

HUMAN TRAFFICKING

BUILDING BRIDGES

*2013 Annual Report of the independent rapporteur on
human trafficking*

Belgium

**FEDERAL CENTRE FOR THE ANALYSIS OF MIGRATION FLOWS, THE
PROTECTION OF FUNDAMENTAL RIGHTS OF FOREIGNERS AND THE
FIGHT AGAINST HUMAN TRAFFICKING**



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INTRODUCTION

This seventeenth "Annual Report on Human Trafficking" is the first of its kind to be compiled by the new Federal Centre for the Analysis of Migration Flows, the Protection of Fundamental Rights of Foreigners and the Fight against Human Trafficking. Since 15 March 2014 there have effectively been two new centres in place as successors to the former Centre for Equal Opportunities and Opposition to Racism. The Interfederal Centre for Equal Opportunities is responsible for promoting equal opportunities and fighting discrimination; the Federal Migration Centre – as it is called while awaiting a decision on a new name by its board of directors – has taken over the migration related duties, including the responsibility for stimulating the fight against human trafficking. Also, on 1 September 2014, the Royal Decree was published officially appointing the Federal Migration Centre as the independent component of the mechanism for a National Rapporteur on Human Trafficking, in addition to the Interdepartmental Coordination Unit which reports on behalf of the Belgian State. The new Centre will retain its powers to take legal action: in 2013 the board of directors voted to file civil charges in 20 cases (13 for human trafficking and 7 for human smuggling). This facilitates the Federal Migration Centre to share its expertise with the judiciary and other stakeholders and to acquire a thorough knowledge on the phenomenon. The Federal Migration Centre aims to continue its role as an independent monitoring mechanism, in relation to all human rights which falls under its competence, in a spirit of dialogue and cooperation.

This seventeenth Annual Report is presented in a different format than in previous years. This is in response to the request by the European Commission Anti-Trafficking Coordinator to compose the national reports according to a specific model or template (internal document). The model was developed in dialogue with the informal network of national rapporteurs and equivalent mechanisms and should considerably streamline the process of compiling a European report. After consultation with the other component of the Belgian rapporteur mechanism, the Federal Migration Centre opted to adopt both the structure and methodology of this model, including, where possible, policy analysis in terms of output, outcome and impact. Also at the request of the European coordinator, we shall give extensive consideration to financial investigations in the context of crimes of human trafficking, and in this way build further on the basis laid down in the Annual Report on Human Trafficking and Human Smuggling 2011, entitled "The money that matters", which served as a source of inspiration for the EU-strategy of the European Commission at the time. However, this model does not include a section for discussing the phenomenon of human smuggling, and we therefore decided not to include human smuggling in this report, although it is an area in which the Federal Migration Centre remains highly active. In our next Annual Report, we shall continue to report on human smuggling, but in a different form.

This Annual Report will focus once again on the victims of human trafficking. It should be emphasised that the Belgian official victim status offers clear guarantees. In 2013, 116 individuals assumed the official victim status and 72 prior victims received permanent residence permits. Occasionally, the transnational referral mechanism has also been applied: in the recent past, several victims have been transferred from other countries to one of the specialised support centres in Belgium.

Yet there is also cause for concern. In its memorandum for the elections of May 2014, the Centre called upon the government to fully support the EU-strategy 2012-2016 against human trafficking which puts the focus on "detecting, protecting and assisting victims". Undeniably, it all starts with the detection of victims: in this Annual Report we shall examine the essential role played by the frontline services in the detection of victims. The functioning of the support centres for victims of human trafficking is a part of the protection mechanism: these three centres have now been officially recognised, but they are still unable to access adequate and, particularly, structural financing. Victims also need other forms of support, such as automatic access to prompt, cost-free legal aid. Furthermore, there is a continuous need for the training of frontline services and magistrates on all aspects relating to the fight against human trafficking.

The "law establishing sanctions and measures against the employers of illegally-staying third-country nationals" poses an additional challenge, both for the three support centres and for the Federal Migration Centre, which now has the power to take legal action to claim unpaid wages on behalf of these employees. This was addressed in the Annual Report Migration 2013 of the Federal Migration Centre. It also addressed the distinction with the status of victim of human trafficking.

In addition to attention for the victims, the detection, investigation and prosecution of the perpetrators remains a necessity. A proper policy also requires reliable numerical data to be made available, which would allow effective analyses to be carried out as a basis for shaping policy. The necessary conditions for making this happen are still not in place, despite the fact that the plans for developing an information and analysis system for human trafficking and human smuggling (IAMM) have been on the table for many years now. Although this Annual Report pools the figures from six different stakeholders, this is only a first step. It is unfortunate that the Minister for Justice is not formally required to inform the Centre of all decisions of the courts and tribunals, which was highlighted by its directors as a priority at the time of the reorganisation of the Centre. In compiling this Annual Report, the Centre was able to study some 50 judgements and rulings, and further in this report, an analysis is presented of just over 30 of these.

This Annual Report is being published in the midst of the formation of the new federal Parliament. It is a timely occasion to fully engage in the debate on new policy options, and thus, on the policy recommendations presented at the end of this Annual Report. We are counting on the new government and the parliament to play an active role in this policy, as the previous legislatures have done. We are counting on Parliament to thoroughly examine the official victim status from a human rights point of view. We are counting on the new government to guarantee that the three specialised support centres can have access to sufficient structural funding; to ensure that the police, social inspectorate and judicial authorities have sufficient capacity for, and give sufficient priority to, the detection, investigation and prosecution of human trafficking and human smuggling; to now finally make serious advances in creating a system for data collection and analysis in order to develop a robust prevention policy.

Through this Annual Report we hope to make a contribution, both in Belgium and in Europe, to the ambitious EU-strategy 2012-2016 the goal of which, let us not forget, is the elimination of human trafficking.

We hope you will find this an informative and thought-provoking report.

Patrick Charlier, Deputy Director

Jozef De Witte, Director

CHAPTER I: ASSESSMENT OF TRENDS IN HUMAN TRAFFICKING

Methodology

For the description of the trends, the Centre has worked on the basis of the judicial cases and case law in those cases in which the Centre has been a civil party. Other information sources included interviews with relevant stakeholders and previous annual reports by the Centre, as well as by the police, inspection services, the Belgian Financial Intelligence Processing Unit (CTIF-CFI or anti-money-laundering unit), Europol and the Parliamentary committee of inquiry on organised crime of the Senate.

Interviews were carried out with members of the federal and local police, specialised support centres for victims of human trafficking, reference magistrates on human trafficking, Labour Prosecutors, social inspection services, the anti-money laundering unit CTIF-CFI and the Central Office for Seizure and Confiscation (COSC). These interviews were open, informal and confidential conversations.

The focus is on the situations of sexual and labour exploitation because, in part through the interviews and the case law, there is sufficient representative material available to form an accurate picture of the phenomenon. Moreover, these two types of exploitation are the most prevalent in human trafficking cases in Belgium.

Each profile is illustrated in a separate text box with an example from the case studies or case law. For the period 2011-2014 the Centre performed its own analysis of 23 cases of sexual exploitation and 17 cases of labour exploitation.

1. Assessment of trends based on criteria

The following criteria were used to assess the trends: nationality, gender and age of the victims and perpetrators; the types of exploitation; new and most prevalent trends; *modi operandi*; the role of organised crime; other criminal activities; involvement of legal entities; method of recruiting victims; the high-risk sectors; the criminal proceeds of the human traffickers and the handling of the financial transactions.

1.1. Sexual exploitation

1.1.1. Characteristics

AN INTERNATIONAL PHENOMENON

Human trafficking for the purposes of sexual exploitation has become an international phenomenon. The police are increasingly observing this type of human trafficking in border areas and in connection with large-scale prostitution networks in the form of international exchange programmes. The prostitutes are moved from one city to another, across international borders (Germany-Belgium-the Netherlands), which complicates the work of the police. Efficiently organising wiretaps and surveillance for example requires extensive international cooperation between the police and justice authorities in the concerned countries. Cooperation of this type does not always run smoothly and criminal networks are aware of this and take full advantage of it.

PROFESSIONAL ENTREPRENEURS

Networks, active in sexual exploitation operate as entrepreneurs. These are "learning" organisations which adapt themselves quickly and are constantly growing more professional.¹ They set up bogus corporations and invest in the economy. Organised crime networks of this type use legal corporations not only to launder their criminal proceeds, or to provide a front for their criminal deals. In a number of cases, the corporate structures are also an essential element for the smooth functioning of the criminal network. Concretely, for example, they set up travel agencies or employment agencies in order to recruit and transport victims at the same time as using these corporations as a front for their criminal activities.

Sometimes, the criminal proceeds are invested in the country where the exploitation is being perpetrated, particularly when the perpetrators have settled there permanently, but generally, this money is transferred to the country of origin because it is more difficult to seize or to confiscate it there. Like Europol,² in the cases reviewed, the Centre has been able to confirm that criminal proceeds are being transferred to the countries of origin through the use of cash couriers. Sometimes, the money is transferred online, using the names of the victims.

WHAT ABOUT CHILD PORNOGRAPHY?

Child pornography, too, falls under the definition of human trafficking and should theoretically lead to a judicial case for human trafficking for the purposes of sexual exploitation. However, the Centre is aware of just a single such case, which in fact resulted in acquittal.³ The recent amendment of the human trafficking law should facilitate convictions on this count in the future, as will be discussed in the following chapter.⁴

¹ S. JANSSENS, "Fenomeenanalyse van mensenhandel", in Ch.-E. CLESSE (dir.), "Traite des êtres humains, Mensenhandel-Mensensmokkel", *Les dossiers de la revue de droit pénal et de criminologie*, Brussels, La Chartre, 2010, p. 41 and subsequent.

² Europol, *Trafficking in Human Beings in the European Union: a Europol perspective*, June 2009. www.europol.europa.eu.

³ See Chapter 4.

⁴ See Chapter 2, point 1.1.1.

1.1.2. Network profiles

A) NIGERIAN NETWORKS

- *Pyramidal and familial structures*

The Nigerian networks have a pyramidal or familial structure. In addition to human trafficking and human smuggling, they are also active in credit card fraud, scams, corruption and money-laundering. They are mobile and well-organised internationally and they use corporate structures to facilitate their criminal activities. They have a self-perpetuating organisational structure which poses a serious challenge in the fight against human trafficking. A key role is played by female leadership in the guise of the Nigerian “madam”. Often, the “madam” is someone with knowledge of the prostitution system who has obtained legal residence documents through a marriage of convenience. In most cases she will have worked as a prostitute herself, having bought her freedom by recruiting new victims.

The victims, which often include minors, will generally have sworn an oath, in the presence of a voodoo priest, to pay back their travel expenses and other costs by working as prostitutes. The Nigerian “madam” puts the victims to work, monitors them, collects the income and manages their debt. She also plays a psychologically supportive role towards the victims who therefore begin to regard her as a mother or sister figure. Various cases have involved “madams” who themselves have assumed the official status of human trafficking victim in the past, giving them insider knowledge of the victim procedure.

- *Possibly over 1,000 Nigerian women per year*

According to the police, each year over 1,000 Nigerian women travel to Italy, Belgium, the Netherlands and France. There are some 20,000 Nigerian women working in the sex industry in Italy. Often, the women will be encouraged by their families to work abroad as this is the only way to improve their own standard of living. Via acquaintances in Nigeria they will make contact with an intermediary or trafficker. At the start of the journey, the victims undergo a ritual involving voodoo or juju practices. They must swear their loyalty and the trafficker receives a package containing bodily materials from the victim, such as fingernails, hair and blood. This grants the traffickers psychological power over the victim.

Usually, various victims will travel together through different countries in Africa and Europe, by a variety of guides, before arriving in Belgium. The journey can take months and involves crossing the desert and/or dangerous boat trips over sea. The Italian island of Lampedusa is one of the notorious transit locations. Often, these women are required to earn money as prostitutes already during their journey in Africa in order to pay their debts. Women and girls who fall ill during the trip are left behind. It is estimated that half of the girls are arrested during the journey and sent back to Nigeria.⁵

⁵Source: police reports in judicial cases.

Once they have arrived in Belgium, the women are finally assigned to the ringleader who then puts them to work as prostitutes or sells them onwards. The victim is given the standard story about high debts incurred to pay for the journey and usually accepts this without any form of coercion. Most of them do not wish to return to their native countries because they fear that they will be treated with contempt by the communities or disowned by their families for not having acquired wealth and/or because their families have been threatened.

- *International exchange of Nigerian women*

The Nigerian networks use international exchange programmes. A Nigerian madam in Belgium may, for example, have victims under her control in Norway, Sweden and Spain. There appear to be exchange programmes whereby, for example, a Nigerian madam in Spain will send a girl to work for her in Belgium, but under the supervision of the Nigerian madam based locally. Sometimes, Nigerian victims are delivered upon request. In a specific case, the defendants attempted to remove a Nigerian victim, by request, from an asylum centre in Greece so that she could work as a prostitute in Belgium.

- *Violence against disobedient victims and their families*

The Nigerian networks do not hesitate to use violence against victims or their families. To punish the family, the human traffickers will engage the services of local mercenary gangs. In one case⁶ the Belgian rogatory commission witnessed the patrol of a gang of "area boys", members of local gangs, who were hired by human traffickers on multiple occasions. This gang patrolled a market square accompanied by a number of hyenas and baboons on leads to enforce their demands and sow fear. Gangs of this type play an important role. They take control over a district of Benin City and, for a fee, provide so-called protection to the residents. These gangs can also be hired to "teach someone a lesson". According to a magistrate, a wiretap revealed that during a type of trial session, a voodoo or juju priest issued a condemnation for a victim's failure to uphold a sworn oath. The priest commanded the "area boys" to decapitate the victim.

Various Nigerian cases have given rise to financial investigations.⁷ These have revealed that the money transfers are usually done via money transfer systems and cash couriers who pose as business travellers. In addition, there is what is known as the "Black Western Union", which is known by this nickname in the Nigerian community. This "Black Western Union" is an African version of the Pakistani hawala system whereby the profits are transferred via an informal network of money transfers in telephone shops and grocery stores into Nigeria. The human traffickers invest their money in real estate in Nigeria.

⁶ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 50-51.

⁷ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 17-19.

Example: Nigerian human trafficking and human smuggling case, Brussels⁸

A network smuggled young Nigerian girls, including several minors, to Belgium to work as prostitutes. They had to pay 55,000 euros for the travel, a debt which they repaid by working as prostitutes, among other activities. Various victims underwent the standard voodoo rituals to keep them under control. The Brussels court regards rituals of this type as fraudulent manipulation. Some of the girls had already been put to work as prostitutes in other European countries, including Spain. Due to lack of work, they were transferred to Belgium, at the request of their madam.

The chief defendant worked together with various contacts in Nigeria, each of whom had a particular specialty (identity documents, visas, smuggling routes, etc.). He also had henchmen in Spain and Turkey to bring the girls to Belgium. The other defendants were part of an organised network that brought Nigerian women to Belgium to work as prostitutes.

B) BULGARIAN NETWORKS

▪ *Professional networks that are difficult to combat*

The Bulgarian networks operate as true criminal entrepreneurs on an international scale. They work from Bulgaria via local henchmen in Belgium, the Netherlands and Germany. These professional networks are difficult to combat. At the slightest suspicion that a police raid is on the way, the victims are rapidly transferred to another location. Both the pimps and their girls are highly mobile and move efficiently between various cities in Belgium, the Netherlands and Germany. The victims hail from the classic recruitment sites such as the Bulgarian cities of Sliven and Varna that have a certain reputation for prostitution, but recruitment has begun in new zones as well.

▪ *The role of escorts*

The pimps adapt their activities to the police techniques, for example, by no longer collecting the money directly from the prostitute. They have escorts do this for them. These women are important local intermediaries, and are often Bulgarian prostitutes or former prostitutes. It is their job to oversee the local prostitution working terrain in the Western European cities so that the Bulgarian bosses no longer have to leave their country. They exert control over their colleague-prostitutes, monitor the bars, collect the money and arrange the contacts.

The activity of the escorts falls within a grey area. On one hand, they collect the window tax and negotiate with the pimp to arrange a new girl if one of the girls drops out, to ensure that there is no loss of income. On the other hand, they protect their prostitutes, they are considerate, take care of the girls' safety and handle administrative matters. According to the police, the prostitutes regard the escorts as a second mother.

▪ *Lack of interest in the official status of victim of human trafficking*

The victims are for the most part Bulgarian girls working in a so-called win-win situation. They intentionally enter the world of prostitution in order to earn money rapidly and regard it

⁸ Brussels Criminal Court, 24 February 2012, 46th ch.; Brussels Court of Appeal, 31 October 2012, 13th ch.; Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 79.

as a temporary project lasting for perhaps two years, so that they will later be able to have a sufficiently high standard of living. Because of this so-called win-win situation and their legal residence status, as a category of prostitutes, these Bulgarian girls have little interest in the official status of victim of human trafficking.

- *Transporting money via Bulgarian cash couriers*

In the past, money would be transported via money transfer agencies. Currently, Bulgarian cash couriers are increasingly taking care of the transport, via a regular route with pickup points in Belgium, the Netherlands, Germany and Bulgaria. Because they are highly trusted, they transport not only the money for the pimps, but they also work, for a set percentage of the profits, for the entire Bulgarian criminal underworld in the Benelux region. Bulgarian prostitutes also make use of the cash couriers to send their money to their families in Bulgaria.

These Bulgarian business networks invest their money primarily in the Bulgarian economy, including in the tourism sector, in financial institutions, import and export and car sales. In this way, they are able to shelter their criminal proceeds from international legal actions.

Example: Bulgarian case of human trafficking, Brussels⁹

The crimes took place from 2007 to November 2011 on Aarschotstraat, a prostitution area in Brussels. The defendant was convicted of human trafficking;¹⁰ the victim did not file civil charges. The victim and the perpetrators were originally from the Bulgarian city of Sliven, a recruitment location for prostitutes. The defendant ran various companies and a bar in Bulgaria.

A young Bulgarian woman had initially begun working as a prostitute voluntarily in Bulgaria and later via her "loverboy" in Germany. There, the defendant bought her in a café that was frequented by Bulgarians from Sliven. He forced her to work as a prostitute on Aarschotstraat. The defendant provided her with housing, paid the window tax and supplied her with a false address in the event of a police raid. She had to hand over her income to the defendant.

⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 91-93.

¹⁰ *Ibid.*, pp. 129-130.

In 2008 during a raid by the federal police, the same defendant was observed in the company of another 18-year-old girl who was working as a prostitute in a bar. The girl had entered into a relationship with the defendant while she was still a minor, and had accompanied him to Brussels. She was satisfied with her income and working conditions. In the meantime, since 2011, she herself had become actively involved in the prostitution network and had, at the request of the defendant, assigned a suitable location for prostitution to the victim who was later intercepted. Furthermore, via a money transfer agency, she had made multiple suspicious money transfers to various people in Sliven. For this reason, the court no longer regarded this girl as a victim.

C) ROMANIAN ROMA-NETWORKS

▪ *Regional and clan-based*

The Romanian networks and their victims mostly come from certain regions in Romania, such as Braila-Galati, where various gangs of Roma perpetrators are concentrated. These criminal gangs make up a small minority within the Roma community. According to the police, these Roma gangs are well organised. They are mostly groups of loverboys and organised gangs who maintain contact with their clans in Romania. They have been able to fill the vacuum that was left after the decline of the Albanian networks.

The Roma networks are regionally and clan linked. The cultural background of the Roma plays an important role in the internal functioning of the Roma gangs. They have their own social system with their own values and norms, as well as a parallel justice system. For example, within the Roma community, girls may get married at the age of 12 and are regarded as adults from that point on. The Roma gangs take advantage of this to recruit minors into the prostitution world. They are aware that these minor victims will generate far more profits for them than adult victims.

▪ *Violence for disobedience*

These Roma gangs use physical violence to punish "disobedient" girls who are often minors. Their victims usually end up in forced street prostitution and organised begging, often after having worked for a stint in Spain. The victims often have the same Roma origins but this is not a general rule. These minor-aged victims do not always find a way to claim official victim status.¹¹

¹¹ See chapter 2, point 2.2.

Example: Romanian case involving a Roma gang¹²

The defendants belonged to a Roma gang from Tirgu Jiu in Romania, a poor region where coal mines were once operated. This criminal organisation had definitely been active since 2010. Initially, the chief defendant was active in Portugal, but after legal problems with the Portuguese authorities, he moved to Belgium to put the young women, whom he considered his property, to work as prostitutes. The victims – including various minors – had also come from Tirgu Jiu, but did not belong to the Roma community.

In Romania young girls starting from the age of 16 were seduced by loverboys who, under the pretext of holiday jobs, lured them to the region of Santarém in Portugal where, after physical threats and violence, they were sold to the leader of a Roma gang. The selling price for a girl ranged between 2,000 and 5,000 euros. From Portugal these girls were forced by their pimps to travel elsewhere in Europe where they were then forced to work as prostitutes. When they refused to work as prostitutes or attempted to contact the police, their families in Romania were threatened.

Upon arrival, the girls were placed in a bar in Sint-Truiden. They had to hand over half of their income to the operators of the bar, and the other half to their pimp. If the girls refused to cooperate they were intimidated and beaten. They were also forced to accept unprotected sex because they could then charge a higher price. This resulted in venereal disease and forced abortions.

The defendants provided the minor-aged victims with false identity documents so that they could allegedly be legally employed in the bar. These identity documents were not in the possession of the women themselves, but were held by one of the defendants. The victims had to reimburse the pimp for the costs of these false identity papers.

The criminal assets amounted to 512,066 euros. The income from this prostitution work was transferred via money transfers in the name of other members of the criminal organisation to the parents of the chief defendant in Romania.¹³ This money was then invested in real estate in the names of the suspects, their parents or other family members.

¹² See chapter 4: Leuven criminal court, 4 July 2013, 17th ch. and Brussels Court of Appeal, 13 November 2013, 13th ch.

¹³ See chapter 2, point 1.2.

D) THAI NETWORKS

▪ *Massage parlours*

Thai criminal organisations use Thai massage parlours in Belgium for the sexual exploitation of young Thai women. Often, the massage parlours are run by Belgian managers. In the Thai networks the business is organised chiefly by women. These networks are active in human smuggling and trafficking for the purposes of both sexual and labour exploitation. They bribe government staff, including within embassies, and engage in money-laundering via money transfers. They arrange marriages of convenience and use these marriages to increase their victims' debts.

▪ *Debt bondage*

The victims are required to pay back their so-called smuggling debts through prostitution, so the situation could be described as debt bondage. Those who do not meet the "sexual standards for prostitution" are put to work in the hospitality sector where they are exploited economically.

Almost all of these Thai networks work with the same Thai travel agency, which has been operating since 1999 and is run by a Thai woman whose name appears in various Belgian cases concerning Thai massage parlours. This company recruits its victims in a karaoke bar in Bangkok or Pattaya and delivers them upon request.

The travel agency then provides passports and a Schengen visa, chiefly via the Swedish embassy in Bangkok. A rogatory commission informed the Swedish authorities of this. The case has since been investigated. Per victim, a fee of 15,000 euros is demanded. The exploiter pays 5,000 euros and the girl pays the remaining 10,000 euros. Usually, the girl cannot pay such a large sum all at once. She is then asked to pay back her debts to the massage parlour manager in instalments. She gets this money from her income as a prostitute.

Example: case of a Thai massage parlour in Mechelen¹⁴

During the trial, the Public Prosecutor denounced the fact that the two chief defendants were still in Thailand and that the investigation was being blocked there, preventing both defendants from being questioned. "Our rogatory commission was ready to go, but we did not receive permission from Thailand", according to the Public Prosecutor. "It is clear that these two people were receiving political protection in Bangkok."

The two central figures of this Thai criminal organisation appear in various cases in Mechelen, Antwerp and Dendermonde. These involved ten Thai massage parlours. The "buyers" of the girls are different in each case. The victims remain in the power of these traffickers because of the requirement to repay the debt. But later on as well, they remain dependent on them because they have entered the country undocumented and have no safety net here.

¹⁴ See chapter 4.

These two kingpins remain in Thailand and will probably never be penalised. They recruited the women in Thailand, promising them a better life in Europe by offering them jobs as masseuses. The victims had to pay 10,000 to 20,000 euros for this. In exchange, they were given passports, visas and transport to Europe. Because many of the victims were unable to pay, they worked on credit. Their income in Belgium was handed over first to their creditors, so that the victims were in a position of dependency on them.

1.2. Labour exploitation

Human trafficking for the purposes of labour exploitation is found in a very wide range of economic sectors. This also applies for new and atypical sectors in which the frontline services do not initially consider illegal workers as victims of human trafficking. An example of this is the case of a catering company operating along motorways that was discussed in detail in the Annual Report 2010.¹⁵

In addition to the many small-scale cases, there are also cases with organised forms of human trafficking for the purposes of labour exploitation, which can sometimes be linked to criminal organisations.

In the following pages, we shall focus on the major high-risk sectors.

1.2.1. The construction sector

According to the social inspection services¹⁶ and the money-laundering reports¹⁷ of the Belgian Financial Intelligence Processing Unit (CTIF-CFI), in recent years there has been an increase in the number of Romanian and Bulgarian bogus independent contractors and seconded workers who are forced to work in the construction sector in a context of social dumping. They are easy for human traffickers to exploit. The conditions of their housing and employment deviate grossly from the legal standards for the employment, safety and health of employees and Social Security. They are paid a wage of 5 euros per hour, part of which is withheld as payment for their lamentable housing.

¹⁵ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 56-63.

¹⁶ Interviews with the social inspectorate.

¹⁷ CTIF-CTI, *White Paper on criminal money, 20 years of combating money-laundering and terrorist financing*, 2013; J.-C. DELEPIERE, P. DE KOSTER, M. PENNA, *Les flux financiers illégaux de blanchiment de capitaux and relation avec le trafic d'êtres humains, de migrants et l'exploitation de main d'œuvre clandestine*, 2013.

Example: case of human trafficking using bogus secondment in the construction sector in Turnhout

A case of exploitation in the construction sector using bogus worker secondment from 2007-2008 led to a conviction for human trafficking in 2012.¹⁸ Romanian labourers from a poor region were lured through classified ads in advertising circulars with offers of good jobs in Belgium with proper labour conditions.

The defendants had set up a system for their scam. In Romania there was a network for recruiting the labourers: they published the classified ads, provided contacts and a company locally, provided false documents and organised the transport. The victims worked as fictitiously seconded employees for a Romanian construction firm which in turn was working on behalf of a Belgian subsidiary of an English corporation. The latter used the Romanian construction workers either on its own worksite in Belgium or operated as a subcontractor using the same labourers for construction sites for other corporations (clients). The manager of the Romanian company acted as gangmaster and was a partner in the Belgian subsidiary of the English corporation. The secondment documents from the Romanian company were forged. In reality, the forgeries were found to have been made with photocopies and the necessary cutting and pasting. Moreover, the Romanian company was not authorised to organise secondment because, since being established in 2007, it had undertaken no activities and no longer had any active personnel in Romania.

The court ruled that the inhumane working and living conditions were sufficiently demonstrated on the grounds of the following observations: the labourers had no social protection (due to the absence of an employment contract); they worked long days, including Saturdays; they were constantly assigned to different work sites, whereby one of the victims was transported to the work sites in the trunk of a car; they were not paid fairly and they were unable to freely access their wages; they had no access to medical help. The housing conditions were also inhumane: the labourers were crowded into excessively small studios that did not meet fire safety standards. The sanitary facilities were minimal, with hot water available only occasionally. As payment for this accommodation, the chief defendant withheld a part of their wages.

In addition, there are cases of human trafficking involving Brazilian networks who falsely seconded Brazilian labourers as "Portuguese" employees. Most of the workers came from the same region in Brazil, specifically, Goiás or Minas Gerais. The transport was organised by travel agencies.

The Brazilians would arrive at a fixed arrival point in Brussels. According to the Federal police, based on their Brazilian identities, false Portuguese residence permits would be created in consultation with their employers. They would then settle in Portugal for a brief period of time in order to obtain a tax identification card there. After that, they would go to work in Belgium or elsewhere in Europe on construction sites as subcontractors for Portuguese companies.

¹⁸ Turnhout Criminal Court, 5 December 2012, 13th ch.; Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 86.

By using these forged documents based on real identities, combined with a real Portuguese tax identification card and secondment documents, they are able to mislead the police and inspection services during checks. The perpetrators later vanish without a trace and there is nothing the police can do about it.¹⁹

In the meantime, these networks have further professionalised their working methods by using Portuguese companies that officially work with seconded personnel.²⁰ Because of the heavy burden of proof in cases of human trafficking, magistrates are more inclined to qualify such cases as illegal employment.

1.2.2. The cleaning sector

The CTIF-CFI has warned of human trafficking practices in the cleaning industry.²¹ According to their analyses, there have been multiple cases in which front companies have been used with fictitious registered offices. These companies act as a go-between for cleaning companies and questionable subcontractors.²²

In addition, the CTIF-CFI has observed a the use of chain of companies, strawmen, personal accounts and transactions which do not correspond to the corporate purpose of the company or which do not correspond to the financial health of the company.²³ According to the CTIF-CFI-report, all of these observations indicate the existence of an organisation that is based on a criminal structure.²⁴

In recent years, during inspections, the social inspection services have observed human trafficking practices in the cleaning sector for fast food restaurants. These restaurants pit two small cleaning companies against one another to compete for a subcontracting job. The staff are required to work one month for free before the company is awarded the contract. That is one of the reasons why the subcontracting cleaning company illegally employs third country nationals without residence papers. Under the guise of a trial period, these labourers are forced to work for from several days up to even three weeks for free. Later they can receive a net monthly salary of 800 euros, for which they must work seven days a week with only two days off per month. According to a witness, some of the labourers are also working under false identity papers that they had to pay for themselves in instalments.

¹⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2008, *Enlisting people and resources to combat the phenomenon*, p. 27. (only an abridged English version available).

²⁰ CTIF-CTI, *White Paper on criminal money, 20 years of combating money-laundering and terrorist financing*, 2013.

²¹ CTIF-CTI, *op.cit.*; C. DELEPIERE, P. DE KOSTER, M. PENNA, *op.cit.*

²² CTIF-CTI typology report 2008, www.ctif-cfi.be.

²³ *Ibid.*

²⁴ *Ibid.*

Example: case of human trafficking in a cleaning company in Charleroi

The manager was convicted of human trafficking. His cleaning company was active in a number of fast food restaurants and exploited two illegal employees.²⁵ The employees sometimes had to work seven days in a row for a fixed pay of 25 to 35 euros per night (from 10 or 11 PM until 6 or 8 AM the next day). The employees were paid at most 250 to 300 euros per month. The suspect took advantage of the fact that they were living in the country undocumented and falsely promised them that he would provide an employment contract for them.

1.2.3. The carwash sector

The carwash sector is another area in which organised forms of human trafficking for the purposes of labour exploitation are found. Hand-carwashes are particularly susceptible to fraud because they involve more human labourers than machinery. The perpetrators and victims are Indo-Pakistani, chiefly Pakistanis but also sometimes Indian Sikhs.

The cases involve both small-scale exploitation as well as large-scale organised networks. In collaboration with the frontline services, in recent years, magistrates have conducted various coordinated raids. In the wake of these raids, a financial investigation of the cash flows and money-laundering practices is also sometimes launched.²⁶

The analysis of a large-scale carwash case²⁷ revealed bogus constructions which could be traced to a number of major organised crime kingpins. These organisations were active in the 1990s with VAT-carrousels in the petroleum sector and received considerable attention from the parliamentary committee of inquiry on organised crime in the Senate²⁸.

Example: carwash case Ghent

In a carwash case, the manager was charged with and convicted of human trafficking.²⁹ The defendant, a Pakistani, exploited a foreign national in his carwash. His claim that the man was doing him a personal favour was contradicted by the victim's statements and after a confrontation between the two men. The defendant had recruited him and forced him to work six days a week from 9:30 AM to 8 PM with no pay. Because items were found in his apartment that could be used for the temporary housing of undocumented migrants, according to the court, he had probably acted in the same way towards other foreigners.

1.2.4. The hospitality industry

Chinese restaurants, which are often family businesses, are known as a high-risk niche for human trafficking in the hospitality industry, but they are certainly not the only ones. In

²⁵ Charleroi Criminal Court, 10 December 2010, 7th ch.; Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, p. 91.

²⁶ Police, Annual Report 2007 by the federal police, www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2007_nl.php.

²⁷ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 59-63.

²⁸ *Parl. Doc.*, Senate, session 1998-1999, Doc. no. 1-326/9.

²⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 117-138.

recent years, the frontline services have also discovered such practices in Japanese and Vietnamese restaurants, in Turkish cafés and pita bars and in Belgian snackbars.

The Chinese and Vietnamese cases included both small-scale and large-scale cases involving criminal organisations. In the other cases, it was generally a matter of small-scale or individual cases.

In the cases of Chinese criminal organisations in the hospitality sector, the typical situations of debt bondage are seen. The victims are exploited by Chinese Snakeheads, better known as the Chinese Triads, in a Chinese restaurant in order to repay their smuggling debts. Often, after a certain period, these victims will be transferred to a different restaurant to continue with their debt repayment. With these Chinese criminal organisations, victims are sometimes too frightened to assume the official status of human trafficking victim.

Example: Chinese restaurant case

A case involving charges of human trafficking against the operators of Chinese restaurants at which Chinese workers were being exploited resulted in a conviction.³⁰ One of the victims claimed to have arrived in Belgium via a "Snakehead" smuggling organisation (Chinese mafia). Her passport was taken away and torn up before her very eyes. She worked first in restaurants in Antwerp and Leuven, and later in the defendant's restaurant in Tournai. She worked 14-hour days for a monthly salary of 400 euros. The working conditions were severe (she was given no breaks, her meals consisted of leftover food from the customers, and she had to pay for any broken dishes) and she was housed in precarious conditions (a basement level with a hiding place where the employees had to hide in the event of police raids). When the victim stopped being paid and requested her salary, she was put out on the street and the defendant threatened to report her to the authorities.

1.2.5. Retail

Human trafficking practices have also been discovered in telephone shops and convenience stores, as well as in butcher shops and bakeries. In the cases of Belgian, Turkish and Moroccan bakeries and butchers, the victims were generally from Morocco, and living and working in Belgium undocumented. These cases usually involve small-scale labour exploitation.

In the Indo-Pakistani telephone shops and convenience stores, in addition to the small-scale cases, situations have also been discovered whereby the victims have to repay their smuggling debts by working in the shops for free, and criminal organisations are involved, with the victims being chiefly of Indo-Pakistani origin.

According to case law,³¹ the following elements are regarded as proof of working conditions that are an offence against human dignity; having to work seven days a week and/or more

³⁰ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 88.; Tournai Criminal Court, 6 September 2012.

³¹ Annual Report on Trafficking in and Smuggling of Human Beings 2007, *An integral evaluation of policy in the fight against human trafficking*, p. 111. (abridged English version available).

than 12 hours per day for a weekly salary of 50 to 60 euros; withholding of wages; substandard housing (unventilated room, no sanitary facilities, heat or water).

Example: case of human trafficking in a telephone shop

In a judgement of 14 January 2013³² the criminal court of Liege ruled that the charges of human trafficking were confirmed against the defendant and his companies.

The man exploited various employees in his telephone shops. The court based its decision on factors such as objective elements that the investigators had collected. These elements confirmed the statements of the employees: the shops did not meet the slightest hygienic standards (no sanitary or other facilities for the employees, no area for them to eat meals); all except one of the employees were undocumented migrants residing in precarious circumstances in Belgium; they were required to work much longer hours than had been agreed through contracts or verbally; the defendant led them to believe that their situation would be regularised; in light of the number of hours worked, the pay was much lower than that of a labourer; no overtime was paid; they were monitored by cameras or by confidants of the employer; certain employees were also required to pay rent; sometimes they were threatened.

2. Profiles of the victims of human trafficking

This part offers an overview of the profiles of victims through the analysis of court cases and interviews with magistrates and frontline services. It is therefore not an exhaustive list. Different victim profiles may be involved, in one single case

2.1. Victims of sexual exploitation

In the 1990s, victims were regularly abducted and forced into prostitution. This led to the typical association in people's minds, as well as in the media, of human trafficking with forced prostitution.

Since then, criminal networks have become increasingly professional. They use other, less conspicuous, techniques for keeping their victims under control. In this way, they have evolved from the use of repressive measures to psychological pressure by subtly making victims dependent on them. This method has also proved to be more effective.

In addition to victims of forced prostitution, in the following pages we shall describe the victims of more subtle forms of sexual exploitation via debt bondage, cultural dependency, drug addiction, loverboys and the so-called win-win situations.

³² Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 89.; Liege Criminal Court, 14 January 2013, 14de ch.

2.1.1. *Forced prostitution*

In forced prostitution, victims are coerced into working as prostitutes by means of physical violence or threats against them or their families.

Forced prostitution is still seen in cases of sexual exploitation. It is the best known profile, but the prevalence of this profile is in decline. Victims of forced prostitution are chiefly found in the Romanian Roma gangs or other Eastern European networks.

The Roma gangs recruit chiefly minor aged girls and are the only ones who occasionally still kidnap their victims.

Based on the cases, it appears that selling women as a recruitment method is sometimes still practised in Bulgarian, Russian, Hungarian, Albanian and Romanian milieus. The victims are sold on the market as merchandise and the buyer-pimp regards his purchases as assets that need to generate maximum returns. Should the victims resist or fail to perform productively, then the victims and/or their families in their native countries are beaten or threatened. The women are under the control of their pimps and are not allowed to leave the house alone. Usually, the pimp takes away their identity papers so that the women are unable to travel freely.

Examples from human trafficking cases of forced prostitution

Testimony of a Romanian girl³³

The minor aged girl was purchased by a Roma gang but initially refused to work as a prostitute. She was only prepared to keep the customers company and drink champagne with them. From her victim statement, it is clear how her pimp was able to finally break her will, psychologically: "I was able to stick to my resolution not to work as a prostitute for five days. After that, he began to threaten my life. He yelled at me, hit me and showed me a pistol. These scenes were repeated several times. After two weeks, B. (the chief defendant) drove me to an abandoned field in which there was an empty shipping container. He pulled me out of the car by my hair, took his pistol and fired into the metal container. He said that I had better do what he says because he had paid €3,000 for me and he wanted to recover the money: "You will do what I say or I will do to you what I did to that container." Then we drove back to the club. That was the first day that I worked as a prostitute."

³³ See this chapter, point 1.1.2; Brussels Court of Appeal, 13 November 2013, 13th ch.

Testimony of a Latvian woman³⁴

A pregnant Latvian woman stated to the police that: “We were threatened and beaten, S. (the defendant) took out a gun (pistol) and a knife that he tossed onto the table. He also showed us strips you could use to tie someone up, and put one of the strips around his hand, tightened it and said that the strip was used to put around the necks of people who refused to talk. S. also took all our money. He beat all three of us. I was pregnant and tried to protect my belly.”

Testimony of an Albanian woman with a daughter³⁵

After the Albanian woman had filed a complaint with the local police in Ukkel, her pimp attacked her six-year-old daughter multiple times. The police drew up an assault report about this. The report states: “Based on our experience in the prostitution environment, we can confirm that this is a known *modus operandi* for pimps in the Albanian underworld for coercing prostitutes who no longer want to work to go back to work.” After these events, the victim and her daughter went into hiding. They have not been seen in Belgium since.

2.1.2. Debt bondage

In debt bondage, the victim is required to work to pay off a debt, while he or she does not receive anything in exchange for the work carried out. Debt bondage is one of the six operational indicators for human trafficking compiled by the ILO (International Labour Organization).³⁶

In cases of sexual exploitation, this type of victim is recruited via a false job advertisement or a smuggling offer. Once they arrive, they are required to pay back their alleged debts by working as prostitutes. Debt bondage is chiefly seen among Asian victims. Once they arrive, they are faced with an ultimatum: either pay back their debts immediately, or pay them back gradually (within interest) by working as prostitutes, for example. Via debt bondage a relationship of dependency is created.

In the Annual Report 2006 it was demonstrated how officially licensed Russian employment agencies would use job advertisements to recruit women as domestic workers in countries such as Belgium, Italy, Spain, Israel and Japan.³⁷ Once they had arrived, these girls were forced, through debt bondage, to work as prostitutes in order to pay back their alleged "debts" for transport, documents and the employment application.

In recent years, there has been sharp growth in this victim profile among Asian prostitution victims. Thai cases are usually based on situations of debt bondage, in which the victims are required to pay the costs for a marriage of convenience and/or a smuggling journey by means of prostitution work in Thai massage parlours. Initially, these girls are too frightened and/or, based on their cultural backgrounds, too ashamed, to make relevant statements and assume the official status of human trafficking victim. But after intervention by the staff of

³⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 76.

³⁵ See chapter 2, point 2.2.

³⁶ International Labour Organisation, *Human Trafficking and Forced Labour Exploitation: guidance for legislation and law enforcement*, Geneva, 2005.

³⁷ Annual Report on Trafficking in and Smuggling of Human Beings 2006, *Les victimes sous les projecteurs* p. 28. (not available in English).

specialised support centres for human trafficking victims, in the end they are often prepared to make statements and assume the status.

Example: Thai victims in a massage parlour³⁸

In this case, a Thai criminal organisation smuggled various victims from Thailand to Belgium in order to sexually exploit them at a massage parlour in Aarschot.

The victims had to pay back their smuggling debts by working as prostitutes. In exchange for a visa, tickets, sponsorship and shelter in Belgium, the Thai victims had to pay from 6,000 to 15,000 euros. In Belgium, the defendants set up bogus cohabitation contracts between the female Thai victims and older Belgian men in order to obtain residence documents. This enabled the victims to be legally employed.

However, they had to use their income to repay their debts to the smuggling organisation (transport, documents, attorney) with interest. The victims were only given their freedom back once the entire amount had been paid. The victims were not employed only in massage parlours. If they did not earn enough in the massage parlour, they were removed to a prostitution bar to do other work. However, they were then required to pay for their own food.

2.1.3. Cultural dependency

A typical Nigerian technique for exerting pressure on victims is the misuse of voodoo rituals to create a situation of cultural dependency. Anthropological insight into these practices is crucial in order to be able to understand the position of the victims.

The local term for voodoo is "juju". Voodoo is a collective term for religious beliefs based on a seemingly invisible world. In African cultures, the belief in an unseen world is equal in importance to life in a "visible world". The belief in a supernatural spirit can be regarded as virtually universal. Generally, important decisions are only taken after consulting a local voodoo or juju priest. Many Nigerian girls swear an oath before their departure to the West, whereby they or their families promise to pay back the travel expenses and debts to their "madam". This oath is accompanied by a series of rituals. Thus, the woman provides fingernails, blood and hair that are carefully kept in a parcel. This parcel is held onto by the criminal network. If the woman fails to meet her obligations, juju or voodoo will be used against the victim. The parcels full of fingernails, blood and hair can be used to make someone ill, make them go mad or even cause them to die. It is in this way that the "madams" instil fear into their girls and create a pact that cannot be broken unpunished. In order to protect themselves and their families, many victims choose to continue to work as prostitutes to pay off their debts.

³⁸ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, p.101.

Many police forces have now come to understand that they need to take this cultural context into account and make use of mediators and priests to assist them in questioning Nigerian victims. Sometimes they engage a voodoo priest to break the spell on the victim. The woman only feels free from her curse once she has control over her own parcel. This means that during investigations, police forces should make every effort to obtain the parcel so that the woman will understand that she can break the spell. In this way, the police can gain the victim's trust. In Nigerian cases, the Centre has been able to determine that the victim asked to be able to retrieve her parcel from the court registrar so that she could destroy it and lift the curse.³⁹

Example: testimony of a Nigerian victim⁴⁰

Based on the statements by the Nigerian victim, it is clear how great the impact of the voodoo ritual is and how easily this ritual lends itself to abuse in order to exert pressure on the victims: “after two days X also brought me to this place and demanded that I work for her as a prostitute. I refused, but after a week, I began working for her anyway because X had put voodoo in my food, had snipped off a piece of my hair and taken menstrual blood from my underpants, in other words, she had subjected me to a voodoo ritual.”

2.1.4. Drug addicted victims

In recent years, there have been increasing numbers of drug addicted victims in cases of sexual exploitation. Due to their addiction, these victims are completely manipulable. Sometimes, the victims were initially not addicted but are systematically drugged in order to make them totally dependent on their pimps. Sometimes the victims are recruited in the drug scene and are therefore already highly vulnerable.

The female victims are paid by their pimps with drugs, so that they are put into a position of total dependency. Research into these cases has revealed that victims of this type sometimes die. This category of victims also includes Belgian girls who are seduced by a "loverboy" (see below) and become addicted to drugs through him.

Example: drugs victims from Morocco and Brazil⁴¹

In this case, a Belgian-Moroccan bar manager and former prostitute sexually exploited several young Moroccan and Brazilian women, including a minor aged girl, in a prostitution bar in Aalst. The defendant was convicted of human trafficking and was also involved in drug related crimes and in arranging marriages of convenience.

³⁹ See chapter 2, point 1.3.2.

⁴⁰ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 79.

⁴¹ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, p. 93h.

The victims were gradually forced into prostitution. Most of them were offered opportunities whilst still in Morocco to come to Belgium and work as domestic help or assistants in restaurants. Also undocumented girls residing in Belgium who had great difficulties finding work received such proposals. The victims were generally not aware that they were supposed to work as prostitutes. Once they had arrived in Belgium, they were housed by the bar manager who gradually, with the help of drink and drugs, broke down the victims' boundaries. They told them that working as prostitutes would solve all of their financial and residence related problems. Various victims accepted the proposal and became dependent as drug addicts. They were easy to manipulate and became very willing in order to receive their portion of drugs from the defendant.

2.1.5. Loverboy-victims

Pimps make use of the notorious loverboy-method whereby they apply seduction techniques to gain influence over young girls and then later exploit them as prostitutes. The victims are usually girls between the ages of 15 and 25 years with a negative or poorly developed self-image. Girls and women who are desperate for love and affection are extra vulnerable to the intense attention that they initially received from these boys. This means that the victims do not always realise that they are being exploited or may not "feel" exploited. The victims may be Belgian girls or foreign girls living in Belgium. But they may just as well be victims who were recruited abroad via the loverboy-method and were brought to Belgium for sexual exploitation.⁴²

Victims from Belgium generally have family problems and do not know where to turn. They are in a vulnerable position. In certain cafés they are offered help and a place to stay. A few weeks later, the pimps makes it clear to them that they are going to have to work to pay for their expenses and they are forced to become prostitutes. Pimps work patiently and systematically and wait until the moment that the girl has become entirely dependent upon them. They encourage the girls to cut off their relationships with family, friends and acquaintances. Victims of this type become completely isolated and utterly dependent on their pimps.

Example: Romanian victims of loverboys⁴³

The defendants used the loverboy-method. The Romanian girls were first seduced and then forced into prostitution.

Through wiretaps, it was revealed that one of the victims was a minor aged girl of 17. This victim was discovered during a search. She had a loverboy-relationship with one of the defendants, upon whom she was emotionally dependent. The victim did not make any incriminating statements and did not assume the official status of victim of human trafficking.

⁴² In the Netherlands the notion of the loverboy is subject to debate. The term is often used to refer exclusively to the phenomenon of domestic human trafficking, whereby Dutch girls are seduced and then forced into prostitution in the Netherlands by pimps of foreign origin. However, the loverboy method is also frequently seen as a recruitment method in cases of international human trafficking, whereby women abroad are seduced by loverboys and transported into the country. What the victims all have in common is that they find themselves in situations of emotional dependency from which it is difficult for them to escape.

⁴³ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 56-57.

2.1.6. So-called win-win situations

The victims are women who initially intentionally and voluntarily choose for prostitution as a way to earn money in a short period of time. They consider prostitution as a temporary project for, perhaps, two years, so that they will later be able to live with a decent standard of living.

Professional prostitution networks are aware that they can earn far greater profits by using motivated, willing victims who are less inclined to make incriminating statements to the police and judicial authorities. The victims receive approximately half of the income from the prostitution, but they also have to pay for their own expenses. This means that they ultimately receive less than had been promised them and it is chiefly the exploiters who walk off with the profits.

The victims must frequently work under exceptionally poor conditions but accept this. A few cases can still be qualified as situations of exploitation. It is the combination of the poor working conditions and the control exercised by the exploiters that determines whether the charges of human trafficking apply. In practice, we see that these cases are sometimes also prosecuted as human trafficking for the purposes of labour exploitation due to the fact that the working conditions are inhumane.

The poor working conditions may give rise to serious conflicts, whereby pimps resort to violence in order to prove that they are the ones to make the rules. Situations of this type no doubt lead to prosecution for sexual exploitation.

Example: a case of human trafficking of Belgian and African victims in Liege⁴⁴

In this sexual exploitation case from Liege, there were several front companies involved.⁴⁵ The people behind them were convicted of human trafficking. The defendants recruited 161 prostitutes, most of whom were working in a so-called win-win situation. Of these, there were 22 prostitutes of foreign origin who were considered by the court as victims of human trafficking.

The chief defendant had taken over a large share of the prostitution parlours in Liege and, according to the statements during the trial, he wanted to develop a complex similar to the Villa Tinto in Antwerp. In reality, he never presented any concrete details about the project. On the contrary, after the departure of the Belgian prostitutes who did not want to work under his conditions, he put numerous young African women with Belgian or Spanish documents to work in his salons. He recruited these women in Antwerp and Brussels.

After his arrival, the shifts were shortened, allowing him to fit in an extra tenant; despite promises, renovations were never carried out in the buildings; bogus employment contracts were drawn up; extra fees were regularly charged for services such as cleaning and the use of showers, while these services were in fact included in the rent; etc.

⁴⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 81; Liege Criminal Court, 20 March 2013, 8th ch. (appeal filed).

⁴⁵ See chapter 2, point 1.2.2.

2.2. Victims of labour exploitation

In this part, we shall discuss three victim profiles for labour exploitation: undocumented third-country nationals in Belgium; victims exploited through dependency constructions; and the victims through debt bondage.

2.2.1. Undocumented third-country nationals

The victims are undocumented third-country nationals living in Belgium who are economically exploited. Their working conditions often fail to meet safety standards. These victims are required to be available for work at all times and are scarcely paid, but cooperate voluntarily because it is still more than they would be able to earn in their home country. Generally, there is no physical violence used against them and they are able to move freely. They are usually housed in deplorable conditions which qualify as slumlord practices, with no heating and even risk of fire. These victims are found in the following sectors: textiles, cleaning, carwash, equestrian centres, domestic help and retail, including bakeries, butcher shops and all-night convenience stores.

Example: case of human trafficking of Syrian victims in the textile sector

This textile case led to a conviction for human trafficking.⁴⁶ A Syrian defendant exploited his countrymen in sorting second-hand clothing in a clandestine warehouse. The Syrians were working in poor labour conditions and the facility did not meet standards for employee well-being; a part of the warehouse was covered with plastic to keep rain from leaking in; it was cold. The employees had no papers and were staying in Belgium undocumented; the defendant had hired them without any employment contract. The defendant provided them with housing, as they were apparently living in the warehouse as well.

⁴⁶ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 89; Mons Criminal Court, 26 June 2012, 10th ch.

2.2.2. Dependency constructions

The victims are usually EU-citizens from Eastern European countries such as Bulgaria and Romania. They are mostly found in sectors such as construction, transport, the cleaning industry, gardening services and restaurants operated along motorways. They are employed via complex constructions such as bogus independent contractors or bogus seconded employees and find themselves in situations of social dumping which can sometimes qualify as human trafficking (working conditions that are an offence to human dignity).

This leads to the situation whereby the workers become dependent on the employer. The indicators for human trafficking include: insufficient wages or unpaid wages, failure to respect safety standards, inhumane working conditions, deceitful practices such as false contracts for bogus self-employed contractors, and inhumane methods of transport or deplorable housing, organised by the employer.

Example: case of Polish victims in the construction sector⁴⁷

This case involved victims working as seconded employees and bogus independent contractors. In the conviction for human trafficking, the court explicitly referred to the defendants' use of legal constructions. The victims were Polish labourers who were required to carry out renovation work under a bogus status of independent contractors, without understanding what this entails. Moreover, they were housed in deplorable conditions. Their wages were far below the officially indexed rates, and they were paid irregularly or not at all. The court judged that the defendant had used the legal construction purely for the sake of maximising profits, and in any case failed to respect the fundamental rights of his fellow humans and human dignity. He had recruited them as bogus independent contractors through fraudulent manipulation.

Previously, the defendant had already employed these Polish workers in subcontracting as seconded employees. When the social inspection authorities found the secondment documents to have been forged, the Belgian construction contractor offered the Polish workers a proposal for regularising their situation. One evening, he appeared with several documents which he asked them to sign. The documents were drawn up in Dutch and there was no interpreter provided. He explained to them that each of the seven of them would receive a share in a construction company that he had taken over, which, he claimed, would allow them to work in compliance with regulations. After several months, this company was dissolved by the commercial court, after the Belgian building developer filed for bankruptcy, unbeknownst to his Polish partners.

⁴⁷ Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp.22-23 and p. 136; Dendermonde Criminal Court, 3 April 2012 (higher appeal).

2.2.3. Debt bondage

In labour exploitation there are debt bondage cases whereby the victims are required to pay back their smuggling debts by providing years of free labour. These are often Chinese victims who are generally undocumented migrants and do not possess work permits. Sometimes they have forged residence papers for which they have to pay extra and therefore, are required to work for longer for free. Victims are often under pressure and are afraid to assume the official status of human trafficking victims.

Example: Chinese victims of a construction company⁴⁸

In this Chinese construction case, Chinese victims were illegally employed to carry out renovation work in Chinese restaurants and adjacent buildings. Various victims were required to work to pay back their debts. After their smuggling journey, they were dropped off at the construction site by a supervisor and were instructed to do whatever tasks they were assigned.

One of the victims stated that he had to pay 18,000 euros for his smuggling journey. He had borrowed the entire amount in advance from loan sharks at a rate of 10% interest. He sent any money he earned to his family in China who used to pay back the loan sharks.

He had flown from China to France and his passport was confiscated upon arrival. He was then transported from France to Belgium and dropped off at the construction site. There, he received food and shelter and after two days, he started work. He had no idea for whom he was working. He did his job and got paid. He spent six months working in this way at various construction sites. He could not provide names or locations of where he had worked. He had been working at the last construction site for a month, and was being paid 2 euros per hour. He had to work 12 hours a day, seven days a week. He felt cheated because in China he had been told that he could earn 10 euros per hour in Europe.

⁴⁸ Charleroi Criminal Court, 7 June 2013, 7th ch. (definitive). See chapter 4, point 2.

3. The gap between "presumed" and "identified" victim

In the international literature⁴⁹ considerable attention is devoted to the gap between the presumed victims and the identified victims of human trafficking.⁵⁰

A "presumed victim" of human trafficking is defined as “a person who meets the criteria of the EU legislation and International Treaties, but who has not been formally identified by the competent authorities (police) as a victim of human trafficking or who has rejected the option to formally or legally become identified as a victim of human trafficking.”⁵¹

An "identified victim" of human trafficking, in turn, is defined as “a person who has been formally identified as a victim of trafficking in human beings according to the relevant formal authority in Member States.”⁵² Identified victims meet all conditions and are effectively granted the official status of human trafficking victim.

Between the two categories of victims, however, there is a significant gap which hinges on the referral mechanism⁵³ to allow victims to assume the official status of human trafficking victims.

The referral mechanism consists of a detection phase and an identification phase. The process is fraught with a number of hurdles, however, so that only some of the victims are able to fully complete these phases and ultimately assume the official status of human trafficking victims.

This gap will be analysed below, an approach which allows the various phases of the Belgian policy on victims to be critically reviewed and the different hurdles to be described. In addition, we shall refer back to the previous chapter on victim profiles. In this way, we shall be able to highlight the points in the process which pose the greatest risks for the victims.

This part is limited to observations and analyses based on victim profiles. The related policy recommendations will be discussed later, in point 2 (help and support), of chapter 2, which presents an assessment of the policy.

⁴⁹ Eurostat, *Methodologies and Working Papers, Trafficking in Human Beings*, 2013, European Commission; NREM, *Annex I to Template*, 2014; ICMPD and USAID, *Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe*, 2009; France Expertise Internationale (FEI), *Identification of Victims of Human Trafficking in Bulgaria, France, Greece, Romania, the Netherlands and Spain: Good Practices Report*, September 2012; OSCE/ODIHR, *National Referral Mechanism. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, Warsaw, 2004.

⁵⁰ We shall not address the issue of victims ending the trafficking victim status as this only becomes apparent after the identification of the victims, and the topic is discussed in point 2 of chapter 2, on help and assistance for victims.

⁵¹ Definition of European Commission (NREM, Eurostat). According to ICMPD and FEI "presumed victims" are persons who formally meet the conditions for the status of victims of human trafficking, but who, in fact have not formally been identified by the relevant authorities, or have declined to be formally identified as such.

⁵² Definition of European Commission (NREM, Eurostat). In Belgium, the mechanisms for identification and referral were formally stipulated in the circular of 26 September 2008 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling, *Belgian Official Gazette*, 31 October 2008.

⁵³ See chapter 2, point 2.2.

3.1. Detection phase

During the detection phase the frontline services (federal and local police, Social Inspection services) need to be able to perceive the intercepted persons as potential victims of human trafficking.⁵⁴ There are victims who contact the specialised support centres for human trafficking directly. The problems in the detection phase are situated at two levels and result in an initial group of "presumed victims".

3.1.1. *First hurdle: crimes and victims remain out of sight*

The victims need to be (actively) tracked down or (passively) discovered. This is where there is a first hurdle in the detection phase. When human trafficking crimes are observed, many victims are never intercepted because they have already vanished by then. The victims who are intercepted generally represent only a fraction of the many victims who were active in the previous periods. Wiretaps are an important source for gathering evidence⁵⁵ and are a useful tool for gaining information about previous victims.

In addition, there are crimes of human trafficking that are never uncovered, such as clandestine prostitution. In such cases, the victims remain invisible. Many victims will therefore never be traced.

3.1.2. *Second hurdle: lack of awareness*

The second hurdle in the detection phase is in the discovery of crimes of human trafficking when the victims are intercepted by the frontline services. At that moment, the frontline services need to regard the intercepted individuals as potential victims of human trafficking and not as undocumented migrants needing to be repatriated as rapidly as possible.

In cases of human trafficking for labour exploitation, the frontline services do not always pay sufficient attention to immediately regarding intercepted persons as potential victims of human trafficking.⁵⁶ This may, for example, be the case in atypical sectors, or in the case of bogus independent contractors or seconded employees. During raids, the frontline services are also not inclined to regard possible victims of labour exploitation who have previously received an Order to Leave the Territory (OLT) during previous interceptions as potential victims of human trafficking. In situations of labour exploitation, the workers sometimes fall into a grey area because they (themselves) have become accessories to fraud towards the Public Social Welfare Office or have obtained residence papers unlawfully and at their own

⁵⁴ The ministerial circular of 26 September 2008 stipulates: "A potential victim is detected based on the statements that he has made to this effect and/or the existence of indications that his situation corresponds to that of human trafficking or of the forms of human smuggling that are covered by the law. The intercepted individual does not have to make any declarations immediately in order to obtain victim status. The existence of indications is sufficient grounds."

⁵⁵ See chapter 2, point 1.3.

⁵⁶ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, p. 75; Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, p. 119.

initiative.⁵⁷ For the frontline services, detecting victims is not always self-evident in such situations.⁵⁸

On the other hand, the specialised support centres have also reported persons who contacted them claiming to be victims of human trafficking, presumably in order to obtain residence papers, whilst according to the specialised centres and the social inspectorate, they were clearly ineligible.⁵⁹ In other words, not all so-called victims are in reality victims of human trafficking. This is also one of the reasons why detecting the victims of human trafficking is no easy matter.

3.1.3. Risk factors for the victims during the detection phase

Detection problems arise for various victim profiles. This also applies to victims of forced prostitution or debt bondage, the *loverboy*-victims and victims of forced criminality.

VICTIMS OF FORCED PROSTITUTION OR DEBT BONDAGE

Victims of forced prostitution or debt bondage are sometimes difficult to trace and to approach because they are working in a situation of clandestine prostitution. On account of their closed nature, the Roma-gangs are difficult for police forces to infiltrate, meaning that little evidence can be gathered in order to launch an investigation into human trafficking. In the case of Thai victims working in a situation of debt bondage in massage parlours: the true nature of the activities is often invisible to the outside world.

LOVERBOY-VICTIMS

In the case of *loverboy*-victims, in Belgium few individual cases of minor aged victims have been detected. The youth brigades of the local police are not very familiar with the indicators of human trafficking, so that they are not always inclined to regard minor aged victims of vice crimes as potential victims of human trafficking. This issue has already been highlighted in the recommendations of the 2010 Annual Report.⁶⁰

VICTIMS OF FORCED CRIMINALITY

There also needs to be attention for victims of forced criminality (drug dealing or theft). These victims are difficult to detect and crimes of forced criminality are seldom perceived by the various stakeholders as human trafficking, which means that few human trafficking cases are launched on this basis. This issue was discussed extensively in the 2012 Annual Report.⁶¹

⁵⁷ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 17.

⁵⁸ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, p. 62 and 75.

⁵⁹ Interviews with centres and social inspectorate.

⁶⁰ Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 142-145.

⁶¹ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, pp. 8-37.

3.2. Identification phase

When the frontline services detect a presumed victim of human trafficking, during the identification phase they are required to contact the competent magistrate and the specialised support centres. The magistrate then decides, in part based on the recommendations of the partners with whom he or she cooperates in a multidisciplinary context (specialised support centres for human trafficking, frontline services and the IO), whether or not to offer the victim the option of assuming the official status of human trafficking victim. The victim must, however, be prepared to make relevant statements and to sever all contact with the presumed perpetrators; moreover, it is mandatory for the victim to receive assistance from the specialised support centres for human trafficking.⁶²

The hurdles in this identification phase lead to a second group of "presumed victims" who do not find a way to claim the official victim status or decline to do so.

3.2.1. First hurdle: the magistracy

A first hurdle in the identification phase may be caused by insufficient awareness on the part of the magistracy. The victims may have been detected by the frontline services or the specialised centres, but the competent magistrate does not provide authorisation for them to assume the official victim status. This occurs only rarely, but the specialised centres have encountered it on occasion. One person had contacted a support centre and after a long intake interview, was clearly identified as a potential victim of human trafficking. The specialised centre asked the magistrate to rule in favour of granting the victim the official victim status; the magistrate refused.

For the magistrate, identifying the victims as victims of human trafficking is not always self-evident. There are a number of factors that complicate this matter for the magistrate.

Sometimes, there may be considerations of opportunity that come into play, for example if it is no longer possible to gather any evidence. Conversely, there are several known cases in which the magistrate did launch an investigation on charges of human trafficking, with full awareness that due to the lack of evidence, the case would never stand up in court, but in this way, it was still possible for the victim to be granted protection via the official status of human trafficking victim.

In various situations of forced criminality, there is a grey area between victimhood and being the perpetrator. In these cases, it is difficult for the magistrate to draw a line between perpetrator and victim and it is also difficult to determine the extent to which the victims were forced to become perpetrators, or whether they acted fully independently.⁶³

⁶² Ministerial circular of 26 September 2008 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling, *Belgian Official Gazette*, 31 October 2008.

⁶³ Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 19.

The role of escorts illustrates how difficult it is to make clear distinctions in prostitution cases. That was true of a case recently handled by the court of Liege⁶⁴ and in which various defendants had exploited the prostitution of young Bulgarian girls. One of the defendants, who herself was exploited by her *loverboy* and at the same time was the chief defendant, was personally charged with multiple offences: human trafficking, encouraging and exploiting vice, participation in organised crime, and illegal residence. In its detailed motivation, the court clarifies the responsibility and role of each of the defendants. With regard to the escort – who was a prostitute herself – wiretaps revealed that she was being controlled by her *loverboy*. He forced her to work even when she was tired – she was not given any days off. Moreover, he complained that she did not earn as much as another prostitute and threatened her when she returned without any money. She was also required to pick up money from a different prostitute. The court ruled that the charges of human trafficking against her were not demonstrated because she did not exercise sufficient control over the girls to encourage them to commit the vice offence or prostitution. After all, she had become a prostitute thanks to her partner; she was completely in his power and totally dependent on him.

There are also cases known of attempted manipulation of the magistrate whereby the defendants initially present themselves as victims. In a case⁶⁵ of sexual exploitation, one of the female defendants initially stated on questioning that she was a victim of human trafficking and had been forced to work as a prostitute since the age of 16. She was by that time 24 years old and based on statements from the various victims it was possible to demonstrate that in recent years she had personally assumed an active role in the prostitution network. She admitted this in her later statements.

3.2.2. Second hurdle: the victim

A second hurdle in the identification phase is posed by the victim, who must indicate whether or not he or she is interested in assuming the official victim status and wishes to comply with the necessary conditions.

Victims from EU-countries such as Romania and Bulgaria are no longer always interested in assuming the official victim status because to start with, the opportunity to receive residence papers is no longer of value to them and because the other benefits, such as legal or possibly medical or psychological aid are not sufficiently emphasised. Most EU-victims of labour exploitation in fact want to return home as soon as possible, while various EU-victims of sexual exploitation wish to remain working in the prostitution sector, autonomously and for their own revenue: this means that they are no longer eligible for official victim status.

⁶⁴ Liege Criminal Court, 26 September 2012, 8th ch., confirmed by Liege, 23 April 2013. See Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, pp. 19-20 and 80.

⁶⁵ See this chapter, point 1.1.2. (Romanian Roma-networks) and chapter 4, point 1.

Some victims are too frightened to assume the official status of victims of human trafficking and refuse to make the relevant statements. They are threatened by their exploiter. They speak a different language and have other cultural standards, and have little confidence in the Belgian frontline services. Usually, the victims have a different perception of the police and the authorities. They incorrectly assume that these authorities will be just as corrupt as they are in their own countries. With these victims, it is essential for the frontline services or the staff of the specialised support centres to be able to gain their trust.

Various victims find themselves in a psychologically dependent relationship and are insufficiently aware of their own victimhood. They, too, refuse to make relevant statements.

3.2.3. Risk factors for the victims during the identification phase

The difficulties with identification are encountered for various victim profiles. This applies for EU-victims, victims in a fearful situation and victims in a relationship of dependency.

EU-VICTIMS

The EU-victims with decreased interest in the official victim status chiefly fall under victim profiles involving dependency constructions and the so-called win-win situations. In cases of labour exploitation it is the bogus independent contractors or seconded employees who have been falsely promised decent wages who realise that they have been taken advantage of by their employers and want to return home as quickly as possible. This group of victims is, however, highly interested in obtaining back pay or compensation during the trial. In cases of sexual exploitation, it is the EU-victims who wish to continue working in the sex industry and therefore reject the conditions for receiving support from the specialised centres.⁶⁶

VICTIMS IN A FEARFUL SITUATION

Various victims react with fear when they are intercepted by the frontline services. The frightened victims are found in the victim profiles involving debt bondage situations and situations of cultural dependency, and to a lesser extent undocumented third-country nationals.

Victims in situations of debt bondage are still required to repay their "debts" to criminal organisations – such as the Chinese Triads – in their home countries. If they fail to do so, they or their families will be threatened with death. This threat is therefore hanging over their heads when they have to make a statement to the judicial authorities. The fear of Nigerian victims stemming from abuse of voodoo rituals to force them into a relationship of dependency can be partially alleviated by thorough anthropological background knowledge on the part of the frontline services and the staff of the specialised centres. Finally, the third-country nationals are often pressured by their exploiters not to make any statements. Building trust in such cases is therefore the key.

⁶⁶ The victim has to formally break contact with the presumed perpetrators. In practice, the specialised centres take a pragmatic approach for victims of sexual exploitation, interpreting this aspect more broadly as a ban on contact with the prostitution world.

VICTIMS IN A RELATIONSHIP OF DEPENDENCY

Victims in a relationship of dependency are generally found among the drug addicted victims and victims of *loverboys*.

The drug addicted victims can be manipulated by their drug supplier/pimp and it is difficult to convince them to assume the official victim status. In addition, they require specialised support. These are often victims who are not interested in residence permits because they are Belgian or are legal residents. Nevertheless, they are victims of human trafficking with behavioural issues that demand urgent psycho-medical support and appropriate legal aid concerning human trafficking.

Loverboy-victims are often in a position of emotional dependency: they are not aware of their victimhood, and therefore regularly continue to protect their pimps.

CHAPTER II: RESULTS OF THE POLICY FOR COMBATING HUMAN TRAFFICKING

The structure of this part of the report is largely based on the “template” of the European Commission. The European Commission has to provide the European Parliament and the Council, by 6 April 2015, with a report evaluating the extent to which member states have taken the necessary measures to comply with directive 2011/36/EU on human trafficking.⁶⁷ In order to facilitate this, at the request of the Informal Network of National Rapporteurs or Equivalent Mechanisms on Human Trafficking to which the Centre belongs, the EU-coordinator for combating human trafficking – who is involved in drawing up the Commission's report⁶⁸ -, prepared a template to help member states provide the necessary information. As an independent rapporteur for Belgium, the Centre is interested in playing a role in this evaluation.

1. Detection, judicial investigation and prosecution

1.1. Recent developments in the Belgian legal and political framework

Methodology

This part is based on the latest amendments that were published in 2013 and early 2014 in the Belgian Official Gazette (Official Journal), on the parliamentary activities concerning the aforementioned provisions, on public sources of information which are available through, among others, the website of the FPS (Federal Public Service) Justice, on previous human trafficking Annual Reports by the Centre and on a decision from case law.

At the Belgian level, the recent developments in the field of human trafficking have concerned the adoption of the new law on human trafficking and the - henceforth explicit - possibility to confiscate immovable assets connected with human trafficking. Although not directly related to human trafficking, we also refer to the reorganisation of the judicial districts, the reform of the Centre for Equal Opportunities and Opposition to Racism, and a number of innovations in the financial sphere.

⁶⁷ Art 23 of directive 2011/36/EU of the European Parliament and 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/JBZ by the Council, *OJEU*, L101 of 15 April 2011.

⁶⁸ See article 20 of directive 2011/36/EU.

1.1.1. New law on human trafficking

In 2013, Belgium adopted the law of 29 April 2013 in amendment of the criminalisation of human trafficking referred to in article 433*quinquies* of the Criminal Code.⁶⁹ This law forms part of the implementation of directive 2011/36/EU on human trafficking, with which the Belgian legislation was already extensively aligned.⁷⁰

The law of 24 June 2013 also amended the penalties associated with the criminalisation, whereby the amount of the fines would be multiplied by the number of victims.⁷¹ This principle is now applicable not only to human trafficking⁷², but also to human smuggling,⁷³ exploitation of begging⁷⁴ and prostitution.⁷⁵

Human trafficking, criminalised through article 433*quinquies* of the Criminal Code, is henceforth defined as follows:

“Constituting the offense of human trafficking are the recruitment, transport, transfer, housing, harbouring of a person, taking control or transferring of the control over him for the purposes of:

1° the exploitation of prostitution or other forms of sexual exploitation;

2° the exploitation of begging;

3° carrying out work or providing services in conditions contrary to human dignity;

4° removal of organs in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human tissue in violation of the law of 19 December 2008 on the acquisition and use of human tissue for the purposes of medical applications in humans or scientific research;

5° or having this person commit a crime or an offence against his will.”

The amendments concern both the material and moral element of the crime:

⁶⁹ Law of 29 April 2013 in amendment of article 433*quinquies* of the Criminal Code in order to clarify and expand the definition of human trafficking, *Belgian Official Gazette*, 23 July 2013. See in this context i.a. the previous annual report of the Centre: the Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, pp. 45-50.

⁷⁰ See in this context the Annual Report on Trafficking in and Smuggling of Human Beings 2010 of the Centre, *Combating social fraud to prevent trafficking in human beings*, pp. 9-22.

⁷¹ Law of 24 June 2013 on the penalisation of the exploitation of begging and of prostitution, human trafficking and human smuggling in proportion to the number of victims, *Belgian Official Gazette*, 23 July 2013.

⁷² Also amended therefore are articles 433*quinquies* to *octies* of the Criminal Code.

⁷³ Amendment of articles 77*bis* to *quinquies* of the law of 15 December 1980 on the entry, temporary and permanent residence, and removal of aliens.

⁷⁴ Amendment of articles 433*ter* and *quater* of the Criminal Code.

⁷⁵ Amendment of article 380 of the Criminal Code. This revision follows an amendment of the government (*Parl. Doc.*, Senate, session 2012-2013, no. 5-1216/2).

A) MATERIAL ELEMENT OF THE CRIME:

Taking control of a person has been added as one of the components of human trafficking and replaces the previous wording that referred to the “shifting” of control. Initially, the transfer of control referred to the sale of the person and not to a number of situations in which control is exerted over the person for the purposes of exploiting them. The term “taking control” makes it possible to more clearly target acts such as the purchase, illegal adoption or the control of persons in the context of a forced marriage.⁷⁶

This amendment to the law recently formed the basis of a judgement by the criminal court of Verviers on 30 January 2014.⁷⁷ In this case concerning a “forced” marriage based on customary law between two minors, the court convicted the parents of these minors of human trafficking (sexual exploitation). According to the court, it was effectively a case of transfer of control over the minor aged girl in order to enable her rape and molestation accompanied by violence and threats.

B) MORAL ELEMENT OF THE CRIME

The purposes of the exploitation have been expanded or clarified:

- I. The purpose of "sexual exploitation" has been expanded and now also covers the concept of sexual slavery. The legislators had a number of reasons for making this modification:
 - the wording of the directive: it is intended to criminalise any form of sexual exploitation;
 - based on the definition of human trafficking for the purposes of sexual exploitation as it was previously worded, not all forms of sexual exploitation were criminalised, specifically the crime of recruitment in order to satisfy an individual's own sexual urges. The Centre had in the past repeatedly called for an expansion of this definition in order to cover such situations.⁷⁸
 - finally, this modification brings closure to a controversy in case law. In the field, there were problems with the interpretation and respective areas of application of article 433*quinquies*⁷⁹ of the Criminal Code (human trafficking) and of article 380 of the Criminal Code (recruitment and exploitation of prostitution). According to certain case law, based on the explanatory

⁷⁶ Amendment to the draft law in amendment to article 433*quinquies* of the Criminal Code in order to clarify and expand the definition of human trafficking to sexual exploitation, *Parl. Doc.*, Chamber, Doc 53-2607/002, p. 4.

⁷⁷ See also part 4 of this report (overview of case law).

⁷⁸ The legislative proposal refers to the case of “V”, mentioned in a report by the Centre (see the Annual Report on Trafficking in and Smuggling of Human Beings 2007, *An integral evaluation of policy in the fight against human trafficking* (abridged English version available), pp. 97-100).

⁷⁹ The difficulty is in the use of the term “having” in article 433 *quinquies*. The article is worded as follows: “the crime of human trafficking is constituted by the recruitment, transport, housing, reception of a person, exercising or transferring control over him with the purpose of: 1° having this person commit offences as referred to in articles 379, 380, §1 and §4 and 383bis, §1”.

memorandum of the law of August 2005⁸⁰, which in fact is in conflict with the *ratio legis* of the law, there can only be a case of human trafficking when there is a network involved (whereby article 433*quinquies* for example would not be applicable to cases of *loverboys*⁸¹ acting alone). This interpretation means that there would be an additional condition set for the criminalisation and that a distinction would be made from other forms of exploitation.

- II. There is an explicit reference to services involving exploitation through labour. The investigative and prosecuting authorities must, “*based on a series of elements, observe subjugation with harm to the person by violation of his physical and mental integrity, in such a way that it is apparently contrary to human dignity*”.⁸² The concept of labour in social law had been found to be insufficient in the case of legal constructions such as, for example, bogus independent contractors.⁸³ By including the concept of “services” in the circumstances in violation of human dignity, other forms of exploitation can now be taken into account beyond strictly labour exploitation (such as forcing someone to transport drugs as a “mule”).⁸⁴ During the debates in the Chamber of Representatives (hereafter: Chamber), the representative of the ministry of justice noted that this insertion offered sufficient room for an evolutive interpretation of the crime.⁸⁵
- III. With regard to organ removal, the legislation needed to be completed by adding, in addition to the removal and transplantation of organs, the law on removal of human tissue. This law became effective later (2008) than the law of 10 August 2005 which introduced article 433*quinquies* into the Criminal Code.⁸⁶

⁸⁰ The law of 15 August 2005 modifying various provisions in order to strengthen the fight against human trafficking and human smuggling and against the practices of slum landlords introduced article 433*quinquies* into the Criminal Code.

⁸¹ *Loverboys* are men who seduce young girls in order to later put them to work as prostitutes.

⁸² Amendment to the draft law in amendment of article 433*quinquies* of the Criminal Code in order to clarify and expand the definition of human trafficking to include sexual exploitation, *Parl. Doc.*, Chamber, Doc 53-2607/002, p. 3.

⁸³ *Ibid.*, p. 3.

⁸⁴ A “mule” is someone who transports drugs within his or her body. See report on behalf of the Chamber committee on Justice, specifically regarding the draft law in amendment of article 433*quinquies* of the Criminal Code in order to expand the definition of human trafficking to include sexual exploitation, *Parl. Doc.*, Chamber, Doc 53-2607/004, p.10. Since the person is committing a drug offence, the question arises as to whether it would be better to apply point 5° of the criminalisation, which is “forcing this person to commit a crime or offence against his will.

⁸⁵ *Ibid.*, p. 10.

⁸⁶ *Ibid.*, p. 5.

The Centre has called for the expansion of the definition of sexual exploitation⁸⁷ and also emphasises the importance of an evolutive concept in response to the creativity of the criminal networks, in light of the general expansion of the criminalisation. However, the concept of human trafficking must not become a container concept that covers virtually everything. This concern was also raised during the debates in the Chamber.⁸⁸ Only time will tell whether such concerns were justified.

1.1.2. Mandatory confiscation of real estate in relation to human trafficking

In our last report, we indicated that the parliament was still in the process of composing the draft law to explicitly introduce the option to confiscate immovable assets (also provided for the exploitation of prostitution and human smuggling).⁸⁹ This amendment was proposed in response to a decision of the Court of Cassation, which stipulated that confiscation of immovable assets used to commit the crime of human trafficking is not possible without an explicit provision of the law.⁹⁰ This option was effectively introduced by the law of 27 November 2013, in supplement to articles 43*bis*, 382*ter* and 433*novies* of the Criminal Code, and to article 77*sexies* of the law of 15 December 1980 on the entry, temporary and permanent residence, and removal of aliens, concerning the special confiscation.⁹¹ This law has been effective since 1 March 2014.

The general principles regarding special confiscation have thus been modified: article 43*bis*, paragraph 4 of the Criminal Code stipulated that the special confiscation of immovable assets, depending on the determinant legal grounds, is mandatory or optional only to the extent that it has been ordered in writing by the Public Prosecutor. With regard to human trafficking, article 433*novies*, paragraph 3 of the Criminal Code henceforth explicitly states that the confiscation of a building that has been used to commit a crime is mandatory, regardless of whether or not it was the property of the convicted party, subject to the rights of third parties. If the building has since been sold, the confiscation may concern the equivalent value (and this is then optional).⁹²

⁸⁷ See the Annual Report on Trafficking in and Smuggling of Human Beings 2007, *An integral evaluation of policy in the fight against human trafficking* (abridged English version available), p.117 and the Annual Report on Trafficking in and Smuggling of Human Beings 2010, *Combating social fraud to prevent trafficking in human beings*, p. 142.

⁸⁸ Report on behalf of the Chamber committee for Justice, specifically of the draft law in amendment of article 433*quinquies* of the Criminal Code in order to expand the definition of human trafficking to include sexual exploitation, *Parl. Doc.*, Chamber, Doc 53- 2607/004, p. 9.

⁸⁹ Draft law in supplement to articles 382*ter* et 433*novies* of the Criminal Code, and of article 77*sexies* of the law of 15 December 1980 on entry, temporary and permanent residence, and removal of aliens, concerning the confiscation of real estate, *Parl. Doc.* Chamber, Doc.53-2819/001.

The initial proposal (to the Senate) only concerned the amendment of article 433*novies* of the Criminal Code (human trafficking). After the amendments were made by the government, modifications were also proposed for article 382*ter* of the Criminal Code (exploitation of prostitution) and to article 77*sexies* of the law of 15 December 1980 (human smuggling) (See *Parl. Doc.*, Senate, Doc 5-1881/2).

⁹⁰ Cass., 27 May 2009, AR P.09 0240F.

⁹¹ *Belgian Official Gazette*, 13 December 2013.

⁹² Article 433*novies*, paragraph 3 stipulates that (the confiscation) “*must be applied under the same circumstances to movable assets, any part of these, real estate, the room or any other space. It may also be applied to the equivalent value of any movable or immovable assets that have been removed during the period between the perpetration of the crime and the definitive judgement*”.

1.1.3. Redrawing the judicial map

The complete reorganisation of the judicial landscape that became effective on 1 April 2014 does not directly have to do with human trafficking (although it will have an impact on the handling of cases), but nevertheless we would like to sketch some of the main outlines of the changes.⁹³ The complete reorganisation of the judicial landscape is a response to the need for greater efficiency, to reduce the backlog of cases, to offer greater flexibility and better service to the citizenry.⁹⁴

A first aspect of this reorganisation has to do with economies of scale: the 27 judicial districts have been reduced to 12 new judicial districts that are organised according to the provinces. This also means that the number of Public Prosecutors has been reduced as well.

The divisions have been made per district and correspond to a former district (e.g.: a court of first instance of West-Flanders, division Kortrijk; court of first instance of Liege, division Verviers) or an existing division (e.g.: Court of first instance of Antwerp, division Antwerp).⁹⁵

The courts and Labour Prosecutors were reduced from 27 to 9 (with 8 directors). A number of Labour Prosecutors serve various provinces, such as that of Liege (serving the provinces of Liege, Namur and Luxemburg) or that of Ghent (serving East and West Flanders), while others such as Eupen or Walloon-Brabant have only limited territorial competence.

A second important point in this reorganisation concerns the mobility (and specialisation) of the magistrates who can now be deployed with greater flexibility depending on the needs and requirements in the field.

Finally, in terms of oversight, the judiciary is now responsible for the management of the budget and personnel, which will allow greater autonomy in terms of oversight and management.

This reorganisation of the judicial districts is also linked to a reorganisation of the police. The federal police will be reorganised according to the territorial divisions of the judicial districts.⁹⁶

What consequences will this have for the handling of human trafficking cases?

⁹³ See the law of 1 December 2013 on revision of the judicial districts and modification of the Judicial Code in order to promote greater mobility of the members of the judiciary, *Belgian Official Gazette*, 10 December 2013 and the law of 18 February 2014 on the devolution of the judicial system, *Belgian Official Gazette*, 4 March 2014.

⁹⁴ See explanatory memorandum on the draft law on revision of the judicial districts and modification of the Judicial Code in order to promote greater mobility of the members of the judiciary, *Doc. parl.*, Chamber, Doc. 53-2858/001, p.6-7 and the report on behalf of the Justice committee on this draft law, *Doc. parl.*, Senate, Doc. 5-2212/4, p. 3.

⁹⁵ See in this context the Royal Decree of 14 March 2014 on division of the labour courts, courts of first instance, labour tribunals, commercial courts and police courts into departments, *Belgian Official Gazette*, 24 March 2014.

⁹⁶ See in this context the appointment of the new judicial directors based on the new districts (*Belgian Official Gazette*, 27 May 2014)

Since human trafficking (and smuggling) is by nature a phenomenon that exceeds the bounds of districts, this reorganisation may make the fight against the phenomenon more efficient. After all, this phenomenon is one of the areas that may fall outside of the exclusive authority of a given division.⁹⁷ These cases can therefore be addressed by specialised magistrates who are active within a broader scope, however, we can only hope that they will be provided with sufficient resources to fulfil their responsibilities. The digitisation of the Justice Department and the allocation of the necessary funding for efficient functioning remain areas for improvement.⁹⁸

1.1.4. Reform of the Centre for Equal Opportunities and Opposition to Racism

The Centre for Equal Opportunities and Opposition to Racism has also undergone a number of changes. Since 15 March 2014 the reform of the Centre has been a reality.⁹⁹ The tasks of the former Centre related to human trafficking and human smuggling will henceforth be assigned to a separate federal body: the Federal Centre for the Analysis of Migration Flows, the Protection of Basic Rights of Foreigners and the Fight against Human Trafficking¹⁰⁰ (referred to below as the Federal Migration Centre).

The competency that was in the past held by the Centre for combating discrimination has now been transferred to the Interfederal Centre for Equal Opportunities and Opposition to Discrimination and Racism.

These Centres have each been granted a new Board of Directors, who will appoint the management. The members of the BoD of the Federal Migration Centre are nominated by the federal parliament and later appointed by Royal Decree.¹⁰¹ As of the completion of this report (August 2014), the BoD has yet to begin the recruitment procedure for the management.

1.1.5. Innovation in the financial field

The template presented by the European Commission aims to particularly focus on the importance of financial analyses. It is therefore useful to highlight the number of changes which should reinforce the fight against fraud which have been introduced by the law of 11 February 2014 establishing various measures to improve the collection of assets-based penalties and legal costs in criminal cases (I), which are not exclusively limited to the fight against human trafficking.¹⁰² Thus, for example, the seizure of equivalent value has been

⁹⁷ This must be established by Royal Decree: see art. 50 of the law of 1 December 2013 on revision of the judicial districts and modification of the Judicial Code in order to promote greater mobility of the members of the judiciary, *Belgian Official Gazette*, 10 December 2013.

⁹⁸ See in this context the Annual Report on Trafficking in and Smuggling of Human Beings 2008 by the Centre, *Enlisting people and resources to combat the phenomenon*, p. 88-89.

⁹⁹ For more information, see the website of the Centre: www.diversiteit.be

¹⁰⁰ See the law of 17 August 2013 amending the law of 15 February 1993 establishing a Centre for Equal Opportunities and Opposition to Racism, for the purpose of converting it to a Federal Centre for the Analysis of Migration Flows, the Protection of Fundamental Rights of Foreigners and the Fight Against Human Trafficking, *Belgian Official Gazette*, 5 March 2014.

¹⁰¹ See the Royal Decree of 29 June 2014 appointing the effective and interim members of the Board of Directors of the Federal Centre for the Analysis of Migration Flows, the Protection of Basic Rights of Foreigners and the Fight Against Human Trafficking, *Belgian Official Gazette*, 18 July 2014.

¹⁰² *Belgian Official Gazette*, 8 April 2014.

expanded¹⁰³: this is now not only possible if the confiscated criminal proceeds cannot be found among a suspect's assets that are located in Belgium, but also if the criminal assets have been combined with legally held assets. Moreover, in order to prevent the suspect from transferring assets with the apparent goal of avoiding later confiscation, the possibility to claim seizure of assets by equivalent has now been expanded to include criminal third parties.¹⁰⁴

In order to improve the collection of fines and confiscated assets, with the new law,¹⁰⁵ the legislator has introduced a new type of investigation: the Criminal Execution Inquiry (CEI), performed by specialised CEI magistrates.¹⁰⁶ In this way, the Public Prosecutor can actively investigate the assets of convicted parties who have intentionally shielded them from fiscal measures and seizure. The magistrate not only has the traditional investigative methods available (search, request of bank data, etc.), but can also use special investigative methods for which in principle only the examining magistrate would be authorised (surveillance, wiretapping, etc.).

Finally, we should point out that the statute of limitations for confiscations ordered in relation to crimes is henceforth 10 years, regardless of the duration of the prison sentence issued.¹⁰⁷

1.2. Focus on the financial approach: the use of financial investigations in human trafficking cases

As indicated by Eurojust in its action plan on human trafficking,¹⁰⁸ it is not easy to gather evidence in cases of human trafficking. The statements and testimony of victims are essential evidence but often need to be supported by other elements, particularly when the victims change their statements. Financial investigations are one way to gather objective evidence. That is why the template emphasises that aspect. In this part, we shall take a closer look at the “output” (point 1.2.1), “outcome” (effects on the short to medium term) (point 1.2.2.) and the “impacts” (long-term effects) (point 1.2.3.).

Aspects of the prosecution that are not related to financial investigations will be discussed later in this chapter.¹⁰⁹

¹⁰³ Article 35ter, §1 of the Code of Criminal Procedure (CCP) is amended by the law of 11 February 2014.

¹⁰⁴ Article 35ter, § 4 CCP.

¹⁰⁵ Another legal basis for this CEI is the law of 11 February 2014 introducing various measures for improving the collection of asset-based penalties and the legal costs related to criminal proceedings(II), *Belgian Official Gazette*, 8 April 2014. However, this procedure is still awaiting an implementing act in order to become effective.

¹⁰⁶ See new chapter I *bis* inserted in book II, title IV of the Code of Criminal Procedure (new articles 464/1 à 464/41).

¹⁰⁷ Article 94 of the Criminal Code amended by the law of 11 February 2014.

¹⁰⁸ Eurojust, *Strategic project on Eurojust's action against trafficking in human beings, Final report and action plan*, October 2012: 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.

¹⁰⁹ See this chapter, point 1.3.

Methodology

The Centre has used the following sources to answer the questions covered in this part of the template:

- *various reports: the Centre's annual report on human trafficking, reports on organised crime by the FPS Justice, government reports on combating human trafficking, reports by the Belgian Financial Intelligence Processing Unit (referred to below as: CTIF-CFI),¹¹⁰ by the Financial Action Task Force (referred to below as: FATF),¹¹¹ by the federal police, etc.*
- *various action plans (government, federal police);*
- *articles from the legal literature;*
- *analysis of court cases;*
- *case law;*
- *interviews with stakeholders in the field (police, labour inspection services, magistrates, CTIF-CFI).*

1.2.1. OUTPUT (actions on regulations, policy and at the level of operational implementation)

This part discusses aspects such as the importance of the financial analyses as recommended by the Centre and which are also mentioned in various action plans by the government and other authorities. The role of the CTIF-CFI and the fight against money-laundering will also be discussed.

1. IMPORTANCE OF FINANCIAL INVESTIGATIONS

Aside from the statements by victims, the police and judicial authorities in Belgium have numerous investigative techniques for obtaining evidence (wiretaps, observation, searches, etc.).

The financial investigation is among the most important of these.

Example

In a case of sexual exploitation involving a Nigerian network,¹¹² the financial and property investigation revealed that the recruiter from Benin City was the mother of the “madam” in Belgium. She enjoyed a certain prestige in Nigeria, and was conspicuous for her beautiful house and luxury car, while she did not appear to have any official source of income locally whatsoever.

In the case, there were various traces of money wires and bank transfers but generally the money was transferred in cash, via couriers who travelled between Belgium, Nigeria and Spain. In this way at least 30,000 euros was transferred between Belgium and Nigeria.

¹¹⁰ See www.ctif-cfi.be.

¹¹¹ See www.fatf-gafi.org.

¹¹² For more details, see the Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, p. 58-61.

Inspection of the bank accounts also revealed evidence of money-laundering. Between 17 April 2004 and 31 May 2008, a total of 37,860 euros in cash was deposited onto various accounts. Most of the deposits (34,535 euros) date from after January 2007, which is when the prostitution activities were discovered. These amounts were also utterly disproportionate to the defendants' official incomes. Moreover, via these accounts, there were a number of conspicuous transactions carried out, such as an international transfer of 3,950 euros. The ambiguous origin of this money was considered suspicious.

The Centre has for many years emphasised the importance of this type of investigation in order to dismantle the networks.¹¹³ Ideally, an investigation of this type needs to be started after a human trafficking case is opened. Its success also depends on the consultation and efficient collaboration between the authorised sections of both the Public Prosecutor's offices and police forces. It would also be useful to compose specialised mixed teams of investigators and magistrates (a section on human trafficking and a financial section).

Finally, there could still be greater efficiency in the international collaboration, particularly in the area of information exchange between competent authorities, carrying out joint investigations and the detection, freezing and confiscation of criminal assets. That is why the Centre has called for increased use of the CARIN network,¹¹⁴ which can offer an insight in a suspect's assets held abroad.

As soon as an investigation is launched, suspects will attempt to hide or transfer their assets, or declare their company bankrupt so that seizure of the assets at a later stage in the procedure becomes impossible. That is why it is important to seize as many assets as possible at the start of an investigation.

Based on these reports, and other sources, the action plans 2008 and 2012-2014¹¹⁵ of the federal government emphasised the importance of financial investigations in the context of investigations into human trafficking.

The National Security Plan 2012-2015 which concerns the police also lists combating human trafficking as a priority criminal phenomenon. The plan specifies that for this type of phenomenon “special attention should be paid to the detection (of the laundering) of criminal assets and the seizure of these assets to the maximum extent for the purposes of confiscation”.¹¹⁶ However, this will require the allocation of sufficient investigative resources.

¹¹³ See the Annual Reports Trafficking in and Smuggling of Human Beings 2005, La politique belge en matière de

traite des êtres humains :

Ombres et lumières, pp.99-100 (not available in English) and 2011, *The money that matters*, p. 158.

¹¹⁴ CARIN is an acronym for “Camden Asset Recovery Inter-agency Network”. Founded in 2004, this informal regional network connects governmental authorities responsible for the recovery of entitlements. The network oversees all aspects of combating the proceeds of crime. The members include investigative and law enforcement authorities, chiefly in Europe, but also in North America. Its mission is to provide an inter-institutional basis for increasing the effectiveness of its members' efforts to deprive criminals of their illicit profits.

¹¹⁵ These plans of action are available on the website of the Department of Criminal Policy: www.dsb-spc.be/web/index.php?option=com_content&task=view&id=41&Itemid=65&lang=dutch.

¹¹⁶ National security plan 2012-2015, p.16. See also the 2012 annual report of the federal police, p. 9.

Above, we have already mentioned the recent amendment of article 433^{novies} of the Criminal Code, which enables confiscation of a building that has been used for human trafficking purposes.

2. THE ROLE OF THE BELGIAN FINANCIAL INTELLIGENCE PROCESSING UNIT (CTIF-CFI)

The CTIF-CFI, the Belgian contact point of the FATF, also plays an important role in the financial analysis of human trafficking cases.¹¹⁷

On the prevention front of the fight against money-laundering¹¹⁸ the CTIF-CFI is responsible for the centralisation, processing and, as necessary, transfer of information to the judicial authorities for combating money-laundering. The operational analysis carried out by the CTIF-CFI must demonstrate a link between the money that forms the object of the financial operations and certain restrictive, legally defined criminal activities (the underlying qualifications), including trafficking in clandestine labour, human trafficking and exploitation of prostitution.¹¹⁹

When the operational analysis reveals serious indications of money-laundering, the CTIF-CFI is required to provide all of its information to the authorised Public Prosecutor. If it is matter of crimes concerning trafficking in clandestine labour or human trafficking, the CTIF-CFI must also inform the Labour Prosecutor of this transfer of information.

In 2011 the cases of trafficking in clandestine labour, human trafficking and exploitation of prostitution accounted for 15% of the cases the CTIF-CFI handed over to the Public Prosecutors' offices and some 10% of all criminal assets.¹²⁰ In 2012 these figures were respectively almost 12% of the cases and just 3% of the criminal assets.¹²¹

The trafficking in clandestine labour is an increasingly prevalent phenomenon in cases handled by the CTIF-CFI. Thus, in 2011, 92 cases were handed over to the judicial authorities for a total amount of 43.57 million euros.¹²² In that type of cases, the funds generally come from Belgium, via national money transfers. In 2012 there were 86 cases handed over, for a total amount of 45.31 million euros.¹²³ In 76.75% of the cases there is a judicial investigation in progress and in 23.25% of the cases, a decision was taken to definitively close them.¹²⁴

The amount of money laundered that is related to human trafficking was on the rise in 2011,

¹¹⁷ The Financial Action Task Force (FATF) is an intergovernmental institution established in 1989 by the Ministers of its member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. The FATF has published various reports on typologies with regard to human trafficking.

¹¹⁸ See in this context the Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p. 28.

¹¹⁹ This is more a matter of a phenomenon, rather than specific crimes. Human smuggling can, therefore, be categorised as "human trafficking". The CTIF-CTI also performs typological (an overview of the trends detected in money-laundering) and strategic analyses.

¹²⁰ CTIF-CTI, Annual Report 2011, p. 26 -27.

¹²¹ CTIF-CTI, Annual Report 2012, p. 25-26.

¹²² CTIF-CTI, Annual Report 2011, p. 69.

¹²³ CTIF-CTI, Annual Report 2012, p. 25 - 26 and 70.

¹²⁴ *Ibid.*, p.72.

in comparison with 2010 and 2009, yet this accounts for barely 1.69% of all of the laundered money detected by the CTIF-CFI in 2011.¹²⁵ In 2012 the amounts from this type of case continued to rise in comparison to 2011 but accounted for barely 0.73% of all of the laundered money in 2012.¹²⁶

In 2011, 70 cases were transferred to the judicial authorities, for a total amount of over 12 million euros.¹²⁷ For the most part these involved cash deposits in Belgium and national transfers. In 2012 the CTIF-CFI handed over 54 cases representing an amount of over 16 million euros.¹²⁸ These included the same number of cases of human trafficking as in 2010. In 66.66% of the cases handed over, there is a judicial investigation underway and in 25.93% of the cases the decision was taken to close them.¹²⁹

It is primarily institutions and individuals from the financial world who submit declarations to the CTIF-CFI. Certain professions from the non-financial sectors such as Notary Publics and bankers have a special obligation to be vigilant.¹³⁰ In this area, certain gaps may still persist in the “compliance” systems (internal control systems that regulate this vigilance). This was true of the case of human smuggling and residence regularisation fraud that was discussed in a previous report.¹³¹

Example: gaps in the anti-money laundering compliance system

In that case, the internal control procedures of the financial institution (a branch office of an agency for international money transfers) concerning money-laundering were not functioning correctly so that the chief defendant had become, via his company, a commercial subagent for that agency for money transfers. As subagent he himself sent large amounts of money to a subsidiary of his company in China. Moreover, he possessed the access codes and the user manual for the anti-money-laundering system. Furthermore, the defendant's company did not report any suspicious payments to the CTIF-CFI.

¹²⁵ CTIF-CTI, Annual Report 2011, p. 87 and 88.

¹²⁶ CTIF-CTI, Annual Report 2012, p. 86.

¹²⁷ CTIF-CTI, Annual Report 2011, p. 87 and 88.

¹²⁸ CTIF-CTI, Annual Report 2012, p. 25 and 26.

¹²⁹ CTIF-CTI, Annual Report 2012, p. 86.

¹³⁰ See CTIF-CTI, Annual Report 2011, p. 19-21.

¹³¹ See the Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p. 12-13.

Based on interviews with the staff of the agency for money transfers it was clear that the commercial interests took precedence over the anti-money-laundering measures. In the police report, the police referred to it as a structural problem. During internal controls (which work based on a scoring system), the defendant's company received a 0/10 and should have been blocked immediately. However, this only happened after the agency for money transfers discovered that a judicial enquiry was underway against the defendant.

As the CTIF-CFI has determined¹³² the money flows connected with human trafficking are chiefly done by means of cash (deposits and withdrawals), card payments, national transfers and international transfers of the “money remittance” type¹³³ (transferring money via an international money transfer system) to countries notorious for organising networks for human trafficking and exploitation of clandestine labour (Bulgaria, Romania and Pakistan). The same types of money flows are also seen in cases of the exploitation of clandestine employees,¹³⁴ specifically in national money transfers in the construction sector and industrial cleaning sector, followed by cash withdrawals (cases of exploitation of clandestine Brazilian and Portuguese labourers)¹³⁵ or transfers of the money remittance type to countries identified as sources of clandestine labour such as Romania, Bulgaria, Poland, Turkey, and Pakistan.

3. HUMAN TRAFFICKING AND MONEY-LAUNDERING

The aim of the financial investigation is to gain insight into the financial assets of the perpetrators of human trafficking, or even of the criminal organisation's assets, in order to be able to seize and confiscate these assets. However, this assessment remains a challenging undertaking. Frequently, investigation into the assets intended to assess the profits that the criminals have been able to obtain through their illegal activities results in only a partial picture of the total financial resources that a criminal organisation may possess.¹³⁶

Sometimes, commercial structures are used to facilitate or conceal criminal activities, or to establish (inter)national money-laundering networks. This interweaving of legal and illegal activities masks the most visible part of the financial flows and thus provides excellent protection for organised crime.¹³⁷ That is why it is so important that, since 1999, (thanks to the law of 4 May 1999 introducing the criminal liability of legal entities¹³⁸) it has been possible in Belgium to prosecute legal entities.

¹³² CTIF-CTI, Annual Report 2012, p.86.

¹³³ The CTIF-CFI (Annual Report 2011, p.125) defines this term as follows: "*service where an intermediary transfers money that was deposited in cash through international systems for payments by order of his client to a beneficiary designated by this client. In Belgium these services are usually provided by exchange offices even though this has now been extended to other sectors*".

¹³⁴ CTIF-CTI, Annual Report 2012, p.72; in this context see also government report on human trafficking 2007-2008, p. 15 (available on the website: www.dsb-spc.be).

¹³⁵ This makes the ultimate recipient of the money more difficult to trace.

¹³⁶ Department of Criminal Policy, Annual Report 2010 on organised crime (2007-2009), p.50.

¹³⁷ *Ibid.*, p. 52.

¹³⁸ *Belgian Official Gazette*, 22 June 1999.

Based on a financial investigation, the crime of money-laundering, as stipulated in article 505 of the Criminal Code may also be established. The philosophy behind this criminalisation is to enable the confiscation, either in kind, or in the form of substitution goods, of criminal proceeds such as those derived from human trafficking, regardless of whether they constitute the property of the perpetrator, or even if they are no longer part of the perpetrator's assets at all, via a mandatory confiscation.¹³⁹ Three categories of benefits may form the object of a money-laundering operation: the primary proceeds obtained through the crime, the secondary proceeds associated with this crime, and the income derived from those proceeds¹⁴⁰:

- primary assets: all goods and benefits that the perpetrator has derived from them as income, and the equivalent value of the illegal profits and expenses;
- substitute assets: the possession of assets that have been obtained instead of the primary assets (e.g.: assets acquired through illegal resources);
- revenue: the revenue that these assets generate e.g.: dividends, rental fees, etc.).

In some cases, we observed that the judicial authorities attempt to combine the crimes of human trafficking and money-laundering within a single case. Based on interviews, we have also learned that sometimes a parallel money-laundering case is launched in addition to the human trafficking case.

Example

In this context, there was a case of sexual exploitation of young Bulgarian girls in which various defendants (escorts) were convicted of human trafficking and money-laundering.¹⁴¹ The defendants had transferred sums of money in order to conceal their illicit origins.¹⁴² The court thus pointed out that *“the defendants had no regular income, neither in Belgium nor in their country of origin and in any case have no financial resources other than those derived from their activity as prostitutes. Bank investigation however revealed that the defendants had transferred relatively large sums of money to accounts in Bulgaria which can only be explained by the accumulation of criminal profits, acquired through their work as escorts in two Brussels bars”*.

1.2.2. OUTCOME (short-term and medium-term effects)

Under this point, we shall discuss the following questions from the template:

1. *Has financial investigation in THB cases resulted in an increased number of traffickers prosecuted?*
2. *Has it led to a better detection and dismantling of THB organised crime groups?*
3. *Has it resulted in an increase of the freezing, seizing and confiscation of proceeds of crime?*
4. *Has it lead to better collection of evidence and in the process lift the burden for victims to testify?*

What have been the effects of the financial investigations on the short and medium term?

¹³⁹ O. KLEES, “Le blanchiment”, *Droit pénal de l'entreprise*, 2011/3, p. 206.

¹⁴⁰ *Ibid.*, p. 206-207.

¹⁴¹ Liege Criminal Court, 19 January 2011, 11th ch. This ruling is definitive with regard to the chief defendants.

¹⁴² The definition of the offence as referred to in article 505, 3° of the Criminal Code, *Ed.*

1. FINANCIAL INVESTIGATIONS AND THE PROSECUTION OF HUMAN TRAFFICKERS

As mentioned above, tracking down the assets derived from human trafficking for the purposes of seizure and confiscation is a priority in investigating human trafficking.

Based on the financial analyses of the system, the criminal network for human trafficking and the peripheral activities can be analysed and if possible, disabled. In certain cases, this type of analysis leads to more prosecutions of human traffickers.

Example

In a case of sexual exploitation in which the Court of Appeal of Brussels¹⁴³ recently ruled, based on an investigation of bank records it was possible to demonstrate that the human trafficker in Belgium had transferred almost all of the proceeds from the exploitation of prostitution to his father in Romania, who invested this money in Romania. This was also confirmed by wiretaps. Based on the financial investigation, it was possible not only to prosecute the human trafficker in Belgium but also one of the most important organisers in Romania.

2. FINANCIAL INVESTIGATION AND DISMANTLING CRIMINAL ORGANISATIONS

Financial investigations are also an essential key to tracking down and convicting criminal organisations involved in human trafficking.¹⁴⁴ According to the FATF,¹⁴⁵ networks for human trafficking and human smuggling can be very simply structured, with a small number of people involved, or they may be so sophisticated and organised that they can effectively be regarded as organised crime.

Like the Centre, the CTIF-CFI has also observed that networks are becoming increasingly professional in their methods. The CTIF-CFI expresses this as follows: “*the increasing importance of the trafficking in clandestine labour, human trafficking and exploitation of prostitution, which occur when networks commit multiple crimes and which are closely connected to certain sectors of the economy and commerce*”. The unit also points out that this: “*increases the insidious threat that is currently characteristic whereby illegal money and criminal proceeds are invested into the legal economy, although this is generally only a facade*”.¹⁴⁶

A financial analysis is an important method that makes it possible to uncover the connections and responsibilities between the criminal organisation and the legitimate world. By tracing the patterns of relationships between the financial transactions, the unseen leaders of these organisations who stay in the background and their contacts at the level of legitimate society can be traced.

¹⁴³ Brussels, 13 November 2013, 13th ch. See in this context chapter 1 of this report, point 1.1.2. (Romanian-Roma networks) and chapter 4, point 1.

¹⁴⁴ In this context, also see the OSCE rapport, *Analysing the business model of trafficking in human beings to better prevent the crime*, 2010.

¹⁴⁵ FATF, *Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants*, July 2011; Tracfin, *Annual Report 2010*, p. 13.

¹⁴⁶ CTIF-CTI, *Annual Report 2011*, p. 6.

In addition, a financial investigation can help to support charges of organised crime. In the Bulgarian case A.¹⁴⁷ about a large-scale prostitution network, financial investigation revealed the way that the organisation made use of commercial structures for its criminal activities and the organisation was convicted of organised crime.¹⁴⁸ Thanks to the financial analysis, it was also possible to track down the ringleaders.

In various cases of human trafficking, the defendants were also convicted on charges of organised crime. Their criminal assets can be staggering. Several examples of cases of this type are presented below.

Examples

In a Romanian Roma-case¹⁴⁹ handled by the Court of Appeal of Brussels¹⁵⁰, in which a criminal organisation sexually exploited victims during the period from 2005 to 2007 on Aarschotstraat in Brussels, the four chief defendants had managed to acquire criminal assets to the tune of, respectively, 5,535,660 euros, 1,703,280 euros, 2,554,920 euros and 2,554,920 euros. The other defendants in this case were paid a 2% commission by the criminal organisation for their contribution to laundering these criminal assets.

In another case concerning a carwash, the defendants were also prosecuted for organised crime. They made use of various corporate constructions to cover their activities. The criminal assets in this case amounted to 391,275 euros. Due to procedural errors at the start of the investigation, however, the court decided to acquit them of all charges.¹⁵¹

Criminal organisations are increasingly striving to make their activities appear normal and socially acceptable. They work in just the same manner when they use the legal economy for their activities. They make use of complicated formal legal structures so that the effective beneficiary is hidden from view or they quickly transfer the proceeds from their activities, after they have been safely protected against seizure or confiscation, to the other side of the world, so that they can no longer be traced.¹⁵²

This type of legal construction is often used in the context of sexual exploitation, as illustrated by the following example.

¹⁴⁷ Annual Report on human trafficking 2003 by the Centre, An integral evaluation of policy in the fight against human trafficking (abridged English version available), p. 23-25 (of French version) and Annual Report on human trafficking 2005, La politique belge en matière de traite des êtres humains :

Ombres et lumières, p. 99-100. (not available in English)

¹⁴⁸ Since this case, the criminalisation of organised crime (articles 324 *bis* and *ter* of the Criminal Code) has been expanded and no longer includes the use of commercial or other structures to conceal or facilitate criminal acts, except with regard to participation in such an organisation (see in this context the Annual Report 2007 on organised crime in Belgium (2005-2006), p.98 and 105-106).

¹⁴⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2008 by the Centre, *Enlisting people and resources to combat the phenomenon*, p. 40 (of the French version).

¹⁵⁰ Brussels, 30 January 2009 (available on: www.diversiteit.be).

¹⁵¹ Turnhout Criminal Court, 19 October 2011.

¹⁵² J.-C. DELEPIERE and P. DE COSTER, “Le rôle de la cellule de traitement des informations financières (CTIF-CTI) et le dispositif préventif dans le cadre de la lutte contre le blanchiment d’argent et le financement du terrorisme — analyse opérationnelle et grandes tendances du blanchiment de capitaux et du financement du terrorisme”, *Droit pénal de l’entreprise*, 2011/1, pp. 38-39.

Example

In a recent case of sexual exploitation in Liege,¹⁵³ the court had to issue a judgement against three defendants and four corporations for a number of crimes: human trafficking for the purposes of sexual exploitation involving 22 victims, the recruitment for and exploitation of prostitution involving 161 prostitutes, running a house of ill repute or prostitution (three defendants and two corporations), running a hotel for prostitution (three defendants and one corporation). Some of them were also charged with other crimes such as forgery, money-laundering, tax fraud and insurance fraud.

The corporations that were set up were used to conceal the proceeds from the prostitution. The partner of the chief defendant, who was a co-defendant, allowed her name to be used in this context. The third defendant was responsible for running the salons and collecting the rent money on behalf of the chief defendant. The corporations were acquitted as legal entities of the charges of human trafficking and of other crimes related to prostitution. Since the defendants as natural persons were only taking advantage of the legal and material framework of the legal entities and were strictly pursuing their own interests, the court ruled that the moral element was absent, specifically the existence of a personal and autonomous will on the part of the legal entity.¹⁵⁴

The court convicted two of the three defendants who were natural persons, of human trafficking, recruitment for and exploitation of prostitution and maintaining a brothel. The chief defendant was convicted of running hotel for prostitution.

Certain defendants were also convicted for various charges of a financial nature.

Legal constructions for concealing the exploitation of persons are also found in the economic sector, particularly in the construction industry.

Example

In May 2013, the criminal court of Bruges¹⁵⁵ ruled in a case of labour exploitation involving a Brazilian network.¹⁵⁶ The chief defendant ran a company that was active in hotel renovation. For this activity he used subcontracting constructions whereby Brazilian workers without legal residence and Czech workers were employed. False invoices were used to cover the illegal work done under the table for accounting purposes.

¹⁵³ Liege Criminal Court, 20 March 2013, available on www.diversiteit.be

¹⁵⁴ However, the Public Prosecutor's Office has filed an appeal against this decision: it does not agree with the court regarding the acquittal of the legal entities. In October 2014 this case will be brought before the court of appeal in Liege.

¹⁵⁵ Bruges Criminal Court, 15 May 2013, 17th ch. (definitive) (available on www.diversiteit.be).

¹⁵⁶ On the Brazilian networks, see *supra*, chapter 1, point 1.2.1. and the Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 35-36.

Thus, the court considered that the charges of human trafficking and aggravated human smuggling, illegal employment and violations of the social criminal code were proven.¹⁵⁷ With regard to the chief defendant, the court ruled that the crimes committed were of an extremely serious nature and were socially utterly unacceptable. For various construction projects he had worked with recruiters of Brazilian origin who supplied him with the victims. He was sentenced to a jail term of 30 months and a fine of 16,500 euros. The other defendants, who used the services of recruiters or acted as recruiters themselves and who provided invoices, were sentenced to prison terms of between one year and 18 months.

Tracking down the proceeds from human trafficking is not always easy, particularly because the use of cash is highly prevalent in this type of crime. That is why at the start of the investigation there needs to be much more frequent use of financial analysis, in order to uncover the destination of the proceeds from these criminal activities, particularly in those countries where they are invested and which generally tend to be the countries of origin of the victims and the organisers. This would require better cooperation between the judicial authorities and the police in the countries where the victims are exploited and the countries where the proceeds of these activities are invested.¹⁵⁸ On an international scale, cooperation in the framework of the CARIN network can, for example, be useful here.

Example: international network approach and the CARIN network

The financial investigation of the human trafficking case of sexual exploitation discussed above¹⁵⁹ is a textbook example of good application of the international network approach allowing this criminal organisation to be completely dismantled internationally. The police were able to do this using the CARIN network which is still not well enough known in Belgium and internationally, but which has already been shown to be effective.

The police report submitted to the examining magistrate gives a concrete picture of how the investigation via the CARIN network was carried out: “Based on questioning and further investigation, it was discovered that the defendants are investing the proceeds of the prostitution network in real estate abroad. Within the framework of locating the criminal assets, we are performing an investigation via the CARIN network. Research indicates that after being recruited, the victims are brought to Belgium via Portugal. In Portugal the defendants own a property where the victims are housed. The investigation is therefore being focused on Romania and Portugal since this is where the defendants in this prostitution

¹⁵⁷ With regard to violations of social criminal law, the judge ruled that the concept of employer was a much broader concept in criminal law than in standard labour law. In this context, the judge emphasises that the question of whether a person has the status of employer does not have to be answered on the basis of legal qualifications in other judicial disciplines, but simply on the basis of the actual, effective context in the workplace.

¹⁵⁸ CTIF-CTI, Annual Report 2011, p. 77.

¹⁵⁹ See chapter 1, point 1.1.2. (Romanian-Roma networks) and chapter 4.

network have their contacts. We wish to notify your office that we are submitting the following report to the COSC,¹⁶⁰ an intermediary in investigations via the CARIN network”.

The following concrete investigative inquiries were made for each of the suspects:

1. Complete identification of the persons in question as well as their current domicile
2. Do the defendants and/or direct family members own real estate in Romania and Portugal?
3. Do the defendants possess movable assets, bank accounts, or valuable assets?
4. Do the defendants have criminal records?
5. Are the defendants involved in corporations? If yes, in what capacity and what type of activities?

The Belgian judicial authorities were in this way able to obtain important information about the criminal assets - both per individual suspect and in total (512,066 euros). It was also possible to decipher the payment systems used by the criminal organisation: “The income from this prostitution work is transferred via money transfers in the names of other members of the criminal organisation to the parents of the chief defendant in Romania. This money is invested in real estate in the region of Târgu-Jiu, capital of the province of Gorj in Romania, either in the name of the defendants, or of their parents or other family members.” A significant structural gap with regard to Romania was also revealed during this investigation: “Based on interviews, it was found that real estate in Romania can be the property of a family or of a clan without a single specific owner needing to be indicated.”

3. FINANCIAL INVESTIGATION, SEIZURE AND CONFISCATION OF THE CRIMINAL PROCEEDS

Carrying out financial investigations leads to more seizures and therefore more confiscations.¹⁶¹ With regard to human trafficking, there are no specific provisions for seizure. In that case, the ordinary law and specifically articles 35 and subsequent of the Code of Criminal Procedure is applied. The confiscation (which is a penalty) is mandatory¹⁶² if it is a question of assets which form the object of the crime and which have been used or were intended for use in committing the crime, when they are the property of the convicted party (such as cars, mobile telephones, etc.) (article 42,1° of the Criminal Code). With regard to human trafficking, however, article 433*novies* of the Criminal Code derogates from this general provision insofar as the article stipulates that the confiscation can be applied “even when the assets involved are not the property of the convicted party”.

The confiscation of assets derived directly from the crime, or of goods and securities received in exchange for them and of income from the investment of such assets is, however, discretionary (article 43*bis*, paragraph 1 of the Criminal Code) and a written request must be submitted to the Public Prosecutor. This refers to assets such as the profits derived from the crime, such as the income from the exploitation of prostitution. When the amount of income

¹⁶⁰ The Central Office for Seizure and Confiscation (COSC) is a body of the Public Prosecutor's Office established by the law of 26 March 2003, and which has been operational since 1 September 2003. The COSC functions as a knowledge centre for the judicial authorities in criminal cases, in the context of the confiscation of assets. It provides support in criminal prosecution in the case of confiscation and acts as a facilitator within the framework of the execution of judgements and decisions which entail confiscation (source: www.confiscaid.be).

¹⁶¹ For numerical data on confiscations imposed in cases of human trafficking, see chapter 3 of this report.

¹⁶² Article 43, paragraph 1 of the Criminal Code.

derived from these crimes cannot be determined precisely, confiscation of an equivalent value can be ordered (article 43*bis*, paragraph 2 of the Criminal Code).¹⁶³

In practice, when confiscations are ordered in relation to human trafficking, it is a question of mandatory confiscations (often cars or mobile telephones) and the confiscation of assets or equivalent value.

We have already mentioned that since a decision of the Court of Cassation of 27 May 2009 in the absence of an explicit legal provision, denying the confiscation of the building used to commit a crime (the rooms, for example, used to house the victims of human trafficking),¹⁶⁴ the legislator recently amended article 433 *novies* of the Criminal Code¹⁶⁵ in order to remedy this gap.

Seizure is not a prerequisite condition for confiscation but if it has not occurred, later confiscations may be problematic because the defendant will have had the chance in the meantime to modify his assets and/or transfer them. This is why the Centre emphasises the importance of the investigative methods such as the “plukteams (plucking teams)”,¹⁶⁶ which are involved from the very start of the investigation and ensure that more seizures are made of criminal proceeds. In fact, the federal police have established a network for the exchange of good practices and for discussing problems in this area.¹⁶⁷

Example

In a case of sexual exploitation, the police discovered at the beginning of the investigation that the defendants were renting accommodation in the same building but were not officially registered as residents and did not have any legal income. Based on various statements by victims, it was determined that they were living on the proceeds of prostitution. This information was sufficient to propose that a plucking team be organised to investigate the assets. The plucking team could be deployed immediately from the moment of the first searches of the premises in order to be able to investigate traces of the criminal assets so that

¹⁶³ In that case, the judge must assess the value of the items that cannot be included in the assets of the convicted party. The confiscation will then apply to an equivalent monetary sum.

¹⁶⁴ Cass., 27 May 2009 (judgement available on www.juridat.be). The court thus ruled that “articles 42,1° and 43 (of the Criminal Code) do not allow the confiscation of a building that has been used to commit a crime. When it is the legislator's intention to impose a penalty of this type, this will be indicated in a specific provision, such as article 433*terdecies*, paragraph 2 (slumlords) of the aforementioned code. Neither article 380, §1, 3°, nor any other provision allows the confiscation of a building that is rented for the purposes of prostitution and with the aim of obtaining abnormal profits”.

¹⁶⁵ Law of 27 November 2013 in supplement to articles 43*bis*, 382*ter* and 433*novies* of the Criminal Code, and article 77*sexies* of the law of 15 December 1980 on the entry, temporary and permanent residence, and removal of aliens regarding special confiscation, *Belgian Official Gazette*, 13 December 2013. This article henceforth stipulates that “*must be applied under the same circumstances to movable assets, any part of these, real estate, the room or any other space. They may also be applied to the equivalent value of any movable or immovable assets have been removed during the period between the perpetration of the crime and the definitive judgement*”.

¹⁶⁶ The word “*plukteam*” (plucking team) comes from the Dutch word “*kaalplukken*” and literally means plucking criminals bare, financially. The term comes from the legislation on asset stripping, the legislation on seizure and confiscation of the property of criminals. The team is responsible for drawing up an inventory of criminal assets for the purpose of subsequent seizure. (Source: inforevue 2009 no. 3 of the federal police: www.polfed-fedpol.be/pub/inforevue/inforevue3_09/PLUKTEAM_IR03FR.PDF).

¹⁶⁷ Annual Report 2012 of the federal police, economic and financial section, p. 25 and p. 39.

the defendants were not given the chance to get rid of them. This made it possible for the maximum amount of seizures to be made.

Example

In the context of a case discussed above that was recently handled by the Court of Appeal of Brussels,¹⁶⁸ this “financial” team that was active in addition to the team responsible for investigating the human trafficking made the following proposals in the context of the assets investigation in that same case.

An official report from this team to the examining magistrate reads as follows:

“Based on these observations, the existence of criminal assets appears likely. With your approval, our services will conduct a further financial investigation into the relevant entities in this case. In order to form a picture as quickly as possible of the extent and location of the criminal assets, with the aim of seizure and to prevent removal by the defendants, the following investigative steps would be useful:

- checking the national land registry for the existence of any property registered in the name of B, ...;
- checking the tax file for the legal income of B, ...;
- checking with all financial institutions whether any accounts exist in the name of B, ...;
- checking with the agencies for money transfers if there have been funds transferred or received.
- via the proper channels, checking whether B, ... possessed money or securities in Romania and Portugal.”

Many stakeholders in the field (magistrates, police officers) in fact mentioned the practical difficulties involved in seizures and confiscations: problems detecting the criminal proceeds, seizing them and confiscating them, inefficient international cooperation, cumbersome procedures, etc. This is primarily the case when the money has been sent to the country of origin.

Based on the analysis of case law, however, it would appear that confiscations are regularly ordered. Thus, in a case of human trafficking (sexual exploitation) and human smuggling involving the exploitation of young Thai women in massage parlours, the court ordered confiscation of equivalent value for a total of 195,000 euros. This amount was equitably distributed in fixed amounts depending on the involvement of each of the defendants.¹⁶⁹ In another case of sexual exploitation of young Moroccan and Brazilian women, the financial investigation revealed that the amount of the electronic bank transactions was 304,611 euros, of which the defendant had transferred 290,903.50 euros onto his personal bank account. After calculating his original criminal assets, during the trial the confiscation of 2.5 million euros was ordered. The court ultimately ordered the confiscation of the equivalent value of 2,437,557 euros, which corresponds to the income derived from crimes of human trafficking and exploitation of prostitution.¹⁷⁰ In another case of sexual exploitation of young Bulgarian

¹⁶⁸ Brussels, 13 November 2013, 13^{de} ch. See chapter 1, point. 1.1.2 and chapter 4, point 1.

¹⁶⁹ Leuven Criminal Court, 22 November 2011 (www.diversiteit.be). For full details of this case, see the Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 132-133.

¹⁷⁰ Dendermonde Criminal Court, 3 April 2012 (www.diversiteit.be). For that case, see the Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 130-131.

women, the court ordered the confiscation of the sums of money seized (1,182 euros) and of various vehicles. In addition, confiscation of equivalent value was ordered for a sum of 228,000 euros (with deduction of the effectively seized amounts).¹⁷¹ Finally, confiscation has also been ordered in human trafficking cases of labour exploitation, as indicated in a case discussed above involving a Brazilian network specialised in hotel renovations. In that case, the court ordered the special confiscation of 65,700.63 euros.¹⁷²

4. FINANCIAL INVESTIGATION AND GATHERING EVIDENCE

In Belgium, barring exceptions, the victim does not have to testify at trial. The victim statements are always an important element in the evidence but are regularly supported by other elements such as observations, telephone investigations or financial investigations. These objective elements help to reduce the weight of the victim's testimony in the context of the trial and reduces the pressure on them. Various rulings in case law illustrate this, such as the case of sexual exploitation in a massage parlour as discussed above:¹⁷³ in this case it was found that (specifically based on the findings of the police, wiretaps, observations, searches, and statements by the victims and perpetrators) the defendants formed part of an organisation involved in smuggling and exploitation of prostitution. They belonged to a branch of a Thai network that smuggled young women and transsexuals into Belgium with false papers and exploited them.

In terms of human trafficking for the purposes of labour exploitation, the objective elements that detectives gather and which support the victims' statements are very important, such as in a recent case in the telephone shop sector.¹⁷⁴ Also in a case in which the defendant had exploited various countrymen for nearly 3 years who were undocumented in the country and had no work permits, in his clandestine workshop preparing Chinese food, the court pointed out that the victim's statements were supported by other elements in the case (statements by the previous owners of the building, results of searches, telephone investigation).¹⁷⁵

1.2.3. IMPACT (long-term effects)

The following questions from the template shall be discussed here:

- 1. Has the detection and prosecution of THB cases increased?*
- 2. Has the number of convictions increased and have more organised crime groups been dismantled?*
- 3. Has compensation to victims increased and has THB been better prevented?*

¹⁷¹ Liege Criminal Court, 26 September 2012, 8th ch. (www.diversiteit.be).

¹⁷² Bruges Criminal Court, 15 May 2013, 17th ch. (definitive) (available on www.diversiteit.be).

¹⁷³ Leuven Criminal Court, 22 November 2011 (www.diversiteit.be). For more details of this case, see the Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 132-133.

¹⁷⁴ Liege Criminal Court, 14 January 2013, 14th ch. (www.diversiteit.be)

¹⁷⁵ Brussels Criminal Court, 29 June 2011, 59th ch., confirmed by Brussels, 14 December 2011 (www.diversiteit.be).

1. FINANCIAL INVESTIGATIONS, DETECTION AND PROSECUTION OF CASES OF HUMAN TRAFFICKING

2. FINANCIAL INVESTIGATIONS AND CONVICTIONS

These two questions will be discussed together.

There is no exact data available for determining whether the financial investigations have caused the number of detections, prosecutions and convictions in cases of human trafficking to increase over the long-term. However, as we have already indicated, a comprehensive approach in the context of an investigation, including financial analysis, enables the entire human trafficking network to be more efficiently detected and dismantled.

Example¹⁷⁶

In a case of sexual exploitation, based on the analysis of the money flows, it was demonstrated that the chief defendant had been working for several years already as a pimp. One of his victims worked on Aarschotstraat, a street in Brussels that is well-known for prostitution. The suspect who did not have any official income was simultaneously sending large sums of money to two individuals in Albania. After contact with the liaison officer on-site, the detectives were able to determine that the recipients were the suspect's parents.

3. FINANCIAL INVESTIGATIONS AND COMPENSATION OF VICTIMS

We cannot claim that as a rule, financial investigations have an influence on the compensation of victims and the charges of human trafficking. However, based on the analysis of decisions in case law it appears that considerable compensation is sometimes paid to victims, especially when there is also a charge of money-laundering. When confiscations are ordered, the judge can award the confiscated goods to the civil party, as appropriate, or award them sums of money in the case of confiscation of equivalent value (article 43bis, paragraph 3 of the Criminal Code¹⁷⁷).

A number of examples of decisions whereby the civil parties have received considerable damages include the following:

Example: sexual exploitation, money-laundering and compensation

In the case handled on 3 May 2012 before the criminal court of Tongeren¹⁷⁸ ten defendants were charged with crimes including human trafficking for the purposes of sexual exploitation and aggravated human smuggling, internet fraud and money-laundering. The young Nigerian victims, who were manipulated through the use of voodoo rituals, were then forced to work as prostitutes under inhumane conditions. At the time of the crimes, one of them was 17 years

¹⁷⁶ With regard to this case, see also above, chapter 1 point 2.1.1. forced prostitution (Albanian case).

¹⁷⁷ This paragraph stipulates the following: "*In the event that the confiscated goods belong to the civil party or the aggrieved party, they will be returned to him or her. The confiscated goods will also be awarded to him or her in the event that the judge has ordered the confiscation based on the fact that they constitute assets and securities that the convicted party has submitted as substitution for the goods to which the civil party or aggrieved party is entitled or because they constitute the equivalent of such goods in the sense of the second section of this article*".

¹⁷⁸ Tongeren Criminal Court, 3 May 2012, 9th ch. (definitive). (www.diversiteit.be).

old and therefore a minor. Of the ten defendants, four were acquitted. The remaining six received prison sentences from one to 5 years and fines of 5,500 to 55,000 euros. They were all stripped of their rights for ten years. None of the defendants were convicted of money-laundering. The victim who had filed civil charges received compensation of 10,000 euros.

Considerable damages have also been awarded in cases of human trafficking for labour exploitation. This is illustrated by a recent case in the hospitality sector and a case in the construction sector.

Examples: labour exploitation and compensation

In the first case, the Criminal Court of Tournai¹⁷⁹ upheld the charges of human trafficking against Chinese restaurant owners who exploited their countrymen in their restaurant. One of the victims had made his way to Belgium via a "Snakehead" organisation (Chinese mafia). He was working 14 hours a day and received a salary of 400 euros per month. The working conditions were gruelling (he was required to pay for any broken dishes, his meals consisted of leftovers from the customers, he did not receive any break time) and he was housed in precarious conditions (a basement level with a hiding place where employees were required to hide during police raids). The defendants were convicted of human trafficking, money-laundering and numerous violations of the social criminal code.

The civil parties were awarded considerable damages: one victim received 7,500 euros for material and moral damages combined, another victim received 22,017 euros (of which 19,017 euros for material damages and 3,000 euros for moral damages) and the final victim received 40,480 euros (35,480 euros for material damages and 5,000 euros for moral damages).

In the second case, the Criminal Court of Brussels¹⁸⁰ upheld the charges of human trafficking against a defendant who was the overseer of a commercial construction site. He recruited labourers and put them to work under inhumane conditions. The employees sometimes had to work more than 14 hours a day, seven days a week, without access to medical care in the event of an occupational accident. The defendant also abused his position of authority. Since the workers were staying in Belgium undocumented, they were in a vulnerable position. The court awarded the victims considerable material and moral damages (between 3,000 and 17,000 euros for the material damages and 2,500 euros for the moral damages).

If possible, the courts will also award the civil parties a part of the confiscated amounts. This was done in a case involving Thai massage parlours.¹⁸¹ The investigation revealed that in addition to massages, sexual services were also being provided. The young women were living in a precarious situation (undocumented) on Belgian territory. The civil party received moral damages of 2,500 euros. The court also confiscated the criminal proceeds for an amount of 8,200 euros and through the intervention of the Central Office for Seizure and Confiscation (the COSC) awarded the civil party the amount claimed, in accordance with

¹⁷⁹ Tournai Criminal Court, 6 September 2012, 19th ch.(www.diversiteit.be).

¹⁸⁰ Brussels Criminal Court, 10 May 2011, 58th ch. (definitive), see www.diversiteit.be.

¹⁸¹ Antwerp Criminal Court, 2 May 2011, ch. 4C. This ruling is final.

article 43bis of the Criminal Code. Also in a case discussed above¹⁸², involving a Brazilian network

specialised in hotel renovation, the court ordered a special confiscation of the amount of 65,700.63 euros, part of which was awarded to the six civil parties as compensation for back wages. The amounts awarded ranged between 190.90 euros and 19,826.20 euros.

1.3. Evidence-based approach: the victim plays the central role

Methodology

For this section the Centre has made use of the following sources:

- Various reports on human trafficking and human smuggling published by the Centre;
- Analysis of legal cases;
- Case law;
- Interviews with stakeholders in the field (police, social inspection services, magistrates);
- Articles from the legal literature.

In addition to the financial approach, various other aspects are also important for enabling a successful investigation from the point of view of human rights, so that sufficient attention can be devoted to the interests of the victim. The various aspects discussed below come into play at the start of the investigation; in the investigative methods used during the course of the investigation; and in the context of the possible international dimension of the case.

1.3.1. Opening a human trafficking case

The start of the case is the crucial point in the investigation and is important for the detection of victims. The frontline services need to be made sufficiently aware of the indicators of human trafficking, so that the observed crimes and intercepted individuals are viewed from a human trafficking perspective. Problems on this account generally arise during the detection phase and are discussed extensively in the chapter on the gap between the presumed victims and the identified victims of human trafficking.¹⁸³

In the past, cases involving human trafficking have already been opened based on a nuisance report,¹⁸⁴ report of a threat,¹⁸⁵ or a check performed on a bogus independent contractor¹⁸⁶ or false seconded employee¹⁸⁷, a situation of slumlord practices,¹⁸⁸ a dispute between tenants and their landlord¹⁸⁹ or the interception of a person carrying forged documents.¹⁹⁰ Incidents of this

¹⁸² Bruges Criminal Court, 15 May 2013, 17th ch. (definitive), available on www.diversiteit.be.

¹⁸³ See chapter 1, point 3.

¹⁸⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2012, "Building trust", p. ¹⁸⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2012, "Building trust", pp. 62-64.

¹⁸⁵ *Ibid.* pp. 54-58.

¹⁸⁶ Annual Report on Trafficking in and Smuggling of Human Beings 2010, "Combating social fraud to prevent trafficking in human beings", pp. 59-63.

¹⁸⁷ *Ibid.*, pp. 56-59.

¹⁸⁸ Annual Report on Trafficking in and Smuggling of Human Beings 2009, "In a haze of legality", pp. 91-92.

¹⁸⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "The money that matters", pp. 94-96.

¹⁹⁰ See chapter 1, Trends, point 1.1.2.(Romanian Roma networks)

type are not necessarily always related to human trafficking, but upon further investigation it may turn out that they are.

The approach taken by the frontline services during the first moments of the observations often determines the later – successful or not – course of the investigation. In the event of discovery of, for example, slumlord practices, the frontline services must question the residents about the way in which they are required to pay their rent and attempt to get a picture of the nature of the relationship between the tenant and the employer. They also need to examine the employment situation in order to be able to reveal cases of human trafficking involving labour exploitation.

In addition, cases of human trafficking have been opened on the basis of statements by victims¹⁹¹, anonymous informants¹⁹², data from other cases¹⁹³, or proactive investigation such as Internet searches¹⁹⁴. These investigative methods require the necessary resources and detective personnel for the police forces, which is currently not always available in all regions.

At the start of the investigation, there is a risk that possible victims may not be detected. In some cases of labour exploitation for example, no victims were granted the official status of human trafficking victim because they had disappeared after a new action by the social inspection services.¹⁹⁵

In addition, at the start of the investigation, there is a danger of a lot of information being lost. The frontline services must therefore take the necessary steps to safeguard the relevant elements for the investigation for a later, more in-depth investigation into human trafficking. This may entail all kinds of residence or travel documents, contracts, letters, certificates, advertisements, goods to be seized, etc. When premises are searched, this needs to be a point for attention. These pieces of evidence can later be used to objectively support the victims' statements, and to uncover new elements.

In the cases of labour exploitation, the reports and official declarations of the inspection services play an important role in detecting signs of human trafficking: in this way, the Labour Prosecutor can make an informed decision about whether or not to open a case of human trafficking. The importance of an extensive investigation and good reporting cannot be emphasised enough.¹⁹⁶ When signs of human trafficking are reported, it is extremely important that the inspectors provide extensive descriptions when they intercept individuals or verify the working and living conditions (including working hours and housing). It needs to be possible for the observations in the reports or official declarations to form the basis for

¹⁹¹ Annual Report on Trafficking in and Smuggling of Human Beings 2012, "*Building trust*", pp.58-61.

¹⁹² Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 105-108.

¹⁹³ Annual Report on Trafficking in and Smuggling of Human Beings 2010, "*Combating social fraud to prevent trafficking in human beings*", pp. 47-49.

¹⁹⁴ See below as well as the Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 98-104.

¹⁹⁵ See also Annual Report on Trafficking in and Smuggling of Human Beings 2010, "*Combating social fraud to prevent trafficking in human beings*", p. 56.

¹⁹⁶ F. Kurz, "Lutte contre le travail forcé, l'exploitation économique et la traite des êtres humains: des concepts légaux à l'application judiciaire", *Soc. Kron.*, 2008, p. 330.

further investigation. Declarations lacking sufficient accuracy will lead to confusion for the Labour Prosecutor, who, in the best case, will have to contact the inspector for clarification, which is time-consuming. In the worst case, it will mean that there is no follow-up for significant indications of human trafficking that have not been traced.

The reporting by the inspection services must be sufficiently descriptive and not too fragmented. Sometimes, not all of the relevant indications are included in the report or official declaration. Situations that are regularly observed are sometimes no longer noted in writing, as they have become routine matters. Then a report is simply made of illegal employment and the investigation stops there. In this way, there are no indications of human trafficking reported. The inspectors need to be made aware of this issue.

1.3.2. Confrontations

In the Belgian system, in principle, victims are not required to appear in court to present confrontational testimony in the presence of the defendant.

In various cases, confrontations were found to have occurred between defendants and victims. These confrontations were always made at the exclusive request of the defendants to the examining magistrate.

Example: confrontations

In a Romanian case¹⁹⁷ the examining magistrate had immediately agreed to these confrontations during the questioning of the defendant. The defendant had formally denied the victim's accusations and requested a confrontation with her. The victim was contacted immediately and asked to come to the police station for confrontation, which resulted in a modification of certain points of the victim's statement.

In a Nigerian case¹⁹⁸ the victim absolutely did not want to be confronted with the defendants. She was still afraid because of the voodoo ritual and feared that a confrontation would allow the defendant to cast a new voodoo curse over her. According to the police, this was an intentional strategy on the part of the defendant, which began with her initial questioning, to instil a pernicious and constant fear of the potential curse in her victim so that she would ultimately retract her complaint during a confrontation with the defendant. It was the victim herself who, via the specialised support centre, notified the police of this situation so that in the end, there was no confrontation held. However, the victim did agree to a confrontation with the doctor who had performed an illegal abortion on her and who was being prosecuted for this in a separate case. The confrontation was fruitless because both parties maintained their original positions.

The Centre questions the added value of confrontations between victims and defendants. This is certainly true for prostitution victims who have been traumatised by their negative psychological and physical experiences and are at risk of being re-victimised by the process. The highly specific sociocultural context of the victims is sometimes a crucial element here. For Nigerian victims, confrontations can lead to a new, controlling voodoo curse cast over the

¹⁹⁷ See: Annual Report on Trafficking in and Smuggling of Human Beings 2012 by the Centre, *Building trust*, pp.54-57.

¹⁹⁸ *Ibid.*, pp.58-62.

victim by the defendant. In reality, when these defendants request confrontations, it is not for the purposes of additional objective inquiry, but rather a manipulative attempt on the part of the defendant to intimidate the victim and/or have her withdraw her statements. It is important for examining magistrates to be sufficiently aware of this and certainly not to immediately agree to such confrontation requests. These confrontations often prove useless or even counter-productive for the investigation and the additional psychological harm to the victim is usually considerable. According to the Centre, victims of sexual exploitation can never be forced to agree to a confrontation. The victims must be provided with an attorney free of charge of who can inform them of their rights.¹⁹⁹

In cases of labour exploitation, the victims are generally in a much less traumatic situation and are less at risk of intimidation. In such cases, in the opinion of the Centre, a confrontation request can be considered if it will generate added value for the investigation and/or can provide a solution for the request for compensation by the victim whose back wages have never been paid. In this case, it may even be the victim who is behind the confrontation request. Naturally, these victims must also have access to an attorney, free of charge, who can advise them of their rights.

1.3.3. Investigative techniques

Based on various cases²⁰⁰ it is clear how important the investigative techniques are for combating human trafficking, both in terms of victim detection and in gathering evidence. The results of the investigative techniques offer objective evidence in support of the victims' statements which may lead to the discovery of new crimes and victims of human trafficking.

A) PROACTIVE INVESTIGATION

The crimes of human trafficking brought to light thanks to victim statements are merely the tip of the iceberg. Most professional criminal organisations currently use more subtle techniques to keep their victims dependent, so that they are less inclined to spontaneously go to the police or a specialised support centre. In order to combat professional organised crime of this type, then, it is necessary to use techniques for proactive investigation.²⁰¹

¹⁹⁹ See also, regarding the rights of victims of crimes, directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards for the rights, support and protection of victims of criminal acts, revising the Council Framework Decision 2001/220/JBZ, *OJEU*, L315, 14 November 2012, p.57.

²⁰⁰ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 91-105.

²⁰¹ The proactive investigation is defined in article 28bis, §2 of the Code of Criminal Procedure. It forms part of the preliminary investigation and is carried out under the authority and monitoring of the Public Prosecutor: "*In order to be able to trace the perpetrators of offences, the proactive investigation entails all procedures aimed at prosecuting the perpetrators of crimes, tracing, collecting, recording and processing data and information based on a reasonable suspicion of future or undiscovered past criminal acts, which have been or will be committed within the framework of a criminal organisation as defined by the law, or which constitute or would constitute crimes or offences as referred in article 90ter, §§ 2, 3 and 4.*" That article 90ter, § 2, 3 and 4 summarises the criminal acts for which surveillance and recording techniques are authorised. Human trafficking and human smuggling are explicitly cited here as aggravating circumstances.

The criminal networks are adaptable. They attempt to become invisible by setting up constructions²⁰² via strawmen and/or by putting the victim in a win-win situation, so that the victim will no longer be interested in cooperating with the judiciary. The only way to officially combat this phenomenon is through proactive investigation involving a variety of methods²⁰³ such as observations, information from monitoring and neighbourhood outreach, reliable informants and tipsters, etc. In the case of the latter, it is important to determine whether or not they themselves are involved, or whether, for example, they are not merely out to denounce their competition.

Example: Thai massage parlour²⁰⁴

The investigation was launched based on information from anonymous informants as a case of human trafficking for labour exploitation. According to the initial police report, the manager of the massage parlour was a member of a criminal organisation which engaged in the labour exploitation of smuggled Thai employees. The criminal organisation made use of commercial corporations in order to facilitate and camouflage its criminal activities.

Various investigative methods uncovered the full extent of the criminal activities of the massage parlour. In the process, all of the available data was put to maximum use. Based on the data from the observations and the wiretap, it was possible to expand the investigation to cover sexual exploitation and human smuggling.

B) INTERCEPTION MEASURES

Interception measures²⁰⁵ can be crucial investigative techniques in order to support a case (in addition to the information previously gathered) and to rescue the victims from their dire situation. By using these investigative techniques, the police attempt to fully identify the victims and perpetrators, and to trace the locations where they may be living and working. At the same time, this provides a picture of the international network with all the contacts and their activities in the various transit countries: passports and visas, transport, financial transactions, etc.

The conversations documented through wiretapping also form an important element of proof of the violence perpetrated against the victims. The suspects speak to one another over the telephone in a type of code. In one case, for example, there was a discussion about a selling price of 3,000 euros for a girl. Sometimes it is possible to detect victims.

²⁰² Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 98-101.

²⁰³ In the proactive investigation, the police forces can also call upon the special detection methods of surveillance, infiltration and the use of informants. Use of these methods is regulated in articles 47*ter* to 47*undecies* of the Code of Criminal Procedure.

²⁰⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 101-105.

²⁰⁵ See articles 90*ter* to *decies* of the Code of Criminal Procedure. However, they cannot be used for the proactive investigation since they fall under the authority of the examining magistrate.

Example: wiretap as a supporting tool for the detection of victims

In a case from Brussels²⁰⁶ a victim was detected thanks to wiretapping: “Right now it seems that X is making the final preparations to transport a girl from Nigeria to Belgium. The girl in question appears to have travelled to Abuja to await her journey to Belgium. The transport appears to have been paid for and the girl will apparently travel under the identity document of a person who is already living in Europe. (...) The wiretap has also revealed that there is a chance that the girl in question will travel on or after the weekend of 4-5 June 2011 from Schiphol to Belgium, and that X will personally collect her at Schiphol.”

C) INTERNET MONITORING

Human traffickers use the Internet to recruit their victims, for marketing their prostitution services and for managing their criminal activities.²⁰⁷ Cases show that in recent years, police officers have been using techniques such as Internet searches to gather evidence.²⁰⁸

In the Centre's *Annual Report 2010* the federal police wrote an external contribution about human trafficking and the Internet, with a particular focus on its role in recruitment. “Recruitment for the purposes of sexual exploitation is not necessarily done via explicit sites, but rather through sites with classified job ads. Communication takes place through, for example, discussion forums where messages can be posted and information exchanged without knowing who is on the other side of the conversation. Social network sites are currently a favourite method for recruiting victims, particularly in the framework of making an initial contact between perpetrator and victim. Perpetrators can find out ample information about their victims' profiles and then only need to choose those that best meet their criteria. Once the contacts have been made through social network sites, the rest of the conversations usually take place in private, away from the prying eyes of Internet users.”²⁰⁹ In a prostitution case²¹⁰ it was determined that the *loverboys* had contacted the victims via Facebook and later recruited them.

For their marketing activities, human traffickers use websites to promote their prostitution services. Information of this type can be a starting point for further detective work and can ultimately lead to an investigation on charges of human trafficking.

Human traffickers also use the Internet to manage their criminal activities: it is a convenient and inexpensive communication tool. The communication tends to be done by e-mail rather than telephone. The human traffickers select the girls from a photo album that they have received over the Internet. Sometimes they use a single e-mail address for which all of the people involved in the conversation know the password, so that the e-mails which are

²⁰⁶ Annual Report on Trafficking in and Smuggling of Human Beings 2012, "*Building trust*", p. 79.

²⁰⁷ Report of the Meeting of the Informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings, 6-7 May 2014.

²⁰⁸ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp.89-105.

²⁰⁹ Annual Report on Trafficking in and Smuggling of Human Beings 2010, "*Combating social fraud to prevent trafficking in human beings*", p. 127.

²¹⁰ See chapter 1, point 1.1.2. (Romanian Roma networks).

composed in draft but not sent can be read on-site and removed. Based on one case²¹¹ however it appears that to request e-mail addresses from Yahoo, an international request for legal assistance addressed to the United States is required. In another case²¹² it was determined that a network in Germany organised the logistics for prostitution and offered the necessary facilities for a fee, according to clear arrangements. All the girls were displayed on the Internet via a website.

The police forces also use Internet applications to support statements by victims and to detect the victims themselves. Thus, during a victim statement, the police have used the web application Google Maps in order to reconstruct the route to the scene of the crime with the help of the victim. Via internet airline reservations and the data from wiretaps, the police have also been able to trace the identity and reference information of other victims and perpetrators. They initially knew only their alias based on the intercepted telephone conversations, but by linking this information with payments they had made by debit card, it was possible to determine their identity.

Examples: Internet research

The basis for an initial criminal case²¹³ was an anonymous complaint containing printouts of advertisements from the website F, where according to the complainant, minor aged girls were being recruited. Based on this information, the police were fairly quickly able to trace the location of the crimes and perform a search of the neighbourhood. A judicial inquiry was launched so that all of the investigative resources could be deployed. This led to the discovery that Latvian girls were being recruited via a website as sex contacts for escort services in the Netherlands and Belgium. They were promised net earnings of 4,000 to 6,000 euros per month, for working two days a week. This website is a social network site where you click on a message with a friend request to accept. The victims were offered over the Internet via erotic dating sites and the websites of escort bureaus. One of the defendants had taken nude pictures of a Latvian minor and displayed them on the website as an advertisement.

Another case, involving a hostess bar,²¹⁴ was launched based on wiretap data from a different investigation. The police determined that the prostitution bar was advertising through its own website on the Internet. After further investigation, it was found that the bar was primarily a prostitution bar, which made use of many young foreign women. The police performed targeted searches on the Internet. On a certain website, where the clients of prostitutes share their experiences, a forum message dating from 2006 caught the attention of the police. The individual in question had already posted 47 messages on the forum about his personal experiences in different bars. In his message about the particular bar in question, he referred to a young woman with forged Lithuanian documents. This showed that she had already been working at this bar in June 2006, more than a year before she had been discovered in October 2007 during a search of the premises.

²¹¹ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 98-101.

²¹² *Ibid.*, pp. 91-94.

²¹³ Annual Report on Trafficking in and Smuggling of Human Beings 2012, "*Building trust*", p. 79

²¹⁴ Annual Report on Trafficking in and Smuggling of Human Beings 2010, "*Combating social fraud to prevent trafficking in human beings*", p. 51.

As a final example, in the context of monitoring clandestine forms of prostitution, when the police launched an investigation²¹⁵ they focused on a certain website where African women presented themselves as escorts. After analysis of the contents of the website, the detectives found possible indications of human trafficking. Based on numerous customer reviews on the publicly accessible forums on certain websites, the police were able to determine that the African women's housing was precarious and that they were presumably working without legal residence permits. The police monitored the neighbourhood and a judicial inquiry was launched, whereby the examining magistrate ordered the police to set up a wiretap and to investigate bank records.

1.3.4. *International collaboration*

International collaboration plays a crucial role in combating human trafficking when the criminal networks operate across national borders. There are various examples of initiatives to improve the international cooperation.

In the Euregio of Belgium, the Netherlands and Germany, the regions of Liege, Hasselt, Maastricht and Aachen have set up the collaboration NeBeDeAgPol for the purpose of encouraging transborder cooperation between the police. This organisation is specifically active in relation to certain types of crime such as combating human trafficking (sexual exploitation), drugs and organised theft. During these meetings attended by police officers, concrete information is shared and actions and working methods are coordinated to the best possible extent. Due to the different regulations, habits and methods, it is not possible for all of the data to be exchanged. This organisation offers a solution for such problems.

At the EU-level, there are Joint Investigation Teams (JIT).²¹⁶ Their operations are based on the "Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union".²¹⁷ However, this is subject to the condition that the countries share a common interest in the cases. Concretely, the police forces then collaborate on each other's territory. There is no need for rogatory commissions; a single phone call is all it takes to obtain the necessary information. The case is also documented in duplicate.

²¹⁵ Annual Report on Trafficking in and Smuggling of Human Beings 2011, "*The money that matters*", pp. 98-101.

²¹⁶ A JIT (Joint Investigation Team) is a partnership between the competent authorities of two or more member states in order to carry out criminal investigations of criminal offences whereby there are connections between suspects in multiple member states. Under the supervision of one member state, a JIT will initiate and carry out a judicial investigation. The legal framework for this is based on the laws and regulations of the country in which the team is operating. After completion of the judicial investigation, the case will be submitted to the prosecuting authorities of the most appropriate member state. In Belgium, the procedures of the joint investigative teams are established in chapter 3 of the law of 9 December 2004 on the international exchange by police forces of personal data and information for judicial purposes, mutual legal assistance in criminal matters and in amendment of article 90ter of the Code of Criminal Procedure (*Belgian Official Gazette*, 24.12.2004).

²¹⁷ Treaty on the European Union on mutual legal assistance in criminal matters between the member states of the European Union, established on 29 May 2000 by the Council, *OJEU*, C197 of 12.7.2000, C 197 and framework decision 2002/465/JBZ by the Council on 13 June 2002 and joint investigation teams, *OJEU*, L 162 of 20.06.2002, p.1.

Example: JIT

In a case from Ghent, the Belgian, Dutch and Hungarian authorities collaborated to set up a JIT. In the JIT-agreement, the interests of the victims were taken into account in establishing the goals.

“A group of suspects is involved in the recruitment and employment of Hungarian women as prostitutes in the Netherlands and Belgium. The JIT is established for the purposes of tracking down and prosecuting these suspects who may (or may not) be part of (a) criminal organisation(s) engaged in human trafficking, money-laundering and other crimes related to sexual exploitation.”

“In the Netherlands, as part of the JIT, investigation A has been launched; in Belgium as part of the JIT, investigation G has been launched. The suspects under investigation in the Belgian and Dutch investigations are also under investigation in the Hungarian investigation. The goal of the JIT is:

- to gather evidence of involvement in human trafficking and money-laundering, perpetrated within an organised context or otherwise. This will examine not only the primary suspects of human trafficking but also the facilitators and all those involved at intermediary levels;
- the seizure and confiscation of criminal assets through recovery, for example;
- carrying out investigations into the transfer of criminal proceeds.”

“In addition to the above points, the following additional goals have been set:

- If, in the course of the joint investigation other subjects for investigation are discovered based on material elements which can be regarded as proof, these will form part of the joint investigation.
- Reports will be drawn up on behalf of the public administration in order to have prostitution facilities and other business facilities shut down if they are found to be linked with criminal acts.
- Rescuing from forced prostitution any women currently working as prostitutes.”

“With regard to the prosecution of suspects, in any case the following goals can be set:

- To ensure that, based on legal and compelling evidence, suspects are convicted in any case of human trafficking and/or money-laundering, perpetrated within an organised context or otherwise.
- To prosecute the facilitators of human trafficking either on criminal charges or for administrative offences.
- To ensure that criminal proceeds are recovered by means of judicial order.
- To ensure that the victims are paid damages and/or financial compensation.
- To prevent wherever possible women from becoming victims of human trafficking all over again.”

2. Aid and support for victims

2.1. Recent developments in the Belgian legal and political framework

Methodology

This point is based on the amendments published between 2011 and early 2014 in the Belgian Official Gazette (Official Journal), on the parliamentary activities related to these provisions, on public information (such as on the website of the FPS²¹⁸ Justice), on previous annual reports by the Centre, on the activities of the bureau of the Interdepartmental Unit and legal literature.

In the area of aid and support to victims, there are provisions concerning the recognition of specialised support centres for victims, and concerning unaccompanied foreign minors. Also of note is the evaluation of the multidisciplinary circular in which the national referral mechanism is described.

2.1.1. Recognition of the specialised support centres

With regard to aid and support to victims, on 18 April 2013 a Royal Decree was approved governing the recognition of the specialised centres for the support and assistance to victims of human trafficking.²¹⁹

This long-awaited system of recognition was one of the points from the Action Plan 2012-2014 of the previous federal government.²²⁰

The Royal Decree stipulates the conditions that an association must fulfil in order to be recognised as a specialised support centre. This also entails authorisation to legally act as a civil party.²²¹ The decree grants the three existing specialised support centres recognition for a period of five years: the non-profits²²² Pag-Asa (Brussels), Payoke (Antwerp) and Sürya (Liege).

The conditions to be recognised as a specialised centre for the support and assistance to victims of human trafficking concern the legal status (non-profit), the location (must be based on Belgian territory), the social aim (providing support, assistance and housing for victims of human trafficking and of certain aggravated forms of human smuggling) and providing follow-up (providing administrative and legal aid to adult and minor-aged victims).

The centres must have a strategic, operational five-year plan, submit an annual report and cooperate in the multidisciplinary approach that has been developed as part of the national action plans to combat human trafficking.

²¹⁸ Federal Public Service.

²¹⁹ Royal Decree of 18 April 2013 on the recognition of centres specialising in the reception and support of victims of trafficking and certain aggravated forms of human smuggling, and consent to go to court, *Belgian Official Gazette*, 22 May 2013.

²²⁰ See point 3.5. of the action plan 2012-2014. The action plan is available via the following link: www.dsb-spc.be/doc/pdf/ACTIEPLAN_C_MH_NL_2012.pdf

²²¹ Article 2 of the Royal Decree of 18 April 2013.

²²² Non-profit association.

The Royal Decree also stipulates that the number of centres is restricted to what is strictly necessary for the administrative and legal follow-up for victims of human trafficking.²²³ In the framework of support for victims who require special follow-up, specifically minors, agreements may also be established with other associations.

Finally, it should be noted that this recognition does not entitle the organisations to subsidies,²²⁴ a matter that brings us to the recurrent problem of the structural financing of the specialised support centres. With regard to this point from the National Action Plan 2012-2014 the bureau of the Interdepartmental Coordination Unit has formulated a number of proposals which unfortunately have not been translated into a concrete political commitment. Not only have the allocated budgets not been subject to indexation for many years, but of greater concern is the fact that certain allocations granted in the past have been cancelled. These cutbacks have forced the centres, among other things, to reduce the amount of legal aid they are able to provide to victims: a number of centres maintain a budget that can be used to pay for the services of a specialised attorney for the victims they assist. These centres will now have to make use of free legal aid services (voluntary or *pro deo*) provided by attorneys. Moreover, it is now also the case that victims entitled to free legal aid as long as they are unemployed no longer fall within the regulations entitling them to aid once they have found work, which can lead to considerable costs. According to the Centre, victims of human trafficking should be able to rely on legal aid until the closure of the criminal procedure against the perpetrators.

2.1.2. Unaccompanied minors (UAFM²²⁵)

Also of note is the establishment of a legal framework for the residence of unaccompanied foreign minors who are not asylum seekers, although this is not a measure specifically related to human trafficking. This status of specific residence permit that was previously provided for in a ministerial circular,²²⁶ is now governed by articles 61/14 to 61/25 of the law of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (referred to below as: the aliens law)²²⁷ and articles 110*sexies* to 110*undecies* of the Royal Decree of 8 October 1981.²²⁸

These new provisions may also concern minor aged victims who are not eligible for the “human trafficking” procedure. These may include, for example, minor aged victims of

²²³ This depends, for example on the number of cases of victims of human trafficking that have been filed with the Immigration Office, the evolution in the number of victims or number of cases of human trafficking being monitored by the public prosecutor's office and labour inspectorates. For numerical data in this context, see chapter 3 of this report.

²²⁴ Article 7 of the Royal Decree of 18 April 2013.

²²⁵ Unaccompanied minors who are victims of human trafficking or human smuggling are eligible for the status of victim of human trafficking.

²²⁶ Circular of 15 September 2005 on residence of unaccompanied foreign minors, revoked by the circular of 14 November 2011, *Belgian Official Gazette*, 28 November 2011.

²²⁷ These new articles were introduced by the law of 12 September 2011 amending the law of 15 December 1980 on entry, temporary and permanent residence, and removal of aliens for the purpose of awarding a temporary residence permit to unaccompanied foreign minors, *Belgian Official Gazette*, 28 November 2011.

²²⁸ These new articles were introduced by the Royal Decree of 7 November 2011 amending the Royal Decree of 8 October 1981 on entry, temporary and permanent residence, and removal of aliens *Belgian Official Gazette*, 28 November 2011.

human trafficking who are not asylum seekers and who are unable to cooperate with the justice authorities because they are too young or are too afraid of their abuser.

The new provisions are largely modelled after the system established by the circular, but nevertheless introduce a number of new elements.²²⁹

As was previously the case, the minors in question here are unaccompanied foreign minors (referred to below as: UAFM) who have been definitively identified as such by the Guardianship Service (in the sense of the programme law on guardianship of unaccompanied foreign minors of 24 December 2012) and who do not have any other procedure pending in Belgium for protection, authorisation or permit for stay or residence, or whose application has been rejected previously.²³⁰ The UAFM who are EU-citizens do not, for example, fall within this definition.

The application for a residence permit is submitted by the guardian of the UAFM. In the framework of the evaluation of his application, the minor will then be interviewed in the presence of his guardian and as necessary, an interpreter. A new element is that the attorney for the UAFM may also attend the interview, if the guardian requests this and if a written report of the interview is drawn up.

The intention of the application for a residence permit and the investigation by the Immigration Office is to find a long-term solution for the UAFM. This may take three forms:

- family reunification in the country where the parents have legal residence;
- repatriation to the country of origin or the country where the UAFM has been granted a residence permit with guarantees for appropriate support and care;
- authorisation to stay in Belgium.

For each individual case, therefore, it must be explored what the long-term solution is that best meets the ultimate interests of the child, which is not always easy in practice. On this basis, the Immigration Office will take a decision about the minor's residence. This may then result in an order to be returned to a different country (if this is the long-term solution chosen), or in granting a residence permit for six months (if no long-term solution has been found) or for one year (if the long-term solution chosen is staying in Belgium).²³¹ At the end of a period of three years after the one-year residence permit is issued, the Immigration Office can issue a permanent residence permit.

2.1.3. Evaluation of the national referral mechanism

The mechanism for providing support and assistance to victims of human trafficking is determined by articles 61/2 to 61/5 of the aliens law of 15 December 1980.²³² This is

²²⁹ For a detailed analysis of the new provisions, see C. GHYMERS, “Le séjour des mineurs étrangers non accompagnés enfin consacré dans la loi”, *J.D.J.* 2012, no. 312, p.36 to 42.

²³⁰ C. GHYMERS, *op. cit.*, p.36.

²³¹ On the differing interpretations regarding the immediate issuance of a one-year residence permit, see C. GHYMERS, *op.cit.*, p.39-41.

²³² For more details on this mechanism, see below, point 2.2.1.

supplemented by the circular of 26 September 2008²³³ which elaborates the multidisciplinary cooperation and the role of the various stakeholders in detail. The multidisciplinary circular of 2008 was slated to be evaluated two years after it came into effect - by 31 October 2010 at the latest - by the Interdepartmental Unit for coordinating the fight against trafficking and smuggling in human beings. The evaluation of the basic procedure was completed in June 2011, however, the evaluation of the section on “minors” by the bureau of the Interdepartmental Unit could only be completed in 2014.

A) GENERAL SECTION

The bureau opted for a qualitative assessment involving target groups/group interviews of the following stakeholders: police forces, Immigration Office, specialised support centres (Pag-Asa, Sürya, Payoke), reference magistrates on human trafficking/human smuggling within the Public Prosecutor's offices and offices of the Labour Prosecutors, social inspection services, the protocol directorate of the FPS (Federal Public Service) Foreign Affairs, the office of the Commissioner General for Refugees and Stateless Persons (CGRS), the public social welfare centres (OCMW/CPAS) and the Customs and Excise Department.

The assessment revealed that the collaboration between the stakeholders had been relatively smooth, however there were a number of points for attention:

- need for a simpler and more practical instrument, as the circular is a very long document;
- lack of knowledge of the existence of the circular in the field and thus of the national referral mechanism (NRM), therefore, a need to pay greater attention to this issue in the basic training for the frontline services (police and inspection services);
- a need to more frequently raise awareness among other services, such as social services, for example;
- effective application of the reflection period (changing the name of that 1st document, which is an “OLT” (order to leave the territory));
- victims of human trafficking who are being exploited in foreign countries: need for more transborder cooperation in the area of the protection and support for victims of human trafficking. This point requires an approach at the European level.

After this evaluation, one of the actions from the federal government action plan (2012-2014) was the creation of simple brochures about victim protection. As the Centre has already mentioned in annual reports,²³⁴ the aim of the action plan is to focus on the issue of the official victim status and the effective referral of victims of human trafficking. In this context, the aid providers need to take the victim's personal situation more into account, specifically the fact that the official victim status in its current form, which is based on the issuance of a

²³³ Circular of 26 September 2008 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling, *Belgian Official Gazette*, 31 October 2008.

²³⁴ See Annual Report on Trafficking in and Smuggling of Human Beings by the Centre 2011, *The money that matters*, p. 162-163 and the Annual Report on Trafficking in and Smuggling of Human Beings by the Centre 2012, *Building trust*, p. 126.

residence permit, no longer offers a solution to the needs of various categories of victims. A working party needs to be set up to formulate proposals for addressing this.

Other proposals from the action plan are to ensure better detection of UAFM include raising awareness among guardians of the issue of human trafficking and in the training in the centres of the Federal Agency for the Reception of Asylum Seekers (Fedasil).

B) MINORS SECTION

The evaluation of the section on “minors” was presented for examination on 18 December 2013 at the meeting of the Interdepartmental Coordination Unit. In addition to the issue of human trafficking/human smuggling, at that time a number of other problems were also discussed in relation to UAFM in general and to young Roma specifically.

In fact, this evaluation was not only scheduled within the framework of the circular, but it was also done in response to a question from a specialised support centre for minor aged victims of human trafficking that wanted to find out why it was not “receiving” its target group.

The method of a questionnaire was used, which was sent to some 200 individuals (stakeholders who encounter this issue), but the response rate was poor. In seven judicial districts, qualitative interviews were then performed with magistrates (human trafficking and youth) and with police officers. In addition, the Guardianship Service, a number of guardians and the observation and orientation centres of Fedasil were also involved. Finally, a discussion group was organised including the specialised support centres for victims of human trafficking and support centres for UAFM.

Based on the information from the evaluation, a number of recommendations were drawn up, chief among which were the following:

- I. Based on the evaluation, it was determined that the stakeholders in the field do not always have a clear idea of how to respond when they intercept a UAFM. In light of the diffuse competence in this area, it is also not always clear which government in which location and in which area has competence. That is why a proposal was put forward to **publish a manual on “unaccompanied foreign minors”**.
- II. **Awareness raising and training:** except for those individuals who encounter unaccompanied foreign minors (UAFM) and human trafficking and human smuggling day-to-day, the interviews revealed that many other people have little knowledge of the appointment of the guardian, the specific nature of the official status of victim of human trafficking, the indicators or the differences between the two phenomena. That is why awareness raising and various levels was proposed:
 - For the Fedasil centres: quite a lot of UAFM are placed in Fedasil centres. A general and systematic training would help the staff to better recognise victims of human trafficking among the UAFM. In 2012 and 2013, Fedasil already organised training for staff working with UAFM in the field, in order to improve the detection and protection of minor aged victims, and to develop mechanisms for referral to the specialised support centres.
 - For the guardians: they often come into contact with UAFM and therefore can play a crucial role in detecting minor aged victims of human trafficking or human smuggling. With the publication of a brochure or organisation of a

training day on human trafficking, the idea is to further develop the basic training on this topic.

- For the staff working within the community structures: since minors regularly wind up in structures that fall under the regional jurisdiction, it is essential that these structures are aware of the legal provisions regarding UAFM and of the official status of human trafficking victim, and that they also know whom to contact.
- For police departments: awareness also needs to be raised among police staff, who do not often come into contact with the UAFM, (a recommendation that the Centre has made on numerous occasions in the past).
- For magistrates and juvenile court judges: magistrates whose intervention is required after the interception of a UAFM sometimes do not consider that it may potentially be a case of a human trafficking victim. This problem could be remedied through training.

III. **Detection:** a number of problems arise in the identification of UAFM, such as determining age and proof of a family relationship, when an adult claims to be a member of the minor's family.

The interviews also revealed that the magistrates are not always able to accurately assess whether it is a case of a UAFM and whether or not it is a victim of human trafficking or human smuggling. The multidisciplinary circular of 2008 stipulates in this regard that there must be consultation between the reference magistrate for human trafficking and human smuggling and the youth court magistrate. In practice, however, it is clear that when a foreign minor is intercepted, there is no uniform approach. In certain districts, there are agreements about this, and in others there are none. In order to remedy this problem a modification is being considered of COL 1/2007 of the Board of Procurators-General on human trafficking,²³⁵ by introducing a specific list with indicators for minor aged victims (including for both UAFM and others).

IV. **Support:** the assessment made it clear that stakeholders in the field in Flanders would like to see the establishment of a specialised centre for minor aged victims of human trafficking.

V. **Guardianship:** there appears to be insufficient knowledge of the Guardianship Service among various stakeholders, which indicates that an information campaign about the functioning of the Guardianship Service is needed. On account of the complex legislation in this area, guardians sometimes also find it difficult to arrive at a solution that is in the interests of the minor. An online support service and a helpdesk could alleviate this. Some of these young people have had traumatic experiences in their contacts with government authorities in their home countries. That is why it is so important that an intercepted youth can be quickly brought into contact with a guardian. The creation of a mobile team of guardians would therefore be useful.

VI. **Specific situations with the Roma-community:** quite a lot of stakeholders apparently regularly come into contact with members of the Roma-community, either in the context of human trafficking/human smuggling, or in a different context. They

²³⁵ Ministerial directive on the investigation and prosecution policy on human trafficking, COL 1/2007.

experience working with people from the Roma-community as much more difficult, which leads to frustration and incomprehension. They are calling for detailed contextual information to be provided about the Roma culture, so there is clearly a need for training/awareness raising.

What may perhaps be helpful is to organise within the police forces in the different districts a contact point for Roma youth. In this way, youth who are regularly intercepted can be monitored at close range, and this may ultimately allow a situation of exploitation to be revealed. Many of the interview subjects spoke of frequently being confronted with Roma youth (victims or suspects). However, the police point out that it is difficult to get information from them particularly because of the young people's strong loyalty towards their families.

2.2. (Trans)national referral mechanism, detection and identification

Methodology

This part is based on the existing legislation and regulations, on previous annual reports on human trafficking by the Centre, on reports by the specialised support centres and on dialogue with stakeholders in the field, on case law and analysis of legal cases.

In this point, we shall discuss in turn the "outputs", "outcomes" and "impacts" of the national referral mechanism (NRM).

2.2.1. OUTPUT (analysis of regulations, policy and the level of operational implementation)

Since the beginning of the 1990s, Belgium has had multidisciplinary cooperation in place in order to better detect and aid victims as well as to more effectively tackle the networks. The system whereby victims of human trafficking who cooperate with the judicial authorities are granted a residence permit has now been incorporated into the aliens law of 15 December 1980 (articles 61/2 to 61/5). This law has been supplemented by a circular of 26 September 2008 which further describes the multidisciplinary cooperation and the role of the various stakeholders.²³⁶

In order to be eligible for the official status of victim of human trafficking, the victims must fulfil three basic requirements: break all contact with the presumed perpetrators of their exploitation, accept assistance from a specialised support centre and, within the potential reflection period of 45 days, make statements or file a complaint against their exploiter.

The procedure is made up of four main phases.

During the reflection period of 45 days, the potential victim who has broken all contact with the persons responsible for trafficking him or her and who has made contact with a specialised support centre, is entitled to receive social assistance.

²³⁶ Circular of 26 September 2008 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling, *Belgian Official Gazette*, 31 October 2008.

Starting from the 2nd phase (after the victim has made statements) the victim is eligible for a three-month residence permit (certificate of registration or C.R.), subject to the condition that the victim accepts assistance from a specialised support centre and no longer seeks contact with the suspected perpetrators.²³⁷ From this point onwards, the victim is also granted access to training and jobs (with a work permit C).

The residence permit is then extended in accordance with the progress of the investigation and the answer from the magistrate of the Public Prosecutor's Office to certain questions²³⁸, after which the victim may be eligible for a six-month residence permit (proof of registration in the register of aliens), which will be extended until the completion of the legal procedure.

This system is applicable not only for victims who are third-country nationals but also for victims who are EU-citizens, and who do not already have a more favourable status.

An essential aspect of a system of this type is that it be associated with certain conditions, in order to offer the victim the prospect of a future and of integration in the country where he or she has been exploited. This is the case in Belgium. Once the criminal case against the perpetrators is tried in court, the victim may be eligible for a permanent residence permit in Belgium.²³⁹

According to article 433*quinquies* of the Criminal Code, that describes the crime of human trafficking, Belgians can also be victims of this type of offence.

Obviously granting a residence permit in the context of the “official status of victim of human trafficking” does not apply to these victims, however, as needed, they can access the services of the specialised support centres (e.g., legal aid).

Thus, as soon as the police or inspection services are convinced or have reason to believe that they have detected a victim of human trafficking, this service must contact one of the support centres so that the victim can be offered assistance.

The three recognised support centres offer victims various types of aid: housing at an “undisclosed” address if necessary, and administrative, psychosocial and legal aid.

It is recommended that the victim be housed in a shelter run by one of the specialised support centres for human trafficking if there is a risk that the victim would only be able to find a place to stay within the milieu in which he or she has been abused and where here she may be

²³⁷ Article 61/3, §1 of the law of 15 December 1980.

²³⁸ It is essential that, in the eyes of the Public Prosecutor's Office or the Labour Prosecutor's Office, it is a matter of victims of human trafficking or of an aggravated form of human smuggling; that the judicial case is still pending; that the victim is clearly willing to cooperate; that the victim has severed all ties with the exploiters; and finally, that the victim's behaviour does not constitute a threat to public order or national security (articles 61/3, §2 and 61/4, § 1 of the law of 15 December 1980).

²³⁹ For this purpose, there needs to have been a conviction on the grounds of the law on human trafficking or the Public Prosecutor's Office or Labour Prosecutor's Office must have included the element of human trafficking in their order (article 61/5 of the law of 15 December 1980). However, the victim will also have to try to prove his or her identity by means of a passport or equivalent travel document, or by presenting his or her national identity card (article 61/3, §4).

endangered. The support centre also offers victims administrative aid (applying for residence permits from the Immigration Office) and psychosocial aid. The latter consists primarily of helping the victim to come up with a personal plan for the future in Belgium or in their home country (assistance with education, looking for a job and, in the case of repatriation, assistance with a voluntary repatriation).

The legal aid consists of providing the victim with information about his or her rights and obligations and with assistance in the legal procedure in Belgium against the perpetrators. The victim also receives the help of an attorney if desired. This allows the victim, as appropriate, to make an informed decision to file civil charges in the case against the perpetrators of the exploitation.

The multidisciplinary circular of 2008, which describes the multidisciplinary cooperation between all of the stakeholders in the field has been evaluated by the Interdepartmental Coordination Unit (see above, point 2.1.3). In a number of legal cases, in fact, the Centre has been able to confirm that the referral mechanism functions effectively (see next point: outcome).

2.2.2. OUTCOME (short-term effects)

In this point, the following questions from the template are discussed:

1. *Has the mechanism raised awareness and increased the use by the targeted actors?*
2. *Has this increased the number of victims identified?*
3. *Have the victims received better support, assistance and protection?*
4. *Have more contacts been established with the actors in the victims' countries of origin?*
5. *Were victims better reintegrated?*

These questions will be discussed jointly.

1. GREATER AWARENESS RAISING

2. MORE VICTIMS IDENTIFIED

3. BETTER SUPPORT FOR VICTIMS

Since the early 1990s, there has been a referral mechanism in place in Belgium, which has been formalised in recent years. Over the course of the years, the support centres have become more professional, enabling the victims to receive high quality support and assistance. Moreover, the frontline stakeholders regularly receive extra training, in which the specialised support centres are often involved. This certainly explains to some extent the increasing number of reports of victims that the support centres have been receiving in recent years. At the centre Pag-Asa, there were 404 reports in 2012.²⁴⁰ Only a very small number of these

²⁴⁰ PAG-ASA, Annual Report 2012, p. 15.

reports effectively resulted in support being provided however.²⁴¹ In 2012, 143 victims of human trafficking were assisted for the first time by one of the specialised support centres.²⁴²

In various legal cases, the Centre has been able to confirm that the referral mechanism functions effectively. In a case of a young Bulgarian woman being sexually exploited in Brussels, who was able to discreetly notify her mother in Bulgaria, after a tip from the Bulgarian police, the Belgian police were able to help the young woman. She applied for the official status of victim of human trafficking but then only for the purpose of organising her return to her family in Bulgaria.²⁴³ The perpetrator of the crimes was ultimately convicted of human trafficking.²⁴⁴ In a case of labour exploitation in the construction sector brought before the Criminal Court of Charleroi²⁴⁵ a Bulgarian victim, who was exploited as a bogus independent contractor and had been questioned by the police, made use of the official status of victim of human trafficking. He later filed civil charges in the trial.²⁴⁶

a) Importance of the multidisciplinary cooperation

In the Belgian system, a central role is played by the multidisciplinary cooperation²⁴⁷ of the frontline services (police and inspection services) with the staff of the specialised support centres. In order to obtain statements and relevant information from victims, it is essential to be able to gain their trust. This has meant that the frontline services pay greater attention to potential victims. In the meantime, most frontline services have learned to no longer regard the victims as undocumented migrants needing to be repatriated as quickly as possible. This has led to a climate of mutual trust so that victims can be convinced to assume the official status of human trafficking victim. In one case, the police were able to locate a minor aged prostitution victim by gaining the trust of a different victim who was her friend.²⁴⁸ The staff of a specialised centre have also been able to convince victims who were initially too frightened to make any statements to assume the official status of victim of human trafficking²⁴⁹.

²⁴¹ There are a number of reasons for this: it is not a case of human trafficking (e.g.: problems in the area of social rights, within the family, ...), the person does not wish to receive the help of a support centre, the crimes do not include enough concrete, verifiable elements, the crimes have taken place abroad, etc.

²⁴² For more details, see Annual Report on Trafficking in and Smuggling of Human Beings by the Centre 2012, *Building trust*, p.116-119.

²⁴³ See Annual Report on Trafficking in and Smuggling of Human Beings by the Centre 2011, *The money that matters*, p. 91-93.

²⁴⁴ Brussels Criminal Court, 30 May 2012.

²⁴⁵ Charleroi Criminal Court, 26 October 2012 (www.diversiteit.be).

²⁴⁶ For more details about this case, see Annual Report on Trafficking in and Smuggling of Human Beings by the Centre 2012, *Building trust*, p. 62-64.

²⁴⁷ This is referring to effective coordination and collaboration between frontline workers, magistrates and shelters for victims of human trafficking, whilst maintaining respect for one another's roles and interests.

²⁴⁸ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p. 98-101.

²⁴⁹ *Ibid.*, pp. 98-105.

Example: Minor aged Brazilian victim actively traced and referred through the national referral mechanism

The police had received signals from various sources about the presence of a minor aged girl in a bar. In their statements, various victims mentioned a 16-year-old drug addicted Brazilian girl and recognised her in a photograph. In one of the conversations intercepted by the wiretap, the defendant expressed relief after a police raid that there hadn't been any minors present at the time. When the clients were questioned, one of the clients had also recognised the minor aged girl in a photograph and had confirmed that she had had sex with him for pay.

The police made various attempts to actively track her down. Ultimately, one of the victims who was a friend of hers brought her into contact with the police. The police then referred her to a specialised support centre. This is an example of the importance of good multidisciplinary cooperation.

During her questioning, she stated that she was initially afraid to respond to the telephone calls from the police out of fear of being sent to jail. After talking to her girlfriend, she was reassured and agreed to talk with the police.

It is not always simple to gain the trust of the victims. Often, the victims are in a position of complete dependency on their exploiters.

They do not speak or understand the local languages at all, and have different social customs and cultural attitudes. Sometimes, the gender aspect plays a role as well. For example, the Chinese community is very closed.²⁵⁰ Vietnamese and Chinese victims are not easily inclined to say anything to male Belgian police officers. For these victims, it is crucial that the police can gain their trust. This also requires the presence of a reliable interpreter, who plays an important role in questioning the victims when they are intercepted, detected and later questioned. Gaining the trust of the victims then forms the basis for good multidisciplinary cooperation whereby the victim can be referred to a specialised support centre.

The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), an inter-agency initiative,²⁵¹ has developed a special tool that can be used during the interception and questioning of foreign-language speaking victims. The questioner indicates in the application the language in which the questions will be asked (spoken yes/no questions). The person being questioned answers by holding up a card. A "conversation" of this type does not take the place of the official questioning, but it can provide the questioner with useful information in advance of the actual questioning (for example, in anticipation of the arrival of an interpreter).

²⁵⁰ Annual Report by the Centre on human trafficking 2006, *Les victimes sous le projecteur (not available in English)*, p.40-43.

²⁵¹ "United Nations Global Initiative to Fight Human Trafficking" was conceived to promote the global fight against human trafficking on the basis of international treaties reached at the United Nations. UN.GIFT was launched in March 2007 by the following organisations: International Labour Organisation (ILO), Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), International Organization for Migration (IOM) and the Organisation for Security and Cooperation in Europe (OSCE). See website: www.ungift.org

The Centre believes that it is essential for the frontline services to continue to receive training on the application of the official victim status and the detection and identification of victims.

b) Gaps in the referral mechanism

Despite the formal referral systems, there is still room for improvement in a number of aspects in the field, in terms of the detection, identification, referral and support of victims.

The Centre was able to observe this in a number of cases in which the centre acted as civil party. From these cases it is clear that there are still gaps in the Belgian victim system but also that the system could be more effectively applied in the field. In some cases, the victims were too frightened to assume the official victim status after the police had explained it and suggested it to them.²⁵² They were afraid of their exploiters, were completely isolated and found themselves in a position of cultural dependency and/or debt bondage or they were afraid of the police.²⁵³ In fact almost all of them had made statements rendering them eligible to assume the official victim status. According to the Belgian victim system, the frontline services should have brought these victims into contact with the specialised support centres, who are better able to gain the trust of the victims.

In some cases of labour exploitation, no victims were granted the official status because they had disappeared after a new intervention by the social inspection services.²⁵⁴ The frontline services should conclude from this that there is generally only one chance to refer the victims to the support centres and thus give them the opportunity to assume the official victim status. Otherwise, a few days later, when the frontline services return, they will usually have vanished. It is an example of good practice that when a victim of labour exploitation is detected, the competent magistrate should be immediately notified to ask whether the crimes are eligible for opening the case of human trafficking and for contacting the specialised support centres.

It is above all important that the frontline services completely and correctly apply the circular on the official victim status. In the Belgian system, the victim does not have to file a complaint: making relevant statements or providing relevant information is sufficient. These victims must always be brought into contact with the staff of the specialised support centres, who must make themselves available. Naturally, this requires the support centres to organise an on-call system. When the frontline services plan major raids in advance, in which they expect to intercept many victims, they should notify the staff of the specialised support centres and give them the chance to explain the official victim status to the victims themselves. Experience has shown that the frontline services often end up explaining the official victim status because they are not always able to reach the support centres or member of their staff.

The Centre asks all stakeholders to make every effort to correctly and completely apply the official status of victim of human trafficking.

²⁵² See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, pp.106-107.

²⁵³ See chapter 1, point 3.2.3.

²⁵⁴ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, pp.121-123.

c) Flexible, customised assistance, support and protection

Some victims do not wish to be immediately brought into contact with the staff of the specialised support centres. The system needs to be made more attractive for victims from EU member states:²⁵⁵ some of them want to voluntarily return to their home countries as soon as possible. The victims of labour exploitation, who feel taken advantage of and want to go home as soon as possible, may need legal aid in order to obtain financial compensation.

Some of these EU-victims who are not interested in the Belgian official status of victim of human trafficking may sometimes be prepared to make relevant statements or even file a formal complaint against the defendants. In this case they do not assume the official victim status but they do require protection from the police, as illustrated by the following example.

Example: Victim not sufficiently protected

In one case²⁵⁶ the magistrate refused to allow the Romanian victims to assume the official status of victim of human trafficking because they wished to continue working as prostitutes as independent sex workers. The victims made relevant statements and even filed a formal complaint against their pimp. After they made those statements, they were given the victim brochure and were told that, should they change their minds, they could always contact the support centres to become eligible for the official victim status. The victims were not interested but after they had made the incriminating statements, they were afraid of potential retaliation by the defendants against themselves and their families. When they contacted the police about this, they were transferred to the general emergency number for the police. The victims therefore received the impression that they were left on their own.

The Centre believes that victims who have not assumed the official victim status but who may be threatened by the defendants, need to receive the necessary protection from the government.

The drug addicted victims who are found also need specialised support and it is difficult for them to be sheltered together with other victims in the human trafficking centres. Generally, these have been Belgian victims²⁵⁷ but in one case there was a minor aged Brazilian girl involved²⁵⁸.

In addition, the question arises of assessing the conditions for support, and the dropout, termination and referral procedures for the victims. Would it be better for these to be geared more towards the different victim profiles? During our interviews, the magistrates and police expressed great satisfaction with the collaboration with the support centres, but in a few cases some of them reported that they had intervened to prevent a termination of the official victim status. Some of the magistrates also suggested the idea of creating a type of mobile brigade of

²⁵⁵ See chapter 1, point 3.3.2.

²⁵⁶ See: Annual Report on Trafficking in and Smuggling of Human Beings 2012 by the Centre, *Building trust*, pp. 54-57.

²⁵⁷ See: Annual Report on Trafficking in and Smuggling of Human Beings 2009 by the Centre, *In a haze of legality*, p.32 and the Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p.93.

²⁵⁸ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p. 93-98.

support centre staff to support victims located far away from any of the three support centres. This would require the operational resources of the support centres to be reinforced.

The Belgian victim system needs to be further refined in a way that is pragmatic and systematic, without altering its fundamental basic principles. Otherwise, this could lead to the hollowing out and potential dismantling of the system.

4. CONTACTING STAKEHOLDERS IN THE COUNTRIES OF ORIGIN

Various cases have shown the importance of rapid and efficient international police cooperation for the detection and referral of the victims. In one case, it was possible to rescue the victim from her pimp's control thanks to rapid collaboration with the Bulgarian police.

Example: Sliven case²⁵⁹

On 13 October 2011, the Bulgarian police²⁶⁰ notified their Belgian colleagues that an 18-year-old Bulgarian girl had called her mother for help. The victim was being forced to work as a prostitute in Brussels by a Bulgarian man. He had "bought" her in Dortmund (Germany) in order to put her to work as a prostitute in Belgium. The victim had to pay back her selling price with the proceeds from her prostitution. The local police in Schaarbeek were able to track down the girl and her pimp via the telephone number from which she had contacted her mother.

The victims of human trafficking not only need protection for themselves but also for their families in their countries of origin. In a Romanian case²⁶¹ the parents of one of the victims were too afraid to send her 15-year-old sister to school any more out of fear that she would be kidnapped.

The Belgian police can provide for the safety of the family in Belgium. But for the protection of the families of the victims (especially of their children) in the countries of origin, everything depends on good international cooperation between the Belgian and foreign police forces and their liaison officers. Often, the foremost concern of prostitution victims is the protection of their children, certainly when they are under the control of or may be threatened by the criminal networks in their home countries. This concern often determines whether or not they are willing to cooperate with the Belgian justice system.

According to some magistrates, the victim status is not suitable for victims wishing to return to their home countries as quickly as possible. This chiefly concerns Roma, who return to the clan who is responsible for their exploitation. When victims return to their countries of origin, the judicial authorities do what they can to notify the local police in the victim's area. Unfortunately, this does not offer any formal guarantee of protection.

When a victim wishes to return to his or her country of origin, contact is made with the IOM within the framework of the REAB-programme²⁶² in order to organise the repatriation. Thus,

²⁵⁹ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p.91-93.

²⁶⁰ *Ibid.*, p.121.

²⁶¹ See, in this context, chapter 1 of this report, point 1.1.2, subheading Romanian Roma-networks.

²⁶² Return and Emigration of Asylum-seekers ex Belgium.

in 2012, 5 victims who had been assisted by Pag-Asa, made use of this procedure for voluntary repatriation.²⁶³ The IOM then helps with preparations for the journey and organising a safe reception in the home country.

5. REINTEGRATION OF VICTIMS

Victims who receive assistance from a support centre are therefore eligible to receive psychosocial counselling to help them come up with a plan for the future in Belgium. Moreover, at the end of the legal procedure, they can also expect a permanent residence permit. The integration of these victims in Belgium is sometimes hindered by uncertainty regarding the renewal of the temporary residence permits during the procedure. Particularly with victims of labour exploitation who have broken contact with their exploiters, it is clear that they want to find new work as quickly as possible.²⁶⁴

6. TRANSNATIONAL REFERRAL MECHANISMS

Various cases demonstrate the importance of the rapid and effective international cooperation of immigration services in the area of the detection and referral of victims.

Example: Official victim status via the Netherlands²⁶⁵

One of the victims was intercepted in the Netherlands and risked being repatriated from there to Nigeria. The reference magistrate then contacted the Immigration Office (IO) in order to transfer the victim to Belgium and to grant her the Belgian official victim status.

Via a wiretap, the police had determined that one of the victims was being held together with a defendant in administrative detention in the Netherlands. Initially, they had been held in jail, and later in a closed asylum centre within the context of the Dutch aliens law. Via EPICC²⁶⁶ (Euregional Police Informatie and Coordination Centre) it was possible to determine the identities of both persons and to locate the detention centre in Netherlands where the victim was being held.

²⁶³ Pag-Asa, Annual Report 2012, p. 27.

²⁶⁴ See, in this context, P. LE COCQ and C. MEULDERS, “Le statut des victimes de la traite des êtres humains”, in *Traite des êtres humains, Mensenhandel-Mensensmokkel*, Proceedings of the colloquium of 26 May 2010, under the academic supervision of Ch.-E. CLESSE, Les dossiers de la revue de droit pénal et de criminologie, Brussels, La Charte, 2010, p. 100 and 104.

²⁶⁵ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, pp.100-101.

²⁶⁶ “Euregionales Informations- und Kooperationszentrum - EPICC” (Euregional Police Information and Coordination Centre). This joint centre is responsible for cross-border collaboration. The centre strives to improve collaboration between the various participant countries and to ensure greater security for the citizens throughout the entire EMR. The aims of the EPICC are information exchange and the support of large-scale transnational actions (roadside checks, observation, judicial orders, joint patrols, etc...). The Euregio Maas-Rijn (EMR) is transnational partnership established in 1976 which makes it one of the oldest cross-border institutions in Europe. It is made up of the following provinces and regions: the Dutch province of Limburg (Zuid-Limburg), the Belgian provinces of Limburg and Liege and the German regions Aachen, Heinsberg, Düren and Euskirchen.(source: www.nebedeagpol.eu/index.php?option=com_content&view=article&id=65&Itemid=483&lang=nl). See also the Annual Report on Trafficking in and Smuggling of Human Beings 2008 by the Centre, *Enlisting people and resources to combat the phenomenon*, p. 97.

At a time, Belgium twice sent a rogatory commission to the Netherlands to interview the victim. With the help of the staff of a specialised support centre and through talking to them, the victim was ultimately convinced to come to Belgium and assume the official status of victim of human trafficking. Various authorities needed to be involved to make the administrative arrangements. The IO organised the transfer of the victim to Belgium. The human trafficking unit at the IO confirmed that the victim met all of the conditions to be granted official status of victim of human trafficking. The IO Dublin office in turn contacted the Dutch authorities, confirming that the victim would be offered a valid residence permit in Belgium. In addition, arrangements were made concerning the practical transfer and further support for the victim. Finally, the "Repatriation and Departure Service" of the Dutch Ministry for Justice notified the Belgian police that the victim was prepared to cooperate unconditionally if she could be housed in a shelter of a specialised support centre in Belgium. The Dutch police subsequently transported the victim to the Dutch border and handed her over to the Belgian police, who then brought her to the shelter of the specialised support centre in Antwerp.

In the past, cases of this type have been discovered after one of the specialised support centres for victims of human trafficking or the Centre found out about it, largely by chance. In the event, in the context of a human trafficking case, it became apparent that there was another victim who had been intercepted in the Netherlands and was being held in a detention and repatriation centre. The Immigration Office then constructively intervened via its immigration officer so that the victim would have the opportunity to assume the Belgian official status of victim of human trafficking. However, what is problematic here is that these victims were only discovered by accident and there is no structural approach in place. It is therefore likely that many other victims in the same situation are never detected.

International agreements need to be made in order to establish an alert system that would function through liaison officers at the level of the police and/or immigration. In these situations, the closed detention centres in neighbouring countries would be required to notify their contact when they discover such victims so that the alert system could be mobilised.

The international cooperation for detecting victims is clearly still not all it should be. In a Nigerian case,²⁶⁷ the police in Spain had tracked down a victim in an emergency situation. The examining magistrate ordered the police to find this victim and contact her with the help of a Nigerian interpreter. The police managed to contact the victim by telephone in Spain and asked her to come to Belgium and assume the official status of victim of human trafficking. At a certain point, the victim said that a woman was approaching her and a few moments later, the connection was broken. Later, the police tried multiple times, unsuccessfully, to contact her through SMS messages. There was no international police cooperation whatsoever. An example of a good practice in this case would have been if the victim could have been tracked down in collaboration with the Spanish authorities via international channels in order to rescue her from her situation.

The various EU countries are also not aware when a certain victim has already been a victim of human trafficking in a different country and has assumed the official status of victim there.

²⁶⁷ See: Annual Report on Trafficking in and Smuggling of Human Beings 2012 by the Centre, *Building trust*, p. 58-62.

In an Albanian case, in 2009 in Brussels, a victim was once again detected who had already been registered as a victim of human trafficking in 2004 in Italy.

In previous reports, the Centre has already emphasised the importance of a Europe-wide official victim status in order to arrange the assistance and support for victims on the basis of criminal acts of human trafficking committed on EU territory.

The Centre is pleased that in its strategic plan, the EU has included a European model with transnational referral mechanisms for victims of crimes of human trafficking that have taken place in a different EU country.

2.2.3. IMPACT (long-term effects)

In this point, the following questions from the template will be discussed:

1. *Has there been a decrease of victims of THB?*
2. *Were victims of THB less damaged?*
3. *Was quality of the assistance and support to victims of THB better?*

The Belgian system remains an international model of a well-balanced and effective victim system through which, in 2011, 152 victims were granted the official victim status and 50 victims received a permanent residence permit based on the official status of victims of human trafficking²⁶⁸. This demonstrates that the Belgian victim system functions effectively in practice.

As already mentioned, the quality of the assistance and support for victims has become more professional over the years. The rate of integration is also high. Based on an analysis of the 170 victim cases that were opened in 2006, it turns out that 71% of these victims were legal residents of Belgium in 2012, whilst 44% of those 170 victims – thus, nearly half of all victims – had received a permanent residence permit within the context of the human trafficking procedure.²⁶⁹

The latest figures even show that 75% of the victims of human trafficking who assumed the official victim status in 2007 were still legal residents of Belgium in 2014, the majority of them having received permanent residence permits.²⁷⁰

For several victims, the transnational referral mechanism also proved effective: they had been transferred from other countries to one of the specialised support centres in Belgium. This is demonstrated by cases (see above) which also formed the basis for a Benelux conference on 1 April 2014 for the improvement of the transnational referral mechanism between these countries.

²⁶⁸ See part 3 of the Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p.142 and subsequent.

²⁶⁹ For more detailed information, see the Annual Report on Trafficking in and Smuggling of Human Beings 2012 by the Centre, *Building trust*, pp.113-115.

²⁷⁰ See this report, chapter 3.

There are also positive examples of vulnerable victims (such as drug addicted victims) who have been granted official victim status by filing civil charges.²⁷¹ The same applies for victims in difficult to detect high-risk sectors (e.g.: seconded employees in the construction sector).

Based on interviews with the frontline services and the magistrates and analysis of the cases, it appears that the most serious forms of human trafficking for the purposes of sexual exploitation, specifically forced prostitution, have declined in comparison to the 1990s, when this was largely the standard practice. However, it is not possible to conclude from this that there are actually fewer victims because the exploitation relationships have become more subtle.²⁷²

There is a risk that this will lead to decreased vigilance concerning human trafficking because the notion may begin to take hold that the truly heinous cases are rarely seen any more and this could cause the issue to be seen as less of a priority in the field.

With regard to labour exploitation, in recent years, the social inspectorate has made great efforts to pay more attention to the indicators of human trafficking when persons are intercepted. In addition, more investigation has been done into the role of the principals, which has led to awareness raising. On the other hand, international cooperation remains a challenge.

As mentioned above, the specialised support centres for victims of human trafficking provide high-quality support. The victim system could nevertheless be further refined so that it could be geared more to the specific needs of the various types of victim profiles, such as EU-victims and drug addicted victims.

The victims can file civil charges during the trial and request compensation, and in recent years, this has increasingly been awarded to them by the courts.

The Centre also asserts that the frontline services, the staff of the specialised support centres and the magistrates need to have sufficient knowledge of the different anthropological backgrounds of the various victim target groups. Many police forces are aware of this and use intercultural mediators and priests to help them when questioning Nigerian victims. It is important that the judges and prosecuting magistrates have sufficient knowledge to be able to approach the typical victim target groups from an anthropological angle in specific cases. This is certainly true of Nigerian cases where often, the personal evidence, associated with voodoo curses, is not returned to the victims. For the victim, it is crucial that this intimate, personal evidence be returned in order to be able to break the voodoo curses and be freed from this culturally based position of dependency.²⁷³

²⁷¹ See: Annual Report on Trafficking in and Smuggling of Human Beings 2011 by the Centre, *The money that matters*, p.98.

²⁷² See chapter 1, point 2.1. of this report

²⁷³ See above, chapter 1, point 2.1.3.

How can structural conditions be developed that will create enough of a climate of trust that victims will be reassured and will be prepared to talk or make statements? Taking an approach to victims that also considers their ethnic-cultural backgrounds would be an important first step in the right direction. A good practice would be to pay attention to the diversity of the counsellors in the support centres and having a multicultural mix within the police forces. This could break down barriers and help gain the victims' trust. The support centres, too, in their personnel policies, could pay attention to multiculturalism and training. For the victim, the assistance of a social worker during questioning is a crucial psychological support.

3. Prevention

3.1. Introduction

This part is completely devoted to a European project to prevent human trafficking (*Corporate Social Responsibility to prevent Human Trafficking*) that is being co-financed by the European ISEC-programme, in which the Centre participated as the Belgian partner between January 2013 and April 2014. We shall present a number of steps that the Centre took in the area of prevention as a result of this project.

This project, which is being coordinated by the University of Tilburg, was carried out according to a formal schedule with a number of predetermined steps and goals.²⁷⁴

3.2. Goal of the project

For this project, each of the partners were required to develop a practical and concrete instrument for preventing human trafficking designed for companies in potential "high risk" sectors. The aim of the project was to study the extent that corporate social responsibility and the application of the UN Guiding Principles on Business and Human Rights²⁷⁵ could form a tool for preventing human trafficking. The Centre focused on creating a set of instruments that could be used by companies in the Belgian construction sector.

²⁷⁴ The partners in the project "*Corporate Social Responsibility to prevent Human Trafficking*" were Tilburg University (the Netherlands), Ludwig Boltzmann Institut für Menschenrechte (Austria), Danish Centre Against Human Trafficking (Denmark), University of Liverpool (United Kingdom), Gabinet d'estudis socials (Spain), Università Ca' Foscari Venezia (Italy) and the Centre for Equal Opportunities and Opposition to Racism. The total budget for this project was 395,000€.

²⁷⁵ Guiding principles that determine the obligations and responsibilities of business enterprises and States with regard to human rights (see: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_FR.pdf of www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

3.3. Procedure for the project

In each of the countries, three major steps were taken towards developing a prevention instrument of this type.

In an initial phase, a theoretical framework was drawn up in which the instruments for the definition and prevention of human trafficking for the purposes of labour exploitation on an international scale were established in a manner that was convergent for all partners. At the same time, it was explored how the principles of socially responsible entrepreneurship for companies could be integrated into the prevention guide.

Then, the sector was outlined per country in order to obtain a picture of its organisation and functional logic, and of the factors contributing to the risk of exploitation of employees. This analysis was based on research on documentation (reports from stakeholders in the field, economic analyses, articles in the press, etc.) and on semi-structured interviews with the stakeholders involved (inspection services, trade unions, employer organisations, construction companies, NGOs). This second phase resulted in a clear picture of the challenges in terms of prevention within this highly specific context (lack of knowledge of the phenomenon of human trafficking on the part of the companies, a phenomenon that is clearly connected to the system of subcontracting, etc.) and led to an initial assessment of the type of instrument that would need to be developed.

Finally, based on the conclusions from the first two phases, the Centre developed a concept for an instrument that was presented to a number of major stakeholders (companies, trade union representatives, employer federations, the bureau of the Interdepartmental Unit for coordinating the fight against trafficking and smuggling in human beings, etc.), who were invited to give feedback. A debate was held about the instrument, after which it was then adapted and elaborated in detail. The members of the Joint Committee for the construction sector were also invited to give input.

3.4. The tools developed

The instruments that the Centre developed for this project aim to prevent human trafficking through raising awareness in the target group at various levels.

For the staff of construction companies who are in charge of selecting companies as subcontractors, a 15-page brochure was composed. This provides theoretical information about the phenomenon, examples from case law and a list of indicators for detecting and preventing high-risk situations.

The guide includes a design for a poster that could be displayed on construction sites in order to raise awareness among the employees as well about the existence and gravity of the phenomenon, and a practical checklist (which would ideally be translated into different languages) including indicators that could point to exploitation and which could be detected on the construction site. In such situations, the construction company that has the overall authority over the work site could turn to the brochure for tips on how to react and action to take when exploitation is reported.

In the framework of this project, the Centre was asked to give a presentation about recent case law on human trafficking in the construction sector, during a working meeting of the Construction Protocol. This consultation body is made up of various stakeholders from the

sector²⁷⁶ who have joined forces to prevent social fraud and illegal employment. The Centre was also asked to repeat this initiative and to regularly come and present the evolution of the case law and of the phenomenon to them.

3.5. Implementation of the prevention guides

For the implementation of the prevention guides that were developed in the context of the project, the Centre opted to collaborate with the organisations in the construction sector which are specialised in prevention at various levels. After presenting the guide to the Joint Committee for the sector, a working party was created within the National Action Committee for Health and Safety in the Construction Industry (CNAC/NAVB). This action committee consists of representatives of the Joint Committee for the Construction Sector, representatives of the CNAC/NAVB, communication experts and the Centre. This working party has set the goal of finalising the guide in terms of form and content, and exploring whether it would be possible to develop a joint awareness raising campaign and an effective and efficient implementation strategy within companies working in the sector. Work will continue in these areas in 2015.

The Centre is giving further consideration to how the concrete impact of the prevention guide could best be measured in a collaborative context of this type. However, it is already a positive sign that the partners are prepared to cooperate and promote information and awareness about human trafficking within the companies active in this high-risk sector themselves.

The Centre will also continue to advocate for a module on human trafficking to be included in the training courses that are provided to companies by the employer federations.

²⁷⁶ The Federal Public Service (FPS) Employment, Labour and Social Dialogue, the FPS Social Security, the National Employment Office, the Social Information and Investigation Service, organisations represented in the Joint Committee for the construction sector and the sector-wide Social Security Fund for the construction sector.

CHAPTER III: DATA

Introduction

Unlike in previous years, in this data section, we shall not include data on human smuggling, unless otherwise indicated. The Centre obtained the figures presented in this section from the six stakeholders who may be involved in cases of human trafficking in Belgium:

- the police, with information from the National General Database;
- the social inspectorate;
- the Board of Prosecutors-General, with information relating to prosecutions made by the Public Prosecutors' offices;
- the Immigration Office;
- the specialised centres for victim support;
- the Criminal Policy Department, with information on convictions.

For each data source, we present:

- a description of the data;
- a presentation of the data;
- a commentary on the data-subset.

This data, received from persons active in the field, gives a reliable picture of the functioning of these stakeholders themselves and generally gives an impression of the evolution of this functioning over time, per stakeholder.

The lack of any mutual coordination of the data results in blind spots and a distorted image of the underlying reality. This means that the existing data is not sufficiently viable as a basis for policy evaluation and for supporting strategic analysis. Finally, these shortcomings have a considerable impact on the ability to provide reporting for the European institutions.

The collection, centralisation and exchange of data on one hand, and analysis for the purpose of political, strategic and/or operational action on the other hand²⁷⁷ remain unfulfilled ambitions within the Belgian policy. And this is so despite the responsibilities which have been assigned to an Information and Analysis Centre on Human Smuggling and Human Trafficking (Centre d'information et d'analyse en matière de traite et de trafic des êtres humains (CIATTEH)), which was created in 2004 under the aegis of the Ministers for Justice and for the Interior.

²⁷⁷ See: *Annual Report on Trafficking in and Smuggling of Human Beings 2005*, "La politique belge en matière de traite des êtres humains : Ombres et lumières", pp. 62-65 (not available in English).

1. Police data

DESCRIPTION

The federal judicial police provides information in the form of maps. These are the work of the strategic analysts of the Directorate of Crime against Persons; they are created based on data made available in the National General Database (NGD) of the police. This is the third year in a row that they have applied a new syntax, which allows a picture of the evolution of the police actions to be obtained.

PRESENTATION OF THE DATA ON HUMAN TRAFFICKING

Figure 1. Human trafficking infractions per municipality and purpose of the exploitation (Source: National General Database, Police)

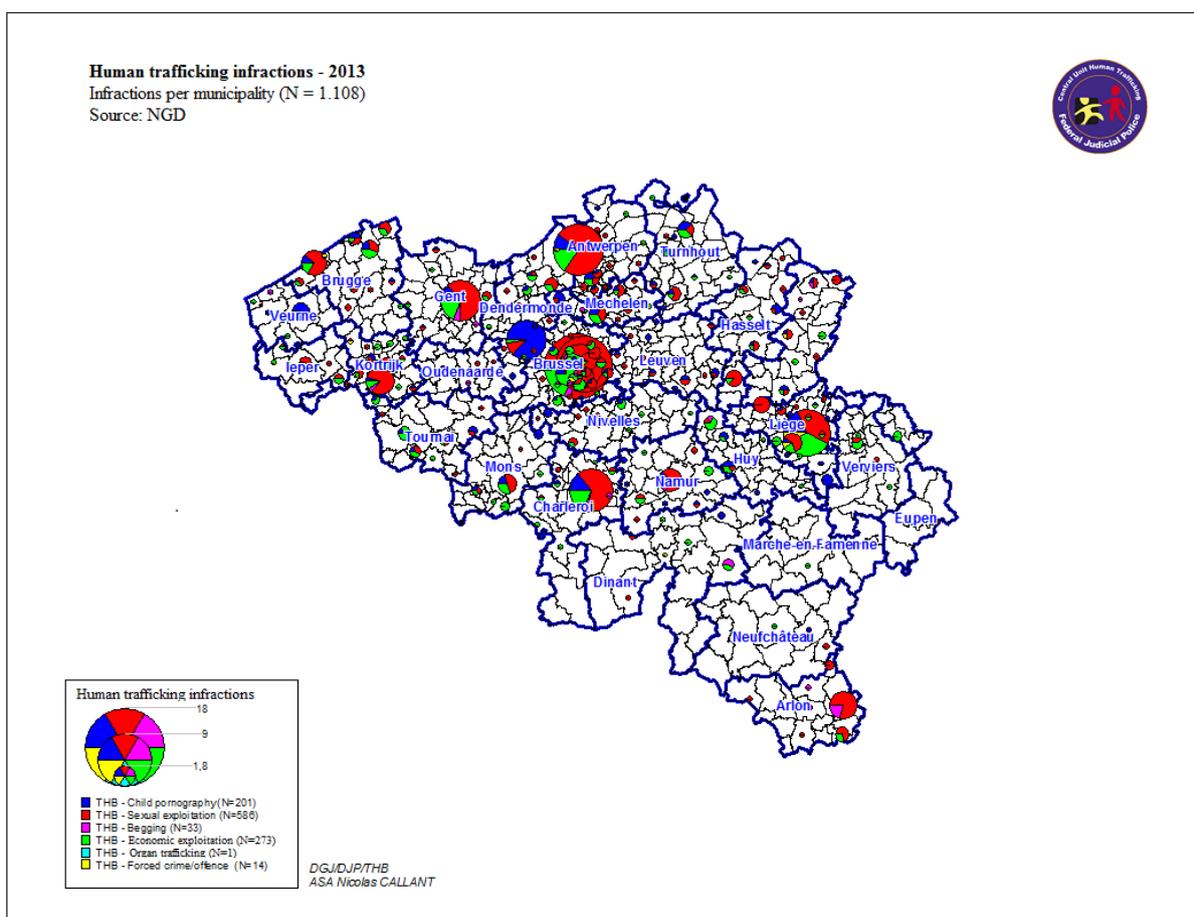


Table 1. Human trafficking infractions per year and purpose of the exploitation (Source: National General Database, Police)

	Sexual	Child pornography	Labour	Begging	Criminality	Organ trafficking	Total
2011	481	85	333	47	10	1	957
2012	466	51	321	44	13	1	896
2013	586	201	273	33	14	1	1,108

For three forms of exploitation, we observe the highest figures since 2011. For sexual exploitation, there were 586 records (120 more than in 2012, and 105 more than in 2011). For human trafficking for the purposes of producing child pornography, there were 201 records, two (2011) to four (2012) times more than in the recent past. This is examined in detail in the commentary. Finally, there were 14 incidents recorded of persons forced to commit crimes. As in both of the previous years, in 2013 there was also a single record of human trafficking for the purposes of organ trafficking.

With 33 records of human trafficking for the purposes of the exploitation of begging, we observe a decreased by one quarter in comparison to 2011 and 2012.

There were 273 incidences of trafficking for the purposes of labour exploitation, which is also fewer than in 2011 (333) and 2012 (321). For this type of exploitation, the social inspectorate has a key role to play as a frontline service. We shall examine their figures in point 2.

If we consider the trends locally, then we can see that specifically in the region of Antwerp, the proportion of records of human trafficking for the purposes of sexual exploitation underwent a very strong relative increase. The city of Kortrijk also stands out, as a newcomer, almost exclusively on the basis of human trafficking crimes of sexual exploitation. Dendermonde also features prominently, specifically for records of human trafficking related to child pornography.

COMMENTARY

A precondition for the production and distribution of child pornography is "some form of control" over the minor. That is why "the production and distribution" is categorised as what is now referred to as other forms of "sexual exploitation". Virtually all of the 201 records (initial Police Reports) were drawn up as a result of European (Europol) or International (Interpol or, for example, only by American police forces) cooperation, whereby investigation revealed that "someone" in Belgium with a specific "IP address" had exchanged child pornography at a certain time. In these cases, the police will take the first steps for the identification and in order to make an initial assessment of the owner of the IP address in question. It is investigated whether it may be a case of "production", and then the case is passed on to the districts for further investigation and to the investigators who are supported by the Federal Judicial Police (FJP). There is then also "investigation of the images" which is done by the Federal Judicial Police, but these are subsequent records which are not shown in the figures under consideration here. There are only a small number of records about production and distribution which are initiated independently, without any international cooperation, when connections were made for example, with certain reports or declarations.

2. Data from the social inspectorate

DESCRIPTION

Since 2011 there has been a protocol in place structuring the cooperation between the Social Inspectorate (SI) of the FPS Social Security and the Social Law Inspectorate (SLI) of the FPS Employment, Labour and Social Dialogue so that both inspection services perform systematic research in a coordinated way. This is done chiefly for the purposes of recording infractions of labour and social security laws in certain sectors that have proved vulnerable to human trafficking (exotic restaurants, cleaning services, agriculture and horticultural companies, garment workshops, and prostitution).²⁷⁸ It is thus a question of raids which are planned and discussed among the various social inspection services within the framework of the "COL01/07".

The Social Intelligence and Investigation Service (SIIS), which is governed by authorities such as the Ministers for Employment, for Social Security and for Justice, acts as a separate support unit. They act on behalf of the federal social inspection services to combat illegal labour and social security fraud, inside and outside of the district-based units. However, there is no coordinated reporting about human trafficking specifically.

The basis for the data provided by the Social Inspectorate is a numerical document with data according to 5 parameters: the victims' countries of origin, the economic sectors, the types of infraction, the number of infractions, and the number of employees on whose behalf violations have been recorded. The basis for the data from the Social Law Inspectorate (SLI) is an e-mail with explanatory notes.

This data is the result of the statistical processing of, on one hand, the *Pro Justitia* reports sent to the Public Prosecutor and/or the Labour Prosecutor, and on the other hand the report of a criminal offence submitted to the Labour Prosecutor, the Public Prosecutor, or to the examining magistrate when the investigation is performed on the latter's behalf. A report of a criminal offence does not have the same evidentiary value as a *Pro Justitia* report: it is up to the judge to assess its evidentiary value.

²⁷⁸ See: *Annual Report 2010, "Toezicht Sociale Wetten"* (Social Law Inspectorate or SLI), chapter 8. De strijd tegen de Mensenhandel, www.werck.belgie.be.

DATA FROM THE SOCIAL INSPECTORATE

Table 2. *Pro Justitia* reports and reports of a criminal offence for human trafficking infractions for the purposes of labour exploitation (Source: SI, calculations Federal Migration Centre)

	2009	2010	2011	2012	2013
<i>Pro Justitia</i> reports / # employees	4/5	16/25	13/25	7/9	12/41
Reports of a criminal offence / # employees	2/4	18/95	20/21	31/114	17/28
Tot. records/ tot. employees	6/9	34/120	33/46	38/123	29/69

In 2013, 12 *Pro Justitia* reports and 17 reports of a criminal offence were drawn up, in which the SI recorded incidences of human trafficking for the purposes of labour exploitation.²⁷⁹ The nationalities of the employees who were the victims of the infractions (n=69) in cases that were qualified as human trafficking for the purposes of labour exploitation break down as follows:

- Romania: 27 persons in five cases, of which 17 victims in the meat processing industry, 5 in the construction sector and 2 as domestic staff;
- Morocco: 8 persons in 6 cases, of which 2 as domestic staff and 2 in the fish and shellfish processing industry;
- Tunisia: 8 victims in 3 cases, of which 6 persons in specialised construction;
- Hungary: 5 victims in 1 case in the restaurant sector;
- Pakistan: 5 victims in 2 cases, of which 4 in retail of primarily food products.

A sampling of the sectors in which the 29 infractions were recorded: small-scale food industry of various kinds, meat or fish processing industry, retail of various kinds, the hospitality sector, construction sector, household work, cleaning, transport, courier services, waste processing, etc.

DATA FROM THE SOCIAL LAW INSPECTORATE

In 2012 the Social Law Inspectorate (SLI) did not record any infractions. In 2013, three *Pro Justitia* reports on human trafficking were drawn up, with regard to three employers, all of whom were Belgian nationals. Information on the nationality of the employees was not retained in these records. One of the associated cases falls under the authority of the South-Liege directorate, in which 3 employees were involved. One case falls under the authority of the Sint-Niklaas directorate, in which 4 employees were involved. In one of the cases, a *Pro Justitia* report (*Pro Justitia* or PJ) on human trafficking was produced in the context of trans-border cooperation to combat fraud, better known by the name COVRON. This involved 14 employees.

In two other cases of human trafficking, in Halle-Vilvoorde and Leuven, the SLI assisted the Social Inspectorate.

²⁷⁹ NACE-BEL, Activity classification, www.economie.fgov.be/nl/binaries/NL-NACE-BEL%202008%20met%20toelichtingen_tcm325-65642.pdf.

COMMENTARY

Joint reporting with a focus on human trafficking by all of the Social Inspection Services would be particularly valuable. Despite all of the initiatives for coordination and support, it is not possible to demonstrate the evolution in the approach to human trafficking for the purposes of labour exploitation based on statistics. This shortcoming is all the more glaring given the fact that the Labour Prosecutors do not systematically record prosecutions for human trafficking (see below: 3). If one is to evaluate the policy on human trafficking for the purposes of labour exploitation, one must rely largely on the analysis of court cases and a limited amount of figures related to victims.

3. Data from the Public Prosecutors

DESCRIPTION

The data presented below has been received from the statistical analysts of the Board of Prosecutors-General. They are a reflection of the information that was available on 10 January 2014 concerning cases that were submitted over the course of 2013 to the criminal divisions of the Public Prosecutors' offices. There are two intrinsic limitations here: this concerns only those cases filed against adults; and the data from the Public Prosecutor's office of Eupen is absent.

A more important shortcoming is that this data does not include the cases handled by the Labour Prosecutors. Although the Labour Prosecutors can file records in the REA/TPI-system, which forms the basis for this data collection, this is not done systematically. That is why in the tables below, there is no data on cases submitted to these Labour Prosecutors. For such cases, there could be said to be a structural underreporting. This is a significant shortcoming.

PRESENTATION OF THE DATA ON HUMAN TRAFFICKING SUBMITTED TO THE PUBLIC PROSECUTORS' OFFICES

Table 3. Cases submitted to the Public Prosecutors' Offices in 2013 (Source: Board of Prosecutors-General, statistical analysts)

		37L: Sexual exploitation (art. 433quinquies §1, 1°)	29E: Exploitation of begging (art. 433quinquies §1, 2°)	55D: Exploitation of work (art. 433quinquies §1, 3°)	55E: Illegal organ removal (art. 433quinquies §1, 4°)	55F: Forced criminality (art. 433quinquies §1,5°)	TOTAL
ANTWERP	2008	58	2	53	0	8	121
	2009	53	1	43	0	3	100
	2010	49	0	31	0	2	82
	2011	31	2	41	0	3	77
	2012	27	0	28	0	4	59
	2013	26	1	38	0	2	67
BRUSSELS	2008	27	6	37	1	5	76
	2009	61	8	41	0	3	113
	2010	76	2	21	1	2	102
	2011	99	5	30	1	1	136
	2012	111	4	46	0	3	164
	2013	116	5	35	1	14	171
GHENT	2008	18	3	69	0	4	94
	2009	24	1	42	0	3	70
	2010	29	1	39	0	4	73
	2011	15	1	42	0	0	58
	2012	28	1	35	0	3	67
	2013	22	2	52	0	6	82
LIEGE	2008	22	1	22	0	11	56
	2009	42	0	18	1	9	70
	2010	17	2	22	0	10	51
	2011	21	0	25	0	4	50
	2012	16	2	32	1	2	53
	2013	22	4	43	0	15	84
MONS	2008	13	0	20	0	2	35
	2009	8	0	29	0	2	39
	2010	4	0	23	0	1	28
	2011	4	0	27	0	5	36
	2012	5	0	22	0	5	32
	2013	9	0	16	0	1	26
FEDERAL PUBLIC PROSECUTOR'S OFFICE	2008	3	0	1	0	0	4
	2009	1	0	0	0	0	1
	2010	0	0	0	0	1	1
	2011	0	0	0	0	1	1
	2012	3	0	1	1	1	6
	2013	1	0	0	0	1	2

TOTAL	2008	141	12	202	1	30	386
	2009	189	10	173	1	20	393
	2010	175	5	136	1	20	337
	2011	170	8	165	1	14	358
	2012	190	7	164	2	18	381
	2013	196	12	184	1	39	432

The most striking observation for 2013 is that the total number of cases submitted, at 432, is the highest since 2008. If we break this figure down according to the various purposes of the exploitation, we see that this record was booked with regard to virtually all of the forms of exploitation.

Only with regard to the exploitation of work, with 184 cases submitted, was there a higher figure in 2008 than for 2013 (202). It should be noted, on the subject of this exception, that this data does not include data from the Labour Prosecutors. It is therefore quite possible that the number of cases with this form of exploitation has increased, but in the absence of reliable reporting by the Labour Prosecutors, this cannot be confirmed. Perhaps the number of incidences of labour exploitation recorded by the frontline services, showing a decrease as reported by both the police and the social inspection services, is also an indication that for the Labour Prosecutors, there was likewise no increase in 2013.

Other striking observations concern the evolutions per judicial district or jurisdiction.

The picture presented by the jurisdiction Liege is the most notable. With 84 cases of human trafficking in 2013, this is a sharp increase compared to 2012 (53), and the increase is the result of higher figures for virtually all forms of exploitation.

In the jurisdiction of Antwerp, the decline that started in 2008 (121 new cases submitted) and continued until 2012 (59 cases submitted), appears to have halted, for 2013, with 67 new cases submitted.

In the jurisdiction of Brussels, we see that the increase continues steadily year after year. In 2008 there were 76 cases, in 2013 there were 171, an increase of 125%. There is no other jurisdiction that has as high a proportion of cases of human trafficking for the purposes of sexual exploitation as Brussels does: more than two thirds of the human trafficking cases concern this form of exploitation.

The jurisdictions of Mons and Ghent show a consistent picture over the years: although in Ghent, there is an increase (+10) compared to the average of the past five years and in Mons there is a decrease (-8).

Whilst it was not yet possible last year to report on the progress of the cases of human trafficking or their closure, a picture can now be sketched, according to the situation as of 10 January 2014.

Table 4. Number of classified cases closed on 10 January 2014 regarding cases from 2013 (Source: Board of Procurators-General, statistical analysts)

	Opportunity	Technical	Other	Total
Human trafficking for the purposes of sexual exploitation	17	29	4	50
Human trafficking for the purposes of exploitation of begging	4	3	0	7
Human trafficking for the purposes of exploitation of work	13	28	0	41
Human trafficking for the purposes of forced criminality	3	14	0	17

The term technical reasons covers factors such as "insufficient evidence" (36 cases), "unidentified perpetrator" (20 cases) and "actions not criminal " (16 cases). Reasons of opportunity are listed because there were other priorities (22 cases), because an illegal situation has since been remedied (3 cases) and due to a disproportion between the consequences of the criminal prosecution and the social disruption (3 cases).

Only in exploitation of begging did opportunity considerations play a greater role than technical ones.

COMMENTARY

We see that there have never been so many cases submitted to the Public Prosecutor's offices as in 2013 and that the number of victims who assumed victim status during the same period, declined. However, this is not contradictory or worrisome as such, as long as it has not been further investigated. This could be done by taking a sampling of cases and examining what the information about the victims can tell us. Only the figures of the social inspection services refer to the number of victims involved in the records of human trafficking for the purposes of labour exploitation.

4. Data from the Immigration Office

DESCRIPTION

The Immigration Office (IO) includes in its annual reports fairly extensive reporting on the activities of its unit *Minors/Slachtoffers van Mensenhandel (MINTEH)* (minors/victims of human trafficking). This unit provides follow-up and investigation of residence cases for victims of human trafficking or human smuggling for whom a residence permit request has been submitted. The annual reports of the IO form the basis for the information presented below. Although the reporting by the IO is done largely according to the same model year after year, it is not possible to compare the trends of the past five years for all victims in terms of the parameters of nationality, purpose of exploitation, gender and age of majority or not.

In this data section, we shall first examine information about victims of human trafficking who received a document for the first time in 2013. We shall then discuss the total number of residence documents that were issued in 2013 for all victims in the procedure.

When there are aggravating circumstances, victims of human smuggling may also receive a residence document. More details are provided in the annual report of the IO.

Last year the IO was willing, at the suggestion of the Centre, to investigate what had happened in "administrative" terms to the victims for whom a first residence document was issued in 2006. The same exercise was performed for the victims of 2007, for the purposes of this report. This once again provides a minifocus.

PRESENTATION

A. Data on the victims of human trafficking who received a residence document for the first time in 2013

Table 5. (Source: the Federal Migration Centre)

2009	107
2010	123
2011	129
2012	127
2013	116

The increase starting from 2009 (107 victims of human trafficking who received a first residence document), through 2010 (123) until 2011 (129) stagnated in 2012 (127). For the year 2013 there is a decline, with 116 new victim cases.

Table 6. Victims for whom a first residence permit was issued in 2011, 2012 and 2013, according to age and sector of exploitation (Source: IO, processed by the Federal Migration Centre)

Age	Sexual exploitation			Labour exploitation			Other			Total		
	2011	2012	2013	2011	2012	2013	2011	2012	2013	2011	2012	2013
< 18	5	9	4	7	2	0	3	0	0	15	11	4
18-25	17	31	15	26	9	19	1	1	0	44	41	34
26-30	8	6	8	12	11	13	2	2	0	22	19	21
> 30	4	6	10	36	43	47	8	2	0	48	51	57
Total	34	52	37	81	65	79	14	5	0	129	122	116
Women	<i>n/a</i>	47	36	<i>n/a</i>	10	12	<i>n/a</i>	6		0	63	48
Men	<i>n/a</i>	5	1	<i>n/a</i>	55	67	<i>n/a</i>	4		0	64	68

A few notable observations here:

- With 79 persons who received a first residence permit, the figure for victims of labour exploitation is high. This is 14 more than in 2012. It is just 2 fewer than in 2011 (the peak year for this type of exploitation);
- The relative share of new victims of labour exploitation has never reached such a high level, at 68%;
- For 2013 the IO does not report any victims outside of the two major exploitation categories;
- In 2013, 4 minors are listed in the sexual exploitation category, that is 5 fewer than in 2012 when there were 9 minors;
- Some of the 5 minors who have assumed the official victim status are accompanied and some are unaccompanied minors;
- Despite the general decrease, the number of victims over the age of 30 is slightly higher than in 2012. The proportion of over-thirties in the victim status has never been so high, at just under 50%.

Table 7. Victims for whom a first residence document was issued in 2013, according to nationality and sector of exploitation (Source: IO, processed by the Federal Migration Centre)

Nationality	Sexual exploitation	Labour exploitation	Other	Total
Morocco	1	19	0	20
Romania	7	13	0	20
China	8	3	0	11
Nigeria	7	0	0	7
Tunisia	0	6	0	6

A few notable observations based on these and other figures:

- Morocco and Romania are together responsible in 2013 for 40 victims, exactly as in the previous year (when Romania and Morocco were responsible for respectively 22 and 18 victims);
- Just like in 2012, in 2013 there were 11 Chinese victims, with exactly the same proportions between sexual and labour exploitation as in the previous year;
- The number of Nigerian victims has declined from 19 in 2012, to 7 in 2013;
- Tunisia is present on this list for the first time, with 6 victims;
- Bulgaria no longer appears on the list. There were 3 new Bulgarian victims, as was the case for two other EU-countries, Hungary and Slovakia.

B. Data on all residence decisions of the MINTEH unit for all victims

The figures on the victims of human trafficking for whom a first residence document was issued in 2013 have been discussed above.

The figures presented below offer a picture of all of the victims of human trafficking as well as human smuggling who received documents in any phase of the procedure. This is the only data-section within which the numerical data on the victims of human trafficking and human smuggling have been combined. In creating this table, the IO in fact made no distinction between victims according to phenomenon and/or purpose of exploitation.

As soon as someone assumes the official victim status, he or she receives a first document: an order to leave the territory or a certificate of registration. Afterwards, as long as this person falls under the status, new residence documents will follow (in principle, proof of registration in the aliens register for six months, which is renewed every six months until the end of the juridical procedure). Sometimes, a right to residence is granted, on a temporary or definitive basis, for humanitarian reasons.

Table 8. Residence documents issued in 2011, 2012 and 2013 (Source: IO)

	2011		2012		2013		Total		
	M	F	M	F	M	F	2011	2012	2013
							M&F	M&F	M&F
OLT 45 days (THB)	20	10	18	18	18	12	30	36	30
Certificate of registration (RC)	73	47	70	73	69	48	120	143	117
Extension of RC	1	11	4	8	8	7	12	12	15
Temporary CIAR (THB)	45	27	61	45	62	38	72	106	100
Extension CIAR (THB)	282	180	285	158	293	168	462	443	461
Indefinite CIAR (THB)	31	20	15	20	25	21	51	35	46
Temporary CIAR (Humanitarian)	0	1	2	2	1	1	1	4	2
Extension CIAR (Humanitarian)	14	33	17	34	10	21	47	51	31
Indefinite CIAR (Humanitarian)	5	6	7	4	14	12	11	11	26
Annex 13 (BGV)	3	4	3	4	7	4	7	7	11
Extension Annex 13	0	1	0	0	0	0	1	0	0
Total	474	340	482	366	507	332	814	848	839

[CIAR = Certificate of Registration in the Aliens' Register; OLT = Order to Leave the Territory]

A few notable observations based on these figures:

- The 839 decisions to issue or extend a residence permit concern both new victims from 2013, as well as those from prior to 2013, who have reached a phase in the victim status and regarding whom one or more decisions have been made.
- A little over three fifths of the residence decisions concern men, which represents the highest proportion to date;
- The number of authorisations for indefinite residence for humanitarian reasons is significantly higher than in previous years.
- The considerably lower number of "start-up documents" (OLT 45 days +RC) is striking, with a count of 147 documents in 2013, after 179 in 2012.

C. The victims of 2007

The Centre asked the MINTEH unit to find out what has happened in terms of administrative residence status to the 161 victims of human trafficking and human smuggling for whom the IO issued a first residence document in 2007. It was not possible to include all of the valuable and detailed information in this overview. A selection is presented below.

Table 9. Characteristics, per 31 December 2007, of the human trafficking victims for whom a first document was issued in 2007 (Source: IO, calculations Lionel Brackman, MINTEH unit)

	Sexual exploitation	Labour exploitation	Other	Total
< 18	2	5	0	7
18-25	25	18	1	44
26-30	10	41	1	52
> 30	10	48	0	58
Total	47	112	2	161
<i>Women</i>	<i>47</i>	<i>33</i>	<i>1</i>	<i>81</i>
<i>Men</i>	<i>0</i>	<i>79</i>	<i>1</i>	<i>80</i>

Table 10. Administrative situation on 31 October 2013 of the 161 human trafficking victims for whom a first residence document was issued in 2007 (Source: IO, calculations Lionel Brackman, MINTEH unit²⁸⁰)

		M	F	Total
Card A	Temporary residence within the framework of the human trafficking procedure	8	2	10
	Temporary residence within the framework of a regularisation procedure	3	1	4
	Temporary residence on the grounds of subsidiary forms of protection	2	0	2
Total		13	3	16

Card B	Permanent residence within the framework of the human trafficking procedure	25	33	58
	Permanent residence within the framework of a regularisation procedure	18	14	32
Total		43	47	90

Card E	Registration as EU-employee	1	1	2
Card F and F+	Sponsor for family reunification	1	5	6
ID as Belgian	Belgians	5	1	6
Total		7	7	14

Total legally registered		63	57	120
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Deceased	0	1	1
Pending regularisation case	0	1	1
Ministerial repatriation order	1	0	1
Forcibly repatriated	0	1	1
Voluntarily repatriated	5	5	10
Unknown	14	13	27
Total not registered	20	21	41

²⁸⁰ The cards in the left-hand column of this table are the electronic identity cards types A through F. See: <https://dofi.ibz.be/sites/dvzoe/NL/Pages/Elektronischevreemdelingenkaarten.aspx>.

A few notable observations based on these figures:

Three out of four victims of human trafficking who assumed the official status in 2007 are still legal residents of Belgium in 2014, the majority of them holders of permanent residence permits. There are 27 persons whose status is currently unknown to the IO, which also applies to the person who received a ministerial repatriation order. It is unknown whether or not this woman has left the country. One man is effectively still residing in Belgium, awaiting a humanitarian residence decision.

Duration of THB procedure	Reason THB decision	Sector		Overall total
		labour	prostitution	
<1 year	Centre	14	11	25
	Public Prosecutor's Office	4	4	8
Total <1 year		18	15	33
1-2 year	Centre	4	2	6
	Deceased	1		1
	Public Prosecutor's Office	7	2	9
Total 1-2 years		12	4	16
2-3 years	61/5	1		1
	Centre	3		3
	Public Prosecutor's Office	4	1	5
Total 2-3 years		8	1	9
3-4 years	Centre	1		1
Total 3-4 years		1		1
4-5 years	61/5		1	1
	Public Prosecutor's Office	1		1
Total 4-5 years		1	1	2
Overall total		40	21	61

“Centre”: One of the specialised centres reports to the IO that the support has been stopped, for example due to repatriation, failure to comply with the terms of the assistance, disappearance, etc.

“Public Prosecutor's Office”: The Public Prosecutor's Office notifies the IO that the person is no longer officially regarded as a victim of human trafficking.

The notification "61/5" means that the victim has received a permanent residence permit within the framework of the human trafficking procedure.

It is hardly the case that all terminations of support resulted in the persons leaving the country. As indicated in the above table, a significant portion received residence status on other grounds.

COMMENTARY

The main supplementary data that the Immigration Office might consider providing would be listing the number of individuals for whom a residence decision has been taken based on human trafficking, in the reporting. The 839 residence decisions sometimes encompass multiple decisions concerning the same person (a first, second or third document issued within the reference year). If the number of individual persons involved could be clarified, we would have an indication of the size of the population who fell within the human trafficking status at any time within the reference year.

5. Data from the specialised centres for victims

DESCRIPTION

In this section, we shall report on the figures on victims for whom, in the course of 2013, the specialised centres started a first, new programme of support. The figures on the new support programmes correspond to the typology established in the circular of 26 September 2008.²⁸¹ Once the initial phase (reflection period) has been started, and thus, an order to leave the territory has been issued, a programme of support is considered as having been established. The form of the psychosocial and legal-administrative aid may vary depending on the support centre.

For the second year in a row, in this annual report the Centre is publishing integrated tables, one for human trafficking and one for human smuggling, which indicate the age, gender, nationality and purpose of the exploitation of the victims. Each of the specialised centres supplied the necessary figures, which the Centre then compiled into a single table.

Based on the information presented below, it is possible to form a picture of the entire support activities and reception capacity of the centres. The duration of the support, which is a very important indicator, is not discussed here because it can be done better justice in a separate description and analysis. The figures from the IO about the extension of residence documents, within the framework of the human trafficking procedure do however offer a potential indicator of this; these numbers increased in 2013.

It would not be possible to include reporting on and analysis of the reports of persons for whom no support programme was initiated, here, although it would certainly be relevant for enhanced insight into the policy on human trafficking and exploitation. The processing of all of the contacts constitutes an important responsibility and significant workload for the centres. For more information, we invite you to consult their annual reports.

²⁸¹ See: Circular of 26 September 2008 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain forms of aggravated human smuggling.

PRESENTATION

Table 11. New programmes of support started by the specialised centres for 2006-2012, for victims of human trafficking and human smuggling (Source: annual reports on Human Trafficking and Human Smuggling, Federal Migration Centre)

2006	2007	2008	2009	2010	2011	2012	2013
172	179	196	158	141	153	174	148

Table 12. New programmes of support started by the specialised centres, for victims of human trafficking only (Source: Specialised centres and Federal Migration Centre)

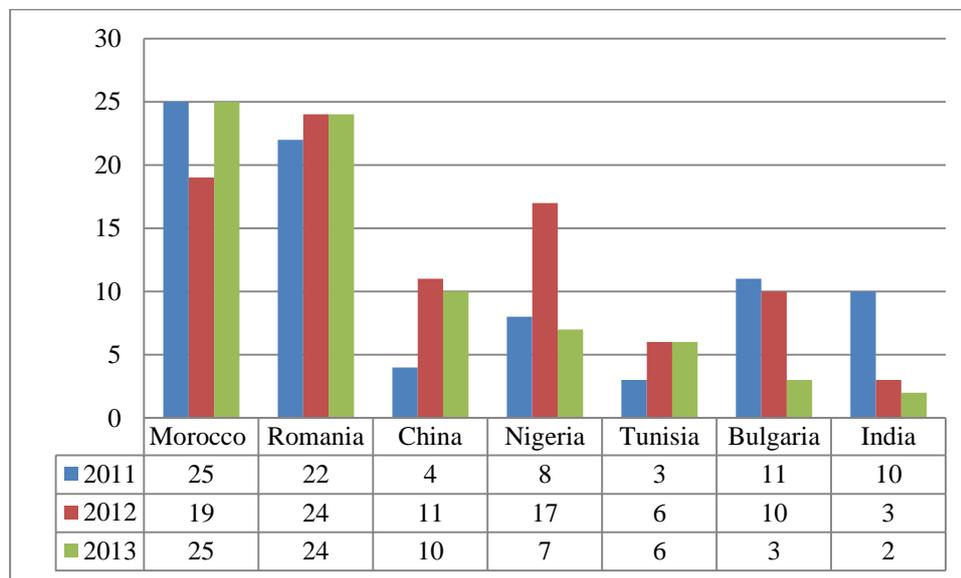
2010	2011	2012	2013
130	133	143	133

Table 13. New programmes of support started for victims of human trafficking, according to purpose of exploitation, gender and age (Source: specialised centres, compiled by the Federal Migration Centre)

Nationality	Sexual				Begging				Labour				Total
	Women		Men		Women		Men		Women		Men		
	Min.	Adult	Min.	Adult	Min.	Adult	Min.	Adult	Min.	Adult	Min.	Adult	
Morocco		2								6		17	25
Romania		9								4		11	24
China		2								2		6	10
Nigeria		6										1	7
Tunisia												6	6
Egypt								1				4	5
Albania		4											4
Bangladesh												4	4
Slovakia										4			4
Algeria												3	3
Belgium		3											3
Bulgaria		3											3
Guinea												3	3
Hungary		3											3
Brazil												2	2
Congo		1										1	2
Guinea-Bissau												2	2
India												2	2
Latvia		2											2
Spain										1		1	2
UK												2	2
Bhutan												1	1

Burkina Faso												1	1
Colombia		1											1
Dom. Rep.		1											1
Equ. Guinea		1											1
Ethiopia										1			1
Ghana												1	1
Cameroon										1			1
Liberia		1											1
Serbia									1				1
Sierra Leone		1											1
Czech Rep.												1	1
Thailand		1											1
Togo		1											1
Turkey												1	1
Subtotal		42		0		0		1		20		70	
Total	0	42	0	0	0	0	0	1	1	19	0	70	133

Figure 2. Evolution of the nationalities making up the top 5 in the figures from the specialised centres in the past five years (Source: specialised centres, processing by the Federal Migration Centre)



The Belgian system is a closed system. It is therefore logical that the figures on the support programmes started by the specialised centres and the residence documents issued (IO), reflect those of the IO.

- They demonstrate that for every three victims who received support for the first time in 2012, one of them is still an EU-national (if we include the three female Belgian victims as well);

- More than half of the victims newly receiving support are male victims of human trafficking for the purposes of labour exploitation;
- Just under 40 of the victims newly receiving support are from North Africa;
- Three victims are holders of Belgian nationality.

COMMENTARY

Now that the Immigration Office has made it possible to track what has happened to victims from the past, it should soon become possible to assess the progress of the socio-economic integration for the people who assumed official victim status and subsequently received a residence permit. Many victims of human trafficking already make use of their right to employment during the human trafficking procedure. Whether these victims and others are able to (continue to) find their way to the labour market is an important question in terms of the assessment and potential adjustment of the support for victims.

6. Judicial data

DESCRIPTION

At the request of the Centre, the Department of Criminal Policy supplied information about convictions for human trafficking. This information consists of data associated with the year 2013 and completion of the data associated with 2012.

The statistics have been compiled based on data from the Central Criminal Registry. This is a record of decisions which have the force of *res judicata* (they are final); they have been submitted to the Criminal Registry by the registrars of the courts and tribunals. These records are still kept manually (whereas the police and the Public Prosecutors' offices make use of automated data processing). This is why the figures must constantly be updated.

The data supplied contains the following information about the convictions: the aggravating circumstances determined for each conviction, the type and number of penalties ordered for each conviction, and the purpose of the exploitation for a number of convictions dating from 2011.

PRESENTATION

Table 14. Convictions for human trafficking (*Source: Department of Criminal Policy, processed by the Centre*)

A.

Year	Convictions
2011 (reported in December 2012)	68
2012 (reported in November 2013)	77
2013 (reported in December 2013)	70

Of the 77 convictions from 2012, the Department of Criminal Policy took a random sample of 49 conviction notices, thus determining that they were based on the following exploitation purposes:

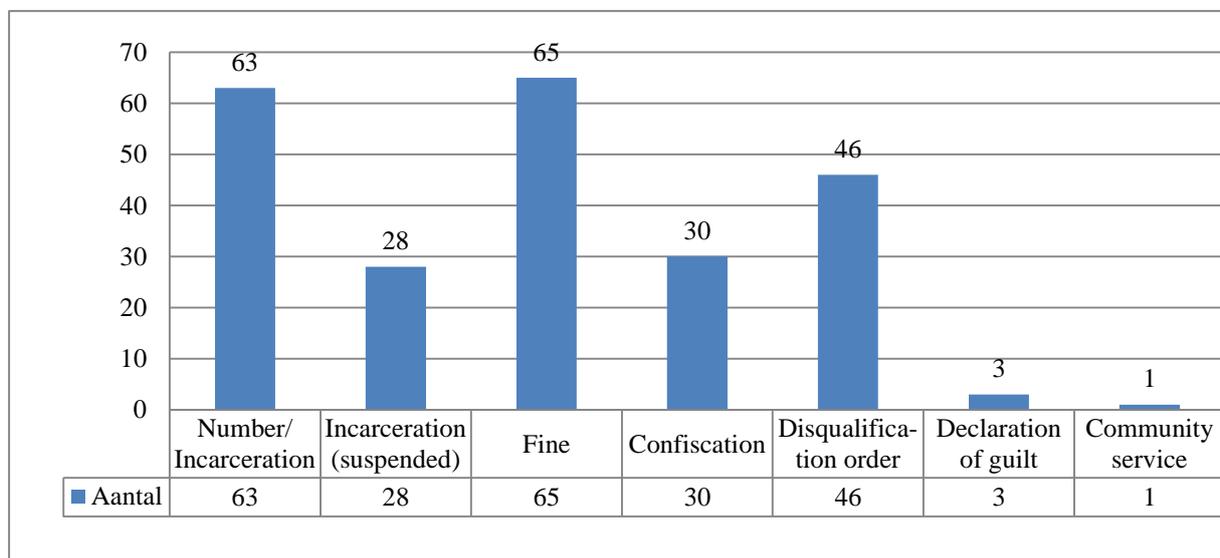
B.

Exploitation purposes	Convictions
Human trafficking for the purposes of sexual exploitation	29
Human trafficking for the purposes of economic exploitation	15
More than one exploitation purpose	1
Not specified in the notice	4

For the convictions from 2012, for which the purpose of the exploitation is known, there are twice as many cases of sexual exploitation as cases of labour exploitation. Ideally, we would also be able to present information on the duration of these cases. That would allow insight to be gained into how human trafficking cases are judged, particularly whether the description of human trafficking for the purposes of exploitation of labour might make it easier or harder to effectively reach a conviction. Other explanatory elements could also be useful, such as the difference in terms of evidence, between the types of exploitation, the gap between illegal labour, exploitation of labour and labour in circumstances regarded as offending human dignity, etc.

For the convictions from 2013, it is certain that a recount at the end of 2014 will cause these figures to increase.

Figure 3. Penalties imposed for human trafficking (Source: Department of Criminal Policy)



Explanation: multiple penalties can be ordered in a single case. Out of the 63 prison sentences, 28 were (partially or fully) suspended. In both relative and absolute figures, fewer suspended sentences were granted than for convictions in 2012. The number of confiscations, by contrast, declined slightly.

Table 15. Duration of the prison sentences (Source: Department of Criminal Policy)

Judgements in 2013	Number	%
Less than 1 year	9	14.3
1 year to less than 3 years	24	38.1
3 year to less than 5 years	17	27
5 years or more	13	20.6
Total	63	100

The most striking observation is the following: in 2013, the prison sentences imposed were longer than previously. Nearly 50% of the prison sentences were ordered for a duration of from 3 years to less than 5 years or for 5 years or more. This is an increase by nearly 10%, since 2011, when the percentage was just over 40%.

COMMENTARY

The backlog in processing the notices of convictions within the Central Criminal Registry is steadily being reduced.

CONCLUSION

The statistical information provided by all stakeholders could be considerably improved – through standardisation, for example - so that longitudinal and transversal analysis would become possible.

We therefore urgently demand that the new federal government effectively establish this data resource. That means: also daring to finally clarify the situation regarding the Information and Analysis Centre for Human Trafficking and Human Smuggling (IAMM). This is necessary if a true analysis and data model is to be achieved.

Perhaps the National Institute for Criminology and Criminalistics could play a role in devising a methodology whereby a minimum of information about the victims involved could be extracted from cases submitted to the Public Prosecutors' offices.

With regard to the socio-economic integration of victims from the past, who have been granted permanent residence in Belgium: the means are already available for gathering information about their progress in terms of socio-economic integration and particularly employment.

However, as mentioned above: for all stakeholders, the need for information and knowledge on victims of human trafficking crimes who have not assumed the official trafficking victim status remains an absolute priority.

CHAPTER IV: OVERVIEW OF CASE LAW (2013 - APRIL 2014)

In this chapter, the Centre presents an overview of the relevant case law between 2013 and April 2014 in human trafficking and human smuggling cases.²⁸² This overview is based on the cases in which the Centre has acted as civil party and on the judgements that we have received from the specialised support centres for victims.

Under consideration are 50 judgements by judicial authorities and 3 judgements by the Commission for Financial Aid for Victims of Deliberate Acts of Violence,²⁸³ the most noteworthy of which are summarised below.²⁸⁴ This entails 30 judgements in 26 cases from various judicial districts in Belgium:

- 14 judgements concerned human trafficking for the purposes of sexual exploitation. They were issued in the judicial districts of the Courts of Appeal of Antwerp (Mechelen, Turnhout, Antwerp), Brussels (Brussels, Leuven), Liege (Liege, Verviers) and Mons (Tournai, Mons).

In human trafficking for the purposes of sexual exploitation, the use of coercion and violence is often observed. Legal constructions to facilitate exploitation are used in the most complex forms of exploitation. There were also various decisions regarding the discussion of the concept of a "network" in human trafficking, particularly in a case of child pornography. Finally, there was also a noteworthy judgement in the case of a "forced" customary law marriage.

- 14 judgements concerned human trafficking for the purposes of labour exploitation. The judgements were issued in various sectors and are therefore discussed per sector of activity (agriculture, hospitality industry, equestrian centres, carwash, transport, construction, bakeries, butcher shops, sorting second-hand clothing, domestic work). These judgements were issued in the judicial districts of the Courts of Appeals of Antwerp (Antwerp, Turnhout), Brussels (Brussels, Nijvel), Ghent (Ghent, Bruges, Kortrijk), Liege (Liege) and Mons (Charleroi).

To qualify as human trafficking for the purposes of labour exploitation, it is not sufficient to pay an employee wages beneath the legal minimum scale and in violation of the social legislation. In order to arrive at the conclusion that certain working conditions are an offence against human dignity and form the constitutive element of a crime of human trafficking, the judges took multiple elements into consideration such as the following: working conditions and working environment (excessive working hours, absurdly low wages, lack of days off), housing in poor conditions, using various excuses to withhold wages, dependency upon the employer. Other findings include the use of fraudulent employee secondment or deployment of bogus independent contractors to conceal the exploitation.

²⁸² A number of decisions in the case law in early 2013 are also discussed in the previous report (see Annual Report on Trafficking in and Smuggling of Human Beings 2012, *Building trust*, pp.75 and subsequent).

²⁸³ With regard to this commission, see Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 59-66.

²⁸⁴ These are decisions that are notable either for juridical reasons or operational reasons.

- A judgement of the court of Liege ruled on crimes of forced criminality. Although the aspect of human trafficking for the purposes of forced criminality was not discussed, this case on the sale of narcotics is worthy of note.
- Finally, 3 judgements of the Commission for Financial Aid for Victims of Deliberate Acts of Violence are also discussed.

1. Human trafficking for the purposes of sexual exploitation

MESSAGE PARLOUR

In a case *in which the court of Mechelen ruled*²⁸⁵ ten defendants were prosecuted for human smuggling, human trafficking for the purposes of sexual exploitation, organised crime and facilitating unauthorised entry. Two of the defendants were also charged with money-laundering. They exploited Thai women in massage parlours. The young women had to pay between 10,000 and 15,000 euros to come to Belgium. They were enticed with false promises and ended up working in massage parlours where they had to perform sexual services for money. They had to hand over half of their income to the exploiter. As long as they were still in debt, their entire income was withheld. They were also required to pay an amount for housing and surrender their passports, until they had paid back their entire debt. Each of the defendants played a highly specific role (recruiting women and arranging documents, manager of the massage parlour, etc.). The court partially upheld the charges and awarded the civil parties compensation ranging from 4,000 to 8,000 euros. Confiscation was also ordered (suspended).

ESCORT SERVICE

A case concerning an escort service was handled by the *criminal court of Turnhout*²⁸⁶, whereby a manager of a massage parlour was convicted of human trafficking (with regard to a young Romanian woman) and exploitation of prostitution (with regard to 20 young women). He put young women to work, who would visit clients at home or at hotels (escorts). In exchange for a part of the profits, he took care of their transport. The young Romanian victim said that she had come to Belgium on the promise of finding steady work here. When she ran out of money, she had no choice but to work as a prostitute. She met the defendant via the bouncer of a nightclub who offered her a job in a massage parlour. The defendant took care of the arrangements and housing for the victim. For a fee, she was housed in an apartment chosen by the defendant. He transported her to clients and withheld half of her income for himself. Due to her precarious residence status and financial situation, she was dependent on the defendant. In this context, the court emphasised that it is hardly relevant that the victim had willingly agreed, and had previously worked for other people in the same sector. Moreover, the defendant threatened to inform her parents of her activities as a sex worker if she would stop and led her to believe that she could become a shareholder in his business.

²⁸⁵ Antwerp Criminal Court, Mechelen division, 9 April 2014, 9th ch. (definitive).

²⁸⁶ Turnhout Criminal Court, 27 March 2013, 13th ch. (definitive).

VULNERABLE VICTIMS

In a case of exploitation of prostitution concerning a young Rumanian woman, the *Criminal Court of Brussels*²⁸⁷ upheld the charges of human trafficking and diverse infractions concerning prostitution against a defendant. He had recruited the young woman with the promise of a job as a dancer. He provided her with false identity documents and organised her travel. She was forced to work as a prostitute at a bar on Aarschotstraat. She had to use her income as a prostitute to pay the window tax of 240 euros and gave the rest to the defendant. The defendant was sentenced to a prison term of 40 months and a fine of 1000 euros. The court awarded the civil party *ex aequo et bono* the sum of 2,000 euros due to moral damage.

In a case *handled in Liege*²⁸⁸ the court upheld the charges of human trafficking and charges concerning prostitution against various defendants who had exploited young Belgian women in a precarious social position through prostitution. The *modus operandi* of the chief defendant, which was later adopted by other defendants, was as follows: he sought out young women in vulnerable situations who had neither income nor a job and recruited them. The defendant then acted as if he had fallen in love with them (loverboy), in order to make the young woman both emotionally and financially dependent on him. Ultimately, they wound up working in prostitution, whereby close tabs were kept on how they spent their time. Gradually, the young women lost contact with their families and had to hand over their ATM card and identity documents. They had to hand over all the income from the prostitution. The young women who did not earn enough money or refused to obey were threatened. Each defendant played a highly specific role (transport and monitoring of the young women, housing and organisation of the prostitution, etc.).

COERCION AND SEXUAL VIOLENCE

The *Criminal Court of Leuven*²⁸⁹ had to rule on an exceptionally violent case of human trafficking in which various Rumanian defendants were convicted of human trafficking and organised crime. These defendants exploited the prostitution of young Romanian women. The women, who were in precarious familial and financial situations and were looking for a better life, were recruited on the pretext of a job as a farm worker in Portugal. They very quickly came into contact with the chief defendant, to whom they were sold. They were forced, through coercion and sexual violence, to work as prostitutes in various bars. They had to hand over their income to the defendant. One of the victims was forced, on two occasions, to have an abortion. Their families were also regularly threatened. The victims could not move freely and also could not contact their families by telephone. Each defendant played a highly specific role: one of them decided which girls would be purchased and in which windows they would be displayed, and another was responsible for transport to the buyers, while one had the job of keeping an eye on the girls, and another one told them how they should dress, etc. One victim received moral compensation of 5,000 euros and material compensation of 25,000 euros. Two others received 5,000 euros for moral damages.

²⁸⁷ Brussels Criminal Court, 30 August 2013, summer chamber (definitive).

²⁸⁸ Liege Criminal Court, 12 February 2014, 8th ch. (definitive).

²⁸⁹ Leuven Criminal Court, 4 July 2013, 17th ch.

The *Court of Appeal of Brussels* partially upheld these convictions in first instance.²⁹⁰

In another case, the *Criminal Court of Antwerp*²⁹¹ convicted eight defendants of Romanian origin who jointly formed a criminal organisation engaged in human trafficking for the purposes of sexual exploitation. The victims were recruited in Romania by their "partner" who promised them a job in the hospitality sector or as a cleaning woman. Once they had arrived in Belgium they were forced to work as prostitutes. This was accompanied by beatings, rape, handing over the income from the prostitution, no freedom of movement and threats against their families in Romania. A number of victims virtually immediately provided clear and detailed statements, whilst others were hesitant, given their "bond" with the defendants, but the court was able to convince them to overcome their reserve, based on the data in the criminal case.

Most of the defendants were sentenced to between four years and 30 months in prison, but the chief defendant was sentenced to a term of eight years.

MARRIAGES OF CONVENIENCE

The *Criminal Court of Leuven*²⁹² convicted various Nigerian and Ghanaian defendants of human trafficking. The defendants had recruited young Nigerian women in Nigeria and Ghana with the promise that they could study in Belgium. These women were then given a residence permit in Belgium, via the procedure for family reunification after a marriage of convenience to a Belgian of African origin (including a number of the defendants), in some cases under a false Ghanaian nationality. Once they were in Belgium, they were forced to work as prostitutes and hand over the majority of their income, in order to repay their travel debts. If they did not earn enough money, the defendants did not hesitate to pressure them and threatened the girls or their families through voodoo practices.

HUMAN TRAFFICKING AND NETWORK

In a case *which appeared before the Criminal Court of Brussels*²⁹³ three Albanian defendants were convicted (one of them in court, the others *in absentia*) of human trafficking and various infractions concerning prostitution. They had exploited the prostitution of various young Ukrainian women, who were first forced to work as prostitutes in Italy using false documents from the Czech Republic, before landing in Belgium. They had to hand over the majority of their income. One of the defendants also used violence. The statements of the victims were supported by observations and checks by the police.

The court did not accept the interpretation of the first defendant, according to whom human trafficking does not as such refer to the person who does the recruiting in order to exploit another person. Specifically, the law does not make any distinction according to whether or not the perpetrator of the sexual exploitation is the perpetrator of human trafficking. The term "in order to [have] the crime committed" could be interpreted as "in order to have him commit [the crime]" or "in order to have another person commit [the crime]".

²⁹⁰ Brussels, 13 November 2013, 13th ch.

²⁹¹ Antwerp Criminal Court, 11 March 2014.

²⁹² Leuven Criminal Court, 16 April 2013, 17th ch. (definitive).

²⁹³ Brussels Criminal Court, 15 July 2013, summer chamber (definitive).

The defendants were sentenced to prison terms up to 5 years (partially suspended). The court also ordered the confiscation of the financial assets that the crimes generated for the various defendants, in amounts between 2,000 and 62,200 euros. The civil party was awarded *ex aequo et bono* the sum of 5,000 euros for material and moral damages together.

LEGAL CONSTRUCTIONS TO CONCEAL EXPLOITATION

The *Criminal Court of Liege*²⁹⁴ convicted various defendants on charges including human trafficking and various infractions concerning prostitution. They were part of an organisation that exploited mostly Bulgarian prostitutes in different bars. The two chief defendants provided the start-up capital for the two bars where the young women worked as prostitutes. In order to conceal the exploitation, they enlisted the services of a co-defendant. He was meant to be the overseer, but ultimately the profits went to the two chief defendants, who also managed the money. In the guise of a licensed establishment, the bars were made available to prostitutes, subject to the payment of a window fee to the manager of the bar. The women worked under the legal status of salaried employee as waitresses, but with forged contracts. They did not receive any salary and had to hand over a part of their income from prostitution to the manager. They had to work seven days a week, 12 hours a day, and pay a window fee of between 200 and 250 euros. When they were rendering services, the bar would be closed.

The court also emphasises here that the fact that the prostitutes did not assume the official status of trafficking victims does not mean that the crime is therefore dismissed. According to the court, moreover, this operation involved human trafficking on a significant scale through a joint operating agreement, which was characterised by an organised structure set up in an intentional and hierarchical way: the two chief defendants operated in the shadows, whilst the two co-defendants took over the assets and/or the building in which the bar was housed. Officially, they were managing directors of the bars, but as “strawmen”. They did this with the help of the escorts and collected the profits from the girls, under the supervision of the two chief defendants.

The court set the total amount of criminal assets at 900,000 euros and ordered the confiscation of 300,000 euros from three of the defendants, after deduction of the amounts seized and confiscated.

Regarding one defendant who filed an appeal, the Court upheld the conviction of human trafficking but granted the defendant a suspension of the official conviction for a period of three years, due to having exceeded the reasonable term.²⁹⁵

In *another case, on which first the court of Tournai and then the court of Mons ruled*, and in which the chief defendant had developed a system of brothels and the exploitation of prostitution (systematically using corporations, use of false contracts, etc.), the court of appeals *of Mons*²⁹⁶ ruled that this was not a case of human trafficking because the defendants did not act as part of a network and that this provision is therefore not applicable to them. The court did however uphold the convictions that the court of *Tournai*²⁹⁷ issued in first instance

²⁹⁴ Liege Criminal Court, 24 April 2013, 8th ch.

²⁹⁵ Liege, 25 February 2014, 4th ch.

²⁹⁶ Mons, 20 September 2013, 4th ch. (cassation appeal filed).

²⁹⁷ Tournai Criminal Court, 21 June 2012, 9th ch.

for the charge of the recruitment and exploitation of immoral behaviour or prostitution of a great many young women, running a brothel or house of prostitution and organised crime.

“FORCED” CUSTOMARY LAW MARRIAGE

The Centre has for the first time become aware of the application of the provisions concerning human trafficking in a case of a customary law marriage between two minors, in which the girl was younger than 16 years old. The Criminal Court of *Verviers*²⁹⁸ ruled on this case. In this case, the parents of the minors were prosecuted for charges including human trafficking for the purposes of sexual exploitation, rape and molestation accompanied by violence and threats.

The two families wanted to arrange a love affair between their children. The parents of the young man presented a sum of money to the parents of the young girl. This amount was dependent on the fact that the young girl would still be a virgin, according to tradition. A party was organised, after which the minors had sexual intercourse at the home of the young man's family. The young girl then moved in to live with the young man's family. She was forced to perform housework, which caused her to often be absent from school.

The court ruled that the charges against the parents as accessories to rape and molestation were founded²⁹⁹, although they did not personally commit the acts and were not present when they were committed. The parents set up the relationship between their children and organised an event that was intended to lead to the consummation of the sexual relationship. By imposing a framework and attempting to comply with a tradition, the court ruled that they contributed to or made every effort to ensure that the young man would not hesitate, or was even encouraged, to violate the integrity and virginity of the young girl.

With regard human trafficking, the court assumes that there was in fact the transfer of control over the minor aged girl, in order to enable the offences of rape, molestation with violence and threats, and corruption of youth towards the girl. The transfer of authority was demonstrated both through the payment of the money and by the minor aged girl's “moving in” with the young man's family. After all, all of the defendants were well aware that the party that was held would lead to sexual intercourse between the children. The element of having a crime committed was also demonstrated.

HUMAN TRAFFICKING AND CHILD PORNOGRAPHY

The court³⁰⁰ and the Court of Appeal *of Brussels*³⁰¹ ruled in a case of human trafficking for the purposes of child pornography.

In this case, the defendant, a graphic artist and psychiatric nurse, was prosecuted for corruption of youth, molestation, human trafficking for the purposes of child pornography, of

²⁹⁸ Verviers Criminal Court, 30 January 2014, 11th ch. (definitive).

²⁹⁹ According to article 66 of the Criminal Code, the following shall be punished as the perpetrators of a crime or offence "*anyone who has committed a crime or offence or directly cooperated in committing it; anyone who has in any way, aided and abetted those committing the offence, if without their assistance it could not have been committed*".

³⁰⁰ Brussels Criminal Court, 28 June 2013, 46th ch.

³⁰¹ Brussels, 8 January 2014, 13th ch.

obtaining the immoral behaviour or prostitution of a minor for payment, obscenity and for the creation, possession, distribution and sale of child pornography.

During various trips to Portugal and Brazil, he paid minors to let him photograph them. At his request or his command, they committed nude, sexual acts individually or with each other, or assumed erotic poses. Moreover, he admits having genitally stimulated, manually and orally, one of the minor aged Brazilians who has filed civil suit.

The investigation in Brazil got started after a complaint from the mother of one of the young victims who told the police that the defendant approached children asking them to pose nude for money. It was possible to identify several of the children. They stated that the defendant took photographs of them on remote beaches. They were paid more if they agreed to perform sexual acts on each other and/or with each other.

During the investigation in Belgium, during a search of the domicile of the defendant and that of his parents, a huge quantity of child pornography materials were found (over 10 million photos depicting child pornography).

The court upheld the aforementioned charges (a number of which were partially re-qualified) but acquitted the defendant of the charge of human trafficking. The defendant contested the charge of human trafficking because he felt that the moral element of the offence was absent: with the child pornography photographs he simply wanted to enlarge his collection, in order to fulfil his own sexual urges. It was never his intention to allow others to abuse the children, whom he paid.

The court emphasised that human trafficking requires a specific intention. Based on the wording of the law (to “have commit”) and of the preparatory actions, the court ruled that the (former) article 433*quinquies*, §1, 1° of the Criminal Code does not refer to a person who personally exploits another person's debauchery or prostitution – behaviour penalised by article 380, §1, 1° of the Criminal Code – but rather the trafficker who makes possible the exploitation of the debauchery or prostitution of his victims by others. The latter can be considered co-defendants in the crime of human trafficking if they were involved in the organisation. According to the court, this interpretation is reinforced by a recently submitted draft law (which has since become law)³⁰², to extend the application of article 433*quinquies*, §1, 1° to include the exploiter.

For this reason the court found that the criminal law should be interpreted restrictively: the investigation did not demonstrate that the defendant, who during his foreign travels intentionally sought out young boys whom he paid to allow him to photograph them, had the intention of allowing the minor aged boys to be sexually abused by others. All of his actions were focused on his personal exploitation of the minors.

The court sentenced the defendant to a prison term of 7 years and a fine of 1,000 euros, and ordered that he remains available, for a period of 5 years after the completion of his sentence, to the sentence enforcement court.

³⁰² Since this ruling, the law of 29 April 2013 has been passed in amendment of article 433*quinquies* of the Criminal Code in order to clarify and expand the definition of human trafficking, Ministerial Decree, 23 July 2013. See chapter 2, point 1.1.1. of this report.

The court declared itself incompetent to accept the claim of the Centre, on account of the acquittal of the defendant for human trafficking. The Brazilian victims who acted as civil party received damage compensation of between 1,500 and 2,500 euros.

On appeal, the court largely upheld the ruling in first instance. Certain charges were requalified and the defendant was convicted of them. However, the court also confirmed the acquittal of the defendant for human trafficking, thus following the reasoning of the lower court: the term “have committed” of the (former) article 433*quinquies* of the Criminal Code excludes that the perpetrator of the offence referred to in article 383*bis*, §1 of the Criminal Code (offences regarding child pornography) can also be found guilty of the crime of human trafficking³⁰³, because he commits the crime himself and does not have it committed by a third party. However, there is nothing that indicates that the defendant granted permission to or suggested that others be present at the time at which the minors performed nude sexual acts or assumed erotic poses, or that he authorised others or offered others the opportunity to take film or photographs, depicting positions or sexual acts by the minors, or related to them.

The prison sentence was reduced to 4 years but the period of availability to the sentence enforcement court was increased to 10 years.

2. Human trafficking for the purposes of labour exploitation

a) Agriculture

The *Criminal Court of Nivelles*³⁰⁴ convicted a couple, who had employed an undocumented labourer on their farm, of human trafficking and for various infractions of the Social Criminal Code.

The employee worked no fewer than 12 hours a day, for a maximum of 5 euros per hour. When the employee had broken the window of a Bobcat truck, a part of his wages were withheld. Finally, the employee was housed in inhumane conditions, specifically in a poorly insulated attic without sanitary facilities which was only accessible by ladder, without any safety barriers on the edges.

According to the court, numerous elements indicate that the defendants received and housed the employee in order to have him work under inhumane conditions. Specifically, that is demonstrated by the type of housing that the employee was forced to endure, combined with the long working hours and for extended periods without any days off, salary withholding, no social protection and a wages that were lower than the rate to which a labourer working officially would be entitled.

The court also indicated that the concept of human dignity should not be tested against the way in which the employee may have initially perceived the working relationship, but rather against the generally accepted social context in Belgium.

³⁰³ This reasoning, which is the same as the accepted reasoning regarding article 380 of the Criminal Code, is debatable (see above, chapter 2, point 1.1.1.).

³⁰⁴ Nivelles Criminal Court, 26 June 2013, 6th ch. (definitive).

b) Hospitality sector

In a case brought before the Criminal Court of *Charleroi*³⁰⁵ a pair of Chinese restaurant managers were prosecuted for human trafficking for the purposes of labour exploitation and serious infringement of the Social Criminal Code. They were also prosecuted for rape and recruitment for the purposes of prostitution of a fellow countrywoman. A third defendant was prosecuted for the rape of the same employee.

The court found that the victim's accusations were insufficient and were not supported by a single clear element of guilt, and therefore acquitted the defendants of the charge of rape.

The court upheld the charge of human trafficking and infringement of the social criminal code: the victim worked 6 days per week and at least 10 hours per day, and also had to clean the kitchen for an hourly wage of 3.07 euros. Moreover, she was living in precarious conditions. The charge of recruitment for the purposes of prostitution was also upheld: the couple encouraged the victim to prostitute herself to the third defendant.

The court awarded the civil party 10,000 euros for moral and material damages as a result of the charge of human trafficking and recruitment for the purposes of prostitution. The civil suit for the non-payment was also declared inadmissible however: since she had no permit to work in Belgium, the court ruled that there was no point in her pressing charges.

In another case, also in the Chinese milieu, the *Criminal Court of Liege*³⁰⁶ accepted the charges of human trafficking and human smuggling towards various Chinese defendants who formed part of an organisation that recruited candidate-emigrants in China. For a large fee, the immigrants were transported to Russia and then taken by land to Belgium, where they were received, assigned work and exploited in various restaurants. Specific techniques were used for this clandestine immigration, such as the “look-alike” system³⁰⁷ and student visas.

Human trafficking (employment of an employee in inhumane conditions) was accepted on the basis of the following elements: labour conditions (12 hours a day) and housing (in an attic), nearly complete dependency on the employer, insufficient and irregularly paid wages, no social protection, often extremely long working hours depending on the employer's whim. The victim worked for the defendants for several years without ever receiving the pay owed.

Finally, the *Criminal Court of Ghent*³⁰⁸ ruled on a case in which three defendants and two companies were prosecuted for human trafficking for the purposes of labour exploitation (work in violation of human dignity). It involved a typical scenario whereby the three victims were employed at two cafés and a pizzeria. The victims were forced to work seven days a week, and to work extremely long hours for an extremely low wage. Moreover, two of them were dependent on the defendants for housing. The victims, undocumented Bulgarians, were partners or bogus self-employed members of the companies.

³⁰⁵ Charleroi Criminal Court, 21 March 2014, 7th ch. (appeal).

³⁰⁶ Liege Criminal Court, 28 April 2014, 14th ch. (definitive).

³⁰⁷ The "look-alike" system entails the use of an identity document belonging to a person one strongly resembles.

³⁰⁸ Ghent Criminal Court, 2 December 2013 (appeal).

The penalties ranged from 12 months to two years and community service for the youngest perpetrator. Heavy fines were imposed on the companies.

c) Equestrian centres

The *Court of Appeal of Antwerp*³⁰⁹ rejected a ruling in first instance by the Criminal Court of *Turnhout*,³¹⁰ which had acquitted a defendant of human trafficking regarding a Brazilian employee at his Equestrian Centre. According to the court, it was indeed a case of employment in inhumane conditions: the victim was to earn 800 euros per month, working six days per week. In reality, she received only a part of this (sometimes 200 euros per month) and later nothing at all. Her situation deteriorated further after an inspection whereby family members who also worked at the equestrian centre were repatriated: after that she had to work seven days a week from six in the morning until 10 at night. Furthermore, the defendant had taken away her passport and withheld a part of her wages, supposedly in order to arrange the necessary formalities for her “legalisation”. The civil party received compensation of 5,500 euros.

d) Carwash

In a carwash case, the Criminal Court of *West-Flanders, Kortrijk division*,³¹¹ upheld the charges of human trafficking (but not smuggling) against Pakistani defendants and their company, who exploited Indian employees in their carwash: according to the court, they worked in inhumane conditions because they did not receive proper wages in exchange for their work (only room and board, and very sporadically a small sum of money) and because of the precarious situation in which they were living, of which the defendant's took advantage. The court further emphasised that the fact that the victims willingly agreed to their exploitation is irrelevant.

e) Transport

The *Criminal Court of Bruges*³¹² upheld the charges of human trafficking and charges related to social criminal law against three defendants and a company, which exploited Bulgarian employees in the transport sector.

The chief defendant had created a fraudulent construction whereby a Bulgarian transport company provided services to the Belgian company through the secondment of drivers and mechanics. In reality, it was illegal employment and clandestine work by Bulgarian and Romanian employees working from Belgium without work permits. An independent Bulgarian transport company in Bulgaria never existed, nor was there any substantial activity (it was merely a front). The orders received by the drivers and mechanics came from Zeebrugge, where the actual registered/operational office was located.

According to the court, there was in fact human trafficking involved: the promise of low wages, which the drivers generally did not receive or did not receive in full, increasingly

³⁰⁹ Antwerp, 23 April 2014, 14th ch.

³¹⁰ Turnhout Criminal Court, 19 November 2012.

³¹¹ West Flanders Criminal Court, Kortrijk division, 4 April 2014 (definitive).

³¹² Bruges Criminal Court, 26 March 2014, 17th ch. (appeal)

frequent delays in payment and certainly the precarious residence situation of the drivers ensured that they had no choice but to let themselves be exploited. Wages were withheld on the slightest pretext (repairs to the vehicle, excessive fuel consumption, etc.). Drivers received limited advance payments in order to keep them dependent and what they received was not even enough to survive on (e.g.: 70 euros for three entire workweeks; 90, 200 and 600 euros for an entire month of work, etc.).

Not only were the wages inhumane, but the living conditions were as well: the drivers slept in their trucks, often in pairs, they used the showers and cafeteria at the company, and their housing was a dilapidated building. They were required to work long hours: 110 working hours in 11 days, 12 to 13 hours a day.

The Centre acted as civil party in this case and received the sum of 2,500 euros for material and moral damages.

f) Construction

In a construction case in the Chinese underworld involving 20 employees, the Criminal Court of *Charleroi*³¹³ upheld, in addition to the charges of human trafficking and human smuggling, numerous charges in relation to the social criminal code against a Chinese restaurant operator and his daughter who had work carried out at various sites. The daughter paid the workers, brought them to the site and gave the instructions.

According to the court, it was effectively a case of human trafficking and labour conditions that form an offence to human dignity, based on the following elements: salary conditions, daily and weekly working schedule, sleeping on-site in poor conditions, lack of work equipment.

It is noteworthy that in this context the court also pointed out that although certain workers were paid a wage that was not inhumane, the working conditions were nevertheless inhumane because they were required to work in the conditions described in the case and because they had to sleep on-site in poor conditions, in order to receive this pay. The three civil parties were awarded respectively 250, 1,000 and 5,000 euros as compensation for material and moral damages combined.

In another case handled by the *Criminal Court of Brussels*³¹⁴ two defendants were prosecuted for human trafficking and diverse infractions of the social criminal code. One defendant was acquitted for all charges against him. The other defendant was convicted of violations of the social criminal code but acquitted of the charge of human trafficking. On various construction sites of the company he managed, he had employed undocumented Moroccan migrants as labourers. They had to work long hours, without ever receiving the full amount of pay they were owed. Sometimes they had to sleep on-site.

According to the court, it was not sufficiently demonstrated that the employees worked under inhumane conditions. The fact that they had to work long hours and that they did not receive

³¹³ Charleroi Criminal Court, 7 June 2013, 7th ch. (definitive).

³¹⁴ Brussels Criminal Court, 28 May 2013, 58th ch. (definitive ruling on criminal charges, civil case in appeal).

the full pay owed to them, combined with the lack of detail in the sole statement by one of the employees about safety on the worksites, offered insufficient evidence.

g) Bakeries

The *Criminal Court of Brussels*³¹⁵ upheld the charges of human trafficking and various charges in relation to the social criminal code against a couple who operated a bakery where an employee had incurred serious injuries when his hand fell into a bread kneading machine. The court judged that the hygienic situation in the workshop, the condition of the kneading machine used by the victim and the fact that he was not paid for the work he carried out were sufficient to consider that the employer required him to work under inhumane conditions.

The victim filed civil suit and received 2,500 euros awarded as moral compensation and 5,000 euros for material damages.

h) Butcher shops

The *Criminal Court of Liege*³¹⁶ upheld the charges of human trafficking and various infractions of the social criminal law against a defendant who operated a small supermarket and butcher shop. At the shop, he exploited various employees of Algerian and Tunisian nationality who were not registered in the National Office for Social Security (NOSS) who also did not have legal residence permits. According to one of the employees, in exchange for his work he received nothing more than a promise to be hired for a job which would support his application for regularisation of this residence status, an absurdly low amount of pay, or sometimes simply food. Moreover, he was required to work mostly at night in an unhealthy and hazardous environment (noncertified electrical installation that constituted a genuine danger, extreme lack of hygiene in general).

There was no fixed work schedule and the defendant had instructed all of the employees on what to do if there was a raid by the social inspectorate. The hourly wage that they received was much lower than the legal minimum wage and some of them were not paid at all. The employees worked at night in order to avoid inspection and sometimes had to work up to 12 hours continuously. Only after several days' trial period were they definitively hired and in the event of an occupational accident, they did not receive the necessary care.

According to the court, the moral element of the offence, specifically the employment under inhumane conditions, was sufficiently demonstrated by the working and housing conditions of the undocumented migrants, their virtually total dependence on the employer, the insufficient and irregularly paid wages, the lack of social protection, the often extremely long working hours which were dictated solely by the employer and the fact that the workers were virtually unable to claim any acknowledgement of their rights in this working relationship.

³¹⁵ Brussels Criminal Court, 26 March 2013, 58th ch. (definitive).

³¹⁶ Liege Criminal Court, 2 September 2013, 14th ch. (appeal pending).

i) Sorting second-hand clothing

The *Criminal Court of Ghent*³¹⁷ ruled in a case in which two defendants of Syrian origin were tried for human trafficking for the purposes of labour exploitation (work constituting an offence against human dignity). They personally sought out undocumented migrants and employed them with complete disregard for any obligations concerning labour and social security. Locked doors, no appropriate working clothes, no dust masks, insufficient sanitary facilities, no cafeteria and excessively low wages made the labour in this second-hand clothing business inhumane. One of the victims even lived at the place of business, the other was picked up and brought home by the defendants.

j) Domestic work

In a case of domestic work, the *Criminal Court of Brussels*³¹⁸ ruled that the prosecution was inadmissible. A couple was prosecuted for human trafficking and numerous violations of the social criminal code because they had exploited a young Kenyan woman as a housekeeper.

After an anonymous tip to the social inspectorate, reporting that a Kenyan woman was required to work seven days a week from 6:30 AM to 10 PM as a housekeeper, surveillance was carried out. On the same day the Labour Prosecutor's office opened a case for crimes of human trafficking-labour exploitation. Several days later, with the permission of the police court, a search was carried out of the house. The defendants and the civil party were questioned and confronted with one another.

On 28 May 2013 the court convicted the defendants of all charges in absentia.

The court ruled on opposition that the prosecution was inadmissible because the initial search of the house that was authorised by a judge without proper competence (a police judge instead of an examining magistrate), was illegal. According to the court, this undermined the reliability of the findings resulting from the search. Another consequence was that the investigation on one hand could not be regarded as having been carried out and on the other hand, was carried out strictly to gain incriminating evidence, thereby violating the defendants' presumption of innocence, which in turn led to an unjustified reversal of the burden of proof to their detriment.

3. Human trafficking for the purposes of forced criminality

Although in this case, there were no charges of human trafficking for the purposes of forcing the victim to commit a crime or offence, it is nevertheless noteworthy because the minor aged victim of this criminal organisation was assisted by a specialised support centre. This case involved various defendants who were prosecuted for diverse drug-related offences. One of them (the chief defendant) was also prosecuted for human smuggling and the import, possession or sale of narcotics with the aggravating circumstance of the use of a minor to commit the offences, and for running a criminal organisation. Thus, these Moroccan nationals

³¹⁷ Ghent Criminal Court, 19 February 2014 (appeal).

³¹⁸ Brussels Criminal Court, 6 January 2014 (appeal).

brought their Moroccan nephew into the country clandestinely, using forged documents, in order to force him to “work” for them selling drugs.

The *Criminal Court of Liege*³¹⁹ worked on the basis of the statements of the defendants (some of whom had confessed), wiretaps, observations and findings of the police, and of the many statements from customers in this case, to uphold the charges against the defendants (except against one of them who was acquitted).

Thus, the court ruled that the defendants had developed a fully fledged network for the distribution of drugs. The chief defendant was the boss and organiser (he negotiated the purchase of the drugs from Dutch suppliers, oversaw the delivery of the goods, recruited and dismissed sellers, etc.). The other defendants also had specific roles (lieutenant, receiving the drugs, delivery to customers, etc.).

The defendants were sentenced to prison terms of between 3 and 8 years, most of which were suspended. In addition to ordering the confiscation of the sums of money and vehicles seized by the police, the court also ordered the confiscation of the equivalent value of the sum of 300,000 euros from the chief defendant and 50,000 euros from his lieutenant, after deduction of the sums that had been seized and confiscated.

4. Decisions of the Commission for aid to victims of deliberate acts of violence

Various victims of sexual exploitation were awarded financial support by the Commission for Financial Aid for Victims of Deliberate Acts of Violence.³²⁰ In two of the decisions it was a matter of two victims in the same legal case.

In the first case³²¹ the convicted party enticed a young Romanian woman to come to Belgium, under the pretext that he was looking for a babysitter for his child. She was housed with a different man who encouraged her to begin working as a prostitute, which she refused to do, and with whom she bore two children. This man was convicted of human trafficking and sexual exploitation.³²² The victim requested aid for permanent disability and legal costs. The commission awarded her the amount and deducted the sum that the convicted party had already paid. She received 3,000 euros in aid.

The other victim, who also appealed to the Commission, was also Romanian.³²³ She was lured to Belgium under false pretexts and forced to work as a prostitute. The perpetrators were both convicted of human trafficking and sexual exploitation. The request for aid was submitted by the father of her child as legal representative of the child after the woman had committed suicide as a result of what had happened to her. After investigating the case, the

³¹⁹ Liege Criminal Court, 8 January 2014, 11th ch. (definitive).

³²⁰ With regard to this commission, see Annual Report on Trafficking in and Smuggling of Human Beings 2011, *The money that matters*, pp. 59-66.

³²¹ Ruling of 9 January 2014, Labour Court M12-5-0321.

³²² Ruling of the Ghent Criminal Court on 17 December 2008 (see www.diversity.be). This case has already been discussed in a previous report (see Annual Report on Trafficking in and Smuggling of Human Beings 2008, *Enlisting people and resources to combat the phenomenon*, p. 39-40).

³²³ Ruling of 9 January 2014, Labour Court M12-5-0322.

Commission ruled that the suicide was a direct consequence of the deliberate acts of violence to which she was subjected and awarded the aid. The Commission awarded the amount requested for the mother's permanent disability and costs for the legal appraisal, which amounted to 9,748 euros. The money is to be placed in a savings account in the child's name until the child reaches the age of majority.

Finally, there was a notable decision whereby the maximum amount of aid was awarded.³²⁴ For seven years, a Nigerian woman who had been recruited in her native country, was the victim of sexual exploitation.³²⁵ Whenever she attempted to take action, she was pressured through voodoo practices. It was only after the death of her mother that she dared to take action, but she is severely damaged psychologically. Given the facts of the case as presented, the commission awarded her aid the amount of 25,000 euros.

³²⁴ Ruling of 13 February 2014, Labour Court M11-3-1298.

³²⁵ On 26 November 2010, the perpetrators were convicted of human trafficking and human smuggling, and of recruitment for the purposes of prostitution by the Brussels Criminal Court (see www.diversiteit.be). This ruling was confirmed by the Brussels Court of Appeal in a judgement delivered on 21 December 2011.

RECOMMENDATIONS

1. DETECTION AND PROSECUTION POLICY

RECOMMENDATION 1. THE CENTRE RECOMMENDS EXTENSIVE FINANCIAL INVESTIGATION, TO BE LAUNCHED AS SOON AS A HUMAN TRAFFICKING CASE IS OPENED.

A financial investigation provides a picture of the financial assets of the perpetrators of human trafficking so that these assets can be seized and later confiscated. This requires consultation and cooperation between the authorised sections of both the Public Prosecutors' offices and the police forces.

The international cooperation could be made more efficient, particularly with regard to the exchange of information between the governments involved, conducting joint investigations and the detection, freezing and confiscation of illicitly acquired property.

RECOMMENDATION 2. THE CENTRE RECOMMENDS MAKING A MAXIMUM OF SEIZURES IN THE INITIAL PHASE OF AN INVESTIGATION. TO MAKE THIS POSSIBLE, THE CENTRE CALLS FOR INTERNATIONAL COOPERATION FOR SEIZURE AND CONFISCATION.

Once the investigation is started, the suspects will attempt to conceal or transfer their property, or they will declare their company bankrupt so that this property can no longer be seized at a later stage.

The orders to have assets frozen or confiscated are instruments that facilitate the cooperation between the EU member states. Their use should be encouraged.

In this context, there is insufficient awareness of the existence of the CARIN network among the stakeholders and it is not widely enough known that this CARIN network can be an important instrument. It enables a suspect's assets to be traced abroad.

RECOMMENDATION 3. THE CENTRE ENCOURAGES THE USE OF THE POSSIBILITY TO AWARD CONFISCATED PROPERTY AND MATERIAL BENEFITS TO THE CIVIL PARTY, IN ORDER TO COMPENSATE THE VICTIM FOR DAMAGE INCURRED.

Art.43bis, al. 3 of the Criminal Code allows the judge to assign confiscated items to the civil party for the damages suffered due to the offence. It concerns constitute assets or securities substituted by the convicted party for items belonging to the civil party or because they constitute the equivalent of such items. This principle should be applied more often in practice, and at least for material damages.

RECOMMENDATION 4. THE CENTRE ADVISES AGAINST ORGANISING A CONFRONTATION BETWEEN THE VICTIMS OF SEXUAL EXPLOITATION AND THE ACCUSED PERSONS.

Revictimisation occurs when, after a traumatic experience, people are once again placed in the position of victim. In order to be able to assess this risk, it is important to be alert to the sociocultural context of the victims.

This recommendation does not apply for all victims of human trafficking: in the cases in which the exploitation is not sexual, a confrontation may be able to provide answers and insights, although it is best to proceed with caution.

RECOMMENDATION 5. THE CENTRE DEMANDS THAT THE FIGHT AGAINST HUMAN TRAFFICKING REMAINS AN ABSOLUTE PRIORITY, INCLUDING IN THE FIELD, AMONG THE MAGISTRACY AND FRONTLINE SERVICES.

The Centre hopes that the reorganisation of the judicial districts – by means of expansion and specialisation – will lead to greater awareness of human trafficking. That is why it is so important that both the police forces and those magistrates responsible for investigation into human trafficking be provided with the necessary human and material resources to be able to carry out this work.

2. POLICY ON VICTIMS

RECOMMENDATION 6. THE CENTRE RECOMMENDS THE STRUCTURAL FUNDING OF THE SPECIALISED CENTRES, IN ORDER TO ENABLE THEM TO FULLY CARRY OUT THEIR DUTIES.

In 2013, the support centres received official recognition after adoption of the Royal Decree of 18 April 2013. As is also stipulated in this Royal Decree, however, this recognition does not entail entitlement to subsidies, although the centres are forced to contend with the chronic problem of lack of structural funding. This issue, about which the bureau of the Interdepartmental Coordination Unit has already issued recommendations and which is also addressed in the national action plan 2012-2014, has yet to be resolved.

RECOMMENDATION 7. THE CENTRE RECOMMENDS THAT THE INTERDEPARTMENTAL UNIT FOR COORDINATING THE FIGHT AGAINST TRAFFICKING AND SMUGGLING IN HUMAN BEINGS DEVELOP A RANGE OF SERVICES THAT IS ADAPTED TO THE NEEDS OF VICTIMS IN TERMS OF PROTECTION, ASSISTANCE AND COMPENSATION, AND PARTICULARLY FOR EU CITIZENS.

Within the framework of the revision of the multidisciplinary circular of 2008³²⁶, the Interdepartmental Coordination Unit was asked to consider whether the support and assistance to victims could, in future, be better adapted to the specific needs of the different victim profiles, such as victims who are EU citizens or victims who are also drug addicts.

In order to do this, resources must be provided for the centres, which can be allocated on a functional basis. Efficient collaboration with other specialised services, such as counselling for drug addicts, is also necessary.

RECOMMENDATION 8. THE CENTRE RECOMMENDS OFFERING LEGAL AID THAT IS AVAILABLE PROMPTLY AND FREE OF CHARGE TO VICTIMS WHO HAVE ASSUMED THE OFFICIAL STATUS OF VICTIMS OF HUMAN TRAFFICKING.

After the victim has been given the option to assume the official status, an assigned attorney is best placed to defend the interests of the victim in the event of problems during the procedure for the official status or in the run-up to the trial. This should also enable victims to make informed decisions as to whether or not to file civil suit and claim compensation for damages.

³²⁶ Circular of 26 September 2008 on the implementation of multidisciplinary cooperation for the victims of human trafficking and/or certain aggravated forms of smuggling of human beings, Moniteur Belge [Belgian Official Gazette], 31 October 2008.

Moreover, victims who are entitled to free legal counsel as long as they are unemployed, no longer fall within the regulations to be eligible for this legal aid once they become actively employed, which can lead to considerable costs. It is the opinion of the Centre that victims of human trafficking should be able to rely on legal aid through to the end of the criminal procedure against the perpetrators.

RECOMMENDATION 9. THE CENTRE RECOMMENDS ONGOING AWARENESS RAISING FOR THE FRONTLINE SERVICES (LOCAL POLICE, FEDERAL POLICE, INSPECTION AUTHORITIES) ON THE DETECTION OF VICTIMS OF HUMAN TRAFFICKING. THIS MEANS THAT FURTHER TRAINING OF THE FRONTLINE SERVICES ON INDICATORS OF HUMAN TRAFFICKING IS NEEDED.

Many victims of human trafficking are never detected by the frontline services. There needs to be ongoing awareness raising among the frontline services so that during large-scale raids, they are able to detect the victims of human trafficking and put them in touch with the specialised centres.

RECOMMENDATION 10. THE CENTRE DEMANDS THAT AFTER VICTIMS ARE DETECTED, ALL STAKEHOLDERS INVOLVED (FRONTLINE SERVICES, MAGISTRATES, CENTRES) MAKE EVERY EFFORT TO APPLY THE VICTIM PROCEDURE ACCURATELY AND COMPLETELY SO THAT THESE VICTIMS CAN BE EFFECTIVELY GRANTED THE OFFICIAL STATUS OF HUMAN TRAFFICKING VICTIM. THIS WILL REQUIRE FURTHER TRAINING OF THE FRONTLINE SERVICES AND THE MAGISTRACY ON THE APPLICATION OF THE VICTIM STATUS.

It is especially important that the frontline services fully and accurately implement the multidisciplinary circular.

In the Belgian system, it is sufficient to make relevant statements, and the victim does not have to file charges. In the field, this is an aspect that is frequently poorly understood and inconsistently applied. In practice, the frontline services are the ones who explain the official victim status to the victims and ask them to assume it. At the time that the frontline services explain this victim status to the victims, they have often already made relevant statements, which is sufficient to grant them access to the status. According to the Belgian victim system, the frontline services must bring these victims into contact with staff of the specialised centres, who are able to instil greater trust in the victims.

RECOMMENDATION 11. THE CENTRE RECOMMENDS THAT THE EU EFFECTIVELY DEVELOP AND IMPLEMENT THE STRATEGY OF ESTABLISHING A EUROPEAN MODEL WHICH PROVIDES FOR TRANSNATIONAL REFERRAL MECHANISMS FOR VICTIMS OF HUMAN TRAFFICKING CRIMES COMMITTED IN A DIFFERENT EU COUNTRY.

Practical experience has demonstrated the importance of rapid and efficient international cooperation by police and immigration services in the detection and referral of victims. In the past, it has happened that completely by coincidence, it was discovered that another victim had been intercepted in the Netherlands and was being held in a custody and repatriation centre. International agreements need to be made for creating an alert system that would function via liaison officers in the police and/or immigration services. In these situations, the detention centres in neighbouring countries would have to notify their national contact point when they discover such victims, so that the alert system could be activated.

Along the same lines, in previous annual reports, the Centre has already emphasised the importance of a European victim status for the support and assistance of victims based on human trafficking crimes that have taken place within EU territory.

Colophon

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