

# Chapter 3

## Case law overview 2023 - start 2024

### 1. Trends

What were the major trends in the cases of human trafficking and smuggling in 2023 and early 2024? The analysis of case law in this report is based on the cases in which Myria filed a civil suit, the decisions received by Myria from the three centres specialised in the reception of victims and the handful of decisions provided by magistrates or other partners.

Myria also presents two decisions of the European Court of Human Rights relating to human trafficking. Finally, the Council for Alien Law Litigation (CCE) granted refugee status to two women, one Ivorian and the other Guinean, who were victims of human trafficking. Myria also discusses these decisions at the end of this overview.

This year, Myria received fewer decisions from the judicial authorities than in previous years, due to the new data privacy law and the partial entry into force of the law on the central registry for judicial decisions<sup>413</sup>. Agreements will have to be reached on this subject in the future. Myria only received 43 decisions this year, 33 of which were in Dutch and 10 in French<sup>414</sup>. Myria regrets that it no longer receives decisions spontaneously from the public prosecutor's office.

The analysis of case law is an important tool in the context of its mission as national rapporteur (evaluation of policy on human trafficking and smuggling). It provides a clear picture of trends in case law, which represents significant added value for those involved in the fight against human trafficking and smuggling.

The 31 most interesting and relevant decisions are listed below<sup>415</sup>. They relate to 30 cases dealt with in the country's various jurisdictions<sup>416</sup>.

- Among the decisions of this selection, 28 concern **human trafficking** and 9 relate to **human smuggling**.

- It should be noted that this year, in several cases, the public prosecutor or the labour prosecutor's office brought **proceedings for human smuggling (and not for trafficking)** when in fact the case concerned labour exploitation (in the construction, cleaning and agricultural sectors). Some of these decisions are detailed in the section on labour exploitation<sup>417</sup>.

- 12 decisions relate to **acts of sexual exploitation**. They were handed down within the jurisdiction of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (Brussels [French-speaking and Dutch-speaking] and court of appeal), Ghent (West Flanders [Bruges] and court of appeal), Limburg (Tongeren and Hasselt divisions), Liège (Liège division and court of appeal) and Mons (Charleroi division).

<sup>413</sup> Law of 16 October 2022 on the creation of the central registry for judicial decisions and on the publication of judgments, and amending the assize procedure relating to the challenge of jurors, M.B., 24 October 2022.

<sup>414</sup> In comparison, Myria received 100 decisions in 2023 and 107 decisions in 2022.

<sup>415</sup> Regarding a number of cases, the judgment at first instance was already mentioned in previous annual reports.

<sup>416</sup> These decisions have also been published on [Myria's website \(case law\)](#).

<sup>417</sup> On this subject, see hereafter points 2.3.1. (construction), 2.3.4. (cleaning) and 2.3.5. (agriculture): Brussels French-speaking Crim. Court, 21 June 2023, 69<sup>th</sup> ch. (appeal); Namur Crim. Court, 11 October 2023, 12<sup>th</sup> ch. (final); Limburg Crim. Court, Tongeren division, 20 July 2023, ch. 12K (final and in absentia).

As in previous years, a large proportion of the decisions relating to sexual exploitation concern Nigerian prostitution networks, with the acts occurring mainly in Antwerp, Oudenaarde and Brussels, in addition to one case in Liège. Several cases involve child victims.

A trend already observed by Myria is continuing this year, with several decisions concerning human trafficking for the purposes of sexual exploitation of victims originating from **Latin American countries**, both in the French-speaking and Dutch-speaking parts of the country<sup>418</sup>. In one of these decisions, the defendant was also prosecuted for the human trafficking of a Moroccan trans person<sup>419</sup>. In another case, the defendants were prosecuted for both human trafficking for the purposes of sexual exploitation and trafficking for the purposes of labour exploitation of Latin American and Ukrainian victims in the cleaning sector<sup>420</sup>.

A few decisions concern the **loverboy method**. This year, the cases only relate to Romanian perpetrators and young adult Romanian victims<sup>421</sup>. Myria also noted the use of this method in a case involving young adult South American women<sup>422</sup>.

- 16 decisions relate to **labour exploitation** in various sectors. They are presented below by sector: construction, transport, hospitality, agriculture, domestic work and a football club. These decisions were handed down within the jurisdiction of the courts of appeal of Antwerp (court of appeal), Brussels (Brussels [French-speaking and Dutch-speaking]), Ghent (West Flanders [Bruges division]), East Flanders (Ghent, Oudenaarde, Dendermonde and court of appeal), Limburg (Tongeren and Hasselt divisions) and Liège (Namur division). A decision was handed down on appeal in a case of labour exploitation in which a mentally handicapped Belgian victim had been exploited in a café.

Myria notes that in order to conclude the existence of working conditions contrary to human dignity – which is a constituent element

of human trafficking—, judges take into account various factors such as working conditions and environment (excessive working hours, excessively low wages, lack of rest days), poor accommodation, withholding of wages under various pretexts and dependence on the employer.

- In 2023, a Dutch-language decision on **forced criminality** was handed down with application of the non-punishment clause in an opposition judgment following the victim's previous conviction for drug-related offences. The case concerned a Vietnamese trafficking victim discovered on a cannabis plantation in Limburg<sup>423</sup>.
- Decisions relating to **human smuggling** were handed down in the jurisdiction of the courts of appeal of Ghent (West Flanders [Bruges division]), Antwerp (Antwerp division and court of appeal) and Liège (Liège division). This year, Myria received a significantly lower number of decisions relating to human smuggling, for the reasons mentioned above.

Human smuggling often involves well-structured and even criminal organisations. Based on the decisions communicated, it appears that these organisations sometimes cooperate with other nationalities. This was the case in Liège, for instance, where a large-scale international smuggling operation involving commercial vehicles, cars and vans rented within the framework of a criminal organisation, involved some 30 defendants, mainly Belgian, but also French, Congolese, Armenian, Iranian, Bulgarian and Turkish<sup>424</sup>. The case law received also provides a better understanding of cases linked to the 'logistics' of small boats, where nautical equipment is transported from abroad to France, via Belgium, with the aim of smuggling migrants across the North Sea. This year, Myria did not receive any decisions concerning Vietnamese, Albanian, Ethiopian/Eritrean or Sudanese smuggling networks.

418 See also the focus of this annual report.

419 Limburg Crim. Court, Tongeren division, 4 January 2024, c. 9K3R (appeal).

420 Limburg Crim. Court, Hasselt division, 1 December 2023, c. 18A (appeal).

421 See below point 2.2.3: West Flanders Crim. Court, Bruges division, 10 May 2023, ch. B17 (appeal); Brussels French-speaking Crim. Court, 26 May 2023, 47th ch. (appeal)

422 See below point 2.2.2: Liège Crim. Court, 22 November 2023, 19th ch. (appeal).

423 See below point 2.4: Limburg Crim. Court, Hasselt division, 5 October 2023, ch. 16D.

424 See below point 3.1: Liège Crim. Court, 13 December 2023, ch. 19bis (appeal).

## 2. Human trafficking

### 2.1. European Court of Human Rights

#### 2.1.1. *Krachunova v. Bulgaria*, 28 November 2023

##### Right of a victim of human trafficking to claim compensation from the exploiter

This judgment concerns the right of a victim of human trafficking to claim compensation from the person who exploited them<sup>425</sup>.

The Bulgarian applicant, who had a difficult relationship with her parents, had left her family home in 2012 to settle with her partner, a pimp's associate. As she needed money, she started to work as a sex worker on the Sofia ring road. The applicant stated that she wanted to stop a few months later, and that she had been threatened and subjected to violence by her partner. The latter took her home by force and confiscated her identity card after she tried to escape. From that moment on, he seized all her income and only gave her pocket money to cover her needs. Arrested in 2013, the applicant explained the facts to the police and the perpetrator was investigated. In two trials, the Bulgarian courts found him guilty of human trafficking and ordered him to pay the applicant compensation for non-pecuniary damages. However, they rejected her claim for compensation for pecuniary damages in respect of the income she had lost, on the grounds that the contracts for sexual services were invalid since they constituted an offence against "good morals".

In the Court's view, the applicant was a victim of human trafficking on account of the beatings, the intimate relations (playing on her feelings as a means of control) and the perpetrator's control over her access to money. The Court reiterated that a comprehensive approach must guide the fight against trafficking.

The ability of victims to seek compensation, particularly for the loss of their earnings, enables them to recover from the harm suffered and rebuild their lives. It is also a way of ensuring that traffickers do not profit from their offences, reducing the incentive to commit the offence of trafficking. The Court also noted that the article of the Bulgarian Criminal Code, which was declared unconstitutional<sup>426</sup>, punishing the act of earning income from a prohibited or immoral practice, is based on an outdated social concept originating from the totalitarian communist regime.

The Court found a violation of Article 4 (prohibition of slavery and forced labour) of the European Convention, on the grounds that it contains the positive obligation to allow victims of human trafficking to seek compensation from their traffickers for the theft of their earnings<sup>427</sup>. The Bulgarian authorities did not fulfil their obligation to respect a balance between the interests of the community and the rights arising from Article 4.

#### 2.1.2. *Jasuitis and Šimaitis v. Lithuania*, 12 December 2023

##### Application of the definition of human trafficking

This judgment concerns the application of the definition of human trafficking to the recruitment of women and coercing them to work<sup>428</sup>.

The three Lithuanian applicants argued that the Lithuanian courts had interpreted the applicable law too broadly in convicting them of human trafficking. In 2012-2013, they had recruited women to work as 'online models'. One of them, a high school student who was barely of legal age at the time, accused them of threatening her and using psychological violence to force her to do this work. After she had agreed to communicate online with clients, the applicants then asked her for other types of sexual services such as exposing herself naked, performing a striptease, using sex toys and responding to all of the clients' requests. The high school student refused to do this. They had employed several other women, most of them in vulnerable situations, resorting to threats, humiliation and verbal abuse.

425 ECHR, *Krachunova v. Bulgaria*, 28 November 2023, no. 18269/18.

426 By the Bulgarian Constitutional Court in 2022.

427 The Court referred to Article 6(6) of the United Nations Palermo Protocol on Trafficking in Persons and Article 15(3) of the Council of Europe Convention on Action against Trafficking in Human Beings, which provide for the obligation to allow victims of human trafficking to seek redress.

428 ECHR, *Jasuitis and Šimaitis v. Lithuania*, 12 December 2023, no. 28186/19 and no. 29092/19.

The Supreme Court of Lithuania had ruled that the offence of human trafficking (Article 147 of the Lithuanian Criminal Code) can be constituted by any of the following: pornography, prostitution and other forms of sexual abuse, forced labour or any criminal activity involving a transaction for the benefit of the trafficker. According to the Court, the offence may include recruitment, abuse of the victim's vulnerability, restriction of freedom and deception. It ruled that the applicants' actions met the criteria for the definition of human trafficking.

The key question in this case was whether the applicants could reasonably foresee that their actions corresponded to the essence of the offence of human trafficking. For the Court, the case brought together the three constituent elements of human trafficking: the actions of the applicants and the publication of an advert online constituted an act of 'recruitment' as defined by the Lithuanian Criminal Code ('the act'); they were able to take advantage of their dominant position in relation to the women recruited and their vulnerable situation, and they were able to exploit them for the purpose of providing pornographic services, in particular through the use of deception and various methods of control, such as 'debt bondage' and various forms of coercion ('the means'); the services provided by their victims generated financial gain ('the purpose').

The Court concluded that there had been no violation of Article 7 (no punishment without law) of the European Convention. It ruled that the applicable law and its interpretation by the national courts were clear. The applicants should have realised that their actions fell within the scope of the offence of human trafficking as defined by the Lithuanian Criminal Code.

## 2.2. Sexual exploitation

### 2.2.1. Nigerian networks

As in the case law overviews of previous annual reports, several decisions concern Nigerian networks. One of the decisions relates to child victims. It should also be noted that several decisions relate to cases involving Belgian perpetrators.

### Nigerian prostitution network involving several Belgian men

In a **judgment of 23 May 2023<sup>429</sup>**, **Antwerp Criminal Court** ruled on a case of human trafficking for the purposes of sexual exploitation and human smuggling.

The defendant, a Nigerian woman, was prosecuted for offences committed against a victim.

The victim, a Nigerian woman, made detailed statements. She had been recruited in Nigeria in 2016 by the defendant's entourage with the promise of a job as a shop assistant in Europe. She had taken a voodoo oath and travelled to Italy with other young girls via Libya and the Mediterranean. There she was met by people close to the defendant, including a Dutchman, and was transferred to Antwerp. Initially, she stayed with several Belgian men who were close to the defendant. She was forced to work as a prostitute in bars, in a hotel and on the street. She had to pay a debt of EUR 25,000 to the defendant, which was later increased to EUR 36,000. She also had to pay EUR 150 in rent. She was forced to have sex with the defendant's Belgian partner. She also had to apply for asylum in France.

In 2017, she was approached by a woman from a church who put her in touch with an organisation that helps victims of trafficking. When the defendant found out, she threatened the victim. The victim received a video of insults and threats by phone from the voodoo priest and relatives of the defendant in Nigeria. The victim stated that her family in Nigeria, her children and her sister had been threatened. They had been summoned to the voodoo shrine in Benin City because the victim had not repaid all of her debts.

She then contacted a compatriot living in Germany who was fighting against human trafficking, in particular through a reality TV programme. He ensured that the victim no longer had to repay her debts to the defendant and that the voodoo priest was arrested in Nigeria. Throughout this period, the victim did not dare to make a statement.

She was also threatened during the investigation.

<sup>429</sup> Antwerp Crim. Court, Antwerp division, 23 May 2023, ch.AC10, no. 1812(appeal).

The court found that the acts had been proven. The victim's statements were coherent and detailed and could be corroborated by numerous objective elements: fingerprints abroad, statements from people close to the defendant, financial transactions, results of the examination of the defendant's mobile phone, etc.

The defendant was given a 30-month suspended prison sentence and a partially suspended fine of EUR 8,000. The court took into consideration that the acts dated back to 2016-2017.

One victim filed a civil suit and obtained compensation of EUR 15,300 for non-pecuniary and pecuniary damages.

An appeal was lodged and **Antwerp Court of Appeal** ruled on the case in a **judgment of 14 December 2023**<sup>430</sup>.

The court took into account additional aggravating circumstances for the charge of human trafficking, namely that the offences were committed by means of threats and in association with others.

The court upheld the decision, the sentence and the compensation for the plaintiff.

### Nigerian prostitution in a nightclub in Oudenaarde

In a **judgment of 15 September 2023**<sup>431</sup>, **Ghent Court of Appeal** ruled on a case of human trafficking for the purposes of sexual exploitation.

**Oudenaarde Criminal Court** had already ruled on this case in a **judgment of 16 April 2021**, analysed in a previous annual report<sup>432</sup>. In this case, three defendants – of Belgian, Italian and Nigerian nationality – were prosecuted for human trafficking with aggravating circumstances, as well as for other charges, such as exploitation of prostitution and renting rooms for the purposes of prostitution. At first instance, the court found the three defendants guilty of human trafficking.

At the beginning of 2017, the police noticed adverts concerning 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. He was also known for prostitution offences. The second defendant ensured that the nightclub ran smoothly. An investigation was launched. It emerged that the adverts for other young girls could also be linked to the nightclub and that the accounts through which the adverts were published were linked to the first defendant. It also turned out that the latter was receiving large sums of money through European Merchant Services, a service that processes credit card payments after which the money is collected in cash. The investigations were carried out through phone tapping, searches, wiretaps, hearings of the girls, witnesses and defendants, etc.

In the meantime, two victims who were being supported by a centre had filed a complaint with the police. The police had already intercepted them in the nightclub. The two young African women turned out to be sisters from Nigeria. They were indebted to their pimp, the third defendant, to the tune of EUR 36,000, which they had to repay. She had taken them to the nightclub of the first defendant, where they stayed from December 2016 to July 2017. They had to hand over money to their real pimp and to the first defendant. They slept above the bar and had to be available 24/7. On appeal, the court found it credible that the girls worked on a 50/50 basis, even though the case file contained contradictory evidence on this point.

The court ruled that the first defendant, in his capacity as the nightclub owner, knew that the young women were in a vulnerable position.

The court also found the second defendant guilty, at least as a co-perpetrator. It ruled that, as the right-hand woman and partner of the first defendant, the second defendant was also aware of the girls' vulnerable position and the fact that they had to hand over their money; even though she did not participate directly in the proceeds.

The first two defendants were also convicted of other charges, namely the exploitation of the prostitution of other girls and the running of a brothel.

430 Antwerp, 14 December 2023, ch. C6.

431 Ghent, 15 September 2023, 10th ch.

432 East Flanders Crim. Court, Oudenaarde division, 16 April 2021, 3rd ch.: see Myria, *Annual report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 67 and Myria's website (case law).

The third defendant was the sister or mistress of the man who had organised the victims' arrival in Belgium from Nigeria. She picked up the girls in Italy after they had crossed the Mediterranean and gave them temporary accommodation in her apartment before taking them to the first defendant's champagne bar in Oudenaarde. It was clear to the court that the girls had to hand over half of their earnings to the first defendant. The second half was to be handed over to the third defendant. The victims were also supposed to make payments to her brother/lover in Nigeria. If they did not obey, they were threatened with a 'voodoo curse'. The court therefore also found the third defendant guilty of human trafficking, with the use of threats as an aggravating circumstance. Nevertheless, the court considered that this was not a habitual activity. She was also found guilty of exploitation of prostitution.

When determining the sentence, the court took into account the fact that the events occurred some time ago. The first defendant did not have a clean criminal record and was sentenced to two years in prison, half of which was suspended, as well as a fine of EUR 80,000. He was also banned from exercising a professional activity for 10 years. The second and third defendants were sentenced respectively to 18 months in prison, half of which was suspended, and 12 months in prison, which was fully suspended, as well as fines of EUR 48,000 and EUR 16,000.

The two victims were awarded compensation of EUR 2,500 for non-pecuniary damages.

### Nigerian network that brought over and exploited (underage) girls on demand for various 'madams'

In a **judgment of 30 June 2023**<sup>433</sup>, **Brussels Court of Appeal** ruled on a case of human trafficking for the purposes of sexual exploitation within the framework of a vast Nigerian prostitution network. On appeal, two cases were joined and therefore only concerned two defendants, two women of Nigerian nationality.

In the first case, six defendants were prosecuted at first instance<sup>434</sup> including the main defendant in this case on appeal. She alone appealed the decision of the first judge.

In the second case<sup>435</sup>, only the two defendants on appeal were concerned at first instance. They had both been acquitted, but the public prosecutor had lodged an appeal.

The two defendants were being prosecuted, among other things, for human trafficking for the purposes of sexual exploitation with aggravating circumstances, exploitation of debauchery or prostitution of adults and minors. Some of the victims were minors.

The case was opened in August 2018 following information from the African prostitution community at Brussels North station, according to which a Nigerian woman, the first (main) defendant, herself a prostitute who rented a window, had smuggled at least 35 young Nigerian girls into Belgium in order to exploit them in the prostitution district. She played a key role, bringing over the girls for herself or on order for other 'madams'. She gave instructions, facilitated the girls' journey to Europe, liaised with Nigeria for recruitment, etc.

The young girls had to repay their travel debt of around EUR 30,000 once they arrived in Belgium. On arrival, they were immediately taken to windows to work as prostitutes. They had to hand over at least half of their earnings to pay off their debt. The 'Yemeshe' system<sup>436</sup> was used. If they stopped paying before the debt was repaid, they were threatened or pressured. Some victims were taken to France to apply for asylum and then had to hand over this financial aid to the 'madam'.

The second defendant had actively contributed to the implementation of the organisation's activities by providing, among other things, a place for the young girls to stay.

In the first case, the court confirmed the analysis of the first judge and ruled that the acts of human trafficking had been proven. The victims' statements were consistent, made separately and could be corroborated by other objective elements in the case.

433 Brussels Dutch-speaking, 30 June 2023, 15th ch.

434 Brussels Dutch-speaking Crim. Court, 4 September 2020, 23rd ch. (appeal); see Myria, *Annual report 2021 - Trafficking and smuggling of human beings, Visibly invisible*, p. 60 and [Myria's website \(case law\)](#).

435 Brussels Dutch-speaking Crim. Court, 6 September 2022, ch. 26N (appeal) (unpublished).

436 This is a system whereby a prostitute who rents a window allows a girl to prostitute herself in her place, sharing the takings between them.

The court also ruled that the other charges had been established, in particular that the defendant had played a leading role within the organisation.

In the second case, the court considered, contrary to the first judge, that the victim's statements were coherent and credible and that the acts of human trafficking were therefore proven.

The court took into account the fact that the events had taken place four years ago. The main defendant was sentenced by the court to four years in prison, half of which was suspended, and a fine of EUR 64,000. The other defendant was given 15 months in prison, partially suspended, and a fine of EUR 8,000.

The court overturned the judgment on the provisional compensation of EUR 1 awarded to two of the three victims who had filed a civil suit. They received compensation of EUR 5,120 and EUR 15,215 respectively. The third victim had requested confirmation of the provisional compensation of EUR 1.

### Sexual exploitation of a young Nigerian woman by a couple of Belgian and Nigerian nationality

**Liège Court of Appeal** reviewed a trafficking case involving a Belgian-Nigerian couple, examined at first instance by **Liège Criminal Court** in a **judgment of 2 November 2022**, and discussed in a previous report<sup>437</sup>.

In this case, the couple, consisting of a Belgian man and a Nigerian woman, were prosecuted for the trafficking of a young Nigerian woman for the purposes of sexual exploitation and exploitation of the prostitution, as well as for the human smuggling of this person. The victim, who filed a civil suit, was received by a French association specialising in supporting people in situations of prostitution.

In 2016 in Benin City, the defendant's sister offered the victim a better life in Europe. The former was seeking to bring over people facing hardship in Nigeria. After crossing the desert from Niger and staying in a camp in Libya, the victim took a 'lappa-lappa' type boat with 150 migrants to cross to Italy, but they were rescued by an Italian ship.

The victim stayed in a refugee camp for two weeks, after which the defendant came to collect her and they flew to Belgium. She was required to repay travel expenses totalling EUR 15,000, and was forced to work as a prostitute on the street, in hotels, in clients' homes and in cars, until she was raped during a paid sexual encounter. The victim and her family were subjected to multiple threats of reprisals. She stated that she had handed over her earnings to the defendant, totalling EUR 5,020. She lived with the couple for four months, with two other women of African origin, before moving into an apartment rented by the defendants in Liège. She then stayed with friends before finally being admitted to a specialised reception centre for victims of human trafficking.

A search was carried out at the defendants' home. Based on an analysis of the defendants' phone records showing payment to a smuggler in Italy following the victim's arrival, the judge found that their statements were not credible. However, the judge considered that there was still doubt as to their initial intention to enrich themselves at the expense of the victim or her family, as the analysis of the defendants' bank account did not show any transfer of large sums of money. The court therefore reclassified the charge from smuggling to assisting illegal residence, finding that the couple were guilty of knowingly helping the victim to enter Belgium.

By imposing the rates and the repayment of her debts, through phone monitoring, the female defendant organised the victim's prostitution. The judge convicted the defendants of exploitation of prostitution, reclassified as pimping following the reform of sexual criminal law<sup>438</sup>, the defendants having rented the apartment for her so that she could continue to work as a prostitute, with the sole aggravating circumstance of abuse of vulnerability<sup>439</sup>.

The defendants were also convicted of trafficking for the purposes of sexual exploitation with aggravating circumstances. The analysis of certain text messages showed that the female defendant had a stranglehold over the victim and controlled her schedule, appointments and performance, with the help of her husband and with the aim of exploiting her prostitution. The court took into account the fact that the reasonable time limit had been exceeded.

437 Liège Crim. Court. Liège division, 2 November 2022, 19th ch.: see Myria, *Annual report 2023 – Trafficking and smuggling of human beings. A chain of responsibilities*, p. 97 and [Myria's website \(case law\)](#).

438 See new Article 433quater/1 of the Criminal Code, inserted by the law of 21 March 2022 amending the Criminal Code with regard to sexual criminal law.

439 Following the reform of the sexual criminal law, the aggravating circumstances of the use of coercion, threats and violence provided for in the former legislation and applying to the acts in question are not included in the new article criminalising pimping.

It sentenced the defendants to two and four years in prison respectively, a fine of EUR 8,000 (both sentences partly suspended), and ordered them to pay the plaintiff EUR 7,500 in non-pecuniary and pecuniary damages.

Both the public prosecutor, against the two defendants, and the husband and the plaintiff<sup>440</sup> lodged an appeal. In **a ruling handed down on 22 November 2023**<sup>441</sup>, **Liège Court of Appeal** found, like the first judge, that the victim's statements were accurate, coherent and corroborated by the investigation. The court added that the evolution of the plaintiff's life story did not detract from the credibility of her account. This could be explained by the difficulties in remembering all the details of a painful, long and particularly dangerous journey, as well as the fact that the people she spoke to did not understand what she was saying.

Unlike the first judge, the court convicted the defendants of human smuggling, with the aggravating circumstances of abuse of vulnerability and coercion. The court took into account the fact that the victim had travelled to Lille, on the instructions of the defendant and with the help of her husband, to apply for asylum in France, using inaccurate residence data and a false identity, which enabled her to receive aid from France of between EUR 350 and EUR 380 per month. In addition, the court ruled that the absence of bank transfers to their accounts did not rule out a profit motive in the context of the victim's entry, stay, transit and accommodation in the country, given that the proceeds of her prostitution must have consisted of cash handed over to the defendant and then repaid to her husband. According to the court, their assistance was neither free nor disinterested. They derived some advantage from it, certainly financial for the female defendant, and at least of a sexual nature for the male defendant. Regarding the co-perpetration of the husband, the court adopted the reasoning of the Court of Cassation, under Article 66 of the Criminal Code, according to which it is sufficient that the co-perpetrator knows that by his positive acts he is contributing to smuggling aimed at obtaining a (financial) benefit, without it having to be established that he himself intended to obtain or obtained such a benefit. For the rest, the judgment was confirmed both for exceeding the reasonable time limit and the sanctions, and for the charges of trafficking and exploitation of prostitution, reclassified as pimping, declared to have been established.

<sup>440</sup> The appeal was declared inadmissible due to lack of interest.

<sup>441</sup> Liège, 22 November 2023, 6th ch.

<sup>442</sup> Limburg Crim. Court, Tongeren division, 4 January 2024, ch. 9K3R (appeal).

## 2.2.2. Victims originating from Latin America

Several cases involving victims from Latin America were tried in various French-speaking and Dutch-speaking districts. One of the decisions involved a minor.

### Latin American victims and a Moroccan trans victim

In a **judgment of January 4, 2024**<sup>442</sup>, **Tongeren Criminal Court** ruled on a case of human trafficking for the purposes of sexual exploitation and human smuggling, with aggravating circumstances in both cases. The victims were mainly from Latin America.

Two defendants, a man of Dutch nationality (of Caribbean origin) and a woman of Colombian nationality, were prosecuted for acts of human smuggling and trafficking dating from 2020-2021. They were also prosecuted for organising prostitution and assault and battery.

During the course of another investigation into drugs offences, several women were discovered during a search of a building in Limburg, all of them staying illegally and all but one of them from Latin America.

The building, which had several rooms occupied by the girls, was adjacent to a bar. Some of the girls stated that they rented the room from the first defendant. They were allowed to keep the income they earned from their sex work. Other girls stated that they had to hand over 50% of this to the first defendant. He took care of the adverts on the sex websites. The second defendant allegedly helped him with this. She was also paid by the girls as a phone operator. The defendant supervised the girls using surveillance cameras placed throughout the building.

During the investigation and six months after his release, the first defendant was again involved in acts of sexual exploitation, this time against a Moroccan trans victim. They were picked up in Spain by the first defendant and his girlfriend, and was allowed to come to Belgium in exchange for payment. They were promised that they would be allowed to work in the defendant's properties.

Two young African women also travelled to Belgium with them. Their car was stopped on the way. The person of Moroccan origin was unable to continue the journey because she did not have any papers. The defendant then ordered her to undress and to cross the border by crossing the river. The defendant was waiting for her on the other bank. Once she arrived in Belgium, she had to receive clients in a house in Hasselt. Every evening, she had to hand over her money to the defendant and was promised that she would receive half of it at the end of the month. Her papers were kept by the defendant. The victim was starving because she had no money to buy food. When she refused to accept the conditions, the defendant verbally threatened her before attacking her with a knife. The victim had to go to hospital for treatment and was then admitted by Payoke and granted victim status.

The two cases were joined. With regard to the first set of acts, the court ruled that the girls' statements were detailed and coherent and that they could be corroborated by other results of the investigation. Consequently, the acts were considered proven. In addition, the defendant had made contradictory statements on several occasions.

The court also found that the acts had been proven with regard to the first defendant. The victim's statements were credible and could be corroborated by other elements in the case file. The defendant was found guilty of the charge of human smuggling with the aggravating circumstance of abuse of a position of vulnerability, as well as the charge of human trafficking with the aggravating circumstance of the use of violence, coercion and threats. The aggravating circumstance of incapacity for work for more than four months was not considered proven. The defendant was also found guilty of other charges, including exploitation of prostitution and assault and battery.

According to the court, it was not possible to link the second defendant to the acts committed against the Moroccan victim. Furthermore, the court considered that it was not possible to establish, beyond all reasonable doubt, that she was also involved in the offences committed against the young women from Latin America. There was no evidence to suggest that she was the woman mentioned by the victims as being the assistant/phone operator of the first defendant. The court therefore acquitted her.

The first defendant already had a criminal record and was sentenced to four years in prison and a fine of EUR 40,000. He was also banned from exercising a professional activity for 10 years.

Two victims were granted victim status and one of them filed a civil suit. She was awarded a total of EUR 9,080 in pecuniary and non-pecuniary damages (of which EUR 7,500 in non-pecuniary damages).

### Sexual and labour exploitation of victims originating from Latin America in the cleaning sector

In a **judgment of 1 December 2023<sup>443</sup>**, **Hasselt Criminal Court** ruled on a case of human trafficking for the purposes of sexual and labour exploitation involving Latin American victims.

Two defendants, a couple of Dutch nationality, were prosecuted for trafficking for the purposes of sexual exploitation with aggravating circumstances in relation to four victims. They were also prosecuted for pimping. In addition, the two defendants, together with their Belgian company, were prosecuted for trafficking for the purpose of labour exploitation in relation to 10 or so victims in 2021 and 2022. The victims were from Latin America (mainly Venezuela) and Ukraine.

The offences took place in both the Netherlands and Belgium. The offences committed in the Netherlands were prosecuted by the Dutch courts. The Dutch criminal case file was included as an exhibit in the Belgian case file.

One of the victims, originating from Venezuela, filed a civil suit. She stated that she had stayed in Spain with a temporary residence permit and had worked there as a nail technician before going to the Netherlands and Belgium to earn money by working as a prostitute and sending it to her family in Venezuela. She worked twice in an apartment belonging to the defendants in Limburg and twice in a small house in a holiday village. She paid weekly rent to the defendants and had to pay for the adverts posted on a sex website.

The Dutch criminal file reveals that another victim, originating from Venezuela and a friend of the aforementioned victim, travelled to Belgium via Spain.

<sup>443</sup> Limburg Crim. Court, Hasselt division, 1 December 2023, ch. 18A (appeal).

She had to repay the debts she had incurred for her journey, first by cleaning and then by working as a prostitute. The defendants had forced her to hand over her passport. She had to receive clients in a small house in a holiday village near the Belgian border, rented by the defendants, and later in a hotel. The clients were recruited through adverts on sex websites. The defendants had installed a camera to monitor the victim. The victim received the money from her clients, which the defendants came to collect every evening, bringing the victim food. The victim was unable to keep any of the money she earned.

As regards the charge of human trafficking for the purposes of sexual exploitation, the defendants were acquitted in relation to three victims due to a lack of sufficient evidence that they exercised control over the three girls and that they had forced them to give up the income they earned from prostitution. However, they were convicted for the acts committed against one victim.

In addition, the three defendants were prosecuted for human trafficking for the purposes of labour exploitation. The first two set up a scheme in which their Belgian company, the third defendant, was responsible for the staff subcontracted to another cleaning company. The third was responsible for the staff's work permits, as well as for compliance with Limosa and Dimona regulations and the payment of contributions to the NSSO.

During a search of the defendants' home, containers were discovered behind the house. A Ukrainian couple was staying there. They stated that they worked for the defendants, but that they were never paid properly and always late.

The two victims originating from Venezuela, who lived in an attic room at the defendants' home, stated that they were not paid at all and that by working, they repaid the debts related to their travel expenses and accommodation at the defendants' home. Their identity documents had also been confiscated. These are the same victims as those mentioned above, who were also forced into prostitution.

The workers were totally dependent on their exploiters, even for housing, and the latter took advantage of their precarious situation. The court considered that the charge of trafficking for the purposes of labour exploitation was proven. The company was also found guilty.

For the other six victims, the court considered that there was insufficient objective evidence. The defendants were acquitted in relation to these persons.

The exploiters were sentenced to two years in prison and a fine of EUR 40,000.

The plaintiff obtained compensation of EUR 500 for pecuniary and non-pecuniary damages.

#### Rental of rooms to young Nigerian and Latin-American women, including a minor

In a **judgment of 29 March 2023<sup>444</sup>, Brussels Court of Appeal** ruled on a case of human trafficking for the purposes of sexual exploitation involving two Nigerian victims, one of whom was a minor. The defendant, a Belgian national, was also prosecuted for renting property for the prostitution of minors and several adults and for inciting minors to work as prostitutes. His victims were both Nigerian and South American. He had been convicted at first instance for these acts<sup>445</sup>.

The defendant rented properties to women who worked as sex workers between 2016 and 2018 in the Leuven region. The investigation revealed that he had also taken photos of the girls and published adverts on sex websites. In return, they had to pay rent and hand over half of the income they earned from sex work to him. If they did not have this money, they had to repay it in the form of (extreme) sexual services. There was also alcohol abuse and aggressive behaviour towards the girls. On one occasion, he apparently locked one of them in her room.

There were several victims, some of whom were from Latin America. They were still very young. In one case, the victim was even a minor. Several Nigerian girls had also been delivered to him by a Nigerian 'madam' in France who had already stayed at one of his properties. Two of the victims filed a civil suit in this case.

The court considered that the acts had been proven and that the sentence handed down by the first judge was not severe enough.

444 Brussels Dutch-speaking, 29 March 2023, ch. 13.

445 Leuven Crim. Court, 22 December 2020, ch. 17 (unpublished, appeal).

The defendant was given a prison sentence of 40 months and fined EUR 8,000, both suspended. A confiscation order was made for the estimated financial benefit.

One of the civil parties was awarded EUR 4,805 in non-pecuniary damages. The other victim did not appear at the appeal.

### Subletting rooms to several Colombian and Brazilian women

In a **judgment handed down on 17 April 2023, Charleroi Criminal Court<sup>446</sup>** ruled on a case in which a Belgian defendant was prosecuted for human trafficking for the purposes of sexual exploitation and pimping, with aggravating circumstances, against four women, three of whom were from South America (Colombia and Brazil), as well as other unidentified victims. The acts took place between August 2020 and August 2022.

Regarding these two charges, the judge considered that the defendant's denials were not credible in relation to his own statements, since he admitted to renting two rooms to sex workers for EUR 250 a week, while his own accommodation cost him EUR 550 per month. The court considered that this demonstrated that he was acting with full knowledge of the vulnerability of the victims and for profit, allowing himself an abnormal profit by taking advantage of their vulnerability.

The court took into account the fact that the entry into force of the new sexual criminal law of 21 March 2022 was partly subsequent to alleged acts. The defendant was convicted of human trafficking, pimping and the rape of one of the victims. However, the judge acquitted him of the latter charge with regard to another victim, considering that the latter's statements were not credible based on the examination of her phone and that of the defendant, as well as on the hearing of one of them.

The defendant was given a five-year partly suspended prison sentence and a fine of EUR 32,000, fully suspended. The court also ordered the deprivation of certain rights. The confiscation of the phone and SIM card used to commit the acts, as well as the sum of EUR 52,000 corresponding to the financial benefit gained from the pimping was ordered.

### Loverboy method

**Liège Criminal Court** handed down a **judgment on 22 November 2023<sup>447</sup>** in which it convicted a Belgian defendant of human trafficking with aggravating circumstances<sup>448</sup> against a Venezuelan victim (plaintiff) and of organising prostitution in relation to the latter and six other women. All were of South American origin (from Venezuela, Brazil and Colombia). The acts were committed in Liège and in connection with others in Brussels between 2018 and 2020.

The investigation began in January 2020, following a report made to the police by the wife of a lawyer whose office was in the building where the acts of prostitution were reported. Following a raid on the flat in June, a woman on her way to the flat, as well as three other women present inside, one of whom was busy with a client, were identified on the basis of their passports. Equipment intended for prostitution was found there. Their hearings made it possible to identify other women involved in prostitution activities and also housed successively in the flat.

The lease had been agreed between the owner and one of the victims, who had presented herself as a worker for an NGO and was accompanied by the defendant for translation purposes. The defendant had paid the rental deposit and was the contact person for the owner. It appears from the statements of the various victims that the rent was to be paid to this worker and then to the defendant, who demanded exorbitant prices. On average, he demanded EUR 250 per week from each girl, while the rent payments to the owner consisted of an average amount of EUR 690 per month. He was identified from his phone number provided by the victims.

The plaintiff stated that she had been contacted by the defendant in 2016 on a dating site and had communicated with him for two years. He had promised her money for her and her family, marriage and a family, as well as the possibility of bringing her 10-year-old son to Belgium. He had offered her a cleaning job in his restaurant in Liège, but also mentioned a job as a sex worker, albeit only for two months.

<sup>446</sup> Charleroi Crim. Court, 17 April 2023, 6th ch. (final).

<sup>447</sup> Liège Crim. Court, 22 November 2023, 19th ch. (appeal).

<sup>448</sup> The aggravating circumstances of abuse of a vulnerable situation, fraudulent tactics and habitual activity were taken into account.

Under his influence, she left Vargas in Venezuela on foot in February 2018 to reach the border with Colombia. From Cúcuta, she then went to Bogota to catch a first flight to Madrid and a second one to Brussels airport, where the defendant was waiting for her. The defendant then apparently asked her to reimburse the cost of the flight, which came to EUR 1,300. She stated that she had to work as a prostitute seven days a week, with eight to ten clients a day, from 08:00 to 21:00 or 23:00. Half of her earnings had to be paid to the defendant, as well as the rent and bills.

Bank analyses of the defendant's account and his phone were carried out. The investigation revealed that the defendant had used the same process, i.e. acting as their 'boyfriend', with other victims, whom he brought over from South America. He dictated the rates, the clients, the pace, the place of prostitution, how they were to behave, as well as certain types of sexual services, particularly the 'slave' type, and put pressure on them to be profitable. The young women were replaced as soon as they fell ill. The court noted a professionalism in the setting up of the victims, even in the direct recruitment of some of them, and the presence of an abnormal financial benefit in view of the prohibitive prices charged. He benefited from a higher standard of living from these prostitution activities than from his health insurance benefits.

The court noted that the commission of the acts partly predated the entry into force of the new sexual criminal law of 21 March 2022 and applied the principle of the application of criminal law over time. Although the provision on pimping with provision of a place of prostitution has been abolished, the court considers that it continues to be criminalised by the new provision on pimping, the provision or rental of property constituting an act that facilitates prostitution. It matters little whether or not the person concerned is the owner of the rooms being rented.

The court found the defendant guilty of trafficking with regard to the plaintiff, having used his power of seduction to recruit her and having transported, transferred, harboured and received her. He 'took control' of her. For both charges, the court took into account the aggravating circumstance of abuse of vulnerability in relation to the victims' precarious administrative, financial and social situation.

The court reiterated that the absence of any real and acceptable choice other than to submit to this abuse, as provided for in Article 433septies, 2° of the Criminal Code, does not constitute a constituent element of the circumstance of abuse of vulnerability in its own right. This is a reminder that the vulnerable situation of the victim necessarily leads to the lack of such a choice. Consent remains irrelevant.

The defendant was given a five-year prison sentence and a fine of EUR 56,000, both partially suspended. Confiscation of the equivalent of EUR 113,370, corresponding to the illegal assets generated by the exploitation of prostitution, was ordered<sup>449</sup>, of which EUR 51,000 was awarded to the plaintiff for pecuniary damages. Pending a contradictory expert report to assess non-pecuniary damages, the defendant was ordered to pay a provisional amount of EUR 4,000.

### 2.2.3. *Loverboy* method used on Romanian victims

This year, as before, Myria was made aware of several decisions relating to cases involving the *loverboy* method. Two cases involve young Romanian victims who were of legal age at the time of the offences. These are Dutch-speaking and French-speaking cases, from Bruges and Brussels.

#### Exploitation of young Romanian women in hotel rooms, especially through the *loverboy* method

In a **judgment of 10 May 2023**<sup>450</sup>, **Bruges Criminal Court** ruled on a case of human trafficking for the purposes of sexual exploitation with aggravating circumstances and pimping of several young Romanian victims.

Three defendants – two men and one woman, all Romanian nationals – were prosecuted. They were cousins.

The case came to light following information sent by the Romanian police to the Belgian police about the disappearance of a young woman who had been taken from Romania to a hotel in Bruges to be forced into prostitution.

<sup>449</sup> The court based its decision on a calculation, detailed in the judgment, distinguishing the income received by the defendant, through the rents charged, according to the victims. The amount of EUR 250 per week was retained, as well as the occupation of the flat by three girls. The court then subtracted the amount of rent actually paid by the defendant to the owner.

<sup>450</sup> West Flanders Crim. Court, Bruges division, 10 May 2023, ch. B17 (appeal).

She managed to escape and made a statement on her return to Romania. She claimed that other girls were in the same situation.

Thanks to adverts on a sex website, the police were able to find another girl. She stated that the first defendant had used a pretext to lure her to Belgium. She was in love with him and he had promised her that she could work as a cleaner in Belgium. As soon as she arrived, she was locked in a hotel room and forced to work as a prostitute. She had to work from 06:00 until after midnight, had between 25 and 30 clients a day and was not allowed to use protection, which led to her contracting several STD. She was locked in her hotel room and her identity papers were confiscated. During this period, she earned between EUR 7,000 and EUR 8,000 per week, which she had to hand over in full. The third defendant would take the money to Romania every week. She was beaten and threatened, mainly by the first defendant, who used a belt. She managed to escape with the help of a client. After her first police hearing, the defendants informed her family of her sexual activities in Belgium, so that the family would want nothing more to do with her.

Another victim had already managed to escape from the defendants and was able to be identified. She had also come to Belgium through the second defendant, who had promised her a job as a cleaner. Initially, she was friends with her exploiters and was therefore treated a little better than the other victims. She confirmed that the latter had been subjected to violence and that their identity papers had been taken from them. Adverts concerning her were posted online and she received clients at the hotel. The agreement stipulated that she could keep half of the income, but that the exploiters would keep her share and give it to her once she had returned to Romania. She reportedly earned EUR 8,000 to EUR 9,000 per week. She had to agree to unprotected sex to attract more clients. Eventually, she managed to escape.

The court ruled that there was evidence of human trafficking, with aggravating circumstances. The victims' vulnerability was abused. These were young women living in precarious financial circumstances in Romania. The sexual exploitation was organised within the framework of a long-standing association and was habitual.

Tricks and false information were used to lure the young women to Belgium, and at least one of them was subjected to physical violence. In addition, the girls were forced to have unprotected sex. The defendants were also convicted of exploitation of prostitution.

The third defendant was acquitted of the charge of human trafficking. He collected the money and was aware of the prostitution activities, but it was not possible to establish with sufficient certainty that he was responsible for the recruitment, transportation, transfer, harbouring or reception of the girls, or that he exercised control over them. However, he was convicted as an accomplice to the exploitation of a young woman.

The defendants were respectively sentenced to six years, 50 months (partly suspended) and eight months (fully suspended), as well as receiving fines of EUR 16,000 and EUR 4,000. Confiscations ranging from EUR 5,000 to EUR 30,000 were ordered.

Payoke and a victim filed a civil suit. Payoke was awarded EUR 5,500 in pecuniary damages. The victim was awarded compensation of EUR 80,000 for pecuniary damages, EUR 1,000 for medical expenses related to the treatment of contracted venereal diseases, EUR 150 for administrative expenses and compensation of EUR 6,000 for non-pecuniary damages.

### The loverboy method used by a Romanian family clan

In a **judgment of 26 May 2023<sup>451</sup>, Brussels French-speaking Criminal Court** convicted a young Romanian man of human trafficking for the purposes of sexual exploitation, as well as pimping<sup>452</sup>, in relation to two young women, one of whom filed a civil suit. The offences took place between December 2017 and January 2022 in Schaerbeek, as well as in Nice in the case of the second victim. The defendant lived as a couple with the plaintiff and then with the second victim.

The case began in 2019, when the plaintiff, a young Romanian woman, went to the police to file a complaint against the defendant. She stated that she had met the defendant in Romania when she was 17, outside her school and at the restaurant where she worked. She lived alone and did not get along with her parents.

<sup>451</sup> Brussels French-speaking Crim. Court, 26 May 2023, 47th ch. (appeal).

<sup>452</sup> See new Article 433quater/1 of the Criminal Code, inserted by the Law of 21 March 2022 amending the Criminal Code with regard to sexual criminal law.

The defendant established a relationship of trust through promises and organised her arrival in Belgium, when she had just come of age, by paying for her plane ticket. Three days after her arrival, the defendant reportedly spoke to her about a site for erotic massages and then got her to prostitute herself in a window on Rue d'Aerschot, using beatings and death threats against her and her family. According to the investigation, the defendant behaved in the same way towards the second victim.

The prostitution of the victims was prepared, encouraged and organised with the help of members of the defendant's extended family (in particular his mother, uncle and aunts), both for booking slots in the window and travel arrangements, as well as for clothing, work rules, rates and instructions on how to respond to the police. The victims were monitored via phone. The plaintiff stated that she lived with the family for almost two years and was made to prostitute herself six days a week, without protection, with an average daily income of EUR 900 to 1,000. As the majority of the earnings were handed over to the defendant, the investigation revealed that prostitution was the only source of income for the defendant, which explains the transfers of funds between the defendant and various members of the family (especially to his grandmother in Romania).

The two victims, as well as the defendant's aunt and sister-in-law, were already known to the police from checks in the bars on Rue d'Aerschot. Open source searches were carried out, particularly on Facebook profiles. Based on a phone investigation using 'retro-zollers', contact between the members of the clan and between the latter and the victims were confirmed. Investigative actions were carried out in Romania, enabling certain family members to be interviewed and property to be seized as a precautionary measure.

The court dismissed the defendant's denials that the victim consented to her prostitution without coercion or threats being used against her, reiterating that consent is irrelevant to the offences of trafficking and pimping. These elements (coercion and threats) are aggravating circumstances which, in this case, were not used against the defendant. However, habitual activity was accepted, as the situation was repeated with the second victim and lasted over a period of time. The court also took into account the principle of criminal enforcement over time concerning the entry into force of the sexual criminal law of 21 March 2022.

The defendant was sentenced for trafficking and pimping to 40 months in prison, partially suspended, and a fine of EUR 16,000. Compensation of EUR 25,000 and EUR 5,000 for pecuniary and non-pecuniary damages suffered by the plaintiff was ordered. However, the judge rejected the request for a restraining order prohibiting the defendant from contacting her and her daughter, on the grounds that the provision of the Criminal Code in question is applicable to other types of offences and that the victim was not a minor at the time the acts were committed. The court also ordered the restitution of a house and numerous plots of land, vehicles and sums of money from three members of the defendant's family, as voluntary intervening parties in the trial.

## 2.3. Labour exploitation

### 2.3.1. Construction

Myria learned of several decisions in the construction sector. These are cases that were judged in various districts, with a prevalence on the Dutch-speaking side. It should be noted that several of them involve the use of bogus postings, as well as subcontracting chains.

#### Subcontracting chain and bogus postings with a large number of Romanian and Polish victims

In a judgment of 23 June 2023<sup>453</sup>, **Bruges Criminal Court** examined a vast case of bogus postings and bogus self-employment in the construction sector.

Nine defendants – of Belgian, Romanian and Polish nationality – were prosecuted for, among other things, human trafficking, slum landlordism, belonging to and leading a criminal organisation and various social law violations. Among them were two companies, the third and fourth defendants. The third was a construction company, the fourth a real estate company. The fifth defendant died before the trial. There was evidence of human trafficking involving 117 victims.

The case was first revealed in 2013 following a report of disturbances in an allegedly unoccupied building where several Romanian men were discovered. This drew the attention of the authorities, after which observations were made by the police.

<sup>453</sup> West Flanders Crim. Court, Bruges division, 23 June 2023, ch. B17 (appeal).

It was noted that a large group of men was staying there, boarding the train every day early in the morning to be transported to construction sites. It was possible to link several companies to these activities.

An investigation followed and a criminal investigation was opened in 2016. Phone tapping, surveillance at various locations, searches and arrests were carried out as part of the investigation. A request for mutual legal assistance was also sent to the Romanian judicial authorities.

Originally, the two companies prosecuted were both operated by the first defendant. Subsequently, the second and eighth defendants, including the girlfriend of the main defendant, were appointed as directors of the third and fourth defendants respectively. This was mainly because the first defendant had been prohibited, in another case, from acting as a company director or board member.

The investigation revealed that four Belgian construction companies worked exclusively as subcontractors for the third defendant. The latter did not employ salaried workers, worked solely with subcontractors and was responsible for coordinating the construction work. Four or five Romanians were attached to each of these construction companies as active partners. This was a cover-up to circumvent the administrative difficulties associated with posting. In addition, these partners could work 24/7, without any restrictions. The seventh defendant stated during the investigation that he had helped the first defendant set up this arrangement with the four construction companies. The latter also had partners domiciled in the United Kingdom. At this address, there was a company specialising in the online creation of offshore companies, represented by four Romanians. One of them, the sixth defendant, was the father of the second defendant. The seventh defendant was the director of this company.

At a certain point, the four Belgian companies were taken over by a Romanian company. For this purpose, a shelf company was acquired to bring together the other four companies and all the workers and associates. This Romanian company carried out subcontracted work on behalf of the main defendant. However, it had no client in Romania and was therefore in reality a 'letterbox' company.

The investigation revealed that the first defendant was the real boss. He was the one who directed and controlled everything, and gave instructions. He was no longer the director of the third defendant, but the investigation revealed that he remained the main shareholder and had power of attorney over the accounts.

The workers of the Romanian company worked six days a week, 14 hours a day, with a half-hour lunch break. They received EUR 1,400 per month for this, or EUR 4 per hour. The investigation revealed that all the A1 forms relating to the posting were false. The Romanian company and the third defendant made a profit by paying particularly low wages and not paying social security contributions in Belgium or Romania.

In addition, around 20 (bogus) self-employed individuals worked directly for the third defendant.

The workers were housed in accommodation belonging to the main defendant through a company, the fourth defendant. The rent was paid to the fourth defendant.

The court considered that there was a clear relationship of authority between the second and third defendants. The second was in fact to be considered as a salaried worker of the third.

The court considered that it was possible to demonstrate that 113 workers had indeed worked in this scheme.

The court stated that it is only a question of human trafficking if it is proven that the perpetrator intends to engage in labour exploitation. The offence requires a specific intent; the mere fact of working in degrading conditions is not enough. The fact that there are social law violations is also not enough to consider the work as contrary to human dignity. Furthermore, this offence is inseparable from Article 23 of the Constitution, which states that everyone has the right to live in human dignity. This implies that work must be dignified, and work is dignified if it is carried out in conditions of freedom, fairness and safety.

According to the court, the first defendant was indeed guilty of human trafficking with regard to 113 workers. He played a central and predominant role in the implementation of bogus posting and bogus self-employment mechanisms that enabled and were even aimed at the labour exploitation of workers. The latter worked long hours, six days a week, for a derisory wage paid into their account in Romania. They did not receive holiday pay or an end-of-year bonus, and their expenses were not reimbursed. Nor were they compensated for days of absence due to illness. There was no written employment contract and the workers were kept in the dark about their wages. They did not benefit from any social protection. Labour exploitation was the central income model of the entire mechanism of bogus postings and bogus self-employment. The court also considered the aggravating circumstances as established.

The other defendants were also convicted of human trafficking. The ninth defendant, a property developer for whom the third defendant carried out subcontracted work, was acquitted of all charges as it could not be said with certainty that he was aware of the exploitation.

The defendants were also found guilty of other charges, including those of being a slum landlord and of leading or belonging to a criminal organisation. As regards the money laundering of illegal financial benefits, the main defendant was acquitted.

However, the court considered that the reasonable time limit had been exceeded and took this into account when determining the sentence.

The two main defendants were sentenced to a prison term of 18 months and a fine of EUR 180,000. The others were sentenced to a prison term of five months and fines ranging from EUR 3,000 to EUR 33,900. The eighth defendant was simply found guilty.

The companies were fined between EUR 102,000 and EUR 678,000.

Six victims and the Flemish housing inspectorate filed a civil suit. They obtained compensation of EUR 250 for non-pecuniary damages and between EUR 8,000 and EUR 40,000 for pecuniary damages.

### Fraudulent posting scheme through a Bulgarian company

In a **judgment of 17 November 2023**<sup>454</sup>, **Dendermonde Criminal Court** ruled on a case of trafficking for the purposes of the labour exploitation of 12 victims in the construction sector. Two defendants, of Belgian nationality but of Turkish origin, and a Belgian company were prosecuted.

They were also prosecuted for social law violations, in particular the employment of foreign nationals without the right of residence and social criminal law fraud (through bogus posting).

The case came to light when two people were arrested for shoplifting. It turned out that these people were working for the defendants under dubious conditions. Following their statements, the police began an investigation. Observations were made at the defendants' construction sites and in the houses where foreign workers were employed.

The defendants employed several foreign workers from Romania, Bulgaria, Pakistan and Ukraine, among other countries.

For this purpose, they resorted to a fraudulent scheme of postings through a Bulgarian company that did not carry out any activity in Bulgaria. The criminal case showed that the Belgian company was the real employer. The workers received around EUR 100 per week for long working days from 05:30 to 16:00. Their salary and rent were unclear. The workers received a lower salary than they had been promised. Their housing conditions were disastrous. According to the court, the fact that the workers were initially satisfied with their employment was of little importance.

The court considered all charges to be proven. The defendants were given a six-month prison sentence and a fine of EUR 96,000, both partially suspended.

One Bulgarian victim filed a civil suit. The man was awarded compensation of EUR 5,133.17 (including EUR 700 for non-pecuniary damages).

<sup>454</sup> West Flanders Crim. Court, Dendermonde division, 17 November 2023, ch. 13 (appeal).

## Exploitation of Egyptian workers through subcontracting and bogus postings

In this case concerning Egyptian workers, tried by **Brussels French-speaking Criminal Court on 21 June 2023**<sup>455</sup>, the prosecutions were based on smuggling and not on human trafficking. A Belgian defendant was prosecuted for several social criminal law violations in relation to a group of Egyptian workers without residence permits, and for aggravated smuggling in relation to five of them, in the context of construction sites in Haacht and Hove. A Belgian trade union had filed a civil suit. The proceedings against the defendant's brother and father, who were also defendants in the trial, were declared inadmissible due to the violation of their right to defence<sup>456</sup>. The three defendants, of Belgian nationality, were active in several commercial companies in the construction and cleaning sector. The main defendant was the sole partner and manager of the construction and demolition company. His father and brother were also active in the company.

The company carried out structural work on construction sites and subcontracted to other companies, including an Italian company responsible for masonry and chipboard bonding work on a site in Hove. This allowed the defendant to make use of bogus and fraudulent posting of Egyptian workers. The Italian company had no activities in Italy and was only active on two construction sites in Belgium. Several workers employed by the Italian company thought they were working for the defendant in the context of his construction company. It was a chain of subcontractors, with the defendant's company itself being subcontracted by a main contractor.

The investigation began on 5 October 2018 following a labour dispute that broke out on the construction site in Hove. The local police had received information that workers on a 35-metre-high crane were refusing to come down in protest at not having been paid for several months and at their appalling working and accommodation conditions. The workers stated that they had travelled to Belgium of their own accord and had come into contact with the defendant's company through acquaintances. They were working on several sites and earning a maximum of EUR 50 per week, less if food was bought for them.

They had reportedly been threatened with weapons a few days before the protest. The defendant had climbed the crane to speak to the workers. A fight ensued involving the use of a hammer and the brother of the defendant was administratively arrested. Several workers complained about the company's behaviour to the Egyptian embassy. Some of them also contacted the union representative for the civil party in Antwerp. A union representative went to the site and was able to talk to the site manager (the main contractor) and the workers present. After negotiation, a provisional agreement was reached and five days later, a settlement agreement was concluded between the main contractor and the Italian company to proceed with the payment of EUR 55,000 to the union council's third-party account, which then ensured payment to each worker. The union also contacted the municipality of Lint to find them accommodation through the Red Cross. The defendant's company was then declared bankrupt.

Multiple banking and asset investigation tasks were carried out. The Social Legislation Inspectorate (CLS), NSSO and CTIF-CFI submitted investigation reports as part of this case. Information was gathered from the Italian labour inspectorate and the Italian social security institution. The workers and the parties involved in the trial were heard. The defendant had already been convicted of offences under social criminal law, in particular for using various companies as labour pools, fraudulently presented as subcontractors without any real commercial activity in order to evade social security contributions.

The court convicted the defendant of human smuggling. This charge was contested by the defendant, who was confronted with the elements of the investigation. The court took into account the fact that the defendant had housed the workers in a dilapidated building in Zaventem that he rented, cramming 20 or 25 people into appalling living conditions in order to get them to work on the building sites where his company was working. The court ruled that the economic objective could be inferred from the fact that these workers were employed without respect for the pay scales or the social security and tax contributions relating to salaried work.

<sup>455</sup> Brussels French-speaking Crim. Court, 21 June 2023, 69th ch. (appeal).

<sup>456</sup> The court based its decision on the fact that: the two defendants were never summoned prior to the hearings held four years after the events; they did not know during all this time that they were considered suspects and were unable to keep documents useful for their defence; they were unable to confer with their lawyer before the proceedings; and they were unable to request additional actions.

According to the court, the defendant could be considered an employer as defined by social criminal law, as he exercised employer authority over these individuals, whose vulnerable status could be deduced from their precarious or illegal administrative and social situation, excluding a real and acceptable choice other than to submit to this abuse.

The court also convicted the defendant of illegally employing workers through fraudulent postings, non-payment of wages, employing foreigners without residence permits and failure to file a Dimona declaration. The defendant was sentenced to 40 months in prison and a fine of EUR 32,000, both sentences being conditionally suspended. The defendant was also ordered to pay the sum of EUR 2,500 to the plaintiff as compensation for non-pecuniary damages.

### Exploitation of several Bulgarian victims, with the use of violence

In a **judgment handed down on 17 July 2023** in absentia<sup>457</sup>, **Hasselt Criminal Court** ruled on a case of trafficking for the purposes of labour exploitation of six victims in the construction sector<sup>458</sup>.

The two defendants, of Belgian nationality but of Turkish origin, were prosecuted for human trafficking with the aggravating circumstances of the use of violence and endangering the lives of others. They were also prosecuted for social law violations.

This case concerns serious labour exploitation, where the workers were severely mistreated, manhandled, threatened and barely paid.

The court found that the acts of trafficking were proven on the basis of the elements of the criminal case, namely the police findings, the victims' statements, the transactions on the company's bank account and the examination of the defendant's mobile phone. Added to this is the case relating to the shooting, in which the defendants were convicted of attempted murder and assault and battery in a ruling handed down on 7 October 2022 by Liège Court of Appeal.

The first defendant already had a long criminal record, including convictions for possession of prohibited weapons. Both defendants were sentenced to four years in prison.

A large sum of money was confiscated.

Three Bulgarian victims and Myria filed a civil suit. The victims obtained compensation of approximately EUR 18,000. Myria was awarded compensation of EUR 2,500.

### Long-term exploitation of a Cameroonian victim

In a **judgment of 19 January 2023**<sup>459</sup>, **Brussels Dutch-speaking Criminal Court** ruled on a case in which a Belgian defendant and a Belgian company were prosecuted for human trafficking with aggravating circumstances and other social law violations such as non-payment of wages. The case was joined with another case concerning offences under the Brussels Housing Code.

The victim, of Cameroonian nationality, filed a civil suit.

In October 2020, a coordinated inspection was carried out by the inspection services of the NSSO, NISSE and CLS, accompanied by the police, in the buildings belonging to the company. Several workers were found during this inspection, including the plaintiff. The victim did not have legal residence status and was housed on the company site in two small rooms. A few days later, the housing inspectorate carried out an inspection and declared the accommodation uninhabitable.

The court convicted the defendants of human trafficking. The case revealed that the victim had been working for the defendants since 2011. The defendants had been aware of his illegal stay in Belgium from the outset. The court did not accept the defendants' argument that they had offered financial and material support in good faith.

For nine years, the victim was totally dependent on the defendants. He was led to believe that his residence in Belgium would be regularised and that he would one day be able to trade with Central Africa on behalf of the company. He worked a normal five-day week, but was grossly underpaid and not remunerated for overtime. He earned EUR 7 an hour, or EUR 1,300 a month for a full-time job, from which he had to pay EUR 400 in rent for uninhabitable accommodation.

<sup>457</sup> Limburg Crim. Court, Hasselt division, 17 July 2023, ch. 17 (in absentia).

<sup>458</sup> See the analysis of this case in Part 2, Chapter 2, point 2.

<sup>459</sup> Brussels Dutch-speaking Crim. Court, 19 January 2023, 25th ch. (appeal).

The remaining EUR 900 was generally not paid on time or was paid in small amounts, at the defendants' convenience. According to the court, this was a method of keeping a certain control over the victim, by maintaining him in a position of weakness. The victim did not have a free choice and his movements were severely restricted. This constitutes an abuse of authority as an employer and of the victim's precarious economic and administrative situation. The judge ruled that this constituted degrading treatment. Aggravating circumstances were also considered proven.

The first defendant was sentenced to 10 months in prison, suspended for five years, and fined EUR 8,000. The company was fined EUR 48,000. Large sums of money were confiscated.

The victim was awarded compensation of EUR 48,602 (the minimum wage for the services provided) and EUR 32,650 (the rent withheld for uninhabitable accommodation) as pecuniary damages, as well as EUR 4,500 as non-pecuniary damages.

### Exploitation of several illegal staying workers

In a **judgment of 4 May 2023**<sup>460</sup>, **Oudenaarde Criminal Court** ruled on a case of trafficking for the purposes of labour exploitation involving a victim in the construction sector. The acts date back to the end of 2019.

Two defendants, a Belgian and an Iraqi staying illegally in Belgium, were prosecuted for human trafficking. They were also prosecuted for social law violations, including non-payment of wages, against a total of seven workers.

Four victims filed a civil suit. One victim obtained the status of victim of human trafficking.

The Social Inspectorate had noted that a company had stopped paying social security contributions even though it had registered seven workers in the Dimona database.

The manager and the employees were interviewed. The employer was experiencing financial difficulties. The workers stated that they only received part of their wages in the best case scenario.

One of the workers, who was staying illegally, stated that he had only received three days' wages. Promises of payment were not honoured. He had to pay EUR 9,000 to be employed by the first defendant through an intermediary, the second defendant. The latter took him to the sites and was supposed to be given the salary and pay slips. The victim had to work in a high-risk sector and buy his own protective clothing. The man also suffered violence.

The court found that the social law violations and the acts of human trafficking were proven. The defendants were aware of the vulnerability of the victim, who was used and employed as a labourer in inhumane conditions.

The first defendant did not have a clean criminal record and had already been convicted of social law violations. He was sentenced to 12 months in prison and a fine of EUR 8,000, both partially suspended.

The second defendant did not have a clean criminal record either. He had been convicted several times for human smuggling as part of a criminal organisation. He was sentenced in absentia to two years in prison and a fine of EUR 4,000.

The victim of trafficking was awarded compensation of EUR 18,411.62 for pecuniary damages and EUR 1,000 for non-pecuniary damages. The other civil parties were also awarded compensation.

### 2.3.2. Transport

#### Transport activities through Bulgarian 'letterbox' companies with Serbian drivers

In a **ruling of 5 October 2023**<sup>461</sup>, **Ghent Court of Appeal** ruled on a human trafficking case involving the use of Bulgarian 'letterbox' companies in the transport sector.

<sup>460</sup> East Flanders Crim. Court, Oudenaarde division, 4 May 2023, 3rd ch. 09 (final and in absentia).

<sup>461</sup> Ghent, 5 October 2023, 3rd ch.

In an **opposition judgment of 13 January 2023**, discussed in the previous annual report<sup>462</sup>, **Bruges Criminal Court** had examined this case and found the defendant, a Belgian national residing in Serbia, guilty of human trafficking. The defendant appealed against his conviction.

The defendant had set up several foreign 'letterbox' companies in Bulgaria for transport activities in Belgium and neighbouring countries. The companies had no activity in Bulgaria. The defendant used Serbian drivers. He had already been convicted of similar offences. PAG-ASA had been contacted by a Serbian NGO helping victims of human trafficking to inform it of the existence of anonymous complaints against the defendant. He had lured Serbian workers to Belgium by promising them legal work and a salary. In Belgium, however, they were employed illegally, had to work more hours than the law allows and drive lorries with falsified registration and safety certificates. The drivers' residence documents were also found to be fake. They were paid derisory wages (EUR 300 per month). Furthermore, these salaries were paid partially and late.

The police had found several drivers and their lorries in an open storage building. Multidisciplinary checks were then carried out in the car park. This storage building had no sanitary facilities, and the drivers had to relieve themselves in a plastic bag. They always slept in their vehicles, even at the weekend. Some had never signed an employment contract. They were paid per kilometre travelled, and not provided with a payslip. Several victims had still not received any wages, even after several months.

At first instance, the defendant was sentenced to one year in prison. A special confiscation of EUR 81,963.97 was ordered. The confiscation was executed on all of the defendant's assets.

The court observed that, after a previous conviction for social law violations, the defendant immediately set up other foreign companies in order to continue his transport activities with complete peace of mind, in total disregard of the binding regulations in the field of labour law and social law.

He created a tangle of foreign companies within which he held legal and effective decision-making power and through which he also exercised his authority over the drivers.

The court also found that the defendant had taken advantage of the vulnerable situation of the victims, whose residence status in Belgium was often precarious. It confirmed the judgment in its entirety and again convicted the defendant of human trafficking and of all the offences under social law, including fraud under social criminal law.

### 2.3.3. Hospitality

The following points present cases concerning a café, a restaurant and a hotel. Two of these decisions led to an acquittal for human trafficking. The case involving the exploitation of a Belgian victim with a mental disability in a café was discussed in Myria's previous report and was reviewed on appeal.

#### Exploitation in a café of a Belgian victim suffering from a mental disability

In a **ruling of 26 October 2023**<sup>463</sup>, **Antwerp Court of Appeal** ruled on a case of human trafficking for the purposes of labour exploitation of a Belgian victim.

Three defendants, of Belgian and Dutch nationality, as well as a company, were prosecuted. The second defendant was the owner of the company, a café. The first defendant managed the café for the second defendant. **Antwerp Criminal Court**<sup>464</sup> had convicted them at first instance of human trafficking and sentenced them to a prison term and a fine. The first and second defendants appealed against this decision. The company had gone bankrupt in the meantime.

The defendants had employed a victim, an illiterate Belgian man with a mental disability who was under temporary supervision, in the café for tasks including cleaning, shopping and helping with renovation work. The job had no clear structure and the wages were not well defined either.

462 West Flanders Crim. Court, Bruges division, 11 March 2022, ch. B17 (opposition); West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal); see Myria, *Annual report 2023 - Trafficking and smuggling of human beings, A chain of responsibilities*, p. 113 and [Myria's website \(case law\)](#).

463 Antwerp, 26 October 2023, ch. C6. The defendants lodged an appeal with the Court of Cassation, but their appeal was declared inadmissible.

464 Antwerp Crim. Court, Antwerp division, 12 December 2022, ch. AC1 (appeal); see Myria, *Annual report 2023 - Trafficking and smuggling of human beings, A chain of responsibilities*, p. 114 and [Myria's website \(case law\)](#).

The acts were revealed during an inspection carried out jointly by the Social Inspectorate and the local police. During the inspection, the victim was discovered in the cellar during the night. The victim was sleeping in the closed crawl space, in appalling and unsanitary conditions.

The **court of appeal** ruled that the acts of trafficking remained proven and that the recruitment of a person with a view to carrying out work in conditions contrary to human dignity constituted the offence of human trafficking. The notion of recruitment does not mean that the recruited person must have been sought for that purpose. Reception and accommodation conditions contrary to human dignity must be taken into account in the assessment of the offence of human trafficking. The housing conditions in a (beer) cellar with a low ceiling were particularly harsh. The victim was forced to work every day of the week without being properly paid. The fact that this was the victim's personal choice is irrelevant.

The first defendant already had a criminal record and was subject to a ban on professional activity. The defendants were respectively sentenced to a 24-month prison term and a 20-month partly suspended prison term, as well as a fine of EUR 8,000. A ban on professional activity for 10 years was imposed on both of them.

### Acquittal in a case of labour exploitation in a restaurant

In a **judgment of 20 September 2023, Ghent Criminal Court**<sup>465</sup> ruled on a case of human trafficking for the purposes of labour exploitation in a restaurant. The defendant was a Belgian man of Egyptian origin. His company was held civilly liable. He was also prosecuted for social law violations.

The victim, of Egyptian nationality, and Payoke filed a civil suit.

The victim, a man, had been referred to Fairwork Belgium through Médecins du Mondes, and then to Payoke. During the support process, he filed a complaint against his employer with the Social Inspectorate.

The victim worked in the defendant's restaurant. In the evening, he worked in the back kitchen, out of sight of the customers, and then, at night, he cleaned the restaurant. He slept above the restaurant, where there was no toilet or shower. He earned between EUR 140 and EUR 170 per week, working six days a week. He had been working there for almost two years.

During the investigation, several members of staff were able to confirm that they knew the victim. There were photographic documents and sound recordings.

The defendant threatened the victim and his family in Egypt during the investigation.

The opposing party argued that the employee of the reception centre had regularly contacted the inspection services. According to the defendant, this communication was tendentious, proof that the inspection services had acted in a biased manner. However, the judge declared that there was no reason to conclude that the inspection services had lacked objectivity. The defendant also argued that the labour prosecutor had acted unfairly and influenced a witness. Here again, the court stated that there was no reason to believe that the witness had made false statements.

The defendant was acquitted of the charge of human trafficking. The court was unable to deduce from the criminal case file that the victim had been employed in conditions contrary to human dignity or that there had been labour exploitation. It lacked concrete and/or objective information on the working and living conditions. There were no photographic documents, no search had been carried out and there were no direct witnesses to the circumstances. It was one person's word against another's. Even if certain elements indicated rather miserable working conditions, this was not enough, in the court's view, to conclude that it was a case of human trafficking.

The court considered that the victim was indeed employed in the restaurant and that the social law violations had been proven. The defendant was sentenced to a prison term and a fine. The victim did not receive compensation for lost wages since the labour prosecutor had not requested it.

<sup>465</sup> East Flanders Crim. Court, Ghent division, 20 September 2023, ch. G29, no. 2455 (final).

## Acquittal in a case involving a hotel

**Brussels French-speaking Criminal Court** handed down a **judgment on 28 November 2023**<sup>466</sup> in which three defendants, including a hotel in the form of a public limited company, were prosecuted for numerous offences under social criminal law concerning various people without residence permits and regular workers, as well as for human trafficking with aggravating circumstances with regard to one of the persons in an illegal administrative situation. The victim was a Tunisian man who filed a civil suit. He was supported by a specialised reception centre for victims of trafficking, as well as by Samusocial. The offences were committed between November 2017 and August 2018.

The investigation began following a complaint for non-payment filed by one of the hotel's workers with the Social Inspectorate in February 2018. During an inspection of the establishment carried out by the Social Legislation Inspectorate (CLS) in March 2018, the inspector noticed the presence of mattresses and a bad smell in the laundry room, as well as that of two people folding laundry, one of whom, unidentified, had avoided the inspection on the defendant's instructions to go on an errand. Then, during a National Employment Office (ONEM) check in September 2022, two workers were again found to be at work. The defendant contested their being put to work and claimed that they were washing their own clothes.

The first Belgian defendant, the niece of the second defendant, held 1% of the shares in the company. Having never taken part in the activities of the company or in the running of the hotel, and having never been paid in this context, the court acquitted her of all charges, considering that she could not be considered as an employer, representative or employee within the meaning of social criminal law with regard to the hotel's workers.

The second Belgian defendant, born in Morocco, held 99% of the shares in the company. In parallel with his commercial activity, he supplied food and accommodation to the homeless and migrants.

The plaintiff, a Tunisian woman, had left Tunisia in 2014 and travelled through Greece before living in Germany for two and a half years, and then coming to Belgium through a ride-sharing service. She met the defendant in 2017.

According to several hearings of the parties and other workers, the plaintiff was accommodated in the laundry room and in a room when it was available. She was gradually given the responsibility of managing the migrants and did the shopping, folded the laundry, cleaned the rooms, emptied the bins, brought the staff meals, prepared the breakfast and distributed it to the migrants. The victim stated that she had been poorly paid, up to EUR 30-50 some weeks<sup>467</sup>, while the defendant denied the existence of any work. The plaintiff stated that she had been required to remain available at all times, had only been able to sleep three to four hours a night and had been subjected to aggressive behaviour by the defendant. The statements were corroborated and contradicted by those of other workers at the hotel. Furthermore, the court considered that the obvious animosity expressed towards the defendant by the worker, corroborating the victim's statements, cast doubt on his statements.

The Belgian defendant and the company were acquitted of the charge of trafficking, as the court ruled that this did not constitute the exploitation of the labour of others. The court considered that the precarious accommodation offered to the migrants, which did little to respect their human dignity, did not constitute payment for their work and that the defendant did not make access to this accommodation conditional on carrying out any kind of work. The services provided by the migrants were considered to be one-off and carried out on a humanitarian and mutual basis in the context of the migrants' cohabitation. They do not fall under the concept of work within the meaning of Article 433quinquies of the Criminal Code or of work within the meaning of social criminal law. The court noted, however, that the plaintiff's speech was clear, precise and detailed.

The two defendants were acquitted of some of the offences under social criminal law, in particular those against the plaintiff, as it could not be proven that he had performed any work<sup>468</sup>. In particular, they were acquitted for the charge of failing to immediately report a serious workplace accident with regard to the plaintiff. The court ruled that it was not a work-related accident, as it could not be assumed that he had been employed by the defendant. The victim had stated that he had had an accident while moving a mattress in the defendant's house, resulting in an inability to work for more than four months, because of the resulting lumbar and hip problems and depression.

<sup>466</sup> Brussels French-speaking Crim. Court, 28 November 2023, 69th ch. (appeal).

<sup>467</sup> The pecuniary damage was calculated by the Social Legislation Inspectorate (CLS) at more than EUR 20,000 gross.

<sup>468</sup> However, they were convicted of several social criminal law offences against other workers.

The defendant and the hotel were respectively convicted of the social criminal law offences with which they were charged, and were given a fine of EUR 32,000 and EUR 128,000 euros with a partially suspended sentence and, for the charge of obstruction of surveillance, a fine of EUR 4,800 and EUR 32,000 with a partially suspended sentence of more than four months, in view of the lumbar and hip problems and depression.

#### 2.3.4. Cleaning

A case in the cleaning sector was tried by **Namur Criminal Court on 11 October 2023**<sup>469</sup>. A Belgian defendant was prosecuted for various offences under social criminal law<sup>470</sup> as well as aggravated smuggling with regard to a Brazilian worker. She had no residence permit and filed a civil suit. She was received by a specialised reception centre for victims of human trafficking. The offences were committed in Namur between 2013 and 2019.

The plaintiff arrived in Belgium in 2011 with her daughter on a tourist visa to work in her sister and brother-in-law's cleaning company, which operated in a retirement home. She then worked regularly, undeclared, for the defendant, who had taken over the cleaning company as manager. The investigation began following a complaint filed by the plaintiff for non-payment of her wages on time. In particular, she stated that when she fell ill, the defendant refused to pay her and insisted that she continue working, as he feared losing his contract with the retirement home.

The defendant only contested the smuggling charge, citing unavoidable error, good faith and exclusively altruistic intent. However, the court ruled that the charge had been established, considering that it was clear from the case file that he was aware of the plaintiff's illegal residence situation. The defendant knowingly and voluntarily contributed to enabling her stay by giving her a job, in violation of Belgian legislation on residence, and derived a financial benefit from this, resulting from the non-payment of wages and social security contributions in the context of this illegal employment.

The court based its reasoning on the promise of employment signed by the defendant for the benefit of the plaintiff within the context of her application to regularise her residence status, on his own hearing and on the absence of any attempt to regularise her social security status while she was employed by him.

The plaintiff sought compensation for non-pecuniary damages, which she justified by invoking working and housing conditions contrary to human dignity, which were contested by the defendant. The court considered the non-pecuniary damages unjustified in concreto due to: the absence of moral violence, coercion and conditions contrary to human dignity on the part of the defendant; the absence of a link between the irregular payment of remuneration and the irregular status of the plaintiff; the mutual advantage in the system of undeclared work; the amount of the fixed remuneration at EUR 10 net per hour, not indicative of exploitation; the friendly relationship between the two parties; the defendant's agreement to guarantee the lease of the plaintiff and to assume the consequences thereof.

The defendant benefited from a three-year stay of sentencing and was ordered to pay the plaintiff EUR 1 in non-pecuniary damages and EUR 4,947 in pecuniary damages.

#### 2.3.5. Agriculture

##### Labour exploitation of Albanian victims on an asparagus farm

In a **judgment handed down on 20 July 2023** partly in absentia, **Tongeren Criminal Court**<sup>471</sup> ruled on a case of human trafficking that took place on an asparagus farm in Limburg in 2018. Several Albanian workers were being exploited. Four defendants were prosecuted, including for trafficking and smuggling of human beings: two Belgian companies (the first and second defendants), a Dutch woman (the third defendant) and a Belgian man (the fourth defendant). The real employer, a Belgian partner of the third defendant, died during the investigation, so the charges against him were dropped.

469 Namur Crim. Court, 11 October 2023, 12th ch. (final).

470 Employment of foreign labour without residence permits, failure to make Dimona declarations, failure to make declarations with a view to evading social security contributions, non-payment of social security contributions, failure to draw up individual accounts and non-payment of wages.

471 Limburg Crim. Court, Tongeren division, 20 July 2023, ch. 12K (final and in absentia).

The workers were brought to Belgium and stayed there illegally. They were recruited in their own country and brought here by the fourth defendant. They worked long hours for a very low wage, part of which they also had to hand over for rent. They lived in appalling conditions and sometimes went hungry because they depended on their employer to pay their wages.

The partner of the deceased employer was acquitted due to insufficient evidence of her involvement in the activities and her knowledge of the operation.

As for the other defendants, the court found that the acts had been proven. It believed that the fourth defendant was aware of the offences and intended to participate in them. The fact that he did not personally benefit from any direct or indirect financial benefit was of little importance, according to the court.

The two companies were also sentenced in absentia to heavy fines of EUR 672,000. The court also ordered the permanent and complete closure of the companies. The building in which the acts took place was confiscated.

The fourth defendant was sentenced in absentia to three years in prison and a fine of EUR 448,000.

### 2.3.6. Domestic work

#### Domestic work for diplomats

In a **judgment handed down on opposition on 22 June 2023**<sup>472</sup>, **Brussels Dutch-speaking Criminal Court** took another look at a case of domestic work, which had already been discussed in a previous annual report.

The defendants were a Kuwaiti couple of diplomats. They were prosecuted for human trafficking for the purposes of labour exploitation, non-payment of wages and other social law violations. At first instance, the court had ruled that the trafficking acts were proven and had convicted the couple in absentia<sup>473</sup>.

In the meantime, the defendants had returned to Kuwait and had lodged an opposition.

The victim, a refugee from Ethiopia, fell into the hands of human traffickers and ended up with the defendants in Kuwait. She started working as a domestic worker in 2012. In 2017, she followed the family to Belgium.

The victim had to work seven days a week and be ready to serve the family 24 hours a day. She had no contact with the outside world, no private life and hardly any personal belongings. She earned almost nothing. She had to eat the leftovers from the family meals. If the family members were angry, they insulted her. She could not leave the house. All the doors were locked when the family was not there. The couple had confiscated her passport. She was only able to escape because the couple had accidentally left the keys in the door overnight. She fled and then found refuge at PAG-ASA.

Based on these facts, the court ruled that human trafficking with aggravating circumstances had been proven. The victim was completely dependent on the defendants, which made her a prisoner in reality. They had brought the victim over on a tourist visa, even though there is a specific procedure with certain conditions for diplomatic domestic staff. It is unlikely that the couple were not aware of this.

The victim and PAG-ASA filed a civil suit. The victim was awarded compensation for pecuniary damage (EUR 33,327.44 in back pay) and non-pecuniary damage (EUR 5,000). PAG-ASA's claim for compensation was declared unfounded<sup>474</sup>.

### 2.3.7. Football

In a **judgment handed down on 30 June 2023**, **Brussels French-speaking Criminal Court**<sup>475</sup> convicted an Ivorian defendant of human trafficking against a young Ivorian man, the plaintiff, and of breach of trust, practising as an unlicensed football agent<sup>476</sup> and money laundering. A second person, a Belgian, was also involved in the charge of money laundering.

472 Brussels Dutch-speaking Crim. Court, 22 June 2023, ch. 25N (appeal).

473 Brussels Dutch-speaking Crim. Court, 15 December 2021, ch. 25N: see Myria, *Annual report 2022 – Trafficking and smuggling of human beings, Bound by debt*, p. 85 and [Myria's website \(case law\)](#).

474 Oddly, the court considered that it did not see to what extent the centre had suffered non-pecuniary damage.

475 Brussels French-speaking Crim. Court, 30 June 2023, 49th ch. (final).

476 The defendant was claiming a false position and was not officially registered in accordance with Walloon and Brussels legislation.

A Belgian public utility foundation whose main social objective is to combat human trafficking also filed a civil suit. The offences were committed in Brussels and Sweden between 2016 and 2019.

The victim travelled to Belgium on a short-stay visa in 2013 to try out for a Brussels club, through an agent for Belgian players who had a football academy in Ivory Coast. As the trial was unsuccessful and the visa was about to expire, he had to return to Ivory Coast. In 2014, the managing director of the anti-trafficking foundation (plaintiff), met the young man in Ivory Coast and decided to bring him back to Belgium as a student. With the help of the managing director and her contacts, in particular the Belgian players' agent, he was able to train successively in two other Brussels clubs and a club in Charleroi. However, as the latter could not keep him in the longer term, the agent suggested a solution in a club in Sweden through an occasional Ivorian partner (defendant), who regularly worked there and had family there.

A 'declaration of commitment' was signed between the managing director and this Ivorian 'agent', in which the latter undertook to obtain a professional football contract with the Swedish club, in return for the payment of EUR 30,000 by the foundation, specifying that this sum corresponded to 12 months' salary and accommodation for the plaintiff (EUR 2,500 per month). The young man arrived in Sweden in September 2016 and obtained a Swedish residence permit by signing a professional contract with the Swedish club. However, the young man was given a shared room for a rent of EUR 500 and only received part of his salary in the first few weeks before receiving nothing at all, neither from the defendant nor from the club, as most of the money had been distributed among the defendant's family members. He then had to leave the shared accommodation and stay in a hotel, supporting himself. The victim finally returned to Belgium in March 2017, thanks to his girlfriend's meagre savings. After being ordered by the foundation to repay the EUR 30,000, and the defendant signing an acknowledgement of debt, the defendant repaid the amount in two instalments. Firstly, through the Belgian agent himself, who owed a sum to the defendant. Then, through the second defendant, a young Belgian street educator with a passion for professional football who regularly provides services to certain footballers in exchange for their consideration and free tickets.

Considering the first defendant as a father figure, this young man agreed to make the transfer through his local newsagent in Brussels, in order to avoid the traceability of the financial movement.

Based on the victim's testimony and the chat correspondence between the managing director and the victim, the court took into account the following conditions contrary to human dignity: the lack of a salary, difficulty in accessing food, deprivation, the lack of equipment and clothing suitable for the weather conditions, the need to beg for the solidarity of his teammates and the transport conditions. The aggravating circumstance of abuse of vulnerability was accepted by the court, which noted the lack of a bank account, the isolated accommodation, travel difficulties, the precarious residence situation, the lack of language skills and the social isolation. In his capacity as intermediary, the first defendant transported, transferred, accommodated and received the victim, as well as transferring control over the latter to the Swedish club, for the purpose of exploitation, which he did not dispute. The court noted that the victim's training, regardless of his participation in matches, constituted work expected of a young man aspiring to a career in professional football.

According to the court, "the acts denote an exclusive focus on greed without regard for the ethical aspects of this sports transfer market, the 'raw material' of which, however, is mainly made up of young and often vulnerable people". The first defendant was given a one-year suspended prison sentence and fined EUR 8,000, and ordered to pay the plaintiff EUR 12,226 for pecuniary damage<sup>477</sup> and EUR 1,500 for non-pecuniary damage. The second defendant, prosecuted for money laundering, benefited from a simple suspension of sentencing for two years.

<sup>477</sup> The court ordered that the sum of EUR 14,600 deposited with the Deposit and Consignment Office be released in favour of the plaintiff, and ordered the defendant to pay the difference between the amount released and the total amount due to him as pecuniary damages plus compensatory interest.

## 2.4. Forced criminality: application of the non-punishment provision

Acquittal of a Vietnamese national recognised as a victim of human trafficking for drug offences on a cannabis farm

In a **judgment of 22 June 2023, Hasselt Criminal Court**<sup>478</sup> convicted a gang of drug traffickers made up of several defendants of Dutch, Turkish and Vietnamese nationality, for growing and selling cannabis.

One of the defendants, a Vietnamese national convicted in absentia, was recognised as a victim of human trafficking<sup>479</sup>. He was receiving support from a specialised centre.

The victim seemed unaware of the charges against him and lodged an opposition to the judgment. In a **judgment of 5 October 2023 handed down on opposition**<sup>480</sup>, the victim was acquitted of the drug-related charges due to his status as a victim. The public prosecutor had also requested his acquittal.

The judge based his decision in part on the victim's statements and on the circumstances in which he had been found by the police during a search. He considered that the ground for acquittal for victims of human trafficking, provided for in Article 433quinquies, §5 of the Criminal Code, had been met.

## 3. Human smuggling

The following points present a case involving defendants of various nationalities, and two cases involving a network of Iraqi and Surinamese smugglers respectively.

The first case concerns international smuggling using rented commercial vehicles, cars and vans, as part of a criminal organisation involving some 30 defendants.

Myria also discusses an appeal decision relating to a case whose decision at first instance had already been discussed in its previous annual report. This case concerns a travel agency that smuggled Surinamese nationals into Belgium. Finally, the third case concerns the transport of nautical equipment by an Iraqi network from Germany with a view to illegally crossing the English Channel.

### 3.1. Smuggling using vehicles within the framework of a criminal organisation involving some 30 defendants

**Liège Criminal Court** handed down a **judgment on 13 December 2023**<sup>481</sup> convicting numerous defendants in connection with a criminal organisation involved in large-scale international human smuggling using rented commercial vehicles, cars and vans. The case concerns smuggling from Turkey to Italy or Austria, via the Balkan route or via border crossings between countries such as Slovenia, Croatia, Hungary or Bosnia and Herzegovina. In reality, the criminal organisation autonomously supervised a limited part of the people's journey and was included in a larger structure, managed in Turkey, which organised the journey from the country of origin to other European countries. Some 30 defendants, the majority of whom were Belgian nationals, were prosecuted. Ten of them were from the Liège region. The other defendants were French, Congolese, Armenian, Iranian, Bulgarian and Turkish. Thirteen defendants failed to appear at the trial.

Several hundred Afghan, Iranian, Iraqi, Syrian, Turkish, Bangladeshi, Pakistani, Indian and Egyptian victims, including minors, were involved. All of them were staying illegally. The convoys could involve several dozen people at a time. They were packed in, without seats or seat belts and without ventilation.

478 Limburg Crim. Court, Hasselt division, 22 June 2023, ch. 16D (opposition).

479 Based on the information provided by the reception centre, Myria understands that the human trafficking case was subsequently closed with no further action taken.

480 Limburg Crim. Court, Hasselt division, 5 October 2023, ch. 16D.

481 Liège Crim. Court, 13 December 2023, ch.19bis (appeal).

The head of the organisation stated that the people transported had to pay EUR 2,000 to 5,000 for the journey between Croatia and Italy, and much more for their entire journey from their country of origin.

The investigation began in October 2020 after the arrest, in Croatia and Slovenia, of several people living in the Liège region who were intercepted in vehicles, particularly those registered in Belgium, transporting would-be migrants. The case was the subject of a European Investigation Order. In addition to becoming acquainted with the investigations conducted by the foreign authorities, phone investigations, bank analyses, witness hearings, searches and identification of defendants through photo line-ups were carried out. Information was also provided by Europol concerning checks on several defendants at the Croatian border.

The criminal organisation was made up of a Turkish leader and about 10 members (including the leader's partner and father). Some of the defendants were also members of the same family or former colleagues.

The criminal organisation had a standard modus operandi. The broader structure, of which the organisation was a part, included people near refugee camps who were responsible for taking would-be migrants to loading points and collecting the fare. The would-be migrants were represented, from a distance, by a 'sahibi' (owner) who sometimes lodged them in buildings while waiting for them to be loaded. Their number and location were communicated to the head of the organisation, who then informed his drivers. From Belgium, the organisation defined the routes, organised the journeys and rentals, recruited drivers, geolocated and guided them, provided for their needs and made sure they were paid. The members used nicknames and different phones and SIM cards to conceal their identity. Several defendants were able to pay off debts with the money from the smuggling. The court estimated that the leader made a net profit of EUR 1,654,664.31 from the smuggling.

Some drivers transported the would-be migrants, while others drove the cars that led or followed<sup>482</sup>.

They were recruited in the street or through word of mouth. These were inexperienced people in a precarious situation due to their state of health or financial situation<sup>483</sup>. The recruiters, particularly one defendant, made death threats and intimidated them. Once recruited and after handing over a sum of money<sup>484</sup>, they were taken to a Belgian, German or Dutch rental agency in order to make the rental payment themselves. They were also provided with a phone and a SIM card, so that they could be geolocated and guided step by step via WhatsApp<sup>485</sup>. They were instructed to drive at high speed, without stopping before the final destination, and to film the persons transported when they were unloaded. Some drivers were under the influence of drugs. One of the convoys led to the death of a passenger following a serious accident caused by a driver who had consumed cocaine and cannabis, and was trying to escape a police check. Fifteen or so people were seriously injured. Several drivers were arrested, imprisoned or convicted by foreign courts (in Croatia, Slovenia, Austria, Hungary, etc.). The drivers were paid via money transfer organisations such as Western Union, BPN, Gonderal, Ria or via the 'Hawala'<sup>486</sup> and 'Mektep' systems<sup>487</sup>.

Three defendants were repeat offenders<sup>488</sup>. The prosecutions relating to some of the defendants were separated due to a contradictory forensic psychiatric assessment or in order to clarify questions in the context of judgments or proceedings initiated abroad (in Slovenia and/or Croatia). Although three defendants were fully acquitted due to the non bis in idem principle, all were found guilty of human smuggling. Some of them had admitted to the acts. Several defendants were partially acquitted for certain convoys of victims. The court found aggravating circumstances in the case of several of them, namely minors, abuse of a vulnerable situation, tactics and threats, endangerment and serious negligence of the victims, habitual activity and unintentionally causing death.

482 To report the possible presence of police checks.

483 They were drug addicts, people who were homeless, marginalised, in need or even in debt.

484 This sum of money was used to pay for the rental of the vehicles and to cover their travel expenses (petrol, food, pre-booked hotels, etc.). According to the head of the organisation, the drivers received between EUR 5,000 and EUR 10,000, while those who drove the cars that led or followed received less.

485 The drivers were not informed in advance of the destination or the itinerary, nor of the number, identity or origin of the persons being transported.

486 A 'Hawala' type system can be considered a parallel banking system for transferring money from one country to another without leaving any trace of the transaction. The system is completely anonymous.

487 'Mektep' is a Turkish term that can be translated as 'office'. It refers to a system for circulating money from smuggling. The offices receive the identity details of the would-be migrants and their payment of the sum requested for the journey. This sum is kept and released by the offices once the journey has been completed. The leader then receives the money in cash. The 'Mektep' can be located in various types of buildings abroad such as travel agencies, foreign exchange offices, jewellery shops, night shops, car washes, etc. In this case, the offices were located in Belgium, Turkey, Iran, Iraq, Egypt, Afghanistan and Syria.

488 One for robbery with violence and weapons and for aggravated robbery and criminal association; another for aggravated robbery; the last for drug offences.

Several of the defendants were charged with organised crime. Two defendants were also convicted of attempted extortion and another defendant of robbery with violence.

The defendants were sentenced to between 18 months and 10 years in prison, fines ranging from EUR 8,000 to EUR 4,552,000, both with and without (partial or total) suspension, and a five-year ban on professional activity. The court suspended the sentencing of three defendants. A confiscation of EUR 500,000 was ordered against the manager. The defendants were ordered to jointly and severally pay a definitive sum of EUR 1 to Myria, the plaintiff.

## 3.2. Smuggling of Surinamese migrants by a travel agency using various types of residence options

On **16 March 2023, Antwerp Court of Appeal** ruled on a case of smuggling of Surinamese nationals that had previously been tried by the criminal court in June 2022 and discussed in a previous annual report<sup>489</sup>.

Nine defendants of Surinamese or Dutch nationality were prosecuted in this case. One of the defendants was a company, a travel agency. All were prosecuted for aggravated human smuggling and trafficking of human beings for the purposes of labour exploitation. They were also prosecuted, among other things, for belonging to or leading a criminal organisation, rape, fraud and threats.

The case concerns a travel agency with subsidiaries in Belgium, the Netherlands and Surinam, which served as a hub for the smuggling of migrants, both children and adults, mostly of Surinamese origin.

Following a number of reports from the Immigration Office and findings by the local police, the case was opened by the federal judicial police (FJP) in Antwerp.

Every time it smuggled people into Belgium, the organisation tried to get them registered there. Depending on the situation and/or the preference of the victim, different options could be chosen (for example an asylum application, family reunification or economic migration). People who were smuggled would pay between EUR 10,000 and EUR 20,000 for this. The organisation also offered an 'all-in' package with support throughout the travel and accommodation process.

The members of the criminal organisation all had different tasks and roles, ranging from direct contact and discussions with the victims to the collection of funds and their deposit in the travel agency's account, including the search for, visit to and rental of suitable premises, the creation of files, including communications and photographs, the preparation of interviews at the Immigration Office and transport to Brussels, the drafting and signing of false employment contracts to establish solvency, or even the provision of vehicles.

The court ruled that it was proven that all the defendants had knowingly participated in and/or contributed to the smuggling activities and that these were not sporadic contacts or chance collaborations. The actions they had taken to support the victims were not motivated by humanitarian considerations, since large sums of money had to be paid. Finally, the court emphasised that, even if some defendants had not benefited from financial benefits, the leaders of the network had in any case earned money thanks to the participation of the co-defendants in the smuggling activities.

The defendants were found guilty of human smuggling. The main defendant was also found guilty of human trafficking for the purposes of labour exploitation of a victim. The court ruled that the conditions of employment were indicative of labour exploitation. She was working illegally, residing in the country without authorisation, had no social protection and did not receive a regular salary in proportion to the services provided, but only minimal and variable compensation.

<sup>489</sup> Antwerp, 16 March 2023, ch. C6. See Antwerp Crim. Court, Antwerp division, 28 June 2022, ch. AC10: Myria, [Annual report 2023 – Trafficking and smuggling of human beings. A chain of responsibilities](#), p. 141 and [Myria's website \(case law\)](#).

The consent of the person involved in the exploitation was irrelevant in this respect. The rape of the victim was also considered proven by the court. Another defendant was also convicted of raping another victim of human smuggling.

The three main defendants were sentenced to prison terms ranging from four to eight years and fines of EUR 448,000, some of which were suspended. The other defendants were sentenced to prison terms ranging from two to four years and fines ranging from EUR 440,000 to EUR 448,000, some of which were suspended. The company was fined EUR 1,920,000. The court ordered the dissolution of the company, which had been deliberately set up to carry out criminal activities. The company had gone bankrupt in the meantime. A confiscation of the financial benefit was ordered up to the amount of EUR 115,000.

The public prosecutor and five defendants appealed the decision.

The court of appeal partially upheld the judgment of the criminal court. It acquitted the defendants of some acts of human smuggling due to insufficient available information. In addition, it limited the periods of incrimination of several other charges including human smuggling. Based on this assessment, the court reduced the prison sentences of some defendants by one year and reduced the fines imposed on all defendants who had appealed, with a partial suspension for some of them.

### 3.3. Transport of nautical equipment from Germany

On **18 October 2023**, 21 defendants were tried by **Bruges Criminal Court** for human smuggling with aggravating circumstances and criminal organisation, one of them in absentia<sup>490</sup>. The defendants, mainly of Iraqi nationality and residing in Germany, were prosecuted for their involvement in the transport of inflatable dinghies and other nautical equipment from Germany with the aim of reaching the United Kingdom illegally. Myria filed a civil suit.

The case is linked to an older case concerning the transport of nautical equipment from Germany, in which three people were already convicted of human smuggling<sup>491</sup>. The defendants' responsibility in this new case was gradually revealed thanks to an in-depth phone investigation and the accidental delivery of nautical equipment to the wrong address in the German city of Osnabrück. The German police then managed to get their hands on nautical equipment storage sites and arrest several defendants. The smugglers' network was then mapped out in more detail thanks to statements, observations, searches, phone tapping, interceptions, analysis of images from ANPR cameras and mobile phone records. WhatsApp conversations found on some of these phones revealed, among other things, that one of the defendants did not hesitate to resort to violence.

The activities of the international network of smugglers extend from Turkey to France, via Germany and Belgium. The defendants were responsible for various tasks, including the purchase of nautical equipment, the rental or letting of warehouses, the loading and unloading of equipment, the preparation and execution of transportation, the organisation of crossings of the English Channel and the settlement of payments.

The court confirmed the classification of the acts as human smuggling with aggravating circumstances. The lack of personal financial benefit cited by some of the defendants was rejected as irrelevant. On the other hand, the court emphasised the aggravating circumstances that accompanied the acts of smuggling. These include the scale of the organisation and the fact that the profit motive takes precedence over the age or condition of the person being smuggled. The court also emphasised that the people who participated in the smuggling of the equipment must have been aware that they were endangering the lives of the migrants, given the modus operandi of using inflatable dinghies and the appalling quality of the boats, engines and life jackets found. It was common knowledge that people had lost their lives in these circumstances and drowned in the North Sea. The court considered that the smuggling of nautical equipment had been committed with the sole aim of making a lot of money at the expense of very vulnerable people.

<sup>490</sup> West Flanders Crim. Court, Bruges division, 18 October 2023, ch. B.17 (appeal).

<sup>491</sup> West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B.17 (appeal); see Myria, *Annual report 2023 – Trafficking and smuggling of human beings. A chain of responsibilities*, p. 135 and [Myria's website \(case law\)](#).

One of the defendants was acquitted due to lack of evidence against him. Another defendant had already been convicted in France for similar offences, but could not benefit from the application of the non bis in idem principle, as he had remained active within the smugglers' network both before and after the offences for which he had already been convicted in France.

All the defendants – with the exception of one person – were sentenced to prison terms ranging from 30 months to 11 years and fines ranging from EUR 8,000 to EUR 80,000 ('décimes additionnels' included), sometimes with a (partial) suspended sentence. With regard to six defendants, the court ordered the special confiscation of the financial benefits derived directly from the offence, including an amount of GBP 157,000.

Myria obtained EUR 5,000 in compensation.

## 4. Recognition of refugee status for victims of human trafficking

The **Council for Alien Law Litigation (CALL)** recognised a woman of Ivorian nationality, of Bono ethnic origin, as a refugee in a **ruling of 15 June 2023**<sup>492</sup>. The woman had stated that she had been recruited by a network of smugglers in Ivory Coast to work in Europe. Once she arrived in Belgium, she was required to reimburse the travel expenses advanced by the smugglers. She was in fact the victim of human trafficking for the purposes of sexual exploitation. She had stated that she had run away when she was sent to work on the street for the first time. She suffered from serious psychological problems due to the traumatic experiences.

Her asylum application was initially rejected by the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), on the grounds that her account was implausible and that she did not have a well-founded fear of persecution or a real risk of serious harm if she returned to her country of origin. Following her appeal against this refusal, CALL recognised her as a refugee because she belonged to the social group of women. CALL considered that the persecution experienced in her country of origin, i.e. various gender-based acts of violence<sup>493</sup>, directly extended to the acts of human trafficking of which she was a victim in Europe. CALL based its decision on the fact that the trafficking originated in Ivory Coast and was gender-based, like other forms of violence suffered in the country of origin. It therefore constitutes serious evidence of the risk of further gender-based persecution if the victim returns to the country.

In another **decision, handed down on 8 September 2023**<sup>494</sup>, CALL recognised a young woman of Guinean nationality, of Sousou ethnic origin, as a refugee. Two applications for international protection had been refused by the CGRS. After the public prosecutor's office decided not to follow up on a complaint of human trafficking<sup>495</sup>, the person had submitted a third application for international protection. The person had been the subject of a specific follow-up in Belgium within the framework of the legislation on human trafficking. Several medical documents explain that the sexual, psychological and physical violence experienced by the person in Belgium had rekindled the symptoms related to the serious sexual violence she had experienced at the age of nine at the hands of her cousin in Guinea. She expressed fears of persecution from this cousin's family as well as from the Guineans with whom she had lived in reception centres in Belgium. CALL considered that the person's explanations regarding her experience as a victim of human trafficking were plausible and recognised her as a refugee because she belonged to the social group of women.

Finally, in **two decisions**, CALL excluded perpetrators involved in human trafficking or smuggling from refugee status and subsidiary protection<sup>496</sup>.

492 CALL, 15 June 2023, [decision no. 290 331](#).

493 The victim stated, in particular, that she had been treated as an illegitimate child; that she had been entrusted to the husband of her cousin following the death of her father; that he had sexually abused and exploited her in the home; that she had become pregnant as a teenager and had been rejected by her family because she had been born out of wedlock; that she had lost her child to illness; refusing to enter into a forced marriage with another man proposed by her uncle and, following her refusal, being subjected to violence that caused her to partially lose her sight; having also been harassed by a former partner.

494 CALL, 8 September 2023, [decision no. 293 981](#).

495 Given the difficulty of identifying the perpetrators in view of the length of time that has elapsed since the acts.

496 One decision concerned a person of Afghan nationality following a conviction in Hungary for acts of human smuggling (CALL, 14 April 2023, [decision no. 287 566](#)). In another decision, a Nigerian national was convicted in the Netherlands of human trafficking for the purposes of sexual exploitation (CALL, 20 March 2023, [decision no. 286 311](#)).