

Trafficking in and smuggling of human beings

The money that matters

15th ANNUAL REPORT
2011 (English version 2013)

Centre for Equal Opportunities and Opposition to Racism

CONTENTS

INTRODUCTION	1
PART 1: THE MONEY THAT MATTERS	5
INTRODUCTION	6
CHAPTER 1: FOLLOW THE MONEY	7
1. Belgian measures to combat money laundering	7
1.1. Preventative aspect	8
1.1.1. Principles	8
1.1.2. The role of the Belgian Financial Intelligence Processing Unit (CTIF-CFI)	9
1.1.3. The duty for vigilance among certain professions in the non-financial sector	10
1.2. Punitive aspect	13
2. Trends in money laundering and human trafficking	15
3. Trafficking in human beings and legal structures	19
4. Financial analyses and criminal organisations	23
5. ‘Follow the money’ : obstacles and recommendations	25
<i>External contribution: the financial approach to human trafficking</i>	28
<i>External contribution: the new tools in the fight against serious and organised social fraud</i>	31
CHAPTER 2: GO FOR THE MONEY	37
1. Seizure and confiscation: general principles	37
1.1. The Belgian framework	37
1.2. The international framework	39
2. Difficulties in the execution of seizures and confiscations	40
CHAPTER 3: THE OTHER SIDE OF THE COIN	44
1. The fight against benefit fraud	44
2. Detection	45
3. The (bogus) self-employed	46
4. Initiatives	47
5. Future outlook	48
CHAPTER 4: GIVE THE MONEY BACK	49
Introduction	49
1. Access to compensation for victims of human trafficking	51
2. Compensation through legal proceedings	53
3. The role of the Social Law Inspectorate in the recovery of unpaid salary	56

4. Fund for financial aid to victims of deliberate acts of violence and rescuers	59
Conclusion	65
<i>External contribution : Human rights and trafficking – what does it mean for the victim? Three points for consideration</i>	67

PART II: EVOLUTION OF THE PHENOMENON OF HUMAN TRAFFICKING AND THE FIGHT AGAINST IT 71

CHAPTER 1: RECENT DEVELOPMENTS IN THE LEGAL AND POLICY FRAMEWORK 72

1. Developments in the European legal and policy framework	72
2. Developments in the Belgian legal and policy framework	74
2.1. At the legislative level	74
2.1.1. Human trafficking and smuggling	74
2.1.2. Main contractors	75
2.1.3. Unaccompanied foreign minors	77
2.2. At the political level	78
2.2.1. New action plan for the fight against the trafficking and smuggling of human beings 2012-2014	78
2.2.2. A national parliament that is alert to human trafficking and smuggling	80

CHAPTER 2: ANALYSIS OF THE PHENOMENON 89

1. Sexual exploitation	89
1.1. Trends and developments	89
1.2. Analysis of cases	91
1.2.1. Bulgarian case of Sliven	91
1.2.2. Drug-dealer and Belgian victims	93
1.2.3. Manager of a Belgian-Moroccan bar	94
1.2.4. Nigerian traffickers of women in Tongeren	98
1.2.5. Thai massage parlour	101
2. Labour exploitation	105
2.1. Trends and developments	105
2.2. Case analysis: Belgian-Moroccan construction	105
3. Begging	108
3.1. Trends and developments	108
3.2. Analysis of cases	108
4. Human smuggling	108
4.1. Trends and developments	108
4.2. Analysis of cases	109
4.2.1. Ishtar bis	109

4.2.2.	Indian marriages of convenience in Hasselt	111
4.2.3.	Indian-Pakistani marriages of convenience in Ypres	115
CHAPTER 3: GOOD AND BAD PRACTICES		119
1.	Victims	119
1.1.	Multidisciplinary cooperation	119
1.2.	International cooperation	120
1.3.	Loopholes in the official status of victim	121
2.	Actors	123
2.1.	Local police	123
2.2.	Territorial jurisdiction and organisation	123
2.3.	Investigative judges specialised in human trafficking	124
2.4.	Investigative techniques	124
2.5.	International cooperation	125
3.	Interpreters	126
4.	Lawyers' ethics	127
CHAPTER 4: CASE LAW OVERVIEW 2011-EARLY 2012		128
1.	Findings	128
2.	Overview of decisions per type of exploitation	129
2.1.	Human trafficking	129
2.1.1.	Sexual exploitation	129
2.1.2.	Labour exploitation	136
2.1.3.	Exploitation of begging	139
2.2.	Human smuggling	140
PART III: FIGURES AND STATISTICS		142
Introduction		143
1.	Police data	143
2.	Data from the Social Inspectorate	145
3.	Data on prosecutions	146
4.	Data from the Immigration Office	148
5.	Data from specialised centres for victims	152
6.	Judicial data: convictions for human trafficking	155
Conclusion		157
RECOMMENDATIONS		158
1.	Financial analysis and measures to combat money laundering	158

2.	Seize the profits	158
3.	Local policy	159
4.	Compensation of the victims	160
5.	Victim status	161
6.	Policy actors	163
7.	Interpreters	164
8.	Lawyers	164

INTRODUCTION

With this ‘2011 Annual Report on Trafficking in and Smuggling of Human Beings’, the Centre for Equal Opportunities and Opposition to Racism (hereafter: the Centre) would like to offer, for the fifteenth time, an independent, reliable and critical overview of the results and developments in the fight against trafficking and smuggling of human beings. For the Centre, this report is a crucial instrument for fulfilling its legal mandate: ‘to stimulate the fight against trafficking in and smuggling of human beings.’ With the publication of its first annual report in 1996, the Centre acted as a ‘national rapporteur in the field of trafficking in human beings’ *avant la lettre*, and this has continued to be its *de facto* role in Belgium ever since.

The legislators have stipulated that the Centre is to perform its duties in a spirit of dialogue and cooperation. In this context, it works together with various organisations, including the European network of national rapporteurs or equivalent mechanisms in the field of human trafficking. The European Commission, the EU coordinator for the fight against human trafficking, Ms. Myria Vassiliadou, and the Presidency of the Council of the European Union regularly convene meetings of this network, as most recently took place under the Danish presidency. During the development of the EU strategy against trafficking in human beings, Ms Vassiliadou made an extended working visit to the Centre.

The Centre also collaborates with actors taking a multidisciplinary approach to trafficking in and smuggling of human beings within the framework of the Interdepartmental Coordination Unit and its Bureau, chaired by the Department of Criminal Policy. The National Action Plan 2012-2014 was presented to the Council of ministers of 22 June 2012 and the Unit was given responsibility for its implementation.

One of the practical elements of this Action Plan is to develop a legal basis for the recognition and funding of shelters for victims of human trafficking. Twenty-five years after the establishment of the first centre, Payoke, a recognition procedure is finally in sight for the three centres specialising in the reception and support of victims of human trafficking and smuggling (Payoke in Flanders, Pag-Asa in Brussels and Sürya in Wallonia). The Centre does not play a coordinating role, strictly speaking, with regard to these centres, but it does tend to facilitate collaboration. This is especially reflected by the development and introduction of a uniform system of case record management, called ELDORADO. The system will contribute to better data collection on victims and thus to improving the policy for victims of trafficking and smuggling of human beings.

With this annual report, the Centre completes a triptych. The 2009 Annual Report entitled ‘In a Haze of Legality’ formed the first part and showed how, under the guise of the free movement of persons and services, EU citizens and the nationals of other countries were

exploited through apparently legal constructions. Today, it remains a challenge to adapt the status of victim to the requirements and strategies for residence of the EU citizens.

The second part was presented in the 2010 Annual Report. It was entitled ‘Combating social fraud to prevent trafficking in human beings’ and situated the problem of human trafficking in the context of social fraud, with setups for exploitation involving clients and intermediaries, bogus independent contractors and bogus assignments. The current government is working to find solutions for each of these problems. In addition, the magistrates who work on large and complex cases of labour exploitation must also be given the mandate and the means to investigate instances of human trafficking. It is not enough to prosecute violations of labour law and social security requirements. It is also important that magistrates be able to identify the criminal components within schemes for exploitation and ‘win-win’ situations, if they are to prevent the fight against human trafficking from being reduced to the fight against a small number of amateurs or marginal players.

The focus of this third part, entitled ‘Money Matters’, allows us to complete this triptych. We concentrate on money and other benefits gained from the exploitation of victims of trafficking and smuggling of human beings, which reflects the complexity of the fight against criminal organisations and operators and highlights some key aspects of this fight. In this introduction, we shall address four issues:

- By closely analysing certain income, it is possible to identify the perpetrators of this crime and the clients taking advantage of their services. Once it becomes a matter of a network and/or organised crime, the ill gotten gains need to be transferred, within and often outside of national borders. It is essential to pay attention to the flow of money as part of the policy on the detection and monitoring of money laundering operations.
- A combative police and judicial action will only significantly impact the perpetrators of human trafficking if it effectively removes the profits from the criminal circuits and neutralises the facilitators and resources supporting the entire exploitation process. This particularly highlights the value of seizures and confiscations.
- Local authorities and police play a key role in the detection of trafficking in human beings: without their alert attention, many signals would be lost. The CPAS/OCMW (Public Welfare Offices) also have a role to play in the detection of victims of human trafficking. When they encounter evidence of organised exploitation, they can cooperate in the investigation, subject to respecting their ethical ground rules. Some CPAS/OCMW in major cities have established agreements for this purpose with the Labour Auditor.
- Victims of human trafficking are people whose dignity has been violated and who have suffered financial and moral harm. They need to quickly receive a clear signal that the authorities take their right to reparations and compensation seriously. The appointment of a lawyer as soon as victims officially acquire the status of victim can play an important role here. There must also be adequate measures for victims who do not wish to start the procedure or to victims who have returned to their country of origin during the course of the procedure.

Recognition of the suffering and damage incurred and providing genuine compensation must be given priority from the moment a victim is identified.

Recognising that trafficking in human beings remains a serious violation of human rights can help to develop a type of intra-European protection for victims involved in situations of exploitation that extends across the borders of a single Member State and who are seeking protection and assistance in a different country from the one in which they have been exploited. It is a true challenge for the Belgian policy to use the approach based on human rights as leverage to restore the victims to a place at the centre of the fight against human trafficking. They must be made fully aware that Belgium will prosecute and effectively penalise exploiters and human traffickers and that the declarations provided by the victims play a key role in making this possible. This requires an approach that takes greater account of the victim as an individual, with his or her own potentials and difficulties. The main challenge here is to gain the confidence of victims when they come into contact for the first time with the authorities or specific organisations. Specialised social workers can act, through coordinated actions or in unexpected situations, as the crucial link for the victims, in order to inform them of the opportunities for reflection, protection, support and referral. Victims should be given accurate and confidential information on the steps that can be taken and their potential outcomes. In an initial phase, too often the status of victim is seen as the formalisation of the complaint rather than a comprehensive set of measures aimed at protection and compensation. Giving a more central place to the victims can be achieved through a more long-term assistance than is currently the case, which could particularly entail better preparation and better support upon return.

These two objectives—to pay more attention to the flow of money and more attention to the individual needs of each victim—in a sense mark the two ends of the spectrum in the fight against human trafficking. Between these two extremes, other points for attention emerge as well. A more efficient and more ‘unconditional’ protection of victims is required when they are too frightened or too vulnerable to make a statement. A more concrete interpretation of the ‘victim oriented approach’ is also crucial if the Belgian model is to be reproduced at the international level. There is another issue that has been discussed many times: the lack of numbers. Belgium currently remains at the stage of good intentions and good ideas, in this area. For this report as well, we have been forced to limit ourselves to a simple overview of data from various actors. Better statistics are nevertheless essential if we are to be able to explain and defend the Belgian model internationally.

Finally, we should add that for this annual report, we have invited three external actors to provide input. The ‘focus’ includes two of these Belgian contributions related to the fight against money laundering practices and the fight against economic and financial crime. This is followed by a European contribution presenting valid arguments for a policy that is more focused on victims.

We hope you will find the report a useful and stimulating reading.

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Centre for Equal Opportunities and Opposition to Racism

PART 1:

THE MONEY THAT MATTERS

INTRODUCTION

It is not news that what motivates criminals active in trafficking in and smuggling of human beings is the profit that these activities generate, all the more because they are viewed as activities that are low-risk and high-reward.

According to United Nations Office against Drugs and Crime (UNODC), trafficking in human beings is in fact the third largest source of income for organised crime after trafficking in drugs and arms.¹

Yet, according to the United Nations, the criminal profits – for all activities together – which have been subject to seizure are estimated at less than 1%.²

At a time when Belgium has decided to further reinforce the fight against social and tax fraud, the Centre has deemed it important to make the focus of its annual report on ‘Trafficking in and Smuggling of Human Beings’ the financial aspect of the fight against these phenomena. This focus allows for a fresh take on the phenomenon of trafficking from the angle of sexual and labour exploitation and the smuggling of human beings.

This focus has been divided into four Chapters: *Follow the Money* (about the importance of analysing financial flows) (Chapter 1), *Go for the Money* (about the importance of the seizure and confiscation of the proceeds of crime) (Chapter 2), *the Other Side of the Coin* (about the role of local authorities in the potential detection of these financial flows (Chapter 3). Finally, Chapter 4 (*Give the Money Back*) is devoted to the compensation of victims.

This focus has also been supplemented with three external contributions.

¹ FATF-GAFI Report, *Money Laundering Risks arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011, p.8, citing United Nations Global Initiative to Fight Human Trafficking (UN.Gift) (n.d.), *Background briefing note on human trafficking*.

² Financial Intelligence Processing Unit (CTIF-CFI), Annual Report 2011, p.6.

CHAPTER 1: FOLLOW THE MONEY

about the importance of analysing financial flows

If trafficking in and smuggling of human beings generates profits, these profits must at some point be transferred, repatriated or recycled. This is precisely the purpose of laundering the illicit proceeds of these offences, which is the subject of this chapter.

As a first topic, we shall outline the anti-money laundering measures in Belgium. In a second phase, we shall discuss the major trends observed in the field of human trafficking and money laundering before presenting some commonly used legal structures. We shall then show the importance of financial analysis in order to fight criminal organisations. Finally, we shall discuss the obstacles and make a few recommendations.

1. Belgian measures to combat money laundering

Money laundering can be defined as any transaction intended to manage or convert illicit profits. In terms of trafficking in and smuggling of human beings, it is the assets derived from these offences that may be the subject of laundering. The offence of money laundering is in fact a secondary offence, which by definition necessitates the existence of a primary, underlying offence, without which it would be inconceivable.³ It is therefore dependent on a different criminal behaviour with the purpose of generating illicit profits such as trafficking in or smuggling of human beings.

Currently, the fight against money laundering consists of a preventative aspect and a punitive aspect, adopted particularly in the context of international obligations.

Whilst the punitive aspect is intended to penalise money launderers, through provisions of the Criminal Code (article 505, 2° to 4° of the Criminal Code)⁴, the preventative aspect, meanwhile, aims to establish a series of obligations assigned to various actors in the economic and financial world for the purposes of preventing wherever possible the operations that have been established as criminal money laundering offences.⁵ This preventative aspect was introduced by the law of 11 January 1993 on the prevention of the use of the financial system for money laundering and the financing of terrorism (referred to below as: the law of 11 January 1993).⁶

³ O. KLEES, 'Money laundering', *Droit pénal de l'entreprise*, 2011/3, p.198. See the same author on the introduction of money laundering into Belgian law and the subsequent legislative developments, *ibidem*, p. 198-199.

⁴ Law of 17 July 1990 amending articles 42, 43 and 505 of the Criminal Code and introducing article 43bis into this Code, *Moniteur Belge* [Belgian Official Gazette], 15 August 1990. These articles were further amended on several occasions.

⁵ O. KLEES, *op.cit.*, p.199.

⁶ *Moniteur Belge* [Belgian Official Gazette], 9 February 1993.

These measures have been amended on several occasions.⁷ However, we do not plan to discuss these developments in detail as they fall beyond the - limited- scope of this report.

1.1. Preventative aspect

1.1.1. Principles

In the context of the preventative aspect the *Cellule de Traitement des Informations Financières* or Financial Intelligence Processing Unit (referred to below as the CTIF-CFI) plays an important role. In fact, since its inception, the law of 11 January 1993 provided on one hand for a series of preventative measures (sanctioned, essentially, in administrative terms) and on the other hand, established the duty of cooperation on the part of certain organisations and individuals (such as banks, currency exchange bureaus) for detecting transactions suspected of being linked to money laundering and to inform the Financial Intelligence Processing Unit (CTIF-CFI), created for this purpose.⁸ This law also defined what was to be understood, for the purposes of application, by ‘money laundering’(current article 5, §1) and by ‘illicit origin of goods and capital’, by listing, to this end, underlying offences (or phenomena) likely to generate such funds (current article 5, § 3). Trafficking in human beings is one of these. This obligation to cooperate was later modified and extended, particularly to include certain non-financial professions (such as: notary publics, accountants, lawyers...)⁹.

In addition, certain internal obligations were established for persons and organisations covered by the law. In particular, these include having in place an appropriate organisation and internal control procedures (this applies for financial professions as well as those in the non-financial sector); having to ensure the appropriate professional integrity of staff members at the time of hiring with regard to the risks associated with the tasks and duties they are to perform, the obligation to designate an anti-laundering manager (this is applicable to financial professionals as well as those in non-financial sectors who work within large structures).

Below (see example in point 1.1.3.) we shall see how, in a concrete case of human trafficking, the internal control procedures within a currency exchange bureau failed to function properly.

⁷ The last amendment to the law of 11 January 1993 was introduced by articles 170 to 177 of the Programme law (I) of 29 March 2012, *Moniteur Belge* [Belgian Official Gazette], 6 April 2012. For an analysis of these developments, see in particular O. KLEES, *op.cit.*, p.198-205.

⁸ See in this regard article 2 of the Law of 11 January 1993 and J.-C. DELEPIERE and P. DE COSTER, 'Le rôle de la cellule de traitement des informations financières (CTIF) et le dispositif préventif dans le cadre de la lutte contre le blanchiment d'argent et le financement de terrorisme — analyse opérationnelle et grandes tendances de blanchiment de capitaux et de financement de terrorisme', *Droit pénal de l'entreprise*, 2011/1, p.27 et seq.

⁹ For a complete list of the amendments introduced, see the Annual Report 2009 of the CTIF-CFI, p. 9 to 14.

1.1.2. The role of the Belgian Financial Intelligence Processing Unit (CTIF-CFI)

The CTIF-CFI is an independent administrative authority, established with legal personality, by virtue of the law of 11 January 1993. It is responsible for the centralisation, processing and as necessary, transmission of information to the judicial authorities for the sake of combating money laundering and the financing of terrorism.¹⁰

Belgium has opted to require greater accountability of the organisations and individuals referred to by the law of 11 January 1993: a duty of vigilance (and not an automatic declaration) has been imposed on them, which consists of a preliminary analysis of suspicious transactions by the anti-laundering manager within the organisation, or by the person or the professional in question. If the conclusion of this analysis reveals that or raises suspicion that an operation they are requested to execute is related to money laundering, they must inform the CTIF-CFI. Similarly, organisations and persons covered by the law of 11 January 1993 who have knowledge of an act that they know or suspect to be related to money laundering must also inform the CTIF-CFI.¹¹

The CTIF-CFI receives and centralises declarations of suspicion, which it maintains in a central database. It then has a certain number of options for analysing and supplementing the information provided, such as requesting additional information from the police department or government administrative services. The operational analysis is aimed at demonstrating a link between the money reported as being involved in the suspicious financial operations and certain criminal activities that have been specifically listed in the law (the underlying qualifications), which include trafficking in undocumented workers, trafficking in human beings and the exploitation of prostitution.¹²

When the operational analysis shows strong evidence of money laundering, the CTIF-CFI must transfer the information in its possession to the competent Public Prosecutor. When offences related to trafficking in illegal labourers or human trafficking are involved, the CTIF-CFI must also inform the Labour Auditor of this report.

Note that the underlying qualification identified in the context of a case is the one that appears to be the most obvious one. Aspects of 'human trafficking' are therefore quite regularly included in the cases reported by the CTIF-CFI to the legal authorities in connection with other underlying qualifications covered by the law, such as organised crime.

¹⁰ J.-C. DELEPIERE and P. DE COSTER, *op.cit.*, p.28.

¹¹ *Ibid.*, p.30.

¹² These are phenomena rather than specific offences. Thus, human smuggling, for example, may be placed under the category 'human trafficking'. We should also point out that the CTIF-CFI performs typological and strategic analyses (overview of the major trends observed in the area of money laundering) as well. On this subject, see J.-C. DELEPIERE and P. DE COSTER, *op.cit.*, p.37.

Recently, the CTIF-CFI has also been entrusted with the task of consultation with the various national authorities directly or indirectly involved in the fight against money laundering, in order to ensure effective cooperation with respect for the competencies of each body.¹³

A few figures

In 2011, cases of trafficking in undocumented workers, human trafficking and the exploitation of prostitution represented 15% of the cases transmitted by the CTIF-CFI to the courts and some 10% of the total criminal revenues.¹⁴

Trafficking in undocumented workers is a phenomenon that is increasingly present in the cases handled by the CTIF-CFI. In 2011, 92 cases were thus transmitted to the judicial authorities accounting for a total amount of 43.57 million euros.¹⁵ In such cases, the source of funds is generally located in Belgium, involving national transfer of funds.

With regard to the amounts of money laundered related to human trafficking, these are increasing in comparison with 2010 and 2009, but only represent 1.69% of the total money laundered in 2011. In 2011, 70 cases were thus transmitted to the legal authorities accounting for a total amount of over 12 million euros.¹⁶ Of this, money transfers in cash within Belgium and national transfers make up the largest share.

However, large financial flows are no longer observed related to the exploitation of prostitution, which indicates that the money is being laundered in a different way, (via transport companies, real estate, property rental...).

1.1.3. The duty for vigilance among certain professions in the non-financial sector

Certain professionals, such as notaries, external accountants, and external tax advisers are exempt from the obligation to make declarations to the CTIF-CFI *'if the information related to this declaration has been received from one of their clients or obtained about one of their clients during the assessment of the client's legal situation, except if they in turn are participating in the money laundering activities, provide legal advice for money laundering purposes or are aware that their client is seeking legal advice for such purposes'* (article 26, §1, paragraphs 2 of the law of 11 January 1993). In other words, those notaries, accountants and tax advisers are only required to make a statement when they are consulted for advice specifically to facilitate a money laundering operation or even asked to become a participant. If, on the other hand, they discover, in an indirect fashion, that their client is involved in such operations, they are exempt from making a declaration.

¹³ *Ibid.*, p 38.

¹⁴ CTIF-CFI, Annual Report 2011, p.26 and 27.

¹⁵ *Ibid.*, p.69.

¹⁶ *Ibid.*, p.87 and 88.

With regard to lawyers who, in the exercise of certain activities listed exhaustively in article 3, 5° of the law of 11 January 1993¹⁷, discover acts that they know or suspect to be associated with money laundering, they are required to immediately inform the president of the bar to which they belong. In any case, they are exempted if the information was received from one of their clients, or obtained about one of their clients in assessing the legal position of this client or in performing their role in the defence representation of this client in court, or with regard to such proceedings. However, this exemption is not justified if they themselves are involved in the money laundering activities, if they provide legal advice for the purposes of money laundering or if they are aware that their client is seeking legal advice for such purposes (article 26, §3 of the law of 11 January 1993).

These professions therefore have an important role to play in the fight against money laundering. However, it appears that very few reports made to the CTIF-CFI are submitted by these professions.

It is in fact largely institutions and individuals in the financial sector (currency exchange bureaus and credit institutions) who are detecting the suspicious operations. Thus, in 2011, currency exchange bureaus and credit institutions made up the financial institutions responsible for 80% of the declarations of suspicious activities transmitted to the CTIF-CFI.

The low number or often total absence of declarations by professionals in the non-financial sectors in comparison to the relative numbers of these professionals per sector has not gone unnoticed to the CTIF-CFI (e.g.: 158 notaries out of 1,423, 39 professionals in the accounting and tax sector out of 9,322 and just one lawyer out of 16,344).¹⁸ On the other hand, we must emphasise the overall quality of the reports made by these actors.

However, in terms of human trafficking, complex legal structures are sometimes created, for which the aid of certain professions (notaries, tax specialists...) acting as intermediaries or facilitators is indispensable. (For more on this subject see also the two external contributions at the end of this chapter).

¹⁷ This involves, for example, helping their client to prepare or carry out transactions concerning the purchase or sale of real estate or commercial companies, opening and managing bank accounts, etc.

¹⁸ CTIF-CFI, Annual Report 2011, p. 5.

Example: case of smuggling of human beings, forgery, fraud, embezzlement and money laundering

This case demonstrates a lack of vigilance on the part of both financial and non-financial professionals.

With regard to this case of human smuggling, in which the Centre has acted as a civil party, questions can be raised regarding the role played by the notary or at the very least, with regard to his lack of vigilance. The crimes were committed at the time of the large-scale regularisation of the legal status of resident aliens in 2009 and 2010.¹⁹ The main defendant was suspected and convicted of human smuggling, forgery and use of forgery, fraud, embezzlement, member of a criminal group and money laundering.²⁰

The latter organised, with the help of co-defendants, through various companies that had been set up, a large-scale network providing applications for regularisation of residence permits, which were found to be false or worthless. These false documents were provided for a fee, mostly paid to Chinese nationals residing irregularly on Belgian territory. The main defendant also took out advertisements in various Chinese newspapers and on the Internet, even producing a video, to attract the maximum amount of victims. Many people were victims of these actions and had to pay between 1,400 and 1,700 euros depending on the extent of the services provided. He also incited many irregular residents to participate in companies he founded, assuring them that this would facilitate their regularisation. These people paid large sums of money in exchange for this service.

The investigators found that the paid-in capital for each limited liability corporation (s.p.r.l./b.v.b.a.) was 18,600 euros each, which was always divided into 100 shares and that at the time of creation, each corporation had only 6,200 of capital provided. All of the articles of association and documents concerning modification of the statutes of the corporations managed by the suspect were handled by the same notary. According to the investigators, it were the same people (Chinese nationals staying irregularly in Belgium) who acted as the founders and/or were listed as managers, although they had never been registered in the register of resident aliens and/or did not possess the required work permit.

Based on the same case, it appears that the internal control procedure regarding money laundering within the financial institution (a branch of an agency for international money transfer) did not function properly, as in fact the chief defendant himself was, via his company, a commercial sub-agent for this organisation for money transfer. As a sub-agent, he himself transferred a lot of money to a branch of his company in China. He also possessed the access codes and user manual for the anti-laundering system. In addition,

¹⁹ This regularisation campaign took place upon the government's instruction to the Immigration Office, concerning the application of article 9*bis* and the former article 9.3, 19 July 2009.

²⁰ Brussels Criminal Court, 3 November 2011, 47th ch. This decision is final except in the case of a defendant who has appealed the decision and whose internment, imposed at first instance, was confirmed (Brussels, 5 April 2012, 12th ch). See also this report, Part 2, Chapter 4 (overview of case law), point 2.2.

the defendant's company did not report the suspicious payments to the CTIF-CFI. A witness revealed that he had seen many passports and applications for regularisation of resident status on the desk where the computer terminal was located that had access to the agency's information technology system for money transfer.

Interviews of the staff of the agency for money transfer furthermore revealed that commercial interests took precedence over the anti-money laundering measures. In the official report, the police referred to a structural problem. During internal controls (which were based on a system of points), the company should have obtained a score of 0/10 and should have been blocked immediately. However, this blockage only occurred after the money transfer agency learnt that the defendant was the object of the judicial inquiry.

1.2. Punitive aspect

The offense of money laundering was introduced into the Belgian Criminal Code by the law of 17 July 1990, which particularly supplemented article 505 of the Code.²¹ The text of the article was subsequently supplemented and amended several times.²² Money laundering is now criminalised in article 505, paragraph 1, 2° to 4° of the Criminal Code.²³ As this matter is particularly complex, we shall attempt to present an overview of the main points below.

The philosophy behind the criminalisation of money laundering is to enable the confiscation of the proceeds of a crime, such as trafficking in or smuggling of human beings, held by the perpetrator, either in kind, or in the form of substitute goods, or even if they are no longer in his hands, through their mandatory confiscation.²⁴ These are therefore assets derived from the basic offence (i.e., trafficking in or smuggling of human beings), which may form the subject of potential money laundering.

The object of the money laundering offences is described in article 42, 3° which addresses the special confiscation.²⁵ Three categories of proceeds come into consideration as potentially forming the object of a money laundering operation: the primary benefits derived from an offence, the secondary benefits in connection with this offence, and the income from these assets²⁶:

²¹ Law of 17 July 1990 amending articles 42, 43 and 505 of the Criminal Code and inserting an article 43bis into this Code, *Moniteur Belge* [Belgian Official Gazette], 15 August 1990.

²² For a detailed analysis of the scope of the initial text and the series of amendments made to it, see O.KLEES, *op.cit.*, p.202-205.

²³ Article 505 of the Criminal Code comprises 9 paragraphs and can be consulted on the website www.just.fgov.be (the Criminal Code).

²⁴ O.KLEES, *op.cit.*, p.206.

²⁵ This stipulated that the special confiscation applies to assets derived directly from the offence, goods and securities that substituted for them and revenue from the investment of these assets.

²⁶ O.KLEES, *op.cit.*, p.206-207.

- primary financial benefits: these are all the goods and securities that the perpetrator has obtained as revenue, as well as the counter value of the profit and payments unlawfully obtained;
- substitute assets: this refers to the possession of assets obtained in exchange or in place of primary financial benefits (e.g.: goods acquired with funds of illicit origin);
- revenues: this refers to revenues that these goods generate (e.g.: dividends, rental income from real estate...).

Like any offence, money laundering has both a material²⁷ and a moral²⁸ element.

Finally, money laundering is punishable by a term of imprisonment of 15 days to 5 years, an optional fine (from 26 euros to 100,000 euros)²⁹ and the mandatory confiscation of the object of the laundering or its equivalent (article 505, paragraphs 6 and 7).³⁰

Examples from case law: human trafficking and smuggling and money laundering

When it comes to money laundering related to the trafficking in and smuggling of human beings, it sometimes happens that these two convictions form the object of a single case and are therefore considered together by the trial judge. This was true of the case of residence regularisation fraud discussed above. The illegal assets of the main defendant were assessed at 775,000 euros. In addition to a conviction for human smuggling and other offences, the main defendant was sentenced for the laundering of the sum of 268,279 euros corresponding to the money sent to China.³¹ Penalties of confiscation were also imposed, which will be discussed further in Chapter 2 of this section.

In another case, involving smuggling and sexual exploitation, discussed at length in the chapter on the analysis of the phenomenon³², the defendants were involved in a Thai human smuggling network, whereby women and transsexuals were sent to Belgium with forged papers, in order to later arrive in the United Kingdom. These young women had to repay their debts by providing sexual services in massage parlours. The main defendants

²⁷ The material element consists of purchasing, receiving, exchanging, possessing, keeping, managing, converting, transferring the items referred to in article 42, 3° of the Criminal Code, as well as concealing or disguising nature, origin, investment, possession, transfer or ownership of these items.

²⁸ With the exception of specific intent provided for by Article 505, paragraph 1, 3 ° money laundering offenses punishable by 2 ° and 4 ° of paragraph 1 of Article 505 requires a general intent (element of knowledge and intent) . However, the knowledge of the illicit origin of the object of the money laundering must be pre-existing or at least concomitant with the act of money laundering itself. See on these issues and qualifications concerning them, O.KLEES, *op.cit.*, p.207-208.

²⁹ The loss of civil and clinical rights may also be ordered.

³⁰ It is also possible to order the optional confiscation of the profits derived by the perpetrator of the money laundering offences by virtue of his participation in these acts (or confiscation of assets of equivalent value), in application of the conventional rules regarding confiscation (See in this regard Chapter 2 in this part).

³¹ Brussels Criminal Court, 3 November 2011, 47th ch. (definitive with regard to this).

³² See below Part 2, Chapter 2, point 1.2.5. Thai massage parlour.

were in fact convicted of trafficking in and smuggling of human beings, as well as money laundering.³³ The money generated through illegal activities in the United Kingdom was basically being laundered by means of money transfers into Belgium. Amounts of 10,851 euros and 30,000 Pound Sterling were thus identified and formed the object of the money laundering conviction.³⁴

Finally, we should note another case of sexual exploitation of Bulgarian girls, in which several of the defendants (escorts) were convicted of human trafficking and money laundering.³⁵ The defendants had in fact transferred sums of money for the purpose of disguising or concealing their illicit origin.³⁶ The court also noted that *'the defendants did not have any regular income, neither in Belgium nor in their country of origin and in any case no financial resources other than those generated by their activity in prostitution. Yet it was established through banking records that the defendants transferred relatively large sums of money onto Bulgarian bank accounts which could only have been explained by the accumulation of profits realised through their work as escorts in two bars in Brussels.'*

In some cases, a laundering case is opened in parallel to a case of human trafficking or smuggling. The outcome of this case may be uncertain, without the collaboration between the competent departments. The **cooperation and collaboration between the competent departments within both the Public Prosecutor's office and the police forces** is crucial if we are to achieve results in the area of money laundering involving trafficking in and smuggling of human beings.

2. Trends in money laundering and human trafficking

At the international level, the major trends in money laundering are similar to those seen in other types of offences and include intensive use of cash, banking services, the informal system of *hawala*³⁷, couriers, shell companies, entanglement of funds, aliases, strawmen and false documents.³⁸

³³ Louvain Criminal Court, 22 November 2011, 17th ch. See also Part 2, Chapter 4 (case law review).

³⁴ In this case, the CTIF-CFI discovered money transfers in the form *Money Remittance* from the United Kingdom to Belgium made in a currency exchange bureau in Belgium by one of the defendants. These operations constituted the offence of money laundering. No matter how small, this amount is a valuable piece of evidence that allowed the CTIF-CFI to contribute to the legal case (CTIF-CFI, Annual Report 2011, p.112).

³⁵ Liege Criminal Court, 19 January 2011, 11th ch. This decision is final with regard to the main defendants. See also Part 2, Chapter 4 (overview of case law), point 2.1.1.

³⁶ Ed.: incrimination referred to in article 505, 3° of the Criminal Code.

³⁷ The *hawala* system is a parallel banking system that makes it possible to transfer the sum of money from one country to another without leaving any trace of the transaction. The system is completely anonymous.

³⁸ FATF-GAFI Report, *Money Laundering Risks arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011, p.7.

The Centre has observed that the hawala system is regularly used by traffickers in cases of trafficking and smuggling of people from India, Pakistan and Iraq.³⁹

The courier system, in turn, is often used in cases involving Bulgarians, Romanian and Indian-Pakistanis.⁴⁰ Thus, in a case of marriages of convenience connected with night shops⁴¹, a courier was responsible for collecting between 100,000 euros and 200,000 euros daily and transporting this to other countries.

A 'human trafficking' contact prosecutor also signalled the existence of an informal African system similar to hawala system.

However, the system that remains the most widely used is cash transfer, directly or through the purchase of goods and services. Three models are predominant in terms of smuggling of and trafficking in human beings⁴²:

- the money is directly repatriated to the country of origin of the traffickers, where it is often invested in legal businesses such as restaurants, bars or real estate such as apartments and houses;
- the money is used both in the country of origin and in the destination country to support a lavish lifestyle;
- the money is invested in other criminal or illegal activities in the destination country.

The preferred form of investment is in real estate and the purchase of cars. Real estate investment crops up in several cases of Turkish Bulgarian renovation in which the Centre is acting as a civil party.⁴³

Moreover, in Europe, traffickers often use their victims to carry out money laundering operations (by means of couriers, money transfer services or informal banking services). The Centre can confirm this trend, which it was able to observe first-hand in a case of Bulgarian sexual exploitation in Brussels.⁴⁴ In this case, when money derived from prostitution needed to be transferred, this was carried out through the international money transfer agency in the name of the victims. The money was then laundered in Bulgaria through the purchase of real estate and luxury cars in the name of other persons not involved in the case.

³⁹ See in this regard 2008 Annual Report. 'Trafficking in and smuggling of human beings, p.48 (complete version of the report only available in French and Dutch) and the 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 54 and 57.

⁴⁰ See in this regard 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.17 and Annual Report. 'Trafficking in and smuggling of human beings 2007, p.85.

⁴¹ See below, Part 2, Chapter 2, point 4.2.3. Indian-Pakistani marriages of convenience in Ypres.

⁴² FATF-GAFI Report, *Money Laundering Risks arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011, p.39.

⁴³ See 2008 Annual Report. 'Trafficking in and smuggling of human beings, p.42-43 (complete version of the report only available in French and Dutch) and 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.26-27.

⁴⁴ 2007 Annual Report. 'Trafficking in and smuggling of human beings', p.84.

The CTIF-CFI emphasises the growing scale of activities of the type ‘trafficking in undocumented workers’, human trafficking and exploitation of prostitution’ which is often found in connection with poly-criminal network-based activities that are intimately connected to certain economic and commercial sectors. It ‘*shows the current worsening of the specific and insidious threat formed by the integration of illegal and criminal capital into legal economic circuits which all too often are only legal in appearance.*’⁴⁵ In the past two years, the sectors of construction and industrial cleaning have been identified by the CTIF-CFI as subject to increased risk.

The CTIF-CFI observes numerous transfers of the type *Money Remittance*⁴⁶ (*transfer of money through a system for the international transfer of funds*) from Belgium into countries known as organisers and providers of victims to human trafficking networks (Albania, Moldavia, Romania, Ukraine, Bulgaria, Thailand). These money transfer operations are typical of these cases concerning human trafficking: offering a certain anonymity since they generally involve only small amounts, they afford the established criminals the advantage that they can be carried out virtually instantaneously. These transfers constitute operations for both the repatriation of funds belonging to the victims of the network and the laundering operations on behalf of the criminal organisation. In fact, in the destination countries which are the home countries of the organisers as well as the victims, part of the money transferred in this way is required to be returned to the organisers by the recipients (generally family members of the victims).⁴⁷

The Centre has observed numerous cases of the frequent use of money transfers through international money transfer agencies, sometimes using forged identity documents, which makes it difficult to identify the actual transferer. This modus operandi is particularly seen in a case of marriages of convenience, prosecuted in Ypres which is discussed later in this report.⁴⁸

Example: Suspicious transactions in a case of sexual exploitation

In this case, presented in the chapter devoted to the analysis of the phenomenon⁴⁹, a Nigerian prostitution network was intentionally set up in the region of Tongeren for the purposes of prostitution and money laundering activities.

In 2010, the CTIF-CFI transmitted a statement of money laundering to the Public Prosecutor’s Office of Tongeren regarding 56 suspicious money transfers made by two

⁴⁵ CTIF-CFI, Annual Report 2011, p.6.

⁴⁶ The CTIF-CFI (*Ibid.*, p.125) defines this term as follows: ‘*provision of a service which consists of having an intermediary transfer, by means of a system for international money transfer, according to the instructions of his client, a sum of money that has been previously transferred in cash to a beneficiary designated by the client. In Belgium, such services are usually offered by currency exchange officers, although it is now also starting to be developed in other sectors of activity.*’

⁴⁷ CTIF-CFI, Annual Report 2011. p.88.

⁴⁸ See above, Part 2, Chapter 2, point 4.2.3. Indian-Pakistani marriages of convenience in Ypres.

⁴⁹ See above, Part 2, Chapter 2, point 1.2.4. Nigerian traffickers in women in Tongeren.

businessmen to Nigeria for a total amount of 49,580 euros, via a money transfer agency. Through its Dutch contact, the CTIF-CFI learned that these two men were under investigation for human smuggling and trafficking. In 2009, the CTIF-CFI had already sent a declaration to the Public Prosecutor concerning the laundering of drug money involving these two men.

Throughout the investigation, the police effectively observed close contacts between the prime suspect and several Nigerians involved in a criminal investigation for money laundering. For this reason, it was decided that the two cases should be combined.

The bank investigation concerning the prime suspect revealed that the size of the cash deposits and money transfers carried out were considerable, whilst this man did not have any official income in Belgium. Between May 2008 and December 2009, he transferred 35,901 euros via a money transfer agency, chiefly into Nigeria but also, to a lesser extent, to Italy, Spain, Germany, Morocco and Vietnam.

The police detected various activities typical of money laundering: *'A process whereby a defendant X transfers money in Belgium through [an international money transfer agency] to another defendant in Nigeria where the latter deposits the funds into a Nigerian bank account and instructs the bank to transfer 8,000 dollars to a Dutch bank account in the name of the first defendant X. This process displays all of the characteristics of a money laundering system.'*

In order to carry out suspicious transactions, one of the defendants enlisted the help of a variety of family members, which proves the existence of a clear strategy of dispersion in order to ensure that the remittances are as discreet as possible.

The police also observed a *'highly specific process whereby funds are sent in cash from Belgium by [an international money transfer agency]; these are then collected by the recipient (Nigeria), who deposits them into an account abroad (Nigeria) and then sends them by bank transfer to the first individual who had sent the money in cash via [an international money transfer agency].'*

According to the police, it is a very widespread phenomenon 'at the stage of the placement and layering of transactions for laundering money of criminal origins'. In the police reports, the investigators wondered: *'why would such a system be used? Is it not easier to transfer the 6,000 euros through a bank account?'* They also pointed out that it is a well-known characteristic to incorporate several borders into the money laundering system in order to complicate the tracing of the suspicious funds.

The investigators also found a loan of 20,000 euros of suspicious origin for the purchase and transport of special lights from China, which was repaid in cash by the main defendant. During the money laundering investigation, the police made the following remark: *'Taking a loan which is then repaid in cash is also a classic type of money laundering.'*

Wiretapping may also represent a significant added value in the investigation of money laundering: intercepted telephone conversations in this case indicate laundering offences. The conversations revealed that one of the defendants always had the sex clients pay in cash, which was confirmed by an investigation of the defendant's banking records. In another conversation, the main defendant told his brother *'that he had learned via X that if he deposited the entire amount into his account in cash, this could lead to problems. That is why he decided that he could deposit no more than 5,300 euros in cash into the account, since he couldn't not justify a higher amount, and that the balance of the money would need to be transferred in cash.'*

The conviction of money laundering was however, not accepted by the court.⁵⁰

3. Trafficking in human beings and legal structures

Criminal organisations are increasingly seeking to give their activities a semblance of socially acceptable normality. The same applies when they are utilising the legal economy for these activities, particularly by using official legal structures, which are not very transparent in order to conceal the true beneficiaries or by rapidly transferring the proceeds of their activities from one corner of the world to another without being detected or later detected, once they have been able to protect the proceeds of their activities from seizure or confiscation.⁵¹

The money laundering technique takes place in three stages: the placement, layering and integration.⁵² The *'placement'* is all the ways through which funds, that are direct proceeds of crime are channelled into the financial system, usually in the form of large amounts of cash.

By *'layering'* is understood the succession of financial transactions with the aim of erasing any connection between the placed capital and its criminal origin as quickly possible.

Finally, the *'integration'* stands for the use of any means permitting the ill gotten gains that have been placed and layered beforehand, to be invested in the legal economy.

This third phase appears in the case of smuggling and marriages of convenience in Hasselt, in which the Centre is acting as a civil party and which is discussed later in this report.⁵³ In this case, a financial and money laundering investigation was requested. The defendant from Hasselt is the manager of three limited liability companies, which oversee a financial empire of 10 commercial properties consisting of night shops and petrol

⁵⁰ Tongeren Criminal Court, 3 May 2012, 9t ch., The case has however to be retried by the Antwerp Court of Appeal.

⁵¹ J.-C. DELEPIERE and P. DE COSTER, *op.cit.*, p.38-39.

⁵² CTIF-CFI, Annual Report 2011, p.6 and 124.

⁵³ See below, Part 2, Chapter 2, point 4.2.2. Indian marriages of convenience in Hasselt.

stations. He is also the owner of a sumptuous villa in India. His eldest son, a co-defendant, is the manager of seven different limited liability companies, which encompass the financial empire of 17 different commercial properties.

In the area of illegal labour, legal constructions are used such as subcontracting through a cascade system, secondment of workers and bogus independent contractor status, which have been discussed in previous editions of these annual reports.⁵⁴ These mechanisms have been observed particularly in the context of cases involving Brazilian networks active in the industrial cleaning and construction sectors.⁵⁵

In its latest annual report, the CTIF-CFI provides an example of such a subcontracting cascade and how the money flows⁵⁶: *'In these cases, services provided through subcontracting in Belgium are paid by transfer onto bank accounts opened in the name of corporate 'shells' set up in the construction or industrial cleaning sectors. Funds credited to their accounts generally originate from other companies active in these sectors, some of which have 'storefronts'. (...) The funds are then generally withdrawn in cash to pay illegal workers.'* This modus operandi has also been documented in the external contribution of the federal police (see below).

The main destination of the funds is Brazil. There are also transfers to Romania and Poland, in connection with the issue of the fraudulent secondment of workers.⁵⁷

This system of fraudulent billing has also been observed by the Centre in a case of trafficking connected with Brazilian networks. The investigators thus note that: *'The workers are not paid directly. The system of operation was what became known as the 'Brazilian network', of which everyone, including the main contractor, was aware. He himself even insisted on receiving invoices. Thus, it was necessary to make use of companies that ensure that the hours worked were billed by the companies, who received a 10% commission for doing so. These companies did not deploy workers, but only drew up invoices to cover the services of illegal workers. One person, who herself had connections with the various companies, was responsible for drawing up the invoices. It was particularly the companies X, Y and Z and the s.p.r.l A. which were cited in connection with drawing up false invoices. It was also apparent that the s.p.r.l X., for example, had only a PO box as an address which confirms that it acted merely as 'supplier of invoices'.'*

The phenomenon of legal constructions is seen in many cases of labour exploitation in which Centre is acting as a civil party. We shall give a few examples below (see following page).

⁵⁴ See 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*' (Part 2) and the 2010 Annual Report, *Combating social fraud to prevent trafficking*'.

⁵⁵ See in this regard the two external contributions in this chapter.

⁵⁶ CTIF-CFI, Annual Report 2011, p.70.

⁵⁷ *Ibid.*, p.70.

In the area of sexual exploitation, legal constructions are also used, such as straw men (or women) for the operation of the prostitution bars or bogus independent contractors (the prostitutes would work as bogus independent contractors and purchased shares without being aware of what they had signed). This phenomenon has been discussed in our previous reports.⁵⁸

The fight against social and fiscal fraud is a major concern of the current government, who has made it one of the priorities for action. Legal constructions such as bogus independent contractors or bogus subcontracting cascades that allow those involved to evade their obligations form part of this. Even if they are only indirectly connected to the issue that concerns us, mainly trafficking in human beings, it is nevertheless reason for celebration, that at the time that this report was completed (June 2012), several projects are underway for the purpose of more efficiently combating these phenomena.

These include:

- the adoption of draft legislation to make the principal jointly and severally liable with intermediaries making use of workers with illegal residence status⁵⁹;
- strengthen the fight against bogus self-employed contractors, including in some cases a reversal of the burden of proof⁶⁰;
- approval by the Council of Ministers of 11 May 2012, of the action plan 2012-2013 of the Board to Combat Social and Fiscal Fraud. This had the particular aim of addressing the abuse of moral personhood.

Note also that other measures have already been adopted by the Programme Law (I) of 29 March 2012, such as joint and several liability for social and fiscal debts, as well as for the payment of wages.⁶¹ We shall discuss this further in the following section of this report.⁶²

⁵⁸ 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.18-19. See also S. JANSSENS, '*Fenomeenanalyse van mensenhandel*', in Ch.-E. CLESSE and crts, *Traite des êtres humains, Mensenhandel-Mensensmokkal*, Les dossiers de la revue de droit pénal et de criminologie, Brussels, La Charte, 2010, p. 41 et seq.

⁵⁹ Draft bills passed en Council of Ministers of 11 and 25 May 2012.

⁶⁰ An action plan was approved by the government on 29 March 2012. The existing legislation is not in fact sufficient for tackling abuse of the self-employment doubtless, while it is a growing phenomenon on. The competent ministers acknowledged that the problem of bogus self-employment is particularly acute in certain sectors such as construction and the cleaning sector, janitorial and monitoring services and the transport sector. The presumption of employee status will be determined on the basis of criteria indicating economic dependence. See the site: <http://www.ensembleautravail.be/article/26/le-gouvernement-renforce-la-lutte-contre-les-faux-independants/>

⁶¹ See on this subject Chapter 7 (articles 59-106) of the Programme law (I) of 29 March 2012, *Moniteur Belge* [Belgian Official Gazette], 6 April 2012.

⁶² See below, Part 2, Chapter 1, point 2.1.2.

Examples: trafficking in human beings and legal constructions

- Labour exploitation: the case of the car washes

In a court case that was already mentioned in our previous annual report⁶³, it appears that money from illegal activities was invested in various companies. The legal constructions that had been set up generated 400,000 euros.

The managers of these car washes were part of a larger structure encompassing multiple companies. These would discreetly change director and the workers would move from one company to another. The registered office of the company was regularly shifted from one region to another. In this way, the network of companies and managers started from Antwerp and moved on to Brussels, Liege, Mechelen, Ghent and Sint-Niklaas. We find the same Afghan-Pakistani managers in different companies, each time in a different combination, running car washes, petrol stations, phone shops or night shops and who would declare a fraudulent bankruptcy after a short period of time. When a company fell into difficulties, they would make use of straw men. One of them was connected in this way to 16 firms.

The police have emphasised: *'These managers and their associates live in the same location. The three different official residence addresses in Ghent, Brussels and Liege are the common thread. Occasionally, the same addresses are also used by employees, associates and former associates of these firms. Some of them are in possession of stolen passports.'* Nearly all of these individuals and the related companies are known to the police.

- Case of construction and bogus self-employment

In a case that was also discussed in a previous annual report⁶⁴, one of the defendants was sentenced for human trafficking. The court emphasised the legal constructions used (bogus self-employment).

The case involved Polish workers who were used to carry out various renovation work. They were housed in unsanitary conditions. They were paid well below the standard rate, were paid irregularly or sometimes not at all. The court considered that, through this legal construction, the defendant had the goal of realising a maximum profit and this is in flagrant contradiction to the fundamental rights of fellow humans and human dignity. The court also emphasised: *'It was clear from the criminal investigation that the third defendant abused the ignorance of the Polish workers about their status in terms of labour law by naming them as associates, with all of the social and legal consequences that this entails. Various statements revealed that the third defendant brought Polish workers to Belgium after having convinced them to become an associate in these*

⁶³ 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p.49-51.

⁶⁴ 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.96-98.

*companies and claiming that this would be the only way that they could work legally in Belgium, without even explaining to them anything at all about the status of associate, particularly regarding the say that they would have in the policy of the company or even their right to participation in the profits.*⁶⁵

4. Financial analyses and criminal organisations⁶⁶

Financial investigations are also a key element in the detection and conviction of criminal organisations engaged in human trafficking activities. A financial analysis forms an important method for tracing the responsibilities and links between criminal organisations with the legal sector. Tracking monetary transactions makes it possible to investigate, those pulling the strings, who remain discreetly in the background, as well as the major contact names, active in the legal sector.

In addition, a financial investigation can help to support the charge of organised crime. In the case of the Bulgarian A.⁶⁷ and his large-scale prostitution network, the financial investigation made it possible to demonstrate how the organisation is making use of commercial structures for its criminal activities, which made it possible to also convict him of organised crime. Furthermore, those responsible for the network were also uncovered thanks to evidence from the financial analysis.

⁶⁵ Dendermonde Criminal Court, 3 April 2012. As this defendant appealed, the case has to be retried by the Antwerp Court of Appeal.

⁶⁶ Department of Criminal Policy, *Rapport annuel 2007: la criminalité organisée en Belgique 2005-2006*, p. 99 and 106. The definition of a criminal organisation (art. 324bis-ter of the Criminal Code), was adapted and expanded as a result of the law on human trafficking of 10 August 2005. The former incrimination organised crime included multiple components (art. 324bis first paragraph CP):

- a structured association ;
- of over 2 persons ;
- established over a period of time;
- for the purpose of jointly committing crimes and offences punishable by imprisonment of three years or more severe punishment;
- in order to obtain, directly or indirectly, pecuniary gain;
- using intimidation, threats, violence, fraud or corruption;
- or by the use of commercial or other structures to conceal ability committing the offences.

For the sake of compliance with the definition of the United Nations Convention against Transnational Organized Crime, the last two constitutive elements were eliminated by the law of 10 August 2005 on human trafficking, except with regard to participation in a criminal organisation.

According to the principle of the application of the law over time, the old cases, such as the Roma case, involving acts committed prior to the entry into force of the law on human trafficking of 2005, were judged on the basis of old and new provisions on organised crime. The judgements in cases A. and S. predate the period of the new law and were therefore considered on the basis of the previous provisions.

⁶⁷ 2003 Annual Report. 'Trafficking in and smuggling of human beings, p.23-25 (only available in French and Dutch) and 2005 Annual Report. 'Trafficking in and smuggling of human beings: *Belgian Policy on trafficking in and smuggling of human beings: shadows and lights*', p.99-100.

In a human smuggling case of the Albanian S.⁶⁸, there was no financial investigation carried out into the economic investments made by the gangs. Since this was not the subject of further investigation, the court decided not to retain the charge of organised crime. According to the court, there was no proof of the use of commercial or other structures at the time that the crimes were committed. Nevertheless, wiretaps in this case confirmed that at least two members of this Albanian gang were investing their money of criminal origin in companies in Albania, Germany and Kosovo.

In various cases of human smuggling and trafficking, the defendants were also convicted of organised crime. Their criminal resources are vast. Here are a few examples of cases of this type.

Examples

In a case of Romanian Roma⁶⁹ in which a criminal organisation sexually exploited victims in the rue d'Aerschot, in Brussels, between 2005 and 2007, the four main defendants succeeded, according to the judgement of the Court of Appeal of Brussels (12th chamber, 30 January 2009) in acquiring fortunes of respectively 5,535,660 euros, 1,703,280 euros, 2,554,920 euros and 2,554,920 euros depending on the number of victims exploited. The other defendants in this case received a commission from this criminal organisation of 2% for the contribution to the laundering of this criminal income.

In the car wash case mentioned above, the defendants were also prosecuted for organised crime. They made use of various constructions of companies to further conceal their activities. The fortune in ill-gotten gains in this case amounted to 391,275 euros. The court, however, acquitted them of all the charges due to procedural error at the beginning of the investigation.⁷⁰

In the Iraqi Kurdish Ishtar case, with convictions for human smuggling and organised crime, as discussed in our last annual report⁷¹, telephone taps revealed that the revenue from this smuggling already amounted to 134,705 Pound Sterling over the period of the previous three weeks.

⁶⁸ 2005 Annual Report. 'Trafficking in and smuggling of human beings: *Belgian Policy on trafficking in and smuggling of human beings: shadows and lights*', p.99-100.

⁶⁹ 2008 Annual Report. 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p.40 (complete version only available in French and Dutch)

⁷⁰ Turnhout Criminal Court, 19 October 2011.

⁷¹ 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p.56-60.

5. 'Follow the money' : obstacles and recommendations

Following the trail of money generated by criminal activities is not easy. There are obstacles of many kinds.

Investigations by specialised teams

As rightly pointed out by Maria Grazia Giammarinaro, special representative and coordinator for the fight against human trafficking within the Organisation for Security and Cooperation in Europe (OSCE): *'As trafficking in human beings is a profit driven crime, it is imperative to find, freeze and forfeit the proceeds of crime. This requires the use of financial investigation on a routine basis, as well as on a large scale.'*⁷²

A recurring problem regarding money laundering is the detection of illicit funds, as a result of the prevalence of the use of cash in this type of offence. **Increased use of financial analysis, particularly at the beginning of the investigation** is therefore indispensable for tracing the destination of the proceeds of criminal activities, specially in those countries where these funds are reinvested, which generally tend to be the country of origin of the victims and the organisers. This entails an **improvement in the cooperation between the prosecution and police authorities** of the countries where the victims are exploited and the countries where the profits of these activities are reinvested.⁷³

Another obstacle is the investigation culture, which tends to focus on the main offence (the basic offence) rather than the money laundering. This obstacle is further reinforced by the inherent difficulty of conducting financial investigations for people who are not particularly expert in financial matters. Moreover, there is a lack of financial knowledge and training in the area of money laundering among investigators and judges. **Reinforcing the training of investigators and magistrates in financial matters and creating mixed specialised teams of investigators and magistrates** (sections for trafficking and finances) would allow these difficulties to be remedied. An **efficient and effective collaboration between the competent sections within the courts and police departments is also crucial**, which is not always the case in practice. In addition, **we must also encourage measures designed to attract more financial specialists** in the judiciary, at the level of the Public Prosecutors as well as the investigative judges.

Finally, it should be noted that the financial aspect of the investigations is a concern of the police. The investigation of laundering practices in fact constitutes a transversal theme within the national security plan. With regard to trafficking in human beings, there is even a need to use financial investigation the very beginning of the investigation. This assumes, however that **police departments are given the necessary material and human resources.**

⁷² FATF-GAFI Report, *op.cit.*, p. 44.

⁷³ CTIF-CFI, Annual Report 2011, p.77.

The role of intermediaries/facilitators

A **judicial response adapted** to the challenges faced and the professionalisation of those involved in financial crime is necessary: this presupposes a **greater access to experts (financial, fiscal or others)**, as well as focusing on **intermediaries/facilitators** (assessors-accountant, tax specialists, notaries, lawyers, etc.), who provide or make available the company structures and/or services without which the financial crime would not be possible.⁷⁴

In addition, the anti-money laundering law of 11 January 1993 provides for administrative fines when individuals and organisations covered by the law have not been sufficiently diligent. **These penalties should be effectively applied when breaches occur.**

The Centre recommends raising awareness among these professions of the issue of human trafficking. Behind the legal constructions that are set up, there may in fact be assaults on human dignity which constitute human trafficking.

A shared vision and strategy

Awareness of the phenomenon and the efforts needed are also crucial. To this end, a **global strategic vision involving all stakeholders** is required. The expansion of the competencies of the Board to Combat Social Security and Fiscal Fraud for money laundering, as provided in the Action Plan 2012-2013 of the Board forms a step in the right direction.⁷⁵

In addition, when the CTIF-CFI transmits cases to the Public Prosecutors, it is important that the former can receive feedback, which currently happens too little.

Effective international collaboration

Any criminal organisation whatsoever, needs at some point or other to manipulate or transport cash. The **control of the cross-border transport of liquid assets** is therefore imperative if one is to effectively combat money laundering. It is actually during this manipulation, in the placement phase, that the criminals run the greatest risk of being intercepted: whether at the moment at which they are depositing cash into an account or during the monitoring of the transport of liquid assets from one country to another.

In addition, nearly all of the cases of money laundering present numerous foreign elements in the financial and/or economic set-ups and constructions that they reveal. **An**

⁷⁴ J.-C. DELEPIERE and P. DE KOSTER, *op.cit.*, p.46.

⁷⁵ Action Plan 2012-2013 of the Board to Combat Social and Fiscal Fraud, p.99-95. The plan is available on the website of the Secretary of State for the fight against social and fiscal fraud, Mr. John Crombez: [http://www.samenaanhetwerk.be/media/uploads/john/actieplan_Board to Combat Social and Fiscal Fraud_fraudebestrijding_2012-2013_fr.pdf](http://www.samenaanhetwerk.be/media/uploads/john/actieplan_Board%20to%20Combat%20Social%20and%20Fiscal%20Fraud_fraudebestrijding_2012-2013_fr.pdf)

effective (administrative) collaboration between the CTIF-CFI and its counterparts in other countries is therefore crucial.⁷⁶

Finally, it should again be emphasised **that there is a need for more efficient international cooperation**, particularly for the exchange of information between the authorities concerned, carrying out joint investigations and tracking down, the freezing and confiscation of illegal assets.

Better operational tools and a wider range of techniques and powers both for the units for financial information and the authorities who can impose penalties in the context of investigations and prosecutions relating to money laundering and the financing of terrorism are also necessary. Thus, a **list of indicators (red flags)** for money laundering in connection with human smuggling and trafficking, such as those developed by the FATF-GAFI, offer a valuable tool.⁷⁷

⁷⁶ J.-C. DELEPIERE and P. DE COSTER, *op.cit.*, p.35-36.

⁷⁷ FATF-GAFI Report, *op.cit.*, p.63. These indicators concern the profile of the client and of the transaction.



External contribution: the financial approach to human trafficking

By Jean-Claude DELEPIERE, President of the Belgian Financial Intelligence Processing Unit (CTIF-CFI)

One of the chief tasks of the Centre for Equal Opportunities and Opposition to Racism is to support the fight against human trafficking. For its part, the CTIF-CFI has a place at the heart of the preventative system that has been set up to combat money laundering and the financing of terrorism, including through capital derived from human trafficking.

Our two institutions have completely different competencies and channels for action, but our respective missions are, to some extent, focused on a common goal.

The CTIF-CFI is responsible for analysing suspicious financial transactions reported by individuals and organisations subject to the law of 11 January 1993 and transmitting this information to the judicial authorities if analysis reveals the existence of serious indications of money laundering (or financing of terrorism) derived from one or multiple underlying crimes covered by this law.

Trafficking in human beings has a central place in the activities of the CTIF-CFI. The statistics and annual reports that we publish are also indicative of the scale of this crime.

Between 2001 and 2011, the CTIF-CFI thus transmitted 686 cases in relation to the underlying crimes, which represents 6.8% of all the cases transmitted by the CTIF-CFI to the judicial authorities. The total amount of money laundering in these cases amounts to some 100 million euros.

In order to properly understand the magnitude of this phenomenon, one must also take into account aspects of ‘human trafficking’ there are very regularly found in the records that the CTIF-CFI transmits to the judicial authorities in connection with other underlying crimes such as trafficking in illegal labour, the exploitation of prostitution, organised crime or crimes related to filing for bankruptcy.

The various annual reports of the CTIF-CFI provide a good illustration of the increasingly ‘polycriminal’ nature of the activities pursued and the significant capacity of criminal gangs, aided by professionals, to adapt themselves in order to better respond to the latest developments and to the needs of society, to exploit even the smallest cracks in the system and to deploy significant resources in making it more difficult to detect and control their activities.

The issues related to what the CTIF-CFI has called the the ‘Brazilian network’ is an excellent illustration of this evolution.

In 2009, the CTIF-CFI already described in its annual report (page 71) the activities of this ‘Brazilian network’. Numerous cases thus involved the employment of Brazilian

nationals residing irregularly in Belgium, by Belgian companies (which were also being run by Brazilians) working as subcontractors for other companies in the construction sector. These persons were brought to Belgium from Portugal by organised networks who provided false papers. These cases were referred to the judicial authorities in light of the serious indications of the laundering of profits derived from illegal labour, but it is clear that this setup also showed various characteristics of human trafficking.

Two years later, our last annual report (page 74) again mentioned the existence of human trafficking networks, whose degree of sophistication and organisation now brings this phenomenon to the level a form of organised crime.

In this context, the CTIF-CFI, finding an increasing professionalization of the networks, has observed the way that the procedure for the secondment and bogus self-employment was utilised by the traffickers. In particular, this mechanism was observed in the cases relating to the Brazilian network whose emergence had been the subject of analysis in 2009.

In order to protect themselves more effectively from control by the inspection departments and the police, the perpetrators of this type of fraud, keeping up-to-date on the advances made by authorities in the apprehension of the phenomenon, have improved their modus operandi by making use of Portuguese companies whose staff is officially seconded. This is not an exclusively Belgian phenomenon, but takes place on an international scale. In addition, the cases no longer concern exclusively Brazilians, but also other nationalities such as Romanians, Bulgarians and Czechs.

The purpose of this development is to ensure that, in the case of control, to lead the police or inspection departments off the trail, or at least to introduce reasonable doubt sufficient to avoid the arrest of the workers and therefore direct consequences for the user. Moreover, the situation and the circumstances of their lodgings and employment are completely non-compliant with the current labour laws on safety and health of workers and Social Security. As this makes clear, this phenomenon extends far beyond the traditional role of the authorities combating undeclared labour. In this type of case, offences need to be taken into account such as forgery and use of forgeries, not to mention, on the part of the entrepreneurs, money laundering, participation in organised crime or the use of violence towards reluctant workers who often remain unpaid for the work they have done.

Activities related directly or indirectly to human trafficking thus present many facets, but above all, they are the source of huge revenues that need to be laundered.

As mentioned above, the CTIF-CFI found that criminals are increasingly seeking the advice of professionals (notaries, accountants, lawyers...) both for establishing and organising their activities (constitution of corporations...) and for the laundering of the funds they generate.

This trend has been observed by the CTIF-CFI in specific cases, but it is also striking to observe the ease with which it is possible to gain access, in just a couple of mouse-clicks, to websites offering custom tailored services such as the construction of systems involving offshore companies, or, for a few hundred euros, ‘designated’ directors and shareholders can be supplied in order to ensure complete anonymity and where, for a few hundred more euros, a bank account can be opened in a foreign country (possibly with the designation of a power of attorney holder and the issuance of an anonymous credit card). Certain sites also offer a virtual office with the services of a secretary who will provide reception services in the name of your company.

This trend highlights the challenges we will increasingly face in the future if we are to organise an effective fight against money laundering.

The challenges are significant, particularly with regard to the fight against human trafficking. In 2010, the CTIF-CFI also participated in the FATF-GAFI, in conducting our typological study on money laundering and human trafficking. This project was completed in 2011 with, among the conclusions, a desire to improve the cooperation between the different authorities.

In Belgium, the CTIF-CFI has extensive resources for realising its legal mandate. The law of 11 January 1993 thus assigned it the competence to collect all information it deemed useful from a range of departments (both administrative and police). It can also interrogate individuals and organisations that fall under the aforementioned law and exchange extensive information with its counterparts in other countries.

However, we believe that beyond the information collected in the context of specific operational cases, other relevant information could be available from the departments /organisations (including the Centre for Equal Opportunities and Opposition to Racism) whose cooperation with the CTIF-CFI is not directly covered by the law of 11 January 1993.

We therefore think that it is desirable, if not essential, to develop a type of collaboration with these departments/organisations which is not only based on specific cases, but is rather conducted in the context of an information exchange on phenomena and trends, for example.

Synergies exist and the development of this type of collaboration can only lead to an improvement in the efficiency of the fight against money laundering and therefore also against human trafficking.

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External contribution: the new tools in the fight against serious and organised social fraud

A collective contribution from the Directorate of Economic and Financial Crime (DJF) of the federal police (Benoit GOSSET, Judicial Commissioner, coordinator of the joint support unit for the fight against serious and organised social fraud; Peggy VANHELMONT, strategic analyst; Benoit WOLTER, Judicial Commissioner, in charge of the 'Programme' section of the fight against serious and organised social fraud)

Preface

The fight against social fraud has now become a matter of capital importance, as this type of crime threatens the stability of our Western systems. The activities of criminal organisations, who are engaged in serious and organised social fraud, are doubly reprehensible as they generate illegal property assets at the cost of those people in our society who need the most protection.

During the previous federal legislature, two new tools in the fight against serious and organised social fraud were created: this includes a joint support unit and an operational section.

In the following section, the purpose of the tools will be explained and we shall illustrate our discussion with examples from the Brazilian network and a diagram of fraud.

1) The joint support unit for the fight against serious and organised social fraud

Origin

The joint support unit for the fight against serious and organised social fraud originated in the action plan of the Board for the Coordination of the Fight Against Fraud. Its creation is based on a protocol that was signed on 8 June 2010 by the various authorities concerned. It was implemented in early 2011 and is based in the offices of the DGJ/DJF (General Directorate of the Judicial Police) and more specifically, of the CDGEFID/OCDEF0 (Directorate of Economic and Financial Crime).

Composition

In principle, the unit is made up of two police officers of the DGJ/DJF, one of whom is designated as judicial coordinator, and a representative of each of the four inspection services at the federal level. These 4 inspection services are:

- National Employment Office (ONEM/RVA);
- National Social Security Office (NSSO);
- the Social Inspectorate (of the Federal Public Service Social Security);
- inspection services monitoring social legislation (of the Federal Public Service Employment, Labour and Social Dialogue).

Goal

The goal of the joint support unit is to combat serious and organised social fraud. The cooperation protocol gives the following definition:

'It concerns any form of intentional act whereby either the contributions owed are not (to be) paid (contribution fraud) or undue benefits are (to be) received (benefit fraud), resulting from a structured organisation made up of two or more persons, who, acting jointly, commit (or will commit) crimes or offences for direct or indirect economic gain and that such persons:

- *make use of commercial or other structures in order to commit, conceal or facilitate the commission of offences, or*
- *have resorted to threats, violence or corruption, or*
- *deploy counter strategies which endanger the physical integrity of the staff members of the inspection departments or*
- *take advantage of people in a vulnerable situation.'*

Responsibilities

The responsibilities of the joint support unit are both strategic and operational in the context of the fight against serious and organised social fraud.

In particular, the strategic tasks are:

- performing a strategic analysis of the phenomenon (development of typologies and high-risk profile)
- be alert to shifts related to the involvement of other EU Member States on this issue
- developing detection by datamining (exploration of large volumes of data in order to detect patterns of fraud).

In particular, the operational tasks are:

- gathering information on specific cases and analysing them
- advising on further action
- based on the decision of the coordination structure regarding the approach to the process, contacting the prosecuting authorities.

Evaluation

An evaluation of the functioning of the joint support unit is scheduled annually. The first evaluation took place in January of this year.

Other means established

In addition to the joint support unit, the federal judicial police has also invested in the fight against the phenomenon of serious and organised social fraud in the context of the signature of the cooperation protocol. An operational section, also called the 'Programme' section was created within the CDGEFID/OCDEFO in order to conduct investigations in this area, including those arising from reports by the joint support unit for which it is a privileged partner (see below). A strategic analyst was also hired in order

to monitor the phenomenon in close collaboration with both the joint support unit and the operational section.

2) The 'Programme' section of the fight against serious and organised social fraud

Origin

The second tool that has been developed is implanted at the level of the General Directorate of the Judicial Police. Investigative capacity has been made available in the form of an operational section (also called the 'programme' section), which revolves around eight investigators (including a tax specialist). This programme section is housed within the DGJ/DJF (Directorate of Economic and Financial Crime). Naturally, there is a privileged partnership between these two instruments and based on a good year of functioning, we can only conclude that the collaboration is smooth and efficient

Mission

The mission of this pool of investigators is to oversee cases related to serious and organised social fraud, which generally have a cross-district (if not international) dimension, but also to monitor the actions of other police departments in this area (for example, in order to be able to respond to parliamentary questions on the subject) as well as to work on the aspect of conceptualisation of the issue.

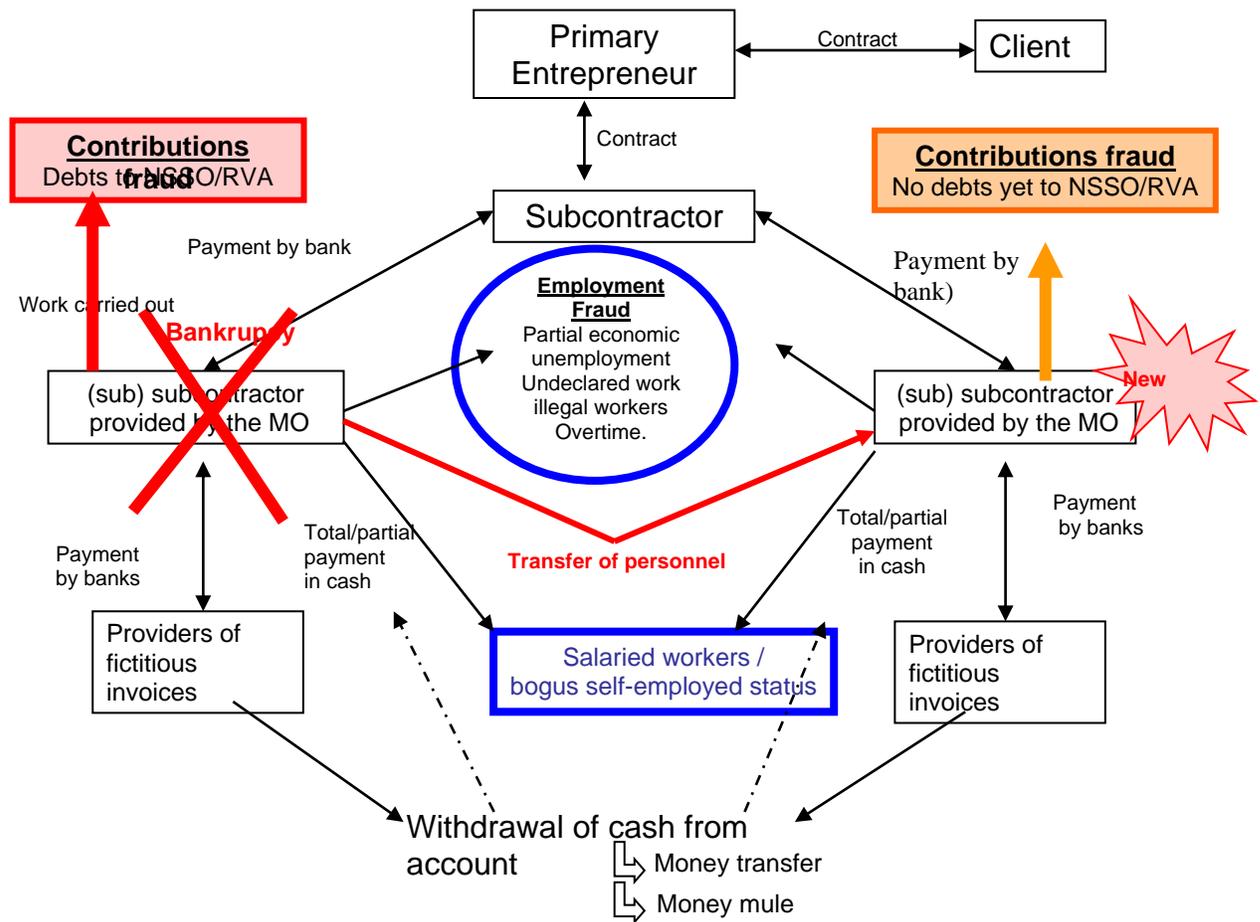
Origin and management of investigations

Referral to the operational section comes from various sources:

- the result of the work of the joint support unit
- composing a civil party through the State organisation victimised (example: the NSSO)
- the results of an investigation originally initiated by a police department, for example in the area of human trafficking.

From the viewpoint of violations, serious and organised social fraud is inextricably linked to various common law offences, such as for example fraud, offences relating to bankruptcy, forgery, use of forgery, human trafficking, money laundering, and can also often go hand-in-hand with tax crimes (organised). However, since the entry into force of the Social Criminal Code (1 July 2011), singular offences can now be prosecuted.

Example of a simplified scheme for contributions fraud: subcontracting in cascade



'Client': the principal who orders the work

'Money mule': the physical person who transports a (large) sum of cash from one place to another (often from one country to another)

- A client places an order & arranges with an entrepreneur for work to be done
- The entrepreneur subcontracts with a company, which in turn subcontracts with another company. The work is carried out by this Company A, often at a price below the average in Belgium. The organisation has appointed a straw man as director of Company A, who has neither decision-making powers nor any management capacities. In reality, in fact, this person is not involved in the management of anything. He has simply provided his identity card and signed the document during a pseudo EGA (Extraordinary General Assembly). The company in question has a lifespan of approximately six months to one year, being the equivalent of two to four quarters of employer social contributions, which naturally, are not paid (which is why this is called contribution fraud). Beyond this point, the company is declared bankrupt, and the straw man, (himself insolvent) disappears into the woodwork.
- At the same 'level of subcontracting', the company then creates a new company, which we will call Company B (often with the help of an accountant's office, who

- may sometimes be involved in the fraud personally). The workers are transferred from Company A to Company B (generally, they are not aware of this), and it is now Company B who becomes the (sub-) contractor of the entrepreneur. The work is thus still done by the same workers, and controlled by same organisation. After a short lifespan (from two to four quarters, with no employer social contributions being paid), Company B is in turn declared bankrupt.
- The same pattern is then repeated as long as necessary.
 - At the level of financial flows, the following is observed: invoices in the subcontracting chain are often paid through banks. The workers, by contrast, are paid virtually exclusively in cash. This money actually comes from the final link in the organisation. Beneath the next-to-last level of subcontracting (in this case, Companies A & B), a new level is created with a shell company that belongs to the organisation. It provides no services and has no registered personnel. On the other hand, bogus invoices are issued. The money is transferred (often) by bank by the 'client', and is then withdrawn in cash from the account in order to either pay the workers, or invest in real estate in Belgium or the country of origin, or to finance the organisation or even to finance terrorism. After the same fashion as the 'higher' subcontracting levels, this shell company is declared bankrupt once the organisation starts to feel the pressure of the inspection services; this leaves room for the creation of a new shell company, allowing the scheme to continue.

3) The Brazilian network

Brazilian migrants to Belgium chiefly come from Goiás and Minas Gerais. They begin their journey in Brazil and land at Charles de Gaulle airport in Paris, and then board the Thalys or the bus to Brussels (railway station Midi). They arrive in Belgium on a tourist visa⁷⁸ and then stay beyond its period of validity. Sometimes they will buy a false Portuguese passport at exorbitant prices.⁷⁹

A very common way for these people to gain employment in Belgium is to walk into a Portuguese café and... simply wait. It is not uncommon for a Brazilian straw man to be on hand primarily to recruit labour mainly for Portuguese entrepreneurs.⁸⁰

The Brazilian network is primarily geared toward the construction sector, although the cleaning sector is also sometimes involved. The Brazilian construction workers are mainly active in activities such as ceiling work (ceiling installation and plastering) and the placement of drywall. These tasks are easy to outsource, and moreover, it is work is carried out inside buildings which is therefore more discreet. Moreover, these are tasks

⁷⁸ Note from the Centre: Brazilian citizens are no longer required to obtain a visa for a stay of under three months.

<https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/TransitetcourtsejoursurleterritoiredesEtatsSchengen.aspx>

⁷⁹ <http://www.vacature.com/blog/deel-2-waarom-landen-brazilianen-in-belgi%C3%AB>, published 10/12/2010, Isabel Pousset, Sofie Van Hoof, Jonas Lampens, Tim Dirven, Maaïke Wayenbergh (24/01/2012).

⁸⁰ <http://meilleurdsmondes.be/blog/wp-content/uploads/2011/07/Fili%C3%A8re-br%C3%A9silienne.pdf>, published 10/12/2010, Nico Schoofs, Filip Michiels (24/01/2012).

that require a lot of manual labour: a small construction site alone requires dozens of man hours for installing ceilings and plastering. The supervisors earn a lot of money quickly by having this work done for a pittance.⁸¹

The companies are mostly private limited liability companies (s.p.r.l./b.v.b.a.), which have been recently established and are still in business (60.2% were created between 2006 and the present). These companies undergo numerous changes in the course of their relatively short lifespan. The three most frequently occurring changes are: appointments, resignations and share transfers. The fraud often only comes to light with the last nominations.⁸²

If we look at the nationality of the persons involved in the CTIF-CFI reports, it is clear that the large majority are of Portuguese and Brazilian nationality. This supports the assumption that many of them are using false Portuguese passports. The majority of the people involved in the Portuguese networks are connected with companies. The persons concerned generally live in the vicinity of the Gare du Midi in Brussels, specifically in Saint-Gilles and Anderlecht. They are aged between 26 and 40.⁸³

What is particularly characteristic of the Brazilian networks, is work being done entirely under the table and using bogus self-employed status. As already noted, it is not surprising that so many Brazilians are living irregularly in Belgium or have a temporary residence permit. The labourers work entirely under the table and are not declared through a DIMONA (the Immediate Declaration of Employment) or LIMOSA (declaration of non-resident employees). They are paid in cash. These payments are made on-site or at headquarters, in an envelope handed over. The clandestine hours worked are kept track of with listings that drawn up by the company.

Sometimes pseudo-national identification numbers are used. A pseudo-national identification number is generated for workers who are not registered in Belgium at that moment. In the Brazilian networks it was observed that none of the workers registered with a pseudo-national identification number were later registered in the National Register. Yet these people continue to work. This may indicate that the workers are using false (Portuguese) passports.

Finally, the Brazilians may work within companies under bogus self-employment status. Often, these people are not aware that they have been assigned this status. They think all the legalities are in order and make none of the standard social security payments required.⁸⁴

⁸¹<http://www.vacature.com/blog/deel-2-waarom-landen-brazilianen-in-belgi%C3%AB,published> 10/12/2010, Isabel Pousset, Sofie Van Hoof, Jonas Lampens, Tim Dirven, Maaïke Wayenbergh (24/01/2012).

⁸² Information from CTIF-CFI reports.

⁸³ Information from CTIF-CFI reports.

⁸⁴ Case study.

CHAPTER 2: GO FOR THE MONEY

About the importance of the seizure and confiscation of the proceeds of crime

Tracking criminal money is one thing, getting one's hands on it is another. However, the confiscation of illicit wealth is often the most efficient way of combating human trafficking and smuggling, as it deprives the perpetrators of the profits.

Yet, seizure and confiscation of the proceeds from these activities is not always easy in practice, as we shall see. However, let's first take a look at the general principles regarding seizure and confiscation.

1. Seizure and confiscation: general principles

On this subject, we shall present the major outlines of the general principles involved in seizure and confiscation and we shall particularly focus on measures related to human trafficking and smuggling. For a more detailed analysis of this topic, please refer to the specialised articles.⁸⁵

1.1. The Belgian framework

Seizure can be defined as *'a precautionary measure, taken in the context of information, judicial or private investigation into the financial advantages, involving property being removed from the free disposal of its owner or possessor and placed directly or indirectly under the control of the judicial authorities in order to later be presented before the courts or confiscated.'*⁸⁶ The seizure is optional and is performed by the Public Prosecutor or the investigative judge.⁸⁷ Thus, it is possible among other things to seize property which can then, at the end of the main proceedings, be confiscated.

The confiscation, meanwhile, is pronounced by the trial judge. This is a *'forced dispossession to the public treasury, or even to individuals, in the case provided by law, especially cases of conviction for crimes, misdemeanours or petty offences.'*⁸⁸ The

⁸⁵ See in particular E. FRANCIS, *'Algemene principes van de bijzondere verbeurdverklaring en het beslag in strafzaken'*, *T.Strafr.*, 2011/5, pp.306-336; F. LUGENTZ, *'Le régime des saisies et des confiscations en matière de la répression de la traite des êtres humains et des pratiques dites des marchands de sommeil'*, in CH.-E. CLESSE et alii, *Traite des êtres humains, Mensenhandel-mensensmokkel*, Les cases de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, p.157-189.

⁸⁶ H.-D. BOSLY, D. VANDERMEERSCH and M.-A. BEERNAERT, *Droit de la procédure pénale*, 6ème éd., Bruges, La Chartre, 2010, p.407.

⁸⁷ The general framework of seizure in criminal matters is set down in articles 35 to 39bis, 46quater, §2, b) and §3 of the Code of Criminal Procedure.

⁸⁸ B. DEJEMEPPE, *'La confiscation-l'état of droit en 2004'*, in D. VANDERMEERSCH and alii, *Beslag en verbeurdverklaring van criminel voordelen-saisie and confiscation des produits of crime*, Antwerp, Maklu, 2004, p.99, citing les Pandectes, v° confiscation, no.1.

distinction is made between two types of confiscations: one is an additional punishment, aimed at punishing the offender by depriving him, for example, of pecuniary gain derived from the offence. The other is a security measure which is designed to remove something due to the danger it represents, or illegal nature (for example, narcotics, prohibited weapons, etc.).

In the context of human trafficking, there is no special provision in the area of seizure. It is therefore the general law resulting from articles 35 and following of the Code of Criminal Procedure which will be applicable. It should also be pointed out that freezing certain assets, particularly the blocking of bank accounts, safety deposit boxes or bank assets is possible in the case of acts of human trafficking with aggravating circumstances (such as abuse of a vulnerable situation or use of violence).⁸⁹

As to the manner of confiscations, this is covered in articles 42 to 43*quater* of the Criminal Code. With regard to human smuggling and trafficking, special provisions have also been established. These are contained in article 433*novies*, paragraph 3 of the Criminal Code with respect to human trafficking and in article 77*sexies*, paragraph 2 of the law of 15 December 1980 on foreigners with regard to human smuggling.

Thus, as for any other crime or offence, confiscation is mandatory (article 43, paragraph 1 of the Criminal Code) in two cases:

- For items forming the object of the offence and those which have served or were intended for use in committing such attacks if they belong to the convicted person (such as cars, mobile telephones...) (article 42,1^o). In any case, with regard to human trafficking, article 433*novies* derogates from this general scheme to the extent that it provides that the penalty of confiscation may be applied ‘even when the items in question are not owned by the convicted person.’
- When it is a matter of items produced by the offence, in other words: those that were created by the offence such as counterfeit money, counterfeit works of art...

In contrast, the confiscation of assets derived directly from the offence, goods and securities that have been substituted for them, and income from proceeds that have been invested, is optional, (article 43*bis*, paragraph 1 of the Criminal Code) and must be requested in writing by the prosecutor. Therefore it particularly covers profits derived from the offence, such as income from the exploitation of prostitution or the enormous profits generated by human trafficking. In the event that it is not possible to precisely determine the amount of revenue derived from the offences, it is possible to order confiscation of assets of equivalent value (article 43*bis*, paragraph 2).⁹⁰ Also included is the possibility for the judge to award the items seized or confiscated assets of equivalent

⁸⁹ See article 46*quater*, §2b) C.I.Cr. and F.LUGENTZ, *op.cit.*, p.166-167. This freezing will be followed, if it is necessary to prolong it, by a formal garnishment.

⁹⁰ In this case, the judge evaluates the monetary value of items that could not be found among the assets of the accused. The confiscation will thus take the form of an equivalent sum of money.

value to the plaintiff (article 43bis, paragraph 3). We shall discuss this possibility further in Chapter 4 of this part, which discusses compensation for victims.

In practice, when confiscation is imposed for human trafficking, these are mandatory confiscations (often cars and mobile telephones), as well as the confiscation of pecuniary gain or confiscation of assets of equivalent value.

It should also be noted that since a decision of the Court of Cassation of 27 May 2009, in the absence of explicit statutory provision, the confiscation of a building that has been used to commit the offence is not allowed (for example, the places where the victims of trafficking were housed).⁹¹ A magistrate informed us that in order to get around this unfavourable jurisprudence, confiscation of property in his district was requested on the basis of money laundering.

However, one may question the position taken by the Court of Cassation, given that neither article 42,1° of the Criminal Code (confiscation) nor article 35 C.I.Cr (seizure) makes a distinction regarding whether or not buildings are involved.⁹²

This jurisprudence is highly regrettable in an area such as human trafficking in which it is common to make use of legal constructions and strawmen to dilute responsibilities.

One potential solution for addressing this jurisprudence would be to introduce an **amendment to article 433novies**, explicitly providing for the possibility of confiscating real estate assets. Such proposals have already been made in Parliament.⁹³

1.2. The international framework

In the area of human trafficking, it is common for the profits from this activity to be repatriated to the country of origin of the operators, where they are sometimes invested in the legal economy.

The legal framework as it currently exists allows Belgian authorities to request the seizure and confiscation of assets and property in other countries if these are eligible for confiscation.⁹⁴ This is done through a request for judicial assistance. Article 43ter of the

⁹¹ Cass., 27 May 2009 (decision available on www.juridat.be). The court thus ruled that '*articles 42,1° and 43 (of the Criminal Code) do not authorise the confiscation of real estate that has been used to commit the offence. When the legislator wants to apply such a penalty, he indicates a specific provision such as article 433terdecies, paragraph 2 (slumlords) of this code. Neither article 380, §1, 3°, nor any other provision can provide for the confiscation of real estate rented for prostitution with the aim of generating abnormal profits*'.

⁹² In this regard, see also F. LUGENTZ, *op.cit.*, p.168.

⁹³ See the law proposal of 12 September 2011 supplementing the Criminal Code with regard to the special confiscation in cases of human trafficking, *Doc.parl.*, Senate, session 2010-2011, 5-1215/1.

⁹⁴ Foreign authorities may also seek the collaboration of Belgium for the execution of confiscation orders they have issued. However, we shall not discuss this here. See in this regard the law of 20 May 1997 on

Criminal Code provides that the special confiscation may also be ordered when the items are located outside of Belgian territory.

Various instruments allow the execution of such requests for assistance. Of particular note, at the level of the Council of Europe, is the Strasbourg Convention of 8 November 1990⁹⁵, gradually replaced by the Warsaw Convention of 16 May 2005.⁹⁶ The latter Convention may be invoked to seek international legal assistance in a state party to the Convention in order to seize and confiscate assets transferred abroad.⁹⁷

With regard to the Member States of the European Union, cooperation between states is, however, more binding. It is the law of 5 August 2006 on the application of the principle of mutual recognition of judicial decisions in criminal matters between the Member States of the European Union which defines the rules for Belgium, whether it is a matter of requests for legal assistance addressed to Belgium or which Belgium addresses to others.⁹⁸ This is to facilitate and expedite the processing of requests for legal assistance on the basis of the principle of mutual recognition: direct transmission between judicial authorities of the requests, simplification of the forms, creation of a common form for submitting requests, limiting the possibilities of control authorities of the executing state.⁹⁹ This law, which was recently amended, is expected to make it easier to perform seizures and confiscations abroad. In fact, recently, there has been such a thing as the certificate of confiscation, which allows Belgium to make a request from another EU member state, by means of a standard form, for the execution of a confiscation decision. A certificate of this type already existed with regard to seizures.

2. Difficulties in the execution of seizures and confiscations

Seizure is not a prerequisite to confiscation. However, without it, confiscation at a later time may prove problematic, as the defendant will have had the chance to modify his assets.

International Cooperation regarding the execution of seizure and confiscation, *Moniteur Belge* [Belgian Official Gazette], 3 July 1997 and H.-D. BOSLY, D. VANDERMEERSCH and M.-A. BEERNAERT, *op.cit.*, p1533 et seq.

⁹⁵ Convention of 8 November 1990, signed in Strasbourg on Laundering, Search, Seizure and Confiscation of the products of crime.

⁹⁶ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the products of crime and financing of terrorism, drawn up in Warsaw on 16 May 2005. Belgium has ratified this Convention under the terms of the Law of 29 August 2009 (*Moniteur Belge* [Belgian Official Gazette], 22 December 2009), which entered into force on 1 January 2010.

⁹⁷ F. LUGENTZ, *op.cit.*, p.162.

⁹⁸ *Moniteur Belge* [Belgian Official Gazette], 7 September 2006. This law has been amended several times to allow the application of the principle of mutual recognition to financial penalties and confiscation orders of assets. The latest amendments were made by the law of 26 November 2011 and 19 March 2012, both published in the *Moniteur Belge* [Belgian Official Gazette] of 4 April 2012.

⁹⁹ H.-D. BOSLY, D. VANDERMEERSCH and M.-A. BEERNAERT, *op.cit.*, p.1540.

In addition, many actors in the field (magistrates, police) mentioned the practical difficulties involved in seizures and confiscations: it is difficult to trace the proceeds of crime, to seize them and confiscate them, international cooperation may be inefficient, the procedures are cumbersome, etc.

However, the Centre has been able to observe in several cases that seizures and confiscations were possible.¹⁰⁰ Thus, in a case of human smuggling and sexual exploitation discussed later in this report, the court ordered penalties of confiscation of assets of equivalent value for a total amount of 195,000 euros, which was distributed in fixed amounts and in equity depending on the involvement of each of the defendants in the crimes.¹⁰¹ In another case of sexual exploitation, also discussed later in this report, significant confiscations of assets of equivalent value were ordered for an amount of 2,437,557 euros.¹⁰²

In the case of human smuggling and residence status regularisation fraud, as discussed above¹⁰³, the Brussels Court of Appeal ordered the confiscation of the amounts recorded on the bank accounts of the defendant whose detention was ordered, in the amount of 20,585 euros.¹⁰⁴ This amount corresponds to transfers that were discovered as having been made by the co-defendants or directly by the victims. It constitutes assets derived directly from the crimes. The court also ordered restitution to the victims to the extent of the amount illegally received by the defendant. In the first instance, at trial, the Brussels Criminal Court had ordered the confiscation of assets of equivalent value of the sum of 600,000 euros from the main defendant.¹⁰⁵

Lack of knowledge of certain tools

While there are certain difficulties in the field, it also appears that there is a lack of awareness of some practical tools, such as **the Central organ for seizure and confiscation (hereafter: OCSC/COIV)**. This is an organ of the Public Prosecutor, created by the law of 26 March 2003¹⁰⁶ which has been in force since 1 September 2003.

The OCSC/COIV acts as a centre of knowledge for legal authorities in criminal matters, in the context of the seizure of assets. It plays a supporting role in the context of public action related to confiscation, and a role as facilitator in the context of the execution of judgements and decisions entailing confiscation.

¹⁰⁰ On this subject see also below, Part 2, Chapter 4 (overview of case law).

¹⁰¹ Louvain Criminal Court, 22 November 2011. See below, Part 2, Chapter 2, point 1.2.5. Thai massage parlour and Chapter 4 (overview of case law), point 2.1.1. Sexual exploitation.

¹⁰² Dendermonde Criminal Court, 3 April 2012. See below, Part 2, Chapter 2, point 1.2.3. Belgian-Moroccan bar manager and le Chapter 4 (overview of case law), point 2.1.1. Sexual exploitation.

¹⁰³ See Chapter 1 in this part, point 1.1.3.

¹⁰⁴ Brussels, 5 April 2012, 12ème ch. See also on this case Part 2, Chapter 4 (overview of case law).

¹⁰⁵ Brussels Criminal Court, 3 November 2011, 47th ch.

¹⁰⁶ Law of 26 March 2003 establishing a Central Organ for Seizure and Confiscation and containing provisions on maintaining a stable value of assets seized in the execution of certain penalties on assets, Moniteur Belge [Belgian Official Gazette], 2 May 2003.

One of the main tasks of the OCSC/COIV is the management of data on seizures and confiscations. Any seizures of a certain size must be reported to the OCSC/COIV. In addition, OCSC/COIV operates in the context of the management measures taken by prosecutors and investigative judges during a seizure.

In fact, between the time of the seizure and confiscation, there may be a very long period of time. Therefore, the OCSC/COIV intervenes to assist the judicial authorities in the context of the execution of seizures. It may thus order the sale of objects that have been seized. This management measure takes place according to a specific procedure requiring that the price obtained for the goods sold be substituted (real subrogation).

The OCSC/COIV is the Belgian office for asset recovery. Each member state of the European Union is required to establish such an office. The OCSC/COIV maintains ties with its counterparts in other countries, with which it exchanges information.

However, it appears that the OCSC/COIV has very few records regarding human trafficking. On the other hand, they are responsible for numerous cases of slumlords (with buildings to be confiscated).¹⁰⁷ Thus, for a seizure of real estate (potentially followed by confiscation) to be effective, the magistrates need to make **specific indictments and the investigation needs to allow the precise identification of the goods** (photos, diagrams, land Registry registration number, condition of the building, marital status of the owner). This then prevents finding out later that the building is the property of another person, or possibly a strawman.

The **network CARIN** (Camden Assets Recovery Inter-Agency Network) is also unknown and deserves to be used more. It lets you know the status of the person's assets in another country. This is a worldwide network that encompasses the competent authorities in the area of asset recovery. It forms a global network of practitioners and experts with the aim of improving mutual understanding of methods and techniques used in the field of the identification, freezing, seizure and confiscation of the proceeds of cross-border crime and other property related to crime. The OCSC/COIV is a member of this network.

Another possibility is to make use of the **FAST team** (Fugitive and Asset Research Team). This team, which is overseen by the federal police, was originally responsible for tracking fugitives (particularly convicted criminals). Recently, its powers have been extended to include the search for the property of convicted individuals.

Moreover, in order to impose effective confiscations, it is necessary for the products to have been seized in advance: that is why, from the very start of a judicial case concerning

¹⁰⁷ It should be noted that, in certain cases the property of slumlords may reveal evidence of human trafficking, if the investigation is conducted in this direction. See on the subject the decision handed down in a case of renovation, discussed in Chapter 4 of Part 2, point 2.1.2.

human trafficking, **the maximum amount of seizures must be made from the very start of the investigation.**

The powers for freezing and confiscation, as discussed above, are also tools for facilitating cooperation between the EU Member States: **their use should therefore be encouraged.**

In order to achieve a more efficient and effective execution of confiscation, various measures have been proposed by the Board to Combat Social Security and Fiscal Fraud. The majority of these ideas are transposable into the context of the fight against human trafficking. These include the establishment of an individual assets investigation in the phase of the execution of the sentence, the imposition of seizure from third parties of poor faith, the possibility of sentencing to joint and several confiscation or the establishment of a confiscation fund.¹⁰⁸

¹⁰⁸ Action Plan 2012-2013 of the Board to Combat Social and Fiscal Fraud, p. 100-106.

CHAPTER 3: THE OTHER SIDE OF THE COIN

about the role of the administrative authorities in the detection of human trafficking

In the previous annual report¹⁰⁹, we already briefly touched upon the role that local administrations can play in the fight against human trafficking. The involvement of local administrations, who may form an important element in an integrated approach to the phenomenon, nevertheless appears to be a largely unexplored potential.

In light of this focus, we would like to try to analyse the role that local administrations, especially the CPAS/OCMW (Public Welfare Offices), can play in the detection of victims of human trafficking and uncovering fraud concerning benefits in which incidences of human trafficking and exploitation situations can be identified. We shall also present a number of examples of good practices.

1. The fight against benefit fraud

The benefit fraud with which the CPAS/OCMW are confronted basically concerns bogus employment, rental contracts, bogus self-employment status¹¹⁰ and clandestine work. Certain larger CPAS/OCMW have taken initiatives, in the context of their policy on legal compliance, to fight this type of abuse in a structured way. The Antwerp CPAS/OCMW already started in 2006 with the creation of an antifraud unit. The CPAS/OCMW of Ghent followed suit in 2011. In cases where there is suspicion of fraud, the control unit undertakes a more in-depth investigation. After 6 months, it was determined in Ghent that there was fraud in no less than half of the cases investigated. That is why the Ghent CPAS/OCMW was highly enthusiastic about the control unit.¹¹¹

The Ghent CPAS/OCMW collaborates systematically in this regard with the Ghent Labour Auditor. The main objective is to combat fraud in employment contracts and fictitious companies.¹¹² On 18 October 2011, the Ghent CPAS/OCMW therefore established a protocol for cooperation with the local Labour Auditor in order to carry out the fight against social fraud. This protocol contains a series of agreements on data exchange without, however, the professional confidentiality of social workers being compromised.¹¹³ It is clear from reading the text of this protocol that the CPAS/OCMW can, on one hand, file an official complaint with the Labour Auditor if there is suspicion of fraud. On the other hand, the Labour Auditor may officially interrogate the CPAS/OCMW if there is a suspicion of fraud, either directly or through the police. The

¹⁰⁹ 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p 108-111.

¹¹⁰ See also 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p 94-96.

¹¹¹ OCWM-CPAS Gent, Aantal leefloners bij OCMW Gent daalt, 20 December 2011, <http://www.ocmwgent.be/OCMW/Actueel-Nieuws/Minder-leeloners.html>.

¹¹² OCWM-CPAS Gent, OCMW Gent en arbeidsauditoraat pakken samen sociale fraude aan, 18 October 2011, <http://www.ocmwgent.be/OCMW/In-de-pers/Sociale-fraude.html>.

¹¹³ OCWM-CPAS Gent, OCMW Gent en arbeidsauditoraat pakken samen sociale fraude aan, 18 October 2011, <http://www.ocmwgent.be/OCMW/In-de-pers/Sociale-fraude.html>.

police cannot interrogate the CPAS/OCMW on its own initiative, it may only do so at the request of the Labour Auditor. If it is determined, during verification by a first-line service that a person is working at the same time as receiving benefits from the CPAS/OCMW, the auditor may ask the inspection department or the police to inform the relevant CPAS/OCMW. This enables the CPAS/OCMW to file a complaint if it proves to be a genuine matter of fraud, after an internal investigation. In order for the exchange of data to proceed smoothly, two contacts were assigned at the level of the Labour Auditor (depending on whether it is an ongoing case or a new case) and a contact at the level of the Ghent CPAS/OCMW.

Liege offers yet another example of cooperation. In the context of a working group created especially for this purpose, exchanges are regularly held at the provincial level between the CPAS/OCMW and the auditor. Among other things, they have addressed the issue of professional confidentiality.

In practice, it appears that the exchange of data between many Labour Auditors and the CPAS/OCMW does not always go smoothly. This was revealed by a particular set of cases that were covered extensively in the previous annual report. In the *car wash case*¹¹⁴, the defendant had set up a system of benefit fraud as a modus operandi. Certain workers associated with the scheme received financial support from the CPAS/OCMW in addition to their official salary. They were able to request this because their salary was intentionally kept low enough (they sometimes even had to return a portion of this aid to their bosses). It emerged from the inquest that the interpretation of the meaning of the cooperation varies depending on the concerned CPAS/OCMW. Thus, while some CPAS/OCMW failed to disclose any information due to professional confidentiality, others, by contrast demanded repayment of the money from the bogus self-employed workers.

In another case¹¹⁵, this time of human smuggling, and in which the Centre is acting as a civil party, it is also a matter of significant benefit fraud. The individual concerned, a businessman running a night shop, was a member of a criminal organisation that organised marriages of convenience for payment. Under a false name, he was receiving undue benefit from the CPAS/OCMW, at the address where he maintained a safehouse concealed to outsiders. The CPAS/OCMW in question forwarded to the magistrate involved an account indicating that the individual had unduly received 50,820.22 euros in support over a period of seven years.

2. Detection

Nevertheless, there is an entire process in which social workers can allow social correction to take place and to pick up signals of situations of exploitation and

¹¹⁴ 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking in human beings*', p 48-51.

¹¹⁵ See also Part 2, Chapter 2, point 4.2.3. Indian-Pakistani marriages of convenience in Ypres.

vulnerability, provided they are equipped with the necessary tools. Before granting benefits, the CPAS/OCMW will investigate the application. The social worker therefore conducts a broad social investigation and draws up a social report. The CPAS/OCMW gathers information and thus gains a picture of the psychosocial situation of the client by means of interviews and home visits. In order to gather data concerning certain factual elements in the case, the CPAS/OCMW consults the Crossroads Bank for Social Security, which contains a lot of information about the social security profile of the benefits applicant (current and past).¹¹⁶ The report is submitted successively to the senior social worker, to a preliminary committee and finally to the board.

Throughout this entire process, various signals of fraud and exploitation may be picked up. Thus, the Ghent CPAS/OCMW has regularly found problems with suspicious employment contracts (e.g., people who are systematically dismissed after two weeks of work and then come and request aid from the CPAS/OCMW) issued by the same employers (in night shops, industrial bakeries, and the distribution of local newspapers). This is what led the CPAS/OCMW to suspect that the employers were crooked. Problems have also been observed with slumlords. Despite the fact that people were encouraged to file complaints, they proved highly reluctant, out of fear or out of lack of confidence in the public institutions.

3. The (bogus) self-employed

The intensified fight against benefit fraud makes the self-employed vulnerable. This requires the social worker to pay extra attention to be able to distinguish between the victims of bogus self-employment status and those who are intentionally deceiving the CPAS/OCMW to obtain benefits. The general bias according to which the self-employed contractors who come knocking at the door of the CPAS/OCMW are regarded as potential fraudsters sometimes leaves little room for the detection of EU citizens who have been the victim of exploitative situations involving the self-employed status. Multiple indicators, such as the same employers who keep cropping up, housing at the company or provided by the company, appalling working conditions, low income, etc., may suggest situations of exploitation. Additional training and support can help the social worker to be more vigilant in this area.

The victims of labour exploitation who are employed as self-employed contractors without their knowledge also run the risk of accumulating huge debts when they receive the account for their Social Security contributions and are unable to pay them. The social workers and the CPAS/OCMW can be made more aware when these people come knocking at the door of the CPAS/OCMW to pay their debt. That is why the victims have every interest in filing a complaint and making statements.

¹¹⁶Response of the VVSG to the proposal for law by Liesbet Homans establishing a new right of communication for the board members and staff of the Public Welfare Offices in cases of social fraud and illegal labour, 12 March 2012, www.vvsg.be.

The social workers who assist clients with debt mediation are particularly well placed to detect the victims of bogus self-employment status. Raising awareness among the social workers, particularly by means of training on the signs, can already contribute to a better detection of this type of victims.

4. Initiatives

In 2011, several initiatives were taken to address alleged abuse of the self-employed social status primarily by EU citizens from Member States that have recently joined the European Union. The alleged abuse consists of having the EU citizen become a member of a Social Security fund as a 'self-employed contractor or helper' in order to use his certificate of membership to obtain a residency permit for Belgium for more than three months. A three-month residence permit then offers him the possibility of claiming social integration (particularly through earning income).

In the context of the fight against these fictitious memberships, an additional control procedure was launched on 1 October 2010 for individuals requesting a 'special certificate of membership' from the Social Security fund in order to register with the municipal authorities. Each person requesting a certificate of this type is reported to the National Institute for the Social Security of the Self-employed, (RSVZ-INASTI). This type of certificate is only delivered by the Social Security fund by request and after receiving a list of questions to fill in. The EU citizen must provide the RSVZ-INASTI with documents/evidence justifying that he effectively carries out an economic activity. If this list of questions is not filled in or does not contain sufficient proof of a real self-employed activity, the Social Security fund will then be asked to cancel the membership of the person in question with retroactive effect. In this way it is not possible to claim social security benefits in such cases.

In the period from 1 October to 31 March 2011, some 2000 EU citizens applied for a specific certification of membership from one of the social security funds. These cases were investigated in depth by the RSVZ-INASTI and no fewer than 35% of these memberships were cancelled with retroactive effect.¹¹⁷

The 2012-2013 Action Plan of the Board to Combat Social Security and Fiscal fraud¹¹⁸ of the competent Secretary of State also devotes attention to cooperation in detecting fraud within the smaller and medium-sized CPAS/OCMW. The action plan specifies that small and medium-sized CPAS/OCMW should conduct an in-depth social investigation, in proportion to the available resources. However it is difficult for these CPAS/OCMW, given their staffing and budgetary situation, to mount the same efforts as the large

¹¹⁷ Q. and A. Senate, 28 December 2011 (Qu. no. 5-4038, G. De Padt).

¹¹⁸ Secretary of State for the fight against social and fiscal fraud, Action Plan 2012-2013 of the Board to Combat Social and Fiscal Fraud, available on: [http://www.ensembleautravail.be/media/uploads/john/actieplan Board to Combat Social and Fiscal Fraud fraudebestrijding 2012-2013 fr.pdf](http://www.ensembleautravail.be/media/uploads/john/actieplan%20Board%20to%20Combat%20Social%20and%20Fiscal%20Fraud%20fraudebestrijding%202012-2013%20fr.pdf).

CPAS/OCMW. That is why the action plan emphasises the role that can be played by the Public Planning Service (PPS) for social integration in supporting initiatives for cooperation in establishing a high-quality detection of fraud. In particular this could take the form of the gathering and distribution of good practices, support for the start of the cooperative initiatives or a forum for the exchange of experiences and ideas.

5. Future outlook

Initiatives for cooperation such as the cooperation protocol between the Ghent CPAS/OCMW and the Labour Auditors and similar protocols between other CPAS/OCMW and auditors serve as good examples or inspiration for good practices. They not only promote the distribution of more qualitative information, they also ensure that the social workers are provided a framework whereby they are not forced to compromise their professional confidentiality at the same time as being able to play a helping role in the investigations as part of the fight against benefit fraud.

In order to prevent a knock-on effect, whereby the phenomena will simply be shifted from one district to the next, a better coordinated policy needs to be established between the CPAS/OCMW. In order to do this, we must find a balance between, on one hand, a common vision and on the other, sufficient autonomy for the CPAS/OCMW so that they remain free to establish their own policy. Promoting a process of reflection between the various CPAS/OCMW, would be a step in the right direction. In particular, this could be made possible through the exchange of data, collaboration or joint training which would allow social workers to share their experiences and problems. The Union of Cities and Municipalities of the Flemish Region (*Vereniging van Vlaamse Steden en Gemeenten*), the Union of the cities and districts of the Brussels Capital Region and the Union of Cities and Municipalities of the Walloon Region (*l'Union des Villes et Communes de Wallonie*) could play a role in this process, including facilitating training programs whereby attention would be paid to the signs of human trafficking with which social workers may be confronted in their work.

CHAPTER 4: GIVE THE MONEY BACK

About the compensation of victims

Introduction

Since the early 1990s, victims of human trafficking have been eligible for a special status in Belgium. The system designed to combat human trafficking is based on a delicate balance between on one hand the desire to protect the victims and to offer them secure future prospects, and on the other hand the necessity of taking efficient action against these networks. It is in this context that the victims who cooperate with the judicial authorities may be eligible to obtain a specific residence status.¹¹⁹

While the profile of victims has evolved considerably, the residence status has remained unchanged. Of the 133 new victims granted the status of victim of human trafficking assistance was initiated by one of the specialised centres for victims of human trafficking in 2011¹²⁰, 72 received this status on the grounds of labour exploitation. Among these 72 victims, 23 were EU citizens. Looking at all of the 133 victims together, combining all types of exploitation, 42 of them are EU citizens. If we more closely examine the figures from a centre, Sürya, for example, in order to compare the figures from 2002 with those from 2012, we observe some very clear trends. Among the 50 people for whom a new process of assistance was started up through Sürya, in Liege, in 2002, none of them were for EU natives (10 of them however did come from states which later joined the Union - six from Romania, two from Bulgaria and two from Poland). Sexual exploitation concerned 65% of the victims in 2001, and this percentage was still at 50% in 2002. In 2012, only nine of the 56 victims for whom new programmes of assistance had been launched by Sürya were still victims of sexual exploitation. Of all of these 56 victims, combining all types of exploitation, 21 were citizens of the EU.¹²¹

This leads to two major conclusions: in 2011, EU citizens represented over one third of the victims granted the status of victim of human trafficking. In addition, more than half of all of the victims of human trafficking received this status because they were victims of human trafficking for the purposes of labour exploitation.

One can therefore wonder whether this status in its current form still corresponds to the needs of these victims. Another question that could be asked is whether there are fewer reports of victims of sexual exploitation being made to these centres. This question is certainly worthy of consideration in the future.

¹¹⁹ Since June 1 2007, this procedure is included in the law on foreigners of 15 December 1980. It is also detailed in a Ministerial circular of 26 September 2008.

¹²⁰ In addition, 20 new assistance procedures were started for victims of human smuggling. In addition to this new assistance procedures, the centres continue to support victims who have already assumed the official victim status. The centres also devote considerable time to analysing the reports that do not ultimately result in a support plan.

¹²¹ 2003 Annual Report. 'Trafficking in and smuggling of human beings', p. 85-87 (only available in French and Dutch).

In this chapter, we shall focus on an aspect no doubt of interest to the victims of human trafficking, specifically the aspect of compensation. A victim of human trafficking wishing to receive compensation must do so by filing for damages and interest in a civil action (see below). Taking a decision of this type naturally requires proper legal advice at the right time.

The ministerial circular of 2008 clearly describes the role to be played by these specialised support centres in this area. *‘One of the three types of assistance that the specialised centres should provide is legal assistance. In the course of the legal proceedings concerning the acts of trafficking and/or certain aggravated forms of human smuggling, the centres must defend the rights and interests of the victim. In order to do so, they must provide information and offer the assistance of a lawyer. The victim can thus make an informed decision whether to take civil action or not. The certified specialised centres (Pag-Asa, Sürya and Payoke) may also act as civil party in their own name or on behalf of the victim. These centres are effectively authorised to take legal action.’*¹²²

While receiving compensation is not in itself a priority or a goal for all victims, the value of such actions should not necessarily be marginalised. A conviction accompanied by the payment of damages and interest can effectively increase the victim's confidence in the justice system. In addition, compensation can give the victim the means to start a new life or to give them a positive boost. It can also reduce the risk of victims sinking back into the clutches of human trafficking.¹²³

However, it should be borne in mind that the value of compensation can vary depending on the situation of the victim and the type of exploitation. Certain victims of forced sexual exploitation may be rather reluctant at the idea of receiving compensation from their exploiter. The victims of sexual exploitation in situations known as ‘win-win’ and the victims of labour exploitation in turn may assume a completely different position on this point. Their initial objective may have been basically to earn money, which has thus led them to become victims of human trafficking. The value will also depend, in the majority of cases, on the victim's personal situation, but also on the information provided to him or her on the subject. A case examined in the analysis of the phenomenon below is a perfect illustration of a victim interested by the compensation aspect. The Moroccan victim of labour exploitation in the construction sector stated the following in his interview: *‘I came here with the understanding of working. I do not want to make trouble. I simply want to continue to earn a living by working. I cannot return to my country without money. My parents have sacrificed everything. I cannot return empty-handed. At*

¹²² Ministerial circular of 26 September 2008 published in the *Moniteur Belge* [Belgian Official Gazette] of 31 October 2008. This replaces the Ministerial circular of 1994 and the ministerial directives of 1997 (amended in 2003) which described the conditions for the application and granting of these residence permits.

¹²³ Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, 2011, p.86.

*the minimum, I need [the exploiter] to pay me what he owes. That way I can return home with my head held high.*¹²⁴

In any case, actually obtaining damages is accompanied by numerous obstacles. The effective payment of the compensation awarded, for example, generally depends in the first place on the solvency of the perpetrator of the crimes and then on the successful tracing of the money flows, seizures and confiscations, with or without assigning them to the civil party.

After a general discussion of the context of the access of the victims of human trafficking to compensation, we shall first discuss the possibility of obtaining compensation in court, and then through the intervention of Social Law Inspectorate, who can assist the victims of labour exploitation in recovering the back pay owed. Finally, we will take a look at the Commission for Financial Aid for Victims of Deliberate Acts of Violence, as a means of compensation, which may or may not be appropriate, for the victims of human trafficking.

1. Access to compensation for victims of human trafficking

Various international instruments prescribe access to compensation for the victims of deliberate acts of violence. It concerns instruments specially designed to combat human trafficking, organised crime and to aid victims of acts of violence.

The United Nations Convention against Transnational Organised Crime expects that signatory states will provide appropriate procedures to allow victims access to reparations and compensation and to be represented at different stages of a criminal procedure.¹²⁵ The additional Protocol on Human Trafficking specifies that any signatory member of the convention must verify that their legal system has measures in place to give victims the possibility of obtaining compensation for damages incurred.¹²⁶

At the level of the Council of Europe, there is the European Convention on the Compensation of Victims of Violent Crime, which provides a subsidiary system of compensation to victims of deliberate acts of violence. When compensation is not fully available from other sources, the signatory State to the Convention must contribute to the compensation.¹²⁷ We also find the principle of solidarity of this Convention in the fund for financial aid for victims of deliberate acts of violence and rescuers (see below).

¹²⁴ See also Part 2, Chapter 2, point 2.2.

¹²⁵ Art. 25 of the UN Convention against Transnational Organized Crime.

¹²⁶ Art. 6, 6 of Additional Protocol to the UN Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children, New York, 15 November 2000.

¹²⁷ Art. 2 of the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.

But more specifically for the victims of human trafficking, the Convention of the Council of Europe on Action Against Trafficking in Human Beings states that each party to the Convention shall adopt legislative or other measures necessary to ensure compensation for victims in accordance with the conditions provided in their national law, for example by establishing a fund for victim compensation or measures or programs aimed at social assistance and social integration of victims. In addition, it adds that the assets seized may be used to contribute to their funding.¹²⁸

At EU level, we can not only discuss the directive on compensation of victims of violence,¹²⁹ but also the new directive on human trafficking which was adopted in early 2011.¹³⁰ In its preamble, the link is clearly made between the seizure and confiscation of the proceeds of crime and their use to compensate victims.¹³¹ According to this directive, Member States must ensure that the victims of human trafficking have access to the existing regulations for the compensation of victims of deliberate acts of violence.

At the European level, a proposed directive is also on the table to establish minimum standards for the rights, support and protection of victims of crime. This proposal is part of a legislative package to strengthen victims' rights in the EU. The proposal also includes a provision on the right of the victims to obtain a decision in the context of criminal proceedings within a reasonable time with regard to compensation from the perpetrator, unless the national law provides that restitution or compensation must take place in a different context. The Member States must take measures to encourage the perpetrator to compensate the victim appropriately.¹³²

A provision has therefore been included in all of these instruments to allow victims access to damages or compensation, either in court or through a fund. It is up to the signatory States or the Member States to fill in the content. Below, we examine the extent to which victims of trafficking are actually benefiting from this access and what obstacles they may encounter in the attempt to effectively receive compensation.

¹²⁸ Art. 15 juncto art. 23 of the Council of Europe Convention on the fight against human trafficking. A similar recommendation was also made by the Financial Action Task Force on Money Laundering, OECD, Recommendation 38, Financial Action Task Force on Money Laundering (FATF-GAFI), The 40 recommendations, 20 June 2003: *Countries should consider: a) Establishing an asset forfeiture fund in its respective country into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes.*

¹²⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

¹³⁰ For more information on the European directive on human trafficking, see 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p 13-22.

¹³¹ Recital 13 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on the prevention of human trafficking and the fight against this phenomenon and the protection of victims and replacing Council Framework Decision 2002/629 / JHA of Council, *O.J.* L101 of 15 April 2011.

¹³² See Article 15 of the proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of the crime, COM/2011/0275 final.

2. Compensation through legal proceedings

The same crime can be grounds for both public action, in the case of a violation of criminal law, and civil action, for example, a claim of compensation in accordance with article 1382 of the Civil Code or a civil action before the Labour Court to demand payment of salary in arrears.

However, these actions are fundamentally different. Thus, the prosecution seeks to enforce the criminal law and not to compensate the victim.¹³³ Civil action, meanwhile, aims to compensate for the damage resulting from the offence.¹³⁴ In the Belgian judicial system, the damage resulting from the offence may be compensated either in criminal court (by means of the appointment of a civil party) or in a civil court.

The civil action may therefore be pursued at the same time and before the same judge as the public action. On the other hand, if this is made separately before the civil court, the civil action is suspended until there has been a definitive ruling on the public action, enacted before ordering the prosecution of the civil action.¹³⁵

In cases of human trafficking, the victim generally requests compensation by acting as a civil party in criminal proceedings. The advantage of acting as a civil party is that the victim may participate in the conduct of proceedings and the judicial investigation, including requesting additional acts of investigations of the investigative judge.¹³⁶

Good legal assistance, but also, legal assistance provided at the right moment, is essential to help victims decide whether or not to take civil action. As we have seen in the previous annual report¹³⁷, the directive on human trafficking also identifies measures relating to the treatment of victims in order to prevent secondary victimisation and obligation to provide access to legal advice. The directive also states that Member States - according to the role the judiciary gives these victims - must ensure legal representation for victims, particularly in the context of claiming damages. In Belgium, legal advice is provided for the time being either by the social workers at the specialised support centres, or by a lawyer appointed by the support centre. **In order to ensure the defence of the rights and interests of the victim, consideration should be given to the immediate appointment of a lawyer for victims who have made statements or filed complaints and this must be done as soon as they have access to the status victim of human trafficking.**¹³⁸ The Centre suggests appointing a lawyer before the expiration of the

¹³³ Art. 1 of the preliminary part of the Code of Criminal Procedure.

¹³⁴ Art. 3 of the preliminary part of the Code of Criminal Procedure.

¹³⁵ It was a matter of applying the principle '*criminal cases take precedence over civil cases*', art. 4 of the preliminary part of the Code of Criminal Procedure.

¹³⁶ Art. 61 *quinquies* of the Code of Criminal Procedure.

¹³⁷ 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 19.

¹³⁸ This recommendation was also made in the 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 19 and 130. Such a recommendation was also made by the Senate working group on human trafficking, Senate Committee on the Interior and

first certificate of registration issued in the context of a human trafficking procedure.

The victim may ask the court to compensate his or her material and moral damage. In the 2006 annual report, the Centre noted that people who had been convicted of human trafficking often claim to be insolvent, so that effective compensation is rarely possible. As was stated earlier in the focus¹³⁹ a seizure conducted at the beginning of the investigation could be a way to combat the process of organising insolvency that certain perpetrators attempt through a variety of constructions. However, this can only be possible when financial investigations in the field of human trafficking are encouraged. Confiscation in favour of the victim could then make it possible for them to be compensated.¹⁴⁰

The introduction of article 43*bis* into the Criminal Code has also made it possible to assign confiscated items to civil party. Restitution is a measure in civil law that can be requested by a civil party and in principle, it is mandatory, particularly when it would allow compensation for the damages suffered due to the offence.¹⁴¹ In order to safeguard the rights of third parties, article 43*bis*, paragraph 3 stipulates that: *'When confiscated items belong to the civil party they will be returned to them. The confiscated items will also be awarded to him if the judge ordered the confiscation on the grounds that they constitute assets or securities substituted by the convicted party for items belonging to the civil party or because they constitute the equivalent of such items in the sense of paragraph 2 of the present article.'*

The explanatory memorandum provides further details¹⁴² on the subject: *'... It seemed appropriate to allocate items confiscated for compensating to the victim, since these items are substitutes for goods of which the victim has been deprived during the offence.'*

When money is seized, the court may order confiscation and award it –at least partially– to the civil parties to compensate for damages.

The Centre encourages the use of the possibility of awarding items and confiscated assets to the civil party in order to compensate for damages incurred.

Administrative Affairs, report on human trafficking, *Doc. parl.*, Senate, session 2011-12, 27 March 2012, no. 5 -1073/1.

¹³⁹ See Part 1, Chapter 2.

¹⁴⁰ 2006 Annual Report. 'Trafficking in and smuggling of human beings', p.66 (only available in French and Dutch).

¹⁴¹ E. FRANCIS, *'Algemene principes van de bijzondere verbeurdverklaring en het beslag in strafzaken'*, *T.Strafr.*, 2011, afl. 5, p.319.

¹⁴² Explanatory memorandum of the draft law amending articles 42, 43 and 505 of the Criminal Code and inserting article 43*bis* in the same code, *Doc.parl.*, Chambre, session 1989-1990, no. 987/1, p.6.

Examples from case law

In November 2010¹⁴³, the Brussels criminal Court awarded moral damages of 5,000 euros and material damages of 50,000 euros to the civil party, a young Nigerian woman who had been recruited in Nigeria supposedly to come and work in Belgium as a housekeeper. In reality, she was forced into prostitution in order to pay back an alleged debt of 45,000 euros. The civil party requested material damages of 300,000 euros, corresponding to the pecuniary benefits she should have received based on her activities as a prostitute. In the absence of concrete data on the extent of the sums involved, the material damages were, however, awarded in equity in the amount of 50,000 euros.

In a decision of the Brussels Court of Appeal of 12 January 2011¹⁴⁴, the Court confirmed the conviction of human trafficking, which had already been imposed in the first instance by the Brussels Criminal Court regarding two defendants who were exploiting various workers in their butcher shop. The conviction of human trafficking was confirmed for a worker who filed suit as a civil party: this was a handyman who was sleeping in a closet hidden behind a flap, without windows or plumbing. The workload was determined to be contrary to human dignity and the working conditions were humiliating. The civil party was awarded the sum of 36,000 euros. The Court stated: *'In the absence of other more specific elements in the criminal case, the reparation in kind of his material damages does not appear possible in this case in cash. For this same reason, the court will rule in equity, allocating a fixed amount to the civil party, calculated on the day of the ruling at 36,000 euros. This amount, which compensates his damage fully, in the absence of other more specific elements, is established taking into account the pace of work maintained by the civil party, the few benefits that he gained from his occupation (more specifically, his food), but also certain payments (50 euros per week) which he acknowledges having received in the course of these three years of work.'*

In a case concerning a Romanian human trafficking network which was discussed at length in the 2008 annual report¹⁴⁵, the Brussels Criminal Court¹⁴⁶ specifically convicted the defendants of human trafficking and exploitation of prostitution. The civil parties,

¹⁴³ Brussels Criminal Court, 26 November 2010, 46th ch.

¹⁴⁴ Brussels Court of Appeal, 12 January 2011, 11th ch.

¹⁴⁵ This was a criminal organisation composed of two clans, each with their own girls and in which each member had a specific function (monitor prostitutes, thugs, etc.). The modus operandi was the same each time. Young women were usually from the same region of Romania, where most of the defendants were from as well. They were recruited in cafes with the promise of a job abroad. The organisation took care of all the administration, transport and reception in Belgium for them. They were housed and monitored in an apartment and were forced to work as prostitutes daily for 12 hours straight. Whatever they earned would be handed over to their exploiters. Their identity papers were confiscated, except for when they went to work, and they were subjected to threats and acts of violence (kidnapping, physical violence when attempting to run away or if they did not bring in enough money); 2008 Annual Report. 'Trafficking in and smuggling of human beings, ' *Enlisting people and resources to combat the phenomenon*', p. 60-61 and p.40-41 (complete version only available in French and Dutch).

¹⁴⁶ Brussels Criminal Court, 18 June 2008, 48th ch.

who requested substantial compensation, were only awarded provisional amounts. This decision was partially reversed by the Brussels Court of Appeal.¹⁴⁷ The Court maintained the conviction of human trafficking with regard to the defendants. It modified its initial decision on the confiscated amounts (some 11 million euros) and allocated them primarily to the civil parties depending on the damages incurred by each one of them. The civil parties received respectively 432,000 euros in material damages and 5,000 euros in moral damages and 257,680 euros in material damages and 5,000 euros in moral damages.

However, it is quite possible, despite the judge's decision, for the convicted person not to compensate the victim. Once the decision is final¹⁴⁸, one can apply to a bailiff to enforce its execution. In this way one can potentially seize the property of the convicted party. Nevertheless, it is a lengthy procedure which generates additional costs for the victim. That is why certain victims abandon this course of action.

For victims who choose not to claim the residence status and/or the victims who have returned to their own countries or who are no longer in Belgium, it is difficult to obtain compensation. Even if the victim, in theory, can be assisted by a lawyer to defend his or her interests, the threshold remains too high for many victims if they do not receive legal assistance, unlike the victims who claim the victim status and thereby receive assistance.

Some specialised support centres where the victims can receive assistance will attempt to continue the legal support after the victim has returned to his country. This is then primarily for victims for whom the procedure is already well advanced, and who may often be still waiting for the announcement and execution of a decision on compensation. Other specialised support centres will provide the victim, wishing to return to his or her native country, and thus to withdraw from the official victim status, the necessary contact information in order to be assisted by a lawyer through second-line legal aid. However, it is up to the victim himself to take the necessary steps. In reality this threshold can be too high for the victim, resulting in the fact that the victim will not seek assistance and therefore his rights and interests will not be defended by a lawyer. With the knowledge and contacts that the specialised centres have with lawyers, the question arises as to what role they can play in providing legal aid to these victims.

3. The role of the Social Law Inspectorate in the recovery of unpaid salary

The mission of the Directorate General of the Social Law Inspectorate (hereafter the SLI) of the Federal Public Service Employment, Labour and Social Dialogue is to defend the individual and collective rights of workers, in particular, the basic working conditions, the right to a salary and other financial benefits, and the respect of the work conditions as prescribed by law, regulations and contracts.

¹⁴⁷ Brussels Court of Appeal, 30 January 2009, 12th ch.

¹⁴⁸ In other words it is a final judgement., according Belgian judicial system.

In the context of its supervisory role, the SLI conducts investigations assigned to it (through complaints, upon request of the judicial authorities to investigate, authorisation requests, waivers, advice and mediation) or performs inspections at its own initiative or in the framework of specific actions such as the fight against clandestine work.

The current priorities of the SLI include joint and several liability, bogus self-employment status, labour supply, temporary work and secondment. Among these priorities and within the susceptible areas where the SLI performs its inspections (construction, metal construction, cleaning, chemical industry), signs of labour exploitation and human trafficking may be detected.

In order to raise awareness about human trafficking, a cooperation protocol was signed in 2001 between the SLI and the Social Inspectorate.¹⁴⁹ The aim is to undertake investigations systematically and in a structured and coordinated way, particularly in the area of Labour laws and social security in particular sectors confronted with human trafficking (exotic restaurants, cleaning companies, horticultural and agricultural companies, garment workshops, and the prostitution sector). This protocol was extended in 2010 according to the same principles. Every year, targeted monitoring is carried out for human trafficking in the high-risk sectors (e.g. bars, massage parlours) in each district. Locally (by region and by district), there has been cooperation in this area between the two inspection services, the Labour Auditors, the prosecutor and/or the police.

Despite these initiatives, it appears that in practice, too little attention is paid to the signs and indications of human trafficking during inspections. The SLI is aware of this and plans to hold another three-day training session in 2012 to increase the awareness of its inspectors and to put in place the necessary tools to maintain vigilance regarding human trafficking.

The Centre encourages ongoing training that focuses attention on the signs and indicators of human trafficking so that the inspectors of the SLI can look out for them during inspections.

*Discretionary power when a violation is found*¹⁵⁰

When the SLI detects a violation of labour laws, there are various possibilities for stopping this offence. The SLI can issue a warning to the offender giving a deadline by which the situation has to be remedied¹⁵¹, or report infractions to the legal authorities by

¹⁴⁹ FPS Employment, Labour and Social Dialogue, DG Controle of Social Laws, Activity Report 2009.

¹⁵⁰ The SLI has the discretionary power to choose the option that will most likely end the violation, taking into account the nature of the offence, the interest of the employees and of the authorities, the intentions of the employer or the objectives of the service.

¹⁵¹ To the extent possible, the employer will be asked to rectify the situation. If it is a case of non-compliance with the regulations relating to compensation, regularisation is mandatory. It is only when the employer does remedy the situation after explicit notice of default when it is a matter of serious offences

means of a police report (PR)¹⁵². In the case that the offence of human trafficking is detected¹⁵³, drawing up an official report is mandatory. In practice, official reports are rarely made by the SLI for human trafficking, as the signals are rarely detected.

The Official Report drawn up for a breach of the labour laws is sent to the Labour Auditor who assesses whether or not it is appropriate to prosecute. If the auditor deems the breaches prosecutable, he will order the offender to appear in criminal court.¹⁵⁴ The Labour Auditor can also file the Official Report without consequence for reasons of expediency. In this case, the research department of the FPS Employment may impose an administrative fine in such a way that the criminal breach of certain social legislation¹⁵⁵ can nevertheless be punished.¹⁵⁶ Some 90% of the cases for which the SLI draws up an Official Report are closed without consequence and thus returned to the research department that once again investigates the case in order to review whether or not to impose an administrative fine.

Recovery of salary in arrears

In the case that there is outstanding salary owed, in principle, an attempt is made to regularise the situation by having the arrears paid by the employer. For the worker, this means that he does not have to institute civil proceedings and that he will receive his unpaid wages faster. Independently of the regularisation of the offence, the Labour Auditor can also prosecute. The regularisation of the offences therefore has no impact on the punitive action, but on the other hand, it can have an impact on the sentence of the defendant.¹⁵⁷

Once the employer agrees to pay wages in arrears, there are several possible scenarios. Depending on the nationality (third country national or EU citizen) and the residence status of the victim, the actual payment of wages may be complicated. If it is a question of persons legally residing in Belgium, there will usually be no problem at all in

that a PV is written (e.g. employment of workers who were not reported to the RSZ-NSSO, occupation of illegal aliens without work permits). FPS Employment, Labour and Social Dialogue, DG Controle of social laws, Activity Report 2009, p. 21, available on <http://www.emploi.belgique.be/publicationDefault.aspx?id=34916>

¹⁵² *Ibid.*, p. 20.

¹⁵³ In this case, he is bound by the provisions of the Code of Criminal Procedure and not those of the Criminal Social Code. For searches, arrests, enforcement, etc., he must turn to the police.

¹⁵⁴ Due to their composition, labour courts do not have any criminal authority.

¹⁵⁵ Art. 69 of the Criminal Social Code: offences punishable by a level 1 penalty referred to in Book 2 may give rise, at the initiative of the competent administration, to an administrative fine [...]. The competent administration has the same power as when the Public Prosecutor's Office waves for the prosecution of the perpetrator of an offence punishable by a section of level 2, 3 or 4 referred to in Book 2.

¹⁵⁶ The Law of 30 June 1971 on administrative fines was administratively repealed by article 109, 26° of the Criminal Social Code. Henceforth the administrative fines are regulated by articles 74-91 of the Criminal Social Code.

¹⁵⁷ Note also that, for the Public Prosecutor, an interesting approach may be to impose conditions on the exercise of seizures (cars used to transport workers, for example), such as the regularisation of all offenses including non-payment of the compensation. This would allow victims to at least partially recover unpaid wages.

recovering back wages. In the case of workers without legal residence, an attempt is made to have the employer pay the back wages in cash to the police. However, employers rarely agree to pay the back salary, which means that this option does not represent a solution in practice.

The loss of contact with the worker makes it almost impossible for the wages to be repaid. When the employer wants to pay salary in arrears, but is unable to find the worker, he can notify the SLI. In order to track down citizens of the EU, the SLI may make use of the internal market information system (IMI)¹⁵⁸ to try to find the details of the person concerned in his country of residence. When successful, a letter is sent to the person requesting the necessary details to have the back salary paid to him.

If the SLI is unable to contact the EU citizen via the IMI or if the person is a citizen of a third country for which contact information is not available, the SLI will then ask the employer to pay the salary in arrears to the Deposits and Consignments Fund.¹⁵⁹ The employer must indicate to the Fund when the transfer is made, who issued the order to make the deposit (for example the SLI), the details of the worker and the reason for the deposit. Once this money has been deposited, it will generally remain there (after 30 years, it will become property of the State). The Deposits and Consignments Fund does not undertake any action to find the rightful owner.

4. Fund for financial aid to victims of deliberate acts of violence and rescuers

A final possibility that the victims of human trafficking can explore in order to obtain compensation for damages incurred is the submission of an application for financial aid from the Commission for financial aid to victims of deliberate acts of violence and rescuers (hereafter: the Commission). The financial aid that the Commission can award via the Fund for financial aid to victims of deliberate acts of violence and rescuers (hereafter: the Fund) is solely subsidiary in nature and is subject to various conditions.

The law of 1 August 1985¹⁶⁰ introduced the system of financial aid. The law intentionally refers to aid and not compensation. Limited financial assistance from the State to the victim (or his family) is not in fact based on the presumption of debt owed by the State, since it was not able to prevent the offence, on the principle of collective solidarity between the members of the same community. The European Convention on the

¹⁵⁸ For further information on the *Système d'information on le marché intérieur*, See also: 2010 Annual Report. "Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*, p 94.

¹⁵⁹ The Deposit and Consignment Office is an independent administration of Federal Public Service Finance and is under the direct authority of the Minister of Finance. For more information on the Deposit and Consignment Office, see the website <http://www.caissedesdepots.belgium.be>

¹⁶⁰ Law of 1st August 1985 on fiscal measures and others, *Moniteur Belge* [Belgian Official Gazette], 6 August 1985.

Compensation of Victims of Violent Crimes of 24 November 1983 is based on the same idea.¹⁶¹

*Who can request financial aid?*¹⁶²

In order to be able to apply for financial aid, the victim must demonstrate (1) that a deliberate act of violence was committed; (2) that she has suffered physical harm or serious mental harm and (3) that this harm is the direct consequence of this deliberate act of violence.¹⁶³

Initially, the individual field of application was limited to victims who, at the time that the act of violence was committed, possessed Belgian nationality, or had a permit to enter Belgium, stay or reside there. In 2004, the field of application was expanded to include victims who subsequently obtained a residence permit for an indefinite period from the Immigration Office in the context of an investigation for crimes of human trafficking. A further amendment to the law in 2009¹⁶⁴ resulted in there no longer being a distinction made between the victims based on whether or not they have a legal residence permit.¹⁶⁵ Currently, therefore, irregular residents can also appeal to the Fund.

However, in practice, it appears that few irregular residents actually submit applications. This is largely due to a lack of information about the Fund and difficulty in meeting the formal conditions, including having to file a complaint with the police or initiate a civil action.¹⁶⁶

What kind of aid?

Three types of aid can be awarded by the Commission: primarily aid, emergency aid and supplementary aid.

¹⁶¹ P. VERHOEVEN en L.VULSTEKE, 'Het Fonds voor Financiële Hulp aan Slachtoffers van Opzettelijke Gewelddaden en Occasionele Redders', Bibliotheek Strafrecht, Larcier, nr.4, Larcier, Gent, 2011, p. 27.

¹⁶² Art. 31 and art. 31*bis* of the Law of 1^{er} August 1985 on fiscal measures and others. For the sake of completeness, it should be noted that financial aid may also be requested by the family, to the second degree of kinship inclusive of a victim who has been missing for more than a year.

¹⁶³ Offences by negligence or imprudence and property crimes (such as theft without resorting to violence or threats) are therefore not considered.

¹⁶⁴ Article 10 of the Law of 30 December 2009 containing various provisions on Justice.

¹⁶⁵ This legislative amendment came after the uproar generated by the Van Themsche case. In addition to the prison sentence, he is liable to compensate the (families of) three victims. Due to his insolvency, the families were able to turn to the fund for aid to victims for damages, with the exception of the family Oulematou. The latter could not appeal to the fund because at the time of her death, Oulematou was staying in the country irregularly. See also Annual Report Migration 2011, '*Les ayant-droits d'une personne en situation de séjour illégal peuvent-ils percevoir une indemnité après le décès de cette dernière ?*', p.161-162.

¹⁶⁶ See also Annual Report Migration 2010, '*Comment permettre aux personnes sans droit de séjour de porter plainte auprès des services de police ?*', p 106-107.

The primary aid is the amount that the Commission awards as financial assistance for the damage suffered. The primary aid is only awarded if the damage is assessed at between 500 euros and 62,000 euros.

The emergency aid can be issued when a delay in the provision of the primary aid could cause the applicant considerable damage.¹⁶⁷ The emergency aid applies to damage between 500 euros and 15,000 euros. The emergency aid can be requested once the civil suit is initiated or the complaint is filed.

The supplementary aid can be granted when the harm suffered by the victim is found to have increased subsequent to the granting of the primary aid.

The aid for the damage suffered can be requested for moral damage (taking into account the temporary or permanent disability), the medical expenses and temporary or permanent disability, loss or reduction of income due to temporary or permanent incapacity to work, the cosmetic damage, litigation costs, material costs (clothing, transport costs, etc.), the damages resulting from the loss of one or more years of schooling, etc.¹⁶⁸

*Conditions*¹⁶⁹

The law provides for various conditions in order to call upon the Fund. Thus, the principle of territoriality requires that the act of violence be perpetrated in Belgium. However, if the violence were to take place in other countries, then the reference points would be examined in order to consider, on a case-by-case basis, whether the aid should be granted by Belgium.

In order to obtain primary aid, the victim must await the results of the investigation or the criminal proceedings. This can lead to two potential situations: if the perpetrator of the acts is known, the aid can be awarded from the moment the decision in the legal proceedings is definitive (i.e., when there is no further appeal possible) or after the definitive decision of the civil court on an allocation or compensation for damage.¹⁷⁰ The victim must also seek compensation in a civil suit, having brought proceedings before the civil court or possibly having issued a direct summons against the perpetrator.

¹⁶⁷ For example when the victim has little income and is faced with significant medical expenses due to a deliberate act of violence.

¹⁶⁸ FPS Justice, 'L'aide financière aux victimes d'actes intentionnels de violence and aux sauveteurs occasionnels', 2010, available on www.justice.belgium.be.

¹⁶⁹ Art. 31*bis* of the Law of 1 August 1985.

¹⁷⁰ The Committee believes that, as an administrative court, it is also bound by the authority of res judicata of the criminal decision. Decisions of criminal justice have res judicata *erga omnes*. Thus, the Committee has already had to reject the application of a person who swore that she had been the victim of rape because the criminal judgement acquitting the perpetrator for the charge of rape has res judicata. P.VERHOEVEN and L.VULSTEKE, *op.cit.*, p.109-110.

If the perpetrator is unknown, the legislature then requires that the applicant at least informs the authorities of the act of violence: this can be done by filing a complaint, acquiring the status of aggrieved party or filing civil suit. If the perpetrator remains unknown, the request to the Fund will then be made after the decision not to prosecute. Only a decision not to prosecute in the absence of knowledge of the perpetrators' identities will be taken into account. A decision not to prosecute for other reasons, such as reasons of expediency, will therefore not be sufficient.¹⁷¹ When a civil suit is filed, the aid can also be requested one year after the constitution of the civil party.

For emergency aid, no decision is required. In this case, it is sufficient for the applicant to have filed a complaint or a civil suit. The Commission will itself gather the necessary information from the Public Prosecutor.

The Fund intervenes according to the principle of subsidiarity. The applicant may therefore not have access to other possible ways of obtaining compensation. Taken into account here will be the solvency and the potential payments of the perpetrator, the intervention of the mutual health insurance fund or the insurer for occupational accidents or compensation based on private insurance. The condition of subsidiarity is not absolute, however. Essentially, the applicant is expected to exercise his rights to the maximum extent vis-à-vis the person responsible or the insurance. The Commission nevertheless emphasises the fact that the victim does not have to wait until the end of long and expensive procedure to request financial aid. The victim does not therefore have to be in a position whereby payment of compensation by the perpetrators is absolutely impossible. Yet a court decision awarding compensation is not enough. The victim must also prove that she has reasonably taken all necessary steps to obtain effective compensation, using all appropriate means of execution, such as precautionary and enforceable seizure.¹⁷² In any case, when the perpetrator is clearly insolvent, the victim is not expected to first carry out an enforced execution of the debt.¹⁷³

The Commission also states that it will generally grant financial aid even when the perpetrator is only able to make small payments that are disproportionate to the total debt. Nevertheless, the Commission expects that the applicant will make the maximum efforts to obtain compensation from the perpetrator, even in the form of smaller repayments.

An appropriate means of compensation for the victims of human trafficking?

As already mentioned above, the victims of human trafficking have had the possibility of applying to the Fund since 2004. The law, however, stated that this was a matter of victims who had subsequently obtained a residence permit for an indefinite period from

¹⁷¹ P.VERHOEVEN and L.VULSTEKE, *op.cit.*, p.55-56.

¹⁷² P.VERHOEVEN and L.VULSTEKE, *op.cit.*, p.71.

¹⁷³ The Commission may conduct or order all necessary investigations to analyse the financial situation of the perpetrator. For this purpose, it may request all authorities for information on the professional, financial, social and fiscal situation without said authority being able to invoke professional confidentiality. P.VERHOEVEN and L.VULSTEKE, *op.cit.*, p.69.

the Immigration Office in the context of an investigation for crimes of human trafficking.¹⁷⁴ This therefore meant that only those victims who had attained the status of victim could appeal to the Fund (with the exception of victims who were entitled to enter, stay or reside in Belgium or who had Belgian nationality at the time the act of violence was committed).

With the enlargement of the field of application as a result of the law of 30 December 2009, irregular residents were also entitled to appeal to the Fund. As a result, even the victims of human trafficking who were not making use of the official victim status¹⁷⁵ could make use of the Fund.

The conditions mentioned above must also be met. The subsidiarity requirement entails that the victim may only appeal to the Fund once she has applied for compensation (through a civil suit, for example). That is why the victims who have not filed civil suit out of fear of reprisals are not taken into account for the aid from the Fund for victims.

The applicant must be the victim of a deliberate act of violence that resulted in serious physical or mental harm. However, neither the preparatory work nor the text of the law clearly define the concept of an act of violence. For its interpretation of this concept, the Commission has based itself chiefly on article 483 of the Criminal Code which describes violence as 'acts of physical stress exerted on persons.'¹⁷⁶ This requirement represents a serious stumbling block for victims of labour exploitation.

Example

In a decision from 2005 concerning a case of labour exploitation, the Court held that the victim's request was unfounded. It declared that '*the acts of labour exploitation of the petitioner, although reprehensible and having serious consequences for the petitioner, are not however sufficient to establish the existence of a deliberate act of violence in the sense of article 31,1° of the law of 1 August 1985.*'¹⁷⁷

The Commission must therefore always check whether the acts perpetrated on the victim's person can be categorised as 'acts of physical stress exerted on persons and leading to serious physical or mental harm.' The 'mere' breach of article 77*bis*, for example, of the law of 15 December 1980 (human smuggling) is therefore not grounds for the intervention of the Commission. Article 77*quater*, 3° (human smuggling with violence) and 5° (human smuggling resulting in illness, disability...) appears, by contrast, to include, according to the Commission, crimes for which it may intervene.

¹⁷⁴ Former article art.31*bis* §1, 2°.

¹⁷⁵ And who have not yet obtained a residence permit for an indefinite period in the context of an investigation for crimes of human trafficking.

¹⁷⁶ P.VERHOEVEN and L.VULSTEKE, *op.cit.*, p. 99.

¹⁷⁷ Commission, 26 July 2005, no. M3778, www.juridat.be. In this case, it was a Bulgarian victim who obtained a residence permit for an indefinite period from the Immigration Office in the context of an investigation for crimes of human trafficking. The court of first instance of Liège convicted the perpetrator of the exploitation of illegal alien workers and sentenced him to 6 months in prison and a fine of 7,355.54 euros.

Example

In a decision of 2012, the Commission found that the request of a victim of human smuggling was unfounded because no judgement had been issued by the criminal court indicating that the applicant had been the victim of acts of violence in the sense of the law on aliens, or acts of violence in the sense of article 483 of the Criminal Code. The Commission further specified in its decision that *‘in fact, the applicant was not put under particular pressure through the use of physical or moral violence to leave his native country to travel to Europe, but freely chose to do so and paid a person for this purpose, who in turn took advantage of his weakness and vulnerable situation.’*

However, the Commission considers it difficult to reconcile the placement on equal footing of offences of human trafficking and smuggling with deliberate acts of violence as a way of overcoming this stumbling block and the interpretation this constitutes of ‘acts of violence’. The condition of the deliberate act of violence does not in fact mean that an offence is necessarily committed. *Mutatis mutandis*, the Commission concludes, by contrast, that the offence punishable by law does not in itself constitute a deliberate act of violence.

The Centre calls for flexibility in the interpretation of the notion of ‘deliberate act of violence’ for victims of labour exploitation.

In practice, it seems that few victims of trafficking appeal to the Fund. However, there are few concrete figures available on this subject. The element of ‘human trafficking’ was more visible at one point, because article 31bis, § 1,2° provided an exception to the condition ‘legal residence in Belgium/legal entry into Belgium’ for the victims who had obtained a residence permit for an indefinite period in the context of an investigation for crimes of human trafficking. However, few victims have made use of this condition and it was cancelled by the law of 30 December 2009, so that the fact of residing legally or not in Belgium is no longer relevant to eligibility to appeal to the Commission.

At present, we are only aware of successful requests made by victims of sexual exploitation, but not by victims of labour exploitation or human smuggling.

Examples

In a decision of 2010, the Commission awarded 62,000 euros (the maximum amount for primary aid) to a victim of sexual exploitation. The victim was 14 years old at the start of the crimes and was forced into prostitution between 1993 and 2003 by a *loverboy*, first in Italy, later in other European countries, including Belgium. The victim was under constant surveillance and was regularly subjected to beatings, the effects of which included the death of her unborn child.¹⁷⁸

¹⁷⁸ Commission, 2010, no. M90001, *not published*.

In a decision of 2009¹⁷⁹, the Commission awarded 10,000 euros to a Nigerian victim who had been transferred illegally to Antwerp, where she was forced into prostitution to pay an alleged debt of 48,000 euros. If she refused, she was threatened and beaten by the perpetrators and also threatened by means of voodoo practices. Concerning the civil action, the perpetrators were sentenced to pay the victim 27,111 euros. However, it was not possible to recover the compensation from the convicted perpetrators. Therefore, the Commission awarded 10,000 euros in equivalent value to the applicant.

Victims who no longer wish to stay in Belgium

The fact that a victim does not assume official victim status and does not wish to remain in Belgium is not in principle obstacle to submitting an application to the Fund. However, the situation differs depending on the victim's place of residence, whether it is within the EU or outside of it. If the applicant resides in another EU country, he may address his application in writing to the Commission through the organisation officially responsible within the Member State in question for assisting victims with applications, with the help of a standard form that has been drawn up by the European Commission.¹⁸⁰ No such mechanism exists for victims who have returned to countries outside of the EU. For this reason, it is more difficult to submit an application because the Royal Decree of 18 December 1986 whereby the Commission for financial aid to victims of deliberate acts of violence and rescuers requires that the chosen place of residence be in Belgium.¹⁸¹

The specialised support centres indicate that the procedure for financial aid from the Fund can be time-consuming and emotionally challenging for the victim. However, some specialised support centres nevertheless believe that when successful, the procedure is worthwhile.¹⁸²

Conclusion

The Belgian legal framework provides various options to allow victims of human trafficking and smuggling to obtain compensation. There are legal restrictions on a claim for compensation or request for financial aid from the Fund. Effectively obtaining compensation will also depend on the (in)solvency of the perpetrator and the effective execution of the judgement. In addition, victims who attempt to obtain compensation through the courts will often have to wait a long time for a decision as to whether or not their claim for compensation will be heard. Given its subsidiary nature, intervention by the Fund will thus take even longer (except for the provision of emergency aid). Victims may therefore be discouraged and lose interest in trying to obtain compensation.

¹⁷⁹ Commission, 27 July 2009, no. M80869, *not published*.

¹⁸⁰ Article 40*bis* of the Law of 1 August 1985 on tax measures and other measures.

¹⁸¹ Article 49 of the royal decree of 18 December 1986 on the Commission for financial aid to victims of deliberate acts of violence and rescuers.

¹⁸² Payoke, Annual report 2009, p.21-22, available (in Dutch) on: http://www.payoke.be/index%20-%20francais_htm_files/jaarverslag2009.pdf.

For victims no longer residing in Belgium, it is difficult, if not to say impossible in practice, to obtain compensation from abroad. In principle, they can entrust a Belgian lawyer with the defence of their rights. However, without proper guidance and information, it will be difficult for them to find their way; moreover, the financial costs that accompany the process form a major obstacle for the victim. Some victims who returned home in an advanced stage of the procedure, however, still receive legal assistance from the specialised support centre in order to follow through with the legal proceedings and the actual awarding of the compensation granted.

In light of these findings, it would be worthwhile to consider alternative possibilities for compensation so that all victims of human trafficking could be eligible to obtain compensation.

The various possibilities do not, however exist in a legal vacuum. The existence of possibilities for obtaining compensation is not in itself sufficient to allow victims to effectively have access to it. In order to ensure their true access, care must be taken that victims are informed at the outset of relevant opportunities in a language that they can understand. Assigning legal assistance through a lawyer as early as possible can help ensure that the victim has an accurate idea of the possibilities, chances of success and timeframe that can be expected.

Victims who are not interested in the official victim status and therefore do not want to assume the status will find themselves destitute. In theory, the victim may be assisted by a lawyer to defend his interests, but for many victims, the threshold remains too high if they do not receive legal assistance, such as that enjoyed by the victims who do choose to claim official victim status. We would both like to encourage reflection on ways that the rights and interests can be defended of those victims who do not deem it worthwhile to assume the official victim status, in its current form, and the way that this status could be adapted in order to encourage them to claim it.



External contribution : Human rights and trafficking – what does it mean for the victim? Three points for consideration

Dr. Jo Goodey – Head of Freedoms and Justice Department, European Union Agency for Fundamental Rights

Understanding what a human rights approach could mean

Trafficking in human beings is typically described as a form of ‘modern day slavery’, and, as such, it is embedded within a human rights framework. As a ‘modern’ response to trafficking, the EU’s 2011 Trafficking Directive refers to trafficking as ‘a gross violation of fundamental rights’ that is ‘explicitly prohibited by the Charter of Fundamental Rights of the European Union’, and adds that ‘The Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings’. Yet what this means in practice for victims, and what it means with respect to victim protection, as well as prevention and prosecution of trafficking, is something that cannot be readily addressed if we remain at an abstract level when referencing the law.

The 2011 Joint Commentary on the Directive by six United Nations agencies¹⁸³ – which takes a human rights-based approach – sets out to address what this actually means with respect to each article of the new Directive. As an example, while the language of a victim-centred approach is embedded in articles 11 and 12 in the Directive, which respectively address ‘Assistance and support for victims of trafficking in human beings’ and ‘Protection of victims of trafficking in human beings in criminal investigation and proceedings’ – what this could mean in practice is spelt out in the UN commentary with reference to a range of international guidelines that are accompanied by recommendations for action. At the same time as setting out what a human rights-based approach to trafficking is – a clear outline of what it isn’t is also needed. For example – whereas in the past victims could be granted a residence permit in their ‘host’ country should they be willing to cooperate with the authorities in testifying against their traffickers, the new Directive specifies that ‘Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial ...’; in this regard, taken together with the other articles in the legislation, the new Directive sees a significant improvement in recognition of victims’ rights – which should, if implemented in practice, lead to more effective protection of victims on the ground.

Yet the Trafficking Directive – like any legislation that is reactive to a human rights violation – can only hope to address the tip of the iceberg when it comes to the number of

¹⁸³ ‘Prevent, Combat, Protect: Human Trafficking’, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach (2011); http://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf

trafficking incidents that go unreported, and is not in a position to tackle the root causes of trafficking. Therefore, it is worth remembering that a rights-centred response to trafficking also needs to look at the causes of trafficking that lie with factors such as social and economic inequalities. In this regard – the importance of social and economic rights in the context of preventing trafficking and protecting those who have been trafficked cannot be over-stated.

Developing a victim-centred response

A human rights or victim-centred response to trafficking is one that puts the needs and rights of the victim centre-stage. In this regard, the prosecution of offenders has to be balanced alongside respect for and protection of victims. Arguably, earlier ‘crime fighting’ responses to trafficking in human beings, such as the Palermo Protocol that forms a component of the UN Convention on Transnational Organised Crime, were driven by a desire to fight organised crime and secure prosecution of offenders – but were not first and foremost grounded in a victim-centred response.

In the last few years the relevance of other branches of law to addressing trafficking – besides international and criminal law – has increasingly come to the fore; particularly given the growing recognition of trafficking for labour exploitation, as well as the phenomenon of internal trafficking both within the EU and within Member States. This does not necessarily mean that a victim-centred or human rights-based approach would fit more naturally with non-criminal law responses to trafficking – as the language of human rights can be alien to other areas of law too. However, with reference to a ‘holistic’ response to trafficking, as contained in the Directive, an important step has been taken to acknowledge the role of different approaches to combating trafficking; and with this can come increased recognition of a human-rights or victim-centred approach – one that sees the role of different actors and different approaches to more effectively combat trafficking. Here – the addition of the so-called fourth ‘P’ to the trafficking discourse – that is, ‘partnership’ – is a sign that the crime-fighting approach is now married to other approaches. The co-organisation of the 2011 EU Anti-Trafficking Day between different EU Agencies – including Europol, Frontex, Cepol *and* the European Union Agency for Fundamental Rights – is an indication that holistic and multi-agency partnerships have become normalised in the discussion of and responses to trafficking.

While there is evidence to suggest that a victim or human-rights centred approach to trafficking is still not the norm in practice, it can be said that the adoption of human rights language in new areas of policy and law is an indication that things are moving in the right direction – be this in the area of criminal law or through other channels. In other words, whereas in the past victims may have been used as ‘instruments’ for securing prosecution, today they are being recognised with respect to their needs *and* rights. However, a problem remains with the fact that implementation of legislation in practice – which sets out to centrally acknowledge victims – differs significantly both between and within EU Member States. As a result, the quality of victim protection and assistance received will depend very much on the Member State and the locality in question.

In the context of the EU, the reality of both EU and non-EU citizens being trafficked within the EU and within a single Member State means that responses to trafficking can benefit from an evidence-based understanding of the shifting realities on the ground. This means that established responses to trafficking – that have traditionally been based on victims coming from outside the EU, and have predominantly focused on trafficking for sexual exploitation – need to be re-visited if the needs and rights of diverse groups of victims are to be adequately reflected and addressed.

Taking rights off the page and measuring them in practice

The 2011 Trafficking Directive is a step in the right direction for victims of trafficking, and can be read in conjunction with other developments for victims of crime that the European Commission has recently developed – such as the ‘victims package’ and the proposed (at the time of writing) Victims Directive. Yet, good legislation on paper, including encouraging reference to ‘partnerships’ between different actors in the trafficking field, will mean very little unless its impact can be felt in practice for the benefit of victims.

Here, the approach of the UN Office of the High Commissioner for Human Rights (OHCHR), which has developed a human rights indicator framework, is a useful way of understanding how law – which presents human rights standards for duty bearers to uphold – can be measured in policy and practice terms. In other words – when asking how a human rights approach can lead to better protection of trafficking victims, there are tools that can assist us when attempting to answer this question. By looking at indicators within a framework of ‘structure’ (legislation), ‘process’ (policy) and ‘outcome’ indicators (numbers on the ground; such as residency permits awarded to victims), the OHCHR approach can show where and whether law is impacting in practice. One stumbling block for this assessment in the field of trafficking is the continuing lack of robust and comparable data between and within Member States. The 2009 report by the European Union Agency for Fundamental Rights (FRA) on ‘Child Trafficking in the European Union’¹⁸⁴, which was accompanied by a FRA report on the development of indicators concerning the rights of the child – part of which focused on indicators in the area of child trafficking¹⁸⁵ – serves to underline the need for data to inform policy and legislative responses to trafficking. The appointment of the EU Anti-Trafficking Coordinator, and of national rapporteurs on trafficking and equivalent mechanisms at Member State level, is another step towards enhanced and harmonised data collection in the years to come. Good data is essential if the impact of legislation that sets out to address trafficking, and to protect victims, can be measured in practice¹⁸⁶.

¹⁸⁴ European Union Agency for Fundamental Rights (2009) Child Trafficking in the European Union: Challenges, perspectives and good practices; http://fra.europa.eu/fraWebsite/attachments/Pub_Child_Trafficking_09_en.pdf.

¹⁸⁵ European Union Agency for Fundamental Rights (2009) Developing indicators for the protection, respect and promotion of the rights of the child in the European Union: Summary Report; (http://fra.europa.eu/fraWebsite/attachments/RightsOfChild_summary-report_en.pdf).

¹⁸⁶ Goodey, J. (2008) Human Trafficking: Sketchy data and policy responses, *Criminology and Criminal Justice* vol.8, pp.421-442.

In 2013 the FRA will be undertaking new research in the area of severe forms of labour exploitation – which follows research published by the Agency in 2011 on the situation of irregular migrants in the EU, and the experiences of particular groups such as domestic workers (predominantly women) – some of whom may have been trafficked. By looking at existing legislation and policy responses, and undertaking fieldwork on the ground with different actors at Member State level, the Agency will use a socio-legal approach to better understand a human-rights abuse; the results of which have the potential to be looked at with reference to the OHCHR’s structure-process-outcome framework for measuring human rights abuse and compliance. Herein – the need for data to populate this framework, and for a multi-disciplinary approach to better comprehend the phenomenon, are key components.

Finally, when talking about a human rights-based approach, we are essentially talking about a victim-centred approach to trafficking. This is one where the victim’s needs, which are sometimes addressed as rights, are considered to lie at the heart of our responses to trafficking. Since the growing recognition or ‘re-discovery’ of trafficking in the EU in its various forms – from sexual through to labour exploitation – the need to place the victim more centre-stage has come to the fore in both legislative and policy responses. In sum – the provision of data to show ‘what works’ for victims, or what works with respect to human rights compliance, is as essential now as it ever was.



PART II:

**EVOLUTION OF THE PHENOMENON OF HUMAN
TRAFFICKING AND THE FIGHT AGAINST IT**

CHAPTER 1: RECENT DEVELOPMENTS IN THE LEGAL AND POLICY FRAMEWORK

In this chapter, the Centre will present the latest developments in the legal and political context regarding human trafficking and smuggling at the European level as well as within Belgium. At the Belgian level, it should be noted that the legislative developments discussed for the most part only indirectly concern human trafficking or smuggling. In addition, as was the case last year, the Centre also provides an overview of the parliamentary work in Belgium. In this light, the second part of the report of the Senate working group on ‘human trafficking’ presented on 27 March 2012, is of particular interest.

1. Developments in the European legal and policy framework

At the European level, the year 2011 saw the adoption of directive 2011/36/EU on human trafficking, which was extensively described in our previous annual report.¹⁸⁷ In addition to this directive, the Commission recently presented the strategy of the European Union (EU) for the period 2012-2016.¹⁸⁸ The goal of the strategy is to provide a coherent framework for existing and planned initiatives, to set priorities, fill gaps and thus flesh out the directive adopted in 2011. The strategy defines five priorities on which the EU will focus:

1) Identifying, protecting and assisting victims of trafficking

The Commission emphasises the importance for Member States to establish official national referral mechanisms that are operationally effective.¹⁸⁹ The strategy also includes the development, by 2015, of a European model for transnational referral. This is a recommendation that the Centre has repeatedly made in recent years.¹⁹⁰ It is therefore cause for celebration that the EU is supporting this objective. In fact, currently, when the victims cross borders, addressing the problems (providing protection for the victim in a

¹⁸⁷ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on the prevention of human trafficking and the fight against this phenomenon, as well as the protection of victims and replacing Council Framework Decision 2002/629/JAI, *J.O.*, L101 of 15 April 2011, p.1-11. See 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*, p.13-22.

¹⁸⁸ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU strategy for the eradication of human trafficking for the period 2012-2016*, 19 June 2012, COM(2012)286 final.

¹⁸⁹ Note in this regard that Belgium already has a well-established, under the Circular of 26 September 2008 on the implementation of multidisciplinary cooperation for the victims of human trafficking and/or certain aggravated forms smuggling of human beings, *Moniteur Belge* [Belgian Official Gazette], 31 October 2008, even if certain shortcomings are still experience in the field.

¹⁹⁰ See in this regard the Annual Reports. 'Trafficking in and smuggling of human beings 2008, *Enlisting people and resources to combat the phenomenon*, p.110 (recommendation 5) and 2007, p.118 (recommendation 5). Complete versions of these reports are only available in French and Dutch.

different state than the one in which she has been exploited...) is done on a case-by-case basis, which is not a desirable situation.

Another focus of the strategy is the protection of child victims of trafficking, particularly the development of a model for good practices on the role of guardians, something which currently varies across Member States. We must also emphasise the importance for the victims of receiving clear information on their rights, which is still a problem in many Member States.

2) Stepping up the prevention of trafficking in human beings

To do this it is necessary to identify and reduce the demand, particularly by means of research funded by the Commission. Another valuable step concerns cooperation with the private sector by means of creating a European coalition of businesses against human trafficking, scheduled for 2014. This should improve the cooperation with companies to meet the new challenges that arise and to discuss measures for preventing human trafficking, especially in the high-risk sectors. Finally, awareness raising activities, particularly among vulnerable groups, will be launched.

3) Increased prosecution of traffickers

The strategy emphasises the importance of creating national interdisciplinary enforcement units, who can actively conduct financial investigations and strengthen transborder police and judicial cooperation, as necessary by means of joint investigation teams. These are points which the Centre itself has highlighted on several occasions in previous annual reports.¹⁹¹

4) Enhanced coordination and cooperation among key actors and policy coherence

This priority should be achieved by strengthening the European network of national rapporteurs or equivalent mechanisms, through the coordination activities of the EU external policy and by the promotion and creation of a platform for civil society. Given the diversity of projects funded by the EU, it has also seemed important to review these in order to ensure coherent policies. Finally, other planned actions include strengthening the fundamental human rights in the anti-trafficking policies and encouraging interdisciplinary training.

¹⁹¹ See in this regard Annual Reports: Trafficking in and smuggling of human beings 2009, *In a haze of legality*, p.133-134 (recommendation 7) ; 2008, *Enlisting people and resources to combat the phenomenon*, p.114 (recommendation 10) and 2007, *Public Policy as seen by a National Rapporteur*, p.118 (recommendation 5). Complete versions of the 2007 and 2008 reports are only available in French and Dutch.

5) Increased knowledge of and effective response to emerging concerns related to all forms of trafficking

This priority encompasses multiple projects: ensuring the gathering of comparable and reliable data at the EU level, improving the knowledge on the gender dimension of trafficking and vulnerable groups, better detection of the recruitment over the Internet and through social networks in order to target trafficking for purposes of labour exploitation. This last action should be carried out particularly through a study of the case law in the Member States, the development of a best practice guide for public authorities on monitoring and control of temp work agencies and intermediary agencies as well as strengthening the cooperation with the department of labour inspection, social affairs, health, safety and fisheries in order to ensure more effective detection of victims.

2. Developments in the Belgian legal and policy framework

2.1. At the legislative level

2.1.1. Human trafficking and smuggling

In Belgium, in the course of 2011 and early 2012 there have been no specific legislative developments in the area of human trafficking and smuggling. However, it should be noted that the law of 26 November 2011 on the abuse of vulnerability¹⁹² made minor changes to the wording of aggravating circumstances in the abuse of vulnerable situations for offences of human trafficking and smuggling.¹⁹³ This modification was made in order to harmonise all of the provisions of the Criminal Code on this point. The particularly vulnerable situation has been replaced by the ‘simple’ situation of vulnerability (by deleting the word ‘particularly’) and age has been added as a circumstance of vulnerability¹⁹⁴. Although we view this amendment as matter of details, questions may nevertheless be raised as to the interpretation of the issue of age when there is already another aggravating circumstance targeting minors.

¹⁹² Law of 26 November 2011 amending and supplementing the Criminal Code to criminalize the abuse of the weak position of people and to extend the protection of vulnerable individuals against criminal abuse, *Moniteur Belge* [Belgian Official Gazette], 23 January 2012.

¹⁹³ See articles 433septies, 2° of the Criminal Code and 77quater, 2° of the Law of 15 December 1980.

¹⁹⁴ This aggravating circumstance was previously formulated as follows (our emphasis):

'the offence under article 433quinquies, § 1, is punishable by imprisonment of ten to fifteen years and a fine of one thousand to one hundred thousand euros in the following circumstances: (...)

2° when it is committed by abusing a person's **particularly** vulnerable situation because of his illegal or precarious administrative situation, precarious social situation, state of pregnancy, illness, infirmity or physical or mental disability such that the person has no real and acceptable alternative but to submit to the abuse;

(...)'.

It has been amended as follows:

2° when it is committed by abusing a person's vulnerable situation because of his illegal or precarious administrative situation, precarious social situation, **his age**, state of pregnancy, illness, infirmity or physical or mental disability such that the person has no real and acceptable alternative but to submit to the abuse'..

2.1.2. Main contractors

Although it is not specifically connected to human trafficking, we should mention the adoption, via the Programme Law (I) of 29 March 2012, of a system of joint and several liability for main contractors for payment of the social security contributions and tax and wage debts.¹⁹⁵ This section of the Programme Law forms one of the first achievements of the present government in the area of measures intended to combat fraud. The coalition agreement also establishes this fight as one of the priority areas for action. We therefore have reason to be pleased that such steps have been taken in this direction.

Before discussing the system adopted in greater detail, other draft laws should be mentioned. In the context of the transposition of the ‘sanction’ directive¹⁹⁶, the government has adopted two draft laws which would make the main contractor who has issued the order, who makes use of intermediaries employing illegally staying alien workers, jointly and severally liable.¹⁹⁷ At the time of the completion of this report (June 2012), these draft laws have not yet been tabled in Parliament.

Other measures in the coalition agreement include the planned adoption of measures to punish the main contractor issuing the order who knew or should have known that the intermediaries involved were guilty of human trafficking. The Centre and other actors have been calling for such legislation for many years. However, this project has not yet been realised concretely.

However, the measures taken in the framework of the Programme Law already represent an important step that can be applied, where appropriate, in cases of human trafficking. Title 7 of the Programme Law (I) effectively establishes joint and several liability for the payment of the remuneration, whilst extending the existing joint and several liability for social security and tax debts.¹⁹⁸ This is the realisation of one of the key points of the coalition agreement which aims ‘*in consultation with the competent Joint Committee, to gradually set up a mechanism for joint and several liability in high-risk sectors for the main contractors placing orders in relation to all the co-contractants, with the possibility of specific conditions depending on the sectors.*’¹⁹⁹ These measures are intended to combat the fraudulent practices of suppliers of manual labour. Frequently, contractors or subcontractors commit Social Security and tax fraud, but it is not possible to penalise

¹⁹⁵ See articles 59 to 78 of Titre 7 of the Programme law (I) of 29 March 2012, *Moniteur Belge* [Belgian Official Gazette], 6 April 2012.

¹⁹⁶ Directive 2009/52/CE of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, *O.J.C.E.*, 30 June 2009, L168/24. This directive is to be transposed by 20 July 2011.

¹⁹⁷ Draft bills passed en Council of Ministers of 11 and 25 May 2012.

¹⁹⁸ Article 30*bis* of the law on the NSSO, article 400 of C.I.R., see the report of 8 March 2012 drawn up on behalf of the justice committee on the draft Programme-law (I), *Doc. parl.*, Chambre, session 2011-2012, Doc 53-2081/013, p.3.

¹⁹⁹ Point 2.1.9 of part II (socio-economic) of the coalition agreement of 1 December 2011, p.100.

them because they change names too quickly or vanish into the woodwork.²⁰⁰ Up until now, however, the responsibility of the main contractors ordering the work for the payment of the Social Security contributions has only been invoked in the construction sector. The scope of the joint and several liability and the obligation of withholding tax has now been extended in high-risk sectors, particularly by ensuring a more effective collection of the employer contributions.

The recovery of debts in application of joint and several liability is based on the system of subsidiary liability. This makes it possible to challenge ‘empty shell’ companies in the chain set-ups of subcontractors or the use of bankruptcy to evade these obligations. This approach entails that when a payment in application of joint and several liability is outstanding or has only been partially paid, the contractors or subcontractors set up upstream of the offending company shall be held jointly and severally liable for the debt in question.²⁰¹

A similar system has been introduced with respect to tax debts.

Finally, and this is presumably the system that is most relevant for human trafficking, joint and several liability with regard to payment of wages (in the case of non-payment of wages by a contractor or subcontractor) has also been introduced. Here, it is not a case of subsidiary responsibility, but responsibility in a chain.²⁰² A new chapter has been introduced into the law of 12 April 1965 on the protection of remuneration, introducing the joint and several liability of the main contractor placing the order, and the contractors and subcontractors within a production chain, with regard to a contractor or subcontractor who, within this chain system, is located downstream, who significantly underpays the workers.²⁰³ This system means that multiple persons are liable for the payment of the remuneration due to one or more workers. It is intended to oppose the distortions of competition that are caused by chains of subcontracting whereby a subcontractor, in violation of provisions for criminal offences, pays workers below the mandatory minimum rate. This is why a central role is assigned to the social inspection departments who are the sole actors who can activate the joint and several liability, by means of issuing a formal notification, solely concerning debts of unpaid wages and exclusively in the case of serious breach of the obligation of the payment of the remuneration.²⁰⁴

During a hearing of the Committee on Social Affairs, the Secretary of State for the fight against social and fiscal fraud noted that cases of human trafficking will be taken into

²⁰⁰ Explanatory memorandum of the draft Programme-law (I) of 24 February 2012, *Doc. parl.*, Chambre, session 2011-2012, Doc 53-2081/001, p.32.

²⁰¹ *Ibid.*, p.33.

²⁰² Report of 16 March 2012 drawn up on behalf of the social affairs committee on the draft Programme-law (I), *Doc.parl.*, Chambre, session 2011-2012, Doc. 53-2081/017, p.35.

²⁰³ Explanatory memorandum on the draft Programme-law (I) of 24 February 2012, *op.cit.*, p.42.

²⁰⁴ Report of 8 March 2012 drawn up on behalf of the justice committee on the draft Programme-law (I), *op.cit.*, p.3-4.

account in the future text of the law, on the occasion of the transposition of European directive 2011/36/EU on human trafficking.²⁰⁵

2.1.3. *Unaccompanied foreign minors*

One last important legislative development of note concerns the establishment of a legal framework for the residence of unaccompanied minors not seeking asylum. This special residence status, previously stipulated in a ministerial circular²⁰⁶, has now been defined in articles 61/14 to 61/25 of the law of 15 December 1980 on access to the territory, residence, establishment and expulsion of foreigners²⁰⁷ and in articles 110*sexies* to 110*undecies* of the Royal Decree of 8 October 1981.²⁰⁸

Again, without being directly linked to human trafficking, it may nevertheless be the case that minors victims who are not eligible for the ‘human trafficking’ procedure may be covered by these new provisions. In particular, this could be the case for minors victims who are not asylum seekers and who are unable to cooperate with the judiciary.

The new provisions incorporate the full system established by the circular, as well as adding certain new elements.²⁰⁹

As in the past, the minors in question here are unaccompanied foreign minors (hereafter: UFM) who have been definitively identified as such by the guardianship service (in the sense of the Programme Law on the guardianship of unaccompanied foreign minors of 24 December 2012) and who have not initiated any other procedure for protection, authorisation or permission for residence or establishment in Belgium or who have been previously rejected.²¹⁰ This definition does not, for example, encompass the UFM who are EU-citizens.

It is the guardian of the UFM who submits the residence application. The minor is then, in the context of the examination of the application, interviewed in the presence of his guardian and an interpreter, as necessary. Two important innovations are worthy of note: the possibility for the UFM to have a lawyer present during the interview if the guardian requests it and the preparation of a written report of the interview.

²⁰⁵ Report of 16 March 2012 drawn up on behalf of the social affairs committee on the draft Programme-law (I), *op.cit.*, p.36.

²⁰⁶ Circular of 15 September 2005 on the residence of unaccompanied foreign minors, repealed by the Circular of 14 November 2011, *Moniteur Belge* [Belgian Official Gazette], 28 November 2011.

²⁰⁷ These new articles were introduced by the law of 12 September 2011 amending the law of 15 December 1980 on access to the territory, residence, establishment and removal of aliens, for the purpose of issuing a temporary residence permit to an unaccompanied foreign minor, *Moniteur Belge* [Belgian Official Gazette], 28 November 2011.

²⁰⁸ These new articles were introduced by the royal decree of 7 November 2011 amending the royal decree of 8 October 1981 on access to the territory, residence, establishment and removal of aliens, *Moniteur Belge* [Belgian Official Gazette], 28 November 2011.

²⁰⁹ For an in-depth analysis of the new provisions, see C. GHYMERS, 'Le séjour des mineurs étrangers non accompagnés enfin consacré dans la loi', *J.D.J.* 2012, no.312, p.36 à 42.

²¹⁰ C. GHYMERS, *op. cit.*, p.36.

The purpose of the residence application and its review by the Immigration Office is to find a long-term solution for the UFM. This can take three forms:

- family reunification in a country where the parents legally reside;
- return to the country of origin or the country where the UFM has been accepted to reside with guarantees of follow-up and appropriate care;
- authorisation to stay in Belgium.

The challenge is therefore to determine, in each case, what is the long-term solution that is in the best interests of the child, which is not always easy in practice. On this basis, the Immigration Office will take a decision regarding the residence of the minor. This may be an order to deport them to another country (if this is the long-term solution selected), or the issuance of a residence document for six months (if a long-term solution has not been found) or for one year (if the long-term solution is in residence in Belgium).²¹¹ Following a period of three years from the issuance of the one-year residence permit, the Immigration Office shall grant a permanent residence document.

2.2. At the political level

2.2.1. New action plan for the fight against the trafficking and smuggling of human beings 2012-2014

The Ministers of Justice and the Secretary of State for migration and asylum policy submitted to the Council of Ministers of 22 June 2012 a new Action Plan 2012-2014 for the fight against the trafficking in and smuggling of human beings. The Interdepartmental Unit for the coordination of the fight against the trafficking in and smuggling of human beings is responsible for its execution.

In reality, there is little that is new in this plan compared to the previous action plan, and it essentially involves a continuation of the work already underway or not yet realised. However, in an attempt to take a more pragmatic approach, it includes a smaller number of projects, which are more realistic in nature. The new action plan thus contains 19 proposals instead of 26 as previously.

We thus find the main lines of the legal and regulatory aspects, the preventative efforts, the protection of victims, investigation and prosecutions and lastly, the coordination and gathering of information²¹², which we shall briefly review below.

²¹¹ On differences of interpretation concerning the immediate granting a one-year residence document, see C. GHYMERS, *op.cit.*, p.39-41.

²¹² The full action plan is available on the website of the Department of Criminal Policy on the following link: http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_C_MH_FR_2012.pdf

a) Legislative and regulatory aspects

The chief points for attention concern the (potential) adaptation of the law of 10 August 2005 on human trafficking in accordance with the new European directive 2011/36/EU on human trafficking and the adoption of a text on the punishment of main contractors who contract work through intermediary suppliers engaged in human trafficking. This last point was already part of the previous action plan. As we have seen above, the current government has made the fight against social and tax fraud one of its priorities and measures have already been taken in this area. We therefore hope that this action plan can be implemented rapidly.

b) Preventative aspects

As in the previous action plan, the emphasis is on prevention campaigns and the fight against child pornography on the Internet. Thus, actions, particularly including awareness raising among the social services, are planned.

c) Protection of victims of human trafficking

The proposals include the drafting of simplified tools for actors in the field, on the detection of victims. The evaluation of the Circular of 26 September 2008²¹³ which details the multidisciplinary cooperation in fact revealed that it was too long and not sufficiently practical. It should be noted in this regard that the evaluation of the circular on unaccompanied foreign minors (UFM) has not yet been finalised (this is among the points for attention in the action plan). The awareness raising among guardians of the issue of human trafficking, as well as training within the Fedasil centres are other proposals of the action plan designed for better detection of UFM. Finally, as in the previous action plan, there is a need to provide assistance for the official recognition and accreditation of specialised support centres for victims.

d) Investigation and prosecution

As in the previous action plan, the emphasis is on the importance of training and the exchange of good investigating practices among both police and judiciary, as well as on the importance of financial investigations.

e) Coordination and gathering of information

The action plan builds on the work done by the Interdepartmental Unit. In addition to changes in its functioning are planned: a formal integration of the specialised support centres into the mechanism for interdepartmental coordination and the representation of the Board of Prosecutors General in the office of the interdepartmental unit.

²¹³ Circular of 26 September 2008 on the establishment of multidisciplinary cooperation concerning the victims of human trafficking and/or certain aggravated forms of human smuggling, *Moniteur Belge* [Belgian Official Gazette], 31 October 2008.

Finally, the issue of data collection (which remains a stumbling block) depends on effective functioning of the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (CIATTEH). Unfortunately, no progress whatsoever has been made on this point, which was already highlighted in the previous action plan, despite the fact that data collection has been marked as a priority, particularly at the European level. While Belgium is a leading country in the area of combating human trafficking, the collection of reliable and comparable data still remains a weak point in its policy.

2.2.2. A national parliament that is alert to human trafficking and smuggling

2.2.2.1. Senate working group on ‘human trafficking’

On 1 December 2009, the Senate Committee on the Interior and Administrative Affairs decided to create a working group on human trafficking. On account of the premature end of the previous legislature the working group ‘human trafficking’ was unable to complete its work, and could not make any recommendations. Shortly before the dissolution of the Federal Parliament, however, it was decided to publish a report on the hearings conducted so that this could serve as a basis for possible further work.²¹⁴ In the previous annual report, the Centre presented a summary of this report, which was published on 4 May 2010.²¹⁵

In May 2011, the current Senate Committee on the Interior and Administrative Affairs decided to create a new working group on human trafficking and to continue this work. The working group was given the task of drawing up a status report on the current situation regarding human trafficking in Belgium, also based on the report of the Working Group on Human Trafficking of 4 May 2010. To this end, it was able to undertake an analysis of the various forms of human trafficking, including the associated phenomena such as illegal labour and child labour, insofar as these are connected to human trafficking. In addition, the legal provisions for the prosecution of human trafficking and the protection of victims of forced prostitution were also examined. Particular attention was also paid to the material resources available to the police and prosecutors for combating human trafficking, as well as the role of the social inspection services. The working group was also asked to examine in greater detail the international collaboration, which was not sufficiently covered in previous hearings. This work resulted in the report of 27 March 2012.

²¹⁴ Committee for the Interior and Administrative Affairs, report on human trafficking, Belgian Senate, session 2011-2012, 27 March 2012, no. 5 – 1073/1.

²¹⁵ 2010 Annual Report. ‘Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*’, p 28-31.

In this second series of hearings, the following speakers took the floor: the Minister of Justice, representatives of the Minister for Employment and Equal Opportunities, the Samilia Foundation, representatives from the academic world, representatives of the European Commission, the International Organization for Migration, Eurojust and Europol, the human trafficking Department of the Federal Judicial Police and the Centre.

The report lists the strengths and weaknesses at the political and legislative level, in order to support a critical analysis of the policy. This has made it possible to uncover many stumbling blocks at the political and legislative level, an area on which the Centre has also focused its efforts.

The report is concluded with a series of recommendations in order to address these stumbling blocks and to provide an impulse for the adaptation of the existing legislation. Given the comprehensive nature of the two reports and the resulting recommendations, we shall present, in the following box, only a selection of these recommendations that highlight the link with previous recommendations of the Centre.

Recommendations resulting from the reports of the Senate Working Group on Human Trafficking

The Senate report concludes with a series of recommendations based on the reports of these working groups. It includes both general and more specific recommendations. The latter are addressed to the specific actors or have to do with a highly specific issue.

Broadly speaking, the Committee calls for more cooperation in Belgium between all those actors who are essentially working side-by-side in the areas of prevention, protection and prosecution. In addition, the Committee emphasises the fact that the fight against human trafficking must remain a top priority for the government.

Awareness raising

The potential victims of human trafficking can only be detected when the first-line players have access to tools to do this. The Commission calls for greater **awareness raising** among the first-line actors such as the social security inspection service, the staff of closed centres for asylum seekers, medical staff, and local police departments. The Centre also supports this type of recommendations on awareness raising.

Also at the level of the judiciary, the Commission calls for greater awareness raising, for example by means of accelerated training of magistrates in the new training cycle that the Board of Prosecutors General and the Judicial Training Institute have developed.

Investigation and prosecutions

The Commission also makes a number of recommendations aimed at **improving the process**, both in terms of interdisciplinarity and at the level of the police and the

judiciary.

Particularly, the Committee recommends inviting the Federal Public Prosecutor's Office, in the case of investigations extending beyond the local level, to better fulfil its role as coordinator of the cases within different judicial districts in the fight against human trafficking, certainly when it is a question of operations involving complex constructions. The Committee also particularly accents the role of facilitator for the collaboration of the federal prosecutors in the context of international investigations. In the past, the Centre has repeatedly noted the lack of initiative taken by the Federal Public Prosecutor's Office in fulfilling this role as coordinator. However, since then it has observed that the situation has improved and that the federal prosecutors are more actively playing this role. The Centre continues to follow this development closely.

At the level of the police, the Committee recommends greater emphasis on the fight against human trafficking in the zonal safety plans. For the same reason, the Centre has called upon the newly elected mayors to pay attention at the local level to crimes of human trafficking and to include this in the new zonal safety plans after the municipal elections. Indeed, the local police plays an indispensable role in the detection of crimes and victims of human trafficking. This is not only true of cases of sexual exploitation, but certainly also applies for cases of labour exploitation.²¹⁶

In addition, the Committee has also called for the inclusion of the fight against human trafficking among the priorities of the new National Safety Plan of the police and to increase the capacity of the proactive investigative teams, specifically the teams of the Federal Judicial Police in Brussels. Within the National Safety Plan 2012-2015 which was adopted by the Council of Ministers on 1 March 2012, human trafficking and smuggling is included as one of the priority crime phenomena.

European social inspection service

The Committee considers it desirable for real international cooperation to be established between the Labour Inspection services within the Member States. It is clear from the report that there is a need for effective cooperation platforms for the Labour inspection services, after the example of those already in place in the area of international judicial and police cooperation. The Minister of Employment emphasised that it is not enough for Belgium to develop tools and databases to map the phenomenon. The fight against the methods used by suppliers of manual labour to operate on a global and cross-border basis in fact requires not only more intensive action and investigation in the field, but also communication of information between the competent services within the various Member States. That is why the Committee is calling for an autonomous European social inspection service, which could undertake joint actions between multiple Member States (particularly for fighting the use of bogus self-employed status and abuses resulting from the secondment of workers). This could be a type of social Interpol bringing together all of the European administrations concerned. Such a recommendation has been made by

²¹⁶ See also later in this report, Part 2, Chapter 3, point 2.1. and recommendation 5.

the Centre in the past as well.

National rapporteur

Regarding the role of national rapporteur, the Committee notes that it may be appropriate to assign the Centre the role of National Rapporteur on Human Trafficking, in accordance with article 9 of the directive 2011/36/EU. The Centre points out that since 1995, on the basis of its statutory mission, it can be considered as having acted as a national rapporteur *avant la lettre* and as *de facto* national rapporteur for Belgium. This is why the Centre hopes to be formally recognised in this role.

Victims of human trafficking

With regard to **the protection of victims**, the Committee proposes working, in the context of control operations and the judicial process, using a national list of interpreters or a list of interpreters who can work in different judicial districts. Strengthening the reliability of the interpreters would help to better detect the victims.²¹⁷

The Centre has also considered the issue of interpreters on numerous occasions and recommends at the very least drawing up a national list of interpreters who are available and reliable. Currently, this is only done at the level of the districts. When there may be suspicions regarding the reliability of an interpreter, this is not always centrally recorded at the national level.²¹⁸

The Committee also recommends conducting a broad discussion on the issue of **the attractiveness of the official status of victim**. Victims originating from Eastern Europe are less likely to report the crimes because they often feel that they are in a better situation than they would be in their country of origin, and wrongly believe that they no longer need the special status of victim of human trafficking now that the borders have been opened. One of the issues on which this annual report focuses is the question of whether the victim status in its current form is still appropriate to the needs of current victims. That is why we scrutinised - intended as an invitation for reflection - an aspect which may be of interest to the victims of human trafficking and for which they are eligible: the aspect of compensation.

In this context, the Centre emphasises the value of quality legal assistance provided in a timely fashion and suggests considering the more rapid designation of a lawyer for the victims who have made a statement or filed a complaint. More specifically, the Centre proposes that the appointment of a lawyer be provided before the expiration of the first certificate of registration issued in the context of the human trafficking procedure.²¹⁹ The Committee also believes that a lawyer should be appointed for the victim at the time that

²¹⁷ The Centre made such a recommendation in previous annual reports. See the 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.11.

²¹⁸ See also later in this report Part 2, Chapter 3, point 3 and recommendation 18.

²¹⁹ See also recommendation 10.

she assumes the official status of victim. This would ensure the defence of her rights as victim by means of filing civil suit, particularly when the victim has returned to her country of origin, in such a way that she can continue to assert her rights.

In the previous annual reports, the Centre has already stressed the importance of structural monitoring of the policy through the parliamentary forum. That is why the Centre is pleased that the Senate has taken such an initiative and has extended it in the context of the new legislature. To fully take advantage of the work carried out by the human trafficking working group, it is therefore necessary for the various actors, both at the level of policy and in the field, to work in line with the recommendations that have been made and that their realisation be monitored. The Parliamentary questions and interpellations may already offer a way to keep the focus on this work.

2.2.2.2. Parliamentary questions and interpellations

As in the previous annual report, we shall present here a selection of some of the issues that have been raised during the parliamentary work. These parliamentary questions reflect current concerns, the challenges that accompany the various facets of the phenomenon of human trafficking and smuggling as well as the need for an interdisciplinary approach.

The interpellations concern both structural problems and issues related to pending cases and prosecutions. They reflect the trends in the area of human trafficking and smuggling which the Centre is also exploring. These questions and interpellations are often based on the findings in the annual reports of the Centre.

The interdisciplinary aspects of the problems are reflected in the questions and interpellations submitted to the various ministers. In fact, these are not limited only to judicial affairs, but also apply to the competencies of the current Ministers of the Interior, Employment and Equal Opportunity, Foreign Affairs or the Secretaries of State for Migration and Asylum Policy and the Coordination of the fight against Fraud.

a) The objectives of the action plan for the fight against human trafficking and smuggling 2008-2011

During the parliamentary work, several questions were asked regarding the realisation of certain goals established in the action plan for the fight against the trafficking in and smuggling of human beings 2008-2011. As mentioned above, an action plan against human trafficking and smuggling was drawn up in June 2012.

One of these questions concerned the feedback to investigators. The Action Plan at the time specifically proposed **providing feedback to investigators on the trial and conviction** of the perpetrators of crimes of human trafficking, particularly on the elements challenged by the defence, the arguments used, gaps and best practices for investigation. According to the Minister of Justice, this goal was taken into account in two ways:

- 1) The directive on the policy for investigation and prosecutions in the area of human trafficking (COL 01/07) provides various ways to circulate information between prosecutors and police, specifically through plenary meetings, organised jointly by the experts network of the Board of Prosecutors General and the Criminal Policy Department, attended by the various interested parties.
- 2) The COL 01/07 also provides that the liaison magistrate at the court of first instance specialised in the area of human trafficking organises, at least once every three months, a coordination meeting which the inspection services are invited to attend as well as the police services active in this area. The organisation of these meetings should lead to an effective exchange of information with the investigators and should provide the opportunity to exchange best practices which can benefit the judicial investigations.²²⁰

The Minister also refers to meetings of the district committees. These are chaired by the Labour Auditors for each judicial district and ensure aspects such as the exchange of information with the social inspectors and police working on the ground in the context of cases of labour exploitation. For this reason the Minister considers that these various types of meetings can provide considerable added value for all actors in the field.²²¹

b) Appropriate attention for underaged victims of human trafficking

During the parliamentary proceedings, various questions have also been raised on the subject of minors victims of human trafficking. One of these questions was asked in the wake of the previous annual report²²² in which the Centre already emphasised that the specific situation of underaged victims was not receiving sufficient attention, neither in terms of detection or support. The underaged victims of human trafficking need assistance that is suited to their needs. The conditions for the granting of the official victim status also need to be approached differently than in the case of adults.²²³

The Minister noted that the COL 01/07 concerning the policy on investigation and prosecution of human trafficking would be completed with specific indicators concerning the trafficking of children as soon as the legal adaptations concerning the transposition of the directive 2011/36/EU are realised. It is only after this transposition that the COL 01/07 can be adapted. The Minister emphasised that the Department of Criminal Policy is currently conducting an assessment of the problems in the detection and orientation of unaccompanied foreign minors who are victims or potential victims of human trafficking. Once the results of this assessment are known, recommendations will be made to improve

²²⁰ *Q. and A. Senate*, 9 June 2011 (Qu. no. 5-2507, B. Anciaux).

²²¹ *Q. and A. Senate*, 9 June 2011 (Qu. no. 5-2507, B. Anciaux).

²²² 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 130.

²²³ In the report of the working group of Trafficking in the Senate mentioned in above, the Committee also believes that unaccompanied minors should be subject to a special procedure separate from the procedure for adult victims. Consideration should be given to an adaptation of the criteria for granting the status of victim of trafficking for minors as well as on the issue of a residence permit upon arrival in reception centers.

the specific situation of underaged victims. According to the Minister of Justice, the resulting recommendations will be made in the course of 2012.²²⁴

c) Awareness raising among the police

The awareness raising among first-line services is an important key to the detection of potential victims of human trafficking. The Centre has repeatedly emphasised the importance of raising awareness among the staff of the local police, the closed reception centres, the social workers, medical staff, social security inspectors, etc.

In particular following certain observations cited in the 2009 annual report²²⁵, parliamentary questions were also submitted concerning the awareness raising of police officers during basic training and on the subject of the role of the federal and local police in the fight against human trafficking.

With regard to training, the Minister for the Interior stated that it is essential for police officers to be made aware already during basic training of the issue and of the detection, in the course of carrying out their daily tasks, of potential victims of human trafficking. The central human trafficking unit developed a project in collaboration with the training directorate of the federal police to harmonise the training modules given during basic training at each provincial police academy. Meanwhile, special sessions have already been organised at two police academies. In addition, the central human trafficking unit publishes a monthly bulletin, through the information exchange channels per district, describing the developments in the phenomenon on a website accessible to all police officers.²²⁶

d) Partnership

Regarding the collaboration between the different authorities in the fight against human trafficking, the Minister for the Interior stated that this is governed by the COL 01/07. The latter provides for periodic meetings, in principle, four times a year, with all of the parties involved in each judicial district: the Contact Prosecutor of the Public Prosecutor's Office, Labour Auditor, the Federal Judicial Police, the central human trafficking unit of the Directorate Judicial Police of the Federal Police, the investigation services of the local police the Social Security inspection services and the Social Law Inspectorate. Together, they provide an update on the situation in the district, on the plan to control operations and on the ongoing or upcoming cases concerning isolated incidents or more organised crime. The central human trafficking unit of the Federal Judicial Police provide support for the coordination of police initiatives.

After the model of the cooperation between the local police in Ghent and four Bulgarian police officers in the fight against human smuggling and clandestine work, the question

²²⁴ Q. and A. Senate, 9 January 2012 (Qu. no.0159, R. de Bondt).

²²⁵ 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*'.

²²⁶ Q. and A. Chambre, 11 February 2011 (Qu. no. 300, M. Delacroix-Rolin).

was raised whether other cities had also cooperated with foreign police departments. The Ministry of the Interior reported that she was not aware of other initiatives taken by local police, but that she is always willing to support such initiatives. The project in Ghent was based on the possibilities for police cooperation within Europe proposed by the Prüm Convention. The Minister indicated that cooperation led to a rapid exchange of information with the Bulgarian police in specific cases and, with regard to people of Bulgarian origin, open communication with the Bulgarian community in Ghent, which, according to the Minister contributed to greater trust, between this population group and the local police and operational support on the ground.²²⁷

e) The role of the social inspection services

The social inspection services are among the key actors in the detection of crimes of human trafficking. Several inspection services have inspectors who have already built up solid experience in the field of human trafficking, whilst other services still require awareness raising about the detection of victims of human trafficking. The inspection services are faced with complex structures and new forms of cross-border fraud. As these services therefore are not always equally alert to the potential indicators of human trafficking, the Centre has already noted in the past that it is also important to raise awareness on this issue.

Following the contribution of representatives of the social inspection during the hearings of the human trafficking working group of the Senate committee for the Interior, questions were posed about awareness raising among the inspectors. The Minister for Social Affairs stated that there is ongoing awareness raising for inspectors on these subjects within the district units. A national coordinator of the Department of information and social research (SIRS/SIOD) follows up these district units. The Minister acknowledges that continuing education of social inspectors is absolutely crucial. In fact, they not only need to have a feral knowledge of the social and labour legislation, they also need to stay abreast of changes in other laws (example: the criminal code, corporate law, European directives, etc.). In 2010 and 2011, priority was given to training in the context of the social Criminal Code and digital police reports.²²⁸

During the parliamentary proceedings, the question was raised as to whether guidelines or departmental memoranda had been distributed within the SIRS/SIOD or by the SIRS/SIOD, incorporating criteria for the transfer of a fraud case to the Public Prosecutor's Office to initiate a criminal prosecution. The Secretary of State for the coordination of the fight against social and fiscal fraud explained that article 21 of the social Criminal Code provides discretionary powers to the social inspectors regarding infractions of the social legislation which falls within their remit. The possibility provided by article 21 of the Social Criminal Code constitutes a derogation from article 29 of the Code of Criminal Procedure which stipulates that any designated authority, any officer or public official who, in the course of his duties, becomes aware of a felony or

²²⁷ *Rapport intégral*, Chambre, 9 May 2012 (Qu. 10714, D. Dumerey).

²²⁸ *Q. and A.* Senate, 23 December 2011 (Qu. no.5-4402, Y. Buysse).

misdemeanour, is obliged to notify the Public Prosecutor, and to transmit all relevant information as well as the corresponding police reports. This derogation is limited to offences for which the right to information, to give the offender a warning or a period of notice to remedy the situation, is granted to social inspectors. In the event of the detection of other offences (such as human trafficking, for example), the latter are subject to the provisions of the Code of Criminal Procedure and must therefore be communicated to the Public Prosecutor's Office.²²⁹

2.2.2.3. Conclusion

The Parliament not only plays an important role in the fight against trafficking in and smuggling of human beings through the introduction and adoption of legislative bills that can advance the fight against these phenomena, but also by virtue of the right to questions and interpellations, possesses an important tool for demanding explanations from the competent Minister on the policy as a whole, or part of it. In this context, the Centre is pleased to see that its annual report has already led to several questions being addressed to the Minister. A Parliament that is concerned about human trafficking and smuggling in fact forms the crucial element for initiating a broader discussion that can help to create a policy that is better adapted to combating these phenomena.

²²⁹ *Q. and A. Chambre*, 29 February 2012 (Qu. no. 29, N. Sminate).

CHAPTER 2: ANALYSIS OF THE PHENOMENON

For each type of exploitation, this chapter gives an overview of the developments in the phenomena of human trafficking and smuggling, with particular attention devoted to the aspect of combating it and more specifically, implementing support measures in the field and the roles of the relevant actors.

For each type of exploitation, we shall first present new trends and developments. For a broader analysis of the profiles of networks and their victims, we invite readers to refer to the annual reports on trafficking in human beings from 2008 and 2009. These analyses are based on interviews with various sources and inspection services, magistrates and auditors. The interviews were conducted in an informal and anonymous way.

Later, still organised according to the type of exploitation, we shall analyse several cases of human trafficking and smuggling to which the Centre had access in its capacity as civil party. This analysis is based on the police reports (PR) of these cases and is further elaborated from the point of view of the victim as well as the criminal system. It includes a critical reading of the official summary report in which the investigators collect the relevant data for the case, official reports of interviews with victims, suspects and witnesses, information reports, reports concerning inquiry commissions, etc.

Data from specific cases of this type is indispensable for an analysis intended to study the implementation of measures providing support in the field, as well as any stumbling blocks. In particular, the Centre bases itself on these case analyses to determine the good and bad practices of various actors in it. These are discussed in the following chapters. The useful elements produced by the analysis of the cases for the chapter 'good and bad practices' are indicated in the footnotes.

1. Sexual exploitation

1.1. Trends and developments

The victims of visible prostitution, such as working from windows or on the street, are mostly Bulgarian, Romanian, Nigerian, Albanian and Hungarian. The Hungarian networks, with Hungarian victims, have only appeared in the course of the last year.

The **Bulgarian networks** remain highly active. They operate in Belgium, the Netherlands and Germany. When there is the slightest suspicion of imminent police action, the victims are rapidly brought elsewhere. The victims no longer come exclusively from Bulgarian cities with a reputation for prostitution, such as Sliven or Varna, but also from regions where prostitutes are being recruited.

The **Romanian networks** and their victims are mainly from the region of Braila-Galati, and tend to come from various Roma communities. Generally, the victims are forced into

street prostitution, but lately, a slight resurgence of 'win-win' situations has been observed. The victims have often worked first in Spain.

In recent months, after the removal of the visa requirements for Albanian nationals, a resurgence has also been observed of **Albanian pimps**. These are often *loverboys*, who collaborate with their fellow pimps, to exploit Albanian girls. For them, prostitution remains a sideline. Their main activities are drug smuggling and the theft of cargo from trucks in industrial zones. What characterises these Albanian pimps is the extreme violence that they use towards their victims.

The **Nigerian prostitution networks** are large-scale criminal networks with international branches and even exchange programmes. A Nigerian madam in Belgium may also have victims in Norway, Sweden and Spain under her control. There are apparently exchange programs where, for example, a Nigerian madam based in Spain sends a girl to work for her in Belgium, but under the supervision of a Nigerian madam operating locally.

The Nigerian victims must pay back 60,000 euros to their madam to buy their freedom, by working as a prostitute and this is usually over a period of two years. Once they have bought their freedom, they themselves have girls brought from Nigeria and then become their madam.

In order to prevent the victims from having to spend months walking via Libya and then travelling by rickety boats to the Italian island of Lampedusa to enter the Schengen area, they are generally transferred by aeroplane using false documents. Sometimes, a Nigerian victim is provided upon request. In one case, the defendants attempted to get a victim out of a reception centre for asylum seekers in Greece, upon orders, so that she could work in prostitution. In the same case, there was another Nigerian victim who was staying under a false name in a closed centre for asylum seekers in the Netherlands, where she had to give birth. Thanks to wiretaps, the police were able to detect the victim and transfer her from the Netherlands to a specialised support centre for victims of human trafficking in Antwerp.²³⁰

Finally, there are other, more discreet forms of prostitution, such as massage parlours and cafés, where the victims are mostly Thai, Moroccan and Brazilian. The Brazilian victims often work with forged Portuguese residence documents.

Many **Moroccan and Thai victims** have obtained residence documents through marriages of convenience, under pressure by the exploiters. Also, they were too terrified and/or too ashamed, for cultural reasons, to make a statement and claim the official status of victim of human trafficking. However, after intervention by the staff of the specialised centres, they often ended up willing to make statements and claim the status.

²³⁰ See also later in Chapter 3: Good and bad practices, point 1.2. International Cooperation concerning victims.

The victims of sexual exploitation in massage parlours are mostly Thai nationals abused by Thai networks. These networks are active in both human smuggling and human trafficking for purposes of sexual and labour exploitation. The victims who do not meet the 'sexual standards for prostitution' have to work in the hospitality industry. These Thai networks almost always work with the same company in Thailand, which supplies the victims on command. This company has been active since 1999 and is run by a Thai woman, whose name appears in various Thai cases in connection with massage parlours. The victims are recruited in a karaoke bar in Bangkok. The company then handles the passports and Schengen visas, chiefly through the Swedish Embassy in Bangkok. The company asks 15,000 euros per victim, of which 5,000 euros is to be paid by the exploiters and 10,000 euros by the victim herself. If she is unable to pay this debt, the amount is reimbursed by the manager in instalments, withheld directly from the earnings of the girl in question. The victims of prostitution are required to work for free for the first two months in order to repay their travel debt.

1.2. Analysis of cases

1.2.1. Bulgarian case of Sliven

The setting for this Bulgarian case is the rue d'Aerschot, in Brussels, known as being the prostitution district. The events took place between 2007 and November 2011. The defendant was convicted of human trafficking.²³¹ The victim was not a civil party. The victim and the perpetrators were from the Bulgarian city of Sliven, a site for recruitment for prostitution.²³² The case was limited to one defendant²³³, which is partly due to the policy vision of the investigative judge.²³⁴ The defendant owned various companies and a bar in Bulgaria.

Start of the case

On 13 October 2011, the Bulgarian police²³⁵ notified their Belgian colleagues that an 18 year old Bulgarian girl had called her mother to ask for help. The victim was forced into prostitution in Brussels by a Bulgarian. The latter had 'bought' her in Dortmund (Germany) for prostitution in Belgium. The victim had to repay her purchase price from the proceeds of her prostitution. The local police in Schaerbeek were able to find the victim and her pimp thanks to the telephone number with which she had contacted her

²³¹ See also later in Chapter 4: Case law review.

²³² See also 2008 Annual Report. 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p.25 (complete version only available in French and Dutch).

²³³ In reality, five people played a major role in the exploitation of this girl.

²³⁴ See also later in Chapter 3: Good and bad practices, point 2.3. Investigative judges specialised in human trafficking.

²³⁵ See also later in Chapter 3: Good and bad practices, point 2.5. International Cooperation .

mother.²³⁶

The same defendant had already been noticed in 2008, during a control of the federal police in Brussels, in the company of a different 18-year-old girl who was also a prostitute in a bar. The girl had entered into a relationship with the defendant when she was a minor and accompanied him to Brussels. She was satisfied with her income and professional situation. In 2011, meanwhile, she herself became actively involved in the prostitution network and at the request of the defendant, assigned a prostitution location suitable for the subsequent victim.²³⁷ She also transferred several suspicious sums of money to various people in Sliven by means of money transfer agencies.²³⁸

Victims' statements

The victim who contacted her mother had left in June 2011 with the man who at the time was her *loverboy*, travelling from Bulgaria to Germany, in order to work there as a prostitute. The young woman had already worked as a prostitute before in Bulgaria, at the age of 14. Her *loverboy*, who in turn went to work in Germany in the construction sector, organised the trip by minibus. The young woman handed over all the income from prostitution to repay her *loverboy* the 500 euros in travel costs.

In Germany, the victim and her *loverboy* at the time discovered that a network organised the logistics for prostitution and provided the necessary facilities, for a fee, on the basis of specific agreements. All the girls were placed on the Internet through a website.²³⁹ The network handled the formalities of their stay via temporary leases and rented houses scattered throughout Germany. After a certain period of time, the prostitutes were forced to move, according to their contracts. However, they were allowed to choose their new destination and had full use of their free time.

In time, the victim quarrelled with her *loverboy*, who beat her and cheated on her with other girls. She broke up with him and went off with another *loverboy*, to whom she also handed over all her income from prostitution. When her new *loverboy* decided to get back together with his former girlfriend, also a prostitute, he sold her for 3,500 euros in a café in Dortmund. This café was an important point of social contact for the pimps and Bulgarian construction workers from the region of Sliven, Bulgaria.

This new exploiter, the defendant in this case, took the victim to Brussels. He told her that she could earn a lot of money in Belgium, but she would first have to reimburse him for the purchase price of 3,500 euros. She had to work particularly in two brothels in the rue d'Aerschot. She stayed with a friend of the defendant and was driven each day to her

²³⁶ See also later in Chapter 3: Good and bad practices, point 2.1. Local police.

²³⁷ See also later in Chapter 3: Good and bad practices, point 1.3. Loopholes in the official victim status.

²³⁸ See also the focus (Part 1, Chapter 1: Follow the money).

²³⁹ See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques and 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 114-117.

place of work. The manager of a Schaerbeek café arranged her rendez-vous appointments. This café is also known as a base for Bulgarian pimps from Sliven.

The defendant was not satisfied with the earnings she provided him and her motivation. He threatened to return her to her former pimp, even though the latter had threatened to kill her. She managed to surreptitiously alert her mother in Bulgaria. Thanks to the speed with which the Bulgarian police notified the local police in Schaerbeek, they were able to save the young woman.²⁴⁰ She was willing to claim official status of victim, but only for the time it took to organise her return to her family in Bulgaria.

Implications

Of particular note is the role of the café in Schaerbeek. This café also features in old cases from Charleroi, as a point of departure for suppliers of labour in the construction sector for situations of human trafficking.²⁴¹

The manager of this café, who organised the prostitution appointments for the victim, was also the head of a waste processing company in the construction sector. In 2002-2003, no fewer than eight vans registered in his name were used for clandestine work.

1.2.2. Drug-dealer and Belgian victims

In this case, a Belgian-Moroccan drug dealer exploited several young Belgian women forcing them to have sex during drug deliveries. The crimes were committed in the region of Tongeren between 2004 and 2008. The defendant was convicted of human trafficking by the Court of Appeal.²⁴² One of the victims was a civil party.

The victims were various young Belgian women in precarious situations. They were forced to perform excruciating and humiliating acts.

Start of the case

The case was initiated on the basis of information picked up through the drug scene. The defendant sold drugs to the young women and then took advantage of their dependent position and addiction.²⁴³ In exchange for drugs, the victims allowed themselves to be sexually exploited and abused. The acts generally occurred at the home of the defendant, on an individual basis or as part of sexual orgies, but also at the homes of individual clients or in bars. Some victims maintained a relationship with the defendant.

²⁴⁰ See also later in Chapter 3: Good and bad practices, point 1.2. International Cooperation concerning victims.

²⁴¹ See also 2008 Annual Report. 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p.28 (complete version only available in French and Dutch).

²⁴² See also later in Chapter 4: Case law review.

²⁴³ See also later in Chapter 3: Good and bad practices, point 1.3. Loopholes in the official victim status.

The majority of the victims had psychological or financial problems. One of them had in the past been subjected to traumatic incest between the ages of 10 to 15 years.

Victims' statements

In this case, all the victims were interviewed. These interviews sometimes had to be suspended because they were too emotionally stressful for the victims. Some of them received psychological support on a voluntary basis. Some were interviewed by a female police officer performing the interview by audiovisual means.

One of the victims had a relationship with the defendant and stated in detail how he forced her to perform specific sex acts such as anilingus, urophilia, coprophilia and threesomes with her younger sister. At first, the defendant provided drugs for free, but once she became addicted, she was forced to pay for them in kind. If she failed to obey, she was locked in a room. The defendant was violent with her, leading to her being hospitalised for one day due to assault. However, she never filed a complaint.

And in fact, the defendant had her completely under his power. He used her bank debit card, took out three loans of 2,500 euros for which the victim had to provide the guarantee. In the end, this victim acted as a civil party in this trial.

Another victim who had had a relationship with the defendant stated that he had her introduced to a massage parlour for a job as a prostitute. It emerged from wiretaps that the victim was required to hand over all her earnings to the defendant.

1.2.3. Manager of a Belgian-Moroccan bar

In this case, the manager of a Belgian-Moroccan bar, a former prostitute, sexually exploited several young Moroccan and Brazilian women, one of whom was a minor, in a prostitution bar in Aalst, in the judicial district of Dendermonde, between 2006 and 2009. The defendant was convicted of human trafficking²⁴⁴ and was also involved in crimes related to drugs and marriages of convenience. A Moroccan victim acted as civil party.

The victims were gradually forced into prostitution. In the majority of cases, they were offered employment in Morocco as domestic help or in a restaurant. Girls who were residing irregularly in Belgium or who had had extensive difficulty finding employment also received proposals of this type.

Most of the victims were unaware that it was prostitution that they were being recruited for and expected to arrive at a restaurant. Once they had arrived at the bar, the manager gradually pushed the boundaries of the victims with drinks and drugs. She told them that prostitution would solve all of their financial and residency problems. In order to obtain residency papers, they had to enter into a marriage of convenience, for which they had to

²⁴⁴ See also later in Chapter 4: Case law review.

pay through prostitution. Many victims agreed to this proposal.

The defendant showed a clear preference for victims staying in the country irregularly. In case of conflict with the victims, she threatened to call some Albanian friends. One of the Brazilian victims confirmed that the manager did call a Moroccan friend after an argument and that this friend came to the prostitution bar and violently threatened anyone who dared to contradict the defendant.

Launch of the investigation

Following indications from several sources that a prostitution bar was involved in crimes of human trafficking with a minor, the police opened a file, began observation and conducted searches.

During these searches in May 2009, the police found irregularities. Two storage compartments were found in the room of the waitresses, where people could hide. In addition, small amounts of drugs were found in the living room and violations of the law on weapons were found.

The housing inspector stated in his report that the entire building was unsafe. During the inspection, the presence of vermin and the smell of gas were detected.

Various investigative measures were taken, such as wiretapping and questioning customers. The financial investigation²⁴⁵ showed that the amount of electronic banking transactions reached 304,611 euros, 290,903.50 euros of which the defendant had transferred to her personal bank account. Based on the calculation of the assets of criminal origin, confiscation of 2.5 million euros was requested during the trial.²⁴⁶

Underaged Brazilian victim

Through various sources, the police had found evidence of the presence of an underaged girl in this bar.²⁴⁷ Various victims spoke during the testimony of a drugged young Brazilian, aged 16, whom they recognised in a photograph. In one of the telephone conversations recorded, the defendant expresses relief after a police control that there were no minors present at the time. During the interviews with customers as well, one of the customers recognised the minor in a photograph and confirmed having had sex with her for a fee.

The other victims described the minor as the defendant's 'goose with the golden eggs': *'She did it for the cocaine, to which she was addicted. But for the moment, she is down*

²⁴⁵ See also the focus (Part 1, Chapter 1: Follow the money).

²⁴⁶ See also the focus (Part 1, Chapter 2: Go for the money).

²⁴⁷ See also later in Chapter 3: Good and bad practices, point 1.1. Multidisciplinary cooperation and 2.4. Investigative techniques.

*and out.*²⁴⁸ She had come from Goiás²⁴⁹ but since 2008, she had not had a fixed domicile and was staying irregularly in Belgium. She used a fake Portuguese identity card as ID.

The police tried several times to find her. Finally one of the victims with whom she had developed a friendship, put her into contact with the police.²⁵⁰ The police then referred her to a specialised support centre.

During her interview, she stated that she was afraid to answer the telephone calls from the police, out of fear of being locked up. After discussing this with her friend, she was reassured and agreed to speak with the police.

In her testimony, she explained that she had arrived by aeroplane in Paris in September, 2007. At the time, her mother was living in Belgium and had asked her to travel there. However, when her mother returned to Brazil in September 2008, the girl lost her footing. Compatriots staying in Brussels took pity on her, but ultimately she became addicted to cocaine.

In late October 2008, she walked into the defendant's bar together with a girlfriend, by chance. The manager of the bar knew that she was a minor, but still approached her to ask her to come and work for her. She then worked at the bar for 3 to 4 weeks. At first, it was limited to simply having a drink with the customers, but it quickly turned into prostitution. The manager of the bar truly exploited her drug addiction. If she was able to get her customers to drink several bottles of champagne, she would be given a free line of cocaine to sniff in private. After she had received her dose, she returned to the customer and prostituted herself. She had 5 customers a day. In 20 days' time, she received 3,000 euros from the manager.

Victims' statements

During questioning, several Moroccan victims initially denied that they had any connections with prostitution. It was only after irrefutable confrontation with the facts that they confessed, with much shame and emotion. They were ashamed that their families would find out and asked for discretion, as it would hardly be acceptable in their culture and religion.

A Moroccan victim explained, with much emotion, that she had left Morocco on the basis of lies that the defendant had told her in order to be able to support her family. In Morocco, the defendant had proposed that she come to work in her restaurant in Belgium. She promised to draw up an employment contract. The defendant knew her family in Morocco well, and she knew that her son was sick and she could not afford treatment.

²⁴⁸ See also later in Chapter 3: Good and bad practices, point 1.3. Loopholes in the official victim status.

²⁴⁹ For more information on Goiás, see the 2008 Annual Report. 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p. 27 (complete version only available in French and Dutch).

²⁵⁰ See also later in Chapter 3: Good and bad practices, point 1.1. Multidisciplinary cooperation.

The victim borrowed 6,000 euros from a neighbour to pay an Algerian human smuggler who is well-known in Tangier, who also provided false French and Spanish passports. The victim travelled to Spain by boat using a false Spanish passport. After having passed the border check, she had to return the passport to the smuggler. In Spain, a driver was waiting to take her to Belgium. After that she heard nothing more from the smugglers. She heard later in the news that the Algerian smuggler had been caught and arrested several months later in Spain. She still needed to repay the loan from her neighbour.

When she arrived in Brussels in December 2008, the victim discovered to her astonishment that it was not a restaurant, but a bar. The defendant then told her that she would tell her the truth. She said she would have to drink with the customers, preferably champagne, and later go upstairs with them. She would be able to earn a lot of money this way. The victim was shocked and asked what she meant by ‘*go upstairs with them*’, to which the defendant replied that everything would come in good time, and that she would explain it along the way. She gave her the necessary outfits, which removed any doubt in her mind. The victim felt very bad and realised that she had been tricked and deliberately drawn into the prostitution world based on these lies. As she had absolutely nowhere else to go in Belgium and did not have a penny to get home, she had no other choice but to work as a prostitute. At first, she was accompanied by Brazilian girls, who were also in the country irregularly and was gradually acquainted with all of the aspects of drinking with customers and the subsequent sexual relations for which there would be a fee. If the customer came back downstairs too quickly, the defendant would ask if he had been satisfied. Among the customers there were also three police officers who were not required to pay anything.

Finally, the victim said: *‘I want to continue to cooperate whenever necessary. My statement is completely true. I am glad to finally have the chance to tell my story. I am happy to have found a sympathetic ear. Up until now, it was a secret between X (the defendant), God and me. I have cried a lot. I am terribly scared that my family or my acquaintances will one day find out. My son would be emotionally devastated. He would understand what I have done but he would connect it directly with his illness. Perhaps one day he would understand that I was abused and that I only did it to help him, but this would give him too great a sense of guilt. Without understanding this, he would hate me, above all. It is still possible for me to speak to my son frequently through my father. If I am crying here, it is because he looks up to me as an example. He said that Paradise lies at the feet of his mother and I'm his great example. I'm proud of him and at the same time I hate myself. This situation is particularly difficult for me. I can never forgive X (the defendant), and my only wish is to be able to take the secret with me to my grave, that my family will never find out. You have told me that X has a right to disclosure, which means that she can learn of the contents of this hearing. But I still want to make these statements, because I do not want there to be other victims and because I still want to do something with my life. To even hope for a future, I need to put this behind me. I hope that X cannot completely and permanently destroy me by letting my family know that I worked for her as a prostitute.’*

Official status of victim

Another Moroccan victim initially refused to cooperate with the police and was highly distraught. She was also afraid that the defendant would be able to read her statement and would use it against her family, whom the defendant knew well. In the end she changed her mind and received the official status of victim.²⁵¹

At first, the victim was taken to a closed reception centre for asylum seekers. Later, she was again interviewed and she was willing to talk. Even though she was afraid of reprisals from the defendant, she was willing to tell her story when she was reinterviewed at the reception centre.

In addition, the victim was also afraid of her family's reaction if the defendant told them everything. About this she said: *'If my family had to find out what kind of work I've done, I would be in danger. What I'm trying to say is that in my culture, it is not unusual for people to be murdered for such things. And I do not want to inflict this pain on my family for a job that after all, I only performed for two days. Learning of these facts would deeply disgraced my family honour.'*

The victim continued: *'You ask me why I now want to tell the truth. Due to my illegal residence, I have been locked up here since 5 May 2009 and I have been treated as a suspect when I should be treated as a victim... At first, I did not trust the police. I still have the Moroccan police in mind, and they are not honest. Last week someone from 'Payoke' came to visit and told me about what they do and my options. I was very happy with this visit because I immediately felt a sense of safety. I have regained my confidence in the future and this has encouraged me to make a full statement... I hope that the police will protect me if ever this statement would get me into trouble'*.

1.2.4. Nigerian traffickers of women in Tongeren

In this case in Tongeren, a Nigerian network of traffickers in women was dismantled. The organisation also had branches in the Netherlands and in Spain and was active in large-scale money laundering activities²⁵² and credit card fraud.

One of the victims was a Nigerian minor. The facts took place in Bilzen, in 2009. The defendants were convicted of human trafficking and smuggling.²⁵³ The victim, who was then a minor, was a civil party.

The girls were recruited in Nigeria under all sorts of pretexts and were transported illegally into Belgium via Greece in order to work as escort-girls in the prostitution

²⁵¹ See also later in Chapter 3: Good and bad practices, point 1.1. Multidisciplinary cooperation and 1.3. Loopholes in the official victim status.

²⁵² See also the focus (Part 1, Chapter 1: Follow the money).

²⁵³ Tongeren Criminal Court, 3 May 2012, 9th chambre (appeal).

world. They had to pay back the travel costs through prostitution. The defendants took advantage of voodoo rituals to instil fear in the victims. The Nigerian girls were forced to submit to extreme forms of sex on dirty mattresses and had to work day and night. There was virtually no hygiene; even the customers complained about the filthy premises and the unpleasant odours.

Launch of the investigation

In the context of monitoring hidden forms of prostitution, the police's attention was drawn to certain websites on which African women presented themselves as escort-girls.²⁵⁴ After analysing the content of the site, investigators found potential indications of human trafficking. Based on the reviews written by numerous customers on forums accessible to the public on certain websites, the police were able to determine that the housing of the African women was precarious and that they were probably working as irregular aliens. The police began surveillance of the neighbourhood, a judicial enquiry was initiated and the appointed investigative judge authorised the police to conduct wiretaps and a bank investigation.²⁵⁵

It was clear from the investigation that the main defendant had set up and run an escort and illegal and clandestine prostitution business in Lanaken, where he lived. The sexual services of the African girls were offered through ads on websites and in the classified ads section of newspapers. In order to receive customers for sex, the main defendant rented an apartment in the name of a Nigerian straw woman. In this way, he was not directly involved in the rental of the apartment. According to the police, control of this apartment by the first-line services was not able to establish a link with him.²⁵⁶

Victims' statements

The victims were staying irregularly in Belgium. It is precisely this precarious and dependent situation that leaves these victims no other choice than to let themselves be exploited. The statements of the victims illustrated in detail how they were manipulated, deceived and intimidated. One of the victims was physically abused and locked in a room when the defendants discovered that she had withheld part of the money earned from the customers. When she refused to spontaneously hand over the money, the defendant struck her in order to try to take the money from her hands. He locked her up in the room where she was then staying and took away her telephone to prevent her from communicating with the outside world. He would return later, after work, to sort things out. In the meantime the victim was able to escape with the help of the neighbour.

²⁵⁴ See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques and 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 114-117.

²⁵⁵ See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques and the focus (Part 1, Chapter 1: Follow the money).

²⁵⁶ See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques.

*Official status of victim via the Netherlands*²⁵⁷

One of the victims was intercepted in the Netherlands and risked being repatriated to Nigeria. The Contact Prosecutor then contacted the Immigration Office (IO) to transfer the victim to Belgium and to place her under the official status of victim in Belgium.

In recorded telephone conversations, the police found that one of the victims was in administrative detention with an inmate in the Netherlands. At first, they were locked up in prison, later in a closed asylum centre in the context of the Dutch law on foreigners. Via EPICC²⁵⁸ (the *Euregional Police Information Cooperation Centre*) the two persons were able to be identified and the closed detention centre in the Netherlands where the victim was being held could be located.

On two occasions, Belgium sent an inquiry commission to the Netherlands to interview the victim. According to the police, during these meetings, the victim appeared overcome with *'an incredible anxiety about the impact of the voodoo spells that had been cast on her future.'* The report mentions on this subject: *'She expressed strong emotions and burst into tears several times. During conversations she admitted the facts of prostitution and added that she had not been forced. She said that if she did not make any statement, she could return to these 'men in the business' and tell them that she had not said anything to the police, and then nothing would happen to her. She indicated that she did not want to make a statement and that she had nothing to add to what we already knew. The victim said that she herself had been a victim of voodoo practices and she was having nightmares. She also attributed the delay in her menstruation to these voodoo practices. She said that she was suffering from such fears and that she only left the detention centre to speak with an African priest, that she feared for her life and that she only felt safe at the detention centre.'*

With the help of the staff of a specialised support centre and discussions with them, the victim was eventually convinced to go to Belgium and claim the official status of victim.²⁵⁹ Various authorities had to be engaged to arrange this in administrative terms. The IO acted as an intermediary to transfer the victim to Belgium. The Human Trafficking unit of the IO confirmed that the victim met all the conditions for access to the official status of victim of human trafficking. The Dublin office of the IO in turn contacted the Dutch authorities and it was confirmed that the victim would be granted legal residence in Belgium. Agreements were also made concerning the practical implementation of the recovery and further assistance to the victim. The 'Repatriation and Departure Service' of the Dutch Ministry of Justice finally notified the Belgian police that the victim would cooperate unconditionally as long as she could be placed in Belgium in a shelter run by a specialised support centre. Thereupon, the Dutch police

²⁵⁷ See also later in Chapter 3: Good and bad practices, point 1.2. International Cooperation concerning victims.

²⁵⁸ See also the 2008 Annual Report, 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p. 96 (complete version only available in French and Dutch).

²⁵⁹ See also later in Chapter 3: Good and bad practices, point 1.1. Multidisciplinary cooperation.

brought the victim to the Belgian-Dutch border to hand her over to the Belgian police, who in turn transferred her to the shelter run by a specialised support centre in Antwerp.

1.2.5. Thai massage parlour

In this case, a Thai criminal organisation illegally transported victims from 2008 to 2010 between Thailand and Belgium for purposes of sexual exploitation in a massage parlour in Aarschot. The victims had to repay their travel debts through prostitution. The defendants' convictions included human trafficking and smuggling as well as money laundering.²⁶⁰ The court imposed heavy penalties, with fines and confiscations.²⁶¹ No victim acted as a civil party. The main defendant was based in Thailand. One of the co-defendants worked at the Embassy of Thailand in Brussels.

The network of the Thai criminal organisation had branches from Japan to Europe, particularly in the United Kingdom and in the United States of America. According to a defendant, the Japanese husband of the operator of the massage parlour was a member of the Japanese mafia. He remained discreetly in the background, but he was convicted as a co-defendant. The other defendants were afraid to face him or his wife.

The Thai victims had to pay between 6,000 and 15,000 euros to the organisation in exchange for visas, tickets, guidance and reception in Belgium. In Belgium, the defendants set up fictitious cohabitation contracts between the female Thai victims and older Belgian men in order to obtain residence documents. This allowed the victims to work legally. Their income was used to repay their debts (transport, documents, lawyer) with interest to the organisation that had taken them from Thailand to Belgium. Only after full repayment could the victims recover their freedom.

The victims did not only work in the massage parlours. If they did not earn enough in the massage parlour, they were separately taken to a prostitution bar. But they still had to pay for their meals. Older Asian couples were also smuggled in order to work in a restaurant in the Netherlands.

Launch of the investigation

The investigation was initiated based on data from anonymous informers as a case of human trafficking for purposes of labour exploitation. Based on the data gathered through wiretaps, the investigation was expanded to include sexual exploitation and human smuggling. According to the initial official report, the operator of the massage parlour belonged to a criminal organisation engaged in labour exploitation of Thai workers who had been the object of human smuggling. The criminal organisation used commercial companies to facilitate its criminal activities.

²⁶⁰ See also later in Chapter 4: Case law review.

²⁶¹ See also the focus (Part 1, Chapter 2: Go for the money).

Among these companies, there was a travel agency in the Ardennes that ran a bungalow park in Vresse-sur-Semois. Wiretaps revealed that at this bungalow park, the Belgian travel agent, one of the defendants, sold Thai women for 3,000 euros to Belgian men to set up a cohabitation contract with them. The organiser himself had, over a period of two years, established a cohabitation contract with three Thai women. He then requested, via his lawyer, an extension of the residence permits for the Thai women at the district civil registry.

In these cases, the victims had to pay for the additional costs. All the victims had accumulated debts which they had to repay. The majority of the victims went into prostitution through the massage parlour or through the managers of a bar who were friends with the travel agent. Some of them also worked in a type of café where rooms located at the back concealed a hidden form of prostitution.

Some victims had additional demands placed on their prostitution work. During a telephone conversation that was wiretapped, the defendants openly discussed one of the victim's bodies: *'X (a defendant) said that her face is okay but her body is too chubby, that she should come stay with me to go on a diet and lose weight. She will be able to repay the cost of the lawyer once she has started working.'*

In addition to the wiretaps and observations, the police also used other techniques such as Internet searches and questioning of customers.²⁶² The police gathered information on the customers' experiences with prostitution and the massage parlours on websites where customers shared their experiences.

Embassy corruption

The documents for the false cohabitation contracts were arranged for a fee by a female employee of the Embassy of Thailand in Brussels. She asked all those involved not to discuss matters of money by telephone.

Wiretaps revealed that she arranged the documents for all the girls who came from Thailand to Belgium and arranged the contacts with the lawyer. According to the case data, she provided residence documents to at least 33 people and charged 6,000 euros each. The telephone wiretaps also revealed that another employee of the Embassy of Thailand attended a party in the Ardennes where he was introduced to the Thai girls.

As part of her job, the female employee defendant had organised parties and dinners for the Embassy. She also hired the victims for these. During their telephone conversation, with regard to this, the defendants said: *'If X (victim) already has a residence permit by then, she can go and help Y (the defendant, the female employee of the Embassy) for these Embassy parties/dinners. X (victim) could also give massages, she took a course in it (traditional massages). Y (the defendant, the female employee of the Embassy) said that a certain Z (another victim) had already done this at an event/party of the Embassy of*

²⁶² See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques.

Singapore.'

During the hearing, the defendant explained how she came into contact with the victims through the assistance project she ran in collaboration with the Embassy of Thailand: *'This project entailed that Thai nationals living in Belgium who were encountering linguistic, cultural or relationship difficulties, etc. could contact us. We would give them advice and guidance. I had a telephone card that I used for this purpose, but I had to return it and I no longer work on the project. The project particularly intervened for a lady who had escaped from a group of Thai who had arrived in Sweden. She had heard that she would have to work as a prostitute in a window. She then fled and took refuge at the Embassy. The Embassy contacted me in the context of this project in order to find a shelter for her. I did not know if the Embassy was aware of the prostitution. At that time she had only told me about it. I only know that the Embassy contacted me to receive her and had lent money to the lady to buy a ticket for Thailand. She would then have to pay it back later in instalments once she had returned to Thailand and had money. This is an example of what I did for the Embassy. Another woman was arguing with her husband, for example. She asked him to go to the Embassy of Thailand to talk about it. In the end I received this woman a few days before she returned to Thailand. In both these cases, the consul clearly indicated to me not to help them to stay here in Belgium. They simply had to wait until they could return to Thailand. But these women did not ask to stay here anyway.'*

Human smuggling

The main defendant, who is currently still staying in Thailand, organised the smuggling from Thailand to European countries such as Belgium and the United Kingdom through his travel agency. The victims were transferred to Belgium with false documents. The airport staff were bribed in order to turn a blind eye to the false passports.

In their telephone conversations, the defendants said they were leaving for the United States to do some human smuggling. They had a *look-alike* American passport for a flight for a Chinese-Thai couple going to Chicago. They also talked about trips to New York and Las Vegas. According to one victim, the manager of the massage parlour had already forged passports in the past in the United States.

In the United Kingdom, the victims were delivered to order and had to work in prostitution. In a telephone conversation, there was talk of *'two children/young girls who were ordered in England'*. During his hearing, one of the defendants confessed to this fact after being confronted with the telephone conversation and explained: *'The two Thai girls were transported illegally to England by Eurostar. How was this arranged in practice? They bought three tickets, one for Lille for the person accompanying her and one for the girl, and one ticket for England. The aim was for the girl to show the ticket for Lille to the train conductor. But she did not get off in Lille and took over her companion's ticket for England. The girl then took the seat of the companion who himself got off in Lille. The companion and the girl never sat together on the train. The companion*

received 500 euros from X (the manager of the massage parlour charged) for doing this. Four of our girls went to England in this way.²⁶³

One victim who is currently in the United Kingdom still needs to work to pay back her debts to the main defendant in Thailand.

The manager of the bar charged had set up a construction of bogus independent contractors²⁶⁴ to provide residence documents to her brother and to have him work for her. She had him come to Belgium and registered him as part of the company of her massage parlour. He received a residence permit for five years. Under the guise of group travel tours of the Belgian Ardennes, he accompanied the Thai victims with a tourist visa in Belgium. In order to reduce suspicion, the trips were usually organised during the tourist season.

The victims were housed in chalets in Vresse-sur-Semois. In at least one case, the Belgian Embassy in Thailand refused the tourist visa for five girls after a negative opinion from the Immigration Office. In another case, the Belgian Embassy in Thailand routinely issued a tourist visa to the victim. She set up a cohabitation contract here with an older Belgian man, but he had specific expectations and the victim had great difficulty living with him. She then received the message that she would have to wait three years in order to establish another cohabitation contract. In order to be able to continue to work with the documents that she had and to be certain not to be deported in the case of the police check, she had to continue living with him.

Victims' statements

Several victims were intercepted during a search of the chalets in Vresse-sur-Semois. The majority of the victims were too terrified to decide to claim the official status of victim.²⁶⁵

After repeated requests from the police, one victim did not wish to go through the procedure as a victim of human trafficking. However, she cooperated in the investigation. She was the niece of one of the defendants. She financed her trip by pledging her property and land in Thailand to a company who knew the defendants. For this she received 6,250 euros without any written proof of the transaction. She also withdrew 750 euros from her account. The victim transferred these 7,000 euros to her aunt, a defendant, to cover the costs of the trip (airplane ticket, visa, lawyer). At the Frankfurt airport in Germany, she was met by another defendant and taken to her aunt's house. After a few days, she was taken to the chalet in the Ardennes to do the housework. In return for her work, she received room and board. In order to regularise her residence situation, she had to establish a false cohabitation contract, which cost her 7,000 euros. She had to pay back

²⁶³ For more information on the *Lille-loophole*, See also: Annual Report Migration 2011, p. 40-41.

²⁶⁴ See also the focus (Chapter 1: Follow the money) and S. JANSSENS, 'Fenomeenanalyse van mensenhandel', in Ch.-E. CLESSE and crts., *Traite des êtres humains-Mensenhandel-Mensensmokkel*, Dossiers de la revue de droit pénal et de criminologie, Brussels, la Chartre, 2010, p.43.

²⁶⁵ See also later in Chapter 3: Good and bad practices, point 1.3. Loopholes in the official victim status.

this amount by working as a prostitute in the massage parlour. In her case, the sexual contact was limited to masturbation. Her aunt, the defendant, stated during her interview that the victim did not have a suitable appearance to work as a prostitute and that she had given her 5,000 euros so that she could continue to repay her debt.

*Lawyers' ethics*²⁶⁶

In analysing this case, the Centre made certain observations concerning the lawyer of one of the defendants, which are difficult to reconcile with the code of conduct for his profession. During his questioning, a customer testified that he noticed the presence of the lawyer in the massage parlour and that the lawyer rented his studio to the victim for use as a domicile. *'X (victim) rented a studio in.... She is renting it from a lawyer... When I went to look for X this morning at the massage parlour, this man was just arriving. As I said earlier, X lived at the massage parlour, the studio was only used as a domicile address.'*

A co-defendant declared during his questioning that this lawyer also rented the same studio to a different victim through his client. *'Y (victim) began looking for a studio to use as a domicile. In the end, Z (defendant) found a studio for her. It was a studio in... It belonged to Z's lawyer. This is the same lawyer who had represented A (defendant) at trial.'*

2. Labour exploitation

2.1. Trends and developments

According to the police and social inspection, in recent months, in the construction sector there has been a strong resurgence of Romanian and Bulgarian bogus self-employed contractors, who have to work in a context of dumping practices. Many of them find themselves in situations of exploitation, which amount to human trafficking. This observation is also featured in the focus of this annual report.

The police and inspection services also find that the cases of Brazilian human trafficking have declined in the construction sector.

2.2. Case analysis: Belgian-Moroccan construction²⁶⁷

In this case, in 2008, a Belgian-Moroccan businessman exploited several Moroccan workers through his construction company in the regions of Brussels and Charleroi. Some of the victims were also exploited in the Netherlands. This case was handled by the

²⁶⁶ See also later in Chapter 3: Good and bad practices, point 4. Lawyers' ethics.

²⁶⁷ See also 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.76.

Labour Auditor of Charleroi and resulted in a conviction.²⁶⁸ Several victims were civil parties to the trial.

Start of the case

The local police²⁶⁹ were alerted by the Belgian-Moroccan businessman, who would later become the defendant, due to a dispute with his workers who had not been paid. They refused to work for him anymore and left his studio, which had served as their home. The local police talked with some of the workers and the businessman. They found indications of a potential situation of human trafficking. At the request of the Labour Auditor, the workers were interviewed, with the help of an interpreter where necessary. The aspects relating to labour and social law were investigated further by the social inspection.

The victims were recruited in Morocco to come to Belgium where they were put to work. They were in a situation whereby they were bound by their debt, so that they had to work for free for a certain period of time in order to repay it.

The defendant created a company in Belgium in early 2008 in order to be able to legally employ Moroccan manual labourers with a work permit B. For 6,000 euros, he would arrange any problems with passports and work permits for the Moroccan workers. In lieu of the fee, they could also opt to first carry out renovation work in one of his houses in Morocco before leaving for Belgium.

Victims' statements

Several victims made statements. The victims arrived in Belgium in July and August 2008. Since then they have worked on various worksites for three to four months. They worked for over eight hours a day, and often on Saturdays and Sundays. For this work, the men were paid only a few hundred euros. The safety and health standards were not respected. In case of illness, they had to return home at their own initiative.

The victims worked every day without interruption and during weekends from 10 AM to 8 or 9 PM. The defendant took them to the worksites every morning and drove them home each night to their place of residence. The victims complained of lack of food ; they were only given food in the evening and were not allowed any breaks during working hours.

They lived in a studio belonging to the defendant's family. The housing conditions were poor. There were only two beds for seven people and the heating was not turned on before the month of November.

²⁶⁸ Brussels Criminal Court, 18 March 2011, 7th ch. (appeal filed). See Case law review, 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 76.

²⁶⁹ See also later in Chapter 3: Good and bad practices, point 2.1. Local police.

The victims were not paid. The defendant gave them 50 euros in pocket money in cash every three weeks to buy cigarettes, telephone cards and bread. After the victims demanded their pay, the defendant replied that they owed him another 6,000 euros to cover their room and board in Belgium. In order to repay this amount, they had to work for free for one year. The victims then refused to leave his home and continue to work until they were paid. The defendant then called the local police who determined, during his call, thanks to past experience and expertise, indications of potential crimes of human trafficking.

Official status of victim

The victims were prepared to file a complaint and claim the official status of victim.²⁷⁰ One of them was completely discouraged and burst into tears when the police explained to him the basic principles of the official status of victim.²⁷¹ The man explained in great detail the circumstances in which the defendant had recruited him in Morocco. Together with his family, in Casablanca, the victim ran a small family business with a workshop that was not very economically profitable. In June 2007, the defendant asked them to carry out renovation work in his house in Morocco. For this, he was paid only a meagre fee. During the work, the defendant proposed that the victim come work with him in his company in Belgium. He would be able to earn a lot of money. He would earn 107 euros a day, an offer that was especially attractive for the victim. The defendant was willing to take care of all of the paperwork such as applying for a passport and a work permit B so that he could work legally in Belgium. In exchange for this, the victim did not charge anything for the renovation of the house in Morocco, worth 6,000 euros. Later, the victim learned that the other victims had received the same type of proposal. Upon leaving, like the other victims, he had to sign a document stating that he had never given money to the defendant.

Once he had arrived, he worked on various construction sites, particularly in Charleroi, Zaventem, Schaerbeek, Auderghem, La Louvière and even in a hotel in the Netherlands. Despite many attempts, the police were unable to find the latter worksite.

The living conditions were poor. The victims were housed together in a studio belonging to the defendant, and due to lack of space, some victims had to sleep on the floor. They barely had the chance to wash. Even though the weather had already been cold for some time, the central heating was only turned on in November.

Death threats

According to one victim, the accused had expressed death threats against him and his family. The victim stated to the police that this occurred in Arabic during the police intervention, a language that the police do not speak: *Thus, on the day of the questioning,*

²⁷⁰ See also later in Chapter 3: Good and bad practices, point 1.1. Multidisciplinary cooperation.

²⁷¹ See also the focus (Part 1 Chapter 4: Give the money back).

which was 11 November 2008 and in the presence of your uniformed colleagues, I came out of the house and at that moment I turned back towards X (the defendant) and told him that he had taken our money and still had the nerve to call the police. He replied: 'I'm going to smash your head against the wall'. He made it clear to me that if I didn't keep quiet, he would shoot two bullets in my head whether I was here in Belgium or in Morocco. I would like to point out that this exchange was made in Arabic and not in French. Nevertheless, I can report that one of your female colleagues did see the gesture indicating a gun, a raised thumb and index finger held perpendicular pointed in my direction. Later, after this exchange, X returned to Morocco. I warned my family that if they see X they should play dumb and ask him where I was. Indeed, X met my brother in the cafe in my village and told him that he did not know where I was, but that if he found me himself, he would kill me because I had 'turned' all the workers against him.'

3. Begging

3.1. Trends and developments

Organised begging in the context of human trafficking remains a current problem. These are **networks** of Roma from different countries (Romania, Moldavia...) who are active in prostitution and begging. The victims have the same 'Roma' origin. They have their own common social life with their own norms and values, rules and a parallel legal system. In their eyes, it is normal for minors to engage in prostitution and begging and this applies both for the victims and the perpetrators. These networks are linked to clans and regions. They use physical violence to punish 'disobedient' girls.

3.2. Analysis of cases

In recent years, the Centre has not been able to act as civil party in cases of human trafficking for purposes of organised begging. These cases also rarely lead to prosecutions by the Public Prosecutor's Office.

The fight against these human trafficking networks requires many types of police investigation. In practice, various cases of begging were abandoned because they were highly time-consuming and the likelihood was very slim of effectively establishing proof and therefore obtaining a meaningful judgement in court.

4. Human smuggling

4.1. Trends and developments

Primarily concerned here in this context are **Iraqi-Kurdish human smuggling groups** who are active in the parking areas along the highway between Brussels and the coast.

These are criminal organisations that are very violent towards their smuggling 'customers' and the police. These smuggling groups also benefit from the shift of the phenomenon of human smuggling from France to Belgium after France, thanks to infrastructural work and increased police controls, introduced a policy of stricter controls for the parking areas along the highways.

About 10 years ago, the Albanian human smuggling organisations, which were operating along the E40 highway and using the parking areas, were dismantled after various large-scale lawsuits. In the meantime, **Albanian human smugglers** have reappeared but they remain in the background. For the moment, they are active in cases of human smuggling on a small scale, in which people are smuggled individually or in small groups in passenger cars using false documents.

4.2. Analysis of cases

4.2.1. *Ishtar bis*

The case forms part of the extension of the Iraqi-Kurdish case *Ishtar*, which we discussed in detail in our previous annual report.²⁷² The new facts took place along the parking areas of the E40 connecting Brussels with the coast between July 2010 and February 2011. In this new case, the defendants were convicted of human smuggling by the Brussels Criminal Court.²⁷³

The majority of the defendants are Iraqi Kurds from Kirkuk. After being released early after a year in prison for their conviction in the previous *Ishtar* case, some of the defendants rejoined the network and immediately resumed their human smuggling activities. Other members of the gang had planned to move, once they were released, to Turkey or Greece, where the possibilities for smuggling are even greater.

This criminal organisation is primarily guilty of smuggling Kurds (from Iraq, Iran and Turkey) and Vietnamese into the United Kingdom. In a second step, these victims are smuggled to Scandinavia. In a telephone conversation, there was also mention of Canada as a destination, for a price of 15,000 to 16,000 euros. The false documents were created and delivered by a supplier in Poland.

The customers were provided by several other human smuggling organisations, mainly from France. The smuggling victims were met at the train station in Brussels or in Paris or Calais. The smugglers even recruited customers in a park located in front of the Office of the Commissioner General For Refugees and Stateless Persons where many asylum seekers were housed. Wiretaps revealed that the smugglers sent thugs to this park to '*sleep there*' and '*keep an eye on everything*'.

²⁷² See 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p. 56-60.

²⁷³ See also later in Chapter 4: Case law review.

The Kurdish organisation was providing transport ‘with or without guarantee’. The standard transport is transport without guarantee, in which the customers are hidden in the back of a truck unbeknownst to the driver and the success of the operation is therefore not guaranteed by the smugglers. In cases of guaranteed transport, the organisation commits to carrying out the transport with 100% success. In this case drivers are used who knowingly hide stowaways for a fee in the cab or under the tarp of a tractor trailer. Another possibility: the smuggler or a freelancer transports stowaways in a car or van. It was primarily the latter technique that was observed in this case.

Launch of the investigation

The case was launched after a ‘bus inspection’ carried out in July 2010, in which 10 Vietnamese irregular alien migrants were intercepted onboard a European bus line ‘Brussels-Paris’. A telephone investigation was carried out based on mobile telephones found. Among the telephone contacts, the police found certain well-known individuals in the Iraqi-Kurdish human smuggling world and the acts of smuggling could be established thanks to wiretapping, observations, searches and later hearings. One of the perpetrators involved had in the meantime emigrated to France in order to continue to engage in smuggling activities. A European arrest warrant was issued for him.

CPAS/OCMW²⁷⁴

The majority of the defendants were staying legally in Belgium, particularly as refugees benefiting from subsidiary protection (4), as recognised refugees (1) and as asylum seekers (4). Some of them were being supported by the CPAS/OCMW. On the basis of a warrant issued by the investigative judge, the police questioned certain CPAS/OCMW about this. The managers of a CPAS/OCMW in the Brussels region initially refused, under the guise of professional confidentiality, to provide information about the visits of the defendant who was also the subject of a European arrest warrant. This defendant was entitled to subsidiary protection and received social and financial aid. Finally, after several attempts, the police obtained the data and decided to wait for him when he next visited his social worker. However, the defendant did not show up and the social worker never heard anything more from him. The police indicated in their report that the CPAS/OCMW concerned continued, in spite of everything, to pay monthly benefits onto the defendant's account.

Financial investigation

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During the trial, the court asked the police to calculate the assets of criminal origin for each defendant individually in order to be able to order the imposition of individual confiscation in its judgement. To do this, the police took into account the transport of

²⁷⁴ See also the focus (Part 1, Chapter 3: The other side of the coin).

²⁷⁵ See also the focus (Part 1, Chapter 1: Follow the money).

irregular migrants detected for each defendant. The results showed that human smuggling was a lucrative business indeed.

The members of a criminal organisation invested in legal channels, such as a car wash, a snack bar and a pub, etc. in order to launder their criminal proceeds. They also transferred funds via the hawala banking system²⁷⁶ to Iraq to support their families or to invest in real estate. For the hawala bank transactions, they used an electrical appliances shop in Antwerp run by two Iraqi brothers, which in reality was a bank.

4.2.2. Indian marriages of convenience in Hasselt

In this case, an Indian criminal organisation arranged, for payment, marriages of convenience in Sweden between Indian operators of night shops and Portuguese women in order to regularise the residence status for these Indians staying irregularly in Belgium. As the husband of an EU citizen, they would receive a residence permit.

The police were able to detect 14 members of the criminal organisation as well as determining their role. They were all Indian nationals. The boss was located in Sweden. Initially, the Public Prosecutor's Office of Hasselt had shelved this case without further action. By filing suit as a civil party before an investigative judge, the Centre was able to have the case reopened. Nevertheless, in the end the Public Prosecutor's Office decided only to prosecute a single defendant. The prosecutor of the Public Prosecutor's Office who handled the case only concentrated in his requisitions on the acts which took place strictly within the territory of Hasselt between the 1st August 2004 and 9 May 2005, so that the crimes of which the defendant was accused in the case of marriages of convenience in Ypres discussed below completely overlapped. For this reason, the court was only able to rule the absorption of the sentence.²⁷⁷ In reality, the criminal organisation in this case was active throughout all of the Belgian territory between 2004 and 2007.

In Belgium, seven night shops actively played a key role. The operators recruited Indian men for marriages of convenience. In Hasselt, a father and son were involved, each in his own shop. Other operators of shops in Liege, Brussels, Woluwe-Saint-Pierre, Saint-Gilles, Braine-l'Alleud and Ypres were also active. Several of these operators had already featured in similar Indian-Pakistani cases of human smuggling. Initially, only the defendant from Hasselt was active there, but encouraged by his success, he gradually expanded to other Indian night shops in Belgium. According to a report from the police, the operators of these stores were '*generally important figures in the Indian community, with authority in religious (Sikh temple) and administrative (Indian embassy) matters*'.

²⁷⁶ See also the focus (Part 1, Chapter 1: Follow the money).

²⁷⁷ Given a previous sentence handed down by the Ypres Criminal Court on 29 March 2009, no new or supplementary punishment was issued in accordance with article 65 paragraph 2 of the Criminal Code since the same criminal intent was determined and the punishment issued by the court of Ypres was considered sufficiently severe by the Court of Hasselt. Hasselt Criminal Court, 25 November 2011, 18th ch.

In Sweden, four suspects were intercepted. For a substantial payment, they organised the reception of the couples, their support on site and took care of the administrative formalities for the marriages of convenience. The boss also took care of the international transport for the candidate. Initially, he ran an Indian restaurant in the Swedish city of Örebro as a contact location. He also created a travel agency. During his questioning, he acknowledged that he had acted as a middleman for mixed marriages between men of various nationalities: Pakistani, Indian, Portuguese, and Moroccan. His computer was found to contain all possible documents concerning the (international) laws regarding marriage. This chiefly concerned Belgian, German, Portuguese, Dutch and Indian laws.

In Portugal, two suspects were tracked down who had recruited and brought 65 Portuguese women to enter into marriages. At first, an accomplice in Lisbon apparently played a role in a number of cases of marriage, first as a lawyer and later as a translator.

Launch of the investigation

In accordance with the statutory provisions, the Hasselt police undertook a proactive investigation²⁷⁸ into human trafficking and smuggling in the Indian community in the region of Sint-Truiden. In the context of this investigation, the Immigration Office noted in early 2005, eight suspicious marriages in the region of Hasselt, all of which had been established according to the same modus operandi. On the basis of police information, a telephone investigation was conducted with regard to the defendant, which confirmed the existence of a structured organisation on an international scale. Investigation confirmed the eight marriages of convenience.

By means of an inquiry commission in the Swedish cities of Örebro and Karlskoga, eight accomplices were identified and 55 other suspicious marriages were discovered all over Belgium. The Public Prosecutor's Office thus decided to extend the investigation to include these suspicious marriages in the other jurisdictions of Belgium. Based on the investigation, which confirmed the marriages of convenience, the various recruiters could be found.

In the meantime the suspect from Sweden was arrested in Germany, where he was caught trying to transport two Indian candidates for marriage of convenience into Sweden. An amount of 9,740 euros was found in the car, as well as their real passports, hidden inside a thermos. The two Indians admitted the facts and stated that the defendant from Hasselt was the organiser of their marriage of convenience.

It emerged from further investigation on the occupation of the male partners in these marriages of convenience that the defendant from Hasselt employed in his shops at least eight men in total in his capacity as manager of two companies.

Subsequently, a coordination meeting was held with national police units who had conducted similar investigations. This meeting confirmed that a structured international

²⁷⁸ See also later in Chapter 3: Good and bad practices, point 2.4. Investigative techniques.

criminal organisation was active in the background. It was also determined by police investigation of the airport of Gosselies (Charleroi) that a travel agency was systematically involved. Even after the arrest of the key figures, the organisation continued its activities.

Marriages of convenience

During the investigation, a total of 109 marriages of convenience were detected, which all followed the same pattern. The *modus operandi* was as follows:

- The male candidates were always recruited in Indian shops in Belgium;
- The transport of the marriage candidate to Sweden always took place according to a fixed pattern, usually by car or by air, from Charleroi to Stockholm;
- The temporary stay of the candidate for the marriage of convenience was always in the vicinity of the Swedish cities of Örebro and Karlskoga, always at the same addresses;
- The administrative procedure prior to the marriage was handled by small circle always made up of the same individuals;
- When the marriages were enacted in the courtrooms of the municipal services, multiple mixed couples from Belgium would often get married at the same time and sometimes the suspects acted as witnesses;
- The marriages did not last and most Portuguese brides returned to their country of origin;
- lavish sums were paid for the arrangement of a marriage of convenience. The male Indian candidates had to pay between 6,000 and 16,000 euros per marriage. The price was determined depending on whether or not the organisation itself had to provide the female marriage candidate (generally Portuguese).

Swedish law allowed such mixed marriages until 2007, without either spouse having to have any links with the country. In addition, this type of marriage could be performed rapidly and virtually for free in Sweden. The total administrative fees amounted to 30 euros.

The male Indian candidates were without exception residing irregularly in Belgium in a hopeless situation at that point (rejected) so that marriage was the only way for them to regularise their residence in Belgium.

The (Portuguese) women recruited were in highly precarious social positions. It was therefore extremely easy for the organisation to take advantage of them by promising them a large sum of money which they in fact would never see or only partially receive.

Background

The Indian boss of the organisation in Sweden had initially developed the system for the very first time in the past. It was then extended to become a widespread phenomenon that was adapted during the various phases.

In the initial phases from 2004 to mid-2005, only women from the local region were used for the marriages: in Belgium, the Netherlands and Germany. Often, these naive young women were led to believe that they were going to embark on an exotic relationship with the Indian man in question. After the marriage, in many cases the relationship was ended. This system provided the clear advantage that the Belgian wives, who were often ignorant of the situation, did not have to be paid for their services. During this initial period, the price of a marriage of convenience was 6,000 euros because the role of the organisers was limited.

In a second (mid-2005 to mid-2006), a specific supply line of Portuguese women was set up, women who were recruited in the impoverished districts of Lisbon. This was handled by two local Indian accomplices. Concretely some 65 Portuguese women were recruited. They promised these women a sum of money and a better life in Belgium which was more prosperous, thanks to steady employment in an Indian shop. In reality, the women were barely paid - if at all - for their cooperation and returned to Portugal penniless. During this period, the amount charged was from 10,000 to 16,000 euros per marriage, because the organisation had to supply the wife themselves. In addition, several organisers/recruiters personally entered into their own marriages of convenience in Sweden in order to accelerate their permanent settlement in Belgium or in another Western country.

In a third phase (mid-2006 to 2007), the organisation even recruited Swedish women who were willing, for payment of 3,785 euros, to enter into a marriage of convenience with an unknown Indian man from Belgium. The women were recruited from the most disadvantaged social classes in Sweden and were themselves in a state of financial emergency. Some 60 women were thus enrolled. These women felt deeply aggrieved as they never received the financial compensation promised them.

After the Belgian police put out a warning during the inquiry commission, the Belgian and Swedish administrative authorities took the necessary steps in 2007 to put an end to this phenomenon. Despite the arrest of suspects in Sweden at the time, this phenomenon has since simply shifted, according to the police, to other Western countries such as Italy, Spain (particularly the region of Girona) and Portugal.

Financial investigation²⁷⁹

The police determined that the workers in the money transfer offices did not sufficiently check the identities of the people who came in to send money and no comparison was made between individuals. The employees of the agencies only made a photocopy of their identification.

However, through investigation, the police have become aware that it is still customary in the Indian community for people to walk into these agencies, for a fee, and use their legal identification documents to send money in the name of irregular resident Indians. The

²⁷⁹ See also the focus (Part 1, Chapter 1: Follow the money).

system of identification within the money transfer agencies can be bypassed in this way, preventing the police from obtaining a clear view of who is in fact sending the money.

4.2.3. Indian-Pakistani marriages of convenience in Ypres²⁸⁰

In this case, an Indian-Pakistani criminal organisation arranged marriages of convenience between Indian-Pakistani operators of night shops and Portuguese women in order to regularise these men's residence status who were irregularly in Belgium. These marriages of convenience were performed in Denmark, Sweden or Portugal.

This criminal organisation was active throughout Belgian territory between 2000 and 2007. The Public Prosecutor's Office of Ypres prosecuted 32 defendants distributed throughout various legal districts in Belgium. The defendants were definitively convicted of human smuggling by the Court of Appeal of Ghent.²⁸¹ One of the defendants was the main defendant in a similar case in Hasselt, discussed above.

The defendants operated night shops in order to provide a cover for their activities and to facilitate the organisation of the marriages of convenience. According to the findings of the police, these night shops appeared at times to function as hubs for the falsification of documents, the organisation of marriages of convenience and the labour exploitation of irregular aliens. Several defendants and their night shops feature in various cases of human smuggling.²⁸²

Launch of the investigation

At the request of the Public Prosecutor's Office, the police conducted a control action on 28 May 2004 in all of the night shops in the judicial district of Ypres. Serious irregularities were found, and some illegal alien workers were intercepted. The key figure in this case was an Indian-Pakistani businessman who managed various night shops. The man was known to the police as an organiser of marriages of convenience between Indian-Pakistani men and young Portuguese women recruited in deprived neighbourhoods in Portugal. The women were promised 2,000 euros. The men had to pay 20 to 30,000 euros for their marriage of convenience. As the spouse of an EU citizen, they would be entitled to a residence permit thanks to this marriage of convenience.

The following arrangement was regularly encountered during the course of the investigation of these Pakistani-Portuguese couples, the husband of which was a self-employed contractor. Both members of the couple were at the head of a company whose registered office had moved. After just eight months, the Portuguese wife would systematically resign and transfer all of her shares to her husband.²⁸³

²⁸⁰ See also the focus (Part 1, Chapter 1: Follow the money and 3: The other side of the coin).

²⁸¹ See also later in Chapter 4: Case law review.

²⁸² See also the focus (Part 1, Chapter 1: Follow the money).

²⁸³ See also the focus (Part 1, Chapter 1: Follow the money).

Inquiry commission in Portugal

An inquiry commission was sent from Belgium to Portugal, where the women had been recruited and many marriages of convenience had been organised. In Portugal, the Belgian representatives received the results of an in depth investigation by the immigration service SEF into the matter of marriages of convenience between Portuguese women and Pakistani men.

This investigation uncovered several problems, which continue to be relevant. In Portugal, like in Belgium, a woman can only officially get married in the municipal district where she is registered. In the case of problems, the woman registers herself in a new district, where another attempt is made to enact the marriage. In the absence of a centralised system of marriage records, the population services are not aware of the previous marriage attempts.

Another problem is the recording by Portuguese consulates of marriages abroad. If a couple wants to have a marriage enacted abroad recognised in Portugal, the Portuguese law requires the marriage to be recorded by the Portuguese consulate in the country where the marriage took place. However, in practice this does not occur. The Portuguese authorities are therefore not aware of the marriage and the woman is able to retain her identity card on which she is listed as unmarried. This allows her to get married multiple times. In the specific case, a Portuguese woman got married three times, the first time to a Pakistani man in England, the second time to another Pakistani in Norway and finally, the third time to a Pakistani in Belgium. As a result, some Portuguese women begin to advertise this kind of marriage of convenience and even recruit other women.

Statements of the Portuguese women

One of the Portuguese women explained how she had been approached and had been recruited. She was highly distraught during her interview, she cried and was afraid of reprisals by the organisation. She felt abused and swindled.

The woman was in a precarious situation. She was an orphan and had spent part of her youth in an orphanage. Her grandfather was unable to support her. At the age of 18, she found a job in a fast-food restaurant chain and moved in with her grandfather.

One year later, in 2004, a stranger visited her after work at the restaurant. She asked her name and told her that a friend of hers had mentioned her. She knew that she was poor and an orphan. The stranger started to tell her about her own situation. She had been married for four years to a Pakistani, which had earned her a lot of money. She attempted to win the young woman's trust and to convince her to enter into a marriage with a foreigner, given her impoverished situation. She embellished the situation mentioning numerous trips that she had been able to go on and the money that she had received. She also explained that the young woman would not have to worry about a thing. After two years, she could file for divorce and return to Portugal. This would earn her 2,500 euros.

Thanks to this marriage of convenience, she would allow the foreigner to obtain the necessary residence documents to settle in Europe.

One week later, the woman called back to arrange a new meeting and asked her for her answer. The subject said yes and was put into contact a few days later, during another meeting in a restaurant, with a Pakistani who organised the marriages of convenience. She met this Pakistani on two more occasions. At first, he asked her to fly to England where she could already get married in September to an Indian. It was impossible for her at the time because she needed to finish her school. In December he called her back with news that he had a good deal set up for her. She needed to travel to Belgium, which was a lot easier for her than going to England.

She accepted this proposal. The Pakistani bought a plane ticket for Brussels and she spent two days in Belgium in December. At Zaventem airport, another Pakistani was waiting for her and she was introduced to her Indian marriage partner. They took her to a Turkish restaurant in Antwerp where the couple exchanged all their personal information, established where and how they had met, their dates of birth, etc. and had to learn all this by heart before being interviewed by the police. Finally, the future married couple flew unaccompanied to Copenhagen (Denmark) to prepare the marriage. The Pakistani provided the man with the necessary instructions.

In January 2005, they flew again to Copenhagen and were married with two employees of the City Hall as witnesses, as is the customary procedure. She was given the order to never inform the Portuguese authorities that she was married. Her Portuguese passport stated that she was still single.

Upon returning to Belgium, they lived in Ghent, where they had to stay for one month until the police check. They had to hang up pictures of their wedding in conspicuous locations. In reality, they slept in separate rooms and led separate lives. When the police arrived, they gave the agreed-upon answers and everything went smoothly.

A few days later, she received a telephone call from the Pakistani organiser who asked her to come to Antwerp to be paid. She was expecting to receive the 2,500 euros that had been promised her, but she was in fact only paid 400 euros. When she protested, the Pakistani told her lies, claiming that the man still had to pay for the organisation of the marriage of convenience. Later, she received a further 600 euros. She later tried to get back into contact with him and his intermediary in Portugal, but they both had changed their telephone numbers, so that she never saw the remaining amount of money she had been promised.

*Interpreters*²⁸⁴

In the course of the investigation several instances of attempted manipulation were reported by the interpreters.

The interpreter notified the investigators that the defendant had asked him in Hindi after the hearing to warn another defendant that he had told the police that his Portuguese wife had left only just three weeks ago. The defendant attempted to manipulate the interpreter by reminding him that he belonged to the same culture and that they should therefore help one another. He even invited the interpreter to his home for a drink. The interpreter refused the invitation and informed the police. He pointed out that he was a sworn interpreter and had to perform his work properly. Other interpreters have reported similar incidents.

*Financial investigation*²⁸⁵

The proceeds from these marriages of convenience were repatriated to India through intermediaries. The money was invested in the purchase of land in India. The intermediary would first purchase the land with his own money. After the purchase, he would be reimbursed by the defendants, with a percentage for the services rendered.

²⁸⁴ See also later in Chapter 3: Good and bad practices, point 3. Interpreters.

²⁸⁵ See also the focus (Part 1, Chapter 1: Follow the money).

CHAPTER 3: GOOD AND BAD PRACTICES

In this chapter, we shall take inventory of good and bad practices based on interviews conducted with the federal and local police, the specialised support centres in the field of human trafficking, the Contact Prosecutors for human trafficking, the Labour Auditors and the social inspection services, but also an analysis of the cases in which the Centre has acted as a civil party. These interviews have always been conducted in strict confidentiality.

The term *good and bad practices* should be understood in the broadest sense and may refer both to specific case or a structural situation.

1. Victims

1.1. Multidisciplinary cooperation

In the Belgian system of providing assistance to victims, the multidisciplinary cooperation between the first-line services and the social workers at the specialised support centres is central. This has made it possible for the first-line services to devote more attention to potential victims, thus creating an atmosphere of mutual trust and allowing the victims to be more easily convinced to assume the official status of victim.

In many cases, the staff of the specialised support centre have been able to convince victims, who were initially too distressed to make a statement, to assume the official status of victim.²⁸⁶ In a particular case, the police were able to find an underaged victim of prostitution by gaining the trust of another victim with whom she was friends.²⁸⁷

In certain cases of labour exploitation, there were no victims who claimed the official status of victim, because they vanished after a new intervention of the social inspection services.²⁸⁸ The first-line services in fact often have only one opportunity to guide the victims towards the centres and to offer the option of claiming the official status of victim. When this does not happen, the victims generally disappear by the time of the next intervention of the first-line services, even if this is only a few days later. For the first-line services, the act of immediately notifying the competent magistrate as soon as a victim of labour exploitation is discovered during an intervention and checking whether the facts are sufficient to launch a case of human trafficking and whether the victims are eligible for the status of official victim of human trafficking and contacting the centres is an example of *good practice*.

²⁸⁶ See also above in Chapter 2, point 1.2.3. Belgian-Moroccan bar manager and point 1.2.4. Nigerian traffickers in women in Tongeren.

²⁸⁷ See also above in Chapter 2, point 1.2.3. Belgian-Moroccan bar manager.

²⁸⁸ See also 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*', p 47.

The Centre believes that ongoing training of the first-line services on the application of the official status of victim and the detection and identification of victims is necessary.

1.2. International cooperation

Various cases have shown that a faster and more efficient international cooperation between the administrative immigration services and police departments is necessary in terms of the detection and orientation of victims. In one case, a victim was able to be rescued from her pimp thanks to rapid cooperation with the Bulgarian police.²⁸⁹ In another case, the victim, who was picked up in the Netherlands, was detected thanks to wiretaps and cooperation of EPICC²⁹⁰ in a closed centre for asylum seekers in the Netherlands and transferred to Belgium through the collaboration between the Belgian and Dutch immigration services.²⁹¹

In the past, cases of this type would have been uncovered incidentally when one of the specialised centres for human trafficking or the Centre itself was notified somewhat by chance that in a case of human trafficking, another victim had been intercepted in the Netherlands and that she was being held in a detention centre. The Immigration Office then positively intervened in these cases through the immigration officer by allowing the victim to claim official status as a Belgian victim of human trafficking.

Such victims are discovered by chance and there is no structural approach for addressing this, which is a problem. Other victims in the same situation are never detected. It is absolutely crucial that international agreements be established for setting up an early warning system which could work through liaison officers within the police and/or immigration service. In such situations, the closed centres in neighbouring countries would have to notify their national contact point of the discovery of this type of victims so that the warning system could be set in motion.

In previous annual reports, the Centre has already emphasised the value of official victim status at the European level as a way to address the reception of and assistance to victims of crimes of human trafficking that have taken place within the EU territory.

The Centre welcomes the fact that in its strategy, the EU provides for the establishment of a European model for a transnational referral mechanism for victims of crimes of human trafficking that have occurred in another EU Member State.²⁹²

²⁸⁹ See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven.

²⁹⁰ International police cooperation in the European border regions between Belgium, the Netherlands and Germany.

²⁹¹ See also above in Chapter 2, point 1.2.4. Nigerian traffickers in women in Tongeren.

²⁹² See also above in Chapter 1: Recent developments legal and policy framework.

1.3. Loopholes in the official status of victim

Study of cases reveals that the Belgian system of aid for victims has certain shortcomings, but also that various problems are caused by the poor application of the system in the field. In certain cases, the victims were too afraid to claim the official status of victim after the police had explained and suggested it.²⁹³ Almost all of them had, however, made a statement, which entitled them to claim official status of victim. According to the Belgian system for aid to victims, the first-line services should have put these victims into contact with the staff of the specialised centres who are better able to create a climate of trust with the victims.

Other cases involved victims addicted to drugs who needed specialised assistance which was difficult to provide together with other victims in the centres for victims of human trafficking. These were generally Belgian victims.²⁹⁴ One case involved an underaged Brazilian national.²⁹⁵ In certain cases of human smuggling, there was an issue of the possible infiltration into the victim status and the centres for victims, with the infiltrator forming a threat to the genuine victims.²⁹⁶ Other victims found themselves in a grey area and were (actively or passively) guilty of CPAS/OCMW benefit fraud²⁹⁷ or, under pressure by their *loverboy*, of crimes of procurement²⁹⁸ with regard to another victim.

The system needs to be made more attractive to the victims from EU Member States, some of whom wish to be repatriated as soon as possible to their country of origin. The victims of labour exploitation, who feel abused and want to leave as quickly as possible, may need legal assistance in order to obtain financial compensation.²⁹⁹ Certain victims of prostitution in a win-win situation do not consider themselves victims and are not interested in claiming the official victim status. They refuse to give relevant evidence and do not wish to co-operate at any level.

Many victims do not wish to be put into direct contact with the staff of the specialised centres for the victims of human trafficking. Moreover, the intervention often takes place in the evening, or at night, at a time when both the victims and the actors in the field are tired. The victims are exposed to a range of factors at such moments (stress, emotions...). Often, this is not the right time and they refuse contact with the centres.

The question also arises as to whether it is necessary to evaluate the conditions of assistance, dropping out and the procedures for the withdrawal and referral of the victims. Are there ways in which these conditions could be better geared towards the different

²⁹³ See also above in Chapter 2, point 1.2.5. Thai massage parlour.

²⁹⁴ See also above in Chapter 2, point 1.2.2. Drug dealer and Belgian victims and the 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.35.

²⁹⁵ See also above in Chapter 2, point 1.2.3. Belgian-Moroccan bar manager.

²⁹⁶ See also 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.38-40.

²⁹⁷ See also the focus (Part 1, Chapter 3: The other side of the coin).

²⁹⁸ See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven.

²⁹⁹ See also the focus (Part 1, Chapter 4: Give the money back).

victim profiles? In the course of our interviews, magistrates and police have expressed their high degree of satisfaction with the collaboration with the centres, but they have also pointed out that in some cases they have had to intervene in order to prevent the withdrawal of the status of victim. Some magistrates have even suggested the idea of creating a sort of mobile team made up of staff of the specialised support centres for those victims who are located far away from the three centres. This would require increased resources for these centres.

The Belgian system of aid to victims needs to continue to be gradually refined without undermining its fundamental principles, which could potentially drain the system of its meaning, or even see it dismantled. This is especially true for the group of underaged victims and victims whose cases have been closed without further action because it has been impossible to track down the perpetrators. Similar questions could be asked concerning certain specific target groups who are too frightened to make a statement, but are clearly the victims of the practices of human trafficking.³⁰⁰ This would then require, for example, a special agreement of the Contact Prosecutor familiar with the facts of the case. The system also needs to remain manageable and easy to apply for the specialised centres and the various actors.

The Belgian system of aid to victims continues to set an example worldwide for a balanced system for victim support, thanks to which, in 2011, 153 victims were granted the official status of victim and 50 victims obtained permanent residence permits on the basis of the status of victim of human trafficking.³⁰¹ This proves that the Belgian system of aid to victims is functioning effectively, in practice as well.

It is particularly important that the first-line services fully and correctly apply the multidisciplinary circular. In the Belgian system, the victim does not necessarily need to file a complaint, but a relevant statement can be sufficient. These victims must always be put into contact with the staff of the specialised centres, who must be available. Naturally this also requires that there be a system of on-call duty within the centres. If the first-line services are planning large-scale actions or if they expect to pick up large numbers of victims, they should alert the staff of the specialised centres so that they can be on hand to explain the official victim status to the victims themselves. It turns out that in practice, it ends up being the first-line services who explain the official victim status, since they have not always been able to contact the centres or they have not taken the initiative to do so.

The Centre calls for a broader implementation of the on-call duty organised by the specialised support centres for victims of human trafficking in order to optimise the cooperation with the first-line services. The question also arises as to whether the centres should not better gear their reception and assistance to the specific needs of different types of profiles of victims, including victims who are EU nationals, and those victims with addiction problems such as to drugs. This would require

³⁰⁰ See also above in Chapter 2, point 1.2.3. Belgian-Moroccan bar manager.

³⁰¹ See also Part 3: Figures and statistics.

adequate resources for the support centres. The Centre would like to see it made a priority for all actors to correctly and fully apply the official status of victim of human trafficking. Moreover, efforts need to be made to find a pragmatic way to give a progressive boost to the Belgian system of aid for victims at the same time as maintaining its fundamental pillars, so that the system can be improved whilst remaining accessible to the various actors working in the field.

2. Actors

2.1. Local police

The analysis of cases reveals that the local police play an indispensable role in the detection of crimes and victims of human trafficking.³⁰² This applies not only to cases of sexual exploitation, but certainly also to cases of labour exploitation. However, in various cities, human trafficking is no longer included in the zonal security plans, which are an implementation of the national security plans. The mayor is responsible for the policy of the local police departments. For the majority of them, human trafficking is not a relevant issue in the context of the local policy. The local police in fact play a key role through their controls and outreach work and essentially function as the eyes and ears of the federal police in the fight against human trafficking.

The Centre calls upon mayors to pay more attention at the local level to crimes of human trafficking and to include this in the new zonal security plans after the municipal elections.

2.2. Territorial jurisdiction and organisation

The Centre emphasises that the judicial reform, whereby there are now only a dozen major judicial districts, can have a highly positive effect on the fight against the networks for human trafficking and smuggling. These networks operate by definition beyond the borders of these districts and generally internationally as well. The Belgian judicial structure often poses a problem in terms of prosecution and investigation. Human trafficking is typically a supralocal phenomenon against which small districts are unable to carry much weight.

In West Flanders, a test project for transferring competency of judicial districts to the provincial level is underway and the results have been good. A judicial district for the province has thus been given responsibility for prosecutions of crimes of human trafficking. According to the agreement, it is Public Prosecutor's office of Bruges, reinforced with a magistrate assigned from the Public Prosecutor's office of Veurne, who handles all the cases of human trafficking and smuggling for the province. This change

³⁰² See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven and point 2.2. Case analysis: Belgian-Moroccan construction.

has been experienced as a fairly positive one by all those involved. It provides a significant added value in the fight against the trafficking in and smuggling of human beings. It offers the advantage of economies of scale and many more possibilities for specialisation, also at the level of the investigative judges.

2.3. Investigative judges specialised in human trafficking

Thanks to additional resources for investigation, the investigative judges can play a decisive role in successfully dismantling human trafficking networks. Some investigative judges do not show enough interest in human trafficking, which can sometimes jeopardise certain investigations. This is what emerges from certain cases and interviews with key actors. In some cases there has been an insular vision, or there is a lack of familiarity with the phenomenon and the impact of their decisions. Cases sometimes remain pending for years. The necessary duties of investigation or arrest do not get carried out, which has a heavy impact on the sense of security and protection for the victims. In other cases, the investigation is focused on just a single defendant, while the rest of the network is left untouched.³⁰³ In some districts, the investigative judge is generally disinclined to implement wiretapping measures in cases of labour exploitation.

Several actors, including magistrates, are calling for a system of an investigative judge specialised in human trafficking. This could be set up within the framework of the upcoming reform of the judicial districts. A measure of this type would not only provide economies of scale but would also lead to better specialisation of the investigative judges, which would be a major asset in the fight against human trafficking.

The Centre recommends appointing investigative judges specialised in human trafficking/smuggling at the level of the jurisdiction of the Courts of Appeal.

2.4. Investigative techniques

Various cases³⁰⁴ illustrate the value of investigative techniques for fighting human trafficking and smuggling, both for the detection and the gathering of evidence.

In order to combat professional criminal organisations, it is necessary to apply –as a good practice - proactive investigative techniques.³⁰⁵ The criminal networks adapt themselves.

³⁰³ See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven.

³⁰⁴ See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven, point 1.2.3. Belgian-Moroccan bar manager, point 1.2.4. Nigerian traffickers in women in Tongeren, point 1.2.5. Thai massage parlour, point 4.2.2. Indian marriages of convenience in Hasselt and point 4.2.3. Indian-Pakistani marriages of convenience in Ypres.

³⁰⁵ Proactive investigation is defined in article 28bis, §2 of the Code of Criminal Procedure. It is part of the information and is performed under the direction and control of the Public Prosecutor. Proactive investigation, 'in order to allow the prosecution of offenders, involves investigation, collecting, recording and processing of data and information on the basis of a reasonable suspicion that criminal offenses will be committed or have been committed, but are not yet known, and which are or may be committed as part of a

They try to make themselves invisible by using constructions³⁰⁶ based on straw men and/or by placing the victim in a win-win situation so that he or she will no longer be interested in cooperating with the judicial authorities. Effectively fighting the networks is only possible through proactive investigation involving the use of a range of methods³⁰⁷ such as observation, information from controls and outreach work, and reliable informants and people tipping off the police for whom it needs to be possible to verify whether they are not themselves involved, or whether they are not simply denouncing their competitors for their own gains, etc.

The cases reveal that in recent years, investigators have also used, as a means to provide evidence, techniques such as Internet searches or information from clients.³⁰⁸ In one case, the questions the client was asked allowed the detection of suspicious operations by a lawyer.

2.5. International cooperation

According to various magistrates and police departments, the cooperation with the Bulgarian public services has improved. European arrest warrants are being respected and the defendants are generally extradited. The International cooperation with Nigeria for the inquiry commissions has also improved over the past years in the context of the Benelux countries.

Belgium has few joint investigative teams for human trafficking, but EPICC is one example of good practice for international police cooperation in the border zones. In the Euro-Region made up of Belgium, the Netherlands and Germany, this cooperative relationship has been established between the regions of Liege, Hasselt, Maastricht and Aachen for combating sexual exploitation in the context of human trafficking, drugs and organised theft. During these meetings involving police and magistrates, concrete data are exchanged, with the goal of aligning the actions and working methods of all involved. This organisation is able to work very rapidly and efficiently.

criminal organisation, as defined by law, or as or would constitute a criminal offense as referred to in Article 90ter, §§ 2, 3 and 4. This article 90ter, §2, 3 and 4 lists the punishable acts for which the techniques of wiretapping and recording are authorised. This explicitly includes human trafficking and smuggling with aggravating circumstances. See also above, Chapter 2, point 4.2.2. Indian marriages of convenience in Hasselt.

³⁰⁶ See also above in Chapter 2, point 1.2.4. Nigerian traffickers in women in Tongeren.

³⁰⁷ In the context of proactive investigation, the police forces can also degree course in specific investigation methods such as observation, infiltration and indicators. The use of these methods is regulated by articles 47ter to 47undecies of the Code of Criminal Procedure.

³⁰⁸ See also above in Chapter 2, point 1.2.1. Case of Bulgarians from Sliven, point 1.2.3. Belgian-Moroccan bar manager and point 1.2.5. Thai massage parlour.

3. Interpreters

The interpreters play a crucial role in the questioning of the victims during their interception, detection and subsequent interviews. They also play an important role during the investigations by translating wiretaps and the interrogations of suspects.

It is extremely difficult to have interpreters removed from the list when they have not been the object of official prosecutions. Various problems have been reported regarding the reliability of the interpreters, without there being criminal offences involved or acts defined as infractions. Certain interpreters work simultaneously for the police and for the lawyers of the defendants. We know of cases where the interpreter has influenced people who have been smuggled or illegal workers by telling them what they need to say or not say in order to be officially recognised as victims of human trafficking. These interpreters asked for money to do this and also wrongly claimed that they could arrange something. In other cases—especially with Indians and Chinese—, the interpreters were pressured by their own sociocultural community to obtain information on planned actions.

In some cases, incidents and attempts at manipulation of the investigation by means of the interpreter were observed.³⁰⁹ In one of these cases it was the interpreter himself who reported this to the police. In other cases it was discovered that the interpreters themselves had been suspects in previous cases yet nevertheless it had not been possible to have them struck from the list of available interpreters. In this way they were able to remain on this list for eight years, although they were discreetly removed from sensitive cases.

In a case of human smuggling discussed in the first part of this report³¹⁰, the main defendant submitted an application, in late 2011, to the Brussels Public Prosecutor to be appointed court translator/interpreter for the languages of French and Chinese. The applicant was not suspected of criminal acts at that time. After taking the oath, he was appointed court interpreter in September 2002. In March 2003, the police determined that he was potentially involved in crimes of human smuggling. The Public Prosecutor immediately decided to no longer assign him as interpreter in sensitive cases. In 2006, it was determined that he was actually involved in acts of human smuggling. It took until June 2006 for him to be officially struck from the list of court translators/interpreters.

Currently, interpreters are hardly checked before they are sworn in to allow them access to confidential information. Only their legal records are examined. However, a security certificate is required for numerous confidential functions of this nature in both the public and private sectors.

The Centre calls for at minimum, the drafting of a national list of available and reliable interpreters. Currently, this is only done at the level of the districts. Once an

³⁰⁹ See also above in Chapter 2, point 4.2.3. Marriages of convenience in Ypres.

³¹⁰ See the focus: Part 1, Chapter 1: Follow the money.

interpreter is deemed under suspicion, he must no longer be allowed to remain on the centralised national list.

4. Lawyers' ethics

In a case of human smuggling from Thailand³¹¹, the Centre has questions concerning the defendant's lawyer whose conduct has been difficult to reconcile with the code of conduct of his profession. At the hearing, a client testified that he noticed the presence of the lawyer in the massage parlour in question and that the lawyer was renting his studio to the victim for purposes of domicile. In addition, another defendant stated during his hearing that the same lawyer had also rented the same studio to a different victim. The Centre sent a letter to the competent Chairman of the Bar and received as an answer that the latter had issued a private admonishment to the lawyer in question.

The Centre states that the Ethics Commission of lawyers must ensure that lawyers do not commit acts in conflict with the code of ethics of their profession. The defendants' lawyers must certainly not give the impression of being involved in any way in the crimes of human trafficking for which their clients have been prosecuted and convicted.

³¹¹ See also above in Chapter 2, point 1.2.5. Thai massage parlour.

CHAPTER 4: CASE LAW OVERVIEW 2011-EARLY 2012

In this chapter, the Centre presents an overview of the case law from 2011 and early 2012. This overview is a selection based chiefly on those cases in which the Centre has acted as civil party as well as on the decisions communicated by the specialised reception centres for victims.

1. Findings

The Centre is aware of numerous decisions in the area of sexual exploitation. Many of these have to do with Thai massage parlours. In some cases, substantial confiscation penalties were imposed. In some cases as well, civil parties were awarded substantial compensation. Another striking finding in this type of exploitation: in many of these cases, the victims included minors. It should also be noted that in some cases it is a question of both smuggling of and trafficking in human beings at the same time for purposes of sexual exploitation, and in other cases of trafficking for purposes of sexual and labour exploitation.

In terms of labour exploitation, it is worth mentioning the rulings in cases mentioned in previous annual reports: a surprising decision of the Antwerp Court of Appeal in a case of arson and horticulture, as well as an explicit decision made on bogus self-employed status in the construction sector by the Dendermonde Criminal Court. Other decisions of note concern the car wash, hospitality and horse stables sectors.

In terms of exploitation of begging, a decision on the case mentioned in the previous report has been made in appeal.

Finally, with regard to human smuggling, several important decisions were made concerning criminal organisations who arranged marriages of convenience or were involved in fraudulent side activities.

Below, we shall present a brief overview of some of these decisions.

2. Overview of decisions per type of exploitation

2.1. Human trafficking

2.1.1. Sexual exploitation

Contrasting decisions in the area of prostitution

In a case of sexual exploitation in the Bulgarian community, mentioned earlier in this report³¹², the defendant, a Bulgarian, was charged with human trafficking (article 433*quiquies*, §1, 1° of the Criminal Code) and exploitation of the prostitution of two young Bulgarian girls (article 380 of the Criminal Code) including the aggravating circumstances of violence and threats. In a ruling of 30 May 2012³¹³ the *Brussels Criminal Court* convicted the defendant of the crimes perpetrated against one of the victims, but acquitted him with regard to the other.

The first young girl had initially voluntarily engaged in prostitution in Bulgaria and later in Germany, where she was purchased by the defendant who subsequently forced her to work as a prostitute in the rue d'Aerschot (red light district in Brussels). She was threatened with being sent back to Germany for failing to generate sufficient profits. It was the defendant who housed her and paid for the rights to a prostitution window and who provided her with an address of convenience that she could use in the case of police control. She was required to hand over all of her earnings to the defendant.

By contrast, the court acquitted the defendant, giving him the benefit of the doubt regarding crimes committed against another young woman, who appears to have freely engaged in prostitution, whilst the defendant was her boyfriend during this period. She declared that she personally managed her own income, and did not have to hand over any money at all to the defendant, who did not supervise her work in any way. The investigation did not reveal any evidence proving otherwise.

In another case, also discussed earlier in this report³¹⁴, the defendant, of Moroccan origin, was charged with human trafficking, rape, indecent assault and a series of drug-related offences.

In a ruling at first instance on 19 February 2009, the Tongeren Criminal Court acquitted the defendant for the offence of human trafficking in the sense of article 433*quiquies* of the Criminal Code on the basis of the following: the defendant formed a couple with two of the victims involved, and it was a matter of satisfying his own sexual desires and to be

³¹² See above, in this part, Chapter 2, analysis of the phenomenon, point 1.2.1. Case of Bulgarians from Sliven.

³¹³ Brussels Criminal Court, 30 May 2012, 54th ch.

³¹⁴ See above, in this part, Chapter 2, analysis of the phenomenon, point 1.2.2. Drug dealer and Belgian victims.

able to benefit from the revenues that these young women earned from prostitution. The court judged that these facts fell within the scope of article 380 of the Criminal Code.

The *Antwerp Court of Appeal* in turn found, in its decision of 29 March 2012³¹⁵, that it was indeed a case of human trafficking. Based largely on credible and consistent statements from the victims, the court considered that the two young women were abused in the form of debauchery and prostitution, by means of the promise of the supply or the actual supply of drugs. These drugs, for the most part cocaine, were not only used as a means of payment for the satisfaction of the defendant's own sexual desires. The defendant also intentionally supplied them for a fee to his victims to allow them to better function in the prostitution marketplace with third party clients. In this way he was able to benefit from the revenues they generated. Particularly, he took responsibility for dropping them off and picking them up at the bars where they worked and in return for this, he made them give him their earnings.

The Court also notes that the victims were completely dependent on the defendant, who was in a position of power and regularly threatened them with violence or effectively resorted to violence if they did not comply with his orders. This dependency was reinforced by the vulnerable position of the victims due to the addiction to drugs and the precarious social situation.

The Court added that the fact that the defendant had, for a certain period, had a 'relationship' with the victims is not relevant, not only because sexual exploitation continued when the 'relationship' was over, but more fundamentally, given the way that the defendant regards women (as sexual objects), it is questionable to what extent this could be considered a genuine relationship.

One of the victims of trafficking was also a civil party. She was provisionally awarded 2,500 euros in both material and moral damages combined.

In a different case, also mentioned earlier in this report³¹⁶, the defendant, a Belgian-Moroccan woman, was charged with human trafficking for purposes of sexual and labour exploitation, particularly of an underaged victim. The other aggravating circumstances concerned the abuse of the vulnerable situation, the use of fraud and the habitual nature of the activity. She was also charged of hiring and exploitation of prostitution, with running a facility for debauchery and prostitution, acting as a slumlord and breach of the law on narcotics.

The *Dendermonde Criminal Court*, in a ruling of 3 April 2012, convicted the defendant of all of the charges.³¹⁷

³¹⁵ Antwerp Court of Appeal, 29 March 2012, 14th ch.

³¹⁶ See above, in this part, Chapter 2, analysis of the phenomenon, point 1.2.3. Belgian-Moroccan bar manager.

³¹⁷ Dendermonde Criminal Court, 3 April 2012, 19th ch. The defendant appealed, but only against the criminal law provisions.

With regard to human trafficking, the court found that all of the elements constituting the offence were present. The defendant was indeed actively recruiting young women residing irregularly in order to put them to work in her bar. Once they had arrived there, they were exploited: they had to engage in prostitution and perform various tasks for the defendant, working seven days a week, 24 hours a day. In the case of police control, the young women had to use a special hiding place designed for this purpose.

In addition, the majority of the victims – Moroccans and Brazilian – were staying irregularly in the country and the defendant used fraud with regard to several of them: one of them was promised a job as a housekeeper, another one believed she would be working in a restaurant and a third, in a café.

The health conditions inside the bar were also very bad: the toilets and showers did not work and the young women were housed in deplorable conditions: the housing inspection declared the rooms uninhabitable, particularly due to the dangers of CO2 poisoning, electrocution and explosion.

The court also ordered the confiscation of assets of equivalent value in the amount of 2,437,557 euros, corresponding to the revenues earned through the offences of trafficking and exploitation of prostitution.

The *Liege Criminal Court* had the opportunity to question the role played by ‘Madams’ (‘dames de compagnie’) and to sentence them, along with other defendants as managers, in a case involving no fewer than 132 prostitutes.³¹⁸ The defendants operated several bars in Liege and Brussels. The madams recruited the staff, were responsible for arranging schedules, supervised the time spent with the client, ran errands and oversaw the bar. Two other defendants, a father and daughter who were managers, took care of the financial aspects. The money was collected in envelopes dropped into a letterbox in the cellar of the bar. These envelopes were then collected by one of the manager defendants, who handed them over to her father.

The court considers that it is indeed a question of human trafficking here. The girls had no choice but to accept the conditions imposed on them in the bars (schedule, handing over all tips to the escort, signing contracts which they were unable to understand, not knowing French). Before any personal withholding, the prostitutes were required to pay the madams between 200 and 250 euros per break in order to be allowed to work, with 50 euros going to the escorts and the remainder shared between the two other defendants (father and daughter). They were also convicted of money laundering.³¹⁹

³¹⁸ Liege Criminal Court, 19 January 2011, 8th ch. This decision is final with regard to the main defendants.

³¹⁹ See in this regard the focus of this report: Part 1, Chapter 1: Follow the money.

Several cases of Thai massage parlours

Several decisions concerned *massage parlours*. Thus, in the case of smuggling and sexual exploitation mentioned above in this report ³²⁰, several defendants, mostly of Thai nationality, were prosecuted for human smuggling and human trafficking for the purposes of sexual exploitation, as well as forgery and money laundering.

The *Louvain Criminal Court*, in its ruling of 22 November 2011 ³²¹, noted that the border between smuggling and human trafficking can sometimes be blurred and that smuggling can lead to trafficking when free will is undermined. This is particularly the case when the people who have been ‘smuggled’ are required to engage in debauchery or prostitution (as referred to in 433*quinquies* of the Criminal Code).

The court convicted the defendants of all of the charges against them. The record shows (particularly, the findings of the police, wiretapping, observations, searches, statements of the victims and others) that they were indeed part of an organisation whose activity was human smuggling and exploitation of prostitution. They formed a branch of a Thai smuggling network who transported young women and transsexuals into Belgium with forged papers. For many of the young women, the final destination was the United Kingdom. The young women had to pay to leave Thailand (between 6,000 and 15,000 euros). Members of airport staff were corrupted in order to ignore the false passports. Once in Belgium, arrangements were made for the transfer to the United Kingdom (using false passports) or a long stay in Belgium using contracts of cohabitation of convenience with Belgian men. The young women were placed, among other work, in massage parlours where they were required to provide sexual services in order to pay off the travel debts. The documents were withheld until they had paid their debts.

Multiple people were responsible for the reception of the young women, their transport or providing the false papers,... The wiretaps revealed that code words were used for the young women (‘pigs’) and for the sexual relations with the clients (‘baby’).

Two defendants ran the organisation from Thailand (one of them took care of the forged documents, the other recruited the girls who wanted to leave Thailand), a third was in charge of their reception in Europe (residence permits for Belgium, finding candidates for the cohabitation contracts and placement of the young women in the massage parlours). Another defendant was the manager of the massage parlour in which the girls were put to work. She received half of the income. Still other individuals took care of the withholding of the documents and the cohabitation contracts.

³²⁰ See above, in this part, Chapter 2, analysis of the phenomenon, point 1.2.5. Thai massage parlour.

³²¹ Louvain Criminal Court, 22 November 2011. The Brussels court of appeal must however rehear this case (November 2012).

Money earned through illegal activities in the United Kingdom was laundered by several of the defendants in Belgium.³²²

The court ordered sentences of imprisonment of from one to five years. Notably: it also ordered penalties of confiscation in assets of equivalent value for a total of 195,000 euros, which it distributed as a lump sum and in equity depending on the involvement of each of the defendants in the crimes.

We should also mention two similar cases decided by the *Antwerp Criminal Court*. In the first case³²³, two of the three defendants were charged with human trafficking for purposes of sexual exploitation, recruitment and exploitation of prostitution, running a house of debauchery or prostitution and employment of illegal workers.

The case was initiated following a control for clandestine prostitution in an Asian massage parlour, based on an advertisement for sex massages. The investigation revealed that in addition to massages, sexual services were also frequently provided. The young women had precarious residence status (irregular) on Belgian territory. The court sentenced the defendants for offences related to prostitution, but acquitted them, without any specific motivation, for crimes of human trafficking. Moral damages in the amount of 2,500 euros were awarded to the civil party. The court also ordered the confiscation of income derived from the offence for an amount of 8,200 euros, managed by the Central Organ for Seizure and Confiscation (OCSC/COIV) and granted to the civil party in the amount requested, in accordance with article 43*bis* of the Criminal Code.³²⁴

In the other case³²⁵, several defendants were exploiting young Thai women in their massage parlours. They were recruited under false promises of providing Thai massages. In reality, the massages were given in the nude and they were also required to offer sexual services at the client's request. They had to work constantly and were given virtually no days off. They were required to repay a considerable debt (15,000 euros), and they were put under pressure to do so. Their passports were withheld and their freedom was restricted as long as they had not fully paid their debt. They also had to perform household tasks and pay for their own room and board.

The *Bruges Criminal Court* was also required to rule in a case involving a massage parlour.³²⁶ In this case, a Belgian-Thai couple was prosecuted for human trafficking for purposes of sexual exploitation with multiple aggravating circumstances, recruitment for prostitution, operating a house of debauchery or prostitution, forgery and multiple breaches of the Criminal Social Laws.

³²² See in this regard the focus in this report: Part 1, Chapter 1: Follow the money.

³²³ Antwerp Criminal Court, 2 May 2011, ch. 4C. This decision is final.

³²⁴ See in this regard Part 1, Chapter 4: Give the money back.

³²⁵ Antwerp Criminal Court, 16 January 2012, ch. 4C (appeal filed).

³²⁶ Bruges Criminal Court, 22 June 2011, 17th ch. (appeal filed).

The court convicted them of all charges. With regard to trafficking, it was established that the defendants had recruited the young Thai women in order to subsequently exploit them sexually in their various massage parlours. They paid the travel expenses for some of them from Thailand, costs which they were then made to reimburse by performing the tasks required of them by the defendant in the massage parlours. They were also residing completely irregularly on Belgian territory, a fact of which the defendants were fully aware.

The young women were indeed required to provide not traditional massages, but ‘body to body’ massages, which ended with sexual stimulation (masturbation, anal stimulation). The defendants gave them clear instructions to that effect.

The court also ordered confiscation of assets of equivalent value of 93,811.25 euros, half of which was suspended. One young woman who was a civil party was awarded 2,500 euros *ex aequo et bono*.

Difficult convictions due to lack of incriminating statements from the victims

We should also mention two more decisions made at the level of the Court of Appeal: one in Mons, and the other in Brussels. The case tried in Mons reveals the difficulty of arriving at convictions in the absence of incriminating statements from the victims.

A case tried in Charleroi and later in **Mons**, involved three Romanian defendants charged with human trafficking and exploitation of the prostitution of several young Romanian women, some of whom were their partners. There was a separate case for one of them. The son of one of the defendants, a minor, was also charged for the same crimes before a specific chamber of the juvenile court. The courts assigned to handle this case arrived at opposite decisions, on the basis of the same case.

While the minor was convicted (after the decision concerning his father) for the charges against him³²⁷, the court acquitted his father. The court found that the case did not provide sufficient evidence, particularly with regard to the issue of the young women handing over money to the defendant. None of the victims filed complaints regarding his actions. It was also ruled that the fact that at certain times he was able to convey or receive one or more of the young women does not indicate the exploitation of their prostitution.

By contrast, the court convicted the other defendant for the facilitation of the prostitution of a minor, for which it was established that he transported her and showed her where to work as a prostitute. It was therefore concluded that the charge of trafficking was also supported (providing housing and transport knowing that she could thus work as a prostitute).

³²⁷ This is a decision of the special youth chamber ruling on criminal matters, 27 September 2011.

This judgment was upheld by the *Mons Court of Appeal* in a decision of 21 May 2012, which acquitted the father of the minor in the benefit of the doubt and confirmed the conviction of the other defendant.³²⁸ The Court noted that, despite the existence of some disturbing elements such as police observations, large sums of money in the possession of the defendant and his regular presence accompanied by several young women, these elements are not unambiguous and cannot prove, beyond a shadow of a doubt, the defendant's guilt. None of the young women who were interviewed in fact confirmed that they were required to hand over the income from their prostitution to the defendant.

As for the *Brussels Court of Appeal*, it issued heavy sentences in a case involving minors, particularly because one of the defendants was a former police officer.

The Court³²⁹ upheld the judgement issued in first instance that convicted the two defendants (a couple, the girlfriend of which worked as a prostitute who was also under the control of the defendant) for human trafficking, recruitment for and exploitation of prostitution and money laundering. The Court however increased the penalty, raising it from 6 to 7 years with regard to one defendant and from 40 months to 4 years for the other defendant. The defendant had in fact worked as a police officer in Bulgaria, which allowed him to find out how to set up his business.

They exploited, together with a third co-defendant who did not appeal, the defendant's brother, the prostitution of several young Bulgarian women. An inquiry commission was carried out in Bulgaria, where several victims were interviewed, confirming the declarations of the civil party. The defendants recruited their victims in Bulgaria, enticing them with tales of an easy life, jewellery, nice cars, nice clothes and plastic surgery.

The defendant played a supervisory role. She was the one who explained the practices related to prostitution and the rates to be charged in the window. The young women had to hand over half of their income to the defendant. The defendants used threats to put pressure on the young women.

The young women were given two mobile telephones: one for the contacts, the other for the police in the event of control. The defendant also took care to regularly change the SIM cards in the mobile telephones, to prevent wiretapping.

Once the revenues reached 3,000 euros, this money was sent to Bulgaria by minibus.

The Court also noted the presence of the moral aspect of the offence of money laundering and therefore ordered the mandatory confiscation of the amounts found on the defendant during controls, the latter being the subject of the money laundering offence.

A victim, acting as civil party, had her compensation raised from 10,000 to 25,000 euros.

³²⁸ Mons, 21 May 2012, 3rd ch. (appeal Charleroi Criminal Court, 19 September 2011, 6th ch.).

³²⁹ Brussels Court of Appeal, 11 October 2011, 14th ch.

2.1.2. Labour exploitation

Surprising decision on appeal in a 'horticulture' case

In a case discussed in the caselaw overview in a previous report, which had to do with a horticultural operation in which the defendant set fire to the caravan which housed the workers, a decision of conviction of human trafficking was pronounced in the first instance³³⁰ and confirmed on appeal by the Ghent Court of Appeal.³³¹ After Cassation (due to a Bench that was not properly composed), this same case was again brought before the *Antwerp Court of Appeal*. Meanwhile, the defendant died, and the case was therefore dropped. His heirs resumed the pending lawsuit, the Court was only able to rule on the civil interests.³³² However, it arrived at a surprising decision, based on a completely different interpretation of the events.

With regard to the burning of the caravan, although arson was well-established, the Court nevertheless decided that (contrary to the earlier decisions) the two Romanians, the civil parties, were not there at the time of the fire.

Also, in contrast to the previous rulings, the Court decided that the charge of human trafficking was not established. It decided that the case does not establish proof of working conditions contrary to human dignity: the statements of the two Romanian workers were not corroborated by the other illegal workers. They were free to come and go as they pleased, were in possession of their identity documents and they themselves had asked for the work. The Court deemed them not to be credible and their claims were not supported by other elements in the case according to which the Romanian brothers were not properly paid for their work for the past three years. The court even went so far as to question the reports from medical experts (who diagnosed post-traumatic stress as a result of the caravan fire), which form the sole basis for their statements and were not supported by objective medical evidence.

Therefore, the Court determined that it lacked jurisdiction to rule on the damages related to human trafficking and declared the application admissible, but unfounded with regard to the other offences.

Construction sector

A case of bogus self-employed status in the construction sector was finally judged by the *Dendermonde Criminal Court*.³³³

³³⁰ Ghent Criminal Court, 22 October 2007, 19th ch. See 2007 Annual Report. 'Trafficking in and smuggling of human beings: *Public Policy as seen by a National Rapporteur*', p.110-111.

³³¹ Ghent Court of Appeal, 30 September 2009, 3rd ch.

³³² Antwerp Court of Appeal, 26 April 2012, 14th ch.

³³³ Dendermonde Criminal Court, 3 April 2012 (appeal filed).

Several defendants were prosecuted as slumlords, one of them also being charged with human trafficking. The court convicted them of this charge. It highlighted the legal structures that were used (bogus self employment status).³³⁴ The victims were Polish workers who had to carry out various renovation work under the system of bogus self-employed status, without understanding what this involved. They were also housed in unsanitary conditions. They were paid well below the standard rates, were paid irregularly or sometimes not at all. The court ruled that by using this legal construction, the defendant's sole aim was to achieve maximum profits and this was at the cost of fundamental human rights and human dignity.³³⁵

Two other notable decisions were pronounced in the same sector in Mechelen and in Brussels.

The *Mechelen Criminal Court*, in a ruling of 14 October 2011 convicted Portuguese defendants of the sole charge of human trafficking for purposes of labour exploitation.³³⁶ They had employed several Brazilians who were staying irregularly on the territory, whom they had picked up at a meeting place in order to drive them to various worksites.

The Court considered that it was indeed a case of work contrary to human dignity: several workers were not paid at all, they were given no safety equipment and no form of medical or financial assistance was provided in the case of accident, nor social protection. In addition, advantage was taken of their vulnerable situation as irregular aliens, so that any form of protest was excluded.

The *Brussels Criminal Court*³³⁷ also upheld charges of trafficking against a defendant who ran a work site for a company, hired workers and then put them to work under conditions contrary to human dignity. The workers were sometimes required to work for over 14 hours a day, seven days a week without medical care for accidents in the workplace. The defendant also abused the power he had over them due to their vulnerable situation as they were residing irregularly in Belgium. The court awarded substantial material and moral damages to the victims (between 3,000 and 17,000 euros for the material damages and 2,500 euros for the moral damages).³³⁸

Car wash sector

In a case involving a **car wash**, the *Ghent Court of Appeal*³³⁹ confirmed the judgement issued at first instance by the Bruges Criminal Court (12 January 2010) which convicted a defendant of human trafficking and various offences against the Criminal Social Law. The defendant, a Pakistani, employed a foreigner in his car wash. He claimed that the

³³⁴ See on this case the 2009 Annual Report. 'Trafficking in and smuggling of human beings: *In a haze of legality*', p.96-98. And on bogus self-employment, in the same report, p.79-81.

³³⁵ See also above the focus, Part 1, Chapter 1, point 3: Human trafficking and legal constructions.

³³⁶ Mechelen Criminal Court, 14 October 2011, 9th ch. (appeal filed).

³³⁷ Brussels Criminal Court, 10 May 2011, 58th ch. This decision is final.

³³⁸ See in this regard the focus: Part 1, Chapter 4: Give the money back.

³³⁹ Ghent Court of Appeal, 23 June 2011, 3rd ch.

latter was helping him out as a friend, which was contradicted by the statements of the victim and after a confrontation between them. The defendant had recruited him and forced him to work six days a week from 9:30 AM to 8 PM without being paid. He was probably acting in the same way towards other foreigners as he was found to be providing temporary housing to other irregular aliens in his apartment.

The Court considered that it therefore was indeed a matter of working under the authority of the defendant, who decided which tasks should be performed, did not pay for the work and also abused the fact that the victim was an irregular alien. The constituent elements for human trafficking were met. It was indeed recruitment for the purposes of putting people to work in conditions contrary to human dignity, namely for a long period of time, without any payment, and working for more hours than is legally allowed.

Hospitality sector

In a case in the **hospitality sector**, the *Brussels Court of Appeal*, in a decision of 29 June 2011, confirmed the decision at first instance by the Brussels Criminal Court which convicted the Chinese defendant of human trafficking and various violations of Criminal Social Law.³⁴⁰ For nearly 3 years, the defendant had operated a clandestine workshop for the production of Chinese food where he employed several other Chinese nationals who were irregular aliens and without work permits.

The case was launched after contact between a specialised support centre and the federal police of Brussels.³⁴¹ A victim in fact walked into the specialised support centre, claiming to have been exploited. The victim told the investigators that he had worked for several years in the company of others in this workshop, located on the ground floor of a residential house in Brussels. The production was sold to various local Chinese restaurants. The working conditions and hygiene was deplorable: they had to work seven days a week 10 hours a day for a pittance (between 1 and 3 euros depending on the person or the period). The victim's statements were corroborated by the other elements in this case: statements by former owners of the building, results of searches, telephone records.³⁴²

A penalty of confiscation of assets of equivalent value of 144,000 euros (the value of the assets derived directly from the offence) was also ordered.³⁴³

On the other hand, the charge of human trafficking was not upheld in a case judged in Dendermonde. In a judgement of 15 March 2011³⁴⁴, the *Dendermonde Criminal Court* acquitted two defendants of the charge of human trafficking for purposes of labour exploitation. They were accused of having exploited several Chinese irregular aliens in

³⁴⁰ Brussels Criminal Court, 29 June 2011, 59th ch.

³⁴¹ See also above, in this part, Chapter 3, point 1.1. Multidisciplinary cooperation.

³⁴² See also above, in this part, Chapter 3, point 2.4. Investigative techniques.

³⁴³ See above the focus: Part 1, Chapter 2: Go for the money.

³⁴⁴ Dendermonde Criminal Court, 15 March 2011, 19th ch. This decision is final.

Chinese restaurants. However, the defendants were convicted of violations of the social laws and the law on the employment of foreign workers. The court noted that the wages paid were respectively 900 euros, 1,000 euros, 500 euros and 700 euros, in addition to room and board, and that this was not sufficiently low to be considered as working conditions contrary to human dignity. Moreover, the court ruled that the criminal case did not contain sufficient objective evidence to indicate threats of physical violence towards the victims, but they had to eat leftovers and had to hide in the event of controls as they indicated in their statements.

Riding stables

In a case brought before the *Tongeren Criminal Court*³⁴⁵, the charge of human trafficking was upheld against a defendant (with the aggravating circumstance of abuse of the vulnerable situation), while two other defendants were convicted of violations of the social laws. Two Brazilian victims had in fact worked seven days a week for three months. They would generally start work around 5 AM and finished between 9 and 10 PM. They cleaned the stalls of the horses, the trails, stalls for cows and took care of the general maintenance of the riding stables. The two victims together earned scarcely 3,100 euros for the three months. The Court considered that the statements of the civil parties were credible, given that they were able to describe in detail the layout of the riding stables and the activities that took place there.

On the basis of the statements, the court felt that it was sufficiently demonstrated that the civil parties were forced to work seven days a week for long hours and for extremely low wages and for housing in very poor conditions. Furthermore, the physical workload was very heavy. The court found that these facts could be qualified as employment under work conditions contrary to human dignity. Compensation of 9,446.85 euros was awarded to each of the victims for wages in arrears.³⁴⁶

2.1.3. Exploitation of begging

In this case, already mentioned in the overview of cases in the previous report, the *Brussels Court of Appeal* ruled by default. The defendant, a Romanian, was convicted at first instance of human trafficking for purposes of exploitation of begging.³⁴⁷ He was prosecuted having recruited and personally exploited the begging of another Romanian who was disabled. In its judgement of 1 April 2011 (12th ch.), the Court requalified the charge on the basis of article 433^{ter} of the Criminal Code and ruled that the conviction should be upheld.

³⁴⁵ Tongeren Criminal Court, 8 September 2011, 9th ch.

³⁴⁶ See in this regard the focus: Part 1, Chapter 4: Give the money back.

³⁴⁷ Brussels Criminal Court, 21 September 2010 (in opposition to the judgment by default on 2 June 2010). See 2010 Annual Report. 'Trafficking in and smuggling of human beings: *Combating social fraud to prevent trafficking*, p.78.

2.2. Human smuggling

An important case in immigration status regularisation, discussed earlier in this report³⁴⁸ was considered by the *Brussels Criminal Court*.³⁴⁹

The acts were committed in the context of the campaign for regularisation of the status of foreigners in 2009 and 2010. The chief defendant was suspected and convicted of human smuggling forgery and the use of forgery, fraud, embezzlement, conspiracy and money laundering.

The defendant had organised, with the help of co-defendants, making use of various companies, a large network for providing applications for the regularisation of residency status which were determined to be false or worthless. These documents were issued for a fee to clients consisting chiefly of Chinese nationals residing irregularly on Belgian territory. He also advertised in various Chinese newspapers and on the Internet, even producing a video, to attract a maximum number of victims. Many people fell victim to his actions and had to pay between 1,400 and 1,700 euros depending on the extent of the services provided. He also encouraged several irregular aliens to become part of companies he had founded, claiming that this would facilitate their regularisation. These people paid large sums of money in exchange for this service.

The court ruled, with respect to this defendant, a penalty of confiscation of assets of equivalent value of 600,000 euros.

The *Liege Court of Appeal* judged an important case of human smuggling and forgery.³⁵⁰ The defendants, Pakistani nationals, formed part of a criminal organisation for human smuggling, were smuggling persons particularly from Pakistan and India. Two defendants also ran night shops and textile shops in the Liege region. This organisation took charge of the irregular immigrants who had come from Pakistan via countries in Eastern Europe such as Poland and provided them with false documents in order to allow them to regularise their situation (false employment contracts...). They also ran a sideline business in forgery of commercial and identity documents to allow fraud to be committed towards credit institutions. The court convicted the defendants of human smuggling as well as forgery, fraud and organised crime.

In a particularly violent human smuggling case discussed earlier in this report³⁵¹, in a judgement of 14 December 2011³⁵² the *Brussels Criminal Court* convicted 16 out of 18

³⁴⁸ See above the focus: Part 1, Chapter 1: Follow the money.

³⁴⁹ Brussels Criminal Court, 3 November 2011, 47th ch. This decision is final for all of the defendants, except the one whose internment was upheld in appeal by the Brussels Court of Appeal on 5 April 2012, 12th ch.

³⁵⁰ Liege Court of Appeal, 20 July 2011, vac. ch.

³⁵¹ See above, in this part, Chapter 2, analysis of the phenomenon, point 4.2.1. Ishtar bis.

³⁵² Brussels Criminal Court, 14 December 2011, 51st ch.

defendants, particularly for human smuggling. The court stated that it was a ‘*classic*’ human smuggling operation with a well-known *modus operandi*, in which Kurdish organisations would stow away irregular aliens in trucks destined for the United Kingdom (and to a lesser extent for Scandinavia) from parking areas along the E40 highway. In questioning, the defendant indicated that the transport had failed several times. Nevertheless, the court stated that this did not matter because after a failure of transportation, the victims were taken back in anticipation of a new attempt, which demonstrates that the perpetrator continued to contribute to the victims remaining on the territory of an EU Member State or in transit.

The court considered that human smuggling should be severely punished, because it undermines human dignity and has a negative effect on society. The prison sentences issued range therefore between one and eight years, some of which were suspended. The court also ordered the confiscation of assets for a total amount of 84,724 euros.³⁵³ The judgement was upheld (with a slight adjustment as to the sentencing) in a judgement of the Brussels Court of Appeal of 2 May 2012.³⁵⁴

Finally in a case³⁵⁵ judged by the *Ypres Criminal Court* 32 defendants were charged with human smuggling, marriages of convenience, forgery and fraud. An Indian-Pakistani criminal organisation arranged marriages of convenience in exchange for payment between (chiefly) Indian or Pakistani men and Portuguese women recruited from poorer areas in Portugal. These marriages of convenience were performed in order to obtain permanent residence permits for the Indian and Pakistani men. In order to do this, a foreign marriage certificate was generally presented to the Belgian municipal offices as evidence of a marriage, enacted in Portugal, Denmark or Sweden, as well as employment contracts (particularly in night shops) and fictitious and forged certifications from employers in the name of the Portuguese wife. The organisation of such marriages of convenience cost between 7,500 and 10,000 euros. In its *judgement of 19 March 2009*, the Ypres Criminal Court finally sentenced eight of the 32 defendants for human smuggling. Regarding the main defendants, the court held that they were definitely guilty of the organisation of marriages of convenience and therefore of a form of human smuggling, for which they were handsomely paid. They were sentenced to prison terms ranging from 30 months to 3 years. The other defendants’ convictions included forgery (for having drawn up false employment contracts), for marriages of convenience, the use of false passports, etc. For one defendant who was found guilty of a marriage of convenience and for swindling the CPAS/OCMW for 50,000 euros under a false name, the court held that a severe sentence was necessary. This judgment was upheld by the *Ghent Court of Appeal in a decision of November 2011*³⁵⁶ regarding the three defendants who had appealed.

³⁵³ See also above, focus: Part 1, Chapter 2: Go for the money.

³⁵⁴ Brussels Court of Appeal 2 May 2012, 13th ch.

³⁵⁵ Ypres Criminal Court, 29 March 2009. See also Chapter 2, point 4.2. 3. Indian-Pakistani marriages of convenience in Ypres.

³⁵⁶ Ghent Court of Appeal, 18 November 2011, 10th ch.

PART III:

FIGURES AND STATISTICS

Introduction

The two key tasks of the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings, created in 2004 under the aegis of the Ministers of Justice and the Interior, have not currently been fulfilled: the gathering, the centralisation and exchange of data on one hand and the strategic analysis with an eye to political, strategic and/or operational action on the other.³⁵⁷ The key figures concerning crimes and victims of human trafficking and smuggling are made available exclusively to those actors who play a role in the multidisciplinary approach. These are the figures which we shall present in this chapter.

Wherever possible, in the presentation of the figures, a distinction is made between cases of human trafficking and cases of human smuggling. This distinction is clearly made in the figures from the Immigration Office and specialised support centres, and with certain restrictions inherent to the data, for the figures from the police and the Board of Prosecutors General.

The figures shown below are based on data from:

- the General National Police Database (*Banque de données Nationale Générale* or BNG), provided by the federal police;
- the Social Inspectorate (SI) of the Federal Public Service Social Security and of the Social Law Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue (ELSD);
- of the Board of Prosecutors General;
- of the Immigration Office;
- specialised support centres for victims;
- report concerning convictions issued by the Department of Criminal Policy of the Federal Public Service of Justice.

1. Police data

For the reproduction of these figures, we are using the data taken from the General National Police Database. The strategic analysts of the central Department of human trafficking of the federal police used it to create a map. This map offers a qualitative overview of the number of reports recorded by the police and their geographical distribution.

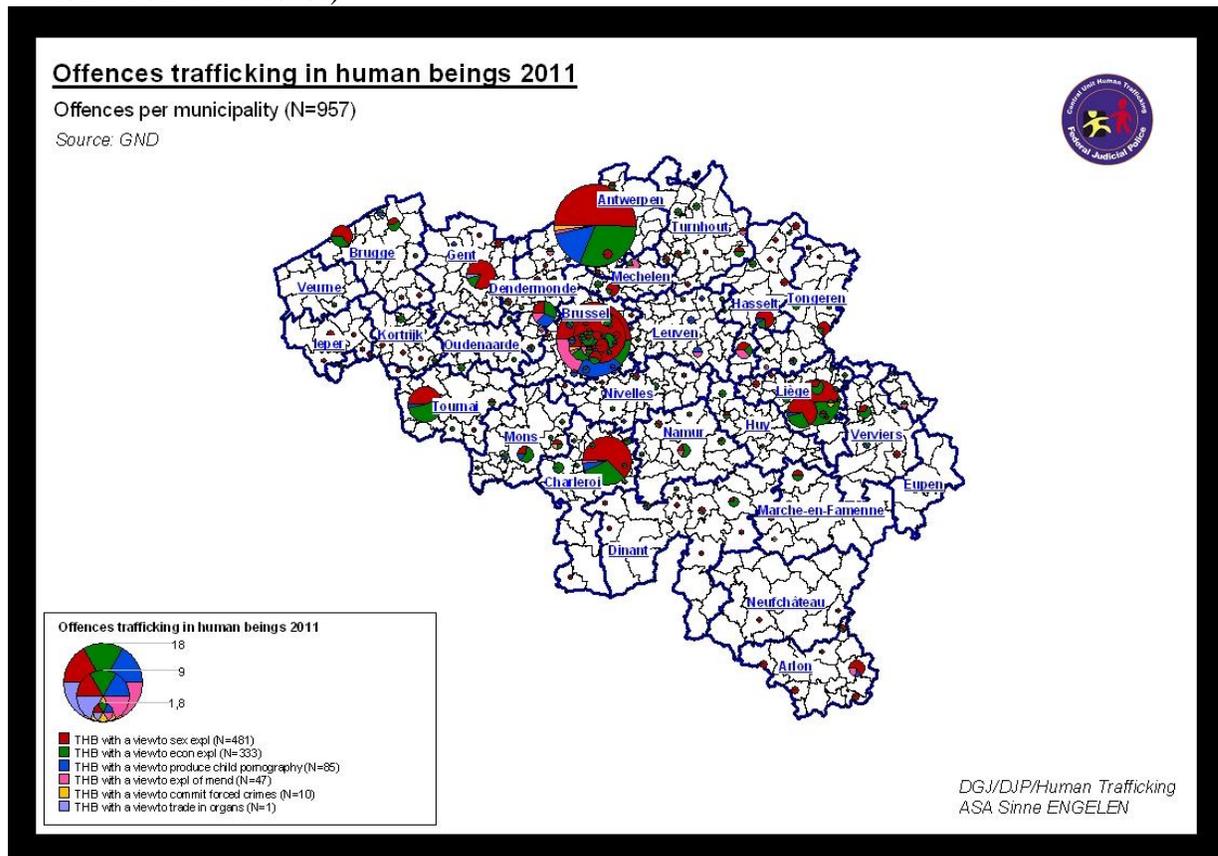
The use of a new syntax makes it impossible to compare this data with the data we have been able to publish in previous years.

³⁵⁷ See Annual Report. 'Trafficking in and smuggling of human beings: *Belgian Policy on trafficking in and smuggling of human beings: shadows and lights*', November 2005, p. 62-65.

The syntax is designed to highlight a specific phenomenon. Various elements have been taken into consideration in the General National Police Database, including the qualification of a crime, the nature of the crime, an element, the modus operandi, the type of perpetrator... For each phenomenon, the syntax records a precise selection of elements that can enable crimes to be linked to a phenomenon.

Taking the phenomenon 'human trafficking for purposes of labour exploitation' as an example, the process can be described somewhat as follows. Whereas, in previous years, only the reports containing the offence 'human trafficking for purposes of labour exploitation' were selected, the process does not only take into account this type of 'human trafficking' offence to determine the extent of the phenomenon, but also, for example, the offence of 'clandestine labour' if there was an indicator of human trafficking or if there was an element of coercion, etc. The aim of this syntax is to gain the most complete possible picture of the phenomenon and not simply a snapshot based only on the nominative offence. For example, whereas 42 crimes of human trafficking for the purposes of child pornography were reported under this same heading based on the BNG for 2010, the BNG reveals that, due to the new syntax, 85 crimes were reported in 2011. This may have to do with the result of more investigation but also a better understanding of the phenomenon.

Figure 1. Offences per municipality and per purpose of exploitation (Source: General National Police Database)



In terms of human smuggling, certain figures from the BNG make it possible to create a comparative table year by year of comparable data, although rudimentary.

Table 1. Cases of human smuggling (Source: *General National Police Database*)

	2008	2009	2010	2011
Human smuggling	290	283	212	268

The definition of human smuggling as it is understood here is included in 77bis of the law of 15 December 1980: ‘*Human smuggling is the act of contributing, in any way whatsoever, either directly or through an intermediary, to allowing the access, transit or stay of a person who is not a citizen of the Member State of the European Union within or via the territory of such a state, in violation of the laws of the state, in order to obtain, either directly or indirectly, pecuniary benefits.*’

2. Data from the Social Inspectorate

A cooperation protocol between the Labour Inspectorate of the FPS for Social Security (SI) and the Social Law Inspectorate of the FPS Employment, Labour and Social Dialogue (SLI) should guarantee that the two inspection departments conduct their systematic investigations in a way that is structured and coordinated, particularly in the area of the employment and social security laws in certain sectors which are subject to human trafficking (exotic restaurants, cleaning services, horticultural and agricultural companies, garment manufacturers, the prostitution sector).³⁵⁸

The data provided by the SI of the FPS Social Security concern primarily the number of *Pro justitia* acts (PJ) which were sent to the Public Prosecutor and/or the Labour Auditor. The SI also draws up criminal reports. These are sent to the Labour Auditor, the prosecutor or to the investigative judge when an investigation is conducted at the order of the latter. A criminal report does not have the same probative force as a PJ act. It is up to the judge who has called for it to evaluate the probative force.

Thirteen PJ concerning 35 workers were drawn up in 2011 by the SI for offences of human trafficking and transmitted to the Public Prosecutor.

Table 2. Number of *Pro justitia* acts for THB per number of workers (Source: *Social Inspectorate*)

	2009	2010	2011
Pro Justitia acts / # workers	4 / 5	16 / 25	13 / 35
Criminal reports/ # workers	2 / 4	18 / 95	20 / 21

³⁵⁸ See Social Law Inspectorate, 2010 Annual Report, Chapter 8, the fight against human trafficking.

PJ have been drawn up for the offence of human trafficking in nine sectors. Here are the sectors in which more than one PJ for the offence of human trafficking was drawn up in 2011 by the SI: hospitality and catering (3), diplomatic domestic staff (2) and the cleaning sector (2). The only PJ for human trafficking for purposes of labour exploitation in the construction sector involved 20 workers.

An evolution towards a more intensive utilisation of the options for drawing up criminal reports has also been observed within the Department of Information and Social Research (SIRS/SIOD). These are then reports of offences, in the context of the cooperation protocol between the SI and the SLI, of the law of 30 April 1999 on the occupation of foreign workers, although it is not possible to provide specific figures establishing a link between the use of the criminal report in the context of this collaboration, and the records of the offence of human trafficking.

The figures of the annual report of the SLI in turn note, in 2010, 15 offences for which a PJ was drawn up. A situation of an offence for human trafficking was recorded in this context for 38 foreign workers. During this same period, 10 criminal reports for human trafficking were also drawn up, in the context of which one offence was recorded with regard to 8 foreign workers.

3. Data on prosecutions

Here we shall present a selection of the data provided by the Board of Prosecutors General. The statistical analysts of the Board of Prosecutors General gathered and analysed information from multiple cases that came before the Belgian criminal courts in the course of the year 2011. The data comes from a collection of data obtained through the REA/TPI system, within the criminal sections of 27 Public Prosecutor's office of first instance and federal prosecutors. Only the judicial district of Eupen is missing. Offences committed by juveniles are not taken into account.

The cases stemming from Labour audits are not included in these tables because the Labour audits do not all use the REA/TPI system for keeping records in the same way. Including them would result in a distorted image of the Labour Auditor's processing of cases of exploitation based on districts. This omission therefore has a negative impact on the quantitative data concerning human trafficking for labour exploitation.

The criminal cases included in the table below may each involve multiple offences and/or one or more people. The cases shown in the following tables have been selected based on the charge of 'human trafficking', whether it is a primary or secondary charge. In comparing the figures for the past four years, the following trends were revealed with regard to prosecution by the courts for crimes of human trafficking.

At the level of prosecution for human trafficking for purposes of sexual exploitation, we note an increase from 2008 (n=27) to 2011 (n=99) in the jurisdiction of Brussels, whilst we see a steady decline in the jurisdictions of Antwerp and Mons. For Antwerp, this is a

decline of 53%, from 2008 (n=58) to 2011 (n=31). For Mons, this is a decrease from 13 prosecutions in 2008 to four in 2011.

The prosecutions for human trafficking for purposes of exploitation of begging remain a largely urban phenomenon, with an average of 4 prosecutions per year since 2008. Among the 35 prosecutions for this use of human trafficking in the course of the past four years, 21 were initiated within the jurisdiction of the Brussels Court of Appeal.

With regard to prosecutions for human trafficking for purposes of labour exploitation, one must certainly take into account, in these figures, the omission of prosecutions initiated by Labour Auditors. On the basis solely of figures from the Public Prosecutor's office, we observed relative decreases in the jurisdictions of Antwerp, Brussels and Ghent and relative increases in the areas of Mons and Liege. For 2011, there were a total of 165 prosecutions initiated by the Public Prosecutor, which is four fewer than the average for the past four years (169).

In addition, one prosecution concerned the offence of human trafficking for the purpose of organ removal. One single prosecution is also the average of the past four years.

In all of the jurisdictions, the number of prosecutions for human trafficking for the purpose of committing offences decreased from 2008 to 2011, except in the jurisdiction of Mons, where there were five prosecutions for 2011, and which is also the highest figure for the five jurisdictions.

Table 3. Overview of prosecutions for human trafficking per jurisdiction of Court of Appeal (Source: *database of the Board of Prosecutors General - statistical analysts*)

	ANTWERP				BRUSSELS				GHENT				LIEGE				MONS				FEDERAL PUBLIC PROSECUTOR'S OFFICE				TOTAL			
	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011
	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
37L: Human trafficking -																												
Sexual exploitation (art. 433 quinquies §1,1°)	58	53	49	31	27	61	76	99	18	24	29	15	22	42	17	21	13	8	4	4	3	1	0	0	141	189	175	170
29E: Human trafficking -																												
Exploitation of begging (art. 433 quinquies §1, 2°)	2	1	0	2	6	8	2	5	3	1	1	1	1	0	2	0	0	0	0	0	0	0	0	0	12	10	5	8
55D: Human trafficking -																												
Labour exploitation (art. 433 quinquies §1, 3°)	53	43	31	41	37	41	21	30	69	42	39	42	22	18	22	25	20	29	23	27	1	0	0	0	202	173	136	165
55E: Human trafficking -																												
Illegal organ removal (art. 433 quinquies §1, 4°)	0	0	0	0	1	0	1	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	1	1	1
55F: Human trafficking -																												
Coercion to commit an offence (art. 433 quinquies §1,5°)	8	3	2	3	5	3	2	1	4	3	4	0	11	9	10	4	2	2	1	5	0	0	1	1	30	20	20	14
TOTAL	121	100	82	77	76	113	102	136	94	70	73	58	56	70	51	50	35	39	28	36	4	1	1	1	386	393	337	358

With regard to the prosecutions for human smuggling, these data are still included in the total violations of the law on foreigners, in which a distinction is not yet made between prosecutions for human smuggling and the prosecutions for criminal offences of facilitating illegal entry and residence (which are not covered by the standard definition of trafficking and/or smuggling human beings).

The picture painted by the figures for 2011 is striking: no fewer than 515 prosecutions are indicated in the figures provided. The jurisdictions of Ghent (n= 326) and Brussels (n= 166) together account for 492, or over 95% of all the prosecution cases. For the rest, there were sixteen cases of prosecutions in the jurisdiction of Antwerp, seven in Liege and none in Mons.

Table 4. Overview of prosecution for human smuggling per jurisdiction of Court of Appeal (Source: *database of the Board of Prosecutors General - statistical analysts*)

	ANTWERP				BRUSSELS				GHENT				LIEGE				MONS				FEDERAL PUBLIC PROSECUTOR'S OFFICE				TOTAL			
	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011	2008	2009	2010	2011
	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
55G: Human smuggling (art. 77bis, art. 77ter, art. 77quater, art. 77quinquies Law of 15 December 1980)	11	34	21	16	71	80	61	166	366	242	228	326	7	5	13	7	3	1	2	0	4	0	0	0	462	362	325	515

4. Data from the Immigration Office

Within the Immigration Office, the Bureau MINTEH (minors/victims of human trafficking) is made up of two units, each in charge of a specific area. One of the units, the UFM unit, examines and processes cases of unaccompanied foreign minors (UFM) requesting asylum. The latest annual report of the Immigration Office provides more detailed information on the subject.³⁵⁹

The other unit, the human Trafficking unit (the THB unit) analyses and processes cases of victims, both minors and of the age of majority, of human trafficking and smuggling. The legal basis is found in articles 61/2 to 61/5 of the law on foreigners of 15 December 1980.³⁶⁰

³⁵⁹ Immigration Office, report of activities 2011, p 110-115.

³⁶⁰ Chapter IV foreigners who are victims of human trafficking in the sense of article 433quinquies of the Criminal Code are victims, under the circumstances referred to in article 77quater, 1°, solely with regard to unaccompanied minors, to 5°, to the offence of human smuggling in the sense of article 77bis, and cooperate with the authorities.

4.1. Victims who received a residence document for the first time in 2011

The increase seen between 2009 (124 cases of victims) and 2010 (137 cases of victims) continued in 2011, for which the Immigration Office (IO) reports a total of 149 new cases of victims (129 victims of trafficking and 20 victims of smuggling). The downwards trend that continued up until 2009 appears to have been reversed. If we observe the purposes of exploitation, among the crimes of human trafficking, we notice that the number of persons who have claimed the official status of victim for reasons of labour exploitation continues to increase, rising from 59 in 2009 to 72 in 2010 and 81 in 2011. In 2011, the number of victims of sexual exploitation having received a first residence document fell by ten (n = 34). The IO does not include the purpose of exploitation ‘commission of an offence’ as a separate category in its report. These victims are probably included in the category ‘miscellaneous’.

The IO has explained that, with regard to the victims of human trafficking for purposes of organ removal, these were Iraqis upon whom the removal was actually performed.

Table 5. Sectors of exploitation and age in 2011 (Source: IO)

Age	Sexual	Begging	Labour	Organs	Crime	Misc.	TOTAL
< 18	5	1	7	0	n	2	15
18 - 25	17	0	26	0	n	1	44
26 - 30	8	0	12	0	n	2	22
> 30	4	0	36	2	n	6	48
TOTAL	34	1	81	2	n	11	129

Table 6. Human smuggling and age in 2011 (Source: IO)

Age	TOTAL
< 18	5
18 - 25	7
26 - 30	3
> 30	5
TOTAL	20

It is important to note that among the 20 victims who were minors out of the total reported by the IO for crimes of human trafficking (n=15) and smuggling (n=5), 12 had received a residence document for the first time as the child of a victim and not as a victim in their own right.

The following table shows the nationality and the sex of the minors who are themselves victims, and the situation of trafficking or smuggling of human beings that resulted in their being able to assume the official status of victim of human trafficking in 2011. In all cases these are unaccompanied minors. For one of these minors, the procedure was stopped. Another minor disappeared from one of the support centres. The support shown

in this table indicates whether these are minors receiving support or not (so it does not refer to assistance by one of the specialised support centres).

Table 7. Minors who obtained a residence document as an individual victim of human trafficking or smuggling (Source: IO)

Year	Nationality	Gender	Sector	Support
° 1994	Iran	F	Labour	No
° 1994	Serbia	F	Misc.	No
° 1995	Croatia	F	Misc.	No
° 1994	Nigeria	F	Sexual	-
° 1997	Romania	F	Begging	No
° 1994	Slovakia	F	Sexual	No
° 1995	Vietnam	F	Smuggling	No
° 1994	Bulgaria	F	Sexual	No

As mentioned above, the IO does not publish separate figures for human trafficking for purposes of committing an offence. This purpose of exploitation or any other purpose of exploitation not described may therefore be counted in ‘miscellaneous’.

Finally, we show the most frequently represented nationalities among those persons who have received a residence permit within the framework of human trafficking. As it covers all forms of exploitation and smuggling at once, this table does not allow a conclusive interpretation. If, specifically, one removes the Indian victims of smuggling from this table, it is likely that another country would rise to 5th position regarding human trafficking. However, this data has not been published yet.

Nevertheless, it is possible to compare the figures for the victims of human trafficking from 2011 with those from 2010 with regard to the three top countries on the list. That is because they are the same three countries. In 2010, Romania was 2nd with 23 victims, Morocco was 3rd with 20 victims and Bulgaria was 1st with 27 victims. This quickly leads to the conclusion that in comparison with 2010, the number of Bulgarian victims having received a first residence document from the Immigration Office has fallen by half.

A second observation can be made based on the 129 victims of human trafficking who received a first residence document in 2011 from the IO and in light of the figures regarding EU citizens who, as victims of human trafficking, are provided support by one of the specialised support centres: more than a third of the victims of human trafficking are EU nationals.

Table 8. Nationalities: sectors of exploitation of THB and human smuggling in 2011
(Source: IO)

	Sexual	Begging	Labour	Organs	Crime	Misc.	Smug gling	TOTAL
Romania	4	1	19	0	n	2	0	26
Morocco	1	0	16	0	n	2	1	20
Bulgaria	6	0	8	0	n	0	0	14
China	0	0	7	0	n	1	1	9
India	0	0	5	0	n	0	3	8

4.2. Decisions to grant residence from the Bureau MINTEH concerning all victims

The figures for victims for whom a residence document was issued for the first time in 2011 is important information. The type and the number of residence permits that the IO issued in 2011 supplements this information. Once a victim assumes official status as victim, he is issued an initial document, or as necessary, an order to leave the territory or a certificate of registration (when statements are made directly). Subsequently, as he has this status, he will receive other residence documents.

The 813 decisions to issue or extend a residence permit therefore concern both new victims from 2011 as well as victims from prior to 2011, who are in the phase of having been granted victim's status and regarding whom one or more decisions were taken.

62 victims received a residence permit of indefinite duration, among which 51 for reasons inherent to the procedure of human trafficking and 11 for humanitarian reasons.

Table 9. All residence decisions concerning victims of human trafficking and smuggling (Source: IO)

M (Male) / F (Female)	M	F	TOTAL
OLT (order to leave the territory) 45 days/THB	20	10	30
Certificate of registration/THB	73	47	120
Extension and certificate of registration/ THB	1	11	12
Temporary CIAR (Certificate of inscription in the alien's register)/ THB	45	27	72
Extension of temporary CIAR/ THB	282	180	462
Permanent CIAR/ THB	31	20	51
Temporary CIAR/humanitarian	0	1	1
Extension of temporary CIAR/ humanitarian	14	33	47
Permanent CIAR/ humanitarian	5	6	11
Annex 13 (OLT)	3	4	7
Extension of Annex 13 (OLT)	0	1	1
TOTAL	474	340	814

5. Data from specialised centres for victims

Pending a formal recognition of specialised centres (SC) for the victims, the multidisciplinary circular is the best source for approaching the role of these specialised centres. Their annual reports and other documents and data supplied by the centres themselves however give a more accurate picture of their practical work day-to-day. This year, we are publishing the figures from the centres in an aggregate table. This table does not include the reports recorded and processed by the SC, but which were referred to other services because they do not involve acts of trafficking or because they did not end up leading to a programme of support.

The reports which did not lead to the initiation of support by the SC account for a large amount of work for the centres, both in terms of workload and responsibility. The analysis and reporting of notifications which do not lead to providing support is itself a matter worth analysing and reporting on, but this is not considered within the framework of this annual report.

The figures for new programmes of support correspond to the typology required by the circular. Once the initial phase (period of consideration) has begun and thus, an order to leave the territory is issued, it becomes a matter of providing support. The organisation of the psychosocial and legal-administrative support may vary depending on the centre.

For the first time, we are publishing two integrated tables, one for human trafficking and the other for smuggling, into which are entered, respectively, the age, sex, nationality and the purpose of exploitation, as well as the victims of human smuggling who are receiving support. While the number of new support plans appears to hover around 180 people between 2006 and 2008, the average between 2009 and 2011 is approximately 150.

Table 10. New support plans initiated by the specialised centres from 2006 to 2011
(Source: *annual reports on human trafficking and smuggling, Centre for Equal Opportunities and Opposition to Racism*)

2006	2007	2008	2009	2010	2011
172	179	196	158	141	153

To the 153 victims newly receiving support plans in 2011 should be added the other victims for whom a support plan was already underway, bringing the total to 381 victims receiving support as of 31 December 2011.

The table below does not provide a picture of the occupation level and the capacity of the centres. The indicator of the duration of the support, which is a very important indicator,

is not included here, but is generally analysed in greater depth in the annual reports on the activities of the SC (specialised centres).³⁶¹

In 2010, 141 victims were newly provided with support plans, of which 130 were victims of human trafficking and 11 victims of human smuggling. In 2011, a support plan was initiated for 133 new victims of human trafficking and for 20 new victims of human smuggling. Labour exploitation remains the most widespread purpose of exploitation. If one considers that the status of victim was not designed to address persons who visit our country in the context of the free movement of persons, the figures for EU citizens who are receiving support plans as victims of human trafficking are particularly relevant to the policy for providing aid to victims.

³⁶¹ The figures from the Immigration Office on the extension of documents are also an indicator. But this indicator shows the number of documents issued or extended, without any information on the number of people these decisions concern.

Table 11. Victims of human trafficking for whom a support plan was initiated in 2011 (Source: *specialised centres for the victims of human trafficking, table compiled by the Centre for Equal Opportunities and Opposition to Racism*)

F (female) / M (male) - (Minor) / + (Major)	Sexual		Begging		Labour		Organs		Crime		Other		TOTAL												
	F	H	F	H	F	H	F	H	F	H	F	H													
	-	+	-	+	-	+	-	+	-	+	-	+													
Morocco	1				5	19							25												
Romania	3				2	13			1	3			22												
Bulgaria	1	5			1	4							11												
India					1	9							10												
Nigeria	1	7											8												
Algeria						4							4												
Belgium	4												4												
China					1	3							4												
Albania	1				1	1							3												
Cameroon	2					1							3												
Hungary	1	2											3												
Sudan						3							3												
Tunisia						3							3												
Moldavia	1				1								2												
Poland						1			1				2												
Sierra Leone			1			1							2												
Czech Republic	2												2												
Turkey						2							2												
South Africa					1								1												
Belgium-Moldavia											1		1												
Bosnia	1												1												
Croatia									1				1												
Great Britain						1							1												
Kenya					1								1												
Liberia						1							1												
Lybia						1							1												
Macedonia					1								1												
Mali					1								1												
Nepal						1							1												
Pakistan						1							1												
Portugal						1							1												
Dominican Republic	1												1												
Senegal	1												1												
Serbia					1								1												
Slovakia	1												1												
Tanzania	1												1												
Chad						1							1												
Tibet						1							1												
Subtotal	4	32	0	1	0	0	0	0	1	16	0	72	0	0	0	0	2	1	0	3	0	1	0	0	133
TOTAL	37		0		89		0		6		1		133												

Table 12. Victims of human smuggling, for whom a support plan was initiated in 2011 (Source: *specialised centres for the victims of human trafficking, table compiled by the Centre for Equal Opportunities and Opposition to Racism*)

F (female) / M (male) (minor) / + (age of	smuggling/trafficking				TOTAL
	F		M		
	-	+	-	+	
Iran		1		5	6
India				4	4
Iraq				4	4
China				3	3
Kosovo		1			1
Morocco				1	1
Vietnam	1				1
subtotal	1	2	0	17	20
TOTAL	20				20

The increase in the number of victims of human smuggling is striking and appears to be associated with the number of prosecutions conducted by the Public Prosecutor for human smuggling. In order to gain an idea of the referral mechanisms, information from the support centre Pag-Asa revealed that among the seven victims of human smuggling receiving support, three had been reported in the context of ongoing investigations by the Brussels Public Prosecutor. These were men of Indian nationality. Of these three victims, two were reported by the Federal judicial police (FJP) and one by the railway police. A Moroccan victim and a Chinese victim of human smuggling were reported by a lawyer in the context of 'Brussels based' cases. The Iranian victim concerned a Brussels case reported here by the FJP. The Vietnamese underaged victim was reported by the Centre for Unaccompanied Foreign Minors in Steenokkerzeel and the investigation was conducted by the Public Prosecutor of Bruges.

6. Judicial data: convictions for human trafficking

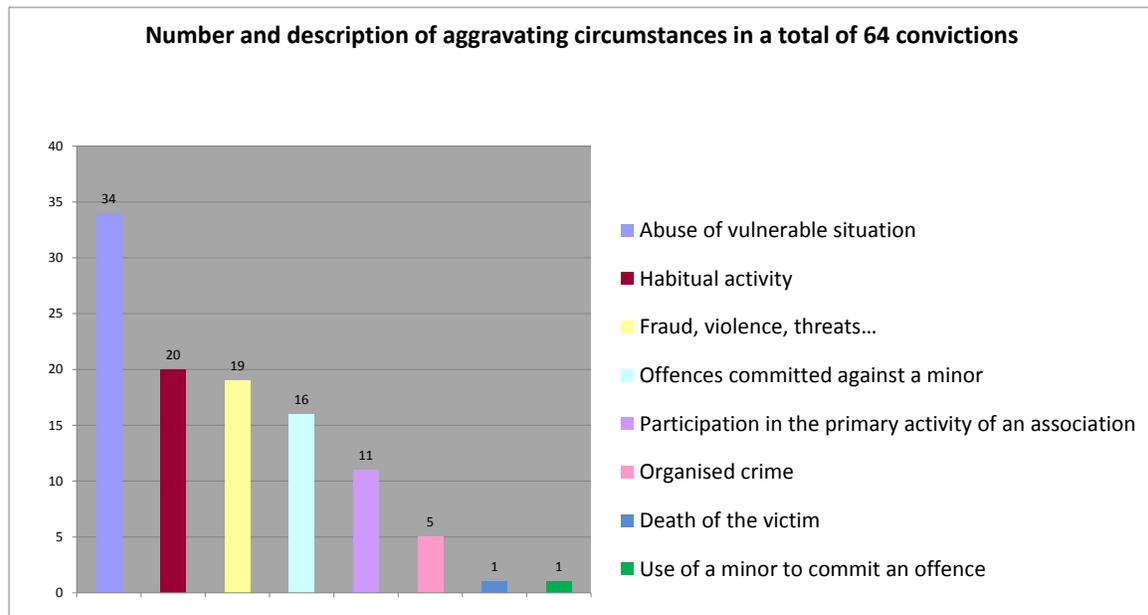
The Department of Criminal Policy (DCP) provided statistics on convictions. The most recent information concerns 2010. These statistics are taken from the central judicial records. These judicial records include the decisions that have the force of *res judicata*. These decisions are transmitted to the judicial reference by the clerks of the courts and tribunals. These inscriptions are still done manually (while the police and the prosecutors work with automated data analysis). It follows that, in the figures shown here for 2009, still approximately 15% of the decisions are missing, according to the estimate of the DCP.

Meanwhile, however, the data entry has been adapted to offences of the 2005 law, which finally allow the distinction between convictions for human trafficking and those for human smuggling. The data entry also includes codes indicating all of the aggravating circumstances. The following data relate exclusively to convictions for human trafficking.

There were 64 convictions for human trafficking, with a presumed underestimation of 15%. Although the data entry provides the possibility of making a distinction depending on the purpose of the exploitation, it appears, based on internal verification, that the purpose of the exploitation has not always been entered. Based on the 20 cases which were correctly entered, the DCP suggests a distribution of 10/10, or 50/50, among the convictions for economic and sexual exploitation. New instructions will be given for making it mandatory to enter the type of exploitation in subcategories, whether economic or sexual.

In this total of 64 convictions, we find aggravating circumstances 107 times. Attention should certainly be drawn to 34 cases of abuse of the vulnerable situation and the 16 cases in which the crimes were committed against minors.

Figure 2. Number and type of aggravating circumstances in a total of 64 convictions for human trafficking (Source: *Department of Criminal Policy*)



It is also interesting to take a look at the aggravating circumstances, apart from convictions for human trafficking in 2010 for which this information lacks, namely, when:

- the crimes were committed by a person who has authority over the victim, or by a person who has abused the authority or the facilities derived from his functions;

- the crimes were committed by an officer or a public official, a trustee or a law enforcement agent acting in the course of carrying out his functions;
- the life of the victim was endangered deliberately or through gross negligence ;
- the offence has caused an apparently incurable illness, a permanent physical or mental disability, the complete loss of an organ or of the use of an organ, or a serious mutilation.

Conclusion

The figures provided by the different actors do not allow us to gain a complete and accurate picture of the evolution of the approach to the phenomenon of human trafficking and smuggling over the years. The parameters and methods for recording, reporting and presentation change year to year. These adaptations - often synonymous with apparent improvements - are not the result of a common method adapted and coordinated by the actors in order to obtain a reliable picture that can be compared over time, at the national and international level, of the Belgian approach to human trafficking and smuggling. This observation has already been made in the previous reports of the Centre. Better coordination is needed. And this is especially true regarding the delays in the establishment of Centre for Information and Analysis on Trafficking in and Smuggling of Human beings (see above).

Even without a collaborative model, it is possible to ask each player, when it comes to gathering data and the form in which it is presented, to endeavour to provide more complete records (for example by the Labour Auditors) and more specific records (for example for the convictions for human trafficking and the purpose of the exploitation concerned) as well as to update data more rapidly. The limitations, gaps or modifications, which have not allowed a full or sufficiently accurate picture to be formed of the intervention of the authorities, or have not allowed an acceptable comparison with the data from previous years, have been demonstrated in nearly all of the previous points. As a result, year after year, accurate information enabling a correct picture of the approach and the evolution of the problem at the national level is not being provided.

It is also crucial for information to be exchanged internationally. Especially as the discussion on the role of the statements by victims and the value of their cooperation in the fight against human trafficking can only be carried out effectively and formally when there is a more specific policy and the means to punish the perpetrators of human trafficking.

RECOMMENDATIONS

1. Financial analysis and measures to combat money laundering

Recommendation 1. The Centre recommends the use of detailed financial investigation, to be started immediately after opening a case concerning human trafficking.

This requires cooperation and collaboration between the competent sections within the Public Prosecutor's office as well as the police, if results are to be achieved regarding money laundering in cases of human trafficking and smuggling. Creating specialised mixed teams of investigators and magistrates (trafficking and financial sections) may also be a valuable step.

Conducting in-depth financial investigations also requires reinforcement of the training of the investigators and the magistrates in financial matters. Measures aimed at attracting more financial specialists to the magistrature could also be encouraged, both at the level of the Public Prosecutor and investigative judges. The police forces must also be given the necessary equipment and personnel to conduct thorough financial investigations.

Finally, international cooperation could be made more effective, particularly for the exchange of information between relevant authorities, conducting joint investigations and the tracing, freezing and confiscation of illegal assets.

Recommendation 2. The Centre calls for awareness raising about money laundering among professionals such as notaries, lawyers, and tax advisers.

The anti-money laundering law imposes a duty of vigilance to these professions. However, these professions may also play an important role in setting up the complex legal constructions which are sometimes associated with practices of human trafficking.

In addition, the anti-money laundering law provides for administrative fines when individuals or organisations covered by the law have not been sufficiently diligent. These penalties should be effectively applied when failures occur.

2. Seize the profits

Recommendation 3. The Centre emphasises that it is important to make a maximum amount of seizures early in the investigation.

Once the investigation is initiated, the suspects will attempt to hide or shift their property, or put their company into bankruptcy in such a way that these assets can no longer be seized in a subsequent phase of the proceedings.

In order for the seizure of real estate property to be effective (followed, as necessary by a subsequent confiscation), it is necessary for the magistrates to make specific inquiries for the investigation to allow accurate identification of the assets (photos, diagrams, number in the Land Registry, building condition, type of marriage contract of the owner). This would prevent later discovering that the building is the property of someone else, namely, a straw man.

In addition, according to the current case law of the *Cour de Cassation*, the confiscation of the building that has been used to commit the offence is not possible in the absence of an explicit statutory provision. To remedy this problematic case law, it would be necessary to consider a legislative amendment to article 433^{novies} of the Criminal Code, by explicitly providing for the confiscation of real estate property in the area of human trafficking, as has already been proposed in Parliament.

Finally, orders for freezing and confiscation are tools which can facilitate cooperation between Member States of the European Union: their use should therefore be encouraged.

Recommendation 4. The Centre urges international cooperation for seizures and confiscations.

The CARIN network is not sufficiently well-known among the actors involved and could be used for this purpose. It allows the status of a suspect's assets abroad to be known. It is also possible nowadays to investigate the property of convicted individuals via the FAST-team.

3. Local policy

Recommendation 5. The Centre calls upon the mayors to devote attention at the local level to crimes of human trafficking and to include this point in the new zonal security plans after the municipal elections of October 2012.

The local police plays an indispensable role in the detection of crimes and victims of human trafficking. This not only applies to cases of sexual exploitation, but certainly also to cases of labour exploitation. However, in various cities, human trafficking is no longer included in the zonal security plans, which are an implementation of the national security plan. The mayors are responsible for the policy of the local police departments. For most of them, human trafficking is not a relevant issue in the context of the local policy. Yet the local police play a key role through their controls and outreach work and in a sense act as the eyes and ears of the federal police in the fight against human trafficking.

Recommendation 6. Vis-à-vis the role of the CPAS/OCMW:

- **The Centre encourages stimulation of cooperation initiatives such as a collaboration protocol between a CPAS/OCMW and a Labour Auditor.**

These cooperation initiatives not only promote better information sharing, they also ensure that the social workers are provided with a framework that does not require them to jeopardise professional confidentiality yet allows them to still provide assistance in investigations in the fight against benefit fraud.

- **The Centre encourages the facilitation of knowledge exchange between the CPAS/OCMW, as well as the training of social workers.**

In order to prevent the phenomenon from moving from one municipality to the other, better policy coordination is required between the CPAS/OCMW. To do this, we must find a balance between one hand, a shared vision, and on the other, sufficient autonomy for the CPAS/OCMW to be able to establish their own policies. Promoting brainstorming work between the different CPAS/OCMW would be a step in the right direction. The different unions of towns and cities can play a role, particularly by promoting the exchange of data, collaboration or joint training which could allow social workers to share their experiences and difficulties.

- **The Centre is calling for awareness raising and specific training for social workers in the services providing debt mediation on the subject of signs of human trafficking.**

The social workers who assist their clients in debt mediation are particularly well placed to detect the victims of bogus self-employment status.

4. Compensation of the victims

Recommendation 7. The Centre encourages the use of the possibility of assigning confiscated objects and assets to the civil party in order to compensate for the damage incurred.

When sums of money are seized, the courts and tribunals can declare them confiscated and award them -at least partially-to the civil parties as compensation. This should be more frequently applied in practice.

Recommendation 8. The Centre encourages ongoing training which draws attention to the signs and indicators of human trafficking, in such a way that the inspectors of the Social Law Inspectorate (SLI) can look out for them during their controls.

The mission of the General Directorate Social Law Inspectorate (hereafter the SLI) of the FPS Employment, Labour and Social Dialogue is to defend the individual and collective rights of workers, in particular, the basic working conditions and the right to a salary and other financial benefits and the respect of legal, regulatory and contractual working conditions.

In practice, the SLI does not always devote sufficient attention to the signs and indicators of human trafficking during its controls. The SLI is aware of this and plans to organise another three-day training session in 2012 to raise awareness among the inspectors and to implement the tools necessary to maintain vigilance in the area of human trafficking.

Recommendation 9. The Centre calls upon the Commission for financial aid to victims of deliberate acts of violence and rescuers to apply greater flexibility in the interpretation of the notion of ‘deliberate act of violence’ for the victims of human trafficking for purposes of an labour exploitation.

The applicant must be the victim of a deliberate act of violence and have experienced serious physical or mental harm. However, neither the preparatory work nor the text of the law clearly define the notion of the act of violence. This requirement is a major stumbling block for the victims of human trafficking for purposes of labour exploitation. The Centre is calling for reflection on a better definition or a different solution.

5. Victim status

Recommendation 10. To safeguard the rights and interests of the victim, the Centre believes that it is worth considering the immediate appointment of a lawyer for victims who have made a statement or filed a complaint as soon as they have assumed the official status of victim of human trafficking. The Centre suggests appointing a lawyer before the expiration of the first certificate of registration issued in the context of the human trafficking procedure.

After the victim has been able to assume the status, a lawyer is better able to defend his or her interests should problems arise during the procedure relating to the status or pending trial. This should also allow the victim to make an informed decision whether or not to file a civil suit. Many victims who are citizens of EU Member States want to return to their own country as soon as possible. These victims from the EU must also be able, through the appointment of a lawyer, to file civil suit later and claim compensation.

Recommendation 11. The Centre would like to see it made a priority for all the actors to strive to correctly and fully apply the official status of victim of human trafficking. The Centre calls for more broadly implementing the system of on-call duty for the specialised support centres in order to optimise the collaboration with the first-line services.

It is particularly important that the first-line services fully and correctly apply the multidisciplinary circular. The Centre believes that the continuous training of first-line services about the application of the official status of victim and the detection and identification of victims is necessary.

In the Belgian system, the victim does not necessarily have to file a complaint, but a relevant statement is sufficient. In the field, this element is often poorly understood and applied. In practice it is the first-line services who need to explain the official victim status to the victims and offer them access to it. At the time when the first-line services explain the victim status, the victims have often already made a relevant statement, which is sufficient to grant them access to the official victim status. According to the Belgian system of aid to victims, these victims should be brought into contact by the first-line services with the staff of the specialised centres, who are better able to create a climate of trust with the victims.

This also means that the centres need to provide an on-call duty service with adequate resources. During planned actions when it is expected that many victims will be intercepted, the first-line services should warn the specialised centres so that they will have the opportunity to explain the official victim status to the victims themselves, in conditions that will allow victims to distinguish them from the police. It turns out that in practice, it is the first-line services who explain the official victim status, because for various reasons, they have not always been able to contact the centres or they have not made the attempt.

Recommendation 12. The Centre believes that continuous training of social inspection services on the application of the official victim status and the detection and identification of victims is required.

In certain cases of human trafficking for purposes of labour exploitation, there have been no victims who claimed the official status because they had disappeared after a new intervention of the inspection services. The first-line services need to learn from this that in reality, they only have a single chance to refer the victims to the specialised centres and to give them the possibility of claiming official victim status. If not, the victims will generally disappear by the following intervention of the first-line services, even if this is only a couple of days later. The fact that the first-line services immediately notify the competent magistrate of the detection of the victim of labour exploitation during intervention and ask him or her if the facts are sufficient to launch a case of human trafficking and whether the victims are eligible to be granted the official status of victim of human trafficking and contact the centres is an example of good practice.

Recommendation 13. According to the Centre, there should be reflection on a pragmatic and progressive way to boost the Belgian system of aid for victims at the same time as maintaining its basic tenets, in such a way that it is improved at the same time as remaining accessible for the various actors in the field.

The question arises as to whether the centres should not further align the intake and support to the specific needs of the different types of victim profiles, including victims who are EU nationals, and the victims of addiction including addiction to drugs. In order to do this, there should be more resources allocated in a functional manner. Effective collaboration with other specialised services such as support services in the field of addiction is also necessary.

The Belgian system of aid to victims needs to be progressively refined without altering its fundamental principles, which could lead to stripping the system of its substance, or ultimately shutting it down. This is especially true for the group of minors victims and victims whose cases have been closed without further action because they have been unable to find any traces of the perpetrator.

Recommendation 14. The Centre welcomes the EU's strategy for the development of a European transnational referral mechanism for victims of crimes of human trafficking committed in a different EU Member State. The Centre encourages its effective implementation.

It has been shown in practice that faster and more efficient international cooperation of the administrative immigration and police departments is necessary in terms of the detection and referral of victims. It has already occurred in the past by chance that a victim was intercepted in the Netherlands and placed in a closed detention centre. It is extremely important for international agreements to be set up for the creation of an early warning system that operates through liaison officers at the level of the police and/or immigration services. In such situations, the closed centres of neighbouring countries must notify the national contact point when they discover such victims, in order to mobilise the warning system.

In previous annual reports, the Centre has already stressed the importance of an official victim status at the European level for regulating the reception and support for victims based on crimes of human trafficking committed within the territory of the EU.

6. Policy actors

Recommendation 15. The Centre recommends establishing a system of investigative judges specialised in human trafficking/smuggling at the level of the jurisdictions of the Courts of Appeal.

Through additional investigation resources, investigative judges can play a key role in the successful dismantling of human trafficking networks. Certain judges do not pay enough attention to human trafficking, which may jeopardise integrated investigations.

Several actors, such as magistrates, are calling for a system with an investigative judge specialised in human trafficking. This could be initiated in the context of the upcoming revision of the legal districts. Such a measure, while allowing economies of scale, could lead to better specialisation of the investigative judges, which is an important asset in the fight against human trafficking.

Recommendation 16. The Centre encourages the government to adopt the measures announced to provide a mechanism for joint and several liability of the main

contractor issuing the order to subcontractors who have been found guilty of human trafficking.

The Centre welcomes the new legal provisions that have already been taken at this level in order to combat social and fiscal fraud.

In its previous annual reports on human trafficking, the Centre has reiterated the importance of adopting a law that regulates the joint and several responsibility of the contractor placing the orders.

Recommendation 17. The Centre asks that Belgium puts in place, as quickly as possible, a system of comparable statistics which make it possible to determine the annual number of convictions in cases and/or with regard to individuals for various purposes of exploitation of human trafficking, as is being requested by various international authorities.

Various international authorities want to make the fight against human trafficking for purposes of labour exploitation a spearhead and consider Belgian practices in the field an example of good practices. Belgium can only maintain its leadership in Europe by providing comparable statistics as requested by the EU. For the moment, it is impossible to determine how many people (individually or grouped together in a case of human trafficking) have been convicted for crimes of human trafficking for purposes of labour exploitation.

7. Interpreters

Recommendation 18. The Centre calls for at least a national list to be drawn up of available and reliable interpreters.

For the moment, this is only available at the level of districts. If an interpreter is the object of suspicion, this information is not centrally recorded at the national level.

8. Lawyers

Recommendation 19. The Centre specifically states that the Ethics commission for lawyers must ensure that lawyers do not commit actions that contravene the code of ethics of their profession.

The defendants' lawyers certainly cannot give the impression of being involved in any way whatsoever in the crimes of human trafficking for which the client was prosecuted and convicted.

**15th Annual Report on Trafficking in and Smuggling of Human Beings (2011)
The money that matters**

Brussels, October 2012

(English version: March 2013)

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Graphic design cover: d-Artagnan

Printing: Proxess Maes

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