

CHAPTER 1: BELGIAN LEGAL FRAMEWORK

The international instruments that tackle human trafficking, such as the United Nations Palermo Protocol¹⁹ or the Council of Europe Convention²⁰, don't explicitly include forced begging as an explicit form of human trafficking. On the other hand, Article 2 of European Directive 2011/36/EU on human trafficking²¹ explicitly cites begging among the possible forms of forced labour or services, as a component of human trafficking, alongside the action and the means²².

In Belgium, begging as such isn't a punishable offence. The offence of begging

was actually abolished in 1993²³. Therefore, the communes cannot actually forbid begging²⁴. However, some of them prohibit it or control it on the basis of their police powers in terms of hygiene, safety and public peace²⁵. For instance, the city of Ghent introduced it as an administrative offence that can be punished by a municipal administrative sanction, in application of Article 119bis of the new municipal law²⁶.

Regarding the offence of exploitation of begging, it was significantly amended by the Law of 10 August 2005 on trafficking in human beings²⁷. The same law also introduced exploitation of begging as a

¹⁹ Additional protocol to the United Nations Convention against Transnational Organized Crime, aimed at preventing, suppressing and punishing trafficking in persons especially women and children, New York, 15 December 2000.

²⁰ Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, Warsaw, 16 May 2005.

²¹ European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 concerning the prevention of trafficking in human beings and combating this phenomenon as well as protecting the victims, replacing the Council's framework-decision 2002/626/JAI, O.J., L101 of 15 April 2011.

²² Article 2, 3 states that: "Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging (...)". Preamble 11 specifies that "Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur". Note that as regards minors, they are considered trafficked even without recourse to means (coercion, exploitation of a vulnerable situation, etc.).

²³ The Law of 12 January 1993 containing an emergency programme for a more supportive society (*Belgian Official Gazette*, 4 February 1993) repealed the Law of 27 November 1891 on the repression of vagrancy and begging as well as articles 342 to 347 of the Criminal Code relating to offences against public safety committed by vagrants or beggars.

²⁴ Also see Chapter 2 hereafter.

²⁵ Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Bruxelles, Larcier, 2013, pp. 339 et 379-388.

²⁶ Written question No. 881 of 19 April 2013 from Deputy Karin Temmerman to the Deputy Prime Minister and the Minister of the Interior and Equal Opportunities, DO 2012201312442, *Bulletin des questions et réponses*, Chamber, QRVA of 24 June 2013, 53-118, pp. 200-201. Ghent's municipal rules on begging are available via the following link: <https://stad.gent/reglement/politiereglement-op-de-bedelarij>.

²⁷ Law of 10 August 2005 amending various provisions with a view to reinforcing the fight against trafficking and smuggling in human beings and the practices of slum landlords, *Belgian Official Gazette*, 2 September 2005. For an analysis, see M.A. BEERNAERT and P. LE COCQ, "La loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil", *Rev.dr. pén.*, 2006, spéc. pp. 354-359.

specific form of human trafficking²⁸. The term exploitation of begging is more commonly used in Belgium than forced begging.

Subsequently, two almost similar offences concerning the exploitation of begging²⁹ currently co-exist: the one provided for in Article 433ter of the Criminal Code (exploitation of begging) and the one provided for in Article 433quinquies (trafficking for the purpose of exploitation of begging).

However, the key notion of begging hasn't received a legal definition. In this respect, the (future) criminal policy directive on the exploitation of begging should provide some answers, specifying behaviours that can be associated with begging (musicians, for instance).

1. Exploitation of begging (Article 433ter of the Criminal Code)

The offence of exploitation of begging, referred to in Article 433ter of the Criminal Code, aims to punish recruitment and incitement to beg (433ter, 1°) on the one hand, and the exploitation of begging (433ter, 2°)³⁰ on the other. Here, there is no mention of human trafficking.

As regards recruitment with a view to begging (Article 433ter, 1°), a person who "recruited, induced, misled or retained a

person with a view to making them beg", or who "incited them to beg or to continue doing so", or who "made them available to a beggar so that the latter could use them to arouse public compassion"³¹, will be punished. In this case, this is an act of general fraud and the crime is punished regardless of any hoped-for or actual profit³².

As for the charge of exploitation of begging (Article 433ter, 2°), there must be exploitation, i.e. a profit is made from someone else begging³³. This charge would also allow "the person who has determined the places or public transport where the begging will take place, who takes the beggars there and who collects their earnings"³⁴ to be prosecuted.

Article 433quater provides for three aggravating circumstances relating to the offence of exploitation of begging: when the victim is a minor, when the perpetrator has exploited the victim's vulnerable situation or when violence, threats or a form of coercion have been used. We should point out that the last aggravating circumstance can also have been applied to the victim's family and not necessarily the actual victim³⁵.

²⁸ For a detailed analysis, see Ch.-E. CLESSE, *op. cit.*, pp. 331-388 and F. KURZ, "L'exploitation de la mendicité", in Ch.-E. CLESSE and crts., *La traite des êtres humains et le travail forcé*, Brussels, Larcier, 2014, pp. 30-42.

²⁹ A draft ministerial directive relating to the investigation and prosecution policy in terms of exploitation of begging is in the process of being finalised by the Board of Prosecutors General. It hadn't yet been finalised when this report was concluded (June 2016).

³⁰ For an analysis of this charge, see Ch.-E. CLESSE, *op. cit.*, pp.346-348.

³¹ Note that the Law of 10 August 2005 withdrew Article 82 from the Law of 8 April 1965 relating to child protection and punishing the exploitation of a minor for the purpose of begging. However, Article 433ter captures the spirit of it.

³² Ch.-E. CLESSE, *op. cit.*, p. 347.

³³ CH.-E. CLESSE considers that in this case, the offence requires special deceit, (*op.cit.*, p.348). Compared with: M.-A. BEERNAERT, "L'exploitation de le mendicité", *Les infractions, vol.2, Les infractions contre les personnes* (H.D. BOSLY et C. DE VALKENEER, dir.), Brussels, Larcier, p. 590 for whom general fraud is sufficient, since the legislator did not demand a special intention for this offence.

³⁴ Preamble of the bill amending various provisions with a view to reinforcing the fight against human trafficking and smuggling, *Parl. doc.*, Chamber, 2004-05, 51-1560/1, p. 15.

³⁵ *Ibid.*, 23.

As regards minority, this aggravating circumstance seems to be very broad.³⁶ For instance, what about a parent who gets their child to beg while begging with them? In this respect, the minister of justice at the time pointed out that a parent who uses their own child to beg (i.e. they are begging together) isn't committing an offence³⁷. Therefore, such acts shouldn't be dealt with from a criminal point of view. However, this is not the case for parents who make their child available to a beggar. In this instance, they will be punished by law.³⁸

2. Human trafficking for the purpose of the exploitation of begging (Article 433quinquies of the Criminal Code)

Treating human trafficking as a crime, when exploitation of begging is one of the purposes, was introduced in the Criminal Code by the Law of 10 August 2005. It is referred to in Article 433quinquies of the Criminal Code. The Law of 29 April 2013³⁹ then modified the charge, in particular to render it more compliant with Directive 2011/36/EU on human trafficking⁴⁰.

For human trafficking to be considered as such, there must be a combination of two elements: a material element: "the recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring control exerted over them" and a moral element whose goal is to benefit from the person's exploitation. One of these forms is the exploitation of begging (Article 433quinquies, 2°). In this case, this means benefiting from someone else's begging.

This raises questions concerning the scope of this article and Article 433ter, 2° (exploitation of begging). For instance, a person who recruits or takes control of a beggar to exploit their begging, can be charged twice⁴¹. Parliamentary work isn't very explicit on this issue. However, it does mention that the exploitation of begging can be envisaged from the angle of human trafficking. The public prosecutor's office would have to take into account the circumstances of the case (for instance, the number of victims) to choose the appropriate charge⁴².

Few cases have been opened by the public prosecutor's office in the past few years. It is indeed difficult to establish all the

³⁶ In this sense, see M.A. BEERNAERT and P. LE COCQ, *op. cit.*, p.356.

³⁷ Report by the Senate's Justice Commission, 10 May 2005, Parl. doc., Senate, 2004-2005, Doc 3-1138/4, p.17. Also see M.A. BEERNAERT and P. LE COCQ, *op. cit.*, pp. 356-357, especially note 68.

³⁸ Report by the Senate's Justice Commission, 10 May 2005, Parl. doc., Senate, 2004-2005, Doc 3-1138/4, p.17. Also see CH.-E. CLESSE, *op. cit.*, pp. 363-364 and note 1203.

³⁹ Law of 29 April 2013 aimed at modifying Article 433quinquies of the Criminal Code in order to clarify and extend the definition of human trafficking, O.J., 23 July 2013.

⁴⁰ As regards the charge of human trafficking, this law deleted the explicit reference to Article 433ter and replaced it with the term 'exploitation of begging'. The final elements to bring the law fully in line with the directive were introduced by the Law of 31 May 2016 completing the implementation of the European obligations in terms of the sexual

exploitation of children, child pornography, human trafficking and facilitation of unauthorised entry, transit and residence, *O.J.*, 8 June 2016. On this subject, see Part 3, Chapter 1, point 2.1.1.

⁴¹ In a decision of 1 April 2011 (*Rev. dr.pén.*, 2012/2, pp. 230-239 and note Ch.-E. CLESSE, "L'incrimination de la mendicité: 433ter or 433quinquies, *that's the question!*"), the act of making someone recruited by another person engage in begging, initially described as human trafficking, was amended by Brussels Court of Appeal as an infringement to Article 433ter of the Criminal Code. On this subject, see F. KURZ, "L'exploitation de la mendicité", in Ch-E. CLESSE and *crts.*, *La traite des êtres humains et le travail forcé*, Brussels, Larcier, 2014, p. 41.

⁴² Preamble of the bill amending various provisions with a view to reinforcing the fight against the trafficking and smuggling of human beings, *Parl. doc.*, Chamber, 2004-05, 51-1560/1, p. 16.

evidence concerning the infringement and to identify those responsible⁴³.

The possible confusion between exploitation of begging (433ter) and human trafficking for the purpose of exploitation of begging (433quinquies) leads to different interpretations. This can give rise to arbitrary legal situations in the country's various jurisdictions. The new criminal policy directive (COL) should solve this problem and determine the difference between the two articles. A response could be found in the acts that serve as a basis for human trafficking (433quinquies), i.e. recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring the control exerted over a person. Contrary to Article 433ter, these acts indicate the organised nature of the acts. Here, "organised" nature could determine the difference between human trafficking (433quinquies) and simple exploitation of begging (433ter).

3. Child begging⁴⁴

The act of begging with a child isn't punishable in itself. What is punishable, is incitement to begging and exploitation of begging. What is more, the law makes no distinction depending on whether the person who makes the child beg is the parent or not. Hence, a parent who incites their child to actively beg or who supplies them to a third party for the purpose of begging could be prosecuted on the basis of Article 433ter (therefore, not within the framework of human trafficking)⁴⁵.

⁴³ See Question no. 886 from Ms Temmerman of 19 April 2013 to the Minister of Justice, DO 201220131442, Bulletin des questions et réponses, Chamber, QRVA of 10 June 2013, 53-116, p. 173. See also Chapter 3 hereafter.

⁴⁴ For analysis of this issue, see CODE, *Recherche relative au développement d'une réponse sociale à la question de la mendicité des enfants en Belgique, 2003*, available on CODE's website: www.lacode.be.

⁴⁵ See Ch-E. CLESSE, *op. cit.*, p. 355. However, this author considers that a parent who supplies their

On the other hand, mothers who beg (passively) with their child in their arms or are accompanied by young children, as is the case with certain young Roma mothers⁴⁶, aren't considered to be acting unlawfully. Therefore, we find ourselves outside the context of exploitation (Article 433ter) and human trafficking (Article 433quinquies). This is what was decided by the Brussels Court of Appeal in a judgement of 26 May 2010⁴⁷. This case concerned a young Roma mother who was begging with her two young children aged two years and seven months, one of which appeared to be "apathetic". The police called her in for questioning several times. At first instance, this young mother was sentenced to 18 months in prison and a fine of EUR 4,125 on the basis of Article 433ter (exploitation of begging), on the grounds that she had used her child to arouse pity among users at stations, principally to obtain money. She was even imprisoned⁴⁸.

child to a beggar should be prosecuted on the basis of Article 433quinquies.

⁴⁶ Begging in certain Roma groups in Brussels represents a survival strategy. But this is far from being a practice among all Roma people, or even a phenomenon inherent to the Roma culture. On this subject see Centre régional d'intégration Foyer, *Les Roma de Bruxelles*, 2004, pp. 139 and 163. The study is available online on the website of the non-profit organisation Foyer: http://www.foyer.be/IMG/pdf/Les_Roma_de_Bruxelles.pdf. In the same sense, see F. VAN HOUCKE, *Recherche d'une réponse sociale à la mendicité des mineurs*, October 2005, Coordination des ONG pour les droits de l'enfant (CODE), pp. 5-6; CODE, *La mendicité des enfants: questions-réponses*, October 2010 (documents available on CODE's website: <http://www.lacode.be/>). CODE also compiled other studies on child begging and made many recommendations in an effort to find answers (see <http://www.lacode.be/la-mendicite-des-enfants-questions.html>).

⁴⁷ Brussels, 26 May 2010, 14th ch., J.T., 2010/26, No. 6402, p.454.

⁴⁸ See, especially, the trauma suffered by the oldest girl following her mother's imprisonment: CODE, *Analyse des observations finales 2010 du Comité des droits de l'enfant relatives à la mendicité des mineurs*, October 2010, pp. 4-5.

The Court of Appeal completely reversed this decision, considering that "no element in the case proved that the defendant made her children beg" nor had she "supplied one of her children to a beggar" "so that they could use them to arouse pity among the general public". It subsequently concluded that the case's facts and didn't fall under the scope of 433ter and quater of the Criminal Code. In fact, this judgement was misunderstood, in particular by the United Nations Committee on the Rights of the Child⁴⁹. In its concluding observations to the Belgian state⁵⁰, the Committee expressed its concern about the decision, which didn't forbid the use of children to beg insofar as the adults involved are the parents. Furthermore, it requested that Belgium expressly forbid the use of children to beg in the street. After being better informed, the Committee clarified its position, stating that it wasn't calling for the punishment of begging and that parents shouldn't be imprisoned for begging with their children⁵¹. The Committee pointed out that any law or individual decision affecting children should be taken in line with the best interests of the children and that every child has the right to remain with its parents and grow up

in a family and social environment favourable to its development.

It appears that the profile of families who beg with children is not consistent; some of them come to settle permanently in Belgium, while others sometimes stay temporarily to collect money through begging before going back to their home country⁵².

Some have raised questions about the existence of exploitation networks behind the begging of Roma families with children⁵³. And yet, begging is above all a survival strategy for these families. The exploitation of children for the sole purpose of begging appears to be only a minor reality in Belgium⁵⁴, even if this problem doesn't necessarily receive sufficient attention from the authorities, allowing all avenues of suspicion to be examined⁵⁵.

However, the same isn't true of children who, besides begging, are also involved in acts such as committing offences. In these cases, there is immediate suspicion of acts of human trafficking. On this point, please refer to Chapter 3 of this focus.

⁴⁹ The United Nations Committee on the Rights of the Child is responsible for examining the progress made by the Member States regarding the execution of their obligations resulting from the Convention on the Rights of the Child. The Committee was not aware of the details of the judgement when it made its observations. On this subject, see J. FIERENS, hearing at the Senate, 21 May 2013, in "Vers une pénalisation de la mendicité des mères avec enfant(s)", *J.D.J.*, 2013, No. 326, p. 23, note 1.

⁵⁰ Committee for the Rights of the Child, Examination of the reports presented by the States Parties in application of Article 44 of the Convention, Concluding observations: Belgium, No. 72-73: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BEL/CO/3-4&Lang=En.

⁵¹ CODE, *Pénalisation de la mendicité: le Comité des Nations Unies remet les pendules à l'heure*, 20 June 2013, see <http://www.lacode.be/penalisation-de-la-mendicite-le.html>.

⁵² CODE, *Mendicité avec enfants, l'arsenal législatif est suffisant mais un renforcement des droits des enfants roms s'impose*, Analyse, 2013, p.3.

⁵³ On this subject, see, especially, CODE, *La mendicité des enfants: questions-réponses*, October 2010, pp. 9-10.

⁵⁴ CODE, *La mendicité des enfants: questions-réponses*, October 2010, p.9; Centre régional d'intégration Foyer, *op. cit.*, 164-165, CH-E. CLESSE, *op. cit.*, p.387 citing status report 2006-2007 of Committee P (standing police monitoring committee); hearing at the Senate on 28 May 2013 of the General Delegate for the Rights of the Child, in "Vers une pénalisation de la mendicité des mères avec enfant(s)", *J.D.J.*, 2013, No. 326, p. 26.

⁵⁵ On this subject, see, especially, CODE, *La mendicité des enfants: questions-réponses*, October 2010, pp. 9-10.