

## CHAPTER 4: CASE LAW OVERVIEW (2015- MAY 2016)

### 1. Trends

This chapter provides an overview of the relevant case law from 2015 to the beginning of 2016 (May 2016) concerning cases of human trafficking and human smuggling<sup>455</sup>. This year, the overview focuses on cases in which Myria instituted civil proceedings, decisions received from the specialised victim reception centres as well as decisions provided by judges and stakeholders in the field. We are also presenting a decision recently made by the European Court of Human Rights. Finally, a decision made by the Council of State, concerning the temporary administrative closure of an establishment where acts of trafficking took place, is also mentioned.

Myria was informed of 83 decisions rendered by the judicial authorities.

Here, we are presenting the most interesting decisions relating to 50 cases in the country's various jurisdictions:

- 15 decisions relating to 14 cases concern acts of sexual exploitation. They were pronounced in the jurisdiction of the Courts of Appeal of Antwerp (Antwerp, Turnhout), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent) and West Flanders (Bruges)).

As regards **sexual exploitation**, many of the decisions concern minors, some of whom are very young. They are primarily Belgian girls who have run away from youth

institutions and been recruited by loverboys. The Nigerian girls are also very young. There is one decision that took into account acts committed abroad, as well as a decision concerning the sexual exploitation of two men, in which human trafficking wasn't, however, retained.

- 26 decisions relating to 25 cases concern labour exploitation. The decisions pronounced relate to a wide range of sectors and are presented per sector of activity (construction, agriculture/horticulture, road haulage, hotel & catering, bakery, meat processing industry, shops, riding schools, cleaning, paper serviette manufacturer and domestic work). These decisions were pronounced in the jurisdiction of all the courts of appeal: Antwerp (Turnhout division), Brussels (French-speaking Brussels, Walloon Brabant, Leuven), Ghent (East Flanders (Ghent, Termonde)), Liège (Liège and Namur) and Mons (Mons division).

In terms of **labour exploitation**, Myria was informed, for the first time, of a decision concerning the labour exploitation of a minor, pronounced in a sector other than domestic work.

To conclude the existence of working conditions contrary to human dignity that bear the attributes of human trafficking, the judges took into consideration the presence of several of the following elements: work conditions and work environment (excessive working hours, derisory wages, no day of rest), bad housing conditions, wage deductions under various pretexts, dependence on the employer. It is also interesting to note that, for one worker, the fact of having been the victim of a work accident which the employer attempted to hide, was considered a determining factor in concluding the existence of work conditions contrary to human dignity.

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<sup>455</sup> Please note that these decisions will also be published on Myria's website: [www.myria.be](http://www.myria.be). Several case law decisions from the beginning of 2015 also feature in the previous report (Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, part 2 chapter 4).

As in previous years, we also noted the existence of fraudulent structures intended to conceal exploitation: cascade subcontracting, fraud in terms of posted workers or bogus self-employed workers. Here, we should emphasise the difficulty of obtaining convictions for trafficking in an atypical sector such as road transport.

Furthermore, in a major case concerning the subcontracted cleaning of fast-food restaurants, the court considered, based on its reading of the case, that the principals weren't sufficiently aware of the facts to be declared complicit in the acts of human trafficking.

Finally, we should mention an interesting decision pronounced by Brussels Labour Court concerning domestic work and a former diplomat and his wife. The court considered that human trafficking was established and awarded the worker damages.

- a decision relating to acts of exploitation of begging was rendered, on opposition, by the Dutch-speaking Criminal Court of Brussels. The decision pronounced in absentia was presented in the previous report.
- 11 decisions relating to 10 cases concern cases of human trafficking. They were rendered in the jurisdiction of the Courts of Appeal of Antwerp, Brussels (Brussels, Leuven) and Ghent (East Flanders (Ghent) and West Flanders (Bruges)).

As regards **human smuggling**, the organisations are usually well structured. Note that in one case, victims instituted civil proceedings and were awarded compensation. The charge of smuggling was also used to prosecute defendants who put people to work under a false identity, i.e. their own.

## 2. Human trafficking

### 2.1. European Court of Human Rights, case L.E. c. Greece, 21 January 2016 (application no. 71545/12)

In a case concerning a Nigerian national forced into prostitution in Greece, the court concluded a violation of Article 4 of the ECHR prohibiting slavery and forced labour<sup>456</sup>.

The woman entered Greece in 2004 with the help of a man, thus contracting a debt of EUR 40,000. A voodoo ritual was performed before she left. Once in Greece, he confiscated her passport and forced her to prostitute herself. She was arrested several times for prostitution and violation of laws on the entry and stay of foreign nationals. In November 2006, while in detention prior to her expulsion, she filed a complaint against this man and his wife. In return, she received the help of a non-governmental organisation, with which she stayed in contact for approximately two years. The director of this organisation was heard and corroborated the applicant's statements. However, it was only nine months after she filed a complaint that the court acknowledged the status of victim of trafficking.

The court stated that human trafficking falls under the scope of Article 4 of the Convention (§58) and that it charges the Member States with a series of positive obligations relating in particular to the protection of trafficking victims as well as the prevention and suppression of trafficking (§64).

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<sup>456</sup> Concerning this judgement, see CH-E. CLESSE, "Fugit irreparabile tempus", note under ECHR (1<sup>st</sup> section), 21 January 2016, *Rev. Dr. pén.*, 2016, pp. 701-707.

The court found that the operational measures taken to protect the applicant weren't swift enough, considering the amount of time that had passed since the complaint was filed and the applicant's recognition as a victim. This delay was due to the fact that the statement of the NGO's director wasn't included in the file in due time owing to an oversight by the police authorities.

The court also found numerous delays and shortcomings regarding procedural obligations relating to Greece, especially concerning the efficiency of the preliminary investigation and the investigation of the case.

## 2.2. Sexual exploitation

### *Victims of loverboys, including Belgian underage runaways*

Several decisions concern the victims of loverboys.

**Antwerp Criminal Court** reached a verdict within the framework of four cases of sexual exploitation of minors who had run away from youth centres<sup>457</sup>. Several underage victims were involved in different cases.

One of the cases (involving the same victim at the basis of other cases)<sup>458</sup> was opened when the police were informed that an underage girl, who had been reported missing, was being held in a house. Both the victim and one of the defendants were intercepted in the house. The victim stated to the police that she had to participate in

sexual acts against her will. The intercepted defendant admitted he had kept the victim in his house for the past three weeks, on the request of two other defendants, who were her pimps.

The girl was able to provide a great deal of information regarding the perpetrators as well as other victims, which allowed the police to initiate other investigations. More facts were revealed through phone taps, searches through mobile phone records, statements from victims, witnesses and defendants, and data from a GPS.

The defendants approached (Belgian) underage girls, aged between 14 and 16, who were in a precarious situation. The girls had been placed in youth centres but had run away. They had been reported as missing. The young men made contact with the girls mostly via Facebook. They first took the girls to their home and then obliged them to prostitute themselves. The girls had run away from the youth centre and they didn't know where to go, or have anywhere to stay, which made them easy prey for the perpetrators. Some of them were in love with their pimp. They were taken to hotels where they had to have sexual relations with men. They were put under pressure because they didn't have anywhere to live and didn't have any money. Violence was sometimes used if the girls refused to prostitute themselves. In one case, a girl was even raped by a defendant. In one of the cases, the pimps' partners were also aware of the facts.

In all four cases, several defendants were prosecuted for human trafficking with aggravating circumstances (especially regarding minors). In the first case mentioned above, five defendants were prosecuted, three of whom for human trafficking. In a second case, three defendants were also prosecuted for human

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<sup>457</sup> Antwerp Crim. Court, 15 December 2015, ch. AC4 (final), 22 December 2015, ch. AC4 (final because the defendant lodged an appeal too late and it was declared inadmissible), 21 March 2016, ch. AC4 (no. 1397, appeal) and no. 1398 (final). Concerning the decision of 15 December 2015, see also this part, Chapter 2 (Case Studies), point 1.1.1.

<sup>458</sup> Decision of 22 December 2015.

trafficking<sup>459</sup>. In a third case, six defendants were prosecuted, five of whom for human trafficking<sup>460</sup>, and in a fourth case, one defendant was prosecuted<sup>461</sup>.

Some of the defendants were also prosecuted for (attempted) rape, detention and supplying drugs to minors.

The court accepted the acts of human trafficking in all four cases and handed down heavy sentences, with prison sentences varying between 30 months and eight years, as well as fines.

In several of these cases, Myria and Child Focus instituted civil proceedings and received a symbolic euro as compensation. The victims who instituted civil proceedings received provisional compensation while awaiting a medical assessment to determine the damage suffered by these very young girls.

**In a case judged in Brussels on 25 June 2015**<sup>462</sup>, an Albanian defendant was sentenced to four years in prison and a fine of EUR 18,000 for trafficking and exploitation of the prostitution of his wife, who was also Albanian. The victim had met her husband in Albania when she was barely 18 and in a precarious social and family situation. The court primarily based its judgement on a note written by the reception centre supporting the victim, explaining the loverboy technique. The defendant made her believe in a wonderful future but then forced her to prostitute herself in Greece. She had to give him the money she earned. He told her he loved her but only married her so that she could

obtain a document allowing her to go to Belgium and continue working as a prostitute. She hadn't been able to stay in Belgium in the past and had been deported to Albania.

The case was opened following police information according to which the defendant was exploiting his wife. In particular, the defendant was demanding that she bring in EUR 3,000 so that he could rent out a building in order to set up a cannabis farm. She was also the victim of violence. He didn't work and lived entirely off the victim's earnings as a prostitute.

The defendant contested these charges, saying that his wife's statements weren't true and contradicted by the evidence he brought to the case. However, the court pointed out that the case hadn't been opened on the basis of the victim's complaint but based on police information. This information was supported by information received from Albania and other evidence collected during the investigation. The victim's statements only later confirmed the evidence the police already had.

The court pronounced the confiscation of sums seized during searches and the confiscation of the sum of EUR 157,000, less the amount of the sums seized.

The victim also asked that the defendant be ordered to pay her for pecuniary and non-pecuniary harm evaluated *ex aequo et bono* at EUR 60,000, corresponding to the 'wages' earned which she didn't receive as she had to give everything to the defendant. She also asked that she be given the amount she requested from the confiscated amounts, in application of Article 43 of the Criminal Code.

However, the court considered, without giving any reasons, that it didn't fall within its remit to grant her the equivalent of the sums she had earned as a prostitute. On the other hand, it awarded her non-pecuniary

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<sup>459</sup> Antwerp Crim. Court, 15 December 2015. On this subject, see this part, Chapter 2 (Case Studies), point 1.1.1.

<sup>460</sup> Antwerp Crim. Court, 21 March 2016, no. 1398.

<sup>461</sup> Antwerp Crim. Court, 21 March 2016, no. 1397.

<sup>462</sup> Brussels French-speaking Crim. Court, 25 June 2015, 47<sup>th</sup> ch. (final).

damages of EUR 15,000. However, it refused to give her priority when awarding her the confiscated sums in application of Article 43bis of the Criminal Code since, in order to return or award the confiscated money to the civil party, the latter would have to be the owner of it, which wasn't actually the case. The fact that the defendant was sentenced to compensate the civil party, does indeed create a debt but it doesn't make the civil party the owner of the confiscated sums by equivalent, since these are two different notions.

In another case that was also tried in **Brussels on 21 May 2015**, the **criminal court**<sup>463</sup> confirmed the default judgement pronounced against the defendant. Two defendants (one of whom was a recidivist) were sentenced in absentia for human trafficking for the purposes of sexual exploitation regarding two young Albanian women, and for the exploitation of prostitution of the one who was their friend<sup>464</sup>. The two young women had both been recruited by Albanian loverboys (one of them via Facebook). They were gradually led into prostitution, in particular through the promise of a better life. They worked as prostitutes in the Netherlands and Germany, where they were expelled because that had fake passports supplied by the defendants. They were then taken to Brussels where they worked as prostitutes in Rue d'Aerschot. They had to give their earnings to the defendants and were also victims of physical and psychological abuse.

Although one of the defendants filed an opposition, the court confirmed the conviction pronounced, especially on the basis of the victims' corroborating statements. They both appeared frightened when they made their first statements; they

were afraid of the defendants' reaction following their decision to leave prostitution.

A confiscation order of EUR 105,000, equivalent to the assets derived directly from the offences, was pronounced against the defendant.

### ***Wide-scale sexual exploitation in Thai massage parlours***

A major case, in which Myria instituted civil proceedings, concerns acts of sexual exploitation in massage parlours.

**In a judgement of 27 January 2016, Brussels Criminal Court**<sup>465</sup> reached a verdict on a case of human trafficking for the purposes of sexual exploitation and other offences relating to prostitution, concerning different Thai massage parlours. These parlours were in fact hidden brothels. The acts took place from 2005 to 2009. The case was initiated when several Thai women attempted to commit suicide in a short period of time. The criminal case was instituted on the basis of phone taps, observations, searches and statements from the defendants and victims.

Six defendants were prosecuted, one of whom was the main defendant, a Belgian accountant living in Spain. He was the accountant of the Thai massage parlours but also the manager or partner of various companies. The criminal case revealed that through his accounting firm, he had significant contact with other Thai brothels, for which he did the accounting as well as taking care of the social obligations. It was thus possible to establish a link with some 30 massage parlours. An officially registered 'clean' company was to be found behind every massage parlour.

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<sup>463</sup> Brussels French-speaking Crim. Court, 21 May 2015, 47<sup>th</sup> ch. (final).

<sup>464</sup> Brussels French-speaking Crim. Court, 19 February 2015, 47<sup>th</sup> ch. (in absentia).

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<sup>465</sup> Brussels Crim. Court, 27 January 2016 46<sup>th</sup> ch. (appeal in progress).

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

The massage parlours were generally owned by Thai women. The defendants had begun a romantic relationship with some of them. In reality, the parlours were managed behind the scenes by Belgian men who benefited from the income. The women only received EUR 300 or 500 a month, or 800 in the best case. The administrative and financial matters were dealt with by the defendant who was the accountant. Business was conducted in ordinary houses, by women who barely spoke Dutch or English and didn't understand anything about administrative matters. The massage parlours were advertised online.

The women were lured from Thailand on the basis of false promises, such as marriage or work. They arrived in Belgium on a tourist visa. A marriage or sham marriage was then organised, thanks to which the girls obtained papers and could work. Other girls were staying illegally. The majority of them didn't know that they had to work in prostitution. The case also revealed that money had been paid for girls brought from Thailand to Belgium: EUR 9000 per girl supplied.

As soon as they arrived in Belgium, their papers were confiscated and they had to work six or seven days a week, and often for long hours. On paper, they received a minimum wage but in reality, they received much less. They only earned money if they had clients and had to hand over half of their earnings to reimburse the costs of their visa and residence papers. They were in a vulnerable position owing to their precarious situation, because they were pregnant, had no financial resources, didn't master the language and knew nothing about social legislation. They often lived in the massage parlours and hardly went out. Several girls were also addicted to gambling, and were subsequently faced with financial difficulties.

A Belgian-Thai couple who owned various massage parlours were also prosecuted. It

was the accountant who advised them. The Thai wife was responsible for supplying girls. She would leave papers in Thai bars and restaurants to incite the girls to come and work with them. She also looked for men who were prepared to act as guarantors for the girls. Once the girls had the papers, the men would receive 15 % of the girl's income as well as a reduction on the services offered in the massage parlour. The wife was pressured by her Belgian husband, who ensured that the recruited girls worked enough. She played the role of intermediary between the girls and her husband.

The victim who instituted civil proceedings was employed in one of the couple's massage parlours. She was enticed to Belgium by another defendant under the false promise of a better life. Contact with the father of her child, a Belgian 'sex tourist', were re-established. The child was entrusted to her family-in-law. The victim had to work in one of the massage parlours to be able to reimburse her costs for the visa and the journey, and to pay 'taxes'. She hardly saw her child. She was able to make very detailed statements regarding the false documents and her very low income. The victims had to pay for their own condoms and then dispose of them by burying them in the garden. The girls had to pay to cover the cost of their accommodation and food, as well as pay 'taxes'. There was no physical violence, just psychological coercion. They were threatened by being told the police would be brought in, thus leading to their expulsion from the country. When the victim finally stopped working in the massage parlour, she was threatened and followed on the orders of the owner. She obtained the status of victim of human trafficking.

The six defendants were prosecuted for human trafficking for the purposes of sexual and labour exploitation in conditions contrary to human dignity, with various aggravating circumstances. The court stated that the majority of charges were established, except against two of the defendants, where it couldn't be proven that the activities were regular activities.

They were also prosecuted for exploitation of debauchery and prostitution, forgery, receiving undeclared income and avoiding compulsory social security and tax contributions (false work contracts, false worksheets, false VAT returns, false payslips, etc.), running a brothel and harassing the victim who instituted civil proceedings.

The defendants were given partly suspended prison sentences ranging between 18 months and three years. The Belgian-Thai couple were sentenced in absentia. Various large sums of money and cars were confiscated. Myria and one victim instituted civil proceedings. The victim received more than EUR 8,000 covering the material and moral damages suffered. Myria received EUR 500 (even though it had asked for EUR 2,500).

#### ***Escort agency involving African women***

In a ***case tried in Turnhout on 9 December 2015***<sup>466</sup>, three defendants were prosecuted for trafficking for the purpose of sexual exploitation and various prostitution charges regarding underage Nigerian girls and an adult woman.

The defendant, who was also Nigerian, had African girls brought over, several of whom were minors, with false papers, in order to make them work as escorts in the agency she managed with her Belgian boyfriend. These services were advertised on the internet. The girls and their family in Nigeria were threatened and put under pressure through voodoo rituals. The boyfriend took care of the photos for the website, transporting the girls and collecting the money. The third defendant, a Nigerian, was the adult victim's former boyfriend and had helped to set up the escort agency. He

received money from the young women and created several websites.

The police were informed of the case by the PAG-ASA reception centre. Two victims instituted civil proceedings.

The court terminated the prosecution regarding the defendant, who had died in the meantime, and convicted the other two defendants for the charges made against them, except as regards a minor.

#### ***Cash courier***

In a ***decision of 25 March 2016***, the ***Brussels Court of Appeal***<sup>467</sup> completely reversed the judgement pronounced at first instance by ***Brussels Criminal Court***<sup>468</sup>. At the end of a detailed explanation, a defendant active in the transport of goods, people and cash between Belgium and Bulgaria, was acquitted.

The court began by emphasising the fact that in terms of principles, the act of transporting a woman coming to Belgium to work as a prostitute isn't a human trafficking offence, even if she was exploited, if it hasn't been established that the defendant knew or must have been aware of this actual or planned exploitation. The acts concerned no less than 113 people. And yet the majority of girls were never heard and the court considered there was no evidence proving that their activity was exploited by a third party. Concerning the girls who were identified and questioned, the court considered that neither their statements, the observations made or the intercepted conversations were sufficient to

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<sup>467</sup> Brussels, 25 March 2016, 12<sup>th</sup> ch.

<sup>468</sup> Brussels Crim. Court, 7 May 2014, 54<sup>th</sup> ch. The judgement is available on Myria's website: [www.myria.be](http://www.myria.be). and was dealt with in the previous report: Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1-1., p. 107.

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<sup>466</sup> Antwerp Crim. Court, Turnhout division, 9 December 2015, ch. TC1 (appeal).

deem established beyond all doubt that the defendant transported young women in order to allow offences to be committed against them in terms of prostitution. Subsequently, the court acquitted the defendant, owing to a lack of sufficient material evidence and no established mental evidence (knowledge) regarding the cases where exploitation of prostitution occurred.

However, the court ordered the sums seized by the police be returned to the three young women; they had given this money to the defendant but it belonged to them.

### ***Extraterritoriality***

In a ***case tried in Brussels on 6 November 2015***<sup>469</sup>, a Nigerian defendant living in Spain was principally prosecuted for trafficking for the purpose of sexual exploitation, and hiring and exploitation of prostitution. The girl in question, a minor at the time of the acts, instituted civil proceedings.

The court first asserted its jurisdiction to examine the acts committed in Spain, relating to the trafficking and exploitation of prostitution of the girl. Indeed, they are the expression of the same criminal intent that took place in Belgium, i.e. charges of extortion and money laundering, for which the defendant was also prosecuted. According to the case law of the Court of Cassation, this is a case where the authority of the Belgian judge can be extended (see Article 10ter and 12 of the Preliminary Title of the Code of Criminal Procedure).

The acts were revealed following checks on the 'rooms' in St. Josse. A number of African girls stated that they were victims of a Nigerian organisation. During a check at the address of the property they gave, the police discovered the girl. She was living there with her daughter. Heard by the police, she stated that she had been made

false promises and brought over from Nigeria to Europe (Spain) in 2002, within the framework of the network organised by the defendant and his wife. She was forced into prostitution through coercion (voodoo) and threats. She was 15 years old at the time. She had to give all her earnings to the defendant (a total of EUR 10,000). At the beginning of 2004, she fled to Italy (where she got pregnant) but pressured by the defendant through voodoo and threats to her family, she quickly returned to Spain to work as a prostitute again. At the beginning of 2010, she decided to escape to Belgium. As she had no other means of subsistence, she turned to prostitution. Coerced by the defendant, she made a series of payments to the defendant through Western Union. Although she was taken in by a specialised reception centre, the defendant continued to call her incessantly.

Letters rogatory were sent to Spain. During a search at the defendant's home in Barcelona, a suitcase was found containing the victim's personal belongings. The defendant was arrested in Spain on the basis of a European arrest warrant and extradited to Belgium.

The court accepted all the charges, on the basis of the victim's detailed and repeated statements, confirmed by the results of the letters rogatory, payments made via Western Union and the statement of a support worker at the reception centre that had taken her in, confirming the phone calls the victim had continued to receive.

The defendant was given a six-year prison sentence, together with a EUR 2,750 fine (EUR 500 multiplied by the 'décimes additionnels' (a coefficient of six)). Concerning the defendant, the court also ordered the confiscation of EUR 16,000, equal to the benefits derived directly from the offences. It sentenced the defendant to pay the civil party EUR 16,200 in terms of pecuniary damages and EUR 1,000 in non-pecuniary damages. The court also ruled that the confiscated sums be allocated to the civil party, first and foremost.

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<sup>469</sup> Brussels Dutch-speaking Crim. Court, 6 November 2015, 46<sup>th</sup> ch. bis (final).



### ***Control and subcontracting from inside a prison***

On **17 June 2015**, the **Criminal Court of Bruges**<sup>470</sup> examined a case of human trafficking for the purpose of sexual exploitation involving an Albanian gang. Six defendants were prosecuted. The main defendant was in prison for other offences when the acts took place. Mobile phone records revealed that he was still running his business from prison, using a mobile phone that had been smuggled in, and was firmly in control.

The criminal case revealed that several girls who were working in the main defendant's bar had to provide various services such as drinking with the clients, dancing and stripping, 'bedroom' activities (erotic massage and sexual relations) and escort services. The main defendant's girlfriend, in whose name the club was registered, was the manager. She was behind the counter and co-founder/shareholder. The criminal case clearly revealed that the main defendant was actually the real owner of the nightclub. His mistress had to follow his instructions and implement them in the workplace. She had to report back to him. He also gave instructions to his wife. The two women were in his grip.

A fourth suspect, a girl working in the bar, was also actively involved in the exploitation. She acted as a link between the waitresses and the boss. But the boss set the price a client had to pay and the duration of the services. He controlled his entourage, to ensure the girls had worked sufficiently and to check how much they had earned. He checked the accounts every week. The salary stipulated in the employment contracts wasn't what was actually paid. He used allocation keys (50/50 or 60/40) and didn't pay any salary if the girls hadn't drunk with the clients or

organised 'bedroom' activities with them. The girls had to work long hours (from 20:00 to 09:00 in the morning). There was little or no social security cover. He wasn't afraid of using threats or exerting significant pressure on them. The girls were in a precarious situation regarding residency and were financially dependent. Besides his wife and regular girlfriend, he had relations and children with different girls. It was clear to the court that the girls were exploited and had no other choice than to accept their fate.

Two prison guards were also prosecuted. Through passive corruption, the main defendant was able to continue his criminal activities from inside the prison. The guards warned him if the cell was going to be inspected and turned a blind eye to the mobile phone and drug use. The criminal case revealed that the two prison guards regularly went to the main defendant's nightclub. In exchange for their services, they could go and drink there and enjoy the girl's services.

The main defendant, his regular girlfriend and manager of the nightclub, and another girl that was working there, were prosecuted for human trafficking for the purpose of exploitation of prostitution with aggravating circumstances. They were also prosecuted for pimping and running a brothel, forgery and breaches of the Social Criminal Code. The court declared the charge of human trafficking established, except in the case of the girl.

The main defendant was a repeat offender. He already had some 30 convictions, especially for exploitation of prostitution and human trafficking. The court handed him a four-year prison sentence. The main defendant's girlfriend was given a partially suspended 18-month prison sentence. The court took into account the pressure exerted on her by the main defendant. The other waitress in the nightclub was given a six-month suspended prison sentence for running a brothel. The main defendant's wife was given a four-month prison sentence. The court considered that she

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<sup>470</sup> West Flanders Crim. Court, Bruges division, 17 June 2015, 17<sup>th</sup> ch. (appeal).

actively participated in the disgraceful practices since she took care of the fake work contracts, thus attempting to make the activities appear legal. Furthermore, different sums of money discovered in safety deposit boxes were confiscated.

One of the prison officers was given a six-month suspended sentence. The other one was acquitted owing to a lack of evidence. However, the court considered that his presence in the main defendant's bar was debatable from an ethical point of view.

Myria instituted civil proceedings and received EUR 2,500 in compensation.

### ***Exploitation of Hungarian girls in prostitution windows***

On 13 May 2015, Ghent Criminal Court<sup>471</sup> ruled on a case concerning the prostitution of Hungarian girls in windows in Ghent. Three defendants were prosecuted.

The defendants would go and fetch girls in Hungary, who were living in poverty, in order to bring them to Ghent. They worked 12-hour shifts in the prostitution windows, seven days a week. They gave the money they earned to the main defendant. The girls received EUR 20 a day to eat as well as the rent for the windows. The second defendant, who was the wife of the main defendant, supervised the girls. She monitored their work and their income. They all stayed in the same hotel. The defendants kept some of the girls' identity papers. The main defendant used physical violence against the girls on several occasions and threatened their family in Hungary.

The defendants were prosecuted for human trafficking for the purposes of sexual exploitation with aggravating circumstances. They were also prosecuted for exploitation for the purposes of

debauchery and prostitution. The court considered that both the material element (recruitment, transportation, harbouring, reception, control) and moral element (with the goal of sexually exploiting the girls) of the crime of human trafficking were established. Aggravating circumstances were also declared as being established.

The main defendant and his wife were both given a suspended sentence of two years and 10 months respectively, and heavy fines. EUR 100,000 were confiscated.

A third defendant was acquitted of the charges. The court considered that the fact that he also benefited from the income of his fiancée's prostitution wasn't punishable. The couple had a relationship and were engaged. They were saving together to buy a house in Hungary. As regards the defendant, there was no question of a punishable economic benefit.

### ***Sexual exploitation by a Nigerian gang***

On 5 February 2016, Brussels Criminal Court<sup>472</sup> ruled on case concerning offences committed between end 2013 and 2015 by a criminal gang active in Nigerian prostitution circles. The investigation was conducted with the help of phone taps and searches.

Several defendants smuggled Nigerian girls into Europe, who arrived in Belgium via Italy. The girls had to make the extremely dangerous crossing from Libya, across the Mediterranean. Several of them were rescued at sea by the Italian maritime police. They were received in Italy and taken to Brussels. They were given false identity papers with their own photo. Upon arrival, they had to work as prostitutes, to reimburse their travel costs above all. The amounts varied between EUR 35,000 and 40,000. The girls were recruited with the help of the defendants' family in Nigeria.

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<sup>471</sup> East Flanders Crim. Court, Ghent division, 13 May 2015, 28<sup>th</sup> ch. (final).

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<sup>472</sup> Brussels Dutch-speaking Crim. Court, 5 February 2016, 46<sup>th</sup> ch. (final).

They had to work as prostitutes in windows in the area around Brussels-North railway station. They had to hand over the majority of their earnings to their 'madam' (female pimp). They **Yemeshe system** was often used. It is a *modus operandi* that is frequently used in the world of Nigerian prostitution whereby the girl has no fixed place of prostitution but is offered the possibility of using a regular prostitute's window for a few hours. In exchange, the girl must give 50 % of her earnings from prostitution to the regular prostitute.

The girls are threatened with voodoo rituals. These rituals were organised in Nigeria before their departure or used at a later date to bring difficult girls in line. The girl's families in Nigeria were also held accountable if the girls didn't do as they were asked. The girls didn't dare go to the police. They were in a vulnerable situation, without money or a legal residence permit, had nowhere to stay and were entirely at the mercy of their pimps.

The investigation also revealed that three other girls had arrived in Italy in order to be taken to Belgium and that in Nigeria, three new girls were waiting to be smuggled and exploited.

During the searches, some sort of the accounts were discovered, demonstrating that the 'madams' earned between EUR 12,000 and 14,000 a month thanks to prostitution. Documents were also found concerning payments to accounts in banks in Italy and Nigeria.

The defendants were prosecuted for human trafficking for the purpose of sexual exploitation and for attempted human trafficking, both with aggravating circumstances. They were also prosecuted for exploitation of prostitution, laundering money from prostitution, and managing and participating in a criminal organisation.

In particular, the court considered the charges of human trafficking with a view to sexual exploitation established. Aggravating circumstances were also declared as being established, especially the fact of having

endangered the victims' lives by making them embark upon one of the most dangerous journeys across the Mediterranean. The charge of attempted human trafficking for the purpose of sexual exploitation of three new girls in Nigeria was also declared established. The court considered that it was a question of prostitution in a larger framework, on an international scale, and that all the interested parties were clearly coordinated, communicated with each other and offered to assist one another to make as much profit as possible from the prostitution of their victims. For three of the defendants, the court considered that they held the role of leader within the criminal organisation.

The defendants were given prison sentences ranging from 12 months to five years, and heavy fines. Several large sums of money were also confiscated.

### ***Sexual exploitation of young men in hotels***

On **9 February 2016, Bruges Criminal Court<sup>473</sup>** ruled on a case concerning the sexual exploitation of two young men.

After the police were alerted by a hotel owner, two male victims, one Russian the other Brazilian, were intercepted in a hotel room. They confirmed that they were sexually exploited by the defendant. He obliged them to have sexual relations with clients or massage them. Sometimes, they were forced to take drugs. The defendant took care of the clients and the hotel rooms. The victims had to give half of their earnings to their boss every time.

The defendant was prosecuted for human trafficking for the purposes of exploitation of prostitution or other forms of sexual exploitation with aggravating circumstances. He was also prosecuted for exploitation of debauchery and prostitution,

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<sup>473</sup>West Flanders Crim. Court, Bruges division, 9 February 2016, 14<sup>th</sup> ch. (final).

computer fraud and identity theft. The court considered that the material element of the offence of human trafficking wasn't sufficiently established. The victims were already living in Belgium and already working in prostitution before meeting the defendant. The criminal case also doesn't sufficiently emphasise the control the defendant exercised over the victims. According to the hotel owner's statements, the victims regularly went there, even without the defendant. Hence, he was acquitted of the charge of human trafficking.

However, the acts of exploitation of prostitution, identity theft and computer fraud were accepted. The defendant took photos of the clients' bank cards when they were in the bathroom and then used their bank details to buy products online. The court considered that the defendant didn't hesitate to get people to work in prostitution for him. Furthermore, he didn't respect the terms of his parole and had continued his escort activities. He was sentenced to two years in prison and had EUR 6,000 confiscated. The two victims, who instituted civil proceedings, each received compensation worth EUR 1,000.

## 2.3. Labour exploitation

### 2.3.1. Construction

In a case, tried at first instance by **Arlon Criminal Court** and presented in the previous report<sup>474</sup>, two defendants were prosecuted for human trafficking for the purpose of labour exploitation with respect to illegally staying foreign workers and, for one of the defendants, Belgians too. They were accused of having made the victims

work on renovating houses seven days a week, more than nine hours a day, with no appropriate work or safety equipment, no bathroom facilities and low wages. Some of the workers slept on site in precarious conditions.

The court declared the charge of trafficking established but only regarding the foreign workers. It didn't accept this charge regarding the defendant who was also prosecuted for these acts committed against Belgian workers.

In a **judgement of 14 January 2016, Liège Court of Appeal**<sup>475</sup> confirmed the decision overall at first instance: the versions of the civil parties are coherent and corroborated by the testimonies gathered. Based on a judgement of the Court of Cassation, the court reiterated that in this respect, making employees work in such a way that they are exploited economically is contrary to human dignity and considered an act of human trafficking. It found that this was indeed the case: the insalubrity of the place where the foreign workers were staying, the derisory wages, the very difficult conditions, and no heating or facilities regarding the workers' well-being, sufficiently established the fact that these workers were made to work in conditions contrary to human dignity.

However, despite the sentences handed down at first instance, the court ordered suspended sentences. It confirmed the material damages awarded at first instance, i.e. the salary arrears. Contrary to the Court of First Instance, it also awarded the civil party non-pecuniary damages. The first judge had refused to award non-pecuniary damages because the workers hadn't been deprived of their freedom of movement and had led each other into illegal employment. The court, on the other hand, considered that the violation of the human dignity of each of the civil parties entitled them to

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<sup>474</sup> Arlon Crim. Court, 8 May 2014. Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1.2.1., p. 113. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

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<sup>475</sup> Liège, 14 January 2016, 6<sup>th</sup> ch.

compensation for non-pecuniary damages. It subsequently awarded non-pecuniary damages of EUR 1,500.

Another case, that was also tried at first instance, by *Charleroi Criminal Court*<sup>476</sup> this time, concerned a Moroccan national who legally brought over fellow countrymen to then exploit them in his renovation company. He was prosecuted for both human trafficking and human smuggling. The workers had to work without being paid and without a day off when the job had to be finished. The defendant also put pressure on the workers by threatening to use a document signed by each worker authorising him to take action against them if they broke the contract. He also retained some of the workers work permits and residence permits.

The defendant was convicted at first instance for human trafficking and various charges regarding social criminal law. On the other hand, he was acquitted of the charge of human trafficking because the workers had arrived in Belgium with a visa, and therefore legally. Hence, one of the elements constituting the offence wasn't met.

In a *judgement of 26 June 2015, Mons Court of Appeal*<sup>477</sup> confirmed the criminal conviction in first instance. On a civil level, it awarded the final sum of EUR 1,500 in non-pecuniary damages, as well as the final amounts of salary arrears, upon the request of the civil parties.

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<sup>476</sup> Charleroi Crim. Court, 18 March 2011. See Annual Report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, Part 1, Chapter 4, point 2.4., p. 92. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

<sup>477</sup> Mons, 26 June 2015.

### *Work accident*

On **9 September 2015, Brussels Criminal Court** pronounced an interesting decision within the framework of a serious work accident<sup>478</sup>. Two brothers, working as building contractors, were chiefly prosecuted for trafficking for the purposes of labour exploitation with regard to a worker who instituted civil proceedings, with the aggravating circumstance that the victim's life was put at risk.

The victim, an Algerian undocumented worker, had fallen from badly installed scaffolding while cementing a house and suffered a serious head injury, fracturing his skull in several places. He disappeared suddenly from the hospital where he was receiving treatment but then returned to the same hospital's A&E department several times, before being operated. As a result of the fall, he was left with lifelong injuries.

The court accepted the charge of trafficking against the defendant who regularly used undocumented and illegally staying workers to work on building sites that he managed as a partner or on his own account. This practice was confirmed through observations, searches and phone investigations conducted within the framework of this case. The hired workers were taken on for the day for the sum of EUR 50. The court considered that the defendant had indeed recruited the worker who was the victim of a serious work accident, and who was staying illegally in Belgium under precarious circumstances, to work for him illegally and exploit him, in conditions contrary to human dignity, on a building site where the conditions were so bad that the worker nearly died. Furthermore, he did all in his power to cover up the matter, thus endangering the

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<sup>478</sup> Brussels French-speaking Crim. Court, 9 September 2015, 54<sup>th</sup> ch. (appeal).

victim's life and thrusting him back into an illegal situation, denying him the medical treatment he required.

On the other hand, the court acquitted the other defendant who was the manager of the companies and took care of design, technical calculations, finding clients, business relations and quotes. In view of his position as manager and actual authority within the companies, the court considered that he must have known of his brother's activities involving the hiring of illegal workers, especially on behalf of one of the companies. Nevertheless, concerning the recruitment of the victims and his work in dangerous conditions at the building site where the accident happened, there didn't appear to be any objective element in the case to establish his participation for certain. Indeed, the convicted defendant admitted to conducting undeclared building projects in the company's name, which he actually did on his own account without his brother knowing, and he was the one who signed the quote for the building project where the accident occurred. The court subsequently gave him the benefit of the doubt and acquitted him.

The victim was awarded a provisional sum of EUR 10,000 out of total damages amounting to EUR 250,000. Moreover, a medical expert was appointed to assess the injury.

### ***Bogus self-employed workers***

A case concerning Polish and Romanian bogus self-employed workers was tried by **Turnhout Criminal Court on 22 April 2015**<sup>479</sup>. The case was opened following the findings of the Financial Intelligence Processing Unit (CTIF - CFI) concerning a

company's suspicious transactions. The acts took place between 2005 and 2009.

The main defendant managed a company specialising in building works. He had set up two British companies which, in turn, set up two other companies. Romanians were then employed as limited partners or associates in the structure of these last two companies. They worked mainly as subcontractors for the main company.

The Romanian workers were barely aware of their role as managers-partners of the companies and were therefore employed as self-employed workers. They earned an hourly rate of EUR 8 out of which they had to pay social and tax contributions. The workers signed documents written in a language they didn't understand and fake signatures were used. They were also regularly intimidated and threatened by the main defendant, who had confiscated some of the workers' residence permits. They only got them back after having signed a contract for a loan. The post addressed to them from the social secretariat, among other things, was held back or ripped up by the main defendants. The rent was also often deducted from their 'wages'. They stayed in accommodation which, according to the Housing Inspectorate, didn't meet minimum housing standards. Within the framework of their activities, the main defendants benefited from the advice and collaboration of their accountants.

Several of them were prosecuted, including the main principle and his wife, two companies and three accountants. The main defendants were prosecuted for human trafficking for the purpose of labour exploitation (conditions contrary to human dignity), with aggravating circumstances. Just like the two companies, they were also prosecuted for participation in a criminal organisation as a leader, decision-maker or co-member. As well as the accountants, they were prosecuted for forgery and use of forgeries, breaches of the income tax code, money laundering and fraud.

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<sup>479</sup> Antwerp Crim. Court, Turnhout division, 22 April 2015, ch. TC1 (appeal).

In particular, the court considered the charge of human trafficking established, except for the aggravating circumstance of participation in a criminal organisation. The court also considered that the work performed by these Romanian workers was tantamount to labour exploitation and that it was contrary to human dignity. The main defendants wanted to make as big a profit as possible, to the detriment of the foreign labour. The victims were completely dependent on them for their job, their accommodation and, in some cases, also for the return of their residence permits. The court considered that even if the defendants had acted together in some way, there was nothing to prove that they formed a criminal organisation. There wasn't sufficient structure, stability or hierarchy to prove it.

The main defendant and his wife were given a four-year and two-year partially suspended prison sentence respectively, and very high fines. They were also handed down a 10-year professional ban. Both companies received fines. The accountants were given suspended prison sentences. Special confiscations were pronounced against the two main defendants and the companies.

Myria instituted civil proceedings, as did several of the victims and the trustees appointed to administer the companies' bankruptcy. Myria received a symbolic euro as compensation. The trustees received a provisional amount of one euro. The victims each received non-pecuniary damages varying between EUR 2,500 and 2,600. There wasn't sufficient evidence concerning material damages.

A similar case was judged by ***Mons Criminal Court on 21 April 2016***<sup>480</sup>.

Three defendants and a company were prosecuted for human trafficking for the purpose of labour exploitation regarding numerous Romanian workers. The main defendant was also prosecuted for forgery and as a slum landlord. Three workers and Myria instituted civil proceedings.

The case was initiated following a complaint lodged with the police by a Romanian worker who complained of the work conditions, as did several other Romanians. They had responded to an advertisement in a Romanian newspaper, with a view to working in Belgium. The second defendant acted as a middleman for the recruitment process. They were promised EUR 7 an hour the first month and then EUR 8. Accommodation would be provided, with rent costing EUR 150. The travel costs and the first month's rent would be deducted from the salary after a full month of work.

Once in Belgium, they were faced with appalling work and living conditions: six days a week and eight to twelve hours a day; in addition, the promised wages were never paid. The workers had the status of associate, of which they hadn't been informed, and were completely unaware of the consequences of this status, since they

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<sup>480</sup> Hainaut Crim. Court, Mons division 21 April 2016, 8<sup>th</sup> extraordinary ch. (final).

didn't understand the documents they were asked to sign. The main defendant was responsible for all the managerial tasks, while the Romanian workers were restricted to simply executing the tasks, under his authority. The court therefore concluded that the status of associate was a status that bore no relation to reality, since the workers who had come from Romania were clearly bound by an employment contract.

The court accepted all the charges brought against the main defendant: The salary offered fell well below the minimum wage, and the long hours worked and a failure to pay the wages constituted work conditions contrary to human dignity. The court also pointed out that it was of little importance that the Romanian workers consented to this salary, which appeared more than satisfactory to them considering Romania's well-known poverty at the time of the acts.

The charge of trafficking regarding the co-defendant was also accepted: she served as an intermediary for the recruitment of labour in bad conditions on behalf of the main defendant, with full knowledge of the facts, and therefore allowed the recruited workers to work in conditions contrary to human dignity. As for the third defendant, he was also convicted: he was chiefly responsible for transporting the workers and supervising the building site.

The charge of slum landlord was also declared established: the buildings rented were overcrowded and squalid: they were made available to some of the workers in conditions contrary to human dignity. The intention of making an abnormal profit results from demanding rent even though the building isn't fit for rent, and the large amount of rent received.

The civil party present was awarded EUR 2,000 in damages associated with the charge of human trafficking. Myria received one final euro.

### 2.3.2. Agriculture/horticulture

In a case tried in Brussels, a defendant, who was a company manager, and his company, were prosecuted for human trafficking regarding a Moroccan worker, hiring illegally staying labour and various breaches of the social criminal law concerning several other foreign workers as well.

The worker contacted a specialised reception centre, which had then got in touch with the labour prosecutor's office. The worker was then heard several times by the Social Inspectorate. He had come from Morocco and entered Belgium illegally in 2003. Recruited several years later by the defendant in the 'petit château' neighbourhood, he was then exploited for several years by the defendant in a market garden. The work consisted of planting various vegetables and herbs (in greenhouses) as well as treating them with chemical products without the proper protection. He was forced to work seven days a week and 12 to 14 hours a day for a salary of EUR 40 a day. The defendant also promised him a better salary and the regularisation of his situation, but he never kept his promises. He also only received part of the promised salary.

In its decision of **1 April 2015, Brussels Criminal Court**<sup>481</sup> accepted all the charges. As regards human trafficking, the court made it clear that the circumstance of the person concerned being the victim of breaches of social legislation, isn't actually sufficient to accuse the perpetrator of these breaches of the offence of human trafficking. The worker had indeed been recruited by the defendant. The court then examined whether the aim of recruiting the worker was to make him work in conditions contrary to human dignity. The wages paid were significantly lower than those paid for

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<sup>481</sup> Brussels French-speaking Crim. Court, 1 April 2015, 69<sup>th</sup> ch. (final).



this type of activity according to Belgian law: the defendant admitted paying a flat fee of EUR 50 a day regardless of the number of hours worked, which corresponds to EUR 6 instead of EUR 8.18 an hour, as long as the number of hours is approximately eight hours a day for 75 % of the legal working week. However, the court then pointed out that it wasn't at all established that the duration of the work was 'only' eight hours. Other workers confirmed working long days (10 hours). The hygiene conditions in the labourers' place of work were very basic (toilets in a terrible state, no place to wash hands properly, even though the labourers used highly toxic products and had only basic protection). The exploitation of the worker, whose illegal situation the defendant was well aware of, did indeed occur in conditions contrary to human dignity.

On the other hand, the court acquitted the company, since it had no will or awareness of its own separate from that of its one and only manager. In this case, it can have no individual criminal responsibility of its own. The court also didn't declare it responsible on a civil level for the fine or the costs its manager was ordered to pay, because the actions taken by the latter were done so in his capacity as the main agent and not as a representative or employee of this company.

The worker who instituted civil proceedings was awarded salary arrears of EUR 25,000 *ex aequo et bono* and definitively, as well as non-pecuniary damages of EUR 500<sup>482</sup>.

PAG-ASA, which instituted civil proceedings, was awarded EUR 1 definitively.

On the other hand, in another case concerning horticulture, ***Liège Criminal***

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<sup>482</sup> Note that perpetrator paid the victim the damages in full.

**Court** acquitted a Belgian employer and his horticultural company (picking apples, pears and strawberries) of all charges in a ***decision of 29 June 2015***<sup>483</sup>. He employed Indian, Pakistani and Polish workers.

The defendants first put forward the argument of the violation of the presumption of innocence and the right to a fair trial (Article 6, ECHR), owing to the fact that investigators and journalists openly spoke of 'contemporary slavery' in RTBF's programme *Devoir d'enquête*. During this programme, the defendant and his workers were questioned and extracts from the first few moments of the police investigation were broadcast. The court dismissed this argument and declared the legal proceedings admissible on the grounds that even if the investigators and/or journalists wrongly expressed views without the required reserve, they alone weren't of a nature to mar the judgement of the case by a professional, independent and impartial judge with a violation of Article 6 of the ECHR. They didn't actually deprive the defendants of their right to a fair trial.

The defendant used the ALE (local employment agency) system<sup>484</sup> to hire and pay workers of Indian and Pakistani nationality. The workers didn't have a residence permit and not all of them had the right forms. The defendant had paid a significant amount for ALE cheques.

The court considered that the charge of trafficking wasn't sufficiently established:

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<sup>483</sup> Liège Crim. Court, Liège division, 29 June 2015, ch. 18A (appeal).

<sup>484</sup> The Local Employment Agency (ALE), present within every commune or group of communes, has the task of organising and checking, in collaboration with the National Employment Office (ONEM), activities that don't fall under the category of regular work. The ALE system puts ALE workers in contact with private individuals or legal persons, in order to carry out specific activities. See: [www.cheque-ale-onem.be](http://www.cheque-ale-onem.be).

the Indian and Pakistani workers' pay conditions were correct. As for the Polish workers, they paid social security contributions and were given payslips, which elicited no criticisms. The working hours weren't excessive, the accommodation for the Polish workers was basic but not precarious and the workers weren't threatened, subjected to violence or have their papers retained. The court also considered that transporting the workers in a covered truck couldn't be considered alone as an act contrary to human dignity. Even though this form of transport was neither suitable nor in line with the rules, the journeys were short.

### ***Non bis in idem***

In a case presented in the previous report<sup>485</sup>, ***Mechelen Criminal Court***<sup>486</sup> convicted the head of a company at first instance, who acted as a middleman for labour in the horticultural sector. He was convicted for human trafficking for the purpose of labour exploitation regarding at least nine Romanian seasonal workers. The criminal case revealed, among other things, that the workers hadn't signed a lease agreement with the defendant but that they paid him approximately EUR 200 a month, per person, all the same. The dormitories were in barely habitable buildings, with no conveniences, and the workers were piled in there for the night. For transportation to and from the workplace, they had to pay EUR 200 a month.

The defendant appealed against the judgement. He alleged a violation of the *non bis in idem* principle. The defendant had already been convicted in 2013 by Antwerp

Court of Appeal for illegal employment and prohibited employment services. He considered that the judgement of 21 January 2015 related to the same acts. In its ***judgement of 4 February 2016, Antwerp Court of Appeal***<sup>487</sup> considered otherwise. The court considered that the **non bis in idem** principle relates to "acts that are identical and substantially the same, i.e. a collection of concrete factual circumstances that are inextricably linked to each other in time and space". The judgement of 2013 related to acts that occurred between July and October 2011, whereas the conviction of 2015 related to acts that occurred between January 2008 and May 2011. According to the court, it was subsequently not a matter of "acts that are identical and substantially the same", "even though they were the successive and continuing expression of the same criminal intent".

The court handed down a suspended 12-month prison sentence and a heavy fine. It also reversed the confiscation pronounced at first instance. The court considered there wasn't enough data to determine that the assets resulted directly from the offence, but rather that the income resulted from investments.

### **2.3.3. Road transport**

#### ***False posted workers***

Within the framework of a case touched upon in the case law overview of the previous report<sup>488</sup> and in this report's case studies<sup>489</sup>, several defendants and a road haulage company (legal person), were convicted at first instance for human

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<sup>485</sup> Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point 1.2.2., p. 118. 118.

<sup>486</sup> Mechelen Crim. Court, 21 January 2015. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

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<sup>487</sup> Antwerp, 4 February 2016, 14<sup>th</sup> ch.

<sup>488</sup> Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter 4, point 2.5., p. 119.

<sup>489</sup> See this part, Chapter 2 (Case Studies), point 1.2.3.

trafficking by Bruges Criminal Court<sup>490</sup>. **Ghent Court of Appeal** adopted another point of view in its judgement of **7 January 2016**<sup>491</sup>.

The main defendant had set up a fraudulent structure, whereby a Bulgarian road haulage company provided services for a Belgian firm using posted drivers and mechanics. In reality, this involved undeclared work and the illegal employment of Bulgarian and Romanian workers in Belgium with no work permit.

At first instance, the court considered that the charge of human trafficking had been established. The three defendants were given prison sentences ranging between 18 months and 3 years. As for the company, it was fined. The court also ordered the company's complete closure for two years. Myria, which instituted civil proceedings, received EUR 2,500 in damages.

During the appeal, the defendants challenged the jurisdiction of the Belgian court, saying that there was no link between the charge and Belgium: it isn't because the instructions were given in Belgium that the offence is located in Belgium, considering that no professional service took place in Belgium. The court wasn't of this opinion. The Belgian courts have the jurisdiction to rule on an offence if one of the essential elements is situated in Belgium. According to the indivisibility theory, they also have jurisdiction if the acts committed in Belgium and abroad form an indivisible whole.

According to the court, the Bulgarian company had only contributed to the construction of an illegal structure for false

posted workers. The Bulgarian company provided road haulage services as a subcontractor on behalf of the company in Belgium by using posted Bulgarian drivers. However, management and the operational base was in Belgium. These acts were established concerning the main defendant and his wife but also regarding the Belgian company. A third defendant was acquitted of the charges.

As regards the charge of human trafficking, the court considered a doubt remained concerning the essential element of employment 'contrary to human dignity'. The criminal case wasn't able to determine the exact salary paid to everyone. Furthermore, the public prosecutor didn't instigate proceedings for non-payment or late payment of the salary. Therefore, it wasn't possible to sufficiently support the argument of labour exploitation. The statements made by the drivers on the subject weren't coherent and no complaint was made in this respect. Neither was a complaint filed concerning living and work conditions contrary to human dignity. The court therefore acquitted all the defendants of this charge. The two defendants had their sentence reduced to a 12-month suspended sentence. The company, as a legal person, was given a fine. The court also ordered the complete closure of the company for a year.

Since the defendants were acquitted of the charge of human trafficking, Myria's request for compensation was declared unfounded.

### ***Criminal organisation of bogus subcontractors***

A wide-scale fraud case in the road haulage sector involving no less than 19 defendants (including six companies), concerning a series of offences (forgery, social legislation breaches, tax fraud), was tried by **Liège**

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<sup>490</sup> Bruges Criminal Court, 26 March 2014, 17<sup>th</sup> ch. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

<sup>491</sup> Ghent, 7 January 2016, 3<sup>rd</sup> ch.

***Criminal Court on 25 April 2016***<sup>492</sup>. The two main defendants were prosecuted for having been the leaders of a criminal organisation, and the other private individuals and two companies for having been part of it. In addition, four defendants (including the two main defendants) were prosecuted for human trafficking for the purpose of labour exploitation regarding three workers, two of whom instituted civil proceedings. The National Social Security Office (NSSO) and the Professional Union for Transport and Logistics also instituted civil proceedings, as did Myria.

The case was opened when a Turkish lorry driver, staying illegally in Belgium, filed a complaint with the police because he had just been fired by his employer, which he said was a Bulgarian company. In reality, he thought he was working for a Belgian company because he had never worked in Bulgaria and had never even transported goods to or from Bulgaria. He transported goods and worked 17 to 18 hours a day without being declared. The two main defendants had instructed him to destroy the work contracts for the day and the tachograph discs at the end of every workday. He also stated that a great many more illegally staying drivers were employed by this company. He was supposed to be paid EUR 500 a week but he was never paid in full for his work. He declared himself a victim of human trafficking and instituted civil proceedings.

Observations and searches were then carried out, which revealed that some well-established Belgian road haulage companies subcontract haulage activities to other Belgian companies. This led to the appearance of the names of several companies that were prosecuted in this case. One of the two main defendants confirmed that he was the *de facto*

manager of these different companies. Some of these Belgian companies actually gave subcontracting work to companies registered abroad (one of which was also prosecuted). These companies functioned and were managed with complete disregard for the legal rules. Indeed, none of these foreign companies had effective and genuine activities in the country where they were registered and it was later established that they were, in fact, managed by one of the main defendants from his home in Belgium. Hence, the searches and hearings gathered showed that, for instance, this defendant established the invoices at his home in Belgium, which a Slovak company was supposed to send to one of the Belgian companies.

The court therefore observed that it wasn't disputing the fact that the Belgian companies had indeed performed the haulage activities for the end-customer. It was the fact that the work was subcontracted to foreign companies that raised questions from a legal point of view. The defendants had indeed set up a method whereby the companies abroad appeared to be the employers of the drivers driving these lorries, which wasn't the case.

The court accepted the majority of the charges regarding forgery, social legislation breaches and tax fraud concerning the accused natural persons but acquitted the legal persons.

As regards human trafficking, after recalling the essential elements, the court stated that since the conditions were contrary to human dignity, it was question of a subjective assessment of the situation thanks to a body of evidence such as the wages, the working hours, the failure to declare the work and the working conditions.

The court observed that while the lack of a DIMONA declaration, the failure to declare the workers to the NSSO, and hiring workers with no valid residence or work permits (all sufficiently proven by the case-) can be

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<sup>492</sup> Liège Crim. Court, Liège division, 25 avril 2016, 18<sup>th</sup> ch. (appeal).

considered evidence of human trafficking, they alone aren't sufficient, in this case, to establish this charge. As regards pay, the court based itself on an interim report from the Social Inspectorate and on the statements made by many of the identified workers. It deemed that it wasn't low enough to be considered serious evidence of working in conditions contrary to human dignity.

As regards the working hours, the court considered that the two workers who had instituted civil proceedings had given conflicting statements. Furthermore, the court considered that there was no argument to be raised, in support of a human trafficking charge, concerning the fact that international lorry drivers were made to sleep in the cabin of their lorry.

Besides the driver who reported the matter to the police, another Turkish worker, who also instituted civil proceedings, was actually the only one to state that he worked every day, except at weekends and on national holidays, that he drove for at least nine hours a day, that he received EUR 150 a week cash-in-hand with no payslip, while the other drivers were paid EUR 450 to 500 a week, because they were in training and non-European. He had to tamper with his work hours in order to arrive in time when deliveries were made. In particular, he would use a magnet in order to be able to continue driving without taking a compulsory break.

The court concluded that the investigation hadn't established to the requisite legal standard the essential elements of human trafficking, and declared this charge not established thus giving the accused the benefit of the doubt.

The court accepted the charge of criminal organisation except for one of the three natural persons and the legal person, which it acquitted of this charge. It appeared that for almost two years, drivers, either with a residence permit but receiving benefits, or staying illegally, were hired as undeclared

workers and paid in cash to ensure the success the road haulage business, which was supposed to generate maximum profit while paying the least amount of social charges and taxes. In order to hide the true identity of the employer, several companies were involved in the set-up, with front men at the head of them or the involvement of people on the ground serving as intermediaries between the organisation's kingpin and the customers or the workers. Everyone had a role to play in this criminal organisation led by the two main defendants.

The applications of some of the civil parties were declared (partly) founded.

#### 2.3.4. Hotel & catering industry

Two cases were recently tried by *Brussels Criminal Court*. The first one, which was mentioned in the Case Studies part of this report<sup>493</sup>, concerns a defendant who owned various establishments and businesses both in his own name and in the form of companies, including a café, a snack bar, a grocery shop, a restaurant, various driving schools and a hairdresser's. He was prosecuted for human trafficking for the purposes of labour exploitation regarding seven people and for various social criminal law charges. Nine workers instituted civil proceedings, as did Myria and PAG-ASA.

The workers were entrusted with a variety of tasks according to the defendant's needs. The majority of these tasks consisted of housework and cleaning at the defendant's home, cleaning the driving schools and the café, and works in the defendant's house.

The majority of the workers had no Belgian residence permit or had a temporary permit. The defendant had promised to regularise their situation. Furthermore, he

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<sup>493</sup> See this part, Chapter 2, point 1.2.2.

had political contacts, which seemed to reassure the workers.

In its *judgement of 19 June 2015*<sup>494</sup> the court accepted the charge of human trafficking for the acts committed after the Law of 10 August 2005<sup>495</sup> came into force: the workers' testimonies establish that the defendant took advantage of the administrative precariousness of these people to hire them in circumstances that proved to be contrary to human dignity: no schedule or wages, available to their employer at all times, precarious accommodation. The workers were sometimes housed at the defendant's home, or in a room located in a cellar or attic, or in a garage, where there was no heating or bathroom facilities.

In addition, the defendant was insulting, threatening and even denigrating.

Myria and PAG-ASA received one euro. The workers who instituted civil proceedings were awarded salary arrears and non-pecuniary damages.

The second case, *judged on 4 September 2015*<sup>496</sup>, concerns a couple who owned a Moroccan snack bar. The couple was prosecuted for employing four illegally-staying workers, various breaches of the social criminal law, as well as for human trafficking regarding two of them. Their

failing company was held civilly liable. The case was opened following a complaint from one of the workers to the Social Inspectorate. They contacted a specialised reception centre for victims of trafficking to complain of their working conditions.

The defendants referred to the inadmissibility of the legal proceedings, since the initial home visit was ordered by a judge without jurisdiction (the police court and not the investigating judge). However, the court rejected this argument, considering that even if this home visit was irregular, it didn't invalidate the initial findings. Indeed, Article 32 of the Preliminary Title of the Criminal Procedure Code, which came into force in 2013, i.e. after the acts were committed and with immediate effect, doesn't provide for nullity in case of a breach of essential procedural requirements affecting the organisation of the courts. None of the other causes of nullity prescribed by this article were considered to have been met. The court concluded that the home visit wasn't irregular to the point that it should invalidate the acts that followed, especially the irregularity of all the legal proceedings.

Regarding the facts, the court first found that the various workers were indeed employed by the defendants, as corroborated by their statements, which were consistent and therefore considered credible. Some of the testimonies also confirmed their employment. The defendants denied having employed them.

As regards human trafficking, the court found that it was certain that the two workers in question had been paid very little or not at all. The court therefore considered that the simple fact of not paying a worker their due, and to consider that they have been 'paid' by offering them free accommodation and food, was sufficient to prove that the conditions in which these workers were required to work were contrary to human dignity. In addition, the defendants were well aware that these two people were staying here illegally, a

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<sup>494</sup> Brussels French-speaking Crim. Court, 19 June 2015, 59<sup>th</sup> ch. (final).

<sup>495</sup> The labour prosecutor requested the recharacterisation of the acts committed before the Law of 10 August 2005 came into force, on the basis of (former) Article 77bis of the Law of 15 December 1980. However, since the court considered that the defendant hadn't contributed to the entry or stay of the workers in question, he was acquitted of these charges. This point of view is questionable, given that it can be considered that someone who illegally employs another person, automatically contributes to their stay.

<sup>496</sup> Brussels French-speaking Crim. Court, 4 September 2015, 69<sup>th</sup> ch. (appeal).

particularly precarious situation because it made them dependant on the defendants' good will, in order to avoid expulsion. It is of little importance, in this respect, that the workers continued to work for them for several years.

The company wasn't convicted as being civilly liable, since the offences weren't committed by the agents or employees.

The worker who was the victim of trafficking, was awarded EUR 500 in non-pecuniary damages and EUR 25,000 *ex aequo et bono* in salary arrears.

**Namur Criminal Court** also tried a case in this sector on **29 June 2015**<sup>497</sup>. It convicted two defendants, a father and a son and their company for trafficking and smuggling in human beings, facilitating unlawful stay and various charges concerning social criminal law. They exploited several Chinese workers in their restaurant. Two workers instituted civil proceedings and each received the provisional sum of one euro in material damages and one euro in non-pecuniary damages.

The case began with the testimonies gathered by Liège Social Inspectorate, of two workers who had been taken in by a specialised reception centre and who had instituted civil proceedings. The workers spoke of their journey from China to Belgium, involving middlemen whom they had to pay. One of them had come here with the aim of studying but was then obliged to work to reimburse the loans taken out by his family to fund his trip to Belgium. He worked as a cook in the defendants' restaurant. The work and living conditions were very difficult: food consisted of what the boss decided to give them or the customers' leftovers, working 12 to 14 hours a day six days a week, for EUR 550 a month.

The court considered that it was indeed question of accommodation with a view to making someone work in conditions contrary to human dignity: salary below the Belgian minimum wage, accommodation on site, long hours, withholding a passport, quality of the food, lack of social protection, threats, etc.

Interestingly, the court emphasised that it had been established that what the people had to say, after they had been taken in by specialised structures, evolved over time. "The confidence and safety they feel thanks to their new status allows them to speak about what they have gone through and their living conditions". The court thus observed a marked difference between the first hearings that took place during the police interventions when the 'threat' was still there, and subsequent hearings following the intervention of the specialised structures.

On the other hand, in a case tried by **Leuven Criminal Court on 23 February 2016**<sup>498</sup>, the defendant was given the benefit of the doubt and acquitted. The court ruled on acts of human trafficking by the owner of various restaurants in Leuven and Ghent. Two victims made damning statements. They were employed as cooks or waiting staff. They had to work long days (up to 11 hours), for which they were paid very little. The owner had promised to take care of their residence papers and asked them for EUR 500 for this service. As they had an employment contract, they hoped to be regularised, which is why they didn't dare complain. In the end, their applications were rejected.

The main defendant was prosecuted for human trafficking for the purpose of labour exploitation (conditions contrary to human dignity), with aggravating circumstances. The victims obtained the status of victim of

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<sup>497</sup> Namur Crim. Court, Namur division, 29 June 2015, 12<sup>th</sup> ch. (appeal set for October 2016).

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<sup>498</sup> Leuven Crim. Court, 23 February 2016, 17<sup>th</sup> ch. (final).

human trafficking based on the information they were able to provide within the framework of the investigation.

The court considered that the facts weren't established. The case didn't contain sufficient evidence that the defendant exploited the two people. Testimonies from other people who worked for him contradicted the victims' statements. The Social Inspectorate didn't make any findings. Furthermore, the victims' regularisation procedure was rejected.

We shall also look at a recent decision taken by **Mons Court of Appeal**, which was required to re-examine a case tried at first instance by Charleroi Criminal Court<sup>499</sup>. A couple of restaurant owners were prosecuted for human trafficking for the purpose of labour exploitation and various breaches of the social criminal law. They were also prosecuted for rape and hiring with a view to prostituting a compatriot. A third defendant was prosecuted for the rape of this worker.

At first instance, the court acquitted the defendant of the rape charge, as it considered the victim's accusations to be insufficient and not corroborated by any unambiguous element of guilt.

The court accepted the charge of trafficking and social criminal law breaches: the victims worked for six days a week and at least 10 hours a day, and cleaned the kitchen, for an hourly rate of EUR 3.07, and were housed in precarious conditions.

In its **judgement of 10 February 2016, the court**<sup>500</sup> confirmed the first instance judgement, albeit with a few minor corrections. It pointed out that in this

respect, the notion of recruitment must be understood in the usual sense of 'hiring'. This doesn't imply that the person hired must be approached for this purpose and doesn't exclude that it was the person hired who asked for the work.

### 2.3.5. Bakery

In a **judgement of 9 February 2016, Namur Criminal Court**<sup>501</sup> convicted two defendants (Turkish brothers), for human trafficking and smuggling, as well as facilitating unlawful stay and various social criminal law breaches regarding several workers whom they exploited in their bakery. They also had a shop and a delivery service in other points of sale. The workers had to make between 2,000 and 2,400 loaves of bread a night.

Four victims, including two claimants who were the children of a worker who died, instituted civil proceedings.

In addition, the defendants had substandard accommodation on the floor above, which was rented out to the civil parties for EUR 400 a month. The four of them slept in a room above the flour silo, and didn't even have a bed, only a mattress that had been recuperated from the street on the day large items are left out for the rubbish collectors. The housing conditions were squalid both in terms of cleanliness and hygiene, to the point where the floor was sticky with filth in order to increase the dependence of the civil parties, the defendants deducted the rent from their meagre salary. They also deducted the purchase of bread and various supplies that the victims were required to make in a neighbouring grocery store, which the defendants also owned.

The work conditions were appalling in terms of both health and safety. The wage conditions were also disgraceful: the salary

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<sup>499</sup> Charleroi Criminal Court, 21 March 2014, 7<sup>th</sup> ch. Annual Report 2013, *Trafficking in human beings, Building bridges*, Chapter 4, point 2.2., p. 118. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

<sup>500</sup> Mons, 10 February 2016, 4<sup>th</sup> ch.

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<sup>501</sup> Namur Crim. Court, Namur division, 9 February 2016, 12<sup>th</sup> ch. (appeal set for November 2016).



varied between EUR 2.30 and 3.50 an hour for a 16- to 17-hour day, seven days a week.

The defendants were also violent and intimidating towards the victims. They also had no scruples concerning the victims' children (one defendant refused to allow one of the children to see a doctor), who didn't go to school.

One civil party was awarded EUR 5,000 ex aequo et bono in non-pecuniary damages and a provisional sum of EUR 56,263.77 in material damages; the three children of the deceased worker (one of whom was an adult): EUR 2,500 in non-pecuniary damages and the provisional sum of EUR 31,722.17 in material damages. Finally, the last civil party, i.e. the husband of the deceased worker, was awarded EUR 5,000 in non-pecuniary damages and a final gross sum of EUR 127,124.70 in material damages as well as salary arrears of EUR 11,099.32 equal to the holiday bonus.

### 2.3.6. Meat-processing industry

On **27 February 2015, Termonde Criminal Court** convicted a defendant and his company for human trafficking and various breaches of the social criminal law<sup>502</sup>. The latter employed numerous Romanian nationals in his meat-processing firm. Besides his own staff, he called upon the services of two subcontractors for posted workers. Numerous irregularities were found (no LIMOSA declaration, no A1 form for posted workers proving regular posting from Romania, non-compliant and unpaid wages, etc.).

As regards human trafficking, the court referred to an earlier decision rendered by Ghent Criminal Court which said that the employment of foreign workers without a work or residence permit for a minimum

and variable salary, with no social cover is equal to arbitrary forced subjugation and can be considered as human trafficking.

In this case, the unskilled workers had to work a minimum of 45 hours a week for a salary of EUR 100 a week, which is equal to an hourly rate of EUR 2.22. The workers also had to pay a deposit which they lost if they withdrew.

The defendants were also prosecuted for slum landlord activities but the court acquitted them of this charge.

### 2.3.7. Shops (night shops / second-hand shops)

On **5 May 2015, Namur Criminal Court**<sup>503</sup> sentenced a Bangladeshi defendant in absentia for human trafficking and various social criminal law breaches. At the hearing, the civil parties explained how they came to Belgium and their disastrous living conditions (they slept on a mat, had their television confiscated, could only eat the leftovers from the restaurant, had no emergency medical help when it was required, were only allowed one shower a week) even though they had to work long hours (more than 12 hours a day, seven days a week) for a derisory sum and were prevented from going out or having any contact with the outside world. The defendant put them under enormous pressure and they lived in fear of reprisals, against themselves and their family back home. The defendant's company was declared civilly liable. The two civil parties were each awarded EUR 54,000 in material damages and EUR 10,000 in non-pecuniary damages.

In a decision of **8 February 2016, Liège Criminal Court** also convicted a defendant (and his company), who sold second-hand

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<sup>502</sup> East Flanders Crim. Court, Termonde division, 27 February 2015, 13<sup>th</sup> ch. (final).

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<sup>503</sup> Namur Crim. Court, Namur division, 5 May 2015, 12<sup>th</sup> ch. (in absentia).

furniture, for human trafficking and various social criminal law breaches<sup>504</sup>. A Guinean worker and an Algerian worker were exploited in this company.

After recalling the essential elements, the court stated that since the conditions were contrary to human dignity, it was question of a subjective assessment of the situation, as regards human trafficking, thanks to a body of evidence such as the wages, the working hours, the failure to declare the work and the working conditions. As for the moral element, with regard to the recruiter, it was sufficient to demonstrate that the work conditions were contrary to human dignity for the offence to be complete.

While social criminal law offences (such as unpaid or partly paid wages, failure to declare workers to social security, etc.) were sufficiently established in the case, they weren't however sufficient to establish human trafficking.

The court considered this charge sufficiently established by additional elements. For this purpose, it based itself on the workers' coinciding and credible hearings, the material findings made during a police intervention, and the photos taken by the workers that were handed over to the Social Inspectorate.

The additional elements were as follows: abnormally long working hours (almost 63 hours a week, with no day off), wages that didn't correspond to the amount of work or the minimum rate for the sector of activity (EUR 20 a day), wage deductions supposedly for the application for a work permit; wilfully hiding the workers by shutting them in the warehouse while they were doing their work; accommodation on site in particularly unhygienic and dirty conditions; the workers' dependency regarding external help to get food; the existence of an escape

route and instructions on what to do if there was an inspection; lack of medical care in case of work accidents.

One of the workers who instituted civil proceedings was awarded the provisional sum of EUR 10,000.

### 2.3.8. Riding schools

In a **judgement of 13 January 2016, Mons Court of Appeal**<sup>505</sup> confirmed the judgement rendered at first instance by Charleroi Criminal Court<sup>506</sup>. The latter convicted two defendants for human trafficking for the purpose of labour exploitation and various social criminal law breaches. They exploited a couple of Brazilian workers at their riding school. However, the court reversed the sentences and order them to be deferred.

The court stated that in this respect, the term 'recruit' must be understood in the usual sense of 'hire', which doesn't imply that the person hired must be approached and doesn't exclude that the hired person asked for the work, as was the case. The court once again emphasised that the charge doesn't require the acts to take place within the framework of a work contract and that it isn't necessary to demonstrate the existence of a link of subordination before seeking evidence of a violation of human dignity. According to the Court of Cassation, 'work performed' falls within the scope of the incrimination of trafficking when the dignity of the person doing the work is violated, regardless of the duration of this violation.

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<sup>504</sup> Liège Crim. Court, Liège division, 8 February 2016, 18<sup>th</sup> ch. (appeal).

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<sup>505</sup> Mons, 13 January 2016, 4<sup>th</sup> ch.

<sup>506</sup> Charleroi Crim. Court, 26 April 2013. See Annual Report 2012, *Trafficking in human beings, Building trust*, Part 2, Chapter 3, point 2.1.2., p. 88. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

In this case, the husband had to clean out around 27 boxes and look after and feed almost 30 horses. He worked six days a week and ten hours a day for a starting salary of EUR 500 a month, going up to EUR 750. The court calculated his hourly salary as varying between EUR 1.86 and 2.79 an hour. He also had to ask his wife to help, who therefore did unpaid work so that her husband could finish his day at a reasonable time.

### 2.3.9. Cleaning

On **25 May 2016**, **Brussels Criminal Court** ruled in an important case in the cleaning sector, concerning subcontracted work for a well-known fast-food restaurant<sup>507</sup>. In this case, no less than 20 defendants were prosecuted. The managers of the cleaning firms, as well as the companies themselves, were the perpetrators and co-perpetrators of various social criminal law breaches (illegally employing foreign workers with and without a residence permit, no DIMONA declaration); some of them were also prosecuted for human trafficking regarding several workers. Six defendants, who were franchisees of the fast-food chain, were prosecuted as accessories to the social criminal law breaches and several of them regarding the offence of human trafficking as well. As regards the fast-food company itself, it was only prosecuted for complicity in human trafficking. Two workers instituted civil proceedings.

The Social Inspectorate carried out inspections across the whole country for several years. These inspections concerned the cleaning staff in various restaurants belonging to the fast-food chain. They

discovered various social breaches. In the majority of cases, the restaurants where the inspections took place were franchised.

The court accepted the sole responsibility of the legitimate or effective managers of these cleaning companies. Concerning one of them, the court discovered the existence of an elaborate system by which undeclared labour was systematically used, involving persons with no residence or work permit, which allowed them to pay particularly low wages.

Owing to the precariousness of their residency status, some workers were exploited in conditions contrary to human dignity. One worker explained that the work was particularly arduous and difficult on a physical level, that there was an unpaid trial period and that deductions were made from the wages for sick days and to supposedly pay taxes.

The court acquitted the cleaning companies owing to the lack of a moral element, considering that since they were following the will of their shareholders/managers, they weren't in a position to oppose their decision or express their personal and independent will.

As regards the liability of the franchisees, as accessories, and the fast-food company itself, the court considered, according to its reading of the case described in a detailed explanation, that it wasn't established.

The labour prosecutor argued that the managers of the franchised restaurants aided and abetted the perpetrators regarding the preparation, execution and perpetration of the crimes for which they were prosecuted. The position taken was essentially based on the conditions laid out before the contracts were concluded: the prices set clearly didn't allow the cleaning companies to respect their social obligations and therefore imposed an abnormal reduction in staff costs. The exploitation system discovered following

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<sup>507</sup> Brussels French-speaking Crim. Court, 25 May 2016, 59<sup>th</sup> ch. The judgement was final, except in the case of the defendants convicted in absentia. One of them filed an opposition and will be retried in October 2016.

the inspections was maintained thanks to the networks of principals comprised of the franchisees, who subsequently became accessories to the system.

As for the fast-food company, it was inevitably aware of the offences observed in the franchised restaurants because it was the company itself that had subcontracted the cleaning at abnormally low prices for the restaurants it personally owned. It had put an end to it following various articles that were published in the press after a wide-scale investigation in 2007. The company reacted half-heartedly by strongly advising its franchisees not to use subcontractors. The labour prosecutor also criticised it for not having taken more serious action before the investigations which took place in 2011.

Complicity requires the combination of three elements: the existence of a primary offence in which a person cooperates, the desire to be part of it and the execution of one of the acts of participation listed by the law. The court recalled that in certain cases, abstention can nevertheless constitute an act of participation.

However, in this case, the court found that, on the one hand, the margin between the calculation proposed by the labour prosecutor and the sum paid by the franchised restaurants to the cleaning companies wasn't particularly significant. Therefore, it can't be reasonably concluded, on the basis of this calculation alone, that the managers were necessarily aware of the social breaches committed. On the other hand, the court also considered that the managers of the franchised companies weren't sufficiently aware of the social breaches committed, after the first inspections, and that they became accomplices by continuing to execute the contract. They were neither officially warned nor heard concerning the first inspections carried out or the infringements that were identified, even though articles were published in the press and a meeting

was organised by the fast-food company aimed at warning the franchisees of the dangers associated with subcontracting.

As for the fast-food company itself, it was only prosecuted for complicity regarding several human trafficking charges. The court considered, on the one hand, that the company had acted cautiously, probably in the interest of its reputation, by ending the cleaning contracts in the restaurants it personally managed. On the other hand, based on the information the company had when the acts took place, the court considered that there wasn't any reason to end the franchise contracts at that time or give formal notice to the managers of the franchised restaurants to end the subcontracting contracts which they freely concluded. Indeed, the only information gathered by the company at that time came from the press and a meeting the company itself arranged with the Social Inspectorate. The reports drawn up by the Social Inspectorate were addressed only to the subcontracted cleaning companies and their manager.

However, the court found that following the investigation, the various meetings and initiatives taken by the company may seem somewhat limited and inadequate, but they appear to be in line with the information the company had at its disposal.

Consequently, the court acquitted both the managers of the franchised restaurants and the parent company of the charges of which they were accused.

It sentenced the managers of the cleaning companies who didn't appear in court to prison terms varying between 18 months and 3 years, some of them suspended, and fines from EUR 82,500 to EUR 165,000. For those who appeared in court, their sentences were suspended.

The workers who instituted civil proceedings were awarded material and moral damages.

### 2.3.10. Paper serviette and packaging products factory

This is the first time that Myria heard of a judgement where a minor was the victim of labour exploitation in a sector other than domestic work.

In this case tried at ***Ghent Criminal Court on 20 April 2015***<sup>508</sup>, two defendants and a company (fourth defendant) were prosecuted for various breaches of the social criminal law. They were also prosecuted for human trafficking for the purpose of labour exploitation regarding nine people, including a minor. The main defendant and a third defendant were also prosecuted for forgery. Four workers instituted civil proceedings. The company's corporate purpose is the manufacturing, purchasing and selling of serviettes and packaging products.

The case was initiated following an inspection by the Flemish region's Labour and Social Economy Inspectorate, which found various machines, including one in operation, two people working and a living space in the back of the factory, where a 14-year-old Bulgarian was sleeping because one of the machines wasn't working. The factory manager was heard several days later. According to the inspection services, 11 Bulgarian workers were doing undeclared work, seven of whom were staying here illegally. The 14-year-old was also employed despite the provisions regarding child labour. One of the families (three people) employed here had to live in a space in the middle of the factory, which wasn't suitable as a living space. The case was sent to the investigating judge and searches were then carried out, as well as hearings for all the interested parties.

Some of the employees were working as bogus self-employed workers. In a detailed reason, the court showed that there was indeed a work relationship between the defendants and these workers and, therefore, they weren't associates.

The court accepted the various charges concerning the social criminal law. The minor explained that his father and mother also worked in the factory, that he too had been working there for about a week, seven days a week, nine hours a day and that he earned EUR 35 to 40 a day like his parents. They lived for free in the factory.

The court accepted the charge of human trafficking based on a combination of elements. The Bulgarian workers were recruited by the main defendant, who was their boss. They had to work all week and at weekends, but also at night, often more than 12 hours a day, six days a week. The hourly rate (EUR 2.89) was well below the minimum wage; moreover, the workers weren't paid regularly and had no social rights whatsoever. They were housed in the factory or in a nearby house in precarious conditions. The defendants also took advantage of the fact they couldn't speak Dutch. Furthermore, the workers were dependant on the company and the main defendant; the latter exerted a subtle pressure on them in the sense that they had to work for free to pay for their rent and the supposed contributions to the company. The court also accepted the aggravating circumstances of the offence, i.e. the fact that one of the workers was a minor.

The charges concerning trafficking and social criminal law were accepted against the main defendant and the company. On the other hand, the court acquitted the second defendant, owing to a lack of concrete evidence proving that he was the de facto manager of the company during the period in question. The third defendant was convicted of forgery.

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<sup>508</sup> East Flanders Crim. Court, Ghent division, 20 April 2015, ch. G29 (appeal).

The workers who instituted civil proceedings were awarded damages varying between EUR 21,963.5 and EUR 88,241.79.

At the appeal, *Ghent Court of Appeal* confirmed the convictions pronounced at first instance in a *judgement of 19 May 2016*<sup>509</sup>, but reduced the sentences. It did indeed confirm that two of the workers weren't associates but employees working as bogus self-employed workers. The defendants continued to dispute the facts but this was rejected by the court.

### 2.3.11. Domestic work

Several interesting decisions, including one concerning a former diplomat, were rendered in a case relating to domestic work.

On *2 April 2015*<sup>510</sup>, the *Walloon Brabant Criminal Court* ruled in a case where a couple was prosecuted chiefly for human trafficking and the degrading treatment of a Portuguese woman it employed as a domestic worker. The couple was also prosecuted for the offence of slum landlord concerning a building which it owned in Brussels.

The court accepted the charge of slum landlord: the defendants rented out the cellar in the building and several rooms. The ceilings in these spaces were too low and there were several serious faults directly resulting in a human safety and/or health risk (damp, no bathroom, no heating, rats, etc.). The court therefore considered that these were conditions contrary to human dignity and that the defendants had made an abnormal profit from renting this accommodation (EUR 200 and 550 for the

cellar and EUR 250 to 350 for the other rooms). The victims were all people in a precarious social situation (illegally staying, dependant on welfare, etc.).

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

Furthermore, the victim was in a precarious situation from an administrative and social point of view.

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

On the other hand, the court acquitted the defendants of the charge of degrading treatment, since some of the behaviour in question didn't reach a level of severity whereby it could be said that the victim, in her opinion or in that of others, suffered humiliation or serious degradation.

The victim was awarded the provisional sum of EUR 5,000 in material damages. PAG-ASA also instituted civil proceedings but the court deferred the ruling.

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<sup>509</sup> Ghent, 19 May 2016, 3<sup>rd</sup> ch.

<sup>510</sup> Walloon Brabant Crim. Court, 2 April 2015, 6<sup>th</sup> ch. (appeal set for February 2017).

In a case dealt with in a previous report<sup>511</sup>, **Brussels Court of Appeal** confirmed, in a **judgement of 12 May 2015**<sup>512</sup>, the decision rendered at first instance by Brussels Criminal Court<sup>513</sup>. The latter had convicted a Congolese defendant for human trafficking and various breaches of the social criminal law. She had exploited a compatriot who was responsible for looking after her handicapped son. The victim wasn't paid for her work and slept on the floor in the children's bedroom. She took care of the child but also the housework and the shopping. When she arrived in Belgium, she was forced to hand over her passport to the defendant.

The court emphasised that the statements of the civil party, especially regarding her living conditions, were confirmed by the Social Inspectorate's findings. As regards holding back the victim's passport, the court specified that the defendant thereby prevented any steps from being taken to regularise the situation of the person whom she wished to present as her friend. She completely prevented her free movement, which was already complicated by the lack of pay for the services rendered.

However, the court reduced the prison sentence and the fines pronounced at first instance, but confirmed the amounts awarded to the civil party.

#### **Former diplomat**

**Brussels labour court** was required to examine a case concerning domestic work for a former diplomat and his wife<sup>514</sup>. A worker appeared in court through her union

representative. She summoned her former employers, a Moroccan couple now divorced, to appear in court to order them to pay her damages equal to her salary arrears and a sum of EUR 2,500 *ex aequo et bono* in damages as compensation for the offence of human trafficking.

When the acts took place, the husband was vice-consul at the Moroccan embassy in Brussels. The worker was contacted in Morocco through the wife's sister to come and look after the couple's children (one of whom was autistic), for a salary of EUR 150 a month. Initially, she received a special passport. She lived with the family and looked after children, did the cleaning, the cooking, the laundry and the ironing. Her employer had taken steps in Belgium to obtain a special residence permit for her, which was refused because vice-consuls don't have this privilege. The worker then applied for a residence permit, which was refused (lack of exceptional circumstances justifying the application in Belgium). She then lodged a complaint with the Social Inspectorate concerning her work conditions and asked to benefit from the status of victim of human trafficking.

The labour prosecutor informed the Immigration Office that its office was issuing a favourable opinion regarding the recognition of the status of victim of human trafficking for the worker, since the case had been closed owing to the diplomatic immunity her employer benefited from at the time, and the impossibility of a criminal prosecution.

The employers claimed immunity from suit as a diplomatic agent and member of the family of a diplomat, thus obliging the court to decline jurisdiction. After a detailed examination of the Vienna Conventions and periods during which the employer (and his wife) had immunity, the court overruled the objection to jurisdiction. Indeed, the court must check whether the courts have the power to entertain the application when it gives a ruling, not when the summons is

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<sup>511</sup> See Annual Report 2012, *Trafficking in human beings, Building trust*, Part 2, Chapter 3, point 2.1.2., pp. 88-89. This judgement is available on Myria's website: [www.myria.be](http://www.myria.be).

<sup>512</sup> Brussels, 12 May 2015, 11<sup>th</sup> ch.

<sup>513</sup> Brussels Crim. Court, 22 January 2013, 58<sup>th</sup> ch.

Brussels French-speaking Lab. Court Brussels French-speaking Lab. Court, 18 June 2015, 4<sup>th</sup> ch. (appeal lodged by one of the employers).

served. In this case, the employers returned to Morocco and the husband no longer held the position of diplomat. Therefore, neither he nor his (ex-)wife could claim immunity.

The court considered that human trafficking was established: while the worker was initially supposed to take care of the couple's children, she also had to do the cleaning, the shopping, prepare meals, do the laundry and the ironing. She slept in the children's bedroom. She received EUR 150 a month, had no social cover, and had to be available at all times. There were no fixed working hours and she was given very little free movement. In this respect, the court stated that the confiscation or not of the worker's passport when she arrived, and the ban or not from leaving the apartment, weren't circumstances required to conclude the existence of the offence of human trafficking. The court thus considered that the worker had indeed been recruited, harboured and received by the interested parties in order to make her work in conditions contrary to human dignity.

The court declared the application for damages for human trafficking admissible and grounded. It consequently awarded the worker non-pecuniary damages. The court also ordered the reopening of the proceedings to allow the worker to calculate the amount of salary arrears she could claim in the form of damages, taking into account the number of hours worked as calculated by the court, and to allow her former employees to discuss the calculations made.

## 2.4. Exploitation of begging

In a default judgement presented in last year's annual report<sup>515</sup>, **Brussels Criminal Court** convicted four defendants for human trafficking for the purpose of exploitation of begging<sup>516</sup>.

The four Romanian defendants belonged to the same family and organised and exploited the begging of Romanian compatriots with a physical disability.

Their modus operandi was discovered through observations. The defendants would take the victims to busy public places and keep a constant eye on them from the bench at a bus or tram stop. The victims sometimes went over to the defendants to discreetly hand over their earnings. In exchange, they sometimes received something to eat or drink. They lived with the perpetrators in precarious conditions. The defendants also brought other beggars over from Romania. These people were exploited by other members of the family.

The four perpetrators were all sentenced in absentia to five years in prison. The court also order the confiscation of EUR 39,868. This is the amount the family earned in 15 months from begging. Myria, which instituted civil proceedings in this case, received a symbolic euro as compensation.

The defendants raised an objection and the **court** ruled once again in a **judgement of 19 May 2016**<sup>517</sup>. They contested the fact that it was a question of exploitation of begging. They argued everyone supported each other in the Roma culture. They formed a community, a family. Begging is dictated by

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<sup>515</sup> Brussels Crim. Court, 3 March 2015, 60<sup>th</sup> ch. Annual Report 2015, *Trafficking and smuggling in human beings, Tightening the links*, Part 2, Chapter 4, point. 1-3., pp. 124-125.

<sup>516</sup> On this subject, also see the focus in this report (Part 2).

<sup>517</sup> Brussels Crim. Court, 19 May 2016, 60<sup>th</sup> ch. (final).



human suffering and the need to survive. They claimed there was a strong family link with the victims.

However, the court considered that the criminal case contained sufficient elements to prove that victims had been exploited. The court didn't accept the arguments of a supposed family link. The relative statements in the criminal case were contradictory. The victims weren't able to provide information concerning family ties and one of the defendants admitted, at a first hearing, that he had approached the victims at Brussels-North railway station. The court considered that solidarity had its limits. The criminal case revealed that the defendants recruited Romanians in dire straits, with serious physical disabilities, brought them or had them brought to Belgium where they were housed and made to work in conditions that were particularly contrary to human dignity.

The defendants exerted control over them and were given the earnings from begging. They kept the money and left the victims with nothing. The financial investigation revealed that the defendants transferred large sums to their family in Romania. Subsequently, the court considered as established the fact that the defendants had made their activities a habit. However, they didn't have sufficient proof to establish that the begging activities fell within the framework of an association. The defendants were indeed organised as a family, which doesn't necessarily mean an association in the sense of the criminal code. As a result, this aggravating circumstance was rejected.

The court reduced the sentence to a 44-month partly suspended prison sentence, with heavy fines. Significant amounts resulting directly from the offences declared established were confiscated.

Compensation of a symbolic euro awarded to Myria was confirmed.

### 3. Human smuggling

#### *Vietnamese criminal organisation involved in smuggling*

In a decision of **22 April 2016, Brussels Criminal Court**<sup>518</sup> convicted five defendants of Vietnamese nationality, three in absentia, for human smuggling, especially regarding minors. It also convicted them, as well as a sixth defendant, for having been active, in different capacities, in a criminal organisation.

The defendants were part of an international smuggling network. People from Vietnam were brought mainly to Great Britain in return for a large sum of money. Half of the journey was paid before leaving Vietnam and the rest was paid by the family when the journey was completed. The rate was approximately EUR 20,000 for Belgium or France, with an additional EUR 5,000 to 6,000 for England. The money was paid to the main defendant's parents. He was the leader of the organisation. Another defendant was the treasurer of the organisation and also took care of logistics. One of the others was a driver.

Those who wanted to go to England were housed in safe houses in Brussels and were then taken to the Grand-Bigard parking area where they got into lorries heading for Calais and Great Britain (either in the lorry's cab with the driver's cooperation, or hidden in trailers, in the middle of the load, sometimes risking their lives).

Members of the organisations were posted in the countries crossed by the prospective immigrants. They took care of establishing contacts allowing the progression of the illegal immigrants either across Eastern Europe, or Southern Europe via Ukraine.

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<sup>518</sup> Brussels French-speaking Crim. Court, 22 April 2016, 47<sup>th</sup> ch. (final for the convicted defendants after due hearing of the parties).

The acts were brought to light following the discovery of several illegal immigrants in lorries, at Grand-Bigard and Calais. The various protagonists and the *modus operandi* were identified thanks to phone taps. Observations were also carried out. The bank investigation revealed Western Union-type money transfers, from Belgium and other western European countries to Vietnam.

The leader of the organisation was sentenced in absentia to 10 years in prison and a EUR 90,000 fine.

PAG-ASA and Myria, who instituted civil proceedings, each received a euro.

### ***Kurdish-Palestinian smuggling gang***

***On 21 October 2015***<sup>519</sup>, ***Bruges Criminal Court*** examined a case, dealt with earlier in this report<sup>520</sup>, concerning a Kurdish-Palestinian smuggling gang who smuggled people into the United Kingdom via Bruges and the port of Zeebrugge. The acts took place between the end of 2014 and the beginning of 2015. The case was initiated when Zeebrugge maritime police discovered refugees in a lorry. After questioning the victims, the police were able to use the information they acquired to carry out a criminal investigation through phone taps and observations.

The victims were placed in lorries heading for Zeebrugge. Refugees were able to get in contact with the smugglers through a Facebook group. The people had to pay EUR 1,800 for one attempt and EUR 3,500 for several. For GBP 6,000, it was possible to bribe certain people in order to guarantee successful transportation.

Two main defendants were considered as the leaders of the gang and the human smuggling activities were their main occupation. The first defendant was the organiser. He decided who would be transported and how much they had to pay. The second defendant took the refugees to the parking areas where they would look for suitable lorries. Sometimes, they also acted as drivers for other smugglers. Both of them were very disdainful towards the victims (referring to them as animals).

Two other defendants offered their support and assistance. One was a motor mechanic who took care of temporarily housing the victims and advertising the smuggling activities. The other one acted as an intermediary between potential customers and the organiser. He accompanied the victims and briefed them. The latter even admitted he was a former victim of the smugglers' practices. Owing to his precarious situation, he had no choice but to commit these acts.

The defendants were prosecuted for human smuggling with aggravating circumstances. The court sentenced the main defendants to four- and five-year prison sentences respectively, along with heavy fines. The other two perpetrators were acquitted of some of the aggravating circumstances. They were each sentenced to one year in prison. Large sums and various belongings were also confiscated. The investigation revealed that part of the money was sent back to the country of origin.

Myria instituted civil proceedings and received EUR 2,500 in compensation.

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<sup>519</sup> West Flanders Crim. Court, Bruges division, 21 October 2015, 17<sup>th</sup> ch. (final).

<sup>520</sup> On this subject, see Part 1, Chapter 2, point 3.1.

### ***Kurdish-Afghan smuggling gang***

In another case, also dealt with in this annual report <sup>521</sup>, ***Ghent Criminal Court***<sup>522</sup> ruled, on **1 June 2015**, on acts of human smuggling which took place at parking areas located along certain highways. The investigation into these acts was primarily based on mobile phone records, aerial support and heat detection, the examination of mobile phones and observations made on site by the police.

Three defendants were prosecuted for human smuggling with aggravating circumstances. The first and second defendant were prosecuted for acts that took place between December 2014 and January 2015. The third defendant was prosecuted for acts that occurred one evening in December 2014. The acts took place at the E17 parking area in Gentbrugge. The defendants helped the illegal immigrants to climb into the lorries heading for the United Kingdom. The victims, who were Kurdish and Albanian, had to pay between EUR 1,500 and 2,200 for the journey. The first defendant told the second and third defendants what to do. He was clearly in a superior hierarchical position and was the manager and organiser of the parking area. The first defendant was part of a far bigger international human smuggling structure and received instructions from an Iranian woman in the Netherlands. She also took care of supplying illegal immigrants for transportation. She was the one who was contacted when transportation succeeded. She worked through several intermediaries, all smugglers. She also took care of financial transactions and the earnings were distributed between the various smugglers. There was also a safe house in Brussels where the illegal immigrants stayed.

Contact was often established in a café in Brussels, which served as a meeting place. The second and third defendants stayed in a wooden hut situated at the edge of the parking area. They received the illegal immigrants here and gave them food and covers while they waited for a lorry. They observed the police's presence in the area and chose lorries - often Hungarian ones - on the orders of the first defendant. They opened the lorries so that the illegal immigrants could slip inside. The second defendant had attempted to leave the structure at one point but was threatened with death, beaten up and scalded with boiling water by one of the intermediaries. The information contained in the criminal case revealed that the third defendant was also awaiting transportation to the United Kingdom and provided services to pay for it. In total, there were at least 11 transportations in which 43 victims were involved.

The court considered the acts of human smuggling established for each defendant, as well as the aggravating circumstances. The court handed down heavy fines multiplied by the number of victims: there were 43 people for the first defendant, 37 for the second and three for the third. The first defendant was also given a 40-month prison sentence. He was already convicted for similar acts in France in 2005. The second defendant was given an 18-month prison sentence, and the third one, a one-year sentence in absentia. The court also ruled the confiscation of sums of money. Myria, which instituted civil proceedings, received EUR 2,500 in compensation.

The first defendant lodged an appeal against the judgement, but ***Ghent Court of Appeal***<sup>523</sup> confirmed the court's decision.

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<sup>521</sup> On this subject, see Part 2, Chapter 2, point 3.2.

<sup>522</sup> Ghent Crim. Court, 1 June 2015, 28<sup>th</sup> ch. (appeal).

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<sup>523</sup> Ghent Court of Appeal, 3 November 2015, 4<sup>th</sup> ch.

### ***Albanian smuggling gang***

This case concerned a well-structured gang of smugglers with international ramifications in the United Kingdom, Germany, the Netherlands and France. Phone taps were the main source of evidence. ***Brussels Criminal Court*** ruled on this subject in a ***judgement of 6 October 2015***<sup>524</sup>.

The defendants were part of a criminal organisation which organised smuggling to the United Kingdom of Albanian nationals who had arrived in Belgium. The victims were met by smugglers when they arrived in Brussels or Ghent and taken to buildings located around Brussels-South railway station. From here, they were taken to different parking areas located along the highways in Flanders, where they were loaded onto lorries. Other gang members ensured the victims arrived in Belgium via the Netherlands, and were then smuggled to the United Kingdom. The acts took place between the end of 2013 and mid-2014. The gang also maintained contacts with lorry drivers who would transport people (with guarantee). The victims had to pay between EUR 2,500 and 5,700 (sometimes GBP 6,000) per person, depending on whether the transportation was guaranteed or not. Sometimes, they received false Romanian identity papers. Depending on how much they paid, the victims were smuggled in the cabin or in the lorries' cargo space. They sometimes had to hide in cardboard boxes in the lorries. Some people were also hidden in the empty tank of a lorry that carried liquids. Other the victims were disguised as priests. The victims' luggage and mobile phones were confiscated and sent by courier to the United Kingdom once the transportation had succeeded. Several minors were among the victims. Parents with young children had

to be given them medication so that they would remain calm during the journey. The smugglers were able to extract money from the victims by betraying their trust or taking advantage of their gullibility. Some of the defendants pretended they were high-ranking officials or that they worked at an embassy in order to obtain money from their victims.

Eleven defendants were prosecuted, some for organising and others for executing the smuggling activities, mainly for human smuggling with aggravating circumstances (including the presence of child victims). This wasn't the first time for the defendants. One of the defendants had already been convicted in 2014 for human smuggling and another for murder. The 11 defendants were all given prison sentences ranging between six years, five years, three years and two years, along with heavy fines.

Myria instituted civil proceedings and received one symbolic euro in compensation.

### ***Iranian smuggling gang***

On ***31 March 2015, Antwerp Criminal Court***<sup>525</sup> ruled in a case of human smuggling between Iran and Belgium. The acts took place in 2011. Three victims instituted civil proceedings.

The defendant had got the three victims into Belgium from Iran via Turkey, Greece and Italy. He asked for astronomical amounts of money, sometimes up to EUR 16,500. False identity papers were used. He assured the victims that he could get residence papers for them, and helped them to submit a fake asylum application. Moreover, the defendant didn't hesitate to use threats and violence. One of the victims was obliged to steal. The criminal case was compiled on the basis of mobile phone records, statements and other elements.

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<sup>524</sup> Brussels Dutch-speaking Crim. Court, 6 October 2015, 51<sup>th</sup> ch. (appeal set in December 2016).

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<sup>525</sup> Antwerp Crim. Court, 31 March 2015, ch. AC4 (final).

The court found the defendant guilty of human smuggling with aggravating circumstances. The court also found that he was helped by a complete network in Iran, Turkey and various countries in Europe. Only the aggravating circumstance of abusing the vulnerable situation of the victims wasn't established. According to the court, the victims' precarious situation wasn't established. It wasn't proven that they were in a precarious administrative situation for social and economic reasons before entering into contact with the defendant.

The court sentenced the defendant to 40 months in prison, along with a fine. The defendant was also sentenced to compensate each of the civil parties with a fixed amount of EUR 2,500 in material and moral damages.

#### ***Human trafficking and human smuggling using a student visa***

In this case, tried by **Leuven Criminal Court on 12 May 2015**<sup>526</sup>, the defendant was prosecuted for acts of human trafficking and human smuggling between 2009 and 2010. The defendant had set up a network to bring Nigerian students over to Belgium in a seemingly legal manner. He used student visas to ensure that the various Nigerian nationals received a Belgian residence permit as prospective students, by presenting fake documents to a university or college of higher education. The fake documents served as a basis to compile a file for a student visa. The 'students' received a declaration of intent and a provisional student visa which allowed them to stay for a year in Belgium to enrol at a university or college of higher education, and take Dutch lessons if necessary. The victims paid EUR 2,300 for this. None of the prospective students actually enrolled at a

university or college of higher education. The practices were revealed when the Belgian embassy in Nigeria noticed an astonishingly high number of applications for a student visa: 62 students in total. It was established that 19 people actually went to Belgium. The defendant was helped by other people who had also arrived in Belgium through him. He used them as smuggling couriers and to settle matters on his behalf. One person made their bank account available to him, while another submitted the application files to colleges, etc. The defendant used the earnings from these activities to invest in property in Lagos, Nigeria. He also used intermediaries in order to stay off the radar as long as possible.

The criminal investigation was conducted with the help of phone taps, searches, statements from the 'students' and student administration offices, letters rogatory to Nigeria and a financial investigation.

The defendant was prosecuted for human smuggling with aggravating circumstances. He was also prosecuted for human trafficking for the purpose of coercing the victims to commit an offence against their will, with aggravating circumstances. The defendant also sexually abused several prospective students, especially when it transpired that they didn't have the means to pay. Apparently, he threatened to send them back to Nigeria. He took advantage of the vulnerable situation of these people and obliged several of them to have homosexual relations with him. He was also prosecuted for using false names, forgery and the laundering of money from criminal activity.

He also forced people to provide him with help and assistance. He used smuggling couriers essentially to collect, send, legalise and keep documents, receive money, and meet 'students' at the airport. One of the victims instituted civil proceedings. She confirmed that the defendant had sexually abused her for years. However, the judge's chambers had already ruled a nonsuit for the acts of rape, indecent assault and assault and battery.

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<sup>526</sup> Louvain Crim. Court, 12 May 2015, 17<sup>th</sup> ch. (appeal).

The defendant didn't challenge the facts, only their criminal nature. He wanted to help compatriots and acted through humanitarian reasons or friendship.

According to the court, the boundary between human trafficking and human smuggling is rather vague and human smuggling can turn into human trafficking when free will is jeopardised. The court considered the charge of human smuggling established. However, the aggravating circumstance of human smuggling concerning the abuse of a vulnerable situation was sufficiently established for the court. The criminal case revealed that the victims (or their parents) had contacted the defendant themselves and negotiated with him concerning the price and the procedure (adoption, sham marriage, etc.). It also wasn't possible to directly establish the sexual abuse of the various students on the basis of the criminal case.

The court declared the acts of human trafficking as not established. Within the framework of the status of victim of human trafficking, several victims made damning statements in this respect. According to the court, there wasn't enough objective evidence that the people had been put under pressure by the defendant to participate in criminal activities. They had also benefited from them.

In the past, the defendant had already been sentenced to community service for human smuggling. However, the court sentenced the perpetrator to two years in prison, along with a heavy fine and the confiscation of sums of money.

Myria also instituted civil proceedings and received one symbolic euro in compensation. The victim's application was rejected. The acts of human smuggling and trafficking concerning this victim weren't considered as established.

### *Employment fraud*

**Antwerp Criminal Court** tried various cases of employment fraud<sup>527</sup>.

These were different unrelated situations where the defendants 'lent' their identity to persons staying illegally in Belgium, in exchange for payment, so that these persons could work. These people worked for several periods, mainly through interim agencies, for different companies. The defendants were prosecuted for human smuggling with a view to obtaining pecuniary benefits, with aggravating circumstances. In the four cases, the court considered the facts established and convicted the defendants.

#### **4. Administrative Jurisdiction Division of the Council of State: judgement relating to Article 134quinquies of the new municipal law**

A company and the manager of a café located in Antwerp's red-light district had urgently brought a motion for a stay before the Council of State. The purpose of this motion was to obtain the stay of the execution of the ban, issued by the mayor of Antwerp, to exercise any activity or business in this café for a period of three months, or be forced to pay EUR 3,000 a day for non-compliance.

This decision was taken by the mayor on the basis of Article 134quinquies of the new municipal law. This article stipulates that "when there are strong indications of human trafficking taking place in an establishment as referred to in Art. 433quinquies of the Criminal Code or acts of

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<sup>527</sup> Antwerp Crim. Court, 5 January 2016, ch. AC4, no. 56 (in absentia); Antwerp Crim. Court, 5 January 2016, ch. AC4, no. 57 (in absentia); Antwerp Crim. Court, 1 March 2016, ch. AC4, no. 1070; Antwerp Crim. Court, 1 March 2016, ch. AC4, no. 1071.

human smuggling as referred to in Art. 77bis of the Law of 15 December 1980 on access to the territory, residence, settlement and expulsion of foreigners, the mayor may, after first discussing the matter with the judicial authorities and after having heard the manager present his defence, decide to close this establishment for however long he/she deems appropriate. (...). The mayor has the power to affix seals if the order to close the establishment isn't respected. (...). However, the closure can't exceed six months. The mayor's decision is lifted at the end of this period".

The applicants had already been heard two years earlier on this subject by the mayor, who informed them of his intention to close the establishment on the basis of this article. In the end, he decided not to but the applicants were given an official warning and they were explicitly asked to put an end to any behaviour in the establishment that could disrupt public order and safety. They were also told that if new acts relating to human trafficking were discovered, measures would certainly be taken. This is what happened following the mayor's decision of 29 April 2016. The latter had previously asked the senior crown prosecutor if they had any objections. The prosecutor stated they had none, given that they were currently dealing with two criminal cases concerning this establishment. Investigations were being carried out concerning the smuggling of young Nigerian women. As soon as they had arrived in Belgium, they were taken by their exploiter to the establishment in question, in order to work as prostitutes and recruit clients, and then hand over the money earned to the pimp.

The applicants referred to several means supporting their claim. The first one referred to an infringement of the rights of the defence during the handling of the administrative procedures regarding the closure of the establishment. Another one referred to fact that the contested decision wasn't adequately reasoned. In its

**judgement of 17 May 2016**, the Council of State<sup>528</sup> rejected these two arguments. As regards the reasons for the contested act, it also emphasised, in reference to extracts from the said act, that there were numerous elements clearly showing that the owner collaborated in illegal practices by facilitating the work 'conditions' of the young African women in his establishment, which made money for her and contributed to her reputation.

The applicants also referred to a third argument according to which the measure taken is disproportionate to the objective pursued, an argument also rejected by the Council of State, since the decision taken didn't contain the maximum duration possible, i.e. six months. Moreover, the applicants had already been warned that if the acts reoccurred, the commune would close the establishment. There was a fear that the acts would recommence. Instead of taking measures to combat the problem of trafficking taking place in their establishment, the applicants played it down, or even denied it.

The Council of State subsequently rejected the emergency motion to stay.

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<sup>528</sup> Administrative Jurisdiction Division of the Council of State, judgement of 17 May 2016, no. 234.755.