

Part 2: Focus
Victims' right to
legal aid and
protection

For this year's report, Myria has chosen legal aid for victims of human trafficking as its focus. This choice is in line with that of GRETA (Council of Europe expert group responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings⁸), which has placed it at the centre of the Convention's third evaluation round.⁹ Belgium will be assessed in 2021.¹⁰

Myria has nevertheless decided to examine this theme in greater depth by also looking at the principle rights of victims (associated with criminal proceedings) that feature in the European anti-trafficking directive of 2011¹¹, the 2012 directive on victims of crime¹², as well as the Council of Europe convention on human trafficking. European Directive 2004/81/EC on the residence permit issued to victims of trafficking in human beings who cooperate with the competent authorities¹³ was also taken into account.

Myria referred to several sources for this focus: existing literature interviews with the specialised reception centres for victims and two lawyers, concrete examples from case law and legal cases where a civil suit was filed.

This focus includes the following chapters:

- An overview of the rights provided for in the legal instruments serving as a basis for the focus and the Belgian support system for victims of human trafficking (Chapter 1);
- A practical analysis of the trafficking victims right to information and access to support services (Chapter 2);

- A presentation of the legal aid system in Belgium and how it affects the participation of trafficking victims in criminal proceedings, as well as their protection within this framework (Chapter 3)
- Special attention is given to the compensation of victims of human trafficking (Chapter 4) and the importance of financial investigations (Chapter 5)

The focus concludes with a concrete example of a case illustrating the points examined in the previous chapters.

It is also enriched by three external contributions. One of them, written by the director of a specialised reception centre, illustrates how the victims who are supported only represent the tip of the human trafficking iceberg. The second one, written by those in charge of the NSSO's ECOSOC teams, examines the duty of the NSSO's specialised inspection services (formerly the Social Inspectorate) to inform trafficking victims. The final one was written by a prosecutor from the federal prosecutor's office and discusses the importance of financial analysis in investigations relating to human trafficking, with a view to facilitating the compensation of victims, among other things.

8 Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005.

9 This evaluation is in the form of a questionnaire sent out beforehand, to which the state replies. It is called "Access to justice and effective remedies for victims of trafficking in human beings": <https://rm.coe.int/greta-2018-26-en/16808f0990>. An evaluation visit then takes place

10 <https://rm.coe.int/timetable-greta-3rd-evaluation-round/1680925834>.

11 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., L 101 of 15 April 2011.

12 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/JHA, O.G., L315 of 14 November 2012.

13 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, who cooperate with the competent authorities, O.G., L261 of 6 August 2004.

Chapter 1

Overview of the rights of human trafficking victims

1. The provisions in the Council of Europe Convention and in the EU directives

Just like all victims of crime, victims of human trafficking benefit from specific rights. At European level, these rights are defined in several instruments: Directive 2011/36/EU on trafficking in human beings¹⁴ and Directive 2012/29/EU on the rights of victims of crime.¹⁵ A special system for granting residence permits to victims of trafficking who are third-country nationals and who

Another objective of the EU's 2011 anti-trafficking directive is to reinforce the protection of victims. cooperate with the authorities, is also provided for in Directive 2004/81/EC.¹⁶ As for the Council of Europe Convention on Action against Trafficking in

Human Beings¹⁷, it aims to be a global instrument in order to develop a comprehensive plan aimed at protecting and assisting victims of trafficking.

Although the two specific directives on trafficking were completely transposed into to Belgian law¹⁸, this is not the case for the directive on victims of crime.¹⁹

The objective of the anti-trafficking directive of 2011 is not only to ensure European harmonisation of the legal provisions allowing the traffickers to be prosecuted but also to reinforce protection of the victims. Countries are subsequently required to take the necessary measures to provide assistance and support before, during and after the criminal proceedings, so that they can effectively exercise their rights.²⁰ This support and assistance must be provided as soon as a person is presumed to be a victim of trafficking²¹, after they have been adequately informed and have agreed.²² Among other things, the support measures include appropriate and safe accommodation, material assistance, necessary medical treatment, counselling and information and, if necessary, translation and interpretation services.²³

¹⁴ 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.

¹⁵ 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/JHA, O.G., L315 of 14 November 2012.

¹⁶ 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.

¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

¹⁸ See Law of 10 August 2005 amending various provisions with a view to intensifying action to combat trafficking and smuggling in human beings and slum landlords, O.G., 2 September 2005 and articles 64 to 68 in the Law of 15 September 2006 modifying the Law of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners, O.G., 6 October 2006.

¹⁹ See Law of 26 October 2016 completing the transposition of European Parliament and Council Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation within the framework of criminal proceedings and European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing minimum standards regarding rights, support and the protection of victims of crime, and replacing Framework Decision 2001/220/JHA, O.G., 24 November 2016 and the decree of the German-speaking community of 26 September 2016 on support for victims and specialised support for victims, O.G., 19 October 2016. Belgium also considered that many appropriate provisions already existed in our legal (especially the Code of Criminal Procedure) or practical arsenal (victim support services within houses of justice).

²⁰ Art. 11, § 1 and recital 18 of Directive 2011/36/EU. ²¹ Art. 11, § 2 of Directive 2011/36/EU.

²² Art. 11, § 5 of Directive 2011/36/EU.

²³ Art. 11, § 5 of Directive 2011/36/EU; Art. 12, § 1 of the Council of Europe Convention; Art. 7, of Directive 29/36/EU.

Similar measures are provided for by the Council of Europe Convention on human trafficking.²⁴ In principle, granting support and assistance can't be dependent on the victim submitting an official complaint to the authorities²⁵ or on their cooperation in the investigation.²⁶ However, if the victims are staying illegally, countries can link obtaining a residence permit with cooperating with the authorities, providing they are given adequate information and a period of reflection.²⁷

Trafficking victims must have access to legal advice without delay and, depending on the role attributed to the victims in the relevant judicial system, to legal representation, including for the purpose of claiming compensation. This is free if the victim doesn't have sufficient financial resources.²⁸ Ideally, the legal advice should be provided by someone with the appropriate legal training, but this person doesn't have to be a legal professional.²⁹ The information and advice must be using simple and accessible communicated language and, if possible, by using different types of media.³⁰

States must ensure that the victim is advised, as soon as possible, of their right to receive information relating to the criminal proceedings initiated following the complaint concerning a criminal offence they have suffered, and to receive this information if they request it. This chiefly concerns decisions to close the case without further action or information that would allow them to know the status of the criminal proceedings.³¹ It is for the victim to decide whether or not to receive this information.³²

States are also required to ensure that trafficking victims benefit from special protection within the framework of investigations and criminal proceedings by providing specific treatment to prevent secondary victimisation, among other things.³³ Avoiding unnecessary repeated interviews is part of this.

Victims of crime have the right to obtain a decision within reasonable time limits on compensation from the offender within the framework of the criminal proceedings.³⁴

Finally, trafficking victims must have access to the existing compensation schemes for victims of violent intentional crime.³⁵ Furthermore, states are encouraged to use seized or confiscated instruments and products of human trafficking in particular to compensate the victims.³⁶ Similar requirements are provided for by the Council of Europe Convention.³⁷

There are special measures - not mentioned here - for child victims of trafficking.³⁸

2. The Belgian support system for human trafficking victims

Belgium has opted for a specific support system for victims of human trafficking.

This system, which has been in existence since the early 1990s³⁹, was incorporated in 2006 in the Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners (hereafter, Aliens Act).⁴⁰ This involved transposing the provisions of Directive 2004/81/EC. It enables foreign victims who cooperate with the judicial authorities to benefit from a specific type of residence permit.

²⁴ Art. 12 of the Council of Europe Convention.

²⁵ Art. 8, § 5 of Directive 2012/29/EU.

²⁶ See Art. 8, § 5 of Directive 2012/29/EU, Art. 11, § 3 of Directive 2011/36/EU and Art. 12, § 6 of the Council of Europe Convention. The latter states that each party is required to adopt the measures necessary to ensure that assistance to a victim isn't dependent on their willingness to testify.

²⁷ Art. 11, § 3 of Directive 2011/36/EU; Art. 5 and 6 of Directive 2004/81/EC and Art. 13 and 14 of the Council of Europe Convention.

²⁸ Art. 12, § 2 of Directive 2011/36/EU. See also Art. 7 § 4 of Directive 2004/81/EU.

²⁹ Preamble 19 of Directive 2011/36/EU.

³⁰ Preamble 21 of Directive 2012/29/EU.

³¹ Art. 6, § 1 and 2 of Directive 2012/29/EU.

³² Art. 6, § 4 of Directive 2012/29/EU.

³³ Art. 12, § 4 of Directive 2011/36/EU and Art. 18 and 20 of Directive 2012/29/EU.

³⁴ Art. 16, § 1 of Directive 2012/29/EU.

³⁵ Art. 17 of Directive 2011/36/EU.

³⁶ Preamble 13 of Directive 2011/36/EU.

³⁷ See esp. Art. 15, § 4: victim compensation must be guaranteed, for instance, through the establishment of a victim compensation fund or other measures or programmes aimed at assistance and the social integration of victims. For example, these can be financed by the assets resulting from the confiscations ordered against the traffickers.

³⁸ See. art. 13, 14, 15 and 16 of Directive 2011/36/EU.

³⁹ At the time, it was only provided for in ministerial directives and circulars.

⁴⁰ See art. 61/2 to 61/5 of the Law of 15 August 1980, introduced by articles to 68 of the Law of 15 September 2006 amending the Law of 15 64 September 1980 on the access to the territory, residence, settlement and removal of foreigners, O.G., 6 October 2006.

What are the main phases of this particular procedure?

As soon as a presumed victim is identified, a specialised reception centre will offer them specific support. While assistance and protection don't initially depend on cooperation with the law, they are nonetheless very closely linked. After a period of reflection, victims are indeed asked to cooperate with the judicial authorities by filing a complaint or making relevant statements. Victims must also promise to break all contact with the perpetrators of the offence and accept the specific support offered by one of the three specialised reception centres. These conditions must be respected throughout the legal proceedings against the perpetrators.

The three reception centres are located in each of the country's regions with competence on a national level. Hence, they can welcome victims regardless of where they were detected. These three not-for-profit reception centres are PAG-ASA in Brussels, Payoke in Antwerp and Sürya in Liège. These centres offer victims accommodation if necessary, and medical, psychosocial, administrative and legal support. If the victims are minors, accommodation will be provided by other centres in principle, such as the Esperanto centre in Wallonia⁴¹, which is specially designed to take in and take care of presumed child victims of human trafficking.

Legal support consists mainly of informing presumed victims of their rights in the criminal proceedings which may be brought against the perpetrator if necessary, of accompanying them during the hearings with the judicial authorities, and of following the evolution of the case. They will also be offered the assistance of a lawyer with a view to requesting compensation. If necessary, the reception centres work with interpreters.

The reception centres take care of trafficking victims as referred to in Article 433 quinquies of the Criminal Code.⁴² They can be both foreign and Belgian victims. They also take in third-country nationals (non-EU) who are victims of certain aggravated forms of human smuggling, as referred to in Article 77quater of the Law of 15 December 1980.⁴³

The system is based on multi-disciplinary cooperation between the various players (police and inspection services, public prosecutor's offices and labour prosecutor's offices, specialised reception centres for victims, Immigration Office (IO)).

The procedure and national mechanism for referring victims to the support services are detailed in a multidisciplinary circular.⁴⁴

There are several successive phases to the procedure. During the initial phase, the detection of victims by frontline services (police and labour inspection services) and their referral to a specialised reception centre are crucial.

When a frontline service has evidence that they are in the presence of a presumed victim, it must inform the latter of the existence of the specific procedure for victims of trafficking and refer them to a specialised reception centre. The victim will then benefit from a 45-day period of reflection.⁴⁵ This time frame should enable them to escape the perpetrators' influence, return to a state of calm and allow them to decide whether or not they wish to make statements or file a complaint against the persons who have exploited them. Or, if they so wish, to prepare for a voluntary return to their country of origin.⁴⁶

In practice, many victims are referred to the specialised reception centres after having already made statements to the authorities. In this case, they move directly onto the next phase of the procedure. As soon as the victim has made statements, they benefit from a three-month residence permit (certificate of immatriculation or CI⁴⁷). The issuing of residence permit and, hence, the support of the victims by the specialised reception centre, depends then on the evolution of the judicial proceedings.

41 On this subject, see the contribution from the Esperanto centre in Myria's *2018 Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 56-61.

42 These are people who were recruited, transported, harboured, etc., for the purposes of exploitation. Purposes are listed exhaustively and include sexual exploitation, work or services in conditions contrary to human dignity, exploitation of begging, organ trafficking and forced criminal activities.

43 Among other things, these aggravating circumstances include the fact the victim is a child, abuse of the victim's vulnerable situation or endangering their life.

44 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.

45 An Annex 15 document is issued in relation to this period.

46 This voluntary return is organised with the help of organisations such as IOM.

47 Art. 110bis, §3 of the R.D. of 8 October 1981.

Before the expiry of the temporary three-month residence permit, the Immigration Office requests an opinion from the public prosecutor or the labour prosecutor in charge of the case, based on a number of questions.⁴⁸ The answers to these questions determine the issue of the six-month residence permit, which takes the form of a certificate of immatriculation entered in the register of foreign nationals (CIRE).⁴⁹ This document will be renewed up until the end of the judicial proceedings, as long as the victim still satisfies the conditions. During the last phase of the procedure, after the judicial proceedings against the perpetrators, the victim can obtain a permanent residence permit. This means that either their statement or complaint has resulted in a conviction, or the senior crown prosecutor or labour prosecutor have accepted the charge of trafficking in human beings in their summing-up.⁵⁰

The victim has a right to social aid from the start of the first phase (45-day period of reflection). They can also work as soon as they receive their three-month residence permit.⁵¹

48 Art. 61/3, §2 and 61/4, §1 of the Aliens Act and point 5.2.4. of the Circular of 23 December 2016. These questions aim to ascertain whether the inquiry or judicial proceedings are still in progress, whether the person can be considered as a victim of human trafficking or an aggravated form of human smuggling, whether they are showing a clear desire to cooperate and whether they have broken off all ties with the presumed perpetrators of the offence. In addition, the latter must not be considered as having the ability to compromise public order or national security.

49 Art. 61/4 of the Aliens Act and Art. 110bis, §4 of the R.D. of 8 October 1981.

50 Art. 61/5 of the Aliens Act.

51 I.e. the immatriculation certificate, without the need for a work permit. On this subject, see Part 3, Chapter 1, point 2.1.3.

Chapter 2

Right to information and access to specialised support services

A presumed victim of human trafficking must be adequately informed of the existing support measures, while remaining free to make use of them or not. The above-mentioned European instruments specify the content of this information. Hence, Directive 2011/36/EU specifies that this obligation to inform covers, if necessary, the communication of information on a period of reflection and recovery as well as on the possibility of being granted international protection.⁵² When those concerned are third-country nationals, the information must relate to the possibility of obtaining a residence permit by cooperating with the competent authorities and of benefiting from certain rights within this framework.⁵³ This information can also be supplied by a non-governmental organisation or an association expressly designated for this purpose by the Member State concerned.⁵⁴

As for Directive 2012/29/EU on victims of crime, it states that Member States must ensure that victims of crime receive information on the type of support they can obtain as soon as they come into contact with a competent authority. This information must include the procedures to follow to file a complaint for a criminal offence and the role of the victim, and the terms and conditions for access to legal advice, among other things.⁵⁵ However, the extent or level of accuracy of the information can vary according to the specific needs and personal situation of the victim, as well as the type or nature of the offence. Extra information can also be provided later depending on the victim's needs and the relevance of this information at each stage of the procedure.⁵⁶

In Belgium, for trafficking victims, Article 61/2, §1 of the Aliens Act and the multidisciplinary circular of 23 December 2016 specify the content of the information to be provided to a presumed victim at the moment of detection. The latter must be informed of the possibilities offered by the specific procedure for victims of human trafficking. The circular indicates the services bound by this obligation to inform. These are police and social inspection services as well as any other service that comes into contact with presumed victims, such as the Immigration Office (IO) or the Commissioner General for Refugees and Stateless Persons (CGRS). This information is provided in a multilingual leaflet.⁵⁷ It aims to help the victim identify themselves as such and to agree to be put in contact (or to later make contact) with a specialised reception centre.

Myria examines below how this duty to inform is put into practice and identifies good and not so good practices. It depends on how the victim was identified or brought to the authorities' knowledge. According to Myria, there are two types of cases: firstly, when the presumed victim is identified by frontline services (police or inspection services) and interviewed, so the period of reflection is rarely applied (point 1). Secondly, when a victim is referred to a reception centre by other services or when a victim spontaneously goes to a reception centre (point 2). Finally, Myria raises two particular problems associated with the access of presumed victims to the support services provided by the specialised reception centres: on the one hand, when the victim hasn't been properly identified and has been put in a detention centre; on the other hand, the problem of transporting victims and their access to support services when checks are carried out far from the towns where the reception centres are based (Point 3).

⁵² Art. 11, § 6 of Directive 2011/36/EU.

⁵³ Art. 5 of Directive 2004/81/EC.

⁵⁴ Art. 5 of Directive 2004/81/EC.

⁵⁵ Art. 4, § 1 of Directive 2012/29/EU. See also Art. 15, § 1 of the Council of Europe Convention: the state parties are required to guarantee victims, as soon as they enter into contact with the competent authorities, access to information on the relevant judicial and administrative procedures in a language they can understand.

⁵⁶ Art. 4, § 2 of Directive 2012/29/EU.

⁵⁷ <https://www.myria.be/en/publications/multilingual-brochure-for-victims-of-human-trafficking>.

1. Detection of victims and the obligation of police and the labour inspection services to inform them

1.1. | Use of the multilingual leaflet

Both police and inspection services are key players in identifying potential victims of human trafficking and offering them the assistance of a specialised service. Therefore, informing the victims is crucial. The NSSO inspection service has in fact paid particular attention to this obligation to inform in its priorities regarding human trafficking.⁵⁸

Within this framework, the use of the multilingual leaflet⁵⁹ is certainly an added value.

The leaflet is generally used for the frontline services' initial contact with the victim, but it could also be a useful instrument for hospitals and social services. According to the specialised centres, the

The use of the multilingual leaflet by frontline services is an added value in terms of informing victims. leaflet is a means to make the victim aware of the situation of exploitation. An interpreter isn't always present during the initial contact. In this case, the multilingual leaflet is

often the only source of information for the victim. One of the centres acknowledged that the leaflet was an important tool but that it could be improved by including more information on the different forms of exploitation.

During an initial interview with the victim, the police simply give general explanations about victim status, often referring to the leaflet. However, the role of frontline services doesn't consist of explaining the victim status procedure to victims in detail, because they aren't in the right position to do so. Police and inspection services often don't benefit from the victims' trust owing to their negative experiences with police and inspection services in their country of origin, or because of their residence status.

Frontline services don't have any experience either in the way in which the system works in practice, which sometimes gives rise to false promises.

During its analysis of the court cases in which it filed a civil suit, Myria noted that frontline services do use the multilingual leaflet and mention it in their reports.

In a case concerning a **construction company involving bogus self-employed Romanians**⁶⁰, a Romanian worker had filed a complaint with the local police concerning his poor working conditions, i.e. the non-payment of his wages, the long working hours and the squalid living conditions. The victim also referred to five other Romanian victims. An investigating judge was immediately appointed to open an investigation into human trafficking. The five other victims were found the next day during the search. Several of them received a multilingual leaflet when they were interviewed by the police at a specialised centre, which was a familiar environment for these victims. One of the victims who instituted civil proceedings was awarded EUR 2,000 in compensation.

In a **Romanian case of sexual exploitation**⁶¹, several victims were initially resistant to the ideas of making real statements. They were afraid they would suffer reprisals from the defendants and/or find themselves in a situation of dependence with regard to their loverboy. In the end, several victims filed a complaint, without showing any interest in the support offered to them by the specialised victim support centres. The majority of them wanted to continue working as a prostitute and therefore didn't want to benefit from the status of victim. The police gave them the multilingual leaflet containing the details of the specialised victim centres in case they changed their mind.

⁵⁸ See external contribution by P. Van Hauwermeiren and S. Schulze.

⁵⁹ <https://www.myria.be/en/publications/multilingual-brochure-for-victims-of-human-trafficking>.

⁶⁰ MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online p. 86; MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 165-167; Hainaut Crim. Court, Mons division, 1 April 2016, 8th ch.

⁶¹ CECLR, 2012 Annual Report Trafficking and Smuggling of Human Beings, *Building trust*, pp. 51-53.

When the reception centres are contacted about a potential victim, they start with an assessment of the situation. Are there indications that the person is probably a victim? If there are, an interview will then take place with the presumed victim, with an interpreter if necessary.

During the first interview with the victim, the team member from the specialised centre clearly explains the difference between their role and that of the police. As an introduction, they give details about the organisation, reception and support that the centre can offer. The victims can then tell their story. At this point, they should also have the chance to talk about everything, such as the way they experienced the situation and, if relevant, how they felt during the police check. The team member from the specialised centre will react to this, gradually try to win their trust and explain little by little that as of this moment, the victim can take a decision to change their future.

Once the victims have told their story and are eligible for victim status, another interview takes place, during which the entire victim status procedure and conditions for support are explained. The implications for the victim's potential plans for the future are assessed. The team members must ensure that the victim understands them properly, is aware of the situation in order to decide whether or not to engage in the procedure, and that they meet the support conditions. The status is only explained in this phase to prevent victims from adapting their story to the criteria.

1.2. | The duty to inform in practice

The way in which the victim is informed depends on the circumstances in which they were referred to the specialised centres. During the identification phase, there are various situations in which victims can and must be informed by frontline services: for example, during checks by frontline services, when a victim is identified in a slum landlord situation, a complaint is filed or an emergency call is made.

The various situations in the detection phase are key moments to inform and properly guide the victims. The success of the multidisciplinary collaboration between frontline services and the specialised centres for victims of human trafficking is a basic condition essential to the execution of the duty to inform victims.

a) *Checks performed by frontline services*

When frontline services carry out checks, several victims are often identified. The police first conduct an initial interview with the victim. When team members from specialised centres arrive, the police first inform them about the victims and the situation in question. Another possibility - if the team members from the centres aren't able to be present - consists of frontline services transporting the victims to the specialised centres, where an intake interview is conducted with the victim.

Some victims don't wish to immediately enter into contact with team members from the specialised centres. Furthermore, interventions by frontline services often take place at night, when the victims are exposed to a whole range of facts, and are rarely put in contact with the centres. They aren't aware of the other advantages of victim status, such as legal support. This is why they are often no longer interested in this status. However, victims who feel ill-treated and want to go home as quickly as possible, may require legal assistance to seek compensation. Other victims may be afraid to ask for the status of victim of human trafficking and refuse to make relevant statements.

Identifying and informing victims during checks can be fruitful but also sometimes problematic.

Sometimes, planned checks take place. The specialised centres are informed beforehand to ensure someone is on duty and to be able to offer the necessary support in case potential trafficking victims are detected.

The centres then go to the scene and act as a second line of action to win the victims' trust. West Flanders federal police already asked a specialised centre in the past to offer support on a specific day during a check because there was a chance a lot of victims would be detected.

The evening before the check, it was agreed that the specialised centre would inform the police about how many spaces it had available and in other centres. This type of collaboration during a planned check already exists within the NSSO inspection service in Brussels.

In practice, it has to be said that detecting and informing victims during checks has proved to be successful in certain cases, but difficult and even very problematic in many other cases. Here are various examples of the approach in cases of human trafficking for the purposes of labour or sexual exploitation.

In a **case of sexual exploitation concerning a Ukrainian network**⁶², victims were detected following a check carried out in one of the apartments where the young women were forced to prostitute themselves. The victims were interviewed by the police and referred to the specialised reception centres. It was possible to open an investigation thanks to the victims' statements. One victim filed a civil suit during the trial and received compensation of EUR 7,500. On the other hand, the police were unable to identify 17 victims traced through phone taps.

In a **Nigerian case**⁶³, the investigators consulted the internet to find online adverts for young Nigerian girls on sex websites. They called the number given, pretended they were clients and made an appointment. When they arrived, the police officers immediately showed them their badge.

During the interception, the police found a Nigerian victim locked in a room. She was offered victim status and thanks to the presence of an interpreter, it was possible to convince her to be referred to a specialised reception centre. She indicated another victim through her Facebook account. In this case, a number of Nigerian victims filed a civil suit during the trial and received compensation. There were also several bad practices involved in this case. One of the victims, who was a minor, was found in a bar that was searched by the police. She was 17 years old and had been prostituting herself for almost a year. At the end of the search, the minor was handcuffed and taken away in the car because she didn't have a residence permit. This approach isn't conducive to building trust. The police report states the following: "The interested party is called I. and has no papers indicating identity or nationality. We decide to take her to Brussels. She makes no objection (in English, which she speaks a little). She doesn't cause any problems during the transfer. Since the interested party was arrested administratively for illegal residence, she was handcuffed in front and transferred in accordance with security recommendations. The girl tells us through her interpreter that she is the victim of human trafficking. Our services contact the public prosecutor's office in Brussels and receive the order to hand the case over to a specialised centre that can support her." Another problem was that girls who were intercepted during the evening had to spend the night in the local police's transit cell, because the interpreter was only available for the interview the following day.

In one **case concerning a second-hand clothes sorting workshop**⁶⁴, several victims were identified, interviewed and referred to the specialised centres on the basis of an operation involving observations, checks and searches. One of the workers, who later filed a civil suit, gave the investigators a detailed statement. He explained that the defendant had two work systems depending on whether or not the workers were staying legally in the country. The electric heating in the warehouse was insufficient and it was cold in the building in winter. The defendant also supervised the workers from his home using a camera system. According to the court, the victim's statement was confirmed by the evidence in the case. The defendant was convicted and had to pay the victim compensation of EUR 1 for non-material damage.

62 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 110.

63 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger, p. 94.

64 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online p. 121.

A Thai case⁶⁵ is an example of bad practice. Following a check, the victims weren't offered the opportunity to obtain victim status and were detained for illegal stay, and then transferred to a detention centre for removal. The official 'Foreign National Check Report' was attached by the frontline services to the police report concerning the interception of the victims. In the latter, a negative answer was given to the questions relating to the presence of indicators of human trafficking and contacting a centre specialising in the reception of victims of human trafficking. The report also mentioned the following regarding the circumstances: 'check of massage parlour - brothel'; concerning the nature of the facts: 'undeclared work, no work permit'; concerning the purpose of the stay: 'prostitution, economic reasons'.

The same bad practices can clearly be found in cases of human trafficking involving victims of labour exploitation. In a **poultry farming case⁶⁶**, exploited posted workers weren't informed of the victim status procedure. They were detained following a check by frontline services and immediately transported to a detention centre for their removal. They had, however, made statements for an investigation into human trafficking but hadn't been informed of the victim status procedure.

There are also several examples of projects aimed at properly informing victims about existing support. For instance, PAG-ASA participates in an outreach pilot project.

Outreach pilot project in Brussels

In its 2018 annual report, Myria recommended that specialised teams should act as outreach teams and join the police when checking the windows where Nigerian minors are exploited. These teams can win the trust of the victims by approaching them with empathy and convincing them to ask for victim status. This work must also be funded, of course.

A new outreach pilot project recently started up in Brussels. Cooperation agreements were established within this framework with several frontline services, so that they could accompany them during checks. The outreach workers and a team member from a specialised centre intervene together with the federal police, who organise the checks. The project doesn't specifically target the Nigerian network, but it is part of the target audience. The goal is to inform potential victims of the existence of specialised centres for victims of human trafficking. The project's main objective consists of **motivating potential victims to contact the support organisation**. They also sometimes ask for an appointment themselves. But the project is in its early stages. Within the framework of the Dutch Querido outreach project⁶⁷, which has already been in operation in Amsterdam for some time, more experience has already been acquired in this domain.

b) Slum landlord situations

In slum landlord situations, frontline services may identify indicators of human trafficking and thus detect potential human trafficking victims. In this type of case, these services must ask the occupants how they pay their rent, and assess whether it is possible to ascertain the type of relationship between the landlord and the employer of these occupants. They must also assess the work situation in order to identify cases of human trafficking for the purpose of labour exploitation.

In a slum landlord situation, frontline services may identify indicators of human trafficking and thus detect potential human trafficking victims.

If this is the case, the occupants must be considered by frontline services as potential victims of human trafficking and be properly informed about this. A correct identification of human trafficking indicators in a situation such as this is a crucial prerequisite for informing the victim about the status of victim of human trafficking. This is clearly demonstrated in the example taken from the following case, which shows bad practice regarding the treatment of the victims.

⁶⁵ MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 101 and 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 99.

⁶⁶ MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 146-147, Turnhout Crim. Court, 20/12/2017.

⁶⁷ <https://hvoquerido.nl>.

Example of bad practice:

In a case concerning a mushroom farm⁶⁸, an investigation was launched following statements concerning food that was shoplifted from a supermarket on several occasions. The perpetrators of the acts were Bulgarian. During their interview, they stated that they were employed illegally and that their employer provided them with accommodation. There were also two underage girls, aged 16 and 17 respectively, as well as their parents among the perpetrators. These people were stealing food to survive because their employer didn't pay them. The Bulgarians showed the local police the building they were renting, which was uninhabited according to the national register. The officers noted that the situation in which they were living indicated slum landlord activities. The occupants stated that their employer, the mushroom farmer, was the landlord. None of the occupants were considered as potential victims of human trafficking.

A few months later, the police and the Social Inspectorate carried out a coordinated inspection of all the mushroom farmer's businesses and the places where he lodged the pickers. Several dozen Bulgarian workers, 30 or so Poles and 59 Romanian victims were discovered and interviewed within the framework of this action. None of the victims were informed by a frontline service about the existence of the status of victim of human trafficking. These people were referred to the Immigration Office and all received an order to leave the territory.

c) Complaint filed by victims and emergency call to frontline services

Often, victims go in person to a frontline service to file a complaint. If there are sufficient indicators of human trafficking, they must be considered by frontline services as potential victims of human trafficking. They are given information based on the multilingual leaflet and referred to a specialised centre. In general, the police take the victim to the specialised centre where the intake interview takes place. In some cases, this was done by the local police who aren't specialised in human trafficking. But there are also examples of bad practices.

In a **Chinese hotel & catering case**⁶⁹, a victim spontaneously presented themselves to the federal judicial police of Liège. After having informed the labour prosecutor, the police were asked to contact a specialised centre. The victim filed a civil suit and obtained compensation of EUR 5,000 for non-material damage and EUR 15,000 for material damage. The victim not only gave the police the names of people involved in the smuggling network, which stretched across China, the Czech Republic, Luxembourg, Belgium, Spain and Portugal, but also information relating to the placement of irregular Chinese migrants in various restaurants; the restaurants in which he had worked for the past five years (in Luxembourg and Belgium); the police checks during which he had been arrested; and details of his personal exploitation.

Belgian victims of sexual exploitation aren't easily identified as victims of human trafficking, even if they go to the police to file a complaint. In a case associated with **poly-criminality in prostitution circles**⁷⁰, the person who filed the complaint wasn't initially considered as a potential victim of human trafficking. The victim went to the local police of their own accord to file a complaint concerning acts of harassment, but not sexual exploitation. She had been threatened by her pimp. The victim wasn't initially informed about the leaflet for human trafficking victims, but was referred to a specialised centre later on. An important point in this case: flexible, tailored support for all victims by a specialised centre. The support offered was adapted to the victims' needs. The victim who had filed a complaint, and had no home or income, benefited from legal support and aid from the specialised centre owing to her precarious administrative situation, even during the trial. The two other victims, who feared reprisals from the defendant, agreed to be sheltered by the specialised centre.

In a **loverboy case involving adult Belgian victims**⁷¹, the local police in Liège were informed that a young girl was at risk. She was kept locked up and regularly moved around. The police found her at the home of the one of the defendants. The victim informed the police that another victim was also locked up.

68 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 99-104.

69 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 101-105; Liège Crim. Court, 28 April 2014, 14th ch. (final): CECLR 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, p. 113.

70 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, *Online*, pp. 80-84.

71 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 90-95.

The police decided to set up an operation and freed the victim. The Belgian victims were referred to the specialised reception centres.

One of the specialised centres informed Myria that some local police departments weren't complying with their legal obligation to report a victim of human trafficking to the specialised centres, even after the victim had made a statement. Hence, one victim arrived at a specialised centre after it had closed, but luckily for her, a team member was still there. The victim had made statements three weeks earlier and filed a formal complaint for human trafficking with a local police department in West Flanders. This police department wasn't aware of the existence of the specialised centres and hadn't ever contacted any of them, even though it is an obligation. The victim managed to get to the specialised centre by herself, taking several days to do so.

In a case concerning domestic work for private individuals⁷², the police were called out to investigate a minor in difficulty who was in the street. There they found a 15-year-old Congolese girl in tears, accompanied by a friend. The young girl, who had run away, explained that she lived with the defendant, to whom she had been entrusted three years earlier by her father. She was sheltered by the Esperanto centre, which is responsible for child victims of human trafficking. The defendant suspected her of witchcraft and had therefore behaved violently towards her for the past month. She was taken to the hospital by the police, where the doctor noted pain in multiple places as a result of bruising. Traces of aggression were also visible on the photos taken of the young girl by the police. Six months later, she was audiovisually heard at length. The court acquitted the defendant of the charge of human trafficking but accepted the charges concerning social criminal law, illegal child labour, as well as deliberate assault and battery. The victim filed a civil suit and obtained compensation of EUR 2,000 for non-material damage and EUR 38,414 for material damage.

Frontline services are also obliged to help vulnerable child victims, especially if they are in a precarious situation. Minors must be informed and referred to a specialised centre. In the case of unaccompanied foreign minors, additional protective measures apply, such as informing the guardianship service.⁷³ These people must be sheltered by a specialised centre for minors.

2. Reporting by other services, on their own initiative and application of period of reflection

Presumed victims of human trafficking can be referred to a reception centre by services other than the police or inspection services. Those chiefly involved in informing victims of the centres' existence are hospitals, public welfare centres, social services and unions. Victims are also referred to the centres by clients (of prostitutes), neighbours, lawyers and former victims. Sometimes, victims also go to the reception centres on their own initiative. In this type of situation, the period of reflection will usually be applied if the presumed victim hasn't already been in contact with the authorities.

In some cases, the specialised centres are also contacted by the police for the application of the period of reflection, because there are indicators of human trafficking but the victim isn't ready to make statements yet. The team members can therefore try to win the victim's trust and work with them.

In several cases, the specialised centres put the victims in contact with frontline services in order to make statements, after first having given them enough time to recover and feel calm again.

⁷² MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 152.

⁷³ MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, pp. 39-55.

In a case concerning **Nigerian escorts in Turnhout**⁷⁴, the police were informed about the case through a specialised centre. A few Nigerian child victims went directly to a specialised centre and then made statements to the police. Two victims filed a civil suit.

In the **Nigerian Mama M. case in Brussels**⁷⁵, several Nigerian victims, including minors, went to a reception centre after having been supported and encouraged by other Nigerian victims still in contact with them via Facebook. Some former Nigerian victims had also approached other young Nigerian girls in the street who had problems, or had met them within the Nigerian community. They referred them to the specialised centres. Twelve Nigerian victims, including four minors, obtained the status of victim of human trafficking after being reported and later made statements to the police. One victim filed a civil suit during the trial.

In a case concerning a **businessman in Brussels**⁷⁶, a victim was referred to by the public welfare centre (CPAS) to a specialised centre. After the hearing with labour prosecutor's office, the victim was granted the status of victim of human trafficking. Initially, only an investigation into the non-payment of wages was launched. The specialised centres provided a lot of support: this demonstrated the usefulness of the period of reflection and the importance of social and legal support. The investigation into human trafficking only began when additional information concerning the victims was given to the labour prosecutor's office by the specialised centre.

Hospital staff inform a specialised reception centre

In hospitals, there are sometimes patients who are likely to be potential victims of human trafficking and who should be referred to the specialised centres. Thanks to various campaigns, hospital staff have been made aware of the need to contact the specialised centres when they have patients who are potential victims of human trafficking.⁷⁷ As a result of their close contact with the centres, they will discuss the matter with them over the phone and arrange an initial assessment.

In a case concerning a **work accident in the construction sector**⁷⁸, a nurse from the hospital informed the police of the disappearance of their patient. The victim, an undocumented Algerian worker, was found and referred to a specialised centre. His statements revealed that he had fallen from badly installed scaffolding while cementing a house and suffered a serious head injury, fracturing his skull in several places. He disappeared suddenly from the hospital where he was receiving treatment but returned to the same hospital's A&E department several times and then had to be operated. He was left with lifelong injuries as a result of the fall. The defendant did everything in his power to cover up the matter, thus endangering the victim's life and forcing him back into an illegal situation, denying him the medical treatment he required. The victim filed a civil suit and was awarded a provisional sum of EUR 10,000 out of total damages amounting to EUR 250,000. A medical expert was also appointed to assess the injury.

Cooperation after social actions or a union complaint

Victims can be informed of victim status through a union or following social actions, and referred to a specialised reception centre. This is usually done through frontline services, who have been notified by civil society organisations or bodies

⁷⁴ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 158: Antwerp Crim. Court, Turnhout division, 9 December 2015, ch. TC1 (confirmed by Antwerp Court of Appeal in a judgment of 31 May 2017: see 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 127).

⁷⁵ MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 94.

⁷⁶ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 105-109.

⁷⁷ www.dsb-spc.be/doc/pdf/Mensenhandel-Ziekenhuis-FR.PDF

⁷⁸ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 164-165.

In a **case concerning the construction sector**⁷⁹, the acts in question were brought to light when the union filed a complaint for one of its members. On the basis of this complaint, the federal judicial police carried out a check on site with the Social Legislation Inspectorate and the Social Inspectorate. An investigation into trafficking was initiated, the victims were informed about victim status and referred to a specialised reception centre. The victims were mainly Romanians and Bulgarians who didn't speak Dutch and weren't aware of the procedures in terms of social legislation and residence rights. Their statements revealed that they were paid very little and that they lived in caravans or in a bus parked on the defendant's land, sometimes without water or electricity. When a work accident occurred, the defendant deprived the victim of the necessary medical care. The defendants were convicted but none of the victims filed a civil suit.

In another **case concerning the construction sector**⁸⁰ **involving posted bogus self-employed workers**, an investigation into human trafficking was initiated following a collective protest by Bulgarian and Bosnian workers. Even the embassy intervened and advised them to file a complaint with the police. The victims were informed and referred to a specialised centre. Five victims filed a civil suit during the trial. There were 19 known victims in total but according to the court record, there had been more victims over the years. The victim statements revealed that they were only paid in part and had to work long hours. When some of the workers confronted the employer about this, he threatened to send some men over to punish them and evict them from the accommodation. When a serious work accident occurred, the employer also refused to provide the necessary help and to declare it.

3. Problems accessing specialised support services

3.1. | Detection of victims in detention centres

When a trafficking victim fails to be detected, they run the risk, as a third-country national, of being placed in a detention centre in order to be repatriated. This problem essentially falls within the framework of police checks and was discussed earlier.⁸¹

Nevertheless, there are positive examples of the detection of presumed victims in detention centres.

The specialised centres are sometimes contacted about presumed victims of human trafficking, who have been detained with a view to repatriation. The source of the reporting can vary depending on the detention centre. This practice of reporting is applied in certain detention centres, but not everywhere, and the information is more likely to come from an organisation, an individual visitor or a lawyer.

When someone has been reported, the specialised centre assesses the situation just like any other spontaneous notifications and will send a team member over with an interpreter if there are indicators of human trafficking.

Good practices have already been observed in some cases: victims of human trafficking were detected in a detention centre and referred to a specialised reception centre.

In a **case concerning a wok restaurant**⁸², several Chinese victims were intercepted during a check by frontline services. The victims gave the local police detailed statements but spent the night in a police transit cell. After the intervention of the Immigration Office, they were taken to the Vottem detention centre the following day.

79 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 112.

80 MYRIA, 2017 Annual Report Trafficking and smuggling of human beings, Online, p. 113.

81 See above, point 1.2. The duty to inform in practice.

82 CECLR, 2008 Annual Report Trafficking and smuggling of human beings, Enlisting people and resources to combat the phenomenon, p. 82.

The team members from this detention centre took the initiative to contact a specialised centre for human trafficking victims as they suspected potential victims of human trafficking among these Chinese people. Good practice: staff at the detention centres are trained to identify and detect victims of human trafficking and work closely with the reception centres for this purpose.

In a **Nigerian case**⁸³, one of the victims was intercepted in the Netherlands and risked being sent back to Nigeria. The responsible prosecutor therefore contacted the IO to transfer the victim to Belgium and place them under Belgian victim status. Police phone taps revealed that one of victims was in administrative detention with a defendant in the Netherlands. In the beginning, they were detained in prison, then in a closed asylum centre within the framework of Dutch law on foreign nationals. Through EPICC⁸⁴ (the Euroregional Police Information and Cooperation Centre), the two people were identified as well as the location of the detention centre in the Netherlands where the victim was being held. Belgium sent letters rogatory to the Netherlands twice in order to interview the victim. Thanks to one of the team members at a specialised reception centre and the discussions with them, the victim was finally convinced to go to Belgium to access victim status.⁸⁵

3.2. | Transport and access to the specialised centres

Another problem is that of the victims' effective access to support services owing to the distance between the place where the victim was detected, and the location of the reception centres.

Victims of human trafficking detected within the surrounding area of a specialised centre quickly benefit from physical access and aren't faced with an extra obstacle with regard to obtaining victim status owing to transport problems. Victims detected in remote areas must benefit from an equal opportunity to be referred to the specialised centres. In practice, there can sometimes be discussions between frontline services and the specialised centres regarding transportation. According to some, victims who are detected far from the centres have less chance of obtaining victim status than those identified in Brussels, Antwerp or Liège, where these centres are based. This is what some of the cases clearly show.

In **two comparable cases concerning Thai massage parlours in Ypres and Mechelen**, the victims were treated in a completely different way. Contrary to the case in Mechelen⁸⁶, where the majority of the victims obtained victim status and four of them filed a civil suit, all the victims in the case in Ypres⁸⁷ were repatriated to their country of origin.

A **case concerning the hotel & catering industry**, discussed in more detail in the case studies section⁸⁸, provides an example of good practice regarding the transportation of a victim. The victim made relevant statements and the police put them in contact with PAG-ASA in Brussels. The police took them from Bruges to PAG-ASA in Brussels, where the centre was able to win their trust. Consequently, the person was identified as a victim of human trafficking and was granted victim status.

83 CECLR, 2011 *Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 94-95.

84 "Euregionales Informations- und Kooperationszentrum – EPICC" (Euroregional Police Information and Cooperation Centre). This joint centre is responsible for cross-border cooperation. The centre aims to improve cooperation between the different participating countries and greater security of citizens in the Meuse-Rhine Euroregion (MRE). EPICC focuses on information exchange and the support of wide-scale cross-border actions (road checks, observations, apostils, joint patrols, etc.). The Meuse-Rhine Euroregion is a cross-border partnership cooperation created in 1976, the oldest in Europe of its kind. The following provinces are part of it: the southern part of the province of Limburg in the Netherlands, the Belgian provinces of Limburg and Liège, and the German regions of Aachen, Düren, Euskirchen and Heinsberg. (Source: <https://euregio-mr.info/be/themen/sicherheit/nebedeagpol.php>). Also see the Centre's 2008 *Annual Report Trafficking and smuggling of human beings, Enlisting people and resources to combat the phenomenon*, p. 97.

85 CECLR, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 75.

86 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 95-99.

87 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 105-109.

88 See Part 3, Chapter 2 (Case studies), point 1.2. Labour exploitation – Hotel & catering case, point 1.2.5. Victim status.

According to the specialised centres, it is the responsibility of frontline services to transport the victim to the premises of the specialised centres in Brussels, Antwerp or Liège. This is generally the case, but sometimes there are problems concerning resources because transportation from the coast or Limburg and back takes a whole day. Team members at the specialised centres can no longer come out at night either for security reasons, the only exception being if it has been planned.

The specialised centres can't act as a flying squad either that is active throughout the country, considering their insufficient staff numbers. According to one of the specialised centres, the best solution would be to have a centre with capacity for 200 presumed victims who bear the primary indicators of human trafficking. According to a witness account, half of those reported in 2018 presented indicators of human trafficking. However, owing to a lack of human resources and capacity, they couldn't accommodate all of these presumed victims and begin a period of reflection. This problem still exists. As a result, the specialised centre is obliged to select victims on a pragmatic basis, according to the available capacity, which it deeply regrets. It is mainly presumed victims of labour exploitation, which can sometimes be interpreted very broadly or very strictly, who may suffer the consequences. According to other specialised centres, capacity certainly isn't a criterium in the discussion concerning the reception of presumed victims and the start of the period of reflection.

A major problem that explains why so many victims still don't have access to victim support organisations is the lack of awareness among some frontline services, such as local police departments in remote areas. The specialised centres sometimes find out through the newspapers that a check has taken place involving the detection of victims, but they haven't received any reports. In some cases, it was painfully clear.

In a **case concerning sexual exploitation**⁸⁹, the local police in a remote area had organised a check and proceeded with the administrative detention of a Nigerian victim. The local police had initially established a report for illegal residence. In the report concerning the repatriated victim, this is what the police wrote: "X was handed over to the Immigration Office in Brussels so that she could be repatriated to Lagos because she was staying in the Schengen area without a valid visa. She doesn't comply with the rules. It is therefore unlikely that she will follow up on the order to leave the territory that she will be given. Since the interested party may be prosecuted for inciting indecent behaviour, there is a risk of new attempts to disrupt public order. Given that the interested party was working without a self-employed permit, there is a risk that she will continue her illegal practices."

Conclusions

This chapter has highlighted how victims are informed of the existence of specialised support services and the specific procedure for victims of human trafficking. The added value of the multilingual information leaflet was emphasised. While the obligation to inform is effectively put into practice by the services accustomed to working in this domain, police departments or inspection services that aren't specialised, or are located far from the reception centres, won't always follow the procedure. Consequently, the victim is deprived of their right to access a support service and, all the more so, legal assistance.

Myria recommends pursuing and intensifying training efforts among all services potentially in contact with presumed victims.

⁸⁹ MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 100-101.

This obligation to inform obviously goes hand in hand with the existence of sufficient

The obligation to inform goes hand in hand with the existence of sufficient human and financial resources for the police and inspection services. resources and budgets for the police and inspection services. However, these have been sorely lacking for several years now. Owing to staff shortages, police departments are no longer able to assist the social inspection services during checks.

The NSSO inspection service's ECOSOC units don't have sufficient resources either.

For several years now, staff members who leave these services are no longer replaced.

This observation is shared by a federal prosecutor. When asked whether combating the smuggling and trafficking of human beings was still a priority in practice, the prosecutor recently replied in the *Juristenkrant*⁹⁰:

"In practice, it's a little more complex. In the past few years, we've suffered terrorist attacks which means a great deal of staff was involved, which is entirely understandable. But the transferred police officers aren't replaced. If people and means are limited, priorities must be defined, and I fear that the fight against human trafficking has become the main victim. Human smuggling is very visible. The problem is clear to see in parking areas, Brussels-North railway station, etc. However, this is far less true of human trafficking. It's something that takes place in secret. Therefore, you have to go looking for it. But you mustn't forget that humans tend to consider something invisible as non-existent. The opposite is true as well. The time has come for us to focus on this problem again."

"Let's not forget that the federal police's central services are suffering greatly from cuts. Capacity is significantly limited. This means you no longer have the expertise that allows you to have a clear idea of things. Despite staff shortages, those present continue to do their best. But, obviously, we can only move forward with the means available."

Myria recommends that the government provide a budget and allocate sufficient human and financial resources to police and inspection services, so that the fight against human trafficking is a real priority and not just on paper.

It is also necessary for frontline services to have better knowledge of the multidisciplinary circular concerning their obligation to inform. It could be useful to develop a practical tool.

Myria recommends that the interdepartmental coordination unit develop a practical tool for frontline services relating to the obligation to inform presumed trafficking victims and its content.

⁹⁰ Interview with Ann Lukowiak by Dirk Leestmans, *De Juristenkrant*, No. 391, 12 June 2019.

Chapter 3

The right to legal aid, participation in the criminal proceedings and the right to protection

Chapter 3 opens with the subject of legal support for trafficking victims and their access to the Belgian legal aid system (point 1). It then looks at how trafficking victims can assert their rights during criminal proceedings (point 2). Lastly, Myria analyses the protection of victims against secondary victimisation during these proceedings (point 3). This chapter also uses concrete examples to demonstrate the difficulties encountered by the late appointment of a lawyer.

1. Right to legal aid

Trafficking victims must have access to legal advice without delay and, depending on the role attributed to the victims in the judicial system concerned, to legal representation, including for the purpose of claiming compensation. This is free if the victim doesn't have sufficient financial resources.⁹¹

Trafficking victims must have access without delay to legal advice.

Legal advice, allowing victims to be informed and advised about the possibilities available to them, should ideally be provided by someone with the appropriate legal training, however, this person doesn't have to be a legal professional.⁹²

1.1. | Importance of the legal support provided by the specialised reception centres

In Belgium, when a victim of human trafficking is detected and referred to a reception centre, where they agree to the support and the conditions, they may benefit from legal aid. Within each of these three centres, social workers or criminologists explain to the victims what their rights are and the conditions associated with the specific procedure for trafficking victims. They will help them to reveal the facts and explain their rights to them within the framework of the criminal proceedings. They also follow the investigation, inform the victim of how it is progressing and accompany them during the interviews. They will also offer the assistance of a lawyer with a view to claiming compensation. As specified in the multidisciplinary circular of 23 December 2016, this assistance lies within the framework of cooperation and dialogue with the competent police and social inspection services, and competent prosecutors.⁹³

91 Art. 12, § 2 of Directive 2011/36/EU. Also see Art. 7, § 4 of Directive 2004/81/EC.

92 Preamble 19 of Directive 2011/36/EU.

93 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.

The specialised centres prepare the victim for the interviews and explain what will happen. Team members from these centres play the role of a person of trust, providing moral support for the victim.⁹⁴

If necessary, the interview can take place in the premises of the specialised centre. As observed in one case⁹⁵, this is a familiar environment for the victim. In the presence of more vulnerable people, it can be useful to hold an audiovisual interview with specialised police officers. This is the case for child victims, but it can also apply to vulnerable adults.⁹⁶

The importance of this legal support was especially highlighted in a case of trafficking for the purposes of labour exploitation in a Chinese restaurant. In its reasoning, the court noted that the statements of the people taken in by the specialised structures changed while they were being cared for: "the confidence and safety they feel thanks to their new status allows them to speak about what they have gone through and their living conditions." The court observed a significant difference between the first interviews that took place during the police intervention when the 'threat' was still there, and subsequent interviews following the intervention of the specialised structures.⁹⁷

1.2. | Appointment of a lawyer

In the past, two of the three reception centres⁹⁸ chose to devote a specific budget to paying the lawyers appointed to represent the victims. Sadly, this is no longer the case as there is no budget for it. Consequently, the three reception centres use lawyers acting within the framework of legal aid, as long as the victim meets the conditions to benefit from it.

1.2.1. | How the legal aid system works in Belgium⁹⁹

People with a low income can benefit from a legal aid service that exists in every bar.

Article 23 of the Constitution guarantees everyone the right to lead a life in keeping with human dignity. Within this framework, it guarantees the right to legal aid.¹⁰⁰

The law¹⁰¹ recognises two types of legal aid:

- Primary legal aid consists of on-duty lawyers who are available for short consultations: initial legal counselling, request for information, etc. Anyone, regardless of their income, has access to this form of legal aid.
- Secondary legal aid allows people who meet certain financial conditions or who are in certain situations, to be allocated a lawyer to assist them within the framework of judicial proceedings, among other things. Depending on the situation, this aid can be completely or partly free. This aid is organised by the Legal Aid Office (LAO), with staff on duty in every judicial district.

94 This right to be accompanied by a person of trust features in Directive 2012/29/EU (Art. 20, c), concerning victims. In Belgium, this right is explicitly recognised for both minors and vulnerable adults, who are the victims or witnesses of certain offences, including human trafficking (Art. 91 bis of the Code of Criminal Procedure [hereafter: CCP]).

95 MYRIA, *2017 Annual Report Trafficking and smuggling of human beings*, Online, p. 86; MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 165-174; Also see above, Chapter 2 of this focus (right to information and access to specialised support services).

96 Under Article 15, §4 of Directive 2011/36/EU on trafficking, Member must take the necessary measures to ensure that provision is made for the possibility of making a video recording of the interviews of child victims of human trafficking. This possibility also features in Directive 2012/29/EU (Article 24) concerning victims. In Belgium, Article 92 of the Code of Criminal Procedure provides for the possibility of holding this type of interview, both for minors and vulnerable adults, who are victims or witnesses of certain offences, including human trafficking.

97 Namur Crim. Court, 29 June 2015: www.myria.be/fr/traite/jurisprudence/tribunal-correctionnel-de-namur-29-juin-2015. Also see MYRIA, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 174 and *2017 Annual Report Trafficking and smuggling of human beings*, Online, pp. 117-118.

98 The third reception centre has always used the system of pro-Deo lawyers, who intervene within the framework of legal aid.

99 Sources: www.avocats.be; www.aidejuridiquebruxelles.be.

100 Art 23, §3, 2° of the Constitution.

101 See articles 508/1 to 508/25 of the Judicial Code.

The majority of the person's livelihood is taken into account (professional income, personal property, savings, signs of affluence, etc.).

In order to have the right to completely free legal aid, a single person must have a net monthly income less than EUR 1,026. If they live with someone, the net monthly income of the household must be less than EUR 1,317.¹⁰²

Partially free legal aid is granted to a single person whose net income is between EUR 1,026 and EUR 1,317. If they live with someone, the net monthly income of the household must be between EUR 1,317 and EUR 1,607.

In addition, a number of people are considered for completely free legal aid owing to their particular situation.¹⁰³ For instance:

- beneficiaries of the integration allowance or welfare: a person in this situation is presumed not to have a sufficient livelihood, unless proved otherwise.
- children: the aid is completely free, regardless of their situation.
- foreign nationals, for a residence permit or to appeal against a decision relating to access to the territory, stay, establishment and removal of foreign nationals: a person in this situation is presumed not to have a sufficient livelihood, unless proved otherwise.
- asylum seekers or those with displaced person status: they are also presumed not to have a sufficient livelihood, unless proved otherwise.

A trafficking victim with the right to welfare from the start of support, falls under the first category mentioned above.

However, since 2016, it has been tougher to access legal aid in terms of the conditions and the procedure.¹⁰⁴ The withdrawal of the irrebuttable presumption of need, except for minors, implies that the applicants must present a whole range of documents to establish this state of need. Whereas proof of income was previously sufficient, such persons are now asked for proof of all the means of support and income they receive.

In concrete terms, the applicant must compile a file in which they have to declare their income and the property they own (house, car, bank account), as well as the income of the person who helps them or houses them. This is why the 'Justice for All Platform'¹⁰⁵, in which Myria participates as an observer, is demanding the in-depth reform of primary and secondary legal aid and an effective right of access to justice for all.

Furthermore, a financial contribution or minimum amount has been introduced, even for those with a right to completely free legal aid.¹⁰⁶ Following an appeal by associations, the Constitutional Court ruled, in a judgment of 21 June 2018, that this minimum amount was contrary to the Constitution.¹⁰⁷ It considered it contradictory to ask for a financial contribution from persons requesting a pro-Deo lawyer precisely because they don't have the necessary means to pay for a lawyer themselves.

1.2.2. | Policy for the appointment of a lawyer by the reception centres

The three specialised centres each have their own work method and their own schedule for putting a victim in contact with a lawyer. The victims therefore have the chance to choose their own lawyer. If not, the specialised centre will look for an appropriate lawyer for them.

It could be that a victim who was referred to a reception centre already has a lawyer (e.g.: for an asylum application). In this case, either the lawyer who has already been involved will also ensure the follow-up of the criminal aspect, or another lawyer will be appointed for this specific part.

¹⁰² Amounts in force in September 2019.

¹⁰³ See Art. 1, § 2 of the R.D. of 18 December 2003 determining the conditions for complete or partial free access to secondary legal aid and legal assistance.

¹⁰⁴ For more details see MYRIA, *Myriadoc 6, Être étranger en Belgique en 2017*, December 2017, pp. 37-39 and *Myriadoc 2, Être étranger en Belgique en 2016*, December 2016, pp. 23-28.

¹⁰⁵ This platform is a de facto association bringing together players from Belgian civil society and the legal world: <https://pjpt-prvi.be/fr?lang=fr>.

¹⁰⁶ Certain categories of people are exempt from this contribution, in particular : in criminal matters, persons receiving secondary legal aid completely free of charge, asylum seekers, foreign nationals who have initiated proceedings against a repatriation decision or a ban on entry or someone who "has no means of subsistence" (see Art. 508/17 §4 of the Judicial Code).

¹⁰⁷ Constitutional Court, judgment no. 77/2018 of 28 June 2018 www.const-court.be/public/f/2018/2018-077f.pdf.

In order to ensure optimum follow-up of the case, some centres encourage and help the victim to register in advance as an 'injured party', i.e. as a person who declares having suffered damage as a result of an offence.¹⁰⁸ This declaration can be made in person or through a lawyer. The person who claims to be an injured party is entitled to: have any document they consider useful to be attached to the file, be informed of the dismissal of the proceedings and the reasons for it, and to be informed of the fact that the investigation has been opened and the day fixed for the hearing at the investigating and trial courts. The injured party also has the right to ask to consult the file and obtain a copy of it.

One of the centres emphasised during the interview that declaring oneself an injured party doesn't always guarantee, in practice, that this person is kept informed of the case's progress and the day fixed for the hearing owing to organisational problems and a lack of resources at the public prosecutor's office.

Normally, the centres offer victims the assistance of a lawyer when the case is in the closing phase: either because the investigation is coming to an end and a hearing in chambers has been scheduled for the settlement of the proceedings, or even when the case is set to go before the court.¹⁰⁹ The latter occurs mainly when the case hasn't been investigated by an investigating judge or when the victim hasn't been informed of the referral of the proceedings.

In one of the centres, the appointment of a lawyer sometimes depends on the progress of the investigation. If the suspects have been arrested and remanded in custody,

The royal decree on the conditions of secondary legal aid must be modified to enable trafficking victims to benefit from it. the centre immediately appoints a lawyer for the victim. If a case has been going on for years, a lawyer can be appointed to attempt to accelerate the process. This also sometimes happens

right at the beginning of the criminal investigation phase. By appointing a lawyer at this point, it is possible to ask for access to the file and to carry out further investigations (see further on). Another centre acknowledged the interest of appointing a lawyer more quickly in certain cases.

If the victim meets the conditions for legal aid, they will be offered the assistance of a pro-Deo lawyer. In general, it is the centre that is responsible for collecting the necessary documents to prove a lack of sufficient means (in particular, a CPAS certificate if the victim still receives welfare). Owing to the requirements of the different legal aid offices, this can sometimes be rather time-consuming. On the other hand, if the investigation and the proceedings have been going on for several years, it is likely that the victim has found work. This means that they often no longer meet the conditions to benefit from free legal aid (total or partial). The fact of having to pay a lawyer can therefore discourage them from attending the trial and acts as a pitfall in claiming compensation¹¹⁰, even if the centres try to negotiate a social tariff or flat fee with the lawyer.

The Belgian system is thus different from the Dutch system where presumed victims of trafficking can benefit directly from the assistance of a lawyer within the framework of legal aid, if they so wish. The lawyer will intervene in the different aspects linked to human trafficking (criminal proceedings, residence rights, etc.).¹¹¹

A recommendation formulated both by a reception centre and a lawyer who was interviewed, is to adapt the royal decree concerning the conditions of secondary legal aid to allow trafficking victims to benefit from it throughout the criminal proceedings, regardless of the development in their financial status, owing to the particular vulnerability of victims of human trafficking.

¹⁰⁸ Article 5 bis of the Preliminary Title of the Criminal Procedure Code.

¹⁰⁹ On filing a civil suit, see below point 2.3 (right to compensation for the damage suffered).

¹¹⁰ For more details, also see point 2.3.3 hereafter (filing a civil suit) and Chapter 4 (compensation of victims of human trafficking).

¹¹¹ <https://www.wegwijzermensenhandel.nl/organisatieprofielen/RaadvoorRechtsbijstand.aspx>. The Dutch system combines elements of the Belgian plaintiff system and an approach based on needs: in the Netherlands, the victim is considered as a witness with a privileged position owing to the damage suffered and the resulting vulnerability and needs. See FRA, Victims' rights as standards of criminal justice, Justice for victims of violent crime, Part I, pp. 41-42: <https://fra.europa.eu/en/publication/2019/justice-victim-crime-standards>.

In addition, there are situations where the centres should have appointed a lawyer for a victim in the initial phase of the case or well before the referral of the proceedings. The importance of making this appointment quickly was also stressed by the lawyers questioned.

An early appointment not only allows access to the file, but also to request the investigating judge for additional investigative measures (see below). This also avoids a situation where the lawyer discovers at the hearing in chambers that they are faced with a colossal case involving several defendants, and that they haven't had the time to sufficiently familiarise themselves with it in order to best represent the victim's interests. More generally, this allows the victim to be suitably represented at all stages of the proceedings and to position themselves, among other things, when a request for a confrontation is made by the perpetrator. Since a recent legislative amendment¹¹², anyone who is heard, in any capacity, has the right, if they so wish, to take the initiative to be assisted by a lawyer at the hearing.¹¹³

Support of a lawyer in case of confrontation

The role of the lawyer and the moment when they should come into play are critical. One prominent example concerns a case of sexual exploitation¹¹⁴ where the victims were recruited over the internet. A Palestinian victim was prepared to face her exploiters after the defendant's lawyer officially submitted the request to the investigating judge. The specialised centre supporting the victim informed her that she could refuse the confrontations at any time. However, they should have explicitly advised her against it. The two confrontations, which took place the same day, didn't go as she had expected. The perpetrators denied everything, which made the victim powerless. During the second confrontation, she started shouting because she couldn't stand it any longer. The police had to stop the confrontation early because the victim was no longer able to react. She later said that she was shocked by her own reaction. This situation could have been avoided if the victim had been appointed a lawyer. There was only one team member from the specialised centre to support the victim psychologically.

Consequently, the victim didn't benefit from any support from a lawyer. On the other hand, the exploiter was indeed assisted by a lawyer, which means that the exploiters were fully supported at that time.

If a lawyer had been appointed, the victim's interests would have been better defended. Discussions with the specialised centres revealed that two of the three centres don't usually appoint a lawyer before the end of the proceedings.

In practice, however, victims of sexual exploitation are rarely exposed to a confrontation with their pimp because the majority of investigating judges consider it inadvisable. If this happens despite all, the victims must be given maximum protection. In cases concerning labour exploitation, confrontations between victims and defendants can be more frequent, as shown in the case studies.¹¹⁵ It was also noted in these cases that the victim wasn't appointed a lawyer

Voluntary return of the victim to their country of origin

Some victims wish to return to their country of origin as quickly as possible, either after their interception or in the short term. This is particularly true for EU citizens who aren't always aware that victim status also enables them to obtain legal assistance and, if necessary, compensation. The role of the specialised centres is to inform the victims and put them in contact with a (pro-

Deo) lawyer, who can defend their interests in Belgium so that they can go home. Nevertheless, staff at the specialised centres expressly explain to victims that it is their responsibility to keep in contact

with their lawyer and that the centres have no further role to play in this respect. The problem is that the proceedings are often spread out over many years and the victims lose contact. They lose interest too because there is often only a small chance of obtaining actual compensation in the future.

Victims who return to their country of origin must be put in contact with a lawyer who can continue to defend their rights in Belgium.

¹¹² Law of 21 November 2016 on certain rights of persons subjected to questioning, O.G., 24 November 2016.

¹¹³ Art. 47bis, §6, 7 C.i.Cr. See M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 406.

¹¹⁴ MYRIA, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 105-106; Also see below, point 3 (right to protection against secondary victimisation).

¹¹⁵ See Part 3, Chapter 2, point 1.2 (case studies: hotel & catering case).

In some cases, it turned out that the specialised centres had appointed a lawyer for the victims, but they put an end to the support because they were returned to their country of origin. The case in the example (see below) had a positive outcome with effective compensation granted to the victims. However, this isn't always the case.

In a **case concerning labour exploitation in the construction sector** tried in 2016¹¹⁶, the victims were supported and taken care of by Sürya and Payoke. Two victims requested a voluntary return to Romania. However, their participation in the judicial proceedings was guaranteed by the appointment of a lawyer, who represented them as a civil party during the rest of the investigation and trial. The victims thus had access to justice, even if they were no longer living in the country where the exploitation took place. It is regrettable that the company in question went bankrupt during the proceedings and that no significant confiscation was ordered, thus preventing the victims from receiving effective compensation.

Victim protection in the event of discussion during the status procedure

Victims may sometimes be excluded from the procedure because they haven't complied with the conditions. In some instances, these may be cases in which the specialised centre itself is involved (for example: non-compliance with the support agreement). In this type of case, the victims' interests could be better guaranteed by a lawyer than by a team member from a specialised centre.

In a **sexual exploitation case concerning a Thai massage parlour**¹¹⁷, one of the victims was excluded from the status for violating the conditions. She had made contact by phone with one of the defendants, whose family were friends with her own family. The police confronted her with an audio fragment of the phone taps and questioned her about it in the presence of two staff members from the specialised reception centre.

Manipulation of the suspect through the appointment of a lawyer

Sometimes, victims are contacted by their exploiter after their interception. They claim to be trying to help them through a lawyer. Of course, in such a case, the lawyer is only serving the exploiter's interests and not those of the victim. The following example further demonstrates the importance of appointing a lawyer quickly to avoid any risk of manipulation.

In the **Mama M. case**¹¹⁸, a Nigerian victim, taken in by PAG-ASA, stated that her 'madam' had contacted her and had tried to force her to see a lawyer: "You've told me about the status of victim of human trafficking. I consider myself to be a victim and would like to have this status. I will cooperate fully with the investigation. You're asking me if I wish to state anything. I'd like to tell you that X. contacted me on my mobile phone. First, I received a lot of text messages, to which I didn't react. In the beginning, it was to ask if I'd been released. Then, she told me that she had sent someone to the police and they told her I'd been released and that I could go back to work for her. Mama, as I always call her, then called me and I answered. She told me I could come back to work for her, to which I replied that I no longer wanted to.

So she asked me if I didn't want to earn money anymore. She also told me she'd hired a lawyer to help me and when she pointed out that I'd have to pay them myself, I replied that it wasn't necessary."

2. Participation in the criminal proceedings

A trafficking victim, like any victim of crime, benefits from rights within the framework of criminal proceedings. Some of them are detailed below.

¹¹⁶ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online, pp. 84-88: point on victim status p.88.

¹¹⁷ MYRIA, 2016 *Annual Report Trafficking and smuggling of, in the hands of traffickers*, p. 98.

¹¹⁸ MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 95-96.

2.1. | Victim's right to be heard and to give information

Article 10, §1 of Directive 2012/29/EU states that Member States must ensure that the victim can be heard during the criminal proceedings and give evidence.

In Belgium, under Article 3bis of the Preliminary Title of the Criminal Procedure Code, victims of offences and their relatives must be treated properly and conscientiously, in particular by providing them with the necessary information and, if required, by putting them in contact with specialised services. Victims must also be provided with relevant information on how to file a civil suit and make a declaration as an injured party.¹¹⁹

A joint circular of the minister of justice and the Board of Prosecutors General on the reception of victims at the public prosecutor's office and the courts¹²⁰, also mentions the main rights of victims, including the right to receive and give information.

During their police interviews, victims of human trafficking often give information that can be used as evidence, and even provide the evidence themselves. It can be the recording of a conversation on Skype, a USB stick containing messages or even photos on Facebook.

In a **loverboy case involving adult Belgian victims**¹²¹, a specialised centre contributed to the investigation by giving the police additional information provided by the victims with their consent. In a **Nigerian case**¹²², the victim had recorded (telephone) conversations and put them on a USB stick.

In a **Hungarian human trafficking case**¹²³ in Ghent, one victim was able to prove via Skype that her pimp had made false statements. She consulted a friend who had recorded the oral conversation on Skype with the pimp. The police asked her friend for this Skype conversation and checked the content. This element was later included in the judgment¹²⁴ as evidence against the pimp.

In a **Belgian loverboy case**¹²⁵, associated with multiple crimes, one victim gave the investigators a USB stick during a new interview, which contained Facebook messages and photos. She was thus able to prove that one of the defendants had threatened her after her complaint. Based on the photos and messages, it was possible to detect and identify new victims. In the same case, a child victim showed a Facebook message to the police during her interview, proving that the accused had attempted to contact her through another victim's profile, which is absolutely forbidden owing to the possibility of manipulation.

2.2. | Right to the return of property

Article 15 of Directive 2012/29/EU states that Member States must ensure that recoverable property seized in the course of criminal proceedings is returned to the victim without delay.

The return of personal belongings to the victim can play an important role in the victim's psychological healing process. This is especially the case for Nigerian victims.

Many Nigerian girls swear an oath in Nigeria before a voodoo or juju priest prior to their departure, an oath by which they or their family promise to pay the travel costs and debts to their 'madam'. This swearing of an oath is combined with a series of rituals. The woman has to give fingernails, blood, hair and other intimate items that are carefully stored in a packet. The criminal network keeps control of this packet. If the woman doesn't or no longer fulfils her obligations, juju or voodoo is inflicted on the victim. According to voodoo beliefs, it is possible to use this packet to make someone fall sick or go mad, and even cause their death. The madams are therefore able to terrorise their girls and create a bond that the girls can't break without being punished. In order to protect themselves and their family, many victims prefer to continue to work as prostitutes and reimburse their debts.

¹¹⁹ Article 5 bis of the Preliminary Title of the Criminal Procedure Code.

¹²⁰ Joint circular of the minister of justice and the Board of Prosecutors General no. 16/2012 of 12 November 2012 on the reception of victims at the public prosecutor's office and the courts.

¹²¹ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 91-95.

¹²² MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, p. 126.

¹²³ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 109-110.

¹²⁴ East Flanders Crim. Court, Ghent division, 31 March 2017, ch. G28 (appeal).

¹²⁵ MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, p. 80-84.

The woman only feels free of the curse when she gains control of her own packet. This means that during the investigation, the police should try to get hold of this packet so that the woman knows that she can free herself from this grip. This will allow the police to win the victim's trust. Myria noted in the Nigerian cases that the victim had asked the court to retrieve her packet from the clerk's office so that she could destroy it and thus lift the curse.¹²⁶

2.3. | Right to compensation for damage suffered¹²⁷

Article 12, § 2 of Anti-trafficking Directive 2011/36/EU provides that victims must have access to legal advice without delay and, depending on the role attributed to the victims in the judicial system concerned, to legal representation, including for the purpose of claiming compensation. Article 16, §1 of Directive 2012/29/EU concerning 'victims' rights stipulates that the latter have the right to obtain a decision on compensation from the offender, within a reasonable time, within the framework of criminal proceedings. As for the Council of Europe Convention on Action against Trafficking in Human Beings, it specifies in Article 15, §3, that each party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

In Belgium, if the victim of an offence wants to claim compensation for damages before the criminal court, they must acquire the status of plaintiff by filing a civil suit. The victim therefore becomes a party to the criminal proceedings and, in many respects, has the same rights as the accused or the defendant.¹²⁸

Trafficking victims who wish to file a civil suit usually do so when the prosecution has already been instituted by the public prosecutor. This is what is known as filing a civil suit by intervention.

This is the cheapest procedure. Such an action is accepted when the criminal proceedings have been instituted and up until the closing of the proceedings before the trial judge ruling at first instance.¹²⁹ A victim can therefore bring a civil action before the investigating judge when the matter is already under criminal investigation concerning the alleged acts, when the proceedings are settled at the end of the investigation before the investigating court (in chambers) or during the hearing at the trial court.

The plaintiff, as a party to the proceedings, has certain rights. During the investigation, they can request access to and obtain a copy of the file¹³⁰ as well as the fulfilment of additional investigative measures.¹³¹ At the end of the investigation, they also have the right to access and obtain a copy of the file, as well as the right to request additional investigative measures.¹³² At the judgment stage, the victim has the right to access the file and benefits from the rights granted to the parties to the proceedings.

Human trafficking cases are generally investigated by an investigating judge after the initial information phase under the authority of the senior crown prosecutor or labour prosecutor. The victim then has the chance to file a civil suit at the beginning of the investigation. However, some labour prosecutors, responsible for processing cases of trafficking for the purpose of labour exploitation, are sometimes unfamiliar with how criminal justice works. Hence, they prefer to hold onto the case without handing it over to an investigating judge, or they consider that the production of evidence doesn't require it. The law doesn't lay down general criteria to determine the type of cases that should be investigated by an investigating judge.¹³³ If they decide that the case is in order, they then proceed with a direct summons before the criminal court. In this case, if the victim is an injured party, they may submit a request to access the file or obtain a copy of it, at any time, from the senior crown prosecutor or the labour prosecutor, depending on the progress of the proceedings.¹³⁴ On the other hand, they can't request additional investigations to be carried out (see below).

126 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 26. The restitution is made on the basis of Article 43bis, paragraph 3 of the Criminal Code, which provides that when confiscated property belongs to the civil party, it will be returned to them.

127 Also see Chapter 4 hereafter (compensation of victims of human trafficking).

128 M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 286.

129 Art. 67 C.I.cr.

130 Art. 61ter C.I.cr.

131 Art. 61quinquies C.I.cr.

132 Art. 127, §2 and 3 C.I.cr.

133 M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 636.

134 Art. 21bis C.I.cr.

2.3.1. | Case dropped

Article 11 of Directive 2012/29/EU on victims of crime, sets out several victims' rights in the event of a decision not to prosecute, advising them in particular about their right to receive sufficient information to decide whether or not to have such a decision reviewed.

In some instances, the case is dropped during the information phase and the victim risks being excluded from the status of victim of human trafficking. According to one of the centres, this is more likely to be the case for labour exploitation cases, with the margin of interpretation inherent to the concept of "work contrary to human dignity", than for sexual exploitation cases. In such cases, there is often insufficient evidence to prosecute the perpetrators of the human trafficking. It is likely the case will be dropped and team members should prepare the victims for it. Often, the reason is very general and the centres have to contact the labour prosecutor for further explanations.

Another problem is associated with the fact that prosecutors sometimes only make known their decision to drop the case at the last minute. In one case, the centre had to terminate their support for the victim the following day.

Sometimes, there are shortfalls in the investigation and/or the reference prosecutor in question has little experience in investigations into human trafficking. If the decision to drop the case isn't justified, the centre will offer to appoint a lawyer for the victim. The lawyer can then look through the file and/or consult with the prosecutor in order to back up the elements in it. If there are justified reasons to support this, the victim will be offered the chance to have the case reopened by bringing a civil suit before an investigating judge, with the possibility of requesting additional investigative acts at a later stage.

2.3.2. | Request to carry out further investigative measures

In addition to the right to request access to the investigation file, the parties are granted the possibility of asking the investigating judge to carry out an additional investigative act.¹³⁵ This notion should be understood in the broad sense: it includes all acts aimed at collecting data on the facts or at determining the guilt or responsibility of the accused or the credibility of a witness or victim.¹³⁶

The interviews revealed that one of the three centres is quicker to appoint a lawyer during the investigation compared with the others. This lawyer may then consult the file to identify any shortfalls and, in consultation with the victim, ask the investigating judge to conduct an additional interview with the victim. According to this centre, the investigating judge nearly always agrees.

Another centre always receives a negative response from the investigating judge. According to this centre, there is no point in appointing a lawyer for the victim during the criminal investigation (i.e. before a date has been set for the case in chambers).

A third centre appoints a lawyer when the case is dragging on. By requesting access and additional investigations, the latter endeavours to resume the investigation. This centre rarely uses this procedure but, if necessary, it is willing to learn from it, as it realises that perhaps greater attention is required, especially in cases with a high likelihood of success. The lawyers questioned also mentioned the interest of appointing a lawyer as early as possible in order to have access to the file in order to request additional investigations to be carried out, if necessary.

The rapid appointment of a lawyer allows access to the file and to request additional investigations be carried out, if necessary.

A late appointment no longer allows such duties to be requested. The evidence to assess the damage suffered by the victim is therefore definitive. A lawyer gave the example of a young Albanian prostitute who informed him that the defendant had bought a hotel in Albania with the proceeds from her prostitution.

¹³⁵ Art. 61quinquies, §1, C.I.cr.

¹³⁶ M.-A. BEERNAERT, H.D. BOSLY, D. VANDERMEERSCH, *Droit de la procédure pénale*, Tome I, Bruges, La Charte, 2017, 8e éd, p. 838.

With an early appointment, it is possible to check whether this aspect has been investigated (for instance, if letters rogatory have been sent to Albania).

Some cases, in which Myria filed a civil suit, show that the investigating judge responded positively to several requests made by the plaintiff (a victim and/or Myria) for additional investigative acts. However, in some cases, the result didn't meet expectations.

In the **case of the Emirati princesses**¹³⁷, the victims were exploited as domestic slaves in a luxury hotel in Brussels. An entire floor of the hotel was rented exclusively to the princesses for months.

They were convicted of human trafficking. They had hired a security firm to monitor their domestic staff. The victims systematically went through the hotel reception area accompanied by their security guards. The hotel staff must have noticed. The hotel manager, for whom this was a lucrative activity and who, according to the plaintiffs, must have been aware of the abuses, was never prosecuted. During the investigation, the lawyers of Myria and one of the victims, i.e. the plaintiffs, asked the investigating judge, on the basis of specific questions, to question the hotel manager, the head of the security company and certain witnesses.

The investigating judge agreed and instructed the police to do so. In the meantime, several witnesses had gone abroad with the princesses or had been dismissed by the hotel. Interviews with those involved didn't reveal much new information. The investigators hadn't received any other assignments either within the framework of this part of the investigation. Besides the requested interviews, no other inquiry was made regarding the role of the hotel's manager in this case.

Recourse to additional investigative acts proved successful in the **case of an illegal textile workshop**.¹³⁸ It involved Syrian victims. The manager was convicted of human trafficking. Within the context of a request for further investigative acts, Myria asked that experts be able to testify. This allowed significant additional evidence to be obtained, in addition to the hearings, the phone investigation ('zoller'¹³⁹ and messages) and financial analyses. Based on their experience, these experts stated that there was clearly a heavy workload resulting in a situation of exploitation. Normally, five to six people are required to sort 2,000 kilos of clothes a day; in this case, just one person had to do the work.

2.3.3. | Filing a civil suit

A certain number of victims file a civil suit and are represented by a lawyer, especially with a view to receiving compensation (see Chapter 4). This can be seen in several examples from case law, mentioned in this focus. According to one of these centres, it is usually victims of labour exploitation rather than sexual exploitation. In addition, there are considerable stumbling blocks preventing victims from filing a civil suit.

Stumbling blocks

Some victims of sexual exploitation, but sometimes labour exploitation as well, fear reprisals because the perpetrators come from the same region as their loved ones. They don't want to risk putting their family in danger in their country of origin. In countries like Nigeria and Thailand, there are hardly any protective measures.

The financial aspect is also a major stumbling block. Victims who have found a job no longer have access to the pro-Deo system and have to pay for the lawyer themselves, knowing that the defendant will no longer be able to compensate them. This is highly discouraging.

137 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 122-124.

138 CECLR, 2012 *Annual Report Trafficking and smuggling of human beings, Building trust*, pp. 58-59 and 76; Mons Crim. Court, 26 June 2012, 10th ch.

139 The network operator provided the investigating judge with a list of phone numbers: those dialled by a certain phone (landline or mobile) and numbers that contacted this phone. The content of these incoming and outgoing calls wasn't recorded. The recorded phone numbers can be up to a year old.

Other victims don't wish to file a civil suit because they want to distance themselves emotionally from the traumatic experience as quickly as possible.

In a **labour exploitation case in the construction sector**¹⁴⁰, several victims stated that they weren't interested in pursuing the case because they wanted to close this chapter and forget about their involvement with the Belgian businessman: "I'm now working as a P.E. teacher and I'm (...) married. I'm no longer in contact with [X] and I don't want to hear about him anymore".

There are also victims who abandon participation in the civil proceedings and who are no longer represented by a lawyer at the trial. This is due to the length of the proceedings, with the trial taking place many years later and/or all the defendants having been released, leaving the victims feeling even more threatened.¹⁴¹

The specialised centres confirm that the victims should at least have the chance to file a civil suit. It is also important for the defence of their interests at the trial. The opposing counsel often uses arguments that don't always stand up in its pleadings. If there is no plaintiff, there is no counterweight, so the court only hears one side of the story.

One of the specialised centres indicated that, in some cases, it would be better to appoint a lawyer more quickly in order to file a civil suit for a victim. According to this centre, the conditions of access to legal aid for victims of human trafficking should be more flexible.

Victim without official victim status as a plaintiff in a trial concerning human trafficking

Sometimes, there are victims who haven't benefited from the procedure associated with the status of victim of human trafficking and who, years later, are plaintiffs in a trial concerning human trafficking, as shown in the last point of the case illustrated at the end of this chapter.¹⁴² There are also several other examples taken from case law.

In a case of **labour exploitation in a sewing workshop**¹⁴³, several victims reported acts of bogus self-employment associated with human trafficking to the labour prosecutor, through their lawyer. The investigation, conducted by the social inspectorate and the labour prosecutor, revealed that several victims thought they were working for the company as employees. In reality, they were bogus self-employed workers. Three victims filed a civil suit during the trial but the court only accepted the social criminal law offences. Nevertheless, it ordered the special confiscation of EUR 100,000 from each of the two convicted parties. The court awarded the provisional sum of EUR 1 to the plaintiffs and ruled a stay of proceedings in order to judge the civil interests.

In a case of **labour exploitation in a paper serviette and packaging material factory**¹⁴⁴, the main defendant and his company were convicted of human trafficking. Four workers filed a civil suit and didn't benefit from the specific procedure related to the status of victim of human trafficking. The court awarded them damages of between EUR 21,963.50 and EUR 88,241.79. The case began following a check by the Flemish Region's labour and social economy inspectorate. The latter made the following observation: "Several machines, one of which was running, operated by two people and, at the back of the factory, a living area where a 14-year-old Bulgarian boy was sleeping because one of the machines wasn't working." According to the inspectorate, 11 Bulgarian workers were employed without having been declared to social security, including seven who were in the country illegally. The 14-year-old boy was also employed, in violation of all the provisions relating to child labour. Furthermore, one of the workers' families (three people) were housed in an area located in the middle of the factory, which wasn't at all suitable as a living space for people.

140 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 96.

141 See following point on secondary victimisation.

142 See below: example of a case (pallet factory).

143 MYRIA, 2018 Annual Report Trafficking and smuggling of human beings, *Minors at major risk*, p. 150.

144 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 180-181.

3. The right to protection against secondary victimisation

What comprises secondary victimisation of adults, minors and other vulnerable groups? The following examples help to define the problem.

3.1. | Secondary victimisation

Secondary victimisation means that victims become victims of the same offence for a second time, as they are faced with negative social reactions, civil servants and authorities who can't or won't help them, as well as lengthy exhausting, bureaucratic and costly legal proceedings. For the victim, this secondary victimisation accentuates victimisation the suffering or prejudice suffered as a result of the initial offence (primary victimisation). In essence, it involves a feeling of new victimisation.¹⁴⁵

Different factors influence the victim's actual additional suffering; firstly, the intervention of the authorities concerned in the criminal process. Secondly, the nature and the severity of the offence, the victim's personal characteristics and the presence of a supportive social network also play a major role.¹⁴⁶

It is essential to be familiar with the factors that increase (risk factors) or reduce (protection factors) the risk of secondary victimisation. For instance, adequate information and legal and psychological assistance reduce the risk, while unnecessarily long criminal proceedings or confrontations with the perpetrators increase it. Studies and literature reveal¹⁴⁷ that these factors can be subdivided into four main themes: predictability, safety, management/control

and justice. Predictability means that the victim knows what to expect. Control means knowing whether or not the victim feels they can have an influence on their own situation. Safety chiefly refers to physical safety. When the victim is afraid of reprisals from the exploiter or a confrontation with the perpetrator, they don't feel safe. As regards emotional and social security, other factors must be taken into account such as respect for the victim's privacy and their respectful treatment. Factors with a negative score in relation to the above-mentioned themes reinforce the likelihood of secondary victimisation. Consequently, they can have a negative impact on trust, traumatise a second time, hamper recovery, cause further trauma or a loss of trust in the judicial system. Lastly, victims may lose faith in a just world.¹⁴⁸

Example

A 14-year-old Belgian girl became the victim of a loverboy after running away from a youth centre. She fell in love with a loverboy who sexually exploited her. After the trial, the young girl was sent back to the same centre.¹⁴⁹ This was a form of secondary victimisation by the law, because there was no other available alternative. The victim ran away from the centre several times, an obvious sign of a problematic situation. It was bad practice to send her back to the same place.¹⁵⁰

Another form of secondary victimisation is the confrontation between a victim and their exploiter. In principle, according to the Belgian system, victims don't have to appear in court during the trial to testify in the presence of the defendant. However, in some cases, there have been confrontations between defendants and victims. Each time, this has been at the exclusive request of the defendants' lawyer to the investigating judge.¹⁵¹

145 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*.

146 M. WIJERS, M. BOER, *Een keer is genoeg: verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafproces*, Research and Documentation Centre (WODC) of the Ministry of Justice and Security (Netherlands), 2010, pp. 135-147.

147 F.W. WINKEL, *Post traumatic anger. Missing link in the wheel of misfortune*, Wolf Legal Publishers: Tilburg University, 2007.

148 M. WIJERS, M. BOER, *Een keer is genoeg: verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafproces*, Research and Documentation Centre (WODC) Ministry of Security and Justice (Nederland), 2010, pp. 135-147; U. ORTH, *Secondary Victimization of Crime Victims by Criminal Proceedings*, Social Justice Research, 2002, N° 15(4), pp. 313-325.

149 On this subject, see this report, Part 3, Chapter 2 (Case studies), point 1.1.

150 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 91 and 144-147.

151 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 58-59.

Myria questions the added value of confrontations between victims and defendants in problematic cases. This question is certainly valid as regards victims of sexual exploitation, who have been traumatised psychologically and physically by their negative experiences. As victims, they risk being dragged into a 're-victimisation' process. The often very specific sociocultural context of the victims is sometimes decisive. For Nigerian victims, confrontations are likely to result in the defendant putting a new voodoo spell on the victim. And so the victim is cursed once again. In practice, these requests by the defendant for a confrontation aren't objective requests for further investigation, but rather an attempt at manipulation by the defendant to intimidate the victim and/or encourage them to withdraw their statements. It is essential that the investigating judges be sufficiently aware of this, and avoid granting such requests straight away. Such confrontations are often pointless and even counterproductive to the investigation, and the

A defendant's request for a confrontation is often an attempt to manipulate and intimidate the victim.

additional psychological damage to the victim is usually significant. According to Myria, victims of sexual exploitation can never be forced to agree a confrontation. Today, if the lawyer of a defendant sends a request for a confrontation, the majority of investigating judges immediately give a negative response in the case of sexual exploitation. It is an example of good practice that has given rise to a general practice. In the case of labour exploitation, this issue rarely arises. Caution should also be exercised, as observed in a hotel & catering case.¹⁵² A specialised centre explained that in some labour exploitation situations, the victim can also experience significant trauma. In this case, it is important that a team member from the specialised centre inform them that the confrontation isn't compulsory. For this purpose, the victims must also be given a lawyer (free of charge) in order to inform them of their rights within the framework of a confrontation.¹⁵³

Examples

In a case concerning the sexual exploitation of victims recruited online¹⁵⁴, a Palestinian victim was prepared to participate in a confrontation with her exploiters, after the defendant's lawyer made an official request through the investigating judge. The specialised centre supporting the victim explained to her that she could decline the confrontation at any moment. However, the centre should have explicitly advised against it. The confrontation didn't go as expected. The perpetrators denied everything, which made the victim powerless. During the confrontation, the exasperated victim verbally abused them. The police should have stopped the confrontation earlier because the victim was no longer able to react. She later admitted that she was surprised by her reaction. The specialised centre should have appointed a lawyer beforehand to advise her against the confrontation and to defend her interests during the hearing.¹⁵⁵

In a Romanian case¹⁵⁶, the defendant had formally denied the victim's accusations and had asked for a confrontation, which the investigating judge had immediately authorised during the defendant's hearing. The victim was therefore contacted and invited to go to the police station for a confrontation. This resulted in the victim modifying certain points in their statements, which meant they no longer benefited from any protection.

The reaction of the victim's own family is also a major factor that can cause a new feeling of victimisation. In some cultures, prostitution is considered shameful, even if the victims were forced into prostitution or influenced through fraudulent tactics, and were subjected to appalling situations.

Example: in an Albanian loverboy case concerning sexual exploitation, the victim suffered secondary victimisation owing to her family. She was forbidden from returning to her country of origin because she had left her husband to then earn a living as a prostitute under the influence of a loverboy.

¹⁵² See below in this report, Part 3, Chapter 2 (Case Studies), point 1.2.

¹⁵³ MYRIA, *2013 Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 58-59. Concerning the rights of victims of crimes, Directive 2012/29/EU of the European Parliament and Council of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA, O.G., L315, 14.11.2012 November 2012, p.57.

¹⁵⁴ MYRIA, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 105-106. This victim never filed a civil suit.

¹⁵⁵ On this subject, see this chapter, point 1 (right to legal aid).

¹⁵⁶ MYRIA, *2012 Annual Report Trafficking and smuggling of human beings, Building Trust*, pp. 54-55.

As a result, her family wanted no more contact with her. In addition, the young woman was still in love with her loverboy. The clan in which the loverboy was active had a grip over an entire region in Albania, both on a criminal and political level. The perpetrators in custody in Belgium were all released during the proceedings. The victim felt threatened and had no social safety net. She needed money to pay her loverboy's lawyer. She was therefore forced to work for another pimp from the same family clan.

Example: in one case¹⁵⁷, several Thai victims were exploited. Lured to Belgium by false promises, they ended up in massage parlours where they were paid to perform sexual services. Enticed under the pretext of a job as a cook, one of the victims made the following statement: "My parents have already told me that the defendant claims I told the police everything and that's why they now have problems. I'm now considered the black sheep of the family. However, I can't tell my family that I was obliged to work in a massage parlour. They won't believe me or accept it." This is another blatant example of secondary victimisation by the family."

Example: in another case¹⁵⁸, Moroccan victims were sexually exploited and forced to prostitute themselves. The biggest fear of one of the victims was that her parents should discover she had had to work as a prostitute. The circumstances were of no interest to them. One of the victims stated: "If my family were to find out what type of work I did, I would be in danger. What I mean is, in my culture, it isn't uncommon for someone to be killed for that type of thing."

Another blatant example of secondary victimisation in Hungary illustrates this phenomenon. During an interview with a reference prosecutor, Myria learnt, in relation to a case of sexual exploitation¹⁵⁹, that Belgium had launched a reintegration programme for victims in Hungary.

This Belgian-Dutch-Hungarian initiative led directly to the European RAVOT project.¹⁶⁰ The Belgian prosecutor concerned noted that only one Hungarian woman (without children) was prepared to participate in this reintegration programme. After having obtained information from other victims, it transpired that the women were punished if they joined the programme. Prostitution is punishable in Hungary. The Hungarian authorities considered the victims of prostitution following the programme as unfit mothers and removed their children from them.¹⁶¹ When the Belgian prosecutor was informed, she threatened to put an end to the project and the Hungarian authorities changed stance. The intervention of the prosecutor is a good practice.

3.2. | Protection against intimidation by the exploiters

To avoid secondary victimisation, the victims must be protected against intimidation by their exploiters. The latter are often in a position of power in relation to the victim. For instance, a specialised centre mentioned in an interview that there were sometimes victims with serious mental or physical disabilities. This is why, in some cases, the centre has to take a decision for the victim as they are unable to do so. The exploiters make full use of their position of strength towards these people. Based on a variety of cases, good and bad practices concerning the protection of victims are listed hereafter.

During an interview, Myria learnt that, in an Albanian case of sexual exploitation, an Albanian victim received death threats after the Belgian police asked for information about the exploiters through letters rogatory. The victim was supported by a specialised reception centre. As a protective measure, the victim went to fetch her child in Albania and brought it back to Belgium through the family reunification procedure.

157 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 98.

158 MYRIA, 2011 *Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 96-97.

159 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, p. 64.

160 Referral of and Assistance for Victims of Human Trafficking, ISEC project, under the direction of the Hungarian Ministry of the Interior, in which the NGO Payoke participated as the Belgian partner.

161 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, p. 92.

In one **case**¹⁶², two Albanian girls were victims of loverboys. The case was brought to light because the police found the victim in a state of shock with broken ribs. Her pimp had beaten her up. During the investigation, the main defendant continued to threaten the victim and her family in Albania. They all received death threats. He had threatened the victim's father to the point where the latter came to Belgium, accompanied by the main defendant's father, to tell the police that his daughter was lying. The man was completely disoriented and after having made his statements, the police helped him organise his return to Albania. The threats against the victim and her family continued. Fearing the defendant, the victim went into hiding with the help of a specialised reception centre.

In the **Mama M. case**¹⁶³, a former Nigerian victim took a 14-year-old Nigerian victim to a specialised centre for victims of human trafficking. She had found her crying in the street. It turned out that she was a Nigerian child victim who was being exploited as a prostitute. She worked the street in Antwerp as a prostitute for two months. She was probably only 13, or had just turned 14, when she left Nigeria. The defendants had threatened the victim and her family using voodoo rituals. Through fear, the victim was only prepared to speak to the police later and to make a statement after Esperanto, a specialised centre for child victims of trafficking, succeeded in gaining her trust. The police organised an interview in the familiar surroundings of the specialised centre Sürya, in consultation with her guardian. The victim was accompanied by a psychosocial worker from a specialised centre.

This section concludes with final painful example of the extreme intimidation of a victim. In the Nigerian Mama L. case¹⁶⁴, the 14-year-old victim R. escaped from the window where she had to work. R.'s mother advised her to run away and come back to Nigeria. Mama L., R.'s pimp, was furious about R.'s disappearance.

Investigators learnt from the phone taps that R's mother had been severely beaten by corrupt Nigerian police officers. These officers had been paid by Mama L.'s brother. Conversations were recorded where Mama L. can be heard in a rage giving the order - and free rein - to her accomplices in Nigeria to beat the hell out of R.'s mother (and the other children) to make her pay for her daughter's escape. R.'s mother was imprisoned and tortured. Conversations were recorded in which Mama L. was informed that R.'s mother was dead. The police later learnt from R. that it was her brother and not her mother who died in mysterious circumstances.¹⁶⁵

We can conclude from the examples and cases cited that secondary victimisation is very frequent. The exploiters not only intimidate victims in Belgium but often their families as well in their country of origin. In many cases, the victim's family is also at the source of the secondary victimisation. Consequently, it is even more difficult for the victim to process such events, which are often highly traumatic.

Conclusions

The legal support for victims provided by the specialised reception centres is vital: it allows victims to be explained their rights and to provide them with support within the framework of criminal proceedings (hearings, information on the follow-up, support, etc.). The centres also offer victims the assistance of a lawyer with a view to claiming compensation. With no budget to pay the lawyers, the reception centres rely on lawyers acting in the context of legal aid. The victim can benefit from a pro-Deo lawyer if they fulfil the conditions (e.g. if they are on welfare, which is the case at the start of the support).

162 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online, pp. 106-107.

163 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings*, *Minors at major risk*, p. 98.

164 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings*, *Minors at major risk*, p. 70-71.

165 In the 2018 focus, the theme of vulnerable child victims of human trafficking was discussed in detail.

Normally, the centres offer victims the assistance of a lawyer when the case is in the closing stage: either because the investigation by an investigating judge is coming to an end and a hearing in chambers has been scheduled for the settlement of the proceedings, or even when the case is set to go before the court. Sometimes, a lawyer is appointed earlier if necessary (e.g.: when there are prisoners and when the case will probably be rapidly closed).

However, human trafficking investigations take time. Sometimes, a case will only be closed after several years. In such cases, it is likely that the victim has found a job and no longer qualifies for legal aid to benefit from a pro-Deo lawyer. The victim may also now wish to turn the page or have other financial priorities.

Furthermore, the rapid appointment of a lawyer means they have access to the file and can ask the investigating judge for additional investigative measures, if necessary, if there appear to be gaps in the investigation. This also avoids a situation where the lawyer discovers at the hearing in chambers that they are faced with a colossal case, and that they haven't had the time to sufficiently familiarise themselves with it in order to best represent the victim's interests. More generally, this allows the victim to be

A lawyer should be appointed without delay.

represented at all stages of the proceedings and to position themselves, among other things, when a request for a confrontation is made by the perpetrator.

At the same time, when there are reasons to reopen a case, such as shortcomings in the investigation or an investigation capacity problem, it is important that the victim is assisted by a lawyer. If necessary, they can file a civil suit with the investigating judge and then ask for additional investigative measures.

This is why Myria recommends that the specialised reception centres appoint a lawyer for the victims they are supporting, in a timely manner.

This appointment must be made quickly after the case has been put under the responsibility of an investigating judge. In some cases, such an appointment can also be useful after the first interview with the victim within the framework of the first stage of the criminal procedure (the "information").

An amendment to the multidisciplinary circular of 2016 could be envisaged for this purpose.

Myria also recommends that for each victim of human trafficking, a registration as "injured party" be systematically introduced, in order to guarantee their rights within the framework of the criminal proceedings.

Furthermore, trafficking victims, just like other categories of persons such as asylum seekers, are in a particularly vulnerable situation at the beginning of the proceedings.

Myria therefore recommends adapting the Royal Decree of 18 December 2003 on secondary legal aid in order to allow human trafficking victims, whose status was initially recognised after the first statements they made to the judicial authorities, to benefit from secondary legal aid until the end of the criminal proceedings against the perpetrators.

In addition, a list of **voluntary lawyers specialised** in assisting victims of human trafficking, should be established at the main legal aid offices in Belgium.

Another important issue dealt with in the European directives and the Council of Europe Convention is the prevention of secondary victimisation.

It is advised not to confront victims of sexual exploitation with the defendants in order to avoid the risk of secondary victimisation. In the case of victims of labour exploitation, caution should be applied and a lawyer must be appointed for the victim in case of confrontation.

Myria questions the added value of confrontations between victims and defendants in problematic cases. This is certainly the case for victims of sexual exploitation, traumatised by their negative psychological and physical experiences, who risk becoming victims again in a secondary victimisation process. In practice, the goal for requesting a confrontation is rarely to obtain additional objective information, but rather an attempt by the defendant to manipulate and intimidate the victim or to incite them to withdraw or modify their statement. It is important that the investigating judges are sufficiently aware of this and in no way grant such requests for a confrontation straight away.

Such confrontations are often pointless and even counterproductive to the investigation. The potential additional psychological damage to the victims shouldn't be underestimated. According to Myria, victims of sexual exploitation should never be forced into a confrontation. In the case of sexual exploitation, the majority of investigative judges now immediately refuse a request from a defendant's lawyer to organise a confrontation.

A confrontation is more often requested in the case of labour exploitation. Here, caution should also be exercised. Some victims experience labour exploitation as a major trauma.

Victims must also benefit from the (free) services of a lawyer to inform them of their rights and assist them in the event of a confrontation.

Chapter 4

Compensation of victims of human trafficking

This chapter takes a detailed look at compensation, an aspect that is particularly useful to victims of human trafficking. The possibilities for victims in general to access compensation are first put into context (point 1) before looking at how compensation can be obtained through the courts (point 2). The intervention of the Social Legislation Inspectorate (a division of FPS Employment, Labour and Social Dialogue, which could help victims of labour exploitation recover their wage arrears) and the role of the NSSO inspection department (formerly the Social Inspectorate of FPS Social Security), as regards human trafficking will then be analysed (points 3 and 4). Fedris, the Federal Agency for Occupational Risks, is also discussed as a potential means to compensate victims for work accidents in the event of labour exploitation (point 5). We also take a look at the Commission for Financial Assistance to Victims of Acts of Deliberate Violence and Occasional Rescuers¹⁶⁶, as a compensation body for victims of human trafficking, whether appropriate or not (point 6), before a few final words on the FRA's recent international study on the compensation of victims of violent crimes (point 7).

Any victim of human trafficking who wishes to obtain compensation must file a civil suit. This way, they can claim damages. A decision such as this is dependent on good quality and timely legal representation.

Although obtaining compensation isn't a priority or an end in itself for all victims, its importance shouldn't be underestimated. A conviction combined with compensation can strengthen the victim's trust in the judicial system. Furthermore, compensation can enable the victim to build a new life for themselves or give them a helping hand.

Compensation can also reduce the risk of becoming a trafficking victim again.¹⁶⁷

Depending on the victim's situation and the form of exploitation, the interest of compensation can vary. Some victims of forced sexual exploitation can, for emotional and financial reasons, be more reluctant to ask their exploiters for damages. Victims of sexual exploitation in a so-called win-win situation¹⁶⁸ and victims of labour exploitation, can have a completely different point of view. Their initial objective was indeed to earn money and it was only later that they became victims of trafficking. The victims are women who initially make the conscious and willing choice to go into prostitution because they want to earn money quickly. They often have to work in very bad conditions, but they come to terms with this situation. It is these bad working conditions, as well as the exploiter's abuse of power, that determine whether the charge of human trafficking can be accepted.

Hence, interest will often depend not only on the victim's personal situation, but also on the information they receive about it. A case concerning the construction sector provides a good example of a victim interested in compensation. A Moroccan man, who was a victim of labour exploitation, stated during his interview: "I swear I came here to work. I don't want to cause any problems. I just want to continue to earn money by working. It's impossible for me to return to my country without money. My parents have given up everything for me."

167 Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, 2011, p. 86.

168 For more information, see MYRIA, *2013 Annual Report Trafficking and smuggling of human beings, Building bridges*, p. 25.

166 Occasional rescuers are people who voluntarily offer their help to victims.

I can't go home empty-handed. The [exploiter] must at least pay me what he still owes me.. That way I can go home without losing face¹⁶⁹."

However, there are many obstacles to actually obtaining compensation. Consequently, the actual payment of the damages awarded will depend to a large extent on the perpetrator's solvency and the traceability of the financial flows, seizures and confiscations - with or without attribution to the plaintiff.

1. Access to compensation for human trafficking victims

Access to compensation for victims of intentional acts of violence is provided for in a variety of international instruments. These are specifically aimed at combating human trafficking, organised crime and victims of violent acts.

The United Nations Convention against Transnational Organized Crime expects its signatories to set up appropriate procedures to give victims access to reparation and compensation, as well as allowing them to be different stages of the criminal proceedings.¹⁷⁰ The supplementary protocol on human trafficking specifies that every signatory state must ensure that its legal system provides for measures allowing a victim of human trafficking to obtain compensation for the damage suffered.¹⁷¹

As regards the Council of Europe, the European Convention on the Compensation of Victims of Violent Crimes provides for a subsidiary system of compensation for victims of deliberate acts of violence. The state, bound by the Convention, must contribute to the compensation if it can't be fully covered by other sources.¹⁷² This Convention's principle of solidarity can also be found in the Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers (see point 6). More specifically for victims of human trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings requires each Contracting Party to take the necessary legislative or other measures to ensure the compensation of victims in accordance with the conditions provided for by its national law (e.g. by creating victim compensation funds or social support and integration measures or programmes). It adds that the proceeds of the seized assets can contribute to their financing.¹⁷³

There are many obstacles to obtaining actually compensation.

As for the European Union, the directive on the compensation of victims of crime¹⁷⁴ and Directive 2011/36/EU on trafficking in human beings, are two instruments to be taken into consideration. The preamble of the latter clearly establishes the link between the seizure and confiscation of the proceeds of crime and their use to compensate victims.¹⁷⁵ This directive requires Member States to ensure that victims of human trafficking have access to the existing compensation schemes for victims of deliberate acts of violence.

A directive laying down minimum standards on the rights and protection of victims of crime is also in force at European level.¹⁷⁶ This directive reinforces the rights of victims in the European Union. Article 16 gives victims the right to a decision on compensation by the offender within the framework of criminal proceedings. The victim has the right to obtain a decision on compensation by the offender in the context of criminal proceedings, within a reasonable time, unless national law provides that such a decision shall be taken within the framework of other judicial proceedings.

171 Art. 6, § 6 of the Supplementary Protocol to the United Nations Convention against Transnational Organized Crime, aimed at preventing, suppressing and punishing trafficking in persons especially women and children, New York, 15 November 2000.

169 MYRIA, *2011 Annual Report Trafficking and smuggling of human beings, The money that matters*, pp. 49 and 103-105; See case law: 2010 *Annual report Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, p. 90. Charleroi Crim. Court, 18 March 2011, 7th ch. (confirmed by Mons Appeal Court, 26 June 2015) (available at www.myria.be).

170 Art. 25 of the United Nations Convention against Transnational Organized Crime.

172 Art. 2 of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.

173 Art. 15 in combination with Art. 23 of the Council of Europe's Convention on Action against Trafficking in Human Beings.

174 Council Directive 2004/80/EC of 29 April 2004 on compensation for victims of crime O.G. 6 august 2008, L261/15.

175 Preamble 13 of the 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 the Council Framework Decision, 2002/629/JHA, O.G., 15 April 2011, L101.

176 European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing the minimum standards on the rights, support and protection of victims of crime, replacing the European Parliament and Council Framework Decision 2001/220/JHA, O.G., 25 October 2012, L315/57.

To what extent do victims of human trafficking actually have access to these services? What obstacles are they likely to encounter before being able to obtain actual compensation? This is the subject of the following points.

Joëlle Milquet is Special Adviser to President Juncker for the compensation of victims of crime. In March 2019, she published a report entitled *Strengthening victim's rights: from compensation to reparation*.¹⁷⁷ The report shows that the victims often experience difficulties obtaining justice and reparation owing to the absence or lack of information, insufficient support, strict admission criteria or procedural obstacles. People who are victims of offences in countries other than their country of origin, usually experience greater difficulties in obtaining compensation.

Mme Milquet says that a strategic approach is needed to address the issue of compensation. If victims don't have access to judicial proceedings because, for instance, they are afraid to report a crime, or can't claim compensation through civil action because they don't have the means, or if they are unaware that they have a right to compensation, their access to compensation will always be hampered. The special adviser therefore suggests a holistic approach.

She proposes four changes:

- A shift from compensation to reparation. It is necessary to take into account the formal compensation of a victim and to approach compensation from a broader perspective, i.e. recognition of the victim, compensation, support and, lastly, care.
- There must be a shift towards the state making an immediate payment, which means that the state pays the victim directly and, in turn, it endeavours to obtain compensation from the perpetrator.
- There should also be a shift from inequalities and a lack of cooperation to closer cooperation, coordination and harmonised minimum standards.
- Lastly, the shift from a needs-based approach to a rights-based approach is essential. It is the victim's right to obtain compensation and the state must ensure rights are respected.

¹⁷⁷ https://ec.europa.eu/info/sites/info/files/strengthening_victims_rights_-_from_compensation_to_reparation_rev.pdf.

2. Compensation through judicial proceedings

The same act may give rise to both public action, in the event of a breach of criminal law, and civil action, for instance, an action for damages in accordance with Article 1382 of the Civil Code. It is also possible to bring a civil suit before the labour court to recover wage arrears.

However, the fundamental difference between these actions is their purpose. Hence, the goal of public action is to apply criminal law and not to compensate the victim.¹⁷⁸ Civil action, on the other hand, aims to compensate the damage resulting from the offence.¹⁷⁹ In the Belgian legal system, the damage resulting from the offence can be compensated both in the civil court and in the criminal court by filing a civil suit.

Providing the victim with good quality and timely legal assistance is essential when choosing whether or not to file a civil suit. However, if a separate application is made to the civil court, the civil action is suspended until a final decision has been taken on the criminal action brought before or after the civil action.¹⁸⁰

In a case of human trafficking, the victim usually seeks reparation by filing a civil suit in the criminal proceedings. By filing a civil suit, the victim has the advantage of being able to contribute to how the proceedings and criminal investigation are conducted, especially by asking the investigating judge for additional investigative actions.¹⁸¹ However, it isn't always easy to file a civil suit. The victims sometimes have to overcome certain obstacles.

¹⁷⁸ Art. 1 of the Preliminary Title of the Code of Criminal Procedure.

¹⁷⁹ Art. 3 of the Preliminary Title of the Code of Criminal Procedure.

¹⁸⁰ In particular, the application of "le criminel tient le civil en état" (criminal action takes precedence over civil action), Art. 4 of the Preliminary Title of the Criminal Procedure Code.

¹⁸¹ Art. 61 quinquies of the Code of Criminal Procedure. On this subject, see Chapter 3 of this focus, point 2.3.2.

According to the three specialised centres, the main stumbling blocks for a victim who is filing a civil suit are the fear of reprisals against themselves and their family, and the lack of protective measures in their country of origin. The financial aspect is also a major problem because lawyer's fees can be high.¹⁸²

The European directive on human trafficking¹⁸³ also includes measures relating to the treatment of victims for the prevention of secondary victimisation and the obligation to give them access to legal advice. The directive also stipulates that, depending on the role attributed to victims in the judicial system, Member States must guarantee the legal representation of victims, also in the context of bringing an action for damages. In Belgium, legal advice is currently provided either by social workers in the specialised reception centres, or by a lawyer appointed by the reception centre or the victim.

The victim can claim compensation for material and non-material damage in court. In its 2006 annual report, Myria stressed that people who were convicted of human trafficking very often feigned their insolvency, making effective compensation rarely possible. Ten years later, the 2016 annual report¹⁸⁴ tackled this issue again, which is still relevant today. It is therefore important to open a financial investigation at the beginning of an investigation in order to obtain a complete picture of the exploiter's financial situation.

Example

In one case, a Moroccan businessman was forced to pay his victims substantial damages. The amount was EUR 215,189.99 in total. Although the victims were awarded a significant amount as compensation, the perpetrator had enough time to ensure he no longer had any property. All the same, he could have been forced to pay the compensation ordered by the court. No seizure was made. This would indicate that the compensation was never paid to the victims, because the businessman declared his company bankrupt.

The case law analysis shows that victims are sometimes awarded a considerable amount of compensation. For instance, three Nigerian victims of sexual exploitation were awarded compensation for non-material damage ranging from EUR 6,500 to 12,000 in a judgment handed down by Bruges Criminal Court on 20 September 2017.¹⁸⁵ In a case concerning Chinese private prostitution, the victim was awarded compensation for material and non-material damage worth EUR 10,000.¹⁸⁶ In a case of labour exploitation in the hotel and catering industry, Namur Criminal Court awarded the victim EUR 5,000 for non-material damage and EUR 37,763.73 material damage.¹⁸⁷

However, there is always the possibility that the convicted party won't actually compensate the victim, despite the court's decision. This is also what the interviews with the specialised centres reveal. Once the decision is final¹⁸⁸, the bailiff can be called to execute it. If necessary, the property of the convicted party can then be seized. However, this procedure is time-consuming and costly for the victim. This is why some victims give up.

According to the specialised centres, victims whose exploiters are Belgian or who have been living in Belgium for a long time, have a better chance of actually being compensated.

182 On this subject, see also Chapter 3 of this focus, points 1 and 2.3.3. 183 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., 15 April 2011, L101.

184 MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, pp. 105-106.

185 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, p. 128.

186 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, pp. 132-133.

187 MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, *Minors at major risk*, p. 142: Namur Crim. Court, Namur division, 22 November 2017, 12th ch. (appeal).

188 In other words, it has entered into force *res judicata*.

Example

One of the specialised centres gave the example of a Belgian exploiter who paid the full compensation of EUR 200,000. The house of the convicted party was seized. The victim had paid a bailiff because the defendant didn't want to pay the compensation. On the day of the final bid, just before the sale of the house, the convicted party turned up and paid the victim in full. This happens very rarely.

Example

In a labour exploitation and slum landlord case, the main defendant was the director of a pallet factory, which was also prosecuted.¹⁸⁹ The victims were paid a minimum salary of EUR 135 per month and worked 12 hours a day, six days a week. They were housed in dreadful conditions. The acts date back to 2009-2011 but the sentences were only finally disposed of in 2019. In its judgment, Antwerp Court of Appeal¹⁹⁰ awarded the victims a considerable amount of compensation. Two victims were granted EUR 4,000 each for material damage and EUR 750 for non-material damage; the third victim received EUR 2,199 for material damage and EUR 500 for non-material damage. Although the convicted party made the trial last as long as possible, the company still exists. As it is a Belgian company, this increases the chance of the victims actually receiving the compensation¹⁹¹.

When a confiscation is ordered, the judge can award the plaintiff the confiscated property to which they are entitled or the equivalent in money from the confiscated sums (Article 43bis, para. 3 of the Criminal Code).

Restitution is a civil law measure that can be claimed by filing a civil suit. In principle, it is compulsory, especially when it is compensating for the damage caused by the offence.¹⁹² In order to protect the rights of third parties, Article 43bis, paragraph 3, provides that: "When the confiscated property belongs to the plaintiff, it will be returned to them. The confiscated property shall likewise be attributed to them when the judge orders its confiscation on the grounds that they comprise property or assets substituted by the convicted party for property belonging to the plaintiff or because they are equivalent to such things in the sense of paragraph 2 of the present article."

The preamble¹⁹³ provides more details: "It has been deemed appropriate to allocate the confiscated property as compensation for the victim, when this property is the substitute or equivalent of the property of which the latter was deprived during the offence."

This is also the case for seized sums of money that can be awarded to the plaintiffs - at least in part - by way of compensation. There are several examples in case law relating to this article.

Example

The judgment of Liège Criminal Court of 2 October 2017 is a good example: the confiscated sums of money were allocated in priority to the victim.¹⁹⁴ In this labour exploitation case in the construction sector, the victims were paid abnormally low wages (below the legal minimum for abnormally long working hours. The workers depended on outside help for food and received no medical care in the event of a work accident. The court decided to confiscate a building and ordered the confiscation of this defendant's assets equivalent to the sum of approximately EUR 24,000. Furthermore, they were sentenced to pay a provisional sum of EUR 10,120 for material damage and the final sum of EUR 1,250 for non-material damage.

189 Also see this focus, example of a case (pallet factory).

190 See part 3, Chapter 3 (Case law overview): Antwerp Court of Appeal, 24 January 2019, chamber C6.

191 MYRIA, 2017 *Annual Report Trafficking and smuggling of human beings*, Online p. 115.

192 E. FRANCIS, *Algemene principes van de bijzondere verbeurdverklaring en het beslag in strafzaken*, T.Strafr. 2011, vol. 5, p. 319.

193 Preamble of the bill amending Articles 42, 43 and 505 of the Criminal Code and inserting an Article 43bis in this code, Parl. doc., Chamber, session 1989-1990, no. 987/1, p. 6.

194 MYRIA, 2018 *Annual Report Trafficking and smuggling of human beings, Minors at major risk*, pp. 137-138. This judgment is final.

Myria encourages recourse to the possibility of allocating the confiscated property and the financial advantages to the plaintiff in order to compensate them for the damage suffered.

For victims who decide not to access the status and/or victims who go home or are no longer in Belgium, it is difficult to obtain reparation. Although the victim can, in theory, be assisted by a lawyer to defend their interests, the threshold is too high for many of them if they don't receive legal aid, contrary to victims who access the status and receive assistance.

Some specialised reception centres, where victims are supported, endeavour to continue the legal support when the victim returns home. These are mainly victims for whom the judicial proceedings are well advanced and who are often still waiting for compensation to be granted and for its payment to be enforced. For victims who wish to go home, and who therefore no longer benefit from the status, other specialised reception centres will provide them with the necessary details so that they can be assisted by a lawyer.

However, it is the victim's responsibility to take concrete measures and remain in contact with the lawyer. This threshold may mean that the victims' interests and rights aren't defended by a lawyer or that they lose contact with the appointed lawyer.

3. The role of the Social Legislation Inspectorate in the recovery of salary arrears

The mission of the Directorate-General Social Legislation Inspectorate (hereafter SLI) of FPS Employment, Labour and Social Dialogue is to defend the individual and collective rights of workers, especially basic work conditions, the right to a salary and other pecuniary benefits, and compliance with legal, regulatory and contractual work conditions.

Just like the other services, the SLI collaborates in the fight against social fraud and trafficking in human beings. The SLI's legal function is more based on an approach to social law infringements. As regards human trafficking, it is mainly the NSSO inspection department that leads investigations in the field in practice.

Recuperation of wage arrears¹⁹⁵

One of the SLI's main tasks is the recuperation of wage arrears. If wage arrears are identified, an attempt is made to regularise the situation by asking the employer to pay the arrears. In this case, the employee won't have to file a civil suit and will be able to obtain the wages more quickly.

The labour prosecutor can always prosecute, whether the offence has been regularised or not. The regularisation of the found offences therefore has no effect on criminal proceedings, but may have an impact on the level of the sanction imposed on the defendant.

Once the employer has agreed to pay the wage arrears, a variety of scenarios may arise. Depending on the victim's nationality (third-country national or EU citizen) and residence status, it can be more difficult to have the wages paid. If the persons are staying legally in Belgium, there is no difficulty in obtaining the recuperated wages. If the workers have no residence permit, then it is far more difficult. Often, employers won't agree to pay outstanding wages. The loss of contact with the worker makes it almost impossible to pay back the wages.

If the employer wants to pay back the wages but is unable to find the worker, he has to report it to the SLI. The latter can use the Internal Market Information System (IMI)¹⁹⁶ to find EU citizens in order to obtain the contact details of the person concerned in their country of origin. If this is the case, they will be sent a letter asking them for their details so their wage arrears can be paid. If the SLI doesn't manage to contact the EU citizen through the IMI, or if the person is a third-country national whose contact details aren't available, the SLI will ask the employer to make the payment to the Deposit and Consignment Office.¹⁹⁷

¹⁹⁵ The SLI also has a specific prerogative in accordance with the sanction directive (Law of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals, O.G., 22 February 2013).

¹⁹⁶ For more information on the Internal Market Information System, see http://ec.europa.eu/internal_market/imi-net/index_fr.htm; Also see: MYRIA, 2010 Annual Report Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings, p. 106 and 2011 Annual Report Trafficking and smuggling of human beings, The money that matters, p. 57-58.

¹⁹⁷ The Deposit and Consignment Office is one of the five operational departments of the General Administration of Treasury (AGTrés), a general administration of FPS Finance. For more information on the Deposit and Consignment Office, see <https://finances.belgium.be/fr/pai>.

When the employer makes a payment at the office, they must indicate who is the principal for the payment (e.g. SLI), and provide the worker's details and the reason for the payment. These funds usually remain there (and are handed over to the state after 30 years) as the Deposit and Consignment Office doesn't take any steps to locate the rightful claimant. The FAIRWORK Belgium annual report for 2017 mentions that at a certain moment, 35 Polish workers were employed in Belgium through the posting system. Only four of them recuperated their wage arrears. The 31 others had already returned to Poland. The total sum of the wage arrears amounted to EUR 61,739.08. FAIRWORK Belgium worked with an inspector and contacted their Polish counterpart through the PICUM network. This collaboration enabled 25 workers to be found and paid.¹⁹⁸

4. The role of the NSSO inspection department

The NSSO inspection department also plays a role in the recuperation of wage arrears. It regularly provides the labour prosecutor with calculations of financial benefits, informing them of the benefits the employer received from the victims' illegal employment. They chiefly consist of unpaid wages and social security contributions. In the court rulings, judges often use these calculations as a basis to assess the victim's material compensation. On this basis, it is possible to deduct the amount the victim should have received. The NSSO inspection department also pays significant attention to human trafficking. In 2018, the NSSO Inspection department's Central Thematic Directorate for Trafficking in Human Beings provided its non-specialised inspectors with basic training. The teams dedicated to the fight against human trafficking within the NSSO inspection department (some 40 inspectors are trained and have a great deal of experience. The aim of these basic training sessions is to raise awareness among the other inspectors

about labour exploitation, to familiarise them with the indicators and inform them of the best measures to take when they are confronted with potential trafficking victims during their inspections. During these sessions, they also focus on the compensation of victims. Hence, they insist on collecting as many elements as possible so that the damage suffered by the victims can be calculated with a view to subsequent financial compensation. Finally, they also highlight the need to provide potential victims with as much information as possible concerning their situation and their rights. They encourage the inspectors to do their utmost to ensure that victims are referred to a reception centre, as the department is convinced that this type of referral is the best guarantee of recovering wage arrears. The NSSO inspection department's Thematic Directorate for Trafficking in Human Beings has also provided non-specialist inspectors from other inspectorates with this basic training, especially inspectors from the Brussels-Capital Region (Social Inspectorate and Housing Inspectorate), the Flemish Social Inspectorate and the inspectorate of the National Institute for the Social Security of the Self-Employed (NISSE).

5. Federal Agency for Occupational Risks (Fedris)

Fedris is a public institution for social security. The agency was created on 1 January 2017, as a result of the merger between the Fund for Occupational Accidents and the Fund for Occupational Diseases.¹⁹⁹ In the past, an undocumented worker who was the victim of a work accident had to file a complaint with the Social Inspectorate. Now, they have to go to Fedris. The procedure changed on 1 July 2017.

¹⁹⁸ FAIRWORK BELGIUM, *Jaarverslag Werknemers zonder wettig verblijf* 2017, p. 9.

¹⁹⁹ Extra information on Fedris is available at <https://fedris.be/nl/over-het-fonds/wie-zijn-we>.

Procedure

Someone who is the victim of a work accident and whose employment isn't established, must first make an appointment with the Well-being at Work (WW) inspectorate in Brussels, regardless of where the work accident occurred in Belgium. The file is then sent to the local WW inspectorate of the employer's place of work. Another WW inspector will then lead the investigation. The declaration must be submitted within three years of the work accident.²⁰⁰

If a victim of human trafficking wanted to obtain compensation for a work accident, they first had to bring a separate action before the labour court. This was a requirement of the former Fund for Occupational Accidents. This separate action resulted in a long and time-consuming period for the victim. With Fedris, this is no longer necessary. The judgment from the Criminal Court simply has to contain relevant evidence of a work accident during the recognised period of employment. In some cases, the victims are heard but not systematically.

This method has been used more recently and therefore has certain advantages for victims of human trafficking. A decision can be taken more quickly and the victims paid faster by Fedris. Unnecessary and time-consuming judicial proceedings can be avoided, thus limiting legal and court costs. Two specialised centres have already received positive decisions from Fedris.

6. Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers

A final possibility for victims of human trafficking to receive effective compensation for the damage suffered is to seek financial aid from the Commission for Financial Assistance to Victims of

of Acts of Deliberate Violence and Occasional Rescuers (hereafter referred to as 'the Commission'). The financial aid it can grant through the Financial Aid Fund for Victims of Deliberate Acts of Violence and Occasional Rescuers (hereafter 'the Fund') is subsidiary²⁰¹ and is subject to various conditions. Information relating to the Fund is provided by victim support centres or by lawyers, at the end of the judicial proceedings.

The Law of 1 August 1985²⁰² introduced the financial aid system. The law specifies who can request financial aid, the different types of aid and the conditions. This issue is dealt with in more detail hereafter. The law deliberately refers to aid and not compensation. The authorities' limited financial intervention in favour of the victim (or their survivors) isn't based on the state's presumption of guilt because it couldn't prevent the offence, but on the principle of collective solidarity between members of the same community. The same idea underpins the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.²⁰³ The law requires the perpetrators sentenced by law to a principal criminal or correctional sentence to pay a certain sum of money as a contribution to the Fund. This compulsory contribution isn't a penalty and is always imposed. The contribution is currently EUR 25, to be increased by the coefficient relating to criminal fines, which means that the amount in 2019 must be multiplied by eight.

Who can request financial aid?²⁰⁴

For a victim to be eligible for financial aid, they have to prove three things: a deliberate act of violence was committed, they have suffered serious physical or psychological damage and the damage is the direct consequence of this deliberate act of violence.²⁰⁵

201 All other possibilities must be exhausted first. It is only when other possibilities of obtaining compensation have been exhausted that the Fund can be called upon to intervene (see below).

202 Law on fiscal and other measures, O.G., 6 August 1985.

203 P. VERHOEVEN and L. VULSTEKE, *Het Fonds voor Financiële hulp aan slachtoffers van opzettelijke geweldsdaden en occasionele redders*, Library strafrecht, Larcier, nr. 4, Ghent, 2011, p. 27.

204 Art. 31 and Art. 31bis of the Law of 1 August 1985 on fiscal and other measures. FPS Justice, *L'aide financière aux victimes d'actes intentionnels de violence et aux sauveteurs occasionnels*, 2019, available at www.justice.belgium.be. Since a Law of 15 January 2019, special provisions have been introduced for victims of terrorist acts (Art. 42 bis to sedecies of the Law of 1 August 1985).

205 Consequently, criminal negligence or recklessness (such as traffic offences) and property offences (such as theft without violence or threats) aren't admissible.

The law has made a distinction between the different eligible parties.

- First of all, there are **direct victims**, person has personally suffered an act of violence. The relatives of a deceased victim and the relatives of a living or missing victim can also apply to the Fund.
- Then there are **occasional rescuers** people who voluntarily offer their help to victims. Hence, this aid isn't the result of someone exercising a profession associated with security or participation in a structured association that provides help and assistance to third parties. Financial aid is granted to occasional rescuers (and their relatives) if they acted in Belgium; and if they suffered damage, for instance, by voluntarily rescuing a victim of a deliberate act of violence.
- Finally, **victims of unsolved cases** can also apply to the Fund. These can be direct victims or relatives of deceased or living victims of acts committed by a perpetrator who is still unknown. These are acts for which no decision to discontinue proceedings (decision not to proceed or to no longer proceed) or to dismiss the case was taken because the perpetrator couldn't be identified and there is still doubt concerning the case. In such cases, exceptional aid can be requested for exceptional damages resulting from long-term uncertainty regarding the identity and motives of the perpetrator(s).

Initially, the scope was limited to victims who were in possession of Belgian nationality or had the right to enter, stay or settle in Belgium when the act of violence occurred. In 2004, the scope was extended to victims who were subsequently granted a permanent residence permit by the Aliens Office as part of an investigation for trafficking in human beings. Since a new legislative amendment in 2009²⁰⁶, there is no longer any distinction between legally staying victims and those who aren't.²⁰⁷

From now on, people staying illegally can also apply to the Fund. In practice, very few illegally staying people would be likely to apply, principally because of a lack of awareness of the Fund and the difficulties in meeting the formal conditions, including those relating to the obligation to file a complaint with the police or to file a civil action.

What sort of aid?²⁰⁸

Four types of aid can be granted: primary, emergency, additional and exceptional. Aid is only granted by the Commission if the damage exceeds EUR 500. This applies to both physical and psychological damage.

- **Primary aid** is the amount that the Commission grants as financial aid for the damages suffered. The amount of this aid has increased from EUR 62,000 to a maximum of 125,000 since the amendment to the law in 2016. The aid can be granted to the victim or to their relatives.
- **Emergency aid** can be granted when a delay in granting primary aid risks causing the applicant considerable damage²⁰⁹. To award emergency aid, the Commission doesn't need to wait until the end of the criminal investigation and the judicial proceedings. Emergency aid can be requested as soon as a civil suit or a complaint has been filed. The Commission takes into account the fact that criminal prosecution isn't always possible, for instance, when the perpetrator is a minor. An emergency is always presumed when the victim has an accumulation of medical costs. The emergency aid ceiling has risen from EUR 15,000 to 30,000.
- **Additional aid** can be granted when the damage suffered by the victim increases after primary aid has been granted. New costs for medical care don't amount to actual proof that the damage has worsened. The increase in damage must be confirmed by medical documents or expert opinions. The ceiling for additional aid is EUR 125,000.

206 Art. 1 of the Law of 30 December 2009 laying down various measures relating to justice.

207 This legislative amendment occurred after the turmoil caused by the Van Themsche case. In addition to the prison sentence, he was ordered to compensate the (families of) three victims. Following his insolvency, the families were able to request the intervention of the Aid Fund for Victims in order to receive compensation, with the exception of O's family. They weren't able to apply to the Fund because at the moment of her death, O was staying illegally in our country. Also see the annual migration report 2011, Les ayants-droits d'une personne en situation de séjour illégal peuvent-elles percevoir une indemnité après le décès ? pp. 161-162.

208 FPS Justice, *Financial aid for victims of deliberate acts of violence and occasional* www.justitie.belgium.be.

209 For instance, if the applicant has a modest income and faces high medical costs owing to the deliberate act of violence.

- **Exceptional aid, reserved for victims of unsolved acts**, can be requested by a victim if more than 10 years have passed since the acts and if primary aid has already been awarded. The ceiling for exceptional aid is EUR 125,000.

For minors, the Commission sets the terms for granting aid. It can request that the aid granted, or part of it, be blocked in a savings account opened in the child's name. As soon as the child becomes an adult, they will be able to have access to the savings account.

Aid for the damage suffered by a direct victim can be requested for moral damage, medical costs and temporary or permanent invalidity, the loss or reduction of income following temporary or permanent unfitness for work, cosmetic damage, procedural costs, material costs, damage resulting from the loss of one or more years of schooling.²¹⁰

Conditions²¹¹

The Commission can grant aid on an equitable basis, but doesn't guarantee full compensation. The law provides for a number of conditions that must be met before being able to benefit from the Fund.

- The **principle of territoriality** implies that the act of violence was committed in Belgium. There is also a procedure for victims of acts committed in a Member State of the European Union. This procedure aims to avoid any practical and linguistic problems the victim could encounter as an applicant for financial aid. If a deliberate act of violence was committed in Belgium and the applicant is usually a resident in another Member State of the European Union, they can be assisted by an authority specifically designated by the Member State concerned.

- A second condition relates to the **criminal proceedings**. The investigation must be completed before a request for primary aid can be submitted. Hence, there are two possible avenues, the first one involving a known perpetrator. In the first case, if the perpetrator is known, aid can be granted after their conviction by the judicial authorities. The decision must be final, i.e. with no further possibility of appeal. In the second case, the perpetrator is unknown, in which case aid may be granted after the decision has been taken to drop the case for this reason, as long as the applicant has already filed a complaint or has the status of injured party. It can also be granted after a year from the date on which the civil claim was filed.

- The third condition sets **the date by which the application must be submitted**. The victim must submit an application for primary aid within three years from the date of the final judicial decision. The same deadline applies in the event the case is dropped if the perpetrator or perpetrators are unknown.

- The fourth condition is that, if **the perpetrator is known**, the victim must have done everything in their power to attempt to obtain reparation. Proof must be provided that the victim has filed a civil suit, brought an action before a civil court or possibly made a direct summons.

- The final **condition is subsidiarity**. In this case, the applicant must not have had any other opportunity to obtain compensation. Different factors are taken into account here. First of all, the perpetrator's solvency and any possible repayments made by them. Secondly, the intervention of the health insurance fund and, finally, the intervention of the various types of insurance (work accident insurance, family insurance, etc.). However, the condition of subsidiarity isn't absolute. The applicant is expected to exercise their rights to the greatest possible extent regarding the person responsible or the insurance company. However, the Commission insists on the fact that the victim mustn't wait until the end of long and costly proceedings to request financial aid. However, the condition of subsidiarity isn't absolute. That said, a court decision granting compensation isn't enough. The victim must also prove that they have reasonably taken the necessary steps to obtain effective compensation, using all useful means of enforcement, such as precautionary and enforceable attachment.²¹²

²¹⁰ Art. 32, § 1 of the Law of 1 August 1985.

²¹¹ Art. 31bis of the Law of 1 August 1985. FPS Justice, Financial Aid for Victims of Deliberate Acts of Violence and Occasional rescuers, 2019, available at www.justice.belgium.be.

²¹² P. VERHOEVEN en L. VULSTEKE, op. cit., p. 71.

However, when the perpetrator is clearly insolvent, the victim isn't expected to enforce the claim first.²¹³

The Commission also specifies that, in the majority of cases, it won't wait until a financial contribution has been paid if the perpetrator can only make small repayments that are disproportionate to the total claim. Nevertheless, the Commission expects the applicant to make every effort to obtain compensation from the perpetrator, even if the repayments are more modest.

An adequate means of compensation for victims of human trafficking?

Since 2004, victims of human trafficking have also been able to apply to the Fund. However, the law specified that these were victims who had subsequently been granted a permanent residence permit by the Aliens Office in the context of an investigation into human trafficking. Hence, only victims who had attained victim status could apply to the Fund (with the exception of victims who were entitled to enter, reside or settle in Belgium or who had Belgian nationality at the time the act of violence was committed).

With the extension of the scope brought about by the Law of 30 December 2009, illegally staying persons may also turn to the Fund. This means that even victims of human trafficking who haven't benefited from the status²¹⁴ can apply to the fund. In addition, the above-mentioned conditions must also be fulfilled.

Nonetheless, the requirement of subsidiarity is an obstacle for victims who haven't filed a civil suit through fear of reprisals. These victims are therefore not eligible for support from the Aid Fund for Victims.

The subsidiarity requirement is an obstacle for victims who haven't filed a civil suit through fear of reprisals.

The condition linked to the act of filing a civil suit can thus be problematical in certain cases of human trafficking.

Examples

In a case of sexual exploitation, underage girls were recruited online through classified ads for a job as a hostess. Once they arrived, they were manipulated into selling sexual services.²¹⁵ In total, there were more than 25 victims. However, only one victim filed a civil suit: the one who was a minor. Fear of the perpetrators often plays a major role and discourages the victims from filing a civil suit. The other victims never had the opportunity to obtain compensation even though it could have helped them to have a better life.

Another example is the case of the Nigerian prostitution network centred around Mama L. It involved serious acts: more than 30 victims, often minors, were forced to prostitute themselves. They were threatened and kept under control through voodoo practices.²¹⁶ None of these victims filed a civil suit.

The applicant must be a victim of a deliberate act of violence and as a result, suffer from serious physical or psychological damage. However, 'act of violence' isn't defined in any preparatory or legal document. The Commission bases its assessment on Article 483 of the Criminal Code, which defines violence as "acts of physical coercion against persons".²¹⁷ This requirement is a major stumbling block for victims of labour exploitation. This is what can also be inferred from the Commission's decisions. The Commission informed Myria of five anonymous decisions from 2015 to 2018.²¹⁸ Aid was granted in three cases of sexual exploitation (see below), rejected in one case of labour exploitation and also in a case of smuggling. It is difficult to prove the element of deliberate violence in a case of labour exploitation; this is confirmed by Myria's interviews with the three specialised centres.

²¹³ The Commission can conduct or order all the necessary investigations to analyse the perpetrator's financial situation. It can ask all the authorities for information concerning the perpetrator's professional, financial, social and fiscal circumstances, without the authority in question being able to cite professional secrecy to withhold information. P. VERHOEVEN en L. VULSTEKE, op. cit., p. 69.

²¹⁴ Hence, not having obtained a permanent residence permit as part of an investigation into human trafficking.

²¹⁵ MYRIA, 2017 Annual Report Trafficking and Smuggling of Human Beings, Online, p. 29.

²¹⁶ MYRIA, 2018 Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk, p. 62.

²¹⁷ P. VERHOEVEN en L. VULSTEKE, op. cit., p. 99.

²¹⁸ The Fund's database contains the classification code 'trafficking in human beings. Nevertheless, this code is seldom used because there are few human trafficking cases. However, the main reason seems to be that only one classification can be given and it is the code pertaining to the most important facts that prevails. Hence, an assassination related to human trafficking will be coded as death/assassination or murder and not as a case of human trafficking. Furthermore, the wrong classification is also sometimes used.

Examples

In a decision of 2018²¹⁹ relating to acts of domestic exploitation at an embassy, the Commission found that the victim's application was unfounded. The applicant, a national of Burkina Faso, had been the victim of abuse while working for an ambassador. The criminal investigation established the existence of essential elements of human trafficking and making the applicant work in conditions contrary to human dignity. He had to work from 06:00 in the morning to midnight, seven days a week, wasn't paid, lived in an unheated cellar without a bed or bedding, and wasn't given sufficient food. His passport had been confiscated. He was subjected to threats and insults. The case was dropped owing to the ambassador's diplomatic immunity and the impossibility of a criminal prosecution.

The Commission considered that "without wishing to minimise the damage suffered by the applicant as a result of the aggression to which he was subjected, the Commission's customary case law considers granting financial aid once a medical expert report has duly established the existence of a permanent disability or incapacity directly related to the nature of the aggression". However, in the present case, there were no documents on file that showed any permanent disability or incapacity. The Commission therefore took the view that, since the applicant wasn't suffering from any permanent after-effects confirmed by an expert opinion, he wasn't a victim within the sense of Article 31, 1 of the Law of 1 August 1985.

In another decision dating from 2005, also concerning a case of labour exploitation, the Commission also found the victim's application to be unfounded. It stated that "the facts pertaining to the applicant's exploitation at work, which are reprehensible and with serious consequences for the applicant, aren't, however, sufficient to establish the existence of a deliberate act of violence within the sense of Article 31, 1 of the Law of 1 August 1985".²²⁰

The Commission must always consider whether the acts to which the person has been subjected can be characterised as "acts of physical coercion committed against persons causing serious physical or psychological harm". However, equating the offence of trafficking in human beings with a deliberate act of violence in order to overcome this obstacle seems difficult for the Commission, given its interpretation of "act of violence".

After all, the existence of a deliberate act of violence doesn't necessarily imply the existence of an offence. Mutatis mutandis, the Commission, **Myria calls for openness in the interpretation of the notion of 'deliberate act of violence' for victims of labour exploitation.**

however, infers that the infringement of a provision punishable under criminal law doesn't actually constitute a deliberate act of violence. Myria calls for a certain openness in the interpretation of the notion of 'deliberate act of violence' for victims of labour exploitation.

In practice, it seems that victims of human trafficking rarely apply to the Fund. In addition, there are no concrete figures. 'Trafficking in human beings' was more visible when Article 31bis, § 1, 2° provided for an exception to the condition of "legally residing in / gaining legal access to Belgium" for victims who had obtained an permanent residence permit in the context of an investigation into human trafficking, even though there were already very few victims who made use of the Fund then. The condition was abolished by the Law of 30 December 2009, meaning that a person doesn't have to be legally staying in Belgium to be able to apply to the Fund.

Another shortfall of the Fund lies in its budgetary capacity following the terrorist attacks. An interview with a specialised centre indicates that after the terrorist attacks at Brussels Airport and Maelbeek metro station, victims of sexual exploitation received very little compensation. Despite the dreadful circumstances, the victim was only paid EUR 5,000, whereas in similar cases, other victims received a much higher sum. According to the specialised centre, this low level of compensation could be due to the moment at which the request was submitted, i.e. just after the attacks. At the time, many victims of terrorist acts were compensated, so the amount of compensation for the victims of sexual exploitation may have been exceptionally lower. The specialised reception centres confirm that the procedure to obtain financial aid from the fund is time-consuming and represents a psychological burden for the victim. However, the three specialised reception centres consider that the procedure - if it is successful - is worth it.

219 Commission, 3 July 2018, no. M17-2-1450, www.juridat.be.

220 Commission, 26 July 2005, no. M3778, www.juridat.be. The case concerned a Bulgarian victim who had been granted a permanent residence permit by the Aliens Office in the context of an investigation into human trafficking. The Liège Court of First Instance had sentenced the perpetrator to six months' in prison and compensation worth EUR 7,355.54 for the exploitation of illegally staying workers.

At the same time, they point out that it is an adequate means of compensation for sexual exploitation only, not for labour exploitation. So far, Myria is only aware of applications from victims of sexual exploitation that have been accepted, and not from victims of labour exploitation.

Examples

In a decision of 2018, the Commission granted EUR 45,000 to a Georgian applicant who had fled her country. When she arrived in Belgium, she was forced into prostitution by Albanian nationals. The latter had sold her and she was regularly subjected to violence²²¹.

The same year, the Commission granted EUR 20,000 to a Belgian victim of sexual exploitation. She had been recruited by one of the perpetrators to be exploited in prostitution in the Liège region. She was taken to various workplaces and was constantly monitored. She was regularly subjected to threats and violence.²²²

On the other hand, as mentioned above, the Commission only granted EUR 5,000 for moral damage in 2017 to a Romanian applicant forced into prostitution by her boyfriend, a loverboy. She was regularly beaten, resulting in a premature birth. She was also made to have an abortion.²²³

This type of mechanism doesn't exist for victims returning to non-EU countries. Filing an application is thus made more difficult by the Royal Decree of 18 December 1986 on the Commission for Financial Aid to Victims of Deliberate Acts of Violence and Occasional Rescuers, which requires the choice of domicile to be in Belgium.²²⁵

Conclusion

The Belgian legal framework provides various possibilities for victims of human trafficking to obtain compensation. However, there are legal limits to claiming damages or applying to the Fund for financial aid. Actually obtaining compensation will also depend on the solvency of the perpetrator and the effective enforcement of the judgment. Furthermore, victims seeking compensation through the courts will often have to wait a long time before a court decision includes or excludes their claim. Owing to its subsidiary nature, the Fund's intervention will take even longer (except for the granting of emergency aid). Victims may be discouraged and, as a result, lose interest in the possibility of obtaining compensation. The interviews with the various centres confirm this.

For victims no longer residing in Belgium, it is practically impossible to obtain compensation from another country. In principle, they can pursue their interests through a Belgian lawyer. For instance, one of the specialised reception centres for victims appointed a lawyer for a victim.²²⁶ They were informed by their lawyer and came back to Belgium during the trial. As a result, they were granted compensation, which is good practice. Without proper guidance or information, victims will find it difficult to know what to do. Furthermore, the financial costs involved are a major obstacle.

Victims who no longer wish to stay in Belgium

In principle, a victim who isn't interested in the status and no longer wishes to remain in Belgium, can apply to the Fund. However, the situation differs depending on whether the victim lives in the EU or a third country. If the applicant normally lives in another EU Member State, they can submit their request to the Commission through the body specifically charged by the Member State concerned to assist the victim with their request, by using a standard form from the European Commission.²²⁴

221 Commission, 24 September 2018, no. M17-2-0243, www.juridat.be.

222 Commission, 19 October 2018, no. M14-4-0674, unpublished.

223 Commission, 23 January 2017, no. M13-2-0998, unpublished.

224 Art. 40bis of the Law of 1 August 1985 on fiscal and other measures.

225 Art. 49 of the R.D. of 18 December 1986 on the Commission for Financial Aid to Victims of Deliberate Acts of Violence and Occasional Rescuers.

226 For more information on this case, see MYRIA, 2016 Annual Report *Trafficking and Smuggling of Human Beings, Beggars in the hands of traffickers*, pp. 165-167; Hainaut Crim. Court, Mons division, 21 April 2016, 8th ch. (final); For the analysis of this case, see MYRIA, 2017 Annual Report *Trafficking and Smuggling of Human Beings, Online*, pp. 84-88.

On the other hand, some victims who return to their country of origin at a later stage in the proceedings, continue to benefit from legal assistance from the specialised reception centre in order to complete the judicial proceedings and receive the compensation awarded.

Recourse to Fedris as a means of compensating victims of labour exploitation who have suffered a work accident is, according to some centres, a success. Two of the three specialised centres have already pursued this option and have so far received several positive decisions. They were satisfied with the amounts. Although the procedure initially took some time, this is no longer the case today, as Fedris can intervene on the basis of a judgment by the criminal court.

In light of these findings, Myria would like to examine other compensation options, so that all victims of human trafficking can be eligible for effective compensation. The time-consuming processes associated with some alternative compensation schemes also need to be reviewed.

The mere existence of possibilities to obtain compensation isn't sufficient in itself to enable victims to have effective access to it. In order to ensure effective access, it is necessary to ensure that victims are informed from the outset of relevant possibilities in a language they understand. Arranging legal assistance provided by a lawyer as quickly as possible can also help to ensure that the victim is properly informed of the possibilities, the chances of success and the associated time frames.²²⁷

Victims who aren't interested in the status and don't want to 'enter' into it, are usually left by the wayside. In theory, the victim can be assisted by a lawyer to defend their interests, but for many of them, the threshold is too high if they don't benefit from the legal support given to victims who adopt the status. Therefore, it is now a matter of endeavouring to improve the defence of the rights and interests of victims who reject the current status.

7. International comparative perspective on compensation for victims of violent crime

The European Union Fundamental Rights Agency (FRA) has written a report on judicial systems for victims of violent crime. In practice, there is little knowledge of the application of victims' rights. The report is based on previous surveys, such as a 2017 FRA study on the situation of the rights of victims of violent crime in the criminal justice system in Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. Various interviews were also conducted. A brief comparison of victim's position in the criminal justice system in the above-mentioned countries is made before discussing compensation and the main findings of the FRA.²²⁸

The criminal justice systems are subdivided into three different models or types, with each participating country categorised accordingly. Every model has its own view of the concept of 'victim of crime'. Even if the objective of criminal law in types 2 and 3 is identical, the difference lies in the different positions of the victim.

In Belgium, a victim of crime is a person who has suffered damage caused by a crime.²²⁹ A victim of violent crime is defined as someone who has suffered physical or psychological harm as a direct result of a deliberate act of violence.²³⁰ In Belgium, victims have the right to participate in criminal proceedings as a civil party. Belgium most closely resembles Type 3.

228 FRA - European Union Agency for Fundamental Rights, *Victims' rights as standards of criminal justice - Justice for victims of violent crime Part I*, Publications Office of the European Union, 2019, pp. 42-43. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf.

229 Art. 3 of the Preliminary Title of the Criminal Procedure Code.

230 Law of 1 August 1985 on fiscal and other measures, O.G., 6 August 1985.

227 On this subject, see the previous chapters of this focus.

Characteristic	Type 1	Type 2	Type 3
Objective of criminal law	Protect the rights of individuals	Protect public interests	Protect public interests
Definition of a victim of violent crime	A wronged person: an individual whose rights the offender(s) violated	A person with specific needs due to the harm suffered as a consequence of the violent crime	A person who suffered harm as a consequence of the violent crime
Position of the victim	Entitled to act as a party to the criminal proceedings	Can be called as a witness	Can file a civil suit
Countries covered by the research	Austria, Germany, Poland and Portugal	Netherlands and United Kingdom	France

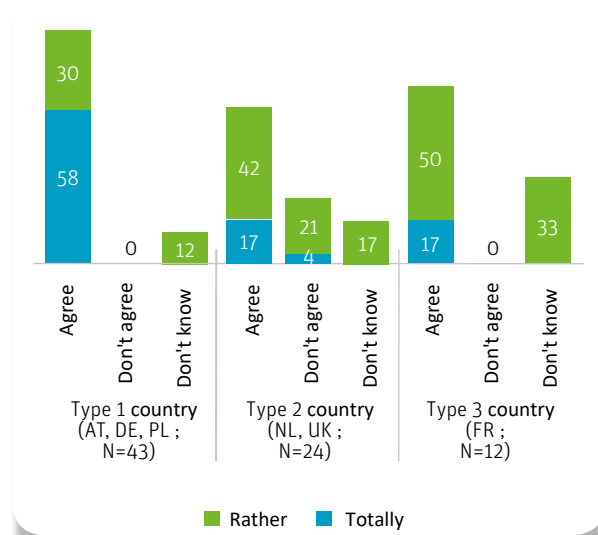
Source: FRA, 2019

Victim compensation and the main findings of the FRA's investigation are detailed here, allowing the identification of problems in other countries and the FRA's recommendations.²³¹ The possibilities and difficulties in Belgium were discussed earlier. They largely correspond to the difficulties listed by the FRA.²³²

One major problem is due to the fact that damages aren't recognised as being part of criminal law. Perpetrators are obliged to compensate their victims on the basis of Article 13 of the European Convention on Human Rights (ECHR).²³³ According to the FRA, damages should be part of criminal law and not civil law. Criminal courts should demand damages and the competent public authorities should enforce the courts' decisions. Public authorities must ensure that victims actually receive compensation for all (non-)financial damage resulting from the act of violence. The expectations of the victims interviewed are an essential aspect of what criminal law means from their point of view.

Victims who ask the courts to ensure they are compensated by the perpetrator (%)

Source FRA, 2019



The public authorities treat the victim's damages as a private matter. For instance, the victim must claim damages through the civil court or become a plaintiff in the criminal proceedings. Instead, it should be possible to decide automatically, through a criminal judgment, on damages in proceedings concerning offences against a person. Inspiration could be drawn from recently adopted legislation that has entered into force in Poland and Portugal.²³⁴ These reforms have gradually separated damages from their civil basis and converted them into an instrument of criminal conviction. This can be compared to the model that exists in the United Kingdom. Hence, in both countries, the burden on victims of filing a civil suit has been eased.²³⁵

231 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, pp. 9-11: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part_3-sanctions_en.pdf.

232 See the first points of this chapter.

233 Article 13 of ECHR deals with effective remedy. It states that "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority".

234 Hence, the FRA suggests drawing inspiration from the legislation adopted in Poland, to consider strengthening the position of compensation as a criminal sanction by adding punitive damages. This would simplify the calculation of damages.

235 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, p. 27.

In the course of criminal proceedings, criminal judges should decide on damages for victims of violent crimes. When considering an action for damages, Member States may take into account the experience acquired in other Member States, including the United Kingdom, Poland and Portugal.

Another difficulty is linked to the fact that Member States must make greater efforts to ensure that victims are informed of the possibility of obtaining compensation from the perpetrator. The information provided must also be clear. For instance, victims in Austria and Germany receive an information leaflet on compensation.²³⁶ However, there is considerable doubt as to whether victims can understand the leaflet. In the United Kingdom, it depends on the region: in some regions, police officers sometimes provide additional information on claiming compensation, whereas in others, the belief is that it isn't up to police officers to supply this information.

The following problem relates to claiming compensation. One of the main reasons victims fail to obtain damages is because relatively few of them file a claim. According to the interviews with victims and experts, the main reasons for not filing a claim are:

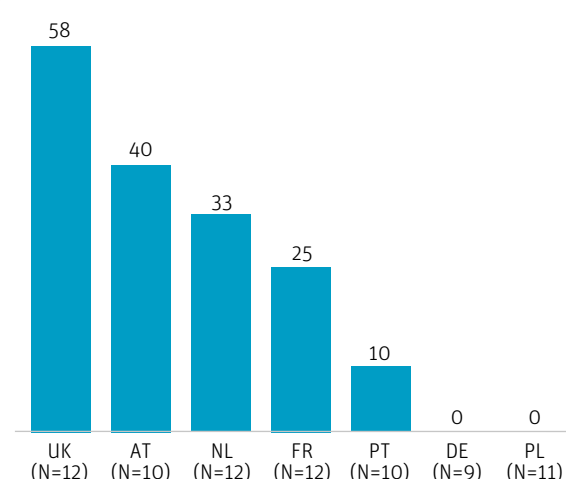
- Victims aren't effectively informed of the possibility of filing a claim for damages. This is by far the main reason among all the Member States taking part in the study;
- Long bureaucratic procedures that discourage the victim;
- Some victims are afraid of reprisals as proven in this extract from an interview with a Portuguese victim: "No, why would I ask for it, for what reason? I would be further confronted with them [...] and that would make things worse, not to mention the reprisals." (Victim, Portugal);
- Strict basic conditions: in some cases, victims of violent crimes aren't eligible for compensation, as pointed out by participants in the survey in Austria, Germany and Poland.

²³⁶ These types of leaflets also exist in Belgium.

In Belgium, interviews with the specialised centres confirm that victims of labour exploitation could only rarely, or never, seek compensation from a public organisation. In this case, the notion of 'violence' isn't sufficiently demonstrated, even if the victim is already considered as a victim of human trafficking.²³⁷

Victims who have submitted a claim for state compensation (%)

Source: FRA, 2019



Finally, obtaining compensation from the perpetrator is also a major difficulty. In practice, victims rarely receive damages from the perpetrator and usually with considerable delay. According to the FRA, all victims of violent crime should benefit from effective and fast access to state compensation in this case. This should be an advance payment of the damages owed by the perpetrator. When a victim reports the offence to the police, they should be informed immediately of their right to damages from the perpetrator, or even from the state. If the victim submits a claim for compensation, the period leading to effective compensation shouldn't be too long.

The court must recuperate the amount the state has paid to the victim from the perpetrator. The state will then recuperate the payment of the rest of the compensation owed to the victim.

²³⁷ On this subject, see point 6 in this chapter.

According to the victims interviewed during the study, lengthy waiting times prior to obtaining damages must be avoided. The state must intervene if the perpetrator doesn't quickly compensate the victim. The public authorities should ensure that the payments are actually paid and not leave this responsibility to the victims.

"Having spoken to the [...] enforcement courts,
[...]

she said I'd be lucky to receive anything because
you only get it if he pays

[...] That to me says he has influence on my life,
and he does, because I've got no money [...]

I think there should be a fund where it's paid to
me and he pays back the fund. »

(Victim, United Kingdom)²³⁸

238 FRA - European Union Agency for Fundamental Rights, *Sanctions that do justice - Justice for victims of violent crime Part III*, Publications Office of the European Union, 2019, p. 30: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part_3-sanctions_en.pdf.

Chapter 5

The importance and purpose of a financial investigation

Even if the court regularly awards damages to victims, this decision is often futile. As illustrated in the previous chapter, in practice, the defendant is often without resources (or becomes so). To enable the effective compensation of victims, it is essential to seize the suspects' criminal assets right from the start.

Drying up financial flows is the ultimate weapon to dismantling the criminal system and ensuring the effective compensation of victims.

This is the only way the court can award the confiscated money, when judgment is passed, as compensation to the victims who have filed a civil suit. It is therefore essential that a

thorough financial investigation is also carried out during the judicial proceedings. The latter is one of the basic pillars of a good criminal investigation and has four different purposes, in addition to confiscating money:

1. ensure the victim is compensated²³⁹
2. dry up the financial network
3. map the entire network
4. obtain certain pieces of evidence to make a conviction for human trafficking.

1. Collecting the money for compensation and to dry up funds

The main driver for traffickers is profit. Often, they are powerful criminal entrepreneurs managing their illegal activities as a business. These large-scale networks operate like multinationals.

In the world of organised crime, human trafficking is a lucrative business. In order to combat human trafficking effectively, it is necessary to target the heart of the system, i.e. the financial flows. A thorough financial analysis is essential. It allows the criminal network to be scrutinised in detail and neutralised. Drying up the analysed financial flows is therefore the ultimate weapon to strike at the heart of the criminal system and paralyse it. It is also a crucial way to award effective compensation to victims.

²³⁹ This point was dealt with in the previous chapter.

1.1. | Notification of money laundering prior to the start of the financial investigation

As an administrative body, the Financial Intelligence Processing Unit (FIPU)²⁴⁰ plays an important role, prior to the detection of criminal assets, in the financial analysis of human trafficking cases. In the preventive part of the fight against money laundering, the FIPU is responsible for centralising, processing and, if necessary, transferring information to the judicial authorities for the fight against money laundering. When serious indications of money laundering emerge from the operational analysis, the FIPU must forward all the information it has to the competent senior crown prosecutor.

In the case of offences related to the smuggling of illegal labour or human trafficking, the FIPU also informs the labour prosecutor.²⁴¹

Several human trafficking cases and financial investigations were initiated on the basis of a money laundering notification from the FIPU and subsequently resulted in court rulings of confiscation and compensation for the victims. This happened in a case of sexual exploitation involving a Thai massage parlour.²⁴²

It contained suspicious money transfers reported to the FIPU by Western Union. The court subsequently ordered confiscations of EUR 51,861 and EUR 20,598.40, and awarded damages to the four victims who filed a civil suit, ranging from EUR 4,000 to EUR 8,000.

A case concerning labour exploitation²⁴³, involving Polish and Romanian bogus self-employed workers and posted workers in the construction sector, was initiated following the FIPU's discovery of a company's suspicious transactions. The FIPU noticed that a significant amount of cash had been withdrawn from the account of a construction company.

During the criminal investigation, the FIPU issued an additional notification after having identified more suspicious transactions. The court ordered the confiscation of a total amount of EUR 359,877.29 from two managers and two companies. Three victims who filed a civil suit received EUR 2,500 in damages.

1.2. | Launch of the investigation

At the start of a human trafficking case, a financial investigation must be launched immediately. As soon as suspects believe that an investigation is under way, they try to conceal or move their assets, or let their company go bankrupt so that it becomes

impossible to seize their assets at a later stage of the proceedings. It is therefore important to involve a 'plukteam' at the start of an investigation²⁴⁴ and to seize the maximum amount of assets.

At the start of a human trafficking case, a financial investigation must be launched immediately in order to avoid the criminal assets disappearing or being moved.

The term 'plukteam' comes from the Dutch word 'kaalplukken', which literally means stripping criminals of their finances. This term is derived from kaalplukwetgeving, the law on the seizure and confiscation of criminal assets. More specifically, this team is responsible for making an inventory of criminal assets for subsequent seizure.

The involvement of a plukteam in an investigation of assets increases the seizures of the proceeds of crime. Right from the start, the plukteam will try to trace all movable and immovable property. In addition, it must be able to examine all traces of criminal assets on the spot during the initial searches and freeze them so that the suspects no longer have the opportunity to make them disappear. This approach allows a maximum number of seizures to be organised. The usefulness of plukteams has been demonstrated in several cases, such as in a case analysed earlier concerning Hungarian Roma.²⁴⁵

240 J.-C. DELEPIERE and P. DE COSTER, "Le rôle de la cellule de traitement des informations financières (CTIF) et le dispositif préventif dans le cadre de la lutte contre le blanchiment d'argent et le financement du terrorisme — analyse opérationnelle et grandes tendances du blanchiment de capitaux

241 CECLR, 2011 Annual Report Trafficking and smuggling of human beings, *The money that matters*, p. 9.

242 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 96-97.

243 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 164-166.

244 MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, pp. 42-58.

245 MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 60-65.

A Romanian case²⁴⁶ involving a confiscation of EUR 512,066 clearly illustrates the role and added value of the plukteams for an investigation into assets. Here is an excerpt from the report drafted by the investigators of this team to the investigating judge:

"According to these findings, the existence of criminal assets seems to be very real. With your agreement, our services will conduct an additional financial investigation into the relevant entities in this case. In order to obtain an overview of the extent and location of the criminal assets as quickly as possible, with a view to making a seizure to prevent them from being removed by the suspects, we believe the following inquiries would be useful:

- checking the land registry regarding the existence of properties in the name of B.,...;
- checking the tax records to check if B.,... has any legal income;
- questioning all financial institutions to find out whether they have one or more accounts in the name of B.,...;
- checking with cash transfer agencies to see if there are any traces of money received or sent;
- checking through official channels to see whether B.,... has money or securities in Romania and Portugal."

1.3. | Looking for the money

The suspects' criminal assets can be detected through investigative means such as phone taps and the analysis of money transfers.

Phone taps can be used to trace property and illegal cash couriers. For instance, the professional Nigerian networks use their own financing system. The Nigerian criminal world avoids official money transfer companies, owing to the possibility of tracing identities, amounts and recipients. They have their own system to transfer funds to beneficiaries in the country of origin without a trace: the "Black Western Union" system.

In the Mama M. case²⁴⁷, phone taps revealed that an 'Africa' shop (selling typical African products) was being used as a hub to send cash to Nigeria on a very frequent basis. In concrete terms, this means that these people from the Nigerian underworld contacted Mama M.'s son or his aunt to hand over cash in this Africa shop, and ask for the corresponding sum to be transferred to a beneficiary in Benin City. The son noted down the amounts and informed the interested parties of the possible exchange rates, according to which the amount would be paid to the beneficiary in euros or in naira, the Nigerian currency. The amount was then paid through this Africa shop. The recorded conversations revealed that the son went to fetch sums of money upon the aunt's request. The aunt or her boyfriend travelled frequently (probably every two weeks) with the collected cash (likely sums of EUR 25,000 to 35,000, hidden in their luggage) to Nigeria. She managed an office there where the beneficiaries of the funds would come to receive the agreed sum. She would take a 10 % commission on every amount sent. Based on the phone taps, the court found that money had been transferred illegally at least three times: "in particular, EUR 11,000 (phone tap of 19 March 2016), EUR 15,000 (phone tap of 19 March 2016) and EUR 25,000 (phone tap of 19 March 2016)".

The court subsequently ordered the confiscation of EUR 27,500.

Several cases also show that the Belgian authorities collaborate efficiently with money transfer agencies, which always cooperate fully with the Belgian law following a formal request supported by a warrant.²⁴⁸ Victims are sometimes involved in the transfer of illicit funds. Their statements play an important role in the detection of these illicit funds, an aspect that also emerged from the Hungarian Roma case. One of the victims explained how they had to transfer money to Hungary for the defendant through an agency: "I did it in my own name and not always in his name, sometimes for his sister or sometimes for a relative or an acquaintance. These amounts were clearly for the defendant. In the evening, he beat me because according to him, I was lying because I hadn't sent him money for his return journey".²⁴⁹

²⁴⁶ MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13, 51 and 108.

²⁴⁷ MYRIA, 2018 *Annual Report Trafficking and Smuggling of Human Beings, Minors at major risk*, p. 92.

²⁴⁸ MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 97-98.

²⁴⁹ MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 60-65.

In the case of sexual exploitation concerning the above-mentioned Thai massage parlour, information on property abroad was obtained thanks to the analysis of a computer.²⁵⁰ The police found photos of a building site on the defendant's computer, which the defendant and his wife were supervising. When confronted with the photos, the defendant admitted that his wife had had eight houses built in Thailand with a view to renting them out. The court made reference to this in its judgment for laundering the proceeds of prostitution.

1.4. | International cooperation

Good international collaboration and a far-reaching financial investigation are the most efficient ways to affect and financially dry up criminal networks. This type of approach is part of an international chain approach in which all the links have a role to play. If a link fails or is weak, the chain will collapse.

Joint Investigation Team

A Joint Investigation Team²⁵¹ (JIT) can be a vital tool in this respect.²⁵²

In the same Hungarian Roma case²⁵³ where the plukteam was brought into play, Belgium, the Netherlands and Hungary signed a JIT agreement end 2013. At the beginning of 2014, an investigation into the same Hungarian network was also initiated in the United Kingdom. The investigators managed to identify the perpetrators' movable and immovable assets in Hungary and to quickly and efficiently seize their criminal proceeds thanks to the JIT agreement.

250 MYRIA, 2016 *Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 96-98.

251 A JIT is a partnership between the competent authorities of two Member States or more, in order to carry out a criminal investigation into punishable acts where there are links between suspects in several Member States. Under the direction of a single Member State, a joint investigation team will be responsible for carrying out the criminal investigation. Its legal framework is thus formed by the legislation and regulations in force in the country where the team is operating. At the end of the investigation, the case is brought before the prosecution service of the most diligent Member State. In Belgium, the joint investigation teams' methods are defined in Chapter 3 of the Law of 9 December 2004 on the international transmission by the police of personal data and information for legal purposes, international mutual legal assistance in criminal matters, amending Article 90ter of the Code of Criminal Procedure (O.G., 24.12.2004).

252 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp.66-67.

253 MYRIA, 2015 *Annual Report Trafficking and smuggling of human beings, Tightening the links*, pp. 60-65.

The defendants earned EUR 198,240 per month thanks to their activities in prostitution. The court used these figures to justify its confiscation order for a total amount of EUR 405,980. The investigators analysed the financial modus operandi of the prostitution network based on information from phone tapping, observations and money transfers. The escorts checked how much the victims were 'bringing in' according to the number of condoms used. They entrusted the cash takings to cash couriers who took them to Hungary where they were mainly placed in real estate. Among other things, the perpetrators made international money transfers to Hungary in the names of the victims using regular money transfer agencies. One of the objectives in the JIT agreement was the victims' interests. In addition to gathering evidence of involvement in human trafficking and money laundering, and seizing criminal assets, the JIT also had the following objectives:

- to get the prostitutes out of the forced prostitution;
- to ensure that the suspects had their illegally acquired benefits withdrawn through the courts;
- to ensure that the victims were compensated and/or benefited from financial compensation;
- to prevent the women from becoming victims of human trafficking again.

1.5. | Camden Asset Recovery Inter-agency Network

The network Camden Asset Recovery Inter-agency Network (CARIN)²⁵⁴ is known (though not well enough) as an international instrument that can provide insight into a suspect's assets abroad. It can make international collaboration more efficient, especially in terms of information exchange between competent authorities, the organisation of joint investigations and the detection, freezing and confiscation of illegal assets.

254 Carin stands for 'Camden Asset Recovery Inter-agency Network'. This informal regional network, which was established in 2004, brings together the authorities responsible for asset recovery. It is responsible for all aspects associated with the fight against the proceeds of crime. The network is composed of investigative and law enforcement officers, mainly from Europe but also from North America. It aims, on an inter-institutional basis, to achieve greater efficiency in the actions undertaken by the network's members, whose goal is to cut off criminals' access to illegal income.

In the above-mentioned Romanian sexual exploitation case²⁵⁵ involving a plukteam, the financial investigation, with the help of CARIN, led to the dismantling of an international prostitution network. The report drawn up by the police (plukteam) for the investigating judge, is a concrete example of how the investigation was carried out through CARIN: "The hearings and additional inquiry show that the suspects invest the proceeds of the prostitution network in real estate abroad. Within the framework of locating the criminal assets, we make a request via the CARIN network. The investigation shows that once recruited, the victims are taken to Belgium via Portugal. In Portugal, the suspects have a place where they house the victims. The request is therefore addressed specifically to Romania and Portugal, since the suspects in this prostitution network have their contacts there. We inform your office that we are sending the following information to the COSC²⁵⁶, the intermediary in the event of an investigation via the CARIN network.

The following questions were asked for each suspect:

- Full identity of the persons involved, as well as their current place of residence;
- Do the suspects and/or their family have real estate in Romania and Portugal?
- Do the suspects have movable goods, bank accounts, valuables in their possession?
- Do the suspects have a criminal record?
- Are the suspects involved in companies? If so, in what capacity and in which sector of activity?

The Belgian judiciary thus managed to gather important information on criminal assets both individually for each suspect and as a whole (EUR 512,066).

2. Analysis of the network

A financial investigation can also be useful when the suspects' financial assets have already disappeared and can no longer be seized. It serves as a financial instrument to identify the entire network and dismantle it.²⁵⁷ On the basis of financial analyses of the system, the criminal human trafficking network and its periphery can be analysed and, if possible, paralysed. In some cases, this type of analysis increases the prosecutions against the traffickers.

In the above-mentioned Romanian Roma case²⁵⁸, the bank investigation revealed that nearly all the profits from the exploitation of prostitution were transferred by the exploiters to their father in Romania, who then

invested this money in Romania.

The phone taps also confirmed this. The financial investigation carried out allowed not only the exploiters in Belgium to be prosecuted but also one of the main organisers based in Romania.

A financial investigation can be useful when the suspects' financial assets have already disappeared and can no longer be seized.

The criminal organisation's payment methods were also uncovered: "The proceeds of this prostitution network are sent to the main defendant's relatives in Romania through money transfers in the names of other members of the criminal organisation. This money is invested in real estate in the region of Târgu-Jiu, capital of the province of Gorj in Romania, either in the names of the defendants, or in the names of their parents or other members of their family."

Financial analysis is an important method for identifying those responsible and uncovering links between the criminal network and the legal world. By tracking the relationships between the financial transactions, it is possible to find the leaders of the criminal networks, who are situated in the background, and their contacts in the legal world. In the Bulgarian A. case²⁵⁹ concerning a large-scale prostitution network, the financial investigation demonstrated how the organisation used commercial structures for its criminal activities.

255 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13, 51 and 108.

256 The Central Organ for Seizure and Confiscation (COSC) is an organ of the public prosecutor. It was created by the law of 26 March 2003 and 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 seizing assets. It provides assistance in the context of public action, in relation to confiscation, and assumes the role of facilitator as regards the execution of judgments and orders involving confiscation (source: www.confiscaid.be).

257 CECLR, 2005 *Annual Report, Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, pp. 101-102 and 2011 *Annual Report, The money that matters*, p. 158.

258 MYRIA, 2013 *Annual Report Trafficking and smuggling of human beings, Building bridges*, pp. 12-13 and 53-54 and 114-115; Brussels, 13 November 2013, 13th ch.

259 CECLR, 2003 *Report on human trafficking, In favour of an integrated approach*, pp. 25-27 and 2005 *Annual Report, Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights*, pp. 101-102.

Thanks to the financial investigation, it was possible to identify and convict the leaders of the Bulgarian network.

Commercial structures are sometimes used to facilitate or camouflage the criminal activities, or to create (inter)national money laundering networks. This interweaving of legal and illegal activities allows the most visible part of the financial flows to be hidden, thus offering organised crime good protection.²⁶⁰ In a case in Lige involving prostitution parlours, companies were set up to hide the profits from prostitution.²⁶¹

3. Evidence

Financial investigations are a way to gather objective evidence and are a major added value, even if the criminal assets have disappeared and can no longer be seized. In their decisions, the courts regularly refer to evidence from the financial investigation to convict the defendant. For certain forms of human trafficking, the financial investigation can even be the main evidence. This is true in cases of human trafficking for the exploitation of begging. An important element that helps determine whether this is the case, is when the victims hand over their earnings to a third party. During a surveillance operation in Brussels in a case of exploitation of begging involving a disabled person²⁶², the police were able to determine how the beggars handed over their earnings to a third party: they hid them in a packet of cigarettes. The surveillance photos were an important piece of evidence. At the beginning of the investigation, the police, who had received a warrant, carried out a bank investigation and asked various money transfer agencies to cooperate regarding international transactions. Here is the judgment's conclusion: "The court thus considers that on the basis of the results of the financial investigation, it is clear that the parties exploited their victims. The bank investigation showed that the parties who had no legal income in Belgium had, together, transferred no less than EUR 39,868 to various family members in Romania. Such an amount can only be explained by the centralisation of the assets of other beggars by the defendants."²⁶³

In an Albanian case²⁶⁴, it was possible to extend the period of criminalisation of the criminal acts of human trafficking by a few years, on the basis of a financial investigation. The police used the analysis of the money transfers to show that the defendant had been active as a pimp since 1999. On the basis of the checks in 2005, the police were able to determine that the defendant was the pimp of one of the victims working as a prostitute in Rue d'Aarschot. At the same time, the police noted that this victim had sent a total of EUR 18,468.06 to two people in Albania, between October 1999 and December 1999. The Belgian liaison officer informed the police that they were the defendant's parents. The defendant had also transferred EUR 1,900 himself to his parents in Albania. With no legal income, he wasn't able to explain the source of the funds to the police. The money came from his last victim. In a judgment of 17 October 2014, the court convicted the Albanian pimp primarily for human trafficking for the purpose of sexual exploitation and money laundering. The judge also ordered a confiscation amounting to EUR 60,000.²⁶⁵

In the above-mentioned case concerning a Thai massage parlour²⁶⁶, the financial investigation provided additional evidence for the acts of human trafficking committed. Here is the court's conclusion in its judgment: "If we compare the defendants' cash payments with their income, it is clear that, especially in 2007, 2008 and (partly) 2009, large amounts were transferred to Thailand, and we can in no way assume that these funds were lawfully earned. It is also clear in the court's view that the aim of the cash transfers to people in Thailand, in particular the defendants' (step)children, was to hide their illegal source. The use of a travel agency system such as W., offers the 'advantage' of making the source and the ultimate use of the funds more difficult to trace. In addition, the transfer of funds to Thailand apparently allowed the defendants to benefit from their illegal earnings there, without raising suspicion in Belgium. The defendants also bought various properties in Thailand, in particular a house in (...), in the Province of Nakorn Si Thammarat as well as eight houses to rent out."²⁶⁷

260 MYRIA, 2013 Annual Report Trafficking and smuggling of human beings, *Building bridges*, p. 48.

261 MYRIA, 2015 Annual Report Trafficking and smuggling of human beings, *Tightening the links*, pp. 109-110.

262 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 28-30 and 60-61.

263 Corr. Brussel, 19 mei 2016, 60ste Kamer, (definitief).

264 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, p. 115.

265 Brussels Dutch-speaking Crim. Court, 17 October 2014, ch. 46bis (final).

266 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 107-109.

267 MYRIA, 2016 Annual Report Trafficking and smuggling of human beings, *Beggars in the hands of traffickers*, pp. 107-109.

EXAMPLE OF A CASE: PALLET FACTORY

This case demonstrates the importance of the different aspects of legal aid for victims of human trafficking and their protection. In this case²⁶⁸, 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. His company was also prosecuted as a legal person. The acts date back to 2009-2011. The entire judicial proceedings didn't end until May 2019, when the defendant's appeal to the Supreme Court of Appeal (Court of Cassation) was dismissed. Both Payoke, Myria and several victims filed a civil suit. Among the victims, there was one who had never asked for victim status or been in contact with a specialised centre.

The Belgian manager had set up a legal construction and created a PO box company in Bulgaria that had no substantial activities. He illegally posted Polish and Bulgarian workers in Belgium. He also worked with Polish and Romanian subcontractors who provided him with cheap labour. These subcontractors were also convicted as co-defendants.

1. Duty to inform

On 26 February 2010, four Bulgarians spontaneously went to the local police to file a complaint against their employer: he had tricked them and was withholding a large part of their back pay. After an initial brief interview with these four people, it transpired that they were fed up with their degrading living and working conditions and were demanding justice. This is why they wished to obtain the status of victim of human trafficking.

The police listened to the Bulgarians who told their story in broken German. One of the Bulgarians had a hand-written letter stipulating that they were asking for help and were victims of human trafficking. They were living in awful conditions, in a house belonging to the employer, and an intermediary would come and fetch them to take to the pallet factory. They had to work for EUR 3 an hour, 12 hours a day, and EUR 215 was withheld from their wages every month for the rent. The letter bore the signatures of 11 identifiable people. The police contacted the Social Legislation Inspectorate to ask whether one of the people who had made the complaint was registered with Dimona²⁶⁹ by the company, which wasn't the case. The local police then contacted the human trafficking unit of the federal judicial police (FJP), to pursue the rest of the investigation, as well as the reference prosecutor for human trafficking. It also brought in a Bulgarian interpreter for the rest of the interviews with the victims. Thanks to the list on the back of the hand-written letter, the local police managed to identify some of the people who had signed it and was able to contact them.

The victims were mainly Bulgarian, but there were also some Romanian and Polish victims. According to their statements, some Polish workers also contacted the Polish embassy in Bulgaria.

With the help of the multilingual leaflet for victims of human trafficking²⁷⁰, the victims were informed about the status of victim of human trafficking. They were interested in this status. Twelve victims wanted to cooperate with the authorities by filing a complaint for human trafficking. They also wished to be referred to the specialised centres for victims. Owing to other priorities, the FJP's human trafficking unit wasn't able to interview the victims at the time of the statement. It informed the reference prosecutor for human trafficking and the specialised centres.

²⁶⁸ Myria, 2017 *Annual Report Trafficking and smuggling of human beings, Online*, pp. 85-86, 115-116; Antwerp Crim. Court, Turnhout division, 18 January 2017, ch. TC1; Antwerp Court of Appeal, 24 January 2019, ch. C6 (see below part 3, Chapter 3 (case law), point 2.3.1.).

²⁶⁹ DIMONA (immediate declaration of employment) is an electronic reporting that enables employers to inform the National Social Security Office when they employ a worker or when a worker leaves the company.

²⁷⁰ See this part, Chapter 2, point 1.1.

2. Support and access to victim support centres

At the time, the FJP contacted the specialised centres. Owing to a shortage of space, they were unable to provide accommodation.²⁷¹ All the Bulgarian workers concerned who were interested in the status of victim of human trafficking, were accommodated in a crisis centre by the CPAS, in an establishment at a holiday park. A week later, Payoke was able to take in eight victims and Sürya the other four. They had cut off all contact with the company and were prepared to accept the compulsory support offered by the specialised reception centres.

The victims' interviews were held in the premises of the specialised centres, an environment offering the victims the trust they required. A team member from the specialised centres was able to assist the victims during their interview. The Bulgarian victims stated that they had been recruited in Bulgaria to come and work in Belgium, on the basis of false promises, through an advertisement placed online by an employment agency. At the company's head office in Bulgaria, they were shown a promotional film depicting an amazing workshop, new machinery and a house that they would actually never see. In reality, their accommodation was substandard: there were at least 15 of them staying in housing that wasn't at all suitable.

3. Participation in the criminal proceedings

3.1. | Legal aid and voluntary return to the country of origin

Several Bulgarian victims wanted to return to their country of origin as quickly as possible. They didn't need legal support but they didn't realise that without it, they were reducing their chances of obtaining compensation.

They had been informed about victim status through the multilingual leaflet on trafficking but they didn't want to apply for it. They didn't have enough money for their return journey and couldn't appeal to any authority to help them.

The police had received a fax from the Bulgarian embassy in Brussels stating that the interested parties had presented themselves as victims. The police first attempted to repatriate them with the help of Payoke, through the IOM (International Organisation for Migration), but they didn't meet the conditions. The Immigration Office was then contacted to find another solution. In the end, the police could only advise them to go to the Bulgarian embassy to try to get back to Bulgaria.

Other victims who asked for the status also expressed their desire, after a while, to return to their family in Bulgaria. The specialised centres informed the police and the reference prosecutor in writing that their support had ended as the victims had gone back to Bulgaria. It also emerged from the interviews with Myria that the centres had put the victims in contact with a pro-Deo lawyer, before their departure, so that they could be represented during the rest of the proceedings. Almost 10 years later, several victims subsequently filed a civil suit during the trial.

3.2. | Victim without the formal status of victim of human trafficking as a civil party

An interesting example from the same case relates to a repatriated victim, identified through acts committed in another case but who had never obtained the status of victim of human trafficking. Almost 10 years later, in 2017, they became a civil party in the trial by appointing their own lawyer. In the end, the victim wasn't recognised by the court owing to flaws in the case: a major part of the other case wasn't included in it.

²⁷¹ See this part, Chapter 2, point 3.2.

This part of the case began after the arrest of several Romanians for theft. They were staying in a house belonging to the same employer and travelled in the employer's car. The police drew up a report for illegal stay and the suspects were repatriated to Romania.

The police had interviewed the suspects. It emerged that they had been exploited by a Romanian labour supplier who worked as a subcontractor for the Belgian manager. In their investigation, the police found indications that the labour supplier was drawing Romanian workers to Belgium on a large scale through his Romanian company, and that he was acting as an intermediary in the assignment of Romanian workers to professions where there was a shortage. One of the Belgian companies where he posted his workers was the Belgian manager's pallet factory. On the basis of this information, an investigation into human trafficking was started and the suspects in the theft case were identified as the victims in the pallet company human trafficking case. The theft case was partly added to the pallet company human trafficking case. One of the Romanians involved in this case, who had the status of victim of human trafficking, later filed a civil suit during the trial against the pallet company.

The court had to reject this victim's civil suit because the interviews of the Romanian victims were missing from the original theft case. Hence, no link could be established with the acts of human trafficking. The act of theft didn't play any role in it. Here is the court's reasoning: "On 7 November 2009, the Romanians N., C. and H. were caught stealing a barbecue set in Rijkevorsel. They were staying in (...) without being registered there and were working for the defendant X. These persons had clearly been interviewed within the framework of another criminal case, but there were no such interviews in the present case. Following the theft, the Noorderkempen local police force drew up an initial report for human trafficking. Based on the summary of the interviews of the workers concerned in the theft case, the court was unable to conclude whether these people were employed or housed in conditions contrary to human dignity (documents 769-772, general file 3, part 1). The current assertion of plaintiff N. that they [the workers] had to work and live in appalling conditions isn't supported by any element in the criminal case file. For the rest, no other investigations have been carried out and there is no evidence to the contrary."

The victim, who had never been referred to a specialised centre, subsequently never received any compensation from the defendant and never had access to the procedure associated with victim status. This problem could probably have been solved if they had taken the opportunity to ask the investigating judge for additional investigations²⁷². The parts missing from the theft case could thus have been requested, i.e. the interview of the interested party referring to human trafficking. Another lesson to be learnt from this is that, when putting a case together, all the detailed elements and indications of human trafficking must be added.

4. Right to protection

Some victims were reported as missing and became vagrants. One of the victims even died.

4.1. | A victim reported as missing becomes a vagrant and ends up in a squat

On 10 September 2009, the local police in Retie received a fax from the Polish consulate regarding a Polish worker whose last address was one of the houses belonging to the main Belgian defendant. He had left his personal belongings there. The victim's family reported him as a missing person to the Polish consulate. He had been working in the pallet factory before he went missing. The son tried unsuccessfully to contact his father for three weeks. After an investigation, the Polish victim was found in a dilapidated building that was used as a squat. According to the police, he had become a vagrant.

The police considered him as a "vagrant Polish worker from the company for which he had probably only worked for a short period of time and which probably found him unsuitable, as a result of which he was thrown out onto the street."

²⁷² See this part, Chapter 3, point 2.3.2.

He didn't have enough money to get back to Poland. [...] Owing to their precarious social situation in Belgium (no employment contract with the Bulgarian company, paying for their journey to Belgium themselves, no registration with the municipality, payment for their stay, minimum salary or none at all, dismissal or replacement by another worker if they don't work enough), some of the workers concerned have no other choice but to live as 'vagrants'."

4.2. | Death of victims

According to the police at least two workers from the pallet company died while they were in Belgium. Several statements made by victims testify to two deaths, and one of the victims even spoke of the deaths of four Polish colleagues in their statement. One of these deceased Polish workers whom the court referred to in its judgment was identified and found. There is no other known information on the other deceased victims.

The FJP reported a suspicious death of a Polish worker in a report. Their wage calculations for the Belgian pallet company were found on the company computer of a subcontractor. He suffered from a severe form of diabetes, and owing to a lack of money, he wasn't able to buy himself the necessary food or medication. When he died, he was staying in the building belonging to a defendant, an intermediary who was a subcontractor. As his wages weren't paid, or not on a regular basis, he was unable to go to a Polish hospital around 20 December 2008 to get treatment. He didn't have enough money to pay for the bus journey to Poland. He was found dead on 11 January 2009.

5. Compensation

Three Bulgarian victims filed a civil suit during the trial. They had obtained victim status and, after returning to their country of origin, a lawyer continued to defend their interests. The court awarded two victims EUR 4,000 for material damage and EUR 750 as compensation for non-material damage. The third victim received material compensation worth EUR 2,199 and non-material compensation worth EUR 500.²⁷³ The Belgian manager has no financial problems and his company, which was also convicted, still exists. Therefore, the victims can expect to be compensated.

6. Empowering victims

Two Bulgarian victims who had filed a complaint with the local police in Belgium, took the initiative of raising awareness among other potential workers regarding the misleading promises and abuses of the pallet company and the subcontractors concerned. This is what emerged from the victims' statements.

Apparently, one of the Bulgarians set up a website on which he warned Bulgarian workers about the company's practices. He hadn't received any reactions about these warnings but he knew that several Bulgarian workers had filed a complaint in Bulgaria.

Another Bulgarian who had filed a complaint, also set up a website to unite all the misled workers, upon the initiative of his sister who was a lawyer in Bulgaria. He gave his sister's identity so the police could contact her.

²⁷³ See this part, Chapter 3, point 2.3.2.



External contribution: The number of victims taken in is only the tip of the iceberg

Sarah De Hovre

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Introduction: the mission of the specialised centres for victims of human trafficking

Since the 1990s, the Belgian government has officially recognised three organisations²⁷⁴ as specialised centres for the support of persons within the framework of the 'protection procedure for victims of human trafficking'. These are women and men, children and adults, whose nationality is Belgian, European or other, who have been exploited as modern slaves in Belgium.

The 'protection procedure' is an integral part of the Belgian multidisciplinary approach to combating human trafficking. This chain approach involves close cooperation between various partners²⁷⁵, who each have a very specific and essential mission, which is complementary to everyone else's mission.

Victims who choose to engage in the 'protection procedure' undeniably contribute to this fight. It requires a great deal of courage and strength to take this step! Thanks to the support and guidance of the support workers from the specialised centres, many victims manage to do it. It often boosts their self-confidence, because thanks to their testimonies, the Belgian authorities can act and prevent other people from becoming victims of the same criminals.

The specialised centres offer integral and holistic assistance, adapted to the needs of each victim. At first, victims are temporarily accommodated in one of our shelters, located at discrete addresses for security reasons, where they can stay for a few months before moving to a rented studio or apartment.

In addition, the victims benefit from long-term support (composed of three parts: administrative, legal and psychosocial) spread over three to five years, depending on the person's context and the length of the judicial proceedings against the perpetrators of human trafficking. The specialised centres support between 500 and 600 victims every year.

However, their mission isn't to go and look for victims in the field; their purpose is to actively ensure that the frontline services in contact with at-risk groups and potential victims are sufficiently informed in order to recognise the signs of a human trafficking situation. By 'frontline services' we mean the police and social inspection services, but also (and increasingly) stakeholders belonging to the vast 'social sector' (such as: Fedasil or Red Cross migrant centres, social services, legal advice services, youth care, hospitals medical centres or NGO). When a frontline service is faced with a possible human trafficking situation, it contacts one of the specialised centres to clarify the situation and then we refer the (potential) victim so that they are taken care of if necessary, and if they so wish.

For example: The work carried out by the 3 specialised centres in 1 year in 4 key figures

- 700 to 900 reports processed
- 100 to 150 victims housed in one of our shelters
- 500 to 600 victims receiving support
- 1,000 to 3,000 professionals trained or informed

1. Reports are the first step towards specialised support and therefore deserve a quality response

By 'report', we mean any request for help that reaches one of the specialised centres, by phone, fax, email or by someone coming to our offices. Every report is treated with care because anyone seeking help deserves an attentive ear: whether it is the (potential) victim who has had the courage to ask for help, or a professional who has taken the time to listen to the victim and contact us, or a private individual who is concerned about the fate of another human being in a difficult situation. Our mission involves offering an initial warm and humane welcome, so that everyone is listened to with respect and that each request for help receives a quality response (even when we can't offer the requested support ourselves).

²⁷⁴ PAG-ASA in Brussels founded in 1994, Payoke in Antwerp founded in 1987, and Sürya in Liège founded in 1995.

²⁷⁵ In the field, these partners include: the local and federal police, regional and federal social inspection services, public prosecutor's offices and labour prosecutor's offices, reception centres for foreign unaccompanied minors, and the three specialised centres.

As regards these reports, we would like to clarify several misunderstandings or 'myths'.

Myth 1: every report concerns a human trafficking situation

Not all the reports concern human trafficking situations. In many cases, it is clear from the first contact that it is another problem, such as social law disputes (e.g. non-payment of wages or long working hours), intra-family problems (e.g. violence or abuse), questions about residence procedures, questions about emergency overnight accommodation, etc.

In these cases, we also endeavour to help the person to look for a solution, and don't leave them to fend for themselves. We try to refer them to another relevant service. For this purpose, we have a very extensive social map and a network of (local) organisations with which we cooperate.

Myth 2: it only takes one conversation to process a 'relevant' report

The majority of reports aren't limited to a single moment but cover a series of different stages. During the first contact, the main objective is to draw up a general picture of the situation in order to assess whether the request for help falls within our field of action; this involves screening or filtering before we decide whether or not to launch our intake process.

For every 'relevant' report, i.e. with a potential indication of human trafficking, or when the situation is unclear after the first contact, we take various steps to further clarify the situation of the (potential) victim. The intake process begins with an intake interview, which is preferably scheduled in the agenda, so that the person and the worker from the centre concerned have enough time to go through everything and book an interpreter²⁷⁶ if necessary. An intake interview usually lasts between 1.5 and 2 hours. Sometimes, it is necessary to organise several in the interest of the (potential) victim as it isn't always easy to determine whether or not it is a case of human trafficking.²⁷⁷ It is therefore essential to create a relationship of trust so that the person involved feels comfortable enough to describe what happened. And it takes time to create this trust.

In addition to one or more intake interviews, it is sometimes necessary to contact the person who made the initial report again or to contact other services. Contact is only made with the consent of the victim concerned.

Myth 3: every reported human trafficking situation leads to the victim being taken into care

A large number of 'relevant' reports don't lead to the victim concerned being taken into care. There are various reasons: for instance, the victim isn't interested in our offer; the acts are time-barred or occurred abroad (subsequently, the victim can't access the protection procedure); the person's account contains too few concrete or verifiable elements (the chances of a criminal case are therefore nil); the reference judge for human trafficking issues a negative opinion; the person doesn't get in touch with us again despite various attempts by the centre to contact them; or, the person decides to return to their country of origin.

Our support is organised on a voluntary basis, which means that the victims decide for themselves whether or not to accept our offer. We like to give them absolute freedom and autonomy - it is a conscious methodological choice based on empowerment: for weeks, months or even years, these victims have lived in a situation of exploitation and control, without being able to make their own choices or take their own decisions. If the person doesn't wish to benefit from our support, we carefully refer them to other services, which may not offer 'specialised trafficking-oriented' assistance, but do have the necessary expertise to provide assistance in other areas.

²⁷⁶ Interpreters are an essential link in our work since the majority of victims are foreign and have little or no command of Dutch, French or English.

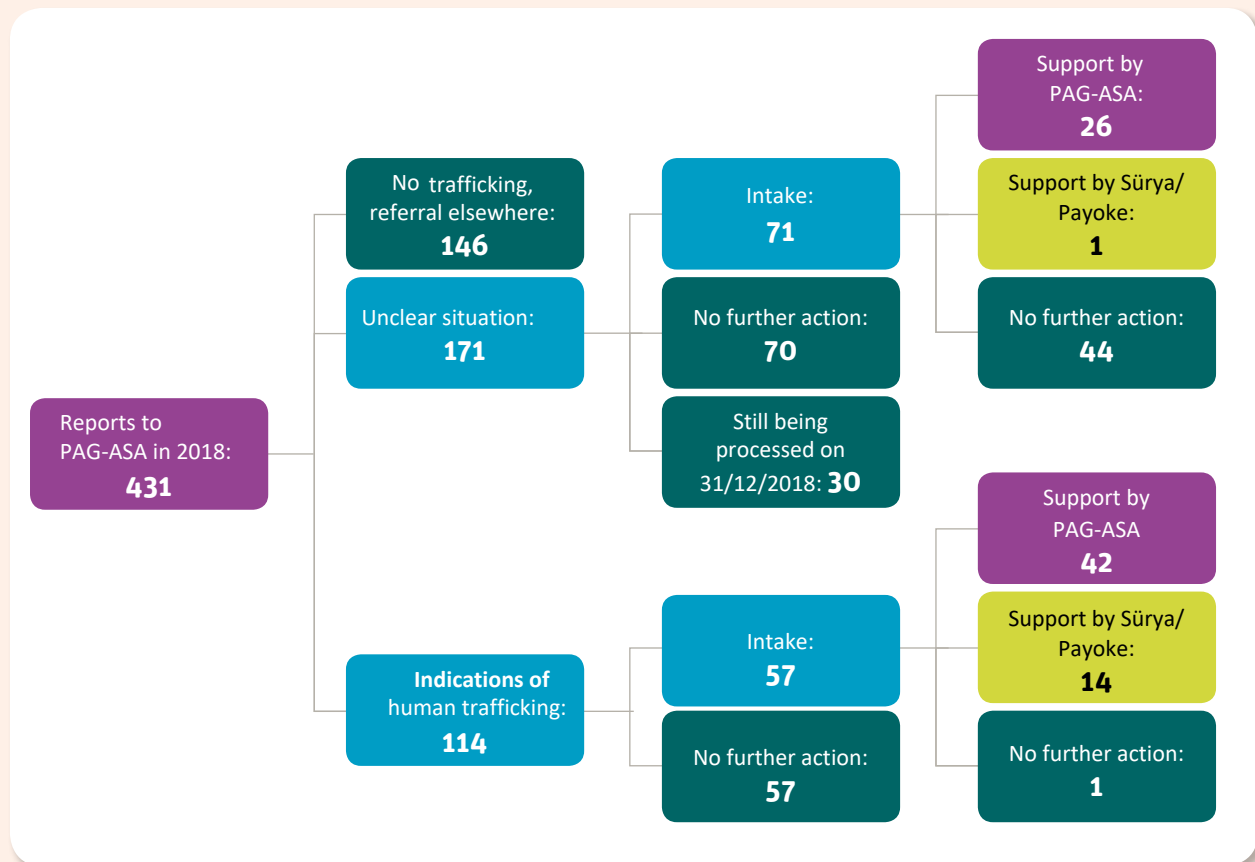
²⁷⁷ Ultimately, it is always the reference judge for human trafficking who is competent to classify certain acts as human trafficking.

For example: an analysis of PAG-ASA figures

In **2018** PAG-ASA dealt with **431** reports. After the initial contact, **146** of the situations clearly had no indications of human trafficking and the persons concerned were referred to other services. For the **171** reports where the situation was unclear, and for the **114** reports with indications of human trafficking, we suggested to each person concerned to start the intake process. An intake interview was only organised if the (potential) victim agreed to it.

In the end, **83** reports resulted in those concerned being taken care of and the start of support: **68** at PAG-ASA and **15** at Payoke or Sürya after being referred²⁷⁸ by PAG-ASA.

Furthermore, on 31 December 2018, **30** reports were still in the process of being examined: it will become clear at the start of 2019 whether it is a question of human trafficking and whether support will be initiated.



2. The number of victims supported by the specialised centres is only the tip of the iceberg

The exact extent of the phenomenon of human trafficking and the number of victims in Belgium (and elsewhere in the world) is unknown. The main obstacle is that human trafficking takes place under the radar, in hidden conditions. On the one hand, the criminals are well organised and find creative ways to deal with new realities. For instance, we have found that exploiters are increasingly offering sexual services through 'invisible' channels; in addition to the windows in the red-light districts where the police regularly patrol, they use the internet, social media, escort agencies and receiving clients at home, where it is more difficult for the police to detect exploitation and victims.

Furthermore, the victims are often too frightened to speak: fear of reprisals by the exploiters, also fear that the authorities will send them back to their country of origin. In addition, shame and feelings of guilt are a major obstacle when it comes to speaking out.

According to an estimate of the International Labour Organization²⁷⁹, there are 1.5 forced labour victims for every 1,000 inhabitants in European Union countries. With a population of 11 million inhabitants, that would mean 16,500 victims of labour exploitation in Belgium alone.

²⁷⁸ A referral was necessary because in 14 situations, there was no room at our shelter and in one situation, the person couldn't stay in Brussels for security reasons.

²⁷⁹ ILO, Global Estimate of Forced Labour 2012: Results and Methodology, June 2012, p. 15.

According to an estimate of the Global Slavery Index.²⁸⁰ These figures are therefore very different from the figures available in our country. Every year, Myria, the Federal Migration Centre, quite rightly states in its annual report that the figures available don't reflect the true extent of the phenomenon of human trafficking, but only the recorded acts and the victims detected by the authorities. The figures available on human trafficking only show the visible part of the iceberg.

We are also aware of the fact that the figures from the specialised centres aren't representative of the true number of human trafficking victims in Belgium. Our annual figures for 'support started' only concern victims who have begun the special protection procedure. However, many victims have also chosen not to go through this procedure for various reasons (as mentioned above). Moreover, our annual figures for 'registered reports' don't include all the (potential) victims either. The registration system is currently organised in such a way that only the victims referred to one of the specialised centres are registered. However, many victims have never been reported to us; therefore, they aren't registered anywhere.

This finding leads us to two other misunderstandings or myths that we would like to clear up.

Myth 4: victims are mainly reported by the police and social inspection services

While most reports were still coming in through the police and social inspection services at the start of this century, this hasn't been the case for several years now. More and more reports are reaching us through other stakeholders (as mentioned in the introduction). In addition, more and more private individuals are also finding their way to the specialised centres to report a human trafficking situation.

In the last few years, the share of reports from the police and social inspection services has varied between 15 % and 25 % of the total number of reports reaching the three specialised centres. Of the 898 reports processed by the specialised centres in 2018, 158 came from the police and social inspection services.

Given that these services have teams specialised in combating human trafficking, their reports are always relevant and very often lead to the initiation of support.

Myth 5: all detected victims are referred to the specialised centres

In 2018, the police identified 358 cases with elements of human trafficking and 301 cases were sent to the public prosecutor's office for acts of human trafficking.²⁸¹ At least one victim must be involved in each of these findings and in each one of these prosecutions because human trafficking can only be considered as such if a person has been exploited. However, when comparing these two figures with the number of victims who were reported to the specialised centres by the judicial authorities in 2018 (158), we can only surmise that many victims of human trafficking are never reported (and therefore not registered) in Belgium.

This reality is confirmed by the fact that we are regularly faced with judgments issued by Belgian courts and tribunals in which victims are mentioned who have never been supported or even seen by one of the specialised centres.

The offence of 'human trafficking' doesn't exist without a victim. Hence, where are the victims of these recorded and prosecuted acts? Various factors can explain why the (potential) victims aren't reported or referred to one of the specialised centres. As regards frontline services: insufficient knowledge on the issue of human trafficking and insufficient human resources to detect invisible forms of human trafficking (which implies that many victims are never detected). As regards the victims: after receiving information from the police or the social inspection services, they don't wish to be referred to one of the specialised centres (owing to a fear of reprisals against themselves and their families, a lack of knowledge of social services, a lack of trust in the public authorities, the fear of being deported because they don't have a residence permit, or simply because they don't consider that they are victims). However, it is essential and compulsory²⁸² to contact one of the specialised centres for each human trafficking situation.

²⁸¹ These figures appear in the present Myria report. They don't include the findings made by the social inspection services, or the cases opened by labour prosecution offices.

²⁸² This obligation to make contact and refer victims is explicitly stated in two texts: Article 61/2 of the Aliens Act and Chapter 3.3. of the Ministerial Circular of 23/12/2016 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated smuggling in human beings.

²⁸⁰ Walk Free Foundation, *Global Slavery Index 2018*, p. 180.

We are aware and regret that the police and social inspection services throughout the country are faced with a serious shortage of human resources to combat human trafficking. In addition, training and raising awareness of human trafficking doesn't seem to be a priority within these services. However, this situation has a direct impact on the number of recorded acts and the number of victims detected.

3. Reflection and taking action: a new reporting and referral policy with a central point of contact as the next stage?

As long as the extent of the phenomenon of human trafficking and the number victims is unknown, it is difficult for stakeholders in the field, policymakers and politicians to assess the investments that need to be devoted to combating human trafficking. However, it is clear that the current trend of investing less and less in this fight is having a negative impact on the entire multidisciplinary chain: there are too many cases for too few investigators; questioning is delayed in some cases; evidence may diminish or disappear because of these delays; some investigations take more time which can, in turn, jeopardise the reasonable time limit; criminals have the feeling that 'everything is possible and everything is allowed'; and the victims are demotivated and even disappointed by the law, or feel ill-treated by system.

Every partner in the multidisciplinary 'chain' approach has a vital mission, which is complementary to everyone else's. This chain is as strong as its weakest link. This means that every partner must have enough resources to be able to fulfil their mission and that the government must invest sufficiently in this respect at all levels of action.

Human trafficking is the third most lucrative criminal activity in the world after drugs and arms trafficking.²⁸³ If human trafficking isn't seriously addressed, the way is wide open for traffickers to continue their trade in human beings and all their other illegal activities. Therefore, it isn't only a question of the individual rights of each victim, but also of a general societal interest.

From our hope for a better life for every victim and a society in which human trafficking will no longer exist, PAG-ASA would like to put some food for thought on the table. We are convinced that an adapted reporting and referral policy will help to better understand the extent of the problem in Belgium. We believe this step is necessary to be able to make better political choices. We would like to work with all the relevant partners to develop a uniform and rigorous reporting and referral policy, with the obligation for all stakeholders to report all (potential) victims of human trafficking, possibly anonymously, even when they don't seem to want help, or wish to be referred to a specialised centre, or when they are already supported by other services. This obligation would also help to ensure that each victim detected is at least informed of their rights and offered the choice to accept, or not, the offer of the protection procedure.

Such a reporting and referral policy would be greatly facilitated by establishing a central point of contact (with a single phone number, preferably free of charge) where all (potential) victims of human trafficking should be reported and registered. This central point of contact²⁸⁴ could make an initial analysis of the situations and refer the (potential) victims to the appropriate services. Hence, basic information could be gathered, such as: type of exploitation, sector of exploitation, place of exploitation, country of origin, age, gender. This information is necessary to be able to establish a clear picture of the type and extent of human trafficking in Belgium. The data could be used for in-depth analysis by our National Rapporteur on Trafficking in Human Beings (Federal Migration Centre, Myria), as well as for reports, analyses, investigations, and to perhaps result in a proactive prosecution policy one day.

A uniform and rigorous reporting and referral policy, facilitated by a central point of contact for the whole country? A dream or a realistic and achievable possibility of better understanding the extent of the phenomenon of human trafficking, in Belgium, so we can then make better political choices in the fight against human trafficking?

283 FATF-GAFI Report, *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011.

284 Ideally, this central contact point would be managed by the specialised centres which have the required expertise and years of experience, as long as the authorities provide the necessary human and financial resources.



External contribution: Initiatives of the Thematic Directorate for Trafficking in Human Beings NSSO Inspection Department and the role of social inspectors in informing potential victims of their possibilities for assistance

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Detection and referral of victims: increased attention but a constant sore point

Our ECOSOC teams have been paying special attention to the effective referral of detected victims to approved reception centres for victims of human trafficking for several years. Our inspectors have been informed of this over the past few years, and have been asked to pay more attention to the interests of victims and their referral to an approved reception centre. In doing so, the NSSO intends to meet the government's expectations within the context of interdisciplinary cooperation in the fight against human trafficking, especially for the purpose of labour exploitation. Circular 01/2015 of the Board of Prosecutors General on the investigation and prosecution policy concerning trafficking in human beings, and the Circular of 23 December 2016 on the introduction of a multidisciplinary cooperation regarding victims of human trafficking and/or certain aggravated forms of human smuggling, are also important documents for the Thematic Directorate for Trafficking in Human Beings.

Integration of the Social Inspectorate into the NSSO Inspection Department

Following the integration of the former Social Inspectorate of FPS Social Security into the Inspection Department of the National Social Security Office (NSSO) on 1 July 2017, the activities of the Social Inspectorate's ECOSOC teams concerning the fight against human trafficking were included in the mandate of the NSSO's newly created inspection department.

Over the past few decades (since the mid-1990s), the Social Inspectorate has made great efforts to detect and establish facts relating to human trafficking, especially for the purpose of labour exploitation, to cooperate with other players in this field (labour prosecutors, police services, reception centres, the Immigration Office, the Housing Inspectorate, other inspection services, etc.) and to report these facts to the labour prosecutor. The ECOSOC teams have thus become an essential partner in Belgium's multidisciplinary approach to human trafficking, especially for the purposes of labour exploitation, an approach that has also been welcomed at international level.

The NSSO would like its newly established inspection department to continue to play this role in an expert manner. The NSSO's aim is to make its inspection department a pioneer in the fight against labour exploitation, thus responding to national and European trends of increased exploitation in a growing number of sectors of activity. In the new vision of the NSSO's inspectorate, it is stipulated that the service wants to excel in the fight against labour exploitation. Workers who are potential victims of exploitation are considered as stakeholders of the NSSO's inspection department: our inspection department will inform them during checks, about their social rights and the protection procedure for presumed victims of human trafficking and refer them to a specialised centre for the reception of human trafficking victims.

In order to consolidate this commitment, in addition to continuing the work of the specialised ECOSOC teams in the 10 provincial directorates (approximately 40 inspectors), a central thematic directorate on human trafficking has been created: it determines policy in this area, maintains the network in which research activities are organised and coordinates and supports the running of the ECOSOC teams.

The priorities of the Thematic Directorate for Trafficking in Human Beings within the NSSO inspection department are to detect the illegal employment of foreign workers, by focusing on defined risk sectors, and to detect the situations of human trafficking described in Article 433quinquies of the Criminal Code. The checks carried out by our inspectors, who are responsible for detecting and investigating human trafficking offences, are aimed at detecting cases of labour exploitation in cooperation with the judicial authorities, police forces and other relevant services.

They clearly indicate that help for victims of human trafficking is the subject of special attention and that the approach of social inspectors and police officers in the field must be appropriate. In our Thematic Directorate for Trafficking in Human Beings in general and within the provincial ECOSOC teams, the attention paid to the interests and protection of victims in investigations of labour exploitation has been significantly increased.

As regards quantitative results, only the following data is mentioned in this contribution: in the cases closed in 2018, 56 reports on acts and indicators of human trafficking, in which 65 potential victims were mentioned, were forwarded to labour prosecutors and investigating judges. Thirty-nine presumed victims were supported by a specialised reception centre (Sürya, Payoke, PAG-ASA). It should be noted that some of the 39 presumed victims were already receiving support from a centre when our investigation began (interviews of these people and/or further investigation of the exploitation).

However, in general, the detection of potential victims of human trafficking remains a matter of concern. Many situations in which workers are exploited aren't detected in time. This is due, on the one hand, to insufficient knowledge of the problems encountered by the various players in the field and, on the other hand, to a capacity problem that can't be solved fast enough. This is all the more true since the capacity of the police to deal with this phenomenon has been reduced - it is no longer always easy to obtain police assistance for our ECOSOC actions. One stumbling block that may result from this is that the transfer of victims detected in the field to a reception centre is in some cases problematic because the police don't have the ability or the means to transport them.

Hence a call for greater awareness of the issue of labour exploitation, both within inspection and police services, so that more attention can be paid to indicators of human trafficking during on-site inspections, and for increased resources and capacity to be allocated to specialised teams such as ECOSOC within the NSSO inspection department, so that detected situations of exploitation can be thoroughly investigated.

There are a variety of reasons why detected potential victims aren't referred to one of the three accredited centres. One of the main reasons for this is that victims found during a workplace inspection in a situation considered by the inspector to be a situation of presumed exploitation are, in many cases, reluctant to accept a proposal to be put in contact with a specialised reception centre. The reasons for this refusal, which are rarely given to the inspector, vary: the person is satisfied with their professional situation and accepts the sometimes appalling work and living conditions, their current situation is often better than their previous one, they don't see their situation as exploitation at all, they don't want to lose their job, they are afraid of being deported from the country because they are staying illegally, they consider their employer as an ally rather than an exploiter, but at the same time they are also sometimes afraid of them, they fear reprisals, they have received instructions from the employer on what to do during an inspection, they are ashamed and refuse to admit that they are being exploited, they distrust the inspectors who are usually accompanied by the police, they perceive the centre as something unknown and sometimes far from the place where they live and work, etc.

Furthermore, inspections often take place at irregular times, which means that some reference judges can't or can no longer be reached in time and the inspectors are forced to contact the judge on duty. The latter isn't always familiar with offences of human trafficking for the purpose of labour exploitation, or with the procedure in place for potential victims of trafficking. If the judge on duty is unfavourable to the idea of considering a worker as a potential victim of human trafficking, it is difficult for the inspector to contact a reception centre, even if the circular of 23 December 2016 allows it. In many cases, the discovered worker makes no statement to the inspectors, making it difficult to refer them to a centre, especially if the indicators established during an initial inspection aren't obvious.

Obligation of the social inspector to inform potential victims

It is therefore of the utmost importance that an inspector, who is confronted with workers during an inspection whom they suspect of being victims of labour exploitation in the sense of Article 433 quinquies, properly informs the potential victims about their situation, their rights and the assistance they may receive and, in particular, about the possibility of legal aid for the recovery of unpaid wages.

As the Thematic Directorate for Trafficking in Human Beings, we urge ECOSOC inspectors to be sufficiently proactive in this area, as we are aware that if the victim is not referred to a reception centre, their chances of obtaining non-material and material compensation may be non-existent.

If there are clues that could indicate an exploitative situation through observations in the field or statements that have been made, it is essential to immediately report the potential exploitative situation to the reference judge and contact one of the reception centres. During these checks, our inspectors also pay special attention to the social status of the workers found and to the declaration of their working hours and salary to the NSSO. Indeed, many foreign workers and victims of labour exploitation are often bogus self-employed workers.

It isn't necessary to formally question the victim during the inspection to consider them a presumed victim. On the other hand, the failure to make a statement isn't a reason for not referring a potential victim to a reception centre. A victim who doesn't consider themselves a victim (which is often the case) must also be informed and referred. If the inspector believes they have sufficient evidence (indicators) to consider a worker as a presumed victim of human trafficking, they should inform the worker about the special protection procedure for presumed victims of human trafficking. Inspectors and police officers aren't sufficiently aware that it is compulsory to provide this information as described in the circular of 23 December 2016.

Our inspectors use the multilingual leaflet for victims of human trafficking for this purpose, but they can also pass on the information by other means. In this respect, we would like to underline the importance of using an interpreter. In addition, we generally aim to create conditions that are likely to induce trust in potential victims and encourage them to provide information on their working conditions. Inspectors should make it clear that they are monitoring the employer and that they want to protect victims of exploitation by the employer by guiding them towards the specific protection procedure. If possible, they will do so in a quiet environment without the employer, so that the latter can't exert any pressure on the workers. It is also recommended that no other workers be present at the first interview, which should preferably take place somewhere other than the workplace. In practice, this isn't always easy to do. Our inspectors are also advised to give their business card to workers they suspect of being victims of exploitation, but who refuse to contact a reception centre, so that they can contact them later if necessary.

The importance of the duty to provide information and the inspector's obligation to make every effort to put potential victims in contact with one of the three specialised reception centres (PAG-ASA, Sürya or Payoke) can't be overemphasised. An inspection of a workplace is often the first and only chance for a victim of exploitation to receive assistance. Experience shows that it is extremely difficult for victims of labour exploitation to obtain adequate compensation and, in particular, to obtain payment of the wages owed to them, if they aren't referred to a specialised reception centre. Victims who aren't supported by a centre don't have access to either criminal or civil proceedings because they are too expensive, complex and time-consuming. The victims also often return to their country of origin.

On the other hand, in our opinion, the referral of presumed victims to a specialised reception centre is the best guarantee of recuperating wage arrears. In particular, the centre can take care of appointing a lawyer and filing a civil suit in the criminal case following the investigation.

Underpaid or unpaid wages: an indicator of exploitation

Our role as frontline players and investigators of human trafficking also involves the recovery of victims' wages. What is crucial is that we consider the payment of unacceptable wages as an indicator of exploitation rather than as a violation of social law (which, of course, is also the case). We look for this indicator, we identify it and we use it as proof of exploitation. Although we aren't competent for the law on the protection of workers' wages and salaries and therefore aren't in a position to compile an official report on the subject, we are qualified to establish that workers are working in conditions contrary to human dignity and, consequently, to identify the indicators that show this is the case.

Hence, the payment of salaries that are clearly too low is one such indicator, as is the non-payment of salaries, which we report to the labour prosecutor. The same reasoning applies to excessively long working hours (for instance, 12 hours a day, seven days a week). We have no authority over the regulations concerning working hours, but we shall of course use this proof as an indicator in our evidence of exploitation. The same applies to substandard housing and other areas such as safety and well-being, where indicators of an unacceptable quality of life for workers or unacceptably high levels of dependency on their employer/exploiter can be found. We aren't going to compile an official report on these various issues, but we shall gather evidence to demonstrate these facts and thus prove that there are sufficient indicators to conclude that we are dealing with work or services contrary to human dignity, and therefore human trafficking for the purpose of labour exploitation. In other words: we consider all the above-mentioned offences from the point of view of common law (Criminal Code / offence of trafficking in human beings, for which we are declared competent by Article 81 of the Residence Act) rather than from the point of view of special or social criminal law (Social Criminal Code / offence of non-payment of worker's wages). Of course, that doesn't prevent the competent services (Social Legislation Inspectorate, Well-being at Work Inspectorate, Housing Inspectorate, etc.) from compiling official reports for offences that fall within their specific competences. These official reports can thus considerably strengthen the basis for the offence of human trafficking.

Financial approach

We would also like to highlight another aspect relating to the quest for the effective compensation of victims. Increasingly, and often at the labour prosecutor's request, our attention is focused on the exploiter's available assets when we carry out the first inspection, with a view to subsequent seizure and confiscation by the criminal court. Ideally, the confiscated assets should be awarded to the victims.

At the labour prosecutor's request, we then make a calculation of the financial benefit that will allow us to carry out the seizures and confiscations.

Ideally, our calculation of the financial benefit illegally acquired by the exploiter is accompanied by a financial investigation that can be carried out by the police.

At the same time, ECOSOC inspectors collect as much information as possible in the course of their investigations, with a view to ulterior financial compensation, in order to be able to estimate the damage suffered by the victims. This will mainly involve a thorough investigation of the nature and extent of the services provided (period of employment, number of working days and hours), in order to be able to determine the wages due. Indeed, regardless of the status of the exploited workers, even if they were staying illegally in the country, the employer must pay them a wage equivalent to that which he would pay to a legally employed worker in a comparable work relationship.

The inspectors will also report to the NSSO on the services provided and the wages owed to the exploited workers. The employer of the exploited worker obviously has to pay the social security contributions that they should have paid had the work been declared, including late payment fines and possible administrative fines. This also enables victims of labour exploitation to acquire social rights from their work.

Growing interest in other services to raise awareness

To conclude, we would like to emphasise a positive evolution: in 2018, we noted a growing interest among other inspection services in the problem of labour exploitation. At the end of 2018 and in 2019, we (the Thematic Directorate for Trafficking in Human Beings of the NSSO) provided awareness-raising sessions and basic training on human trafficking to the Social Inspectorate and Housing Inspectorate of the Brussels-Capital Region, to inspectors of the National Institute for the Social Security of the Self-employed (NISSE) and to the Flemish authorities' Social Inspectorate. This shows that the management of these inspectorates is paying attention, even if they aren't authorised to detect the offence of trafficking in human beings. However, they do wish to make their inspectors aware of exploitation indicators. In our training sessions, we give advice on what these inspectors should do when they are faced with a possible situation/victim of human trafficking.

In 2018, we offered the same training sessions to inspectors from teams other than ECOSOC, also in our own inspection department in each provincial directorate. Any inspector is likely to be faced with a situation, during an inspection, where workers are being exploited. In such cases, it is important to act quickly and properly. Initial findings and initial contact are essential for investigations to be carried out and, above all, for the protection of the exploited victims.

Conclusion

Just like the integration of the Social Inspectorate into NSSO's inspection department, the subject of human trafficking has found its place in the new inspection department: the fight against labour exploitation is part of its main activities.

Despite the increasing attention paid to the interests of victims, the detection of presumed victims remains problematic and there is no clear explanation for this.

Properly informing potential victims is a difficult, delicate, but crucial role for social inspectors, especially since referral to a specialised reception centre is the best guarantee for the victim to be compensated. Within this context, financial investigations into the assets of employers/exploiters, the calculation of their proceeds and the seizure of assets are also particularly useful, so that confiscated assets can possibly be used to compensate victims.

The awareness-raising and training efforts of all social inspectors, which began in earnest in 2018, must be continued.



External contribution: Business model as an investigative tool in international human trafficking

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In this contribution, I shall briefly describe how human trafficking reaches far beyond the relationship between the victim and the exploiter at the place of exploitation. A broader view of the offence not only allows all the players involved in the offence at a given time to be identified and prosecuted, but also to identify the criminal proceeds with a view to their confiscation and subsequent compensation of the victim. International cooperation plays an essential role in this respect.

Introduction

The trafficking of human beings isn't an isolated act but a complex series of associated acts. It is therefore essential to approach human trafficking as a complex offence, which isn't limited to the exploitation aspect. The offence must be considered as a whole, so that all the players can be identified.

Human trafficking can be considered as a process, in which the victims pass through different phases and where different people can be involved each time.

The first phase is recruitment, with the aid of pretexts, or even the kidnapping of a victim. The second phase relates to the transportation of the victim and their entrance into another country. The third phase is exploitation during which the victim is forced to commit sexual acts or work in inhumane conditions. The fourth phase is getting rid of the victims, because their value has dropped.

Human trafficking can also be accompanied by many other offences. They can be instrumental, i.e. committed to facilitate the offence of human trafficking (use of forged documents, violence with a view to exercising control over the victim), or secondary, in which case they are the result of the activity of human trafficking (money laundering, tax evasion, etc.).

Offence motivated by profit

Those involved in human trafficking assess the opportunities, the profit, the risks and the possible costs, and then make the necessary decisions.

The players within the organisation

It is essential to understand how these players work. There are different sorts of organisational structures in the realm of human trafficking. At one end is the soloist, who recruits one or more victims alone, with a view to their exploitation. At the other end are well-structured organisations, with different members, each with their own role to play.

It is precisely this organisational structure that must be brought to light in order to have an idea of the potential players involved. The following table can be used for this purpose:

Phase 1	Phase 2	Phase 3
Recruit	Transport	Exploit
Where?	From where to where?	Where?
Who?	Who?	Who?
By whom?	By whom?	By whom?
How?	How?	How?
Costs?		
Cash flows		

For each column in the table, it is possible to determine the best way to proceed and the investigative opportunities available. The following example illustrates this.

Operation popcorn

This investigation began when a large number of very young Czech women were found on a website featuring classified ads of a sexual nature. An examination of these classified ads revealed that the women were always photographed in the same room. The text under the ads was identical and two phone numbers were given.

If we were to focus only on exploitation, we would examine where the women provide their sexual services (place of exploitation) and who controls them (who exploits them). After identifying and interviewing these victims, those in their direct entourage were identified. When the victims were interviewed, it was quickly possible to determine their income and how much they had to pay to cover mainly the rent for their place of work (necessary to calculate the illegal financial benefit).

However, it was also possible to go further than the actual exploitation in Belgium. The victims were all from the Czech Republic. Therefore, this raised the question of how they all arrived in the same place in Belgium and who was responsible (the victims' statements revealed that they were recruited either in a nightclub or by a photographer in Prague). The manner in which the exploitation is maintained (in this investigation, it was established that cameras had been installed in the entrance and the living room where the victims were to receive their customers, and a subsequent investigation established that the cameras had been monitored from the Czech Republic. Furthermore, the Czech organisation used a Belgian facilitator who managed the Belgian branch of the organisation, in collaboration with the members of the organisation). There is also the question of what happens to the illegally obtained money.

If we place the known elements in the table, this is what we obtain:

Phase 1	Phase 2	Phase 3
Recruit	Transport	Exploit
Czech Republic	Czech Republic to Sint-Niklaas	House in Sink-Niklaas / flat in Antwerp
Girls barely 18 years old in a precarious social and financial situation	Identify the victims	Which victims?
By a photographer, spotters in a nightclub in Prague	By whom?	By whom?
Promise of work as a model abroad	Low-cost plane tickets-	Monitored in the Czech Republic through cameras Monitored in Belgium by accomplices
Costs Plane tickets, rental of a house and a flat, camera system and maintenance, etc.		
Revenue stream The cash is handed over to an accomplice in Belgium, but where does it go?		

The table clearly indicates that there was much more than the actual exploitation in Sint-Niklaas and Antwerp. It was obvious that close cooperation with the Czech authorities was required in this case. It rapidly transpired that the photographer was known and that the nightclub in which he recruited people was in the hands of various people known for acts of human trafficking in the Czech Republic. A financial investigation revealed that large sums of money had been transferred to different people in the Czech Republic. We had to intervene early in Belgium because it was likely that an abducted child victim was involved. The prosecutions in Belgium finally focused on the actual exploitation in Belgium by different persons who were in Belgium (one Belgian and three Czech nationals). With the help of Belgian investigative elements, the Czech Republic has continued the investigation of the criminal organisation based in Prague. We are clearly dealing with a well-organised criminal organisation here.

Human trafficking as a criminal market

When we talk about human trafficking as a criminal market, it is impossible to calculate the turnover, even approximately. Nor do we know the consequences of this underground economy, or the moment when it joins the legal economy. Human trafficking is an offence with a low risk of detection and a high profit. Victims of human trafficking don't know how much their exploiters earn, let alone what happens to that income. In most cases, a victim will only be able to disclose their own income and the person to whom they had to give some (or all) of it. This is why a financial investigation must be initiated right at the start of an investigation into human trafficking.

A financial investigation can be three-dimensional:

- An examination of the past, by reconstructing the offence with a view to calculating the illegal gains in order to confiscate them.
- An examination of the present, by analysing data obtained during the financial investigations (e.g. financial intermediaries, bank accounts, businesses, etc.) on a Belgian, European and international level, can possibly lead to new investigations into human trafficking and enable us to trace the entourage that launders the criminal funds and assets, or that takes care of 'transport' or the 'compensation' of funds.

- An examination of the future, by detecting indications of criminal activities, identifying the *modus operandi* that should lead to a better understanding and knowledge of the offence.

In this contribution, I shall limit myself to the use of financial investigations for the calculation of the illegally acquired financial advantage and the detection of the financial advantage with a view to its confiscation.

When setting up the investigative team within the framework of an investigation into international human trafficking, it is crucial to directly include a financial investigator in the team. The latter doesn't focus on reconstructing the human trafficking offence with a view to identifying the exploiters, but rather on detecting the facilitators who make the offence possible, generate expenses and assets, and on identifying assets that can be seized and confiscated. The elements of the investigation are approached from a financial point of view and the financial elements will be put together, like a jigsaw puzzle, to form a whole. The following example clearly illustrates this.

Operation Galaton

This investigation uncovered a criminal organisation in Belgium involving 11 people who sexually exploited 41 young Hungarian women identified in Ghent between February 2013 and March 2014. Several members of this organisation also sexually exploited victims in the Netherlands.

Initially, a team of investigators was temporarily set up in Belgium, composed of members of Ghent police zone's local investigation team and Ghent's Federal Judicial Police, to which a financial investigator was added. A joint investigation team (JIT) was created with Hungary and the Netherlands at a later stage. Hungary was a key partner, given that the perpetrators and the victims came from Hungary. The investigation quickly revealed that a large part of the income from human trafficking had been sent to Hungary.

The financial elements of this investigation and the close collaboration with Hungary led to the identification of the assets in Hungary that could be seized with a view to their confiscation:

- Different vehicles, including the new Audi A4, A8 and S8;
- HUF 6,880,000 (approximately EUR 21,000) were found in the side door of the Audi A8;
- Bank accounts
- Real estate;
- High-tech electronic equipment.

The financial elements of the investigation allowed us to understand:

- the amounts generated by the sexual exploitation: a total amount of EUR 406,040 was seized;
- the way in which the victims were brought to Belgium (by car and using low-cost airlines in the Netherlands);
- the limited proportion of income that the victims could keep (one victim initially stated that during the three months she was in Belgium, she had saved EUR 1,500, and the investigation showed that in three months, the organisation had earned approximately EUR 40,000 thanks to her);
- the way in which these funds were returned to Hungary (especially through Moneytransmitters, where victims sent money or used third parties to send money; through parcel delivery companies, whereby the money was concealed among baby clothes, jeans, shoes; by means of money couriers who were sent to Budapest on an aeroplane with a suitcase full of money, without knowing the contents).
- the way in which these funds were invested (the investigation revealed that the money was placed on bank accounts in the name of children belonging to members of the organisation);
- the cost structure of the organisation (rental of hotel rooms and apartments to house the victims, the small proportion of their income that the victims could keep, the amount they had to pay for their window (EUR 120 per 12-hour period), condoms, an allowance for their accommodation, cigarettes, sexy clothes, etc.).

The necessary certificates were sent to Hungary in view of the application of the principle of mutual recognition to confiscation orders (Article 4 of Council Framework Decision 2006/783/JHA).

Hungary also opened an investigation into money laundering.

Conclusion

We need to be aware of the fact that human trafficking is a complex and constantly shifting offence. Investigations into human trafficking are mainly focused on the exploitation of victims. However, financial investigations offer a real added value to the destabilisation and possible dismantling of criminal organisations. The reconstruction of the illegally acquired assets is also essential for the victims. The court can award these illegal assets to the victims.

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