

**2009 ANNUAL REPORT ON TRAFFICKING IN AND SMUGGLING
OF HUMAN BEINGS**

In a haze of legality

Centre for Equal Opportunities and Opposition to Racism

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Introduction

This annual report on trafficking in and smuggling of human beings is the thirteenth in the series published by the Centre for Equal Opportunities and Opposition to Racism (hereafter: the Centre). This tool can be used to assess progress and provide impetus for the fight against the trafficking in and smuggling of human beings, a remit entrusted to the Centre by legislation. Through this report, the Centre also takes on the de facto role of 'national rapporteur on trafficking in human beings'.

This year's report takes a theme-based approach, focused on **labour exploitation**. This choice was not an arbitrary one. The 'bogus self-employed workers' issue and abuse of the secondment procedure are grey areas in terms of the free movement of persons and services in Europe. Whilst the most extensive enlargement of the European Union took place in 2004, the transitional measures concerning Bulgarian and Romanian workers are not likely to be lifted before 1 January 2012.

This report presents the problems that these measures can pose, in particular in the context of trafficking in human beings for the purposes of labour exploitation. The exploitation of European or non-European workers can reach varying degrees of sophistication. However, in all cases it is based on fallacious methods and is concealed behind administrative 'packaging' inspired by different aspects of the free movement of persons and services as well as Member States' judicial and administrative shortcomings. In our previous reports, we have already noted that these networks are becoming increasingly professional. In terms of labour exploitation, we note that use is made of gaps in European and Belgian regulations on secondment and limitations related to inspections. The line between organised forms of labour exploitation and trafficking in human beings is ever closer to being crossed.

This haze of legality, which often accompanies labour exploitation, makes it difficult to detect victims. A coherent approach at a European level is necessary and urgent in this respect. At a national level too, it is essential for the different authorities concerned to join forces and share the data that they have available.

Since the Centre's first report was published, there have never been so many developments in the different aspects of the combat against the trafficking in and smuggling of human beings – both on a strategic level and regarding (inter)national regulations. It is hence not surprising that the Centre tries to enhance the **multidisciplinary dimension** of this fight, both by working within the legal framework and by taking initiatives where there are shortcomings, and also by stimulating awareness, and encouraging studies and review. Despite these efforts, two issues have remained unresolved.

The first is **victim status**. In line with policy, closer attention is now paid to the different categories of victims: vulnerable groups, minors, domestic staff, persons of specific national or ethnic origin, etc. This should go hand in hand with an appropriate status for victims of trafficking in human beings and with suitable support and assistance for these victims. Such solutions should not leave aside other categories of victims, for example persons placed in a ‘win-win’ situation or those who have no residency problems. Compensation for these victims, recognition of injuries suffered, and the possibility to return to a normal life should be central issues.

The second point that has been neglected thus far is **statistics**. On the one side, Belgium can claim that it has developed effective instruments, and has acquired extensive expertise in the field of trafficking in and smuggling of human beings, but on the other it should be recognised that the gathering of statistical data leaves something to be desired. Further analysis of these statistics would nevertheless allow the combat against the trafficking and smuggling of human beings to be given fresh impetus and to be better targeted. Although institutional requirements in this domain are met effectively, we are still missing an opportunity to make additional progress. Improved data collection is a goal at a European level. In order to provide a contribution in this area, in this report the Centre, assisted by centres specialised in the reception of victims, presents an overview of statistics from the actors concerned.

Alongside the gathering of statistical data, **awareness-raising** also remains a priority. Through the films ‘*10 minutes*’ and ‘*Vous êtes servis*’ [You are served] by Jorge León, the Centre seeks to focus experts’ attention on the issue of trafficking in and smuggling of human beings. The Centre also aims to describe practical situations that could be relevant to a wider audience. The two films were inspired by cases in which the Centre has brought civil action.

As in previous years, the Centre also **analyses the phenomenon** of trafficking in and smuggling of human beings in this report, as well as providing an overview of recent case law. Through a careful analysis of case files and meetings with the actors involved, we pinpoint good and bad practices. It should be noted that access to the case files enables the analysis of the phenomenon of trafficking in and smuggling of human beings and the assessment of policy by the Centre to be firmly based on reality. In addition to a summary of current policy on this issue, the Centre makes a series of recommendations aimed at a more targeted policy. Finally, the international perspective of this report has been reinforced by including contributions from international stakeholders. We thank them very much for their participation.

When this report is published, Belgium will have taken on the **Presidency of the European Union**. A multidisciplinary approach to trafficking in human beings will be the nucleus of debate, particularly on the occasion of the 4th European Anti-Trafficking Day on 18 October 2010. Our experience in Belgium has taught us that such a multidisciplinary approach by specialised authorities leads to effective prosecution of the guilty and the protection of victims. Among the points to be dealt with are the importance of **judicial and police cooperation**, seizures and confiscations in other Member States,

collaboration with third countries, and the question of a cross-border approach and victim protection in cases of exploitation concerning several countries.

On the 2010 agenda, we should also note the partially completed analysis of Belgian policy on trafficking in human beings. At the end of September 2010, the **assessment of** the impact of the multidisciplinary Circular of 26 September 2008 should be concluded. It will offer all parties concerned an opportunity for self-assessment. However, ongoing monitoring by Parliament remains necessary. During its previous term in office, the Senate analysed Belgian policy on trafficking by means of a sub-commission. More than ever, a critical examination is essential in order to ensure that policy to combat trafficking in and smuggling of human beings is effective.

We hope that you will find this report helpful and stimulating.

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**PART 1: EVOLUTION OF THE PHENOMENON AND
THE COMBAT AGAINST TRAFFICKING IN HUMAN
BEINGS**

Chapter 1: Recent developments in the legal and policy framework concerning the trafficking in and smuggling of human beings

There were no major developments in 2009 or early 2010 as regards legislation or policy on the trafficking in and smuggling of human beings, whether at the international, European or Belgian level.

However, a number of projects currently being prepared should be mentioned.

At a European Union level, in March 2009 the Commission presented a new Proposal for a Council Framework Decision on trafficking in human beings, repealing the 2002 Decision.¹ This Proposal has been prompted by a desire to implement a more effective, comprehensive policy on trafficking in human beings, particularly in terms of prevention, protection and assistance to victims. Following the entry into force of the Lisbon Treaty on 1 December 2009, the basis of a new legislative initiative² was laid down in March 2010. It consists of a Proposal for a Directive of the European Parliament and of the Council³. Its content is almost identical to the previous year's Proposal. Inspired to some extent by the Council of Europe Convention on Action against Trafficking in Human Beings⁴, the Proposal for a Directive contains, inter alia, a fuller definition of trafficking in human beings, as well as better regard for victims' rights⁵. It also examines more closely measures seeking to assist, support and protect children that are victims of trafficking in human beings.

The Proposal will be subject to political agreement and should be adopted during the Belgian presidency of the Union.

Another significant event, this time concerning case law – the first Decision issued specifically on trafficking in human beings for the purposes of sexual exploitation by the

¹ Proposal for a Council Framework Decision of 25 March 2009 on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM2009/136/final.

² See Articles 79 and 83 of the consolidated version of the Treaty on the Functioning of the European Union, *O.J. C* 115 of 9 May 2008. Trafficking in human beings is one of the areas in which the Council and the European Parliament may adopt measures by acting through directives in accordance with the ordinary legislative procedure.

³ Proposal for a Directive of the European Parliament and of the Council of 29 March 2010 on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM/2010/95/final.

⁴ Council of Europe Convention No 197 on Action against Trafficking in Human Beings, Warsaw, 16 May 2005. This Convention entered into force on 1 February 2008 (for Belgium: 1 August 2009).

⁵ See on this point P. Le Cocq and C. Meulders, 'Le statut des victimes de la traite des êtres humains', in Ch.-E. Clesse et al., *Traite des êtres humains-Mensenhandel-Mensensmokkel*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, pp. 77-80.

European Court of Human Rights⁶. In this regard, we refer readers to the part of the report devoted to case law (see below, Part I, Chapter 4).

In Belgium, although not specifically related to the trafficking in or smuggling of human beings, the adoption on 1 October 2009 of a Circular of the Board of Attorneys-General on marriages of convenience⁷ should be mentioned. In this Circular, the attention of front-line actors and magistrates is drawn to the fact that in some cases such marriages may have links with criminal networks trafficking in or smuggling human beings.⁸

Lastly, as we went to press with this report (June 2010), a joint Circular from the Justice Minister and the Board of Attorneys-General on trafficking in human beings was being finalised. In addition, the Circular of 26 September 2008 on the implementation of multidisciplinary cooperation regarding victims of trafficking in human beings and/or certain serious forms of smuggling of human beings⁹ is currently being assessed and it is possible that, if appropriate, changes may be made.

⁶ European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Judgment of 7 January 2010.

⁷ Circular No COL 10/2009 on marriages of convenience issued by the Board of Attorneys-General at Appeal Courts. This Circular, which entered into force on 15 October 2009, is available on the website of the Belgian Federal Public Service (FPS) Justice website (FR/NL): www.just.fgov.be

⁸ See section 4.2.2.2. b. of COL 10/2009. For application in practice, see below in this part, Chapter 2, and the Centre's 2008 Annual Report (FR/NL) 'Human Trafficking – Enlisting people and resources to combat the phenomenon', Part 1, Chapter 2, A, section 3.5 (p. 32); B, section 1.3 (p. 36-37), section 1.4 (p. 38), section 3.2 (p. 47) and Chapter 4, section 4 (p. 72).

⁹ *Moniteur Belge/Belgisch Staatsblad* (Belgian Official Gazette), 31 October 2008. The Circular provides for it to be assessed by the Interdepartmental Unit for the prevention of trafficking in and smuggling of human beings within 24 months from the Circular's publication in the Belgian Official Gazette.

Chapter 2: Phenomenon analysis

In this chapter, we provide an overview of current changes as regards trafficking in human beings¹⁰. Our information sources are cases in which the Centre has brought civil action, and informal discussions with Public Prosecutors, labour auditors, police officers and the social inspectorate.

According to Europol¹¹, trafficking in human beings in its various forms will not diminish in the next few years in the European Union. Due to the current climate of crisis, labour exploitation is probably the aspect that will spread the most.

The fact that the Belgian Financial Intelligence Processing Unit (*Cellule de Traitement des informations financiers/Cel voor financiële Informatieverwerking* (CTIF-CFI)) sent the Ministry no less than 227 cases¹² in 2009 regarding different networks trafficking in human beings, exploiting prostitution (African and Eastern European networks) and smuggling illicit labourers (the construction and industrial cleaning sectors) speaks volumes¹³ in this regard.

In its report, the CTIF-CFI, which is chaired by a magistrate with several years of experience in the field, warns: ‘This finding is a significant indicator of the genuine threat of financial networks of the criminal and underground economy to the stability of the socio-economic structures of democratic states.’¹⁴ In this case, further weight is added to the analysis by the reminder that the power of the CTIF-CFI to refer to the Public Prosecutor’s Office is only exercised for the most serious forms of criminal activity at the origin of the identified funds.¹⁵

The exploitation of victims of these networks goes hand in hand with serious fraud prejudicing the social security system and tax legislation. The products of these fraudulent activities increase still further the illicit profits of the organisers and those who, in one way or another, support them as co-perpetrators and/or accomplices, whether they be located abroad or on Belgian territory.¹⁶

¹⁰ For further information on the profiles of the criminal networks involved, see also S. Janssens, ‘Fenomeenanalyse van mensenhandel’, in Ch.-E. Clesse et al., *Traite des êtres humains-Mensenhandel-Mensensmokkal*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, pp. 35-70.

¹¹ Europol, Trafficking in Human Beings in the European Union: a Europol perspective, June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language

¹² In 2009, the CTIF-CFI referred 111 cases of ‘smuggling illicit labour’, 60 cases of trafficking in human beings and 56 cases of exploitation of prostitution to the Public Prosecutor’s Office. In 2008, the number of cases was respectively 30, 67 and 49.

¹³ 16th CTIF-CFI Annual Report 2009. This publication can be consulted at www.ctif-cfi.be

¹⁴ Ibid., p. 5.

¹⁵ Ibid.

¹⁶ Ibid.

1. Trafficking in human beings for the purposes of sexual exploitation

1.1. General trends

According to Europol¹⁷, the criminal networks trafficking in human beings that are active in carrying out sexual exploitation on EU territory are mainly Bulgarian, Romanian and Nigerian prostitution networks. This corroborates the observations presented by the Centre in its previous report on trafficking in human beings.¹⁸ Albanian networks have been less visible recently, but they are nonetheless present on the ground. In addition, 'hidden' prostitution is still found in Asian and Turkish networks. These forms of 'hidden' prostitution are difficult to detect due to their specific cultural orientation and the difficulty of approaching those involved.¹⁹

The police from the town of Verviers also reported to us the existence of Russian prostitution networks operating very inconspicuously. They work through Bulgarian pimps who deal with the young women in Belgium. The victims are women from former Soviet States such as Moldavia and Georgia. They are recruited to become domestic workers in Belgium and travel from Russia to Belgium through Berlin. Once in Belgium, they are coerced into prostitution. If they refuse, their families are threatened in their country of origin.

In its last report, in June 2009, Europol²⁰ indicated that the criminal networks trafficking in human beings on a large scale that are present in most Member States generally meet the criteria which define a criminal organisation²¹. Europol also states²² that they operate in the form of small, independent groups that work together and with other criminal groups by providing specific services.

¹⁷ Europol, OCTA 2009, 'EU Organised Crime Threat Assessment'. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language

¹⁸ Centre for Equal Opportunities and Opposition to Racism, 2008 Annual Report (FR/NL), 'Human Trafficking – Enlisting people and resources to combat the phenomenon', Chapter 2 (Phenomenon analysis), pp. 22-49. This publication can be consulted at www.diversite.be ('Publications' section).

¹⁹ See below in this chapter: victims' profiles, hidden victims and Chapter 5: Good practices (The value of proactive investigations).

²⁰ Europol, 'Trafficking in Human Beings in the European Union: a Europol perspective', June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language

²¹ The definition of a 'criminal organisation' for the EU: see first paragraph of Article 1 of the Joint Action on making it an offence to participate in a criminal organisation in the Member States of the European Union (98/733/JHA): 'a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities'.

²² Europol, 'Trafficking in Human Beings in the European Union: a Europol perspective', June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language=

Prostitution has no borders. Prostitutes are moved from one town to another, across frontiers (Germany – Belgium – The Netherlands). This modus operandi complicates police work like tapping phones or carrying out surveillances. For this reason, it is essential that the judicial authorities of different countries cooperate at an international level. In practice however, things are not that easy. Criminal networks use these shortcomings to their advantage.²³

The border region of Verviers, renowned as a base for criminal logistics' operations, is a good example of this. Pimps of various nationalities are to be found there, whereas their criminal activities take place in Aachen (Germany) or Heerlen-Maastricht (The Netherlands). On Belgian territory, they comply scrupulously with the law in order to placate the Belgian justice system.

Exploitation may take many forms and be adapted to the circumstances. Lately, police reports show that visible forms of sexual exploitation are being transformed into more dissimulated forms (for example in massage parlours, saunas, private clubs, houses, private homes, through escort services and even on the Internet).²⁴

1.2. The professionalisation of networks

Criminal networks operate like *business networks*²⁵. They are 'learning organisations' which adapt and become professional very quickly. They create corrupt firms and invest in the economy. In some cases, they use the rules of the market economy to assume a position of strength through unfair competition.

In cases where the Centre has brought civil action²⁶, we note that networks trafficking in human beings are managed by criminal entrepreneurs. They become specialised, establishing professional partnerships and setting up criminal *business units* for specific segments. Services are outsourced. The criminals form companies themselves, or infiltrate existing firms and perform money-laundering activities. Lawyers are also recruited.

These criminal organisations do not use licit firms only to launder dirty money or to cover up their illegal activities. In some cases, these corporate organisations are the hub

²³ Centre, 2008 Annual Report (FR/NL) 'Human Trafficking – Enlisting people and resources to combat the phenomenon', Part 2, Chapter 1 (Good practices, section 9, International collaboration, pp. 96-97). This publication can be consulted at www.diversite.be ('Publications' section).

²⁴ Police, 2007 Federal Police Activity Report. This publication (FR/NL) can be consulted at www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2007_fr.php.

²⁵ Centre, 2005 Annual Report, Trafficking in Human Beings 'Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights', pp. 89-106. This publication can be consulted at www.diversite.be ('Publications' section).

²⁶ Centre, 2007 Annual Report, Trafficking in Human Beings, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', A case concerning massage parlours in Liège, pp. 77-83. This publication can be consulted at www.diversite.be ('Publications' section).

of the functional base of the criminal network. Networks trafficking in human beings thus set up travel agencies and employment agencies²⁷ to conceal their criminal activities.²⁸

Sometimes, income from criminal activities is invested in the country where the exploitation takes place. This is mainly so in cases where those responsible for the exploitation have moved to Belgium definitively and obtained Belgian nationality. Generally, funds of criminal provenance are transferred to the country of origin, where they are more difficult to seize and confiscate²⁹. In common with Europol³⁰, we have observed cases where money of criminal provenance is transferred to the country of origin using couriers. Sometimes the money is transferred via the Internet, but in that case the victims' names are used.

1.3. Learning organisations: structures

Criminal networks set up structures to camouflage their activities of trafficking human beings. According to the police, different criminal networks have adapted themselves to the law on trafficking in human beings. The Law stipulates that (attempted) exploitation is a pre-requisite in order for defendants to be convicted of trafficking in human beings.

Prostitution networks use this subtlety to their advantage by means of structures that make the 'sexual exploitation' aspect invisible and conceal their own position in the criminal system. The concept of 'exploitation' implies that one person, the victim, finds itself in a position of dependency with regard to another person, the exploiter. In a situation where a person is seen to be independent, exploitation is no longer considered to have taken place. Through these structures, the direct link between the pimps and the actual prostitution is broken. Prostitutes give the impression that they are working alone. This still further complicates the work of investigators and the judiciary when trying to prove that trafficking in human beings is actually taking place.³¹

However, criminal networks can also develop and adapt to changing circumstances. They learn lessons from errors committed in the past. The theory of the 'learning' organisation is therefore very relevant here – in fact it has been used successfully in analysing Colombian drug cartels and prostitution networks. Two different levels of learning are distinguished. The lower level – re-adaptation – is direct, and reacts quickly, for example where a network reacts to a sudden change in its environment, such as after a police

²⁷ Centre, 2006 Annual Report (FR/NL), 'Trafficking in Human Beings, Victims In the Spotlight', A Russian employment agency with a licence, operating as a major prostitution network, pp. 28-29.

²⁸ Centre, 2005 Annual Report on Trafficking in Human Beings 'Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights', pp. 89-106. This publication can be consulted at www.diversite.be ('Publications' section).

²⁹ See Part 2, Chapter 2, Good practices (International collaboration: seizures) and Centre, 2008 Annual Report (FR/NL) on Trafficking in Human Beings 'Human Trafficking – Enlisting people and resources to combat the phenomenon', Part 2, Chapter 1 (Good practices, section 9, International collaboration, pp. 96-97). This publication can be consulted at www.diversite.be ('Publications' section).

³⁰ Europol, 'Trafficking in Human Beings in the European Union: a Europol perspective', June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language=

³¹ See below in Chapter 5, Good practices (The value of proactive investigation).

operation. A second, higher level is directed rather at proactive learning, and is creative and conceptual. This level is therefore more fundamental. It is at this level that profound structural changes in criminal networks take place.³² Here are a few examples of structures set up by criminal networks.

1.3.1. Madams³³

Madams play a crucial role in prostitution. They are (former) prostitutes who have to check on their colleagues, watch over bars and deal with contacts. Pimps adapt to police techniques and no longer collect their money directly from the prostitutes. This is now done by the madam. Police surveillance photographs of money being handed over are a key element of objective proof for the courts. Through this kind of screen structure, the pimps no longer have to collect the money from the prostitutes themselves.³⁴

The work of these madams is a grey area. On the one hand, they play the role of intermediary in the criminal system. When a prostitute disappears, for example, they contact a pimp themselves to obtain a new young woman in order to avoid loss of income. They also know all the pimps since they work closely with them. On the other hand, they are a sort of protection for the prostitutes. They are attentive, ensure their safety and deal with their administrative affairs.

1.3.2. Rent

Prostitutes pay a fee to rent a 'window' in the brothel and are forced into the role of tenant of a room.³⁵ Since they are seemingly room tenants, it appears that they work for themselves without external control, which rules out any idea of trafficking in human beings for sexual exploitation. Prostitutes pay their rent to the madams. In fact, they pay a higher amount and pass on much of their income from prostitution to the madams. The task of the police and the Belgian justice system, for whom the remittance of money is key material proof in cases of trafficking in human beings, is therefore seriously obstructed. They must be able to prove (and provide photos from surveillance if possible), that the sums remitted are higher than the rent and in fact constitute income from prostitution.

³² The proactive learning capacity of a criminal organisation often leads to profound structural changes in the network. These changes may consist of taking over front companies that comply with the law in terms of their structure and serve as cover, or corrupt firms combining licit and criminal activities. See M. Kenney, 'When Criminals Out-smart the State: Understanding the Learning Capacity of Columbian Drug Trafficking Organisation', *Transnational Organized Crime*, Volume 5(1), Spring: 97-119, 1999. See also J. Leman in S. Janssens, 'Albanian and Post-Soviet Business in Women Trafficking: Structural Developments and Financial Modus Operandi', *European Journal of Criminology*, Volume 5 (4): 433-451, 1477-3708, 2008.

³³ Centre, 2008 Annual Report (FR/NL) Trafficking in Human Beings, 'Human Trafficking – Enlisting people and resources to combat the phenomenon', Different criminal networks: Bulgarian networks, p. 25. This publication can be consulted at www.diversite.be ('Publications' section).

³⁴ Ibid., A professional business network with a win-win profile, pp. 36-37.

³⁵ Ibid.

1.3.3. Bogus self-employed workers³⁶

There are also structures where victims of prostitution work in a prostitution bar as bogus self-employed workers and own one or several shares in a company. In fact, they are not aware of the nature of the documents that they have signed. The above emerges from statements recorded by the police. Signatures are often obtained by means of subtle coercion and the women have to redeem the shares through their prostitution work, thus creating a debt bondage situation.

The following example is a good illustration of the difficulty of prosecuting such cases on charges of trafficking in human beings.

In this case, a criminal known to the police oversees six private bars in which he recruits Brazilian women who have false Portuguese papers. He sets the young women up as self-employed. The women take advantage of the fact that there is a three-month period to complete the administrative formalities for those creating their own enterprises. The criminal has various businesses. He signs cooperation agreements with these young women through these companies. Legally speaking, he is not liable for the illegal position of the young women since he thinks ‘in all good faith’ that he is working with licit workers, as their status as self-employed workers seems to demonstrate. After three months of working together, the young women go elsewhere, and are taken on by another company. The criminal amends the Memorandum and Articles of Association of his company, declares that it is in liquidation and creates a new company. These manoeuvres are aimed at confounding investigators and making the work of the social inspectorate more onerous.

It is difficult to prosecute this exploiter, due to a loophole in the law, namely that it is impossible to establish a link of subordination or the illegality of the employment.

1.3.4. ‘Champagne bars’

Still other structures are the so-called ‘champagne bars’ (establishments in which customers are encouraged to drink), hotel room rental or bars, where prostitution is offered to customers in a covert way and where, once again, no direct link can be established between the bar operator and the prostitute. The young woman has to give the money to the operator. If she is caught with a customer, the exploiter declares that she is working on her own and that she has just rented a room from him.

In these ‘champagne bars’, the work of the young woman officially consists only of keeping clients company. In fact, prostitution services are also offered discreetly, behind the scenes, to clients that are ‘trustworthy’.

³⁶ See also Part 2 of this Report.

This also has repercussions on legal action. Some cases have led to acquittals. In other cases, the content of telephone conversations recorded by the police has enabled a position of dependence to be proved and the exploiters to be sentenced for trafficking in human beings.

In some districts, cases of trafficking in human beings for the purposes of sexual exploitation are only prosecuted as offences of trafficking in human beings for the purposes of labour exploitation.³⁷

1.3.5. Front men

The police also note that pimps use front men, through management companies, to officially run their bars. They are sometimes Belgians from marginalized social environments, who are offered the opportunity to abandon public welfare assistance and be appointed as managers in exchange for payment. They may also be trustworthy people from the pimps' own ethnic community, or former prostitutes that they have married or with whom they live.³⁸

1.3.6. Residence permits

In some cases, exploiters organise marriages of convenience for victims living in Belgium illegally. They thus obtain residence permits and police investigations are further complicated.³⁹ Given that victims have residence permits, the police is not able to free them from their exploited position immediately - they can only do this subsequently, on the basis of proof collected during the investigation. Material proof confirming charges of trafficking in human beings is also difficult to provide in practice.

1.4. Victims' profiles

1.4.1. Win-win situations⁴⁰

Victims' profiles have changed considerably. Victims now find themselves, more often than in the past, in positions that some would call 'win-win' situations. Victims prostitute themselves deliberately to earn money fast. They knowingly enter prostitution and

³⁷ See below, Chapter 4 on case law.

³⁸ Centre, 2008 Annual Report (FR/NL) 'Human Trafficking – Enlisting people and resources to combat the phenomenon', A professional business network with a win-win profile, pp. 36-37. This publication can be consulted at www.diversite.be ('Publications' section).

³⁹ Ibid., Different criminal networks: Asian cases of debt bondage, p. 26.

⁴⁰ Ibid., The cases 'A Bulgarian prostitution network from Varna' and 'A professional business network with a win-win profile', pp. 35-37.

consider it as a temporary way of life for two years, for example, in order to be able to have a lifestyle that they consider to be acceptable.

Prostitution networks have become professional and have realised that they can make far more profit with consenting and cooperative victims. The latter are also less inclined to make incriminating statements to the police and the courts. Victims can keep almost half of the income from the prostitution, as long as they pay all their costs. Actually, in the end they are left with less money than was promised at the outset. The real winners are the pimps. Victims accept to work in conditions which are often particularly bad. In several cases there is still question of exploitation. Apart from the forms of control practised by the exploiter, bad working conditions also determine whether charges of trafficking in human beings can be brought.

There are several known cases of women who have fallen into the clutches of Bulgarian traffickers through false promises such as the building of a beautiful villa in Bulgaria, for example. Initially, the victim receives a deed of ownership for a piece of land and a villa in Bulgaria in their name. While the victim is active in prostitution, a villa is effectively being built on this land. Each time that the victim returns to Bulgaria, she sees that work is progressing. However, at the end of the construction work, a corrupt notary in Bulgaria replaces the name of the girl by the name of the Bulgarian pimp on the notarial deed. In the end, the victim gets nothing at all.

Many victims of these so-called 'win-win' situations are EU citizens, mainly from Bulgaria and also from Romania. There are also young women from West Africa and Albania holding legal Belgian residence permits. All of these young women have residence permits that their pimps allow them to keep so that they do not seem suspect with respect to the police.

Pimps barely need to have recourse to violence, since there are enough candidates to go into prostitution. In the event that there is a serious conflict with the victims, they use violence where necessary to restore their authority. However, they may also have recourse to acts of extreme violence to set an example and to show that they make the rules.

In these 'win-win' situations we also find prostitutes that cannot be considered as victims of trafficking in human beings since they are no longer in an exploited position. In *Eros Centers* in Flanders, young women work either as dancers seconded⁴¹ from companies based in Bulgaria, the Czech Republic or Hungary, or as self-employed dancers. On the basis of 50-50 shares, in both cases they earn several thousand euros per month.

⁴¹ See below in Part 2.

1.4.2. *Victims of loverboys*

Pimps also have recourse to the well-known ‘loverboy’⁴² method in which they seduce young women and, after a time, exploit them in prostitution. Victims are generally young Belgian girls aged between 15 and 25 who have little or no self-esteem and seek love and security. This makes them more susceptible to the attention of boys. Hence these victims do not always realise that they are being exploited or do not ‘feel’ exploited.⁴³ Recruitment by sexual partners is therefore a very effective way of controlling the women and ensuring that they do not run away or return to their own environment.⁴⁴

This loverboy technique is mainly used by Albanian and Turkish pimps, but for some time now it has also been adopted by Bulgarian, Italian and Belgian pimps. Victims are young women from Belgium, Bulgaria and Romania as well as, in the past, women from Albania. In some judicial districts, prosecutions for trafficking in human beings will only take place where a network is involved.

In a very specific case in the city of Mons, the loverboy technique was identified as the modus operandi of a bar owner. First of all, he identified young Belgian women that were dropping out of the school system or breaking away from their families and/or came from a difficult socio-economic background, often drug addicts, aged between 16 and 21 years old.⁴⁵ When he found a girl that corresponded to this profile, he seduced her and offered her free accommodation. Once he had gained her trust, he offered to give her a job. First as a waitress, then as a stripper, and finally he suggested that she could turn tricks. If she didn’t want to, he insisted. If he then felt that the girl was becoming unwilling to turn tricks, he would entrust her to pimps that offer ‘high-class’ women. She would thus work in a more luxurious environment where she would also be offered roles in pornographic films. These offences can be prosecuted on trafficking charges, since the law on liability for trafficking has been extended to Belgian victims.

1.4.3. *Drug-dependent victims*⁴⁶

Turkish and Albanian networks deliberately enlist young women of different nationalities that are particularly vulnerable because they are drug addicts. Pimps pay victims in drug fixes so as to place them in a position of total dependence. This can in some cases lead to the death of a victim, as we have already seen in one case.⁴⁷

⁴² See also below in this chapter the case review ‘Turkish pimps and drug traffickers’ and the Centre’s 2008 Annual Report (FR/NL), ‘Human Trafficking – Enlisting people and resources to combat the phenomenon’, Different Criminal Networks: Bulgarian Networks, p. 25. This publication can be consulted at www.diversite.be (‘Publications’ section).

⁴³ The Dutch National Rapporteur on trafficking in human beings, ‘Third Report on Trafficking in Human Beings’, The Hague. This publication can be consulted at: <http://english.bnrm.nl/>

⁴⁴ The Centre’s 2006 Annual Report (FR/NL) ‘Victims in the spotlight’, Appendix, and G. Vermeulen, ‘Mensenhandel in beeld: Eerste kwantitatieve en kwalitatieve analyse van Belgische slachtofferdata’, IRCP, Maklu, 2007.

⁴⁵ See also below concerning under-aged victims.

⁴⁶ See below, Chapter 5: Priority on detecting and assisting victims.

⁴⁷ See the case review ‘Turkish pimps and drug traffickers’.

In this group of victims of prostitution, we also find many young Belgian girls who have been seduced by a loverboy (see above) and thus rendered drug-dependent. However, generally the victims are already addicted to drugs, have family problems or have nowhere else to go. Pimps use a strategy that deliberately aims to place these young women in a position of dependence. They are encouraged to break away from their families, friends and acquaintances. They are thus completely isolated and depend completely on the pimp.

1.4.4. Hidden victims

Some victims are in a situation of hidden prostitution, which is almost inaccessible for a general public and is investigated little or not at all by the social services and the police. Such a situation can easily lead to serious abuse.

Victims of hidden prostitution can be found in Asian massage parlours⁴⁸, saunas, on the Internet via webcams, in private studios or massage parlours with Brazilian victims, some Turkish community associations based in cafés, etc. In the city of Liège, there has even been a report of a Bulgarian night shop where prostitution services are offered to Bulgarian clients in the back of the shop.

These victims are often in a precarious situation of forced prostitution where violence is commonplace. In the case of Asian victims, it is generally a question of debt bondage as the victims have to pay back the costs of their smuggled entry in the territory by working. In the case of Turkish victims, it is more often a question of drug-dependency (see above).⁴⁹ As for Brazilian victims, they have false Portuguese residence permits. Most of them are minors (see below).

1.4.5. Culture-based submission

A typically Nigerian means of pressure upon victims is abuse of the voodoo ritual.⁵⁰ In order to understand victims, some anthropological notions are required. The Nigerian term for voodoo is ‘juju’. Voodoo is a form of worship of the unseen world. In African cultures, belief in an unseen world is as important, or even more so, as life in the ‘visible’ world. Belief in the supernatural is deeply rooted in this culture. Important decisions are taken jointly after having asked for advice from the local voodoo – or juju – priest. Many young Nigerian women have taken oaths before leaving for the West. They or their families have undertaken to pay back their travel costs and their debts to their madams. These oaths go hand in hand with a series of rituals. If the victim does not perform them

⁴⁸ Centre, 2007 Annual Report, ‘Trafficking and smuggling of human beings, Public policy as seen by a national reporter’, A case concerning a massage parlour in Brussels, pp. 90-91. This publication can be consulted at www.diversite.be (‘Publications’ section).

⁴⁹ See the case review ‘Turkish pimps and drug traffickers’.

⁵⁰ Centre, 2006 Annual Report (FR/NL) ‘Victims In the Spotlight’, Nigerian voodoo prostitution networks, p. 31.

correctly, or does not fulfil her undertakings, juju or voodoo is used. With a few fingernails, some blood and a few hairs, according to this ritual someone can be made sick, sent mad or even killed...

The madams thus provoke anguish in the young girls and create a bond that the girls cannot break until they have completely repaid their debts, subject to being punished. Many victims prefer to continue to prostitute themselves and pay their debts in order to look after their families.

The madams often know the prostitution system very well. Most have worked in the system themselves and have managed to set themselves free. In order to do this, they in turn have introduced new victims to prostitution.

1.4.6. Debt bondage

There are many cases of debt bondage, where victims pay back their travel or other debts through prostitution. This is mostly the case for Asian victims⁵¹, and sometimes also for Russian victims.

In our 2006 Report⁵², we illustrated how Russian employment agencies recruited young women through job offers to become domestic workers in countries such as Belgium, Italy, Spain, Israel and Japan. These agencies hold official licences. The debt bondage system forces the young women to enter prostitution to pay back their supposed debts for transport, permits and job offers.

The latter case is also very common for Vietnamese victims. The Brussels police has also noted, in case of Vietnamese domestic workers, practices of debt bondage that lead victims to pay back their debts through prostitution.

The victims, who are hired at a Thai massage parlour with a tourist visa (many of which are issued by the Swedish embassy), have to work without receiving a salary for the first two months to pay back the debts that they have incurred to arrive in the country. They can then keep the third month's wages for themselves.

1.4.7. Forced prostitution

Forced prostitution in the strict sense of the term still exists, but is becoming less common. Victims are mainly from Romanian networks – 'Roma'.⁵³ Physical violence is

⁵¹ Centre, 2007 Annual Report, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', A case concerning a massage parlour in Brussels, pp. 90-91. This publication can be consulted at www.diversite.be ('Publications' section).

⁵² Centre, 2006 Annual Report (FR/NL) on Trafficking in Human Beings 'Victims In the Spotlight', pp. 28-29.

⁵³ Ibid., Romanian clan-network, p. 32; 2008 Annual Report, 'Human Trafficking - Enlisting people and resources to combat the phenomenon', Romanian case, pp. 40-41 and 61. This publication can be consulted at www.diversite.be ('Publications' section).

used to reprimand ‘disobedient’ young women. They are mainly associated with Romania, but may also come from other Eastern European countries. The victims have the same Roma origin. These networks are linked to their clan and their region. Roma networks have their own common code, their own lifestyle and a parallel judicial system.

Different flexible forms of forced prostitution can be found in debt bondage situations and there may be hidden victims, those who are drug-dependent or under the domination of their culture (see above).

Victims of Russian prostitution networks are afraid to speak out due to fear of reprisals involving their families in their country of origin. When interviewed by the police, they state that they are not victims. If the police manages to confront them with reality, they eventually tell the truth.

1.4.8. Under-aged victims of prostitution

Under-aged victims of prostitution⁵⁴ are also found mainly in Roma networks.⁵⁵ Each time that a case comes up in a Roma network, we note that victims come from very specific areas in Romania. The fact that the Roma community is difficult to access and closed, slows down and sometimes even completely blocks police investigations (this is even more the case for exploitation through begging, see below). In one specific case, the police carried out surveillance on the basis of one victim’s account. However, the surveillance activities had to be curtailed because the officers were identified in the street. The police did not find any other evidence to enable it to continue the investigation.

Under-aged victims have also been found in the loverboy victim group.⁵⁶

⁵⁴ Centre, 2007 Annual Report, ‘Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur’, a case involving a minor, p. 101. This publication can be consulted at www.diversite.be (‘Publications’ section).

⁵⁵ Centre, 2006 Annual Report (FR/NL) on Trafficking in Human Beings, ‘Victims In the Spotlight’, Romanian clan-network, p. 32, and 2008 Annual Report (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, Romanian case, pp. 40-41 and 61. These publications can be consulted at www.diversite.be (‘Publications’ section).

⁵⁶ See also above - Victims of loverboys.

2. Trafficking in human beings for the purposes of labour exploitation

2.1. General trends

With regard to trafficking in human beings, labour exploitation is, according to Europol⁵⁷, typically found in the following sectors: horticulture, agriculture, construction, the hotel, restaurant and catering (HORECA) sector and domestic work. Men and women are equally likely to be among the victims. Both carry out work requiring few qualifications. According to Europol⁵⁸, a new development has come to light – the exploitation of asphalt workers during road works.

In our previous annual report, we noted that as regards trafficking in human beings, labour exploitation occurs in most sectors.⁵⁹ At the moment there are also new, atypical sectors where illegal workers are not directly perceived, at first sight, as victims of trafficking in human beings. Examples are bakers, Turkish and Bulgarian butchers, managers of night shops and Indo-Pakistani phone shops, as well as the sectors of transport, cleaning, car washing and toilet attendants.

Marriages of convenience, combined with the possibilities offered by the free movement of persons, crop up several times in the various modus operandi. Those who enter into a marriage of convenience with an EU citizen and who are hence entitled to move to Belgium are then constrained to work to pay back their debts. This generally also applies to the leaders of networks trafficking in or smuggling human beings, who themselves enter into a marriage of convenience in order to obtain a residence permit.

Policy has reacted to this abuse by strengthening the instruments to combat marriages of convenience. In our 2009 annual Migration Report, the issue of marriages of convenience is dealt with from the point of view of fundamental rights⁶⁰.

2.2. Professional networks

Apart from a few isolated cases, it seems that, generally, trafficking in human beings for the purposes of labour exploitation arises in organised forms⁶¹, sometimes involving criminal organisations⁶².

⁵⁷ Europol, 'Trafficking in Human Beings in the European Union: a Europol perspective', June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language=

⁵⁸ Europol, OCTA 2009, 'EU Organised Crime Threat Assessment,' p. 36.

⁵⁹ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', pp. 26-34. This publication can be consulted at www.diversite.be ('Publications' section).

⁶⁰ 2009 Annual Report, *Migration*, p. 118.

⁶¹ The 2008 Federal Police Activity Report refers, in the section on trafficking in human beings for the purposes of labour exploitation, to 16 identified groups of criminals that are active internationally, and to 14 identified groups of criminals that are active in several districts.

⁶² Europol, 'Trafficking in Human Beings in the European Union: a Europol Perspective', June 2009. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language=

This type of criminal organisation mainly emerges, in terms of labour exploitation, in systems of debt bondage where the victim is constrained to pay back their travel costs by working for free. This generally takes place in Chinese restaurants when victims have a debt to the Chinese triads.⁶³ This is also the case at the moment in the context of domestic work – mainly involving Vietnamese victims. In some cases, we see a combination of labour exploitation, smuggling of human beings and prostitution.⁶⁴

Other forms of trafficking in human beings for the purposes of labour exploitation involve working in inhumane circumstances. Large firms conduct unfair competition by setting up outsourcing systems and/or using bogus self-employed workers, where foreign labour is exploited and constrained to work in inhumane conditions, without this actually being forced labour in the strict sense of the term⁶⁵. Labour exploitation in conditions that are contrary to human dignity constitutes as a key element of outsourcing models applied by legal economic sectors that seek to reduce their wage costs. To this end, systems of secondment are used through outsourcing and/or involving bogus self-employed workers⁶⁶. The constraint placed upon victims is often subtle and complex.

In different cases where the Centre has brought civil action, we note that organised networks abuse the three-month residence permits granted to EU citizens in order to put them to work illegally and to exploit them at dumping levels of wages.⁶⁷ Whilst it infringes the individual rights of the illegal workers, this also threatens to degrade the Belgian socio-economic system, as the CTIF-CFI points out in its report.⁶⁸

2.3. Victims' profiles

It is mainly in situations of debt bondage that the question of forced labour arises.⁶⁹ In most cases of labour exploitation, the so-called 'win-win' situation is the most common. Victims receive an offer that gives them much better income prospects than in their country of origin. In practice, this means that they come to work at dumping levels with

⁶³ Centre, 2006 Annual Report (FR/NL) on Trafficking in Human Beings, 'Victims In the Spotlight', A Case of Debt Bondage in the HORECA Sector', p. 40, and the 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', the wok restaurant case, pp. 46-47. This publication can be consulted at www.diversite.be ('Publications' section).

⁶⁴ Ibid.

⁶⁵ See interpretations and definitions of forced labour: below in Part 3 in the contribution made by the ILO, and Centre, 2005 Annual Report, Trafficking in Human Beings 'Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights', pp. 73-74.

⁶⁶ See below in Part 2.

⁶⁷ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', A construction case, pp. 43-44. This publication can be consulted at www.diversite.be ('Publications' section).

⁶⁸ See the 16th CTIF-CFI Annual Report, 2009. This publication can be consulted at www.ctif-cfi.be

⁶⁹ See below in Part 3, the contribution made by the ILO, and Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p. 67: Tongeren Criminal Court, 9th Chamber, 9 May 2008.

respect to Western standards. Victims are seduced by the potential income and do not imagine for a moment that they are victims of trafficking in human beings.

It is essential that magistrates should not be led astray by the subjective experience of victims when qualifying situations of exploitation as trafficking in human beings. It is neither the treatment nor the income that the victim may receive in their country of origin nor their wish to work in inhumane conditions or to be abused that should be the central point of discussion. A precise description of the key elements defining trafficking in human beings should always form the basis of the enquiry.

2.4. Sectors

2.4.1. *Agriculture and horticulture*

Cases of trafficking in human beings in the agriculture and horticulture sectors mainly concern fruit picking. Indian labour is in the majority, and they are obliged to work at dumping wage levels. In some cases, the ‘gangmasters’ system comes to light – they work with different fruit growers and place their workers with them. These gangmasters receive the wages of the illegal workers and only pass a small part on to them. Furthermore, the gangmasters deal with the transport and accommodation of the victims so as to have full control over them.

In the Dendermonde area, practices of trafficking in human beings have been observed in the past at Belgian mushroom growers. In this case, Belgian exploiters expressly recruited young Bulgarian female immigrants through *Eurolines* and illegally put them to work in Belgium. They were very badly paid and housed in deplorable conditions.

A new development has also emerged in the agricultural sector – trafficking in human beings within the staff of the poultry industry. In one case Polish people were recruited in an organised manner as bogus self-employed workers⁷⁰ and placed in licit poultry firms.

The police has also reported other cases of trafficking in human beings at poultry breeders managed by Turkish operators.⁷¹ They illegally employ Bulgarian men of Turkish origin to look after their poultry. This was brought to light in one case where local inhabitants had reported a slum landlord of whom Bulgarian people were victims. After questioning, it transpired that they were being exploited by the Turkish owners of poultry abattoirs.

2.4.2. *Construction and renovation*

⁷⁰ See below in Part 2.

⁷¹ Centre, 2008 Annual Report (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 30. This publication can be consulted at www.diversite.be (‘Publications’ section).

In some cases of illegal Brazilian workers, the court established charges of trafficking in human beings on the basis of the following: abnormal working hours, wages lower than normal, paid irregularly or not at all, and the absence of social rights.⁷²

Different Brazilian networks are involved in cases of trafficking in human beings in the construction sector.⁷³ Most Brazilians that are recruited come from the same regions, Goiás or Minas Gerais. The latter is well known as a migration area⁷⁴. These two areas subsist on money from the diaspora. At an IOM workshop⁷⁵, a Brazilian delegation explained that Goiás was undergoing an economic boom, with employment growth of 28% in 2008, and that this town had the best quality of life in Brazil. Following the economic crisis in the United States and in Europe, some 20 to 30,000 migrants are said to have returned to Goiás.

How does the Brazilian network function?⁷⁶ Transport is generally organised by travel agents that offer a ‘migration package’ to Europe. Brazilians are offered a job, but they are unaware that the working conditions are deplorable and wages very low. They arrive in Belgium at very specific arrival points in Brussels with a series of telephone numbers of Brazilian people in their pocket. They can stay in Belgium legally for three months.

Brazilians are not only put to work in Brussels, but also in other Belgian towns. Many live in Brussels, and commute every morning to their place of work. In Mons, Brazilian networks represent 15 % of labour exploitation.

In late 2009, the CTIF-CFI published a warning about Brazilian networks of illicit workers⁷⁷.

In different cases in which the Centre has brought civil action, it emerges that certain organised forms of labour exploitation take place in the construction and renovation industry in Turkish construction firms.⁷⁸ They have decrepit properties renovated and turned into apartments by Ottoman Bulgarians – a significant Turkish minority, established in the south of Bulgaria – who are brought to Belgium especially for this purpose.

One of these Bulgarian workers explained in a statement how the system worked. They work in Belgium on a large construction site for three months and then return to Bulgaria.

⁷² Ibid., p. 66, and also below, Chapter 4 on case law.

⁷³ See also below, Chapter 4 on case law.

⁷⁴ IOM, ‘Awareness Raising for Brazilian and Belgian authorities on managing migration from Brazil to Belgium’, 2nd Awareness-Raising Workshop, 26-27 May 2010, Brussels.

⁷⁵ Ibid.

⁷⁶ See also Centre, 2008 Annual Report (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, Labour exploitation: Construction and renovation, p. 27. This publication can be consulted at www.diversite.be (‘Publications’ section).

⁷⁷ See below, Part 2, Chapter 1.

⁷⁸ See Chapter 4 on case law, and the Centre’s 2008 Annual Report, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, pp. 43-44. This publication can be consulted at www.diversite.be (‘Publications’ section).

In the meantime, other Bulgarian workers have taken their place on the same site. When they return to Belgium, whilst waiting to work on a large project again, they do small jobs for other Turkish property owners.

In practice, we have noted that one of the names involved in a large case of Bulgarian prostitution⁷⁹ from 1999 to 2002 also appeared in a case of Bulgarian labour exploitation in the field of construction in 2006. This is probably a case of diversification and/or redeployment of criminal networks that were previously specialised in prostitution and since then have seen the advantages of forms of exploitation within economic sectors such as construction.

We also note in other cases of trafficking in human beings, the exploitation of Romanian workers through a system of secondment and/or bogus self-employed workers⁸⁰. The location and circumstances of their accommodation and their work deviate completely from legislation on employment, health and safety of workers and social security. They receive five euros per hour, of which a portion is deducted to pay for their pitiful accommodation.

They are registered in Romania, where they sign a contract of an insignificant amount or are constrained to purchase shares in the company involved (in Belgium or not) in order to be able to work as bogus self-employed workers.⁸¹ These shares must be paid for through work, thus creating debt bondage.

In various districts, there are also cases of trafficking in human beings with exploitation of Moroccan workers who live and work illegally in Belgium. These are mainly small-scale cases.

Cases involving illegal Polish workers in the construction sector are not prosecuted under criminal law on charges of trafficking in human beings. The issue of bogus self-employed workers⁸² requires significant resources in terms of research capacity, is difficult to prove and often leads to acquittals at court.

For the moment, we note more specifically cases of seconded⁸³ self-employed workers. They come to work in Belgium for five euros per hour and are recruited through the intermediary of a temporary employment agency. Other duly registered entrepreneurs complain about this, but the inspectorate does not have enough resources to counter this behaviour. This unfair competition may lead to an extension of these practices.

2.4.3. The Hotel – Restaurant – Catering sector (HORECA)

⁷⁹ Centre, 2003 Annual Report (FR/NL) on Trafficking in Human Beings, ‘Pleading for an Integrated Approach’, pp. 23-25. This publication can be consulted at www.diversite.be (‘Publications’ section).

⁸⁰ See below, Part 2.

⁸¹ See below, Part 2.

⁸² See below, Part 2.

⁸³ See below, Part 2.

In cases involving the HORECA sector, case law considers working conditions that are contrary to human dignity are established by the following⁸⁴: working for a salary that is less than the minimum wage, for no less than 60 hours a week, the fact that video cameras infringe the workers' private lives, that the workers' freedom is limited, that contact with third parties are forbidden and that identity and bank documents have been confiscated.

Chinese restaurants, often family firms, are well known as typical examples of trafficking in human beings in the HORECA sector⁸⁵. However, we also examine Chinese 'wok restaurants'⁸⁶, Japanese and Vietnamese restaurants. Practices of trafficking in human beings have spread throughout the HORECA sector. In the HORECA industry, apart from Chinese restaurants and other Asian restaurants, Turkish bars, kebab houses and Belgian snack bars are also associated with trafficking in human beings. In a case of trafficking in human beings involving a group of Belgian cafés, the Belgian staff was systematically exploited with extreme working conditions and an excessively low wage.

Whilst Chinese and Vietnamese cases may be a sign of the possible involvement of criminal organisations, they are generally only isolated cases and in any case on a limited scale. During investigations, the police has noted that Chinese victims of Chinese triads do not work in just one restaurant but in several different restaurants in order to be able to pay back their smuggling debts. What is more, in the case of Chinese criminal organisations, many victims are too terrified to accept to be a part of legal action in order to be recognised as victims of trafficking in human beings.⁸⁷

In the city of Mons, Chinese HORECA cases represent 10 % of labour exploitation. Chinese victims work illegally and receive EUR 500 per month on average for working seven days a week. They are housed in a small room in the restaurant building and are only allowed to sleep for 4 to 5 hours a night. Some Chinese victims are enlisted in Belgium through small ads placed in Chinese newspapers.

2.4.4. *Textiles*

Counterfeit textiles are also more and more commonly manufactured in conditions classed as trafficking in human beings.⁸⁸ This practice exclusively involves criminal organisations, often also carrying out other criminal activities.

⁸⁴ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p. 64. This publication can be consulted at www.diversite.be ('Publications' section).

⁸⁵ See below, Case review: A Chinese restaurant.

⁸⁶ Centre, 2008 Annual Report (FR/NL), 'Combating Trafficking and Smuggling of Human Beings Using People and Resources', p. 46. This publication can be consulted at www.diversite.be ('Publications' section).

⁸⁷ See Part 2, Chapter 2, Good practices.

⁸⁸ Federal Police, Federal Police Annual Report, Economic and Financial Crime Department. This publication (FR/NL) can be consulted at: http://www.polfed-fedpol.be/pub/rapport_activites/rapports_act_fr.php

Other cases of trafficking in human beings in this sector involve illegal workers who have to sort second-hand clothes intended for export to rag dealers.⁸⁹ Victims have to work in extremely precarious conditions: they have to work standing up for 10 to 15 hours every day, without heating and with fixed production quotas. This type of illegal sweatshop is generally concealed in a dilapidated garage or in industrial parks that have been disused for a long time. Local police also play a key role in detecting these illegal sweatshops.⁹⁰ In the past, the social inspectorate has found victims hidden under floorboards during their visits. Workshops of this kind are often equipped with external surveillance cameras and a secret exit through which workers can disappear. These practices of trafficking in human beings are mainly found in cases of illegal textile manufacturers and clothes-sorting workshops operated by Syrians.

In cases of illegal textile manufacturing workshops⁹¹ it transpires that those running the business are not the only winners in this system. Other people also profit – the clients. Major brands and well-established garment manufacturing firms can be involved in these cases.

2.4.5. Domestic work

Trafficking in human beings in the domestic work sector is more difficult to pinpoint. This kind of exploitation is often found, on a smaller scale, in certain households in the North African culture.

In this type of case, the burden of proof is very often based exclusively on the victims' statements. However, they are not easy to obtain – statements are often only made after victims have been able to escape from the home where they were being exploited. For this reason, many cases never lead to prosecution.

Trafficking in human beings in the domestic work sector is even more difficult to identify when diplomats or embassy contacts are involved. With regard to embassies, several cases relating to domestic work have been opened by the labour auditors, but have never given rise to criminal proceedings due to diplomatic immunity. One solution for victims is often to obtain humanitarian aid status⁹².

Several cases of labour exploitation in the sector of domestic work have also concerned forms of sexual exploitation. Two years ago, the annual report on the trafficking in and smuggling of human beings referred to two cases in which the main task of young girls

⁸⁹ See below, case review: The rag trade.

⁹⁰ See below, Part 2, Chapter 2, Good practices.

⁹¹ Centre, 2003 Annual Report (FR/NL) on Trafficking in Human Beings, 'Pleading for an Integrated Approach', pp. 24-27. This publication can be consulted at www.diversite.be ('Publications' section).

⁹² See on this subject the Centre's 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p. 19. This publication can be consulted at www.diversite.be ('Publications' section).

being exploited as domestic workers was to satisfy the sexual fantasies of the employers.⁹³

In another case, we observed that employment agencies recruited young women to be employed as domestic workers in well-known families and how they or their families were subject to pressure by accomplices to get them to retract their statements. We see here that these are indeed organised networks.

2.4.6. Transport

In transport cases, case law considers that working conditions that are contrary to human dignity are established by the following⁹⁴: absence of an employment contract, working seven days a week in inhumane conditions, no payment or insufficient payment and bad accommodation conditions.

During police inspections, irregularities were mainly reported for Moldavian truck drivers. Transport companies are also formed for this purpose in Russia, while the workers actually work for a Belgian company.⁹⁵

In the transport sector, practices of trafficking in human beings have also been observed through organisations of bogus self-employed workers and secondment. This transpires from different cases of trafficking in human beings in which the Centre has brought civil action.⁹⁶

In our 2006 Annual Report on trafficking in human beings⁹⁷, one particular case illustrates this perfectly. A Belgian transport company set up an international organisation with around 20 bogus self-employed workers, all Polish truck drivers. The Belgian owner operated transport companies in Germany, Poland, Romania, Bosnia and the Netherlands. He mainly dealt with international shipping for Belgian, German and English dispatch firms sending goods to England. The owner had an office in Belgium, where the administrative staff worked and where operations were orchestrated.

⁹³ Centre, 2007 Annual Report, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', pp. 96-102.

⁹⁴ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', pp. 68-69. This publication can be consulted at www.diversite.be ('Publications' section).

⁹⁵ See below, Part 2.

⁹⁶ See below, Part 2 and the Centre's 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', pp. 44-46. This publication can be consulted at www.diversite.be ('Publications' section).

⁹⁷ Centre for Equal Opportunities and Opposition to Racism, 2006 Annual Report (FR/NL) on Trafficking in Human Beings, 'Victims In the Spotlight', pp. 43-45.

2.4.7. *Night shops and phone shops*

Indo-Pakistani operators of night shops and phone shops often do not have a valid Belgian residence permit. In many cases, they are exploited as bogus self-employed workers⁹⁸. They become shareholders and even, later on, directors of the company. In fact they are only front men for the exploiter, who, in this way, avoids social security contributions and easily grows his business. On the basis of their self-employed status, the victim can legally register at the town hall and receive a valid residence permit. The situation is thus beneficial both to the exploiter and the victim.

We also observe situations of trafficking in human beings where victims have to pay back their travel debts by working in the store without being paid.⁹⁹ In these cases criminal organisations are involved. One of the cases in which the Centre has brought civil action illustrates how criminal organisations make use of the marriage of convenience system on an international scale¹⁰⁰. Marriages of convenience are organised in return for payment between Indian or Pakistani men and Portuguese women from underprivileged areas of Portugal. Weddings take place in Denmark, Sweden or Portugal. After the wedding, the men move to Belgium. Victims who have paid for a marriage of convenience then have to pay back their debt by working in the shop for scarcely any wage at all. Several of these unregulated night shops and phone shops are linked to Indo-Pakistani smuggling networks. They are used as a place of transit and safe house¹⁰¹ for the clients and as meeting places, and to launder traffickers' profits.

2.4.8. *Car washes*

We also find organised forms of trafficking in human beings for the purposes of labour exploitation in the car wash sector involving Pakistanis. The same modus operandi applies as for night shops where the system of bogus self-employed workers is used¹⁰².

Here however, there is no small-scale exploitation. These are organised networks. Labour exploitation with ramifications all over Belgium was brought to light during a coordinated operation by the central department of the federal police dealing with trafficking in human beings, federal police departments of Turnhout, Mechelen and Hasselt, and the social inspectorate. Following this case, a financial enquiry was opened regarding cash flows and the money laundering practices used.¹⁰³

⁹⁸ See below, Part 2.

⁹⁹ See below in this chapter, Indo-Pakistani smuggling rings.

¹⁰⁰ For similar case-law, see Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p.72. This publication can be consulted at www.diversite.be ('Publications' section).

¹⁰¹ For an explanation of safe houses, see below in the section about trafficking in human beings.

¹⁰² See below, Part 2.

¹⁰³ Police, 2007 Federal Police Activity Report (FR/NL). This publication can be consulted at www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2007_fr.php

2.4.9. Bakeries and butchers' shops

The police and inspection services have also noted evidence of trafficking in human beings in butchers' shops and bakeries. These are mainly small-scale cases. According to the police, in some towns, shops associated with trafficking in human beings are in the hands of certain Turkish families.

In these instances, case law considers that working conditions that are contrary to human dignity are established by the following¹⁰⁴: working seven days a week, for more than 12 hours work a day for a weekly salary of EUR 50-60, non-payment of wages and bad accommodation conditions (locked room, no bathroom or toilets, no heating or water).

2.4.10. The cleaning industry

Various reports, including federal police activity reports¹⁰⁵, give examples of trafficking in human beings in the cleaning industry through structures set up by a criminal organisation. Firms employ illegal workers or bogus self-employed workers as subcontractors for large firms.¹⁰⁶ The victims have to work without wages for several days as a trial period. In addition to African illegal workers, and particularly Moroccan workers, Brazilian women¹⁰⁷ also number among the victims. These are deplorable practices which are spread throughout the country. Victims are employed in very bad conditions and even in some cases without any remuneration whatsoever. At present, this takes place mainly in the Liège area.

According to the CTIF-CFI report on money laundering, in many cases front companies are used with fictitious registered office addresses. They act as intermediaries between the cleaning companies under contract and the suspect subcontractors¹⁰⁸. A succession of companies, the use of front men, personal accounts, operations that do not correspond to the company's objects or do not correspond to the company's financial situation – these are some of the methods reported by the CTIF-CFI.¹⁰⁹ Once again according to the CTIF-CFI report, all of these indications lead to the conclusion that an organisation based on a criminal structure exists.¹¹⁰

¹⁰⁴ Centre, 2007 Annual Report, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', p. 111.

¹⁰⁵ Police, 2007 Federal Police Activity Report (FR/NL). This publication can be consulted at www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2007_fr.php

¹⁰⁶ See below, Part 2.

¹⁰⁷ IOM, 'Awareness Raising for Brazilian and Belgian Authorities on Managing Migration from Brazil to Belgium' 2nd Awareness-Raising Workshop 26-27 May 2010, Brussels

¹⁰⁸ 2008 CTIF-CFI Annual Report, Typologies. This publication can be consulted at www.ctif-cfi.be

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

2.4.11. Toilet services

We also find organised forms of trafficking in human beings for the purposes of labour exploitation in the public toilet sector. This is a new development, where gangmasters put aliens to work through fraudulent means as seconded¹¹¹ self-employed workers in various service stations along the motorway. Agreements with those running the service stations are verbal. There are around 22 establishments, spread throughout Belgium. Around five or six aliens, generally Russian, work in teams at each establishment and service station.

2.4.12. Petrol stations

We also find organised forms of trafficking in human beings for the purposes of labour exploitation in petrol stations operated by Pakistanis. Pump attendants work in bad conditions, sometimes bordering on trafficking in human beings. This is not small-scale exploitation – it involves organised chains. Cases have been opened throughout the country. This issue was first reported more than 10 years ago to the Parliamentary Commission on organized crime organised by the Senate¹¹².

2.4.13. Waste processing

Various Belgo-Turkish firms act as subcontractors processing waste for large Belgian enterprises in the ports. They do not comply scrupulously with social legislation. The victims are Bulgarian or Turkish workers who are put to work as bogus self-employed workers¹¹³ and have to sort waste from these large firms.

It is dirty, dangerous, noisy and badly paid work, where the regulations on protection are not complied with. Workers are paid 7 to 8 euros per hour, from which their social security contributions are deducted. They are not aware of their social security status and are obliged to sign documents the content of which they do not understand. In many cases, they do not even know the name of the company employing them. Most cases relate to illegal work, but some cases have also been opened for trafficking in human beings.

It emerges from these cases that exploiters apply a system of fines and threaten their victims. Exploiters deduct exorbitant amounts from an already derisory wage and generally do not respect their promise to pay the social security contributions due for self-employed workers. In the event of a work-related accident or injury, exploiters abandon victims.

¹¹¹ See below, Part 2.

¹¹² Parliamentary Commission investigating organised crime in Belgium, Final Report, *Parliamentary Documents*, Senate, 1998-1999 session, 8 December 1998, No 1 – 326/9.

¹¹³ See below, Part 2.

2.4.14. *The meat processing industry*

In the meat processing industry in the Ghent region, gangmasters have systematically been present in a whole series of cases involving criminal organisations. The victims are Slovak workers seconded to Belgium through a company in Slovakia.¹¹⁴ Labour auditors concentrate mainly on combating gangmasters. If threats are made against the victims, these are indeed cases of trafficking in human beings. Most cases only involve illegal work. In one case, charges of trafficking in human beings were upheld in the judgment.

3. Other forms of exploitation

3.1. Begging

In a number of cases of sexual exploitation, we have noted the problem of begging organised in the context of trafficking in human beings.¹¹⁵ These cases are mainly found in Roma networks.¹¹⁶ According to the police, the closed nature of this community complicates investigations in these cases.

3.2. Coercion to commit offences

Pursuant to the 2005 Law on Trafficking in Human Beings, coercion to commit a crime or offence falls under the new purposes of exploitation characterising the offence of trafficking in human beings. This recent issue has also been noted in other countries and by European authorities. In the Netherlands, the National Rapporteur on trafficking in human beings has already discussed this issue in the context of trafficking in human beings.¹¹⁷ The Rapporteur identified several cases of forced criminal activity, such as theft at gunpoint and forgery of documents. According to Europol¹¹⁸, Vietnamese and Chinese illegal workers who still have to pay back their travel costs are constrained, by means of debt bondage, to supervise cannabis plantations.

Since 2006, the city of Charleroi has been confronted with the issue of Moroccans without a residence permit who are constrained to sell drugs. In this case, sometimes only

¹¹⁴ See below, Part 2.

¹¹⁵ Reminder: the exploitation of begging forms part of the purposes of exploitation laid down in Article 433*quinquies* of the Criminal Code which defines the offence of trafficking in human beings: Centre for Equal Opportunities and Opposition to Racism, 2005 Annual Report, Trafficking in Human Beings 'Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights', pp. 10-16.

¹¹⁶ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', pp. 40-41. This publication can be consulted at www.diversite.be ('Publications' section).

¹¹⁷ Fifth report of the Dutch National Rapporteur on trafficking in human beings, p. 217. This publication can be consulted at: <http://english.bnrm.nl/>

¹¹⁸ Europol, OCTA 2009, 'EU Organised Crime Threat Assessment'. This publication can be consulted at www.europol.europa.eu/index.asp?page=publications&language

legal action concerning ‘narcotics’ is initiated. In practice, victims then face many difficulties to obtain trafficked victim status.

Our meetings with the police have revealed that these are not individual cases, but clearly a new strategy used by criminal organisations. According to the police, this is an international issue to which very little attention is paid. Coordinators are located in Morocco and from there they send people to Belgium.

In Charleroi, drug dealers work in the prostitution area near the exit of the town. Some drug dealers walk around armed with knives and firearms. The police can no longer carry out surveillance of this area discreetly because officers are immediately identified by criminals. Moroccan dealers generally do not have a residence permit and all come from the same area of Morocco – the Rif. Most know very well that they have been recruited as drug dealers and that they can also earn a lot of money. However, several are recruited with the promise that they are going to come and work in the building trade. When they arrive in Belgium, they are constrained, in particular through debt bondage, to work as drug dealers.

In our previous annual report¹¹⁹, this issue was illustrated by an important case of drug smuggling and dealing organised by Moroccan nationals. This network recruited Moroccans or Algerians by making false promises in their country of origin or in Spain. In particular this organisation used ‘workers’ that it brought over for the purposes of selling drugs via a chain of Moroccan emigrants living in Spain and arriving illegally in Belgium. When they arrived in Belgium, their identity papers were confiscated and they then had to deal drugs to pay their travel debts. Sometimes they had to attend a training course in France or in the Netherlands for this purpose. After that they came back to Charleroi where they had to sell drugs, both in the street and in ‘dealing houses’.

This development has also been observed in the city of Mons, but most cases there concern Algerians.

In the city of Antwerp, the police is faced with Chinese people who have accumulated large gambling debts in local gaming houses belonging to the Chinese triads. In order to repay their gambling debts, victims are constrained, through a system of debt bondage, to collaborate in dealing ecstasy for the Chinese triads and/or to work as smugglers of human beings.

4. Smuggling of human beings

Currently, active networks smuggling human beings are led by Indians (Sikhs), Turkish Kurds, Iraqi Kurds and Afghans. Paying to protect the honour of the female victim is a

¹¹⁹ Centre, 2008 Annual Report (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 71. This publication can be consulted at www.diversite.be (‘Publications’ section).

characteristic of Turkish Kurd smuggling networks.¹²⁰ We should also note Chinese networks and other smugglers who make use of air travel and give the necessary papers to their smuggled customers. Here, the problem of the failing of the Schengen area presents itself as regards travel controls.¹²¹

Various police departments note that smuggling networks have recourse to a new *modus operandi* consisting of deliberately sending alleged victims of smuggling to the police to lodge a complaint against the smuggler for trafficked victim status. In fact, they are not victims of smuggling but the ‘small fry’ of the smuggling ring who are sent to the police in a counter strategy which consists of testing and studying the reactions of the repressive apparatus and if appropriate, sabotaging the discreet enquiries being carried out. They know that the police is obliged to act when a complaint of this kind is made and will carry out searches. Hence, low-key operations such as surveillance and phone tapping have no further purpose and have to be discontinued.

According to the police, it also emerges in some cases that people present themselves as victims and pass on information to the police in order to know what proof and information the police already holds or to damage a competing smuggling organisation.

4.1. Kurdish smuggling rings

Car parks on the motorways towards the coast still play a key role in the smuggling of human beings. Currently, the Kurds control the car parks. They consider them to be their territory. They allow other smuggling networks, including Indians and Afghans, to use them in exchange for a monthly rent. Kurdish smugglers are very violent. Serious altercations take place in these car parks.

Kurdish smuggling networks recruit their customers in Elisabeth Park in Koekelberg (Brussels). A trip to the United Kingdom costs EUR 1,000.

4.2. Indo-Pakistani smuggling rings

In India, legitimate travel agents do not only sell travel. They also make large profits by supplying visas for foreign countries. They have two kinds of offers. The first consists of the customer paying around EUR 11,000 for a business visa to Russia. The customer gets a visa on their passport. The passport has to be handed over to the travel agency which deals with supplying a visa and a plane ticket for Moscow. This is a business visa for a company that the customer allegedly represents. Customers are met at the airport. With their ticket, customers also receive a code such as ‘white rose’ or ‘blue rose’, destined for the smuggler. The smuggler takes the customer to a safe house, which generally belongs to different smugglers. There, they often have to hand over their passports. The

¹²⁰ Centre, 2006 Annual Report (FR/NL) on Trafficking in Human Beings, ‘Victims In the Spotlight’, Typology Chapter, 2.2.3. Turkish smuggling business-network.

¹²¹ Ibid., 2.3.1. Debt bondage in the HORECA industry.

smugglers wait for several customers to be collected together and then transport them in trucks and cars from Moscow to Europe. Frontiers always have to be crossed on foot.

The second offer made to customers is a plane ticket and a tourist visa or student visa for a European Schengen country for EUR 21,000; for the United States it costs EUR 30,000. For Canada, the cost rises to EUR 40,000. Part of the cost of the trip has to be paid before departure. The balance is paid upon arrival to an intermediary trusted by both parties who looks after the money in the meantime. There may also be several stopovers and a number of intermediaries.

In addition, there are also Indian smuggling rings that mainly transport Sikhs. Sikh territory covers both India and Pakistan. In 2006, these organisations were collaborating with a Lithuanian organisation of heavy-goods vehicle drivers who provided transport, with guarantees, to the United Kingdom.

In the last few years, these Sikhs have proved to be particularly active in smuggling human beings, organising marriages of convenience and labour exploitation through debt bondage in night shops¹²².

5. Case review

In 2009, the Centre brought civil action in 12 cases of trafficking in human beings (seven for sexual exploitation, five for labour exploitation) and in three cases of smuggling of human beings.

In this part, we will analyse a number of cases of trafficking in and smuggling of human beings that the Centre was able to examine in detail as a result of its capacity to bring civil action. In one of these cases, civil action was brought in 2009. The other reviews concern cases in which the Centre had already brought civil action previously but for which legal proceedings in the case took place recently or are currently in progress.

The review examines both the victims' position and the criminal system. The case review is based on the minutes relating thereto. It includes a critical look at the summary minutes, in which investigators collect relevant information of the case, statements from victims, suspects and witnesses, information minutes, reports relating to letters rogatory, etc. Specific case information is essential in order to analyse policy. It enables us to plot new trends and new modus operandi, to see how policy measures have been implemented in practice and to highlight stumbling blocks. The 'good practice' chapter, which summarises the policy analysis, should therefore also be read in connection with this part.

¹²² See above, Labour exploitation: Night shops.

5.1. Sexual exploitation

5.1.1. *Turkish pimps and drug traffickers*¹²³

In a case from the city of Tongeren, the facts of which go back to 2006-2008, the pimps were Turkish drug dealers. Drugs are used as commodity money in exchange for prostitution. Some victims have to supply escort services to clients. Other victims are placed in bars. These pimps are extremely violent with victims and threaten co-defendants in prison with death for having made damnatory statements. Many victims are interned in psychiatric institutions or are in prison for other offences. One of the victims died from a drugs overdose.

The victims were threatened several times with a firearm. One of the victims had fractures in her fingers following the violence that she had suffered. Another victim, who had been sold, was afraid to give details on the subject fearing reprisals against herself and her family.

Turkish pimps target young girls and get them addicted to cocaine. At the outset, they receive cocaine free of charge. Once they are addicted, they are at the mercy of the accused, who do with them as they wish and use them as prostitutes.

They also recruit victims from the drug scene. They are often Belgian and Dutch women with a criminal record for theft and drugs offences. Some victims evade the police or have escaped from an institution and are looking for a roof over their heads. Pimps also supply cocaine to their victims so that they prostitute themselves willingly. Furthermore, this is carried out in organised groups. Clients of the escorts are asked to buy drugs from the pimps for the young women. Drugs orgies are also organised, where young women are obliged to have sexual intercourse with clients and suppliers. In some cases, pimps consider the victims as the objects of their personal fantasies, with whom they can try out 'little sexual games'.

One of the Belgian victims explained that at 16 years of age she met a boy of Turkish origin with whom she started a relationship. It turned out that he was a loverboy who had connections with drugs and who persuaded her to take drugs. When her parents noticed this, she had to leave home. She then went to live with her boyfriend. Her loverboy had financial problems and forced her to prostitute herself, first only for his friends, then for strangers. They had to pay EUR 50 a time. The victim didn't dare disobey because he beat her. When she was 17 years old, he constrained her to go and work in bars, where she had to offer herself to people. In this way she could earn up to EUR 600 or 700. When she received this money from the bar owner, she had to give it all to her loverboy. The money from the prostitution was used to buy drugs for herself and her boyfriend. When she didn't earn enough, she had to prostitute herself to the drug dealers or his Turkish pimp friends to pay for drugs. However, she was not only used as a means of

¹²³ As this report goes to press (30 June 2010), the hearing of this case has been set at the Tongeren Criminal Court on 2 September 2010.

payment for cocaine, she was also the victim of a gang rape in a forest in the context of punitive action to discharge a debt. Sometimes, she was abandoned in Maastricht (the Netherlands) after a purchase of drugs to pay back the debt *in kind*.

5.2. Labour exploitation

5.2.1. The rag trade¹²⁴

In 2008, the local police¹²⁵ learnt that several illegal workers were employed at a textile firm in a hangar. After having contacted the social inspectorate, an official accompanied them to inspect the firm.

A first visit enabled them to discover that three Romanians and one Algerian were working illegally in inhumane conditions. They had only been working there for a few days. There was no heating, no bathroom or toilet, or any area that could be used as a canteen or office.

The owner, of Syrian origin, admitted that they were working completely illegally, without any contract or legal status. From the victims' statements, it transpired that they had to work from nine to ten hours a day. They were not allowed to talk to each other and their train tickets had been confiscated by the owner when they arrived. Some of them had been promised a wage of EUR 40 per day. Other workers did not yet have any agreement as regards their wage, although they had already been working for several days. Only one of them had received EUR 38.

All of these statements clearly demonstrate therefore that the owner had exploited the illegal workers, made them work in deplorable conditions and had promised to make their position legal, without actually keeping his promise, for the sole purpose of making a profit.

No confrontation was possible with the female Romanian victims, because they were immediately sent back to Romania.¹²⁶ They were hence not entitled to trafficked victim status and, in addition, will not be able to claim damages or compensation in civil action when the case eventually goes to court.

¹²⁴ As this report goes to press (30 June 2010), the hearing of this case has been set at the Dendermonde Criminal Court on 13 September 2010.

¹²⁵ See below, Chapter 5, and Part 2, Chapter 2: Good practices: Detecting victims through the local police.

¹²⁶ See also Part 2, Chapter 2.

5.2.2. *A Chinese restaurant*¹²⁷

One victim presented himself to the federal police in the city of Turnhout on 12 December 2007 with an employee from PAG-ASA, a specialised reception centre for victims of trafficking in human beings. The man came to PAG-ASA on 3 December 2007, following the advice of a friend, as a victim of trafficking in human beings. The friend was himself a victim of trafficking in human beings in another case.

This is his story. In 2003, he arrived in Belgium via a network of Chinese ‘snakeheads’. Initially, he wanted to go to the United Kingdom to find work there as a chef. In China, he had undergone general training but this offered him few prospects to find a good job there. He left China for Russia via Fujian and Beijing with a visa in his name. His trip was organised by the ‘snakeheads’. In Russia, his residence permit was confiscated. He stayed there for two weeks before leaving for the Ukraine, the Czech Republic, Germany and then the Netherlands. He went from Amsterdam to Antwerp by train. The trip took three months and was made in a group of around ten people. Most of his travel companions were going to Spain to request resident status. He wanted to go to England, but made it only as far as Belgium. From here, he only had to pay EUR 15,000 instead of the EUR 24,000 usually demanded for the trip to the United Kingdom.

In Belgium, he stayed in a safe house in the city of Antwerp. Apparently, he was one of the customers in a large case of smuggling involving the Chinese triads that we discussed in our annual reports of 2004 and 2005.¹²⁸ During large-scale legal proceedings, the keeper of the safe house was arrested. The man then found himself on the street.

He then looked for work in the Chinese quarter of the town. He sent the money that he earned to his parents in China to continue to pay back his travel debts. His parents had arranged and paid for his trip. He still owed them EUR 5,000.

He first worked for three years in a Chinese restaurant in Antwerp. At the start, he earned EUR 350 per month. For this, he had to work eight hours a day and six days a week. He was laid off in March 2006 because the business was doing badly. The boss sent him to a caterer in the city of Ghent. There he had to sleep in a garage next to the kitchen, without heating. He worked seven days a week, between 10 and 14 hours a day, for EUR 500 a month. After seven months, he left the catering firm of his own volition. He went to friends in Antwerp who showed him a job offer that had been published in a Chinese newspaper for a restaurant in the city of Westerlo. The owner of this restaurant had many acquaintances in Antwerp, where he was very well respected.

¹²⁷ As this report goes to press (30 June 2010), hearing of this case has been set at the Tongeren Criminal Court on 14 June 2010. A judgment is expected for 13 September 2010. This is one of the five cases of trafficking in human beings for the purposes of labour exploitations where the Centre brought civil action in 2009, but it is the only one to have been dealt with by the courts at this time.

¹²⁸ Centre, 2005 Annual Report, *Trafficking in Human Beings ‘Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights’*, pp. 91-93, and the 2004 Annual Report, *‘Analysis from a Victim’s Perspective’*, pp. 18-28 and p. 40.

The victim presented himself and was taken on. At the start, the man earned a wage of EUR 400, which was increased to EUR 450. He worked six days a week for 14 hours a day. He stayed in the house above the restaurant, on the first floor. The owner is an inveterate gambler and spends all his money on gambling. He very soon did not have the means to pay the victim. When the victim asked for his money, his situation got worse – fearing that he would escape, his access was restricted to the bedroom and kitchen. The owner locked the connecting door and the back door. He could only leave the house when accompanied by his boss. He did not really feel threatened, but his boss kept him at his mercy by withholding his wages, under-feeding him, not giving him access to the street and by threatening to give him up to the police. In the end, the victim managed to get to the garden using a ruse and escaped by climbing over a wall.

The public prosecutor's office only investigated the restaurant in Westerlo. No investigative judge was appointed.¹²⁹ When a search was made (with consent) in the two bedrooms of the restaurant in Westerlo, the victim showed investigators a secret hiding place where he had to hide if there was a police inspection. Two illegal workers were also found there. The investigators could not gain access to the other rooms – since there was no investigative judge, they did not have a search warrant.

The victim still has a claim of EUR 2,000, like another victim, a woman, who is owed even more money. The restaurant owner swore, in his statement, that he didn't owe anything to the victim: 'I don't owe him anything because he worked for board and lodgings only'.

Initially, the public prosecutor's office had sent the case to the labour auditors. When the Centre brought civil action, the magistrate from the public prosecutor's office with jurisdiction requested that the case file be returned and amended the charges to trafficking in human beings. The labour auditor in Turnhout is only prosecuting for illegal employment. The offences of unlawful confinement of an illicit worker were nevertheless sufficiently serious to be qualified explicitly as trafficking in human beings.¹³⁰

5.3. Smuggling of human beings

5.3.1. *Indian smuggling of human beings*¹³¹

An Indian criminal organisation smuggles Indians from India to England through Russia, Ukraine, Italy, Austria, Belgium or France. Customers of the smuggling ring are transported from Brescia (Italy) in private cars, vans, trucks or by public transport. When they arrive in Belgium, they are grouped together in safe houses, mainly in Brussels,

¹²⁹ See below, Part 2, Chapter 2.

¹³⁰ See below, Part 2, Chapter 2.

¹³¹ This case was heard on 15 June 2010 by the Brussels Criminal Court. Serious convictions were pronounced. The case will however be heard again in appeal by the Brussels Court of Appeal.

where they stay for a while. A safe house is accommodation (an apartment) rented (or owned) by the organisation and which houses dozens of customers. They are also given food but their freedom of movement is restricted. This accommodation often does not comply with the safety and sanitary standards in force in Belgium. From the safe houses, the organisation takes them to different car parks along the E40 motorway, where they are loaded into trucks that take them to the United Kingdom.

Two kinds of transport are offered from Brussels to the United Kingdom – with or without guarantee, in various different forms. Transport with a guarantee involves an obligation of results and payment is made upon arrival in the United Kingdom.

Guaranteed transport can take place in two ways. In the first case, customers of smuggling rings are helped on board the trucks by members of the smuggling organisations, who accompany them throughout the trip and subsequently return from the United Kingdom. If intercepted, the customers are once again grouped together and resume the trip until it is successful. In the second case, customers are transported with the connivance of the truck driver who receives payment for his participation. Customers are hidden in a special hiding place built for this purpose under the driver's bed in the rear of the cab.

Transport without guarantees can also take place in two ways. In the first case, customers are left to their own fate in car parks and have to climb into trucks on their own initiative. In the other case, the smuggler selects the trucks and helps the customers to climb in. However, the price that they pay only entitles them to one attempt.

The smugglers are part of a larger and efficient Indian smuggling ring that is in competition with other smuggling organisations. This smuggling ring has various supply lines from other countries where it collaborates with other smuggling organisations. The smuggling networks are flexible depending on location and necessity, which sometimes forces them to cooperate or places them in a position of competition. The allocation of tasks in this organisation is strict: keepers of safe houses, those who accompany customers to the E40 motorway service areas, etc.

It emerges from a review of this case that there is a coordinator (and a deputy) at the head of this trafficking network. The coordinator has to run six separate cells. He acquired a night shop in Brussels through a front man and entered into a marriage of convenience in Portugal in order to obtain a residence permit.¹³²

The cells operate more or less independently from one another – their only link is the coordinator. Since the organisation is made up of small cells, the latter can be reformed quickly following legal action and the smugglers are rapidly replaced by others. There is strong rivalry between cells, which in the past has led to violent altercations during which customers of smuggling rings have been involved and injured.

¹³² See above, Indo-Pakistani smuggling rings, and Labour exploitation: Night shops.

Some cells are more specialised. There are, for example, specialists in forged documents or in selling clean visas. In order to get a person directly from India to Europe with a visa, they ask for EUR 25,000.

One cell, which includes the Pakistani owner of a Brussels night shop, provides logistic support as a driver or as a shareholder in one of the shops. He owns a safe house and adapts the rent according to the number of customers staying there. The money from smuggling is transferred through a bank account to another night shop.

A Kurdish accomplice who lives in England and previously lived in Belgium deals with recruiting foreign heavy-goods vehicle drivers, preferably English, who accept to provide guaranteed transport into the United Kingdom.

The network organisation is very mobile. The suspects never use the same mobile phone number for very long and regularly change the place where smuggled customers are housed. Different methods are used to get customers to the car parks: public transport, private cars, taxis or even vans. This complicates police investigations. The members of the smuggling ring are particularly wary given the presence of several competitors at different transit points. In addition, traditional police investigation methods are not sufficient or do not produce the intended result. For example, given that one of the accused operates a phone shop, telephone surveillance of this person would be of no avail, since in the store he has various telephone lines at his disposal that are difficult to trace and even more difficult to tap.

One of the competing smuggling networks is a Kurdish organisation that manages and controls the motorway service areas along the E40 where illegal transport takes place as its own territory. They 'make available' their territory to other smuggling organisations in return for payment. The Indian smuggling ring made agreements with the Kurdish smuggling network to rent service areas along the E40 for one month for EUR 7,000-8,000. It then paid EUR 400-500 per client who passed through the service area.

Several members of this Indian smuggling network have already been sentenced in previous cases of smuggling of human beings. Three of them are themselves former customers in the Dendermonde Indian smuggling case in 2007.¹³³ These three people were arrested in the same safe house during a police raid and are known to be smuggling customers. The court cases left a gap in the trafficking market. The lure of reward persuaded these clients to become smugglers themselves. In the meantime, they made themselves a reputation of being smugglers who stopped at nothing when threatening their clients. According to statements, they brandished a firearm when making their threats.

On the basis of confessions, we note that at least 100 to 150 persons were smuggled in this case. The clients had to pay EUR 16,000 for the trip from India to Italy and EUR 500

¹³³ This case is an extension of the Indian case of smuggling of human beings discussed in the Centre's 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p. 47. This publication can be consulted at www.diversite.be ('Publications' section).

for the journey from Italy to Brussels. For the last trip from Brussels to the United Kingdom, they had to pay EUR 3,000 with guarantees or EUR 1,500 without guarantees.

Some Indian smuggling clients were intercepted by the police near the city of Mons.¹³⁴ According to conversations recorded during telephone surveillance it seems that these customers were thrown out of the vehicles in Mons. The drivers who were dealing with their transport had arrived in Belgium in the morning and wanted to avoid the traffic jams in Brussels for security reasons. They then refused to drive into Brussels and told their customers to get off in Mons and La Louvière, generally near motorway exits or railway stations. The customers were then ordered to take the train to Brussels Midi where they were awaited by another smuggling cell.

Several clients lodged complaints against the smugglers and claimed to be victims. They contacted the federal police via the local police.¹³⁵ Some victims had serious injuries due to the physical violence that had occurred during an argument with the smugglers, or had been threatened with weapons.

The victims explained the payment terms. Half of the transport price has to be paid in advance by the family to the smuggling leader in India. In some cases, the latter also works in a bank. If the family does not pay the balance relatively quickly, the victim is kidnapped during the trip and the family is threatened with reprisals against their children. When they arrive in Europe the victims have to find work as quickly as possible in order to be able to pay back their debt to their family.

It emerges from a statement that the police sometimes wonders about the real intentions of some people who come forward as victims. Once, two Indian people wanted to lodge a complaint against some smugglers. A discreet police investigation was actually in progress regarding these very smugglers, involving phone tapping and visual surveillance.¹³⁶ When the Indians lodged their complaint, they declared that they had analysed and noted every aspect of the organisation of the smuggling ring. The police was already aware of most of this information. However, when the police asked them additional questions about their notes, they didn't remember what they had written. The magistrate then requested that the police should not yet grant them victim status and the Indians were allowed to leave. When the magistrate subsequently decided to grant them victim status, the Indians had disappeared. One month later, one of the two victims sought to lodge another complaint concerning a death threat against him and his family. The friend with whom he had come forward to lodge the complaint had informed the defendants in the case and had threatened the other Indian man's family.

¹³⁴ See Chapter 3, Statistics.

¹³⁵ See Chapter 5 (Collaboration between local and federal police).

¹³⁶ See above, Indo-Pakistani smuggling rings

Chapter 3: Figures and statistics

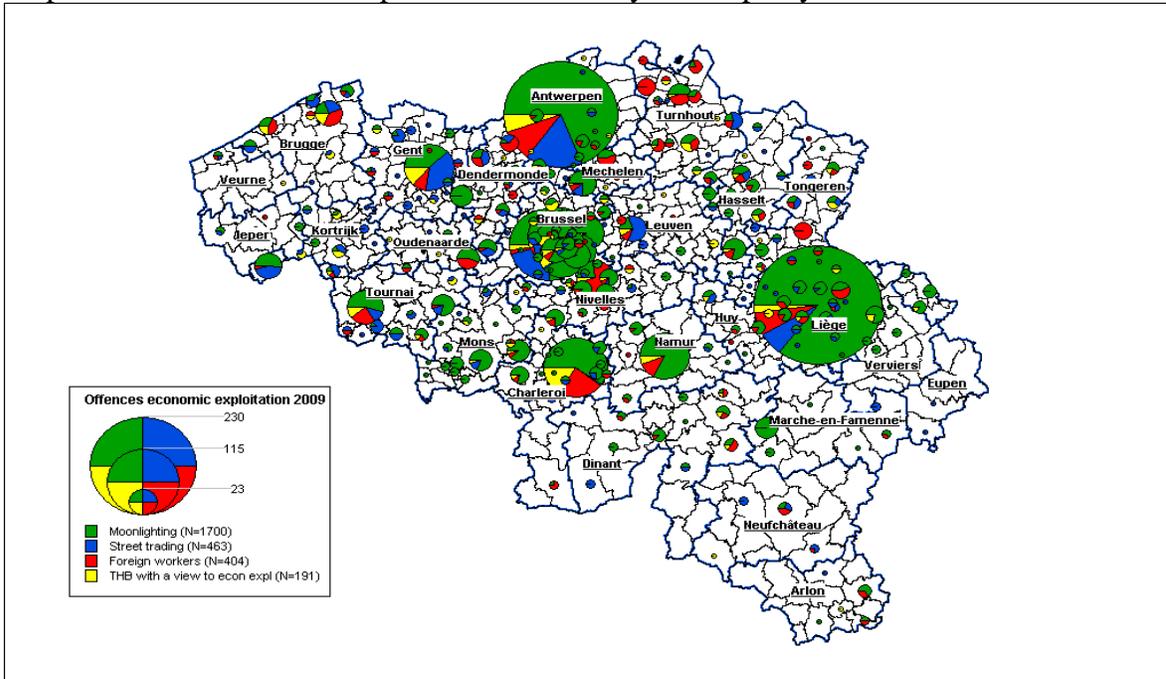
At this time, there is no operational centralisation of data in Belgium of information relating to the trafficking in and smuggling of human beings, since the implementation of the Royal Decree of 16 May 2004 setting up a Centre for Information and Analysis in Trafficking and Smuggling (CIATTEH) has yet to take place. The CIATTEH is under the supervision of the Justice Minister and the Home Affairs Minister. Two essential tasks are thus still not being performed – on the one hand the collection, centralisation and sharing of data, and on the other strategic analysis aimed at policy, strategy and/or operational action.

It goes without saying that the different stakeholders in multidisciplinary collaboration hold their own data at present. As last year, we are reproducing data from some of these key players. Unlike last year, we are reproducing data from the General National Database (*BNG*) managed by the federal police in the form of maps and no longer tables. We are once again citing some data from the Aliens Office. Finally, like last year, we are reproducing figures on prosecutions, data from centres specialised in the reception of victims and some judicial data.

1. Police data

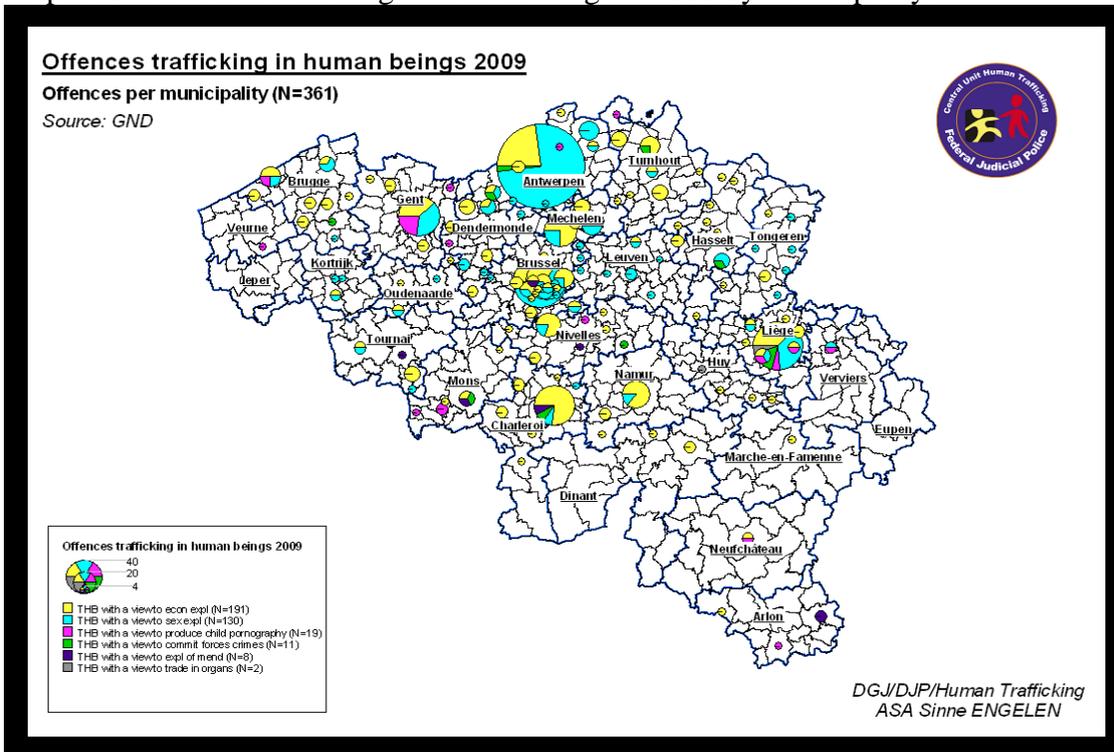
According to the *BNG*, 191 of the 2,758 offences of labour exploitation recorded in 2009 involve trafficking in human beings for the purposes of labour exploitation. There were 1,700 reports of undeclared work and 404 reports concerning legislation on alien workers or self-employed workers. Within these categories, we are unaware whether explicit checks have been made in order to ascertain whether working conditions can give an indication of trafficking in human beings.

Map 1: Offences of labour exploitation in 2009 by municipality.



If we look at Map 2, we can see that the 361 offences for trafficking in human beings that were recorded in 2009 are relatively scattered.

Map 2: Offences of trafficking in human beings in 2009 by municipality.



2. Data on prosecutions

Here we present a selection of the data provided by the Board of Attorney-Generals. Statistical analysts at the Board of Attorney-Generals have gathered and analysed information from several cases referred to the Belgian Public Prosecutor's offices **during 2009**. We have also identified the reasons if no prosecution took place. The data comes from the Federal Prosecution Service and 27 Public Prosecutor's Offices. There is no data concerning offences committed in the judicial district of Eupen. Offences attributed to minors are not taken into account.

The table is presented as it was communicated to us, maintaining a number of reasons for prosecution which do not fall under the definition of 'trafficking in human beings', such as the 'simple' exploitation of begging (facts 29C, falling under Article 433*ter* of the Criminal Code (CC) and which therefore do not appear to be trafficking in human beings) unlike facts 29E, which fall under the scope of Article 433*quinqüies* § 1,2° of the Criminal Code, in which trafficking in human beings is put in place with the aim of exploiting begging. The same goes for slum landlords (55C). Finally, let us mention once again that illegal residence and 'simple' assistance to enter the country or to reside there illegally (55A) do not fall under the scope of the definition of the trafficking in or smuggling of human beings either.

The units used here are numbers of criminal cases. Each case may concern one or several persons and one or more offences. The cases included in the following tables have been selected on the basis of charges of 'trafficking in human beings', whether they are the main charges or secondary charges. Lastly, reproducing the figures for 2008 and 2009 allows initial comparisons to be made.

Table 1: Number of cases in trafficking/smuggling of human beings referred to Public Prosecutor's Offices during the years 2008 and 2009, by charges and by jurisdiction

	ANTWERP				BRUSSELS				GHENT				LIEGE				MONS				FEDERAL PUBLIC PROSECUTOR'S OFFICE				TOTAL		TOTAL			
	2008		2009		2008		2009		2008		2009		2008		2009		2008		2009		2008		2009		2008		2009			
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%		
29C: Exploitation of begging (Art. 433 <i>ter</i> CC)	1	0.2	.	.	24	1.11	14	0.8	1	0.14	2	0.34	.	.	1	0.11	.	.	1	0.92	26	0.61	18	0.47		
29E: Trafficking in human beings - Exploitation of begging (Art. 433 <i>quinquies</i> §1, 2° CC)	2	0.41	1	0.22	6	0.28	8	0.46	3	0.41	1	0.17	1	0.16	12	0.29	10	0.26
37L: Trafficking in human beings - Sexual exploitation (Art. 433 <i>quinquies</i> §1, 1°)	58	11.8	53	11.7	27	1.25	81	3.48	18	2.49	24	4.03	22	3.47	42	4.82	13	6.16	8	7.34	3	2.5	1	12.5	141	3.33	189	4.99		
55A: Law 15.12.80 on Aliens, illegal residence and trafficking in human beings	301	61.4	263	58.1	1,969	91	1,537	87.7	241	33.3	280	43.6	564	89	785	90	162	76.8	59	54.1	2	16.7	7	87.5	3,239	76.5	2,911	76.8		
55C: Slum landlords (Art. 433 <i>decies</i> , 433 <i>undecies</i> , 433 <i>duodecies</i> CC)	56	11.4	56	12.4	23	1.06	0	0.46	21	2.9	22	3.69	7	1.1	11	1.26	11	5.21	9	8.26	1	8.33	.	.	119	2.81	106	2.8		
55D: Trafficking in human beings - Exploitation through employment (Art.433 <i>quinquies</i> §1, 3 CP)	53	10.8	43	9.49	37	1.71	41	2.34	69	9.54	42	7.05	22	3.47	18	2.06	20	9.48	29	26.6	1	8.33	.	.	202	4.77	173	4.56		
55E: Trafficking in human beings - Illicit removal of organs Art.433 <i>quinquies</i> §1, 5° CC)	1	0.05	1	0.11	1	0.02	1	0.03
55F: Trafficking in human beings - Coercion to commit offences (Art. 433 <i>quinquies</i> §1,5 CC)	8	1.63	3	0.66	3	0.23	3	0.17	4	0.53	3	0.5	11	1.74	9	1.03	2	0.95	2	1.83	1	8.33	.	.	31	0.73	20	0.53		
55G: Trafficking in human beings (Art. 77 <i>bis</i> , Art. 77 <i>ter</i> , Art. 77 <i>quater</i> , Art. 77 <i>quinquies</i> Act of 15 December 2008)	11	2.24	34	7.51	71	3.28	80	4.57	366	50.6	242	40.6	7	1.1	5	0.57	3	1.42	1	0.92	4	33.3	.	.	462	10.9	362	9.55		
TOTAL	490	100	453	100	2,163	100	1,752	100	723	100	596	100	634	100	872	100	211	100	109	100	12	100	8	100	4,233	100	3,790	100		

Source: Database of the Board of Attorneys-General – Statistical analysis

3. Data from the Aliens Office

The *MINTEH* Office (Minors/Victims of Trafficking in human beings) is composed of two units, each responsible for a specific area. One unit analyses and deals with cases of unaccompanied foreign minors (*MENA*), that do not apply for asylum (on the basis of the Circular of 15 September 2005 on the residence of unaccompanied foreign minors). The other unit analyses and deals with cases of under aged and adult victims of trafficking in human beings. The legal grounds are to be found in Articles 61/2 to 61/5 of the Law on Aliens of 15 December 1980¹³⁷.

In 2006, the first cases of victims of labour exploitation came to light. 114 cases out of the 178 in **2007** were related to labour exploitation, and 9 concerned smuggling of human beings. The relative increase in the number of cases of labour exploitation came out into the open in **2008**, with, at the same time, a remarkable upsurge in cases of smuggling of human beings, for which the number of cases rose dramatically from 9 to 21. This is related to the new definition of smuggling of human beings and the aggravating circumstances that can lead to protective status.

¹³⁷ Chapter IV, Aliens who are victims of offences of trafficking in human beings within the meaning of Article 433 *quinquies* of the Criminal Code, or victims of the offence of smuggling in human beings within the meaning of Article 77 *bis* under the circumstances described in Article 77 *quater*, 1°, with regard only to unaccompanied minors, up to 5°, and those who cooperate with the authorities.

In 2009, there was a general reduction in the number of people actually obtaining protection status at any stage of the process. Sectors in which exploitation took place and ages are listed.

Table 2: Sectors in which exploitation took place and age ranges

	Misc.	Begging	Labour	Smuggling	Prostitution	Total
<18	1		5	5	1	12
18-25	2		8	7	16	33
26-30			15	3	14	32
+30	1		31	2	13	47
Total	4		59	17	44	124

Regarding under aged victims, we would like to point out that the majority of the victims of labour exploitation are included in these tables as children of adult victims of trafficking in human beings for the purposes of labour exploitation. They have not received protective status on the basis of a personal situation of exploitation. The under aged victims of smuggling in human beings are almost always unaccompanied and are therefore entitled to victim status on the basis of their personal situation. They are mainly young boys from Iraq or Afghanistan.

4. Data from specialised victim centres

These figures can also be found in the annual reports of the centres themselves. The drafting of this report was completed on 30 June 2010. We also present the figures for new assistance schemes initiated during the first half of 2010.

Table 3: Assistance schemes per specialised centre from 2006 to 2009 and new assistance schemes initiated during the first half of 2010

	2006	2007	2008	2009	1st semester 2010
Pag-Asa (Brussels)					
Additional assistance	68	74	65	50	22
Reports where no assistance has been initiated			304	312	
Payoke (Antwerp)					
Additional assistance	60	52	85	63	31
Reports where no assistance has been initiated			128	143	
Sürya (Liège)					
Additional assistance	44	53	46	45	27
Reports where no assistance has been initiated			146	129	
Total 3 centres					
Additional assistance	172	179	196	158	80
Reports where no assistance has been initiated			578	584	

For new assistance schemes initiated in 2009, we can present the following figures:

Table 4: New assistance schemes initiated in specialised centres in 2009

	PAG-ASA		Payoke		Sürya		Total	
	'08	'09	'08'	'09	'08	'09	'08	'09
Vict.THB for the purposes of sexual exploitation	9	13	29	39	8	4	46	56
Vict.THB for the purposes of labour exploitation	40	25	50	15	34	36	124	76
Vict.THB for the purposes of begging	2	0	0	0	0	0	2	0
Vict.THB comprising coercion to commit offences	0	0	0	0	0	0	0	0
Vict. Of smuggling with aggravating circumstances	14	10	6	9	4	5	24	24
Others		2						2
Total	65	50	85	63	46	45	196	158

5. Judicial data

Here we give a selection of the figures that the Criminal Policy Department has made available to the Centre. These are criminal sentences for trafficking in and smuggling of human beings. Some sentences based on the new Article 433*quinquies* (the Law of 2005) may have been left out of these figures, thus influencing the figures for 2006, 2007 and 2008. It was only from 2010 that an adapted nomenclature was rendered operational in order to maintain data on trafficking in human beings in criminal records. In our opinion, it is nevertheless important that these figures on sentences also be available in this annual report on trafficking in and smuggling of human beings.

The table that we present this year cannot be compared with the table published last year. For the moment, information relating to criminal cases is updated regularly and in the end leads to statistical amendments. This year, the number of criminal convictions is included in the total column (188 for 2008), which enables us to observe which sentences were passed in the context of these 188 criminal convictions (181 prison sentences, 160 fines, 62 seizures, etc). The current table therefore better reflects the reality of the number of convictions, including the individual sentences forming a part thereof.

Table 5: Sentences passed

Decision	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Prison sentence	199	167	220	249	305	362	332	289	268	212	181
<5 years	175	154	200	209	257	302	271	252	238	169	157
From 5 to less than 10 years	23	12	21	40	49	62	66	39	34	43	24
10 years or more	0	0	0	0	0	0	0	0	0	0	0
Other sentences											
Fine	179	151	202	234	273	335	301	262	248	193	160
Community service	0	0	0	0	1	3	4	8	2	10	2
Specific confiscation	0	0	0	19	112	111	123	108	117	59	62
Loss of certain rights	175	137	166	180	205	262	269	214	209	163	151
Removal of title, grade or position	0	0	0	0	0	0	1	0	0	1	0
Banned from exercising a certain profession/activity	16	23	3	15	26	25	7	12	2	3	4
Placed at the Government's disposal	0	0	0	1	0	1	1	1	2	1	1
Total	202	171	226	258	306	384	346	303	282	226	188

Chapter 4: Overview of case law: 2009 – early 2010

In this annual report, the Centre has decided to present a number of significant rulings handed down in 2009 and early 2010. The European Court of Human Rights examined for the first time a case of trafficking in human beings for the purposes of sexual exploitation (section 1). We will then present several decisions handed down by the Belgian courts, both on trafficking in human beings for the purposes of sexual exploitation (section 2) and on labour exploitation (section 3).

1. European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Judgment of 7 January 2010¹³⁸

In its judgment, the European Court of Human Rights explicitly recognises, for the first time, the application of Article 4 of the European Convention on Human Rights on trafficking in human beings. This Article prohibits slavery, servitude, forced labour or compulsory labour. In its judgment, the Court updates its case law regarding the interpretation of Article 4, making States responsible for effective, positive obligations in terms of trafficking in human beings.

This case concerns the suspicious death of a young Russian woman who was working by virtue of an artist's visa in a Cypriot cabaret. She died in strange circumstances that have not been elucidated, after having fallen from the window of a private residence in Cyprus. The young woman had arrived in Cyprus in March 2001 with an 'artist's' visa. She started working there a few days later as an artist in a cabaret, and then left her job and accommodation three days later, leaving a note indicating that she was going back to Russia. When he found her in a discotheque around ten days later, the manager of the cabaret where she had been working took her to the police station, demanding that she be declared an illegal immigrant and imprisoned, apparently with a view to get her deported, in order that he might replace her in his establishment. After having consulted its database, the police concluded that the young woman's papers seemed to be in order and refused to detain her. The police asked the cabaret manager to take the young woman away from the police station and to come back with her later in the morning so as to carry out other investigations regarding her immigrant status. The cabaret manager then left with the young woman, and took her to the apartment of another of his employees, a bedroom on the sixth floor of a residential building. He stayed in this flat. A few days later, the young woman was found dead in the street in front of the building.

In its judgment, the Court ruled that States should act effectively, taking measures at three levels: preventing trafficking, protecting victims and punishing traffickers. It

¹³⁸ Application No 25965/04. The text of the judgment is available on the Court website at this link: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>

condemned Cyprus and Russia in particular for violating obligations resulting from Article 4 thus interpreted.

The Court concluded that Cyprus did not comply with the positive obligations by virtue of this provision in two ways. First, because the country had not put in place legal and administrative measures adapted to combating trafficking, based on the regime in force for artist's visas. Secondly, because the police did not take any practical measures to protect the young woman, whereas the circumstances could have legitimately led them to suspect that she might be the victim of trafficking in human beings. The Court considered that there was also a violation of Article 4 by Russia, since it did not seek to find out when and where the young woman had been recruited and in particular take measures to determine the identity of the recruiters or means used by them. The court also concluded that there was a violation of Article 2 (Right to life) by Cyprus since it did not carry out an effective enquiry, as well as a violation of Article 5 (Right to liberty and security) by Cyprus.

2. Decisions handed down regarding sexual exploitation

2.1. Hasselt Criminal Court, 19 March 2010¹³⁹

A young Russian woman was recruited in Kyrgyzstan by a compatriot and was promised work as an au pair girl or as a domestic worker in the Netherlands. Once she arrived in the Netherlands (August 2007), her papers were confiscated by the same man and she was obliged to work as a prostitute in several locations. She was then placed in a private club in Belgium, the Belgian landlord of which is the only defendant in this case. She only had a travel document, and the accused knew that she was being employed illegally. She was made to work seven days a week and to give half of her earnings to the defendant, as well as EUR 250 per week to the Russian man who had placed her there.

The accused was convicted of trafficking in human beings for the purposes of sexual exploitation (Article 433*quinquies*, §1, 1° of the Criminal Code), for employing prostitutes and exploiting prostitution, and the keeping of a disorderly house or brothel (Article 380 of the Criminal Code).

As regards the charge of trafficking, the court considered that the defendant did indeed deal with the reception and accommodation of the young prostitute in order to exploit her as a prostitute.

The court established aggravating circumstances – the abuse of a vulnerable situation and the use of violence, threats or coercion. The young woman was indeed in a vulnerable situation and the accused took advantage of this. She was not present in the bar on a voluntary basis – she had been forced there by a Russian pimp and by the accused. Her freedom was also limited – she only had a travel document, and the accused suspected

¹³⁹ Hasselt Criminal Court, 19 March 2010, 18th Chamber. Since the defendant lodged an appeal, this case is to be heard again by Antwerp Court of Appeal (end of September 2010).

from the outset that the document was not in order. Her other identity papers had been confiscated from her. Furthermore, the accused had beaten the woman on several occasions.

However, the court did not uphold the aggravating circumstances of habitual activity and criminal organisation.

The young woman requested that an expert medical witness be appointed in order to establish the injuries suffered. This request was refused by the court, and it only took into account the facts and practical information relating to the victim. The victim was granted EUR 2,000 on a provisory basis, and the court ordered that the case be adjourned until 15 October 2010 in order that the damages under civil action could be specified.

2.2. Liège Court of Appeal, 28 June 2010

In a case described in our last report¹⁴⁰, the *Liège Criminal Court*, in judgments of 18 November 2009 and 3 February 2010¹⁴¹, sentenced to serious convictions (between 4 and 8 years of imprisonment) a number of defendants who had exploited the prostitution of two young Belgian women and had raped them. In this case, the court did not, however, rule on the basis of Article 433*quinquies* of the Criminal Code but on the grounds of Article 380 of the same code which deals with the recruitment of prostitutes and exploitation of prostitution. The court highlighted the consistency of the victims' statements and the coherency of their accounts, which was not dramatised. Apart from the charges of rape, it also upheld the charges described in Article 380 of the Criminal Code. The court underlined in this respect the state of terror in which the young women were living. They were beaten and raped by the defendants or their associates, were threatened, were in a precarious situation, without means or accommodation and almost all of the money made through the prostitution was stolen by one of the accused.

In an Order of 28 June 2010, the Liège Court of Appeal (8th Chamber) nevertheless set aside these rulings due to procedural issues. It did, however, confirm the conviction of some of the defendants. It also acquitted other defendants who had been convicted at first instance¹⁴².

2.3. Antwerp Criminal Court, 21 December 2009

Here we report a decision handed down by the *Antwerp Criminal Court on 21 December 2009*¹⁴³, which convicted of trafficking in human beings the pimps of young women who

¹⁴⁰ Centre, 2008 Annual Report (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', Chapter 2, Section B 1.3, Flexible pimps with Belgian victims, p. 36-38.

¹⁴¹ The judgment of 18 November 2009 was returned partly in the presence of all parties and partly by default. The judgment of 3 February 2010 was handed down in appeal following an application lodged by the two defendants convicted in their absence in the first judgment.

¹⁴² One defendant has lodged an appeal against the order with the Court of Cassation.

¹⁴³ Antwerp Criminal Court, 21 December 2009, Chamber 4C.

were obliged to present themselves as tenants of the display windows where they had to prostitute themselves¹⁴⁴. The defendants had recruited them in Romania under false pretences (fruit-picking work or work in a boarding-house), then forced them to prostitute themselves.

2.4. Ghent Criminal Court, 9 November 2009

Finally, let us cite a decision of the *Ghent Criminal Court on 9 November 2009*¹⁴⁵ in which a Bulgarian victim with a slight mental handicap was brought to Belgium under false pretences. Her mobile phone had been confiscated, and she had to prostitute herself against her will to reimburse the so-called travel costs, sometimes being drugged, and under threat of physical violence.

3. Decisions handed down regarding labour exploitation

Concerning the trafficking in human beings for the purposes of exploitation through employment, we see that some courts, in the absence of elements attesting to a form of deprivation of liberty, do not uphold charges of trafficking in human beings. Other courts, however, do not consider this point as being relevant.

3.1. Champagne bars/cafés

The *Criminal Court of Tongeren* dealt with two cases, one concerning a **champagne bar**, the other a **café**. Both cases involved young women from Poland employed illegally. The court returned two completely opposed judgments, in one case upholding charges of trafficking in human beings and in the other case not.

In the champagne bar case, the court, in its *judgment of 26 November 2009*¹⁴⁶, did not uphold charges of trafficking in human beings. On the one hand it considered that no proof had been provided of organised recruitment in Poland. On the other, it ruled that there had been no demonstration that any kind of forced labour had been involved. The young women all declared that they were able to choose to work in the bar and were not deprived of their freedom to act. They received a percentage on drinks (EUR 0.20 per drink that they got clients to consume). The court considered that the occupation and low pay of these young women constituted offences under social criminal law but that it had not been demonstrated with certitude that the defendants had the specific intention of committing the offence of trafficking in human beings. This decision was however considerably reformulated by the *Antwerp Court of Appeal* in its *order of 24 June*

¹⁴⁴ This is a strategy to circumvent the law on trafficking in human beings – behaving as if the victims were prostituting themselves independently, see Chapter 2 (Phenomenon analysis, Sexual Exploitation, Learning organisations: structures).

¹⁴⁵ Ghent Criminal Court, 9 November 2009, 19th Chamber. This decision was confirmed in principle by Ghent Court of Appeal in a ruling of 18 May 2010.

¹⁴⁶ Tongeren Criminal Court, 26 November 2009, 9th Chamber.

2010¹⁴⁷. The court ruled that it was indeed a case of trafficking in human beings, since the accused had dealt with the victims' accommodation and had put them to work in their champagne bar. Their remuneration mainly consisted of the accommodation that was given to them but which was unfit for habitation and, therefore inhumane.

In another case, concerning which judgment was handed down on *18 March 2010*¹⁴⁸, the court convicted two of the three defendants for trafficking in human beings. They had provided accommodation for young Romanian and Polish women before putting them to work in their café. This time it considered that the working conditions were contrary to human dignity – the young women earned EUR 3 to 4 per hour and had to be available at all times for clients or to do cleaning. A victim revealed that she had been promised a job in a cafeteria during the day, whereas in reality she found herself in a shady café where she had to work mainly at night and had to persuade male clients to have drinks. In addition, they were in a precarious administrative situation since they were living illegally in Belgium. Finally, the court held that the following was not relevant: the fact that they were housed (in inhumane conditions) and the fact that they had a certain freedom (they had mobile phones, could come and go as they wished and could decide freely to leave the café for good).

3.2. Domestic workers

Another case, already discussed last year in our case law review¹⁴⁹, concerns a case of **domestic work**. An Antwerp lawyer is accused of having used a young Moroccan minor as a domestic slave and having abused her sexually. The *Antwerp Court of Appeal*, in orders of *25 March*¹⁵⁰ and of *20 May 2010*¹⁵¹, confirmed the judgment rendered at first instance¹⁵². It also increased the prison sentence passed on the main defendant from 5 to 8 years. It confirmed the charges that the young victim was raped (with the subtle difference that it had not been established with certitude that she was less than 14 years old but that she was in any case under 16 years old). The court added that the contradictions in the young victim's statements did not diminish her credibility in any way, all the more so since they did not deal with the essence of the facts and were completely understandable in view of the trauma suffered by the victim.

The court considered that it was indeed a case of employment under conditions that were contrary to human dignity: the young victim had to stay at the defendant's home to satisfy his sexual desires, and she had to do the housework for the defendant and his mother,

¹⁴⁷ Antwerp, 24 June 2010, 14th Chamber.

¹⁴⁸ Tongeren Criminal Court, 18 March 2010, 9th Chamber. Since one of the defendants lodged an appeal, the case is to be re-examined by Antwerp Court of Appeal (September 2010).

¹⁴⁹ Centre, 2008 Annual Report on Trafficking in Human Beings, op. cit., p. 69.

¹⁵⁰ Antwerp, 25 March 2010, 14th Chamber (the main defendant and his mother failed to appear and were judged by default, the other defendants appeared).

¹⁵¹ Antwerp, 20 May 2010, 14th Chamber (since the main defendant and his mother lodged an appeal, this time the order was handed down in the presence of both parties). The main defendant has nevertheless lodged an appeal with the Court of Cassation.

¹⁵² Antwerp Criminal Court, 26 January 2009, Chamber 4C.

without being paid. Furthermore she had been beaten both by the defendant and by his mother. In addition, the defendant had led her to believe that she would have a golden future as his wife whereas in fact he never had the slightest intention of marrying her.

3.3. Construction/renovation

In the **construction/renovation** sector, a number of interesting decisions should be mentioned.

3.3.1. *Charleroi Criminal Court, 23 April 2010, 7th Chamber*¹⁵³

Two defendants of Turkish origin were prosecuted in particular for trafficking in human beings and various offences relating to social criminal law, the first defendant having also been prosecuted on slum landlord charges. They were accused of having employed illegally and in undignified conditions several Bulgarians to renovate their properties. The Bulgarians did not have valid residence permits.

The court upheld these charges. As regards the slum landlord offence, the court considered that the housing conditions were completely contrary to human dignity and that the accommodation constituted payment for the various work carried out for the first defendant. The latter thus made an unfair profit by making available his properties to the victims, since he saved the money that the work would have cost him if he had had it carried out under normal circumstances – the work was done either free of charge or at a ridiculously low price.

Regarding trafficking, the court considered that the employment (large-scale renovation work) had been carried out under conditions that were contrary to human dignity (10 hours a day, six days a week, for an hourly salary of just under EUR 1 per hour). Furthermore, additional work was given to the victims all the time and they were under pressure to increase their working speed without rests or breaks. The court upheld the aggravating circumstance of abuse of a vulnerable situation: the workers did not have valid residence permits at the time of the facts, and the defendant speculated upon the fact that the income that the victims would have been able to generate in their country of origin would have been equal to or even less than the disgraceful wage that he paid them. Furthermore, he took advantage of the circumstance that the victims could not work legally and had no other choice but to work under these conditions in order to make a living.

In addition the workers were also working in the context of an employment contract, insofar as a relation of subordination between the defendant and the workers existed at the time of the facts. A very real authority was exercised over the workers.

¹⁵³ The Public Prosecutor's Office lodged an appeal against the decision handed down against one defendant. See also above, Chapter 2 (Phenomenon analysis) and below, Part 2, Chapter 1.

3.3.2. Charleroi Criminal Court, 19 March 2010, 7th Chamber¹⁵⁴

In this case, two defendants employed undeclared foreign labourers in order to carry out ceiling work. The defendants stated that they had used a subcontracting company which in reality did not exist¹⁵⁵, and raised some workers to the status of shareholder in order to avoid application of the actual worker status. In fact their status was that of bogus self-employed workers¹⁵⁶.

The court convicted the defendants for all of the charges brought against them. Specifically, they were prosecuted on the grounds of the former Article 77*bis* of the Law of 15 December 1980 and Article 433*quinqüies* of the Criminal Code.

Regarding charges of trafficking, the court considered that the fact that the defendants had revised their initial financial commitments according to the vagaries of the sites constituted a fraudulent manoeuvre as described in the first paragraph of the former Article 77*bis* of the Law of 15 December 1980. In addition, the Court considered that a situation where working hours were remunerated below the official rate and where problems encountered in performing work were sanctioned by non-payment was a sign of abuse of the workers' precarious situation.

3.3.3. Liège Criminal Court, 29 June 2009, 14th Chamber¹⁵⁷

Three Turkish defendants were prosecuted for trafficking in human beings concerning several workers of Togolese and Bulgarian origin. In a 'slum landlord'¹⁵⁸ investigation relating to the two first defendants, searches were made of different buildings belonging to them. Persons in illegal or precarious situations were found there. They declared that they had carried out various building, renovation or painting work for the defendants. The Togolese worker declared that he had been coerced to do this work because he had been threatened with being thrown out of his accommodation by one of the defendants if he did not do it.

In addition to the charges relating to social criminal law, the court also upheld charges of trafficking in human beings. The court took into consideration both the former Article 77*bis* of the Law of 15 December 1980 and Article 433*quinqüies* of the Criminal Code: the tenants were abroad without family or friends, without papers and in an illegal and precarious situation as regards residence status – it considered that they had no other choice but to carry out the litigious work for the defendants under the conditions that were imposed upon them. Abuse of their vulnerable situation had therefore taken place. Furthermore, the court underlined the fact that simply being a victim of offences against labour legislation and social security legislation is not sufficient to conclude that

¹⁵⁴ Both defendants lodged appeal only against the civil provisions of this judgment.

¹⁵⁵ For further details of the fraudulent structures, see Part 2, Chapters 1 & 2.

¹⁵⁶ Regarding bogus self-employed workers, see below, Part 2, Chapter 1, section 2.

¹⁵⁷ An appeal has been lodged in this case.

¹⁵⁸ See also below, Part 2, Chapter 2 on good and bad practices, and the final conclusions of this report.

trafficking in human beings has taken place. The court nevertheless considered that the working conditions were contrary to human dignity with regard to the hours worked and the almost total lack of remuneration.

3.3.4. *Brussels Criminal Court*

The *Brussels Criminal Court* ruling on two cases of Brazilian men exploited on construction sites considered, in one of the two cases, that trafficking in human beings had taken place¹⁵⁹.

In a *judgment of 16 February 2010*¹⁶⁰, handed down almost entirely by default, the court acquitted the only defendant prosecuted for trafficking in human beings in this case. It was a major case encompassing several large construction/renovation sites in which many Brazilians were involved. Several defendants were prosecuted for multiple offences: criminal organisation, forgery and making use of forged documents with intent to defraud, employment of foreign labourers, and money laundering. A second component related only to another defendant, prosecuted for trafficking in human beings. He was accused of having put several Brazilians to work in conditions that were contrary to human dignity. The court acquitted him of this charge. It considered that the fact of not having legal residence status, not having been paid (in full), having had to purchase one's own tools and having worked seven days a week for almost 10 hours a day was of such a nature as to establish abuse but not conditions contrary to human dignity. Indeed there were no indications of the working climate and environment.

Notwithstanding, in a *judgment of 22 March 2010*¹⁶¹, the court partially upheld this charge in another case against Portuguese defendants who were employing Brazilian workers for construction work¹⁶². Detailed statements, which were consistent and tallied, enabled it to be established that they were underpaid and paid extremely irregularly, that they were obliged to work at a furious pace, that they were subjected to humiliations, insults and threats and that safety was not ensured on sites where they were working.

3.4. **HORECA: debt bondage**

One case of **debt bondage** in the **HORECA** sector also gave rise to a conviction by the Liège Criminal Court in a *judgment of 30 November 2009*¹⁶³.

The court upheld the charges described in Article 433*quinquies* and the offence of trafficking in human beings against a defendant exploiting a compatriot in his restaurant.

¹⁵⁹ See also above Chapter 2, Phenomenon analysis.

¹⁶⁰ Brussels Criminal Court, 16 February 2010.

¹⁶¹ Brussels Criminal Court, 22 March 2010. One defendant has lodged an appeal. The case is to be re-examined by the court in October 2010.

¹⁶² See also above, Chapter 2, Phenomenon analysis.

¹⁶³ Liège Criminal Court, 30 November 2009, 14th Chamber. See also below, Part 2, Chapter 1 (the section on aliens without residence permits).

In a detailed summing up, the court took account of several elements to conclude that employment had taken place in conditions that were contrary to human dignity. The victim had to work in the defendant's restaurant to pay back the EUR 20,000 that she had been obliged to pay in order to emigrate. The defendant was aware of the illegal residence status of the worker. She received a salary that was significantly lower than the minimum monthly average guaranteed wage and the applicable minimum wage laid down by the Equality Commission (she received approximately EUR 4 to 4.40 per hour). She worked around 60 hours a week, 10 hours a day, and she only had one day off per week. She did not have any other days off during the seven months of her employment. She did not have any social security protection, her freedom was limited, and she was housed by the defendant in rudimentary conditions. The court also held that the fact that the defendant had offered board and lodgings was irrelevant. Similarly, the fact that the living conditions of the worker were better than in China did not change the fact that the defendant had taken advantage of the worker's situation in Belgium. Finally, the court also held that the fact that the worker declared that she considered herself well treated in comparison to other places where she had worked was irrelevant, particularly since victims, in some cases, find it difficult to recognise themselves as such.

On the basis of the same evidence, the court considered that the charge of smuggling in human beings was also well founded. The defendant did indeed contribute to the illegal residence status of the worker and secured a pecuniary benefit from her illegal employment.

3.5. Phone shop

The charge of trafficking in human beings was not upheld in a case concerning a **phone shop** heard by the Liège Criminal Court on **4 May 2009**¹⁶⁴.

The defendant, from Cameroon, employed an Algerian worker in his phone shop. He was acquitted of the charge described in Article 433*quinquies*. Only charges under social criminal law were upheld against him. The Court considered that the evidence in the case was not sufficient to establish an intention to employ workers in conditions contrary to human dignity. Whilst labour exploitation of the worker was demonstrated by a remuneration that was significantly under the legal minimum, when the worker was taken on, he was living elsewhere and it was on his request that he was housed in the mezzanine above the shop. He had all the keys of the shop and could come and go as he wished. He had days off and when he stayed in the shop, it was on his own initiative in order to learn the job while the manager was present. Hence, in the absence of information concerning working conditions and environment, and in view of the uncertainty as to the number of hours worked per day (apart from the fact that it was between 20 and 40 hours a week), the Court considered that the charge of trafficking had not been established.

¹⁶⁴ Liège Criminal Court, 4 May 2009, 14th Chamber (an appeal has been lodged).

3.6. HORECA: bogus self-employed workers

Finally, the charge of trafficking was not upheld either in a judgment returned on **16 November 2009** by the *Ghent Criminal Court*¹⁶⁵ in a case concerning the illegal employment of several Chinese nationals in a **restaurant**. This case is interesting in several ways. First, because it concerns a situation of bogus self-employed workers¹⁶⁶. Secondly because the interpretation made by the court of the concept of trafficking in human beings for the purposes of labour exploitation through employment is particularly limited, reducing it to forced labour.

In this case, two Dutch nationals of Chinese origin were prosecuted for having employed some Chinese nationals in their restaurant illegally, including one minor and some students. They were also prosecuted for trafficking in human beings, smuggling and aiding and abetting illegal immigration with regard to the worker who was a minor.

In order to contest the charge of illegal employment of one of the Chinese workers (who did not have a residence permit and for whom a DIMONA [declaration of employment] had not been made¹⁶⁷) the defendants held that the latter was a shareholder and was working in the business as a self-employed worker. The court referred to Court of Cassation case law on this point¹⁶⁸: the nature of the working relationship is determined by the wishes of the parties, which binds the judge unless the execution of the undertaking in practice reveals the contrary (facts that are incompatible with the agreement). Whereas, in this case, the investigation was very limited concerning relations between the parties. No witness was heard regarding how the interested parties behaved with respect to each other. The only evidence in the case was the fact that the worker was in the kitchen at the time of the inspection and that he himself decided when he would work. In addition, he paid for his shares (20 %, purchased at EUR 2,000) and was affiliated to a social security organisation for self-employed workers. The court therefore considered that these items did not suffice to enable it to call into question the description chosen by the parties.¹⁶⁹ The court thus ruled that the worker had to be considered as self-employed at the time of the offence.

In a detailed summing up, the court did not uphold the charge of trafficking. Whilst the defendants did indeed provide accommodation and take in the victim, the court considered that it was not with the aim of employing the victim in conditions that were contrary to human dignity. In this regard, referring in particular to international definitions and Parliamentary positions, it considered that this term meant forced labour, such as slavery, servitude or similar situations. In fact, it considered that there was no coercion, abuse of power or deception in the employment of the young minor, amongst other things on the basis of the following: the defendants made efforts to obtain a

¹⁶⁵ Ghent Criminal Court, 16 November 2009, 19th Chamber. This ruling is final.

¹⁶⁶ On bogus self-employed workers see below, Part 2, Chapter 1, section 2.

¹⁶⁷ For further information on the conditions for the employment of aliens, see below, Part 2.

¹⁶⁸ For further details, see the section of this report on bogus self-employed workers (Part 2, Chapter 1, section 2).

¹⁶⁹ For further details on reclassification in cases of bogus self-employed workers, see below, Part 2, Chapter 1, section 2.

residence permit and employment papers (an apprenticeship contract) for the worker, her employment was declared to the authorities, she was taking language lessons and was housed in a modern room above the restaurant. Finally, she helped in the restaurant of her own volition. Moreover, it considered that the fact that the victim's passport had been retained by the defendants was not relevant, given that she had been able to use it when making a trip to Spain.

As for the charges of smuggling and aiding and abetting illegal immigration, the defendants were also acquitted – the young girl (who had been trafficked from China to Spain) arrived in Belgium from Spain with Spanish identity papers and there is no information subsequently about her residence status. It was therefore not proven that the defendants aided and abetted her illegal stay in Belgium.

Chapter 5: Good and bad practices. Provisional conclusions

1. Victims

1.1. Detecting and assisting victims: the need for vigilance concerning drug-dependent victims¹⁷⁰

In previous annual reports¹⁷¹, we have looked at the importance of and difficulties inherent in identifying, detecting and assisting victims of trafficking in human beings. In this chapter, we would like to draw attention to the vulnerable group represented by victims of trafficking in human beings that are dependent on drugs. This is an atypical group of victims in trafficking in human beings, involved in a precarious relationship of dependence¹⁷². The danger rests in the fact that they are initially perceived and treated by front-line services purely and simply as drug addicts. There are also specific requirements as regards receiving and assisting this type of victim, requirements that are not always easy to satisfy in specialised reception centres for victims of trafficking in human beings. A flexible approach is essential in these cases. In addition, these victims often have no interest in residence permits, because they are Belgian or because they are staying in Belgium legally. Nevertheless, they are victims of trafficking in human beings with behavioural problems that require urgent psycho-medical assistance and legal aid that is adapted to trafficking in human beings. The latter is indispensable in order for their rights to compensation to be upheld during court cases.

1.2. International victim coordination: detection and assistance abroad

In previous annual reports, we have already highlighted the value of victim status at a European level in order to regulate the reception and assistance of victims of offences of trafficking in human beings that are punishable under criminal law and which have taken place on EU territory.¹⁷³

Since then, latterly we have observed situations in border areas where victims are intercepted in neighbouring countries whereas the offences of trafficking in human

¹⁷⁰ See Chapter 2, Phenomenon analysis: Victims' profiles: Drug-dependent victims.

¹⁷¹ See, inter alia, the Centre's 2008 Annual Report, (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p. 108. This publication can also be consulted at www.diversite.be ('Publications' section).

¹⁷² See Chapter 2, Phenomenon analysis: the case of Turkish pimps and drug traffickers.

¹⁷³ Centre, 2008 Annual Report, (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', Recommendations, pp. 108-115, and 2007 Annual Report, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', Recommendations. Can be consulted at: http://www.diversite.be/?action=publicatie_detail&id=108&thema=5

beings have taken place in Belgium. In the past, these cases came to light rather haphazardly when one of the centres specialised in assisting victims of trafficking in human beings or the Centre itself was informed that in a case of trafficking in human beings, another victim had been intercepted in the Netherlands and had been detained there in a detention and deportation centre. The Aliens Office then intervened positively in cases through its immigration officer, by allowing the victim to benefit from Belgian victim status related to trafficking in human beings.

The problem is that such victims were discovered by chance and there is no structural approach in this regard. It is likely that many other victims in the same situation are never detected. It is essential that international agreements be concluded to set up a warning system that operates through liaison officers in the police and/or immigration departments. In such situations, detention centres in neighbouring countries should inform their national contact point when this type of victim is identified, in order to activate the warning system.

Police departments offer an international coordination system for the reception of victims in a particularly high-risk situation. Similarly, in the event of a threat of infiltration or manipulation, transfer to a reception centre for victims from a neighbouring country may offer a solution. In border areas, this can certainly have a positive effect. Victims can thus be taken out of their exploitation environment and there is less fear of reprisals. This kind of proposal offers many advantages, but there are still obstacles to be overcome in terms of funding and responsibilities.

2. Police

2.1. Investigative capacity

In order to be able to combat professional criminal networks, the Centre considers that it is crucial to continue devoting sufficient investigative capacity to trafficking in human beings¹⁷⁴. The 2008-2011 national security plan makes trafficking in human beings a priority. This should also be sustained during implementation. Various police departments informed us that their investigative capacity in the field has been reduced for budgetary reasons.¹⁷⁵ In several places, time is lacking to carry out proactive investigations, since they require considerable work. They are, however, effective in

¹⁷⁴ Centre, 2008 Annual Report, (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, pp. 90-91 and p. 112. This publication can also be consulted at www.diversite.be (‘Publications’ section).

¹⁷⁵ See Part 2, Chapter 1 on a case of secondment, and Centre, 2008 Annual Report, (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, the case of Belgian defendants with Romanian victims (p. 38), and Recommendations. This publication can also be consulted at www.diversite.be (‘Publications’ section).

combating professional networks and necessary to combat hidden prostitution – a difficult issue to investigate.¹⁷⁶

2.2. Raising the awareness of the local police¹⁷⁷

In several urban local police departments, investigations relating to trafficking in human beings are no longer a priority since the police reform in which mayors were given authority over the local police. However, the local police are the eyes and ears of the federal police, which complains in several areas of a lack of basic information to enable it to open cases of trafficking in human beings. The success of an enquiry on trafficking in human beings is often measured by the degree of collaboration between the local police and the federal police. Fruitful, expedite and complementary collaboration, and an exchange of information between the local police and the federal police should certainly be considered as good practice. This is certainly the case when proactive investigations are carried out. Moreover, good practice also consists of enabling local police units to make enquiries into small cells of trafficking in human beings and, if possible, those of medium size. Large-scale criminal organisations should preferably be dealt with by the federal police.

The police has prepared a program aimed at better combining the work of the federal police departments and local police departments in the combat against trafficking in human beings (sexual and labour exploitation). This is of course an example of good practice, since it contributes to raising awareness by the local police and its hierarchy of the need to devote attention to trafficking in human beings. On the basis of an analysis of the priority given to sexual exploitation in the national security plan, the federal investigation units in the towns of Antwerp, Arlon, Bruges, Brussels, Dendermonde, Hasselt, Leuven and Liège have set up a local ‘trafficking in human beings – sexual exploitation’ network with specialised police officers from the local and federal police as well as inspectors from the Social Inspectorate in order to develop good practices and to better detect the potential victims of sexual exploitation.

2.3. Phone tapping

Phone tapping techniques may prove to be essential investigation techniques when building up a case (in addition to information that has already been gathered) to free victims from their situations.¹⁷⁸ This measure is often used in cases of trafficking in and smuggling of human beings. The police complains about the costs inherent to phone

¹⁷⁶ See Chapter 2, Phenomenon analysis, and OSCE, *Analysing the business model of trafficking in human beings to better prevent the crime*, 2010.

¹⁷⁷ See also Part 2, Chapter 2 (Good practices), and Centre, 2008 Annual Report, (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, pp. 90-91. This publication can also be consulted at www.diversite.be (‘Publications’ section).

¹⁷⁸ Centre, 2008 Annual Report, (FR/NL), ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 86. This publication can also be consulted at www.diversite.be (‘Publications’ section).

tapping, which are higher in Belgium than in neighbouring countries. Telecommunication firms thus supplement their income in Belgium at the cost of the Belgian State. Like the Commission for the modernisation of the legal system,¹⁷⁹ the Centre has requested that the new government negotiates lower tariffs for phone tapping.

¹⁷⁹ VRT (Flemish Radio and Television) news, 22 June 2010.

PART 2: TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSES OF LABOUR EXPLOITATION

Introduction

This year, the Centre has decided to devote a specific section of the report to trafficking in human beings for the purposes of labour exploitation (i.e. through employment). This form of exploitation has attracted a greater focus of attention in recent years.

As a reminder, in Belgium, trafficking in human beings for the purposes of labour exploitation through employment is defined in Article 433*quinquies*, §1, 3°, of the Criminal Code. Two component parts are required in order for this offence to be constituted:

- the first – material – consists of an act, or behaviour (the recruitment, transport, transfer, harbouring or receipt of persons, passing or transferring control over such persons);
- the second – moral – consists of the purpose of exploitation (to employ such persons in conditions that are incompatible with human dignity or to allow them to be thus employed).

Victims may be Belgians or aliens. We have already commented in a previous report on the choice made by the Belgian legislator to opt for a concept such as employment under conditions that are contrary to human dignity¹⁸⁰.

It is not uncommon to observe, both in cases where the Centre has brought civil action and during discussions with different stakeholders in the field, that traffickers have put in place various legal structures (licit, semi-licit or illicit) or made use of them to contribute to practices of trafficking in human beings. In particular, this is true for:

- the secondment of workers (especially in the context of sometimes complex subcontracting chains);
- bogus self-employed workers.

It is for this reason that the Centre has considered it useful to examine these different legal structures more closely this year. **In view of its aim, this part of the report will have a wider scope than trafficking in human beings.** However, we will limit our discussions to labour exploitation, even if the use of such structures also occurs in the context of sexual exploitation¹⁸¹. Domestic work will not be covered either, since this is exploitation in a purely private context. In this regard, we refer readers to Chapter 2

¹⁸⁰ See Centre, 2005 Annual Report, Trafficking in Human Beings ‘Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights’, November 2005, pp. 28-33. See also 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 et le trafic des êtres humains et contre les pratiques des marchands de sommeil’, *R.D.P.C.*, 2006, esp. pp. 371-374.

¹⁸¹ As regards sexual exploitation, see above, Part 1, Chapter 2, Phenomenon analysis.

(Phenomenon analysis) and Chapter 4 (Case law) in the first part of this report, and our previous annual report¹⁸².

First, we will deal with these legal structures and the context in which they may be used – the free movement of persons and the free provision of services in the European Union. We shall illustrate our arguments by using certain cases or court decisions concerning trafficking in human beings (Chapter I). We shall then define a certain number of good and bad practices in the fight against trafficking for the purposes of labour exploitation (Chapter II).

¹⁸² Centre, 2008 Annual Report, (FR/NL), Part 1, Chapter 2 (Phenomenon Analysis), section A 2.8, p. 29, and Chapter 4 (Overview of case law), section 2.5, pp. 69-70. See also Antwerp, 14th Chamber, 9 November 2005 (can be consulted at www.diversite.be).

Chapter 1: Trafficking in human beings for the purposes of labour exploitation – An image of complex legal structures

As we mentioned in the introduction, trafficking in human beings is sometimes based on legal structures or organisations, such as secondment or bogus self-employed worker status. These are wide-ranging and complex themes, which are the subject of many publications and prolific case law, in particular from the Court of Justice of the European Communities. Since the context of this report is nevertheless limited, we therefore refer readers who wish to know more about this to specialist publications in these fields¹⁸³.

Before dealing with the questions of bogus self-employed workers (section 2) and secondment (section 3), which meet specific regulations, we describe the conditions under which foreign persons may work in Belgium (section 1).

A brief table setting out the basic principles is presented below:

	Workers that are EU citizens	Workers that are nationals of third countries
Employees	<ul style="list-style-type: none"> • No work permit except Bulgarians and Romanians (permit D, temporary) • Declaration of registration with the municipality • Same working conditions and social security as Belgians. 	<ul style="list-style-type: none"> • In principle, permit D (authorisation to work). • Registration with the municipality & residence permit issued by the Aliens Office • Belgian working conditions and social security.
Self-employed workers	<ul style="list-style-type: none"> • No 'professional card'. • Declaration of registration with the municipality • Belgian social security & contributions in Belgium. 	<ul style="list-style-type: none"> • 'Professional card'. • Registration with the municipality & residence permit issued by the Aliens Office • Affiliation to a Belgian social security organisation.
Secondment (employees)	<ul style="list-style-type: none"> • No work permit. • Belgian employment legislation • Social security from the country of origin 	<ul style="list-style-type: none"> • No work permit (conditions). • Belgian employment legislation • Social security from the country of origin

¹⁸³ Regarding the free movement of persons see: J.Y. CARLIER, 'La condition des personnes dans l'Union européenne', Précis de la Faculté de droit de l'Université Catholique de Louvain, Brussels, Larcier, 2007, 485 pages; on bogus self-employed workers: Ch-E. CLESSE, 'L'assujettissement à la sécurité sociale des travailleurs salariés et indépendants ou aux frontières de la fausse indépendance', Vols. I and II, Brussels, Kluwer, 2005 ; G. WILLEMS, 'La fausse indépendance', Waterloo, Kluwer, 2010 and on secondment: Ch.-E. CLESSE, 'Travailleurs détachés et mis à disposition – droit belge, européen et international', Brussels, Larcier, 2008, 488 pages.

Secondment (self-employed workers)	<ul style="list-style-type: none"> • No 'professional card' • Social security from the country of origin 	
And what about illegal/non-compliant residence?		
	<ul style="list-style-type: none"> • No right to work for Romanians and Bulgarians • Employers are subject to criminal penalties or administrative fines • If working: Belgian labour and social security legislation applies. 	<ul style="list-style-type: none"> • No right to work • Employers are subject to criminal penalties or administrative fines • If working: Belgian labour and social security legislation applies.

1. Categories of workers concerned: conditions for legally exercising a professional activity in Belgium

The conditions for legally exercising a professional activity in Belgium differ according to the status of the migrant worker and the type of activity carried out. On the one hand the work may be as an employee or as a self-employed worker. On the other, the migrant worker may be a citizen of the European Union (hereafter: EU), from the European Economic Area (hereafter: EEA)¹⁸⁴ or from third countries. Furthermore, immigrant workers are often employed illegally. By illegal employment, we mean at the same time situations of illegal or non-compliant residence by the worker, their employment without the necessary authorisations and work permits and the employment of (foreign) workers in violation of social security legislation (not having been declared to the National Social Security Office (*Office national de la sécurité sociale, ONSS*), for example).

Overall, we can distinguish three categories:

- workers that are citizens of the European Union (section 1.1);
- workers that are from third countries (section 1.2);
- foreign workers residing illegally in the country (section 1.3).

¹⁸⁴ The European Economic Area (EEA) is an economic Union including thirty European States – the twenty-seven Member States of the European Union (EU) and 3 of the 4 Member States of the European Free Trade Association (EFTA) – Iceland, Norway and Liechtenstein. However, Switzerland, the fourth member, has signed new bilateral agreements with the EU, outside the scope of the EEA.

1.1. Workers that are citizens of the European Union: the free movement of persons and services¹⁸⁵

1.1.1. The free movement of persons¹⁸⁶

The free movement of persons is, in the same way as that of goods, services and capital, one of the cornerstones of the European Union. The free movement of persons comprises in particular the free movement of employees and self-employed workers¹⁸⁷. It gives each EU citizen the right to live and work in any country of the Union.

The principle in this field is that Union citizens may move freely without visas – for a period not exceeding three months – inside the Union. They can also obtain a residence permit for more than three months under certain conditions (for example working as an employee or a self-employed worker)¹⁸⁸. The worker is entitled to stay in the host country after the period of employment. They also benefit from the same treatment as workers from the host country, whether under labour law (employment, salary, etc.) or in terms of social security.

A. Employees

For workers that are nationals of a Member State of the Union who wish to **come and work as employed workers** in Belgium, this means that they may do so freely without having to request a work permit¹⁸⁹ and that Belgian law will apply in terms of working conditions and social security. In practice, the worker must register their presence on Belgian territory, and if the employment lasts for more than three months, they must be registered with the municipality.

¹⁸⁵ In this section, we have referred extensively to the written work of Marie-Pierre DE BUISSERET, ‘La migration de travail dans l’Union européenne: politique et législations’, presented during the conference: *Migration et travail décent: l’influence de la réglementation européenne et internationale sur le statut des travailleurs migrants*, 6 mars 2009. See also this website:

<http://ec.europa.eu/social/main.jsp?catId=458&langId=en>

¹⁸⁶ For a detailed analysis of this theme, see J.Y. CARLIER, ‘La condition des personnes dans l’Union européenne’, Précis de la Faculté de droit de l’Université Catholique de Louvain, Brussels, Larcier, 2007.

¹⁸⁷ The free movement of employed workers is established by Article 45 (formerly Article 39 of the EC Treaty) of the Treaty on the Functioning of the European Union (TFEU). As regards the free movement of self-employed workers, this is covered in Article 56 (formerly Article 49 of the TEC) and following of the TFEU (in the context of free movement of services).

¹⁸⁸ These principles were introduced in Council Regulation (EEC) 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (*O.J.*, L257 of 19 October 1968) and in Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, *O.J.*, L.229 of 29 June 2004.

¹⁸⁹ This exemption from holding a work permit is laid down in Article 2, 1° of the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign workers.

There is however one exception: it relates to the enlargement of the Union (in 2004 and 2007). It was possible for Member States to lay down restrictions to the labour market for nationals of new Member States. Thus in Belgium, the nationals of eight out of the ten new States that became members of the Union on 1 May 2004¹⁹⁰ were subject, until 30 April 2009, to a transitory period in order to access the employment market. In order to do this they had to obtain work permit B (requested by the employer)¹⁹¹. The permit was to be obtained more easily if there was a shortage of workers in a particular field.

Concerning nationals of Bulgaria and Romania, which acceded to the Union on 1 January 2007, they were also subject to a transitory period in order to access the employment market in Belgium. This period will continue at least until 31 December 2011. In addition, they benefit from an accelerated procedure to obtain a permit B in fields where there is a shortage of workers.

Existing restrictions on accessing the employment market for nationals of new Member States are one of the reasons that may explain why they are often employed illegally.

Illustrations:

1. Construction/renovation cases

The construction sector is a favourable one for the exploitation of workers from new Member States of the Union (Poland, Romania and Bulgaria in particular). They are often employed illegally (without the required work permits and in violation of social security legislation), mainly for renovating buildings. Sometimes, it is also a question of trafficking in human beings. We dealt with this form of exploitation in the context of trafficking in human beings in our previous report, both in the phenomenon analysis¹⁹² and by looking at case law¹⁹³.

It emerges from different cases in which the Centre has brought civil action that there are also organised forms of labour exploitation among the Turkish real estate exploiters in the construction and renovation sector. These are Turkish construction operators that have their dilapidated properties renovated and turned into apartments by Bulgarians that have been brought to Belgium especially for this purpose. Minibus transport to the towns of Charleroi and Brussels is organised every day or every week according to the town,

¹⁹⁰ The following countries are concerned: Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia.

¹⁹¹ Permit B is related to a given job and is granted for a maximum period of 12 months. Concerning access to the employment market for nationals of new Member States, see Centre for Equal Opportunities and Opposition to Racism, *Flux migratoires en provenance des nouveaux Etats membres de l'Union européenne vers la Belgique, Tendances et perspectives*, February 2006, pp. 31-34

¹⁹² See Centre, 2008 Annual Report, (FR/NL), 'Human Trafficking - Enlisting people and resources to combat the phenomenon', October 2009, Part 1, Chapter 2 A. 2.1. (Building and renovation, pp. 24-26), and B.2.1. (pp. 42-43).

¹⁹³ Centre, 2008 Annual Report on trafficking in human beings (FR/NL), Part 1, Chapter 4 (Overview of case law), pp. 65-66.

from Bulgarian towns. The minibuses go to a specific place in Charleroi or Schaerbeek (Brussels), where Turkish cafés are located. Upon arrival, the drivers get in touch with their Turkish contact person. The contact organises their stay in a slum. The Turkish cafés in Schaerbeek are also known to the police for hidden prostitution.

This is what a Bulgarian worker explained – the workers were left in one of the Turkish cafés when they arrived in Brussels. All of the workers collected there at 5 pm to receive orders for Turkish contractors for the next day from a gangmaster in construction. They work on a large construction site for three months and then return to Bulgaria. In the meantime, other Bulgarian workers take their place on the same building site. When they return to Belgium, whilst waiting to work on a large project again, they do small jobs for other Turkish property owners.

Since then, it has, however, been confirmed by a labour auditor that, following the lifting of the work permit obligation for Polish workers, no further cases of Polish victims have been initiated.

2. Transport sector

In the transport sector we also reported a case previously in which the Turkish directors of a Belgian company had employed Polish drivers illegally and were exploiting them¹⁹⁴. This criminal organisation was composed of different active members in various countries that consequently used several international transport firms. There are networks and firms in Poland, Spain, Belgium and Germany. These firms also collaborate with Sicilian transport companies. The organisation has been structured intelligently with the aim of remaining operational for a long period. It purchases companies, changes them as it wishes and puts them into liquidation after a certain time, creating a new firm. At the head of these companies front men are often to be found acting as fictitious directors.

There is one specific case in which Turkish directors were convicted of trafficking in human beings¹⁹⁵. In addition to not having work permits, the Polish drivers were employed in working conditions that were contrary to human dignity, constituting offences of trafficking in human beings (absence of employment contract, working seven days a week with abusive hours, absence of remuneration or insufficient remuneration, the existence of threats and fraudulent manoeuvres).

B. Self-employed workers

The situation of self-employed workers is fundamentally different to that of employees. All Union citizens without exception are entitled to come and establish themselves freely in Belgium to carry out or start up a *business as a self-employed worker* without having

¹⁹⁴ See Centre, 2008 Annual Report on Trafficking in Human Beings (FR/NL), Part 1, Chapter 2 B, section 2.3.2. Case Y. (pp. 44-45).

¹⁹⁵ Ibid., Case law, pp. 68-69.

to obtain a trade licence¹⁹⁶. Self-employed workers from new Member States are thus not subject – unlike employees – to a transitory period. As soon as their States acceded to the European Union – respectively on 1 May 2004¹⁹⁷ and 1 January 2007¹⁹⁸ – they were then able to provide services as self-employed workers without prior authorisation¹⁹⁹.

These nationals must however prove to the municipality that they are carrying out an economic activity as self-employed workers and have legal residence status as citizens of the Union. They are also subject to Belgian social security and have to pay their social security contributions in Belgium.

In recent years, we have seen a rise in the number of self-employed workers that are nationals of these new Member States and who become active shareholders in a Belgian company²⁰⁰. In some cases, however, it transpires that the situation is that of bogus self-employed worker status and possibly trafficking in human beings (see below section 2).

1.1.2. *The free movement of services and secondment*

The free movement of services constitutes another cornerstone of free movement within the Union, established by Article 56 (ex Article 49 of the TEC) and following of the Treaty on the Functioning of the European Union (TFEU).

On the one hand it concerns self-employed workers who are ‘on secondment’ from their country of residence to come and work temporarily in another Member State and, on the other, European companies who come to provide services in a country other than the country where they have their registered office and for this purpose, transfer employees. In this latter case, the seconded worker may be a citizen of the Union but this is not necessarily the case (e.g.: an Italian company which sends its Ukrainian workers on secondment to carry out the provision of service on a construction site in Belgium). The seconded workers, whatever their nationality, do not need a work permit²⁰¹.

¹⁹⁶ This concerns one of the categories that are exempted from holding a professional licence. On this subject readers can refer to Royal Decree of 3 February 2003 exempting certain categories of aliens from holding a trade licence in order to carry out a self-employed activity, Belgian Official Gazette, 4 March 2003.

¹⁹⁷ For the following countries: Estonia, Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Hungary and Slovenia.

¹⁹⁸ For Romania and Bulgaria.

¹⁹⁹ We should nevertheless note that nationals of some new Member States already had access to self-employed worker status before their States acceded to the Union, through CEEC agreements (in this regard see Centre for Equal Opportunities and Opposition to Racism, *Flux migratoires en provenance des nouveaux Etats membres de l’Union européenne vers la Belgique, Tendances et perspectives*, February 2006, pp. 26-28). This review (FR/NL) can be downloaded from the Centre’s website at: www.diversite.be

²⁰⁰ Polish self-employed workers are one of the main groups of foreign self-employed workers. See on this point *Flux migratoires en provenance des nouveaux Etats membres de l’Union européenne vers la Belgique, Tendances et perspectives*, February 2006, pp. 61-63.

²⁰¹ In Belgium, this exemption is established in Article 2, 14° of the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign workers. However, also see below the section which examines the secondment of employed workers and labour legislation (section 3.1.1.).

The secondment and fraud that are carried out in practice are examined below (see section 3). In some cases, trafficking in human beings is also involved.

1.2. Workers that are third-country nationals

1.2.1. Employment and work permits

The freedom to move to another country in the European Union to work there without a work permit is a right which is only recognised for citizens of the EU and nationals of Iceland, Lichtenstein and Norway (countries which are part of the EEA), and Switzerland.

Other third-country nationals may also be entitled to work in an EU country and to benefit from the same working conditions as nationals of Member States. These rights, however, depend on the person's nationality and situation and are determined by various agreements and other Community regulations²⁰². According to the agreements concluded, third-country nationals working legally in an EU Member State may or may not be entitled to the same working conditions as nationals of that State. For nationals of third countries that have not concluded agreements, the right to work in an EU country depends mainly on the national legislation of the Member State in question.

Nevertheless, in certain cases European regulations govern the situation of workers from third countries²⁰³. In particular we can cite third-country nationals that are long-term residents in the EU (i.e. those who have resided there legally and on an uninterrupted basis for 5 years). The latter have access, subject to certain conditions, in the same way as EU citizens, to employed or self-employed work²⁰⁴. Hence, third-country nationals given this status in Belgium are exempted from the obligation to obtain a work permit²⁰⁵. If they have obtained this status in another EU country and wish to move to Belgium to carry out an economic activity there, they are subject, in order to access the employment market, to the obligation to obtain a work permit²⁰⁶.

²⁰² For further information, see the EU site: <http://ec.europa.eu/social/main.jsp?catId=470&langId=en>

²⁰³ We refer to family reunification rights, the entry of researchers from third countries, the entry for study purposes, exchanges of pupils, unpaid training or volunteering.

²⁰⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *O.J.*, L16 of 23 January 2004. Concerning access to the labour market, the necessary amendments were transposed into Belgian legislation by the Royal Decree of 23 December 2008 amending, for long-term residents, the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 29 December 2008. However, for an evaluation of this transposition see the Centre's 2009 report *Migration*, p. 175.

²⁰⁵ See Article 15*bis* of the Law of 15 December 1980 on admission to the territory, residence, settlement and expulsion of aliens and Article 2 of the Royal Decree of 9 June 1999.

²⁰⁶ This is under the same conditions as those for Bulgarian and Romanian nationals. See Articles 61/6 to 61/9 of the Law of 15 December 1980 on admission to the territory, residence, settlement and expulsion of aliens and Article 38*septies* of the Royal Decree of 9 June 1999.

European regulations also lay down conditions for entry and residence for highly qualified workers from third countries for the purposes of employment (the EU Blue Card system)²⁰⁷.

Moreover, new European rules have been proposed concerning the simplification of entry procedures and the rights of migrant workers from third countries²⁰⁸.

In Belgium, a national from a third country outside the EU must in principle obtain work permit D (permit A²⁰⁹ and permit C²¹⁰ are being reserved for certain categories of foreign workers). This type of permit is related to a specific job and is granted for a maximum duration of 12 months²¹¹. In fact, the conditions relating to the issue of this permit mean that in practice it is very difficult to obtain. There is a presumption that the employer has first obtained employment authorisation (before the start of the work). This employment authorisation is subject to a prior examination of the employment market. The latter must demonstrate that it is not possible to find an available candidate on the Belgian labour market who could fill the post envisaged in the short term²¹². Furthermore, in principle the permit can only be requested for a worker who is still abroad²¹³. The application must be made to the competent regional Ministry.

As we have seen, access to the employment market as a third-country national remains difficult. It has, however, been facilitated for certain specific categories, such as highly qualified personnel or persons coming to fill a management position²¹⁴. Hence, if they do not fall into these categories, such nationals would often only have access to the labour market via the status of self-employed worker, secondment or illegal work.

²⁰⁷ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, *O.J.*, L155 of 18 June 2009. See in this regard the Centre's Report *Migration 2009*, pp. 173-174.

²⁰⁸ See the Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM/2007/0638 final - CNS 2007/0229. This would involve each Member State appointing a single authority responsible for dealing with applications for residence permits and work permits. If the application is successful, a single permit would be issued. It would have a uniform format in all States of the European Union. The duration of the permit, the conditions for its issue, renewal and withdrawal would remain under the sole jurisdiction of the Member States.

²⁰⁹ Permit A is of unlimited duration, and is valid for all types of employment. It is granted to foreign nationals who, during ten years of legal and uninterrupted residence, have worked for at least 4 years under a work permit B. See in this regard Articles 3 and 16 of the Royal Decree of 9 June 1999.

²¹⁰ Permit C has a limited duration, a maximum of 12 months, and is limited to employment by a single employer. It is generally linked to a temporary residence permit. The categories of foreign nationals covered by this permit are listed in Article 17 of the Royal Decree of 9 June 1999. In particular it concerns victims of trafficking in human beings holding residence papers which are valid for three or six months.

²¹¹ Article 3 of the Royal Decree of 9 June 1999. Furthermore, only the employer may make the application for the worker that they wish to employ. The foreign national may not make the application themselves.

²¹² Article 8 of the Royal Decree of 9 June 1999.

²¹³ Several derogations to this principle are, however, laid down in the Royal Decree of 9 June 1999 (see Articles 5, 9 and 38*septies*).

²¹⁴ See Article 9 of the Royal Decree of 9 June 1999.

Illustration:**Case in the construction industry**

In a case which is to be heard by the Charleroi Criminal Court²¹⁵, a Belgian was recruiting Moroccan workers in Morocco to employ them in the construction/decorating industry. To this end, he had carried out the necessary formalities to obtain work permits. The workers were issued with work permit B. The man is accused of having put his employees to work on several sites for a derisory remuneration, working abusive hours and living in precarious housing conditions. The Court will have to rule in particular on the charge of trafficking in human beings (employment in conditions that were contrary to human dignity).

1.2.2. Self-employed workers and 'professional cards'

Union citizens may move freely to Belgium to work as self-employed workers. Nationals of third countries outside the European Economic Area must in principle²¹⁶ first obtain a 'professional card' for aliens²¹⁷.

The 'professional card' is an authorisation to carry out independent professional activities as a natural person, agent, director or shareholder. If the person already has a residence permit in Belgium (a certificate of company registration or a certificate of registration on the Aliens Register) they may make this application through the local authorities (municipality) at their place of residence. If the person is still abroad, this application may be made to the Belgian diplomatic post or consulate in their country of residence²¹⁸.

In order to be granted a 'professional card', three criteria must be met: residency entitlement, compliance with the regulatory obligations related to the activity (such as the right to exercise the profession) and the value of the project for Belgium (meeting an economic need, creating jobs, financial capacity, etc.). The 'professional card' is issued for a maximum period of five years, and is renewable. It may be issued for one or several specific activities. The duration of validity of the licence is also related to residency entitlement.

²¹⁵ In an order of 16 June 2010, the defendant was referred by Charleroi pre-trial chamber to be heard by the Criminal Court, inter alia on a charge of trafficking in human beings.

²¹⁶ Some categories of aliens are however exempted from holding a professional licence, either due to the nature of the activity, or due to the type of residence, or pursuant to international treaties. See in this regard the Royal Decree of 3 February 2003 exempting certain categories of aliens from holding a professional licence in order to carry out a self-employed professional activity, Belgian Official Gazette, 4 March 2003.

²¹⁷ See the Law of 19 February 1965 on the exercising, by aliens, of self-employed professional activities. For detailed information about the conditions and procedure to be followed, see the website of the Belgian Federal Public Service (FPS) Economy, SMEs, Middle classes and Energy at this link: http://statbel.fgov.be/fr/entreprises/reglementation_de_marche/Autorisations_Economiques/Carte_professionnelle_etrangers/index.jsp

²¹⁸ See the Royal Decree of 2 August 1985 implementing the Law of 19 February 1965 on the exercising, by aliens, of self-employed professional activities.

Self-employed workers must also be affiliated to a Belgian social security organisation. In addition, the creation of a company in Belgium is carried out by depositing the Memorandum and Articles of Association with the clerk of the Commercial Court where the registered office is located. If the company carries out a commercial activity, it must also obtain access to the profession, have its activities registered and register for VAT. If it employs staff, it must also register with the *ONSS*.

Some companies that are set up between Belgian nationals and aliens actually involve self-employed workers, allowing immigrant workers to be exploited and sometimes fall under the definition of trafficking in human beings (see below, section 2 on bogus self-employed workers and above, Part 1, Chapter 2 devoted to the phenomenon analysis). In practice, such companies are also formed despite the fact that the foreign national is in a situation of illegal residence and does not have a 'professional card', nevertheless being declared with the National Institute for the Social Security of the Self-employed (*Institut national d'assurances sociales pour travailleurs indépendants, INASTI*).

1.3. Foreign workers residing illegally

Foreign workers residing illegally are not entitled to work. In this context they are mainly employees. In some cases, as mentioned above, they may also be self-employed workers.

In Europe, the number of immigrants residing illegally is said, according to some estimates, to be between 2.8 and 6 million, representing between 11 and 23 % of the total number of immigrants²¹⁹.

Given the restrictive conditions of access to employment for third-country nationals, many of them find themselves working illegally. Even if they are working illegally, these persons are in fact bound by a *de facto* employment contract with their employer. They are hence entitled to the same salary and working conditions as legally employed Belgian workers.

A European Directive has recently been adopted, aimed at setting minimum common standards concerning the penalties and measures applicable in Member States against employers that hire persons without residency status²²⁰. These penalties are mainly financial. In addition, Member States must also, in particular, ensure that the employer is

²¹⁹ ILO, 'Labour inspection in Europe: undeclared work, migration, trafficking', Geneva, January 2010, p. 28.

²²⁰ Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, *O.J.*, L168 of 30 June 2009. Amongst other things, the Member States must ensure that third-country nationals employed illegally can lodge a complaint against their employers directly or through the intermediary of a designated third party. Those that have worked in particularly abusive conditions may be granted a residence permit for the duration of the court proceedings in a case-by-case basis, in line with provisions that are comparable with those of Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. This Directive must be transposed by 20 July 2011 at the latest.

bound to pay all unpaid wages to the third-country national that has been employed illegally²²¹.

In Belgium, investigations into the employment of foreign workers are mainly carried out by the social inspectorate. Each province in the country has a unit that is specialised in this field²²². The offences generally reported are the following: no work permit and illegal residency or absence of work permit but legal residency²²³. In addition to these offences concerning the employment of foreign labour, the employer may also be prosecuted, if applicable, for offences under social criminal law (e.g.: non-payment of remuneration, not making declarations to the *ONSS*, etc.).

Furthermore, if the offences are particularly serious, prosecution for trafficking in human beings will also take place. Let us mention in this regard Circular n° 3/2007 of the Board of Attorney-Generals of 18 January 2007 making the fight against illegal work a priority of criminal policy. So, both the offences of trafficking in human beings and the employment of three workers who have neither residence permits for more than three months nor work permits, justify prosecution, by the labour auditors, before the criminal court.

The International Labour Organization (ILO) also draws attention to the necessity, for inspection services, to be attentive to the situation of the vulnerable group of aliens residing in a country illegally: ‘Migrants in irregular status are particularly vulnerable. Reports are not infrequent of unscrupulous employers hiring migrants and then discretely [sic] denouncing their own workers to immigration enforcement authorities just before payday to prompt arrest and deportation before workers can collect their earnings. In a number of cases, non-payment of wages or illegal wage deductions are combined with other coercive measures, such as threats of violence, psychological abuse, restriction of the freedom of movement or retention of identity documents. Migrants, in particular irregular migrants, can thus end up in a situation of forced labour from which they find it difficult to escape. Labour inspectors have a key role to play to facilitate access to assistance for those workers and to collaborate with criminal justice authorities to adequately enforce sanctions.’²²⁴

Illustrations:

1. ‘Debt bondage’ cases in the HORECA sector

In ‘trafficking in human beings’ cases, illegal work carried out by nationals of third countries outside the European Union is mainly found in debt bondage cases, in which Chinese nationals are made to work illegally in Chinese restaurants to repay their travel

²²¹ Article 6 of the Directive.

²²² See the 2007 Annual Report of the Belgian Federal Public Service (FPS) Social Security, p. 15.

²²³ *Ibid.*, p. 45.

²²⁴ ILO, ‘Labour Inspection in Europe: Undeclared Work, Migration, Trafficking’, Working Document number 7, January 2010, pp. 29-30.

debts. In general they have to work six days out of seven, for long hours and for a derisory wage, from which the debts are often deducted. In previous reports we have dealt several times with such cases²²⁵, and with the court decisions handed down in this field²²⁶. We also refer readers to the chapter devoted to the phenomenon analysis²²⁷.

These workers are generally residing illegally and do not have a work permit²²⁸. They sometimes have false papers. In one of the cases dealt with in our previous report²²⁹, a worker had a work permit but was not declared to the social security; another was staying in Belgium illegally but was declared; and lastly two others were employed without any authorisation to work whatsoever.

2. Second-hand clothes sorting cases, textile sector

This type of case also involves employing illegal labour without residence permits or work papers. Second-hand clothes are sorted in particularly precarious working conditions: working standing up for 10 to 11 hours a day, without heating and with fixed production quotas. The workers are of various nationalities, generally from third countries outside the Union. In the rag trade case presented in the chapter devoted to the phenomenon analysis²³⁰, we noted that some victims had already been employed for several days without any agreement about wage conditions. In addition it was forbidden for them to talk whilst they worked. In a case described in our previous report²³¹, the Palestinian and Syrian victims benefited from victim status under trafficking in human beings.

²²⁵ See Centre, 2006 Annual Report, Trafficking in Human Beings, 'Victims In the Spotlight', July 2007, Chapter 2, section 2.3.1: Labour exploitation: Forced labour: Debt bondage in the HORECA industry (pp. 40-43) and the 2008 Annual Report, 'Human Trafficking - Enlisting people and resources to combat the phenomenon', October 2009, Part 1, Chapter 2, B.2.4 HORECA (Wok restaurant), p. 46.

²²⁶ See the Centre's 2007 Annual Report, 'Trafficking and Smuggling of Human Beings, Public Policy as Seen by a National Rapporteur', Part 3, Overview of case law 2006-2007, section 2 (Labour exploitation), p. 110, and the 2008 Annual Report, Chapter 4, section 2.1 (HORECA), pp. 64-66.

²²⁷ See above, Part 1, Chapter 2.

²²⁸ This was so in the case of debt bondage described in footnote 86. In this case, the Bruges Criminal Court which ruled on this case at first instance noted in its judgment of 19 June 2007 that the defendants were employing several persons in their restaurant that did not have residence permits and had no identity papers. They were totally dependent on the defendants.

²²⁹ Centre, 2008 Annual Report on trafficking in human beings (FR/NL), Part 1, Chapter 2, B.2.4 HORECA (Wok restaurant), p. 46.

²³⁰ See above, Part 1, Chapter 2 (Phenomenon analysis).

²³¹ Centre, 2008 Annual Report on Trafficking in Human Beings, Part 1, Chapter 2, B.2.2 (textiles), p. 43 and Chapter 4 (Case law), section 2.4 (textile/clothes sorting workshops), p. 68.

2. Bogus self-employed workers²³²

The essential difference between an employee and a self-employed worker is the presence or absence of a relationship of subordination in the practice of the trade or profession. Work performed for remuneration under the authority of another person is the hallmark of an employment contract²³³. Moreover, this distinction also has important tax, social and economic implications, whether in terms of social security contributions and protection or of working conditions. The status of a self-employed worker is characterised by, among other things, flexibility in the contractual relationship and lower social security contributions (and correspondingly less social protection).

In recent years, inspectors have been encountering more and more (bogus) self-employed workers (foreigners) in the course of their inspections. Although this phenomenon is also found in the area of sexual exploitation (see the review of this issue above), it is most prevalent in sectors such as construction²³⁴ and night shops.

The labour market is changing. There has been an increase in practices such as outsourcing and subcontracting, often as part of a cost-cutting strategy²³⁵. We are thus seeing a diversification of labour relationships. Correspondingly, we are witnessing an increase in the phenomenon of bogus self-employment. This can involve EU nationals as well as those of third countries.

Bogus self-employment can take several forms. The free movement of services, which, unlike the free movement of workers²³⁶, has applied to citizens of the new Member States in Central and Eastern Europe since their initial accession on 1 May 2004, gave rise to an increase in the number of people working as self-employed workers. This serves not only as a way of avoiding the restrictions on access to the European labour market but also of

²³² On bogus self-employment, see note by M. Rigaux and A. Van Regenmortel (eds), *Rechts(on)zekerheid omtrent (schijn)zelfstandigheid. De gespannen verhouding tussen artikel 1134 BW en de sociaalrechtelijke finaliteit*, Antwerp, Intersentia, 2008, 228p; C.-E. Clesse, *L'assujettissement à la sécurité sociale des travailleurs salariés et indépendants ou aux frontières de la fausse indépendance*, Vol. I and II, Brussels: Kluwer, 2005; C.-E. Clesse, 'Aux frontières de la fausse indépendance', *Orientations*, March 2009, pp. 1-11 and April 2009, pp. 1-9; K. Van Den Langenbergh, *Les faux indépendants*, Brussels, Federal Ministry of Employment and Labour, 2000; C. Wantiez, J. Clesse, R. De Baerdemaker, 'Les faux indépendants', lecture given on 20 April 1991, Editions du jeune barreau de Bruxelles; G. Willems, 'La fausse indépendance', Waterloo, Kluwer, 2010.

²³³ See Articles 137, 1° and 328, 5°, of the Programme Law of 27 December 2006, Belgian Official Gazette, 28 December 2006.

²³⁴ See chapter 2 on good practices. See also the following interesting report: 'Travail indépendant et faux travail indépendant dans le secteur de la construction au sein de l'Union européenne, Une étude comparative de 11 Etats membres', by Y. Jorens, University of Ghent, 2009. The study consists of a comparative analysis (FR, EN, DE) as well as of a synthesis of the various national reports (EN) and full national reports (available in English only). Belgium is one of the countries included in the study. The report is available via the following link:

<http://www.efbww.org/default.asp?Issue=Self-employment%20and%20Bogus%20Self-employment&Language=EN>

²³⁵ Ibid., pp. 6.

²³⁶ See above in the first section of this Chapter.

avoiding the requirement to comply with the standards and minimum social conditions in the host country. These self-employed workers represent a vulnerable labour force, open to exploitation by employers who take advantage of their services in order, notably, to reduce their social security costs and circumvent various provisions of social legislation²³⁷. We will return to this question in the next part, devoted to secondment, since the approach taken by the latter group of self-employed workers is different.

There is also the situation where a company is established or bought in Belgium by one (or more) Belgian national(s) and foreigners. The latter sometimes invest a fixed amount and receive a number of shares, but in fact under the labour laws are often dependent on the Belgian national(s)²³⁸. Sometimes they are not even aware of their own social status and do not really know what it is they have signed (see illustration below).

Yet, to prove that these people are in fact working under the authority of an employer and to have them reclassified accordingly is in practice very difficult, for both case law and Belgian legislation are strict on this point.

In Belgium parties are free to decide between themselves the nature of the contract they enter into. Their actual behaviour during their professional collaboration must not, however, display aspects that are incompatible with the type of contract chosen. According to well-established case law at the Court of Cassation, it is the will of the parties (as regards the way they characterise their working relationship) that carries the greatest weight. The latter must be respected, on condition that it is confirmed by the way in which they actually meet their commitments²³⁹.

A legislative framework for this matter has, however, recently been drawn up. It is set out in Title XIII (Articles 328 to 342) of the Programme Law (I) of 27 December 2006²⁴⁰, entitled 'Nature of the working relationship'. It aims at tackling the phenomenon of bogus self-employment more effectively. It thus seeks to create a framework that makes it possible to assess the legal nature of the working relationship by defining general criteria to take into consideration when categorising that relationship, and allowing for the drafting of a list of specific criteria applicable to one sector or to one or several professions or categories of professions. While the general criteria are set out in the Law,

²³⁷ 'Travail indépendant et faux travail indépendant dans le secteur de la construction au sein de l'Union européenne, Une étude comparative de 11 Etats membres', *op.cit.*, p.6 and see also the Belgian report by Y. Jorens and T. Van Buynder, Expert Reports, 'Self-employment and Bogus Self-employment in the Construction Industry in Belgium', February 2009, pp. 9 and 12.

²³⁸ J. BUELENS and J. TIELEMAN, 'Les permis de travail, les métiers en pénurie et le détachement', addition to the colloquium : *Migration et travail décent : l'influence de la réglementation européenne et internationale sur le statut des travailleurs migrants*, 6 March 2009, p.23.

²³⁹ See esp. the following rulings of the Court of Cassation: Cass., 23 December 2002, *J.T.T.* 2003, p. 217; Cass. 28 April 2003, *J.T.T.* 2003, p.261; Cass., 8 December 2003, *J.T.T.*, 2004, p.122; Cass., 3 May 2004, *R.W.*, 2004-2005, p.1220 ; Cass. 20 March 2006, *J.T.T.*, 2006, p.276; Cass., 22 May 2006. These rulings can also be consulted at www.juridat.be.

²⁴⁰ Belgian Official Gazette, 28 December 2006.

the specific criteria have yet to be determined by royal decree. This remains an option, however, and not an obligation²⁴¹.

In effect, this legislation confirms the current case law in this area and places the emphasis on the will of the parties. They are the ones who freely choose the nature of their working relationship²⁴².

The relationship of subordination remains a key element of the employment contract; it can be assessed on the basis of four general criteria determined by law²⁴³, namely:

- the will of the parties as expressed in the agreement between them, provided the latter corresponds to the real situation (the *de facto* working relationship)²⁴⁴;
- freedom to organise working hours;
- freedom in organising one's work;
- the possibility of exercising hierarchical control.

These four general criteria do not have to be applied cumulatively, and none of them on its own is more decisive than any other. Moreover, the legislators also provided a series of elements that on their own cannot serve to classify the working relationship, such as registration with a social security organisation or the way in which revenues are reported to the tax authorities²⁴⁵.

If, in the *de facto* implementation of the working relationship, a sufficient number of general criteria (and possibly specific criteria as well) concur, as well as certain indications developed by case law that are incompatible with the classification claimed by the parties, it will be possible to reclassify the working relationship and apply the appropriate social security regime²⁴⁶.

When it comes to foreigner nationals, a reclassification also means that the employer (the one who exercises authority) can also be penalised for offences relating to the employment of foreign workers, such as the absence of a work permit, if the latter was required, or the hiring of a foreigner lacking the proper papers, if this were the case²⁴⁷.

²⁴¹ See Article 334. To date, however, no royal decree has been issued. An illustrative list of criteria that could be used in this way is given in Article 334, §3: possibility of hiring staff; working in locations and with equipment owned by the worker; personal and substantial investment of one's own funds in the business; substantial participation in the business's profits and losses, etc.

²⁴² Article 331 of the Programme Law.

²⁴³ See Article 333 of the Programme Law.

²⁴⁴ See Article 331 of the Programme Law. Therefore the free will of the parties is given priority. The *de facto* working relationship can only be given consideration in second place.

²⁴⁵ See Article 333, §3 of the Programme Law.

²⁴⁶ Article 332 of the Programme Law.

²⁴⁷ For offences regarding employment of foreign workers, it is not necessary to prove that there is a line of subordination. See on this point C.E. Clesse, 'La définition du travailleur inscrite dans la loi du 30 avril 1999 et l'arrêté royal du 5 novembre 2002 instaurant une déclaration immédiate à l'emploi', note under C.A. Mons, *R.D.P.C.*, no. 5, 2009, pp. 624-630.

A decision of this type is not without consequences for the worker: a change in his status can be problematic for his residence permit (see example below).

This legislation is nevertheless perceived as a matter for further debate and difficult to put into practice, since the general criteria are considered too vague²⁴⁸. In practice, therefore, obtaining a reclassification is very difficult.

We have also mentioned in the section devoted to the phenomenon analysis that the problem of Polish nationals being employed illegally and harshly exploited in the construction sector is not, for the most part, dealt with in the criminal courts as examples of human trafficking. The problem of bogus self-employed workers demands too many investigative resources, is difficult to prove and often leads to an acquittal by the courts.

Illustrations: Bogus self-employed workers and human trafficking

We have had the opportunity to show, in the section devoted to the phenomenon analysis, how bogus self-employment is used in various sectors to exploit migrant workers by means of human trafficking. We also mentioned the presence of this practice in the *poultry breeding sector*²⁴⁹. Thus, the Tongeren Criminal Court, when called upon to hear a case of this type, deemed that the defendants ‘in an organised and continuous manner placed Polish workers within legal poultry businesses, and did so by means of an illegal form of outplacement in exchange for a fee. Part of the process was to set up companies that would then give the Polish workers self-employed status, without the latter being aware of this status. The revenues from this illegal employment were then laundered by means of payments into various bank accounts’²⁵⁰.

This phenomenon is also to be found in the *cleaning sector*. In the cleaning industry, we have noted that subcontractors, played off against each other by large companies, use bogus self-employed workers as cleaning staff.

In the *waste processing* sector, Bulgarian and Turkish victims are employed as bogus self-employed workers by Belgo-Turkish companies that work as subcontractors for large Belgian firms in the port area. These workers sort waste for large companies for a wage of 7-8 euros an hour. A penalty system is used and out of that amount they still have to pay their social contributions. They are hardly aware of their social status, and are obliged to sign documents without understanding their contents. Very often they do not even know the name of the company they are working for.

Another important sector is the *construction industry*. Thus, in a case recently heard by the Charleroi Criminal Court²⁵¹, the two defendants were sentenced for human

²⁴⁸ Y. Jorens and T. Van Buynder, Expert Reports, *Self-employment and Bogus Self-employment in the Construction Industry in Belgium*, February 2009, p. 12.

²⁴⁹ See above, Part 1, Chapter 2, the point concerning labour exploitation.

²⁵⁰ Tongeren Criminal Court, 9 May 2008, 9th Chamber. This ruling has been published on the Centre’s website: www.diversite.be.

²⁵¹ See above, Part 1, Chapter 4: Overview of case law : Charleroi Criminal Court, 19 March 2010.

trafficking. They had hired undeclared foreign workers (Poles and Brazilians) to carry out ceiling work. Some of the workers had been given the rank of partner in order to avoid the implications of an employee status. In reality, they were always subordinate to the defendants.

In various cases (see in particular the case review in the illustration sections below: secondment, bogus self-employment and human trafficking), we have noticed that, in the past, workers started out working temporarily in Belgium as subcontractors under the status of seconded employees from a construction company set up in the home country. In the event of problems with the secondment or at the end of a temporary secondment, the Belgian entrepreneur offered to regularise their situation or to allow them to continue working upon their return. A quick solution is one where the Belgian entrepreneur takes over another Belgian construction company, becoming the principal shareholder. The company then offers the foreign workers a few shares. As shareholders in the construction company that has been taken over, the foreign workers can continue to work as bogus self-employed workers for the first company, owned by the Belgian entrepreneur, while in reality they are hired under a relationship of subordination.

The *transport sector* is also one where we find the phenomenon of bogus self-employment. In an earlier report, mention was made of a Belgian transport company that had set up an international business with some 20 bogus self-employed workers, all Polish truck drivers. The drivers earned EUR 40 a day for their services, regardless of the number of hours worked or kilometres driven²⁵².

As already mentioned, third-country (non-EU) nationals may also settle in Belgium as self-employed workers. They must, however, obtain a trade permit (*carte professionnelle*). In the section devoted to the phenomenon analysis, we noted cases of bogus self-employed workers among the Indo-Pakistani operators of *night shops, phone shops and car wash facilities*. They are made shareholders or, later, managers of the company. In reality, they are but front men for the exploiter, who thus avoids having to pay social security contributions and can easily expand the scope of his business. Based on his self-employed status, the worker can legally register at his municipality and receives a residence permit. In some cases, however, these bogus self-employed persons in the night shop sector have no legal permit to reside in Belgium, while at the same time they have been registered with the National Institute for the Social Security of the Self-employed (*Institut national d'assurances sociales pour travailleurs indépendants, INASTI*).

3. Secondment of workers

The issue of secondment, if occurring in the context of the free provision of services within the European Union, deserves separate attention because of its complexity. It

²⁵² For further details, see Centre, 'Annual Report on Trafficking in Human Beings' 2006, Chapter 2, point 2.3.2. On European transport companies as an at-risk sector for labour exploitation, see pp. 43-45.

should be noted, however, that the practices of human trafficking are more the exception than the rule as regards secondment.

In previous reports we had already mentioned the professionalisation of these networks. In the context of trafficking of human beings for the purposes of labour exploitation, we note that professional networks are designing schemes that take advantage of gaps in European legislation on secondment (or ‘posted workers’). This can result in ‘social dumping’, which occasionally crosses the line into human trafficking, namely, employment in conditions contrary to human dignity. It can, however, be easier to detect victims of human trafficking in cases involving foreign employees in an illegal work and/or residential situation than when schemes such as secondment are being used²⁵³.

In this section, we will deal successively with:

- Seconded employees (who may be EU nationals or the citizens of third countries) (point 3.1)
- The ‘self-secondment’ of self-employed workers (point 3.2)
- Problems observed in the field (point 3.3)

3.1. Secondment and employees

Under Article 56 (ex-Article 49 TEC) of the TFEU, Member States must guarantee the freedom to provide services within the European Community. This fundamental freedom includes the right of a service provider to temporarily post workers to another Member State in order to provide a service there. The true exercise of this freedom requires that any form of discrimination²⁵⁴ be prohibited and impediments removed²⁵⁵. The Court of Justice of the European Communities (hereafter the European Court of Justice) has had the opportunity to examine these questions in depth on several occasions²⁵⁶.

The growing unification of Europe and the resulting rise in mobility of workers is reflected, notably, in an increase in the number of seconded workers. Between the

²⁵³ See also the final recommendations in this report.

²⁵⁴ The service provider must be able to perform his services, on a temporary basis, in the country in which the free provision of services is offered under the same conditions as those which the country imposes on its own nationals.

²⁵⁵ Thus it is a question of ensuring that companies that circulate for the purposes of economic activity are not impeded by any regulation in the host country. To prevent the service provider from using his staff to fulfil a contract obtained in another Member State ‘discriminates against that person in relation to his competitors established in the host country who are able to use their own staff without restriction’ (ECJ, 27 March 1990, *Rush Portuguesa*, C-113/89, Rec., p.I-1417, point 12).

²⁵⁶ The Court condemns, as a rule, any national measure that might be likely to impede or restrict the exercise of this freedom in the host country. The host country may, however, under certain conditions demand that local rules be followed in respect of work performed temporarily on its territory. See on this matter the interesting article by P. Mavridis, ‘Détachement des travailleurs dans l’Union européenne: le juge national, arbitre ou soumis au principe du pays d’origine ? Commentaire sur l’arrêt Kiere de la Cour de justice (26 January 2006, Case C-2/05)’, *J.T.T.* no. 948, 2006, pp. 225-233.

beginning and the middle of the 1990s, there were half a million seconded workers or migrants sent temporarily by their employers to work abroad²⁵⁷.

While this is part of the framework of a provision of services, the free movement of workers does, however, raise certain specific difficulties. One of the major challenges is to avoid the risks of unfair competition and social dumping. These risks, however, have grown in the context of the secondment of workers moving from low-wage countries to countries with higher salary costs.

As a result, the mobility of workers created by the free movement of persons and the freedom to provide services within the EU tends to heighten the chance of exploitation of certain workers. In practice, secondment is subject to abuse and various forms of fraud (see point 3.3 below). We can observe that the construction sector, which is also at high risk for human trafficking, is especially vulnerable to the risk of ‘secondment carousels’. Various measures have been taken to combat this phenomenon (see Chapter 2 of this part on good and bad practices).

In addition to the construction sector, the meat processing industry also employs workers seconded to Belgium via companies in Slovakia²⁵⁸. In some cases, these systematically involve labour placement agencies, while in others there are criminal organisations at work. In cases where threats to victims are made, we are dealing with human trafficking.

A legitimate secondment of employees requires that certain rules be followed, as regards both labour law and social security law.

3.1.1. *Secondment and labour law*²⁵⁹

A. The principles

The principles governing this area are contained in EU Directive 96/71/EC²⁶⁰. The aim of this Directive is twofold: to promote free movement of services while at the same time taking account of the social dimension of the single market, as well as guaranteeing a minimum number of rights to workers seconded by their employer²⁶¹.

²⁵⁷ ILO, ‘Labour Inspection in Europe: Undeclared Work, Migration, Trafficking’, Geneva, January 2010, p.20.

²⁵⁸ See Part 1, Chapter 2, Phenomenon analysis.

²⁵⁹ See on this matter C.-E. Clesse, *Travailleurs détachés et mis à disposition – droit belge, européen et international*, Brussels: Larcier, 2008, 488p; C. Denève, ‘Le détachement et le droit individuel du travail’, in *Le détachement international*, Brugge: La Charte, 1995; B. Lantin, ‘Le détachement des travailleurs étrangers en Belgique’, *Orientations* no. 1, 2003, pp. 2-17.

²⁶⁰ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, *O.J. L* 18 of 21 January 1997.

²⁶¹ See recitals 5 and 13 of Directive 96/71 EC.

A seconded worker is one who, for a limited period, carries out his or her work in the territory of a Member State other than the State in which he normally works²⁶². This category thus does not include migrant workers who go to another Member State to find work and who work there (on this matter, see point 1 above in this chapter).

The Directive addresses three types of secondment²⁶³:

- the worker is seconded for the account of and under the management of a company in the context of a contract signed between the sending company and the company receiving the services (e.g. Polish workers are seconded by their Polish construction company to work for a Belgian client for a period of six months, as was initially the case in the human trafficking case addressed below);
- the worker is seconded to an entity or company belonging to the same group (e.g. a Dutch parent company seconds one of its workers to work for its Belgian subsidiary for a period of one year);
- the worker is seconded by a temporary employment agency or an out-placement office that supplies the worker to a client company established or operating in another Member State (e.g. Romanian workers are recruited by a French temporary employment agency in order to come and work in Belgium for three months).

The working relationship between employer and the seconded worker must be maintained for the duration of the secondment.

Companies established in a Member State that seconds workers in order to work on a temporary basis on the territory of another Member State must comply with a basic nucleus of mandatory rules of minimum protection in the country where the work is being performed (= host country)²⁶⁴. These rules are defined by the legal, regulatory or administrative provisions – or in some cases in collective agreements or arbitration awards of general application²⁶⁵ where the construction sector is concerned²⁶⁶.

The nucleus of minimum regulations concerns the following²⁶⁷:

- maximum working time and minimum rest breaks;
- minimum number of annual paid holidays;
- minimum wage;
- conditions under which workers are seconded to employers, in particular by temporary employment agencies;

²⁶² Article 2, 1, of Directive 96/71/EC. The directive also specifies that the definition of a ‘posted worker’ is that which applies in the law of the Member State to whose territory the worker is posted (Art. 2, 2).

²⁶³ Article 1, 3 of Directive 96/71/EC.

²⁶⁴ See Article 3 of Directive 96/71/EC.

²⁶⁵ §8 of Article 3 specifies that ‘collective agreements or arbitration awards which have been declared universally applicable’ means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

²⁶⁶ Pursuant to Article 3, §10, Member States may nevertheless provide that terms and conditions of labour and employment laid down in collective agreements or arbitration awards shall apply to other activities than those of the construction sector.

²⁶⁷ Article 3, §1 of Directive 96/71/EC.

- safety, health and hygiene in the workplace;
- protective measures applicable to the working and employment conditions of pregnant women and those who have just given birth, children and young people.
- equal treatment of men and women, as well as other provisions regarding non-discrimination.

Derogations from this nucleus of regulations are, however, provided for in certain cases²⁶⁸. The Directive also provides that if the working conditions and terms of payment are more favourable in the country of origin, these may be applied²⁶⁹.

Finally, Member States are also required to take measures in the area of administrative cooperation and access to information concerning their working and employment conditions²⁷⁰, something that has proven to be problematic in practice.

In Belgium, this Directive was transposed by the Law of 5 March 2002²⁷¹. This law defines the notion of secondment²⁷² and the workers to whom it applies. These are employees, that is, persons who under contract provide their labour in exchange for remuneration and under the authority of the company that is seconding them²⁷³. Workers seconded by a company established in a Member State of the European Economic Area (EEA) are, regardless of their nationality, exempted from the obligation of obtaining a work permit. If the seconded workers are nationals of countries outside the EEA, this exemption is, however, subject to certain conditions²⁷⁴. Nationals of third countries do continue to need a work permit if the company seconding them is established in a country outside the EEA²⁷⁵.

²⁶⁸ See Article 3, §§2 to 5 of Directive 96/71/EC.

²⁶⁹ Article 3, §7 of Directive 96/71/EC.

²⁷⁰ See Article 4 of Directive 96/71/EC.

²⁷¹ Law of 5 March 2002 transposing Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and laying down rules for implementing the simplified regime for the drawing up and keeping of social documents for undertakings posting workers to Belgium, Belgian Official Gazette, 13 March 2002. For more information, see the site of the Belgian Federal Public Service Employment, Labour and Social Dialogue: <http://www.employment.belgium.be/home.aspx>

²⁷² According to Article 2, 2 of the Law of 5 March 2002, secondment refers to the situation of a worker who carries out work in Belgium, regardless of the scope or length of time involved and who either works habitually on the territory of one or more countries other than Belgium, or has been hired in a country other than Belgium.

²⁷³ Article 2, 1 of the Law of 5 March 2002.

²⁷⁴ These workers must have their residence in a Member State of the European Economic Area, they must be authorised to reside there for more than three months and be authorised to work there, and the said authorisation must be valid at least for the duration of the work to be performed in Belgium. Finally, they must also be in possession of a regular employment contract and a passport or residency permit with a period of validity equal at least to the duration of the work to be performed in Belgium (see Article 2, 14 of the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign workers).

²⁷⁵ In this case, the work permit must be requested by a mandate domiciled in Belgium.

Moreover, since 1 April 2007 there has been a general obligation to make a prior declaration of any foreign worker seconded to work in Belgium. This is known as the LIMOSA declaration. This declaration is made electronically²⁷⁶.

A company that second workers to Belgium must – in respect of any work performed there – comply with the provisions of Belgian labour law. These include Belgian legal, regulatory or contractual provisions covering working conditions, and their violation is a criminal offence²⁷⁷. Failure to comply with these conditions is among the elements taken into account by Belgian judicial authorities when determining whether a given case is one where working conditions are contrary to human dignity, thus constituting human trafficking²⁷⁸.

B. Difficulties relating to the implementation of Directive 96/71/EC and the restrictive interpretation of the European Court of Justice

European Directive 96/71/EC requires that authorities of the Member States carry out inspections ensuring the proper application of the core rules governing working conditions and terms of payment. In Belgium, the authorities responsible for ensuring that these provisions are complied with are the labour inspection services. Violation of the rules is punishable by various criminal penalties or administrative fines.

The Commission has on several occasions had the opportunity to reflect on the implementation of the Directive by Member States²⁷⁹. Initially, the considerations seemed to be more of a practical than of a legal nature, and it therefore did not seem necessary to amend the text of the Directive²⁸⁰. The problems were, among others, the lack of checks on compliance with the provisions, and the difficulty in comparing the demands of the host country legislation with the working conditions in the country where the employee normally works. The ILO has drawn attention to these problems as well:

²⁷⁶ See Chapter 2 on good and bad practices.

²⁷⁷ Article 5, §1, of the Law of 5 March 2002. This covers, among other things, the regulation of working hours (limit on working hours, rest periods, Sunday rest, breaks), temporary work and the provision of workers to employers, well-being in the workplace (job safety), wage protection (time, manner, mode of payment of remuneration, authorised withholdings at source) as well as minimum salary scales established by sectoral collective labour agreements made mandatory by royal decree.

²⁷⁸ See above, Part 1, Chapter 4 on case law, as well as the Centre's Annual Report on Human Trafficking, 2008 entitled Human Trafficking - Enlisting people and resources to combat the phenomenon, Part 1, Chapter 4 (overview of case law 2008-early 2009), pp. 64-70.

²⁷⁹ See Communication from the Commission, COM (2003) 458 of 25 July 2003 on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services; Communication from the Commission, 'Guidance on the posting of workers in the framework of the provision of services', COM(2006) 159 final, 4 April 2006; Commission staff working document, 'Report of the Commission staff on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services', SEC(2006) 439, 4 April 2006, COM(2006) 159 final; Communication from the Commission, 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers', COM(2007)304 final.

²⁸⁰ See the Communications from the Commission, COM (2003) 458 and COM(2006) 159 final.

The current situation of posted workers, in terms of protection by law and collective agreements in the areas covered by the Directive, varies greatly from one country to the next. The concerns of countries that are net ‘senders’ of posted workers tend to differ from those that ‘receive’ them. For example, attention in Portugal focuses more on the posting of national workers to other countries than on posted workers in Portugal. Furthermore, the approach taken by "recipient" countries to which workers are posted is very different: some have no specific provisions on posted workers (Ireland, Italy, Spain and the UK), whereas others specifically include posted workers within some or all provisions covering their own nationals (Denmark, Finland, Luxembourg, the Netherlands and Sweden). Still others have specific legislation for posted workers (Austria, Belgium, France and Germany)²⁸¹.

Thereafter, a series of legal questions were mentioned, to which the Commission replied in the light of the case law of the Court of Justice²⁸².

Gaps were also identified:

- as regards the procedures for access to information on working and employment conditions in host Member States²⁸³.
- in terms of cooperation between national administrations and labour inspections in the domains governed by the Directive²⁸⁴ (see also the point below on problems observed in the field). Various measures have, however, been taken in order to improve the situation (see Chapter 2 on good and bad practices)²⁸⁵.

Finally, while Member States can have recourse to measures in order to monitor compliance with working conditions as defined in the Directive, they must not, however, present unjustified or disproportionate obstacles to the free provision of services within the internal market²⁸⁶. In its Communication of June 2007²⁸⁷, the Commission nonetheless stressed that ‘the necessity for preventive actions and appropriate sanctions

²⁸¹ ILO, ‘Labour inspection in Europe: undeclared work, migration, trafficking’, Working Document number 7, January 2010, p. 20.

²⁸² See on this matter the Report by the Commission staff, COM(2006) 159 final, pp. 10-21. These questions concern, among other things, the scope of the Directive or the notion of worker and the position of self-employed workers in the light of the Directive.

²⁸³ Ibid., p. 21.

²⁸⁴ Ibid., pp. 24- 25: Thus, the human resources are apparently often insufficient, and very few requests for information would be made, and responses often non-existent or only quite vague. The European Parliament therefore adopted a resolution proposing various possible solutions to the problems raised: see European Parliament Resolution of 26 October 2006 on the application of Directive 96/71/EC on the posting of workers (2006/2038(INI)).

²⁸⁵ On this point, see ILO, ‘Labour Inspection in Europe: Undeclared Work, Migration, Trafficking’, Working Document number 7, January 2010, p.20-23.

²⁸⁶ See the Communications from the Commission: ‘Guidance on the posting of workers in the framework of the provision of services’, COM(2006) 159 final, 4 April 2006, p. 3 and ‘Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers’, COM(2007) 304 final.

²⁸⁷ Communication from the Commission, Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers’, COM(2007) 304 final, p.6-7.

aimed at countering illegal employment and undeclared work, including in the form of disguised self-employment, as well as combating unlawful activities by fictitious foreign temporary employment agencies, is indisputable⁷.

The Commission was thus committed to taking the necessary measures to resolve the situation resulting from a failure to fulfil the relevant provisions of Community law and/or a lack of cooperation between Member States as provided for in Articles 4 (cooperation on information) and 5 (implementing measures to be taken by the Member states) of the Directive.

Between December 2007 and June 2008, the European Court of Justice handed down several decisions in which it affirmed the primacy of the freedom to provide services and the freedom of establishment over social rights (of workers)²⁸⁸. Moreover, the Court gave a restrictive interpretation of the Posted Workers Directive (96/71/EC). It treats it as a ‘maximalist’ directive, interpreting the nucleus of minimum rules of protection as if it were a directive of ‘maximum norms’²⁸⁹.

These judgments constitute, in the view of the European Parliament, a form of legitimisation of social dumping, and have prompted the deputies to adopt, based on an own initiative report²⁹⁰, a legislative resolution demanding, among other things, the partial reworking of Directive 96/71/EC²⁹¹.

In its resolution, the Parliament exhorts the Member States and the Commission to take measures against abuses and in particular against ‘letterbox companies’, which conduct no real activity in the country of origin but were created in order to avoid having to apply the rules of the host country, notably as regards salaries and living conditions²⁹². We will return to address these fraudulent secondments in greater detail under the point devoted to problems observed in the field, as well as in the chapter on good and bad practices.

3.1.2. Secondment and social security legislation

As regards social security, the fundamental principle is that a worker who moves around the European Union is subject to a single social security legislation. The prevailing principle is that of the unity of the applicable legislation. Until 1 May 2010, it was EU

²⁸⁸ These are the ‘Viking’ (ECJ, Judgment of 11 December 2007, Case C-438/05, International Transport Workers’ Federation and Finnish Seamen’s Union; ‘Laval’ (ECJ, Judgment of 18 December 2007, Case C-341/05, Laval un Partneri Ltd.), ‘Rüffert’ (ECJ, Judgment of 3 April 2008, Case C-346/06) and ‘Luxembourg’ (ECJ, Judgment of 19 June 2008, Case C-319/06, Commission v. Luxembourg) judgments. These judgments are available on the Court’s website: www.curia.europa.eu.

²⁸⁹ This means that Member States and social partners cannot require that conditions beyond a very minimum level be applied to posted workers. (See note ‘Pour une Europe du progrès social’, Common position paper by the SPD and the DGB, Paris, May 2009).

²⁹⁰ Report of the European Parliament of 30 September 2008 on challenges to collective agreements in the EU, 2008/2085 (INI), A6-0370/2008.

²⁹¹ European Parliament Resolution of 22 October 2008 on challenges to collective agreements in the EU. See note to points 12 to 16 and 28 of the Resolution.

²⁹² See point 32 of the Resolution.

Regulation No 408/71²⁹³ that set out the rules applicable in this area, supplemented by implementing Regulation No 574/72²⁹⁴. The Regulation applies to legislation governing the traditional branches of social security²⁹⁵.

As a rule, the applicable social security legislation is the one in force in the State where the worker performs his activity²⁹⁶. This is known as the principle of '*lex loci laboris*'. Secondment is an exception to this basic principle. In this case, the aim is to ensure that the posted worker continues to benefit from the social security scheme of his country of origin, in order to avoid having to pay social security contributions twice.

Since 1 May 2010, two new Regulations coordinating the social security legislation of Member States of the European Union entered into force: Regulation No 883/2004²⁹⁷ and its implementing Regulation No 987/2009²⁹⁸. These Regulations replace the previous ones as regards the relations among EU Member States. A transitional period has been provided for, however, in which the persons concerned remain subject to the social legislation determined in accordance with the provisions of the former Regulation, up to a maximum period of ten years, that is, until 30 April 2020²⁹⁹. Persons in this situation may, however, request a change in applicable legislation.

Evidence that one has maintained one's membership in the social security scheme of one's home country is provided by means of the E101 certificate (A1 under the new Regulation). In practice, the inspection services may for many more years encounter persons subject to either the old or the new regulation, depending on the situation. This is not going to facilitate inspections, particularly with regard to certain problems linked to the E101 certificate (see point 3.3.1 below).

²⁹³ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, *O.J.* L 149 of 5 July 1971. This Regulation (and its implementing regulation) were later amended and updated several times. For a consolidated version, see the website: www.cleiss.fr

²⁹⁴ Regulation (EEC) No 574/72 of the Council of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, *O.J.* L 74 of 27 March 1972 (consolidated version: *O.J.* L 28 of 30 January 1997).

²⁹⁵ These are sickness and maternity benefits, invalidity benefits, old age and survivors' benefits, occupational accident and disease benefits, death grants, unemployment benefits and family benefits.

²⁹⁶ And this so even if the person in question lives on the territory of another Member State or if the company's registered office or the domicile of the employer for whom he is working is on the territory of another Member State (Article 13, §2 *sub a*) of Regulation 1408/71.

²⁹⁷ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, *O.J.* L 166 of 30 April 2004. This Regulation was recently amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems and determining the content of its annexes (*O.J.* L 284 of 30 October 2009).

²⁹⁸ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, *O.J.* L 284, 30 October 2009.

²⁹⁹ Article 87 of Regulation No 883/2004.

Moreover, the new Regulation provides expressly for electronic exchange of data among the Member States. This system has yet to be put in place. (see below Chapter 2 on good practices).

Nevertheless, the problems identified and the practical illustrations related to the previous Regulation will be the main focus of our attention.

General Conditions

In order for secondment to be legal, certain conditions must be met³⁰⁰:

- prior membership in the social security scheme: before the secondment, the worker must already belong to the social security scheme of the Member State from which he is being posted;
- maintenance of an organisational link. During the secondment, the worker must continue to be a regular staff member of the company seconding him (in other words, be in an employment relationship) and to perform a job on account of and for the benefit of that company. It is therefore necessary for an ongoing link to exist with the company posting and the posted worker. The organisational link may be demonstrated on the basis of the following elements: responsibility for recruitment, for the employment contract, for firing and for determining the nature of the work to be performed;
- temporary nature: the length of the secondment may not exceed 12 months (24 in the new Regulation, and non-renewable). The secondment may, however, be extended for another twelve-month period if the work itself continues beyond the initial period on account of unforeseen circumstances³⁰¹. An exemption for a longer period may, however, be requested from the competent authority in the Member State under whose legislation the worker wishes to continue to belong;
- prohibition on replacement: a worker may not be sent to replace a worker who has completed his term of secondment³⁰².

The rules governing secondment and the maintenance of the social security scheme of the posting Member State also applies in certain specific, sometimes complex, situations. This possibility of undertaking complex secondments increases the risk of fraud, as we shall see further on.

³⁰⁰ See D. Ghailani, *Le détachement des travailleurs sur les territoires belge, français et britannique*, Final report, commissioned by the EuresChannel network, European Social Observatory, May 2004, pp. 16-18.

³⁰¹ Article 14, §1, a and b of Regulation 1408/71. It is nevertheless possible to ask the competent authority of the Member State under whose legislation the worker wishes to remain, to grant an exemption for a longer period, whether for purposes of employment or self-employed work (see on this point Article 17 of Regulation 1408/71) and *Practical Guide for the Posting of Workers in the Member States of the European Union, the European Economic Area and Switzerland*, p. 11. The guide can be downloaded from the following site: ec.europa.eu/social/BlobServlet?docId=1848&langId=en

In that case, authorisation is subject to the signing of an agreement between this authority or body and the one in the Member State in question.

³⁰² Article 14, §1, a) of Regulation 1408/71.

Among these, let us mention:

- hiring someone with a view to secondment,
- a continuous series of secondments.

Hiring someone with a view to seconding them is a problem encountered largely – but not exclusively – at temporary employment agencies. This practice is subject to several conditions. Thus, besides requiring that an organisational link be maintained with the company and the seconded worker, the habitual nature of the actual activity performed by the company in the posting Member State is essential if one is to be able to speak of secondment³⁰³. Yet it is precisely the absence of actual activities in the posting country that is typical of the phenomenon of letter box companies. The ILO has also drawn attention to this phenomenon:

Unfortunately, the posting of workers has been abused, for instance in order to circumvent the obligation to pay social security contributions in the host country. Letter box companies, for example, are sometimes created for the purpose of ‘posting’ workers and offering lower wages and social benefits compared to those that would apply if workers were employed as opposed to posted. These arrangements are not considered legal since entities such as letter box companies do not take part in the domestic market where they are registered. In the context of posting, different forms of undeclared work might occur which likewise constitute forms of social fraud. For instance, the declaration certifying a worker’s enrolment in a social security scheme which is applicable to the posting company might be falsified. It might also happen that a worker, while working within a posting arrangement, is still registered as unemployed in his or her country of origin³⁰⁴.

In this regard, the new Regulation 883/2004 adds a number of supplementary requirements with regard to secondment. Thus, besides the conditions set out above, the Regulation also requires that the employer has a substantial activity in the posting country prior to the secondment³⁰⁵. Moreover, where workers are hired in order to be seconded, they too must have been previously subject to the social legislation of the posting country for at least one month, and must continue to maintain an organisational link with the posting company³⁰⁶.

The practice of a series of successive postings refers to a situation where a posted worker at a company in the host country is then further seconded by the original company to one

³⁰³ See, for further details on this question, the *Practical Guide*, *op. cit.*, pp. 4-5.

³⁰⁴ ILO, *Labour inspection in Europe: undeclared work, migration, trafficking*, Working Document number 7, January 2010, p. 20.

³⁰⁵ This condition applies to any situation of secondment, and not only, as before, to cases of employers who recruit workers in order to second them directly (see Article 12 of Regulation 883/2004 and Article 14 of Regulation 987/2009).

³⁰⁶ Decision A2 of 12 June 1999 of the Administrative Commission for the Coordination of Social Security Systems concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State.

or more other companies in the same destination country. The same is true when a worker carries out work successively in different host countries³⁰⁷.

3.2. 'Self-secondment' of self-employed workers

Self-employed workers established in another Member State of the European Union may also enter another country temporarily to carry out work on behalf of a co-contractor, and thus to practice 'self-secondment'. As regards social security, they remain subject to the legislation of their country of origin provided the period of their secondment does not exceed 12 months (renewable once) (24 months under the new Regulation)³⁰⁸. As in the case of employed workers, it is possible to obtain derogations that allow for a longer secondment. Likewise, maintaining one's membership in the social security scheme of the country of origin is demonstrated by means of the E101 certificate (A1 under the new Regulation).

One of the difficulties that arises with the secondment of self-employed workers has to do with the definition of 'work' used to determine the applicable legislation. The European Court of Justice has already had occasion to rule on the matter. Thus, in a judgment dated 30 March 2000³⁰⁹, it specified that the concept of work must be given a very wide interpretation: the term applies without distinction to any performance of work, whether as an employee or as a self-employed person³¹⁰. This means in practice that a self-employed worker can take advantage of provisions governing secondment (and thus to remain a member of the social security scheme in his country of origin), regardless of the nature of the work (as an employed worker or not) being performed temporarily in the other Member State.

To be able to benefit from the secondment rule, the Court specified, however, that the person in question must 'normally' engage in self-employed work on the territory of a Member State. The person must therefore already have carried out his activity for some time before he wishes to invoke the rules governing secondment. He must also, for the entire period of the secondment, continue to maintain, in his State of origin, the necessary means to carry on his activity so as to be in a position to pursue it upon his return³¹¹. These means consist, for instance, of the use of offices, payment of social security contributions and of taxes, etc., in the State of origin.

³⁰⁷ *Practical Guide for the Posting of Workers in the Member States of the European Union, the European Economic Area and Switzerland*, p. 5.

³⁰⁸ Article 14bis, 1a of Regulation 1408/71.

³⁰⁹ ECJ, 30 March 2000, *Banks*, C178/97, Rec. I-2005.

³¹⁰ This is all the more relevant when the work carried out by the person in question is considered not to be employment in the first State but as employment in the other State.

³¹¹ See D. Ghailani, *op.cit.*, p. 20.

These conditions are formulated more explicitly in the new Regulation applicable from 1 May 2010³¹². Moreover, the self-employed worker must, in order to be seconded, perform work of the same type in the host country³¹³.

In practice, however, it is often the case that ‘self-seconded’ self-employed workers who come to work in Belgium in fact perform their work under the authority of an employer and find themselves in a situation of bogus self-employment.³¹⁴

We have already mentioned in this regard the LIMOSA system of mandatory prior declaration, in effect since 1 April 2007. This system, applicable both to seconded employees and self-employed workers³¹⁵, appears to be one of the ways to prevent working as a bogus self-employed worker under the free movement of services and to combat social fraud and dumping practices³¹⁶. For seconded employees, the employer makes this declaration electronically to the *ONSS*. He is, as a result, exempted from the requirement to keep certain social records³¹⁷. For seconded self-employed workers, this declaration is made electronically to *INASTI*. In principle, this electronic declaration must be made before the self-employed worker can begin activities in Belgium. The European Commission recently challenged Belgium before the Court of Justice on this matter, judging that it was thereby placing a restriction on the freedom to provide services³¹⁸.

The ILO recommends, however: ‘to increase resources (financial and human) dedicated to collecting appropriate and accurate information on enterprises and the movement of ad hoc categories of workers (e.g. posted workers, migrant workers). This means the creation and management of coordinated registries or databases, which can in turn be shared with other units of public administration at the national and European level’³¹⁹. It refers explicitly to the LIMOSA system as an example of good practice³²⁰.

³¹² The requirement that a person has pursued his activity for some time, and that the person continues to fulfil the requirements for the pursuit of his activity in the home State is thus clearly formulated (see Article 14, 3° of Regulation 987/2009).

³¹³ Article 14, 4° of Regulation 987/2009 thus specifies that one needs to take into consideration the real nature of the activity, and not its designation as employed or self-employed activity that may be given to this activity by the host Member State.

³¹⁴ The European Parliament stressed the fact that the activity of a bogus self-employed worker is a strategy used mainly in order to evade the minimum norms that follow from Article 3 of the Posted Workers Directive. See the European Parliament Resolution of 26 October 2006 on the application of Directive 96/71/EC on the posting of workers (2006/2038(INI), point 7.

³¹⁵ See Articles 137ff of the Programme Law of 27 December 2006. Certain exceptions to this general rule were nevertheless provided for.

³¹⁶ ‘Travail indépendant et faux travail indépendant dans le secteur de la construction au sein de l’Union européenne, Une étude comparative de 11 Etats membres’, *op.cit.*, p.30. See also Chapter 2 on good practices.

³¹⁷ See Articles 142 to 148 of the Programme Law of 27 December 2006.

³¹⁸ ‘UE: La Belgique accusée d’entraves aux indépendants’, *Le Soir*, Thursday, 3 June 2010.

³¹⁹ ILO, ‘Labour Inspection in Europe: Undeclared Work, Migration, Trafficking’, Working Document number 7, January 2010, p.5.

³²⁰ *Ibid.*, p.10 and 15. In the same vein, see also the contribution by Ludo Beck ‘Migration économique et lutte contre l’exploitation’ in the Centre’s 2009 report on *Migration*, p.179-180.

In 2008, 224,905 declarations were entered into the LIMOSA system, of which 203,867 were employed persons and 19,896 self-employed workers³²¹. The most widely represented nationalities among the foreign self-employed workers were the Poles, Bulgarians and Romanians. Self-employed workers account for around 8 % of all declarations. A large number of self-employed workers having worked in Belgium in 2008 did so under a secondment scheme. It seems that these are often bogus self-employed workers³²².

Illustration: The construction sector

At present, there is a problem with seconded self-employed persons who come to work in the construction sector for EUR 5 an hour. They are recruited by a temporary employment agency in the Netherlands or in Germany in the context of a subcontracting arrangement as self-employed persons, in order to be seconded to Belgium. Entrepreneurs who follow the rules complain about this, but the Social Inspectorate is often helpless to deal with this phenomenon. Because of the resulting unfair competition, these sorts of practices risk harming everyone.

3.3. Problems observed in the field

3.3.1. The E101 certificate and the difficulties of verifying its authenticity

As already mentioned, maintaining membership in the social security scheme of the country of origin during a secondment, whether in the case of an employee or a self-employed worker, is attested to by means of the E101 certificate (secondment) and the E102 certificate (in the event of a renewal) by the competent social security authorities in the posting State (for employees) or the State where the self-employed worker normally performs his activities. The new Regulation replaces the E101 form by a document entitled A1.

This form must in principle be requested before the secondment period. However, according to the Court of Justice, the E101 certificate may also be issued during the period in question, or even afterwards, since its effects are retroactive³²³.

³²¹ The other categories concern interns (1.038) and self-employed interns (104). See Social Laws Inspection Service, 2008 Activity Report FPS Employment, Labour and Social Dialogue, p.129-130.

³²² The report (ibid., p.130) notes in this regard that the parties enter into a contract that does not correspond to reality in order to evade administrative obligations imposed for workers as well as monitoring of working conditions and remuneration.

³²³ ECJ, 30 March 2000, C-178/97, Banks and others, *Rec.*, p. I-2005, points 53 and 54; *J.T.T.*, 2000, p. 304 with comment by P. Gosseries, p. 307 and 308. See also Decision no. 181 of 13 December 2000 concerning the interpretation of Articles 14, § 1, 14*bis*, § 1 and 14*ter*, § 1 and 2, of Council Regulation

Furthermore, a seconded worker and the seconding company must be able to produce the E101 certificate at any time in order to allow the insurers in the States in question to make the necessary checks³²⁴.

Such checks are not easy, however, to perform in practice, more particularly because of the case law of the European Court of Justice on this matter³²⁵. In several of its judgments³²⁶, the Court held in essence that it is not up to the host State to determine the validity and authenticity of a certificate issued by the competent body in the seconding Member State. In its view, it is exclusively up to the authority issuing the certificate to revoke or cancel it (and thus also to verify the grounds upon which it was issued are correct, such as the existence of a direct relationship between the company and the seconded workers).

As a result, if a social inspector encounters fraud when conducting his checks, and he is sure to be dealing with a bogus self-employed worker³²⁷ who has an E101 certificate, the difficulty of reclassifying the person's status is nearly insurmountable, in light of the probative value of the E101 form³²⁸.

This position taken by the Court of Justice has unleashed numerous criticisms, notably because it deprives national authorities of nearly all their power to combat fraudulent secondments to their country, preventing them from checking whether the substantive conditions for secondment have been met³²⁹.

It is nevertheless possible, for the host State that can attest to a number of facts pointing to a failure to meet the conditions of secondment, to ask the issuing body to review its decision and, if necessary, to withdraw the document. If necessary, the host State may also require that the work performed in his State be subject to the local social security scheme. In practice, however, the means of challenging the issuance of the certificate are often lacking. As far as the Belgian social services are concerned, verifying whether the employer or the self-employed worker actually carried out substantial activities in the

(EEC) No 1408/71 on the legislation applicable to posted workers and non-salaried workers who temporarily carry out an activity outside the competent State, *O.J.* L 239, 14 Dec. 2001, point 6.

³²⁴ *Practical Guide for the Posting of Workers in the Member States of the European Union, the European Economic Area and Switzerland*, p. 8. The guide can be downloaded from the following site: ec.europa.eu/social/BlobServlet?docId=1848&langId=en. See also Chapter 2 on good practices.

³²⁵ In this regard, see C. Visart de Bocarme, 'Pour une politique intégrée de lutte contre la fraude', opening speech for the reopening of the Labour Court of Liège, *J.T.T.*, 2008, p.459.

³²⁶ See the *Fitzwilliam* (ECJ, Case C-202/97), *Banks* (ECJ, Case C-178/97) and *Herbosch Keire* (ECJ, 26 January 2006, Case C-2/05) judgments.

³²⁷ On bogus self-employed workers, see below, section 2 of this Chapter.

³²⁸ C. Visart de Bocarme, *op.cit.*, p.459.

³²⁹ 'Travail indépendant et faux travail indépendant dans le secteur de la construction au sein de l'Union européenne, Une étude comparative de 11 Etats membres', by Y. Jorens, University of Ghent, 2009, pp. 24-25.

country of origin and whether the social security contributions are being paid there is not easy to do³³⁰.

If no agreement is confirmed, the competent institutions may refer the case to an administrative commission or even to the Court of Justice (initiating an action for failure to fulfil)³³¹.

The new Regulation does not make any significant change in the procedure to be followed in case the certificate is challenged by the host State.

Another difficulty has to do with the quality of the E101 forms. A number of them are incomplete, bear erasures³³² or are (easily) forged³³³ (see the illustration below: secondment, bogus self-employment and human trafficking).

It follows from the above that positive and effective cooperation with the inspection services or the competent bodies of the country of origin is indispensable. Yet this collaboration is often unsatisfactory. Thus, it often takes a very long time to receive an answer from the competent body in the country of origin. Some States are also quite reticent and slow to communicate the information requested by the inspectors³³⁴.

It is for this reason that a variety of actors have made recommendations in this matter. In particular, the need to strengthen the effectiveness of collaboration among the different social and tax inspection services in the Member States. This could be done, for instance, by means of collaboration agreements and by a code of conduct. Moreover, an electronic form of the E101 certificate, that can be consulted online, would be a definite step in the right direction, as would cross-border databases³³⁵. A more efficient use of the current LIMOSA system or even its adoption at a European level, would further contribute to the fight against fraudulent secondments and bogus self-employment³³⁶.

³³⁰ See also Chapter 2 on good practices.

³³¹ This is the Administrative Commission for the social security of migrant workers. In practice, it seems that this administrative commission does not play its role of mediator ('Travail indépendant et faux travail indépendant dans le secteur de la construction au sein de l'Union européenne, Une étude comparative de 11 Etats membres', by Y. Jorens, University of Ghent, 2009, p.23).

³³² Ibid., p.25.

³³³ Y. Jorens and T. Van Buynder, Expert Reports, 'Self-employment and bogus self-employment in the construction industry in Belgium', February 2009, p. 10. Various problems arise in this context. First, a problem of authenticity: the inspection services rarely see the original document, which is kept at the company head office, and the workers often only have a copy. In addition, it is easy to falsify the form, which can be downloaded from the Internet. Finally, there are problems as well with the translation of the form, which complicates the task of verifying its authenticity. It should also be noted that a falsified E101 in the case of a secondment does not necessarily mean that the secondment itself is illegal.

³³⁴ C. Visart d Bocarme, *op.cit.*, p.459.

³³⁵ Y. Jorens and T. Van Buynder, Expert Reports, Expert report for Belgium, *op. cit.*, pp. 16-17 and 18-19.

³³⁶ Ibid., p. 17. See also Chapter 2 on good practices, as well as the final recommendations of this report.

Illustration: Secondment and human trafficking

We have had the opportunity to show, in the section devoted to the phenomenon analysis, how secondment in some cases facilitates exploitation of migrant workers by way of human trafficking.

An illustration of this danger may be found in the case of transport B. referred to in last year's report³³⁷. This was a complex system of companies in the removals sector. In this case, an Italian company with a branch in Belgium illicitly employed both workers recruited in Belgium and Italian workers seconded to Belgium on a temporary basis. However, the rules governing secondment were not complied with, either as regards labour law (failure to comply with the regulations in force in Belgium) or as regards social security law (the inability of either the workers or the employer to produce an E101 certificate showing that they continued to be subject to the social legislation of the posting home country).

If a company is investigated by the judicial authorities, it simply ceases operations and starts again under the same name but under a different business status. The parent company is based in Naples. It has two branches in Germany and five establishments in Italy, including one in Naples and one in Sicily. There are sales offices in the Azores, Greece, the United Kingdom, Turkey (Istanbul), Spain, Russia, Croatia, Bosnia, Crete, Hungary, Israel and the United States.

In Belgium, the removal company's primary client is Shape and the American soldiers who work for NATO. Another major client in the United States is Fort Bragg, where the American special forces are trained (elite military units).

Another company, which is practically bankrupt, lodged a complaint on grounds of unfair competition. The labour inspector (*auditeur de travail*) has submitted the case to the tax authorities. But no tax offence was found to have been committed in Belgium. They are all subject to Italian law. VAT fraud, for instance, is the competence of the Italian tax authorities.

The investigation in Italy shed light on fraud involving more than EUR 4 million. The Italian investigation was launched on the grounds of irregularities spotted by the German branch. In Campania (Italy), several fictitious companies were found, all linked to each other.

3.3.2. Fraud involving secondments

In the past few years, the inspection services were faced with a steady increase in activities by foreign companies in Belgium. The phenomenon often goes hand in hand with various forms of unfair competition. In several cases, we can even consider these

³³⁷ See Centre, 2008 Annual Report on Human Trafficking, Part 1, Chapter 2, B.2.3: Dossier B (case of an Italian transport company linked to the mafia), pp. 42-43 and Chapter 4 (case review), point 2.4., p.68-69.

foreign companies to be engaged in practices of social dumping³³⁸. The secondment of workers, often under the most complex arrangements (such as a long chain of subcontracting, subcontracting using the services of temporary employment agencies³³⁹ or bogus self-employed workers), can thus serve to cover up various dubious practices and to facilitate the exploitation of migrant workers. The ILO notes in this regard that: ‘Some enterprises might engage in subcontracting for the very purpose of avoiding compliance. This has been the case in Belgium, for instance, where subcontracting prevents actions for the recovery of unpaid social security contributions since there is no joint liability scheme. Another challenge is when the enterprise "ceases" to exist between the time the inspection is conducted and the sanction imposed’³⁴⁰.

Yet more and more sectors are involved in the phenomenon of secondment. In addition to the construction sector and metal manufacturing, we also find posted workers in the HORECA industry, in agriculture and horticulture, security services, cleaning and heavy-goods vehicle transport³⁴¹.

The four main forms of fraud involving secondment

On-site checks have revealed various problems. Fraud involving secondment is one of these³⁴². In some cases this gave rise to investigations of human trafficking (see illustration below). In practice, it turns out that secondment does not always meet the conditions set out in Regulation (EEC) No1408/71 and Directive 96/71/EC, because the seconded worker is not ‘normally’ employed in his country of origin, or that he no longer has an organisational link with his employer.

Moreover, the social security authorities may have serious grounds to believe that social security contributions are being evaded, but have few means to look into this fraud in the country of origin and put an end to it³⁴³. We have also mentioned the problems related to verifying the E101 certificates. In cases where a secondment has been cancelled by the issuing institution, the employer should be responsible for making the contributions in the country where the worker is performing work (i.e. in Belgium). In this case, workers may

³³⁸ 2008 Activity Report of the Social Laws Inspection Service of the Belgian FPS Employment, Labour and Social Dialogue, p. 117.

³³⁹ For instance, a Portuguese principal entrepreneur subcontracts to a Lithuanian, who, via a Polish temporary agency, engages in work on a Belgian construction site with Ukrainian workers.

³⁴⁰ ILO, ‘Labour Inspection in Europe: Undeclared Work, Migration, trafficking’, Working Document number 7, January 2010, p.19.

³⁴¹ 2008 Activity Report of the Social Laws Inspection Service, *op. cit.*, p.124.

³⁴² Off shoring is another problem. In this case, Belgian companies operate schemes by creating a subsidiary in one of the new EU Member States, with the aim of reducing their own Belgian staff (especially in the international heavy-goods vehicle transport sector). The foreign subsidiary then hires workers who are seconded to Belgium, supposedly in order to work there as subcontractors for the Belgian parent company. However, the working conditions and terms of payment these seconded workers face are often less advantageous than those of the Belgian employees who work alongside them (2008 Activity Report of the Social Laws Inspection Service, *op. cit.*, p.118).

³⁴³ As the employment is situated outside the borders of the country of origin, these institutions have no power of oversight. (*Ibid.*, p. 121).

perhaps enjoy rights in Belgium, but this does not necessarily mean that social security contributions are being paid³⁴⁴.

In its 2008 Activity Report³⁴⁵, the Social Laws Inspection Service (CLS) distinguished four different forms of fraud involving secondment:

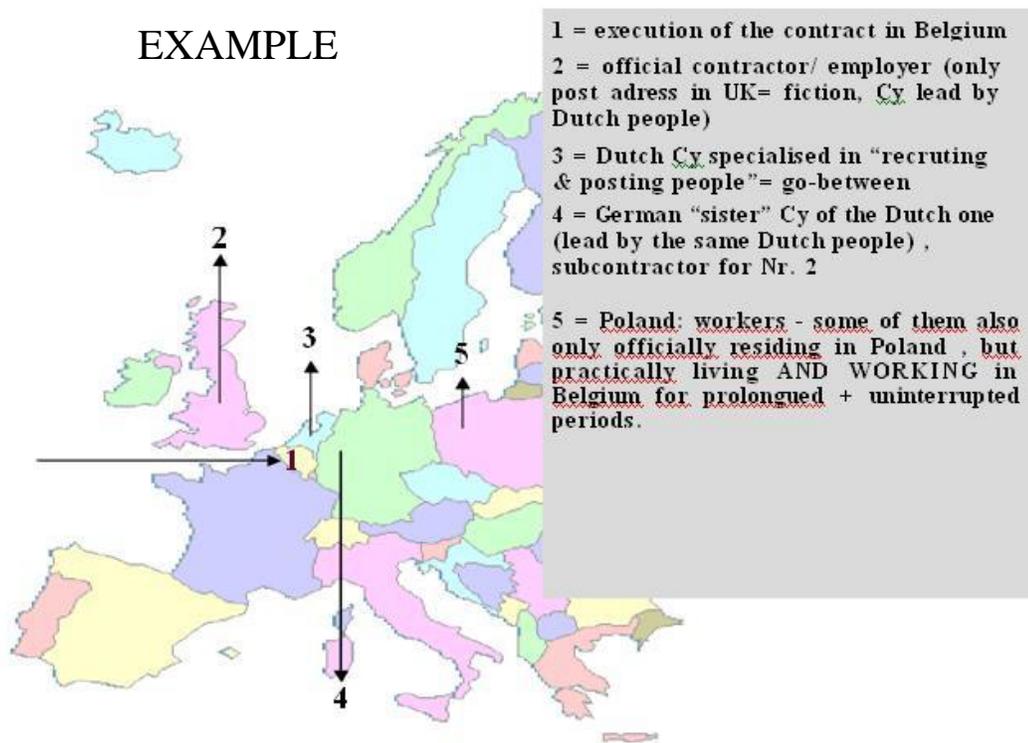
- a. Incomplete declaration of the work performed: the secondment is arranged correctly, but not all hours worked are reported to the social security or tax authorities in the worker's country of origin. The undeclared work is paid under the table.
- b. The secondment is falsified: in this case, there is no assurance that the E101 secondment form is correct. If a false E101 is produced during inspection, it is not easy to detect the fraud. This would have as a consequence in Belgium (the country where the work is performed) that the worker will be considered to be benefiting from social security in his country of origin, even though the payment for the work is completely undeclared.
- c. Special arrangements: these are fraudulent secondments via companies and subsidiaries that are established in different European countries. This fraud goes hand in hand with fraud involving the declaration of work performed. (See figure on the next page.)
- d. Fictitious secondment: in this case, workers from another EU Member State live permanently in Belgium (e.g. many Polish and Portuguese nationals), but are fictitiously registered with a foreign company. They are thus seconded to Belgium under false premises. Sometimes these companies are simply 'letter box companies' or are fictitiously based abroad. In certain scenarios, these may be companies created abroad by a Belgian national in order to 'self-second' workers who are not declared anywhere.

³⁴⁴ Ibid., p. 121.

³⁴⁵ Ibid., pp. 121-122.

Figure: source: Annual Report 2008 of the Social Laws Inspection Service of the Belgian FPS Employment, Labour and Social Dialogue (p.128)

EXAMPLE



A Belgian company (1) wishes to have work performed and calls upon a company established in Great Britain (2). The latter company in fact has only a postal address in Great Britain and is managed by Dutch entrepreneurs. The British company does not employ any staff but uses the services of a Dutch secondment firm (3). This firm, managed by the same people as those who manage the British company, serve as 'go-betweens' to find the subcontractors who can perform the work. The Dutch secondment firm has a sister company in Germany (4). The German company will act as 'subcontractor' for the British company, but in fact it is the sole contractor/entrepreneur. The staff will be recruited in Poland (5); some of the Polish workers are in fact residents of Poland but have been living and working in Belgium for a longer period.

Providing workers³⁴⁶ via foreign 'secondment firms', intermediaries, temporary employment or outplacement agencies whose activities do not comply with the laws on temporary or interim work or with the decrees governing private employment agencies constitutes another type of fraud³⁴⁷.

³⁴⁶ Providing workers is regulated by Articles 31ff of the Law of 24 July on temporary work, interim work and providing workers to employers, Belgian Official Gazette, 30 July 1987.

³⁴⁷ For more information on this matter, see the 2008 Activity Report of the Social Laws Inspection Service, *op. cit.*, pp.122-24.

Offences uncovered

The offences uncovered in the field mainly relate to the following areas: payment terms, social documents, length of work and LIMOSA declarations³⁴⁸:

- Terms of payment: salaries paid to seconded workers are systematically lower than the Belgian minimum wage. Bonuses and supplements are often not paid³⁴⁹. Sometimes a wide variety of deductions are withheld from the salaries of seconded workers (e.g. rent, cost of tools and work clothes)³⁵⁰. Yet, as we have seen, the employer is required to observe the nucleus of minimum working conditions and terms of payment in the host country. By the same token, it is also important to determine the working conditions or terms of payment to which the seconded worker is entitled, something that is not always easy to do, particularly as regards the sectoral collective agreements that have been declared to be mandatory³⁵¹.
- Social documents: in practice, these are often absent. If they do exist, they are not always correct or have been falsified. Moreover, evidence of fraud has also been detected on documents that the workers do possess (identity cards, residence permits, E101 certificates, and of course pay slips)³⁵².
- Working time: In this regard, the Social Laws Inspection Service (CLS) has noted that: ‘the main advantage of the massive supply of seconded workers is their “work flexibility”. This is characterised by long working days, irregular shifts, 6 or even 7-day working weeks(often 60 hours a week), working nights and holidays. Paid holidays are not taken. Overtime is rarely paid at the legally mandated rate’.

Moreover, seconded workers are often put in situations that do not comply with the conditions determined by regulations on well-being, safety and health in the workplace³⁵³.

Terms of payment and working conditions, as well as the work environment, are all elements taken into account by Belgian authorities to determine whether there are working conditions that are contrary to human dignity and could constitute human trafficking³⁵⁴.

³⁴⁸ 2008 Activity Report of the Social Laws Inspection Service, *op. cit.*, p.128.

³⁴⁹ *Ibid.* p.119. Often, foreign employers pay a daily allowance (‘per diem’) that can run as high as EUR 45 per calendar day, and which is for the most part exempted from social contributions and tax deductions in the country of origin. These daily allowances are not, however, part of the salary, since they are intended to cover travel and accommodation costs related to the secondment.

³⁵⁰ J. Buelens and J. Tieleman, *op. cit.*, pp.19-20.

³⁵¹ *Ibid.*, p. 20.

³⁵² 2008 Activity Report of the Social Laws Inspection Service, *op. cit.*, p.120.

³⁵³ J. Buelens and J. Tieleman, *op. cit.*, p. 21.

³⁵⁴ See Part 1, Chapter 4 on case law, as well as the Centre’s 2008 Annual Report on Human Trafficking, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, Part 1, Chapter 4 (overview of case law 2008-early 2009), pp. 64-70.

Illustration: Ring of illegal Brazilian workers presented as if they were Portuguese

At the end of 2009, the Belgian Financial Intelligence Processing Unit (CTIF-CFI) published a notice on clandestine Brazilian labour rings. Fraud involving secondment is one of the many types of fraud being practiced in these circles.

We quote here in full the notice in question taken from the CTIF-CFI's annual report, which also applies to cases of human trafficking:

‘Brazilian clandestine worker rings make use in particular of false documents and the fraudulent use of companies. Brazilians residing illegally in Belgium are recruited in order to work on building sites in Europe. These illegal workers are sent to Portugal where, based on leases relating to dwellings in small Portuguese towns they, with the help of their employers, register with the Portuguese Ministry of Finance. As soon as they are registered, the illegal Brazilian workers receive a “social security card” (CPF card) made out in their legal name. With this card, the illegal Brazilian workers return to Belgium before being sent to work on the building sites. In Belgium, based on their true Brazilian identity, one or more counterfeiters linked to the employer draw up a false Portuguese residence permit intended for use by the workers. This false document is the “Autorização de Residência permanente” (permanent residence permit for foreigners), in this case containing the same information as that which appears on their Brazilian passports. An employment contract is drawn up for each illegal Brazilian worker with a Portuguese company (one created for this purpose) and in some cases subcontracting documents are provided (authentic documents from the Portuguese social security services or else forged documents). With these documents, the illegal workers are then sent all over Europe to work on building sites (a Portuguese firm working as subcontractor for a Belgian company, which in turn is subcontractor to another company, etc.). Such structures are set up in order to cover the employment of illegal Brazilian workers. The use of forged documents that nevertheless contain true identities, combined with the use of an authentic Portuguese social security card and documents attesting to a secondment help to cover their tracks.³⁵⁵

Running parallel to this practice we see, in conjunction with this organised fraud and money-laundering ring, abusive practices involving companies. Frequently, Brazilians with false papers and a false Portuguese nationality take over existing companies. Under active VAT numbers, they carry out various types of work in the construction sector but do not pay either company taxes or social contributions. Their workers are clandestine workers illegally residing in our country. The consequences of these fraudulent structures are, notably, unfair competition and social dumping (low salaries, abuses, exploitation of workers, dangerous working conditions). Once the number of their creditors grows and the noose begins to tighten around these companies, they are emptied out. The directors/managers then take over other existing companies, under another false

³⁵⁵ Federal Police, ‘Filières brésiliennes’, Central Service on Human Trafficking (Service central Traite des êtres humains), *Bulletin d’information*, February 2009.

Portuguese identity, so that the cycle can start all over again. The accounts of these companies are fed mainly by payments corresponding to the invoices for the work performed. These funds are withdrawn in cash, thus making it impossible to trace their final destination and enabling the company to pay the clandestine workforce. The latter, for its part, generally uses money remittance firms to send money home to Brazil.³⁵⁶

Fighting fraud

In addition to the difficulties relating to the verification of the E101 certificate, there are other sorts of problems, such as that of language, which make verification difficult to carry out³⁵⁷. It is not only a matter of the language spoken by the employers and employees, which makes interviewing them difficult, but also the language of the documents, which makes it hard to read them. And since the employer is a foreign company, which for the most part has no establishment in Belgium, it is very difficult to collect information, and the officials of the Belgian inspection services are unable to conduct enquiries abroad. Similarly, sometimes neither the employers nor the workers are willing to provide information. Finally, we have already mentioned that collaboration with foreign inspection services is not always without its own problems.

The State Secretary for Coordination of the Fight against Fraud has proposed a variety of measures in order to fight against fictitious secondments. In his view, amending the European rules governing secondment would be the best solution. Nevertheless, since this is a long-term project, pragmatic measures can be taken, such as the conclusion of bilateral agreements for a rapid and precise exchange of data with European countries involved in secondment. This applies mainly to neighbouring countries and the new EU Member States (see below, Chapter 2 on good and bad practices).

Illustration: Secondment, bogus self-employment and human trafficking

In the following case, which arose in the city of Dendermonde, all the defendants were summoned before the criminal court for offences committed in 2004 and 2005. The victims included both seconded employees and self-employed workers.

Launching the investigation

The local police noticed, during a check relating to a request to enrol in the population register, that 13 Polish workers in the construction industry were living in a dilapidated villa that did not meet the basic standards of a habitable dwelling. The police contacted the housing inspectorate to report the practices of slum landlords. The Poles told the

³⁵⁶ 16th Annual Report of the Belgian Financial Intelligence Processing Unit (CTIF-CFI), 2009. This publication can be consulted at www.ctif-cfi.be.

³⁵⁷ 2008 Activity Report of the Social Laws Inspection Service (Service Contrôle des Lois sociales), *op. cit.*, p. 125.

police that they were working for a construction company as active partners. During the inspection, the housing inspectors found a significant risk of electrocution, fire and explosion. They initiated a procedure to have the premises condemned. On the spot, one of the Poles questioned in German stated that they did not have to pay rent and that they were working for a tenant of the premises, who is a Belgian property developer. The latter had asked them to fix up the villa and render it habitable, by installing showers and toilets and to do so outside their normal working hours. The enquiry showed, however, that the developer deducted EUR 150 a month from their pay to cover the rent. The housing inspector also questioned the owner of the villa, who was renting it to the Belgian property developer. The magistrate ordered that a legal investigation be launched against the owner and tenant on charges of engaging in slum landlord practices. He also requested that the Polish workers, in the presence of an interpreter, and the Belgian property developer be heard as to the nature of their employment and the terms of tenancy of the villa. After consulting police databases, it turned out that this Belgian property developer was known for theft, fraud, false signatures, bearing illegal arms, illegal employment and that he was the subject of a judicial investigation for fraud. They also noted that he was a manager and/or partner of a number of companies.

Victims' statements

The Poles stated that they had come to Belgium in 2004 via a Polish company. This company, managed by a Belgian-Polish couple, worked as subcontractors for a Belgian property developer. The Polish workers signed an employment contract for a monthly salary of EUR 800. They were to work 168 hours on the building site, under the supervision of the Belgian developer. In Poland they could earn no more than EUR 350 per month, while the minimum wage in the Belgian construction sector is EUR 1,350. The Poles thought that they were working legally, based on their Polish employment contract and the E101 form that they had submitted to the town hall upon arrival. During inspection, it turned out, however, that they were working illegally. The E101 forms had in fact been falsified. The Poles then refused to continue working for the Belgian property developer via the Polish company. The developer then offered to create a joint company with them in Poland. Since this project was likely to take a long time, he proposed taking over a Belgian company. In this way, their work situation could be regularised. He did not give them any further details. At the time, that is, in 2005, the borders for the free movement of workers were not yet open to Poles. They were only opened up on 1 May 2006 (editor's note: in fact, they were not fully opened up until 1 May 2009)³⁵⁸.

One evening, the Belgian property developer arrived with the documents and asked them to sign them. The documents were drawn up in Dutch and no interpreter was present. He explained to them that they would each receive 7 shares. The Poles did not agree. They wanted to buy all the shares in the company in order to become the exclusive owners. But the Belgian property developer refused.

³⁵⁸ As managers, they have self-employed status and could already at that time settle in Belgium as self-employed workers.

The Polish workers performed work in the towns of Brussels, Sint-Niklaas, Hamme, Dendermonde, Asse, Zottegem and Zele. A few months later, the commercial court liquidated the company, as the Belgian property developer had wound up the company unbeknownst to the Polish partners.

Working conditions

In practice, the Poles were entirely at the service of the Belgian property developer. They were required to work 45 hours per week, and for that they were paid EUR 300. Of that sum, they had, as self-employed workers, to pay their own tax deductions and social security contributions. As the Belgian entrepreneur did not keep his promise to pay the social security contributions, the Polish workers found that they had serious arrears with the social security office.

It turned out that some of them had not even received their full salary from the Belgian developer. The latter allegedly owes large amounts to the Polish workers interviewed, ranging from EUR 3,000 to 10,000. One of the Polish workers who had been on incapacity leave for a month following a workplace accident was not compensated and had to undergo medical treatment in Poland. He is still claiming EUR 6,500 from the Belgian property developer.

In later interviews between the police and the Polish workers, it emerged that the property developer had told them to get lost when they insisted their salaries be paid. The developer apparently claimed that the federal police had seized his assets and his payroll records, so that he no longer had any money.

Bogus self-employed workers

After having listened to the police testimony upon the request of the investigative judge, the Social Inspectorate responded that this was clearly a classic case of bogus self-employed workers. '[...] which consists of a system that confers the status of self-employed person on a worker, without that worker really being self-employed, thus allowing the employer to avoid paying social security contributions. In the case at hand, the Polish workers were initially named managers of the employer's limited company. Subsequently, they became partners in the company and employed as active partners in order to be able to work under self-employed status.

According to the Social Inspectorate, this situation constitutes an offence under the law on the employment of foreign workers and on the immediate declaration of employment to DIMONA. The Social Inspectorate continued: 'In order to be able to designate the Polish workers as partners in the limited company, a contract was drawn up stipulating that each employee would be sold 1 % of the company shares for an amount of EUR 100. None of the workers ever had to pay this sum, which indicates that the contract was fraudulent and that the employees were never partners at all. Indeed, there is no mention anywhere of a share in profits or losses, nor other advantages and disadvantages relating to the status of a partner. This also points to the likelihood that the employer's sole

objective was to evade payment of social contributions. All the Polish workers were named managers of the limited company. Their various statements suggest, however, that they never had to act in any managerial capacity [...]. This clearly indicates that x (the Belgian property developer) used fraudulent manoeuvres to employ the Polish workers as self-employed workers'. Upon orders from the labour inspector, the 'bogus self-employed worker' charge was subjected to a supplementary enquiry conducted by the Social Inspectorate.

Prosecutions

Both the Belgian property developer and his company, the managers of the Polish subcontracting company as well as the owner of the villa were prosecuted. The villa was seized.

This case also points to the limitations in the investigative capacity at the level of the federal police³⁵⁹.

³⁵⁹ In October 2005, their report noted: 'Our services have not yet carried out the requested tasks, given that our department must give priority to handling a case of human trafficking'.

Chapter 2: Good and bad practices in combating human trafficking for the purposes of labour exploitation

1. Victims

In its previous annual reports on human trafficking, the Centre delved into the issues of detecting and dealing with victims of human trafficking for the purposes of labour exploitation³⁶⁰. In this annual report as well, we want to point out what the good and bad practices are in this regard, on the basis of observations made in specific case files.

The **case file on the rag trade**³⁶¹ underlines the key role played by local police in detecting human trafficking practices. Information and the vigilant stance of local police have made it possible to compile this case file on human trafficking; consequently this is a clear example of *good practice*. Owing to their local work and neighbourhood checks, it is the local police who are most informed about areas at risk. Nevertheless, in actual fact, human trafficking no longer has priority for numerous local police departments³⁶².

However, in this case file it is regrettable that the victims could not benefit from the status of victims of human trafficking³⁶³. With the approval of the magistrate on duty, the Romanian victims were in fact transferred to a detention centre and sent back to Romania. It should be noted that EU nationals are often no longer interested in obtaining a residence permit via the status of human trafficking victim. In this particular case, when several months later during the questioning of the defendant, the police wanted to organise a face-to-face meeting with the Romanian victims, this was impossible since they had been sent back home. Consequently a key element of the criminal investigation was lost with this repatriation.

The handling of this case file simultaneously illustrates the importance of good detection and of proper support and assistance to the victims in order to safeguard the quality of the criminal investigation. But it also has consequences for the expelled victims, who can no longer assert their right to compensation by adding a civil action to the criminal case.

Another case in which one notes the importance of actors in the field is human trafficking in the construction industry through secondment and bogus self-employment that we

³⁶⁰ Centre, 2008 Annual Report, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 80. This publication can be consulted at www.diversite.be (‘Publications’ section).

³⁶¹ See Part 1, Chapter 2, Phenomenon analysis (Case review).

³⁶² See Part 1, Chapter 5 and Centre, 2008 Annual Report, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 90. This publication can be consulted at www.diversite.be (‘Publications’ section).

³⁶³ See Part 1, Chapter 2, Phenomenon analysis (Case review).

analyse in this report³⁶⁴. As in the other **case files on the labour exploitation of construction workers**³⁶⁵, we see that a case was opened after victims were discovered following a report on a **slum landlord**. In these cases, both the local police and the housing inspection services played a crucial role. Here we feel this is an example of *good practice*, because when the slum landlords were exposed, the inspection services questioned the illegal residents on the method they used to pay their rent and probed the nature of the landlord/employer relationship. They also looked into working conditions in order to uncover any human trafficking for the purposes of labour exploitation³⁶⁶.

The **general checks on housing** carried out on the accommodation premises by local police are an invaluable source of evidence of human trafficking and help detect human trafficking victims.

The **Social Inspectorate** also plays a role in detecting victims of human trafficking. In the circular on multidisciplinary collaboration³⁶⁷, they are put on an equal footing with the police services when it comes to victim detection³⁶⁸. Nevertheless a number of distinctions must be made. Unlike the police, the Social Inspectorate does not view the fight against human trafficking as their main mission, but as one of their many tasks. In practical terms, this means that social inspection services – especially if they are understaffed – cannot give priority to fighting against human trafficking. Nonetheless, we are asking social inspectors to pay the necessary attention to detecting victims of human trafficking during their inspection checks.

It is therefore important to raise awareness and generate encouraging results. We note amongst other things the publication of the **new brochure intended for victims**³⁶⁹, which made it possible to provide social inspectors with the necessary explanations on this topic. So after having been put in the picture by one of the specialised centres during a district meeting on human trafficking, the Social Inspectorate decided to conclude a practical framework collaboration agreement with that specialised centre in order to detect victims of human trafficking: an example of *good practice*.

The **United Nations Global Initiative to Fight Human Trafficking** (UN.GIFT), a section of the United Nations Office on Drugs and Crime (UNODC), developed a special tool to use during the interception and interrogation of persons whose native language is not one of the national languages (*'allophones'*). The person who conducts the hearing

³⁶⁴ In this section, see the illustrative case file in Chapter 1: example: secondment, bogus self-employment and human trafficking.

³⁶⁵ See Centre, 2008 Annual Report, Part I, Chapter 2B Review of case 2.1 Construction.

³⁶⁶ Centre, 2008 Annual Report, Human Trafficking - Enlisting people and resources to combat the phenomenon, p. 80. This publication can be consulted at www.diversite.be ('Publications' section).

³⁶⁷ Circular of 26 September 2008 relating to the implementation of multi-discipline cooperation with regard to victims of human trafficking and/or a number of aggravated forms of human smuggling. Belgian Official Gazette, 31 October 2008.

³⁶⁸ Centre, Annual Report 2008, 'Human Trafficking - Enlisting people and resources to combat the phenomenon', 14. This publication can be consulted at www.diversite.be ('Publications' section).

³⁶⁹ Multilingual brochure for victims of human trafficking, see www.diversite.be under Human trafficking/publications.

indicates in the application the language to be used to ask the questions (oral questions and yes/no replies). The person being interviewed answers by holding the card corresponding to his/her reply. While such a ‘dialogue’ does not replace the official hearing, it does enable the person who is conducting the interview to obtain useful information before moving to the hearing proper (for example, while waiting for an interpreter to arrive). The tool is currently still at the testing stage in police departments, but the police are already set to give it to the Social Inspectorate to use.

2. Inspection Services

A. Reporting signs of human trafficking

The inspection services play an important role in detecting signs of human trafficking by sending their reports or official statements to the labour prosecutor (*auditeur du travail*). Indications of this type are often not enough in themselves for an inquiry on or prevention of human trafficking. One can never insist enough on the importance of an in-depth investigation and detailed reports.³⁷⁰ We hope that with the scheduled launch of the electronic model format for official reports/ statements³⁷¹, which will enable all inspection services to work in a uniform manner, the following remarks will be taken into account.

Within the context of reporting signs of human trafficking, it is of the utmost importance that inspectors provide detailed descriptions of their observations during their interceptions and inspections of working and living conditions (in particular working hours and accommodation). The observations included in the reports or official statements should notably serve as basis for a subsequent investigation. Imprecise reports/statements result in a lack of clarity for the labour prosecutor who, at best, will have to ask the inspector again for details, which means a loss of time. At worst, there will be no follow-up on signs of human trafficking, which were significant but were not noted down.

The reports from inspection services must be more descriptive. At present, the reports are too fragmented and pertinent signs are not always noted in the reports/statements. The aspects observed on a regular basis are no longer routinely noted down. Sometimes people just report illegal/undeclared employment and do not take the investigation beyond that. As a result no indications of human trafficking are recorded.

³⁷⁰ F.Kurz, ‘Lutte contre le travail forcé, l’exploitation économique et la traite des êtres humains: des concepts légaux à l’application judiciaire’, *Chr dr.soc.* 2008, p. 330.

³⁷¹ Press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

B. Data processing

In order to carry out effective checks, access to **appropriate databases** is needed. In recent years, important strides have been made, with the start of the updating of databases such as DIMONA, the *Déclaration unique de chantier* (single on-line Building Site Declaration), Genesis, LIMOSA and the Banque Carrefour des Entreprises (Crossroads Bank for Enterprises, a central company database). Belgium currently leads the field in this area. These databases also prove useful in cases involving human trafficking and are an example of *good practice* for the whole world.³⁷²

DIMONA³⁷³: For employees (whatever their nationality), a registration system exists within the DIMONA project [*Déclaration immédiate/onmiddellijke aangifte/Immediate declaration*]. DIMONA [Immediate declaration of employment] is an electronic system that makes it possible to notify the Belgian National Social Security Office (ONSS) that an individual is being employed or an employee is leaving the company.

Single on-line Building Site Declaration (*Déclaration unique de chantier*)³⁷⁴: This application is used to report building sites. Inspectors can consult this website. Subcontractors and safety managers, data and building site locations are registered on it. The electronic registration of people present on the site will also be introduced, so that it will be easier for inspection services to carry out targeted checks.³⁷⁵

Genesis³⁷⁶: This platform was created by the four federal inspection services and should improve collaboration among these services. Genesis is comprised of two sections: the *cadastre* and the *enrichissement*. The *cadastre* (register) enables the inspectors to read about ongoing and closed investigations by company or location. It also contains concise information about the reasons for and results of the investigation. The *enrichissement* (enhancement) is the feature that offers inspectors all computer-based options for preparing, processing and closing case files.

LIMOSA³⁷⁷: In order to monitor employment, the LIMOSA system [abbreviation of the ‘Landenoverschrijdend Informatiesysteem ten behoeve van Migratieonderzoek bij de Sociale Administratie’ / International Information System for Migration Research of the Social Administration] was introduced on 1 April 2007. This is a system for monitoring

³⁷² See also Y. Jorens and T. Van Buynder, Expert Reports, ‘Self-employment and Bogus Self-employment in the Construction Industry in Belgium’, February 2009.

³⁷³ Centre, 2008 Annual Report, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, p. 88. This publication can be consulted at www.diversite.be (‘Publications’ section).

³⁷⁴ Belgian Federal Public Service (FPS) Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social legislation, 2008 Activity Report.

³⁷⁵ For additional details on problems during checks, see Chapter 1 of this Part, as well as the press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

³⁷⁶ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social legislation, 2008 Activity Report.

³⁷⁷ See Chapter 1 of this Part and the Centre’s 2008 Annual Report, ‘Human Trafficking - Enlisting people and resources to combat the phenomenon’, 88. This publication can be consulted at www.diversite.be (‘Publications’ section).

the employment of foreigners in Belgium within the context of the free movement of services and goods, in order to counter fraud and abuse in the areas of working conditions and social security. In practical terms, any foreign employer who employs foreign workers and foreign self-employed individuals/job trainees must report their job electronically (identification data, job duration, principal, type of service, etc.). LIMOSA is a system that centralises all information relating to movements of foreign personnel (secondment of employees, students, self-employed individuals). This system takes into account the European directives on posted workers.

GOTOT-in³⁷⁸ (Cross-border employment): This application registers the E101 certificates of employees and self-employed workers seconded to Belgium³⁷⁹.

Oasis³⁸⁰ (**Organisation Anti-Fraude des Services d'Inspection Sociale /Anti-Fraud Organisation of the Social Inspection Services**): On the basis of alarm signals and scenarios, the social inspection services try to have a view of potentially fraudulent companies. At this time, alarms are defined for three sectors: construction, transport and cleaning. A positive point: the use of tax data via the VAT database.

C. Means

The inspection services are faced with a problem of understaffing, even though the fight against large-scale organised social fraud is very profitable for the Belgian Treasury. The example of the Social Laws Inspection Services (*Contrôle des Lois sociales, CLS*), which focuses on the employer-employee relationship, speaks volumes. It has a staff complement of around 275 positions that are filled by just 240 people. In 2008, their budget for staff and resources was EUR 21.5 million and settlements brought in EUR 40.8 million.³⁸¹

The number of staff members is still calculated on the basis of the number of National Social Security Office declarations and not on the basis of LIMOSA declarations, which include secondments and foreign self-employed individuals; this results in a distorted overview. This method of calculation is clearly outdated and does not take into account the dynamics of free movement and current European regulations that appear to be vulnerable to fraud.

Once a year, the inspection services have to organise large-scale checks for human trafficking in each district. Such actions demand a lot of time and personnel.³⁸² A lot of energy is spent on the preparation, execution and follow-up. In many cases, they are

³⁷⁸ J. Pacolet and F. De Wispelaere, *Naar een observatorium ondergrondse economie*, Leuven: Acco, 2009, p. 96.

³⁷⁹ For additional explanations regarding the E101 form, see Chapter 1 of this Part.

³⁸⁰ J. Pacolet and F. De Wispelaere, *Naar een observatorium ondergrondse economie*, Leuven: Acco, 2009, p. 96.

³⁸¹ Belgian FPS Employment, Labour and Social Dialogue Directorate General for monitoring compliance with social laws, 2008 Activity Report .

³⁸² *Ibid.*

forced to call in interpreters for the different languages. The shortage of staff in these social inspection services can have an effect on the quality of the follow-up of these actions and the detection of human trafficking during the general checks.

D. Collaboration with the police

Generally speaking, things are going quite smoothly in the collaboration between social inspection services and the police on joint actions pertaining to human trafficking. This is certainly the case in Flanders. They complement one another perfectly as regards the tasks to be performed and the roles to be played. This type of collaboration is an added value for both parties. The police concentrate on the criminal aspect and victims and the inspection services on social (security) fraud. Police and inspection services alert each other about the discovery of labour exploitation. Another positive aspect: recent agreements concluded between the police and inspection services with regard to support and reporting. This is a case of *good practice*.

Problems sometimes arise with transfers to the local police. In the Social Laws Inspection Service 2008 Activity Report³⁸³, reference is made to a proposal to improve collaboration with police departments and looks to the Minister of the Interior to intervene. The report stipulates: ‘On the one hand, this is an organisational problem, in which the partnerships between the Social Inspectorate and the police has not followed the reorganisation within the police services, which gives rise to difficulty in clearly defining the level of the new partnerships. Nonetheless, clearer instructions would certainly simplify matters’³⁸⁴. For the inspection services, it is still not easy to find out which police service is competent for the matter concerned. The Federal Police sometimes transfers the inspection to local police because the latter has jurisdiction for the cases in question. The problem then arises that some local police forces are not interested in human trafficking because the mayor is interested only in local matters.

Some parties regret the lack of official information points within the police and inspection services for settling the issue of jurisdiction. It seems that in Flanders all this is structured better.

The case file programme on labour exploitation that the Federal Police started in 2008 can play a positive role in this area. It was especially created for better integration of the work of the local and the federal police as well as of the Social Inspectorate in the fight against human trafficking. This is a good practice that contributes to raising awareness in the local police forces and inspection services involved.

³⁸³ Ibid.

³⁸⁴ Ibid.

E. Handling fraudulent secondments³⁸⁵

In recent years, the inspection services have adopted important structural measures to fight intensively against fraudulent set-ups using secondments, subcontracting and bogus self-employed foreigners.

The units for ‘Cross-border working’ and ‘Large companies’ were created within the Social Inspectorate.³⁸⁶ The ‘Large companies’ unit is responsible for detecting and combating state-of-the-art social security technology in companies with more than fifty employees. The ‘Cross-border working’ unit has to check whether foreign workers temporarily staying in Belgium within the context of a secondment fulfil the regulations and are consequently exempt from registering with the Belgian social security service.

The Social Laws Inspection Service³⁸⁷ has also seen the creation of ‘Covron’ and ‘SPOC’. The objective of the Covron network is to provide better structure for checks on foreign companies, to share knowledge of effective checks and new working methods and to maintain partnerships when faced with fraudulent set-ups and techniques. Each full-time social inspector in the regional directorates must handle five ‘foreign employer’ case files a year. The SPOC (Single Point Of Contact) was created to improve international collaboration with foreign inspection services. The objective of the SPOC is to enable the exchange of operational information on case files or practical issues connected with monitoring salary and working conditions between the inspection services of EU Member States³⁸⁸.

F. Mixed Social Support Unit

According to the plans of the State Secretary for Coordination of the Fight against Fraud³⁸⁹, a mixed social support unit will be created in 2010 within the ‘Service d’information et de recherche sociale’ (SIRS) (Information and Social Investigation Service). This unit is ‘mixed’ because police, judicial and social inspection services will collaborate as an integrated unit. The unit’s initial objective will be to detect fraud as quickly as possible and to put an end to it. The services involved will continue to work within their own legal framework but will compare the results of their analyses on potentially serious and organised social security fraud. This will enable quicker detection of networks of organised social security fraud.

³⁸⁵ See above, Chapter 1 of this Part.

³⁸⁶ FPS Social Security, Social Inspectorate, Annual Report 2007.

³⁸⁷ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social laws, 2008 Activity Report.

³⁸⁸ *Ibid.*, p. 49.

³⁸⁹ Press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

3. The Judiciary

A. Priority Issue

In its 2008 Activity Report, the Social Laws Inspection Service requests that the public prosecutor's office and the auditor's office pay more attention to dealing with case files that the inspection services send to them. They also request better feedback.³⁹⁰

The way the 'Chinese Restaurant' case, presented in this report³⁹¹, was handled, in which the victim was deprived of freedom of movement, shows to what extent human trafficking for the purposes of labour exploitation is not given the priority it deserves. No investigative judge was ever appointed to this case, however flagrant it may have been.

We can see that it is not always the labour prosecutor (*auditeur du travail*) who handles cases of human trafficking for labour exploitation in the judicial districts. It depends on the size of the district. But whether these cases are dealt with by a labour prosecutor or a public prosecutor, in both cases it is necessary to name an investigative judge who will have greater authority when these cases are significant or serious. Better use could thus be made of investigative options such as telephone wiretaps or specific research methods that police forces are specialised in, thus contributing added value to the case file.

B. Law on human trafficking

The prosecutors we spoke with said that they were pleased that a law embodying the specific criminalisation of human trafficking for the purposes of labour exploitation has existed since 2005. The interpretation of the concept of 'working under conditions contrary to human dignity' does, however, pose numerous problems and can lead to differing opinions. In actual practice, there is a risk of being confronted with different rulings for human trafficking depending on the venue where these acts were dealt with by the courts³⁹². Inevitably, labour prosecutors and public prosecutors in turn then risk aligning their prosecution policy with the specific interpretation in their jurisdiction.

The majority of prosecutors handle few human trafficking cases. Their cases are generally closed administratively by fines, which is feasible if one considers the offences from the perspective of social security fraud, for example by illegal employment and/or false documents. The cases relating to illegal work are small case files, which are easy to deal with and more 'profitable' than cases relating to human trafficking. A prosecutor explained to us that the follow-up of a 'trafficking' case that came to trial required ten times greater investment than an 'illegal work' case.

³⁹⁰ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social laws, 2008 Activity Report.

³⁹¹ See Part 1, Chapter 2, Phenomenon analysis (case review).

³⁹² See Part 1, Chapter 4, Overview of case law.

Moreover, legally speaking, the administrative fines for illegal work are clearly higher than criminal fines for human trafficking. The application of monetary penalties does indeed remain the best way to hit the perpetrators.

According to a labour prosecutor, demanding the prevention of human trafficking only makes sense when the acts are sufficiently serious to incur stiffer sentences than a year in jail. In the event of a milder sentence, the chance that the remanded prisoners actually sit out their prison sentence diminishes and moreover, the fine they will have to pay will be much lower. Given that international confiscation is not effective, all that remains to dissuade people is a potential punitive sentence. For an entrepreneur, a sentence for human trafficking definitely has an impact. Sometimes proceeding down the administrative and the criminal route are viewed as alternatives, which is not very good from the standpoint of legal certainty or for an effective approach to human trafficking.

C. Means

The labour prosecutors' offices (*auditorats*) do not have any information technology tools. Among the prosecutors we questioned, one of them confided to us that they were forced to 'work in the dark'. In concrete terms, that means, for example, that they do not know if the company or the exploiters against whom they initiate a case is/are already under investigation for a case in a different district.

D. Plans for reforming the judicial structure³⁹³

The labour prosecutors were prepared to take up the (previous) suggestions of the then Minister of Justice for restructuring the judicial structure³⁹⁴ and fundamentally limit and specialise the labour prosecutors' offices. Under those plans, the labour prosecutors' offices would have become an autonomous division within the public prosecution services.

But the public prosecution services refused because they saw this development as interference by the legislature in their status as a (structural) organisational authority. The public prosecutors' offices did not want to 'be instructed' by the legislative body on whether or not there should be subdivisions within the prosecutors' office, nor as to their number, should this happen.

³⁹³ The Centre's 2008 Annual Report drew attention to the positive impact in the fight against human smuggling and trafficking networks that a reform of the judicial structure that would leave only around a dozen large judicial districts could have. By definition, these networks operate beyond district boundaries and are often international. The present Belgian judicial structure with its numerous (and small) districts is not always able to cope.

³⁹⁴ Centre, 2008 Annual Report on Human Trafficking, 'Human Trafficking - Enlisting people and resources to combat the phenomenon', p.94. This publication can be consulted at www.diversite.be ('Publications' section).

Just like last year³⁹⁵, some labour prosecutors argued in favour of including a specialist in social legislation in the Federal Prosecution Service for cases dealing with widespread human trafficking for labour purposes. This can help make them take responsibility and assume their task of bringing cases of such magnitude to the federal level.

4. International collaboration

According to the State Secretary for Coordination of the Fight against Fraud,³⁹⁶ ‘entire networks are set up to create ‘secondment carousel’ fraud in several Member States and against which the national inspection services are ill-equipped due to lack of data sharing at an international level. This involves a new type of fraud that is spreading like wildfire’. Earlier in this report, we referred to various cases of human trafficking involving secondment fraud.³⁹⁷

Here, the State Secretary strongly criticises the European secondment rules and the lack of international cooperation within the EU³⁹⁸: ‘Ideally, an amendment to the European rules pertaining to secondment should bring some relief. However, such an amendment risks being a very long, drawn-out task. A more pragmatic approach would be to have our country enter into bilateral agreements for a rapid exchange of data and specifically with European countries that are very active in secondment matters. These are mainly our neighbours and the new EU Member States. Through our role as coordinator inside the government, we are going to take the necessary initiatives to encourage the conclusion of such agreements. During the second half of the year, we are also going to broach the exchange of data between EU Member States, or rather the lack of exchange, at a European level within the context of the Belgian Presidency of the Union’³⁹⁹.

Several positive steps were already taken in the past. As opposed to other services, the Social Laws Inspection Service is very satisfied with the cooperation with Poland, which constitutes a priority for them.⁴⁰⁰ SPOC, the international contact point hosted by the Social Laws Inspection Service, exchanged about a hundred case files in 2008 with its Polish counterpart. In total, 236 case files were exchanged, 10 of which were requested from foreign countries. A Belgian-Polish agreement for administrative collaboration was concluded in 2007. In 2008, two meetings were organised between the collaborating services under the terms of this agreement. The agreement also included a working visit enabling the exchange of practical experience through a construction site inspection. This exchange with Polish colleagues enables Belgian inspectors to obtain extremely valuable information and contacts. Needless to say, this is an example of *good practice*.

³⁹⁵ Ibid.

³⁹⁶ Press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

³⁹⁷ See Chapter 1 of this part.

³⁹⁸ See Chapter 1 of this part.

³⁹⁹ Press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

⁴⁰⁰ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social laws, 2008 Activity Report.

On the basis of a Franco-Belgian agreement, joint checks were conducted in 2008 in the border region, where foreign inspectors acted only as observers. With the help of contacts in a secretariat, a system of information exchange via a standardised fact sheet was worked out between the Belgian and French services. There was an exchange of 80 fact sheets pertaining to the construction and transport sectors⁴⁰¹. On average, the response time was one to two months. Examples of *good inspection practices* in the construction sector were also exchanged.⁴⁰²

Belgium is participating in the Cibeles project, an EU network of Spanish, Austrian, Belgian, French, German, Hungarian, Italian and Portuguese inspection services. The objective is to develop rapid information exchange channels that can, first of all, compile a knowledge base for inspections in cross-border territories.⁴⁰³ In addition, within the scope of the EU Posted Workers Directive⁴⁰⁴, the European Commission set up an *Expert Committee on the Posting of Workers*, which met for the first time in March 2008 and focused on the improvement of international administrative cooperation.⁴⁰⁵

In the event of the regularisation of a secondment in terms of social security law⁴⁰⁶, there is a real risk that the collaboration will prove less than satisfactory if the cooperation of the country of origin is required for regularisation albeit that regularisation is financially beneficial only to our country. Each country seems to want to keep social security contributions for their own state treasury. Following this line of thinking, one may well feel an urgent need for information on a company's activities in the country of origin⁴⁰⁷. Getting into contact with a foreign employer remains an obstacle. Foreign companies generally do not have any establishment in Belgium and inspectors encounter all sorts of difficulties in gathering information from other countries. In these cases, according to the Social Laws Inspection Service, it is anything but easy to establish findings properly or conduct an investigation undisturbed. Moreover, international cooperation between inspection services does not always follow naturally.⁴⁰⁸

Being able to check if social security documents are authentic, if they comply with *reality*, or if payments have indeed been made, etc: those are just a few aspects of a problem which, without cross-border cooperation or in the absence of a European social inspection service, risks becoming insoluble.⁴⁰⁹

⁴⁰¹ Ibid.

⁴⁰² International Labour Organization, *Labour inspection in Europe: undeclared work, migration, trafficking*, Geneva, January 2010, pp. 20-23.

⁴⁰³ Ibid.

⁴⁰⁴ See above, Chapter 1 of this Part.

⁴⁰⁵ International Labour Organization, *Labour inspection in Europe: undeclared work, migration, trafficking*, Geneva, January 2010, p.20-23.

⁴⁰⁶ See Chapter 1 of this part .

⁴⁰⁷ See Chapter 1 of this part.

⁴⁰⁸ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social laws, 2008 Activity Report.

⁴⁰⁹ See Chapter 1 of this part and P.Mavridis, 'Détachement des travailleurs dans l'Union européenne :le juge national, arbitre ou soumis au principe du pays d'origine?', *J.T.T.* 2006, 233.

Chief Public Prosecutor Visart de Bocarmé also stressed this during his *Mercuriale*: ‘...and it’s not futile to dream of the creation of a social Interpol assembling all the European administrations concerned’⁴¹⁰.

A prosecutor confided to us that international cooperation was a disaster as regards seizures⁴¹¹. Various countries refuse all cooperation.

5. Carousels⁴¹²

In the course of our meetings, a prosecutor noticed the worrying problem of dormant companies, with front men who can operate for two years without setting off any alarms. They then disappear to another country or simply to a different region of Belgium to start up a new dormant company with a different front man. In previous annual reports we also mentioned the existence of such carousels in various case files on human trafficking for the purposes of labour exploitation.⁴¹³

These organised set-ups must be tackled resolutely. They represent tens of millions of euros in losses per year for the Belgian State.⁴¹⁴ The blight that this type of carousel represents is particularly prevalent in the construction sector.

Exchanges of data between the tax authorities and inspection services at domestic level must be better harmonised. For example, the social (security) data does not always reach the tax authorities and the tax data is not always accessible to the Social Inspectorate. Measures have been taken in this direction: at the end of 2009, tax and social inspection services concluded a protocol in which they undertake to exchange, on a structural basis, all data useful in combating social and tax fraud.⁴¹⁵ In addition, from now on the anti-money-laundering unit of the CTIF-CFI can send case files where there is suspicion of tax fraud to the SIRS (Information and Social Investigation Service)⁴¹⁶. The Oasis database, mentioned earlier, also constitutes an important step forward.

The *Collège pour la lutte contre la fraude fiscale et sociale* (Authority for combating tax and social security fraud) included important measures in its action plan⁴¹⁷ aimed at dealing better with abuses involving setting up companies for fraudulent purposes. The various administrations must be made more aware and receive resources for detecting

⁴¹⁰Traditional speech for the reopening of the Liège Labour Court after the holiday period, given by Cédric Visart de Bocarmé, Chief Public Prosecutor of Liege, *J.T.T.*, 2008, pp. 457-463.

⁴¹¹ On the importance of seizures and confiscations see OSCE, *Analysing the business model of trafficking in human beings to better prevent the crime*, 2010.

⁴¹² See Chapter 1 of this part.

⁴¹³ See Chapter 1 of this part.

⁴¹⁴ Press conference given by Carl Devlies, State Secretary for Coordination of the Fight against Fraud, ‘the fight against fraud was more effective in 2000 than in 2008’, 24/03/2010, Brussels.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

⁴¹⁷ Collège pour la lutte contre la fraude fiscale et sociale (Authority for combating tax and social security fraud), Action Plans 2008-2009 and 2009-2010, Carl Devlies, State Secretary for Coordination of the Fight against Fraud.

dormant companies and putting an end to their freedom to operate. The public prosecutors, police force and tax and social security administrations will have access to annual accounts filed at the National Bank of Belgium and to the companies' database. Thus companies that do not file their annual accounts will be detected relatively quickly. The services must have access to international economic databases. The action plan notes the introduction of an obligation to communicate with the judicial officers and the police. Actual checks by the different services will be encouraged. A future legislative initiative should aim at reducing the 3-year response time, which from a fiscal viewpoint is too long for tackling dormant companies. The legal possibility to forbid legal entities from using post office boxes, as well as the necessary measures for limiting Belgian entrepreneurs' ability to make use of more flexible and less expensive foreign legal forms, should also be examined.

6. Joint and several liability in the construction sector

On the basis of the 2003 Government Statement, the Interdepartmental Unit for coordination of the fight against human smuggling and trafficking worked out a penalty mechanism for contractors having recourse to middlemen who were involved in human trafficking.⁴¹⁸

We illustrated these problems in our 2003 Annual Report via the topic of clothing sweatshops. Depending on circumstances, the contractor can be the brand, wholesaler or retailer. When the sweatshops are broken up, only the managers are arrested. It is actually difficult to prove that the contractor knowingly used the services of a middleman who did not comply with social legislation or was even guilty of human trafficking. The introduction of the civil or criminal joint liability of contractors should make it possible to dissuade these contractors from turning to such middlemen.

An ad hoc working group of the Interdepartmental Unit drafted a bill based on the following fundamental principle. The contractor must ask the middleman for a number of documents proving that he is in order as regards the social security standards and labour laws. In the event that it is subsequently discovered that the middlemen committed the offence of human trafficking, the contractor risks being prosecuted in civil court, or in criminal court if this option is favoured, if he had not taken care to request the required documents beforehand. A mechanism like this, which exists in some countries, can have a preventative effect on human trafficking.⁴¹⁹

In the construction sector, a sector vulnerable to human trafficking, there are civil measures based on the principle of joint and several liability. A prosecutor confided to us that there are plans to extend these measures to the industrial and meat sectors.

⁴¹⁸ May be consulted on our website under Traite des êtres humains/documentation: Belgium: Action Plan, p. 5. www.diversite.be

⁴¹⁹ May be consulted on our website under Traite des êtres humains/documentation: Belgium: Action Plan, p. 6. www.diversite.be

The preceding rules required the contractor /entrepreneur who subcontracts work to an unregistered entrepreneur to withhold part of the amount of the invoice at source and to pay the amount shown on the invoice to the tax office and the National Social Security Office. If the contractor/entrepreneur does not fulfil this withholding obligation, he can be held jointly and severally liable for the payment of the social security and tax debts of his subcontractor, and additional financial penalties have been provided for. This rule was deemed contrary to the European principle of free circulation of services. The new rule takes into account the objections of the European Court of Justice⁴²⁰.

From now on, joint and several liability and the withholding obligation are no longer linked to registration: the latter has, however, been kept but is completely optional.⁴²¹

The new system of the principle of joint and several liability only concerns the relationship:

- between the contractor and his entrepreneur
- between the contractor and his direct subcontracting entrepreneur (B)
- between subcontractor (B) and the direct subcontractor (C)

According to the Social Laws Inspection Service report however, cumulative joint and several liability still exists. 'If the direct subcontractor has debts and the direct subcontracting entrepreneur is liable for the debts of the direct subcontractor, if B does not pay his debts, the latter are presumed to be unsettled debts of B and for which A is jointly and severally liable.'⁴²²

The contractor is released from his joint and several liability when he has executed all withholdings and settled all tax and social security debts. However there is an exemption from the withholding obligation, including for an entrepreneur who is not established in Belgium, who does not have any social security debts in Belgium and whose workers are in possession of a valid secondment declaration⁴²³. In combating carousels, a blight to which the construction sector is the most vulnerable, we have already mentioned the measures taken against secondment fraud.

⁴²⁰ FPS Employment, Labour and Social Dialogue, Directorate General for monitoring compliance with social laws, 2008 Activity Report, p.65.

⁴²¹ Ibid., p.65.

⁴²² Ibid., p.66.

⁴²³ Ibid., p.66.

**PART 3: TRAFFICKING IN HUMAN BEINGS FOR THE
PURPOSES OF LABOUR EXPLOITATION: VIEWS OF
INTERNATIONAL EXPERTS**

In this section of the report, the Centre asked for the views of some international experts, with the intent of learning more about the approach of their country or organisation to combating human trafficking for labour purposes. Their answers to the questionnaires are presented in their entirety.

Following, in this order, are the contributions of the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings (BNRM), the Dutch Social Intelligence and Investigation Service (SIOD) and the International Labour Organization (Geneva).

1. Contribution of the Dutch National Rapporteur on Trafficking in Human Beings by Linda Van Krimpen LL.M, Researcher, Bureau of the National Rapporteur on Trafficking in Human Beings

1) Are your legal instruments equipped to deal with human trafficking for purposes of labour exploitation? Is 'coercion' a defining element of trafficking in your legal system? Is the concept of 'abuse of a person's insecure situation' a defining element of trafficking in your legal system? To what extent do you think that either (or both) of these concepts are essential underpinnings of legislation on human trafficking?

Yes, the definition of the crime of human trafficking has been extended since 1 January 2005. In addition to exploitation in the sex trade, the offence of human trafficking (Art. 273f of the Criminal Code ('Sr')) now covers exploitation in all sectors, along with forced harvesting of organs. Labour exploitation is, as a result, also included within the offence of human trafficking. 'Other forms of exploitation' (labour exploitation) refer to exploitation in all economic areas, except for the sex trade and forced organ harvesting.

In the case of adult victims, the means of coercion described in Art. 273f Sr are among the constitutive elements of the offence. In the case of minors, coercion need not be alleged, in accordance with international regulations. Under Art 273f Sr, 'means of coercion' are defined as coercion, violence or the threat of violence or of other forms of coercion, extortion, fraud, deception or the abuse of a *de facto* situation of dominance, abuse of a situation of vulnerability, offering or accepting payments or favours to obtain the consent of persons with power over others.

The concept of 'abuse of a situation of insecurity' is not included as such in Art. 273f Sr. That said, it appears to be an equivalent concept to 'abuse of a situation of vulnerability' as defined in Art. 273f Sr.

In the case of adult victims, the presence of a means of coercion constitutes an essential element of the offence of human trafficking.⁴²⁴ The means of coercion are included in the definition of human trafficking, in accordance with international law.

⁴²⁴ Article 273f, Paragraph 1 Sub 3 Sr provides a material exception: 'Any person who hires, transports, or kidnaps another with the intention of transporting them across national borders for purposes of sexual exploitation, or for the benefit of a third party in exchange for payment.'

2) In your country, what is the policy on prosecution and the number of convictions for human trafficking for the purposes of labour exploitation? Does it give enough weight to seizures and confiscations? Where could problems arise?

The prosecution of cases of human trafficking is considered a priority by the public prosecutor's office. This priority covers all forms of exploitation, labour included. Prosecutions and sentencing for human trafficking slowly began to increase after Article 273f Sr entered into force in 2005. The fact that the idea of 'exploitation' needed further definition in judicial practice made the task of the (special) investigation services and the public prosecutor's office particularly difficult, since it also involved evaluating which particular situation a judge would classify as exploitative. But the abuses uncovered in the course of preliminary workplace investigations by various law enforcement agencies succeeded in raising the issue of human trafficking, and prosecutions have been conducted on this basis. The BNRM has not examined the investigations conducted by various law enforcement agencies into other forms of exploitation. Although at the time when the Seventh Report of the National Rapporteur on Trafficking in Human Beings was published in October 2009, only three cases of labour exploitation had resulted in a sentence, by May 2010, there were nine. The number of cases judged involving other forms of exploitation (with numerous defendants) likewise rose during the same period, from 12 to 17. Further cases were dealt with in the appeal courts, and one in the Court of Cassation. From a slow start, then, we have seen a perceptible increase in the number of prosecutions and convictions for labour exploitation.

On the other hand, the BNRM has not yet examined the issue of seizures and confiscations in the area of labour exploitation, and so no information on the subject is available.

3) In the struggle against human trafficking, is it more (or less) difficult to tackle labour exploitation than it is to deal with sexual exploitation? How does this affect the tasks of the police and prosecutors?

In some cases, labour exploitation can be hard to recognise, because in practice, it may involve a combination of different elements. Taken separately, these elements often do not provide enough evidence to bring a charge of exploitation; only when they are taken together does this become possible. For example, there may be a combination of under-payment, poor working conditions and various levels of servitude. Evidence of these arises in different ways. Treated as a whole, they constitute exploitation, but taken separately, they may be difficult to uncover.

In general, this combination of factors is not a serious problem in cases of sexual exploitation. Forced sexual activity, with or on behalf of a third party who pays, is in itself enough to define exploitation. Furthermore, sexual exploitation has been a punishable offence much longer than labour exploitation. For this reason, both investigation and prosecution of sexual exploitation can draw on a greater wealth of experience.

For a broader analysis of investigations and prosecutions of sexual and labour exploitation, see the Seventh Report of the National Rapporteur on the Trafficking of Human Beings.⁴²⁵

4) Where, in your view, is the grey area between illegal work and human trafficking?

The 'grey area' between illegal work and human trafficking appears in cases where working conditions are clearly bad, but not bad enough to be called 'exploitation'. The boundary is drawn by the judge, on a case-by-case basis.

5) In which sectors of the economy do you find human trafficking for the purposes of labour exploitation? Is it largely a matter of debt bondage, where victims have to pay off their immigration costs by unpaid labour (as in the HORECA sector)?

There have been 17 prosecutions in the Netherlands involving charges of labour exploitation (Dutch law refers to this as 'other forms of exploitation'). The breakdown by sector is as follows: criminality (6), personal services/domestic labour (4), the food industry (2), Chinese restaurants (1), cleaning services (1) the craft metalworking sector (1) and massage (1). In one case, the sector is unknown. Of these 17 cases, 9 resulted in convictions for human trafficking. Some of these cases are under appeal.

Not all of these cases involve debt bondage, where the victims work without pay to clear the cost of their transportation. In 6 of these 17 cases, the victims were native-born Dutch citizens, where the problem of border crossing does not arise. As far as I know, there was no unpaid labour involved in any of these 17 cases. Often they did involve starvation wages and sometimes debt bondage.

6) In your experience, do some business owners (for instance, in agriculture or the construction industry) use bogus self-employment or schemes under the EU system of secondment for the purposes of labour exploitation? Have you encountered cases of human trafficking where transport companies are involved in labour exploitation through systems of bogus self-employment? Do you know of any large firms that take advantage of human trafficking to limit their production and wage costs by means of subcontracting (for example in the textile industry)?

The BNRM has done no research into such schemes. But it is well known from investigative practice that the status of a self-employed worker without employees can be used to give the impression that independent contractors are involved, when in fact it may be a case of an employer/employee relationship that involves exploitation. We do not know to what extent this sort of situation exists in the Netherlands.

7) In practice, do different agencies work together to combat human trafficking for the purposes of labour exploitation?

⁴²⁵ This report is available on-line at <http://www.bnrm.nl>.

It depends on the case and the sector involved. Ideally, there is multidisciplinary cooperation on sexual and other forms of exploitation. In most of the cases where other forms of exploitation have been adjudicated, there was cooperation among various partners. In dealing with labour exploitation, the agencies involved would be: the SIOD (Dutch Social Intelligence and Investigation Service), the labour inspection service, the (aliens') police, the tax authorities, municipal services, the public prosecutors' offices, the prosecution service for economic and environmental matters and fraud ('Functioneel Parket', or FP), social services, the immigration and naturalisation service, the centre of expertise on human trafficking and smuggling, and the border police (Koninklijke Marechaussee).

8) Is the law on victims of human trafficking in your country suited to dealing with the victims of trafficking for the purposes of labour exploitation? Is it not essential to have special facilities for victims of this type of trafficking?

The treatment and the rights of victims of human trafficking are the same, regardless of the sector. So a victim of labour exploitation has the same rights as a victim of sexual exploitation.

Victims of human trafficking are not a single, homogeneous group. There are men as well as women, adults and minors, foreigners and citizens, and victims of sexual exploitation along with all the other varieties. So it is not always desirable to handle all these groups of victims in the same way. At present, we are looking into appropriate ways of treating each category of victims.

9) How effective is international cooperation - in terms of policing, inspection, and prosecution - on human trafficking for the purposes of labour exploitation? Has Eurojust become involved? Is there efficient and effective cooperation on seizures of property?

The BNRM has not done any research on international cooperation in cases of labour exploitation. The same is true for cooperation on seizures in such cases. Therefore no information is currently available on these subjects.

10) Can you provide any examples of 'good practice(s)' in the effort to combat human trafficking for the purposes of labour exploitation?

From the beginning of the investigation of the 'kroepoek' case (case involving exploitation of oyster cracker makers), we were looking for an appropriate division of labour among the SIOD, the immigration police, and the department of urban development (DSO). Before proceeding to search the workplace and the living quarters, the SIOD and the immigration police agreed on a division of labour. In a case that only involved illegal labour, the immigration police would have stepped in and put the foreign workers into a detention centre for aliens. In a case of bad working conditions, the SIOD would have taken charge and determined whether it was a case of human trafficking. The DSO was also involved, due to the risks of fire and overcrowding.

For purposes of prosecution, photos and films were made of the sites where workers lived and worked under deplorable conditions. These records were put into a so-called 'environmental report', so as to give the judge a clear idea of the circumstances. The case resulted in convictions in the lower courts.

2. Contribution of the Dutch Social Intelligence and Investigation Service (SIOD), by Floris van Dijk, SIOD Advisor on combating human trafficking⁴²⁶

1) Are your legal instruments equipped to deal with human trafficking for the purposes of labour exploitation? Is 'coercion' a defining element of trafficking in your legal system? Is the concept of 'abuse of a person's insecure situation' a defining element of trafficking in your legal system? To what extent do you think that either (or both) of these concepts are essential underpinnings of legislation on human trafficking?

Under the amended definition of human trafficking adopted as of 1 January 2005, exploitation of labour and of services is equally penalised. Since 1 July 2009, the sentence has been raised from 8 years to 18. Since that time, the concepts of 'coercion' and 'abuse of an insecure situation' have been treated under law as constitutive elements of the offence of human trafficking. Keep in mind that the latter concept is formulated as 'abuse of a situation of vulnerability'. These concepts are essential. Dependence on the offender and the vulnerability of the victim are central here, because they indicate the absence of consent – unlike in the case of people smuggling – as the defining characteristic of victimisation.

2a) In your country, what is the policy on prosecution and the number of convictions for human trafficking for the purposes of labour exploitation?

Between 19 February 2010 and 12 May 2010, the first three convictions ever were pronounced in the lower courts against human trafficking for labour purposes in the strict sense of the term. One was in the Chinese restaurant sector, another in the Indonesian food industry, and the third involved Indian merchants. The penalties imposed were even more severe than those requested by the prosecution, namely sentences of 3.5 and 4 years.

2b) Is enough weight given to seizures and confiscations? Where could problems arise?

We underestimate the importance of seizures and confiscations. In principle, we agree that these should be used to prevent human trafficking, but as far as I know, the principle is not really honoured in practice. As of 2011, the European Commission will draw up a new directive, which should attract new attention to the subject on a policy level. This

⁴²⁶ The author is responding as an individual, and his remarks are not intended to represent the views of the SIOD as a whole.

directive will require forfeiture of assets in cases that involve criminal investigation of human trafficking. Problems arise mainly from the way these are carried out. There is a lack of awareness, particularly in the process of inspections. But the EC is not alone in concerning itself with quality of inspections; this is also true of the Dutch Rapporteur on Trafficking in Human Beings. Generally speaking, it is 'less trouble' for the inspectors to impose administrative penalties for minor offences than to prosecute them under criminal law.

3) In the struggle against human trafficking, is it more (or less) difficult to tackle labour exploitation than it is to deal with sexual exploitation? How does this affect the tasks of the police and prosecutors?

As I have pointed out, the problem is a lack of awareness on the part of the police (and of the general public in cases of exploitation of labour or services). As regards the exploitation of prostitutes, there is a matter of physical integrity, the boundaries of which are clearly being violated. This touches upon our 'cultural framework' and our concept of the offering of sexual services. The victims of the 'loverboy' remind us of the 'girl next door'. A victim of exploitation by labour or services just does not fit this image.

4) Where, in your view, is the grey area between illegal work and human trafficking?

There isn't one. These are two entirely different types of offence: the former is a misdemeanour, the latter is a crime. Illegal labour is offering work to non-European employees who do not have the required paperwork. Human trafficking is always characterised by exploitation; it involves not only illegal aliens but can also affect all kinds of other powerless people. Human trafficking thus has very little to do with immigration law as such; an illegal worker need not be an exploited worker, and *vice versa*. In the next few years, I think it will be largely EU nationals from countries with a low minimum wage who will seem to be exploited, since they are more likely to accept dodgy working conditions. But the target group of illegal workers will still be at an increased risk of exploitation.

5) In which sectors of the economy do you find human trafficking for the purposes of labour exploitation? Is it largely a matter of debt bondage, where victims have to pay off their immigration costs by unpaid labour (as in the HORECA sector)?

My previous reply should give you some idea on this issue. We have focused too much on Chinese exploitation (and thus on the restaurant sector). As far as I am concerned, the problem is that the demand for cheap labour prevails among employers who look only to the bottom line (maximizing profits and minimising losses. You find this in sectors such as construction, gardening, agriculture, the food industry, packaging, and various types of unskilled temporary work. I would make an exception for the transport industry. I think drivers from Eastern Europe are exploited: they have to sleep in their vehicles, make only EUR 200 per week, have no insurance, and so on. Having said that, they do receive a degree of training (the advanced driving licence) in exchange. I think actual debt bondage

is more of a cultural phenomenon: you find it mostly in the HORECA sector and in retail (Chinese and West Africans).

6a) In your experience, do some business owners (for instance, in agriculture or the construction industry) use bogus self-employment or schemes under the EU system of secondment for the purposes of labour exploitation?

There are cases of so-called self-employed workers without employees, who work under conditions where lines of authority, work, and wages are not clearly defined (and which may in fact involve an employer/employee relationship).

6b) Have you encountered cases of human trafficking where transport companies are involved in labour exploitation through systems of bogus self-employment?

There have been no convictions in this area, but there have definitely been cases under investigation over the past several years.

6c) Do you know of any large firms that take advantage of human trafficking to limit their production and wage costs by means of subcontracting (for example in the textile industry)?

There are certainly large businesses that resort to practices that involve human trafficking, using subcontracting in order to reduce payroll costs and production costs. We know of at least one such case in the construction sector.

7) In practice, do different agencies work together to combat human trafficking for the purposes of labour exploitation?

Yes, the investigation service that covers work, income, and the labour market (SIOD) is always looking to cooperate in criminal investigations (with the police, the tax authorities, border guards, and others). But I have to admit that this happens mostly on a case-by-case basis, rather than systematic.

8a) Are services to help victims of human trafficking in your country adequate for dealing with the victims of trafficking for the purposes of labour exploitation?

No, our services for victims are not adequate, in the sense that we need to find more places to help male victims.

8b) Is it not essential to have special facilities for victims of this type of trafficking?

Yes, we really need specialised centres for the victims. But the problem is mostly one of a lack of space. There is also a problem with coordination and record-keeping. However, I have suggested that we use one of our six empty prisons for this purpose.

9) How effective is international cooperation - in terms of policing, inspection, and prosecution - on human trafficking for the purposes of labour exploitation? Has Eurojust become involved? Is there efficient and effective cooperation on seizures of property?

Here, too, things are done mostly on a case-by-case basis. I think we do not make enough use of Europol: we use it only to request things, but do not contribute to it. Judicial assistance requests are done separately for each case. This is not very efficient. And we have the same problem with Eurojust.

The effectiveness of seizures in the context of international collaboration depends, as usual, on the country with which we are collaborating. Recourse to forfeiture of assets is infrequent (see question 2).

10) Can you provide any examples of ‘good practice(s)’ in the effort to combat human trafficking for the purposes of labour exploitation?

I am a keen supporter of the Belgian system of labour prosecutors. We only have a prosecutor who actually deals with fraud cases. You can find further examples in the forthcoming publication on LABOREX10, the international workshop on labour exploitation which had its first meeting in the Netherlands in 2010. Might it be possible, for example, to tap the victim's telephone rather than that of the suspected perpetrators? In theory, you could therefore obtain information about possible exploitation more quickly this way. Generally speaking, the ‘best practice’ is zero tolerance for human trafficking by prosecuting relentlessly, this will also have a preventative effect.

3. Contribution of the International Labour Office (ILO), Geneva⁴²⁷

by Aurélie Hauchère, Project Officer, Special Action Programme to combat Forced Labour (SAP-FL)

1) What is the approach and the competence of the ILO as regards trafficking in human beings for the purposes of labour exploitation? Are these limited to forced labour? Where does the ILO draw the line between human trafficking and forced labour?

The concepts of trafficking and forced labour are very closely related, but they do not overlap entirely. On the one hand, there are types of trafficking that do not involve forced labour, such as organ harvesting. On the other, there are varieties of forced labour that are not tied in with trafficking, such as debt bondage in Africa and Latin America, the

⁴²⁷ The International Labour Organization (ILO) was founded in 1919, and has 183 Member States. It is the only UN agency with a tripartite structure, within which governments, employers, and workers develop policies and programmes to improve access to decent and productive work for men and women. The International Labour Office is the permanent secretariat of the ILO in Geneva. The Special Action Programme to combat Forced Labour (SAP-FL) is a programme of technical cooperation that deals with the issues of forced labour and human trafficking.

vestiges of slavery which persist in parts of Africa, and forced prison labour. So human trafficking is one form of forced labour, which has been described as ‘the underside of globalisation’ in the first ILO global report on forced labour⁴²⁸.

The ILO mandate is based on Convention 29 on Forced Labour (1930) and Convention 105 on the Abolition of Forced Labour (1957). These two ILO conventions are among the most widely ratified of all ILO instruments.⁴²⁹ In Article 2 of Convention 29, forced labour, or compulsory labour, is defined as ‘all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily’.

One essential component of the definition of trafficking provided by the Palermo Protocol⁴³⁰ is its purpose, namely exploitation, which expressly includes forced labour or service, slavery and similar practices, servitude and various forms of sexual exploitation. The Palermo Protocol and ILO Convention 29 are thus linked to each other, which facilitates the application of these two documents at the national level. Human trafficking involves imposing forced or compulsory labour or services, along with the violation of other basic rights. It must therefore be subject to criminal prosecution, under both Article 25 of ILO Convention 29 and Article 5 of the Palermo Protocol⁴³¹.

In June 1998, the International Labour Conference of the ILO adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up, which requires Member States to respect, promote and realise four fundamental rights. These are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. It further recognises the ILO's obligation to help its Member States to attain these objectives, in response to their clear and expressed needs.

In November 2001, following the publication of the first Global Report on Forced Labour⁴³², the ILO Governing Body set up a special Action Programme to combat forced labour (SAP-FL), in the larger context of promoting the 1998 Declaration and its follow-up. From its inception, SAP-FL has striven to fulfil several objectives; to increase public awareness and to improve the understanding of forced labour in the world today; to assist governments in developing and enforcing new laws, policies, and action plans; developing and disseminating guides and training handbooks on key aspects of forced

⁴²⁸ *Stopping Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (2001), p.50.

⁴²⁹ As of May 2010, Convention 29 has 174 ratifications, and Convention 105 has 169.

⁴³⁰ Palermo Protocol, Article 3 a). This definition is the one used in the Council of Europe's Convention on Action against Trafficking in Human Beings (2005).

⁴³¹ ILO, Report III (Part 1B), *General Survey concerning the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105)*, Survey by the Committee of Experts on the Application of conventions and recommendations, International Labour Conference, 96th Session (Geneva, 2007).

⁴³² ILO, *Stopping Forced Labour* (Geneva, 2001).

labour and human trafficking, and, finally, to put innovative programmes in place that combine policy development, capacity building of institutions responsible for law enforcement, and carrying out projects targeted to particular areas, while providing direct support both for preventing forced labour and for identifying and rehabilitating the victims⁴³³.

2a) What are the criteria used by the ILO to identify human trafficking or forced labour, respectively? Are these criteria interpreted in a broad sense?

Let us return to the definition of forced labour (Article 2, ILO Forced Labour Convention 29). It refers to ‘all work or service’, and thus includes all work, legal or illegal, with or without a contract, including activities that are not always considered part of the economy, such as prostitution or begging. The expression ‘menace of penalty’ clearly shows that a simple threat is sufficient, whether or not it is carried out. Thus a person engaged in forced labour may be a victim of violence, or simply under the threat of violence. ‘Penalty’ is a broad term, which can cover various situations: physical or psychological violence, the threat of being turned in to the authorities, the threat of deportation, or the withholding of wages. The notion of ‘voluntarily’, in turn, denotes free and informed consent, which also entails the right to leave a job or employer. The ILO’s committee of experts has ruled that free consent is not valid if it was obtained in a fraudulent manner. A person who has accepted a job is not deemed to have freely consented if he or she was told lies about working conditions (wages, freedom of movement, etc.), the nature of the job, the workplace, the employer’s identity or the freedom to leave the job. Forced labour is work exacted under coercion. The victims cannot quit their jobs, most often because of threats, violence, rigged debts, or confiscation of papers.

Forced labour is the antithesis of decent work under conditions of freedom, equity, safety and human dignity, which lies at the heart of the ILO’s mission. Forced labour is clearly defined in theory, but it is often difficult to detect situations of forced labour in practice. There is, in fact, a continuum running from forced labour at one extreme to decent work at the other, which passes through a large variety of more or less exploitative situations⁴³⁴. To eradicate forced labour, therefore, it is helpful to define its boundaries. In order to do this, the ILO has developed two sets of practical guidelines, one on trafficking and the other on forced labour.

First, the ILO has worked with the European Commission to develop a set of guidelines on human trafficking. In the context of the Council of Europe’s Hague Programme aimed at increasing freedom, security and justice in the European Union, the European Commission has appointed a group of experts on the policy needs for data on crime and criminal justice⁴³⁵. In April 2007, this group decided to set up a sub-group of experts on ‘human trafficking’. The purpose of the latter was to harmonise the definitions and

⁴³³ More information is available at www.ilo.org/forcedlabour.

⁴³⁴ Aurélie Hauchère, ‘Travail forcé, enjeux et défis contemporains’, *Cahiers de la Sécurité*, INHES, July 2009.

⁴³⁵ 2006/581/EC.

associated guidelines across all the European Union countries, so as to facilitate comparison of data among Member States.

Following the recommendations of this sub-group, a joint project was set up between the ILO and the European Commission, using the Delphi method⁴³⁶ to reach a European consensus on indicators covering the different aspects of the definition of trafficking, for the purposes of data collection. The experts were selected from the 27 Member States of the European Union from within the police, universities and research institutes, NGOs, international organisations, labour inspectors, unions and judicial authorities. They agreed on four sets of operational indicators for adult and child victims of trafficking for the purposes of labour exploitation or sexual exploitation. Each series consists of a structured list of indicators that relate to the defining elements of trafficking: recruitment by means of deception, by use of coercion, by abuse of authority or by abuse of a situation of vulnerability, exploitation at work, coercion or abuse of vulnerability at destination. Within each set, each indicator was classified as **strong**, **medium**, or **weak**. However, a given indicator might be classified as strong for children and medium for adults, or strong for sexual exploitation and weak for labour exploitation. The definitions of all 67 indicators were provided in a separate document, available on the SAP-FL website⁴³⁷.

These indicators can be used to guide national statistical agencies in their efforts to produce quantitative national estimates. They have already been used in several countries, including countries of origin, in the course of interviews with representative samplings of workers returning home. They can help labour inspectors in their efforts to determine whether a worker should be considered a victim of trafficking (and whether or not the case should be pursued as such), and can also help NGOs that provide assistance to victims.

Secondly, the ILO is also in the process of developing indicators for forced labour.⁴³⁸ These indicators are based on the two elements of Convention 29 on forced labour: first, impediments to a person's freedom to 'voluntarily' consent to a job (which includes forced recruitment, deception and abuse of vulnerability), and secondly, the threat of a penalty (which implies the person has not freely accepted the job and/or cannot freely leave it).

2b) In the ILO's view, how should the concepts of coercion and abuse of a situation of vulnerability in the area of human trafficking be interpreted?

The concepts of coercion and abuse of vulnerability lie at the heart of the problem of forced labour and trafficking.

⁴³⁶ The Delphi method, developed in the 1950s, has been widely used in social, medical and political science. Its purpose is to achieve results based on the consensus of a large group of experts.

⁴³⁷ More information is available at:

http://www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/lang--en/docName--WCMS_105023/index.htm.

⁴³⁸ ILO, How to estimate forced labour in a country (forthcoming in 2010).

According to the ILO group of experts, exterior or indirect coercion that impedes a worker's freedom to 'offer himself voluntarily' can result not only from action on the part of the authorities (such as legal provisions), but also from the practices of the employer, for instance when migrant workers are victims of deception, false promises, when their identity papers are withheld, or when they are forced to remain at the employer's disposal. Such practices are in clear violation of ILO Convention 29. Regarding the issue of the possibility of revoking freely given consent to carry out work or provide a service, the committee has deemed that workers can never give up their right to free choice of employment, even in cases where employment was originally the result of a freely concluded agreement⁴³⁹. Consequently, every situation (whether resulting from legal provisions or the actions of the employer) that prevents a worker from leaving his job after having given reasonable advance notice transforms a freely concluded contract into forced labour. In terms of child labour, the question arises whether, and to what extent, it is possible for a minor to offer himself 'voluntarily' for work or service, and whether parental consent is required and can be considered sufficient. Most countries have established a legal minimum age for entering into a valid employment contract⁴⁴⁰. Nevertheless, in the worst cases of child labour⁴⁴¹, the ILO committee of experts has determined that neither children nor those in a position of parental authority over them can validly consent to accepting such employment.

The abuse of vulnerability is more difficult to determine. 'Vulnerability' can be either a physical or psychological weakness. From the legal point of view, the judge must take into account various elements, such as age, state of health (mental or physical), and cultural or social origin (which lead theoretically to include illegal immigrants). Dependence can be a matter of law or of fact. It can be economic, financial, and/or emotional.⁴⁴² Certain people run more risks and are more vulnerable than others. Migrant workers in illegal situations, for example, are more vulnerable due to their lack of valid documents and their fear of deportation. In cases of debt bondage in Asia and Latin America, the victims are vulnerable due to their extreme poverty and lack of education, which makes it easier to deceive them. In many countries, indigenous and tribal peoples who suffer from discrimination are among the first victims of servitude. Finally, in most cases an important aspect of vulnerability is that the victims are not aware of their rights and do not know who to turn to for help. As a general rule, the more isolated a worker, the more he is at risk.

⁴³⁹ ILO, *General Survey Concerning the Forced Labour Convention* (Geneva, 2007).

⁴⁴⁰ ILO Minimum Age Convention, 1973 (No. 138).

⁴⁴¹ ILO Worst Forms of Child Labour Convention, 1999 (No. 182). These are: a) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; b) the use, recruitment, or offer of a child for purposes of prostitution, production of pornographic material or pornographic shows; c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

⁴⁴² Gao Yun and V. Poisson, *Le trafic et l'exploitation des immigrants chinois en France* (Geneva: ILO, 2005).

The ILO's committee of experts has extended the concept of 'abuse of a situation of vulnerability' by considering some cases involving compulsory overtime. Workers may, in theory, have the right to refuse to work outside normal working hours, but in practice, the vulnerability of their position means they have no real choice, so they are compelled to do extra work if they want to receive the minimum wage or to keep their jobs. This exploitation of the worker's vulnerability allows the employer to impose extra work under threat of reprisal (dismissal or pay below the minimum wage)⁴⁴³.

3) To what extent is the fight against human trafficking for the purposes of labour exploitation more or less difficult than the fight against trafficking for the purposes of sexual exploitation?

Trafficking for the purposes of sexual exploitation and for the purposes of labour exploitation are both difficult problems to eliminate, especially because of their 'underground' nature. Both are crimes, but they must be approached from different angles.

For a long time 'trafficking' has only been understood as sexual exploitation. Yet ILO research has shown that only 43 % of victims of trafficking are exploited for purely sexual purposes⁴⁴⁴. We therefore need to look more closely into the workings of trafficking for the purpose of labour exploitation. The most difficult task is to reach out to the victims, who often are completely isolated, literally locked up in their workplaces, as is particularly observable in the textile workshops. It is then very difficult to identify the victims, contact them and help them. Most of the time, they can only be reached when they manage to escape by themselves. Working in secret, sometimes without valid immigration documents, they have no contact with associations or labour unions and live in terror of any figure of authority, especially the police. Besides, these workplaces are often hidden in private homes, which make it much more difficult for labour inspections to access unless receiving denunciation or complaints.

In the context of trafficking for the purposes of labour exploitation, a multi-faceted approach is needed, one which combines the efforts of the various parties involved: government, the labour inspectorate, employers and unions, police, magistrates, and NGOs. Recruiting and training an adequate number of labour inspectors is absolutely essential to this effort. ILO research has shown that, worldwide, between 40,000 and 45,000 more inspectors are needed. And without a sufficient number of labour inspectors, it will be difficult to reach out to workers. Local associations, such as watchdog committees, and trade unions are also vital to the task of reaching out to vulnerable workers and informing them about their rights⁴⁴⁵.

⁴⁴³ ILO, *General Survey on Forced Labour* (Geneva, 2007).

⁴⁴⁴ *A Global Alliance against Forced Labour. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, 2005).

⁴⁴⁵ ILO, *Forced Labour and Human Trafficking – Handbook for labour inspectors* (2008).

4) Where, in your view, is the grey area between illegal work and human trafficking?

The terms ‘undeclared work’ and ‘illegal labour’ are often used as synonyms, especially in the developed countries, even though the activity itself may be legal⁴⁴⁶. We must be very careful not to confuse illegal labour with forced labour. Not all workers in illegal work situations are in forced labour or are victims of trafficking. But because their situation is irregular, their vulnerability is greater. This distinction is especially important in the wider European context of combating both forced labour and illegal immigration. Hence the importance of identifying the victims, so that their rights can be recognised and applied. The ILO committee of experts reminds us⁴⁴⁷ that, ‘neither Convention No. 81 nor Convention No. 129 contains any provision suggesting that any worker be excluded from the protection offered by labour inspection on account of their irregular employment status’. Furthermore, ‘the committee points out that the main task of labour inspectors is to oversee the protection of workers, and not to ensure the application of immigration laws’, reiterating the need to treat exploited workers as victims, regardless of their legal status.

5) Do you know of any large firms that take advantage of human trafficking to limit their production and wage costs by means of subcontracting (for example in the textile industry)?

We know that issues of human trafficking and forced labour can arise in supply and subcontracting chains. The employer, however, is not necessarily aware of this, and it can be difficult to identify these practices. Globalisation has led to an incredible complication of the system of production. A multinational may have the power to exert real pressure on its immediate suppliers, but this power is weaker in the next tier of the supply chain. It practically ceases to exist by the time we reach the subcontractors at the beginning of the chain. In the textile industry, for example, it is possible to impose control and transparency on clothing manufacturers, but it is very difficult for buyers to trace working conditions all the way back to the original cotton fields.

Still, there are signs of significant improvement. The ILO, in cooperation with the International Organisation of Employers, has come up with a manual to help employers to prevent the risk of forced labour⁴⁴⁸. More and more companies are getting involved publicly, like the signatories to Brazil's National Pact, who agreed not to work with suppliers using forced labour⁴⁴⁹.

⁴⁴⁶ Ibid.

⁴⁴⁷ ILO, *General Survey of the Reports Concerning the Labour Inspection Convention, 1947 (No. 81) and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)* (Geneva, 2006).

⁴⁴⁸ ILO, *Combating Forced Labour: A Handbook for Employers and business* (Geneva, 2010).

⁴⁴⁹ ILO, *Fighting Forced Labour: the Example of Brazil* (Geneva, 2009).

6) How effective, at the political level, is international cooperation on human trafficking for the purposes of labour exploitation?

Increased international cooperation is an absolute necessity in combating human trafficking, and not just at the government level. Clearly, efforts at cooperation have multiplied over the past few years, whether between countries of origin and of destination, or between countries more or less advanced in the fight against forced labour, in the framework of exchanges of good practices. Interestingly, the latter also arise in the context of South-South cooperation. In May 2008, the governments of Brazil and Peru signed a cooperation agreement to strengthen their activities in preventing and combating forced labour. The agreement allows them to exchange experiences through technical cooperation and missions of specialised civil servants from both countries. We should also point out European initiatives on coordination, such as the creation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA).

International cooperation among trade unions is also very important, so that workers can be informed about the risks of exploitation in their destination country and what their rights are, and in order to provide them with legal assistance where necessary. Agreements have been signed between the unions of Senegal and Mauritania, of Costa Rica and Nicaragua, of Jordan and Pakistan, and of Malaysia and Indonesia. But there is still much work to do, especially in terms of coordination among the stakeholders (Ministries of the Interior, Labour, and Justice, the police, labour inspectorates, magistrates, civil society, employers and trade unions). For example, not every European country has established a national rapporteur like the one in the Netherlands, although this was strongly encouraged by the text of the Council of Europe's Convention on action against human trafficking⁴⁵⁰.

7) How effective and efficient, in terms of the police services, the labour inspectorate and as regards prosecutions, is international cooperation on human trafficking for the purposes of labour exploitation?

We are seeing growing cooperation between labour inspectorates. I have already referred to the agreement between Brazil and Peru, which provides for exchange of experiences between the national labour inspectorates. In March 2010, the ILO organised a seminar in Lyons on trafficking and forced labour, in collaboration with INTEFP (Institut National du Travail, de l'Emploi et de la Formation Professionnelle), with participation from the labour inspectorates of France, Belgium, Luxembourg and Portugal. The discussions were very fruitful, and the participants pointed out in particular the need for training and awareness-raising actions.

This coordination and cooperation among the agencies has already shown results in the area of enforcement. The cooperation of the police and inspectorates of Poland and Italy, in 2006, resulted in the rescue of Polish workers who were engaged in forced agricultural

⁴⁵⁰ <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

labour in the Italian region of Puglia. This operation has frequently been cited as an example by Europol.

Nevertheless, a great deal still remains to be done, especially with regard to dismantling international criminal networks. It would be especially useful to come up with heavier financial sanctions capable of deterring traffickers. In Brazil, for example, numerous credit institutions have agreed not to make loans to companies that use forced labour. This is a particularly interesting example, since it is a private sector initiative to supplement sanctions imposed by law. In the case of international networks of organised crime, more international cooperation is needed to enable effective sanctions, such as the freezing of assets and real property.

8) Do you consider that certain measures are currently lacking as far as protecting victims of human trafficking is concerned? If so, what are they? What could the ILO contribute in this regard?

Forced labour and human trafficking cannot be eliminated without touching on other problems, like corruption and impunity of perpetrators. Many countries have toughened up their laws on human trafficking, but these laws are only weakly enforced, and the penalties attached are too lenient to effectively discourage the practice. The US State Department, in its most recent report on trafficking, lists only 335 convictions worldwide in 2009 in cases of trafficking for the purposes of labour exploitation. By contrast, in the same period there were more than 4,000 convictions in cases of sexual exploitation⁴⁵¹. For the victims, it is important to improve protective measures (preservation of anonymity, residence permits that do not depend on providing testimony), compensation (financial indemnities) and rehabilitation (vocational training and reintegration programmes).

The ILO's projects range from prevention to rescuing and reintegrating victims and aim to reinforce institutional capacities and increase research, advocacy and awareness by mainly targeting at-risk groups (migrant workers, indigenous or tribal peoples, etc.) and the agencies that oversee the application of standards. The ILO's particular contribution has to do with its tripartite nature, which makes it possible, within technical cooperation projects, to involve governments, employers and workers. The organisation's broad mandate allows it to attack the problem of forced labour and trafficking from a variety of angles, and in connection with other issues (discrimination, freedom to organise, labour inspection, child labour, etc.).

9) What measures does the ILO propose to combat trafficking more effectively?

Between 2005 and 2009, the ILO acquired considerable experience on the different ways to combat forced labour and human trafficking, and has learned some valuable lessons. The importance of research and the need to act on a national scale against forced labour have been clearly highlighted. There is an obvious need for assistance and educational material on forced labour and human trafficking, aimed at different groups – labour

⁴⁵¹ US Department of State, Trafficking in Persons Report 2010, <http://www.state.gov/g/tip/>.

inspectors, judges and prosecutors, employers' organisations and unions. The projects already in place have clearly shown that time is needed to create a consensus between stakeholders and to obtain results.

After the most recent meeting of the ILO's Board of Directors, held in Geneva in November 2009, the Special Action Programme to Combat Forced Labour (SAP-FL) presented a new action plan.⁴⁵² It comprises four general priorities:

- Improving data collection and research, and refining the indicators used. Quantitative and qualitative studies remain a high priority. Countries that so desire will receive technical assistance to produce their own national statistics and to refine their indicators of forced labour. The aim is to replicate, in developing and industrialised countries, existing pilot programmes (several studies have been conducted to measure the extent of forced labour among migratory victims of trafficking and on the traditional forms of forced labour). It is important to work on the forms of forced labour that have received less attention to date, such as prison labour, and to focus on vulnerable workers, especially domestic workers, seamen, and workers in Free Trade Zones, as well as to look more closely at the economic aspects of forced labour;
- Intensifying the global awareness-raising campaign aimed at the general public, potential victims and those concerned by the fight against forced labour and trafficking. Particular emphasis should be placed on the causes of forced labour and the most effective means to combat it;
- Improving law enforcement and the efficiency of labour justice, strengthening the participation of labour administration and labour inspectors in a coordinated action against forced labour, and developing specific training tools, adapted to the different stakeholders involved and to both national and regional contexts. It is essential to follow up the work already begun with the legal casebook on trafficking and forced labour, particularly considering the way courts address the issue of compensating the victims of forced labour;
- Strengthening the involvement of employers' and workers' organisations in combating forced labour and trafficking. It is important to bolster the unions' ability to organise those workers who are most vulnerable, especially in high-risk sectors like agriculture, construction, domestic service, and the hospitality industry. Concerning employers, the ILO will continue to develop training programmes and tools targeted, for example, at social auditors. The aim here, in each sector, is to find ways of going beyond the first tier of the international supply chain, and to support the efforts of employers to reintegrate victims of forced labour.

⁴⁵²GB.306/TC/3 *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plan regarding the elimination of forced labour.*

CONCLUSIONS : RECOMMENDATIONS

DETECTING VICTIMS

1) Raising the awareness of local police on how to detect victims of human trafficking for the purposes of labour exploitation

General housing inspections conducted by local police can be an invaluable source of evidence of human trafficking. Administrative checks of this nature can serve as a significant basis for detecting victims of human trafficking.

Through its **local work and neighbourhood patrols**, local police are the most informed about high risk areas. Yet many local police forces no longer give real priority to combating human trafficking.

If **slum landlord practices are uncovered**, inspectors must question the clandestine residents as to how they pay their rent and probe the nature of the tenant/employer relationship. If one looks closely at the work situation, it is often possible to discover human trafficking for the purposes of labour exploitation.

INSPECTION SERVICES

2) Raising the awareness of the Social Inspectorate on how to detect victims of labour exploitation:

- **reporting**
- **seconded workers and bogus self-employed workers**
- **new model of electronic reporting minutes**

Social inspectors need to devote more careful attention to indications of human trafficking in their reports. The Social Inspectorate plays an important role in detecting signs of trafficking of human beings. In some cases they do no more than identify undeclared workers, although this identification should be the starting point of a more targeted investigation into working conditions, working time, remuneration and living conditions. Reports and police minutes should put forward the evidence as clearly as possible to the labour inspector.

In this Annual Report we ask that particular attention be paid to detecting victims of labour exploitation via the data on secondment and bogus self-employed workers.

If the template of the electronic police minute, which is expected to be launched in 2010, takes this into account, it could mean a significant step forward in gathering evidence of human trafficking.

3) The Social Inspectorate must have adequate human resources to fulfil their role within the framework of multidisciplinary collaboration and should be able to detect victims of trafficking in human beings.

The inspection services are faced with the problem of a **suitable staff complement** and within that complement, there is a **lack of staff**. In times of crisis, combating organised large-scale social fraud, which is their principal mandate, is not only an advantage to the Belgian Treasury but also a weapon against practices of unfair competition. During their daily inspections, the lack of staff complicates their task within the multidisciplinary collaboration involved in combating human trafficking. The need for adequate training, in particular as regards the employment of foreign workers, is also evident.

Similarly, the mandate of the inspection services, which consists of organising a major annual inspection campaign, in consultation with the police, to check for human trafficking in each district, is impeded by the lack of staff. Large scale coordinated actions require a lot of time and investment of human resources. The shortage of staff in social inspectorates has a negative effect on the quality of these campaigns and reduces the likelihood of detecting victims of human trafficking in the course of general inspections.

Finally, we recommend scrupulous attention be paid to checking that the parameters used to set the staffing levels for the Social Inspectorate are indeed suited to the current developments in globalisation of the labour market and the problem of exploitation.

THE JUDICIARY

4) The labour inspectors and the magistrates of the public prosecutor's office must devote sufficient attention to cases involving trafficking in human beings for the purposes of labour exploitation.

The magistrates are the end point for the results of the inspections and evidence reports on human trafficking carried out by the inspectorate and the police. The magistrates set the policy regarding prosecutions for trafficking in human beings which the front-line services will follow. In certain criminal cases in which the Centre has come forward as a civil party, we have been able to observe that in certain judicial districts, cases involving trafficking in human beings for the purposes of labour exploitation are not a priority. This has an impact on the attitude taken by the front-line services to this phenomenon.

5) The Centre asks that labour inspectors and magistrates of the public prosecutor's office appoint an investigative judge for the more important case files involving trafficking in human beings for the purposes of labour exploitation.

An investigative judge has much more power than the inspectors. Therefore, investigative methods, such as phone tapping or specific forms of investigation in which the police are specialised, may be put to better use, thus adding significant value to the case file.

6) The labour inspectorates should be reorganised on a territorial basis and become specialised and computerised, and the federal public prosecutor's office should have a specialist in social law on its staff.

The labour inspectors were ready to agree to the (previous) proposals of the Minister of Justice to reorganise the judicial system and to seriously limit and enhance the specialisation of the prosecutors. As was the case last year, certain labour inspectors have been calling for a specialist in social law to be included among the magistrates of the federal public prosecutor's office for cases involving human trafficking for the purposes of labour exploitation on a grand scale.

The prosecutors' offices must have adequate IT resources. Among the prosecutors we interviewed, one stated that the prosecutors' offices were obliged to 'work in the dark'. They were unaware whether the firm or the exploiters on whom they were opening a case file had already been the subject of investigation in another judicial district.

INTERNATIONAL COLLABORATION

7) International collaboration must be improved:

- **via a system of European electronic registration for secondment documents and a Europe-wide LIMOSA database;**
- **by encouraging cross-border collaboration or the implementation of a European social inspectorate;**
- **via international collaboration on seizures.**

According to the State Secretary for Coordination of the Fight against Fraud, 'entire networks have been put in place to create carousels of secondment in various Member States, and against which the national inspection services are helpless due to the lack of information exchange on an international scale. This is a new form of fraud that is growing at lightning speed. Ideally, an amendment to the European rules pertaining to secondment should relieve some of the issues. However, such an amendment risks being a very long, drawn-out task. During the second semester, under the Belgian Presidency, we will address the exchange of data among EU Member States, or rather the absence of such exchange at the European level.' In our annual report we have also referred to various case files of human trafficking in which fraudulent secondment is involved.

Chief Public Prosecutor Visart de Bocarmé stressed, during his inaugural speech before the Liège Labour Court, 'and it's not futile to dream of the creation of a social Interpol assembling all the European administrations concerned.'⁴⁵³ In the past, several positive steps were taken and gave rise to cross-border checks. International collaboration among the inspection services does not always come naturally. Each country wants to retain as far as possible the receipts from social security for their own State Treasury. Suggestions

⁴⁵³ 'Mercuriale de rentrée de la Cour du Travail de Liège prononcée par Cédric Visart de Bocarmé, procureur général de Liège', *J.T.T.*2008, p.457-463.

have been made for a European electronic registration system, where authentic E101 forms (A1 in future)⁴⁵⁴ must be entered digitally by the authorities in the country of origin of the subcontracting firm in question, and transferred by electronic means to the other State.

The LIMOSA system stores all information on the movements of foreign workers centrally (secondment of employees, students, self-employed workers, etc.). We consider LIMOSA to be an example of good practice which can serve as an example for international training sessions. At the moment, Belgium is a pioneer in this field.

A labour prosecutor confided to us that international collaboration was a disaster as regards seizures. Various countries refuse all cooperation. This situation must be remedied urgently.

CAROUSELS

8) Abuses of company structures for fraudulent uses must be dealt with firmly.

In our previous annual reports, we have also indicated the existence of such carousels in various cases involving human trafficking for the purposes of labour exploitation. These organised set-ups must be tackled resolutely. They represent tens of millions of euros in losses per year for the Belgian State. It is mainly the construction sector that is most vulnerable to these sorts of carousels.

Exchange of data at a national level between the tax authorities and the inspection services must therefore be better harmonised. The *Collège pour la lutte contre la fraude fiscale et sociale* (Authority for combating tax and social security fraud) has, in its action plan, taken important measures aimed at combating more effectively the corrupt practice of establishing companies for fraudulent purposes. The various authorities must be made aware that they need the resources to detect dormant companies and to put an end to them operating freely.

THE GOVERNMENT MUST ENSURE ORDER-GIVERS ASSUME THEIR RESPONSIBILITIES

9) The introduction of a law on the co-responsibility of order-givers in cases of trafficking of human beings for the purposes of LABOUR exploitation.

The Centre hopes that Belgian legislators will shortly adopt a law aimed at making order-givers responsible in the context of combating large-scale labour exploitation by means of subcontracting schemes. The Centre and the Interdepartmental Unit for coordination of the fight against human smuggling and trafficking have been calling for such a law for years.

⁴⁵⁴ On the E101 and A1 documents, see above Part 2, Chapter 1.

In the construction sector, a risk sector for human trafficking, there are civil law measures based on the principle of joint and several liability. This can serve as a point of departure from which to extend these measures to other sectors.

CONTINUE MONITORING BY PARLIAMENT

10) The Centre calls upon Parliament to continue regularly monitoring policies on trafficking in human beings.

In its previous annual reports, the Centre has already stressed the importance of structural political monitoring by means of a parliamentary forum. It is delighted that the Senate took such an initiative in the previous Parliament. It hopes that this will be continued or that other initiatives of a similar nature will be introduced during the next term in office.

Colophon

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In a haze of legality
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