

Chapter 3

Investigations, prosecutions and protection of victims

1. Detection of victims and investigation methods

The case law analysed shows that **the starting point of a case** may be a **report** made to the police by a client or the neighbours of the place of prostitution regarding numerous visits or noise pollution. In one case¹⁶⁷, a client reported a failure to comply with the COVID measures.

Clients can play a relevant role in the fight against human trafficking, as they can identify certain abuses more easily and quickly in places that are difficult or impossible for the police to access. The police see client awareness as an important form of social control in the fight against human trafficking in private sex work via the internet. According to the police, the clients of SWs sometimes inform them, anonymously, of possible abuse. They are not afraid of the police, but they do not want their name to go on record so as not to damage their reputation. Making clients aware of human trafficking and encouraging them to report possible abuse can reduce the demand for human trafficking for the purposes of sexual exploitation. As a result, they are less likely to use the services of victims of trafficking, especially if, as part of the transposition of the revised European directive on trafficking, they could be punished themselves¹⁶⁸.

According to police officers, clients are not afraid for themselves at present, but rather of negative reactions from their social circle.

It is rare for Latin American victims to denounce a situation of exploitation. They are more likely to come forward in situations of violence or obvious danger.

According to case law and various interviews conducted by Myria, the case may also be initiated as part of a proactive police check following **routine virtual patrols**, consisting of screening sex sites or social media for dubious adverts or private addresses included in a large number of adverts relating to Latin Americans. Checks are generally carried out by making an appointment with the SW indicated in the advert.

Victims are detected and suspects identified through **searches** of places of prostitution and through statements or interviews with the first victims identified. In several cases¹⁶⁹, the victims were detected following a search carried out as part of an initial investigation into drug-related offences.

In the case law analysed, Myria notes that investigators use a variety of **investigative methods**. These include tapping suspects' phones with their consent, carrying out a financial investigation and analysing their bank accounts, carrying out neighbourhood investigations and a retroactive phone analysis, identifying suspects from a photo lineup and comparing reported phone numbers with adverts published online. In addition to these investigative methods, the investigators regularly carry out surveillance at the addresses given in the adverts for sexual services.

¹⁶⁷ See Myria, *Annual Report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 70 (West Flanders Crim. Court, Bruges division, 13 July 2021, ch. VK1) and Myria's website (case law).

¹⁶⁸ See also chapter on evolutions of the Belgian legal and policy framework in this report: part 2, chapter 1, point 1.1.1.

¹⁶⁹ See part 2, chapter 3, point 2.2.2.: Limburg Crim. Court, Tongeren division, 4 January 2024, ch. 9K3R; See part 2, chapter 2, point 1.2.1.

According to various interviews, wiretaps are regularly employed in cases as part of (judicial) investigations. However, they are being used to a much lesser extent, in favour of an increase in the number of searches carried out on the basis of **open sources** on social media and internet platforms. As the phenomenon is increasingly taking place online, the police need to be able to make greater use of digital tools to speed up and facilitate detection and investigation.

The investigation regularly comes up against a lack of cooperation from social media, instant messaging apps and internet platforms or other media used to advertise prostitution, as well as regulations on **privacy protection**. In terms of **good practice**, however, it should be noted that the police are very satisfied with their good **collaboration with a certain internet platform**. It checks the identity and content of each advert published and informs the police if there is any **suspicion** of trafficking, coercion or minors. They may also receive information through a **client** reporting a suspicious situation on the website, further demonstrating the need to raise awareness. The collaboration of internet platforms is essential for the successful completion of police investigations in the detection of victims, particularly those who are minors. The then Minister of Justice confirmed to members of parliament in 2021 that the police use the internet as an investigative tool, but also that providers of internet platforms used to advertise prostitution are already cooperating with the authorities: ‘Specialised’ websites are indeed monitored by investigators, as are adverts placed on other internet platforms and in paper publications (junk mail, etc.). The site managers readily cooperate with our services when a suspicious advert is detected. Unfortunately, this type of platform is only the tip of the iceberg¹⁷⁰.

During its interviews with magistrates in 2021, Myria learned that some internet service providers were also requesting memorandums of understanding with the judiciary in order to report abuse, but such agreements were not possible at the time because of the legislation prohibiting advertising for prostitution¹⁷¹.

The situation should change in this respect with the new provisions on advertising for sexual services. Since the adoption of the recent royal decree on advertising the prostitution of adults, providers of an internet platform whose registered office is established in Belgium, or who distribute advertising for prostitution to an audience specifically located in Belgium, are required to comply with certain preventive measures, in particular to avoid the risks of sexual exploitation. They are thus required to act promptly whenever they suspect a case of abuse of prostitution or human trafficking, or when a case is brought to their attention, and to report these cases to the police or judicial authorities¹⁷².

The multitude of **straw men** also complicates the investigation in terms of identifying the individuals and IP addresses linked to the adverts. It emerged from several interviews that **the investigative difficulties in this type of case relate to several parameters**. Detection of the phenomenon is limited owing to its **hidden nature**. In addition, the **constant mobility** of Latin American SWs in Belgium and Europe, as well as the **language barrier**, complicate contact and the establishment of a relationship of trust between the investigators and this group. In addition, **Latin American SWs very rarely consider themselves victims**, which considerably reduces the number of **statements** they make. **Collaboration with the centres** specialising in the reception of victims of trafficking is vital in this respect. This is why certain checks are sometimes carried out at the addresses shown on adverts for sexual services, in the presence of a centre employee, in order to strengthen contact with this group.

One **good practice** identified by Myria relates to the awareness-raising carried out by **field organisations** offering psychological, medical and social support to SWs.

170 Written question from Emmanuel Burton (MR) to the Minister of Justice, *Bulletin*, Chamber, S.O.2020-2021, QRVA 55 040, 25 February 2021.

171 Answers from the Minister of Justice to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), the Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 463 of 5 May 2021.

172 On this subject, see also the chapter on recent developments in the Belgian legal and political framework in this report: Part 2, Chapter 1, point 2.3.

Discussion groups in the presence of (former) SWs are organised once a week to inform this group about the existence of situations of exploitation and specialised help¹⁷³.

The **training and specialisation of police officers**, as well as the **sharing of information between local and federal police**, and even within local police zones, are crucial for this type of case. In some cases, checks were initiated by a specialised vice or human trafficking section within the police force¹⁷⁴. However, according to one local police force, frontline police services are not sufficiently aware of the phenomenon in general, which limits the number of checks carried out, in addition to shifting priorities to other issues such as drugs and terrorism. The police also suffers from a **staff shortages**, which hampers the expertise of its members. Myria points out that **recruiting police officers who speak Spanish or Portuguese** is a good practice that already exists in some local police areas. Sharing the same language and having an affinity with the victims' culture gives police officers greater access to the victims¹⁷⁵.

A final **good practice** identified concerns the organisation of **international cooperation** in various cases in order to dismantle international criminal organisations. This cooperation can take the form of letters rogatory or simple exchanges of information between the countries concerned¹⁷⁶.

Several municipalities also adopt an **administrative approach**. For instance, if there are serious indications of human trafficking and smuggling¹⁷⁷, the mayor may decide to close a building for a certain period of time¹⁷⁸.

2. Prosecution of the perpetrators and elements used in sentencing

Most of the case law decisions analysed by Myria concern prosecutions for **trafficking** in human beings for the purpose of sexual exploitation and **exploitation of prostitution/pimping**. However, Myria notes that certain strategies differ depending on the case, especially regarding prosecutions for human smuggling and not for human trafficking.

For the charge of **trafficking for the purpose of sexual exploitation**, the case law indicates that the courts base themselves on the objective elements of the criminal record demonstrating the guilt of the accused, such as recruitment in the country of origin; the reception of victims as soon as they arrive in the country; the provision of accommodation; the abuse of their precarious administrative situation; the provision of sexual services at this accommodation; the publication of online adverts on websites; managing contacts with potential clients; organising the regular transfer of victims to other workplaces or accommodation; controlling the victims¹⁷⁹; the amounts of money given to the defendants; the working conditions; the use of force or coercion; or making an abnormal profit; all with the aim of exploiting their prostitution.

Most of the decisions involve the charge of **exploitation of prostitution**, reclassified as **pimping** where appropriate, after the entry into force of the sexual criminal law of 21 March 2022¹⁸⁰. In one decision, the judge found that **property pimping**¹⁸¹ continues to be considered a criminal offence,

173 This is apparent from an interview conducted with these field organisations.

174 Namely the prostitution team of the Antwerp police zone in one case and the human trafficking section of the FJP in another, as well as the THB-Prostitution section of the Brussels local police according to an interview conducted by Myria; see Myria, *Annual report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 70 (West Flanders Crim. Court, Bruges division, 13 July 2021, ch. VK1) and Myria's website (case law); see also M. Mariën, "Twee Brazilianen in cel voor mensenhandel in de prostitutiesector: 'Werden onder druk gezet en bedreigd'", *Het Laatste Nieuws*, 7 June 2024, available at www.hln.be and Belga, "Brazilianen blijven in de cel voor mensenhandel in de prostitutiesector", *Krant van West-Vlaanderen*, 11 June 2024, available at www.kw.be.

175 According to information provided by a local police department.

176 Myria has observed this in several cases: see Part 2, Chapter 2, point 1.2.4.; see also Part 2, Chapter 3, point 2.2.2: Limburg Crim. Court, Hasselt division, 1 December 2023, k. 18A.

177 Article 134quinquies of the New Municipal Law grants the mayor special police powers.

178 See, in particular, Stad Antwerpen, *Politie stelt ernstige aanwijzingen mensenhandel vast in Molenaarstraat in Ekeren en Bisschoppenhoflaan in Deurne*, Pressroom, available at <https://pers.antwerpen.be>.

179 Control may include restrictions on freedom of movement or the degree of surveillance (in particular camera surveillance, retention of identity documents, requiring authorisation to leave the premises, imposed choice of clients and sexual acts offered, etc.).

180 See new Article 433quater/1 of the Criminal Code.

181 Previously criminalised by Article 380, §§1, 3° and 7 and Article 382, §§1 and 4 of the Criminal Code.

since its removal under this new law, by the new provision on pimping. According to the judge, the provision or rental of a property is indeed an act that facilitates prostitution. It is irrelevant whether or not the person concerned is the owner of the rooms rented out¹⁸².

In a number of decisions, the courts have based themselves on the concept of **abnormal profit**, as demonstrated in particular by the use of excessively high rents. In one decision, the concept was developed in detail by the Criminal Court of Bruges, which found several defendants guilty of having acted as co-perpetrators in making an abnormal profit for a first defendant, even though they themselves only benefited from a rather limited economic benefit¹⁸³.

In another decision, the defendants were jointly prosecuted for trafficking in human beings for the purposes of **sexual** exploitation and for the purpose of **labour** exploitation, as well as for pimping. In addition to sexual exploitation, this decision also concerned subcontracting in the cleaning sector¹⁸⁴.

In two cases, the charges of **trafficking and smuggling** were combined, as well as the **exploitation of prostitution**¹⁸⁵. In one of the two cases, analysed further on in this report, the prosecutions for smuggling (and exploitation of prostitution) concern several defendants who played the role of **phone operator or driver**, while the two defendants convicted of trafficking and smuggling (and exploitation of prostitution) played a more important role within the two networks concerned¹⁸⁶.

In another decision, the perpetrators were only prosecuted for **human smuggling and pimping**. The judge took into account the fact that the couple were aware of the fact that they were renting the rooms to illegally staying persons, because their accountant has warned them about it several times; they mainly

rented to foreigners; they did not ask them to sign a rental agreement or require the agreement to be registered with the local registration office; they asked for the rent to be paid in cash; and the amount of rent they charged was not in accordance with market prices¹⁸⁷.

In these three decisions, the judge convicted the defendants of having facilitated the illegal stay of their tenants, and facilitating their prostitution through the provision of accommodation and means of subsistence, with a view to obtaining a financial benefit, all of which constituted smuggling as defined in Article 77bis of the Law of 15 December 1980¹⁸⁸.

In comparison, only a few of the decisions analysed by Myria relating to the sexual exploitation of Latin Americans resulted in acquittals¹⁸⁹.

3. Protection of victims: few victims in the status

The interviews conducted by Myria revealed that **it is difficult for the police to obtain statements from victims** and that **very few of them are interested in the protection status**. In 2023, despite the 41 reports of sexual exploitation of Latin Americans submitted to the specialised reception centres for trafficking victims, only 14 victims actually sought support¹⁹⁰. In one decision, no more than one of the five Latin American victims agreed to integrate the status¹⁹¹.

182 See Part 2, Chapter 3, point 2.2.2.: Liège Crim. Court, 22 November 2023, 19th ch.

183 Myria, *Annual report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 69 (West Flanders Crim. Court, Bruges division, 5 November 2021, ch. B15) and Myria's website (case law).

184 See Part 2, Chapter 3, point 2.2.2.: Limburg Crim. Court, Hasselt division, 1 December 2023, ch. 18A.

185 Myria, *Annual report 2019 – Trafficking and smuggling of human beings, Empowering victims*, p. 120 (Liège, 17 May 2018, 18th ch.) and Myria's website (case law); see Part 2, Chapter 2, point 1.3.1.

186 See Part 2, Chapter 2, point 1.3.1.

187 See Myria, *Annual report 2023 – Trafficking and smuggling of human beings, A chain of responsibilities*, p. 101 (West Flanders Crim. Court, Bruges division, 8 February 2023, ch. 817) and Myria's website (case law).

188 Myria, *Annual report 2019 – Trafficking and smuggling of human beings, Empowering victims*, p. 120 (Liège, 17 May 2018, 18th ch.); Myria, *Annual report 2023 – Trafficking and smuggling of human beings, A chain of responsibilities*, p. 101 (West Flanders Crim. Court, Bruges division, 8 February 2023, ch. 817) and Myria's website (case law); see Part 2, Chapter 2, point 1.3.1.

189 Two decisions that resulted in an acquittal at first instance (one acquittal for trafficking and one acquittal for smuggling) were overturned on appeal. A recent third decision (handed down on 4 October 2024) also resulted in an acquittal and is final.

190 These figures are taken from the MyEldo system. The 41 reports concern people from Brazil (26), Colombia (13) and Venezuela (2). The 14 cases of support concern Brazilian and Colombian victims.

191 See Part 2, Chapter 3, point 2.2.2.: Limburg Crim. Court, Tongeren division, 4 January 2024, ch. 9K3R.

Several filed a civil suit in a case analysed further on in this report as well as in several case law decisions, but it is usually only a minority compared with all the victims concerned¹⁹².

It is not uncommon for victims who agree to enter the status not to remain. For instance, one of the victims in this case decided to stop receiving support¹⁹³. The interviews carried out by Myria show that drug use and the psychiatric vulnerabilities of this group can influence their decision to exit the status. Failure to respect the status' basic conditions¹⁹⁴ is usually linked to the fact of having to cut all ties with the exploiter.

According to these interviews, **the main reason behind the victims' refusal to enter the status or to exit it** is economic, owing to the **limited income** when stopping sex work, a basic condition of the status among the conditions for support¹⁹⁵. The income they receive within the framework of the status is significantly lower than what they would earn from sex work. The fact that they are required to reimburse a debt or meet family expectations can also lead them to refuse the status.

Another reason is because **the victims do not consider themselves as trafficking victims**, especially because the majority of them were already SWs in their country of origin, and generally in **much worse living and working conditions**. The victims are not always aware of their exploitation, because they earn more in Europe and also because of the **lack of explicit constraint** in this new subtle form of exploitation. Victims are more likely to accept the status and the support of a reception centre in the event of a dangerous situation or violence, which is rare in Latin American trafficking cases.

Lack of trust in the Belgian authorities is also a factor that limits the number of Latin Americans entering the status, especially trans victims.

Various interviews have shown that Latin Americans are generally afraid of being ordered to leave the country. The **language barrier** when they are picked up by the police can also act as a deterrent. This lack of trust is particularly acute if the person fears reprisals from their recruiter in their country of origin. Furthermore, the **handling of victims and their complaint** is closely linked to their trust in the authorities¹⁹⁶.

One **good practice** is for **a member of staff from a specialised reception centre to be present** when trafficking victims are heard by the police.

In one case¹⁹⁷, several victims were able to receive this type of support. A change of attitude was noted in the case of a Brazilian trans victim who finally entered the status, after initially declaring that they were not a victim of trafficking, following a hearing in the presence of an employee of a specialised centre.

Lastly, the national and international **itinerancy** of Latin American SWs and the fact that not all victims necessarily intend to **stay in Belgium** are also obstacles to their entering the status.

192 See Part 2, Chapter 2, point 1.3.4.; see Part 2, Chapter 3, point 2.2.2.: Liège Crim. Court, 22 November 2023, 19th ch.; Limburg Crim. Court, Hasselt division, 1 December 2023, ch. 18A; see also the case law decision in the following annual report: Myria, *Annual report 2023 – Trafficking and smuggling of human beings. A chain of responsibilities*, p. 99 (Leuven Crim. Court, 6 December 2022, ch. C2) and *Myria's website (case law)*.

193 See Part 2, Chapter 2, point 1.3.4.

194 Victims must meet three basic conditions to qualify for the status of victim of trafficking: they must leave the person or network that exploited them; they must be supported by a recognised centre specialising in receiving and supporting victims of human trafficking; and they must file a complaint or make a statement against the person or trafficking networks that exploited them.

195 Under the *circular letter* of 23 December 2016 on the implementation of multidisciplinary cooperation for victims of human trafficking and/or certain aggravated forms of human smuggling, the victim may receive financial support equivalent to the social benefits granted by the CPAS (social services) throughout the procedure.

196 See the case of a victim who had to spend seven hours in a police cell on the orders of the investigative judge following their arrest after a search. The victim expressed their dissatisfaction regarding the waiting time for using the toilet or receiving a meal: Part 2, Chapter 2, point 1.3.2.

197 See Part 2, Chapter 2, point 1.3.4.