

Part 2

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



Chapter 1

Recent developments in the legal and political framework

1. Developments in the European legal and political framework

1.1. | Human trafficking

EU strategy on combating trafficking in human beings

In the European Union, one of the main recent developments is the adoption of the EU Strategy on Combating Trafficking in Human Beings (2021-2025)¹⁷⁶. Presented on 14 April 2021 by the Commission, it focuses on: reducing the demand that fosters human trafficking, breaking the business model of traffickers, protecting and supporting victims and promoting international cooperation. It was discussed in detail in Myria's previous report¹⁷⁷. The Commission also launched an evaluation of anti-trafficking directive 2011/36¹⁷⁸ to examine whether it still corresponds to the objectives pursued and whether the currently optional provision on the criminalisation of the use of services provided by victims of human trafficking should be amended. This was discussed at a meeting of national rapporteurs and equivalent mechanisms and the EU Civil Society Platform in May 2022.

On 1 July 2021, Diane Schmitt was appointed EU Anti-Trafficking Coordinator. She is responsible for improving coordination and coherence, avoiding duplication of efforts between EU institutions and agencies, and between Member States and international players, contributing to the development of new or existing policies and strategies.

Joint anti-trafficking plan to address the risks of human trafficking and support potential victims among persons fleeing the war in Ukraine

Since the beginning of the war in Ukraine on 24 February 2022, several million people have arrived in the European Union¹⁷⁹, mainly women and children. While civil society has mobilised to welcome them, it has also provided ill-intentioned individuals or organised groups with an opportunity to take advantage of the situation. The risk of human trafficking therefore exists. European bodies such as Europol have sounded the alarm, warning Member States of the risk that organised criminal groups may take advantage of the crisis to recruit people fleeing Ukraine for sexual or labour exploitation, or other purposes such as begging or forced crime¹⁸⁰.

In March 2022, the European Commission also adopted a 10-point action plan¹⁸¹, including, among other things, the creation of a European registration platform;

176 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, 14 April 2021, COM(2021) 171 final: see [document](#).

177 Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, pp. 9-10.

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

179 As of 6 May 2022, this figure amounted to over 5.4 million people (source: [A new Anti-Trafficking Plan to protect people fleeing the war in Ukraine \(europa.eu\)](#))

180 War in Ukraine – refugees arriving to the EU from Ukraine at risk of exploitation as part of THB, see [Europol website](#).

181 [The 10-Point Plan: For stronger European coordination on welcoming people fleeing the war from Ukraine \(europa.eu\)](#).

a mapping of reception and accommodation capacities; the development of standard operating procedures and uniform guidelines for the reception and support of children, and the adoption of a common anti-human trafficking plan to prevent trafficking and exploitation.

Published on 11 May 2022, this anti-trafficking plan, developed under the leadership of the EU Anti-Trafficking Coordinator, is based on the EU Strategy on Combating Trafficking in Human Beings (2021-2025)¹⁸².

The plan is structured around five main objectives and provides for a series of concrete actions at EU level as well as recommendations to Member States:

- increase awareness of the risks of human trafficking and set up specialised helplines. Among other things, the Commission has set up a dedicated website for people fleeing the war in Ukraine¹⁸³ and made a video on human trafficking, which gives concrete advice to Ukrainians entering the EU and seeking shelter¹⁸⁴;
- strengthen prevention of human trafficking, in particular through the registration of entities and individuals intending to provide shelter, transport or other assistance and the training of helpline staff;
- reinforce the law enforcement and judicial response to human trafficking, in particular through increased collaboration between the competent authorities of the Member States with a view to the early detection of potential cases of trafficking;
- improve the early identification, support and protection of victims of human trafficking, in particular through the implementation and effectiveness of national referral mechanisms for victims;
- combat the risks of human trafficking in third countries, especially in Ukraine and Moldova, in particular through awareness-raising campaigns.

1.2. | Human smuggling

In September 2021, the European Union adopted a new action plan (2021-2025) to combat migrant smuggling¹⁸⁵. It is one of the results of the new pact on migration and asylum. The action plan sets out actions to counter and prevent the smuggling of migrants and to ensure that migrants' human rights are fully protected.

The action plan is based on the following pillars of action:

- strengthen cooperation with partner countries and international organisations, especially by establishing special, tailor-made operational partnerships with third countries or regions crossed by the migration routes leading to the EU to combat migrant smuggling;
- implement legal frameworks and punish smugglers active within and outside the EU, especially by improving the implementation of legal frameworks applicable by Member States and partner countries based on the UN protocol on the smuggling of migrants;
- prevent the exploitation of migrants and ensure their protection, especially by providing protection and assistance to vulnerable migrants who are victims of smugglers, and by paying particular attention to children and women;
- strengthen cooperation and support the work of law enforcement and judicial authorities to meet new challenges, especially by making greater use of Eurojust's support, in particular for joint investigation teams, by tackling the use of digital technologies and by strengthening financial investigations and asset recovery procedures;
- improve knowledge of smugglers' modus operandi, especially by supporting the development of new technologies, including artificial intelligence, to broaden the knowledge base on irregular migration and smuggling.

¹⁸² [A new Anti-Trafficking Plan to protect people fleeing the war in Ukraine \(europa.eu\)](#)

¹⁸³ [Information for people fleeing the war in Ukraine | European Commission \(europa.eu\)](#)

¹⁸⁴ [EC AV PORTAL \(europa.eu\)](#)

¹⁸⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Renewed EU action plan against migrant smuggling (2021-2025)*, 29 September 2021, COM(2021) 591 final: [Fighting migrant smuggling: 2021-2025 EU action plan \(europa.eu\)](#)

2. Developments in the Belgian legal and political framework

2.1. | Special commission trafficking and smuggling of human beings

A special commission to review legislation and policy on trafficking and smuggling of human beings was set up within Parliament in February 2022¹⁸⁶. This was proposed at the Conference of Presidents on 16 February 2022. It is composed of 13 full members and 13 substitutes from the different political parties in the Chamber of Representatives¹⁸⁷.

This special commission is tasked with taking stock of the current situation in the fight against trafficking and smuggling of human beings, reviewing the existing legal provisions both for the prosecution of perpetrators and the protection of victims, and examining international cooperation in the fight against human trafficking. It must also pay special attention to the fate of minors and other vulnerable profiles. Lastly, it is also responsible for tabling a report whose conclusions and possible recommendations will, after a debate in plenary, be put to the vote within eight months of the establishment of the commission.

The commission hears people and asks for any documents it deems necessary. It has decided to call on two experts to support its work and, in particular, to draft recommendations. The commission's meetings are public in principle and the reports of the hearings are published on the Chamber's website¹⁸⁸.

Myria welcomes such a commission, which can once again¹⁸⁹ assess the phenomena and policies of the fight against human trafficking and smuggling. It had indeed recommended implementing a parliamentary follow-up, as announced in the government agreement¹⁹⁰.

Myria was among the stakeholders to be heard¹⁹¹. It hopes that this work will lead to progress in the fight against these phenomena and the protection of victims.

2.2. | Reform of the sexual criminal law: new law comes into force

On 1 June 2022 the new Sexual Criminal Law Reform Act, introduced by the Minister of Justice, came into force¹⁹². In its previous report, Myria discussed aspects of the bill on prostitution and expressed concerns about the possible impact of the bill on the fight against human trafficking and the protection of victims¹⁹³. The main points of the provisions on the prostitution of adults are summarised below.

The bill was the subject of lively discussions and numerous amendments in Parliament, especially on aspects related to prostitution. The Committee on Justice also held numerous hearings, including with Myria¹⁹⁴. Even after the adoption of the text at first reading, the Council of State was again asked for its opinion on the articles that had been amended during the parliamentary debates, especially those related to prostitution¹⁹⁵.

The new law aims to adapt sexual criminal law to our times. The goal was also to harmonise prostitution-related offences with the criminal provisions on human trafficking.

¹⁸⁶ Creation of a special commission to review legislation and policy on trafficking and smuggling of human beings, text adopted by the plenary session of 24 February 2022, S.O. 2021-2002, Doc 55 2530/001 and full report of the Chamber of Representatives, plenary session of 24 February 2022, S.O. 2021-2022, CRIV 55 PLEN 166, p. 22.

¹⁸⁷ Its members were appointed by the Chamber of Representatives from among its members, according to the rule of proportional representation of political groups.

¹⁸⁸ See the website of [the Chamber of Representatives of Belgium](#).

¹⁸⁹ The last working group on human trafficking was created in 2011 in the Senate. See the report compiled on behalf of the "Human Trafficking" working group by Ms. Désir on 27 March 2012, *Parl. doc.*, Senate, session 2011-2012, Doc 5-1073/1.

¹⁹⁰ See recommendation 1 of Myria's 2020 annual report, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p. 132.

¹⁹¹ Special commission to review legislation and policy on trafficking and smuggling of human beings, full report of Monday 25 April 2022, S.O. 2021-2022, CRIV 55 001, available at: [The Chamber of Representatives of Belgium](#).

¹⁹² Act of 21 March 2022 amending the Criminal Code with regard to sexual criminal law, *M.B.*, 30 March 2022. The law explicitly provided for its entry into force three months after its publication.

¹⁹³ Bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001. See Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, pp.14-19 and 35-40.

¹⁹⁴ Report on the first reading on behalf of the Committee on Justice by Ms. Claire Hugon and Mr. Christoph D'Haese on the bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/006, p. 280 and seq.

¹⁹⁵ Opinion of the Council of State No. 70.817/3 of 3 February 2022 on the bill amending the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/008.

It also aims to decriminalise certain offences related to incitement to debauchery. The new law repeals the existing provisions of the Criminal Code on pimping¹⁹⁶ and introduces a new chapter in the Criminal Code, entitled “abuse of prostitution”, containing several articles¹⁹⁷. The wording in the articles finally adopted differs significantly from the initial draft following the adoption of amendments¹⁹⁸. Pimping (new Article 433*quater*/1), advertising for prostitution (Article 433*quater*/2), public incitement to prostitution (Article 433*quater*/3) and aggravated abuse of prostitution (Article 433*quater*/4) are punishable.

New definition of pimping

The initial definition contained in the bill was amended¹⁹⁹. This offence, provided for in Article 433*quater*/1 of the Criminal Code, is now defined as “without prejudice to the application of Article 433*quinquies*” (human trafficking), having committed one of the following acts against an adult:

- "organising the prostitution of others for the purpose of obtaining a benefit, except as provided by law;
- promoting, inciting, encouraging or facilitating prostitution²⁰⁰ for the purpose of deriving, directly or indirectly, an abnormal economic or other benefit;
- taking measures to prevent or make more difficult the abandonment of prostitution".

The authors of the amendment thus wanted to make a clearer distinction in relation to a situation where there is a form of coercion, which would then, according to them, fall under the definition of human trafficking. However, Myria would like to stress that the definition of trafficking in Belgian law doesn't require a coercive element²⁰¹.

The authors also stress that preference should always be given to prosecution of the offence of human trafficking, the meaning of the wording "without prejudice to the application of Article 433*quinquies*", which is positive.

The definition of the term "organising the prostitution of others" bears the characteristics of an employment contract²⁰². The result is that without the adoption of a law (which doesn't exist at present), a sex worker can't (yet) work within a salaried framework. A specific law will have to determine the recognition procedure and thus the basic conditions imposed on the person organising the prostitution of another person²⁰³.

This article also aims to punish third parties who abuse the offer of sexual services related to the prostitution of another person. This includes all possible abuses, not directly related to the income from prostitution (e.g. excessive rent, etc.).

Myria is of the opinion that many questions will arise in practice, especially on the interpretation of the notion of (abnormal) benefit. Also, how will magistrates make the differentiation with human trafficking (recruiting for the purpose of exploiting prostitution) in the field?

Isn't there a risk that some victims, especially the most vulnerable ones (such as third country nationals), will escape the specific protection provided for victims of trafficking if the magistrate considers that the new provision on pimping is easier to establish than trafficking in human beings?

Following the hearings in the Committee on Justice, the same authors of the amendment decided to change the original wording of aggravated abuse of prostitution²⁰⁴, because it led to confusion with human trafficking and could therefore be detrimental to victims.

196 Articles 379 and following of the Criminal Code.

197 Chapter IIIbis/1 containing articles 433*quater*/1 to 433*quater*/9.

198 See amendments 71 to 75 and 79 tabled by Ms. Gabriëls et al: amendments to the bill amending the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/005.

199 Amendment no.79 by Ms Gabriëls et al. to the bill to amend the Criminal Code with regard to criminal sexual law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC

55 2141/005. Furthermore, as this new definition of pimping covers Article 433*quater*/4 of the bill (seeking an abnormal benefit through the prostitution of another person), another amendment has replaced it (see amendment 72, *ibid.*, p. 3).

200 This refers to the situation where a third party allows sex in their establishment in order to make an abnormal benefit.

201 In Belgian law, the definition of trafficking only includes the act (recruiting, transporting, harbouring, etc.) and the purpose of exploitation (sexual or other) as essential elements of the offence. The means (*modi operandi*), such as coercion, violence, abuse of vulnerability, which appear as a third essential element of the offence in international and European instruments, are considered aggravating circumstances in Belgian law.

202 See amendment to the bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/005, pp. 13-14: “Organising the prostitution of others, with the aim of obtaining a benefit”, means: subjecting in return for remuneration to hierarchical control or a specific way of operating, coordinating in return for remuneration the activity of persons providing paid sexual services, for instance coordinating work or determining working hours or times.

203 As the amendment makes clear, these aren't conditions imposed on the sex worker. Sex work is an occupation with specific characteristics that requires robust protection for the sex worker. Adaptations will therefore have to be made to labour law and social security law to take account of these specificities.

204 See amendment no. 71 by Ms Gabriëls et al to the bill amending the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/005.

This was one of Myria's concerns, raised in the previous report²⁰⁵ and during its hearing²⁰⁶.

The new Article 433*quater*/4 therefore only provides for the vulnerability of the victim as an aggravating circumstance, but has dropped the reference to other means (such as coercion, specific to human trafficking).

Advertising for prostitution: prohibited with some exceptions

The Council of State was critical of the text contained in the bill adopted at first reading, following the adoption of an amendment. It considered its scope to be too vague, with the result that it was doubtful whether the envisaged criminalisation was sufficiently predictable. In particular, it referred to the type of medium on which advertising could be permitted.

This article (Article 433*quater*/2) was therefore amended again at second reading²⁰⁷. The text finally adopted provides for a ban on advertising the prostitution of an adult, except in three cases²⁰⁸:

- where the adult advertises their own sexual services behind a window in a place that is specifically intended for prostitution;
- where the adult places advertising for their own sexual services on an internet platform or other medium or part of a medium, specifically intended for that purpose;
- where a provider of an internet platform, other medium or part of a medium, specifically intended for this purpose, advertises sex services, or establishments in which such services are offered. Advertising by the latter shall be lawful if the provider can demonstrate that it takes measures to protect sex workers and to prevent abuse of prostitution or trafficking in human beings by immediately reporting suspicions of abuse or exploitation to the police or judicial authorities and by complying with the terms determined by the King. However, these terms have yet to be defined.

Multidisciplinary evaluation

The new Article 433*quater*/9 of the Criminal Code provides for an evaluation of the provisions of the chapter on abuse of prostitution by the Chamber of Representatives two years after their entry into force and every four years thereafter. This provision was also introduced as a result of an amendment to the bill under discussion²⁰⁹. The authors of the amendment considered that the social importance of this subject justified a periodic evaluation. This should make it possible to objectify the situation and monitor its evolution, not only to verify the positive effects (protection, access to rights, etc.) but also to establish whether or not some of the risks mentioned have emerged (in particular, the impact on the fight against human trafficking).

The law specifies that this evaluation is multidisciplinary and relies in particular on the expertise of representatives of the stakeholders in the judiciary and the police, representatives of specialist public bodies, representatives of civil society organisations and academic experts. The terms of this evaluation must be laid down in law by 31 December 2022.

2.3. | Amendments to the act of 1995: Belgian victims and national referral mechanism

The government took advantage of the discussion on the Sexual Criminal Law Reform Bill to make changes to the Act of 13 April 1995 on trafficking in human beings²¹⁰ through an amendment²¹¹.

The aim was to clarify what is meant by victim of trafficking and (aggravated) smuggling of human beings and to emphasise that Belgian victims of human trafficking also benefit from the support of specialised reception centres²¹².

205 Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, p.16 and 122.

206 Report of the first reading made on behalf of the Committee on Justice by Ms. Claire Hugon and Mr. Christoph D'Haese on the bill amending the Criminal Code as regards criminal sexual law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/006, p. 282.

207 Amendment no. 140 by Ms. Gabriëls et al. to the bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/016. Also see the report of the second reading on behalf of the Committee on Justice by Ms. Sophie De Wit, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/017, pp.30-35.

208 Advertising the prostitution of a minor is totally forbidden (new articles 417/39 and 417/40 of the Criminal Code).

209 Amendment no. 124 by Ms. Hugon, Mr. Van Hecke et al. to the bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/012, p. 14.

210 Act of 13 April 1995 containing provisions for the suppression of trafficking and smuggling of human beings, *M.B.*, 25 April 1995.

211 Amendment no. 114 by Ms. Gabriëls et al. to the bill to amend the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/011, p. 3.

212 New Art. 11, §1, 3° of the Act of 13 April 1995. The act specifies that "victim of human trafficking" should be understood as "any person, Belgian or foreign, against whom the offence referred to in Article 433quinquies of the Criminal Code is committed".

Article 11 of this act now explicitly incorporates the general principle of referring all victims of human trafficking, whether Belgian or foreign, as well as victims of aggravated smuggling, to specialised reception centres²¹³.

Myria welcomes this clarification.

The amendments also create a legal basis for the principle of subsidising the specialised reception centres²¹⁴. The Inspector of Finance considered that the current bases of the 1980 and 1995 acts were too vague. The law now distinguishes between 'recognition' and 'authorisation'. 'Recognition' consists of the ability to implement the residence procedures referred to in the Aliens Act, and to act as a referral point for the services in charge of detecting victims of human trafficking and aggravated forms of human smuggling, with the aim of involving these victims in the judicial process. 'Authorisation' refers to the consent given by the King to take legal action. The law therefore provides that recognised and approved centres can be subsidised within the framework of the tasks they perform in connection with their recognition and authorisation²¹⁵.

2.4. | Other measures

Unenforceability of the nullity of an employment contract of persons engaged in prostitution

On 31 March 2022, another act came into force that should be mentioned. This is the Act of 21 February 2022 concerning the unenforceability of the nullity of an employment contract of persons who engage in prostitution²¹⁶.

The aim of this act is to render unenforceable the potential nullity of an employment contract of persons engaged in prostitution. The act thus provides for both an autonomous provision and the amendment of certain existing provisions in labour and social security law. Therefore, the nullity of the contract can't be invoked against the rights of a person working as a prostitute under an employment contract.

This act falls within the framework of the implementation of the government agreement. The agreement stipulates that the fight against sexual exploitation will remain a priority in the area of prostitution. The act adopted falls under the agreement's second priority: the implementation of a reflection process, in consultation with the stakeholders in the field, in order to improve the living and working conditions of sex workers²¹⁷.

This will prevent certain employers or third parties in the future from invoking the nullity of the contract in order to avoid their obligations²¹⁸. The consequence of the nullity of the contract was that the contract was presumed never to have existed. Therefore, the worker couldn't claim any rights or protection.

Hence, this act is a step forward for sex workers.

Measures taken to limit the risk of human trafficking of people fleeing the war in Ukraine

Various measures have been taken by the Belgian government to inform people fleeing the war in Ukraine and prevent the risk of human trafficking:

- Information tool on human trafficking²¹⁹: there is an information tool on the info-ukraine.be website to warn people from Ukraine, who may be victims of exploitation, about the indicators of human trafficking and to urge them to contact one of the three specialised reception centres. This tool also exists as a flyer and was displayed on a big screen at Heysel.
- Fedasil has also produced a brochure on the reception of asylum seekers including a short reference to human trafficking and the contact details of specialised reception centres.
- There will also be brochures available for both stakeholders working with minors and for the minors themselves.
- Screening of persons wishing to offer a home to persons fleeing the war in Ukraine: in order to prevent the risk of human trafficking, special provisions have been made for persons wishing to offer a home to persons fleeing the war in Ukraine: they must provide a certificate of good conduct²²⁰. In addition, the regions and municipalities are responsible for checking housing facilities for those fleeing and the standards of safety, hygiene, quality and/or equipment of the housing. Persons wishing to offer a home must register through an online platform.

213 New Article 11, §1/1 of the Act of 13 April 1995. The victim referral mechanism was already defined in the Aliens Act of 15 December 1980 but was only aimed at foreigners since these provisions concern the conditions for issuing residence permits (Articles 61/2 to 61/5).

214 Art. 11, § 2 of the Act of 13 April 1995.

215 Art. 11, § 2, paragraph 4 of the Act of 13 April 1995.

216 Act of 21 February 2022 concerning the unenforceability of the nullity of the employment contract of persons engaged in prostitution, *M.B.*, 21 March 2022.

217 Explanatory memorandum to the bill concerning the unenforceability of the nullity of the employment contract of persons engaged in prostitution, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2385/001, p. 4.

218 *Ibid.*, p.5.

219 [I am being exploited - Ukraine \(info-ukraine.be\)](https://www.info-ukraine.be)

220 Circular of 18 March 2022 on the control of applicants for accommodation of persons fleeing the armed conflict in Ukraine, *M.B.*, 8 April 2022.

Chapter 2

Case law overview 2021 - start 2022

1. Trends

What were the main trends in human trafficking and smuggling cases in 2021 and at the start of 2022? The case law analysis in this edition is based on the cases in which Myria filed a civil suit, on decisions it received from the three specialised reception centres for victims and the decisions provided by magistrates or other partners. Myria also presents two decisions of the European Court of Human Rights, one on human trafficking and the other on migrant smuggling.

Finally, the Council for Alien Law Litigation (Conseil du Contentieux des Étrangers) granted refugee status to a young woman from Sierra Leone who was a victim of human trafficking. Myria also discusses this decision at the end of this overview.

Myria was informed of a particularly high number of decisions rendered by the judicial authorities this year, i.e. 107²²¹ : 87 Dutch-speaking decisions and 18 French-speaking decisions.

The most interesting and relevant decisions are listed below: 57 decisions²²² relating to 50 cases in the country's different jurisdictions²²³.

- Among the decisions in this selection, 35 concern human trafficking and 21 human smuggling.
- 19 decisions relate to sexual exploitation. They were handed down in the jurisdiction of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (French- and Dutch-speaking and court of appeal), Ghent (East Flanders/Oudenaarde) and West Flanders (Bruges and court of appeal), Liège (Liège division) and Mons (Charleroi division).

Once again, a large proportion of the sexual exploitation cases concern Nigerian prostitution networks. This year, there are also cases from East Flanders and West Flanders. One case from Bruges is of particular note: a former victim recruited girls in Nigeria herself and exploited them in Dubai from Belgium. Another major case, dealt with in Brussels and discussed in detail below, concerns a Nigerian network with international ramifications and dozens of victims, and also has a link to the older 'Mama Leather' case.

In addition, a large number of cases concern the 'loverboy' technique or pimping of teenagers, frequently involving minors, including Belgians from vulnerable families or who have run away from a centre for minors.

Myria also notes a trend involving victims of sexual exploitation from Latin American countries, both on the French- and Dutch-speaking sides of the country. These are often transsexual women.

In several cases, the defendants were actually former victims.

In one of the French-speaking cases involving the loverboy technique, the recent non-punishment provision was applied to one of the victims, who had acted as a 'lovergirl'.

²²¹ Compared with 42 decisions in 2021 and 58 decisions in 2020.

²²² In a number of cases, the judgment at first instance has already been discussed in previous reports. ²²³ These decisions will also be published on Myria's website: www.myria.be (jurisprudence).

In several cases involving child victims, the clients had reported their presence on the prostitution website to the police or to Child Focus.

It is worth noting that judges attach great importance to victims' statements if they can also be supported by other objective evidence.

- 16 decisions deal with labour exploitation in various sectors. They are presented below per sector: construction, transport, bakery, hospitality industry, night shops, domestic work (including a diplomat and a European public servant), cleaning, as well as atypical sectors (travel agency, hairdressing salon and metal sorting sector). These decisions were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (French- and Dutch-speaking), Ghent (West Flanders (Bruges) and court of appeal), Liège (Liège and Luxembourg (Marche-en-Famenne)).

One case on appeal concerns a posting carousel and manslaughter in the transport sector. The decision at first instance was already mentioned in the previous annual report.

It should be noted that in one case of domestic work where the employer was a European public servant, the job was perfectly legal.

In order to establish the existence of working conditions contrary to human dignity - which is an element of human trafficking - Myria notes that judges take into account various elements such as working conditions and environment (excessive working hours, excessively low wages, no days off), poor accommodation, withholding of wages under various pretexts, dependence on the employer (e.g. use of surveillance cameras). It is worth noting that in many cases, courts give great weight to workers' statements, provided they are accurate, consistent and supported by other objective evidence. However, some courts still show a lack of knowledge of the provisions on human trafficking (e.g. based on the more restrictive ILO criteria for forced labour, such as restriction of freedom of movement).

- One case involves acts of forced criminality combined with sexual exploitation using the loverboy technique. This case is discussed below, among the decisions relating to sexual exploitation.
- This year, there was no decision concerning human trafficking for the purpose of begging.
- The human smuggling decisions mainly come from West Flanders (Bruges) but also from the jurisdictions of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (Dutch-speaking Brussels and court of appeal), Ghent (East Flanders (Dendermonde, Ghent)) and Liège ((Namur division) and court of appeal).

Human smuggling often involves well-structured, even criminal organisations, such as the Vietnamese, Albanian and Iraqi-Kurdish networks. But there are also less well organised smugglers, such as Ethiopian/Eritrean and Sudanese.

One major case relates to the smuggling of Vietnamese nationals into the United Kingdom, which resulted in 39 deaths. In this case – in which Myria filed a civil suit – 23 defendants were prosecuted, including Vietnamese smugglers as well as various Brussels taxi drivers who transported the victims of smuggling to lorries in West Flanders or in northern France. Several smaller cases also involved the smuggling of Vietnamese nationals, either in lorries or across the North Sea in makeshift boats. It should be noted that in the latter case, Vietnamese smugglers use Iraqi-Kurdish smuggling organisations.

Another Iraqi-Kurdish smuggling case, reheard on appeal, relates to the tragic death of the Kurdish girl Mawda following a police shooting.

According to a general trend, aspiring migrants are not only climbing into heavy goods vehicles in parking areas in Flanders but also increasingly in parking areas further from the coast, sometimes even in Wallonia. In one case, illegal boarding took place in parking areas on the Luxembourg border, and it seems that this also happened in the Grand Duchy.

The new modus operandi of smuggling people in small boats or sailboats, already observed last year, is continuing. In addition, a large part of the smuggling cases received concerned logistical support for the crossings by small boat. This involves the transportation of logistical material from abroad via Belgium to Calais in France, where the majority of the boat crossings take place, as this is the shortest stretch of the North Sea between Europe and the United Kingdom. The majority of the cases are from West Flanders, but there is also a case from Namur.

It concerns cars that were stopped, often in areas where human smuggling takes place on the coast and on the French border, with equipment used for smuggling found in the boot: dinghies, outboard motors, life jackets and jerry cans filled with petrol. Very often, they were cars with German number plates, or sometimes Dutch or French, which were found at night or at dusk, and usually with the windows blacked out. This was all the more conspicuous at the time given the strict health restrictions linked to the coronavirus epidemic. The defendants were usually resident in Germany.

It should be noted that in almost all smuggling cases, defendants are prosecuted as perpetrators or co-perpetrators under Article 66 of the Criminal Code, for which there is no need to prove a financial benefit for the defendant.

There were also several cases concerning the smuggling of Albanian nationals. On the one hand, there were cases of smuggling by car via the Zeebrugge ferry or by yacht or sailboat from marinas on the Belgian coast. Several cases involved a modus operandi whereby an Albanian smuggling organisation operating from the United Kingdom and Italy used Italians who were in financial difficulty. These Italians are used as drivers or their Italian identity documents are used to produce false identity documents (with a different photo). They take Albanian aspiring migrants to boats in marinas or drive them to England by ferry.

On the other hand, there are several decisions concerning the smuggling of Albanian nationals in lorry cabs. The point of departure is a hotel on the outskirts of Ghent. The smuggling is carried out with the knowledge of Italian or Albanian lorry drivers who work for an Italian haulage company.

Myria also presents a judgment of the Brussels Court of Appeal in a case where the human smuggling acts were reclassified under Article 77 of the Aliens Act and the humanitarian clause was applied.

2. Human trafficking

2.1. | European Court of Human Rights, *Zoletic and others v. Azerbaijan*, judgment of 7 October 2021

This judgment concerns the failure to open and effectively investigate allegations of forced labour and human trafficking in the construction sector²²⁴.

The applicants were 33 nationals from Bosnia and Herzegovina, recruited in Bosnia and Herzegovina as temporary construction workers to work in Azerbaijan. In particular, they argued that they had been victims of human trafficking and subjected to forced or compulsory labour while working on construction sites. Among other things, they allegedly worked without a contract or work permit, had their papers confiscated by their employer, who restricted their freedom of movement, and were left without pay.

The Court considered that the three elements of human trafficking were present in the case: the recruitment of the applicants in Bosnia and Herzegovina, their transportation in groups to Azerbaijan by a private company and their collective accommodation in purpose-built housing, which they were forbidden to leave without their employer's permission, can be considered as 'the recruitment, transportation, transfer, harbouring or receipt of persons' (the 'act'); the allegations relating to the recruitment of the workers depict a situation that may pass for recruitment by deception or fraud (the 'means'); and the Court's finding as to the arguability of the applicants' claim of 'forced or compulsory labour' indicates that they may have been sought to be exploited by being forced to work (the 'purpose').

The Court found a violation of Article 4 § 2 (prohibition of forced labour) of the Convention in its procedural aspect. It found that the Azerbaijani authorities had failed to fulfil their procedural obligation to initiate and conduct an effective investigation into the applicants' complaints of forced labour and human trafficking.

224 ECHR, *Zoletic and Others v. Azerbaijan*, judgment of 7 October 2021, application no. 20116/12.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

As in the previous case law overviews, there are several decisions concerning Nigerian networks, sometimes also involving minors. This year, there are also decisions from East Flanders and West Flanders.

Child victims in an international Nigerian network

The Dutch-speaking Criminal Court of Brussels tried a large-scale case involving a Nigerian prostitution network with international ramifications on 10 December 2021²²⁵.

In this case, five defendants of Nigerian and Belgian nationality were prosecuted for trafficking in human beings for the purpose of sexual exploitation with aggravating circumstances, in particular the fact that the victims were minors. Other charges included running a criminal organisation, acquiring financial benefits of criminal origin, possession of child pornography, etc. Dozens of victims were involved.

In May 2019, the federal police in Brussels were contacted by a French NGO in Lille that supports victims of human trafficking. Two young girls had reported being trafficked from their home country to Belgium as minors in 2015 by a Nigerian network and exploited there for years. Over the years, the victims had repaid a debt of almost EUR 30,000 to the defendants.

The leaders of the organisation were the main defendant, who remained mainly in Italy, and his assistant, the second defendant.

The police launched an investigation and interviewed the victims, examined their mobile phones, analysed their accounts, searched a safehouse, and verified past checks during which the two victims had been spotted by the police on several occasions in the red-light district.

In October, a third victim, the civil party, came forward and made identical statements. She also made statements about her harrowing journey from Nigeria to Belgium, during which she attempted to cross the Mediterranean up to seven times, was caught by the Libyan coastguards, ended up in prison, was raped several times and was sold to a stranger.

She stayed in the safehouse in the presence of the second defendant and other girls. New girls arrived on a regular basis. When she became pregnant, she was taken to Italy where the two main defendants made her have an abortion against her will. She also witnessed the forced abortion of a 16-year-old girl who was seven months pregnant. The little boy was born alive and was drowned in a bucket. In 2018, she stopped paying her exploiters. Threats were then made against her and her family. Two of her Belgian friends made statements. One stated that he knew she was being exploited and that he regularly gave her money so that she could pay off her debt more quickly. The other was her former boyfriend. He confirmed that the victim had gone to Italy, but at the time he didn't know the exact reasons for the trip. It was only afterwards that she told him that she was pregnant by him and had been forced to have an abortion.

A judicial investigation followed in November 2019. The victims were heard again. Information was requested from the Immigration Office (IO). The various Facebook and Instagram accounts were investigated, which also established links between the first defendant and Norway, Denmark and Italy. An investigation was carried out at Ryanair, where it was found that return flights were always booked in the same name from Italy to Denmark, but that there was never anyone on the return flight, indicating that it was being used to transfer the girls to Denmark. Requests for mutual legal assistance were sent to Norway, Denmark and Italy.

The safehouse was observed, the phone numbers of the various defendants were tapped and a financial investigation was conducted. As a result, numerous international contacts were uncovered, particularly with people in Libya. Large flows of money were identified within Europe and between Europe and Nigeria. There were numerous financial transactions, especially through the 'Black Western Union' system, investments in real estate, property and businesses in Nigeria. False identity documents were used.

It was an international organisation that brought over women from Nigeria to Europe to exploit them for prostitution. When the women arrived in Italy, they were distributed throughout Europe by the Turin organisation. The women were subjected to voodoo practices and had to pay off large debts. Dozens of girls were involved, which, according to the court, was just the tip of the iceberg. The girls had to pay back debts of EUR 30,000 to EUR 45,000. If the girls did something wrong, their debts were increased.

²²⁵ Brussels Dutch-speaking Crim. Court, 10 December 2021, ch. 23N (appeal).

According to the court, this was a well-structured and organised association. The organisation was masterminded by a number of people. The first defendant was clearly one of the leaders of the organisation. He brought the girls to Italy and distributed them among several countries. The second defendant was clearly also at the head of the organisation. The girls were 'divided' between the first defendant and the second defendant. The first defendant also had girls in Greece, Italy, France, etc. He came to Belgium every two months to collect the money. The role of the second defendant was to collect the money for the first defendant. Sometimes the money was also transferred directly to Italy. She kept the victims under control. She herself had girls in Belgium, France and Italy. She wasn't always in Belgium and often went to Spain.

The girls stayed in the flat of the second defendant and prostituted themselves in windows through the 'Yemeshe' system²²⁶. Several girls also stated that they had to work in the window of 'Mama Leather'²²⁷.

The investigation revealed that the second defendant was assisted by several friends who also took on her role and kept an eye on things during her absence abroad, namely the third, fourth and fifth defendants.

The third defendant was the right arm of the second defendant. She kept a close eye on the girls. She was an active member of the organisation, liaising with Nigeria for the transfer of new girls from Nigeria and organising the related voodoo rituals. Her mobile phone contained dozens of videos of voodoo rituals. She was also involved in sending and receiving money and falsifying documents. She also assisted the girls on their way by phone, in Nigeria and in Europe. She herself had girls in windows.

The fourth defendant was also an active member. She lent her own daughter's passport so that other girls could travel from Italy to Belgium. She regularly travelled to Nigeria to bring back belongings and money.

She was the financial intermediary who organised the 'Black Western Union system'²²⁸. She was caught with a large sum of money in her shoe during airport checks. Her passport revealed that she took about ten flights to Nigeria every year. Accounts were discovered during a search and numerous conversations were heard about exchange rates, 'fundraising' and the Black Western Union system. The investigation revealed the following modus operandi: the defendant received the money and had to hand it over to someone in Nigeria. She would send a message via an intermediary with the recipient's details (surname, first name, account number, bank and amount). The intermediary then transferred the money to this account. In addition, the defendant also managed the 'fundraising'. A group of people make a financial contribution. The organiser determines who can contribute and who receives the money. In Europe, this system is mainly used in criminal circles. In this case, the pimp's contribution to the fund was covered by the victims' income. In addition, her phone contained photos of severe violence, mutilation and corpses, as well as child pornography.

Some of the defendants were known in other Member States and often used different identities and passports. In the end, two defendants were arrested in Belgium, one in Italy and the second defendant in France, where she had fled after learning of the police investigation against her. The third defendant had already been convicted in Germany of attempted intensive prostitution and particularly intensive forced prostitution.

During the investigation, Payoke contacted the police about threats made against the civil party by the defendants and their entourage.

The main defendants were given prison sentences of 12 and 10 years and fines of EUR 96,000 and EUR 64,000 respectively. The other defendants were given prison sentences of five, four and three years and fines of EUR 48,000, EUR 32,000 and EUR 16,000 respectively. An amount of EUR 13,300 was confiscated. The first defendant and the fifth defendant were sentenced in absentia. One victim filed a civil suit and was awarded EUR 55,500 in compensation, including EUR 10,000 for non-pecuniary damages.

226 This is a typical modus operandi of the Nigerian prostitution scene, whereby a young girl who has no fixed place of prostitution is offered the opportunity to prostitute herself for a few hours in the window of a contract prostitute. The girl then has to pay a sort of rent by handing over 50% of her income to the contract prostitute.

227 'Mama Leather' is a Nigerian madam who was convicted in 2019 in a vast case concerning a Nigerian prostitution network. See Brussels Dutch-speaking Crim. Court., 31 May 2018, 60th ch. and Myria, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 65 and foll., and 130-132 and Myria, 2019 Annual Report Trafficking and smuggling of human beings, *Empowering victims*, p. 118.

228 The Nigerian criminal underworld avoids official money transfer companies and has its own system for transferring cash to beneficiaries in the country of origin without leaving a trace: *Black Western Union* (which has nothing to do with the well-known Western Union company). An African shop is often used as a hub for regularly sending cash to Nigeria. People bring their cash to this shop with the request to transfer the same amount to the beneficiary in Nigeria. They are then given a code number. The courier regularly flies to Nigeria with the collected money (hidden in luggage). In Nigeria, a family member runs an office where the beneficiary can go and receive the amount due, in return for a commission. On this subject, see Myria, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 92-93.

Exploitation of a young Nigerian woman with the testimony of a priest

On 22 March 2022, Antwerp Criminal Court²²⁹ ruled on a case in which a defendant of Nigerian nationality was prosecuted for trafficking and smuggling of human beings, in both cases with aggravating circumstances. The victim filed a civil suit.

The investigation was launched in the autumn of 2019 after Antwerp federal judicial police (FJP) was informed of a potential victim of sexual exploitation. The victim made very detailed statements. In Benin City, the victim was approached by a lady who said she could offer her work as a hairdresser in Europe. For this purpose, she had to take a voodoo oath and pay EUR 20,000. She was then taken to Italy via the Libyan route and the Mediterranean Sea with other girls, before being driven to Antwerp in a 'black taxi'²³⁰. Once there, she had to prostitute herself in a café. Her 'madam' gave her instructions on how to approach the clients, how much she should charge (EUR 100 per hour), which hotel to go to with her clients, how to use a condom, etc. The victim had to hand over EUR 500 of her earnings every week, plus EUR 200 per month for rent and EUR 50 per week for food. She had already paid back between EUR 7,000 and EUR 8,000 in total. She also had to apply for asylum in France and hand over the allowance of EUR 360 per month. In 2018, the victim fainted in the train station, was admitted to hospital, fell into a coma and was found to have diabetes. After she was discharged from hospital, her 'madam' didn't care about her illness and forced her to continue working.

The victim stated that she was in contact with a priest who could also make statements about her situation. This priest confirmed the victim's account and also stated that he had been approached by the defendant, who asked him to remind the victim that she had debts and that if she defaulted she would be 'destroyed'. He was able to produce an audio fragment in which the defendant threatened him and indicated that she had a network that would pursue the victim. The victim's family in Nigeria was also threatened.

The court found that the victim's particularly consistent, detailed and credible statements could be supported and substantiated by the police findings, the statements of the priest and the audio fragments of conversations between the priest and the defendant.

In addition, the investigators had access to a similar case of human trafficking involving other girls, in which the defendant also appeared. The defendant had been assisted in her activities by several other persons who couldn't be identified during the investigation.

The defendant was convicted of trafficking in human beings with the aggravating circumstance of using fraudulent schemes (voodoo ritual and threats against the victim and her family). She was also found guilty of human smuggling with the aggravating circumstance of endangering the life of the victim (Libyan route and crossing the Mediterranean). She was sentenced to four years in prison and fined EUR 8,000. She was also ordered to pay the victim EUR 15,700 in pecuniary damages (including money from prostitution, the allowance linked to the asylum application in France, rent and food) and EUR 3,750 in non-pecuniary damages.

Ghanaian 'madam' and child victim

In a judgment of 3 February 2022, Brussels Dutch-speaking Criminal Court²³¹ ruled on a case in which the defendant was prosecuted for human trafficking for the purpose of exploitation of prostitution and for exploitation of prostitution with the aggravating circumstance of the victim being a minor. The defendant had Belgian nationality, but was Ghanaian by origin.

In early 2018, a patrol in the red-light district discovered an apparently very young girl behind a window. The girl stated that she had been brought from Nigeria to Belgium by her 'madam' to work there. Apparently, her 'madam' was in Spain. Before her departure, she had been made to take a voodoo oath. Before taking the oath, she was told that she would have to work as a prostitute and that she would have to pay back a debt of EUR 25,000 for the crossing. She arrived in Italy via the Libyan route and a boat crossing. From there, she was flown to Spain, where she had to prostitute herself with her 'madam'. After a few months, she was flown to Belgium, which cost her EUR 1,000. She was housed with the defendant on the outskirts of Brussels. The defendant had initially thought that the victim was the sister of the 'madam' in Spain and became angry when she discovered her true status. After a few days, she brought the girl to the Brussels North district and put her in contact with another lady with whom she could work in a window according to the 50/50 system ('Yemeshe' system).

229 Antwerp Crim. Court, Antwerp division, 22 March 2022, ch. AC10 (in absentia).

230 These are unofficial taxi drivers.

231 Brussels Dutch-speaking Crim. Court, 3 February 2022, ch. 26 (final).

The defendant collected the money for the 'madam' in Spain. At the same time, the victim had to regularly hand over money to the defendant. This amounted to a total of EUR 500, in addition to the repayment of her debt. The defendant also confiscated the victim's passport when she wanted to leave her house.

The victim was helped by Payoke and stated during the investigation that she had been contacted by the defendant and that her parents were also being pressured by the 'madam' in Spain and her entourage.

The investigation revealed that the victim was still a minor when the acts began.

The defendant was heard. She said that at first she didn't know that the girl was a victim of trafficking. She stated that she didn't want the victim to be a prostitute, but that she had indeed brought her personally to the Brussels North district. She also denied receiving any money from the victim, except for food.

The court found that the elements of human trafficking were established. "Trafficking in human beings for the purpose of the exploitation of prostitution is not aimed at the person who recruits a person to exploit them themselves - an act already punishable under Article 380 § 1, 1° of the Criminal Code - but is aimed specifically at persons who enable others to carry out the exploitation by helping to 'deliver' the victims to make them work in prostitution". The defendant may not have been aware of the reason and circumstances of the victim's presence in Belgium at first, but after a week she nevertheless found her a place to work. In doing so, she acted in a way that made the exploitation of prostitution by others possible. She didn't refer her to the emergency services that could have supported her better owing to her vulnerable situation and status as a minor. This is sufficient to qualify as human trafficking.

For the other aggravating circumstances, the court didn't find sufficient evidence. The defendant didn't deliberately want to be part of an association, and it wasn't established that she wanted to abuse the victim in any way, unlike the other persons directly involved in the transfer. It couldn't be proved that this activity had become customary for her. The charge of exploitation of prostitution wasn't upheld and the defendant was acquitted.

She was given a one-year prison sentence and a fine of EUR 8,000, both suspended for three years.

Nigerian prostitution network in West Flanders and links to human trafficking in Dubai

In a judgment of 26 May 2021²³², Bruges Criminal Court ruled on a case of human trafficking for the purpose of sexual exploitation in the context of a Nigerian prostitution network. This was a large-scale case in which 15 defendants of Nigerian, Sierra Leonean or unknown nationality were prosecuted for being perpetrators or co-perpetrators of human trafficking, human smuggling, money laundering, belonging to a criminal organisation, etc. The main defendant was also prosecuted for assault and battery of a victim. Two victims filed a civil suit.

In autumn 2018, the local police in the Bruges area noticed that more prostitutes of African origin than usual were offering their services on a sex website. The advertisements were analysed and it was found that they could be linked to different phone numbers and were managed from IP addresses based in Nigeria, France and the United Kingdom. In total, 33 different logins were used.

An investigation revealed that several clients of the sexual services website had complained: they had to pay the prostitute's driver; the prostitute was accompanied by a man who waited at the door in an intimidating manner; the prostitute didn't do the work willingly; the services offered didn't correspond to those advertised; the prostitute turned out to be someone other than the one depicted in the photos. One client was confronted with a girl who was clearly underage and didn't seem to have any experience in the field of sexual services.

Several perpetrators and victims appeared in court.

Evidence from the investigation indicates that human smuggling from Nigeria to Europe and then onto Dubai was taking place. The women transferred were then employed in prostitution to pay back the money owed to those responsible for the smuggling.

The investigation was conducted on the basis of phone tapping, an analysis of the advertisements and querying the advertising platform, searches, examination of the laptops found during the searches, hearings of victims, witnesses and defendants.

²³² West Flanders Crim. Court, Bruges division, 26 May 2021, ch. B17 (appeal: Ghent Court of Appeal, 4 February 2022, 10th ch.).

The investigation revealed that the first defendant was clearly the key figure in the criminal organisation. She had several Nigerian girls under her control. She organised the transportation of Nigerian girls to Europe via Libya under false pretences, using voodoo as a means of pressure. Once in Europe, the girls had to pay back their 'debts' by prostituting themselves. The first defendant was responsible for the advertisements on the sex website and for dispatching the prostitutes from Belgium and abroad. She made appointments with clients, after which she sent prostitutes accompanied by a 'black taxi', an unlicensed taxi service that transports prostitutes for a fee. The first defendant took the lion's share of the proceeds.

The proceeds were then laundered and transferred. Several phone tapped conversations concerned the purchase of property in Nigeria by the first defendant. The practices involved constant attempts to avoid detection by relying on social media such as WhatsApp and Facebook Messenger, using numbers in another person's name, many different online logins, etc. The use of violence as a means of pressure was common. One of the victims was found by the police after being beaten by the first defendant, leaving her with a serious permanent eye injury. She was granted victim status.

The second defendant was also high up in the hierarchy of the criminal organisation and was called 'sister' by the first defendant. Together with the first defendant, she was responsible for the organisation and management of the prostitutes both in Belgium and abroad. Like the first defendant, she made appointments with clients for the prostitutes who were brought to them by 'black taxis'. She also supervised the execution of the orders and was involved in transportation orders. She also actively tried to avoid detection, used social media, different numbers and logins, etc.

By listening to a conversation, the investigators got a good idea of how the payments were made: an order for two girls brought in a total of EUR 250, of which EUR 30 was paid to the 'black taxi'. The remaining EUR 220 was distributed among the victims. Both had to pay EUR 10 for a SIM card and of the remaining EUR 100 each had to give half to the first defendant. So, after the payment, each of the escorts had EUR 50 left.

The third defendant was the partner of the second defendant, whom helped to manage the prostitutes (transportation, payments, etc.). His mobile phone number was connected with the advertisements and he was the beneficiary of the financial transactions associated with the prostitution.

As for the fourth defendant, it appears that she organised financial transactions and money laundering, among other things. Initially, she was a prostitute herself, managed by the first and second defendants. However, she went beyond her role as a victim and became involved in (financing) the smuggling and trafficking of human beings from Nigeria and Dubai and sexual exploitation. She attempted to generate income from the same practices she had previously been subjected to by the first two defendants, and then transfer these gains to Nigeria to build properties there. She and her partner, the fifth defendant, were financing the transfer of girls from Nigeria to Dubai. As soon as the girls arrived there, they had to prostitute themselves to pay off their debts, which they paid back to the sixth defendant in Dubai, on the orders of the fourth and fifth defendants. They controlled all this from Antwerp. The sixth defendant was also involved in the smuggling practices of the fourth defendant between Nigeria and Dubai. Her role was considered more extensive than that of the fifth defendant.

The seventh defendant brought two ladies to the fourth defendant with a view to getting them to work in prostitution. At least one of them was indeed used as an escort by the defendant. He also worked as a 'black taxi' within the organisation for the fourth defendant. The other five defendants in this case also worked in the organisation as 'black taxis'.

The fourteenth defendant was employed by the fourth defendant to launder income from prostitution and used a false identity with a separate mobile phone number for this purpose. He organised the money laundering scheme known as 'Black Western Union' on commission. The fifteenth defendant was also involved in laundering the organisation's prostitution proceeds and facilitating human smuggling between Nigeria and Dubai. One of the defendants died during the proceedings.

Several defendants couldn't be traced during the proceedings and were sentenced in absentia.

The first and second defendants were sentenced to 10 and seven years in prison respectively and fines of EUR 8,000. They were stripped of their rights for 10 years. Large sums of money were confiscated.

The fourth defendant, the fifth defendant, the sixth defendant and the fifteenth defendant, involved in human smuggling and trafficking from Nigeria to Dubai, were given five-year, 40-month and 30-month prison sentences respectively and each fined EUR 8,000.

The taxi drivers were sentenced to 18 months in prison and fined EUR 8,000. The other defendants were sentenced to 30 months in prison and fined EUR 8,000.

The victims were each respectively awarded EUR 25,000 and EUR 12,000 for pecuniary and non-pecuniary damages.

An appeal was lodged by several defendants and Ghent Court of Appeal re-examined the case in a judgment of 4 February 2022.

The court largely upheld the decision, with the exception of certain aspects. The first three defendants were acquitted of human trafficking and recruitment of a specific person owing to lack of evidence.

The prison sentences were reduced to seven years, three years, two years and five years respectively for the first four defendants and the fines were also reduced. One of the taxi drivers received a one-year prison sentence and a fine of EUR 8,000.

Nigerian prostitution in a nightclub in Oudenaarde

In a judgment of 16 April 2021²³³, Oudenaarde Criminal Court ruled on a case of human trafficking for the purpose of sexual exploitation, in which three defendants, of Belgian, Italian and Nigerian nationality, were prosecuted for acts of human trafficking with aggravating circumstances, as well as exploitation of prostitution and hiring adults for the purpose of prostitution, among other things. The first two defendants were also charged with running a brothel and renting out rooms for the purpose of prostitution. The various events took place between 2014 and 2018.

At the beginning of 2017, the police noticed advertisements of two girls of African origin offering their services as prostitutes/escorts in a nightclub in Ronse.

The first defendant turned out to be the owner and manager of this nightclub. The second defendant was responsible for ensuring the club ran smoothly. The first defendant was known for acts of prostitution and money laundering. An investigation was opened, also for money laundering. It transpired that advertisements of other girls could also be linked to the nightclub and that the accounts through which the advertisements were posted were linked to the first defendant.

It also emerged that the defendant was receiving large sums of money through European Merchant Services, a service that processes credit card payments and the money is then withdrawn in cash. The investigations were carried out by means of a phone investigation, searches, phone tapping, questioning the girls, witnesses and defendants, etc.

In the meantime, two victims, supported by a centre, filed a complaint with the police. The police had already intercepted them in the nightclub. The two young African women turned out to be two sisters from Nigeria. They stated that they had been brought to Europe from Nigeria under false pretences. They were bound by a debt of EUR 36,000 and had been subjected to a voodoo ritual. In Europe, they had been brought to Belgium from Italy. Their 'madam', the third defendant, received them in Belgium. The latter took them to the first defendant's nightclub where they stayed from December 2016 to July 2017. They had to give money to their real pimp and the first defendant. The pimp was the friend or brother²³⁴ of the third defendant, who was in Italy. Part of their earnings were transferred to Italy by 'Black Western Union'. They also acted as escorts, with the first defendant acting as their driver. If they didn't earn enough, they were threatened and abused. Their families in Nigeria were also threatened.

While working in the club, they had to hand over the money to the first defendant. He kept track of the payments and also of what the girls gave to their 'madam'. They slept above the club and had to pay EUR 700 per person per month. They were available to clients 24 hours a day, seven days a week, with no days off. When the police came by every week, they had to hide and the door was locked.

Several people stated that the girls in the club worked on a 50/50 basis. The first two defendants refuted this claim and said that the girls could keep their money and that they only earned money from drinks and room rentals. They were completely unaware of the EUR 36,000 debt and the victims' illegal stay in Belgium.

The various statements of the girls, victims, defendants and other witnesses were sometimes contradictory. The sisters' statements also contradicted each other on certain points.

²³³ East Flanders Crim. Court, Oudenaarde division, 16 April 2021, 3rd ch.(appeal).

²³⁴ The investigation couldn't specify whether it was his brother or his friend.

The three defendants were found guilty of human trafficking in relation to the two victims. The court held that Article 433*quinquies* § 1 of the Criminal Code defines the crime of human trafficking as the recruitment, transportation, transfer, harbouring, taking or transferring of control of a person for the purpose of exploitation of prostitution or other forms of sexual exploitation. One of these behaviours is sufficient. The defendant doesn't have to be part of a network that set up the trafficking. The exploiters at the end of the chain are also punishable if they are guilty of at least one of these acts. The offence doesn't require the perpetrator to make any profit from it.

The consent of the person to the sexual exploitation is irrelevant. The investigation didn't reveal whether the girls actually had to give up their earnings to the first two defendants, but they were housed and harboured above the nightclub. They earned money from the rent of the 'accommodation', which was in fact unfit for habitation, and from the consumption of drinks. Thus, the defendants received income from prostitution at least indirectly.

The third defendant housed the sisters and took them to the first defendants' nightclub. According to the court, there was no evidence in the file that the victims had to give money to the third defendant, so it wasn't proven that she benefited from a share of the income of the prostitution. On the other hand, she was a co-perpetrator of the human trafficking, as she was the one who put the sisters in contact with the nightclub and thus provided the necessary assistance to the first two defendants. She was well aware that the women would be prostituting themselves in the bar. However, according to the court, she wasn't involved in the recruitment of these women.

The court found that there was every indication that the sisters had to hand over their money to their pimp, the brother or friend of the third defendant. He couldn't be found during the investigation.

The first two defendants were therefore found guilty of human trafficking and all the other charges relating to the two victims and several other girls. They were sentenced respectively to 18 months and 12 months in prison, both suspended, and fined EUR 16,000 and EUR 8,000.

The third defendant was charged with human trafficking in relation to the two victims, but not with recruitment or exploitation of prostitution. She was sentenced to 12 months in prison and fined EUR 8,000.

Two victims filed a civil suit and obtained EUR 2,500 in compensation.

2.2.2. | Latin American victims

Three decisions concern victims from Latin America, including transsexuals. One decision was handed down in Charleroi, the other two in Bruges.

Exploitation of young South American women in private prostitution

Charleroi Criminal Court tried a major case of exploitation of prostitution of young Latin American women in private prostitution.

Fourteen defendants of various nationalities (Brazilian, Belgian, Peruvian, French and Moroccan) were prosecuted in this case: the majority of them for exploitation of prostitution with aggravating circumstances, human smuggling with aggravating circumstances and criminal organisation. Some defendants were prosecuted for hotel pimping and one of them for possession and sale of drugs. Two defendants were also prosecuted for human trafficking with aggravating circumstances. Two defendants failed to appear. Three defendants were repeat offenders.

They were accused of exploiting the prostitution of young Latin American women in flats. Three victims and Myria filed a civil suit.

The case consists of two parallel investigations that were joined and revealed two prostitution networks.

The first nine defendants were involved in the first network, the other five in the second. One defendant was singled out by both investigations, as he rented flats to both networks.

In a judgment of 27 October 2021, Charleroi Criminal Court²³⁵ convicted the defendants of the majority of charges brought against them. The evidence was based on the confessions of several defendants, victim statements, phone analyses, and mobile phone and laptop analyses. In the first prostitution network, the main defendant, a Brazilian woman, admitted to operating such a network. She had set up the network, managed it by defining the role of the various members and giving instructions on how to deal with the prostitutes when they arrived at the airport, how to allocate them in the areas of prostitution and how to manage the phones. She received half of the earnings of the young women who worked for her.

235 Hainaut Crim. Court, Charleroi division, 27 October 2021, 6th ch. (appeal).

She also determined the working conditions (hours, rates and locations). The young women had to be available in case a client called between 09:00 and midnight, or even 02:00 or 03:00 at weekends. They weren't free to come and go as they pleased and were under pressure to be constantly available.

A second defendant, her partner, assisted her, in particular by writing and publishing advertisements on the 'Quartier-Rouge' website and by buying the materials required for prostitution. He also collected the money from the prostitution and took care of renting a flat.

Three other defendants acted as receptionists, answering phone calls from clients, making appointments and directing them to the places of prostitution, notifying the prostitutes, checking the duration and terms of the service and reporting back to the main defendant.

Two other defendants, one of whom was the son of the main defendant, acted as drivers, picking up prostitutes when they arrived in Belgium at Charleroi or Brussels airport and taking them to the places of prostitution, as well as driving them from one place of prostitution to another.

One of the defendants was a professional photographer who, at the request of the main defendant, took 'sexy' photos of the prostitutes for advertisements on the internet in return for payment.

The court also found aggravating circumstances of abuse of vulnerability, coercion and criminal association for the majority of the defendants.

The court considered the charge of human smuggling to be established, because the exploitation of the prostitution of the victims provided them with them a means of subsistence and accommodation in Belgium. This exploitation therefore contributed to the victims' stay in Belgium.

In the second network, the main defendant operated a prostitution network in several flats that she rented to another defendant in a building he owned. Some of the girls worked for her, paying her 50% of the earnings. She was also in charge of publishing advertisements on the internet and acted as a receptionist. Another defendant was her partner and ran the prostitution network with her. Another one acted as a security guard for the building.

He also took the clients to the rooms and collected the money. He kept an eye on the prostitutes. Yet another acted as a driver and procurer for the network. The last one rented his flats to the network.

Here too, for the majority of the defendants, the court found the aggravating circumstances of abuse of vulnerability, coercion and association.

For the two defendants also prosecuted for human trafficking, the court considered that it was well established: these defendants recruited the victims who worked for them, inciting them to come to Belgium to work in their prostitution network; they transported them to their place of prostitution, harboured them and controlled them, all for the purpose of exploiting their prostitution.

The sentences varied from 18 months to four years in prison and from EUR 2,000 to EUR 14,000 in fines, most of which were suspended.

The court ordered the confiscation by equivalent of the rent received for the rental of the flats and the confiscation of the sums seized from the defendants.

Myria received EUR 1 and the victims EUR 2,500 as plaintiffs, *ex aequo et bono*.

Prostitution of transsexual women in Flanders — exploitation by a former victim

Two cases were tried in Bruges.

In the first case, tried by Bruges Criminal Court on 5 November 2021²³⁶, nine defendants, including one company, were prosecuted for various offences such as running a brothel and prostitution, pimping and child pornography. However, four defendants, of Belgian, Dominican and Thai nationality, were also prosecuted for the charges of human trafficking with aggravating circumstances. The first defendant and the fifth defendant were married. The second defendant and the third were also a couple.

The starting point of the case was the observation of an increase in the offer of sexual services by Latin American women (often transsexuals) on a sex website in certain parts of West Flanders.

236 West Flanders Crim. Court, Bruges division, 5 November 2021, ch. B15 (appeal).

At the same time, an excessive number of visits to certain houses was observed. An initial inspection was carried out in July 2018, during which several women without valid residence permits were found. This was followed by further checks and searches, and both victims and defendants were heard. It emerged that the second defendant acted as an intermediary between the girls and the first defendant. She was in charge of renting out the rooms, placing the advertisements, collecting the rent and answering the clients' phone calls. The girls had to pay a daily rent for the room; for some it was EUR 30, for others EUR 80 per day. If the second defendant took the calls herself, the girls had to hand over up to 50% of their earnings. A bank investigation found that the first defendant's accounts showed large cash deposits and other transactions suspected of being income from prostitution.

The investigation included hearings of victims and defendants, phone investigations, phone tapping, an analysis of email and WhatsApp exchanges, and a financial investigation.

The first defendant, the main defendant, died during the proceedings, which terminated the criminal proceedings against him.

His wife, the fifth defendant, was acquitted of the offences because she was able to prove that she had remained in Thailand during the period of incrimination, even though the income from prostitution and rent were deposited on her account, over which the main defendant had power of attorney. Neither the other defendants nor the victims named her as the perpetrator.

The second defendant, a Dominican national, had arrived in Belgium in 2010. She was sexually exploited and obtained victim status through Payoke. She was found guilty of human trafficking and other charges. The court ruled that even if she had to collect the earnings for the main defendants, and consequently didn't make any great profit herself, this didn't make her any less guilty. She acted as a co-perpetrator in making an abnormal profit for the first defendant, even though she herself received a rather small financial benefit as a result. Furthermore, the bank investigation showed that she benefited from a significant flow of income through cash deposits for a certain period at least.

Moreover, the defendant didn't have a clean record: she had been convicted of similar acts of sexual exploitation in 2020, committed after the acts referred to in the present decision. She was sentenced to 30 months in prison and a fine of EUR 76,000 (EUR 250 multiplied by 38 victims), part of which was suspended for three years. An amount of EUR 3,500 was confiscated.

The third defendant was also convicted of human trafficking and several other charges, but only for part of the period when the offences were committed. The other part was considered unproven. He was sentenced to three years in prison, part of which was suspended for five years, and a fine of EUR 304,000 (EUR 1,000 multiplied by 38 victims), part of which was suspended for three years.

A special confiscation order was issued for two properties as well as for several sums of money.

Two victims of Colombian nationality filed civil suits. They obtained compensation worth EUR 1,500 and EUR 3,000 respectively for pecuniary and non-pecuniary damages.

The second case was tried by Bruges Criminal Court on 13 July 2021²³⁷.

A defendant of Belgian nationality was prosecuted for human trafficking, but also for other offences such as exploitation of prostitution, renting rooms for the purpose of prostitution and forgery.

In March 2020, the police noticed that a certain address in Bruges was mentioned on a sex website and suspected hidden prostitution. After checking, it turned out that the property was rented by the defendant, who was already known to the police for exploitation of debauchery by renting out property that he then sublet to sex workers.

Several checks were conducted, which led to the discovery of Latin American women who were often transsexuals. They didn't want to be awarded the status of victim of human trafficking. Their mobile phone was examined and the information revealed human trafficking and drug-related offences. A judicial investigation was opened and a tap on the defendant's phone was ordered. Several searches and a retroactive phone investigation were carried out.

237 West Flanders Crim. Court, Bruges division, 13 July 2021, ch. VK1 (final).

The court found that the defendant was clearly guilty of human trafficking and exploitation of debauchery. The system of sexual exploitation consisted of charging exorbitant prices for the rental of rooms in properties rented by the defendant in different cities in Belgium, with full knowledge that this allowed the exploitation of the tenants' prostitution. This was done under conditions that the ladies were forced to accept because, owing to their vulnerable (residence) situation, they simply had no other choice and no possibility of entering the regular labour or rental market.

The defendant already had a criminal record and was a repeat offender. He was sentenced to 40 months in prison and a fine of EUR 56,000, half of which was suspended for three years.

An amount of EUR 54,700 was confiscated.

2.2.3. | Loverboy technique (with application of the non-punishment clause)

Several decisions concern victims recruited and exploited using the loverboy technique, including minors. In the Dutch-speaking cases, the victims were usually Belgian underage girls in a precarious family situation or who had run away from a centre for minors. Some of the major French-speaking cases also involved minors, but also other Albanian victims of the loverboy technique.

In one of the decisions, a victim, also prosecuted as a perpetrator, was acquitted on the basis of the non-punishment clause.

Loverboy technique among Belgian minors and forced criminality

On 22 September 2021, Bruges Criminal Court ruled on a case involving a defendant who pimped out teenagers²³⁸.

The defendant, a Belgian national, had several victims, all girls of Belgian nationality, several of whom were still minors. Some of the victims and Payoke filed a civil suit.

The defendant was prosecuted for human trafficking for the purpose of sexual exploitation and for human trafficking for the purpose of forced criminality, with the aggravating circumstance, among others, that some of the victims were still minors. In addition, he was also prosecuted for incitement to debauchery and prostitution of minors over the age of 14, exploitation of debauchery and prostitution of minors over the age of 16, exploitation of prostitution (of adults), rape with violence against children under the age of 14, and assault and drug trafficking, also in relation to minors under the age of 16.

In the course of the investigation, 16 people were identified as victims, but it wasn't possible to identify all of them. Several of them were questioned and admitted to being victims.

The defendant systematically targeted very young and particularly vulnerable girls, who had often spent time in an institution or had a difficult family background. He would first approach them as their boyfriend and make empty promises, which would eventually turn into threats and even violence to force them into prostitution. This happened over a longer period of time, and with a very high frequency and intensity regarding some of the girls. They had to give him the money they earned. The defendant took advantage of this to satisfy his gambling addiction. The prices agreed with the customers varied between EUR 250 and EUR 300 and sometimes reached EUR 1,000. During the investigation, his gains were estimated to be between at least EUR 120,000 and EUR 670,000. The appointments were arranged by the defendant through online advertisements on various platforms. He often encouraged the girls to use drugs and narcotics.

The defendant also actively sought girls online who were willing to work for him. He approached them and suggested they work for him. Some of the victims were already familiar with the prostitution business.

He also asked some of the girls to make 'rip deals', i.e. to make an appointment with a client and then run off with the money before carrying out the act.

The defendant was assisted in his activities by his brothers and friends. He was even in contact with several girls while in prison or they were approached by his entourage.

238 West Flanders Crim. Court, Bruges division, 22 September 2021, ch. B.17 (appeal).

The investigation included several hearings of the victims, searches of the victims' and the defendant's homes, an extensive phone investigation, observations, forensic analysis of laptops, mobile phones and SIM cards, internet searches, ANPR capture records²³⁹, questions concerning the sex website, etc.

The defendant was examined by a forensic psychiatrist who found no mental disorder, but rather a development of an anti-social personality. An expert doctor found several injuries among the victims.

The defendant already had a long criminal record, with several convictions, and was a repeat offender. Even in prison, he had been caught in possession of drugs and had assaulted a prison officer.

The court ruled that on the basis of the numerous statements of the various victims - which could be confirmed by objective elements in the file - the facts were proven.

He was finally handed a 10-year prison sentence and a fine of EUR 8,000. He had to pay damages of EUR 45,000 and EUR 12,000 respectively to the various victims. Payoke was awarded compensation of EUR 2,500. A large sum was confiscated and allocated to the victims.

Loverboy method and non-punishment clause

The non-punishment clause was applied in a major case of trafficking for the purpose of sexual exploitation in Liège.

In this case, eight defendants, most of them Belgian nationals, were prosecuted in various capacities for various offences: human trafficking for the purpose of sexual exploitation of several Belgian women and teenagers, including minors; hiring and exploitation of prostitution of adults and minors; and criminal association. For the charges of trafficking and recruiting and exploitation of prostitution, aggravating circumstances were also referred to, including the fact that some of the victims were minors, the abuse of their situation of vulnerability, violence, threats and coercion. Some of the defendants were also prosecuted for acts of false imprisonment, intentional assault and battery, threatening to attack people or destruction of property. One of the defendants, a defaulter, was also prosecuted, in an associated case, for attempting to recruit two young girls for prostitution, one of whom was a minor.

One of the victims figured among the defendants prosecuted, and she filed a civil suit. Another victim – a minor – also filed a civil suit through her mother, as well as Myria.

The case was initiated in October 2020 when the mother of one of the victims received several messages from her on Instagram reporting that she and other young girls were being held by several men.

The police officers deduced that she was the victim of a network that was prostituting her. The girl was domiciled at her mother's, but she didn't live there, and had been monitored by the Youth Care Service (Services de l'aide à la jeunesse - SAJ) and the Youth Protection Service (Service de la protection de la jeunesse - SPJ). An investigation was conducted on the basis of phone analyses and advertisements on the 'Quartier-Rouge' website; observations of the places where the photographs were taken for the advertisements; and hearings of the victims and the defendants.

The young girls, often in a difficult family situation, were recruited using the loverboy method to then be prostituted in various places.

In a judgment of 15 December 2021²⁴⁰, Liège Criminal Court upheld the majority of the charges and aggravating circumstances in a detailed reasoning, except for one defendant, who was acquitted of all the charges and another, who was also a victim.

As regards human trafficking, the court found that the victims were received, harboured, transported and controlled for the purpose of exploitation of prostitution. The taking or transfer of control was accomplished through the loverboy attitude exercised by the main defendant. He also encouraged several young girls who were prostitutes to continue this activity. He also managed the advertisements and the clients. The girls had to hand over half of their earnings.

The other defendants fulfilled various roles: control and surveillance of prostitution activities, renting out places (including Airbnbs) where prostitution activities were carried out, transportation to clients' homes, recruiting via the Snapchat application, placing advertisements on the 'Quartier-Rouge' website.

The defendants interacted constantly and regularly and there was a high turnover of girls, who were regularly 'moved' to different locations.

²³⁹ Automatic number plate recognition.

²⁴⁰ Liège Crim. Court, Liège division, 15 December 2021, 19th ch. (final).

One victim was also prosecuted as a perpetrator: she admitted having participated in the exploitation of the prostitution of several young girls, in particular by taking photographs for advertisements to be placed on the 'Quartier-Rouge' website or by making reservations in various hotels in the Liège region.

At the hearing, both the defendant and the prosecution invoked a cause of justification that compelled her to commit the alleged acts. The public prosecutor requested the application of the non-punishment clause, provided for in Article 433 *quinquies*, § 5 of the Criminal Code²⁴¹. This is a ground for an absolute discharge.

The court applied this clause to this defendant: she never filed a complaint against the main defendant with whom she had a love affair for several months and who exploited her prostitution. He hit her, but also played a protective role. She had to share her earnings with him. When she separated from this defendant, she went to another defendant and dragged one of the other victims into prostitution, thus playing the role of 'lovergirl'.

The court therefore considered that she was above all a victim, as the two defendants had taken advantage of her vulnerable position. The court based this on the investigators' findings that she was a prostitute like the other girls, her hearing (especially the non-verbal parts during the hearing) and her surveillance by one of the defendants. On the subject of coercion, the court considered that she didn't have enough control over the other girls who were victims to encourage their prostitution. She herself was made to work as a prostitute by her successive partners in a state of submission and dependence.

The court therefore acquitted her of the human trafficking charges. The court stressed that the idea behind the concept of non-punishment, which must be assessed on a case-by-case basis, is that, despite the commission of offences, the victim acted without real autonomy, either because of the degree of control exercised by the perpetrator or because of the methods used by the latter.

The court also acquitted this defendant, on the basis of coercion, of the charge of recruitment for the purpose of prostitution.

Several defendants were also acquitted of certain charges of exploitation of prostitution, including the defendant who was also a victim. The court handed down sentences of 18 months to six years imprisonment and fines of EUR 8,000 (multiplied by the number of victims), some of which were partly suspended.

The court also pronounced confiscation orders. The court ordered the defendants to pay the mother of a victim, who had filed a civil suit, EUR 500 and a provisional EUR 1,000 for her daughter.

The defendant, who filed a civil suit and was acquitted of the charge of human trafficking, received one provisional euro and Myria received one final euro.

In another case tried by Antwerp Criminal Court, in which a victim was both a plaintiff and a defendant, the principle of non-punishment wasn't applied.

The judgment of 29 July 2021²⁴² concerned a case of procuring adolescents involving several minors. Four defendants, of Belgian, Spanish and Dutch nationality, were prosecuted as perpetrators or co-perpetrators of human trafficking for the purpose of sexual exploitation with aggravating circumstances, in particular the fact that the victims were minors.

Three child victims and the mother of one of the victims filed a civil suit. A defendant also filed a civil suit as a victim. She herself had been a victim of the loverboy technique used by one of the defendants in the past.

The majority of the girls were minors and were staying at a centre for minors.

Some of the charges concerned the sexual exploitation by the first and second defendants of the fourth defendant and another victim. In June 2020, the fourth defendant filed a complaint against them with the police. She had been forced to prostitute herself in hotels and in an empty house for several months. The defendants posted advertisements online and arranged appointments with clients. She had to hand over her earnings, or at least a part of them. The police intervened several times at the request of her mother. The defendants provided the victims with drugs so that they could work longer.

The court found the facts to be true. The detailed statements of the fourth defendant were supported by various objective elements (phone investigation with determination of the base station, examination of the mobile phones, police findings, analysis of the profiles on the classified ads platform). The fact that the victims agreed to prostitute themselves wasn't relevant to determining the defendants' guilt, the court ruled. According to Article 433 *quinquies* § 1 of the Criminal Code, the victim's consent to the exploitation is irrelevant.

241 This article states that "a victim of human trafficking who takes part in offences as a direct consequence of his or her exploitation shall not be liable to punishment for of these offences". 242 Antwerp Crim. Court, Antwerp division, 29 July 2021, ch. ACV3. (final).

The other charges concerned the sexual exploitation by the third and fourth defendants of four underage girls and one adult. On the basis of a review of profiles on a sex website and reports made to Child Focus by a number of concerned clients, some underage girls were identified and questioned.

The fourth defendant, who had initially been a victim herself, was persuaded by the third defendant, with whom she had started a relationship and eventually had a child, to recruit young victims herself and live off the proceeds.

The two defendants mainly approached girls in institutional care for minors and helped them to escape. They allowed the girls to live at their place, went out a lot together and used drugs and alcohol. In return, they persuaded the girls to become prostitutes. The defendants organised the appointments, booked the hotels and collected the money. In some cases, they locked the girls in the hotel room. The third defendant also frequently used violence and threats against the girls. He was also reportedly in possession of an alarm pistol. Several clients found these situations suspicious and reported them to Child Focus or the police.

The court found that the other charges were proven, except in relation to one girl, because of the uncertainty about her identity.

Despite their young age, the defendants already had several criminal convictions. One defendant was a repeat offender. The fourth defendant had no criminal record. The court took into account her precarious personal situation and the birth of her child in prison when determining her sentence. The defendants were sentenced to prison terms of three years, 40 months and five years respectively and fines of EUR 16,000 and EUR 24,000. The fourth defendant was sentenced to three years in prison and a fine of EUR 24,000, part of which was suspended. Property and money were confiscated and partly allocated to the victims.

The victims were awarded provisional compensation of EUR 5,000 and EUR 1 respectively. The mother of one of the victims was awarded EUR 1,546.51 in pecuniary and non-pecuniary damages, and the fourth defendant, also a plaintiff, was awarded EUR 2,500 in compensation. One of the victims had also requested a ban on contact, but this was rejected by the court.

Albanian loverboy

Several cases concern young Albanian women who were victims of loverboys. These cases were tried in Brussels and Liège.

Brussels Court of Appeal reviewed a case involving the trafficking of young Albanian women, which was tried at first instance by Brussels Criminal Court on 28 June 2019 and discussed in a previous report²⁴³.

In this case, seven Albanian defendants were prosecuted for human trafficking for the purpose of sexual exploitation with aggravating circumstances against seven young Albanian women; for falsification and use of false passports and for criminal association. One defendant failed to appear. The first six were also prosecuted for recruiting and exploiting the prostitution of these young women.

The young women, who were prostituting themselves in windows, all came from the same Albanian town or from nearby villages. The main defendants were from the same sibling group and came from the same town, where a neighbourhood bears their name and where the family is said to have a strong influence. The money from the prostitution was brought back to Albania in cash so as not to leave any traces of transfers via agencies or banks.

The criminal court convicted the defendants on all the charges. It found that human trafficking had been established: the defendants recruited their victims using the loverboy technique; they participated in their transport from Albania to Belgium, took charge of them upon their arrival in the country and provided them with accommodation. The victims were under constant control and their earnings were used to maintain the defendants and/or to pay off their debts (real or supposed). The investigation was able to demonstrate the links between the defendants, the organisation set up to transport the victims, and their collaboration in monitoring and housing them. Furthermore, the defendants had set up a network with a common forger to obtain false documents in order to allow the victims to stay in Belgium.

243 Brussels French-speaking Crim. Court, 28 June 2019, 47th ch. See Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, pp.76-77 and www.myria.be, (jurisprudence).

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 a fine of EUR 42,000.

Three defendants lodged an appeal. One of them failed to appear.

In a judgment of 28 April 2022, Brussels Court of Appeal²⁴⁴ outlined the chronology of events and, in particular, the initial report of the arrest at Zaventem airport in June 2005 of the defendant – who failed to appear in court – in possession of false documents. He was accompanied by a young woman (one of the victims), whose passport had a false Schengen entry stamp. The young woman stated that the defendant was a friend and that she was coming to work in the windows on Rue d'Aerschot in Brussels to support her family. The research carried out by the investigators revealed that a case had already been initiated against this defendant concerning another victim.

The investigation would reveal that other members of this family clan were involved in the exploitation of the prostitution of several young Albanian women.

The investigation was conducted on the basis of phone taps, observations, information obtained from the Albanian authorities, and searches.

At their hearing, several young women stated that they didn't consider themselves to be victims, that they had come over of their own accord to work in prostitution and that they weren't aware of the activities of the members of the clan, which was contradicted by the phone taps.

The court upheld the convictions and sentences pronounced at first instance, with the aggravating circumstances of abuse of vulnerability, criminal association and habitual activity.

It also upheld the defendants' order to pay Myria damages amounting to EUR 2,500.

Two other cases were tried in Liège, all in absentia.

In the first case, an Albanian defendant was prosecuted for various offences: smuggling and trafficking of human beings, recruitment for prostitution and exploitation of prostitution and exploitation of prostitution, fraud and, secondarily, breach of trust.

He was accused of profiting from his partner's prostitution for almost 15 years by convincing her that they could build a life together and that he wanted to invest in real estate in Albania. He allegedly pocketed at least EUR 804,000 from her prostitution.

The victim and Myria filed a civil suit.

The case was initiated in 2015 when the victim filed a complaint for exploitation of prostitution. She explained that she had met the defendant in 1999, i.e. 16 years earlier, that she had been seduced and had begun a romantic relationship with him. He quickly made it clear to her that he had no more money and that she would have to become a prostitute. To make her accept this activity, he promised her that all the earnings would be invested in a joint real estate project in Albania. She had to prostitute herself in different places of prostitution in Belgium. In June 2014, she realised that all the earnings given to the defendant had been invested in property in his name or in the name of his family members.

During her exploitation, she was stopped several times by the police and deported. Each time, the defendant bought visas for her and brought her back through Austria. He also tried to arrange a marriage of convenience for her, which was refused by the municipality because she was known for prostitution. She was subjected to 13 abortions.

Various investigative actions were carried out, including international letters rogatory in Albania in order to verify his statements.

In its judgment of 10 November 2021, Liège Criminal Court²⁴⁵ convicted the defendant – who failed to appear – of the charges. The court considered that the victim's statements were coherent and precise, corroborated by the information gathered during the investigation. With regard to trafficking, the court relied in particular on the testimonies collected, which showed that the defendant pretended to have a romantic relationship with the victim (loverboy attitude).

The defendant was sentenced in absentia to four years in prison and a fine of EUR 30,000, as well as confiscation by equivalent of EUR 804,000, which the court awarded to the plaintiff.

The second case concerns an Italian defendant who exploited the prostitution of a young Albanian woman in Italy and then in various places in Belgium.

²⁴⁴ Brussels, 28 April 2022, 12th ch.

²⁴⁵ Liège Crim. Court, Liège division, 10 November 2021, 19th ch. (in absentia).

In a judgment of 30 November 2021 rendered in absentia, Liège Criminal Court²⁴⁶ convicted him of human trafficking with several aggravating circumstances and of exploitation of prostitution.

The case was initiated when the victim filed a complaint with the federal judicial police. She explained that as a young student in Albania, she had met defendant during a holiday in Italy and he had seduced her. She then decided to stop her studies. The defendant then confiscated her passport and identity card and forced her into prostitution by telling her that he had money problems. She had to prostitute herself on the street and was beaten if she refused. She arrived in Belgium with false documents and had to have an abortion. After her abortion, she was forced to work as a prostitute in bars in Sint-Truiden and Seraing, having to take home at least EUR 500 per day.

The victim's statements were confirmed by numerous inquiries.

The defendant was sentenced to four years in prison and a fine of EUR 24,000 and ordered to pay the victim EUR 307,200 in damages. She asked to be awarded the sum of EUR 4,100, which was seized following the inspection of the defendant's vehicle, but the court rejected this request. According to the court, it had not been shown that this sum of money corresponded to a financial benefit derived from the two offences referred to in the summons, as the seizure had taken place well after the end of the period when the offences were committed.

Sham marriage and statute of limitations on appeal

In a judgment of 4 November 2021, Antwerp Court of Appeal²⁴⁷ ruled on a decision of Antwerp Criminal Court of 22 December 2020²⁴⁸. In this case, the loverboy method was used and a sham marriage was arranged. This decision was already discussed in a previous annual report²⁴⁹.

Two defendants were prosecuted at first instance for human trafficking and exploitation of the debauchery or prostitution of a victim, with various aggravating circumstances. The first defendant and the second defendant formed a family unit with three school-age children.

The victim filed a civil suit.

The victim had to work as a prostitute between 2000 and 2012 and was sexually exploited by her ex-boyfriend, the first defendant. She had met him in Albania when she was studying there. The loverboy technique led to their relationship. She came to Belgium to start a family and the first defendant took care of everything for her visa, her flight and then a sham marriage with a Belgian to obtain a residence permit. He then forced her to work as a prostitute to pay back the costs incurred. The victim worked as a prostitute in Antwerp or Ostend on a daily basis and sometimes stayed in the Netherlands. She earned a lot of money, which she had to give to the defendants, who invested it in real estate in Albania and Belgium.

The defendants had already invoked the time limit for court action at first instance.

The court found that the offences weren't time barred and that the charges were established. The first defendant was sentenced to three years in prison and a fine of EUR 6,000. The financial benefits amounting to EUR 37,570 were confiscated and partly allocated to the plaintiff. The second defendant was sentenced to two years in prison, of which one year was suspended, and a fine of EUR 6,000. The two defendants had to pay non-pecuniary damages of EUR 7,500 to the plaintiff.

The court of appeal considered that it could be inferred from the evidence in the file that the relationship between the first defendant and the victim had ended in June 2011. There was no evidence of any control after this date. The victim filed a complaint in August 2016 for forced prostitution between 2001 and 2012. The court found that there was no evidence of guilt for these acts and that the period of crime in relation to the charge should be limited to the period between September 2005 and June 2011. Therefore, the time limit for court action had already expired.

246 Liège Crim. Court, Liège division, 30 November 2021, 19th ch. (in absentia).

247 Antwerp Court of Appeal, 4 November 2021, ch. C6.

248 Antwerp Crim. Court, Antwerp division, 22 December 2020, ch. AC10.

249 See Myria, 2021 Annual Report Trafficking and smuggling of human beings. *Visibly invisible*, pp. 67-68 and [Antwerp Crim. Court, 22 December 2020 | Myria](#).

2.2.4. | Sexual exploitation of young Romanian women

A case concerning the exploitation of young Romanian women was tried in Brussels.

In this case, a Romanian defendant was prosecuted for human trafficking and exploitation of prostitution, both with aggravating circumstances, of several unidentified young Romanian women. He was prosecuted for acts committed in Belgium, as well as in Germany and the Netherlands. He was also accused of raping a victim.

One of the victims, who was in the care of a reception centre, filed a civil suit. She initiated the case by making a long statement to the police about her life and her relationship with the defendant. She lived in an orphanage before meeting a couple who lured her into prostitution in different countries. She met the defendant when she was working at Schiphol. He seduced her, they started a romantic relationship and she joined him in Germany where she worked in a club. She had to hand over all her earnings to the defendant. She then worked in the Netherlands. In order to keep up with the clients, she used a lot of cocaine. She earned more than EUR 1,000 per night, which she handed over entirely to the defendant. She was then taken to Brussels where she worked as an escort. The defendant beat or strangled her when she challenged him. She wanted to stop seeing clients during the lockdown, but the defendant forced her to continue. One of her clients at the time was giving her money not to prostitute herself, which she gave to the defendant. She finally explained her story to him and he referred her to an association.

One of her former clients, with whom she lived for a while, explained during her hearing that he never suspected that she was under the control of a pimp.

The defendant was known in Romania for having been convicted of a theft which led to the death of the victim.

Following the defendant's arrest, he and his sister had contacted the victim to ask her to withdraw the complaint.

In a judgment of 30 June 2021, Brussels Criminal Court²⁵⁰ convicted the defendant of the charges, based on the credible statements of the victim, corroborated by the statements of the other victims. It also found the aggravating circumstance of endangering the victim's life, as she was consuming large quantities of drugs with the defendant and he had forced her to continue her activities during the lockdown.

The court convicted him of the same charges concerning other victims who had been kidnapped and forced into prostitution. One of the victims had met the defendant through Facebook and started working as a prostitute in Italy. Once in Brussels, she had to hand over all her earnings to the defendant, who was aggressive. The court also upheld the rape charge.

He was sentenced to six years in prison and a fine of EUR 24,000 and ordered to pay the plaintiff EUR 5,000 in compensation.

2.2.5. | Exploitation of underage girls by an urban gang

A major case of trafficking in underage girls was tried in Brussels.

In this case, 12 defendants were prosecuted in various capacities for various offences, including human trafficking with aggravating circumstances, especially of underage girls; recruiting and exploiting the prostitution of underage girls and adults, with aggravating circumstances, and supplying drugs (cannabis) to underage girls. Several defendants were repeat offenders. Child Focus, Myria and the parents of one of the exploited underage girls filed a civil suit. Two defendants failed to appear and were tried in absentia.

In 2019, investigators in a Brussels police zone learned from a police source that the main defendant was allegedly exploiting the prostitution of underage girls on the ground floor and in the basement of a building, as well as in a flat. The advertisements were published on the 'Quartier-Rouge' website. They called the number advertised in order to make an appointment. It was an underage girl who had been on the run for almost a year who opened the door. When this young girl was heard, she declared that she was willingly working as a prostitute. She had met the main defendant at various parties five months earlier. She also stated that she knew other underage girls who had worked as prostitutes with her, one of whom had returned to France and another to her parents.

An investigation was also initiated in December 2019 concerning another young girl, when investigators from another Brussels police zone learned, also from a police source, that another of the defendants was allegedly exploiting the prostitution of two young girls aged 17-18 years old. Each time he would rent two hotel rooms for two or three days and then change hotels. He would occupy one of the rooms with an accomplice and the other room would be occupied by girls who would prostitute themselves on his behalf and under his control.

²⁵⁰ Brussels French-speaking Crim. Court, 30 June 2021, 47th ch. (final).

Advertisements were placed on the 'Quartier-Rouge' website. Shortly afterwards, the French gendarmerie contacted the Belgian police to report the worrying disappearance of an underage girl, whose father had learned from a friend of his daughter that she was being held in a flat and had been registered on the 'Quartier-Rouge' prostitution website. He had recognised his daughter on this site.

Phone tapping and observations were carried out, as well as a search in a building where the French underage girl was discovered. When heard, she explained that she had willingly accompanied a French friend and three Belgians to Belgium from Paris to work as a prostitute. She arrived directly at the flat of the main defendant. She then understood that her friend had 'sold her to the Belgians'. She explained that the friend of the main defendant managed the photos and the appointments with the clients. Others were responsible for accompanying her when she moved around or for ensuring her safety.

The rates varied between EUR 80 and EUR 250 depending on the duration of the 'trick' and the location (at home or somewhere else). She worked on average from 17:00 to 06:00. She gave the money earned directly to the person who was 'looking after' her. At the end of her working day, she usually received a joint from this person to help her fall asleep faster.

Phone tapping was set up to locate certain defendants, and phone investigations were also carried out. Analyses of advertisements on the 'Quartier-Rouge' website and of mobile phones were also conducted.

However, some of the network's victims were never identified.

In its judgment of 30 June 2021, Brussels Criminal Court²⁵¹ upheld the majority of the charges. For the human trafficking, this was based in particular on the checks carried out by the investigators, especially on the 'Quartier-Rouge' website, which supported the police information collected, the phone tapping, the hearings of two victims and the analysis of their mobile phones, the phone investigations, and the observations.

The sentences ranged from 50 months and eight years in prison (for the main defendant) and fines between EUR 8,000 and EUR 40,000. Some of the sentences were suspended.

The court awarded Child Focus EUR 2,000, EUR 5,250 to the parents of the young victim and another EUR 15,000 to them as the legal representatives of their child, as well as EUR 1 to Myria.

Four defendants appealed. In a detailed reasoning, Brussels Court of Appeal confirmed, in a judgment of 27 January 2022, the convictions pronounced at first instance regarding the defendants who appealed, but reduced some of the sentences²⁵². One defendant failed to appear and was sentenced in absentia.

The court stressed that the operational role played by one of the defendants in the appeal, the partner of the main defendant (who wasn't in the appeal), in the exploitation of prostitution was central, since she received calls from clients, quoted prices and described the services. She then forwarded these calls to the men who looked after the girls engaged in prostitution and directed the clients to the girls. She was also actively involved in harbouring the girls and abusing their vulnerability.

Another defendant managed the phone calls of the young French girl and 'prepared' her for prostitution. In this respect, the court pointed out that the aggravating circumstance of the girl being a minor establishes the offence as human trafficking when it is proven that the victim is under the age of 18 at the time of the events. It is irrelevant whether the perpetrator knew or should have known that the victim was a minor.

A third defendant was responsible for renting the hotel rooms where the young girls prostituted themselves, took care of their accommodation and exploited their prostitution. He also supplied the young French girl with drugs. The last one acted as a 'guard' and also supplied the drugs.

The court awarded the young girl, now an adult, who filed a civil suit, and her parents the sums seized by equivalent, up to the amounts allocated to them.

251 Brussels French-speaking Crim. Court, 30 June 2021, 47th ch. (appeal).

252 Brussels, 27 January 2022, 16th ch.

2.3. | Labour exploitation

2.3.1. | Construction

Bogus postings orchestrated from Spain

In a judgment of 11 February 2022²⁵³, Bruges Criminal Court ruled on a case of labour exploitation in the construction sector involving several victims.

Seven defendants of Bulgarian, Chilean and Moroccan nationality were prosecuted for a number of things including human trafficking with aggravating circumstances with regard to 14 victims, offences under social criminal law and belonging to or leading a criminal organisation. Five victims filed civil suits.

During an inspection at a construction site in West Flanders, evidence of human trafficking was discovered. Four victims were found and heard, and other victims were subsequently identified.

In January 2017, a judicial investigation was opened, followed by a phone investigation, phone tapping and searches.

The victims were recruited in Spain, mostly through advertisements on a website. If the victims responded, they were put in contact with the Spanish companies of the first, second or third defendant. The Spanish companies then called in a Belgian company that worked as a subcontractor for the final general contractor. The Belgian company was run by the fifth and sixth defendants. The seventh defendant was in charge of logistics.

The workers were sent directly to Belgium and none of them had ever worked in Spain. They used bogus postings with falsified A1 documents. There was a fraudulent carousel with circumvention of Dimona declarations and contribution obligations.

The court ruled that the Belgian judge had jurisdiction and that Belgian labour law applied to the situation. There was no legal posting of workers.

The workers were promised that they would earn about EUR 1,800 a month. In reality, they received small advances and otherwise weren't paid. They were housed in dreadful conditions, first in flats close to the building sites where they had to sleep on mattresses on the floor, then at a campsite.

The court found that there was indeed human trafficking. The workers were in a vulnerable position and, given their precarious social and residence situation, they had no choice but to accept these living and working conditions. They worked six days a week, had no paid holidays, received virtually no wages and had no social protection.

The court also found that this was a criminal organisation. Based on the number of acts and the group's long period of activity, it could be deduced that the organisation was continuous. The first four defendants recruited the workers and the fifth and seventh defendants organised the work in Belgium. The second and fifth defendants were clearly at the head of the organisation.

The defendants were handed suspended prison sentences ranging from six months to two years, and fines of EUR 6,000, partly suspended. One defendant received 120 hours of community service. The civil parties were awarded damages ranging from one provisional euro to EUR 9,025.43.

Renovation of a private house

Ghent Court of Appeal²⁵⁴ ruled, in a judgment of 7 October 2021, on a decision of Dendermonde Criminal Court of 18 September 2020²⁵⁵.

Three defendants were prosecuted at first instance for, among other things, the human trafficking of two Moroccan brothers for the purpose of labour exploitation in the construction sector.

The case was initiated when the police were called to a house for a civil dispute. The two workers were discovered there. They had been staying there until they discovered that the locks had been changed and their belongings left outside the door.

One of the victims was active in the construction sector in Spain, where he had his own company. One of the defendants had found his company on the internet and recruited him to carry out renovation work on a house in Belgium. It was agreed that he would earn EUR 25 an hour and his brother EUR 15 an hour. He worked 10 hours a day, including weekends. He was paid EUR 500. They had to pay EUR 1,500 in rent for three months, deducted from the salary. The accommodation was dirty and there was only a small water heater. There was no place to shower or cook. Things started to escalate when they asked one of the defendants for a copy of the employment contract and their money. They were then threatened.

The workers were admitted to a reception centre specialised in the reception of trafficking victims.

253 West Flanders Crim. Court, Bruges division, 11 February 2022, ch. B.17 (final).

254 Ghent, 7 October 2021, 3rd ch.

255 East Flanders Crim. Court, Dendermonde division, 18 September 2020, ch. 13 D. See Myria, 2021 Annual Report Trafficking and smuggling of human beings, *Visibly invisible*, pp. 70-71 and [Dendermonde Crim. Court, 18 September 2020 | Myria](#).

The court found two of the defendants guilty of trafficking. The third defendant, however, was acquitted. They were sentenced to one year in prison (with a suspended sentence for one of them) and a fine of EUR 8,000 (partly suspended for one of them). The victims who had filed a civil suit received damages of EUR 7,120 and EUR 8,852 respectively for pecuniary and non-pecuniary damages.

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

In the case of the first defendant, the court ruled that he could also be given the benefit of the doubt and be acquitted. He acted as an intermediary and interpreter between the second defendant and the victims. In this factual role, the elements of human trafficking couldn't be cross-checked: there was no evidence that he wanted to take on the role of employer. Furthermore, it couldn't be concluded that he deliberately engaged in human trafficking. On the basis of the information in the file, it was only at a final stage that it became clear to the defendant that the victims wouldn't be compensated and would be thrown out like dirt. The evidence in the file shows that he had already distanced himself from the other defendant.

In the case of the second defendant, the court ruled on the sentence only because of the time limit of the referral on appeal. Only the alternative custodial sentence was reduced from 150 days to three months.

The acquittal of the third defendant was confirmed by the court.

The action of the civil parties against the first defendant was declared unfounded as a result of his acquittal.

The second defendant appealed to the Court of Cassation, because the court of appeal had wrongly ruled on the sentence only and not on all the other provisions of the first judgment against which he had appealed.

Indeed, in its judgment of 1 February 2022, the Court of Cassation²⁵⁶ held that the court of appeal should also have ruled on all the other grievances of the first defendant and annulled the judgment in this respect. It referred the case back to Antwerp Court of Appeal.

2.3.2. | Transport

Carrousel of fraudulent postings and manslaughter

In a judgment of 20 January 2022, Ghent Court of Appeal ruled on a case of human trafficking for the purpose of labour exploitation in the transport sector²⁵⁷. Bruges Criminal Court had already expressed its opinion on this case in a judgment of 27 November 2020, which was discussed in the previous annual report²⁵⁸.

In this case, six defendants were prosecuted for a carousel of fraudulent postings and manslaughter. The second and third defendants were transport companies. The first defendant (natural person) was responsible for the day-to-day management. The fourth defendant (company) was the managing director of the second, third and fifth defendants (also companies). The fifth defendant was specialised in the sale of new and used pallets. The sixth defendant was the employer of the pallet repairers.

The six defendants were prosecuted for the human trafficking of five Polish workers, two of whom died in a fire in a warehouse they used as a dormitory. The main defendant and two companies were also charged with the manslaughter of the two deceased Polish mechanics. The other charges concerned involuntary assault and battery, non-compliance with social criminal law and slum landlordism.

The case reveals that the various companies prosecuted had been set up in a postings carousel to fraudulently evade the application of Belgian law. The staff was fraudulently employed simultaneously in Poland and Belgium, and the Polish workers active in Belgium didn't even know which Polish company they were working for. In reality, the supposed Polish subcontractor was simply a channel for cheap labour employed solely in Belgium and therefore under the authority of the Belgian client.

The court found the facts to be established, including human trafficking.

The first defendant was found guilty of involuntary manslaughter, involuntary assault and battery, human trafficking of several workers and slum landlordism.

256 Court of Cass., 1 February 2022.

257 Ghent, 20 January 2022, 3rd ch. (appeal to Court of Cass.).

258 West Flanders Crim. Court, Bruges division, 27 November 2020, ch. B17. See also Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, pp. 71-72 and Bruges Crim. Court, 27 November 2020 | Myria.

He was sentenced to three years in prison, partly suspended, and a fine of EUR 60,000, half of which was suspended for three years. The sixth defendant was sentenced to 15 months in prison, partly suspended, and a fine of EUR 15,000, EUR 3,000 of which was suspended for three years. The other defendants (companies) were handed fines of EUR 18,000 and EUR 45,000 with partial suspension. An amount of EUR 1,475,408.03 was confiscated.

The mother of one of the deceased Polish mechanics, who had filed a civil suit, was awarded EUR 15,000 in pecuniary and non-pecuniary damages. Myria was awarded EUR 5,000 in pecuniary and non-pecuniary damages.

On appeal, the defendants argued that the rights of the defence had been violated and that the statute of limitations had expired, but the court rejected their argument. The court found that the five Polish workers who died or were injured in the warehouse fire should be considered victims of human trafficking without question. The five victims had all been recruited and harboured by the first defendant and the companies constructed around him. The court found that they were in a situation contrary to human dignity. According to the court, the facts were established.

The court found that it was clear the warehouse was used as a place to sleep, which in no way could be considered as a proper family home that could accommodate 16 people in dignified conditions, with only one toilet, one washbasin and one shower. In addition, the electricity was faulty and basic, the warehouse had been refurbished with flammable insulating materials, etc.

The working conditions and wages were also contrary to human dignity. It is particularly important to take into account the amount actually paid for the number of hours worked. Belgian salaries must be used as a benchmark when determining whether a salary is acceptable or not. The criminal case file sufficiently demonstrates that the victims were employed in exchange for wages that didn't meet the threshold of human dignity. For example, the court refers to the statements of a victim who earned EUR 6 per hour and EUR 1,500 per month (which amounts to 250 hours of work and 25 ten-hour working days). Others had stated that they earned EUR 800 per month, i.e. EUR 5 per hour, with the added bonus of 'free' accommodation. In view of these findings, it was clear to the court that the pay was contrary to human dignity, also taking into account the duration of the work.

According to the court, it was clear that all the defendants had provided the necessary assistance by cooperating in the recruitment, transfer and harbouring of the Polish workers.

In the case of the fifth and sixth defendants, including a company, the court reversed the judgment and acquitted the defendants of the charge of human trafficking with regard to the three victims employed as mechanics. They were only liable for the pallet repairers and not for the mechanics and drivers.

The first defendant was again found guilty of involuntary manslaughter, involuntary assault and battery, human trafficking in relation to several workers, and acts of slum landlordism. He was sentenced to three years in prison, suspended for five years, and fined EUR 25,000. He was stripped of his rights for ten years and EUR 924,000 were confiscated. The sixth defendant was sentenced to 15 months in prison, suspended for five years in its entirety, and a fine of EUR 18,000.

The other defendants were sentenced to fines of between EUR 30,000 and EUR 60,000. Significant amounts were confiscated, but the amounts were adjusted by the court.

The compensation awarded to the civil parties was confirmed, except for the partial acquittals of the fifth and sixth defendants.

2.3.3. | Hospitality sector

A case concerning acts of trafficking in a pizzeria was tried in Marche.

In this case, a couple of Tunisian nationality was prosecuted, as well as their company as civilly liable, for various charges: human trafficking for the purpose of labour exploitation of a Tunisian worker, with aggravating circumstances, and several social criminal law charges (including failure to pay wages).

The worker filed a civil suit.

The case was initiated when police officers were conducting a neighbourhood investigation in Vielsalm in connection with another case of human trafficking. They entered a pizzeria, where they were greeted by a person, the worker who filed a civil suit, dressed as a 'pizzaiolo' who was busy preparing pizza dough. He seemed stressed and, in broken French, made them understand that it was his first day at work. The defendant then showed the police an identity card issued by Italy for this worker. An official report for illegal residence was then drawn up.

The worker was heard a few months later by the police, having come forward on his own initiative, and having been referred to them by another department. He wished to report his situation. He explained the conditions under which he had arrived in Belgium, via Italy, the circumstances of his employment in the pizzeria and those of his accommodation. A few days later, he was heard by social inspectors, who found indications of human trafficking.

Various checks and investigative actions then took place (hearings, neighbourhood inquiries, etc.).

In a judgment of 19 November 2021, Marche Criminal Court²⁵⁹ upheld the charges, but limited some of them. It considered that this was a case of human trafficking: the worker had been recruited by the defendants so that he could work for them. In this respect, the fact that the worker contacted the defendants himself because he was looking for work was irrelevant. He was also harboured by the defendants. This work took place in conditions contrary to human dignity for more than two years (wages of EUR 150 to EUR 200 per week; six days a week, between nine and eleven hours of work per day; undeclared work, with false promises of regularisation).

The court sentenced the defendants respectively to suspended prison sentences of 12 and 10 months and a partly suspended fine of EUR 8,000, and to pay the plaintiff, together with the company liable for damages, EUR 1,500 for non-pecuniary damages and EUR 1 as a provisional payment for pecuniary damages.

2.3.4. | Bakery

Several decisions concern acts of trafficking in bakeries. They were judged in Brussels, Mechelen and Marche.

In a judgment of 16 February 2022, Brussels Dutch-speaking Criminal Court²⁶⁰ ruled on a case of human trafficking in a Moroccan biscuit factory.

Two defendants of Dutch nationality were prosecuted for human trafficking for the purpose of labour exploitation, employment of illegally staying workers and other social law violations. There were several victims from Morocco, but only one of them filed a civil suit.

In October 2019, a control was carried out by the social inspectorate and the police in the Moroccan biscuit factory. Ten people were arrested at their workplace and heard.

The court found that, on the basis of all the evidence in the criminal case file, it was established that the working conditions were contrary to human dignity. The premises where the persons worked weren't suitable for the activities they performed, the work conditions were appalling and hazards and safety risks were very high (fire, toxic fumes, etc.). The workers worked long hours, sleeping together in a flat or on a mattress in an adjacent room in the bakery. Their wages were well below the minimum. They worked without social protection or insurance. They were all in a precarious situation, so it was easy to control them.

The bakery went bankrupt in 2021.

The defendants were found guilty of human trafficking, among other things. They were sentenced to 18 months in prison, partly suspended, and a fine of EUR 38,400. The victim was awarded compensation of EUR 10,727.46 for pecuniary damages and EUR 500 for non-pecuniary damages.

The case tried by Mechelen Criminal Court on 21 January 2022²⁶¹ concerned acts committed in a Moroccan bakery during the period 2011-2020.

The two defendants were, on the one hand, the manager of the multi-branch bakery and, on the other hand, the receiver of the bankrupt company. The company was the successor of another one previously declared bankrupt. In addition to human trafficking, they were also prosecuted for other social law violations.

During several checks, the inspection services had found illegally staying persons in the bakery, including the plaintiff.

In a judgment of 19 March 2021, Mechelen Criminal Court had convicted the defendant for similar offences, but for a shorter period of time, and therefore invoked the non bis in idem principle. The court ruled that the acts were indeed comparable, but that the conviction concerned other acts, other persons and another period.

The court found that the acts relating to human trafficking were established. The victim, who filed the civil suit, had to work nights for years – at least since 2012 – without a break and for a particularly low salary. He had no social protection, worked seven days a week and was monitored by the defendant with cameras.

²⁵⁹ Luxembourg Crim. Court, Marche-en-Famenne division, 19 November 2021, 14th ch, no. 2021/277. (final).

²⁶⁰ Brussels Dutch-speaking Crim. Court, 16 February 2022, ch. 25N (appeal).

²⁶¹ Antwerp Crim. Court, Mechelen division, 21 January 2022, ch. MC7 (final).

He lived in a room above the bakery, without a shower or toilet, where he slept on a mattress. He was in a vulnerable position, didn't speak Dutch and didn't have valid residence papers. This was established through detailed statements by the victim and other workers, findings by social inspectors and the police, fingerprints and photographs. The victim had already been found during an inspection in 2012 and fingerprints had been taken at that time.

The acts of human trafficking were also materially and morally imputable to the second defendant, the company, but the period of criminal liability was reduced, as the company was only established in May 2019.

The first defendant was sentenced to an additional one-year prison term, suspended on probation. The sum of EUR 15,000 was also confiscated. The second defendant was also given a confiscation order of EUR 5,000.

The victim was awarded a provisional amount of EUR 5,000 for pecuniary damages and a final amount of EUR 9,000 for non-pecuniary damages.

In the case tried in Marche, an Italian defendant and his company were prosecuted for human trafficking for the purpose of labour exploitation of a Congolese national, and for human smuggling of the same person, both with aggravating circumstances, as well as for various criminal social law charges concerning several workers, including the Congolese man.

The defendant was the manager of a bakery.

The Congolese worker filed a civil suit but failed to appear.

The case was initiated following a tip-off from a couple who had worked as volunteers for the restoration of the building in which the bakery was to be located. They reported the labour exploitation of the Congolese worker by the defendant. The worker slept in the cellar and worked at night doing cleaning tasks. A report was drawn up by the NSSO inspectorate stating various irregularities concerning this bakery. The case was put under investigation and several investigative actions were conducted (search of the bakery, where the Congolese worker was found to be working, but fled before being intercepted, visit to the residence above the bakery where the victim was reportedly sleeping). During his hearing, the worker explained that he had been working for approximately five years (initially as a trainee with the promise that at the end of the training he would take over a bakery) and that he earned approximately EUR 80 per week. The worker was taken in by a specialised reception centre for victims.

In a judgment of 19 November 2021, Marche Criminal Court²⁶² upheld the majority of the charges, without the aggravating circumstances, both for the defendant and the company. It considered this to be a case of human trafficking: the worker was recruited by the defendant to work in his bakery. In this respect, it is irrelevant whether the worker himself made or renewed contact with the defendant because he was looking for work or wanted training in the bakery. He was also harboured by the defendant. This employment took place under conditions contrary to human dignity and for more than four years (an average wage of EUR 80 per week; excessive working hours (from 83.5 to 87.5 hours per week); undeclared work; fear of being intercepted by the police; a dysfunctional relationship with the employer, who held onto him through empty promises, such as the takeover of a bakery or the hope of regularisation).

As regards smuggling, the court considered that the defendant had contributed to the illegal stay of the Congolese worker. He had received a financial benefit from the undeclared labour exploitation of the victim.

The court handed the defendant an 18-month suspended prison sentence and a partly suspended fine of EUR 24,000; the company was fined EUR 32,000 with a partial suspension.

262 Luxembourg Crim. Court, Marche-en-Famenne division, 19 November 2021, 14th ch., no. 2021/276 (appeal).

2.3.5. | Cleaning

Acquittal owing to doubt about inhumane conditions

In a case heard by Antwerp Criminal Court on 7 May 2021²⁶³, four defendants of Turkish, Dutch, German and Belgian nationality were prosecuted as perpetrators and co-perpetrators of (among other things) human trafficking for the purpose of labour exploitation of several victims. In addition, they were also prosecuted for various social law violations, participation in a criminal organisation and money laundering.

The defendants were the successive managers of a limited liability company during the period of the acts: 2009-2011, 2013-2016 and 2016. The company's corporate purpose was the cleaning of buildings. The company was declared bankrupt in 2016.

There were two parts to the criminal investigation.

Firstly, following two complaints about inhumane working conditions and several social inspections at the company's premises, an investigation was carried out into possible human trafficking and social law violations. Secondly, following a report by the Financial Intelligence Processing Unit (Cellule de Traitement des Informations Financières - CTIF) concerning indications of money laundering obtained through social fraud and illegal labour trafficking, an investigation was launched into economic-financial offences.

In mid-2014, at Payoke's request, a man of Algerian nationality was heard by the Social Legislation Inspectorate (SLI). The man, an illegal resident, stated that he was being exploited by the cleaning company. He had to work 13 hours a day for a very low salary, six days a week. Sometimes he received EUR 60 per week, sometimes nothing at all. In 2016, the Federal Judicial Police (FJP) was informed of a man of Moroccan nationality employed in degrading conditions and exploited by the cleaning company. He had to work many hours in unhygienic conditions, without protective clothing, and there were problems with the payment of his salary. He was paid from time to time and received EUR 30-50 per day. His living conditions were poor. Several checks were carried out by the social inspectorate in the company's buildings, and each time it was found that several people were working without residence or work permits, without employment contracts and without Dimona declarations. The social inspectorate also found a significant discrepancy between the turnover and the total gross wages declared by the employer to the NSSO.

In addition, considerable amounts of cash had been withdrawn from the company's account. A search was conducted at the private home of one of the defendants, during which all accounts and computer hard drives were seized.

For the acts of human trafficking, the court ruled that it couldn't be established beyond any reasonable doubt that the defendants had actually employed people in conditions contrary to human dignity and/or taken advantage of their situation of vulnerability. The mere fact that the workers concerned were in Belgium illegally and chose to rent a flat or room from the first defendant, or that the defendants may have committed social law violations, wasn't sufficient. The court also found that there had been no further investigation into the actual working and living conditions of the workers concerned. As such, the court couldn't find the defendants guilty of human trafficking and acquitted them of this charge.

On the other hand, the defendants were convicted of various social law offences and money laundering.

2.3.6. | Domestic work

Several decisions relate to the domestic work sector. Two of them concern acts committed respectively by a diplomat and a European public servant.

On 18 November 2021²⁶⁴, Ghent Court of Appeal examined a case of modern slavery concerning three Bulgarian victims in the domestic work sector. The case was tried at first instance by Ghent Criminal Court on 7 October 2020, and discussed in a previous annual report²⁶⁵.

The police investigation took place in two stages: in August 2018 and a year later between April and September 2019. The facts were first brought to the attention of the local police in Ghent following the compulsory de-registration of one of the defendants. During a neighbourhood inquiry, several residents reported serious violence against a resident with a disability, among others things. The defendants and the victims were questioned, but denied everything, so the police considered that the defendants were no longer of interest.

In April 2019, the police were again alerted to recurring injuries to one of the victims. The police had received several new complaints from local residents. Witnesses had described the victims as slaves of the defendants.

²⁶³ Antwerp Crim. Court., Antwerp division, 7 May 2021, ch. AC5 (final).

²⁶⁴ Ghent Court of Appeal, 18 November 2021, 3rd ch.

²⁶⁵ East Flanders Crim. Court, Ghent division, 7 October 2020, ch. G29. See Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, pp. 75-76 and Ghent Crim. Court, 7 October 2020 | Myria.

This time, the victim made statements about his wretched living conditions. Further investigation revealed that there was a second and third victim. The second victim made similar statements. The third victim worked as a so-called shareholder in the pita company of the second defendant. The defendants, together with members of their families, had set up a fraudulent scheme with companies.

The court found the two defendants (father and son) guilty of the crime of human trafficking. The court referred to the act of ‘keeping needy compatriots in a system of modern slavery, using extreme and senseless violence’. The victims were undeniably employed in conditions contrary to human dignity. The first defendant was also found guilty of assault and battery. Both defendants had extensive criminal records and were sentenced to four years in prison and a fine of EUR 24,000.

The plaintiffs obtained damages of EUR 21,232.62 for the first victim (pecuniary and non-pecuniary damages) and EUR 10,975.63 for the second (pecuniary and non-pecuniary damages). Payoke received EUR 2,500.

On appeal, the court also found that the charges were established. It followed the reasoning of the trial judge in its entirety. The court went into more detail about the material and moral elements of the offence of human trafficking. On the basis of the evidence in the criminal case file, the court found that the victims had undoubtedly been employed by the defendants in a manner contrary to human dignity. They had to live and work in degrading conditions, for very low wages or no wages at all. One of the victims was even involved as a partner in one of the pita companies without his knowledge. Two victims had been lured to Belgium by the defendants under false pretences, such as receiving medical treatment or to work here. Once in Belgium, their vulnerable position had been abused owing to their illegal and precarious administrative situation. Therefore, the aggravating circumstance was also established for the court. One of the victims was also the victim of chronic physical neglect and physical and psychological abuse by the defendant. This was established by a medical expert. However, the court took into account the fact that, for certain acts relating to the charge of the absence of a Dimona declaration, the first defendant had already been convicted in a previous judgment.

Both defendants were sentenced to a prison term of 36 months and a fine of EUR 24,000. The damages awarded to the victims were confirmed.

Domestic work for diplomats

In a judgment of 15 December 2021, Brussels Dutch-speaking Criminal Court²⁶⁶ ruled in absentia on a modern slavery case.

The defendants were a couple of diplomats from Kuwait. They were charged with human trafficking for the purpose of labour exploitation, non-payment of wages and other social law violations. The victim, a refugee from Ethiopia, had fallen into the hands of human traffickers and ended up with the defendants in Kuwait. In 2021, she started working as a domestic worker. She had to work seven days a week and be available 24 hours a day for the couple and their children. She had no contact with the outside world, no private life and hardly any personal belongings. She earned almost nothing. She could only eat after the family, and only the leftovers. If they were angry, they insulted her, the children too. In 2017, she followed the family to Belgium. She wasn't allowed to leave the house. All the doors were locked when the family was away. The couple had confiscated her passport. She could only escape when the couple forgot the keys on the door during the night. She escaped and later found refuge at PAG-ASA.

The court first ruled that the couple could be prosecuted for these acts under the Vienna Convention on Diplomatic Relations. In the meantime, the defendant had left his diplomatic post and the couple had returned to Kuwait. According to the Convention, once the diplomatic function has ended, diplomatic immunity only covers acts committed by the diplomat in the exercise of his or her functions as a member of the diplomatic mission. The exploitation of domestic staff within the private residence falls outside the scope of official and diplomatic acts.

The defendants failed to appear in court, but the court found that the facts were established on the basis of the criminal case file. In particular, the court found that the victim's statements were consistent and that there was no reason to doubt them.

The defendants were sentenced in absentia to a two-year prison term and a fine of EUR 12,000.

266 Brussels Dutch-speaking Crim. Court., 15 December 2021, ch. 25N (contested).

The victim and PAG-ASA filed a civil suit. The victim was awarded pecuniary and non-pecuniary damages totalling EUR 33,327.44 (EUR 5,000 of which was for non-pecuniary damages). PAG-ASA didn't obtain any damages, because the court couldn't clearly determine the damage suffered by the non-profit organisation.

Domestic work for a European public servant

A couple was prosecuted for the human trafficking of their African nanny and for social criminal law charges. The husband was a European public servant.

The victim filed a civil suit.

As part of the husband's work, the couple had lived in Senegal where they had recruited a domestic worker. The worker accompanied them when they moved to Belgium. A domestic work contract was signed and according to the pay slips issued, she was supposed to receive EUR 1,400 net, after tax and social security deductions. A bank account had been opened in her name and in the husband's name.

An analysis of the movements of this bank account revealed unjustified withdrawals and expenditures and the systematic recovery of sums paid as wages or annual holidays. The defendants didn't dispute that, throughout her period of employment (more than 10 years), the worker didn't have access to her wages or her bank account onto which her wages were paid.

Both the victim and the defendants were heard. A home visit on consent also took place.

The victim lived in a room in the cellar (she called herself 'madame cellar'), and cleaned and looked after the children. She worked from 06:30 to 23:30 (17 hours a day). She didn't have a bank card and couldn't withdraw money from her account because the wife kept the card. She never took a holiday.

In its judgment of 20 April 2022, Brussels Criminal Court²⁶⁷ considered that both members of the couple were employers, in the sense of 'any natural person with authority over staff, regardless of their title'.

In a detailed reasoning, the court considered that there was indeed human trafficking: the couple had harboured the victim in order to make her work in conditions contrary to human dignity.

In assessing this criterion, the court took into account several circumstances: availability to the defendants at all hours, material conditions of stay (basement of the building with very rudimentary and outdated facilities, with traces of mould and damp), no measures concerning safety, hygiene or well-being in the workplace, no access to information or culture (the possibility of watching television in a comprehensible language wasn't allowed), failure to pay wages, no possibility of having a social or family life.

The court also accepted the aggravating circumstances of authority over the victim and abuse of vulnerability, as well as the social criminal law charges.

It sentenced the defendants to a two-year suspended prison term and a EUR 6,000 fine, and to a 15-month suspended prison term and a EUR 6,000 fine. It ordered the confiscation of the building and allocated the proceeds in priority to the plaintiff. The defendants were ordered to pay her a gross sum of EUR 216,000 as a provisional payment.

2.3.7. | Hairdressing salon

A case concerning a hairdressing salon was judged by Brussels Criminal Court on 21 December 2021²⁶⁸.

Three defendants of Belgian nationality, but of Palestinian origin, were prosecuted for human trafficking for the purpose of labour exploitation of two Moroccan nationals and for various social criminal law offences.

The case was initiated when one of the defendants asked the police to intervene at a hairdressing salon, saying that he was allowed to use the premises and presented a lease contract. One of the workers was also there, explaining that he was a worker and that his boss, the main defendant, had all the lease documents. He explained his working conditions: seven days a week, from 10:00 to 20:00 for EUR 50 - 70 per week (never more than EUR 350 per month), and this had been the case for over two years. His boss has been promising him an employment contract since the beginning, but had never provided one. He slept at the back of the shop. Besides his boss, two associates were reportedly also benefiting from his exploitation. The police found that there was no bathroom or shower and no room for cooking. The cooking was done on a gas burner. He was staying illegally. His boss and his partners (the other two defendants) had several hairdressing salons and other undocumented people were being exploited there.

²⁶⁷ Brussels French-speaking Crim. Court, 20 April 2022, 69th ch. (appeal).

²⁶⁸ Brussels French-speaking Crim. Court, 21 December 2021, 69th ch. (appeal).

He also stated that the three defendants were transferring companies to each other and integrating some of these people in them to regularise them, before declaring bankruptcy.

The investigation was carried out on the basis of the workers' statements, an analysis of the base stations, a neighbourhood inquiry and various inspections in the hairdressing salons where the other worker who was a victim was found.

The court upheld the charge of human trafficking, but only in the case of the main defendant, in particular based on the workers' statements, corroborated, in the case of one of them, by the analyses carried out on his phone and by the neighbourhood inquiry. It considered that the two men had indeed worked in a hairdressing salon, in a position of insecurity and total dependence on their employer. Moreover, this work took place in conditions contrary to human dignity (substandard housing conditions, illegal residence making them vulnerable, no social protection, excessive number of working hours, reduced pay, well below the hourly minimum, impossibility of having a social or family life).

The court considered that the main defendant had indeed recruited and harboured the two victims in order to exploit them. On the other hand, it acquitted the other two defendants, owing to the lack of evidence implicating them in the acts and their denials.

It also upheld the social criminal law charges, but only for the main defendant, considered to be the employer.

It acquitted the other defendants of the charges.

The main defendant was sentenced to a 30-month suspended prison term, a fine of EUR 24,000 and a five-year professional ban. He was also ordered to pay the worker, the plaintiff, EUR 74,169.75 in compensation for pecuniary damages and EUR 14,000 for non-pecuniary damages.

2.3.8. | Other sectors

Religious order

In a judgment of 2 December 2021, Ghent Court of Appeal reviewed an extensive case of labour exploitation within a monastic order²⁶⁹. In a judgment of 26 June 2019, Ghent Criminal Court²⁷⁰ acquitted the defendants of the charge of human trafficking. This case was discussed in a previous annual report²⁷¹.

In this case, the Augustinian Fathers of Ghent and their superior, as well as the non-profit association responsible for organising events at the monastery, were prosecuted for various social law offences (employment of foreigners without a residence or work permit, failure to declare employment), human trafficking, aiding illegal immigration, forgery and incorrect or incomplete NSSO declarations.

According to the labour prosecutor's office, the superior of the monastic order in Africa recruited young seminarians, promising them an official position in the Catholic Church (training for the priesthood), while in reality they were also recruited as cheap labour for the monastery's commercial activities. The young seminarians came mainly from Benin, Togo and the Ivory Coast. The charge of human trafficking related to 13 people who filed a civil suit.

The defendants also allegedly drafted and used false invitations, certificates and sponsorship agreements in order to obtain residence permits for the seminarians, mentioning a false status as a monk or prior training as a monk in their country of origin.

In a lengthy and detailed reasoning, the court acquitted the defendants of the charges of human trafficking, aiding illegal immigration, forgery and most of the social criminal law charges.

As regards human trafficking, the court found that the postulants (and their families) were fully aware that they would be part of a religious community with all income going to that community and that they would have to live according to the rules of that community. They had indeed received the promised training and their services in the monastery were within the normal framework of monastic life. In addition, the fathers had paid for all the costs of their stay (travel, visa, accommodation and meals) and their training. Each month they received pocket money and also money to buy clothes. They were also allowed to go out, provided they had permission. They were also authorised to permanently leave the monastery and the monks made sure that they could return to their country of origin at their expense.

Concerning the charge of aiding illegal immigration, the court considered that nothing in the criminal case file showed that the defendants had knowingly aided non-EU nationals to enter or stay in Belgium in contravention of the law.

269 Ghent, 2 December 2021, 3rd ch.

270 East Flanders Crim. Court, Ghent division, 26 June 2019, ch. G29w. and Ghent Crim. Court, 26 June 2019 | Myria.

271 See Myria, 2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors, pp. 91-92.

The criminal 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.

The court handed the superior a partly suspended fine of EUR 10,800, and the non-profit associations a fine of EUR 36,000, also partly suspended. In view of the acquittals, the court declared that it had no jurisdiction to rule on the plaintiffs' claims.

On appeal, Ghent Court of Appeal essentially upheld the judgment. For the charge of human trafficking, the court referred to the considerations of the first judge. The tasks and duties that the postulants had to perform should be seen in the context of a voluntary religious commitment in the monastic order. There was no evidence that they had to work in circumstances contrary to human dignity. The fact that the first defendant often behaved in an authoritarian, derogatory and even racist manner was not in itself sufficient to speak of overall working conditions contrary to human dignity. Furthermore, the abuse of their vulnerable position couldn't be proven.

However, the court considered that a number of social law offences and aiding illegal immigration were established against the first and second defendants, as were the charges of forgery. The first judge had found the first two defendants guilty of false and incomplete NSSO declarations, which the court confirmed.

The court sentenced the first defendant to three months in prison and a fine of EUR 27,000, as well as a separate fine of EUR 1,000 (for the charges of forgery and aiding illegal immigration), both suspended for three years. The second defendant was sentenced to a fine of EUR 9,000 and a separate fine of EUR 10,800, both suspended for three years. The third defendant was given a three-year suspended fine of EUR 14,400.

The fact that the reasonable time limit was exceeded (to a limited extent) was taken into account in the sentencing. The plaintiffs' claims were dismissed.

Administrative work in a travel agency

Antwerp Court of Appeal²⁷² reviewed a judgment of 9 September 2021 concerning a case of human trafficking for the purpose of labour exploitation and social law offences, previously tried by Antwerp Criminal Court on 14 December 2020 and discussed in a previous annual report²⁷³. The period of criminal activity was from December 2017 to December 2019. A defendant of Moroccan nationality was prosecuted. The Moroccan victim filed a civil suit.

The victim was discovered during a random inspection of a travel agency run by the defendant. He stated that he had been living and working there for two and a half years. He wasn't registered in Dimona and was working without the necessary work and residence documents, hence, he was in the country illegally and had already received an order to leave the territory. The defendant had promised to help him obtain his residence documents, but this promise had gone unheeded. He was housed in the basement of the building and worked without a contract and without a fixed salary, but in exchange for accommodation (in a damp, musty basement with no facilities), bread, coffee and occasionally a little money for cigarettes. He opened the agency at 10:00 and closed it around 19:00. He received customers, weighed their luggage and took care of all the administration for the dispatch of the parcels. All the transactions were recorded in notebooks.

The defendant argued that he had only been away for a short time and that - to please the plaintiff - he had allowed the man to help him from time to time with the business. He had offered accommodation to the plaintiff after being begged because the man was in an irregular situation.

The defendant was found guilty of human trafficking and social law violations (including failure to comply with the Dimona declaration obligation and employment of a foreigner not authorised to work). He was sentenced to one year in prison and fined EUR 24,000. The victim was awarded pecuniary damages of EUR 45,846.62 (calculation of the salary due) and non-pecuniary damages of EUR 5,000.

The court of appeal upheld the judgment pronounced at first instance concerning the human trafficking charge. The defendant didn't challenge the other charges. The court sentenced the defendant to one year in prison, but limited the fine to EUR 8,000. The victim received compensation of EUR 40,846.62 for pecuniary damages and EUR 2,500 for non-pecuniary damages.

²⁷² Antwerp Court of Appeal, 9 September 2021, ch. C6.

²⁷³ Antwerp Crim. Court, Antwerp division, 14 December 2020, ch. AC1. Myria, *2021 Trafficking and smuggling of human beings, Visibly invisible*, pp. 77 and [Antwerp Crim. Court, 14 December 2020 | Myria](#).

Metal sorting

Liège Court of Appeal reviewed a case concerning metal sorting, judged at first instance by Marche Criminal Court on 30 June 2017²⁷⁴. In this case, three Belgian defendants (two brothers and their father) were prosecuted for various offences: human trafficking for the purpose of labour exploitation of two illegally staying Burkinabe nationals, human smuggling of the same persons, aiding illegal residence and several social criminal law offences (including the employment of workers with no right to stay in Belgium and failure to pay wages).

The two workers filed a civil suit.

The defendants were convicted of the charges at first instance (without the aggravating circumstances of authority and abuse of vulnerability).

The case was initiated when a specialised reception centre for victims of trafficking contacted the social inspectorate in August 2013 in order to hear one of the two workers, who wished to report the acts of human trafficking of which he had been a victim. Originally from Burkina Faso, he explained his journey to Belgium, his two unsuccessful asylum applications, the numerous squats he lived in, the work for one of the defendants, which he found through a friend. First he had to clear a piece of land in order to set up a scrap yard, and then he had to sort the scrap. He lived in a caravan on the site with the other worker, with no hot water or heating. Although it was agreed that he would receive EUR 25 per day, he received EUR 300 for three months. He also worked for the father of this defendant at a yard for old scrap metal in Vielsalm, where he had to sort out the old scrap and dismantle car parts. He worked seven days a week, from 08:00 to 21:00. Another of the defendants, the brother, ran this yard. He also lived there in a caravan.

In March 2014, the reception centre notified the social inspectorate of another worker who was a victim of the same defendants' actions. The latter, also of Burkinabe nationality, was employed by two of the defendants at the Vielsalm yard, while seeking asylum (he had submitted three asylum requests which had all been rejected). While out shopping one day, he met the father who offered him work. He asked for an employment contract but he never got one and frequently wasn't paid. He also worked in the yard of the other defendant and also lived there in a caravan.

An investigation was then carried out to confirm the statements of the two victims, despite the defendants' denials: analysis of transactions, neighbourhood inquiry, material evidence provided by the victims (rail passes showing the routes between the various sites, photos, analysis of the victims' mobile phones).

In a judgment of 9 September 2021, Liège Court of Appeal²⁷⁵ confirmed the convictions pronounced at first instance, but contrary to the criminal court, upheld the aggravating circumstance of abuse of vulnerability concerning the two workers, both in relation to trafficking and smuggling. In a detailed reasoning, it specified that the plaintiffs had indeed been recruited in order to be put to work. Recruitment should be understood in the ordinary sense of hiring: it is sufficient for the employer to offer a job to a person who contacts them. The plaintiffs were also harboured, at least partly. The violation of human dignity was established by the unfair pay, the working hours, the failure to declare the work and the working conditions. The abuse of vulnerability was also established since the workers were in an illegal or precarious administrative situation at the time the work was carried out for the defendants (refugee status denied or under examination).

The court found that the reasonable time limit had been exceeded and therefore pronounced a simple declaration of guilt.

As regards the plaintiffs, contrary to the criminal court, it considered that the non-payment of wages resulting from undeclared work, as in the present case, could be compensated, since the workers had been victims of human trafficking. It therefore didn't follow the arguments of the Court of Cassation²⁷⁶ which established that the receipt of wages from undeclared work constitutes, as a rule, unlawful work, the loss of which can't be compensated.

It therefore ordered one defendant (one of the brothers) to pay the plaintiffs more than EUR 6,000 and more than EUR 32,000 respectively in pecuniary damages; the other two (the other brother and the father) were ordered jointly and severally to pay them more than EUR 6,000 and more than EUR 17,000 respectively in pecuniary damages. The three were also ordered to pay them EUR 2,500 in non-pecuniary damages.

274 Luxembourg Crim. Court, Marche-en-Famenne division, 30 June 2017, 14th ch. (unpublished).

275 Liège, 9 September 2021, 6th ch.

276 Court of Cass., 14 May 2013; RG P.02. 1204.F.

3. Human smuggling

3.1. | European Court of Human Rights, *Al Alo v. Slovakia* judgment of 10 February 2022

This case concerns the unfair conviction of a migrant smuggler based on statements given by witness who weren't heard at the trial. The issues were examined in light of Article 6 (right to a fair trial) of the European Convention on Human Rights²⁷⁷. The applicant, a Syrian national, claimed that his trial and conviction for migrant smuggling was unfair because much of the evidence against him came from the migrants he had assisted. However, they were only interviewed at the pre-trial stage of the proceedings, before being expelled from Slovakia, and didn't appear at his trial. He wasn't represented by a lawyer at the time, and wasn't present at their interviews.

In January 2017, he was accused of joining forces with others to smuggle migrants. Two police officers, who were watching him in Bratislava, saw him and two suspected migrants getting into a taxi which then headed for the border between Slovakia and Austria. The police intercepted the car and took the migrants into custody.

Both the applicant and the migrants were interviewed. The former stated that he considered the latter to be acquaintances of his father and that he had only provided them with accommodation and transport. However, the migrants claimed that he had organised their transfer to Germany on the basis of an agreement paid for in advance. In May 2017, he was found guilty of the charges against him and sentenced to five years in prison.

The Court²⁷⁸ concluded that there had been a violation of Article 6 §§ 1 and 3 (d) (right to a fair trial/right to obtain the attendance and examination of witnesses) of the Convention with regard to the applicant, finding that the proceedings against him as a whole had not been fair. In particular, it found that the person concerned had been deprived, without sufficient justification, of the opportunity to question, or have questioned, witnesses whose statements had been of significant importance to his conviction.

Although the fact that the migrants weren't present in Slovakia was in principle a valid reason for admitting the statements they had given at the pre-trial stage to the trial, there was no sufficient reason in practice for their non-appearance at the trial, since the authorities had their address and identity documents and hadn't used any of the means available to them to ensure their appearance remotely. The fact that the applicant had chosen not to attend the preliminary questioning of the migrants could in no way be regarded as an implicit waiver of his right to question or have questioned the witnesses against him. The authorities should have ensured that the applicant, who had made it clear from the outset that he had difficulty in understanding legal issues, was in a position to understand the consequences of not exercising his rights.

3.2. | Vietnamese smuggling networks

Essex case: 39 victims deceased in a refrigerated lorry

Bruges Criminal Court ruled in a judgment of 19 January 2022²⁷⁹ on a vast case of human smuggling by a Vietnamese smuggling network in which 23 defendants were prosecuted. The defendants were of Vietnamese, Belgian, Moroccan and Armenian nationality²⁸⁰.

On 23 October 2019, 39 bodies were found in the trailer of a lorry in the United Kingdom. The victims were all Vietnamese nationals and had been smuggled in a lorry trailer from Zeebrugge to the United Kingdom by boat.

The investigation in Belgium was conducted by the federal prosecutor's office and began on 24 October 2019. At the time of the events – 22 and 23 October 2019 – several judicial investigations were already underway in West Flanders for previous acts of smuggling of Vietnamese nationals. These investigations were added to the investigation into the events of 22 and 23 October 2019.

277 ECHR, judgment *Al Alo v. Slovakia* (application no. 32084/19).

278 Source: press release from the Court registrar of 10 February 2022.

279 West Flanders Crim. Court, Bruges division, 19 January 2022, ch. B17 (appeal set for December 2022).

280 In the meantime, two other Vietnamese defendants were convicted in the recent Essex-bis case. They were only arrested later and extradited from the United Kingdom to Belgium after the first trial in January.

Hence, the investigation covered the events both before and after the tragedy. As a result, it was possible to identify a whole series of activities and *modi operandi* of the smuggling network. Various methods were used during the investigation to identify the victims and link them to the smugglers, but also to identify the clandestine migration routes taken from Belgium to France, then back to Belgium and from there to the United Kingdom.

As the smuggling activities of this network took place in different countries, investigations were conducted in several countries: Belgium, France, United Kingdom, etc. Belgium and the United Kingdom reached an agreement for a joint investigation team (JIT) in early November 2019. Ireland and France also participated. EUROPOL and EUROJUST were involved too. A meeting was held with the families of the victims in Vietnam within the framework of a British letter rogatory. This information was used by the FJP in the case²⁸¹.

The victims found in the trailer consisted of eight women and 31 men, all Vietnamese nationals. Four of them were under 18 years old. The trailer in which the victims were found was a refrigerated trailer. A British investigation showed that the cooling (and therefore air circulation) of the refrigerated lorry wasn't working. As a result, the victims succumbed to a lack of oxygen. This certainly occurred on the ship during the journey.

The investigation revealed that several victims had been taken by taxi from Anderlecht, Paris and Berlin to northern France, where they had boarded the lorry's trailer. Several victims had previously stayed in safehouses in Brussels while waiting for their crossing. The trailer was then driven to Zeebrugge and left in the port to be loaded onto the ship, and then collected in Purfleet, United Kingdom, by another lorry. It was the lorry driver who discovered the bodies of the victims on arrival at their destination.

The investigation relied on a variety of techniques, including camera footage from ports and ships, as well as from service stations along the route, analysis of GPS tracking of lorries, ANPR²⁸² searches for the lorries and taxis, neighbourhood inquiries, especially among port companies and safehouses, information from customs, tractor cargo searches, base station checks, retroactive phone number searches, emergency switchboard and phone operator searches, and IMEI searches²⁸³. There were hearings, re-hearings and confrontations with the defendants, a hearing of a victim with a tour to identify addresses. There was a bank investigation and an examination of social media, including Facebook.

The investigating judge was asked to initiate various investigative actions. The various safehouses were observed for several months. Several numbers were put under surveillance as a result of the phone investigation. Numerous searches were carried out at various stages of the investigation, during which various defendants and victims were found, DNA traces were examined on mobile phones found in the safehouses, prison records were examined, such as account details, visitor lists and phone contacts. There were several European Investigation Orders (EIO) for the Netherlands, Germany and the United Kingdom. Data from 21 mobile phones recovered from the trailer containing the 39 victims was analysed by the UK police. The FJP received this data downloaded from the mobile phones and SIM cards via the JIT. The FJP combined all this information with the UK reports of visits to the victims' families as part of their letters rogatory in Vietnam. An IO investigation revealed that several visas were issued to the victims for France for alleged family reasons.

The investigation revealed that smuggling victims in Vietnam are often lured by criminal organisations with false promises of lucrative jobs in Europe.

The majority of victims are men, mostly between the ages of 20 and 40, often from certain regions of Vietnam. Social media plays a major role in attracting potential victims. The final destination is often the United Kingdom, with Belgium usually acting as a transit country for migrants. There are several routes: they often pass through Russia, Belarus, the Baltic States, via Poland, the Czech Republic, Slovakia, to Germany and from there to the Netherlands, Belgium and France, and often from there to the United Kingdom. Some routes also pass through Ukraine and Kaliningrad in Russia or through South America. Another route went through Vietnam, Malaysia, Greece, Portugal, France and then Belgium.

281 Because of the Covid-related restrictions, the Belgian research team wasn't able to travel to Vietnam at the time.

282 Automatic number plate recognition.

283 International Mobile Equipment Identity (IMEI): every phone has a unique IMEI number which can be useful in finding a lost or stolen phone. This number can be found by dialling *#06#.

The price of smuggling in Western Europe can reach EUR 40,000 euros, forcing families or migrants to borrow money. Ultimately, the migrant is responsible for the repayment.

The cost of a journey varies depending on whether it is a standard journey or a 'VIP route'. Those who want to go to the United Kingdom have to pay extra. The amounts can vary: one family paid EUR 11,000 to smuggle the victim to the UK. Another family had to pay EUR 11,500, EUR 5,500 of which they had to pay to one of the defendants; they borrowed this sum from a relative of a defendant. Another family paid EUR 10,000 for the journey to Hungary and then another GBP 15,000 to continue to the United Kingdom. Yet another family had to pay EUR 39,500 once they had arrived safely in the United Kingdom.

Most of the smuggling was carried out by the Vietnamese network, with local taxi drivers being called in for the last part, the transportation of the victims to the lorries. Several of these taxi drivers also appear in this case.

For the final part of the journey, i.e. the crossing to the United Kingdom, other smuggling networks were sometimes used, such as the Kurdish and Albanian networks. In the United Kingdom, local lorry drivers were used.

The victims who stayed in Belgium in Vietnamese-owned safehouses had absolutely no freedom of movement. They sometimes stayed there for a long time until their crossing to the United Kingdom.

The various defendants in this case can be subdivided as follows: 1) the defendants who played an important role in the Vietnamese network; 2) the defendants who had more of a secondary role as facilitators of the smuggling activities, such as the owners of the safehouses, and 3) the taxi drivers who transported the victims from their place of residence to different places in Belgium and neighbouring countries in order to hide them in lorries. One of the defendants was the director of a taxi company.

The various defendants were prosecuted as perpetrators or co-perpetrators²⁸⁴ of, among other things, human smuggling with aggravating circumstances, such as the fact that the offence resulted in the death of the victims without intent to kill, that the offence was committed against minors, etc. One defendant was prosecuted for attempted smuggling of human beings.

The defendants were also prosecuted for being leaders, or for having participated in the decision-making, or for having participated in the preparation or implementation of activities of a criminal organisation. In addition, several of them were prosecuted for fraudulent use of identity documents, for using false names and for illegal residence in Belgium.

The court assessed the role of each defendant. It was possible to directly link ten of the defendants to the events of 22 October 2019.

The first defendant was considered the leader of the safehouse in Belgium. He recruited victims to travel to the United Kingdom through him. He determined the prices and ordered the family members to pay the required amount to his family in Vietnam. It was also possible to link him to several smuggling runs before and after the events of 22 and 23 October 2019. The court found that he was the undisputed leader of the criminal organisation, and of its Belgian cell to be exact. He was in contact with the coordinators in Germany and France. He was in close contact with the Vietnamese facilitation network that the organisation used to smuggle victims into the United Kingdom. He decided who could and couldn't travel and how and when payment should be made on arrival in the United Kingdom.

The second and third defendants were also considered co-facilitators. They were responsible for the Brussels safehouses and both could be directly linked to the events of 22 October 2019.

The sixth and eighth defendants belonged to the middle management of the organisation, between the first defendants and the facilitators and taxi drivers.

The ninth, tenth and eleventh defendants were the owners of the safehouses and were therefore important facilitators in the criminal organisation. The thirteenth and fourteenth defendants were a father and son who ran a nail bar together. The fifteenth and sixteenth defendants bought SIM cards in their names.

Defendants 17 to 26 were taxi drivers who were in charge of transferring the victims to the lorries²⁸⁵. The eighteenth defendant was a taxi driver and co-manager of a taxi company, who transported the victims himself or organised runs for other taxi drivers. He determined the price of the runs. The routes passed through remote areas and weren't recorded on the log sheet.

284 In the sense of Art. 66 of the Criminal Code.

285 The prosecution of the 17th defendant was inadmissible because he had already been convicted of the same offence.

The nineteenth defendant was a taxi driver. He was the contact person for the Vietnamese network and was in contact with the Vietnamese smugglers. He took care of the runs himself or entrusted them to other taxi drivers. He took people to France, the Netherlands, Germany and back to Belgium. He also set the price and received the money from the Vietnamese smugglers. He would then pass the amount onto the taxi drivers who would carry out the runs. The taxi drivers had to pay him a percentage of the amount, as he had made the contacts. The twentieth defendant, the twenty-first defendant and the twenty-sixth defendant were also taxi drivers. According to the court, they must have been aware of the smuggling activities. Not only were the principals always the same and the transport paid for by third parties, but the clients were always allegedly 'family'. The clients also usually had no luggage and couldn't make themselves understood. The destinations were clearly suspicious, usually totally remote places on the coast. In addition, the drivers didn't generally record these journeys on the log sheets. They were professional drivers and could therefore tell the difference between these and regular rides. These journeys were frequent, over a long period of time, and they knew that they were illegal. One of the defendants had continued to accept assignments to transport Vietnamese migrants even after the dramatic events of 22 October 2019.

Four other defendants were also taxi drivers, but were acquitted. According to the court, they weren't directly approached by Vietnamese principals, but acted on behalf of a fellow taxi driver, a significant number of destinations weren't necessarily suspicious, nor were the earnings unusually high. There was insufficient objective evidence to assess whether they had knowledge of the nature or purpose of the runs for the criminal organisation.

The main defendant was sentenced to 15 years in prison and fined EUR 920,000. He was stripped of his rights for 20 years. A special confiscation of EUR 2,284,005.19 was ordered. The second and third defendants were sentenced respectively to prison terms of four years and 37 months, and fines of EUR 8,000. The sixth defendant was sentenced to ten years in prison and a fine of EUR 480,000. A special confiscation of EUR 337,335.25 was ordered. He was stripped of his rights for 10 years.

The eighth to sixteenth defendants were sentenced to prison terms ranging from 18 months to 50 months, some suspended, and fines of EUR 8,000.

One of the taxi drivers was sentenced to seven years in prison and a fine of EUR 368,000. A special confiscation order of EUR 17,103.50 was issued. The other taxi drivers were sentenced to two to four years in prison, suspended, and fines of EUR 88,000 to EUR 160,000, partly suspended. Special confiscations were ordered for several amounts.

Three defendants were sentenced in absentia.

Myria and PAG-ASA filed a civil suit together with eight other family members of the victims. Myria and PAG-ASA were each awarded EUR 5,000 in compensation. The claim of the other plaintiffs, namely the direct relatives and close friends of the deceased victims, was upheld against the defendants who could be linked to the events of 22 October 2019. Non-pecuniary damages ranging from EUR 4,500 to EUR 9,000 were awarded, depending on the relationship between the plaintiff and the victim. Pecuniary damages were estimated at between EUR 1,000 and EUR 2,000, plus interest.

Small boats transporting Vietnamese victims and Kurdish smuggling organisations

In a judgment of 9 February 2022²⁸⁶ Bruges Criminal Court ruled on a case of human smuggling using small boats to cross the English Channel. A defendant of Iraqi nationality was prosecuted. In May 2021, a patrol discovered a van with a French registration plate parked in Koksijde with its doors open. The patrol noted that several people were escaping into the dunes. There was suspicion of illegal smuggling by small boat.

A drone team arrived on the scene and searched the dune area with a thermal camera, locating around 60 people. The maritime information centre was alerted and a team of boats scoured the coast. In the dunes, inflated RHIB boats²⁸⁷, a few boxes of life jackets and several jerry cans of fuel were found. A backpack containing amphetamines, heroin, cannabis and ecstasy, among others things, was also found.

More than 80 transit migrants were found that night and were mainly of Vietnamese and Kurdish origin. One of the people, the defendant, had the key to the car found with the French number plate.

286 West Flanders Crim. Court, Bruges division, 9 February 2022, ch. B17 (appeal).

287 Rigid hull inflatable boat.

The investigation revealed that the car had been intercepted several times by the ANPR system in Belgium. Heroin was also found in the vehicle. The defendant and several people in his entourage were arrested and their mobile phones analysed. Several transit migrants were heard. Searches were made of vehicles, in the dunes, as well as searches for evidence on RHIBs and accessories, vehicles, and analyses of the transit migrants' mobile phones.

At the same time, an RHIB was intercepted by the maritime police with 15 women and 29 men of Vietnamese and Kurdish origin on board. There wasn't enough fuel on board to reach the United Kingdom, the life jackets were only suitable for inland waters, all the necessary equipment was missing and the boat didn't comply with any regulations. In the event of an emergency, outside the range of a mobile phone network, there was no way to send a distress signal. Among the passengers were victims who had also been intercepted during another intervention.

According to the court, there was sufficient evidence that the defendant was involved in smuggling and his statement that he was simply one of the illegal migrants wasn't credible and inconsistent with the other evidence. It was proven that he was in contact with a known smuggler. On his mobile phone, sufficient information was found about 'Hawala' banking services, information about RHIBs and outboard motors, and threats against a person who couldn't pay their debt.

The defendant was sentenced to seven years in prison and fined EUR 640,000. Payoke filed a civil suit and was awarded EUR 5,500 in compensation.

British lorry driver involved in smuggling Vietnamese victims

In a judgment of 13 October 2021²⁸⁸, Bruges Criminal Court ruled on a case involving the smuggling of Vietnamese nationals. A British defendant was prosecuted.

West Flanders FJP had police information showing that an organisation was active in bringing trailers to Belgium to transport transit migrants in them to the United Kingdom via the Zeebrugge-Purfleet route. Information from the British authorities established the identity of the suspects. The trailers involved were also known and it was possible to locate them. Ten people were found in the trailer, all of Vietnamese origin, including eight minors. The defendant was the driver and denied any knowledge of the stowaways in the trailer.

²⁸⁸ West Flanders Crim. Court, Bruges division, 13 October 2021, ch. B17 (appeal).

²⁸⁹ Liège Crim. Court, Liège division, 31 March 2021, 19th ch. See Myria, *2021 Annual Report Trafficking and smuggling of human beings, Visibly invisible*, pp. 81-82. This judgment is available on Myria's website.

There was a phone investigation, camera footage was analysed, intelligence was gathered in France and the United Kingdom, forensic analyses were carried out in search of evidence, and WhatsApp conversations were thoroughly examined. The file also contained statements from the victims, as well as contradictory statements from the defendant.

The court found that the facts were established, with aggravating circumstances. The defendant had a criminal record. He was sentenced to 37 months in prison and fined EUR 8,000. He was stripped of his rights for 10 years.

3.3. | Iraqi smuggling network

Smuggling of Kurdish victims with a tragic outcome for one child victim

Liège Court of Appeal was called upon to review the acts of human smuggling in the case linked to the death of Mawda, the Kurdish girl who died following a police shooting during a chase with the van transporting the migrants. The part relating to the police shooting was tried by Mons Criminal Court on 12 February 2021. The smuggling acts were tried at first instance by Liège Criminal Court on 31 March 2021²⁸⁹. It concerned six Iraqi defendants, three of whom failed to appear. They were charged with human smuggling with aggravating circumstances, including endangering the lives of the victims and the fact that there were children among them on the fatal night. The migrants transported were of various nationalities: Iraqi, Syrian, Pakistani, Iranian and Afghan. Those prosecuted included the presumed driver of the van (convicted in the Mons case) and the smuggler (acquitted in the Mons case). The latter was also prosecuted for a number of other human smuggling charges, as was another defendant. All the defendants were prosecuted for participation in a criminal conspiracy and for illegal residence. The parents of the deceased girl filed a civil suit on their own behalf and as the legal representatives of their daughter Myria also filed a civil suit.

The case was initiated at the beginning of May 2018, when investigators from Liège federal police drew up an initial report stating that an Iraqi-Kurdish group was active in human smuggling, with migrants transiting through the Liège region. This smuggling of migrants from Syria and Iraq was organised between France, Belgium and other countries, with England as the destination. The modus operandi consisted of gathering the migrants together in a camp near Dunkirk. Groups, each accompanied by a smuggler, would then be picked up in vans with false number plates. These vehicles would be driven by two drivers, who would trawl through motorway parking areas overnight to find opportunities to board trucks bound for Great Britain. Payment for the journey between Dunkirk and Great Britain would be made on arrival. However, to be able to make the crossing, the migrants would have to guarantee the sum via a money transfer 'agency', such as Western Union, by providing the name of the beneficiary and the code of the operation. The investigation carried out by the police in Liège suggested that certain organisations bought vans in Liège, mainly from the same garage, which were subsequently fitted out (removal of the partition between the driver's and the load space) and provided with false number plates.

On 17 May 2018, the police gave chase to a van with false number plates leaving a parking area on the motorway heading to Mons. The driver drove in a manner that endangered both his passengers and other road users, and then refused to obey police orders. The rear windows (obscured by black paint) were smashed and the occupants threw out objects in order to obstruct the traffic of other vehicles, including the police. A small child was even held up. After a police officer fired, the van was immobilised, revealing around 30 people crammed inside, the driver having mixed with the passengers. An Iraqi girl, hit by the shot, died.

An investigation was launched to identify the driver(s), facilitators, smugglers and organisers of these smuggling operations. Various means of investigation were used (open source searches on social media, mobile phone analyses, DNA analyses and fingerprinting, etc.). Anonymous witnesses were also heard.

The court considered that this was indeed a case of human smuggling and convicted the defendants of most of the charges.

The smuggler (acquitted in the Mons case) and another defendant, who drove the van at the start and then took the place of the facilitator, appealed against the decision. The former claimed to be just another migrant, which was disproved by several documents in the file.

In its judgment of 18 January 2022, Liège Court of Appeal²⁹⁰ confirmed the sentences pronounced at first instance.

Iraqi and Syrian human smuggling organisation

Another case was tried by Antwerp Criminal Court. In a judgment of 3 November 2021²⁹¹ the court ruled on a case of human smuggling in which eight defendants were prosecuted, as perpetrators or co-perpetrators, for smuggling human beings with the aggravating circumstance of being members or leaders of a criminal organisation. The defendants were either of Iraqi, Syrian or British nationality, or of unknown nationality.

The investigation started after a report of a person who was locked in a refrigerated lorry with other victims. They were able to call the police after the lorry's refrigeration system was activated and it was too cold.

The investigation was carried out on the basis of mobile phone analyses, phone tapping, a retroactive phone investigation, statements from defendants, photographs, and searches²⁹².

The investigation revealed that the criminal organisation had been active between August 2018 and January 2020 and had smuggled at least 91 people. They operated in parking areas along the E34 near Oud-Turnhout and Postel, but also in car parks in other parts of the country, in Liège, Ghent and Maasmechelen.

²⁹⁰ Liège, 18 January 2022, 18th ch.

²⁹¹ Antwerp Crim. Court, Antwerp division, 3 November 2021, ch. AC10 (appeal).

²⁹² The court excluded certain recordings of conversations from the French case file as evidence against one of the defendants. There was only a typed transcript of the audio files and, despite insisting the French authorities provide the audio files, they failed to do so.

They allowed migrants to board lorries to the United Kingdom in exchange for substantial sums of money. Victims paid around EUR 3,000 to EUR 5,000 and up to EUR 10,000 or EUR 11,000 for a clandestine crossing with a guarantee that the lorry driver was aware of the situation. Payment was made through the 'Hawala' system, where the money was given to someone for safekeeping. Only upon arrival at the destination did this intermediary hand over the money to the criminal organisation. The migrants were contacted in Brussels. They stayed in the vicinity of Brussels North station, in Maximilian Park. The smugglers would tell them when to leave and where to go in the parking areas. They either took public transport to the parking areas or were driven there by car.

Belgian investigators received information from a case in France in which some of the defendants were also involved.

The organisation was international with contacts in Belgium, France, the Netherlands, the United Kingdom and Iraq. It was composed of organisers/principals and field workers who provided logistical support. The members all had different tasks and roles, such as giving orders and instructions, acting as drivers, collecting victims as enforcers, opening trucks, guarding parking areas, etc. They didn't hesitate to use violence, including towards other members. Firearms were used to make threats. The organisation also made plans for smuggling activities via the North Sea on board boats.

The court found the facts to be true. The two main defendants were at the head of the criminal organisation. The other defendants were members of the organisation and carried out certain tasks in return for payment. Some of the defendants argued that they had participated in the smuggling activities to pay for their own crossing and that they hadn't collected any money themselves. However, the court found that their financial benefit in this case constituted a benefit in kind.

The sixth defendant was a recruiter and contact person for the new victims. He was in charge of the financial arrangements, the 'Hawala' transactions. He wasn't active in the parking areas. One of the defendants had meanwhile managed to get to the United Kingdom, from where he continued his smuggling activities.

The seventh defendant was a British national and the companion of the main defendant with whom she had a little boy. She regularly transported people. She was aware of the plans to organise smuggling activities by small boat.

Three defendants failed to appear.

The defendants were sentenced to heavy prison terms ranging from 50 months to 10 years and heavy fines ranging from EUR 256,000 to EUR 728,000, some of which were suspended. Large sums of money were also confiscated.

The first, sixth and eighth defendants appealed and Antwerp Court of Appeal reviewed the case in a judgment of 28 April 2022²⁹³.

The court largely upheld the judgment. The sentence of 10 years' imprisonment for the first defendant was confirmed. For the sixth defendant, the prison sentence was reduced to 40 months, suspended for five years, and the fine was reduced to EUR 134,000, partly suspended. The eighth defendant was sentenced to 50 months' imprisonment, suspended for five years, and the fine was reduced to EUR 208,000, partly suspended.

3.4. | Sudanese smuggling network

Smuggling network active up to the province of Luxembourg

Brussels Dutch-speaking Criminal Court ruled in a judgment of 2 April 2021²⁹⁴ on a human smuggling case in which nine defendants were prosecuted as perpetrators or co-perpetrators of human smuggling and attempted human smuggling with aggravating circumstances between November 2019 and July 2020. They were also prosecuted for participating in the decision-making, preparation or implementation of the activities of a criminal organisation, and for illegal stay.

It was an organisation composed mainly of men of Sudanese nationality. They were very active in the Brussels area and at motorway parking areas near Arlon, close to the border with the Grand Duchy of Luxembourg. Maximilian Park in Brussels was used as a place to recruit transit migrants to go to the United Kingdom for amounts ranging from EUR 700 to EUR 1,200 depending on the profile of the migrant. From Brussels, migrants were taken to parking areas near Arlon where they were loaded into lorries. Both the smugglers and the migrants sometimes stayed in the parking areas for several days in tents.

A phone investigation was carried out ('retro-zollers', analysis of base station traffic and tapping operations). Ten numbers were tapped. Observations were carried out at Brussels-North station and the motorway parking area, as well as searches.

293 Antwerp, 28 April 2022, ch. C6.

294 Brussels Dutch-speaking Crim. Court, 2 April 2021, 23rd ch. (appeal).

Two female victims, supported by PAG-ASA, gave statements to the police. They stated that the main defendant had threatened them with violence and sexually harassed them at different times. One of the girls was even injured. They were able to identify several smugglers in photos.

The court considered that there was a very well structured and organised relationship between the defendants, with a clear division of tasks between the large number of members (leaders, recruiters, boarding assistants, etc.). The material organisation (distribution of camps with tents in the parking area, distribution of tickets, organisation of a constant flow of victims, collection of money, multiple attempts to intercept migrants, etc.), the consistency of the organisation and the systematic and high frequency of the commission of offences were all elements that demonstrated the existence of a well-organised criminal organisation, distinct from an association. The acts were committed by mutual agreement. The recorded conversations also revealed that several members were transferring money abroad.

The court found that the acts of human smuggling were established, with aggravating circumstances.

Two defendants were also convicted as leaders of the criminal organisation. They decided when to go to the parking areas, who could go there and how many people could board. They were sentenced to prison terms of five years and 40 months respectively and fines of EUR 1,644 and EUR 832. Five defendants were also convicted of participating in decision-making within the criminal organisation. They collected the money and negotiated prices. They were sentenced to four years in prison and fines ranging from EUR 1,456 to EUR 10,192. Two defendants were convicted of participating in the preparation or implementation of activities. They helped people to board the lorries and carried out the tasks assigned to them by the other members. They were sentenced to 30 months in prison and fines of EUR 8,320 and EUR 8,944.

Separate sentences were handed down for the charge of illegal stay and all defendants received a three-month prison sentence.

Several defendants and the public prosecutor appealed. Brussels Court of Appeal reviewed the case in a judgment of 15 October 2021²⁹⁵. The court considered that the acts should be described according to their most severe classification. It redefined the charges by dropping the aggravating circumstance of human smuggling within an association (Article 77quater, 7° of the Aliens Act).

Prosecutions were also brought for the aggravating circumstance of participation in the activity of a criminal organisation (Article 77quinquies of the Aliens Act).

One of the defendants stated during the proceedings that he was a minor at the time of the events. The first judge considered that the age of majority was established on the basis of the report of the forensic expert (after an X-ray examination of the wisdom teeth, wrist and collarbone) according to which it could be established with reasonable scientific certainty that the defendant was older than 18 years. However, the court held that reasonable scientific certainty couldn't rule out any doubts concerning the person's age. The forensic expert expressed reservations about the fact that the study was based on the results of a 'Caucasian' and that it wasn't scientifically conclusive that the results also applied to other ethnic groups. The court considered that there were doubts about the defendant being of age at the time of the crime and therefore ruled the criminal proceedings against him inadmissible.

Furthermore, the court considered that the allegation by some of the defendants that they hadn't personally gained anything from their intervention wasn't relevant to define the acts as human smuggling. Complicity in human smuggling applies to any person who contributes in any way, directly or through an intermediary. Each of the defendants knowingly participated and provided the cooperation necessary for the success of the smuggling activities, with the ultimate goal of making money for the organisation. They are therefore all co-perpetrators, irrespective of any personal financial benefit they may have derived.

The court also found that the sentence should take into account the situation of the defendants, all of whom had fled humanitarian disasters or difficult situations in their countries. Perhaps they didn't initially act for the sole reason of making money, but were trying to earn some money despite their vulnerable situation.

The sentence of the main defendant was finally confirmed. For the other defendants, the prison sentence was reduced to 30 months. The fines were confirmed.

295 Brussels, 15 October 2021, 15th ch.

3.5. | Ethiopian-Eritrean smuggling network

In a judgment of 15 March 2022²⁹⁶, Dendermonde Criminal Court ruled on a case in which five defendants were prosecuted for human smuggling with aggravating circumstances. The defendants were from Eritrea and Ethiopia. A victim filed a civil suit²⁹⁷.

The smuggling activities mainly took place at the motorway parking area in Wetteren in January and February 2020.

The judicial investigation was conducted through observations, phone taps, retroactive phone investigations, examinations of mobile phones and interviews with transit migrants. British pre-paid SIM cards were often used.

The main defendant was clearly the leader of the smuggling group. He asked aspiring migrants for EUR 800 to smuggle them. He was the one who opened the lorries, checked the destination and closed the lorries. New transit migrants could only be smuggled with the express consent of the defendant.

The other four defendants assisted the first defendant. Some of the defendants argued that they hadn't received any money but were trying to enter the United Kingdom in exchange for their assistance. The court held that section 77bis of the Aliens Act doesn't require each co-defendant to receive money personally. Cooperating directly or through an intermediary and participating in a human smuggling organisation is sufficient to be considered a co-perpetrator. According to the court, they were looking for at least an indirect financial benefit.

The court found the defendants guilty, but limited the number of victims.

Aggravating circumstances were also established. The vulnerable position of the transit migrants was abused, they were loaded into refrigerated or bulk trailers, at great risk to their lives. There was also association: smuggling by one person is impossible. Human smuggling is a team effort and all the defendants had a specific role in the system, as guard (supervisor), enforcer or escort.

The association was clearly structured, with the other defendants in contact with the first defendant, their superior. He decided when to go to the parking areas, in which lorries the transit migrants were to be 'loaded' and ensured the opening and closing of the lorries. He did everything he could to remain unnoticed. The other defendants acted as intermediaries and were in contact with the transit migrants, helped to bring them to the parking areas, stood guard and provided the necessary equipment.

The first defendant was sentenced to four years in prison and a fine of EUR 46,000. The other defendants were sentenced to prison terms of one to three years and fines of EUR 5,000 to 24,000, partly suspended.

3.6. | Albanian smuggling networks

As mentioned in the trends at the beginning of this chapter, the decisions Myria received concerned, on the one hand, VIP smuggling of Albanian nationals in the cabs of lorries and, on the other hand, smuggling by ferry from Zeebrugge with forged Italian identity documents, or by means of sailing boats or yachts from marinas on the Belgian coast.

Italian drivers²⁹⁸

In a judgment of 12 May 2021²⁹⁹ Bruges Criminal Court ruled on a case of smuggling of Albanian nationals who used false identity documents.

Three defendants were prosecuted in this case, two of Albanian nationality and one of Italian nationality. Two of them failed to appear at their trial.

The case was initiated following information that one of the defendants was the organiser of an international human smuggling operation. He was living in the United Kingdom, but organised the clandestine crossing of Albanians to the United Kingdom via the port of Zeebrugge. He collaborated with his brother who lived in Italy.

²⁹⁶ East Flanders Crim. Court, Dendermonde division, 15 March 2022, ch. D19D (appeal).

²⁹⁷ The victim's application was inadmissible because it wasn't mentioned in the order for referral and the court can't accept new facts that haven't been submitted to it.

²⁹⁸ See other decision: West Flanders Crim. Court, Bruges division, 10 November 2021, ch. B17 (unpublished).

²⁹⁹ West Flanders Crim. Court, Bruges division, 12 May 2021, ch. B17 (contested).

The modus operandi was to approach Italians - mainly from the Tuscany region - who were in financial difficulties to let Albanian nationals use their identity documents or to act as drivers to drive the Albanian nationals to the United Kingdom. Italian identity documents were falsified (by changing the photo) so they could be used by the migrants. The Italian drivers reportedly earned between EUR 1,000 and EUR 3,000 for each successful crossing, plus compensation for all expenses. Migrants paid approximately EUR 35,000 for the crossing of a family of three.

Several cars were intercepted at Zeebrugge with Albanian nationals attempting to cross the Channel. It was possible to link those arrested to the defendants. In one of the cases, a witness had given detailed statements against the main defendants.

The two defendants, two brothers, were known for serious criminal offences, including human smuggling. The first defendant was the key figure in the organisation. He lived in the United Kingdom. His name appeared in several human smuggling cases. He used several British phone numbers and was also in contact with several people via Facebook. His brother lived in Italy.

The first and second defendants were sentenced to 50 and 40 months' imprisonment respectively and fines of EUR 56,000 and EUR 40,000. The Italian driver was sentenced to 37 months in prison and a fine of EUR 8,000.

On 8 December 2021, Bruges Criminal Court³⁰⁰ ruled on a human smuggling case in which a person had tried to reach the United Kingdom by ferry using false identity documents.

Four defendants were prosecuted, two Italian nationals and two Albanian nationals, as perpetrators or co-perpetrators of human smuggling, for using false passports and a false name. Two of them failed to appear at their trial.

Their car was checked at the border checkpoint at the port of Zeebrugge. The photo of one of the people didn't seem to match the individual present and the passport turned out to be a fake.

The Italian driver made statements. He said he travelled to Belgium in his car together with the other defendant of Italian nationality. In Belgium, the fourth defendant apparently got into the car pretending to be the second defendant.

The second defendant was arrested in Italy and extradited to Belgium. The real mastermind was an Albanian living in Italy who allegedly paid the first two defendants to bring the third defendant to the United Kingdom.

The first and second defendants were sentenced to 30 months in prison and a fine of EUR 8,000, both suspended. The third defendant was sentenced to 37 months in prison and a fine of EUR 8,000. The fourth defendant was sentenced for using a false name and false documents. He was sentenced to six months in prison and a fine of EUR 800.

Sailboats in the North Sea

In a judgment of 10 March 2021³⁰¹ Bruges Criminal Court ruled on a case of smuggling Albanian nationals on a sailboat. The defendant was of Lithuanian nationality.

Ostend maritime police received a call from the port that a badly lit sailboat had left the port of Blankenberge. They were able to escort the boat to the harbour. The defendant was the skipper. There were also four Albanians on board, including several close relatives.

The skipper had been approached by Albanians in Antwerp who had asked him to take them to the United Kingdom. The sailboat wasn't in good condition and was taking on water during the crossing. The passengers got scared.

The court considered the facts to be established and sentenced the defendant to four years in prison and a fine of EUR 8,000. The defendant appealed and Ghent Court of Appeal confirmed the judgment in a judgment of 30 June 2021³⁰². However, it reduced the prison sentence to three years.

300 West Flanders Crim. Court, Bruges division, 8 December 2021, ch. B17 (final).

301 West Flanders Crim. Court, Bruges division, 10 March 2021, ch. B17 (appeal).

302 Ghent, 30 June 2021, 8th ch.

VIP clandestine migration in the cab of a lorry

Myria received various decisions rendered at first instance and on appeal concerning this *modus operandi*³⁰³. These include a ruling by Antwerp Court of Appeal³⁰⁴ on a case in which Myria had previously acted as a civil party and in which, after a decision of the Court of Cassation, a new ruling was handed down, largely confirming the decision of the first judge with regard to a defendant and even imposing a heavier sentence.

Bruges Criminal Court ruled on³⁰⁵ several cases of human smuggling, mainly involving Albanian nationals. Myria has chosen to present two of these decisions.

A case tried on 13 July 2021³⁰⁶ concerned a defendant of Albanian nationality. He appealed against a judgment of 29 July 2020.

In January 2019, an intervention team was sent to a site in Veurne following a suspicion of smuggling activities. An investigation was initiated. It revealed that the smuggling organisation was based in London and was run from a bar.

Those wanting to leave were brought there via Albania or Greece. Initially, they were housed in safehouses in the Brussels area. This is where a selection was made and photos were taken.

Those departing left Brussels and gathered in a hotel close to the port of Ghent.

The organisation's henchmen picked up and transported the participants, housed them in hotels and safehouses, chose who would be leaving and sent their photos to their principals.

The taxi drivers took the departing passengers from the hotels or safehouses to the lorry, collected the money and redistributed it via money transfers. The departing passengers were transported clandestinely in the cab of the lorry, and therefore with the complicity of the drivers. The lorry drivers all worked for an Italian company. The migrants weren't allowed to bring any luggage; it was transferred to the United Kingdom afterwards, in the event of a successful crossing.

Members of the London bar were responsible for receiving the migrants when the lorries arrived in the United Kingdom, collecting the balances due on the spot and delivering the transit migrants to their guarantor in the United Kingdom.

The investigation was carried out through retroactive phone searches, phone taps, observations, interviews with the smugglers, searches and a phone investigation. The smugglers often changed their phone numbers and used false names. There were contacts with numbers in Belgium, Italy, Greece and the United Kingdom.

In this case, the defendant was an accomplice/helper. He was sentenced to forty months in prison and a fine of EUR 72,000, both partly suspended.

Ghent Court of Appeal dealt with another case in a judgment of 23 February 2021³⁰⁷. This case concerned the smuggling of Albanian nationals in the cabs of lorries. In its judgment of 6 November 2019, Bruges Criminal Court³⁰⁸ convicted the defendant of Belgian nationality.

He was prosecuted as a perpetrator or co-perpetrator of the human smuggling of two people. He made lorries available to other drivers. Two victims were found in the cab of one of his drivers. They were a woman and her child, who wanted to join the father of the family in the United Kingdom.

The defendant requested that the acts be reclassified under section 77 of the Aliens Act as humanitarian reasons or, at the very least, as aiding illegal migration. The court didn't agree. The defendant was well aware of the smuggling practices.

Furthermore, the court didn't believe his claim that he hadn't received any money. The defendant was prosecuted as a perpetrator or co-perpetrator. It isn't necessary for all the elements of the offence to be present to convict someone as a co-perpetrator. It is sufficient that they knowingly and willingly participated in the commission of the offence.

Therefore, they don't necessarily have to have received money personally.

The acts of human smuggling with aggravating circumstances were again considered established by the court. However, it found that there was a slight unjustified delay in the processing of the case, as the facts dated back to September 2016. This was taken into account when assessing the sentence.

The defendant's criminal record didn't help his case. He was sentenced to a prison term of 30 months.

303 See these decisions, among others: Ghent, 3 November 2021, 8th ch. (unpublished); Ghent, 4 May 2022, 8th ch. (unpublished); Ghent, 23 February 2022, 8th ch. (unpublished).

304 Antwerp, 10 June 2021, ch. C6 and West Flanders Crim. Court, Bruges division, 14 December 2018, ch. B17. Also see Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p. 99 and Bruges Crim. Court, 14 December 2018 | Myria.

305 West Flanders Crim. Court, Bruges division, 13 July 2021, ch. B17 (unpublished); West Flanders Crim. Court, Bruges division, 23 March 2022, ch. B17 (unpublished); West Flanders Crim. Court, Bruges division, 23 February 2022, ch. B17 (unpublished).

306 West Flanders Crim. Court, Bruges division, 13 July 2021, ch. VK1 (contested and appeal).

307 Ghent, 23 February 2021, 8th ch.

308 West Flanders Crim. Court, Bruges division, 6 November 2019, ch. B17.

3.7. | Smuggling in small boats

Several decisions were rendered concerning the smuggling of human beings by small boat in the North Sea. On the one hand, there were cases concerning logistical helpers, i.e. those who bought or transported the small boats and other equipment³⁰⁹. Logistical equipment was transported from abroad via Belgium to Calais, where the Channel crossing is the shortest way to reach the United Kingdom by boat. On the other hand, there were cases where small boats were found at sea. Myria has chosen to present three of these decisions: two tried in Bruges and one in Namur.

Small boat logistics

In a judgment of 9 March 2022³¹⁰ Bruges Criminal Court ruled on a case in which the two defendants were of Dutch nationality.

They had been spotted during a police check, as the windows of their car were covered with cardboard. When the car was checked, it was found to be loaded with orange life jackets, an outboard motor, a rubber boat, a jerry can of petrol, a box full of documents and copies of passports. The FJP took over the investigation. It turned out that one of the defendants was known in the Netherlands for various previous convictions. A conversation in the cell complex was intercepted, in which the two defendants agreed on what each would say.

Eventually, one of the defendants confirmed that he had travelled to Germany to collect a boat, a duckboard and life jackets and that he was to transport them to an address in France for a principal in The Hague. It later turned out that the outboard motor had been stolen from a water sports club in the Netherlands.

The court found the defendants guilty of human smuggling and handed down a 30-month suspended prison sentence and a fine of EUR 8,000.

In May 2020, two defendants were found in their car with equipment intended for human smuggling. Information from the German police revealed that other defendants had also been found with equipment in their cars. One of the boats purchased by a defendant had already been intercepted earlier by the British Coast Guard. The German police reported that several outboard motors had been purchased in a specific sports shop. In another shop, several boats had been sold to the same person. The police found photos of boats and life jackets on the defendants' mobile phones.

One of the defendants had been buying boats and motors for a long time and organised smuggling operations, even with Vietnamese. The investigation revealed that between August and September 2020, he spent EUR 10,000 on boats in a shop.

The defendants were working with a person in Calais who was recruiting victims to be smuggled into the United Kingdom by small boat in return for payment. The boats weren't fit for the whole journey.

The court assessed the facts in the light of the ANPR camera search, the results of the 'retro-zoller', the results of the examination of the seized mobile phones, the WhatsApp conversations found, the mobile phone photos of small boats and outboard motors, the Google Maps photos, the fact that some of the defendants had been caught in a car with smuggling equipment, and the defendants' implausible and contradictory statements.

It ruled that the facts were established and that the defendants were clearly part of a criminal organisation. They received prison sentences ranging from six to 12 years and fines ranging from EUR 96,000 to EUR 240,000.

A similar case was tried in Namur.

In this case, an Iranian defendant was prosecuted for human smuggling, malicious obstruction of traffic and armed rebellion.

In September 2021, the vehicle he was driving was intercepted by the traffic police for speeding (161 km/h) on the E42 motorway towards Mons. The driver ignored instructions to follow the police and made several dangerous manoeuvres in an attempt to outrun the police. The vehicle was finally stopped after a 57 km chase.

Another person, also an Iranian national, was in the vehicle too. She filed a civil suit. Neither of them had any identity documents. The vehicle was reported (Schengen) by the French authorities in the context of illegal transit of foreigners to England, in which the defendant was one of the suspects. In the vehicle, the police found 30 life jackets, an inflatable dinghy in a bag provided for this purpose, as well as seats, oars, pumps and a motor in another bag.

The passenger burst into tears and said she didn't know the driver. She said she had come from Denmark and that he had picked her up to take her to England by boat with a life jacket via France.

309 Ghent, 21 April 2021, 8th ch.; Ghent, 10 March 2021, 8th ch.; Ghent, 14 April 2021, 8th ch.; West Flanders Crim. Court, Bruges division, 23 March 2022, ch. B17; West Flanders Crim. Court, division Bruges, 23 February 2022, ch. B17; West Flanders Crim. Court, Bruges division, 8 December 2021, ch. B17; West Flanders Crim. Court, Bruges division, 13 July 2021, ch. B17.

310 West Flanders Crim. Court, Bruges division, 9 March 2022, ch. B17 (final).

311 West Flanders Crim. Court, Bruges division, 23 June 2021, ch. B17 (contested and appeal).

The defendant explained that the vehicle had been entrusted to him in Germany, that he had to take it to a car park in Brussels and also had to pick up the passenger, who had arrived with three other people in a vehicle registered in Denmark. He denied being a smuggler. The passenger was an asylum seeker in Denmark, where she had just received a negative reply, and had planned to travel to England via France. She contacted people who had already done the journey and obtained the numbers of smugglers. It was going to cost her approximately EUR 1,700. She was taken to a reception centre for victims of trafficking and smuggling, which took her in.

In a judgment of 17 March 2022, Namur Criminal Court³¹² upheld all the charges. It was possible to establish, mainly on the basis of phone analyses and police findings, that the defendant had repeatedly made several trips from the Netherlands to Germany via Belgium to France and that the aim was to get people in an illegal and precarious situation to cross the Channel to England.

The court sentenced him to a partly suspended five-year prison term and a suspended fine of EUR 8,000, and ordered him to pay the plaintiff one final euro for non-pecuniary damages.

Small boats at sea

In a judgment of 8 October 2021 pronounced by Ghent Court of Appeal³¹³, a defendant of Iraqi nationality, residing in Denmark, was prosecuted as a perpetrator or co-perpetrator of human smuggling by small boat in the North Sea.

Police intercepted a small boat with 13 Syrians at sea after a complaint from witnesses who saw the boat collide with another boat in the marina. The defendant was transporting transit migrants from the Calais 'Jungle' to the marina in Nieuwpoort, where they boarded a small boat.

The defendant was handed a seven-year prison sentence and a EUR 12,000 fine.

3.8. | Reclassification as aiding illegal immigration (Article 77 of the Aliens Act) — acquittal under the humanitarian clause

Brussels Court of Appeal applied the humanitarian clause for acts of aiding illegal immigration.

In a judgment of 12 January 2022³¹⁴, it examined a case of human smuggling in which the defendants had been acquitted at first instance by a judgment of the criminal court of 4 February 2019³¹⁵. The public prosecutor appealed.

The two defendants, both Syrian nationals but resident in the United Kingdom, were prosecuted for human smuggling with aggravating circumstances. They had helped a friend, a Syrian living in Greece with whom they also had a family link, to fly to the United Kingdom with false documents, at the request of the man's brother.

The first judge reclassified the acts under Article 77 of the Aliens Act and acquitted the two defendants.

The court agreed with the first judge on the reclassification under Article 77. There was no evidence that the defendants acted with the aim of obtaining any financial benefit, either directly or indirectly. There was no evidence in the criminal case file that any financial benefit was promised or that the defendants received any financial benefit.

The court also examined whether the defendants' motivation couldn't be equated with aid 'primarily for humanitarian reasons' within the meaning of Article 77(2). According to the parliamentary work on the adaptation of this article, this aid must be 'understood in a broad sense and include all non-criminal and non-economic objectives'.

The court also ruled that 'offering disinterested help to a person claiming to be a Syrian refugee, brother of a friend or family member, who, after a long and difficult journey, finds himself in difficult circumstances in Greece and wishes to join his family elsewhere in Europe, after having fled the war himself as a refugee and having travelled to a place of safety, falls within the notion of offering help 'primarily on humanitarian grounds''. According to the court, there was no indication that the defendants acted with any economic or criminal intent.

The court confirmed the decision and acquitted the two defendants.

³¹² Namur Crim. Court, Namur division, 17 March 2022, 13th ch. (final).

³¹³ Ghent, 8 October 2021, 8th ch.

³¹⁴ Brussels Dutch-speaking Crim. Court, 12 January 2022, 13th ch.

³¹⁵ Brussels Dutch-speaking Crim. Court, 4 February 2019, 24th ch.

4. Recognition of a human trafficking victim as a refugee

The Council for Alien Law Litigation (Conseil du contentieux des étrangers - CCE) recognised a woman from Sierra Leone as a refugee in a decision of 13 January 2021³¹⁶. The woman claimed to have been recruited in Sierra Leone by a Nigerian woman to work abroad. In the end, she was trafficked for the purpose of sexual exploitation by a network. She was first exploited in Sierra Leone and then sent to Belgium, where she managed to escape at Brussels airport. She was held in a detention centre where she applied for asylum. She suffered from severe psychological problems due to the traumatic experiences. A first asylum application was rejected due to the implausible nature of the asylum story. She then contacted PAG-ASA, but didn't qualify for victim status. In a second asylum application, the victim was able to present additional evidence, but her application was again refused by the General Commission for Refugees and Stateless Persons (Commissariat Général aux Réfugiés et aux Apatrides - CGRA). Following her appeal against this refusal, the CCE recognised her as a refugee on the basis of her belonging to a specific social group, namely women from Sierra Leone.

316 CCE, 13 January 2021, no. 247 309.