



2017 Annual report

Trafficking and smuggling
of human beings

Online_



Federal Migration Centre

2017 Annual report

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of human beings

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INTRODUCTION

Criminality is growing, the fight is adapting

This is the 20th report published by Myria on human trafficking and smuggling. Twenty years, almost a generation, in which the world has changed considerably. The technological changes during these two decades, especially the internet, have had the desired impact. This certainly applies to the issues covered in this report, in particular the criminal networks which are active in human trafficking or smuggling.

Human trafficking and smuggling often remains invisible. Invisible because the victims are exploited in silence, under the 'omerta' of criminal circles. Invisible because victims all too often protect their abusers, out of fear. Invisible because, like every crime, human trafficking and smuggling adapts to new information technologies.

Two years ago, we approached this 'underground' reality to a certain extent in our report *Tightening the Links* which was partly devoted to the *loverboy* phenomenon. This year, we have decided to devote more attention to the issue of online human trafficking and smuggling. In fact, the internet and social media are meeting places for organising and mutually facilitating human trafficking and smuggling. It is through these social media for example that pimps recruit their victims and market their 'offers'.

Current events also show that smugglers who are exploiting the migration crisis are making their services known to potential migrants through social media, and sharing information about migratory routes. As the European Migration Network (EMN) noted in its report, the increasing use of these networks is due to their anonymity, and lower costs. They also allow a large audience to be reached quickly. In addition, it is less risky for smugglers to communicate with each other via social media than over the phone.

Like an endless game of cat and mouse, internet and social media have also become operational terrain for the police and judiciary. As a true reflection of society, where hundreds of relationships are started and maintained every day, social media have turned out to contain a wealth of information which victims can take advantage of. The internet can also be used to cross-check transfers of funds and other elements that may indicate a criminal offence. In this area, and despite the proactive involvement of the authorities, there is still much progress to be made, particularly in the area of international cooperation. Myria

believes that the use of the internet and social media as a method of investigation should be reinforced, including at the level of the front-line services and the magistrates. Combating economic exploitation requires particular attention. It requires a reinforcement of the resources allocated to this digital fight.

Progress and concerns

Otherwise, and as is the case every year, this report presents an assessment of the policy for combating human trafficking and smuggling, as well as the main statistics and judicial results in this area.

In terms of figures, the police recorded a general decrease in the number of human trafficking offences between 2012 and 2016. In 2016, most offences were committed in Brussels, in the provinces of Antwerp and Hainaut, and in East Flanders. Half of the offences were related to sexual exploitation. The number of persons involved in the procedure for obtaining 'victim of human trafficking' status remains stable. We also note that 2016 was characterised by a large number of victims of sexual exploitation from Nigeria.

However, there was a sharp increase in the numbers of human smuggling. The number of crimes registered by the police tripled between 2012 and 2016. This primarily concerned the judicial districts situated along the E40 motorway (Brussels, Ghent, Bruges), which allows us to make a link between the figures and the sharp increase of the migration flows that reach or pass through our country over the same period.

From a legal perspective, recent events were marked by significant progress in the case which became known as "the Conrad princesses" case, for which Myria initiated civil proceedings. This symbolic case of economic exploitation in the context of human trafficking, for which these princesses from the UAE were prosecuted, is an important signal against impunity for such actions. We observed that this case had a broad international impact, which still resonates. This important ruling should also serve to raise awareness within the hotel sector regarding these trafficking practices, so that hotels can be held liable in the future if they remain silent.

In general, Belgium continues to set a good example in the fight against human trafficking and smuggling. However, as is the case every year, we criticise the lack of a structural solution for financing reception centres for victims of human trafficking. As an independent national

rapporteur for human trafficking, Myria also has concerns regarding the consequences of the recent reform of the Social Inspectorate, which is now integrated within the National Social Security Office. Belgium's expertise in combating human trafficking is based, *inter alia*, on the specialisation of the social inspection services. It would be highly detrimental if streamlining resulted in a reduction in the quality of the fight against human trafficking.

Furthermore, we can address a particular concern in this introduction: Myria, the Federal Migration Centre, is still confronted with linear, unilateral and disproportionate cutbacks, which were decided on by the federal government in December 2014, contrary to the organic law which is supposed to guarantee its independence by means of fixed funding. This is no small matter, especially as regards our work in the area of human trafficking and smuggling, and promoting the fight against these phenomena: our role as an independent national rapporteur is directly related to our ability to act in complete financial independence. For example, as is the case with all Myria functions, we regret the fact that the cutbacks limit our ability to intervene in judicial matters. In 2016, we were able to initiate civil proceedings in seven cases. This figure is likely to be lower in 2017. This forces us to make difficult choices. This restriction is generally a bad signal in the fight against human trafficking and smuggling. A reduction in our ability to initiate civil proceedings also reduces our ability to defend the interests of society, and to obtain symbolic and favourable verdicts for victims of human trafficking. The weakening of Myria undermines the fight against human trafficking and smuggling.

François De Smet,

Director



Part 1: Myria in action

In 2016, Myria initiated civil proceedings in seven new cases, five of which involved human trafficking, and two of which involved human smuggling. Myria fulfilled its role as observer and participant within the Interdepartmental Coordination Unit for the fight against human smuggling and human trafficking, and for the bureau. Myria also ensures the secretarial function for both of these bodies. Myria also actively participated in the meetings of the informal network of national rapporteurs and equivalent mechanisms in the area of human trafficking. It continued its policy of demographic (Myriatics) and legal (Myriadocs) publications. Myria also continues to fight for its independence in the light of non-regulatory federal cutbacks. Myria has become a UNHCR partner for refugees with regard to their right to family reunification.

The logo for MYRI is displayed in a blue, wavy, cloud-like shape. The letters M, Y, R, and I are white and positioned within the peaks of the waves.

Centre fédéral Migration

Federaal Migratiecentrum

Federal Migration Centre

Föderales Zentrum für Migration

1. INSTITUTIONAL SITUATION

As an autonomous public institution, Myria, the Federal Migration Centre, fulfils three complementary legal tasks, in complete independence: safeguarding the fundamental rights of foreign nationals, providing information on the nature and scale of migration flows, and boosting the fight against human trafficking and smuggling. Myria was officially inaugurated on 15 March 2014. Since August 2014 it has had a Board of Directors, and its first director was appointed on 15 March 2015. The team consists of about fifteen people.

Myria is managed by its Board of Directors, which is appointed by the Federal Parliament. The Board formulates the general policy, closes the accounts, determines communication policy and decides whether or not to initiate civil proceedings in a court case. The Director is responsible for day-to-day operations and budgeting, for implementing the decisions of the Board of Directors, and for preparing the recommendations.

Members of the Board of Directors of the Federal Migration Centre as of 1 May 2017

| Dutch-speaking full members | Dutch-speaking deputy members |
|--|---|
| Mrs. Shaireen Aftab (Chair) Mr. Yves Aerts Mrs. Els Schelfhout Mr. Herman Van Goethem Mr. Jogchum Vrielink | Mrs. Naima Charkaoui Mr. Jan Theunis Mrs. Jacqueline Goegebeur Mr. Bernard Hubeau Mr. Selahattin Koçak |
| French-speaking full members | French-speaking deputy members |
| Mr Louis-Léon Christiaens Mrs. Sotieta Ngo Mrs. Christine Nina Niyonsavye Mrs. Bernadette Renaud Mr. Thierry Delaval | Mr. Daniel Soudant Mrs. Maité De Rue Mrs. Christine Kulakowski Mrs. Claire Godding Mr. Patrick Wautelet |

2. ACCOUNTS AND FINANCIAL SITUATION

In 2016 there was a balance sheet shortfall of €28,784.29.

As explained last year¹, Myria's budget is under pressure due to austerity measures imposed by the federal government. These cutbacks would appear to be illegal and undermine Myria's independence in carrying out its duties. A full description was drawn up along with our arguments in the report 'Institutional and budgetary

situation of the Federal Migration Centre', sent to the government in March 2017.

Myria has lobbied the federal government for several years, as regards:

- adjusting the imposed cutbacks so that they are reasonable in comparison with the other institutions;
- guaranteeing Myria's independence by including its budget line in the list of grants, which also includes the other institutions which, like Myria and Unia, have the same independence and anchoring within Parliament, as is the case, inter alia, for the College of Federal Ombudsmen and the Supreme Judicial Council.

To date, none of these requests have been met by the federal government, despite the considerable amount of letters, meetings and attempts to make contact. This

1 Report Migration in Figures and Rights 2016, p 15.

is highly regrettable, since it does not allow us to fulfil all our tasks in the best possible way. For an organisation

monitoring fundamental rights, having to make priorities out of necessity is unacceptable.

| Balance sheet as of 31 December 2016 (x €1,000) | | | |
|---|--------------|-----------------------|------------|
| Assets | 1,615 | Liabilities | 1,615 |
| Fixed assets | 9 | Initial capital | 835 |
| | | Cumulative result | 22 |
| Current assets | 1,606 | Debts | 758 |
| Trade receivables | 63 | Suppliers | 611 |
| Financial assets | 33 | | |
| Cash investments | 250 | Social security debts | 123 |
| Cash and cash equivalents | 1,259 | Other debts | 24 |
| Income statement 1 January 2016 - 31 December 2016 (x €1,000) | | | |
| Revenues | 1,506 | Expenses | 1,535 |
| Subsidies | 1,376 | Project expenses | 68 |
| Revenue from projects | 111 | Operating costs | 441 |
| Other revenue | 6 | Staff costs | 1017 |
| Financial revenue | 10 | Depreciations | 9 |
| | | Result 2016 | -29 |

3. MYRIA AND NETWORKS: AT THE NATIONAL LEVEL

Government

Myria is of course a public institution, but it is autonomous vis-à-vis the government and carries out its duties in complete independence. The aim is that the organisation is able to communicate with all stakeholders involved in its duties: public authorities, institutions, associations, interest groups, political parties, research centres, and citizens. Much of the statistical and recommendation work is only possible thanks to the contacts and relations that are maintained with numerous public authorities, in particular with the Immigration Office, the Office of the Commissioner-General for Refugees and Stateless Persons, Fedasil, the FPS Home Affairs, the FPS Justice, the FPS Foreign Affairs, the FPS Employment, the Directorate-

General for Statistics and the Council for Alien Law Litigation.

Federal government

The contacts with the federal government relate to substantive cases for which Myria wants to make its voice heard, i.e. the fundamental rights of foreign nationals or the fight against human trafficking and smuggling. The federal government is the first body to receive the thematic and annual reports which directly relate to many of its competences: Asylum and Migration, Justice, Security and Home Affairs, Foreign Affairs, Employment and Equal Opportunities.

In addition to the budgetary and institutional difficulties already mentioned above, 2016 led to new developments in the transposition of Directive 2014/54.

The objective of Directive 2014/54 is to protect European citizens as regards the free movement of workers. Its Article 4 provides, inter alia, for the establishment

of one or more bodies to promote, analyse and monitor equal treatment of all workers in the Union and their family members. The aim is to prevent discrimination on the grounds of nationality, or unjustified restrictions on their right to free movement, and to make the necessary arrangements for the proper functioning of these bodies. These bodies may be part of existing bodies at the national level pursuing similar objectives. The Directive requires Member States to give these organisations the necessary resources to carry out these new duties.

Myria and Unia were surprised to learn that the government had appointed them as reference bodies (Myria for federal matters, Unia for matters for which the federated states are competent). At the time of writing, the two institutions have observed that the federal government has not taken any specific measures to implement the Directive. This raises questions. Furthermore, neither Myria nor Unia has any information on the additional budgetary resources that need to be allocated to carry out these duties. The fulfilment of these duties requires far-reaching specialisation in social law and advanced tax law in particular, especially as both organisations are expected to be able to advise and guide European citizens.

The Federal Parliament

Myria is firmly anchored in the Federal Parliament, since the members of its Board of Directors have been appointed by the latter. This link with Parliament is a consequence of the resolution to guarantee the independence of the institutions from government interference. All members of parliament receive a copy of the two annual reports when they are published.

Myria often exchanges views with Parliament, to which it regularly presents its reports (Internal Affairs Committee). During these sessions, there is frequent contact with elected representatives. Myria is also regularly called upon for its expertise in dealing with relevant topics. This was the case in January 2016 for the activities in the Senate regarding statelessness, in May in the Parliamentary Standing Committee on Home Affairs on the right to family reunification, and in January 2017 on the situation of unaccompanied foreign minors as victims of human trafficking and smuggling. At the request of this committee, Myria has also issued an opinion on a draft law concerning seriously ill foreigners.

Unia

Unia, the Inter-Federal Equal Opportunities Centre, is undoubtedly Myria's most privileged partner, with which it was previously the Centre for Equal Opportunities and Opposition to Racism. This common anchoring is now reflected in strong cooperation, the shared use of cross-cutting services, joint members of the Boards of Directors, and valuable human contacts.

As regards substantive issues, there wide-ranging cooperation with Unia, which underpins the common values of both institutions.

Contact meeting on international protection

Since January 2016, Myria has resumed the contact meetings previously organised by the Belgian Committee for Aid to Refugees (BCHV). The objective remains that asylum authorities and organisations active in the field of asylum, reception and voluntary repatriation should continue to meet pursuant to these meetings, in order to exchange information in a spirit of dialogue and courtesy. These meetings are chaired by employees of Myria, who also prepare the reports and make them available on their website.²

Transit group of visitors to the detention centres

In 2016, Myria participated in the political monitoring meetings of the Transit group, as an observer. The Transit group brings together the organisations which visit the detention centres and the repatriation houses. In this context, it has supported the analysis work of the Transit group on questions relating to the detention and removal of foreigners. It has also provided legal support for visitors to the detention centres and repatriation houses, particularly in the context of monitoring individual cases. Myria has also provided legal training to visitors (regarding the Dublin III Regulation, marriage, legal cohabitation and family reunification of persons detained in detention centres).

Platform for a national human rights institution

Since 2014, Myria has participated in the consultation platform set up between the Belgian institutions which fully or partially exercise a mandate for the respect for human rights.

² www.myria.be/nl/contactvergaderingen-internationale-bescherming.

This platform meets every month to exchange information and relevant cases, pending the possible establishment of a national human rights institution that would coordinate part of the activities of the human rights monitoring structures. Myria has given a presentation on the role of national human rights institutions, as part of the implementation of the rulings of the European Court of Human Rights.

'Kinderen op de Vlucht' (Children on the run) platform

In 2016, Myria participated in the meetings of the working groups "Families in Migration", "Detention" and "UFM" of the Kinderen op de Vlucht Platform.

'Recht voor Iedereen' (Rights for all) Platform

In 2016, Myria participated in the working sessions of the Recht voor Iedereen Platform.

Platform for obtaining Belgian nationality

In November 2016, Myria organised a meeting for the various actors who are in contact with people wishing to acquire Belgian nationality. This is in order to establish an initial state of play as regards the practices, interpretation problems and obstacles to obtaining nationality since the reform of the Belgian Nationality Code in 2013. This work will continue in 2017, with the findings being communicated to institutional actors.

Training sessions

In 2016, Myria organised training sessions on the fundamental rights of foreign nationals, in particular for ADDE (Association pour le Droit Des Etrangères), visitors of detention centres (see above) or the integrated police. In May 2016, Myria gave a training session on asylum and migration, and human trafficking and smuggling, to the members of the traffic police. In September 2016, following the changes in legislation regarding the criminalisation of undeclared work, Myria, in cooperation with PAG-ASA and OR.C.A., organised a training session (on the special situation of persons residing in the territory without a permit, or potential victims of exploitation) for the attachés of the administrative fines department of the FPS Employment.

Finally, it should also be noted that Myria participated in the work of the National Commission on the Rights of the

Child in 2016, with an advisory vote, and of the Advisory Council for the Employment of Foreign Workers.

Interdepartmental Coordination Unit to combat human smuggling and trafficking

Myria has continued its role as an observer within the Coordination Unit and its bureau, for which it also carries out secretarial duties. In September 2016, Myria organised an assembly. This primarily concerned the adoption of a new multi-disciplinary circular on the victim referral mechanism. Myria also participated in the monthly meetings of the bureau of the Coordination Unit.

Coordination meetings on human trafficking in the judicial districts

Myria actively participated in the meetings of the Ghent platform (September 2016) and Charleroi platform (December 2016), where it presented its duties and its annual report on human trafficking and smuggling for 2016.

4. MYRIA NETWORKS: AT THE INTERNATIONAL LEVEL

European Migration Network (EMN)

Myria is one of the partners of the Belgian national point of contact of the European Migration Network (EMN). At the Belgian level, participation in the EMN is ensured by a mixed point of contact made up of four institutions. Myria is a member of the Steering Committee of the Point of contact, and actively participates in its day-to-day operation, in cooperation with the Office of the Commissioner-General for Refugees and Stateless Persons (CGRS), Fedasil, and the Immigration Office responsible for coordination.

The EMN was established by an EU Council Decision (2008/381/EC) to meet the need to provide objective, reliable and up-to-date migration and asylum data to support policy-making in these areas in Belgium and within the European Union. It is also responsible for informing the general public about these issues.³

In July 2016, the EMN published its Annual Synthesis Report on immigration and asylum in 2015 at the EU and Member State level, as well as a series of reports on specific issues. The subjects covered by the thematic studies are determined each year in a joint work programme. On the basis of a joint questionnaire, each Member State draws up a national report. Using these national reports, the EMN publishes a comparative synthesis report at the European level.

The 2016 reports covered:

- *the approach as regards rejected asylum seekers;*
- *resettlement and residence programmes on humanitarian grounds;*
- *the right to family reunification of third-country nationals;*
- *and the illegal employment of third-country nationals.*

On 8 November 2016, the Belgian point of contact for the EMN organised a conference in Brussels on the integration

of persons enjoying international protection into the labour market.

Myria also actively participated in the EMN's annual conference, which was organised on 12 and 13 January 2016 in cooperation with the Dutch Presidency of the European Union. This year, the conference addressed human trafficking, with the title: *Promoting the multidisciplinary approach in addressing migrant smuggling*. In particular, the results of the EMN study on human trafficking were presented and discussed. On 21 March 2016, EMN organised a workshop on social media and human smuggling, in collaboration with Myria. On 16 June 2016, Myria also actively participated in an EMN workshop on the role of social media in human smuggling, in cooperation with the EU.

Informal network of national rapporteurs and equivalent mechanisms in the area of human trafficking

Myria actively participates in the meetings of the informal network of national rapporteurs and equivalent mechanisms on human trafficking, organised jointly by the European coordinator for combating human trafficking, Myria Vassiliadou, and the Presidency of the Union. The issues discussed at these meetings were the role of financial institutions in the fight against human trafficking, transnational victim referral mechanisms and the EU's post-2016 strategy for human trafficking. Myria also invited Mrs. Vassiliadou for a meeting on 27 January 2016.

European network of national human rights institutions (ENNHRI)

Myria is a member of ENNHRI, a regional network that brings together national human rights institutions from all over Europe, and which has around 40 members. The network's mission is to improve the promotion and protection of human rights in Europe by supporting the development of national human rights institutions, and encouraging their cooperation on specific issues. In this context, on 29 March 2016, it participated in the 29th General Assembly of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), and also participated in the NRHI Academy in Tbilisi in May 2016, which was an interactive training course for members of NHRIs from numerous European countries, organised in cooperation with the OSCE. Myria also represented ENNHRI within the drafting group for human rights and migration of the Steering Committee on Human Rights of the Council of

³ See EMN website: <https://emnbelgium.be>.

Europe. In June 2007, the network started with a working group on Asylum and Migration, which Myria has chaired for several years in cooperation with the Deutsches Institut für Menschenrechte (German Institute for Human Rights), and in which it has been actively participating to date. Myria also offers expertise to the legal working group to which it belongs, in the area of disputes.

Myria participated in an ENNHRI monitoring visit to four migrant reception facilities in Greece in July 2016: Elaionas, Elliniko, Skaramagkas and Schisto. This was part of Myria's focus on the European approach to the asylum and migration crisis.

European Union Agency for Fundamental Rights (FRA)

The Fundamental Rights Agency (FRA) carries out the following three tasks: collecting and analysing data, providing advice to the European institutions and the Member States, cooperating with civil society and raising awareness among the general public. Myria participated in the FRA Council of Europe-ENNHRI Platform (European Network of Equality Bodies, or EQUINET) meeting on the rights of migrants and asylum seekers, organised by the FRA in February 2016.

United Nations

On 18 January 2016, Myria received a courtesy visit from Ms Philippa Candler, the new Deputy Representative of the Western Europe Bureau of the United Nations High Commissioner for Refugees (UNHCR).

In May 2016, Myria participated in a meeting of a group of experts on detention, organised by the United Nations High Commissioner for Human Rights, where it presented its work in this area.

In addition, at the start of 2017, Myria responded to a call launched by UNHCR to work on the right to family life for refugees and beneficiaries of international protection. Myria was selected by the UNHCR, and is delighted by this new collaboration. This will further develop its expertise in this area, and strengthen its international network.

OCSE

Myria continued its cooperation with the OSCE, and attended the annual conference organised by the OSCE on 11 and 12 April 2016. The theme of the conference was: "Combating trafficking in human beings for the purpose of forced criminality".

Council of Europe

On 20 and 21 January 2016, Myria was invited to contribute to the International Conference on the fight against trafficking in Human Beings: "Shared experiences between Tunisia and Europe", organised by the Council of Europe, the IOM and the Tunisian Ministry of Justice. Myria gave a presentation on the Belgian experience, with the identification of victims of human trafficking.

Myria was also requested by GRETA, the expert group responsible for evaluating the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, during its visit in December 2016 as part of the second evaluation round of Belgium.

European Union

Myria was invited as an independent National Rapporteur on human trafficking, to participate and actively contribute to the conference of the Presidency of the European Union in Amsterdam on 17, 18 and 19 January 2016, with the theme: "TeamWork! against Trafficking of Human Beings for labour exploitation".

Myria was also invited to present part of its annual report on human trafficking at a meeting of the European Commission's contact group on illegal migration, on 19 February 2016.

On 18 May, Myria received a Swedish delegation and gave a presentation on Belgium's policy for combating economic exploitation and human trafficking.

On 29 October, Myria participated in the Benelux meeting on transnational referral mechanisms within the Benelux.

5. PUBLICATIONS AND TOOLS

Myria conducts a large part of its activities through its publications. These are diverse and varied, and relate to its three main responsibilities. Since 2015, particular attention has been given to the diversification of Myria's target audience: not only partners and professionals from the sector of migration and the fight against human trafficking and smuggling, but also a wider public. In addition, their format was also diversified, and their accessibility was expanded by making all publications available on the website in several languages.

All Myria's publications are available free of charge, in a paper version on request, or as a download from www.myria.be.

Migration in Figures and Rights 2016

The *Migration in Figures and Rights 2016* report, published in 2017, continues the philosophy of the annual Migration Reports which have been issued by the Centre for Equal Opportunities and Opposition to Racism since 2007.

Trafficking and smuggling of human beings 2016: Beggars in the hands of traffickers

The annual report *Trafficking and smuggling of human beings 2016: Beggars in the hands of traffickers*, published in October 2016, focuses attention on a little-known form of human trafficking: the **exploitation of begging**. Exploited beggars are potential victims of human trafficking in the first instance, and should clearly not be seen from the perspective of a nuisance to be tackled.

Myriadocs

Since 2016, Myria has completed its range of publications with Myriadocs. The Myriadocs publications are less comprehensive than the annual reports, and provide thematic analyses of legal topics, politics or current affairs, with respect to Myria's duties. They are published exclusively in digital format. Two Myriadocs were published in 2016:

- **Europe in (asylum) crisis:** Myria investigated the European approach to this exceptional situation in 2015 and early 2016. The analysis focuses on the European

resettlement plan, external border hotspots and the relocation of asylum seekers from Italy and Greece. Myria also analyses the future of the Dublin system.

- **Life as a foreigner in Belgium in 2016:** Myria intends to publish an analysis of the issues which have had an impact on the fundamental rights of foreigners in Belgium, in December of each year.

The following elements are discussed in this Myriadoc:

1. access to emergency medical assistance which can be improved;
2. the 'Gaudi' operations, for which the *modus operandi* should be explained in order to avoid any risk of ethnic profiling;
3. access to banking services, which remains problematic for people in a precarious residence situation;
4. the changes in criminal law to which irregularly-resident foreigners no longer have access;
5. the administrative fines for which exceptions and accessible remedies should exist;
6. the reform of legal aid which limits access to justice;
7. the right of irregularly-resident victims of crime to go to the police without running the risk of arrest and detention in a detention centre.

Myriatics

The *Myriatics* are brief studies with a demographic approach which Myria has published every three months since October 2015. Their aim is to elaborate on a specific issue which is always different, and which falls under Myria's competence. These mini-studies are designed to provide factual, accurate, concise and accessible information.

The Myriatics published in 2016⁴:

1. New migration from Eastern Europe: focus on Romanians, Poles and Bulgarians - March 2016
2. Migration in figures - July 2016
3. 70 years of Italian immigration.... and more! - September 2016
4. Is migration gender-related? - December 2016

The *Myriatics*, published in December, was the subject of a collaboration with students from the IHECS to mark International Migrants Day (18 December). On this occasion, visuals were developed on <http://journeedesmigrants.be> and on social media sites to distribute the figures in Myria's possession more widely.

⁴ *Myriatics* can be consulted at www.myria.be/nl/migratedata/myriatics. Register on our site to receive these publications by email.

6. HUMAN TRAFFICKING AND SMUGGLING

6.1. | Myria in court - 2016

Every year, Myria initiates civil proceedings for various cases involving human trafficking and smuggling. Myria has competence in this respect under its organic law, which expressly authorises it to take action pursuant to the law of 13 April 1995 on combating human trafficking and smuggling. In the rest of this section, we will present an overview of all the cases which have been initiated and closed during the past year.

Myria initiates civil proceedings on the basis of both selection and opportunity criteria, which are set out in the three-year plan, and the operational plan.

With regards to civil proceedings, Myria is completely independent and must always take decisions as regards their desirability. The Royal Decree appointing Myria as rapporteur refers to the initiation of civil proceedings as a source of expertise in their capacity as an independent National Rapporteur on human trafficking. In order to simplify these decisions, Myria adheres to the following guidelines: the symptomatic character of the case, the importance of the hoped-for decision, and any action deemed necessary (e.g. support for victims).

In order to facilitate the analysis work, Myria urges court clerks to provide it with free copies (paper or digital) of the cases. In fact, as a public institution, it should be entitled to receive such cases. The centre is also entitled to a free copy of cases in certain judicial districts, and is also trying to obtain this right in the other judicial districts.

6.2. | New cases in 2016

In 2016, Myria initiated civil proceedings in 7 new cases: 5 human trafficking cases and 2 human smuggling cases.

6.2.1. | Human trafficking

1. Sexual exploitation

Sexual exploitation - Brussels

Two cases of sexual exploitation were dealt with by the Brussels Public Prosecutor's Office.

In the first case, various girls had been sexually exploited in the Aarschotstraat in Brussels since 2013. A criminal organisation was suspected of exercising control and power over an entire region of Albania, like a real mafia.

The second case concerned an international Nigerian human trafficking and smuggling network. The case was initiated in 2007, following on from another important case. A Nigerian woman recruited young girls and then forced them to prostitute themselves in various European countries, including Belgium. The investigation revealed that the young girls were supplied via intermediaries in Libya and Italy. The victims in this case, including minors, had been taken in by the three reception centres for victims of human trafficking. The Correctional Court of Brussels ruled on this case on 28 March 2017. This case is covered in the case law overview of this annual report.

2. Economic exploitation

Horticulture sector - Mechelen

This human trafficking case from the Mechelen Prosecutor from 2014 relates to economic exploitation offences in the horticulture sector. It concerns two Belgian defendants who, through a sole-trader business, exploited 39 Romanian victims who picked tomatoes in greenhouses. The defendants were assisted by a Romanian intermediary, who recruited the victims and was himself convicted as the main defendant in a similar case, but was not referred to the correctional court by the pre-trial chamber in this case. The victims were in a situation of slavery. They were illegally employed without documents, and during picking they were locked up in the tomato greenhouse under threat of an aggressive dog. They were

spat on and fined when they had to go to the toilet, or if they sat down while working. Medical assistance was refused. Their living conditions were also appalling. It was claimed that they only received part of their salary, and had to work long hours.

The Correctional Court of Mechelen ruled on this case on 20 January 2017. This case is covered in the case law overview of this annual report.

Construction sector - Tongeren

This human trafficking case from the Public Prosecutor's Office in Tongeren concerns economic exploitation offences committed by a construction company over the period 2011-2014. It was a Belgian company exploiting Bulgarian and Bosnian-Croatian workers. They were recruited in their countries of origin, and thought that they would be employed as employees, but were actually put to work as bogus self-employed persons. Their working and living conditions were described as being beneath human dignity. They only received part of their pay for long hours. There was also mention of a serious workplace accident for which the employer refused the necessary assistance and declaration. The Correctional Court of Tongeren ruled on this case on 9 February 2017. This case is covered in the case law overview of this annual report.

Transport sector - Bruges

This case concerns the exploitation of Polish workers by a Belgian transport company. Their working and living conditions were potentially deadly, and fell a long way short of human dignity. Two Polish workers died in 2012 in a fire in the hangar where they were housed. This case is in the final stages of the judicial investigation.

6.2.2. | Human smuggling

Smuggling E40 - Dendermonde and Brussels

Two cases concerned offences which were committed in 2015 along the E40 motorway towards the coast, which were initiated by the Public Prosecutors of Brussels and Dendermonde. Both cases relate to smuggling offences where a Kurdish smuggling network smuggled victims, including Syrian, Iraqi, Iranian and Afghan nationals, of whom some were minors, in refrigerated containers, to the United Kingdom. The main organisers operated from the United Kingdom, but thanks to effective cooperation with the British government, they were arrested and extradited.

One of the smugglers was a repeat offender who had already been convicted in previous smuggling cases.

One of these cases, for which a judgement was delivered by the Correctional Court of Dendermonde on 25 April 2016 and the Court of Appeal of Ghent on 6 February 2017, is discussed in the chapter 'case studies' and the chapter 'case law overview' of this report. The other case will be examined by the Court of Appeal of Brussels in September 2017.

6.3. | Cases closed in 2016

Myria noted in 2016 that a number of cases had been concluded and closed. We are only referring here to cases where a final judicial decision was handed down in 2016: either because the judgement at the first instance was not appealed against, or because the case was closed on appeal in 2016.

In 2016, 9 cases were closed (5 fewer than in 2015): 4 cases relating to sexual exploitation, 3 cases relating to economic exploitation, and 2 cases relating to human smuggling.

6.3.1. | Sexual exploitation

Two cases were heard in Brussels.

The first case concerned a defendant who was active in the transport of goods, persons and cash between Belgium and Bulgaria on behalf of the prostitution milieu. The defendant maintained close contacts with the Brussels and Antwerp prostitution milieu. He also appears as a contact person in various cases of human trafficking initiated in Belgium. Although on 7 May 2014 the Correctional Court of Brussels had sentenced him at the first instance for human trafficking, the Court of Appeal of Brussels overturned this decision in a judgement of 25 March 2016.⁵ He was acquitted, since according to the Court of Appeal, there were insufficient material elements, and the moral element of the crime (knowledge of the exploitation) could not be proven.

⁵ The rulings in this case are available on the Myria website and were covered in the two previous annual reports (see 2016 Annual Report on Trafficking and Smuggling of Human Beings 2016, *Beggars in the hands of traffickers*, p. 138 and 2015 Annual Report on Trafficking and Smuggling of Human Beings 2015, *Tightening the Links*, p. 107).

The second case was related to an earlier case from Liège. It primarily concerned offences including running a house of ill-repute and prostitution, and the exploitation of prostitution involving various young foreign women. The main defendant, who was also a repeat offender, operated various bars in the Aarschotstraat in Brussels, through front men. He was also prosecuted for human trafficking, for which the victim was a Belgian woman, but he was acquitted of these charges. In a judgement of 28 October 2016 - which was not appealed against - the Correctional Court of Brussels convicted the various defendants of charges including prostitution and criminal organisation.

One case was heard by the Correctional Court of Liège. It concerned the sexual exploitation of a young Romanian woman by various defendants. The young woman was the victim of violence. She had expressed a wish to return to her country of origin. In a judgement of 23 March 2013, the Correctional Court of Liège had convicted several defendants for human trafficking. In a judgement of 4 November 2013, the Court of Appeal of Liège found the defendant, who had been acquitted of human trafficking offences in a judgement at the first instance, guilty of the same offences. Moreover, the Court of Appeal upheld the judgement handed down at the first instance against other defendants, and made some of the sentences harsher. The court also separated the case concerning one of the defendants, who could not be validly summoned. In a judgement in absentia of 14 March 2016, the court upheld the conviction handed down at the first instance to this defendant.⁶

Finally, the last case heard in Bruges on 17 June 2015. The case involved young girls being exploited by an Albanian gang in a nightclub. The main defendant continued to run his operation from prison. The Correctional Court of Bruges accepted the charge of human trafficking. A number of guards were also prosecuted and convicted for passive corruption. In a judgement of 29 June 2016, the Court of Appeal of Ghent largely upheld the conviction handed down at first instance. This case was already addressed in the previous annual report.⁷

6.3.2. | Economic exploitation

Two cases have been finally settled by the Court of First Instance of Hainaut, subsection Mons.

The first case pertained to the construction sector and was covered in the previous report.⁸ It is also discussed in the "case studies" chapter of this annual report. This case involved the exploitation of Romanian workers under the status of bogus self-employment. The Correctional Court of Mons convicted the defendants for human trafficking, in a judgement of 21 April 2016, against which no appeal was lodged.

In the second case, the defendant was a repeat offender who had second-hand clothes sorted by illegal immigrants in his workshop. In 2008, the Correctional Court of Charleroi had already convicted him for similar offences. Myria - then still the Centre for Equal Opportunities - had also initiated civil proceedings in the first case. The Correctional Court of Mons found the defendant guilty of all charges, including human trafficking. This judgement, delivered on 24 November 2016, was not appealed against. It is covered in the case law overview in this report.

Finally, a case against a manager acting as an intermediary to employ Romanian seasonal workers was also closed in 2016. On 21 January 2015, the latter was convicted at first instance by the criminal court in Mechelen. This decision was largely upheld by the Antwerp Court of Appeal in a judgement of 4 February 2016. The case was covered in our two previous annual reports.⁹

6.3.3. | Human smuggling

One case was heard in Brussels, another in Leuven.

The case in Brussels concerned a Vietnamese criminal organisation involved in smuggling. The defendants were involved in an international network of smugglers, who transported minors, among other offences. In a judgement of 22 April 2016, the Correctional Court of Brussels sentenced the head of the organisation in absentia to 10 years' imprisonment. The defendants convicted at the

⁶ This case was discussed in our 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 175. The ruling of the correctional court is available on the Myria website: www.myria.be.

⁷ 2016 Annual Report on Trafficking and Smuggling of human beings 2016: *Beggars in the hands of traffickers* p. 160.

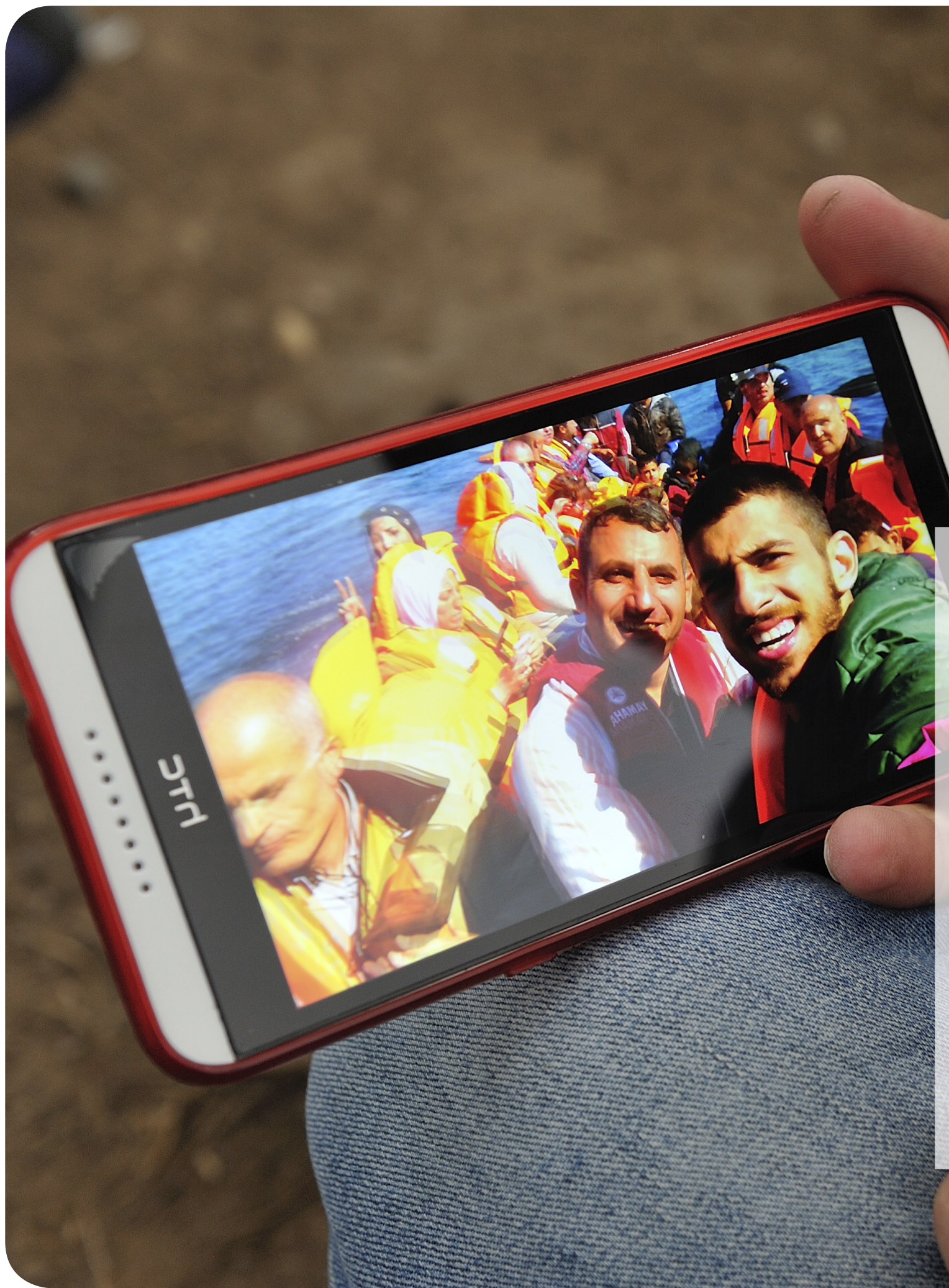
⁸ Annual Report Trafficking and smuggling of human beings 2016: *Beggars in the hands of traffickers* p. 165. This ruling is also available on the Myria website: www.myria.be.


⁹ 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 114-120 and 2016 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, p. 160. These rulings are also available on the Myria website: www.myria.be.

trial did not appeal. The case was covered in a previous annual report.¹⁰

Finally, the case in Leuven concerns a Kurdish network of smugglers. The defendants were convicted on 14 June 2016 and no appeal against the judgement was lodged.

10 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 184. This ruling is also available on the Myria website.





Part 2: Focus

The role of social media and the internet in human trafficking and smuggling

Social media and the internet are increasingly used by human traffickers and smugglers in their recruitment processes, for criminal purposes, but also for marketing their services and managing their criminal activities. At the same time, the internet and social media are also used to facilitate the fight against human trafficking and smuggling.

This focus will first give an overview of the phenomenon of the role of social media and the internet in human trafficking and smuggling, before examining how the internet and social media function as a method of investigation. We will also briefly address the new challenges facing policy, the police and the judiciary in this respect.

This section also includes contributions from external authors:

- The head of the internet investigation service of the Directorate for the fight against serious and organised crime of the Federal Police sheds light on his support role in investigations on the internet and social media;
- The Head of the UNHCR's 'Communicating with Communities' team makes a number of observations on the existing grey area between human trafficking and smuggling, based in particular on a study carried out by her department.

Introduction



This section analyses the use of the internet and social media in human trafficking and smuggling, at the various levels. The internet has permeated all facets of society over the last 10 years. In many countries, it has become an important part of the formal education system, meaning that children come into contact with it at a younger age. We live in a world which is in thrall to technology, which continues to evolve. This development brings with it a myriad of possibilities and opportunities. This is a positive development. In addition to its barrier-reducing effect on education, it provides people with numerous platforms for communicating and being part of groups that promote social cohesion. Unfortunately, digital media is also used for less wholesome purposes. Among other things, this medium facilitates human trafficking and smuggling. Social networking sites and classified websites are increasingly used by traffickers and smugglers in their recruitment process for criminal ends, and in trafficking and exploiting people. At the same time, the internet and social media, as a method of investigation, facilitate the fight against human trafficking and smuggling.

Internet and social media allow users to connect and communicate with individuals and reach a wider audience remotely. Human trafficking and smugglers are also able to reach and exploit a greater number of victims across national borders.¹¹ The internet also has a barrier-reducing effect.¹² The anonymity of the platform enables people to be whoever they want to be via a simple click of the mouse. Moreover, the internet makes it more difficult to establish the burden of proof of criminal offences.

As an introduction to this chapter, it is important to clarify certain concepts.

Digital human trafficking and smuggling falls under the category of cybercrime. Cybercrime is a very broad concept pertaining to unlawful acts committed using computers, computer networks, the internet and web-based information and communication technology.¹³ On 23 November 2001, the Council of Europe signed the Convention on Cybercrime, also referred to as the Budapest Convention. It was signed by 38 countries and encompasses the investigation and punishment of computer-related crime.¹⁴ This legislation covers computer fraud, hacking, and the possession and distribution of child pornography, etc. The countries that signed the Convention have a cooperation agreement to detect cybercrime, given that these offences are often cross-border in nature.

The term internet also includes the term **dark web**. The dark web literally refers to the dark side of the internet. It is an encrypted world of hidden and anonymous services or exchanges which are proposed or consumed, whereby users cannot be traced or identified. It is not a separate physical network, but a part of the World Wide Web. It is a part of the internet which cannot be indexed by search engines such as Google, Bing, Yahoo, etc.¹⁵ The dark web is a collection of networks and technologies which are used to share digital content. It is used for the sale of drugs, weapons and child pornography. The magistrates and policemen we interviewed have not seen much activity here on the part of traffickers, and this view is shared by the EU's Surf and Sound¹⁶ project, so we will not cover this phenomenon any further. However, for the sake of completeness, we refer to the European project Trace¹⁷ (Trafficking as a criminal enterprise) which refers to

11 M. LATONERO, *Human Trafficking Online: The Role of Social Networking Sites and Online Classifieds*, 2011, p. 12. Consulted at <https://ssrn.com/abstract=2045851>.

12 D. MUIR, *Violence against Children in Cyberspace*, ECPAT International, 2005, pp. 25-29. Consulted at www.ecpat.net/ei/Publications/ICT/Cyberspace_ENG.pdf.

13 E. MCLAUGHLIN & J. MUNCIE, *The sage dictionary of criminology* (3rd ed.), London, United Kingdom: Sage, 2013, pp. 112-114.

14 Jura, België ratificeert Cybercrimeverdrag (Belgium ratifies the Convention on Cybercrime), 2012. Consulted at www.legalworld.be/legalworld/content.aspx?id=57284&LangType=2067.

15 P. BIDDLE, P. ENGLAND, M. PEINADO & B. WILLMAN, *The Darknet and the Future. Lecture Notes in Computer Science*, 2002, 155-176. Consulted at www.researchgate.net/profile/Reihaneh_Safavi-Naini/publication/221609583_Traitor_Tracing_for_Shortened_and_Corrupted_Fingerprints/links/5466dc1c0cf2f5eb18017b40.pdf.

16 www.surfandsound.eu, *Improving and sharing knowledge on the Internet role in the processes of human trafficking and smuggling*, ISEC 2013 Action Grants (HOME\2013\ISEC\AG\THB) \ 24 months (02.11.2014 - 01.11.2016), 2017.

17 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE-D4.1_Role-of-technologies-in-human-trafficking_FINAL.-1.pdf.

articles¹⁸ which identify websites trafficking in women within the dark web.¹⁹

Social networking sites are platforms and services that



allow users to build up a network or make connections. This can be done by sharing messages and content with fellow users. The use of social media has increased exponentially in recent years, both among young people and adults.²⁰ Online communities are created where people around the world can network with all kinds of organisations and individuals, for specific purposes. These sites are very popular due to the benefits they offer, such as the ability to make quick and easy contact. The downside of this system is the dissemination of false data, such as fake identities, online intimidation and stalking, etc.²¹

Finally, the source material for this focus is based on case analyses, informal interviews with magistrates and police officers, and literature reviews. It successively presents an overview of the role of social media and the internet in human trafficking and smuggling (Chapter 1), the internet and social media as a method of investigation (Chapter 2) and, finally, the new challenges for policy, police and the judiciary in this area (Chapter 3).

18 J. COX, "My Brief Encounter With a Dark Web 'Human Trafficking' Site", *Motherboard*, 27 July 2015.

<http://motherboard.vice.com/read/my-brief-encounter-with-a-dark-web-human-trafficking-site>; See e.g. GREENEMEIER, 2015; R. SIEGEL, *Investigators use New tool To Comb Deep Web For Human Traffickers*, nr special series, 6 July 2015; "The Dark Net and Human Trafficking: Is There a Connection?", *A21 Blog*, no date. www.a21.org/content/the-dark-net-and-human-trafficking-is-there-a-connection/gjdplv?permcode=gjdplv; "Human Trafficking on the Darknet", *Darknet Injustice* blog, 4 May 2015. <http://darknetinjustice.tumblr.com>.

19 Ulster University, *TRACE WP4 validation workshop on the role of technologies in human trafficking*, TRACE project, Tilburg, the Netherlands, 29 September 2015.

20 M. LATONERO, *op. cit.* p. 12.

21 A. ABHYANKAR, *Social Networking Sites*, SAMVAD, 0 (2), 2011, pp. 18-21. Consulted at www.sibm.edu/assets/pdf/samvad2.pdf#page=18.

Chapter 1

The phenomenon

In its 2016 Situation Report, Europol states: "The global development of online infrastructures has made the Internet a crucial tool for human traffickers, and it is likely to become more significant in the future. Online interaction facilitates several aspects of human trafficking and exploitation: targeting of potential victims; access to personal data; arrangement of logistics and transportation; recruitment through social media, chat forums and other websites; advertisement of victims; their exploitation and surveillance."²²

In this outline of the phenomenon, the first of such, we will only discuss the impact of the internet and social media on human trafficking and smuggling to a limited extent. We will mainly focus on the way in which human trafficking and smuggling networks use social media and the internet as a tool. Due to their different dynamics, we will address human trafficking and human smuggling separately.

The internet and social media are an efficient recruitment channel through which traffickers can reach their potential victims anonymously and on a larger scale.

1. THE ROLE OF SOCIAL MEDIA AND THE INTERNET IN HUMAN TRAFFICKING

Human traffickers use social media and the internet to recruit victims, market their prostitution services and manage their criminal activities.²³ At present, this is particularly true of sexual exploitation. We will also investigate how the victims deal with social media.

We find in the cases that the most important tools are Facebook, the chat forums of sex dating sites, Viber, Whatsapp, Skype, and other internet platforms.

1.1. | Recruitment by human trafficking networks

The internet and social media are an efficient recruitment channel through which human traffickers can reach their potential victims anonymously and on a larger scale.

Europol states: "The recruitment of victims increasingly takes place online. Traffickers lure victims with promising advertisements for jobs or travel placed on general advertisement sites or distributed through au pair agencies, international marriage agencies or dating sites".²⁴

²² EUROPOL, *Trafficking in human beings in the EU*, Situation report, The Hague, February 2016, Document Ref No: 7651, www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu.

²³ Report of the Meeting of the Informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 6-7 May 2014.

²⁴ EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014: www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet.

In several cases in which Myria initiated civil proceedings, it was able to observe how victims are recruited via a job offer or prostitution work, or via the *lover boy* method. This can take place in the country of origin, a transit country or the destination country. It is usually done via Facebook or other internet platforms. According to some magistrates, Snapchat can also be used during the recruitment phase. In addition, a compromising screenshot is taken during a video conversation or chat or voluntarily supplied photographs are used as a means of blackmail.

1.1.1. | Jobs

In the past, many victims were recruited via a job offer, including vacancies for dancers, waitresses, hostesses, housekeepers, cleaning ladies, childminders or household help, etc. and were subsequently forced into prostitution. This is still the case, but social media and the internet are also being used for this purpose.

In its external contribution on human trafficking and the internet, the federal police wrote in our own 2010 annual report: "Recruitment for the purposes of sexual exploitation does not necessarily take place through sexually explicit websites, but rather through sites recruiting for jobs, through classified ads. Communication thus takes place, amongst others, through chat forums where it is possible to post messages and exchange information without knowing who is on the other side of the screen."²⁵

Internet

Bogus modelling agencies recruit victims through their websites. An ongoing judicial investigation has revealed that young girls, including minors, had reacted to so-called internet advertisements for modelling work in their countries of origin, and were ultimately forced into prostitution in Belgium. As a recruiter, the modelling agency in the country of origin was an important part of the international prostitution network that exploited its victims in Western European countries, including Belgium.

In an Antwerp-Latvian case²⁶ from 2010-2011, a bogus modelling agency recruited Belgian girls online, in addition to Latvian girls. The website stated (translation): "The most beautiful models in the Benelux for your catwalk fashion

shows and the promotion of your products. Our models are available for €200 per working hour for catwalk shows, photo shoots, hostess work, model presence, guidance tasks, etc.". Immediately after replying to the offer, and at their first interview, the girls were given a proposition to work as escorts with the promise to earn between €4,000 and €6,000 per month, for which they would have to work two days a week. A Belgian girl testified to the police: "I'm 18 years old and my friend 17, she's foreign and doesn't speak our language. I'm of Belgian origin. A few weeks ago, we met a man on the internet. He offered us a job as private escorts in the centre of Antwerp. After we met him, we began work immediately as escort girls. We want to stop as soon as possible but we can't stop or leave just like that. He threatens us in all sorts of ways, he blackmails us with photos of us naked or in underwear".

A Latvian victim in this case was contacted after placing her own internet advertisement looking for work. She said: "In Latvia I lived with my parents. I had studied, looked for work, and placed a job advertisement on the internet for work in the hotel and catering industry. I was contacted by the defendant X, the wife of the main defendant, who promised me work in a restaurant. A few days later she phoned, and apologised since I was not going to work in a restaurant but in an escort agency, as company. I only had to keep the customers company in a restaurant, theatre, etc., and did not have to provide sex services. This would earn me a few thousand euros per month. I agreed and left."

Facebook

Human traffickers also use Facebook to recruit their victims via job offers. In a Liège case²⁷ from 2012, a Belgian victim testified that she was approached via a fake Facebook profile for a job as hostess. One of the male defendants had created a fake profile for the recruitment of victims, in which he had pretended to be a woman with a fake profile picture. The man recruited young girls online or approached them on the street. He generally targeted young girls with no experience in the prostitution milieu, and recruited them based on their looks. In addition to this male recruiter, there was also a female defendant who was engaged in recruiting. She made the initial contact with the young girls via social media such as Facebook. They proposed a job for them in the events business or as an escort, in which they would earn a lot of money, and then referred the girls to the main defendant. During the first interview, he organised a photo shoot and manipulated the girls, until they were prepared to

²⁵ MYRIA, 2010 Annual Report on Human Trafficking and Smuggling, *Combating social fraud to prevent trafficking in human beings*, p. 128.

²⁶ MYRIA, 2015 Annual Report of Trafficking and Smuggling of Human beings, *Tightening the Links*, case study, pp. 69-71.

²⁷ MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 108.

have sex. In addition, the main defendant and his escort agency also ran an internet site through which he recruited victims, and immediately after the photo shoot for their first interview, subjected them to a 'test' for his website as a kind of selection procedure.

Economic exploitation

Human traffickers also use Facebook to recruit their victims via job offers.

Victims of economic exploitation can also be recruited via advertisements on the internet, but this can also be done via social media.²⁸ According to a HEUNI report²⁹, internet adverts, and to a certain extent Facebook, are increasingly taking the place of newspaper adverts, and applicants themselves are actively soliciting via the internet.³⁰ A study as part of a European project on the role of social media and the internet in human trafficking (Surf and Sound) refers to online advertisements in Romania for jobs in the hotel and catering industry by bogus companies, or in the agricultural sector in another EU country such as Spain, which result in exploitation.³¹

In Belgium, in a Bulgarian case³² from the transport sector, workers were lured to Belgium by advertisements in newspapers or on the internet, where they were supposed to work for a Bulgarian transport company. They were to earn a lot of money, but this promise was not kept.

In a Chinese case³³ from the hotel and catering sector, a Chinese victim responded to a Belgian internet advertisement from a company run by the Chinese main defendant. His Chinese contacts in Belgium had alerted him to this internet advertisement via Facebook.

In a case from a riding school³⁴, an illegally-resident Moroccan was hired as a stable hand after responding to an internet advertisement for this job in Belgium. The contact address for this internet advertisement was the email address of the main defendant.

In cases from the construction sector, victims were recruited as construction workers via internet advertisements. In a case from the construction sector involving bogus self-employment³⁵, the victims were recruited in Bulgaria and Bosnia. In a case from the construction sector involving posted workers³⁶, the Polish and Ukrainian victims were recruited in Poland, where the so-called construction company was active.

1.1.2. | Prostitution

Some young women also seek voluntary employment in the prostitution sector and may find themselves in a situation of exploitation. They contact the internet sites of escort agencies themselves or leave their telephone number on a Facebook address of a contact they know from the prostitution sector. They sometimes already have experience, but are looking for a better working area where they can earn more money.

Facebook

Social media can be a relevant tool for contacting young women with a proposal for prostitution work. According to Europol, women in chat rooms are also approached by traffickers.³⁷

In a Ghent case³⁸ from 2013-2014, a Hungarian victim explained how she was recruited in Hungary: "I got acquainted with a man called X. via Facebook, who I got to know as P. We wrote to each other several times. He learned from me that we were living in poverty. It was mentioned that I wanted to work as a prostitute. He told me that he could help, he would give me money for the trip, he would organise the work there. He told me that in Belgium, in Ghent, women need to stand in the window

28 EUROPOL, *Trafficking in human beings in the EU*, Situation report, The Hague, February 2016, Document Ref No: 7651, www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu.

29 HEUNI is the European regional institute within the network of the United Nations drugs and crime agency (UNODC). HEUNI operates under the auspices of the Finnish Ministry of Justice as an independent research and policy institute.

30 HEUNI, *Exploitation of migrant workers in Finland, Sweden, Estonia and Lithuania: Uncovering the links between recruitment, irregular employment practices and labour trafficking*, Natalia Ollus, Anniina Jokinen and Matti Joutsen (eds.), Helsinki 2013, www.cbss.org/wp-content/uploads/2012/11/HEUNI-report-75-15102013.pdf.

31 www.surfandsound.eu, *Improving and sharing knowledge on the Internet role in the processes of human trafficking and smuggling*, ISEC 2013 Action Grants (HOME\2013\ISEC\AG\THB) \ 24 months (02.11.2014 - 01.11.2016), Surf and Sound, National Report Romania, 2017. www.crpe.ro/en/wp-content/uploads/2017/04/Improving-and-sharing-knowledge-on-the-role-of-internet-in-the-human-trafficking-process-national-report-Romania.pdf.

32 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case study, pp. 110-111.

33 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* pp. 158-159.

34 See also Part 3, Chapter 3 (case-law overview): Corr. Court Liege, subsection Liege, 21 November 2016, 18th chamber.

35 See also Part 3, Chapter 3 (case-law overview): Corr. Court Limburg, subsection Tongeren, 9 February 2017, 9th chamber.

36 See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Ghent, 1 February 2017, G29w chamber.

37 EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014: www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet.

38 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human beings, *Tightening the Links*, case study, pp. 69-71.

and lure the men from the street inside, and prostitute themselves. Later investigation of the Facebook profiles revealed that the defendants created fake Facebook accounts using fictive identities, to recruit their victims. The defendants also used Facebook as a selection tool in the recruitment of victims. They placed the photos of the girls who agreed to their proposal on their Facebook profile and forwarded the photos to each other to compare them. The telephone tapping revealed that the suspects regularly consulted their Facebook page to view and rate the photographs of girls.

In a Brussels case³⁹, a Brazilian victim in Italy received a proposal via Facebook from a Portuguese defendant to work in prostitution in Belgium, on the basis of a so-called 50/50 profit distribution. She was photographed naked, and these photos were placed on a Brussels website for sex dates against her explicit will.

Facebook variant

In the Antwerp case (see above) young Latvian women were offered work in prostitution via a social networking site for sex contacts. Draugiem.lv is a Latvian version of Facebook in which interested women click on a friendship request message, and then respond positively. The main defendant had specifically called in a prostitute to approach the girls and convince them to work as escorts in Belgium and the Netherlands. She actively went looking for girls with a draugiem.lv profile and approached them with empty financial promises. In the end, they earned very little because their money was taken from them, and they were severely mistreated.

Dating sites

In Bulgaria, traffickers use the same techniques. In the previously-mentioned EU Surf and Sound project, various magistrates, police, human traffickers, victims and NGOs were questioned. In the Bulgarian country report, the authors refer to an interview with a Bulgarian human trafficker: "According to the interviewed person, now he recruits exclusively girls who independently engage in prostitution, and for this reason checks the dating sites where they could be frequently met: " We regularly follow the dating sites (Elmaz, Twoo, Gepime, etc.). I most frequently seek girls in Elmaz and Facebook I play it a man who needs companion and try to be cautious, but they disclose their selves alone that they seek sex for payment" [sic]. (Sex trafficker)".

The interviewed person shared that the girls recruited from the mentioned sites are used for exploitation and trafficking within the country, while the girls for international trafficking are recruited through Tinder, because those who have registered there speak at least two European languages, and the profits they bring, respectively, are double in comparison with profits made in the home country. Regardless whether Facebook or dating sites are used, in all cases the communication is made through private chats, and then transferred to applications like Skype or Viber, or directly to mobile phones.⁴⁰

1.1.3. | *Loverboys*

The *loverboy* technique focuses on the role of social media as a means of initial contact with the victims. Some internet sites can also play a useful role for *loverboys* in their recruitment.

Facebook

Loverboys make victims of both underage and adult women, but minors in particular are vulnerable prey on social media. Thanks to digitisation, a lot of information is available on Facebook. Minors can easily expose themselves to these websites and share their entire lives there. Using this information, human traffickers can target vulnerable girls. It is a form of social engineering in which traffickers adapt to the needs and wishes of the victim. The role of hobbies will play an important role in this respect. If the girl is a horse enthusiast, the *loverboy* will also present himself as a horse enthusiast. Using a search function on Facebook, for example, they can also specifically target victims from youth institutions. In a subsequent phase, they use mobile apps such as WhatsApp and Viber to make direct contact.⁴¹

39 Corr. Court Brussels, 22 September 2016, 47th chamber (not published).

40 www.surfandsound.eu, *Improving and sharing knowledge on the Internet role in the processes of human trafficking and smuggling*, ISEC 2013 Action Grants (HOME\2013\ISEC\AG\THB) \ 24 months (02.11.2014 - 01.11.2016), Surf and Sound, National report Bulgaria, 2017. www.csd.bg/artShow.php?id=17951.

41 www.surfandsound.eu, *Improving and sharing knowledge on the Internet role in the processes of human trafficking and smuggling*, ISEC 2013 Action Grants (HOME\2013\ISEC\AG\THB) \ 24 months (02.11.2014 - 01.11.2016), Surf and Sound, National Report Romania, 2017. www.crpe.ro/en/wp-content/uploads/2017/04/Improving-and-sharing-knowledge-on-the-role-of-internet-in-the-human-trafficking-process-national-report-Romania.pdf.

Minors in particular are vulnerable prey on social media.

In a Leuven prostitution case⁴², it was found that *loverboys* had made contact with their victims via Facebook in Romania, recruited them and then exploited them in Belgium. In an Antwerp case⁴³ of *loverboys* involving minors from youth institutions, the victims were recruited using Facebook in Belgium. When asked how she had gotten into prostitution, the minor replied during her questioning: "Through an ex-friend I met on Facebook. He put me on the online forum site for sex dates. He drove me to the customers". The *loverboy* also encouraged an underage victim to put some Facebook friends, also underage runaways, into contact with him via Facebook, whom he then sexually exploited.

Internet

Loverboys can also actively look for victims at modelling sites. These are popular websites for young girls who, on their own initiative, apply for modelling work. They must present themselves on the site and post a photo. Some girls think they are more likely to have a better chance by posting a more risqué picture. *Loverboys* target this group to try to seduce them.

Skype

Loverboys also use Skype to search for vulnerable potential victims at random. In concrete terms, a young person can get set up on Skype online with a certain saying or proverb. *Loverboys* respond to this by looking specifically for girls with certain sayings which show that they don't feel good about themselves and are vulnerable. He will then approach them and try to recruit them using the *loverboy* technique. Often the victim thinks that she has met her *loverboy* by chance on Skype.

In another Antwerp case⁴⁴ of *loverboys* involving minors from youth institutions, the victims were recruited using Skype, as well as Facebook. In this case, a 14-year-old girl who had fled from a youth institution explained that she had ended up with *loverboys* after getting to know one of them 'by chance' via Skype. They talked to each other

every day and she fell in love with him, she could not resist. One evening he came to visit her at a café in Verviers and then took her to Antwerp. In her testimony she spoke about the severe acts of violence that she subsequently had to endure.

Instagram

A study as part of the EU Trace project⁴⁵ (Trafficking as a criminal enterprise) on the internet, social media and human trafficking referred to a case in the US where a model was recruited by traffickers through Instagram. The newspaper reported the case under the title 'Florida model allegedly lured to New York on Instagram and forced to be sex slave'⁴⁶ as follows: "She was lured to New York with promises of cash and gifts, but a naive Florida model ended up a sex slave and pimped out to johns by a Brooklyn man who wooed her on Instagram. Cops said the Instagram picture she posted caught Attz's eye, and he began messaging her false promises that he would financially take care of her and her children if she came to New York. She accepted his invitation and \$150 in travel expenses to come north, sources said. The 23-year-old woman's pleasure trip to New York turned into a 12-day tour of hell, in which she was forced to turn tricks in hotel rooms under constant threats of death."

1.2. | Marketing by human trafficking networks

For their marketing activities, traffickers use websites to promote their prostitution services. These days, prostitution is primarily arranged via the internet and social media. Many women who prostitute themselves on display behind windows also prostitute themselves via the internet.

'Window prostitution' suffers from competition from the internet. Twenty years ago, clients had to go looking for prostitutes in newspaper adverts, or visit known red light districts. This is now arranged from behind a computer. It is possible to find all categories of prostitutes on the

42 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, p. 29; 2013 Annual Report on Human Trafficking and Smuggling, *Building Bridges*, pp. 17, 60 and 108; Corr. Leuven, 4 July 2013, 17th k. (available at www.myria.be).

43 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case-law overview, p. 134.

44 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 88.

45 Project ID: FP7-SEC-2-13-607669 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE_D4.1_Role-of-technologies-in-human-trafficking_FINAL_-1.pdf.

46 PARASCANDOLA, ROCCO, SANDOVAL, EDGAR, YANIV, OREN, HUTCHINSON, BILL, "Florida model allegedly lured to New York on Instagram and forced to be sex slave", *Daily News*, 16 July 2013. www.nydailynews.com/news/crime/cops-model-lurednyc-forced-hooker-article-1.1399559.

internet, at all prices. Higher-end escorts have individual websites, and do not work via 'sex-dating' websites. These escorts also target a specific kind of client from a certain milieu.

Websites

In the cases mentioned above, the traffickers advertised their victims with their photographs on the website of their escort agency. In the Antwerp modelling case, the defendant responsible for the victims' photo shoots also admitted that he had placed photos of an underage Latvian girl on the internet to advertise for his own escort agency.

In a Nigerian case⁴⁷, the Nigerian defendants worked together with the owners of a prostitution hotel. The Nigerian victim said: "From the research carried out by your services, it appears that there are photos of myself online on the website 'X'. You ask me who took these photos and who put them online? These photos were taken by the owner of the hotel and put online by her"

Thai massage parlours also advertise through their websites and the internet ads of the girls on them.⁴⁸

Online advertising sites

In a Ukrainian case⁴⁹, the victims were recruited and photographed by acquaintances as dancers or servants. Among other things, the exploiters put their sexually-tinged photos on an online advertising site in Brussels where, in addition to renting/rental of real estate, job offers, music lessons, babysitting, holidays, sales computers, etc., a special service for escorts is also offered to customers. The defendants found a USB flash drive with several pictures of victims of which several unidentified people still had to be placed online.⁵⁰ In addition, some of the victims were recruited as masseuses, and ended up on an escort site.

In a Liège escort case⁵¹, several Thai victims were recruited using a 'debt bondage' system and their photos were

placed on a similar online advertising site in Belgium. Two Romanian victims were also placed on similar sites, but also on escort sites.

Online forum sites for sex dating

In a *loverboy* case involving a rapper⁵² and the same Nigerian case, the defendants used online forums for sex dating, on which they advertised the details and photographs of the prostituted victim. One of the Nigerian defendants took erotic photographs of victims and created a personal profile on this site, for the victim's sex dates with clients. According to a Nigerian victim, the defendant sold it to her as follows: "Mama' also told me that she had a new system of work: she would put my photo on the internet, along with a mobile phone number, so that I could arrange my appointments myself". In addition to the Nigerian networks, *loverboys* also use these websites regularly to arrange sex dates with their victims and clients.

For their marketing activities, traffickers use websites to promote their prostitution services.

These are highly interactive internet sites with a wide market offering of sex adverts. Clients can make contact through Facebook, Twitter and email. There is an online forum where clients can leave comments on the prostitutes. At some sites, review forms are available showing rates, and the sexual services offered. Through Twitter, specific questions can be asked separately to prostitutes, and their individual reviews can be monitored.

1.3. | Managing human trafficking networks

"One of the most worrying aspects of human trafficking is its continuous modernisation, to the extent that it has become a veritable industry. Criminals are acquiring more and more know-how, and work ever more professionally. They carry out marketing activities for their 'products' and 'services', and make substantial use of the internet and other communication tools."⁵³

47 See also Part 3, Chapter 3 (case-law overview): Dutch-speaking Corr. Court Brussels, 28 March 2017, 60th Chamber (definitive).

48 See also Part 3, Chapter 3 (case-law overview): Corr. Court West Flanders, subsection Dendermonde, 11 October 2016, chamber. D19D; MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case-law overview, p. 156; Corr. Court Brussels, 46th Chamber, 27 January 2016.

49 See also Part 3, Chapter 3 (case-law overview): Corr. Court Brussels, 14 July 2016, holiday chamber.

50 See also Chapter 2 of this focus (investigation methods).

51 See also Part 3, Chapter 3 (case-law overview): Corr. Court Liege, subsection Liege, 16 November 2016, 19th chamber (appeal).

52 See also Part 3, Chapter 3 (case-law overview): Corr. Court Antwerp, subsection Antwerp, 21 September 2016, chamber AC8.

53 EUROPOL, *Trafficking in human beings in the EU*, Situation report, The Hague, February 2016, Document RefNo: 7651, www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu.

Logistics

In a Bulgarian case⁵⁴, it was already established a few years ago that an organisation in Germany used the internet to arrange logistics support for prostitution in Germany as subcontractors, and offered the necessary facilities for a fee, based on clear agreements. All the girls were posted on the internet via a website.

In a large-scale prostitution network⁵⁵ offering sexual services via erotic dating sites, the Belgian main defendant ran several websites from Spain as an 'agency' on which the services of the Moroccan, Romanian and Bulgarian girls were advertised. He recruited the girls through his internet platform. This was mostly in Belgium but also in Romania and Germany. When they were recruited, the girls were asked to create a new Facebook profile.

Confidential communication

Human traffickers realise that their phone can be tapped and prefer to conduct their confidential conversations via Viber, WhatsApp and Skype, etc., which are difficult for the police to wiretap. This was observed in a wiretapped conversation of an Albanian mafia case of sexual exploitation. Another technique is to use a single e-mail address for which the password is known by all participants, so that the messages that are drafted, but not sent, are read and deleted on the spot.

In the Hungarian case⁵⁶ of 2013-2014 in Ghent, the police found Facebook messages from the defendants about a number of girls who had been supplied by the defendant, and who were under his control.

Counter-espionage strategy

Human traffickers are starting to realise that the police can now also use Facebook as a tool for gathering evidence. In the Nigerian case, a defendant made this clear to another defendant during a telephone call: "Defendant X says that when someone logs in

on Facebook, the police can see it". In response, the defendants discussed their Facebook actions with each other: "Defendant X asks the main defendant whether

Y wrote on Facebook that he was staying in Belgium. The main defendant says she doesn't know, because she doesn't know anything about Facebook, but she thinks Y would have written that X is staying in London. X says that Y has denied chatting about this. The main defendant asks X if Y told him that Z had read it. X says that Y told her that Z deleted the Facebook page." As was the case for the phone tapping, the defendants had already developed a counter-espionage strategy: "X says, since he (Y) is the one who was contacted, he needs to change his Facebook and mobile phone number".

Threats and blackmail of victims

Europol states: "[Criminal organisations] use the internet to threaten or coerce victims of trafficking in human beings. The internet is used to blackmail victims, by threatening to send compromising pictures to their family or friends or to expose them online."⁵⁷

Especially in *loverboy* cases, and cases in which victims were recruited for a job as a model via photo shoots, the traffickers try to blackmail the victims with naked photographs to force them into prostitution. *Loverboys* sometimes use screenshots taken with Snapchat during the seduction process of the victims.

This is an even greater problem among children. In the Romanian report of the EU project Surf and Sound, a Romanian magistrate stated: "[The trafficker would approach] especially victims that were 11,12, 13 years old, who had little life experience, requesting that they take off their clothes and display pornographic poses. [...] Once the victims sent their first picture, they start being blackmailed. They don't tell their parents and that's where the child pornography really snowballs, through the minor's friends. (Prosecutor)".⁵⁸

Control of victims

As observed in a study of the EU Trace project⁵⁹ (Trafficking as a criminal enterprise), Europol⁶⁰ likewise observed:

Human traffickers realise that their phone can be wiretapped and prefer to conduct their confidential conversations via Viber, What's App and Skype.

54 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human beings, *The Money that matters*, p. 92.

55 See also Part 3, chapter 3 (case-law overview): Corr. Antwerp, subsection Antwerp, 2 May 2016, chamber AC4. and Antwerp, 24 November 2016, 14th chamber.

56 MYRIA, 2015 Annual Report on Trafficking and Smuggling in Human beings, *Tightening the Links*, case study, pp. 69-71.

57 EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014; www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet.

58 www.surfandsound.eu, *Improving and sharing knowledge on the Internet role in the processes of human trafficking and smuggling*, ISEC 2013 Action Grants (HOME\2013\ISEC\AG\THB) \ 24 months (02.11.2014 - 01.11.2016), Surf and Sound, National Report Romania, 2017. www.crpe.ro/en/wp-content/uploads/2017/04/Improving-and-sharing-knowledge-on-the-role-of-internet-in-the-human-trafficking-process-national-report-Romania.pdf.

59 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE-D4.1_Role-of-technologies-in-human-trafficking_FINAL.-1.pdf.

60 EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014; www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet.

"Online technologies also enable traffickers to more easily harbour and control victims. [Criminal organisations] maintain close surveillance of their victims, by imposing daily e-mail exchanges or chat sessions to prove their presence".

In one of the Antwerp cases⁶¹ involving minors from youth institutions, the victim made statements about her *loverboy* and how he always managed to find her: "I am afraid of that because he always finds me. I only knew him for two weeks. During those two weeks I ran away twice and each time he found me. He found me via Facebook".

1.4. | Victims and social media

How do victims deal with social media? We have observed that victims use social media to create a certain image for people back home. But social media and the internet can also be a tool to strengthen the resilience of victims.

Creating an image for people back home

A media report by Public Radio International (PRI),⁶² a global not-for-profit media company, revealed that Nigerian victims present an image of their lives which is much more wonderful than the reality. They conceal the fact that they have been raped en route and have ended up in prostitution after they arrive. They have a sense of pride and want to come across well to their friends, and certainly not as victims.

The article 'On Facebook, Nigerian victims of sex trafficking often present their life as far more glamorous than it is' tells the story of some of the victims we have summarized:

"Walking out of church one sunny Sicilian Sunday, Fortune puckers her lips, looks coyly into the camera and snaps a selfie. Like millennials everywhere, Fortune loves social media. She asks her friend to take a few quick pics, striking different poses. She's looking sharp in her matching skirt and suit jacket, red lipstick, and a sleek new blonde wig tied in a knot at the back of her head. She publishes the photo on Facebook, and likes the comments coming in from friends back in Nigeria. "Very fine", types one friend.

According to Fortune's Facebook profile, she is living in Europe — grateful, happy, and devout. "Most of them lie," concludes Peace, another Nigerian woman living in Palermo. To her, the Facebook posts of her Nigerian and African friends who live in Europe make it look like they are "enjoying" Europe, when often the exact opposite is true. "It's a living hell". Publicizing their traumas and problems to their friends back home would be useless. "They won't believe you," Peace explained, saying they might think you were lying, in order to keep all the goods of Europe to yourself.

Social control

The cases show that the Nigerian victims also maintained close contacts between themselves, and kept each other informed via Facebook, which could at least equate to a minimum level of protection. For example, a Nigerian victim in a case⁶³ was able to indicate to the police the place where another victim prostituted herself: 'Regarding X, I can tell you that she is currently also working as a prostitute in a club located in X. She uses the telephone number.... And she also has a Facebook profile. She is a contact of mine on my Facebook profile'. In a case involving the Albanian mafia, the defendants did not take any risks in this respect and forbade their victims from accessing Facebook. Based on a tapped phone call, the police concluded: "The defendant did not allow victim X to have Facebook, so she had to use her sister's Facebook profile". However, the victim found an alternative solution.

Nigerian victims use social media to portray their life as being much more wonderful than it is in reality to family and friends.

Facebook can also be a relevant instrument of social control, whereby the police can be alerted in urgent cases. In a Liège case involving a *loverboy* and adult Belgian victims, a neighbour informed the mother of a disabled victim via a Facebook message that her daughter had been beaten by two men and a woman.

Economic exploitation

Among the victims of economic exploitation, we have observed that they exchange their positive and negative work experiences with each other, for example through a Polish website (Etransport.pl), about companies from the transport sector, in order to inform and protect their compatriots from abuse.

61 MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers*, p. 154.

62 www.pri.org/stories/2017-05-19/facebook-nigerian-victims-sex-trafficking-often-present-their-life-far-more?utm_campaign=TheWorld&utm_source=Facebook&utm_medium=SocialFlow.

63 See also Part 3, Chapter 3 (case-law overview): Dutch-speaking Corr. Court Brussels, 28 March 2017, 60th Chamber (definitive).

2. HOW LOVERBOYS MANIPULATE THEIR VICTIMS WITH SOCIAL MEDIA

In this section we will go into more detail on the role of social media among *loverboys*, since this is currently an essential tool for *loverboy* victims, and especially Belgian victims, including many minors.

Various methods are used by human traffickers to manipulate victims. One of these is the *loverboy* method.⁶⁴ In such cases, the perpetrator will ensure that the victim becomes emotionally dependent, often using seduction. The victim is then exploited by human traffickers through coercion and violence.⁶⁵ The *loverboy* technique is a method of human trafficking, and not an isolated phenomenon.⁶⁶

In recent years, the *loverboy* problem has become more widespread. Instead of seducing their victims in public places frequented by many young people, the internet is increasingly used. Research shows that half of victims have been recruited via the internet.⁶⁷ The internet offers a wide range of opportunities for this kind of criminality. Firstly, the internet has a barrier-reducing effect.⁶⁸ The anonymity of the platform allows criminals to adopt a different identity. Perpetrators no longer have to move around physically, meaning that they can reach a larger number of targets in less time and at less cost. Distances become irrelevant. The internet has also made the whole process easier and faster. All of the victim's information is available on the internet, which enables perpetrators to pick up on the victim's personality more quickly. This means that the problem is not shifted,

Loverboys appear to use Facebook most often for starting relationships.

but rather it broadens out. This development has been facilitated by new technologies, including the internet and the social media associated with it. Generally speaking, use of the internet has increased the *loverboy* problem.

In principle, there has been no increase in *loverboys* since the development of the internet. The lack of comparable material means that it is not possible to measure any increase in the phenomenon. Despite the lack of data, many experts believe that the phenomenon has existed for a very long time, even though it has only recently come into the spotlight. A possible increase in the number of cases in recent years can be attributed to the fact that the phenomenon has been given more attention, and people can find the various organisations responsible for combating *loverboys* more easily. A possible change may also be due to trends in the country of origin, which is therefore dependent on time periods. Another possible explanation for an increase in the phenomenon can be attributed to cases which are qualified more precisely. In the past, *loverboy* cases often fell under vice cases rather than human trafficking.

Loverboys appear to use Facebook most often for starting relationships. This is because vulnerable young people who are prone to getting involved in dependency relationships with a *loverboy* have an open profile on this platform. In addition to the open profiles, these young people are often available 24/7 on Facebook, making them easy prey. In addition to the use of Facebook, Skype, Whatsapp, Viber and MSN are also used.

Loverboys usually work according to a three-phase pattern. The first is the grooming phase. This is followed by the habituation phase and finally the exploitation phase.

The grooming phase can be further divided into three stages. The literal meaning of grooming is 'taking care of, or preparing something or someone'.⁶⁹ In the scientific jargon, grooming is described as the process whereby an adult approaches a young person manipulatively and starts to prepare them for abuse, often of a sexual nature.⁷⁰ The internet has influenced individual grooming behaviour in various ways. The aim of traffickers remains

64 EUROPOL, *Trafficking in human beings in the EU*, Situation report, The Hague, February 2016, Document Ref No: 7651, www.europol.europa.eu/publications-documents/trafficking-in-human-beings-in-eu.

65 F. BOVENKERK & M. VAN SAN, "Loverboys in the Amsterdam Red Light District: A realist approach to the study of a moral panic", *Crime Media Culture*, 7(2), 2011, pp. 185-199.

66 R. VERWIJS, A. MEIN, M. GODERIE, C. HARREVELD & A. JANSMA, *Loverboys en hun slachtoffers* (Loverboys and their victims), 2011, p. 20. Consulted at www.verwey-jonker.nl.

67 V. ZANETTI, (2009), "De digitale loverboy", (The digital loverboy), *Proces*, 88 (5), p. 282.

68 D. MUIR, *Violence against Children in Cyberspace*, 2005, pp. 25-29, ECPAT International: www.ecpat.net/ei/Publications/ICT/Cyberspace_ENG.pdf.

69 L. STEVENS, "Grooming en cyberlokking strafbaar (Grooming and cyber-enticelement punishable. Uitbreiding van de strafrechtelijke bescherming van de seksuele integriteit van minderjarigen in cyberspace)" (Extension of criminal law protection of the sexual integrity of minors in cyberspace), *Rechtskundig weekblad*, (Legal Weekly Journal) 78(22), 2015, pp. 844-855.

70 CHILD FOCUS, *Slachtoffers van tienerpooiers in Vlaanderen* (Victims of teenage groomers in Flanders), 2016. Consulted at www.childfocus.be/sites/default/files/rapport_tienerpooiers_en_hun_slachtoffers_1.pdf; H.C. WHITTLE, C. HAMILTON-GIACHRITSIS, A.R. BEECH & G. COLLINGS, "A review of online grooming: Characteristics and concerns". *Aggression and Violent Behavior*, 18, 2013, pp. 62-70.

the same. However, traffickers use other techniques and media to achieve their goal. They see the internet as a safe environment where all forms of behaviour are acceptable and the likelihood of prosecution is low.⁷¹ The only difference between the online grooming phase and offline grooming is the space in which the grooming occurs.⁷² The internet has created a new dimension for grooming, namely the online dimension. The aim of grooming remains the same. The online grooming process can be divided into several phases which the groomer needs to progress through.

First and foremost, the perpetrator must create a profile. Here, a distinction can be made between two approaches. The first involves the perpetrator drawing up a very incomplete, screened profile with little or incorrect information. In the second approach, the perpetrator will portray himself as a 'gangster', hoping to catch the eye of their victim.⁷³ The second phase within the grooming phase is the recruitment phase, during which the perpetrator looks for his victim. He recruits his victim based on gender, age, place of residence, hobbies, educational level, etc.⁷⁴ The recruiting sites are primarily social networking sites, youth sites and chat boxes.⁷⁵ The *loverboy* can approach multiple youngsters at the same time much more easily. In the third phase, the perpetrator will select a potential victim. This is called hawking, in reference to a hawk circling around its prey. This recruiting method can be divided into the direct recruitment of potential victims, and the indirect recruitment. In the case of direct recruitment, the perpetrator will focus on one individual victim. In the case of indirect recruitment, this is done via social media. The perpetrator will then send as many messages as possible, in the hope that someone will take the bait. Once this phase is completed, the perpetrator will start to approach his victim.⁷⁶ This can be done directly or indirectly. The fifth phase of the grooming process involves moving in on the victim.⁷⁷ This process

goes much faster via the internet. This is because people often reveal more information on the internet than in the offline world.⁷⁸ During this phase, sites are used that facilitate communication with the victim. The perpetrator will intentionally gather compromising information about the potential victim, to subsequently use it for blackmailing purposes. During this phase, the perpetrator will put the idea of prostitution into the victim's head.

During the habituation phase, the perpetrator often uses the internet as a means of blackmail. In order to maintain control, the perpetrator will blackmail his victim by threatening to spread sensitive information.

The final phase is the exploitation phase. Here, the perpetrator will primarily use the internet as a means of advertising. He will mainly advertise on large-scale commercial sex advertisement websites.⁷⁹ These websites are a simple way for customers to organise a sex date cheaply, without much control. Victims can take any identity on these websites, which makes it very easy to advertise underage girls. The problem with these websites is that it is prohibited to advertise for prostitution in Belgium, meaning that any dates arranged via these sites are illegal. And if the judiciary were to enact a regulation in this respect, it could itself be accused of breaking the law. Subsequently, the internet is also used to keep a close eye on the victim. Research has shown that the vast majority of prostitution takes place online these days.⁸⁰

The internet is used as a means of blackmail, whereby threats are made to spread sensitive information.

71 J. DAVIDSON, "Internet Child Abuse: Understanding Offender Online Grooming Behaviour", in M. SEIFI (Editor), *Advances in the Analysis of Online Paedophile Activity*, pp. 39-55. Consulted at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.167.8208&rep=rep1&type=pdf#page=39>.

72 CEOP, *Strategic Overview*, 2006, pp. 25-26. Consulted at www.ceop.gov.uk/pdfs/CEOPStrategicOverview2007.pdf; P. GOTTSCHALK, "A Dark Side of Computing and Information Sciences: Characteristics of Online Groomers", *Journal of Emerging Trends in Computing and Information Sciences*, 9, 2011, pp. 447-448. Consulted at www.cisjournal.org/journalofcomputing/archive/vol2no9/vol2no9_5.pdf.

73 V. ZANETTI, *op. cit.*, p. 286.

74 MOVISIE, (2009), *Meisjesprostitutie: feiten en cijfers* (Prostitution of girls: facts and figures), 2009, p. 6. Consulted at [www.movisie.nl/sites/default/files/alfresco_files/Factsheet%20meisjesprostitutie%20\[MOV-226011-0.5\].pdf](http://www.movisie.nl/sites/default/files/alfresco_files/Factsheet%20meisjesprostitutie%20[MOV-226011-0.5].pdf).

75 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 28.

76 V. ZANETTI, *op. cit.*, p. 287.

77 MYRIA, 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 28.

78 V. ZANETTI, *op. cit.*, p. 288.

79 *Ibid.*, p. 289.

80 M. FARLEY, K. FRANZBLAU, & A.M. KENNEDY, (2014), "Online Prostitution & Trafficking", *Albany Law Review*, 77(3), 2014, pp. 101-102. Consulted at <http://prostitutionresearch.com/wp-content/uploads/2014/09/FarleyFranzblauKennedyOnlineTrafficking-2014.pdf>.

3. THE ROLE OF SOCIAL MEDIA AND THE INTERNET IN HUMAN SMUGGLING

In 2016, the European Migration Network (EMN) investigated the role of social media in human smuggling.

Social media started playing a role in human smuggling around 2013-2014.⁸¹ The EMN report states: "The use of social media in migrant smuggling has witnessed an exponential growth in recent years. Smugglers use social media to: advertise smuggling services; to provide information on migration routes; as well as to facilitate communication. The increasing use of social media can be explained by the fact that it is less costly, safer to use for both the migrant and their smugglers (anonymity/ encryption), whilst more effective in increasing visibility and reaching a wider group of migrants".⁸²

The EMN launched a survey in the EU Member States using a questionnaire. This revealed that 11 EU countries were confronted with this problem.⁸³

3.1. | The smuggling market

In 2016, Europol traced 17,000 smugglers who used Facebook for their smuggling activities into the EU.

In 2016, there was a huge increase in the use of social media by smuggling networks. In 2016, Europol traced 17,000 smugglers

who used Facebook for their smuggling activities into the EU.⁸⁴ In addition, in the same year, Europol was able to trace more than 2,500 counterfeit travel documents on social media.⁸⁵

One smuggler stated to the BBC that between 10 and 20 people are smuggled daily, through his Facebook account.⁸⁶ He had not used social media before 2012. At the time of publication of the BBC article (13/05/2015), Facebook already accounted for between 30% and 40% of his smuggling business.

Advertisement

In its first annual report, Europol's European Migrant Smuggling Centre (EMSC)⁸⁷ stated: "In 2016, the migrant smuggling content in social media facilitated illegal migration and associated content became not only increasingly visible in the online environment, but also significantly increased in quantity and complexity. In 2016, 1150 suspect social media accounts were communicated to the EMSC. This reflects an 87% increase when compared to approximately 148 such accounts in 2015. The social media platform of choice for smugglers remains Facebook; however a very slight movement towards other service providers, such as Telegram, was detected". Frontex also noted that smugglers were very quick and flexible in their handling of social media: "I might have more than 40 to 50 Facebook accounts. I activated them as needed, and when my passengers arrived at their destination, I deactivated them".⁸⁸

Smugglers also use Facebook to advertise their services, including the cost, type of transport, success rate, and, in some cases, information on asylum policies or family reunification processes across the EU, says the International Centre for Migration Policy Development (ICMPD).⁸⁹

81 <https://emnbelgium.be/news/experts-migrant-smuggling-gather-be-emn-ncp-roundtable?q=/news/experts-migrant-s>.

82 European Migrant Network (EMN) Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016.

83 Summary of EMN Ad-Hoc Query No. 1055 from 18 April 2016, *Addressing and preventing the use of social media in migrant smuggling*: "Eleven (Member) States (BE, CZ, ES, FI, HU, LT, NL, NO, PL, SK, UK) have confirmed that social media is used to advertise smuggling services, provide information on migration routes and communicate with smugglers using applications such as WhatsApp or Viber. For example Facebook is used to provide information on specific trips (travel packages including price), contact details, live blogs on the progress of other clients across the sea as well as for sharing of stories to tackle safety concerns of potential clients".

84 Europol, *Migrant Smuggling in Europe*, February 2016; www.express.co.uk/news/world/771957/smugglers-mediterranean-traffickers-facebook-europol-report.

85 L. TAYLOR and V. CARDI, *The Smuggling Game Playing with life and death to reach Europe*, 28 March 2017: <http://news.trust.org/shorthand/the-smuggling-game>.

86 D. ADAMSON and M. AKBIEB, *The Facebook smugglers selling the dream of Europe*, BBC World Service, 13 May 2015: www.bbc.com/news/magazine-32707346.

87 European Migrant Smuggling Centre, *Activity Report: First Year*, January 2016 - January 2017, Europol.

88 <http://frontex.europa.eu/pressroom/hot-topics/profitting-from-misery-how-smugglers-bring-people-to-europe-aUY2f>.

89 FRONTEx, *Profiting From Misery - How Smugglers Bring People To Europe*, 18 February 2016 <http://news.trust.org/shorthand/the-smuggling-game>.

The UNHCR has examined the role of social media in smuggling from the perspective of migrants.⁹⁰ It found a whole range of offers on social media tailored to various migrant groups.

For Afghans who receive a total package for a smuggling route from Afghanistan to the destination country via a so-called travel agent (see below): "Smuggling networks are not only responsible for transport, they also arrange the necessary documents. On Facebook, there are always numerous offers, with details of the sellers' contact details. Sometimes potential customers even get information about the expected waiting times and price. Counterfeit visas are also continually for sale. In addition, there are also short-term offers for genuine visas from various embassies/consulates. These include visas for the 'Schengen' area or specific EU Member States, but also for Turkey, Ukraine, Canada and the USA. In some cases, the offers also include details on the type of visa, such as a tourist or student visa, but sometimes bizarre details such as "marriage visas", "visas and place of residence", "investment visas" or "visas to buy property".⁹¹

Arabic speakers, including Syrians and possibly Iraqis, are suspicious of smugglers and try to organise their own journeys in stages, and only contact smugglers in the event of a difficult illicit trafficking route. "Smuggling proposals on Facebook now include illegal international land, air or sea transportation, embassy staff being bribed to deliver visas, passports being stolen in one country to be stolen in another".⁹²

During its survey of EU countries, the EMN also found comments on Facebook advertisements with an offer of sham marriages.⁹³

Public Relations

Various smugglers recruit their customers through word-of-mouth advertising. For them, this is still the most important way to reach migrants. They use Facebook to take care of their public relations, with promotional films for their smuggling trips.

The newspaper *De Morgen* interviewed a smuggler on this subject: (translation) "He claimed to use Facebook as a means of reinforcing his image, so that migrants who had been given his name by others could see that he was the real deal. His Facebook account contains videos of refugees who have arrived at Lesbos in dinghies. They raise their thumbs: 'Let's hear it for X (name of smuggler)!', the migrants call out, relieved that they have made it to the other side".⁹⁴ The UNHCR report also found promotional material from smugglers from the time when they were in a negative light due to the many people who were drowning.⁹⁵

Facebook user groups

Facebook contains various Arabic-speaking user groups for human smuggling". According to the UNHCR report, Syrian and Iraqi migrants are more likely to make use of this for a certain part of their planned smuggling journey.

The role of these Facebook user groups was also covered in the smuggling cases. Analysis of a smuggling case⁹⁶ showed that a Kurdish-Palestinian smuggling network used Facebook to further develop its international network with potential smuggling customers. At the start of its investigation, the police noted in an official report that a Facebook group had been set up for this purpose: "We have also learned that there are various Arabic-speaking user groups on the social media website Facebook. These are intended to bring people who want to come to Europe without having valid documents in contact with each other and people smugglers. People can ask questions within these user groups about the situation in European countries and cities. The aim is to gather information to reach these areas. People also ask for contact details of people who can help them in this regard. These contact details are then sent to the person asking the questions via private messages. Other users are also sometimes informed if the crossing to the UK was successful. We obtain the names of some of these user groups. We add these to the appendix of this official report".

90 UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017: www.unhcr.org/uk/5909af4d4.pdf. See also the external contribution by M. SUNJIC, "Refugees: when human smuggling becomes human trafficking".

91 *Ibid.*

92 *Ibid.*

93 Summary of EMN Ad-Hoc Query No. 1055 from 18 April 2016, *Addressing and preventing the use of social media in migrant smuggling*: "Other similar activities on social media include advertisements of sham marriages. For example Poland explained that they detected advertisements of such services being provided in the UK in exchange for GBP 6,000".

94 *De Morgen*, 7 November 2015.

95 "Criticism of the dangers of illegal migration on Facebook pages poses a threat to the smuggling business and smugglers react in various ways. When more and more Facebook users started to point out the dangers of the sea crossing, smugglers put beautiful photos of yachts and luxury cruise liners online, to make potential customers believe that this was the kind of ships they were using. In addition, images about safety and persons brought to Europe on the wings of angels also appeared".

96 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* pp. 113-114.

Various specific Facebook user groups linking migrants to smugglers have been listed in several study reports⁹⁷: "Smuggling Into the EU", "How to Emigrate to Europe", "Smuggling from Turkey to Europe", "Immigration and Travel to Europe", "Wishing to immigrate to Europe through Libya". Migrants can compare smuggling routes, destination countries and cost prices.

Fake passports can be bought here.⁹⁸ In addition, smugglers also use success stories to promote themselves⁹⁹ and respond to migrants' fears of drowning.¹⁰⁰

Maps with routes via WhatsApp

In Whatsapp, there are chat groups for migrants who wish to travel autonomously as much as possible and who seek contact with smugglers for certain difficult routes. They exchange maps showing routes, major cities, border areas, means of transport, prices and the contact points of smugglers. These maps were discussed in an EU project from 2016-2018 that examines the role of social media among migrants.¹⁰¹

Travel agencies

Travel agencies play a key role in human smuggling through internet advertising. Using pleasant photographs on Instagram, smugglers offer smuggling trips to Western European cities via travel agencies. They promote these using attractive photographs of the cities, and photographs



Facebook group of smugglers

of the necessary false identity documents. Facebook is also used to distribute advertisements, as Frontex identified.¹⁰² Moreover, according to Europol, some of these Facebook accounts look similar to those with the offers from normal travel agencies.¹⁰³ In Thailand, such travel agencies with internet ads are engaged in human smuggling, as well as trafficking.¹⁰⁴

The UNHCR report found many advertisements in Afghanistan from so-called travel agencies dealing in human smuggling.¹⁰⁵

Human smuggling is highly ingrained in Afghan society. This has already been observed in the case study of an Afghan smuggling network.¹⁰⁶ Human smugglers are seen as travel agents there, and they enjoy great prestige. Afghan migrants therefore place their full trust in these smugglers to organise their journey.

97 Danish Refugee Council, *Getting to Europe the 'WhatsApp' way*, June 2016. http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20Briefing%20paper%202_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf.

98 *Ibid.*: "Smugglers also use social media to offer specific services such as fake passports and other identity documents. The so-called Facebook page in Arabic: 'Issuing and renewing passports, driving licences and educational diplomas' helps Syrians who want to obtain such documents".

99 *Ibid.*: "The 'Asylum and migration to pan-Europe' Facebook group listed below has 23,810 members. There is a testimonial from someone who managed to reach Sweden, and after these comments, smuggler W. posted his number on Viber and WhatsApp to others who may want to use his services.

100 *Smugglers, Migrants connect using Facebook*, The Toronto Star, 10 July 2015: "The smugglers writing in Arabic mention phone numbers, rates, details about routes and means of transport, and even provide their Facebook page walls with a: 'book now' button. In an attempt to dispel the fear of migrants drowning at sea, a Facebook page of smugglers has added the term 'safe travel' to the title, while another page has added the word 'smuggling' and openly mentions the size of the boats and smuggling costs".

101 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk/research/main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf. "The maps show in great detail the specific transport options between locations and their cost, the optimal routes and border crossings. Information can also be found about specific cities and places where smugglers or drivers offer their services. Its highly detailed nature indicates a very well-organised partnership".

102 <http://frontex.europa.eu/pressroom/hot-topics/profitting-from-misery-how-smugglers-bring-people-to-europe-aUY92f>: "Some Facebook pages also offer false travel documents for sale and sell themselves as travel agencies which are generally based in Turkey".

103 De Morgen, 7 November 2015.

104 See above point 1 of this focus (the role of social media and the internet in human trafficking) and below, Part 3, Chapter 3 (case-law overview).

105 UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017. www.unhcr.org/uk/5909af4d4.pdf: "Afghans practically always book all-inclusive trips from country of origin to destination. Among Dari speakers, there are both direct contacts and advertisements on social media. Often travel agencies will operate legitimate as well as illegal businesses. Afghan smugglers sell the 'European Dream' with enticing pictures and promises of a good and safe life.

106 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, p. 82.

The smugglers also use the same marketing strategies as a travel agency. This was identified in an EU project from 2016-2018 that examines the role of social media among migrants.¹⁰⁷

Communication between smuggler and customer

Smugglers mainly communicate with their customers through social media. They operate under a pseudonym. This communication is an extra dimension, especially in the Syrian and Iraqi smuggling cases. According to the UNHCR report, this communication with Syrian and Iraqi migrants is not just to make contact. It is veritable negotiation between smuggler and customer, since these migrants have little trust in smugglers.¹⁰⁸

As observed in numerous cases, smugglers prefer to communicate via Viber, Skype, WhatsApp and Facebook because they realise that their mobile phone can be wiretapped by the police.

In a Syrian smuggling case, the police were able to read the chat conversations from a smuggler's iPhone. This showed that the smuggler in question had communicated with 769 customers via Viber, WhatsApp and Skype. There was also talk of communication via Facebook, but the police had no details in this respect.

In a Kurdish smuggling case¹⁰⁹ the smugglers communicated with their customers via Viber. In a tapped telephone call from a smuggler, customers were referred to Viber: "At 14:17, the smuggler (796) calls the user of the Iraqi phone number 788. He asks after a boy (unknown) who, according to 788, was staying in Bulgaria. The user of 788 was going to send the smuggler's (796) number to the boy so that he could call him. The smuggler explains that he also has a few other numbers and that he will send them all by Viber". A smuggled person who had successfully arrived in the UK reported this to the smuggler

by telephone and was promptly advised to use Viber for this communication.

In another Kurdish smuggling case¹¹⁰, the smugglers were explicitly instructed by their leader to contact the smuggling customers via Viber. The police were able to trace the chat messages between the smugglers and their Iranian customers, which contained the locations of the appointments (hotels in Brussels).

In a Ukrainian smuggling case¹¹¹, the smugglers used various Skype profiles with which they forwarded the smuggled people to Viber: "Hello! How is it going? Will there be something today? How is it with a package for the chicken house (note: safehouse where the smuggled persons are located)? Answer: Hello. There is a boy from Spain. He is arriving. This boy has not called yet. There is no one yet. Add him via Viber. He will be in Brussels this morning".

Using pretty photographs on Instagram, smugglers offer smuggling trips to Western European cities, through travel agencies.

3.2. | Managing smuggling networks

Social media have a strong impact on the dynamics of human smuggling. The EMN concluded: "The use of social media has a significant impact on irregular migration. It helps migrants congregate, producing faster dynamics at the external borders, and, it has also increased the capacity of smugglers to change smuggling routes in response to security situations or law enforcement operations".¹¹² At the same time, they can better protect their smuggling activities through social media. Frontex came to the same conclusion.¹¹³

We have found in the cases that smugglers use the social media in various facets for their confidential conversations to manage their smuggling business internally. This

107 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk.research.main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf. "This is why smugglers often use new technologies for marketing purposes, just as travel agencies do. Or, as one of the MEDMIG surveys put it: "In order to win our trust [the smuggler] gave us the telephone numbers of all the people who would travel with us".

108 UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017. www.unhcr.org/uk/5909af4d4.pdf. "Potential clients ask each other on social media about ways to get to Europe or certain countries. Smugglers monitor Facebook conversations and post their offers. Negotiations are done via private channels (Viber, Imo, WhatsApp,...).

109 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case studies p. 119.

110 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

111 See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Ghent, 10 January 2017, G28bis chamber.

112 EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016.

113 <http://frontex.europa.eu/pressroom/hot-topics/profitting-from-misery-how-smugglers-bring-people-to-europe-aUY2f>: "Persons who advertise their services on social media are aware of the risks and are active on various social media platforms. They usually use Facebook, WhatsApp and Viber to discuss the financial details and logistics of smuggling operations".

relates to the various facilitating aspects of social media: financial management, customer management, internal organisation management, the smuggling network and counter-strategy.

Financial management and discussions

The cases show that human smugglers prefer to conduct their financial conversations via social media. Delicate subjects such as financial discussions could not be discussed over the phone.

By tapping the telephone conversation of a smuggler in a Kurdish case¹¹⁴, the police found that the smugglers agreed by telephone to discuss these matters via Skype or Viber: "Smuggler X reproaches smuggler Y that he is holding back money from 3, which was sent on Thursday 04.12. Smuggler Y is currently in the Netherlands and doesn't want to discuss it over the phone, but over the internet".

Human smugglers prefer to conduct their financial conversations via social media.

The smugglers used Facebook to arrange and manage the payments. In a Kurdish smuggling case¹¹⁵, in connection with a customer's payment, a smuggler referred to an unknown account number during a telephone call for the settlement of his payment, which then had to be reported via Facebook. In the same smuggling case, text messages containing transaction codes of money remittances via money remittance services such as Moneygram, Western Union etc., names and bank details were found when a smuggler's Facebook messages were read.

In another Kurdish smuggling case¹¹⁶, payments from the smugglers within the network were settled via Viber: "On Saturday 24 January 2015 at 11:47, the user of 796 (smuggler) calls the person looking after finances in the Netherlands and explains that he sent her a name the day before. The woman (779) explains that she hasn't received anything. The smuggler tells her that he will send the name by Viber. The person looking after the finances most likely has to pay the smuggler. At 11.56am. the user of 796 will again send the same message with the name of the person involved to the financier in the Netherlands".

According to the UNHCR report¹¹⁷, more than one hundred Afghan freelance bankers are active on Facebook who arrange financial transfers between the smuggler and the customer. The UNHCR found evidence on social media of such contacts in the UK, Hungary, Austria, Germany and Ireland.

Confidential discussions about customer management

Smugglers prefer social media to communicate about their customer management. There are clear examples of this in the cases.

In a Ukrainian smuggling case¹¹⁸, they deliberately switched from a mobile phone conversation to Skype when customers were mentioned: "Smuggler Z. calls smuggler S. and explains the situation. He still has 12 or 13 'candidates' to move. Further communication via Skype'. The police found relevant Skype and Viber messages in a smuggler's smartphone where locations (mainly car parks along motorways) and addresses of safehouses were passed on, as well as a communication about a person arriving from Spain.

In an Iraqi smuggling case in Dendermonde¹¹⁹, a smuggler A. from Belgium had privileged contacts with a Syrian smuggler in London who was known as a supplier of Syrians. These two smugglers were friends via Facebook. Smuggler A. stated during his questioning that all his communications with the Syrian smuggler from London had to go through Viber and Facebook. In a related smuggling case in Brussels¹²⁰, the same Syrian smuggler from London maintained contacts with another smuggler via Skype.

Confidential discussions on internal organisation and cooperation

Smuggling networks arranged their operations via social media. In a Ukrainian smuggling case¹²¹, smugglers arranged their operational smuggling management via Skype. The police analysed the Skype messages of the smugglers and concluded: "We note that in the communication (Skype) between X, Y and Z relatively structured messages are made that can be considered

114 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case study p. 121.

115 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

116 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case studies p. 122.

117 UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017: www.unhcr.org/uk/5909af4d4.pdf.

118 See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Ghent, 10 January 2017, G28bis chamber.

119 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

120 Corr. Court Brussels, 13 October 2016, 60th chamber (not published).

121 See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Ghent, 10 January 2017, G28bis chamber.

relevant for the investigation. The communication mainly covers the following two subjects: a) the forwarding of Polish telephone numbers with an additional amount in euro and a time. These include, with a probability bordering on certainty, numbers of drivers who take "candidates" across the Franco-British border, the amount to be paid to them and the time at which they have to contact the man; b) transfer of Polish names, dates of birth and alphanumeric data from Polish identity cards that are checked for their usefulness (whether or not sealed). These communications transfer data from Polish identity cards which are then returned with or without an OK. The modus operandi shows that [the] organisation uses Polish identity cards bought from their owners".

The smugglers make contact with other smugglers from the countries of origin via social media. In an Afghan smuggling case¹²², the smugglers started talking by telephone about a new Afghan smuggler they wanted to contact. They agreed to continue their conversation later with the help of video chat: "557 asks if 166 has been to Afghanistan. 166 says that he has been in Afghanistan for 51 days and that people smugglers are now asking 17,000 dollars to send people here. 557 asks if he can forward that person's number. 166 says that there is a girl in Kabul doing the work. 557 asks for her number and says that he wants to talk to her. 166 says that she does it in 25 days and then says that he will soon talk to 557 via video chat. The number is (...) and then he says that he will send that number again via Facebook, just to be sure".

In an Albanian smuggling case¹²³, the smugglers exchanged their Skype addresses and directly discussed their smuggling operations and problems through Skype. The police were only aware of this because the smugglers referred to it during their mobile phone conversations.

Counter-espionage strategy

According to the EU countries' survey, the EMN concludes: "Investigations have discovered that smugglers express a preference for communicating over the internet rather than phone. This way of working is more anonymous and reduces the risks of police intervention, while at the same time allowing smugglers to expand their activities."¹²⁴

The smuggling leaders give clear guidelines to communicate not by telephone but by social media. In

an Afghan smuggling case¹²⁵, the smugglers alerted each other to the fact that their phones were being tapped by the police, and said in a tapped phone call: "Go on Skype. Ok, I'll be there in five minutes. There was a similar phone tap in a Kurdish case:¹²⁶ "It is smuggler A who calls a British number, smuggler W asks him to correspond via Viber".

The smugglers regularly changed their mobile phone numbers to make it more difficult and exchanged their new numbers via Facebook. The following is a good example of a telephone wiretap in a Kurdish smuggling case¹²⁷: "Smuggler D asks smuggler S to send his new mobile phone number via Facebook and says that he will also have a new number tomorrow... Both agree to change their number again and forward their new number via Facebook". During his questioning, a smuggler publicly admitted to the police: "We also tried to communicate as much as possible via the internet (Facebook and WhatsApp, but especially Viber) because the police cannot wiretap these calls".

According to an investigative report¹²⁸, such use of social media fits in with a strategy of professionalising smuggling networks.¹²⁹ A smuggler who was interviewed for this study explained: "I have used more than 100 mobile phone SIM cards myself," explains Afghan smuggler J. "I probably have more than 40 or 50 Facebook accounts. I activate them when I need them and as soon as my customers arrive at their destination, I deactivate them".¹³⁰ Such deactivation of a smuggler's Facebook account is seen as a new form of counter-espionage techniques.

We currently see in smuggling cases that smugglers realise that social media chat messages can be read and analysed by the police, as is the case for mobile phones. In a Kurdish smuggling case¹³¹, it appears that smugglers are trying to adapt to this situation and are developing counter-espionage strategies in social media. Following the arrest of several smugglers, four of them managed to flee to France. One of the fugitive smugglers quickly warned the others by telephone to remove the digital traces of the

122 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case studies p. 122.

123 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, p. 73.

124 Summary of EMN Ad-Hoc Query No. 1055 from 18 April 2016, *Addressing and preventing the use of social media in migrant smuggling*.

125 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, p. 82.

126 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* pp. 113-114.

127 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case studies p. 122.

128 The Smuggling Game Playing with life and death to reach Europe, by Lin Taylor and Valeria Cardi, 28 March 2017: <http://news.trust.org/shorthand/the-smuggling-game>.

129 "Smugglers are very innovative and they are adjusting their criminal activities very quickly to new obstacles in their way." Through social media platforms like Facebook, or encrypted mobile apps such as WhatsApp, Imo and Viber, smugglers can easily bypass police detection and communicate freely with migrants or their relatives to negotiate payments and logistics.

130 <http://news.trust.org/shorthand/the-smuggling-game>.

131 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

detained smugglers, so that the police could no longer make any connection between them: "On 22/05/2015, Q (fugitive smuggler) contacted P (smuggler) via his French telephone number. Q inquires firstly as to the situation of the suspects arrested on 22/05/2015 (and advises to block their names on Viber), and then indicates that he has lost his smartphone in the car park. He asks P to turn off his Facebook when he finds his smartphone (he transfers PIN code 2101)".

In the same case, a smuggler was in the process of searching for trucks for a smuggling operation. During a phone call, he was asked not to post the photos to Facebook. He knew that these are important operational smuggling data that can be found by the police: "597 calls 782 with the information that he has just taken two photographs, he will send the photos to 782 and asks to see if they are going there or not. (police note: presumably to a given destination in the United Kingdom, presumably photographs of lorries with a given destination, this is removed from the context of the conversation). 782 asks that no photographs are posted to his Facebook account".

3.3. | Social media and the exploitation of smuggling victims

Smugglers also use social media as a tool to assist in the exploitation of victims of smuggling. There are also reports of exploitation on social media.

Social media as a facilitator of sexual exploitation

In an Afghan smuggling case¹³², the smuggling leader, using Skype, arranged a free smuggling trip for a minor to France, where the boy had to pay for it in kind afterwards. An employee phoned the smuggling leader with the message: "There are a few nice-looking boys and I can send them to you if you like". The smuggling leader replied: "Why not, use Skype to show them to me and there's one whose trip to France will be totally paid. Ok, give my number to one of these two minors, the one that looks the most "expensive".

This Afghan smuggling leader operated from a smuggling camp in Calais, where UNHCR also reported sexual abuse of Afghan boys.¹³³

Reports of exploitation on social media and internet

Migrants themselves are also starting to post more situations of abuse on social media, to warn their peers. This can lead to a form of social control at the digital level. For example, stories of rape have already been reported on social media, which have taken place along the way.¹³⁴ Films have also been posted in which smugglers force migrants to cram into an overcrowded boat under the threat of a weapon.¹³⁵

The EU project on the role of social media and migrants mentions an online platform that records violations of the human rights of Mediterranean migrants: Watch The Med¹³⁶ is an online mapping platform that tracks the number of deaths of migrants and human rights violations at sea.¹³⁷ The information on this platform is based on reports and testimonies sent by telephone or internet by migrants, family members, seafarers and other witnesses to violations of migrants' rights at sea.¹³⁸

3.4. | Social media, internet and secure migration routes

Myria has already highlighted the importance of safe migration routes in its previous annual reports. Social media can play a major role in this respect. One study puts

132 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, p. 82.

133 UNHCR, *From A Refugee Perspective, Discourse of Arabic speaking and Afghan refugees and migrants on social media from March to December 2016*, April 2017. www.unhcr.org/uk/5909af4d4.pdf: "Individual interviews with our investigator in Calais have shown that a number of very young boys have been sexually abused by smugglers. This is something that young Afghans will not readily talk about due to fears of stigmatisation and/or retaliation... In general, the Afghan travellers are very young and uninformed, and rely entirely on their smuggler, which makes them vulnerable to abuse, including sexual exploitation".

134 *Ibid.*

135 *Ibid.*

136 www.watchthemed.net.

137 www.watchthemed.net/pdf/WTM-flyer-eng.pdf.

138 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk/research/main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf.

it this way: "It is through phones that refugees learn about routes and the cost of transport. It's how they find out which borders are open and which are closed. Even before they make it that far, their phone might have saved their life by informing them about the weather conditions on a sea crossing. The general view is that they have three basic needs: a smartphone, food and water – in that order".¹³⁹

Below are some best practices that have already been developed and show the possibilities of social media.

Safe migration routes

Migrants find their bearings along the way using Google Maps, and exchange safe routes and current changes among each other.¹⁴⁰ In 2015 and 2016, migrants used Google Maps to traverse several countries from Greece along the so-called Balkan route to Western Europe.¹⁴¹ When Hungary closed its borders in 2015 and the migration route shifted to Croatia and Serbia, an application was developed via Facebook with a map of the locations of landmines in these two countries, so that the migrants could travel through safely.¹⁴²

The EU project examining the role of social media for migrants mentions various developed Apps as best practices in its interim report. During the refugee crisis, Google, together with various NGOs, developed the App 'Crisis Info Hub' with up-to-date relevant information on Greece, Macedonia (FYROM), Serbia, Croatia and Slovenia, and their border regions.¹⁴³

Another app is 'Infomobile - Welcome 2 Europe'¹⁴⁴ and was developed by migrants themselves. It provides updated advice on migration policy and contact details of the NGOs of 35 countries.¹⁴⁵

Facebook user groups without smugglers

Facebook groups have been set up for migrants who want to travel to the West without a smuggler. The Facebook page 'Europe without Smugglers' provides information about the routes that were previously only provided by smugglers. One migrant put it as follows to a journalist: "You have an entire network of people at your fingertips. Smugglers via the land-based route are no more than an extra cost. Often it is much more risky to work through them than to rely on other refugees."¹⁴⁶

The Facebook group "Asylum and Immigration without Smugglers" has more than 15,000 members and steers the migrants through Europe individually or in a group without smugglers. One migrant asked the question to join a group: "I am in Turkey and would like to go to Germany or Sweden, is there a group which is ready to leave? One person replied: "My father and brother are also doing the journey and we are just forming a group, call me at this number: xxx".¹⁴⁷

Migrants themselves are also starting to post more situations of abuse on social media, to warn their peers.

139 Babani, 2016. *Phones – crucial to survival for refugees on the perilous route to Europe*. <https://theconversation.com/phonescrucial-to-survival-for-refugees-on-the-perilous-route-to-europe-59428>.

140 J. ZIJLSTRA, IVAN LIEMPT, "Smart(phone) travelling: understanding the use and impact of mobile technology on irregular migration journeys", *International Journal of Migration and Border Studies*, January 2017. www.researchgate.net/publication/312015518_Smartphone_travelling_understanding_the_use_and_impact_of_mobile_technology_on_irregular_migration_journeys.

141 Danish Refugee Council, *Getting to Europe the 'WhatsApp' way*, June 2016. http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20Briefing%20paper%202_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf.

142 NPR, 2015, A Harrowing Journey Into Europe, Aided By Apps And Internet Access. www.npr.org/2015/09/19/441754735/aharrowing-journey-into-europe-aided-by-apps-and-internet-access.

143 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk.research.main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf: "The Google team identified a "lack of timely hyperlocal information for refugees", developing something that would give refugees vital forms of information concerning the particulars of their departure, journey, and arrival, "providing refugees—most of whom carry smartphones—with critical information for their journeys: lodging, transportation, medical facilities, etc.

144 www.facebook.com/w2eu.info/info/?tab=page_info.

145 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk.research.main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf: "Refugees are encouraged to navigate across the various links in order to find information concerning issues such as: "safety on the sea", "asylum", "Dublin II", "gender", "minors", "regularization", "detention", "deportation", "living", "family", "medical" and "work".

146 The Financial Times, 2016. *Technology comes to the rescue in migrant crisis*. www.ft.com/cms/s/0/a731a50a-da29-11e5-a72f-1e7744c66818.html#ixzz41ks4s7ZX.

147 Danish Refugee Council, *Getting to Europe the 'WhatsApp' way*, June 2016. http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20Briefing%20paper%202_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf.

Social media as a lifeline on the move

Migrants use social media as a helpline during their journeys, which can save lives. One migrant testified to a journalist: "At the beginning of his dangerous journey across the Aegean Sea in a rubber boat with 62 other refugees, H. phoned a friend in New York. He wanted to keep her on the line in case something went wrong. And then something did go wrong. The boat started to take in water and sank. When H. fell into the water, he was able to keep his phone above the waves and ask his girlfriend to inform the Turkish coastguard. Through WhatsApp, he was able to give his location. 45 minutes later he was rescued".¹⁴⁸ There was a similar story in which Twitter played a crucial role as an assistance tool which saved many lives.¹⁴⁹

According to the IOM (International Organization for Migration),¹⁵⁰ a total of 7,763 migrants died during their crossing in 2016. Of these, 5,096 people drowned or disappeared in the Mediterranean Sea.¹⁵¹ In 2015, there were 3,771 deaths in the Mediterranean Sea. According to the UNHCR, by 31 July 2017, there had already been 2,409 deaths or missing persons in the Mediterranean Sea.¹⁵²

Migrants use social media as a helpline during their journeys, which can help save lives.

Meanwhile, various applications are being developed that serve as a lifeline. For example, there is a Facebook page with real-time information about missing boats in the Mediterranean Sea.¹⁵³

The EU project on social media and migrants refers to Alarmphone¹⁵⁴ as a hotline for supporting relief operations.¹⁵⁵

148 Wired, 2016, *Refugees are more connected than ever. Rescuers must be too*. www.wired.com/2016/04/humanitarian-aidstartups/?mbid=social_fb.

149 Babani, 2016. *Phones – crucial to survival for refugees on the perilous route to Europe* <https://theconversation.com/phonescrucial-to-survival-for-refugees-on-the-perilous-route-to-europe-59428>: "A Twitter subscriber who received a phone call from someone on a boat with a broken engine on the Mediterranean, used Twitter to get the number of the Italian coastguard, tweeting: "250 Eritreans women and children majority their ship is in distress in Mediterranean. Please help, they asking for help! Motor stop working". This message was retweeted with GPS coordinates to alert the emergency services.

150 <http://migration.iom.int/europe>.

151 See MYRIA, 2017 *Annual Report Migration in Figures and Rights*, p. 103.

152 <http://reliefweb.int/report/italy/mediterranean-dead-and-missing-sea-july-2017>.

153 Danish Refugee Council, *Getting to Europe the 'WhatsApp' way*, June 2016. http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20Briefing%20paper%202_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf: "More than 58,000 people follow the Facebook page of Lukman Derky, a Syrian in France. He shared information on boats that have gone missing while crossing the Mediterranean Sea. This includes the last known GPS coordinates of the vessels, as well as readings for people in need on dry land, along with a request for the nearest follower to come to their aid.

154 <http://alarmphone.org/en>.

155 The Open University and France Médias Monde, 2016. *Mapping Refugee Media Journeys: Smartphone and Social Media Networks*. www.open.ac.uk/research/main/sites/www.open.ac.uk.research.main/files/files/ecms/web-content/Mapping-Refugee-Media-Journeys-16-May-final-V1.pdf: "The alarm phone was started in October 2014 by activist networks and civil society actors in Europe and Northern Africa. The project set up a self-organized hotline for refugees in distress in the Mediterranean Sea. It offers the affected boat-people a second option to make their SOS noticeable. The alarm phone documents and mobilises in real-time. In this way, pressure to rescue is built-up, wherever possible and push-backs and other forms of human rights violations of refugees and migrants at sea can be opposed. Thus, the Alarm Phone is not a rescue number, but an alarm number to support rescue operations.

Chapter 2

Social media and the internet as a method of investigation

The judiciary and police have also use social media and the internet themselves, as a method of investigation in their work. Despite many new challenges¹⁵⁶, the European Migration Network (EMN) identified, in its survey of EU countries, that most European countries use social media and the internet as an investigation tool to gather evidence in the fight against human smuggling.¹⁵⁷ There is also cooperation in the fight against human trafficking in seven EU countries.¹⁵⁸

In the Belgian human trafficking and smuggling cases in which Myria has initiated civil proceedings, or has taken

The social media and the internet, when used as investigative tools, are much less present in cases of economic exploitation.

note, we have observed that social media and the internet are used in various ways at the different stages of an investigation. The results can be used by the court as objective evidence when justifying their decisions.¹⁵⁹ This is a significant merit of the Belgian judiciary,

which responds to a recommendation from the EMN,¹⁶⁰

not only for the fight against human smuggling, but also human trafficking. However, these details should be shared internationally, as best practice. As such, the EU Trace project recommends introducing this into the Human Trafficking Case Law Database of the United Nations Office on Drugs and Crime (UNODC), which was set up for this purpose.¹⁶¹ It is also desirable and necessary that a similar instrument is established at the EU level.¹⁶²

We have also observed that social media and the internet are much less present as investigative tools in cases of economic exploitation, whereas it could be useful, for example, during the questioning of a victim in identifying a location via Google Maps. The front-line services, including the inspection services, need to be trained in this regard. In addition, a recommendation from the EU's Trace project is worth considering: "To promote the strict control of websites with online job advertisements (either by the police or by civil society organisations), especially in sectors where trafficking in human beings is common".¹⁶³

156 EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: "Social media in migrant smuggling has played a large role in not only increasing the volume but also the effectiveness of smuggling operations, and has made it overall more difficult to investigate and prosecute such crimes. Both Member States as well as EU agencies, however, identified important challenges obstructing their monitoring activities. For example, monitoring is obstructed by the anonymity of users, the use of closed accounts, restricted pages, encryption, the use of the dark net, etc."

157 Summary of EMN Ad-Hoc Query No. 1055 from 18 April 2016, *Addressing and preventing the use of social media in migrant smuggling*: "A majority of Member States (BE, CZ, DE, ES, FR, HR, HU, LT, NL, PL, SE, SI, UK) have reported that they use social media and online platforms to gather evidence against migrant smugglers."

158 *Ibid*: Several Member States (BE, CZ, DE, EE, ES, NL, PL) gave examples of existing cooperation in other crime areas such as human trafficking and sexual exploitation.

159 Myria, 2013 Annual Report on Trafficking and Smuggling of Human Beings, *Building Bridges*, p. 67

160 EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: "Pursuing and further developing the monitoring and analysis of relevant case law on migrant smuggling and the use of e-evidence."

161 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE_D4.1_Role-of-technologies-in-human-trafficking_FINAL_-1.pdf: "In October 2011, the United Nations Office on Drugs and Crime (UNODC) launched the online "Human Trafficking Case Law Database" a publicly available repository of summaries and full 159 court documents of trafficking cases to support successful convictions in trafficking cases. Not only can people search the database, in addition, they can contribute new cases by directly contacting the UNODC, thereby helping to continuously populate the database. At the same time, it is a public space where summaries and complete court documents of human trafficking cases can be viewed, and which can raise awareness about how to reach effective convictions in human trafficking cases".

162 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE_D4.1_Role-of-technologies-in-human-trafficking_FINAL_-1.pdf: Establish national and/or European databases on cases of human trafficking. In principle, such databases do not contain information on the identification of victims or perpetrators, but they do provide for updated statistics, comments on modus operandi, geographical patterns, etc. The information could make future Eurostat reports more reliable and easier to analyse.

163 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE_D4.1_Role-of-technologies-in-human-trafficking_FINAL_-1.pdf.

1. OPEN SOURCE INVESTIGATION

Open source investigation is an important part of police work. It can be provided by a front-line service or by a police support service, if requested.¹⁶⁴

1.1. | Initial phase of an investigation

In cases of human trafficking, a case can be initiated on the basis of an internet investigation into an escort service in which there are indications of sexual exploitation. This is done through internet ads and online forum conversations.

A Nigerian case¹⁶⁵ was initiated in Tongeren following police surveillance of concealed forms of prostitution. The police monitored certain internet websites where African women presented themselves as escorts. After a substantive analysis of the details on the website, the investigators identified possible indications of human trafficking. Using the numerous customer reviews on the publicly accessible forums of certain websites, the police deduced that the accommodation of the African women was precarious, and that they were presumably employed as illegal residents, which is an indication of human trafficking.

In cases of human smuggling, an internet investigation may also lead to the initiation of a smuggling case. As early as 2001, a human smuggling case¹⁶⁶ was started up in Brussels, following a complaint from a victim of smuggling, on the basis of an internet survey of a Russian agency that offered residence documents via an asylum procedure. The judgement¹⁶⁷ in the case was as follows: (translation) "The criminal record starts with an official report of the Ostend Maritime Police (22 January 2001) on a website

that apparently aims to familiarise refugees from Russia with the asylum procedure, and more generally with life in Belgium. On the site "(...)", people can even create their own page. Several newsletters have been published in this way.... The Federal Police - Judicial Department Antwerp (...) knows that Russian nationals offer their services to fellow Russians for payment. A GSM number (...) is indicated on the website. When this number is called, the person is forwarded to the number (...). Police information indicates that the number (...) could be linked to a (...) so-called lawyer, K. D."

1.2. | Detecting victims

The police use social media and the internet to trace victims of human trafficking. In a Hungarian case¹⁶⁸, the police managed to trace an underage victim via Facebook. From the telephone wiretaps, the police identified a conversation in which the minor contacted the accused about prostitution work. She gave him her Facebook profile with her references, so that the police could easily find her.

Facebook can also serve to link victims to a prostitution network. In the same Hungarian case¹⁶⁹, the investigators in the found, in the Facebook profile of the defendant recruiter, 34 Hungarian women among her friends, who worked as 'window' prostitutes in Ghent. The police managed to identify the victims and link them to the prostitution network. In a *loverboy* case¹⁷⁰ involving minors from youth institutions, the police found underage victims on an online forum site for sex dates.

The online forums of clients of prostitutes, where people exchange their experiences, provide important data for the police in determining whether human trafficking is taking place. In these cases, there are then also potential victims of human trafficking. In a Thai case in Leuven¹⁷¹, the police gathered information concerning the prostitution experiences of clients of the massage parlour which were found on the websites where the clients shared

164 See also external contribution: Presentation DJSOC/I2 in the fight against human trafficking: supporting role in investigations on the internet and social media".

165 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human Beings, *The Money that matters*, p. 90.

166 MYRIA, 2008 Annual Report on Trafficking and Smuggling of Human Beings, *Enlisting people and resources to combat the phenomenon*, p. 73.

167 Correctional Court of Brussels, 22 October 2008, 51st chamber (definitive) (available at www.myria.be).

168 MYRIA, 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, case study, pp. 69-71.

169 *Ibid.* See also Chapter 1, point 1 of this focus (the role of social media and the internet in human trafficking).

170 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human beings, *Beggars in the hands of traffickers*, case-law overview, p. 154; Corr. Court Antwerp, 22 December 2015, chamber. A4C (definitive).

171 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human Beings, *The money that matters*, p. 101.

their experiences. This enabled the police to prove that it was a case of human trafficking. In a Thai case in Mechelen¹⁷², the police identified additional victims via

The online forums of prostitution clients, where people exchange their experiences, provide important data for the police.

the online forums of prostitution clients. The comment sections on these websites clearly showed that in addition to the massages, further sexual acts were also performed.

In a 'drink-along' business case¹⁷³, the police could prove via the online forum site that a victim had been exploited for a significant length of time. The police carried out targeted searches on the internet. On an internet site for prostitution clients, a forum post from 2006 caught the attention of the police. The prostitution client had already posted to the forum 47 times about his personal experiences in various bars. In his post about the bar in question, he mentioned a young woman with fake Lithuanian documents. The police conclude from this that she had already been active in this bar in June 2006, more than a year before she was found during the search of the premises in October 2007.

In order to improve victim detection, Trace recommended setting up a kind of hotline via social media: "Work on better tools to facilitate anonymous reporting of suspected human trafficking on websites and social media. An anonymous complaint, for example, via apps / websites / hotlines".¹⁷⁴

1.3. | Identification of suspects

Facebook is a convenient medium for identifying potential perpetrators of human trafficking and smuggling. If Facebook profiles are closed, they fall outside the scope of the open source investigation, and a different procedure applies.¹⁷⁵ These days, the police, and especially the federal judicial police, use this method of investigation in their cases. But the police also check internet data. With Google Image, for example, a personal photo from a surveillance operation can be compared with existing

photos on internet platforms, meaning that the Facebook profile of the person in question can be traced. The result is that the suspect can be identified, as can various other data on his profile.

Identification of main suspects

In various human smuggling cases, the police were able to determine the true identity of a main suspect who operated under a false name, through photographs on Facebook. Through open source investigation, the police were able to find the profile of the smuggler under his false name, and found that the photograph of his profile resembled the photograph of a suspect from their database.

In a Kurdish smuggling case¹⁷⁶ in Bruges, the police established through a telephone wiretap that a main defendant used a false name on social media. When the police checked in the national register, they were unable to find the person in question. However, through an open source investigation on Facebook, the police were able to find the profile of the smuggler under his false name, and found that the photo of his Facebook profile resembled the photograph of the Iraqi M., the true identity of the main defendant, whose data were indeed in the police database.

In an Albanian smuggling case in Ghent, the court, in its judgement,¹⁷⁷ referred to an open source investigation into the Facebook profile of an intercepted person who had been smuggled, in which a link could be made with the Facebook profile of the main suspect.

In a *loverboy* case¹⁷⁸ involving minors from youth institutions, an important suspect was identified by comparing a Facebook profile picture with a photograph from the national register.

In a Thai human trafficking case¹⁷⁹, the perpetrators were identified on the basis of telephone tapping and the internet. When an airline ticket was booked via an airline, the police contacted the airline in question to obtain the full personal details of the person concerned. The police were also able to trace the identity and reference details of other victims and perpetrators, since their airline tickets had been ordered through the internet, and because they had data from wiretapping. The police initially only knew them from their aliases from the telephone conversations

172 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, case study, pp. 87-90.

173 MYRIA, 2010 Annual Report on Trafficking and Smuggling of Human Beings, *Combating social fraud to prevent trafficking in human beings*, p. 53.

174 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE-D4.1_Role-of-technologies-in-human-trafficking_FINAL-1.pdf.

175 See also chapter 3 of this focus (Internet and social media: new challenges for policy, the police and the judiciary).

176 MYRIA, 2011 Annual Report on Trafficking and Smuggling in Human Beings, *Beggars in the hands of traffickers*, case study, pp. 112.

177 Corr. Court East Flanders, subsection Ghent, 23 November 2015, 28th chamber (unpublished).

178 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of trafficker*, case study, pp. 69-71.

179 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human Beings, *The money that matters*, p. 98.

monitored during the wiretaps, but by linking these data to their bank card payments, their identities could be established.

Switching identity

The police use Facebook to investigate identity switching among suspects. In an Iraqi smuggling case¹⁸⁰ in Dendermonde, the police were able to prove that the smuggler had adopted a different identity when he was arrested, by comparing Facebook profiles.¹⁸¹

Identification of networks

The police can get a better picture of the complete network through a Facebook investigation. As such, it checks the Facebook profiles of the suspects. Links with friends, messages and images can lead investigators to co-suspects, and relevant locations such as safehouses. In this way, the police have detected additional suspects in both human trafficking¹⁸² and human smuggling¹⁸³ cases.

In a case of human trafficking in a Thai escort case¹⁸⁴, the police were able to identify and investigate the internet advert for escort services via Google, based on a telephone wiretap. In its judgement¹⁸⁵, the court explicitly justified the conviction for human trafficking with a reference to the internet investigation of this website. In a Belgian *loverboy* case¹⁸⁶ linked to polycriminality, a video on Facebook in which the victim was humiliated was used as evidence. In an economic exploitation case¹⁸⁷, the police used Google

as a supporting investigative tool to search for information about the defendant's company.

In an Iraqi smuggling case¹⁸⁸ in Dendermonde, the police managed to identify the Syrian smuggler in London (UK) via Facebook, who arranged the supply of Syrian smuggling victims via Belgium from the UK.¹⁸⁹ He was prosecuted and convicted as a co-defendant, and was also the main defendant in a Brussels smuggling case.¹⁹⁰

A Facebook investigation can also provide an additional burden of proof. In a Kurdish smuggling case¹⁹¹ in Ghent, the police were able to find incriminating photographs on the Facebook profile of the main defendant, through an open source investigation. It was ascertained that he had posted four photographs of himself with an alarm gun in his left hand. These photographs were added to the official report as evidence.

The police can get a better picture of the complete network through a Facebook investigation.

180 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

181 An official report states the following (translation): "At the time of his arrest, 'B' was found not to be in possession of any identity document, and was identified as N on the basis of an oral interrogation. Through an open source investigation, we should be able to establish that: the Facebook page of 'B' does not correspond to the identity 'N' which he specified. The same photograph is also found on the Facebook profile 'A.N.'. A check of the latter account (visible section) revealed that this is a different person from 'B'. It is stated on the Facebook page that the user of the profile 'A. N' is someone who lives in S. Both are acquaintances of each other, since the account of 'A. N' has liked various pictures on the Facebook page of 'B'. This all shows that the arrested suspect 'B' had taken a different identity when confronted by the Belgian authorities, which was the identity of an acquaintance of his from his country of origin, Iraq".

182 MYRIA, 2015 Annual Report on Human Trafficking and Smuggling, *Tightening the Links*, case study, pp. 69-71 (Hungarian prostitution case) and p. 29 (Romanian prostitution case); 2013 Annual Report on Human Trafficking and Smuggling, *Building Bridges*, pp. 17, 60 and 108 (Romanian prostitution case); Corr. Court Leuven, 4 July 2013, 17th chamber (available at www.myria.be)

183 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

184 See also Part 3, Chapter 3 (case-law overview): Corr. Court Liege, subsection Liege, 16 November 2016, 19th chamber (appeal).

185 *Ibid.*

186 See also section 3, Chapter 2, point 1.1. (Sexual exploitation case studies).

187 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* case-law overview, p. 163.

188 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

189 An official report stated (translation): "On the basis of the aforementioned statement, we carried out a few searches on Facebook in an attempt to identify this Syrian supplier. Searches for the profile X were unsuccessful. However, we did note that some pictures posted to smuggler A's Facebook profile were 'liked' by the holder of the Facebook profile 'M'. Upon checking the public section of the latter's profile, we observe that the holder claims to live in London. There are 5 photographs on the public section, which according to the context presumably depict the profile holder. As regards identification, we have also observed that, according to the General National Database (GND), M is linked to the human trafficking investigation C. Based on the photographs in the GND, we can see that M is linked to the suspect X, who is being traced in the current investigation".

190 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

191 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, case study, pp. 118.

2. HEARINGS

Social media and the internet are useful tools in hearing victims and interrogating suspects. Facebook and Google Maps can provide important added value, as well as additional leads for the investigation.

2.1. | Hearing of victims

When victims are interviewed, the police primarily use Google Maps and Facebook, but the victims themselves can also provide evidence sourced from social media.

Google Maps

Often, victims do not know exactly where they were held captive. In the past, the police drove around the surrounding area with the victims, to try to pinpoint the exact location. The police can now use Google Maps when interviewing victims to find out where they were being held, and they can then find the full address. In addition, when victims make their statements, the police already use the Google Maps web application to find the route to, and the location of the offences, with the victim's help.¹⁹²

Facebook

The police use Facebook profiles when interviewing victims in order to gather as much relevant information as possible for the investigation.

In another *loverboy* case¹⁹³ involving minors from youth institutions, the victim was able to indicate a suspect via his Facebook profile.¹⁹⁴ By comparing the photographs in the profile with police photographs, it was possible to formally identify the defendant.

In a Nigerian case¹⁹⁵ in Brussels, an underage victim was able to identify a co-defendant during her interview, based on his Facebook profile photo. In the same case, the police were able to free another victim as she still had contact with one of the Nigerian victims via Facebook. The victim in question had stated that, through Facebook, she knew which other club she was employed in. The federal judicial police carried out a search of the club and were able to intercept the other girl.

In an Iraqi smuggling case¹⁹⁶ in Dendermonde, following complaints by Iranian smuggling victims in 2014, the Brussels police investigated the Facebook profiles of the suspected smugglers who had been identified by the victims. This enabled the police to identify the smugglers.¹⁹⁷

Evidence from victims

Victims themselves provide evidence to the investigators during their hearings. This may be a Skype call recording or a USB stick containing messages, and images on Facebook.

In a Hungarian human trafficking case¹⁹⁸ in Ghent, a victim was able to prove through Skype that her pimp had made false statements. She contacted a friend who had recorded the oral Skype discussion with the pimp. The police were able to request this Skype interview from her girlfriend and examine the content. This was then included in the judgement¹⁹⁹ as evidence against her pimp.

In a Belgian *loverboy* case²⁰⁰ linked to polycriminality, a victim gave a USB flash drive containing Facebook messages and photographs to the investigators during her second hearing. As such, she could prove that, after having made a complaint, a defendant had threatened her. Based on the photographs and messages, new victims could be detected and identified. One photo depicted a female friend from a refuge who had told her in a Facebook message that the defendant had also wanted to force her into prostitution. The police questioned the female friend as a witness, declaring that the defendant had recruited several victims for prostitution, and was clearly a pimp. In the same case, an underage victim provided the police with a Facebook message during her hearing, which

¹⁹² MYRIA, 2013 Annual Report on Trafficking and Smuggling of Human Beings, *Building Bridges*, pp. 70.

¹⁹³ MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human beings, *Beggars in the hands of traffickers*, case study, p. 87

¹⁹⁴ The official report stated (translation): "Via Facebook, the victim A. indicated the profile of T as the perpetrator; this was presumably B. She also had a suspicion of the suspect's place of residence".

¹⁹⁵ See also Section 3, Chapter 3 (case-law overview).

¹⁹⁶ See also Part 3, Chapter 2, point 2, (human smuggling case studies).

¹⁹⁷ The official report stated: "Based on the content of the hearings, we will proceed to the necessary verifications. With regards to the identified S, we have detected the Facebook profile under the name 'S.N.' and have taken a 'print screen' of the profile page and photos. His GSM number is known in the general national database for the human smuggling case D. and the case 'K'. In this case, the person in question was intercepted, together with our victims, while being transported by truck.

¹⁹⁸ See also Section 3, Chapter 3 (case-law overview).

¹⁹⁹ See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Ghent, 31 March 2017, Chamber G28m (appeal).

²⁰⁰ See also section 3, Chapter 2, point 1.1. (Sexual exploitation case studies).

showed that the defendant had attempted to contact her via another victim's profile, which is illegal due to possible manipulations.

2.2. | Interrogation of suspects

The police use Facebook and Google Maps as a tool when interrogating defendants.

Google Maps

When interrogating suspects, the police can use Google Maps to trace specific locations linked to smuggling activities, such as safehouses. In a Kurdish smuggling case²⁰¹ in Ghent, the defendant indicated the hotel where he had been lodging with the other smuggler, during his interrogation. The hotel also served as a safehouse for smuggling activities.²⁰²

Facebook

In the same Kurdish smuggling case²⁰³ in Ghent, the defendant voluntarily gave his Facebook password during his interrogation, to demonstrate his full cooperation. The police opened up Facebook in his presence and had him indicate, through the photographs in his profile, which people he referred to in his statement. He also provided further explanation more about other smugglers, using his Facebook photos.²⁰⁴

3. ANALYSIS

Europol highlights the importance of the technical analysis of smartphones, iPads and computers.²⁰⁵ The cases, both relating to human trafficking and human smuggling, show that these analyses provide substantial data which can be used as evidence. In these cases, it relates to analyses of seized equipment which requires a mandate from a magistrate.²⁰⁶

3.1. | Messages and images

Most chat messages and saved images can be traced by technically analysing smartphones, iPads and computers. This has provided decisive evidence in many cases.

In an Iraqi human smuggling case²⁰⁷ in Dendermonde, the police were able to make 9000 messages in a deleted files folder visible again. Most of the files were Skype calls where only the call information was available, but there were also several relevant chat messages with texts about smuggling transportation. In addition, many deleted photograph files were made visible again. In some photographs, the smugglers paraded with firearms. In the case of one defendant, 270 deleted photographs with references to the terrorist group Islamic State were found and made visible again.

In a Kurdish smuggling case²⁰⁸ in Ghent, the retrieved messages provided important data on the main defendant. His smartphone also contained photographs of other smugglers. During the analysis of his computer, it was possible to retrieve Facebook chats about smuggling transport and financial management, and trace the Facebook profiles of the persons involved in the chats. In an Albanian-Czech smuggling case, the judgement²⁰⁹

201 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, case study, p. 116.

202 The official report states (translation): 'A. told me that I could stay with him at hotel X. Together with you I am looking for it via Google Maps and let me take you a print screen from the entrance of the hotel that is named (...)'.
203 MYRIA, 2016 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, case study, p. 116.

204 The citations from an official record of the interrogation of the smuggler were as follows: When the police asked him: "Are there still people who you haven't mentioned yet, but who play an important role in the organisation", he replied: "Only D., there are other groups, but the people I have seen in the cafe are those I've already mentioned, I don't have a picture of him on my mobile phone, but I do on Facebook. I will willingly show you the photograph on my Facebook".

205 EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014. www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet: "Data found online and on mobile devices can be obtained using forensic examination and used as evidence in cases. Law enforcement specialists require continuous technical training in order to keep up with OCGs' increasing use of countermeasures such as encrypted mail and encrypted mobile devices".

206 See also chapter 3 of this focus (Internet and social media: new challenges for policy, the police and the judiciary).

207 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

208 MYRIA, 2016 Annual Report on Trafficking and Smuggling in Human Beings, *Beggars in the hands of traffickers*, case study, p. 116.

209 See also Part 3, Chapter 3, (case-law overview): Corr. Court East Flanders, subsection Ghent, 2 January 2017, chamber G28m

on the investigation referred, inter alia, to the analysis of Skype messages between the smugglers.

In a Hungarian human trafficking case²¹⁰ in Ghent, a defendant had filmed his victims himself and saved the recordings to his iPhone. The police described this in detail in their technical report. In an economic exploitation case involving Pakistani night shops²¹¹, it was possible to analyse the relevant Skype messages and the defendant's contacts through his smartphone.

Technical analyses are important to substantiate victim statements with objective evidence. In a Belgian *loverboy* case²¹² linked to polycriminality, the images obtained from the computer backed up the statements of the victims and witnesses. This was also the case in several economic exploitation cases. In a case involving a riding school,²¹³ the police determined, following its investigation, that the internet advertisement for the job was connected to the email address of the defendant. In a construction case²¹⁴, the statement by the Pakistani victim substantiated his recruitment in Italy. An investigation of the victim's Facebook profile revealed that he communicated with the Turkish defendant about when he should come to Belgium to work for him.

In another Kurdish smuggling case in Bruges²¹⁷, a technical analysis of the iPhone enabled the police to identify a number of exact locations where the smuggler had visited. The individual in question had clearly gone from the French migrant camp in Calais through Belgian car parks to further abroad (The Netherlands, Barcelona, etc.). These elements of the investigation were included as evidence by the court in its judgement.²¹⁸

In a murder case linked to a Ukrainian smuggling case²¹⁹, the police were able to reconstruct their entire route chronologically, through a GPS tracking system in the truck of the murdered driver/smuggler. This tracking system was connected to a website which offered a wide range of control options: real-time tracking of the vehicle, the journey history of the vehicle, the locations and duration of stops, details regarding the fuel consumed, and instruments such as door opening, engine start-up, etc. The employer provided the password to the police. The places where the driver had stopped were searched by the police with Google Maps and plotted schematically. The technical report served as a basis for the questioning of the defendants.

3.2. | Chronology of the chosen route

Information regarding the chosen routes can provide relevant evidence. This is certainly the case with human smuggling. Trace²¹⁵ indicated geo-mapping²¹⁶ as an instrument in this respect.

210 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case study, pp. 66-71.

211 Session of the Correctional Court of Ypres scheduled for 9 October 2017.

212 See also Part 3, Chapter 2, point 1.1. (Sexual exploitation case studies).

213 See also Part 3, Chapter 3 (case-law overview): Corr. Court Liege, 21 November 2016, 18th Chamber, and above Chapter 1, point 1 of this focus (the role of social media and the internet in human trafficking).

214 See also Part 3, Chapter 3 (case-law overview): Corr. Court East Flanders, subsection Dendermonde, 20 May 2016, Chamber G29w (definitive), and above Chapter 1, point 1 of this focus (the role of social media and the internet in human trafficking).

215 http://data.trilateralresearch.com/wp-content/uploads/2015/11/TRACE_D4.2_Role-of-Technologies-in-human-trafficking_Briefing-Paper_FINAL.1.pdf.

216 Geo-mapping: "is a visual and geographical representation of data. It resembles a geographical map with symbols containing various information. It may also contain detailed data, representing a sequence of events. The data used to create the map can be collected in various ways, including by applying GPS data to existing data". (Kantin, "Geo-mapping: an attempt at a definition", *Newtactics*, 29 October 2009).

217 MYRIA, 2011 Annual Report on Trafficking and Smuggling of Human Beings, *Beggars in the hands of traffickers*, case study, p. 116.

218 MYRIA, 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, case-law overview, pp. 125-126; Corr. Court West Flanders, subsection Bruges, 2 April 2014 (upheld by the Court of Appeal): (see Myria website).

219 See also Part 3, Chapter 3 (case-law overview).

4. FINANCIAL INVESTIGATION

Social media and the internet can be a useful tool for financial investigations, both to track the criminal assets of suspects and to assess their unlawfully acquired assets. The analysis (see point 3. Analysis) already referred to the importance of social media messages regarding financial management on the part of the smugglers.

4.1. | Tracing criminal assets

In a Hungarian human trafficking case²²⁰ in Ghent, the police analysed the smartphone of a pimp and found photos of a house being renovated, on which basis they conducted an internet investigation which led to France.²²¹

The investigation in France led to a construction involving a company, and could not be continued due to the various additional letters rogatory, as this would have delayed the investigation. It is, however, a good example to use as a method of investigation in future cases.

4.2. | Assessing unlawfully acquired assets

In a Syrian human smuggling case²²², the police focused on the number of chat messages in order to assess the unlawfully acquired assets, using the number of persons smuggled by the smuggling organisation. The main defendant communicated with 769 people via Viber, WhatsApp, Skype and Facebook. After analysing

his smartphone, the police were able to trace some of the messages and link them to at least 291 victims of smuggling. Based on the case in question, the police knew that the average smuggling price per person was between €4,000 and €4,500, so a minimum amount could be calculated. The result of this calculation was €1,164,000.

5. COOPERATION WITH SOCIAL MEDIA COMPANIES

Europol²²³ advocates close cooperation between the judiciary and companies including Facebook and Google. The relevant EMN survey²²⁴ shows that various European countries have an informal cooperation agreement with private social media companies.

In Belgium, there are also agreements to cooperate in investigations of human trafficking and smuggling. This is evident from the case studies and our interviews. Template forms have also since been developed for the applications of magistrates, which are mostly filled in and require only certain details to be added. It is however Facebook which determines the opportunity-decision of any cooperation, which was also established by EMN²²⁵ in the fight against human

Informal cooperation agreements with social media companies exist in several EU countries.

²²⁰ MYRIA, 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, case study, pp. 69-71.

²²¹ An official report states (translation): "These last photographs were taken on 22 and 27-03-2013 and 25-04-2013. When we enter the corresponding coordinates (....) via Google Maps we come to a house in France,.... Striking resemblance, also the streetview photos of Google Maps show a house that is being renovated. It would be useful to find out who owns this property in France".

²²² This case was brought before the Correctional Court of Ghent on 4 September 2017.

²²³ EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014. www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet: "LEAs (law enforcement agencies) will need to increasingly engage with partners in the private sector in order to improve investigative outcomes and preventative measures. The private sector is a crucial partner as traffickers rely on technologies and service offerings by companies to facilitate their activities. Contacts with social media companies or domain hosts will make investigations more effective."

²²⁴ EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: "As to cooperation with online service providers, only 7 out of 17 responding Member States (CZ, DE, EE, ES, FI, HU, UK) have some form of cooperation with online service providers to prevent and fight migrant smuggling, but in the majority of cases (CZ, DE, EE, ES), these are not formalised".

²²⁵ EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: "Service providers like Facebook, Twitter or Google have their own internal policy about shared content. In the case of Facebook, activities related to human smuggling are not allowed and Facebook has its own team of legal experts and law enforcements officers to make sure the rules of their platform are not breached, they primarily react to referrals from users of content deemed inappropriate, which they subsequently remove. Nevertheless, Facebook also indicated that the monitoring of content related to migrant smuggling is not always prioritised as compared to other crime areas, for example child pornography, and could be further improved".

smuggling. The application is made via a request for legal assistance through a liaison officer who acts as the central contact point for a given country. As such, the relevant Facebook profiles can be temporarily frozen, without the suspect noticing anything. This ensures that the person in question will no longer be able to delete his profile. This also applies to Instagram and WhatsApp, since these two applications are also owned by Facebook.

The Belgian cases show that it has been possible to request data from social media companies for a number of years already. In January 2015, the police involved in the Iraqi human smuggling case in Dendermonde informed the competent magistrate about the possibility of requesting information from Facebook: "*Facebook request order: We refer to the original official report which shows that we requested information about the open Facebook profile X. to be able to determine the possible place of residence of 'S'. They [another police unit] inform us that the following crucial information is visible via the open Facebook profile (...). For the sake of completeness, we inform you that a history of the logins on the relevant Facebook profile can be requested from Facebook within a certain period of time. In addition, you can also request the email address with which the Facebook profile was created. In a second phase, IP identifications can lead to specific addresses/ persons*".

As part of the tracing of telephone communications, the magistrate then served a petition to Facebook to obtain the identification and location of the suspected smuggler.²²⁶ The results of the Facebook investigation yielded important data which made it possible to identify the smuggler.²²⁷

Based on the cases, we find that there is cooperation with social media companies, such as Facebook, but there is still room for improvement. According to the EMN, various

problems arise, relating to the cumbersome procedure.²²⁸ Eurojust needs to try to standardise this.²²⁹

6. INTERNATIONAL COOPERATION

The use of social media and the internet has led to an international increase in the scale of the human smuggling and trafficking phenomenon. According to Europol²³⁰, this needs to result in improved international cooperation. Social media and the internet can be useful tools. Europol's internet referral unit has already proven its usefulness in the fight against human smuggling.²³¹

The EMN recommends that international bodies including Eurojust facilitate international cooperation by exchanging best practice.²³² We can go further here and request that this be structurally embedded in a future forum which stimulates the use of social media in international cooperation, and regularly exchanges best practice.

226 An official report states (translation): "My official is requesting the technical cooperation of Facebook in order to provide my official with the following information: in accordance with article 46bis of the Belgian Code of Criminal Procedure, to provide all available information concerning the person using the following account or pseudonym on the website www.facebook.com with the following two Facebook profiles: (...) the complete identification/registration data (including any linked numbers) of the user of the aforementioned pseudonyms; IP address/date/time/time zone of the creation of the accounts; a list of the available IP addresses with dates, times and time zone, used to consult these pseudonyms".

227 An official report states (translation): "The history data show that Facebook profiles were opened in at least the last 3 months on the Internet Service Providers (ISP) network in Belgium, the Netherlands, Germany, Sweden, Denmark and the United Kingdom.. The history data of both profiles are parallel (= within the same timeframes logged in on the networks of the same ISPs in the same countries), indicating that both profiles are used by the same person. The IP when logging in with the Facebook profile 'A' belongs to the Belgian ISP Skynet/Belgacom, which implies that this Facebook profile was created in Belgium. The GND shows that the number (...) linked to this Facebook profile appears to be linked to the Brussels memo (...) under the name C. This leads to the identification of the suspect 'S'.

228 Summary of EMN Ad-Hoc Query no. 1055 from 18 April 2016, *Addressing and preventing the use of social media in migrant smuggling*: "It is difficult to cooperate in this area due to the national legislation on privacy. Most online service providers have offices abroad which makes cooperation cumbersome. Cooperation is often slow and information can be lost because platforms can change rapidly. The procedures to access data once a request is submitted to providers are long.

229 EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: EMN recommends "Eurojust to help in streamlining legal assistance by facilitating discussions of best practice amongst judicial experts (...) contributing to the further development of streamlined cooperation with private (social media) companies, e.g. contributing to the elaboration of standard request forms, or by helping to streamline the current MLA system through standardised procedures and trainings".

230 EUROPOL, *Intelligence Notification 15/2014*, The Hague, October 2014. www.europol.europa.eu/publications-documents/trafficking-in-human-beings-and-internet: "Internet-facilitated trafficking takes place on a global scale, which complicates investigations. Effective information-sharing across multiple jurisdictions is of utmost importance for law enforcement agencies.

231 Europol, *EU Internet Referral Unit year one report: Highlights*, 22 February 2016: "According to its mandate, the EU IRU expanded its open source and Internet monitoring activities, in order to contribute to the disruption of illegal immigrant smuggling networks. The EU IRU has processed 122 accounts linked to illegal immigration upon request from the European Migrant Smuggling Centre (EMSC)". For more information on the IRU, see external contribution: "Presentation of the DJOC/i2 service in the fight against human trafficking: a supporting role in internet and social media investigations".

232 EMN Inform, *The Use of Social Media in the Fight Against Migrant Smuggling*, September 2016: EMN recommends "Eurojust to help in streamlining legal assistance by facilitating discussions of best practice amongst judicial experts on matters of procedure and international cooperation related to cyber-enabled crime aspects of migrant smuggling, in line with the Budapest Convention on Cybercrime, as well as the European Judicial Cybercrime Network".

In Belgium, some of these best practices have already been identified in the various cases. This was also briefly covered in the financial investigation, although there are other cases.

In a human trafficking case involving a Thai massage parlour, the police were able to ask additional relevant questions for an international rogatory commission, based on an internet investigation. Using this data, it was ruled²³³ that the internet shop of the travel agency in Thailand where the victims were recruited could be traced: (translation) "Using the IP address from which the mails of the travel agency 'T.C' were sent. it could be established through an international rogatory commission in Thailand that the travel agency 'T.C.' was found to be operating from a telephone and internet shop/travel agency in Bangkok, operated by the defendant and her husband".

In an Iraqi smuggling case²³⁴ in Dendermonde, the police traced a smuggler via a rogatory commission to the United Kingdom, and to this end used his Facebook profile in addition to telephone tapping data. Partly thanks to his profile picture, the smuggler in the UK could be clearly identified.²³⁵

233 See also Part 3, Chapter 3 (case-law overview): Corr. Court West Flanders, subsection Dendermonde, 11 October 2016, chamber. D19D.

234 See also Part 3, Chapter 2, point 2, (human smuggling case studies).

235 An official report states (translation): "The suspect under number 13 has not yet been identified. He is addressed with the call sign 'H' and: 'H. B', and has been active as a smuggler for at least 6 years. He is an Iraqi Kurd. He is staying at an unknown location in the United Kingdom. At the least, he has used the telephone numbers (...) and (...). He is a user of the Facebook nickname: H.B. via account (...). He was in contact with both the suspects in Belgium and the United Kingdom. In a short period of time, he has carried out various smuggling-related money transactions for the attention of the user of the number (...) under three different aliases, namely 'A.O', 'A.A', and 'A.M'. A similar investigation at the Home Office (comparable to the Immigration Office in Belgium) produced a positive result. For example, this man was formally identified as A. It was certain that he was the same person as the one on the profile picture of the Facebook account (...) used by: 'H'".

Chapter 3

Internet and social media: new challenges for policy, the police and the judiciary

This focus delves deeper into the various facets of the use of the internet and social media in the context of human trafficking and smuggling. Human traffickers now use the internet and social media constantly for recruiting and controlling victims, and also to manage their affairs. As we have seen, the police and the judiciary also use the internet and social media in their fight against traffickers and smugglers. Yet there is still a long way to go, and many obstacles.

The challenges in this respect should not be underestimated.

1. THE LEGAL FRAMEWORK OF THE METHODS OF INVESTIGATION AVAILABLE TO THE JUDICIAL AUTHORITIES

The first challenge relates to the legal framework of the methods of investigation which are available to the judicial authorities.

The legislative framework is always one step behind the ingenuity of criminals, or worse.

The legislative framework is always one step behind the ingenuity of criminals, or worse. Many of the provisions of our Code of Criminal

Procedure were no longer up to the task, compared with the rapid technological developments of recent years. As a result, the police and judiciary had fewer resources available to collect evidence in IT systems.

In the fight against terrorism, and in order to give magistrates and police investigators the resources appropriate to their time and the reality on the ground, the Minister of Justice presented a draft law to Parliament in July 2016. The draft law aims to complete Belgian law with regards to special investigation methods and certain investigative methods as regards the internet and telecommunications.²³⁶ The aim was to create a legal framework which is better suited for searches in IT systems. The new law was adopted in Parliament on 22 December 2016 and published in the Belgian Official Journal on 17 January 2017.²³⁷ Most of these new provisions entered into force on 27 January 2017.²³⁸

The latest major amendments in the area of investigative measures date back to 2000, with the law on computer crime.²³⁹ For example, this law introduced new investigation possibilities in the Code of Criminal

²³⁶ Draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, *Doc. parl.*, Chamber, Session 2015-2016, Doc 54-1966/001.

²³⁷ Law of 25 December 2016 on various amendments to the Code of Criminal Procedure and the Criminal Code, with a view to improving the special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, and establishing a database of voice prints, *BOJ*, 17 January 2017.

²³⁸ However, some of these amendments still require the approval of a royal decree before they can enter into force.

²³⁹ Law of 28 November 2000 on computer crime, *BOJ*, 3 February 2001.

Procedure, including the seizure of data in an IT system (Article 39bis)²⁴⁰ and network searches (Article 88ter).²⁴¹

The new law adapts these articles to the changing needs, by incorporating the content of Article 88ter into Article 39bis. This has become the reference article for *non-covert* searches in IT systems (a smartphone for example).²⁴²

As such, an officer of the judicial police (OGP) can now order a search in a confiscated computer system (a smartphone without access code, for example).²⁴³ However, it is up to the Public Prosecutor to order a search in an IT system which has not been confiscated, but which could be (a computer in a cybercafé or a bank for example, in which case the confiscation would be impossible or inappropriate).²⁴⁴ It is also the Public Prosecutor who can decide on a network search²⁴⁵ (for example, a search in the cloud, provided that the data is accessible without a new password).²⁴⁶ In the past, the investigating judge was competent in this respect. Both the search in an IT system and the search in a seizable carrier can only be performed after the external connections have been deactivated beforehand²⁴⁷ (for example, a smartphone must be switched to aeroplane mode). Likewise, the network search ordered by the Public Prosecutor is limited to the accessible parts only.²⁴⁸

Finally, any other non-covert search in an IT system can only be ordered by an investigating judge (for example, when access to the cloud has additional protection).²⁴⁹

For example, when interrogating a suspect in possession of a smartphone²⁵⁰, an immediate check of the device may be necessary. An officer of the judicial police (OGP) can decide in this respect, but only if access to the data does not require a password or a specific technical action, and if the smartphone is put in aeroplane mode. If an unlocking or technical action is required, the Public Prosecutor's approval is compulsory.

If the smartphone provides access to a Gmail or Facebook account and the user has saved his login and password in the device, the Public Prosecutor can order a network search. The external connections can therefore also be activated (i.e. the device is no longer in aeroplane mode) and searches may be made on the accounts that are accessible without a password. If, however, a login and password are not configured in the device, permission from an investigating judge is compulsory. The investigating judge will then be able to order the necessary operations to retrieve the codes, since passwords need to be entered to activate the external connections to search the accessible accounts.

Another situation occurs when access to non-accessible accounts is required. This then becomes a covert search for which the permission of an investigating judge is required (see below, amendments to Article 90ter).

The new law also introduces new methods of investigation into the Code of Criminal Procedure.

Examples include:

- interactions and infiltrations occurring exclusively on the internet ("digital" infiltration or "light" infiltration (new article 46sexies)). In this case, contacts via the internet are maintained with one or more persons, if necessary under a fictive identity. The conditions for such infiltration are more flexible than for 'physical' infiltration. Incidentally, this does not require an order from an investigating judge. Permission from the Public Prosecutor's office is sufficient.
- the surveillance operation (infiltration into an IT system (Article 46quinquies)).

Finally, Article 90ter, which regulates the conditions under which telephone wiretaps may be carried out, has also been radically amended. This article was originally drafted

240 This refers to data seizure, in contrast to the seizure of the IT carrier (a mobile phone or computer, for example). This is then a seizure of movable property within the meaning of Article 35 of the Code of Criminal Procedure. Data seizure refers to the copying of data on ad hoc carriers, if confiscation of the carrier is not desirable.

241 The investigating judge could order a search in an IT system or part of it. Under certain circumstances, this search could also be extended to an IT system or part of it, which is located in a different place from the one where the search is carried out (search within a network).

242 Article 39bis applies in the event that the smartphone holder refuses to give his consent.

243 New §2, paragraph 1, of Article 39bis of the Code of Criminal Procedure. E.g.: After a smartphone is set to aeroplane mode, an email will appear on the screen. The OGP is authorised to take a photo from the screen, but if he wants to click on it, etc., he no longer has the authority to do so.

244 Article 39bis, §2, paragraph 2 Code of Criminal Procedure.

245 Article 39bis, §3 Code of Criminal Procedure.

246 Report of the first reading within the Judiciary Commission of the draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, *Doc. parl.*, Chamber, Session 2016-2017, Doc 54-1966/006, p. 5.

247 Article 39bis, §2, paragraph 3 Code of Criminal Procedure.

248 Article 39bis, §3, paragraph 2 Code of Criminal Procedure.

249 Article 39bis, §4. See also the report of the first reading in the Judiciary Commission of the draft law, *op. cit.*, Doc 54-1966/006, p. 5.

250 This example is quoted in the presentation by the specialised Chief Inspector General of the RCCU of Namur, H. COLIN, entitled "La saisie des données informatiques en pratique", during the seminar organised by the 'Centre de recherche information, droit et société' of the University of Namur (CRIDS): "Les méthodes d'enquête pénale dans le domaine des nouvelles technologies", on 12 May 2017.

with conventional telephony in mind, and was only applicable to communications and telecommunications during the transmission. In the internet age, the article therefore needed to be adapted to communications on the information superhighway.²⁵¹ Except on telephones, covert searches and wiretaps may now be carried out on e-mails, Skype, Whatsapp, Facebook, Snapchat, etc. The list of violations for which the measure in Article 90ter can be applied has been extended (wiretap list). Human trafficking and smuggling were already on this list, but the measure has since been extended to 'simple' human trafficking and smuggling, whereas aggravating circumstances were required in the past.²⁵²

This law is undoubtedly a breakthrough in a world in which technology is rapidly evolving, and it clearly offers new opportunities for investigation. However, there are also points of criticism. The amendments made appear to go far beyond mere modernisation.²⁵³ For example, actors from the judicial (investigating judges and lawyers²⁵⁴) and academic worlds²⁵⁵, as well as human rights associations²⁵⁶ and members of parliament²⁵⁷, have made various observations which raise questions. The shift of the powers of the investigating judge, an independent and impartial judge, to the Public Prosecutor's Office, which is party to criminal proceedings, without real judicial control, the higher risks of violating the right to privacy²⁵⁸ and the right to a fair trial²⁵⁹ are the main criticisms of the new law. Moreover, the 'Liga voor de mensenrechten' (League of

Human Rights) and *La Ligue des Droits de l'Homme* have lodged an appeal for annulment with the Constitutional Court.²⁶⁰

2. THE (INTERNATIONAL) COOPERATION WITH OPERATORS AND PROVIDERS

A second challenge is the (international) cooperation with, inter alia, operators and providers.

One of the problems is that communications made in Belgium pass through service providers who are officially established abroad. As the Minister of Justice has pointed out, "The problem of territoriality has become particularly complex with the development of new technologies and social media".²⁶¹ Moreover, the Code of Criminal Procedure only addresses this issue of territoriality to a limited extent when determining the conditions for the application of each investigative measure, since this is in principle governed by international law.²⁶²

In addition, the EU Member States have highlighted various difficulties in their cooperation with social media and internet providers, in particular in the area of preventing and combating human smuggling: difficult cooperation due to national privacy laws; service providers with headquarters abroad, leading to cumbersome and bureaucratic cooperation; slow cooperation and lost information due to platforms which can change rapidly; lengthy procedures to obtain access to the data, once a request has been submitted.²⁶³

251 Explanatory memorandum to the draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, Doc. parl., Chamber, Session 2015-2016, Doc 54-1966/001, p.7.

252 This measure is referred to in Article 90ter, §2, 22° (human trafficking) and §2, 37° (human smuggling).

253 M. KEITA, "De wet bijzondere opsporingsmethoden: een delicate evenwicht", (The special tracing methods law: a delicate balance) *TvMR*, (Human Rights Journal) 2017, nr. 1, p. 12.

254 See in this respect the paper by E. BROCKMANS: "Minister wil opsporings- en onderzoeksbeleid op internet versterken" (Minister wishes to strengthen tracing and investigation policy on the internet), *De Juristenkrant* (Jurists' Journal), 28 September 2016, no. 334, p.11, and the report of the first reading within the Judiciary Commission of the draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, *Doc. parl.*, Chamber, Session 2016-2017, Doc 54-1966/006, pp. 33-34 and 56-57.

255 The risks of possible derailment and lack of sufficient control were already highlighted during the seminar organised by the CRIDS on 12 May 2017, which dealt with the: 'méthodes d'enquête pénale dans le domaine des nouvelles technologies'.

256 See also the hearings with the representatives of the "Liga voor mensenrechten" and the "Ligue des droits de l'homme" during the examination of the draft law in the Chamber (report of the first reading within the Judiciary Commission, *op. cit.*, Doc 54-1966/006, pp. 67-74).

257 See also the report of the first reading in the Judiciary Commission of the draft law, *op. cit.*, Doc 54-1966/006, p. 8-9 and 12-15.

258 It should be borne in mind that this fundamental right is guaranteed by Article 8 of the European Convention on Human Rights (ECHR) and by Article 22 of the Constitution.

259 This right is guaranteed in particular by Article 5 of the ECHR.

260 Docket number 6711.

261 Explanatory memorandum to the draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, *op. cit.*, Doc 1966/001, p. 10.

262 *Ibid.* These include the Budapest Convention on Cybercrime of 23 November 2001 of the Council of Europe, and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order on criminal matters, *OJ.*, L130 of 1 May 2014, p. 1. For example, Article 31 of this Directive provides for a specific system of interception of communications, depending on the location of the person to whom the interception relates, and depending on the State, where the person to whom the interception relates may or may not need technical assistance.

263 European Migration Network, Summary of EMN Ad-Hoc Query n° 1055 from 18 April 2016, point 3.4.

Many of the actors surveyed indicated a positive cooperation with various such operators (such as Facebook), but this is far from being the case for all of them. Moreover, there is no truly formal framework for cooperation in this area.²⁶⁴ In Belgium, for example, the Judiciary needed to intervene on various occasions, in order to oblige certain operators to cooperate. Indeed, in a judgement of 18 January 2011 concerning the company Yahoo, the Court of Cassation ruled that the duty to cooperate applied to 'any person providing electronic communications services, including the transmission of communication data', and that the obligation to cooperate laid down in Article 46*bis* of the Code of Criminal Procedure is not limited to operators of an electronic communications network or providers who provide their electronic communications services only through their own infrastructure.²⁶⁵ As such, a provider of an electronic communications service can also be considered as 'the person offering a service consisting in allowing customers to obtain, receive or disseminate information via an electronic network'.

The new law of 25 December 2016 is a breakthrough in this respect, as it gives effect to this case law in various provisions. For example, companies providing an internet service within Belgian territory must cooperate with the Belgian judicial authorities within the context of the measures, with the aim of identifying a service or subscriber (Article 46*bis*) detecting communications (Article 88*bis*) or intercepting communications or covert searches in an IT system (Article 90*ter*). The obligation of cooperation therefore also applies to operators of electronic communications networks and providers of electronic communications services, in particular "any person who makes or offers a service, in any way whatsoever, within Belgian territory, consisting of transmitting signals via electronic communications networks or allowing users to obtain or receive or disseminate information via an electronic communications network".²⁶⁶

Moreover, during the examination of the draft law in the Chamber, the Minister of Justice pointed out that "any internet service offered within Belgian territory must comply with Belgian law, including the enforcement of judicial decisions regarding access to data".²⁶⁷ However,

he also pointed out that there is a need for comprehensive European regulation in this area.²⁶⁸

The need for more efficient and faster international mutual legal assistance was also highlighted.²⁶⁹

In addition, it is advisable to pursue cooperation with private social media operators, in order to initiate a dialogue on best practice in the fight against, and prevention of, human trafficking.²⁷⁰

The sharing of best practice in the area of cooperation between national bodies, social media and other service providers should also be encouraged.

Finally, the private companies managing social media should recognise (some already do) that perpetrators of human trafficking and smuggling make use of their platforms. These companies should therefore take measures to implement proposals and technologies which tackle human trafficking, including, for example, the online reporting mechanism on Facebook.²⁷¹

3. THE RESOURCES OF FRONT-LINE SERVICES

A third challenge relates to the resources of the front-line services. In the context of cooperation with Europol, the creation of a support service such as the IRU²⁷² is undoubtedly a positive development. However, front-line services are still insufficiently equipped for dealing with the internet and social media: obsolete computers, un-

²⁶⁴ *Ibid.*

²⁶⁵ Cass. Court, 18 January 2011 (Decision available at www.juridat.be): (translation) "This obligation also applies to anyone providing a service consisting wholly or mainly of transmitting signals over electronic communications networks".

²⁶⁶ See article 46*bis*, §1, 2° Code of Criminal Procedure (identification).

²⁶⁷ Report of the first reading within the Judiciary Commission of the draft law of 8 July 2016 on the improvement of special tracing methods and certain methods of investigation relating to the internet and electronic and telecommunications, *op. cit.*, Doc 54-1966/006, p. 4.

²⁶⁸ *Ibid.*

²⁶⁹ Among other people, Professor V. FRANSEN emphasised this point in his speech on 30 October 2015 in the context of the: "Middagen van het recht" (Legal afternoons) organised by the FPS Justice on the theme: "Internet en nieuwe technologieën: welke nieuwe middelen voor de opsporings- en vervolgingsautoriteiten". (The Internet and new technologies: what are the new means for the investigating and prosecuting authorities?).

²⁷⁰ In this sense: H. WATSON and others, *Report on the role of current and emerging technologies in human trafficking*, Deliverable 4.1., TRACE project, p. 79 (available at: <http://data.trilateralresearch.com>).

²⁷¹ *Ibid.*, p. 80.

²⁷² In July 2015, the Justice and Home Affairs (JHA) Council, composed of the Ministers of Justice and Home Affairs of all EU Member States, decided to set up a new unit within Europol: the EU-IRU (Internet Referral Unit). Each country, including Belgium, has set up a national contact point. See *below*, in this respect, the external contribution: "Presentation DJSOC/I2 in the fight against human trafficking: supporting role in internet and social media investigations".

trained police officers, etc. It would certainly be useful and appropriate to invest in information technology, and provide the necessary financial and human resources.

In this context, specific on-the-job training is envisaged.

The front-line services are not yet sufficiently equipped to deal with the internet and social media.

Moreover, the departments involved in economic exploitation should also be better trained on internet monitoring (as regards online job advertisements, for example).²⁷³

4. SCIENTIFIC INVESTIGATION

A final challenge relates to scientific investigation.

It should be possible to fund internet and social media-related investigations, when these are used for human trafficking and smuggling. In the context of the fight against human trafficking, it is important to continue gaining insight into the role of the internet and new technologies, and their use. However, little in the way of scientific information is available at the present time. For example, a comparative scientific study on the role and impact of social media and the internet could be carried out, as a source of objective evidence for the judiciary.

²⁷³ In this sense, see H. WATSON and others, *op. cit.*, p. 80.



External contribution: Presentation DJSOC/i2 in the fight against human trafficking: supporting role in internet and social media investigations

Alain Luypaert
Police Commissioner
Head of Department

The Internet Investigation Unit of the Directorate of Serious and Organised Crime - **DJSOC/i2** was set up as part of the optimisation of the services of the Federal Police (2014) and was extended with the 'Kanaalplan' (Canal Plan).²⁷⁴

In July 2015, the Justice and Home Affairs (JHA) Council, composed of the Ministers of Justice and Home Affairs of all EU Member States, decided to set up a new unit within Europol: the EU-IRU (*Internet Referral Unit*). The activities of this unit are as follows:

- The coordination of searches on the internet for content related to terrorism, violent radicalism and human trafficking and smuggling, and the coordination of its removal.
- Operational support to national units;
- Strategic analysis and assistance in prevention;
- Coordination and awareness-raising in the area of R&D (Research and Development);

Since January 2016, on the initiative of the Minister for Home Affairs, the BE-IRU unit has been part of DJSOC/i2, which is now called **DJSOC/i2-IRU**. As part of the operationalisation of the 'Canal Plan', the Minister for

Home Affairs decided to increase staff within the service in February 2016.

In November 2016, the Ministries of Justice and Home Affairs officially designated the **i2/BE-IRU** service as the Reference Unit and single national and international contact point for the removal of hate content - 'Hate Speech - Hate Crime' - on the internet, but also other illegal content, covering all phenomena, including human trafficking.

The service currently consists of 21 persons: A Commissioner - Head of Department, Chief Inspector and 19 inspectors. Via Mobility, new staff will shortly reinforce the team. The aim is to recruit 33 members of staff in total.

The responsibilities of the **DJSOC/i2-IRU** unit in the area of terrorism are to search the internet, transmit reports to the relevant units, submit proposals for the removal of content to Europol, which along with the OTT Providers, acts as a contact point. These tasks are carried out on the basis of cumulative criteria defined by the Plan R - Radicalism:

- The entity minimises and/or justifies the use of coercion or force;
- The entity disseminates its own objectives to third parties through specific operations or channels (propaganda).
- The entity poses a threat to democracy and/or seeks to destroy or dismantle the democratic system.

For all kinds of hate messages (racist, homophobic, xenophobic, religious or sexual remarks) the **IRU** either searches the internet autonomously, or receives elements from various sources (integrated police services, the magistrates, UNIA, national or international partners, etc.). The investigative work focuses mainly on content related to Belgium.

Once the evidence has been established and recorded, the unit identifies the author - if necessary, the magistrates are called upon - and draws up an official report against him. As a reference unit, it also requests the providers directly to remove the content, based on non-compliance with the Code of Conduct.

When searching the Internet, the **i2/BE-IRU** unit also provides support to the investigation units in the context of judicial orders, in particular to the entities responsible for the cases falling under the National Security Plan (NSP), including human trafficking and smuggling, to carry out investigative work for online and freely-available content.

²⁷⁴ The 'Canal Plan' is the action plan against: "radicalisation, violent extremism and terrorism in the canal zone" and comprises seven municipalities in Brussels, the territory of Laeken (the Brussels-City entity), Sint-Gillis, Anderlecht, Molenbeek, Koekelberg, Sint-Joost and Schaerbeek, and Vilvoorde in the outskirts. Among other things, this plan envisages the strengthening of the police forces in this area, and includes a section for the investigation and identification of associations through which propaganda is disseminated and/or which are responsible for the recruitment and shadow financing of these associations and of hate preachers.

The **i2/BE-IRU** unit does not operate autonomously and only operates when requested. In this context, the unit actively participated in the investigation following the attacks in Zaventem and Brussels.

With regards to human trafficking, the unit has already been called upon to investigate possible instances of sexual exploitation. Our services do not always have to intervene in critical situations, in which a person may be exploited. Sometimes the investigative work carried out can help resolve certain cases. A concrete example where the service has provided assistance is the following:

The service was called in for the case of a minor from an EU country who was suspected of having travelled through Belgium before being forced into the Belgian prostitution milieu. We were asked to find traces of her stay in Belgium, to check whether the person in question had stayed in Belgium voluntarily and what she had done here. As such, we were able to identify two men, and move the investigation forward.

The open source investigation consisted of analysing the data available on various social media: Facebook, Instagram and Twitter.

In the case of minors, the investigation revealed the following elements:

a) Facebook

- She has a public Facebook account in her name, and has 1,781 friends;
- In Belgium there was a link, with the Facebook page of a nightclub which she had 'liked';
- The photos, likes and comments on her Facebook account were investigated, but nothing alarming was found;
- Via Facebook, no link could be established between this minor and the two men.

b) Instagram

- Her Facebook account showed that she also had an Instagram account;
- After a check, we were able to establish that she did indeed have an Instagram account, which was also public;
- She has 12 photos and 744 followers on this account. She follows 1,272 other Instagram accounts herself;
- One of her followers is one of the two men (P.) involved, who also has an Instagram account himself;
- However, no link could be established between his Instagram account and that of the other man (V.).

As regards the first man (P.), the investigation revealed the following elements:

a) Facebook

- He has a public Facebook account in his name, and has 152 friends;
- He has many contacts with the other man (V.);
- After examining the photos and pages which he "liked", two nightclubs of a sexual nature were identified.

b) Instagram

- Via the minor's Instagram account, 'P' could be identified as one of her followers. He himself has an Instagram account in his name;
- He has 346 photos and 334 followers on this account. He follows 281 other Instagram accounts himself;
- His account contains a link to one of the nightclubs with a sexual nature on his Facebook page. Given the number of hashtags, he appears to be very active in terms of this nightclub, which is located in an EU country. Moreover, it appears that he has recently been in the country in question;
- His account also contains various photos showing him with large sums of money and drugs, as well as confirmation that he purchased two new mobile phones for an amount of €2,258.

As regards the second man (V.), the investigation revealed the following elements:

a) Facebook

- He has a Facebook account in his name, and has 110 friends, including the other man (P.);
- He is not friends with the underage girl;
- He is often tagged on the photographs of a Belgian company specialising in graphic design;
- He is tagged on a photo of the first man (P.): it is the same photo as the one which appears on the Instagram account of P., during the purchase of the two mobile phones;
- The investigation into this man's profile did not reveal anything suspicious.

b) Instagram

- He has an Instagram account. However, it is apparently a private account;
- Nonetheless, we can see that he has placed 60 posts/photographs on it, that he has 38 followers and that he

follows 688 people.

c) Twitter

- He has a Twitter account, but his last tweet dates from 2014.

d) LinkedIn

- Subsequent investigation shows that this man also has a LinkedIn profile, in which he presents himself as a businessman.

The results of these analyses have been passed on to the relevant departments for further investigation.

In the area of human trafficking, our service therefore supports the services that call on us for a particular aspect of an investigation, namely investigative work and analysis on the internet.



External contribution: Refugees: When human smuggling becomes human trafficking

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UNHCR²⁷⁵

Law books make a clear distinction between the definition of human smuggling and human trafficking, the former being a voluntary transaction between the provider of an (illegal) service and a paying client, while the latter involves deception and violence, and pertains to the transport or detention of persons against their will by criminals. If we look at mixed migration flows towards Europe in practice, however, it quickly becomes apparent that there is no binary distinction between the two phenomena but a continuum which always involves elements of both. There is no smuggling without moments of coercion, and conversely, elements of voluntary cooperation can be found between traffickers and victims. The smuggling industry, once established on a certain route, is hungry for profits and will resort to trafficking methods to secure them.

The observations described in the text are based on the following:

- Interviews and discussions within focus groups with hundreds of asylum seekers and refugees, conducted by the author and her team over the past four years, in the countries of origin, transit and destination;
- Systematic assessment of the interviews between asylum seekers and refugees on open social media platforms;²⁷⁶
- Briefings by UNHCR colleagues in the field and journalistic sources.

Key terms and definitions

There are a number of key definitions explaining the terms "Trafficking in Human Beings" and "Smuggling of Migrants":

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UNTOC) supplementing the United Nations Convention Against Transnational Organised Crime (UNTOC)²⁷⁷ specifies that "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

According to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC ('Protocol against the Smuggling of Migrants'), "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Migrant smuggling affects almost every country in the world. It undermines the integrity of countries and communities, and claims the lives of thousands of people every year.

Obviously, there are overlaps between the two forms of organised criminal activities related to migration. According to UNTOC, there are three main differences between human trafficking and the smuggling of migrants²⁷⁸:

²⁷⁵ The author is an employee of the UNHCR. The views expressed here are those of the author and not necessarily those of the United Nations.

²⁷⁶ www.unhcr.org/publications/brochures/5909af4d4/from-a-refugee-perspective.html.

²⁷⁷ www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf.

²⁷⁸ www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html.

Consent

The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Exploitation

Smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers. From a practical standpoint, victims of trafficking also tend to be affected more severely and to be in greater need of protection from re-victimization and other forms of further abuse than are smuggled migrants.

Transnationality

Human smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another State or only moved from one place to another within the same State.

How does trafficking and smuggling relate to asylum seekers and refugees?

Even though "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (Article 14: Universal Declaration of Human Rights), in practice tight visa regimes, restrictive asylum policies and strict border controls make it nearly impossible for refugees to access the territory of the EU without using the services of smugglers.

Whether a person is in need of international protection is unrelated to the way s/he entered the country of asylum. Smuggled as well as trafficked persons must have access to fair and efficient asylum procedures, in order to establish if the claimant has a well-founded fear of persecution linked to one or more of the 1951 Convention grounds: for reasons of race, religion, nationality, membership of a particular social group or political opinion. Having been trafficked does not constitute a claim to asylum per se, but victims

of trafficking may qualify for international protection if their country of origin is unable or unwilling to provide protection against further re-trafficking or serious harm as a result of traffickers' potential retaliation.²⁷⁹

With 65.6 million people forcibly displaced people worldwide²⁸⁰, the largest number in the history of humankind, it is hardly surprising that a minority of them is trying to come to Europe. (Currently, 84% of all refugees and internally displaced persons remain in the developing world, and only 16% move to industrialized countries.) Consequently, international criminal networks see lucrative business opportunities and move in, adapting their modus operandi. As a result, the common definitions are not up-to-date, as they do not fully reflect today's realities and newly emerged phenomena:

- Very present in today's mixed migration movements is the repeated alteration between smuggling services and trafficking methods during the same journey.
- Unsuspecting clients of a smuggler might find themselves taken hostage by the smugglers themselves or be kidnapped by various militias who prey on people along smuggling routes. They would then be subject to torture and mistreatment for the purpose of extorting a ransom from relatives at home. Sometimes, victims are even traded between different trafficking groups.
- Smugglers who do not get paid as much as they ask for or who increase the price during the journey, might kidnap the client or a family member at home in order to get the requested amount.
- The smugglers are interested in getting their clients to their destination quickly, as they will only get fully paid upon completion of the journey. They will therefore use violence against clients who have a change of heart and want to return home, or who refuse to put themselves in danger by mounting an overcrowded boat or squeezing into suffocating spaces in vehicles.

²⁷⁹ www.fmreview.org/peopletrafficking/floor.html.

²⁸⁰ www.unhcr.org/fr/apercu-statistique.html.

Case study: A smuggling industry emerges

UNHCR's case study (*From a Refugee Perspective*²⁸¹) clearly demonstrates through social media sources that the smuggling industry is a demand-driven business. If there are potential clients, it emerges at breathtaking speed. And, more importantly, once a major smuggling network with its considerable infrastructure is in place, it expects profits from paying clients. When client numbers dwindle, this is initially compensated by "special offers" and low prices to entice potential customers. In such cases, we can still talk of **smuggling** networks. However, when marketing becomes more aggressive and smugglers start luring clients with false promises, deceit and coercion, it morphs into **trafficking**.

When analysing the social media discourse on asylum and migration related issues in Arabic between March and December 2016, UNHCR could demonstrate how the smuggling industry developed and professionalized within months after legal possibilities for refugees to reach Europe via the Western Balkans route had been closed. The level of sophistication and complexity of smuggling offers found on Facebook in Arabic language dramatically increased between March and July 2016, indicating that experienced cartels moved in and took over the business.

In early 2016, our researchers found posts on Facebook indicating the presence of opportunistic local money making schemes. Offers were put forward by individuals who would sometimes identify themselves as Syrians, Moroccans and Pakistanis, as well as Turkish citizens. Most of them operated from Izmir, more precisely around Basmane Square. Potential clients in search of smugglers informed each other on Facebook that smuggling agents could be found in streets and cafés of certain Turkish cities. Apparently, local criminals and businessmen seized the opportunity to make money by offering life vests and accommodation in coastal cities, as well as boat rides to Greece on cheap dinghies, and sometimes on their private yachts or fishing boats.

Smuggling offers during that time seemed amateurish and experimental. For example: on Sunday, 27 March 2016, there were several Facebook announcements of direct ship connections on commercial cargo vessels from Turkey to Italy, but on Monday they were all cancelled. Short-lived, bizarre offers of transfer appear and disappear: by Jet Ski or in plastic containers which would be towed behind

boats submerged under water. Impracticable routes for Europe were being promoted, e.g. from hard to reach Albania to Italy, others even via Latin America and the Caribbean.

In spring 2016, access to Europe became difficult for refugees and migrants. The humanitarian corridor which, in preceding months, allowed refugees and migrant easy access via Greece, Serbia, Hungary (later Croatia and Slovenia) to Austria and Germany was shut down. On 9 March, the President of the European Council, Donald Tusk, declared the Western Balkans route closed. On 18 March, the EU concluded a deal with Turkey to stop the influx to Europe across the Aegean Sea, boosting the demand for more sophisticated smuggling services.

Already in April 2016, professionals started moving in. The number of smugglers' accounts on Facebook increased every day. Their pages were mostly set up as closed groups, requiring interested clients to identify themselves before seeing the content. By the end of April, regular tourist and student visas from various European consulates were on offer, indicating that criminal networks had established links to corrupt officials.

In the beginning of May 2016, a vast number of smugglers posted offers for various routes to Europe on Facebook, mostly departing from Turkey. Such offers comprised flights, boat rides, road trips and guided treks on foot or combinations thereof. This implied that a growing number of persons worked in the smuggling business and that the networks had at their disposal collaborators at ports, airports, borders crossings, etc.

Smuggling advertisements usually included the names (or aliases) and full telephone numbers of contact persons. Detailed negotiations between smuggler and client were not openly conducted on Facebook but through private communication channels. Enquiries by clients were removed quickly from Facebook pages, so as not to leave too much of an electronic trail.

Over the following months, European politicians and media kept debating whether all borders would remain closed, whether the EU-Turkey deal would collapse or not. Meanwhile, smugglers tried to calm down fears of refugees and migrants that they might get stuck in Turkey and/or Greece. On Facebook, they encouraged potential customers to keep coming as they have ways to get people to Europe. One smuggler even had the audacity to post the slogan "Keep coming. Only legal borders are closed".

By the end of May 2016, Facebook was full of visa offers for numerous Schengen and non-Schengen countries in Europe. Tourist visas, student visas and fake marriages

281 www.unhcr.org/publications/brochures/5909af4d4/from-a-refugee-perspective.html.

could be bought. Tourist visas, student visas and marriages of convenience were offered for sale.

The first stolen passports were on sale in June 2016, showing the existence of international cooperation between persons who steal ID documents in various countries and those who sell them, mostly in Turkey.

As of July 2016, forged passports, diplomas, driving and marriage licenses could be bought from providers on Facebook. A full-fledged transnational criminal network was at work.

Apparently, competition was high and profits were dwindling by August 2016: for the first time, smugglers on Facebook named and shamed rivals who had allegedly cheated clients out of their money. At the same time, they downplayed the dangers of irregular movement. They called their trips “safe” and “100% guaranteed” while people kept losing their lives drowning at sea or suffocating hidden in tiny spaces in vehicles.

Different routes - Different dangers

The way to Europe is becoming increasingly difficult as a general rule, but there are major differences as to the level of danger travellers are exposed to. Each route has characteristic moments where smuggling degenerates into trafficking and smugglers endanger the lives of their clients in their greed for profit.

Afghans

Afghan refugees and migrants usually book an “all-inclusive” trip from a major city in Afghanistan or Iran all the way to a destination country in Europe. They travel in groups of mostly young and minor males and are accompanied by handlers called “uncles”. Travellers completely rely on the instructions and guidance provided by these “uncles” as they often have no notion of the geographical, cultural or political circumstances on route or at the destination, and they rarely speak any foreign language.

The local smuggling agent normally changes from country to country. The young Afghans are dependent on their services regarding food, water, accommodation and transportation and, thus, vulnerable to mistreatment and exploitation, including sexual abuse.

The most dangerous stretches of the journey are the Afghan-Iranian border areas, where border guards shoot to kill, as they do not distinguish between drug traffickers and people being smuggled. In order to avoid contact with the authorities, smugglers load their clients on pickup trucks and drive by night, off-road, without lights and at neck-breaking speed. If accidents occur, injured people are left behind.

The next critical leg of the journey is the crossing of the Van mountain range between Iran and Turkey that the migrant groups and their guides normally pass on foot, by night, without the necessary gear and in all weather conditions. Here, too, if someone is injured or too exhausted to move on, they will be left behind.

The most dreaded stretch is the Aegean Sea. Although it is a relatively short trip, Afghans, coming from a landlocked country and mostly unable to swim, are terrified. As such, it is quite common that they refuse to board overcrowded dinghies to cross to a Greek island. Such last-minute debates are dangerous for the smuggling agent.

To maximize their profits, smugglers push far too many persons on the boats and do not care much about weather conditions. They are interested in sending off the vessels as quickly as possible in order to avoid being detected by police, and they only get paid when the customers arrive. As such, they often threaten people with knives or fire arms.

In interviews, UNHCR heard of cases where the travellers or their families could not pay the full amount asked by the smuggler. In such incidents, it is not uncommon that either the traveller or a family member at home in Afghanistan is taken hostage until the smuggler is fully compensated.

Syrians and Iraqis

Both on the Western and Central Mediterranean routes, smugglers use force during embarkation. They need as many people as possible to enter the boats as quickly as possible and do not allow them to change their minds at the last minute (see above). They do not refrain from using violence to make this happen. Delays in departure decrease the profit rate and increase the danger of detection by law enforcement.

Eritreans and Somalis

Eritreans and Somalis are two groups that run the highest risk of becoming Victims of Trafficking (VOTs) during their attempts to reach Europe. Trafficking agents prey on young people in Somalia, Ethiopia and Sudan, looking for potential clients at typical youth congregation points such as schools. They promise gullible teenagers that they will take them to Europe for little or no money and paint a rosy picture of the riches and comforts awaiting them there. Most young people leave in a clandestine manner without informing their parents.

Once they cross into another country, the traffickers show their true colours. They start brutally torturing and abusing their victims and send proof of their suffering to the families back home in order to extort a ransom. Sometimes they threaten to remove the victims' organs if the money is not paid in time. These threats are underpinned by phone calls during which the victim is being tortured and screams for help or their ordeal is recorded on sound files and videos posted on social media. Prices range from a few thousand dollars up to a few tens of thousands of dollars.

When hostages get traded between different criminal networks, prices go up. It might also happen that during a journey a person is taken hostage multiple times in succession, especially in Libya where many armed groups operate. During incarceration, victims are regularly tortured and raped by their captors, receive little food and water and live under incredibly unhygienic conditions.

Those whose families cannot pay are sold into slavery and forced prostitution.

There are luckier travellers who deal with smugglers rather than outright traffickers. The dangers they are exposed to are of a different nature: travellers are transported across the desert on the backs of trucks. During the trip, they might fall off the truck, get sunstroke, be dehydrated, or fall ill. In these cases, the smuggler leaves them behind in the desert. The testimonials UNHCR collects²⁸² show that women regularly get raped.

Once they arrive at the coast, they often have to wait many days, even weeks for their departure. During this time, they are kept locked in remote industrial buildings, with little food and water and under deplorable hygienic circumstances. Again, sometimes the guards turn violent and abuse their hostages physically and sexually. Embarkation onto vessels follows the same patterns of violent smuggler behaviour as described above.

West Africans

Migrants and refugees from West Africa can move freely within the ECOWAS area, using public transport to get to the city of Agadez in Niger, where the Sahara Desert begins. In order to cross this stretch and get to the Libyan coast they need to commission the services of smugglers who are easily contacted in the streets.

Bringing people and goods across the Sahara has been the main source of income for some of the local families for hundreds of years. Currently, they offer such services to migrants and refugees heading for Europe. Danger is mostly looming on the Libyan side, where armed groups can take the travellers hostage to extort ransom and the same pattern emerges as described for Somalis and Eritreans in the previous paragraph.

Nigerian women

There is one particular group that stands out however, these are Nigerian women, mostly from Edo State and its capital city Benin, who are trafficked to become sex workers in Europe. In their case, it is not smuggling that turns bad, but it is trafficking from the start.

The women know from the beginning that they will be forced to do sex work in European brothels for several years in order to "pay back" the transportation costs incurred by the trafficker. These young women are not forced to come along but conclude an agreement with their traffickers that is often reinforced by religious ceremonies. After that the agreement becomes binding and the women have to follow the orders of their traffickers. Sex work sometimes already starts on route. ID papers are taken from the women and they cannot leave or breach the contract without serious repercussions for themselves and their families at home. This is how ordeals start that may last for many years in a spiral of violence, exploitation and dangerous work.

Few women find the strength to break out. They lack experience, means of sustenance and they believe breaching the contract will endanger themselves and the lives of their families at home. Also, their legal status and right to residency in Europe is uncertain.

282 www.tellingtherealstory.org.

Interaction between smugglers and clients on social media

| Target audience | Somalis and Eritreans | Syrians and Iraqis | Afghans | West Africans |
|--------------------------------|-----------------------|--------------------|---------|-------------------------------------|
| Social media use pre-departure | some | yes | no | some |
| Social media use en route | yes | yes | some | too expensive, rather text messages |
| Social media use upon arrival | yes | yes | yes | yes |

Syrians and Iraqis are most active: Smugglers offer their services on social media (Instagram and Facebook), but business deals are negotiated on closed channels.

Afghan smugglers offer their services directly and on social media. Often travel agencies have a legitimate business and some illegal offers on the side. No negotiations are done on social media.

Smugglers get in touch directly with Somalis and Eritreans to recruit clients. However, when they are taken hostage, the trafficker's sometimes use social media, sometimes mobile phones to get in touch with the families. Families sometimes use social media to raise funds for paying the ransom.

Smugglers for the West African route rarely use social media at this point in time, but this might change soon as the use of mobile phones and smart phones is growing fast in the region.

Solutions must be global and comprehensive

In the past years, Europe has tried to stem the influx of asylum seekers by closing its borders, tightening border controls and making regular access to EU territory nearly impossible. Such measures proved to be short-sighted. Tackling refugee flows at their tail end rather increases the dependency of refugees on ever-growing international smuggling cartels.

Europe needs to understand and address the root causes of forced displacement and the drivers of onward movement. In December 2016, UNHCR presented a paper to the European Union calling for a far-reaching reform of Europe's global engagement with refugees.²⁸³

Asylum policy should not start at European borders but should engage with countries of origin in order to prevent and resolve conflict. In countries of first asylum and transit the EU should support measures to stabilize refugee populations and offer them protection closer to home. In addition, UNHCR is calling for a more efficient asylum system within Europe, and for legal pathways for refugees to enter EU territory.

When presenting this paper in Brussels, UN High Commissioner for Refugees Filippo Grandi stressed that Europe can develop comprehensive solutions, drawing "on its history of tolerance, openness and protection principles".

²⁸³ Better Protecting Refugees in the EU and Globally: www.refworld.org/pdfid/58385d4e4.pdf.

girls victims

younger coercion
advantage new
broken incidents
fraud labor
coercion
today
owned
involved
Act
profit
bought
vulnerable
female
age
demand
supply slavery
control

Fighting Against Human Trafficking

Part 3

Evolution of the phenomenon and the fight against human trafficking and smuggling

This section covers the phenomenon of, and fight against, human trafficking and smuggling in three chapters:

- the latest developments in the legal and policy framework at the European and Belgian level;
- analysis of the legal cases in which Myria initiated civil proceedings, and for which reason it has a comprehensive vision;
- the relevant case-law from 2016 and the start of 2017, based on the cases in which Myria was a civil party, decisions received from specialised victim reception centres, and decisions adopted by magistrates and actors in the field.

Chapter 1

Recent developments in the legal and political framework

In this chapter Myria examines the latest developments of the legal and political framework in the area of human trafficking and smuggling at the European and Belgian level. There are various developments to report, particularly at the Belgian level.

1. DEVELOPMENTS IN THE EUROPEAN LEGAL AND POLITICAL FRAMEWORK

1.1. | Human trafficking

On 19 May 2016, the European Commission published its first report on Member States' progress in the fight against human trafficking.²⁸⁴ This report, which according to Article 20 of the European Directive on Trafficking in Human Beings²⁸⁵, must be drawn up every two years, highlights trends in the fight against human trafficking, analyses the progress made, and highlights the key challenges still to

be tackled by the EU and the Member States. For example, sexual exploitation appears to be

the most widespread form of human trafficking²⁸⁶, while child trafficking is on the rise in the EU. One of the main challenges is to make concerted and coordinated efforts to prevent and tackle child trafficking, and provide the necessary assistance to the children who are its victims. Another challenge is the collection of data to monitor the phenomenon of human trafficking. The report also highlights the fact that the criminal networks involved in human trafficking have exploited the migration crisis to target the most vulnerable people, especially women and children. Human traffickers abuse asylum systems more readily, which are not always linked to national referral mechanisms. Finally, as regards the focus of this report, new technologies allow organised criminal gangs to reach a wide range of potential victims, conceal their activities and commit a large range of criminal offences, in much shorter time periods and on a much larger scale than in the past. For example, Member States have pointed out that many victims of human trafficking have been recruited online, particularly for the purpose of sexual and economic exploitation. As such, one of the main challenges is to take measures to prevent and tackle the use of new technologies as a means of recruiting victims of human trafficking.

As part of Anti-Trafficking Day on 17 October 2016, the Commission proposed an inventory of the projects they funded between 2004 and 2015, which are in line with one of the 40 priorities of the 2012-2016 strategy to

²⁸⁴ Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016), 19 May 2016, COM(2016)267 final. This report also includes a staff working document.

²⁸⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ, L101 of 15 April 2011.

²⁸⁶ According to this report (*op. cit.*, pp. 14-15 and 35), Belgium is one of the countries most likely to attract human traffickers due to strong demand for sexual services and cheap labour. According to Myria, the various human trafficking cases of sexual and economic exploitation are the result of an effective multidisciplinary system of actors and specialised centres trained in the successful detection and supervision of victims, and prosecution of traffickers.

combat human trafficking. In principle, the results of these projects will serve to support future policy initiatives to combat human trafficking within the EU.

On 2 December 2016, the Commission presented two reports on preventing and combating human trafficking, and protecting victims. The first report assesses the extent to which Member States have taken the necessary steps to transpose Directive 2011/36.²⁸⁷ Major efforts have been made in the meantime, but there are still a number of stumbling blocks. Examples include special measures to protect children, suspecting children of being underage and determining their age, access to unconditional assistance, the non-punishment and compensation of victims.

The second report relates to "users" and assesses the impact of national legislation, which penalises the use of services which are the object of exploitation of human trafficking.²⁸⁸ Only ten Member States have adopted laws which criminalise the use of services which are the object of exploitation of human trafficking. According to most of these countries, it is still too early to assess their impact at this stage. Fourteen Member States (including Belgium) have not yet taken any measures in this respect. Three of them have adopted a limited and selective criminalisation of the use of services provided by victims of human trafficking. The report also points out that the approaches and practices of Member States differ widely, which does not have a dissuasive effect on the demand for such services.

1.2. | Human smuggling

Following the dramatic events in the Mediterranean Sea, the European Commission proposed a series of measures in May 2015 to respond to the current

migration challenges.²⁸⁹ One of these is an action plan 2015-2020 against the smuggling of migrants²⁹⁰, which was covered in our previous annual reports.²⁹¹ On 10 March 2016, the Justice and Home Affairs Council of the European Union adopted conclusions on the smuggling of migrants²⁹², reinforcing the 2015 Action Plan. The Council stressed the importance of tackling all forms of migrant smuggling, including in countries of origin and transit countries. The Council also highlighted the fact that migrant smuggling is a serious form of organised crime. This can only be stopped with a comprehensive, multidisciplinary and cross-border approach on the part of Member States, involving all actors (including judicial and police authorities, labour inspectorates, border police, immigration services, NGOs and the relevant EU agencies including Europol, Eurojust and Frontex). As such, the Council called on Member States to work more closely with Europol, in particular by sharing reliable and up-to-date information and intelligence on migrant smuggling and by actively cooperating with its European Migrant Smuggling Centre²⁹³, as well as with Eurojust, within the newly established thematic group on migrant smuggling. Migrant smuggling cases should also be subject to more in-depth financial investigations.

The importance of cooperation in the area of human smuggling was also evident at a seminar organised in June 2016 on the use of social media in human smuggling. Representatives from the Member States, international organisations, EU agencies and also companies such as Facebook attended this seminar organised by the EMN (European Migration Network).²⁹⁴

Between January and April 2016, the Commission consulted the public in order to support the current evaluation and analysis of the impact of European legislation on migrant smuggling, and to gather different views on possible legislative improvements.²⁹⁵ Indeed, one of the points in the European action plan is to

287 Report from the Commission to the European Parliament and the Council assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with article 23(1), 2 December 2016, COM(2016)722 final.

288 Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with article 23(2) of the Directive 2011/36/EU, 2 December 2016, COM(2016)719 final.

289 http://europa.eu/rapid/press-release_IP-15-5039_n1.htm. For Myria's position on these subjects, see 2015 Annual Report: *Migration in figures and rights*, Chapter 3, *Access to the Territory*, available at www.myria.be.

290 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Action Plan against Migrant Smuggling (2015-2020)*, Brussels, 27 May 2015, COM (2015)285 final.

291 2015 Annual Report on Trafficking and Smuggling in Human Beings, *Tightening the Links*, p. 58 and 2016 Annual Report on Trafficking and Smuggling in Human Beings, *Beggars in the hands of traffickers*, p. 71.

292 www.consilium.europa.eu/fr/press/press-releases/2016/03/10-council-conclusions-on-migrant-smuggling.

293 See also Part 2, Chapter 1, point 3 of this report (the role of social media and the internet in human trafficking).

294 https://emnbelgium.be/sites/default/files/publications/emn-informs-00_emn_inform_on_social_media_in_migrant_smuggling.pdf.

295 http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2015/consulting_0031_en.htm.

improve the European legal framework to combat migrant smuggling. The Commission has published a summary of the responses received.²⁹⁶ The survey yielded no less than 2425 contributions. More than 90% of respondents feel that current European legislation is not efficient enough to meet the objectives. The two main shortcomings were the inadequate protection of people who provide humanitarian aid, and insufficient respect for the human rights of illegally-transported persons.²⁹⁷ The vast majority of respondents were also in favour of only criminalising assistance in entering or transiting if it is given in exchange for financial gain.

As far as we know, this consultation has not yet led to proposals for amending European legislation.

2. DEVELOPMENTS IN THE BELGIAN LEGAL AND POLITICAL FRAMEWORK

In 2016 and early 2017, the most striking developments occurred mainly in Belgium. Most of the measures concern both human trafficking and human smuggling, so they are addressed under a single heading.

2.1. | New residence document in the context of the reflection period

The procedure by which victims of human trafficking²⁹⁸ may be eligible for specific residence permits includes a reflection period of 45 days in an initial phase. This period should give the victim the opportunity to calmly decide in

an informed manner whether or not to cooperate with the judicial authorities. In concrete terms, up until now this implied that an order to leave the territory was issued. On the ground, the distribution of such an order was often unsatisfactory for both the actors in the field, and the victims.²⁹⁹ For example, the reception centres found it much more difficult to build up a relationship of trust with victims: urging a victim to cooperate is not evident if the victim assumes that he or she will be expelled from the country after 45 days.

In addition, during its first evaluation visit, the Council of Europe Group of Experts in the fight against human trafficking (GRETA) had recommended that Belgium grant a temporary residence permit during the period of reflection and not an order to leave the territory.³⁰⁰

These recommendations were included in the National Action Plan on combating human trafficking 2015-2019, which therefore provided for a legislative amendment on this point.³⁰¹

A law of 30 March 2017 replaced this order to leave the territory with a temporary residence document, for which the model still needs to be laid down in a royal decree.³⁰² According to this decision, which was adopted on the same day, suspected victims of human trafficking will now receive an Annex 15.³⁰³ This Annex serves as a certificate of temporary residence.

Myria can only welcome this positive measure in the interest of victims of human trafficking.

²⁹⁶ Summary of replies to the public consultation on "tackling migrant smuggling: is the EU legislation fit for purpose?": https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/public-consultation/2016/20170321_summary_of_replies_en.pdf.

²⁹⁷ Most of the people who completed the survey are active in the field of migration and human rights.

²⁹⁸ This procedure also applies to victims of human smuggling in aggravating circumstances (see the following section).

²⁹⁹ Explanatory memorandum to the draft law amending Article 61/2 of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals in order to replace the order to leave the territory with a temporary residence document in the procedure for victims of trafficking in human beings, *Doc. parl.*, Chamber, Session 2015-2016, No 2045/001, p. 4.

³⁰⁰ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, first evaluation round, Strasbourg, 25 September 2013, point 161, p. 42.

³⁰¹ Point 5.4 of the Action Plan, see: www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_MH_2015_2015_2019-EN-13072015.pdf.

³⁰² Article 2 of the Law of 30 March 2017 amending Article 61/2 of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals in order to replace the order to leave the territory with a temporary residence document in the procedure for victims of trafficking in human beings, *BOJ*, 10 May 2017.

³⁰³ Royal Decree of 30 March 2017 amending Article 110bis and replacing Annex 15 of the Royal Decree of 8 October 1981 on the entry into the territory, residence, establishment and expulsion of foreign nationals, *BOJ*, 10 May 2017.

2.2. | New circular letter on multidisciplinary cooperation

On 23 December 2016, a new circular letter on multidisciplinary cooperation between all relevant departments was signed and published in the Belgian Official Journal of 10 March 2017.³⁰⁴ This circular letter updates and replaces the circular letter of 26 September 2008.³⁰⁵ The emphasis is now much more on Belgian or foreign underage victims, and the fact that European citizens can also be victims of human trafficking.

This circular letter organises the Belgian national referral mechanism for both victims of human trafficking³⁰⁶ and victims of smuggling in aggravating circumstances.³⁰⁷ Both categories of victims are eligible for the status of specific protection. Thanks to this status, which provides assistance from specialised reception centres, they are entitled to a residence permit, on condition that they cooperate with the authorities.

The aim of the circular letter is to determine not only the way in which suspected victims are identified, referred and supervised, but also the procedures to be determined in order to obtain the protection status. The circular letter therefore clarifies the role of each partner (police services, social security inspectorates, Immigration Office, magistrates from the Public Prosecutor's office, specialised reception centres for victims) and reminds these various partners of certain legal obligations.

For example, the circular letter also reiterates that victims often do not regard themselves as such, because they feel that their conditions of exploitation and pay are better than what they could get in their country of origin.

However, according to the Belgian legislature, the situation of the victims must be assessed on the basis of Belgian employment conditions and not the criteria applicable in the country of origin of the victim. As such, just because a victim does not regard him or herself as such does not mean that he or she is not a presumed victim. Even a victim who does not regard him or herself as a victim should also be properly informed and referred.

The circular letter reiterates the obligations in terms of providing information to victims, the formalities to be carried out simultaneously by the front-line services when dealing with a suspected victim and the type of assistance provided by specialised reception centres. The circular letter largely covers the various steps of the procedure. As such, it stresses that Belgians can also be victims of human trafficking and they should consequently also be referred to specialised reception centres.

Finally, as in the previous circular letter, two categories of victims receive special attention: the victims of human trafficking who work for diplomatic staff, and child victims of human trafficking. As regards the latter, the circular letter highlights the vital cooperation between the magistrate responsible for human trafficking, and the magistrate the of the youth court.

2.3. | New circular letter on the investigation and prosecution policy as regards exploitation in begging

Almost simultaneously with the presentation of Myria's last report, for which the focus was on human trafficking for the purpose of exploitation in begging, new guidelines were adopted by the College of Public Prosecutors General (COL).³⁰⁸ Since this is a confidential document, we can only provide the broad outlines, including a summary provided by the College.

304 Circular letter of Friday 23 December 2016 on the introduction of multidisciplinary cooperation with regards to victims of human trafficking and/or certain more serious forms of human smuggling, *BOJ*, Friday 10 March 2017.

305 Circular letter of 26 September 2008 on the introduction of multidisciplinary cooperation with regards to victims of human trafficking and/or certain more serious forms of human smuggling, *BOJ*, 31 October 2008.

306 This concerns people who are recruited, transferred, housed, etc. for the purpose of exploitation. Only a limited number of forms of exploitation are mentioned here (see Article 433*quinquies* of the Criminal Code)

307 Human smuggling consists of assisting the illegal entry, transit or residence of a non-EU national in or on Belgian territory, with a view to obtaining a financial advantage (Article 77 bis of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals). In order to qualify for the status, smuggling must have taken place in certain aggravating circumstances, which are listed exhaustively under article 77*quater*, 1° to 5° of the Aliens Act. These include, for example, the minority of the victim, the use of force, putting the victim's life in danger, etc.

308 COL 20/2016 New ministerial guidelines on the investigation and prosecution policy as regards exploitation in begging. The guidelines were adopted on 22 September 2016 and entered into force on 1 October 2016.

Following a definition of the concept of 'begging',³⁰⁹ COL reiterates that not all situations of begging are exploitative and that attention should be focused on potential situations of exploitation. For example, criminal policy priorities include situations of begging by minors or with minors, and any exploitation of begging of an adult which may be a case of human trafficking. The COL also intends to make a transparent assessment of the phenomenon of the exploitation of begging. In addition, the reference magistrates of human trafficking within the Public Prosecutors' offices are also the official reference magistrate for the exploitation of begging. Consultation between reference magistrates and magistrates of other subsections, including the juvenile sections, for example when a minor is a victim of the exploitation of begging, is encouraged. Taking victims into consideration is the focus of particular attention.

Finally, the guidelines contain a list of specific indicators and a list of police tasks and questions that the investigators can use during hearings.

2.4. | Reform of the Social Inspectorate of the FPS Social Security

Since 1 July 2017, the inspectorate of the National Social Security Office and the social inspectorate of the FPS Social Security have been merged into a single inspectorate within the National Social Security Office. This merger is part of the federal government's policy of stepping up the fight against tax and social security fraud by, inter alia, strengthening the inspectorates and streamlining their operation.³¹⁰

It should be recalled that Belgium has been an international benchmark in the fight against human trafficking for nearly two decades, especially in the area of economic exploitation.

Over the last ten years, the Social Inspectorate has ensured, in the fight against human trafficking for the purpose of

economic exploitation, that a strong policy on paper was translated into an effective policy on the ground.

Myria would like to see this reform of the social inspectorate guarantee that the fight against human trafficking remains one of the priorities of the new inspectorate.

2.5. | National and Brussels-focused security plans

As part of this overview of legal and political developments, the approval of the National Security Plan (NSP) 2016-2019, which was officially proposed on 7 June 2016, should also be mentioned. This document is the guiding principle of police operations and is published every four years by the Minister of Security and Home Affairs, and the Minister of Justice. It reports on the contribution of the integrated police to the security policy laid down by the federal government, which is included in the Framework Memorandum on Integral Security 2016-2019.³¹¹

Every four years the NSP defines 10 priority security areas, which require special attention from the police forces and all other relevant authorities. Human trafficking and smuggling remain one of these priorities.³¹²

As one of the key elements in the fight against these phenomena, the NSP mentions the following: (translation) "destabilising criminal organisations engaged in human trafficking and depriving them of their financial gains, disrupting human smuggling and tracking human smuggling networks". Some of the concrete measures cited here reflect the will to work towards an integrated approach to the problem of "teenager pimps/loverboys" between the integrated police, the Judiciary and the social actors, to protect the victims and prosecute the perpetrators; the willingness to conduct financial investigations in as many cases as possible; the contribution to a proper referral of child victims of human smuggling.

The Government of the Brussels-Capital Region also adopted a Global Security and Prevention Plan (GSPP)

³⁰⁹ As regards the phenomenon of begging, Belgian law distinguishes between three cases: begging per se, the exploitation of begging, and human trafficking for the purpose of the exploitation of begging. Only the last two cases are punishable.

³¹⁰ www.socialsecurity.be/site_nl/employer/infos/fusion_inspections/index.htm.

³¹¹ The Framework Memorandum on Integral Safety (FMIS) is the strategic reference framework of safety policy for all actors who can contribute to it, taking into account their competencies, responsibilities or social objectives.

³¹² The NSP is available in full or abridged version via the following link: www.politie.be/fed/nl/over-ons/geintegreerde-politie/nationaal-veiligheidsplan.

on 2 February 2017.³¹³ Following the last State reform, the Brussels-Capital Region acquired new powers in this area. The GSPP defines an overall strategic reference framework for the period 2017-2020, prior to the adoption of the Zonal Security Plans (ZSP) and taking into account the National Security Plan (NSP) and the Framework Memorandum on Integral Security (FMIS). Human trafficking and smuggling are also considered priority areas, with particular attention for the specific situation in Brussels. For example, exploitation of begging is mentioned as a particular point of attention.³¹⁴

313 www.veiligheid-securite.brussels/nl/plan.

314 See in particular points M4.1 and M. 4.2 of the GSPP.

Chapter 2

Case studies

In this chapter, Myria analyses the judicial cases of human trafficking and smuggling in which it has obtained full access as a civil party. It provides a clear picture of how an investigation is initiated and conducted in the field. In addition, this chapter outlines the phenomenon of human trafficking and smuggling, for each form of exploitation.

The analysis is based on the official report of these cases, and focuses on the criminal system and the victim's perspective. In the first instance, we will thoroughly and critically examine the summary reports, in which the investigators summarise the case. Significant attention is also given to the initial official reports which provide information on what basis the case was actually initiated, and whether victims were intercepted and detected at that time. In addition, the case contains the official reports with interviews of victims, suspects and witnesses; the information reports; the folders containing conversations which were obtained through wiretapping, the surveillance reports, and finally the reports of letters rogatory.

The study of specific cases is a cornerstone in evaluating policy. It leads to knowledge about the implementation of the investigation and prosecution policy in the field, and about the bottlenecks which arise. Together, these findings also form an important source of information for the focus of the annual report, and they are a vital basis for formulating recommendations.

1. HUMAN TRAFFICKING

1.1. | Sexual exploitation

Polycriminality in the prostitution milieu:
Belgian nationals

Introduction

This case concerns a situation of polycriminality involving a group of 10 Belgian nationals, namely two brothers known for their violent outbursts and their links with local criminal networks, including a group of Hells Angels who have a criminal history. The most important violations concerning the prostitution milieu relate to human trafficking for the purpose of sexual exploitation (five Belgian female victims) and forced criminality (one Belgian male victim).³¹⁵ Two of the defendants (the main defendant and his ex-partner, who was initially also a presumed victim) were found guilty of human trafficking for the purpose of sexual exploitation. All defendants were acquitted of the charges of human trafficking for the purpose of forced criminality.³¹⁶

³¹⁵ The other indictments in this case concern offences relating to fraud, assault and battery, harassment, inhuman and degrading treatment, threats against persons or property, criminal organisation, violations of the Arms Act and the sale of narcotics.

³¹⁶ MYRIA, 2015 Annual Report on Human Trafficking and Smuggling, *Tightening the Links*, pp. 111-112; Corr. Court Liège, 19th chamber, 7 January 2015, available on the Myria website: www.myria.be.

1.1.1. | Initiating the case

In December 2010, the local police was alerted to the case through one of the victims, who was forced by the main defendant to prostitute herself, first in Awans and later in Sint-Truiden. She had managed to break free from the control of her exploiters by moving in with a new boyfriend she had met online. She filed an official complaint against the defendant for harassment, but not for sexual exploitation. At the initial stages of the investigation the facts as presented were only considered by the police as prostitution and not as human trafficking. However, the victim indicated two other persons who had also been forced into prostitution by the defendant. This information was corroborated by further investigation in the General National Database (GND) of the police, where the details from an information report on the two suspected victims matched the first victim's statement. However, when making her first statement, the victim was not offered the information leaflet on the procedure for victims of human trafficking.

1.1.2. | Investigation

In April 2011, the reference magistrate responsible for human trafficking tasked the federal police with the investigation. A police search of the bars and the registers of the prostitutes working there matched the names given by the first victim. In 2012 an investigative judge was appointed, and additional investigation techniques were employed including wiretapping the mobile phone of the main defendant, digital forensics of computers, USB sticks, and witnesses and victims' Facebook accounts. The analysis confirmed the statements of the victim and the witnesses.³¹⁷

The investigation between April and August 2014 revealed more details on other criminal activities carried out by the main suspect and some of his associates. One of these was identified as a potential victim of human trafficking for the purpose of committing forced crimes, including theft and fraud, but also inhuman and degrading treatment.

*Social media and the internet*³¹⁸

An investigative tool

The analysis of the Facebook accounts of witnesses and victims was one of the investigative tools used. The content of instant messages including photos was used as part of the evidence to determine the identity of the victims and the extent of the defendant's involvement in the prostitution milieu. In one case, a message on Facebook formed the basis for interviewing one of the witnesses, who had suggested that the main defendant recruited prostitutes.

The police also used Facebook to determine to what extent the accusations of the male victim amounted to inhuman and degrading treatment, and rape, in the context of human trafficking for the purpose of forced criminality (see below). Photos and videos found on the Facebook accounts of defendants and witnesses provided evidence of the alleged incidents. This information was also used to establish the lack of credibility of one witness who, when questioned, failed to have recollect any of the alleged events despite the existence of digital evidence to the contrary.

A way of interfering with investigation: witness intimidation

During the investigation on a number of instances the defendants or family members attempted to contact the victims via Facebook to find out about their whereabouts. At one stage, a defendant's mother contacted witnesses via Facebook to obtain information regarding the status of the investigation.

1.1.3. | Victims

All the victims in this case were female Belgian nationals aged between 17 and 39.

a) Victim statements

Lacking a fixed income or social security benefits, the defendant relied on the victims' income and financial means: "*I was the one who always completely covered the family's needs*" (victim) so that he could afford a flamboyant lifestyle which including gambling, prostitutes and drugs.

³¹⁷ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³¹⁸ *Ibid.*

All the victims were subjected to violence and threats, and witness statements suggest that both the defendants, who were brothers, often used coercion and blackmail³¹⁹ and threats of violence. Witness and victim statements attest to the violent personalities of both defendants, both in business and in their personal relationships. Numerous witness accounts relate domestic violence, in some instances requiring hospitalisation:

"He lost his temper completely, and he became even more violent. To put it bluntly, sometimes he locked me in the boot of his car while he went for a drink with friends."

In addition to their violent outbursts, the defendants were known to be part of local criminal networks in the Seraing area, including a Hell's Angels biker club known for criminal activities.

Statements of the 19-year-old victim who sparked the investigation

At the time of meeting the defendant in July 2010, the victim was in a particularly precarious social situation. She had been living in a women's shelter as a result of problems in the family home.³²⁰ She sought refuge with her best friend (another victim), who was living with the main defendant at the time. The main defendant subsequently forced her, through intimidation, to become involved in prostitution. He constantly supervised the victim whilst driven to and from the bars. She was obliged to send text messages to the main defendant after each client. The earnings from her prostitution work were to be split between the bar owners, the main defendant, and his brother. She was also under observation by other prostitutes. For example, they once informed the defendant that she had tried to hide some money in her boots. The victim would be threatened with violence when she had not earned enough money or behaved badly towards the owners of the bars or the clients. The victim tried to run away on several occasions. But each time, the main defendant and his brother caught up with her.

"The latter once gave me a slap in the face and pulled me by my hair. The reason was that I had just told his brother [x] that I no longer wanted to work for him and that I didn't like prostituting myself."

319 The defendant attempted to blackmail a witness with a video that the eldest brother had recorded of her performing sexual acts with the younger brother. Her current partner and her mother saw this video.

320 The victim however was at that time already acquainted with the defendant via a former partner of the youngest brother (a witness in the case) whom she had met at the women's shelter, and who also had a criminal background. This former girlfriend was also questioned as a witness.

Statements of the 22-year-old victim

Similar to the first victim, another victim (22 years old) was in a vulnerable position at the time she met the main defendant in February of 2012. She had just started working as a prostitute in a bar, where she kept 75% of her gains for herself and paid 25% to the bar owner. After confiding in the main defendant, he told her she could rely on him, that he would help her get back on her feet. The main defendant threatened the victim's current pimp and took her to stay with his mother. In the meantime she continued to work as a prostitute, but for the main defendant. He brought her to and from work. The investigation established that the defendant and the victim were regular drug users, particularly cocaine.

b) Recruitment of a minor in the prostitution milieu

The minor victim (who also initiated civil proceedings) met the main suspect in March 2011, when she was 17 years old. The victim's father knew the main defendant from his involvement in a biker club. From March 2011 onwards, the victim and the defendant established an intimate relationship. The defendant persuaded her to stop using contraceptives in order to have a child together, which she did for four months without getting pregnant. During this period, she was exposed to the prostitution milieu since she accompanied the defendant to the bars.

In February 2012, a day before she turned 18, the defendant forced her to prostitute herself. He threatened her with violence (holding a gun to her head), forcing her to stand in a window, and providing her with clothes to wear. Another prostitute gave advice on what to do.

"He told me that I had no choice, whereupon he picked up a black automatic pistol which looked like a 9 mm calibre, and pressed it against my temple."

She was forced to prostitute herself for two nights, under the supervision of the defendant, who immediately confiscated all her earnings (€180 from five customers) to spend on drugs. She tried to reject the advances of potential customers by constantly *"sticking up my middle finger to customers when I stood behind the window"*. Over the same period, she was also the victim of other violence. After attempting to run away she was: *"grabbed and thrown against a marble mantelpiece in the private rooms [of the bar]"*.

The victim managed to escape this situation by creating a scene in public in order to avoid further violence. As a result of her cries and screams, the defendant agreed to return the victim home to her parents. Despite no longer

being involved in prostitution, the victim did not report the situation to the police for two reasons. She feared reprisals due to the violent character of the defendant, as well as her father's reaction towards the defendant.

During the investigation, the defendant made two attempts to contact her via Facebook. The first time, he sent her a private message using his brother's account.³²¹ The second time, he managed to identify her through the friends list of the male victim of forced criminality. The defendant also came to the parents' house in an attempt to re-establish the intimate relationship, which she rejected through a text message.

c) The Loverboy method

The defendant was in an intimate relationship with four of the five female victims. The circumstances surrounding the sexual exploitation of these victims highlights aspects of the *loverboy* method, often used in prostitution to lure victims.

4. **Recruitment:** The defendant would often be in more than one intimate relationship at a time. The victims and witnesses all had a connection to the local area, and were already acquaintances of the defendant's brother, parents and friends.
5. **Emotional dependency:** The investigation revealed that the defendant was able to charm and seduce a large number of women around him. He would then secure their emotional dependency by entering into intimate relationships with them. In some cases, he would persuade them to stop taking contraception (see above minor section), stating the wish to have children with them.
6. **Grooming:** Taking into account the financial difficulties of both the defendants and his partners, the defendant would very often suggest, to his intimate partners, that prostitution would be a good way of earning "easy money".
7. **Exploitation:** The defendant manipulated the victims as a result of their emotional dependency. In a number of cases, this dependency led them to enter into prostitution. This extreme dependence and manipulation was demonstrated by the fourth victim. Even during the investigation, she considered it entirely normal for all financial gains to be used by the defendant as he didn't work:

"It is true that he has benefited from my income from prostitution because he did not work and therefore he

had no income, but for me it was money for the family, so it is normal that he benefits from it".

This case differs in three respects from the known understanding of the *loverboy* method.

Firstly, it is evident that the outcome of the manipulation may reach beyond exploitation in prostitution and play a role in other fraudulent activities such as using partners' bank cards to register for mobile phone contracts and other online purchases. and play a role in other fraudulent activities such as using partners' bank cards to register for mobile phone contracts and other online purchases.

Secondly, it is important to note that whilst the method is often attributed to young girls, the present case demonstrates that all victims are susceptible, regardless of age.³²²

Thirdly, the present case demonstrates that the impact of the *loverboy* method is long-lasting and the effects on victims may endure during legal proceedings. For example, during the investigation, the first victim instigated contact with the second defendant (brother of the main defendant) via Facebook. Much of the discussion was suggestive of further engagement in prostitution. The same victim became subsequently involved in another human trafficking prosecution, where she was found to have written love letters to the main defendant while he was in prison. In that case, the letters were used by the defence lawyer in the trial to discredit her victim status.³²³ Such behaviour demonstrates the susceptibility of individuals to being emotionally manipulated and deceived rather than a lack of credibility of the witness.

1.1.4. | The principle of non-punishment

The current understanding and enforcement of the non-punishment principle is a grey area, subject to interpretation by prosecutors, law enforcement and judges. The present case highlights two areas for consideration in this regard. The first looks to the use of the *loverboy* method and the second to forced criminality.

³²¹ See Part 2, Chapter 1, point 1 (focus on the phenomenon of human trafficking (management)).

³²² Myria, 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 23-40.

³²³ See MYRIA, 2016 Annual Report on Human Trafficking and Smuggling: *Beggars in the hands of traffickers* pp. 85.

a) Presumed loverboy victim

*"Loverboy-victims are often in a position of emotional dependency: they are not aware of their victimhood, and therefore regularly continue to protect their pimps."*³²⁴

As mentioned above, a third female defendant was found guilty of trafficking for the purpose of sexual exploitation, recruitment and exploitation of prostitution in the case of the first victim. However, the same individual was also identified as a presumed victim of the main defendant. Such a situation would appear to be at odds with the non-punishment principle when it is interpreted within the context of the *loverboy* method.³²⁵

The third defendant was initially identified as a presumed victim. It may be suggested that her emotional dependency on the defendant, as evidenced by her attempted suicide following a break up with the defendant, was a significant factor in her decision to become involved in prostitution. A witness statement suggested in addition that she was seeking favour with him as part of their intimate relationship: *"if you want me to prostitute myself so that you will stay, I will do it..."*. The same conclusion could therefore be deduced from her subsequent involvement in the "training" and facilitation of the prostitution of the victim for which she was convicted.

b) Forced criminality

The male victim was, according to witnesses, always by the side of the main defendant. He was employed by the main defendant as an odd-jobber and undertook different jobs: bartender, cleaner, cashier and supervisor at the bars. Witnesses claimed that the victim was severely mistreated by the main defendant, including being forced into substance abuse. The victim claimed that he experienced inhumane and degrading treatment including the use of violence, harassment and threats of violence via text messages. Anecdotal examples include being locked in a car for a whole night, taking baths in bleach, drinking aftershave, sitting on a chair whilst being beaten/hit by numerous persons and being buried in the sand naked whilst being sodomised (the latter two events are recorded on social media, with videos published on Facebook).³²⁶ However, conflicting reports emerged from witnesses regarding the willingness of the victim to take part in these activities.

As to the forced criminality, the victim stated that the main defendant had forced him to commit numerous criminal activities including shoplifting and theft of metal. The victim also complained of fraudulent use of his personal details for the purpose of online purchases, social security fraud, and credit card and loan applications for the purchase of a car (with the use of falsified pay slips). In some of these instances, the victim was complicit by being physically present and providing his signature and personal details.

1.1.5. | Victim status

A *best practice* that has emerged from the present case is the victim support that was provided to all of the victims by the specialised centre Sürya. The support provided depends on the needs of the victims. In one case, a victim was given legal support and assistance. In particular, at the trial the victim was still in an administratively precarious situation, as she had no income or place of residence. The two other victims, who feared reprisals by the defendant, accepted shelter from Sürya. In the summer of 2012, it was established that one of the victims had re-established contact with the main defendant's brother via social media, and had returned to the prostitution milieu. She came into contact with a new *loverboy* who exploited her, which led to prosecution for human trafficking in another case.³²⁷ It is interesting to note, that while she had not abided by the conditions of the victim status in the present case, and had re-entered the prostitution milieu, she was once again accepted as a victim of human trafficking.

1.2. | Economic exploitation

Bogus self-employment of Romanian labourers in the construction sector

This human trafficking case, which occurred in Mons³²⁸, concerns the economic exploitation of Romanian nationals in the construction sector³²⁹ over the period 2006-2008.

³²⁴ Myria, 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 23-40.

³²⁵ *Ibid.*, p. 40.

³²⁶ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³²⁷ See MYRIA, 2016 Annual Report on Human Trafficking and Smuggling: *Beggars in the hands of traffickers* p. 93.

³²⁸ *Ibid.*, pp. 166-167: Corr. Court Hainaut, subsection Mons, 1 April 2016, 8th chamber.

³²⁹ NB: One of the Romanians interviewed, who was not a victim but a witness in this case, did not work in the construction sector, but played in a basketball team.

The case concerned three individual defendants and one company. They were all prosecuted for the human trafficking of 20 Romanian men whom they had employed in Belgium in conditions which were an affront to human dignity. Three of the victims, and Myria, initiated civil proceedings. The company, which was owned by the main defendant, filed for bankruptcy in 2012. On procedural grounds, the bankruptcy case was filed separately.

The Belgian main defendant recruited exclusively Romanian nationals, mostly by advertising employment opportunities in the Belgian construction sector in different Romanian Newspapers. Prospective employees would call the number in Romania and speak to the second defendant, a Romanian woman with a Romanian employment agency, who would inform them of the working conditions including salary and accommodation arrangements. The second defendant would arrange to meet the workers in Oradea where she would arrange for their travel to Belgium by car or minibus, with a small group of compatriots who had all responded to the newspaper advert.

Upon arrival in Belgium, the Belgian businessman (main defendant) would welcome the workers and find accommodation for them in the Manage area, where the main defendant sub-leased approximately 10 residential properties. The main defendant accompanied the workers to the local town hall to register their legal address and residence in Belgium. In particular, one victim hinted at collusion between the main defendant and a civil servant who worked in the local town hall. This victim saw the same woman on 3 out of 4 occasions. Accordingly, the main defendant would choose the days when she was working in order to register the residency of the Romanian workers. The third defendant, an Italian foreman from La Louvière, played a key role. He operated as a gangmaster, taking the workers to different construction sites, where they would work according to his instructions and under his supervision. The Belgian main defendant had known him for many years and needed his experience as a foreman.

1.2.1. | Business structure: constructions

All three defendants were connected to the business structure that recruited, registered and supplied sub-contracted labour (the Romanian workers) to a number of third-party companies, predominantly in the construction sector. Also some particulars such as the building of a Chinese restaurant and the renovation of a house from one of the friends of the Italian foreman. It is important to note that the Belgian main defendant and Romanian defendant were also in a personal intimate relationship. The third defendant had also been implicated as the main perpetrator of a criminal organisation involved in sexual exploitation and human trafficking for the purpose of exploitation of prostitution (see below).

The Belgian main defendant became involved in the construction sector in 2007. He is associated with seven construction companies established in Belgium (manager and partner of three companies together with other partners; sole manager and partner of two companies; partner of two companies) and an employment agency, established in Romania in 2005 (manager and partner). The main defendant was also connected to a company aiming to supply Romanian labourers to conduct maintenance work on oil platforms in Africa. The business however came to an end due to difficulties with transport and logistics.

The Romanian second defendant was also linked to the former Romanian recruitment company. The third defendant, the Italian foreman, managed six companies. One company filed for bankruptcy in 2008. A separate hotel business was used for the exploitation of prostitution and linked with another trafficking case. The Italian foreman had had a criminal record since 1995 for violence, theft, menace, extortion and social fraud.

Link to criminal organisations in the prostitution milieu

It is important to note that in another investigation the third defendant was suspected of being the head of a criminal network facilitating the entry of irregular third country nationals forced into prostitution. The victims were Russian prostitutes who had to prostitute themselves in sex orgies with friends of the Italian foreman, including lawyers. The third defendant was convicted for human trafficking and smuggling, exploitation of prostitution, criminal organisation and other related offences, from March 2009 to September 2009, parallel to the present

case. For these offences, he was sentenced to two years in prison and a fine of €5,000.³³⁰

The third defendant's storied criminal record is of significance to the identification and investigation of human trafficking for two reasons. First, the interconnectivity and the defendant's involvement in different crimes in different milieus demonstrates the importance of maintaining an overview of all forms of exploitation that result from human trafficking and associated criminal practices. Cooperation between investigating teams led, during a search of the premises of the defendant as part of the investigation into sexual exploitation, to the discovery of proof for the present case. In particular, documents were found relating to the administration and employment of three victims from the present case.³³¹

1.2.2. | Opening the case

The investigation started in July 2008, when a Romanian national, who had arrived in Belgium in May 2008, complained about his working conditions to the local police. In particular, the complainant decried non-payment of wages, long working hours and poor living conditions.³³² The complainant also made reference to five compatriots who had arrived at the same time, and were experiencing the same working and living conditions. The police followed up the next day by interviewing the other workers at the premises of Sürya, a reception centre specialised human trafficking cases. An investigating judge was immediately appointed to the case and a search of the business premises of the Belgian businessman where the complainants had been initially accommodated was undertaken within days.

In the summer of 2008, an expert architect further assessed the residential properties where the Romanian workers had been accommodated.

1.2.3. | The investigation

The investigation, which ran from 2008 to 2012³³³, identified a total of 89 Romanian nationals registered as having worked for the Belgian businessman, while he himself claimed that he only employed about 40 Romanians. Of the 89 nationals identified, 16 were interviewed in Belgium, 39 had returned to Romania, and 34 could not be located. The investigation was based mainly on interviews with business associates of the defendants (such as sub-contractors, landlords of residential properties used for accommodation, business associates not listed as defendants, accountants) and the workers who had been registered (as self-employed), as well as employees of the defendants' companies. The investigation also used the results of the searches of private premises and business properties connected to the main defendant, and the seizing of computers and mobile phones. An analysis of the browsing history³³⁴ on the computer did not identify anything of major significance, however the mobile phone analysis indicated that the main defendant was also in frequent contact with individuals from Germany, Bulgaria, France, Hungary, Italy, Moldova, the Netherlands and Poland.

Between 2009 and 2010, the Belgian National Social Security Office (RSZ) investigated the social status of Romanian workers registered in the company of the main defendant, in particular because the Romanian nationals were all registered as (self-employed) partners. As a result, interviews were conducted with the main defendant, as well as inspections of the construction sites.

a) International cooperation in financial investigations

In February 2010, Romania and Belgium concluded a bilateral agreement for judicial cooperation. The cooperation also included interaction between Belgian authorities and a Police Liaison Officer from the Romanian Embassy.

As a result of this agreement, a number of successful aspects of cooperation during the financial investigation emerged. In July 2010 Interpol provided the Belgian investigation team information of the persons who are registered as working with the main defendant. Subsequently, in May 2011, Interpol Romania provided

³³⁰ See also Chapter 3 of this section (case-law overview): Corr. Court Hainaut, subsection Charleroi, 27 February 2017, 6th chamber.

³³¹ These documents were seized during a search at the house of the wife of the Italian foreman, which was the start of the investigation against him.

³³² The police inspected the accommodation of the victims in May 2008. The house had mould growth and was generally unsanitary. At that time, the police did not yet see them as potential victims of economic exploitation and simply informed them that they could no longer live there. The victims were taken to another home by the defendants. See 2013 Annual Report on Human Trafficking, *Building Bridges*, p. 29 on obstacles in identifying and detecting potential victims by front-line services.

³³³ In an official report from October 2012, justification was given for the long duration of the investigation, due to the number of defendants, the number of companies involved, the number of suspected foreign victims and the commitment of an international rogatory commission in Romania.

³³⁴ See also above Part 2, Chapter 2 (Social media and the internet as a method of investigation), point 3 (analysis).

further information regarding the employment agency owned by the main defendant and his Romanian girlfriend. From this information, a rogatory commission was requested in January 2012 to provide further details regarding the associated bank accounts for this business and details of transactions. The Romanian Ministry of Justice transferred the information from the Romanian Bank in June 2012.

The Romanian authorities provided extensive information pertaining to the two Romanian bank accounts that were connected to the employment agency owned by the Belgian businessman and the Romanian woman. The information demonstrated that the accounts were used regularly and the frequency of transactions increased in 2008, the period during which the victims were recruited by the Romanian woman in Oradea. Similarly, the Romanian woman moved to Belgium in 2009 as her intimate relationship with the Belgian businessman developed and the number bank account files show that the number transactions reduced as of this period.

b) Bogus self-employment

A significant finding of the investigation was the fraudulent administrative handling of the Romanian nationals. In particular, these fraudulent practices of the Belgian Businessman were to the detriment of his business associates. Two individuals in particular who - based on a friendship of 25 years - trusted the defendant and allowed him to register Romanian nationals as Associates were unaware of any administrative irregularities.

The plaintiffs all believed that the working relationship with the main defendant constituted a contract of employment, however it emerged that in fact, they had all been fraudulently registered by the main defendant as associates in the company.

The findings of the RSZ investigation into the bogus self-employment showed that the workers were not acting as associated partners for a number of reasons. They did not have a decision-making capacity in the operation of the company. They were not able to decide their own workload. Their salary was always calculated by the main defendant. They did not hold any administrative responsibilities and they did not have access to the bank account of the business.

As for the workers, as the original documents were either fraudulently signed by the defendant or were presented to them in a language they did not understand, they stated that they had only become aware of their employment status upon receipt of correspondence from the payroll

agency requesting the fulfilment of overdue service payments.

Throughout the course of the investigation, the Belgian businessman was interviewed by the police on several occasions between 2008 and 2011, to confirm the findings of the enquiries. On many occasions the Belgian businessman expressed his lack of intention to exploit the Romanian workers. The main defendant stated that the administrative handling of the Romanian workers was in their best interest in order to regularise their working status in Belgium. He pointed out in particular that he gave the labourers partner status on the advice of a Brussels lawyer.

1.2.4. | Victims

All the victims were Romanians, and a significant number of them came from Oradea, where many Roma live.³³⁵ The victims' description of the reality of the working and living conditions in Belgium illustrates the established network of contacts both in Romania and in Belgium that successfully deceived the victims as to the provision of work and accommodation.

a) Victim statements

Working conditions: an affront to human dignity

None of the victims had signed an employment contract. They worked 8 to 12 hours a day, six or seven days a week. At the end of each month they provided the main defendant with an overview of the hours worked. Not only was the promised wage of €7 or €8 per hour 40% lower than the minimum wage for the construction sector at that time³³⁶, but according to the plaintiffs, the main defendant never paid the full amount corresponding to the number of hours worked.

Living conditions: an affront to human dignity

Based upon information provided by the complainants in the interview process, the registration of residency

³³⁵ Two victims stated that two of the victims were Roma. Oradea is also mentioned in other Belgian cases of human trafficking, not only as a place of recruitment, but also because of the presence of a large Roma community. See 2012 Annual Report on Human Trafficking and Smuggling, *Building trust*, p. 68.

³³⁶ €11.874 per hour in the 1st half of 2008 and €12.035 per hour in the 2nd half of 2008.

at the local town hall and the official registration of the business owned by the main defendant, an expert architect visited a number of properties that were used in a residential capacity to accommodate the workers. In all instances, the expert reported that the properties had been overpopulated and in some cases, the properties were uninhabitable. This corroborates the statements of the plaintiffs who stated that they had been accommodated in properties with no running water, no heating or electricity, insufficient sanitary and cooking facilities and in a poor state of repair.

"They lied to us. We lived in places where you wouldn't even keep animals. They left us without money, without food and without livelihoods; there was certainly no money to meet the needs of our family in Romania".

The investigation also identified that the main defendant was making a profit by sub-letting these properties and deducting the rent from the wages, as the market price rent that he paid to the owners of the premises was less than the total he received from the plaintiffs.

Physical and psychological violence

The victims' statements revealed two specific incidents in which the Italian foreman used physical violence against them. The foreman admitted as much when he was questioned by the police. In the first case, he physically attacked a labourer after his trousers were soiled when a piece of Gyproc plasterboard fell on him, through the fault of the labourer. On another occasion, one of the victims had come to his house early in the morning, and caused a disturbance. This resulted in a physical confrontation and police intervention. The potential victim however did not press charges. Other victims declared that he was afraid to file a complaint and was unable to in any case because he was already home in Romania.

The victims were also subjected to psychological threats that were considered as limiting their ability to either confront their employers or to approach the authorities to complain of their circumstances.

"[X] used a kind of psychological blackmail on us. He was well aware of the normal wages in Romania (less than €200 per month for a labourer) and knew that we did not want to go back to Romania. We didn't dare to discuss our problems with him because we were afraid he would tell us that we would have to return to our country".

In addition to the physical and psychological violence suffered by the victims themselves, some of them also

feared possible reprisals against their families if they got involved in legal proceedings: *"Just like many of my Romanian colleagues, I distrust [X, the defendant], because in today's society everything is possible. We and especially our family in Romania could be the victims of reprisals".* Again it is important to reiterate that the majority of the victims were recruited in Oradea, making it highly likely that the criminal networks of the defendants extends to this area.³³⁷

b) Victim status

The victims were supported and taken in by Sürya and Payoke. In August 2008, two of the victims requested to voluntarily return to Romania. Following this development their involvement in the judicial process was secured by the appointment of a lawyer who represented them as civil parties during the remainder of the investigation and trial. This is an example of best practice as it ensures access to justice for victims, despite their no longer being resident in the country where the exploitation took place.

During the investigation, a number of potential victims were given the multilingual leaflet on human trafficking for potential victims of trafficking. The use of this tool is an example of best practice, since it helps people to decide whether or not to accept victim status.

A number of the statements from the potential victims show that they did not in fact have any interest in pursuing the case further as they wanted to put this period of their lives behind them and forget about their involvement with the Belgian businessman.

"I now work as a teacher of physical education and have been married since 2008.... I no longer have any contact with [X] and I don't want to hear any more about it".

2. HUMAN SMUGGLING

Iraqi smuggling case Delocation

In this human smuggling case in Dendermonde, an Iraqi smuggling network mainly smuggled Kurds and Syrians to the United Kingdom between August 2014 and June 2015. The case was heard by the Correctional Court of

³³⁷ See also earlier cases concerning the recruitment of Roma in Oradea and fears of reprisals: 2012 Annual Report on Trafficking and Smuggling in Human Beings, *Building trust*, p. 69.

Dendermonde on 25 April 2016³³⁸ and the Court of Appeal of Ghent on 6 February 2017.³³⁹ It convicted both the Belgian branch and the British leaders of the smuggling network. The same smuggling network is also linked to a Brussels smuggling case.³⁴⁰

2.1. | Smuggling network

The Belgian branch of the smuggling network consisted mainly of Iraqi Kurds who operated from Brussels and had international contacts. The network was coordinated from the UK with a supply route of Syrians. They had contacts with smugglers in Greece, Turkey, Italy, Austria, Hungary, Bulgaria, the Czech Republic, Slovakia, Serbia and Iraq. For example, a Turkish contact person smuggled people by truck from Turkey to Germany. It was also established through a telephone wiretap that smuggling money was transferred to Istanbul (Turkey), Italy and Greece. They also worked with specialists who offered services, such as visa suppliers.

The smugglers regarded their smuggling activities as a profession. They smuggled people from the car parks in Groot-Bijgaarden and Waasmunster along the E40 motorway to the Belgian coast. The smuggling network organised non-guaranteed transport in ordinary trucks and refrigerated trucks without the drivers' knowledge. These refrigerated vehicles were deliberately selected because the inspections were less rigorous. The low temperatures and limited oxygen levels significantly increased the risk to the victims. Large sums of money (€2,500 per person) were demanded, without any guarantee of success. They also worked with a specific routine; a rotation system. If the victims were caught, they knew where to go and try again the following night. It was a well-organised activity.

The smugglers met frequently and analysed the easiest and least risky ways they could exploit. They consciously looked for the countries with the most lenient legislation for them to smuggle. They also provided guaranteed transport using vans via the Netherlands, as there are fewer inspections there than in France.

Hierarchical organisation

The network was organised, with a clear hierarchy and division of tasks. The various defendants represented different positions within the hierarchy. Most smugglers did not have residence permits. One of the smugglers was known in Serbia under a false name, on the basis of his fingerprints.

The footmen worked at the car parks, and made sure that the victims climbed into the right trucks. They received €1,400 per smuggled person, meaning that they could earn at least €14,000 in one evening of smuggling. The members of the group had no income other than that from human smuggling.

The smuggling leader from the Belgian branch had a British residence permit, so that he could easily travel back and forth to the UK for consultations. He had been involved in the smuggling circuit for many years, and was arrested in France as early as 2003 for human smuggling.

Other defendants had a 'key position', and gave orders from the UK. These three smuggling organisers (An Arab Iraqi, a Kurdish Iraqi, and a Syrian) were arrested in the UK where they lived. The Arab Iraqi and Syrian smugglers are also the defendants in a Brussels smuggling case.³⁴¹ Since 2010, the Arab-Iraqi organiser provided 10 to 20 smuggled persons every week, from the UK. The Kurdish organiser came from Belgium, and had women pay 'in kind'.³⁴² He had been working with the smuggling leader in Belgium for several years. Together with this leader, he had bought a car park along the motorway in Belgium from Albanian smugglers in 2014, who, as so-called owners of a 'criminal territory', managed them together and leased them to other smugglers. Meanwhile, the Kurdish senior figure had moved to the UK for security reasons. He advised the other smugglers to follow his example and continue to smuggle from the same country on a temporary basis, and then quickly leave, to avoid being caught. The Syrian senior figure supplied Syrians on a large scale, and organised this from the UK. According to a Kurdish smuggler, the Syrian smuggling organiser had several restaurants and car washes in the UK.

Three other smugglers were able to stay in Belgium on the basis of subsidiary protection status. One of them was a Kurdish smuggler responsible for managing the money of the Kurdish smugglers. The financing was not just with money. He was sometimes also paid in drugs. Another defendant, a non-Kurdish Iraqi smuggler, was

338 Corr. Court East Flanders, subsection Dendermonde, 25 April 2016, Chamber D19D.

339 Court of Appeal Ghent, 6 February 2017, 6th Chamber. See also in this section, Chapter 3 (case-law overview).

340 Corr. Court Brussels, 13 October 2016, 60th chamber (not published).

341 Corr. Court Brussels, 13 October 2016, 60th chamber (not published).

342 See below abuses and rapes; family with children under victim status human smuggling.

the assistant to the Syrian smuggling organiser in the UK, and worked almost exclusively with him, as well as arranging the finances with him. This assistant was the only one who spoke both Arabic and the Kurdish language Sorani, and acted as an interpreter between the Arabic-speaking Syrian smuggling organiser and the Kurdish smugglers in Belgium. They communicated exclusively via Viber and Facebook.³⁴³ The Arab smuggling organisers were generally not directly reachable by telephone for the Kurdish smugglers. Moreover, there was a major rivalry between the Kurds and the Arabs.

The Syrian smuggling organiser from London and his assistant in Belgium had IS sympathies and were infiltrated into the smuggling network. The police found 270 deleted photographs on the assistant's computer, almost all of which made references to the terror organisation, Islamic State.³⁴⁴ In prison, this assistant had threatened the Kurdish money manager with beheading in the name of IS. He demanded that the Kurdish smugglers withdraw their statements about him. The assistant had stayed in Belgium since 2011 and had met the Kurdish money manager at the 'Klein Kasteltje' reception centre in Brussels.

2.2. | Initiating the case

The case was initiated partly on the basis of the victim statements made by an Iranian family in October 2014 (see below). But the investigation got underway when in April 2015 the road police found two victims of human smuggling at the E40 car park in Wetteren. A truck driver had alerted the police when he saw a colleague taking two Afghans out of the loading area. One of the smuggling victims spoke poor English, with the result that no relevant statements were made. The Public Prosecutor's office was not informed.³⁴⁵ The Immigration Office decided to detain both Afghans at a closed centre in Bruges.

The mobile phones of the two smuggling victims were examined. During a first local check, the road police had found an SMS message in a mobile phone with an address in Etterbeek, which dated from the day before

the smuggling. According to the police, it is often the case in human smuggling investigations that the smuggler notifies the victims of the meeting point shortly before their smuggling. The police were able to trace one of the smugglers of this crossing through the telephone number.³⁴⁶ A telephone investigation was carried out on the basis of this number.

2.3. | Investigation

The telephone investigation immediately revealed human smuggling. The investigation showed that the numbers in question were active at night around the Groot-Bijgaarden car park, that some numbers could be linked to closed human smuggling cases, and that there were contacts with British numbers.

Through the telephone wiretaps carried out, one of the main figures of the Belgian smuggling branch was identified, as was a British number of a smuggling organiser who operated from the UK as a supply line for Syrians. The police were then able to get a picture of the entire smuggling network.

The criminal record was also made up of material elements found at the meeting points and house searches, statements by the parties involved, etc.

2.3.1. | Social media

The smugglers arranged and organised their smuggling activities using social media.³⁴⁷ They used social media to arrange payments and conduct their confidential conversations. The smuggling leader explicitly instructed the smugglers to discuss this via social media and not by mobile phone. The smuggling customers were also told by the smugglers by telephone that they had to talk about this subject via social media, such as Viber and Skype. In the meantime, the smugglers had already developed counter-espionage techniques for social media, since they realised that social media chat messages could be read and analysed by the police, as is the case with mobile phones. Following the arrests, the smugglers who had fled advised

³⁴³ See above, Part 2, Chapter 1, Point 3 (the role of social media in human smuggling).

³⁴⁴ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁴⁵ When intercepting victims of smuggling, it is important that the magistrate of the public prosecutor is immediately informed, so that instructions can be given.

³⁴⁶ Best practice; see MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 116.

³⁴⁷ See above, Part 2, Chapter 1, Point 3 (the role of social media in human smuggling).

removing all links with the arrested smugglers on social media, but they were too late.

During their investigation, the police made extensive use of social media.³⁴⁸ With the data from the telephone wiretaps, they were able to find the Facebook profiles of the smugglers via open source investigation. By comparing the Facebook photos with the police databases, the smugglers could be identified via links with other smuggling case. In addition, this made it possible to unmask smugglers who had changed their identity. During the interrogations, a Kurdish smuggler also gave the police the Facebook account of the Syrian smuggling organiser from London, so that he could be traced more easily.

The magistrate made further inquiries with Facebook. The results of these Facebook data enabled the police to identify and arrest a smuggler who had been active in Belgium since 2010. After the arrest of the leader of the Belgian smuggling branch, he had managed to flee to a smuggling camp in Calais to a Kurdish smuggler who was an acquaintance.

In addition, various Skype messages about smuggling transport and photo files of smugglers with firearms that were in the deleted files folder were made visible again.

2.3.2. | Financial investigation

The illegal assets of the smuggling network amounted to (at least) €3,125,000 over a period of 9 months. This was calculated on the basis of at least 125 proven crossings of 10 persons, with a smuggling price of €2,500 (125 x 10 persons x €2,500).

They used a hawala banker³⁴⁹ and money remittance agencies for their financing. One smuggler stated during his questioning that the large smuggling funds do not pass through Belgium, but were in the UK. These smuggling funds are only released in the country of origin when the smuggling is successfully carried out.

Only the smuggler payments linked to Belgium could be seen by the police. A hawala banker was active in Antwerp, who arranged payments from the UK to Belgium. He was

the manager of an Antwerp travel agency specialising in Iraq, and offering air travel there.

Payments were also made through money remittance agencies. These were always amounts up to a maximum of €2,000. The sender of the money in the UK used a different or false identity in this respect, in order to keep the smugglers under the police radar. The person who collected the money in Belgium received a commission which was in proportion to the amount collected. The maximum commission was €100. This person handed over the money to the smugglers. The smugglers also employed a pizza delivery firm in this regard. According to the assistant of the Syrian organiser, this way of working is common practice in human smuggling.

2.3.3. | International investigation

There was good cooperation between the Belgian and British judiciaries. Based on a Belgian rogatory commission and data from the telephone wiretapping and Facebook, the smuggling organisers in the UK were identified, located and arrested via a European arrest warrant.

2.4. | Victims

In the wiretap, 1,290 victims of smuggling were traced during at least 56 days of smuggling. Up to 10 to 15 persons could be smuggled per crossing. The victims of the smuggling were mainly Kurds from Iraq and Iran, and Syrians. They also came from Somalia, Afghanistan and Albania. The final destination of most of them was the UK for family reasons, language skills, the presence of large ethnic communities, job prospects and a reduced risk of checks. The smugglers also advised their customers to travel to the UK, as this represented a significant additional cost to the smuggling price. For example, in a wiretapped telephone conversation, a Kurdish smuggler replied to a customer that it was better to seek asylum in the UK than in the Netherlands because it was easier to find work in the UK. The smugglers abused the vulnerable position of the victims. They used propaganda to bring people to the so-called 'promised land'. The victims often paid with the last of their money, which made them even more vulnerable. When they arrived in the United Kingdom, they often still had debts, which made them easy prey

³⁴⁸ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁴⁹ In addition, a guarantor in the home country gives a guarantee to a hawala banker in the country of destination who makes the payment; see 2011 Annual Report on Human Trafficking and Smuggling, *The money that counts*, p. 30.

for further exploitation, or to end up in crime. Some were even obliged to help the smugglers as errand runners, for a limited fee.

In total, the police were able to identify 120 victims of smuggling, including 22 minors. The youngest victim was 3 years old when found on the smuggling transport, the oldest 66 years old. The majority of these victims were found once in Belgium on a smuggling transport. An exception to this was an Iranian family who was found on seven different smuggling transports, and who received victim status relating to human smuggling (see below).

2.4.1. | Abuse and rape³⁵⁰

Some traffickers told their victims that they would be killed if they contacted the police. During his questioning by the police, a smuggler stated in this respect: "The asking price for smuggling a person to England from Belgium is normally between \$3,000 and \$3,500. In fact, the price is not fixed. It depends on the smuggler and the maximum amount the smuggled persons are able to pay. The aim is always to get as much money as possible for the smuggling. For example, X has smuggled a small family for €14,000. He threatened to kill them if they went to the police".

Female victims had to pay in kind if they could not pay the full amount for their smuggling. This was ascertained from the complaint lodged by an Iranian family who, together with another woman, were smuggled into the UK by the Kurdish smuggling organiser. This organiser then relocated from Belgium to the UK (see above) but was then intercepted by the police in Belgium during a smuggling operation. The Iranian family later stated to the Brussels police that they had once seen the organiser at the hotel with a woman who was waiting to be smuggled to England. He spent the night there with that woman. In a confidential conversation with the wife of the Iranian family, this woman said 'that there are female victims of smuggling who are obliged to continue paying for their smuggling transport in kind, in addition to the partial payment in cash, by sleeping with the smuggling organiser'. During his questioning by the police, the Kurdish organiser made out that he had been smuggled himself, and, together with his wife, had attempted to reach the United Kingdom clandestinely. Subsequently, based on the complaint by the Iranian family, the police established that this woman was not his wife, but a victim of smuggling who was raped in exchange for part of her smuggling costs.

³⁵⁰ See the external contribution above: "Refugees: When human smuggling becomes human trafficking".

2.4.2. | Abuse against minors

Many minors have been smuggled in inhuman situations. The traffickers showed them no respect, threatened them, and put them in life-threatening situations where they almost suffocated.

A wiretapped telephone conversation revealed that the Arab-Iraqi smuggling organiser based in the UK (see above) showed complete disregard for the lives of smuggled children: "406 told the smuggling organiser (158) that the three children of the Afghans were too small. 158 says that he has agreed to transport them with the container, and not with the truck, and asks to send them anyway, even if they are dead when they arrive at the other end. 406 said ok".

They also unwittingly put minors in life-threatening situations. During a smuggling transport, an ambulance needed to arrive at the car park at Groot-Bijgaarden after a child had almost suffocated in a refrigerated truck and was only just rescued in time. When a Kurdish smuggler was alerted by telephone and feared for the child's life, he informed the police before fleeing.

In a telephone call, a smuggler threatened to take a smuggled boy hostage because he had not paid in time: "265 says that he did the boy a favour, and if the boy wants to cheat him and not pay his money, he will call England to have him taken hostage until his money is paid". When the police questioned him about this during his interrogation, he replied: "That boy had still not contacted me after seven days despite the fact he was smuggled successfully, and clearly had no intention of paying me. I see this as betrayal and that is why I threatened to hold him hostage in England. I was finally paid via that R. in Iraq. He received the money from the boy's family. My brother H. received my money in Iraq via R.

2.4.3. | Human smuggling victim status

Various victims have been offered human smuggling victim status.³⁵¹ The adult victim wanted to travel on to the UK. There was also an unaccompanied foreign minor (UFM) and a family with children who received smuggling victim status. In her complaint, the Iranian family also made statements about the female victims of smuggling who had to pay in kind.

³⁵¹ It should be borne in mind that victims of certain serious forms of human smuggling can also benefit from human trafficking victim status. This applies in particular to minors and people whose lives have been endangered.

a) Unaccompanied foreign minors with smuggling victim status

A 15-year-old Palestinian, born in Syria (Damascus), had fled with his family to Lebanon in January 2014, where they ended up in a refugee camp. He wanted to be smuggled into the UK. In March 2014, the 15 year-old left for the United Arab Emirates and Sudan with a business visa. He had paid €3,000 for this to a smuggler in Lebanon. In Sudan, another smuggler was waiting for him at Khartoum airport. The Lebanese smuggler had sent him his photo and then took him to Libya, along with other people, through the Egyptian desert in a small open truck, where a civil war was raging at the time.³⁵² The smugglers were heavily armed. The minor experienced awful events on the way. People died in the desert during the journey. They were immediately buried, and the convoy carried on. The boat he needed to board was 10 metres long and there were 270 people on it. They forced him to board the boat without protection, and all his identity documents were taken from him when he boarded.

The child victim told his full story to the police and made relevant statements: "The journey into the desert lasted 7 days. There were 12 cars driving in convoy. The escorts were armed and also had anti-aircraft weaponry. We were with up to 50 people in the pick-up with a large rope around us so that we wouldn't fall out. Sometimes people fell off the truck, and they were simply shot dead by the smugglers and buried in the desert. Everyone feared for their lives. They then just carried on driving. When we arrived in Libya, we were dropped off with other traffickers, and we stayed in Idjdabia, the first city in Libya you cross when coming from Egypt. We stayed there for 3 days in tents. After that we were taken to a farm. From there we went on trucks to Benghazi on the coast. On the way we came across a roadblock, and everyone had to get out. We were taken to a prison. The prison is called Rajma. We stayed in this prison for 6 months and I was mistreated, tortured with electric shocks on my hands and teeth, and beaten on my head. Since then I have had constant headaches. I was tortured because I am a Palestinian from Damascus (Syria) and a stateless person without rights. After 6 months they released me, and I did some work for 2 months to earn money. From Benghazi I went to Tripoli, which is also on the coast. In Tripoli I paid €1,000 to go by boat to Italy. I found the people who organise these boat crossings through the man I worked for in Benghazi. He was actually also a smuggler, whom I met in prison. On this boat crossing, only a few children had a life jacket on. I can't swim well, so I also asked for a life jacket, but I had to pay €1,000 for

it. I didn't have that money. We were picked up en route by Italians with a large boat, where we were taken to a camp. I left there and carried on to Rome, and from there to Berlin, where a Palestinian brought me into contact with an Arab smuggler, who in turn gave me the name and telephone number of a smuggler. He took a picture of me and forwarded it to the other smuggler. He put me on a train that took me to Brussels via the Netherlands. The smuggler recognised me from the picture, and then drove me to some woods from where we had to walk half an hour to the car park. Once there, he handed me over to two other men. There were also other men wearing balaclavas who opened the trucks. I climbed onto a truck using a ladder. I was the first one on board, about half an hour later a family boarded, followed by a lone boy".

The victim was offered the smuggling victim status and said: "If I had known all this in advance, I would never have started the journey. My mother sold all her jewellery to give me a future in England. I confirm that I was informed about the possibility of being declared an 'injured party', and about the associated rights. I declare myself to be an injured party and also consider myself to be a victim of human smuggling".

b) Families with children with human smuggling victim status

In October 2014, an anonymous intermediary contacted the Schaerbeek local police to have an Iranian-Kurdish family with two daughters aged 3 and 5 years recognised as victims of human smuggling. The following morning, the police met with the family at the entrance of a hotel. The father gave a short account and handed over his mobile phone to the police. The family followed the police to the police station to make statements and file a complaint. When checking two telephone numbers in the mobile phone, the police immediately established that these numbers were known in two different smuggling cases.³⁵³ The police contacted the Brussels reference magistrate who gave her permission for victim status following their hearing.

The family had been smuggled seven times and had substantial information about the smugglers, the British organisers (see above) and their Facebook profiles.³⁵⁴ The father stated: "We wanted to go to England, because I have a friend there. We left Iran for Istanbul on 20 August 2014, then continued to Rome, Copenhagen and finally Brussels.

³⁵² See the external contribution above: "Refugees: When human smuggling becomes human trafficking".

³⁵³ Best practice; see MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* pp. 148 and 216.

³⁵⁴ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

It is only when we arrived here in Belgium that I met SH (later the Kurdish smuggling organiser based in the UK) and SA (the Kurdish smuggling leader in Belgium). I know that they work with someone who gives orders from England, and that they only get a commission. This person gets the lion's share of the money. He is called 'H' (an Arab-Iraqi smuggling organiser based in the UK) and he uses the numbers (....). His profile name on Facebook is HB. My wife received SH's Facebook profile name through one of our daughters. It is SN. You are showing me these profiles on your computer and I can confirm that they are the right ones".

His statement provided an important insight into how smuggling victims arranged their payments to smugglers: "In the beginning I paid the equivalent of \$70,000 to people in Iran to be able to leave the country. I paid €5,000 for transport for myself, my wife and my two children here in Belgium. I paid this amount as follows: on leaving Iran, my brother gave the equivalent of €6,000 to my friend's brother who has a restaurant in Liverpool, in England. My friend then gave that money to 'H'. At the time of the payment here I had €2,000 on me which I paid in cash to SH and SA. H sent €3,000 (out of the €6,000 he had already received) from Western Union in the UK which I collected here in Brussels to give to SH and SA. Since then I have not paid anything else".

Regarding the smuggling transport from the car parks along the E40 via the coast to the UK, he stated: "We went to the car park several times. In general, it was SH or SA who contacted me by phone with the message: "At 11:15pm, you need to take the 214 bus to the end of the line". The bus stopped in front of the hotel (....). From there, we followed a person who had already travelled the route on foot, through fields and woods, to get to the car park. We waited there until SH and SA arrived from the other side with the car. They always parked the car at a considerable distance and out of sight from the side of the woods. The first time, SH ordered us to tear up our Iranian passports. As soon as I knew the way, I had to explain it to newcomers. Sometimes there were 30 or 40 of us, and SH and SA were helped by 4 or 5 Kurdish smugglers. They kept guard in front of the woods to sound the alarm if a police car arrived, or to check the car park to see if the truck drivers were still awake. When we had to crawl into the truck, SH and SA came to pick us up in small groups (5 to 6 people) and a few hours later another group, and so on. Sometimes they had drivers who knew them and with whom they had made a deal to smuggle people".

The police explicitly stated that they regarded these people as victims and not as suspects³⁵⁵ and explained the procedure of victim status to them, whereby they were monitored by a specialised centre. The family responded positively to the offer and gave their real identities: "I have talked to my wife, and in the interests of our children, we have decided that we want to obtain this victim status. I also admit that my identity and that of my wife are identities which were imposed by the smugglers SH and SA. Our real identity is (....)". The police transferred the family to the specialised victim centre in Brussels.

c) Adult offered human smuggling victim status

The adult human smuggling victim was a 29-year-old Somalian whose wife and three-year-old daughter lived in London. He came from the Netherlands where he was a recognised refugee, but in the meantime his residence card had expired and he lived on the street as a homeless person. He had met a person in the Netherlands who had contact with smugglers in Belgium. He travelled from Rotterdam to Brussels Midi by train. Once there, he was picked up by the smuggler who brought him to a café. Other people also arrived at the café. They were then put into a van, and after that walked half an hour or so to the car park. Following the instructions of an escort, six of them crawled into a truck. The agreement was that he had to pay £1,000 upon arrival in London. A smuggler would wait for them there to settle the payment. A friend would lend him the money.

The police offered him victim status, to which he answered: "I confirm that I was informed about the possibility of being declaring an 'injured party', and about the associated rights. I would like to think about it. I am indeed a victim of human smuggling, but the only thing I want is to go to England to be with my wife and child".

³⁵⁵ Best practice; see MYRIA, 2016 Annual Report Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* pp. 148 and 216.

Chapter 3

Case law overview

2016 - early 2017

1. TRENDS

In this chapter, Myria gives an overview of the relevant case law from 2016 and early 2017 in cases of human trafficking and human smuggling.³⁵⁶ This year's overview is based on cases in which Myria was a civil party in the proceedings, on the decisions we have received from the specialised victim reception centres, and on decisions communicated to us by magistrates. Myria also provides an explanation of two recent rulings by the European Court of Human Rights. Finally, two decisions of the Council of State are also discussed, regarding the temporary administrative closure of a building where human trafficking offences took place.

Myria has taken note of 68 judgements by judicial authorities. Below, Myria reviews the most relevant decisions, namely 41 judgements in 39 cases in various jurisdictions around the country:

- **14 decisions** in 13 cases related to acts of sexual exploitation. These are judgements in the jurisdiction of the courts of appeal of Antwerp (subsection Antwerp), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent and Dendermonde)), Liège (subsection Liège) and Mons (Charleroi).

As regards **sexual exploitation**, we can observe an increase in the number of underage victims, especially from Nigeria. Two major cases, with an important international element, related to massage parlours and Thai escort girls. Joint investigation teams were set up in two cases, in the context of European cooperation. A striking fact is that the *loverboy* technique is still used to seduce both young foreign girls and young girls who have fled from youth institutions. Finally, one case relates to

a hotel that was used for sexual exploitation and drug trafficking.

- **19 decisions** (of which 4 were on appeal and 1 was by the labour court) relate to cases of economic exploitation. The cases covered a wide range of sectors and are presented per sector of activity (construction, hotel and catering, agriculture/horticulture, bakeries, printers, riding schools and stud farms, workshops for sorting second-hand clothes, domestic help, and in a less well-known sector, waste disposal). These rulings were made within the jurisdiction of all courts of appeal: Antwerp (Antwerp (subsection Turnhout and Mechelen), Limburg (subsection Tongeren), Brussels (French-speaking Brussels, Walloon Brabant, Leuven), Ghent (East Flanders (Ghent, Dendermonde)), West Flanders (Bruges), Liège (Liège) and Mons (subsection Mons).

As regards **economic exploitation**, there was the important decision on domestic exploitation in the so-called "Conrad princesses" case, against the princesses from the United Arab Emirates. This decision led to convictions for human trafficking. Moreover, the Brussels labour tribunal declared itself competent in a domestic help case involving a diplomat and his wife, who had been posted to Brussels at an earlier date.

In concluding that the employment conditions were an affront to human dignity and an element of human trafficking, the judges took into account the following elements: the employment conditions and circumstances (excessive working hours, negligible pay, no rest days), housing in poor conditions, withholding wages on various pretexts, dependency on the employer (including the use of guard dogs, withheld passports, etc.) or the fact that the employee was the victim of a serious accident at work. Fraudulent constructions were also set up in various

³⁵⁶ These decisions are published on the Myria website: www.myria.be.

cases to conceal exploitation, including fraud involving the posting of workers, or bogus self-employment.

However in various sectors, we have also observed that defendants are acquitted, often because the judges are not sufficiently aware of human trafficking, or because the case does not contain enough objective elements to confirm the statements of worker(s).

The lack of knowledge, among some judges, regarding the offence of human trafficking was also observed in some cases of sexual exploitation.

Some courts also decided, both as regards sexual and economic exploitation, to give priority to civil parties when awarding confiscated sums.

- **8 judgements** in 7 cases concern cases of human smuggling. These are judgements in the jurisdiction of the courts of appeal of Antwerp, Brussels, Ghent (East Flanders (Ghent, Dendermonde) and West Flanders (Bruges)).

As regards **human smuggling**, the relevant organisations are usually well-structured. We have observed that places of worship, such as churches, sometimes serve as bases for operations. The activities of smugglers were also exposed in a murder case. Finally, apart from a Nigerian smuggling case involving a student visa, there was another important case for which a joint investigation team was set up.

2. HUMAN TRAFFICKING

2.1. | European Court of Human Rights

At the start of 2017, the European Court of Human Rights (ECHR) adopted two decisions relating to acts of human trafficking. In a first case involving domestic exploitation, in which two Filipino nationals were allegedly victims of two employers from the United Arab Emirates, the Court concluded that there was no violation of the European Convention on Human Rights. We have included this decision since it illustrates the situation faced by domestic workers in the Gulf States. Indeed, in June 2017, the Brussels Criminal Court dealt with similar offences, which were charged to princesses from the same country.³⁵⁷

A second decision was more relevant and concerns allegations of human trafficking against Bangladeshi migrants who worked as fruit pickers in Greece. The particularly serious offences led to a judgement against the Greek State, in which the Court held that Greece did not provide these workers with effective protection.

2.1.1. | European Court of Human Rights, Case J. v Austria, 17 January 2017 (Application No 58216/12) (Application No 58216/12)³⁵⁸

This case concerns the Austrian authorities' investigation of suspected human trafficking. The plaintiffs were both Filipino nationals who had travelled to Dubai in the United Arab Emirates to work there as domestic servants, or as au pairs, for a family or relatives of this family. They claimed that their employers had taken away their passports, treated them badly and exploited them. For example, they were apparently obliged to work extremely long hours in succession, without receiving the agreed wage. They were apparently badly treated, and physically and morally threatened. Their employers apparently also treated them in this way during a short stay in Vienna, where they had travelled with the family.

³⁵⁷ See below in this respect, point 2.3.9.

³⁵⁸ The ruling is available via the following link: [http://hudoc.echr.coe.int/eng#{\"itemid\":\"001-170630\"}](http://hudoc.echr.coe.int/eng#{\).

In Vienna, they were finally able to escape. They found refuge among the Filipino community. Nine months later, they contacted a local government-funded NGO, which was active in the fight against human trafficking in Austria. Finally, they filed a criminal complaint against their employers through this NGO.

However, the Austrian authorities declared that they did not have the authority to judge alleged violations committed abroad. They also dismissed the complaint concerning the offences that had taken place in Austria.

The plaintiffs maintained that they had been victims of forced labour and human trafficking and that the Austrian authorities had not carried out an effective and full investigation into their statements in this regard. Among other things, they argued that the incidents in Austria could not be regarded as isolated, and that the Austrian authorities were obliged to carry out investigations into what had happened abroad.

Nevertheless, the Court held that the Austrian authorities had fulfilled their obligations to protect the plaintiffs as (potential) victims of human trafficking. The Court ruled that neither Article 4 (prohibition on forced labour) nor Article 3 (prohibition on inhuman and degrading treatment) of the European Convention on Human Rights had been violated. In particular, the Court pointed out that the Convention did not require Austria to conduct an investigation into the recruitment of the plaintiffs in the Philippines, or into their claims that they had been exploited in the United Arab Emirates. According to the Court, Article 4 of the Convention does not require States to establish universal jurisdiction regarding human trafficking committed abroad.

As regards the incidents in Austria in particular, the Court concluded that the State had taken all reasonable measures in this case. For example, during their interrogations by specially trained police officers, the plaintiffs could count on the assistance of an NGO, and they had been granted a residence permit and work permit, allowing them to reside legally in Austria. Finally, the Court also held that their claims regarding their stay in Vienna had been sufficiently investigated and that, in the light of the facts and available evidence, the authorities' assessment would have been reasonable.

2.1.2. | European Court of Human Rights, *Chowdury and others v Greece*, 30 March 2017 (Application No 21884/15)³⁵⁹

This case relates to 42 Bangladeshi nationals residing in Greece. They did not have a work permit when they were recruited in Athens and other parts of Greece to work on the largest strawberry farm in Greece. They were promised a wage of €22 for seven hours of work and €3 for each additional hour. They worked in extreme physical conditions: every day, from 7am to 7pm, under the supervision of armed guards. Their employers had informed them that they would only get their wages if they continued to work. Moreover, the applicants also lived in improvised cabins without toilets or running water.

They went on strike three times to demand unpaid wages, without success. Ultimately, the employers eventually hired other Bangladeshi migrants. Around one hundred labourers, who feared that they would no longer see their wages, went to the two employers to demand the money. One of the armed guards opened fire and injured 30 labourers, including the 21 plaintiffs. They were taken to the hospital and later questioned by the police.

The two employers, the guard who fired the shots, and a foreman, were arrested and prosecuted for attempted manslaughter (which was later commuted to grievous bodily injury) and human trafficking. However, the Patras Court acquitted them of the charges of human trafficking and only convicted the armed guard and one of the employers for grievous bodily injury and illegal use of firearms. The public prosecutor rejected the plaintiffs' request for an appeal against the Court's judgement. It considered that the accusation of human trafficking had not been properly investigated.

Appearing before the European Court of Human Rights, the plaintiffs argued that they were subject to forced or compulsory labour. They also stated that, not only did the Greek State have a duty to prevent them from being subjected to a situation of human trafficking, but they also had to take preventive measures and punish the employers in this regard.

The Court ruled that there had been a violation of Article 4, § 2 (prohibition on forced labour) of the Convention, and ruled that the Greek State had not sufficiently protected the plaintiffs.

³⁵⁹ The ruling is available via the following link: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-172365%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-172365%22]}).

In particular, the Court pointed out that the plaintiffs' situation did indeed correspond to human trafficking and forced labour, and specified that exploitation through work is an element of human trafficking. It stressed that the Patras Court acquitted the persons accused of human trafficking on the grounds that the workers were not in the absolute impossibility of defending themselves and that their freedom of movement was not compromised, as they were free to stop their work. However, the Court rightly held that the restriction of freedom of movement is not a *sine qua non* condition for considering a situation as forced labour or even human trafficking. Indeed, there may even be a situation of human trafficking, even though the victim has freedom of movement.

The Court ruled that, in this case, the Greek State did not comply with its obligation to prevent human trafficking, protect the victims, thoroughly investigate the crimes committed, and punish those responsible for human trafficking.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

Various judgements related to Nigerian networks, which also exploit minors.

A first case concerned a network in Antwerp, which recruited young women to exploit them sexually. The network was **sentenced by the Correctional Court of Antwerp on 23 May 2016**.³⁶⁰

Three defendants were prosecuted in this case, for human trafficking with the aim of exploiting prostitution and other forms of sexual exploitation, over the period 2014-2015. The investigation concerned three young Nigerian women who were recruited in Nigeria and taken to Belgium. The two main defendants were Nigerian sisters. A fourth defendant was identified as a cash courier who channelled the money to Nigeria. He was prosecuted for money laundering.

The smuggling to Belgium was organised by one of the 4 defendants. Once they arrived in Belgium, the girls had

to prostitute themselves so that they could repay their debt of €60,000. They had to hand over almost all the money they earned. Both the girls and their families in Nigeria were put under pressure using voodoo rituals.

The court convicted the three main defendants for human trafficking with aggravating circumstances, one of whom was sentenced in absentia. The fourth defendant was convicted of money laundering. The court ruled that the victims' statements were consistent with each other and that there were also objective elements which confirmed their statements, including telephone investigations, wiretaps, observations, cash which was transferred almost every week through official channels such as Western Union, and through unofficial channels using couriers. Victims were found during searches of premises, as were significant sums of money and documents related to the money transactions.

The two sisters were sentenced to 30 and 40 months' imprisonment and a fine of €24,000 and €18,000 respectively. The third defendant was sentenced in absentia to 4 years' imprisonment and a fine of €6,000. The fourth defendant was sentenced to 1 year imprisonment and a fine of €1,000, which was partly suspended. The court also declared the funds confiscated.

A second case concerned a large-scale investigation which led to the dismantling of a major Nigerian network. At the start of 2016, some of the members of this network were convicted at the first instance.³⁶¹ One of the defendants, who was convicted in absentia, appealed against the judgement. **On 30 June 2016, the Dutch-speaking Correctional Court of Brussels ruled on the case.**³⁶²

The case came to light when the police found a girl behind a prostitution 'window' during a patrol near Brussels North Station, who they did not recognise. The girl turned out to be in the country illegally, and declared being domiciled in the defendant's premises. The girl was interviewed and wiretapping measures were taken as part of the investigation.

A large-scale investigation showed that she was just one of the victims of a larger Nigerian prostitution network. Young girls were smuggled from Nigeria via Libya and Italy to Belgium, to work as prostitutes here. The girls paid a lot of money for the trip to Europe, sometimes up to €30,000

³⁶⁰ Correctional Court of Antwerp, subsection Antwerp, 23 May 2016, Chamber AC4 (appeal).

³⁶¹ Dutch-speaking Correctional Court of Brussels, 5 February 2016, 46th Chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 161. These judgements are published on the Myria website: www.myria.be.

³⁶² Dutch-speaking Correctional Court of Brussels, 30 June 2016, 46th Chamber bis (definitive).

or €40,000. They then had to repay that money through their prostitution activities. The girls and their families in Nigeria were put under pressure through voodoo practices. They earned €20 per customer, money they had to give to their 'madam', on top of which they also had to pay rent. Sometimes the girls prostituted themselves within their 'madam's' territory, or that of other women through the 'Yemeshe' system. This is a *modus operandi* in the Nigerian prostitution milieu whereby a girl who does not have a permanent prostitution spot is given the opportunity by a contractual prostitute to prostitute herself behind her window for several hours. The girl has to pay a kind of rent by giving 50% of her income to the contractual prostitute. They had to put the remaining money in a 'money box' which was managed by the 'madam'. During the investigation, the accounts of one of the 'madams' were found where she kept all the amounts received, by date. This showed that she had an average income of €12,000 to €14,000 per month.

The defendant was found guilty of human trafficking offences for the purpose of sexual exploitation. Her actions undeniably contributed to the 'supply' of girls to the prostitution milieu. The aggravating circumstances that the vulnerable position of the victims was abused were also upheld. The court was particularly alarmed by the fact that the victims had to make a life-threatening journey by boat across the Mediterranean Sea, during which they needed to be rescued. The court also ruled that this appeared to be a routine, and that the defendant and her associates formed a structured association.

In addition, the defendant was also found guilty of exploiting prostitution with aggravating circumstances (abusing the vulnerable situation of the victims), participating in the activities of a criminal organisation and also of illegally collecting income from the exploitation of the victims.

The defendant was sentenced to 30 months' imprisonment and a fine of €12,000, which was partly suspended. In addition, the court ruled that their funds were to be confiscated.

Finally, a judgement of the **Dutch-speaking Correctional Court of Brussels on 28 March 2017** revealed that some Nigerian networks have their own system for transferring money.³⁶³

In this sexual exploitation case, six different defendants were prosecuted for human trafficking with aggravating

circumstances, sexual exploitation of both underage and adult victims, criminal organisation and money laundering. The judicial investigation had mapped a network which smuggled young girls from Nigeria to Belgium to get them to work in prostitution. The main defendant was helped by her mother in Nigeria and her brother, among other people. The mother recruited young girls on the pretext that they could study or work as childminders in Belgium. Before their departure they had to undergo voodoo rituals, whereby insubordinate girls and their families could then be threatened.

The girls were smuggled through Nigeria and Niger to Libya, where they were put on boats to Italy. The journey across the Mediterranean Sea was perilous. One victim said that the boat started taking in water, and she was rescued at sea by the Italian coastguard. Once they arrived in Italy, they ended up in refugee camps where they were picked up and taken to Belgium. In Belgium, they were told that they had incurred debts of €35,000 that they were obliged to pay back through prostitution. The girls were also often supplied to other Nigerian 'madams', who had requested them. The girls were obliged to hand over all their earnings. If they did not obey, or did not bring in enough money, they were assaulted or threatened with voodoo.

The money that the girls brought in was transferred to Nigeria through a company and via the 'Black Western Union' system. In order to avoid official money remittance companies, the Nigerian criminal milieu used its own transfer system, which did not leave any traces, to transfer cash to the beneficiaries in Nigeria. The money was deposited in a 'shop' which also operated as a barbershop. The funds to be sent were noted down, and the applicable exchange rates were communicated. This money was then taken to Nigeria almost every month by some of the defendants, hidden in luggage. In Nigeria, one of the defendants ran a shop/office where the beneficiaries could come to collect their funds by paying a commission of 10% on the amount sent. The money earned from the exploitation of prostitution was laundered by the defendants by buying and rebuilding houses there.

The court found most of the facts proven. The criminal file consisted of various credible statements by victims and the content of numerous wiretapped discussions. The court ruled that both the material and moral elements of the offence of human trafficking were in evidence. The aggravating circumstances were also upheld, namely that the offences also involved underage girls, that the vulnerable situation of the victims was abused, that subterfuge was employed, that criminal activity was a

³⁶³ Dutch-speaking Correctional Court of Brussels, 28 March 2017, 60th Chamber (definitive).

matter of course, and that the defendants committed the crime as a criminal organisation.

The court sentenced the defendants to prison sentences of between 40 months and 6 years, and gave them fines of between €12,000 and €108,000. Large sums of money were also confiscated.

Myria and one victim initiated civil proceedings. Myria received moral and material damages of €1,500. The victim received material damages of €200 and moral damages of €2,500.

2.2.2. | Thai and Chinese massage parlours

Two significant cases involved a Thai and a Chinese massage parlour.

The first case, in which letters rogatory were sent, related to a Belgian-Thai gang. This case was heard by the **Correctional Court of Dendermonde on 11 October 2016**.³⁶⁴

20 defendants were prosecuted in this case. The offences occurred between 2006-2008, primarily in Belgium and Thailand. The defendants were prosecuted for human trafficking for the purpose of sexual exploitation, with the aggravating circumstances that the vulnerable situation of the victims was abused, the activity was a matter of course, and took place within a criminal association. They were also prosecuted for running a house of ill-repute and prostitution, with aggravating circumstances, leadership and participation in a criminal organisation, gang activity, slumlording, money laundering, receiving stolen goods and attempted fraud. The investigation also consisted of two elements, firstly the investigation into human trafficking and the exploitation of prostitution and secondly, the financial investigation into transactions with stolen cheques.

The case came to light in early 2008 when the local police heard rumours about the operation of a Thai massage parlour in Wetteren which was actually a cover for prostitution. A few weeks later, the police learned from Thailand that some Belgian nationals were involved in the exploitation of Thai prostitutes in Belgium. As a result, an investigation was launched. It was investigated who was

the manager of the massage parlour, and surveillance operations helped establish that several defendants were regularly present in the massage parlour, including the lawyer, and that the parlour received an average of 30 customers per day. Subsequently, administrative checks were carried out, as well as a check at the request of the Immigration Office. Some illegally-resident girls were arrested and transferred to a detention centre. Several of the victims were questioned. They declared that they were recruited in Thailand through a Thai organisation, to come to Belgium. Most of the girls already had financial hardship in their own country. Some of them knew that they would end up in prostitution. Most of them only spoke Thai. They declared that they had come to Europe with a Swedish Schengen visa for tourists. Once in Belgium, they were told that they had incurred debts of €15,000. They were obliged to repay this by giving massages. They had to hand over all their earnings. At the end, when all debts had been repaid, half of their earnings were reimbursed to them. In addition, they also paid €80 per week for rent and costs. They had to charge €50 per half hour massage, and €80 for an hour. This price included masturbation. If customers still wanted further sexual contact, they had to pay an extra charge of €50. The girls were allowed to keep the money from the sexual contact. As such, it took two to three months before they paid off their debts. Moreover, the girls had no choice but to earn extra money from sexual contacts in order to provide for their daily livelihoods. The girls also had to buy their own condoms. Instructions were given on how to get rid of the condoms by cutting them into pieces and throwing them down the toilet, or putting them in an empty can and flattening it. They worked 7 days a week, and saw an average of 5 customers a day. They rarely left the house.

The girls who did not work hard enough, or did not want to go with a customer, were threatened with being sent back to Thailand. Although some girls knew why they came to Belgium, they felt exploited.

The investigation was conducted through house searches, combined with the results of the wiretapping, statements, laptop analysis, a rogatory commission to Thailand, etc.

The main defendant was the actual boss of the massage parlour. He had started the parlour with his wife. He was also a partner in a British company. This company was set up on the advice of the defendant's accountants and financial advisers. By making the Thai girls co-managers, they were able to circumvent the regulations relating to foreign nationals. The boss had contacts with the Thai travel agency (T.C.), from where he ordered the girls. This organisation arranged the visas, airline tickets, passports etc. He had also agreed with them that the debt price would eventually be fixed at €15,000, of which T.C. would

³⁶⁴ Correctional Court of East Flanders, subsection Dendermonde, 11 October 2016, Chamber D19D. Six defendants were tried in absentia. An appeal against the decision was lodged by a defendant who was tried at the first instance. The judgement was expected to be delivered before 11 September 2017.

receive €3,000, leaving him with a profit margin of €7,500. From the end of 2008, he would have two girls sent to Belgium every month. The wife of the main defendant was aware of the goings-on in the massage parlour. The other defendants had to report to her when the boss was away abroad. Even after his provisional release, the main defendant still looked around to start a new massage parlour. In addition, he tried to influence the victims to make favourable statements about him.

The other two main defendants took care of the practical and day-to-day organisation of the massage parlour. One of them had married one of the first Thai girls who came to Belgium. She served as an intermediary between the girls and the bosses, and gave them instructions.

The two accountants and the lawyer were also prosecuted. The accountants gave advice on financial constructions for the massage parlour, and were well aware of the activities. The lawyer gave advice on foreign nationals law, and was paid in kind by services in the massage parlour. In addition, he visited the victims in the detention centres to coax their statements out of them which they had made against the defendants during the course of the investigation.

Through the rogatory commission to Thailand it was possible to find out, via the IP address of the e-mails³⁶⁵ of the company T.C. and the contact details, etc., that this company was operated by two Thai women and operated from an internet shop/travel agency,³⁶⁶ run by another defendant and her husband. She was also prosecuted in this case, in addition to the two Thai women who ran the firm.

The court ruled that sexual exploitation had taken place. The fact that the girls had consented had no bearing on the case. They were in a vulnerable position; they had no choice but to let themselves be sexually exploited. The court considered the charges against each defendant individually. Six defendants were convicted in absentia. The main defendant and his wife were found guilty of human trafficking, with aggravating circumstances. For the other two main defendants, the facts were also considered as proven. For another defendant, the court found that there were insufficient elements to prove that he had done more than just take preparatory actions, and he had withdrawn even before the offences were committed. For the defendant who had previously worked as a 'masseuse' herself in the massage parlour, the court

held that, although she had undeniably contributed to sexual exploitation, she did not act with the intention of exploiting the masseuses, nor did she knowingly and intentionally participate in it. The defendant herself was still in a vulnerable position due to her own precarious social situation. The court ruled that there was moral force majeure on the part of the defendant in question, and acquitted her of human trafficking offences. The three defendants in Thailand who worked under the name T.C. were also found guilty of human trafficking. The five main defendants were also found guilty of keeping a house of ill-repute and prostitution. In addition, the court ruled that the girls were housed in conditions which were an affront to human dignity, and considered that the main defendants were also guilty of slumlording. The court ruled that all constitutive elements were present to judge that it concerned a criminal organisation, in which each defendant played a role. Several defendants were also considered guilty of receiving stolen goods and attempted fraud.

During the proceedings, several defendants asserted that a reasonable time limit had been exceeded. Although it was a complex case with various letters rogatory to the UK, the Netherlands, Thailand, Switzerland, Sweden and Rwanda, among others, the court ruled that the reasonable time limit had been exceeded, and that it had to take this into account in the sentencing. The main defendants were sentenced to, respectively, 3 years with suspension, 2 years with probation, 20 months with probation, and some were given a simple conviction (without sentence). Only the three Thai female defendants behind T.C. were sentenced in absentia to effective prison sentences of 2 and 3 years, and fines.

The court ordered the confiscation of significant sums of money, as well as vehicles.

Myria and several victims initiated civil proceedings. Myria received damages of €1 and the other civil parties received damages of €26,000 and €16,850 respectively, which was the amount of the "debt obligation" and expenses, and €1,000 moral damages.

The other case relating to a massage parlour was heard by the **Court of Appeal of Brussels on 16 November 2016**.³⁶⁷

A Belgian-Chinese couple, who ran a massage parlour, were prosecuted for human trafficking for the purpose of sexually exploiting a young Chinese woman, who was staying in the country illegally, and for operating a

³⁶⁵ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁶⁶ See also above, Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking) and Chapter 2, point 6 (Social media and the internet as a method of investigation).

³⁶⁷ Brussels, 16 November 2016, 14th chamber.

house of ill-repute and prostitution. In the first instance, the Correctional Court of Walloon Brabant³⁶⁸ judged the alleged facts to be proven. The court ordered the restitution, to the civil party, of confiscated funds seized from the defendants, in the form of assets found in their possession. In addition, the court awarded, to the civil party, confiscated funds of an equivalent value in the form of assets which were not found among the assets of the defendants.

The case got underway following a complaint by the employee, who initiated civil proceedings. She stated that she was forced to perform sexual services at the end of the massages and that she received only half of the proceeds. She lived at the premises. When she wanted to end this situation and announced that she wanted to leave, she noticed a few days later that her passport and a sum of €2,550 had disappeared from her luggage.

The court held that the charges were proven on the basis of the criminal file. Based on the elements of the investigation, it was established that sexual massages did indeed take place (declaration of the victim, questioning of customers, comments in a forum on a website³⁶⁹, the presence of used towels with traces of semen at the location of the incidents). In addition, the victim's statements were elaborate and detailed, while the accused's statements were improbable, inconsistent and contradictory.

The court increased the sentences handed down at the first instance of 8 and 10 months to 1 year and 15 months respectively. The female defendant only received a suspended sentence.

Conversely, the Court of Appeal considered the fines imposed at the first instance (€2,000 and €3,000) to be too high. It reduced them to respectively €1,000 (€6,000 increased with a multiplication factor) and €2,000 (€12,000 increased with a multiplication factor).

It also upheld the civil measures of the judgement. The employee who initiated civil proceedings was awarded reasonably-established moral damages of €2,000, taking into account the psychological damage suffered, and a reception centre received symbolic damages of €1. The court also specified that the first judges had correctly applied Articles 43*bis*, paragraphs 3 and 44 of

the Criminal Code³⁷⁰ by restituting to the civil party the confiscated funds found in the assets of the defendants (€2,450) as compensation for her material damages (established at €3,192) and by awarding to the former a confiscated amount of an equivalent value (€371 on top of a supplement of €742 to be paid by the defendants).

2.2.3. | Thai escorts

This case, which was heard by the **Correctional Court of Liège on 16 November 2016**, concerns the trafficking and smuggling of young Thai women using a well-organised, proven set-up.³⁷¹ The young women had to prostitute themselves in apartments in Liège, Brussels and Arlon.

Four defendants - two Thai women, one Pakistani and one Romanian - were prosecuted on various charges. In the case of the first three, this was human trafficking and smuggling, recruitment and exploitation of prostitution involving several young Thai women. They were also prosecuted for distributing advertisements offering sexual services from these young women on a website of a sexual nature, under the heading 'Escorts and massages'. The Romanian and Pakistani defendants were prosecuted on the same charges (except for smuggling and publicity) but regarding two Romanian girls.

Four Thai victims initiated civil proceedings.

The court gave a detailed description of the facts. The case was opened in early January 2015. The local police of Liège were informed about the presence of Thai prostitutes in a building in Liège. Two young women were seen who apparently received numerous clients in an apartment on the second floor. The same month, the police received a tip-off that a vehicle with a British number plate had been parked in front of the building in question. The vehicle was used by a man who regularly dropped off and picked up women working at the location. During the inspection and search of the vehicle, several mobile phones were found. Investigations were made using the nicknames of the girls and the numbers called from these telephones, which led to the discovery of various advertisements that had been

368 Corr. Court Walloon-Brabant, 22 May 2014, 2nd chamber. (not published).

369 See also Part 2, Chapter 4 (Social media and the internet as a method of investigation).

370 According to these Articles, the confiscation should not affect the rights of civil parties who are victims of the offences, and the courts must order the restitution or re-allocation of the confiscated assets belonging to them, or of the confiscated assets which are deemed to be a replacement or have equivalent value to the assets belonging to them.

371 Corr. Court Liège, subsection Liège, 16 November 2016, 19th chamber (appeal).

posted on a website of a sexual nature for several months, and on which these names and numbers appeared.³⁷²

Based on a number from one of the mobile phones, the investigators also discovered a site for *escort girls* and two other websites with similar advertisements as those on the previously discovered website.

In February 2015, the police carried out a check on young Thai women in a hotel in Arlon, for whom advertisements for prostitution had been posted on the discovered website. A link was soon established with the ongoing investigation in Liège. The statements of the three identified girls showed broadly similar pathways and working conditions, in which each of the first three defendants played a role. Recruitment in Thailand was carried out by the first defendant, who organised the trip. The girls had to repay the travel expenses (€15,000) by working in prostitution. The second Thai defendant was responsible for the girls in Belgium: she received them, explained the terms of employment, took calls, arranged appointments and received the earnings. As long as they had not fully repaid the travel expenses, the victims had no money of their own. They had to be available every day from 10.00am to 2.00am the following morning. The Pakistani defendant was responsible for placing the advertisements on the internet, purchasing the telephones and renting the apartments. He later took the place of the defendant who lived in Belgium and who was his partner, because she returned to Thailand due to a conflict of interest between them. The girls' passports were confiscated and they could not freely leave the apartment.

The police carried out further investigations into the first website and carried out wiretaps. They discovered that the Pakistani defendant had just opened a car wash, and that Romanian girls were also working for him. As such, he worked with the Romanian defendant, who was his contact person for recruiting Romanian staff to work in the car wash.

Surveillance and house searches were also carried out. Several more victims were then discovered and questioned, in addition to the two defendants. The Pakistani defendant acknowledged that he had asked the Romanian defendant to find him a girl to work in an empty apartment in Liège. Incidentally, the Romanian defendant had married the Thai defendant in Thailand, so that she could obtain the necessary papers (sham marriage).

Based on analysis of the mobile phone found during the search, and the property of the Pakistani defendant, it was possible to identify the contact person in Thailand, namely the Thai defendant who was responsible for recruitment. The police were able to arrest her, but were unable to arrest the other defendant, for whom a European and international arrest warrant was issued.

In a detailed justification, the court stated that all charges were proven, except for exploitation of prostitution on the part of the Romanian defendant.

As regards human trafficking, the court considered that all the elements of this charge were present in this case, since the five girls had undeniably been recruited, received, housed, transported and controlled for the purpose of exploitation of prostitution. They described an identical, proven *modus operandi*. They were recruited in Thailand, where they lived in a difficult financial and/or family situation, by the first defendant and usually through a girlfriend, who presented her to them. The defendant explained to them the possibility of coming to Belgium, the nature of the work and the principle of the travel cost debts, which had to be repaid. She provided them with a visa (tourist visa, often from another EU country) and airline tickets, she provided accommodation for the trip, gave them money for travel costs and took photos of the girls (intended for advertisements on websites for prostitution in Belgium). Two girls often travelled at the same time. They travelled via the European country for which they had obtained a visa. The court ruled that the first defendant, under the guise of her travel agency, did indeed participate in recruiting and transporting these five Thai girls for the purpose of exploitation of prostitution.

In Brussels, they were awaited by the second defendant, who gave them a nickname, provided a mobile phone 'for work', confiscated their passports and explained the nature of the work. The girls stayed in the same place where they worked, and were often relocated. Their services were constantly monitored. The girls had to hand over 40% of their income and the remaining 60% served to pay off their travel debt until it was fully repaid.

The third defendant played an important role in housing the girls, transporting them, placing the advertisements, and keeping them under control.

The court noted in this respect that the statements of these five victims contained all the details of the facts. Any contradictions or amendments during the various hearings had no bearing on the credibility or sincerity of their story, but rather reaffirmed the importance of their status as victims of human trafficking, as they were still

³⁷² See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

under the control of the defendant (at least one of them) during these hearings.

In the same way, the court also convicted the defendants for human trafficking offences involving the two Romanian girls, based on the confessions of the two defendants involved, wiretaps, surveillance and investigations on a website.³⁷³ The court ruled that the Romanian defendant made an essential contribution to committing the offences and recruiting the girls, but he also helped clean their house and ensured a certain level of supervision. He also had a bond with the other defendants, since he was married to one of them and was a partner in the company that operated the car wash.

These statements were substantiated by various other elements in the case (including statements by two defendants, wiretaps, the examination of the mobile phones, the findings of the investigators and the investigations into the advertisement websites).

The court also acknowledged the aggravating circumstances of the offences (abuse of the vulnerable situation of girls, violence, threats and a certain form of coercion (but only in the case of Thai victims) and participation in the activity of an association).

For the charges of human smuggling, which concerned the first three defendants, the court also ruled that all the elements were present in this case: they took care of the arrival, transit and residence of these five Thai girls in several Member States of the European Union. Each of them, in their own role, was involved in supplying tourist visas, advancing money for airline tickets, helping these women travel through several European countries before arriving in Belgium, and arranging accommodation and therefore their stay in Belgium, all with the aim of obtaining a direct or indirect material benefit. After all, these girls had a travel debt of €15,000, an amount that far exceeded the actual travel costs.

The sentences imposed ranged from 2 to 6 years' imprisonment, and fines ranging from €12,000 to €42,000. Confiscation of equivalent-value assets was also handed down to the first three defendants. The civil parties were awarded moral damages of €1,000 and material damages between €17,704.20 and €35,054.31. The court also decided to allocate the amounts of equivalent-value confiscations in the first instance to the civil parties.

2.2.4. | Large-scale prostitution network offering sexual services via erotic dating sites³⁷⁴

In this case, which was heard by the **Correctional Court of Antwerp on 2 May 2016**³⁷⁵ and by the **Court of Appeal of Antwerp on 24 November 2016**³⁷⁶, 16 defendants were prosecuted for their involvement in an extensive prostitution network. In addition to human trafficking offences for the purpose of sexual exploitation, with aggravating circumstances, the offences also included criminal association and drug legislation violations dating from 2013-2015, involving various victims.

The case came to light through a distress call from a victim who claimed that she was a victim of human traffickers and was forced to prostitute herself. A further extensive telephone investigation revealed an entire prostitute network. The criminal file consisted of statements by victims and other parties involved, and other investigation elements.

The main defendant was the leader of the network offering paying sexual services with transport via the internet, which he ran from Spain, and later from Romania. He managed several websites on which the services of the girls were advertised. He recruited the girls, advertised their services via his internet platform, and provided drivers who brought the girls to the customers. In exchange for these services, he asked for a 'commission' of 25% of their earnings, plus the advertising costs. As such, he sexually exploited at least 17 victims, thereby abusing their vulnerable situation. The girls, often of Moroccan or Bulgarian nationality, did not have any official papers, were not proficient in Dutch and were in a precarious financial situation or had other problems. He told new girls that the earnings were much higher than what eventually turned out to be the case. He monitored their activities by constantly telephoning them and their drivers from abroad. He alone managed the website on which he placed advertisements for the girls. He had control over the girls, who often had financial problems since only he could determine when and with which clients the girls could work. He often lied in the advertisements that the girls were prepared to perform certain sexual acts, when he knew that they were unwilling to. The girls had to negotiate this with the client at the time. If girls were unable to work for whatever reasons, he deliberately prevented them

³⁷³ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁷⁴ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

³⁷⁵ Corr. Court Antwerp, subsection Antwerp, 2 May 2016, chamber. AC4.

³⁷⁶ Antwerp, 24 November 2016, 14th chamber.

from meeting future clients so that they were in financial difficulty, and their dependence on him only grew. These activities were his only income, so it was in his interest to recruit new girls.

The activities were well organised. Various people took care of financial matters, while others were involved in the logistical side of the activities. Money was channelled abroad using fictional profiles or frontmen. The employees used coded language among themselves. The court consequently deemed that the case pertained to a criminal organisation. There were also plans to set up a prostitution network in Spain and the United Kingdom.

The investigation showed that the other defendants cooperated with the main defendant. They took care of the reception of new girls, collaborated on online advertisements, supplied drugs to the girls, worked as drivers, collected money from the girls and took care of money transfers abroad. Several of them also had decision-making authority within the organisation. Some of them worked as prostitutes themselves.

The court found that human trafficking allegations had been proven, except for the circumstance that violence was used against women. The main defendant was certainly not a novice, and already had a criminal past. He was sentenced to 40 months in prison and fined €18,000. Other defendants were sentenced to imprisonment of between 6 and 18 months, and received fines, some of which were suspended.

For the other defendants, the court took into account their limited role, their clean criminal record, personal situation, etc. and gave them a suspended sentence. The court also ordered confiscations worth €250,000. One victim initiated civil proceedings and received damages of €2,500.

At the appellate level, the verdict was upheld almost entirely, with the exception of certain facts and circumstances relating to some of the girls. The fact that not all girls who worked for the 'agency' of the defendant did not consider themselves to be victims of human trafficking was, according to the Court of Appeal, irrelevant in judging the offences.

The penalties for the defendants who appealed were ultimately mitigated, as was the confiscated amount.

2.2.5. | *Loverboy technique*

The '*loverboy*' technique was used in several cases.³⁷⁷

This was the case in a case involving the sexual exploitation of two young Albanian women, which was brought before the **Dutch-speaking Correctional Court of Brussels on 30 June 2016**.³⁷⁸

The defendants used the '*loverboy*' technique to make their victims fall in love with them, so as to be able to put them under emotional pressure. They were prosecuted for human trafficking with aggravating circumstances, for the exploitation of prostitution also with aggravating circumstances, inciting vice, and prostitution and money laundering.

The first defendant met the victim in Albania and promised her that she would be able to build up a singing career in his music bar in Belgium. The victim was naive. She came from a socially disadvantaged environment, and believed him. Once in Belgium, he forced the victim to prostitute herself near the Brussels Midi train station. He used violence and threats when the victim refused. Finally, the victim worked as a prostitute for two years. She earned €500 per night and had to hand over everything to her pimp. He used this money to buy a hotel and an apartment in Albania. The victim became pregnant and was forced to have an abortion twice. The case came to light when, in September 2014, the police found the victim in shock and with broken ribs. She had been beaten by her pimp.

Even during the investigation, the main defendant also made various threats to the victim and her family in Albania. They all received death threats. He threatened her father, so the father even travelled to Belgium together with the father of the main defendant to make a statement to the police that his daughter was lying. The man appeared to be completely lost, and after making his statement, the police helped him organise his return trip to Albania. The threats to the victim and her family continued. The victim was sheltered with the help of a specialised reception centre, out of fear for the defendant.

The second defendant had a relationship with the second victim and they agreed to go to Belgium together so that they could earn a lot of money in prostitution in a short period of time, which they would then share among themselves. Once in Belgium, she earned €700 to €1000 per

³⁷⁷ The issue of *loverboys* was addressed as the focus of a previous Annual Report. See in this respect 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 23-40.

³⁷⁸ Dutch-speaking Correctional Court of Brussels, 30 June 2016, 46bis Chamber (appeal).

night, which she had to hand over in full to her pimp. He did not stick to the agreement, and regularly used violence against her. Following her complaint, an international arrest warrant was issued against the second defendant.

The victims made very detailed statements. Financial investigations, via rogatory commission, were also conducted into the funds, both in Albania and Belgium.

The first defendant was found guilty of human trafficking with aggravating circumstances, as well as exploitation of prostitution and money laundering.

The second defendant was not found guilty of human trafficking, but was found guilty of the other charges. The court held that it was not a situation of 'supply', or of coercion or subterfuge. The victim knew that she came to Belgium to work in prostitution and could earn so much money. Moreover, the court found that the victim's statements should be approached with caution. The content of the first interview with the victim was not registered by the interviewer. Moreover, a large part of the statements could not be corroborated by other elements in the criminal case. However, the court did find that there was exploitation of prostitution. The fact that the two formed a couple was not an impediment for the court.

The court sentenced the first defendant in absentia to 6 years' imprisonment and a fine of €3,000. The second defendant was sentenced to 3 years, which was partly suspended, and a fine of €3,000.

The court ordered confiscations worth €70,000 for each of the defendants, part of which was awarded to the victim of the first defendant, who had initiated civil proceedings.

The victims obtained the status of victims of human trafficking, and were monitored by a specialised reception centre. The first victim received material damages of €70,000 and moral damages of €5,000.

Another case concerned the sexual exploitation of underage girls who had fled from youth institutions. It was settled in a **judgement of 21 September 2016 by the Correctional Court of Antwerp**.³⁷⁹

In this case, a young man from Antwerp was prosecuted for human trafficking and attempted human trafficking for the sexual exploitation of various underage girls. The man's uncle was also prosecuted.

The case came to light following the disappearance of a number of underage girls. In addition to four Belgian girls, a Cuban girl had run away from home, and a Turkish girl had disappeared from a youth institution. They fell in with the entourage of the main defendant, a known rapper from Antwerp. Several girls were found by police, and made incriminating statements against him.

The investigation consisted of statements by the defendants, various victims and other witnesses, wiretap measures, telephone investigations, an investigation of the Facebook page of the defendant, etc.³⁸⁰

Almost all of the victims were from socially disadvantaged backgrounds, or had run away from home or an institution. They often had no other place to go. The defendant did not use physical coercion, but first tried to win the girls over before persuading them to prostitute themselves for him.

The defendant had a relationship with an underage girl in which he used the '*loverboy technique*'. She prostituted herself and also recruited other girls for him. Photos of the girls were placed on erotic dating sites.³⁸¹ He brought the girls to the client, gave instructions and received the money from the client. The victims did not get anything from the earnings.

Even after his arrest, the defendant tried to influence the girls, by asking them to get rid of the incriminating evidence against him. He also removed his ankle monitor during the period when he was placed under electronic surveillance, pending trial.

The second defendant, the uncle of the main defendant, made his apartment and car available to his nephew. According to the court, it is not credible that he was unaware of what the girls were doing. Six victims and Child Focus initiated civil proceedings.

The main defendant was acquitted of attempted human trafficking involving three underage victims since there were insufficient elements. He was found guilty of the human trafficking of three other underage girls.

His uncle was also found guilty of assisting in the sexual exploitation of the girls.

The main defendant was sentenced to 6 years' imprisonment and received a fine. The second defendant was sentenced to 20 months, for which he needed to

³⁷⁹ Corr. Court Antwerp, subsection Antwerp, 21 September 2016, chamber. AC8.

³⁸⁰ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁸¹ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

serve at least 10 months, and received a fine. Child Focus received €1 in damages. Three victims each received damages of €1,500.

2.2.6. | Joint investigation teams

Joint investigation teams (JIT) were formed in two important cases. The first case related to a Belgian-French investigation in Liège, and the second a Belgian-Hungarian investigation in Ghent.

The first case was heard by the Correctional Court of Liege on 14 September 2016.³⁸²

In this case, 15 defendants were brought before the Correctional Court. Twelve of them, including the main defendant and numerous female defendants, were prosecuted for human trafficking for sexual exploitation involving many Romanian girls, and for participation in a criminal organisation.

All but one of the defendants were also prosecuted for running houses of ill-repute. These were primarily the female owners of the businesses where the prostitution had taken place.

Most of the defendants were also charged with inciting vice, and exploiting prostitution.

Finally, the main defendant and another defendant were also prosecuted for publishing and distributing advertisements for services of a sexual nature.

The case got underway in September 2007 in France. The judicial police in Lille had learned from police sources that one of the defendants was operating a bar in Kortrijk for the benefit of a Parisian, the main defendant in this case. The latter was also the owner of another bar in Liège, which was run by another defendant, where it had been established during a Belgian police check that sexual services were being performed for payment. The main defendant also apparently had three parlours in Liège, and at the same time worked as the manager of several companies.

In the same period, during a police check by the Kortrijk police in the bar in Kortrijk, the presence of a new female manager was established, who was also a defendant in this case.

Earlier, in June 2007, two people in Paris had filed a complaint against the main defendant with the accusation that he had hired them as barmaids, while in reality they had to work as prostitutes.

In September 2008, the Belgian police investigation revealed that there was indeed a link between one of the companies of the main defendant and three cases, via a website that led to these three cases.

On the basis of this information, a joint French-Belgian investigation team (JIT) was set up in October 2008 to investigate allegations of sexual exploitation under aggravating circumstances, money laundering and human trafficking. In a police operation in March 2009, it was established that most of the girls present in these cases were Romanian.

The main defendant claimed that the prosecutions were inadmissible, as he believed that the rights of defence, and in particular the right to a fair trial, had not been respected. He claimed that he had not been heard by the Belgian investigating judge. The court rejected this argument, since the defendant had been heard several times by the French police and the courts. During these hearings, he was questioned specifically about the alleged violations committed in Belgium, and the businesses he ran there. As it was a joint investigation team, it was unnecessary, and certainly not compulsory, for him to be questioned again on the same allegations by an investigating judge in Belgium. Moreover, nothing prevents the use of evidence obtained abroad, as long as it meets the same requirements as for evidence gathered on national territory at the preliminary stage of the proceedings.

The defendant also put forward other arguments, such as the fact that he was not charged by the Belgian investigating judge. However, all his arguments were rejected by the court, which held that the rights of defence and the right to a fair trial had indeed been respected, and that the charges against the defendant were therefore admissible.

The court found the charges of human trafficking to be proven, based on a series of serious, precise and correlating suspicions: the original complaint of two young women, recruited as barmaids, statements by the main defendant, in which he admitted to have financed the journey of several young Romanian women, who then prostituted themselves in his businesses, telephone wiretaps, the results of the police operations in the various bars, and statements made by co-defendants.

The court ruled that it had been sufficiently proven that the main defendant, either himself or through the actions of

³⁸² Corr. Court Liege, subsection Liege, 14 September 2016, 19th chamber (appeal).

third parties, including two co-defendants, had recruited young women in Romania, for whom he financed the journey to Belgium, where they were received and housed in his prostitution businesses by responsible persons he had employed, namely, several of the defendants. The latter persons, who were managers in the businesses where the young women ended up, were responsible for the room and board, and for controlling the young women who had arrived from abroad. In this way, they actively and knowingly contributed to human trafficking offences.

The court also took into account the aggravating circumstances that the allegations were a matter of course, and that the vulnerability of the girls had been abused. The court noted in this respect that some prostitutes had not explicitly complained about the conduct of the main defendant or the female managers, and not even about their working conditions, which did not mean that there was doubt about the genuine and deliberate exploitation of these people, who were very vulnerable due to their social situation.

However, the court did not take into account the aggravating circumstances of violence, threats or coercion, nor that of association, given that the public prosecutor had not proved that the defendants intended to form such a grouping. For the same reason, the defendants were acquitted of the charges of criminal organisation.

The court also held that the charges of keeping a house of ill-repute was proven. It was the main defendant who recruited the persons responsible for managing these businesses during his absence. It was also the main defendant who paid them for this management, even though he had laid down a number of rules (such as an equal distribution of the proceeds). The role of the defendants as managers was deduced from their own statements, and those of the main defendant.

The charges of instigating and exploiting prostitution were also deemed proven for all but one of the defendants.

Three defendants put forward the argument of insurmountable error. The main defendant argued that he was in a situation in which he thought he was acting legally, since he was not aware of the fact that he was carrying out an objectionable activity, given that he complied with the conditions imposed by the municipality. The court rejected this argument. After all, the investigation had shown that one of the establishments had never submitted an application for exploitation. Error, inferred from a limited check by the police or from an administrative, police or judicial oversight, cannot be regarded as insurmountable. Moreover, the municipal regulations cited by the defendant had nothing to do

with the management of houses of ill-repute, nor with the setting of prices or opening hours, but only concerned rules on the location and minimum equipment of prostitution parlours, and on communicating specific information.

The court ruled against four defendants in the first instance and in absentia against 11 other defendants.³⁸³ One of the defendants was fully acquitted of the charges of which he was accused. The court also acquitted the defendants of criminal organisation and advertising sexual services, for which they had been charged. The sentences, handed down for the other charges against the convicted defendants, were 12 months in prison for most of them, and a fine of €5,500, both suspended. For two of the defendants the fine was reduced to €2,750. The main defendant received a suspended sentence of 30 months' imprisonment, and a fine of €11,000.

Myria, who had initiated civil proceedings, received €1.

The second case, for which a joint investigation team (JIT) was set up, was heard by the **Correctional Court of Ghent on 31 March 2017**.³⁸⁴

In this case, several members of a Hungarian prostitute network were prosecuted for human trafficking for the purpose of sexual exploitation, recruitment and exploitation of prostitution. The allegations occurred in 2013-2014. The case got underway when the local police in Ghent received information from Western Union about conspicuous money transactions to Hungary. The police investigated the matter and found that there was a gang active in the Hungarian prostitution milieu in Ghent, where a number of girls were linked to specific bars and several Hungarian men. They also identified new conspicuous money transfers. One of the members was linked to an earlier pimping case. In addition, a report was received via Europol about a complaint from a husband of a Hungarian girl active in the Ghent prostitution milieu. In view of this information, the public prosecutor's office requested a more in-depth investigation. Cooperation with the Hungarian authorities was organised as part of a JIT (Joint investigation team). Several girls were questioned extensively. One of the girls had recorded a Skype conversation with one of the defendants. The police requested this Skype discussion to compare the content with the statements.³⁸⁵ Following an investigation,

³⁸³ Two of the defendant appealed against their convictions. The judgement was expected in September 2017.

³⁸⁴ Corr. Court East Flanders, subsection Ghent, 31 March 2017, Chamber G28m (appeal).

³⁸⁵ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

it also appeared that the various defendants had lured the Hungarian girls, who were in a dire financial and social situation at home, to Belgium with the sole intention of having them work there as prostitutes. They often made sure that young girls fell in love with them. They controlled the girls, and collected their money so that they had very little left for themselves. Violence was used against some of the girls. An international arrest warrant went out for the defendants, and several of them were arrested.

One of the defendants claimed during the proceedings that the evidence gathered in the context of the JIT was problematic, because:

- The JIT agreement specifies that the management of the investigation team is carried out by the investigating judge and public prosecutor on a collegial basis, without there being a defined division of responsibilities in the agreement.
- The purpose described in the JIT agreement is not in accordance with the statutory role of the investigating judge.

However, the Court ruled that the legal basis of the JIT procedure is laid down in the Convention of 29 May 2000 of the Council of the European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union and in the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (JIT). In Belgium, the transposition of the European legislation is provided for in the law of 9 December 2004 on international legal assistance in criminal matters. This law has subsequently been amended twice.³⁸⁶ According to the Court, these international legal instruments have no influence whatsoever on the division of responsibilities between the investigating judge and the public prosecutor.

In practical terms, it is required that the JIT agreement is signed by both the investigating judge and the public prosecutor, and that both act externally as representatives of the Belgian judiciary. This is because the JIT agreement pertains to both the element of investigation and prosecution. As such, both sign in relation to the area for which they are competent under Belgian law.

The court considered the charges to be proven almost across the board. The statements made by the victims were very detailed, nuanced, coherent, consistent and therefore credible. The financial investigation had also revealed a number of elements.

The court sentenced the defendants to prison sentences of between 1 and 2 years, and gave them fines of between €3,000 and €12,000.

2.2.7. | Ukrainian prostitution network via internet

In a case heard by the **Correctional Court of Brussels on 14 July 2016**, three defendants, including one woman, were prosecuted for their participation in a human trafficking network which recruited young Ukrainian and Moldovan women with false promises, to put them to work in Brussels.³⁸⁷ They were also accused of exploiting the prostitution of these young women. The prostitution took place in various buildings and the clients were prospected via various websites.

The investigation got underway following an intervention by the police in one of the apartments where the young women prostituted themselves. Several persons, including victims and the first defendant, were then questioned. Following these interrogations, an investigation was launched, which led to the second defendant as one of the people who had exploited the prostitution of the girls, and to the third defendant (who could not be arrested) as the leader of the network.

For the first defendant, the court held that the charges of exploiting prostitution had been proven (with limitations). Indeed, the defendant had first been recruited herself to work in prostitution, and then voluntarily joined the organisation. The defendant cited irresistible coercion³⁸⁸, fearing that if she refused to participate, her family (who was unaware of her activities as a prostitute) would see photographs of her. The court disputed this position by arguing that in the case in question, there was no irresistible coercion which completely negated the person's free will.

The rent of the apartment where she stayed was actually paid in cash with the income from prostitution.

Nonetheless, the court acquitted the defendant for the charges of human trafficking. It ruled that she had not recruited the girls with false promises, and had not confiscated their passports in order to force them into prostitution. Moreover, there were some contradictions in the statements made by the victims and witnesses.

³⁸⁷ French-speaking Corr. Court of Brussels, 14 July 2016, holiday chamber (definitive for two defendants and in absentia for the third defendant).

³⁸⁸ Article 71 of the Criminal Code.

³⁸⁶ Law of 30 December 2005 and Law of 15 May 2014.

The court ruled that there was doubt about the pressure exerted by the defendant to force the young women to prostitute themselves. Although several people stated that the defendant had confiscated the passports, the court noted that the criminal file did not contain any investigation element regarding the safe where it was deduced the passports were kept, and clearly not that the defendant would have withheld them.

The second defendant was also convicted of exploiting vice and prostitution, but was acquitted of the charge of human trafficking. He stated that he transported the prostitutes, who went from the airport or to clients, but the court noted that his role was much more important than he would admit. Elements of the case showed that he was also responsible for posting certain advertisements and recruiting a receptionist. He was also the one who paid the rent of the apartment where the first defendant stayed, in cash.

On the other hand, the court ruled that the charges of human trafficking and the various charges of recruitment and exploitation of prostitution against the third defendant, who was tried in absentia, were proven. He was in charge of the network. He was the one who had recruited the prostitutes, and for whom the two other defendants worked. He was also the one who provided the telephones to be able to respond to the advertisements he had placed on the internet and who came to collect the proceeds from the prostitution. In addition, he was already known to the Israeli police for prostitution and human trafficking back in 2006.

The prison sentences ranged from 2 to 4 years, some of which were suspended. The fines ranged between €14,400 and €108,000. The first defendant also received a special confiscation order, for an amount of €1,135. One of the victims, who initiated civil proceedings, was awarded moral damages of €7,500.

2.2.8. | Hotel used for sexual exploitation and drug trafficking

In this case, which was heard by the **Correctional Court of Charleroi on 27 February 2017**, two cases were merged.³⁸⁹ Six defendants were prosecuted in the first case, of whom five were charged for being in a criminal

organisation. The main defendant was prosecuted on various charges relating to prostitution, human trafficking and smuggling for the purpose of sexual and economic exploitation involving various young foreign women, slumlording, drugs-related offences and social criminal law. In the second case, there was only one defendant, who was tried in absentia. He was prosecuted for participating in a criminal organisation, for various charges relating to prostitution, human trafficking and smuggling, slumlording, drug-related offences and forgery.

The court held that all charges against the main defendant were proven, except for slumlording and bogus organisation of insolvency. This defendant managed a hotel, where prostitutes could go to perform their activities. The prostitutes had access to a room for 15 to 30 minutes, which cost them €10. The court ruled that the defendant derived abnormal profit from prostitution by demanding a price that was not per day, but per 'session' with a client, and for a very short period of time, without providing the corresponding services. The hotel was open 24 hours a day. The defendant in the other case was responsible for the night shift, while the main defendant took care of the administration and gave instructions about the clients and the visiting hours. He threatened and intimidated at least one prostitute, so that she would participate in group sex at the hotel. The hotel also served as a meeting point for drug trafficking and consumption.

The court held that the charges of human smuggling involving persons from countries outside the European Union was proven: by accepting them in his hotel, knowing that they did not have a residence permit, the defendant facilitated their stay in the national territory, and he did so with a view to acquiring rent (directly) or material benefit (directly), where the work was possible because the girls stayed on the premises. In addition, he made the victim, who initiated civil proceedings, work for an undignified wage, with the promise that she would get a contract.

The court ruled that there was indeed criminal organisation, and considered this charge proven for all but one of the defendants. The main defendant set up this organisation with a view to the joint management of the hotel, which was intended to continually exploit the prostitution of others and facilitate drug trafficking, so that the prostitutes continued to work there and could therefore better ensure the return on his business. Each defendant had a precise role: the main defendant led the group, the defendant of the second case was the effective manager in the hotel at night, another was responsible for the administration, another one supervised the hotel and was responsible for collecting the rent for the rooms made available to the prostitutes. Finally, another defendant

³⁸⁹ Corr. Court Hainaut, subsection Charleroi, 27 February 2017, 6th chamber. (one defendant, who had a limited role, appealed regarding legal costs). See also above this section, chapter 2 (case studies), point 1.2 (economic exploitation).

also had the task of policing the hotel and chasing away dealers who were no longer allowed to stay there.

The court also held that all charges against the defendant from the second case were proven. This defendant was responsible for running the hotel at night, except for the management of the slumlords.

As the reasonable time limit had elapsed, the two main defendants were sentenced to two years (suspended) and three years in prison respectively. The other convicted defendants received suspended sentences.

The two main defendants were ordered to pay €3,000 to the civil party.

2.3. | Economic exploitation

2.3.1. | Construction

In this sector, court rulings were given in several cases. The defendants were sometimes acquitted.

In a first case, heard by the **Correctional Court of Dendermonde on 20 May 2016**, the defendant was prosecuted for human trafficking for the purpose of economic exploitation (also: exploitation through work).³⁹⁰

The allegations occurred between 2014 and 2015. The case came to light when the police found the victim crying in front of their offices. The Pakistani victim explained, in poor English, that he was working for the defendant. The defendant had a construction company carrying out renovation works. The victim worked for him for €250 per week, for 6 working days of 8 to 10 hours. The victim was paid 3 or 4 times. After that he did not receive anything. Rents were also deducted (€250 per month) for a property that was declared uninhabitable. The victim was employed in breach of the basic rules of well-being at work. He was obliged to work in the cold and rain during the winter months without any protective or safety clothing. The defendant also used threats, coercion and violence. The victim was staying illegally in Belgium and the defendant threatened to report him.

The defendant denied the allegations but the court ruled that the charges of human trafficking with aggravating circumstances was proven by the elements of the investigation (exploration of the Facebook profile³⁹¹, GSM analysis, photos from the GSM, results of house searches, etc.). The defendant was sentenced to 1 year's imprisonment and a fine of €6,000. The victim initiated civil proceedings and received damages of more than €8,000 for the material and moral damage suffered.

Another case, heard in absentia by the **Correctional Court of Leuven on 15 November 2016**, concerned the exploitation of Romanian and Bulgarian workers.³⁹²

The allegations occurred between 2010 and 2012. The defendant in this case was the manager of a construction company. In addition to various breaches of labour law and social law, he was also prosecuted for human trafficking with the aim of having work carried out in conditions below human dignity, and aggravating circumstances in which he abused the vulnerable situation of the victims, made use of threats, and that his activities were a matter of course. The victims were primarily Romanians and Bulgarians who did not speak Dutch, and who were unfamiliar with the social law and residence procedures. They were obliged to work for long periods more or less continually, and without leave. The defendant did not pay them any wages, or wages that were disproportionate to the activities, and of which a part was also deducted for rent and other costs. They stayed in caravans or a bus on the site, sometimes without water and electricity. Medical care was refused in the event of a workplace accident. The allegations came to light after a trade union filed a complaint concerning one of its members at the end of 2011. In 2012, the federal judicial police, together with the social law enforcement services and the Social Inspectorate, carried out an on-site inspection. As a result, an investigation into human trafficking was launched. Over the course of several years, an intensive and extensive investigation was conducted which revealed a whole series of abuses. The court considered almost all the facts to be proven. The court was concerned by the fact that, although the defendant had been barred from carrying out his professional activity for 10 years as of early 2011 due to past allegations, he nevertheless continued his activities.

In October 2012, the defendant's company was declared bankrupt.

³⁹⁰ Corr. Court East Flanders, subsection Dendermonde, 20 May 2016, Chamber G29w (definitive).

³⁹¹ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁹² Corr. Court Leuven, 15 November 2016, 21st chamber. (in absentia).

The defendant already had a criminal record for similar offences and had already received prison sentences. He was sentenced in absentia by the court for the various offences to two prison sentences of two years, and fines totalling more than €570,000. He was once again barred from professional activity for 3 years and deprived of his rights for 10 years.

Bogus self-employment

One case heard by the **Correctional Court of Tongeren on 9 February 2017** related to bogus self-employment.³⁹³

Eight defendants were prosecuted in this case, including two companies, for allegations of human trafficking for the purpose of employing people in conditions below human dignity, which took place between 2011 and 2015. They were also prosecuted for social law offences and money laundering, among other things.

Myria and five victims initiated civil proceedings. In total there were 19 known victims, but according to the criminal file there were likely to have been more over the years.

The main defendant used his companies with the help of the other defendants to employ people from Central and Eastern Europe in the construction sector. The first company existed until mid 2014, and the second company from mid 2014 until 2015. The victims were deceived into thinking that they had employee status, when in fact they were working under bogus self-employment status, in the context of the free movement of services within Europe. The recruitment took place in their countries of origin, especially Bulgaria and Bosnia, via radio, newspaper and the internet.³⁹⁴ By working with bogus self-employed persons who were posted to Belgium, both the residence permit and minimum social conditions could be circumvented. In Belgium, the people were employed as cooperating partners at one of the two companies. They were registered with the social insurance fund with the intervention of the various defendants. They went along with the victims and translated for them. They ensured that they did not know the true facts of their status. Subsequent correspondence from the social insurance fund was taken away from them.

The case came to light, among other things, due to a collective protest by employees in early 2014, during which

even the embassy intervened and advised them to lodge a complaint with the police. In addition, an employee of the social insurance fund also became suspicious and alerted the National Social Security Office of her suspicions of bogus self-employment.

The workers were only paid €8 to €10 per hour and sometimes had to work more than 10 hours per day, with very short rest breaks, for 6 days out of 7, while the minimum wage in the construction sector was €14 per hour. The company was not responsible for the social security contributions, which had to be paid by the labourers themselves. They were unaware of this, given that they did not know that they were working under the status of cooperating partner, and they consequently accumulated substantial social debts. Moreover, they did not have social insurance, nor occupational accident insurance, etc. They were not paid in the event of bad weather or other circumstances. In addition, part of their wages was withheld as rent (€225 - €250) and travel expenses. The main defendant also paid out wages in a highly irregular and opaque manner. A new worker had to work the first 2 weeks for free during the 'trial period'. Because they were self-employed, they were not entitled to overtime pay, holiday pay, mobility allowance, etc. There was clearly a hierarchy within the structure. The main defendant was in charge and gave the orders. Several other defendants acted as foremen, but were clearly aware of the exploitation.

The court considered the statements made by the victims to be very clear and precise and therefore credible. Since they did not understand any Dutch, and also had a family to support in their country of origin and had previously been unemployed there, they were in a vulnerable position.

Both companies were declared bankrupt in 2014 and 2016 respectively. From July 2014, the activities of the first company were simply continued by the new company, with the entire fraudulent construction continuing in the same way.

The court considered most of the facts to be proven. It found the five defendants guilty of human trafficking with the aggravating circumstance that the vulnerable position of the victims had been abused, the offences were a matter of course, and they could be described as an association. However, the court did not find that subterfuge, violence, threats or any form of coercion had been used.

The first five defendants were sentenced to prison sentences of between 18 months and 3 years. Fines of between €81,000 and €336,000 were handed down. A sum of €56,400 was

³⁹³ Corr. Court Limburg, subsection Tongeren, 9 February 2017, 9th chamber. (appeal).

³⁹⁴ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

ordered to be confiscated. The companies themselves were acquitted because they had not actively participated in the exploitation, but were merely used as an instrument for organising economic exploitation.

Myria received symbolic damages of €1. The victims received moral damages of €500 and provisional material damages of €1.

The chain of subcontractors

An important case concerning a system of fictive subcontracting in the construction sector, heard at the first instance by the Correctional Court of Brussels on 30 October 2014,³⁹⁵ was re-investigated by the **Brussels Court of Appeal on 20 June 2016**.³⁹⁶ Illegally-resident Brazilian labourers who had travelled to Europe were mainly recruited in Belgium to be deployed on construction sites across Europe, as part of a complex chain of subcontractors.

Eight defendants (natural persons) and three companies were prosecuted for varying degrees of involvement in a criminal organisation, forgery and the use of forged documents (fake employment contracts and fake identity documents), illegal employment of foreign workers without a residence permit, and various violations of social criminal law which ensued, including non-payment of wages, and non-payment of social security contributions to the National Social Security Office (RSZ). Five of them and two companies were prosecuted for human trafficking for the purpose of economic exploitation. They were charged in Belgium and other European countries with recruiting multiple illegal workers to work in degrading conditions. Two labourers initiated civil proceedings.

One of the defendants (a natural person), who was convicted at the first instance of human trafficking, criminal organisation, various charges relating to social criminal law, and another defendant who was convicted of forgery, both appealed. None of the companies appealed their conviction.

The court upheld the conviction of the first defendant at the first instance, but acquitted the defendant who was prosecuted for forgery. It also upheld the civil measures of the judgement in the first instance.

Building renovation companies

Again in Brussels, the **French-speaking Correctional Court of Brussels**, in its **judgement of 24 November 2016**, upheld the charges of human trafficking and various violations of the Social Penal Code against a defendant who exploited three Tunisian labourers in his building renovation company.³⁹⁷ The men worked on several construction sites for an absurdly low wage (€800 for four months of work) and were housed in degrading conditions.

The Court noted that on the basis of the corresponding detailed statements, which were corroborated by various material elements, they were able to conclude with certainty that the defendant took advantage of the precarious residence situation of these labourers to recruit them in degrading conditions: an absurd wage, which was insufficient for decent housing or food; unsanitary accommodation without hot water, toilets and a place to cook and wash; expulsion from the place of residence if the employer so decided; and immediate dismissal of the labourers without any notice period or compensation.

The defendant was given a 10 months suspended sentence and a fine of €1,500 (€8,250 with the multiplication factor).

Two of the three labourers initiated civil proceedings. They were awarded moral damages of €2,800 and provisional material damages of €3,000 for damages estimated at more than €8,000.

In another case, the **Court of Appeal of Liège** upheld the convictions handed down at the first instance by the Correctional Court of Namur on 15 December 2015 against the two Chinese defendants and their renovation company.³⁹⁸ They were prosecuted for human trafficking and smuggling offences, assistance with illegal residence, and various violations of the Social Penal Code. They were accused of having provided accommodation to, and exploiting, two illegally-resident Chinese citizens, in the context of renovation work on restaurants.

In its **judgement of 8 December 2016**, the court upheld the convictions handed down at the first instance for all the charges, for all three defendants.³⁹⁹ The Court ruled that the allegations of human trafficking were clearly proven. The defendants made the two labourers work on their behalf on their own initiative, through an intermediary

395 French-speaking Corr. Court Brussels, 30 October 2014, 69th chamber. See 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 113. The judgement was published on the Myria website: www.myria.be.

396 Brussels, 20 June 2016, 11th chamber.

397 French-speaking Corr. Court Brussels, 24 November 2016, 59th chamber (appeal).

398 Corr. Court Namur, subsection Namur, 15 December 2015, 12th chamber. (not published).

399 Liège, 8 December 2016, 6th chamber.

and while they were aware of the labourers' residence situation. The working conditions were degrading: 12 working hours a day, without being registered and without social insurance, a ridiculously low wage (€5/hour), work sites which did not comply with social legislation and, according to the investigators' findings, appalling accommodation (no beds, no heating, minimum sanitary facilities, forced to make improvised beds with concrete blocks).

In addition, the court ruled that the charges of human trafficking did not necessarily mean that the defendants had set up a network enabling foreigners to enter Belgian territory illegally, with a view to obtaining material benefit. This charge also refers to the illegal residence of these foreign nationals in Belgium, also with a view to obtaining material benefit. In this case, the material benefit was the profit obtained by cheaply employing foreign nationals.

In general, the court upheld the prison sentences and fines handed down at the first instance, with partial suspension, as well as the civil convictions. In the first instance, the court had awarded final amounts of €5,000 for moral damage and €10,000 for material damage.

Palette company

In a file settled by the **Correctional Court of Turnhout on 18 January 2017**, several defendants were prosecuted for human trafficking for the purpose of economic exploitation, and for slumlording.⁴⁰⁰ The main defendant was the manager of a pallet factory. The company was also prosecuted as a legal person. The allegations date from 2009-2011. Both Payoke and Myria, as well as various victims, initiated civil proceedings.

The case came to light after the natural death of a Polish employee at the pallet factory. The defendants had already come under police scrutiny in the past, following a complaint from Polish workers. A judicial investigation was launched. In the meantime, 13 Bulgarian labourers filed a complaint against the company. The prosecuted firm repaired pallets on behalf of other companies. To this end, it used subcontractors employing posted Polish, Bulgarian and Romanian workers. These subcontractors were Polish and Bulgarian companies. One of these companies turned out to be a Bulgarian 'letterbox' company without substantial activities in Bulgaria, and was set up purely to circumvent social security and labour law obligations in Belgium. The labourers were lured to Belgium with good wages, while in reality they earned

only €400 to €600 per month, depending on the number of repaired pallets, which equated to €3 per hour. Rent was also deducted from their wages. Officially, according to their employment contracts, they only earned the Bulgarian minimum wage of €135. The remainder was paid out 'off the books' in order to also circumvent Bulgarian social security. The workers had to work very long hours, 12 hours a day, 6 days a week, in very poor conditions, and without protective clothing. They were housed in very poor conditions. One of the houses was even declared uninhabitable, due to the risk of electrocution, among other things. The company rented this accommodation to the Bulgarian company for €1,000 per month. Sometimes there were 15 people per house. If they fell ill, they were not paid. One of the labourers was given a choice when he became incapacitated for work: work with a broken leg or go back to Bulgaria. He was forced to choose the first option. Several falsified secondment documents were also found.

The defendants were found guilty and sentenced to prison sentences of between 18 months and 4 years, and were handed heavy fines. Large sums of money were also confiscated. The victims received moral and material damages. Payoke and Myria were each awarded €1 in damages.

Acquittals for human trafficking (regardless of the social fraud)

Finally, two judgements made in Ghent led to the acquittal of the charge of human trafficking.

The first judgement was made on **4 May 2016 by the Correctional Court of Ghent**.⁴⁰¹

In this case, several defendants, including two legal entities, were prosecuted for a series of offences, including various social offences and human trafficking for the purpose of economic exploitation. Various inspections of construction sites between 2011 and 2013 found several people, mainly of Bulgarian nationality, working there. The persons were questioned about their employment status. They often worked without valid papers, and others were employed as cooperating partners at the two companies. However, it appeared from the elements they cited that they did not have a say in the companies, they worked under the authority of the defendants, they were not able to determine their own work rhythm, and they did not properly understand the status under which they were employed, etc. The court therefore ruled that they were employed as bogus self-employed persons, and that their

⁴⁰⁰ Corr. Court Antwerp, subsection Turnhout, 18 January 2017, chamber TC1 (contestation by a number of persons convicted in absentia and appeal of a defendant whose conviction had inconsistencies).

⁴⁰¹ Corr. Court East Flanders, subsection Ghent, 4 May 2017, Chamber G29w (appeal).

employment relationships needed to be reclassified, since they were in fact employees. However, no valid Dimona declarations had been made and the persons in question did not have the required working and residence papers. One of the individuals filed a complaint with the Social Inspectorate for economic exploitation. He was in fact employed without any status or contract, and he did not receive his wage. He had apparently worked for the main defendant for several months and only received €900 in this respect. The labourer initiated civil proceedings.

As regards this charge, the court ruled that although the labourer's statements seemed credible, they could not be sufficiently corroborated by objective evidence in the criminal file. The court did however rule that the defendants were guilty of organising social fraud. It considered that various violations of social law had been proven. Moreover, the defendants were not novices.

They were sentenced to between 6 months' and 2 years' imprisonment, and were handed fines. The two legal entities were also handed fines. The victim received moral damages of €500 and material damages of €12,200, based on calculations by the Social Inspectorate.

The second case, for which the judgement was handed down by the **Correctional Court of Ghent on 1 February 2017**, related to posted workers.⁴⁰²

In this case of economic exploitation, four defendants were prosecuted for human trafficking offences for the purpose of economic exploitation, social and labour law offences, illegal employment of foreign workers, and slumlording. Two of the defendants were companies.

The investigation started after the local police carried out an inspection of a site. The labourers they found were Ukrainian nationals with Polish visas. The persons were found not to be in compliance as regards the formalities, including the A1 forms (posted workers) and the Dimona or Limosa notification. The police learned that the individuals were working for a Polish company subcontracted by a Belgian company. Based on this information, the Prosecutor attached to the Employment Courts decided to investigate the employment of Ukrainian and other foreign workers through surveillance. It appeared that numerous foreign workers worked and stayed at a certain address. A check revealed that they were illegally resident in the country, and were all housed together in different premises, sometimes with 10 to 12 people per house. They paid €200 per bed per month. The

Housing Inspectorate found that there was no electricity or hot water present. The gas supply did not work, and there was a serious risk of electrocution.

They declared being salaried labourers. They were recruited through word-of-mouth advertising, or through the internet,⁴⁰³ and had not signed any documents. They did not have the necessary documents to work and did not know whether they were socially insured.

In this case, the manager of the Belgian company was prosecuted as well as the Polish manager of the Polish company, as were both of the companies.

The investigation was conducted on the basis of house searches, surveillance, various statements from the defendants, employees and bystanders, etc.

On the matter of guilt, the court ruled that the Polish company was indeed a 'letterbox' company with the aim of evading payment of Belgian social security contributions (and wage conditions). Both defendants had created this construction to illegally employ Poles and Ukrainians. From various elements (statements made by the employees, adjusted invoices, the fact that the Polish company had not been active in Poland for five years, etc.), the court concluded from the case that the two companies were essentially one entity, and were only separate entities on paper.

As regards the labour relations of the construction workers, the court ruled that the principle of 'fraus omnia corrumpit' (fraud negates everything) was applicable. Since the Polish company was a fraudulent construction, the agreements and completed A1 forms were also drawn up with fraudulent intent. Since this principle is public policy, all its legal effects are also fully neutralised. The fraudulent application of the European posting of workers directive was therefore completely obviated.

The court also examined the cumulative criminal responsibility of the company as a legal entity and the defendant as manager. The offences were committed on behalf of the company and the violations also generated an economic advantage for the company. Even the legal entity has its own criminal liability. The other defendant and his Polish company were seen as co-perpetrators.

However, the court did not pursue the charge of human trafficking. The court stated that this was a factual assessment. The willingness of the victims to work in

⁴⁰² Corr. Court East Flanders, subsection Ghent, 1 February 2017, Chamber G29w (appeal).

⁴⁰³ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

these circumstances, and their treatment and income in the country of origin, did not play a role in this respect. Although the wages were very low, the court did not consider that it had been proven that the victims were working in inhuman conditions. It could not be proven that the workers had no freedom to come and go, that their will was limited by any form of coercion. According to the court, the investigation had produced too few factual elements to be able to invoke human trafficking. The defendants were therefore acquitted of this charge.

However, they were convicted of slumlording. Among other things, the court referred to a finding by the Social Inspectorate and the Housing Inspectorate that the sleeping accommodation was below human dignity. It considered that the precarious administrative, social and illegal situation in which the persons concerned found themselves had been abused. The defendants were sentenced to 8 months' imprisonment and were handed fines, both of which were suspended. One of the houses in which the labourers stayed was ordered to be confiscated.

2.3.2. | Hotel and catering

In a judgement of 29 June 2015, which was covered in the previous report, the Correctional Court of Namur convicted two defendants, a father and son, and their company, of human trafficking and smuggling, assistance with illegal residence, and various violations of the Social Penal Code.⁴⁰⁴ They exploited multiple Chinese workers in their restaurant.

The case got underway following the hearings, conducted by the Social Inspectorate of Liège, of the two employees who had initiated civil proceedings and who were staying in a specialised reception centre. The employees explained how they had ended up in Belgium via payable intermediaries in China. One of them had come here to study, but was forced to work to repay the loans taken out by his family to finance his trip to Belgium. He worked as a cook in the restaurant of the defendants. The working and living conditions were appalling: he ate what the boss gave him, or leftovers from customers, and worked 12 to 14 hours a day, 6 days a week, for a salary of around €550 per month.

According to the court, this case did indeed involve the provision of accommodation for employment in degrading conditions, but the **Court of Appeal of Liège** took a

different view. In its **judgement of 10 November 2016**, the court ruled that the elements collected during the criminal investigation were insufficient to corroborate the complaints of the two workers, because they were not verifiable (timetables and working conditions, quality of food, threats or aggression).⁴⁰⁵ On the basis of the searches in the restaurant and in another building of the defendants, it was not possible to determine whether or not there was heating in the room, nor could the passports of the plaintiffs, which they claimed had been confiscated, be found. The witnesses interviewed (employees who replaced the victims after their departure) described relatively different working conditions, in particular with regards to wages (which would fluctuate around €1,100 or €1,200 per month, in addition to accommodation and food). The court ruled that the elements of the criminal file were not sufficient to substantiate the actual working conditions and mistreatment that the civil parties had complained about, and acquitted the defendants of human trafficking.

The court also acquitted the defendants of the charge of human smuggling and only considered the charge of assistance with illegal residence as proven. Indeed, the defendants helped the plaintiffs with their residence by providing them with accommodation and employment. However, the court ruled that the elements of the case did not sufficiently prove that the defendants had recruited individuals without a residence and work permit in order to obtain a higher material benefit than if they had employed individuals 'off the books'.

Nonetheless, the Court of Appeal upheld the convictions handed down in the first instance regarding the violations of the Social Penal Code. It replaced the sentences given to the two natural person defendants in the first instance (specifically the prison sentences) with fines, and reduced the fine (suspended) handed down to the company.

The court ruled that it had no jurisdiction to decide on the demands of the civil parties, based on the charges of human trafficking and smuggling, taking into account the acquittal of the defendants.

On 4 May 2016, the Correctional Court of Bruges delivered a judgement in the same sector.⁴⁰⁶

Two defendants were prosecuted in this case, including a company, for human trafficking for the purpose of economic exploitation with aggravating circumstances, and human smuggling with aggravated circumstances, as well as various social law offences.

⁴⁰⁴ Corr. Court Namur, subsection Namur, 29 June 2015, 12th chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 174. This judgement is also available on the Myria website: www.myria.be.

⁴⁰⁵ Liège, 10 November 2016, 6th chamber.

⁴⁰⁶ Corr. Court West Flanders, subsection Bruges, 4 May 2016, Chamber B17 (appeal).

The defendant operated a restaurant through a company, which was the second defendant in this case. The case came to light in 2011 during an inspection by the Social Inspectorate, the Labour Inspectorate, and the federal judicial police, in the restaurant where the victim was found. A criminal file was drawn up partly on the basis of his statements.

The court examined the allegations of human trafficking, specifically whether or not the victim was employed in conditions below human dignity. According to the Court, (translation) "*the notion of human dignity refers to a quality of life which should be protected by respect for others, and implies a human existence in which basic provisions are ensured*". Based on the information in the case, it appeared that the victim continued to be employed after his right of residence had expired, in appalling conditions. Due to his residence situation, the victim had no choice but to endure this unilaterally imposed situation. He received no remuneration whatsoever, was housed in appalling conditions above the restaurant, was not entitled to social security or professional accident insurance, and 'was allowed' to eat the leftover food of customers.

The court also held that the charge of human smuggling was proven in the sense that illegal residence was facilitated, and that there was a profit motive, profits which were substantial for the restaurant, since the victim was not paid any remuneration. The charges of the social criminal offences were also upheld.

The allegations were attributable to both the main defendant and his company. According to the Criminal Code, a natural person can be convicted together with a legal person if he or she knowingly and intentionally committed the offences, as was the case here. The offences were also committed within the company's corporate purpose, namely the operation of the restaurant. The company had since been declared bankrupt.

The main defendant already had a criminal record with similar offences and was sentenced to an effective 18-month prison sentence and a fine of €5,500. The company, which had since been declared bankrupt, was ordered to pay a fine of €16,500, which was partly suspended. Various amounts were ordered to be confiscated, namely €18,108 and €12,757.

In this case, Myria and the victim, who had obtained the status of victim of human trafficking, initiated civil proceedings. Myria was awarded damages of €1,250. The victim was awarded moral damages estimated at €3,700 and the confiscated sum of €18,108 was fully awarded to him, namely the salary advantage that the defendant received as a result of exploiting the victim, calculated

according to the inspectorates, and the sum of €12,757, which was the amount the inspectorate considered to equate to the evaded social security contributions.

2.3.3. | Horticulture

In a case of economic exploitation in the horticulture sector heard by the **Correctional Court of Mechelen on 10 February 2017**, the manager and his wife were prosecuted for human trafficking and social law offences.⁴⁰⁷

The defendants apparently exploited at least 39 people of Romanian origin in their horticultural business.⁴⁰⁸

The victims were paid only €6 per hour and had to work long hours, even on Saturdays, Sundays and public holidays. They worked more than 11 hours a day or 50 hours a week, and did not receive overtime pay. They were often treated very brutally by the defendant, spat at and physically pushed around. For a large part of the time they were even in the presence of an aggressive muzzled guard dog. Hefty penalties were imposed for trivial incidents, which were then deducted from their wages. They were housed in appalling conditions, and their rent was deducted from their wages. The social facilities provided to the workers were also inadequate and soiled. There was no provision for appropriate work clothing.

The court considered the facts to be proven. Both the 'recruitment' and 'housing' aspects of Article 433^{quinquies} of the Criminal Code were in evidence. The court ruled that the conditions were an affront to human dignity. The notion of 'human dignity' is related to the core notion of labour law, namely that employees should not be treated as mere commodities (*labour is not a commodity*). The notion has a highly prescriptive content which is evolutionary and progressive in nature, and must be interpreted in the context of what is generally deemed to be (un)acceptable at the time of the facts. In this case, according to the Court, the lower limit of employment in conditions which are compatible with human dignity was exceeded.

The court sentenced the defendants to 18 months' imprisonment and fines of €120,000, both of which were suspended. Large sums were ordered to be confiscated.

Myria initiated civil proceedings and was awarded €1 in damages.

⁴⁰⁷ Corr. Court Antwerp, subsection Mechelen, 10 February 2017, (appeal).

⁴⁰⁸ Namely, a tomato farm.

A case involving a mushroom producer, which had previously been heard by the Correctional Court of Kortrijk⁴⁰⁹ and covered in a previous report⁴¹⁰, was heard again by the **Court of Appeal of Ghent on 19 January 2017**.⁴¹¹

In the first instance, the court convicted 10 defendants, including several companies, for human trafficking for the purpose of economic exploitation, slumlording and various violations of social legislation. The defendants mainly employed Bulgarians in a mushroom farm in conditions which were an affront to human dignity. One minor was also employed.

As regards human trafficking offences for the purpose of employing people in conditions which are an affront to human dignity, the Court of Appeal believed that the constituent elements of the basic offence were present. This expands further on the notion of 'human dignity'. According to the court, to violate this concept is to lower the human quality of a person or group. The quality of being human has a physical and mental capacity. Physical capacity refers to: moving freely, the physical capacity to meet one's essential needs in a free and equal manner. Certain working conditions which ensure that workers are no longer able to meet their essential needs in a free and equal manner may be incompatible with human dignity. The court gave the example of a wage which was lower than the minimum wage. The norm in the country of origin is irrelevant in this respect, but Belgian employment conditions are relevant. The court upheld the judgement in this sense, but gave additional justification as regards the various indications provided by the public prosecutor's office: the wages which were far below the salary scale, the appalling and even life-threatening conditions, the illegal employment, the problems with employment contracts, the failure to pay wages regularly, the long hours in succession without extra pay or sufficient rest period.

The criminal offence of slumlording, namely that the rented property was an affront to human dignity, was also upheld by the court. The court provided additional justification regarding the indications of slumlording.

In addition, the court also examined the confluence of responsibilities between the natural persons and the legal entities. It is not ruled out that there is an accumulation of criminal liability on the part of the employer (natural or

legal person) and the appointee or agent (natural person) when it appears de facto that they have both committed an error. The trial court needs to assess this in concrete terms. The natural persons can be held criminally liable if they could have used 'any influence' to prevent or impede the violations. In addition, the natural person must have 'knowingly and intentionally' committed the offence. On the other hand, the legal person may be held criminally liable if the offence committed by the natural person is linked to a shortcoming in the structure of the legal entity. The court held that the facts were intrinsically linked to the accomplishment of the company's objectives, and that these offences were therefore committed on its behalf.

The main defendants were acquitted for several social criminal offences since the court found that they had not been sufficiently proven.

The court reformed the sentences, but clearly indicated that the sentences would have been harsher if the reasonable time limit had not been exceeded.

The defendants were fined between €625 and €2,000, which was partly suspended. A confiscation was also ordered, which was also partly suspended.

2.3.4. | Bakery

In a judgement of 9 February 2016, which was covered in the previous report, the Correctional Court of Namur convicted two defendants, who were Turkish brothers, of human trafficking and smuggling, as well as assistance with illegal residence and various violations of the Social Penal Code, involving multiple workers whom they exploited in their bakery and their shop which sold bakery products and groceries.⁴¹² In addition, the defendants had the upper floor of an uninhabitable house in their possession, which they made available to the civil parties for a monthly rent of €400.

Four victims, including two underage beneficiaries of a female worker who had died, initiated civil proceedings.

In its judgement of 8 December 2016, the Liège Court of Appeal upheld, in general terms, the judgement delivered at the first instance, with the exception of the aggravating circumstance of abuse of vulnerability.⁴¹³ As regards human trafficking, the court stressed that it

409 Corr. Court West Flanders, subsection Kortrijk, 16 February 2015, 10th chamber. This judgement is also available on the Myria website: www.myria.be.

410 2015 Annual Report Trafficking and Smuggling of Human Beings, *Tightening the Links*, pp. 116-117.

411 Ghent, 19 January 2017, 3rd chamber.

412 Corr. Court Namur, subsection Namur, 9 February 2016, 12th chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 175-176.

413 Liège, 8 December 2016, 6th chamber.

was irrelevant that the workers were recruited by the defendants after they had come to Belgium voluntarily. The working conditions were an affront to human dignity: the workers worked around 16 hours a day, 7 days a week, for wages of around €2.50 per hour, and were housed in precarious conditions. The court ruled that the workers' statements were credible, unlike those of the defendants.

However, the court reduced the prison sentences handed down at the first instance, and established the moral damages of the civil parties at €2,000.

2.3.5. | Printing business

In a judgement, delivered in absentia, of 11 February 2015, which was covered in a previous report, the French-speaking Correctional Court of Brussels convicted a defendant for human trafficking for the purpose of economic exploitation, as well as various charges relating to social law violations. The defendant exploited various illegally-resident Moroccan nationals in his printing business.⁴¹⁴ Some of them came from a reception centre for refugees. The working hours and rhythm were gruelling (7 days a week and 10 to 14 hours a day), the wages were ridiculously low (€5/hour) and the workers stayed on site in very precarious conditions (they slept on cardboard). They were locked up in the workshop without views to the outside world and were insulted and threatened. The civil parties were awarded substantial material damages (between €6,000 and €13,000), and they each received €3,000 in moral damages.

The court heard the case again, **on objection, on 27 June 2016** and partially amended the original judgement. The defendant was acquitted of the charge of human trafficking and only the violations of the Social Penal Code were upheld.⁴¹⁵

Among other things, the court ruled that this charge was based solely on the workers' statements made more than two years after they had worked for the defendant; that it was unable to assess the credibility since the workers had not appeared in court and were not represented to confirm their statements; that no substantive determination could be made to assess the statements objectively, and that no confrontation between the defendant and the plaintiffs had been considered. The court ruled that there was doubt in favour of the defendant.

⁴¹⁴ French-speaking Corr. Court Brussels, 11 February 2015, 49th chamber. See 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 121. The judgement was published on the Myria website: www.myria.be.

⁴¹⁵ French-speaking Corr. Court Brussels, 27 June 2016, 89th chamber.

2.3.6. | Riding school - stud farm

On **21 November 2016, the Correctional Court of Liège**⁴¹⁶ heard a case involving a stud farm.

Two owners of a riding school (one man, the managing director, and one woman, the manager) and their company, which owned a riding school, were prosecuted for human trafficking, smuggling and various violations of the Social Penal Code (some of which also related to Belgian workers). They were accused of having illegally employed and exploited two Moroccan workers. The workers took care of the horses and the general maintenance of the riding school.

The case came to light as a result of information from the police, according to which two illegally-resident persons were apparently employed by the defendant, who was the operator of two stud farms. They were apparently housed in precarious conditions, and earned €500 per month.

One of the two workers, who had no documents, was questioned on the car park of a supermarket. During his questioning, he stated that he had been living illegally in Belgium for five years. He also stated that he had found refuge in a riding school where he received room and board from the owners, the two defendants, in exchange for carrying out chores. The police visited his residence, of which the room resembled a small apartment.

Then police made simultaneous visits to the two riding schools. The worker was again questioned, and contradicted a number of the points of his original statement. For example, he stated that he had replied to an internet job offer for a stable hand. The e-mail address of the contact person was that of the female defendant.⁴¹⁷ He also met the second defendant, and it was agreed that he would start a trial period, which was positive. It was agreed that he would receive €200 per week. Since he had an increasing number of jobs to do (cleaning out the boxes, feeding the horses, putting them out in the meadows, maintaining the tracks, repairs, painting, cleaning the cafeteria during competitions, etc.), he suggested that his brother could come and work there, for the same wage. However, the defendants refused and offered him €100.

The court ruled, on the basis of various elements, that there was no doubt about the employment of the two workers. They made precise, detailed statements about the work site, the organisation and the conditions. These statements were substantiated by the many other objective elements in the criminal file (in particular a noticeboard

⁴¹⁶ Corr. Court Liège, subsection Liège, 21 November 2016, 18th chamber (appeal).

⁴¹⁷ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

showing the tasks they had to perform in one of the two stud farms, text messages between the worker and the defendant, comments by the defendant on the Facebook profile of the workers⁴¹⁸ and interviews with witnesses).

The court held that the various violations of the Social Penal Code involving these workers and against the Belgian workers, who were working 'off the books', were proven. It also considered that both the two natural persons and the company were criminally liable.

However, the court ruled that the conducted investigation had not sufficiently demonstrated the elements of human trafficking and acquitted the defendant of this charge, giving them the benefit of the doubt. The court ruled that the agreed wage (even if it was not fully paid or did not correspond to the applicable wage scales), together with the fact that the workers were not registered with the social security system, that they were employed without having a residence permit or work permit, proved that the defendants intended to circumvent the rules on social legislation. This might have been an indication of human trafficking, but the facts were not in themselves sufficient to prove the charge of human trafficking. The court also ruled that the number of working hours performed could fit the context, and that the house in one of the stud farms was sufficiently equipped.

The court also acquitted the defendants of charges of human smuggling on the grounds of benefit of the doubt, considering that it was not sufficiently demonstrated that smuggling had been set up in order to obtain a material benefit intended to enrich the defendants at the expense of the victim or his family.

The defendants were sentenced to suspended fines.

The moral damages claimed by the two Moroccan workers, who had initiated civil proceedings, based on the charges of human trafficking and smuggling, were rejected, as the defendants were acquitted for these two charges.

However, the Court did grant them final material damages of €6,050.98 and €9,343.09 respectively.

2.3.7. | Sorting workshop for second-hand clothes

In a **judgement of 24 November 2016**, the **Correctional Court of Mons** held that the charge of human trafficking for economic exploitation and various violations of the Social Penal Code against a Syrian defendant, who was a repeat offender who exploited many foreign workers of various nationalities in his sorting workshop for second-hand clothes, was proven.⁴¹⁹ The work consisted of sorting clothes and stacking bales of clothing weighing between 40 and 50 kg.

The case came to light following a check carried out by the police on a public holiday on persons who were leaving the offices of the defendant's company. Surveillance was then carried out, from which it was ascertained that people entered the building in the morning, but did not leave. This prompted another inspection in the vicinity of the commercial zone, a new surveillance operation, and finally a house search. The persons who were found in situ, including several illegally-resident persons, were questioned. One of the workers, who initiated civil proceedings, made a detailed statement to the investigators. He explained that the defendant employed both illegally and legally-resident persons. The illegally-resident persons were forced to work from 10.00am until 10.00pm, i.e. 12 hours a day, with a break of 15 minutes to eat, for a daily wage of €30, which equated to an hourly wage of €2.50. The electrical heating of the workshop was insufficient and in winter it was cold in the building.

During the search in the workshop, it was found that the sanitary installations were broken, the heating was inadequate and water seeped into the building.

The court ruled that the denials of the defendant were not credible and disproved by the objective elements of the case (the surveillance, checks, findings during the search regarding the state of the premises and the nature of the work carried out).

The court clearly considered the charge of human trafficking to be proven (except for one worker, who was a relative of the defendant). It was assumed that the defendant, who was the lawful manager of the company, and responsible for recruiting the workers and paying wages, had hired illegally-resident persons. The court also ruled that the working conditions were an affront to human dignity, taking into account a number of elements:

⁴¹⁸ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

⁴¹⁹ Corr. Court Hainaut, subsection Mons, 24 November 2016, 8th chamber (definitive).

the duration of the working days (minimum 10 hours), the number of working days per month (between 26 and 28 days), the actual hourly wage (€2.50 per hour), the heavy manual labour (carrying bales of clothes weighing between 40 and 50 kg) and the working conditions (almost no heating, defective sanitary installations, water seepage into the building). In addition, the defendant organised two work shifts, one for illegally-resident workers and another for legally-resident workers, and only produced pay slips for the legally-resident workers. Finally, he controlled the workers via a camera system from his home.

The court sentenced the defendant, who was a repeat offender, to three years' imprisonment with partial suspension, and a fine of €1,000 (increased to €6,000 with the multiplication factor).

The worker and Myria, who both initiated civil proceedings action, each received €1 in damages.

2.3.8. | Waste processing

In a **judgement of 5 April 2016**, the **Correctional Court of Walloon Brabant** held that the charge of human trafficking and various violations of the Social Penal Code involving several defendants, who were partners, and their company, which was active in waste processing, were proven.⁴²⁰ Amongst other things, they employed a worker of Moroccan nationality who was illegally-resident. During an attempt to unblock the drains, this person suffered a serious accident at work (with the loss of an eye) but his employers did not take any real steps to obtain compensation from a legal insurer or the Fund for occupational accidents. In addition, he worked almost 10 hours a day, 6 days a week, for a daily wage of €50. Based on the shortest hourly schedule, which was 8 1/2 hours per day, this equated to an hourly wage of €5.88, while the wage scale within this sector is €10.30 gross per hour. He had no social cover whatsoever and was in a precarious administrative and social situation at the time of recruitment. The court ruled that the charges of human trafficking had been proven on the basis of the work schedules and wages paid, the failure to report an accident at work and the fact that the defendants only bore a limited part of the financial consequences of the accident themselves, whereas it was impossible for the worker to make provision for these consequences, in particular because of his long-term work incapacity.

The defendants were sentenced to community service and were given fines. The company received a partly

suspended fine of €2,000 (or €12,000 with the multiplying factor).

The worker who had initiated civil proceedings was also given overdue payments of €7,875.50 in addition to a provisional sum of €1,000 for the damage he had suffered as a result of human trafficking and the various violations of the Social Penal Code.

2.3.9. | Domestic help

On **23 June 2017**, the **French-speaking Correctional Court of Brussels** heard a landmark case concerning allegations of domestic exploitation in a large Brussels hotel:⁴²¹ the so-called 'Conrad Princesses' case.

A princess from the United Arab Emirates and seven of her daughters, who were also princesses, were accused of trafficking offences against 23 women who worked in their service in the hotel between 2007 and 2008. They were also prosecuted for the inhuman and degrading treatment of these women. Most of the female workers were of Filipino origin, but there were also Moroccan, Indonesian and Tunisian workers, one Chinese and one Eritrean. In addition, they also employed two young European women, one French and one Belgian.

They were also prosecuted for various violations of the Social Penal Code, as was their butler, also on the grounds of these charges.

Myria, two reception centres for victims and 12 workers all initiated civil proceedings.

The case came to light when a victim of Moroccan nationality was questioned by the police. During this hearing, she stated that she worked as a cook in the service of a princess from the United Arab Emirates, who was staying in a large hotel in Brussels at the time. The working conditions were extremely difficult. They worked 7 days a week, 24 hours a day. They were called "dogs". The mother and seven of her daughters stayed in the hotel, and each of them had two servants. The victim had fled the hotel and was taken in by a family. She justified her actions by the fact that the servants of Filipino nationality had made an attempt to flee a few days earlier, but were caught. Then, two persons of Filipino nationality were intercepted at Zaventem airport. They came from the hotel, and had to take the plane back to the Emirates. One of them stated that she was a victim of human trafficking.

⁴²⁰ Corr. Court Walloon-Brabant, 5 April 2016, 6th chamber. (final).

⁴²¹ French-speaking Corr. Court Brussels, 23 June 2017, 59th chamber (definitive).

A few days later, with an authorisation issued by the police judge⁴²², the Social Inspectorate and the police carried out a search and identified the persons staying on the fourth floor of the hotel. 17 potential victims were questioned on the same day. The butler had their passports in his possession. An investigation was then launched. Several princesses were questioned, as was the butler. The director of the hotel and some staff members were also questioned. More investigation reports followed, as did testimonies, second hearings and investigation assignments.

Before the court, the defence put forward various reasons for inadmissibility, all of which were rejected by the judges.⁴²³

The court held that the charges of human trafficking were proven, both regarding the material element (the housing) and the moral element (the employment in degrading working conditions). As such, the workers were essentially recruited as housekeepers. Some of the others (the Europeans) were responsible for bringing up the children. Recruitment took place in various ways (via an agency, through a family member or acquaintance, or through an advertisement in the press). The 'private department' office was responsible for various administrative tasks, in particular the recruitment of the staff, who were then placed at the service of the princesses, while they themselves provided accommodation for the workers. The court therefore ruled that the material element of the violation had been met.

The court also ruled that there was indeed a question of employment in degrading circumstances, based on the hearings of the people who served the princesses and various consistent statements, testimonies from hotel staff and European nationals employed by the princesses, as well as on the basis of the findings made. The working conditions were as follows: full availability, working 7 days a week, with some staff working 24 hours a day, and others according to timetables that far exceeded the 8-hour working day, without a weekly rest day. Annual holidays and moments of relaxation were exceptional, and subject to the will of the princesses. The servants were not

allowed to leave the hotel, except in the company of the princesses, which restricted their freedom of movement to the movements of the latter. Security agents carried out genuine security guard functions. Finally, the passports of staff were kept by the butler.

The court also noted that (translation) "*the fact that gifts, jewellery or tips were sometimes offered to a servant does not conflict with this conclusion, since these gifts also depended on the whim of one or another princess, to whom the person was completely subjected*".

The court also noted that (translation) "*these terms and conditions were freely determined and imposed by each of the defendants, both as regards the servants assigned to them and other employees, who were not constantly at their service*".

However, the court acquitted the defendants of the charge of human trafficking for the Belgian and French workers. Their working conditions were significantly more favourable than those of other servants, and the court ruled that these persons were not employed in degrading circumstances.

The court also upheld the aggravating circumstances of abuse of authority and abuse of vulnerability. In this sense, it noted that (translation) "*the princesses (...) abused the authority they had due to their privileged status and, in particular, the fact that they belonged to the royal family of the United Arab Emirates, to impose inhumane conditions*". However, the court acquitted them from the aggravating circumstance of gang activity.

For the other charges, the court ruled that there was indeed humiliating treatment of the non-European staff⁴²⁴, in the sense that they were subjected and had no personal freedom. However, according to the court, the facts could not be considered as inhumane treatment.⁴²⁵

Surprisingly enough, the court acquitted the princesses and their butler from the violations of the Social Penal Code. Although the various servants were at the service of the princesses, the princesses were not, according to the court, their employer: they did not recruit them and had no say over their status or their wages. The judges ruled that the authority they exercised on a daily basis was merely the result of the special status they had because

422 During the initial phase of the proceedings, the defence argued that the house search which initiated the case was invalid. In their opinion, this could only be carried out via a search warrant issued by the investigating judge. In a judgement of 24 April 2013, the Supreme Court of Cassation upheld this opinion. However, in a decision of 22 January 2014, the Chamber for Indictments of the Brussels Court of Appeal (investigating court) to which the case was referred upheld the original referral order, issued by the pre-trial chamber of the Court of First Instance of Brussels on 17 April 2012. Although the Chamber for Indictments decided that the first house search was illegal, it considered, pursuant to the new Article 32 of the previous title of the Code of Criminal Procedure introduced by the law of 24 October 2013, that the collected evidence should not be ignored.

423 This related to the role of the press, the absence of a lawyer during interrogations and the unfairness of the prosecutions.

424 Degrading treatment is defined by article 417, 3° of the Criminal Code as any treatment which, in the eyes of the victim or third parties, constitutes a serious affront to or violation of human dignity.

425 Inhuman treatment is defined by article 417bis, 2° as any treatment by which a person is intentionally subjected to serious mental or physical suffering, inter alia, in order to obtain information or force a confession from the person, or punish him, or to exert pressure on him or on third parties, or to intimidate him or third parties.

they belonged to a royal family. The butler mainly took care of the public relations of the princesses. According to the court, it was the company 'private department' which should be regarded as the employer, since it was responsible for recruitment and the formalities that needed to be taken care of for the status and remuneration of the staff. It was therefore this company, which was not, however, a party to the case, which was responsible for ensuring compliance with social laws.

The court stated that the working conditions verged on slavery, but that the reasonable time limit had been exceeded. As such, the princesses were sentenced to 15 months' imprisonment, which was fully suspended, and were given criminal fines of €165,000 with a suspension of half the amount.

The court awarded the workers who had initiated civil proceedings the requested moral damages (which were between €500 and €17,500). However, it refused material compensation for the non-payment of wages, since the princesses had been acquitted of this charge.

It awarded Myria and the two reception centres moral damages of €1.

Another case concerned the alleged exploitation of a housekeeper by a couple of diplomats. This worker sued her two former employers, a diplomat from Sri Lanka and his wife, who were previously posted in Brussels, and who are now posted in another country, before the **Brussels Labour Tribunal**. An **interim judgement delivered on 4 November 2016** ruled on the violation of the immunity rules of the Vienna Convention on Diplomatic Relations of 18 April 1961 and on the limitation period.⁴²⁶

Between 2008 and 2010, the victim was employed for two years and six months as a domestic worker in the defendant's residence, who at that time were at diplomatic posts in Brussels. When she left the residence, she was recognised by the public prosecutor to the employment courts as a victim of human trafficking. It upheld that she had worked in inhumane circumstances, despite the fact that the legal case had been dismissed, since her employers enjoyed diplomatic immunity and therefore could not be prosecuted.

The defendants argued that the court was not in a position to try the case, as the husband felt that he should enjoy

diplomatic immunity in criminal cases⁴²⁷ and that this immunity should also be extended to his wife.⁴²⁸

The plaintiff, on the other hand, considered that this immunity was not applicable, since the privileges and immunity expire when the person leaves the country.⁴²⁹ The defendants considered that this immunity was always valid because the Vienna Convention states that "*with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist*". In this case, they argued that the professional relationship that existed at the time between the worker and her bosses was not intended for private purposes. The court rejected this argument because it considered that the main activities carried out by the worker were private and had nothing to do with the diplomatic mission of her employers. After all, her main tasks were housekeeping, cooking and caring for the couple's children.

Moreover, the immunity from prosecution is a procedural immunity, which does not cover impunity or non-liability. Article 6, §1, of the European Convention on Human Rights (ECHR), which guarantees the right to a fair trial, also includes the right of access to a court. Both the Vienna Convention and Article 6 of the ECHR are enshrined in Belgian national law, and must be complied with by the Belgian courts. The right of immunity from prosecution should not be a restriction on the right of access to a court, in such a way as to undermine the essence of the right of access to a court. In this case, the defendant's current place of residence was not communicated. The plaintiff consequently did not have the opportunity to sue them in the sending state or any other state. The court therefore considered itself competent to rule on the case.

The court also ruled that the plaintiff's claim was not time-barred, since it concerned a violation (non-payment of wages) for which the period of limitation was five years. The civil claim was lodged within this period. The court therefore declared the plaintiff's claim to be admissible.

The examination of the merits of the case was postponed to a later date.⁴³⁰

427 Article 31 of the Vienna Convention.

428 Pursuant to Article 37 of the Vienna Convention.

429 Article 39 of the Vienna Convention.

430 Namely on 28 February 2017. However, this hearing (on the merits) was never held because the defendants lodged an appeal. A hearing on admissibility for the Labour Court established in September 2017 a possible hearing on the merits in February 2018.

426 Dutch-speaking Labour Tribunal of Brussels, 4 November 2016, 3rd chamber.

3. HUMAN SMUGGLING

Smuggling gang with a route between Austria and Belgium

In this case, which was settled by the **Correctional Court of Antwerp on 8 December 2016**⁴³¹, three defendants were prosecuted for smuggling people who had fled mainly from the Middle East, from Austria to Belgium, among other offences. The criminal file was compiled on the basis of a telephone investigation, telephone wiretapping, searches, mobile phone scans, results of bank investigations, etc. Among other things, the defendants were prosecuted for transporting a family with four minors. The victims had to pay several hundred euros per person for the journey by car from Vienna to Antwerp. If they were unable to pay, they were threatened and their passports were taken from them. The court held that the facts had been proven and sentenced the defendants to two years' and six months' imprisonment respectively, which was partly suspended, and 150 hours of community service and fines between €36,000 and €90,000, which were also partly suspended.

Various items and sums of money corresponding to the sums paid by the victims were ordered to be confiscated. Two victims initiated civil proceedings and each received damages of €1050.

Smuggling gang operating from a church in Zeebrugge.

In this case of human smuggling, which was heard by the **Correctional Court of Bruges on 19 October 2016**, three defendants were prosecuted.⁴³² They smuggled people of mainly Iraqi and Iranian origin, from Belgium to the United Kingdom. The allegations occurred in the first half of 2016.

The maritime police found the victims at the ferry terminal in Zeebrugge. Security camera images provided a significant amount of information about the perpetrators and their activities. Information was also gathered through wiretapped conversations and mobile phone scans. One of the victims paid €3,000 for the crossing to the United Kingdom, an amount deposited by his family into an account in the United Kingdom. A church

in Zeebrugge was used as a base for the operation. The smugglers decided who was allowed to stay and eat, and who wasn't. They did not shy away from using violence in their activities.

The court held that the facts had been proven and sentenced the defendants for human smuggling offences with aggravating circumstances, and for their illegal residence within the territory.

The defendants received prison sentences of between 3 years and 5 years and fines of €18,000. The third defendant was sentenced in absentia. One of the victims initiated civil proceedings and received damages of €1.

Nigerian human smuggling via student visas

At the appellate level, a case was re-examined in which the defendant had been prosecuted at the first instance⁴³³ for human trafficking offences, among other things, for the purpose of committing a coercive crime, and human smuggling, both with aggravating circumstances, and for attempted smuggling. Between 2009 and 2010, the defendant had set up a network to get Nigerian students into Belgium pseudo-legally. He ensured that various Nigerian nationals were given residence papers in Belgium as candidate students via a student visa, with false documents from a university or high school. The so-called students received a provisional student visa, whereby they had one year to enrol at a university or high school in Belgium and take language classes. The victims sometimes paid up to €2,300 per person. None of the candidate students ended up enrolling at a university or high school. The practices came to light when the Belgian embassy in Nigeria noticed a conspicuous number of student visa applications. A total of 62 students were apparently linked to these activities, of which 19 people were found to have actually come to Belgium. The defendant was assisted by other persons who had also gotten to Belgium through him. He used them as running boys to take care of errands for him. The defendant also apparently sexually abused several candidate students, in particular if it appeared that they were unable to pay. He apparently threatened to send them back to Nigeria, and thereby abused their vulnerable position. With the proceeds of his activities, he apparently invested in real estate in Nigeria through intermediaries. He was also prosecuted for using false names, forgery, and money laundering.

In the first instance, the court held that the cases of human smuggling were proven, except for the aggravating circumstances that vulnerable situations were abused, and

⁴³¹ Corr. Court Antwerp, subsection Antwerp, 8 December 2016, AC8 chamber (definitive).

⁴³² Corr. Court West Flanders, subsection Bruges, 19 October 2016, 17th chamber (appeal at criminal level).

⁴³³ Corr. Court Leuven, 12 May 2015, 17th chamber.

that use was made, directly or indirectly, of subterfuge, violence, threats or any form of coercion. The court ruled that human smuggling *"is an illegal crossing of national borders with the assistance of third parties. (translation) Human smuggling requires the direct or indirect pursuit of a material benefit. Smuggling means that the person who intends to cross a border is aware of how he or she will travel, and freely agrees to it. This is in contrast to human trafficking (...), in which people are transported for the purpose of subsequent exploitation and traffickers limit their 'clients' in their free choice using violence, deception, threats or intimidation. The boundary between human trafficking and human smuggling is rather thin and smuggling can evolve into human trafficking when free will is curtailed"*. The court ruled that the aggravating circumstance that the defendant had put pressure on the foreign nationals and abused them was insufficiently proven. It held that the allegations of sexual abuse of several male students could not be proven from the criminal file. There was no immediate evidence of these accusations. However, the file did show that the defendant and various persons had sexual contacts.

The court considered the allegations of human trafficking to be unproven. The victims had provided a helping hand for the defendant in Belgium and/or Nigeria. However, there was not enough objective evidence to believe that they were pressured by the defendant to participate in these criminal activities. They had also profited from it themselves. Several victims had made incriminating statements on this subject as part of the 'victim of human trafficking' procedure. However, these statements were refuted by the defendant. One of the victims initiated civil proceedings. He claimed that he had been sexually abused by the defendant for years. However, the court noted that the pre-trial chamber had already exonerated the defendant from prosecution for the allegations of rape, sexual assault, and assault and battery. The victim's statements were not corroborated by the criminal file (wiretapped conversations).

The defendant was sentenced to two years in prison, a high fine and confiscation of sums of money. Myria initiated civil proceedings and received damages of €1. The victim's claim was rejected.

In an appeal, the judgement was partially upheld by the **Court of Appeal of Brussels in a judgement of 23 January 2017**.⁴³⁴ The court nonetheless mitigated the convictions on a number of points. The defendant was even acquitted of the charge of money laundering. The court ruled again that the aggravating circumstance of

abuse of the vulnerable situation of the victims had not been proven. The court considered that the reasons for vulnerability were not sufficiently serious, and were not such that the candidate students had no other real or acceptable choice but to allow themselves to be abused. The court did however uphold the sentence, with the exception of the confiscated funds, for which the amount was reduced. The damages for Myria were upheld. The victim who had initiated civil proceedings was not present at the hearing, for which the Court held that he had waived his right to appeal.

Well organised international human smuggling gangs sentenced to heavy sentences

In this extensive human smuggling case⁴³⁵, which is discussed earlier in this report⁴³⁶, 13 defendants were prosecuted. The defendants were prosecuted for human smuggling with the aggravating circumstances that this also involved minors, that their particularly vulnerable position was abused, that the lives of the victims were endangered, that the activity was a matter of course, and that there was criminal organisation.

The investigation revealed that it concerned a large Kurdish group operating from Brussels, which had international contacts. The main defendant is the central figure in the Belgian branch of smugglers.

They smuggled people of all nationalities practically on a daily basis, as well as families with minors, from the car parks in Groot-Bijgaarden and Waasmunster. Large sums of money (€2,500 per person) were demanded, without any guarantee of success. The adults and children were treated like cattle, and the conditions were an affront to human dignity. Various smuggling transports were intercepted. The summons indicated 1,290 smuggled persons. When they arrived in the United Kingdom, they often still had debts, which made them easy prey for further exploitation, or to end up in crime. Some were even obliged to help the smugglers for a limited fee.

The court believed that it was clearly an organisation, with a clear hierarchy and division of tasks. They also worked with a specific routine; a rotation system. If the victims were caught, they knew where to go and try again the following night. It was a well-organised activity.

⁴³⁵ Corr. Court East Flanders, subsection Dendermonde, 25 April 2016, Chamber D19D.

⁴³⁶ See Chapter 2 of this section (human smuggling case studies). See also Part 2 (focus), Chapter 1, point 3 (the role of social media and the internet in human smuggling) and Chapter 2 (Social media and the internet as a method of investigation).

⁴³⁴ Dutch-speaking Court of Appeal of Brussels, 23 January 2017, 13th chamber.

The various defendants represented different positions within the hierarchy. The footmen worked at the car parks, and made sure that the victims climbed into the right trucks. Other defendants had a 'key position', and gave orders from the United Kingdom. The members had no income other than that from human smuggling.

In its **judgement of 25 April 2016**, the **Correctional Court of Dendermonde** ruled that all aggravating circumstances had been proven with regard to all the defendants.

The defendants were sentenced to substantial prison sentences of between 5 and 12 years and to heavy fines of between €300,000 and €3,360,000 (in proportion to the smuggled victims). Several defendants were convicted in absentia.

Myria initiated civil proceedings and was awarded €1 in moral damages.

At the appellate level, on the question of guilt, the **Court of Appeal of Ghent**⁴³⁷ **held in its judgement of 6 February 2017** that the defendants had not submitted any new arguments than those submitted to the first judge. The Court of Appeal upheld the reasoning of the first judge almost entirely. The court upheld the sentences for all defendants, with the exception of one defendant where the court reduced the sentence from seven to six years, and one defendant for whom the court imposed an additional sentence since, in the meantime, he had also been convicted of similar offences in another case by a judgement with the force of *res judicata*.

British-Ukrainian international smuggling gang exposed following a murder case.

In this human smuggling case, a large-scale international network of human smugglers was exposed, which operated from the United Kingdom and Ukraine, and used Belgium as a transit country. A total of 15 defendants were prosecuted in the smuggling case. The case was settled by a judgement of **10 January 2017 by the Correctional Court of Ghent**.⁴³⁸

The case came to light through an investigation carried out for a murder case, in which a truck driver was killed by several gang members. In this murder case⁴³⁹, a truck driver was strangled and found in his truck with stab

wounds on a car park along the motorway. Two of the 15 defendants were prosecuted for the murder.

The investigation that followed was based on the data from the tachograph, from which it could be deduced exactly when the truck had driven. A destroyed mobile phone was also found, on which a telephone investigation was carried out and, as a result of which, various wiretapping measures were ordered of the numbers the driver had called shortly before his death. These numbers led to various defendants both in Belgium and the United Kingdom. During a patrol, one of these defendants was caught in flagrante delicto in smuggling activities taking place on a car park. Arrests and searches followed, which included the discovery of victims as well as hundreds of false Polish identity documents. The statements made by the suspects and human smugglers soon showed that the murder had taken place within an international and well-organised smuggling gang. The truck driver had been killed by two gang members after a dispute had arisen over the sums due to the driver after the latter had smuggled several people in his truck to the United Kingdom. The murder case was settled in the judgement of 21 February 2017.

In the human smuggling case, the 15 defendants were prosecuted for human smuggling with aggravating circumstances, criminal organisation, the use of false identity documents, receiving stolen identity documents, and fraudulently issuing forged identity documents.

The judicial investigation was conducted extensively on the basis of a telephone investigation, wiretapping measures, findings made during various house searches, laptop, iPad and mobile phone scans, analyses of conversations via social media⁴⁴⁰, analyses of the data from the tachograph and truck tracking system, surveillance operations, camera images on the car parks, bank investigations, statements of defendants and victims, etc., and a perpetrator caught in flagrante delicto by a police patrol.

International letters rogatory were sent to Latvia and London, and international arrest warrants were issued.

The information obtained during the investigation, including detailed bookkeeping/ledgers, showed that the crossing of at least 500 persons had been organised or carried out. The two leaders of the gang were based in London and Ukraine. One of the defendants recruited people in Ukraine under the guise of a travel agency to transport them to Great Britain. He also took care of

⁴³⁷ Court of Appeal Ghent, 6 February 2017, 6th Chamber.

⁴³⁸ Corr. Court East Flanders, subsection Ghent, 10 January 2017, Chamber G28bis (appeal).

⁴³⁹ Settled by the Correctional Court of Ghent, 21 February 2017.

⁴⁴⁰ See also above Part 2, Chapter 2 (Social media and the internet as a method of investigation) and Chapter 1, point 3 (the role of social media and the internet in human smuggling).

the Schengen visas via Poland and arranged the initial transport from Ukraine to Belgium. In Belgium, the victims were received in various safe houses, they were given false (Polish) identity documents, and were taken to car parks along the motorways in Belgium and sometimes France, and escorted to the truck. From there they crossed to the United Kingdom as a passenger or co-driver.

As regards the offence of criminal organisation and being part of a criminal organisation as a leader or member, the court ruled that the criminal organisation was well organised and consisted of a hierarchical structure with a managerial, mid-ranking and executive framework with a clear division of tasks, which had been active since at least January 2015. All constitutive elements were therefore present for this crime (a structured association of more than 2 persons which was established over a period of time, with the intention of committing offences in order to obtain a direct or indirect material benefit). In its judgement, the court made an analysis of the different individual roles of each of the defendants within the well-organised criminal organisation. The two central figures of the organisation operated from the United Kingdom and Ukraine respectively, and directed the others.

One of the defendants even worked as a hairdresser within the organisation, and cut the hair of the victims to be smuggled so they would resemble the people on the Polish identity documents.

For the offence of human smuggling with aggravating circumstances, that the vulnerable situation of the victims was abused, that the activity was a matter of course and that the activity took place within an association, the court ruled that the first circumstance was not proven. The victims had a precarious residence permit in Belgium, which in most cases had been obtained under false pretences, but the court did not prove in this case that the members of the organisation had actually used or abused the vulnerable situation. They did not restrict the victims' freedom of movement and action. They knew in advance that they would end up in the Schengen area with a temporary (precarious) residence permit and that they would subsequently receive identity documents to make the crossing to the United Kingdom by truck. The court also believed that the smuggling itself was carried out in relatively humane conditions, in which the candidates were smuggled as regular passengers in a van, or as passengers or co-drivers of trucks. The court considered the other circumstances to be proven.

The offences of using false identity documents and receiving stolen identity documents were also deemed proven by the court.

When determining the extent of the penalty, the court was concerned by the high level of organisation, the established structure, and the many branches of the criminal organisation. The defendants were sentenced to prison sentences of between 8 months and 7 years, and were handed very heavy fines sometimes exceeding €3 million. Confiscations were also ordered.

In the murder case, the two defendants were found guilty of manslaughter with malice aforethought, and sentenced to 27 years' and 23 years' imprisonment respectively.

Myria initiated civil proceedings and was awarded €1 in damages. Myria also initiated civil proceedings in the murder case, which was however declared inadmissible.

[Albanian-Czech human smuggling gang dismantled by an international investigation.](#)

This case⁴⁴¹ concerned an Albanian-Czech human smuggling gang which smuggled Albanians into the United Kingdom. 28 men and women were prosecuted. The criminal file was drawn up on the basis of criminal investigations conducted in Belgium, France, the United Kingdom and the Czech Republic.

The smuggling network was based around three persons in the UK: the two main defendants and a third who was not prosecuted in this case because his identity was only revealed at a later stage of the investigation. They arranged the transportation of Albanians to order. The practical arrangements for the specific transportation were left to various people from the Czech Republic.

The victims were smuggled in vans with Czech drivers. The vans were rebuilt in such a way that they were filled with car tires at the back, behind which there was a concealed space where the victims could hide. The victims were sometimes hidden in wooden or cardboard boxes, or in the boot of a car. In one of the crossings, the victims themselves contacted the emergency services because they couldn't breathe.

The victims only got into the cars in Belgium. Belgium was therefore a transit country where the victims temporarily stayed in cheap hotels or safe houses. They were then smuggled to the UK by ferry or via the Eurotunnel. They had to pay a kind of surety first, and if the crossing was successful they paid the remainder. The drivers were not paid until the crossing was successful. The

⁴⁴¹ Corr. Court East Flanders, subsection Ghent, 2 January 2017, Chamber G28m.

smuggled persons paid between £1,200 and £6,000. The final destination was always the restaurant of the main defendant in a borough of London. The allegations had taken place since at least 2013, until 2014. Several victims were minors.

The investigation was conducted in cooperation with various countries, both at the police level and the level of the Public Prosecutor's office and the investigating judge, as part of a Joint Investigation Team (JIT).

Through the full investigation, the various smuggling crossings could be mapped out fairly accurately. The various wiretapping measures provided insight into the *modus operandi*, the hierarchy in the organisation, the position of the various members and the specific implementation of the smuggling crossings. In addition, several crossings were intercepted, and the defendants were caught in *flagrante delicto*. The investigation was carried out through telephone investigation, telephone wiretaps, house searches, interrogations and statements by members of the smuggling network and victims, results of the scans of various mobile phones, investigation into financial transactions, traces of Skype conversations and Skype chats.⁴⁴²

The defendants were prosecuted for gang activity, leadership and participation in a criminal organisation and human smuggling with aggravating circumstances (including the fact that offences were committed against minors).

The two main defendants were prosecuted for the leadership of the criminal organisation, four others for participation at the level of decision-making processes, and 22 others for participation in the preparation and implementation of an activity within the organisation.

The court investigated and ruled that all constitutive elements were present to judge that it concerned a criminal association.

The two main defendants, together with another third person (who was not prosecuted in this case due to late identification), represented the core of the organisation. They were the leaders of the organisation, had the connections with their Albanian network in the UK, determined which crossings would take place when, collected the money from the families of the victims, paid the drivers, etc. Two other defendants were found to be one level below in the organisation. They travelled

constantly between continental Europe and the UK. They looked for van drivers in predominantly socially poorer environments of homeless people and drug users. They provided the vans, supervised the preparation of the vans in the Czech Republic, and were present when the victims were loaded into the vans in Belgium. From that point on, they left the drivers to travel alone across the Channel, thereby letting them face the risk of getting caught. They themselves travelled by plane or separate cars. On the other side of the Channel, they took over again and ensured that the victims reached their final destination. Two other defendants were initially recruited as drivers and later climbed up in the organisation. The other defendants were also found guilty of membership, except for one who was acquitted. Many of them were caught in *flagrante delicto* as drivers or co-drivers.

The court examined for each of the defendants exactly which crossings they had been responsible for. For the main defendants, the court found the charges of human smuggling to be proven, with all aggravating circumstances. For the other defendants, the human smuggling offences were considered proven, with or without the various circumstances.

The court handed down heavy sentences. The main defendants were sentenced to prison sentences of between 42 months and 8 years, and were handed heavy fines sometimes exceeding €600,000. The other defendants were sentenced to between 6 and 30 months' imprisonment, and received fines in proportion to the number of victims smuggled, some of which were suspended. Various large sums were ordered to be confiscated.

International Albanian network

This case⁴⁴³ concerned a well-structured smuggling gang with international branches in the United Kingdom, Germany, the Netherlands and France.

The gang smuggled Albanian nationals arriving in Belgium into the United Kingdom. Upon their arrival in Brussels or Ghent, the victims were received by the smugglers and accommodated in hotels or private premises near Brussels Midi Station. From there they were taken to various car parks along motorways, including the E40 car parks at Groot-Bijgaarden, Gentbrugge and Gent-Drongen, where they were loaded into trucks. Other gang members ensured that victims were transported from Brussels to the Netherlands, and smuggled from there to the UK. The incidents occurred between November 2013 and June

⁴⁴² See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

⁴⁴³ Corr. Court Brussels, 6 October 2015, 51st chamber.

2014. The gang also had contacts with truck drivers who carried out the (guaranteed) crossings because the victims travelled with false Romanian identity documents. The victims paid between €2,500 and €5,700, or even up to €6,000 per person, depending on whether the crossing was guaranteed. The luggage and mobile phones were taken from the victims and subsequently sent by post to the UK if the crossing was successful. There were also many minors among the victims. Parents with small children were asked to give them medication during the smuggling journey, to calm them down. Depending on the price, the victims were smuggled into the cabin or the trailer part of the truck. The sometimes had to hide in cardboard boxes in trucks. People were also hidden in the liquid container section of a truck. There were reports that some of the victims disguised themselves as priests. On several occasions, various defendants used subterfuge to extort money from their victims.

The investigation was mainly conducted via telephone wiretapping, telephone investigation, material findings, surveillance operations and statements.

Initially, 11 suspects were prosecuted, including both organisers and smuggling operators. They were prosecuted for human smuggling with aggravating circumstances, participation in a criminal organisation and illegal residence in Belgium. They were also prosecuted for fraud and deception by exploiting the trust or credulity of the victims. Several suspects presented themselves as senior officials or employees of the embassy, in order to extort money from their victims.

Several defendants, including the main suspects, did not appear in court.

The 11 defendants were all sentenced to imprisonment of between 2 and 6 years, and heavy fines (multiplied by the number of victims). Various assets were ordered to be confiscated.

Myria initiated civil proceedings and was awarded a symbolic €1 in damages.

One of the defendants was sentenced to five years in prison and received a heavy fine (€6,000 x 64). He appealed against this decision.

At the appellate level, he was represented at the hearing by his lawyer but could not be present at the hearing himself because he had received an entry ban injunction and had been repatriated to his country. He believed that this violated his right to defence, which the Court rejected.

As regards the merits of the case, the **Court of Appeal of Brussels, in its judgement of 17 May 2017⁴⁴⁴** upheld the judgement of the first instance across the board. But it imposed a heavier sentence, 6 years' imprisonment and a heavy fine.

4. COUNCIL OF STATE, ADMINISTRATIVE JURISDICTION DIVISION

The Council of State twice rejected the urgent request for suspension of an administrative police ordinance, issued by the mayor for a temporary closure. These ordinances, submitted pursuant to Article 134 *quinquies* of the new Municipal Law,⁴⁴⁵ relate to establishments suspected of committing human trafficking offences.

The first judgement of **12 January 2017⁴⁴⁶** concerned an ordinance to close a prostitution parlour for a period of three months, imposed by the Mayor of Martelange in consultation with the judicial authorities. Various police checks and inspections of the social laws had taken place in these prostitution parlours. Unanimous testimonies from the clients and serving girls, as well as the evidence found in situ, testified to acts of prostitution and serious indications of human trafficking in this bar. The female operator received and provided shelter to serving girls, some of whom had neither work nor residence permits. She determined the prices of drinks and sexual services, and retained a substantial percentage.

The plaintiff, who ran the bar, pleaded, inter alia, the lack of sufficient reasoning, the clear decision-making error, and the exceeding or misuse of power. In particular, she

⁴⁴⁴ Dutch-speaking Court of Appeal of Brussels, 17 May 2017, 13th chamber.

⁴⁴⁵ This article stipulates that (translation) "if there are serious indications that acts of human trafficking as referred to in article 433 *quinquies* of the Criminal Code or acts of human smuggling as referred to in article 77bis of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals, are taking place in an establishment, the mayor may decide, after prior consultation with the judicial authorities, and after having heard the pleas of defence of the manager, to close the establishment for a duration which he shall specify. (...). The mayor is authorised to have the establishment sealed off if the closure decision is not complied with (...). The closure measure shall last for a maximum of six months. Upon expiry of this period, the mayor's decision shall lapse".

⁴⁴⁶ Council of State, Administrative Jurisdiction Division, judgement No 237.025 of 12 January 2017.

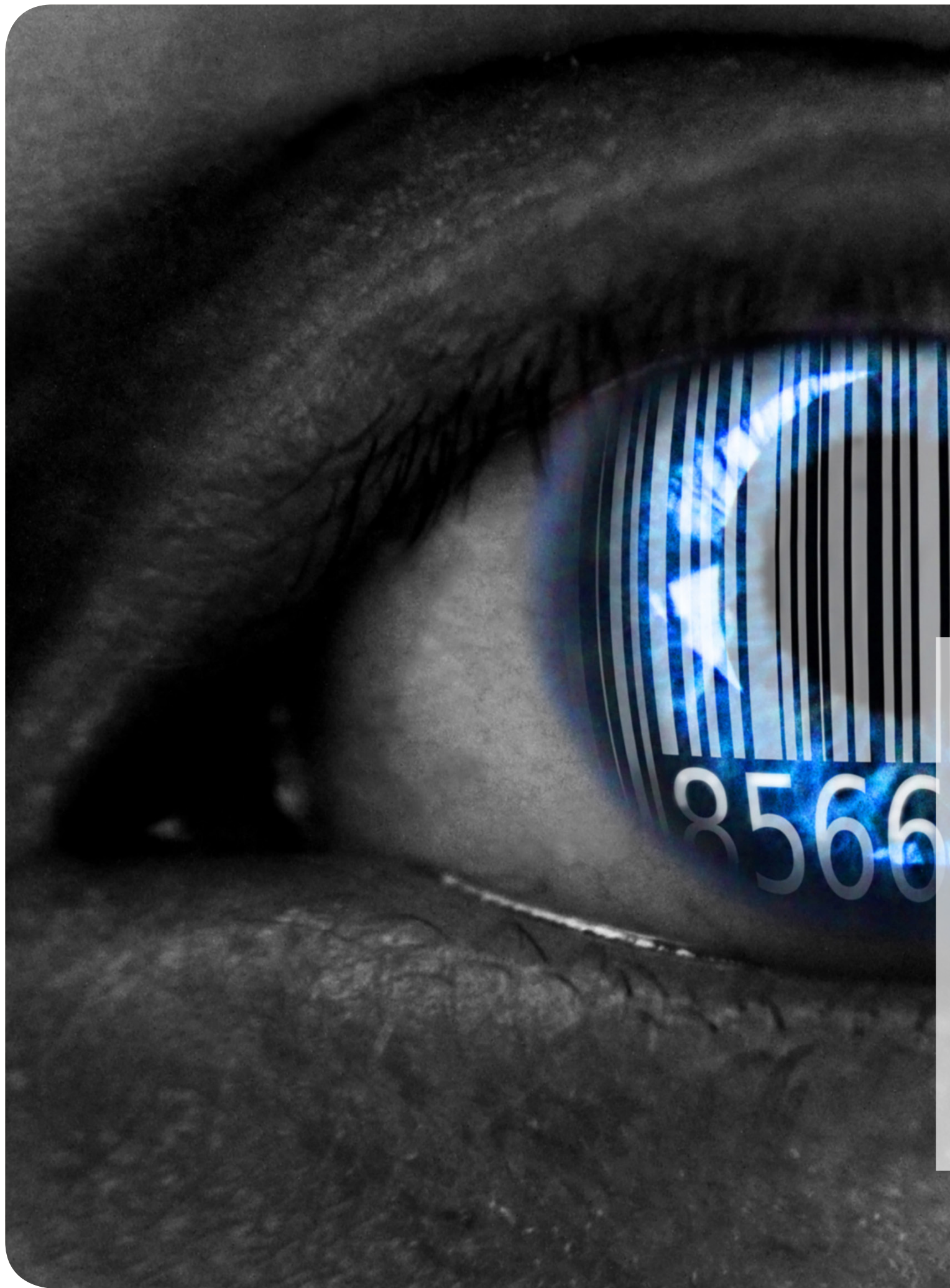
argued that the choice of measures taken - closure for three months - was unreasonable and disproportionate in relation to the elements of the case. In a detailed justification, the Council of State rejected this plea.

The second judgement of **16 May 2017**⁴⁴⁷ once again concerned the closure of a well-known café in Antwerp's red light district, for a period of four months. This café was also used for the prostitution of young Nigerian women. The temporary closure for a period of three months had already been requested one year earlier and had led to the rejection of the application for suspension in cases of extreme urgency by the Council of State.⁴⁴⁸ According to the Mayor of Antwerp, there were once again serious indications of human trafficking in this case.

The company which ran the bar appealed to the Council of State for an interim order to lift this administrative police ordinance for a temporary closure, which had been brought about by the mayor. It argued that the delivered judgement did not give sufficient reasons as to why such a sanction needed to be taken so hastily, and that there were no new elements to justify such a measure. On the contrary, the Council of State held that the contested decision stated that indications of human trafficking had been found on several occasions in the café, despite the warnings and checks by the competent authorities, and the fact that the plaintiff was aware of the illegal activities and the previous administrative measure taken. The Council of State consequently rejected the plea in law.

⁴⁴⁷ Council of State, Administrative Jurisdiction Division, judgement No 238.214 of 16 May 2017.

⁴⁴⁸ Council of State, Administrative Jurisdiction Division, judgement No 234.755 of 17 May 2016. This decision was highlighted in our last report: See 2016 Annual Report on Human Trafficking and Smuggling: *Beggars in the hands of traffickers* p. 189.



Part 4

Key figures obtained from human trafficking and smuggling actors

The figures in this section come from six actors who possibly play a role in a human trafficking case in Belgium. The figures on human smuggling are also indicated if these actors are active in this area. Based on the figures and their evolution between 2012 and 2016, we obtain a certain picture of the government's approach to human trafficking and smuggling.

These six actors are:

- the police, with information from the General National Database (GND);
- the social inspection services;
- the College of Prosecutors-General with information on the prosecutions initiated by the public prosecutors' offices;
- the Immigration Office (IO);
- PAG-ASA, Payoke and Sürya: specialist reception centres for victims;
- the Office for the Criminal Justice Policy of the FPS Justice, with information on convictions.

INTRODUCTION

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There is no harmonisation of the figures between the various actors. These figures are therefore not sufficient to provide a basis for policy evaluation or to substantiate strategic analysis. The lack of harmonisation also significantly limits the extent to which reports can be made to the European institutions.

1. POLICE DATA

The federal judicial police provide detailed information which is prepared by strategic analysts of the Directorate for the prevention of crime, based on data from the General National Database (GND) of the police. These data help to obtain a picture of the evolution of police interventions over the past five years.

1.1. | Data relating to human trafficking

Between 2015 and 2016, the number of human trafficking offences decreased by 12%. This slight overall decrease is mainly due to a decrease in the number of offences of the exploitation of begging (33 in 2015, 13 in 2016) and sexual exploitation (467 in 2015, 396 in 2016). The number of offences of economic exploitation has remained relatively stable since 2014.

In 2016, two offences in every three concerned sexual exploitation offences (67%). This figure has remained stable in recent years. This is followed by offences of economic exploitation (29%). The exploitation of begging (2%) and forced criminality (2%) is less common. Crimes relating to organ trafficking are exceptional. Of a total of 589 offences in 2016, there was just one case (0.2%).

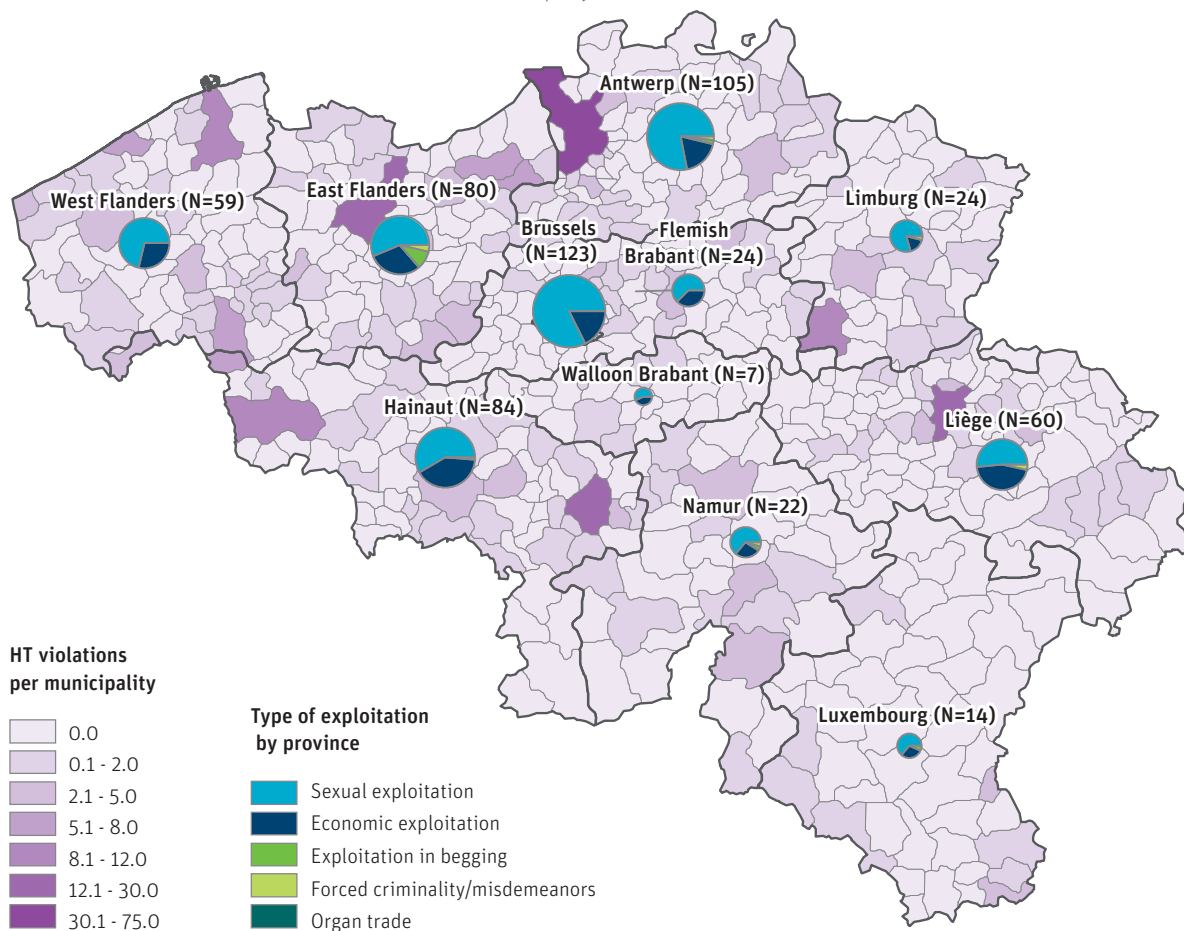
Table 1. Human trafficking violations by form of exploitation, 2012-2016

(Source: General National Database, Police)

| Year | 2012 | 2013 | 2014 | 2015 | 2016 |
|--------------------------------|------------|------------|------------|------------|------------|
| Sexual exploitation | 466 | 586 | 460 | 467 | 396 |
| Economic exploitation | 321 | 273 | 166 | 160 | 168 |
| Exploitation in begging | 44 | 33 | 38 | 33 | 13 |
| Forced criminality | 13 | 14 | 15 | 9 | 11 |
| Organ Trade | 1 | 1 | 1 | 0 | 1 |
| Total | 845 | 907 | 680 | 669 | 589 |

Figure 1. Number of human trafficking violations by municipality and form of exploitation by province⁴⁴⁹

(Source: General National Database, Police; calculations and map: Myria)



Brussels accounted for 20% of the offences recorded in 2016 relating to human trafficking offences (123 offences). The capital is therefore the leader, ahead of the province of Antwerp (105 offences, or 17%) and the province of Hainaut (84 infringements, or 14%). Sexual exploitation accounts for more than half of all types of exploitation in each province, but is especially prevalent in Brussels (80%), Limburg (79%) and the province of Antwerp (78%). The offences of economic exploitation occur mainly in the province of Liège (45%), in Walloon Brabant (43%) and in Hainaut (40%). In 2016, the offences of exploitation of begging were mainly committed in East Flanders (8 offences in East Flanders out of a total of 13 cases at the national level). There were roughly as many offences of forced criminality detected as there were instances of exploitation of begging. In 2016 there were 11, of which 3 were in East Flanders, 2 in the province of Liège and

2 in the province of Antwerp. The only offence of organ trafficking in 2016 occurred in Brussels.

1.2. | Data relating to human smuggling

The following data relate to human smuggling offences, but also to those relating to the facilitation of illegal entry or residence (Article 77 of the Aliens Act), and to situations in which illegal residence is determined together with an element of smuggling or exploitation.

As shown in Table 2, the number of human smuggling offences more than doubled during the period 2012-2016, from 233 in 2012 to 805 in 2016. There was also an increase of 16% between 2015 and 2016. This increase, as

⁴⁴⁹ The card includes the category "sexual exploitation, including 13 offences relating to child pornography" recorded in 2016.

can be seen from police figures, is in line with the increase noted by the Immigration Office in the figures on arrests following transit migration (see Tabel 16).

In 2016, one crime in every two related to human smuggling in the strict sense (49%), 28% related to illegal entry or residence, and 23% to illegal residence.

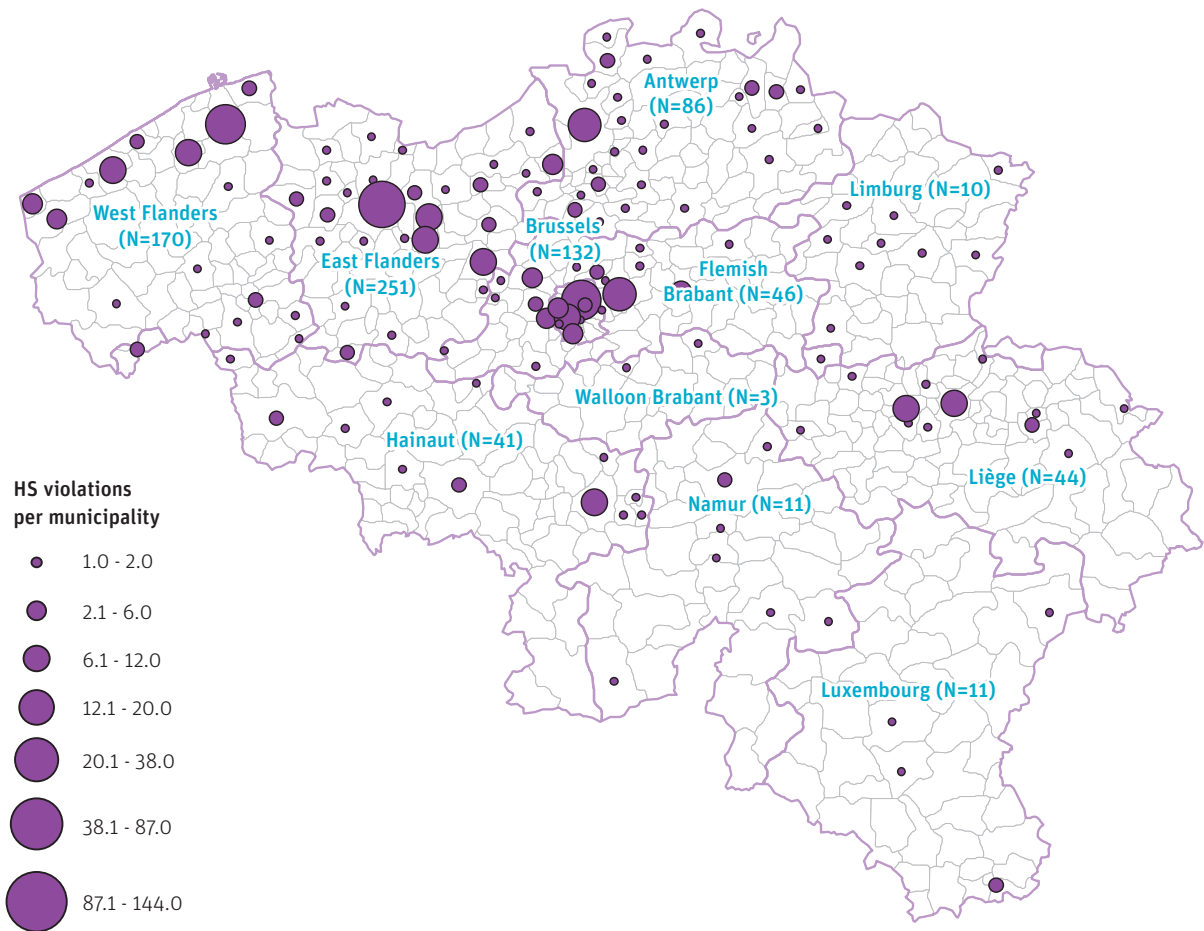
Table 2. Evolution of the number of human smuggling offences, 2012-2016

(Source: General National Database, Police)

| Year | Number |
|------|--------|
| 2012 | 233 |
| 2013 | 597 |
| 2014 | 627 |
| 2015 | 691 |
| 2016 | 805 |

Figure 2. Scale of the phenomenon of human smuggling per municipality (purple) and per province (blue)

(Source: General National Database, Police; calculations and map: Myria)



Almost one in three offences were recorded in the province of East Flanders (31%). West Flanders follows with 21% of offences, followed by Brussels (16%). Figure 2 shows the number of human smuggling offences by municipality and province. We see that human smuggling offences mainly take place in a few national cities. Ghent is the frontrunner with 144 offences, followed by all 19 municipalities of Brussels (132 offences) and Bruges (87 offences). Together, they accounted for 69% of all human smuggling offences at the national level in 2016. At the level of the provinces, East Flanders is in first place with 251 human smuggling offences, followed by West Flanders (170), the Brussels-Capital Region (132) and the province of Antwerp (86).

2. DATA FROM THE SOCIAL INSPECTORATE

In certain sectors (restaurants, cleaning companies, horticultural and gardening companies, textile workshops, prostitution) the Social Inspectorate of the FPS Social Security and the police (federal and local police), and sometimes also the Social Law enforcement agency (TSW) of the FPS Employment, carry out permanent inspection actions. Sometimes these inspections are targeted against certain places where people are employed (building yards, scrap metal companies, forestry companies, markets, etc.) and where police or inspection services have been informed that there may be cases of exploitation (e.g. information from the Prosecutor attached to the Employment Courts).

The following data are derived from the statistical analysis of all official reports: on the one hand, the 'Pro Justitias' sent to the Public Prosecutor and/or Prosecutor attached to the Employment Courts, and on the other hand, the judicial reports sent to the Prosecutor attached to the Employment Courts, the Public Prosecutor or investigating judge, if the investigation has been ordered by the latter.

Data relating to human trafficking

In 2016, the Social Inspectorate drew up 32 official reports for 52 employees, relating to human trafficking. This is a decrease compared to 2015 (see Table 3) which is mainly due to the fact that 2015 was characterised by an exceptional amount of cases of official reports in the transport sector for cases of social dumping involving

hundreds of drivers from the countries of Eastern Europe.⁴⁵⁰

Table 3. Official reports for human trafficking offences for the purpose of economic exploitation, and number of workers involved

(Source: Social Inspectorate)

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|--------------------------|------|------|------|------|------|------|
| Official reports | 33 | 38 | 29 | 37 | 58 | 32 |
| Number of workers | 46 | 123 | 69 | 48 | 425 | 52 |

Despite a decline since 2015, the hotel and catering industry remains the sector with the highest number of official reports (14 in 2015, 9 in 2016). The number of official reports in the construction sector decreased more sharply, from 14 in 2015 to 5 in 2016. They also decreased in retail trade sector (11 in 2015, 5 in 2016). While 9 official reports were registered in the road transport sector in 2015, there were none in 2016. In the garages sector (2 in 2015, 5 in 2016) and the housekeeping sector as employers of domestic workers (household help), however, we note an increase in the number of official reports (0 in 2015, 2 in 2016).

⁴⁵⁰ See MYRIA, 2016 Annual Report on Human Trafficking and Smuggling: *Beggars in the hands of traffickers* pp. 169-170.

Table 4. Official reports for human trafficking in 2016 (n=32) according to the economic sectors to which they relate

(Source: Social Inspectorate)

| Sector | Offences |
|-----------------------|-----------|
| Hotel and catering | 9 |
| Construction | 5 |
| Garages | 5 |
| Retail trade | 5 |
| Household help sector | 2 |
| Cleaning activities | 1 |
| Wholesale trade | 1 |
| Other | 4 |
| Total | 32 |

In 2016, 39 workers were identified as victims of human trafficking in the official reports handed over by the Inspectorate to the judicial authorities. Table 5 shows the nationality of these 39 workers and the sector in which they were employed. The frontrunners were Bulgarians (16), followed by Moroccans (8), Chinese (5), Romanians (4) and Pakistanis (2).

3. DATA FROM THE PUBLIC PROSECUTOR'S OFFICE

The following data are taken from the database of the College of Prosecutors-General⁴⁵¹ and are presented by jurisdiction. They contain the number of cases⁴⁵² received by the correctional Public Prosecutors (including the Federal Public Prosecutor's Office) in the course of 2016. Each criminal case may involve one or more defendants.

Methodological notes

- The data from the Public Prosecutors' Offices are limited to offences committed by adults (the offences committed by minors are dealt with by the juvenile departments of the Public Prosecutors' Offices).
- The cases submitted to the Public Prosecutor's Office of Eupen are missing from this database because the registration system has not been translated into German.
- Given that a new registration system has been introduced, we should also point out that the data of the Public Prosecutor's Office of Leuven does not go beyond 18 May 2016, that of the Turnhout department of the Public Prosecutor's Office of Antwerp does not go beyond 25 May 2016 and that of the Charleroi Public Prosecutor's Office does not go beyond 10 October 2016.
- A major shortcoming has been identified in the cases handled by the prosecutors attached to the employment courts. Work is currently underway to standardise the data in order to record it, but concrete results have yet to be achieved.
- If a case is transferred to another judicial district, or if it is transferred to another department of the same judicial district, it is counted twice in the database (once at the initial Public Prosecutor's office, the second time at the Public Prosecutor's office of destination).

Table 5. Victims of human trafficking who were referred by the Social Inspectorate to a reception centre in 2016 (n=39) by nationality and by sector (Source: Social Inspectorate)

| | Construction | Hotel and catering | Garages | Retail trade | Wholesale trade | Domestic help | Cleaning activities | Other | Total |
|--------------------|--------------|--------------------|----------|--------------|-----------------|---------------|---------------------|-----------|-----------|
| Bulgaria | 5 | 1 | | | | | | 10 | 16 |
| Morocco | 2 | | | 3 | | 1 | 1 | 1 | 8 |
| China | | 3 | | | | | | 2 | 5 |
| Romania | 2 | | | | 2 | | | | 4 |
| Pakistan | | | 2 | | | | | | 2 |
| Chile | | 1 | | | | | | | 1 |
| Ivory Coast | | | | | | 1 | | | 1 |
| France | | 1 | | | | | | | 1 |
| India | | | 1 | | | | | | 1 |
| Total | 9 | 6 | 3 | 3 | 2 | 2 | 1 | 13 | 39 |

⁴⁵¹ These data were extracted from the database on 10 January 2017.

⁴⁵² The number of cases comes from the police (initial reports). A new case is opened on the basis of an initial report (the subsequent official reports do not lead to the opening of a new case). A new case may also be opened on the basis of a complaint or civil action. A case coming from another Public Prosecutor's office or from a ministry with offence-recording powers (e.g. customs) can also be included, meaning that cases can be counted twice at the national level.

3.1. | Presentation of data on human trafficking

Table 6. Evolution of the number of human trafficking cases brought before the criminal divisions of the Public Prosecutors' offices (including the federal Public Prosecutor's office) over the period 2012-2016, according to jurisdiction and the form of exploitation

(Source: Database of the College of Prosecutors-General, analysts)

| | | Sexual exploitation 37L (art. 433quinquies §1 1° Criminal Code) | Economic exploitation 55D (art. 433quinquies §1 3° Criminal Code) | Exploitation in begging 29E (art. 433quinquies §1 2° Criminal Code) | Forced criminality 55F (art. 433quinquies §1, 5° Criminal Code) | Illegal removal of organs 55E (art. 433quinquies §1, 4° Criminal Code) | TOTAL |
|---|------|--|--|--|--|---|-------|
| Antwerp | 2012 | 27 | 28 | 0 | 4 | 0 | 59 |
| | 2013 | 26 | 38 | 1 | 2 | 0 | 67 |
| | 2014 | 26 | 26 | 2 | 1 | 1 | 56 |
| | 2015 | 45 | 30 | 2 | 2 | 0 | 79 |
| | 2016 | 56 | 20 | 3 | 2 | 0 | 81 |
| Brussels | 2012 | 111 | 46 | 4 | 3 | 0 | 164 |
| | 2013 | 116 | 35 | 5 | 14 | 1 | 171 |
| | 2014 | 26 | 25 | 3 | 7 | 0 | 61 |
| | 2015 | 25 | 23 | 2 | 4 | 0 | 54 |
| | 2016 | 66 | 17 | 2 | 3 | 0 | 88 |
| Ghent | 2012 | 28 | 35 | 1 | 3 | 0 | 67 |
| | 2013 | 22 | 52 | 2 | 6 | 0 | 82 |
| | 2014 | 38 | 30 | 3 | 1 | 0 | 72 |
| | 2015 | 47 | 27 | 6 | 5 | 0 | 85 |
| | 2016 | 41 | 52 | 6 | 4 | 0 | 103 |
| Liege | 2012 | 16 | 32 | 2 | 2 | 1 | 53 |
| | 2013 | 22 | 43 | 4 | 15 | 0 | 84 |
| | 2014 | 14 | 25 | 6 | 7 | 0 | 52 |
| | 2015 | 20 | 26 | 0 | 2 | 0 | 48 |
| | 2016 | 11 | 13 | 2 | 3 | 0 | 29 |
| Mons | 2012 | 5 | 22 | 0 | 5 | 0 | 32 |
| | 2013 | 9 | 16 | 0 | 1 | 0 | 26 |
| | 2014 | 6 | 9 | 0 | 0 | 0 | 15 |
| | 2015 | 14 | 18 | 0 | 1 | 0 | 33 |
| | 2016 | 10 | 9 | 1 | 2 | 0 | 22 |
| Federal Public Prosecutor's office | 2012 | 3 | 1 | 0 | 1 | 1 | 6 |
| | 2013 | 1 | 0 | 0 | 1 | 0 | 2 |
| | 2014 | 1 | 0 | 0 | 1 | 0 | 2 |
| | 2015 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2016 | 0 | 1 | 0 | 0 | 0 | 1 |
| TOTAL | 2012 | 190 | 164 | 7 | 18 | 2 | 381 |
| | 2013 | 196 | 184 | 12 | 39 | 1 | 432 |
| | 2014 | 111 | 115 | 14 | 17 | 1 | 258 |
| | 2015 | 151 | 124 | 10 | 14 | 0 | 299 |
| | | 184 | 112 | 14 | 14 | 0 | 324 |

At the national level, of the 324 cases received by criminal prosecutors in 2016, 57% concerned cases involving sexual exploitation offences, 35% involved economic exploitation, 4% concerned the exploitation of begging and 4% concerned forced criminality. It is important to note that the number of cases of economic exploitation is underestimated because the data from the Prosecutor attached to the Employment Courts are not included in this database. In Brussels (75%) and Antwerp (69%) we note that the percentage of cases of sexual exploitation is higher than the average. In Ghent (50%) the same applies to cases of economic exploitation.

At the national level, a slight increase (+8%) in the number of cases was observed between 2015 and 2016, but this number remains lower than the results observed in 2012 and 2013. This increase is mainly due to an increase in the number of cases for sexual exploitation (+21%). The increase was strongest in Brussels (25 cases in 2015, compared to 66 in 2016). The number of cases involving exploitation of begging also increased, but to a lesser extent (10 in 2015 and 14 in 2016). On the other hand, the number of cases of economic exploitation decreased at the national level (-10%). This downward trend was observed everywhere, except in Ghent, where the number almost doubled in one year (27 in 2015 and 52 in 2016).

In 2016, the jurisdiction of Ghent recorded the majority of cases of human trafficking, 32%, followed by the jurisdiction of Brussels (27%) and Antwerp (25%). The jurisdictions of Liège and Mons recorded 9% and 7%, respectively, of the cases of human trafficking. In 2016, the Federal Public Prosecutor's Office registered only one case (0.3% of the total). The evolution of the number of cases between 2015 and 2016 is highly divergent, depending on the jurisdiction. For example, the number of cases in the jurisdiction of Antwerp remained more or less stable (+3%) but there was a significant increase in that of Brussels (+63%) and Ghent (+21%), while the number of cases in the jurisdictions of Liège (-40%) and Mons (-33%) is decreasing. However, the visible increase in Brussels between 2015 and 2016 follows a sharp decline in previous years. If we compare the number of cases in the jurisdiction of Brussels between 2012 and 2016, we see that they have fallen by half (164 in 2012 versus 88 in 2016). Over the same period, the number of cases in the jurisdiction of Ghent increased by 54% and in Antwerp by 37%, while a decrease of 45% was observed in the jurisdiction of Liège and 31% in that of Mons.

Table 7. Number of cases of human trafficking that were brought before the correctional prosecutors during 2016, and that had been dismissed by 10 January 2017

(Source: Database of the College of Prosecutors-General, analysts)

| | Dismissed cases | Total | % |
|--------------------------------|-----------------|------------|------------|
| Sexual exploitation | 50 | 184 | 27% |
| Economic exploitation | 16 | 112 | 14% |
| Exploitation of begging | 6 | 14 | 43% |
| Forced criminality | 8 | 14 | 57% |
| Total | 80 | 324 | 25% |

On 10 January 2017, one out of four cases involving human trafficking launched during 2016 had been dismissed (25%) (see Table 7). The proportion of dismissed cases was particularly high for the offences of forced criminality (57%) and for the cases of exploitation of begging (43%). This shows how difficult it is to bring prosecutions in such cases to a successful conclusion. By way of comparison, on the same date, 27% of cases of sexual exploitation and 14% of cases of economic exploitation had been dismissed.

The number of cases dismissed due to insufficient evidence is particularly high for economic exploitation (87.5%). In the case of sexual exploitation, this percentage is low (54%). On the other hand, the large number of cases dismissed for reasons of expediency (due to "other priorities") (46%) is striking.

3.2. | Presentation of data on human smuggling

The data on the cases of human smuggling offences received by the correctional Public Prosecutors' offices are covered by articles 77bis, 77ter, 77quater and 77quinquies of the Aliens Act.

In 2016, 395 cases of human smuggling were received by the correctional Public Prosecutors' offices (including the federal Public Prosecutor's office), a slight increase of 9% compared to 2015, which follows the upward trend already observed in 2013. More than 3 cases in 4 (77%)

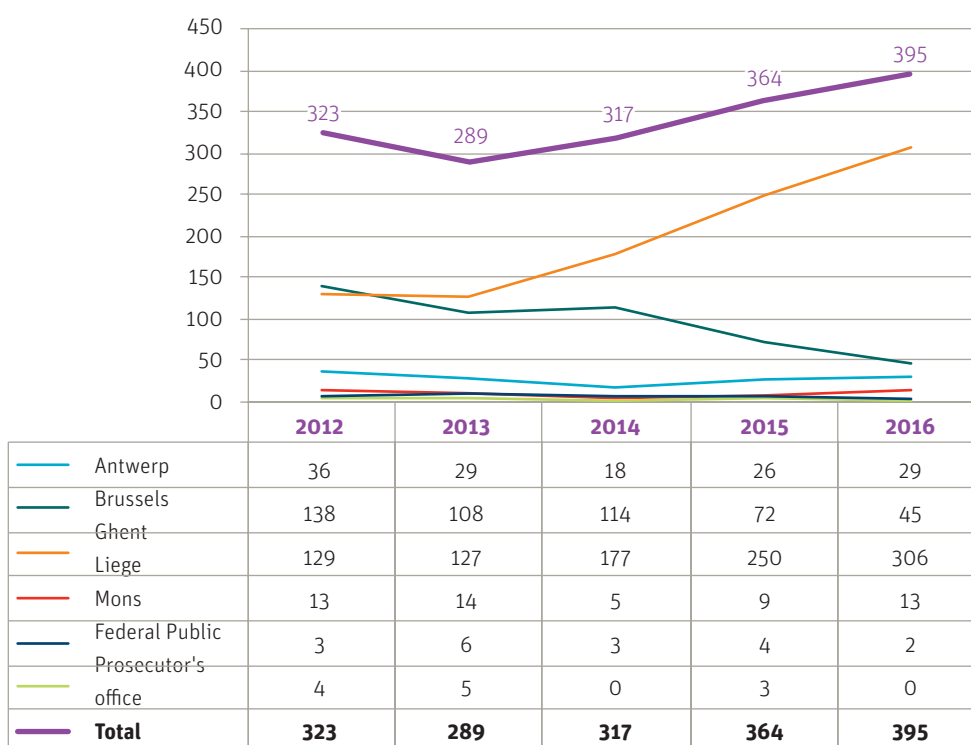
were registered in the jurisdiction of Ghent in 2016 (77%), compared to 11% for Brussels, 7% for Antwerp, 3% for Liège and 1% for Mons (in 2016 no cases of human smuggling were received by the Federal Public Prosecutor's Office). As can be seen from Figuur 3, the number of cases received by the correctional Public Prosecutors in the jurisdiction of Ghent has been steadily increasing since 2013 (127 in 2013 and 306 in 2016), while this figure is falling in Brussels. The same upward trend is also observed in the jurisdictions of Antwerp and Liège, while the tendency in the jurisdiction of Mons and the federal Public Prosecutor's office is declining.

4. DATA FROM THE IMMIGRATION OFFICE

The Immigration Office not only keeps records of the victims of human trafficking and smuggling involved in proceedings, but also of the number of documents issued to victims of human trafficking and smuggling involved in proceedings. In cases with aggravating circumstances, victims of human smuggling may also receive a residence permit. Indeed, the Immigration Office also has data on the number of people apprehended following transit migration. This type of data can be used as an indicator to determine the extent of human smuggling in Belgium.

Figure 3. Evolution of the number of human smuggling cases brought before the correctional divisions of the public prosecutors' offices (including the federal public prosecutor's office) over the period 2012-2016, according to jurisdiction

(Source: Database of the College of Prosecutors-General, analysts)



4.1. | Data on the victims of human trafficking

Table 8. Victims of human trafficking who entered the specific procedure, 2012-2016

(Source: Immigration Office, MINTEH unit)

| Year | Number |
|------|--------|
| 2012 | 127 |
| 2013 | 116 |
| 2014 | 138 |
| 2015 | 117 |
| 2016 | 119 |

2016 was stable compared to the previous year given that, according to data from the Immigration Office, 119 victims of human trafficking were involved in proceedings, compared to 117 in 2015. Table 9 shows that this stability is in fact the result of two opposite trends: over the period 2013-2016, we see an increase in the number of victims of sexual exploitation (37 in 2013 and 48 in 2016), but a decrease in the number of victims of economic exploitation (79 in 2013 and 62 in 2016).

In 2016, men and women were equally represented among the victims of human trafficking, but only women were victims of sexual exploitation, while most men were victims of economic exploitation. Data from the IO also shows that 6 minors were involved in proceedings in 2016, of which 4 were for sexual exploitation and 2 for economic exploitation.

Table 9. Evolution of the number of victims of human trafficking who entered the specific procedure during the period 2013-2016, according to gender, age and form of exploitation

(Source: Immigration Office, MINTEH unit)

| Age | Sexual exploitation | | | | Economic exploitation | | | | Other forms of exploitation | | | | Total | | | |
|-------|---------------------|------|------|------|-----------------------|------|------|------|-----------------------------|------|------|------|-------|------|------|------|
| | 2013 | 2014 | 2015 | 2016 | 2013 | 2014 | 2015 | 2016 | 2013 | 2014 | 2015 | 2016 | 2013 | 2014 | 2015 | 2016 |
| <18 | 4 | 1 | 5 | 4 | 0 | 1 | 3 | 2 | 0 | 3 | 6 | 0 | 4 | 5 | 14 | 6 |
| 18-25 | 15 | 19 | 22 | 23 | 19 | 18 | 9 | 9 | 0 | 1 | 1 | 2 | 34 | 38 | 32 | 34 |
| 26-30 | 8 | 12 | 7 | 7 | 13 | 26 | 6 | 13 | 0 | 0 | 0 | 3 | 21 | 38 | 13 | 23 |
| >30 | 10 | 11 | 10 | 14 | 47 | 41 | 43 | 38 | 0 | 5 | 5 | 4 | 57 | 57 | 58 | 56 |
| Total | 37 | 43 | 44 | 48 | 79 | 86 | 61 | 62 | 0 | 9 | 12 | 9 | 116 | 138 | 117 | 119 |
| Men | 1 | 5 | 2 | 0 | 67 | 74 | 52 | 51 | 0 | 5 | 9 | 8 | 68 | 84 | 63 | 59 |
| Women | 36 | 38 | 42 | 48 | 12 | 12 | 9 | 11 | 0 | 4 | 3 | 1 | 48 | 54 | 54 | 60 |

As Table 11 shows, Morocco and Romania, who have been the frontrunners in recent years, were overtaken by Nigeria in 2016. In 2015, the IO figures numbered 10 Nigerian victims compared to 24 in 2016, which is therefore more than the double. The number of Moroccan victims almost doubled in one year, with 11 in 2015 and 21 in 2016.

Conversely, the number of Romanian victims fell from 39 in 2014 to 23 in 2015, and 13 in 2016. A striking element of these figures is also the high number of Egyptian victims (10 in 2016), a nationality that did not feature in the top 10 victim nationalities in the previous two years.

Table 10. Number of underage victims of human trafficking who entered the specific procedure in 2016

(Source: Immigration Office, MINTEH unit)

| Nationality | Sexual exploitation | Economic exploitation | | Total |
|--------------|---------------------|-----------------------|----------|----------|
| | Women <18 | Women <18 | Men <18 | |
| Nigeria | 3 | | | 3 |
| Morocco | | 1 | | 1 |
| Serbia | 1 | | | 1 |
| Vietnam | | | 1 | 1 |
| Total | 4 | 1 | 1 | 6 |

Of the 6 underage victims of human trafficking involved in proceedings in 2016, 4 were victims of sexual exploitation, including 3 young Nigerian girls and a Serbian girl. The other two minors were victims of economic exploitation. These were a young Moroccan girl and a young man from Vietnam.

Table 11. Victims of human trafficking who entered the specific procedure in 2016, per nationality and form of exploitation (Source: Immigration Office, MINTEH unit)

| Nationality | Sexual exploitation | Economic exploitation | Exploitation of begging | Other forms of exploitation | Total |
|----------------|---------------------|-----------------------|-------------------------|-----------------------------|------------|
| Nigeria | 24 | 0 | 0 | 0 | 24 |
| Morocco | 0 | 21 | 0 | 0 | 21 |
| Romania | 3 | 7 | 1 | 2 | 13 |
| Egypt | 0 | 10 | 0 | 0 | 10 |
| Hungary | 2 | 3 | 0 | 0 | 5 |
| China | 3 | 0 | 0 | 1 | 4 |
| Togo | 3 | 1 | 0 | 0 | 4 |
| Vietnam | 0 | 1 | 0 | 3 | 4 |
| Algeria | 0 | 3 | 0 | 0 | 3 |
| Bulgaria | 3 | 0 | 0 | 0 | 3 |
| Spain | 0 | 3 | 0 | 0 | 3 |
| Ethiopia | 1 | 2 | 0 | 0 | 3 |
| Ghana | 2 | 1 | 0 | 0 | 3 |
| Serbia | 2 | 1 | 0 | 0 | 3 |
| India | 0 | 2 | 0 | 0 | 2 |
| Portugal | 0 | 1 | 0 | 1 | 2 |
| United Kingdom | 2 | 0 | 0 | 0 | 2 |
| Tunisia | 0 | 2 | 0 | 0 | 2 |
| Brazil | 0 | 1 | 0 | 0 | 1 |
| Cameroon | 0 | 1 | 0 | 0 | 1 |
| Lithuania | 0 | 0 | 0 | 1 | 1 |
| Pakistan | 0 | 1 | 0 | 0 | 1 |
| Senegal | 1 | 0 | 0 | 0 | 1 |
| Sierra Leone | 1 | 0 | 0 | 0 | 1 |
| Slovakia | 0 | 1 | 0 | 0 | 1 |
| Thailand | 1 | 0 | 0 | 0 | 1 |
| Total | 48 | 62 | 1 | 8 | 119 |

Table 12. Documents provided by the Immigration Office to victims of human trafficking and smuggling, 2012-2016

(Source: Immigration Office, MINTEH unit)

| | | 2012 | 2013 | 2014 | 2015 | 2016 |
|--|-------------------------|------------|------------|------------|------------|------------|
| BGV 45 days | | 36 | 30 | 33 | 17 | 10 |
| Certificate of immatriculation (AI) | | 143 | 117 | 139 | 115 | 119 |
| Extension of AI | | 12 | 15 | 11 | 23 | 27 |
| Human trafficking | Temporary BIVR (Card A) | 106 | 100 | 85 | 90 | 84 |
| | Extension Card A | 441 | 461 | 450 | 426 | 421 |
| | Unlimited BIVR (Card B) | 35 | 46 | 33 | 6 | 49 |
| Humanitarian | Temporary BIVR (Card A) | 4 | 2 | 2 | 29 | 3 |
| | Extension Card A | 51 | 31 | 31 | 36 | 20 |
| | Unlimited BIVR (Card B) | 11 | 26 | 22 | 36 | 21 |
| Annex 13 (BGV) | | 7 | 11 | 14 | 2 | 2 |
| Total | | 846 | 839 | 820 | 780 | 756 |

Tabel 12 is currently the only overview that gives an indication of the number of persons with the status of victim of human trafficking or smuggling. A certificate of registration in the Aliens Register (BIVR), of a temporary and/or extended nature, is always for a period of six months. Normally, victims receive it twice a year as long as they have the status. The 421 renewals of the BIVR (human trafficking) therefore concern some 210 individual victims.

The 756 decisions regarding the issuance or renewal of a residence permit relate to new victims from 2016, but also to those of previous years, who are in the victim status phase, and who have been the subject of one or more decisions. This table shows a decrease in the total number

of documents issued to victims of human trafficking and smuggling: of the 846 in 2012, there were still 756 in 2016.

Of those 756 documents issued by the IO to victims of human trafficking and smuggling in 2016, 29 went to minors (Table 13). While the figures on victims involved in proceedings in 2016 show an equal distribution between men and women, the documents issued in 2016 by the IO mainly pertain to men (454 documents issued to men (60%) compared to 302 for women (40%)).

Table 13. Number and types of documents provided by the Immigration Office to victims of human trafficking and smuggling in 2016, per sex and age group

(Source: Immigration Office, MINTEH unit)

| | | Women | | | Men | | | Total |
|---|-------------------------|-----------|------------|------------|-----------|------------|------------|------------|
| | | -18 | +18 | Total | -18 | +18 | Total | |
| BGV 45 days | | | 5 | 5 | | 5 | 5 | 10 |
| Certificates of Immatriculation (AI) | | 3 | 58 | 61 | 3 | 55 | 58 | 119 |
| Extension of AI | | 3 | 21 | 24 | | 3 | 3 | 27 |
| Human trafficking | Temporary BIVR (Card A) | 4 | 38 | 42 | 2 | 40 | 42 | 84 |
| | Extension Card A | 7 | 122 | 129 | 7 | 285 | 292 | 421 |
| | Unlimited BIVR (Card B) | | 15 | 15 | | 34 | 34 | 49 |
| Humanitarian | Temporary BIVR (Card A) | | 3 | 3 | | | | 3 |
| | Extension Card A | | 12 | 12 | | 8 | 8 | 20 |
| | Unlimited BIVR (Card B) | | 10 | 10 | | 11 | 11 | 21 |
| Annex 13 | | | 1 | 1 | | 1 | 1 | 2 |
| Total | | 17 | 285 | 302 | 12 | 442 | 454 | 756 |

4.2. | Data on the victims of human smuggling

Victims of human smuggling with aggravating circumstances can also invoke victim status. A residence permit is only issued to these victims if, for example, there is a situation of violence or if they are minors.

This involved 13 victims in 2016: 5 women (all adults) and 8 men (of whom 2 were minors). Iraq is the most represented nationality with 4 victims, followed by Iran (2 victims).

Table 14. Evolution of the number of human smuggling victims with aggravating circumstance who entered the specific procedure, 2012-2016

(Source: Immigration Office, MINTEH unit)

| Year | Number |
|------|--------|
| 2012 | 30 |
| 2013 | 13 |
| 2014 | 18 |
| 2015 | 14 |
| 2016 | 13 |

Table 15. Victims of human smuggling who entered the specific procedure in 2016

(Source: Immigration Office, MINTEH unit)

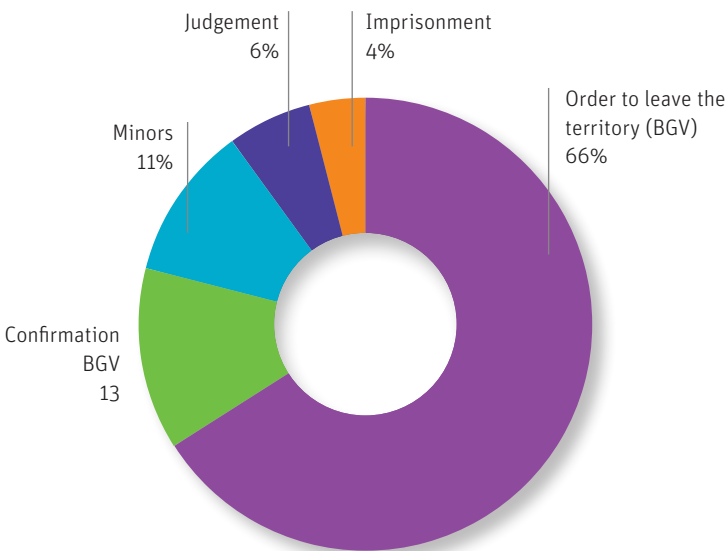
| Nationality | Women | | | Men | | | Total |
|-------------------------|----------|----------|----------|----------|----------|----------|-----------|
| | 18 - 25 | 26 - 30 | >30 | <18 | 18 - 25 | >30 | |
| Iraq | | | | 1 | 2 | 1 | 4 |
| Iran | | | | | 1 | 1 | 2 |
| Albania | | | | | 1 | | 1 |
| Congo (DR) | | | 1 | | | | 1 |
| Ivory Coast | | | 1 | | | | 1 |
| Not specified | 1 | | | | | | 1 |
| Palestinian territories | 1 | | | | | | 1 |
| Senegal | | 1 | | | | | 1 |
| Somalia | | | | 1 | | | 1 |
| Total | 2 | 1 | 2 | 2 | 4 | 2 | 13 |

4.3. | Figures from the Immigration Office that are useful as indicators for human smuggling

Table 16. Nationalities of persons apprehended in Belgium following transit migration
(Source: Immigration Office)

| Nationality: | 2012 | 2013 | 2014 | 2015 | 2016 | Evolution 2010-2016 | Evolution 2015-2016 |
|-------------------------|--------------|--------------|--------------|--------------|--------------|---------------------|---------------------|
| Iran | 302 | 229 | 290 | 758 | 2,354 | ██████████ | x3 |
| Syria | 74 | 123 | 483 | 972 | 1,960 | ██████████ | x2 |
| Iraq | 58 | 30 | 37 | 775 | 1,758 | ██████████ | x2 |
| Eritrea | 49 | 89 | 236 | 126 | 727 | ██████████ | x6 |
| Afghanistan | 255 | 157 | 167 | 474 | 681 | ██████████ | x1 |
| Sudan | 4 | 11 | 17 | 45 | 508 | ██████████ | x11 |
| India | 94 | 191 | 94 | 56 | 488 | ██████████ | x9 |
| Algeria | 490 | 159 | 113 | 138 | 281 | ██████████ | x2 |
| Albania | 105 | 151 | 155 | 213 | 205 | ██████████ | x1 |
| Morocco | 71 | 74 | 121 | 106 | 170 | ██████████ | x2 |
| Pakistan | 76 | 22 | 42 | 39 | 137 | ██████████ | x4 |
| Libya | 10 | 10 | 10 | 6 | 129 | ██████████ | x22 |
| Egypt | 4 | 6 | 9 | 5 | 108 | ██████████ | x22 |
| Palestinian territories | 48 | 15 | 11 | 9 | 84 | ██████████ | x9 |
| Vietnam | 95 | 9 | 13 | 54 | 82 | ██████████ | x2 |
| Tunisia | 21 | 8 | 23 | 22 | 60 | ██████████ | x3 |
| Not specified | 0 | 0 | 0 | 0 | 39 | ██████████ | NA |
| Somalia | 0 | 6 | 8 | 25 | 33 | ██████████ | x1 |
| Ethiopia | 1 | 0 | 5 | 2 | 24 | ██████████ | x12 |
| Kuwait | 5 | 5 | 23 | 16 | 19 | ██████████ | x1 |
| Other | 71 | 34 | 34 | 75 | 68 | ██████████ | x1 |
| Total | 1,833 | 1,329 | 1,891 | 3,916 | 9,915 | ██████████ | x3 |

Figure 4. Outcomes following arrests in the context of transit migration, 2016
(Source: Immigration Office)



Tabel 16 shows the sharp increase in the number of persons apprehended in Belgium following transit migration. Between 2014 and 2015, the number of administrative arrests had already doubled, and between 2015 and 2016 it almost tripled. While in 2012 there were 1,833 arrests following transit migration, five times as many were counted in 2016, at 9,915. The main nationalities of the persons arrested correspond with the asylum flows observed in recent years, with Iranians at the top spot. Iranians alone account for 24% of the people arrested in 2016 following transit migration. This was followed by Syrians (20%), Iraqis (18%), Eritreans (7%) and Afghans (7%).

Over the period 2012-2016 (see penultimate column of Tabel 16) we observe not only a decrease in the number of Algerians (and to a lesser extent Vietnamese) but also an increasing trend for all nationalities. The last column of the table shows the evolution over a shorter period, 2015-2016. Among the various nationalities, there is a general increase (with a few exceptions). Although the number of arrests of people from Africa remains rather marginal compared to the number of arrests of people from the Middle East, there was also a significant increase for this group between 2015 and 2016. For example, 6 times as many Eritreans, 11 times as many Sudanese and 22 times as many Libyans and Egyptians were arrested. Figuur 4 shows the consequences of these arrests. For example, it appears that 66% of the arrests after transit migrations led to an order to leave the territory (BGV), 13% to the upholding of a BGV, 11% of these persons declared being minors, 6% were released, and 4% incarcerated. The consequences of these arrests vary greatly according to the nationality of the arrested person. Albanians arrested after transit migration were detained in 64% of cases, Pakistanis in 32%, and Afghans in 24% of cases. Other nationalities are incarcerated much less often following such arrests. Iranians, Syrians and Iraqis, who lead the top three nationalities in terms of arrests, were imprisoned in only 1.2%, 0.1% and 0.3% of cases respectively.

5. DATA FROM SPECIALISED VICTIM RECEPTION CENTRES

We report here on the figures for the victims for whom the specialised centres started providing initial support during 2016. The figures relating to this new support follow the typology defined in the circular of 26 September 2008.⁴⁵³ There is talk of guidance as soon as the first phase (reflection period) is started and therefore immediately after the order to leave the territory⁴⁵⁴ has been issued. The type of psychosocial and legal-administrative guidance differs according to the centre.

This annual report includes only integrated tables: one for human trafficking and one for human smuggling, each with age, gender, nationality and method of exploitation. Each specialised centre has provided the necessary figures for this purpose, which Myria has included individually in a table.

On the basis of the following tables, it is not possible to form a picture of all support activities or of the reception capacity of the centres. The duration of the support, which is an essential indicator, is not covered here, but in the context of the analysis and a description of the guidance process. The figures provided by the Immigration Office for the extension of documents in the context of proceedings for human trafficking are a possible indicator of this. The evolution between 2012 and 2016 is shown in Table 12.

The framework of this report does not lend itself to providing an overview or an analysis of the reports of persons for whom no support was started, even though this would certainly have been relevant to the policy on, and knowledge of, the phenomenon of human trafficking

⁴⁵³ Circular letter of 26 September 2008 on the introduction of multidisciplinary cooperation with regards to victims of human trafficking and/or certain more serious forms of human smuggling. On 23 December 2016, a new circular letter on multidisciplinary cooperation between all relevant departments was signed and published in the Belgian Official Journal of 10 March 2017. This circular letter updates and replaces the circular letter of 26 September 2008.

⁴⁵⁴ Since 20 May 2017, this order to leave the territory has been replaced by Annex 15 (see Law of 30 March 2017 amending Article 61/2 of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals in order to replace the order to leave the territory with a temporary residence document in the procedure for victims of trafficking in human beings, *BOJ*, 10 May 2017). See Part 3, Chapter 1, point 2.1 of this report.

and the exploitation of people. The processing of all reports is a huge workload and responsibility for the centres. For more information, please refer to the annual reports of these centres.

The Belgian system is a closed system. The figures for the support provided by the specialised centres and the issued documents (IO) are therefore largely in line with those of the IO, as can be seen in Tabel 17.

Table 17. New support initiated by the specialised centres between 2012 and 2016 for victims of human trafficking and smuggling
(Source: specialised centres, processing by Myria)

| Year | Number |
|------|--------|
| 2012 | 174 |
| 2013 | 148 |
| 2014 | 174 |
| 2015 | 153 |
| 2016 | 145 |

5.1. | Presentation of data on victims of human trafficking

Table 18. New support initiated by the specialised centres, only for victims of human trafficking

(Source: specialised centres, processing by Myria)

| Year | Number |
|------|--------|
| 2012 | 143 |
| 2013 | 133 |
| 2014 | 158 |
| 2015 | 135 |
| 2016 | 133 |

Table 19. New support initiated in 2016 for victims of trafficking in human beings, according to the form of exploitation, gender and age group

(Source: specialised centres, processing by Myria)

| Nationality | Sexual exploitation | | Economic exploitation | | Exploitation of begging | | Forced criminality | | Other forms of exploitation | | Total | |
|-------------------------|---------------------|-------------|-----------------------|-------------|-------------------------|-------------|--------------------|-------------|-----------------------------|-------------|-------|---|
| | Women | Men | Women | Men | Women | Men | Women | Men | Women | Men | | |
| | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | Minor Adult | | |
| Nigeria | 4 | 21 | | | | | | | | | 25 | |
| Morocco | | | 5 | 17 | | | | | | | 22 | |
| Romania | 5 | | 1 | 7 | 1 | | | 2 | | | 16 | |
| Egypt | | | | 11 | | | | | | | 11 | |
| Hungary | 4 | | 1 | 3 | | | | | | | 8 | |
| Thailand | 5 | | | | | | | | | | 5 | |
| Bulgaria | 1 | 3 | | | | | | | | | 4 | |
| China | 3 | | | | | | | | | | 3 | |
| Spain | | | | 3 | | | | | | | 3 | |
| Portugal | 1 | | 1 | 1 | | | | | | | 3 | |
| Vietnam | | | | 1 | | | | 2 | | | 3 | |
| Afghanistan | | | | 2 | | | | | | | 2 | |
| Algeria | | | | 2 | | | | | | | 2 | |
| Belgium | 2 | | | | | | | | | | 2 | |
| Ethiopia | 1 | | 1 | | | | | | | | 2 | |
| United Kingdom | 1 | 1 | | | | | | | | | 2 | |
| India | | | 1 | 1 | | | | | | | 2 | |
| Lithuania | | | | | | | | 2 | | | 2 | |
| Serbia | | | 1 | | | | | | 1 | | 2 | |
| Tunisia | | | | 2 | | | | | | | 2 | |
| Albania | 1 | | | | | | | | | | 1 | |
| Bangladesh | | | | 1 | | | | | | | 1 | |
| Brazil | | | | 1 | | | | | | | 1 | |
| Cameroon | | | 1 | | | | | | | | 1 | |
| Croatia | | | | | | | 1 | | | | 1 | |
| Ghana | | | | 1 | | | | | | | 1 | |
| Pakistan | | | | 1 | | | | | | | 1 | |
| Palestinian territories | 1 | | | | | | | | | | 1 | |
| Senegal | 1 | | | | | | | | | | 1 | |
| Sierra Leone | 1 | | | | | | | | | | 1 | |
| Slovakia | | | | 1 | | | | | | | 1 | |
| Togo | | | | 1 | | | | | | | 1 | |
| Sub-total (age) | 6 | 50 | 0 | 0 | 0 | 12 | 1 | 55 | 0 | 1 | 0 | 0 |
| Sub-total (gender) | 56 | 0 | 12 | 56 | 1 | 0 | 1 | 6 | 1 | 0 | 133 | |
| Total | 56 | | 68 | | 1 | | 7 | | 1 | | | |

In 2016, specialist centres started to provide support to 133 victims of human trafficking. These were mainly victims of economic exploitation (68 persons) and sexual exploitation (56 persons). They also received seven victims of exploitation of forced criminality, one for begging and one for another type of exploitation.⁴⁵⁵ There were no new victims of organ trafficking in 2016.

Victims of sexual exploitation were mainly women (55 women and one man), while economic exploitation is mainly male (12 women versus 56 men).

The underage victims account for 5% of the victims who received support from a specialised centre in 2016 (7 minors out of 133 victims). Six of these seven victims were young girls who were victims of sexual exploitation (four Nigerian, one Bulgarian and one British). There was also a young man, with Vietnamese nationality, who was a victim of economic exploitation.

Nigeria is the most significant country of origin of the victims who received support with a specialised centre in 2016. The top 5 nationalities show that 25 victims were Nigerian, 17 Romanian, 11 Egyptian and 7 Hungarian. All 25 Nigerian victims were women who were victims of sexual exploitation (4 of them were minors). The 22 Moroccan victims were all victims of economic exploitation (5 women and 17 men) and this was also the case for the Egyptian victims (11 men). The Romanian victims, on the other hand, were exploited in different ways.

5.2. | Presentation of data on victims of human smuggling

Table 20. New support initiated in 2016 for victims of human smuggling, according to the form of exploitation, gender and age group

(Source: specialised centres, processing by Myria)

| Nationality | Women | | Men | | Total |
|-------------|-------|-------|-------|-------|-------|
| | Minor | Adult | Minor | Adult | |
| Iraq | | | 1 | 5 | 6 |
| Iran | | | | 2 | 2 |
| China | | 1 | | | 1 |
| Albania | | | | 1 | 1 |
| DR Congo | | 1 | | | 1 |
| Senegal | | 1 | | | 1 |
| Total | | 3 | 1 | 8 | 12 |

A decrease is observed compared to 2015, the year in which 18 victims of human smuggling received support from a specialised centre. One third came from Afghanistan.

The trends in terms of nationalities between victims of human smuggling and victims of human trafficking are very different. In this case, 50% of the victims come from Iraq (6 men, including one minor).

455 It subsequently turned out that this was an intra-family problem.

6. DATA FROM THE JUDICIARY

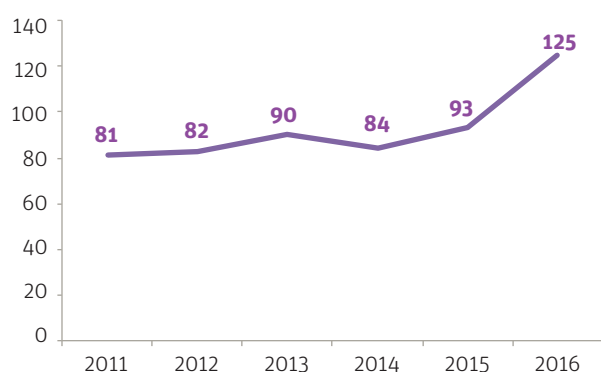
At Myria's request, the Criminal Policy Office provided information on convictions for human trafficking and smuggling. These statistics have been compiled on the basis of data from the central criminal registry. All decisions with the force of res judicata are registered here and the court clerks of the courts and tribunals transfer them to the criminal registry. This is still done by hand (whereas the police and Public Prosecutors process this data digitally).

6.1. | Presentation of data on human trafficking

The figures⁴⁵⁶ presented here relate to the number of final convictions, i.e. convictions that cannot be appealed against, in other words final sentences and judgements where one or more offenders can be convicted. A conviction refers to sentences or judgements for which one or more persons had to appear. The forms of exploitation could not be sufficiently recorded to be included in this annual report.

Figure 5. Evolution of the number of convicted perpetrators of human trafficking during the period 2011-2016

(Source: Criminal Justice Policy Service)



Each conviction relates to a convicted offender (convictions are not the same as court decisions, which may consist of several convictions).

The number of convictions increased in 2016 compared to the previous year (an increase of 34% between 2015 and 2016). Of the 125 convicted offenders in 2016, at least 18 were involved in sexual exploitation, 11 in economic exploitation offences and one in the exploitation of a person to force them to commit offences or misconduct. Due to the method of implementation, information on the type of exploitation is only available for about 30% of the convictions.

Partial information on the aggravating circumstances is available. For example, in 71 decisions the abuse of vulnerability was taken into account, and in 47 decisions, the use of violence and threats was taken into account. Different aggravating circumstances may apply to the same offender. In total, 231 aggravating circumstances were taken into account in 2016.

A total of 384 sentences were handed down for the 125 convictions (see Tabel 21). Indeed, different types of sentences can be ordered simultaneously for the same conviction (e.g. a offender can be sentenced simultaneously to imprisonment and a fine, resulting in a total of two decisions).

Table 21. Sentences given for 125 convictions handed down in 2016 for human trafficking offences

(Source: Criminal Policy Office)

| | Rulings | Suspended (full or partial) |
|-------------------------------|------------|-----------------------------|
| Prison sentence | 113 | 79 |
| Fine | 117 | 54 |
| Confiscation order | 55 | 1 |
| Deprivation of rights | 96 | 0 |
| Conviction (without sentence) | 3 | 0 |
| Total | 384 | 134 |

⁴⁵⁶ The information in this report is the result of a data extraction on 30 January 2017 (Extraction Report of 03/03/2017).

Table 22. Duration of prison sentences for convictions of human trafficking in 2016

(Source: Criminal Policy Office)

| | Number of sentences | % |
|--------------------|---------------------|------------|
| Less than one year | 11 | 10 |
| 1 - 3 years | 55 | 49 |
| 3 - 5 years | 33 | 29 |
| > 5 years | 14 | 12 |
| Total | 113 | 100 |

In 2016, 30% of persons convicted of human trafficking had Belgian nationality (see Tabel 23). Of the convicted foreign nationals, the top 5 consisted of Romanians (9%), Albanians (6%) Bulgarians (6%), French (5%) and Dutch (5%). The convicts were mainly men. Men were involved in 80% of the cases, women in 18% (for 2% of the convictions, information on gender was missing).

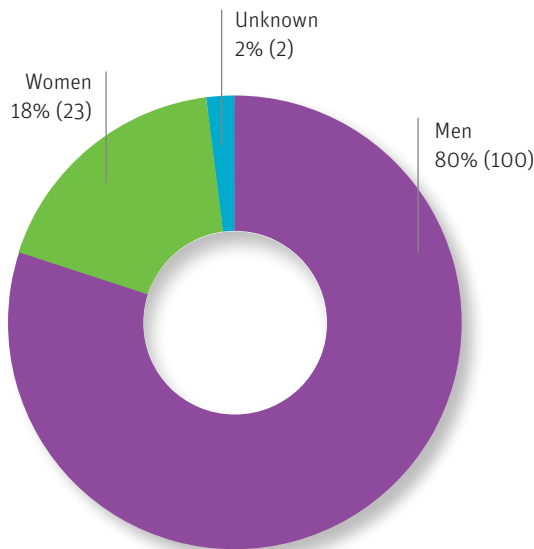
Table 23. Top 10 of the most prevalent nationalities of persons convicted of acts of human trafficking in 2016

(Source: Criminal Justice Policy Service)

| Nationality | Number of persons convicted |
|------------------------|-----------------------------|
| Belgium | 37 |
| Romania | 11 |
| Unknown/not registered | 8 |
| Albania | 8 |
| Bulgaria | 8 |
| France | 6 |
| Netherlands | 6 |
| China | 5 |
| Portugal | 4 |
| United Kingdom | 3 |
| Other | 29 |
| Total | 125 |

Figure 6. Gender of persons convicted of human trafficking offences in 2016 (N=125)

(Source: Criminal Justice Policy Service)



6.2. | Presentation of data on human smuggling

There were at least 127 final convictions for human smuggling in 2016.

CONCLUSION

The number of offences related to **human trafficking** registered by the police decreased over the period 2012-2016. In 2016, offences were recorded mainly in Brussels, the province of Antwerp, Hainaut and East Flanders. More than half of the criminal offences concerned sexual exploitation. The second type of exploitation for which police recorded offences is economic exploitation. Offences relating to the exploitation of begging and forced criminality are less frequent. Illegal organ trafficking is exceptional.

In 2016, the number of victims of human trafficking included in proceedings remained stable compared to the previous year. 2016 was marked by a significant number of Nigerian victims of sexual exploitation, as a result of the many cases involving victims of that nationality.

The number of cases received by public prosecutors in the period 2012-2016 for human trafficking offences decreased slightly at the national level. But in fact, this is a reflection of different trends depending on the jurisdiction: an increase was visible in the districts of Antwerp and Ghent, while there was a decrease in the districts of Brussels, Liège and Mons.

In recent years, there has been a sharp increase in **human smuggling**. This can be deduced from police figures: the number of offences tripled between 2012 and 2016. In the IO figures regarding arrests following transit migration, there was also an increase over the same period, which was particularly pronounced between 2015 and 2016. Police figures also show that the offences were mainly recorded in Ghent, Brussels and Bruges. The figures provided by IO indicate that the main nationalities of the persons arrested following transit migration are Iranians, Syrians and Iraqis.

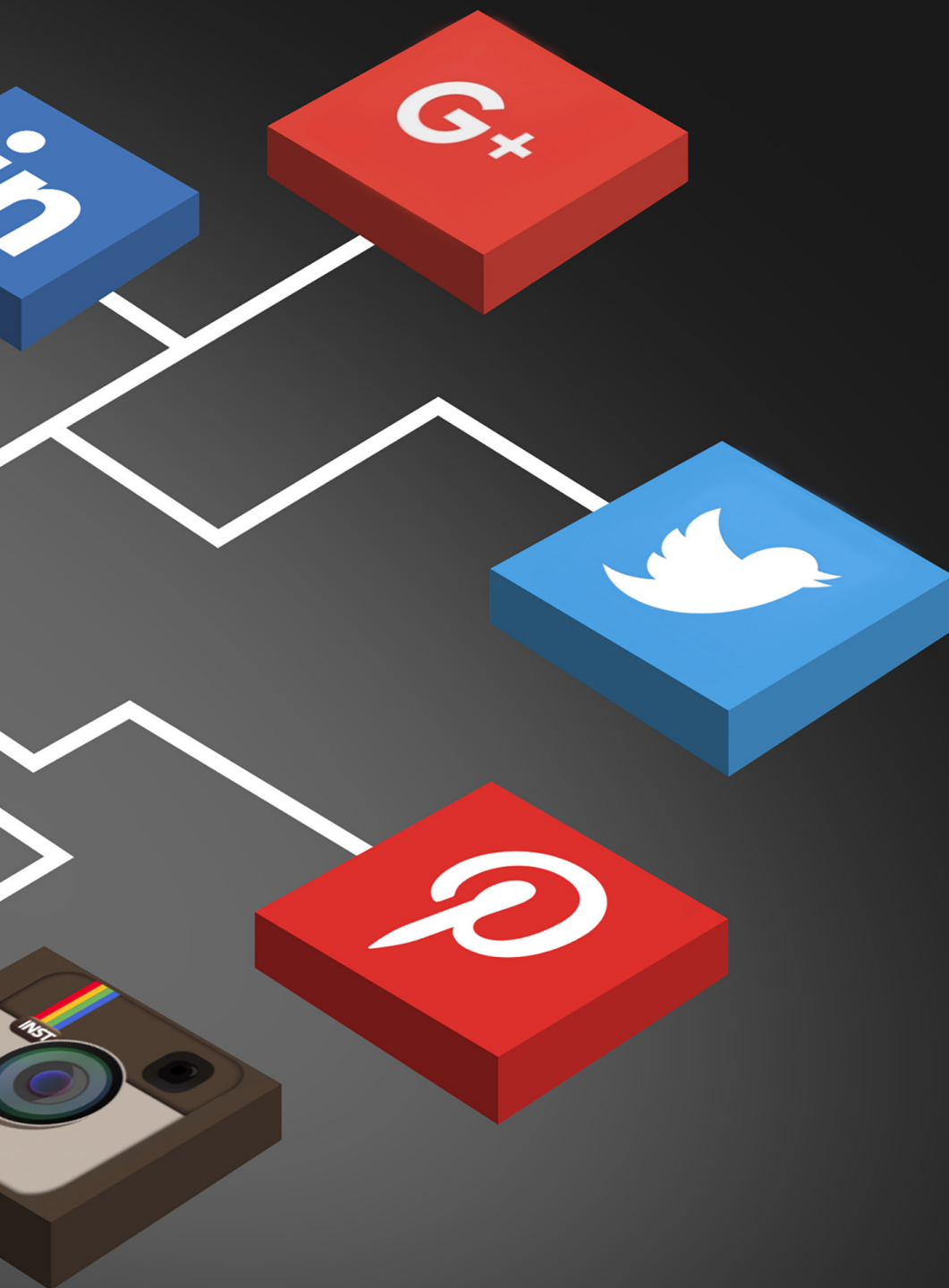
There was also an increase in the number of cases brought before the public prosecutors concerning human smuggling. But this increase at the national level is largely the result of a sharp increase in the district of Ghent (mainly cases related to the E40), while we see a strong decrease in the jurisdiction of Brussels and a slight decrease in Antwerp.

Despite the sharp increase observed in the number of offences and arrests, the number of victims of human smuggling who entered the specific procedure (IO figures) decreased over the period 2012-2016.



Part 5

Recommendations



1. GENERAL RECOMMENDATIONS ON HUMAN TRAFFICKING AND SMUGGLING

1.1. | The front-line services and magistrates need to continue to pay attention to victims exploited in the household help sector.

With the symbolic trial of the princesses from the United Arab Emirates, which is covered extensively in the case law overview, and for which Myria initiated civil proceedings, Myria would like to draw attention to the fact that human trafficking also concerns less well-known forms of exploitation, such as the exploitation of domestic help. It is a blatant form of disguised exploitation with vulnerable victims, in which the exploiter often holds a dominant position. This form of exploitation is much more difficult to detect, because it takes place in closed circles. It is crucial that the judiciary, police and inspectorates continue to invest in such investigations as a matter of priority.

Myria insists that the fight against human trafficking and smuggling must remain an absolute priority at the policy level and in the field, with magistrates and the front-line services.

1.2. | The hotel sector should be made more aware of structural situations of economic exploitation of domestic aid.

The trial of the princesses of the United Arab Emirates shows that there can be structural abuses of economic exploitation in the hotel sector; for example, when an entire floor is rented out exclusively for a longer period of time and there are indications of abuse. The hotel sector will no longer be able to claim ignorance in the future. Myria argues that with this final judgement, attention and awareness of this problem must be raised in sectors such as the hotel sector. This important ruling should therefore make the hotel sector more aware of such

trafficking practices so that, in the future, a joint liability can be invoked by the judiciary in the event of silence.

1.3. | Protection of victims: reception centres must have the necessary resources to fulfil their duties.

The reception centres for victims do not yet have the structural funding to fulfil their duties. Their subsidies have also been reduced following the closure of the Federal Impulse Fund for Immigrant Policy (FIM) as part of the Sixth State Reform. When this report was being finalised (July 2017), the federal level was still unable to provide guarantees on the budgetary situation of the centres for 2017 and 2018. This situation will jeopardise the support of victims by these centres. In line with the government's action plan, Myria calls on the federal government to find a solution to this persistent problem.

1.4. | Following the reform of the Social Inspectorate, efforts will need to be made to ensure that the fight against human trafficking remains one of the priorities of the new inspectorate, as it was in the past.

Since 1 July 2017, the inspectorate of the National Social Security Office and the Social Inspectorate of the FPS Social Security have been merged into a single inspectorate within the National Social Security Office. This merger is part of the federal government's policy of stepping up the fight against tax and social security fraud by, inter alia, strengthening the inspectorates and streamlining their operation.

Belgium has been an international benchmark in the fight against human trafficking for nearly two decades, especially in the area of economic exploitation. As an independent national rapporteur on human trafficking, Myria does not expect the reform of the social inspection services to put a brake on this clout and expertise. Over the last ten years, the Social Inspectorate has ensured, in the fight against human trafficking for the purpose of economic exploitation, that a strong policy on paper was translated into an effective policy on the ground.

GRETA (the Council of Europe's Expert Group on Trafficking in Human Beings, which is responsible for monitoring the Council of Europe Convention

on Trafficking in Human Beings) has also repeatedly underlined Belgium's progressive approach, in particular the role and specialisation of the social inspectorates. It praised their resolve in proactively initiating investigations and prosecuting human trafficking offences.

2. SPECIFIC RECOMMENDATIONS: THE ROLE OF SOCIAL MEDIA AND THE INTERNET IN HUMAN TRAFFICKING AND SMUGGLING

2.1. | The use of social media and the internet as a method of investigation and source of evidence should be encouraged.

It has been observed in the cases that the police also use social media and the internet as a method of investigation in their investigative work. Through open source investigation, they detect victims and identify suspects. This approach constitutes significant added value when suspects are questioned. Victims are also sometimes able to virtually locate the place where they are being exploited. Social media can also provide added value in financial investigations. Data can also be requested by the judiciary from social media companies such as Facebook.

Courts regularly refer to the results of such investigations in their justifications for judgements and as objective evidence. Investigators should therefore make more use of social media in their investigations.

2.2. | Particularly in investigations of economic exploitation, a lot still needs to be invested in the use of social media and the internet as investigative tools.

Police and magistrates use social media and the internet as investigative tools in cases of human trafficking for the purpose of sexual exploitation, and in cases of human smuggling.

Myria has also observed that social media and the internet are much less present as investigative tools in cases of economic exploitation, whereas it could be useful, for example, during the questioning of a victim in identifying a location via Google Maps. The cases and case law show that traffickers clearly use social media to recruit their victims at the recruitment stage. Analysis of Facebook profiles and chat messages on WhatsApp, Skype etc., can provide significant added value. The social inspectorates must pay more attention to the role of social media as an investigative tool, and must also be trained in this regard.

2.3. | The front-line services and magistrates should be adequately trained and informed on the use of social media and the internet as an investigative tool.

There is a need for more knowledge among front-line services (the police and inspectorates) and magistrates, who need to evolve sufficiently with current technologies so that they can also make use of them. As such, there needs to be continued training, as well as practical on-the-job training, with self-participation behind a computer.

2.4. | The front-line services and magistrates need to have sufficient resources to be able to use social media and the internet as investigative tools.

Smartphones are invaluable during an investigation. By analysing computers or smartphones, incriminating photos and chat messages can be traced. Based on an analysis of a complete chat conversation, the whole process endured by the victim can be reconstructed.

To this end, the police need more resources. During the interviews, Myria learned that in some judicial districts, a lot of information was lost in human trafficking and smuggling cases, because information in smartphones could not be read. In addition, websites, dating sites and Facebook profiles must also be investigated. This requires not only investment in IT, but also more capacity and know-how within the police.

2.5. | At the international level, best practice in the area of social media and the internet should be exchanged, as an investigative tool.

In its survey of EU countries, the European Migration Network (EMN) identified that most European countries use social media and the internet as an investigative tool to gather evidence in the fight against human trafficking and smuggling.

At the European level, international cooperation should be facilitated, inter alia, through the exchange of best practice. Eurojust could play a role in this respect. For example, this could be structurally embedded in a future forum which stimulates the use of social media in international cooperation, and regularly exchanges best practice.

2.6. | The cumbersome cooperation procedures with social media companies such as Facebook must be standardised and improved. In addition, these social media companies themselves must also develop strategies to combat human trafficking and smuggling.

Based on the cases, Myria has observed that there is cooperation between the judiciary and certain social media companies, including Facebook. However, there is still room for improvement, as there are several issues with the cumbersome procedure. The application is made via a request for legal assistance through a liaison officer who acts as the central contact point for a given country. In countries such as the US, this can take a long time. These procedures could easily be standardised and improved, for example through Eurojust, in order to work faster and more efficiently.

Partnerships should also be sought with social media managers and other providers from this industry. A dialogue should be initiated with these parties on better practices to combat and prevent human trafficking and smuggling.

The private companies managing social media should also recognise (some already do) that perpetrators of human trafficking and smuggling make use of their platforms. These companies should therefore take measures to implement proposals and technologies which tackle human trafficking, including, for example, the online reporting mechanism on Facebook.

In addition, internet platforms can be developed to strengthen the resilience of victims of human trafficking and smuggling. An example of good practice is the Polish website where drivers can exchange their experiences in the transport sector to protect their colleagues from abuse.⁴⁵⁷

⁴⁵⁷ Another US example: www.truckersagainstrafficking.org/ See also: <https://www.thetruckersreport.com/preventing-human-trafficking-how-truckers-are-fighting-the-problem>.

2.7. | Scientific research on the use of social media and the internet as an investigative tool and as a source of evidence in case law should be fostered.

There is scant scientific research on the role of social media and the internet as investigative tools for the police and judiciary in the fight against human trafficking and smuggling. Understanding of the new technologies and their use should be encouraged. For example, a comparative scientific study on the role and impact of social media and the internet could be carried out, as a source of objective evidence for the judiciary.

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The purpose of the Annual Report on *Human Trafficking and Smuggling* is to provide an independent assessment of the evolution and results of the fight against human trafficking and smuggling.

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