

Chapter 3: Best practices and experiences

In this chapter, we mean best practices among national players and international partners. As for experiences, they often refer to practices that are not as good, and even maybe bad, but from which we can often learn a lot.

This chapter is based on the analysis of cases where Myria instituted civil proceedings, and on interviews with the local and federal police, specialised centres for victims of human trafficking, reference judges in human trafficking, labour prosecutors and social inspection services. Confidentiality was maintained during all these interviews.

1. The fight against human trafficking

1.1. Reform of the judicial districts

The judicial districts reform plan is beginning to take shape in the field. Human trafficking and human smuggling reference judges have been appointed.

The reform may have an extremely positive impact on the fight against human trafficking and smuggling networks. These networks generally operate beyond different districts, and even different borders. The Belgian judicial structure has often been a problem during prosecutions and during investigations. Trafficking and smuggling in human beings are typically not restricted to a local level: small-scale districts can't always deal with the problem.

In West Flanders, this reform has been successfully applied over the past few years through a pilot project. It was agreed that the public prosecutor's office in Bruges, in collaboration with a judge seconded from the public prosecutor's office in Furnes, would take care of all the cases of trafficking and smuggling in human beings in the province. All the stakeholders are particularly positive in this respect. This reform is a real added value in the fight against the trafficking and smuggling of human beings: on the one hand,

owing to the economy of scale and, on the other hand, considering the countless possibilities for specialisation as a result, even among investigating judges and judges sitting in court. Hence, the court in Bruges appointed a judge specialising in the trafficking and smuggling of human beings. According to the reference judges, this resulted in better, uniform case law.

In practice, problems could arise in the police services. The federal police's specialised Human Trafficking Unit will also be centralised in the same place as the reference judge and will no longer be divided between the various former districts. The specialised units subsequently risk losing their local foothold and therefore a lot of essential information, especially in cross-border regions. Consequently, their information will depend fully on the good relations they maintain with the local police³⁴⁹ which doesn't always give priority to the fight against human trafficking. In many towns, this collaboration functions very well, but others are faced with a police war where the local police is limited to dealing with ordinary wrongdoing. To ensure the district reform is successful, it is essential that human trafficking remains a priority for local police in towns and that the latter collaborate closely with the federal police.

1.2. Victim status

In the Belgian system, multidisciplinary collaboration³⁵⁰ between frontline services (police and inspection services) and staff in specialised centres is essential. Subsequently, frontline services pay more attention to potential victims, and no longer consider them as illegal immigrants who have to be repatriated as quickly as possible. This has led to an atmosphere of mutual trust, where it is possible to convince victims to opt for victim status. In one case, the police succeeded in finding an underage victim of prostitution by

³⁴⁹ See also this part, Chapter 2, point 1.1.3.a.

³⁵⁰ See this part, Chapter 2, point 1.1.2.d. (victim status).

winning the trust of another victim, who was her friend³⁵¹. Staff at a specialised centre were also able to optimally inform victims, who were initially afraid to give evidence, to opt for victim status³⁵².

The cases examined revealed the presence of shortfalls in the Belgian victim status system, as well as rule breaches in several areas regarding its application in the field. It is above all crucial that frontline services fully and correctly apply the multidisciplinary circular. Which means that in the Belgian system, the victim doesn't have to file a complaint; a relevant statement is sufficient. Victims must always be put in contact with staff from specialised centres who must be available and are better placed to win the victims' trust.

In several cases³⁵³, we noted that some victims of human trafficking, who were also recognised as such by the court, never obtained victim status. We dealt with this problem in detail in last year's annual report, within the framework of the gap that exists between the presumed victim and the identified victim³⁵⁴. In general, the victims aren't interested in the status or are too afraid.

Several victims don't wish to be put directly in contact with staff in specialised centres. Furthermore, the intervention of frontline services often takes place at night, at a time when both the victims and field workers are tired. At this point, the victims are exposed to a multitude of factors and refuse contact with the centres.

For victims from European countries such as Hungary³⁵⁵, victim status is often no longer relevant to their stay. The other advantages of

³⁵¹ See Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 88-91.

³⁵² *Ibid.*, pp. 88-93.

³⁵³ See this part, Chapter 2, point 1.1.1.d. (victim status) and point 1.1.3c. (victim status).

³⁵⁴ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 30-35.

³⁵⁵ See this part, Chapter 2, point 1.1.1.d. (victim status).

the status, such as legal support and possible medical or psychological help, are often not sufficiently emphasised. This is why the victims are often no longer interested in the status. These victims, who feel exploited and want to go back to their home country as quickly as possible, may however need legal support to obtain financial compensation³⁵⁶.

Other victims are too afraid at the idea of accepting victim status and refuse to make relevant statements. They have been threatened by their exploiter, speak another language, have different cultural habits and have little, or no, trust in Belgian frontline services. Their perception of the police and the authorities is also different. They therefore wrongly assume that the latter are as corrupt as they are in their home country. In the case of these victims, it is essential that the frontline services or staff in specialised centres win their trust. This is why it is important for these centres to be easily accessible.

Some judges do indeed consider that the victim reception centres aren't sufficiently well distributed. In their opinion, victims discovered far from these centre have much less chance, in practice, of obtaining victim status than victims identified in Brussels, Antwerp or Liège, where these centres are established. According to a judge, for the majority of the time, they only benefit from phone contact with a member of staff in the short term, who informs them of the status and raises their awareness. Obviously, it isn't as easy to create a feeling of trust during a phone conversation as it is during direct contact. Some judges therefore decided to set up a sort of mobile team comprised of staff from the centres in charge of supporting victims who aren't close to any of the three centres. This approach requires a consolidation of the centres' resources. Moreover, we have asked for one of the reception centres to be present during district

³⁵⁶ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 54-56.

meetings within the framework of the COL on trafficking in order to facilitate contact.

The Belgian victim status system needs gradual and pragmatic improvement while maintaining its fundamental basic principles. If not, the system could well suffer erosion or be dismantled. Some judges plead in favour of opening potential access to victim status for specific vulnerable target groups who are too frightened to give evidence but are clearly victims of human trafficking practices. The reference judge with knowledge of the case's facts is the person best placed to take this decision in consultation with the other stakeholders.

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1.3. Victim reintegration programme

The King Baudouin Foundation successfully set up the TVRP programme³⁵⁷. Thanks to this programme, which is a remarkable initiative, it supports the projects of local NGO to reintegrate victims in different Balkan countries³⁵⁸.

Following interviews, Myria learnt that Belgium had also initiated a reintegration programme for trafficking victims in Hungary. It was set up following the Hungarian human trafficking case involving sexual exploitation dealt with in the case studies³⁵⁹. This Belgian/Hungarian initiative led directly to the European RAVOT project³⁶⁰.

The Belgian judge concerned noted that at one point, only one Hungarian woman (with no children) was prepared to take part in this reintegration programme. After having obtained information from other victims, it transpired that the women were punished if they joined the programme. Prostitution is punishable in Hungary and the Hungarian authorities considered the victims of prostitution who followed the programme to be unfit mothers, and removed their custody of their children.

The Belgian judge reacted and refused to continue to collaborate under these conditions with the Hungarian authorities within the framework of this project. After consultation, the Hungarian authorities completely changed their stance and the Hungarian victims of prostitution who returned to their country were able to take part in the project, with no problem or risk of punishment. In the end, the programme turned out to be a success.

These kinds of reintegration programmes can be considered good practice if the victims returning to their country aren't at risk of being stigmatised or punished again. When programmes such as these are set up, it is important to ensure that the existing legislation on prostitution in the country concerned won't have a negative impact on victims returning to the country.

2. Combating human smuggling

2.1. A lack of coherence regarding victim status in the case of human smuggling

In order to be able to claim the status of victim of human smuggling, there must be certain aggravating circumstances. One of them is that the life of the victim of human smuggling is endangered. In this respect, the Belgian model adopts a stance that is unique on an international level. The Belgian stakeholders consider this as a good practice. Myria (which was the Centre for Equal

³⁵⁷ Trafficking Victims Re/Integration Programme.

³⁵⁸ *Beyond trafficking, The re/integration of trafficking victims in the Balkans, 2007 to 2014*, Final review report 2015, King Baudouin Foundation (Brussels), Nexus Institute (Washington).

³⁵⁹ See this part, Chapter 2, point 1.1.1.d. (victim status).

³⁶⁰ Referral of and Assistance for Victims of Human Trafficking, ISEC project, under the direction of the Hungarian Minister of the Interior, which the NGO Payoke participates in as a Belgian partner.

Opportunities and Opposition to Racism at the time) took steps in this respect after having noted in the cases in question, that some of the human smuggling victims had been the subject of considerable violence or that their parents had had to pay an extra amount to guarantee that their daughter wouldn't be raped during the journey³⁶¹. This system can only be applied to a certain extent, because the status of victim must remain, above all, a status that protects victims of human trafficking. In practice, this isn't a problem, according to the statistics³⁶², since the number of victims of human smuggling who have obtained victim status is still quite limited.

During the implementation of this regulation in the field, we noted that the approach to victims of human smuggling varied from one region to another. Some judges asked the police to systematically offer victim status of human trafficking to victims of human smuggling, while other judges chose to never do it because they wanted to exclusively reserve it for victims of human trafficking who had been exploited. Consultation is required with a view to harmonising these practices.

In practice, it also transpired that victims of human smuggling, who are confronted with an offer of status of victim of human trafficking, aren't interested in this status and wish to continue their journey to the United Kingdom as quickly as possible. In general, they subsequently receive an order to leave the territory.

The Immigration Office's (IO) statistics confirm this³⁶³. In 2014, the IO took 1,619 decisions after an intervention within the framework of human smuggling during a transit migration to

³⁶¹ Trafficking and Smuggling in Human Beings, Annual Report 2004, *Analysis from the victims' point of view*, pp. 18-25; Trafficking and Smuggling in Human Beings, Annual Report 2006, *Victims in the spotlight*, p. 40.

³⁶² See part 3, point 5.3.

³⁶³ Bulletin of written questions and answers, *Parl. doc.*, Chamber, QRVA 54/026, 26 May 2015, pp. 192-195 (question no. 116 of Deputy Renate Hufkens, of 21 April 2015, DO 2014201502661) available at the following link: www.lachambre.be/QRVA/pdf/54/54K0026.pdf

the United Kingdom or another country. In 1,240 cases, the interested party received an order to leave the territory; in 130 cases, the person who was the victim of smuggling was imprisoned and in 249 cases, they were able to leave.

It emerges from our analysis of the jurisprudence³⁶⁴ that certain victims of human smuggling who have obtained the status of victim of human trafficking, instituted civil proceedings during the trial and obtained moral reparation and material compensation amounting to EUR 2,500. It is thanks to the support and legal assistance provided by the specialised centres for victims of human trafficking that these victims of human smuggling were able to institute civil proceedings. This is also a good practice.

Attention should also be paid to possible criminal infiltrations through the status of victim of human trafficking. This is especially the case with victims of human smuggling. In several human smuggling cases, it was even question of the infiltration of specialised centres for victims of human trafficking, where the infiltrator was a threat to the real victims³⁶⁵. Some judges also reported this problem during interviews.

2.2. Smuggling of families

In the majority of cases of human smuggling³⁶⁶, it isn't uncommon for families with children to be transported in refrigerated trucks. Sometimes, three-year-old children or babies who tend to cry are given sleeping pills. This group of victims gets very little attention from political decision-makers and stakeholders. However, this extremely vulnerable and precarious group is subject to additional risks and deserves the necessary protection.

³⁶⁴ See this chapter, Chapter 4, point 2 (Iranian human smuggler).

³⁶⁵ See Trafficking and Smuggling in Human Beings, Annual Report 2009, *In a haze of legality*, pp. 38-41.

³⁶⁶ See this part, Chapter 2, point 2.1.4.a., point 2.2.4.a. and point 2.4.4.c.

Some judges also offered the status of victim of human trafficking to these families. In practice, they turned out not to be interested and were issued an order to leave the territory. In some cases, we noted that in the case of a new attempt to reach the United Kingdom, they were again intercepted by the police³⁶⁷.

The debate should be conducted on a national and international level, with the goal of demanding that greater attention be paid to the needs and vulnerability of this specific group of victims of human smuggling.

2.3. Action plan

Despite the fact that a governmental action plan has been in existence for years concerning the fight against human trafficking, nothing has ever been done to elaborate a specific governmental action plan to combat the smuggling of human beings. However, as a transit country, Belgium actively fights against the smuggling of human beings, with a focus on the interception of the smugglers³⁶⁸. Besides combating human trafficking, the Interdepartmental Coordination Unit for the Fight against the Smuggling and Trafficking of Human Beings is also involved in Belgium's policy on the smuggling of human beings and is responsible for it. It is important that the Interdepartmental Unit takes the initiative to develop a governmental action plan to combat the smuggling of human beings. This is the only way to make sure that a policy to combat the smuggling of human beings will be more uniform and effective in the field.

The Interdepartmental Unit takes the initiative to develop a governmental action plan to combat the smuggling of human beings

2.4. Financial battle

Human smuggling networks are led by criminal entrepreneurs who organise their criminal activities and manage them like a multinational. Their sole motivation is financial: they want to earn as much as possible in the shortest amount of time, dehumanising their victims and reducing them to goods. It isn't unusual for large international human smuggling networks to also be active in drugs and arms smuggling.

A quality international collaboration and a wide-scale financial investigation are the most efficient means to combat human smuggling networks and to dry up their finances. In Belgium, judges generally conduct a financial investigation³⁶⁹ within the framework of their inquiries into human smuggling, which we can qualify as a good practice.

This type of approach falls within the framework of an international chain approach, where all the links play a role. A faulty or weak link will cause the chain to collapse. Therefore, smugglers ensure, in practice, that the proceeds from their criminal activities are safely transferred and placed in their country of origin. The EU must endeavour to conclude as many agreements as possible with the countries of origin outside the EU as regards the seizure of criminal assets. Within the EU, Member States must learn to collaborate better if a Member State requests a seizure or a confiscation from another Member State. On an international level, the CARIN network³⁷⁰ plays an important role in

³⁶⁹ See this part, Chapter 2, point 2.1.3.b., point 2.3.4.b. and point 2.4.3.b.

³⁷⁰ Carin stands for the "Camden Asset Recovery Inter-agency Network". This informal regional network, which was set up in 2004, groups together the authorities in charge of recovering assets. It is responsible for all aspects associated with combating the proceeds of crime. The network is composed of officers from the investigation and law enforcement services, mainly from Europe but also North America. On an inter-institutional level, it is aiming for greater efficiency in the actions

³⁶⁷ See this part, Chapter 2, point 2.1.4.a.

³⁶⁸ See hereafter, the contribution "Combating the international smuggling of human beings".

the detection and seizure of criminal assets. The Central Organ for Seizure and Confiscation (COSC)³⁷¹ is the Belgian member of CARIN and the intermediary in investigations. Still relatively unknown, the network has already proven its worth³⁷².

Financial investigations are also an essential element in the identification of criminal organisations active in the smuggling of human beings. Financial analysis is an important method for tracking down the responsibilities of criminal organisations and their links with the legal world³⁷³. By monitoring monetary transactions, it is possible to search the legal social terrain for the leaders, who remain discreetly in the background, as well as their major contact persons, such as transport companies or companies active in the real estate sector (in the case of money laundering).

Myria is convinced that this type of international financial chain approach would be positive for the European action plan³⁷⁴.

undertaken by the network's members, whose goal is to cut off the criminals' access to illegal income.

³⁷¹ Central Organ for Seizure and Confiscation. The Central Organ for Seizure and Confiscation (COSC) falls within the scope of the public prosecutor. It was created by the Law of 26 March 2003 and has been operational since 1st September 2003. The COSC is a knowledge centre for the legal authorities in criminal matters, within the framework of the seizure of patrimonial assets. It offers assistance within the framework of public action, associated with confiscation, and the role of facilitator within the framework of executing judgements and orders involving confiscation (source: www.confiscaid.be).

³⁷² Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44, 52-53 and 122; Trafficking in and smuggling of human beings 2011, *The money that matters*, pp. 42-43 et 142.

³⁷³ See this part, Chapter 2, point 2.4.1.a. and point 2.4.3.b.

³⁷⁴ See this part, Chapter 1, point 1.2.

EXTERNAL CONTRIBUTION: COMBATING THE INTERNATIONAL SMUGGLING OF HUMAN BEINGS

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Concerning the raison d'être of combating the smuggling of human beings

Nowadays, everyone has a view of what human smuggling is. Over the past few months, images of boats jam-packed with refugees have been seen all over the world. The island of Lampedusa, south of Sicily, has quickly become associated with the term human smuggling. The sheer audacity of the human smugglers has drawn the public's attention to the problem on an international level.

However, the phenomenon of illegal migration and human smuggling has been a problem for a very long time. For years, desperate people have been relying on smugglers, who masquerade as advisors and travel agents and demand considerable financial sacrifices from migrants and their families in order to embark on the journey to the promised land or continent, often risking their lives. Once on their way, the migrants are entirely at the mercy of the smugglers: the latter choose the means of transport and the itinerary, and the migrants have their papers taken from so that they run less risk of being sent back to their country of origin, owing to a lack of identity and nationality. Migrants who don't toe the line are threatened by the smugglers or are subject to violence, or are simply left to their fate. Since their family has already paid a large part of the cost for their journey, there isn't actually any going back and they are therefore prepared to do whatever the smugglers ask them to do. They receive instructions on how to behave when they are intercepted by the police.

But it isn't the migrants who are to blame, since they are the ones fleeing poverty and

violence. This is what immediately creates a paradox, which is what a public prosecutor or investigating judge is directly confronted with when conducting criminal investigations concerning human smuggling: why intervene in a system that allows these people to aspire to a better life?

In reality, the smuggling of human beings is just as present in our country as in the rest of Europe, even if, for the majority of people, it is still a very distant problem. This presence is particularly felt in motorway parking areas, industrial zones, ports and only to a lesser degree in town centres or villages. The Belgian situation is of course overshadowed by the large number of migrants attempting to cross the Mediterranean and the number of deaths as a result of these attempts. Migrants – and many are those who have never seen the sand on the beaches of Lampedusa – enter Belgium, stay here or cross it on their way to their final destination, and rely on the “services” of smugglers. Their presence in Belgium is often very short, and they have absolutely no desire to stay here. The “order to leave the territory” they receive from the Immigration Office is often a correct translation of what they want to say to the law enforcement officer: migrants in transit want nothing more than to leave Belgium as quickly as possible, very probably in the direction of their final destination. Which inevitably brings us to the questions which are very often asked: why intervene when our country is nothing more than a transit country for a large majority of migrants? Isn't the human smuggling problem of greater concern to the United Kingdom, which has an unbelievable power of attraction for numerous nationalities, or (the north of) France, where migrants stay by the thousands in camps, with smugglers simply using Belgian car parks to put migrants in trucks (via the French sea ports) heading for the United Kingdom?

As if that wasn't enough, the judges or investigators are often asked the frustrating

question of whether it is really of any use or simply a complete waste of time, as was the case last year in an article in the newspaper *De Tijd* (*De Tijd*, “De E40, miljoenenroute voor mensensmokkelaars”, April 2014).

They are only questions, to which there isn't always an immediate answer, providing there is only one answer. It is as though any judge or investigator who is involved in the fight against human smuggling, is bound to suffer a burnout sooner or later, if the focus is constantly on these questions.

But let us leave aside these difficult questions on an apparently hopeless situation and return to the field with a true story... *On 5 September 2013, in the middle of the night, the police surveillance team for the highways in West Flanders noticed several migrants hidden in a green Ford Transit van in the Jabbeke car park. This highway parking area is the favourite playground for smugglers of human beings and the highway police decided to follow the van to intercept it. When the police were spotted, the Ford Transit fled down the E40 highway in the direction of France and was pursued by the highway police. The Kurdish smugglers had one objective: to remain out of the reach of the police and cross the border between France and Belgium in order to reach the migrants' camp, where the Belgian police has no authority and where the French police no longer dares to go at night. The end justifies the means because they will do all they can not to be arrested. Several police vehicles arrived as reinforcement and joined the chase. The smugglers forced their way through the police vehicles and deliberately rammed them several times. They were driving at top speed. The police officers attempted to avoid direct contact as much as possible, because they knew that the vehicle they were chasing was filled with migrants, and that if an accident occurred at this speed, the result could be catastrophic. When the smugglers tried to overtake, their wheel hit a hole and they lost control of the vehicle, which crashed into a ditch. One of the smugglers ended up under the vehicle, while another one managed to escape. Warning shots were fired. Once the*

accident scene had been secured, the migrants were let out as quickly as possible. The first sound coming from the vehicle was a child crying. The seven-year-old was sitting at the back of the van with his mother and other migrants, with no safety belts. They had been tossed about, lights were flashing and sirens were wailing all over the place and everyone on board was in a state of panic. They suddenly found themselves, in a state of shock, in the ditch, hearing the groans of a man under the weight of the vehicle, accompanied by several shots. For several long minutes, they had the feeling they were in a war zone, whereas they were actually only in peaceful West Flanders, albeit in a runaway vehicle driven by human smugglers.

This story already gives an answer to the question of the need to invest the best means in the criminal phenomenon of human smuggling: it is intolerable and incomprehensible that such human suffering can exist in Belgium. The smugglers are in no way driven by any form of humanity, even though they claim the contrary when they have to answer for their crimes in court. They are only motivated by the lure of gain, and the victims of this smuggling must pay the toll. Up until now, no-one has taken the trouble to calculate the financial impact of this crime on our society: tarpaulins are slashed, freight is partly or completely contaminated and refused, insurance policies are increasingly expensive, fences are regularly severed and destroyed, 30 to 40 police officers are on night duty, assisted by sniffer dogs and helicopters, the costs associated with phone tapping and interpretation services soar as soon it is a matter of putting an organisation behind bars, etc.

And if this story isn't enough to convince some, there are plenty of other sickening stories of men, women and children stowed away in refrigerated trucks (in freezing temperatures), in gigantic piles of iron containers (under a scorching sun), in all sorts of slits and storage spaces, even in the dashboard of a vehicle to attempt to make the crossing. The tragedies of Dover (2000),

Wexford (2001) and recently Tilbury (August 2014) are still in our memories.

Collecting information

For the police and the law to be able to initiate the fight against a criminal phenomenon, it is essential they have precise information. Sometimes – although it is extremely rare – information relating to a human smuggling organisation falls into the hands of the police by chance, but in the majority of cases, it is the constant attention of the police services on this phenomenon that leads to a successful outcome.

The migrants intercepted by the police services are therefore an important source of information. However, it is very rare for the victims to spontaneously divulge correct and useful information on the smugglers. And you don't need to look far to understand why: the victims have already paid a fortune, they have already travelled far and are now only a stone's throw away from the United Kingdom. Therefore, they don't want to throw away their chance of reaching the promised land on the final stretch.

And yet, the information the migrants have, which comes to the surface thanks to a duly performed search, often appears very useful. It may be in the form of letters, notes, cards, tickets, signatures, phone numbers, etc., which can be hidden anywhere. The phone they might have must also be checked. When a police officer thinks a migrant might be able to provide useful information, they will conduct a hearing with an interpreter. It isn't feasible, either on a human level, or on a financial level, to systematically hear all the migrants discovered, and it wouldn't add any value in practice either, precisely because the majority of them aren't able to give correct information or give the smugglers away. Nevertheless, the role of the police officer at this precise moment is essential: it is often the same members of the police services who, on the basis of their experience and their empathy, are able to pick out and interview the right migrants. They can therefore provide information on the basis of which a new investigation can be launched. It is also often

these police officers who correctly assess these situations and decide to carry out an inspection owing to suspicious behaviour, there where others may not have taken action as quickly in similar circumstances.

It is the public prosecutor's responsibility to raise awareness and continuously stimulate police officers and emphasise the importance of their initial reports and the accuracy and meticulousness they must apply in these tasks. While the desire, at the level of the public prosecutor's office, is to perform quality investigations, which lead to convictions, it is necessary to ensure that all eyes and ears in the field – i.e. those of the police officers – are sufficiently focused on the phenomenon, and that people are aware that their initial report³⁷⁵ can make a difference in a case.

In return for precise information, the public prosecutor must also make sure the police officers involved are provided with a report on the consequences of their observations. In general, this is the case as regards investigators who have been involved in the criminal investigation, but sometimes, the initiators are completely forgotten even though the case was opened thanks to their observations and was conceived on their computer. Furthermore, police officers can learn a great deal about the way in which a court assesses a case. The judges analyse the facts based on what was written down on paper. What the police officer saw but didn't write down simply doesn't exist for the judge, and can't be taken into account during the trial.

It is therefore very important in practice that hierarchical superiors in the police force are aware of the interest of combating human smuggling and the way cases are created. Every police unit has its priorities, which allow it to refer to national and zonal security plans and to the strategic choices of the director or

³⁷⁵ The initial report is the basis for opening a case. The police officer notes down the facts of the infringement and the preliminary findings.

chief of police. If human smuggling isn't part of the priorities in a region where the phenomenon may appear one day, problems could occur. Of course, police officers who don't feel supported by their superiors or their chief of police won't be as motivated to arrest illegal immigrants on an administrative basis or to chase after suspicious vehicles and give it their best to fight this phenomenon.

Apprehending an illegal immigrant can't be done in a flash: besides the usual triptych, there is a great deal of paperwork, and as long as the police services haven't received a notice from the Immigration Office as to what should be done with the intercepted person, the intervention team is stuck in the office and the police officers are unavailable for other assignments. If a *group* of foreigners has been discovered, there is even more work for the police services. It goes without saying that the intercepted migrants are treated correctly and humanly by the police officers. They have the chance to freshen up or eat something, or at least rest on a mattress rather than in a tent pitched on pallets. When the decision is finally made to let the interested parties go, everyone wonders what the point of the intervention was. Hardly surprising then that some are sometimes tempted to look the other way and *not* notice the group of migrants. And yet, the missing piece in a big investigation is sometimes hiding in a corner: the police officer who does their duty and carries out an administrative arrest and a search, can very well unearth the key to a successful outcome, in the form of a letter, a note or a phone number. The investigation of the Wexford case (findings of 8 December 2001, eight migrants found dead in Wexford, Ireland) received a boost thanks to a police officer who found a letter, which initially seemed insignificant, and the investigators who decided to analyse this bit of paper.

The public prosecutor must specify their expectations to the police and, if necessary, confer with superiors so that everyone is looking in the same direction. Smugglers of human beings are highly mobile, and they quickly notice in which regions they are more actively pursued than in others, thus quickly

shifting their area of activity. The trucks sounded out by the smugglers for the crossing from Calais or Coquelles to the United Kingdom have already been chosen in the Belgian highway parking areas. And yet, the trucks still have to cover a long distance before arriving at the French sea ports, and the risk is very real that these trucks' load isn't always destined for the United Kingdom but for Belgium or France instead. Even in parking areas where the phenomenon of human smuggling hasn't yet been observed, groups of migrants suddenly seem to be displaced under the leadership of one or several smugglers. Closing our eyes to the phenomenon isn't actually an option, on the contrary.

Managing the information

If we base ourselves on the principle that everyone is on the same wavelength within a judicial district and that every police service has a part to play in the fight against human smuggling, the question we then need to ask is, who is going to manage all the information.

SICA (the district information and communication service, formerly the CIA) is the backbone of information management. Its role in the fight against human smuggling is essential. SICA in West Flanders (or Bruges CIA to be more precise) has been collecting all the information provided by the police services since 2003. The database has grown and been refined over the years.

As a result, the database is supplied with additional data every day, and every partner receives a *sitrep* (situation report) in their mailbox on a daily basis, with all the police reports concerning illegal immigrants and human smuggling. Even simple reports from heavy-goods drivers or citizens that didn't lead to a police report are included in the *sitrep*. Furthermore, overviews are written every month and every year. SICA therefore does much more than simply record: thanks to the incoming information, it endeavours to spot the links and the trends. When information from different cases matches up, the public prosecutor and the federal judicial police's anti-human smuggling team are contacted

directly, in order to make the most of this information.

The Bruges-based database is a user-friendly tool that is also used by the police services outside West Flanders. The smuggling organisations which operate from abroad often use the parking areas in West Flanders, owing to their proximity to the French border. Since the transportations are often thwarted by frequent police action, and as the police services draw up a police report every time concerning the migrants discovered, the national investigators can make good use of this information to find a link between the transportations and their investigation on the basis of their own data, and thus better inventory the organisation.

Integrated approach and collaboration

It goes without saying that combating a phenomenon of international crime such as human smuggling requires an integrated and coordinated approach.

Within a judicial district, all the police services play a part, without exception. Despite its international nature, human smuggling isn't the exclusive remit of the federal police. It is the responsibility of the public prosecutor's office to lay out the guidelines with a "made-to-measure approach" within the district, and the public prosecutor must manage the police according to this policy. The local police, which is in the field every day, must remain attentive to the increased presence of migrants in its area, and it must ensure that apartment blocks don't suddenly become safe houses. During checks relating to social fraud and human trafficking in high-risk sectors such as night shops, car washes and Asian restaurants, it is also necessary to pay attention to clues relating to the potential smuggling of human beings. Trafficking and smuggling of human beings are clearly separate offences, but they often go hand in hand.

Following the judicial reform, the majority of judicial districts, which have been reduced to 12, are now operating on a large scale. This means that the reference judge for human

smuggling must also now manage the police services of other divisions and ensure that their policy is also applied in these divisions. For the current West Flanders district, the reform didn't bring about many changes, since the cases of trafficking and smuggling of human beings had already been entrusted to the former district of Bruges some years ago, following partnerships between the public prosecutor's offices. In concrete terms, this means that the quarterly follow-up meetings on human smuggling, as well as meetings that were set up beforehand by the College of Public Prosecutors, were already taking place beyond the district borders before the judicial reform.

For large-scale actions, the public prosecutor's office will ask all the police services concerned to provide reinforcement during the action, thus allowing clear agreements to be concluded regarding the administrative processing of migrants who are discovered and the judicial treatment of the arrested smugglers. Small streams make big rivers, and every police service must fulfil a specific mission: the transport police knows the highways and has the appropriate vehicles for chases; the local police areas know the escape routes like the back of their hand; the federal judicial police maintains an overview of the investigations in progress and the modus operandi; the river and maritime police know how the ports function and the technical support team has tools allowing accurate observations to be made in all circumstances. If this mixed team has the support of the police dog handlers and helicopters, everything is in place to be able to keep several places under observation at the same time and to catch the smugglers. Of course, this is much easier said than done, especially since the police services aren't accustomed to collaborating as closely together in the field within the same district, but it is the only way to ensure the correct approach without the risk of weakening the human resources of a specific police service after the action.

The College of Public Prosecutors stipulated that to effectively combat the smuggling of human beings, there needs to be a synergy

between the administrative and judicial policies. In practice, this synergy is expressed above all in the administrative actions organised by the director-coordinator (Dirco) of the federal police. These actions are visible to the public: police officers enter the human smugglers' field of action with scanners, dogs and measurement devices to check trucks and remove the migrants from them. We should add that the governor can, within their competence, become a partner in the fight against human smuggling, since this subject can also feature at the provincial round table for security which takes place every four months, where the public prosecutor of the court of appeal acts as co-chairman. The competence of the mayor may also be recommended in the administrative framework. According to Article 134 *quinquies* of the new communal law, it is possible to close down an establishment for a maximum of six months if there are serious indications that acts of human smuggling are taking place there. To prevent this measure from having a counter-productive effect on the legal proceedings, closure can only be ordered after consultation with the judicial authorities. The text of Article 134 *quinquies* therefore underlines both the synergy between the administrative side and the judicial side. In concrete terms, this means that the public prosecutor must abandon their judiciary *niche* and – taking into account each person's competences and the regulations - contact the Dirco, the governor's office and, in specific cases, the mayors concerned.

The judges are sometimes forced to make contact with people even further afield. When the embankments along highway bridges have to be cleared or when a highway parking area has to be moved, this is a golden opportunity for the public prosecutor's office and the police services to make contact with the highways agency (agentschap Wegen & Verkeer (AWV)) or private partners so that the parking area's infrastructure can also be adapted according to security needs. In ports, the harbour master is present, as well as the port facility officers. They can say whether smugglers and migrants are entering the port.

This may sound like a cliché, but collaboration is essential to success, and not only within a judicial district. Collaboration must exceed the borders of the district and the country. This is the *modus operandi* of smuggling organisations: they can be compared to de facto associations of small groups of smugglers, some of whom only take care of part of the illegal transportation, and others of the next part. When some of them are arrested, others try to rapidly seize the territory or camp of migrants left free (with a weapon if necessary), and take the "vacant" space. Smugglers of human beings also choose the path with the least resistance and move their field of action very quickly: some of them have acquired the necessary skills in their country of origin to make counter-observations, and when they see they are running too many risks in a specific region, they go to other parking areas or regions to hide migrants in trucks. When a transportation fails, the damage is limited for the smuggling organisation, because the migrants return obediently to the migrant camp, where they can make new attempts, paying the organisation a supplement if necessary.

A consultation forum exists between the judicial districts situated along the E40 highway. It is organised once a year and the judges discuss the ongoing human smuggling cases, in the presence of the contact judge from the Federal Prosecution Service. This forum draws inspiration from the consultation meetings which have been taking place for a long time already between the federal judicial police's decentralised services. As a result, this prevents the same smuggling organisation from being the subject of several simultaneous criminal investigations, which would mean a loss in terms of capacity. Information is exchanged, and if necessary, joint actions are organised and debated at these forums.

Since the activities of human smugglers are international by definition, it is also necessary to be in contact with foreign police services and authorities with a view to a collaboration. *Joint Investigation Teams* (JIT) were set up on

several occasions within the framework of human smuggling cases under the aegis of Eurojust, which led to arrests in several countries.

Investigative procedures

In human smuggling cases, no *sui generis* investigation is carried out. The judge and the police services use traditional and special techniques that are also used in other criminal investigations and belong to the usual investigative range. The crime of human smuggling obviously also features in the list of crimes eligible for phone tapping (Art. 90ter of the Code of Criminal Procedure).

Quite often, there are convincing reasons to hold suspects of human smuggling in pre-trial detention, which allows the criminal investigation to continue by endeavouring to make it advance as quickly as possible and to conclude it within a reasonable timeframe. Hence, the accused may be summoned to appear before the criminal court, bound by the arrest warrant, where the punishment must be balanced against the severity of the acts and have a dissuasive effect on the defendants and other human smugglers.

For some time now, investigators have been paying special attention to the financial benefit generated as a result of the acts, with a view to seeking confiscation. With the Law of 27 November 2013 (brought into force on 1 March 2014), the legislator also created the possibility to have property confiscated within the framework of human smuggling. For instance, this could refer to safe houses or temporary shelters where migrants are housed while awaiting transportation to the promised land. Considering that human smugglers are motivated by the lure of gain, the goal of these measures is clearly to hit the organisation in its Achilles heel, especially in its wallet.

Everyday challenges

Global migration and human smuggling, which often go hand in hand, are age-old

phenomena and a *never-ending story*. It would be utopian to think, despite the efforts made every day in this country to combat human smuggling, that we could manage to wipe out this type of crime. The number of migrants is too high and human smuggling too profitable a business; here too, the law of supply and demand prevails.

Nevertheless, detecting human smuggling activities and the inventory of human smuggling organisations active in Belgium remains a challenge. The smugglers learn by their mistakes, they are becoming more professional, more cautious, but also more aggressive. They appear rational to their opponents and unscrupulous to their victims, thus forcing police services to lie in wait for an opportunity and be creative with the investigative methods at their disposal. It is extremely rare for them to admit to the acts they are accused of, thus forcing police officers to do all in their power to close all the doors on the basis of observations and objective evidence. Cases must therefore be brought to court with hard evidence, where there is no room for objection, and it is up to the impartial and independent judge to decide how to punish the perpetrators of a crime that is so destabilising for society.

The internet is becoming (or rather, is) one of the investigators' biggest challenges. The possibilities of accessing the internet are greater, better and cheaper, even if the tools the law and the police currently have to investigate and catch "surfers armed with bad intentions" via the same *worldwide web* are somewhat derisory and wanting. Everyone agrees on this. Internet searches should feature among the absolute priorities on our legislators' to-do list.

As long as there are still challenges, human smuggling remains a particularly fascinating subject.