

CHAPTER 5: CRIMINAL LAW APPROACH TO HUMAN TRAFFICKING FOR THE PURPOSE OF EXPLOITATION OF BEGGING

In this chapter, we shall focus specifically on the criminal law approach that targets the criminal networks involved in human trafficking for the purpose of begging. It is important not to create confusion with ordinary beggars, residing lawfully in Belgium, who have no criminal links and for whom a social policy may be implemented.

During interviews with judges, the police, specialised centres for the reception of human trafficking victims, support organisations for the Roma, and cultural mediators, several problems and dilemmas came to light: no clear picture of the phenomenon, difficulty in collecting sufficient evidence on a closed cultural community, insufficient means to carry out investigations, lack of interest among public prosecutors who show no readiness to initiate an investigation given the low chance of a conviction, the court's lack of knowledge about the cultural context of this vulnerable group. In its 2013 report on Belgium, GRETA (Council of Europe's group of experts) pointed the finger at Belgium for its policy failures regarding forced begging¹⁵⁰. In its national reports, GRETA comments on forced begging in 22 European countries¹⁵¹.

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Following up cases of human trafficking for the purpose of exploitation of begging requires specific investigation techniques, such as surveillance and a financial investigation. Investigating judges are not very inclined to work on these types of cases, though their involvement is necessary to obtain a conviction. Cases involving perpetrators and victims of Roma origin are not popular with the police, because they often require complex investigations: large families with complicated names and genealogy, a multitude of addresses and house moves, a closed culture, etc. Obtaining sufficient clues is very difficult because material evidence in the case of exploitation of begging is often entirely lacking. In this form of exploitation, there is less reliance on modern means of communication or on money flows that are difficult to trace. Furthermore, assets are often placed abroad.

Some judges plead in favour of a more proactive approach in these investigations, because they believe that a traditional reactive investigation, based on victim statements, has little chance of succeeding. The victims, often of Roma origin, have little confidence in the police and refuse to make statements, make contradictory statements, or retract their statements under pressure. In many cases, the investigation is already doomed because the perpetrators were able to take the necessary measures and probably already removed any evidence. Groups of perpetrators such as these are also particularly mobile. Consequently, we often see victims being moved to another

¹⁵⁰Group of Experts on Action against Trafficking in Human Beings (GRETA), 2013, *Report concerning the implementation of the Council of Europe Convention on actions against trafficking in human beings by Belgium*, p.24. Available at: http://www.emnbelgium.be/sites/default/files/publications/greta_2013_14_fgr_bel_w_ith_comments_fr.pdf.

¹⁵¹ Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Spain, France, Luxembourg, Moldavia, Montenegro, Norway, Poland, Portugal, Romania, the United Kingdom, Serbia, Slovakia,

Slovenia, Sweden. The countries where forced begging is not yet recognised: Cyprus, Denmark, Georgia, Ireland, Latvia and Malta.

town, even abroad, after which they completely disappear from view.

For the time being, discussions are in progress to establish a circular stipulating the method of approach to human trafficking for the purpose of begging. In any case, it is a powerful social signal. A new circular of this type from the Board of Prosecutors General containing a procedure to follow and a model for police reports, could lead to a uniform approach and renewed interest in the phenomenon¹⁵². There must also be a fluid exchange of information between police departments, from local level to federal level, both on a national and international scale. But cooperation and an efficient information flow between the different public prosecutor's offices (youth court and ordinary, district and federal public prosecutor's offices) are also necessary.

A fruitful approach to human trafficking for the purpose of exploitation of begging must be based on the correct perception. According to some judges, when possible exploitation of begging has been observed, the victims cannot be directly intercepted. Instead they are monitored within the framework of an observation mission so that the exploiter can be identified when the earnings are handed over and their car registration plate identified, for instance. Subdivided into stages, this approach can be reduced to three key aspects: perception, opening the investigation and approach to it, and the court's sufficient contextual knowledge.

¹⁵² C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

1. Perception

In order to be able to detect forms of exploitation, it is necessary to have the correct perception of begging. It is highly variable and can encompass different categories: street musicians, selling newspapers, washing windscreens, begging, petitions asking for a contribution etc.

Begging is not an offence, but when problems with an aggressive beggar are observed, police officers will file a police report or draw up an information report. This they will do so according to their own position and experience in the offence category. For example, for traffic police, it will be a traffic offence, while for other police departments, the same acts will be qualified as a nuisance or public disorder issue. Begging is sometimes registered as a municipal administrative sanction, street music, or an itinerant trade, and is given a different registration code every time. Consequently, it is often not recorded as begging, thus leading to a loss of valuable information. We are therefore faced with the problem of an incorrect and incomplete record. This problem produces a distorted image: the number of records is under-representative of the true situation. However, this data is crucial in order to establish the urban and international movements of the exploited beggars at a later date.

Exploitation of begging, mostly involving minors, also occurs as a mixed structure of exploitation associated with human trafficking, where the exploitation of begging is the only visible criminal activity. This is why some police officers, for example, use a police report to book aggressive beggars under begging/human trafficking, thus sending out a signal for other possible invisible criminal acts. Sometimes, these acts are not linked to the exploitation of beggars, or the police reports are not detailed enough and do not contain relevant data. Therefore, we are also faced with police reports on human

trafficking and begging that cannot be used later on within the framework of an investigation on human trafficking and begging.

This leads to the conclusion that, in terms of detection, there is a problem regarding the records made by the police¹⁵³. It is crucial to harmonise the reporting of acts linked to begging. Therefore, providing the police with instructions and raising awareness are essential. Giving possible scenarios and common threads (questions) per situation could be useful in this respect. In this case, it would be necessary to create uniformity for the purpose of better communication and perception (in statistical terms).

Police reports must be as complete as possible and at least include all useful elements in order to be able to determine whether or not the acts fall under the scope of human trafficking with the purpose of exploitation of begging. Knowledge of the phenomenon is necessary, but also the ways in which groups of perpetrators abuse cultural customs to place victims in a position of dependence and thus easily exploit them. Precise findings must be noted in police reports on the basis of formally agreed indicators, established in a circular. An important factor, in this respect, will be the presence and role of minors. Transfers of the money collected are also a key factor in determining whether or not it is a question of human trafficking.

It must be possible to centralise and consult all this data in a national database. Entering the data consistently in the National

General Database(ANG)¹⁵⁴ is therefore crucial. Sharing information is a vital basic principle when examining acts linked to the exploitation of begging. This is a target group with great flexibility and mobility. The victims' movements in towns could therefore be identified. Furthermore, by finding parallels with other police reports, it may be easier to detect whether other acts can be linked to the exploitation of begging and if, for instance, a group of perpetrators active in forced crime appears.

2. Opening the investigation and the approach

It is useful to know that when an investigation opens, the judge always carries out a cost-benefit analysis for the purpose of obtaining a conviction. Resources are limited and must be used as efficiently as possible, especially when there is a terrorist threat. In addition, as we have already indicated, it is difficult to obtain objective evidence in this type of case. The judge therefore works in a social context, where it is necessary to take into account the fact that justice is intrinsically linked to efficiency: everything must go quickly and give results. An important element, which is relevant on a social level in order to take the decision to initiate an investigation, is the presence of minors. In its European study on child begging relating to 15 European countries, financed by the European Commission, the International Centre for Migration Policy Development (ICMPD) refers to clear indicators showing the presence of human trafficking¹⁵⁵.

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¹⁵³The International Labour Organization notes that forced begging is not properly recorded and that this is an international problem: ILO 2012 Global Estimate of Forced Labour Regional Factsheet European Union.

¹⁵⁴ See Part 4 (figures): police statistics.

¹⁵⁵ ICMPD, *Report for the Study on Typology and Policy Responses to Child Begging in the EU*, December 2012.

Observations

When opening an investigation, the judge first orders the police to observe the (alleged) victims of begging. Surveillance photos are a determining factor for the court in terms of material evidence. Cases reveal¹⁵⁶ that it is possible to shed light on the perpetrators' working methods through observations. Surveillance can help establish whether the suspects have been active in a systematic and organised manner for a relatively long period, but can also establish the possible involvement of minors, how the victims move around and their discreet method of control, how money transfers are organised, where they are housed (at the suspects' home) and the type of accommodation. The place of residence or car registration plate also helps to identify all the parties involved. Surveillance can also possibly help to discover other associated criminal acts. All elements that can, for instance, lead to the detection of a group of perpetrators involved in forced criminal activities.

Financial investigation (and phone investigation)

Following the identification of the parties concerned, a financial investigation can be initiated. If necessary, a phone investigation can be initiated in order to identify the exploiters in question. A designated investigating judge can also order a phone investigation.

The financial investigation is essential proof in the investigation. An important factor that helps to determine whether human trafficking for the purpose of exploitation of begging is concerned, is the moment when the victims of begging have to hand over their earnings (up to the last cent) to a third party. During surveillance conducted within

the framework of an investigation, the police were subsequently able to discover that the beggars gave their earnings to a third party, hidden in a cigarette packet¹⁵⁷.

The perpetrators send the money to their family in the country of origin and use cash smugglers or well-known money transfer agencies. If the police have a warrant from an investigating judge, they can question money transfer agencies regarding money transfers made by the concerned parties to other countries. This approach helps to demonstrate that inexplicably high sums of money are sometimes sent to the family, even though the perpetrators have no legal income in Belgium. In the above-mentioned case, the defendants had sent almost EUR 40,000 to their family in Romania, even though they did not have any official income in Belgium.

The financial investigation must also determine the damages suffered by the victims. This way, if they institute civil proceedings, they may be able to obtain compensation. This type of investigation into criminal assets can also be used by the court as serious burden of proof. The importance of seizures and requests for international letters rogatory regarding an investigation into assets, must also be highlighted to allow effective confiscations later on.

International movements

The international movements of perpetrators and victims may conceal important data concerning the group of perpetrators and their modus operandi. They can provide information on the international movements of victims of begging by the exploiters and give an idea of their international scope, indicating that it is not only a purely local phenomenon but that there are ramifications in other countries. When the victims of begging

¹⁵⁶ See in this part, Chapter 3, the phenomenon in Belgium. Example of a case of exploitation of disabled beggars in Brussels.

¹⁵⁷ *Ibidem*.

travel with the exploiters, this means that the victims are under their control.

In a case in Brussels, the police, who had a warrant from an investigating judge, questioned low-cost Romanian travel agencies and airlines at Zaventem airport. After analysing the results, the investigators were able to conclude with certainty that victim X had travelled at least once in the company of the defendant's family. Considering the movements of some of the victims, the begging did not only take place in Brussels, but also in other European towns and cities, such as Rome, Coni (Italy), and London¹⁵⁸.

Searches

While searching the exploiters' and victims' homes, great attention must be paid to potential acts of identity theft and slum landlord situations. Victims can find themselves dependent on their exploiters due to identity theft. The police's findings, which revealed that the victims lived in dreadful living conditions, are an important indicator of human trafficking.

The suspected exploiters are arrested and heard. During their hearing, the suspects must be confronted with the criminal earnings they have transferred abroad and their official financial status as having no income. During the searches of the suspects' home, any criminal earnings and goods concerned must be seized so that the victims can be compensated in case of a later court decision to confiscate and compensate.

Victims

Arresting the suspected exploiters allays the fear of the victims of begging or helps to break down their dependency on the

exploiters. It is therefore crucial to win their trust and not to proceed with their hearing until their exploiters have been arrested. The victims must be heard on the basis of the circular's criteria in order to guarantee uniformity.

The beggars must be considered by the police and judges as victims and not as people causing a significant nuisance by begging. They must be put in contact with a member of staff from a specialised centre for victims of human trafficking. This person is the best placed to win their trust, offer them the status of victim of human trafficking, and draw their attention to its importance.

When the offences are found to be forced, the perpetrators of the offences must be considered as victims. Their statements can be a determining factor for the rest of the investigation, allowing key people in the network, or criminal organisation, as the case may be, to be pointed out and identified. As already mentioned, the exploitation of begging is often the only visible criminal activity in cases involving several offences. In this case, the victims' statements can be crucial for the investigation. An audiovisual recording should be made of a minor's hearing and it must be organised in compliance with the indicators in the new circular.

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¹⁵⁸ *Ibidem.*

A European study conducted by RACE organisations (Anti-Slavery International, ECPAT, La Strada, etc.), financed by the European Commission, concerning forced criminal activities and the exploitation of begging, showed that in European countries, these victims were generally considered as perpetrators¹⁵⁹. And yet, according to this report, it is a major form of exploitation within the framework of human trafficking in different EU countries.

According to the findings and identifications, victims who are unaccompanied foreign minors must be redirected (through the guardianship service) to the specialised centres for unaccompanied minors that work with the specialised centres dealing with the reception of victims of human trafficking.

International cooperation

International points of contact do exist in the home countries of many of the victims exploited through begging and the perpetrators. Cooperation agreements have also been concluded with Romania, Bulgaria, Moldavia, Albania, Russia, and Serbia.

Thanks to the creation of Joint Investigation Teams (JIT)¹⁶⁰ with the countries of origin, it is possible to conduct a campaign against criminal networks on an international scale. This is certainly the case regarding criminal organisations involved in forced criminal

activities. Joint investigation teams have already been set up by the authorities in Romania, the United Kingdom, and Austria in the past. Not only were these teams able to dismantle various networks, but evidence also showed that these were indeed criminal networks that were exploiting children¹⁶¹.

3. Court

Courts do not always have sufficient knowledge of the phenomenon or the cultural contexts through which the victims of begging fall into a relationship of dependency with their exploiters. We can draw a comparison with Nigerian networks, which exploit voodoo rituals to push their Nigerian victims into a relationship of dependency so that they are completely under their control. The public prosecutor's office dealt with these cases by asking the police to establish a police report on the role of customs and their misuse. Therefore, in begging cases involving Roma victims, it would be useful to also establish a police report on the cultural contexts and abuse of Roma victims. This also explains the victims' mistrust of the police and their mistaken loyalty towards their exploiters.

In their defence speech, the defendants' lawyers sometimes play the card of family ties and the loyalty of the Roma community and point out that the victims are also members of the defendants' family. This is why the investigation into defendants' family ties and genealogy is also a crucial argument of persuasion for the court. In the previous case in Brussels¹⁶², the defence speech of the defendants' lawyer was

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¹⁵⁹ RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013.

¹⁶⁰ For more information on the JIT, see Part 3, Chapter 3 (Best practices and experiences); RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013.

¹⁶¹ C. ROELANDTS and G. VERVAEKE, "De aanpak van bedelende kinderen", *Cahiers Politiestudies*, 2015/35.

¹⁶² See in this part, Chapter 3, the phenomenon in Belgium. Example of a case of exploitation of disabled beggars in Brussels.

demolished when the victims' hearings revealed that they were unknown to the defendants' family. They were met and recruited at Brussels-North railway station and did not even know the defendants' names.

In cases of begging associated with forced criminal activities, the court must apply the non-punishment clause¹⁶³ and recognise the people forced to commit thefts as victims of human trafficking.

Method of approach

1. Level of detection: perception
 - a) Recording
 - b) Detailed police report: distinction between exploitation and human trafficking
 - c) National police database: indications of other criminal acts
 - d) Sharing information on national movements of victims
2. Opening the investigation and the approach
 - a) Opportunity assessment by the judge: obligation to achieve a result/resource management
 - b) Surveillance: indications of other forms of exploitation
 - c) Financial investigation: international money transfers
 - d) Monitoring phone records
 - e) Questioning low-cost travel agencies: international movements
 - f) Searches and slum landlords
 - g) Victim statements
 - h) Victims of forced criminal activities and minors must be heeded
 - i) International cooperation
3. Court
 - a) Police report on the context (and perception) of a group of vulnerable victims and how their relationship of dependence with the exploiters is facilitated
 - b) Forced criminal activities and the principle of non-punishment must be heeded

Myria's main recommendations concerning human trafficking for the purpose of exploitation of begging are mentioned in Part 5, further on in this report.

¹⁶³ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 9-35; RACE, *Trafficking for Forced Criminal Activities and Begging in Europe, Exploratory Study and Good Practice Examples*, 2013; OSCE Resource Police Training Guide: *Trafficking in Human Beings*, TNTD/SPMU Publication Series Vol. 12, 2013; ERRC, *Breaking the Silence*, A Report by the European Roma Rights Centre and People in Need, 2011.