

Chapter 4: Case law overview (2014 - may 2015)

This chapter provides an overview of the relevant case law from 2014 to the beginning of 2015 (May 2015) concerning cases of trafficking and smuggling in human beings³⁷⁶. This year, the overview focuses on cases in which Myria instituted civil proceedings and on the decisions received from the specialised victim reception centres. A decision was also sent by an organisation working with illegal workers.

Myria was informed of 58 decisions rendered by the judicial authorities, two of which were pronounced by the Court of Cassation. There is also a decision from the Council for Alien Law Litigation, which granted the status of refugee to a victim of human trafficking.

The most interesting decisions are presented below³⁷⁷, i.e. 43 decisions relating to 35 cases in the country's different jurisdictions:

- 10 decisions concern cases of **sexual exploitation**. They were pronounced in the jurisdiction of the Courts of Appeal of Antwerp (Antwerp), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent), West Flanders (Ypres)) and Liège (Liège).

In terms of sexual exploitation, there were several decisions concerning young girls, sometimes minors, in very precarious social situations. Several young Belgian women were also recognised as victims of human trafficking. Several decisions held companies liable, i.e. legal entities, which were set up with the intention of

concealing the exploitation. One decision concerns a case of polycriminality, in which both acts of sexual exploitation and coercion to commit a crime were prosecuted.

- 18 decisions relating to 15 cases concern **labour exploitation**. The decisions pronounced relate to a wide range of sectors and are presented per sector of activity (construction/renovation, agriculture/horticulture, car washes, riding schools, exotic shops, printing works, butcher's shops, domestic work and football). We should point out that this is the first time that Myria was informed of a decision pronounced regarding a printing works. Furthermore, several years have passed since Myria was informed of decisions concerning footballers. These decisions were pronounced within the jurisdiction of the Courts of Appeal of Antwerp (Mechelen, Turnhout division), Brussels (French-speaking Brussels, Walloon Brabant), Ghent (East Flanders (Ghent), West Flanders (Courtrai), Liège (Liège) and Mons (Charleroi division).

In terms of labour exploitation, we noticed, as in previous years, the existence of fraudulent structures to conceal the exploitation: cascade subcontracting, fraud in terms of posted workers or bogus self-employed workers. It is also sometimes a question of offences committed by slum landlords, in combination with labour exploitation. Moreover, it is interesting to note that, for the worker, the fact of having been the victim of a work accident that the employer completely ignored, was considered a determining factor establishing the existence of work conditions contrary to human dignity. The notion of recruitment was also the subject of a decision by the

³⁷⁶ Several case law decisions from the beginning of 2014 are also presented in the previous report (see Trafficking and Smuggling in Human Beings, Annual Report 2013, *Building bridges*, pp. 105 and following).

³⁷⁷ We consider that a decision is interesting when it appears relevant either on a legal level or in terms of the acts. These decisions are published on Myria's website: www.myria.be

Court of Cassation. This term must be understood in a general sense, since the employer wasn't required to take any active steps.

- a decision relating to acts of **exploitation** of disabled adults **for the purpose of begging** was pronounced by the Dutch-speaking Criminal Court of Brussels.
- 14 decisions relating to nine cases concern **human smuggling**. They were pronounced within the jurisdiction of the courts of appeal of Antwerp, Brussels and Ghent. Given that the previous report didn't give an overview of the case law in this domain, some of the decisions pre-date 2014.

In terms of human smuggling, it is usually a question of well-structured organisations with various nationalities collaborating with each other. Sham marriages are also used within this framework.

1. Human trafficking

1.1. Sexual exploitation

*Wide-scale sexual exploitation by a gang of Hungarian perpetrators*³⁷⁸

In a **judgement of 21 August 2014**³⁷⁹, **Ghent Criminal Court** charged a gang of Hungarian pimps with human trafficking for the purposes of sexual exploitation, in particular regarding a minor, for exploitation of prostitution, criminal organisation and money laundering.

At the end of 2012, beginning of 2013, the gang was active in the red-light district in Ghent. The case was opened when the police in Amsterdam raised a question regarding the forced prostitution of a Hungarian woman in

Ghent, whose family had been threatened. The investigation was conducted using phone taps and observations. It was carried out on an international level, in order to cover the Netherlands and Hungary as well. The defendants recruited young Hungarian girls looking for work to improve their daily lives. These girls were offered a job as a prostitute in Belgium, in a bikini in a bar, with an income of EUR 1,000 a day and the promise of being well treated. The victims were mainly vulnerable young girls from institutions, single mothers or young girls who were already prostituting themselves for their boyfriend (pimp).

Once in Ghent, the young women were housed in a low-rent hotel. They were then forced to prostitute themselves in prostitution windows. They were obliged to earn between EUR 500 and 800 a day and had to accept all sexual acts, including unprotected sex. If they earned too little or didn't do as they were asked, they were raped and/or beaten. The young girls worked 12 hours a day, and sometimes six or seven days a week. They were also drugged to optimise their services.

In order not to arouse the suspicions of the young girls' families, the defendants regularly sent small amounts of money to the young girls' families in Hungary. The young girls had to hand over half of their earnings. They also had to pay for the window, condoms and hotel costs themselves. They were left with almost nothing. They generally transferred the little bit that remained to their family or their boyfriend, often their pimp (under a subcontracting arrangement). One of the victims was expecting twins and, despite the fact that she wanted to keep the children, she was forced to abort. She had to go back to work in the window four days after the intervention.

A minor was also put to work, but just for one night. One of the defendants stated that he wasn't aware that she was underage and would have taken her to Charleroi as soon as he found out she was a minor. According to the phone conversations, it appeared that

³⁷⁸ See also this part, Chapter 2, point 1.1.1. and part 1, Chapter 2, point 1.1.

³⁷⁹ Ghent Crim. Court, Ghent division, 19th ch., 21 August 2014 (final).

there were other underage victims from time to time.

It was a very well structured network, where the only concern was to make a maximum profit. The organisation functioned on an international level and also employed girls in Germany, the Netherlands and Switzerland. In Belgium, the main defendants always used a dozen or so Hungarian girls in prostitution. They also hired a few Hungarian men to act as supervisors, bodyguards, drivers or cash carriers. The organisation also brought pimps to Ghent with the Hungarian girls to make them work there. Two older Hungarian women acted as *bottom girls*. They brought food and condoms to the Hungarian girls, collected their earnings and provided them with their dose of drugs. Furthermore, they didn't hesitate to use violence.

Nearly all the men involved in this case were unemployed and received unemployment benefit in their country of origin. Nevertheless, they had expensive cars and/or luxury villas. It emerged from various tapped phone conversations that the defendants made an average turnover of EUR 18,250 a month.

In the extensive judgement, the judge dealt with the revised definition of human trafficking brought into force in 2013. Since 2 August 2013, "taking control" is also included in the offence of human trafficking. The description must cover all forms of pressure or authority: attitude, shouting, sham relationships or sham marriages, isolation of the victims. All forms of sexual exploitation can also be punished as human trafficking. In this case, the girls knew they were coming here to work in prostitution, but they were misled in terms of the work conditions and the salary. In reality, they were exploited in dubious prostitution windows. To prevent them from leaving prostitution, the defendants employed all sorts of constraints and threats. This is why the court didn't hesitate to speak out in this case of human trafficking for the purpose of sexual exploitation.

The judge handed down prison sentences ranging between one and five years, together with fines from EUR 120,000 to 240,000. The court also ordered special confiscations for amounts varying between EUR 8,000 and 60,000, for a total of EUR 405,980. The court granted Myria, which instituted civil proceedings, compensation worth EUR 2,500.

Massage parlours

Several cases, in which Myria instituted civil proceedings, concerned acts of sexual exploitation in massage parlours.

On 12 March 2014, Brussels Court of Appeal gave its ruling³⁸⁰ in a case where the Criminal Court of Leuven had acquitted the defendants in 2012³⁸¹ for acts of human trafficking for the purposes of sexual exploitation, but had nevertheless convicted the majority of the defendants for human smuggling with aggravating circumstances. In first instance, the court considered that it wasn't possible to establish whether or not the girls had been deceived regarding the nature of the activities they were going to perform in Belgium or that they had been exploited. Besides Myria, PAG-ASA and two victims also instituted civil proceedings.

The young girls were brought to Belgium from Thailand in an organised manner. Some of the girls were already active in prostitution in Thailand. One of the defendants took care of the plane tickets and the visas. A second defendant acted as an intermediary who put the young girls to work in a bar or massage parlour in Belgium. The two other defendants ran a bar or a massage parlour. One of them transferred part of the income from prostitution to Thailand, sometimes on behalf of the young girls, sometimes not. In Belgium, they received half of their income. Part of this money allowed them to reimburse their journey from Thailand. They were in possession of their identity papers and other

³⁸⁰ Brussels, 12 March 2014, 13th ch. (appeal).

³⁸¹ Louvain Crim. Court, 23 October 2012, available at www.myria.be. Also see: Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 71-72 (Thai massage parlour).

documents. It emerged from the case that they had freedom of movement and that their work in Belgium was profitable.

The court of appeal adopted another stance and gave a broader interpretation of the charge of human trafficking than the criminal court. The court considered that the girls had been brought to Belgium from Thailand with the aim of exploiting them sexually. As a result, it emphasised the fact that the consent of the victims to the envisaged or actual exploitation was irrelevant, since the possible consent of the victim to her exploitation doesn't alter the fact that human trafficking is a punishable offence. Nevertheless, the court gave a reduced sentence given that the reasonable time limit had been exceeded. Six to 18-month prison sentences were handed down, as well as fines varying between EUR 2,750 and EUR 5,500.

On **23 March 2015**, the **Criminal Court of Ypres**³⁸² convicted three defendants, including a company, primarily for acts of human trafficking for the purpose of sexual exploitation, human smuggling and various breaches of the Social Criminal Code.

The defendants ran a Thai massage parlour, where foreign girls staying here illegally were employed under dubious circumstances. The prostitutes were actively recruited, housed and taken care of by the defendants. They were significantly underpaid, lived in seedy conditions and had no form of social protection. They had to hand over half of their earnings and pay various indemnities on top of that. The court considered that in view of their precarious circumstances, the young women didn't have much choice other than to work under these conditions.

The defendants were already tried in 2011 for similar acts. Consequently, the judge sentenced them to 30 months and four years in prison respectively, together with a EUR 18,000 fine (EUR 6,000 per victim). The company, for which the other two defendants

acted as agents, was also fined EUR 18,000. The court also ordered a special confiscation of EUR 3,750 and EUR 12,000 for the first and second defendant respectively. Myria, which instituted civil proceedings, received compensation worth EUR 2,500.

In a **judgement of 31 March 2015**³⁸³, **Antwerp Criminal Court** convicted a Thai woman, who ran a massage parlour, for the sexual exploitation of several compatriots. During various inspections carried out by the Social Inspectorate, Thai women were found there; they were working without valid documents. Although they stated in the beginning that they had come to Belgium on their own initiative and were working in the massage parlour on a voluntary basis, one of the victims gave a completely different version during a second hearing. One of the victims stated that she had arrived in Belgium through a smuggler for the sum of EUR 15,000. She worked in the massage parlour to pay off her debt. She had just started to work there when she was told that her debt was EUR 30,000. The massages went hand in hand with sexual relations. She had to give half of her earnings to the defendant. Once the initial debt had been paid off, the exploiter offered to get the victim official papers, which would cost her another EUR 10,000.

The court found that the defendant ran a brothel and took advantage of the fact that the victims were staying here illegally and in a precarious administrative situation. The court added that there was sufficient evidence to accuse the defendant of human trafficking with the aggravating circumstance of a business activity.

The court handed down a two-year suspended prison sentence, together with a EUR 3,000 fine. Myria, which instituted civil proceedings, was awarded a symbolic euro as compensation.

³⁸² West Flanders Crim. Court, Ypres division, 23 March 2015, 17th ch. (final).

³⁸³ Antwerp Crim. Court, Antwerp division, 31 March 2015, ch. AC4 (final).

Sham marriages

In a **judgement of 17 October 2014**³⁸⁴, the **Dutch-speaking Criminal Court of Brussels** convicted an Albanian pimp primarily for human trafficking for the purposes of sexual exploitation and money laundering. The defendant used fraudulent tactics to recruit victims and put them to work in Belgium as prostitutes. For instance, he organised a sham marriage between the victim and a Belgian national, making the victim's stay completely dependent on the success of the sham marriage. One of the victims worked as a prostitute in Rue d'Aarschot in Brussels, then later in a bar in Ostend, and then in Ghent. The victim was taken to a specialised reception centre for victims of human trafficking, but refused victim status. She refused to make further statements through fear of reprisals against her child and her family.

The court sentenced the defendant to a four-year suspended prison sentence, together with a EUR 2,750 fine. The judge also ordered a confiscation amounting to EUR 60,000. Myria, which instituted civil proceedings in this case, received a symbolic euro as compensation.

Loverboys

A decision given by the **French-speaking Criminal Court of Brussels on 23 September 2014**³⁸⁵ concerns an Albanian loverboy³⁸⁶. The defendant was convicted for trafficking in human beings for the purposes of sexual exploitation. He exploited the prostitution of two young women whom he had seduced (he told them he was in love with them) and then forced them into prostitution. He had recruited and seduced them in Albania with the purpose of exploiting them through prostitution in Brussels. The court emphasised

that “after seduction, the promise of a reassuring life as a couple is a fraudulent tactic, even if it is indirect, as referred to in the charges”.

Cash courier

In a decision of **7 May 2014**, the **French-speaking Criminal Court of Brussels**³⁸⁷ accepted the charge of trafficking of human beings for the purposes of sexual exploitation and money laundering for a total sum of EUR 66,270 with regard to a defendant who was active in the transportation of goods, people and cash between Belgium and Bulgaria in relation to prostitution. The case (and more particularly, phone tracking) revealed that the defendant was in close contact with prostitution circles in Brussels and Antwerp. He also appeared as a contact in several cases opened in Belgium within the framework of acts of human trafficking. Cooperation with Bulgaria revealed that the defendant had crossed the Bulgarian border numerous times with women who were known to be involved with prostitution, and that he regularly travelled between Belgium and Bulgaria. The cost for travelling with the defendant was EUR 150 to go to Belgium and EUR 100 to return to Bulgaria. The defendant knew that the girls who travelled with him were going to Belgium to prostitute themselves. As regards the transportation of cash, the defendant took a commission on the transported sum. As for luggage, the price depended on the size.

The court sentenced the defendant to a five-year suspended prison sentence for the period exceeding pre-trial detention and a EUR 22,000 fine. It also ordered the special confiscation of the money resulting from the sale of the seized vehicle, as well as the sums that were in the defendant's possession or the subject of the offence of money laundering.

³⁸⁴ Brussels Dutch-speaking Crim. Court, 17 October 2014, ch. 46bis (final). Also see: Human Trafficking, Annual Report 2013, *Building Bridges*, p. 25.

³⁸⁵ Brussels French-speaking Crim. Court, 23 September 2014 (final).

³⁸⁶ Also see part 1, Chapter 2, point 1.1.

³⁸⁷ Brussels French-speaking Crim. Court, 7 May 2014, 54th ch. (appeal).

Belgian victims

A major case concerning Belgian victims in a precarious situation was tried by the **Criminal Court of Liège on 19 November 2014**³⁸⁸. In this case, five defendants, including a company, were prosecuted for trafficking several Belgian girls for the purpose of sexual exploitation. The majority of them, as well as two other co-defendants, were also charged with recruiting and exploitation of prostitution, as well as running a brothel. One of the defendants (recruiter) was also prosecuted for the rape of an underage girl, as well as two adult women. All the defendants (seven) were prosecuted either for being the leader or the member of a criminal organisation.

The case was opened following a police check in a champagne bar where several hostesses in skimpy clothing were identified. One of waitresses, who was clearly nervous and ill at ease, was later summoned and heard. She explained how she was recruited, how the earnings were divided, as well as the role of several of the defendants. On the basis of her statement, investigations were carried out (phone tapping, searches, hearings with the other waitresses and questioning).

The court charged the five defendants with human trafficking: the girls in question were recruited, housed, and controlled for the purposes of prostitution within the framework of the champagne bar. The girls spoke of a similar modus operandi, i.e.:

- they were taken to the bar by one of the defendants (the recruiter), who then presented them to the people running the bar (a couple) whom he knew;
- the woman running the bar showed them round and explained the work conditions, the tariffs and showed them the gear;

- she particularly talked about sexual services;
- the girls were encouraged to do a trial;
- several days after they began work, the woman who ran the bar got them to sign a document saying that they were active partners in the company.

The girls' statements were confirmed by the initial statements of several of the defendants.

Recruitment took place primarily over the internet (fake Facebook profiles). The court pointed out for there to be recruitment, it didn't matter whether the worker was salaried or self-employed, whether the social regulations in force were respected or not or whether the contract related to a job contrary to public order or decency. Consequently, as to whether the victims were bogus self-employed workers, real or fake active partners or salaried employees was of little importance in this case. Regarding the application of Article 433*quinquies* of the Criminal Code, this didn't change anything.

One of the defendant's was the woman who ran the bar and was the manager of the company. Her husband was the co-manager and took care of maintenance in the establishment. The court also accepted the charge of the company's, i.e. the legal entity's, criminal liability³⁸⁹. The company was in fact founded exclusively to take over and run one or more hostess bars, including the one where the girls were exploited. Furthermore, the offence of trafficking was knowingly and intentionally committed by the persons who set up the company, i.e. the two defendants, i.e. natural persons whose role within the

³⁸⁸ Liège Crim. Court, Liège division 19 November 2014, 19th ch. (final except for the company convicted in absentia). The latter filed an opposition (see hereafter note 405).

³⁸⁹ Article 5 of the Criminal Code relating to the criminal liability of the legal entities states that "All legal entities are criminally liable for the offences intrinsically linked to the achievement of its objective or the defence of its interests, or for those whose concrete facts show that they were committed for their benefit. When the legal entity is held liable exclusively owing to the intervention of an identified natural person, only the person who has committed the most serious offence can be convicted. If the identified natural person knowingly and willingly committed the offence, they can be convicted at the same time as the liable legal entity".

company and the structure of the latter justified a joint conviction of the natural persons and legal entity.

The two other defendants (a man and a woman) were the recruiters. The man recruited the girls on the internet or accosted them in town. He generally approached young girls without any experience in prostitution, who were recruited on the basis of their appearance. He then took them to the bar where they were met by the couple managing the champagne bar. He also used young girls to canvass other ones. In addition, he managed an escort agency which had a website. During the first appointment with a young girl for the website, he asked them to take a “test”. The court emphasised that the control he exerted over these young girls was particularly marked by this sex test. The court also accepted the charge against him of rape, especially in the case of an underage girl whom he forced to take this famous “test”.

As for the woman, she acted as an intermediary and played the role of “secretary”. She managed the clients’ requests, answered calls and directed them towards her “colleague”. She was responsible for making the initial contact with the young girls through social networks (such as Facebook).

The charge of criminal organisation was changed to criminal association and accepted, except with regard to the defendant who played the role of “secretary”. There was indeed a certain distribution of the tasks but no strict hierarchy, or elaborate structure as required within the framework of a criminal organisation. The defendants were associated in the exploitation of the prostitution of young girls in the bar but they were all acting on their own account since the money collected wasn’t distributed among the perpetrators.

After due hearing of the parties, the court ruled against all the defendants, except the

company, which was sentenced in absentia (and filed an opposition)³⁹⁰.

The defendants who managed the bar were sentenced to two years in prison and a EUR 5,500 fine, with a partial suspension. The defendant who was the recruiter, and a repeat offender, was given an eight-year prison sentence and a EUR 5,500 fine. The other defendants were sentenced to community service. The company was sentenced to a suspended fine of EUR 3,000. Sentences involving the confiscation of assets of equivalent value were also handed down (EUR 23,960 in the case of the recruiter and EUR 45,682 in the case of the managers and the company). The underage victim was granted the provisional sum of EUR 2,500 and an expert neuropsychiatrist was appointed to assess the moral damage suffered.

Income from prostitution and shell companies: conviction of legal persons

Three defendants and two companies were prosecuted for various offences: trafficking of human beings for the purpose of the sexual exploitation of 22 victims, recruiting and exploitation of the prostitution of 161 prostitutes, running a brothel, pimping at hotels (this charge concerns a company). Some of them (including two other companies) were also charged with forgery of documents, money laundering, tax fraud and insurance fraud.

The main defendant bought out the majority of prostitution parlours in Liège to create, as he put it, a sort of “Villa Tinto” like the one in Antwerp. In reality, he didn’t present any such concrete project. On the contrary, after the departure of the Belgian prostitutes who refused the conditions imposed by this defendant, he put to work a large number of young women of African origin with Belgian or Spanish papers. He recruited these young women in Antwerp and Brussels. When he arrived, the shifts were reduced, which

³⁹⁰ However, the court confirmed the conviction of the latter in a judgement of 3 June 2015.

allowed him to bring in another tenant; nothing was done to renovate the building despite the promises made; fake employment contracts were drawn up, etc. Supplements were regularly demanded for cleaning, for the shower, etc., even though the tenancy included these services.

The companies set up were intended to conceal the profits from prostitution. His partner, the co-defendant, served as a nominee in this context. The third defendant looked after the parlours and rent collection for the main defendant.

In a **judgement of 20 March 2013**, which was dealt with in the previous report³⁹¹, the **Criminal Court of Liège**³⁹² accepted the charge of trafficking and other offences concerning prostitution in the first instance, but only with regard to the natural persons.

Through a detailed statement in its **judgement of 13 January 2015**, the **Court of Appeal of Liège**³⁹³ reversed the decision on this point, also convicting the companies, i.e. the legal entities. The court emphasised in effect that the material attribution of the offence to a legal entity implies that the acts which led to the prosecutions are linked, even indirectly, with this legal entity, either because the acts are intrinsically linked to the achievement of its business purpose, or because they have been committed in its interest or on its behalf. The legal entity isn't required to have benefited from the offence: the offence just needs to have been committed for this purpose. In this case, since the offences of which the defendants were accused were directly or indirectly linked, among other things, to the exploitation of the debauchery which took place in the buildings belonging to the companies concerned, the conduct under scrutiny is intrinsically linked with the achievement of the business purpose of the charged legal entity. In other words, the

exploitation of prostitution, running a brothel and laundering the profits from these activities are, in this case, the means chosen by the organs of the prosecuted companies to achieve their business purpose. Hence, regarding the two companies prosecuted for trafficking, it was a question of asset management. The court found that in view of the evidence, it was established that the two companies, managed in law or in fact by the two main defendants, had acquired several houses in full knowledge of the previous purpose of these properties. Through the endless rental of the prostitution windows located on the ground floor of these buildings, they ran brothels and exploited the prostitution of 161 people recruited for this purpose. The two defendants, who managed the two companies with the consent of the companies in the name of which and on behalf of which they acted, knowingly and willingly recruited 161 persons with a view to exploiting their prostitution. Through this conduct, they contributed to the achievement of the companies' business purpose.

As regards the charge of trafficking, the court emphasised that the envisaged or actual exploitation of the victims and the defendants' intention to exploit them resulted, above all, from the immediate replacement of the tenants who left the premises, by foreign prostitutes who were resigned to working in disgraceful conditions. The tenants refused to prostitute themselves in the conditions offered to them. The court also noted that fact that some prostitutes didn't explicitly complain about their working conditions or the rent to be paid, didn't alter the fact of the effective and intentional exploitation of these persons in a precarious situation owing to their social status. The court quite rightly added that their docility could be explained by the fear of reprisals or losing their means of subsistence which they could only earn through their prostitution. It therefore convicted the defendants of this charge as natural persons and legal entities.

³⁹¹ Trafficking and smuggling in human beings, Annual Report 2012, *Building trust*, p. 71.

³⁹² Liège Crim. Court, 20 March 2013, 8th ch., available at www.myria.be

³⁹³ Liège, 13 January 2015, 8th ch.

The court also accepted the charge of taking advantage of the vulnerable situation of the prostitutes of African origin and using fraudulent tactics, violence and coercion on them.

The court increased the sentences delivered in first instance for one of the defendants, from three to four years in prison. As regards the companies, they were sentenced to a fine of EUR 5,500, with a three-year suspension.

Confiscation orders for the sum of EUR 535,516 were made against the two main defendants and the four companies. A confiscation order for all the buildings was also made against the same two defendants and the two companies prosecuted for acts of trafficking.

Polycriminality

In this case tried by the **Criminal Court of Liège on 7 January 2015**³⁹⁴, ten defendants were prosecuted in the criminal court for various offences. Six of them were prosecuted for trafficking for the purpose of the sexual exploitation of several Belgian girls, as well as for recruiting and exploiting the prostitution of the same girls. Three defendants were prosecuted for trafficking for the purpose of committing a crime or offence, in this case, theft by a person placed in court order administration; and five for forging documents in order to force the same person to commit acts of fraud. The main defendant was also prosecuted for rape. The other charges in this case concern aggravated assault, harassment, fraud, inhuman and degrading treatment, threats, criminal association, breach of the Firearms Act, the sale of drugs.

The court accepted the charges of trafficking for the purpose of sexual exploitation, recruitment and exploitation of prostitution against the main defendant regarding three young women in a precarious social position. It also accepted the charge against the ex-

partner of this defendant concerning the first young woman. The defendant who recruited, transported and received her, made sure she was looked after and housed by people close to her and/or under her control, with the aim of exploiting her prostitution. She had to give half of her earnings to the owners of the bars where she was supposed to prostitute herself and the other half to the main defendant. The court accepted the aggravating circumstance of abuse of a position of vulnerability owing to the young woman's precarious social situation: she had no income, no property and was housed in an institution for the homeless.

As for his ex-partner, who was actually considered a victim herself in another charge of trafficking for the purpose of sexual exploitation (which the court didn't accept), she contributed to receiving the victim and housing her with another young woman, training her, taking her to her place of work, and agreeing to have her work in the same bar as her. In this respect, the court emphasised that she was under the main defendant's control, and was probably trying to win him back by making herself useful by committing the acts.

Concerning the second young woman in a precarious situation, the main defendant met her in a bar as she was just starting out in prostitution. He quickly took charge of her, taking her from her place of work to where was staying and vice versa. The aggravating circumstance of abuse of a position of vulnerability was also accepted: she started out in prostitution, which she was previously familiar with, because she had no income and was staying with her boyfriend's brother. The defendant told her that he would get her out of this situation and threatened her friends. He also used fraudulent tactics by making her believe that he was doing this to help her by getting her out of a difficult situation.

³⁹⁴ Liège Crim. Court, Liège division, 7 January 2015, 19th ch. (final).

Finally, the third young woman he seduced was still a minor³⁹⁵. She became his girlfriend and came to stay at his house so that he could encourage her to work in prostitution once she was an adult and then exploit her prostitution.

On the other hand, the charges of trafficking with a view to committing a crime or an offence weren't accepted. With regard to the man placed in court order administration, several of the defendants abused his naivety and his submissiveness towards the main defendant. In this respect, the court considered that the fact that he was placed in court order administration didn't prove that he wasn't able to assess the situation correctly or was in a position to refuse to carry out the acts the main defendant demanded of him. As regards the thefts this person was obliged to commit, the court noted that the criminal court record didn't include any element objectivising the thefts this person committed (such as the judgement which convicted him for the theft of metals or the police reports concerning other thefts). The presumed victim stated that the main defendant had a bad influence on him which, according to him, led him to do "stupid things". The court considered that, even if these thefts were recognised, it wasn't sufficiently established that the presumed victim had acted against his will, an essential element to accept the charge of human trafficking as it relates to the committing of a crime or offence. Consequently, the defendants were given the benefit of the doubt and acquitted from this charge.

The court maintained the same reasoning concerning the acts of fraud: the fact that the man believed to be a victim had been placed in court order administration for several years, didn't prove that he wasn't in a position to refuse to take out the loans envisaged by the defendants, or made to sign these credit contracts against his will. And yet, this is an essential element of the offence of trafficking in that it relates to the committing of the

crime or offence. Furthermore, it was agreed that he would receive part of the borrowed amounts. The defendants were subsequently given the benefit of the doubt and acquitted.

The main defendant was given the benefit of the doubt and acquitted from the charge of rape.

The main defendant was sentenced to five years in prison and a fine of EUR 5,500, and given a confiscation order for the sum of EUR 78,180 of which EUR 180 were attributed to the victim (a minor when she was recruited). The other defendants prosecuted were sentenced to 12 to 15 months in prison and fines ranging from EUR 2750 to 5500, with partial suspension.

The underage girl who instituted civil proceedings was granted the provisional amount of one euro out of damages estimated at EUR 5,000, with the deduction of EUR 180, attributed within the framework of the special confiscation³⁹⁶.

1.2. Labour exploitation

1.2.1. Construction/Renovation

In 2012, the **Criminal Court of Termonde** convicted a defendant for human trafficking in the construction industry³⁹⁷. The judge also convicted several other defendants for their role as slum landlords. The victims were Polish workers who were employed to carry out renovation works as bogus self-employed workers, even though they didn't understand what this status actually implied. Furthermore, they were housed in precarious conditions. Their salary fell far below the official rates, and they were paid at very irregular intervals, if they were paid at all. The court found that the defendant only set up

³⁹⁶ On compensation, see Human Trafficking, Annual Report 2013, *Building bridges*, pp. 55-56.

³⁹⁷ Termonde Crim. Court, 3 April 2012, available at www.myria.be. See also: Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 136.

³⁹⁵ See also part 1, Chapter 2.

this legal arrangement to maximise his profits and that he paid no heed to the basic rights of his fellow human beings or to human dignity.

In a **decision of 6 June 2014**³⁹⁸, the **Ghent Court of Appeal** confirmed these convictions, as well as adding a number of specifications and corrections. The defendant was found guilty of human trafficking and was sentenced to a year in prison and a fine of EUR 4,500.

Another case in the same sector was judged by the **Criminal Court of Arlon** in a **judgement of 8 May 2014**³⁹⁹: two defendants were prosecuted primarily for human trafficking for the purposes of labour exploitation with regard to illegally-staying foreign workers and, one of them, with regard to Belgians as well. They were accused of making them work on house renovations seven days a week for more than nine hours a day, with no proper work or safety equipment, no bathroom facilities and low wages. Some of the workers slept on site in precarious conditions.

The case was opened following a complaint that was filed several months after the acts by workers who were placed under the protection of a specialised reception centre. These complaints were confirmed by numerous independent witnesses.

The court declared the charge established but only regarding the foreign workers: the defendants recruited, harboured and received them with the purpose of making them work in conditions contrary to human dignity (excessively low salary, no days off, highly precarious accommodation on site and a blatant lack of respect for the standards relating to the well-being of workers). The court didn't accept this charge regarding the defendant who was also prosecuted for the acts committed against the Belgian workers (one of them wasn't in a position of subordination, another one was only a tenant and the latter's job wasn't clear).

³⁹⁸ Ghent, 6 June 2014, 10th ch.

³⁹⁹ Luxembourg Crim. Court, Arlon division, 8 May 2014, 7th ch. (appeal).

The workers who instituted civil proceedings were granted the wages owed to them.

*Brazilian network and cascade subcontracting*⁴⁰⁰

A major case concerning a fictitious subcontracting system in the construction sector was tried by the **French-speaking Criminal Court of Brussels on 30 October 2014**⁴⁰¹. Illegal Brazilian workers, who had travelled to Europe from Brazil, were essentially recruited in Belgium to work on building sites all over Europe within the framework of a complex subcontracting chain.

Eight defendants (natural persons) and three companies (the client: company S, as well as two subcontractors: companies C. (main contractor) and E.) were prosecuted according to different degrees of involvement for criminal organisation, forgery and the use of forgeries (sham work contracts and fake identity papers), illegal employment of illegal foreign workers and the resulting breaches of the social criminal code (in particular, unpaid wages, non-payment of social contributions to the National Social Security Office (NSSO), etc.). Five of them and two companies (but not company S., the client) were prosecuted for human trafficking for the purpose of labour exploitation. They were accused of having recruited several illegal Brazilian workers, in Belgium and in other European countries, and making them work in conditions contrary to human dignity. Two workers instituted civil proceedings.

The case was initiated after Brazilian workers employed by a Portuguese company filed a complaint for unpaid wages. These workers worked on various building sites for company S. in Europe, under false papers. The work involved building and installing metallic partitions in warehouses and storage spaces

⁴⁰⁰ Concerning these acts of fraud and the Brazilian networks, see the external contributions in Trafficking and Smuggling of Human Beings, Annual Report 2011, *The money that matters*, pp. 31-36.

⁴⁰¹ Brussels French-speaking Crim. Court, 30 October 2014, 69th ch. (appeal).

which had been built all over Europe by company S. Company S. therefore entrusted the manufacturing and installation of these structures on various building sites to C., a specialised private limited company. Since the latter didn't have sufficient staff to meet S.'s request, it initially entrusted the works to a company that went bankrupt, then to another company, which was also prosecuted in this case (E.). This company was primarily composed of the former employees of the company that went bankrupt.

The Brazilian workers had to register with the tax office in a small town in Portugal, with a view to obtaining residence papers. A sum was deducted from their salary to supposedly pay the contributions in Portugal.

The court described the mechanism that was established: the works to install the partitions on the building sites of company S. entrusted to company C. were carried out, after resorting to a chain of successive subcontractors, by a certain number of illegal Brazilian workers. Within this subcontracting chain, company E. was in a privileged position because the main contractor, i.e. company C., went to them for all the works. As it didn't have any staff, company S. used subcontracting companies. Three Portuguese companies appear as the final link in the chain providing the labour force, which turned out to be essentially composed of illegal workers.

The companies concerned and their directors hid behind this subcontracting chain in order to maintain that they weren't in any way responsible for using these workers, who were exclusively managed by the company that employed them.

The court then examined the role played by each of the links in the chain:

- a. As regards company S. (not prosecuted for human trafficking): it is the first link in the chain (client). However, S. is actually part of a group, comprised of various companies with a separate legal personality. As for company S. Europe, a defendant, it was formed prior to the

subcontracting collaborations set up and it was other entities in the group that negotiated the service contracts. The court considered that it wasn't involved as the contracting party for the construction works and therefore wasn't the first link in the chain, for whom the works would have thus been done. As a result, it was acquitted from all the charges against it.

- b. Then there is the main contractor, the private limited company C. (defendant), which didn't place any workers at S.'s building sites since the works were subcontracted to company E.
- c. Company E. occupies a central position since it is through this company or its two main managers that:
 - the workers are recruited;
 - the instructions regarding the work to be done are given, through the team leaders;
 - the transportation of the workers from Belgium to the building sites abroad is arranged;
 - board and lodging for the workers is taken care of and they are paid on site by the team leaders;
 - the workers' wages are paid directly or indirectly.

The court deduced that far from being simply the main subcontractor who used other subcontractors on the building sites, company E. had all the characteristics of an employer in the sense of labour law.

- d. The two companies identified as being E.'s main subcontractors are actually fictitious.
- e. The last link: the subcontractor with the workers: they are companies under Portuguese law.

The court concluded from the analysis of the role of each of the links in the alleged subcontracting chain that a mechanism had clearly been set up, aimed at concealing the

fact that company E. had placed a significant number of workers, who were in fact illegal immigrants, on company S.'s building sites. By maintaining the totally fictitious appearance of this company's independence with officially no workers, it was able to hide behind this feigned good faith, since the end user (the last subcontractor) was solely responsible for its staff. The use of subcontractors was purely artificial and fictitious.

The court accepted the charges concerning social criminal law against the managing director of company E. and of another defendant who was in fact the de facto director of this company. On the other hand, the court acquitted the company, a legal entity, as it didn't act of its own free will or knowingly and independently of its director. Therefore, it can't assume its own individual criminal responsibility.

Likewise, the other charges were also accepted against the majority of defendants.

On the other hand, the court acquitted both company S. (charged with illegally employing foreign labour, the only thing it was accused of) and company C. (main contractor) and its director of the offences for which they were accused, since it wasn't possible to establish their knowing involvement in the fraudulent mechanism.

As regards the trafficking of human beings, the court accepted this charge against the defendants linked to company E. and its fictitious subcontracting companies. On the other hand, it acquitted company C. (main contractor) and its director (given the benefit of the doubt), as well as company E. since it couldn't be held personally liable. The working hours were very long (12 to 14 hours a day) with very few or no breaks, successive periods of work could last 30 to 45, and even 90 days, and six or even seven days a week; the wages were significantly lower than those specified by Belgian law, and they were paid randomly and not fully; sums were deducted from the salaries in order to reimburse the cost of the forged documents given to the workers or supposedly to pay Portuguese tax

contributions; the fake documents had to be handed back at the end of every job.

The prison sentences were suspended but the fines were firm.

The two workers who instituted civil proceedings were granted back payments fixed ex aequo et bono at EUR 15,000 and 50,000 respectively, as well as one final euro for immaterial damage. Concerning the latter, while the civil parties demanded significant moral damage, the court considered that while the defendants were found guilty of human trafficking, it was clear that the precarious situation they found themselves in, which was exploited by some of the defendants, resulted from a situation created by the civil parties themselves: they left Brazil with full knowledge of the facts to come and work in Europe in conditions they must have known would be difficult.

PAG-ASA, which also instituted civil proceedings, received one final euro.

False posted workers and bogus self-employed workers

In a **judgement of 22 April 2015**⁴⁰², the **Criminal Court of Turnhout** convicted the defendants, which included two companies, for trafficking in human beings for the purpose of labour exploitation and forgery (regarding taxes), among other things. The court case was opened after information was sent by the CTIF (unit responsible for handling financial information) regarding suspicions of money laundering.

One of the accused companies used a Polish firm to recruit Poles through a posting procedure. The investigation revealed that they were put to work with fake E101 forms⁴⁰³

⁴⁰² Antwerp Crim. Court, Turnhout division, 22 April 2015 (appeal).

⁴⁰³ An E101 certificate is a European form that allows workers to indicate in which country they benefit from social insurance. The major reform of European social security legislation which came into force in May 2010 scrapped the E forms, which had been used up until then by persons moving between EU countries. It was replaced by the simplified A1 form.

and that the Polish firm has no accounting. Later, the same accused company used a Romanian firm to get Romanians to work in Belgium within the framework of posting. These nationals were also in possession of falsified E101 forms and this Romanian firm didn't have any accounting either, plus its income was almost inexistent.

This collaboration came to an end and the Romanians were then employed as managing partners or sleeping partners in the structure of the second company, which also appeared as a defendant in this case. The latter acted as a subcontractor for the first accused company.

The defendants housed the Romanian workers. They deducted the rent directly from their salaries. A check by the housing inspectorate revealed that several Romanians were staying at the defendant's house, which didn't meet the minimum housing quality standards either. Regardless of the structure where they worked, the workers earned an average hourly wage of EUR 8, which was far lower than the amount the principal was paying the company, but the judge considered that the wages were in keeping with the market for posted workers. Nevertheless, the defendants didn't pay any social or tax contributions for the Polish or Romanian workers. The victims had forged E101 forms and consequently didn't benefit from any kind of cover. The court subsequently found that within this context, the wages were indeed abnormally low.

The *modus operandi* used when the Romanians were introduced into the company's structure was similar to the one used in the past. They provided the defendants with worksheets, on the basis of which the defendants paid them in cash, then on their bank account based on the same hourly rate, which was very low after the deduction of the social and tax charges. Later, it transpired that the Romanians were registered as self-employed workers, that they were partners and that they had signed papers written in Dutch without understanding a word. One of the defendants asserted that the Romanian workers were

perfectly aware of their status as self-employed workers and had agreed to this. However, it emerged from the hearings that the victims weren't aware, or only partly, and that they had no knowledge of the implications this had on a social or fiscal level. The defendant had an absolute power of decision over their job, their accommodation, etc. The victims were also obliged to sign fake loan and guarantee contracts, otherwise they wouldn't be able to retrieve their residence papers. Several victims were threatened after having filed a complaint against the defendants.

The judge didn't doubt the victims' credibility and considered the working conditions of these workers to be comparable with labour exploitation and that it was contrary to human dignity.

The judge handed down a confiscation order for the amount of EUR 359,877.29. Myria, which instituted civil proceedings, received a symbolic euro in damages. The victims who instituted civil proceedings each received immaterial damages ranging between EUR 2,500 and 2,600⁴⁰⁴. The judge handed down prison sentences varying between three months and four years, combined with fines ranging between EUR 6,000 and 90,000.

1.2.2. Agriculture/horticulture

Wide-scale exploitation and slum landlords in a mushroom farm

On **16 February 2015**, the **Criminal Court of Courtrai**⁴⁰⁵ convicted ten defendants, including several companies, for the trafficking of human beings for the purposes of labour exploitation, slum landlord activities and numerous social legislation breaches. The defendants primarily employed Bulgarians to work in a mushroom farm in conditions

⁴⁰⁴ On the compensation of victims, see Human Trafficking, Annual Report 2013, *Building bridges*, pp. 55-56.

⁴⁰⁵ West Flanders Crim. Court, Kortrijk division, 16 February 2015, 10th ch. (appeal).

contrary to human dignity. There was also a minor among these workers.

In 2008, the Social Inspectorate inspected the mushroom farm with the support of the police. They discovered 15 people there, all of foreign origin, with a precarious residency status, picking mushrooms. The workers stated that they were in their “trial period”. They earned very little and often didn’t know how much they would get. The Bulgarian workers were also caught stealing food in shops on several occasions. They were forced to since they hadn’t been paid for a while. They lived in houses belonging to the main defendant who deducted the rent directly from their wages. Other inspections and searches also revealed other similar acts.

The court emphasised that the crime of human trafficking was composed of two elements:

1. a material element composed of the recruitment, transportation, transfer, harbouring, reception of a person, including the exchange or transfer of control over that person;
2. an immaterial element: the objective of making someone work in conditions contrary to human dignity. The court pointed out that the notion of constraint wasn’t an essential element of the offence but an aggravating circumstance.

For the court, the conditions contrary to human dignity were based mainly on the fact that the victims wages fell well below the scales for that sector, that they were working illegally in precarious and dangerous conditions, and that they weren’t paid on a regular basis. These victims worked for hours on end, without being paid overtime for working at night or during the weekend. The court added that the fact that the victims would be satisfied with what they earned here, in their country of origin, shouldn’t be taken into account when considering whether or not the conditions are contrary to human dignity. The Bulgarian workers were made to work as bogus self-employed workers. This allowed the exploiters to avoid paying social

and tax contributions. The majority of the victims either didn’t have a contract, or the contract was written in a language they didn’t understand.

The judge also underlined the fact that the activities of the slum landlord were indissociably linked to the employment process and labour exploitation. This accommodation was unfit for habitation and dangerous. The victims were living in overcrowded spaces, slept on mattresses on the floor, used small electrical appliances for heating and had access to limited sanitary facilities. The majority of victims paid several hundred euros a month for this and the amount was deducted directly from their wages.

The court considered that the role of the different companies was clearly highlighted during the hearings of the various workers. It emerged from the searches, the companies’ assets that were inventoried, the hearings of the proxies and the coordinated inspections that the companies should be considered as the employer. The acts they were accused of were intrinsically linked to achieving their company’s goal and they transferred their material benefits by invoicing the various companies.

The court sentenced the main defendant to three years in prison, with a minimum of one year. The court also fined them and ordered the effective confiscation of EUR 100,00 and a suspended confiscation of EUR 169,637. His wife was given a 15-month prison sentence, with a minimum of six months. All the other defendants were also punished, natural persons included, with each forced to pay a fine of EUR 16,500, of which EUR 5,500 immediately. Myria, which instituted civil proceedings in this case, received EUR 2,500 in damages.

Exploitation of seasonal workers through “employment services”

On **21 January 2015**, the **Criminal Court of Mechelen**⁴⁰⁶ convicted a company director who acted as an intermediary to employ labour in the horticultural sector. He was convicted for trafficking in human beings for the purpose of labour exploitation in relation to at least nine seasonal Romanian workers.

According to the defendant, his sole-trader company was active in providing services to Romanian workers who were employed by his intermediary in some 15 or so horticultural businesses. He was responsible for finding accommodation for the workers, who mainly only lived and worked in Belgium for several months. He stated that he began providing these services in 2009 and had thus helped some 200 people or so to find work. He pointed out that they paid him a decent amount for his services.

Things started to move after an inspection carried out by the Social Inspectorate of one of the horticultural businesses, where workers were employed through him. None of them had their personal papers on them. It was the defendant who brought their identity cards and work permits. Fourteen Romanian workers were heard. It emerged from the hearings that the workers hadn't signed a rental contract with the defendant but that they paid him EUR 200 a month all the same. These dormitories were located in barely habitable buildings, with no facilities, and the workers were piled in there to spend the night. They had to pay EUR 200 for transport to and from the place of work, even if they went there by bicycle. Furthermore, the defendant also demanded money for transport to the shop (EUR 100 a month), costs for translations and other services (EUR 100 a month). If the workers wanted to come back the following year, they had to make a backhand payment of EUR 140 a month. All in all, the workers were left with only half their

wages, i.e. approximately EUR 500. The workers were dissatisfied with their situation but they didn't dare say so because they were afraid of the defendant, who came from the same region as them. Their families were threatened if they refused to pay.

The defendant had already been convicted in 2013 by the Antwerp Court of Appeal for illegal employment and prohibited employment services. However, in this case, the defendant was prosecuted for trafficking in human beings. The court considered that the defendant was being prosecuted for acts other than those for which he was convicted in 2013. This is why the court considered that the *non bis in idem* principle isn't violated when the essential elements of two offences aren't the same. Finally, the court sentenced the defendant to a two-year prison sentence, together with a EUR 49,500 fine. The judge also ordered the confiscation of patrimonial benefits amounting to EUR 25,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages.

1.2.3. Car wash

In a **judgement of 4 April 2014**, the **Criminal Court of Kortrijk**⁴⁰⁷ convicted two brothers and their company for the trafficking of human beings for the purposes of labour exploitation and for breaches of the social criminal code.

During the inspection of a car wash by the Social Inspectorate, two Indian men who were working there ran off. When they were intercepted, it turned out that they were illegal immigrants and that they had no source of income. One of the victims was living at the defendant's house. In exchange, he worked at the car wash and was given a bit of money, as well as food and drinks. The court expressed doubts concerning the fact that the victims lived with the defendant because a search gave no indication that this was the case. The other victim stated that he work there three days a week and earned EUR 25 a day. The

⁴⁰⁶ Antwerp Crim. Court, Mechelen division, 21 January 2015, ch. MC1 (appeal).

⁴⁰⁷ West Flanders Crim. Court, Kortrijk division, 4 April 2014 (final).

defendants stated that the victims often came to visit the car wash and worked there voluntarily. This way, they learnt the job so that they could find employment as soon as they received their Belgian residence permit.

The judge considered that they worked in conditions contrary to human dignity, given that they worked without really being paid and that there was abuse of their precarious situation. The court considered it irrelevant that the victims agreed to work under such conditions. It sentenced each of the defendants to a 12-month suspended prison sentence, together with a EUR 6,000 fine. The court also ordered the confiscation of EUR 10,000. The company, in which the other defendants were the director and partner, was fined EUR 18,000 and given a confiscation order of EUR 10,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages.

1.2.4. Riding schools

Two decisions concerning riding schools.

In a **decision of 6 May 2015**⁴⁰⁸, the **Criminal Court of Walloon Brabant** accepted the charge of trafficking for the purposes of labour exploitation and various charges relating to social criminal law (including the lack of workplace accident insurance and non-payment of wages) against a woman who illegally employed a Brazilian worker without papers in her riding school. The worker was the victim of a work accident (a horse stepped on her leg) and the injuries sustained as a result of this accident required hospitalisation on several occasions as well as surgery. The court considered that this was a case of work in conditions contrary to human dignity from the moment when the worker was the victim of a work accident, and the defendant showed complete disinterest in her worker's fate. She didn't call emergency services when the accident occurred and invented a story aimed at disguising the work accident by pretending

⁴⁰⁸ Walloon Brabant Criminal Court, 6 May 2015, 6th ch. (final).

that a piece of furniture had fallen on the victim's leg during a house move. She didn't report the work accident, didn't pay what was due and showed no concern for the medical costs the worker was faced with owing to the accident even though she had no social cover. She also quickly threw her onto the street even though she could barely walk.

The defendant was sentenced to a year in prison and a fine of EUR 12,000, suspended for the entire prison sentence and half of the fine. The worker instituted civil proceedings and was granted the provisional sum of EUR 1,000.

In another case, already presented in an earlier report⁴⁰⁹, the **Liège Court of Appeal** was compelled to note the limitation period in a **decision of 26 June 2014**⁴¹⁰. This case relates to a dozen or so defendants who were prosecuted for multiple offences (forgery, falsification of the companies' annual accounts, criminal organisation, failure to file for bankruptcy, failure to comply with legal obligations concerning taxes and social security contributions to the NSSO, misappropriation of assets, money laundering, misuse of company assets, fraud, breaches of the criminal social law). Two defendants were also prosecuted for trafficking for the purposes of labour exploitation, regarding three illegally staying Brazilian workers whom they recruited and housed under the cover of a company to employ them in their riding school. They were convicted of this charge, among others, in first instance by the Criminal Court of Liège⁴¹¹. During the appeal, the court noted the statute of limitations of this charge and for the majority of the other charges. On a civil level, it confirmed the judgement as regards the civil proceedings of the two exploited Brazilian workers, holding that both offences concerning trafficking and criminal social law were established. They demanded

⁴⁰⁹ Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building Trust*, p. 77.

⁴¹⁰ Liège, 26 June 2014, 6th ch. (cassation complaint submitted).

⁴¹¹ Liège Criminal Court, 26 March 2013, 14th ch., available at www.myria.be

compensation corresponding to the payment of their wages (EUR 12,711.77 for one worker and EUR 27,082.86 for the other).

1.2.5. Exotic shops

In a **decision of 19 February 2015**, the **French-speaking Criminal Court of Brussels**⁴¹² accepted various criminal social law charges against a defendant, a Belgian of Pakistani origin, concerning several workers he employed in his shops. However, he was acquitted of human trafficking for the purposes of labour exploitation regarding an Indian national he employed in his shop. The defendant employed him for two years and only paid him EUR 500 on two occasions for 12 to 14 hours of work a day. The worker was provided with accommodation at the shop, in a room on the first floor above the shop. There was no heating and there was only a rug and a cover for a bed. He wasn't given any days off.

While the court considered that it could be established (in particular through witness statements) that the worker was employed by the defendant, it considered on the other hand that it couldn't safely be concluded that the worker's work conditions were contrary to human dignity. The case didn't contain any objective elements other than the worker's statement. There was no visit to his home which could have provided an objective view of the description of the accommodation and the worker refused a confrontation with his employer, which may have possibly reinforced the credibility of his statement.

The court thus reviewed the decision of **3 April 2014**⁴¹³ rendered in absentia, which had also convicted the defendant for human trafficking. He was sentenced to pay the civil

party EUR 29,480 in material damages and EUR 5,000 in non-material damages⁴¹⁴.

Notion of recruitment

In a **decision of 14 January 2013**⁴¹⁵, the **Criminal Court of Liège** convicted a defendant and his companies, i.e. legal entities, for trafficking in human beings and various charges concerning criminal and social law. He exploited several foreign workers in his exotic shops. In its **decision of 8 May 2014**⁴¹⁶, the **Court of Appeal in Liège** confirmed the conviction pronounced at first instance. It considered that it was indeed a matter of working in conditions contrary to human dignity: the workers worked more hours than those declared, when they were declared; the hourly rate was derisory, the workplaces didn't meet labour legislation (lack of bathroom facilities, place to eat, meal breaks, etc.). Furthermore, precise instructions were given in case of an inspection, employees were fired without notice and the workers were permanently monitored via surveillance cameras. The defendant's grip over them was further illustrated by the fact that he provided accommodation for some workers and personally intervened to undertake various administrative steps to supposedly regularise the residency situation.

The court emphasised that contrary to the defendant's opinion, the offence of human trafficking isn't reduced to situations where the worker is deprived of freedom or papers.

It also pointed out that the act of recruiting must be understood according to its usual meaning as is the case here since the workers concerned were recruited by the defendants to work for them.

The court granted the civil party EUR 500 in non-material damages and the provisional

⁴¹² Brussels French-speaking Criminal Court, 19 February 2015 (final).

⁴¹³ Brussels French-speaking Crim. Court, 3 April 2014 (in absentia).

⁴¹⁴ Since the defendant only opposed the criminal aspect, the civil provisions of the judgement given in absentia are final.

⁴¹⁵ Liège Crim. Court, 14 January 2013, available at www.myria.be.

⁴¹⁶ Liège, 8 May 2014, 6th ch. (appeal rejected).

sum of EUR 2,500 in material damages, reserving the right to decide on the surplus when a more precise and detailed calculation of the damages had been made.

The convicted defendant ***filed an appeal*** on points of law before the “Court of Cassation” (Supreme Court) against this decision. As the plaintiff, he referred to the violation of Article 433*quinquies* of the criminal code on a single ground.

On the one hand, he criticised the interpretation given by the Court of Appeal in Liège of the material element of the offence of human trafficking provided for in Article 433*quinquies*, §1, 3 of the criminal code. He maintained that according to the sense of this provision, the term “recruit” implied the active role of the person employing a worker. However, in this case, the workers presented themselves of their own accord. On the other hand, he considered that the contested decision didn’t show through any of the motives therein, the existence of special intent, the mental element required by the offence.

The **Court of Cassation**⁴¹⁷ threw out this plea. As regards the material element of the offence, it pointed out that “if there is no legal definition or explanation in the preparatory work, the term recruit must be understood in its usual sense. This doesn’t imply that the person recruited must be approached for this purpose”. Indeed, the Court of Appeal considered that the defendant recruited the workers in question by hiring them to work for him. The Court of Cassation consequently considered that the judgement legally justified its decision and rejected the plea.

The Court of Cassation also considered that the Court of Appeal found on the plaintiff’s (defendant) part, the existence of the moral element required by Article 433*quinquies*, §1,

⁴¹⁷ Cassation, 8 October 2014, no. P.14.0955.F. Regarding this judgement, see Ch.-E. CLESSE, “Le recrutement: une action active ou passive”, note under Cass., 8 October 2014, *R.D.P.C.*, 2015, pp. 695-701.

3 of the Criminal Code. The Court of Appeal adopted the reasoning of the first judge who pointed out that the work carried out was done so in conditions contrary to human dignity and added that the plaintiff knowingly and with full knowledge of the facts decided to employ certain workers under such conditions. Consequently, the Court of Appeal legally justified its decision. On this point, the Court of Cassation subsequently rejected the plea.

1.2.6. Printing works

In a **decision of 11 February 2015**, the **French-speaking Criminal Court of Brussels**⁴¹⁸ convicted in absentia a defendant, who exploited several illegally staying Moroccan nationals at his printing works, for trafficking in human beings for the purposes of labour exploitation and various labour law charges. Some of them were staying at a refugee centre. The hours and work rates were soul-destroying (seven days a week and 10 to 14 hours a day), the wages ridiculous (EUR 5/hour), the accommodation was at the place of work in very precarious conditions (on boxes). The workers were shut up in the workshop with no view outside, and were insulted and threatened. The civil parties were granted considerable material damages (between EUR 6,000 and EUR 13,000) and immaterial damages of EUR 3,000 per person.

1.2.7. Butcher’s shop

In this case concerning a mini-market and a butcher’s shop, the **Liège Court of Appeal** reviewed, in a **decision of 12 March 2015**⁴¹⁹, the judgement rendered at first instance by Liège Criminal Court⁴²⁰. It involved a manager who exploited several workers of Algerian or Tunisian nationality who hadn’t been

⁴¹⁸ Brussels French-speaking Crim. Court, 11 February 2015, 49th ch. (opposition to be examined in 2015).

⁴¹⁹ Liège, 12 March 2015, 6th ch. (an appeal was filed by the civil party).

⁴²⁰ Liège Crim. Court, 2 September 2013, 14th ch., available at www.myria.be; see Human Trafficking, Annual Report 2013, *Building bridges*, p. 121.

registered with the National Social Security Office (NSSO) and had no residence permit for Belgium. According to the worker in question, in return for the work done there was a simple promise of being taken on with the aim of supporting a request for regularisation, derisory wages, and basic food. The work was mainly carried out at night in unhealthy and dangerous conditions (genuinely dangerous non-standard electrical installation, a huge amount of gas bottles, a major lack of hygiene overall).

There were no fixed working hours and the defendant had given all the workers instructions in case of an inspection at the workplace. The hourly rate of pay was far below the applicable legal rate, and some workers weren't even paid. They had to work at night to avoid inspections and had a workload of up to 12 hours a day; they were only permanently hired after a trial period of several days with no guarantee of payment or employment. Furthermore, they didn't receive any medical care if they were injured at work.

Contrary to the court of first instance, which declared all the charges established, including human trafficking, the court acquitted the defendant of the charge of human trafficking, only accepting the social criminal law violations. The court thus considered that the circumstances of there being no signed employment contract, no set working hours, wages below the going rate, and no medical care provided by the employer in case of a work accident, weren't sufficient to accept the crime of trafficking.

The enforcement record shows that the workers were free to come and go, that they didn't live at the place of work, that it wasn't established that the workers were subject to mental pressures or that they were they deprived of their identity papers.

Consequently, the court declined jurisdiction to rule on the civil party's complaint based on the charge of trafficking. It declared it unfounded as it would have to be based on the charge of employing foreign nationals without a residence permit, and there is a lack

of a causal link between the fact of having allowed an illegally staying worker to work and the fact of not having paid him the correct wages.

1.2.8. Domestic work

In a case concerning an arranged marriage⁴²¹ and domestic work, both the Criminal Court of Charleroi (in first instance) and the Court of Appeal of Mons found that the charge of human trafficking for the purposes of labour exploitation wasn't established.

The defendants, a Serbian couple, were charged with human trafficking for the purposes of labour exploitation. They were accused of having exploited their daughter-in-law, a minor, within the framework of domestic work at their home. The latter instituted civil proceedings.

The facts presented in the judgement of the court of first instance reveal that the civil party married the defendants' son, who lived with his family in Belgium. This marriage allowed her to escape a particularly difficult life because her mother forced her to beg; she had already been married two or three times according to the local custom and her father-in-law interfered with her and forced her to have sexual relations. The marriage with the defendants' son appears to have been arranged by the defendants and the civil party's mother. In fact, they had to obtain a special authorisation since she was a minor.

In its **judgement of 13 October 2014**, the **Criminal Court of Charleroi**⁴²² considered that the facts concerning exploitation weren't established by the evidence in the case. The civil party did indeed have to perform domestic chores but she wasn't obliged to do all the household chores and her mother-in-law perhaps worked as much as she did. The court also emphasised that while the men were culturally exempt from doing household

⁴²¹ See also part 1, Chapter 1.

⁴²² Hainaut Crim. Court, Charleroi division, 13 October 2014, 10th ch.

chores, this didn't make the civil party the family's slave.

The court surprisingly found it irrelevant that she didn't go out alone, that she didn't have access to her passport and that she wasn't enrolled in school (nor were the defendants' other children either). They also didn't consider it a determining factor that she had been beaten by her husband.

The court also found that the mental element of the offence of trafficking was missing: even if it was understood that the conditions in which the civil party was living were contrary to human dignity, it wasn't proven that she was brought to live with the family for the purpose of being exploited by them; special intent is required for the charge. The defendants and their four children treated her according to her status as a young person, daughter-in-law and wife. The defendants maintained that they weren't aware that they had mistreated her or exploited her. However, the court accepted that much of what the defendants and their family did and said, as well as the way she was married, was offensive and even disgraceful and that it was possible that the defendants took advantage of the civil party's distress to bring her to Belgium with the goal of making her do all the domestic chores. Nevertheless, it considered that the case didn't provide proof that she was forced to work or that this was the defendants' intention when they brought her over from Serbia to come and live with them. Considering that a doubt remained concerning both the material element and the mental element of the offence, the defendants were acquitted.

During the appeal, the **Mons Court of Appeal**, in its **judgement of 24 February 2015**⁴²³, confirmed the acquittal for human trafficking pronounced at first instance.

The court considered that it wasn't immediately apparent that the defendants had encouraged their son's marriage with the

civil party, then brought her to live with them in Belgium with the intention of forcing her to do work contrary to human dignity. The court again emphasised that just because she was monitored by her in-laws, didn't mean that she was illegally confined to their house. It also added that the young woman had the chance to go to the police given that she was left alone for about 10 days when her in-laws went back to Serbia.

The court considered that there was insufficient proof regarding the material and mental elements of the offence of trafficking. The defendants were given the benefit of the doubt and acquitted.

1.2.9. Football

A case concerning young African footballers was tried by the **French-speaking Criminal Court of Brussels on 7 April 2014**⁴²⁴. Several defendants were prosecuted on several charges, two of them (one the chairman of a Brussels football club) for smuggling and trafficking of human beings. The latter were, along with the other defendants, also prosecuted for various charges of forgery and the use of forgeries. Another defendant, a local civil servant, was also prosecuted for assisting illegal residence and for fraudulently issuing certificates of inscription in the aliens register (CIRE).

The two main defendants were accused of having abused the situation of illegally staying young African footballers. They also forged the certificates of inscription in the aliens register to affiliate them with the Union Royale Belge de Football (URBSFA). These footballers didn't receive the sums they were promised and owed. Furthermore, when they were injured, they weren't reimbursed the hospital fees even though the club was reimbursed by the Federation. They were also sometimes insulted by one of the defendants.

⁴²³ Mons, 24 February 2015, 3rd ch.

⁴²⁴ Brussels French-speaking Crim. Court, 7 April 2014, 61th ch. (appeal).

The court accepted both the charge of smuggling and trafficking.

As regards the charge of human smuggling, the court found that it had been established. Even if the case didn't establish for certain whether the players with an illegal administrative status were less well paid than the others whose administrative situation was legal, it was nevertheless established that the main defendants made the players believe that they would hire them and obtain identity papers and regularise their situation. In reality, this never happened. The only identity papers obtained were forged ones and they only served to register the players with URBSFA. Furthermore, they treated these players as "trash" knowing that they wouldn't dare respond considering their situation. Therefore, they allowed these footballers to stay in Belgium. Moreover, by hiring the players they thought would help the team to win matches, the defendants had the intention of directly or indirectly obtaining a patrimonial benefit.

As for the charge of human trafficking, the court considered this also to be established: the defendants made these footballers work under conditions contrary to human dignity, even abandoning them socially and financially at the hospital when they were injured even though they thought all their care was covered. They also behaved arrogantly towards them.

The charges of forgery were also accepted against them.

The defendant who was a local civil servant was also convicted for the majority of charges brought against him. Concerning the charge of assisting illegal residence, the court declared this as established: through his involvement in the forgeries, he facilitated the stay in Belgium of several foreign nationals.

As the reasonable time requirement was exceeded, the court simply declared some of the defendants guilty and for the others, sentencing was deferred.

The court rejected one of the footballer's requests for material damages, because receiving wages from illegal work is an illicit benefit whose loss can't be compensated⁴²⁵. Based on a decision of the Criminal Court of Charleroi, it also pointed out that the fact of being a victim of human trafficking doesn't make the work performed legal or the complaint legitimate. In this particular case, the civil party knew that their situation was illegal even though they hoped the defendants would obtain valid papers for them.

1.3. Exploitation of begging

In a **judgement of 3 March 2015**, the **Dutch-speaking Criminal Court of Brussels**⁴²⁶ convicted four defendants for human trafficking for the purposes of exploitation of begging. The four Romanian defendants were from the same family and organised and exploited the begging of Romanian compatriots with a physical handicap. Their modus operandi was revealed thanks to observations. The defendants and the victims would go to a very busy public place. The defendants kept a constant eye on the victims from a bench at a bus or tram stop. The victims sometimes joined up with the defendants to discretely hand over their earnings. In exchange, they sometimes received something to eat or drink. They were housed with the perpetrators in precarious conditions. The defendants also brought over other beggars from Romania. The latter were exploited by the other members of the family.

The four perpetrators were all sentenced in absentia to five years in prison. In addition, they were fined and stripped of their rights. The court also handed down an effective confiscation order of EUR 39,868. This was the amount that the family had earned from begging over 15 months. Myria, which

⁴²⁵ Following a judgement of the Court of Cassation of 15 May 2004. On this point, see: Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Brussels, Larcier, 2013, pp. 745-751.

⁴²⁶ Brussels Dutch-speaking Crim. Court, 3 March 2015, 60th ch. (in absentia).

instituted civil proceedings in this case, received a symbolic euro in damages.

2. Human smuggling

Human smuggling along the E40

Over the past few years, Myria has instituted civil proceedings in different cases where the acts of human smuggling mainly took place in parking areas located along the E40. All these smugglers used trucks to fraudulently transport the victims, with or without guarantee, to the United Kingdom in general. We shall take a look, in turn, at the smuggling activities of Iraqi, Afghan and Iraqi/Iranian smuggling gangs, active along the E40.

Violent Iraqi smuggling gangs

In a **judgement of 27 June 2012**⁴²⁷, the **Criminal Court of Brussels** convicted a gang of Iraqis for human smuggling with aggravating circumstances. The judge handed down heavy prison terms without remission, referring in particular to the extremely violent nature of the group of smugglers. The main defendants received prison sentences ranging from nine to 12 years. One of the defendants was also charged with the attempted murder of police officers, but was acquitted of this charge.

The case relates to the smuggling of human beings organised by a group of Kurds who collaborated with each other. Their modus operandi was relatively classic: illegally staying persons of different origin, including children, were stuffed into trucks at night heading for the United Kingdom. They were placed in safe houses while they waited for their transportation. The transportations were organised with and without guarantee. Transportation with guarantee cost double the price of transportation without guarantee. For traditional transportation, the victims were loaded on board trucks in various parking areas in Belgium, such as Grand-Bigard, Wetteren or Drogen. Contrary to other cases, these smugglers also operated

from the Westkerke parking area. As there are no facilities as such in this parking area, tents were pitched in the surrounding corn fields to shelter the smugglers and the victims.

For transportation with guarantee, the organisation called on another gang of smugglers, which operated from the Netherlands. The first gang of smugglers brought the victims to De Panne, where they were handed over to the other gang. This one took them to Calais, where the truck driver was waiting for them. The victims were then hidden in the truck driver's sleeper berth. The victims were also hidden in refrigerated containers. They risked suffocating in them because it took a while for the air to get in. Violence wasn't only used on the victims, but also against smugglers who were in the wrong place at the wrong time, as well as the police.

In this case, we can distinguish between two large groups: on the one hand, the group linked to the first defendant and, on the other hand, the group linked to the second one. They operated independently from one another but worked together closely and even exchanged staff. The smuggling victims arrived through different channels. Each supplier had their own structure and their own safe houses.

In the court of first instance, the judge handed down prison sentences of three and a half to 12 years, together with fines of up to EUR 55,000. Myria, which instituted civil proceedings, received a symbolic euro in damages.

The **Brussels Court of Appeal**⁴²⁸ confirmed this judgement as well as making several amendments. The prison sentences were also reduced. Hence, the main defendant, who had been given a 12-year prison term at first instance, had the sentence reduced to seven years by the court of appeal.

⁴²⁷ Brussels Crim. Court, 27 June 2012.

⁴²⁸ Brussels, 16 January 2013, 13th ch.

Afghan smuggling gang

In a **judgement of 19 June 2013**⁴²⁹, the **Criminal Court of Ghent** convicted three Afghan defendants, one in absentia, for human smuggling with aggravating circumstances.

It emerged from numerous telephone conversations that the defendants were guilty of human smuggling. They brought several illegal immigrants to Ghent, including nationals from Sri Lanka, Afghanistan and Iran, who were then sent to Drongen, where they were mainly taken to Great Britain. To benefit from this transportation, the victims had to wrap themselves in plastic film.

The first defendant, who had probably just reached adulthood when the acts took place, played an important role in transporting people on several occasions, in particular to the United Kingdom. He played a major role in the organised smuggling of human beings. He thus gave instructions regarding the number of people that could be transported, the means of payment and the organisation of the transportations. The court gave him a five-year partly suspended prison sentence, together with a EUR 12,000 fine.

The second defendant served as a driver. He was well aware of the people he was transporting and also played a major role in the implementation of the smuggling. The court gave him a three-year partly suspended prison sentence, together with a EUR 6,000 fine.

The third defendant was also found guilty of participating in the organised smuggling of human beings. He was convicted in absentia and given a three-year prison sentence, together with a EUR 6,000 fine.

The court also ordered a special confiscation order amounting to EUR 19,000. Myria, which instituted civil proceedings in this case, received EUR 500 in damages.

⁴²⁹ Ghent Crim. Court, 19 June 2013, 19th ch. (final).

On **27 October 2014**, **Antwerp Criminal Court**⁴³⁰ also convicted a gang of Afghans for human smuggling with aggravating circumstances, in particular for smuggling minors, within the framework of a criminal organisation. It emerged from the criminal investigation that the Afghan smugglers mainly transited compatriots via Belgium and France in order to get to Great Britain. In this particular case, the victims were taken to the Drongen parking area, where they were loaded on board a truck heading for Great Britain. Other victims were taken to De Panne, where they were transferred to Calais, where the smugglers put them in trucks also heading for Great Britain. It emerged from phone taps that there were also minors among the victims, sometimes even babies. It also emerged from the phone taps that the defendants didn't act out of humane reasons but purely out of the lure of gain. Sums of money were paid through an illegal payment system. The victims' families deposited money in Belgium, London, Afghanistan or Pakistan. They used a person of absolute trust for both parties, who only handed over the money when the transportation had taken place.

The tasks were broadly distributed between the different gang members. Some organised the transportation. They had contacts abroad with members of the family of the people being smuggled and/or managed the financial aspect of the activities linked with the smuggling. Others only offered their support and assistance. The organisation's goal was to organise large-scale international human smuggling, where people, particularly of Afghan or Iranian origin, would be taken fraudulently to Great Britain via several European countries. The organisation used specific means, such as fraudulent tactics and threats. It didn't hesitate to use violence either. Victims who couldn't or didn't want to pay were threatened with physical violence. This is why the court found that it was irrefutably a question of a criminal organisation.

⁴³⁰ Antwerp Crim. Court, Antwerp division, 27 October 2014, ch. AC4 (final?).

The court handed down one to five-year prison sentences, together with fines of up to EUR 30,000.

Iraqi/Iranian human smuggling gang

In a case involving an Iraqi/Iranian gang of smugglers, in which Myria instituted civil proceedings, the judge convicted the gang for human smuggling with aggravating circumstances and criminal organisation, both at **first instance**⁴³¹ and in the **Court of Appeal**⁴³². The facts were revealed thanks to preliminary reconnaissance missions, counter-observations and phone taps.

The court found that it was a structured network, designed to last, for the purpose of organising the smuggling of human beings. The organisation's goal was to obtain a patrimonial benefit that was clearly of criminal origin, and it used all possible fraudulent techniques. The gang operated in parking areas along the E40 and in coastal ports. It didn't hesitate to use any form of violence and it clearly emerged from the investigation that it was question of a power struggle between the human smuggling organisations that operated from what they themselves referred to as "this jungle".

The victims, who mostly originated from Afghanistan, Syria, Turkey and Iran, were taken by van to the parking areas where the trucks were, so they could be transported to England. The smugglers offered this transportation with or without guarantee. Guaranteed transportation cost from EUR 7,000 to 8,000, and between EUR 1,500 and 2,000 without guarantee. There were also families with young children and pregnant women among the victims⁴³³. Hence, 10 % of the victims were children. They were perceived as mere goods so little attention was paid to their safety. For instance, transportation was organised in refrigerated trucks.

⁴³¹ West-Flanders Crim. Court, Bruges division, 2 April 2014, 17th ch.

⁴³² Ghent, 21 October 2014, 6th ch.

⁴³³ Also see this part, Chapter 3, point 2.2.

The defendants weren't new to the game. One of them had already been convicted in France for similar acts, albeit under another name. He was universally feared and settled conflicts with firearms. Another one had actually been a victim of human smuggling in the past⁴³⁴. But for the judge, this was no excuse. On the contrary: as a former victim of human smuggling, the defendant was well placed to know how it felt to be treated like cattle in appalling conditions.

The criminal court handed down prison sentences of two to eight years, together with fines ranging from EUR 6,000 and 24,000. It also pronounced a confiscation order of up to EUR 30,000. The Ghent Court of Appeal confirmed these sentences. Myria, which instituted civil proceedings, obtained EUR 2,500 in damages.

Gang of Indian smugglers in close collaboration with other smuggling networks

In a **judgement of 6 November 2013**⁴³⁵, the **Criminal Court of Brussels** convicted a gang of Indians for human smuggling with aggravating circumstances. The **Court of Appeal** confirmed this judgement – after making a number of amendments – in its **decision of 12 March 2014**⁴³⁶.

In this case, it involved the organised smuggling of human beings within Indian and Iraqi/Kurdish circles. The investigation began after the interception of several Indians at the Grand-Bigard parking area, which led to an Indian organisation that arranged transportation for illegal immigrants to the United Kingdom. Transportation was mainly organised "with guarantee".

The victims were essentially Indian men although children also featured regularly among the victims. The Indian organisation used different routes. One of these routes passed through the Netherlands to reach the

⁴³⁴ *Ibid.*, point 2.1.

⁴³⁵ Brussels Crim. Court, 6 November 2013.

⁴³⁶ Brussels, 12 March 2014, 13th ch.

United Kingdom. In the Netherlands, the victims were hidden in the boot of a car after which they took the boat to Scotland. A member of the organisation took care of them over there.

A second route was managed by an Indian organisation. The head operated from the United Kingdom. The passengers were picked up in Vilvoorde. Many victims stayed near the Sikh temple. During the day, they could go to the temple and at night, they slept in a warehouse nearby. They were transferred to trucks, whose drivers were aware of the smuggling, and crossed over to the United Kingdom.

A third route was managed from France by an Afghan/Kurdish organisation that was located both in Belgium and France. The victims took the train in Brussels to De Panne, where they took the bus to Dunkerque. From there, they went on foot to Tétéghem. They stayed in a camp there nicknamed “the jungle”⁴³⁷, until members of the Kurdish organisation put them in vans registered in Great Britain. From there, they returned to Belgium to a parking area along the E40 where they hid in trucks bound for the United Kingdom.

The fourth route was organised by a person of Russian origin, in collaboration with a Lithuanian organisation. The drivers, who were well aware of the facts, allowed victims to board the truck so they could be smuggled into the United Kingdom.

At first instance, the court handed down three to six-year prison sentences, together with fines ranging from EUR 6,000 to 30,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages. The court of appeal reduced some of the defendants’ sentences, by pronouncing suspended sentences among other things.

⁴³⁷ This camp also appeared in other cases, see for instance the Iraqi/Iranian human smuggling gang along the E40.

Human smuggling through sham marriages

In a **judgement of 15 May 2014**, the **Antwerp Court of Appeal**⁴³⁸ confirmed the decision of **the Criminal Court of Hasselt**⁴³⁹, which had previously convicted two defendants for human smuggling with aggravating circumstances.

The defendants brought Indian men into Belgium illegally through sham marriages. The victims paid large sums for this, around EUR 15,000. Some of the victims came to Belgium legally because their papers were already in order thanks to a sham marriage. For other victims, a sham marriage was organised in Belgium. The victims’ statements played a key role in providing evidence.

One of the victims (a man), who was able to obtain a residence permit thanks to a sham marriage, had also worked for several months in one of the defendant’s night shop, but he had never been paid. The defendants had set up this structure to abuse the situation and take advantage of the victim by exploiting him for several months. When the victim demanded his wages, the defendant imposed three conditions on him:

- As long as he was officially married, he had to give the defendant all his wages;
- After three years, the victim had to divorce and enter into another sham marriage with a woman chosen by the defendant. The victim was supposed to give this money to the defendant;
- He couldn’t contact his family or send them any money.

The defendants were sentenced to 18 months and two years in prison respectively, and fined EUR 27,500.

⁴³⁸ Antwerp, 15 May 2014, 14th ch.

⁴³⁹ Hasselt Crim. Court, 25 October 2013. Payoke and three victims instituted civil proceedings in this case.

Iranian human smuggler

In a **judgement of 31 March 2015**⁴⁴⁰, the **Criminal Court of Antwerp** convicted an Iranian for human smuggling with aggravating circumstances. Three victims, who accepted the status of victim of human trafficking⁴⁴¹ and whose statements played a key role in providing evidence, instituted civil proceedings.

The judge ruled that there were indeed elements constituting the offence of human smuggling. The victims left their country to travel to Belgium, their end goal, without asking for asylum in any of the countries they crossed. Entering via Greece, they crossed the European Union without the required papers. They used forged papers given to them by the defendant and his associates. On the basis of the victims' statements, the judge found that the defendant had acted purely out of the lure of gain. For instance, one of the victims paid the defendant EUR 16,500 for his journey. He made his victims believe that he could help them get a residence permit. In reality, he only helped them to submit a request for asylum, principally by teaching them a fictitious story.

The defendant had a whole network that helped him to get victims into Belgium from Iran via Turkey, Greece, Italy and France. These intermediaries provided shelter, transport and forged identity papers. These acts were also confirmed in the victims' statements, who reported having been assisted by different people. These people were in contact with the defendant, especially in Istanbul and Athens.

The court sentenced the defendant to 40 months in prison, together with a EUR 5,500. The defendant also had to pay EUR 2,500 in material and immaterial damages to each of the civil parties.

⁴⁴⁰ Antwerp Crim. Court, Antwerp division, 31 March 2015, ch. AC4 (in absentia).

⁴⁴¹ The status of victim of human trafficking can also be granted to victims of human smuggling with aggravating circumstances.

Stowaways

In a **judgement pronounced by the Criminal Court in Ghent**⁴⁴², four of the five defendants were convicted for human smuggling with aggravating circumstances. The Iraqi gang were guilty of the organised smuggling of human beings and smuggled people staying illegally in Belgium to England or other European countries. Everything revolved around making a maximum profit⁴⁴³.

The acts were revealed in January 2012, when two stowaways were discovered on board a ship sailing from Ghent to Sweden. They were discovered after two sailors heard banging on the boat coming from a trailer registered in England. It emerged from the stowaways' hearing that they had been placed in the truck with the help of the defendants so they could enter England illegally. One of the victims said that he had paid EUR 1,500 to go to England, but that he had been put in the wrong truck.

An in-depth phone investigation allowed the activities to be recorded. For instance, one of the defendants advised on the routes and strategies to use. He was also actively looking for contact people in England (in particular his own brother), who could play a role in the organisation, such as truck drivers or people who could look after the money after a successful transportation. His shop served as a meeting point for people before they were transported and for the various people who were involved in human smuggling, as well as a place to deposit money.

According to the judge, "human smuggling must be described as an unauthorised form of organising travel, where someone helps an illegal immigrant to access the territory of a given country for lucrative purposes only". The court pointed out that by "entering, transiting or staying" the following should be understood: "inciting the immigration of foreigners to Belgium, organising transportation to allow them to enter the

⁴⁴² Ghent Crim. Court, 19 June 2013, 19th ch. (final).

⁴⁴³ Also see this part, Chapter 2, point 2.3.

country, providing them with transportation within the Kingdom, obtaining forged identity papers, putting a foreigner to work, harbouring foreigners in safe houses, etc.”

The defendants also abused the victims’ precarious situation. Regarding the latter, the judge pointed out that abuse doesn’t necessarily involve recourse to some sort of physical violence or psychological abuse. It can occur in a far more subtle way. The fact that the foreigner concerned tolerated the abuse, doesn’t mean that this treatment isn’t abusive. The fact that this situation endures is generally due to fear and the vulnerable position of the stowaway.

Four of the five defendants received partly suspended prison sentences ranging from four to five years. The judge also imposed fines of EUR 6,000. Myria, which instituted civil proceedings, received EUR 500.

Albanian smuggling gang

In a decision of 25 November 2013⁴⁴⁴, later confirmed by the **Brussels Court of Appeal in its judgement of 18 June 2014**⁴⁴⁵, an Albanian gang was convicted of human smuggling with aggravating circumstances. The gang was regularly guilty of smuggling illegal immigrants, fellow Albanians and children into Great Britain, with the help of another smuggling gang. Myria instituted civil proceedings in this case⁴⁴⁶.

This case began in 2013, when five Indians were discovered in a refrigerated truck at the Grand-Bigard parking area. The police also

found three Albanians there. A more in-depth investigation revealed that an Albanian human smuggling network was responsible. The four defendants ran a specific “travel agency”. Their Albanian “clients” arrived in Brussels legally via Charleroi airport or the Gare du Midi railway station, and were met there by the defendants’ organisation. Contrary to the Indian or Afghan smugglers, who used safe houses, the defendants used hotels in Brussels. The victims paid for the costs inherent to their stay themselves.

The defendants were contacted by members of their family in Albania. They paid for the transport and the amount to be paid, which varied between EUR 3,000 and 5,000. The smugglers kept between EUR 1,300 and 1,400 for themselves. After payment, contact was made with the Kurdish smugglers who were responsible for the crossing to England. The victims met up with the Kurdish gang in a café in Brussels, which took them to the parking area so that they could get into trucks, often refrigerated ones. When there wasn’t enough room in the trucks, the passengers had to get into a car boot by twos.

As soon as the victims had got into the trucks, the Kurdish gang sent a text message to the Albanian gang giving them the truck’s number plate and other information, so that the accomplices in the United Kingdom could find the right truck in the right place in order to get the victims out and take charge of them. The Albanian gang kept in contact with the victims during the entire crossing. There was also “guaranteed” transport. The truck driver was aware in this case, which increased the chances of success. The Albanian gang didn’t use violence, but it knew that those to whom they had transferred the victims were violent.

There were also a lot of minors among the victims, including very young children. They were also put in refrigerated trucks. The victims complained of being very cold and of not having enough oxygen, water or food⁴⁴⁷.

⁴⁴⁴ Brussels Crim. Court, 25 November 2013.

⁴⁴⁵ Brussels, 18 June 2014.

⁴⁴⁶ Also see this part, Chapter 2, point 2.1.

^{446 (bis)} Since 15 December 2010, Albanian nationals no longer need a visa to enter the Schengen area for a maximum duration of three months. However, this is on the condition that those concerned have a biometric passport (with a chip on which all the biometric data is recorded such as an identity photo and fingerprints). Therefore, they can regularly travel to Belgium. On the other hand, the United Kingdom isn’t part of the Schengen area. Therefore, the victims must contact a smuggling gang to help them get to the United Kingdom.

⁴⁴⁷ Also see this part, Chapter 3, point 2.2.

The court handed down prison sentences ranging between 14 months and seven years, together with fines between EUR 6,000 and 60,000. The Court of Appeal confirmed this judgement but reduced the sentence of the main principle by one year, i.e. six years in prison instead of seven.

3. Granting refugee status to a victim of human trafficking

In a **decision of 2 June 2014**, the **Council of Aliens Law Litigation (CALL) (Conseil du Contentieux des étrangers (CCE))**⁴⁴⁸ awarded refugee status to the applicant, a young man from Cameroon who was the victim of human trafficking.

After the death of his parents, the applicant went to live with his uncle. The applicant discovered that his uncle, and other village elders, were involved in child trafficking, of which the applicant was also a victim. While staying there, he was beaten several times, threatened, locked up and forced to work. In 2013, his uncle told him that he had decided to send him abroad without giving any explanation, an act which led him to believe that he was going to be involved in some kind of illegal activity. The next day, an acquaintance of his uncle came to the house with the purpose of taking him away and when he refused, he was beaten by his uncle. The latter told his acquaintance that in a month's time, he would have convinced him to comply. Finally, he was drugged and taken by his uncle's acquaintance to Belgium. When he arrived, he managed to escape and went to the Belgian authorities, where he requested asylum.

Contrary to the decision of the Commissioner General for Refugees and Stateless Persons (CGRA), the Council of Aliens Law Litigation (CALL-CCE) ruled that the applicant belonged to a "special group", as defined in Article 48/3, § 4, d), of the Law of 15 December 1980, concerning "persons who are the victims of

human trafficking". Furthermore, CALL-CCE found that the applicant sufficiently demonstrated that on account of his vulnerability – having been beaten and locked up, and illegally detained with the complicity of the police – it couldn't, in practice, ask for the protection of the Cameroonian authorities.

Consequently, CALL-CCE found that the applicant established that he had left his country of origin and that and that he should remain outside his country through fear of being persecuted in the sense of Article 1, section A, § 2, of the Geneva Convention, and granted him the status of refugee.

⁴⁴⁸ CALL-CCE, 2 June 2014, no. 125 148.