



PART 5: RECOMMANDATIONS

1. The fight against human trafficking

a) *Raising awareness among frontline services regarding victim status is still required*

Continuous training for frontline services, relating to the referral system within the framework of the status of victim of human trafficking, must be pursued.

We noticed in various cases that when the referral system was brought into play, it wasn't properly applied. The victims weren't offered victim status and were repatriated. In one case, a victim who was awaiting a decision, was locked in a transit cell by the local police. Nevertheless, the victims were granted the status in most of the other cases.

The multidisciplinary cooperation of frontline services with staff in specialised centres plays a key role in the Belgian system. We would like to repeat that relevant statements are sufficient. The victims must be put in contact with the specialised reception centres for victims of human trafficking, which must remain at the disposal of frontline services for this purpose and place the victims within a framework of basic trust so that they can reap the benefits.

b) *Victim protection: the reception centres must be able to benefit from the means required for them to perform their tasks*

The victim reception centres don't always benefit from structural funding allowing them to perform their tasks. Their subsidies have also been reduced, especially after the withdrawal of the Fonds d'impulsion à la politique des immigrés (FIPI - funds to promote immigration policies) at federal level following the sixth state reform. In line with the government's action plan, Myria would like a solution to be found for this - recurring - problem, once and for all.

c) *International cooperation is required in the case of labour exploitation in order to dismantle false posted worker structures that can lead to human trafficking⁵³²*

The international fight against fraudulent posted worker operations, several of which have led to human trafficking practices, must be strongly encouraged. Several positive initiatives have been conducted this year to this effect. Following on from the discussion relating to Brexit, there has been growing interest in this type of approach to human trafficking, which has benefited from considerable social support.

The Labour Inspectorate must be able to collaborate more easily on an international level in order to carry out the necessary inspections and thus effectively combat the many abuses that can lead to human trafficking.

In our 2010 annual report⁵³³, we already strongly recommended that priority be given to tools that lead, on a structural level, to better information exchange and a better collaboration between the authorities of the Member States.

- elaboration of a European electronic recording system for posting documents;
- better agreements between Member States regarding verifications in case documents are checked;
- creation of a 'social Interpol', as already supported and expressed by the former senior crown prosecutor of Liège in his opening address to the Liège labour court: "there is every reason to dream of the creation of a social Interpol

⁵³² Also see http://www.myria.be/files/Migration2016-5-Libre_circulation_et_migration_economique.pdf.

⁵³³ Annual report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, Part IV: Recommendations.

uniting all the European authorities concerned".

The first steps were taken, showing that cooperation between inspection services in the country of origin and the destination country was possible and could be effective. End May 2016, joint action days were organised in 21 EU Member States, during which targeted inspections were conducted in risk sectors in search of acts of labour exploitation. Joint inspections were also carried out in Belgium by different inspection services and the police. The participating European countries agreed beforehand to use several new methodologies within the framework of this initiative, with the active support of Europol. During a preliminary coordination meeting at Europol, which the Belgian Social Inspectorate also attended, several innovative international cooperation methods were agreed upon.

Hence, two Romanian labour inspectors were also present during the inspections on Romanian road haulage companies, which favoured the preparation, execution and follow-up of the inspections.

During the entire action period, a coordination centre was in operation at Europol in The Hague, where a representative of the Belgian Social Inspectorate also worked on the harmonisation of the actions and the facilitation of information exchange between the participating countries. Every country could send 'special requests' to another Member State, asking for information or inspection services to carry out investigations. These information exchanges weren't limited to the duration of these action days: information will continue to be exchanged regarding the companies that were inspected.

d) Myria requests that the Belgian authorities develop the reporting of data concerning human trafficking and smuggling, in order to be able to meet the needs of national and European policies

Objectives established in consultation are lacking in the reports written by the stakeholders. There is no consultation platform to harmonise data needs or the offering in terms of information, even though regular consultation is required. Therefore, there is an urgent need for information and analyses that form a link between police reports and prosecutions, or prosecutions where the victims have been identified. In other words, the multidisciplinary model used by our country hasn't yet shown any added value at this level.

e) It is necessary to improve the detection and identification of victims of human trafficking for the purpose of exploitation of begging

Beggars who show potential indications of human trafficking must be considered by the police and judges as victims and be treated as such, and not as people whose begging causes a nuisance. We must take into account their relationship of dependency regarding a potential exploiter, who has forced them into it by abusing their 'cultural loyalty'. The victims must be put in contact with staff from a centre specialising in the reception of human trafficking victims, because this staff is the best placed to win their trust. These employees are in the best position to offer them the status of victim of human trafficking and to underline its importance.

If offences committed under coercion have been found, the perpetrators of these offences must be considered as victims based on the principle of non-punishment⁵³⁴. Their statements can be a determining factor in the continuation of the investigation and lead to the identification of key persons in the network or criminal organisation, as the case may be.

⁵³⁴ Annual Report 2012, *Trafficking and Smuggling in Human Beings, Building trust*, pp. 9-40.

f) *The judges must pursue cases of human trafficking for the purpose of exploitation of begging, especially when children are concerned*

The victims of this form of exploitation of human trafficking represent a highly vulnerable target group, which requires a good approach to this theme. The investigation will ideally be initiated by a discreet observation team, in order to catch sight of the exploiter when money is handed over and to be able to identify them through their car registration plate, for instance. The financial investigation is therefore a key element in the investigation as burden of proof for human trafficking, when the victims of begging have to hand over the money (down to the last coin) from begging to a third party.

Within the framework of human trafficking, the exploitation of begging can sometimes be the only visible activity in cases involving a range of different forms of exploitation, such as offences committed under coercion. This is certainly the case with minors. Often, acts such as offences committed under coercion are only revealed after an investigation has begun concerning child beggars. During the investigation's observation period, the police may find that the children are forced to commit acts of theft. This is why the fight against the exploitation of begging is an essential method to deal with invisible crimes such as those committed under coercion.

g) *Judges and police officers must take into account internal diversity within the various Roma communities.*

Eastern European Roma who came to Belgium after the Second World War are a very heterogeneous community. Some Roma groups aren't involved in begging activities and want nothing to do with them. This is certainly the case of young Roms born in Belgium, who have changed their values.

Roma is a term encompassing very different populations, mainly living in Europe, whose ethnicity is anything but homogeneous. There are of course certain shared cultural

traditions (that have also become diluted over time), but what really characterises the Roma community is an awareness based on the historical and contemporary experience that the non-Roma world can be hostile.

This powerful loyalty within the different Roma communities also has consequences on the attitude of Roma victims regarding their exploiters, also often from this community. We frequently see that this creates a strong relationship of dependency with the exploiter, which partly explains the significant mistrust of external persons and the refusal to make statements to the police. Their past negative experiences with the police have simply reinforced this attitude. Sometimes, the court has insufficient knowledge of the case and the cultural context that facilitates this relationship of dependency the victims of begging have with their exploiter.

h) *The new criminal policy directive (COL) on human trafficking for the purpose of exploitation of begging should clarify the distinction between the respective scopes of Article 433ter of the Criminal Code (exploitation of begging) and Article 433quinquies (human trafficking for the purpose of exploitation of begging)*

This would allow a better standardisation of the approach to human trafficking for the purpose of exploitation of begging, thus demonstrating to judges and the police that these cases are important and not simply a nuisance. The possible confusion between exploitation of begging (Article 433ter) and trafficking for the purpose of exploitation of begging (Article 433quinquies) can initiate different interpretations and can lead to arbitrary legal situations in the country's different jurisdictions. The new COL should take care of this problem and determine the difference between these two articles. A response could be found in the acts that serve as a basis for human trafficking (433quinquies), i.e. recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring the control exerted over a person. Contrary to Article 433ter, these acts indicate the

organised nature of the acts. Here, the 'organised' aspect could determine the difference between human trafficking

2. The fight against human smuggling

a) *A humane approach to the victims during the interception of persons subject to smuggling brings an important added value to the investigation*

Smuggling victims' phone data is crucial to open an investigation for human smuggling. A humane approach to the victims of smuggling when intercepted is therefore crucial. They will more easily surrender their phone to the police and give them their pin code if necessary. By winning their trust, victims of smuggling are sometimes willing to make a statement and thus bring an added value to the investigation. In the case of human smuggling with aggravating circumstances, the victim must be offered victim status and be received in a specialised centre. Most of the time, the victims aren't interested because they only want one thing: to reach the United Kingdom as quickly as possible.

b) *The use of social networks as a method of investigation must be encouraged*

The cases reveal that the police actually use social networks as a method of investigation. They are able to get information from open sources or the analysis of data from the smartphones given to them by the victims. They even used Facebook and Google Maps during the defendants' hearings. The elements discovered were used as objective evidence by the courts to motivate their decisions. This is revealed in the analysis of the investigation methods used in smuggling cases and the good practices dealt with in this report. Investigators should use social media more often during investigations.

c) *Financial investigations based on an international chain approach are required*

A vast financial investigation is an efficient way to tap into and financially exhaust the

(433quinquies) and simple exploitation of begging (433ter).

smugglers' networks. This kind of approach works well in an international chain approach, where all the links have a role to play. If a link goes missing or doesn't function, then the chain is broken. Hence, in practice, the smugglers ensure their criminal proceeds are safely transferred to their country of origin (for instance, Iraq, Afghanistan and the Indian-Pakistani region) by the hawala system. In some cases, we observed that these hawala bankers settled the payments in the destination country using the underground banking system. They are difficult to apprehend. Occasionally, it was possible to trace them back to the United Kingdom using phone taps, although it wasn't possible to arrest them. Here, good international collaboration is essential to effectively run the smuggling network dry on a financial level.

d) *It is necessary to stimulate international collaboration through joint investigation teams*

Some judges still don't make sufficient use of joint investigation teams (JIT) because they prefer to give priority to the rapid (and local) processing of cases, which means that the network isn't always fully dismantled. On the other hand, there are several smuggling cases that were successfully dealt with in Belgium, based on a JIT agreement. International cooperation plays a crucial role in the fight against human smuggling, where criminal networks largely exceed the borders. On a European level, it is conveyed through the existence of joint investigation teams (JIT). There is one essential condition: that the countries have a shared interest in the cases. In concrete terms, the police therefore work together in their respective countries. That means we no longer require letters rogatory.