

TRAFFICKING AND SMUGGLING OF HUMAN BEINGS

Report 2007

**Preface & Part I: An integral evaluation of policy in the fight
against trafficking in human beings**

Centre for Equal Opportunities and Opposition to Racism (CEOOR)

Belgium

May 2008

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PREFACE

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With this report, the Centre for Equality Opportunities and Opposition to Racism (Centre) intends to entirely fulfil its role as “de facto” Belgian National Rapporteur on the subject of the trafficking in human beings within the borders of the European Union. Through its previous annual reports, the Centre has, in a constructive and critical manner, consistently monitored this issue to assure an ongoing evaluation of policy with regard to human trafficking and its application in the field.

This year the Centre has made use of a questionnaire touching on certain main themes. In October 2007, this questionnaire was discussed and distributed by the European Commission on the occasion of the first European Day against trafficking in human beings in the context of a national report. As the National Rapporteur of the first country to apply this particular instrument, the Centre has used it to analyse and evaluate current policies in the fight against human trafficking.

The report is composed of three parts, which can be read independently of one another. Nonetheless, they are characterised by the same guiding thread and were all three drawn up with the same aim in mind, that of reporting the national status on this issue.

The first part is entirely devoted to the questionnaire itself. This relates to the following matters: guiding principles in the fight against human trafficking; prevention; protection and aid to victims, as well as strategies of investigation and prosecution of perpetrators. On this basis, the Centre has analysed Belgian policy with regard to human trafficking and its application by the parties concerned. Information arising from certain specific dossiers (examined in the second part) as well as issues of jurisprudence (dealt with in the third part), are essential when drawing up replies to the questionnaire.

In the second part, via those dossiers in which it appears as the plaintiff, the Centre analyses the latest developments and tendencies in sexual exploitation. Different types of exploitation networks are examined. These dossiers are analysed as much with regard to the victims, as with regard to the structure and operating strategies of a criminal system. Particular attention is given to the testimony of victims: how they were detected and how they were treated. This data is essential to an analysis of the policies considered in part one, with regard to their impact in the field and the problems that arise.

The third part deals with jurisprudence. This enables us to observe how courts actually apply policies designed to combat human trafficking, whether towards the perpetrators or the victims.

We hope you will find this report valuable.

PART I

AN INTEGRAL EVALUATION OF POLICY IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

1. INTRODUCTION

In the context of extending the work of the European Expert Group on the trafficking in human beings, created in March 2003¹, and whose mandate has recently been renewed², the European Commission presented a manual on the evolution of this phenomenon to the first European Day against human trafficking, held on 18th October, 2007.

Entitled “Measuring Responses to Trafficking in Human Beings in the European Union: as Assessment Manual”, this publication is designed to help the Member States reinforce their capacity for developing and installing adequate policies and strategies in this field³. It contains a questionnaire of 55 questions, covering different aspects of the fight against human trafficking. These questions enable the Member States to examine whether or not particular measures have been installed as well as providing a list of indicators to aid in measuring the progress made.

The manual is based on the principal recommendations issued by the Expert Group in their December 2004 report⁴. The first part focuses on six “directing principles”. The second broaches the question of preventative actions, while the third is centred on the protection of and assistance to victims. Finally, the fourth part relates to strategies with regard to investigation and prosecution⁵. The questionnaire forms an annexe to the manual and is also included in the annex of this report.

Among other things, the manual suggests that the most appropriate organism for evaluating the progress made in this respect by a Member State is its “National Rapporteur on Human Trafficking”.

The Centre, an independent public service, was designated over a decade ago to coordinate and evaluate Belgian policy in human trafficking and smuggling⁶. In this sense it already fills, de facto, the role of National Rapporteur.

¹Decision 2003/209/CE of the Commission of 25 March 2003 bearing on the creation of a consultative group called “Expert Group on Human Trafficking”, J.O., L. 79 du 26.3.2003, p. 25.

²Decision 2007/675/CE of the Commission of 17 October 2007 on the creation of an Expert Group on human trafficking, J.O., L. 277 of 20.10.2007, p.29. This decision abrogates the decision 2003/209/CE. It extends the Expert Group composition following EU enlargement, and extends its field of action.

³European Commission, Directorate-General Justice, Freedom and Security, “Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual”, October 2007.
http://ec.europa.eu/justice_home/news/events/news_events_en.htm

⁴Report of the Experts Group on Trafficking in Human Beings, December 2004:
http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf

⁵In English, this chapter is called “law enforcement strategies” and in fact covers law enforcement activities. There is no French equivalent for this term, which leads us to the translation we have chosen.

⁶Article 1of the Royal Decree of 16 May 2004 on the fight against trafficking and smuggling of human beings, MB (Belgian Monitor), 28 May 2004; and R.D. of 16 June 1995 on the mission and competences of the Centre in the fight against

In its November 2005 report, the Centre had already used the Expert Group's report on human trafficking as its basis for evaluating certain aspects of Belgian Policy in this field⁷. This time, all aspects of the fight against human trafficking are analysed through the medium of these 55 questions. The Centre has based its responses on numerous sources: information contained in those case dossiers in which it figures as civil plaintiff, interviews with the referring magistrates for "human trafficking" cases in several public prosecution offices and labour auditorates, the "victims of human trafficking" data base that the Centre has drawn up in collaboration with the three specialized victim reception centres (Pag-Asa, Payoke, Sürya), jurisprudence, its own previous evaluation reports, as well as other official reports and studies.

The Centre decided to deal with these questions one by one. However, since several of them are interlaced, cross-references between the questions are frequent.

Finally, with a view to making reading the replies easier, the Centre has chosen to adopt a continuous enumeration of the questions.

international trafficking in human beings, as well as the implementation of article 11 § 5 of the law of 13 April 1995 containing the provisions for the repression of human trafficking and child pornography, M.B., 14 July 1995.

⁷ See Centre's report on human trafficking: "Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005. This report is available as download from the Centre's website: www.diversite.be

2. GUIDING PRINCIPLES FOR ALL ACTION TO STOP TRAFFICKING IN HUMAN BEINGS

The manual lists six guiding principles – complementary and independent – which must underlie any action intended to combat the phenomenon of human trafficking.

- Envisage an adequate legal framework and an adequate definition of human trafficking;
- Make human rights an essential issue;
- Take care to ensure a holistic, coordinated and integrated approach;
- Bring governmental policies on migration, economics and the shadow economy in line with efforts to combat human trafficking;
- Respect the rights of children and the duty of States to protect them in anti-trafficking actions;
- Promote research on human trafficking as well as follow-up and evaluation of the impact of all measures against human trafficking.

1. Principle 1: Ensuring an adequate legal framework and definition of trafficking in human beings

Question 1: Definition of trafficking in human beings

In 2005, with a view to meeting its international (the Protocol of Palermo on human trafficking⁸) and European obligations (the framework decision on trafficking in human beings⁹), Belgium modified its legislation with regard to human trafficking.

Thus, the law of 10 August 2005, applicable from 12 September 2005, included several substantial changes¹⁰:

- The “trafficking” in human beings is forthwith distinguished from the “smuggling” of the same: it thereby becomes an autonomous infraction in the penal code and is henceforth clearly defined (article 433, sections five to nine) ;
- The incrimination of the trafficking in human beings was enlarged to include all victims, independent of the sector of exploitation, thus enabling prosecution of national or internal trafficking¹¹ which, with the exception of sexual exploitation, was not formerly possible;
- The provision formerly covering prosecution for the trafficking in foreign nationals and for smuggling in migrants has been modified (article 77b of the law of 15 December 1980¹²), in order to exclusively target the smuggling of human beings.

⁸Additional Protocol to the United Nations Convention against transnational organized crime intended to prevent, suppress and punish trafficking in persons, especially women and children. This protocol was enacted on 1 February 2003 and signed into Belgian law by the statute of 24 June 2004 (M.B., 13 October 2004). Note also the coming into force on 1 February 2008, of the Council of Europe Convention on Action against Trafficking in Human Beings. At the time of closing this report (February 2008), the Belgian ratification process is not yet completed.

⁹ Framework decision of the Council of the European Union of 19 July 2002 on combating trafficking in human beings, J.O. L203 of 1.08.2002.

¹⁰ Law of 10 August 2005 modifying various provisions for the enforcement in the fight against trafficking and smuggling of human beings and against the practices of slumlords, M.B., 2 September 2005. For a general presentation of the new provisions, see C. HUBERTS, «Les innovations de la loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite des êtres humains et contre les pratiques des marchands de sommeil», J.D.J., n°251, January 2006, p.6 ff; M.A. BEERNAERT and P. LE COCQ, «La loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite des êtres humains et contre les pratiques des marchands de sommeil». Rev.dr.pén.crim., April 2006; p. 335 ff.

¹¹By national or internal trafficking is meant that adults or children are victims of trafficking within the borders of their own country. The new law enables the penalizing of all forms of human trafficking, whether committed against foreigners or Belgians.

¹²This article states: “Constitutes the offence of smuggling of human beings the fact of contributing by any means, directly or via intermediaries, to permitting entry to, transiting or lodging a person from a non-European Union country on or through the territory of such a state or a state that is party to an international convention regarding the breaching of borders, both exterior and adjoining Belgium, in violation of the legislation of that state, with a view to obtaining, directly or indirectly, a patrimonial advantage.”

Article 433, section 5 of the penal code goes as follows:

“The recruiting, transportation, transfer, harbouring or reception of a person, or the passing on or transfer of control over a person for the purposes of:

1° permitting the commission of infractions against that person as envisaged in articles 379, 380, §1st and §4th and 383b, §1st; (exploitation through prostitution and child pornography)

2° permitting the commission of infractions against that person as envisaged under article 433c; (exploitation through begging)

3° putting that person to work or to allowing that person to be put to work in circumstances that are contrary to human dignity;

4° removing from that person, or allowing the removal, of organs or tissues in violation of the law of 13 June 1986 on organ removal or transplantation;

5° forcing the person to commit a crime or an offence against his will;

Constitute the offence of trafficking in human beings. With the exception of the case referred to under section 5°, the consent of the person referred to in paragraph 1 to the intended, or actual, exploitation is irrelevant”

We should note that the Belgian legislator has not transposed the definition of trafficking in human beings such as it appears in the European framework decision and the Palermo Protocol on human trafficking.

Indeed, in contrast to these European and international instruments, the new provisions do not make a difference, in the degree of incrimination, between adult and minor victims of the trafficking in human beings.

Furthermore, the elements that constitute an infraction are the existence of an act (recruiting, harbouring, transporting) and the presence of a clearly determined exploitative objective¹³. The operating methods (menace, constraint, violence,...) which figure in the Palermo Protocol and the European framework decision, do not appear herein as constitutive elements of the crime, but are instead included among the aggravating circumstances¹⁴. This choice has been made notably with a view to facilitating proof of an infraction¹⁵.

With regard to the forms of sexual exploitation, the new law restricts itself to the crimes of prostitution and child pornography. As far as labour exploitation goes, this has to take place in “conditions contrary to human dignity”.

While the issue of the removal of organs was imposed by the Palermo Protocol, article 433 section 5 targets two forms of exploitation, which are not envisaged by either the European or international instruments: exploitation through organized begging and the commission of

¹³Note that the exploitation does not have to have been effective: Exposé des motifs du projet de loi modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains, Doc. Parl., Chambre, 2004-2005, 51-1560/1, p. 20.

¹⁴For an analysis of aggravating circumstances and punishments, see M.A. BEERNAERT and P. LE COCQ, op.cit., p.377-382.

¹⁵See in particular: Senate Justice Commission Report, Doc. Parl., Sénat, 2004-2005, 3-1138/4, p. 15.

infractions against a person's will. These are intended to address new forms of trafficking currently appearing in jurisprudence¹⁶.

In a previous report, the Centre took the opportunity to analyse the new provisions in detail and highlight both the positive points and those which raise questions¹⁷.

Thus, the fact of now possessing a legal definition of trafficking and of enlarging the incriminating categories to cover economic exploitation for all victims, Belgian or foreign, was received positively.

On the other hand, the Centre raised questions in regard to the practical consequences of limiting the forms of exploitation to certain defined areas. Up till now, judges working under the previous disposition, article 77b of the law of 15 December 1980, centred their analysis on the abuse of a precarious situation, which enabled the inclusion of other situations, unlimited by the constraints of category, such as sexual slavery within the context of prostitution, or fraudulent adoptions. Such situations which, prior to the inception of the new law, could have been considered as constituting trafficking in human beings, may fall outside its definition in the future, with a resulting risk of prejudice to the victims.

Indeed, the Centre questions whether this categorization might not risk excluding certain forms of trafficking, which may emerge in the future, from the definition of trafficking in human beings.

The Centre can confirm from experience that limiting the definition of "human trafficking for the purposes of sexual exploitation" to "exploitation for the purpose of prostitution and child pornography" does indeed pose practical problems. This has been demonstrated in the context of two cases in which the Centre appears as civil plaintiff.

This person stood accused, on the one hand, of having recruited young Romanian women for the purposes of prostitution and, on the other, of also having forced them to work, together with other Romanians, under conditions contrary to human dignity.

Both the criminal court in Charleroi and the court of appeal in Mons¹⁸ have upheld the charge of trafficking in human beings for the purpose of exploiting their labour. Nevertheless, they are both of the opinion that the dossier has not established beyond doubt that the accused intended to debauch or prostitute the young Romanian women. In reality, the case, as presented to the court makes it clear that the accused clandestinely imported the women to serve his sexual needs.

¹⁶Exposé of motives of the draft law modifying various provisions in order to reinforce the fight against trafficking and smuggling in human beings, Doc. Parl., Chambre, 2004-2005, 51-1560/1, p. 20. We note that in 2006, 23 dossiers were opened by the public prosecution offices for exploitation consisting in forcing a person to commit an offence. With regard to the exploitation of beggars, 2 dossiers were opened in 2006. Note also a European Parliamentary Resolution of 16 January 2008 towards a European strategy for the rights of the child, which notably deals with the question of the exploitation of children in association with begging practices.

¹⁷ See Centre's report on human trafficking: "Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights", p.21 to 37. This report is available as download from the Centre's website: www.diversite.be. See also, for a critical analysis of these new provisions: M.A. BEERNAERT and P. LE COCQ, p. 366-377; and G. VERMEULEN, «Matroesjka's : tien jaar later, repressie en controle als speerpunten van het vernieuwde mensenhandelbeleid ? », Panopticon, 2005, p.1 ff.

¹⁸ District Court of Charleroi, 15 May 2007, chapter 6; Court of Appeal of Mons, 26 December 2007, 3rd chapter. These two decisions are analysed in the jurisprudence section of this report. They are also published on the Centre's website: www.diversite.be.

One may well ask whether the courts' decisions would not have been different if the prevention of "trafficking in human beings" had targeted all types of sexual exploitation, rather than only trafficking for the purposes of debauchery or prostitution.

The second case concerns a lawyer who is accused of having bought an underage Moroccan girl, in particular to serve as his sex slave. This case – which at the time of closing this report (February 2008) – had not yet been judged in the criminal court – is also dealt with in greater detail in the second part of this document (see dossier: underage girl). We must pay close attention to just how the examining magistrate (whose role is solely to determine the facts of the case) interprets the new provisions, in particular article 433 section five, 1^o, concerning sexual exploitation.

With regard to the trafficking in human beings to exploit their labour, the Belgian legislator has not adopted the terms as they appear in the European framework decision (forced or obligatory work or service, slavery, bonded servitude ...), but has rather chosen the term "work that is contrary to human dignity". The Belgian legislator has thereby opted for a wider field of application than that called for by the European instrument¹⁹.

The law does not give any supplementary indication of what should be understood by the term "work that is contrary to human dignity". More detail can, however, be found in the parliamentary groundwork. Exposure of motives clarifies the different elements which may be taken into account when establishing the presence of working conditions that contravene human dignity, whether in the area of remuneration or the working environment and conditions. Thus, a salary that is manifestly disproportionate to the very large number of hours worked or to the services provided may be considered as a condition contrary to human dignity. In addition, the fact that payment is less than the monthly minimum wage envisaged by collective labour convention, or that workers are active in an environment manifestly non-conform with the standards prescribed by the law of 4 August 1996 relative to the well-being of employees in the workplace, are also elements that would qualify as undignified working conditions²⁰ for the magistrate.

In a previous report, the Centre has already voiced certain concerns regarding the practical interpretation of this notion in the field²¹.

As we have gathered from interviews which the Centre has had with certain Public Prosecutors and Labour Auditors, a difference can exist with regard to the content of the term "work that is contrary to human dignity", depending on whether the case is handled by the Public Prosecutor or the Labour Auditor²². Moreover, on one side are those who believe that the presence of some kind of constraint must be determinant for a case to be considered as human trafficking, while on

¹⁹See on this point, the Centre's annual report on human trafficking: "Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005, p.32-33.

²⁰Exposé of draft law motives to modify diverse provisions intended to fight against trafficking and smuggling of human beings, Doc. Parl., Chambre, 2004-2005, 51-1560/1, p. 19.

²¹The Centre, annual report on human trafficking, : "Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005, p.32-33; See also M.A. BEERNAERT and P. LE COCQ, op. cit. p.371-374.

²²The Centre has had the opportunity of interviewing several liaison magistrates engaged in human trafficking cases across the country.

the other are those who maintain that from the moment a worker is paid below the legal minimum wage, we are already dealing with trafficking in human beings.

Although there is as yet little jurisprudence to base an opinion upon, it would seem that the courts are not only considering the most extreme cases, as we had initially feared. On this matter, we refer the reader to last year's report²³, as well as the third part of this one.

Question 2: Making it a priority to identify trafficked persons

Since the 1990s, Belgium has established a system of protection for the victims of human trafficking. The Belgian system for combating the trafficking in human beings occupies the middle ground of a compromise between, on the one hand, a desire to protect the victims and offer them genuine future prospects and, on the other, the necessity of carrying out an effective fight against the networks involved. It is within this context that victims of trafficking who agree to cooperate with the judicial authorities and to be accompanied by a specialized reception centre, may benefit from special status. They may also, under certain conditions, be granted documents for temporary – or even permanent – residence in Belgium. This system has recently been incorporated into the law of 15 December 1980 concerning access to territory, residence, the implantation or removal of foreigners (see below: law on foreigners) (see articles 61/2 to 61/5).

In this context, and while under constraint to leave the territory, victims may take advantage of a 45 day reflection period. This delay is intended to give them time to find the necessary peace of mind to make a free decision with regard to bringing charges or testifying against their exploiters. As this system is examined in some detail under question 38, we need not go into it now.

In addition, Belgium has recently received a new directive from the Justice Ministry: COL 01/07 concerning policies of investigation and judicial pursuit with regard to human trafficking²⁴. Introduced into law on 1 February 2007, it replaces the previous directive (COL 10/04) of 1 May 2004. This directive is primarily addressed to magistrates and police services. In particular it includes in its annex a list of indicators designed to help detect cases of human trafficking and to aid in identifying victims. This directive will be examined more closely under question 36.

An important point in this directive involves taking the victim's interests into consideration. Here, even if the status of the exploited persons is not in conformity with residence, immigration or employment legislation, it is expressly foreseen that they be considered first and foremost as crime victims. In other words, they should not be initially regarded as illegal immigrants or clandestine workers, but as potential victims, and should therefore also be directed towards reception centres specialised in their needs.

Another important instrument in the context of the identification of victims is proposed in the draft of a ministerial circular addressed to all front-line actors in the field (police, inspection

²³ The Centre's report on human trafficking 2006 : Les victimes sous les projecteurs, July 2007, point 3.2: « premières interprétations de la notion de travail contraire à la dignité humaine ».

²⁴ This new directive was analysed in last year's report: see "report on human trafficking" 2006 : Les victimes sous les projecteurs, chapter I, point 1.2. »

services, immigration services ...)”, and intended to forge a multidisciplinary cooperation among these services. Among other things, this publication details the measures to be taken once a person has been identified as a potential victim, notably including the delay for reflection accorded them and the different procedural phases linked to their status as a victim of human trafficking.

While the system of orienting victims toward the reception centres generally works well, improvements are possible in the detection and identification of victims, principally, of economic exploitation (see below: questions 35 – 37).

From interviews that the Centre has held with certain magistrates, it would seem that the front-line actors tend to perceive the victims of labour trafficking primarily as illegal workers. As a result potential victims are often repatriated directly.

It also happens that potential victims who have not immediately declared themselves as such find themselves faced with a deportation order or end up in closed centres intended for illegal migrants awaiting repatriation.

The Centre has observed this in several cases. The first dossier concerned a case of forced labour and debt bondage, something we have covered in detail in last year’s report²⁶. One of the victims seemed completely traumatised when she was interviewed: she broke into tears regularly and even vomited. To the question of whether she considered herself a victim of trafficking, she replied in the negative. But in reality she was completely under the control of the traffickers, refusing to answer any questions implicating them. She still had to reimburse part of her “debt”. She begged for the return of the 2,200 Euros seized in her room, saying that: “she had already had enough trouble getting that much money together”. She was able to recuperate the sum on the eve of her repatriation. Initially she had even refused to give her name, for fear of expulsion.

Another dossier concerns a case of sexual exploitation in Turnhout. This affair is approached in detail in the second part of the report (see dossier: prostitution bar in Turnhout). When four young women were intercepted in a bar, three of them declared they were victims of human trafficking²⁷. It emerges from the case history, however, that these women were taken to a closed centre for illegal immigrants, with a view to repatriation. It was only at the last moment that this expulsion could be prevented. It also emerged that they were locked up together with one of their suspected exploiters, only serving to extend that person’s control over them through the use of threats.

Finally, in the dossier on massage parlours in Liège, which we will also return to in the second part of this report, it seems that between September 2001 and June 2002, the police intercepted more than a hundred young girls. Although more than ten of them were placed in a specialized

²⁵Circular relative to the establishment of multidisciplinary cooperation concerning victims of human trafficking and certain aggravated forms of human smuggling. At the time of closing this report (February 2008), this text has yet to be submitted to the interdepartmental coordination cell for the fight against trafficking and smuggling of human beings.

²⁶Report on human trafficking 2006, op. cit., Chapter 2, point 2.3.1., p.42. The judgement given in this case is commented in the third section of this report, on jurisprudence.

²⁷The fourth, who could not benefit from the “trafficked” statute, was repatriated.

reception centre, fifteen young girls were nonetheless taken to the closed centre at Vottem with a view to repatriation. A number of young girls also received expulsion orders.

Question 3: Internal Trafficking

As we have already mentioned, with regard to the definition of “trafficking in human beings”, the new article 433 section five of the penal code, introduced by the law of 10 August 2005, also enables the penalization of national trafficking, regardless of the nature of the exploitation. Previously only national trafficking for reasons of sexual exploitation (prostitution) was punishable by law in virtue of articles 379 and 380 of the penal code. The trafficking in human beings for the exploitation of their labour was not considered punishable unless the victim was a foreigner.

Thus trafficking in human beings, as opposed to smuggling, no longer presupposes the breaching of a frontier.

Question 4: Definition of trafficking when a child is involved

As stated above, the Belgian legislator has decided that those who trafficking in human lives shall be equally incriminated, regardless of whether the victim is adult or minor.

This is mainly because the Palermo Protocol and the European framework decision on human trafficking demands that, with regard to minors, the infraction of human trafficking holds good, even without any specific operating methods, and the Belgian legislator has decided to extend this principle to adult victims²⁸.

Therefore, being a minor is included among the aggravating circumstances of this crime (article 433 section seven, 1° of the penal code). In practice, age minority is one of the essential priorities in the context of investigation and charging for the crime of trafficking in human beings²⁹.

²⁸Exposé of motives for the draft law modifying certain provisions concerning the fight against trafficking and smuggling of human beings, Doc. Parl., Chambre, 2004-2005, 1-1560/1, p. 11.

²⁹See the Justice Ministry directive COL 01/07 on investigation and prosecution policy in the fight against trafficking and smuggling in human beings, that came into force on 1 February 2007. This directive was analysed in the Centre's previous report, p.25-27.

2. Principle 2: Human rights as a paramount issue

Question 5: Human rights as explicit priority

The Expert Group on human trafficking has made the “human rights approach” an explicit priority for all policies and measures designed to combat the trafficking in human beings. This should notably result in a specific statute of protection for victims of human trafficking, independent of whether or not they collaborate with the justice system.

However, we know that this is not the approach chosen by Belgium. In Belgium, being accorded the status of a victim of human trafficking is linked with respect to several conditions, the principal one being that of collaborating with the justice system. The Centre has already evaluated this choice in a previous report³⁰.

In practice, the link with the justice system and, in particular, with information pertinent to the judicial enquiry still offers the best guarantee for defining and making contact with the target group of those who best meet the term “victim of human trafficking”³¹.

In the Belgian system, victims enjoy several basic rights. In lieu of a temporary residence permit, such as is the case in other European countries – something which is not a real solution – Belgium offers them the possibility of obtaining permanent residence if they meet the conditions imposed. They may legally look for employment and are accompanied in the process by a reception centre. They may also benefit from social and medical assistance, as well as judicial support from a lawyer assigned to their case. From the point of view of the victim, however, the fact that those who are not interested in such assistance lose their victim status (and thereby their basic rights) constitutes a disadvantage³².

But the Belgian system also shows several gaps. In principle, victims whose statement concerns things they have experienced outside Belgian territory may not benefit from the statute.

As already mentioned under question 2 (see also questions 35-37 *infra*), good functioning of the Belgian system depends considerably on the quality of detection and identification of victims by all participants concerned. In this context, the follow-up of victims is equally important. Normally, victims who have cooperated with the justice system but who lose their status in the course of the proceedings or the accompaniment phase, have no further access to such basic rights as legal aid from a court appointed lawyer (see question 18).

³⁰See The Centre, “Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005, esp. p.53-58 ».

³¹The term ‘abuse of a precarious situation’ in the context of the former law was also a good basis for definition.

³²We might ask ourselves in parallel, whether the victims who benefit from the federal statute granted by the government of Flanders can be obliged to follow courses under the integration decree, like other new arrivals.

Sometimes this might mean a great deal, as we have seen in the Bulgarian dossier, covered in the second part of this annual report: those victims, who had received death threats and who had fully cooperated with the legal system but who did not wish to satisfy one of the supplementary conditions, found themselves totally abandoned to their fate.

Some victims never even acquire the statute.

Consequently, unless they benefit from a residence permit in the context of some other procedure (that of asylum, for example), only those who benefit from the statute of “victim of trafficking” will have access to important rights such as social welfare payments or the right to work.

As regards the right to legal aid, or information on how to proceed in the pursuit of damages, such information is generally provided by the reception centres for trafficking victims or the lawyers they offer for that purpose. Nonetheless, a potential victim who does not benefit from the statute of protection may still be entitled to such rights in the context of free legal aid. In practice, however, exercising such a right poses problems, as we shall see under question 41.

Question 6: *Ex ante* impact assessments

The first law on human trafficking, adopted in 1995, as well as other measures, were the result of the work of the lower chamber’s parliamentary Commission of enquiry into human trafficking³³, this law being in effect modelled on recommendations given by the Commission.

Furthermore, the Senate Commission of the Interior and Administrative Affairs decided, on the 17 October 1999, to create a sub-commission for “Trafficking in human beings and prostitution” which was given the task of studying the problem of human trafficking from the angle of sexual exploitation. This work consisted in the analysis of the modes of organization and function of the trafficking networks, the situation in the home countries of those concerned, the reception of victims, police strategy and logistical support, judicial policy and the collaboration between police forces and justice systems at the international level. This commission produced three parliamentary reports³⁴ offering, each time, a number of concrete proposals, of which several were implemented.

Unfortunately this sub-commission was dissolved in 2003.

³³See notably the report of the 18 March 1994 of the Commission of enquiry for the elaboration of a structural policy aimed at the repression and abolition of the trafficking in human beings, Doc.parl., Chambre, sess. extr. 1991-1992, 673/7.

³⁴These three reports, drawn up for the “Sub-commission for Human Trafficking issues” were as follows: report on “Human trafficking and Prostitution in Belgium,” Doc. Parl., Senate, 1999-2000, 2-152/1 and 2/152/2; report on the “measures taken by the government following the recommendations of the “sub-commission Human trafficking and Prostitution””; Doc. Parl., Senate, 2000-2001, 2-365/1; report on “Human Trafficking and visa fraud”,Doc. Parl., Senate, 2002-2003, 2-1018/1.

Question 7: *ex post* impact assessments

(see also question 19, below)

Different forms of evaluation exist for implemented policies. The Centre, due to its role as national Rapporteur, functions through its annual reports on human trafficking as both observer and ongoing evaluator of implemented policies (see below: question 20).

It is equally important that Parliament is able to play a driving role. In the past we have confirmed that the existence of a parliamentary monitoring commission on human trafficking policy grants a particular dynamic and provides an important control of policies and their implementation within the various jurisdictions.

A focus study carried out by the University of Ghent, completed in December 2006³⁵, also evaluated different aspects of the policies implemented in the field of human trafficking and issued several recommendations.

We may also note that the Justice Ministry directive COL 01/07 relating to the investigation and prosecution policy on human trafficking, envisaged that evaluation reports should be drawn up by the liaison magistrates for human trafficking cases and transmitted to the Justice Ministry. Consequently this has meant an evaluation of the repressive aspects of the policy against human trafficking.

The draft circular on multidisciplinary cooperation for the victims of human trafficking and certain aggravated forms of human smuggling, also envisages its evaluation, within two years of its publication in the Belgian Monitor, by the interdepartmental cell for coordination in the combat against human trafficking³⁶. This concerns evaluation of the humanitarian aspects as well as the coordinated and integrated policy approach.

Finally, it should be mentioned that the government must report every two years to Parliament on the application of its human trafficking and smuggling legislation and on the general state of the fight against these phenomena³⁷. To this end, it gathers information from the different Ministries concerned on the initiatives taken and actions implemented in these matters. But this document does not, in the proper sense of the term, constitute a policy evaluation report.

³⁵Fondation Roi Baudouin, La politique belge en matière de traite des êtres humains: état des lieux, évaluation et options futures, December 2006. The study is downloadable via the following link: <http://62.50.9.26/publication.aspx?id=193662&LangType=2060>

³⁶For the role played by this Cell, see below: question 10.

³⁷Article 12 of the law of 13 April 1995 included provisions for the repression of trafficking in human beings and child pornography.

Question 8: Avoiding labelling individuals as “trafficked”

The Centre does not have any information on the possible negative impact of certain techniques on the victims.

In Belgium, data gathering on victims takes place in conformity with privacy law.

However, it is probable that a presumed victim who returns to his or her country of origin, or is repatriated, without a risk evaluation having been made, runs a major gamble of finding themselves, once again, a victim (see the issue of “risk assessment” at question 44 below).

3. Principle 3: The need for a holistic, coordinated and integrated approach

Question 9: Resolving contradictions between policies

As we have already mentioned, the difficult compromise found by the Belgian authorities with regard to combating trafficking networks while nonetheless offering a certain protection to victims (who are for the most part in the country illegally) consists in granting residence papers only to those victims who collaborate with the judicial authorities and who are accompanied by a special reception centre. This statute is detailed under question 38.

Belgian legislation envisages granting a reflection period of 45 days to presumed victims. This delay is intended to provide them with the necessary peace of mind to reach a mature decision as to whether to collaborate with the judicial authorities or rather to prepare for repatriation. Nevertheless, as we shall see below (see question 37), this delay is very rarely applied.

In practice, we remark that there are lacunae in the statute of victim.

One lacuna, which has already been mentioned, is the fact that a victim who makes a deposition concerning events that took place outside Belgian territory is not normally entitled to the status of victim. A solution to this has to be found at the European level.

A further lacuna: victims who have cooperated with the justice system, but whose dossier has been closed for lack of sufficient evidence, lose their status as victims of human trafficking and may not receive a residence permit other than through such official alternatives and the “stop” procedure. To benefit from this, the victim needs to have been accompanied for two years by a specialized reception centre.

As already mentioned under question 5, there are also cases of victims who have cooperated with the justice system, and who have been clearly identified by the latter as being victims of human trafficking in the context of a particular dossier, but who are refused the statute because they have failed to meet certain supplementary conditions.

This difficult balancing act is particularly obvious when considering the trafficking in humans with a view to exploiting their labour. Indeed, as we have already mentioned under question 2 and as we shall see in more detail at question 35, these latter present especial difficulties when it comes to detection and identification.

In a previous report, the Centre has already analysed the link between human trafficking and economic exploitation³⁸.

In order to fulfil their dream of migration, numerous migrants use the services of human traffickers, thus augmenting the risk of economic exploitation. The limited options for legal migration, coupled with the reinforcement of immigration controls in the destination countries (but also in the transit countries and countries of origin) makes it impossible for a vast number of

³⁸The Centre, annual report on human trafficking: “Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005, in particular p. 67-69.

migrants to organise a migration project towards Europe or North America without such dubious assistance.

While the actual recruitment is often organised on a voluntary basis, more subtle mechanisms are employed to force the victims to work for miserable pay in deplorable conditions. Sometimes the victims find themselves in situations of forced labour, in which they must reimburse their so-called transport and lodging fees with badly paid work. Their precarious administrative status (many victims have no residency documentation whatsoever) leaves them vulnerable and, in consequence, easily exploitable. The confiscation of their identity papers, allied with the threat of denunciation to the immigration authorities or the police for repatriation, are among the most oft-used weapons for assuring the silence of these victims.

It emerges from various interviews with labour auditors, that in cases involving illegal employment, the charge of “human trafficking” is sometimes retained at the beginning of the enquiry, only to be abandoned later, which has a direct impact on the fate of the exploited person- doubtless, to the detriment of the potential victims who, depending on the case, may find themselves used for the goals of the investigation.. Several reasons can be advanced for this such as: the lack of knowledge of front-line services that identify such cases as relating to the trafficking in human beings and the fact that qualifying them as a “human trafficking” case, rather than as “clandestine work” promises greater material support for the enquiry. Interviews with the labour auditors show that the majority of them follow a reasoning based, for the most part, on the concept of unfair competition.

Only ongoing training and consciousness-raising of the front line services concerned will help to redress this delicate balance.

In its previous reports³⁹, the Centre has also needed, several times, to insist that offering legal alternatives to the current dynamic of migration represents one of the paths to be taken into consideration in the context of the war on human trafficking.

One way to snatch potential victims from the claws of the criminal exploiters is to draw up and implement an economic migration policy which integrates a sufficient number of control mechanisms to ensure that migrants do not find themselves in situations of exploitation (see question 28).

In 1974, economic integration to Belgium was officially ended, meaning, in practical terms, that economic migration became extremely difficult for workers. The general rule, which has been in vigour since 1974, stipulates that any employee originating from a country outside the EU⁴⁰ must find an employer ready not only to offer him an employment contract, but also to request a work permit on his behalf. This permit is only granted after a market study which implies investigating

³⁹See notably the Centre, annual report on human trafficking, Analysis from the victims' point of view, December 2004, part 1, point 3.3, p.43 (only available in French and Dutch).

⁴⁰For those member states of the EU who have joined in 2004 and 2007, specific transitory measures have been decided in order to ease access to workers from these countries who want to take up certain jobs established by the government as being short of labour in the Belgian job market. This system has been operational since 2006 but has recently undergone some “beefing up”, given that by 2011 at the latest, for the new eastern European Member States that joined in 2004, and 2013 for the two who joined in 2007, free circulation of workers must be fully realised. As a result, we shall not go into any depth for such transitory measures.

whether or not the work concerned could not be done by someone available on the Belgian market within a reasonable delay. Once the employment authorization has been granted to the employer, a work permit B, intended for the migrant worker, is delivered. With this permit in hand, the worker can request a type D visa for entry into Belgium. He then has the right of residence for a maximum of one year (renewable for the duration of his employment) and with it the right to work uniquely for this employer and within the job description for which the work permit was granted. In practice this procedure is akin to an extended limitation of the possibility of economic migration. There is however, an important exception to this rule, which affects anyone coming from third countries migrating for reasons of employment to Belgium to work in one of the ways detailed below and who are thus able to obtain a work permit without a prior enquiry into the status of the employment market. The statutes in question are the following:

- Internships, assuming they meet certain conditions
- Highly qualified personnel
- Researchers and professors under invitation
- Specialised technicians with a foreign work permit for the repair or erection of installations manufactured abroad
- Foreign workers who are undergoing vocational training in Belgium for a maximum of 6 months
- Top level sportspersons and their crew
- Management personnel of aviation companies having a headquarters in Belgium
- Those responsible for foreign tourism services in our country
- Au pair girls
- Entertainment professionals
- The spouse and children of foreign migrants whose residence is limited to their length of employment
- The spouse and children of diplomats, ministers of recognized faiths, personnel of military cemeteries, managers and researchers in the service of a coordination centre, employees of the EU, journalists and post doctoral scholars.

Other than the work permit B, there are two other types of work permit. The work permit A, which is valid for an indeterminate period and for all types of employment in all sectors. A worker may ask for an A permit if he can prove a legal and uninterrupted stay of four years within a period of ten years maximum. This period is reduced to three years if the employee is here with his family or if an international convention has been concluded between Belgium and his country of origin⁴¹. If the worker lives here with his family, and an international convention

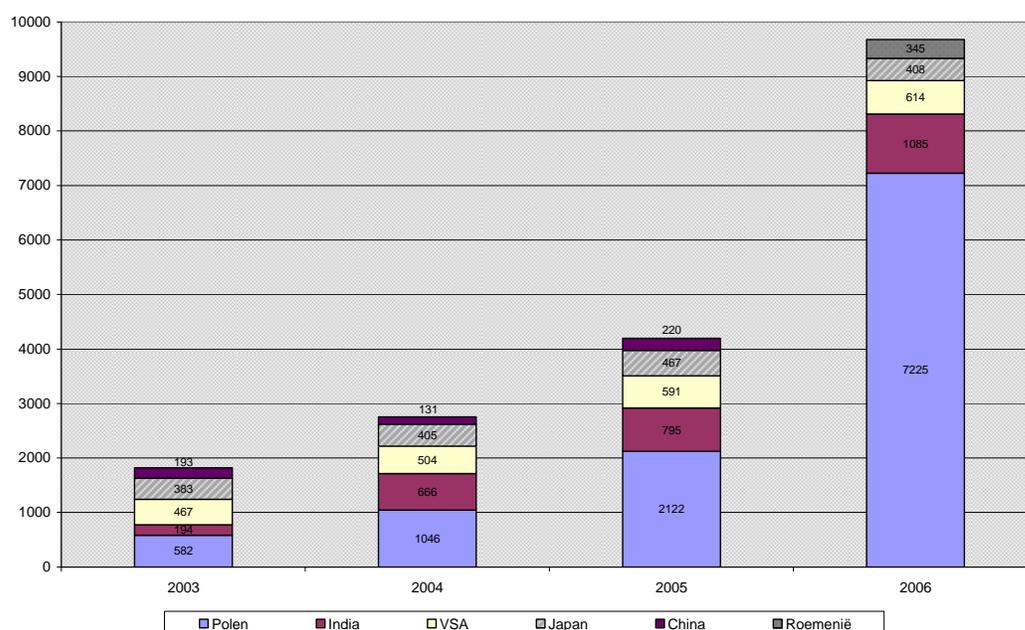
⁴¹Countries with which this type of convention has been concluded: Algeria, Bosnia-Herzegovina, Croatia, Macedonia, Malta, Morocco, Serbia-Montenegro, Slovenia, Tunisia, Turkey and Switzerland.

also exists, then the period is further reduced to two years. However, all the years of work with a B permit are not taken into account. Those who fall into one of the allotted categories for permit B are often not taken into account for permit A.

The third type of work permit is the permit C, which is delivered to certain categories of foreigners who have obtained a provisional right of residence in Belgium for a reason other than professional and who may then exercise a profession with permit C for one year (renewable until the end of their permitted residence) with any employer in any sector. Asylum seekers and persons who benefit from the statute of victim of human trafficking or trafficking are examples of the type of persons who have the right to a C permit.

This last type of work permit enables victims of trafficking and smuggling of human beings to work as a protected person for the duration of their statute.

Illustration 1: first A and b permits delivered to foreign nationals (2003 - 2006) (source: FPS ELSD, 2007)



The illustration opposite shows that the number of first issue permits of type A and B has increased strongly in recent years. This increase is mainly due to the number of first permits of type B issued to persons from new EU member States. With regard to C permits, we can see that the number lies between 25,000 and 30,000 between 2003 and 2006. The number seems to have diminished in recent years, probably linked to the fall in the number of persons requesting asylum in Belgium.

Question 10: Coordination at a national level

In order to ensure the coordination of the various initiatives being undertaken in the context of the fight against human trafficking and smuggling, an Interdepartmental Coordination Cell was set up. This cell has existed since 1995 but was reinvigorated by the Royal Decree of 16 May 2004 on the fight against human trafficking and smuggling⁴². The chairmanship of the Cell is held by the Minister of Justice and its Secretariat by the Centre.

This Cell reunites all the federal participants (whether operational or political) active in the fight against human trafficking and smuggling⁴³.

Apart from its coordinating function, it is also charged with the critical evaluation of the results of the fight against human trafficking and smuggling and, depending on the case, also collaborates in formulating policy suggestions linked to these two phenomena.

Given that this cell only meets once or twice a year, a bureau comprising the services of the principle departments engaged in the fight against human trafficking and smuggling was created. This Bureau⁴⁴, which meets on a monthly basis, has to ensure the functioning of the Cell and prepare or execute its decisions, recommendations and initiatives.

The Bureau of the Interdepartmental Coordination Cell was charged with the setting up of several work groups on different themes. Thus, for example, one working-group met several times and carried out numerous audits in 2005 and 2006 with a view to evaluating the system for granting residence documents to the victims of human trafficking. In addition it drew up diverse proposals and recommendations concerning the recognition and the financing of reception centres for the victims of human trafficking and smuggling. It has also addressed the issue of criminal co-responsibility and civil liability of persons who knowingly place orders through intermediaries who engage in human trafficking.

Even though various projects have been approved by the Cell, one is nonetheless forced to remark the absence of political back-up for already approved projects. Particularly deplorable in this regard is – with a few exceptions – the very patchy presence of political representatives at the interdepartmental Cell's meetings⁴⁵. In consequence, the Cell has not been able to genuinely fill the driving role in policy evaluation and improvement that it was intended to play.

⁴²Moniteur Belge, 28 May 2004. For a more detailed presentation of this structure, see the Centre's 2005 report: "Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights », November 2005, chapter III, « coordination structures and data collection », p.59-62.

⁴³The Cell is composed of the following members: representative of the Prime Minister, of each of the deputy Prime Ministers, Justice Minister, Ministers of the Interior, Foreign Affairs, Employment, Social Affairs, Social Integration, Cooperation and Development, the College of General Procurers, Office of the Federal Prosecutor, Criminal Policy Service FPS Justice, General Directorate of penal legislation and human rights FPS Justice, Trafficking in Human Beings Cell of the Federal Police, State Security, Foreigners' Office FPS Interior Affairs, Social Legislation Inspectorate, FPS Employment, Work, Special Inspectorate of taxes FPS Finance, Service of the Social Inspectorate FPS Social Security, FPS Foreign Affairs, External Commerce and Development Cooperation, Centre for Equal Opportunities and Opposition to Racism, Child Focus.

⁴⁴The members of the Bureau are the representatives of the Service of Criminal Policy (Chairman), Centre for Equal Opportunities and Opposition to Racism (Secretariat), the Foreigners' Office, the Central Service of the Federal Police for "Human Trafficking", the Social Inspection Service of the Federal Public Service of Social Security, the Inspection Service of Social Legislation of the Federal Public Service of Employment, Work and Social Negotiation.

⁴⁵Including the representative of the Justice Minister, who assures the chairmanship of the Cell.

It therefore appears indispensable that the new government accords this body the necessary attention and follow-up.

In 2007, the Bureau developed an action plan for the fight against human trafficking. This plan touched on different facets of the struggle against this phenomenon (legislative aspects, preventative, victim protection, investigation and prosecution, coordination and information gathering) and drew up a series of proposals and recommendations. This action plan has yet to be approved by the government.

We should note that no specific budget is envisaged for the realization of the Cell's activities, which does little to ease its task.

The NGOs, who run the specialised centres for the reception and support of victims, are not members of the Cell, but respect for the humanitarian aspects and the attention paid to victims is guaranteed by the Centre's presence and its active role within the Cell. That said, however, once one examines the questions that concern them - such as recognition of victim reception centres, or the evaluation of the statute of "victim" - the three specialised reception centres are closely associated with the Cell's working groups and are invited to share their points of view and suggestions.

The Centre also fills a coordinating role, in particular as it is responsible for coordination and seeing to the good collaboration between the specialized victim reception and support services⁴⁶.

Finally, we should note that a restricted working group within the Cell was given the task of drawing up a draft circular intended for all the front line actors (police services, inspection services, immigration services...) ⁴⁷. This text aims to continue to assure a multidisciplinary cooperation between the different parties involved. It replaces previous regulation⁴⁸, following the anchoring within the law of 15 December 1980 of a system for granting residence permits to human trafficking victims (articles 61/2 to 61/5). In particular, it aims to ensure an adequate process of referral to specialized reception centres for all potential victims. In the context of drafting this circular, the reception

⁴⁶Art. 3 of the R.D. of 16 May 2004.

⁴⁷Circular relative to the establishment of multidisciplinary cooperation concerning victims of human trafficking and certain aggravated forms of human smuggling. At the time of closing this report (February 2008), this text has yet to be submitted to the interdepartmental coordination cell for the fight against trafficking and smuggling of human beings.

⁴⁸Circular of 7 July 1994 concerning the issuing of residence permits and work permits to foreigners who are victims of human trafficking, M.B., 7 July 1994.; Directives of 13 January 1997 of the Foreigners' Office, to the public prosecution offices, to the police forces, to the inspection service for social legislation and the social inspectorate for assistance to victims of trafficking in human beings, M.B., 21 February 1997, modified 17 April 2003, M.B., 27 May 2003.

4. Principle 4: Policies linked to migration, the economy and the informalisation of the workplace

Question 11: Immigration policy

Defining the framework in which the three regions deliver work permits and employment authorizations is the responsibility of the federal legislator. These work permits may either link a specific employee to a specific employer (permit B), or authorize the worker to freely accept any kind of paid work (permits A and C). Certain categories of people are exempted from requiring a work permit on the basis of their resident status, their nationality or their profession.

There is no real question today of a targeted job creation policy in order to liberate certain sectors of the illegal labour market with a system of permits for certain categories of workers. Nonetheless, a number of measures have been designed to (among other things) authorize legal cheap labour in those sectors which are prone to illegal labour practices. The opening of those professions suffering from a labour shortage, such as agriculture, construction, transport, meat, HoReCa, ... has recently enabled the engagement, always at short term (maximum one year, but with an option to prolong) of tens of thousands of workers from the new EU countries in the context of transitory measures applied by Belgium with regard to citizens of these Member States (Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Slovenia and Slovakia) who wish to come and work in Belgium. In numerous cases these newcomers replace workers who are either illegal residents or who have no legal right to work, or who hold jobs in those sectors whose employers tend to rely on clandestine labour (whether or not they have appealed to it).

Apart from the legislation pertaining to professions suffering from a labour shortage, which applies to workers from the new EU Member States, and whose content is fixed by the Regions, we note that Belgium only has legislation at the federal level for workers issuing from third countries.

A system of work permit exemptions also exists, as explained above, as well as a system of exemption for the labour market study in the context of market access for certain functions and categories of professionals (see question 9).

One of the measures developed by the current government in its official statement of 18 March 2008 is a measure designed to regularize the residence of illegal residents who have a professional project. Persons who can demonstrate that they have lived in the country since 31 March 2007, and who have a firm offer of employment, who have acquired the status of an independent worker or who can prove that they have that status within a 6 month period, may obtain an exceptional and concomitant work permit and certificate of residence.

In order to do this, a definition of professions suffering from a labour shortage will perhaps be suggested. We do not know for certain whether the announced measures will also be valid for domestic workers and their employers- an extremely important category of clandestine labour.

Question 12: Avoid discrimination in jobs open to migrant workers

Jobs for which work permits are issued (= permit B, see above) benefit men more than women (see illustration 2). While there is no evidence to suggest that current policy intends to encourage male professional migration rather than female, nonetheless, the lack of a legal framework in the field of domestic labour primarily affects female workers.

Illustration 2: Number of B permits issued in Belgium in function of gender, 2006 (source: FPS ELSD, 2007)

| 1 st application | | | Renewal | | |
|-----------------------------|--------------|---------------|--------------|--------------|--------------|
| Men | Women | Total | Men | Women | Total |
| 8,715 | 3,757 | 12,472 | 5,839 | 2,316 | 8,155 |

Question 13: Checking the unprotected employment sector

The centre of gravity of government action in those economic sectors offering scant protection for workers tends towards detection and orientation of those commanding the supply, that is to say, the employers and middle men. This problem often has a negative effect on the workers themselves and their rights. Belgian labour contract law guarantees each worker the right to a salary, job security, indemnities in the event of an accident at work, protection from sacking and regulations with regard to rest and holidays. Nevertheless, workers are often arrested during an on-the-spot control and expelled from the country without having been able to take steps to secure their salary arrears.

In 2005, in the context of a “Human trafficking mini-protocol” (see question 47 below), 233 actions giving rise to 957 controls were carried out. The sectors of activity primarily targeted were:

- Foreign restaurants: 31.8%
- Agriculture, horticulture: 18.5%
- Prostitution, bars: 18%
- Phoneshops, nightshops: 8.2%
- Construction: 6.4%
- Other: 17.2%

In 2006, 1031 “Human trafficking in the wider sense” actions were realised; the sectors targeted by the local cells were:

- Agriculture, horticulture: 19.4%

- Construction: 16.6%
- HoReCa: 13.7%
- Foreign restaurants: 13.1%
- Prostitution, bars: 12%
- Retail shops: 6.3%
- Phoneshops, nightshops: 5.7%
- Other: 13.1%

Thus we can see that while in 2005 the foreign restaurants, the agriculture/horticulture sections and bars/prostitution represented the largest share of labour controls, in 2006 this trend has continued with the addition of construction and HoReCa⁴⁹.

Concerning migrant workers in a larger sense, in the SIOD report we can consult the statistics relative to summonsed infractions involving the employment of foreign workers. These are not, strictly speaking, human trafficking or trafficking violations, although in certain cases they may have given rise to investigation or prosecution for human trafficking offenses, since the risk sectors controlled are very similar.

Illustration 3: Number of infractions and workers in infraction recorded per type:

| | Illegal foreign worker infractions (law 30/04/99) | | Professional independent work permit infractions (law 19/02/65) | |
|-------------|---|-----------------|---|-----------------|
| | Nbr. of infractions | Nbr. of workers | Nbr. of infractions | Nbr. of workers |
| 2005 | 1081 | 1955 | 94 | 94 |
| 2006 | 1193 | 2106 | 31 | 31 |

⁴⁹Source: Social Intelligence and Investigation Service (SIOD), Bi-annual report 2005-2006 on the illegal employment of foreign workers and the exploitation of labour (TEH), 2007, pp.7-8.

Illustration 4: Synthesis of foreign workers occupied illegally in infraction of the law of 30 April 1999 by sector

| 2005 | Total | HoReCa | Construct. | Agricult., Horticult. | Retail shops | Transport | Oth er | Undetermi ned |
|--------------|--------------|---------------|-------------------|----------------------------------|-------------------------|------------------|-------------------|--------------------------|
| Total | 1955 | 493 | 475 | 133 | 147 | 136 | 495 | 76 |

| 2006 | | Horeca | Construct. | Agricult., Horticult. | Retail shops | Transport | Oth er | Undetermi ned |
|--------------|-------------|---------------|-------------------|----------------------------------|-------------------------|------------------|-------------------|--------------------------|
| Total | 2106 | 505 | 746 | 146 | 136 | 41 | 467 | 65 |

Illustration 5: Workers in infraction of the law of 30 April 1999 by residence category

| | Total | Total foreign workers Art. 12, 1° of the law of 30/04/99 (Neither work permit, nor residence permit) | Foreign workers Art. 12, 2° of the law of 30/04/99 (No work permit, but holds a residence permit) |
|-------------|--------------|---|--|
| 2005 | 1955 | 1714 | 241 |
| 2006 | 2106 | 1894 | 212 |

In the context of their job, social inspectors are entitled to issue warnings, to fix a delay period for persons in contravention to regularize their status or even to issue summonses, according to the circumstances and the gravity of the infraction. In any event, in cases of human trafficking or human trafficking violations, they enjoy no power of discrimination⁵⁰, but are obliged to report

⁵⁰For more detail on the subject of discriminatory powers of appreciation, see notably ibidem, p.22.

the matter at once to the Public Prosecutor⁵¹. However, the number of “human trafficking infraction” summonses delivered by the social inspection service remains limited, being that it is primarily the police who address this kind of summons. At the same time, one may well query how such violations can be ascertained, seeing that “work contrary to human dignity” is not always easy to determine in practice, even if Col 01/07 serves as a useful instrument in this respect⁵².

Furthermore, it would seem that the social inspection services generally leaves the task of orienting victims towards a reception centre to the competent police authority.

In our previous annual reports, we have also discussed in detail the problems linked to subcontracting and false free-lancing, which we have analysed on the basis of several cases in which we are/were the civil plaintiff. In this regard, the international structure of companies in the European context is often used. In our interviews with labour auditors and magistrates, we have noticed that these officials are entirely unprepared for the types of subcontracting structures (with or without free-lancing) in the European context. Criminals are often better versed in the loopholes of legislation than are our magistrates and auditors.

⁵¹In virtue of articles 80 and 81 of the law of 15 December 1980.

⁵²In this context, SIOD, p. 42.

5. Principle 5: The rights of children and the duty to protect them in anti-trafficking actions

In this part of the report (questions 14 - 17), which deals with juveniles, we shall approach the problem of unaccompanied foreign minors, some of whom may be human trafficking victims⁵³. We shall not be looking into children accompanied by their parents, who follow the statute of the latter in every respect.

Question 14: Children have at least the same rights as adults

Unaccompanied foreign minors (hereafter referred to as ufm) who are presumed to have been trafficked, benefit from the same protection as adults in terms of residence.

They are subject to the same conditions as adults: break off contact to the traffickers, collaborate with the judicial authorities, and be accompanied by a specialized reception centre⁵⁴. They also may benefit from a residence permit of indefinite duration⁵⁵. The sole difference is the residence document granted during the period of reflection: this is three months (not 45 days) and the minor benefits directly from a registration certificate⁵⁶. The law specifies that, throughout the procedure, the superior interest of the child must be taken into account.

If the minor may not benefit from the procedure relating to human trafficking victims – often because the statements submitted do not permit the enquiry to be effectively pursued or because he or she does not wish to make a statement – he may, depending on the circumstances of the case, come under the remit of the circular of 15 September 2005 concerning residence of ufm⁵⁷. This circular applies to ufm who are illegally resident on Belgian territory and have not initiated any other procedure.

This circular also envisages the possibility of indeterminate residence, on the condition that the ufm has formerly held a temporary permit for three years and no other sustainable solution has been found⁵⁸. In practice, this means that, in the context of this circular at least, a ufm who has reached the age of 15 in Belgium will have almost no chance of receiving an indeterminate residence permit by the age of 18, which is regrettable⁵⁹.

⁵³For a detailed analysis of the situation of unaccompanied foreign minors in Belgium, see CH. VAN ZEEBROECK, *Unaccompanied Foreign Minors in Belgium, Administrative, Legal and Social Situation, Practical Guide*, Brussels Children's Rights Department, publisher Jeunesse et droit, 2007.

⁵⁴See articles 61/2 - 61/5 of the law of 15 December 1980. See also *infra* the detail of the procedure explained under question 38. The Centre commented these new provisions in its annual report on human trafficking 2006, the victims in the spotlight, July 2007, Chapter I.

⁵⁵Article 61/5 of the law of 15 December 1980.

⁵⁶Article 61/2, §2, indent 2 of the law of 15 December 1980.

⁵⁷M.B., 7 October 2005. For an analysis and critical commentary of this circular, see B. VAN KEIRSBILCK and CH. VAN ZEEBROECK, «Premiers commentaires de la circulaire du 15 septembre 2005 relative au séjour des mineurs étrangers non accompagnés», J.D.J., 2005, n°248, pp.21-23.

⁵⁸IV.B. of the circular. Residence of indeterminate duration is only possible in third place, after family regrouping, repatriation to country of origin or to a country in which the minor is authorized to reside.

⁵⁹And this, even more so given that the largest group of ufm arriving on Belgian territory is composed of youth over the age of 14. See B. VAN KEIRSBILCK and CH. VAN ZEEBROECK, p. 22, who consider that the procedure takes far too long.

In terms of lodging, new legislative provisions have recently intervened to better structure the reception of ufm⁶⁰. Effectively speaking, a minor was previously received in function of their statute and not of their specific needs. The new provisions represent an advance for ufm, because they notably guarantee that the child will be cared for materially, via the reception structures, regardless of the administrative situation it finds itself in⁶¹.

A distinction has to be made as to whether the ufm is on Belgian soil or is intercepted at a frontier without visa or residence permit. If the minor is already on Belgian soil, reception is divided into two phases: an initial phase of observation and orientation in a centre intended for that purpose. The second phase, which in principle begins 30 days later, consists of orienting the ufm towards a reception centre designed for its specific needs.

As regards ufm who arrive at the frontier without a residence permit, new legislative provisions limit the length of time a minor may spend in a closed centre once they have been identified as ufm⁶². They are then taken to a centre for observation and orientation by educators and social workers who have undergone a specific training in specific educational techniques. The Foreigners' Office must then examine the case to see whether they are given access to the territory or not.

In any case, with regard to minors suspected of being victims of human trafficking – who are, for the most part, intercepted on Belgian territory in an illegal situation by the police – it has already been several years now that they have been, within the measure of the possible, directly placed in the care of centres, organised by the youth protection services of the French and Flemish Communities⁶³, for the protection of unaccompanied minors who are victims of human trafficking or trafficking. There the minor will find receptive ears, medical help, education, psycho-social assistance adapted to its own particularly vulnerable situation. If they are however involved in the “human trafficking” procedure, the administrative and judicial follow-up will take place in collaboration with one of the specialised reception centres.

The ufm, as minors, have access to education. They also, in accordance with the International Convention on the Rights of the Child⁶⁴, have the right to enjoy the best possible state of health

⁶⁰See articles 36 - 42 of the law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners, M.B., 7 May 2007; R.D. of 9 April 2007 determining the regime and rules of function applicable to centres of observation and orientation for unaccompanied foreign minors, M.B. 7 May 2007. For a short analysis of the changes that have been made, see CODE, «Esquisse de la situation des mineurs étrangers non accompagnés en Belgique», July 2007 (available via the following link: <http://www.lacode.be>)

⁶¹Ibidem, p.3; art. 59 and 62 of the law of 12 January 2007 on the reception of asylum seekers and certain categories of foreigners. The material aid comprises notably lodging, social, medical and psychological accompaniment, access to legal aid, to services such as interpreters and training (see article 2, 6° of the law of 12 January 2007).

⁶²Thus, so long as doubt exists with regard to the age of a juvenile discovered at the border without valuable documents, they may still be placed in a closed centre for three working days, which may be prolonged exceptionally by three further days, which means, taking into account weekends and holidays, a maximum stay in a closed centre of 11 calendar days.

⁶³See notably the Centre, annual report on human trafficking, analysis from the victims' point of view, December 2004, chapter II, points 4.2.3.: “reception of juvenile victims of trafficking”. See also on this issue article 7, indent 3 of the R.D. of 9 April 2007 which reminds us that the centre for orientation and observation is not the ideally adapted place by nature for a prolonged stay for the most vulnerable of minors such as victims of trafficking. They should be oriented as rapidly as possible towards a reception structure adapted to their situation.

⁶⁴Article 25, §2 of the Convention of 20 November 1989.

and to benefit from medical services⁶⁵. Since 1 January 2008, ufm who have attended more than three months of school are entitled to have their medical costs reimbursed. They are also entitled, as are all other vulnerable people, to mental health care, convalescence and reinsertion services⁶⁶.

Later, under question 17, we shall examine the loopholes in the protection of children.

Question 15: Benefit of the doubt

If the minority of an unaccompanied young foreigner – whether presumed victim of human trafficking or not – is in some doubt, the protection services are, in the context of their general mission of identification, responsible for ascertaining the young person's age⁶⁷. The law prescribes that this determination of actual age shall be made with the aid of medical examinations⁶⁸, which may notably include psycho-affective tests⁶⁹. This last modality has not yet been put into practice however. Age is currently determined on a basis of three complementary radiographic examinations, generally undertaken and interpreted by the same specialist: a test of the bone structure of the wrist, an x-ray of the clavicle and a dental examination⁷⁰. The average of the combined results of these three tests is retained as an indicator of age. Such tests include a degree of scientific imprecision, however, which can result in a margin of error of between 2 and 2.5 years^{71 72}.

The law of guardianship envisages that “in cases where the medical result may be subject to a margin of doubt, the lowest age is taken into consideration”⁷³.

Thus, from May 2004 to May 2005, the service of guardianship carried out 921 tests to determine age, resulting in a decision of majority in 183 of these (63%) and minority for 108 others (37%). For the year 2005 (January to December), 513 medical tests were made: resulting in a decision of majority in 70% of cases (360 cases) and only in 30% of cases in a finding of minority (153 cases)⁷⁴.

Given the contestations connected with age determination via medical testing, the benefit of doubt must be applied absolutely before considering a young person to be major. If a single

⁶⁵R.D. of 3 August 2007 modifying the royal decree of 3 July 1996 bringing into application the law on obligatory health insurance and indemnities, coordinated 14 July 1994 (M.B. 17 August 2007).

⁶⁶Article 39 of the 12 January 2007 law on the reception of asylum seekers and certain other categories of foreigners.

⁶⁷Article 7, § 1 of the programme law of 24 December 2002 on the guardianship of unaccompanied foreign minors (hereafter referred to as the Guardianship law).

⁶⁸Ibidem.

⁶⁹Article 3 of the R.D. of 22 December 2003 bringing into application title XIII, chapter 6 on guardianship of unaccompanied foreign minors of the programme law of 24 December 2002.

⁷⁰Guardianship service, Activity Report (May 2004 to May 2005) and addendum (May to December 2005), p.30-31. (downloadable on the FPS Justice site: www.just.fgov.be). For more details, see Recommendation of the “Minors in Exile Platform”, concerning the guardianship of unaccompanied minors, December 2006, point 4 (http://www.sdj.be/admin/docmena/Recommandations_tutelle_2006.pdf).

⁷¹CODE, op.cit., p.2; Guardianship Service, Activity Report, op.cit., p 31. For a critique of the methods of determining age, see CH. VAN ZEEBROECK, op. cit., p.72-83.

⁷²See the dossier of a young girl (minor) dealt with in the second part of this report.

⁷³Article 7§3 of the Guardianship law.

⁷⁴Guardianship Service, Activities Report, op cit., p.31 and chart, p. 80.

element leads one to think that this person might indeed be minor, the benefit of doubt should be given in favour of that⁷⁵.

At the same time, determining a person's age should be made first and foremost on the basis of a series of documents. In the absence of documents, the young person's physical appearance should be taken into consideration, psychological maturity, and their own statements in the matter, verifications made through authorities or ambassadors. The use of x-rays being potentially dangerous and only justified to a medical end⁷⁶, the medical test should be only realised as a final resort⁷⁷.

This is why some people consider that a study into the methods used for determining the age of ufm should be carried out, with the aim of improving the system to better serve the interest of minors⁷⁸.

Question 16: Mechanism for upholding the best interests of the child

Since 1 May 2004, any ufm meeting the conditions defined by the law is assigned a guardian whose principle mission is to protect, represent and see that the superior interest of the child is assured in all acts and procedures which concern it⁷⁹. The protection services– and the guardian – are charged with ensuring that a durable solution, in keeping with the interests of the child, is found as swiftly as possible by the competent authorities⁸⁰. The law expressly stipulates that the interests of the child must be the fundamental consideration in any decision made concerning it⁸¹.

For guardianship to be applicable, we must be dealing with:

- A person under 18 years of age;
- Unaccompanied by any person exercising parental authority or guardianship;
- Coming from a non-EU member country;
- And who has either introduced an asylum application, or who does not satisfy conditions for entry or residence in Belgium⁸².

Consequently, guardianship is available for asylum seekers and minors who arrive in Belgium without formerly having benefitted from an entry or residence authorization or who have lost

⁷⁵On this subject, see Recommendation of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit.

⁷⁶On this subject: Unicef, Guidelines on the protection of child victims of trafficking, September 2006,p.15.

⁷⁷On this subject Recommendations of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit.

⁷⁸"Minors in Exile Platform", information letter n°15 , July – August 2007, available at: www.mena.be.

⁷⁹Articles 9 - 16 of the programme law of 24 December 2002 on the guardianship of unaccompanied foreign minors, (henceforth called the guardianship Law).

⁸⁰Article 3, §2, 4° of the Guardianship Law.

⁸¹Article 2 of the Guardianship Law.

⁸²Article 5 of the Guardianship Law. On the problems of identification and description of ufm, see the recommendations of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit.

such authorization during their stay in the country. Since the majority of underage victims of human trafficking and trafficking are living in illegality, these naturally fall within the law's field of application.

In a previous report, to which we refer the reader⁸³, the Centre has already had the opportunity of examining this new mechanism and its implications for the underage victims of human trafficking and the various other players.

It is however appropriate to make a couple of remarks at this point:

Firstly, if it is indeed the minor's guardian who is expected to make suggestions with regard to a sustainable solution in conformity with the child's interests⁸⁴; it is nonetheless definitely the Foreigners' Office – the competent authority in matters of residence and immigration – which takes the final decision on this sustainable solution⁸⁵. Because it seems that this particular Federal Public Service often has a somewhat restricted vision of what this sustainable solution should be, namely repatriation to the country of origin⁸⁶. Nonetheless, when it is a question of presumed underage victims of human trafficking, these dossiers are always examined with particular attention, notably with regard to the possible implication of the child's family in the trafficking process.

A second difficulty is that Belgium does not consider juvenile emigrants from Member States of the European Union as unaccompanied minors susceptible of benefitting from the right of guardianship, which certainly poses some practical problems, particularly when these juveniles come from Bulgaria and Romania. These have indeed become inner-European migrants since 1 January 2007. Yet these are also the predominant nationalities among the victims (both major and minor) of trafficking for sexual exploitation. Thus, in 2006, of 160 new victims having benefitted from the residence statute granted to victims of human trafficking, 16 were from Romania and 11 from Bulgaria. In 2007, of 178 dossiers treated, the Romanians were 18 and the Bulgarians 9 (source: Foreigners' Office).

This lacuna is examined in more detail in the following question.

Question 17: Specific vulnerabilities of children and gaps in protection for children

Diverse lacunae in the protection afforded to minor (presumed) victims or, more generally, to unaccompanied foreign minors have been pointed out by different instances and organisations, as well as by the Centre. These principally concern the following aspects:

- At the level of the statute of residence granted to victims of human trafficking

⁸³The Centre's report on human trafficking, "Analysis from victims' point of view", December 2004, chapter II, point 4.2.4: the guardianship of ufm victims of trafficking.

⁸⁴Article 11, § 1 of the Guardianship law

⁸⁵At least for the minor who has not requested asylum and who has not been recognized as a refugee or who does not or no longer benefit from the victims of trafficking procedure (see the circular of 15 September 2005 relative to the residence of unaccompanied foreign minors).

⁸⁶On this subject, see Recommendation of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit., point II, point 7- sustainable solution.

We have already seen above (question 14) that the provisions of the law of 15 December 1980 (articles 61/2 – 61/5) on the granting of resident status to victims of human trafficking are applicable to both adults and children, the basic condition of eligibility for these provisions being that of collaboration with the judicial authorities.

Yet, as the Centre has frequently had cause to underline⁸⁷, this requirement is highly constraining for underage victims (especially those under 16), who, by reason of their particular vulnerability, are more susceptible to threats and menaces from their exploiters and thus less inclined than adults to give information useful to the enquiry. Testimony to this is the very small number of minors benefitting for the first time each year from the “human trafficking” procedure when compared to the number of ufm identified. Thus, in 2006, the number of ufm registered by the Foreigners’ Office was 1410. Fourteen minors applied for the first time that year under the “human trafficking” procedure⁸⁸. In 2007 there were only nine who benefitted for the first time from that statute.

This is why the Centre would like see the preconditions for this procedure interpreted in a suppler manner when it is a case of an underage presumed victim (such as in re-contacting the presumed exploiters)⁸⁹. To take the matter further, it would be judicious to modify the law to envisage granting the “victim of human trafficking” status on the basis of “objective victimization”, as was recommended in the final report of the working group on resident status formed within the Interdepartmental Coordination Cell against the trafficking in and smuggling of human beings. This concept consists of granting the status of a victim of human trafficking without requiring collaboration with the justice system, given that the quality of victim has been confirmed by diverse instances representing a certain inter-disciplinary cross-section (liaison magistrate, reception centre, etc.)⁹⁰.

This recommendation also figures in the plan of action project on human trafficking developed by the Bureau of the Interdepartmental Coordination Cell.

Consequently we may hope that the newly constituted government takes the necessary steps on this subject.

⁸⁷See in particular the reports on trafficking in human beings from the Centre: “Analysis from victims’ point of view”, December 2004, and report 2006, “the victims in the spotlight”, July 2007, p. 24.

⁸⁸Foreigners’ Office, Activities Report 2006, p. 68 and 74.

⁸⁹Another improvement suggested was to continue to benefit those who dared, as minors, to make a victim of human trafficking declaration, from the trafficking victim statute, even after their eighteenth year if their dossier has been closed for lack of evidence to prosecute (see on this point the reports on trafficking in human beings from the Centre: “Analysis from victims’ point of view”, December 2004, and report 2006, “the victims in the spotlight”, July 2007, p.77.

⁹⁰Also: see the study ordered by the Fondation Roi Baudouin (King Baudouin foundation), *op. cit.*, p.81: the study’s authors estimate that a dissociation of the act of granting the statute from the fact of cooperating with the justice system, or at least a slackening of the conditions, is the only morally acceptable scenario with regard to juvenile unaccompanied foreign victims.

At the same time, given the constraints linked to the “human trafficking” procedure, numerous juveniles find themselves within the field of application of the 15 September 2005 circular relating to ufm residence. Yet this circular, even if it represents a step in the right direction – it replaces an internal memo – does not, however, offer real protection to minors. This is why a genuine ufm statute needs to be adopted⁹¹. Equally serious is the growing problem of obtaining a temporary residence permit for minors who do not hold a passport⁹². Furthermore, the sustainable solution needs to be decided by an independent instance⁹³.

➤ At the level of protective guardianship of juvenile (victims of human trafficking)

We have seen above (question 16) that ufm victims of human trafficking may, depending on the case, also benefit from the law’s provisions on protective guardianship.

A serious lacuna exists, however, with regard to minors originating from within the European Economic Space (EES). These are not recognized in Belgium as ufm. Therefore they may benefit neither from the law on protective guardianship, nor the 15 September 2005 circular on ufm residence, nor from reimbursed health costs. Yet an important number of juvenile (potential victims) are from Bulgaria or Romania.

They will arrive at a rate of 200 a year in Belgium, that is to say, 10% of ufm⁹⁴. Since January 2007 they do not benefit from any protection comparable to that established for those ufm issuing from non-European countries.

In order to somewhat remedy this problem, a circular intended to develop a system of temporary reception for vulnerable minors has recently been adopted⁹⁵. The situation of juvenile victims of human trafficking is explicitly targeted.

Nonetheless, the best solution for ensuring the protection of minors would, without doubt, be to enlarge the current definition of ufm as it is defined in the law on protective guardianship in order to extend the benefit of such provisions to include those minors originating from EU Member States⁹⁶.

We should also note that improvements need to be made in the way the protective guardianship functions, notably with regard to human resources and budgeting of the service, but also with

⁹¹This was already one of the recommendations featured in the “Analysis from victims’ point of view”, December 2004, report from the Centre. For more detail and concrete suggestions, see the 10 recommendations of the “Minors in Exile Platform”, May 2007, http://www.sdj.be/admin/docmena/fiches_10_recomm_PF.pdf and the recommendations of the Platform concerning the guardianship of unaccompanied minors, op. cit., B. VAN KEIRSBILCK and CH. VAN ZEEBROECK, op. cit., p. 23.

⁹²This condition is called for by the circular to obtain C.I.R.E. (a so-called white card) and the exceptions are very limited. However, we know that one of the modi operandi of the traffickers is to deprive their victims of their identity papers or to provide them – generally against payment – with false ones.

⁹³In this direction, see the recommendation of the “Minors in Exile Platform”, concerning the guardianship of unaccompanied minors, December 2006, op.cit.

⁹⁴“Minors in Exile Platform”, Information Letter n°15, July – August 2007 (available from the: www.mena.be).

⁹⁵Circular of 2 August 2007 relative to European unaccompanied minors in a situation of vulnerability, M.B., 17 September 2007. Note that this taking into care is by the SEMK/SMEV service (signalling unaccompanied non-European minors in a vulnerable situation) of the FPS Justice and consists essentially in taking necessary measures to organize an accompaniment adapted to the needs of the child. However, no guardian is designated.

⁹⁶In this matter, see the 10 recommendation of the “Minors in Exile Platform”, and their recommendation concerning the guardianship of unaccompanied minors, December 2006, op.cit.

regard to the professionalism and harmonization of the role of guardian, as well as its remuneration⁹⁷.

- At the level of the reception of unaccompanied foreign minors

Improvements have recently been introduced at the level of the reception of ufm, notably with regard to limiting the time they can be held in closed centres⁹⁸.

Thus, the current preferred system is that of reception as a function of the specific needs of minors, rather than of their residence status. The cooperation accords between the Federal State and the Communities have yet to be adopted in order to make the system truly efficient. With regard to minors presumed victims of human trafficking, a specific reception is, in principle, chosen as priority.

Nonetheless, certain problems subsist, notably in terms of reception capacity, principally for non asylum-seeking minors⁹⁹. Another recurrent problem is that of the disappearance of ufm. According to the Foreigners' Office, this phenomenon is on the rise since the introduction of the law of protective guardianship has obliged the protection and guardianship service to lodge all ufm discovered on Belgian soil¹⁰⁰.

⁹⁷On these different points, see recommendations of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit. Note that the guardianship service has recently launched an ongoing training programme in order to harmonize practices.

⁹⁸See article 41 of the law of 12 January 2007 on the reception of asylum seekers and other categories of foreigners.

⁹⁹Recommendation of the "Minors in Exile Platform", concerning the guardianship of unaccompanied minors, December 2006, op.cit., point 8.

¹⁰⁰Foreigners' Office, Activities Report 2006, p. 72-73. A study by Child Focus was especially devoted to this question (Child Focus, the disappearance of unaccompanied minors and of minors who are victims of human trafficking, April 2002). The Centre has also approached this question in its report "Analysis from victims' point of view", December 2004, p.66-68: it seems that the majority of juveniles who run away are those who do not want to stay in Belgium or do not want to be placed in centres. In order to limit such disappearances, we need to privilege the reception and taking into care of ufm presumed trafficking victims within small structures adapted to them, such as structures specifically organised by the Communities in this respect (ex: Esperanto, Juna, Minor- Ndako).

6. Principle 6: The need for research, monitoring and evaluation and for standardized systems for recording data

Information is one of the essential components of activity directed against human trafficking. It is particularly necessary with a view to understanding the impact of measures taken to combat this phenomenon.

Question 18: Research to identify causal factors and gaps in protection

The question of the causes of human trafficking and the lacunae which exist in protective measures has been approached in the context of a study of the Centre's data base.

In 2003, the Centre began to draw up a data base on "victims of human trafficking" in collaboration with the three reception centres specialized in trafficking cases (Pag-Asa in Brussels, Payoke in Antwerp and Sürya in Liege). This data base was constituted on the basis of the victims' narratives and history. A study made into the data base (which carries information bearing on the period 1999 – 2005) was carried out by the Institute to International Research on Criminal Policy (IRCP), of the University of Ghent, with the support of the FPS (scientific policy programme). The results of this study were carried in the annexe of the Centre's last annual report¹⁰¹. The detailed study¹⁰² is also available at the Centre's website (www.diversite.be) and the site of the IRCP (<http://www.ircp.org/uk/index.asp>).

This study helps us to build a profile of the victims taken in by the reception centres, from the moment they are recognized as victims, up to the end of their accompaniment. One part of the study focuses on the socio-economic profile, including the victims' motives for leaving their country. It thus appears that poverty is a key factor in their vulnerability, even if it is not the decisive "push factor". An unstable social environment (violence, abuse and family conflict) seems to play an equally important role¹⁰³.

The principal motivation for victims of sexual exploitation to emigrate was the hope of finding a better standard of living. The principal promise made to them (69% of cases) was that of finding a job, principally in the prostitution (27.2%) or HoReCa sectors (25.3%). As regards victims of economic exploitation, the principal motives were the search for an attractive job (40.5%), the fact of earning enough money to ensure a better living standard for themselves (33.3%) or for their families (21.6%)¹⁰⁴.

¹⁰¹The Centre, report on human trafficking 2006, "Victims in the spotlight", July 2007, annexe: a qualitative and quantitative analysis of the victims of trafficking in human beings data base. The report can be seen at the Centre's website: www.diversite.be

¹⁰²G.Vermeulen, E. Van den Herrewegen, L. van Puyenbroeck, "Mensenhandel in beeld. Eerste kwantitatieve en kwalitatieve analyse van Belgische slachtofferdata"; IRCP, Maklu, Antwerp, 2007. This study was published in Dutch, a French translation is available at the Centre's website: www.diversite.be

¹⁰³The Centre's report on human trafficking 2006, op.cit., p.96.

¹⁰⁴Ibidem, p.100.

The study brought to the surface certain problems linked to the system of victim protection as it exists in Belgium (gaps in the system, see also above: question 5; for more detail, see below: question 38).

Thus the refusal by a reception centre to take in a victim was, in almost half of the cases (46.6%), due to a lack of elements showing that this was indeed an instance of human trafficking, and in 19% of cases the result of a decision of the victim. Numerous victims who are oriented towards a reception centre refuse to make a statement and initiate proceedings, out of fear of the traffickers' reaction. Interviews with victims have also shown that the fear of vengeance by the exploiters is one of the principal reasons for not making a statement.

This study also reveals that numerous victims leave the protection of the statute after accompaniment has started. Among the files analysed, 75% were interrupted prematurely.

In 42.4% of the cases, the premature interruption was due to the disappearance of the victim. There are victims who deliberately choose to leave the programme. At the same time, numerous victims are subjected to intense pressures to return to the "scene" they were trafficked into.

A considerable number of premature interruptions were the consequence of the judicial dossier being classified as "closed without further pursuit" on the part of the Public Ministry (18.1%). This factor thus holds not only the function of filter at the beginning of the process of accompaniment, but is also at the root of numerous premature interruptions of the same. The majority of cases classified without further pursuit are those where insufficient proof was gathered against the suspects, or those that were not considered a priority by the court.

The reception centres themselves may also play a part in premature interruption of accompaniment (17.3%). The principle reasons for a centre deciding to terminate an accompaniment programme early is the systematic non-respect of the internal house rules (52.1%), the return of the victim to the exploitation milieu (26.6%), or, to a lesser degree, the systematic refusal of that which is on offer within the context of the accompaniment process (8.5%). In fact, the motive "return of the victim to the milieu of exploitation" should not be considered as a decision of the centre. Such a return to the "scene" constitutes a violation of one of the conditions under which the statute of victim can be claimed and leads to an interruption of the accompaniment programme. However, such a decision is not taken autonomously by the centre: accompaniment is only terminated after consultation with the court and the Foreigners' Office.

The systematic non-respect of internal rules and the systematic refusal of the services offered by the accompaniment process are indeed decisions taken by the centres themselves, but in both decisions the consequences are less weighty. Such a decision does not represent the end of the procedure for the statute of victim, but rather their redirection to another centre.

It also emerges from the study that the reflection period is very little used in practice¹⁰⁵. Numerous victims, principally of sexual exploitation, stay in the reception centres for very little

¹⁰⁵ibidem, p. 131.

time. More than in other victim categories, these are inclined to go back to the milieu of exploitation¹⁰⁶.

This is why the authors of the analysis suggest certain modifications to the current statute of protection, or at least to the way that it is applied.

Question 19: Assessment of the impact of anti-trafficking policies and measures

This point has also been approached above at question 7, to which we refer the reader.

As already mentioned, the Centre, through its various reports, has undertaken an ongoing evaluation of the impact of policies and measures initiated to counter human trafficking. This has occurred on different levels (legislative, repressive and humanitarian)¹⁰⁷ (see below: question 20).

In terms of the strategy of repression of this phenomenon, both the former COL 10/04 and the new COL 01/07 of the Justice Ministry accord the second priority in the context of investigation and prosecution to the detection of those elements that demonstrate the existence of criminal organizations. The Centre has insisted for several years now, through its various case studies, on the importance of analysing the networks and their financing in order to pierce the heart of the criminal system¹⁰⁸. In recent years we have been able to confirm some concrete improvements on these issues.

We have also mentioned a recent study carried out by the Institute of International Research on Criminal Policy (IRCP) of the University of Ghent, which aimed to draw up a current state of affairs and evaluate human trafficking policy, as well as develop certain recommendations¹⁰⁹. This study focused as much on the legislative aspects as on the global approach and the victim assistance. Furthermore, one aspect of the report concerned preventative measures.

Thus, for example, although the government mentions human trafficking as being a priority that needs to be approached in a holistic and integrated manner, the reality on the ground seems to be otherwise, notably through a lack of personnel and resources¹¹⁰.

¹⁰⁶Ibidem, p. 113.

¹⁰⁷An aspect which has not yet been dealt with by the Centre up till now in its reports is that of prevention.

¹⁰⁸This question is approached in all the more recent Centre reports: The report on human trafficking "Plea for an integrated approach, analysis of legislation and jurisprudence", December 2003 first part; the report "analysis from the victims point of view", December 2004; the report of November 2005, part V, and also that of 2006. These are all available at the website: www.diversite.be

¹⁰⁹Fondation Roi Baudouin (King Baudouin Foundation), Belgian policy on trafficking in human beings: current situation, evaluation and future options, December 2006. The study can be downloaded from: <http://62.50.9.26/publication.aspx?id=193662&LangType=2060>

¹¹⁰Ibidem, p.31.

Question 20: A National Rapporteur on trafficking in human beings or similar structure

In Belgium, the role of National Rapporteur on human trafficking is assured in practice by the Centre¹¹¹. This public service created by law on 15 February 1993, the Centre has been entrusted, since 1995 with stimulating the struggle against trafficking and smuggling in human lives. It carries out its mission entirely independently¹¹². Its more specific missions in the field of human trafficking are defined in a Royal Decree of 16 May 2004¹¹³. This decree has itself modified a preceding Royal Decree, in which the missions of the Centre with regard to human trafficking were laid out¹¹⁴.

One of the Centre's essential missions is to draw up an independent and public annual report on the evolution and results of the fight against human trafficking and smuggling¹¹⁵. This report is transmitted to the Government and the Parliament. These reports are always the focus of sustained attention on the part of the media and are discussed at an ad hoc hearing in Parliament. The Centre's reports also represent an important tool for those actors on the ground in terms of the operating methods of criminal networks, new trends in the trafficking phenomenon, as well as jurisprudence.

Since the first report, published in March 1996¹¹⁶, the Centre has striven to take into account the different aspects of policy being installed as measures against human trafficking and smuggling – whether at the punitive or humanitarian level – in order to evaluate these and draw up recommendations with a view to a more effective fight and a heightened consideration for the needs of victims.

The Centre may enter into litigation in trafficking and human smuggling cases¹¹⁷. This enables it to build a concrete understanding of the way policies are applied.

In addition, as we have already mentioned, the Centre has drawn up a common data base for “victims of human trafficking” in collaboration with the three reception centres. Thus it has at its fingertips a precise, standardized and centralized record of those victims of human trafficking who have been admitted to the three reception centres.

Several recommendations or points worthy of attention thus formulated by the Centre in its reports have been taken into consideration by the public authorities.

We have already mentioned (above: question 19) that the Centre has frequently expressed the necessity of subjecting the criminal networks and their modes of financing to analysis. The Centre can confirm that positive practical developments have been made in this regard. This

¹¹¹See on this point notably the report on human trafficking in November 2005, op. cit., p.63-64.

¹¹²Articles 2 and 3 of the law of 15 February 1993.

¹¹³R.D. of 16 May 2004 on the fight against trafficking and smuggling of human beings, M.B., 28 May 2004.

¹¹⁴Royal Decree of 16 May 2004 on the fight against trafficking and smuggling of human beings, MB, 28 May 2004; and R.D. of 16 June 1995 on the mission and competences of the Centre for Equal Opportunities and Opposition to Racism in the fight against the international trafficking in human beings, as well as the implementation of article 11 § 5 of the law of 13 April 1995 containing the provisions for the repression of trafficking in human beings and child pornography, M.B., 14 July 1995.

¹¹⁵Article 2 of the R.D. of 16 May 2004.

¹¹⁶Article 2 of the R.D. of 16 May 2004.

¹¹⁷Article 3, 5° of the law of 15 February 1993.

focal point figures elsewhere as one of the priorities of the Action Plan against human trafficking and smuggling.

Following an in depth sector analysis focusing on clandestine sweat-shops in the clothing industry, carried out in the light of a concrete case study from one of its reports¹¹⁸, the Centre mentioned the necessity of installing a system of financial co-responsibility for those who place the orders. A working group has since then been set up within the Interdepartmental Coordination Cell. This working group has drawn up a piece of draft legislation, approved by the Cell. This project has not yet received the sought after support at the governmental level. This is one of the points since featured as being of priority in the anti human trafficking Action Plan.

A further recommendation concerns legislative aspects: indeed, an analysis of the jurisprudence carried out by the Centre reveals the modern face of human trafficking, where victims are forced to commit acts of theft and deal drugs. The legislator has taken these new growth areas into account in its new incrimination measures against human trafficking¹¹⁹.

In addition, following legislative changes introduced in 2005 which made the trafficking and smuggling of human beings distinct crimes, the Centre has drawn attention to the necessity for both victims of human trafficking and victims of the graver forms of smuggling to benefit from a special protective statute. Indeed, these migrants are often also victims of contravention of their fundamental human rights¹²⁰. This is the solution which has prevailed in the latest provisions adopted (articles 61/2 – 61/5 of the law of 15 December 1980).

Finally, we should still note the lacunae that the Centre has already remarked in the new provisions in favour of victims of human trafficking, notably the fact that the new provisions have not, for example, mentioned the right to social assistance of which the victims may benefit in the initial phase of the procedure. This gap has been filled in the draft circular currently in the final phase of preparation.

Otherwise, however, the recommendations made by the Centre on the subject of minors have still not received any kind of follow-up. This point will nonetheless figure in the Action Plan against the trafficking in human beings.

Question 21: Common terminology and methods for recording data

Since the law of 10 August 2005, human trafficking is legally defined in the penal code. However, there is no uniform system of human trafficking data gathering or recording in Belgium, neither is there a common data base.

¹¹⁸See the Centre, annual report on human trafficking "Plea for an integrated approach, analysis of legislation and jurisprudence", December 2003 first part; point 2.5.3.

¹¹⁹See the motivation exposé for the draft law modifying various provisions with a view to reinforcing the fight against trafficking and smuggling of human beings, Doc. Parl., Chamber, 2004-2005, 51-1560/1, p. 20, which refers to the Centre's annual report 2003 "Plea for an integrated approach, analysis of legislation and jurisprudence", December 2003.

¹²⁰See Report of November 2005, op. cit., chapter I, point 3.3. (p 35).

However, there is indeed a human trafficking data base containing all the data for the victims who benefit from the “human trafficking” procedure. This was set up at the instigation of the Centre, in collaboration with the three specialized reception centres (see below).

A sound understanding and knowledge of the struggle against the trafficking and smuggling of human beings is essential, whether at the policy-making level, or on the street. Numerous useful and pertinent information sources are still far too scattered about between the different departments, services and institutions. In addition, such information is often partial and incomplete. This may cause information losses or even erroneous representations of the facts.

Several services are implicated in the struggle against human trafficking: the police, the social inspection services, the Foreigners’ Office... All dispose of their own independent data bases with information recorded in accordance with their own working methods. The police hold criminal information; the social inspectors hold data relating to clandestine employment; while the Foreigners’ Office holds data relative to residence or illegal residence status.

Furthermore, an attempt to pool the data was made with the creation of the IAMM/CIATTEH (Centre for Information and Analysis on the Trafficking and Smuggling of Human Beings)¹²¹. However, the IAMM/CIATTEH is currently an empty box, notably because of the difficulty in bringing together the common data on economic exploitation, as the definition of exploitation and thus the data recorded varies depending on the service involved.

The Royal Decree of 16 May 2004 (MB 28 Mai 2004) created the IAMM/CIATTEH under the stewardship of the Ministers of Justice and the Interior. This IAMM/CIATTEH should be considered as an information network within which the members of the Interdepartmental Coordination Cell collaborate to share information on the trafficking and smuggling of human beings gathered by their department, service or institution, in accordance with a clearly described model. However, the IAMM/CIATTEH does not wish to be limited to a simple exchange of information. Indeed, the data concerned lends itself to a number of analyses and studies with a view to moving beyond simple reactive reporting. They may, over and above that, give insights into the latest methods in human trafficking and smuggling.

Several fundamental problems arise within the structural functioning of the IAMM/CIATTEH. One of the important problems¹²² is the fact that the Royal Decree underpinning the IAMM/CIATTEH speak of anonymous data, which considerably complicates the execution of reliable and qualitatively sound strategic analyses. The risk is that several sources will use the same data or data that is hard to compare, which will result in a deformation of the image of the situation.

Furthermore, there is a confusion that currently exists between the operational and strategic goals within the functioning of the IAMM/CIATTEH. A reinforcement of the information flow between the different actors involved (in order to improve the fight against human trafficking) is an operational goal, as is the detection of new modes of criminal activity in the international

¹²¹See articles 12 – 20 of the R.D. of 16 May 2004.

¹²²Fondation Roi Baudouin, Human trafficking Policy in Belgium: state of the issue, evaluation and future options. See: <http://62.50.9.26/publication.aspx?id=193662&LangType=2060>

networks of those engaged in human trafficking. Analysis and evaluation of the quality of the information coming from the departments involved (in the light of results obtained) is more of a strategic goal. But even when looking at the IAMM/CIATTEH exclusively from the point of view of its operational objectives (which one can do without any problem, given the composition of the Coordination Cell and the Management Committee), we are confronted with problems. The strategic analysts of the IAMM/CIATTEH cannot transform the collected, anonymised data from the different partners into reliable, integrated, strategic analyses, unless they start from a standardized and integrated data collection plan. This implies that the partners put into practice an integrated, uniform and global logic when transmitting available data, so that the IAMM/CIATTEH becomes more than a post box for the collect of disparate elements, devoid of structural uniformity: non-comparable data transmitted according to the ideas, norms and variable practices of each of the parties at a precise moment. In other words, an absolute standardization and a tightening of the variables used and supplied by the different partners are the basic pre-conditions for a well-functioning (operational) IAMM/CIATTEH. An operational goal also generates another plan with regard to data collection than a goal of strategic evaluation.

A few years ago, the Centre put into place a computerized data base on victims of human trafficking recorded by the three reception centres (Pag-Asa, Payoke and Sürya). For Pag-Asa and Payoke, the dossiers were integrated from 1999 and for Sürya since 1 January 2003. The information was entered directly into the data base by the specialized centres concerned, on the basis of a particularly detailed questionnaire. Thus the Centre is the first of the several partners involved to have at its disposal extremely refined data, standardized and updated in a centralized manner, concerning the diverse aspects of the trafficking and smuggling in human beings. As such, the Centre and the three specialized reception centres possess a veritable treasury of anonymous data concerning the victims of human trafficking, notably in regard to social anamnesis, administrative statute, travel documents, the situation of the person in his/her country of origin (prior to becoming a victim), the experiences and route taken, the process of recruitment, the traffickers, the type and nature of exploitation, the situation of indebtedness, the type of pressures and threats brought to bear on the victim, the statute of the judicial procedure, the reception and support of the victim and his/her degree of integration.

Both the Centre (design of the questionnaire, technical development and conception of the data base, with an easy user interface, ongoing investment in the best performing IT systems and report capacity via a web interface) and the three reception centres (to systematically enter the data from the files of all victims- an engagement that should not be underestimated) have made enormous efforts to gather the raw data into a statistically exploitable form. However, only the victims of human trafficking identified as such – because they are within the process – are recorded in this data base held in common by the Centre and the three reception centres.

Question 22: Protecting personal data about presumed trafficked persons

Strict privacy legislation exists in Belgium, to which all public services and organisations must conform. A commission for the protection of the right to privacy was specially created to this end. The reader may find a wealth of useful information on the site: <http://www.privacycommission.be/>

3. ACTION TO PREVENT TRAFFICKING IN HUMAN BEINGS

Prevention of the trafficking in human beings involves different aspects. The most known of these is the running of prevention and information campaigns with a view to raising the awareness of potential migrants to the dangers linked to the trafficking. Nevertheless, other preventative aspects target the identification of gaps in existing protection systems as well as assuring that the different specialized services have sufficient expertise and knowledge at their disposal.

1. The technical capacity of institutions to stop trafficking

Question 23: Adequate levels of expertise, equipment and levels of resources

In Belgium, victims are for the most part detected by the authorities, principally the police. Within each judicial area, the Federal Police have at their disposal officers specialized in the issue of human trafficking. Certain local police forces are also specialized in this matter. There are about 500 such police specialists in the country.

Moreover, a central “human trafficking” cell exists within the Federal Police. This service of 30 officers is charged with developing the police approach strategy towards the gangs that traffic and smuggle human beings. In addition it advises and provides information to the political authorities, consultative bodies and administrations concerned, as well as specific organizations and groups active in the fight against human trafficking and smuggling. This is also the service which draws up the five-year police action plans against the trafficking and smuggling of human beings and sees to their implementation in the field.

Within the different inspection services, personnel have also been trained to be on the lookout for signs of the trafficking in human beings. Thus, the Social Inspection Services of the FPS Social Security and the Social Laws Control Service of the FPS Employment, Work and Social Negotiation are actively associated in the struggle against human trafficking, notably during the target controls they carry out in the high risk sectors such as prostitution, foreign restaurants, agriculture and horticulture, clothing confectioners, the construction industry and more specifically renovation work¹²³ (see also questions 24 and 47).

Human trafficking cases are dealt with by specialized liaison magistrates (public prosecutors and labour auditors).

It should be noted, however, that detection of human trafficking cases becomes more difficult when non-specialized services come into contact with potential victims (such as harbour police,

¹²³Since 2002, supplementary investments, both in personnel and material means, have been made in the fight against trafficking in human beings within the federal social inspectorate (about 35 controllers and social inspectors specifically affected to the task (see Annual Governmental Report 2002-2003 on the fight against trafficking in human beings and child pornography, p.24). The Information and Social Research Service organized a training day in 2006 on illegal working practices, the exploitation of labour and trafficking in human beings (see Information and Social Research Service (SIOD), biannual report 2005-2006 on illegal employment of foreign workers and labour exploitation (TEH), December 2007, p.9).

or railway police, for example)¹²⁴ or even more so when they come before magistrates on standby duty – unspecialized in questions of human trafficking – who must then rapidly take a decision as to the trajectory a case will follow.

The reception centres for victims have acquired over the years increased specialization which makes them best suited for the effective accompaniment of victims.

With regard to equipment and resources, it should be noted that the judicial system still does not have a computer information system that is harmonized throughout the country.

There is often call for particular methods and techniques in human trafficking cases, but these are very expensive (such as telephone tapping, a privileged method in this type of dossier) thereby setting limits on their use, which in turn has a prejudicial effect on the enquiry.

Finally, we should note that both the police and the magistrates deplore the displacement of their personnel specialized in human trafficking to other departments which deal with subjects considered as having higher priority.

Providing adequate means as well as investigative and research capacity is essential if the combat against human trafficking is to remain a priority.

Question 24: Appropriate specialised training

Increased efforts have been made in recent years to ensure that specialized training is available to those services and instances that carry out the struggle against human trafficking (police, inspection services, immigration services)¹²⁵. Nevertheless, in order to continue to guarantee an adequate response to the phenomenon of the trafficking, ongoing training and awareness-raising for all front-line actors must be pursued. Supplementary training tools can still be provided, in particular more training for the inspection services in collaboration with the police¹²⁶.

As far as magistrates dealing with “human trafficking” cases are concerned, the annual meeting of the Expert Network on Human Trafficking and Smuggling gives them the opportunity to share methodology and experience.

Certain magistrates have developed, in collaboration with the police and inspection services in their area, standardized questionnaires for the hearing of victims. The Centre has been able to witness their utility in several economic exploitation cases in which it was the civil plaintiff¹²⁷.

¹²⁴See: the Centre, annual report on human trafficking 2006, op.cit., annexe p.85.

¹²⁵See annual governmental report 2002-2003 on the fight against trafficking in human beings and child pornography, p.11-12: training and awareness raising of police officers in the problems linked to trafficking in human beings was transposed into action in 2002, in particular by the organisation of a training programme “trafficked to order” intended for a certain number of local police forces, Federal Police services but also their collaborators at the Ministry of Foreign Affairs. A 400-hour training module was also developed in 2002 for frontier posts.

¹²⁶Report SIOD, op. cit., p.43.

¹²⁷This was notably the case in a dossier concerning the renovation of a luxury yacht that the Centre dealt with in last year’s report, chapter 2, point 2.3.3.

Lacunae still exist in regard to training on the subject of dealing with juvenile victims of human trafficking. To our knowledge, no specific training exists on this issue or the front line services.

Since 2006 the police have decided to develop a particular way of interrogating or hearing juvenile presumed victims of human trafficking or smuggling, applying a similar approach to that used for minors who witness crimes (video filmed auditions). However, this project has not yet been realised.

Question 25: Multi-disciplinary teams at local level in areas from which people have been trafficked

Belgium not being a country from which trafficking originates and not being confronted with the phenomenon of internal human trafficking, this question is not pertinent.

2. Administrative controls to combat trafficking in human beings

Administrative controls may be a regulatory and monitoring means for those procedures, practices and agencies which are considered to have an influence on the trafficking in human beings.

Question 26: Immigration service systems to identify cases of trafficking

Following the recommendations drawn up by the Senate in its report on the trafficking in human beings and visa fraud¹²⁸, several measures were taken both in the way visas are delivered and in the detection of the fabrication and use of fraudulent documents¹²⁹.

Thus training sessions have taken place, notably for visa control agents and consuls in difficult posts, on how to recognize false documents.

Belgian foreign postings have all been computerized since 2003, which enables an appraisal of the follow-up reserved for the processing of files that are keyed in there and an appropriate reaction to these on a case by case basis. A new version of the programme was installed in 2005, providing a powerful tool for data management and research.

A visa monitoring cell was also installed at the end of 2003 within the FPS Foreign Affairs. This cell assists notably with the detection of certain non-conform practices during the visa delivery procedure.

With regard to visa requests for study purposes, legislative measures for skimming off the “false students”¹³⁰ were practically inexistent before 2002. Since then the “visa” section of the student bureau of the Foreigners’ Office has carried out an attentive policy designed to combat the fraudulent use of the student visa, particularly among Chinese nationals. This happens mainly through the introduction of a particular system with regard to the financial covering of Chinese students’ residence period¹³¹ or through study missions carried out by immigration civil servants¹³².

When a visa is delivered, particular attention is paid to the detection of human trafficking networks. Belgian diplomatic posts must therefore be especially attentive to detect any possibility of human trafficking as well as other elements. However, no specific measure is imposed on foreign outposts in this respect. Depending on the local specific context, they should put into place the necessary control mechanisms within the legitimate framework designed for the granting of visas.

¹²⁸Senate Recommendations relative to trafficking in human beings and visa fraud, Commission of the Interior and Administrative Affairs, session 2002-2003, doc.2-1018.

¹²⁹For more details on the measures referred to later, please see the governmental reports: 2002-2003, pp.17-22: report 2004, p.16-22.

¹³⁰This term refers to one of the modi operandi of Chinese smuggling networks.

¹³¹Foreigners’ Office, Activities Report 2006, pp.57-58, point 2.2.

¹³²Ibidem, p. 137, point 3.10.3.

Taking into account that this is not a purely Belgian problem, this subject is also the object of particular attention in the context of the ongoing Schengen local consular negotiations between ambassadors. Experiences are exchanged, new tendencies are researched and the services are constantly endeavouring to harmonize their procedures as closely as possible to avoid abuse.

Moreover, a particular procedure exists for obtaining special identity cards for domestic servants in private embassy service.

Question 27: Ensuring such systems do not violate human rights standards

In this domain, Belgium seems to take a proactive approach. At the same time, particular attention should be given to article 48/3 §2 f) & d) of the coordinated law on foreigners of 15 December 1980¹³³. This article, which transposes the “qualification” directive¹³⁴, ordains that in the application of the Geneva Convention, particular attention must be paid to gender-specific discriminatory acts. Since 2005, the General Commissariat for Refugees and Stateless Persons has created within its ranks a cell specialized in gender questions (a female coordinator and seven persons of reference, each one attached to a geographical area). Outside this apparatus, specific to the question of asylum, no particular measure concerning the gender issue has been applied by those Belgian authorities in charge of access to the territory, residence, the installation or removal of foreigners.

Question 28: Steps to regulate or monitor the activities of private agencies

Diverse measures have been taken to try to regulate the activities of private employment agencies, as well as other firms such as matrimonial, tourist, or adoption agencies.

With regard to controlling employment, the social administration’s cross-border information system for research into migration issues (Limosa) has been installed since 1 April 2007¹³⁵. This is a control system for foreign employees in Belgium in the context of the free circulation of goods and services within the EU, which is designed to fight fraud and abuse in working conditions and social security. In practice, any foreign employer who employs foreigners, as well as any foreign self-employed person or intern must make an electronic declaration concerning that employment (identification information, length of work term, person who ordered the work done, type of service etc.). More complete information can be found on the site <http://www.limosabe.be>. For those people who have been hired as employees, regardless of their nationality, there already exists such a declaration within the Dimona project. Dimona (immediate declaration of

¹³³Unofficial coordination of the law of 15 December 1980 relative to access to the territory, residence, the establishment and expulsion of foreigners, 22.10.2007, available at the site: http://www.dofi.fgov.be/fr/reglementering/belgische/wet/Loi_Version20070606.pdf, (30.01.2008).

¹³⁴Directive 2004/83/CE of the Council of 29 April 2004 concerning the minimum standards relative to the conditions that migrants from third states or stateless persons must fulfil in order to qualify for refugee status or persons who for other reasons are in need of international protection, as well as to the content of these statutes.

¹³⁵Chapter 8 of Title IV of the programme law of 27 December 2006 introduces a pre-emptive declaration to be made by salaried workers and freelancers, MB, 28.12.2006 (3rd edition) and the corresponding Royal Decree of 20 mars 2007, MB, 28.03.2007.

employment) is an electronic message, by which an employer informs the National Social Security Office that he is hiring someone, or that someone is leaving his employ (more information at the site: https://www.socialsecurity.be/site_fr/Applics/dimona/index/.htm). Finally there exists a vast array of regulation aimed at sub-contracting or outsourcing bureaus. This offers important guarantees against abuse. Such regulation is, however, frequently subverted in practice by using foreign outsourcing or sub-contracting services that are controlled less strictly.

With regard to adoption, a new law has been in vigour since 1 September 2005¹³⁶. The change in the law was intended to harmonize the provisions of adoption with the principles declared at the Hague Convention of 29 May 1993. Although the implementation of the federal legislative framework was developed differently in Flanders and in the French Community, we can still say that, in answer to the question above, the control of adoption has increased and that the possibility of autonomous adoption, without the intervention or control of government, is now illegal.

In Belgium there is a strict law to regulate and control the exploitation of marriage agencies¹³⁷. This law has three main objectives:

- Sanitizing the marriage agency sector, principally to render it more transparent;
- Protection of the consumer from certain indelicate methods;
- Suppression of certain practices which are contrary to human dignity.

By marriage brokerage, the law understands “any activity consistent with offering, against remuneration, meetings between persons, having as direct or indirect objective the realization of a marriage or stable union”. The law thereby targets marriage agencies, but also dating clubs, insofar as they carry out activities such as those envisaged by the definition of marriage agency.

To achieve this transparency, the law aims to put into place a registration system for marriage bureaus. This is not a question of the approval or control of the quality of service provided, but uniquely an inscription in order to have an overview of the companies working in the sector. In addition, the small ads published by these agencies must carry certain information by which the agency can be identified and which clarify the candidates “profile”.

According to the Senate report on visa fraud¹³⁸, the Minister of the Interior has repeatedly sent staff members to several foreign countries to study the problem of travel agencies. This frequently remarkable work has produced reports which have been very useful, also to our consulates in the countries concerned. This was the case in the Ukraine, for example. In part thanks to these reports, the Minister of Foreign Affairs was able to concentrate the work of the local consular cooperation on travel agencies throughout the period of the Belgian EU Council

¹³⁶Law of 24 April 2003 reforming adoption, MB, 16 May 2003 and the corresponding Royal Decree of 24 August 2005, MB, 29 August 2005.

¹³⁷Law of 9 March 1993 intended to regulate and control the activities of marriage brokers (MB 24 April 1993) modified by the laws of 11 April 1999 (MB 30 April 1999) and of 15 December 2005 (MB 28 December 2005).

¹³⁸“Trafficking in human beings and visa fraud”, report made in the name of the sub-commission “on human trafficking”, Doc. Parl., Senate, subcommission, 2002-2003, 2-1018/1.

Presidency. Finally it was also possible to present a draft decision to the Council with the aim of harmonizing the process in all diplomatic and consular posts of visa applications presented by travel agencies and the relation of these same posts with the agencies themselves.

3. Actions to prevent trafficking which complement criminal justice interventions

Numerous prevention initiatives, aimed at both the "push factors" in the countries of origin and the "pull factors" in the Member States, can be used to attack the factors behind human trafficking. For this purpose, it is necessary to precisely identify the causes, based in particular on the information given by those who have been the victims of human trafficking; otherwise the prevention initiatives may be focused on the wrong objectives and may not obtain the desired effects¹³⁹.

Question 29: Review of prevention strategies

While the prevention campaigns conducted in the countries of origin and in Belgium are the subject of random assessments, they are not reviewed periodically. Furthermore, they are not based on the information provided by the victims.

We should particularly mention the Federal Police's "human trafficking" unit's "Flyer" information project in 2001. Through a leaflet, this unit aimed to provide information and practical advice to truck drivers, concerning the transport of illegal immigrants who had managed to hide among their load without their knowledge. However, the results of such a campaign are difficult to assess, considering the rapid adaptation of criminal organisation to changes in conditions¹⁴⁰.

Question 30: Modifying prevention strategies in Belgium in the light of evidence

Following a Federal Police study on the perpetrators of sex offences committed on children abroad, the workgroup "Fight against child prostitution" was set up in 2001. Two awareness campaigns were set up within this framework, one in 2004-2005 with the slogan "it's so simple to ignore child prostitution abroad", and another in 2007 with the slogan "Abroad, don't be one of those who prefers to turn a blind eye". The aim of these campaigns is to inform the public that the sexual exploitation of children exists, that it is forbidden in Belgium but also abroad and that the perpetrators of such acts may be prosecuted in a Belgian court. Furthermore, it encourages people to report any act of child sexual exploitation observed abroad. People may report such acts to diplomatic posts in Belgium and abroad, among other places.

¹³⁹ Also in this sense cf. the appendix to the Centre's 2006 report on "human trafficking", *op. cit.*, point 5.b: motivation and promises, (p.97).

¹⁴⁰ Cf. 2002-2003 Government Report, *op. cit.*, p.15.

Moreover, each participant in this workgroup developed actions in his/her own field of activity. Instructions were sent to diplomatic and consular posts asking the Ministry of Foreign Affairs to be informed of acts committed by Belgians, but to also send all useful information for an analysis of the situation. The FPS Foreign Affairs is also committed to informing people who are taking up a post abroad of this phenomenon.

Several preventative measures were also adopted by the Foreigners' Office, such as consultation meetings and a website aimed at the transport sector and a number of missions carried out in countries such as the Democratic Republic of Congo (DRC) or China by immigration civil servants. In 2006, for instance, the latter trained a certain number of immigration services agents in DRC, or led an information and dissuasion campaign to discourage illegal immigration and expose the dangers. Positive results were revealed during the assessment carried out following this campaign¹⁴¹.

Question 31: Modifying prevention strategies supported by the Belgian government in other countries in the light of evidence

Several prevention projects have been conducted in the countries of origin with the support of Belgium¹⁴².

Following the Senate's recommendations formulated in its report on human trafficking and visa fraud¹⁴³, the Development Cooperation supported (in 2004) programmes enabling the establishment of public records; since children were not registered, it made them more vulnerable to human trafficking.

In 2004, the Belgian Development Cooperation supported a child soldier demobilisation programme, through Unicef, in the Great Lakes region of central Africa. This programme was especially aimed at preventing recruitment, demobilisation and the social reintegration of children.

In collaboration with the OSCE and the IOM, two programmes in Georgia targeted the training of the Georgian police within the framework of investigations linked to human trafficking, and the reform of the Georgian civil status system.

From 2004 to 2007, the Multilateral Cooperation financed a joint UNFPA/UNICEF/OHCHR programme with a view to fighting violence against women and children in DRC. The expected outcome of the project is prevention and care in cases of sexual violence.

Since the education of vulnerable people is also an aspect of prevention, the Belgian Cooperation has also supported a community radio programme set up by Unicef in several African countries.

¹⁴¹ Foreigners' Office, 2006 Activities Report, p. 86-88 and 120.

¹⁴² For more details on these various programmes, cf. not. the government's annual report relating to human trafficking and child pornography in 2004, p.13-15 and the government's 2002-2003 annual report, p. 10-11.

¹⁴³ Senate's recommendations relating to human trafficking and visa fraud, 'Commission for the Interior and Administrative Affairs', session 2002-2003, doc.2-1018.

This programme aims to promote the rights of women and children, schooling and the prevention of child marriages.

Within the multilateral framework, through a voluntary contribution made by Unicef, the Belgian Development Cooperation has been supporting a programme to fight the trafficking in children in Western Africa (Mali, Niger, Togo and Ghana) since 2004. This programme aims to reinforce the national capacities to prevent and respond to situations of child trafficking. It will be the subject of an assessment in 2008.

In 2007, a project aimed at raising awareness about the dangers of illegal immigration among the young and vulnerable population in two Moroccan regions was approved.

4. Using information on human trafficking as a prevention technique

Question 32: Targeting information on individuals who are at high-risk

Belgium is not a country of origin for human trafficking. Subsequently, it does not organise prevention campaigns targeting probable high-risk migrants. Information campaigns have taken place, however, such as the “no to prostitution” campaign mentioned above (question 30). Furthermore, local actions have taken place such as the “human trafficking and sexploitation work” initiative in Malines, developed by the police, the public prosecutor’s office and the employment tribunal in Malines and Malines’ central auction halls. They developed a brochure for employers of seasonal staff in the horticultural sector. The aim of this brochure was to explain the legal framework for employing foreign staff, especially the checks that must be carried out, and reminded employers of the legal action related to human trafficking.

We should also mention the information brochures elaborated by the King Baudouin Foundation concerning international domestic staff. One brochure aims to remind people of the standards in force and to explain the possible actions victims can take if these standards are not respected. Two brochures aimed more specifically at foreign domestic workers (one for employment in a family and another for the private residence of a diplomat) were also compiled. These brochures, available in four languages, remind people of workers' rights (in terms of remuneration, health) and explain the existing possibilities (as well as reference addresses) in case these rights are not respected. The “human trafficking” procedure is one of the elements mentioned.

Nevertheless, the preventative aspect of the policy to fight human trafficking is the least developed in Belgium. Hence, a programme should be set up, internally, which raises awareness in the sectors that may be confronted with human trafficking and to inform the victims. Developing suitable preventative instruments is therefore one of the points to be included in the draft Action Plan on Human Trafficking elaborated within the Office of the Interdepartmental Coordination Cell.

Question 33: Information about trafficking in the school curriculum

Since Belgium is not a country of origin for human trafficking, information on human trafficking does not appear systematically in the school curriculum.

At the same time, awareness actions have been undertaken in schools, particularly through actions organised by Unicef, such as the “what do you think” campaign, aimed at encouraging children and young people to participate. Child trafficking is one of the themes dealt with in a mini-guide. It allows schools to organise debates on this theme.

Awareness actions in schools in the province of Limbourg are also organised by the NGO “Stop The Traffick” (<http://www.stophetraffick.org/language.aspx>).

Question 34: Free advice for migrants

Up until now, there has been no free phone number for migrants in Belgium, with information about the possibilities for legal employment or the precautions to take to avoid becoming the victim of human trafficking.

However, specific information for new arrivals covering residency, employment and training in particular, is available on the website: www.newintown.be

In question 32, we also referred to the information brochures for international domestic staff.

4. ACTIONS TO PROTECT AND ASSIST TRAFFICKED PERSONS

The identification of potential victims is the first vital step to protect and help the victims of human trafficking. Hence the importance of having an efficient system to refer potential victims to the appropriate services as well as granting them a period to recuperate before deciding on a possible collaboration with the courts. Furthermore, it is vital for the victims to be able to benefit from appropriate aid and protection. These points are the subject of the present chapter (questions 35 to 46).

1. Establishing a referral system to identify trafficked persons, refer them for assistance and guarantee them a minimum period to recover

It is not easy to identify victims. They share many characteristics with other categories of migrants. Moreover, they can still be traumatised when the authorities come into contact with them.

Many victims may also not consider themselves to be victims and may be reticent about providing information within the framework of enquiries. There is therefore a risk of categorising them as "illegal immigrants" and repatriating them to their country.

Question 35: A referral system

Since the beginning of the 1990s, Belgium has set up a multidisciplinary cooperation aimed at better detecting and assisting victims while helping to fight against the networks.

Thus, the 1997 directives¹⁴⁴, which gave details of the 1994 circular¹⁴⁵, emphasised the dynamic collaboration between all those involved (police and inspection departments, Foreigners' Office, public prosecutors' offices, reception centres). It was formally stipulated that the (presumed) victims legally residing in the country, just like those residing illegally, must be put in contact with a specialised reception centre. Moreover, the directives described the practical organisation of contact with the specialised reception centres, as well as the procedure to grant residents' permits.

In concrete terms, every time a police or inspection department is convinced or thinks that they are in the presence of a victim of human trafficking, they must get in contact with one of the reception centres so that the victim can be taken care of.

¹⁴⁴ Directives of 13 January 1997 to the Foreigners' Office, public prosecutors' offices, police departments, inspection of social laws and social inspection departments relating to assistance for human trafficking victims, MB, 21 February 1997, amended on 17 April 2003, MB, 27 May 2003.

¹⁴⁵ Circular of 7 July 1994 concerning the issuing of residents permits and work permits to foreigners, who are the victims of human trafficking, MB, 7 July 1994.

The system to grant residents permits to victims of human trafficking who cooperate with the legal authorities was recently incorporated into the law of 15 December 1980 on foreigners (articles 61/2 to 61/5) (for the details of the procedure, see question 38 hereafter).

Article 61/2 of the law stipulates that when the police or inspection departments have evidence that the person may be a victim of human trafficking (or of an aggravated form of smuggling)¹⁴⁶, they must inform this person of the possibility of obtaining a residents permit by cooperating with the authorities responsible for the enquiry or legal action and must put them in contact with a specialised reception centre for human trafficking victims.

In order to continue to guarantee the multidisciplinary approach which was adopted many years ago, a draft circular¹⁴⁷, aimed at replacing the 1994 circular and the 1997 directives, was prepared within a workgroup of the Interdepartmental Cell for the Coordination of the Fight against Human Trafficking. The different partners concerned, and especially the reception centres, were associated with the work.

In particular, the circular aims to explain the role of each department concerned and detail the steps to be taken when a first-line department thinks that they are confronted with a potential victim. One of the first steps is to make contact with a reception centre.

A multilingual information brochure is also sometimes given to the victim.

When the victim is put in contact with a reception centre, they receive more explanations about the conditions of the “human trafficking” procedure and on the support offered by the centre. A support contract is signed by the victim and the reception centre¹⁴⁸.

Hence, Belgium has specific regulations for the optimum referral of victims to reception centres.

The number of victims referred to reception centres shows that the system is relatively well applied in practice. Thus, the study on the “victims of human trafficking” data base showed that between 1999 and 2005, 3,332 potential victims were reported to specialised reception centres. A third of these reported cases (1,101) resulted in the effective support of a victim¹⁴⁹. As from 2004, only a quarter of reported cases have become “victim” cases. This can be explained by the more precise filtering, thanks to the efficiency of the multidisciplinary approach (better collaboration between the police, the law and the centres), and thanks to the experience acquired

¹⁴⁶ The system also applies to people who have been the victim of various aggravated forms of human smuggling (article 77 quarter, 1° to 5° of the Law of 15 December 1980): smuggling with violence, threats, endangering the victims lives, etc.

¹⁴⁷ Circular relating to the implementation of a multidisciplinary cooperation concerning the victims of human trafficking and certain aggravated forms of human smuggling.

¹⁴⁸ This support agreement, which is signed when the victim is taken in, includes the terms of the procedure, each party's commitments and the circumstances under which the support is brought to an end. Thus, for instance, the victim must promise to respect the internal regulations of the reception centre if they are housed there.

¹⁴⁹ Cf. The Centre, annual report on “human trafficking” 2006, The victims under the spotlight, July 2007, Appendix, point 7 a: from referral to the victim's case, p.83.

in the centres, allowing them to detect the reported cases as cases of human trafficking, even after a brief preliminary interview¹⁵⁰.

The Centre also observed the efficiency of the referral system in certain cases. Thus, in the case on massage parlours, which we deal with in the second part of this report, all the intercepted victims were able to benefit from the status of “victim of human trafficking”.

In the case on the massage parlours in Liège, the police tried to guide the young women to a specialised referral centre. The police also hoped that if the young women were in a safe environment, they would reveal information concerning the prostitution network. During their hearing, several of the victims were asked if they considered themselves to be victims. Some of them replied that they were not victims. Despite this, the police gave them a multilingual brochure on victims of human trafficking and asked them if they would be interested in reading it. The victims reacted positively. In some cases, the victims had the opportunity before or after the hearing to speak in another room with the director and two employees from one of the reception centres. These people gave their details to each victim in case they decided to ask to be awarded the status of human trafficking victim. During interceptions, the police have always attempted to ensure that a worker from the reception centre is on hand to talk to the victims at the police station to explain the meaning of the status in a friendly environment.

However, there is still room for improvement in the field in terms of detection, identification, referral and taking care of the victims. The main difficulties appear especially in the case of human trafficking for the purpose of exploitation through work, as already mentioned above (see question 2 above, in particular).

The work of the ad hoc “granting the status of and issuing residents permits to victims of human trafficking”¹⁵¹ workgroup, created by the Interdepartmental Coordination Unit for the Fight against Human Trafficking, effectively revealed that despite the existence of standardised regulations, not all the victims are always treated in the same way by the various players in the field. In some cases, the presumed victim is immediately steered towards a specialised reception centre and in other cases they are not, with no clear reason explaining this difference in treatment. In some cases, the status of protection is not proposed and the victims are considered more as illegal immigrants rather than victims of human trafficking. Or, the status of protection is only proposed after statements have been made. Sometimes, the victim is steered towards the centres according to the quantity and quality of the information initially provided, even though the period of reflection must precisely be used for this purpose. Furthermore, there is sometimes a difference in the treatment towards victims of sexual exploitation and victims of economic exploitation, which is often labelled “undeclared work”. It has also transpired that sometimes, some players in the field are not familiar with the specific status of protection for victims of human trafficking.

¹⁵⁰ Ibid, p.83

¹⁵¹ The mandate of the ad hoc workgroup was approved by the Interdepartmental Coordination Unit during its meeting of 27 January 2005.

The Centre observed these difficulties within the framework of certain recent files in which it was associated in court action with the public prosecutor.

Thus, it seems that in atypical sectors, such as transport, victim identification poses a problem. This was the case regarding a case on the economic exploitation of Polish drivers, of whom we spoke in our previous report¹⁵².

This was also the case in a horticultural case, whose events date back to 2001, where the Romanian victims were not considered as victims and the majority was repatriated or received an order to leave the country.

In a case concerning the renovation of a luxury yacht, which we covered at length in last year's annual report¹⁵³, the Lithuanian workers were also not considered as victims of human trafficking.

Furthermore, as already indicated in question 2, the Centre also observed – through several cases in which it associated in a court case with the public prosecutor – that when victims do not declare themselves to be victims during their police hearing, they are often not put in contact with a reception centre.

Thus, in the file concerning the massage parlours in Liège, that we talk about in the second part of this report, it appears that the police sometimes told victims that they were only in a position to help them if they declared themselves to be victims. When the victims sometimes reacted very negatively, the police therefore chose not to call upon an interpreter and not to inform the workers at the reception centre.

¹⁵² The Centre, Report on "human trafficking/trafficking in human beings" 2006, The victims under the spotlight, July 2007, Chapter 2, point 2.3.2: During a road check in the Brussels region, a Polish driver was controlled. After controlling his tachygraph, he admitted that he was doing undeclared work. The Polish driver was unable to pay the EUR 2500 fine he was given and supposed to pay immediately, and was taken to the police station for questioning. In his statement, the Polish driver provided some interesting evidence. He was working without a work permit or a contract. According to his boss' recommendations, the tachygraphs had to be thrown away after every journey. He drove 1900 km without taking any of the legal breaks and only slept four hours a night on average. He earned EUR 40 a day for his services, regardless of the hours worked and the number of kilometres covered. He had to remain in his lorry for seven weeks. As regards personal hygiene, he had to use the service stations along the motorway. After seven weeks, he would return to Poland for two weeks, where he was contacted to find out whether or not he was required again. His boss had given him a mobile phone, so that he was always contactable, and he always had to be available to arrive at the destination as quickly as possible. He was never asked if he had taken a break or if he had been able to rest. He was afraid of giving statements because of his work. According to him, there was also the danger of reprisals and he said that it was not possible to catch his boss because the head office of his transport company was in Germany. The traffic police contacted the Federal Police to ask what they should do with the victim. The Federal Police advised them to contact the reference magistrate for human trafficking in Brussels. After this magistrate was presented with the facts, the police was oriented towards the 'Auditeur du travail' (officer representing the public interest at employment tribunals) in Brussels, since it was a question of social legislation. In turn, the officer oriented the police to the public prosecutor's office of the district in which the suspect was living. Here, the public prosecutor ordered the statement to be transferred to him and the tachygraphs to be seized. This public prosecutor promised to contact the 'Auditeur' and confirmed that the vehicle could be liberated after the fine had been paid. Therefore, nothing was done for the victim, which once again illustrates the problem of the detection and treatment of people who are the victims of economic exploitation.

¹⁵³ Cf. The Centre, Report on "human trafficking" 2006, The victims under the spotlight, July 2007, Chapter 2, point 2.3.3, pp. 46-47.

Finally, while the main authority referring people to reception centres are police departments, the Centre's study of the data base revealed that when a referral was made by a Federal Police department, only victims in 22 % of cases were taken care of owing to a "lack of sufficient evidence of human trafficking". This percentage is 28 % in the case of local police. A different interpretation of what human trafficking is by the various players, lack of information and the delimitation of the roles of all those involved, as well as a lack of expertise or experience, figure among the reasons put forward to explain these refusals to take care of victims¹⁵⁴. Continuous dialogue and communication between the various partners is therefore essential, as well as training and raising awareness among less specialised first-line players.

Question 36: Formal protocols for identifying trafficked persons

The instrument used by the authorities responsible for enquiries and legal action in order to identify cases of human trafficking and potential victims, is the Ministry of Justice's directive (COL 01/07) on human trafficking that we have already mentioned.

This directive does not contain any fundamental differences compared with the former COL 10/04. Essentially, it adapts the scope, following new provisions on human trafficking coming into force, in particular, article 433, section five of the penal code.

Just like the earlier one, this directive provides for a framework and uniform criteria aimed at the homogenous development of the law enforcement policy in terms of human trafficking within the country's different judicial arrondissements.

COL 01/07 contains several appendixes to help the players in the field identify cases of human trafficking.

Thus, appendix 1 attempts to better define the notion of human dignity - the heart of the incrimination of human trafficking for the purpose of exploitation through work - by making reference, in particular, to the parliamentary works of the law of 10 August 2005. It specifies, among other things, that the perception a victim has of their work conditions is indifferent. Thus, it is not because a victim considers that they are not being exploited that it is not a case of human trafficking. These work conditions contrary to human dignity must be assessed according to our national criteria and not according to the conditions practised in the victim's country of origin.

¹⁵⁴ For more details on this point, cf. The Centre, Report on "human trafficking" 2006, The victims under the spotlight, July 2007, Appendix, point 4, a (pp. 83-86), d, 1 and 2 (pp. 129-130).

As for appendix 2, it provides a detailed list of indicators aimed at helping to detect evidence of trafficking. While the majority of these indicators were already present in the former COL 10/04¹⁵⁵, those relating to the work conditions of presumed victims were further detailed and expanded upon. They now concern the obligations for which the worker is responsible, the behaviour of the employer towards the worker, the place and the material conditions of the work, etc.

COL 01/07 does not include any specific indications for minors. Neither is there any other specific instrument concerning them. Nevertheless, underage victims are one of the priorities within the framework of law enforcement.

On the other hand, the draft of the new circular on the status of “human trafficking”¹⁵⁶ deals specifically with the issue of unaccompanied foreign minors who are the victims of human trafficking. Thus, it is explicitly provided for that the police or inspection department must take into account the specific vulnerability of the minor when they think they are confronted with a potential victim. Special measures in terms of reporting (especially to the guardianship services) and housing (in a suitable centre), are also provided for. For the rest, please refer to what was said in questions 14 to 17, which relate specifically to minors.

Question 37: A reflection period

The Belgium system of assistance for victims conditions the granting of residents permits specific to collaboration with the law.

As soon as this four-phase system was set up at the beginning of the 1990s, regulations provided for a 45 day period of reflection to be granted (in the form of an order to leave the country) to the victim who left the place of exploitation and was taken care of by a reception centre. This period of reflection must allow the victim to find the necessary peace of mind and to decide whether they would like to make statements against the people who exploited them or to prepare to return to their country of origin.

It is also the option retained by the new article 61/2, §2 of the law of 15 September 1980, which maintains the 45 day period of reflection accompanied by an order to leave the country¹⁵⁷. Moreover, the draft circular specifies that the observation of clues leading to the belief that the person is a victim of human trafficking is sufficient to consider that the presumed victim can benefit from a period of reflection.

¹⁵⁵ Especially those concerning the displacement of the perpetrators and presumed victims, the indicators relating to identity and travel documents, accommodation and the housing of the workers, the victims freedom of movement.

¹⁵⁶ Circular relating to the implementation of a multidisciplinary cooperation concerning the victims of human trafficking and certain aggravated forms of human smuggling.

¹⁵⁷ We should however mention the fact that the law subsequently speaks of breaking ties with the presumed perpetrators and not the place of exploitation. Article 61/2, §3 of the law does indeed stipulate that the “The Minister or his/her representative can, at any moment, decide to end the limit provided for in §2 (the period of reflection), if it has been established that the foreigner actively, voluntarily and on his/her own initiative, has renewed ties with the presumed perpetrators of the offence referred to in Article 433, section five of the Penal Code (human trafficking) or the breach of human smuggling in the sense of Article 77bis, or if it is considered as compromising public order or national security”.

However, it has been observed that this period of reflection is rarely applied in the field.

Most of the time, given that the victims are mainly detected and identified by police departments, they are directly heard by the latter. Their status is subsequently often proposed during this first hearing. As soon as they enter into the care of the reception centre, they can often directly benefit from the second phase of the procedure (the issuing of a three month residence permit).

Furthermore, the various players generally consider that the contents of the first statement constitute a major indication of genuine victimisation¹⁵⁸.

We have also mentioned the problems associated with the detection and identification of victims, which also results in the reflection period rarely being applied (see questions 2 and 35).

However, even if not all the victims do require this period of reflection, there are circumstances in which it should effectively be applied. We are particularly referring to the cases in which criminal organisations are involved. It is indeed in this type of case that the victims are the most exposed to threats of reprisals and are therefore scared to make a statement¹⁵⁹. More often than not, they have a very negative view of the police. Therefore, they are particularly reticent about cooperating, stating that they do not consider themselves to be victims, or they make highly evasive or false statements in the beginning. The possibility of returning to a state of serenity and trust, aided by the workers at the reception centres, in order to be able to decide whether or not to cooperate, with full knowledge of the facts, therefore seems essential in these cases.

¹⁵⁸ In this sense, cf. The Centre, Report on "human trafficking" 2006, The victims under the spotlight, July 2007, Appendix, point 8, d, 3 (p. 131).

¹⁵⁹ Cf. the Bulgarian and V. cases in the second part of this report; the forced labour case in the 2006 report, Chapter 2, point 2.3.1; and case A., Annual Report on "human trafficking", Pleading in favour of an integrated approach, analysis of the legislation and the precedents, December 2003, pp. 23-25.

2. Assistance for individuals who have been trafficked

Question 38: Providing unconditional assistance to trafficked persons

In Belgium, the granting of protection and assistance to victims of human trafficking is linked to cooperating with the law. Only victims who benefit from the special status of “victim of human trafficking” will have the right to the various forms of aid provided for within this framework¹⁶⁰ (mainly right of residence, accommodation, psychosocial help and legal aid).

To achieve this, the victims must satisfy three basic requirements: break all contact with the presumed perpetrators of their exploitation, be supported by a specialised reception centre and, within the possible 45 day period of reflection, make statements or file a complaint against their exploiter.

There are four phases to the procedure¹⁶¹.

During the possible 45 day period of reflection, the potential victim, who has left the people who subjected them to human trafficking and gone to a specialised reception centre, may benefit from social aid¹⁶².

At the beginning of the second phase (i.e. when the victim has made a statement), they can benefit from a three month residents permit (registration certificate), providing that they are supported by a specialised reception centre and that they do not make further contact with the presumed perpetrators¹⁶³. From this moment on, they can also have access to training and employment possibilities (providing they have work permit C)¹⁶⁴.

Their stay will be extended according to the evolution of the enquiry and according to certain conditions¹⁶⁵, which, if necessary will allow the victim to benefit from a six month residence permit (C.I.R.E.) which will be renewed until the end of the legal proceedings.

¹⁶⁰ Unless they benefit from another procedure such as the asylum procedure for instance.

¹⁶¹ For an analysis of the new provisions, cf. the Centre's 2006 report on human trafficking, Chapter I; and J.P. Jacques, “Foreigners who are victims of human trafficking”, Special edition of the Review on Foreigner's Rights (to be published).

¹⁶² We should mention that this right, which was explicitly provided for in the 1997 directives, was not included in the new legislative provisions. The circular in preparation should however remediate this shortfall.

¹⁶³ Article 61/3, §1 of the Law of 15/12/1980.

¹⁶⁴ Cf. on this point, articles 17 and 18 of the RD of 9 June 1999 relating to the execution of the law on the occupation of foreign workers, MB, 26 September 1999. Please note that certain terms should be adapted to make them comply with the new provisions of articles 61/2 to 61/5 of the law of 15 December 1980.

¹⁶⁵ The public prosecutor's office or the ‘Auditeur’ must consider that the person is indeed a victim of human trafficking; that the case is still in progress; that the victim clearly shows the desire to cooperate, that they have broken all ties with their exploiters; and finally, that they are not considered as being in a position to compromise public order or national security (Articles 61/3, §2 and 61/4, §1 of the law).

The victim, supported by one of the three reception centres, will also be offered the aid of a lawyer. They can therefore decide, with full knowledge of the facts, to associate in a court action with the public prosecutor against the perpetrators of their exploitation.

When a case is taken to court, the victim will also have the possibility - according to certain conditions - of obtaining a permanent residence permit in Belgium¹⁶⁶.

Subsequently, the granting of protection and assistance is not unconditional.

In questions 5, 9, 18 and 35, we mentioned several shortfalls in the system. Please refer to these questions.

Question 39: Protection and assistance to nationals from other Member States

The Belgian legislator decided to allow both nationals from countries outside the European Union as well as those from the European Union, who do not have a more favourable status, to benefit from the recent provisions relating to the status of residency for victims of human trafficking. While the law speaks of “foreigners”, the preamble specifies that the status of protection can be applied to both these sorts of nationals¹⁶⁷. This is certainly one of the positive aspects of the new law, especially if we consider the recent entry of Bulgaria and Romania into the European Union – countries from which many of victims come.

In accordance with article 433, section five of the penal code – which subsequently defines the offence of human trafficking – Belgians may also be the victims of this type of offence.

Subsequently, while they cannot logically be considered for a residence permit within the framework of “status of victim of human trafficking”, they can nevertheless have recourse to the services of the specialised reception centres if necessary.

Furthermore, just like any other Belgian victim of offences, they will have the right to the various forms of aid and assistance offered by the existing services such as the aid to victims services (psychosocial aid, psychological assistance, legal aid, etc.) or the reception services within the public prosecutors’ offices.

¹⁶⁶ For this to happen, there must be either a sentencing based on the law on human trafficking, or the public prosecutor’s office or the ‘auditoriat’ must have retained the element of human trafficking in its brief (Article 61/5 of the law). However, the victim must also try to prove their identity (Article 61/3, §4 of the law).

¹⁶⁷ Preamble, Parl. Doc., Ch., 2005-2006, 51- 2478/001 p.28; cf. also the Report of the ‘Commission de l’Intérieur, des Affaires Générales et de la Fonction Publique de la Chambre’, Parl. Doc., Ch., 2005-2006, 51-2478/008, p.19.

Question 40: Minimum standards and adequate resources for service provision

The three specialised reception centres for victims of human trafficking are jointly financed by the federal government and federated entities. Besides a head office which organises the points of contact, they also have a hostel (approximately 15 beds each).

Up until now, there has been no consent and acknowledgement procedure at federal level of the approved services to receive and support victims, allowing the possible consent of new reception centres.

A text on this subject was written by the office of the Interdepartmental Coordination Unit for the Fight against the Human Trafficking and Smuggling. It has not yet been approved on a political level however. This is why it is also a point that figures in the draft Action Plan on Human Trafficking.

As regards the centres' hostels, these are financed by the regional authorities and must meet the quality standards defined by these authorities.

3. Witness protection and treatment of trafficked persons in the course of legal proceedings

Question 41: Rights of trafficked persons as victims of crime

In principle, the victims of human trafficking benefit from the same rights as the victims of other types of offences (such as the right to information and the right to obtain compensation for the damage suffered by the victim). Nevertheless, the actual exercising of these rights can sometimes prove difficult in practice.

As we have mentioned several times already, victims who benefit from the granting of resident permits within the framework of the “human trafficking procedure” are those who have accepted to cooperate with the legal authorities, besides any other conditions. Subsequently, the reception centre supporting the victims must provide them with legal support, by suitably informing them and offering the assistance of a lawyer with a view to ensuring the defence of their rights in the legal proceedings. The path generally chosen in a criminal case is independent action for damages. These victims have the right to fully defend their rights.

On the other hand, as we have already seen (see questions 5 and 18), there are victims who do not benefit from the status – most often because they have not been properly guided or have not wanted to enter into proceedings – or who only benefit from it for a given time for various reasons (making contact again with the presumed exploiters, not respecting the support standards set by the reception centre, etc.).

In fact, it is only the reception centre supporting the victim who is authorised to request documents and temporary resident permits from the Foreigners’ Office¹⁶⁸.

If the support ends, the centre will request no further documents for the victim from the Foreigners’ Office. Hence, the victim will be in a precarious situation in terms of residency and if they stay in Belgium illegally, they risk being removed thus compromising the defence of their rights.

Furthermore, since free legal aid is not automatically available for all foreign victims of human trafficking, it may be difficult to obtain the designation of a lawyer to defend their rights as a victim of offences since their stay in Belgium is illegal¹⁶⁹.

It is unfortunate, just as some other authors say, that victims of human trafficking do not benefit directly from free legal aid, given the complexity and technical nature sometimes associated with

¹⁶⁸ Cf. article 110 bis, §1 of the Royal Decree of 27 April 2007 amending the Royal Decree of 8 October 1981 on access to the country, residency, the establishment and removal of foreigners, MB, 21 May 2007. As regards requests for resident permits with an unlimited duration, it is not however specified whether this request must be made by one of the specialised reception centres. Subsequently, we can deduce that this request can also be made by the victim’s lawyer.

¹⁶⁹ See note on this subject in article 1, §1, 9^o and 10^o of R.D. of 18 September 2003 defining the conditions of completely or partially free second line legal aid and legal assistance. This article provides for completely free legal aid for foreigners but only for requests concerning their stay.

the criminal procedure in this type of case. Moreover, the presence of a lawyer at the victim's side may turn out to be of great importance in case of a conflict with a reception centre¹⁷⁰.

Question 42: Special measures to protect trafficked persons in criminal proceedings

We have already mentioned the possibility for victims of human trafficking to benefit from a specific residency status. Within this framework, they can, if necessary, be housed in one of the centres' hostels who address is kept secret.

Furthermore, like other victims of serious forms of crime, victims of human trafficking can, according to certain conditions, benefit from provisions relating to the anonymity of the witnesses or the protection of threatened witnesses, or provisions regarding statements by means of audiovisual media¹⁷¹.

In practice, it seems that it is only exceptionally that such measures are taken in favour of victims and witnesses of human trafficking. Therefore, over the past few years, complete anonymity was only granted in a single case of human trafficking (source: Criminal Policy Department, FPS Justice).

In such cases where the criminal network turns out to be particularly violent, these measures could certainly be employed more often.

Question 43: Efforts to ensure trafficked persons are not detained or charged

We have already highlighted (see above, especially question 2) that there is still room for improvement in terms of detecting and identifying victims, mainly victims of human trafficking for purposes of exploitation through work in high-risk sectors or atypical sectors. Potential victims are still too often considered and treated above all as illegal immigrants or illegal workers.

As a result, they can, if necessary, be held in detention centres for illegal immigrants and workers with a view to being repatriated. One of the criteria for placing a foreigner in a detention centre is indeed the suspicion of undeclared work. Moreover, nothing indicates that within these centres, systematic screening is carried out to detect potential victims. Detection will consequently mostly depend on the awareness of the social workers and the general philosophy of the detention centre.

Finally, we should point out that the incrimination of "human trafficking" explicitly contains the obligation of committing a crime or an offence among the various types of exploitation. This

¹⁷⁰ In this sense, J.P. JACQUES, "Foreigners who are the victims of human trafficking", Special edition of the Review of Foreigner's Rights (to be published).

¹⁷¹ Cf. the law of 8 April 2002 relating to the anonymity of witnesses (MB, 31 May 2002), the law of 7 July 2002 containing rules relating to the protection of threatened witnesses and other provisions (MB, 10 August 2002) and the law of 2 August 2002 relating to the collection of statement through audiovisual media (MB, 12 September 2002). These laws were briefly analysed in the Centre's report, Pleading in favour of an integrated approach, analysis of the legislation and the jurisprudence, December 2003.

choice of the legislator was made in light of precedents that revealed cases of human trafficking in which the victims were forced to commit acts of theft or deal in drugs. This allows potential victims to be acknowledged as such and not as the perpetrators of offences. In 2006, 23 cases were opened by public prosecutors' offices concerning human trafficking with the aim of committing offences.

4. Return and social inclusion

The establishment of systems and procedure to assess the risk of a victim of human trafficking returning to their country of origin are essential in order to avoid secondary victimisation and to guarantee the protection of the victims.

This assessment should take into account elements such as the risk of reprisals, the risk of stigmatisation, rejection from the community or the means to meet their needs.

Question 44: Risk assessments

Within the framework of the former asylum-seeking procedure, there was a non-renewal clause¹⁷² which allowed the competent authorities to draw the Ministry of the Interior's attention to the risk run by asylum seekers, whose case had been dismissed, if they returned to their country of origin. Since 10 October 2006, this clause no longer exists and the "qualification" directive relating to subsidiary protection is in force in Belgium. The adaptation¹⁷³ of this directive allows international protection to be granted to people who run a real risk, in case of return to their country of origin, of being exposed to serious harm such as the death penalty, torture or inhuman or degrading treatment or punishment or serious threats to their lives or selves (only in the case of civilians) owing to random violence in case of internal or international armed conflict. The risk assessment concerning the potential violation of the prescription of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in case of return to the country of origin is therefore organised within the framework of the asylum-seeking procedure and entrusted to the asylum authorities.

However, if the person or their advisor has not asked for international protection, there is no set formula imposing a risk analysis in case of return. Nevertheless, all the Belgian authorities are required to apply Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which establishes that "no-one can be subjected to torture or inhuman or degrading punishment". The Belgian governmental authorities apply this article on a case by case basis.

Consequently, it is necessary to distinguish the forced (removal) or voluntary return of a presumed victim within this framework.

When removal has been decided upon (repatriation or turning back¹⁷⁴), it is because in general, the person has not been identified as a victim of human trafficking, but is considered to be an

¹⁷² Former Article 68/5 of the law of 15/12/1980.

¹⁷³ Articles 48 and following, of the law of 15/12/1980.

¹⁷⁴ The term 'turning back' is used when the country has not yet been accessed and 'repatriation' when the foreigner has been intercepted in the country, cf. Foreigners' Office, Activity Report 2006, p. 115.

illegal immigrant or an illegal worker. In these cases, there is no systematic practice of risk assessment before proceeding with the return.

When it is a question of a minor who has been turned back or whose guardian has been issued with an order from the Foreigners' Office to escort the minor home, no risk assessment is carried out either. Nevertheless, if the decision is taken to proceed with the execution of these decisions and the return to the country of origin effectively appears to be a sustainable solution for the minor, there must be the guarantee, in principle, that the minor will be received and supported in the country of origin¹⁷⁵.

A victim of human trafficking has – like certain other categories of migrants in Belgium – the possibility of opting for voluntary return to their country of origin. In this case, this return will be organised by the IOM (International Organisation for Migration), through the REAB programme (Return and Emigration of Asylum Seekers Ex Belgium)¹⁷⁶.

Since June 2006, two new Reintegration Funds¹⁷⁷ have been created to provide those returning with additional assistance for reintegration. One of these funds, “the Fund for Vulnerable Cases” is specifically aimed at vulnerable groups such as victims of human trafficking or minors and unaccompanied minors. The aim of this fund is to encourage a safe and durable return and reintegration in the country of origin. It grants financial assistance for reintegration, which depends on the availabilities in the country of return. It may be a question of services such as temporary housing and care, psychological follow-up, guidance towards education and/or vocational training.

The voluntary return of minors (presumed victims or not), is also organised via the IOM. Nevertheless, in this case, a specific risk assessment takes place. It must be certain that it is in the minor's best interest to return to their country.¹⁷⁸

Thus in 2006, the IOM proceeded with the voluntary return of 22 unaccompanied minors (out of a total of 1410 unaccompanied minors reported to the Foreigners' Office). Therefore, there are very few voluntary returns with regard to the high number of unaccompanied minors in Belgium¹⁷⁹. We should also mention that in practice it is very rare for an unaccompanied minor who is the victim of human trafficking to be sent home.

¹⁷⁵ Cf. for more details on these issues: CH. VAN ZEEBROECK, *Unaccompanied Foreign Minors in Belgium, Administrative, Legal and Social Situation, Practical Guide*, Brussels Children's Rights Department, publisher Jeunesse et droit, 2007, pp.436 and following.

¹⁷⁶ The assistance programme for voluntary return (REAB) addresses three categories of migrants: asylum seekers who have retracted their request for asylum; those whose request has been rejected and all foreign migrants (outside the EU and Schengen zone) who could fall under the responsibility of the Belgian public authorities and who request the return to their country.

¹⁷⁷ For more details, see Fedasil, Annual Report 2006, pp. 37-43: <http://www.fedasil.be/home/attachment/i/12745>

¹⁷⁸ Cf. for a detailed explanation on this assessment and the practical organisation of this return: CH. VAN ZEEBROECK, *Unaccompanied Foreign Minors in Belgium, Administrative, Legal and Social Situation, Practical Guide*, Brussels Children's Rights Department, publisher Jeunesse et droit, 2007, pp.135-140.

¹⁷⁹ *Ibidem*, p. 72, point 7.2.2.6.

In order to improve practices, it would be useful, as proposed in the draft action plan on human trafficking, to obtain up-to-date information, via embassies and consulates, on the manner in which returns are organised.

Question 45: Bilateral agreements for the repatriation of presumed trafficked persons

Given that there is no specific readmission agreement for the victims of the human trafficking or smuggling, it is therefore necessary to examine the general readmission agreements concluded by Belgium with different countries. Very recently, Belgium and other European Union states concluded a certain number of readmission agreements with the countries of Eastern Europe and the Balkan region (Republic of Moldavia, Republic of Serbia, Bosnia-Herzegovina, Ukraine, Republic of Montenegro and the ex-Yugoslavian Republic of Macedonia). In each of these agreements, provisions were included to regulate "applicability with reservations". This means that the readmission agreement must not infringe the rights, obligations or responsibilities of the European Community, the Member States or the country with which the agreement was concluded, and which follow on from international law and, in particular, any treaty or convention to which they are party. It is currently impossible to reach a concrete verdict about the compulsory nature of this clause relating to human rights.

Furthermore, besides this, all governmental authorities are linked by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which states that: "No-one may be subjected to torture or inhuman or degrading treatment or punishment."

Question 46: Social assistance programmes in the countries of origin

Since Belgium is not a country of origin, this question is not relevant.

5. LAW ENFORCEMENT STRATEGIES

It is not sufficient to adopt a law on human trafficking. Effective implementation must also take place. This is why it is important to take the necessary measures for it to be understood by those responsible for its implementation, as well as giving them the means to detect and gather the necessary evidence in order to sentence the traffickers. Furthermore, compensation for the victims also constitutes an important point for attention. This is the subject of this fourth and last part (see questions 47 to 55).

I. Developing law enforcement agency expertise, establishing priorities and ensuring coordination and cooperation between agencies

Question 47: Specialist “anti-trafficking” unit

We have already explained (see question 23 above) that each of the country’s judicial arrondissements had, within the federal police, policemen and women specialised in human trafficking, with some specialised staff also within the local police.

As regards exploitation through work, we have already mentioned the fact that the social security inspectors were more specialised in human trafficking¹⁸⁰.

Furthermore, in 2001, a collaboration protocol was concluded between two inspection services¹⁸¹. This protocol created the necessary framework for the preparation and execution of joint actions in high-risk sectors for human trafficking and illegal work.

Until the end of 2005, joint controls (in general once a month) were subsequently organised upon the initiative of these inspection services. Since 1 January 2006, this mini-protocol, an operational multidisciplinary platform composed of the legal authorities, the social inspection departments, the police and the tax office¹⁸², was integrated into the arrondissement units.

As a result, following the integration of the mini-protocol, these arrondissement units coordinate, first and foremost, “human trafficking in the broadest sense” among other things. In reality, these actions are mainly aimed at the employment of foreign workers (fight against illegal work and

¹⁸⁰ Hence, a “human trafficking” officer was designated in each judicial arrondissement both within the “control of social laws” department and in the social security inspection department. Cf. SIOD report, op. cit., p.46 and 47.

¹⁸¹ Mini cooperation protocol concerning the fight against human trafficking concluded between the social inspection department of the FPS Social Affairs and the social laws inspection department of the FPS Employment, Labour and Social Dialogue, 2001

¹⁸² Cf. not. articles 309 to 327 of the Programme Law (I) of 27 December 2006, M.B., 28 December 2006 which institutes a “Service de Recherche et d’Information Sociale” in terms of fighting social fraud and illegal work, the arrondissement units and the partnership commission, and repeals the law of 3 May 2003 instituting the Federal Council for the Fight against Illegal Work and Social Fraud, the Federal Coordination Committee and the Arrondissement Units.

social fraud) and can sometimes lead to reports of human trafficking¹⁸³. In this case, these services must inform the legal authorities who will decide what should be done.

The action of the arrondissement units is distinct from the actions carried out within the framework of COL 01/07. In practice, the special collaboration links between police and inspection services in terms of human trafficking are privileged under the aegis of the magistrates of the public prosecutor's office or the 'auditoriat', within the framework of the controls and enquiries specifically carried out to detect cases of human trafficking. The list of indicators featuring in the appendix of the COL is a very useful instrument in this respect. Within this framework, it is the "human trafficking" liaison magistrate from the public prosecutor's office who leads the action. The federal police have jurisdiction first and foremost. The social inspection services also help the police departments, in terms of their specific knowledge of subjects relating to social penal law.

While the collaborations between these services generally run smoothly¹⁸⁴, those involved have nevertheless underlined the difficulties linked to the lack of staff, the reorganisation of certain services or the changes in the appointment of staff who were previously specialised¹⁸⁵. The introduction of new players who are not familiar with the subject also poses a problem, hence the need to pursue training efforts¹⁸⁶.

Subsequently, the idea was put forward, in order to "standardise" the collection of evidence and to develop quality standards for the enquiry, and to write a sort of handbook for the police. This would include the various elements and stages allowing a complete human trafficking case to be constituted¹⁸⁷.

Question 48: Intelligence-led investigation techniques

Even if the victims' statements and evidence play an important role within the framework of the legal enquiries against traffickers, they are not the police departments' only means of investigating and opening an enquiry.

It is true in numerous cases that an enquiry will immediately lead to statements from the victims during the controls. But numerous cases also begin or depend on the basis of other elements, such as observations or phone-tapping. These objective elements of the case are in fact often

¹⁸³ This term is a source of confusion in the field, hence the designation "exploitation of labour and employment of foreign workers" by SIOD. Cf. SIOD, Biannual Report 2005-2006 relating to illegal work performed by foreign workers and exploitation at work (TEH).

¹⁸⁴ Cf. SIOD report, op. cit., 4; FPS Employment, Directorate-General for the Control of Social Laws, op. cit., p. 100.

¹⁸⁵ Cf. the Centre's annual report on "human trafficking", The Belgian policy on human trafficking: Light and shade, November 2005, p. 88-89.

¹⁸⁶ Cf. FPS Employment, Directorate-General for the Control of Social Laws, op. cit., p. 100-101.

¹⁸⁷ This is one of the propositions that feature in the draft action plan on human trafficking.

important in order to allow the magistrates establish their conviction concerning the culpability of the accused¹⁸⁸.

Furthermore, financial enquiries are vital in order to identify those responsible in the legal world¹⁸⁹. A financial enquiry also allows support for the prevention of criminal organisations. Thus, in case A., the financial enquiry helped to prove how the organisation made use of commercial structures for its criminal activities. The accused were subsequently also condemned for belonging to a criminal organisation¹⁹⁰.

Question 49: Cooperation between agencies in different States

Since human trafficking is essentially a transnational phenomenon, European and international cooperation is vital in this domain. Belgium has concluded some fifty extradition treaties with other countries¹⁹¹.

The Federal Police's central "human trafficking" department fulfils an important operational role: it is responsible, in particular, for exchanging information with the federal public prosecutor's office, Europol and Interpol and with the police departments in foreign countries with whom Belgium has concluded bilateral or multilateral cooperation agreements in terms of human trafficking.

On an international level, the task of facilitating the international cooperation of the federal prosecutor is of vital importance given the transnational nature of human trafficking.

Our interviews with "human trafficking" reference magistrates revealed that the federal public prosecutor's office also plays a relevant role in practice for the exchange of information on an international level. Several among us have however revealed that we have found little support from the federal public prosecutor's office, and that they rarely work together.

The federal public prosecutor's office is also the international interlocutor with Eurojust. A transnational case, dealt with in our preceding report¹⁹², and which was dealt with by the federal public prosecutor's office, constituted an important case for Eurojust. It was also a good test for international cooperation through Eurojust. Our interviews with the reference magistrates revealed that they were absolutely not informed as regards Eurojust.

¹⁸⁸ Cf. on this point in particular several legal decisions mentioned in the 2003 human trafficking report, op. cit., p. 65. Numerous decisions can also be consulted on the Centre's website: www.diversite.be

¹⁸⁹ Cf. file on massage parlours in Liege and file on massage parlours in the second part of the present report.

¹⁹⁰ Cf. the Centre, annual report on human trafficking, The Belgian policy on human trafficking: Shadows and lights, November 2005, p. 101.

¹⁹¹ You can find more information on this subject on the following site which has a legal data base on the treaties: <http://reflex.raadvst-consetat.be/reflex/?page=traiverd&lang=fr>

¹⁹² The Centre, report on human trafficking 2006, The victims under the spotlight, July 2007, p. 36-38.

In practice, cooperation with Europol is a complicated bureaucratic procedure which can take several months, and has harmful consequences on the smooth running of the case. The rogatory letters play an important role in legal enquiries concerning human trafficking. In various sexual exploitation cases in the second part of this report (case of massage parlours in Liège, Bulgarian case, case V., minors case) and in the cases of economic exploitation which we spoke about in our previous report¹⁹³, rogatory letter were drafted with a view to hearing the witnesses or victims who had already gone back to their country.

The Centre observed a shortfall in the status of victim protection during the transfer of a case to another state, where the most serious actions had been committed. Some of the accomplices had been active in Belgium but the main perpetrator was in this state. In this case, a victim had made significant statements in Belgium concerning the criminal acts in this foreign country and a confrontation took place. In this concrete case, the magistrate contacted the Foreigners' Office so that the victim could benefit from the status.

In various cases, also dealt with in the second part (cf. Bulgarian case), Belgium obtained the extradition of the accused residing abroad, who was then prosecuted in Belgium.

Bulgaria's recent admission into the EU poses serious problems. In the Bulgarian case, which we shall talk about in the second part, it has come to our attention that the leader of a criminal mafia-type prostitution network has not been extradited to Belgium. At a given moment, he was even freed from the Bulgarian prison for health reasons. As a result, all the victims hid as they feared for their lives.

Corruption is not the only serious problem in Bulgaria. There is also a structural problem within the Bulgarian legal system. According to several sources, it would appear that the Bulgarian legal system is structurally incapable of effectively fighting organised crime¹⁹⁴. Time limits of several months have been imposed, within which an enquiry must be terminated. This time limit may then be prolonged in the case of serious crime after the public prosecutor has given his personal approval. Human trafficking falls outside this category because it is not considered as a serious crime under Bulgarian law. At the trial itself, the case goes right back to the beginning again. The enquiry relating to the case is considered inexistent and all the evidence and testimonies must be presented again during the trial. As a result, if important witnesses are not present at the trial because they have disappeared or been threatened, this leads to acquittals in practice.

The Consultative Council of European Prosecutors (CCEP), created in 2005 by the Council of Europe¹⁹⁵, which is mainly responsible for monitoring the functioning and effectiveness of the law, can draw up notices in domains that fall under the competence of the public prosecutor's

¹⁹³ The Centre, report on human trafficking 2006, The victims under the spotlight, July 2007, p. 43-47.

¹⁹⁴ Also note that the European Commission, in recent reports, has deplored the lack of results in this country as regards the fight against high-level corruption and organised crime: http://www.challenges.fr/actualites/business/20080204.CHA7009/corruption__sofia_et_bucarest_inquietent_bruzelles.html. Cf. also the Bulgarian case further on in the second part.

¹⁹⁵ http://www.coe.int/t/dq1/legalcooperation/ccpe/default_fr.asp

office. It would be useful if it were to examine a way to improve the effectiveness of the fight against human trafficking, considered as a major form of organised crime.

2. Tackling corruption

Question 50: Action against corruption in general

Belgium does not have an action plan or specific strategy against corruption. Nevertheless, various mediation services and control bodies were set up to investigate individual complaints made by citizens.

In the preceding annual report, the Centre already made an in-depth study of the fight against corruption¹⁹⁶. The main problem is that the fight against corruption cannot currently be dealt with in a structured manner. The final report of the commission to monitor organised crime refers to statements made by the competent magistrate Philippe Ullman, who considers it a problem that the current OCRC/CDDB anti-corruption service “cannot exercise preventative controls” like its predecessor, the ‘Hoog Comité van Toezicht/Comité Supérieur de Contrôle’¹⁹⁷. Therefore, the public prosecutor’s office only takes corruption cases into account indirectly, for instance, when they are associated with a major financial enquiry. Subsequently, corruption can no longer be traced in a structured manner¹⁹⁸. Individual corruption cases however, are prosecuted in a criminal court.

Question 51: Specific action to reduce opportunities for corruption linked to trafficking in human beings

Within the framework of illegal migration, the corruption is mainly at the level of immigration control and customs officers in the countries of origin, transit and destination¹⁹⁹. According to PACO²⁰⁰, corrupt members of staff at western embassies are also sometimes involved. Corruption therefore goes hand in hand with document trafficking. Both the Senate’s report on visa fraud and the annual report of Committee I made a detailed analysis. In its previous annual reports²⁰¹, the Centre dealt with this theme in depth on several occasions on the basis of a few cases. It is thanks in particular to the parliamentary report mentioned that additional measures were taken concerning visa fraud.

¹⁹⁶ Cf. the Centre, annual report on “human trafficking”, The Belgian policy on human trafficking: Shadows and Lights, November 2005, pp. 97-101.

¹⁹⁷ Ibidem, p. 98.

¹⁹⁸ Ibidem, p. 98.

¹⁹⁹ ANDREAS SCHLOENHARDT, Organised Crime and The Business of Migrant Trafficking, An economic analysis, Australian Institute of Criminology, AIC Occasional Seminar Canberra, 10 November 1999

²⁰⁰ Programme against corruption and organised crime (PACO), Corruption and Organised Crime, Report on the regional seminar, Portoroz, Slovenia (19-22 June 2002), Council of Europe 2002.

²⁰¹ Annual report, Images of the phenomenon of human trafficking and analysis of the jurisprudence, May 2001, Chapter 1, points 5 and 6; annual report, Pleading in favour of an integrated approach, analysis of the legislation and the jurisprudence, December 2003, part 1, points 1.2 and 1.4; annual report, Analysis of the victims’ point of view, December 2004, part 1, point 3.4; annual report 2005, The Belgian policy on human trafficking: Light and shade, November 2005, Chapter V, point 6; annual report 2006, The victims under the spotlight, July 2007, Chapter 2.

The governmental departments involved in the control operations are also a major at-risk group. In criminal cases of sexual exploitation, dealt with in part 2 (cf. case V.), the Centre observed that members of the police force suspected of having used their influence had been questioned. In other cases, dealt with in previous annual reports²⁰², it turned out that this was not always the case.

²⁰² Annual report 2005, p. 101; annual report 2006, pp. 30-31.

3. Tracing and confiscating traffickers' assets

Question 52: Tracing and confiscating/seizing traffickers' assets

For several years now, through its reports, the Centre has insisted on the necessity of proceeding with financial enquiries with a view to getting to the heart of this form of crime.

It observed that real efforts have been made with a view to identifying and seizing the assets of traffickers in "human trafficking" cases. This type of enquiry requires a lot of time and means, which sometimes signifies this side of the case is dealt with separately from the main case. Furthermore, the techniques used by traffickers sometimes make it very difficult to search for and identify their assets. Thus, when financial transfers have occurred via banking organisations or Western Union, for instance, they are of course much easier to identify than when they have occurred through the "Hawali"²⁰³ system, the favoured means in India and Pakistan, for instance, or through bus drivers, as is often the case in Bulgarian criminal networks²⁰⁴.

Belgian legislation allows fairly extensive investigative means on this point²⁰⁵. Indeed, the public prosecutor's office in particular has the possibility of proceeding with the seizure of the suspect's assets of an equivalent value, even if it has not been possible to show that the goods seized result directly from the offence²⁰⁶. This particularly allows bank accounts to be blocked, without the necessity of the sums of money therein to be linked to the offence. Furthermore, a relatively extensive system of confiscation of assets has been provided for, which applies to human trafficking in fences, among other things²⁰⁷.

Subsequently, we have observed in many cases regarding both sexual and economic exploitation, that seizures take place, which the courts then declare to be confiscation. For instance, there is a major case of debt binding in the hotel and catering industry that the Centre analysed in its report last year²⁰⁸. In this case, the magistrates' court of Bruges pronounced the confiscation of assets for an amount of nearly one million euros²⁰⁹.

²⁰³ This system allows the transfer of money without any banking operations. The money is sent through a third party who acts as the guarantor for transmission into the intended country, in exchange for a small percentage. Cf. not. the case concerning a Pakistani smuggling business network mentioned in our previous report: *The victims under the spotlight*, July 2007.

²⁰⁴ Cf. on this point in particular the second part of this report (Bulgarian case).

²⁰⁵ In particular, according to the law of 19 December 2002 extending the possibilities for seizure and confiscation in criminal matters (M.B., 14 February 2002). This law was commented upon in the Centre's 2003 report, *Pleading in favour of an integrated approach, analysis of the legislation and jurisprudence*, December 2003.

²⁰⁶ Cf. Article 35 ter C.I.C.R.

²⁰⁷ Article 43 quarter of the penal code, cf. also the Centre's 2003 report on this point.

²⁰⁸ Annual report 2006, Chapter 2, point 2.3.1.

²⁰⁹ Magistrates' court Bruges, 19 June 2007: this judgement is dealt with in the third part of this report and is available on the Centre's website: www.diversite.be

Other examples are mentioned in the jurisprudence section, available on the Centre's website²¹⁰. Furthermore, when sums of money have been seized, the courts frequently award at least a part to the civil party as compensation²¹¹.

²¹⁰ www.diversite.be

²¹¹ Cf. on this point also our 2006 report: Chapter 3, point 3.5 and the decisions mentioned therein which can also be consulted on the Centre's website.

4. Restitution and compensation of victims

Question 53: Access to compensation or damages

All victims of human trafficking can decide to associate in a court action with the public prosecutor against the perpetrators to claim damages. However, in practice there are two difficulties within this framework.

The first one is linked to the right of residence. Indeed, as we have already seen (see question 41 above), only those who have appealed for the “human trafficking” status may legally reside in Belgium (unless they benefit from another right of residence) and will be in the position to suitably defend their rights in the legal proceedings²¹².

The second difficulty concerns the actual compensation of the victims. While damages are granted to them through the courts most of the time, more often than not, the perpetrators arrange or simulate their insolvability²¹³. This is why judges frequently directly grant part of the seized and confiscated sums to the private parties (see question 54 hereafter).

Question 54: Earmarking the proceeds of traffickers

As we have just seen, the victims are rarely compensated in practice. Subsequently, while numerous courts pronounce the confiscation of the sums seized, they grant part of the sums as compensation for the private parties. While compensation for material damages (especially the sums that the victim had to give the exploiters) is generally not contested, on the other hand, the jurisprudence seems to be more divided a regards compensation for moral damages. This point was dealt with in our report last year²¹⁴. Please refer to this report.

We should also underline the fact that the allocation of part of the confiscated sums to the private parties as compensation is not automatic, but mainly upon the request of the lawyers of the private parties or the public prosecutor’s office.

It would be preferable if this practice were to be generalised thus allowing the effective compensation of victims.

²¹² It may also be that some of them decide to return to their country of origin, even though they would like their case to be taken to court. In this case, they have been given (in principle) the possibility of being represented by a lawyer or they have mandated the reception centre that supported them to associate in a court action with the public prosecutor on their behalf.

²¹³ Cf. on this point in particular the reports of cases that the Centre published in 2002: “The law of 13 April 1995 containing provisions with a view to suppressing human trafficking and child pornography”, jurisprudence, May 2002.

²¹⁴ The Centre, report on human trafficking 2006, The victims under the spotlight, July 2007, cf. Chapter 3, point 3.5: several decisions, especially in Antwerp and Brussels. These decisions are also available on the Centre’s website. Furthermore, other decisions, not included in this report, can also be consulted on the Centre’s website: www.diversite.be

Question 55: Access to a State-run compensation scheme

There are no funds specifically established by the state to compensate human trafficking victims.

However, since 1st January 2004, victims of human trafficking have had access to the Commission for Aid to Victims of Deliberate Acts of Violence²¹⁵. This Commission may grant aid to victims of acts of violence, under certain conditions (relatively restrictive), who were not able to obtain compensation through any other means. The maximum amount that may be granted as the main source of aid is EUR 62,000.

In an earlier report²¹⁶, we highlighted the fact that the main issue within this framework was knowing how the Commission would interpret the notion of a deliberate act of violence with regard to human trafficking victims. The victim must have been subject to major physical or psychological harm following such an act in order to ask for aid. And yet, not all the victims of human trafficking (especially the victims of economic exploitation) are victims of a deliberate act of violence in the strictest sense, i.e. voluntary aggravated assault for instance, but the violence to which they are subjected is far more insidious, and falls more under the scope of psychological violence (intimidation, threats, loss of the freedom to come and go as they please, isolation). Subsequently, even if they have not been victims of a deliberate act of violence in the strictest sense, human trafficking victims are nonetheless the subjects of undeniable psychological harm.

Up until now, the Commission for Aid to Victims pronounced four decisions concerning human trafficking victims. Two among them granted aid to the applicants, both victims of sexual exploitation²¹⁷. At the same time, the Commission declared a request for compensation inadmissible in a case of economic exploitation²¹⁸. In this case, the perpetrator of the acts was condemned for economic exploitation (former article 77 bis of the Law of 15 December 1980) but he was acquitted of the charge of rape and indecent assault. Subsequently, while acknowledging that the perpetrator of the acts had abused the particularly vulnerable situation of the applicant by making her work in a state of dependence towards him, the Commission considered, however, that in view of his acquittal for rape and indecent assault, that there had been no act of deliberate violence towards the applicant.

This decision confirms the fears that we already formulated in an earlier report²¹⁹. Finally, in a final decision concerning a victim of sexual exploitation, the Commission considered that the

²¹⁵ Before, they had no access given that the law required victims to be of Belgian nationality or to have the right to enter, reside or settle in the kingdom at the time when the act of violence was committed. However, many human trafficking victims are mostly in the country illegally at the time of their exploitation, thus barring them from the fund. The law has since been amended in order to allow them access. For more details on this issue, cf. the Centre's 2003 report, "Pleading in favour of an integrated approach, analysis of the legislation and the jurisprudence", December 2003, part II, point 3.4.3.

²¹⁶ *Ibidem*

²¹⁷ In a decision of 13 November 2006 (no. M4 0916 of the general role), the Commission granted aid worth EUR 15,000 and in a decision of 19 August 2005 (no. M1499 of the general role), it granted EUR 10,000. These decisions are available on the Centre's website.

²¹⁸ Decision of 26 July 2005, no. M3778 of the general role.

²¹⁹ Centre's report on human trafficking, "Pleading in favour of an integrated approach, analysis of the legislation and the jurisprudence", December 2003.

elements of the case did not lead to the conclusion of the existence of major psychological harm. Consequently, it declared the request for aid admissible but not founded²²⁰. Other cases are still pending.

Once again, we would like to draw the attention of the members of the Commission to the need for a broader interpretation of the notion of deliberate act of violence in favour of human trafficking victims, and mainly those who have been the victims of economic exploitation.

²²⁰ Decision of 26 June 2005, no. 97026 of the general role.

Checklist of key questions to assess Member States' progress in implementing anti-trafficking measures

1. Does your country's anti-trafficking legislation include, as purposes for which individuals are trafficked, forced or compulsory labour or services, slavery or practices similar to slavery, or servitude? If not, does your country have separate legislation making it an offence to recruit or traffic individuals for all of these purposes?
2. Do your country's law enforcement agencies and immigration service have clear instructions to identify trafficked persons, rather than to categorise them as offenders (who have committed immigration offences or other crimes)? Are the Government's messages about priorities and any systems for setting 'targets' for these agencies consistent with these instructions?
3. Does your country's legislation make it an offence to traffic an individual within your country?
4. Does your country's legislation on trafficking in human beings state explicitly that the recruitment, transportation, transfer, harbouring, or subsequent reception of a child under 18 years of age, including exchange or transfer of control over that child, constitute trafficking, even if the child is not subjected to any of the coercive means which are involved in the case of an adult?
5. Do the Government's policies and measures to combat trafficking in human beings make it an explicit priority to respect and protect the human rights of people who have been trafficked?
6. Have there been attempts, prior to the adoption of anti-trafficking policies by your Government, to investigate what their probable impact will be, either on trafficked persons or on individuals who are reckoned to be at high risk of being trafficked?
7. Has the impact of anti-trafficking measures in your country been assessed?
8. Have the authorities in your country taken action to ensure that government agencies which come into contact with presumed trafficked persons (e.g., law enforcement agencies, the immigration service and consular services, and social services), do not use techniques which cause prejudice to the individuals concerned, for example by labelling individuals in a way that is interpreted by others to suggest that the person has been trafficked?

9. Has your Government addressed possible contradictions between its policies concerning trafficking in human beings and those concerning immigration?

10. Has a national coordination structure been established (whether or not it is called a 'national referral mechanism') to oversee the development, coordination, monitoring and regular evaluation of plans and policies at national level on the issue of trafficking in human beings, including mechanisms for referring trafficked persons to appropriate services? Does it ensure the participation of representatives of civil society or NGOs?

11. Does your Government have a policy which allows third country nationals to enter the country and work in jobs which are either manual or do not require special qualifications, on either a short-term (i.e. up to 12 months) or long-term basis? If so, does this cover work in sectors where trafficking or forced labour have been reported (such as agricultural and domestic work and the commercial sex sector) or are these sectors in practice filled by migrant workers who have not entered the country under the terms of your Government's migration policies?

12. Are the jobs for which migrant workers are granted work permits in your country predominantly ones in which men are employed, rather than women? I.e., do policies relating to immigrant workers have the effect of promoting immigration by men rather than women or providing greater protection to immigrants who are men than women?

13. Do government agencies check respect for human rights, labour rights and working conditions in the unprotected sectors of the economy (including sectors where it is predominantly women, rather than men, who work or provide services, such as domestic work, au pair or similar arrangements, and the commercial sex sector) and try to detect exploitative working practices, including cases of forced labour and trafficking.

14. Do the policies and procedures in your country ensure that young people who are presumed to have been trafficked before reaching the age of 18 are entitled to the same rights to protection and assistance as other presumed trafficked persons, in addition to special rights that they are entitled to because they were under 18 years of age when trafficked?

15. Do the immigration service(s) and law enforcement agencies give the benefit of the doubt to any young people whose precise age is in doubt, but who might be under 18 years of age, and, if the person might have been trafficked, accord them all the rights that a child would have?

16. Does your country have a procedure or mechanism in place for ensuring that the best interests of the child are a primary consideration in all actions (and decisions) concerning children who are presumed to have been trafficked, such as those concerning a durable solution for the child?

17. Have the authorities in your country identified the specific ways in which children have been trafficked or exploited in your country and any shortcomings in protection systems in your country, which should protect children? If so, have they taken action to address the situations in which children are particularly vulnerable to traffickers and to remedy any shortcomings in protection systems?

18. Has your Government commissioned research to identify causal factors (in the cases of trafficking in human beings occurring in your country) and gaps in protection systems which have contributed to the cases occurring? Has such research identified the salient characteristics of people trafficked into or out of your country, which may have contributed to their being trafficked?

19. Has research been carried out in your country (whether by government-financed institutions or independently) to collect evidence about the impact of your Government's anti-trafficking policies and measures, including criminal justice strategies, and has this research collected information about their unforeseen or unintended effects as well as their intended effects?

20. Is there an independent National Rapporteur on trafficking in human beings in your country, or a similar structure responsible for gathering and analysing information about all the anti-trafficking measures taken in the country and reporting publicly in a regular way?

21. Is there a common understanding in government institutions and NGOs about what constitutes a case of trafficking in human beings and are standard methods in use in all government institutions to record data about cases of human trafficking?

22. Does your country have a legally enforced system for protecting personal data in place, which ensures that exchanges of personal data (such as personal details about presumed trafficked persons) between different government agencies, either in the same country or with agencies in another country, occur only on the basis of a previously concluded protocol, stipulating how information should flow between the different agencies and meeting relevant legal requirements on the protection of personal data?

23. Do the principal agencies in your country, governmental and non-governmental, which are involved in anti-trafficking actions, have adequate levels of expertise, equipment and resources to perform the roles expected of them (e.g., roles specified in your country's national plan against trafficking or referral system or by your national coordination structure)?

24. Have the staff of these agencies had specialised training (about how they should act when responding to cases of trafficking in human beings) and did this include child specific training for all law enforcement officials, border guards and other officials and NGOs who might come into contact with trafficked children?

25. In the case of Member States from which or within which people have been trafficked, have 'multi-disciplinary teams' or inter-agency coordination groups been set up in areas of your country from which young people are reported to have been trafficked?

26. Have the authorities responsible for immigration (immigration service or border police and consulates issuing visas) introduced systems or procedures designed to help identify possible trafficked persons and traffickers?

27. Have efforts been made to ensure that any new systems or procedures used by the authorities responsible for immigration are not discriminatory (e.g., against women) and are not excessive (i.e., are proportional to the abuse reported to be occurring and which they seek to prevent)?

28. Has your country taken steps to regulate or monitor the activities of private recruitment or employment agencies and other agencies dealing with marriage, tourism or adoption, which are suspected of being used by traffickers?

29. Have the strategies to prevent trafficking in human beings being used by government agencies in your country or supported financially in other countries by Ministries or government agencies in your country been reviewed to ensure they are evidence-based and have they been evaluated to check they have had the desired effect and not any unintended adverse effects?

30. Have the strategies to prevent trafficking in your country been amended in the light of evidence available about factors causing or contributing to trafficking in human beings, in particular;

iii. the lack of protection for women and girls working in the informal economy, both in your country and abroad, notably in the area of domestic and sexual services; and

iv. a lack of capacity of state-run social services to identify and protect children and adults who have a similar profile to others who have already been trafficked.

31. Have the prevention strategies supported financially by your Government in other countries (other Member States or third countries) been amended in the light of evidence available about factors causing or contributing to trafficking in human beings?

32. Are efforts in your country to increase awareness about trafficking in human beings specifically targeted on categories of people who are known (on the basis of research findings) to be at disproportionately high risk of being trafficked?

33. Is information about trafficking in human beings and precautions to avoid being trafficked part of the school curriculum in your country. If so, is information provided to school children at an age when it is still compulsory for them to attend school and before they reach an age when significant numbers are known to be trafficked?

34. Is advice freely available to migrants and potential migrants in your country (from hotlines or other accessible sources) on how to obtain legal employment (in your country or abroad), on precautions to take to avoid being entrapped by traffickers or others who will subject them to abuse, and what to do if subjected to exploitation or other abuse by traffickers or employers?

35. Has your country adopted a standard system to be followed whenever someone is identified as a possible trafficked person (whether this is known as a 'national referral system' or 'standard operating procedures' or another title)? If so, is this standard system implemented by NGOs and other non-governmental actors, as well as by government agencies?

36. Do the relevant authorities (law enforcement, immigration and others) use formal protocols for identifying adults and children who may be in the process of being trafficked into or out of the country and for identifying adults and children who are being exploited in your country, whatever the form of exploitation involved?

37. When a third country national is identified as a presumed victim of trafficking, is she or he entitled to a reflection period before being asked to cooperate in a police investigation or other criminal proceedings? If so, can a reflection period be granted if there is even the slightest suspicion that a person has been trafficked (or is a higher level of evidence required) and is the minimum reflection period at least three months?

38. Are all the individuals who are identified in your country as presumed trafficked persons provided with protection and assistance and have law enforcement agencies in your country abandoned the practice of making access for trafficked persons to some or all forms of assistance conditional on their agreeing to cooperate with law enforcement officials or to take part in criminal proceedings?

39. Is there adequate provision in your country to ensure that nationals of your country and nationals of other Member States who are presumed to have been trafficked have access to at least the same forms of protection and assistance that are provided to third country nationals who are presumed to have been trafficked? I.e., have the authorities taken action to ensure that laws and

regulations do not make provision for assistance to be provided uniquely to people trafficked to your country from outside the EU?

40. Have minimum standards been set in your country for the services to which trafficked persons are referred (i.e., covering safe and appropriate accommodation, health care, counselling, free legal assistance, education, vocational training and employment opportunities)? If so, are procedures in place for checking that these are respected and do organisations providing services to trafficked persons receive timely and adequate financial support from the Government to meet the minimum standards agreed?

41. Are trafficked persons who are third country nationals and who are involved in criminal proceedings in your country entitled to (and able to exercise) at least the same rights as victims of other categories of crime?

42. Have any special measures been taken to protect adults or children who have been trafficked and who take part in criminal proceedings as witnesses or victims of crime, i.e., measures in addition to those taken to protect victims of other categories of crime?

43. Have the authorities in your country taken sufficient steps to ensure that trafficked persons, including children, are not detained, charged or prosecuted for violations of immigration law or for activities they are involved in as a direct consequence of their situation as trafficked persons?

44. Are risk assessments carried out by your country's authorities as a matter of routine before any foreign national (adult or child) who is suspected of having been trafficked returns to her/his country of origin? If so, is the person concerned directly involved and are her or his views sought and taken into account when a decision is under consideration about whether she/he should remain in your country, or return to her/his country of origin or go to another country? And are appropriate procedures in place to ensure that, when risk assessments require inquiries to be made in the trafficked person's country of origin, they are carried out in such a way that they do not cause the person prejudice upon arrival home?

45. Has your country reached a formal agreement with any other Member State or other State governing the process of repatriation of trafficked persons? If so, do these contain guarantees or minimum standards concerning respect for the human rights of the individuals concerned, both in your country and in their country of origin?

46. If and when individuals who are presumed to be trafficked persons return to your country from abroad, are social assistance programmes available to which they are entitled to have access unconditionally and free of charge if they wish to do so, and are they routinely informed about the programmes on offer?

47. Has your country got one or more specialist police unit with specific expertise and capacity to respond to cases of trafficking in human beings occurring in your country, involving all the various forms of exploitation associated with trafficking?

48. Has this specialist unit (and/or other law enforcement agencies in your country) developed techniques to detect cases of trafficking and secure convictions of traffickers, which are intelligence led and do not rely mainly on testimony provided by victims of trafficking?

49. Are effective systems in place to ensure that the criminal justice agencies in your country can cooperate with the criminal justice agencies in other Member States?

50. Has your Government adopted a national strategy or action plan to combat corruption and, if so, does this include action to address the causes of corruption and abuse of power at different levels?

51. Have the various opportunities which might allow public officials to facilitate the activities of traffickers, directly or indirectly, been investigated and identified and has appropriate remedial action been taken?

52. Is it routine, when a suspected case of trafficking in human beings is detected, that efforts are made to identify, trace and either confiscate or seize the proceeds of trafficking/assets of traffickers?

53. Is the ability of citizens of other Member States or third countries, who have been trafficked in your country, to be paid compensation or damages in your country (either via court proceedings or otherwise) hampered in any way, either because foreign victims of trafficking are not allowed to remain in your country while claims are considered, or because some convicted traffickers who are ordered by the courts to pay compensation or damages fail to do so and their victims have no alternative channel from which to seek payments?

54. Are confiscated or seized proceeds of traffickers earmarked for use as a first priority to compensate or pay damages to victims of trafficking?

55. Does your country have a State-run compensation scheme which is authorised to pay compensation to victims of trafficking, whatever form of exploitation they have experienced?