

Chapter 3

Case law overview

2016 - early 2017

1. TRENDS

In this chapter, Myria gives an overview of the relevant case law from 2016 and early 2017 in cases of human trafficking and human smuggling.³⁵⁶ This year's overview is based on cases in which Myria was a civil party in the proceedings, on the decisions we have received from the specialised victim reception centres, and on decisions communicated to us by magistrates. Myria also provides an explanation of two recent rulings by the European Court of Human Rights. Finally, two decisions of the Council of State are also discussed, regarding the temporary administrative closure of a building where human trafficking offences took place.

Myria has taken note of 68 judgements by judicial authorities. Below, Myria reviews the most relevant decisions, namely 41 judgements in 39 cases in various jurisdictions around the country:

- **14 decisions** in 13 cases related to acts of sexual exploitation. These are judgements in the jurisdiction of the courts of appeal of Antwerp (subsection Antwerp), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent and Dendermonde)), Liège (subsection Liège) and Mons (Charleroi).

As regards **sexual exploitation**, we can observe an increase in the number of underage victims, especially from Nigeria. Two major cases, with an important international element, related to massage parlours and Thai escort girls. Joint investigation teams were set up in two cases, in the context of European cooperation. A striking fact is that the *loverboy* technique is still used to seduce both young foreign girls and young girls who have fled from youth institutions. Finally, one case relates to

a hotel that was used for sexual exploitation and drug trafficking.

- **19 decisions** (of which 4 were on appeal and 1 was by the labour court) relate to cases of economic exploitation. The cases covered a wide range of sectors and are presented per sector of activity (construction, hotel and catering, agriculture/horticulture, bakeries, printers, riding schools and stud farms, workshops for sorting second-hand clothes, domestic help, and in a less well-known sector, waste disposal). These rulings were made within the jurisdiction of all courts of appeal: Antwerp (Antwerp (subsection Turnhout and Mechelen), Limburg (subsection Tongeren), Brussels (French-speaking Brussels, Walloon Brabant, Leuven), Ghent (East Flanders (Ghent, Dendermonde)), West Flanders (Bruges), Liège (Liège) and Mons (subsection Mons).

As regards **economic exploitation**, there was the important decision on domestic exploitation in the so-called "Conrad princesses" case, against the princesses from the United Arab Emirates. This decision led to convictions for human trafficking. Moreover, the Brussels labour tribunal declared itself competent in a domestic help case involving a diplomat and his wife, who had been posted to Brussels at an earlier date.

In concluding that the employment conditions were an affront to human dignity and an element of human trafficking, the judges took into account the following elements: the employment conditions and circumstances (excessive working hours, negligible pay, no rest days), housing in poor conditions, withholding wages on various pretexts, dependency on the employer (including the use of guard dogs, withheld passports, etc.) or the fact that the employee was the victim of a serious accident at work. Fraudulent constructions were also set up in various

³⁵⁶ These decisions are published on the Myria website: www.myria.be.

cases to conceal exploitation, including fraud involving the posting of workers, or bogus self-employment.

However in various sectors, we have also observed that defendants are acquitted, often because the judges are not sufficiently aware of human trafficking, or because the case does not contain enough objective elements to confirm the statements of worker(s).

The lack of knowledge, among some judges, regarding the offence of human trafficking was also observed in some cases of sexual exploitation.

Some courts also decided, both as regards sexual and economic exploitation, to give priority to civil parties when awarding confiscated sums.

- **8 judgements** in 7 cases concern cases of human smuggling. These are judgements in the jurisdiction of the courts of appeal of Antwerp, Brussels, Ghent (East Flanders (Ghent, Dendermonde) and West Flanders (Bruges)).

As regards **human smuggling**, the relevant organisations are usually well-structured. We have observed that places of worship, such as churches, sometimes serve as bases for operations. The activities of smugglers were also exposed in a murder case. Finally, apart from a Nigerian smuggling case involving a student visa, there was another important case for which a joint investigation team was set up.

2. HUMAN TRAFFICKING

2.1. | European Court of Human Rights

At the start of 2017, the European Court of Human Rights (ECHR) adopted two decisions relating to acts of human trafficking. In a first case involving domestic exploitation, in which two Filipino nationals were allegedly victims of two employers from the United Arab Emirates, the Court concluded that there was no violation of the European Convention on Human Rights. We have included this decision since it illustrates the situation faced by domestic workers in the Gulf States. Indeed, in June 2017, the Brussels Criminal Court dealt with similar offences, which were charged to princesses from the same country.³⁵⁷

A second decision was more relevant and concerns allegations of human trafficking against Bangladeshi migrants who worked as fruit pickers in Greece. The particularly serious offences led to a judgement against the Greek State, in which the Court held that Greece did not provide these workers with effective protection.

2.1.1. | European Court of Human Rights, Case J. v Austria, 17 January 2017 (Application No 58216/12) (Application No 58216/12)³⁵⁸

This case concerns the Austrian authorities' investigation of suspected human trafficking. The plaintiffs were both Filipino nationals who had travelled to Dubai in the United Arab Emirates to work there as domestic servants, or as au pairs, for a family or relatives of this family. They claimed that their employers had taken away their passports, treated them badly and exploited them. For example, they were apparently obliged to work extremely long hours in succession, without receiving the agreed wage. They were apparently badly treated, and physically and morally threatened. Their employers apparently also treated them in this way during a short stay in Vienna, where they had travelled with the family.

³⁵⁷ See below in this respect, point 2.3.9.

³⁵⁸ The ruling is available via the following link: [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-170630\"\]}](http://hudoc.echr.coe.int/eng#{\).

In Vienna, they were finally able to escape. They found refuge among the Filipino community. Nine months later, they contacted a local government-funded NGO, which was active in the fight against human trafficking in Austria. Finally, they filed a criminal complaint against their employers through this NGO.

However, the Austrian authorities declared that they did not have the authority to judge alleged violations committed abroad. They also dismissed the complaint concerning the offences that had taken place in Austria.

The plaintiffs maintained that they had been victims of forced labour and human trafficking and that the Austrian authorities had not carried out an effective and full investigation into their statements in this regard. Among other things, they argued that the incidents in Austria could not be regarded as isolated, and that the Austrian authorities were obliged to carry out investigations into what had happened abroad.

Nevertheless, the Court held that the Austrian authorities had fulfilled their obligations to protect the plaintiffs as (potential) victims of human trafficking. The Court ruled that neither Article 4 (prohibition on forced labour) nor Article 3 (prohibition on inhuman and degrading treatment) of the European Convention on Human Rights had been violated. In particular, the Court pointed out that the Convention did not require Austria to conduct an investigation into the recruitment of the plaintiffs in the Philippines, or into their claims that they had been exploited in the United Arab Emirates. According to the Court, Article 4 of the Convention does not require States to establish universal jurisdiction regarding human trafficking committed abroad.

As regards the incidents in Austria in particular, the Court concluded that the State had taken all reasonable measures in this case. For example, during their interrogations by specially trained police officers, the plaintiffs could count on the assistance of an NGO, and they had been granted a residence permit and work permit, allowing them to reside legally in Austria. Finally, the Court also held that their claims regarding their stay in Vienna had been sufficiently investigated and that, in the light of the facts and available evidence, the authorities' assessment would have been reasonable.

2.1.2. | European Court of Human Rights, *Chowdury and others v Greece*, 30 March 2017 (Application No 21884/15)³⁵⁹

This case relates to 42 Bangladeshi nationals residing in Greece. They did not have a work permit when they were recruited in Athens and other parts of Greece to work on the largest strawberry farm in Greece. They were promised a wage of €22 for seven hours of work and €3 for each additional hour. They worked in extreme physical conditions: every day, from 7am to 7pm, under the supervision of armed guards. Their employers had informed them that they would only get their wages if they continued to work. Moreover, the applicants also lived in improvised cabins without toilets or running water.

They went on strike three times to demand unpaid wages, without success. Ultimately, the employers eventually hired other Bangladeshi migrants. Around one hundred labourers, who feared that they would no longer see their wages, went to the two employers to demand the money. One of the armed guards opened fire and injured 30 labourers, including the 21 plaintiffs. They were taken to the hospital and later questioned by the police.

The two employers, the guard who fired the shots, and a foreman, were arrested and prosecuted for attempted manslaughter (which was later commuted to grievous bodily injury) and human trafficking. However, the Patras Court acquitted them of the charges of human trafficking and only convicted the armed guard and one of the employers for grievous bodily injury and illegal use of firearms. The public prosecutor rejected the plaintiffs' request for an appeal against the Court's judgement. It considered that the accusation of human trafficking had not been properly investigated.

Appearing before the European Court of Human Rights, the plaintiffs argued that they were subject to forced or compulsory labour. They also stated that, not only did the Greek State have a duty to prevent them from being subjected to a situation of human trafficking, but they also had to take preventive measures and punish the employers in this regard.

The Court ruled that there had been a violation of Article 4, § 2 (prohibition on forced labour) of the Convention, and ruled that the Greek State had not sufficiently protected the plaintiffs.

³⁵⁹ The ruling is available via the following link: [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-172365\"\]}](http://hudoc.echr.coe.int/eng#{\).

In particular, the Court pointed out that the plaintiffs' situation did indeed correspond to human trafficking and forced labour, and specified that exploitation through work is an element of human trafficking. It stressed that the Patras Court acquitted the persons accused of human trafficking on the grounds that the workers were not in the absolute impossibility of defending themselves and that their freedom of movement was not compromised, as they were free to stop their work. However, the Court rightly held that the restriction of freedom of movement is not a *sine qua non* condition for considering a situation as forced labour or even human trafficking. Indeed, there may even be a situation of human trafficking, even though the victim has freedom of movement.

The Court ruled that, in this case, the Greek State did not comply with its obligation to prevent human trafficking, protect the victims, thoroughly investigate the crimes committed, and punish those responsible for human trafficking.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

Various judgements related to Nigerian networks, which also exploit minors.

A first case concerned a network in Antwerp, which recruited young women to exploit them sexually. The network was **sentenced by the Correctional Court of Antwerp on 23 May 2016**.³⁶⁰

Three defendants were prosecuted in this case, for human trafficking with the aim of exploiting prostitution and other forms of sexual exploitation, over the period 2014-2015. The investigation concerned three young Nigerian women who were recruited in Nigeria and taken to Belgium. The two main defendants were Nigerian sisters. A fourth defendant was identified as a cash courier who channelled the money to Nigeria. He was prosecuted for money laundering.

The smuggling to Belgium was organised by one of the 4 defendants. Once they arrived in Belgium, the girls had

to prostitute themselves so that they could repay their debt of €60,000. They had to hand over almost all the money they earned. Both the girls and their families in Nigeria were put under pressure using voodoo rituals.

The court convicted the three main defendants for human trafficking with aggravating circumstances, one of whom was sentenced in absentia. The fourth defendant was convicted of money laundering. The court ruled that the victims' statements were consistent with each other and that there were also objective elements which confirmed their statements, including telephone investigations, wiretaps, observations, cash which was transferred almost every week through official channels such as Western Union, and through unofficial channels using couriers. Victims were found during searches of premises, as were significant sums of money and documents related to the money transactions.

The two sisters were sentenced to 30 and 40 months' imprisonment and a fine of €24,000 and €18,000 respectively. The third defendant was sentenced in absentia to 4 years' imprisonment and a fine of €6,000. The fourth defendant was sentenced to 1 year imprisonment and a fine of €1,000, which was partly suspended. The court also declared the funds confiscated.

A second case concerned a large-scale investigation which led to the dismantling of a major Nigerian network. At the start of 2016, some of the members of this network were convicted at the first instance.³⁶¹ One of the defendants, who was convicted in absentia, appealed against the judgement. **On 30 June 2016, the Dutch-speaking Correctional Court of Brussels ruled on the case.**³⁶²

The case came to light when the police found a girl behind a prostitution 'window' during a patrol near Brussels North Station, who they did not recognise. The girl turned out to be in the country illegally, and declared being domiciled in the defendant's premises. The girl was interviewed and wiretapping measures were taken as part of the investigation.

A large-scale investigation showed that she was just one of the victims of a larger Nigerian prostitution network. Young girls were smuggled from Nigeria via Libya and Italy to Belgium, to work as prostitutes here. The girls paid a lot of money for the trip to Europe, sometimes up to €30,000

³⁶⁰ Correctional Court of Antwerp, subsection Antwerp, 23 May 2016, Chamber AC4 (appeal).

³⁶¹ Dutch-speaking Correctional Court of Brussels, 5 February 2016, 46th Chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 161. These judgements are published on the Myria website: www.myria.be.

³⁶² Dutch-speaking Correctional Court of Brussels, 30 June 2016, 46th Chamber bis (definitive).

or €40,000. They then had to repay that money through their prostitution activities. The girls and their families in Nigeria were put under pressure through voodoo practices. They earned €20 per customer, money they had to give to their 'madam', on top of which they also had to pay rent. Sometimes the girls prostituted themselves within their 'madam's' territory, or that of other women through the 'Yemeshe' system. This is a modus operandi in the Nigerian prostitution milieu whereby a girl who does not have a permanent prostitution spot is given the opportunity by a contractual prostitute to prostitute herself behind her window for several hours. The girl has to pay a kind of rent by giving 50% of her income to the contractual prostitute. They had to put the remaining money in a 'money box' which was managed by the 'madam'. During the investigation, the accounts of one of the 'madams' were found where she kept all the amounts received, by date. This showed that she had an average income of €12,000 to €14,000 per month.

The defendant was found guilty of human trafficking offences for the purpose of sexual exploitation. Her actions undeniably contributed to the 'supply' of girls to the prostitution milieu. The aggravating circumstances that the vulnerable position of the victims was abused were also upheld. The court was particularly alarmed by the fact that the victims had to make a life-threatening journey by boat across the Mediterranean Sea, during which they needed to be rescued. The court also ruled that this appeared to be a routine, and that the defendant and her associates formed a structured association.

In addition, the defendant was also found guilty of exploiting prostitution with aggravating circumstances (abusing the vulnerable situation of the victims), participating in the activities of a criminal organisation and also of illegally collecting income from the exploitation of the victims.

The defendant was sentenced to 30 months' imprisonment and a fine of €12,000, which was partly suspended. In addition, the court ruled that their funds were to be confiscated.

Finally, a judgement of the **Dutch-speaking Correctional Court of Brussels on 28 March 2017** revealed that some Nigerian networks have their own system for transferring money.³⁶³

In this sexual exploitation case, six different defendants were prosecuted for human trafficking with aggravating

circumstances, sexual exploitation of both underage and adult victims, criminal organisation and money laundering. The judicial investigation had mapped a network which smuggled young girls from Nigeria to Belgium to get them to work in prostitution. The main defendant was helped by her mother in Nigeria and her brother, among other people. The mother recruited young girls on the pretext that they could study or work as childminders in Belgium. Before their departure they had to undergo voodoo rituals, whereby insubordinate girls and their families could then be threatened.

The girls were smuggled through Nigeria and Niger to Libya, where they were put on boats to Italy. The journey across the Mediterranean Sea was perilous. One victim said that the boat started taking in water, and she was rescued at sea by the Italian coastguard. Once they arrived in Italy, they ended up in refugee camps where they were picked up and taken to Belgium. In Belgium, they were told that they had incurred debts of €35,000 that they were obliged to pay back through prostitution. The girls were also often supplied to other Nigerian 'madams', who had requested them. The girls were obliged to hand over all their earnings. If they did not obey, or did not bring in enough money, they were assaulted or threatened with voodoo.

The money that the girls brought in was transferred to Nigeria through a company and via the 'Black Western Union' system. In order to avoid official money remittance companies, the Nigerian criminal milieu used its own transfer system, which did not leave any traces, to transfer cash to the beneficiaries in Nigeria. The money was deposited in a 'shop' which also operated as a barbershop. The funds to be sent were noted down, and the applicable exchange rates were communicated. This money was then taken to Nigeria almost every month by some of the defendants, hidden in luggage. In Nigeria, one of the defendants ran a shop/office where the beneficiaries could come to collect their funds by paying a commission of 10% on the amount sent. The money earned from the exploitation of prostitution was laundered by the defendants by buying and rebuilding houses there.

The court found most of the facts proven. The criminal file consisted of various credible statements by victims and the content of numerous wiretapped discussions. The court ruled that both the material and moral elements of the offence of human trafficking were in evidence. The aggravating circumstances were also upheld, namely that the offences also involved underage girls, that the vulnerable situation of the victims was abused, that subterfuge was employed, that criminal activity was a

³⁶³ Dutch-speaking Correctional Court of Brussels, 28 March 2017, 60th Chamber (definitive).

matter of course, and that the defendants committed the crime as a criminal organisation.

The court sentenced the defendants to prison sentences of between 40 months and 6 years, and gave them fines of between €12,000 and €108,000. Large sums of money were also confiscated.

Myria and one victim initiated civil proceedings. Myria received moral and material damages of €1,500. The victim received material damages of €200 and moral damages of €2,500.

2.2.2. | Thai and Chinese massage parlours

Two significant cases involved a Thai and a Chinese massage parlour.

The first case, in which letters rogatory were sent, related to a Belgian-Thai gang. This case was heard by the **Correctional Court of Dendermonde on 11 October 2016**.³⁶⁴

20 defendants were prosecuted in this case. The offences occurred between 2006-2008, primarily in Belgium and Thailand. The defendants were prosecuted for human trafficking for the purpose of sexual exploitation, with the aggravating circumstances that the vulnerable situation of the victims was abused, the activity was a matter of course, and took place within a criminal association. They were also prosecuted for running a house of ill-repute and prostitution, with aggravating circumstances, leadership and participation in a criminal organisation, gang activity, slumlording, money laundering, receiving stolen goods and attempted fraud. The investigation also consisted of two elements, firstly the investigation into human trafficking and the exploitation of prostitution and secondly, the financial investigation into transactions with stolen cheques.

The case came to light in early 2008 when the local police heard rumours about the operation of a Thai massage parlour in Wetteren which was actually a cover for prostitution. A few weeks later, the police learned from Thailand that some Belgian nationals were involved in the exploitation of Thai prostitutes in Belgium. As a result, an investigation was launched. It was investigated who was

the manager of the massage parlour, and surveillance operations helped establish that several defendants were regularly present in the massage parlour, including the lawyer, and that the parlour received an average of 30 customers per day. Subsequently, administrative checks were carried out, as well as a check at the request of the Immigration Office. Some illegally-resident girls were arrested and transferred to a detention centre. Several of the victims were questioned. They declared that they were recruited in Thailand through a Thai organisation, to come to Belgium. Most of the girls already had financial hardship in their own country. Some of them knew that they would end up in prostitution. Most of them only spoke Thai. They declared that they had come to Europe with a Swedish Schengen visa for tourists. Once in Belgium, they were told that they had incurred debts of €15,000. They were obliged to repay this by giving massages. They had to hand over all their earnings. At the end, when all debts had been repaid, half of their earnings were reimbursed to them. In addition, they also paid €80 per week for rent and costs. They had to charge €50 per half hour massage, and €80 for an hour. This price included masturbation. If customers still wanted further sexual contact, they had to pay an extra charge of €50. The girls were allowed to keep the money from the sexual contact. As such, it took two to three months before they paid off their debts. Moreover, the girls had no choice but to earn extra money from sexual contacts in order to provide for their daily livelihoods. The girls also had to buy their own condoms. Instructions were given on how to get rid of the condoms by cutting them into pieces and throwing them down the toilet, or putting them in an empty can and flattening it. They worked 7 days a week, and saw an average of 5 customers a day. They rarely left the house.

The girls who did not work hard enough, or did not want to go with a customer, were threatened with being sent back to Thailand. Although some girls knew why they came to Belgium, they felt exploited.

The investigation was conducted through house searches, combined with the results of the wiretapping, statements, laptop analysis, a rogatory commission to Thailand, etc.

The main defendant was the actual boss of the massage parlour. He had started the parlour with his wife. He was also a partner in a British company. This company was set up on the advice of the defendant's accountants and financial advisers. By making the Thai girls co-managers, they were able to circumvent the regulations relating to foreign nationals. The boss had contacts with the Thai travel agency (T.C.), from where he ordered the girls. This organisation arranged the visas, airline tickets, passports etc. He had also agreed with them that the debt price would eventually be fixed at €15,000, of which T.C. would

³⁶⁴ Correctional Court of East Flanders, subsection Dendermonde, 11 October 2016, Chamber D19D. Six defendants were tried in absentia. An appeal against the decision was lodged by a defendant who was tried at the first instance. The judgement was expected to be delivered before 11 September 2017.

receive €3,000, leaving him with a profit margin of €7,500. From the end of 2008, he would have two girls sent to Belgium every month. The wife of the main defendant was aware of the goings-on in the massage parlour. The other defendants had to report to her when the boss was away abroad. Even after his provisional release, the main defendant still looked around to start a new massage parlour. In addition, he tried to influence the victims to make favourable statements about him.

The other two main defendants took care of the practical and day-to-day organisation of the massage parlour. One of them had married one of the first Thai girls who came to Belgium. She served as an intermediary between the girls and the bosses, and gave them instructions.

The two accountants and the lawyer were also prosecuted. The accountants gave advice on financial constructions for the massage parlour, and were well aware of the activities. The lawyer gave advice on foreign nationals law, and was paid in kind by services in the massage parlour. In addition, he visited the victims in the detention centres to coax their statements out of them which they had made against the defendants during the course of the investigation.

Through the rogatory commission to Thailand it was possible to find out, via the IP address of the e-mails³⁶⁵ of the company T.C. and the contact details, etc., that this company was operated by two Thai women and operated from an internet shop/travel agency,³⁶⁶ run by another defendant and her husband. She was also prosecuted in this case, in addition to the two Thai women who ran the firm.

The court ruled that sexual exploitation had taken place. The fact that the girls had consented had no bearing on the case. They were in a vulnerable position; they had no choice but to let themselves be sexually exploited. The court considered the charges against each defendant individually. Six defendants were convicted in absentia. The main defendant and his wife were found guilty of human trafficking, with aggravating circumstances. For the other two main defendants, the facts were also considered as proven. For another defendant, the court found that there were insufficient elements to prove that he had done more than just take preparatory actions, and he had withdrawn even before the offences were committed. For the defendant who had previously worked as a 'masseur' herself in the massage parlour, the court

held that, although she had undeniably contributed to sexual exploitation, she did not act with the intention of exploiting the masseuses, nor did she knowingly and intentionally participate in it. The defendant herself was still in a vulnerable position due to her own precarious social situation. The court ruled that there was moral force majeure on the part of the defendant in question, and acquitted her of human trafficking offences. The three defendants in Thailand who worked under the name T.C. were also found guilty of human trafficking. The five main defendants were also found guilty of keeping a house of ill-repute and prostitution. In addition, the court ruled that the girls were housed in conditions which were an affront to human dignity, and considered that the main defendants were also guilty of slumlording. The court ruled that all constitutive elements were present to judge that it concerned a criminal organisation, in which each defendant played a role. Several defendants were also considered guilty of receiving stolen goods and attempted fraud.

During the proceedings, several defendants asserted that a reasonable time limit had been exceeded. Although it was a complex case with various letters rogatory to the UK, the Netherlands, Thailand, Switzerland, Sweden and Rwanda, among others, the court ruled that the reasonable time limit had been exceeded, and that it had to take this into account in the sentencing. The main defendants were sentenced to, respectively, 3 years with suspension, 2 years with probation, 20 months with probation, and some were given a simple conviction (without sentence). Only the three Thai female defendants behind T.C. were sentenced in absentia to effective prison sentences of 2 and 3 years, and fines.

The court ordered the confiscation of significant sums of money, as well as vehicles.

Myria and several victims initiated civil proceedings. Myria received damages of €1 and the other civil parties received damages of €26,000 and €16,850 respectively, which was the amount of the "debt obligation" and expenses, and €1,000 moral damages.

The other case relating to a massage parlour was heard by the **Court of Appeal of Brussels on 16 November 2016**.³⁶⁷

A Belgian-Chinese couple, who ran a massage parlour, were prosecuted for human trafficking for the purpose of sexually exploiting a young Chinese woman, who was staying in the country illegally, and for operating a

365 See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

366 See also above, Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking) and Chapter 2, point 6 (Social media and the internet as a method of investigation).

367 Brussels, 16 November 2016, 14th chamber.

house of ill-repute and prostitution. In the first instance, the Correctional Court of Walloon Brabant³⁶⁸ judged the alleged facts to be proven. The court ordered the restitution, to the civil party, of confiscated funds seized from the defendants, in the form of assets found in their possession. In addition, the court awarded, to the civil party, confiscated funds of an equivalent value in the form of assets which were not found among the assets of the defendants.

The case got underway following a complaint by the employee, who initiated civil proceedings. She stated that she was forced to perform sexual services at the end of the massages and that she received only half of the proceeds. She lived at the premises. When she wanted to end this situation and announced that she wanted to leave, she noticed a few days later that her passport and a sum of €2,550 had disappeared from her luggage.

The court held that the charges were proven on the basis of the criminal file. Based on the elements of the investigation, it was established that sexual massages did indeed take place (declaration of the victim, questioning of customers, comments in a forum on a website³⁶⁹, the presence of used towels with traces of semen at the location of the incidents). In addition, the victim's statements were elaborate and detailed, while the accused's statements were improbable, inconsistent and contradictory.

The court increased the sentences handed down at the first instance of 8 and 10 months to 1 year and 15 months respectively. The female defendant only received a suspended sentence.

Conversely, the Court of Appeal considered the fines imposed at the first instance (€2,000 and €3,000) to be too high. It reduced them to respectively €1,000 (€6,000 increased with a multiplication factor) and €2,000 (€12,000 increased with a multiplication factor).

It also upheld the civil measures of the judgement. The employee who initiated civil proceedings was awarded reasonably-established moral damages of €2,000, taking into account the psychological damage suffered, and a reception centre received symbolic damages of €1. The court also specified that the first judges had correctly applied Articles 43*bis*, paragraphs 3 and 44 of

the Criminal Code³⁷⁰ by restituting to the civil party the confiscated funds found in the assets of the defendants (€2,450) as compensation for her material damages (established at €3,192) and by awarding to the former a confiscated amount of an equivalent value (€371 on top of a supplement of €742 to be paid by the defendants).

2.2.3. | Thai escorts

This case, which was heard by the **Correctional Court of Liege on 16 November 2016**, concerns the trafficking and smuggling of young Thai women using a well-organised, proven set-up.³⁷¹ The young women had to prostitute themselves in apartments in Liège, Brussels and Arlon.

Four defendants - two Thai women, one Pakistani and one Romanian - were prosecuted on various charges. In the case of the first three, this was human trafficking and smuggling, recruitment and exploitation of prostitution involving several young Thai women. They were also prosecuted for distributing advertisements offering sexual services from these young women on a website of a sexual nature, under the heading 'Escorts and massages'. The Romanian and Pakistani defendants were prosecuted on the same charges (except for smuggling and publicity) but regarding two Romanian girls.

Four Thai victims initiated civil proceedings.

The court gave a detailed description of the facts. The case was opened in early January 2015. The local police of Liège were informed about the presence of Thai prostitutes in a building in Liège. Two young women were seen who apparently received numerous clients in an apartment on the second floor. The same month, the police received a tip-off that a vehicle with a British number plate had been parked in front of the building in question. The vehicle was used by a man who regularly dropped off and picked up women working at the location. During the inspection and search of the vehicle, several mobile phones were found. Investigations were made using the nicknames of the girls and the numbers called from these telephones, which led to the discovery of various advertisements that had been

368 Corr. Court Walloon-Brabant, 22 May 2014, 2nd chamber. (not published).

369 See also Part 2, Chapter 4 (Social media and the internet as a method of investigation).

370 According to these Articles, the confiscation should not affect the rights of civil parties who are victims of the offences, and the courts must order the restitution or re-allocation of the confiscated assets belonging to them, or of the confiscated assets which are deemed to be a replacement or have equivalent value to the assets belonging to them.

371 Corr. Court Liege, subsection Liege, 16 November 2016, 19th chamber (appeal).

posted on a website of a sexual nature for several months, and on which these names and numbers appeared.³⁷²

Based on a number from one of the mobile phones, the investigators also discovered a site for *escort girls* and two other websites with similar advertisements as those on the previously discovered website.

In February 2015, the police carried out a check on young Thai women in a hotel in Arlon, for whom advertisements for prostitution had been posted on the discovered website. A link was soon established with the ongoing investigation in Liège. The statements of the three identified girls showed broadly similar pathways and working conditions, in which each of the first three defendants played a role. Recruitment in Thailand was carried out by the first defendant, who organised the trip. The girls had to repay the travel expenses (€15,000) by working in prostitution. The second Thai defendant was responsible for the girls in Belgium: she received them, explained the terms of employment, took calls, arranged appointments and received the earnings. As long as they had not fully repaid the travel expenses, the victims had no money of their own. They had to be available every day from 10.00am to 2.00am the following morning. The Pakistani defendant was responsible for placing the advertisements on the internet, purchasing the telephones and renting the apartments. He later took the place of the defendant who lived in Belgium and who was his partner, because she returned to Thailand due to a conflict of interest between them. The girls' passports were confiscated and they could not freely leave the apartment.

The police carried out further investigations into the first website and carried out wiretaps. They discovered that the Pakistani defendant had just opened a car wash, and that Romanian girls were also working for him. As such, he worked with the Romanian defendant, who was his contact person for recruiting Romanian staff to work in the car wash.

Surveillance and house searches were also carried out. Several more victims were then discovered and questioned, in addition to the two defendants. The Pakistani defendant acknowledged that he had asked the Romanian defendant to find him a girl to work in an empty apartment in Liège. Incidentally, the Romanian defendant had married the Thai defendant in Thailand, so that she could obtain the necessary papers (sham marriage).

Based on analysis of the mobile phone found during the search, and the property of the Pakistani defendant, it was possible to identify the contact person in Thailand, namely the Thai defendant who was responsible for recruitment. The police were able to arrest her, but were unable to arrest the other defendant, for whom a European and international arrest warrant was issued.

In a detailed justification, the court stated that all charges were proven, except for exploitation of prostitution on the part of the Romanian defendant.

As regards human trafficking, the court considered that all the elements of this charge were present in this case, since the five girls had undeniably been recruited, received, housed, transported and controlled for the purpose of exploitation of prostitution. They described an identical, proven *modus operandi*. They were recruited in Thailand, where they lived in a difficult financial and/or family situation, by the first defendant and usually through a girlfriend, who presented her to them. The defendant explained to them the possibility of coming to Belgium, the nature of the work and the principle of the travel cost debts, which had to be repaid. She provided them with a visa (tourist visa, often from another EU country) and airline tickets, she provided accommodation for the trip, gave them money for travel costs and took photos of the girls (intended for advertisements on websites for prostitution in Belgium). Two girls often travelled at the same time. They travelled via the European country for which they had obtained a visa. The court ruled that the first defendant, under the guise of her travel agency, did indeed participate in recruiting and transporting these five Thai girls for the purpose of exploitation of prostitution.

In Brussels, they were awaited by the second defendant, who gave them a nickname, provided a mobile phone 'for work', confiscated their passports and explained the nature of the work. The girls stayed in the same place where they worked, and were often relocated. Their services were constantly monitored. The girls had to hand over 40% of their income and the remaining 60% served to pay off their travel debt until it was fully repaid.

The third defendant played an important role in housing the girls, transporting them, placing the advertisements, and keeping them under control.

The court noted in this respect that the statements of these five victims contained all the details of the facts. Any contradictions or amendments during the various hearings had no bearing on the credibility or sincerity of their story, but rather reaffirmed the importance of their status as victims of human trafficking, as they were still

³⁷² See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

under the control of the defendant (at least one of them) during these hearings.

In the same way, the court also convicted the defendants for human trafficking offences involving the two Romanian girls, based on the confessions of the two defendants involved, wiretaps, surveillance and investigations on a website.³⁷³ The court ruled that the Romanian defendant made an essential contribution to committing the offences and recruiting the girls, but he also helped clean their house and ensured a certain level of supervision. He also had a bond with the other defendants, since he was married to one of them and was a partner in the company that operated the car wash.

These statements were substantiated by various other elements in the case (including statements by two defendants, wiretaps, the examination of the mobile phones, the findings of the investigators and the investigations into the advertisement websites).

The court also acknowledged the aggravating circumstances of the offences (abuse of the vulnerable situation of girls, violence, threats and a certain form of coercion (but only in the case of Thai victims) and participation in the activity of an association).

For the charges of human smuggling, which concerned the first three defendants, the court also ruled that all the elements were present in this case: they took care of the arrival, transit and residence of these five Thai girls in several Member States of the European Union. Each of them, in their own role, was involved in supplying tourist visas, advancing money for airline tickets, helping these women travel through several European countries before arriving in Belgium, and arranging accommodation and therefore their stay in Belgium, all with the aim of obtaining a direct or indirect material benefit. After all, these girls had a travel debt of €15,000, an amount that far exceeded the actual travel costs.

The sentences imposed ranged from 2 to 6 years' imprisonment, and fines ranging from €12,000 to €42,000. Confiscation of equivalent-value assets was also handed down to the first three defendants. The civil parties were awarded moral damages of €1,000 and material damages between €17,704.20 and €35,054.31. The court also decided to allocate the amounts of equivalent-value confiscations in the first instance to the civil parties.

³⁷³ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

2.2.4. | Large-scale prostitution network offering sexual services via erotic dating sites³⁷⁴

In this case, which was heard by the **Correctional Court of Antwerp on 2 May 2016**³⁷⁵ and by the **Court of Appeal of Antwerp on 24 November 2016**³⁷⁶, 16 defendants were prosecuted for their involvement in an extensive prostitution network. In addition to human trafficking offences for the purpose of sexual exploitation, with aggravating circumstances, the offences also included criminal association and drug legislation violations dating from 2013-2015, involving various victims.

The case came to light through a distress call from a victim who claimed that she was a victim of human traffickers and was forced to prostitute herself. A further extensive telephone investigation revealed an entire prostitute network. The criminal file consisted of statements by victims and other parties involved, and other investigation elements.

The main defendant was the leader of the network offering paying sexual services with transport via the internet, which he ran from Spain, and later from Romania. He managed several websites on which the services of the girls were advertised. He recruited the girls, advertised their services via his internet platform, and provided drivers who brought the girls to the customers. In exchange for these services, he asked for a 'commission' of 25% of their earnings, plus the advertising costs. As such, he sexually exploited at least 17 victims, thereby abusing their vulnerable situation. The girls, often of Moroccan or Bulgarian nationality, did not have any official papers, were not proficient in Dutch and were in a precarious financial situation or had other problems. He told new girls that the earnings were much higher than what eventually turned out to be the case. He monitored their activities by constantly telephoning them and their drivers from abroad. He alone managed the website on which he placed advertisements for the girls. He had control over the girls, who often had financial problems since only he could determine when and with which clients the girls could work. He often lied in the advertisements that the girls were prepared to perform certain sexual acts, when he knew that they were unwilling to. The girls had to negotiate this with the client at the time. If girls were unable to work for whatever reasons, he deliberately prevented them

³⁷⁴ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

³⁷⁵ Corr. Court Antwerp, subsection Antwerp, 2 May 2016, chamber. AC4.

³⁷⁶ Antwerp, 24 November 2016, 14th chamber.

from meeting future clients so that they were in financial difficulty, and their dependence on him only grew. These activities were his only income, so it was in his interest to recruit new girls.

The activities were well organised. Various people took care of financial matters, while others were involved in the logistical side of the activities. Money was channelled abroad using fictional profiles or frontmen. The employees used coded language among themselves. The court consequently deemed that the case pertained to a criminal organisation. There were also plans to set up a prostitution network in Spain and the United Kingdom.

The investigation showed that the other defendants cooperated with the main defendant. They took care of the reception of new girls, collaborated on online advertisements, supplied drugs to the girls, worked as drivers, collected money from the girls and took care of money transfers abroad. Several of them also had decision-making authority within the organisation. Some of them worked as prostitutes themselves.

The court found that human trafficking allegations had been proven, except for the circumstance that violence was used against women. The main defendant was certainly not a novice, and already had a criminal past. He was sentenced to 40 months in prison and fined €18,000. Other defendants were sentenced to imprisonment of between 6 and 18 months, and received fines, some of which were suspended.

For the other defendants, the court took into account their limited role, their clean criminal record, personal situation, etc. and gave them a suspended sentence. The court also ordered confiscations worth €250,000. One victim initiated civil proceedings and received damages of €2,500.

At the appellate level, the verdict was upheld almost entirely, with the exception of certain facts and circumstances relating to some of the girls. The fact that not all girls who worked for the 'agency' of the defendant did not consider themselves to be victims of human trafficking was, according to the Court of Appeal, irrelevant in judging the offences.

The penalties for the defendants who appealed were ultimately mitigated, as was the confiscated amount.

2.2.5. | *Loverboy* technique

The '*loverboy*' technique was used in several cases.³⁷⁷

This was the case in a case involving the sexual exploitation of two young Albanian women, which was brought before the **Dutch-speaking Correctional Court of Brussels on 30 June 2016**.³⁷⁸

The defendants used the '*loverboy*' technique to make their victims fall in love with them, so as to be able to put them under emotional pressure. They were prosecuted for human trafficking with aggravating circumstances, for the exploitation of prostitution also with aggravating circumstances, inciting vice, and prostitution and money laundering.

The first defendant met the victim in Albania and promised her that she would be able to build up a singing career in his music bar in Belgium. The victim was naive. She came from a socially disadvantaged environment, and believed him. Once in Belgium, he forced the victim to prostitute herself near the Brussels Midi train station. He used violence and threats when the victim refused. Finally, the victim worked as a prostitute for two years. She earned €500 per night and had to hand over everything to her pimp. He used this money to buy a hotel and an apartment in Albania. The victim became pregnant and was forced to have an abortion twice. The case came to light when, in September 2014, the police found the victim in shock and with broken ribs. She had been beaten by her pimp.

Even during the investigation, the main defendant also made various threats to the victim and her family in Albania. They all received death threats. He threatened her father, so the father even travelled to Belgium together with the father of the main defendant to make a statement to the police that his daughter was lying. The man appeared to be completely lost, and after making his statement, the police helped him organise his return trip to Albania. The threats to the victim and her family continued. The victim was sheltered with the help of a specialised reception centre, out of fear for the defendant.

The second defendant had a relationship with the second victim and they agreed to go to Belgium together so that they could earn a lot of money in prostitution in a short period of time, which they would then share among themselves. Once in Belgium, she earned €700 to €1000 per

³⁷⁷ The issue of *loverboys* was addressed as the focus of a previous Annual Report. See in this respect 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 23-40.

³⁷⁸ Dutch-speaking Correctional Court of Brussels, 30 June 2016, 46bis Chamber (appeal).

night, which she had to hand over in full to her pimp. He did not stick to the agreement, and regularly used violence against her. Following her complaint, an international arrest warrant was issued against the second defendant.

The victims made very detailed statements. Financial investigations, via rogatory commission, were also conducted into the funds, both in Albania and Belgium.

The first defendant was found guilty of human trafficking with aggravating circumstances, as well as exploitation of prostitution and money laundering.

The second defendant was not found guilty of human trafficking, but was found guilty of the other charges. The court held that it was not a situation of 'supply', or of coercion or subterfuge. The victim knew that she came to Belgium to work in prostitution and could earn so much money. Moreover, the court found that the victim's statements should be approached with caution. The content of the first interview with the victim was not registered by the interviewer. Moreover, a large part of the statements could not be corroborated by other elements in the criminal case. However, the court did find that there was exploitation of prostitution. The fact that the two formed a couple was not an impediment for the court.

The court sentenced the first defendant in absentia to 6 years' imprisonment and a fine of €3,000. The second defendant was sentenced to 3 years, which was partly suspended, and a fine of €3,000.

The court ordered confiscations worth €70,000 for each of the defendants, part of which was awarded to the victim of the first defendant, who had initiated civil proceedings.

The victims obtained the status of victims of human trafficking, and were monitored by a specialised reception centre. The first victim received material damages of €70,000 and moral damages of €5,000.

Another case concerned the sexual exploitation of underage girls who had fled from youth institutions. It was settled in a **judgement of 21 September 2016 by the Correctional Court of Antwerp**.³⁷⁹

In this case, a young man from Antwerp was prosecuted for human trafficking and attempted human trafficking for the sexual exploitation of various underage girls. The man's uncle was also prosecuted.

The case came to light following the disappearance of a number of underage girls. In addition to four Belgian girls, a Cuban girl had run away from home, and a Turkish girl had disappeared from a youth institution. They fell in with the entourage of the main defendant, a known rapper from Antwerp. Several girls were found by police, and made incriminating statements against him.

The investigation consisted of statements by the defendants, various victims and other witnesses, wiretap measures, telephone investigations, an investigation of the Facebook page of the defendant, etc.³⁸⁰

Almost all of the victims were from socially disadvantaged backgrounds, or had run away from home or an institution. They often had no other place to go. The defendant did not use physical coercion, but first tried to win the girls over before persuading them to prostitute themselves for him.

The defendant had a relationship with an underage girl in which he used the '*loverboy* technique'. She prostituted herself and also recruited other girls for him. Photos of the girls were placed on erotic dating sites.³⁸¹ He brought the girls to the client, gave instructions and received the money from the client. The victims did not get anything from the earnings.

Even after his arrest, the defendant tried to influence the girls, by asking them to get rid of the incriminating evidence against him. He also removed his ankle monitor during the period when he was placed under electronic surveillance, pending trial.

The second defendant, the uncle of the main defendant, made his apartment and car available to his nephew. According to the court, it is not credible that he was unaware of what the girls were doing. Six victims and Child Focus initiated civil proceedings.

The main defendant was acquitted of attempted human trafficking involving three underage victims since there were insufficient elements. He was found guilty of the human trafficking of three other underage girls.

His uncle was also found guilty of assisting in the sexual exploitation of the girls.

The main defendant was sentenced to 6 years' imprisonment and received a fine. The second defendant was sentenced to 20 months, for which he needed to

³⁷⁹ Corr. Court Antwerp, subsection Antwerp, 21 September 2016, chamber. AC8.

³⁸⁰ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁸¹ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

serve at least 10 months, and received a fine. Child Focus received €1 in damages. Three victims each received damages of €1,500.

2.2.6. | Joint investigation teams

Joint investigation teams (JIT) were formed in two important cases. The first case related to a Belgian-French investigation in Liège, and the second a Belgian-Hungarian investigation in Ghent.

The first case was heard by the Correctional Court of Liege on 14 September 2016.³⁸²

In this case, 15 defendants were brought before the Correctional Court. Twelve of them, including the main defendant and numerous female defendants, were prosecuted for human trafficking for sexual exploitation involving many Romanian girls, and for participation in a criminal organisation.

All but one of the defendants were also prosecuted for running houses of ill-repute. These were primarily the female owners of the businesses where the prostitution had taken place.

Most of the defendants were also charged with inciting vice, and exploiting prostitution.

Finally, the main defendant and another defendant were also prosecuted for publishing and distributing advertisements for services of a sexual nature.

The case got underway in September 2007 in France. The judicial police in Lille had learned from police sources that one of the defendants was operating a bar in Kortrijk for the benefit of a Parisian, the main defendant in this case. The latter was also the owner of another bar in Liège, which was run by another defendant, where it had been established during a Belgian police check that sexual services were being performed for payment. The main defendant also apparently had three parlours in Liège, and at the same time worked as the manager of several companies.

In the same period, during a police check by the Kortrijk police in the bar in Kortrijk, the presence of a new female manager was established, who was also a defendant in this case.

Earlier, in June 2007, two people in Paris had filed a complaint against the main defendant with the accusation that he had hired them as barmaids, while in reality they had to work as prostitutes.

In September 2008, the Belgian police investigation revealed that there was indeed a link between one of the companies of the main defendant and three cases, via a website that led to these three cases.

On the basis of this information, a joint French-Belgian investigation team (JIT) was set up in October 2008 to investigate allegations of sexual exploitation under aggravating circumstances, money laundering and human trafficking. In a police operation in March 2009, it was established that most of the girls present in these cases were Romanian.

The main defendant claimed that the prosecutions were inadmissible, as he believed that the rights of defence, and in particular the right to a fair trial, had not been respected. He claimed that he had not been heard by the Belgian investigating judge. The court rejected this argument, since the defendant had been heard several times by the French police and the courts. During these hearings, he was questioned specifically about the alleged violations committed in Belgium, and the businesses he ran there. As it was a joint investigation team, it was unnecessary, and certainly not compulsory, for him to be questioned again on the same allegations by an investigating judge in Belgium. Moreover, nothing prevents the use of evidence obtained abroad, as long as it meets the same requirements as for evidence gathered on national territory at the preliminary stage of the proceedings.

The defendant also put forward other arguments, such as the fact that he was not charged by the Belgian investigating judge. However, all his arguments were rejected by the court, which held that the rights of defence and the right to a fair trial had indeed been respected, and that the charges against the defendant were therefore admissible.

The court found the charges of human trafficking to be proven, based on a series of serious, precise and correlating suspicions: the original complaint of two young women, recruited as barmaids, statements by the main defendant, in which he admitted to have financed the journey of several young Romanian women, who then prostituted themselves in his businesses, telephone wiretaps, the results of the police operations in the various bars, and statements made by co-defendants.

The court ruled that it had been sufficiently proven that the main defendant, either himself or through the actions of

³⁸² Corr. Court Liege, subsection Liege, 14 September 2016, 19th chamber (appeal).

third parties, including two co-defendants, had recruited young women in Romania, for whom he financed the journey to Belgium, where they were received and housed in his prostitution businesses by responsible persons he had employed, namely, several of the defendants. The latter persons, who were managers in the businesses where the young women ended up, were responsible for the room and board, and for controlling the young women who had arrived from abroad. In this way, they actively and knowingly contributed to human trafficking offences.

The court also took into account the aggravating circumstances that the allegations were a matter of course, and that the vulnerability of the girls had been abused. The court noted in this respect that some prostitutes had not explicitly complained about the conduct of the main defendant or the female managers, and not even about their working conditions, which did not mean that there was doubt about the genuine and deliberate exploitation of these people, who were very vulnerable due to their social situation.

However, the court did not take into account the aggravating circumstances of violence, threats or coercion, nor that of association, given that the public prosecutor had not proved that the defendants intended to form such a grouping. For the same reason, the defendants were acquitted of the charges of criminal organisation.

The court also held that the charges of keeping a house of ill-repute was proven. It was the main defendant who recruited the persons responsible for managing these businesses during his absence. It was also the main defendant who paid them for this management, even though he had laid down a number of rules (such as an equal distribution of the proceeds). The role of the defendants as managers was deduced from their own statements, and those of the main defendant.

The charges of instigating and exploiting prostitution were also deemed proven for all but one of the defendants.

Three defendants put forward the argument of insurmountable error. The main defendant argued that he was in a situation in which he thought he was acting legally, since he was not aware of the fact that he was carrying out an objectionable activity, given that he complied with the conditions imposed by the municipality. The court rejected this argument. After all, the investigation had shown that one of the establishments had never submitted an application for exploitation. Error, inferred from a limited check by the police or from an administrative, police or judicial oversight, cannot be regarded as insurmountable. Moreover, the municipal regulations cited by the defendant had nothing to do

with the management of houses of ill-repute, nor with the setting of prices or opening hours, but only concerned rules on the location and minimum equipment of prostitution parlours, and on communicating specific information.

The court ruled against four defendants in the first instance and in absentia against 11 other defendants.³⁸³ One of the defendants was fully acquitted of the charges of which he was accused. The court also acquitted the defendants of criminal organisation and advertising sexual services, for which they had been charged. The sentences, handed down for the other charges against the convicted defendants, were 12 months in prison for most of them, and a fine of €5,500, both suspended. For two of the defendants the fine was reduced to €2,750. The main defendant received a suspended sentence of 30 months' imprisonment, and a fine of €11,000.

Myria, who had initiated civil proceedings, received €1.

The second case, for which a joint investigation team (JIT) was set up, was heard by the **Correctional Court of Ghent on 31 March 2017**.³⁸⁴

In this case, several members of a Hungarian prostitute network were prosecuted for human trafficking for the purpose of sexual exploitation, recruitment and exploitation of prostitution. The allegations occurred in 2013-2014. The case got underway when the local police in Ghent received information from Western Union about conspicuous money transactions to Hungary. The police investigated the matter and found that there was a gang active in the Hungarian prostitution milieu in Ghent, where a number of girls were linked to specific bars and several Hungarian men. They also identified new conspicuous money transfers. One of the members was linked to an earlier pimping case. In addition, a report was received via Europol about a complaint from a husband of a Hungarian girl active in the Ghent prostitution milieu. In view of this information, the public prosecutor's office requested a more in-depth investigation. Cooperation with the Hungarian authorities was organised as part of a JIT (Joint investigation team). Several girls were questioned extensively. One of the girls had recorded a Skype conversation with one of the defendants. The police requested this Skype discussion to compare the content with the statements.³⁸⁵ Following an investigation,

³⁸³ Two of the defendant appealed against their convictions. The judgement was expected in September 2017.

³⁸⁴ Corr. Court East Flanders, subsection Ghent, 31 March 2017, Chamber G28m (appeal).

³⁸⁵ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

it also appeared that the various defendants had lured the Hungarian girls, who were in a dire financial and social situation at home, to Belgium with the sole intention of having them work there as prostitutes. They often made sure that young girls fell in love with them. They controlled the girls, and collected their money so that they had very little left for themselves. Violence was used against some of the girls. An international arrest warrant went out for the defendants, and several of them were arrested.

One of the defendants claimed during the proceedings that the evidence gathered in the context of the JIT was problematic, because:

- The JIT agreement specifies that the management of the investigation team is carried out by the investigating judge and public prosecutor on a collegial basis, without there being a defined division of responsibilities in the agreement.
- The purpose described in the JIT agreement is not in accordance with the statutory role of the investigating judge.

However, the Court ruled that the legal basis of the JIT procedure is laid down in the Convention of 29 May 2000 of the Council of the European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union and in the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (JIT). In Belgium, the transposition of the European legislation is provided for in the law of 9 December 2004 on international legal assistance in criminal matters. This law has subsequently been amended twice.³⁸⁶ According to the Court, these international legal instruments have no influence whatsoever on the division of responsibilities between the investigating judge and the public prosecutor.

In practical terms, it is required that the JIT agreement is signed by both the investigating judge and the public prosecutor, and that both act externally as representatives of the Belgian judiciary. This is because the JIT agreement pertains to both the element of investigation and prosecution. As such, both sign in relation to the area for which they are competent under Belgian law.

The court considered the charges to be proven almost across the board. The statements made by the victims were very detailed, nuanced, coherent, consistent and therefore credible. The financial investigation had also revealed a number of elements.

The court sentenced the defendants to prison sentences of between 1 and 2 years, and gave them fines of between €3,000 and €12,000.

2.2.7. | Ukrainian prostitution network via internet

In a case heard by the **Correctional Court of Brussels on 14 July 2016**, three defendants, including one woman, were prosecuted for their participation in a human trafficking network which recruited young Ukrainian and Moldovan women with false promises, to put them to work in Brussels.³⁸⁷ They were also accused of exploiting the prostitution of these young women. The prostitution took place in various buildings and the clients were prospected via various websites.

The investigation got underway following an intervention by the police in one of the apartments where the young women prostituted themselves. Several persons, including victims and the first defendant, were then questioned. Following these interrogations, an investigation was launched, which led to the second defendant as one of the people who had exploited the prostitution of the girls, and to the third defendant (who could not be arrested) as the leader of the network.

For the first defendant, the court held that the charges of exploiting prostitution had been proven (with limitations). Indeed, the defendant had first been recruited herself to work in prostitution, and then voluntarily joined the organisation. The defendant cited irresistible coercion³⁸⁸, fearing that if she refused to participate, her family (who was unaware of her activities as a prostitute) would see photographs of her. The court disputed this position by arguing that in the case in question, there was no irresistible coercion which completely negated the person's free will.

The rent of the apartment where she stayed was actually paid in cash with the income from prostitution.

Nonetheless, the court acquitted the defendant for the charges of human trafficking. It ruled that she had not recruited the girls with false promises, and had not confiscated their passports in order to force them into prostitution. Moreover, there were some contradictions in the statements made by the victims and witnesses.

³⁸⁷ French-speaking Corr. Court of Brussels, 14 July 2016, holiday chamber (definitive for two defendants and in absentia for the third defendant).

³⁸⁸ Article 71 of the Criminal Code.

³⁸⁶ Law of 30 December 2005 and Law of 15 May 2014.

The court ruled that there was doubt about the pressure exerted by the defendant to force the young women to prostitute themselves. Although several people stated that the defendant had confiscated the passports, the court noted that the criminal file did not contain any investigation element regarding the safe where it was deduced the passports were kept, and clearly not that the defendant would have withheld them.

The second defendant was also convicted of exploiting vice and prostitution, but was acquitted of the charge of human trafficking. He stated that he transported the prostitutes, who went from the airport or to clients, but the court noted that his role was much more important than he would admit. Elements of the case showed that he was also responsible for posting certain advertisements and recruiting a receptionist. He was also the one who paid the rent of the apartment where the first defendant stayed, in cash.

On the other hand, the court ruled that the charges of human trafficking and the various charges of recruitment and exploitation of prostitution against the third defendant, who was tried in absentia, were proven. He was in charge of the network. He was the one who had recruited the prostitutes, and for whom the two other defendants worked. He was also the one who provided the telephones to be able to respond to the advertisements he had placed on the internet and who came to collect the proceeds from the prostitution. In addition, he was already known to the Israeli police for prostitution and human trafficking back in 2006.

The prison sentences ranged from 2 to 4 years, some of which were suspended. The fines ranged between €14,400 and €108,000. The first defendant also received a special confiscation order, for an amount of €1,135. One of the victims, who initiated civil proceedings, was awarded moral damages of €7,500.

2.2.8. | Hotel used for sexual exploitation and drug trafficking

In this case, which was heard by the **Correctional Court of Charleroi on 27 February 2017**, two cases were merged.³⁸⁹ Six defendants were prosecuted in the first case, of whom five were charged for being in a criminal

organisation. The main defendant was prosecuted on various charges relating to prostitution, human trafficking and smuggling for the purpose of sexual and economic exploitation involving various young foreign women, slumlording, drugs-related offences and social criminal law. In the second case, there was only one defendant, who was tried in absentia. He was prosecuted for participating in a criminal organisation, for various charges relating to prostitution, human trafficking and smuggling, slumlording, drug-related offences and forgery.

The court held that all charges against the main defendant were proven, except for slumlording and bogus organisation of insolvency. This defendant managed a hotel, where prostitutes could go to perform their activities. The prostitutes had access to a room for 15 to 30 minutes, which cost them €10. The court ruled that the defendant derived abnormal profit from prostitution by demanding a price that was not per day, but per 'session' with a client, and for a very short period of time, without providing the corresponding services. The hotel was open 24 hours a day. The defendant in the other case was responsible for the night shift, while the main defendant took care of the administration and gave instructions about the clients and the visiting hours. He threatened and intimidated at least one prostitute, so that she would participate in group sex at the hotel. The hotel also served as a meeting point for drug trafficking and consumption.

The court held that the charges of human smuggling involving persons from countries outside the European Union was proven: by accepting them in his hotel, knowing that they did not have a residence permit, the defendant facilitated their stay in the national territory, and he did so with a view to acquiring rent (directly) or material benefit (directly), where the work was possible because the girls stayed on the premises. In addition, he made the victim, who initiated civil proceedings, work for an undignified wage, with the promise that she would get a contract.

The court ruled that there was indeed criminal organisation, and considered this charge proven for all but one of the defendants. The main defendant set up this organisation with a view to the joint management of the hotel, which was intended to continually exploit the prostitution of others and facilitate drug trafficking, so that the prostitutes continued to work there and could therefore better ensure the return on his business. Each defendant had a precise role: the main defendant led the group, the defendant of the second case was the effective manager in the hotel at night, another was responsible for the administration, another one supervised the hotel and was responsible for collecting the rent for the rooms made available to the prostitutes. Finally, another defendant

³⁸⁹ Corr. Court Hainaut, subsection Charleroi, 27 February 2017, 6th chamber. (one defendant, who had a limited role, appealed regarding legal costs). See also above this section, chapter 2 (case studies), point 1.2 (economic exploitation).

also had the task of policing the hotel and chasing away dealers who were no longer allowed to stay there.

The court also held that all charges against the defendant from the second case were proven. This defendant was responsible for running the hotel at night, except for the management of the slumlords.

As the reasonable time limit had elapsed, the two main defendants were sentenced to two years (suspended) and three years in prison respectively. The other convicted defendants received suspended sentences.

The two main defendants were ordered to pay €3,000 to the civil party.

2.3. | Economic exploitation

2.3.1. | Construction

In this sector, court rulings were given in several cases. The defendants were sometimes acquitted.

In a first case, heard by the **Correctional Court of Dendermonde on 20 May 2016**, the defendant was prosecuted for human trafficking for the purpose of economic exploitation (also: exploitation through work).³⁹⁰

The allegations occurred between 2014 and 2015. The case came to light when the police found the victim crying in front of their offices. The Pakistani victim explained, in poor English, that he was working for the defendant. The defendant had a construction company carrying out renovation works. The victim worked for him for €250 per week, for 6 working days of 8 to 10 hours. The victim was paid 3 or 4 times. After that he did not receive anything. Rents were also deducted (€250 per month) for a property that was declared uninhabitable. The victim was employed in breach of the basic rules of well-being at work. He was obliged to work in the cold and rain during the winter months without any protective or safety clothing. The defendant also used threats, coercion and violence. The victim was staying illegally in Belgium and the defendant threatened to report him.

The defendant denied the allegations but the court ruled that the charges of human trafficking with aggravating circumstances was proven by the elements of the investigation (exploration of the Facebook profile³⁹¹, GSM analysis, photos from the GSM, results of house searches, etc.). The defendant was sentenced to 1 year's imprisonment and a fine of €6,000. The victim initiated civil proceedings and received damages of more than €8,000 for the material and moral damage suffered.

Another case, heard in absentia by the **Correctional Court of Leuven on 15 November 2016**, concerned the exploitation of Romanian and Bulgarian workers.³⁹²

The allegations occurred between 2010 and 2012. The defendant in this case was the manager of a construction company. In addition to various breaches of labour law and social law, he was also prosecuted for human trafficking with the aim of having work carried out in conditions below human dignity, and aggravating circumstances in which he abused the vulnerable situation of the victims, made use of threats, and that his activities were a matter of course. The victims were primarily Romanians and Bulgarians who did not speak Dutch, and who were unfamiliar with the social law and residence procedures. They were obliged to work for long periods more or less continually, and without leave. The defendant did not pay them any wages, or wages that were disproportionate to the activities, and of which a part was also deducted for rent and other costs. They stayed in caravans or a bus on the site, sometimes without water and electricity. Medical care was refused in the event of a workplace accident. The allegations came to light after a trade union filed a complaint concerning one of its members at the end of 2011. In 2012, the federal judicial police, together with the social law enforcement services and the Social Inspectorate, carried out an on-site inspection. As a result, an investigation into human trafficking was launched. Over the course of several years, an intensive and extensive investigation was conducted which revealed a whole series of abuses. The court considered almost all the facts to be proven. The court was concerned by the fact that, although the defendant had been barred from carrying out his professional activity for 10 years as of early 2011 due to past allegations, he nevertheless continued his activities.

In October 2012, the defendant's company was declared bankrupt.

³⁹⁰ Corr. Court East Flanders, subsection Dendermonde, 20 May 2016, Chamber G29w (definitive).

³⁹¹ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

³⁹² Corr. Court Leuven, 15 November 2016, 21st chamber. (in absentia).

The defendant already had a criminal record for similar offences and had already received prison sentences. He was sentenced in absentia by the court for the various offences to two prison sentences of two years, and fines totalling more than €570,000. He was once again barred from professional activity for 3 years and deprived of his rights for 10 years.

Bogus self-employment

One case heard by the **Correctional Court of Tongeren on 9 February 2017** related to bogus self-employment.³⁹³

Eight defendants were prosecuted in this case, including two companies, for allegations of human trafficking for the purpose of employing people in conditions below human dignity, which took place between 2011 and 2015. They were also prosecuted for social law offences and money laundering, among other things.

Myria and five victims initiated civil proceedings. In total there were 19 known victims, but according to the criminal file there were likely to have been more over the years.

The main defendant used his companies with the help of the other defendants to employ people from Central and Eastern Europe in the construction sector. The first company existed until mid 2014, and the second company from mid 2014 until 2015. The victims were deceived into thinking that they had employee status, when in fact they were working under bogus self-employment status, in the context of the free movement of services within Europe. The recruitment took place in their countries of origin, especially Bulgaria and Bosnia, via radio, newspaper and the internet.³⁹⁴ By working with bogus self-employed persons who were posted to Belgium, both the residence permit and minimum social conditions could be circumvented. In Belgium, the people were employed as cooperating partners at one of the two companies. They were registered with the social insurance fund with the intervention of the various defendants. They went along with the victims and translated for them. They ensured that they did not know the true facts of their status. Subsequent correspondence from the social insurance fund was taken away from them.

The case came to light, among other things, due to a collective protest by employees in early 2014, during which

even the embassy intervened and advised them to lodge a complaint with the police. In addition, an employee of the social insurance fund also became suspicious and alerted the National Social Security Office of her suspicions of bogus self-employment.

The workers were only paid €8 to €10 per hour and sometimes had to work more than 10 hours per day, with very short rest breaks, for 6 days out of 7, while the minimum wage in the construction sector was €14 per hour. The company was not responsible for the social security contributions, which had to be paid by the labourers themselves. They were unaware of this, given that they did not know that they were working under the status of cooperating partner, and they consequently accumulated substantial social debts. Moreover, they did not have social insurance, nor occupational accident insurance, etc. They were not paid in the event of bad weather or other circumstances. In addition, part of their wages was withheld as rent (€225 - €250) and travel expenses. The main defendant also paid out wages in a highly irregular and opaque manner. A new worker had to work the first 2 weeks for free during the 'trial period'. Because they were self-employed, they were not entitled to overtime pay, holiday pay, mobility allowance, etc. There was clearly a hierarchy within the structure. The main defendant was in charge and gave the orders. Several other defendants acted as foremen, but were clearly aware of the exploitation.

The court considered the statements made by the victims to be very clear and precise and therefore credible. Since they did not understand any Dutch, and also had a family to support in their country of origin and had previously been unemployed there, they were in a vulnerable position.

Both companies were declared bankrupt in 2014 and 2016 respectively. From July 2014, the activities of the first company were simply continued by the new company, with the entire fraudulent construction continuing in the same way.

The court considered most of the facts to be proven. It found the five defendants guilty of human trafficking with the aggravating circumstance that the vulnerable position of the victims had been abused, the offences were a matter of course, and they could be described as an association. However, the court did not find that subterfuge, violence, threats or any form of coercion had been used.

The first five defendants were sentenced to prison sentences of between 18 months and 3 years. Fines of between €81,000 and €336,000 were handed down. A sum of €56,400 was

³⁹³ Corr. Court Limburg, subsection Tongeren, 9 February 2017, 9th chamber. (appeal).

³⁹⁴ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

ordered to be confiscated. The companies themselves were acquitted because they had not actively participated in the exploitation, but were merely used as an instrument for organising economic exploitation.

Myria received symbolic damages of €1. The victims received moral damages of €500 and provisional material damages of €1.

The chain of subcontractors

An important case concerning a system of fictive subcontracting in the construction sector, heard at the first instance by the Correctional Court of Brussels on 30 October 2014,³⁹⁵ was re-investigated by the **Brussels Court of Appeal on 20 June 2016**.³⁹⁶ Illegally-resident Brazilian labourers who had travelled to Europe were mainly recruited in Belgium to be deployed on construction sites across Europe, as part of a complex chain of subcontractors.

Eight defendants (natural persons) and three companies were prosecuted for varying degrees of involvement in a criminal organisation, forgery and the use of forged documents (fake employment contracts and fake identity documents), illegal employment of foreign workers without a residence permit, and various violations of social criminal law which ensued, including non-payment of wages, and non-payment of social security contributions to the National Social Security Office (RSZ). Five of them and two companies were prosecuted for human trafficking for the purpose of economic exploitation. They were charged in Belgium and other European countries with recruiting multiple illegal workers to work in degrading conditions. Two labourers initiated civil proceedings.

One of the defendants (a natural person), who was convicted at the first instance of human trafficking, criminal organisation, various charges relating to social criminal law, and another defendant who was convicted of forgery, both appealed. None of the companies appealed their conviction.

The court upheld the conviction of the first defendant at the first instance, but acquitted the defendant who was prosecuted for forgery. It also upheld the civil measures of the judgement in the first instance.

Building renovation companies

Again in Brussels, the **French-speaking Correctional Court of Brussels**, in its **judgement of 24 November 2016**, upheld the charges of human trafficking and various violations of the Social Penal Code against a defendant who exploited three Tunisian labourers in his building renovation company.³⁹⁷ The men worked on several construction sites for an absurdly low wage (€800 for four months of work) and were housed in degrading conditions.

The Court noted that on the basis of the corresponding detailed statements, which were corroborated by various material elements, they were able to conclude with certainty that the defendant took advantage of the precarious residence situation of these labourers to recruit them in degrading conditions: an absurd wage, which was insufficient for decent housing or food; unsanitary accommodation without hot water, toilets and a place to cook and wash; expulsion from the place of residence if the employer so decided; and immediate dismissal of the labourers without any notice period or compensation.

The defendant was given a 10 months suspended sentence and a fine of €1,500 (€8,250 with the multiplication factor).

Two of the three labourers initiated civil proceedings. They were awarded moral damages of €2,800 and provisional material damages of €3,000 for damages estimated at more than €8,000.

In another case, the **Court of Appeal of Liège** upheld the convictions handed down at the first instance by the Correctional Court of Namur on 15 December 2015 against the two Chinese defendants and their renovation company.³⁹⁸ They were prosecuted for human trafficking and smuggling offences, assistance with illegal residence, and various violations of the Social Penal Code. They were accused of having provided accommodation to, and exploiting, two illegally-resident Chinese citizens, in the context of renovation work on restaurants.

In its **judgement of 8 December 2016**, the court upheld the convictions handed down at the first instance for all the charges, for all three defendants.³⁹⁹ The Court ruled that the allegations of human trafficking were clearly proven. The defendants made the two labourers work on their behalf on their own initiative, through an intermediary

395 French-speaking Corr. Court Brussels, 30 October 2014, 69th chamber. See 2015 Annual Report on Trafficking and Smuggling of Human Beings, *Tightening the Links*, p. 113. The judgement was published on the Myria website: www.myria.be.

396 Brussels, 20 June 2016, 11th chamber.

397 French-speaking Corr. Court Brussels, 24 November 2016, 59th chamber (appeal).

398 Corr. Court Namur, subsection Namur, 15 December 2015, 12th chamber. (not published).

399 Liège, 8 December 2016, 6th chamber.

and while they were aware of the labourers' residence situation. The working conditions were degrading: 12 working hours a day, without being registered and without social insurance, a ridiculously low wage (€5/hour), work sites which did not comply with social legislation and, according to the investigators' findings, appalling accommodation (no beds, no heating, minimum sanitary facilities, forced to make improvised beds with concrete blocks).

In addition, the court ruled that the charges of human trafficking did not necessarily mean that the defendants had set up a network enabling foreigners to enter Belgian territory illegally, with a view to obtaining material benefit. This charge also refers to the illegal residence of these foreign nationals in Belgium, also with a view to obtaining material benefit. In this case, the material benefit was the profit obtained by cheaply employing foreign nationals.

In general, the court upheld the prison sentences and fines handed down at the first instance, with partial suspension, as well as the civil convictions. In the first instance, the court had awarded final amounts of €5,000 for moral damage and €10,000 for material damage.

Palette company

In a file settled by the **Correctional Court of Turnhout on 18 January 2017**, several defendants were prosecuted for human trafficking for the purpose of economic exploitation, and for slumlording.⁴⁰⁰ The main defendant was the manager of a pallet factory. The company was also prosecuted as a legal person. The allegations date from 2009-2011. Both Payoke and Myria, as well as various victims, initiated civil proceedings.

The case came to light after the natural death of a Polish employee at the pallet factory. The defendants had already come under police scrutiny in the past, following a complaint from Polish workers. A judicial investigation was launched. In the meantime, 13 Bulgarian labourers filed a complaint against the company. The prosecuted firm repaired pallets on behalf of other companies. To this end, it used subcontractors employing posted Polish, Bulgarian and Romanian workers. These subcontractors were Polish and Bulgarian companies. One of these companies turned out to be a Bulgarian 'letterbox' company without substantial activities in Bulgaria, and was set up purely to circumvent social security and labour law obligations in Belgium. The labourers were lured to Belgium with good wages, while in reality they earned

only €400 to €600 per month, depending on the number of repaired pallets, which equated to €3 per hour. Rent was also deducted from their wages. Officially, according to their employment contracts, they only earned the Bulgarian minimum wage of €135. The remainder was paid out 'off the books' in order to also circumvent Bulgarian social security. The workers had to work very long hours, 12 hours a day, 6 days a week, in very poor conditions, and without protective clothing. They were housed in very poor conditions. One of the houses was even declared uninhabitable, due to the risk of electrocution, among other things. The company rented this accommodation to the Bulgarian company for €1,000 per month. Sometimes there were 15 people per house. If they fell ill, they were not paid. One of the labourers was given a choice when he became incapacitated for work: work with a broken leg or go back to Bulgaria. He was forced to choose the first option. Several falsified secondment documents were also found.

The defendants were found guilty and sentenced to prison sentences of between 18 months and 4 years, and were handed heavy fines. Large sums of money were also confiscated. The victims received moral and material damages. Payoke and Myria were each awarded €1 in damages.

Acquittals for human trafficking (regardless of the social fraud)

Finally, two judgements made in Ghent led to the acquittal of the charge of human trafficking.

The first judgement was made on **4 May 2016 by the Correctional Court of Ghent**.⁴⁰¹

In this case, several defendants, including two legal entities, were prosecuted for a series of offences, including various social offences and human trafficking for the purpose of economic exploitation. Various inspections of construction sites between 2011 and 2013 found several people, mainly of Bulgarian nationality, working there. The persons were questioned about their employment status. They often worked without valid papers, and others were employed as cooperating partners at the two companies. However, it appeared from the elements they cited that they did not have a say in the companies, they worked under the authority of the defendants, they were not able to determine their own work rhythm, and they did not properly understand the status under which they were employed, etc. The court therefore ruled that they were employed as bogus self-employed persons, and that their

⁴⁰⁰ Corr. Court Antwerp, subsection Turnhout, 18 January 2017, chamber TC1 (contestation by a number of persons convicted in absentia and appeal of a defendant whose conviction had inconsistencies).

⁴⁰¹ Corr. Court East Flanders, subsection Ghent, 4 May 2017, Chamber G29w (appeal).

employment relationships needed to be reclassified, since they were in fact employees. However, no valid Dimona declarations had been made and the persons in question did not have the required working and residence papers. One of the individuals filed a complaint with the Social Inspectorate for economic exploitation. He was in fact employed without any status or contract, and he did not receive his wage. He had apparently worked for the main defendant for several months and only received €900 in this respect. The labourer initiated civil proceedings.

As regards this charge, the court ruled that although the labourer's statements seemed credible, they could not be sufficiently corroborated by objective evidence in the criminal file. The court did however rule that the defendants were guilty of organising social fraud. It considered that various violations of social law had been proven. Moreover, the defendants were not novices.

They were sentenced to between 6 months' and 2 years' imprisonment, and were handed fines. The two legal entities were also handed fines. The victim received moral damages of €500 and material damages of €12,200, based on calculations by the Social Inspectorate.

The second case, for which the judgement was handed down by the **Correctional Court of Ghent on 1 February 2017**, related to posted workers.⁴⁰²

In this case of economic exploitation, four defendants were prosecuted for human trafficking offences for the purpose of economic exploitation, social and labour law offences, illegal employment of foreign workers, and slumlording. Two of the defendants were companies.

The investigation started after the local police carried out an inspection of a site. The labourers they found were Ukrainian nationals with Polish visas. The persons were found not to be in compliance as regards the formalities, including the A1 forms (posted workers) and the Dimona or Limosa notification. The police learned that the individuals were working for a Polish company subcontracted by a Belgian company. Based on this information, the Prosecutor attached to the Employment Courts decided to investigate the employment of Ukrainian and other foreign workers through surveillance. It appeared that numerous foreign workers worked and stayed at a certain address. A check revealed that they were illegally resident in the country, and were all housed together in different premises, sometimes with 10 to 12 people per house. They paid €200 per bed per month. The

Housing Inspectorate found that there was no electricity or hot water present. The gas supply did not work, and there was a serious risk of electrocution.

They declared being salaried labourers. They were recruited through word-of-mouth advertising, or through the internet,⁴⁰³ and had not signed any documents. They did not have the necessary documents to work and did not know whether they were socially insured.

In this case, the manager of the Belgian company was prosecuted as well as the Polish manager of the Polish company, as were both of the companies.

The investigation was conducted on the basis of house searches, surveillance, various statements from the defendants, employees and bystanders, etc.

On the matter of guilt, the court ruled that the Polish company was indeed a 'letterbox' company with the aim of evading payment of Belgian social security contributions (and wage conditions). Both defendants had created this construction to illegally employ Poles and Ukrainians. From various elements (statements made by the employees, adjusted invoices, the fact that the Polish company had not been active in Poland for five years, etc.), the court concluded from the case that the two companies were essentially one entity, and were only separate entities on paper.

As regards the labour relations of the construction workers, the court ruled that the principle of 'fraus omnia corrumpit' (fraud negates everything) was applicable. Since the Polish company was a fraudulent construction, the agreements and completed A1 forms were also drawn up with fraudulent intent. Since this principle is public policy, all its legal effects are also fully neutralised. The fraudulent application of the European posting of workers directive was therefore completely obviated.

The court also examined the cumulative criminal responsibility of the company as a legal entity and the defendant as manager. The offences were committed on behalf of the company and the violations also generated an economic advantage for the company. Even the legal entity has its own criminal liability. The other defendant and his Polish company were seen as co-perpetrators.

However, the court did not pursue the charge of human trafficking. The court stated that this was a factual assessment. The willingness of the victims to work in

⁴⁰² Corr. Court East Flanders, subsection Ghent, 1 February 2017, Chamber G29w (appeal).

⁴⁰³ See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

these circumstances, and their treatment and income in the country of origin, did not play a role in this respect. Although the wages were very low, the court did not consider that it had been proven that the victims were working in inhuman conditions. It could not be proven that the workers had no freedom to come and go, that their will was limited by any form of coercion. According to the court, the investigation had produced too few factual elements to be able to invoke human trafficking. The defendants were therefore acquitted of this charge.

However, they were convicted of slumlording. Among other things, the court referred to a finding by the Social Inspectorate and the Housing Inspectorate that the sleeping accommodation was below human dignity. It considered that the precarious administrative, social and illegal situation in which the persons concerned found themselves had been abused. The defendants were sentenced to 8 months' imprisonment and were handed fines, both of which were suspended. One of the houses in which the labourers stayed was ordered to be confiscated.

2.3.2. | Hotel and catering

In a judgement of 29 June 2015, which was covered in the previous report, the Correctional Court of Namur convicted two defendants, a father and son, and their company, of human trafficking and smuggling, assistance with illegal residence, and various violations of the Social Penal Code.⁴⁰⁴ They exploited multiple Chinese workers in their restaurant.

The case got underway following the hearings, conducted by the Social Inspectorate of Liège, of the two employees who had initiated civil proceedings and who were staying in a specialised reception centre. The employees explained how they had ended up in Belgium via payable intermediaries in China. One of them had come here to study, but was forced to work to repay the loans taken out by his family to finance his trip to Belgium. He worked as a cook in the restaurant of the defendants. The working and living conditions were appalling: he ate what the boss gave him, or leftovers from customers, and worked 12 to 14 hours a day, 6 days a week, for a salary of around €550 per month.

According to the court, this case did indeed involve the provision of accommodation for employment in degrading conditions, but the **Court of Appeal of Liège** took a

different view. In its **judgement of 10 November 2016**, the court ruled that the elements collected during the criminal investigation were insufficient to corroborate the complaints of the two workers, because they were not verifiable (timetables and working conditions, quality of food, threats or aggression).⁴⁰⁵ On the basis of the searches in the restaurant and in another building of the defendants, it was not possible to determine whether or not there was heating in the room, nor could the passports of the plaintiffs, which they claimed had been confiscated, be found. The witnesses interviewed (employees who replaced the victims after their departure) described relatively different working conditions, in particular with regards to wages (which would fluctuate around €1,100 or €1,200 per month, in addition to accommodation and food). The court ruled that the elements of the criminal file were not sufficient to substantiate the actual working conditions and mistreatment that the civil parties had complained about, and acquitted the defendants of human trafficking.

The court also acquitted the defendants of the charge of human smuggling and only considered the charge of assistance with illegal residence as proven. Indeed, the defendants helped the plaintiffs with their residence by providing them with accommodation and employment. However, the court ruled that the elements of the case did not sufficiently prove that the defendants had recruited individuals without a residence and work permit in order to obtain a higher material benefit than if they had employed individuals 'off the books'.

Nonetheless, the Court of Appeal upheld the convictions handed down in the first instance regarding the violations of the Social Penal Code. It replaced the sentences given to the two natural person defendants in the first instance (specifically the prison sentences) with fines, and reduced the fine (suspended) handed down to the company.

The court ruled that it had no jurisdiction to decide on the demands of the civil parties, based on the charges of human trafficking and smuggling, taking into account the acquittal of the defendants.

On 4 May 2016, the Correctional Court of Bruges delivered a judgement in the same sector.⁴⁰⁶

Two defendants were prosecuted in this case, including a company, for human trafficking for the purpose of economic exploitation with aggravating circumstances, and human smuggling with aggravated circumstances, as well as various social law offences.

⁴⁰⁴ Corr. Court Namur, subsection Namur, 29 June 2015, 12th chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 174. This judgement is also available on the Myria website: www.myria.be.

⁴⁰⁵ Liège, 10 November 2016, 6th chamber.

⁴⁰⁶ Corr. Court West Flanders, subsection Bruges, 4 May 2016, Chamber B17 (appeal).

The defendant operated a restaurant through a company, which was the second defendant in this case. The case came to light in 2011 during an inspection by the Social Inspectorate, the Labour Inspectorate, and the federal judicial police, in the restaurant where the victim was found. A criminal file was drawn up partly on the basis of his statements.

The court examined the allegations of human trafficking, specifically whether or not the victim was employed in conditions below human dignity. According to the Court, (translation) "*the notion of human dignity refers to a quality of life which should be protected by respect for others, and implies a human existence in which basic provisions are ensured*". Based on the information in the case, it appeared that the victim continued to be employed after his right of residence had expired, in appalling conditions. Due to his residence situation, the victim had no choice but to endure this unilaterally imposed situation. He received no remuneration whatsoever, was housed in appalling conditions above the restaurant, was not entitled to social security or professional accident insurance, and 'was allowed' to eat the leftover food of customers.

The court also held that the charge of human smuggling was proven in the sense that illegal residence was facilitated, and that there was a profit motive, profits which were substantial for the restaurant, since the victim was not paid any remuneration. The charges of the social criminal offences were also upheld.

The allegations were attributable to both the main defendant and his company. According to the Criminal Code, a natural person can be convicted together with a legal person if he or she knowingly and intentionally committed the offences, as was the case here. The offences were also committed within the company's corporate purpose, namely the operation of the restaurant. The company had since been declared bankrupt.

The main defendant already had a criminal record with similar offences and was sentenced to an effective 18-month prison sentence and a fine of €5,500. The company, which had since been declared bankrupt, was ordered to pay a fine of €16,500, which was partly suspended. Various amounts were ordered to be confiscated, namely €18,108 and €12,757.

In this case, Myria and the victim, who had obtained the status of victim of human trafficking, initiated civil proceedings. Myria was awarded damages of €1,250. The victim was awarded moral damages estimated at €3,700 and the confiscated sum of €18,108 was fully awarded to him, namely the salary advantage that the defendant received as a result of exploiting the victim, calculated

according to the inspectorates, and the sum of €12,757, which was the amount the inspectorate considered to equate to the evaded social security contributions.

2.3.3. | Horticulture

In a case of economic exploitation in the horticulture sector heard by the **Correctional Court of Mechelen on 10 February 2017**, the manager and his wife were prosecuted for human trafficking and social law offences.⁴⁰⁷

The defendants apparently exploited at least 39 people of Romanian origin in their horticultural business.⁴⁰⁸

The victims were paid only €6 per hour and had to work long hours, even on Saturdays, Sundays and public holidays. They worked more than 11 hours a day or 50 hours a week, and did not receive overtime pay. They were often treated very brutally by the defendant, spat at and physically pushed around. For a large part of the time they were even in the presence of an aggressive muzzled guard dog. Hefty penalties were imposed for trivial incidents, which were then deducted from their wages. They were housed in appalling conditions, and their rent was deducted from their wages. The social facilities provided to the workers were also inadequate and soiled. There was no provision for appropriate work clothing.

The court considered the facts to be proven. Both the 'recruitment' and 'housing' aspects of Article 433*quinquies* of the Criminal Code were in evidence. The court ruled that the conditions were an affront to human dignity. The notion of 'human dignity' is related to the core notion of labour law, namely that employees should not be treated as mere commodities (*labour is not a commodity*). The notion has a highly prescriptive content which is evolutionary and progressive in nature, and must be interpreted in the context of what is generally deemed to be (un)acceptable at the time of the facts. In this case, according to the Court, the lower limit of employment in conditions which are compatible with human dignity was exceeded.

The court sentenced the defendants to 18 months' imprisonment and fines of €120,000, both of which were suspended. Large sums were ordered to be confiscated.

Myria initiated civil proceedings and was awarded €1 in damages.

407 Corr. Court Antwerp, subsection Mechelen, 10 February 2017, (appeal).

408 Namely, a tomato farm.

A case involving a mushroom producer, which had previously been heard by the Correctional Court of Kortrijk⁴⁰⁹ and covered in a previous report⁴¹⁰, was heard again by the **Court of Appeal of Ghent on 19 January 2017**.⁴¹¹

In the first instance, the court convicted 10 defendants, including several companies, for human trafficking for the purpose of economic exploitation, slumlording and various violations of social legislation. The defendants mainly employed Bulgarians in a mushroom farm in conditions which were an affront to human dignity. One minor was also employed.

As regards human trafficking offences for the purpose of employing people in conditions which are an affront to human dignity, the Court of Appeal believed that the constituent elements of the basic offence were present. This expands further on the notion of 'human dignity'. According to the court, to violate this concept is to lower the human quality of a person or group. The quality of being human has a physical and mental capacity. Physical capacity refers to: moving freely, the physical capacity to meet one's essential needs in a free and equal manner. Certain working conditions which ensure that workers are no longer able to meet their essential needs in a free and equal manner may be incompatible with human dignity. The court gave the example of a wage which was lower than the minimum wage. The norm in the country of origin is irrelevant in this respect, but Belgian employment conditions are relevant. The court upheld the judgement in this sense, but gave additional justification as regards the various indications provided by the public prosecutor's office: the wages which were far below the salary scale, the appalling and even life-threatening conditions, the illegal employment, the problems with employment contracts, the failure to pay wages regularly, the long hours in succession without extra pay or sufficient rest period.

The criminal offence of slumlording, namely that the rented property was an affront to human dignity, was also upheld by the court. The court provided additional justification regarding the indications of slumlording.

In addition, the court also examined the confluence of responsibilities between the natural persons and the legal entities. It is not ruled out that there is an accumulation of criminal liability on the part of the employer (natural or

legal person) and the appointee or agent (natural person) when it appears de facto that they have both committed an error. The trial court needs to assess this in concrete terms. The natural persons can be held criminally liable if they could have used 'any influence' to prevent or impede the violations. In addition, the natural person must have 'knowingly and intentionally' committed the offence. On the other hand, the legal person may be held criminally liable if the offence committed by the natural person is linked to a shortcoming in the structure of the legal entity. The court held that the facts were intrinsically linked to the accomplishment of the company's objectives, and that these offences were therefore committed on its behalf.

The main defendants were acquitted for several social criminal offences since the court found that they had not been sufficiently proven.

The court reformed the sentences, but clearly indicated that the sentences would have been harsher if the reasonable time limit had not been exceeded.

The defendants were fined between €625 and €2,000, which was partly suspended. A confiscation was also ordered, which was also partly suspended.

2.3.4. | Bakery

In a judgement of 9 February 2016, which was covered in the previous report, the Correctional Court of Namur convicted two defendants, who were Turkish brothers, of human trafficking and smuggling, as well as assistance with illegal residence and various violations of the Social Penal Code, involving multiple workers whom they exploited in their bakery and their shop which sold bakery products and groceries.⁴¹² In addition, the defendants had the upper floor of an uninhabitable house in their possession, which they made available to the civil parties for a monthly rent of €400.

Four victims, including two underage beneficiaries of a female worker who had died, initiated civil proceedings.

In its judgement of 8 December 2016, the Liège Court of Appeal upheld, in general terms, the judgement delivered at the first instance, with the exception of the aggravating circumstance of abuse of vulnerability.⁴¹³ As regards human trafficking, the court stressed that it

409 Corr. Court West Flanders, subsection Kortrijk, 16 February 2015, 10th chamber. This judgement is also available on the Myria website: www.myria.be.

410 2015 Annual Report Trafficking and Smuggling of Human Beings, *Tightening the Links*, pp. 116-117.

411 Ghent, 19 January 2017, 3rd chamber.

412 Corr. Court Namur, subsection Namur, 9 February 2016, 12th chamber. See 2016 Annual Report on Trafficking and Smuggling of Human Beings: *Beggars in the hands of traffickers* p. 175-176.

413 Liège, 8 December 2016, 6th chamber.

was irrelevant that the workers were recruited by the defendants after they had come to Belgium voluntarily. The working conditions were an affront to human dignity: the workers worked around 16 hours a day, 7 days a week, for wages of around €2.50 per hour, and were housed in precarious conditions. The court ruled that the workers' statements were credible, unlike those of the defendants.

However, the court reduced the prison sentences handed down at the first instance, and established the moral damages of the civil parties at €2,000.

2.3.5. | Printing business

In a judgement, delivered in absentia, of 11 February 2015, which was covered in a previous report, the French-speaking Correctional Court of Brussels convicted a defendant for human trafficking for the purpose of economic exploitation, as well as various charges relating to social law violations. The defendant exploited various illegally-resident Moroccan nationals in his printing business.⁴¹⁴ Some of them came from a reception centre for refugees. The working hours and rhythm were gruelling (7 days a week and 10 to 14 hours a day), the wages were ridiculously low (€5/hour) and the workers stayed on site in very precarious conditions (they slept on cardboard). They were locked up in the workshop without views to the outside world and were insulted and threatened. The civil parties were awarded substantial material damages (between €6,000 and €13,000), and they each received €3,000 in moral damages.

The court heard the case again, **on objection, on 27 June 2016** and partially amended the original judgement. The defendant was acquitted of the charge of human trafficking and only the violations of the Social Penal Code were upheld.⁴¹⁵

Among other things, the court ruled that this charge was based solely on the workers' statements made more than two years after they had worked for the defendant; that it was unable to assess the credibility since the workers had not appeared in court and were not represented to confirm their statements; that no substantive determination could be made to assess the statements objectively, and that no confrontation between the defendant and the plaintiffs had been considered. The court ruled that there was doubt in favour of the defendant.

414 French-speaking Corr. Court Brussels, 11 February 2015, 49th chamber. See 2015 Annual Report Human Trafficking and Smuggling, *Tightening the Links*, p. 121. The judgement was published on the Myria website: www.myria.be.

415 French-speaking Corr. Court Brussels, 27 June 2016, 89th chamber.

2.3.6. | Riding school - stud farm

On 21 November 2016, the Correctional Court of Liège⁴¹⁶ heard a case involving a stud farm.

Two owners of a riding school (one man, the managing director, and one woman, the manager) and their company, which owned a riding school, were prosecuted for human trafficking, smuggling and various violations of the Social Penal Code (some of which also related to Belgian workers). They were accused of having illegally employed and exploited two Moroccan workers. The workers took care of the horses and the general maintenance of the riding school.

The case came to light as a result of information from the police, according to which two illegally-resident persons were apparently employed by the defendant, who was the operator of two stud farms. They were apparently housed in precarious conditions, and earned €500 per month.

One of the two workers, who had no documents, was questioned on the car park of a supermarket. During his questioning, he stated that he had been living illegally in Belgium for five years. He also stated that he had found refuge in a riding school where he received room and board from the owners, the two defendants, in exchange for carrying out chores. The police visited his residence, of which the room resembled a small apartment.

Then police made simultaneous visits to the two riding schools. The worker was again questioned, and contradicted a number of the points of his original statement. For example, he stated that he had replied to an internet job offer for a stable hand. The e-mail address of the contact person was that of the female defendant.⁴¹⁷ He also met the second defendant, and it was agreed that he would start a trial period, which was positive. It was agreed that he would receive €200 per week. Since he had an increasing number of jobs to do (cleaning out the boxes, feeding the horses, putting them out in the meadows, maintaining the tracks, repairs, painting, cleaning the cafeteria during competitions, etc.), he suggested that his brother could come and work there, for the same wage. However, the defendants refused and offered him €100.

The court ruled, on the basis of various elements, that there was no doubt about the employment of the two workers. They made precise, detailed statements about the work site, the organisation and the conditions. These statements were substantiated by the many other objective elements in the criminal file (in particular a noticeboard

416 Corr. Court Liege, subsection Liege, 21 November 2016, 18th chamber (appeal).

417 See also Part 2, Chapter 1, point 1 (the role of social media and the internet in human trafficking).

showing the tasks they had to perform in one of the two stud farms, text messages between the worker and the defendant, comments by the defendant on the Facebook profile of the workers⁴¹⁸ and interviews with witnesses).

The court held that the various violations of the Social Penal Code involving these workers and against the Belgian workers, who were working 'off the books', were proven. It also considered that both the two natural persons and the company were criminally liable.

However, the court ruled that the conducted investigation had not sufficiently demonstrated the elements of human trafficking and acquitted the defendant of this charge, giving them the benefit of the doubt. The court ruled that the agreed wage (even if it was not fully paid or did not correspond to the applicable wage scales), together with the fact that the workers were not registered with the social security system, that they were employed without having a residence permit or work permit, proved that the defendants intended to circumvent the rules on social legislation. This might have been an indication of human trafficking, but the facts were not in themselves sufficient to prove the charge of human trafficking. The court also ruled that the number of working hours performed could fit the context, and that the house in one of the stud farms was sufficiently equipped.

The court also acquitted the defendants of charges of human smuggling on the grounds of benefit of the doubt, considering that it was not sufficiently demonstrated that smuggling had been set up in order to obtain a material benefit intended to enrich the defendants at the expense of the victim or his family.

The defendants were sentenced to suspended fines.

The moral damages claimed by the two Moroccan workers, who had initiated civil proceedings, based on the charges of human trafficking and smuggling, were rejected, as the defendants were acquitted for these two charges.

However, the Court did grant them final material damages of €6,050.98 and €9,343.09 respectively.

2.3.7. | Sorting workshop for second-hand clothes

In a **judgement of 24 November 2016**, the **Correctional Court of Mons** held that the charge of human trafficking for economic exploitation and various violations of the Social Penal Code against a Syrian defendant, who was a repeat offender who exploited many foreign workers of various nationalities in his sorting workshop for second-hand clothes, was proven.⁴¹⁹ The work consisted of sorting clothes and stacking bales of clothing weighing between 40 and 50 kg.

The case came to light following a check carried out by the police on a public holiday on persons who were leaving the offices of the defendant's company. Surveillance was then carried out, from which it was ascertained that people entered the building in the morning, but did not leave. This prompted another inspection in the vicinity of the commercial zone, a new surveillance operation, and finally a house search. The persons who were found in situ, including several illegally-resident persons, were questioned. One of the workers, who initiated civil proceedings, made a detailed statement to the investigators. He explained that the defendant employed both illegally and legally-resident persons. The illegally-resident persons were forced to work from 10.00am until 10.00pm, i.e. 12 hours a day, with a break of 15 minutes to eat, for a daily wage of €30, which equated to an hourly wage of €2.50. The electrical heating of the workshop was insufficient and in winter it was cold in the building.

During the search in the workshop, it was found that the sanitary installations were broken, the heating was inadequate and water seeped into the building.

The court ruled that the denials of the defendant were not credible and disproved by the objective elements of the case (the surveillance, checks, findings during the search regarding the state of the premises and the nature of the work carried out).

The court clearly considered the charge of human trafficking to be proven (except for one worker, who was a relative of the defendant). It was assumed that the defendant, who was the lawful manager of the company, and responsible for recruiting the workers and paying wages, had hired illegally-resident persons. The court also ruled that the working conditions were an affront to human dignity, taking into account a number of elements:

⁴¹⁸ See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

⁴¹⁹ Corr. Court Hainaut, subsection Mons, 24 November 2016, 8th chamber (definitive).

the duration of the working days (minimum 10 hours), the number of working days per month (between 26 and 28 days), the actual hourly wage (€2.50 per hour), the heavy manual labour (carrying bales of clothes weighing between 40 and 50 kg) and the working conditions (almost no heating, defective sanitary installations, water seepage into the building). In addition, the defendant organised two work shifts, one for illegally-resident workers and another for legally-resident workers, and only produced pay slips for the legally-resident workers. Finally, he controlled the workers via a camera system from his home.

The court sentenced the defendant, who was a repeat offender, to three years' imprisonment with partial suspension, and a fine of €1,000 (increased to €6,000 with the multiplication factor).

The worker and Myria, who both initiated civil proceedings action, each received €1 in damages.

2.3.8. | Waste processing

In a **judgement of 5 April 2016**, the **Correctional Court of Walloon Brabant** held that the charge of human trafficking and various violations of the Social Penal Code involving several defendants, who were partners, and their company, which was active in waste processing, were proven.⁴²⁰ Amongst other things, they employed a worker of Moroccan nationality who was illegally-resident. During an attempt to unblock the drains, this person suffered a serious accident at work (with the loss of an eye) but his employers did not take any real steps to obtain compensation from a legal insurer or the Fund for occupational accidents. In addition, he worked almost 10 hours a day, 6 days a week, for a daily wage of €50. Based on the shortest hourly schedule, which was 8 1/2 hours per day, this equated to an hourly wage of €5.88, while the wage scale within this sector is €10.30 gross per hour. He had no social cover whatsoever and was in a precarious administrative and social situation at the time of recruitment. The court ruled that the charges of human trafficking had been proven on the basis of the work schedules and wages paid, the failure to report an accident at work and the fact that the defendants only bore a limited part of the financial consequences of the accident themselves, whereas it was impossible for the worker to make provision for these consequences, in particular because of his long-term work incapacity.

The defendants were sentenced to community service and were given fines. The company received a partly

suspended fine of €2,000 (or €12,000 with the multiplying factor).

The worker who had initiated civil proceedings was also given overdue payments of €7,875.50 in addition to a provisional sum of €1,000 for the damage he had suffered as a result of human trafficking and the various violations of the Social Penal Code.

2.3.9. | Domestic help

On **23 June 2017**, the **French-speaking Correctional Court of Brussels** heard a landmark case concerning allegations of domestic exploitation in a large Brussels hotel:⁴²¹ the so-called 'Conrad Princesses' case.

A princess from the United Arab Emirates and seven of her daughters, who were also princesses, were accused of trafficking offences against 23 women who worked in their service in the hotel between 2007 and 2008. They were also prosecuted for the inhuman and degrading treatment of these women. Most of the female workers were of Filipino origin, but there were also Moroccan, Indonesian and Tunisian workers, one Chinese and one Eritrean. In addition, they also employed two young European women, one French and one Belgian.

They were also prosecuted for various violations of the Social Penal Code, as was their butler, also on the grounds of these charges.

Myria, two reception centres for victims and 12 workers all initiated civil proceedings.

The case came to light when a victim of Moroccan nationality was questioned by the police. During this hearing, she stated that she worked as a cook in the service of a princess from the United Arab Emirates, who was staying in a large hotel in Brussels at the time. The working conditions were extremely difficult. They worked 7 days a week, 24 hours a day. They were called "dogs". The mother and seven of her daughters stayed in the hotel, and each of them had two servants. The victim had fled the hotel and was taken in by a family. She justified her actions by the fact that the servants of Filipino nationality had made an attempt to flee a few days earlier, but were caught. Then, two persons of Filipino nationality were intercepted at Zaventem airport. They came from the hotel, and had to take the plane back to the Emirates. One of them stated that she was a victim of human trafficking.

⁴²⁰ Corr. Court Walloon-Brabant, 5 April 2016, 6th chamber. (final).

⁴²¹ French-speaking Corr. Court Brussels, 23 June 2017, 59th chamber (definitive).

A few days later, with an authorisation issued by the police judge⁴²², the Social Inspectorate and the police carried out a search and identified the persons staying on the fourth floor of the hotel. 17 potential victims were questioned on the same day. The butler had their passports in his possession. An investigation was then launched. Several princesses were questioned, as was the butler. The director of the hotel and some staff members were also questioned. More investigation reports followed, as did testimonies, second hearings and investigation assignments.

Before the court, the defence put forward various reasons for inadmissibility, all of which were rejected by the judges.⁴²³

The court held that the charges of human trafficking were proven, both regarding the material element (the housing) and the moral element (the employment in degrading working conditions). As such, the workers were essentially recruited as housekeepers. Some of the others (the Europeans) were responsible for bringing up the children. Recruitment took place in various ways (via an agency, through a family member or acquaintance, or through an advertisement in the press). The 'private department' office was responsible for various administrative tasks, in particular the recruitment of the staff, who were then placed at the service of the princesses, while they themselves provided accommodation for the workers. The court therefore ruled that the material element of the violation had been met.

The court also ruled that there was indeed a question of employment in degrading circumstances, based on the hearings of the people who served the princesses and various consistent statements, testimonies from hotel staff and European nationals employed by the princesses, as well as on the basis of the findings made. The working conditions were as follows: full availability, working 7 days a week, with some staff working 24 hours a day, and others according to timetables that far exceeded the 8-hour working day, without a weekly rest day. Annual holidays and moments of relaxation were exceptional, and subject to the will of the princesses. The servants were not

allowed to leave the hotel, except in the company of the princesses, which restricted their freedom of movement to the movements of the latter. Security agents carried out genuine security guard functions. Finally, the passports of staff were kept by the butler.

The court also noted that (translation) "*the fact that gifts, jewellery or tips were sometimes offered to a servant does not conflict with this conclusion, since these gifts also depended on the whim of one or another princess, to whom the person was completely subjected*".

The court also noted that (translation) "*these terms and conditions were freely determined and imposed by each of the defendants, both as regards the servants assigned to them and other employees, who were not constantly at their service*".

However, the court acquitted the defendants of the charge of human trafficking for the Belgian and French workers. Their working conditions were significantly more favourable than those of other servants, and the court ruled that these persons were not employed in degrading circumstances.

The court also upheld the aggravating circumstances of abuse of authority and abuse of vulnerability. In this sense, it noted that (translation) "*the princesses (...) abused the authority they had due to their privileged status and, in particular, the fact that they belonged to the royal family of the United Arab Emirates, to impose inhumane conditions*". However, the court acquitted them from the aggravating circumstance of gang activity.

For the other charges, the court ruled that there was indeed humiliating treatment of the non-European staff⁴²⁴, in the sense that they were subjected and had no personal freedom. However, according to the court, the facts could not be considered as inhumane treatment.⁴²⁵

Surprisingly enough, the court acquitted the princesses and their butler from the violations of the Social Penal Code. Although the various servants were at the service of the princesses, the princesses were not, according to the court, their employer: they did not recruit them and had no say over their status or their wages. The judges ruled that the authority they exercised on a daily basis was merely the result of the special status they had because

422 During the initial phase of the proceedings, the defence argued that the house search which initiated the case was invalid. In their opinion, this could only be carried out via a search warrant issued by the investigating judge. In a judgement of 24 April 2013, the Supreme Court of Cassation upheld this opinion. However, in a decision of 22 January 2014, the Chamber for Indictments of the Brussels Court of Appeal (investigating court) to which the case was referred upheld the original referral order, issued by the pre-trial chamber of the Court of First Instance of Brussels on 17 April 2012. Although the Chamber for Indictments decided that the first house search was illegal, it considered, pursuant to the new Article 32 of the previous title of the Code of Criminal Procedure introduced by the law of 24 October 2013, that the collected evidence should not be ignored.

423 This related to the role of the press, the absence of a lawyer during interrogations and the unfairness of the prosecutions.

424 Degrading treatment is defined by article 417, 3° of the Criminal Code as any treatment which, in the eyes of the victim or third parties, constitutes a serious affront to or violation of human dignity.

425 Inhuman treatment is defined by article 417bis, 2° as any treatment by which a person is intentionally subjected to serious mental or physical suffering, inter alia, in order to obtain information or force a confession from the person, or punish him, or to exert pressure on him or on third parties, or to intimidate him or third parties.

they belonged to a royal family. The butler mainly took care of the public relations of the princesses. According to the court, it was the company 'private department' which should be regarded as the employer, since it was responsible for recruitment and the formalities that needed to be taken care of for the status and remuneration of the staff. It was therefore this company, which was not, however, a party to the case, which was responsible for ensuring compliance with social laws.

The court stated that the working conditions verged on slavery, but that the reasonable time limit had been exceeded. As such, the princesses were sentenced to 15 months' imprisonment, which was fully suspended, and were given criminal fines of €165,000 with a suspension of half the amount.

The court awarded the workers who had initiated civil proceedings the requested moral damages (which were between €500 and €17,500). However, it refused material compensation for the non-payment of wages, since the princesses had been acquitted of this charge.

It awarded Myria and the two reception centres moral damages of €1.

Another case concerned the alleged exploitation of a housekeeper by a couple of diplomats. This worker sued her two former employers, a diplomat from Sri Lanka and his wife, who were previously posted in Brussels, and who are now posted in another country, before the **Brussels Labour Tribunal**. An **interim judgement delivered on 4 November 2016** ruled on the violation of the immunity rules of the Vienna Convention on Diplomatic Relations of 18 April 1961 and on the limitation period.⁴²⁶

Between 2008 and 2010, the victim was employed for two years and six months as a domestic worker in the defendant's residence, who at that time were at diplomatic posts in Brussels. When she left the residence, she was recognised by the public prosecutor to the employment courts as a victim of human trafficking. It upheld that she had worked in inhumane circumstances, despite the fact that the legal case had been dismissed, since her employers enjoyed diplomatic immunity and therefore could not be prosecuted.

The defendants argued that the court was not in a position to try the case, as the husband felt that he should enjoy

diplomatic immunity in criminal cases⁴²⁷ and that this immunity should also be extended to his wife.⁴²⁸

The plaintiff, on the other hand, considered that this immunity was not applicable, since the privileges and immunity expire when the person leaves the country.⁴²⁹ The defendants considered that this immunity was always valid because the Vienna Convention states that "*with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist*". In this case, they argued that the professional relationship that existed at the time between the worker and her bosses was not intended for private purposes. The court rejected this argument because it considered that the main activities carried out by the worker were private and had nothing to do with the diplomatic mission of her employers. After all, her main tasks were housekeeping, cooking and caring for the couple's children.

Moreover, the immunity from prosecution is a procedural immunity, which does not cover impunity or non-liability. Article 6, §1, of the European Convention on Human Rights (ECHR), which guarantees the right to a fair trial, also includes the right of access to a court. Both the Vienna Convention and Article 6 of the ECHR are enshrined in Belgian national law, and must be complied with by the Belgian courts. The right of immunity from prosecution should not be a restriction on the right of access to a court, in such a way as to undermine the essence of the right of access to a court. In this case, the defendant's current place of residence was not communicated. The plaintiff consequently did not have the opportunity to sue them in the sending state or any other state. The court therefore considered itself competent to rule on the case.

The court also ruled that the plaintiff's claim was not time-barred, since it concerned a violation (non-payment of wages) for which the period of limitation was five years. The civil claim was lodged within this period. The court therefore declared the plaintiff's claim to be admissible.

The examination of the merits of the case was postponed to a later date.⁴³⁰

⁴²⁶ Dutch-speaking Labour Tribunal of Brussels, 4 November 2016, 3rd chamber.

⁴²⁷ Article 31 of the Vienna Convention.

⁴²⁸ Pursuant to Article 37 of the Vienna Convention.

⁴²⁹ Article 39 of the Vienna Convention.

⁴³⁰ Namely on 28 February 2017. However, this hearing (on the merits) was never held because the defendants lodged an appeal. A hearing on admissibility for the Labour Court established in September 2017 a possible hearing on the merits in February 2018.

3. HUMAN SMUGGLING

Smuggling gang with a route between Austria and Belgium

In this case, which was settled by the **Correctional Court of Antwerp on 8 December 2016**⁴³¹, three defendants were prosecuted for smuggling people who had fled mainly from the Middle East, from Austria to Belgium, among other offences. The criminal file was compiled on the basis of a telephone investigation, telephone wiretapping, searches, mobile phone scans, results of bank investigations, etc. Among other things, the defendants were prosecuted for transporting a family with four minors. The victims had to pay several hundred euros per person for the journey by car from Vienna to Antwerp. If they were unable to pay, they were threatened and their passports were taken from them. The court held that the facts had been proven and sentenced the defendants to two years' and six months' imprisonment respectively, which was partly suspended, and 150 hours of community service and fines between €36,000 and €90,000, which were also partly suspended.

Various items and sums of money corresponding to the sums paid by the victims were ordered to be confiscated. Two victims initiated civil proceedings and each received damages of €1050.

Smuggling gang operating from a church in Zeebrugge.

In this case of human smuggling, which was heard by the **Correctional Court of Bruges on 19 October 2016**, three defendants were prosecuted.⁴³² They smuggled people of mainly Iraqi and Iranian origin, from Belgium to the United Kingdom. The allegations occurred in the first half of 2016.

The maritime police found the victims at the ferry terminal in Zeebrugge. Security camera images provided a significant amount of information about the perpetrators and their activities. Information was also gathered through wiretapped conversations and mobile phone scans. One of the victims paid €3,000 for the crossing to the United Kingdom, an amount deposited by his family into an account in the United Kingdom. A church

in Zeebrugge was used as a base for the operation. The smugglers decided who was allowed to stay and eat, and who wasn't. They did not shy away from using violence in their activities.

The court held that the facts had been proven and sentenced the defendants for human smuggling offences with aggravating circumstances, and for their illegal residence within the territory.

The defendants received prison sentences of between 3 years and 5 years and fines of €18,000. The third defendant was sentenced in absentia. One of the victims initiated civil proceedings and received damages of €1.

Nigerian human smuggling via student visas

At the appellate level, a case was re-examined in which the defendant had been prosecuted at the first instance⁴³³ for human trafficking offences, among other things, for the purpose of committing a coercive crime, and human smuggling, both with aggravating circumstances, and for attempted smuggling. Between 2009 and 2010, the defendant had set up a network to get Nigerian students into Belgium pseudo-legally. He ensured that various Nigerian nationals were given residence papers in Belgium as candidate students via a student visa, with false documents from a university or high school. The so-called students received a provisional student visa, whereby they had one year to enrol at a university or high school in Belgium and take language classes. The victims sometimes paid up to €2,300 per person. None of the candidate students ended up enrolling at a university or high school. The practices came to light when the Belgian embassy in Nigeria noticed a conspicuous number of student visa applications. A total of 62 students were apparently linked to these activities, of which 19 people were found to have actually come to Belgium. The defendant was assisted by other persons who had also gotten to Belgium through him. He used them as running boys to take care of errands for him. The defendant also apparently sexually abused several candidate students, in particular if it appeared that they were unable to pay. He apparently threatened to send them back to Nigeria, and thereby abused their vulnerable position. With the proceeds of his activities, he apparently invested in real estate in Nigeria through intermediaries. He was also prosecuted for using false names, forgery, and money laundering.

In the first instance, the court held that the cases of human smuggling were proven, except for the aggravating circumstances that vulnerable situations were abused, and

431 Corr. Court Antwerp, subsection Antwerp, 8 December 2016, AC8 chamber (definitive).

432 Corr. Court West Flanders, subsection Bruges, 19 October 2016, 17th chamber (appeal at criminal level).

433 Corr. Court Leuven, 12 May 2015, 17th chamber.

that use was made, directly or indirectly, of subterfuge, violence, threats or any form of coercion. The court ruled that human smuggling *"is an illegal crossing of national borders with the assistance of third parties. (translation) Human smuggling requires the direct or indirect pursuit of a material benefit. Smuggling means that the person who intends to cross a border is aware of how he or she will travel, and freely agrees to it. This is in contrast to human trafficking (...), in which people are transported for the purpose of subsequent exploitation and traffickers limit their 'clients' in their free choice using violence, deception, threats or intimidation. The boundary between human trafficking and human smuggling is rather thin and smuggling can evolve into human trafficking when free will is curtailed"*. The court ruled that the aggravating circumstance that the defendant had put pressure on the foreign nationals and abused them was insufficiently proven. It held that the allegations of sexual abuse of several male students could not be proven from the criminal file. There was no immediate evidence of these accusations. However, the file did show that the defendant and various persons had sexual contacts.

The court considered the allegations of human trafficking to be unproven. The victims had provided a helping hand for the defendant in Belgium and/or Nigeria. However, there was not enough objective evidence to believe that they were pressured by the defendant to participate in these criminal activities. They had also profited from it themselves. Several victims had made incriminating statements on this subject as part of the 'victim of human trafficking' procedure. However, these statements were refuted by the defendant. One of the victims initiated civil proceedings. He claimed that he had been sexually abused by the defendant for years. However, the court noted that the pre-trial chamber had already exonerated the defendant from prosecution for the allegations of rape, sexual assault, and assault and battery. The victim's statements were not corroborated by the criminal file (wiretapped conversations).

The defendant was sentenced to two years in prison, a high fine and confiscation of sums of money. Myria initiated civil proceedings and received damages of €1. The victim's claim was rejected.

In an appeal, the judgement was partially upheld by the **Court of Appeal of Brussels in a judgement of 23 January 2017**.⁴³⁴ The court nonetheless mitigated the convictions on a number of points. The defendant was even acquitted of the charge of money laundering. The court ruled again that the aggravating circumstance of

abuse of the vulnerable situation of the victims had not been proven. The court considered that the reasons for vulnerability were not sufficiently serious, and were not such that the candidate students had no other real or acceptable choice but to allow themselves to be abused. The court did however uphold the sentence, with the exception of the confiscated funds, for which the amount was reduced. The damages for Myria were upheld. The victim who had initiated civil proceedings was not present at the hearing, for which the Court held that he had waived his right to appeal.

Well organised international human smuggling gangs sentenced to heavy sentences

In this extensive human smuggling case⁴³⁵, which is discussed earlier in this report⁴³⁶, 13 defendants were prosecuted. The defendants were prosecuted for human smuggling with the aggravating circumstances that this also involved minors, that their particularly vulnerable position was abused, that the lives of the victims were endangered, that the activity was a matter of course, and that there was criminal organisation.

The investigation revealed that it concerned a large Kurdish group operating from Brussels, which had international contacts. The main defendant is the central figure in the Belgian branch of smugglers.

They smuggled people of all nationalities practically on a daily basis, as well as families with minors, from the car parks in Groot-Bijgaarden and Waasmunster. Large sums of money (€2,500 per person) were demanded, without any guarantee of success. The adults and children were treated like cattle, and the conditions were an affront to human dignity. Various smuggling transports were intercepted. The summons indicated 1,290 smuggled persons. When they arrived in the United Kingdom, they often still had debts, which made them easy prey for further exploitation, or to end up in crime. Some were even obliged to help the smugglers for a limited fee.

The court believed that it was clearly an organisation, with a clear hierarchy and division of tasks. They also worked with a specific routine; a rotation system. If the victims were caught, they knew where to go and try again the following night. It was a well-organised activity.

⁴³⁵ Corr. Court East Flanders, subsection Dendermonde, 25 April 2016, Chamber D19D.

⁴³⁶ See Chapter 2 of this section (human smuggling case studies). See also Part 2 (focus), Chapter 1, point 3 (the role of social media and the internet in human smuggling) and Chapter 2 (Social media and the internet as a method of investigation).

⁴³⁴ Dutch-speaking Court of Appeal of Brussels, 23 January 2017, 13th chamber.

The various defendants represented different positions within the hierarchy. The footmen worked at the car parks, and made sure that the victims climbed into the right trucks. Other defendants had a 'key position', and gave orders from the United Kingdom. The members had no income other than that from human smuggling.

In its **judgement of 25 April 2016**, the **Correctional Court of Dendermonde** ruled that all aggravating circumstances had been proven with regard to all the defendants.

The defendants were sentenced to substantial prison sentences of between 5 and 12 years and to heavy fines of between €300,000 and €3,360,000 (in proportion to the smuggled victims). Several defendants were convicted in absentia.

Myria initiated civil proceedings and was awarded €1 in moral damages.

At the appellate level, on the question of guilt, the **Court of Appeal of Ghent**⁴³⁷ **held in its judgement of 6 February 2017** that the defendants had not submitted any new arguments than those submitted to the first judge. The Court of Appeal upheld the reasoning of the first judge almost entirely. The court upheld the sentences for all defendants, with the exception of one defendant where the court reduced the sentence from seven to six years, and one defendant for whom the court imposed an additional sentence since, in the meantime, he had also been convicted of similar offences in another case by a judgement with the force of *res judicata*.

British-Ukrainian international smuggling gang exposed following a murder case.

In this human smuggling case, a large-scale international network of human smugglers was exposed, which operated from the United Kingdom and Ukraine, and used Belgium as a transit country. A total of 15 defendants were prosecuted in the smuggling case. The case was settled by a judgement of **10 January 2017 by the Correctional Court of Ghent**.⁴³⁸

The case came to light through an investigation carried out for a murder case, in which a truck driver was killed by several gang members. In this murder case⁴³⁹, a truck driver was strangled and found in his truck with stab

wounds on a car park along the motorway. Two of the 15 defendants were prosecuted for the murder.

The investigation that followed was based on the data from the tachograph, from which it could be deduced exactly when the truck had driven. A destroyed mobile phone was also found, on which a telephone investigation was carried out and, as a result of which, various wiretapping measures were ordered of the numbers the driver had called shortly before his death. These numbers led to various defendants both in Belgium and the United Kingdom. During a patrol, one of these defendants was caught in flagrante delicto in smuggling activities taking place on a car park. Arrests and searches followed, which included the discovery of victims as well as hundreds of false Polish identity documents. The statements made by the suspects and human smugglers soon showed that the murder had taken place within an international and well-organised smuggling gang. The truck driver had been killed by two gang members after a dispute had arisen over the sums due to the driver after the latter had smuggled several people in his truck to the United Kingdom. The murder case was settled in the judgement of 21 February 2017.

In the human smuggling case, the 15 defendants were prosecuted for human smuggling with aggravating circumstances, criminal organisation, the use of false identity documents, receiving stolen identity documents, and fraudulently issuing forged identity documents.

The judicial investigation was conducted extensively on the basis of a telephone investigation, wiretapping measures, findings made during various house searches, laptop, iPad and mobile phone scans, analyses of conversations via social media⁴⁴⁰, analyses of the data from the tachograph and truck tracking system, surveillance operations, camera images on the car parks, bank investigations, statements of defendants and victims, etc., and a perpetrator caught in flagrante delicto by a police patrol.

International letters rogatory were sent to Latvia and London, and international arrest warrants were issued.

The information obtained during the investigation, including detailed bookkeeping/ledgers, showed that the crossing of at least 500 persons had been organised or carried out. The two leaders of the gang were based in London and Ukraine. One of the defendants recruited people in Ukraine under the guise of a travel agency to transport them to Great Britain. He also took care of

⁴³⁷ Court of Appeal Ghent, 6 February 2017, 6th Chamber.

⁴³⁸ Corr. Court East Flanders, subsection Ghent, 10 January 2017, Chamber G28bis (appeal).

⁴³⁹ Settled by the Correctional Court of Ghent, 21 February 2017.

⁴⁴⁰ See also above Part 2, Chapter 2 (Social media and the internet as a method of investigation) and Chapter 1, point 3 (the role of social media and the internet in human smuggling).

the Schengen visas via Poland and arranged the initial transport from Ukraine to Belgium. In Belgium, the victims were received in various safe houses, they were given false (Polish) identity documents, and were taken to car parks along the motorways in Belgium and sometimes France, and escorted to the truck. From there they crossed to the United Kingdom as a passenger or co-driver.

As regards the offence of criminal organisation and being part of a criminal organisation as a leader or member, the court ruled that the criminal organisation was well organised and consisted of a hierarchical structure with a managerial, mid-ranking and executive framework with a clear division of tasks, which had been active since at least January 2015. All constitutive elements were therefore present for this crime (a structured association of more than 2 persons which was established over a period of time, with the intention of committing offences in order to obtain a direct or indirect material benefit). In its judgement, the court made an analysis of the different individual roles of each of the defendants within the well-organised criminal organisation. The two central figures of the organisation operated from the United Kingdom and Ukraine respectively, and directed the others.

One of the defendants even worked as a hairdresser within the organisation, and cut the hair of the victims to be smuggled so they would resemble the people on the Polish identity documents.

For the offence of human smuggling with aggravating circumstances, that the vulnerable situation of the victims was abused, that the activity was a matter of course and that the activity took place within an association, the court ruled that the first circumstance was not proven. The victims had a precarious residence permit in Belgium, which in most cases had been obtained under false pretences, but the court did not prove in this case that the members of the organisation had actually used or abused the vulnerable situation. They did not restrict the victims' freedom of movement and action. They knew in advance that they would end up in the Schengen area with a temporary (precarious) residence permit and that they would subsequently receive identity documents to make the crossing to the United Kingdom by truck. The court also believed that the smuggling itself was carried out in relatively humane conditions, in which the candidates were smuggled as regular passengers in a van, or as passengers or co-drivers of trucks. The court considered the other circumstances to be proven.

The offences of using false identity documents and receiving stolen identity documents were also deemed proven by the court.

When determining the extent of the penalty, the court was concerned by the high level of organisation, the established structure, and the many branches of the criminal organisation. The defendants were sentenced to prison sentences of between 8 months and 7 years, and were handed very heavy fines sometimes exceeding €3 million. Confiscations were also ordered.

In the murder case, the two defendants were found guilty of manslaughter with malice aforethought, and sentenced to 27 years' and 23 years' imprisonment respectively.

Myria initiated civil proceedings and was awarded €1 in damages. Myria also initiated civil proceedings in the murder case, which was however declared inadmissible.

[Albanian-Czech human smuggling gang dismantled by an international investigation.](#)

This case⁴⁴¹ concerned an Albanian-Czech human smuggling gang which smuggled Albanians into the United Kingdom. 28 men and women were prosecuted. The criminal file was drawn up on the basis of criminal investigations conducted in Belgium, France, the United Kingdom and the Czech Republic.

The smuggling network was based around three persons in the UK: the two main defendants and a third who was not prosecuted in this case because his identity was only revealed at a later stage of the investigation. They arranged the transportation of Albanians to order. The practical arrangements for the specific transportation were left to various people from the Czech Republic.

The victims were smuggled in vans with Czech drivers. The vans were rebuilt in such a way that they were filled with car tires at the back, behind which there was a concealed space where the victims could hide. The victims were sometimes hidden in wooden or cardboard boxes, or in the boot of a car. In one of the crossings, the victims themselves contacted the emergency services because they couldn't breathe.

The victims only got into the cars in Belgium. Belgium was therefore a transit country where the victims temporarily stayed in cheap hotels or safe houses. They were then smuggled to the UK by ferry or via the Eurotunnel. They had to pay a kind of surety first, and if the crossing was successful they paid the remainder. The drivers were not paid until the crossing was successful. The

⁴⁴¹ Corr. Court East Flanders, subsection Ghent, 2 January 2017, Chamber G28m.

smuggled persons paid between £1,200 and £6,000. The final destination was always the restaurant of the main defendant in a borough of London. The allegations had taken place since at least 2013, until 2014. Several victims were minors.

The investigation was conducted in cooperation with various countries, both at the police level and the level of the Public Prosecutor's office and the investigating judge, as part of a Joint Investigation Team (JIT).

Through the full investigation, the various smuggling crossings could be mapped out fairly accurately. The various wiretapping measures provided insight into the modus operandi, the hierarchy in the organisation, the position of the various members and the specific implementation of the smuggling crossings. In addition, several crossings were intercepted, and the defendants were caught in flagrante delicto. The investigation was carried out through telephone investigation, telephone wiretaps, house searches, interrogations and statements by members of the smuggling network and victims, results of the scans of various mobile phones, investigation into financial transactions, traces of Skype conversations and Skype chats.⁴⁴²

The defendants were prosecuted for gang activity, leadership and participation in a criminal organisation and human smuggling with aggravating circumstances (including the fact that offences were committed against minors).

The two main defendants were prosecuted for the leadership of the criminal organisation, four others for participation at the level of decision-making processes, and 22 others for participation in the preparation and implementation of an activity within the organisation.

The court investigated and ruled that all constitutive elements were present to judge that it concerned a criminal association.

The two main defendants, together with another third person (who was not prosecuted in this case due to late identification), represented the core of the organisation. They were the leaders of the organisation, had the connections with their Albanian network in the UK, determined which crossings would take place when, collected the money from the families of the victims, paid the drivers, etc. Two other defendants were found to be one level below in the organisation. They travelled

constantly between continental Europe and the UK. They looked for van drivers in predominantly socially poorer environments of homeless people and drug users. They provided the vans, supervised the preparation of the vans in the Czech Republic, and were present when the victims were loaded into the vans in Belgium. From that point on, they left the drivers to travel alone across the Channel, thereby letting them face the risk of getting caught. They themselves travelled by plane or separate cars. On the other side of the Channel, they took over again and ensured that the victims reached their final destination. Two other defendants were initially recruited as drivers and later climbed up in the organisation. The other defendants were also found guilty of membership, except for one who was acquitted. Many of them were caught in flagrante delicto as drivers or co-drivers.

The court examined for each of the defendants exactly which crossings they had been responsible for. For the main defendants, the court found the charges of human smuggling to be proven, with all aggravating circumstances. For the other defendants, the human smuggling offences were considered proven, with or without the various circumstances.

The court handed down heavy sentences. The main defendants were sentenced to prison sentences of between 42 months and 8 years, and were handed heavy fines sometimes exceeding €600,000. The other defendants were sentenced to between 6 and 30 months' imprisonment, and received fines in proportion to the number of victims smuggled, some of which were suspended. Various large sums were ordered to be confiscated.

International Albanian network

This case⁴⁴³ concerned a well-structured smuggling gang with international branches in the United Kingdom, Germany, the Netherlands and France.

The gang smuggled Albanian nationals arriving in Belgium into the United Kingdom. Upon their arrival in Brussels or Ghent, the victims were received by the smugglers and accommodated in hotels or private premises near Brussels Midi Station. From there they were taken to various car parks along motorways, including the E40 car parks at Groot-Bijgaarden, Gentbrugge and Gent-Drongen, where they were loaded into trucks. Other gang members ensured that victims were transported from Brussels to the Netherlands, and smuggled from there to the UK. The incidents occurred between November 2013 and June

⁴⁴² See above Part 2, Chapter 2 (Social media and the internet as a method of investigation).

⁴⁴³ Corr. Court Brussels, 6 October 2015, 51st chamber.

2014. The gang also had contacts with truck drivers who carried out the (guaranteed) crossings because the victims travelled with false Romanian identity documents. The victims paid between €2,500 and €5,700, or even up to €6,000 per person, depending on whether the crossing was guaranteed. The luggage and mobile phones were taken from the victims and subsequently sent by post to the UK if the crossing was successful. There were also many minors among the victims. Parents with small children were asked to give them medication during the smuggling journey, to calm them down. Depending on the price, the victims were smuggled into the cabin or the trailer part of the truck. The sometimes had to hide in cardboard boxes in trucks. People were also hidden in the liquid container section of a truck. There were reports that some of the victims disguised themselves as priests. On several occasions, various defendants used subterfuge to extort money from their victims.

The investigation was mainly conducted via telephone wiretapping, telephone investigation, material findings, surveillance operations and statements.

Initially, 11 suspects were prosecuted, including both organisers and smuggling operators. They were prosecuted for human smuggling with aggravating circumstances, participation in a criminal organisation and illegal residence in Belgium. They were also prosecuted for fraud and deception by exploiting the trust or credulity of the victims. Several suspects presented themselves as senior officials or employees of the embassy, in order to extort money from their victims.

Several defendants, including the main suspects, did not appear in court.

The 11 defendants were all sentenced to imprisonment of between 2 and 6 years, and heavy fines (multiplied by the number of victims). Various assets were ordered to be confiscated.

Myria initiated civil proceedings and was awarded a symbolic €1 in damages.

One of the defendants was sentenced to five years in prison and received a heavy fine (€6,000 x 64). He appealed against this decision.

At the appellate level, he was represented at the hearing by his lawyer but could not be present at the hearing himself because he had received an entry ban injunction and had been repatriated to his country. He believed that this violated his right to defence, which the Court rejected.

As regards the merits of the case, the **Court of Appeal of Brussels, in its judgement of 17 May 2017**⁴⁴⁴ upheld the judgement of the first instance across the board. But it imposed a heavier sentence, 6 years' imprisonment and a heavy fine.

4. COUNCIL OF STATE, ADMINISTRATIVE JURISDICTION DIVISION

The Council of State twice rejected the urgent request for suspension of an administrative police ordinance, issued by the mayor for a temporary closure. These ordinances, submitted pursuant to Article 134 *quinquies* of the new Municipal Law,⁴⁴⁵ relate to establishments suspected of committing human trafficking offences.

The first judgement of **12 January 2017**⁴⁴⁶ concerned an ordinance to close a prostitution parlour for a period of three months, imposed by the Mayor of Martelange in consultation with the judicial authorities. Various police checks and inspections of the social laws had taken place in these prostitution parlours. Unanimous testimonies from the clients and serving girls, as well as the evidence found in situ, testified to acts of prostitution and serious indications of human trafficking in this bar. The female operator received and provided shelter to serving girls, some of whom had neither work nor residence permits. She determined the prices of drinks and sexual services, and retained a substantial percentage.

The plaintiff, who ran the bar, pleaded, *inter alia*, the lack of sufficient reasoning, the clear decision-making error, and the exceeding or misuse of power. In particular, she

⁴⁴⁴ Dutch-speaking Court of Appeal of Brussels, 17 May 2017, 13th chamber.

⁴⁴⁵ This article stipulates that (translation) "if there are serious indications that acts of human trafficking as referred to in article 433 *quinquies* of the Criminal Code or acts of human smuggling as referred to in article 77 *bis* of the Law of 15 December 1980 on entry to the territory, residence, establishment and expulsion of foreign nationals, are taking place in an establishment, the mayor may decide, after prior consultation with the judicial authorities, and after having heard the pleas of defence of the manager, to close the establishment for a duration which he shall specify. (...). The mayor is authorised to have the establishment sealed off if the closure decision is not complied with (...). The closure measure shall last for a maximum of six months. Upon expiry of this period, the mayor's decision shall lapse".

⁴⁴⁶ Council of State, Administrative Jurisdiction Division, judgement No 237.025 of 12 January 2017.

argued that the choice of measures taken - closure for three months - was unreasonable and disproportionate in relation to the elements of the case. In a detailed justification, the Council of State rejected this plea.

The second judgement of **16 May 2017**⁴⁴⁷ once again concerned the closure of a well-known café in Antwerp's red light district, for a period of four months. This café was also used for the prostitution of young Nigerian women. The temporary closure for a period of three months had already been requested one year earlier and had led to the rejection of the application for suspension in cases of extreme urgency by the Council of State.⁴⁴⁸ According to the Mayor of Antwerp, there were once again serious indications of human trafficking in this case.

The company which ran the bar appealed to the Council of State for an interim order to lift this administrative police ordinance for a temporary closure, which had been brought about by the mayor. It argued that the delivered judgement did not give sufficient reasons as to why such a sanction needed to be taken so hastily, and that there were no new elements to justify such a measure. On the contrary, the Council of State held that the contested decision stated that indications of human trafficking had been found on several occasions in the café, despite the warnings and checks by the competent authorities, and the fact that the plaintiff was aware of the illegal activities and the previous administrative measure taken. The Council of State consequently rejected the plea in law.

447 Council of State, Administrative Jurisdiction Division, judgement No 238.214 of 16 May 2017.

448 Council of State, Administrative Jurisdiction Division, judgement No 234.755 of 17 May 2016. This decision was highlighted in our last report: See 2016 Annual Report on Human Trafficking and Smuggling: *Beggars in the hands of traffickers* p. 189.