant was sentenced to three years in prison with a five-year suspension, and a fine of EUR 6,000. The court took into account her clean criminal record and the time that had elapsed since the acts.

Victim's changing statements

In a **judgment of 26 June 2019**¹⁷⁹, **Antwerp Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation and human smuggling in which two defendants were prosecuted. The acts took place between June 2017 and February 2018.

The victim was arrested during a police check following their response to an advert on a dating site. The victim stated that she was forced into prostitution.

She had been approached in Nigeria by a woman who could help her find work in Europe with her sister who lived there. The victim had incurred a

debt of EUR 25,000 for this journey, which she then had to repay. During a voodoo ritual, she had to promise that she would pay back the money and not say anything to the police. She travelled from Nigeria to Libya, where she stayed in a camp for a while, before taking a boat to Italy. The boat was intercepted and she found herself in a camp again. She later went to France to stay with a friend of the first defendant. After a few weeks, she was taken to Belgium. She lived in the Antwerp region and had to prostitute herself there to pay off her debt. The first defendant took photos of the victim and posted them on a dating website. The victim was given a mobile phone so that clients could contact her. She also had to prostitute herself at a private address, in a bar in Germany and in the street in Strasbourg. She lived with the defendants in a small room, for which she had to pay EUR 450 as well as EUR 50 for groceries. Initially, the second defendant, the boyfriend of the first defendant, was unaware of the victim's activities and her dependence on his girlfriend. Afterwards, the victim also had to give him money.

The investigation was based on the hearings of the victim, the defendants, the owner of the bar in Germany, and the friend in France. The victim changed her statements several times. It later turned out that she and her family in Nigeria had been threatened by the first defendant. A phone investigation was carried out and online chats were analysed. The dating site was also investigated. During a search, some sort of accounting system was discovered.

The court found the first defendant guilty on the basis of the evidence in the criminal case file. Regarding the second defendant, the court considered that the evidence in the criminal case file was insufficient to find him guilty of human smuggling. On the other hand, he was charged with human trafficking. Although he was not informed about these activities at the beginning, there was sufficient evidence indicating that he was indeed aware of them after a certain time.

The first defendant was sentenced to four years in prison and handed a fine of EUR 8,000. The second defendant was sentenced to two years in prison and handed a fine of EUR 8,000.

One victim and Payoke filed a civil suit. The victim received one symbolic euro as compensation and Payoke received non-pecuniary and pecuniary compensation of EUR 2,500.

¹⁷⁹ Antwerp Crim. Court, Antwerp division, 26 June 2019, ch. AC10, no. 2019/3379 (final).

Victim previously held in a detention centre

In a **judgment of 14 June 2019**¹⁸⁰, **Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation. One defendant was prosecuted for acts of human trafficking committed between 2015 and 2016 involving at least four victims, for the exploitation of debauchery and prostitution, for belonging to a criminal organisation and for illegal residence. One victim was arrested during a police check because of her prostitution activities and placed in a detention centre. She was then identified as a victim of human trafficking and sheltered by Payoke, where she made statements.

The defendant would bring several young girls over from Nigeria to Europe via Libya to prostitute themselves in Italy and Belgium. She provided them with board and lodging and exerted control of them, for instance, by making them take a voodoo oath and making them promise to repay a debt of EUR 30,000 to 40,000. She also threatened the victims and their families in Nigeria. According to the court, the defendant was part of a criminal organisation. The investigation involved victim statements, phone investigations and access to other criminal case files which revealed that she was possibly linked to other gangs involved in smuggling young girls from Nigeria. She was also possibly associated with the "Mama Leather" gang¹⁸¹.

The defendant was sentenced in absentia to four years in prison and a fine of EUR 60,000.

2.2.2. | Chinese private prostitution

Ghent Court of Appeal reviewed a case of human trafficking for the purpose of sexual exploitation of Chinese women in a **judgment of 10 April 2019**¹⁸². This case had previously been judged by **Bruges Criminal Court on 17 May 2017** and discussed in a previous report¹⁸³. In this case, a Chinese defendant and a Belgian defendant were prosecuted for

human trafficking for the exploitation of prostitution. Charges of attempted rape, indecent assault and false imprisonment, as well as social criminal law were also brought against them. The victims were all Chinese nationals. One victim filed a civil suit.

The Chinese defendant appealed against the decision.

The acts took place in different flats on the coast, where Chinese girls were prostituting themselves. Clients were put in contact with private escort girls through adverts on the internet. At a first hearing, all four victims denied the prostitution activities. During a subsequent search of the defendant's home, the victims' Chinese passports were found. One month after the first hearings, PAG-ASA contacted the local police by phone on behalf of one of the victims to report attempted rape, false imprisonment and indecent assault. At the second hearing, the victim stated that when she was in China, she had been put in contact with a person who could bring her to Europe to work in massage parlours. This had cost her EUR 10,000 and the person in question threatened to kill her if she didn't pay. Once in Belgium, she was forced to prostitute herself. If she refused, the defendants would lash out at her. Her passport was taken from her. The investigation revealed that the first defendant also offered women in Dubai.

The court found both defendants guilty of the offence of human trafficking for the purpose of sexual exploitation of Chinese girls. The court acquitted the two defendants of attempted rape, indecent assault and false imprisonment in view of the lack of objective evidence supporting the victim's statements. The first defendant was sentenced to three years in prison and given a suspended fine of 4 x EUR 6,000. The second defendant was sentenced to 18 months in prison and given a fine of 4 x EUR 6,000, both of which were suspended. The court confiscated several pieces of evidence and also ordered a confiscation of EUR 6,487.50.

The victim, who filed a civil suit, received EUR 10,000 for pecuniary and non-pecuniary damages.

The Court of Appeal confirmed the defendant's guilt for the charges of human trafficking for the purpose of exploitation of prostitution, running a brothel

180 Brussels Dutch-speaking Crim. Court, 14 June 2019, 23rd ch. (in absentia).

181 On this subject, see this report, Part 2, Chapter 2, point 1.1.

182 Ghent, 10 April 2019, 8th ch.

183 East Flanders Crim. Court, Bruges division, 17 May 2017, 17th ch. See Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 132.

and social law breaches. The acquittals for attempted rape, indecent assault and false imprisonment were upheld. However, the prison term was reduced to a two-year suspended sentence. The fine of 4 x EUR 6,000 was maintained, but partly suspended. A confiscation order for EUR 7,000 was also pronounced.

The court recalculated the damages for the civil party, reducing them to EUR 2,500 for pecuniary damages and EUR 500 for non-pecuniary damages. It awarded part of the confiscated sums to the plaintiff for pecuniary damages.

2.2.3. | Thai prostitution network

In a **judgment of 8 November 2019, Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking involving Thai women¹⁸⁴.

Two defendants, a couple, were prosecuted for human trafficking for the exploitation of prostitution, the exploitation of debauchery or prostitution, being a member (the second one, male) or leader (the first one, female) of a criminal organisation, and money laundering. The acts took place between 2007 and 2016 and involved several victims. The defendants were prosecuted for both the acts committed in Belgium and Thailand (Articles 10 *ter* and 12 of the Preliminary Title of the Code of Criminal Procedure).

The case was opened when the federal judicial police of Brussels was informed of the existence of a young Thai girl who was allegedly recruited in a bar close to Brussels-North railway station by a Thai man who usually lived in Thailand. The police found the girl and launched an investigation during which it questioned prostitutes in the neighbourhood above all. Several young Thai girls were thus identified, as well as the first defendant. The latter was allegedly in contact with the girls and had put a window at their disposal by negotiating with the other prostitutes in the neighbourhood. The girls had to hand the money over to her (EUR 100 a day).

The investigation was conducted by means of a tax investigation into the taxable income of the defendant. The (professional) income of the defendant turned out to be minimal. However, an investigation of Western

Union and the banks revealed that she had transferred large sums of money abroad. In addition, observations were conducted, Facebook profiles were examined, a phone investigation was carried out, other prostitutes in the neighbourhood were interviewed and the various young Thai girls were questioned. This is how the second defendant also came into the picture. The defendants' phones were tapped and five young Thai girls were found thanks to a search of their home. Mobile phones and a computer were also seized.

The young women stated that they had travelled from Thailand to Belgium with the help of a middleman or through the first defendant. The defendants picked them up at the airport in Belgium. They had been warned that they were going to work in prostitution. According to one of the victims, it was common knowledge in the region where she was from that the first defendant organised such activities. They had to repay a debt to the defendants, ranging from EUR 12,500 to 30,000, to cover the costs of travel, visa, stay, etc. The "stay" costs amounted to EUR 7,000 per six-month period. The young women thought they had a genuine residence permit but in reality, it was just a letter from the lawyer who had applied for regularisation. Every six months, this letter was replaced by another one. The young women were instructed to present this letter if there was a check. In addition, they also had to pay the first defendant EUR 600 for board and lodging, and they had to pay several hundred euros a day to use the windows at Brussels-North railway station. Several young women also stated that to pay for their journey, they had taken out a loan from someone in Thailand at an interest rate of 3 to 5 % per month, often with a family title deed as a guarantee. They mentioned several other intermediaries in Thailand, probably from the first defendant's entourage. Some of the young women were distraught at the hearings because they didn't know how they would repay these debts now, and would therefore have problems. The analysis of the first defendant's mobile phone revealed that she was in contact with several people in Thailand about the arrival, the plane tickets and the papers of the young Thai girls, the payment of the young girls' debts, the transfer of large sums of money to Thailand, the tasks which she had entrusted the young Thai girls with in Belgium and contacts with other prostitutes concerning the available windows at Brussels-North railway station. The bank investigation showed that the first defendant had transferred large sums of money to Thailand for the young girls.

184 Brussels Dutch-speaking Crim. Court, 8 November 2019, 23rd ch.

A search was also carried out at the home of a third person with whom the defendant often had phone contact about the young women. The person was heard. They turned out to be a Thai/French interpreter and an intermediary between the defendants and the lawyer who had sorted out the Thai girls' residence papers.

The lawyer, who was also heard, had her home searched as well. The defendants also turned out to be addicted to gambling and regularly visited the casino. The management and staff at the casino were also questioned.

Information was requested from Thailand about several people who had repeatedly appeared in the investigation and to whom the young women had been referred. These people were identified. One of them was a man who played a major role in this Thai network and had been the subject of an arrest warrant in the past for illegally employing people abroad. However, the Thai authorities were unwilling to comply with the request to question these persons.

Several young women were supported by Payoke and benefited from the status of victims of human trafficking.

The court considered that there was indeed criminal organisation. The criminal case file revealed that it was an internationally organised association which, over a long period of time, brought young Thai girls over to Belgium to exploit them in prostitution. Their journey was well prepared and organised. They were taken care of and accompanied as soon as they arrived. The organisation's mastermind used intermediaries. The international context, the frequency of the activities, the large number of victims, the cooperation between the different people involved in the network, the mutual consultation and the clear distribution of roles within the network, are all evidence that demonstrate the existence of a well-established criminal organisation. The court considered that it could be inferred from the criminal case that the defendant clearly played a leading role in the organisation.

The court also accepted the charge of human trafficking for the purpose of sexual exploitation against the first defendant. She brought the girls over from Thailand, housed them and made them work in prostitution. Aggravating circumstances were also considered to be proven.

For the charge of exploitation of debauchery and prostitution, the court found that the evidence in the criminal case file was insufficient to establish that the first defendant profited from the employment of the young girls in prostitution. The girls did indeed have to pay the first defendant their debts associated with their visa, in particular, the lawyer's fees. However, in the criminal case file, it is only mentioned once that the girls had to pay EUR 100 a month to the first defendant. There was no further investigation into this matter and no-one else was questioned about it. As a result, the court was unable to determine whether or not the defendants had exploited the victims. The first defendant was also found guilty of money laundering.

The court considered that there was insufficient objective evidence in the criminal case to conclude that the second defendant was aware of the specific activities of the young women and his girlfriend, the first defendant. Owing to the language barrier, he often didn't understand what was going on. His ignorance of the girls' prostitution was questionable, but he didn't know that they had to repay their debts. According to the court, he was a naive man who allowed himself to be blinded by his feelings. He was given the benefit of the doubt.

The conviction takes into account the fact that the reasonable time limit was exceeded.

The first defendant was sentenced to 36 months in prison and a fine of EUR 80,000, both partly suspended. A sum of approximately EUR 160,000 was confiscated. The second defendant was acquitted of all charges.

2.2.4. | Loverboy technique

Several cases concerning the trafficking of young women from Eastern Europe, recruited through the '*loverboy*' method, were tried in Brussels and Antwerp.

The first case, tried by **Brussels Criminal Court on 28 June 2019**, concerns the trafficking of young Albanian women¹⁸⁵.

Seven Albanian defendants were prosecuted for human trafficking for the purpose of sexual exploitation with aggravating circumstances regarding seven young Albanian women, for forgery and use of false passports, and for criminal association. One defendant was absent.

185 Brussels French-speaking Crim. Court, 28 June 2019, 47th ch. (appeal).

The first six were also prosecuted for the recruitment and exploitation of the prostitution of these young women.

The young women, who prostituted themselves in windows, all came from the same Albanian town or from nearby villages. The main defendants were siblings from the same town, where a neighbourhood is named after them and where the family is said to have a strong influence.

The money earned through prostitution was brought back to Albania in cash so as not to leave any traces of transfers through agencies or banks.

The court convicted the defendants for all of the alleged offences. It considered that human trafficking was established: the defendants recruited their victims using the "loverboy" technique; they participated in their transportation from Albania to Belgium, took care of them upon their arrival and provided them with accommodation. The victims were constantly monitored and their earnings were used to maintain the defendants and/or to pay off their debts (real or supposed).

The court accepted the aggravating circumstances of abuse of the victims' vulnerable situation owing to their precarious financial, social and family situation, as well as habitual activity and participation in an association. The investigation was able to demonstrate the links between the defendants, the organisation set up to transport the victims, their collaboration in monitoring them and housing them.

In addition, the defendants had set up a system to obtain forged documents through a particular forger enabling the victims to reside in Belgium.

The six main defendants were sentenced to five years in prison and fined EUR 84,000. The defendant who failed to appear was sentenced to four years in prison and fined EUR 42,000.

A confiscation of sums of money, i.e. assets derived directly from the offences, was pronounced against two of the defendants.

Myria, who filed a civil suit, received the final sum of EUR 2,500.

Two other cases were tried in Antwerp.

Antwerp Court of Appeal re-tried a case of trafficking for the purpose of sexual exploitation of young Romanian women,

previously examined by **Antwerp Criminal Court on 7 November 2018**¹⁸⁶.

In this case, five defendants were prosecuted for human trafficking with the aggravating circumstances of leading and participating in a criminal organisation.

The main defendant brought young women, often from financially precarious backgrounds, from Romania to Belgium with promises of a large income. Once in Belgium, the young women had to work in prostitution through a dating site. They worked as escorts or in windows. They often had to prostitute themselves without a condom. He took a large part of their income. To achieve his goal, he used the *loverboy* technique. He kept the victims under his control thanks to a clever mix of love and anxiety. He could suddenly become aggressive and dominant. The young women spoke only Romanian, which also made them dependent on the defendants. Two of them became pregnant by the main defendant.

The money he made by exploiting the young women was sent to Romania, where he was building a house. He also squandered part of it on gambling.

He was assisted by friends and acquaintances. His regular girlfriend, also brought to Belgium as a victim, watched over the girls and collected the money as well. Other acquaintances from Romania came to Belgium with their spouse; the wives were forced into prostitution, while the men offered their services to the main defendant as drivers or supervisors of the young women. The friends and their spouses had to pay the main defendant some sort of protection premium, as well as the rent.

The defendant resided in Belgium, Romania and the United Kingdom, where he also had links with the prostitution industry. His friends replaced him when he went abroad.

The investigation was carried out on the basis of findings, the data provided by the adverts on the website, a phone investigation, phone tapping, a financial investigation, hearings of victims and defendants, and house searches. The court found the 5 defendants guilty. The main defendant was considered the mastermind of a criminal organisation.

186 Antwerp Criminal Court, 7 november 2018, AC10 ch. (unpublished)

The main defendant was sentenced to seven years in prison and fined EUR 144,000. His girlfriend was sentenced to four years in prison and fined EUR 40,000. The other defendants were sentenced to four and two years in prison and fined EUR 32,000.

The house in Romania was confiscated, as well as several other properties. According to the court, it was clear that the house had been built with criminal earnings.

Several defendants and the public prosecutor's office appealed against this decision.

The main defendant and his girlfriend argued that their right to privacy and family life had been violated. They claimed to be in a polygamous relationship and that they lived in a sort of community with other girls who knew and helped each other in daily life. The court didn't accept this version. According to the case file, there was sufficient evidence to show that he was exploiting and controlling the girls. He had set up an international network of people to channel the money from prostitution activities from Belgium to Romania without anyone noticing, in order to build a luxury villa there. His girlfriend, the second defendant, also knowingly participated in the activities of the criminal organisation.

In its **judgment of 25 April 2019, Antwerp Court of Appeal** confirmed the defendants' guilt¹⁸⁷. The defendants were only acquitted of the exploitation of the main defendant's sister-in-law owing to insufficient evidence.

The main defendant's prison sentence was increased to eight years instead of seven. The fine was reduced to EUR 120,000. The prison sentences of the two other defendants, his girlfriend and his half-brother were confirmed, but half of the sentence was suspended.

The court also confirmed the confiscation of the villa in Romania.

The second case, judged by **Antwerp Criminal Court on 10 March 2020**, concerns young Bulgarian women¹⁸⁸.

In this case, two defendants, who formed a couple, were prosecuted for human trafficking for the purpose of sexual exploitation.

The investigation was opened after a victim, a prostitute working in the red-light district (Schipperkwartier) in Antwerp, filed a complaint against her pimp and the woman who had recruited her.

She stated that two years earlier, the second defendant had persuaded her to leave Bulgaria and come to Belgium to work as a prostitute. Once in Belgium, she first had to pay for her travel costs, then hand over half of her earnings and, in the end, all of her income.

On the basis of WhatsApp and Facebook messages, the investigators deduced that in the beginning, there was some sort of romantic involvement between the victim and the first defendant. The latter used the *loverboy* technique. The discussions then took on a more threatening tone. She had to prostitute herself in Antwerp, Amsterdam and Brussels. The defendants also managed to find her a window. Every two months, the defendant came back to Belgium from Bulgaria to collect the money.

Several witnesses, including several young women working in prostitution, confirmed the victim's statements. Another young woman who allegedly worked for the defendant was mentioned. She was threatened, mistreated and eventually fled to Spain.

According to information from the Bulgarian police, the defendant wasn't really known there. He had no income over there. However, it was established that he had been seen, in the past, in the company of prostitutes during border controls. According to the investigators, this indicated that he had been employing young Bulgarian girls for quite some time. An investigation into his assets in Bulgaria showed that he owned a house, partly registered in the victim's name. In addition, it seemed that each time he was arrested in connection with the case, he ensured that all the assets were put in the name of the second defendant and other members of her family.

The victim and her mother in Bulgaria received death threats. Police forces also observed this in the course of the investigation. She was threatened with an acid attack if she didn't retract her complaint.

The court found that the facts were proven, also with regard to the second defendant. She had also played an active role in the recruitment and exploitation of the victim.

¹⁸⁷ Antwerp, 25 April 2019, ch. C6.

¹⁸⁸ Antwerp Crim. Court, Antwerp division, 10 March 2020, ch. AC10 (appeal).

The court sentenced the first defendant to four years in prison and a fine of EUR 8,000. His girlfriend, the second defendant, was sentenced to 30 months in prison and fined EUR 8,000. Their properties were confiscated.

2.2.5. | Forced and customary marriages

In these two cases of human trafficking, one concerns the forced marriage of a minor and the other a customary marriage.

Oudenaarde Criminal Court and Ghent Court of Appeal accepted the charge of human trafficking in a case of early and forced marriage of a minor.

In this case, a Somali defendant was prosecuted for the rape of a minor aged approximately 14 to 16 years with aggravating circumstances; human trafficking for the purpose of exploitation of prostitution or other forms of sexual exploitation with aggravating circumstances; assault and battery with aggravating circumstances; inhumane treatment with aggravating circumstances; forgery and the use of forgeries; false imprisonment.

He was accused of forcing his wife, a minor, to have sexual relations. The girl's date of birth on her identity documents, as well as the Somali marriage certificate were forged.

The girl filed a civil suit through her guardian.

The case began when the girl called the police in July 2018. They found her on the balcony of the flat where she lived with her partner, the defendant. She stated that she had to marry against her will in 2016, at the age of 15, by phone. She arrived in Belgium from Somalia in 2017. Her mother supposedly arranged for her to be given a passport with a false date of birth. Her husband allegedly forced her to have sex and she wasn't allowed to leave the flat.

An age test revealed that the girl was about 14.5 years old, give or take two years. A visa application for family reunification with her husband had been made in 2016 (on the basis of a religious marriage that supposedly took place in 2011).

She was heard several times, including audiovisually. She had been circumcised in Somalia at the age of

seven (type 3 circumcision, involving narrowing of the vaginal orifice), which made sexual contact with her husband very painful. Apparently, her husband refused to take her to the doctor to have her vaginal orifice enlarged. Since her husband's arrest, she and her family had been threatened. Her husband reportedly arranged for her to come to Belgium via Uganda with the help of a smuggler. The papers were supposedly sorted out in Uganda. She went to school part-time.

The defendant was also heard. He stated that he had married the girl in Somalia in 2011, but that the marriage certificate was only issued in 2016, because he wanted to bring her to Belgium. He paid his mother-in-law EUR 1,500 for the marriage and paid all the travel costs. According to him, his wife was well and truly an adult. He denied forcing her to have sex.

In a **judgment of 30 August 2019, Oudenaarde Criminal Court** considered several charges to be established¹⁸⁹. For the forgeries, the court found that the Somali documents had been drawn up in 2016, i.e. when the defendant was already in Belgium. They were necessary in order to bring the girl to Belgium, who was presented as being his adult fiancée. It was established that the date of birth and the name on the Somali identity certificate, the Somali birth certificate, the date of marriage and the name on the marriage certificate, as well as the name on the Belgian residence permit were forged.

Rape was also established: the marriage didn't take place in 2011 but in 2016, when the defendant was already in Belgium. The first sexual relations took place in 2017, after the girl's arrival in Belgium. The girl didn't consent to this. She had never seen her partner before. The court based its decision on repeated statements by the victim, by neighbours who regularly heard shouting and the statements of the defendant who considered that sexual relations were a conjugal duty.

As regards human trafficking, the defendant actively contributed to the girl's arrival in Belgium, presumably for a (forced) marriage, by paying the related costs. He took her in and sexually exploited her himself. The court reiterated that in this respect, the law doesn't require any particular form of exploitation. Given the fact she was a minor, isolated and dependent, she was therefore in a precarious social situation.

¹⁸⁹ East Flanders Crim. Court, Oudenaarde division, 30 August 2019, ch. vac.

It also accepted the charge of inhuman treatment, but acquitted the defendant of the charges of intentional assault and battery and false imprisonment.

The court sentenced the defendant to eight years in prison and he was stripped of his rights. It also ordered him to pay the plaintiff EUR 5,000 in non-pecuniary damages.

In a **judgment of 28 February 2020, Ghent Court of Appeal**¹⁹⁰ confirmed the convictions and acquittals handed down at first instance. However, it rectified the judgment on one point: the first judges had no jurisdiction and therefore wrongly convicted the defendant of the charge of rape of a minor over 16 years old (as the victim was considered to be under 16 years old), for which the pre-trial chamber had decided that there were no grounds for prosecution.

The court increased the sentence to 12 years in prison.

In another case, **Antwerp Criminal Court** ruled in absentia in a **judgment of 12 November 2019**¹⁹¹ on a case in which a defendant was prosecuted for acts of human trafficking for the purpose of the sexual exploitation of a victim. The case only came to light in 2017, but the acts date back to 2015-2016. The victim, a divorcee and mother of a daughter, had been pressured by her parents to enter into an unofficial marriage according to Albanian custom. Her partner, the defendant, had been recommended to her by friends as a rich man living in Germany. Once the marriage had been contracted, he took her to Italy. Once there, he forced her into street prostitution. He had threatened to go after her younger sister if she didn't cooperate. She charged EUR 20 to 30 per client and had to give all her earnings to the defendant. He monitored her with a friend. If she didn't earn enough, she was beaten. The defendant took drugs, was unpredictable and could suddenly become very aggressive. The couple then went to Germany. There, the victim had to work in a large brothel. She had to rent a room for EUR 140 where she had to spend the night. She earned EUR 20 to 30 per 20 minutes. She had to hand over all the money. During this period, she became pregnant. The couple went to Belgium because it was cheaper to have an abortion there. The victim had to go back to work a week after the abortion, despite the pain, this time in a club in Belgium. She lived in a flat with another woman who worked for the defendant. After

having been forced to work even though she was constantly bleeding, she managed to flee to her parents' home in Albania. Her parents didn't dare tell anyone she had been forced to work in prostitution. When the defendant discovered she was in Albania, the victim fled to a friend in the Netherlands, then to Sweden where she applied for asylum. Her application was rejected and she ended up coming back to Belgium via Denmark.

The court found the defendant guilty. The case contained sufficient objective evidence to corroborate the credible statements made by the victim. The defendant was sentenced in absentia to four years in prison and fined EUR 6,000. An amount of EUR 13,300 was confiscated. This amount corresponds to the remuneration of a sex worker over a certain period of time, at a rate of approximately EUR 140 per day, six days a week.

2.3. | Labour exploitation

2.3.1. | Construction

The courts of appeal of Brussels, Liège and Ghent retried certain human trafficking cases in this sector, discussed in previous reports.

In a **judgment of November 2016**¹⁹², the **French-speaking Criminal Court of Brussels** accepted the charge of human trafficking and various social criminal law charges concerning a French defendant of Malian origin, who exploited Tunisian workers in his building renovation company. These workers were employed at various building sites for very low wages (EUR 800 for four months of work), and housed in unfit conditions.

The defendant contested all of the charges against him on appeal. In its **judgment of 6 May 2019**¹⁹³, **Brussels Court of Appeal** considered there was little truth to the defendant's denials. Like the first prosecutor, it confirmed the similarities between the workers' statements concerning the defendant's description, their recruitment and, for three of them, their unfit accommodation in a building owned by the defendant.

192 Brussels French-speaking Crim. Court, 24 November 2016, 59th ch. See *Myria, 2017 Annual Report Trafficking and Smuggling of Human Beings, Online*, pp. 114 and www.myria.be (case law).

193 Brussels, 6 May 2019, 11th ch.

190 Ghent, 28 February 2020, 10th ch.

191 Antwerp Crim. Court, Antwerp division, 12 November 2019, Ch. AC10 (in absentia).

The court confirmed the convictions handed down at first instance. It thus considered that the similar and detailed statements made by the workers, corroborated by various pieces of material evidence in the case file, made it possible to conclude with certainty that the defendant took advantage of the precarious residence status of three of these workers to hire them in conditions contrary to human dignity.

The court confirmed the sentences pronounced at first instance, although the prison sentence was only partly and not fully suspended. It confirmed the civil sentences overall.

Another case, tried in Liège, concerned two Belgian defendants of Romanian origin, a brother and sister, prosecuted for human trafficking for the purpose of labour exploitation and for various criminal social law offences. They were accused of making two Romanian workers (a couple) work in conditions contrary to human dignity, for which they filed a civil suit (abnormally low pay, insanitary housing, abnormally long working hours, dependence of the workers on external aid for food, lack of medical care in the event of an accident at work). They had to carry out renovation work, mainly in a building in Huy, owned by the defendant.

In a **decision of 2 October 2017, Liège Criminal Court**¹⁹⁴ acquitted the male defendant of all charges against him. However, the female defendant was convicted for all the charges against her.

The case began following a phone call from neighbours complaining about the work being carried out by a Romanian couple who lived in appalling conditions in a building in Huy. The local police went to the premises and met the female worker. Both Romanian workers were heard and described their working conditions.

In a **judgment of 23 January 2020, Liège Court of Appeal** confirmed the conviction of the female defendant for all the charges brought against her, in particular, human trafficking¹⁹⁵. In a detailed statement of reasons, it considered that the essential elements of the offence were established, especially with respect to the following elements: renovation work for derisory wages (approximately EUR 111 per month, seven days a week, with hours sometimes exceeding 12 hours a day, extremely precarious housing conditions

on site, dependence on the female defendant for food).

The court also accepted the aggravating circumstances of abuse of a vulnerable situation, coercion (the defendant kept the identity papers of the victims, who were also dependent on them for means of subsistence such as food) and habitual activity.

The court of appeal confirmed the acquittal of the other defendant for the charge of human trafficking. Like the criminal court, it considered that there were shortcomings in the criminal case file concerning the defendant as regards the situation of the civil parties. On the other hand, it accepted the social criminal law charges for one of the civil parties: the male defendant had gone to Romania to pick up the worker in order to carry out work, which did indeed take place at the defendant's home.

The court confirmed the 12-month suspended sentence for the female defendant, but added a EUR 3,000 suspended fine. It also confirmed the confiscation of the building and the confiscation of assets of the equivalent value of almost EUR 24,000, awarded to the civil parties.

The male defendant was sentenced to a suspended fine of EUR 6,000 and the confiscation of assets of the equivalent value of EUR 6,030.32.

The court confirmed the non-pecuniary damages of EUR 1,250 awarded to the civil parties. It also sentenced the female defendant to pay each one of them the final sum of EUR 15,000 euros for the economic damage.

In a **judgment of 24 April 2019**¹⁹⁶, **Ghent Court of Appeal** examined a case of labour exploitation in which **Bruges Criminal Court** had rendered a judgment on **21 March 2018**¹⁹⁷. In this case, a defendant of Belgian nationality was prosecuted for trafficking for the purpose of the exploitation of labour of a Ghanaian victim and for a social criminal law offence regarding three victims.

The police had been called by a man who was deeply distressed and asking for help. He spoke very bad English and said that someone wanted to kill him. The investigators rapidly traced the case back to the defendant's real estate agency. The victim confirmed

194 Liège Crim. Court, Liège division, 2 October 2017, 18th ch. (available at www.myria.be); see Myria, *2018 Annual Report Trafficking and smuggling in human beings, Minors in major danger*, pp. 137-138.

195 Liège, 23 January 2020, 6th ch.

196 Ghent, 24 April 2019, 3th ch.

197 East Flanders Crim. Court, Bruges division, 21 March 2018, 17th ch. See Myria, *2018 Annual Report Trafficking and smuggling of human beings*, p. 138-139 and www.myria.be (case law).

that he worked in the construction industry for the defendant. He received board and lodging in exchanged for his services (cleaning, painting, etc.). He had been made to hand over his papers to the defendant and had no residence permit. This defendant was linked to a real estate company, which had been under investigation for quite a while. Owing to suspicions of human trafficking, the public prosecutor's office had been informed and the victim was transferred to PAG-ASA.

The investigation was based on the reading of the victim's mobile phone, the hearings of several witnesses and house searches.

The court found the defendant guilty and sentenced him to 30 months in prison and a fine of EUR 6,000. The victim was awarded EUR 7,500 in non-pecuniary damages. The defendant appealed against this decision.

The court of appeal decided that the point of the judgment concerning the charge of human trafficking should be rejected because neither the public prosecutor nor the judge had correctionalised the offence. Consequently, the court had to re-try these charges.

The court found that the victim had to work in circumstances contrary to human dignity. Due to the precarious nature of his residence and social situation, he had no choice but to comply with the situation imposed by the defendant. He received no pay for his work, only board and lodging. The victim's papers were also confiscated by the defendant for a period of time. The defendant promised help, support and papers in exchange for work.

The court found the defendant guilty of both charges. He was sentenced to one year in prison and a fine of EUR 6,000, both partly suspended. The victim was awarded EUR 2,500 in non-pecuniary damages.

Lastly, in a **judgment of 7 March 2019¹⁹⁸, Brussels Dutch-speaking Criminal Court** ruled on a case in which two Iranian defendants appeared for human trafficking for the purpose of exploitation of labour in the construction sector, among other things. They were also prosecuted for the illegal employment of foreign workers, failing to make a Dimona declaration, and non-payment of wages.

Several persons were recruited for building sites in various municipalities of Brussels.

The acts go back to the period 2012 to 2015. The victims, of Iranian nationality, had to work and live on a building site for several weeks. They were paid very low wages, sometimes only EUR 500 a month for long days of 10 to 14 hours, six days a week. One victim reported that he wasn't paid when he was ill. The defendants still owed him his wages. Another victim reported having worked on three building sites. He worked long days of more than 10 hours for a miserable wage. He slept at the building sites on the ground, on a blanket, in inhuman conditions, with no sanitary facilities. When the victims knocked on the door of one of the defendants to receive their wages, they were sent to the other one and vice versa.

The second defendant was the founder, while the first defendant was a partner in a construction company. The first defendant worked as a foreman on the various building sites. The second defendant claimed that the first defendant was employing illegally staying workers without his knowledge. The first defendant stated that the second defendant knew about it and paid the wages. The victims knew the defendants from the Iranian community. They weren't residing legally in Belgium and were therefore in a vulnerable position. They were promised work and wages again and again, making them dependent on the defendants.

The court found that the facts were established. The victims' statements were consistent. Moreover, the company had no other employees, so the work on the building sites had to be carried out by the victims. In addition, an inspection in 2015 revealed another illegally employed foreign worker.

Owing to the proven acts of human trafficking with aggravating circumstances, the other charges were also accepted.

However, the court found that the reasonable time limit had been exceeded. In the course of the investigation, there was a period of three years during which no investigative action was taken without justification. An effective prison sentence was therefore considered disproportionate.

The defendants were given a one-year suspended prison sentence and a fine of EUR 60,000.

One victim was assisted by PAG-ASA and filed a civil suit. He obtained EUR 8,681.73 in pecuniary damages and EUR 1,000 in non-pecuniary damages.

¹⁹⁸ Brussels Dutch-speaking criminal court, 7 march 2019, 25th ch. (appeal).

2.3.2. | Hotel and catering industry

Two cases in the hotel and catering industry sector, discussed in previous reports, were reviewed on appeal in Liège and Ghent respectively.

In the case reviewed in Liège, a Belgian defendant of Indian origin was prosecuted for human trafficking for the purpose of labour exploitation regarding three Indian nationals whom he allegedly exploited in his restaurant. These workers filed a civil suit. One of them, the son of one of the workers, was a minor (16 years old) at the time of part of the acts. The defendant was also prosecuted for human smuggling and various social criminal law offences (notably, non-payment of wages, failure to declare the work to the NSSO, no accident insurance). He was also prosecuted, alongside another defendant, for aiding illegal residence (he housed eight Indian nationals).

The restaurant was subject to three successive inspections by the social inspectorate (one in 2012 and the other two in 2015). During the first inspection, two people fled, clearly as instructed by the defendant. They were two of the three workers who filed a civil suit, and who were also present in the kitchen during the subsequent checks. They were the uncles of the main defendant. The third worker (a minor at the time of the first inspection) served the customers. The families of two of the workers (including the minor) lived in the basement of the restaurant.

At first instance, in a **judgment of 22 November 2017, Namur Criminal Court** considered all the charges established¹⁹⁹.

The main defendant and the public prosecutor lodged an appeal.

In a **judgment of 13 February 2020, Liège Court of Appeal** confirmed the judgment at first instance overall²⁰⁰. The court found that the essential elements of human trafficking were all present, and that the defendant had indeed recruited, harboured and received his uncles and their families to exploit them in his restaurant. The exploitation was confirmed by the detailed and consistent statements of the civil parties and their relatives, as well as by the investigators' findings. Violation of human dignity was established on the grounds of the wages (EUR 500 per worker per month),

the working hours which could be up to 67 hours a week, the undeclared work done by illegally staying persons without a work permit, extremely difficult living conditions (totally unsuitable accommodation for a family in the restaurant's basement), complete dependence on the defendant (the victims passports were hidden in a chimney flue).

The court considered it irrelevant that the defendant had also slept in the basement, that he had taken steps concerning schooling and lawyers (unsuccessfully), and reminded him that Belgian standards prevailed over Indian ones.

Even if the civil parties' statements changed over time, the court explained this by the evolving context of their lives: their flight during the first inspection; the need to maintain contact on site with the defendant who was exploiting them, as they were dependent on him owing to their illegal residence situation during the second inspection; the fact they were sheltered by a specialised reception centre after the third inspection, where they were explained their rights, of which they were unaware until then.

The court accepted the aggravating circumstances of authority and abuse of a vulnerable situation, and added the fact that one of the victims was a minor, in light of which the defendant had to defend himself.

The court considered that the charge of human smuggling also remained established: the defendant had allowed the civil parties and their family, who were non-EU nationals, to stay in Belgium. The defendant obtained a financial advantage by employing them for a salary well below the minimum wage while evading the various social contributions.

The court confirmed the civil convictions and the sentences pronounced at first instance (but granted a full reprieve for the entirety of the fine).

In Ghent, in a **judgment of 11 September 2019**²⁰¹, Ghent Court of Appeal considered the decision of **Kortrijk Criminal Court of 25 June 2018**²⁰² in a case of human trafficking and smuggling in a Chinese restaurant. The two defendants were also prosecuted for forgery and various offences under the Social Criminal Code.

201 Ghent, 11 September 2019, 3th ch.

202 East Flanders Crim. Court, Kortrijk division, 25 June 2018, 11th ch. See Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 129-130.

199 Namur Crim. Court, Namur division, 22 November 2017, 12th ch. See Myria, *2018 Annual Report Trafficking and smuggling in human beings, Minors in major danger*, pp. 142-143 and www.myria.be (case law).

200 Liège, 13 February 2020, 6th ch.

The criminal court had found the defendants guilty of human trafficking and that there was clear evidence of labour exploitation. The victims made credible, detailed and consistent statements. The Chinese victims were seriously underpaid, they were completely at the mercy of the defendants' whims, working almost seven days a week, for long hours. They slept in undesirable conditions and were totally dependent on the defendants owing to their precarious situation and the fact that they were obliged to give them their residence papers.

According to the first judge, they were guilty of the charge of human smuggling, even if the defendants weren't personally responsible for the victims' journey from China. Facilitating illegal residence in Belgium by providing accommodation and work is also punishable.

However, the criminal court found that the reasonable time limit had been exceeded and took this into account in the conviction. The defendants were sentenced to 12 months in prison and a fine of EUR 6,000, both suspended.

One victim had filed a civil suit and obtained EUR 5,000 in non-pecuniary damages and EUR 5,900 in pecuniary damages.

Both defendants appealed.

The defendants only contested the charges for one victim, who had filed a civil suit. According to the defendants, the victim's statements weren't credible and they had never been to the restaurant. According to the defendants, the only goal of the victim's statements was to regularise their stay in Belgium. The court accepted this. Although the victim's statements were detailed, no objective evidence could be found in the case file. They weren't there when the inspection services visited and none of the other workers recognised them in the photographs. The defendants were acquitted of the charges relating to this victim. The court found them guilty of all the other charges.

However, the court of appeal found that the reasonable time limit had been exceeded and that it could therefore only hand down a sentence that was below the statutory minimum. For both defendants, the court reduced the sentence by dropping the main prison sentence. They were given partly suspended fines of EUR 3,000 and EUR 4,500 respectively. The compensation

of the victim who had filed a civil suit was declared unfounded, since the defendants were acquitted of the related charges.

2.3.3. | Retail trade

A case concerning a shop was reviewed by Mons Court of Appeal.

In this case, a Belgian defendant of Pakistani origin was prosecuted for human trafficking with aggravating circumstances and various social criminal law charges. Charges of psychological harassment in the workplace and false imprisonment of a worker, illegally employed in his shop, were also brought against him. Two other defendants (the brother and the nephew of the main defendant) were prosecuted for the assault and battery of the same worker and another one. The first defendant's company was cited as civilly liable.

In a **judgment of 4 December 2017, Charleroi Criminal Court**, at first instance, had acquitted the main defendant of the charge of human trafficking, as well as for the acts of psychological harassment in the workplace and false imprisonment²⁰³. It only accepted the social criminal law charges.

The criminal court also acquitted the two other defendants of the charge of assault and battery.

The public prosecutor's office appealed against the judgment, and against the acquittal of the defendant for the acts of human trafficking, psychological harassment in the workplace and false imprisonment.

Contrary to the criminal court, **Mons Court of Appeal**, found the acts of human trafficking to be established in a **judgment of 11 March 2020**²⁰⁴.

In a detailed statement of reasons, in which it listed the essential elements of the offence, the court found that they were present on the basis of several elements:

- the detailed statements of the worker who explains that he was taken care of by the defendant when he arrived at Charleroi station, that he was housed at the back of the shop, that he worked for him every day and for many hours a day (from 5 a.m. to late in the

²⁰³ Hainaut Crim. Court, Charleroi division, 4 December 2017, 8th ch. (unpublished).

²⁰⁴ Mons, 11 March 2020, 4th ch.

evening), that he was unable to leave the shop except for work, in particular to go to work in the defendant's other shop, that he was locked in his room every night by the defendant, that he wasn't given a work contract, that he wasn't paid except for a small amount of cash from time to time, and that he was beaten up if he complained;

- witness statements (especially concerning the fact that the worker slept in a room locked with a padlock);
- the findings of the police (especially the configuration of the workplaces and the victim's accommodation) and the inspectors from the Social Legislation Inspectorate;
- the shop's video surveillance images that proved the worker worked many hours, and the fact that the defendant took him back to his accommodation and followed him to lock the gate;
- the statements of the defendant and members of his family, as well as the implausible, changing and contradictory nature of the defendant's statements.

Consequently, the court considered that the worker had indeed been recruited, harboured and controlled by the defendant for the purpose of being put to work in conditions contrary to human dignity — to be assessed according to Belgian standards and not Pakistani ones (long working hours, various Social Criminal Code offences, the victim's living and housing conditions) —. The court of appeal also noted, contrary to what had been accepted by the criminal court, that the fact the victim was allowed a certain freedom of movement during the day and had a phone, didn't alter the fact that the offence had been committed.

The court also accepted the aggravating circumstances of abuse of a vulnerable situation, coercion (by being obliged to live at the workplace without being able to leave it), and authority over the victim.

The court also reviewed the judgment concerning the charges of psychological harassment at work and false imprisonment, which it declared established.

The court sentenced the defendant to a two-year suspended prison sentence and a fine of EUR 6,000. It also prohibited him from exercising certain civil and political rights.

2.3.4. | Car wash

Two car wash cases led to convictions for human trafficking, one in Brussels and the other in Namur.

In a **judgment of 18 December 2019**²⁰⁵, **Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking for the purpose of labour exploitation in a car wash. The acts date back to the period 2010 to 2018. It involved two separate cases that were merged. In the first case, five defendants of Belgian, Indian and Pakistani nationality appeared in court. They were all directors of the original company. In the second case, the first two defendants as well as a company were prosecuted as the civilly liable party. The defendants were prosecuted for acts of human trafficking with aggravating circumstances, slumlord activities, illegal employment of foreign workers, failure to file a Dimona declaration, failure to declare amounts owed to the NSSO, non-payment of statutory wages, etc.

The car wash was inspected on a number of occasions over a long period of time. At the end of 2017, during an inspection of the car wash, the inspection services found a living space with a mattress, an electric plate and personal belongings in a room off the shed. This space was clearly inhabited. The person of Pakistani nationality who was living there stated that they worked in the car wash six days a week, from 8 a.m. to 7 p.m. for a daily wage of EUR 40. He had been promised residence status through a job. After that, several more checks were carried out, and each time, people were found to be working illegally. At one point, the defendant's company was dissolved. A new company was set up and work continued.

The court ruled that some of the acts committed before 2011 were time-barred. There were two major periods of investigation, one up to 2011 and the other starting in 2017. As a result, the last three defendants, who could only be linked to the oldest acts, could no longer be prosecuted. On the other hand, it was possible to prosecute the first two defendants and their new company for a certain number of older offences owing to the unity of intent.

The court found the first two defendants guilty of human trafficking and certain

²⁰⁵ Brussels Dutch-speaking Crim. Court, 18 December 2019, 25th ch. (appeal).

social law offences. They were acquitted of other charges, including some also concerning social law, owing to insufficient evidence. The court took into account the fact that the situation had persisted despite the various interventions and checks carried out by the inspection services and the police. The defendants systematically used new companies to continue the car washing business regardless of the most fundamental social law obligations. According to the court, the risk of recidivism was high. In the first case, the defendants were sentenced to an 18-month suspended prison sentence and a fine of EUR 16,000. In the second case, they were sentenced to a fine of EUR 4,800. The court also ordered the complete closure of the car wash for a period of three years. The company was declared civilly liable for the payment of the fines and legal costs of the defendants in the second case.

The other case was tried by **Namur Criminal Court on 22 January 2020**²⁰⁶.

In this case, four defendants of Indian and Belgian nationality (the first two of whom were husband and wife and the fourth a company) were prosecuted for the human trafficking of a Romanian worker and for various social criminal law offences. The first two defendants were repeat offenders. The worker who was the victim filed a civil suit.

The acts were related to or followed on from those on which the same court had already ruled in the past. The company ran a car wash in Andenne under the authority of the second defendant, who was a general partner. In reality, it was the first defendant who was the de facto manager, despite his capacity as a limited partner, which, in principle, didn't authorise him to carry out managerial acts.

The civil party worked for the company in the Andenne car wash, which was inspected by the social inspectorate. On the day of the inspection, the civil party was working and spontaneously declared that they were living in a room above the office.

The court accepted the human trafficking and social criminal law charges for the three defendants. The civil party was working under a self-employed contract, which, in the court's opinion, was contrary to the evidence in the case file. It considered that there was indeed a verbal employment contract. The worker worked more than 10 hours a day.

The court estimated his gross salary to be EUR 1.86 per hour worked, i.e. 13 % of what he should have received (EUR 14.1470 per hour).

The court considered the charge of human trafficking established on the basis of the following elements: the indecent wages, the worker's accommodation in a clearly uninhabitable room and his complete dependence on the defendants.

The court also accepted the social criminal law charges for the civil party and another worker.

The court acquitted the company of the charges against it, as it considered that the first two defendants had committed the most serious misconduct.

The first two defendants were sentenced to 12 and four months in prison, and the third defendant a six-month fully suspended sentence and a fine of EUR 8,000.

The three defendants were ordered to pay the civil party EUR 48,504.65 *ex aequo et bono* in pecuniary and non-pecuniary damages.

2.3.5. | Poultry farming

In a **judgment of 13 November 2019**²⁰⁷, **Antwerp Court of Appeal** ruled on a case of human trafficking at a poultry farm. This case, tried at first instance by **Turnhout Criminal Court on 20 December 2017**, was discussed in a previous annual report²⁰⁸. One of the seven defendants lodged an appeal. Myria intervened again as a civil party.

In this case, seven defendants, namely one Belgian, four Bulgarians and two companies, had been convicted of human trafficking for labour exploitation, various social and tax offences and renting rooms that didn't comply with requirements. The acts took place between 2004 and 2012 at a poultry farm that employed some 40 Bulgarians. The managers had set up various constructions: the workers were employed as bogus self-employed workers or through a fake posting. When sentencing, the court took into account the fact that the workers

²⁰⁷ Antwerp, 13 November 2019, ch. C6.

²⁰⁸ Antwerp Crim. Court, Turnhout division, 20 December 2017, ch. TC1.

See Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 146-147 and www.myria.be (case law).

²⁰⁶ Namur Crim. Court, Namur division, 22 January 2020, 12th ch.(appeal).

didn't see themselves as victims because of their precarious living conditions in their own country and their cultural affinities with it. In addition, the court stated that the reasonable time limit had been exceeded to a limited extent.

The defendants were handed a main prison sentence ranging from 18 months to five years (partly) suspended and fines of up to EUR 110,000.

The court of appeal considered that regarding the defendant, the criminal case file didn't prove the existence of human trafficking. The various workers didn't consider themselves as victims of human trafficking. Furthermore, the court considered that "the fact that no social security contributions were paid for the workers, that they were paid less than the minimum wage in Belgium and that several social law offences were identified, isn't sufficient in itself to conclude that they are victims of human trafficking". The court therefore acquitted the defendant.

2.3.6. | Bakery

Brussels French-speaking Criminal Court tried a case of trafficking in the bakery sector on **3 February 2020**²⁰⁹.

In this case, four Belgian defendants, including a company, were prosecuted for human trafficking with aggravating circumstances of a Moroccan worker, who filed a civil suit. They were accused of making him work in their bakery in conditions contrary to human dignity: pay ranging from EUR 100 to EUR 250/month, accommodation at the workplace in conditions contrary to human dignity (cramped room with damp walls, folding bed, toilet with a sink with cold water only), at least 12.5 hours of work a day, seven days a week.

The main defendant and the company were also prosecuted for various social criminal law offences.

The main defendant was the manager of the company, a bakery, and the other two defendants were partners.

Several checks, two of them at night, were carried out at two of the company's sites.

During the first check, a worker tried to escape through the back, but the police managed to find him hiding behind a container. He gave a false identity and had no identity papers on him. It later became apparent that it was the worker who was the victim. During another check this same worker was discovered working on site with a torn t-shirt serving as work clothing. He also lived on site, on a mattress on the floor in a room with traces of damp. When he was heard by the social inspectorate, he stated that he had arrived in Belgium in 2002 and had asked to be regularised without success; he was employed in both of the defendants' workshops and always slept in the place where he prepared the bread; he worked more than 12 hours a day, never received any leave and was sometimes paid EUR 100, 200 or 250 a month. He received an SMS every evening from one of the defendants telling him how much bread to prepare. He reported respiratory problems and allergies related to his work conditions. A neighbourhood and phone investigation confirmed the worker's statements.

The court found that the defendants should indeed be considered as employers as defined by social criminal law. In a detailed statement of reasons, it convicted all the defendants of human trafficking. It identified a number of elements that established the work conditions were contrary to human dignity: arduous work at night; lack of safety and hygiene equipment at work; working hours and work pace (seven days a week, at night); non-payment of wages making the worker dependent and forcing him to accept inappropriate housing conditions; poor housing conditions at the workplace; no possibility of having a social or family life; lack of social protection.

The court also accepted the aggravating circumstances of authority over the victim and abuse of a vulnerable situation. On the other hand, fraudulent tactics, threats and coercion weren't supported by objective elements in the case file.

The court also accepted the charges concerning social criminal law against the main defendant and his company.

It handed the main defendant a 15-month fully suspended prison sentence and a EUR 6,000 fine; the two other defendants were handed a one-year suspended prison sentence and a EUR 3,000 fine respectively and suspended sentencing. The company was sentenced to a partly suspended fine of EUR 36,000.

²⁰⁹ Brussels French-speaking criminal court, 3 February 2020, 69th ch. (final).

The four defendants were sentenced to pay the civil party EUR 4,000 in non-pecuniary damages. The court has yet to rule on the remainder of the claim, since the civil party has to specify the net pecuniary damages they are claiming.

2.3.7. | Secondhand clothes sorting

Brussels French-speaking Criminal Court tried a case of trafficking in the secondhand clothes sorting sector on **9 March 2020**²¹⁰.

In this case, a Belgian defendant, of Syrian origin, and his company (bankrupt and insolvent) were prosecuted for the human trafficking of two Algerian workers who filed a civil suit. He was accused of having recruited them to put them to work in conditions contrary to human dignity (very low and irregularly paid wages, long working hours, no safety protection when doing dangerous work, employer's threatening attitude, very difficult work conditions (fast pace, a lot of dust causing breathing problems, little or no heating, substandard housing conditions)). They were also prosecuted for various charges concerning social criminal law: non-payment of the two workers' wages; illegal employment of foreign workers with no residence permit, no DIMONA declaration and failure to declare the work to the NSSO regarding the two Algerian workers and several other African workers.

Through his company, the defendant was involved in sorting secondhand clothes that were then exported to Africa. The acts were revealed when one of the two Algerian workers was heard by the social inspectorate after having been in contact with a specialised reception centre. There, he explained his journey from Algeria and his work conditions at the defendants' company (seven days a week, an average of one day off a month, a trial period, irregular pay, death threats). The other Algerian worker was also heard by the social inspectorate following contact with the same specialised reception centre. The social inspectorate then went to the workshop where the company's activities took place. Apart from the fact that the workshop was locked, it found several workers without residence or work permits, no ventilation, a smell of mould and damp and an enormous amount of dust, due to the handling of the clothes. The defendant was also heard.

He explained how his business worked: large quantities of secondhand clothes were purchased, which were then sorted in the warehouse. The best pieces were sold in his shop or other secondhand clothes shops, and the rest was exported to Africa.

The court found that the criminal proceedings for the defendant's company, which had been declared bankrupt, had lapsed. The defendant put forward several procedural arguments: the fact that he had been heard without a lawyer (although he had the opportunity to consult one), the violation of the right to a fair trial and exceeding the reasonable time limit. The court rejected these arguments. As regards the violation of the right to a fair trial, it particularly emphasised that there was nothing suspicious about the fact that the workers were assisted in their procedures by a specialised reception centre, since the legal function of this non-profit organisation is precisely the reception and support of victims of trafficking, established by royal decree royal.

The court acquitted the defendant of the charge of human trafficking, considering that the investigation conducted did not sufficiently objectify the plaintiffs' statements. The social inspectors weren't able to see their working and/or housing conditions for themselves; no witnesses were heard; it wasn't checked whether it was possible to open certain rooms with the keys in one of the plaintiff's possession; it was impossible to deduce from the difficult working conditions during the inspection whether the plaintiffs had previously worked in these conditions.

Since the court considered that the employment of the two Algerian workers who filed a civil suit was insufficiently proven, it also acquitted the defendant of the social criminal law charges against them. However, it accepted these charges for the workers found at work during the social inspectorate's check.

The defendant was handed a partly suspended fine of EUR 67,200 and a three-year ban on this type of professional activity.

The court declared that it wasn't within its jurisdiction to hear the civil parties' claims, since the defendant was acquitted of the charges against them.

²¹⁰ Brussels French-speaking Crim. Court, 9 March 2020, 69th ch. (appeal).

2.3.8. | Domestic work

Brussels Court of Appeal reviewed a case of trafficking in the domestic work sector, discussed in a previous report²¹¹.

The Congolese defendant was prosecuted for human trafficking for the purpose of labour exploitation and various social criminal law offences against a young Congolese girl who was a minor at the time of the acts (12 years old at the beginning of the acts). The girl was living with the defendant who allegedly exploited her. The defendant was also prosecuted for acts of violence at work, illegal child labour and intentional assault and battery.

In a **decision of 24 November 2017**, **Brussels Criminal Court** acquitted her at first instance of the charges of human trafficking and violence at work²¹². It only accepted the charges concerning social criminal law, illegal child labour, as well as intentional assault and battery.

The public prosecutor's office and the civil party appealed but the defendant failed to appear. Since she didn't appeal, and the public prosecutor limited its appeal to the acquittals pronounced at first instance, **Brussels Court of Appeal**, in a **ruling of 2 December 2019**, declared the charges concerning social criminal law, illegal child labour and intentional assault and battery definitively established²¹³.

Contrary to the criminal court, it also declared established the charges of human trafficking, with all the related aggravating circumstances, and violence in the workplace.

For the trafficking offence, it considered that the material and moral elements of the offence were established. Contrary to the criminal court, the court of appeal considered that there was no doubt that during her long stay with the defendant, the young girl, a minor, was forced to perform arduous household chores and to take care of her children, in conditions contrary to human dignity. On this point, the court noted: she had to be available at all times; her working hours prevented her from regularly attending school; there was repeated use of violence, insults and threats; the conditions of her accommodation were inhuman and her passport was confiscated.

The court increased the sentence pronounced at first instance: two years in prison, without suspension. It also reviewed the civil judgment: it ordered the defendant to pay the victim EUR 100,577.60 in pecuniary damages (corresponding to the loss of remuneration and two years of schooling) and EUR 5,000 in non-pecuniary damages.

In another case, tried by **Walloon Brabant Criminal Court on 2 April 2019**²¹⁴, two defendants, a Belgian-Chinese couple, were prosecuted for human trafficking and various other charges concerning social criminal law with respect to an illegally staying Chinese worker who was taking care of their children. They were also accused of not having declared a work accident suffered by the worker. One of the defendants and their company were also prosecuted for forgery and social criminal law charges concerning other workers active in the restaurant they ran.

The court accepted the social criminal law charges. The investigation revealed that the worker had been in the couple's service for almost four years, her duties consisting mainly of looking after their two children. She was never declared. In January 2017, she was knocked down by a car on her way to the children's school to pick them up, causing various injuries and requiring hospitalisation for several days. The defendants had no work accident insurance and didn't report the worker's work accident. The defendants terminated the work relationship on the day of the accident and went to look for a new nanny.

The court also accepted the charge of non-payment of wages. This amounted to EUR 1,200 per month, part of which was deducted by the defendants as a guarantee to protect them from a possible unexpected departure. The worker's net salary was therefore reduced to EUR 700 or 600 per month. However, part of these deductions from her salary was returned to her by the defendants. The average sum of EUR 1,100 per month was, however, lower than the applicable rates.

On the other hand, the court gave the defendants the benefit of the doubt concerning the charge of human trafficking, and acquitted them. There were indications of labour exploitation: the wages paid to the worker were insufficient in relation to the number of hours worked, even with the addition of benefits in kind; although she received

211 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 152-154.

212 Brussels French-speaking Crim. Court, 24 November 2017, 59th ch. (available at: www.myria.be).

213 Brussels French-speaking Court of Appeal, 2 December 2019, 11th ch. (in absentia).

214 Walloon Brabant Crim. Court, 2 April 2019, 6th ch. (final).

board and lodging, she had no social security cover. However, the court considered that they weren't sufficient to conclude that she had been made to work in conditions contrary to human dignity. It noted, among other things, that the nature of the work wasn't demeaning, she shared meals and bathroom facilities with the family, she had kept her passport and was allowed out, and she had been able to save money, etc.

In addition, the court accepted the social criminal law and forgery charges concerning the employment of workers in the restaurant of one of the defendants and their company.

The court handed the defendants fines of EUR 12,000 and EUR 4,800 respectively, partly suspended. The company was also given a suspended fine of EUR 24,000.

The court sentenced the two defendants to pay the worker EUR 17,140.72 for the non-payment of their salary.

2.3.9. | Football

Two decisions in the domain of football were pronounced by the courts in Brussels, one of them by the court of appeal.

The first case was the subject of a ruling by **Brussels Court of Appeal on 8 May 2019**²¹⁵.

In this case, several Belgian defendants were prosecuted for various offences, two of them (one the chairman of a Brussels football club) for smuggling and trafficking in human beings. Together with the other defendants, they were also prosecuted for various offences concerning forgery and use of forgeries. Another defendant, a municipal civil servant, was also prosecuted for aiding illegal residence and for fraudulently issuing certificates of immatriculation in the aliens' register (CIAR).

The two main defendants were accused of abusing the situation of young illegally staying African footballers. They also allegedly forged certificates of immatriculation in the aliens' register in order to enrol them in the Royal Belgian Football Association (URBSFA).

At first instance, **Brussels French-speaking Criminal Court** accepted the charges against them of smuggling and trafficking in human beings, as well as the forgery charges, in a **decision of 7 April 2014**²¹⁶. As regards human trafficking, the court found that the defendants had employed these footballers in conditions contrary to human dignity: they went so far as to completely abandoned them, socially and financially, at the hospital when they were injured. The footballers thought that all their care was covered. In addition, they were very arrogant towards them.

The municipal civil servant was also convicted of the majority of charges against him.

As the reasonable time limit had expired, a simple guilty verdict was pronounced against certain defendants and a suspended sentence against others.

The municipal civil servant and the public prosecutor appealed against the criminal and civil provisions of the judgment against this defendant.

Two footballers, who filed a civil suit, also appealed against the civil provisions of the judgment. The criminal court had awarded each of them EUR 500 in non-pecuniary damages. However, it had rejected the claim for compensatory damages, on the grounds that the receipt of wages for undeclared work is an unlawful benefit, the loss of which can't give rise to compensation.

The footballers, who filed a civil suit, didn't appear at the court of appeal.

The court found that the criminal proceedings against the municipal official were time-barred. For the civil provisions, the court upheld the judgment of first instance.

In the other case, tried by **Brussels French-speaking Criminal Court on 4 November 2019**²¹⁷, two Belgians, the former chairman and former vice-chairman of a football club, were prosecuted for human trafficking with aggravating circumstances of a Nigerian footballer, as well as for forgery and use of forgeries. They were accused of the recruitment, harbouring, and receipt of this footballer to make

²¹⁶ Brussels French-speaking Crim. Court, 7 April 2014, 61 ch. See Myria, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, p. 123-124 and www.myria.be.

²¹⁷ Brussels French-speaking Crim. Court, 4 November 2019, 69th ch. (appeal).

²¹⁵ Brussels (French-speaking), 8 May 2019, 11th ch.

him work in conditions contrary to human dignity (insufficient wages, broken promises and withholding his passport). They also allegedly falsified a pay slip to make it appear that the footballer had been paid in accordance with the agreements made with the football club. They were also prosecuted, together with the non-profit association managing the football club, for various social criminal law offences concerning this footballer (no immediate declaration of employment, no work accident insurance, no quarterly NSSO declaration, non-payment of wages).

In 2014, the football club, whose players were exclusively amateurs until then, considered taking on one or more professional players. The club recruited a young Nigerian player who had previously played for other clubs. However, the player was staying illegally. He was housed in the defendants' family home and received a bit of pocket money. In May 2014, he signed his first contract with the club as a paid player, covering several seasons, for a gross salary of EUR 4,000. He returned to Nigeria in order to regularise his administrative situation in Belgium, and returned in November 2014 when everything had been sorted out. A new contract was then signed with the club, for a salary of EUR 7,000 gross per month, with accommodation provided by the club. He resumed training and matches between November 2014 and January 2015. However, he was never provided with the accommodation and only received a small part of his salary; the payslips were falsified by the defendants. In fact, he received the sum of EUR 700 twice. In addition, he wasn't registered with the NSSO, worked without social protection and was completely dependent on the defendants who had confiscated his passport. In January 2015, he was thrown out onto the street.

The court convicted the defendants of all the charges, and held that the charge of human trafficking was established. Although he had been provided with comfortable accommodation, the court considered that there were other criteria contrary to human dignity: no social security cover, failure to pay the agreed salary (in this case, a few payments far below the salary to which he was entitled, making him dependent on the defendants), withholding his passport. The defendants thus saved on the contributions relating to the player's salary, while hoping that the player's value would help the club to improve its ranking.

The court also accepted several aggravating circumstances (authority over the victim, abuse of a vulnerable situation, coercion (by withholding the player's passport)).

It sentenced the two defendants to a 15-month suspended prison sentence and a fine of EUR 4,800. It also convicted the non-profit association in absentia for the social criminal law offences and fined it EUR 18,000.

The court ordered the two defendants to pay the footballer EUR 2,500 in non-pecuniary damages in relation to the charge of human trafficking; the two defendants and the non-profit association a provisional euro in relation to the loss of salary and EUR 1,500 in non-pecuniary damages in relation to the failure to comply with social legislation.

2.3.10. | Other sectors

Decisions were rendered in atypical sectors: lumber industry, newspaper delivery and a religious congregation.

a) Logging

Namur Criminal Court tried a case of trafficking in the lumber industry on **26 June 2019**²¹⁸.

A Belgian defendant and a company were prosecuted for the human trafficking and smuggling with aggravating circumstances of a Burkinabe worker who filed a civil suit. They were also prosecuted for various social criminal law offences against this worker and other Romanian workers.

The defendant bought lots of standing timber for firewood at auctions, whose felling was initially sub-contracted by the defendant. The sawing and delivery of the logs were done under his authority. He paid the wages of his undeclared workers in cash and made an undeclared turnover by reselling the wood to pizzeria owners, among others, who paid him in cash.

The defendant had recruited the Burkinabe worker near Petit Château. He had to go and chop firewood for the defendant in the Sonian Forest.

The defendant also recruited Romanian workers on the quiet near a Brussels metro station. They also worked under his authority for wages paid in cash.

²¹⁸ Namur Crim. Court, Namur division, 26 June 2019, 12th ch. (final).

The court declared the charge of human smuggling to be established because by recruiting the Burkinabe employee, the defendant contributed to his illegal stay in the country. The defendant took advantage of the employee's vulnerable position to gain a financial advantage by not paying the salary and related costs, and thus saving money. Consequently, the court also considered proven the social criminal law charges with regard to this employee.

It also accepted the limited social criminal law charges relating to the Romanian workers.

However, the court acquitted the defendant of the charge of human trafficking, considering that it wasn't sufficiently established. It pointed out, among other things, that the testimonies of people working in the Sonian Forest weren't always direct testimonies, and sometimes contradictory, especially regarding the Burkinabe worker's working hours.

The court acquitted the company of all the charges, as the defendant was the only natural person within the legal entity to whom the charges could be attributed.

The defendant was sentenced to six months in prison (fully suspended) and fined EUR 6,000 (partly suspended). He was also sentenced to pay the plaintiff EUR 9,750 in pecuniary damages and EUR 3,000 in non-pecuniary damages.

b) Newspaper delivery

On **15 January 2020, Ghent Criminal Court**²¹⁹ ruled on a case of human trafficking for the purpose of labour exploitation within the context of newspaper deliveries. In this case, a Belgian defendant of Slovakian origin was prosecuted for human trafficking and the lack of, or an inaccurate, Dimona declaration.

The case came to light after an elderly couple found the Slovakian victim begging and took him to a homeless shelter. Payoke contacted the social inspectorate to open an investigation for human trafficking for the purpose of labour exploitation.

The investigation revealed that the victim had been recruited in Slovakia by the defendant in 2015. At the

time, this man was homeless. When he arrived in Belgium, the victim was (falsely) registered as self-employed, without his knowledge. The defendant confiscated his Slovakian identity card and went with him to the town hall to apply for a residence permit, which the defendant kept. The victim was put in contact with a distribution company: he and the defendant were to distribute leaflets and letters in different areas around Ghent. Initially, the money for the hours worked was paid onto the defendant's account. A bank account was only opened in the victim's name in June 2016. However, the defendant kept the bank card and the PIN code. The victim was very poorly paid. Some months he received nothing, others between EUR 20 and 500. He worked very long days, from 05:00 or 06:00 to 15:00, delivering brochures. Afterwards, he sometimes had to fold leaflets until 22:00.

The victim lived with the defendant and his family. When he became ill and soiled a carpet, he was evicted from the house and had to sleep in the garage. The victim had to buy himself a mattress to sleep on the floor. There was no water or electricity. He had to use a plastic bag as a toilet. He fetched water from another Slovakian family. The defendant occasionally brought him food. After a few weeks he was able to return to the family home to sleep. However, he was still regularly locked up in the garage. In addition, the defendant and the family were often physically aggressive towards the victim. He was often ill, but had no money to go to the doctor. When he fell ill again during his working hours at the end of 2016, the defendant locked him in the garage again. That night, the victim managed to escape and wandered the streets for three weeks. He was eventually found by a couple who took him to a shelter for the homeless. After a few weeks, the defendant discovered that the victim was in this centre and took him by force to the town hall. He had to hand over his residence permit. The defendant then took him to the bus station and bought him a bus ticket to Slovakia.

A bank investigation was carried out, observations were made and a neighbourhood investigation took place. An investigation was carried out by the NSSO's services.

A doctor was appointed as an expert by the labour prosecutor. He stated that the victim had had a difficult childhood, suffered from depression and had a lower than average IQ. This was the reason why the man was very easily influenced and vulnerable.

The victim filed a civil suit.

²¹⁹ East Flanders Crim. Court, Ghent division, 15 January 2020, ch. G29 (final).

Based on the elements of the criminal case file, the court found the defendant guilty of human trafficking with the aggravating circumstance that he had abused the victim's vulnerable situation.

The defendant was given an 18-month suspended prison sentence and a fine of EUR 12,000. The victim was awarded compensation of EUR 20,000 in pecuniary damages and EUR 3,000 in non-pecuniary damages.

c) Religious congregation

An important case concerning acts committed within a religious congregation was tried by **Ghent Criminal Court on 26 June 2019**²²⁰. In this case, the Augustinian Fathers of Ghent and their superior, as well as the non-profit association through which events were organised at the monastery, were prosecuted for several social criminal law offences (employment of foreign nationals staying illegally or work permit, failure to declare employment immediately), human trafficking, aiding illegal immigration, and forgery. The Augustinian Fathers and their superior were also prosecuted for having sent the NSSO an inaccurate or incomplete declaration of the amount of contributions due for two workers.

According to the labour prosecutor's office, the superior of the Augustinians recruited young seminarians in Africa, to whom he promised an official position within the Catholic Church (training for the priesthood) whereas in reality, it was a question of recruiting cheap labour for the commercial activities of the monastery. The young seminarians were mainly from Benin, Togo and the Ivory Coast. The charge of human trafficking related to 13 of them, who filed civil suits.

The defendants also allegedly drew up and used false invitations, certificates and sponsorship declarations in order to obtain residence permits for these young African seminarians, falsely indicating the latter were monks and that they had received prior training as monks in the country of origin.

The case began when a young Beninese postulant filed a complaint, accusing the Augustinian Fathers of having made him work without any regard for social obligations. Following this testimony, many other people were heard. These testimonies revealed that the superior paid the

the plane ticket and the visa, that the seminarians had a private room in the monastery, that they first had to learn Dutch, ask for authorisation to leave the monastery, and that they weren't paid for their work. They received EUR 30 in pocket money and EUR 300 - 400 for clothes.

Searches were carried out at the monastery, among other things.

The superior was also heard. He explained that the non-profit association had been set up to optimise the monastery's profitability, by using the ground floor for parties, conferences, etc.

In a long and detailed statement of reasons, the court acquitted the defendants of the charge of human trafficking, aiding illegal immigration, forgery and the majority of social criminal law offences.

For the social criminal law offences, the court found that the foreign postulants did indeed provide services in the monastery of the Augustinian Fathers in Ghent (maintenance of the cloister, the garden, preparation of the celebrations, help and care for the older brothers), but that these activities were part of the life of a religious community and the postulants' commitment to the monastery. The court also noted that various commercial events for third parties not connected with pastoral work were organised in the monastery buildings, which is why a specific non-profit association was set up; the postulants were mainly responsible for emptying and cleaning up the rooms, participating in the Ghent Festival, sometimes guarding the entrance or serving beer at the abbey. The court considered that it wasn't established that the activities carried out by the postulants during these events exceeded those carried out by the Augustinian Fathers within the community, nor that they performed these services under the authority of the Fathers or the non-profit association.

As regards the human trafficking, the court found that the postulants (and their families) were correctly informed that they were going to be part of a religious community, where all income goes to the monastic community and that they had to live according to its rules. They did receive training as promised and the work they did in the monastery was within the framework of monastic life. Furthermore, all the expenses relating to their stay (travel, visa, the stay itself and meals) as well as their training were paid by the Augustinian Fathers. They received monthly pocket money and an allowance for clothing. They were allowed to go out with permission. It was also possible to permanently leave the monastery and the monks made sure that they could

²²⁰ East Flanders Crim. Cout, Ghent division, 26 June 2019, ch. G29 (appeal).

return to their country of origin, at the cost of the Augustinian Fathers.

Concerning the charge of aiding illegal immigration, the court considered that the criminal case failed to establish that the defendants knowingly aided non-EU nationals to enter or stay in Belgium in contravention of the law.

The court only accepted a number of social criminal law charges concerning volunteers whose services went beyond that of pure voluntary work, as well as the non-declaration of overtime (paid unofficially) of two workers.

It handed the Augustinians' superior a partly suspended fine of EUR 10,800, and the Augustinian Fathers non-profit association and the events non-profit association a partly suspended fine of EUR 36,000.

In view of the acquittals pronounced, it declared that it had no jurisdiction to rule on the plaintiffs' claims.

2.4. | Exploitation of begging

Brussels French-speaking Criminal Court tried, in absentia, a case of trafficking for the purpose of exploitation of begging on **6 November 2019**²²¹.

A young Romanian woman was prosecuted for human trafficking for the purpose of exploitation of begging, for recruitment and exploitation of begging, and for intentional assault and battery against her nephew, a minor. All these charges were accompanied by aggravating circumstances.

The defendant didn't appear in court and her nephew filed a civil suit through his guardian. The reception centre that was sheltering the minor also filed a civil suit.

The case started when, in July 2018, a child, the minor in question, aged 12, came to the reception of a police station barefoot, wearing a dirty track suit and holding a note in English mentioning the need for an interpreter and the fact that he had problems with his uncle. Through a Romanian interpreter, he explained that his aunt, the defendant, suggested to his mother

that she bring him to Belgium for a three-week holiday. They came by coach. He was then made to beg near a casino and a cinema for several hours in the morning, afternoon and weekend, and even at night during the weekend. He specified that it was his aunt's partner who forced him to beg and that he was beaten if he refused. He said that he had been living on the street for several weeks and that he stayed in a shop entrance. He said that his aunt always had his passport on her, as well as his birth certificate and a letter from his mother authorising him to leave Romania.

Following the hearing, the police took the child by car to identify the places where he and his aunt stayed. The latter was identified on the basis of her identity card; during the search, the passport of the boy, and of the little girl (her daughter) with whom she was begging, were found in her bag. The police also found the defendant's money and a Western Union transaction slip for EUR 1,500 addressed to a man, whom she claimed to be her sister's husband.

During her hearing with the police, the defendant explained she had been in Belgium for almost a month to beg there. She pointed out that her nephew also begged but that she didn't receive his earnings. She confirmed that she slapped him because he wasn't listening, and that his head hit a wall. She denied forcing her nephew to beg. She confirmed that she, her husband, her daughter and her nephew slept on the ground.

When she was heard by the investigating judge, she confirmed the statements she had made to the police and the fact that her nephew and his mother had been told why he was coming to Belgium, namely to beg.

The court accepted all the charges against the defendant based on the disclosure of the facts, the police findings concerning the young boy, the hearings of the victim and the defendant, and the money and documents found on the defendant during the search. The court found that the defendant was the young boy's guardian and therefore had authority over him while he was a minor, that he was in a vulnerable situation, that he was subjected to violence and threats to make him beg, that she acted together with her partner to force her nephew to beg and that she transferred the money from begging to third parties.

The court sentenced the defendant in absentia to five years in prison and a fine of EUR 16,000, and to pay both the victim and the reception centre the final sum of EUR 1. It also ordered the immediate arrest of the defendant.

²²¹ Brussels French-speaking Crim. Court, 6 November 2019, 47th ch. (in absentia).

2.5. | Forced criminal activities

In a **judgment of 30 March 2020, Antwerp Criminal Court** ruled on a case of the human trafficking of a Belgian victim for the purpose of criminal activities²²².

Five defendants, of Macedonian nationality, who were part of the same family, were prosecuted for various offences including human trafficking, abuse of a person's vulnerable situation, degrading treatment of a person and threats against persons. One victim, a Belgian man, and the non-profit association Payoke filed civil suits.

The investigation began when the police received a report from several neighbours, mid-2019, concerning an elderly man who was sleeping on the terrace of a house on a daily basis, regardless of the weather. The police began an investigation and indeed found an unkempt man in need of help.

The investigation revealed that the victim's first contact with the family was in 2008, when he worked at the counter in the post office. He immediately established a relationship with them and was regularly invited to their home. This is how the victim became attached to the family. Very quickly, they began to ask him for money from time to time because the family was in difficulty. In the beginning, he gave the family EUR 300 a month. Soon, he also gave them his bank cards and PIN codes, which meant that he actually lost control of his money. The victim argued with his own brother and sister about his close contact with the family. As a result, he became even more socially isolated. He also resigned from the post office after stealing money from his employer at the request of one of the defendants.

In 2009-2010, the victim sold his flat at the suggestion of the family. A large part of the income was used to pay their debts. The balance was deposited on the account for which the family had the bank card and PIN code. The money was withdrawn by the family in no time. The victim then started working part-time for a monthly salary of EUR 1,400. As soon as he received his salary, the family squandered it, in particular to buy a car. He rented a studio flat from the CAW (social aid centre). He gave the key to the family, who rented the studio to an acquaintance and pocketed the rent. The victim lived with the family and paid

weekly rent. The victim lived in extremely unhygienic conditions. The man was forced to eat and sleep outside and had to wash under the tap. He could take a shower from time to time, when the family allowed him.

Over the past few months, he also had to go shoplifting (about 20 times) at the request of the defendants.

The victim himself didn't understand how it could have come to this. He was talked into it and pressurised, and was unable to say no. The family was difficult and got angry when he refused to do something, and threatened to throw him out on the street. It seemed like a hopeless situation to him. He was easily influenced and emotionally dependent on the family. Meanwhile, the victim had accumulated a large amount of debts. A collective debt settlement was requested. The neighbours, who eventually alerted the police, were threatened by the family.

The investigation was carried out on the basis of a search, police findings, a bank investigation, detailed and consistent statements by the victim, and the defendants' statements that lacked credibility.

The court found each of the defendants guilty of the acts they were accused of. In addition, this wasn't the first time for some of them, who already had several convictions on their criminal records. One defendant had already been convicted of human trafficking in the past. The father, mother and a son of the family were respectively sentenced to five years (the parents) and 30 months (the son) in prison and fined EUR 20,000. The other two children of the family were given 10- and 18-month suspended sentences and fines of EUR 8,000 (partly suspended) and EUR 800. Their contribution to the acts was more limited.

The victim obtained compensation of EUR 100,000 in pecuniary damages and EUR 2,500 in non-pecuniary damages. Payoke obtained compensation of EUR 2,500 in pecuniary and non-pecuniary damages combined.

²²² Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1879 (appeal).

3. Human smuggling

3.1. | Recruitment in Maximilian Park

A case of human smuggling was tried by **Brussels Dutch-speaking Criminal Court on 5 September 2019**²²³.

Three defendants, two Iraqis and one Iranian, were prosecuted for human smuggling, the first two in relation to two Iranian nationals, the third in relation to one of these two Iranians. One of the defendants was a repeat offender. The first two defendants recruited their clients in Maximilian Park, and hid them in a lorry going to Germany for the sum of EUR 3,000. The third one smuggled one of these nationals from Italy to Belgium via France, for the sum of EUR 32,000. One of the defendants was also prosecuted for the attempted extortion of one of the Iranians and for illegally carrying weapons. The first two defendants were also prosecuted for illegal stay.

The case started when the two victims filed a complaint against their smugglers with the local police. They made similar statements: they arrived in Belgium separately and met each other at Maximilian Park. They spent a few nights together at the reception centre for transit migrants in Haren. A few days later, they were approached by the first two defendants while they were at Maximilian Park; they offered to smuggle them to the United Kingdom for EUR 3,000 per person. They then left together and took public transport to the Groot-Bijgaarden parking area, where the defendants put them in a lorry that was there. Twenty-four hours later, they realised they were in Germany and had therefore gone in the wrong direction. They managed to attract the driver's attention and return to Brussels. A new appointment was made with the first two defendants. One of the Iranians asked for a reimbursement and they both accompanied the two defendants to their home, where they were threatened with a knife. Following these acts, they decided to file a complaint. During his hearing, one of the two defendants admitted having intentionally

put the two victims in a lorry that was going in the wrong direction, because he didn't dare go to the right place, which was in the hands of the Sudanese.

One of the victims explained they had tried to reach the United Kingdom several times and had contacted a smuggler living in Italy, who was identified as the third defendant.

The court accepted the charge of human smuggling against the three defendants. It stressed the fact that it was indeed a transit, even if the victims arrived in Germany instead of the United Kingdom. It also accepted the charge of illegal stay. However, it acquitted the defendant of the charge of extortion and illegally carrying a weapon, owing to a lack of evidence.

The defendants were convicted for the acts of smuggling and respectively received prison sentences of 12, 20 and 30 months. The court ordered the immediate arrest of the third defendant.

3.2. | Extremely violent Iraqi networks

In a **judgment of 16 April 2019, Dendermonde Criminal Court** ruled on a case of human smuggling with aggravating circumstances, in which seven of the defendants were Iraqi nationals²²⁴. The acts tried by the court dated from January to April 2018. It concerned a group of smugglers who were very active in the parking areas along the E17. The group continued to be very active even after its members had been replaced. The case came to light following the pursuit of a van by the French police as part of a French investigation. After it crossed the border, the van was followed by the Belgian police. It ran into the police car and several other vehicles. The perpetrators escaped, but migrants in transit were found in the cargo space. The Belgian and French investigators concluded a cooperation agreement.

The investigation was conducted on the basis of analyses of ANPR (*Automatic Number Plate Recognition*) cameras and other camera images, searches of the defendants' Facebook profiles, observations, phone

223 Brussels Dutch-speaking Crim. Court, 5 September 2019, ch. vac. (final except for the defendant convicted in absentia).

224 East Flanders Crim. Court, Dendermonde division, 16 April 2019, ch. D19D (appeal).

investigations, photos on mobile phones, DNA searches, phone tracking and migrants' statements. The group of perpetrators was mainly composed of Iraqi Kurds. They operated out of the Calais "jungle", where they recruited the victims. The defendants used anonymous British SIM cards and phones, which they changed regularly. They communicated mainly using mobile internet services, making it difficult to connect the phone numbers with the perpetrators. It was also almost impossible to use phone tapping to obtain incriminating information. Some information was recovered from mobile phones abandoned on the spot during interceptions. This made it difficult to identify the defendants.

The vehicles used were quickly swapped and bore false Belgian or British number plates. The partition was usually removed so that, in the event of interception, the smugglers could quickly mix with the migrants in transit.

The court found that there was indeed evidence of criminal association. The defendants knew each other and got together again when they were back in Italy. They all played a specific role in the system as a recruiter, logistical support, dispatcher, enforcer, escort or driver. In addition, it seems that they were given orders from Iraq or Syria.

The group brought transit migrants from France to Belgian parking areas five times a week to board lorries bound for the United Kingdom. It was estimated that there were between three and 40 migrants per night. The majority of the victims came from Syria or Iraq. The victims paid between EUR 3,000 and EUR 4,000 for the crossing, which they often paid through their families in Kurdistan or with funds they deposited while waiting for the crossing. In some cases, the amount was already paid before they left their country of origin.

The defendants often used refrigerated lorries, which put the victims at great risk. They were perfectly trained to professionally dismantle and reassemble the locking system. All possible seals remained intact, giving the impression that everything was in order. Refrigerated lorries are almost never checked at the border because of the perishable load. Transport to motorway parking areas in overloaded vans also puts victims at risk. The smugglers weren't afraid to use violence and threats. One lorry driver said he was threatened with

a knife when he discovered the smugglers. They also resorted to violence during police chases. They would collide with the police car or another car, drive the wrong way down the motorway, etc.

After a violent confrontation between two groups of smugglers in April 2018, it was noted that the members of the criminal association were gradually replaced by others. The majority then went to stay in Italy (in Rome). Hence, the period of incrimination for this case was limited to the period prior to this incident.

The court didn't follow the reasoning of some of the defendants that they were actually transit migrants and were authorised to make a crossing to the United Kingdom in return for smuggling activities. This wasn't credible because several defendants had already stayed in the United Kingdom.

The court handed the defendants four, five and six-year prison sentences and fines between EUR 640,000 and EUR 2,480,000. Large sums of money were confiscated.

In another case of human smuggling **tried on 26 June 2019** by **Antwerp Criminal Court**, 15 defendants, some of Iraqi nationality and others of Iraqi origin with British nationality, were prosecuted²²⁵. The case involved a well-organised international Kurdish network with associates in Belgium, France, Spain, England and Kurdistan.

The case was put together based on observations, police findings, phone investigations, examinations of mobile phone content, information from the French investigation file (especially phone tapping), contacts on Messenger or Facebook profiles, photos and video fragments on mobile phone, DNA investigations, analysis of evidence (fingerprints in a van used for smuggling), searches, statements by victims and co-defendants and confessions, and offenders caught in the act.

In general, the victims weren't willing to cooperate in the investigation. Often, they had no intention of applying for asylum in Belgium.

225 Antwerp Crim. Court, Antwerp division, 26 June 2019, ch. AC10, no. 2019/3380 (appeal for the first defendant, final for the others except those convicted in absentia).

The gang had been organising the transportation of around 60 people per night to England, three to four nights a week, since November 2017. The defendants were prosecuted for human smuggling and rebellion. The victims paid between EUR 3,500 and 1,000 for guaranteed transportation, depending on the method of smuggling. The organisation hid the victims in lorries where the drivers were completely unaware of the situation.

Most gang members were said to be armed and didn't hesitate to use violence against victims and the police. The victims were threatened verbally and physically and there was talk of weapons. During several police interceptions, vehicles were used as weapons to drive into the police. Smugglers also jumped out of a moving vehicle while victims were still on board. During one interception, the police noticed that a van was overloaded. They urged the driver to stop, but he refused. The police therefore shot at one of the back tyres. There were 31 people in the van, including six minors. The smugglers had removed the partition separating them from the victims and mixed with them to avoid being identified as smugglers. The investigation and interceptions often took place across borders, in cooperation with the French and Dutch police services.

Another victim confirmed they had been threatened with a Kalashnikov after having made statements to the police.

In addition, they endangered the victims by transporting them in refrigerated lorries, and even in a tank containing iron sulphate powder. The victims consequently needed medical attention when they were freed.

The victims were often of Iraqi origin and were generally taken to the Calais "jungle". They were approached through social media, especially Facebook, and often included pregnant women and young children, sometimes even small babies. Payment was made through a foreign exchange office in Iraq. Once a deposit of funds was confirmed, the victims were directed to a van driver. If the transaction to the UK was successful, the deposited funds were released to the smuggling organisation.

The organisation was very "professional", using coded language on less traceable communication channels and pseudonyms. To make identification difficult, they used hire cars and

vehicles delivered via the United Kingdom that were only used a few times.

There was a hierarchy in the organisation and the main defendant was considered the leader. Three other people were involved in the decision-making within the organisation. They also recruited victims in the Calais "jungle". Sometimes, those recruited for departure were involved in the criminal organisation's network. In addition, they ensured the smuggling operations in the parking areas ran smoothly.

Some of the defendants claimed that they had cooperated in smuggling activities in order to pay for their own crossing to the United Kingdom. They didn't have sufficient financial resources and therefore had to work for the organisation. They asked that a nuance be made regarding the fine line between co-perpetrator and victim. The court didn't follow the defendants in this reasoning. The case revealed, among other things, that they never stayed with the other victims and had no luggage. After dropping off the victims, they immediately returned to the north of France to take part in new transportations the next day. In addition, they regularly changed their SIM cards. Some of the defendants argued that they never received any financial benefit. The court considered that the free passage they received in exchange for their cooperation could be considered an indirect financial advantage, a benefit in kind.

The defendants were handed prison sentences of 11 years, nine years, six years, five years, four years, two years, 40 months and 30 months. The fines ranged between EUR 80,000 and EUR 720,000.

One of the defendants was acquitted. He had legal residence status in the United Kingdom and was active there as a car dealer. He allegedly brought two cars over to Calais from Dover. The court found that there wasn't sufficient objective evidence in the case file to prove that this defendant was knowingly and intentionally involved in the human smuggling activities. Three defendants were convicted in absentia.

Various goods, vehicles and EUR 89,934 were confiscated.

3.3. | Albanian network

Ghent Court of Appeal²²⁶ ruled in a **judgment of 20 November 2019** on a case of human smuggling involving an Albanian gang operating in motorway parking areas along the E40, in the direction of France. This case was discussed in a previous annual report²²⁷. During the proceedings at **Bruges Criminal Court on 14 December 2018**²²⁸, 13 of the 14 defendants were found guilty of human smuggling with aggravating circumstances. They were handed prison sentences ranging from 30 months to 10 years and heavy fines of EUR 1,000 (partly suspended), multiplied by the number of victims. Large sums of money were confiscated.

Several defendants and the public prosecutor's office appealed.

Five defendants had their cases reviewed by the court of appeal.

The investigation revealed that the organisers of the human smuggling were based in the United Kingdom, where the prices were set and the drivers sought. On the European mainland, the victims were recruited either in Albania or in a hotel in the Ghent region. The organisation specialised in guaranteed human smuggling, often involving the participation of the lorry drivers. This cost between GBP 8,000 and GBP 13,000. Three of the defendants were lorry drivers. Life-threatening transportations were also organised in refrigerated lorries. The investigation revealed that the organisation had been involved in smuggling for five years. Several members of the gang were related to each other.

The investigation was carried out on the basis of hearings of the arrested persons, a phone investigation, observations, the examination of mobile phone content, phone tapping and information sharing with the British police.

Three defendants were arrested in the United Kingdom, but had opposed their extradition to Belgium. Another defendant was arrested in Hungary.

On appeal, the defendants denied that they were part of a criminal organisation. The court of appeal ruled that

there was indeed a criminal organisation, i.e. an enduring structured association of more than two people, with the intention of committing crimes and offences in a concerted manner. The first defendant was clearly the leader of the organisation and arranged everything from the United Kingdom. Besides all sorts of associates, there were genuine smugglers and several drivers.

The court more or less confirmed the first judge's verdict. It increased the sentences of several defendants by sentencing them respectively to 10 years instead of eight, and eight years instead of six. For other defendants, the confiscated amounts were adjusted.

Myria filed a civil suit and obtained EUR 5,000 in pecuniary and non-pecuniary damages.

3.4. | Eritrean networks

Dendermonde Criminal Court tried two Eritrean networks.

In the first case, **Dendermonde Criminal Court** ruled on a large smuggling network in a **judgment of 26 November 2019**²²⁹. In this case, 14 defendants were prosecuted for human smuggling with aggravating circumstances, running a criminal organisation, participating in decision-making concerning the activities of a criminal organisation, and the preparation and execution of the criminal organisation's activities from October 2017 to August 2018. The smuggling activities took place in the parking areas along the E40 motorway, in the direction of the coast.

This network was mainly composed of Eritrean and Ethiopian smugglers, who smuggled people of Sudanese and Eritrean origin to the United Kingdom by hiding them in lorries.

The investigation revealed that the gang used to operate in a parking area in France, but after this area was closed, it moved its activities to Belgium. Some of the defendants had residence status in Belgium or France.

226 Ghent, 20 November 2019, 8th ch. (partial cassation for one defendant, to be reassessed by Antwerp Court of Appeal).

227 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 139-140.

228 East Flanders Crim. Court, Bruges division, 14 December 2018, ch. B 17 (available at www.myria.be (case law)).

229 East Flanders Crim. Court, Dendermonde division, 26 November 2019, ch. D19D (appeal).

They affirmed they "bought" the parking area for EUR 40,000 from another gang.

The investigation consisted of a phone investigation, observations, phone tapping, a discreet visual check in a squat, searches during which belongings were seized, a financial investigation, hearings of transit migrants and defendants.

The normal price for illegal transportation was EUR 800, but sometimes it was different. Victims sometimes paid lower prices, between EUR 400 and 500, and sometimes higher amounts, up to EUR 1,000 per crossing. For this price, victims were allowed to try their luck as often as necessary until they finally managed to make it to the United Kingdom. If victims no longer wanted to make the crossing, they didn't get their money back. Sometimes, the payment was made through an intermediary. The smugglers would help the victims to get into the lorries in the car park. During the day, they hid in safe houses. Some of the defendants also operated from a café-restaurant in Antwerp where they kept the funds, made (illegal) monetary transactions and also used the "Hawala" banking system so that the authorities couldn't trace the transfers.

The smugglers used unregistered SIM cards from the Netherlands, which one of the defendants went to buy there. In Belgium, it isn't possible to buy a SIM card without identifying yourself. These unregistered SIM cards were used to contact transit migrants without being traceable. A large number of them were found during a search.

The organisation smuggled people on a very frequent basis. The smuggling activities took place four to five nights a week in the parking areas.

Some of the defendants were responsible for bringing in new "clients". They usually did this in Maximilian Park in Brussels or in the Calais "jungle". The victims were promised they would be put in contact with the "fastest" smuggler and that they could spend the night in a "safe house" close to the parking areas. The intermediaries were compensated and received part of the sum the victim had to pay. The phone taps revealed that some of the defendants also accompanied people who wanted to travel from Eritrea to Europe, or who were trying to get to Belgium from Greece.

The smugglers weren't afraid to use violence, both against the victims and against the lorry drivers who spotted the smuggling, other gangs and the police. They sometimes used metal bars and batons. Fights between gangs of smugglers regularly broke out in the parking areas.

Children were also smuggled and refrigerated lorries often used for this purpose as they are less meticulously checked.

During the hearings, the defendants initially denied they were smugglers. They all claimed they wanted to go to the United Kingdom themselves. They maintained that they were helping each other.

According to the court, there was clear evidence of a criminal organisation. The hierarchy and division of labour was clear. First there were the "footmen", who took care of the work in the parking area. They supervised the victims and accompanied them to the parking area. Some of them also wanted to go to the United Kingdom. Then there were the intermediaries. They rarely came to the parking areas, but they performed other useful tasks, such as bringing new transit migrants and looking after the money. In addition, there were three defendants who were part of the gang's core. They would take turns and otherwise spend the rest of the time in France. Most of the money was meant for them. The organisation also had an ingenious system for keeping the funds safe. There were two treasurers, one for the victims from Antwerp and one for the victims from Brussels. They kept the money so that the smugglers didn't have to carry too much around with them. The victims also preferred to pay their money to the treasurers so that the smugglers couldn't run off with their money.

The court found most of the defendants guilty of the charges. For some, the period of incrimination was limited, and for a number of them, so was the number of victims. Three defendants were given the benefit of the doubt and were acquitted. In the course of the investigation, one defendant only entered the scene for a short period of time, during which he bought the SIM cards in the Netherlands. According to the judge, the criminal case didn't prove that he had knowingly and voluntarily contributed to the smuggling of human beings. Another defendant was acquitted on the basis of reasonable doubt. He was only in contact with the smugglers in relation to the smuggling of his two "sisters" and his nephew. According to the judge, the criminal case didn't prove that he knowingly and voluntarily provided the assistance necessary for smuggling human beings.

The main defendants were handed prison sentences of five years, six years and 40 months and heavy fines that were partly suspended. The other defendants were handed prison sentences of 20-30 months and heavy fines, some of which were partly suspended. Two defendants were sentenced to community service and fines. Several defendants were sentenced in absentia. Sums of money were confiscated.

In the second case, **Dendermonde Criminal Court** ruled on a gang of Eritrean smugglers composed of eight defendants, **in a judgment of 25 February 2020**²³⁰. They were prosecuted for smuggling with aggravating circumstances between 2016 and early 2019. The smuggling gang was mainly active in the parking areas along the E17 in the direction of the coast, at bus stops in and around Kruikeke.

The investigation was carried out with the help of observations, in particular those of a night shop and the home of one of the smugglers, phone analyses, analysis of images from surveillance cameras in railway stations, phone tracking, phone tapping, statements by the defendants, and the analysis of Facebook profiles. Only one victim could be questioned. The various defendants were identified thanks to IMEI numbers and SIM cards.

The smugglers used tactics to avoid being seen in public at the same time as the transit migrants. They avoided direct contact with these migrants and went through intermediaries, travelling separately to the parking areas and taking a different route to get there.

The investigation showed that victims paid EUR 800 to travel to the United Kingdom. From November 2018, the fare was increased to EUR 1,000. They calculated that the smugglers earned a total of EUR 300,000.

The victims were also smuggled in refrigerated vehicles. During one of the phone taps, the Belgian police learned that people were dying and informed the British police, who intercepted the refrigerated van. The smuggler, who was aware, hadn't contacted emergency services. The 27 victims on board were in a state of severe hypothermia. There were also smugglers among the transit migrants

who were attempting to get to the United Kingdom themselves.

The main defendant was seen as the central figure and the boss of the parking area. He denied being a smuggler and stated that he was a transit migrant who wanted to go to the United Kingdom. He had already been convicted of smuggling in France. The other defendants acted as intermediaries. They informed the transit migrants, helping them to get to the parking areas, telling them about the transportations, etc. Some of the defendants enjoyed a privileged position and were slightly closer to the main defendant. They were allowed to collect the money.

Based on the criminal case file, the court wasn't able to establish whether or not the activities had been committed with the aggravating circumstance of violence and threats. The court acquitted the defendants of this aggravating circumstance.

The court also considered that this wasn't a criminal organisation, but rather a criminal association. Criminal organisations are more complex than simple gangs. They have (inter)national ramifications. They have a more complex, better organised and more resistant structure within which legal and illegal activities can take place, even if not all members necessarily intend to contribute to committing offences. This group of criminals had no international ramifications. However, it is clear that each defendant intended to commit an offence and to benefit from it by doing so. The leaders acted purely for profit, while the others cooperated to ensure their own crossing to the United Kingdom. The court reclassified the aggravating circumstance of criminal organisation as the aggravating circumstance of criminal association. The main defendant was sentenced to seven years in prison and fined EUR 1,824,000. The other defendants were handed prison sentences ranging from 20 months to five years and fines ranging from EUR 152,000 to EUR 1,088,000. Six of the defendants were sentenced in absentia, five of whom were in the United Kingdom at the time. EUR 70,000 were confiscated.

Myria filed a civil suit and obtained EUR 1 in non-pecuniary damages.

230 East Flanders Crim. Court, Dendermonde division, 25 February 2020, ch. D19D (appeal set for 12 October 2020).

3.5. | Afghan smuggling network - joint investigation team (JIT)

Ghent Court of Appeal ruled in a judgment of 21 January 2020²³¹ on a case of human smuggling discussed in the previous annual report²³². At first instance, 16 people were prosecuted for human smuggling within the framework of a criminal organisation with a large network active in several European countries. Myria filed a civil suit. In a **judgment rendered on 25 March 2019 by Ghent Criminal Court**, several defendants were handed heavy prison sentences, while others were acquitted²³³.

One of the defendants lodged an appeal.

The criminal organisation had an enormous network in Europe and smuggled people of different nationality into the United Kingdom. The organisation illegally transported people in vans and small lorries that had been fitted with hidden compartments. During interceptions, links were established with Belgium, in particular thanks to documents and examinations of phone data. Based on this information, a criminal investigation began in Belgium. When it transpired that there was also regular contact with Bulgaria and the United Kingdom, a European collaboration was set up involving the police, the public prosecutor's office and the investigating judge, within the context of a judicial investigation by a joint investigation team (JIT). It emerged from all these investigations that an organisation had been constructed, that it had mainly been facilitated by Afghans and that it was led by two specific people in the United Kingdom and Bulgaria. The network mostly smuggled people from Afghanistan, Syria and Iraq to the United Kingdom. Belgium served as the crossroads where people were loaded into vehicles with hidden compartments. Migrants had to pay EUR 10,000 for a complete journey.

The two main defendants and several others were found guilty, respectively, of being the leader and

co-perpetrators of a criminal organisation involved in human smuggling with aggravating circumstances. They were handed prison sentences ranging from eight months to seven years, and fines between EUR 24,000 and EUR 760,000.

Several other defendants were acquitted owing to a lack of evidence.

Myria was awarded a lump sum of EUR 2,500 as compensation.

At the court of appeal, the defendant argued that he only had a subordinate role in the criminal organisation. The court didn't agree and upheld the first judge's decision.

3.6. | Human smuggling reclassified as facilitation of illegal immigration (Article 77 of the Act of 15 December 1980)

On **20 March 2020, Antwerp Criminal Court** ruled on a case of human smuggling involving acts that took place at Antwerp Airport²³⁴. Two people were prosecuted.

End 2018, a woman with a British passport who wanted to take a flight to London was stopped at the airport. Her face didn't match the photo on the passport she presented. Her statements were vague and contradictory. There were two men, of British nationality but of Eritrean origin, on the same flight, one of whom had the same surname as her. All three swore that they didn't know each other. The police then carried out an investigation. All three people were questioned, their mobile phones were examined, images from the airport cameras were analysed and a retroactive phone investigation was carried out. A photo of the British passport was found on the mobile phone of one of the defendants. The woman and the two men had arrived separately from the station by taxi, but only a few minutes apart. In addition, the statements of the three individuals were contradictory: at first, they appeared not to know each other, then they stated they were related.

231 Ghent, 21 January 2020, 4th ch. (appeal to the Court of Cassation rejected).

232 Myria, 2019 Annual Report Trafficking and smuggling of human beings, *Empowering victims*, pp. 137-138.

233 East Flanders Crim. Court, Ghent division, 25 March 2019, 28th ch.

234 Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1877 (appeal).

During the court proceedings, the defendants stated that they were, respectively, the brother and nephew of this woman. Originally from Eritrea, she had allegedly lived in Sweden and become homeless after her divorce. The Swedish immigration services rejected her asylum application and she was ordered to leave the country. The defendants had tried to help her get to the United Kingdom where her son and brother were staying. The court stated that it couldn't rule on these statements but had to rely on the criminal case file. The court found that the defendants were acting as *smugglers*.

The court nevertheless reclassified the acts according to Art. 77 of the Act of 15 December 1980, because the mental element, the special intent "with a view to obtaining, directly or indirectly, a financial advantage" provided for in Art. 77 bis, hadn't been proven. The court agreed with the defence that, taking into account the specific context and the family ties, there was no evidence of a direct or indirect financial advantage.

The court didn't accept the argument that the defendants had provided assistance primarily on humanitarian grounds. The defendants belonged to the same family and had specifically and deliberately travelled to Belgium to help organise and accompany this woman on her journey to the United Kingdom. They weren't individuals providing primary care or assistance to a person in an illegal situation.

The two defendants were handed a one-year prison sentence and a fine of EUR 13,000, both suspended.