

## Part 3

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



# Chapter 1

## Recent developments in the legal and political framework

The recent European and Belgian developments are summarised hereafter.

### 1. Developments in the European legal and political framework

#### 1.1. | Trafficking and smuggling of human beings: Global Compact for Migration

In December 2018, the UN Global Compact for Migration<sup>285</sup>, better known as the Marrakech Migration Pact, was adopted. Along with 152 other countries, Belgium finally signed the much debated United Nations Global Compact for Safe, Orderly and Regular Migration. This non-legally binding instrument is the first international framework for cooperation on migration. It sets out 23 objectives. Two of them relate more specifically to the smuggling of migrants and trafficking in human beings. On the one hand, the signatory states undertake to strengthen transnational action against migrant smuggling through a series of measures.

On the other hand, the aim is also to prevent, combat and eliminate trafficking in persons in the context of international migration. Key measures include strengthening existing capacities and international cooperation, improving the identification of migrants who have become victims of trafficking, and the protection and assistance offered to them.

<sup>285</sup> <https://undocs.org/en/A/CONF.231/3>.

#### 1.2. | Trafficking in human beings

##### Joint statement of commitment to combat trafficking in human beings

On 13 June 2018, 10 EU agencies, including EASO, Europol, Eurojust, Frontex and the FRA signed a joint declaration of commitment to work together to combat trafficking in human beings.<sup>286</sup> This is one of the main action points of the Commission's 2017 communication on the follow-up of the EU Strategy on combating trafficking in human beings.<sup>287</sup> This joint statement stresses an inter-institutional and multi-agency approach, combating the culture of impunity and improving attention to prevention.

##### Second Commission report on the progress made by the Member States in the fight against trafficking in human beings

On 3 December 2018, the European Commission published its second report on the progress made by the Member States in the fight against trafficking in human beings.<sup>288</sup> This report must be compiled every two years under Article 20 of the EU directive on trafficking in human beings.<sup>289</sup>

<sup>286</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu\\_agencies\\_joint\\_statement\\_of\\_commitment\\_to\\_working\\_together\\_to\\_address\\_thb.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_agencies_joint_statement_of_commitment_to_working_together_to_address_thb.pdf).

<sup>287</sup> Communication from the Commission to the European Parliament and Council Reporting on the follow-up to the EU Strategy towards the eradication of trafficking in human beings and identifying further concrete actions, 4 December 2017, COM(2017) 728 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0728&qid=1590596446481&from=EN>.

<sup>288</sup> Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2018), 3 December 2018, COM(2018) 777 final: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204\\_com-2018-777-report\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_com-2018-777-report_en.pdf)

<sup>289</sup> European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, O.G., L101 of 15 April 2011.

The report<sup>290</sup> presents the trends in this fight, the actions undertaken within the framework of the EU strategy to combat this phenomenon and the progress made in the implementation of the 2017 Communication. Statistical data provided by Member States<sup>291</sup> and an update on the implementation of Directive 2004/81/EU on residence permits for victims<sup>292</sup> are also included.

Sexual exploitation remains the most widespread form of human trafficking: 56% of victims. Internal trafficking, within the territory of a Member State, is on the increase, while the age of the victims is on the decrease. Furthermore, the migration crisis has increased the risks of human trafficking.

In an effort to combat impunity and for the purposes of prevention, the Commission is calling upon Member States to criminalise those who knowingly make use of the services provided by a trafficked person. At the same time, it is encouraging the development of cross-border cooperation and joint investigations, as well as awareness-raising and training efforts.

The Commission also stresses that the chance for victims to effectively exercise their rights should be further improved, in particular by rapidly identifying victims through referral mechanisms including asylum systems, ensuring a multidisciplinary approach and ensuring effective access of victims to compensation opportunities.

## Other reports

In 2018, again in line with the 2017 Communication and European Anti-Trafficking Day on 18 October, the Commission published a report on gender-specific measures in anti-trafficking actions, in collaboration with the European Institute for Gender Equality (EIGE).<sup>293</sup> A gender-based approach is applied as an analytical tool to examine the provisions and obligations of the anti-trafficking directive (Directive 2011/36/EU) and the directive on victims' rights.<sup>294</sup> The analysis aims to identify strengths and opportunities to improve protection and respond to the needs of victims of sexual exploitation. The report provides guidelines for Member States on gender-related measures with a view to better identifying, helping and assisting victims of human trafficking.

Finally, we should also mention another report published on 11 March 2019, compiled by Ms. Joëlle Milquet, Special Adviser to the President of the European Commission. It relates to the compensation of victims of crime and especially victims of trafficking.<sup>295</sup> It shows how victims often experience difficulties in accessing justice and in obtaining compensation, owing to a lack of information, sufficient help or procedural obstacles.<sup>296</sup>

290 The report is accompanied by a staff working document: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204\\_swd-2018-473-commission-staff-working-document\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_swd-2018-473-commission-staff-working-document_en.pdf).

291 The data relates to 2015 and 2016: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204\\_data-collection-study.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181204_data-collection-study.pdf). Quantitatively, some of the Belgian data is much lower than that of other states (mainly concerning identified victims). As the Commission stresses, not every Member State records this data in the same way, which strongly limits their comparability.

292 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities, O.G., L261 of 6 August 2004.

293 <https://eige.europa.eu/publications/gender-specific-measures-anti-trafficking-actions-report>.

294 European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JAI, O.G., L315, of 14 November 2012.

295 [https://ec.europa.eu/info/sites/info/files/strengthening\\_victims\\_rights\\_-\\_from\\_compensation\\_to\\_reparation\\_rev.pdf](https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf).

296 For a detailed analysis of access to compensation for victims of trafficking and the main features of this report, see the focus of the present report, Part 2, Chapter 4.

### 1.3. | Other measures

Although not directly related to human trafficking, two recent measures deserve to be mentioned:

#### European Labour Authority

In its previous report<sup>297</sup>, Myria mentioned the Commission's proposal, in March 2018, to set up a European Labour Authority (ELA).<sup>298</sup> In February 2019, the EU managed to reach a provisional agreement on its creation. This initiative reflects the increased attention paid within the EU to improving the rules on social rights. The Authority should be created in 2019 and be fully operational by 2023. Even though it doesn't have a specific competence in terms of human trafficking, the ELA aims to support the Member States in the area of intra-EU labour mobility, for instance, concerning the rules for posting workers and the coordination of social security systems. Another objective is to improve cooperation between Member States in the fight against undeclared work.

#### Revision of the directive on posting workers

In May 2018, the European Parliament approved the revision of the current directive on posting workers. The European Employment and Social Affairs Ministers gave their green light on 21 June 2018. The revised directive<sup>299</sup> came into force on 29 July 2018. Member States have two years - until 30 July 2020 - to transpose the new rules into their national legislation. The major change is that posted workers are not only subject to the minimum salary of the host Member State, but also to all the others rules concerning pay. If the workers are posted to another EU Member State for more than 12 months, this country's labour law rules also apply. The fact that many cases of human trafficking concern fraudulently posted workers, it is hoped that these new rules will help to put an end to it.

297 MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 85.

298 European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority*, Strasbourg, 13 March 2018, COM 2018 (131) final: <https://eur-lex.europa.eu/legal-content/ENG/TXT/PDF/?uri=CELEX%3A52018PC0131&from=EN>.

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

## 2. Developments in the Belgian legal and political framework

### 2.1. | Trafficking in human beings

#### 2.1.1. | Addendum to the action plan on trafficking in human beings concerning minors

In August 2018, the Interdepartmental Unit for the Fight against Trafficking and Smuggling in Human Beings adopted an addendum<sup>300</sup> to the National Action Plan on Trafficking in Human Beings 2015-2019. Actions were indeed undertaken within the framework of the national action plan with the French Community and the German-speaking community, and with the Flemish Community. However, different issues emerged during the work.

Hence, in Flanders, the work focused on the 'loverboy/teenage pimp' problem and, more specifically, Flemish victims. Upon the request of the Flemish minister for Welfare, Public Health and Family, Child Focus conducted an exploratory study in 2015 on the problem of loverboys/teenage pimps in Flanders.<sup>301</sup> The study specifically focused on an action plan for victims. Based on the report's recommendations, an action plan for a better protection of victims of teenage pimps was drafted.<sup>302</sup> A steering group was created to coordinate and ensure the follow-up of their implementation. As well as drawing up a new Flemish action plan<sup>303</sup>, adaptations also had to be made at federal level. It was thus decided to include them in this addendum to the National Action Plan on Trafficking in Human Beings 2015-2019.

300 [www.dsb-spc.be/doc/pdf/Addendum-plan-action-teh-FR.pdf](http://www.dsb-spc.be/doc/pdf/Addendum-plan-action-teh-FR.pdf).

301 <https://www.childfocus.be/fr/exploitation-sexuelle/victimes-de-proxenetes-dados>.

302 <https://jongerenwelzijn.be/professionelen/assets/docs/jeugdhulpaanbieders/mensenhandel/actieplan-tienerpooiers-2016.pdf>. This action plan includes actions in four areas: advanced prevention, adapted reception of victims, prosecution of perpetrators and cooperation between the welfare, justice and police sectors.

303 <https://jongerenwelzijn.be/professionelen/jeugdhulpaanbieders/mensenhandel-tienerpooiers>.

In the French Community and within the framework of the 2015-2019 Action Plan, an initial training course for staff in the youth care sector was organised in April 2017. The decision was taken to pursue this type of initiative and to form a workgroup responsible for its implementation.

Discussions within the two workgroups showed that there were gaps and/or different working methods in the flow of information between players such as youth care service providers, the judiciary, and the police, etc.

This is why it was considered necessary to draft an addendum to the action plan, specifically devoted to minors. This addendum makes several proposals for actions to improve the detection, identification, referral and protection of all child victims of trafficking. It focuses on initiatives that fall within federal jurisdictions or on issues involving collaboration between federal/federated entities.

Action points include establishing an information flow where the role of each competent player must be defined, organising interdisciplinary training, as well as examining the adaptation of the status of victim of human trafficking to the specific situation of minors.

### 2.1.2. | The principle of non-punishment of trafficking victims enshrined in law

On 25 April 2019, Parliament adopted a bill in plenary session on trafficking in human organs and on the principle of the non-punishment of victims of human trafficking.<sup>304</sup> Through amendments to an initial bill on organ trade<sup>305</sup>, the federal government wished to have new provisions adopted by Parliament.<sup>306</sup> This is a draft prepared by a workgroup of FPS Justice and Public Health, responsible for preparing the compliance of Belgian law with the Council of Europe Convention against Trafficking in Human Organs of 25 March 2015. The law was published on 21 June 2019 and came into force on 1 July 2019.<sup>307</sup> There are two parts to the law. The first one falls within the framework laid out by the Council of Europe Convention against Trafficking in Human Organs.

304 Bill of 9 April 2019 on trafficking in human organs and on the principle of non-punishment of victims of trafficking in human beings, Parl. doc., Chamber, session, 2018-2019, Doc 54 - 3537/005.

305 Bill of 7 February 2019 criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, Session 2018-2019, Doc 54 -3537/001.

306 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002.

307 Act of 22 April 2019 on trafficking in human organs and on the principle of non-punishment of victims of trafficking in human beings, O.G., 21 June 2019.

It is the first legally binding international instrument that condemns organ trafficking, and is complementary to the international instruments used to combat human trafficking.

The adopted text thus introduces a new chapter in the Criminal Code, relating to trafficking in organs, which includes a (long) article 433 novies. Even though the Belgian legislative arsenal already includes a series of applicable offences that are useful in combating this form of crime (especially trafficking in human beings for the purpose of organ harvesting<sup>308</sup>), the legislator wished to add new offences to the Criminal Code combined with severe penalties. The aim is to combat all the acts that comprise the criminal chain of organ trafficking (e.g. brokering, organ removal and use for purposes other than research or transplantation, transport, storage).

The second part enshrines in the Criminal Code the principle of non-punishment of victims of trafficking for offences committed as a direct result of their exploitation. And this, regardless of the type of exploitation suffered (sexual or criminal exploitation, removal of organs, exploitation of begging, labour exploitation, etc.). This principle of non-punishment is enshrined in the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005<sup>309</sup> and in the European anti-trafficking directive 2011/36/EU.<sup>310</sup>

Two amendments have therefore been made to Article 433 quinquies of the Criminal Code on trafficking in human beings.<sup>311</sup> The first one amends the description of the purpose of exploitation for the purpose of organ trafficking (Article 433 quinquies, 4<sup>o</sup>)<sup>312</sup>, by reference to exploitation through the removal of organs and no longer by reference to specific laws.<sup>313</sup>

308 Article 433quinquies, § 1, para. 1, 4<sup>o</sup>, of the Criminal Code.

309 Article 26 of the Convention stipulates that "each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so".

310 Article 8 of Directive 2011/36/EU states that "the Member States shall, in accordance with the basic principles of their legal system, take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to one of the acts referred to in Article 2".

311 Art. 2 of the bill of 9 April 2019 on trafficking in human human organs and on the principle of non-punishment of victims of trafficking in human beings, Parl. doc., Chamber, session, 2018-2019, Doc 54 - 3537/005, p. 3.

312 It is a criminal offence to recruit, transport, transfer, harbour, receive, take or transfer control over a person (...) 4<sup>o</sup>: for the purpose of exploitation through the removal of human organs or biological material.

313 Note: The Law of 13 June 1986 on the removal and transplantation of organs, or human biological material and the Law of 19 December 2008 on the procurement and use of human biological material intended for human medical applications or for the purposes of scientific research.

According to the legislator, "the concept of exploitation will allow the judge to reserve the classification of trafficking for abusive situations where human dignity isn't respected".<sup>314</sup>

The second amendment completes Article 433 quinquies with a paragraph 5 applicable to all forms of exploitation constituting human trafficking to expressly include the principle of non-punishment, in the form of absolute causes of excuse. According to this principle, the responsibility of the perpetrator is established but no penalty can be imposed on them.<sup>315</sup>

The new paragraph thus states that "a victim of trafficking in human beings who takes part in offences as a direct consequence of their exploitation shall not be punished for those offences".

It should be noted that, contrary to the Convention and the European Directive, it doesn't refer to the notion of coercion, which is understandable, particularly because the offence itself doesn't refer to the notion of coercion.<sup>316</sup>

The purpose of such a clause is threefold: to safeguard the human rights of victims deprived of their free will, to prevent re-victimisation and to establish a relationship of trust so that they agree to collaborate in the criminal investigation against the perpetrators.<sup>317</sup>

Indeed, committing offences may be a way for traffickers to maintain control over the victim. By adopting a specific provision in its legal arsenal, Belgium is thus following the example of other countries.<sup>318</sup>

As pointed out by the legislator, the cause of excuse applies to criminal or administrative offences provided for in the Criminal Code (use of forged documents, theft, etc.), in the Social Criminal Code (especially undeclared work referred to in Article 183/1) and in special laws (such as the Law on Narcotic Drugs).

Myria is delighted that this principle has been enshrined in law. It hopes that this will strengthen protection for victims. Nevertheless, this provision will hopefully only be applied when the prior safeguards relating to the principle of discretionary prosecution haven't worked.<sup>319</sup> The joint circular of the College of Prosecutors General and the competent ministers on the investigation and prosecution of acts of trafficking (COL 2015)<sup>320</sup> draws the attention of the prosecutors specialising in this area to this particular situation, in the interests of the victims (without, however, clearly referring to the European non-punishment clause). In a previous report, which focused on the non-punishment clause,<sup>321</sup> Myria had recommended that a new criminal policy directive should include an open and non-exhaustive list of offences typically linked to trafficking, in respect of which victims would be protected from prosecution.<sup>322</sup>

In practice, the principle of non-punishment has already been used by the public prosecutor's office and trial judges in several cases, but it is still relatively unknown and seldom applied, to the detriment of the victims concerned.<sup>323</sup>

314 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002, p. 26.

315 It should be noted that the original draft bill provided for grounds of non-liability, along the lines of Article 71 of the Criminal Code on coercion. The Criminal Code Reform Commission amended it, in its draft code, to absolute causes of excuse. In practice, the courts have a strict interpretation of Article 71, and very rarely apply it in favour of trafficking victims. On this subject, see the report of the Committee on Public Health, the Environment and Social Renewal of 9 April 2019 on the bill criminalising trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 - 3537/004, p. 6.

316 Under Belgian law and contrary to international and European instruments the *modus operandi* (including coercion) isn't an essential element of the offence of trafficking for adults, but is an aggravating circumstance. The legislator therefore considered that it wouldn't be coherent to require proof of coercion in order not to punish a victim of trafficking for offences committed in direct connection with the exploitation suffered, when such proof isn't required in order to convict the perpetrator of trafficking. For a detailed explanation, see the justification for the amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, Session 2018-2019, Doc 54 -3537/002, p. 28.

317 *Ibid.*, p. 27.

318 According to information from GRETA (Group of Experts on Action against Trafficking in Human Beings), 14 countries (including Luxembourg, Spain and the United Kingdom) have included the non-punishment clause in their legal arsenal (*Ibid.*, p. 27).

319 Moreover, the legislator considers that, in accordance with this principle, the inclusion of the non-punishment clause in the Criminal Code wasn't strictly necessary to meet European obligations (*Ibid.*, p. 29).

320 COL 01/2015 on the policy of investigation and prosecution regarding trafficking in human beings. This COL is completely confidential. For an outline of this COL, see Myria, *2015 Annual Report Trafficking and smuggling in human beings, Tightening the links*, p. 57.

321 MYRIA (formerly the Centre for Equal Opportunities and Opposition to Racism), *2012 Annual Report Trafficking and smuggling of human beings, Building trust*, Chapter 1.

322 *Ibid.*, p. 104.

323 Amendments of 26 March 2019 to the bill criminalising the trade in organs and transplant tourism, Parl. doc., Chamber, session 2018-2019, Doc 54 -3537/002, p. 29. For concrete examples, see Myria's *2012 annual report*, op. cit., spec. pp. 14-22 (forged documents, forced criminality, etc.).

Explicitly providing for it in the Criminal Code can therefore only strengthen the awareness of players in the field, even if it will ultimately be up to the public prosecutor's office and the trial judge to make a sovereign assessment of the existence of the direct link between exploitation and the commission of offences perpetrated by the victim.

### 2.1.3. | Abolition of work permit C and automatic access to the labour market

As part of the complex and late transposition of the European directive on the single permit<sup>324</sup>, Belgium abolished work permit C, which was available to victims of human trafficking (or aggravated smuggling). Now, as soon as these victims have a temporary residence permit of at least three months (immatriculation certificate<sup>325</sup> or a certificate of registration in the aliens register<sup>326</sup>), they can immediately have access to the labour market, on the basis of this temporary residence.<sup>327</sup> This residence permit also contains information on access to the labour market.<sup>328</sup>

328 The federal government remains responsible for legislation concerning access to the labour market for foreigners who have migrated to Belgium for reasons other than economic migration (i.e. when the initial reason for migration wasn't work-related). However, it is the Regions (Wallonia, Flanders and Brussels-Capital as well as the German-speaking Community) that are responsible for the implementation of legislation in this field. Similarly, following the 6th state reform, it is also the Regions that are responsible for economic migration.

324 European Parliament and Council Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, O.G., L.343/1 of 23 December 2011. For full and detailed information on the transposition of these measures into Belgian law, see MYRIA, Migration in Figures and Rights 2019, pp. 87 and seq.

325 A three-month IC is issued to victims who have broken off contact with their exploiters, accepted support from a specialised reception centre and made statements or filed a complaint against the perpetrators (Art. 61/2, §2, para. 3 and Art. 61/3, §1, para. 1 of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (hereinafter: Aliens Act)).

326 A six-month certificate of registration in the Alien's Register (CRAR) is granted to the victim when the prosecutor in charge of the judicial file has answered favourably to five questions asked by the Aliens Office (is the victim a victim of trafficking or aggravated smuggling? Is the investigation or legal proceedings still ongoing? Does the foreigner show a clear willingness to cooperate? Have they severed all ties with the presumed perpetrators? Are they considered a threat to public order or national security?) See Art. 61/4, §1 of the Aliens Act of 15 December 1980.

327 Art. 18, 2° (RC) and Art. 10, 9° (CRAR) of the Royal Decree of 2 September 2018 implementing the Law of 9 May 2018 on the occupation of foreign nationals in a particular residence situation, O.G., 17 September 2018. The Law and the Royal Decree came into force on 24 December 2018.

## 2.2. | Human smuggling

### 2.2.1. | Updating the action plan on human smuggling

In April 2019, the Interdepartmental Unit for the Fight against Trafficking and Smuggling in Human Beings adopted an update to the 2015-2018 action plan on human smuggling for the year 2019.<sup>329</sup> It must therefore be read in conjunction with this plan. Given the proximity of the federal elections and possible new political orientations thereafter, it didn't seem like the right time for the government to draft a new action plan on this issue.

The main measures in this action plan relate to:

- The identification of smuggling situations via money flows and money laundering: the 2015-2018 action plan provided for the development of information tools for the financial sector, in particular banks. An ad hoc working group was set up, and a leaflet with transaction indicators potentially related to smuggling and trafficking of human beings was compiled and distributed by Febelfin to the banks' compliance departments in August 2018. As a follow-up to this work, there are plans to organise an interactive meeting between police officers, prosecutors and representatives from the banking sector in order to keep the latter abreast of developments in the practices of traffickers and smugglers. In addition, the working group will also consider how to expand the distribution of the leaflet to the money transfer agency sector, which, unlike banks, doesn't have an umbrella organisation.
- The continuation of control and diversification actions: the action plan emphasises a comprehensive approach to controls. However, the actions carried out across the entire territory (MEDUSA) are more focused on transit migration. The action plan quite rightly specifies and insists on the verification of elements of human smuggling during such controls, so that the national referral mechanism can be applied if the presence of victims of aggravated forms of human smuggling is established. The action plan therefore specifies that training and information tools should include this aspect.

329 [www.dsb-spc.be/doc/pdf/ACTIEPLAN\\_MS\\_2019\\_FR.pdf](http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MS_2019_FR.pdf).

It is also a matter of taking into account the criminal investigation and victim protection aspects, within the framework of referral to the Steenokkerzeel administrative detention centre, set up in September 2018. The creation of such a centre is part of the Minister of the Interior and the then State Secretary for Asylum and Migration's joint action plan against illegal transit migration.<sup>330</sup>

The action plan therefore insists on the proper application of the criminal policy directives and the multidisciplinary circular of 23 December 2016<sup>331</sup> and on the existence of these provisions within the framework of organising control operations. The working group on 'transit migration', set up within the COTER (return coordination) platform in June 2015, should include representation of the players in charge of criminal policies and the 'judicial investigation' aspect, in particular the network of expertise on 'trafficking and smuggling of human beings' and the Federal Public Prosecutor's Office.

- The continuation of training efforts: as part of police training, an accreditation package will be submitted to the provincial police academies for new training programmes on smuggling (and trafficking). Similarly, thematic training days for the police following the adoption of the new circular on human smuggling (see below) will be organised.

There are also plans to improve the entry of data on human smuggling convictions, to conduct another awareness-raising campaign for the road haulage sector as part of the information and awareness-raising campaign on human smuggling, and to assess the multidisciplinary circular of 23 December 2016 in 2019-2020. A specific section on human smuggling should also be included.

<sup>330</sup> On 10 September 2018, the (former) Minister of the Interior and the (former) State Secretary for Asylum and Migration presented a 10-point action plan to combat irregular transit migration. In addition to the creation of this coordination centre for the administrative processing of migrants in transit, set up in a wing of the detention centre 127bis in Steenokkerzeel, the other measures include: doubling the capacity of detention centres intended primarily for migrants in transit, increasing controls on transit routes, stepping up cooperation with the United Kingdom, necessary efforts to systematically consult and, if possible, confiscate the mobile phones of transmigrants, improving the security of motorway parking areas. See general policy note on asylum and migration, 26 October 2018, Parl. doc., Chamber, DOC 54 3296/021, pp. 10-11: [www.lachambre.be/FLWB/PDF/54/3296/54K3296021.pdf](http://www.lachambre.be/FLWB/PDF/54/3296/54K3296021.pdf).

<sup>331</sup> Circular of 23 December 2016 relating to the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, O.G., 10 March 2017.

## 2.2.2. | New criminal policy directive (COL 13/2018) on human smuggling and the facilitation of unauthorised entry, transit and residence

On 15 December 2018, the Ministers of Justice and the Interior, the Secretary of State for Asylum and Migration and the College of Public Prosecutors adopted a new criminal policy directive on smuggling in human beings and the facilitation of unauthorised entry, transit and residence (COL 13/2018).<sup>332</sup> This COL replaces both COL 4/2011 containing provisions for combating smuggling in human beings (confidential) and COL 10/2010 relating to Article 77 of the Act of 15 December 1980 on Access to the territory, stay and removal of foreign nationals.

The revision of COL 4/2011 was foreseen in the 2015-2018 action plan on human smuggling. In particular, it established specialised prosecutors in each judicial district and provided for regular coordination meetings at local level. It also contained practical tools for investigators and prosecutors in the form of annexes.

Just like the former COL 4/2011, the new COL 13/2018 is completely confidential. Consequently, Myria can only provide very general information about it. It was given this information by the relevant coordinator of the network of expertise on 'smuggling and trafficking of human beings'.

The development of the phenomenon of human smuggling in the field has indeed justified a revision of Directive 4/2011, taking into account its assessment. The application of the operational guidelines contained in this COL and its annexes had become problematic owing to a number of factors, in particular the *modi operandi* used, the scale of the means employed by the perpetrators, the violence used by the latter, the difficulty in distinguishing between victims and perpetrators, the number of victims concerned and the interaction between criminal organisations at the different stages of smuggling. The proliferation of *modi operandi* aimed at making a foreigner's stay appear legal (forged documents, fake diplomas, fake work certificates, etc.) also justified a revision of the COL.

<sup>332</sup> Joint circular of the Ministers of Justice and the Interior, the Secretary of State for Asylum and Migration and the College of Public Prosecutors of 15 December 2018 on the investigation and prosecution policy in terms of smuggling in human beings and the facilitation of unauthorised entry, transit and residence (COL 13/2018).



In addition, COL 10/2010 has provided public prosecutors with guidelines for the application of Article 77 of the Law of 15 December 1980. It refers to the facilitation of the entry, residence or transit on Belgian territory of unauthorised foreigners. However, this article contains an exoneration from liability clause, which is applicable when the aid is provided for primarily humanitarian reasons. The importance of this provision is highlighted by the situation experienced in the main places where illegal migrants are grouped together, assisted by citizens' platforms.

The College and the competent ministers therefore considered that the coherence of the legislative system established by Articles 77 and 77bis of the Law of 15 December 1980 justified a single COL incorporating the directives applicable to smuggling in human beings and facilitation of entry, residence and transit of foreigners in an illegal situation.

Hence, the aim of the new COL is to provide clear guidelines for the investigation and prosecution of human smuggling, taking into account the evolution of this phenomenon and to provide investigative services with tools to facilitate the identification of perpetrators and victims of the offence of human smuggling.

It also provides the magistrates with guidance to identify the existence of predominantly humanitarian reasons exempting those assisting persons residing illegally in the territory from criminal liability.

# Chapter 2

## Case studies

### 1. Trafficking in human beings

#### 1.1. | Sexual exploitation

##### *Case of loverboy A*

In this case, an underage Belgian girl ran away from an institution for minors. A loverboy forced her to prostitute herself.<sup>333</sup> The acts took place in Antwerp in May 2015. The Criminal Court of Antwerp convicted the defendants in a judgment of 22 December 2015<sup>334</sup> for the gang rape of a minor, human trafficking for the purpose of sexual exploitation and illegal and arbitrary detention. The victim's statements led to the detection of other victims in the hands of other loverboys. These perpetrators were also convicted by the court.<sup>335</sup>

The child victim's ad hoc guardian<sup>336</sup> filed a civil suit. They received compensation of EUR 1,500 for the victim. Myria and Child Focus also filed a civil suit. They each received symbolic compensation of EUR 1 and procedural compensation of EUR 165.

##### 1.1.1. | Network structure

The case involves five defendants: one loverboy, who seduced the victim; a pimp, who received the money; a supervisor who imprisoned the victim and two other defendants convicted by the court for gang rape. Four of the defendants were Kosovan and the fifth Macedonian. They were very young; approximately 18 years old at the time of the acts. Apart from the supervisor and one of the rapists, the other perpetrators had a criminal record, mainly for theft and assault and battery. The pimp was married and his wife was pregnant. Unbeknown to her, he was also the lover of a minor. He took advantage of her religious beliefs and justified his attitude on the basis of his own manipulative interpretation. According to him, Islam authorised him to maintain a relationship with two women. One of the rapists was also a father and was married. The five defendants were youths who had left school and lived on benefits.<sup>337</sup>

333 Myria prefers the term loverboy to teenage pimp, which is too often subject to a variety of interpretations. Loverboys use seduction techniques to attract their victims in order to sexually exploit them in Belgium. Their victims can be minors or adults, and Belgian or foreign. They are no longer exclusively underage girls from Belgian youth institutions.

334 Antwerp Crim. Court, 22 December, 46th ch. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings 2016, Beggars in the hands of traffickers*, p. 154. This decision is also available on Myria's website: [www.myria.be](http://www.myria.be).

335 Antwerp Crim. Court, 15 December 2015, ch AC4. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 88-90. This decision is also available on Myria's website: [www.myria.be](http://www.myria.be).

336 Ad hoc guardian: sometimes, the parent(s) isn't(aren't) able to adequately represent the child's interests. In the event of conflicting interests between the child and their parents, the court may appoint an ad hoc guardian to represent the child in financial proceedings.

337 For further explanations on benefits fraud, see MYRIA, *2011 Annual Report trafficking and smuggling of human beings, The money that matters*, p. 46.

According to their modus operandi, the minor was first shown love and affection. Shortly afterwards, she had to prostitute herself 'in return', under the pretext of building a life together thanks to the money earned, which was almost entirely managed by the pimp. When the victim realised that she had been abused by the defendants in another loverboy case mentioned in the introduction<sup>338</sup>, the loverboy in that case offered to help her, out of love and affection. He then pushed her into prostituting herself again by arguing that she had already done it. In this case, communication was mainly through Facebook and other social media. The victims were offered on a website like goods for sale.

### 1.1.2. | Opening the case

The case started when the victim sent a text message to her mother explaining that she was being held in Antwerp. She described the place in her emergency message. Her mother informed the emergency services who carried out a search, with the agreement of the defendants. They discovered the victim under a bed, in tears and shaking with fear. The police took the persons present to the police station to interview them.

The victim was also able to describe the suspects' vehicles and had several phone numbers. She explained that a neighbour below had been threatened and was forced to keep quiet about her presence. During a short car journey, she was able to point out where the loverboy was registered as living, and she identified him as being one of the suspects.

### 1.1.3. | Investigation

The investigation was based on a phone investigation, a search and interviews. Thanks to the interview with a neighbour, the police were able to identify different defendants associated with the building where the victim had been held. The police also carried out a medical test to establish sexual assault (rape kit). The location of the mobile phone mast and the examination of the victim's mobile phone, as well as the statements made by the defendants and another victim, confirmed her account. The defendants largely admitted their role, with the exception of the pimp who, despite the evidence, denied everything.

<sup>338</sup> For more details on this loverboy case, see: Antwerp Crim. Court, 15 December 2015, ch. AC4. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 88-90: [www.myria.be](http://www.myria.be).

During a confrontation between the pimp, the loverboy and the supervisor, it emerged that the loverboy and the supervisor were in the same cell. According to the pimp, this explained their corresponding accounts. Placing the defendants in the same cell isn't good practice. The victim was able to identify one of the rapists via Facebook, as well as other child victims. She had met her loverboy through Facebook. Contact mainly took place through social media.

The detective chief inspector who found the victim called the victim support service to provide first aid. The police wanted to conduct a video interview, but this wasn't possible owing to the circumstances. Instead, they carried out an ordinary interview. A second interview only took place a month later, in the form of a video interview this time. This was particularly difficult for the victim on an emotional level, because she was right in the middle of processing her experience and had to relive everything. However, a support worker from the youth centre managed to convince her of the importance of her participation. The interview took place without the support worker, who was in an adjacent room. The involvement of the victim support service and the organisation of a video interview are good practices. However, the video interview could only be held much later, which caused the victim to experience negative feelings. This is a bad practice.

The multidisciplinary collaboration between services is another example of good practice in this case. In particular, the police superintendent asked the crisis reception centre for minors ('Opvangcrisiscentrum voor minderjarigen')<sup>339</sup> to organise the victim's reception. They also tried unsuccessfully to contact the minor's youth centre. The local police took care of the minor, who spent the night in a centre. She was then taken back to the youth centre.

### 1.1.4. | Victim

The victim was a 16-year-old Belgian girl who had run away from a centre. She said that she had been made many promises but that none of them had materialised. She was at a centre where victims can stay for a year but she had been there for two years already.

<sup>339</sup> An orientation and observation centre (OOC) approved by the Flemish government. An OOC takes in children and teenagers who can't return home or can't appear directly before the juvenile court judge.

The victim was in a highly vulnerable situation. She was a minor, she had run away and had a difficult family history. The fact that she was a 'runaway' meant that she couldn't ask the police or acquaintances for help. She had nowhere to go and was prepared to do anything to have a place to sleep. The defendants dominated her by intimidating, threatening and locking her up. They used her for the purpose of sexual exploitation. Not only was she confined, but also coerced. The defendants also denied the existence of numerous text messages in which the victim begged her exploiters to put an end to her exploitation owing to the serious pain from which she was suffering and the fear she had of some of her clients.

#### Victim's statement

The victim's statement is telling. The 16-year-old victim had already been through a lot before ending up with the defendant. Her mother was a prostitute and drug addict. Her father regularly beat her but the authorities didn't react despite her many statements. She had been staying in centres since the age of nine.

It was through a friend who was also staying at the centre that she came to Antwerp, to the home of one of this girl's friends. She left the place because they were drug users. The victim then fell into the arms of the exploiters present in this case.

The loverboy attracted her by promising a 'better world'. He asked her to spend the evening with him. When she got into the car, the pimp was there as well. The latter asked her almost immediately to prostitute herself. If she refused, he would drop her off 750 km from here. She had to switch off her mobile phone otherwise they would 'beat her up'. They then entered the destination in the GPS and took her away, before returning via the E19. Completely intimidated, she had to engage in paid sexual relations with three unknown men on the first evening. The pimp threatened her with a hammer that was in the car. She was then exploited and kept in the supervisor's house, where there were also iron bars. She was frightened of being attacked. She had to work every day from 20:00 until after midnight. She also had to buy a new SIM card twice, losing all her contacts and finding herself cut off from the outside world. The iron bars used to threaten her were found during the search.

At night, the victim's pimp and loverboy went out looking for clients. She had to earn EUR 300. All the money went to the defendants. She didn't see a penny of it. The victim also stated that when she had to earn the last EUR 50 for the pimp, she was suffering from severe pain. She asked the last client not to say they hadn't had sexual relations, which he refused to do.

When the pimp found out, he was not pleased and forced her to have sex with him instead. The victim pleaded with him several times but he didn't listen to her. He raped her. After this event, she had earned the EUR 300, enough to be finally freed from her pimp. However, her loverboy wanted her to continue working and refused to free her. She refused and decided to send a message to her mother asking for help.

The victim was terrorised by the pimp and emphasised several times during the video interview that he had to be arrested as soon as possible. Her mother found the pimp's telephone number in the victim's statement and called him, in a rage, to which the pimp replied: "Be careful, or you'll be working with your daughter".

#### Victim status

The victim was sent back to the centre from which she had run away, which is bad practice.<sup>340</sup>

## 1.2. | Labour exploitation

### *Hotel & catering case*

#### 1.2.1. | Introduction

This case concerns acts of human trafficking for the purpose of labour exploitation. The acts took place between May 2010 and November 2011. The defendants were a Pakistani restaurant manager and a private company that owned the restaurant. The case involved a very long procedure: it began in 2011 and the final decision was only pronounced in 2017.<sup>341</sup>

The Criminal Court of Bruges ruled in 2016<sup>342</sup> that the offence of human trafficking was proven. The Tibetan victim worked in disgraceful conditions. The court also considered the acts of human smuggling established.

<sup>340</sup> See Part 2, Chapter 2, point 2.1. (Secondary victimisation).

<sup>341</sup> Ghent Court of Appeal, 11 October 2017.

<sup>342</sup> Bruges Crim. Court, 4 May 2016: see MYRIA, *2017 Annual Report Trafficking and smuggling of human beings, Online*, pp. 117-118.

The court broadly interpreted the concept of human smuggling as an extension of the debt bondage situation: "The court also considered the charge of human smuggling as proven: the illegal stay had indeed been facilitated and a lucrative purpose established, owing to the profits made by the restaurant; the victim didn't receive any pay."

Ghent Court of Appeal pronounced a final judgment on 11 October 2017. However, it acquitted the defendant of the offence of human smuggling. It reduced the period of criminalisation, resulting in a reduction of the compensation owed to the victim.

The victim filed a civil suit. The Court of Appeal awarded them compensation of EUR 16,953.40, EUR 15,703.40 of which for material damage and EUR 1,250 for non-material damage. These amounts were never paid.<sup>343</sup>

### 1.2.2. | Structure

The restaurant manager came from Pakistan. The defendant worked with his wife and son in the restaurant.

### 1.2.3. | Launch of the investigation

On Sunday 6 November 2011, the Social Inspectorate carried out a check in a restaurant in Roeselare, after having noted social legislation infringements in January the same year. The victim (a man) was working when the check took place. He presented his expired work permit to the inspectors. In addition, he wasn't registered as an employee of the company. Since he didn't have any valid identity papers, the Social Inspectorate deprived him of his freedom on an administrative basis, and took him to the police station in Bruges to interview him. It then emerged that this person was a victim of human trafficking for the purpose of labour exploitation. A police report was initially established for human trafficking against the manager (labour exploitation). This is an example of good practice regarding the identification of victims of human trafficking.

In the report, the victim stated - through his interpreter - that he had arrived in Belgium in 2009. Between May 2010 and September 2010, he worked 30 hours a week for the said restaurant owner, for wages of approximately EUR 900 to 1000 per month plus fresh meals. His payslips were attached to the file. At the time, he paid EUR 200 a month for a room above the restaurant, where he slept on a mattress on the floor. After this initial period, he was exempted from paying rent but was no longer paid for his work. He had to supervise the restaurant, open it at midday and close it in the evening. He also served customers. He received no more fresh meals and had to make do with the customers' leftovers. These elements indicate a situation of debt bondage. Hence, he had to reimburse his debt, his stay in the flat and his meals by working for the owner for free. The victim wasn't able to see a doctor when he was ill and had to buy medication himself. The interview revealed that the victim's employer had subjected him to moral, physical and labour exploitation. The latter abused the victim's particularly vulnerable position owing to his illegal stay and administrative precarity.

### 1.2.4. | Criminal investigation

The investigative actions carried out include interviews and searches of the manager's home and his company. The defendant denied everything he was accused of. He considered that he had helped the victim by providing food and shelter. The defendant asked that witnesses who confirmed his version of the facts should be heard. According to them, the victim used an alias and had even lied about his family situation. During the confrontation between the witnesses and the victim, all parties stuck to their statements and contradicted each other.

It emerged from the accountant's interview that the defendant was a 'person of power' in Pakistan, thus making the victim's fear plausible and reinforcing their position of dependence. This information also aroused mistrust among the witnesses and implied a risk of secondary victimisation<sup>344</sup> of the victim in a confrontation with the defendant. This is what this extract from the statement also reveals: "The accountant started to reprimand the police by saying that the defendant only wanted to help the Tibetan and couldn't accept the fact that they had dared to imprison him.

<sup>343</sup> Concerning the compensation of victims, see this report, Part 2, Chapter 4.

<sup>344</sup> See Part 2, Chapter 3, point 3 (right to protection against secondary victimisation).

He continued, explaining that the defendant's brother was a prominent and powerful figure in Pakistan, that he was a brigadier general and particularly angry with the law in Bruges and the police. This brother called the Belgian embassy to account and, allegedly, Belgians were also thrown out because of this. Owing to the investigations carried out by the police and the measures taken by the law, demonstrations might occur (he repeated this three times). Pakistan is a military regime. The brother in question is under the orders of the President. Furthermore, according to the accountant who meets with the brigadier general brother when he comes to Belgium, the latter is accompanied by four bodyguards and state security."

### 1.2.5. | Victim status

The victim declared that he was born in Shigatse, in Tibet. He was single with no children. At about the age of five, he moved to Nepal with his parents. On 10 December 2010, he had to leave Belgium after his asylum application was rejected. He didn't initially feel he was a victim of human trafficking, considering he had somewhere to live, a mattress to sleep on and food to eat. However, he admitted that he was bound to the restaurant and the place where he slept. The victim was afraid of the defendant.

The victim made relevant statements. He was put in contact with PAG-ASA by the police, the specialised reception and support centre in Brussels for victims of human trafficking and smuggling. The police took him from Bruges to PAG-ASA<sup>345</sup>, which was able to win his trust. Here, he was identified as a victim of human trafficking and obtained the status of victim. The successful multidisciplinary collaboration between the different players is good practice. This case is also exemplary in terms of detection. The Social Inspectorate examined the offences from a social fraud point of view and the police focused on processing and referring the victim to a specialised reception centre.

<sup>345</sup> See Part 2, Chapter 2, point 3.2.

## 2. Human smuggling

### *International Ukrainian smuggling gang*

In this case, an international human smuggling network was revealed following a murder case. The network was based in the United Kingdom and Ukraine, and used Belgium as a transit country. The acts took place between 1 January and 29 January 2016. In a decision of 10 December 2017<sup>346</sup>, the Criminal Court of Ghent convicted 15 defendants for smuggling in human beings with aggravating circumstances. Two defendants were also convicted of murder. The murder case was dealt with separately and the judgment was pronounced by the Criminal Court of Ghent on 21 February 2017.

Myria filed a civil suit in the human smuggling case as well as in the murder case. The civil suit in the murder case was declared inadmissible.

### 2.1. | Smugglers' network

Belgium served as a transit country where the network temporarily housed its victims. Based on the accounting found, it emerged that the smuggling network had taken several hundred people to their destination. The organisation systematically smuggled Ukrainian nationals to Great Britain illegally and in return for payment. The victims who wanted to get to Great Britain were recruited in Ukraine. The organisation then made sure that these people obtained a visa (Schengen) allowing them to travel 'legally' to Belgium. In Belgium, these people received authentic Polish identity papers that allowed them, as a European citizen, to cross the French-British border. The organisation charged between EUR 3,000 and 5,000 per person according to the statements. On top of this amount were costs for a passport, a visa, transport from Ukraine to Belgium, meals and accommodation in Belgium. Part of the money was paid in Ukraine and the rest upon arrival in the United Kingdom.

<sup>346</sup> East Flanders Crim. Court, Ghent division, 10 January 2017, ch. G28bis: [www.myria.be](http://www.myria.be).

Every week, one or two vehicles left Ukraine for Belgium, with around 14 people in total. The victims were transported in large vans belonging to a regular delivery service, equipped with one or two rows of seats for the victims.

Once in Belgium, the victims were taken to safe houses where they stayed while awaiting their final transportation to Great Britain. There were large amounts of Polish identity papers available here. The victims received an identity document whose photo most closely resembled the victim concerned. If necessary, the victim's hair was adapted to increase the resemblance. Finally, the organisation checked to see whether the identity papers on the point of being used hadn't been reported as stolen.<sup>347</sup> For the final transportation from Belgium to the United Kingdom, the smugglers used international drivers, mainly Poles. They transported the victim to the other side of the border in return for payment.

As soon as a driver was available, the leaders sent the driver's phone number and the place and time of departure to their safe-house gang members. It was usually a parking area between Antwerp and the ports in the North of France. Once in the United Kingdom, the victims were intercepted by the smugglers who wanted to recuperate the remainder of the payment. They also wanted to recuperate the Polish identity papers given to the victims. The latter then used their Ukrainian identity card to ask for asylum in the United Kingdom.

The smugglers used fraudulent schemes and commercial or other structures to conceal or facilitate their offences. To maximise the chances of their enterprise succeeding, they used alternative communication channels, such as Skype, Viber and others that allowed them to avoid traditional, traceable channels as much as possible. The leader T. appeared to be a respectable citizen with a traditional travel agency in Ukraine. The leader S. was at the head of a company active in property development. The defendant B., a middle manager, was the head of a regular delivery service. They also used authentic Polish papers, regular road haulage companies in the EU, the principle of free movement of persons and goods within the EU and camouflage techniques (adaptation of hair and possibly make-up).

## 2.2. | Hierarchical organisation

The investigation was able to show that the network had a hierarchical structure: senior management, middle management and purely a purely executive one. The leadership role was assumed by two Ukrainian men, the above-mentioned T. and S. They ran the system, collected the revenue, made payments and therefore also generated considerable profits. The two leaders were in contact with their 'subordinates' and gave them instructions. They regularly received or demanded explanations on the state of progress and intervened when necessary.

T., the first leader, operated from Ukraine. He recruited the victims, ensured they had a passport and a visa (Schengen) and put them in contact with the person who would take care of their journey to Belgium. He then checked to see whether the authentic Polish identity papers hadn't been reported as stolen. He received an initial part of the amount the victims had to pay for their transport to the United Kingdom. He was responsible for paying the rent of the safe houses.

S., the second leader, worked in the United Kingdom. In addition to T., he was in contact with the Belgian unit on the one hand, and with a number of international drivers on the other hand. As soon as a driver said he was available, S. sent the essential pieces of information to the Belgian unit. These essential elements chiefly related to the time and the place to which the victim had to be taken to get across the border. In England, S. or one of his local gang members met the victim to recuperate the outstanding amount and the Polish identity papers used. He ensured that the identity papers were sent back to the Belgian unit so they could be used again.

Middle management was composed of members who took care of the victims' accommodation in Belgium. They were in charge of managing the Polish identity papers, the choice of document for the various victims, possible changes in appearance (hair) for a victim to ensure as close a resemblance as possible with the photo on the identity papers used. The victim was then taken to the place where they were handed over to a complicit international driver.

<sup>347</sup> The way in which they operated will be further detailed in point 2.2.

Among the purely executive members were the international drivers who transported the victims over the French-British border. The two leaders also had local members in the country where they were active. In view of the investigation's limits, this case only focused on the leaders and the gang members active in Belgium.

## 2.3. | Opening the case

The investigation into the smugglers' network stemmed from a murder investigation. A Lithuanian lorry driver was found murdered in the cab of his lorry. The acts took place in the night of 6 to 7 May 2015, in the parking area along the E40 in Drogen. The victim was stabbed several times and was strangled. During the investigation, it emerged that the perpetrators were part of an 'organisation' whose main activity was human smuggling. On the night in question, the suspects had to hand over a large sum of money (more than EUR 10,000) to the driver for the leader T. This amount served as compensation for the services rendered to the organisation. He illegally transported Ukrainian victims to the United Kingdom. However, the perpetrators, who were part of middle management, kept the money and killed the driver. They made the organisation believe that they had paid the driver but that he had been murdered and robbed by a rival group. Hence, they attempted not to compromise their activity in the organisation. They then continued with their human smuggling activities. In the end, it was this element that led to their arrest. They continued to use the same mobile phone numbers as those used the night of the murder. This helped determine that the perpetrators had been in contact with the victim and each other. Phone taps were put on these two numbers, according to the identification and location of the users (they were considered as potential suspects in the murder case). A whole range of relevant conversations concerning human smuggling were recorded through the phone taps. On 12 May 2015, a conversation was recorded where the user of one of the crucial numbers appeared to be in a police station. Perpetrator P. had been caught in the act of suspected smuggling with smuggler Po., on the night of 11 to 12 May 2015, in the parking area along the E40 in Drogen. This situation later formed the basis for the present investigation.

P. had been arrested the same day in connection with the murder investigation. A day later, the perpetrator Z., user of another crucial phone number, was also arrested. It emerged that he was living in a safe house where 13 Ukrainian victims were found. One of these people was still in possession of Polish identity papers. In the murder investigation, both P. and Z. admitted to human smuggling.

## 2.4. | Investigation

### 2.4.1. | Investigative actions

The investigation was carried out in detail on the basis of the telephone investigation, phone tapping, findings made during the various searches, examination of laptops, iPads and mobile phones, analyses of conversations on social networks, analyses of data from the tachograph and the truck tracking system, surveillance, images from car park surveillance cameras, bank investigation, statements from the defendants and the victims, etc., as well as the flagrante delicto observed by the police patrol.

Thanks to the phone investigation, the police identified two suspects in connection with the murder case. Z.'s home was searched during his arrest. Thirteen people of Ukrainian nationality were found there, along with Polish identity papers and a diary containing possible transportation accounts. Thanks to the phone investigation and surveillance, various people, potentially involved in illegal transportation, were identified.

On 29 January 2016, searches were carried out in three potential safe houses. During these searches, different suspects and victims were found. Three of them were in possession of the Polish identity papers of another person. More than 300 identity papers (mainly Polish) were also found, as well as a diary containing probable transportation accounts. V.B. was arrested in Poland the same day. Thanks to the data from the phone investigation and phone taps, it emerged that he was a potential haulier from Ukraine. The police found six people in V.B.'s vehicle, who all made a similar statement.<sup>348</sup>

<sup>348</sup> See below point 2.6.2. Victim statements.



The investigation and the statements of the various people concerned revealed a certain I. (in Ukraine) and M. (in the United Kingdom) as the organisers and coordinators of the transportations. M. was arrested by the police in Great Britain. During the search, a large quantity of cash and the accounts for transportations were seized. I. wasn't found.

#### 2.4.2. | Social media

Social media was used by the criminal network, the victims and the investigators. The smugglers planned and organised their smuggling activities through social media, which they used to conduct confidential conversations. They intentionally switched from a mobile phone conversation to Skype when it was a question of customers. In one of the smugglers' smartphones, the police found Skype and Viber messages in which the locations (mainly parking areas) and addresses of safe houses were given. The smugglers' network took care of operations via Skype. The police analysed the Skype messages and noted that they mainly related to two subjects. On the one hand, passing on Polish phone numbers as well as an amount in euros and a time. These were possibly the phone numbers of drivers who took victims across the border between France and Great Britain, the amount to be paid and the time at which the drivers had to be contacted. On the other hand, the messages also related to Polish names, dates of birth and alphanumeric contact details, i.e. data from Polish identity cards whose usefulness had been verified (i.e. that their holders were not on file). An OK was sent or not in response. The modus operandi revealed that the organisation used Polish identity cards bought from their owners.<sup>349</sup> After a time, the owners reported the loss of their identity papers, thus making them unusable by the organisation.

The relationship between the two leaders and a middle manager (K) was proven through Skype; the Skype account of the latter had been used. The relationship between them was confirmed through the iPad, especially owing to the fact that the three men were in the same Skype group, which allowed them to follow the whole communication. This element also placed smuggler K. at a certain level. Through these conversations, it was possible to connect the men to a safe house in Antwerp, and to the Polish identity papers used by the organisation, etc.

349 MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 40-41.

The internet analysis revealed that the two defendants were talking about a 'hen coop' in a conversation. This referred to the small sleeping space located above the lorry driver's cab. It was used to conceal people who didn't have any identity papers. The word 'hen coop' says it all about the conditions in which the victims were transported.

## 2.5. | Financial analysis

The aim of the organisation was to earn money. The victims had to pay approximately EUR 3,000 to 5,000, to which was added the cost of transport, accommodation and food to reach the United Kingdom illegally. The average monthly salary in Ukraine is EUR 150 to 200.

### 2.5.1. | Quality of the financial investigation

In this case, the federal public prosecutor's office requested and executed the seizures in the United Kingdom. More than GBP 150,000 were seized from the leader S. A safe was found in his home. Belgian police officers were given the authorisation to assist the National Crime Agency in the assessment and analysis of the seized objects. The aim was to select the elements that were important for the Belgian investigation in order to include them as quickly as possible in the ongoing proceedings in Belgium.

In this investigation, the federal public prosecutor's office had also requested a special operation ('plukonderzoek')<sup>350</sup> to determine the movable and immovable property of leader S. This would allow them to proceed with the immediate removal and seizure of his property, should it emerge that it had been acquired through criminal activities that were the subject of the ongoing money-laundering investigation. The two investigations are examples of best practices. Leader S. owned a house, a vehicle, EUR 64,448 in cash and several personal and business bank accounts. A request was also made to ascertain whether the suspect or his relatives had accumulated criminal assets and, if so, to seize them. As a result of the investigation, several shared accounts were revealed.

350 On this subject, see the focus: Part 2, Chapter 5 (The importance and purpose of a financial investigation); MYRIA, *2011 Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 53-54.

At the trial, the public prosecutor's office requested the confiscation of significant amounts on the basis of the financial investigation. The amounts varied between a minimum of EUR 2,950 and EUR 1,084,000. The court partly complied with the request of the public prosecutor's office but still ordered the confiscation of considerable amounts, ranging from EUR 920 to 632,500. The calculations were based on the victims' and defendants' statements. Several defendants even revealed the amount they earned for certain transportations. The victims' statements served as a basis to calculate the amounts to be confiscated.

### 2.5.2. | International cooperation

The collaboration between the Belgian judiciary, the United Kingdom, Europol Poland and Interpol Kiev was optimal. On the basis of a European arrest warrant, leader S. was located and arrested in Great Britain. A search involving seizures was carried out. International letters rogatory were sent to the United Kingdom (London) in order to conduct a hearing/interview with S., among other things.

## 2.6. | Analysis concerning the victims

### 2.6.1. | Victims

For each defendant, the court assessed the number of people who had definitely been smuggled. When calculating the number of victims, the court took into account the period of offence per defendant, the material findings of the police officers who took the statements, including the accounts found, and the statements of the defendants and victims. The organisation had smuggled several hundred victims using this modus operandi.

### 2.6.2. | Victim statements

The victims essentially came from Ukraine. None of them obtained victim status: on the one hand, because they weren't really interested in this status and, on the other hand, because the interception happened abroad. The majority of victims intercepted denied that they wished to be smuggled to the United Kingdom. A few victims made relevant statements but didn't wish to declare themselves as an injured party. The two victims (men) who were interviewed made similar statements corresponding to the modus operandi explained hereafter.<sup>351</sup> One victim explained that he wanted to go to the United Kingdom to lead a better life with his family. The man worked in Ukraine, in the construction sector, and only earned EUR 50 a month. He had borrowed the money for the journey from his family. He admitted that he feared reprisals and that as a result, he hadn't dared give any names. He had a wife and children in Ukraine and wanted to avoid anything happening to them. Another victim refused to proceed with the payment of EUR 3,000 because he didn't resemble the photo on the identity papers. He then found out that his father had been threatened in his country of origin because he refused to approve the payment.

<sup>351</sup> Point 2.1. trafficking network.

# Chapter 3

## Case law overview 2018 - start 2019

### 1. Trends

What are the main trends in case law in 2018 and at the beginning of 2019 concerning cases of trafficking and smuggling in human beings? In this report, the overview is based on cases in which Myria filed a civil suit, decisions received from the victim reception centres as well as decisions provided by prosecutors. There is also a presentation of a recent judgment by the European Court of Human Rights.

Myria was informed of 48 decisions rendered by the judicial authorities. Hereafter, is a presentation of the most interesting decisions, i.e. 38 decisions relating to 37 cases<sup>352</sup> in the country's various jurisdictions:<sup>353</sup>

- 11 decisions (including four appeal decisions) relating to 10 cases concern **acts of sexual exploitation**. They were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division), Brussels (Dutch-speaking), Ghent (East Flanders (Ghent), and Liège (Liège division). Besides two judgments rendered in Liège, the nine other decisions were rendered in the Dutch-speaking part of the country or by Dutch-speaking courts in Brussels.

In terms of **sexual exploitation**, we noted, as we did in the last two years, a further increase in underage victims, essentially Nigerian girls. The majority of these cases were tried in Antwerp. In several decisions concerning these cases, some of the defendants were former victims. One decision concerns transsexual prostitutes and another, Belgian victims. Finally, the non-punishment clause was applied in a case concerning the exploitation of young Romanian women.

- 18 decisions (including nine appeal decisions) concern **cases of labour exploitation**. The decisions rendered relate to a variety of sectors. They are presented by sector of activity (construction, hotel & catering, night shops, car wash, bakery, butcher's, riding schools, cleaning, domestic work). These decisions were rendered in the jurisdiction of the following courts of appeal: Antwerp (Court of Appeal), Brussels (Brussels French-speaking, Walloon Brabant and Court of Appeal), Ghent (East Flanders (Ghent, Dendermonde)), West Flanders (Kortrijk), and Liège (Liège division and Court of Appeal).

As regards **labour exploitation**, fraudulent structures such as abuse of the posting procedure or bogus self-employed workers are always very much present to mask the exploitation. It appears to be the construction sector that is mainly concerned.

As evidence of work conditions contrary to human dignity that bear the attributes of human trafficking, the judges took into consideration the presence of several of the following elements: work conditions and work environment (excessive working hours, derisory wages, no day of rest), bad housing conditions, wage deductions under various pretexts, dependence on the employer (such as promise of regularisation).

<sup>352</sup> It should be noted that several cases already ruled on at first instance were discussed in previous reports.

<sup>353</sup> These decisions will also be published on Myria's website: [www.myria.be](http://www.myria.be).

In many cases, the courts give a great deal of credit to workers' statements, as long as they are accurate and consistent. It is also a shame that on several occasions, the reasonable time limit for being tried was exceeded. Finally, there are regular prosecutions based on both the charge of human trafficking and human smuggling. While one court found that the facts brought before it had to be examined solely from the point of view of human trafficking, other courts generally accepted both charges. They consider that the illegal employment of illegally staying workers is equivalent to assisting illegal residence with a view to profiting from it.

- 1 decision concerns the **exploitation of begging**. It was rendered in Brussels and concerns a case decided on opposition. Unlike the first judgment convicting the defendant in absentia, the court acquitted them on this occasion owing to a lack of evidence other than the -sometimes contradictory - statements of the victim.
- 8 decisions relate to cases of **human smuggling**. They were rendered in the jurisdiction of the courts of appeal of Brussels (French-speaking Brussels and Dutch-speaking court of appeal), Ghent (East Flanders (Ghent, Dendermonde) and West Flanders (Bruges)).

As regards **human smuggling**, this often involves well-structured and even criminal organisations active in several countries. In a few cases, the organisers were based in the United Kingdom. A joint investigation team (JIT) was set up in a case involving an Afghan network. Note: a Chinese poly-criminal network active in providing fake papers, against payment, to facilitate the stay, employment or residence of compatriots in Belgium. Finally, a (non-final) decision was handed down by the French-speaking Criminal Court of Brussels in a case in which citizens active in helping migrants were also prosecuted, alongside other defendants.

## 2. Trafficking in human beings

### 2.1. | European Court of Human Rights, judgment *S.M. v. Croatia*, 19 July 2018

The European Court of Human Rights delivered an interesting chamber judgment relating to acts of internal trafficking in human beings for the purpose of the sexual exploitation of a young Croatian woman.<sup>354</sup> However, this case isn't final.<sup>355</sup>

The applicant, Mrs. S.M., is a Croatian national born in 1990 and living in Croatia. Owing to family problems, she lived with foster parents for four years before being placed in state home for children and teenagers. She lived there until she had finished her professional training as a waitress.

In September 2012, she filed a criminal complaint, claiming that a man had coerced her into prostitution for months, as of mid-2011. This man, a former police officer, took her to clients and forced her to hand over half of her earnings for sexual services. He threatened to punish her if she didn't comply with his demands.

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

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

<sup>354</sup> ECHR, judgment *S.M. v. Croatia*, 19 July 2018, application no. 60561/14 (case pending). The chamber's judgement is available at: [www.echr.coe.int](http://www.echr.coe.int)

<sup>355</sup> This case was re-examined by the Grand Chamber.

Referring in particular to Article 4 (which prohibits slavery and forced labour), the applicant complained about the lack of an adequate legal framework in Croatia to deal with the issues in question and the authorities' reaction to her allegations.

In its Chamber judgment of 19 July 2018, the Court found that Article 4 of the European Convention on Human Rights had indeed been violated. The Court points out that Article 4 is applicable in cases such as that of the applicant, which involves human trafficking and exploitation of women for the purpose of prostitution, even though the case has no international dimension. It also considers that there is an adequate legal framework in Croatia for the suppression of human trafficking, forced prostitution and the exploitation of prostitution. Furthermore, the Croatian authorities acknowledged that the applicant was a victim of human trafficking and provided her with various forms of assistance and support, including the right to psychological support and free legal aid.

However, the investigation conducted by the authorities was flawed. In particular, the Court notes the authorities' failure to interview all possible witnesses (especially clients). In addition, they made no effort to investigate the applicant's allegations when she claimed to be threatened or financially dependent on the accused. They also didn't assess the possible impact of the psychological trauma on the applicant's ability to give a clear and coherent account of the circumstances in which she was exploited, and simply disregarded her testimony owing to its lack of reliability.

Finally, by establishing that the applicant had provided sexual services of her own free will and by acquitting the accused, the Croatian authorities, in the Court's view, also failed to comply with international standards applicable to human trafficking, which provide that the victim's consent is irrelevant.

On 3 December 2018, the College of the Grand Chamber accepted the request of the Croatian government to refer the case to the Grand Chamber.<sup>356</sup>

On 15 May 2019, the Grand Chamber convened to hear this case. However, the judgment still hadn't been pronounced when this report was finalised.<sup>357</sup>

<sup>356</sup> The parties can ask for the case to be referred back to the Grand Chamber for further consideration within three months of the Chamber judgment's delivery. This request is accepted in exceptional cases. It is the College of the Grand Chamber that decides whether or not to refer the case back to the Grand Chamber for further consideration.

<sup>357</sup> July 2019.

## 2.2. | Sexual exploitation

### 2.2.1. | Nigerian networks

As in the two previous case law overviews, several decisions concern Nigerian networks that also exploited minors. Furthermore, two cases discussed in the 2018 report went to the appeal courts.

#### Asylum-seeker victims in France

Two cases, both tried in Antwerp, concern Nigerian victims who had applied for asylum in France.

In the first case, **the court** ruled on an opposition to a judgment rendered in **absentia on 21 March 2017** discussed in the previous report.<sup>358</sup> Two Nigerian defendants were convicted in absentia for the charge of human smuggling. The first defendant had also been convicted in absentia for human trafficking for the purpose of sexual exploitation.

The case came to light after the Nigerian victim filed a complaint. In June 2015, she was smuggled from Nigeria to Europe for the amount of EUR 35,000. The smuggling had been organised from Nigeria by the first defendant's brother-in-law. A voodoo ritual was organised prior to the illegal transportation. The victim then set out on her perilous journey that would take her from Nigeria to Europe. She stayed in different places in Italy for several weeks before applying for asylum in France and continuing her journey to Belgium.

Two weeks after her arrival in Antwerp, her 'madam' ordered her to work in a café. She had to solicit clients and convince them to have sexual relations with her to reimburse her debt.

<sup>358</sup> Antwerp Crim. Court, Antwerp division, 21 March 2017, ch. AC5. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*.

She had to ask for EUR 100 an hour. The victim always worked from 16:00 until closing time and then had to walk the streets. If she spent the night with a client, her 'madam' forbade her from sleeping and she was obliged to immediately begin preparing the meal in the morning. She had to deliver it to two shops, explaining that the 'madam' was her aunt.

The investigation established that the victim's statements were consistent with the retroactive phone investigation conducted with the help of base station data. The consultation of several money transfer agencies revealed that the second defendant had made three money transfers to the man with whom the victim had stayed in Italy. The victim had also recorded (phone) conversations on a USB stick. The various witness statements also had significant probative force.

The defendants were convicted in absentia and given a 30- to 50-month prison sentence, and a fine of EUR 1,000.

One of the defendants lodged an opposition to the judgment. In its **judgment of 12 July 2018, Antwerp Criminal Court**<sup>359</sup> once again found that he was guilty of human smuggling, on the basis of the evidence resulting from the criminal investigation. He had accompanied the victim during the first part of her journey to Belgium and maintained phone contact with her during her journey. The court upheld the sentence but granted a suspended sentence for the time exceeding the duration of the pre-trial detention.

In the second case, **Antwerp Criminal Court** ruled on the acts of human trafficking for the purpose of sexual exploitation and human smuggling in a **judgment of 7 November 2018**.<sup>360</sup> Two defendants were prosecuted as perpetrators and co-perpetrators of trafficking and smuggling in human beings. One victim filed a civil suit.

The victim had been approached in Benin City in Nigeria by the sister of one of the defendants to go and work for her sister in Belgium. Once in Belgium, the victim had to reimburse her debt of EUR 30,000 for her travel expenses by working as a prostitute. Before her journey began, she had to undergo a voodoo ritual. She had to eat chicken liver and ingest a highly alcoholic drink. She made the crossing on a dinghy and was finally rescued by an Italian ship. Once in Italy, she was given instructions on how to get to Belgium. In Belgium, she had to pay to sleep on an armchair.

359 Antwerp Crim. Court, Antwerp division, 12 July 2018, ch. ACV3.

360 Antwerp Crim. Court, Antwerp division, 7 November 2018, ch. AC10 (final).

She first worked as a prostitute in Brussels and Antwerp. She was then forced to apply for asylum in France, under a fake identity, and to hand over the benefits she received. The two defendants stated that they had also travelled from Nigeria and (still) worked in prostitution.

The defendants were convicted for trafficking and smuggling of human beings with respective prison sentences of four years and 36 months, partly suspended, together with fines of EUR 8,000. The victim obtained EUR 18,150 for material damage and EUR 2,500 for non-material damage.

### Child victims

Another case concerning a Nigerian prostitution network was re-examined by **Ghent Court of Appeal**. It was previously judged by **Bruges Criminal Court** in a decision of 20 September 2017<sup>361</sup>, discussed in the previous annual report.<sup>362</sup> In this case, eight Nigerian defendants appeared in court for human trafficking for the purpose of sexual exploitation with aggravating circumstances. The victims were comprised of dozens of young Nigerian women, including a minor. Three victims, including a minor, filed a civil suit, as did the PAG-ASA and Payoke reception centres.

The acts were revealed thanks to an investigation led by the local police in Ostend. A meeting was arranged following a response to an advert. The investigation (composed primarily of phone taps, surveillance and statements) quickly revealed that it was an organised gang, that different young girls were forced to prostitute themselves and that they had to hand over a large part of their earnings. The young girls had to be available at all hours and the defendants forced them to engage in sexual acts. They were threatened using voodoo practices.

Several young girls also stated that the first defendant regularly used physical violence and psychological coercion against them, ranging from various acts of violence to attempted rape, and a refusal to provide work if he didn't obtain exactly what he wanted. The other defendants also threatened the victims in case of non-payment.

361 West Flanders Crim. Court, Bruges division, 20 September 2017, 17th ch.

362 MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 127-128.

One of the defendants had been a victim of human trafficking herself as a result of the same organisation. This is a common phenomenon in the Nigerian world of prostitution, i.e. prostitutes who, after a certain time, form a relationship with their (male) pimp and then climb the ladder to exploit other women in turn and make them work in prostitution.

Searches were organised, different financial transactions were checked as were mobile phones. Two videos of extreme child pornography were found on the mobile phones of several of the defendants.

According to the court, the criminal case clearly revealed that this was a particularly well organised international network that smuggled young girls from Nigeria to Belgium in order to exploit them in prostitution. Several defendants were also prosecuted for smuggling Nigerian women from Nigeria to Belgium via Italy, to then exploit them sexually in prostitution and as escorts. In order to smuggle them, the women were also subjected to voodoo rituals. One of the victims arrived in a house in Libya where she was exploited as a sex slave. Another victim was still a minor when the acts occurred.

The eight defendants were all convicted at first instance and given prison sentences varying between an 18-month suspended sentence and a fixed nine-year sentence, together with fines of 3 x EUR 8,000 and 16 x EUR 8,000. Exhibits and significant sums were confiscated.

The three civil parties obtained between EUR 6,500 and EUR 12,000 for non-material damage. The associations PAG-ASA and Payoke each received EUR 2,500.

Several defendants and the public prosecutor lodged an appeal. In its judgment of **1 June 2018, Ghent Court of Appeal**<sup>363</sup> upheld the convictions almost in their entirety, including the charge of human smuggling. The court didn't accept the argument of one of the defendants according to which the smuggling of the young girls should be dissociated from their subsequent sexual exploitation. It found that the girls had been smuggled to Belgium for the purpose of sexual exploitation. It also rejected the argument that the girls had made incriminating statements in order to obtain the status of victim of human trafficking. One of the defendants, the partner of another defendant with whom she also had a child, was also identified as a victim in the case. However, the court found that this didn't in any way detract from the fact that she also later committed the offences.

<sup>363</sup> Ghent Court of Appeal, 1 June 2018, 10th ch.

The damages of the three civil parties were also confirmed. In the absence of precise documents supporting the damage, the compensation awarded to PAG-ASA and Payoke was reduced, in equity, to EUR 1,500 for material damage. According to the court, non-material damage wasn't sufficiently demonstrated.

In a **judgment of 14 November 2018, Antwerp Criminal Court**<sup>364</sup> ruled on another case regarding the branch of a Nigerian prostitution network active in Antwerp. Six people were prosecuted but several of them failed to appear. Some of them were staying in Italy. They were prosecuted for human trafficking for the purpose of sexual exploitation and for human smuggling, both with aggravating circumstances. One of the victims was a minor.

At the beginning of March 2016, the police were contacted by the Payoke reception centre. One victim of forced prostitution, who had been brought from Nigeria to Belgium even though she was only 16 years old, made several statements. She had been approached by one of the defendants to travel to Europe in order to go to school there. She travelled from Benin City to Libya via Niger, before taking a boat to Europe. She, and the other passengers, were rescued in the Mediterranean by an Italian ship. Four other girls on the same boat drowned. In Italy, one of the defendants was waiting for her and she was told she had to reimburse a debt of EUR 35,000 for her journey to Europe. She also had to undergo a voodoo ritual. Another defendant took her from Italy to Antwerp, Belgium. She was taken to the apartment of one of the defendants, which she shared with another young girl who was in the same situation as her. She had to give the money she earned from prostitution to her landlady, one of the defendants, to reimburse her debt. In addition, she was charged EUR 25 a month for food and drinks. When she made her statements to the police, she mentioned another victim, the young girl with whom she shared the apartment. This girl was found and made similar statements.

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

The court found that the acts were established because the statements of the two victims were consistent, detailed and similar, and therefore credible. Furthermore, their statements were supported by objective elements.

<sup>364</sup> Antwerp Crim. Court, Antwerp division, 14 November 2018, ch. AC10 (appeal).

During the investigation, the Eurodac database was consulted, as well as Belgium's airports. The journey taken (from Italy to Belgium) by the defendants could therefore be traced. It was perfectly consistent with the victims' statements. Data from the base stations also made it possible to determine the presence of the defendants in certain places at certain times, which was also perfectly consistent with the victims' statements. Retroactive phone and financial investigations were also used to confirm the victims' statements. During the search, an envelope containing the objects used during the voodoo rituals was found. Voice messages and text messages were found. In addition, it emerged that one of the defendants was the subject of an Italian investigation and was one of the key players in an organisation involved in the trafficking of human beings from Nigeria to Europe.

The defendants were handed prison sentences - some in absentia - ranging from two to six years, together with fines ranging from EUR 6,000 to EUR 15,000. They were all stripped of their rights for five years and amounts were confiscated. Their immediate arrest was ordered during the court hearing.

One victim filed a civil suit. She received EUR 13,000 for non-material and material damage. She was awarded the confiscated amount.

### Heavy sentences and confiscation of windows

Brussels Court of Appeal re-examined a case judged on 31 May 2018 by Brussels Criminal Court, and discussed in the previous annual report.<sup>365</sup> Eleven defendants appeared at first instance for human trafficking for the purpose of exploitation of prostitution or other forms of sexual exploitation, among other things. One of the aggravating circumstances was the fact the victim was a minor. Several defendants also appeared for hotel pimping and involvement in a criminal organisation.

It was a particularly well-organised Nigerian network, in which a known Nigerian prostitute exploited 15 or so young Nigerian girls in prostitution, among whom were several minors. The organisation was responsible for both bringing these young girls over from Nigeria and for exploiting them in the red-light district in Brussels. The majority of them had been recruited by the first defendant in Nigeria, with the help of his brother who lived there. They were often enticed by false promises such as studying. The victims were smuggled from Nigeria to Italy via the Libyan route, before reaching Belgium. They then had to reimburse their travel debt, amounting to about EUR 35,000. The young girls and their family were put under pressure and threatened through voodoo rituals. One of the underage girls managed to escape, after which her mother, in Nigeria, was locked up and severely punished. This victim later stated that her brother had died in mysterious circumstances.

The defendants were handed heavy prison sentences at first instance, ranging from two to 14 years, together with fines. Large sums of money, as well as the 'windows' in buildings where the prostitution took place, were confiscated.

Myria filed a civil suit in this case.

Five of the defendants and the public prosecutor lodged an appeal against the decision.

In its **judgment of 3 April 2019, Brussels Court of Appeal**<sup>366</sup> confirmed the judgment with some amendments (for some defendants, the court limited the charges in relation to certain acts and certain victims) and reduced the prison sentences. The main defendant's 14-year prison sentence was reduced to 10 years, the third defendant's to five years and the other defendants' sentences from two years to a one-year suspended sentence. The judge had ordered the confiscation of three buildings at first instance. However, it was only possible to confiscate a small part, i.e. the part that had been rented for prostitution purposes with the aim of making an abnormal profit. The court confirmed the confiscations of different sums of money and parts of the real estate.

<sup>365</sup> Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 130-131.

<sup>366</sup> Brussels Court of Appeal, 3 April 2019, 13th ch.



## Perpetrators and former victims

In a case involving an extensive Nigerian prostitution network, tried by **Antwerp Criminal Court on 14 August and 27 November 2018**<sup>367</sup>, two defendants were prosecuted for human trafficking for the purpose of sexual exploitation and for human smuggling. Other members of the same network had been convicted before for human trafficking by the court of West Flanders<sup>368</sup> and the Ghent Court of Appeal<sup>369</sup>, within the framework of other legal proceedings.

The case began when seven young Nigerian girls without a residence permit were found in a caf in Antwerp in January 2017. During the same period, within the framework of another case, the police went to a hotel in Ostend, based on advertisements on a website, where they found young Nigerian girls forced to prostitute themselves. Both cases had ramifications. Two victims were identified in this case, and one of them filed a civil suit.

The young girls had been recruited in Nigeria by a friend of the first defendant and arrived in Italy via the dangerous Libyan route, which involved crossing the Mediterranean. From Italy, they were brought to Belgium, where they were told they had to reimburse a debt of EUR 35,000 through forced prostitution. Voodoo rituals were organised, putting pressure on the young girls and their family. The first defendant held a higher rank than the second defendant. The latter regularly received the money earned by the young girls, which she gave to the first defendant.

The investigation involved searches, a financial investigation, reading mobile phones and SIM cards, analyses of phone traffic at base stations, statements from victims and clients and confrontations with a selection of photos.

The two defendants were convicted of the charges. The first defendant was considered as the pimp of the young girls, some of whom were minors. She had organised at least part of their journey from Nigeria. One of the victims was rescued by the Italian coastguard after having drifted for days. The aggravating circumstance of human smuggling with endangerment of the victim's life was also accepted. The second defendant provided support and assistance.

<sup>367</sup> Antwerp Crim. Court, 14 August 2018, ch. ACV3. The defendant convicted in absentia lodged an opposition and was retried by the same court on 27 November 2018.

<sup>368</sup> West Flanders Crim. Court, Bruges division, 20 September 2017, 17th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 127-128.

<sup>369</sup> Ghent Court of Appeal, 1 June 2018, see above.

According to the court, it was of little importance that the defendants had originally been victims of a similar network.

The two defendants were sentenced to six and three years in prison respectively, and were given fines of EUR 16,000 and EUR 6,000. The two were stripped of their civil rights for five years. The second defendant was convicted in absentia and lodged an opposition. In the judgment handed down on opposition, the court granted her a five-year suspended sentence for part of the prison term.

One victim and the non-profit association PAG-ASA filed a civil suit. The victim was awarded EUR 10,000 for material and non-material damage, and PAG-ASA EUR 250 in compensation.

## 2.2.2. | Thai massage parlour

In a **judgment of 13 November 2018, Brussels Court of Appeal**<sup>370</sup> ruled in a case of Thai massage parlours. The defendants were convicted at first instance by Brussels Criminal Court on 27 January 2016.<sup>371</sup> The acts of human trafficking and other offences relating to prostitution already dated back to 2005-2009. Six defendants were prosecuted, one of whom was the main defendant, a Belgian accountant living in Spain. He was the accountant of the Thai massage parlours but also the manager or partner of various companies. The criminal case revealed that through his accounting firm, he had significant contact with other Thai brothels, for which he did the accounting as well as taking care of the social obligations. It was thus possible to establish a link with some 30 massage parlours. An officially registered 'clean' company was to be found behind every massage parlour.

The other main defendant was the owner of various parlours in Flanders, on paper or in practice.

<sup>370</sup> Brussels Court of Appeal, 13 November 2018, 15th ch.

<sup>371</sup> Brussels Crim. Court (Dutch-speaking), 27 January 2016, ch. 46. See MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 155-158.

The massage parlours were generally owned by Thai women. The defendants had begun a romantic relationship with some of them. In reality, the parlours were managed behind the scenes by Belgian men who benefited from the income. The women only received EUR 300 or EUR 500 a month, or EUR 800 in the best case. The women were lured from Thailand on the basis of false promises, such as marriage or work. They arrived in Belgium on a tourist visa. A marriage or sham marriage was then organised, thanks to which the young women obtained papers and could work. Other young women were staying illegally. The majority of them didn't know that they were going to have to work in prostitution. The case also revealed that money had been paid for young women brought from Thailand to Belgium, i.e. EUR 9,000 per young woman supplied.

As soon as they arrived in Belgium, their papers were confiscated and they had to work six or seven days a week, and often for long hours. They were in a vulnerable position owing to their precarious situation, because they were pregnant, had no financial resources, didn't master the language and knew nothing about social legislation. They often lived in the massage parlours and hardly went out.

The defendants were given partly suspended prison sentences ranging from 18 months to three years. Large sums of money and cars were confiscated. One of the victims and Myria filed a civil suit and received EUR 8,000 and EUR 500 respectively as compensation. Several defendants lodged an appeal.

The Court of Appeal considered that the acts, the most recent of which dated from 2009, were time-barred and acquitted the defendants.

### 2.2.3. | Transsexual victims

In a **case decided on appeal in Liège**, a French defendant was prosecuted with another defendant (not on appeal) for human trafficking for the purpose of sexual exploitation of young transsexuals from Latin America, human smuggling, recruitment and exploitation of prostitution. He was also prosecuted for advertising sexual services. He posted advertisements on websites for sexual services by transsexuals.

In a **judgment of 21 December 2016** at first instance<sup>372</sup>, Liège Criminal Court sentenced him to four years in prison and a fine of EUR 18,000 for human trafficking and other prostitution-related offences. However, the court acquitted him of the charge of smuggling.

Ruling in absentia on a judgment of 23 May 2017<sup>373</sup>, Liège Court of Appeal upheld the first judgment, except with regard to the charge of human smuggling, for which it had also convicted the defendant.

Upon re-examination of the case following the defendant's opposition to the first judgment, the Court followed the same reasoning as in its judgment delivered in absentia. In a **judgment of 17 May 2018**, it upheld the first judgment, except with regard to the charge of human smuggling, for which it convicted the defendant.<sup>374</sup>

As for the human trafficking and charges concerning prostitution, the Court of Appeal found them to be established. Just like the court at first instance, it accepted the objective elements of the criminal court record demonstrating the defendant's guilt. He had indeed recruited three transsexuals of South-American origin, over the internet, who were living abroad. He met them as soon as they arrived in Belgium and provided them with accommodation of which he was the lessee, taking advantage of their precarious administrative situation. These transsexuals worked as prostitutes in these lodgings. Their activities were advertised on websites by the defendant. The latter was also responsible for the contact with potential clients, as well as taking the transsexuals to other properties and places of work. He was paid for the services provided by the transsexual prostitutes, and thus received half of the earnings from their services. The defendant's father-in-law regularly served as a driver for his son-in-law's business, in particular to fetch the transsexuals from the airport and to meet the owners of the properties rented by the defendant.

Regarding the charge of smuggling, the Court of Appeal found that the defendant did indeed recruit and accommodate the three transsexual victims who were in a precarious situation in Belgium, in particular by providing them with apartments which he rented to enable them to prostitute themselves.

372 Liège Crim. Court, Liège division, 21 December 2016, unpublished.

373 Liège Court of Appeal, 23 May 2017, 18th ch. (in absentia), unpublished.

374 Liège Court of Appeal, 17 May 2018, 18th ch.

In exchange for his services, he received part of their earnings. The Court based itself on the victims' converging statements, corroborated by the investigators' findings during visits to their homes and searches, testimonies, analysis of the defendant's phone and Facebook profile, and bank searches. The Court noted that the criminalisation of smuggling punishes the act of aiding or assisting the illegal entry or illegal stay of third-country nationals in Belgium for profit. It therefore considered that the act of providing accommodation, in return for payment, for non-European Union nationals residing and working illegally in Belgium constitutes smuggling in human beings in the sense of Article 77 bis of the Law of 15 December 1980.

#### 2.2.4. | Belgian victims

In a decision of **29 June 2018**<sup>375</sup>, **Ghent Criminal Court** examined a case of human trafficking for the purpose of the sexual exploitation of various women, including Belgian minors and women.

The case came to light when an organisation helping prostitutes provided the police with worrying information about a man allegedly inciting several young girls and women into prostitution. The man apparently promised the girls that they would be able to earn a lot of money very quickly. He took naked photos of them, which he then used for advertising purposes on a website where extreme acts were offered. He kept them under pressure by threatening to make the photos of them public and to show them to members of their family. The defendant took care of making the appointments for the young girls with the clients. These girls had to hand over 40 % of their earnings, and could keep the rest. His IP address was linked to advertisements of some 70 young girls. Minors were also concerned. He especially targeted young girls with financial difficulties. Acts of child pornography and indecent assault on a six-year-old girl were also revealed. The investigating judge appointed a psychiatry and psychology expert.

As well as acts of human trafficking, the defendant was also prosecuted for acts of rape, child pornography, public indecency, etc.

The court acquitted the man of the charge of human trafficking. Even if he chose women with financial difficulties and exerted pressure on them in different ways, it wasn't possible to determine whether or not the women had a choice. They were responsible for their own transportation, collected the money, weren't housed by him and weren't under his physical control. There was no physical violence, only moral blackmail. Several women decided not to agree to his proposal. Consequently, the court considered that, in this sense, the circumstances in which the women worked as sex workers weren't contrary to human dignity.

However, the defendant was sentenced to six months in prison for other charges, among other things.

#### 2.2.5. | Application of the non-punishment clause

This case, tried by **Liège Criminal Court on 13 Juin 2018**<sup>376</sup>, concerned acts of human trafficking for the purpose of the sexual exploitation of young Romanian girls. Within the complex framework of this case, a young woman and three men, including the young woman's boyfriend, were prosecuted for human trafficking as well as for recruiting and exploiting the prostitution of the young Romanian girls.

The case began in April 2009, date on which the local police in Liège carried out a check on a young Romanian girl soliciting on the public highway in the Cathédrale Nord neighbourhood, well known for prostitution. She claimed to be staying at the hotel alone and had been working as a prostitute in Belgium for two days, after arriving from Spain. In the following months, checks were also carried out on other young Romanian women with similar stories. The defendant was one of these young women: she explained that she had just arrived in Belgium, from Spain, where she was obliged to work as a prostitute for someone. These young women were sometimes accompanied by Romanian men. Each time, the signs of prostitution were blatant.

Following various checks, the Romanian girls changed phone numbers and hotel, then left for Brussels.

<sup>375</sup> East Flanders Crim. Court, Ghent division, 29 June 2018, ch. G28 (final).

<sup>376</sup> Liège Crim. Court, Liège division, 13 June 2018, 19th ch. (opposition to the judgment of Liège Crim. Court of 11 January 2017).

An in-depth phone analysis was carried out. This especially helped to identify certain people, who were then interviewed as witnesses, and to establish the existence of bonds of submission between the protagonists. Among other things, it emerged that the two mobile phone numbers attributed to the defendant were linked to all the perpetrators in the case, and were often the first numbers contacted by the girls after a check. Other tasks were also carried out such as investigations into the hotels frequented by the young women and the defendants, and letters rogatory in Italy and in Romania.

After months without any particular findings, one of the young women was checked again. She said she worked as a prostitute without a pimp. As she didn't consider herself a victim of trafficking, she was transferred to a detention centre with a view to repatriating her to Romania. However, following the intervention of a specialised reception centre, she agreed to make a new statement end 2009, which differed from the initial ones. She subsequently stated that she had met a man in Romania whom she fell in love with and whom she was supposed to marry. This person then sold her to the couple formed by the defendant and her boyfriend, with a view to making her work as a prostitute. From then on, she had to prostitute herself in Paris with the defendant, who told her the rates and terms of the work. She then went to Italy where she prostituted herself under the surveillance of the defendant. After the interviews, she wanted to go home.

The modus operandi described by the investigators was as follows. Young women were recruited in Romania (or even bought). They were generally pushed into prostitution by the loverboy system. 'Managers' took these girls to European countries, where they had to work as prostitutes (Italy, France, Belgium). They were subjected to threats and violence if the work or money they brought in was insufficient. The perpetrators gave them a mobile phone to keep in contact, control them and recuperate the money (a mobile phone that often changed hands). Sometimes, the men who accompanied them served as observers for the pimps, to keep a look out and warn them if the police were coming. They didn't stay long in the same place to avoid investigations. Numerous links existed between the people in question. The girls stayed in the same places, and sometimes at the same time. They were together at their place of work. The mobile phones were regularly swapped between people and the phone numbers were consecutive, which implied that they had been purchased in bulk and all deactivated at the same time.

The case was investigated by an investigating judge, but none of the defendants were ever located or interviewed in detail during the investigation. However, three of the defendants, including the defendant in question, were convicted in absentia in a judgment of 11 January 2017, with the court separating the case against the fourth.

Having opposed the judgment, the defendant was heard at the court hearing. She contested the charges against her. She explained that she had met her boyfriend in Romania when she was 19 years old. He had suggested she go and work in Italy and she said she had accepted for financial reasons, and for her daughter. She stated that she had to work the streets in Italy and have sexual relations with this 'boyfriend'. He started to beat her and threatened her family, which prevented her from filing a complaint. They then went to Germany and Spain. Other girls were also present in her entourage. She stated that she had to give all her money to her boyfriend. When she arrived in Belgium with him in 2009, she said she knew the girls who were victims but didn't give them orders. She lived in the same place and they went to work together but she didn't supervise them. It was her boyfriend who gave the instructions in the house and ordered her to talk to the other girls about prostitution. She also stated that she was the only one who was beaten and that she protected the other girls. She contested having worked with the victim taken in by a reception centre, as she was no longer in Belgium at that time but in France.

She filed a complaint in France in 2012 after having again been threatened, sequestered and raped for a long time. She pointed out that she was the only one to be beaten in Belgium. However, in France, her boyfriend beat all the other girls because they didn't bring in enough money. In support of her claims, the defendant submitted a judgment from the Paris Court of First Instance of 4 March 2015, convicting several people, including her boyfriend, of human trafficking, aggravated pimping, and criminal association against the girls who were victims, including herself. This related to a period from January 2011 to 25 March 2013, i.e. after the acts committed in Belgium.

In a detailed statement of reasons, the court established the existence of acts of human trafficking and of the presence of all the constitutive elements of this offence. The young women had indeed been recruited, received, harboured, transported and controlled for the purpose of exploitation of prostitution.

The court chiefly based itself on the following elements: the victims' statements, police observations of the victims, phone analyses (establishing links between the girls and the defendants, and monitoring their activity), witness interviews and investigators' findings (including the girls being put up in hotels by and with the defendants). The court also declared several aggravating circumstances (including a form of coercion) to be established.

The court then examined the issue of attributing the acts to the defendant. In a detailed statement of reasons, it considered that the defendant's participation in the acts wasn't as simple or as significant as stated and concluded by the investigators in their summary report, nor in relation to that which the public prosecutor's office tried to maintain with regard to the period of the offence and the content of the acts of participation. The court also noted that the same material evidence of participation by the defendant in no way prevented her from being considered as a human trafficking victim of the same network in France. Moreover, in the French investigation, unlike the Belgian one, the majority of the defendants and the girls who were victims were interviewed in detail. Most of the them didn't implicate the defendant as co-perpetrator of the acts but, on the contrary, described her as a girl who had suffered the same fate as the other girls.

Subsequently, while acts of participation in the offence were committed by the defendant, the court considered that she was herself, and above all, a victim. The perpetrators also took advantage of her vulnerable situation. She acted under coercion. In this respect, the court chiefly based itself on the investigators' findings that showed she was a prostitute just like the other girls; her interview during the investigation; the phone calls that indicated a dependence on her loverboy, and her surveillance by the latter.

As regards the coercion, the court therefore considered that she didn't have enough control over the other victims to encourage their debauchery and prostitution. She was in a state of submission and dependence and was also 'put on the market' for prostitution by her boyfriend. The court therefore considered that the charge of trafficking wasn't established in her case. It also noted that the non-punishment clause should be taken into account in such a case.

More specifically, in the absence of a specific provision<sup>377</sup>,

377 Since then, a new § has been inserted in Article 433 quinquies of the Criminal Code, concerning the non-punishment of trafficking victims. On this subject, see Part 3, Chapter 1, point 2.1.2.

the court considered that Article 71 of the Criminal Code should be applied: a person who is coerced by an overpowering force at the time of the events, can't be accused of the offence. It therefore considered that the defendant's actions were the result of coercion by her boyfriend and the other co-perpetrators.

For her own security, and her physical and psychological integrity (and that of her family members), she therefore had no other option than to participate in the offence through certain acts against other girls. The court therefore acquitted her of the charge of human trafficking and the other charges in terms of prostitution.

## 2.3. | Labour exploitation

### 2.3.1. | Construction

Several cases in this sector resulted in court rulings, some of them on appeal.

In a case in which **Dendermonde Criminal Court ruled on 25 June 2018**<sup>378</sup>, four people, two managers and two legal persons were prosecuted for human trafficking for the purpose of labour exploitation with aggravating circumstances, the illegal employment of foreign workers and non-payment of wages. The case came to light after a staff inspection by the Social Legislation Inspectorate, in collaboration with the National Social Security Office, the Social Inspectorate and the 'Toezicht en Handhaving' (supervision and control) department<sup>379</sup> of the Flemish Community.

The company employed Europeans (Portuguese and Spanish) and non-Europeans (Brazilian, Bissau-Guinean), sometimes as paid employees, sometimes as posted workers.

Site visits were organised at different times by the Social Inspectorate, the Housing Inspectorate and the police. The interviews revealed that the people concerned had been enticed by advertisements in Portuguese newspapers. They were promised an hourly wage of EUR 8/hour. Accommodation, transport and food were free. Once in Belgium, they had to work up to 50 hours a week in construction work, Saturdays included.

378 East Flanders Crim. Court, Dendermonde division, 25 June 2018, ch. (opposition)

379 The 'toezicht en handhaving' section was integrated into the Flemish social inspectorate in 2017

They were housed in conditions contrary to human dignity, sharing a house between 10 and 18 people. They had signed a backdated employment contract, received a small cash advance and were then no longer paid. They had been deceived, causing unrest and arguments. No one stayed to work there for more than three months and, in the end, none of the workers received their money. The first defendant was often physically violent and threatened to withhold the wages. The defendants deliberately chose labour from Portugal because of the poor economic situation there. Owing to their weak financial position, the workers were dependant on their employer.

In some cases, a Limosa declaration had been made, but no declaration regarding posted workers (form A1) or a Dimona. The company wasn't active in Portugal. The Social Inspectorate asked them several times to send the A1 forms. The requested documents were never sent.

The first defendant was given a two-year prison sentence and a fine of EUR 56,000 (EUR 1,000 x victims x surcharges) and the second defendant a one-year prison sentence and a fine of EUR 8,000.

### Bogus self-employed workers

In this case, Antwerp Court of Appeal considered the **judgment of the Tongeren Court of First Instance of 9 February 2017**, discussed in a previous annual report.<sup>380</sup>

Several defendants and the public prosecutor lodged an appeal.

At first instance, eight defendants, including two companies, had been tried i.a. for acts of human trafficking for the purpose of labour exploitation, committed between 2011 and 2015. They were also prosecuted for social law and money laundering offences.

Myria and five victims filed a civil suit.

With the help of the other defendants, the main defendant used his companies to hire people from Central and Eastern Europe in the construction sector. The defendants made the victims believe that they had the status of salaried employees whereas, in fact, they were working as bogus self-employed workers.

Some victims worked as active partners in the companies. Furthermore, they worked in and under bad conditions. Unaware they had to pay social contributions, the workers accumulated an enormous social debt.

The case came to light following a collective protest by the workers. Even the embassy intervened and advised them to file a complaint with the police. An employee from the social insurance agency also began to suspect a situation involving bogus self-employed workers and informed the NSSO.

The court considered the majority of acts established. It found the five defendants guilty of human trafficking, with aggravating circumstances.

In its **judgment of 13 September 2018, Antwerp Court of Appeal**<sup>381</sup> confirmed the decision overall. However, some of the defendants were acquitted for certain specific acts. One of the defendants, i.e. the main defendant's son-in-law, was acquitted for the acts of human trafficking. For the other defendants, the court upheld the conviction for the acts of human trafficking with aggravating circumstances, except for that of the abuse of the workers' vulnerable situation. The court considered that it wasn't established given that the workers could travel freely or look for another employer. The fact that the victims experienced financial difficulties wasn't sufficient to conclude that they were in a vulnerable situation.

Several defendants were sentenced to prison at first instance, with sentences ranging from 18 months to three years, and fines between EUR 81,000 and EUR 336,000. A sum of EUR 56,400 was confiscated. The court upheld the sentences of the various defendants, but granted some of them a stay of execution.

The damages were confirmed: Myria received symbolic compensation of EUR 1. The victims received EUR 500 for non-material damage and a provisional sum of EUR 1 for material damage.

<sup>380</sup> Limbourg Crim. Court, Tongeren division, 9 February 2017, 9th ch. See MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 113-114.

<sup>381</sup> Antwerp Court of Appeal, 13 September 2018, ch. C6.

## Abuse of the posting procedure

Ghent Court of Appeal re-examined a case of human trafficking for the purpose of labour exploitation and abuse of the posting procedure. **Dendermonde Court of First Instance** ruled on this subject in a **judgment of 20 October 2017** in the previous annual report.<sup>382</sup> The defendants had set up various construction companies in Bulgaria. The companies were barely active, merely hiring staff whom they then posted in Belgium. The three defendants, including a company, were prosecuted for various social criminal law charges, as well as for human trafficking for the purpose of employing persons to work in conditions contrary to human dignity. Two Bulgarian victims filed a civil suit.

The investigation and the workers' statements revealed that the latter had little or no knowledge of the mother company in Bulgaria, that they had never worked in Bulgaria, and had been explicitly recruited to come and work in Belgium. There was rarely a contract, they worked between eight and ten hours a day (six days a week) for a promised salary of EUR 200 to EUR 250 a month.

The court sentenced the two defendants to one year in prison and a 7 x EUR 6,000 fine. Two victims filed a civil suit. The each obtained compensation.

One of the defendants and the public prosecutor lodged an appeal.

In its **judgment of 7 February 2019, Ghent Court of Appeal** partly confirmed the judgment.<sup>383</sup> Concerning the charge of human trafficking, the court considered that the investigation hadn't been conducted in sufficient detail. Proof was lacking and was insufficient from a legal point of view regarding certain charges, including that of human trafficking. In view of the scant evidence in the criminal file, there was reasonable doubt regarding the acts and the guilt of the accused. Furthermore, the reasonable time limit had been exceeded. The investigation was halted for approximately two years, although this wasn't attributable to the defendant. He was therefore acquitted of certain charges, including that of human trafficking, but convicted of offences under the Social Criminal Code.

382 East Flanders Crim. Court, Dendermonde division, 20 October 2017. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 140-141.

383 Ghent Court of Appeal, 7 February 2019, 3rd ch.

The court reduced the sentence to a fine of EUR 3,000. The claims of the civil parties were declared unfounded.

## Pallet factory

Another case discussed in a previous report<sup>384</sup> concerned a pallet factory.<sup>385</sup> Antwerp Court of Appeal examined the **judgment of Tongeren Criminal Court of 18 February 2017**.<sup>386</sup> Several defendants were convicted for human trafficking for the purpose of labour exploitation as well as for slum landlord activities. The main defendant was the manager of a pallet factory. The company was also prosecuted as a legal person. The acts date back to 2009.

The case came to light after the natural death of a Polish worker at the pallet factory. Polish and Bulgarian workers had filed a complaint with the police. A criminal investigation was opened. The prosecuted firm repaired pallets for other companies. For this purpose, it used subcontractors who hired Polish, Bulgarian and Romanian posted workers. These subcontractors were Polish and Bulgarian companies. It emerged that one of these companies was a PO box in Bulgaria, with no substantial activities, created solely to circumvent Belgian social security and labour law obligations. The workers were enticed to Belgium with the promise of an attractive salary whereas, in reality, they only earned EUR 400 to EUR 600 a month, according to the number of pallets repaired, the equivalent of EUR 3 an hour. The rent was also deducted from their salary. Officially, according to their employment contracts, they were only earning the Bulgarian minimum salary of EUR 135. The rest had been paid unofficially to also circumvent Bulgarian social security. The workers had to work very long days, in dreadful conditions and without any protective clothing. They were housed in very bad conditions.

The defendants were given prison sentences ranging from 18 months to four years, as well as heavy fines. A large sum of money was also confiscated. The victims obtained compensation for non-material and material damage.

Payoke and Myria each received EUR 1 as compensation. Several defendants and the public prosecutor lodged an appeal.

384 See Myria 2017 Annual Report *Trafficking and smuggling of human beings, Online*, p. 115.

385 This case is presented in detail as an example at the end of this report's focus (see Part 2).

386 Antwerp Crim. Court, Turnhout division, 18 January 2017, ch. TC1.

In its **judgment of 24 January 2019, Antwerp Court of Appeal acquitted one of** the defendants.<sup>387</sup> He was a worker for the company and received instructions from one of the other defendants. According to the court, it couldn't be concluded from his duties that he had assisted the acts of human trafficking in any way. He had no decision-making power and was in a position of subordination. He was therefore acquitted as a co-perpetrator of the acts of human trafficking. Another defendant was acquitted solely for the slum landlord acts.

The court also considered that the reasonable time limit had been exceeded. The time between the defendants' knowledge of the threat of criminal prosecution in February 2010 and the court's decision in January 2018 wasn't reasonable in the court's view.

The court reduced the defendants' sentences to suspended sentences and partially suspended fines.

The damages were confirmed in favour of the civil parties, Payoke and Myria, except vis-à-vis the acquitted defendant.

### 2.3.2. | Hotel & catering industry

#### Snack bars

Several cases concern snack bars.

The Brussels Court of Appeal re-tried a trafficking case in which a couple running a Moroccan snack bar was prosecuted for employing four illegally staying workers, various social criminal law offences, as well as the human trafficking of two of the workers. The case was opened following a complaint from one of the workers to the Social Inspectorate. They contacted a specialised reception centre for victims of trafficking to complain of their work conditions.

In a judgment of 4 September 2015 discussed in a previous report, Brussels Criminal Court had convicted the defendants for human trafficking.<sup>388</sup>

It was confirmed that the two workers weren't paid or were paid very little. According to the court, the simple fact of not paying a worker their due and considering that they have been 'paid' by offering them free accommodation and food, was sufficient to prove that the work conditions were contrary to human dignity. In addition, the defendants were well aware they were staying here illegally, a precarious situation that made them dependant on the defendants' goodwill in order to avoid expulsion. It is of little importance, in this respect, that the workers continued to work for them for several years.

In its **judgment of 16 October 2018, Brussels Court of Appeal** took a completely different stance and reversed the court's decision on this point.<sup>389</sup> It considered that there was nothing in the case to establish that the two workers were in any way deprived of their freedom to come and go. Furthermore, it considered that the conditions of employment didn't, as such, appear to be indicative of conditions contrary to human dignity. Although the working hours were indeed long, they didn't appear to be totally out of step with the normal working hours in the catering sector. Similarly, while the conditions of the accommodation on the first floor of the establishment appeared relatively basic, this accommodation didn't seem to be bereft of the strict vital minimum that would have made it contrary to human dignity. Finally, the court considered that although the defendants didn't pay the workers adequately for the services rendered, this alone wasn't sufficient to establish that they were employed in conditions contrary to human dignity.

As a result, it acquitted the defendants of the charge of human trafficking. On the other hand, it maintained the social criminal law charges.

Considering that the reasonable time limit had been exceeded, the court sentenced both defendants and gave an order suspending the sentence. It confirmed the amounts awarded to the civil party at first instance (EUR 500 for non-material damage and EUR 25,000 ex aequo et bono in arrears) while declaring itself incompetent to hear the application relating to the charge of trafficking, in view of the acquittal of the defendants on these counts.

<sup>387</sup> Antwerp Court of Appeal, 24 January 2019, ch. 6C.

<sup>388</sup> Brussels French-speaking Crim. Court, 4 September 2015, 69th ch. MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 172-174.

<sup>389</sup> Brussels Court of Appeal, 16 October 2018, 11th ch.



In another case, also in Brussels, a Moroccan defendant was prosecuted as a natural person and manager of a snack bar for social criminal law offences and human trafficking against a compatriot. The snack bar was checked several times by the police (initial check, following the denunciation of a worker who claimed to have worked there without receiving her pay), and by inspection services (Social and Social Legislation Inspectorate). During the last check, in March 2015 by the Social Legislation Inspectorate, accompanied by the police, a man tried to flee. This is the worker who filed a civil suit. He stated that he had been living in Belgium since 2006, had been present at a check in 2013, during which he had fled as he had no papers, and was staying illegally in Belgium. He said he had been working at the establishment for four years, eight to nine hours a day (from 17:00-18:00 to 02:00), seven days a week without any days off, for a daily salary of EUR 30 a day paid in cash. He cooked and served meals. The defendant had never taken any steps in his favour to obtain a work permit.

In a **judgment of 11 December 2018, Brussels Criminal Court** considered the work conditions to be contrary to human dignity, with the defendant also taking advantage of the worker's precarious situation. The latter hadn't dared go to the police through fear of repatriation.<sup>390</sup>

The court sentenced the defendant to 15 months in prison (fully suspended) and a fine of EUR 12,000. It awarded substantial compensation to the civil party, namely EUR 10,000 for material damage and EUR 5,000 for non-material damage.

The **Criminal Court of Liège** also tried a case of trafficking on **5 November 2018**.<sup>391</sup> Five defendants, including a woman and a company were prosecuted for human trafficking for the purpose of labour exploitation of four Bangladeshi workers. They were mainly accused of exploiting them in a snack bar. The company was set up by the main defendant and his brother. The main defendant was appointed as manager before his girlfriend, the female defendant, became the sole manager. The purpose of this company was to run two snack bars, one in Namur and the other in Liège.

The first three defendants, as well as the company, were also prosecuted for the human smuggling of three of these workers and another Bangladeshi worker.

Furthermore, the defendants were prosecuted for various other charges: forgery, social criminal law offences concerning the Bangladeshi workers and other nationals, and benefit fraud.

Two workers, who were victims of trafficking and smuggling, filed a civil suit.

The case was opened following a social inspection at the snack bar in Liège in October 2013. On this occasion, two people from Bangladesh were found working there. They couldn't present either an employment contract or a valid residence permit for Belgium. They said they lived in a studio apartment located in the same street. A third person fled.

The next day, the investigators visited the establishment again in order to fetch the key to the studio apartment inhabited by the two Bangladeshi workers, and to seize their personal belongings. They found two other Bangladeshis there, including the one who had fled the day before, with no valid employment contract or Belgian residence permit.

In November 2013, a check was carried out at the snack bar in Namur. Three people were found to be working there.

Inquiries were made: interviews, searches and examination of the documents seized. Some were carried out in France with the help of the French authorities.

The court accepted the social criminal law and forgery charges. It also accepted the charge of human trafficking but only as regards the main defendant, his partner and the company. The court reiterated the essential elements of this offence: an action and a purpose, in particular for the purpose of work or services in conditions contrary to human dignity. It also stressed that these unfit work conditions were subject to a subjective assessment of the situation based on a body of evidence such as pay, working hours, failure to declare the work, and work conditions. It considered the charge founded in the case of two of the four Bangladeshis, those who filed a civil suit. They were indeed employed by the company in breach of the social criminal law rules. Their interviews were consistent regarding the essential points of their work conditions, making them credible.

<sup>390</sup> Brussels French-speaking Crim. Court, 11 December 2018, 89th ch. (appeal set for February 2022).

<sup>391</sup> Liège Crim. Court, Liège division, 5 November 2018, 18th ch. (final).

Hence, they were in an irregular situation when they were hired. In return, they were promised that their papers would be sorted out so that their situation could be regularised. Instead, they were given fake residence permits, with the recommendation to use them in the event of an inspection. In addition, the defendants presented one of these two workers as posted by a French company previously managed by the female defendant, but this wasn't true.

Their daily working hours were from 10:00 in the morning to 22:00 or 23:00 in the evening (i.e. 12 to 13 hours a day), and they had to clean the snack bar after it had closed. They weren't paid the wages they were supposed to receive and they were given no day off. They could only eat one of the cheapest sandwiches available at the snack bar during the day, and drink tap water. For the rest, they had to justify every need to possibly receive money from one or other of the defendants. They were housed in very basic conditions. Their accommodation was provided by the employer, right next to the place of work, allowing constant surveillance. The main defendant also asked them not to discuss their personal situation among themselves.

The court noted that some of the assertions were supported by other objective elements in the criminal case file, including statements by other workers, defendants and the findings of the investigators. The court also accepted the aggravating circumstances of abuse of the illegal or precarious administrative situation, the use of fraudulent means and a form of coercion and authority. However, it didn't accept the aggravating circumstance of usual activity.

Furthermore, the court acquitted these defendants of the charge of human trafficking regarding the two other workers. They had indeed been employed to work for the company without being declared. However, they weren't interviewed and therefore weren't able to provide any elements regarding either the terms of employment or their actual working conditions. The court subsequently considered that there was a doubt as to whether they worked in conditions contrary to human dignity.

In addition, the female defendant invoked diminished responsibility owing to her mental state on the basis of Article 71 of the Criminal Code. The court ordered a medical assessment whose findings excluded this hypothesis. The female defendant also invoked the state of dependence or submission regarding the main defendant, owing to the special relationship between them. In her opinion, it was equivalent to coercion or a force that she couldn't resist, again based on Article 71 from Criminal Code.

The court didn't follow her on this point either. It considered that the defendant's free will wasn't suppressed, that she was aware that she was guilty of criminal offences and that she had the chance to avoid committing such offences.

Concerning the company, the court explained, in a detailed statement of reasons, why it considered it criminally responsible, just like the defendants who worked within the company.

Regarding the charge of human smuggling, the court considered that the conduct adopted must be analysed from the point of view of human trafficking but that it didn't sufficiently meet the essential elements of human smuggling, particularly with regard to its moral element. It therefore acquitted the defendants of this charge. The workers were of Bangladeshi origin and staying illegally. They were recruited in Paris in order to be brought to Belgium by one of the defendants. Although they were indeed employed in breach of social legislation, the court considered that the willingness to derive a financial advantage wasn't sufficiently demonstrated. The perpetrator must have obtained or sought to obtain a profit as a result of allowing illegal entry or residence. In addition, the act of human smuggling is usually linked to a demand for illegal immigration, from which the smugglers profit. Hence, the court considered that the defendants' intention was to recruit cheap and easily exploitable labour. However, it wasn't sufficiently established that the smuggling was set up with a view to obtaining a financial advantage, demonstrating that the smuggler intended to enrich himself at the expense of the victim or their family, since the workers didn't show a desire to immigrate illegally to Belgium.

Taking into account that the reasonable time limit had been exceeded, the court sentenced the main defendant and his girlfriend to 24-month suspended prison sentences and a fine of EUR 12,000. It also ordered the confiscation of assets equivalent to the sum of EUR 10,535 from the main defendant. It handed the company a suspended fine of EUR 36,000.

The court awarded one of the workers the provisional sum of EUR 22,500, i.e. EUR 2,500 for non-material damage and EUR 20,000 for material damage, and the other worker the provisional sum of EUR 7,500, i.e. EUR 2,500 for non-material damage and EUR 5,000 for material damage.

Finally, **Dendermonde Criminal Court** rendered a decision in absentia on **16 November 2018** concerning a pita bar.<sup>392</sup> In this case, the manager was prosecuted, as an servant or agent of the company, for human trafficking for the purpose of labour exploitation and social criminal law offences. The company, as an employer, was cited as being civilly liable.

The acts came to light when a victim lodged a complaint with FPS Social Security about wage arrears. They declared that they were staying illegally and had worked for almost a year at a pita bar. They allegedly worked long days, seven days a week, without a single day off. They lived in a room above the establishment. They were promised a salary of EUR 50 a day but only received EUR 25 a week. The employer had promised to pay them the rest in one lump sum. However, the promised payment was never made.

A visit to the establishment was organised with the Social Inspectorate, the Housing Inspectorate, the food inspection service and the police. This resulted in a number of findings. They found another person working there. The accommodation was declared unfit and uninhabitable. The other person was interviewed by the police, and they made similar statements regarding their job at the pita bar.

The court found the defendant guilty of human trafficking and other offences. It found that the defendant systematically exploited illegally staying persons by employing them for a pittance, which was never paid, and by housing them in substandard accommodation.

The two defendants were convicted in absentia. The first one was sentenced to one year in prison and a fine of EUR 16,000 and forfeiture of their rights for 10 years.

The court considered that, according to the Social Criminal Code, the company and the employer were civilly liable for the criminal fines handed down to the servant or agent. In the event of unity of purpose between breaches of the Social Criminal Code and general criminal law, the general law sentence is the heaviest. Consequently, only general criminal law applies here. Therefore, civil liability stemming from the Social Criminal Code

is no longer applicable to the legal person. Under general law, the company can only be held civilly liable for costs and not for fines.

In the end, the two victims received the status of victim of human trafficking and were supported by Payoke. They filed a civil suit and received compensation of EUR 67,625 and EUR 42,125 respectively.

### Chinese restaurant

In a **judgment of 25 June 2018, Kortrijk Criminal Court** ruled in a case of human trafficking and human smuggling concerning a Chinese restaurant.<sup>393</sup> The case began when PAG-ASA filed a complaint with the police end 2010, on behalf of a victim, against the owners of a restaurant in West Flanders. The victim stated that they worked in the restaurant for EUR 800 a month, from 06:30 to 01:00 or 02:00. They had paid more than EUR 10,000 to come to Belgium. They were able to give detailed information about their experiences in the restaurant.

This allowed an investigation to be launched. Dimona declarations were requested, phone investigations conducted, and checks carried out by the Social Inspectorate. Searches took place and an investigation into financial transactions was organised. During each inspection, workers without a valid residence permit and/or work permit were found in the restaurant. There was no Dimona declaration either, among other things.

The defendants were prosecuted for human trafficking for the purpose of labour exploitation, human smuggling, forgery and various breaches of the Social Criminal Code.

The court found that the defendants were guilty of human trafficking but that violence, coercion and deprivation of liberty weren't a constituent element of the basic offence of human trafficking, only an aggravating circumstance. With regard to the concept of recruitment provided for in Article 433 quinquies of the Criminal Code, the court considered that, within the context of this provision, the term 'recruit' doesn't imply an active approach on the part of the person hiring a worker. The mere finding that the defendants had hired the victims was sufficient to conclude that recruitment was involved.

<sup>392</sup> East Flanders Crim. Court, Dendermonde division, 16 November 2018, ch. D13V. (in absentia)

<sup>393</sup> West Flanders Crim. Court, Kortrijk division, 25 June 2018, 11th ch. (appeal).

The court also clarified what was meant by the term 'conditions contrary to human dignity'.

"They relate to the essence of human nature. The fact of belonging to humanity must be specified and is presented as the symbolic collection of all the elements common to mankind. To violate human dignity thus means to 'diminish' the human quality of a person or group of persons and amounts to 'destroying' that which characterises human nature, namely physical and mental capacity. Physical capacity means being able to move around freely, to meet one's needs, take care of oneself and others; in other words, the physical capacity to meet one's essential needs freely and equally. Mental capacity means the equal social and intellectual capacity that can be mobilised within a society.

Certain work conditions, which may result in the workers concerned no longer being able to meet their basic needs freely and equally, may be contrary to human dignity. Various elements may be taken into account in determining work conditions contrary to human dignity. As far as wages are concerned, a wage that is clearly not commensurate with the extensive number of hours worked, possibly without a day of rest, or the (compulsory) provision of unpaid services can be defined as work conditions contrary to human dignity. Where a wage is lower than the average monthly minimum wage, as stipulated by a CLA, the trial judge may use it as an indication of labour exploitation. Work conditions that are contrary to human dignity can also be said to exist when one or more workers are working in a professional climate that clearly doesn't comply with the imposed standards of well-being at work.

The work conditions that foreign workers have to make do with in their country of origin should - of course - not be used as the benchmark to consider a job as contrary to human dignity or not. It is the work conditions in force in Belgium that serve as the basis, and with which the situation of foreign workers must be compared."

The court considered that it was clearly a question of labour exploitation. Victims made credible, detailed and consistent statements. The Chinese victims were significantly underpaid, entirely at the mercy of the defendant, and worked long hours for practically seven days a week. They slept in dreadful conditions. They were completely dependent on the defendants owing to their precarious residence situation and the fact that they had been forced to hand over their residence papers. In this context, they had no choice but to submit to the unilaterally imposed living and work conditions.

Concerning human smuggling, the court found that even though the defendants weren't responsible for the victims' journey from China, the facilitation of illegal residence in Belgium by harbouring and employing them was also punishable.

The court found that the reasonable time limit had been exceeded and took this into account when determining the sentence. The investigation had been interrupted or had only advanced slowly at various times. The acts date back to 2010-2013.

The defendants were given a 12-month prison sentence and a fine of EUR 6,000, both suspended.

One of the victims filed a civil suit and obtained EUR 5,000 for non-material damage and EUR 5,900 for material damage.

### 2.3.3. | Night shops

In a case tried in Liège, a Belgian defendant was prosecuted for exploiting a Bangladeshi worker in his night shop.

Following a violent robbery in the defendant's shop, the investigators noticed the worker who was employed as a sales assistant. The latter had no identity papers and was living in the back of the shop. The police noted that the worker slept on a mattress on the floor, had no heating and no bathroom facilities. There was no kitchen either and he prepared his meals on a small electric hot plate and a microwave placed on cardboard boxes. The worker later stated that he was responsible for looking after the night shop and worked there alone, six days a week, 15 hours a day, until 02:00. He was paid EUR 600 - 700 a month.

In a judgment of **10 January 2019, Liège Court of Appeal**<sup>394</sup> confirmed the judgment rendered at first instance by the Criminal Court of Liège on 4 September 2017.<sup>395</sup> The court accepted the various social criminal law charges and the charge of human trafficking.

With regard to the human trafficking, the court noted that the first judge had pointed out that the work was performed in conditions contrary to human dignity. The victim was in a vulnerable situation as they weren't authorised to stay in the country. The defendant knew the worker was staying illegally because he had taken steps to 'employ' him as a self-employed worker, which of course was impossible. The victim worked a minimum of 11 hours a day without being declared and with no social cover, and wages well below official rates. The court found that his living conditions were contrary to human dignity: he lived at his workplace in precarious conditions that flouted the standards for washing and eating.

The court confirmed the sentences pronounced at first instance: two years in prison with a three-year suspended sentence and a EUR 1,000 fine. However, it extended the suspension to the fine. It confirmed the award of EUR 500 to the civil party for non-material damage and set the final amount for material damage at EUR 9,285.48.

**Ghent Court of Appeal** also had to retry a case concerning a night shop.

This was a case in which **Ypres Criminal Court ruled on 8 January 2018**<sup>396</sup>, where two cases were linked. Six people and three companies were prosecuted at first instance. The main defendants and the three companies filed an appeal. The defendants had set up various companies, i.e. night shops, where the victims were employed as bogus self-employed workers. The defendants were convicted of human trafficking for the purpose of labour exploitation, but also of other charges such as human smuggling, money laundering, forgery, misappropriation of assets, attempted sham marriage, attempted fraudulent legal cohabitation, various social criminal law offences, etc. Six victims filed a civil suit, including the administrator of a company and Myria.

Furthermore, the first defendant was a repeat offender as regards human trafficking, having abused the victim's particularly vulnerable position, and entering into a sham marriage.

The case was brought to light following an initial report concerning money-laundering practices. A subsequent investigation showed that the first defendant made a profit especially from the organisation of sham marriages. During the financial investigation, suspicious cash transactions were identified. As the investigation progressed, more and more victims made statements.

The court found that the status of bogus self-employed worker didn't, as such, amount to labour exploitation in the sense of human trafficking. Conditions contrary to human dignity are required. The court considered that the bogus self-employed workers were indeed employed in conditions contrary to human dignity, especially owing to the fact that they acquired no right to social security, that they didn't benefit from any cover in case of occupational accidents, and that they were significantly underpaid. In addition, they were threatened. The bogus self-employed workers were in a precarious situation in terms of social law and/or residence rights, and they were completely at the mercy of the defendants' whims. Furthermore, the victims were housed in dreadful conditions and often worked very long hours.

<sup>394</sup> Liège Court of Appeal, 10 January 2019, 6th ch.

<sup>395</sup> Liège Crim. Court, Liège division, 4 September 2017, unpublished.

<sup>396</sup> West Flanders Crim. Court, Ypres division, 8 January 2018, 19th ch. See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 140-141.

The defendants were given prison sentences ranging from one to four years, and fines of EUR 24,000 to EUR 76,000. The companies were fined between EUR 600 and EUR 612,000. Several real estate assets and cash were confiscated. An order was also issued to close down the private limited companies.

Myria was awarded compensation of EUR 2,500 for material and non-material damage. The victims received amounts between EUR 1 and EUR 25,000.

In its **judgment of 28 November 2018, Ghent Court of Appeal**<sup>397</sup> upheld the court's argument on labour exploitation. According to the court, the combination of imposing the status of bogus self-employed worker and withdrawing it at will, without providing basic content in the interim, or offering sufficient social protection, is to be regarded as a form of labour exploitation affecting human dignity.

In addition, in relation to all those employed, there were allegedly substantial violations of certain standards and the essential commitments of the law on working conditions, such as working hours, workers' well-being, wage protection, etc.

The court also upheld the conviction for human smuggling. According to the court, the defendant doesn't have to have actively recruited and/or deprived the victims of their freedom. They simply have to have employed the persons under the terms of labour exploitation in order to obtain a financial advantage from them. Moreover, by putting these people to work, they contributed to their illegal stay and its extension.

The court adjusted the sentences to a limited degree. In particular, it reduced the main defendant's prison sentence to 40 months. The damages awarded to the three civil parties were confirmed practically in full.

### 2.3.4. | Carwash

**Dendermonde Criminal Court** tried a case of trafficking concerning a car wash in the region of Ninove on **1 December 2017**.<sup>398</sup>

This case was opened following a check by the Social Inspectorate, assisted by the federal judicial police and the local police's intervention service. During this check in March 2016, illegally employed persons without a valid Belgian residence permit were found, as well as employment contracts and documents. Various sleeping places were also discovered on site at the car wash, where the workers were staying.

A few months later, a search was carried out on the orders of the investigating judge. Several people present during the search were questioned. A few people stated that they only worked a few hours a day for payment, accommodation and a small extra amount. They washed cars and did a few extras. Even though the employer was in order regarding a number of documents, the workers' statements nonetheless revealed shortcomings. In view of the car wash's advertised opening hours (between 08:00 and 19:00), it was impossible that only a few people worked a limited number of hours each day. Other workers stated that they did indeed work long days and that the working conditions were bad. They had no breaks, no days off and had to be available seven days a week. Furthermore, the employer had promised to take care of their residence papers. Owing to their precarious situation, they were heavily dependent on their employer's goodwill and weren't at all aware of their rights.

The Housing Inspectorate had also declared several living spaces uninhabitable.

The manager and the company were prosecuted for human trafficking and various offences under the Social Criminal Code.

The court held that the acts of human trafficking for the purpose of labour exploitation were established. The workers were made to work in conditions contrary to human dignity: the salary wasn't proportional to the high number of working hours, there were no days of rest, the services provided weren't paid and the work conditions didn't comply with the welfare at work regulations.

The manager was finally sentenced to one year in prison and a fine of EUR 24,000 (EUR 6,000 x four victims) and was deprived of his civil rights for 10 years. The company was sentenced to a fine of EUR 72,000 (EUR 18,000 x four victims) with a three-year suspension.

<sup>397</sup> Ghent Court of Appeal, 28 November 2018, 3rd ch.

<sup>398</sup> East Flanders Crim. Court, Dendermonde division, 1 December 2017, ch. 13V (final).

### 2.3.5. | Bakery

In a case in which **Ghent Criminal Court ruled on 27 June 2018**, a bakery and its two managers were prosecuted for human trafficking, illegal employment of workers, unintentional harm and injury, failure to assist a person in danger and various offences under the Social Criminal Code and breaches of the welfare regulations.<sup>399</sup>

The case in Ghent was brought to light when the emergency services received a call early one January morning in 2017, concerning two people lying unconscious in a supermarket car park. In the beginning, the emergency services didn't know what had happened. There was no-one around. It then transpired that the two men had been the victims of CO<sub>2</sub> poisoning, which is highly dangerous. Their lives were in danger for several days. It emerged from the police investigation, interviews and an analysis of the camera footage that the two men had been working in a bakery close by.

During their night shift, they were exposed to CO<sub>2</sub> that had leaked from the oven. Camera footage revealed that one of the managers had found the unconscious men in the bakery and moved them with the help of a customer who was there. They dumped the bodies in the car park and the customer called emergency services. They then fled. The manager failed to inform the emergency services what had happened to the two men. Hence, the two victims weren't immediately given the correct treatment.

During an interview with the two victims and the managers, it emerged that the two victims were illegally employed. They had no official Belgian residence permit and had been recruited through an illegal labour circuit.

Furthermore, it transpired from the investigation carried out by the fire brigade, an expert and the welfare at work inspectorate, among others, that the oven hadn't been properly installed. There wasn't sufficient ventilation, no written instructions or handbook for the oven, and no installation report. No risk analysis had been made, and neither had prevention measures been adopted.

Both managers were found entirely guilty, especially of human trafficking for the purpose of labour exploitation.

The court considered that the acts made it possible to establish that the victims had been employed in conditions contrary to human dignity. Originating from Morocco, the victims worked long nights, six days a week (48 and 54 hours respectively per week), and weren't sufficiently paid (EUR 6.1 and 7.5 respectively per hour). They slept on a mattress on the floor. The managers had got the oven installed unofficially by amateurs who weren't recognised installers and weren't approved. The occupational safety of the workers was the least of the managers' concerns. And after the CO<sub>2</sub> poisoning, the victims were dumped in a car park without informing the emergency services.

Aggravating circumstances were also found to be established by the court, namely, abuse of the workers' vulnerable situation and the fact that their lives had been endangered owing to gross negligence. They had been recruited from an illegal foreign labour circuit, with the knowledge that because of their precarious administrative situation, they would be prepared to work for low wages. The first defendant was also found guilty of failure to assist a person in danger.

The defendants were handed partly suspended prison sentences of 30 months and nine months respectively, together with fines of EUR 20,800. They were also given a three-year ban on running a business.

The company was also held liable and sentenced to a partly suspended fine of EUR 96,000. An order was issued to close down the business.

The victims were supported by the non-profit association Payoke and received the status of victim of human trafficking.

One victim filed a civil suit. They received provisional compensation of EUR 10,000. A medical expert was appointed to assess the victim's exact physical injury.

### 2.3.6. | Butcher's shop

**Liège Criminal Court** tried a case of trafficking concerning a butcher's shop on **3 September 2018**.<sup>400</sup> A defendant and his company were prosecuted for social criminal law charges regarding workers employed in their butcher's shop.

<sup>399</sup> East Flanders Crim. Court, Ghent division, 27 June 2018, ch. G29W (final).

<sup>400</sup> Liège Crim. Court, Liège division, 3 September 2018, 18th ch. (final).

They were also prosecuted for the human trafficking of one of the workers, a Moroccan national. Two of the defendant's brothers were also prosecuted for obstructing organised surveillance in accordance with the Social Criminal Code.

The case began after checks were carried out by the Social Inspectorate. During the last one, the worker was cutting up chicken in the workshop. He had fled twice during previous checks. He stated that he was here illegally and worked six days a week, from 08:00 to 21:00, for EUR 180 to 200 a week. He didn't receive proper care when he injured his finger, and was allegedly physically abused by the main defendant's brothers. The defendant contested these statements, but the court considered his explanations to be lacking in credibility.

However, the court found that on the basis of the criminal court record, in its current form, it wasn't possible to establish that the number of hours worked and the remuneration of the worker were contrary to human dignity. Indeed, the worker's statements weren't supported by any other objective element in the record or by any objective witness statements.

As a result, the court gave the defendants the benefit of the doubt. On the other hand, it accepted the social criminal law charges regarding the main defendant and the butcher's shop. It sentenced the former to a partly suspended fine of EUR 21,600, and the latter to a suspended sentence.

### 2.3.7. | Riding schools

In a case tried in Liège and discussed in a previous report<sup>401</sup>, two people who ran a riding school (a man, the managing director, and a woman, the director) and their company, the owner of the riding school, were prosecuted for trafficking, smuggling and various social criminal law charges (some of which also concerned Belgian workers). They were accused of illegally employing and exploiting two Moroccan workers. The latter were required to take care of the horses and general maintenance of the riding school.

In a judgment of 21 November 2016, Liège Criminal Court accepted the social criminal law charges. On the other hand, it acquitted the defendants of the charges of trafficking and smuggling in human beings.<sup>402</sup>

In a **judgment of 14 March 2019, Liège Court of Appeal** confirmed the social criminal law charges, as well as the acquittals for the charges of trafficking and smuggling.<sup>403</sup>

With regard to human trafficking, the court considered that although it was established that the workers were recruited and harboured for the purpose of work, this activity wasn't performed in conditions contrary to human dignity. Hence, the court observed, among other things, that the promised wages weren't lower than the legal minimum, that the apartment provided was clean and heated, that the working hours weren't abnormal taking into account the days of rest and the nature of the caretaker services, that the clothing was suitable for the work and that no infringement of the legislation on well-being at work had been found. Furthermore, the workers were free to come and go as they pleased, and to communicate with their family or third parties.

As regards the charge of smuggling, the Court of Appeal also found that it wasn't clear if the defendants had acted with the aim of obtaining an economic advantage by avoiding the payment of social security contributions and by underpaying the workers for the services performed.

It confirmed the (suspended) fines rendered at first instance, as well as the civil sentences. However, it also ordered the confiscation of assets equivalent to the amount of EUR 15,394.07, to be borne by the company. The court awarded this amount to the civil parties as compensation for their loss corresponding to the unpaid wages, i.e. EUR 6,050.98 for one civil party and EUR 9,343.09 for the other. A preventive attachment order was also exercised during the investigation, and the funds transferred to the account of the Central Office of Seizure and Confiscation (COSC).<sup>404</sup>

401 MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 120-121.

402 Liège Crim. Court, Liège division, 21 November 2016, 18th ch.

403 Liège Court of Appeal, 14 March 2019, 6th ch.

404 The Central Organ for Seizure and Confiscation (COSC) is an organ of the Public Prosecutor Office. Created by the Law of 26 March 2003, it has been operational since 1 September 2003. The COSC acts as a knowledge centre for the judicial authorities in criminal matters, within the framework of the seizure of assets. It provides assistance in the context of public action, related to confiscation, and assumes the role of facilitator for the execution of judgments and orders involving confiscation (source: [www.om-mp.be/fr/politique-gestion/ocsc](http://www.om-mp.be/fr/politique-gestion/ocsc)).



### 2.3.8. | Cleaning

A case tried in Brussels concerned an extensive case in the cleaning sector, relating to subcontracted work for a well-known fast-food restaurant. No less than 20 defendants were prosecuted at first instance. The managers of the cleaning firms, as well as the companies themselves, were the perpetrators and co-perpetrators of social criminal law offences (illegally employing foreign workers with and without a residence permit, no DIMONA declaration<sup>405</sup>). Some of them were also prosecuted for the human trafficking of workers. Six defendants, who were franchisees of this fast-food chain, were prosecuted as accomplices to the social criminal law offences and several of them of the offence of human trafficking as well. As regards the fast-food company, it was only prosecuted for complicity in human trafficking. Two workers filed a civil suit.

The Social Inspectorate had carried out inspections at night throughout the country for years, in relation to cleaning staff in restaurants belonging to the chain. This led to the discovery of social offences.

In a judgment of 25 May 2016, Brussels Criminal Court accepted the sole responsibility of the legitimate or effective managers of these cleaning companies<sup>406</sup>. Owing to the precariousness of their residency status, some workers were also exploited in conditions contrary to human dignity.

One of the managers, convicted of human trafficking, illegal employment of foreign workers without a residence permit and no Dimona declaration, and sentenced to an 18-month suspended prison sentence and a fine of EUR 82,500, appealed against his conviction. Since the defendant didn't appear on appeal, **Brussels Court of Appeal** confirmed in absentia, in a judgment of **4 March 2019**, the sentences pronounced against him at first instance.<sup>407</sup>

With regard to trafficking in human beings, it considered that the investigation proved the substandard work conditions of certain workers (excessive night-time working hours, very low wages in view of the hours worked, lack of social security cover owing to a failure to declare the workers to the NSSO, etc.). However, it handed the defendant additional sentences: a six-month suspended prison sentence and a EUR 77,000 fine owing to a previous conviction subsequent to the judgment of the present case but whose acts also concerned the exploitation of human beings.

The court also confirmed the civil sentences pronounced at first instance.

### 2.3.9. | Domestic work

**Brussels Court of Appeal** had to retry a case of trafficking in the domestic work sector, discussed in a previous report.<sup>408</sup> It rendered its judgment on **2 May 2018**.<sup>409</sup>

A couple was prosecuted for human trafficking and the degrading treatment of a Portuguese woman, employed as a domestic worker. The couple was also prosecuted as a slum landlord concerning a building it owned in Brussels.

In a judgment of 2 April 2015, the Criminal Court of Walloon Brabant accepted the slum landlord charge<sup>410</sup>: the defendants rented out the building's cellar and rooms. The ceilings in these spaces were too low and there were serious defects posing a risk to the persons' safety and/or health (damp, no bathroom facilities, no heating, rats, etc.). The court therefore considered that these were conditions contrary to human dignity and that the defendants had made an abnormal profit from renting the accommodation (EUR 200 and 550 for the cellar and EUR 250 to 350 for the rooms). The victims were all people in a precarious social situation (illegally staying, dependant on welfare, etc.).

<sup>405</sup> Dimona (immediate declaration of employment) is an electronic message used by employers to notify the NSSO of employees joining and leaving its staff. It is compulsory for all employers in the public and private sectors.

<sup>406</sup> Brussels French-speaking Crim. Court, 25 May 2016. See MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 178-179.

<sup>407</sup> Brussels Court of Appeal, 4 March 2019, 11th ch.

<sup>408</sup> MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 181.

<sup>409</sup> Brussels Court of Appeal, 2 May 2018, 11th ch.

<sup>410</sup> Walloon Brabant Crim. Court, 2 April 2015, 6th ch.

The court also accepted the charge of human trafficking. The victim, who had worked for the defendants for years, didn't receive any pay; she worked long hours (working in the evening after a day's work as an undeclared cleaner for private individuals, as well as at weekends and national holidays; no social security cover, work that was partly damaging to her health). The victim had to do the laundry, the ironing, clean the house where 10 dogs lived and clean out several birdcages. She had lung problems caused or aggravated by having to clean these birdcages.

The court relied on the victim's statements, various testimonies and an analysis of the victim's mobile phone, confirming the pressure she was under and the threats she received. The court considered the explanations provided by the defendants as neither credible nor true on a number of points.

While the Court of Appeal confirmed the conviction of the defendants for the slum landlord charge, it adopted a completely different reading of the case than the court of first instance regarding the human trafficking charge. It considered that the testimonies collected during the investigation were questionable not only because of the ties but also because of the state of relations between the witnesses and the defendants. It was therefore necessary to assess them with care and caution.

The court also considered that while it couldn't be excluded that the defendants took advantage of the plaintiff's kindness, subservience and a certain idleness, the plaintiff's allegations weren't credible or excessive regarding certain points.

It especially noted the number of hours worked every day at the defendants' after a 10-hour day in private homes (which wasn't credible), and the intensity of the work, which involved cleaning up after the 10 dogs (which would only have been intensive during a very limited period). At the same time, photographs testified to the plaintiff's genuine participation in family events.

As to whether the defendants were guilty of human trafficking, the court subsequently considered that there was a slight but reasonable doubt and acquitted them of this charge.

It also confirmed the acquittal at first instance concerning the charge of degrading treatment.

It therefore declared itself incompetent to rule on the claims of the civil parties, i.e. the worker and the centre that had supported her.

Another case was judged by the **Criminal Court of Walloon Brabant** on **2 October 2018**.<sup>411</sup> A British defendant was prosecuted for social criminal law charges and for human trafficking with aggravating circumstances against a Congolese woman, who filed a civil suit. She had recruited the worker in Kinshasa to look after her seven-year-old son, suffering from a mental disability. She regularly visited Belgium before settling here permanently. When the defendant came to stay, the worker accompanied her under a tourist visa, requested on the basis of the care required for the young boy. She continued to look after the young boy after the defendant settled permanently in Belgium. The worker also had to do household chores (cleaning, cooking, washing up and laundry).

The court accepted the social criminal law offences and the charge of human trafficking. The victim had to work seven days a week, from 06:00 to 23:00 for a monthly salary of USD 200 (i.e. a daily wage of USD 6.6 a day). According to the Social Inspectorate's calculations, her wages only represented 11 % of the amount she had a right to based on a full-time job, i.e. gross earnings of EUR 1604.45. She had no social protection and lived in the laundry room, located in the cellar, with a sofa and no access to a bathroom.

She had to fetch water in a bucket from upstairs to wash herself. In addition, her passport was confiscated when she came to stay in Belgium. The court also pointed out that "the possible consent of the civil party - underpinned by a need for money and/or the hope of a better future in Europe - had no bearing whatsoever on the commission of the offence".

The court gave considerable weight to the victim's statements. It handed the defendant a five-year suspended sentence and sentenced them to pay the plaintiff EUR 1,500 for non-material damage and EUR 62,625 for material damage.

411 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal).

## 2.4. | Exploitation of begging

**Brussels Criminal Court** reviewed its judgment rendered in absentia on 29 June 2017, in a judgment on opposition of **12 April 2018**.<sup>412</sup> A defendant had been convicted of human trafficking for the purpose of exploitation of begging.<sup>413</sup>

The case began when a police patrol discovered a confused woman with seriously handicapped legs and feet in a café in Aalst. The woman was taken to a reception centre but fled the next day, at which point she was stopped by the police again. She appeared to be from Romania and no longer had her parents.

She also looked very unkempt and seemed to have a mental impairment. The defendant, who appeared to be her uncle, had brought her to Belgium from Romania. She had to beg and give him the money she collected. She later stated that she had also been raped several times by the latter. The defendant was prosecuted for various charges: human trafficking for the purpose of exploitation of begging; recruiting, encouraging, misleading or keeping a person in order to make them beg; exploiting the victim's begging, each time with aggravating circumstances.

The defendant was convicted in absentia and given a 40-month prison sentence, together with a fine of EUR 3,000. An order was also issued for his immediate arrest.

The defendant was extradited by Romania and lodged an opposition to the judgement. Ruling on opposition, the judge acquitted the defendant. According to the judge, it wasn't possible to determine from the court record whether the defendant had brought over the victim with the purpose of exploiting her in begging.

In the absence of other objective elements, guilt was only established on the basis of the victim's statements, which were very confused and contradictory on several points. Furthermore, there were two people with the same name in the case: the defendant and another person. During an interview, the victim spoke of the defendant. However, when shown photos, she seemed to recognise the other person.

Even though the court found the defendant's statements to be lacking in credibility, it was impossible to ascertain the truth about what had happened, based on the victim's statements.

412 Brussels Dutch-speaking Crim. Court, 12 April 2018, 60th ch.

413 Brussels Dutch-speaking Crim. Court, 29 June 2017, 60th ch. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 153-154.

## 3. Human smuggling

### Afghani smuggling network - joint investigation team (JIT)

On **25 March 2019**, **Ghent Criminal Court** tried an extensive human smuggling case involving an Afghani network.<sup>414</sup> The Belgian case concerned the Bulgarian middle management of this smuggling network.

In this case, 16 people were prosecuted for human smuggling within the framework of a criminal organisation with a large network active in several European countries. Myria filed a civil suit.

At the beginning of 2017, the Belgian police received information through international information exchanges, on a criminal organisation involved in wide-scale human smuggling. It had an extensive network in Europe and smuggled people of different nationalities into the United Kingdom.

Several transportations were intercepted in ports in the Netherlands, France and the United Kingdom but also in Croatia, Greece, Bulgaria, Hungary, Serbia and Austria. The organisation illegally transported people in vans and small lorries, containing hidden compartments. Sometimes, a support car accompanied the transportations. During a number of interceptions, it was possible to establish links with Belgium through documents that were found and the analysis of phone data, among other things. A criminal investigation was launched in Belgium on the basis of this information. When it became apparent that there was also regular contact with Bulgaria and the United Kingdom, a joint investigation team (JIT) was set up within the framework of a criminal investigation to enable European cooperation in terms of the police, the public prosecutor's office and the investigating judge. These investigations revealed that an organisation had been created, that it had mainly been facilitated by Afghans and that it was led by two specific people in the United Kingdom and Bulgaria. The network especially smuggled people from Afghanistan, Syria and Iraq to the United Kingdom. Belgium acted as the crossroads where people were loaded into vehicles containing hidden compartments. The migrants had to pay EUR 10,000 for the entire journey.

414 East Flanders Crim. Court, Ghent division, 25 March 2019, 28th ch. (appeal set on 17 September 2019).

During the investigation in Belgium, the network cell that operated out of Lovech, in Bulgaria, was studied in detail. An extensive phone investigation was conducted, where phone numbers were recorded and surveillance was carried out. It emerged that the first defendant ran the cell in Lovech. He was responsible for the logistical aspects of transporting migrants: recruiting and dispatching drivers, buying and transforming vehicles and accompanying the transportations. He was sometimes assisted by the second defendant. Both of them were in direct contact with the supposed leaders of the organisation in the United Kingdom and Bulgaria. The other defendants were also involved in the activities in one way or another, either in Belgium or in Bulgaria. Some of them ran a garage in Belgium.

The victims were placed in hotels and safe houses. They were transported in extremely dangerous conditions in hidden compartments in the vehicles, often without the possibility of getting out of them without help.

Fifteen intercepted transportations and two attempted transportations in Belgium and abroad between July 2016 and October 2017, demonstrating an obvious link with Belgium, were accepted in the Belgian criminal investigation.

Following the concerns about the safety of one of the transportations, an action was organised, whereby several suspects were detained in Belgium and abroad. This also led to the extradition of certain defendants from Bulgaria and the United Kingdom to Belgium.

One of the defendants pleaded that the rights of the defence had been violated since the police reports and investigative acts that led to the opening of the criminal investigation weren't included in the criminal case file. The documents from the JIT file and, at the very least, the documents within the framework of the JIT agreement, should have been in the criminal case file. The court held that there was no question of the violation of the defence's rights because the police information was only entered and used as information to open the criminal investigation and wasn't used as evidence.

The two main defendants and a few other defendants were found guilty - of being the leader and co-perpetrators respectively - of a criminal human smuggling organisation with aggravating circumstances: presence of minors, abuse of the victims' precarious situation, usual activity, endangering the victims' lives by smuggling them in dangerous conditions in hidden compartments in the vehicles, thus running the risk of a lack of oxygen. The court took into account the very dangerous and inhumane conditions in which the victims were smuggled, often in ill-ventilated and confined spaces under the floor or even under the bonnet. There was absolutely no regard for the victims' health. The goal was to place as many people as possible in cramped spaces to generate the maximum amount of profit. Seven defendants were given prison sentences ranging between four, five and seven years, and fines between EUR 24,000 and EUR 760,000. Two others were handed eight and 30-month prison sentences and fines of EUR 40,000 and EUR 96,000 (EUR 1,000 x victim x surcharges).

Other defendants were acquitted owing to insufficient evidence.

The federal public prosecutor's office had requested the special confiscation of large sums. In the end, the court only pronounced a confiscation against the main defendant of EUR 71,250 (a minimum of EUR 750 of financial advantage per migrant). For the other defendants, a concrete financial advantage couldn't be proven and the confiscation was therefore rejected.

Despite the opposition of the defendants, who claimed that a token sum of EUR 1 in compensation could be awarded, Myria received a lump-sum of EUR 2,500 in compensation.

## Syrian smuggling network

In a **judgment of 17 December 2018, Ghent Court of Appeal**<sup>415</sup> examined the judgment of Dendermonde Criminal Court of 3 November 2017<sup>416</sup> rendered in a case of human smuggling involving 25 defendants, which was discussed in the previous report.<sup>417</sup> The defendants, of Syrian and Egyptian nationality, were smuggling victims from Syria, Eritrea, Sudan, Ethiopia and Afghanistan to the United Kingdom. They were mostly active in the parking areas along the E40. Myria filed a civil suit in this case.

This was a very active network. In total, the human smuggling activities took place on 154 different nights, involving a total of 1,994 acts of human smuggling. The investigation was conducted by analysing mobile traffic collected from base stations, surveillance and phone taps. It emerged that the smugglers threatened the victims and their family with violence if the victims failed to pay. Violence was indeed used. Young children were also smuggled. Refrigerated lorries were also used. A phone tapped conversation revealed that a victim had contacted the smuggler so that he could come and let them out because they were suffocating, and that the smuggler had done nothing to help them. The indicative prices for an illegal transportation ranged between GBP 1,000 and GBP 3,000, depending on nationality and the family composition. The smugglers promised that every client would get to England. The operations centre was apparently set up in the Calais 'jungle'.

Some defendants denied any involvement and said they were victims themselves, while others admitted working as a smuggler to earn large sums of money. Several of them had evolved from customer to smuggler.

Every defendant had a specific role in the system, as a recruiter, collateral taker, car park manager, implementer, escort or driver, all with a common goal: to place a maximum number of migrants in transit on board a lorry in order to earn money. The court held that the money flows must have been enormous. They were estimated at a minimum of EUR 594,000 but in reality, this was probably a multiple of the figure. Four hundred and ninety-five victims were identified, including 93 minors.

<sup>415</sup> Ghent Court of Appeal, 17 December 2018, 6th ch.

<sup>416</sup> East Flanders Crim. Court, Dendermonde division, 3 November 2017, ch. vac

<sup>417</sup> MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p.157-158.

The court handed down heavy sentences to the 25 defendants, i.e. from a three-year suspended prison sentence and a EUR 288,000 fine to 10 years in prison and a fine of EUR 11,964,000. A total sum of EUR 594,000 was also confiscated. Myria received EUR 5,000 in compensation.

Fourteen of the convicted persons filed an appeal.

One of the defendants was acquitted. He was the driver who regularly drove the other defendants to the parking areas. The court found that it wasn't established that this person was aware of the human smuggling activities of the other defendants.

For the other defendants, the court followed the first judge but partly reduced the prison sentences to between three and eight years.

## Albanian network

In a **judgment rendered on 14 December 2018, Bruges Criminal Court** focused on the acts of human smuggling committed by an Albanian group active along the E40 highway in the direction of France.<sup>418</sup> The case was opened when the police received information about the probable smuggling of human beings in a refrigerated lorry, which was going to take place on a specific night at a parking area. Surveillance was carried out on this basis. On that particular night, several smugglers and 13 victims were indeed found.

Those arrested were interviewed, a phone investigation was conducted as well as the analysis of mobile phones, phone taps and information exchanges with the British police.

It emerged that the organisers of the human smuggling were based in the United Kingdom. It was from here that they set prices, searched for drivers, etc. The victims were recruited in Europe, either in Albania or in a hotel in the Ghent region. The organisation specialised in guaranteed smuggling, meaning that the lorry drivers were often involved. Prices ranging from GBP 8,000 to 13,000 were charged. Three of the defendants were lorry drivers. Dangerous transportations in refrigerated lorries were also organised.

<sup>418</sup> West Flanders Crim. Court, Bruges division, 14 December 2018, ch. B17 (appeal).

Child victims were found. The investigation revealed that the organisation had been active in smuggling for five years. Several members of the group were from the same family.

Fourteen defendants were prosecuted for human smuggling or for being co-perpetrators (Art. 66 of the Criminal Code). Three defendants were arrested in the United Kingdom but opposed an extradition to Belgium. Another defendant was arrested in Hungary.

The court held that in order to be convicted as a co-perpetrator or accomplice in an offence (Articles 66 and 67 of the Criminal Code), it isn't necessary for all the elements constituting the offence to be present in the acts of participation. The participant simply has to have consciously and willingly contributed to the execution of the offence, in accordance with Articles 66 and 67 of the Criminal Code.

The defendants were declared co-perpetrators of human smuggling with aggravating circumstances. The main defendants were given prison sentences of four to ten years, and the others defendants, 30-month prison sentences. Heavy fines (EUR 1,000, to be multiplied by the number of victims), which were partly suspended, were pronounced.

One of the defendants, who was the girlfriend of another defendant, was acquitted owing to a lack of evidence. GBP 910,500 were confiscated.

Myria filed a civil suit and received EUR 5,000 for material and non-material damage.

### Iraqi network

**Brussels Court of Appeal** examined the judgment of the Dutch-speaking Criminal Court of Brussels of 6 February 2018, discussed in the previous annual report.<sup>419</sup> In this case, four Iraqi defendants were summoned to appear for human smuggling.

The case was launched when the police went after a van one evening, which had driven the wrong way down part of the road. During the chase, the driver attempted to drive several police vehicles off the road. The driver then lost control of the van, the vehicle was thrown into the air and turned over several times before landing on its side at the edge of the road. It turned out that 16 people were on board. They were all taken to hospital. Thirteen of them were seriously injured and three sustained minor injuries.

Two children were in a critical condition. They were all transit migrants who wanted to go to the United Kingdom.

It immediately became clear that this was a transportation involving four smugglers, taking 12 people from the Dunkirk camp to Belgium to board a lorry for the United Kingdom.

After various interviews, the role of each person in the transportation became clear. The victims stated that they had paid between USD 2,000 and 9,000 per person to reach the United Kingdom. Several victims had already made one or more attempts to get there.

When they were arrested, the defendants stated that they had nothing to do with human smuggling and that they were victims. The investigation revealed that the first defendant was an assistant to the smugglers. He mostly had to check whether the lorries were accessible or not. The second defendant accompanied the people in the woods, helped them get in the lorry and checked them as well. The third defendant was the driver of the van, which he firmly denied. The fourth defendant was identified as the main smuggler, the leader. The other smugglers had to report to him. The investigation also involved phone taps and a DNA analysis of hair found in a wig worn by the driver. The results were compared with the suspects' reference profiles. This sample confirmed that the third defendant was indeed the driver.

The court found that the charge of human smuggling was established, as well as several aggravating circumstances, i.e. the fact that three victims were minors, abuse of the victims' vulnerable situation, participation in a criminal organisation and the fact that the activity was a usual activity.

Different sentences were pronounced according to the various roles of the defendants. The first defendant, who played a more limited role in the human smuggling activities, was given a 40-month prison sentence and a fine of 11 x EUR 8,000. The second defendant, considered as an implementer, and someone who would readily commit acts, was given a four-year prison sentence and a fine of 11 x EUR 8,000. The third defendant, who clearly played a leading role and bore the overwhelming responsibility for the serious traffic accident, was given a six-year prison sentence and a fine of 11 x EUR 8,000. The fourth defendant, also considered as an implementer, was given a four-year prison sentence and a fine of 11 x EUR 8,000. The last three defendants were convicted of another charge and given a three-month prison sentence.

<sup>419</sup> Brussels Dutch-speaking Crim. Court, 6 February 2018, 51th ch., See MYRIA, *2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, pp. 162-163.

On a civil level, PAG-ASA received EUR 1,000 for material and non-material damage. The court sentenced all the defendants to pay one victim, who had filed a civil suit, the sum of EUR 5,000 for material and non-material damage. He was also awarded EUR 4,475 for material and non-material damage, for the injuries he sustained and his hospitalisation. Finally, the court sentenced the third defendant to pay him compensation for material and non-material damage amounting to EUR 1,000 for rehabilitation.

Several defendants and the public prosecutor lodged an appeal against the decision.

In its **judgment of 27 September 2018**, the **Court of Appeal** didn't follow the defendants who also claimed to be victims of smuggling.<sup>420</sup> One of the defendants maintained in his defence that he had in no way derived, directly or indirectly, any financial advantage from his activities. However, the court found that he had made his services available to the criminal organisation in exchange for free transportation to the United Kingdom. The court nevertheless found that he had played a less important role than the other smugglers since he had no decision-making power.

As regards the sentences, the court confirmed the sentences of the first judge, with the exception of the third defendant. For the latter, the sentence handed down at first instance was deemed insufficient in view of the context. His sentence was increased to seven years in prison.

## Chinese poly-criminal network

Brussels Court of Appeal had to retry a smuggling case involving a Chinese poly-criminal network.

In this case judged at first instance by Brussels Criminal Court on 12 January 2018 and discussed in the previous report<sup>421</sup>, eight defendants of Chinese origin were prosecuted in various capacities for different offences. Three of them were prosecuted for the attempted human trafficking of unidentified underage girls for the purpose of sexual exploitation. Six of them for various human smuggling charges with aggravating circumstances (abuse of the vulnerable situation, usual activity and criminal association). They were accused of going to fetch and transporting mainly Chinese and Tibetan nationals, or providing them with fake or forged documents (European identity cards, employment contracts, documents relating to social security or taxes, employment or a place of residence). The intention was to provide them with a residence permit or the possibility of staying or working without having the necessary work authorisations. These 'services' were provided for a fee that was sometimes substantial. A Chinese national, who filed a civil suit, paid a total of EUR 11,000 over a 10-year period in order to be provided with a place of residence, a job (as a dishwasher in a restaurant) and fake papers (a fake Romanian identity card, among other things). Another Chinese national paid EUR 1,600 for an employment contract, a school certificate and two letters of recommendation. In return for the payment of EUR 2,100, she was also supposedly presented as an alleged victim of trafficking to a specialised reception centre. Several other Chinese nationals were also put to work in a massage parlour.

The other charges concern extortion and attempted extortion, participation as a leader or member in the activities of a criminal organisation, corruption, possession of narcotics, forgery and use of forgeries, money laundering and illegal residence.

At the beginning of 2015, a series of acts led to the launch of an investigation into a human smuggling network. Chinese and Tibetans were reportedly being smuggled from China via European countries to Belgium.

420 Brussels Court of Appeal, 27 September 2018, ch. vac.

421 Brussels Dutch-speaking Crim. Court, 12 January 2018, 46th ch. See MYRIA, *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 196-202.

In January 2015, the customs inspection services discovered a DHL parcel containing two authentic Chinese passports. The contents, which came from China, were addressed to the first and main defendant. Shortly after, a victim came forward, identifying this defendant as the person organising the documents to enable them to stay and work in Belgium. Other facts relating to the use of fake documents were subsequently brought to light. While investigating the data from the objects found, the analysis of the subsequent statements made by victims and witnesses, and the facts associated with the fake identity papers, the police discovered persons who smuggled mainly Chinese nationals into Belgium.

The smuggling activities were conducted in Belgium by people of Chinese origin in contact with the first defendant, who played a key role. The victims paid exorbitant sums to be smuggled into Belgium. Once here, they were put to work in restaurants, illegal food workshops, massage parlours, the construction sector or as babysitters in order to repay their debts. The victims were also employed in commercial firms set up by gang members and third parties looking for illegal workers. As well as selling fake identity papers to victims, identity papers were also provisionally used by the victims against payment of a rental guarantee or guarantee.

The investigation revealed that the victims were physically and verbally threatened, so that they didn't dare reveal their situation to the authorities. Apparently, contact was made with Belgian municipal staff and the Chinese embassy in order to obtain residence permits for the victims.

The gang members arranged for the victims to stay and work. As they didn't speak any European languages, they were completely under their control.

Payments for the stay and residence permits were made in various ways.

The court found that the charge of attempted human trafficking wasn't established owing to the lack of sufficient objective evidence in the case. Indeed, the only elements were two phone conversations between the defendants concerned. The conversations related to the arrival of young Chinese women but there was no evidence in the case demonstrating that this had actually begun.

Of the many smuggling offences, the court considered some to be established in the case of three defendants. It acquitted the other three defendants of the charges. In order to convict the three defendants in question, it based itself especially on the phone investigation, observations, phone taps, material findings, the victims' statements and documents found during searches.

It thus declared the acts of smuggling committed against the civil party to be established, based on the detailed, coherent and consistent statements, which were supported by other objective elements in the case. The main defendant had made this victim stay in Belgium using fake papers, providing places to stay and working without authorisation, with a view to obtaining considerable financial advantages.

At the same time, the court considered as established the smuggling acts relating to the Chinese national presented to the specialised reception centre as an alleged victim.

On the other hand, it acquitted the defendants concerned for making people work in a massage parlour. According to the court, there was doubt about the illegal residence status of the persons who supposedly worked there, despite this being an essential element of the human smuggling charge.

For the three defendants convicted of human smuggling, the court accepted the aggravating circumstances of abuse of a vulnerable situation and criminal association. It also accepted the aggravating circumstance of usual activity but only as regards the main defendant.

The court considered as established the acts of extortion allegedly committed by the two defendants against one victim. It convicted the main defendant and another defendant for the acts of attempted extortion against another victim.

The court declared the acts of active bribery as established regarding the main defendant. Based on the recorded conversations, it emerged that he was in contact with a woman employed by the City of Brussels, or so she claimed. He allegedly tried to buy a passport through her.



The court considered the acts relating to forgery and money laundering partly established. It declared the acts concerning narcotics and illegal stay to be established.

The court found that there was no question in this case of criminal organisation in the sense of Article 324bis of the Criminal Code. For instance, it didn't emerge that the defendants really shared roles and fixed agreements on the expected gains. The defendants knew each other and collaborated according to the circumstances, when it suited them. The court therefore requalified the acts of criminal association.

In this respect, the court acknowledged the key role of the main defendant as coordinator. He had a large network which he could call on regarding the falsification of documents, employing illegally staying persons, places to stay and contacts at the registry office. He was subsequently convicted of this charge, as well as two other defendants.

The defendant was given a four-year prison sentence and a EUR 54,000 fine, as well as a confiscation order for EUR 75,585.07, part of which the court awarded to the civil party as compensation for the damage suffered.

The other convicted defendants were handed prison sentences of three to 18 months, some of which were suspended, and fines of EUR 600 to EUR 30,000.

The court sentenced the main defendant to pay the civil party EUR 13,000 for material damage and EUR 500 for non-material damage. It also sentenced the three defendants convicted for human smuggling to pay EUR 500 in compensation to the reception centre that filed a civil suit.

The appeal concerned five defendants, including the main defendant and another defendant, convicted of human smuggling at first instance.

In its judgment of **25 June 2018, Brussels Court of Appeal**<sup>422</sup> noted that owing to the (limited) scope of the public prosecutor's appeal, it didn't have the jurisdiction to rule again on the acquittals pronounced at first instance for the acts of attempted trafficking in human beings, or for certain acts of human smuggling.

It confirmed the judgment handed down at first instance overall, subject to certain modifications, additions and clarifications.

The Court of Appeal confirmed the sentences handed down at first instance for the acts of human smuggling brought before it, except for the acts relating to the presentation of a Chinese national to a specialised reception centre as a presumed victim in return for payment. In the court's view, there was no evidence of the main defendant contributing to the illegal stay of this person in Belgium.

It confirmed the acquittals of the main defendant and a co-defendant pronounced at first instance for the acts - qualified as human smuggling - relating to the employment in a massage parlour of persons named in the summons. There was indeed an element of doubt concerning these persons' illegal residence status. On the other hand, the appeal court reversed the court's decision concerning the employment in the same massage parlour of other persons, including a Tibetan national, who appeared to be residing illegally in Belgium. It based this on the recorded conversations and on the co-defendant's statements.

The court also reversed one of the smuggling charges, declared not established at first instance, to attempted smuggling and declared it established.

It increased the sentences of the first defendant: five years in prison (and not four), as well as a EUR 66,000 fine (instead of 54,000). It also increased the sentences of several other defendants.

It confirmed the amounts of the damages awarded to the victim who filed a civil suit. In addition, in view of the new convictions relating to several acts of human smuggling, the court awarded a total of EUR 1,100 to the reception centre that filed a civil suit.

<sup>422</sup> Brussels Court of Appeal, 25 June 2018, 13th ch (appeal).

### Employment under a false identity

In a case tried by **Brussels Criminal Court** on **3 January 2019**, a Belgian defendant from Cameroon was prosecuted for human smuggling and fraud in relation to a Cameroonian national.<sup>423</sup> He was accused of having contributed to the latter's stay by making him work under his identity in a supermarket and thus using a false name in order to appropriate his salary.

The salary of the worker, who didn't have a Belgian residence permit, was paid to the defendant's account who only paid him back part of it and from time to time.

The court found that the material element of the charge of smuggling was established: by allowing the Cameroonian national to work under a false identity, the defendant made it easier for him to stay in Belgium even though he had no residence permit.

On the other hand, it found that the purpose of obtaining a financial advantage couldn't be accepted: none of the financial analyses were able to determine the amount withheld by the defendant from the salary received as a result of the worker's services. However, the defendant admitted having withheld EUR 300 a month so that he could pay the additional taxes he was paying as a result of the extra pay.

The court considered that it couldn't be ruled out that the defendant wanted to help the worker by allowing him to work under his identity while avoiding the financial consequences associated with this additional commitment. It therefore considered that it was not sure that the defendant sought a financial advantage by facilitating the worker's stay.

As a result, it acquitted the defendant of the smuggling charge. It also acquitted him of the fraud charge.

### Human smuggling and aiding illegal immigration

In this case, which **Dendermonde Criminal Court** ruled on **26 February 2019**, a person was prosecuted for both human smuggling (Article 77bis of the Aliens Act and aiding illegal immigration, as these acts weren't carried out for humanitarian reasons (Article 77 of the Aliens Act)).<sup>424</sup>

The defendant was suspected of regularly transporting people, mainly of Turkish nationality, from Turkey to Belgium, in his own vehicle, or lorries or buses. He gave them fake identity papers with a visa for the EU and driving licences. These people sometimes presented themselves as the second lorry driver. In some cases, the fake visas were obtained through embassies. He charged very high sums for the journey, up to EUR 7,000 per person. He gave advice on how they could regularise their stay in Belgium.

There were two parts to the investigation, with the acts dating back to 2009-2010 and 2013-2014. However, it had to be interrupted because of the police's changing priorities.

It was chiefly conducted using phone investigations, surveillance and interviews. International letters rogatory were sent to Turkey and a financial investigation was also organised to analyse the banking operations. The defendant received a disability allowance and his wife had no income, even though they owned various properties in Turkey and in Belgium and were paying a mortgage. The public prosecutor was also informed by the Financial Intelligence Processing Unit (FIPU) of suspicious transactions that were a serious indication of money laundering relating to human trafficking (sic). The defendant was also spotted during border checks at Zaventem. It was possible to link him to people who had been detained at the border because they didn't have the right documents.

The victims also filed complaints against the defendant, especially within the framework of marriages of convenience. Another victim was threatened with death if they filed a complaint against the defendant. They eventually filed a civil suit.

The court found that the acts concerning the charge of human smuggling and aiding illegal immigration were identical. It requalified the acts as human smuggling. The distinction between the two charges is that in the case of human smuggling, an explicit pursuit of profit is required ("with a view to obtaining, directly or indirectly, a financial advantage"), whereas aiding illegal immigration involves unpaid support. Subsequently, the two offences can't occur at the same time, for the same acts. According to the court, the transportation of persons from Turkey to Belgium was a 'professional activity' of the defendant, who clearly acted with a view to making a profit.

<sup>423</sup> Brussels French-speaking Crim. Court, 3 January 2019, 59th ch (appeal).

<sup>424</sup> East Flanders Crim. Court, Dendermonde division, 26 February 2019, ch. D19M (final).

The court found that the investigation had exceeded the reasonable time limit, referring to the case law of the European Court of Human Rights. It took this into account during sentencing.

The defendant was given a three-year prison sentence, with a five-year suspension, and a fine of EUR 30,000, with a three-year suspension for half of it.

An amount of EUR 222,000 (EUR 6,000 x 37 victims) was confiscated, half of which was suspended.

The victim who filed a civil suit obtained EUR 12,100 for material damage and EUR 1,000 for non-material damage.

### Human smuggling and humanitarian aid

A major human smuggling case also involving citizens active in helping migrants was tried by **Brussels Criminal Court on 12 December 2018**.<sup>425</sup>

Twelve defendants of Syrian, Egyptian, Sudanese, Eritrean, Tunisian and Belgian nationality were prosecuted for acts of human smuggling with aggravating circumstances: in particular, endangering the lives of victims, some of whom were children, and participating in the activities of a criminal organisation. Among the defendants were people who harboured migrants and were active within the Citizen's Platform for Migrant Support.

The defendants were initially summoned before the Criminal Court of Dendermonde but asked for a change of language, which they were granted. The case was subsequently referred to the French-speaking Criminal Court of Brussels.

The investigation began following an initial report drawn up by the police in May 2017. It revealed that the Wetteren motorway parking area was an assembly point for migrants who were put into lorries by human smugglers bound for the United Kingdom, unbeknownst to the drivers and in extremely dangerous conditions. The analysis of the masts located near the Wetteren parking area helped to identify the call numbers and phones.

Following an initial analysis of the numbers and phones, an investigation was launched with a view to setting up phone taps. Other police observations took place that demonstrated the use of this parking area for the purpose of human smuggling. Phone numbers were tapped. One night in August, one of the defendants boarded a lorry himself at this parking area and reached the United Kingdom. At the end of August, another defendant was caught with five other people in a trailer loaded with rugs and was taken to a detention centre. Another defendant met the same fate in October 2017. That month, the police caught three other defendants red-handed at the parking area in Waasmunster, along the E17. They were placed under arrest. Following these arrests, searches were carried out at the home of the four defendants who were harbouring migrants, and at the Caricole and 127bis transit centres.

The investigation revealed a relatively constant modus operandi. Illegally staying persons who wanted to go to the United Kingdom contacted one of the defendants, either by phone or directly through acquaintances. The price of the transportation was negotiated and arrangements were made to meet at a railway station. They travelled by rail and then on foot to the parking areas. Another smuggler took over and put them in 'the right lorries' (those going to the United Kingdom) and closed the doors. The price of the transportation, ranging from a few hundred euros to EUR 2,000/2,500, was paid in cash or part was paid as a guarantee to a third party, who paid the balance of the transportation when the migrant arrived at the destination.

Phone taps, records of who was present at the motorway parking areas, police surveillance and surveillance cameras, established that the defendants were in regular contact.

The court pointed out that some defendants played a role in the human smuggling by taking victims from a railway station to the parking areas, opening and closing lorry doors, helping victims to board with their luggage, inquiring about the situation at the motorway parking areas, or collecting money from the victims.

Noting that all defendants were being randomly charged of smuggling at least 95 victims, the court observed that this number of victims couldn't be charged indiscriminately to all the defendants. It was necessary to ascertain on an individual basis and to what extent the defendants had committed acts of human smuggling against persons identified by name in particular, or at least against persons whose existence could be established with certainty, even without formal identification, by means of phone tapping.

<sup>425</sup> Brussels French-speaking Crim. Court, 12 December 2018, 47th ch.

As the public prosecutor's office wasn't satisfied with the judgment, it appealed against all the provisions of the decision. Besides legal reasons, it seemed to have a completely different reading of the case than the court. Hence, some pieces of evidence weren't taken into consideration.

In addition, the court found that it was necessary to change the charge of criminal organisation to criminal association. The investigation demonstrated the organisation of the transportation of the victims and the distribution of tasks between the perpetrators of the acts, even though this distribution was variable, since it wasn't always the same person performing the same task every time. However, there was no real structure or hierarchy. It wasn't sufficiently established that this association was particularly lucrative. The court thus noted that the price charged to victims for their transportation to the United Kingdom rarely exceeded a few hundred euros and that the defendants weren't found in possession of large sums of money. The court noted that the aim of some of the prosecuted smugglers was to finance their own transportation to England, or even to obtain it free of charge in return for 'services rendered', and not to participate in a criminal organisation. However, the case hinted at the actions of other unidentified persons, who appeared to have made a real profession out of organising illegal travel to the United Kingdom and to have benefited from the assistance of certain defendants in this case.

The court then examined the individual responsibility of each defendant in the alleged acts. It considered most of the acts of human smuggling established as regards the majority of the defendants: those who were present at the motorway parking areas in order to illegally embark migrants, those who took them to the parking areas to be picked up by another defendant, or those who acted as their guide. This charge was also accepted as regards one defendant who put the victims in contact with the smugglers and collected or guaranteed the money. He had previously been a smuggler himself in Calais. For these defendants, the court considered that it was a question of either direct financial advantage when the defendants received the money directly, or indirect financial advantage. The latter consists of financing personal transportation to the United Kingdom in kind, in exchange for participation in the human smuggling. Several of the defendants did indeed attempt to get to the United Kingdom themselves, some of whom were found on board lorries on several occasions.

For the defendant who reached the United Kingdom and was tried in absentia, the court noted that "although the criminal court record doesn't contain formal proof of the financial advantage he received, the fact remains that he inevitably received such an advantage since the very functioning of the association

was such that all the participants were paid or benefited from the promise of being transported free of charge or at a lower cost, which constitutes material aid. It was established that (...) was transported to England himself in August 2017. From England, he continued to monitor the situation of 'his' parking areas in Belgium, which showed that it wasn't simply a matter of him paying a smuggler to get him to England.

As regards certain defendants, the court accepted the aggravating circumstances of usual activity and/or criminal association.

On the other hand, the court acquitted the four defendants who had been active in helping migrants.

In the court's view, apart from the fact that these defendants didn't derive any financial advantage, their complicity in the acts couldn't be established.

With regard to one of the defendants, who was accused by the public prosecutor's office of having lent her phone and computer to a co-defendant whom she was harbouring and with whom she was having a romantic relationship, the court found that it wasn't established that she had made her phone or computer available to the persons she was harbouring, especially the co-defendant, for the purpose of enabling them to engage in any illegal activities. It considered that it wasn't established that she knew that her phone or computer would be used for that purpose and, in any case, wasn't intending to participate in any human smuggling or criminal association.

The court split the case for a defendant convicted of similar acts in another case. It didn't grant the public prosecutor's request of confiscation of assets of equivalent value. It handed down suspended prison sentences ranging from one year to 40 months. Only the defendant who reached the United Kingdom and was tried in absentia was sentenced to three years in prison.

As for the fines, they ranged between EUR 48,000 and EUR 360,000 and were suspended, except for the defendant tried in absentia.

Myria, who only filed a civil suit against the defendants for whom it appeared clearly established that they had derived a financial advantage<sup>426</sup>, had its claim declared admissible and partly founded. It received a symbolic euro.

In a judgment of 14 March 2019, the French-speaking Court of First Instance of Brussels sentenced the defendant, for whom the prosecutions had been split, to an additional suspended fine of EUR 640,000. He had indeed been sentenced to five years in prison and a fine of EUR 160,000 by the Dutch-speaking Criminal Court of Brussels, in a judgment of 8 November 2018, in a similar case of human smuggling.

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<sup>426</sup> Myria is competent to file a civil suit only for acts of human smuggling (Art. 77bis of the Aliens Act) and not for aiding illegal entry, transit or residence (Art. 77 of the Aliens Act).