

**TRAFFICKING AND SMUGGLING IN HUMAN BEINGS**

**BUILDING TRUST**

**ANNUAL REPORT 2012**

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## INTRODUCTION

The Centre for Equal Opportunities and Opposition to Racism (the Centre) has published its sixteenth annual report on trafficking in and smuggling of human beings this year. In 1995, the law against human trafficking gave the Centre a new mission: "«to stimulate the fight against human trafficking". Hence, well before the international institutions demanded it, this law actually created a mechanism that acts as a "national rapporteur for human trafficking". Today, the Centre is an independent rapporteur both on a national and an international level. It fulfils the role in support of the criminal policy department, which is the state rapporteur. Thanks to the independence parliament has given the Centre, it can accomplish this mission in a spirit of dialogue and co-operation, especially through external contributions. This annual report, which was established according to dialogue and consultation, is the result of this constellation. The aim of this annual report is to draw up an objective and critical image of the evolution of the fight against human trafficking and smuggling.

### **Focus on the non-punishment of victims**

The EU Strategy 2012-2016 has set itself the priority of "recognising, protecting and supporting" the victims of human trafficking. This is why the Centre is devoting the focus of this annual report to the victims. Trafficking in human beings is a human rights violation. Consequently, victims must be protected and supported above all.

However, the victims of trafficking in human beings are often accused of being implicated in acts that they were forced to commit or perform within the framework of their exploitation.

European Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting the victims, pays particular attention to the non-punishment of victims. This is essential in order to protect their human rights, prevent further victimisation and establish a relationship of trust so that they agree to collaborate in the criminal investigation against the perpetrators. The focus of this annual report shows that in terms of combating human trafficking, the method of working applied in Belgium leaves room for the development of a policy concerning the non-punishment of victims. Within the context of this policy, the responsibility of the victims must of course be examined and considered in each case. We shall conclude this focus with two external contributions: that of Maria Grazia Giammarinaro, Special Representative for the Organisation for Security and Co-operation in Europe (OSCE) and Co-ordinator for Combating Trafficking in Human Beings, who shares our view; and that of Freddy Roosemont, Director General of the Immigration Office (IO) in Belgium, who provides us with a critical view of the typology of the victims' residence permits.

Giving attention to the victims involves the availability of means to take care of and support them. The recognition of the three support centres – Payoke, Pag-Asa and Sürya – by the Royal Decree of 18 April 2013 is an important step forward. However, there is still no informed financing framework, thus creating uncertainty and stalling planned development focused on the future of their work. It also presents an obstacle to the co-

ordination between these support centres and the other players. The victims have the right to civil society organisations that offer them local support and in which they can place their trust. This will also have a positive effect on the trust they have in the authorities.

### **National and international co-operation**

The Centre works in close collaboration with all the players involved in the multidisciplinary approach required by human trafficking and smuggling. The Interdepartmental Co-ordination Unit (ICU), whose secretariat is run by the Centre and the chairmanship by the Department of Criminal Policy, plays a major role. In future, the support centres will also be represented at the ICU.

At a political level, Belgium has redoubled its efforts to implement Directive 2011/36/EU. In 2013, this has led to the introduction, in legislation, of a new definition and the possibility of fining the perpetrator of the acts according to the number of victims. The new legislation is the result of a co-operation between parliament and the government, which illustrates parliament's sustained interest in combating the trafficking in and smuggling of human beings, and the awareness that recent evolutions require new instruments.

On an international level, the Centre frequently co-operates with the OSCE's special representative for trafficking in human beings. At EU level, the Centre, along with the Department of Criminal Policy, is part of the network of national rapporteurs or equivalent mechanisms in the domain of human trafficking and co-operates with the EU co-ordinator, Myria Vassiliadou, in combating trafficking in human beings.

Besides Directive 2011/36/EU, it is above all the 2012-2016 EU strategy for the eradication of trafficking in human beings (the "EU Strategy 2012-2016") that offers Member States important guidelines. This strategy is based on five priorities, the first of which, as mentioned above, is devoted to the victims. This annual report also examines the other priorities, i.e.: prevention; the active prosecution of perpetrators of trafficking; improvement in co-ordination and co-operation; and, finally, a better understanding of the new concerns relating to the various forms of the phenomenon.

The EU strategy also raises a series of questions. Among other things, a unified Europe offers opportunities for the perpetrators of trafficking: the free movement of people or services can plunge citizens from or outside the EU into situations that are contrary to human dignity, sometimes under the guise of legality. Indeed, the perpetrators of trafficking take maximum advantage of the absence of minimum standards in terms of social protection within the Member States and the lack of effective institutional co-operation in the fight against social fraud.

In Belgium, we tend to associate the idea of victim of labour and sexual exploitation with foreigners, who are citizens of the EU or third countries. The statistics do indeed corroborate this image: Belgian nationals are only rarely among the victims. However, some European states seem to face the opposite phenomenon and are snowed under with having to support, protect and take care of their own citizens who are the victims of human trafficking. Therefore, these countries are barely able to detect, identify or support

the victims of human trafficking from third countries. Furthermore, this annual report once again highlights the lack of organised co-operation allowing victims from beyond our borders to be received and supported, such as those who have been successively exploited in different countries.

## **Recommendations**

At the end of this report, the Centre sets out a series of recommendations based on an analysis of existing policies, the examination of cases and case law on trafficking in human beings, as well as many interviews with players in the field. Absolute priority must be given to the effective implementation, by each player, of the existing instruments to combat trafficking in and smuggling of human beings. This requires every player to give priority to fighting human trafficking and smuggling. Recourse to one of the specialised support centres should be automatic during the interception and identification of victims.

Besides the implementation of the existing political measures, new policies are needed. The non-punishment of victims thus requires a well-considered approach, particularly in relation to human trafficking for the purpose of forced criminal activities. The ICU is an important platform for reflection given that all the competent authorities have the chance to explain their projects here regarding trafficking in human beings. The Bench must also receive the required attention: it must have the most up-to-date and complete information possible in order to ensure that the perpetrators of these acts do not escape punishment and that the victims benefit from compensation.

The lack of concrete statistics and analyses continues to be the Achilles heel of the Belgian model, highlighted in the national and international reports on this subject. Besides the actual responsibility of each player, there is the extra responsibility of incorporating and analysing the figures, a premise that allows us to better understand the evolutions and act in a detailed manner.

Trafficking in human beings is a serious violation of human rights. The final recommendations of this annual report concern the measures that should be taken by the state in order to protect the victims, as well as the measures taken to compensate the harm inflicted upon them.

We wish you an interesting read.

Patrick Charlier, Deputy Director  
Jozef De Witte, Director

## **PART I: NON-PUNISHMENT OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS**

This year, the Centre has chosen to focus on a theme that relates to the identification of victims and the complexity of judicial inquiries. The non-punishment of victims is indeed one of the aspects of the "human" approach to trafficking in human beings, which must be implemented by frontline players. Within this context, the Centre has chosen to deal with the legal framework of the concept of non-punishment (Chapter 1) before examining the practices in the field (Chapter 2). This examination allows us to underline a number of challenges the players face in the field (Chapter 3) before concluding with the proposal of several possibilities for an approach in the field (Chapter 4). This is completed with contributions from two external contributors: the Special Representative and Co-ordinator for Combating Human Trafficking at the Organisation for Security and Co-operation in Europe (OSCE) as well as the Director of the Immigration Office (IO).

## CHAPTER I: LEGAL FRAMEWORK OF THE NON-PUNISHMENT CLAUSE

### 1. The concept

Trafficking in human beings is a constantly evolving phenomenon. While it was mainly known for its sexual exploitation aspect a decade ago, in the past few years, there has been growing attention concerning the trafficking of human beings for the purpose of labour exploitation<sup>1</sup>. Other forms of exploitation have also emerged such as forced criminal activities and begging.

If detection is performed properly, potential victims may be detained and even prosecuted for offences regarding immigration, possessing false documents, or as the perpetrators of crimes in the case of forced criminal activities.

And yet, the offences committed may be directly linked to the fact that these people are the victims of human trafficking: prostitutes obliged by their pimps to use a false identity if they are stopped by the police, drug dealers recruited under the false promise of an attractive job, etc. This is why the principle of the non-punishment of victims falls under the scope of different international and European instruments. It is the subject of a "policy paper" issued by the Special Representative and Co-ordinator for Combating Human Trafficking at the Organisation for Security and Co-operation in Europe (OSCE)<sup>2</sup>.

Non-punishment is part of the "human rights" approach in terms of trafficking. The criminalisation of victims not only constitutes negligence on the part of the state in taking into consideration offences committed against the victim by the traffickers – who must be the subject of an investigation – but also a failure to fully acknowledge the victim as a victim of a serious crime, thus increasing their trauma or victimisation by imposing an unfair punishment<sup>3</sup>.

The idea presiding over the concept of non-punishment is that, despite committing an offence, the victim has not really acted independently, either because of the level of control exercised by the traffickers or the methods used by them<sup>4</sup>.

The principle of non-punishment therefore consists of states guaranteeing that the victims are not punished for offences committed within the framework or as a result of the process of human trafficking.

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<sup>1</sup> See on this subject the Centre's previous annual reports on Trafficking in and Smuggling of Human Beings: annual report 2009, *In a haze of legality*; annual report 2010, *Preventing the trafficking of human beings by fighting social fraud*; annual report 2011, *The money that matters*.

<sup>2</sup> OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 22 April 2013. See also the external contribution at the end of this document.

<sup>3</sup> *Ibid.*, p.4.

<sup>4</sup> *Ibidem*.

## 2. The principle of non-punishment in international and European law

The main international instrument in terms of trafficking is the Palermo Protocol on trafficking in human beings<sup>5</sup>. It does not contain any explicit provision concerning the non-punishment of victims. Directives have nonetheless been given to states so that they can make provision for appropriate procedures aimed at identifying victims, and envisage not punishing or prosecuting victims for offences committed because of their situation as a victim of trafficking or because they were forced to commit these acts<sup>6</sup>.

On the other hand, an explicit provision features in the Council of Europe's Convention on Action against Trafficking in Human Beings<sup>7</sup>. Article 26 (entitled: "Non-punishment provision") stipulates that "*each party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so*".

The states parties are therefore required to adopt or implement the legislative measures (provisions of substantive criminal law or criminal procedure) or any other measures of this type<sup>8</sup>. In this respect, the explanatory report specifies that the requirement of coercion must be extended to include, at the very least, cases where the victims have been the subject of one of the illegal means that make trafficking a criminal offence<sup>9</sup>. These include the threat or use of force, deception, and the abuse of power or a position of vulnerability<sup>10</sup>.

States must ensure that the victims are not punished when the acts were caused by, or have a direct link to the trafficking process. They only have the discretionary power to decide how they will implement this requirement<sup>11</sup>.

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<sup>5</sup> Protocol aimed at preventing, suppressing and punishing trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime.

<sup>6</sup> On this subject, see the United Nations, *Report on the meeting of the Working Group on Trafficking in Persons* held in Vienna on 14 and 15 April 2009, CTOC/COP/WG.4/2009/2 (21 April 2009), [www.unodc.org/documents/treaties/organized\\_crime/Final\\_report\\_French\\_TIP.pdf](http://www.unodc.org/documents/treaties/organized_crime/Final_report_French_TIP.pdf) and, *Report on the meeting of the working group on trafficking in persons* held in Vienna on 27 and 29 January 2010, CTOC/COP/WG.4/2010/6 (17 February 2010), [www.unodc.org/documents/treaties/organized\\_crime/2010\\_CTOC\\_COP\\_WG4/CTOC\\_COP\\_WG4\\_2010\\_final\\_report\\_F.pdf](http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/CTOC_COP_WG4_2010_final_report_F.pdf); United Nations working group on trafficking in persons, *Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking*, CTOC/COP/WG.4/2010/4 (9 December 2009), par. 10, [www.unodc.org/documents/treaties/organized\\_crime/2010\\_CTOC\\_COP\\_WG4/WG4\\_2010\\_4\\_F.pdf](http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/WG4_2010_4_F.pdf)

<sup>7</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, Warsaw, 16 May 2005.

<sup>8</sup> Council of Europe, *Explanatory Report on the Convention on Action against Trafficking in Human Beings*, par.274.

<sup>9</sup> *Ibid.*, par.273.

<sup>10</sup> All the *modi operandi*, involved in the criminal offence of trafficking, referred to in Article 4 of the Convention include: the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve consent of a person having control over another person.

<sup>11</sup> See: OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 22 April 2013, par. 14, p.7. This principle would

The recognition of an obligation of non-punishment has also been established in the European Union's legislation. Directive 2011/36/EU on trafficking in human beings<sup>12</sup> seems to go even further than the Council of Europe's Convention since it establishes a formal obligation of non-prosecution. Article 8 of the directive (entitled: "Non-prosecution or non-application of penalties to the victim") states that "*the Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2*" (i.e., of being the victim of the offence of human trafficking).

Preamble 14 of the directive<sup>13</sup> specifies, in particular, the use of false documents or offences under legislation on prostitution or immigration. It also specifies that "*the aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators*". However, it adds that "*this safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in*".

This principle of non-punishment can also be found in other texts such as the recommendations and guidelines on human rights and trafficking in human beings adopted by the Office of the United Nations for Human Rights<sup>14</sup>, various OSCE texts<sup>15</sup>, the Brussels Declaration on Preventing and Combating Trafficking in Human Beings<sup>16</sup> or the EU Group of Experts on Trafficking in Human Beings<sup>17</sup>.

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not only involve an obligation to protect the victims from being punished, but also from prosecution and detention (*ibid.*).

<sup>12</sup> European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 concerning the prevention of trafficking in human beings and combating this phenomenon as well as protecting the victims, *O.J.*, L101 of 15 April 2011, p.1.

<sup>13</sup> Par. 14 of Directive 2011/26/EU.

<sup>14</sup> United Nations Office of the High Commissioner for Human Rights, *Principles and directives concerning human rights and trafficking in human beings: recommendations*, E/2002/68/Add.1 (2002), [www.ohchr.org/Documents/Publications/Traffickingfr.pdf](http://www.ohchr.org/Documents/Publications/Traffickingfr.pdf)

<sup>15</sup> See OSCE on this subject, *op. cit.*, par. 22.

<sup>16</sup> European Union (EU), *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*, 14981/02 (29 November 2002), par. 7, [www.unhcr.org/refworld/docid/4693ac222.html](http://www.unhcr.org/refworld/docid/4693ac222.html):

"*Trafficked victims must be recognised as victims of serious crime. Therefore they should not be re-victimised, further stigmatised, criminalised, prosecuted or held in detention centres for offences that may have been committed by the victim as part of the trafficking process.*"

<sup>17</sup> European Commission, *Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings on the Revision of the Council Framework decision of 19 July 2002 on Combating Trafficking in Human Beings* (17 October 2008), p. 4.

### 3. The principle of non-punishment in Belgian law

In Belgium, the decision to prosecute is only taken after examination of the legality and appropriateness of the prosecutions.

The examination of legality includes an assessment of the apparent validity of the public policy (constituent elements of the offence, proof, culpability of the accused, identification of the latter, lack of a reason) as well as the admissibility of the public policy (competence of the Prosecution, obstacles preventing the prosecution or reasons for extinguishing it)<sup>18</sup>.

The Prosecution also has the power to assess the validity of the prosecutions. First acknowledged by the doctrine before being enshrined in law, this principle is defined in Article 28<sup>quater</sup>, par. 1 of the Code of Criminal Procedure<sup>19</sup>.

It is indeed possible that while the prosecution is justified from a legal point of view, there may however be disadvantages, thus causing it to be abandoned. For instance, it may be a question of insignificant social harm, the defendant's honourable motive, etc. It is therefore better to close the case because it avoids the risk, on a human level of a criminal prosecution when, in the case in point, it is not essential<sup>20</sup>. Furthermore, the closure of cases has become inevitable considering the excess number of cases to be handled by the public prosecutor's office<sup>21</sup>. In practice, the power to close a case is widely exercised and has been the normal method of managing the flow of criminal cases for a long time.

The power to judge the validity of the prosecutions is exercised by taking into account the criminal policy directives defined. In this respect, Circular COL 1/2007 of the Board of Public Prosecutors regarding trafficking in human beings<sup>22</sup> already takes into account the principle of the non-punishment of victims. Indeed, point 6 states that *«even if persons exploited within the framework of trafficking in human beings are in breach of social legislation or legislation governing access to, stay in and settlement on the territory, they should be considered above all as victims of forms of crime that must be combated as a priority. Their often insecure situation owing to their illegality, generally in addition to a difficult economic and social situation, is precisely a means of pressure, and even coercion, used by those who exploit them»*.

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<sup>18</sup> H.D. BOSLY, D. VANDERMEERSCH, M.A. BEERNAERT, *Droit de la procédure pénale*, Bruges, La Charte, 6<sup>ème</sup> éd., p.148.

<sup>19</sup> This paragraph states that: "Considering the criminal policy directives defined in accordance with Article 143ter of the Judicial Code, the Crown Prosecutor judges the validity of the prosecutions. He gives the reason for the decisions he takes regarding the closure of cases".

<sup>20</sup> H.D. BOSLY, D. VANDERMEERSCH, M.A. BEERNAERT, *op.cit.*, p.509.

<sup>21</sup> *Ibid.*, p.148.

<sup>22</sup> Ministerial directive relating to the policy for investigations and prosecutions in the domain of trafficking in human beings, COL 1/2007.

Following the adoption of European Directive 2011/36/EU, there is good reason to be more explicit in the matter. When this report was being finalised (August 2012), modifications to COL1/2007 regarding this point were being examined.

As we have seen, Belgium has a legal system (discretionary prosecution) and has enacted directives allowing victims found guilty of offences not to be prosecuted owing to their status as victim of trafficking. However, if prosecutions were to be made and if the case were to go to court, it is still possible to cite coercion as the reason for non-liability. Article 71 of the Criminal Code does indeed state that "*there is no offence when the accused or defendant was affected by mental impairment when the act took place, which seriously destroyed or altered his or her sense of judgement or control over his or her actions or if he or she was coerced by a force he or she was unable to resist*". This coercion can be either physical or moral.

The argument for non-liability was cited in a case of human trafficking where the victim, a prostitute, was recognised as a victim, but was nevertheless prosecuted for using false documents (see hereafter, Chapter 2, point 2.1).

## CHAPTER 2: OBSERVATIONS AND PRACTICES IN THE FIELD

### 1. Scope of the principle

For the non-punishment clause to be applicable, the illegal activities must be a direct consequence of trafficking. It is not a question of forgiving all the acts committed by the trafficking victim. The illegal act – which remains as such – must have been caused by the fact that the person – who would otherwise have been responsible – is or was the victim of trafficking<sup>23</sup>. To make this principle effective, potential victims must be identified in early stages of the procedure.

The principle is broader than the simple restriction of the application of a penalty or non-prosecution. There are indeed other ways in which victims are likely to be punished or penalised for acts they have committed owing to their status of victim.

For instance, within the framework of labour exploitation, victims identified as victims of trafficking who find themselves working as bogus self-employed workers are still subject to the social security system for the self-employed and continue to receive invoices concerning contributions (see hereafter, point 4).

Another form of punishment consists of being held in a detention centre. If it has not been possible to properly identify victims, they sometimes run the risk of being expelled. In the past, the Centre has already had the opportunity to draw attention to this problem and the need to properly train staff in detention centres<sup>24</sup>.

### 2. The non-punishment clause: victim and coercion

The – sometimes subtle – coercion which trafficking victims are subject to, leads them to commit offences themselves. These can range from offences such as the use of false documents to more serious offences (such as theft or selling drugs). It is not always easy for frontline services and judges to draw a clear line between a victim who has acted of their own free will by voluntarily committing the offence and the victim who has acted within the framework of a relationship of dependence in relation to the exploiter. And yet, it is the lack of autonomy that will lead the judge to apply (or not) the non-punishment clause.

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<sup>23</sup> In this sense, see the United Nations directives, *Ibid.*, Directive 2.5 (ensure that the victims of trafficking are not prosecuted for violation of immigration laws or for activities they were forced to exercise owing to the trafficking of which they are victim); Directive 4.5 (ensure that legislation prevents trafficking victims from being prosecuted, detained or punished for the same reasons); Directive 5.5 (guarantee that the action of law enforcement services does not expose victims to the risk of being punished for offences resulting from their situation); Directive 8.3 (ensure that exploited children are not the subject of criminal prosecution or penalties for offences resulting from their situation as victims of the trafficking in persons).

<sup>24</sup> See, in particular, the 2008 annual report on Trafficking in and smuggling of human beings, *Fighting with people and resources*, p.108 (Recommendation 2).

In the following points, the Centre presents a certain number of cases where the non-punishment clause was (or was not) applied. They are grouped into themes.

## **2.1. False documents**

Trafficking victims are sometimes led to work with false documents or under a false identity. This is especially the case for minors. In a case that was recently judged in Liège<sup>25</sup>, Bulgarian defendants were found to be prostituting several young women. The latter, in particular a minor, were working under false identities to avoid being harassed by the police. The defendants were charged for forgery. The victims were not prosecuted.

### ***Example: false identity reinforcing exploitation***

In some cases, lack of autonomy can be established. This was the case in a major case concerning the sexual exploitation of young Nigerian women judged by the Court of Appeal in Ghent<sup>26</sup>. They were forced to prostitute themselves by a network (organised in the form of a pyramid) that used voodoo practices. The court considered that because the victims were obliged to declare a false identity and nationality to the Immigration Office, in order to ask for asylum, this reinforced their exploitation.

### ***Examples: false documents and active steps***

On the other hand, it is quite different when a potential victim takes the initiative and actively contributes to obtaining a false passport.

### **Car wash case**

In the car wash case, explained in a previous annual report<sup>27</sup>, the owners of certain car washes in Flanders were illegally employing people with false identity cards or false passports. Following a multidisciplinary inspection (police, social inspectorate) in the concerned car washes and the observations made, an investigation into human trafficking, breaches regarding social security and fiscal regulations, false entries and criminal conspiracy was opened. Several people were working illegally under false identities. The workers concerned were passing themselves off as Afghans but were actually mostly Pakistanis, working as bogus self-employed workers.

The workers were working an average of ten hours a day and earning 40 to 50 euros per day in undeclared wages. Moreover, they had to pay 200 to 300 euros a month for food

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<sup>25</sup> Corr. Liège, 26 September 2012, 8<sup>th</sup> ch., confirmed by Liège, 23 April 2013. See hereafter, Part 2, Chapter 3, relevant case law.

<sup>26</sup> Ghent, 31 May 2007 (the decision is available on the Centre's website: [www.diversite.be](http://www.diversite.be)).

<sup>27</sup> Annual report 2010, Trafficking in and smuggling of human beings, *Combating social fraud to prevent trafficking in human beings*, p. 59-62.

and lodgings at the car wash, an amount that was deducted from their wages. Their presence at the car wash at all times meant that they were always available for work, they were however only paid for the work actually done.

During the investigation, a large number of workers were identified and interviewed. Some of the workers who had been employed at the car washes, as self-employed associates or as workers, could not however be identified and/or interviewed because it was impossible to trace them through the Immigration Office (false identities – fictitious identities and/or fictitious papers).

One of the workers was not considered for victim status because he actively collaborated in acts of corruption concerning an embassy employee with a view to obtaining a false passport.

### **Minor with a false document**

In a case of sexual exploitation dealt with later in this report<sup>28</sup>, a minor was using a falsified copy of her identity card, indicating that she was an adult. She had previously taken steps in Italy to buy a false identity card in order to work as a prostitute. The Belgian police issued a statement for forgery, but the case did not go any further.

### ***Example: false documents and non-imputability***

While the policy of the public prosecutor's office is generally not to prosecute the victims of trafficking for possession or the use of false documents, a victim may however be exceptionally prosecuted and tried for such an act.

A young Nigerian woman was exploited as a prostitute and obliged, by her trafficker, to use a false passport with a view to obtaining a residence permit. While she was acknowledged as a victim of trafficking in the place where she was being exploited (Brussels), she was nevertheless prosecuted and sentenced for using a false passport in the district where she was living (Antwerp). Finally, following an appeal, the judge considered, following the defence of the victim and the brief from the public prosecutor's office, that Article 71 of the Criminal Code should be applied: the judge considered that she was not responsible since she was coerced by a force that she was unable to resist<sup>29</sup>.

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<sup>28</sup> See Part 2, Chapter 2: case analysis, point 1.1. Romanian case, Charleroi.

<sup>29</sup> Corr. Antwerp, 2 April 2008, reversing the decision of 26 April 2006.

## 2.2. Prostitution

Besides the sexual exploitation to which they are subjected, the victims can be led by their traffickers to commit reprehensible acts. Hence, they are sometimes made dependent on drugs, since these are supplied to them in exchange for their prostitution<sup>30</sup>. They can also be used to pass drugs from one country to another<sup>31</sup>.

They can also be subtly forced into a marriage or legal cohabitation of convenience as a means to obtaining a residence permit, the cost of which they must then reimburse by prostituting themselves<sup>32</sup>.

However, the most difficult cases are those where the actual victim is involved in the trafficking or exploitation of another individual. There is a very fine line between perpetrator and victim and it is not always easy to know to what extent the victims have been coerced into becoming perpetrators or if they acted independently.

In a Bulgarian case dealt with in the previous report<sup>33</sup> a victim began a relationship with the defendant, even though she was a minor, and accompanied him to Brussels to work as a prostitute. She stated that she was satisfied with her income and her professional situation. She was subsequently actively involved in a prostitution network and, upon the request of the defendant, she allocated a place for prostitution to a new victim. While the public prosecutor's office named her as a victim in its summing-up for the prosecution, the court didn't recognise her as such<sup>34</sup>.

### *Escorts: perpetrators or victims?*

The role played by these escorts is also a good example of the difficulty of drawing a clear line in this type of case. This was shown in a case that was recently tried in Liège<sup>35</sup>, concerning several defendants who were exploiting the prostitution of young Bulgarian girls. One of the defendants, who was actually exploited by her *loverboy*, the co-defendant (and main defendant), was prosecuted herself for various offences: trafficking in human beings, incitement to debauchery and its exploitation, participation in a criminal organisation and illegal stay. In a detailed statement of reasons, the court made a

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<sup>30</sup> On this subject, see annual report 2011, Trafficking in and smuggling of human beings, *The money that matters*, p.87 (point 1.2.2. Drug-dealer and Belgian victims, and 1.2.3. Manager of a Belgian-Moroccan bar).

<sup>31</sup> On this subject, see annual report 2008, Trafficking in and smuggling of human beings, *Enlisting people and resources to combat the phenomenon*, p. 29 (point 1.3. Flexible pimps and Belgian victims).

<sup>32</sup> In particular, see annual report 2011, *op.cit.*, p.87 (point 1.2.3. Manager of a Belgian-Moroccan bar) and p. 93 (point 1.2.5.: Thai massage parlour: a Thai criminal organisation organised fictitious cohabitation contracts between female Thai victims and older Belgian men to obtain residence permits. The Thai victims, exploited in massage parlours to reimburse their debts, were then able to work legally).

<sup>33</sup> See annual report 2011, *op. cit.*, p. 91-93 (Bulgarian case of Sliven).

<sup>34</sup> Corr. Brussels, 30 May 2012, 54<sup>th</sup> ch., see annual report 2011, *op. cit.*, p.114-115.

<sup>35</sup> Corr. Liège, 26 September 2012, 8<sup>th</sup> ch., confirmed by Liège, 23 April 2013. See hereafter, Part 2, Chapter 3, relevant case law.

distinction between the responsibility and the role played by each defendant. Regarding the escort in question – herself a prostitute – wiretaps revealed the control exercised over her by her *loverboy*. She was refused any day of rest by the latter and was obliged to work even when she was tired. He also reproached her for not earning as much as another prostitute and threatened her if she did not have any money when she returned. At the same time, she was responsible for collecting money from another prostitute. The court considered that she could not be accused of "human trafficking" because she did not have a sufficient amount of power over the girls to encourage their engagement in debauchery or prostitution. She herself entered the prostitution market through her boyfriend, to whom she was submissive and completely dependent.

On the other hand, the court accused her of inciting debauchery and prostitution (but not exploitation), owing to the fact that she was responsible for receiving the young women when they arrived on the street, supervising the work of another prostitute and reporting on her activities to the young woman's pimp. She was given the benefit of the doubt and found not guilty of exploitation or prostitution, because while she collected money from the girls, it was not proven that she gained any kind of financial benefit since it was established that she did not benefit from any kind of favour following these occasional services.

The court also raised the issue of the hybrid status granted to certain prostitutes, such as the defendant in question, who, while having to continue to prostitute themselves under coercion, are also given the responsibility of initiating the new arrivals and collecting their earnings upon the orders of the pimps over the phone. Subsequently, she was not charged with criminal organisation – known as criminal conspiracy. On the other hand, she was sentenced for staying illegally in the country. Finally, she was sentenced to a year in prison and a fine of 1,000 euros<sup>36</sup>.

Within this context, it is interesting to mention a case reported by the Dutch rapporteur on trafficking in human beings, where a prostitute was suspected of being involved in the exploitation of other people<sup>37</sup>. This case resulted in a decision not to prosecute the victim on the basis of the following elements: the victim herself worked as a prostitute and gave money to the suspect; she supervised the other young women, but did not force them; the other women saw her as a victim, not as a suspect; she was under the influence of the suspect because he had promised her a future and she was still in love with him; she supervised the other women to prevent them from being abused or threatened by the suspect. All in all, she was frightened of the suspect.

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<sup>36</sup> The court made the same ruling for two other prostitutes working as "escorts" who were prosecuted for the same offences (except for illegal stay).

<sup>37</sup> Dutch National Rapporteur on Trafficking in Human Beings, *Trafficking in human beings – Ten years of independent monitoring, Eighth Report of the Dutch National Rapporteur* (2010), p. 82.

### *Coercion as a strategy of defence*

Coercion is also sometimes cited by the perpetrators of acts of trafficking in an effort to exonerate themselves. This is what happened in a major case concerning the sexual exploitation of young Nigerian women, recently tried in Brussels<sup>38</sup>. In this case, the main defendant cited the context in which the acts occurred. He did not deny that he was responsible for looking after some of the women whom he knew worked as prostitutes, but he justified his interventions by his concern for these women. He also stated – both in his conclusions and to a psychiatrist – having been forced to commit the acts of trafficking (recruiting and bringing over young women from Nigeria), under threat of death. However, the court considered that there were no elements to support the theory of a force he was unable to resist or that his will had been completely destroyed. On the contrary, he organised a whole network aimed at bringing over young women in order to make them work in prostitution. He did the recruiting himself, exploited the young women – alone or with an associate –, controlled and accompanied them, all with a view to personal enrichment. He was not afraid to put the families under pressure when problems arose. He was sentenced to six years in prison and a fine of 1,000 euros<sup>39</sup>.

In another case of the sexual exploitation of young women mainly of Latvian origin who were exploited through escort agencies, one of the defendants filed a civil suit against three other co-defendants. In this case, tried in Antwerp<sup>40</sup>, the young women were threatened and/or beaten. They were deprived of at least half of their earnings. The defendant in question, who originally became a prostitute on the orders of the two main defendants, quickly began to adopt active behaviour within the framework of incitement and exploitation of prostitution. She recruited school friends in Latvia for fruit and vegetable picking jobs or for domestic work, but once in Belgium, they were forced to work as prostitutes. She collected half of the income from the women who were put to work, which she then gave to the two co-defendants. She also enticed two young women, who had escaped, into a flat and once there, beat them and threatened them with a gun. She appeared to be highly dominant and put the young women under pressure by threatening to inform one of the defendants.

The court considered that as she was sentenced as a perpetrator and accomplice alongside the co-defendants against whom she filed a civil suit, there were no grounds to the civil suit.

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<sup>38</sup> Corr. Brussels, 24 February 2012, 46<sup>th</sup> ch., confirmed overall by Brussels, 31 October 2012, 13<sup>th</sup> ch. See also hereafter, Part 2, Chapter 3: relevant case law.

<sup>39</sup> 5,500 euros in line with an indexation system evolving over time.

<sup>40</sup> Corr. Antwerp, 3 December 2012, division 4c (appeal). See also hereafter, Part 2, Chapter 3: relevant case law.

### 2.3. *Forced criminal activities*

Other particularly difficult cases are those linked to forced criminal activities such as theft and the sale of drugs. Even if the law provides for exploitation as the purpose behind coercion to commit a crime or an offence, it would seem that very few victims are identified in these types of cases. The complexity of this type of investigation linked to the distinction between perpetrator and victim, the fact that it is not the sections specialising in trafficking that are responsible for this type of case, and the fear the victims have of speaking out, are all factors that may explain why there are so few cases in this domain. An example of the difficulties associated with this type of case is dealt with further on in this report<sup>41</sup>. In the case in point, it was suspected that thefts were being carried out under coercion. However, it was impossible to support this suspicion through the investigation, in particular because the perpetrators were in undocumented stay in Belgium and it was not possible to identify and interview them.

This category of cases is also very delicate to deal with when children are involved. These cases involve itinerant gangs, where sometimes very young children commit thefts or other offences. Since the acts often take place within a family framework, the victims rarely dare speak out.

#### *Thefts*

It was possible to apply the non-punishment clause in a major case of organised theft, recently tried in Turnhout<sup>42</sup> and analysed later on in this report<sup>43</sup>.

The victims, who were promised work, were recruited in Romania. All the travel and administrative costs were covered by the defendants. When they arrived in Belgium, the defendants told the victims they had to reimburse these costs and support themselves by bringing them stolen goods. The victims' identity papers were also confiscated. The stolen goods were then sent back to Romania in order to be sold there. One victim was forced into prostitution.

The investigation was able to uncover the same *modus operandi* used for numerous thefts committed in shops in Belgium. It was possible to establish a criminal structure, whereby people were forced to commit thefts and were even told what to say in police statements if they were arrested. All but two of the defendants were sentenced in the end for criminal organisation, with some of them also being sentenced for theft and/or trafficking for the purpose of sexual exploitation.

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<sup>41</sup> See hereafter, Part 2, Chapter 2: case analysis, point 3.2. Algerian drug network.

<sup>42</sup> Corr. Turnhout, 17 October 2012, confirmed by Antwerp, 24 January 2013 regarding the three defendants who filed an appeal. However, the Court increased the sentences. See also hereafter, Part 2, Chapter 3: relevant case law.

<sup>43</sup> See hereafter, Part 2, Chapter 2: analysis of the cases, point 3.1. Romanian network of forced theft.

Several perpetrators were identified as victims of forced criminal activities and were not prosecuted. These were victims who were incited to commit these thefts through coercion or trickery. Identification was possible thanks to the high level of collaboration between the police's "trafficking" and "theft" sections.

### *Drugs*

Another sector involving cases of forced criminal activity is drugs, in particular, the sale of narcotics. A few years ago, the town of Charleroi was confronted with the phenomenon of illegal Moroccans forced to sell drugs. This problem features in an earlier report<sup>44</sup>. In these instances, sometimes only a "drugs" case is opened. In practice, the victim is faced with problems when attempting to obtain the status of victim of trafficking in human beings. The Moroccan dealers are generally here illegally and come from the same area of the Rif region. The majority know that they have been recruited as drug dealers and that they can earn a lot of money. But some of them are recruited with the promise of work in the construction industry. Recruitment takes place either in the country of origin or in Spain. When they arrive in Belgium, they are coerced, especially through debt, to work as drug dealers either on the street or in "*market houses*".

Two cases of this type were tried in 2008 by the criminal court in Charleroi. In both cases, the victims were taken care of by a specialised support centre.

In the first case<sup>45</sup>, fifteen defendants, mainly Moroccan, were prosecuted. They were accused of numerous offences concerning narcotics (acquisition, possession, selling and supplying heroin and cocaine in particular). Three defendants were also prosecuted for trafficking in (forced to commit an offence) and smuggling of human beings with regard to two victims, with aggravating circumstances of abuse of the position of vulnerability and using threats, among other things. The court accepted the numerous drug offences. With regard to two of the defendants, it also accepted the charge of human trafficking, as well as the smuggling of human beings, based in particular on the precise, detailed and corroborating statements of the victims and co-defendants. The aggravating circumstances of the abuse of a position of vulnerability, the use of threats and fraud, were also included in the charge of trafficking in human beings. The court emphasised the fact that once in Belgium, the people were transferred from Brussels to Charleroi where they were housed. The defendants then explained to them why they had come to Belgium: to sell drugs (heroin and cocaine). The victims had received "training" in France or Holland beforehand, their identity papers were confiscated as soon as they arrived in Belgium and they were threatened with weapons.

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<sup>44</sup> See the 2008 annual report on the Trafficking and smuggling of human beings, *Enlisting people and resources to combat the phenomenon*, p.23-24 and 60-61.

<sup>45</sup> Corr. Charleroi, 3 June 2008, 21<sup>st</sup> chamber. This sentence is binding and appears on the Centre's website: [www.diversite.be](http://www.diversite.be)

It was therefore possible to recognise these people as victims and not sentence them for offences involving narcotics.

A few months later, a similar case was brought before the same court<sup>46</sup>. However, unlike the previous case, the defendants were prosecuted (and sentenced) in the context of drug trafficking, but they were not prosecuted for trafficking in human beings. However, one of the victims was taken in by a support centre. For this person to be able to benefit from the status of victim, it was necessary to write a letter to the Crown Prosecutor certifying that the victim had been the victim of this organisation, that they had suffered pressure and clear threats from the network, and that they had courageously denounced it.

### **3. The non-punishment clause: bogus self-employed workers**

Another more indirect form of punishment is that which victims (with regard to sexual exploitation or labour exploitation) who have been led to work under a status of bogus self-employed worker, may be subject to. The Centre dealt with this theme in its earlier reports<sup>47</sup>. Although they are not aware of the status of self-employed worker under which they are working, the victims, even once identified and benefiting from the status of "trafficking in human beings", continue to be liable for the payment of their social contributions. The result is an accumulation of debts.

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<sup>46</sup> Corr. Charleroi, 2 October 2008, 21<sup>st</sup> chamber. This sentence is binding.

<sup>47</sup> See, in particular, annual report 2009, Trafficking in and smuggling of human beings, *A haze of legality*, p.18-19 and 79-82, and 2010, *Combating social fraud to prevent trafficking in human beings*, p. 86-88.

## **CHAPTER 3: CHALLENGES IN THE APPLICATION OF THE NON-PUNISHMENT CLAUSE**

As we have seen, the complexity of the cases and investigations does not always make it possible to properly detect potential victims of trafficking and, consequently, benefit from the non-punishment clause.

The players in the field are thus faced with several challenges.

### **1. Trafficking in human beings: reflexes**

Happily, the general policy of the public prosecutor's office is not to prosecute the victims for minor offences (such as the possession of false papers). On the other hand, the cases linked to forced criminality are rarely approached from the angle of trafficking in human beings. There are several reasons for this: the complexity of these types of cases (coercion and autonomy in committing an offence), the fact that it is neither the police departments nor the public prosecutors specialising in trafficking in human beings who are in charge of these cases (and therefore the priority is not to look for potential victims behind the perpetrators), and the difficulty in collecting proof of coercion (the victims' statements are often not sufficient if they are not supported by other elements such as wiretaps).

As we have seen in the case of "thefts", such cases require good collaboration and communication between the various sections of the police department and competent public prosecutor's offices. A close co-operation with the support centres is also necessary: they are able to build up a relationship based on trust with the potential victim. Subsequently, all frontline services should be encouraged to adopt the reflex to contact a colleague in the trafficking in human beings section where certain particularities particular to trafficking appear in the case.

### **2. Strategic choices in the cases**

It is difficult for victims to make statements, especially in cases of forced criminality. This complicates the work to detect and assess the possible coercion to which they were subjected.

Faced with this type of case, the public prosecutor also remains the guarantor of public order and, in "grey area" cases, they will sometimes have to draw a line between perpetrator and victim, with which they may not always feel at ease. Therefore, painful choices sometimes have to be made. Besides the victim's attitude, the choice of prosecuting or not depends on the conditions and facts of each case. Hence, when acts of violence are committed against people (e.g.: violent theft), the judge would undoubtedly find it difficult to consider someone who was forced to do it as a victim.

Furthermore, with the objective to obtain a conviction, and considering the difficulty associated with establishing proof of the charge of "trafficking in human beings" in this type of case, the judge may be inclined to consider it from a different point of view and therefore not take the case any further on this point.

### **3. Resource management**

Resource management is another challenge.

Putting together a major case requires a great deal of resources for the investigation. Regarding cases of forced criminal activities, and in order to take into account the aspect of trafficking in human beings, an assessment according to other investigations may take place.

One possibility would consist of setting up two separate parallel cases, for instance, drugs and trafficking in human beings, and prosecuting the perpetrators twice, but for different reasons. Nevertheless, this would require greater means, not only for the magistracy, but also for the police department.

### **4. Working together**

Within the framework of in-depth investigations into sexual exploitation, it may appear that some prostitutes are committing labour law offences: working illegally, social fraud, etc. If the cases fall within the "grey area" or the person is not identified directly as a victim of trafficking, the public prosecutor's office may well expose the facts to the court. While the court can always decide to close the case, the public prosecutor has no power over this decision. Everything depends on the profile of the victims. In this respect, a consultation must take place between the two offices in order to avoid prosecution if the person might later be recognised as a victim.

## CHAPTER 4: POSSIBILITIES FOR AN APPROACH IN THE FIELD

### 1. Victims

In accordance with international instruments<sup>48</sup>, judges and frontline services must ensure that people who are forced to commit offences are not punished for these acts. According to the Belgian legal framework, such acts are considered as acts of human trafficking and these people can be considered for the status of victim of human trafficking. In practice, however, it would appear that these people are generally not recognised as victims. At best, the victims are not prosecuted for the offences they have committed.

#### *False documents*

In Belgium, it is usual not to prosecute victims in possession of false documents. The non-punishment clause can however be more difficult to apply when the victim acted upon their own initiative, as we have seen in certain cases dealt with earlier in this report (see Chapter 2). Thus, in a case where the victim obtained false documents through incitement to corruption, there was no question of prosecution, but the victim could not be considered for the status of victim of human trafficking either<sup>49</sup>.

#### *Position as a bogus self-employed worker*

Another problem arises in the case of victims of trafficking in human beings who have been economically and sexually exploited as bogus self-employed workers. Indeed, they risk involuntarily accumulating heavy debts when they receive the breakdown of the social contributions they have to pay and are unable to do so. The labour courts and inspection services must be made aware of these realities and problems.

In this case, the labour prosecutors must inform the National Institute for the Social Security of the Self-employed (INASTI), on the one hand, that the person has been identified as a victim of trafficking and that they are a bogus self-employed worker, and, on the other hand, the National Social Security Office (NSSO), in order to investigate the employer. Furthermore, in order to eliminate the debts previously incurred and limit them to a year's worth of contributions, INASTI must have a contact person who can wipe off the debts as soon as the person is recognised as a victim of trafficking by the public prosecutor's office or the court.

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<sup>48</sup> See above, Chapter 1:

<sup>49</sup> See the car wash case dealt with in Chapter 2.

Many of the victims who find themselves in the position of bogus self-employed worker come from Bulgaria or Romania and are not interested in residence papers, one of the components of the system governing the status as victim of trafficking. This victim status also offers its beneficiaries legal and administrative assistance, and solutions to problems of reimbursement associated with the status of self-employed worker. The victims and players in the field concerned must be informed.

Moreover, the system must be made more attractive for the victims who voluntarily wish to return to their home country as quickly as possible. These victims may also need legal and administrative assistance.

### *Offences committed under coercion*

The attitude of victims can be a determining factor. Quite often, the victims who are coerced into committing offences are too frightened to make a statement or they do not consider themselves as victims and therefore refuse any kind of help.

As a result, a human trafficking case is rarely opened.

Some victims who are forced to commit offences also need specialised help, especially those who have had to commit drug offences and who are (or have become) drug addicts.

Special assistance is also required for children. Itinerant gangs often exploit young children for theft. In some cases, the child is so young that they believe the behaviour instilled in them is normal and therefore have no feeling of guilt.

The victims in this target group are generally not detected and identified immediately by frontline services as victims of human trafficking. Most of the time, they are caught red-handed, identified, and considered as the perpetrators of criminal acts by the police. If necessary, they are arrested. Once freed, if that is the case, these victims risk "«disappearing" by returning to their home country. When they are finally detected as being victims in a later stage of the investigation, they should be given the chance to access the status of victim of human trafficking. For instance, this could eventually happen if letters rogatory are issued later on in the investigation. All the players concerned, such as the judges, the frontline services and the specialised centres for the victims of human trafficking, must actively co-operate to allow these victims to successfully access the status of victim of human trafficking.

## 2. Frontline services

Frontline services must be familiar with the human trafficking indicators and develop a professional attitude in order to recognise people who have committed offences under coercion as potential victims of human trafficking. To achieve this, training must be given to the different frontline services likely to enter into contact with this type of victim. This is valid not only for the federal police force's specialised human trafficking units, but also for the units combating drug trafficking, organised theft and itinerant gangs, who must, at least, have the capacity to be attentive to it.

Detecting these victims requires a good level of co-operation between the different specialised units of the federal police and the local police. Information exchange should be transparent and dialogue favoured. The Turnhout "organised theft" case is a good example of this<sup>50</sup>.

Confronted with acts or cases of organised theft or drug trafficking, frontline services must be attentive to possible parallels between the perpetrators' statements indicating possible coercion in their behaviour, and therefore a status of victim. Different signals may alert them when statements are given: these perpetrators are always at the bottom of the hierarchical ladder and are attracted by false promises of regular work. They are therefore obliged to commit offences to reimburse the cost of staying here and/or transport to Belgium. They are threatened and subjected to pressure. Their identity papers are taken from them, etc. When various statements include such elements and are filed in parallel and in isolation, it is necessary to envisage opening a case in human trafficking on the basis of criminal acts perpetrated under coercion.

## 3. Judges

The most important vital condition in the successful management of cases concerning forced activities of this type, is the effective and rapid implementation of the fight against trafficking in human beings in the field by the different public prosecutor's offices. Thanks to their investigations in human trafficking, the judges can dismantle these criminal networks at structural level in order to find and prosecute the principals of these thefts or forced drug activities. This also allows them to identify the perpetrators behind these offences committed under coercion, as victims, and help them.

However, it is necessary to be conscious of the fact that the judge always makes an assessment based on a cost/benefit analysis according to the obligation to achieve the result of obtaining a conviction. This also determines the strategic choice of the charge for the judge will decide to prosecute in the actual case.

And yet, as we saw earlier, the proof of coercion is difficult to obtain in this type of case. Moreover, the judge is situated in a social context where they knows that the law is linked

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<sup>50</sup> See above, Chapter 2:

to an obligation to achieve a result within a short deadline: everything must happen quickly and end in a result.

#### **4. Launch of an investigation by the judges**

There must be sufficient indications of coercion to be able to open a case concerning trafficking in human beings. This also provides a significant guarantee of positive processing by the court. Opening such a case may take place at the beginning or in the final stages of another ongoing investigation. In the initial phase, the basic problem is that many acts involve the perpetrator(s) being caught red-handed, which requires the competent judge's immediate reaction and may already involve a strategic choice. In addition, the judge must take into account the fact that the suspects' statements may or may not be true, since the latter may be victims or, on the contrary, persons attempting to manipulate the inquiry<sup>51</sup>. It is not always easy to make this distinction at the beginning of an inquiry. The fact that several similar statements are filed separately can be a major objective indication.

These cases of trafficking in human beings will preferably be separated from initial cases in drug trafficking or organised theft, so that the latter can be given priority in court. Such cases in human trafficking do indeed require time, a different approach and extra means.

The elements of proof will be collected, preferably in the initial stages of the case, when these elements are still present, which is not always possible. Indeed, the forced nature of the offences committed is often discovered later in the investigation.

It may be useful to investigate such networks on the basis of the charge of criminal organisation. Therefore, there are several possible methods of investigation available that are essential to discover underlying structures. However, this requires a great deal of work and resources. Generally, this only happens as a last resort, when several acts of a similar nature have been discovered within the context of the perpetrators being caught red-handed. Again, the Turnhout "organised theft" case is a good example<sup>52</sup>.

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<sup>51</sup> See above, Chapter 2: case in which the defendant stated having acted under coercion.

<sup>52</sup> See above, Chapter 2.

## 5. Prosecution policy

According to the Centre, cases where the victims were forced to commit offences must also be prosecuted on the basis of the charge of trafficking in human beings, in order to be able to attack the criminal network (with the principal) in its entirety and allow the victims to have access to the status of victim of human trafficking. If, for strategic and material reasons, the judge chooses not to open an investigation into acts of human trafficking, the victims concerned should not however be prosecuted for criminal acts that they have committed under coercion.

Victims of human trafficking who have also been sexually or economically exploited and who have been found guilty, involuntarily or against their will, of acts of social fraud, must also not be prosecuted by the labour courts.

The Centre recommends that the judges' national network of expertise take into consideration cases of trafficking in human beings for the purposes of forced criminal activity and try to find a way to define a policy on this subject. The processing and feasibility of this type of case raise a great deal of questions among the competent judges. It would certainly be useful to examine when it would be appropriate to begin a case and proceed with prosecution for trafficking in human beings and to reflect upon the best methodological approach to this subject.

In order to help the judges of the public prosecutor's office who are not familiar with trafficking matters, the specific addition of "«victim of human trafficking" among the reasons for closing a case would raise awareness among them.

It would also be useful to adopt an "«open" list of offences typically associated with trafficking, against which the victims could be protected from prosecution. It would have to be specified that the list is not exhaustive and that the non-punishment obligation applies to every offence as long as the link with trafficking is established. This list should be widely distributed among police prosecution services and public prosecutor's offices, including those that do not deal directly with trafficking cases.

## ACTION PLAN 1

### **Action plan concerning the prerequisites to successfully tackling the problem of offences committed under coercion.**

During the analysis of the prerequisites and associated problems, it is necessary to distinguish three different levels of decision-making. At the first level are the various aspects associated with detecting victims and acts committed under coercion. At the second level, the judge assesses whether or not to open an investigation into trafficking in human beings for the purpose of forced criminal activities. At the third level, an investigation on the basis of the charge of criminal organisation is conducted.

1. Level of detection
  - a. Elementary knowledge of human trafficking indicators
    - i. Police departments
    - ii. Public prosecutors
  - b. Good collaboration
    - i. Police level
    - ii. Public prosecutor level
  - c. Trafficking in human beings is a political priority in the field
  - d. Sufficient indications of coercion
    - i. Problems associated with the victim's attitude
    - ii. Problems associated with the potential manipulation of the suspect
    - iii. Parallel statements given separately
    - iv. Grey area between the status of victim and that of perpetrator
    - v. Intercepting the person red-handed: equal to being perceived as the perpetrator
    - vi. Particular attention to gangs who recruit minors
2. Judge's strategic choice
  - a. Assessment of the opportunities
    - i. Situations where there is physical violence against persons
    - ii. Grey area between the status of victim and that of perpetrator
  - b. Obligation to achieve a result
    - i. Speed of the investigation
    - ii. Complexity of the investigation
    - iii. Actual possibility of conviction
  - c. Resource management
    - i. Need for an in-depth investigation with extensive resources
    - ii. Limited resources
    - iii. Assessments according to other investigations
3. Criminal organisation investigation
  - a. Separation new parallel case
  - b. Possibility of dismantling a criminal structure and its principals
  - c. Financial investigation besides the special investigation methods and wiretaps.
  - d. In case of international letters rogatory, attention given to awarding the status of victim

## ACTION PLAN 2

### **Action plan of the prerequisites for detecting and following up victims of trafficking, bogus self-employed workers.**

During the analysis of the prerequisites and the associated problems, it is necessary to distinguish three different levels of decision-making. At the first level are the various aspects associated with detecting victims with the status of bogus self-employed worker within the framework of combating trafficking in human beings. At the second level are the administrative measures that are immediately imposed after the victim has been granted the status. At the third level, the usual investigation is conducted with the charge of trafficking in human beings.

1. Level of detection
  - a. Elementary knowledge of human trafficking indicators
    - i. Frontline services: also in the specialised units
    - ii. For labour and sexual exploitation
  - b. Multidisciplinary collaboration
  - c. Trafficking in human beings is a (political) priority in the field
  - d. Application of the status of victim of trafficking in human beings for bogus self-employed workers
    - i. Special attention given to the specific situation of EU nationals
    - ii. The status of victim is important not only for residence permits, but also for legal and administrative assistance
    - iii. Special attention for victims who wish to return home rapidly and requirement of a flexible application of the status of victim
2. Administrative processing
  - a. Suspension of the merry-go-round of payment injunctions
    - i. Contact INASTI (National Institute for the Social Security of the Self-employed)
  - b. Remission of debts
    - i. INASTI liaison person for trafficking in human beings
3. Investigation
  - a. Charge of trafficking in human beings investigation
  - b. Non-prosecution of the victim for acts of social fraud

***EXTERNAL CONTRIBUTION : Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking***<sup>53</sup>

*Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings*

***Background***

Growing numbers of people are trafficked for exploitation in forced criminality: it is often a deliberate strategy of the traffickers to expose victims to the risk of criminalization and to manipulate and exploit them for criminal activities such as theft, pick-pocketing, drug trafficking, and cannabis cultivation. Furthermore, law enforcement and NGOs working in the field consistently report that trafficking has changed: more subtle mechanisms of control and situations of multiple-dependency are used by traffickers to subjugate individuals, and it may not always be immediately evident that those individuals are maintained in slavery-like conditions. Victims often come to the attention of the authorities primarily as offenders and they may not be easily recognized as actual victims of a serious crime. Available data indeed confirm that compared to the massive scale of the trafficking, only very few persons are recognised as victims of trafficking, while most remain invisible or are misidentified and even arrested, detained and charged with immigration offences, for soliciting prostitution or engaging in illegal work, making false statements, etc.

Traffickers favour the punishment of victims as it simply plays into their hands: it ensures that their victims are the ones to bear the criminal penalties while the real offenders operate with impunity. The punishment of victims for offences caused or directly linked to their being trafficked promotes trafficking by failing to confront the real offenders; by dissuading trafficked victims from giving evidence against their exploiters and by enabling traffickers to exert even further control over their victims by

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<sup>53</sup> In April 2013 the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings issued the «Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking», available online at: <http://www.osce.org/cthb> . The paper was drafted by Ryszard Piotrowicz, Professor of Law at Aberystwyth University, Member of the European Commission's Group of Experts on THB and of GRETA, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings, and Liliana Sorrentino, expert on THB. This work is the result of a rich process of consultations with international organizations and NGO partners in the *Alliance against Trafficking in Human Beings*, including UNODC, UNHCR, UN OHCHR, Unicef, Council of Europe, ICMPD, ILO, Terre des Hommes, ECPAT, Anti-Slavery International, La Strada, legal practitioners and victim advocates. The SR is also grateful to the CEEOR for sharing relevant cases and in particular to Patricia Le Cocq, who was among the expert peer reviewers, along with Parosha Chandran, Human Rights Barrister in London.

threatening exposure to punishment by the State.

### ***The rationale of the non-punishment principle***

Over the past decade the non-punishment principle has evolved from a soft law standard - first enunciated in the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking - into a legally binding provision as per Art. 26 of the Council of Europe Convention on Action against Trafficking in Human Beings and Art 8 of the EU Trafficking Directive.<sup>54</sup> This evolution testifies to a growing recognition of a victim's trafficking ordeal and to the understanding that the punishment of victims of trafficking for crimes directly related to their trafficking is a violation of their fundamental dignity; it constitutes a serious denial of reality and of justice.

Trafficked persons are compelled to commit offences while being trafficked or as a consequence of being trafficked. Victims act without autonomy; their freedom of action is limited by traffickers' use of deceptive, abusive and coercive means to control them. Therefore, they are not responsible for committing the offence and should not be held accountable for this. This is the rationale behind the non-punishment provision which has been affirmed in a number of international and regional standards, as a legally or politically binding norm.<sup>55</sup>

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<sup>54</sup> UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1 (2002), <http://www.unhcr.org/refworld/docid/3f1fc60f4.html>, accessed 31 January 2013; Council of Europe, Convention on Action against Trafficking in Human Beings, CETS No. 197 (Warsaw, 2005), <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>, accessed 10 April 2013; EU, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011).

<sup>55</sup> See for instance, OSCE Permanent Council, *Decision No. 557/Rev.1* OSCE Action Plan to Combat Trafficking in Human Beings, PC.Dec/557/Rev.1 (Vienna, 7 July 2005), Chapter IV, para. 5.2.; OSCE Ministerial Council, *Decision No. 1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings*, MC(8).DEC/1 (Vienna, 28 November 2000), para. 9; OSCE Ministerial Council, *Ministerial Declaration on Combating All Forms of Human Trafficking*, MC.DOC/1/11/Corr.1 (7 December 2011); United Nations, *Resolution Global Plan of Action to Combat Trafficking in Persons: resolution / adopted by the General Assembly, A/RES/64/293* (12 August 2010); United Nations Working Group on Trafficking in Persons, *Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking*, CTOC/COP/WG.4/2010/4 (9 December 2009), para. 10, [http://www.unodc.org/documents/treaties/organized\\_crime/2010\\_CTOC\\_COP\\_WG4/WG4\\_2010\\_4\\_E.pdf](http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/WG4_2010_4_E.pdf), accessed 10 April 2013; United Nations, *Convention relating to the Status of Refugees*, 189 UNTS 150 (Geneva, 28 July 1951); European Union (EU), *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*, 14981/02 (29 November 2002), para. 7, <http://www.unhcr.org/refworld/docid/4693ac222.html>, accessed 10 April 2013; Commonwealth of Independent States (CIS), *Model Law on Providing Assistance to the Victims of Trafficking* (2008); European Commission, *Opinion No. 1/2008 of the Experts Group on Trafficking in Human Beings on the Revision of the Council Framework decision of 19 July 2002 on Combating Trafficking in Human Beings*

### ***Challenging implementation***

Notwithstanding the progressive affirmation of the non-punishment provision in international standards, its practical application remains quite challenging. Evidence from GRETA<sup>56</sup> country evaluation reports, case-law and individual cases reported by NGOs and legal professionals indicate that countries in the OSCE region have adopted a very diverse range of domestic legal provisions to deal with the non-punishment and that their implementation is inconsistent. While only few countries adopted specific legislation (e.g. Armenia, Cyprus, Georgia, Moldova and Romania), the vast majority relies on existing general legal provisions on defence, which are rarely applied in trafficking cases. Moreover, where specific domestic legal provisions exist they are rather limited in their scope i.e. they apply only to certain offences such as illegal border crossing, illegal stay or employment. In some countries, the Ministry of Justice or the prosecution services have been issuing guidance on the implementation of the non-punishment provision. Yet, the application and the interpretation of the scope of the non-punishment obligation greatly varies from one country to another, with a disconcerting tendency to narrow the interpretation of the non-punishment obligation to sentencing considerations, rather than to protection against the conviction of a trafficked person for offences caused or directly linked to their being trafficked. There appears to be also a tendency to restrict the application of non-punishment to cases where there is evidence that the offence was committed under physical violence, thus excluding those cases where traffickers subjugate victims through subtle means of psychological coercion or by abusing their position of vulnerability.

Empirical evidence from investigations and court proceeding shows a great variety of scenarios in which the application of the non-punishment provision is challenging. In most instances, there are issues with the misidentification of victims, including children, as perpetrators of crime. Some cases are indeed very complicated with victims apparently involved in the recruitment or exploitation of others, often as a result of a cycle of abuse. Cases of trafficking for enforced criminality are also challenging, and often relate to children exploited for cannabis cultivation or pick-pocketing; police and prosecutors dealing with theft and drug-related crimes are usually not familiar with trafficking, may not recognize it and mistakenly view victims as offenders. Such cases require good collaboration between various prosecutorial and police services, as well as with NGOs, so that the vulnerability of victims is understood and victims are afforded

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(17 October 2008), p. 4 and UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, A/HRC/20/18 (6 June 2012), paras. 23-30.

<sup>56</sup> GRETA, the Group of Experts on Action against Trafficking in Human Beings is a multidisciplinary panel of 15 independent experts that is responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. GRETA regularly publishes reports evaluating the measures taken by the Parties. On the basis of GRETA's reports, the Committee of the Parties to the Convention, may adopt recommendations concerning the measures to be taken to implement GRETA's conclusions.

adequate care and protection.

What empirical evidence makes clear is that the obligation of non-punishment is tied to the State's obligations to identify, assist and protect victims, and also to State's duty to investigate human trafficking to bring the true perpetrator to justice.

### ***Key recommendations***

Few acts could constitute a more flagrant violation of a victim's rights than for the State to prosecute or otherwise punish a person for acts they were compelled by their trafficker or trafficking to do. Yet, there is evidence that this is happening all too often, exacerbating the victimization of trafficked persons and fostering injustice and the impunity of traffickers; it is therefore necessary to further strengthen our human rights approach to anti-trafficking action and secure an effective and comprehensive implementation of the non-punishment provision.

In a recent judgment in the *Rantsev* case the European Court of Human Rights held that States are obliged to investigate human trafficking where circumstances give rise to, or ought to give rise to, a credible suspicion that the person had been trafficked. In such cases, where no investigation of the trafficker takes place but the criminalization of the victim proceeds, this will give rise to an extremely serious violation of that person's human rights and also the State's obligations under human rights law.<sup>57</sup> Furthermore, States must have in place legislation, "adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking".<sup>58</sup>

### ***A legal right***

For protection against non-punishment to be effective, legislation and/or related policy guidance are necessary to protect trafficked individuals against unlawful punishment for trafficking-related crimes. Current international standards on non-punishment create a legal right for victims and as such this right should be specifically safeguarded in domestic law. States should therefore consider adopting an open-ended list of offences typically related to trafficking in human beings, with regard to the commission of which victims of trafficking will not be punished or penalised. It should be clearly stated that the list is not exclusive, and that the duty of non-punishment applies to any offence so long as the necessary link with trafficking is established.

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<sup>57</sup> European Court of Human Rights, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04 (Strasbourg, 7 January 2010), <http://www.unhcr.org/refworld/docid/4b4f0b5a2.html>, accessed 31 January 2013, para. 286.

<sup>58</sup> European Court of Human Rights, *Case of Rantsev v. Cyprus and Russia*, Application no. 25965/04 (Strasbourg, 7 January 2010), <http://www.unhcr.org/refworld/docid/4b4f0b5a2.html>, accessed 31 January 2013, para. 284.

***Scope: Immunity from prosecution, detention and the application of a penalty***

In terms of scope of the non-punishment obligation, States have an obligation to keep victims immune not only from the application of a penalty but also from prosecution and detention, where their crime was caused or directly linked to their having been trafficked. It is then for States to exercise their discretion regarding *how* to implement this requirement in their national legal systems.

What is crucial is to interpret the notion of compulsion to commit an offence in the context of trafficking. Compulsion should be understood in light of the trafficking definition, whereby compulsion includes all the means of trafficking: threat/use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability. Being "compelled" to commit a crime thus includes the full array of factual circumstances in which victims of trafficking lose the possibility to act with free will, not only under the threat of physical violence or emotional coercion, but also most often wherein traffickers exploit victims through abuse of a position of vulnerability.

Where a child is involved, compulsion needs to be understood in light of the child's vulnerability on account of their age alone, and of the irrelevance of consent in the legal definition of child trafficking. More specifically, where there is evidence of abuse and/or exploitation and/or trafficking of a child, from a legal perspective it should be understood that in such circumstances a child cannot make an informed decision and where the child commits a criminal act related to their trafficked status, the application of the non-punishment provision is crucial, not only from a child protection perspective but also to prevent the risk of secondary traumatization to the child at the hands of the State.

***Some key recommendations***

In practical terms, for the non-punishment principle to function effectively, it is necessary to take into account the following issues and adopt related specific policy and legal measures.

First, establishing early and effective identification and referral systems is a prerequisite for the application of the non-punishment provision. This aims to ensure that as soon as there is a reasonable suspicion that the criminal suspect is a possible victim, state authorities are under a duty to act proactively to uncover potential trafficking in human beings. Legal counselling and assistance should be immediately provided to the person and any deportation order should be suspended while the victim identification process is ongoing. At the same time, the public prosecutor and/or judge should provisionally suspend the proceedings on their own initiative.

Second, once a reasonable grounds indication has been reached that the suspect is a victim of trafficking, any prosecution against them for a crime that is caused or directly linked to their trafficking should not be initiated or at least be discontinued without delay (or as soon as possible) by the competent judicial authority. In cases involving children, the response must be speedy, their best interests shall be considered paramount at all times, they must be immediately provided with appropriate assistance and protection.

Third, unjustified prosecution of a trafficked person or misidentification of a trafficked person may lead to fines being imposed on them or even to detention. Such detention may not only violate States' obligations under human rights law but also contributes to heightening victims' vulnerability, and can lead to cumulative trauma, suicidal behaviour and post-traumatic stress disease.<sup>59</sup> The non-punishment obligation requires States to avoid detention of trafficked persons for offences caused or directly linked to their trafficking, or at least to immediately terminate detention when it is established that the person is a victim and the offence was directly linked to their having being trafficked.

Fourth, the shield of the non-punishment provision needs to be used also to avoid that other sanctions and punishments are unjustly imposed on trafficked persons. For example, States should take measures to ensure that the trafficked person will not have a criminal record as a consequence of having committed an offence directly related to their being trafficked. We are also all aware that criminal records may have long lasting life consequences for the victim. States should also ensure that trafficked persons who have been suspected or convicted of trafficking-related offences are not restricted in their access to residence rights nor, where appropriate, to labour rights, to which they may be entitled to as victims. A conviction of a victim of trafficking for a trafficking-related offence should not be considered a reason not to grant or extend a residence permit, nor to declare the person an undesirable alien.

### ***Conclusion***

Clear and specific legislation and policy guidance is therefore necessary to support full and effective implementation of the non-punishment principle. It is essential that such legislation and/or guidance prioritizes the protection of the rights of victims of trafficking, as victims of serious crimes. It goes without saying that once developed, this guidance should be widely disseminated and accompanied by training for law enforcement authorities, immigration authorities, prosecutors and the judiciary, as well as victims' lawyers and NGO advocates.

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<sup>59</sup> OSCE OSR/CTHB in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, *Trafficking in human beings amounting to torture and other forms of ill-treatment*, Occasional Paper Series (forthcoming).

Victims of trafficking are also witnesses of serious crime. The non-punishment provision will, if applied correctly, equally and fairly, enable States to improve their prosecution rates whilst ensuring critical respect for the dignity and safety of all victims of trafficking who, but for their trafficked status, would not have committed the offence at all.

*EXTERNAL CONTRIBUTION: Working towards better protection for victims of human trafficking*

*Freddy Roosemont, Director Immigration Office*

The fight against trafficking in human beings has been a priority in Belgium since the 1990s. Besides the aspects linked to prevention, the prosecution policy and a multidisciplinary approach, the interests of the victims are also the subject of specific attention.

These people are the victims of forms of crime that must be fought as a priority. Their vulnerability, attributable to their illegal status and their difficult situation from a socioeconomic point of view, is used by those who exploit them to exercise pressure on them and even coercion.

It is absolutely necessary to avoid methods that could encourage the continuation of this position of vulnerability and force the victims of human trafficking to plunge even further underground, thus further reinforcing the grip of criminal activity and complicating help for the victims.

In 1993, Belgium introduced a specific aid and assistance system for victims of human trafficking. The system was included in a ministerial circular in 1994 and in two ministerial directives in 1997 and 2003. It concerned a range of various measures, including the issuing of temporary and even permanent residence permits.

The system received a legal framework with the Law of 15 September 2006 modifying the Law on foreigners of 15 December 1980 (Art. 61/2 to 61/5). This followed the implementation of various European directives in Belgian law, including the directive of 29 April 2004 relating to the issuing of temporary residence permits to victims of human trafficking who co-operate with the competent authorities.

End 2008, the entire protection system was incorporated into a new ministerial circular of 26 September 2008 relating to the implementation of a multidisciplinary co-operation concerning victims of human trafficking and/or certain forms of aggravated human trafficking.

The main objective of this circular is to determine the way in which to detect, guide, look after and help potential victims of human trafficking. The methods to be applied in order to obtain the status of victim are also defined therein.

In order to organise the actions efficiently, a multidisciplinary collaboration was established between the different services concerned. This involves the collaboration of the police and inspection departments, the Immigration Office, the specialised approved support centres for victims of human trafficking and the relevant prosecutors in human trafficking within the public prosecutor's offices or courts.

This objective is respected thanks to the clarification of the roles that the above-mentioned departments must adopt during the various stages and thanks to the awareness raised among frontline players regarding the initiatives to be taken.

Emphasis is placed on the fact that the protection system relates to all forms of exploitation involved in human trafficking.

The protection system can also be applied to victims of certain aggravated forms of human trafficking.

The status of victim of human trafficking can be attributed both to third country citizens and citizens of member countries of the European Union.

Extra measures are also in place for specific categories of victims, such as unaccompanied foreign minors and domestic staff working privately for diplomats.

In the last few years, a lot has been done to help improve the situation of victims.

To be able to further improve the position of human trafficking victims, a file is currently being prepared that will be submitted to the Secretary of State for Immigration and Asylum Policy. It mainly deals with a proposal aimed at making modifications to the statutory procedure in favour of victims.

In the current state of affairs, the period of reflection is divided into two stages. In the first stage, an order to leave the country is issued, which is valid for 45 days. The aim of this stage is to allow the victim to regain their composure and a feeling of calm. The victim can therefore think and take a decision regarding their future, with the assistance of a specialised support centre for victims of human trafficking. During the second stage, a registration certificate is issued after the victim files a statement or a complaint against the person responsible for their exploitation.

The current proposal consists of doing away with the order to leave the country for the following reasons:

- issuing such a document can sometimes be confusing for the victims, but also for the players in the field. Establishing a relationship based on trust between the specialised support centres and the victims can sometimes be complicated. It is not always easy to ask for the victim's collaboration;
- there is also a certain discrimination between the victims from third countries and those who are citizens of a Member State of the European Union. The European victims do not, or rarely, receive this initial document (order to leave the country). In this case, the specialised support centres for victims of human trafficking also have difficulty in getting the competent authorities to reimburse them for the costs incurred for looking after these victims;
- it is also difficult to explain why orders to leave the country are issued when Belgium participates in international forums dealing with trafficking in human beings. This way of proceeding is perceived as a negative signal, when the aim is to protect the victim.

The order to leave the country could possibly be replaced by another document, valid for 45 days. However, this proposal must be discussed between the various competent partners on this subject. Legislative and statutory modifications will be necessary in this case.

This shows the common desire to pursue the system's optimisation and offer the victims of human trafficking even better protection.

## **PART 2: EVOLUTION OF THE PHENOMENON AND COMBATING TRAFFICKING IN HUMAN BEINGS**

## CHAPTER 1: RECENT EVOLUTIONS IN THE LEGAL AND POLITICAL FRAMEWORK

In this chapter, the Centre presents the most recent evolutions in the legal and political framework in terms of trafficking in and smuggling of human beings both on a European and a Belgian level.

### 1. Evolutions in the legal and political framework

In 2012, the EU Strategy 2012-2016<sup>60</sup>, was adopted. It was presented in our previous annual report<sup>61</sup>. Besides this strategy, we should mention that Eurojust adopted a 2012-2016 action plan, with six priority actions<sup>62</sup> :

- to improve the exchange of information;
- increase the number of detections, investigations and prosecutions in cases of human trafficking;
- improve the co-ordination mechanisms, especially for operational activities;
- increase co-operation with third countries;
- promote alternative approaches to combat trafficking in human beings, such as a multidisciplinary approach;
- disrupt the flow of criminal money, especially by encouraging the idea of cross-border procedures to recover assets.

Furthermore, within the framework of the measures taken by the European Union aimed at reinforcing victims' rights in terms of criminal justice, we should mention the adoption of a new directive, 2012/29/EU, on the rights and the protection of victims of crime<sup>63</sup>. Even if it does not directly concern victims of human trafficking<sup>64</sup>, this general directive significantly reinforces the rights of the victims to receive information, support and protection, as well as their procedural rights when they take part in criminal proceedings.

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<sup>60</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, 19 June 2012, COM(2012)286 final.

<sup>61</sup> Annual report 2011, Trafficking in and Smuggling of Human Beings, *The money that matters*, p.72-74.

<sup>62</sup> Eurojust, *Strategic project on Eurojust's action against trafficking in human beings, Final report and action plan*, October 2012, available on the following link [www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20%28October%202012%29/THB-report-2012-10-18-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20%28October%202012%29/THB-report-2012-10-18-EN.pdf).

<sup>63</sup> Directive 2012/29/EU of the European Parliament and Council of 25 October 2012 establishing the minimum standards concerning the rights, support and protection of victims of crime, replacing the Council's framework-decision, 2001/220/JAI, *O.J.*, L315, 14 November 2012, p.57.

<sup>64</sup> Because these people have specific needs, which are taken into account in Directive 2011/36/EU of the European Parliament and Council of 5 April 2011 concerning the prevention of trafficking in human beings and the fight against this phenomenon as well as the protection of the victims, *O.J.*, L101 of 15 April 2011, p.1. On this subject, see the Centre's annual report 2010, Trafficking in and smuggling of human beings, *Combating social fraud to prevent trafficking in human beings*, p.13-22.

It also includes several measures whose objective is to guarantee that practitioners (civil servants, judges, lawyers, aid organisations for victims) receive training adapted to the needs of the victims and to encourage co-operation between Member States, as well as raising awareness about victims' rights.

The directive nevertheless mentions the specific attention the victims of trafficking must receive within the framework of the personalised assessment of the risk of secondary victimisation, intimidation and reprisals. This risk is indeed higher for this category of victim and specific protection measures may prove to be necessary<sup>65</sup>. These measures particularly concern the victim's hearing in adapted premises conducted by professionals trained for this purpose, using techniques that prevent visual contact between the victim and the perpetrator<sup>66</sup> or allowing the victim to be heard without being present in court<sup>67</sup>.

## **2. Evolutions in the Belgian legal and political framework**

In Belgium, the main evolutions concern the modification in the definition of trafficking of human beings, referred to in Article 433*quinquies* of the Criminal Code, as well as the adoption of a procedure that recognises specialised victim support centres.

To a lesser extent, because it is not directly aimed at combating trafficking in human beings, it is useful to take a look at the adaptation to Belgian law of the "sanctions" directive<sup>68</sup>.

### **2.1. Modification to the definition of trafficking in human beings**

Belgium was required to adapt directive 2011/36/EU on trafficking in human beings by 6 April 2013<sup>69</sup>, even though Belgian legislation was already largely compliant<sup>70</sup>. A working group within FPS Justice was given the responsibility, end 2011, of preparing the adaptation of the new European directive and of proposing necessary or useful legislative changes to optimise the application of the legislation in the field.

However, since parliament took the initiative to proceed with several proposed legislative modifications, in particular regarding the definition of trafficking in human beings for the

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<sup>65</sup> Preamble 57 and Article 22 of Directive 2012/29/EU.

<sup>66</sup> In particular, confrontations.

<sup>67</sup> Article 23 of Directive 2012/29/EU.

<sup>68</sup> Directive 2009/52/EC of the European Parliament and Council of 18 June 2009 provides for minimum standards on sanctions and measures against employers of illegally staying third country nationals, *O.J.*, L168, 30 June 2009, p.24.

<sup>69</sup> European Parliament's and Council's Directive 2011/36/EU of 5 April 2011 concerning the prevention of trafficking in human beings and combating this phenomenon as well as protecting the victims, replacing the Council's framework-decision, 2002/626/JAI, *J.O.*, L101 of 15 April 2011, p.1-11.

<sup>70</sup> On this subject, see the Centre's annual report 2010, *Trafficking in and smuggling of human beings, Combating social fraud to prevent to prevent trafficking in human beings*, p.13-22.

purpose of sexual exploitation<sup>71</sup>, it was through amendments to various texts - and not to a single text proposed by the government – that several modifications were finally adopted.

Along with the work of the two "Trafficking in Human Beings" working groups at the Senate<sup>72</sup> and recommendations drawn up within this framework<sup>73</sup>, many private bills were brought before the Senate. One of them, brought in on 26 January 2011<sup>74</sup>, concerns the expansion of the definition of trafficking of human beings for the purposes of sexual exploitation. It was this private bill that finally led to a more general modification of the definition of trafficking in human beings (see hereafter).

The definition of trafficking in human beings for the purposes of sexual exploitation as it was, did not allow for a crackdown on all forms of sexual exploitation, especially recruiting with a view to satisfying one's own sexual desires. The Centre emphasised, on several occasions, the need to expand this definition in order to cover this type of scenario<sup>75</sup>. The aim of the private bills subsequently brought in was to crack down on other forms of sexual exploitation other than offences concerning prostitution and child pornography alone.

Another reason to modify the definition lay in the difficulty associated with the interpretation of the scope of Article 433*quinquies*<sup>76</sup> of the Criminal Code (trafficking in human beings) and Article 380 of the Criminal Code (hiring and exploitation of

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<sup>71</sup> In the last few years, there have been several private bills on this matter: see, in particular, the private bill of 6 January 2010 aimed at modifying Article 433*quinquies* of the Criminal Code in order to extend the definition of trafficking in human beings to sexual exploitation, *Parl. doc.*, Senate, session 2009-2010, Doc 4-1589/1, then taken up in the Chamber (private bill of 8 October 2010, *Parl. doc.*, Chamber, s.e. 2010, Doc 53-0328/001).

<sup>72</sup> The first working group was created on 1 December 2009 (see 'Commission de l'Intérieur et des Affaires Administratives', Senate, Report on Trafficking in Human Beings, *Parl. doc.*, Senate, session 2009-2010, no. 4 – 1631/1). The second working group was created on 3 May 2011 (see 'Commission de l'Intérieur et des Affaires Administratives', Senate, Report on Trafficking in Human Beings, *Parl. doc.*, Senate, session 2011-12, 27 March 2012, no. 5 – 1073/1). The latter was an essential addition to the first working group, which was not able to finish its work because parliament was dissolved. All the planned hearings were therefore able to take place.

<sup>73</sup> On this subject see the Centre's last two annual reports on Trafficking in and smuggling of human beings (annual report 2010, *Combating social fraud to prevent trafficking in human beings*, p. 28 and annual report 2011, *The money that matters*, p.76).

<sup>74</sup> Private bill of 26 January 2011 aimed at modifying Article 433*quinquies* of the Criminal Code in order to extend the definition of trafficking in human beings to sexual exploitation, *Parl. doc.*, Senate, session 2010-2011, Doc -711/1. Another similar private bill was brought in later: Private bill of 4 October 2011 expanding and clarifying the special intent of sexual exploitation in terms of human trafficking, *Parl. doc.*, Senate, session 2010-2011, Doc 5-1245/1. It was abandoned following the adoption of private bill 711.

<sup>75</sup> The private bill refers to case "V", mentioned in one of the Centre's reports (see the annual report 2007, Trafficking in and smuggling of human beings, *A public policy from the national rapporteur's point of view*, p.97-99).

<sup>76</sup> The difficulty lies in the use of the term "allow" in Article 433*quinquies*. This article states: "The offence of trafficking in human beings constitutes the recruitment, transportation, harbouring, receipt of persons, passing on or transferring the control exercised over them in order to: 1. allow the offences provided for in Articles 379, 380, §1 and §4 and 383bis, §1 to be committed against this person".

prostitution). According to some aspects of case law, based on the preamble of the law of 10 August 2005<sup>77</sup>, but contrary to the *ratio legis* of the law, human trafficking only exists if there is a network (which, for example, would exclude the *loverboys*<sup>78</sup> acting individually from the scope of Article 433*quinquies*). This would mean imposing an extra condition on the legislative act defining the act and introducing a difference compared with other forms of exploitation.

It was while the Chamber was examining the private bill that the definition was expanded after the amendments were submitted to the Justice Committee<sup>79</sup>. These amendments included several proposals expressed by the FPS Justice's working group. Subsequently, the title of the bill was modified<sup>80</sup>. Required to re-examine the amendments made by the Chamber, the Senate agreed to the amended bill<sup>81</sup>. These modifications to the definition of trafficking came into force on 2 August 2013, following the publication of the law in the Belgian Official Journal of 23 July of the same year<sup>82</sup>.

Trafficking of human beings is now defined as follows:

*"The offence of trafficking in human beings constitutes the recruitment, transport, harbouring, receipt of persons, **taking control** or transferring the control exercised over them:*

- 1. for the purpose of exploitation of prostitution or other forms of sexual exploitation;*
- 2. for the purposes of begging;*
- 3. for the purposes of work or services, in conditions contrary to human dignity;*
- 4. for the purposes of organ removal in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human biological materials in violation of the law of 19 December 2008 relating to the obtaining and use of human biological material intended for human medical applications or for the purposes of scientific research<sup>83</sup>;*

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<sup>77</sup> The law of 15 August 2005, modifying various provisions with a view to reinforcing the fight against trafficking in and smuggling of human beings and the practices of slum landlords, introduced Article 433*quinquies* in the Criminal Code.

<sup>78</sup> *Loverboys* are men who seduce young girls with the aim of leading them into prostitution.

<sup>79</sup> Amendment no.1 of 19 February 2013 by Madame Van Cauter, *Parl. doc.*, Chamber, session 2012-2013, Doc 53 -2607/002 and Amendments no.2 and 3 of 26 February 2013 by Madame Van Cauter, *Parl. doc.*, Chamber, session 2012-2013, Doc 53- 2607/003.

<sup>80</sup> Private bill aimed at modifying article 433*quinquies* of the Criminal Code in order to clarify and extend the definition of trafficking in human beings (Doc 53-2607/003 and 2607/006).

<sup>81</sup> Private bill aimed at modifying article 433*quinquies* of the Criminal Code in order to clarify and extend the definition of trafficking in human beings, *Parl. doc.*, Senate, session 2012-2013, Doc 5-711/6.

<sup>82</sup> Law of 29 April 2013 aimed at modifying Article 433*quinquies* of the Criminal Code in order to clarify and extend the definition of trafficking in human beings, *O.J.*, 23 July 2013.

<sup>83</sup> This text was introduced through a sub-amendment to amendment no. 1. The latter was indeed expressed in more general terms: «for the purposes of the illegal removal of organs, tissues or cells from this person”. Furthermore, the sub-amendment includes the contents of private bill no. 53-2608 aimed at extending the criminal intent as regards the removal or allowing the removal of organs or tissues within the framework of trafficking in human beings by adapting the new terminology proposed in amendment no. 1 («for the purposes of”). This bill was initially forwarded by the Senate (Private bill of 12 September 2011 aimed at extending the criminal intent as regards the removal or allowing the removal of organs or tissues within the framework of trafficking in human beings, *Doc. parl.*, Senate, session 2010-2011, Doc 5 1214/1 to 4).

5. *or in order to make this person commit a crime or an offence against their will.*”

The changes therefore concern:

1. the material element of the offence: taking control of a person was added to the behaviours that are part of trafficking. Indeed, the transfer of control was originally referred to the sale of the person and therefore did not cover a series of situations where control was exercised over the person with a view to exploiting them. The term "taking control" also allows behaviours such as buying, illegal adoption or control of a person within the framework of forced marriage to be more clearly targeted<sup>84</sup> ;
2. the moral element of the offence: the purposes of exploitation were extended or clarified:
  - the purpose of sexual exploitation has been expanded. It now also covers the notion of sexual slavery;
  - an explicit reference is made to services regarding exploitation through work. For the investigative and prosecuting authorities this means "*establishing, through a range of elements, enslavement, a deterioration in the person as a human being through damage to their physical or mental faculties in such a way that there is a clear incompatibility with human dignity*"<sup>85</sup>. And yet, the notion of work is sometimes too limited in social law to cover legal constructions such as bogus self-employed workers for instance<sup>86</sup>. Including the notion of "services" in conditions contrary to human dignity also allows other forms of exploitation to be covered other than purely labour exploitation (such as the fact of forcing someone to serve as a "mule")<sup>87</sup>. During the Chamber's debates, the minister of justice's representative specified that this insertion offers sufficient scope to allow a progressive interpretation of the offence<sup>88</sup> ;
  - as for organ removal, it was a necessary to complete the legislation by adding to the removal and transplantation of organs the law concerning the removal of human biological materials, a law that had come into force after (2008) the

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<sup>84</sup> Amendment of the private bill aimed at modifying Article 433*quinquies* of the Criminal Code in order to clarify and extend the definition of trafficking in human beings for sexual exploitation, *Parl. doc.*, Chamber, Doc 53-2607/002, p.4.

<sup>85</sup> *Ibid.*, p.3.

<sup>86</sup> *Ibid.*, p.3.

<sup>87</sup> A «mule» is a person who transports drugs in their body. See the report done on behalf of the Chamber's Justice Commission, especially on the private bill aimed at modifying Article 433*quinquies* of the Criminal Code in order to extend the definition of trafficking in human beings to sexual exploitation, *Parl. doc.*, Chamber, session 2012-2013, Doc 53 2607/004, p.10. Since the person is found guilty of the drugs offence, it could be that in this case, point 5 of the legislative act defining the crime would be more applicable.

<sup>88</sup> *Ibid.*, p.10.

law of 10 August 2005 which inserted Article 433*quinquies* in the Criminal Code<sup>89</sup>.

While the Centre hoped and prayed for an extension to the definition of sexual exploitation<sup>90</sup> and considered that it was important to be able to have an evolving concept owing, in particular, to the creativity of criminal networks, the concept of human trafficking must not, however, with regard to the general expansion of the legislative act, become a dumping ground for anything and everything. This concern was also expressed during the debates in the Chamber<sup>91</sup>.

Consequently, it remains to be seen, during the implementation of this concept in the field, whether or not there is indeed a risk of distortion.

### ***Modification of the sentences***

Again within the context of private bills initially submitted to the Senate<sup>92</sup> and amended by the government, there is the law of 24 June 2013, which came into force on 2 August 2013, introducing the increase in fines according to the number of victims<sup>93</sup>. This principle has been introduced for trafficking in human beings<sup>94</sup>, but also for smuggling of human beings<sup>95</sup>, begging<sup>96</sup> and prostitution<sup>97</sup>. We should also mention that when closing this report (August 2013), the explicit possibility of the confiscation of real estate (also provided for as regards the exploitation of prostitution and the smuggling of human beings) was still being examined in parliament<sup>98</sup>. The last modification was proposed in response to a decision of the Court of Cassation according to which a confiscation of real

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<sup>89</sup> *Ibid.*, p.5.

<sup>90</sup> See the annual report 2007, Trafficking in and smuggling of human beings, *A public policy from the national rapporteur's point of view*, p.117 and the 2010 annual report, Trafficking in and smuggling of human beings, *Combating social fraud to prevent trafficking in human beings*, p. 130.

<sup>91</sup> Report done on behalf of the Chamber's Justice Commission, especially on the private bill aimed at modifying Article 433*quinquies* of the Criminal Code in order to extend the definition of trafficking in human beings to sexual exploitation, *Parl. doc.*, Chamber, session 2012-2013, Doc 53 2607/004, p.9.

<sup>92</sup> See the private bill relating to the crackdown on the exploitation of begging, trafficking in and smuggling of human beings in proportion to the number of victims, *Parl. doc.*, Senate, session 2010-2011, Doc 5-1216/1.

<sup>93</sup> Law of 24 June 2013 relating to the crackdown on the exploitation of begging and prostitution, trafficking in and smuggling of human beings according to the number of victims, *O.J.*, 23 July 2013.

<sup>94</sup> Subsequently, articles 433*quinquies* to *octies* of the Criminal Code have been modified.

<sup>95</sup> Modification of articles 77*bis* to *quinquies* of the law of 15 December 1980.

<sup>96</sup> Modification of articles 433*ter* and *quater* of the Criminal Code.

<sup>97</sup> Modification of article 380 of the Criminal Code. This modification follows on from a government amendment (*Doc.parl.* Senate, session 2012-2013, no.5-1216/2).

<sup>98</sup> Private bill completing articles 382*ter* and 433*novies* of the Criminal Code, as well as article 77*sexies* of the law of 15 December 1980 on access to the country, staying, the settling and removal of foreigners, in relation to the confiscation of real estate, *Parl. doc.*, Chamber, session 2012-2013, Doc.53-2819/001. The original bill (in the Senate) was only aimed at the modification of article 433*novies* of the Criminal Code (trafficking of human beings). Following government amendments, modifications were also proposed to article 382*ter* of the Criminal Code (exploitation of prostitution) and article 77*sexies* of the law of 15 December 1980 (smuggling of human beings) (See *Parl. doc.*, Senate, session 2012-2013, Doc 5-1881/2).

estate within the scope of human trafficking is not possible unless there is an explicit legal provision<sup>99</sup>.

### ***Slum landlords***

Finally, we should point out that, again, on the date of 2 August 2013, a law of 29 April 2013 incurred a slight modification to Article 433*decies* of the Criminal Code (slum landlords) by withdrawing from the abuse of the victim's particularly vulnerable position the fact that the person had no other real or acceptable choice than to submit to this abuse<sup>100</sup>. Since this lack of choice results from the very vulnerability of the victim and is not an additional constituent element, it was considered superfluous<sup>101</sup>.

## **2.2. Recognition of specialised centres for the victims**

Another major evolution in Belgium worth mentioning is the adoption of the Royal Decree of 18 April 2013 relating to the recognition of centres specialising in the reception and support of victims of trafficking and certain aggravated forms of human trafficking, and consent to go to court<sup>102</sup>.

This long-awaited system of recognition signifies the achievement of one of points of the federal government's 2012-2014 action plan<sup>103</sup>.

The royal decree establishes the conditions allowing an association to be recognised as a specialised support centre. This recognition also means having approval to go to court as a private party<sup>104</sup>. Finally, the decree recognises the three current specialised support centres for a period of five years: the not-for-profit associations Pag-Asa (Brussels), Payoke (Antwerp) and Sürya (Liège).

The conditions for being recognised as a specialised support centre for victims of trafficking are linked to their status (not-for-profit organisation), location (in Belgium), business (mainly receiving, supporting and providing accommodation for victims of trafficking and certain aggravated forms of smuggling of human beings) and the support provided (administrative and legal support of adults and minors).

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<sup>99</sup> Cass., 27 May 2009, RD P.09 0240F.

<sup>100</sup> Law of 29 April 2013 modifying article 433*decies* of the Criminal Code with a view to specifying the particularly vulnerable position of the victim of a slum landlord, *O.J.*, 23 July 2013.

<sup>101</sup> Report done on behalf of the Chamber's Justice Commission, especially on the private bill aimed at modifying article 433*quinqüies* of the Criminal Code in order to extend the definition of trafficking in human beings to sexual exploitation, *Parl. doc.*, Chamber, session 2012-2013, Doc 53 2607/004, p.6.

<sup>102</sup> *O.J.*, 22 May 2013.

<sup>103</sup> See point 3.5. of the 2012-2014 action plan. It is available via the following link: [www.dsb-spc.be/doc/pdf/PLAN\\_TEH\\_FR\\_2012.pdf](http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf)

<sup>104</sup> Article 2 of the R.D. of 18 April 2013.

Among other things, the centres must have a five-year strategic and operational plan, provide an annual report and contribute to the multidisciplinary approach developed in the national action plans to combat trafficking in human beings.

The royal decree also specifies that the number of centres is limited to the demand in needs as regards the administrative and legal support of trafficking victims<sup>105</sup>. However, agreements can sometimes be concluded with other associations within the framework of receiving victims requiring special care, especially minors. Finally, such recognition does not give the right to subsidies<sup>106</sup>.

### **2.3. Sanction of principals and employers of illegally staying third country citizens**

In the previous annual report<sup>107</sup>, the Centre already mentioned the adoption, through the act providing a framework for the government programme (I) of 29 March 2012, of a system of joint and several liability of the principals concerning social contributions, fiscal debts and wages, i.e. a general system of joint and several liability.

The Centre also mentioned – within the framework of adopting the "sanction" directive<sup>108</sup> – the adoption by the government of two draft legislations aimed at making the principal, who has recourse to middlemen employing illegally staying workers, jointly liable. It is indeed possible that there are potential victims of trafficking among these workers. These draft legislations have led to the adoption of the law of 11 February 2013 providing for sanctions and measures against employers of illegally staying third country citizens<sup>109</sup>.

The main provision of the law consists of a general ban on employing citizens of third countries who do not have the right to stay in Belgium. Furthermore, it lays down a series of minimum standards in terms of sanctions and measures to be taken against employers who contravene this ban<sup>110</sup>.

Belgian law already provided for criminal sanctions against employers who employed illegal residents from third countries<sup>111</sup>. The reform now explicitly obliges the employer

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<sup>105</sup> For instance, this depends on the number of cases of victims of trafficking opened at the Immigration Office, the evolution in the number of victims or the number of trafficking cases pursued in the public prosecutor's offices and labour courts. For the figures on this subject, see Part 3 of this report.

<sup>106</sup> Article 7 of the R.D. of 18 April 2013.

<sup>107</sup> Annual report 2011, Trafficking in and smuggling of human beings, *The money that matters*, p.75-77.

<sup>108</sup> Directive 2009/52/EC of the European Parliament and Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, *O.J.*, L168 of 30 June 2009, p.24.

<sup>109</sup> *O.J.*, 22.02.13.

<sup>110</sup> See also p. 116 of the 2012 Migrations report on this subject.

<sup>111</sup> See the law of 30 April 1999 relating to the employment of foreign workers and Article 175 of the Criminal Labour Code.

to check whether the worker has a valid work permit before employing them. Besides the financial and criminal sanctions that already exist, the employer is also required to pay third country workers any outstanding wages corresponding to the work carried out. In this respect, a rebuttable presumption is provided for, according to which a worker without a residence permit is considered as having worked three months for their employer. Furthermore, the employer must pay the relevant income tax and social contributions<sup>112</sup>. The law also specifies that when the employer does not have the worker's postal address and bank or post office cheque details, the wages will be paid into the Deposits and Consignments Fund.

The text also introduces a system of joint and several liability of the professional principal and the various contractors involved within the framework of a subcontracting chain or in absence of one<sup>113</sup>. There are two sides to this joint and several liability: on the one hand, a joint and several liability regarding wages and, on the other hand, an additional sanction for the main contractor and middlemen if the employer is sanctioned for the violation of the ban on employing third country nationals<sup>114</sup>.

This system of special joint and several liability applies to all forms of activity, both in relation to the existence of a chain of subcontractors and in the absence of such a chain. The contractor, in the absence of a chain of subcontractors, and the middleman, if such a chain exists, are both liable for the payment of the wages still due by their direct subcontractor. Here, joint and several liability concerns all wage debts. However, they are not liable if they have a written statement whereby their direct subcontractor certifies that they do not employ illegally staying third country nationals. That said, they can again be jointly liable if they are aware of the fact that their direct subcontractor employs one or more illegally staying third country nationals.

A similar principle also exists in the situation of a chain of indirect subcontracting<sup>115</sup> where the liability of the main contractor and the middleman, who are aware that their indirect subcontractor employs one or more illegally staying third country nationals, can be called into question.

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<sup>112</sup> Report done on behalf of the Committee on Social Affairs on the private bill providing for sanctions and measures against employers of illegally staying third country citizens, *Doc. parl.*, Chamber, session 2012-2013, Doc 53-2466/003, p.3.

<sup>113</sup> The text thus adapts Article 8 of Directive 8/52/EC of the European Parliament and Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals. For more explanations on this subject, see the explanatory statement of the private bill providing for the sanctions and measures against the employers of illegally staying third country nationals, *Doc.parl.*, Chamber, session 2012-2013, Doc 53 -2466/001, p.5-11. The Centre has been pleading in favour of such a system within the framework of trafficking in human beings for a long time. See, in particular, the Centre's 2010 annual report, *Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 99-102.

<sup>114</sup> According to article 175 of the amended Criminal Labour Code, a level 4 sanction is applied in this case.

<sup>115</sup> Here, the concept of «indirect subcontracting» concerns subcontractors who employ illegally staying third country nationals but who do not have any contractual relations with the abovementioned middleman.

The principal who is aware of this employment situation is also jointly and severally liable, both in the context of a subcontracting relationship and in its absence.

This mechanism means that the principals, who do not depend on the professional chain of the contractor and subcontractors, fall under the system of joint and several liability for the wages due. This means that any company who has work carried out by a contractor employing several subcontractors must, in principle, ensure that no illegally staying workers are employed on the building site.

Finally, to satisfy the requirements of the directive that provides for an efficient complaints system, it is also possible for third parties, such as representative trade union organisations and the Centre for Equal Opportunities and Opposition to Racism, to take to court disputes relating to this domain.

## CHAPTER 2: CASE ANALYSES

In this chapter, we present the results of the analysis of court cases on trafficking in and smuggling of human beings. These are cases that the Centre can consult in full as a private party. The analysis is therefore based on the statements in these cases and is above all aimed at the criminal system and the victim's point of view. The summary statements are examined in an in-depth and critical manner. These are statements in which the police summarises all the case's relevant data, the minutes of the hearings of the victims, the suspects and the witnesses as well as statements on investigations and reports of letters rogatory.

The study of concrete cases constitutes a cornerstone of the policy assessment. It allows knowledge to be acquired concerning implementation in the field of the policy as regards investigations and prosecutions, awareness of the existing stumbling blocks and allows us to form a partial idea of the actual phenomenon. Together, these results constitute a basis that is essential to the development of relevant recommendations.

This chapter is subdivided per type of exploitation. Every analysis of a case begins with a description of the investigation's facts and sensitive spots. If necessary, an example of good practice is included in a box. Where possible, the analysis is subdivided as follows:

1. Introduction;
2. Launch of the investigation;
3. Victims;
4. Investigative actions.

### 1. Sexual exploitation

#### 1.1. Romanian case in Charleroi

##### Introduction

This case relates to acts dating back to 2010 and 2011. It led to a partial conviction by the criminal court in Charleroi, confirmed by the Court of Appeal in Mons<sup>116</sup>. The defendants and the victims were Roma. The young women, including a minor, were sent out to work as prostitutes. The acts mainly took place in Charleroi, but also in the red-light district in the North of Brussels, where the majority of the victims were staying.

The defendants used the *loverboy* technique. The girls were first recruited using seduction techniques and then forced to prostitute themselves. The girls were placed in a street

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<sup>116</sup> Corr. Charleroi, 19 September 2011, 6<sup>th</sup> ch., confirmed by Mons, 21 May 2012, 3<sup>rd</sup> chamber. On this subject, see also annual report 2011, Trafficking in and smuggling of human beings, *The money that matters*, p.119.

known for prostitution in Charleroi, which the defendants considered to be their territory: this caused problems for the other girls who were working there as prostitutes. They were told that either they had to pay or leave. If they did not comply, they would be beaten up.

Wiretaps revealed that the defendants also committed acts of theft in addition to their prostitution activities. They admitted this during the hearings. The majority of men were working in the construction sector and their missions were organised in a Romanian cafe. When they were not working and were short of money, they would commit burglaries during the night. The wiretap also revealed that drugs were being sold, which the defendants also referred to in some of the statements.

### **1.1.1. Launch of the investigation**

At the end of July 2010, a Belgian prostitute of Belgian origin called the local police in Charleroi to say that she felt threatened by the pimp of a young Romanian girl who was working as a prostitute in Charleroi. The Romanian girl was stopped by the police and identified. Over the next few weeks, several other girls working as prostitutes were intercepted at the same spot. One of them even went up to the police during a control. The police thus noticed that several pimps were keeping an eye on the girls, which was confirmed by their analysis of text messages.

End August 2010, one of the victims filed a complaint against her pimp, who had taken her money and beaten her up. In September, several other victims followed suit.

### **1.1.2. Victims**

The majority of the victims came from the town of Galati (Romania) and were prostitutes in Italy before arriving in Belgium. In the beginning, they had to pay off 100 euros in travel costs by prostituting themselves. Then, to be able to continue to work, they had to give up another part of their earnings, if not all of them. Several victims also had a *loverboy* relationship with the defendants.

Initially, several of the victims were reticent about making real statements. They were afraid they would suffer reprisals from the defendants and/or find themselves in a situation of dependence with regard to their *loverboy*. In the end, several victims filed a complaint, without showing any interest in the support offered to them in the specialised victim support centres. The majority of them wanted to continue working as a prostitute and therefore did not want to benefit from the status of victim. The police gave them a brochure intended for victims written in several languages concerning the various specialised victim centres, in case they changed their mind.

### *1.1.2.1 Statements made by a victim, a young Romanian girl*

This young Romanian girl was intercepted in a street by the police following the intervention of the Belgian prostitute. According to her identity card, she was nineteen years old. It was already autumn, she was very cold and was skimpily dressed. The police gave her a jumper. During her hearing, she was highly emotional and started to panic when she was asked questions about where she was staying and the people with whom she was in contact.

Afraid of reprisals, this victim made few statements during her first hearing. In later statements, she told her life story: she lived with her family in Galati and attended school until the age of fourteen. After her father died, two months earlier, her family suddenly had no income. A friend of the family then presented her to the defendant who assured her he could find her work in Belgium. The girl was interested, and a month later, she was taken by car to Charleroi.

The day after she arrived, the defendant took her to the red-light district, explaining to her that this is where she was going to work. The girl refused and the defendant became verbally aggressive. When he came back to the flat where she was staying, he threatened her with a gun. She gave in and from then on, had to give him all her income from prostitution.

She asked for help during a police check. Her body showed evidence of violence: first of all, she said she had fallen on a mirror in Romania before admitting that the defendant had caused the injuries.

The victim was interested in the status of victim of human trafficking, but nevertheless wanted to continue working as a prostitute, the reason for which the judge did not offer her this status.

### *1.1.2.2 Statements made by a victim, a young underaged Romanian girl*

The wiretap revealed that one of the victims was seventeen years old. The victim was discovered during a search. She had a *loverboy* relationship with one of the defendants and was emotionally dependant on him. When she was intercepted by the police, she followed the order of the defendant and presented a false identity card (the defendant having hidden her real identity card) which indicated she was an adult. In reality, she was seventeen, which she also admitted in later statements. Since she had bought the false identity card herself in Italy, the police established a report for possession of false documents<sup>117</sup>.

The girl stated that she went to join her half-sister in Italy in 2010. She wanted to find work there because she had a young two-year-old son. As she could not find any work,

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<sup>117</sup> On this subject, see Part 1 (focus), Chapter 2, point 2.1. False documents.

her half-sister asked her to go back to Romania. She refused and went to live with a friend who prostituted herself online. She bought a false identity card through this friend's *loverboy*/pimp and thereby discovered the world of prostitution. The pimp collected all her income from prostitution, which is why she decided to contact an acquaintance in her home town in Romania.

This acquaintance was one of the main defendants in this case. He said that he could not maintain her but that she could work as a prostitute in Charleroi, as she had done in Italy. Therefore she took the minibus to Belgium. He welcomed her when she arrived and showed her where she could work as a prostitute. She was not able to do it on the first day. Then she took the plunge because she needed money. She confirmed that she did not have to give the defendant any money. But he had hidden her real identity card and told her that she had to pretend to be an adult. The wiretap revealed that she had to ask him for permission to buy clothes.

The victim did not make a compromising statement and did not obtain the status of victim of human trafficking. A week later, she wanted to return to Romania and then come back to Belgium because she needed money.

### Comments

In some cases, the processing of victims by the authorities has been problematic. The victims were detected and identified as victims of trafficking in human beings by the Belgian authorities, but did not obtain the status of victim because they did not satisfy the conditions of support offered by the support centres.

They did not benefit from any protection within the framework of support provided by a specialised centre even though they were afraid of the defendants against whom they had filed compromising statements. When the victims drew the police's attention to this point, they were told that if they were in danger, they should call the general emergency number.

The Centre wonders whether these victims should not benefit from the **necessary protection** offered by the authorities if they explicitly ask for it, through targeted patrols carried out by the local police, for instance.

During the investigation, different victims participated in a confrontation with the defendants against whom they had filed a complaint. The defendants' lawyer had asked the examining magistrate if this was possible, and they had agreed. These confrontations led to a modification to certain points of the victims declarations.

Regarding this point, the Centre also asks that **there should be no confrontations between victims and defendants** in cases involving victims of prostitution, who are often traumatised by psychological and physical experiences, and where there is a real risk of "revictimisation".

## 1.2. Nigerian case in Tongeren

### Introduction

This case led to a conviction for trafficking in and smuggling of human beings at the criminal court in Tongeren<sup>118</sup>. In a related case dealt with in Antwerp, a doctor was convicted of abortion<sup>119</sup>.

Between 2007 and 2008, a Nigerian criminal organisation transported women from Nigeria to Europe to force them to work as prostitutes in Belgium, Germany and Spain. The organisation provided them with false European identity cards so that they would not have any problems if they were stopped by the police in Europe. The victims' statements revealed that they were assaulted and deprived of freedom on several occasions. The organisation also used voodoo rituals to manipulate and control the victims<sup>120</sup>. One of the victims was forced to undergo an illegal abortion.

#### 1.2.1. Launch of the investigation

The case was initiated in September 2007 on the basis of the statement of a victim supported and encouraged by her sister. This sister knew about victim status because she herself had been a victim of human trafficking in the past (Courtrai case<sup>121</sup>). She also reassured her: contrary to Nigeria, the authorities respect the law in Belgium and she need not be afraid of the police.

The law and the police opened an investigation. Using a wiretap, they were able to identify the defendants, find out what their role was and gather proof.

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<sup>118</sup> For this part, see Chapter 3: relevant case law.

<sup>119</sup> Court of Appeal Antwerp, 13 January 2012, 13<sup>th</sup> ch.

<sup>120</sup> The use of voodoo rituals is a typically Nigerian method of exerting pressure. It is essential to have an anthropological view in order to understand the victim. In Nigerian, voodoo is known as “juju”. Voodoo is a complex religion in a world invisible to the naked eye. In African cultures, the belief in an “invisible world” can be just as important, and even more so, than life in a “visible world”. The belief in a supernatural being is a relatively universal concept. Important decisions are often taken after having asked for advice from a local voodoo or juju priest. Many Nigerian girls have taken an oath before leaving. The girls or their families have promised to pay their “madam” their travel costs and debts. Several rituals are involved in serving this oath. If the victim does not satisfy or departs from the imposed obligations, juju or voodoo is invoked. A parcel filled with fingernails, blood and hair can make someone ill, mad or cause their death.

<sup>121</sup> See annual report 2006, Trafficking in and smuggling of human beings, *The victims under the spotlight*, p.31.

## 1.2.2. Victims

### 1.2.2.1. Victim statements

The victim stated that a group of people had approached her in July 2007 in Nigeria, promising her work in a shop in Belgium so that she could then bring over her three underage children. For this she would have to pay 50,000 euros.

The network took care of her transport, via Lagos and Benin City to Abidjan (Ivory Coast) where she was accompanied on a flight to Geneva. Just before landing, she had to give her passport to the person accompanying her, who tore it up and threw it down the aircraft's toilet. At the airport, this person left her and pointed her in the direction of passport control, giving her the following instructions: to ask for asylum under a false name and say that her family had been assassinated. She therefore had to cry, look distressed and say that she never wanted to go back to her home country. The authorities would not bother her. She might be locked up for a few days but then she would be freed. In any case, she had to stick to "her story".

This is what happened and the victim found herself in Geneva in a house where she had limited freedom. She phoned the recruiter in Nigeria, who gave her her daughter's details in Belgium. She organised a meeting by phone with the latter, who would later become her "madam".

The Nigerian "madam" took care of her transport: the victim was picked up by car in Geneva and taken to Belgium. When she arrived she was locked up and beaten. The same thing would later happen on a regular basis. She was then forced to work as a prostitute to pay off her "debt", which in the meantime had risen to 60,000 euros. In the beginning, she refused to prostitute herself, but she was beaten up and threatened: if she did not do it, she and her children would be killed.

In the meantime, it transpired that the victim was three months pregnant. Her "madam" forced her to undergo an illegal abortion. It was performed in a hospital in Antwerp, in the presence of the "madam". The intervention went very badly (part of the placenta remained inside and it was necessary to perform a curettage). Nevertheless, the victim had to prostitute herself again two days after the intervention.

In particular, Voodoo rituals were used to incite the victim to work as a prostitute. When she was illegally confined, her hair, pubic hair and pieces of her fingernails were taken from her. This was part of the method of mental and physical constraint used to incite her into prostitution.

The "madam" gave her a false Spanish residence permit and the victim was put to work as a prostitute in a window in Antwerp and Aachen (Germany). She had to give all her income earned through prostitution to her "madam". Every day, she received seven customers who had to give her between 20 and 30 euros. After a while, she managed to

escape thanks to the help of a customer. Upon her sister's advice, she then contacted the Belgian police.

#### *1.2.2.2. Other victims discovered with the help of wiretaps*

By using wiretaps, investigators discovered that there were several victims. During a search, the names of twelve victims were found in the Nigerian "madam's" notebook.

The Belgian police was able to identify one through the Centrum voor Politie-en Douanesamenwerking in Heerlen in the Netherlands, created within the framework of combating cross-border criminal activity. It turned out that this victim was in custody in Aachen (Germany) on the basis of false identity. She was deported to Spain by the German authorities. The wiretap revealed that the defendants suspected her of keeping money. In one of the recorded conversation, the "madam" had offered to go to Germany to sort things out.

The examining magistrate asked the police to trace this victim and contact her with the help of a Nigerian interpreter. The police managed to get in touch with her in Spain, and asked her to come to Belgium to provide explanations. Without mentioning any names, she confirmed that she had to work for someone to pay off her debts. She had just arrived in Madrid. The police suggested she come to Belgium by train and adopt the status of victim of human trafficking. At one point, the victim explained that a woman was coming towards her and the call was cut off.

The police then sent the following message: "*(x), please make contact with us on this number. (x), you don't have to be afraid. Please call during the day.*" The police then received a voice message in English from a person saying that she wanted to be left in peace, but they were not sure that this was the victim. The police then attempted to contact her several times by text message. However, there was no question of an international collaboration between police forces.

#### ***Comments concerning the treatment of the victim***

It is positive that, upon the request of the examining magistrate, the police department looked for a victim abroad and offered them the status of victim in Belgium. But it would be even better if, in such a case, the Belgian authorities took the initiative to successfully bring the victim to Belgium through the official authorities. The chances of extracting the victim from her critical situation would have been increased if she had been searched for and intercepted in collaboration with the Spanish authorities and through the Spanish police department.

While this victim was not found, the first victim, who initiated the case, obtained the status of victim. During the investigation, the victim did not want to be confronted with the defendants under any circumstances. She was still frightened of the voodoo ritual she had undergone, wanted to put everything behind her as quickly as possible and feared that a confrontation would involve a new voodoo spell.

The police noted that when the first statement was made, the Nigerian "madam" asked several times to be personally confronted with the victim. The police made the link between this request and the victim's assertion. According to the analysis, *"It is within this global context that the defendant asked during her first hearing to be confronted with the victim, with the one and only purpose of awakening the victim's dormant and permanent fears of a possible curse. The defendant probably hoped that the victim, owing to this latent pressure during a confrontation, would finally decide to withdraw the complaint against her."* Therefore, a confrontation between the two women never took place.

However, the victim was confronted with the doctor who carried out the abortion and who was prosecuted in a different case. This confrontation did not change anything: both stuck to their initial statements.

### ***Good practice***

The Centre has noted that it is crucial for frontline services, social workers in specialised centres and judges to have sufficient knowledge concerning the anthropological context of certain groups of victims. It is necessary to understand that the defendants can take advantage of confrontations by putting the victims under pressure using sorcery in order to push them into withdrawing compromising statements. This is particularly the case for Nigerian victims, where the risk is even greater.

### **1.2.3. Investigative actions**

It transpired from the financial and asset investigation that the procurer in Benin City, who was the mother of the "madam" in Belgium, enjoyed a certain prestige in Nigeria. The fact that she lived in a nice house and drove a luxury car while not appearing to earn any income from working there, made her stand out.

In this case, several traces of money and bank transfers were noted but in general, the transfers were made in cash through couriers travelling between Belgium, Nigeria and Spain. At least 30,000 euros were transported between Nigeria and Belgium.

An inspection of the bank accounts also revealed evidence of money laundering. Between 17 April 2004 and 31 May 2008, a total amount of cash of 37,860 euros was paid into different accounts. The majority of these payments (amounting to 34,535 euros) took place after January 2007, when the said acts of prostitution occurred. These amounts were not proportional to the official legal income of the defendants either. Furthermore, significant transactions passed through the same accounts, such as an international payment of 3,950 euros. Its origin was very unclear and considered as suspect.

## 2. Labour exploitation

### 2.1. Construction case in Charleroi

#### Introduction

The acts pertaining to this case relating to the construction sector took place between 2007 and 2009, and led to a conviction for trafficking in human beings pronounced by the criminal court in Charleroi<sup>122</sup>. The defendant had set up different companies in the construction sector. These companies only ever acted as subcontractors and never as principals. Without knowing it, the Bulgarian victims became bogus self-employed workers owing to the defendant. A Brazilian victim was also employed illegally with false identity papers (Portuguese).

#### 2.1.1. Launch of the investigation

On 25 July 2008, the local police in Wavre were contacted by inhabitants who were concerned about suspicious cars that were driving around with Eastern European number plates. The police found these cars on a building site. The people who were working on this building site were intercepted, presented their Bulgarian identity card, but had no employment document or contract. The police took them to the police station and contacted the labour prosecutor and the Immigration Office. The Bulgarians gave the details of their employer who, after having been interviewed by the police, became the main defendant in this case. These people were then sent to a detention centre so that they could be sent home.

During a new incident that occurred on 18 March 2009, the local police in Charleroi was called by the ticket inspectors in the metro, who were faced with a person who refused to pay or identify themselves. This person was taken to the police station where they proved their identity. They were Bulgarian, from Plovdiv, and had been in Belgium for a month working for the defendant without an employment contract. The Bulgarian stated that he had been recruited the year before through Bulgarian friends and that he had already worked for the same manager in the past. This manager had carried out a number of works for a principal, a major Walloon construction firm. During his hearing, the manager blamed this construction company's failure to pay to justify the victim's lack of a contract. The police then informed the labour prosecutor who asked the special human trafficking unit (of the local police) and the social inspection department to keep them informed.

In its report, the social inspectorate noted that no Bulgarian worker employed by the defendant's companies existed in the various data systems. The local police carried out various observation missions and recorded the telephone conversations, thus allowing the contact people to be identified.

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<sup>122</sup> See this part, Chapter 3: relevant case law.

During the inquiry, different witnesses were heard. It turned out that the manager/defendant was well known for being untrustworthy. He barely paid his workers or did not pay them at all and did not register them. A supervisor from another construction company stated: "*It was easy to see that M.'s workers were not declared, sometimes, there were only two who came to the building site, then four, another day and not always the same men, legitimate companies do not work that way.*"

During his hearing, the defendant admitted having illegally recruited a Brazilian employee. The Brazilian had worked several months for him and was still owed EUR 4,000.

### **2.1.2. Victims**

The majority of victims were Bulgarians and bogus self-employed workers. One of the victims was also Brazilian. The defendant had organised accommodation on the building site, so that that victims could be easily and rapidly used. First of all, the defendant subjected the victims to a trial day, without providing them with the necessary protective clothing and without respecting his financial promises. At the end of the working day, he systematically told the workers that they had not done their work properly. The victims who were exploited as bogus self-employed workers stated that the defendant had not respected his financial promises and that he took every opportunity to dock their wages.

#### ***Victim statements***

One of the Bulgarian victims filed a complaint with the police on 24 April 2009. In 2007, he had worked for almost six months for the defendant with seven other Bulgarians. He had only received EUR 300 whereas he had been promised a daily wage of EUR 130. He worked between 5 and 23 hours every day, with hardly any breaks. The victim believed he was legally employed. The defendant had made him sign documents and told him to trust him, because these documents would allow him to stay legally. In reality, the documents signed allowed "spouse assisting with the status of self-employed worker" documents to be established. Without knowing it, he had become a bogus self-employed worker<sup>123</sup>. This victim requested the status of victim of human trafficking and brought a claim for damages during the trial.

The references of a Belgian victim were sent through his uncle to a major contractor for whom the latter worked. A few months later, the victim was offered a job over the phone, which he accepted. The following morning, a van came to fetch him and took him to the building site where he went directly to work, without any protective clothing. When the victim asked for his contract, he was told that it would be ready that evening. In the afternoon, he met the foreman of a major Walloon construction company. He asked him for protective clothing, supposing that he was working for him. The foreman was surprised and told him that he was not his employer. The victim then described the man who had recruited him; the foreman explained that this man was a subcontractor. He

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<sup>123</sup> See also Part 1 (focus) of this annual report.

recommended that he stop work immediately because this subcontractor (the defendant) exploited his staff and did not pay them. However, the victim continued to work. When the defendant arrived that evening, he told the victim he was not suitable and that no contract has been drawn up. The victim was not paid and went to the police.

### **2.1.3. Comments concerning the principals**

In the previous annual reports<sup>124</sup>, the Centre examined the various legal constructions that traffickers active in human trafficking set up to exploit workers. The subcontractors and principals play a crucial role in this respect. Besides the role played by corrupt principals, it is important to emphasise the role that honest principals can play in the prevention of situations of exploitation, as illustrated in this case.

The defendant often worked as a subcontractor for a major Walloon construction company. One of his companies even worked exclusively for this construction company. In 2009, this company had entrusted almost 20% of all its building works in the Mons region to the defendant. The total amount invoiced came to EUR 165,000. This consisted of 197 jobs, 85 (43%) of which were carried out by illegal workers.

In addition to this case, several significant legal constructions were also discovered at the big construction firm. A Bulgarian worker and his son had started work for the company within the framework of an employment contract. They then set up a small company, gave in their notice and started to work as subcontractors for the big company. According to the inspections, the Bulgarian company did not conform to the regulations. This gave the impression that the big construction firm preferred to work with a company of former workers working as subcontractors rather than with its own staff. In turn, the small company was very cheap, used bogus self-employed workers and was not in order in terms of the legislation in force.

Construction companies that collaborated with the manager/defendant as an honest principal, also appear in this case. A family business had signed a subcontracting contract for works in a block of 28 social housing apartments in Jumet. In order to comply with the legal obligations, the foreman asked for the necessary details in a letter addressed to the subcontractor. On the one hand, he asked for a list of the staff as well as the details of the workers working on his building site and, on the other hand, proof that these workers complied with the legislation regarding tax and social security contributions. After sending this letter, the principal confirmed that none of the subcontractor's workers came to the building site. Finding this suspicious, the principal decided to send a copy of the letter to the social inspectorate, as well as the lists of workers present from September to October 2007. Finally, the principal explicitly forbade the defendant to come to the building site.

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<sup>124</sup> See annual report 2010, *Combating social fraud to prevent trafficking in human beings*, and annual report 2011, *The money that matters*.

## **2.2. *Illegal workshop case in Mons***

### **Introduction**

In this textile industry case based on acts in 2008, the defendant was charged with human trafficking by the criminal court in Mons<sup>125</sup>. The defendant/manager and the victims were of Syrian origin. The latter were exploited as workers in an illegal workshop.

It is surprising to note that on 21 February 2008, one of the initial suspects had already been prosecuted and convicted for similar acts in Charleroi with a prison sentence of up to three years and a 33,000 euros fine. This occurred several months prior to the first findings in this case. However, as regards this suspect, the pre-trial chamber dismissed the case for lack of evidence.

#### **2.2.1. Launch of the investigation**

A neighbour called the local police to inform them of a case of exploitation in an illegal workshop. The police informed the labour prosecutor and asked for assistance from an inspection unit. In turn, the labour prosecutor informed Wallonia's regional inspection department. Along with the local police, the latter organised an inspection of the said warehouse on 17 April 2008. In the beginning, the frontline services did not find a workshop here, until a pair of children's shoes led them to a warehouse where the illegal workshop was housed. The warehouse manager, who managed a wholesale textile business, willingly authorised the frontline services to access the building. Six people were in the process of sorting clothes.

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<sup>125</sup> See this part, Chapter 3: relevant case law.

## 2.2.2. Victims

The frontline services noted that the warehouse did not meet hygiene and safety standards. A strong and unpleasant smell hung in the air. It was cold and the rain was coming in. There was a high risk of fire. The six workers had Syrian nationality and came from Syria, Palestine and Lebanon. They were staying here illegally or were in a vulnerable position and had no work papers. They denied working for the manager even though the observations made at the site contradicted this. They made no relevant statements (and did not consider themselves as victims) and were not interested in the status of victim of human trafficking. One of the victims, who had been in Belgium for two days, came from Almeria (Spain), where he had worked for a Spanish company in the construction sector. The other victims had been here longer.

## 2.2.3. Investigative actions

During their inspection, the frontline services took photos as proof, carried out an investigation in the neighbourhood and searched the defendants. They interviewed all those concerned in the company and checked all the resulting information. The financial operations of the manager and his company were examined. The phone contacts and messages were checked. After reading text messages, it turned out that the defendant also arranged the victims' accommodation, leading to precarious slumlord situations.

The experts in the sector indicated that there was clearly a serious overload of work. Normally, five to six people are required to sort 2,000 kilos of clothes a day. In this case, just one worker had to do all this work.

## 3. Coercion into committing offences

### 3.1. Romanian network of forced theft

#### Introduction

In this case in Turnhout, the acts date back to 2010-2012 and took place in Belgium and Holland. It involved an itinerant Romanian gang that had forced various people to commit acts of theft and a 20-year girl to prostitute herself. The defendants were convicted for acts of human trafficking, but also for criminal organisation<sup>126</sup>.

The defendants and the victims came from the region of Oradea in Romania, where two Roma families organised the recruitment in Romania and the reception of the victims in Belgium. They also collaborated with other Roma families to whom the victims were rented to commit acts of theft. In exchange, they received half of the stolen goods.

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<sup>126</sup> See this part, Chapter 3: relevant case law.

In the past, the main defendants had also incited their 14-year-old and 16-year-old daughters to commit acts of theft. In the meantime, they had become adults and had taken on a managerial position in the criminal organisation, which is why they were prosecuted as co-defendants. One of the girls, aged 21, who had committed acts of theft in 2005 when she was 16, supervised and accompanied the 20-year-old victim of prostitution. When she was caught and detained, she stayed in a juvenile centre for a month. She was then freed and returned to Romania. In June 2010, she came back to Belgium to work in prostitution and supervise the victim of prostitution.

The organisation committed acts of theft in shop chains in various towns in Belgium and Holland. In Belgium, it targeted clothes shops throughout the country. In Holland, it was especially active in shops selling electronic goods on the Belgian border. It committed acts of theft every day in three towns.

The criminal organisation used identical methods to commit the thefts and, in particular, to avoid the shop alarms. The members of this organisation proceeded as follows: the "movers", often female members of the group, took clothes off the shelves and racks and into the changing rooms. Using a magnet, they removed the security tags from the clothes. These garments were placed in adjacent changing rooms where the thieves, who arrived after them, were waiting. The security tags were hidden in the shop and the "movers" left the building with just the magnet. Hence, the link between the movers and the thieves disappeared. The thieves could then escape with the goods. They also used bags lined with aluminium to elude the alarms.

The victims who were forced to commit the thefts had to put on as many clothes as possible under their own clothes. Then, they had to leave the shop without buying anything. If they were caught red-handed, they had to make a statement that had been prepared in advance. Most of the time, they stated that they had just arrived in the country, and that they did not know the place where they were staying or the people with whom they were in contact.

The head of the family ran the whole organisation and also acted as a driver. He chose the target but always acted in the background. He sorted out all the administrative matters with the various Romanian administrative authorities to obtain the necessary documents. His son was his right arm. The two regularly changed mobile phone numbers in order to complicate the law's telephone investigation.

### 3.1.1. Launch of the investigation

In January 2011, the police were able to establish links between different acts of shoplifting and the different people concerned through its national database (Banque de Données Nationale Générale - BNG). Over the years, various records had already been compiled of thefts carried out in shops. Owing to the clever *modus operandi*, the clear hierarchy during the execution of these thefts, the fear of making statements among the thieves who were caught and the fact that acts of shoplifting are not a priority in terms of prosecutions, it was a long time before the structure of this criminal organisation was brought to light.

Initially, the police had the impression that the shoplifting acts were only causing a limited social nuisance, but owing to the extremely high level of thefts committed, it realised that the groups of perpetrators in this domain were causing a considerable amount of harm.

The name of the main defendant also appeared in cases in Turnhout, Leuven and Antwerp. In the cases in Turnhout and Leuven, it was a question of organised theft in houses or shops. In the Antwerp case, the perpetrators were pickpocketing in public transport.

On the basis of this information, an investigation concerning the charge of criminal organisation<sup>127</sup> was initiated. Wiretaps provided proof of the abuses endured by the victims, forced prostitution, the use of minors to commit acts of theft and the discreet removal of the victims' identity cards. Through the Romanian liaison officer, information was obtained concerning the use of criminal money and investments in Romania.

### 3.1.2. Victims

The Romanian victims came from Roma families in the Oradea region. They were from a poor and vulnerable environment and had not had any kind of training. They were recruited in Romania with the promise of a job. They painted in glowing colours the money, luxury and protection in Belgium. Their travel and administrative costs were paid by the traffickers. When they arrived in Belgium, the traffickers told them they had to repay their costs by supplying stolen goods. The victims' passports were taken from them.

The victims were housed in Antwerp in houses rented by the Romanian perpetrators, where they were informed of the shoplifting methods. Every morning, they were taken by car to the shops in question. If they tried to protest, the defendants used physical and verbal violence against the victims.

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<sup>127</sup> See set-up, Part 1:

### ***Victim statements concerning forced theft***

Some victims refused to give statements through fear of reprisals against their families in Romania. These threats were also confirmed by other victim statements or recorded telephone interviews.

One of the victims stated that his wife, who was in Romania, was beaten by the main defendant because she had paid her late rent payment. The victim had accumulated a debt of 1,700 euros in rent arrears in Romania and had to pay it off by committing acts of theft abroad. Half of his criminal income was used to wipe off his debts. The other half was paid to the family of the main defendant to reimburse his transport debts and rent in Belgium.

Another victim, an old man, stated that he had worked for a cleaning company in Romania, earning 130 euros a month. At one moment, he learnt that the Belgian construction sector and horticultural sector were recruiting. When he arrived, it turned out that there was no work and he was obliged to commit acts of theft to reimburse his costs. The old man was quickly caught red-handed and taken to a detention centre in Bruges. Wiretaps revealed that the main defendant had ordered the old man's son to reimburse the remainder of his father's debt.

### ***Statements made by a victim of prostitution***

In the beginning, the victim of prostitution was in detention with her "chaperone" on suspicion of belonging to a criminal organisation. The chaperone was the girlfriend of the main defendant's son. The other girl immediately stated that she was a victim forced to prostitute herself. She had no money on her, was scantily clad and was afraid of her chaperone. According to her statement, she was mistreated, locked in a room and under the permanent supervision of the chaperone. She had to sleep on the floor without any covers. All her income from prostitution was taken away from her. She and her family in Romania were threatened. The chaperone had also confiscated her identity card.

The victim stated that she had "passively" opposed her forced prostitution. She had endeavoured to make her customers dissatisfied so that they would not want to call on her services anymore. The direct language used in different recorded phone conversations confirmed this. The customers complained of the girl "because she would fall asleep, she stank, etc.. "

Based on her hearing, the decision was taken to free her and offer her the status of victim of human trafficking. The police gave her an information brochure for victims of human trafficking written in Romanian, to which she immediately reacted positively. The police contacted one of the specialised centres for victims of trafficking in human beings and, after a positive interview, she was taken there.

Then the victim was heard once again by the police. This hearing was organised at the police station in the presence of a person of trust from the specialised victim centre in

order to create an optimum climate of trust. The victim painted a rapid portrait of her life. She had already been subjected to abuse during her stay in a Romanian orphanage. She still bore the scars on her legs. The children in the orphanage stole food from each other to survive. At the age of seven, she was placed with a foster family where she received a good education and was able to undertake training. After her studies, she went to live alone in Oradea where she worked as a cleaner. While she was there, she fell in love with the nephew of the main defendant. They had a relationship and in the beginning, she considered him as her boyfriend. In reality, he was a *loverboy* who asked her to move to Belgium with him where he promised to find her a job as a sales assistant in a clothes shop. He then presented her to the main defendant who paid for her trip to Belgium and asked her to trust him.

The victim accepted the offer and left Romania by car. When she arrived at St-Jansplein in Antwerp, she was presented to the son of the main defendant and his girlfriend, her future "chaperone" who asked her to work as a prostitute. The victim refused and wanted to go to the police, but her identity card had been confiscated and her boyfriend forced her to accept three to four customers a day and to go out on the streets close to a hotel used for prostitution in Antwerp, to reimburse her travel costs and rent. If she was suspected of keeping money from a customer, she was beaten. Her *loverboy*, the nephew of the main defendant, confirmed during his hearing that the girl had been humiliated and beaten by her chaperone and the son of the main defendant (Junior): "*I also remember that Junior hit the girl one Sunday morning using both a phone and his hands.*"

### **3.1.3. Investigative actions**

The majority of stolen goods were taken back to Romania by bus. One of the defendants was the receiver of stolen goods in this case and served as a middleman for the Roma families concerned. He had a haulage company in Oradea which employed about a dozen workers. During the search in Romania, various sports items were discovered and seized.

In Romania, the stolen goods were sold through legal shops. In general, these were sports shops. Some of them placed advance orders with the perpetrators for the theft of high value goods. One of the defendants ran a sport's shop in Oradea. The stolen goods that remained in Belgium were sold in night shops.

Part of the profits were sent from Romania to Belgium via money transfers and comprised a source of income for the defendants. They used the money to acquire luxury goods and rent various houses in Antwerp.

The thefts were intentionally committed using cheap cars to limit the financial loss if they were caught and the car was seized.

#### ***Comments: corruption in Romania***

There were also signs of corruption in Romania in this case. Wiretaps revealed that one of main defendant's daughters was approached by a Romanian police officer. The latter

warned the family that it had to use another mobile phone and another phone number. The Romanian police took part in the investigation in Romania, which was based on Belgium's co-operation request. He told them that the Belgian police had sent documents to the Romanian police and showed them photos. The Belgian police heard the various people concerned, but they refused to speak or gave another version of the facts.

### **3.2. Algerian drug network**

#### **Preface**

For the analysis of this case, we shall not proceed in the same way as before given that the layout of "launch of the investigation – victims – investigative actions" does not apply owing to the limited nature of the information and the development of the case.

#### **Introduction**

This drugs case, which was linked to a series of organised thefts, was initiated by the public prosecutor's office in Charleroi with the charge of trafficking in human beings, because when the investigation started, there were indications of a form of coercion. Finally, the investigation was not taken any further regarding the aspect of human trafficking owing to a lack of proof regarding the "forced" thefts<sup>128</sup>. Indeed, the coercive aspect is often the stumbling block in this type of case.

The criminal acts took place between 2010 and 2011, in the area frequented by drug addicts close to the railway station in Charleroi, also well known as the red-light district. Some gang members had already been convicted for drug dealing and organised theft several times.

The main suspect was at the head of an Algerian drug-dealing gang, which carried out thefts in Belgium and attacked elderly people in the street. Some thefts were "commissioned", upon the orders and instructions of a 40-year-old Algerian man. The perpetrators were nonsuited asylum-seekers who lived outside the law. They mainly came from the town of Mohamadia, in the province of Mascara in Algeria.

According to a police report, it was perhaps a question of coercion in the case of the thefts. The police officers were led to believe this on the basis of information received from an informant, who stated that the main suspect and his brother had taken in several nonsuited Algerians with no residence permit, and provided them with accommodation in exchange for various types of theft that the victims had to commit according to market demands. They had to go to the same place every day at the same time, to deliver their

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<sup>128</sup> The trafficking charge was dropped in the motion to remit the case to the criminal court. In the edict of 1 October 2012, the pre-trial chamber at Charleroi's court of first instance sent the accused for trial by the criminal court on the following charges: firstly, for purchasing or possessing drugs, possessing a weapon, illegal residence; secondly, for theft and, thirdly, for fraudulently concealing stolen property.

loot. There they received orders from the main suspect. These were the only elements in the case that referred to a possible form of coercion.

The main suspect was known to the police for his extremely violent behaviour. He was involved as a suspect in an investigation of attempted murder. He told this person while stabbing them, "*you're a police informer, you're going to die, I'm going to tell all my contacts that you're an informer and that you work with the police*". This gave rise to a psychosis of fear in his environment. After much insistence, the police were able to obtain explanations from a shop assistant, but the latter was too afraid to make a statement. She explained that this gang had created an atmosphere of violence in the shopping streets. The shopkeepers knew the perpetrators but refused to file a complaint against them for fear of reprisals.

The main suspect bought several houses in Morocco thanks to criminal profits. According to an informer, he also used this money to carry out renovation works on a house in Belgium.

## **4. Trafficking in human beings**

### **4.1. Iraqi-Kurdish trafficking case**

#### **Preface**

The usual layout has not been used for the analysis of this case either. The information relating to the launch of this case could not be analysed within the context of the elaboration of this report.

#### **Introduction**

This Iraqi-Kurdish smuggling case was dealt with by the public prosecutor's office in Leuven. The acts cover the period from November 2008 to February 2009. This human smuggling organisation used private cars to smuggle Iraqi-Kurdish clients from its own region, via Greece and Italy, to Belgium where they requested asylum, or they were taken to Norway and/or Sweden. The clients were well treated. For the journey from Iraq to Italy or Greece, the clients used other smuggling networks. One of the smugglers ran a kebab shop in Leuven.

##### **4.1.1 Victims of smuggling**

The defendants and clients in this case belong to the Guli tribe, which is a small Kurdish tribe in the province of Dohuk in Iraq. Their town was destroyed at the end of the 1980s during an attack by Saddam's government. It is one of the smallest tribes in the region in a very rural area. The tribe is highly religious and devoted to the beliefs of Islam. The Guli tribe has always maintained good relations with the KDP in power (Kurdistan Democratic Party led by Massoud Barzani) in the region, as well as the PUK (Patriotic Union of Kurdistan led by Jalal Talabani). The current tribal chief is also a parliamentary member of the KDP.

##### **4.1.2 Investigative actions**

Above all, the legal burden of proof rests on evidence provided by wiretaps and the observation of people and vehicles. The defendants also made considerable use of online telephony, which meant that the police were rarely able to obtain a complete picture of the acts of transportation.

##### ***Financial investigation***

The hawala system was always used for payments from Iraq to Europe. This is a parallel banking system to transfer money without any trace of an international transaction. The system is completely anonymous. It works as follows: someone gives money to a hawala banker living in Belgium for a recipient living abroad. In turn, the banker contacts a colleague living in the area of the recipient in the country of final destination. The issuer

gives the recipient the transaction reference and the latter can simply collect the money from the hawala banker in the country of final destination. In reality, the money never leaves Belgium; the system works with a sort of credit system. The issuer's banker keeps the money and the foreign banker gives the money to the recipient. However, the foreign banker makes a note that the banker in Belgium owes him money. The next time someone wants to transfer money from this country to Belgium the amount will be deducted from the available credit.

The other financial transactions were made in cash. The cost of transport from Italy to Belgium was EUR 1,300 per person.

## CHAPTER 3: RELEVANT CASE LAW (JANUARY 2012-MAY 2013)

In this chapter, we shall give an overview of the relevant case law from January 2012 to May 2013 concerning cases in trafficking in and smuggling of human beings<sup>129</sup>. This overview is based on cases where the Centre instituted civil proceedings, as well as on decisions received from specialised victim support centres.

Thirty decisions relating to 25 cases in the country's various jurisdictions are presented here:

- ten decisions concerning cases of sexual exploitation. They were pronounced in Brussels, Leuven, Antwerp, Tongeren and Liège;
- fifteen decisions concerning cases of sexual exploitation. They are presented according to sector of activity (washroom services, construction, hotel & catering, phone shops, illegal workshops, riding schools, domestic labour and temping). These decisions were pronounced in the jurisdiction of the Court of Appeal of Brussels (Brussels, Leuven), Mons (Charleroi, Tournai), Liège (Liège), Antwerp (Antwerp, Turnhout) and Ghent (Ghent, Bruges, Courtrai);
- another decision concerning a case of exploitation for the purposes of begging. It was tried in Nivelles;
- two other decisions related to forced criminal activities in the same case (Turnhout and Antwerp on appeal);
- finally, two decisions pronounced with regard to human trafficking are also presented. They were pronounced in Brussels and in Leuven.

### 1. Findings

First of all, in the decisions pronounced on **sexual exploitation**, we again found the use of fraudulent schemes (false promises) regarding the victims, who were then forced to prostitute themselves. Charges of rape were also made in several cases. We should mention once again that the criminal court in Liège tried a major case where the income from prostitution was concealed under the cover of various companies.

In terms of **labour exploitation**, the elements allowing courts of law to establish trafficking in human beings mainly concern work and housing conditions, as well as the form of control. In several cases, abuse associated with the secondment procedure also

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<sup>129</sup> Several case law decisions from the beginning of 2012 were also presented in the previous report.

constituted a major element of assessment. Note that an important decision was pronounced in the sector of washroom services found along highways: both the contracting company and the subcontracting company were convicted for human trafficking. We should also mention a defendant convicted for trafficking who had several workers working for him in the temping sector under his own identity. Finally, the Court of Appeal in Ghent had to rectify an acquittal owing to a procedural error pronounced in the court of first instance. The court mistakenly believed that the social inspectorate needed an authorisation to visit the places of work.

As regards **begging**, a decision concerning the exploitation of disabled beggars was considered as trafficking in human beings.

Finally, even if it was not dealt with from the point of view of trafficking for the purposes of **forced criminal activities**, we should mention a major case regarding theft by an organised gang.

## 2. Overview of the decisions per type of exploitation

### 2.1. *Trafficking in human beings*

#### 2.1.1. *Sexual exploitation*

##### *Detailed and coherent victim statements*

Thanks, among other things, to a detailed and coherent victim statement in a case of sexual exploitation in the Romanian underworld, **Antwerp's criminal court** was able to convict one of the three defendants for human trafficking and exploitation of prostitution using fraudulent schemes, violence, threats or other forms of coercion, **on 25 June 2012**<sup>130</sup>. The victim was brought to Belgium under false pretences and then made to work as a prostitute. The main defendant would bring her to and fetch her from work. He also managed her money. The court sentenced him to a 30-month prison sentence, in particular because he was only attracted by the lure of gain and had no interest in the victim's physical or mental integrity. In the case of the two other defendants, the court considered that there were too few elements to prove that they had the intention of committing offences, especially owing to the family tie between one of them and the main defendant.

Another case where the court attached great importance to the detailed and coherent statements of the victim was tried by the **criminal court in Liège on 27 March 2013**<sup>131</sup>. In this case, seven defendants were prosecuted in particular for trafficking in human beings for the purposes of sexual exploitation, recruiting and exploitation of prostitution regarding a young Romanian woman. Furthermore, three of them were prosecuted for

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<sup>130</sup> Corr. Antwerp, 25 June 2012, 4<sup>th</sup> ch., binding.

<sup>131</sup> Corr. Liège, 27 March 2013, 8<sup>th</sup> ch. (appeal filed).

rape and another for attempted rape and intentional aggravated assault against the same young woman. Four of them were also prosecuted for arbitrary detention of the young woman.

The young woman had neither work nor money in Romania and she had to cope with her daughter's significant healthcare needs by herself. A friend put her in contact with two men who offered her work in a bar or a restaurant in Belgium. Once she arrived at her destination, she was sold to a man (one of the defendants) for the sum of EUR 1,000 for the purposes of prostitution, who took her in, controlled her, illegally confined her and forced her to work as a prostitute. She was then sold to another man (one of the other defendants) who obliged her to have sexual relations with a third party and attempted to rape her. He intended her for prostitution in a window in Germany. Her identity papers had been confiscated. She finally managed to escape from the hotel room where she was kept.

The court charged three of the seven defendants with trafficking in human beings. The court reiterated that in this respect, trafficking in human beings refers to those who recruit with a view to exploiting the victim(s) themselves or by someone else. This was based mainly on the victim's statements, corroborated by objective elements in the case such as telephony, the findings of the investigators and statements made by several witnesses. The young woman had indeed been brought to Belgium with the initial promise of working as a waitress. Stripped of her identity papers, she had no other choice than to accept the conditions imposed upon her: if she refused, she was threatened or hit and if she tried to escape, the defendants would come after her as proved by the phone analysis. One defendant (the wife of one of the defendants) was acquitted, because she did not have enough control over the girl to encourage her debauchery or prostitution. Three other defendants were given the benefit of the doubt and acquitted of this charge: they benefited from the prostitution of the young woman set up by two other defendants, but they did not exercise any control over her and were not involved in her transportation or accommodation.

The charges of recruitment and exploitation of prostitution were stated as being established with regard to two of the defendants: the young woman had indeed been sold or rented for a certain amount to various people wishing to maintain sexual relations. The young woman did not receive any income and was obliged to comply otherwise she risked being beaten.

The three defendants concerned were charged with rape. The court also accepted the charge of attempted rape and aggravated assault, but amended it to aggravated rape. It also accepted the charge of arbitrary arrest and detention regarding the defendants concerned.

The sentences varied from one to five years imprisonment.

### *Case of sexual exploitation with violence*

In a case dealt with by **Antwerp's criminal court on 3 December 2012**<sup>132</sup>, twelve defendants appeared in court for their participation in activities relating to prostitution and trafficking in human beings, among other things. These are some of the charges: exploitation of the prostitution of adults and minors, trafficking in human beings for the purposes of sexual exploitation and rape.

Two defendants also appeared in court for distributing child pornography material (but not on the basis of the charge of trafficking in human beings). Only one of the two was convicted for these acts.

The case was opened following an anonymous complaint concerning adverts on the website of a so-called modelling agency looking for child models. In fact, it was an escort agency.

The women were mainly Latvian and were taken to the Netherlands to work as prostitutes there. Some of them were aware of these intentions, others not. One of the minors was taken to the Netherlands to work there as a nanny, but she was forced to prostitute herself as soon as she arrived. The girls were regularly taken to Belgian clients. They were threatened and beaten and had to hand over half of their earnings. They were afraid of their exploiters, who incessantly abused their position of dominance. The defendants also used women of Belgian origin who prostituted themselves through escort agencies.

In the beginning, once of the defendants prostituted herself for some of the other defendants. However, she quickly became involved in the exploitation of prostitution<sup>133</sup>.

Another defendant also forced Latvian women to prostitute themselves. The women worked 7/7 and had to be available 24/24. They had to work in all circumstances, even if they were ill. They also had no choice in the sexual services they had to provide.

In this case, the prison sentences given ranged between eighteen months and eight years. One of the defendants was given a suspended sentence, because she was under the yoke of her partner, another defendant.

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<sup>132</sup> Corr. Antwerp, 3 December, 4<sup>th</sup> ch.

<sup>133</sup> On this subject, also see the focus in this report (Part 1).

## *Nigerian cases*

In a case of **3 May 2012** at **Tongeren's criminal court**, mentioned earlier in this annual report<sup>134</sup>, in which the Centre instituted civil proceedings, ten defendants appeared in court on the charge of trafficking in human beings for the purposes of aggravated sexual exploitation, computer fraud and money laundering. The young Nigerian victims, who were manipulated through voodoo rituals, had to prostitute themselves in conditions that were contrary to human dignity. One of them was seventeen years old at the time of the acts. Four out of the ten defendants were found not guilty. The six others were given prison sentences ranging from one to five years and fines ranging from 5,500 euros to 55,000. They were all stripped of their rights for ten years. None of the defendants was convicted for money laundering. The victim, who filed a civil suit, received compensation of 10,000 euros.

Another Nigerian case of sexual exploitation was dealt with by **Brussels' criminal court on 24 February 2012**<sup>135</sup>, then by the **Court of Appeal, on 31 October 2012**<sup>136</sup>.

Four defendants of Nigerian nationality appeared in court for acts of trafficking in human beings for the purposes of (aggravated) sexual exploitation, exploitation of the prostitution of minors, falsification of passports, etc. Young Nigerian girls, including several minors, were brought to Belgium to prostitute themselves. They had to pay 55,000 euros for the trip, a debt they had to pay back essentially by prostituting themselves. Voodoo was used on a number of them in order to dominate them, a practice considered by the court as a fraudulent device. Some of the other girls had already worked as prostitutes in other European countries, such as Spain, and were transferred to Belgium upon the request of their "madam", owing to a lack of work.

The court considered that the acts of human trafficking took place within the framework of an organised network. The main defendant had several contacts in Nigeria to organise the human trafficking, each with their own speciality (identity papers, visas, itineraries, etc.). He also had accomplices in Spain and Turkey to bring the girls over to Belgium. The other defendants were part of an organised network that brought the Nigerian girls to Belgium for the purposes of prostitution.

The court gave the defendants prison sentences ranging from one to five years and fines ranging from 2,750 to 5,500 euros. The Court of Appeal confirmed this decision, with the implementation of several minor changes (a suspended sentence was granted on part of the prison sentence).

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<sup>134</sup> Corr. Tongeren, 3 May 2012, 9<sup>th</sup> ch. (binding). See above, this part, Chapter 2: Case analyses; point 1.2. Nigerian case in Tongeren

<sup>135</sup> Corr. Brussels, 24 February 2012, 46<sup>th</sup> ch.

<sup>136</sup> Brussels, 31 October 2012, 13<sup>th</sup> ch.

### ***Bulgarian case***

In a case mentioned in this report's focus<sup>137</sup>, nine defendants were prosecuted, mainly for trafficking in human beings for the purposes of sexual exploitation, recruitment and exploitation of prostitution and criminal organisation. Young Bulgarian women were brought to Belgium, some of them under false pretences (to work as cleaners or in the hotel and catering industry), in cars with a Bulgarian licence plate, and then forced to prostitute themselves. Some of the women had their identity papers confiscated and they were threatened.

**In a decision of 26 September 2012<sup>138</sup>**, the **criminal court in Liège** accepted the charge of trafficking in human beings with regard to the four main defendants who transported and housed the girls. Wiretaps revealed the control they exercised over them. It was found that they had to submit to their orders otherwise they were threatened and beaten. The court also accepted the charge against them of exploitation of prostitution.

The court specified that trafficking refers to those who recruit with a view to exploiting the victim(s) themselves or by someone else. In the event of exploitation for one's own benefit, the offences referred to in Article 433*quinquies* and 380 of the Criminal Code must be considered as constituting the successive and continuous expression of the same criminal intention.

The court accepted the charge of incitement to debauchery against the same four defendants and three others, i.e. the "escorts" who were responsible for receiving the young women when they arrived, taking them to the street and supervising their work.

The court accepted the charge of criminal organisation – amended to conspiracy – against the four main defendants: there was no strict hierarchy or elaborate structure, as required by the provision on criminal organisation. In reality, three defendants joined force essentially to help each other out now and again if there was a problem or someone was absent, and to share advice and information on their activities, but everyone acted on their own behalf and the money collected was not shared between the perpetrators. Each one had his own girls and used different techniques (one played on their emotions, the other used violence and/or threats, etc.).

The prison sentences varied from one year ("escort girls") to six years imprisonment. In addition, confiscations were made and fines were given.

In a decision of **23 April 2013**, the **Court of Appeal in Liège** confirmed the conviction and the sentences of the four main defendants who had lodged an appeal.

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<sup>137</sup> See above, Part 1, Chapter 2, point 2.2. Prostitution.

<sup>138</sup> Corr. Liège, 26 September 2012, 8<sup>th</sup> ch.

### *Income from prostitution and shell corporations*

In a **decision of 20 March 2013, Liège's criminal court**<sup>139</sup> was led to judge a major prostitution case in Liège.

Three defendants and four companies were prosecuted for various offences: trafficking in human beings for the purposes of sexual exploitation with regard to 22 victims, recruitment and exploitation of prostitution with regard to 161 prostitutes, running a brothel (three defendants and two companies), running a hotel for prostitution (three defendants and a company). Some of them also faced charges of false entries, money laundering, tax fraud and insurance fraud.

The main defendant bought the vast majority of window brothels in Liège in order to create, as he confirmed, a "Villa Tinto" type of complex like the one in Antwerp. In reality, he did not have any such concrete plans. On the contrary, following the departure of the Belgian prostitutes who refused the conditions imposed on them by this defendant, he brought in numerous young women of African origin with Belgian or Spanish papers to come and work for him. He recruited these young women in Antwerp and Brussels. When he arrived, the shifts were reduced, which allowed him to bring in an extra tenant; none of the buildings were renovated despite the promises he made; fake employment contracts were established, etc. Extra payments were regularly demanded for cleaning, showers, etc., even though the rent included these services.

The companies set up were aimed at concealing the profits from prostitution. His partner, the co-defendant, served as a frontman within this framework. The third defendant took care of running the window brothels and collecting the rent for the main defendant.

The court accepted the charge of trafficking, recruiting and exploitation of prostitution and running a brothel with regard to two of the three defendants as natural persons. It also accepted the charge of running a hotel for prostitution against the main defendant.

As regards the companies, as legal entities, the court found them not guilty of the charge of trafficking or the other offences relating to prostitution. Since the defendants (natural persons) only took advantage of the legal and material frameworks of the legal entities for their own interest, the court considered that the moral element was lacking in the point in case, i.e. the existence of a personal and particular intention as regards the legal entity.

The court accepted the charges of a financial nature as regards certain defendants.

The prison sentences varied from one to three years.

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<sup>139</sup> Corr. Liège, 20 March 2013, 8<sup>th</sup> ch. (appeal filed).

### *Thai massage parlour*

In a decision of **23 October 2012**<sup>140</sup>, the defendants were found not guilty by the **criminal court in Leuven** of human trafficking for the purposes of sexual exploitation, but they were convicted for aggravated trafficking in human beings. Girls were brought over in an organised manner from Thailand to Belgium. One of the defendants was responsible for obtaining the tickets and visas. A second defendant was a middleman who put the girls to work in Belgium in a bar or in a massage parlour. As for the other defendants, they ran a bar or a massage parlour. On several occasions, one of them transferred part of the income from prostitution to Thailand, sometimes upon the request of the girls, sometimes on his own initiative.

The court considered that the following could not be established: firstly, that the girls had been lied to regarding the activities that would be performed in Belgium and, secondly, that they were exploited. Some of them were already active in prostitution in Thailand. In Belgium, they received half of their income. They reimbursed their journey from Thailand with part of this money. They were in possession of their identity papers and other documents. The case also revealed that they had freedom of movement and that their job in Belgium was profitable. Some of the girls had also quickly found a steady partner who was prepared to (continue to) pay back the debt for their transport.

The court also had the impression that some of the girls had modified their initial statement (in which they confirmed they were well treated) to obtain a residence permit through the procedure for victims of trafficking in human beings.

The court deemed that the charge of trafficking in human beings could not be established, but convicted the majority of the defendants for trafficking in human beings, with the aggravating circumstances of regular business and participation in the activity of an organisation.

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<sup>140</sup> Corr. Leuven, 23 October 2012, 17<sup>th</sup> ch. (appeal).

### **2.1.2. Labour exploitation**

#### *a) Washroom services*

This concerns a major case regarding the cleaning of toilets along the highways, which was tried by the **criminal court in Ghent**. In this case, six defendants were prosecuted: the managers of the cleaning company, the cleaning company itself as well as the contracting company (which subcontracted the cleaning of the toilets in the restaurants along the motorways to a subcontractor, the cleaning company).

They were faced with various charges, especially trafficking in human beings for the purposes of labour exploitation (being made to work in conditions contrary to human dignity) as well as various breaches of the criminal labour law (employment of illegal workers, failure to declare them to the NSSO, lack of an advance declaration for seconded workers).

The cleaning company used seconded self-employed workers. The secondment forms included a number of irregularities and the secondment as a self-employed worker was not compliant (in particular owing to the fact the people concerned had never previously worked as a self-employed worker in their country of origin). Being in possession of a secondment form did not hide the fact that, in reality, the staff were put to work as salaried employees. The court found that this was indeed the case: the people concerned did not know that they were working as self-employed workers, had no activity as a self-employer worker in their country of origin, had no VAT number and did not invoice their services to the cleaning company. In reality, they worked under the authority of the cleaning company, which determined the place, the manner and the times of the work and provided the necessary equipment as well as meals and transport to the place of work.

**In a decision of 5 November 2012<sup>141</sup>** the court considered that in the case in point, it was indeed a question of trafficking in human beings: the cleaning company recruited the workers, was responsible for bringing them to Belgium, took care of their accommodation and their transport to the place of work, where they were made to work in conditions contrary to human dignity. The staff worked fifteen hours a day without a break, often seven days a week, several weeks in succession. The court considered that the fact of working so many hours a day, without a break, and for long periods is, in itself, contrary to human dignity. Furthermore, the pay was totally insufficient.

The court also accepted the aggravating circumstances of abuse of the position of vulnerability and abuse of normal activity. The court stated that the breaches of criminal labour law and the offence of trafficking in human beings, regarding both the managers and the cleaning company, were established.

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<sup>141</sup> Corr. Ghent, 5 November 2012 (binding regarding the companies). This decision is available on the Centre's website: [www.diversite.be](http://www.diversite.be), section "Legislation & Jurisprudence".

At the same time, in a detailed statement, it considered that the principal was the accomplice of the acts. To be considered as such, it is simply required by Article 66 of the Criminal Code that the accomplice knowingly collaborates in the offence the perpetrator intends to commit. It is also a matter of punishable participation when the perpetrator adopts a behaviour without having the intention, through this behaviour, to take part in a determined offence, but is aware of the risk that this behaviour contributes to a determined offence and accepts this.

On no account does punishable participation require the participating party to have knowledge of the legal assessment of the acts in which they are participating. In the case in point, it is of little importance whether or not the principal knew that the manner in which the subcontractor made his staff work, could be qualified as trafficking in human beings.

The court considered that several elements in the case showed that the principal, despite being fully aware of the facts, turned a blind eye to the way in which the subcontractor made the staff work.

The court therefore considered that the principal's knowledge of the cleaning company using foreign workers to do the work under the status of self-employed worker, without checking that this status was compliant and that proper work conditions were applied with regard to working hours and wages, meant that he consciously took the risk and accepted that his collaboration with this subcontractor could lead to the use of foreign workers for this job, without respecting the applicable rules (such as the rules regarding work permits and social security) and the minimum rules in terms of working hours and wages.

The principal was found guilty of punishable participation by knowingly collaborating with this subcontractor, which led to making the workers work seven days a week, without a break for several weeks and for insufficient pay. This collaboration involved a real risk of people having to work under these conditions, a risk that the principal was aware of and that he accepted.

More specific knowledge of the other conditions establishing the acts as those of human trafficking is not required to establish punishable participation. In addition, the latter does not require the participating party to have knowledge of the legal assessment of the acts in which they are participating.

The court subsequently gave both companies significant fines (18,000 and 96,000 euros respectively, increased to 99,000 and 528,000 euros according to an indexation system evolving over time) as well as prison sentences of up to four years and fines for the managers<sup>142</sup>.

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<sup>142</sup> This decision is binding as regards the cleaning company and the principal (who were present and did not lodge an appeal). The managers, convicted in absentia, opposed the decision.

## *b) Construction sector*

In a case mentioned earlier in this report<sup>143</sup>, the **criminal court in Charleroi**, in a **decision of 26 October 2012**<sup>144</sup>, sentenced a defendant for trafficking in human beings for the purposes of labour exploitation and various criminal labour law offences with regard to a worker. The latter had to carry out masonry and ceiling plastering works for an average of seventeen hours a day at various building sites for several months. The worker only received 300 euros. The defendant was also convicted for various breaches of criminal labour law regarding others labourers working on his building sites.

However, the court declared inadmissible the worker's demand for material damages, aimed at obtaining the unpaid wages. It considered that it was an illegitimate demand (since the work was not declared) and therefore contrary to public order.

In a decision of **23 January 2013**<sup>145</sup>, **Antwerp's Court of Appeal** acquitted the five Portuguese defendants who had previously been convicted by the criminal court in Malines<sup>146</sup> for acts of human trafficking for the purposes of labour exploitation. The Court of First Instance considered that in the case of the employment of illegally staying Brazilians, it was indeed a matter of work contrary to human dignity: several workers did not receive any wages, had no safety equipment and no form of medical or financial aid was provided in case of an accident, or any social welfare. Furthermore, there was abuse of their position of vulnerability. However, the Court of Appeal considered that based on the factual data in the case, it was not possible to establish whether or not the Brazilians were working in conditions contrary to human dignity. The court considered that the interested parties were free to come and go and that, there was no evidence to establish that, because of the defendants' behaviour, their accommodation was not in order or that they had to live in appalling conditions. According to the court, they were not subject to an unjustified dependency that was contrary to human dignity.

In another case that was brought before the **criminal court in Brussels**<sup>147</sup>, two building contractors appeared in court for trafficking in human beings for the purposes of labour exploitation (work or employment of people in conditions that are contrary to human dignity) and breaches of criminal social law. The victim in this case was employed on several occasions on building sites in November and December 2007 without any work accident insurance or allowances. In addition, the safety recommendations were not taken into account. When he injured himself at work, he was not allowed to see a doctor. All the charges were accepted against one of the defendants, who was sentenced to a one-

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<sup>143</sup> See this part, Chapter 2, case analyses, point 2.1: Construction case in Charleroi

<sup>144</sup> Corr. Charleroi, 26 October 2012, 7<sup>th</sup> ch. (the defendant opposed the criminal law provisions of the decision of 20 January 2012).

<sup>145</sup> Antwerp, 23 January 2013, 14<sup>th</sup> ch.

<sup>146</sup> Corr. Malines, 14 October 2011, 9<sup>th</sup> ch. See 2011 annual report, Trafficking in and smuggling of human beings, *The money that matters*.

<sup>147</sup> Corr. Brussels, 20 December 2012, 52<sup>th</sup> ch., binding.

year suspended prison sentence. The court acquitted the other defendant since there were too few elements indicating that he had employed the victim.

On **5 December 2012**<sup>148</sup>, **Turnhout's criminal court** reached a verdict on a case of labour exploitation with secondment structures in the building sector. In 2007, a first group of Romanian workers were recruited in Romania and brought to Belgium, followed by a second group in 2008. The workers were employed in the construction sector in conditions contrary to human dignity. They were from the same region and adverts published in magazines had caught their eye; they were promised they would find a good job in Belgium with good conditions. They were employed by building firms with false E101 documents<sup>149</sup>. The defendants had formed an organised group of people on whom they could call. A network for recruiting workers was set up in Romania: the network published adverts, designated contact people and a company on site provided false papers and organised the transport.

The court considered that there was sufficient proof that the working and living conditions were contrary to human dignity, because the workers did not benefit from any social welfare (as there was no employment contract); they worked long days (including Saturdays); they were present in alternation on building sites and were driven to and from the building sites; their salary was not paid properly, they could not spend it as they liked; they were forbidden access to medical care. The accommodation was appalling. The workers were packed into narrow studio apartments that did not meet fire safety recommendations and only had limited sanitary installations, with hot water a rarity (the main principal deducted part of their wages for this accommodation).

One- to two-year (suspended) prison sentences were given. The two companies that appeared in court were also convicted of acts of human trafficking and received a fine of 5,500 euros.

In May 2013, **Bruges' criminal court**<sup>150</sup> reached a verdict in a case of labour exploitation involving a Brazilian network. The main defendant ran a company that was active in the renovation of hotels. They used legal subcontracting constructions that employed illegally staying Brazilian and Czech workers. False invoices were established, in order to conceal the illegal and undeclared work in the books. The workers were lodged on the building site or in a hotel on the French side of the border. At the end of the first lot of works, the victims, who still had not been paid for their services, refused to start work on the second building site. However, the main defendant told them that he would never pay them and that if they insisted, he would turn them over to the police.

Among other things, the court accepted the charge of trafficking in and smuggling of human beings with aggravating circumstances, illegally employing workers and breaches

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<sup>148</sup> Corr. Turnhout, 5 December 2012, 13<sup>th</sup> ch.

<sup>149</sup> Form E101 has since been replaced with the A1 electronic form.

<sup>150</sup> Corr. Bruges, 15 May 2013, 17<sup>th</sup> ch.

of the criminal labour law<sup>151</sup>. As regards the main defendant, the court considered that the acts committed were extremely serious and totally unacceptable on a social level. He had worked with Brazilian recruiters on several occasions, who brought the victims to Belgium. He was given a 30-month prison sentence and a fine of 16,500 euros. The other defendants, who used recruiters or performed this role themselves and provided invoices, were given prison sentences of one to eighteen months. Special confiscations of 65,700.63 euros were also pronounced.

It should be noted that the court dismissed one of the civil suits. The court considered that it was correct to consider that the victim who had instituted civil proceedings was a victim of trafficking in and smuggling of human beings, and illegal and undeclared work. But it emphasised that the plaintiff exceeded his role as victim: as an employee of the private limited liability company, he had worked as an "all-round worker" and had served as a recruiter of Brazilian construction workers. The legal action was therefore dismissed owing to the lack of the required interest and facts.

### *Chinese restaurant – social inspectorate warrant*

In a case of labour exploitation during the construction of a Chinese restaurant, the **criminal court in Courtrai** acquitted the defendants owing to procedural errors in a **decision of 17 January 2012**<sup>152</sup>. The case was opened following an inspection carried out by the police department and the social inspectorate. They discovered two illegally staying Chinese workers. Inside the building were four beds, a sort of small kitchen, a toilet that was not partitioned off and two urinals (there were practically no sanitary installations overall). These findings were dismissed as elements of proof because they were made without a search warrant/authorisation for a house search. The initial report was therefore invalidated, as were the resulting statements from the victims. In the absence of other elements of proof, the court acquitted the defendants.

The **Court of Appeal in Ghent**<sup>153</sup> partly reformed this decision. It considered that the inspection had not been carried out in a place of residence, but at a place of work. Consequently, it considered that there was no breach of privacy of one of the defendants. Furthermore, the court stated that a social inspector could freely enter all places of work or other places, that fall under the remit of the inspector's control, at any time of day or night, without prior notice, or when there may be a reasonable motive to believe that people work there who are subject to the legislative provisions which the inspector supervises. Therefore, they were perfectly entitled to inspect the place of work in the company of the police, without first having obtained an authorisation for a house search from the justice of the peace or a search warrant from the investigating magistrate.

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<sup>151</sup> As regards the breaches of criminal social law, the judge considered that the notion of employer in criminal law was a broader concept than in ordinary labour law. On this subject, the judge indicated that the answer to the question of knowing whether a person can be considered an employer should not be given using legal assessments taken from other legal disciplines, but on the basis of the actual and factual context at the place of work

<sup>152</sup> Corr. Courtrai, 17 January 2012, 9<sup>th</sup> ch.

<sup>153</sup> Ghent, 31 January 2013, 3<sup>rd</sup> ch.

The four defendants who wanted to run the Chinese restaurant were acquitted again by the Court of Appeal, because there were not enough elements to prove that they were guilty of trafficking in human beings. When the business contract was signed, they had explicitly agreed with the contractor that he would shoulder the responsibility for the workers. Considering the works had only just begun, the court was unable to establish whether or not the Chinese workers were victims of human trafficking. As for the contractor, he was convicted for acts of human trafficking with aggravated circumstances. It was sufficiently clear in the victims' statements that they had been recruited by the defendant and put to work in conditions that were contrary to human dignity, and that they had become completely dependent on the defendant both as regards the living and working conditions and the payment of wages. The contractor was given a one-year prison sentence and a fine of EUR 5,500. He was ordered to pay the sum of 7,822 euros in damages to the two victims.

*c) Hotel & catering industry*

In a decision of **6 September 2012**, the **criminal court of Tournai**<sup>154</sup> accepted the charge of trafficking with regard to the Chinese restaurant owners who exploited fellow Chinese in their restaurant. One of the victims said that they had arrived in Belgium through a "snakehead" organisation (Chinese mafia). Their passport was ripped up in front of them. First of all, they had to work in Chinese restaurants in Antwerp and Leuven before arriving in the restaurant in question in Tournai. They worked fourteen hours a day for 400 euros a month, in very harsh conditions (no breaks, payment of broken crockery, only customer leftovers for food) and were housed in makeshift conditions (basement with a hiding place where the workers were made to hide if there was a police inspection). When this worker was no longer paid and he demanded his outstanding wages, he was thrown onto the pavement and told his illegal status would be reported to the police.

The court accepted the charge of trafficking in human beings, particularly on the basis of the victims' statements: the workers were in a particularly vulnerable position; no identity papers; staying here illegally and without resources; far from their country, which they had left through illegal channels in inhuman circumstances. The working and living conditions were contrary to human dignity: low wages; no social security cover; inhumane work relations; excessively long hours and rudimentary living conditions.

The defendants were also convicted for money laundering and for various breaches of criminal labour law.

The civil claimants were granted sizeable damages: one victim received 7,500 euros in material and moral damages, another 22,017 euros (i.e. 19,017 euros in material damages and 3,000 euros in moral damages) and the last one was awarded 40,480 euros (i.e. 35,480 euros in material damages and 5,000 euros in moral damages).

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<sup>154</sup> Corr. Tournai, 6 September 2012.

#### *d) Phone shops*

In a decision of **14 January 2013**, the **criminal court of Liège**<sup>155</sup> accepted the charge of trafficking against one defendant and their companies: they exploited several workers in their phone shops. In particular, the court based its decision on the objective elements gathered by the investigators which confirmed the workers' statements: the shops did not meet any hygiene standards (lack of toilets and sanitary installations for the workers, nowhere to have meals); the workers, except for one, were foreign and in an illegal or precarious administrative situation; the working hours were disproportionate to the hours provided for in the contract or verbally; the defendant made them believe their situation would be regularised; the workers were monitored using a camera system or by a person of trust; their pay was much lower than that of a declared worker doing the same job; overtime was not paid; some workers were housed in return for the payment of rent; the workers were sometimes threatened, etc.

#### *e) Illegal workshop*

In a case that was dealt with earlier in this report<sup>156</sup>, the **criminal court in Mons pronounced a decision on 26 June 2012**<sup>157</sup>, accepting the charge of trafficking in human beings for the purposes of labour exploitation with regard to a Syrian defendant who was exploiting fellow Syrians in his illegal second-hand clothes sorting warehouse. The working conditions were appalling and the work environment did not comply with the standards concerning the well-being of the workers: the installations did not respect safety standards; part of the warehouse was covered in plastic to prevent rain from falling on the sorting tables and on the selected and folded clothes; it was cold and there was a pervasive smell of mould. The workers were illegal and had no papers. They were recruited without an employment contract and housed by the defendant. Clearly, the warehouse was also their place of residence.

#### *f) Riding schools*

The charge of trafficking was also accepted in two cases concerning the running of riding schools.

In the first case, tried by the **criminal court in Liège on 26 March 2013**<sup>158</sup>, approximately a dozen defendants were prosecuted for: false entries; falsifying company annual accounts; criminal organisation; failure to file for bankruptcy; failure to meet the legal obligations in terms of taxes and NSSO contributions, embezzlement; money laundering; misuse of company assets; fraud; breaches of criminal labour law. Furthermore, two defendants were prosecuted for trafficking with the purposes of labour

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<sup>155</sup> Corr. Liège, 14 January 2013, 14<sup>th</sup> ch.

<sup>156</sup> See above, this part, Chapter 2: case analysis, point 2.2. Illegal workshop case in Mons.

<sup>157</sup> Corr. Mons, 26 June 2012, 10<sup>th</sup> ch.

<sup>158</sup> Corr. Liège, 26 March 2013, 14<sup>th</sup> ch. (appeal).

exploitation, with regard to three illegal Brazilian workers whom they hired and lodged under the cover of a company in order to employ them in their riding school.

The court accepted the charge of trafficking: they considered that the constituent element, consisting of the purpose of working in conditions contrary to human dignity, was established on the basis of the following elements: the illegal workers' bad working conditions and accommodation; their almost entire dependence on their employer; low and irregular wages; complete lack of social cover; often excessive working hours and dependence on the employer's will alone; the near impossibility of the workers to lay claim to any sort of rights in their work relations.

In the second case, tried by the **criminal court in Charleroi on 26 April 2013**<sup>159</sup>, two defendants were prosecuted for trafficking in human beings for the purposes of labour exploitation and various breaches of criminal labour law. They exploited a couple of Brazilian workers at their riding school.

The court accepted the charge of trafficking on the basis of the following elements: the husband worked six days out of seven, from eight to ten hours a day for a starting salary of 500 euros, going up to 750 euros. He was given the use of a flat, bills included. However, he was not insured and was given no work clothes. His workload was too heavy and his wife had to help him finish, without being paid.

The court considered that the main defendant recruited the husband and his wife in order to make them work in conditions contrary to human dignity by imposing a workload that was impossible to accomplish without the wife's help, for a single salary that was below the legal scale, even taking into account the fact that they were provided with accommodation. The defendant was aware of the employees' precarious situation. The fact that they were here illegally and the need to meet their family's needs meant that the workers could not leave this job.

The court also accepted this offence regarding the other defendant, as an accomplice, because she was aware of the situation. She was also involved in committing the offence because she managed the horses at the riding school on a daily basis, giving orders to the worker and his wife.

The civil claimants were granted 5,000 euros in material and moral damages.

#### *g) Domestic work*

In a **decision of 22 January 2013**, the **criminal court of Brussels**<sup>160</sup> accepted the charge of trafficking for the purposes of labour exploitation, as well as various criminal labour law charges, made against one Congolese defendant, who exploited a fellow Congolese citizen to look after her disabled son.

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<sup>159</sup> Corr. Charleroi, 26 April 2013, 7<sup>th</sup> ch.

<sup>160</sup> Corr. Brussels, 22 January 2013, 58<sup>th</sup> ch. (appeal).

Following an anonymous denunciation, the social inspectorate searched the defendant's flat. The victim was there. She stated that she had come to Belgium to look after the defendant's disabled son; not being paid for her work; sleeping on the floor in the children's bedroom; looking after the child, but also doing the housework and the shopping; being obliged to give her passport to the defendant upon her arrival in Belgium.

The victim's statements were corroborated by the results of the house search and the hearings of various witnesses confirming that she was indeed the person in question regarding the disabled child.

The court therefore considered that the defendant had brought over and housed the victim in order to make her work in conditions contrary to human dignity.

The victim was awarded 52,000 euros in compensation for material damages and 5,000 euros in moral damages.

h) *Temping: exploitation under a false identity*

In a case **tried by the criminal court in Ghent on 2 April 2012**<sup>161</sup>, the defendant, who made his victims work for him for his own benefit, sometimes under his own identity, sometimes under a false identity, was prosecuted for trafficking in and smuggling of human beings with aggravating circumstances, false entries, drawing up false bank documents and making private false entries.

The case was opened after one of the victims lodged a complaint with the police in Ghent in March 2011. The victim, who was from Sierra Leone like the defendant, had met the latter there. He was known for taking people to Europe in return for payment. The victim travelled with the defendant's Belgian identity card and international passport (which bore the victim's photo) from Guinea to Paris, and then to Lille.

When the victim arrived in Ghent, he was housed for "free" by the defendant. In exchange, he had to work for the defendant, who looked for employers through temping agencies. The victim worked there under a false identity. Consequently, the salary was paid into the account belonging to this false identity, which was opened and managed by the defendant. The victim did not receive a salary. The defendant drove him to work every day and went to fetch him.

When the victim fell ill, he acted upon the advice of the defendant and asked for asylum. This was rejected and the victim had no other choice than to contact the defendant again. The victim then went to the VDAB<sup>162</sup> with the defendant's identity card and was

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<sup>161</sup> Corr. Ghent, 2 April 2012, 19<sup>th</sup> ch. (binding).

<sup>162</sup> Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding (Flemish office for employment and professional training).

recruited by the Port of Ghent. Once again, the salary was paid to the defendant and the victim received nothing other than food. The defendant had promised that his salary would be paid in full after six months.

The defendant used two identities, his own and that of another person, and two bank accounts. He rented accommodation in both names and made the victim work under both names. The available bank details showed that he earned 16,000 euros through the work done by the victim. Furthermore, there was a second victim, who had worked for him through the same structure. According to this victim, the defendant had exploited other people in the same way.

In particular, the court considered that the facts were established thanks to a bank investigation concerning the various wages and benefits paid into the accounts, checking the Dimona notifications, and by investigating the places of work, etc. The temping agency's details allowed the investigators to check the times when the victim had worked under false identities for the defendant. Through interviews with the file managers both at the temping agency and the VDAB, and by looking at photos, it was found that the victim had been employed under false identities. The team leader of one of the companies where the victim had worked also confirmed this.

Among other things, the court found the defendant guilty of smuggling of human beings and trafficking with the purposes of labour exploitation (conditions contrary to human dignity) given that: different people confirmed that the victim worked under false identities; the victim had no freedom of movement (he was taken to and fetched from work every day); the wages were paid onto the accounts managed by the defendant, etc. The court also considered as not relevant the argument that the victim consented to the envisaged or actual exploitation, or the fact that he was employed in a normal working environment and in normal working conditions. It was considered that the defendant had abused the particularly vulnerable position of the victim following his precarious administrative situation, and that the victim, having no other type of document allowing him to stay and no social welfare or financial support, had no other choice than to submit to this abuse.

The defendant was given a three-year prison sentence, with an eighteen-month suspended sentence, and a fine of 11,000 euros. The court also pronounced the confiscation of an equivalent value of 54,315 euros. Out of this amount, 10,625 euros were awarded to the victim, who filed a civil suit.

### **2.1.3. Exploitation of begging**

A case of begging was examined by the **criminal court in Nivelles**<sup>163</sup>.

In its decision of **25 January 2013**, the court accepted the charge of trafficking for the purposes of the exploitation of begging and the charge of the exploitation of begging with regard to a Slovakian defendant who was exploiting the begging of disabled compatriots.

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<sup>163</sup> Corr. Nivelles, 25 January 2013, 6<sup>th</sup> ch. This decision is binding.

The civil claimants ask for the charge of trafficking to be re-evaluated by also adding the aggravating circumstance of regular activity, a request that was accepted by the court. According to the statements of the civil claimants, it did indeed appear that the defendant had come to Belgium previously with the same goal. These statements were corroborated by the international police information gathered within the framework of the directive. This information revealed that the defendant was the subject of investigations for similar acts in Germany and Slovenia.

The civil claimants also asked for the charges to be re-evaluated by adding the aggravated circumstance of fraudulent schemes or coercion. The court accepted this as regards the victims who filed civil proceedings. The defendant had indeed come to fetch them from the institution in which they were placed in Slovakia, saying that they would be better with him. Once he had brought them to his home, they were obliged to share their room with other disabled persons. The defendant also took all the benefits they were paid in Slovakia.

The court considered the established facts: the defendant had recruited disabled compatriots; he lodged them in his house; dropped them off in different car parks and came to fetch them in the evening. He took all the money they collected for himself.

The court attached a great deal of importance to the victims' statements, corroborated by other elements in the case (police reports stating the presence of the defendant or the victims on various occasions in Belgium, international police information, a large sum of money found in the defendant's possession, etc.).

He was sentenced to six years in prison and a fine of 5,000 euros. The victims received 2,500 euros and 17,500 euros respectively in material and moral damages. Furthermore, the court awarded the civil claimants half of the sum in cash found on the defendant and confiscated from him.

#### **2.1.4. Coercion into committing a crime or an offence**

Although the acts in the following case, mentioned earlier in this report<sup>164</sup>, were not considered as acts of trafficking in human beings with a view to committing offences, we shall nevertheless, in view of the account, look at the case in this section.

The case deals with a Romanian criminal organisation whose goal was to commit acts of theft. It enrolled Romanians living in poverty and brought them to Belgium, under the pretext that they could earn money here. The victims had given their identity papers to the main defendant, who was in charge of transport. He came to Belgium twice a week with a fixed driver. He kept the victims' papers in his possession so that they could not

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<sup>164</sup> See this part, Chapter 2: case analyses, 3.1. Romanian network of forced theft, as well as Part 1 of this report, Chapter 2, point 2.3. Forced criminal activities.

escape. When they arrived, they had to pay back their debt by shoplifting. The stolen goods were sold in Romania.

A young Romanian girl, the girlfriend of one of the defendants, was forced to prostitute herself. To attract her to Belgium, he promised her that she would find work here as a shop assistant in a clothes shop, but when she arrived, her identity card was confiscated and she was then forced to prostitute herself to reimburse the costs. She was threatened and beaten.

In the first instance<sup>165</sup>, at the **criminal court in Turnhout**, the defendants were prosecuted on the following counts: participation in criminal organisation, trafficking in human beings for the purposes of sexual exploitation and theft (in this case, in shops). They were not prosecuted for trafficking for the purposes of forced criminal activities. The court considered that all the charges were established, but not in the case of all the defendants. Prison sentences ranging from one to five years were given. Two defendants were acquitted.

The **Court of Appeal in Antwerp**<sup>166</sup> decided on the charge of participation in criminal organisation based on several acts whereby the main defendants forced persons to commit acts of shoplifting for the benefit of the organisation. Some of these people said they had acted through fear of the gang and/or because they had been obliged to do it. The court increased the prison sentences of the two main defendants to six and eight years respectively, especially considering the severity of the acts and the threats towards family members of victims who were not doing the work properly, etc.

## **2.2. Trafficking in human beings**

### ***Indian trafficking in human beings***

In 2012, the **criminal court of Brussels**<sup>167</sup> dealt with a case of trafficking in human beings in which the Centre instituted civil proceedings. The gang of traffickers operated in car parks located along the E40 and used lorries and the train to organise the smuggling of its clients. The case also revealed that the traffickers used the facilities at the Sikh temple in Vilvoorde, because they were cheaper and more discreet. Some of the traffickers worked there in the kitchen. Several people, who were attempting to reach the United Kingdom, were staying illegally in and around the temple. Since the presence of the temple resulted in an increased presence of Indians in the town, the victims were able to go there discreetly during the day. At night, they used the empty warehouses located behind the temple.

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<sup>165</sup> Corr. Turnhout, 17 October 2012, 13<sup>th</sup> ch.

<sup>166</sup> Antwerp, 24 January 2013, 14<sup>th</sup> ch.

<sup>167</sup> Corr. Brussels, 11 September 2012, 51<sup>st</sup> ch.

The court considered that in this case, the line between victims and perpetrators was very fine. It established that the use of the term "victim" was sometimes odd considering that the people brought here had willingly made this choice. But they did not choose the sometimes inhuman conditions and excessive costs of the transport. According to the court, the victims were also sometimes the perpetrators: to reduce the cost, and even to be able to travel completely free of charge, they often lent their support. One of the defendants was known for being a victim of trafficking in human beings in another case (he was intercepted in Calais in a train while attempting to reach the United Kingdom).

With the exception of one of them, all the defendants were given one to six-year prison sentences and fines of up to 30,000 euros.

### *Iraqi-Kurdish trafficking case*<sup>168</sup>

In a **decision of 4 December 2012**<sup>169</sup>, the **criminal court in Leuven** convicted all the defendants for trafficking in human beings with aggravating circumstances. It was possible to establish the charges through wiretaps, observations, searches, examination of GPS, witness statements and letters rogatory. Prison sentences ranging from eight months to two years were given.

The case in hand involved a gang of Iraqi-Kurdish traffickers who were responsible for the trafficking of a considerable number of Iraqi-Kurdish victims from the Netherlands to Sweden, Belgium to Germany, Italy to Belgium, etc. The people who were the subject of the trafficking were taken by other traffickers who were responsible for transport between Iraq and Europe. Between November 2008 and February 2009, at least sixteen transports were organised, as well as five transport attempts. In the majority of cases, the victims were collected in Italy or Switzerland with the help of a personal vehicle before being taken to Belgium where they were temporarily received and lodged. The Thalys was also used as a means of transport. Either the victims asked for asylum in Belgium or they continued their journey to another country. To travel from Italy to Belgium, they had to pay between 1,300 and 1,500 euros. According to the court, it was not because the cost was not excessive or that the people were well treated that the defendants could be considered as having acted for humanitarian reasons, as they asserted. Economic reasons clearly played a role. The money was managed through the hawala banking system, thus keeping the funds out of the legal banking circuit.

While the case was being processed, the public prosecutor's office emphasised that this case illustrated new trends in the trafficking of human beings. Whereas, until now, people staying illegally had essentially been travelling in big groups as illegal passengers in lorries, they are now travelling in small groups and in stages. The gang of traffickers involved in this case used existing forms of transport (buses, trains and private vehicles). The journey in stages forced the traffickers to temporarily lodge the people in safe houses. As for the final destinations, they are no longer the same: while illegal

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<sup>168</sup> See also this part, Chapter 2: case analyses, point 4.1 Iraqi-Kurdish case of trafficking in human beings.

<sup>169</sup> Corr. Leuven, 4 December 2012, binding.

immigrants previously wanted to go to the United Kingdom, via the Belgian or French ports, the Scandinavian countries are now their final destination.

## PART 3: DATA IN FIGURES

## Introduction

The Centre requested and obtained the following figures from six players who are likely to play a role in the course of a case of trafficking in human beings:

- the police, with information from the National General Database;
- the Social Inspectorate (SI) of the FPS Social Security and the Social Law Inspectorate (SLI) of FPS Employment, Labour and Social Dialogue (ELSD);
- the Board of Prosecutors General, with information relating to prosecutions made by the public prosecutor's offices;
- the Immigration Office (IO);
- specialised victim support centres;
- the Department of Criminal Policy (DCP), with information relating to convictions.

For each of these data sources, we provide:

- a description of the data;
- a presentation of the data;
- comments on the section relating to the data.

For each player, this data gives an overview of their individual interventions and, in general, provides an outline of their evolution in time. However, if the players have not harmonised their data between each other, the overview offered by this data remains limited and distorted. The result is that this data is not useful enough to be able to assess the policy in terms of trafficking in human beings, which has an impact on the reporting to the European institutions in particular.

And yet, the ambitions of the Belgian authorities reach far beyond the simple elaboration of figures per player. In particular, two extra missions were entrusted to the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (hereafter: CIATTEH), created under the supervision of the ministers of justice and home affairs in 2004. However, it is still not operational. Therefore, this ambition has yet to be satisfied: the collection, centralisation and exchange of data on the one hand, and its analysis with the goal of political, strategic and/or operational actions on the other hand<sup>170</sup>.

The "National action plan against trafficking in and smuggling of human beings 2012-2014" stipulates: "*The only possibility of achieving CIATTEH's objectives would be for legislation to allow the use of personal data instead of anonymous data*". This new

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<sup>170</sup> See on this subject: Annual report 2005, Trafficking in and smuggling of human beings: *Belgian policy on trafficking in human beings: shadows and lights*, p.62-65.

starting point, as well as the better co-operation between the players in the Interdepartmental Co-ordination Unit (ICU), should lead CIATTEH out of this dead end. The Centre speaks in favour of the choice, within this process, of realistic and relevant objectives that can lead, within a reasonable timeframe, to a better understanding of the phenomenon and the priorities.

## 1. Police data

### 1.1. *Description of the data*

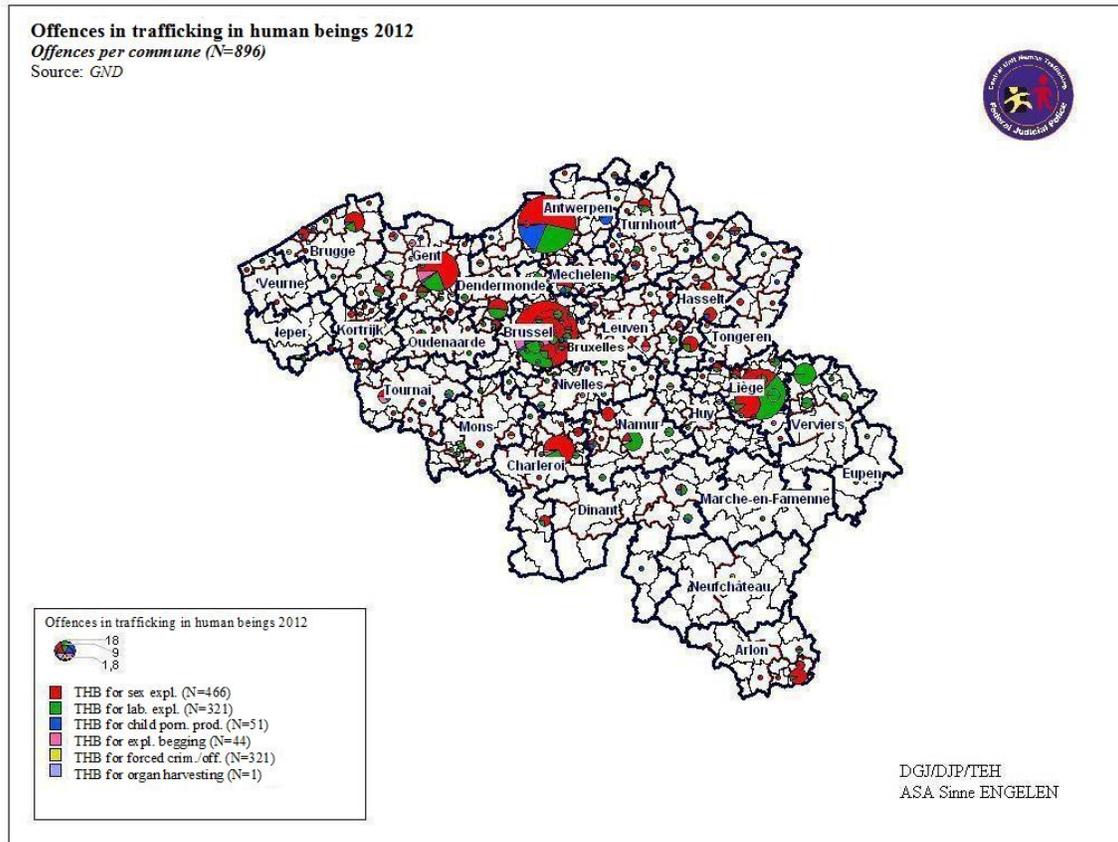
The federal judiciary police supplies information in the form of maps, created by the strategic analysts in the Department of the Fight against Crime against Persons. These maps are elaborated on the basis of the databases available in the police's National General Database (NGD).

For the second consecutive year, the police is using a new syntax, which aims to indicate for every offence whether there are elements reminiscent of human trafficking or smuggling.

## 1.2. Presentation of the data

### 1.2.1 Data relating to trafficking in human beings

**Figure 1. Offences per commune and per type of exploitation** (Source: General National Database, Police)



For almost all forms of exploitation, we noted a slight drop (of less than 5%) compared with 2011. The significant fall in the number of reports of human trafficking offences for the purposes of child pornography (from 85 in 2011 to 51 in 2012) is therefore remarkable. The only upward trend is where the purpose of exploitation is to force the victims to commit offences, increasing from 10 reports in 2011 to 13 reports in 2012. To emphasise a local trend: in Ghent, for instance, we found more offences in trafficking in human beings for the purposes of begging in 2012 than in 2011.

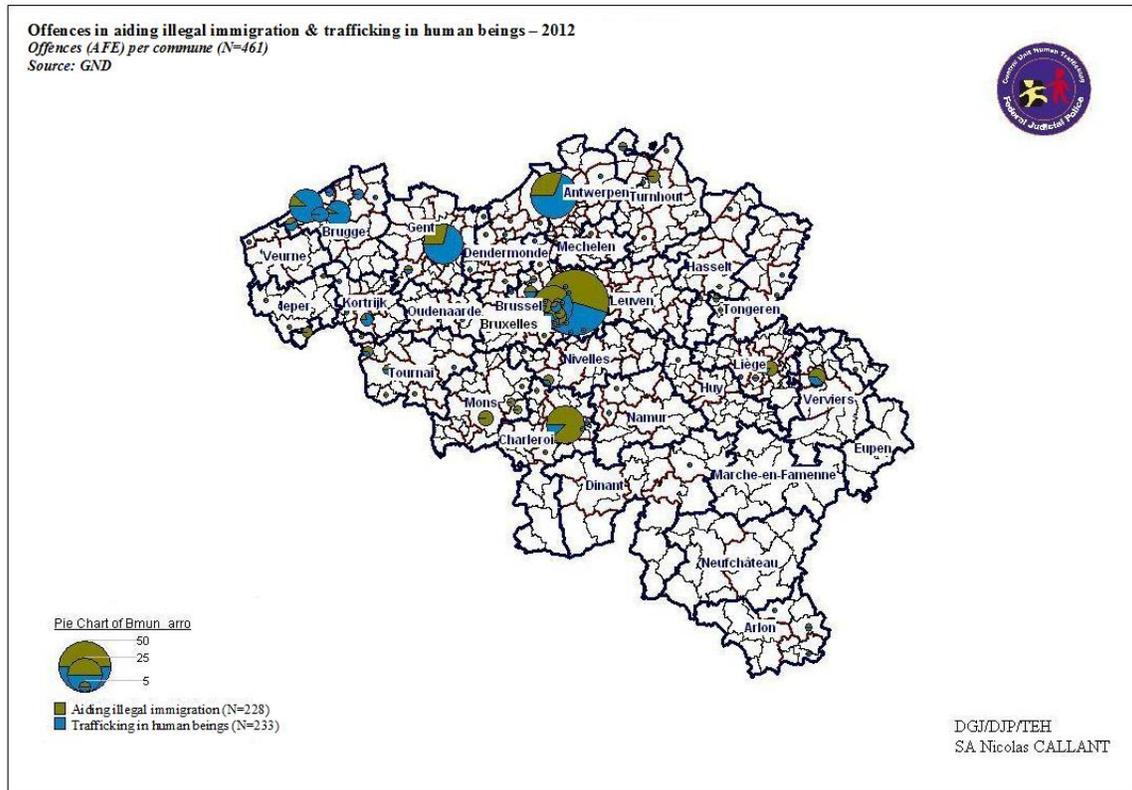
### 1.2.2 Data relating to the smuggling of human beings

Here is the definition of smuggling of human beings as defined by article 77bis of the law of 15 December 1980:

*"Human smuggling is the act of helping, in any way whatsoever, either directly or through an intermediary, to allow the access, transit or stay of a person who is not a citizen of a Member State of the European Union in or via the territory of such a state, in*

violation of the laws of this state, in order to obtain, directly or indirectly, pecuniary benefits.”

**Figure 2. Offences especially in trafficking in human beings per commune (Source: General National Database, Police)**



This diagram should be considered in light of the data relating to prosecutions (that you will find in point 3 of this part), and the fall in prosecutions recorded between 2011 and 2012 in the jurisdiction of the Court of Appeal in Ghent.

The police’s National General Database also offers the following overview (see Table 1 hereafter) of recorded offences in trafficking in human beings over the past five years.

**Table 1: Offences in trafficking in human beings (Source: National General Database, Police)**

	2008	2009	2010	2011	2012
Trafficking in human beings	290	283	212	268	233

### **1.3. Comments on the police data**

These figures are the reflection of police interventions and indications of trafficking in or smuggling of human beings in numerous offences, which is probably the added value of the new syntax. But this method also raises questions. In 2011 and 2012, 85 and 81 offences respectively were considered as acts of trafficking in human beings for the purposes of child pornography, without it being possible to find a suitable trace of this phenomenon in legal action. Nevertheless, trafficking in human beings for the purposes of child pornography represents more than 10 % of the offences in trafficking in human beings for the purposes of sexual exploitation.

## **2. Social inspectorate services data**

### **2.1. Description of the data**

The objective of a co-operation protocol between the Social Inspectorate of the FPS Social Security (SI) and the Social Law Inspectorate (SLI) of FPS Employment, and Social Dialogue (ELSD), is to guarantee that the two inspection services systematically carry out their investigations in a structured and co-ordinated manner. This takes place above all in the area of labour and social security law in certain sectors that appear to be vulnerable in terms of human trafficking (exotic restaurants, cleaning services, horticultural and agricultural companies, clothing manufacturers, prostitution sector)<sup>171</sup>. The Department of Information and Social Research (SIRS), which is answerable to the ministers of employment, social affairs and justice, is an individual support unit for the federal social inspectorate services for the fight against undeclared work and social fraud, within and outside district units. And yet, there is no co-ordinated reporting on trafficking in human beings in particular.

The following data is based on a table of the Social Inspectorate of FPS Social Security, indicating five parameters: the victims' countries of origin, the economic sectors, the types of offences, the number of offences and the number of workers for whom offences were recorded.

This data is the result of the statistical processing of the pro justitia acts (PJ) sent to the crown prosecutor and/or the labour prosecutor, and the criminal reports addressed to the labour prosecutor, the state prosecutor or the investigating magistrate when an investigation was conducted by the latter. We should underline that an expert's report does not have the same probative value as a PJ. It is up to the judge to assess the probative value.

It emerges from a note from the Centre's Social Law Inspectorate that these services did *not* record any offences of trafficking in human beings in 2012.

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<sup>171</sup> See Annual Report 2010, Social law inspection, Chapter 8, combating trafficking in human beings: [www.emploi.belgique.be](http://www.emploi.belgique.be)

## 2.2. Presentation of the data on trafficking in human beings

**Table 2: Pro justitia acts and criminal reports for offences of trafficking in human beings for the purposes of labour exploitation** (Source: Social Inspectorate, calculations Centre for Equal Opportunities and Opposition to Racism (Centre))

	2009	2010	2011	2012
Pro justitia acts / # workers	4 / 5	16 / 25	13 / 35	7/7
Criminal reports / # workers	2 / 4	18 / 95	20 / 21	31/48

In 2012, seven PJ were drawn up and 31 criminal reports written. So what can we gather from the analyses of data from cases where the SI found offences of trafficking in human beings for the purposes of labour exploitation? On the basis of the Nace codes<sup>172</sup>, i.e. the nomenclature of the activities, there are six sectors where SI has revealed acts of trafficking in human beings in three or more cases:

- ten offences in the domestic work sector, for a total of eight identified workers. The countries of origin of these workers are as follows: Bangladesh, Ethiopia, Morocco, Peru, Tanzania;
- six offences in the hotel & catering sector, for a total five workers. Their countries of origin are France, India, Iraq, Morocco and Romania;
- five offences in the construction sector, for a total of sixteen workers, all of Bulgarian or Romanian nationality;
- four counts of exploitation in the retail trade, for a total of thirteen workers. Among those, twelve Syrian citizens in one and the same case and one Belgian in another;
- four counts of exploitation in the car and garage trade, for a total of six workers. These workers were of Indian, Moroccan, Polish and Byelorussian nationality;
- three counts of exploitation in the transport sector, for a total of eight workers, all of Bulgarian or Turkish nationality.

On the basis of the nationality of all the workers who were found to have committed offences (n=7) in cases considered as trafficking in human beings for the purposes of labour exploitation, it was possible to establish the following classification:

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<sup>172</sup> NACE-BEL, Nomenclature of activities, [www.statbel.fgov.be/fr/binaries/FR\\_Nace\\_2008\\_with\\_explanatory\\_notes\\_tcm326-65642.pdf](http://www.statbel.fgov.be/fr/binaries/FR_Nace_2008_with_explanatory_notes_tcm326-65642.pdf)

- Morocco: twelve people from Morocco in eleven cases, among whom four victims in the domestic sector;
- Syria: twelve people from Syria in one retail trade case;
- Romania: eleven people in five cases, three of whom in the construction sector, with a total of eight workers;
- Poland: ten people in three cases, three of whom in the construction sector, with a total of eight workers;
- Bulgaria: four people in one case in the transport sector.

### ***2.3. Comments on the data from the social inspectorate services***

Joint reporting of the records of trafficking in human beings from all the social inspectorate services would be of great added value. Despite all the co-ordination and support initiatives, it has not been possible, up until now, to show the evolution in the approach to trafficking in human beings using statistics. Joint reporting and analysis should provide an overview of the offences and lapses recorded at the same time as the offences relating to trafficking in human beings.

### **3. Data relating to prosecutions led by the public prosecutor's offices**

#### **3.1. Description of the data**

The data we have published here results from the statistical analyses of the Board of Public Prosecutors dating from 10 January 2013. The Board has supplied this information upon the Centre's request.

##### **3.1.1. Data on trafficking in human beings**

The data relating to trafficking in human beings reflects cases submitted to the Crown Prosecution Service in 2012. Note two intrinsic limitations: these are exclusively cases dealing with adults and there is no data from the public prosecutor's office in Eupen.

Even more important is the absence, in this data, of cases dealt with by labour prosecutors. Despite the fact that the labour courts have the opportunity to record them in the REA/TPI system, which forms the basis of this collection of data, this is not carried out systematically enough. Therefore, the prosecutions for trafficking in human beings for the purposes of labour exploitation by order of the courts are not shown in these tables. The structural sub-reporting concerning these prosecutions is a considerable failure.

Given the lack of figures relating to the prosecutions by the labour prosecutors, we noted three types of data that may indicate or influence the evolution of their intervention. First of all, in 2012, the public prosecutor's office initiated prosecutions on 164 occasions for acts of trafficking in human beings for the purposes of labour exploitation, approximately the same number as in 2011 (165). Secondly, the police data indicates a slight fall in the number of offences recorded for this type of exploitation, falling from 333 in 2011 to 321 in 2012. Thirdly, the social inspectorate figures show a major increase in the number of recorded offences, from 33 in 2011 to 48 in 2012.

##### **3.1.2. Data on trafficking in human beings**

Data concerning prosecutions in trafficking in human beings is still included in all the breaches of the law regarding foreigners, with no distinction made between prosecutions for trafficking in human beings and prosecutions for punishable acts in terms of aiding entry and staying illegally (which do not fall within the scope of the usual definition of trafficking in and/or smuggling of human beings).

## 3.2. Presentation of the data

### 4.1.1 Data relating to trafficking in human beings

**Table 3: Prosecutions initiated by public prosecutor's office for acts of trafficking in human beings** (Source: Board of Public Prosecutors – statistical analysts)

	ANTWERP					BRUSSELS					GHENT					LIEGE					MONS					FEDERAL PUBLIC PROSECUTOR					TOTAL									
	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012
	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	n	n	n	n	n	n	n	n	n	n	n	n
37L: Trafficking in human beings - Sexual exploitation (art. 433quinquies §1, 1°)	58	53	49	31	27	27	61	76	99	111	18	24	29	15	28	22	42	17	21	16	13	8	4	4	5	3	1	0	0	3	141	189	175	170	190					
29E: Trafficking in human beings - Exploitation of begging (art. 433quinquies §1, 2°)	2	1	0	2	0	6	8	2	5	4	3	1	1	1	1	1	0	2	0	2	0	0	0	0	0	0	0	0	0	0	12	10	5	8	7					
55D: Trafficking in human beings - Labour exploitation (art. 433quinquies §1, 3°)	53	43	31	41	28	37	41	21	30	46	69	42	39	42	35	22	18	22	25	32	20	29	23	27	22	1	0	0	0	1	202	173	136	165	164					
55E: Trafficking in human beings - Illegal organ removal (art. 433quinquies §1, 4°)	0	0	0	0	0	1	0	1	1	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	1	1	1	1	1	2					
55F: Trafficking in human beings - Coercion to commit a crime (art. 433quinquies §1, 5°)	8	3	2	3	4	5	3	2	1	3	4	3	4	0	3	11	9	10	4	2	2	2	1	5	5	0	0	1	1	1	30	20	20	14	18					
<b>TOTAL</b>	<b>121</b>	<b>100</b>	<b>82</b>	<b>77</b>	<b>59</b>	<b>76</b>	<b>113</b>	<b>102</b>	<b>136</b>	<b>164</b>	<b>94</b>	<b>70</b>	<b>73</b>	<b>58</b>	<b>67</b>	<b>56</b>	<b>70</b>	<b>51</b>	<b>50</b>	<b>53</b>	<b>35</b>	<b>39</b>	<b>28</b>	<b>36</b>	<b>32</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>6</b>	<b>386</b>	<b>393</b>	<b>337</b>	<b>358</b>	<b>381</b>					

We would like to draw your attention to several figures from 2012:

- In six cases, it was the federal prosecutor's office that conducted the prosecutions. This is an important piece of data and perhaps already a result of the policy recently modified by the federal prosecutor's office.
- As regards the general evolution between 2008 and 2012: whereas the number of prosecutions for trafficking in human beings remained almost identical between 2008 (n=386) and 2012 (n=381), the underlying evolutions were considerable. Within the jurisdiction of Antwerp, the number of prosecutions for trafficking in human beings was reduced by half, while in Ghent, it fell by a third. While the number of prosecutions remained constant in Liège and Mons, the jurisdiction of Brussels showed an increase of more than double between 2008 and 2012.

These trends can also be seen in two of the most significant forms of exploitation: sexual exploitation and labour exploitation. While it is possible to spot trends in the figures hereafter for prosecutions concerning sexual exploitation, this is not the case for prosecutions regarding labour exploitation. In the jurisdiction of Brussels, there has been a considerable increase since 2008: from 27 prosecutions in 2008, to 99 in 2011 and 111 in 2012. On the other hand, there has been a significant decrease in the jurisdiction of Antwerp: from 58 prosecutions in 2008, to 31 in 2011 and 27 in 2012. For the rest of the country, the number of prosecutions is 190, the highest figure since 2008 for this type of exploitation.

Finally, we would like to draw your attention to two cases of trafficking in human beings for the purposes of organ harvesting, one of which was initiated by the federal prosecutor's office and the other by the public prosecutor's office in Liege.

#### 4.1.2 Data relating to the smuggling of human beings

**Table 4: Prosecutions initiated by public prosecutor's offices for acts of trafficking in human beings** (Source: Board of Public Prosecutors – statistical analysts)

	ANTWERP					BRUSSELS					GHENT					LIEGE					MONS					FEDERAL PUBLIC PROSECUTOR					TOTAL									
	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012
	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	n	n	n	n	n	n	n	n	n	n	n	n
55G: Trafficking in human beings – Sexual exploitation (art. 77bis, art. 77ter, art. 77quater, art. 77quinquies law 15.12.1980)	11	34	21	16	36	71	80	61	166	138	366	242	228	326	129	7	5	13	7	13	3	1	2	0	3	4	0	0	0	4	462	362	325	515	323					

Two elements stand out in this table. First of all, the federal prosecutor's office began its prosecutions again in 2012 with four cases, something it had not done since 2008. Secondly, the number of prosecutions conducted by the public prosecutor's offices had never been so low since 2008. The fall in the jurisdiction of Ghent is particularly of note.

#### 3.3. Comments on the data relating to prosecutions led by the public prosecutor's offices

The Board of Public Prosecutors also gave the Centre the figures relating to the progress and the closure of cases initiated in 2012, according to the information known on 10 January 2013. The Board also sent the figures for prosecutions regarding trafficking in and smuggling of human beings. The Centre cannot publish this information within the framework of the present report. Based on this information, it is not possible to make a distinction, regarding progress and closed cases, between interventions in terms of trafficking in human beings on the one hand and smuggling of human beings on the other. Finally, the data relating to the situation on 10 January 2013 concerning the

progress or the closure of cases that were submitted to the public prosecutor's offices in 2012, do not give a complete overview, even if they are interesting and relevant.

Information on the intervention of labour prosecutors is also lacking, leading to an under-reporting of the legal actions against trafficking in human beings for the purposes of labour exploitation.

## **4. Immigration Office data**

### **4.1. Description of the data**

The Immigration Office (IO) reports widely on the action of the MINTEH office (minors/victims of trafficking in human beings) in all its annual reports. This IO office is responsible for following up and investigating the residence files of the victims of trafficking in or smuggling of human beings for whom a residence request has been made. While this reporting mainly follows the same layout every year, it is nevertheless impossible to compare the trends over the past five years for all the victims regarding nationality, the purpose of the exploitation, gender and age (minor/adult). The information published by the IO within the framework of its activity reports, forms the basis of the information below.

Upon the Centre's suggestion, the IO also agreed to check what had become of the victims "administratively speaking", who had been issued a residence permit in 2006 within the framework of human trafficking. The report, which takes this exercise into account, serves as a basis for the focus we have presented hereafter. We would particularly like to thank the IO and the MINTEH office for their collaboration.

In this part dedicated to data, we shall first examine the information relating to victims who received a residence permit for the first time in 2012. We shall then look at the total number of residence permits issued in 2012 to all the victims involved in proceedings. Finally, we shall take a brief look at the data relating to the residence of victims having been given this status in 2006.

### **4.2. Presentation of the data**

#### **4.2.1. Victims who received a residence permit for the first time in 2012**

The increase between 2009 (124 cases of victims) and 2011 (149 cases of victims) continued in 2012, with the Immigration Office reporting a total of 157 cases of victims. This increase results, on the one hand, from a status quo in the number of victims of human trafficking and, on the other hand, from an increase in the number of victims of human smuggling with aggravating circumstances.

4.2.1.1. *Victims of trafficking in human beings*

**Table 5: Victims whose first residence permit was issued in 2012, according to the sector of exploitation and their age** (*Source: IO, processed: Centre*)

Age	Sexual	Begging	Labour	Misc	Total
<18	9	0	2	0	11
18-25	31	0	9	1	41
26-30	6	0	11	2	18
>30	6	5	43	2	56
<b>Total</b>	<b>52</b>	<b>5</b>	<b>65</b>	<b>5</b>	<b>127</b>
<i>Women</i>	<i>47</i>	<i>1</i>	<i>55</i>	<i>5</i>	<i>108</i>
<i>Men</i>	<i>5</i>	<i>4</i>	<i>10</i>	<i>0</i>	<i>19</i>

One obvious observation: compared with 2011, the number of victims of labour exploitation who were issued with an initial residence permit fell from 81 to 65 and the number of victims of sexual exploitation increased from 34 to 52.

**Table 6: Victims whose first residence permit was issued in 2012, according to sector of exploitation and their nationality** (*Source: IO, processed: Centre*)

	Sexual	Begging	Labour	Misc.	Total
Romania	14	2	6	0	22
Nigeria	17	0	2	0	19
Morocco	2	0	13	3	18
China	3	0	8	0	11
Bulgaria	4	0	4	0	8

The most significant evolution in terms of nationality can be seen in terms of sexual exploitation: a considerable increase in the number of Nigerian victims (two in 2010, eight in 2011 and seventeen in 2012), a high number of Romanian victims (twelve in 2010, four in 2011 and fourteen in 2012) and a reduction in the number of Bulgarian victims (sixteen in 2010, six in 2011 and four in 2012).

India is no longer in the top five countries of origin, while Romania and Morocco remain in the top three, like last year.

#### 4.2.1.2. *Victims of smuggling in human beings with aggravating circumstances*

For the victims of smuggling in human beings, a residence permit will only be issued within the context of victim status if it is a question of smuggling with aggravating circumstances (for instance: the use of violence, juvenile victims, etc.).

**Table 7: Victims whose first residence permit was issued in 2012, according to their status as victim of smuggling of human beings with aggravating circumstances, according to their age** (*Source: IO, processed: Centre*)

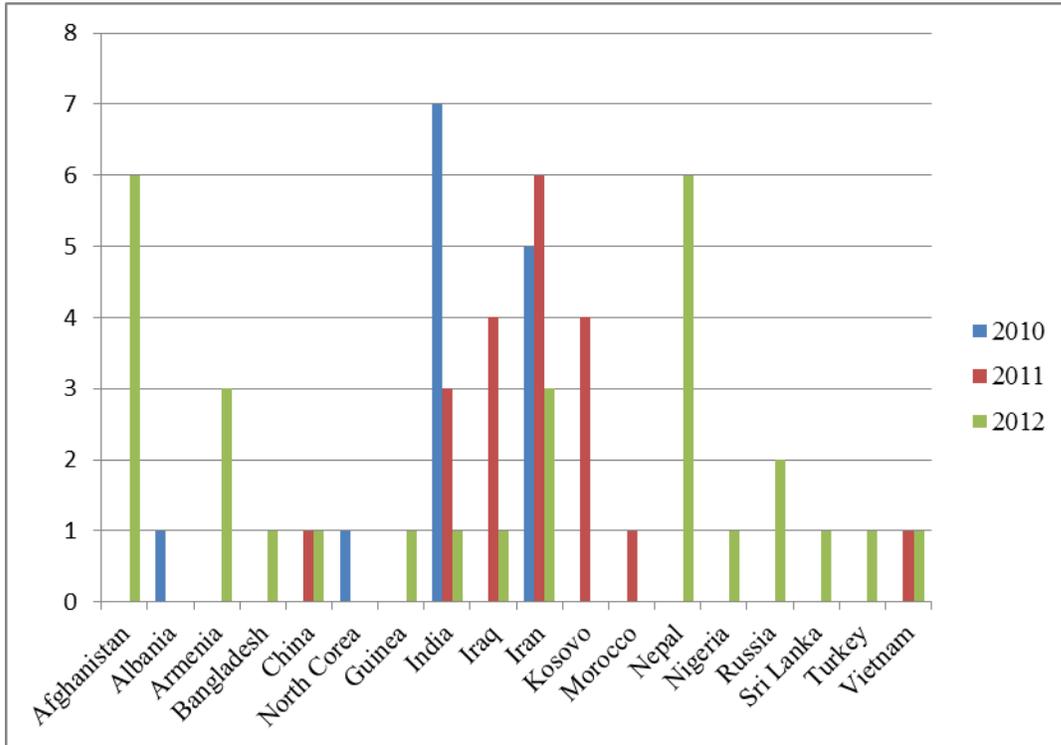
<b>Age</b>	<b>Total</b>
<18	8
18-25	7
26-30	5
>30	10
<b>Total</b>	<b>30</b>

In its activity report, the IO emphasised growing diversification in the countries of origin of the victims of smuggling in human beings. Indeed, for the first time in three years, there are no fewer than nine countries of origin, as shown in the following example<sup>173</sup>.

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<sup>173</sup> Immigration Office, Activity Report 2012, [www.dofi.fgov.be](http://www.dofi.fgov.be).

**Figure 3 Human smuggling cases 2010 to 2012** (Source: Immigration Office, Activity Report 2012)



**4.2.2. Data relating to all the decisions in terms of residence from the MINTEH office concerning all the victims**

Above, we saw the figures relating to the victims who were issued a residence permit for the first time in 2012. Another important piece of data relates to the type and number of residence permits the IO issued in 2012 to all the victims who are involved in proceedings. They may be victims of trafficking in human beings as well as victims of smuggling of human beings with aggravating circumstances.

Once the victim is given victim status, they receive an initial document that may be an order to leave the country (within 45 days) or a registration certificate. If the victim has this status, they receive new residence documents (in principle, a six-month certificate of inscription in the alien’s register, renewable every six months until the end of the legal proceedings).

**Table 8: Residence documents issued in 2011 and 2012 (Source: IO)**

					<b>Total</b>	
	<b>Men</b>		<b>Women</b>		<b>Men&amp;Women</b>	
	<b>2011</b>	<b>2012</b>	<b>2011</b>	<b>2012</b>	<b>2011</b>	<b>2012</b>
OLT (order to leave the territory) 45 days (THB)	20	18	10	18	30	36
Certificate of registration (CR)	73	70	47	73	120	143
CR extension	1	4	11	8	12	12
Temporary CIAR (certificate of inscription in the alien's register) (THB)	45	61	27	45	72	106
Extension of temporary CIAR (THB)	282	285	180	158	462	443
Permanent CIAR (THB)	31	15	20	20	51	35
Temporary CIAR (humanitarian)	0	2	1	2	1	4
Extension of CIAR (humanitarian)	14	17	33	34	47	51
Permanent CIAR (humanitarian)	5	7	6	4	11	11
Permanent CIAR (humanitarian)	3	3	4	4	7	7
Extension of Annex 13 (OLT)	0	0	1	0	1	0
<b>Total</b>	<b>474</b>	<b>482</b>	<b>340</b>	<b>366</b>	<b>814</b>	<b>848</b>

The 848 decisions to issue or extend a residence permit therefore concern both new victims from 2012 and victims prior to 2012, who are in the process of being granted victim status and with regard to whom one or more decisions have been taken.

Forty-six victims received a permanent residence permit in 2012, among which 35 for reasons inherent to the human trafficking procedure and eleven for humanitarian reasons.

#### **4.2.3. The victims of 2006**

The Centre asked the MINTEH unit to check, from an administrative and residency point of view, what had become of the 170 victims of human trafficking to whom the IO had issued an initial residence document in 2006.

**Table 9: Characteristics on 31 December 2006 of the victims who were issued an initial document in 2006** (Source: IO, calculations Lionel Brackman, trafficking in human beings unit, MINTEH office)

	Sexual	Labour	Other	Smuggling	Total
Adults	53	68	13	20	154
Accompanied minors	4	2	0	4	10
Unaccompanied minors	2	1	1	2	6
<b>Total</b>	59	71	14	26	170

**Table 10: Administrative situation on 31 May 2013 of the 170 victims who were issued with an initial document in 2006** (Source: IO, calculations Lionel Brackman, trafficking in human beings unit, MINTEH office)<sup>174</sup>

	No application	THB document	Document other than THB	Stop THB procedure	Total
Illegal immigrant	2	0	0	41	43
Return country of origin	0	0	0	4	4
CR 9 ter	0	0	0	1	1
Card A	0	2	0	14	16
Card B	1	68	10	5	84
Card C	0	2	0	0	2
Card E	0	1	1	3	5
Card F	0	0	4	6	10
Belg.	0	3	1	1	5
<b>Total</b>	3	76	16	75	170

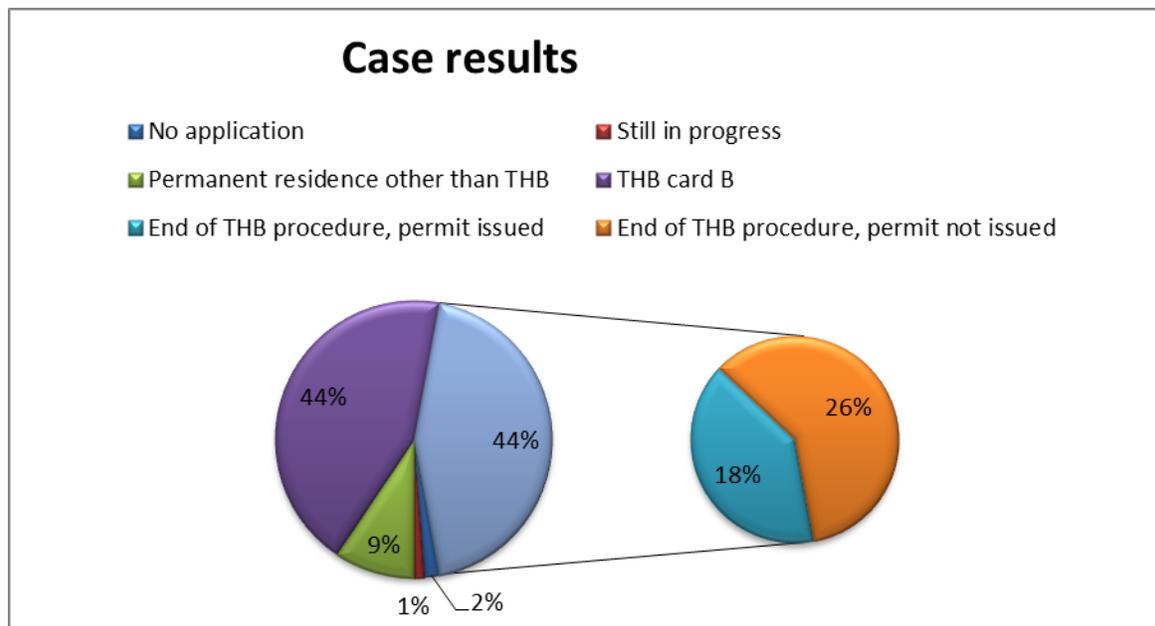
It was found that 47 of the 170 people (27.65 %) were no longer registered on the population register (illegal residency) and that four of them had been removed from it because they had returned to their country of origin. The notion of illegal residency here

<sup>174</sup> The cards in the left-hand column of the table are the electronic identity cards A to F inclusive. On this subject, see: <http://dofi.ibz.be/sites/dvzoe/FR/Pages/Cartes%C3%A9lectroniquespour%C3%A9tranger.aspx>

does not mean that these victims are residing here illegally. It means that, according to the registers, these people do not reside regularly in the country or they have not officially left the territory.

Among the 123 people out of the initial 170 (72.35 %) who are still registered on the population register, sixteen have been given a permanent residence permit (card A) and 101 a limited permit (cards B, C, E and F). Five others have adopted Belgian nationality and one person is authorised to stay temporarily in Belgium for medical reasons (CR 9 *ter*).

**Figure 4: Administrative results of the 170 victim cases initiated in 2006, divided into results inherent to the procedure of trafficking in human beings and outside THB** (Source: IO, calculations Lionel Brackman, trafficking in human beings unit, MINTEH office).



#### 4.3. Comments on the IO data

Every year, the Immigration Office reports on trafficking in human beings in its activity report. With several adaptations, this report could provide a far more accurate picture of the situation by using, for instance, the combination of the variables regarding nationality, age and gender in a single table. This would also make it possible to compare this data with that of the specialised support centres.

At the same time, by not explicitly listing the five types of exploitation (IO works with the category "others" for all victims who have not been exploited economically or sexually), we are given an incomplete view of the situation relating to trafficking in human beings for the purposes of begging and criminal activities.

The information the IO has on the victims who have been granted victim status in the past, provides an overview of the nature and the reach of the regular migration of persons who, at some point, were granted the status of victim of trafficking in human beings.

## **5. Data from the specialised victim centres**

### **5.1. Description of the data**

Below is progress report on the number of victims for whom the specialised centres initiated support in the course of 2012.

The figures relating to new cases of support correspond to the typology provided for in the circular<sup>175</sup>. As soon as the first phase has begun (period of reflection), and an order to leave the country has been issued, it is question of support. The type of psychosocial and legal/administrative support organised can vary according to the centre.

For the second consecutive year, the Centre is publishing integrated tables, one for trafficking in human beings and another for the smuggling of human beings, which include age, gender, nationality and - in the case of trafficking in human beings - also the purpose of exploitation. For this purpose, every specialised centre has provided the necessary figures and the Centre has processed them into a single table.

It is impossible to form an idea of the centres' support activity and reception capacity based on the following information. The indicator of the duration of the support - an essential indicator - is not dealt with here, because it is preferable to deal with it within the framework of an analysis and description of the support process. However, the Immigration Office's figures relating to document extensions represent a potential indicator and show an increase in 2012.

It is not possible within the framework of this annual report to provide a progress report or to analyse the particulars of people for whom no support was initiated, even if this would have been relevant to the policy and knowledge of the phenomenon of trafficking and the exploitation of persons. It would be an enormous responsibility and workload for the centres to deal with all the particulars. For more information, please refer to the centres' annual reports.

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<sup>175</sup> See on this subject: Circular of 26 September 2008 relating to the implementation of a multidisciplinary co-operation concerning victims of human trafficking and/or certain forms of aggravated trafficking in human beings.

## 5.2. Presentation of the data

**Table 11. New support initiated by the specialised centres between 2006 and 2012**  
(Source: Annual reports trafficking in and smuggling of human beings, Centre)

2006	2007	2008	2009	2010	2011	2012
172	179	196	158	141	153	174

In 2012, it was question of 143 victims of trafficking and 31 victims of smuggling of human beings.

### *Data relating to victims of trafficking in human beings*

**Table 12. New support initiated for victims of trafficking in human beings, per type of exploitation, gender and age group of the victims** (Source: specialised centres, processing: Centre)

Nationality	Sexual				Begging				Labour				Crime				Total
	Women		Men		Women		Men		Women		Men		Women		Men		
	Min	Adu.	Min	Adu.	Min	Adu.	Min	Adu.	Min	Adu.	Min	Adu.	Min	Adu.	Min	Adu.	
Romania	3	11				2		1		1		4				2	24
Morocco		1								6		11	1				19
Nigeria	1	15										1					17
China		3										8					11
Bulgaria		6								2		2					10
Tunisia												6					6
Albania		5															5
Serbia										1		4					5
Poland												3		1			4
Slovakia				1				3									4
Algeria												3					3
Bangladesh										1		2					3
Belgium	1	1										1					3
Egypt												3					3
Guinea-Bissau												3					3
India												3					3
Ukraine		2										1					3
Brazil				1								1					2
Hungary		2															2
Cape-Verde												2					2
Cameroon		1								1							2
Burkina-Faso		1															1
Ethiopia											1						1
Gaza		1															1
Moldavia												1					1
Nepal												1					1
Palestine		1															1
Tanzania										1							1
Czech Rep.		1															1
Turkey												1					1
Sub-total	5	51	0	2	0	2	0	4	2	12	0	61	1	1	0	2	143
Total	58				6				75				4				

These figures logically reflect those of the IO, but offer a more complete overview. We see that one in three victims, having benefited from support for the first time in 2012, is an EU citizen.

**Table 13. New support initiated for victims of smuggling of human beings, according to the gender and age group of the victims** (Source: specialised centres, processing: Centre)

Nationality	Smuggling of human beings				Total
	Women		Men		
	Min	Adu	Min	Adu	
Iran	1	2	2	2	7
Afghanistan		2	1	1	4
Armenia		2		1	3
Nepal		1		2	3
India				2	2
Russia			2		2
Bangladesh				1	1
China		1			1
Guinea	1				1
Iraq				1	1
Morocco	1			1	2
Nigeria				1	1
Sri Lanka		1			1
Turkey				1	1
Vietnam			1		1
Sub-total	3	9	6	13	31
Total	31				

### 5.3. Comments on the data from the specialised centres

The specialised centres electronic management of the cases of victims of human trafficking has not yet been able to provide us with any useful data for information or statistical analysis based on the information from the victims of human trafficking, relating to their experiences. This instrument, which the Centre has set up with the specialised centres, should lead to better data concerning the victims and a better overview of their integration or reintegration. The process is laborious, because the computer tool is not efficient enough yet. To be continued.

## 6. Judicial data: figures relating to convictions for trafficking in human beings

### 6.1. Description of the data

Upon the centre's request, the Department of Criminal Policy provided information concerning convictions for trafficking in human beings. This information is almost complete as regards 2011, but not yet for 2012.

The statistics are based on the data of the central police record. This police record includes the decisions that have the status of *res judicata*. These decisions are recorded in the police record by the court clerk. These inscriptions are done manually (whereas the police and the public prosecutor's office work with automated data analyses), which explains why the figures have not yet been updated.

The information provided includes the following data concerning convictions: information relating to the aggravating circumstances observed in each conviction; information on the type and the number of sentences pronounced for each conviction; information on the type of exploitation for several convictions pronounced in 2011.

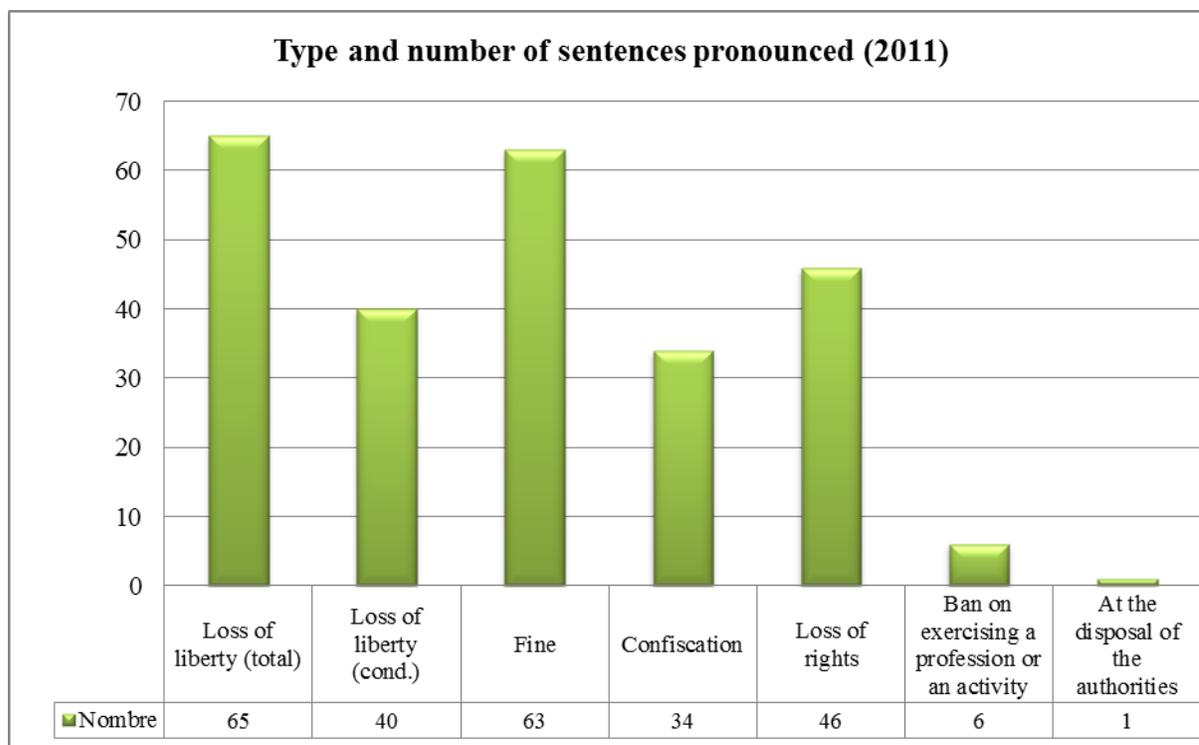
### 6.2. Presentation of the data

**Table 14. Convictions for trafficking in human beings** (Source: Department of Criminal Policy; processing: Centre)

	Convictions
2010	64
2011 (findings December 2012)	68
2012 (findings February 2013)	48

For convictions in 2011, where the type of exploitation was known, there were 23 cases of sexual exploitation and thirteen cases of labour exploitation.

**Figure 5. Sentences pronounced for trafficking in human beings** (Source: Department of Criminal Policy)



Here are the sentences that were pronounced for the 68 convictions in 2011. Several sentences may have been pronounced in the same case. Among the 65 prison sentences, 40 were suspended sentences (partial or not). The number of cases where confiscations were pronounced rose to 34, i.e. 50 % of the convictions, compared with 37.5 % of convictions in 2010.

**Table 15. Length of the prison sentences** (Source: Department of Criminal Policy)

	Number	%
Less than a year	9	13,85
1 < 3 years	29	44,62
3 < 5 years	16	24,62
5 years et +	11	16,92
<b>Total</b>	<b>65</b>	<b>100</b>

### 6.3. Comments on the judiciary data

The backlog in processing the conviction bulletins in the central police record is gradually being absorbed, thus allowing us, for the first time, to include the convictions relating to the year prior to the publication of the annual report on trafficking in human

beings. Even though this information is not yet complete, we have included it in this report.

As we emphasised in the part dedicated to data relating to prosecutions made by the public prosecutor's offices, there is a structural sub-reporting concerning trafficking in human beings for the purposes of labour exploitation. This is why we have also included incomplete information gathered manually on the convictions in 2011 and the purposes of exploitation. A new technical solution is currently being created, which, we hope, will lead to improved information-gathering.

## **Conclusion**

The descriptions and comments on the different sections of data show that there is still a great deal to be done as regards the standardisation and improvement of the data. Each player could, on an individual basis, solve the problem of the lack of statistical information concerning their own data and help to give a better overview of the phenomenon of trafficking in human beings. A greater harmonisation of this data would also allow a horizontal analysis. By launching CIATTEH again, it is important to lay down relevant and achievable objectives that can help, within a reasonable timeframe, to obtain better overviews of the phenomenon and adopt adapted strategies.

One of the foundations of the Belgian model – which makes it a winning model – is that the fight against trafficking in human beings is more effective thanks to victim statements. But the victims must also be able to have faith in the authorities' protection in and against human trafficking situations. Informing the victims is essential in such a model.

In particular, better knowledge of the victims who benefit from the status of trafficking in human beings must result from the electronic management of the cases and the database that the Centre is currently setting up in collaboration with the specialised support centres.

For every player and for every type of co-operation, priority must be given to the search for information and knowledge of the persons who are victims of human trafficking (whether or not they have attained the status of victim of human trafficking).

## RECOMMENDATIONS

## 1. NON-PUNISHMENT OF TRAFFICKING VICTIMS

**RECOMMENDATION 1.** The Centre encourages investigating magistrates to develop a policy, through the network of national expertise on "trafficking in and smuggling of human beings", on forced criminal activities within the framework of trafficking in human beings.

There are a sufficient number of cases of trafficking in human beings involving forced crimes or offences to justify reflection on a policy on the subject. This policy would indicate when a case must be opened and ensure the follow-up with the best approach. In this respect, the judges' national network of expertise in "trafficking in and smuggling of human beings" provides the ideal platform.

Frontline services that record cases of organised theft or drug dealing must pay attention to similar statements by the perpetrators and other elements indicating coercion: these perpetrators are always at the bottom of the criminal ladder and are often brought to Belgium under false pretences; they are subject to threats or pressure; their identity papers are taken from them; they have to commit criminal acts in order to pay for their stay and/or trip to Belgium. If statements taken separately contain similar elements then a case in human trafficking should be opened.

**RECOMMENDATION 2.** The Centre recommends that the motive of "victim of trafficking in human beings" be included in the list of motives for closing a case.

The addition of this motive is part of a policy not to punish victims of trafficking in human beings who initially appear as the perpetrators of an offence, but who need protection as victims. The Centre hopes that the inclusion of this motive will raise awareness among judges.

**RECOMMENDATION 3.** In a new criminal policy directive, the Centre recommends establishing an "open" rather than exhaustive list of offences typically associated with trafficking, enabling victims to be protected from prosecution.

This list should be widely distributed among police prosecution services and public prosecutor's offices, including those that do not deal directly with trafficking cases.

**RECOMMENDATION 4.** The Centre recommends that frontline services are made aware of the problem of victims who commit criminal acts under coercion.

This aspect could be integrated in the training of the frontline services that come into contact with these victims. Besides training, good collaboration, based on dialogue and a transparent and fluid exchange of information between the federal police's specialised units and between the latter and the local police is required.

**RECOMMENDATION 5.** The Centre recommends not making the victims of trafficking in human beings pay the social contributions they owe as bogus self-employed workers.

The inspection services and labour courts can actively intervene when victims, who are in the position of bogus self-employed worker, have to pay social contributions. The National Institute for the Social Security of the Self-employed (INASTI) can designate a contact person who would be available to frontline services and judges.

Bogus self-employed workers who are the victims of trafficking in human beings are often confronted with heavy debts when they are presented with the breakdown of unpaid social contributions. The victims, generally European citizens, must be conscious of the fact that protection against such debts is inherent to the status of victim. Indeed, the status of victim is not limited to a residence document but also offers solutions to such problems and meets the victims' needs, even if they wish to return to their home country.

In this case, the prosecutors must inform the INASTI that, on the one hand, the person has been identified as a victim of trafficking and that they are a bogus self-employed worker and, on the other hand, the National Social Security Office (NSSO) in order to investigate the employer. Furthermore, in order to eliminate the debts previously incurred and to limit them to a year's worth of contributions, INASTI should have a contact person who can wipe off the debts as soon as the public prosecutor's office or the labour court recognises the person as a victim of trafficking.

## 2. VICTIM/PERPETRATOR CONFRONTATION

**RECOMMENDATION 6.** The Centre advises against organising a confrontation between the victims of sexual exploitation and the defendants.

The term "revictimisation" is used when persons having had particularly traumatic experiences find themselves in the position of victim again. To assess this risk, particular attention should be paid to the victim's socio-cultural context.

For instance, if we take the case of the Nigerian victims, they may become the subject of a voodoo spell again if they are confronted with the defendant. These defendants do not request a confrontation with the victim because of the objective questions that will be asked within the framework of the investigation, but to intimidate the victim and push her to retract her statements. It is preferable for the investigating magistrate to be aware of this so that they do not agree to such requests for no reason.

This recommendation does not apply to all victims of trafficking in human beings: in other forms of exploitation other than sexual exploitation, a confrontation may produce answers or a new point of view, although it is always recommended to approach such a confrontation with caution.

### 3. VICTIM STATUS

**RECOMMENDATION 7. The Centre recommends applying the status of victim in a correct and complete manner. The victims' relevant statements should suffice.**

In the Belgian victim status system, relevant statements suffice; it is not necessary to lodge a complaint. It is an essential element that is often misunderstood or seldom applied.

All too often, frontline services inform the victims of this status when they have already made the relevant statements and then offer them the opportunity to adopt the status. However, it is the specialised centres that should carry out this interview: they are in a position to do so and can build the required trust with the victims.

This means that the support centres need a better on-call system in relation to frontline services. This issue must be coupled with that of permanent resources for the centres.

Frontline services should be trained in the complete and correct application of the multidisciplinary circular to detect victims, identify them and guide them towards support centres before taking statements so that the victims can make an appeal, if necessary, during the 45-day period of reflection.

### 4. PERPETRATORS

**RECOMMENDATION 8. The Centre recommends that each of the players explain their policy within the interdepartmental co-ordination unit.**

The reinforcement and the extension of the interdepartmental co-ordination unit is one of the priorities of the policy as regards trafficking in human beings, because its role is crucial for the harmonisation of the policies. Every player must explain their policy plans within this co-ordination unit, as well as the state of progress of their implementation.

**RECOMMENDATION 9. The Centre states that the fight against trafficking in human beings must also remain an absolute priority in the field, among judges and frontline services.**

As regards the police, security plans are a means to guarantee it. Moreover, the Centre has found that the Crown Prosecutor in some districts has, in practice, ceased to make the fight against trafficking in human beings a priority. And yet, the successful processing of cases of forced criminal activity, in particular, depends on public prosecutor's offices making the fight against trafficking in human beings a priority.

**RECOMMENDATION 10. The Centre emphasises the importance of sufficient knowledge of the victims’ socio-cultural context.**

As already indicated in Recommendation 6, it is crucial that frontline services, colleagues in specialised centres and judges have sufficient knowledge concerning the socio-cultural contexts of groups of victims in order to properly identify and detect victims.

Sometimes, criminal networks use certain lifestyles or cultural codes as tools to push victims into a position of dependence. It is useful to be familiar with them in order to understand the situation of exploitation within the context of human trafficking and to put an end to it.

The most well-known are voodoo spells in the Nigerian networks, the Roma way of life or the strong family links of the Chinese. During investigative actions (and certainly during confrontations), it is preferable that the players concerned are aware of the fact that the defendants invoke cultural codes or customs to put pressure on the victim and push them to retract their unfavourable statements. If the defendants used personal and private objects belonging to the victim, and these objects were seized, they must be returned to the victim in order to break the spiral of coercive dependence.

It is therefore preferable that both the frontline services and the bench and state prosecutors have sufficient knowledge of these socio-cultural contexts to be able to deal with the victims appropriately in these types of cases.

**RECOMMENDATION 11. The Centre requests that the Minister of Justice facilitate access of the Bench and the state prosecutors to all the case law relating to trafficking in human beings for the whole of Belgium.**

The Centre has found that during the course of the proceedings, judges are often not informed of the relevant court orders taken in other jurisdictions, even though they can be decisive in the successful outcome of the proceedings.

**RECOMMENDATION 12. The Centre requests that the Belgian authorities develop the reporting of the data concerning the trafficking in and smuggling of human beings, in order to be able to meet the needs of national and European policies.**

Objectives established in consultation are lacking in the reports written by the players. There is no platform for consultation to harmonise the needs in data and the offer in information, even though regular consultation is necessary. Therefore, there is an urgent need for information and analyses that form a link between police reports and prosecutions, or prosecutions where the victims have been identified. In other words, the multidisciplinary model on which our country rests, at this level, has not yet resulted in any added value.

## APPENDIX: A PROJECT UNDER CLOSE EXAMINATION

### PREVENTING TRAFFICKING IN HUMAN BEINGS THANKS TO CORPORATE SOCIAL RESPONSIBILITY

#### *Trafficking in human beings for the purpose of labour exploitation*

Trafficking in human beings for the purpose of labour exploitation is a complex phenomenon. The content of the notion of human dignity, a determining factor in the qualification of acts of trafficking for the purposes of labour exploitation in Belgian law, is subject to the judge's assessment<sup>176</sup>. Case law has developed and allowed the phenomenon to be defined on a legal level. However, the players in the field, especially economic players, always lack indicators allowing them to detect the practices of trafficking.

Acts of human trafficking cannot be defined only in the light of the spectre of the criminal offence. As clearly shown in the Centre's previous annual reports, we must take into account a multitude of factors allowing us to detect or encourage the practices of human trafficking for the purposes of labour exploitation.

Faced with the complexity of the phenomenon, among other things, it is the association of the world's corporate players that could prove interesting. Even if countries are obliged to engage in the fight against trafficking in human beings as a priority, their actions must be extended by the players in the field. As regards trafficking in human beings for the purposes of labour exploitation, the corporate world has a substantial role to play. Following numerous consultations with international institutions engaged in the construction of other standards (ISO<sup>177</sup>, Organisation for Economic Co-operation and Development (OECD), World Bank, European Union), a consensus associating organisations of employers, employees and the defence of human rights has taken shape. This had led to the unanimous adoption by the Human Rights Committee, in June 2011, of the *Guiding principles on business and human rights*. The main points of these principle guidelines are:

- assertion of the state's central role in the protection and promotion of human rights regarding businesses;
- the priority given to a risk-based approach;

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<sup>176</sup> On this subject, see annual report 2005, Trafficking in and smuggling of human beings, *Belgian policy on trafficking in human beings: shadows and lights*.

<sup>177</sup> ISO (International Organization for Standardization) is the world's largest producer of voluntarily applied international standards. These standards give state of the art specifications for products, services and good practices, helping to make industry more efficient and effective. Developed through global consensus, they help to break down barriers to international trade. [www.iso.org/iso/fr/home/about.htm](http://www.iso.org/iso/fr/home/about.htm)

- the extended responsibility of the value chain, all the stages determining an organisation's ability to gain a competitive advantage;
- to use the written international law of human rights and labour rights as a reference.

### ***Prevention guide***

Within the framework of the general "Security and Safeguarding Liberties " programme, the European Union (EU) established a specific programme for the period 2007-2013 aimed at supporting projects concerning prevention and the fight against crime, whether organised or not. The Centre for Equal Opportunities and Opposition to Racism is currently taking part in one aspect of this programme known as ISEC. Co-financed<sup>178</sup> by the European Commission, this project aims to study the way in which social corporate responsibility (SCR) and the implementation of the United Nations principle guidelines relating to businesses and human rights<sup>179</sup> can act as a tool in the prevention of trafficking in human beings.

To achieve this, each of the seven European partners involved in this research<sup>180</sup> is working on the analysis of the functioning and the organisation of a particular sector of economic activity (agriculture, hotel business or construction) with a view to developing a practical prevention guide aimed at businesses in these potentially "at risk" sectors. The University of Tilburg is co-ordinating this project.

Among the victims of human trafficking for the purposes of labour exploitation who have come to the three support centres, there are a high number of workers from the construction sector. As a result, the Centre has chosen this sector as the guide's subject of analysis and implementation. Following the analysis of the functioning of this sector of activity (on the basis of documentary research and interviews with key players), the Centre shall develop, in collaboration with businesses in the sector, a draft tool for the prevention of trafficking in human beings that can be implemented in the construction sector, probably initially in companies that have contributed to its development.

The project began in December 2012 and will be spread over a period of approximately eighteen months.

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<sup>178</sup> The European Commission's guidelines expect it to be able to contribute a maximum of 90% of the project's total cost; i.e. EUR 348,417.20 of the total budget estimated at EUR 386, 690.56.

<sup>179</sup> [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_FR.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_FR.pdf)

<sup>180</sup> University of Liverpool, United Kingdom; Centre for Equal Opportunities and Opposition to Racism, Belgium; Università Ca' Foscari Venezia, Italy; National Board of Social Service, Danish Centre against Human Trafficking, Denmark; Ludwig Boltzmann Gesellschaft. Österreichische Vereinigung zur Förderung der Wissenschaftlichen Förderung, Austria; Gabinet d'Estudes Sociales, Spain.

## Colophon

### Annual Report on Trafficking in and Smuggling of Human Beings 2012

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