

**Annual report
2015**

Trafficking and smuggling of human beings

Tightening the links



Federal Migration Centre

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Introduction

Protection of minors: Tightening the links

What you are holding in your hands is the 18th report on human trafficking and smuggling. It is also the second one to be published by the Federal Migration Centre, now known as Myria. Besides its competences in terms of foreigners' fundamental rights and information on migration flows, which are the subject of the "Migration in figures and rights" report, Myria shall continue to publish a yearly independent assessment of the policy concerning the fight against human trafficking and smuggling. The report will now refer to the year of its publication. This 2015 report is therefore the first of its kind.

Myria's competences in this domain, which previously fell under the scope of the ex-Centre for Equal Opportunities and Opposition to Racism, now fall under Myria's responsibility. They include the possibility of taking cases to court based on the Law of 13 April 1995 prohibiting human trafficking and smuggling. In 2014, the board of directors decided to institute civil proceedings in six cases. For Myria, taking legal action isn't a legal duty in itself; it is also a tool that allows us to further our expertise, gather examples of good and bad practices and support symbolically important cases. Many of the analytical elements in the following pages result directly from the examination or follow-up of these cases. Unfortunately, however, it still isn't possible for us to receive all the decisions pronounced by the courts. This would allow us to further hone our view on a humanly difficult and legally complex subject, for which access to data is of prime importance.

Since 1 September 2014, Myria has also been officially recognised as an independent component of the National Rapporteur on human trafficking, thereby further reinforcing its legal mission. As well as its participation in the interdepartmental coordination unit for the fight against human trafficking, its role also involves compiling the current report: the

report provides a view of the policy aimed at combating human trafficking and smuggling which is independent, and informed thanks to its involvement in many national and international networks.

Increasingly effective tools...

Myria is also delighted by the expansion of the interdepartmental unit: it now includes new stakeholders, such as community and regional representatives (a change made necessary by the country's federalisation process), the Financial Intelligence Processing Unit (anti-money laundering unit), and a representative from the Payoke, Sürya and PAG-ASA reception centres. It is equally delighted with the recent adoption of a new anti-human trafficking action plan for the period 2015-2019.

As we all know, these reception centres provide a frontline service regarding human trafficking. They are able to receive these victims in decent conditions on a daily basis. Myria has been asking for permanent funding for these centres for a long time. Therefore, the granting of extra means, announced by the State Secretary for Equal Opportunities in April, is very welcome news. We shall continue to support these structures, in particular by continuing our investment in the ELDORADO system, which allows the files to be managed electronically in a uniform manner and will ultimately improve data collection.

Myria also gladly welcomes the adoption of a new common crime policy circular concerning the fight against human trafficking (COL), which came into force on 15 May 2015. We believe this text pays greater attention to the victims' interests, including minors who are the victims of trafficking. In our opinion, the fight could be further intensified through a governmental action plan dedicated exclusively to the fight against human smuggling, which we are hoping for with all our hearts.

Dealing more specifically with the fight against human smuggling, the present report emphasises the importance of raising awareness in order to kick-start the debate on the smuggling of families with children on an international level. In general, as our chapter on "Best practices" shows, the fight against human smuggling can only be crowned with success through effective international collaboration.

... in the face of increasingly elaborate crime

As case law shows: the perpetrators of trafficking and smuggling have recourse to increasingly complex legal constructions, such as cascade subcontracting, in order to conceal the exploitation of their victims, and they don't hesitate to hide behind legal entities who are also sometimes convicted. Besides these ruses, exploitation continues to display the trappings of its more traditional and rougher side: the use of blackmail, lies or physical and psychological abuse to keep their victims under their control are still the most commonly used tools among the perpetrators. It is also worth noting that the victims concerned are often highly vulnerable, especially when they are minors or in a precarious situation.

Consequently, we have decided to focus on the victims of *loverboys* this year, and on minors who are the victims of early and forced marriages in connection with human trafficking. What are *loverboys*? They are young men who use seduction to lure young girls into their nets, who are in search of a better future. They are the symptoms of a changing world, and demonstrate the important role emotions play in exploitation. Generally speaking, minors are highly exposed to trafficking and smuggling: child marriages associated with cultural origins and unaccompanied foreign minors, who are particularly vulnerable, feature among the factual elements analysed in this report.

The weak point in the Belgian policy concerning trafficking is clearly the inadequacy of its approach to the exploitation of minors

Tightening the links

The situation is indeed very worrying. As pointed out by the not-for-profit association Minor-Ndako in its contribution to our report, Belgium plays a pioneering role in the fight against human trafficking: the quality of its legal instruments, the availability of its reception network and the humanity of its approach to victims are widely acknowledged. The weak point in the Belgian policy concerning trafficking is clearly the inadequacy of its approach to the exploitation of minors, which requires the renewed mobilization of all the stakeholders. Because the cases concerning minors bring into play a multitude of different stakeholders, they suffer from an overall approach. It is undoubtedly time for this to change and the different links active in this field should make a concerted effort. The action led by the specialist centre Esperanto, which specifically offers support to minors who are the presumed victims of human trafficking, sheds a valuable light on this point of view.

The themes Myria has chosen to focus on in its report (*loverboys*, the exploitation of minors, forced and early marriages) allow us to underline an important fact: the stakes in terms of trafficking and smuggling don't only fall within the scope of legal action. Raising awareness remains one of the main stakes in schools, especially with regard to *loverboys*; then there is the training of professionals in the field; and, thirdly, special attention must be paid to the Roma community, which is particularly exposed to this phenomenon.

Preventive actions are essential and their purpose must be to help victims to dare to recognise themselves as such. It is striking to note that all those who could be considered a victim of trafficking don't adopt this status; it may seem strange that some victims actually become perpetrators in some networks. We are therefore forced to recognise that despite all the authorities' efforts, human trafficking and smuggling are fluctuating notions, which

can even mean something different depending on the national context, and where the issue of the actual definition of the terms occupies a prominent place: what is in fact a victim of trafficking and smuggling? We should remember that while smuggling is a breach of state borders, which doesn't offer those who use smugglers any particular kind of status, trafficking is considered a breach of a person's fundamental human rights: this is an offence regardless of whether the victim consents to their fate or not.

It is primarily between these cracks that the perpetrators prosper. They know that the regulations are different from one country to another and that international collaboration in this field is sometimes laborious. They know that in a Europe that cherishes the freedom of belief, convincing the victims to accept their fate, up to the point that they refuse to consider themselves as victims, can be a means to achieve their ends, even if it actually means abusing the gullibility or precarity of women, men and children dreaming of a better future. Raising awareness among all persons regarding what does and doesn't constitute a form of exploitation is consequently no longer an educational challenge, but a societal issue. As such, and as Myria has already said on several occasions, one of the best ways to fight human smuggling is the creation of legal and secure migratory channels. By fighting human trafficking and smuggling, we can bring a little more justice to the world.

François De Smet

Director of Myria



PART 1: TWO PARTICULARLY VULNERABLE GROUPS OF MINORS AND YOUNG ADULTS

This year, Myria has decided to focus its report on two categories of particularly vulnerable minors and young adults: the victims of forced and early marriages* in connection with human trafficking (Chapter 1) and the victims of so-called loverboys (Chapter 2). Little is known about the first theme even though Myria has learnt of several cases. We therefore thought it would be interesting to deal with this theme. The second one refers to a traditional recruitment method within the framework of human trafficking: seduction. Myria found various profiles among the victims and it would like to draw attention to this category of victim.

In this part, there are also contributions from two external players:

- Minor-Ndako, a reception centre for vulnerable unaccompanied foreign minors, which explains the problems it is faced with within the framework of supporting these minors;
- the Romanian National Rapporteur on human trafficking, which sheds light on the Romanian victims of loverboys.

* See point 1 in Chap. 1 for the distinctions between these different concepts.

Chapter 1: Victims of early and forced marriages

The purpose of this chapter isn't to deal exhaustively with the issue of forced marriages in connection (or not) with human trafficking. Instead, it aims to provide an introduction to the problem, specifically concerning minors, based on several cases that came to Myria's attention.

1. The concept of forced marriage

The aim of European directive 2011/36 on human trafficking¹ is to tackle recent developments in trafficking by including forms of exploitation such as forced begging and the exploitation of criminal activities. In this respect, preamble 11 of the directive specifies that the definition also includes other behaviours “such as illegal adoption or forced marriage, insofar as they fulfil the constitutive elements of trafficking in human beings”.

The Belgian legislator, on the other hand, decided not to explicitly include illegal adoption or forced marriages in the definition of trafficking and, more particularly, as a form of exploitation². However, “control” was added among the material elements that constitute this offence³. The addition of this

term provides a clearer definition, among other things, of the control exerted over a person within the framework of a forced marriage, with a view to their exploitation⁴.

Forced, arranged, sham, early, customary, white, or grey marriages: these terms are frequently used and sometimes confused. What is the current situation regarding these terms⁵?

Also note that these concepts are a particular source of debate when they concern couples where one or both partners don't have Belgian nationality, given that family migration is one of the only legal migration channels⁶.

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

2° for the purposes of the exploitation of begging;

3° for the purposes of work or services, in conditions contrary to human dignity;

4° for the purposes of organ harvesting in violation of the Law of 13 June 1986 on the harvesting and transplantation of organs, or human biological material in violation of the Law of 19 December 2008 relating to the collection and use of human biological material intended for human medical applications or for the purposes of scientific research;

5° or in order to have this person commit a crime or offence against their will.

Except for the case referred to in point 5, the consent of the person referred to in paragraph 1 for the envisaged or actual exploitation is irrelevant”.

⁴ Report compiled on behalf of the Justice Committee of the Chamber, particularly concerning the draft law aimed at amending Article 433quinquies of the Criminal Code in order to extend the definition of human trafficking to sexual exploitation, *Parl. doc.*, Chamber, Doc 53-2607/004, p. 8; Amendment to the draft law aimed at amending Article 433quinquies of the Criminal Code in order to clarify and extend the definition of human trafficking to sexual exploitation, *Parl. doc.*, Chamber, Doc 53-2607/002, p. 4.

⁵ On this subject, see: M. MASKENS, “L'amour et ses frontières: régulations étatiques et migrations de mariage (Belgique, France, Suisse et Italie)”, in Dossier - Mariages et migrations: l'amour et ses frontières (coordinated by Maïté Maskens), *Migrations Société*, Vol XXV, no. 150, Nov.-Dec. 2013.

⁶ On the nature and extent of migratory flows associated with the right to live in a family, see *Migration in figures and rights 2015*, Chapter 5, available on www.myria.be.

¹ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on the prevention and fight against human trafficking as well as the protection of victims, replacing the Council's 2002/629/JAI framework decision, *O. J.*, L101 of 15 April 2011.

² Note that a draft law was however submitted to this effect: see draft law proposition aimed at completing Article 433quinquies, §1 of the Criminal Code, with a view to establishing the special intent of forced marriage in terms of human trafficking, *Parl. Doc.*, Senate, session 2011-2012, Doc.5-1381/1.

³ See the Law of 29 April 2013 aimed at amending Article 433quinquies of the Criminal Code with a view to clarifying and extending the definition of human trafficking, *Belgian Official Gazette*, 23 July 2013. This article defines trafficking as follows: “The crime of human trafficking is constituted by the recruitment, transportation, transfer, harbouring or reception of persons, taking or transferring the control exerted over those persons:

Forced marriage

A marriage is generally considered as forced when one of the two persons involved in the union hasn't given their free and full consent to it. This type of marriage is entered into as a result of physical or psychological pressure, the latter being far more subtle and difficult to detect⁷. As underlined by the Institute for the Equality of Women and Men, this problem should be approached with caution owing to the danger of stigmatisation associated with it: the practice of forced marriage can be explained through cultural data rather than specific racial, ethnic or religious characteristics⁸.

Note that forced marriage isn't defined the same way in all countries worldwide: it is indeed difficult to judge all the cases of forced marriage, associated with a certain unwillingness within families, when there is no physical violence⁹. While forced marriage is characterised by a lack of consent and a form of violence, the way this violence is defined can vary (manipulation, deception, emotional blackmail, coercive means, psychological pressure, etc.)¹⁰.

In Belgium, forced marriages are the subject of specific provisions, both on a civil and criminal level¹¹. The Civil Code gives registrars the right to refuse to conduct a marriage if they are faced with a forced marriage¹². Article 146^{ter} of the Civil Code states that "there is no marriage either if the latter is entered into without the free consent of both spouses or if the consent of at least one of the spouses was given subject to violence or threats". The forced marriage is invalidated. The spouses, any interested parties or the public prosecutor may submit a request for the marriage's annulment¹³. Similar provisions exist for forced legal cohabitation¹⁴.

Article 391^{sexies} of the Criminal Code punishes the behaviour of anyone using violence or threats to force or attempt to force someone to enter into a marriage¹⁵. Article 391^{septies} equally punishes forced legal cohabitation. The judge who hands down a conviction on the basis of these articles can also annul the marriage or legal cohabitation, upon the request of the senior crown prosecutor or any interested party¹⁶.

In Belgian law, it is therefore the lack of free and informed consent that determines whether or not a marriage is forced.

⁷ See the Institute for the Equality of Women and Men website: http://igvm-iefh.belgium.be/fr/domaines_action/violence/gedwongen_huwelijken/

⁸ *Ibid.*

⁹ E. RUDE-ANTOINE, *Les mariages forcés dans les États membres du Conseil de l'Europe: législations comparées et actions politiques*, Directorate General of Human Rights, Strasbourg, 2005, p. 21. The study is available at the following link: [www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2005\)1_fr.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2005)1_fr.pdf)

¹⁰ N. BENSAID and A. REA, *Étude relative aux mariages forcés en région de Bruxelles-capitale*, Group for Research on Ethnic relations, Migrations & Equality (ULB), November 2012, p. 13. The study is available at the following link: <http://germe.ulb.ac.be/uploads/pdf/articles%20online/rapportMF2013NawalB.pdf>

¹¹ These provisions were introduced by the Law of 25 April 2007 inserting Article 391^{sexies} into the Criminal Code and amending certain provisions of the Civil Code with a view to incriminating and extending the means to annul forced marriages, *Belgian Official Gazette*, 15 June 2006. These provisions were further amended by the Law of 2 June 2013 amending the Civil Code, the Law of 31 December 1851 on consulates and consular jurisdiction, the Criminal Code, the Judicial Code and the Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners, with a view to combating sham marriages and sham legal cohabitation, *Belgian Official Gazette*, 23 September 2013.

¹² Article 167, paragraph 1 of the Civil Code.

¹³ Article 184, paragraph 1 of the Civil Code.

¹⁴ Articles 1476 *bis* to 1476^{quinquies} of the Civil Code.

¹⁵ Sentencing includes three months to five years in prison and a fine of EUR 250 to 5,000. Attempt is subject to a two-month to three-year prison sentence and a fine of EUR 125 to 2,500.

¹⁶ Article 391 ^{octies} of the Criminal Code.

Arranged marriage

The difference between an arranged marriage and a forced marriage is that in an arranged marriage, the families of both spouses play a leading role in the arrangement of the marriage but the choice to marry or not lies ultimately with the future spouses¹⁷. Above all, it is a strategic and/or economic tool which serves the family¹⁸.

While it may seem easy to establish the theoretical difference between a forced marriage and an arranged marriage, this is not the case in practice. In reality, there are many variations in the definition of the concept¹⁹: it isn't always easy to draw the line between consent and non-consent²⁰. Different degrees of coercion can exist in an arranged marriage²¹.

Finally, it is those concerned by this type of marriage who are best placed to define whether it is question of an arranged marriage with consent, or arranged without consent, which would put it in the same category as a forced marriage²². For workers in the field,

¹⁷ Definition by A. GARCIA in N. BENSAID and A. REA, *op. cit.*, p. 7.

¹⁸ Institute for the Equality of Women and Men, "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, p. 7. The handbook is available at: http://igvm-iefh.belgium.be/fr/binaries/84%20-%20Mariage%20forc%C3%A9.%20Guide%20%C3%A0%20l'usage%20des%20professionnelles_tcm337-268254.pdf

¹⁹ N. BENSAID and A. REA, *op. cit.*, p. 7 and pp. 16-21.

²⁰ N. BENSAID and A. REA, *op. cit.*, p. 18. These authors also point out (*ibid.*) that some authors consider arranged marriage as an act of violence, just like forced marriage because of the underlying submissive relations. Furthermore, they highlight the fact that on the contrary, for other authors, arranged marriage isn't an act of violence but simply the reflection of a tradition and that nothing proves that young people are against it.

²¹ The handbook on forced marriage for professional purposes, *op. cit.*, p. 10 points out that "there are some situations of 'highly' arranged marriages where the future spouses are subject to a diffuse form of pressure from the family and/or community and ultimately give their consent, more or less reluctantly, without considering that they have been forced".

²² N. BENSAID and A. REA, *op. cit.*, p. 20. See also the interesting study by S. ZEMNI, N. PEENE, M. CASIER, *Étude des facteurs limitant la liberté de choix d'un partenaire dans les groupes de population d'origine*

this means using the victim's experience as a basis, and establishing a grading system in terms of level of pressure and agreement²³.

Customary marriage

Some customary or religious marriages celebrated abroad may be recognised in Belgium if they are valid according to the law in the country where they took place and if they are equivalent to a civil marriage²⁴. The criminalisation of forced marriage (Article 391*sexies* of the Criminal Code) is aimed at marriage legally recognised in Belgium. However, according to certain authors, customary marriage celebrated in Belgium in contradiction with the Civil Code is also a form of marriage protected by Article 391*sexies* of the Criminal Code²⁵. It could therefore be considered as forced marriage.

étrangère en Belgique, Study report, C.I.E, University of Ghent, http://igvm-iefh.belgium.be/fr/binaries/Rapport%20Choix%20de%20partenaire%20FR_tcm337-152789.pdf. This study also establishes the possible nuances between arranged and forced marriage. These authors organised a series of group sessions where the participants were asked to describe their idea of arranged marriage and forced marriage. According to the participants, pressure should enter into the definition of forced marriage. This pressure can be direct and is assimilated with threats; it can also be indirect (pressure from the community, for instance). According to the participants, it is free will that determines whether it is a forced or arranged marriage (*ibid.*, pp. 75-78).

²³ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", speech within the framework of the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", organised by the University of Ghent's International Centre for Reproductive Health and Plan Belgique, in collaboration with the Institute for the Equality of Women and Men, 24 March 2015.

²⁴ Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Brussels, Larcier, 2013, p. 504.

²⁵ Ch.-E. CLESSE, *op. cit.*, p.504 quoting the stance of M.-L. Cesoni, "Le mariage forcé", in *Les infractions, vol.3: les infractions contre l'ordre des familles, la moralité publique et les mineurs*, Brussels, Larcier, 2011, p. 358.

Child marriage, early marriage

The United Nations Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”²⁶. This Convention doesn’t explicitly mention child marriage. However, the United Nations Committee on the Rights of the Child, responsible for monitoring the Convention’s implementation, declared that a “minimum age for marriage should be eighteen years for men and women” and that “the betrothal and marriage of a child shall have no legal effect (...)”²⁷. We should also mention Article 16, 2 of the Convention on the elimination of all forms of discrimination regarding women, which stipulates that “the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory”²⁸.

Plan Belgique²⁹ defines child marriage as being a marriage where at least one of the partners hasn’t reached the age of 18 years old. In the broad sense, the term “marriage” includes cohabitation, betrothal or conjugal union as recognised by civil law, religion or customary rites³⁰. Plan Belgique also underlines the existing discussions regarding the terms to be

used to describe the issue of marriage of persons under the age of 18. According to the existing laws in certain countries or certain regions, or according to certain customs, a child can already be an adult before the age of 18. This is why many associations prefer to use the term early and forced marriage rather than “child marriage”. As for the United Nations, it uses the term “child, early and forced marriage”³¹. In this analysis, we shall use the terms early marriage and child marriage indiscriminately to refer to all forms of union where one of the partners is someone under the age 18.

In many countries, legislation forbids early marriages. However, some laws expressly authorise the marriage of minors, providing parental authorisation is given or a dispensation is granted by an authority. In Belgium, marriage is forbidden under the age of 18, unless the family court authorises it for serious and justified reasons³². In principle, the minor must obtain the consent of his or her parents³³. In some parts of the world, there are also certain rules and traditional, customary and/or religious practices. In this case, marriages are celebrated according to customary rites and aren’t always registered³⁴.

²⁶ Article 1 of the Convention on the rights of the child.

²⁷ General Recommendation of the Committee, General Recommendation No. 21 (13th session, 1994 on equality in marriage and family relations).

²⁸ For the other international and regional treaties relating to issues of marriage, which mention the spouses’ free and full consent, see: B. FONTENEAU and H. HUYSE, *Les mariages précoces et forcés: que fait la coopération au développement belge? La question du mariage forcé d’enfants dans la perspective de la coopération belge*, Plan, KULeuven, Hva, 2014, p. 5. The study is available at the following link: http://www.planbelgique.be/sites/default/files/user_uploads/plan_hiva_cfmreport_fr_web_0.pdf

²⁹ Plan Belgique is an independent non-governmental organisation, and a member of the International Coalition Plan, active in 69 countries 50 of which are the poorest in Africa, Asia and Latin America. It acts in favour of the most vulnerable children in the south and their community.

³⁰ B. FONTENEAU and H. HUYSE, *op. cit.*, p. 5.

³¹ See resolution 24/23 of the Human Rights Council adopted in September 2013 on this issue and more recently, the resolution adopted by the same council in July 2015 (see the website: <http://www.girlsnotbrides.org/human-rights-council-adopts-resolution-to-end-child-early-and-forced-marriage>). See also Joint General Recommendation/General Observation No. 31 of the Committee on the Elimination of All Forms of Discrimination against Women and no. 18 of the Committee on the Rights of the Child on Harmful Practices adopted on 4 November 2014, available at: <http://www.intact-association.org/images/stories/newsletters/3recommendation-cedaw-crc-n31.pdf>.

³² Articles 144 and 145 of the Civil Code. A serious reason may be the future bride’s pregnancy, for instance.

³³ Article 148 of the Civil Code. This consent is recorded by the family court. If the father and mother refuse to give their consent, the court can authorise the marriage if it considers the refusal to be abusive.

³⁴ E. RUDE-ANTOINE, *op. cit.*, pp. 18-19.

Marriage before the age of 18, or even very early on, raises several questions: are the newlyweds capable of making an informed decision concerning their partner? Are they aware of the implications of marriage? As of what age can a child be considered as capable of consenting to marriage? Consequently, many countries compare these child marriages or early marriages to forced marriage. Indeed, in this type of marriage, at least one of the spouses hasn't reached physical, psychological or emotional maturity and is therefore not in a position to express their free consent to marry³⁵.

While child marriages take place worldwide and are common practice in certain parts of Africa and South Asia³⁶, they are also still in practice in certain parts of Central and Eastern Europe, especially among the Roma and in the former Yugoslav Republic of Macedonia³⁷. Some Roma groups have preserved their customary marriage practices. These early marriages are especially seen from an educational point of view: parents know from experience that as of a certain age, young people are more difficult to control. Moreover, they fear that the girls will lose their virginity before they get married. These marriages are considered as a positive step that increases the community's solidarity and respect. The family's and the father's honour is directly linked to the future bride's virginity³⁸. Once married, the young girl goes to live with her in-laws. She has to carry out the tasks her mother-in-law expects her to do. This may or may not lead to her dropping out of school, thus infringing the right to

education and the possibility of working in the future³⁹.

In certain traditional Roma families, a dowry system⁴⁰ still exists. In this case, the young girl's characteristics (virginity, docility, abilities, etc.) will determine the "price of the bride". If it turns out that the future bride is no longer a virgin, the groom's family can demand compensation⁴¹. Later on in this chapter (points 3.2 and 3.3), we shall see how this dowry system is taken advantage of by certain criminal groups for the purpose of exploitation. In this case, we are talking about the sale of children⁴².

Note that the dowry system is no longer customary among many Roma groups living in Brussels. However, the fathers of the brides will offer the young couple a financial contribution during the marriage ceremony, which serves as a starting capital. In addition, expectations regarding the daughter-in-law have also evolved: more and more parents

³⁵ *Ibid.*

³⁶ The highest percentage of child marriages (more than 30 %) occurs in West Africa and Sub-Saharan Africa. More than 50 % of girls forced into marriage live in South Asia (B. FONTENEAU and H. HUYSE, *op. cit.*, p. 5).

³⁷ E. RUDE-ANTOINE, *op. cit.*, pp. 23-24.

³⁸ K. GEURTS, *Roma in beweging, Diverse groepen en evoluties in Brussel, Handvaten voor onderwijs en hulpverlening* (Les Roms en action, Différents groupes et évolutions à Bruxelles, Suggestions pour l'enseignement et l'aide), Regionaal Integratiecentrum Foyer Brussel vzw, 2014, p. 257.

³⁹ See Council of Europe, *Human rights of Roma and Travellers in Europe*, 2012, not. p. 131. The document is available at the following link: http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf

⁴⁰ The bride is symbolically exchanged for goods or money. In the majority of cases, a sum of money is given to the bride's parents. This custom has a social utility in poor families: it allows them to organise a decent wedding for their daughter and symbolically compensates for the future absence of a member of the family. (See: O. Peyroux, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, p. 115).

⁴¹ K. GEURTS, *op. cit.*, p. 259.

⁴² See Article 2 a) and Article 3 1 a) i) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Article 2 a) of the Protocol stipulates: "The sale of children is intended to cover any transaction in which remuneration or other consideration is given and received". According to Article 3, 1 of the Protocol, the States Parties have precise obligations concerning child marriage or forced marriage revolving particularly around the payment of a dowry or the price of the fiancée. On this subject, see point 24 of the Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices adopted on 4 November 2014.

consider that the girls must go to school. The most important concern is that they remain a virgin until they are married⁴³.

Sham marriage

A sham marriage is a marriage where at least one of the two partners has no intention of leading a married life⁴⁴. In Belgium, this concept is more related to migration⁴⁵. Article 146 *bis* of the Civil Code states that “there is no marriage when, despite formal consent being given for the latter, it is revealed through a combination of circumstances that the intention of at least one of the spouses is clearly not the creation of a long-lasting relationship as a couple, but rather (the purpose is merely) to obtain a benefit in terms of residential status, linked to the status of spouse”.

Article 79*bis* of the law on foreigners⁴⁶ criminalises both the behaviour of the person concluding the sham marriage⁴⁷ and the person receiving a sum of money as payment for the conclusion of such a marriage⁴⁸. A person who uses violence or threats towards another person to force them to conclude such a marriage can also be prosecuted⁴⁹. Article 79*ter* of the same law similarly punishes sham legal cohabitation.

In several reports, Myria mentioned the use of sham marriages or legal cohabitation as the *modus operandi* for human trafficking⁵⁰. Furthermore, Myria has dedicated many analyses to the fight against sham marriages and sham legal cohabitation and its impact on the right of the foreigners concerned to live in a family⁵¹.

Grey marriage

There is also the concept of grey marriage, where “one of the two persons is sincere and acting in good faith and is the victim of their partner’s manipulation whose goal is merely to obtain the right to reside in Belgium”⁵². This can be considered a fraudulent marriage, also referred to in Article 146*bis* of the Civil Code⁵³. It is in fact only one of the spouses who has the intention of creating a lasting relationship together.

⁴³ K. GEURTS, *op. cit.*, p. 259.

⁴⁴ N. BENSaid and A. REA, *op. cit.*, p. 21.

⁴⁵ For a detailed overview of the procedures and rights of the persons concerned, see in particular, the Marriage and Legal Cohabitation in Belgium brochure, available at www.myria.be.

⁴⁶ Law of 15 December 1980 on access to the territory, stay, establishment and return of foreigners.

⁴⁷ The sentences provided for in this case are from one month to three years in prison and a fine ranging from EUR 50 to EUR 500.

⁴⁸ The sentences provided for in this case are from two months to four years in prison and a fine ranging from EUR 100 to EUR 2,500.

⁴⁹ In this case, the sentences provided for are from three months to five years in prison and a fine ranging from EUR 250 to EUR 5,000.

⁵⁰ See this report, part 2, Chapter 2, point 1.1.2. and Chapter 4, point 1.1. (sham marriage); Trafficking in and Smuggling of Human Beings, Annual Report 2011, *The Money that Matters*, pp. 89, 93-96 and 101-105; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 13, 17, 23, 25 and 107.

⁵¹ For a critical analysis of the means of fighting simulated marriages, see the *Migration* Annual Report 2013, pp. 106 to 110 as well as the *Migration* Annual Report 2007, pp. 124 to 129, on the unavailability of reliable data on simulated marriages see *Migration* Annual Report 2012, p. 86. Also see: B. LANGHENDRIES, “Les bébés papiers”: Derrière le concept choc, un nouveau risque de discrimination des familles en migration, available at <http://www.adde.be/publications/newsletter/newsletters-2013/92-novembre-2013/edito-newsletter-adde-92-novembre-2013>.

⁵² N. BENSaid and A. REA, *op. cit.*, p. 21.

⁵³ *Ibid.*, p. 25.

2. The victims of forced marriage in Belgium

2.1. Extent of the phenomenon

Forced marriages are the subject of a dark figure owing to the very low number of cases reported⁵⁴. The victims only very rarely report their case to the authorities or even to associations for various reasons (fear, shame, ambivalence, loyalty towards the family, etc.). The official figures are therefore very low. Hence, in Belgium, only 56 complaints relating to a forced marriage have been registered by the police since 2010⁵⁵. In Brussels, the declared number of forced marriages in the strict sense is marginal⁵⁶. There were no figures at all for forced marriages in 15 of the 19 communes in Brussels between 2009 and 2011⁵⁷. Which doesn't mean the phenomenon doesn't exist. But communal employees aren't trained to detect them, contrary to sham or grey marriages⁵⁸. As regards the federal police, 12 complaints concerning forced marriages were registered between 2009 and 2011, whereas no figures on forced marriage were registered by the communal police services during the same period⁵⁹. It would therefore seem that forced marriage isn't registered as such by the federal police services and/or the victims of forced marriage don't go to the police⁶⁰.

⁵⁴ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 12; N. BENSALD and A. REA, *op. cit.*, pp. 23-36.; E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", speech within the framework of the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", *op. cit.*, 24 March 2015. This speech presents an overview of the results of the European study on forced marriage as a new form of trafficking in Europe. The University of Ghent's International Centre for Reproductive Health provided the Belgian part (ICRH) (study website: www.matrifor.eu (results available in November 2015)). The study confirms the lack of representative data for Belgium on forced marriage, as well as underreporting.

⁵⁵ Press release of 24 March 2015 from the Institute for the Equality of Women and Men, Plan Belgique and ICRH, "Les mariages forcés et précoces: une réalité aussi en Belgique, pas une fatalité". The release also mentions that between 2009 and 2013, 3397 applications for

The situation is slightly different as regards grassroots associations. Some of them, such as the Réseau Mariage et Migration in Brussels and the Service Droit des Jeunes in Liège, are indeed regularly confronted with cases of forced marriage. They deal with 20 to 30 cases a year⁶¹.

The lack of awareness and training of institutional staff with regard to this problem can explain, at least in part, the low number of forced marriages registered. Hence, it is difficult for them to detect potential cases and encourage the victims to come forward⁶². Moreover, just like other types of domestic violence, forced marriage is a phenomenon that takes place within the privacy of the family. Consequently, it is all the more difficult to detect. The official institutions have very little awareness of this phenomenon. Their efforts are mainly oriented towards combating fraudulent marriages⁶³.

However, there are initiatives, in particular those of the Réseau Mariage et Migration, which aim to raise awareness among public prosecutors and police services⁶⁴. A handbook for the use of professionals was also compiled by the Institute for the Equality of Women and Men in collaboration with the Réseau Mariage et Migration and other partners⁶⁵. This handbook serves two purposes: on the one hand, it allows professionals to better recognise potential or actual victims of forced

asylum relating to forced marriage were dealt with by the Commissioner General for Refugees and Stateless Persons (CGRS).

⁵⁶ N. BENSALD and A. REA, *op. cit.*, p. 10.

⁵⁷ *Ibid.*, p. 28.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, p. 29.

⁶⁰ *Ibid.*

⁶¹ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 12.

⁶² N. BENSALD and A. REA, *op. cit.*, p. 31.

⁶³ *Ibid.*, pp. 60-61.

⁶⁴ *Ibid.*, p. 31 and pp. 40-42.

⁶⁵ Institute for the Equality of Women and Men, "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, available at: http://igvm-iefh.belgium.be/fr/binaries/84%20-%20Mariage%20forc%C3%A9.%20Guide%20C3%A0%20l%27usage%20des%20professionnelles_tcm337-268254.pdf

marriage and, on the other hand, it offers them several possibilities concerning support for the victims.

Since July 2013, the Réseau Mariage et Migration also has an anonymous hotline where victims or potential victims of forced marriages can talk to someone confidentially⁶⁶.

2.2. Profile of victims

In Belgium, forced marriage plans primarily concern young people on the point of becoming adults and forced marriage affects very young adults above all⁶⁷. But there is no set profile for victims of forced marriage: they can be minors or adults, and it could be a first marriage or a forced remarriage⁶⁸. It is also necessary to deconstruct the stereotypes relating to the profile of the victim of forced marriage. This type of marriage can concern both boys and girls and isn't specific to a given group although it can emerge in different groups of foreign origin (East and South Asia, North African, Sub-Saharan Africa and East Africa, Europe and the Middle East). Consequently, it is important to understand each case on an individual basis⁶⁹.

It is also necessary to deconstruct the stereotypes relating to the profile of the victim of forced marriage

considered inappropriate by the family, accomplishing a financial transaction, complying with peer pressure, or pressure from the family or community, etc.

Victims of forced marriage are frequently subjected to violence by their partner (sexual, physical, psychological). In some cases, the victims are exploited by their in-laws and forced to perform household tasks for the whole family⁷¹. Situations such as these can be compared with human trafficking, as we shall see in the next point.

There can be a whole variety of reasons why a family imposes a marriage⁷⁰. In particular, it may be a case of maintaining the family's honour and preserving the young girl's virginity, preventing close relationships

⁶⁶ <http://www.mariagemigration.org/index.php/fr/menu-accueil-tel>

⁶⁷ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 15.

⁶⁸ *Ibid.*, p. 14.

⁶⁹ *Ibid.*, pp. 14-15.

⁷⁰ On this subject, see "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 18 and E. RUDE-ANTOINE, *op. cit.*, p. 31. This author points out that the reasons behind forced marriages can be linked more specifically to the phenomenon of migration (especially the concern to perpetuate the migration process by the arrival of newcomers' spouses).

⁷¹ "Mariage forcé?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, p. 21.

3. Forced and early marriage, and human trafficking

3.1. Forced marriage: a form of human trafficking?

Forced marriages and human trafficking share common defining elements⁷². Both involve a coercive element. And in some cases, forced marriage can include actual exploitation: this can be sexual exploitation (marital rape, prostitution, pornography), or economic exploitation (domestic work, for instance). In other cases, early marriages may lead to forced begging or the exploitation of criminal activities⁷³.

Forced marriage isn't explicitly included in the definition of trafficking on an international level (Palermo Protocol⁷⁴), or on a European level (Council of Europe Convention⁷⁵ and European directive⁷⁶). According to these instruments, trafficking consists of three core elements:

- a material act (the recruitment, transportation, transfer, harbouring, etc., of persons);
- exploitation (sexual exploitation, and labour in particular);

- the use of certain means (force, deception, threats, abuse of a position of vulnerability, etc.).

However, forced marriage can be a form of human trafficking if it consists of the core elements. Hence, forced marriage can be a way of recruiting women and girls with a view to sexual exploitation or labour exploitation in particular, or the result or the purpose of the trafficking⁷⁷. In the first case, forced marriage is a *means* that serves trafficking because the marriage is concluded "with the goal of acquiring, buying, offering, selling or exchanging a person for the purpose of exploitation"⁷⁸ (sexual, labour or other). In the second case, forced marriage is the end goal of the trafficking: "here, the victims are first recruited, transported, transferred, harboured or received to be sold as brides, the marriage having been contracted through physical and/or psychological force, with the bride consequently subjected to slavery or physical and/or sexual abuse"⁷⁹.

⁷² On this issue, see E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, "Le mariage forcé peut-il être une forme de traite en vertu du protocole additionnel à la Convention des Nations Unies contre la criminalité transnationale organisée visant à prévenir, réprimer et punir la traite des personnes, en particulier des femmes et des enfants?", *Revue québécoise de droit international*, (RQDI), 2011-2012, 24(2), pp. 91-111, spec. p. 100.

⁷³ On this subject, see below, point 3.3.

⁷⁴ Additional protocol to the United National Convention against Transnational Organised Crime to prevent, suppress and punish trafficking in persons, especially women and children, 15 November 2000.

⁷⁵ Council of Europe Convention No. 197 on Action against Trafficking in Human Beings, Warsaw, 16 May 2005.

⁷⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JAI of the Council, *O.J.*, L101 of 15 April 2011. The European directive calls upon the Member States to include forced marriages in the definition of trafficking.

⁷⁷ In this sense E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, *op. cit.*, p. 93 and F. BOKHARI, "Stolen futures: Trafficking for forced child marriage in the UK", ECPAT UK, 2009, available at the following link: . According to the United Nations Office on Drugs and Crime (UNDOC), traditional practices such as arranged, early or forced marriages can help to fuel human trafficking (see United Nations Office on Drugs and Crime, Combating Trafficking in Persons. A Handbook for Parliamentarians, No. 16 (2009)).

⁷⁸ E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, *op. cit.*, p. 104.

⁷⁹ *Ibid.*

For the forced marriage to be considered as a form of human trafficking, in certain cases, it must be proved that the marriage fulfils the core elements of trafficking: on the one hand, the use of certain means (force, deception, etc.) by the initiator of the forced marriage and, on the other hand, the exploitation of the married woman⁸⁰. As regards children, the proof of force or other means isn't necessary, since exploitation exists *de facto*. In this case, the marriage can be considered as a form of exploitation in itself, and even as a form of transfer of a child from one adult to another⁸¹.

We know that the Belgian legislator hasn't included the means or *modi operandi* in the definition of trafficking⁸². They are considered aggravating circumstances of the offence. On the one hand, the Belgian Criminal Code requires material evidence of the offence (the recruitment, transport, transfer, harbouring, receiving of a person, taking control of them or transferring control), and on the other hand, the purpose of exploitation (sexual, labour, exploitation of begging, illegal organ harvesting, coercion to commit a crime). As already mentioned, the Belgian legislator specified that by adding the term "taking control" to the definition of trafficking, control is covered especially within the framework of a forced marriage⁸³.

The recent joint circular of the College of Public Prosecutors and the Minister for Justice regarding the fight against human trafficking (COL 01/15)⁸⁴ distinguishes human trafficking from other criminal phenomena such as forced marriage or illegal adoption. In this

respect, it specifies that forced marriage (Art. 391^{sexies} Criminal Code⁸⁵) can be part of the human trafficking process if it serves to exploit the person, for instance, when it is used to take control of a person or transfer the control to someone else. But the victims of forced marriage don't benefit from the protection status granted to the victims of human trafficking, unless they are also the victims of human trafficking.

The notion of transfer of control lay at the heart of a recent decision rendered by the Criminal Court of Verviers. The court concluded the existence of human trafficking in the case of the early (customary) marriage⁸⁶ of two minors. It considered that the obligation for the young girl to be subjected to non-consensual sexual relations within the framework of a customary union could be considered as a form of sexual exploitation falling within the scope of Article 433^{quinquies} of the Criminal Code (trafficking of human beings).

Non-consensual sexual relations with a minor within the framework of a customary union could be considered as a form of trafficking of human beings.

⁸⁰ E. JIMENEZ, M. LAMBOLEY, M.-M. COUSINEAU, *op. cit.*, p. 103. According to these authors, the explicit inclusion of forced marriage in the definition of human trafficking will facilitate the criminalisation of traffickers and the protection of victims of forced marriage (*Ibid.*, p. 108).

⁸¹ *Ibid.*, p. 104.

⁸² For the definition of trafficking in Belgian law, see the note above No. 4.

⁸³ See above, point 1.

⁸⁴ COL 01/2015 relating to the policy on investigation and prosecution in terms of human trafficking. On this subject, see part 2, Chapter 1 (recent developments in the legal and political framework), point 2.2 of this report.

⁸⁵ This article aims to stop the behaviour of the person who forces or attempts to force someone to enter into a marriage through violence or threats.

⁸⁶ As previously mentioned, by early marriage we mean any form of union between two persons one of whom is not yet 18 years old.

Early marriage and human trafficking for the purpose of sexual exploitation: Criminal court of Verviers, 30 January 2014¹

In this case concerning the early marriage of two minors, where the young girl was under 16 years old, the parents of these minors were prosecuted in particular for human trafficking for the purposes of sexual exploitation, rape, indecent assault with violence and threats.

Both families wished to set the seal on a romantic relationship between their children. The young man's parents gave a sum of money to the young girl's parents, based on the young girl's state of virginity, in line with tradition. A celebration was organised, after which sexual relations took place between the minors, within the young man's family. From that moment on, the young girl went to live with the young man's family, where she carried out various domestic tasks, leading to absences from school.

The court accepted the charge of human trafficking among other things. It considered that it was indeed question of a transfer of control over the underage girl for the purpose of rape, indecent assault with violence and threats and corruption of youth. The transfer of authority was sealed by the cash payment and the minor "moving house" to reside with the young man's family. Since the accused were aware that the celebration they organised would lead to sexual relations between the children, the court considered that the constituent element relating to the purpose of exploitation ("with the purpose of facilitating the commission [of the crime]") was also established.

3.2. Early marriages and human trafficking: a few examples in Europe

In the **United Kingdom**, according to a study by ECPAT⁸⁷⁸⁸, children are smuggled to and from this country for the purpose of forced marriage⁸⁹. This involves both British children born in the United Kingdom and "smuggled" out of the country to be married by force abroad, and children "smuggled" into the United Kingdom for sexual exploitation, on the basis of a false promise of marriage⁹⁰. They can also be migrant children who have come to the United Kingdom with false identity papers which make them look older, who have been forced into marriage in their country of origin by a British citizen, or more rarely, married in the United Kingdom⁹¹.

Marriage is used as a method of recruitment in child trafficking: in this case, young girls are recruited and smuggled into the United Kingdom based on the promise of marriage, as fiancées or girlfriends hoping for a better life and then forced into sexual exploitation⁹². This involves the loverboy method (romantic relationship), which is the subject of Chapter 2 of this report.

Concerning forced marriage as a result of trafficking, ECPAT mentions the typical scenario of young British girls, essentially originating from South Asia, who are taken

⁸⁷ ECPAT is the acronym for "End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes". It is an international NGO responsible for combating the commercial sexual exploitation of children.

⁸⁸ F. BOKHARI, "Stolen futures: Trafficking for forced child marriage in the UK", ECPAT UK, 2009, p. 7, available at the following link: http://www.ecpat.org.uk/sites/default/files/stolenfutures_ecpatuk_2009.pdf. The study focuses on 48 cases of trafficking for the purpose of forced marriage. The Forced Marriage Unit (FMU), the government's central unit dealing with cases and the policy on forced marriage, deals with an average of 300 to 500 cases a year, 30 % of which concern children.

⁸⁹ The greatest number of cases concerned population groups originating from Bangladesh and Pakistan.

⁹⁰ This mainly concerns young girls from Eastern Europe.

⁹¹ F. BOKHARI, *op. cit.*, p. 7.

⁹² *Ibid.*, p. 19.

abroad for the purpose of forced marriage. Once abroad, they suffer various forms of violence (physical, psychological) and their passports are taken away⁹³.

In the past few years, **France** has been faced with different forms of crime committed by minors, the most well known being the famous case of the pickpockets in the metro. This involved minors, mainly young Roma girls, who were exploited within the framework of an extensive criminal family organisation, active in several European countries⁹⁴. They were mostly recruited in Bosnia through real or false marriages with a man living abroad who belonged to one of networks' branches. The young girl's family received a sum of money in exchange⁹⁵. In his book on child trafficking, the sociologist Olivier Peyroux⁹⁶ explains how traditions linked to early marriage in force in certain Roma communities are abused for the purposes of exploitation. The family-in-law give a sum of money to the parents of the future bride, which can range from a few hundred euros to more than EUR 100,000. The dowry linked to customary marriage therefore loses its symbolic purpose and becomes the "price of the bride". The young bride then moves in with her new family and becomes their property. She is then used to commit acts of theft, domestic work, and more rarely, for prostitution. Once married through this misused custom, the daughter-in-law has to reimburse the sum paid. In reality, this means

a life of servitude to pay back the debt. In addition, the amount of the dowry paid increases the feeling of loyalty towards the exploitive family-in-law⁹⁷.

There are different methods of control depending on the criminal organisation. The marriage may be false because the husband already has a wife or the young girl becomes part of a family even though she has a real husband. It is often the mother-in-law who exercises control over her daughter-in-law. The degree of exploitation depends on the position held within the family unit. Therefore, the danger is that these children are considered more as prisoners of a cultural system than victims of trafficking, and to use this as an excuse not to raise the question of the protection of these minors⁹⁸.

According to a note relating to human trafficking in **Macedonia**⁹⁹, many underage young girls are married by force and then leave to live abroad. The Roma community in the Republic of Macedonia practices the marriage of young girls aged between 13 and 16 years old as a traditional custom. The young girl's parents choose the partner, often without her consent. The family of the future husband pays between EUR 3,000 and EUR 5,000 for the costs of the traditional wedding ceremony as well as for the young bride's gold jewellery. In reality, this is deviation of the practice of early marriage, which is comparable to the sale of children. These sales of children take place among certain members of Roma communities, which are highly marginalised and live in situations of extreme poverty. These families are targeted by intermediaries operating in Macedonia.

⁹³ *Ibid.*, p. 20.

⁹⁴ This is the Hamidovic case. The head of the clan, Fehim Hamidovic, was sentenced to seven years in prison by the Criminal Court of Paris. This case received a lot of publicity in the press. See: http://www.lemonde.fr/societe/article/2013/05/15/le-chef-du-clan-hamidovic-condamne-a-sept-ans-de-prison_3233856_3224.html

⁹⁵ O. PEYROUX, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, p. 23. See also "La traite des êtres humains dans des situations de conflits et post-conflits", action research, interim report, Caritas, June 2015, p.41, available at the following link: http://contrelatraite.org/IMG/pdf/recherche_action_traite_et_conflits_fr_10_juin_2015.pdf

⁹⁶ O. PEYROUX, *Délinquants et victimes, la traite des enfants d'Europe de l'Est en France*, Paris, 2013, spec. pp. 97 to 101.

⁹⁷ *Lutte contre la traite des êtres humains en Europe du Sud-Est*, letter from the permanent representations, No. 2 February 2015, p. 4, available at the following link: <http://www.delegfrance-onu-vienne.org/la-lutte-contre-la-traite-des-etres-humains-en-Europe-du-Sud-Est>

⁹⁸ O. PEYROUX, *op. cit.*, p. 100.

⁹⁹ Note relating to human trafficking in Macedonia within the framework of forced marriages (mission in Skopje from 7 to 10 July 2014), French Republic (internal document).

The perpetrators of this human trafficking are Roma from Serbia, Kosovo or Macedonia, who are living alone or with their family, legally or illegally in a Western European country. They often belong to a criminal group and it is possible that the members of the group are part of the same family. Local recruiters are hired by a regional recruiter. They are responsible for locating victims and act as an intermediary between the person behind the deal and the young bride's family, negotiating the sum the family will receive. They often provide false information concerning the future husband. Once the victim reaches her destination, she realises the deception: her husband isn't the one shown to her in the photo, and he is often much older. After arriving in their family, the victims' passport is taken from them, they are threatened, forced into domestic servitude, and sometimes raped by their husband, as well as by their father-in-law. They are forced to beg or commit acts of theft.

The main countries of destination for this form of trafficking are Belgium, Germany, France, Italy and Spain.

A young 13-year-old girl was thus identified as a victim of human trafficking within the framework of forced marriage in 2013 in Belgium. This case gave rise to international criminal cooperation. The perpetrator was sentenced to 12 years in prison.

3.3. Early marriages and human trafficking in Belgium

We already mentioned the underreporting of forced marriages at the beginning of this report. It is hardly surprising then that little is known of the phenomenon of early marriage either.

According to an ongoing European study, which (in which?) the University of Ghent is participating in as the Belgian partner¹⁰⁰,

¹⁰⁰ This is the study on forced marriages as a new form of trafficking in Europe (study website: www.matrifor.eu (results available in November 2015) already mentioned

forced marriage in Belgium concerns both long-established ethnic minorities in Belgium (such as the Turks and Moroccans) and new migrants (such as Serbs and Chechens). This phenomenon also concerns women and men, but women have less chance of escaping from or taking action against the situation. This study also reveals that early marriages are a reality in Belgium among Roma¹⁰¹ and Afghans.

A contact person working on the Roma issue also told us of the existence of arranged early marriages among certain Roma communities from the Balkans (Kosovo, Macedonia), who had been living in Belgium for a long time: early marriages are primarily arranged with families living in Germany.

In the past few years, the Esperanto centre, which specifically receives minors who are the presumed victims of human trafficking, has been faced with young girls who have been subjected to early marriages at the age of 12, 13, 14 or 15. In most cases, these marriages (are) arranged by the father, who receives a sum of money in exchange. This leads to situations of domestic exploitation, sexual abuse, even committing offences. In general, this concerns families who have been living in Belgium for quite a while. The young girls have very little education, and sometimes none at all. These young Roma girls, who are married by force, are automatically received by Esperanto because forced (domestic) labour or begging often lies behind these early marriages.

In 2013, this centre received 17 new minors. Four of them were victims of forced marriage or were on the point of entering into such a marriage.

earlier in this report, see note bottom of page 55. It was presented by E. LEYE during the study day: "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", *op. cit.*, 24 March 2015.

¹⁰¹ In Sint-Niklaas, a Roma representative said, "among the 60 families we monitor, five have imported a minor as a future bride".

The two victims of domestic exploitation received by the centre were both of Roma origin, and were also the subject of a forced marriage¹⁰². The first young girl was of Serbian origin and had been living in Belgium for several years with her family. She was the victim of an early marriage at the age of 13, having been “sold” in reality to another Roma family living in Belgium. She not only served as a domestic slave, but she also had to satisfy the sexual needs of her husband, who was also a minor. This situation led to the conviction of the young man’s and the young girl’s parents by the Criminal Court of Verviers, for trafficking in human beings for the purposes of sexual exploitation¹⁰³. The facts were revealed thanks to the vigilance of the headmaster of the school the young girl attended. He was concerned about the young girl’s repeated absences and questioned her about this. This led her to reveal the facts.

As a comparison, we would also like to mention a similar case of a young girl who was also subjected to an early marriage and who clearly served as a domestic slave for her in-laws. This young girl was also received by the Esperanto centre in 2012. Contrary to the previous situation, the proceedings initiated for trafficking for the purposes of labour exploitation in this case, led to an acquittal based on a lack of evidence.

Early marriage and human trafficking for the purpose of forced labour: Hainaut Criminal Court, Charleroi division, 13 October 2014, 10th ch.¹

The defendants, a Serbian couple, were prosecuted on the charge of human trafficking for the purposes of forced labour. They were accused of having exploited their daughter-in-law, a minor, within the framework of domestic work in their home. She married the defendants’ son who lived with his family in Belgium. She had already been married two or three times according to local custom. This marriage had been arranged by the defendants and the victim’s mother. The victim instituted civil proceedings at the trial.

In its judgement of 13 October 2014, Charleroi Criminal Court considered that the materiality of the acts of exploitation wasn’t established by the elements in the case. The civil party did indeed perform domestic chores but she wasn’t forced to do all the domestic chores and her mother-in-law maybe worked as much as she did. The court emphasised the fact that while the men were culturally exempt from domestic chores, this wasn’t sufficient to make the civil party the family slave.

The court also considered that the moral element of the offence of trafficking was lacking: even if it was recognised that the conditions in which the civil party was living were contrary to human dignity, it wasn’t proven that she was living with the family with the goal of being exploited by them; the charge requires special intent. The defendants and their four children treated her in accordance with her status as a young person, daughter-in-law and wife.

¹⁰² Esperanto centre’s status report 2013.

¹⁰³ Verviers Crim. Court, 30 January 2014 (final), available at www.myria.be. Also see point 3.1 above.

The defendants maintained that they had no intention of mistreating her or even exploiting her. However, the court did accept that much of the behaviour and remarks made by the defendants and their family, as well as the way in which she was married, were shocking and even disgraceful and that it was possible that the defendants had taken advantage of the civil party's dire situation to bring her to Belgium with the aim of making her do all the domestic tasks. Nevertheless, it considered that the case didn't provide proof that she was the victim of forced labour or that this was the defendant's aim by bringing her over from Serbia and having her live with them. Considering that a doubt remained concerning both the material element and the non-material element of the offence, the defendants were acquitted.

During the appeal, Mons Court of Appeal confirmed the order of acquittal for human trafficking giving the defendants the benefit of the doubt, in its **order of 24 February 2015**.

The second young girl received in 2013, who was found to be the victim of domestic exploitation, was of Romanian origin. Her story is similar to that of the first girl with the difference that the acts took place in France. This unwanted marriage led to the birth of a daughter, which meant that she was constantly threatened with being thrown out by her "in-laws", without her child, if she didn't do as they asked. She also had to bring them money every day which she earned through begging. When she escaped from the family with her daughter and arrived in Belgium, she was then kidnapped. Discovered in France several days later, she was entrusted to Esperanto for security reasons.

Another young girl supported by Esperanto was of Roma origin from Macedonia, and was the victim of exploitation of begging. She had been married before in her country of origin to a young Albanian. This was, however, a marriage she had consented to. While

married, she gave birth to a daughter. The minor complained of domestic violence, both physical and psychological, on several occasions. When the couple wasn't placed in a Fedasil centre, the minor went out to beg with her child. However, it turned out that this was more a form of survival than a constraint imposed on her by her husband. Nevertheless, the young girl was threatened by her husband: if she didn't come back to live with him, he would take their child to Albania. Even though she wasn't the victim of trafficking in the sense of Article 433*quinquies* of the Criminal Code, it was agreed that she and her child should be given special protection.

Esperanto also received young Bosnian girls who were the victims of serious abuse by their families and were about to be subjected to forced marriage. It was decided they should benefit from special protection measures and placement in a protected environment. They were subsequently placed at Esperanto.

In 2014, among the 22 new minors taken in by Esperanto, four were the subject of forced marriages. One of these young girls was obliged to burgle private homes. In 2015, Esperanto revealed that it had several suspicions concerning forced marriage with regard to young persons who were taken in for questioning within the framework of the obligation to commit crimes.

One of the victims taken in by Minor-Ndako¹⁰⁴, the reception centre for vulnerable unaccompanied foreign minors, was a young Romanian girl who was sexually exploited and was forced to beg. She belonged to a group of victims who had to beg and sometimes steal for a number of defendants. She was the partner (unofficial customary marriage) of another victim, an older boy. This case was acquitted by the Criminal Court and Court of Appeal in Ghent, owing to a lack of evidence¹⁰⁵.

¹⁰⁴ Also see hereafter this centre's external contribution, "SOS child victims of human trafficking".

¹⁰⁵ West Flanders Crim. Court, Ghent division, 19 November 2014 and Ghent Court of Appeal, 14 April 2015 (unpublished).

Situations such as these aren't always treated as human trafficking because the young person is afraid of filing a complaint (risk of reprisals, home environment, etc.). Moreover, proof of exploitation is sometimes difficult to report. However, this doesn't alter the fact that the young person must be protected above all.

3.4. Encouraging good practices

As already mentioned, little is known of the phenomenon of forced and early marriages and they are difficult to quantify. It relates to the privacy of the couple and families. Furthermore, it involves areas as sensitive as culture, traditions or religion. The Coordination of NGO for the Rights of the Child (CODE) underlines the fact that this theme "is the source of a difficult debate because it is cultural. It lies at the intersection between standards and values which are thought of as 'fair' both in the eyes of those who criticise them and those who pass them down from generation to generation"¹⁰⁶. And yet, it isn't enough to accept other and respect their specificities, because these practices mustn't contradict basic human rights¹⁰⁷.

As we have seen within the framework of this report, forced marriages are underreported. Forced marriages take place in the private sphere and the victims are reluctant to report the acts to the authorities. They may be driven by feelings of fear, shame or family loyalty. It would also appear that as regards the Roma community, where many early marriages take place, assistance isn't adequate¹⁰⁸. These early marriages aren't considered as forced marriages. There is also little knowledge of and a mistrust of official services¹⁰⁹.

¹⁰⁶ CODE, *Les mariages précoces et forcés, une réalité qui nous concerne!*, CODE analysis, October 2014, p. 1.

¹⁰⁷ On this issue, see E. RUDE-ANTOINE, *op. cit.*, p. 10. Also see http://www.diversite.be/diversiteit/files/File//migratie_migrations/Reactieliefdekentgeengrenzen_fr.pdf

¹⁰⁸ E. LEYE, "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹⁰⁹ *Ibid.*

Furthermore, we have also seen how the custom linked to traditional marriage in the Roma community is sometimes abused to exploit young girls, especially within the framework of domestic work or to force them to commit acts of theft. While some young girls may have taken it upon themselves to report such acts, the fact still remains that it isn't always easy to detect these acts of exploitation. The young person will perhaps first be considered a delinquent before being considered a potential victim¹¹⁰. In fact, what they need above all is protection. The abovementioned case of domestic exploitation bears witness to the difficulty of providing proof of exploitation, which is taking place within the family sphere.

It would also appear that professionals in the field aren't always aware or equipped to detect potential cases of forced marriages¹¹¹. Hence, few professionals are familiar with the measures regarding forced marriage or the relevant national action plan¹¹². Or perhaps they are frightened of stigmatising certain communities and don't take action owing to a lack of knowledge, expertise or respect for the culture. Consequently, they lack intercultural skills¹¹³. Sometimes, they also don't have the skills or instruments to identify and recognise situations of forced marriage and react inappropriately¹¹⁴. Recorded acts of forced marriage are also lacking. There also aren't enough specialised, safe refuges for minors¹¹⁵.

¹¹⁰ On this subject, see the problem of the non-punishment of victims in Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 9-33.

¹¹¹ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹¹² This is the 2010-2014 national action plan to combat violence between partners and other forms of domestic violence. This action plan includes a section relating to forced marriages. This plan is available on the Institute for Equality of Women and Men website: http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf

¹¹³ E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

And yet, several good practices have already been initiated and these initiatives must be encouraged. Thanks to the national action plan to combat violence between partners and other forms of domestic violence 2010-2014¹¹⁶, the different levels of power have joined forces to develop measures aimed at improving knowledge of the phenomenon and to better combat forced marriages¹¹⁷.

Efforts must also continue to raise awareness, develop skills and provide training for the professional categories faced with such situations (police officers, judges, registrars, teachers)¹¹⁸. The handbook for professionals developed by the Institute for the Equality of Women and Men is definitely a practical tool allowing players in the field to better recognise victims and help support them. Professionals in the field could also be provided with other concrete tools such as indicators allowing them to detect forced marriages rapidly and efficiently¹¹⁹. At the same time, awareness-raising activities such as those developed by the Réseau Mariage et Migration for professionals (training courses) must be maintained¹²⁰.

¹¹⁶ http://igvm-iefh.belgium.be/fr/binaries/101123-PAN%20FR_tcm337-113078.pdf.

There are plans to set up awareness and education actions aimed particularly at young girls and boys and their family circle.

¹¹⁷ A draft action plan for 2015-2019 relating to gender-based violence was elaborated by the Institute for the Equality of Women and Men (IEFH), after consultation with NGO and civil society. Note that as regards early marriages, the proposals for actions focus on the development cooperation policy.

¹¹⁸ The IEFH proposes including the problem of forced marriage in basic and continuing training for professional categories faced with such situations (police officers, registrars, judges, teachers, etc.). See press release of 24 March 2015, *Les mariages forcés et précoces: une réalité aussi en Belgique, pas une fatalité*, available at the following link: http://igvm-iefh.belgium.be/fr/binaries/CP%20Mariage%20forc%C3%A9%2024%2003%202015_tcm337-264829.pdf

¹¹⁹ Note that the handbook for professionals already contains a series of indicators for professionals in the school, medical, police and administrative sectors. See "Mariage forcé ?", *Guide à l'usage des professionnel-le-s*, 2015, *op. cit.*, pp. 23-31.

¹²⁰ See <http://www.mariagemigration.org/index.php/fr/menu-formation-espaces-reflexion>

It would also appear that the recording of cases of forced marriage – once they finally have been recognised as such by the competent authorities – by the police and on a legal level, as well as by associations, needs improvement¹²¹.

A specific directive on criminal policy could also be envisaged for the attention of judges and police officers¹²². It would give clear instructions in terms of recording forced and early marriages as well as guidelines concerning possible prosecutions¹²³. Reference persons should be appointed within the police and the public prosecutor's office¹²⁴. Sharing information and collaboration methods within the various sections of the same public prosecutor's office (youth, domestic violence, human trafficking) must also be encouraged. The aim is to be able to make the link, if necessary, between a suspected early or forced marriage and a potential case of human trafficking.

¹²¹ It was suggested that a joint recording system should be implemented for non-judicial cases of forced marriage dealt with by associations in Brussels. On this subject, see N. BENSARD et A. REA, *op. cit.*, p. 63.

¹²² On this subject, see E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.* and IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, presented at the study day, "Suggestions en vue de l'approche des mariages précoces et forcés en Belgique et dans les pays partenaires de la Belgique", 24 March 2015:

http://igvm-iefh.belgium.be/fr/binaries/Recommandations%20mariages%20forc%C3%A9s%20IEFH_tcm337-264800.pdf. For the time being, two circulars are in force concerning domestic violence between partners. The first circular (COL 3/2006) leans towards a definition of violence inside and outside the family, child abuse, the identification and recording of cases by the police services and the public prosecutor's office. The second circular (COL 4/2006) deals more specifically with harmonisation between the stakeholders in the police and the law in terms of violence within couples. But there is no specific circular on forced marriage.

¹²³ See IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*

¹²⁴ On this subject: IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*

As regards the potential victims of early or forced marriage, initiatives such as anonymous helplines set up by the Réseau Mariage et Migration, where victims or potential victims of marriages concluded under duress can be heard in complete confidentiality¹²⁵, must be maintained. Actions to raise awareness, especially in schools (on marriage, spouses' rights, its implications, forced marriage) must be encouraged and continued¹²⁶. School is a potential place for the prevention and detection of forced and early marriages, and even human trafficking, as was the case in one of the cases presented in this report. With regard to the Roma community, where early marriages still take place, specific actions should be undertaken, for instance, through intercultural mediators. Awareness campaigns aimed specifically at these communities, especially those suffering from segregation and social exclusion, could effectively be organised¹²⁷.

With regard to the Roma community, where early marriages still take place, specific actions should be undertaken, for instance, through intercultural mediators

The repeated absences of a young person from school, especially if this concerns a young girl, may well be an indication of a potential case of early (forced). As mentioned in one of the cases in this report.

Finally, better collaboration between the different players would also appear to be necessary, as well as sharing expertise and information, especially at an international level¹²⁸. In terms of good practice, we would like to mention a project developed in Verviers: it involves collaboration projects with the police, the public prosecutor's office, the welfare sector and schools in order to guarantee the (potential) victims' safety¹²⁹.

¹²⁵ Note that this helpline is also for professionals who require concrete information for an intervention concerning a user affected by a marriage concluded under coercion. See: <http://www.mariagemigration.org/index.php/fr/menu-accueil-tel>

¹²⁶ For existing concrete initiatives, see: N. BENSaid et A. REA, *op. cit.*, p. 63 and the Réseau Mariage et Migration website: <http://www.mariagemigration.org/index.php/fr/menu-prevention-sensibilisation>

¹²⁷ On this subject see: Council of Europe, *Human rights of Roma and Travellers in Europe*, 2012, not. p. 17 and pp. 104-106.

¹²⁸ On this subject see: E. LEYE "Les mariages forcés en Belgique: étude qualitative menée auprès des professionnels", *op. cit.*

¹²⁹ IEFH, *Recommandations en matière de lutte contre les mariages forcés et précoces*, *op. cit.*

Chapter 2: Victims of loverboys

In this chapter, we shall take an in-depth look at the problem of loverboy victims who are exploited in Belgium. Loverboys recruit their victims through seduction. They sometimes use it to keep victims they already have recruited under control, and even to encourage them to commit criminal acts. In Belgium, loverboys are still primarily active in the prostitution sector, but they are currently also found in other sectors¹³⁰.

We shall deal (will treat three aspects?) with three aspects. We shall begin by providing an overview of the phenomenon of victims of loverboys in Belgium based on examples of case studies and literature. In the second part, we shall review several key points such as the importance of adapting the law relating to human trafficking, the specific needs of this vulnerable group of victims and the problems that exist in terms of detection. For this purpose, we shall refer above all to the literature and experiences in the Netherlands regarding the management of the phenomenon, as well as interviews with judges and specialised centres. In the last part, we shall examine in greater depth the principle of non-punishment of the victims of loverboys. For this purpose, we shall refer to the *Trafficking and Smuggling in Human Beings, Annual Report 2012*¹³¹ and case studies.

1. Overview of the phenomenon of victims of loverboys

The victims of loverboys are generally recruited in their country of origin and then brought to Belgium, with or without prior transit. They are essentially girls who are subsequently sexually exploited here. Another possibility consists of loverboys recruiting and exploiting the victims in Belgium itself. In this

case, the victims are usually of Belgian nationality. But they can also be girls staying in Belgium legally or illegally. These are the two basic profiles of loverboys. They are similar in many ways but there are a number of differences (all the same).

1.1. Recruitment in the country of origin

The loverboy starts a relationship with the victim in the latter's country of origin. This happens above all in Romania, Bulgaria, Albania¹³² and Nigeria. The initial contact between the loverboy and the victim occurs in different ways, but the victims targeted are always vulnerable young girls, with low self-esteem¹³³.

Social networks such as Facebook¹³⁴ are among the means used by loverboys to make contact. During chat sessions, they pay a lot of attention to the young girls and raise their self-esteem so that they fall madly in love with them.

In other cases, the loverboy and the victim have known each other for years because they belong to the same community, such as the Roma. The family plays a major role because they consider this as a good opportunity to ensure the economic future of their daughter.

In the Hungarian case, which will be dealt with in more detail in this annual report¹³⁵, we found that several young girls were recruited in youth institutions. During the period of seduction, the loverboy also behaves as a father or mother figure by offering his support and protection. Many of these victims are of Roma origin and have been left to their fate by

¹³⁰ National Rapporteur on human trafficking (2009), *The seventh report of the National Rapporteur on Trafficking in Human Beings*, The Hague: BNRM, October 2009.

¹³¹ *Trafficking and Smuggling in Human Beings, Annual Report 2012, Building Trust*, pp. 9-40.

¹³² See also part 2, Chapter 4 (overview of case law), point 1.1. (Albanian loverboy).

¹³³ See also part 1, external contribution "La méthode du loverboy en Roumanie".

¹³⁴ Human Trafficking, Annual Report 2013, *Building Bridges*, p. 64.

¹³⁵ See part 2, Chapter 2, point 1.1.1.

the Hungarian authorities. The first contact takes place in the immediate surroundings of this type of youth institution, where loverboys knowingly hang out in order to establish initial contact with young girls who are nearly 18 years old and quickly will have to leave the institution. They give their victims the necessary attention and feeling of security so that they feel protected.

Passing through a transit country and sold as sex slaves

In this Romanian case, minors were contacted and recruited via Facebook.

One victim stated that she had had a relationship with a certain A. in Romania in April 2011 and that she had gone to Portugal with him to work in the agricultural sector. She was 16 years old at the time. In Portugal, one of A's friends convinced her to come and work as a waitress in a café to earn more money. The victim accepted and she was taken to a bar. There, she was forced to accept sexual relations with customers. In the beginning, she refused, but she was threatened with a weapon and beaten.

It turned out that A's friend had bought her for EUR 3,000 and that she had to pay back this sum. In March 2012, the victim was brought to Belgium and placed in a bar in Saint-Trond. If the girls refused to cooperate, they were intimidated and beaten. They also had to accept to have sexual relations without contraceptives, because unprotected sex paid more. This led to venereal diseases and forced abortions.

After having created a sufficient emotional tie with the victim through the pseudo romantic relationship, the loverboy takes her abroad with him, in search of a respectable job. Sometimes, they come directly to Belgium, but in several cases, they firstly go via a transit

country, where the young girl is forced to prostitute herself for the first time. Portugal and Italy are often mentioned as transit countries in the cases¹³⁶. The victims are brutally confronted with the truth of the matter. In some cases, they are even sold by their loverboy, thus bringing their pseudo romantic relationship to an end.

Many victims remain under the yoke of their loverboy, who continues to exploit them in Belgium. Victims who have transited through another country before coming to Belgium have already been subjected to the necessary experience in terms of prostitution. Some girls start taking drugs so they can work "better" or block out their pain and disgust.

In Belgium, the loverboys assure their victim that they are the love of their life. The victims think that they have to give all their earnings to their beloved. Some loverboys try to seal the emotional bond by having a child with them, often with several girls at the same time (see the Hungarian loverboy box). Several victims are also forced to have an abortion. Loverboys also use a technique aimed at further strengthening the bond with the girls by treating them nicely on one occasion, and badly the next, in order to optimise their earnings from prostitution and reinforce their loyalty. They are quite prepared to use violence to achieve this.

Despite this behaviour, the majority of victims don't hold this violence against their loverboy. On the other hand, they aren't prepared to forgive his infidelity. The victims often continue to consider the loverboy as their romantic partner and even come to hearings to morally support their "boyfriend". This proves that the relationship victims have with their loverboy is often one of emotional

The relationship victims have with is often one of emotional dependency, they even come to hearings to morally support their "boyfriend".

¹³⁶ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 51-53; see hereafter the external contribution: "La méthode du *loverboy* en Roumanie".

dependency: they aren't aware that they are victims and continue to regularly protect their pimp¹³⁷.

The love of some victims is so blind that they are even prepared to commit criminal offences to retain the favour of their loverboy, such as acting as a bottom girl to collect the money earned from prostitution by their colleagues for the loverboy (see box devoted to the Hungarian loverboy).

The Hungarian loverboy and his manipulation techniques

The Hungarian case, also dealt with in greater detail in this report, is a good illustration of the manipulation techniques employed by loverboys. The victims are seduced and recruited in Hungary and, once in Belgium, their loverboy forces them to prostitute themselves. During a tapped phone conversation, a Hungarian loverboy described how he emotionally manipulated young girls. At the same time, he was very violent with his victims. He already had three children with three different victims, and a fourth victim was pregnant by him.

During a conversation between the loverboy and the pregnant young girl, the latter said she wanted to keep the baby. He said she could keep the child as long as she stayed with him. But he told an associate a completely different story barely half an hour later: "There won't be a baby, but I made her believe it to encourage her to work". This is how the victim was manipulated to continue to prostitute herself, so he could calmly continue to benefit from it.

The situation then deteriorated and he threatened the young girl. He said that he would make her lose the child, which he did so by striking her in the stomach. A week earlier, she had told him she was pregnant by him. But after this attack, he said he was sure she hadn't been pregnant seeing as she wasn't bleeding.

He already had abused the victim. She had forbidden him to go and see his other woman. He had responded by striking her several times, causing concussion. At the time, the victim had taken photos of her face with her mobile phone, which clearly showed her face swollen as a result of the blows.

She returned to Hungary, not because she was angry with him for hitting her, but because she learnt from the other girls that he was constantly cheating on her.

When this loverboy appeared in court, the room was full of victims who, despite the acts of violence committed against them, had come to offer him moral support and were appalled that he was put on trial.

Criminal organisations also operate on an international level and also use the loverboy method with victims who are minors. Originally, these loverboys were mostly Albanian pimps, but nowadays, they can be found in organised Romanian, Bulgarian and Nigerian networks. Many of these criminal organisations are not only active in prostitution, but also in drug trafficking.

¹³⁷ Human Trafficking, Annual Report 2013, *Building bridges*, p. 34.

In a Bulgarian case¹³⁸, a defendant had a relationship with two underage victims who were forced into prostitution in different countries. His victims were intercepted in Belgium, Holland and Germany. One of them had fake identity papers, making her out to be an adult. In reality, she was only 17 years old. She also told the police that she was married to the defendant.

In another Bulgarian case¹³⁹, several victims, including minors, were recruited through seduction techniques. The loverboy had set up a whole criminal network with accomplices in Belgium and Bulgaria and he managed a financial institution in the coastal town of Varna, in Bulgaria, where he benefited from protection. He placed his money in land and real estate and owned a massage parlour in Varna. According to a victim in Bulgaria, the loverboy provided “services” to police officers, public prosecutors and judges. He organised sex parties in Varna, among other things. He had many contacts among the Bulgarian police, who alerted him whenever a police check was planned for his massage parlour.

In a wide-scale Nigerian prostitution case¹⁴⁰, the sons of the defendants served as loverboys to seduce young girls in Nigeria and then keep them under their control in Belgium. If necessary, they used physical violence against the victims if they didn’t earn enough money.

¹³⁸ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building Trust*, pp. 70-71 and 19; Liège Crim. Court, 26 September 2012, 8th ch., confirmed by Liège, 23 April 2013 (available at www.myria.be).

¹³⁹ Trafficking and Smuggling in Human Beings, Annual Report 2007, *Une politique publique vue par un rapporteur national*, pp. 84-88; Trafficking and Smuggling in Human Beings, Annual Report 2008, *Enlisting people and resources to combat the phenomenon*, p. 61; Brussels Crim. Court, 9 April 2008, 54th ch. and Brussels, 12 August 2008, 11th ch. (available at www.myria.be).

¹⁴⁰ Trafficking and Smuggling in Human Beings, Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 43-44 and 73; Turnhout Crim. Court, 17 November 2010, 13th ch. (available at www.myria.be).

Within Romanian Roma criminal groups, the loverboys are not only guilty of pimping and drug-related crimes, but also the exploitation of organised begging¹⁴¹ and forcing victims to commit acts of theft. In a Romanian case concerning forced acts of theft and prostitution¹⁴², the loverboy method was also used to recruit young Romanian girls in order to force them to prostitute themselves in Belgium. One victim was intercepted by the police and was granted the status of victim of human trafficking after having told her story (see box *Victim of a Romanian criminal organisation*).

Victim of a Romanian criminal organization

In the beginning, the victim of prostitution was detained with her “chaperone” as she was suspected of being a member of a criminal organisation guilty of acts of theft.

The young girl immediately declared herself a victim, who was forced to prostitute herself. She had no money on her and was scantily dressed. She was scared of her chaperone. According to her statements, she was abused, imprisoned and constantly watched by her chaperone. She had to sleep on the floor without any covers. All her earnings from prostitution were taken away from her. Both she and her family in Romania were the victims of threats.

During her hearing, the victim summarised the story of her life. She had been abused in the past, when she lived in a Romanian orphanage. She still bore the scars on her legs.

¹⁴¹ Trafficking and Smuggling in Human Beings, Annual Report 2006, *The victims under the spotlight*, pp. 32-33; [Court of Appeal] Brussels, 21 February 2007, 11th ch. (available at www.myria.be).

¹⁴² Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 59-62 and 79-80; Turnhout Crim. Court, 17 October 2012, 13th ch. and Antwerp, 24 January 2013, 14th ch. (available at www.myria.be).

The children at the orphanage stole food from each other to survive. At the age of seven, a family adopted her. She received a good education and was able to do a course. After her studies, she went to live alone in the town of Oradea. She worked as a cleaner. She fell in love with the main defendant's nephew and began a relationship with him. In the beginning, she considered him as her partner, but he turned out to be a loverboy. He asked her to come to Belgium with him and promised to find her a job in a clothes shop. He also presented her to the main defendant, who asked her to trust him and promised he would arrange everything for her in Belgium.

The victim accepted this offer. She left Romania by car and arrived in a café on the Sint-Jansplein in Antwerp. Here, she was presented to the son of the main defendant and his girlfriend, her future "chaperone".

The latter suggested she work in the sex industry, like her. She refused from the beginning and wanted to go to the police. However, her identity papers had been taken away from her and her boyfriend said she had to pay back the travel costs and car hire by working the streets close to a hotel used by prostitutes in Antwerp. She had to receive three to four customers a day. When she was suspected of keeping the money from a customer, she was beaten and pulled by her hair. Her loverboy, the main defendant's nephew, confirmed during the hearing that the young girl was humiliated and beaten, both by her chaperone and the main defendant's son (Junior). "I still remember Junior beating the girl one Sunday morning with a telephone and his fists".

1.2. Recruitment in Belgium

Several victims are seduced and begin a romantic relationship with the loverboy in Belgium. In general, the victims are Belgian, but the girls can also be of another nationality, staying in Belgium legally or illegally.

The victims are isolated young girls, with low self-esteem who find it difficult to cope (who have difficulties dealing with it). Their social origins are diverse and they are from (derive) all levels of society. These are emotionally fragile children who risk becoming completely isolated. Sometimes, they try to forget their problems by taking various drugs. In addition, most of them have family problems.

Belgian victims with psychological problems

In this case, a Belgian-Moroccan drug dealer sexually exploited several young Belgian girls. The victims were several young Belgian women in a precarious situation. They were forced to indulge in depraved and humiliating practices. The majority of victims had psychological or financial problems. One of them had already been traumatised in the past by acts of incest inflicted upon her between the age of 10 and 15 years old.

The case was opened on the basis of information gleaned from the drug scene. The defendant sold drugs to the young women and took advantage of their dependence and addiction. In exchange for drugs, the victims allowed themselves to be sexually exploited and abused. The acts generally took place at the defendant's home, but also in other people's home or in bars, sometimes on an individual basis but also as part of sex parties. Some of the victims maintained a relationship with the defendant.

The victim described in detail how her loverboy forced her to indulge in certain sexual practices such as anilingus, urophilia, coprophilia and threesomes with her sister. The court unequivocally stated in its judgement: “that 'J' always wanted to test everything in the sexual relations he wanted to have with her, which consisted in particular of sodomy and urophilia, where sex and drugs were often combined; by urophilia we refer in particular to the fact that she had to lie down on the bed or in a bath, after which he urinated on her, or he urinated in a glass which she then had to drink, that on some days he wanted her to eat his faeces in exchange for a reward of “freebasing coke”, i.e. smoking cocaine; that he recuperated his faeces in the toilet and put them on a plate, which he then presented to the young girl on a table; that she was nevertheless incapable of doing so and that he had therefore added mayonnaise; that she had drunk a lot, especially wine and port, and that she was drunk”.

At first, the defendant provided drugs for free, but once she became addicted, she was forced to pay for them in kind. If she disobeyed, she was locked in a room. The defendant was violent towards her and the victim was in fact hospitalised with signs of battery and assault. However, she never filed a complaint. In fact, the defendant had her completely under his control. He used her bank card, took out three EUR 2,500 loans for which the victim had to act as guarantee every time.

The Antwerp Court of Appeal convicted him for human trafficking. The court subsequently didn't take into account the “relationship” the defendant maintained with the victims for a time. Not so much because the sexual exploitation continued after the end of the “relationship”, but above all because one may wonder to what extent it was a real relationship given the manner in which he treated the women, whom he treated as sexual objects.

The loverboy method can be subdivided into four stages for the victims in Belgium¹⁴³: recruitment, grooming, emotional dependency, exploitation.

During the recruitment stage, the loverboy makes the first contact via the internet¹⁴⁴ (social networks such as Facebook, websites for young people, chat boxes), at places where young people meet physically, such as playgrounds, cafés for young people or in the area around institutions for young people¹⁴⁵. The loverboy makes contact with a potential victim and tries to impress them by showing them a nice car, talking to them and making compliments.

During the grooming stage, he pays the young girl a lot of attention. He listens to her and gives her nice gifts. He pretends to be in love with her and tries to get her to succumb to his charms. He gives her emotional security and tells her about the wonderful future they could have together. The loverboy knows exactly where her weak (spot) is and plays on this aspect very skilfully. Sometimes, the victims have run away from home and don't know where to go. In some cafés, they are offered assistance and temporary shelter.

During the emotional dependency phase, the loverboy does everything he can to make the young girl fall madly in love with him so that she becomes totally dependent. The loverboy

¹⁴³ *Aanpak loverboyproblematiek* (Approach to the loverboy problem), Dutch Centre for Crime Prevention and Safety, Utrecht 2012. This subdivision was confirmed in the analysis of the Belgian cases.

¹⁴⁴ To find out more about best practices in the police approach to loverboys via the internet, read the study *Loverboys zijn laffe boys, Beschrijvend onderzoek pilot loverboys* (Loverboys are cowards, a descriptive pilot study of loverboys), Police Rotterdam-Rijnmond, April 2012.

¹⁴⁵ Verwey-Jonker-instituut, *Loverboys en hun slachtoffers, inzicht in aard en omvang problematiek en in het aanbod aan hulpverlening en opvang* (Loverboys and their victims, an overview of the nature and extent of the problem and the offering in terms of assistance and care), Breda 2011; *Loverboyproblematiek, factsheet*, Expertisecentrum voor jeugd, samenleving en ontwikkeling (The loverboy problem, factsheet, Expert centre for youth, society and development), Gouda.

tries to isolate her from her social network and cut all family ties so that she depends on him not only emotionally, but also financially. He will gradually gain control over her and change his behaviour towards her, being aggressive one day, kind the other. He nearly always forces her to push back her limits and encourages her to take drugs, so that she also becomes addicted. He also encourages her to have sexual relations with his friends.

Emotional dependency

In a case in Liège, the defendant was seeking to recruit young Belgian girls in need, often without an income or a job. He would then pretend to start a romantic relationship with them (loverboy) to make them dependent both emotionally and financially. Ultimately, they would end up in the world of prostitution, where he monitored all their comings and goings. Gradually, the young girls would abandon their family and had to hand over their bank card and identity papers. They had to give him all their earnings from prostitution. Those who didn't earn enough money or didn't want to obey were beaten or threatened.

Once of the victims had spent all her life in care centres. She had been taken away from her alcoholic mother at birth and had been taken in by a foster family. She had never experienced the warmth of a home and left the foster family when she was 18 years old.

The exploitation phase begins when the victim is totally dependent. The loverboy makes them clearly understand that they have to work to pay back the costs and forces them into prostitution. He exercises psychological pressure over them by making them feel guilty. He claims to have problems and that they can help him by paying his debts for him "in kind". Sometimes, they have to pay back the costly price of the gifts they have received or the cost of their stay. The easiest solution is

prostitution. And if that doesn't work, the loverboy uses violence and blackmail. The victim also has to reimburse the debts associated with her drug addiction by prostituting herself.

Belgian victim in conflict with her parents

This case involves a Belgian victim who met a young Turk at the age of 16 and started going out with him. In fact, he was a loverboy who had contacts in the drugs scene and managed to get her addicted. When her parents found out, she was forced to leave home and she moved in with him. The loverboy had money problems and forced her to prostitute herself, first with his friends, then with strangers. The charge was EUR 50 per customer. The victim didn't dare refuse because he would hit her. When she was 17 years old, he forced her to work in a bar where she had to offer her services. She sometimes earned between EUR 600 and 700 there. As soon as the bar manager gave her the money, she had to give it all to the loverboy. The money was used to buy drugs for her and her boyfriend. When she earned too little to buy her drugs, she had to prostitute herself to the dealers, who were friends of her Turkish pimp. She wasn't only used as a means of payment for the cocaine, she was also the victim of a gang rape in some woods in return for wiping off a debt. Sometimes, after buying drugs in Maastricht (Netherlands), she was left there by her loverboy to reimburse the debt in kind.

Loverboys also use their seduction techniques indirectly, by manipulation, through what are known as 'lovergirls'. Their status and their aura make some loverboys so attractive that some girls would do anything to please them.

The lovergirls are themselves victims of loverboys. They commit crimes to stay in their loverboy's good books (see point 3 for more details). They approach and recruit other girls

for their loverboy, for their consequent exploitation. To achieve this, they first form friendships, then attempt to win their trust. The lovergirl wants to play a leading role for her loverboy and go up in his esteem. This gives her prestige and confirms her relationship with her loverboy.

2. Focal points

2.1. Prosecution of loverboys acting individually

Legislative amendments in 2013¹⁴⁶ expanded the definition of human trafficking for the purposes of sexual exploitation. The purpose of sexual exploitation no longer makes reference to specific articles of the Criminal Code but is more generally aimed at the purpose of “exploitation of prostitution or other forms of sexual exploitation”¹⁴⁷. Hence, the purpose of sexual exploitation now also covers the notion of sexual slavery. Several reasons persuaded the legislator to introduce this amendment. The objective of one of them was to put an end to a legal controversy. Difficulties arose in the field concerning the interpretation of the respective areas of application of the (former) Article 433*quinquies* of the Criminal Code¹⁴⁸ (human trafficking) and Article 380 of the Criminal Code (recruitment and exploitation of prostitution). According to certain case law,

¹⁴⁶ See the Law of 29 April 2013 amending Article 433*quinquies* of the Criminal Code with a view to clarifying and extending the definition of human trafficking, *Belgian Official Gazette*, 23 July 2013.

¹⁴⁷ Article 433*quinquies* of the Criminal Code states: “The crime of human trafficking involves the recruitment, transportation, harbouring or receipt of persons, taking or transferring the control over that person:

1° for the purposes of the exploitation of prostitution or other forms of sexual exploitation

(...)”.

¹⁴⁸ The difficulty lay in the use of the term “allow” in (former) Article 433 *quinquies*. This article was worded as follows: “The crime of human trafficking involves the recruitment, transportation, harbouring or receipt of persons, exchange or transfer of control over that person: 1° to allow the offences provided for in articles 379, 380, §1^{er} and §4 and 383bis, §1 to be committed against this person”.

based on the explanatory memorandum of the Law of 10 August 2005¹⁴⁹, but contrary to the *ratio legis* of the law, there is only human trafficking if there is a network. For instance, this excluded loverboys acting alone from the scope of Article 433*quinquies*. The purpose of such an interpretation was to impose an extra condition and differentiate between other forms of exploitation. Henceforth, it should no longer be a problem to prosecute loverboys acting outside the framework of a network.

2.2. Vulnerable group, with specific needs

In the previous annual reports¹⁵⁰, Myria, as the Centre for Equal Opportunities and Opposition to Racism, already requested that greater attention should be paid to young girls of Belgian or foreign origin who were in a precarious social position and at greater risk of falling prey to loverboys. It emphasised the need for an adapted approach to this vulnerable group of minors in terms of detection and support.

In the abovementioned Romanian prostitution case (see box *Passing through a transit country and being sold as sex slaves*), the feeling of insecurity among underage victims when they turn 18, at a point where they risk falling into the abyss because they have to leave the centre for minors, is very clear (see box *What will happen when I'm 18?*). The centres for minors have already expressed their concerns over these failings several times. A judge even mentioned, during interviews, having the impression that centres for minors were somewhat forgotten and that they had no-one to go to to solve their problems.

¹⁴⁹ The Law of 15 August 2005 amending various provisions with a view to reinforcing the fight against the trafficking and smuggling of human beings and the practices of slumlords introduced Article 433*quinquies* in the Criminal Code.

¹⁵⁰ Trafficking in and Smuggling of Human Beings, Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, pp. 130-131.

What will happen when I'm 18?

In this Romanian case, an underage victim was taken in by a reception centre for minors. During her hearing with the police, she was assisted by her chaperone. But the victim first asked for specifications regarding her situation: "Before starting the hearing, I would like to point out that I am very frightened of the organisation of which I am a victim. I will soon turn 18 and I will no longer be able to stay in this establishment. You have told me that having the victim status means I that I will stay here until I am an adult. Afterwards, when I am 18, I will be monitored by another organisation that will offer me the same protection. Actually, I would like to live my life as I see fit when I become an adult. Please explain the procedure once again, what will happen to me afterwards. I understand your explanation and I shall continue to collaborate with you fully in this affair. I have also been told that assistance can be extended after I turn 18".

Furthermore, the victims of loverboys need a specific type of support, where someone is always permanently available to them. The victims often suffer from nightmares and also need to be able to talk during the night to restore their confidence. This is why these victims have a significant need for a family environment and a feeling of safety, which can help build their confidence. This requires considerable means, and this kind of availability can't be provided for the time being by centres specialising in the reception of victims of human trafficking. For loverboy victims, it is equally important to be able to share their experiences with people of the same age who have gone through the same thing. This way, they can regain confidence together.

We also observed that the victims of loverboys are sometimes knowingly drugged by their pimp to maintain their complete

physical and psychological dependence. These victims, who have become addicted to drugs, need specialised support programmes. Among them are also several Belgian victims, for whom the conditions of support offered to those with the status of victim of human trafficking are less applicable¹⁵¹ (see also the box earlier in the report on *Belgian victims with psychological problems*). The specialised centres aren't equipped to receive these groups of drug-addicted victims and subsequently work in collaboration with other help centres.

However, the victim assistance system could be refined and more focused on the specific needs of the different profiles of victim¹⁵², such as the victims of loverboys. Hence, victim status doesn't pay enough attention to the specific problems of vulnerable and drug-addicted Belgian victims.

Schools and youth organisations also play a decisive role concerning these victims' needs¹⁵³. School isn't the only place where young people meet. Social control, through one's circle of friends, can also act as a restraint, helping the person to see the situation for what it is or to strengthen the action. Hence, a young girl who belongs to a youth movement will normally be (more capable) to defend herself against the behaviour of loverboys, and the disapproval of her friends will more easily open the eyes of a young underage girl regarding the abusive seductive techniques of a loverboy. Payoke, the specialised victim reception centre, has

Schools and youth organisations also play a decisive role concerning these victims' needs

¹⁵¹ Trafficking in and Smuggling of Human Beings, Annual Report 2011, *The money that matters*, pp. 88 and 116; Trafficking and Smuggling in Human Beings, Annual Report 2009, *An appearance of legality*, p. 36.

¹⁵² Human Trafficking, Annual Report 2013, *Building bridges*, p. 77.

¹⁵³ Verwey-Jonker-instituut, *Loverboys en hun slachtoffers, inzicht in aard en omvang problematiek en in het aanbod aan hulpverlening en opvang* (Loverboys and their victims, an overview of the nature and the extent of the problem and the offering in terms of assistance and care), Breda, 2011.

received many questions from schools and published an informative magazine and a brochure in 2014 aimed at raising awareness in schools concerning the problem of loverboys and their victims, with the help of a check-list among other things. We should also mention that within the framework of the proposed national action plan 2015-2019¹⁵⁴, the federated entities are planning, in cooperation with the Office of the Interdepartmental Coordination Unit against the Smuggling and Trafficking of Human Beings, to organise initiatives to raise awareness among the general public. The school sector could therefore act as a base for the first initiatives. In its contribution, the Romanian National Rapporteur also mentions this type of prevention campaign in the education sector¹⁵⁵.

The Netherlands already has a great deal of expertise in the area, based on experiences in the field¹⁵⁶. In 2011, a national action plan was elaborated on the approach to loverboys¹⁵⁷. This is a joint publication compiled by the ministries of justice, education and well-being, among others. It also pays a great deal of attention to the information material aimed at schools.

The Dutch youth institute also drew up an action plan with several key points aimed at optimising support and treatment for victims

of loverboys¹⁵⁸. Above all, it is the cohesion between these key points which is important. The goal is to ensure the victim's physical and psychological safety; it goes without saying that the necessary acute medical care, such as trauma treatment, is a major element. Parents and the victim's social network must always be involved. The treatment aims to increase the victims' self-esteem. Resilience training can be organised for this purpose. An individualised analysis of the risks, needs and strong points must be carried out for each victim. Attention will be paid to her schooling and future life, including establishing healthy relationships.

Another key element: the treatment must be introduced in stages. "The first stage of the treatment involves a very clear structure, and confrontation with risks within the network is minimised or non-existent. It is essential to guarantee the person's safety at this point. During this stage, use of the internet, social networks and the phone is very restricted. When it is authorised, it is done under surveillance, to ensure the loverboy can't take advantage of any weak points. Contact with the network is gradually increased so that when the last stage is reached, the person has greater autonomy and more opportunities to exercise it. Contact with boys is also taken into account during the various stages. The question is knowing when the young girl is ready for this, and the answer is assessed on a case by case basis. If the treatment is given as outpatient care, the approach must involve very clear stages, with attention paid to safety, health, treatment and the gradual renewal of contact with people"¹⁵⁹.

In the Netherlands, a great deal of attention is paid to proper monitoring to prevent a young girl from falling victim to a loverboy again.

¹⁵⁴ The 2015-2019 action plan was adopted in July 2015 (on this subject, see Myria's website: www.myria.be).

¹⁵⁵ See hereafter, the external contribution "La méthode du *loverboy* en Roumanie".

¹⁵⁶ At the beginning of July 2015, proceedings were still ongoing in Maastricht (NL) against a loverboy and 21 customers including several elderly persons, concerning a 16-year-old girl who had been sexually abused in a hotel in Valkenburg. (De Standaard, 11/07/2015). The loverboy was sentenced to two years in prison without remission for human trafficking. The customers were sentenced for six months (three months suspended), five months (three months suspended), and ten sentences of one day in prison accompanied by 120 to 240 hours of community work (De Morgen, 24/07/2015).

¹⁵⁷ Ministerie van Veiligheid en Justitie, *Rijksbrede aanpak loverboyproblematiek*, Actieplan 2011 - 2014 (Ministry of Security and Justice, national approach to the problem of loverboys, action plan 2011-2014).

¹⁵⁸ "Hun verleden is niet hun toekomst", Actieplan Aanpak meisjeslachtoffers van *loverboys*/mensenhandel in de zorg voor jeugd, 2014, Nederlands Jeugdinstituut ("Their past is not their future", action plan concerning the approach to female victims of loverboys/human trafficking in youth care, Netherlands Youth Institute).

¹⁵⁹ *Ibid.*

Different initiatives exist to support young girls during and after their treatment: “For instance, there are ‘maatjesprojecten’ (literally “buddy projects”) and ‘lotgenotengroepen’ (victim support groups). In a “buddy project”, a young girl is provided with a friend who has been specially chosen for her. This friend can help the young girl to make a new start. For instance, the young girl can go the pictures with this friend, cook or go out for a walk round town. It is essential that young girl returns to a healthy social life. A victim support group offers victims (and parents of victims) a safe place where they can share their experiences with other young girls who have been subject to the same thing, and talk openly”¹⁶⁰.

2.3. Problem of detection within youth care environments and juvenile judges

In the previous annual report¹⁶¹, we found that very few individual cases of underage victims of loverboys had been detected in Belgium. However, it emerges from the overview of the phenomenon that young underage girls are a vulnerable target group for loverboys. We are also faced with the problem of vulnerable Belgian victims who are not easily perceived as victims of human trafficking, a status generally attributed to victims of foreign origin.

Belgian victims are not easily perceived as victims of human trafficking

The local police’s youth offending teams have little knowledge of human trafficking indicators. As a result, they aren’t always inclined to consider minors who are the victims of vice as victims of human trafficking. Sometimes, these underage victims even risk being stigmatised as problem children and are

even considered responsible for acts of vice. As a result, they are considered guilty.

A lack of knowledge of the human trafficking indicators and the status of victim of human trafficking was also observed among juvenile judges¹⁶². The authorities have learnt their lesson and taken an important new measure. According to the new COL¹⁶³ joint circular, juvenile judges and reference judges in the field of human trafficking must better work together to detect and protect underage victims of human trafficking¹⁶⁴. positive is that in the future, the youth division of the public prosecutor’s office will be systematically invited to the coordination meetings relating to human trafficking within the judicial district.

The communities play a key role in providing minors with care and protection. The assessment of the national referral mechanism¹⁶⁵ shows that staff in community structures aren’t sufficiently aware of the status of victim of human trafficking and the stakeholders they should contact. This state of affairs was again sadly illustrated at the end of June 2015, when we learnt through the media that a 14-year-old girl, who was the victim of a loverboy, had to spend the night in prison as there were no available places in the Flemish reception centres¹⁶⁶. The Flemish Minister for Welfare consequently organised a consultation with several players with expertise in victims of loverboys.

It is equally important that the youth care sector is made aware of human trafficking indicators. This is a link in the chain that is

¹⁶⁰ *Aanpak loverboyproblematiek* (Approach to the loverboy problem), Dutch Centre for Crime Prevention and Safety, Utrecht 2012, websites: www.humanitas.nl and www.stichtingstade.nl.

¹⁶¹ Human Trafficking, Annual Report 2013, *Building bridges*, p. 32.

¹⁶² Human Trafficking, Annual Report 2013, *Building bridges*, p. 67.

¹⁶³ COL 01/2015 relating to the investigation and prosecution policy with regard to human trafficking.

¹⁶⁴ See part 2, Chapter 1, point 2.2.

¹⁶⁵ The national referral mechanism was the subject of an assessment (general section in 2011 and minors section in 2014) by the Office of the Interdepartmental Coordination Unit against the Trafficking and Smuggling of Human Beings. See Human Trafficking, Annual Report 2013, *Building bridges*, p. 67.

¹⁶⁶ Newspapers, 25 June 2015.

totally missing in the fight against loverboys. The goal is to prevent, at all costs, the young victims of becoming victims again by making them feel guilty or by stigmatising them for deviant behaviour. This kind of approach would indeed be entirely counter-productive.

The current course of affairs proves that this problem must be quickly taken in hand because the situation continues to be of serious concern in the field. For instance, the next case we shall look at reveals that youth care sometimes facilitates circumstances for the lucrative business of loverboys. The acts were revealed by chance following a complaint after an incident.

According to the Ghent Criminal Court¹⁶⁷, a 13-year-old Belgian girl staying at an institution was seduced by a loverboy and forced to prostitute herself between 2012 and 2014. The same institution also appeared in the Hungarian prostitution case as a target for loverboys (see box *A youth institution targeted by loverboys*). The charms of the 13-year-old victim were offered by her loverboy to all the male customers in a café he regularly frequented. He charged anything between EUR 10 and 500 and accepted payments in drugs as well.

The acts came to light when the loverboy suggested to another young girl at the same institution that she could “earn money” by prostituting herself. He proudly told this young girl that her 13-year-old friend in misfortune earned EUR 110 in one night by sleeping with three different men. The young girl told her boyfriend everything, who sent a furious text message to the loverboy. One day, they took the bus together and bumped into the loverboy. During the confrontation, the loverboy threatened and hit the young girl’s boyfriend with a weapon. Afterwards, they went to the police to file a complaint against the loverboy. When the filed the complaint, they also spoke about the 13-year-old girl who had to prostitute herself upon the loverboy’s request, during the week and at the weekend,

both in bars and at customers’ homes. They explained how the defendant behaved as a loverboy. The loverboy did everything he could to make the young girls fall in love with him, by offering them gifts, money and drugs. He used fear tactics and threats to ensure these young girls did everything he asked of them.

The 13-year-old’s hearing was filmed¹⁶⁸. In the beginning, all she would say in her statement was that she was in love with him. After that, she didn’t want to say anymore as she was scared there would be repercussions for her parents. He owned quite a number of weapons and she had no doubt that he would use them if necessary. During a second hearing, she stated that he wanted her to “earn a bit of money”: “He told others in a café that they could sleep with her for EUR 40. In the café, he slipped her a condom and put one in her bra and told her, “you see that guy, he’s your first customer”. She finally accepted, but when she came out of the toilets, three others were waiting. She saw nothing of the EUR 300 she earned. When she later told him that she no longer wanted to do this, he managed to convince her to continue. He also told her that something would happen to her if she didn’t. She had sex for EUR 40, 20 or 30 times but was never given a cent”.

The victim’s father said that his daughter had been placed in various institutions over the past few years, that she suffered from psychological problems and would regularly run away. Since the last time she ran away, her behaviour had completely changed, also sexually. The last few times she came home, she had new, expensive clothes. She told her brother that someone had asked her to sell her body. She also had problems with drugs. On Facebook, a young man of 19 revealed that he had had sex with her in a bar, with his friends.

The main defendant, who was a minor when the acts began, was sentenced to four years in prison for exploitation of debauchery or

¹⁶⁷ Ghent Crim. Court, 21 January 2015, 28th ch.

¹⁶⁸ Video-recorded hearing.

prostitution of a minor and for violation of the law on firearms. Incrimination was limited to the period as of which the main defendant became an adult. He wasn't prosecuted for human trafficking.

The victim filed a civil suit through her legal representative and received a provisional sum of EUR 1 500. Furthermore, the court ordered an expert report concerning the victim to rule on other damages.

A youth institution targeted by loverboys

In the Hungarian case dealt with in our case studies, and in the overview of this phenomenon, there was also explicit mention of the activities of loverboys close to a care home for young underage girls.

"According to the police's findings, there is a strong assumption and indication that young girls in the care of the not-for-profit association (...) are the victims of 'loverboys'. It would appear that these 'loverboys' exploit the vulnerable position of these minors in order to encourage them to prostitute themselves. They "recuperate" young runaway girls and provide them with shelter before forcing them to have sex and/or to prostitute themselves. Actual victims came forward (and signed a statement). Suspicious vehicles, which would come to pick up/drop off girls at regular intervals, were seen in the area. Some victims suddenly disappeared after receiving a phone call from their "boyfriend", and only reappeared several days later. A vehicle (...) had already been noticed in the past, driving particularly slowly, on several occasions, in front of the not-for-profit association (...). There were several men in the vehicle."

It is clear that we still have a lot to learn from the approach in the Netherlands, where youth care has developed an instrument to assess the risks¹⁶⁹ of deviant sexual behaviour, thus allowing professionals to detect potential victims of loverboys. The Dutch body Scharlaken Koord, which specialises in the problem of loverboys, has drawn up a loverboy check-list based on several basic questions, allowing a loverboy to be detected:

- *Where did the young girl meet her "boyfriend"? Over the internet? When she went out somewhere?*
- *Is he trying to blackmail her with photos on the internet or taken with a webcam?*
- *Does he speak badly of people who are important to the young girl?*
- *How come he has so much money/expensive clothes?*
- *Does he give her expensive gifts (clothes/perfume)?*
- *What is his financial status?*
- *Has he asked her to take a loan out for him in her name?*
- *Has he asked her to take out several phone subscriptions in her name?*
- *Does he deal in or use drugs/weapons?*
- *Does he sometimes take her to red light districts?*
- *Does he know girls who work in prostitution?*
- *Does he sometimes watch pornographic films with her?*
- *Has she already caught him lying?*
- *Is he very jealous/possessive?*
- *Has he asked her to get a tattoo?*
- *Has he asked her to get a breast enhancement?*
- *Does she know this boy's family and friends?*
- *What is this boy's job?*

¹⁶⁹ *Toelichting bij instrument risicotaxatie seksueel grensoverschrijdend gedrag* (Instructions for the risk assessment tool for sexually deviant behaviour), Nederlands Jeugd Instituut (Netherlands Youth Institute), Utrecht, October 2014.

The Netherlands Youth Institute's action plan¹⁷⁰ also pays a great deal of attention to reporting victims of loverboys. It is essential for youth care professionals to be familiar with and aware of the loverboy problem. They must also recognise and report evidence. For this purpose, they can use the risk assessment tool. After having reported the evidence, professionals must also know what steps to take to continue the investigation, report the facts and provide help. To this effect, they must try to discuss the evidence with the victim. They must check to what extent the parents and the young girl's social network can be involved.

Beware of loverboys, a Dutch brochure provided by Scharlaken Koord, gives tips on how to approach a suspected victim of a loverboy and how to broach the subject with her: "If, as a parent, teacher or assistant, you see signs that someone is a (potential) victim, it is important to remain in contact with the young girl. Therefore, take the following points into account:

- Try to remain close to her and keep the communication channels open.
- Don't criticise her, she is a victim above all.
- Don't shoot her "boyfriend" down in flames, he is her identity.
- Show her respect, even if what she does disgusts you.
- Be patient with her, leave her a bit of space to make her own choices.
- Be aware of changes in feelings and decisions.
- Don't be frightened of lies or manipulative behaviour.
- Don't do anything behind her back¹⁷¹.

¹⁷⁰ "Hun verleden is niet hun toekomst", Actieplan Aanpak meisjesslachtoffers van loverboys/mensenhandel in de zorg voor jeugd, 2014 Nederlands Jeugdinstituut ("Their past isn't their future", action plan concerning the approach to female victims of loverboys/human trafficking in youth care, Netherlands Youth Institute).

¹⁷¹ *Aanpak loverboyproblematiek* (Approach to the loverboy problem), Dutch Centre for Crime Prevention and Safety, Utrecht 2012; *Beware of Loverboys* brochure, Scharlaken Koord.

3. Principle of non-punishment for victims of loverboys

In the *Trafficking and Smuggling in Human Beings Annual Report 2012*, Myria, which was still the Interfederal Centre for Equal Opportunities and Opposition to Racism at the time, devoted its report to the principle of non-punishment of victims of trafficking¹⁷².

The central ideal behind the concept of non-punishment is that, despite committing a crime, the victim didn't really act independently, whether this is owing to the degree of control exercised by the traffickers, or the methods used by the latter¹⁷³.

In concrete terms, this means that the states¹⁷⁴ must guarantee that victims won't be punished for crimes committed within the framework of or as a result of human trafficking.

While examining the cases, we found that some victims of loverboys allow themselves to be dragged into criminal situations owing to their emotional dependency. Sometimes, they are clearly a victim but in other cases, they appear more like accomplices. For instance,

¹⁷² *Trafficking and Smuggling in Human Beings, Annual Report 2012, Building trust*, pp. 9-40.

¹⁷³ OSCE, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, 22 April 2013.

¹⁷⁴ The principle of non-punishment of victims is a specific provision for the State Parties to the Council of Europe's Convention on Human Trafficking and for the Member States of the EU. It has also been part of the OSCE's solemn commitments since 2000. See *Trafficking and Smuggling in Human Beings, Annual Report 2012, Building trust*, pp. 12-13.

they act as bottom girls¹⁷⁵. In this case, it is up to the judge and the court to decide on this issue, on a case by case basis. In these cases, it is often difficult to clearly differentiate between the perpetrators and the victims. Furthermore, it isn't easy either to determine to what extent the victims were obliged to act or not. It is also worth checking whether or not such reprehensible acts are actually the result of a survival instinct, rather than just dependency¹⁷⁶.

Among the victims of loverboys who prostitute themselves, three profiles can be established within the Belgian context: the victims, the grey area and the perpetrators. We should also mention that abroad, there are also victims who are forced by their loverboy to commit crimes.

3.1. First profile: the victim

The first profile clearly relates to victims, and the court explicitly recognises them as such.

A loverboy from the Hungarian prostitution case, which is dealt with in greater detail in this annual report¹⁷⁷, had a child with three victims and had got a fourth victimpregnant (see box containing an overview of the phenomenon: *The Hungarian loverboy and his*

¹⁷⁵ Bottom girls play a crucial role in prostitution. They are (or were) prostitutes who have to supervise their colleagues, monitor the bars, collect the money from prostitution and arrange contacts. The role of these bottom girls is situated in a grey area. On the one hand, they play the role of intermediary in the criminal system. When a girl leaves, they are the ones who contact a pimp to get a new girl, so that they themselves don't suffer from a loss of income. By collaborating closely with the pimps, they end up knowing them all. On the other hand, they represent a form of protection for the prostitutes. They are attentive, make sure they are safe and sort out their administrative affairs.

¹⁷⁶ National Rapporteur on human trafficking (2009), *Human Trafficking – Seventh Report of the National Rapporteur*, The Hague: BNRM, October 2009; Siegel, D. & Blank, S. de. (2008). *Vrouwen die in vrouwen handelen: de rol van vrouwen in mensenhandelnetwerken* (Women who trade in women: the role of women in human trafficking networks). *Revue de criminologie*, 1(50), pp. 35-48.

¹⁷⁷ See part 2, Chapter 2, point 1.1.1. and Chapter 4, point 1.1., also see this chapter above, point 2.

manipulation techniques). He had forced the four girls to prostitute themselves. Two of them were recognised as victims of human trafficking, including the young girl who had committed punishable acts. After her loverboy was arrested, she visited him in prison and later arranged appointments for him to place other young girls in prostitute windows. Phone taps revealed that after her loverboy's arrest, she also recommended to another young girl not to say anything to the police.

3.2. Second profile: the grey area

In the second profile, the victims of loverboys are situated in a broader grey area, between victim and perpetrator, where the court no longer recognises them as victims, but not as perpetrators either. Following, are three different typical examples. In the first example, the reference judge strips the victim of her status of victim during the investigation. In another example, the victim of the loverboy is presented by the public prosecutor as a victim, but the court refuses to recognise her as such. In the final example, the public prosecutor prosecutes the victim of the loverboy as a co-defendant, but the court refuses to convict her for human trafficking.

In the Nigerian case, which is dealt with in detail in this annual report¹⁷⁸, a young underage Nigerian girl benefited from the status of victim of human trafficking in the beginning, but this decision was later reversed by the reference judge as regards human trafficking.

In the beginning, she had been recruited in Nigeria to come and work as a prostitute. She was promised that she would earn a lot of money. Just before she left, she was subjected to a voodoo ritual, during which she promised to fulfil all her obligations. When she arrived in Belgium, she was told she had to reimburse

¹⁷⁸ See part 2, Chapter 2, point 1.1.2.; Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, pp. 69-70; Brussels Crim. Court, 24 February 2012, 46th ch. (available at www.myria.be) and Brussels, 31 October 2012, 13th ch.

a supposed debt of EUR 25,000 to gain her freedom. The main defendant was a loverboy who had seduced her to make her fall in love with him and go out with him. Here, the loverboy technique was used not to recruit her, but to exercise additional control over her and make the victim even more dependent in Belgium.

The loverboy managed to encourage her to commit punishable acts and to involve her in the exploitation of other victims of prostitution. The latter later stated that this girl, the underage victim of the loverboy, was waiting for them at Midi station and assigned them to their place of prostitution upon the loverboy's request. Moreover, phone taps revealed that she was already responsible in Nigeria for recruiting new underage victims who were supposed to take her place and come and work for her. This indicated to the reference judge that she was starting to behave as a "Nigerian madame"¹⁷⁹ and that she could be a threat to real victims of human trafficking. This is why she was excluded from victim status.

In the Bulgarian Sliven case¹⁸⁰, the public prosecutor also took into account the prostitution of a minor, among the charges against the loverboy, but the court refused to recognise the victim.

The file was opened in 2011, after an 18-year-old girl escaped from the grip of her loverboy and informed the police through her mother. During the investigation, it turned out that the same defendant had been observed a few years earlier, when the Brussels federal police carried out a check, in the company of another 18-year-old girl who was prostituting herself in a bar. This young girl had begun a relationship with the defendant when she was a minor and had come to Brussels with him. She stated that she managed her own income and that she didn't have to give money to the

defendant, and that the latter didn't supervise her work either. None of the elements in the investigation proved the contrary.

In the meantime, she was active herself in the prostitution network in 2011 and upon the defendant's request, she gave the new victim a key place to prostitute herself. Furthermore, she transferred suspicious sums of money to several people in Sliven through a money transfer agency. In its summing-up for the prosecution, the public prosecutor mentioned her as a victim, but this wasn't followed up by the court¹⁸¹. For the acts committed against the other young woman, the court granted her the benefit of the doubt and acquitted the defendant.

Finally, in another Bulgarian case¹⁸², a victim of a loverboy was prosecuted by the public prosecutor as co-defendant for her involvement as a bottom girl.

The loverboy, i.e. the main defendant, obliged the bottom girl to supervise the other victims of prostitution. She was part of a criminal exploitation system where violence played a key role. She herself was physically threatened by her loverboy and was forced to continue prostituting herself.

She was prosecuted as co-defendant for different offences: human trafficking, hiring and exploitation of debauchery, participation in a criminal organisation and illegal residence. In the detailed statement, the court highlighted the responsibility and the role of every defendant. As regards the bottom girl in question, it emerged from the phone taps that her loverboy controlled her. He forced her to work, even when she was tired; she wasn't allowed a day off. He also criticised her for not earning as much as another prostitute and threatened her if she returned without any money. At the same time, she was made

¹⁷⁹ See part 2, Chapter 2, point 1.1.2, a).

¹⁸⁰ Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, p. 19; Trafficking and Smuggling of Human Beings, Annual Report 2011, *The money that matters*, pp. 86-88.

¹⁸¹ Brussels Criminal Court, 30 May 2012, 54th ch. See: Annual Report 2011, *op. cit.*, pp. 115-116.

¹⁸² Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, p. 19; Liège Crim. Court, 26 September 2012, 8th ch., (available at www.myria.be), confirmed by Liège, 23 April 2013.

responsible for collecting money from another prostitute. The court considered that the charge of human trafficking hadn't been established in her case, because she didn't have sufficient control over the young girls to encourage their debauchery or their prostitution. She herself had entered the prostitution market through her companion, to whom she was submissive and completely dependent¹⁸³.

3.3. Third profile: perpetrator

The third profile is comprised of former victims of loverboys who, over time, have evolved and have become actual perpetrators themselves. They use their past as a defence strategy¹⁸⁴ and present themselves at the outset as a victim. Despite all, the court deals with them and convicts them as defendants.

In a Romanian case¹⁸⁵, Roma victims were recruited in Romania through the loverboy method and then sold abroad as sex slaves (see box *Passing through a transit country and sold as sex slaves*).

A co-defendant was also forced to prostitute herself when she was 16 years old through the loverboy method and had since carved out a place for herself in the prostitution network. She had been working in it for eight years and was married to the main defendant. In the beginning, she was also presented as a victim of the main defendant: when she was intercepted during the search of the bar where she prostituted herself, she pretended she was an exploited victim, just like the real victims of prostitution. However, she wasn't interested in the status of victim of human trafficking after the police had explained and offered it to her.

She acknowledged having assumed certain responsibilities in a prostitution organisation that recruited girls, but according to what others said, she was forced to by the main defendant. She prostituted herself as well and still had to give him her money. She swore that he threatened her and still controlled her. Recently, she secretly had to control the other girls upon his request.

During the investigation, her role in the prostitution network was revealed by the victims' statements and phone tapping. It was shown that she exercised authority over the girls and that she took part in negotiations concerning their sale price as sex slaves. She invited the victims to take cocaine in order to be able to continue to work and she forced them to have unprotected sex because it brought in more money. She also arranged for the forced abortion of a minor who was six months pregnant by her husband, the main defendant. The baby was born alive and was killed (see box *Forced abortion*).

During the subsequent inquiry, the co-defendant went back on her initial statements and admitted that she wasn't a victim and that she did everything of her own free will.

¹⁸³ Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, pp. 70-71.

¹⁸⁴ Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, p. 20.

¹⁸⁵ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 17, 60 and 108; Louvain Crim. Court, 4 July 2013, 17th ch. (available at www.myria.be).

Forced abortion

The Romanian case contains two witness statements concerning this event in which the co-defendant, who presented herself as a victim, played a major role. A witness stated: “The young girl was obliged to have an abortion, she was five or six months pregnant, she was given pills to take; the birth was induced and the child was born and fell on the floor. I wasn’t there, but I saw the blood on the floor, I wasn’t there when it happened. The child was still alive. The wife of I. (the main defendant) put the baby in a bag and tied it shut. We heard that the baby was also I.’s (the main defendant) and that is why his real wife took care of the abortion”.

This is what the victim said about her abortion: “For the second pregnancy (the hearing was suspended for several minutes because the injured party started crying), the second abortion took place in the bathroom and I was helped by (...), then N. (the co-defendant, the main defendant’s wife) turned up as well. The bathroom had a tiled floor and had a shower. When the baby came out, I was in front of the toilet bowl and it fell on the floor, on the tiles, I was in shock. It was (...) who helped me, she cut the umbilical cord with scissors and she wrapped the baby in a small towel. I lost a lot of blood. N. (co-defendant) picked up the baby and (...) helped me to get dressed to take me to the hospital. I don’t know who cleaned up the blood in the bathroom. I left the baby for 15 to 20 minutes to get dressed so that I could go to hospital. The baby was alive when I left the bathroom, because his little hands were moving, and then I found out it was a little boy. I cried a lot when the baby was born. Afterwards, I was told the baby was dead”.

Victims of loverboys forced to commit crimes

Several studies¹⁸⁶ also mention victims of loverboys exploited outside the prostitution sector. In this case, the loverboys can also encourage their victims to commit crimes, such as transporting drugs and acts of theft committed under duress. The Dutch rapporteur on human trafficking refers to cases where the victims were first made to work as prostitutes, then transport drugs, as well as mentioning victims who had never worked in prostitution before¹⁸⁷.

3.4. Conclusion

This brief analysis shows that the approach of the principle of non-punishment among loverboys and their victims shines an interesting light on the strategies adopted by prostitution networks. It is highly instructive to study the phenomenon and it gives us a better overview of the victims who end up making themselves guilty of punishable acts, to a lesser or greater degree, and the reasons that push them to do it. This allows adjustments to be made to the political approach to this subject. Furthermore, it is essential for judges to analyse each case separately in order to take the correct decision.

¹⁸⁶ Verwey-Jonker-instituut, *Loverboys en hun slachtoffers, inzicht in aard en omvang problematiek en in het aanbod aan hulpverlening en opvang* (Loverboys and their victims, overview of the nature and the extent of the problem and the offering in terms of assistance and care), Breda 2011; National Rapporteur on Trafficking in Human Beings (2009), *Human Trafficking – Seventh Report of the National Rapporteur*, The Hague, BNRN, October 2009.

¹⁸⁷ National Rapporteur on Trafficking in Human Beings (2009), *Human Trafficking – Seventh Report of the National Rapporteur*, The Hague, BNRN, October 2009.

EXTERNAL CONTRIBUTION: SOS CHILD VICTIMS OF HUMAN TRAFFICKING

Johan Vangenechten, team member at the not-for-profit association Minor-Ndako

For the past few years, the number of unaccompanied minors who are the victims of human trafficking has been particularly low. The majority of minors recorded are in fact the children of adult victims. This overview¹⁸⁸ of new cases of child victims provided by the Immigration Office confirms this.

Year	Total number of cases	Child victims	Unaccompanied minors
2011	149	20	8
2012	157	19	8
2013	129	5	2
2014	156	10	4

Several factors explain this low figure.

- Unaccompanied minors who are victims of human trafficking are not obliged to cooperate in the judicial inquiry to benefit from support and protection. In all cases, they can benefit from aid for unaccompanied minors until they reach adulthood. The situation is completely different for cases concerning adult victims.
- Many victims don't dare tell their story for fear of reprisals against them or their family.
- Sometimes, the victims are unable to provide useful information owing to their very young age. This is especially the case for children aged five to six years old accompanied by a smuggler.
- During smuggling or the exploitation of young minors, the family is often involved in one way or another. For instance, there are parents who entrust their child to a smuggler, and the children have to beg or steal on behalf

of a network run by an uncle or a grandparent. Consequently, it is particularly difficult to ask the victim to make a statement. This is equal to asking them to turn against their family.

At the same time, we can't hide the fact that the detection of child victims is of great concern. Every Flemish province has an aid network in place in case of a crisis and Minor-Ndako is part of an aid network addressing this type of crisis. One of its departments (age group for children between 0 and 12 years old) always has two beds available in case of a crisis. In the other departments (residential), support is offered in case of a crisis according to the places available.

This crisis support allows us to consolidate our experience with potential victims of human trafficking but, unfortunately, we are also faced with many worrying issues:

- **Negligence.** Children are caught burgling houses. The case is rapidly closed and some adults came to fetch the children. The identity of these adults isn't recorded. A truck carrying a group of people on board, including a 13-year-old, is intercepted. The officer notes on the report sheet that the youngster has a mobile phone. There is no attempt to obtain the number. Two days later, the youngster disappears. The phone number might have helped to track him down.
- **Failure to respect the recommended procedures.** During actions carried out against human smuggling, the competent authorities (public prosecutor's office, Immigration Office/Guardianship Service) aren't always notified of the presence of minors (according to the recommended procedure). The minors involved receive a letter telling them they must come to the Guardianship Service in Brussels the next day (but they aren't provided with a ticket or any support enabling them to get there).

¹⁸⁸ Information from the Immigration Office, partly extracted from published documents, partly obtained from the Minteh unit.

- **Lack of protection.** A man and a child are arrested at the airport. According to the travel documents, they are father and daughter but the child at border control clearly isn't the one shown on the passport. The police launches an investigation and looks for somewhere to place the child. The public prosecutor for youth protection isn't involved. The child stays at an open centre with no intervention by a child placement authority. A criminal network would have no problem recuperating the child.
- **No protection, no investigation.** Four girls aged between nine and eleven years old are arrested during break-ins in a residential area. The case is immediately dismissed owing (=due) to a lack of proof. Three girls are recuperated by their family, but not the fourth one. Finally, a place is found for her and a guardian is appointed. During the next few days, several alarming elements are revealed. The case can't be reopened. No juvenile judge is appointed. The girl is taken into care on a voluntary basis so anyone can recuperate her. "Grandparents" (with no documents to prove this) come forward to recuperate her.
- **Division of competences.** Children intercepted at the airport in cases of suspected human smuggling are generally placed in the care of the Fedasil network. Wouldn't it be preferable for a juvenile judge to place these children in a youth care centre? The latter could offer them care adapted to their age, in small-sized groups, and better protect them against external persons. If so, what is the communities' capacity for these children (often young ones)?
- **Frontline training.** Children who commit acts of organised theft can be considered as perpetrators or as potential victims. Have the services involved in providing crisis support done training in order to understand this potential aspect of victimhood? Do establishments have the means to

provide the appropriate care for these children?

- **No adequate plan for support.** Thirteen-year-olds who slip into a lorry's cargo area, children who steal on behalf of someone else, young girls who end up in prostitution: these children and young persons can't be considered as perpetrators. But receiving and supporting them in an entirely open structure isn't perhaps a sufficient solution. Minor-Ndako endeavours to work in an insistent manner and, by offering secure yet open facilities, does its utmost to prevent an impulsive departure. The handful of places we can offer is too restricted (only crisis support, or as long as there are places available) and has its limits. We remain an open structure. The people in the group maintain contact with the outside world through the internet and mobile phones (possibly through other occupants). In some cases, it is preferable to exercise control over communication with the outside world.

To avoid any ambiguity, the aim is not to have as many victims as possible in the special protection procedure. The primary concern must be the eradication of the exploitation of minors. The legislator stressed the importance of this by trebling the punishments when the victim of human trafficking or smuggling is a minor. The fight against exploitation can't depend on statements from minors or participation in the criminal investigation. The family is often involved, knowingly or unknowingly, in the exploitation. We can't expect the children to make statements against the adults who have taken care of them. Neither can we blame them for trusting people who abuse this trust. We have to find ways to put an end to this exploitation and manipulation and offer the children who are potentially victims of these practices adequate protection, even when they are not in a position to collaborate in a criminal investigation.

The investigations and prosecutions are of course an important part, but the abovementioned list shows that there is still a great deal to be done in terms of frontline collaboration. Diligence, one-to-one and functional procedures, reflection on adequate support, collaboration between the levels of power to solve the problem, etc. There is nothing new about it. The 2012 – 2014 action plan states¹⁸⁹:

“Despite the existence of these measures, the issue of the protection of minors continues to pose a problem in practice owing to the complex architecture of the youth protection system, the guardianship system and specific procedures in terms of human trafficking.” (p. 23)

“Furthermore, special attention must be paid to the issue of the exploitation of minors in general (begging and coercion to commit crimes). A specific incrimination was adopted to this effect in 2005. Moreover, very young minors are more likely to be used than others for the purpose of begging. However, little is still known of this phenomenon. Subsequently, it would be useful to examine this issue and to see what solutions can be found.”

“Finally, we should be very attentive to the fact that some minors escape the guidance measures in place, which increases the risk of them being exploited again. It is therefore important to ensure these situations are carefully monitored and to envisage solutions aimed at preventing this risk.” (p. 24)

Belgium is part of the European Union and is known beyond its borders for its role as a frontrunner in the fight against human trafficking. We have effective legal instruments, a professional detection system and a human approach to victims (care and protection of persons cooperating in a criminal investigation). The combination of these three elements provides good results. On the other hand, we are still far behind as

regards the fight against the exploitation of minors. Things are in need of urgent change. A police inspector, a public prosecutor or a person responsible for providing care doesn't have the power to do this alone. A new impetus is necessary to tie all the links and form a solid chain.

Secure but open care

In 2011, Minor-Ndako was faced with the disappearance of a vulnerable minor from the crisis centre. Disappearances are extremely rare in our establishment. We thought it would be a good opportunity to assess what we could do to avoid this type of impulsive departure.

We consequently sought advice from Esperanto, a care centre for young people in Wallonia which takes in child victims of human trafficking. Esperanto is also an open centre, but the security aspects and the prevention of impulsive departures are intrinsically linked to the educational concept.

Here are the main elements:

- Avoid boredom by offering small activities (meals, showers, medical examinations, doing the laundry, contact with an interpreter or a specialist (legal expert, psychologist, etc.));
- Appointment of a key person who follows up everything concerning this minor and ensures they don't get bored;
- Supervising communication with the outside world;
- Attitude of the support staff: above all, the support worker shows empathy, provides all sorts of information and passes on the young person's requests to the legal authorities, without acting as a substitute for them (police, juvenile judge, etc.);
- The reception procedure takes into account the data necessary to report a disappearance.

The first 48 hours are crucial, with the risk of disappearance gradually falling thereafter.

On the basis of these elements, Minor-Ndako has elaborated its own approach. It isn't as advanced as Esperanto's, and that is normal. For Minor-Ndako, the potential victims of human trafficking are one target group among others.

¹⁸⁹ Source http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_C_MH_FR_2012.pdf

A brief comparison

	Esperanto	Minor-Ndako
Education	Education provided on site in the first few months	Education always off site
Access to a mobile phone/ internet	The residents don't have their own mobile phone, and only access to internet during classes on site + under supervision	The majority of residents have a mobile phone, a laptop is available in the group, free Wi-Fi
Place where the victims are housed	Secluded location Secret address	Urban location No secret address

The issue of knowing how to prevent an impulsive departure from an open structure concerns all the services offering frontline care. Every establishment can reflect upon its own limits and act within this framework. By doing so, when a secure care request is submitted, the establishment will be able to give information concerning its possibilities and limitations in the matter. This request falls under the scope of human trafficking, as well as other problematic situations, such as honour crimes or early marriages.

Minor-Ndako is a Flemish Community youth care service. The association was set up in 2002 with the goal of offering small-scale quality care for the most vulnerable unaccompanied minors. Minor-Ndako is currently a medium-sized establishment with more than 80 employees working at four sites (Aalst, Anderlecht, Asse, Brussels), offering a range of support. We offer care and support services for 66 unaccompanied minors, as well as 44 families and children in Brussels and Flemish Brabant.

We want to facilitate access for minors to youth care. This is why we have a place for registrations which minors and their guardian can come to for a presentation session. We have also set up various complementary projects with no link to youth care. Lisanga is the most long-term project. It offers accommodation for 30 unaccompanied minors benefiting from the status of refugee protection. Karavenseraï is an accommodation project where refugees live alongside students. We are also looking for support teams for children and adolescents with a very small social network. There is a running club and football club, schools where we go and speak, etc.

The name Minor-Ndako was thought up a long time ago. Minor means “young” and Ndako “accommodation”. A combination of Latin and Lingala, the name perfectly conveys our ambition: to ensure harmonious cohabitation between persons from different backgrounds.

EXTERNAL CONTRIBUTION: ASPECTS ABOUT LOVER-BOY METHOD IN ROMANIA

Irina Ionela DIN, police officer,
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Persons

A recent trend in the *modus operandi* of the criminals involved in human trafficking and the exploitation of victims, is to abandon physical violence against the victims and establish their docile acceptance of the networks of traffickers / exploiters instead. Either they choose to involve the victim on a material level by giving them part of the money they have earned, or they obtain the victim's consent through emotional blackmail. The 'loverboy' method is one of the traffickers' preferred methods of recruitment.

For a better understanding of this recent method of recruitment, we shall first define what a loverboy is. A loverboy is a man who intentionally exploits a woman's emotional attachment to him with the goal of making her prostitute herself. The loverboy does his utmost to exert complete control over the girl so that she will only listen to him. She actually falls in love with him without realising that he controls her. In most cases, after a short period of time, he will invent some debts or problems that have to be solved and will consequently ask her to have intercourse with one of his friends to whom he or she owes money, or with another person in order to earn money. By accepting to do this, she believes she is saving him, but for the loverboy, this is just business.

The loverboy method involves a number of specific steps:

- The loverboy introduces himself into the victim's circle of friends or makes direct contact with the victim in order to win her trust;
- The two begin a relationship and he constantly manipulates her with expensive gifts, affection and love, talking about a serious relationship and making her believe

they will soon get married and have a better life;

- After a while, they decide to move in together and either go abroad to work - where the dream is then shattered, or the loverboy begins to reveal various financial problems that can only be solved by the victim's prostitution.

Remarkably is that the different steps will quickly follow each other, so the victim is not aware of the situation.

To achieve his objective, the loverboy uses some of the following techniques:

- The loverboy is always well presented, well dressed and speaks impeccably. For the girl, he is the ideal person (and one she would never have dreamed of meeting), so when he shows an interest in her, she thinks her dream has come true.
- In most cases, the loverboy has an entire criminal network behind him so he always has access to money. He uses expensive gifts to seduce the girl. At the same time, these gifts seal the relationship because it is difficult to leave someone who gives you expensive presents. Moreover, for many girls recruited by this type of method, it provides them with access to a world that was previously inaccessible to them.
- The loverboy usually creates a relationship based on dependency, where the girl will do anything for him. He uses her feelings to control her, because she isn't mature enough to realise what is happening. What she believes to be love is in fact control; he guides her in the direction he has chosen. This makes it extremely hard for her to ever leave. She really loves him and depends on him. Her emotions are very powerful and she doesn't realise what is happening. She eventually falls victim to trafficking and prostitution, and it is very difficult to escape from the hands of the traffickers. She may also feel so ashamed that she doesn't return to her family or her friends¹⁹⁰.

¹⁹⁰ www.abolishion.org/lover-boy-part-4/

Following the analysis of cases monitored by the National Agency against Trafficking in Persons, a number of hypotheses were put forward regarding the profile of vulnerable persons who may be recruited by such a method:

In most cases, the victim is recruited by someone they don't know. The focus is on young underage girls whose sense of judgement is still developing, with a low level of education and from a low-income single-parent or two-parent family. Regarding two-parent families, it should be noted that in most cases, these are families characterized by a lack of parental involvement in their children's lives, strained relations, domestic violence, alcohol or drug consumption, so the child sees the life promised by the loverboy as an escape route. These elements underline to what extent the family environment, financial situation and level of education determine a victim's vulnerability to trafficking through this method.

Below is a presentation of a number of cases of victims recruited by this method, which highlight the abovementioned issues:

Case 1: Victim B.C. is from a broken home (single-parent family, divorced mother who is living with her partner). She was entrusted to her maternal grandparents at the age of one, when her mother went to work in Italy. The family was poor and the only source of income was the grandmother's sickness allowance and state benefits. The child attended school for a while and even had good results, but she dropped out after completing the sixth grade.

The mother tried to take her to Italy during the 2012-2013 academic year, but she didn't adapt and chose to return home after a few months. She was left in the care of her maternal grandparents. She was increasingly absent from home and missed school.

She repeatedly ran away from home and the survival strategies adopted during these periods made her an easy target as a victim of sexual exploitation, especially when these episodes became more frequent and public.

Family problems, lack of family communication and social disintegration substantially increased the child's vulnerability.

In early February 2014, the 12-year-old girl ran away from her grandmother again and went to stay with her best friend, a minor of the same age and the daughter of M.U. Between February and mid-September 2014, M.U. persuaded the girl to have continuous sexual relations with him, promising to divorce his wife (a young 20-year-old living in England) and marry her.

During the same period, he made false promises of marriage and took advantage of her particularly vulnerable situation. He recruited her and took her into his home for the purposes of sexual exploitation, forcing her into prostitution to earn money, supposedly to pay for their wedding and to buy a house. Initially, M.U. gave her various amounts of money to win her trust.

"Lured into the trap of feeling that she was in control of her life and not dependent on adults (parents, grandparents), responsible for herself, benefiting from total freedom, including financially, by earning an income, however small, from the sex trade, and by trying to prove her maturity as a young adult, the minor became the perfect victim for the defendant M.U." the prosecutors from the Directorate for Investigating Organized Crime and Terrorism concluded.

During the time the underage girl was staying at M.U.'s home, H.V. recorded her with a mobile phone while she was having sex with M.U. The film was then shown to other people.

During the same period, following an agreement with U.A.C., M.U.'s wife, he encouraged the 12-year-old girl to have sexual intercourse with him in front of the webcam while talking to his wife on Skype. This film was sold by his wife in England for GBP 200.

On another evening, M.U. asked the underage girl, who was his daughter's friend, to sit down

with him and some friends, including H.V., and two other strangers. Taking advantage of the fact that his daughter had gone to her room, M.U. offered the young girl alcohol. The four men encouraged her to get drunk and took advantage of the situation. Each of them had sexual relations with the 12-year-old girl, while the others watched.

Even after his friends had left, the defendant wouldn't allow the girl to contact her grandmother, and locked her up in his house. She was only released from there after the police intervened.

Case 2: P.M.C. is from a two-parent family. She was the youngest of two children and lived in her parent's apartment located in a town in the centre of Romania. Her parents and older sister had been living and working in Italy for several years. In her relationship with her family, the victim had no real communication with them and no psychological support, so the only help from the family was material (financial).

There was no reported history of violence in her family. The victim was supported financially by her family when required because she only did seasonal jobs that didn't provide a regular income. The victim left after the twelfth grade without passing the final exam.

In the summer of 2007, the victim was living alone in her parent's apartment, while they were working in Italy. The victim's sister was a student and lived in another town.

During this period, she met C.D. by chance and began a relationship with him. He won her trust and their feelings appeared to be mutual, so they began making plans for the future.

In February 2008, C.D. invited the victim to go on holiday to Italy and since the two had been together for six to seven months, this suggestion seemed quite normal and she didn't think anything of it. At the end of February 2008, P.M.C. and C.D. went to Bucharest in a car driven by C.D.

At the airport, C.D. pretended there was a problem and told the victim that she would have to go to Italy alone because he was forced to postpone his departure for a day. He said that he would come to Italy the following day. He reassured her saying that he had spoken to some people he knew there and that they would be waiting for her at the airport in Venice.

In Italy, P.M.C. was met by two girls at the airport who took her to an apartment, where they had to stay together until the arrival of C.D. On the first day, the two girls told the victim why she had been sent to Italy, namely to prostitute herself for the benefit C.D. Surprised by the situation, P.M.C. asked C.D. to explain himself. He played the victim, said that he was desperate, had debts that he couldn't pay and that she was his only hope.

Faced with this blackmail and having no money to return home, the victim agreed to work as a prostitute. She worked the streets for three to four weeks, and the money was sent to C.D. in Romania.

Following an intervention by the Italian police, P.M.C. was forced to stop work and return to Romania. C.D. met her at the airport and took her to a rented apartment in Bucharest.

The victim was emotionally blackmailed and prostituted herself in Bucharest for approximately five months. During this period, the victim intended to disobey C.D. and end their relationship. The control of the trafficker and his entourage had over her then transformed into threats and physical violence, and she was forced to comply.

In August 2008, the victim was taken to Switzerland where she worked as a prostitute for only one week because the Swiss authorities intervened. From there, she was taken to Germany, where she worked as a prostitute in several clubs, from September 2008 to January 2010. In these clubs, the victim said that she was always supervised by one of the girls who worked there.

During this period, the victim claims to have waited for an opportunity to escape from the traffickers so that she could be sure they would leave her alone and that she wouldn't have any problems with them.

In January 2010, when she returned to Romania to seek care for a health problem, the victim contacted B., a former client of hers who intervened and put pressure on C.D. to leave her alone.

We should mention that among the indicators set by the National Agency against Trafficking in Persons to gather statistical data regarding the victims of human trafficking, there is no special indicator for victims recruited via this method. However, by analyzing the available data and information¹⁹¹, it was found that the most vulnerable category in human trafficking is women (74 % of the total number), both adults and underage girls. It was also found that sexual exploitation is still one of the most widespread forms of exploitation among victims of trafficking (63 % in total), and that poor performance at school strongly influences the likelihood of someone becoming a victim of trafficking. Thus, 47 % of all identified victims had only completed the first stage of secondary education¹⁹² when they became the victim of trafficking, while 32 % were going to or had completed secondary education or professional studies when the human trafficking offence was committed. Also, by analysing the data concerning the social relationship between the recruiter and the victim, as well as the data regarding the recruitment method, it appears that the recruiter used a direct approach to recruit the majority of the victims, i.e. in 89 % of the cases (671 of the 757 victims were directly approached by the recruiter). In the same

period, 47 % of the victims were recruited by someone they knew and 39 % by a stranger.

Therefore, although the victims recruited through the loverboy method aren't identified as a specific category, the individualisation of the specific characteristics of this method among a growing number of victims led to an awareness-raising campaign on the potential risks of this method. This is why the Agency¹⁹³ initiated and implemented the campaign "Your boyfriend may be a loverboy", in 2011, with the goal of informing the public, particularly young women aged between 17 and 26 years old, of the existence of this method used by traffickers to recruit victims. The aim was also to provide the target audience with the means to protect itself.

Prevention sessions were organized in over 130 universities, high schools and middle schools, attended by over 11,000 students and teachers. These events had a considerable impact.

Incidentally, this method of recruitment inspired the Romanian film director Catalin MITULESCU to make the film entitled *Loverboy*. The topics addressed in the film provided ANITP with another opportunity to emphasize concrete aspects of the loverboy method and the effects of human trafficking on the younger generation, through a number of meetings with representatives from the target groups.

¹⁹¹ The analysis relates to statistical data on victims identified in 2014

¹⁹² A victim belonging to a specific educational category represents a victim who has completed or is in the process of completing the studies corresponding to this specific category when the trafficking occurred.

¹⁹³ National Agency against Trafficking in Persons.

**PART 2: DEVELOPMENT OF THE
PHENOMENON AND THE FIGHT AGAINST
HUMAN TRAFFICKING AND SMUGGLING**



Chapter 1: Recent developments in the legal and political framework

In this chapter, Myria presents the latest developments within the legal and political framework as regards human trafficking and smuggling in Europe and Belgium.

1. Developments in the European legal and political framework

1.1. Human trafficking

In 2012, the European Commission adopted its human trafficking strategy for the period 2012-2016¹⁹⁴. Myria, then known as the Centre for Equal Opportunities and Opposition to Racism, presented it in a previous annual report¹⁹⁵. In October 2014, the Commission published an interim report on the implementation of this strategy¹⁹⁶. The five priorities defined in the strategy are as follows:

- identifying, protecting and assisting victims of trafficking;
- stepping up the prevention of trafficking in human beings;
- increased prosecution of traffickers;
- enhanced coordination and cooperation among key players and policy coherence;
- increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

The interim report presents the efforts made relating to the first four priorities, while the

fifth one is covered by each of the key priorities. Below are the main points.

a) Identifying, protecting and assisting victims of trafficking

The Commission stresses the importance of the early identification of victims in order to provide effective protection. This is why it is important to have the appropriate national referral mechanisms. The Commission has funded several projects in this domain¹⁹⁷.

The strategy also provided for the development of a European model of a transnational referral mechanism by 2015. However, the interim report doesn't mention any progress in this field.

The other measures adopted by the Commission concern the publication of guidelines to identify trafficking victims, aimed at frontline staff and consular services, as well as a document on the rights of trafficking victims¹⁹⁸. The Commission also placed special emphasis on labour market intermediaries since a comparative study on their regulation and the role of social partners within the framework of preventing trafficking for the purpose of labour exploitation is underway¹⁹⁹. Finally, minors are also the subject of specific attention: the Commission is preparing a communication providing guidelines on integrated child protection systems²⁰⁰, and it

¹⁹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The EU Strategy toward the Eradication of Trafficking in Human Beings 2012-2016*, 19 June 2012, COM(2012)286 final.

¹⁹⁵ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 71-72.

¹⁹⁶ Commission Staff working document, *Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings*, Brussels, 17 October 2014, SWD(2014)318 final, COM (2014) 635 final.

¹⁹⁷ The details of these projects can be found on the Commission's anti-trafficking site: http://ec.europa.eu/anti-trafficking/node/1_en

¹⁹⁸ http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf

¹⁹⁹ <http://www.eurofound.europa.eu/research/projects.htm>

²⁰⁰ The European Forum on the Rights of the Child focused on this issue over the past few years, in an effort to contribute to the development of European guidelines in this field in order to support the Member States in the implementation of their responsibilities in terms of child protection. The Commission presides over this Forum. Its role is to advise and assist the Commission and other European institutions in terms of integration of the

recently published a guide on the guardianship of child trafficking victims deprived of parental care, in collaboration with the EU's Fundamental Rights Agency (FRA)²⁰¹.

b) Preventing and reducing the demand

The Commission will submit a report to the Parliament and the Council by 2016 assessing the impact of national laws criminalising the use of services provided by trafficking victims. A study is actually underway concerning the impact of the trafficking prevention measures²⁰² and the gender aspect in the phenomenon of trafficking²⁰³. On the other hand, the European Coalition against Trafficking²⁰⁴ still has to be set up.

c) Investigation and prosecution of traffickers

The Commission contributes to the regular training of those in charge of investigations and prosecutions, through the many projects it funds. Financial investigations have taken place in several Member States, and Europol is working on an analysis of the financial investigations in terms of trafficking, based on the information provided by the Member States.

The Commission is proactively working on facilitating cooperation at all levels, especially between civil society organisations and the law enforcement authorities of the Member States. As announced in its strategy, it is also

rights of the child in all EU policies, as well as sharing information and good practices.

²⁰¹ <http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship>

²⁰² The results were expected for the end of June 2015. These results were still unknown when this report was finalised (July 2015).

²⁰³ The results are expected for December 2015.

²⁰⁴ The aim of this coalition is to improve cooperation with companies and other stakeholders, to meet any new challenges that arise and to discuss prevention measures for human trafficking, especially in high-risk sectors such as the sex industry, agriculture, construction and tourism.

working on a report in order to increase knowledge on the use of the internet and social networks to recruit people in relation to all forms of trafficking²⁰⁵ as well as a study on the jurisprudence and practices in terms of trafficking for the purposes of labour exploitation²⁰⁶.

We should mention once again the adoption of Directive 2014/42/EU of 3 April 2014 on freezing and confiscating the proceeds of crime²⁰⁷. This will allow Member States to considerably increase the possibility of freezing and confiscating the proceeds of trafficking. The directive provides for a broad definition of proceeds than can be frozen or confiscated. It provides more opportunities to confiscate the proceeds of crime in cases where the person concerned is fleeing or is ill. It also contains rules on the extended powers of confiscation when a judge considers as established that the proceeds in question were obtained through criminal means. Under certain conditions, it authorises the confiscation of proceeds transferred to third parties.

d) Coordination, cooperation and policy coherence

The EU Anti-Trafficking Coordinator is responsible for monitoring the implementation of the European policy framework and in particular the strategy. Within this framework, she supervises the coordination of activities in terms of trafficking within the Commission and with other external players. She also coordinates the allocation of funding in an effort to reflect European priorities.

²⁰⁵ The report was expected for mid-2015. This European report still wasn't available when this report was finalised (July 2015).

²⁰⁶ The results are expected for December 2015.

²⁰⁷ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, *O. J.*, L127/39 of 29 April 2014. The Member States must incorporate it by 4 October 2015.

The European network of National Rapporteurs or equivalent mechanisms holds two monthly meetings; as announced in the strategy, the European civil society platform against trafficking was launched: it convenes every two years and an e-platform has been set up, allowing more frequent communication between the platform's members.

Finally, the Commission funds many projects concerning trafficking to a large number of countries and regions, both inside and outside the EU. The Member States have also stepped up their cooperation with many countries outside the EU. Preventing and combating trafficking in human beings, as well as victim protection, are systematically dealt with in the agreements and partnerships with countries outside the EU, and in all the EU dialogues on migration and mobility.

1.2. Smuggling in human beings

Following the dramatic events in the Mediterranean, the European Commission presented a series of measures to react to the current challenges in terms of migration²⁰⁸. One is an action plan for 2015-2020 against migrant smuggling²⁰⁹. This plan sets out concrete measures to prevent and combat migrant smuggling:

- **improve policing and legal procedures:** in particular, by revising existing European legislation on the subject²¹⁰; by

initiating cooperation with financial institutions in order to implement financial investigations to seize and confiscate the proceeds from migrant smuggling, and by creating a thematic group on migrant smuggling;

- **improve the collection and sharing of information:** among other things, by deploying European liaison officers in the EU's key delegations and by increasing support for Europol to detect and, if necessary, to remove contents placed online by smugglers to advertise their activities;
- **improve the prevention of smuggling and assistance for vulnerable migrants:** especially by launching prevention campaigns in third countries on the risks linked to smuggling; by launching a consultation and an impact assessment, in 2016, on a possible annual revision of Directive 2004/81/EC on residence permits²¹¹; by offering to open negotiations on readmission agreements with the main countries of origin of irregular migrants, and by defining the objectives regarding the number of controls to be carried out in the Member States in the economic sectors most exposed to illegal work;
- **strengthen cooperation with third countries:** among other things, by financing projects aimed at helping third countries to develop strategies to fight migrant smuggling.

²⁰⁸ http://europa.eu/rapid/press-release_IP-15-5039_fr.htm. For Myria's opinion on this subject, see the Annual Report 2015: *Migration in figures and rights*, Chapter 3, *Accès au territoire*, available at: www.myria.be.

²⁰⁹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions, *EU Action Plan against migrant smuggling (2015-2020)*, Brussels, 27 May 2015, COM(2015)285 final.

²¹⁰ The current legislation is comprised of the Council's Directive 2002/90/EC of 28 November 2002 defining facilitation of unauthorised entry, transit and residence, *Official Journal*, L328 of 5 December 2002, p. 17 and the 2002/946/JAI Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised

entry, transit and residence, *Official Journal*, L328 of 5 December 2002, p. 1.

²¹¹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *O. J.*, L261 of 6 August 2004, p. 19.

2. Developments in the Belgian legal and political framework

In Belgium, the main developments primarily concern the amendments to the Royal Decree of 16 May 2004 on the fight against smuggling and trafficking in human beings²¹². On the one hand, the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in Human Beings has been expanded. On the other hand, Myria has been officially appointed as an independent component of the National Rapporteur mechanism.

In addition, a new joint circular (confidential) from the College of Public Prosecutors and the Minister for Justice on the fight against human trafficking (COL 01/2015) came into force on 15 May 2015.

We should also mention the recent law expanding the guardianship of unaccompanied foreign minors (hereafter: UFM).

Finally, there is the new action plan for 2015-2019 against human trafficking, adopted in July 2015²¹³.

2.1. Expansion of the Interdepartmental Coordination Unit and appointment of National Rapporteurs

The Royal Decree of 21 July 2014²¹⁴, published in the Belgian Official Gazette on 1 September 2014, amended the Royal Decree of 16 May 2004. Among other things, this decree defined the composition and the tasks of the Interdepartmental Coordination for the Fight

against Trafficking and Smuggling in Human Beings (hereafter: Interdepartmental Unit).

a) *Expansion of the Interdepartmental Coordination Unit*

Myria is delighted that new players will be joining the expanding Interdepartmental Unit²¹⁵.

First of all, it was necessary and normal to formally include the victim reception centres in the coordination mechanism. They play a decisive role in the implementation of measures relating to victim protection. As underlined in the King's report²¹⁶, even if they already annually attended certain meetings of the Office of the Unit, they weren't members of the mechanism. The presence of one of their representatives²¹⁷ will help to reinforce the multidisciplinary approach adopted in Belgium. Note that this representative has the same right to vote as the other members of the Unit, except on issues where there is likely

²¹⁵ Prior to this amendment, the Unit was composed as follows: a representative of the Prime Minister; a representative for every Deputy Prime Minister who has no representative in another capacity; a representative of the Minister for Justice; a representative of the Minister of the Interior; a representative of the Minister for Foreign Affairs; a representative of the Minister of Employment; a representative of the Minister for Social Affairs; a representative of the Minister for Social Integration; a representative of the Minister of Development Cooperation; a representative of the College of Public Prosecutors; a representative of the Federal Prosecutor's Office; a representative of FPS Justice's Criminal Policy Service; a representative of the FPS Justice's Directorate-General for Legislation, Freedoms and Human Rights; a representative of the Federal Police's central "Human Trafficking" unit; a representative of State Security; a representative of the FPS Interior's Immigration Office; a representative of the FPS Employment, Labour and Social Dialogue's Social Law Inspectorate; a representative of the FPS Finance's Special Taxation Inspectorate; a representative of the FPS Social Security's Social Inspectorate; a representative of FPS Foreign Affairs, Foreign Trade and Development Cooperation; a representative of the former Centre for Equal Opportunities and Opposition to Racism; a representative of Child Focus.

²¹⁶ The report to the King precedes the provisions of the royal decree and explains the amendments adopted.

²¹⁷ The report to the King suggests organising alternation between the three specialised reception centres.

²¹² *Belgian Official Gazette*, 28 May 2004.

²¹³ The plan is available at: http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MH_2015_2019-FRpr%2013072015.pdf. For an analysis of this action plan, see: www.myria.be.

²¹⁴ Royal Decree of 21 July 2014 amending the Royal Decree of 16 May 2004 on the fight against the smuggling and trafficking of human beings, *Belgian Official Gazette*, 1 September 2014.

to be a conflict of interest²¹⁸ (for instance, during discussions on the role and organisation of reception centres). The royal decree also now provides for two formal meetings to be held every year between the Office and the specialised reception centres²¹⁹.

The Unit has also been expanded to include one representative from the Financial Intelligence Processing Unit (CTIF), in order to stress the attention given to the financial aspect of the fight against trafficking. Myria is very much in favour of this expansion: it has emphasised the importance of financial investigations in the fight against this form of crime²²⁰ for many years.

Finally, another important element of the expansion is the inclusion of representatives from the regions²²¹ and communities²²² in the coordination mechanism. In view of the current increased federalisation of Belgium, it would seem crucial to associate federated entities with this mechanism. The regional inspection services have been given new competences, even if they don't (yet) have the competence to establish facts in terms of trafficking, while the communities have competences in terms of training and support for persons (especially youth support, reception and integration of persons).

At federal level, the Unit now has two new representatives: the minister responsible for equal opportunities, and the minister responsible for the Law of 1980 on access to

the territory, stay, establishment and return of foreigners (the law on foreigners). The former is relevant as regards social policies that can be set up and act a barrier to human exploitation²²³. As for the second one, it would appear that this competence is increasingly attributed to a secretary of state for the Minister of the Interior and is no longer exercised by the actual Minister of the Interior, who is already a member of the Unit. Since the smuggling and trafficking of human beings mainly concerns foreign nationals, it was subsequently important to provide a specific representative for this domain, regardless of the minister with competence over the Law of 1980²²⁴.

To be complete, we should also mention that the College of Public Prosecutors is now represented, as an observer, within the Office of the Interdepartmental Coordination Unit²²⁵.

b) National Rapporteur or equivalent mechanism

The other important aspect of the Royal Decree of 21 July 2014 concerns the appointment of a National Rapporteur or equivalent mechanism. Article 19 of Directive 2011/36/EU on trafficking²²⁶ did indeed ask Member States to establish "National Rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting"²²⁷. Article 16 of the initial proposal formulated by the

²¹⁸ Article 5, §1, 2 of the Royal Decree of 16 May 2004 replaced by Article 5 of the Royal Decree of 21 July 2014.

²¹⁹ Article 11bis of the Royal Decree of 16 May 2004, inserted by Article 8 of the Royal Decree of 21 July 2014.

²²⁰ See Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 142; Human Trafficking, Annual Report 2013, *Building bridges*, p. 122.

²²¹ Article 5, para. 1 of the Royal Decree of 21 July 2014 expands the composition of the Unit to one representative for every region (Brussels-Capital Region, Flemish Region, Walloon Region).

²²² Article 5, para. 1 of the Royal Decree of 21 July 2014 expands the composition of the Unit to one representative for every community (Flemish, French-speaking and German-speaking communities).

²²³ See the commentary on Article 5 of the Royal Decree of 21 July 2014.

²²⁴ *Ibid.*

²²⁵ Article 11 of the Royal Decree of 16 May 2004, replaced by Article 7 of the Royal Decree of 21 July 2014.

²²⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, *O.J.*, L101 of 15 April 2011.

²²⁷ Article 19 of Directive 2011/36/EU.

Commission²²⁸ specified the – non-exhaustive – tasks of the National Rapporteur:

- determine the trends in the trafficking of human beings;
- assess the results of the actions undertaken to fight this phenomenon;
- report to the competent authorities.

Among the National Rapporteur's tasks, the text finally adopted by the Parliament and the Council (Article 19 of the directive) added the gathering of statistics in close collaboration with the relevant civil society organisations active in this field. Furthermore, reporting is now far more vaguely defined, with the directive simply mentioning that it is a question of drawing up reports. Closer inspection of preamble 27 of the directive reveals that the gathering of statistics seems to be an important task that the Union wanted to entrust to the National Rapporteurs. Moreover, the latter specifies that such National Rapporteurs are already part of an informal Union network, "which provides the Union and its Member States with objective, reliable, comparable and up-to-date strategic information in the field of preventing and combating trafficking in human beings at Union level"²²⁹.

Note that the Parliament had suggested, in an amendment, that these National Rapporteurs should be independent, but this wasn't retained in the final version of the text. The Member States are still free to set up this mechanism in the form they consider most appropriate in accordance with their internal organisation²³⁰.

²²⁸ Proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, repealing Framework Decision 2002/629/JHA, 29 March 2010, COM(2010)95 final, Article 16 and recital 17.

²²⁹ This informal network was set up at Union level on the basis of the Council's conclusions of 4 June 2009. Myria and the Crime Policy Service of FPS Justice (chairmanship of the Office of the Unit) are part of it.

²³⁰ Recital 27 of the directive.

This notion of National Rapporteur isn't new and must be separate from the coordination mechanism, which the directive doesn't however mention. The Ministerial Declaration of The Hague adopted by the European Union in April 1997 was the first international document recommending that the Member States establish a national reporting mechanism, which led to the concept of National Rapporteur. The latter would be responsible for informing the government of the development of the scale, the nature and the methods of trafficking of women²³¹. As for the Council of Europe's Convention on Action against Trafficking in Human Beings of 16 May 2005 (Article 29, §4), it clearly makes the distinction between a coordination and a monitoring mechanism. While it requires the State Parties to adopt measures as may be necessary to ensure the coordination of the policies, by setting up coordinating bodies²³², it explicitly recommends the appointment of National Rapporteurs or other equivalent mechanisms²³³. These National Rapporteurs are above all monitoring bodies. The emphasis is placed on the independence of such bodies²³⁴. In its third general report on its

²³¹ The Hague Ministerial Declaration of 1997 on European guidelines with a view to adopting effective measures to prevent and combat the trafficking of women for the purposes of sexual exploitation, ministerial conference under the presidency of the EU, The Hague, 24-26 April 1997, available at www.legislationline.org

²³² Article 29, 2: "Every Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of their governments' department and other public agencies against trafficking in human beings, where appropriate, through setting up coordinating bodies".

²³³ Article 29, 4: "Every party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements".

²³⁴ The Explanatory Report to the Convention (§ 298) specifies that "the institution of a National Rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the parliament containing its findings and recommendations".

activities²³⁵, GRETA²³⁶ mentions that it had the opportunity to reiterate, during an exchange of views in September 2012 with the European Commission's Experts Group on Trafficking in Human Beings and Mrs Myria Vassiliadou, the EU Anti-Trafficking Coordinator, "the fundamental difference between 'National Rapporteur' and 'national coordinator': while the former is conceived as an independent institution, the latter is required to have the necessary authority to coordinate the relevant governmental structures as well as associate specialised non-governmental organisations"²³⁷.

In our opinion, the European directive and the composition of the informal network of National Rapporteurs maintain the vagueness and confusion over the role and the nature of this National Rapporteur mechanism, even though the initial idea was to create an independent monitoring and reporting mechanism on the phenomenon and the policies conducted. The informal network is indeed composed of both coordination mechanisms and independent National Rapporteurs (such as the Dutch rapporteur or the Finnish one).

This vagueness is also maintained by the solution chosen by Belgium, even though the directive's requirements could be considered as having been met²³⁸. The National Rapporteur is organised into two parts. On the one hand, there is the coordination body (the Interdepartmental Coordination Unit) and on the other hand, an autonomous public service, exercising its tasks in complete independence: Myria (Federal Centre for the Analysis of Migration Flows, the Protection of the Basic

Rights of Foreigners and the Fight against Trafficking).

Through its missions and, in particular, the publication of its independent policy assessment annual report²³⁹, Myria was already performing the role of National Rapporteur *de facto*²⁴⁰. The royal decree therefore has the merit of officially devoting this role to Myria, thus making it the independent component of the mechanism. It has "extensive expertise on the aspects linked to its report or cases in which it institutes civil proceedings". In order to remove any doubt concerning the possible coordination of the policy²⁴¹, several amendments to the formulation of Myria's tasks were made to the Royal Decree of 16 May 2004²⁴².

Furthermore, the legal mission of the Interdepartmental Coordination Unit for the Fight against the Trafficking and Smuggling of Human Beings – whose main task is the coordination of the relevant policy – is also critical evaluation²⁴³. It mainly executes this

²³⁹ Article 2 of the Royal Decree of 16 May 2004.

²⁴⁰ It requested official recognition as National Rapporteur: see Trafficking and Smuggling of Human Beings, Annual Report Rapport 2010, *Combating social fraud to prevent trafficking in human beings*, p. 131.

²⁴¹ Comments on articles 2 and 3 of the Royal Decree of 21 July 2014.

²⁴² Hence, the coordination role has been removed from Articles 1 and 3 of the Royal Decree of 16 May 2004. Myria is now tasked with stimulating and monitoring the policy to combat smuggling and trafficking in human beings and not its coordination (Article 1). At the same time, as regards specialised reception centres, it is no longer responsible for their coordination but simply ensuring collaboration between these different services (Article 3).

²⁴³ See Article 8 of the Royal Decree of 16 May 2004: "The Unit's mission is to:

- 1° enable efficient coordination between the departments involved, who will share the necessary information for this purpose, with a view to ensuring a sustained policy to combat smuggling and trafficking in human beings and, in particular, with a view to dismantling and eliminating the activities of smugglers and their networks;
- 2° critically assess the evolution of the results in the field in the fight against smuggling and trafficking in human beings;

²³⁵ This report covers the period from 1 August 2012 to 31 July 2013 and is available via the following link: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Gen_Report/GRETA_2013_17_3rdGenRpt_fr.pdf

²³⁶ GRETA (Group of Experts on Action against Trafficking in Human Beings) is a group of independent experts tasked with monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the States Parties.

²³⁷ Point 51 of the report, p. 29.

²³⁸ On this subject, see the report to the King, pp. 65143-65144.

duty within the framework of the elaboration of a national action plan or specific evaluations such as the evaluation of the multidisciplinary circular²⁴⁴. The government is also required to submit a biennial report to parliament on the enforcement of the law on human trafficking²⁴⁵. In practice, it is the Federal Public Service (FPS) Justice which prepares this report and presides over the Office of the Unit. According to the Royal Decree, the Unit is the other full member of the National Rapporteur mechanism, as a coordination body and state rapporteur, even though the “main task of the Interdepartmental Unit is still, of course, the coordination, the proposal and the implementation of the policies (...)”²⁴⁶.

Concerning representation within the informal network of National Rapporteurs, the royal decree specifies that “the representative of FPS Justice represents the government when it is a question of policy and the Federal Centre for the Analysis of Migration Flows, the Protection of the Basic Rights of Foreigners and the Fight against Trafficking gives its opinion on points for which it has specific expertise. In case of differing points of view, everyone gives their own point of view in a personal capacity. The FPS Justice representative for the government and the Centre as an independent institution”²⁴⁷.

It is clear that the solution adopted by Belgium isn't simple. In fact, it is the only

The two-pronged structure adopted by Belgium does raise questions in terms of perception and representation of the mechanism abroad

country in the Union to formally adopt such a two-pronged structure. While the royal decree clarifies the role of Myria by removing any coordination tasks from its responsibility thus making it an independent rapporteur, it seems to us that this further confuses the mission of the Interdepartmental Coordination Unit, which is both the policy's coordination body and the state rapporteur²⁴⁸. The coordination and the evaluation mission are both as important and have their own specificity. In addition, this solution also raises questions, especially in terms of perception and representation of the mechanism abroad.

2.2. New joint circular on crime policy regarding the fight against the trafficking of human beings (COL)

A new joint circular from the College of Public Prosecutors and the Minister for Justice regarding the fight against the trafficking of human beings, came into force on 15 May 2015 (COL 01/15)²⁴⁹. Its aim is to define the investigation and prosecution policy in terms of trafficking in human beings according to the applicable legal provisions. It addresses judges and police officers responsible for prosecuting acts of trafficking. It replaces the previous circular, COL 01/07, and takes into account the legislative amendments made on a national²⁵⁰ and international²⁵¹ level. Unlike

3° contribute to the formulation of proposals and recommendations concerning the fight against smuggling and trafficking in human beings; (...)”.

²⁴⁴ See the report to the King, p. 65143. This is the circular of 26 September 2008 relating to the implementation of a multidisciplinary cooperation concerning the victims of human trafficking and/or certain aggravated forms of human smuggling, *Belgian Official Gazette*, 31 October 2008.

²⁴⁵ Art. 12 of the Law of 13 April 1995 containing provisions with a view to curbing trafficking and smuggling in human beings.

²⁴⁶ Report to the King, p. 65144.

²⁴⁷ Comments on articles 10 and 11 of the Royal Decree of 21 July 2014.

²⁴⁸ Amendments could also have been made to the Royal Decree of 16 May 2004 in order to clarify the context in which the Unit's evaluation task is situated.

²⁴⁹ COL 01/2015 relating to the investigation and prosecution policy in terms of trafficking of human beings.

²⁵⁰ The Law of 29 April 2013 aimed at modifying Article 433quinquies of the Criminal Code with a view to clarifying and extending the definition of trafficking of human beings; this law partly transposes directive 2011/36/EU and the Law of 24 June 2013 on the suppression of the exploitation of begging and prostitution, the trafficking and smuggling of human beings according to the number of victims.

²⁵¹ In particular, European directive 2011/36/EU on the trafficking of human beings.

the previous COL, where only the annexes were confidential, this COL is entirely confidential. Subsequently, we shall only present it briefly.

This new COL pays more attention than the previous one to taking(take?) into account the interest of the victims and, in particular, the non-punishment clause. Hence, close dialogue between the different sections of the same public prosecutor's office is encouraged in order to avoid prosecutions that are irreconcilable with a person's status as victim²⁵².

Furthermore, there must be a greater synergy between the youth division of the public prosecutor's office and the reference judges in trafficking in order to better detect and protect underage trafficking victims. As a result, the youth division of the public prosecutor's office will systematically be invited to "human trafficking" coordination meetings regarding the judicial district.

Besides the priorities of the crime policy, this new COL also defines the process aimed at elaborating an image of the phenomenon as well as the manner of ensuring the coordination of investigations and prosecutions. The tasks of the reference judge are specified within this framework. Above all, they are the interlocutor of the stakeholders in the field and partners. The latter's attention is also drawn to the importance of the financial aspects in this type of crime.

The COL also contains a series of annexes, including indicators aimed at identifying human trafficking situations.

2.3. Extension of the guardianship of UFM to vulnerable unaccompanied European minors who are the victims of human trafficking

Unaccompanied minors from a member country of the European Economic Area who are the victims of trafficking now have the right, like all third country nationals, to a guardian. As previously mentioned, Myria hoped and prayed for such an extension of the "guardianship" law, given the large number of underage victims from member countries of the Union, such as Romania and Bulgaria²⁵³. This right has been in force since 1 December 2014, the day the Law of 12 May 2014 amending the law on guardianship came into force²⁵⁴. This follows a decision reached by the Constitutional Court which considered that the legislator had to intervene to guarantee the protection of European UFM (unaccompanied foreign minors) by laying this statute down in law²⁵⁵. A circular of 8 May 2015 clarifies the notion of UFM following the legislative amendment and establishes a single reporting sheet²⁵⁶.

A European UFM has the right to a guardian if they meet each of the following criteria:

- under 18 years old (is a minor);
- is from a Member State of the EEA or Switzerland;
- isn't accompanied by a person with parental authority or guardianship;
- isn't registered in one of the population registers;
- isn't in possession of a legalised document by which the parent or

²⁵³ See Trafficking in and Smuggling of Human Beings, Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, p. 131.

²⁵⁴ Law of 12 May 2014 amending Title XIII, Chapter VI, of the Programme Act (I) of 24 December 2002 regarding the guardianship of unaccompanied foreign minors, *Belgian Official Gazette*, 21 November 2014.

²⁵⁵ Const. Court, 18 July 2013, no. 106/2013. See also: *Migration Annual Report 2013*, pp. 87-88.

²⁵⁶ Circular of 8 May 2015 relating to the report sheet for unaccompanied foreign minors and their care, *Belgian Official Gazette*, 20 May 2015.

²⁵² As previously mentioned, the non-punishment clause was the focal point of the Myria's annual report in 2012. It made various recommendations within this framework and especially encouraged greater dialogue between the different sections of the public prosecutor's office (Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building trust*, available at www.myria.be).

- guardian authorises them to travel alone and stay in Belgium;
- has requested a temporary residence permit as a victim of human trafficking or is in a vulnerable situation.

The Guardianship Service will assess the child's vulnerability by referring to the International Convention on the Rights of the Child and taking into account the illegal nature of their stay, their unstable social situation, their possible pregnancy and possible mental or physical handicap. European UFM are likely to have been the victims of human trafficking and must be considered as vulnerable²⁵⁷.

2.4. Other measures

Within the framework of the 2015 action plan against social fraud and social dumping, we should also mention the recent adoption of a "white paper" for the construction industry. This "white paper" was elaborated by the trade unions, employer organisations from the construction industry and the federal authorities (the State Secretary for the Fight against Fraud, the Service d'Information et de Recherche Sociale (SIRS), the FPS Social Security, FPS Employment, the National Social Security Office (NSSO) and the National Employment Office (NEO)²⁵⁸). The Belgian construction industry has been hit very hard by unfair competition and social dumping resulting from the abuse of the European rules on posted workers, among other things. In order to fight this international fraud, a three-sided approach has been proposed (regarding Belgium, Benelux and Europe). As regards

Belgium, it is mainly a question of reinforcing control and transparency through various measures (especially the assessment of conditions within the framework of the prior registration of cross-border jobs²⁵⁹ and the limitation of the number of vertical subcontractors (i.e. per speciality)). A specific point concerns human trafficking: it is suggested that local authorities be called upon to investigate and crack down on abuses. Collaboration at all levels of power is indeed essential in order to effectively fight social dumping.

²⁵⁷ When this report was written, the Aliens Act hadn't been adapted to this amendment of the law on guardianship. Consequently, European unaccompanied foreign minors (known as UFM [MENA in French]) are still currently excluded from the residence procedure for UFM (Article 61/14 of the Aliens Act). On this subject, see *Migration in figures and in rights*, Annual Report 2015, pp. 86-87.

²⁵⁸ *Plan pour une concurrence loyale, 40 mesures concrètes pour la construction*, adopted on 8 July 2015. This plan is available via the following link: http://www.tommelein.com/wp-content/uploads/bsk-pdf-manager/150_PCL_BOUW_8_JULI_2015_-_FINAAL_FR.PDF

²⁵⁹ The famous "LIMOSA" system. LIMOSA is an acronym for "Landenoverschrijdend Informatiesysteem ten behoeve van MigratieOnderzoek bij de Sociale Administratie" (Transnational Information Network for the Study of Migration Flows within the social administration services).

Chapter 2: Case studies

In this chapter, Myria analyses the court records of human trafficking and smuggling cases, in which it instituted civil proceedings and therefore has a complete view. This provides a precise image of how an investigation is actually initiated and conducted in the field. Furthermore, this chapter provides an illustration of the phenomenon of trafficking and smuggling in human beings for each form of exploitation.

The analysis is based on cases' reports and takes a detailed look at the criminal system and the victim's point of view. We shall first examine in depth and take a critical look at the summarised reports: the investigators' summary of the case. A great deal of attention is also paid to the initial reports, which indicate on what basis the case was actually opened and whether the victims were intercepted and detected at this point. The case also includes the statements from the hearings of the victims, suspects and witnesses, the informative reports, the files including the transcripts of phone taps, observation reports and, finally, the reports from the letters rogatory.

The study of concrete cases is a cornerstone of the policy assessment. It provides a better understanding of the implementation of the investigation and prosecution policy in the field as well as any tricky points associated with it. Once assembled, these observations are an important source of information for the annual report's focus and an essential basis for the formulation of recommendations.

Myria bases itself primarily on these case studies to determine the good practices and negative experiences of the different players in the field. These are listed in the chapter *Best practices and experiences*. The various texts in the case studies that are relevant to this chapter are accompanied by a footnote.

1. Trafficking in human beings

1.1. Sexual exploitation

1.1.1. Hungarian Roma network in Ghent

In this case of trafficking in human beings based in Ghent, relating to acts in 2013 and 2014, Hungarian Roma women, including a child, were sexually exploited by a Hungarian Roma network. Among the recruitment methods used was the loverboy technique, presented in this focus²⁶⁰.

The case was rapidly dealt with²⁶¹ and tried by Ghent Criminal Court on 21 August 2014²⁶². None of the victims instituted civil proceedings. Besides the charge of human trafficking, the defendants were also charged with criminal organisation and money laundering. The court also ordered the confiscation of EUR 405,980. The Hungarian authorities transferred the sums of the confiscated proceeds to the Belgian authorities²⁶³.

a) Criminal network

The well-organised prostitution network, which also used violence, was comprised of two Hungarian Roma families who forced young Roma women to prostitute themselves. The victims were sexually exploited in Belgium, the Netherlands, Switzerland, Austria and the United Kingdom.

²⁶⁰ Part 1, Chapter 2.

²⁶¹ Trafficking and smuggling in human beings, Annual Report 2010, *Combating social fraud to prevent trafficking in human beings*, p. 133.

²⁶² Part 2, Chapter 4; Ghent Crim. Court, 21 August 2014, 19th ch.

²⁶³ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56.

Three of the defendants acted as ‘bottom girls’²⁶⁴ in the criminal system²⁶⁵. As intermediaries, they collected the money from the victims of prostitution and didn’t hesitate to use violence when the victims didn’t make enough money. Furthermore, they sought places for the victims in windows in the Midi area and looked after their upkeep.

One of the main defendants was also a drug dealer and supplied drugs to some of the co-defendants, customers of prostitution and victims.

b) Opening the case

In 2012, the local police in Ghent was already conducting an initial investigation into several persons of Hungarian origin suspected of trafficking in human beings. After carrying out checks, the local police in Ghent noticed a significant increase in prostitution networks involving young Hungarian girls around the Midi area in Ghent, between January 2012 and March 2013. This increase was corroborated by the official figures of the “service providers” in the various prostitution windows. In 2009, four Hungarians were known to be working there but in 2012, the figure rose to 141, peaking at 283 in 2013. It appeared that the victims were of Roma origin in a highly precarious situation.

At the end of March 2013, the police in Ghent received a letter rogatory request from the police in Amsterdam concerning one of the Hungarian Roma victims of prostitution, who was under the yoke of one of the Hungarian pimps, also known to the Dutch police. In April 2014, the public prosecutor’s office in Ghent decided to open an integrated investigation with members of the local police and the federal police. This time, the investigation wasn’t based on the victims’ statements, because they were too frightened to speak as long as their pimp wasn’t behind bars. At this stage of the investigation, the victims denied

the acts of violence committed against them. During the inquiry, the prostitution network was inventoried and the aforementioned “plukteam” (financial confiscation team)²⁶⁶ identified the criminal money flows.

c) Investigation

In July 2013, an investigating judge was appointed: this was the start of the collection of as much objective evidence as possible against the perpetrators on the basis of special police techniques such as phone tapping, extensive observations and financial investigations²⁶⁷. It was important for the victims because it relieved them from the pressure of the burden of proof. Hence, it was no longer necessary for the investigating judge to consent to confrontations between the victims and perpetrators either. The lawyers of the latter increasingly demanded these confrontations as the investigation progressed. However, these types of confrontations are often very traumatic for the victims of sexual exploitation²⁶⁸.

The phone taps provided objective evidence of violence towards the victims. In some conversations, orders were even given to monitor certain girls, to hit them and threaten them²⁶⁹. It also transpired, on the basis of an extensive cyber investigation and phone taps that the perpetrators used Facebook to select their victims based on their photos and to communicate with them.

Investigators carried out simultaneous searches and arrests in different countries. In Belgium, 32 forged passports were found

²⁶⁴ See part 1, Chapter 2, Victims of loverboys, point 3.2 and note 196.

²⁶⁵ Human Trafficking, Annual Report 2013, *Building bridges*, p. 16.

²⁶⁶ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56. The term “plukteam” comes from the Dutch word “kaalplukken” which literally means to ‘fleece’ criminals financially. The term is based on the legislation of the same name which deals with seizures and confiscations of criminal proceeds. The plukteam is responsible for the inventory of criminal patrimonies with a view to a subsequent seizure. (Source: inforevue 2009 no. 3 of the federal police: www.polfed-fedpol.be/pub/inforevue/inforevue3_09/PLUKTEAM_IR03FR.PDF).

²⁶⁷ *Ibid.*, pp. 57-63.

²⁶⁸ *Ibid.*, p. 58.

²⁶⁹ *Ibid.*, pp. 57-63.

during a search. A search carried out in Hungary provided evidence proving that young girls were also recruited in the United Kingdom for prostitution.

The perpetrators' arrest removed part of the pressure they exercised over their victims. They were therefore able to be heard. The majority of the victims had already returned to their family environment in Hungary upon their request, thus reducing to a large extent the risk of threats. Upon the judge's request, the police used a list of standard questions for a targeted and structured hearing of the victims. The following aspects were dealt with: recruitment, employment, accommodation, the presentation of a photo album, general questions about previous history.

International cooperation

Europol provided important information, in particular concerning the fact that different perpetrators were also known for acts of human trafficking in other EU member countries.

Within Europol and Eurojust, Belgium, the Netherlands and Hungary signed an agreement end 2013 aimed at creating a *Joint Investigation Team (JIT)*²⁷⁰. At the beginning of 2014, an investigation was also launched in the United Kingdom against the same Hungarian network.

In the ECE agreement, the victims' interests were taken into account in the objectives. Besides gathering evidence of involvement in acts of human trafficking and money laundering and the confiscation of criminal resources, the ECE also pursued the following objectives:

- to get active prostitutes out of forced prostitution;
- to take away illegally-acquired benefits from suspects through legal action;

- to ensure that the victims are compensated and/or benefit from financial compensation;
- to prevent women becoming victims of human trafficking again.

Financial investigation

The investigators managed to identify the movable and immovable property of the Hungarian perpetrators and rapidly and efficiently seize these proceeds from criminal activity thanks to the ECE agreement²⁷¹.

The defendants earned EUR 198,240 a month thanks to their activities in prostitution. One of the main defendants even made a personal profit of EUR 94,500 at the expense of six victims of prostitution. These figures were the absolute minimum based on the calculation of resources acquired through crime. The court used these figures as grounds for its decision to confiscate a total amount of EUR 405,980.

The investigators analysed the financial modus operandi of the prostitution network on the basis of the information acquired through the phone taps, observations and money transfers. The bottom girls checked how much the victims "made" based on the number of condoms used. They handed over the cash earnings to cash smugglers who took the funds to Hungary where they were mainly placed in real estate. The perpetrators also made international money transfers to Hungary in the victims' names through regular money transfer agencies.

One of the victims explained during her statement how she had to transfer money to Hungary through an agency for the defendant: "I did it in my name but he wasn't always the beneficiary, sometimes it was his sister, or another family member or an acquaintance of his. However, he clearly received these amounts... He hit me very hard in the evening because, according to him, I had lied, I hadn't sent the money to him at home for his return journey".

²⁷⁰ *Ibid.*, p. 63.

²⁷¹ *Ibid.*, p. 52.

d) *Victims*

The victims were young Hungarian girls of Roma origin. All of them were in a very precarious situation: single mothers, girls who had been in orphanages or care homes until they were 18 years old, etc.

The victims were recruited by making them believe they could earn a fortune in Belgium. Some of the girls fell into the loverboy trap²⁷² or were psychologically forced to take drugs (speed or cocaine) to “improve” their services and overcome the pain and disgust. This also led them to sell drugs to clients and take it with them. Other victims were made to believe they had to reimburse massive debts for the job that was found for them, their transportation, their accommodation and their upkeep.

The perpetrators drummed into the victims that they could never tell anyone who they worked for. They had to say they were independent, had no pimp or intermediary, they weren’t under any constraints, and that they couldn’t reveal the identity of the organisation’s members. They couldn’t say anything about how they arrived in Ghent either.

The various statements revealed that even after the perpetrators were arrested, the victims were still subject to pressure or threats to ensure they would remain silent. The obligation to keep quiet even came from prison.

Victim statements

Anonymous evidence from one of the victims illustrates the extreme violence of the defendants. This is what emerges from this quote, copied word for word from her statement: “During this period, X hit me every two to three days for different reasons. Sometimes because of my behaviour, sometimes based on gossip. By “hit” I mean that he stood on my head, that he kicked me

with his shoes, struck me in the stomach or on my thigh. He often said that he was hurting me because I had lied to him and that he wouldn’t put up with it. I sometimes had to take tranquilizers because my situation seemed hopeless, but he forced me to continue working all the same. Once, he hit me so hard that my tooth broke. Sometimes, the injuries were visible but I didn’t dare go to the doctor for fear of reprisals. I didn’t dare to think of going to the police to file a complaint because X assured me that he had friends everywhere and that if I sent him to jail, he would come and kill me and my family as soon as he got out”.

Regarding another incident, she stated: “He hit me several times with a piece of wood that looked like a table leg, then he wound a belt around my wrist and pulled me to the bathroom where a bath of ice cold water was waiting for me. X told me to plunge my head in the water, otherwise he would push me in himself. He knew that I panicked under water, that’s why he held my head under the water”.

Child victims

One of the victims was a 17-year-old minor, who prostituted herself for one night in Ghent. She used a fake identity card belonging to an adult. She offered her services, showed her photos on a social network and received a positive reaction. It was only when she arrived in Belgium that the main defendant discovered that the young girl was a minor. He nevertheless put her to work so that she could earn money and pay him back for her travel costs. But the fact that she was a minor was indeed the reason why she was sent back to Hungary the next day. The main defendant was frightened of the police’s reaction if they discovered that a minor was active in prostitution. Through phone taps, the police nevertheless managed to later determine the identity and true age of the victim²⁷³.

²⁷² Part 1, Chapter 2.

²⁷³ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 57-63.

Victim status

The court recognised 40 victims of human trafficking on the basis of the results of phone taps. Almost half of the victims were never found. The majority of the victims submitted empty statements when they were intercepted by the police. Initially, the victims had little trust in the police with whom they first came into contact²⁷⁴.

Two victims asked for and obtained victim status, but the majority of victims showed no interest in it²⁷⁵. They refused it because they didn't consider themselves to be victims. They were too worried or wanted to go home as quickly as possible. For some victims, collaborating with the law posed no problem and they were even relieved to be able to make a statement. However, they did express the wish to temporarily continue their activities in prostitution independently.

Seventeen victims were heard at a later date in Hungary. Some victims were heard again after their statements in Belgium and made relevant statements as soon as their fear had gone. Several victims returned on the basis of the RAVOT project²⁷⁶, specially set up in Ghent for maximum reintegration of the victims of human trafficking in Hungary. Thanks to this project, the safety of the victims and their families was ensured. However, in the beginning, the programme did lead to secondary victimisation²⁷⁷ in Hungary, but this was later resolved²⁷⁸.

Several victims had already been detected and previously registered as victims of human trafficking in other countries, which raises the

issue of European victim status. A victim was noticed for the first time working in prostitution in Alkmaar (Netherlands) in 2011, followed by Ghent in January 2014, and then seemed to have disappeared. A young, intellectually-impaired 18-year-old woman was extracted from a brothel as a victim by the police in Lancashire (United Kingdom) in May 2013. In August 2013, she was again active in prostitution in Ghent. She was easy prey and allowed herself to be emotionally manipulated by the perpetrators. She had lost both her parents when she was a child, had grown up in an orphanage and thought of one of the defendants as her mother. She wasn't interested in victim status.

Another young girl, who well and truly integrated the status of victim and benefited from the support of a Hungarian support worker²⁷⁹ at Payoke, the specialised reception centre for victims, already presented herself as a victim of human trafficking in Stuttgart (Germany). When her income from prostitution was taken from her, she went to the police in Stuttgart as a victim of human trafficking. She then returned to Hungary, and ended up at a reception centre where she was recruited by one of the defendants of the present case to supposedly come and work as a cleaner in Belgium. Once here, she was told that she wasn't going to work as a cleaner but as a prostitute. She also added that could no longer return to Hungary and was forced to give in because she first had to earn enough to pay for her journey back. There were eight to ten other young girls in the bar where she had to work. They were all drug addicts. The victim saw them snorting white powder and there were syringes lying around.

1.1.2. Nigerian network in Brussels

In this case of human trafficking and smuggling in Brussels, which dates back to a period between 2007 and 2011, young Nigerian girls, including several minors, were fraudulently brought here and sexually exploited by a Nigerian prostitution network.

²⁷⁴ This part, Chapter 3, point 1.2.

²⁷⁵ *Ibid.*

²⁷⁶ Referral of and Assistance for Victims of Human Trafficking.

²⁷⁷ Secondary victimisation refers to the fact that the victims become victim of the same offence for a second time owing to the fact that they find themselves faced with negative social reactions, (unwilling) civil servants and authorities that can't or don't want to help them, as well as lengthy legal proceedings which are exhausting, bureaucratic and costly.

²⁷⁸ This part, Chapter 3, point 1.3.

²⁷⁹ *Ibid.*, point 1.2.

The victims could be ordered²⁸⁰ in Nigeria and Turkey and were exchanged to work in prostitution in Spain, Norway and Belgium.

The young girls were brought to Belgium to work in prostitution. They had to pay EUR 55,000²⁸¹ for the journey and reimburse this debt by prostituting themselves. One of the victims was in Belgium under the yoke of a loverboy²⁸². According to her identity card, she was 14 years old but was probably actually 19 at the time of the offence.

This case was tried by Brussels Criminal Court on 24 February 2012²⁸³, and then by the Court of Appeal on 31 October 2012²⁸⁴. Several victims instituted civil proceedings²⁸⁵.

a) Criminal network

The court established that the acts of human trafficking were carried out within an organised network. The main Nigerian defendant sexually exploited the victims through Nigerian *madams* who worked for him.

Nigerian “madams”

These *madams* characterise the Nigerian prostitution networks. They put the victims to work, supervise them, collect their money and manage their debts. They take advantage of voodoo rituals to keep the girls under their yoke. At the same time, they act as

psychological support for the victims who consider them as a mother or sister. They have legal residence permits, which they sometimes obtain through a sham marriage, and often know the prostitution system from the inside with the hope of being free of it themselves one day.

Legal residence permits

Phone taps reveal that one of the *madams* had obtained a legal residence permit through a sham marriage. During a phone conversation with the main defendant, she said: “The white man who arranged my residence permit through a sham marriage called me”.

During another phone conversation, it was question of looking for a solution to legalise the stay of another *madam*: “X will try to give Y a Belgian residence permit. She will try to do it by pretending she is ill. We know a Belgian doctor who has already provided the necessary documents in return for a substantial sum of money. The doctor has to clearly state in writing what illness Y is suffering from, such as psychiatric problems. It is one way of speeding up the procedure for Y’s residence permit”.

The main defendant also gave one of the *madams* a piece of advice concerning her request for asylum: “You have to say that they want to mutilate your genitalia in Nigeria and that’s why you fled”.

Corruption and contacts in embassies

The main defendant was in contact with various people to organise the trafficking of human beings in Nigeria, with each person having their own speciality. He would make use of their criminal services to obtain forged identity papers.

He was in contact with a corrupted member of staff at the embassy to obtain a Schengen visa or sort out other business. The main defendant was therefore able to obtain the necessary visa, for instance, at the Italian embassy in Nigeria thanks to a contact person. Furthermore, the sister of an accomplice

²⁸⁰ A “madam” ordered a victim in Nigeria, paid for from Europe, and the victim’s arrival was guaranteed by a voodoo ritual performed by a voodoo priest. The collaboration took place through contacts in the transit country, who had to be paid, which sometimes caused financial conflicts. The phone taps revealed that a young girl who had been “ordered” was stuck in Turkey because the contact person in this country hadn’t yet received the payment necessary to ensure the continued transportation of the young girl.

²⁸¹ One of the victims had to pay EUR 55,000. For the other victims, the amount varied but was at least EUR 25,000.

²⁸² Part 1, Chapter 2.

²⁸³ Brussels Crim. Court, 24 February 2012, 46th ch. (available at www.myria.be)

²⁸⁴ Brussels, 31 October 2012, 13th ch.

²⁸⁵ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 69-70.

worked in the Nigerian embassy in Abuja and he was easily able to obtain a visa this way. And an employee at the Nigerian embassy in Greece ensured that Nigerians who were about to be deported were released, in exchange for a bribe.

He could also count on accomplices within airline companies and among immigration staff at the airport, thus allowing him to organise a *guaranteed* safe passage for people to cross the border illegally²⁸⁶. He also corrupted members of parliament who offered him political protection.

Smuggling itineraries

In general, several victims travelled together and regularly changed guide across Africa and Europe, before arriving in Belgium. The trip sometimes lasted months through the desert or on small dangerous boats at sea with the intention of reaching one of the most well-known transit points, the Italian island of Lampedusa. Sometimes, the young girls already had to prostitute themselves on their way to Italy.

Other *guaranteed* transportations were also organised, bringing Nigerian victims of prostitution by plane from Lagos (Nigeria) to Italy. Their contact person at the embassy had arranged a group trip under the pretence of a training course in Italy. This allowed 19 Nigerian girls to legally leave Nigeria with a visa.

Exchange programmes

The main defendant also had accomplices in Spain, Turkey, Italy, Morocco and Denmark, and his sister even served as a *madam* in Canada. These contacts all entered perfectly into the context of international exchange programmes in the Nigerian networks. For instance, a Nigerian *madam* in Belgium had victims in Norway, Sweden and Spain under her authority. There was also an exchange

programme where, for instance, a Nigerian *madam* in Spain sent a young girl to go and work in for her Belgium, owing to a lack of work in Spain, but under the supervision of a Nigerian *madam* living in Belgium.

b) Opening the investigation

This investigation was the result of another investigation concerning a Nigerian network, which began in 2009. During a hearing in September 2010, one of the main defendants in the old case had had an informal conversation with the investigators. She informed them of the prostitution activities of another Nigerian woman and a man who smuggled young girls into Belgium via Libya, to make them work in the red-light district in Brussels. She refused to make an official statement, but she did give the exact address where the acts took place.

On the basis of this information, the police checked its own records. They revealed that on 24 October 2008, during a police check in this building, two young girls had been seen in the window and had fled towards the cellar.

The initial report said: “Owing to the amount of work resulting from the Y case and peripheral cases, we didn’t directly pursue the investigations based on the information she gave us”²⁸⁷.

The investigation was initiated several months later.

c) Investigation

At the beginning of 2010, the investigating judge ordered several investigative procedures, including a phone tap. This revealed the network’s international contacts, its smuggling methods and how the international exchange programme worked. Girls who didn’t perform well enough were moved to another region. The phone taps also played an important role in the detection of

²⁸⁶ See this chapter below, point 2.1.1., point 2.3.2. and point 2.4.1.

²⁸⁷ Trafficking and smuggling in human beings, Annual Report 2008, *Enlisting people and resources to combat the phenomenon*, p. 112.

victims: “It would appear that X is currently busy with the final preparations for the transport of a girl from Nigeria to Belgium. The girl in question seems to have travelled to Abuja in the meantime, while waiting for her transfer to Belgium. The payment for the transport seems to have been made and the girl will travel alone with full knowledge of the facts, with identity papers belonging to someone staying in Europe. (...) We can deduce from the phone taps that it is possible that the girl in question will arrive at Schiphol in Belgium during or after the weekend of 4 and 5 June 2011, and X will go and fetch her personally from Schiphol”.

In the tapped phone conversations, there was also mention of the so-called *Black Western Union* and the four apartment blocks that the main defendant had had built in Benin City (Nigeria) thanks to the income from prostitution. *Black Western Union* is a financing system known by this nickname in Nigerian circles, which has absolutely nothing to do with the famous Western Union. It is the African version of the Pakistani *hawala* system, where the profits end up in phone shops and grocery shops in Nigeria through alternative remittance systems. A *hawala* type system can be considered as an alternative banking system to transfer money from one country to another without leaving any trace of the transaction. The system works in perfect anonymity²⁸⁸.

d) Victims

Victim status

In this case, it was possible to trace 20 young African girls who were victims through phone taps. Six of them were detected and guided towards victim status²⁸⁹. In one of the tapped phone conversations, the main defendant said he had already fraudulently brought 16 victims to Belgium.

Profile of the Nigerian victim

The majority of victims were offered a job as a prostitute in Nigeria, with the promise of a good income. The main defendant organised a selection procedure, during which he interviewed and selected the victims by phone in Nigeria. The phone taps also revealed that some girls could be ordered in advance.

When they arrived in Belgium, the young girls' identity papers were taken from them and given to the *madam*, who placed the girls in prostitution or sold them for EUR 5,000. The victims were told the same story every time: in order to be set free, they had to pay back their journey. In general, they accepted without any form of resistance.

The Nigerian networks don't hesitate to use any form of violence against the victims or their families. For instance, the parents of one of the *madams* threatened the parents of two minors because they didn't want to reimburse their supposed debts. A young girl, who first worked as a prostitute in Spain before coming to Belgium, was forced to abandon her 10-month-old baby in Spain. The phone taps clearly revealed why: “If the mother does anything stupid, her baby will be killed”.

²⁸⁸ Trafficking and smuggling in human beings, Annual Report 2011, *The money that matters*, p. 23.

²⁸⁹ This part, Chapter 3, point 1.2. and Human Trafficking, Annual Report 2013, *Building bridges*, pp. 30-35.

Abuse of voodoo rituals

In Nigeria, someone had to act as guarantor for a young girl. This guarantee was put into practice by one or more voodoo priests. Abuse of the voodoo ritual is a typically Nigerian means of pressure²⁹⁰. Many young Nigerians swear an oath before leaving for the West, during which they state that they or their family will pay their *madam* for the travel costs and debts. This oath goes hand in hand with several rituals. The fingernails, blood and hair of the young woman are carefully preserved in a packet. This packet is kept by the criminal network. If the woman doesn't satisfy one or more of her obligations, *juju* or voodoo is used against her. According to popular belief, someone whose fingernails, blood and hair are preserved in a packet can be made ill or mad, and even die. This way, the *madams* raise the girls' fears and create a link that can't be broken without consequences. In order to save themselves and their family, many of the victims remain in prostitution to reimburse their debts.

The statements of one Nigerian victim in this case revealed the significant impact of the voodoo ritual and how it can be easily abused to exert pressure: "After two days, X took me to this place too and told me to work for her as a prostitute. I refused, but after a week I had to do it because X had stuffed my food with voodoo, cut a strand of my hair and taken a bit of menstrual blood from my pants... she subjected me to a voodoo ritual".

Child victims

Several victims were detected and obtained the status of victim of human trafficking. Three of them were probably minors, even if the court wasn't able to determine their exact age. It was almost certain that two young girls were minors, but a doubt remained concerning their exact age.

One of the victims was probably 15 years old when the acts took place in 2007. During a police check, she was first taken to the centre for illegal immigrants in Bruges, but she was then transferred, as an unaccompanied minor, to Juna, the centre for unaccompanied foreign minors in Aalst. She stayed there until she reached adulthood, in 2010. She then went to live with her boyfriend. While she was at Juna, the defendants contacted her several times, having got her mobile phone number from her mother, to ask her to escape the reception centre, which she refused to do. Later on, when she was living with her boyfriend, they continued to harass her so that she would continue to reimburse her debts.

Another victim was probably 14 years old when the acts took place. She instituted civil proceedings and was represented by a guardian during the trial in first instance. In Nigeria, she was offered schooling in Europe. She had to go to a so-called immigration office in Lagos where she gave her fingerprints and photos were taken of her in order to make a false passport. She wasn't to tell her mother of her departure for Europe under any circumstances. She took the plane for Spain, passing through Italy and France. She stayed six months in Spain and there she was forced to prostitute herself by means of a voodoo ritual. She was then transferred to Brussels because there wasn't enough prostitution work in Spain.

1.1.3. Modelling agency case in Antwerp

The acts in this case, which took place in Antwerp, date back to 2010 and 2011 and involved a Russian/Latvian criminal organisation that sexually exploited mostly young Latvian girls.

²⁹⁰ Human Trafficking, Annual Report 2013, *Building Bridges*, pp. 14-15 and 26.

This case was tried on 3 December 2012 by Antwerp Criminal Court²⁹¹ and on 12 September 2013 by the Antwerp Court of Appeal²⁹². Twelve defendants were prosecuted for human trafficking, several of whom were sentenced. Two defendants also appeared in court for distributing child pornography images (but not within the context of the charge of human trafficking). Only one of them was sentenced for these offences²⁹³.

One of the defendants passed herself off as a victim during the trial and instituted civil proceedings against three other defendants²⁹⁴. She was first ordered to prostitute herself by the main defendant, but she rapidly began to work freely in prostitution and in the exploitation of prostitution. She recruited school friends in Latvia and made them believe they would have a job fruit-picking or cleaning, but in reality, they were immediately forced to prostitute themselves. The defendant kept half of their earnings, which she then handed over to two co-defendants. She also enticed two young women who had fled, into an apartment, where they were beaten and threatened with a gun. She gave the impression of being very dominant and of putting pressure on the young women by threatening to inform one of the other defendants. Seeing as the defendant was sentenced as a perpetrator and accomplice with the co-defendants, against whom she had instituted civil proceedings, the court considered her civil proceedings as unfounded²⁹⁵.

²⁹¹ Antwerp Criminal Court, 3 December 2012, ch 4C . (available at www.myria.be).

²⁹² Antwerp Criminal Court, 12 September 2013, 14th ch.

²⁹³ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, p. 69.

²⁹⁴ *Ibid.*, pp. 20-21.

²⁹⁵ *Ibid.*

a) Opening the case

In April 2011, the local police²⁹⁶ received an anonymous complaint regarding acts of human trafficking in modelling agencies, concerning websites and victims. Five months later, the PAG-ASA centre specialising in the reception of victims, received an anonymous complaint concerning the same modelling agencies. The complaint was accompanied by printouts of adverts posted on the internet which, according to the person who submitted the complaint, lured minors. The complainant also referred to ill-treatment such as cigarette burns, abuse and the detention of a six-month pregnant woman. The complainant asked for the victims to be taken into care. The complaint was sent to the police. The investigation (information phase) began the same day.

b) Investigation

On the basis of this data, the police was able to quickly localise the acts and conduct an investigation of the neighbourhood. The initial observations showed signs of exploitation of prostitution and already alerted the police to one of the future defendants. A judicial investigation was initiated so that investigative means, such as phone taps, could be organised and implemented.

It emerged that young Latvian girls had been recruited as escort girls in the Netherlands and Belgium through a website for sexual relations. They were promised a net income of EUR 4,000 to 6,000 for two days work a week. This website is a Latvian variant of Facebook, where the surfer clicks on a friend request and gets a positive reaction. The victims were offered on the internet through erotic dating sites and escort agencies. One of the defendants had taken naked photos of an underage Latvian girl and used them for an advert on the website. He was then prosecuted for distributing child pornography.

²⁹⁶ This part, Chapter 3, point 1.1.

A European arrest warrant was issued against a German/Russian national, who was extradited from Germany to Belgium. This accomplice ran a website and provided one of the defendants with several young girls, which allowed the police to find victims from Latvia, Belarus and Ukraine during a search. The website operator had told this defendant that he had an intermediary in every country who sought out and recruited young girls for him, whom he then placed in clubs.

c) Victims

The majority of victims were young 18-year-old girls. They were exposed to serious acts of violence and were offered on the internet through erotic dating sites and escort agencies.

It was mainly Latvian girls who were lured to the Netherlands to prostitute themselves. Some of them were informed in advance, others not. They were threatened and beaten and had to hand over at least half of their income. The majority of these young girls were young adults who had only just turned 18 or 19. One of the victims was unwittingly infected by HIV by a client. The victims were obliged to carry out any sexual act that was asked of them. They were scared of their exploiters, who actively took advantage of this fear. The defendants also had Belgian women working for them in prostitution through escort agencies, but they didn't use violence on them. They also received the money that they had been promised. These young Belgian girls weren't exploited and weren't considered as victims of human trafficking.

One pregnant Latvian woman told the police: "We were threatened and beaten, S. (the main defendant) showed us a gun (a pistol) and a knife, which he threw on the table. He also showed straps which he used to tie people up, he wound one around his hand, pulled it taut and said that it was used to tie around the necks of people who don't want to talk. S. also took our money. He hit all three of us. I was pregnant and I tried to protect my stomach".

One of the young Belgian girls gave evidence concerning the exploitation of the young Latvian girls: "The Latvian girls weren't allowed to talk and had to be available all the time. He (the main defendant) knew very well that it was more difficult to control a Belgian girl than a Latvian girl. According to him, he had nothing but problems with the Belgian girls".

Victim status

The victims were from EU countries (Latvia, Hungary, Romania and the Netherlands) and neighbouring countries (Belarus, Ukraine). They didn't opt for victim status²⁹⁷. When they were intercepted, they received an order to leave the territory with no mention of the status of victim of human trafficking. In the beginning, owing to their fear, the victims stated that they were well treated and that they could keep half of their income. It was only much later that the judge contacted the reception centres specialising in victims of human trafficking, when the victims had returned to their country of origin.

Child victims

One of the minors had been brought from Latvia to the Netherlands, to supposedly work as a nanny. As soon as she arrived, they obliged her to prostitute herself. She was regularly taken to Belgian clients. She had just turned 16 when she arrived in the Netherlands.

One of the Belgian Victims raised the alarm on the situation: "I'm 18 years old and my friend 17, she's foreign and doesn't speak our language. I'm of Belgian origin. A few weeks ago, we met a man over the internet... He offered us a job as private escorts in the centre of Antwerp. After we met him, we began work immediately as escort girls. At the moment, there are still several girls... We want to stop as soon as possible but we can't stop or leave just like that. He threatens us in all sorts of ways, he blackmails us with photos

²⁹⁷ This part, Chapter 3, point 1.2.

of us naked or in underwear. My friend and I are scared. Here's the address where this is happening: ...We're begging you to come and help us".

A young Dutch girl was recruited and made to work for Dutch and Belgian clients when she was just 17 years old. In the Netherlands, the Youth Care Service issued a missing person's notice for her in April 2010.

1.1.4. Romanian Roma network in Liège

In this case concerning acts which took place in Liège in 2010, a young 21-year-old Romanian woman was sexually exploited by a group of Roma perpetrators²⁹⁸.

This case was tried by Liège Criminal Court on 27 March 2013²⁹⁹, and then by the Court of Appeal on 4 November 2013³⁰⁰. The victim didn't file a civil suit.

a) Opening the case

The local police was notified of a young girl crying in the street, whom they intercepted. The young Romanian girl had escaped from a hotel where she was forced to prostitute herself. She had no identity papers on her.

The victim made a statement directly to the police. This served as a basis to begin the case and was supported during the investigation by the objective evidence given by a hotel receptionist, CCTV images, the victim's mobile phone and the defendants' contradictory statements.

b) Victim's statement

In Romania, the victim was offered a job in a bar or in a restaurant. She arrived in Belgium by car in February 2010. Her identity papers were taken away from her. On the way, she was raped a first time in a car park in Austria.

In Belgium, she was sold for EUR 1,000 to the head of a Roma criminal organisation to work as a prostitute. She refused and was raped and beaten several times. She was given a choice: either she prostituted herself, or she reimbursed her EUR 1,000 debt on the spot. She was put to work in a hotel in Brussels and was given a mobile phone so that she could be contacted. She was also forced to have sex with one of the members of the gang.

c) Victim status

The victim obtained the status of victim of human trafficking and required psychological help. On 12 May 2010, she returned to Romania on a voluntary basis. Sürya, the centre specialising in the reception of victims of human trafficking, found her a lawyer but all contact with the victim was lost in Romania.

1.2. Labour exploitation

1.2.1. Riding school in Turnhout

The acts relating to this case in Turnhout date back to 2007 and 2008, and involve a Brazilian victim who was exploited in a riding school. The defendants were a Belgian businessman and his British wife, a lawyer, who managed a set-up together including off-shore companies among other things. The company that ran the riding school went bankrupt in the meantime. The immovable property linked to the riding school is still in the hands of a real estate company belonging to the defendants.

This case was finally tried³⁰¹ on 19 November 2012 by Turnhout Criminal Court and on 23 April 2014 by Antwerp Court of Appeal³⁰². The court acquitted the two defendants, although they were later sentenced by the Court of Appeal for human trafficking³⁰³.

²⁹⁸ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, p. 68.

²⁹⁹ Liège Crim. Court, 27 March 2013, 8th ch. (available at www.myria.be).

³⁰⁰ Liège, 4 November 2013, 18th ch.

³⁰¹ Trafficking and Smuggling in Human Beings, Annual Report 2008, *Enlisting people and resources to combat the phenomenon*, p. 112.

³⁰² Antwerp, 23 April 2014, 14th ch. (available at www.myria.be).

³⁰³ Human Trafficking, Annual Report 2013, *Building bridges*, p. 113.

a) Opening the case

The investigation was initiated in February 2008 on the basis of a victim statement given to the federal police in Turnhout. The investigation was conducted by the public prosecutor's office in Turnhout. An investigating judge wasn't appointed.

In December 2007, the local police, the Social Legislation Inspectorate and the services of the Ministry of the Flemish Community already inspected the riding school in question, but didn't observe any evidence of human trafficking at the time. Nevertheless, a Brazilian family was illegally employed there. The family was intercepted, then repatriated on the orders of the Immigration Office (IO).

b) Investigation

In April 2008, the local and federal police, as well as the Social Inspectorate and the Social Legislation Inspectorate carried out a new multidisciplinary inspection in different riding schools, including that of the defendants. Several false identity cards were found, including a Brazilian identity card with a photo of the Brazilian victim who had already given statements to the police. The investigators also found another identity card, which had already been used six times by Brazilian workers without papers.

Furthermore, witnesses were heard, who confirmed that the victim was paid very little, or not at all, and that her passport had been taken away from her.

The financial investigation revealed that the exploitation of the victim had benefited the defendants. Their patrimonial benefit was estimated at EUR 20,112.

c) Victim's statement

The Brazilian victim had been living in Belgium since 2005. She arrived in Belgium from Brazil with a tourist visa to work for friends as a home help. After a year and a half, she ended her contract for unknown reasons and found a job as a groom at the riding school where she was subsequently exploited.

In the beginning, she earned EUR 800 a month for six days work a week, and 10-hour days. She had to muck out the stalls and take care of the horses. She was housed and fed at the riding school, which meant she was available at all times. She was only paid her full salary the first month. After that, the defendant only paid her in part, amounting to EUR 200 to 275 a month. The defendant justified this to the victim by claiming that he had to use what was left of her salary to regularise her residency situation. She subsequently had to give him her passport so that he could get everything in order. Since she was badly paid, she wanted to leave. When she wanted to recuperate her passport, the defendants refused. Thanks to a customer at the riding school, the victim was able to leave her job and go to PAG-ASA.

d) Victim status

The victim was informed of the possibility of acquiring victim status within the framework of the application of the period of reflection³⁰⁴.

The victim went to PAG-ASA, the specialised reception centre for victims of human trafficking, on 25 January 2008. After interviewing her, they received her as a victim. PAG-ASA directly contacted the Immigration Office (IO). In turn, the IO issued an order to leave the territory within 45 days, corresponding to the period of reflection, so that the victim had enough time to reflect and decide whether or not to make a statement.

On 12 February 2008, PAG-ASA informed the federal police in Turnhout, upon the victim's request, that a potential victim of human trafficking had come to them. The police took the victim's statement with the help of an interpreter. They gave the reference judge the necessary explanation over the phone and received the authorisation to grant the victim the status of victim of human trafficking.

³⁰⁴ This part, Chapter 3, point 1.2.

1.2.2. Case concerning the construction industry

The acts concerning this case in Charleroi took place between 2008 and 2010, and involved several Chinese workers who were exploited in the construction industry³⁰⁵. They had to renovate Chinese restaurants and adjacent properties. The main Chinese defendant and his daughter were sentenced for trafficking of human beings but also for smuggling of human beings.

This case was tried by Charleroi Criminal Court³⁰⁶. What is interesting here is that the court stressed the fact that even though the wages of certain workers weren't bad, their work conditions certainly were. It emerged from the case that they had to work and live on site in poor conditions in order to lay claim to this salary. The three civil parties received EUR 250, 1,000 and 5,000 respectively as material and non-material damages³⁰⁷.

a) Opening the case

Between 2008 and 2010, many inspections were carried out in close succession in the beginning by the police and the inspection services, spread over different regions including Ostend, Ghent and Tournai. During one of these inspections in Ostend, the police noted that one of the interested parties had already appeared during a negative inspection in Charleroi. They got in touch with the federal police in Charleroi and learnt that a judicial investigation against this person was in progress. The labour prosecutor in Charleroi asked for the Ostend file to be transferred and to centralise all the relevant files concerning the interested party in Charleroi. He then asked the police and inspection services to carry out extra multidisciplinary inspections on other building sites of the companies of the interested party, who was to become the main defendant in this case.

³⁰⁵ This part, Chapter 1, point 2.4.

³⁰⁶ Charleroi Crim. Court, 7 June 2013, 7th ch. (final). This decision is available at www.myria.be.

³⁰⁷ Human Trafficking, Annual Report 2013, *Building bridges*, p. 115.

b) Investigation

It emerged from the Social Inspectorate's reports that the main defendant had a man of straw at the head of his construction company. Together they had set up a construction firm. This man of straw of Belgian nationality also had the necessary papers to have access to the contracting profession.

The main defendant recruited clients in Chinese circles through advertisements published in a well-known Chinese newspaper. Afterwards, his clients expressed their extreme discontent concerning the services provided. The main defendant used poor quality Chinese materials which he imported and which didn't meet EU standards. Some subcontractors even refused to use them during the works.

According to the evidence collected during the financial investigation, it also emerged that the main defendant was cheating by establishing false invoices and investing his criminal proceeds in real estate in Italy.

c) Victims

During checks made by the police and inspection services, 15 Chinese victims were intercepted, the majority of whom were here illegally. Some of the victims had fake Spanish or Italian residence permits. One of the victims had a fake passport which, according to their statement, had been issued by the Chinese embassy in Milan.

Some of the victims put a great deal of trust in the main defendant. They came from the same region in China and spoke the same dialect. The main defendant took advantage of this and managed to manipulate them and keep a grip on them³⁰⁸.

All the victims' wages were undeclared and paid in cash. Their living and work conditions were inhuman. They lived on the building site in precarious conditions. There wasn't a bathroom or heating, even in winter. The

³⁰⁸ This part, Chapter 2, point 1.2.

building site didn't meet any of the compulsory safety standards. They weren't provided with any basic safety equipment, such safety shoes or protective clothing.

Victim statement

Several of the victims had to work to reimburse their debts³⁰⁹. At the end of their journey, a person who was accompanying them dropped them off at the building site, where they received orders to perform all the tasks they were given.

One of the victims stated that they had to pay EUR 18,000 for their journey. This amount was borrowed in full beforehand from moneylenders at a 10 % interest rate. They sent the money they earned to their family in China to reimburse the moneylenders. They had flown from China to France and had had their passport confiscated when they arrived. They were then transported from France to Belgium and ended up at a building site. They were offered board and lodging and started to work two days later. They had no idea for whom they were working. They did their work and were paid accordingly. Over a period of six months, they worked on three different building sites. They weren't able to give a name or say where they worked. They had been working on the last building site for a month for EUR 2 an hour. They worked twelve hours a day, seven days a week. They felt they had been completely hoodwinked because in China, they were told it was possible to earn EUR 10 an hour in Europe. They weren't interested in the status of victim of human trafficking, even after having received the brochure for victims and explanations translated by a Chinese interpreter. The victim received an order to leave the territory and was taken to the station.

Victim status

The majority of victims made relevant statements, but some of them refused to accept the status of victim of human

³⁰⁹ Human Trafficking, Annual Report 2013, *Building bridges*, p. 30.

trafficking because they still had blind faith in the Chinese main defendant³¹⁰. As for the victims who expressed an interest, they were taken care of and given the status of victim of human trafficking.

2. Smuggling in human beings

2.1. Albanian human smuggling network in Brussels

In this case of human smuggling in Brussels, which dates back to 2012 and 2013, an Albanian human smuggling network used different parking areas along the E40, in the direction of the Belgian coast, mainly to send Albanian nationals to the United Kingdom illegally. It should be noted that the Albanians³¹¹ had travelled legally to Belgium and that they were staying here legally, before being sent illegally to Britain to stay there illegally³¹². This case was tried by Brussels Criminal Court on 25 November 2013³¹³.

2.1.1. Criminal network

The smugglers ran a so-called travel agency for Albanian migrants. The main defendant had a network of contacts for smugglers in Albania and the United Kingdom. In Belgium, he also worked with an Iraqi / Kurdish human smuggling network, also providing migrants from the border regions between Indian and Pakistan, and Afghanistan and Iran. It emerged

³¹⁰ Part 2, Chapter 2, *Best practices and experiences*, point 1.2. and Human Trafficking, Annual Report 2013, *Building bridges*, pp. 34-35.

³¹¹ For more information on Albanian asylum seekers and refugees, see the annual report *Migration in figures and rights* 2015.

³¹² Bulletins of questions and written answers, *Parl. doc.*, Chamber, QRVA 54/026, 26 May 2015, pp. 192-195, available at the following link: www.lachambre.be/QRVA/pdf/54/54K0026.pdf. This answer was given by the State Secretary for Asylum Policy and Migration on the basis of data from the Immigration Office following a question concerning human smuggling interceptions during transit migration to another country. It should be noted that in 2013, of the 1,329 people intercepted, 151 were of Albanian nationality. In 2014, 1,891 people were intercepted, 155 of which were of Albanian nationality.

³¹³ Brussels Crim. Court, 25 November 2013, 51th ch. See also this part, Chapter 4, point 2.

from the phone taps that he had been exercising his “profession”, as he referred to it, for seven years already.

In Albania, the family members of the Albanian migrants contacted smugglers to organise illegal transportation from Belgium to the United Kingdom, for a sum ranging between EUR 3,000 and 3,500. The smuggling victims had to pay the sum to the brother of one of the defendants, a police officer in Tirana, before their departure.

The Albanians generally arrived in Belgium via Charleroi airport where they were met by smugglers and taken to small hotels. They were then entrusted to Kurdish smugglers, who took them to a parking area and put them in trucks. They were often refrigerated trucks. If there wasn't enough space in the trucks, the migrants had to go by twos into the boot of a car.

Guaranteed transport was also exceptionally organised between Belgium and the United Kingdom. In this case, the truck driver was aware of what was happening and the smuggling victims weren't transported in a refrigerated truck. The price for the guarantee ranged between EUR 5,000 and 5,500. The smuggling victims generally came from the border region between India and Pakistan and Afghanistan, and were above all supplied by Kurdish smugglers, who organised their journey.

2.1.2. Opening the case

The transport police were called on the night of 8 January 2013 to the Grand-Bigard parking area, along the E40, and intercepted three Albanians in a car there who, according to the phone evidence, had hidden people in a truck. Five Indians were extracted from a refrigerated truck which was alongside the car.

After analysing the three Albanians' mobile phones, the police found indications of human smuggling. The information from the federal police's centralised service concerning the transportation of human smuggling victims

involving Albanian smugglers in Waasmunster, Zeebrugge and Kalken obtained between December 2012 and January 2013, was later confirmed by these indications. During a more in-depth examination of the phone calls, several numbers with a link to acts of human smuggling within Albanian circles appeared.

2.1.3. Investigation

a) Phone taps

The data extracted from the phone taps provided sufficient evidence concerning the role of the main defendant in the human smuggling network and his international contacts. He took care of the financial aspect with the clients and the Kurdish smugglers.

Furthermore, the phone taps also helped to understand how the smugglers behaved with their “clients”. During their transportation to the United Kingdom, the smuggling victims had to destroy their passport. If they were intercepted by the police, they had to say they were minors. The phone taps also picked up several conversations during which the smuggling victims complained of the cold and lack of oxygen, water and food.

The smugglers knew their calls were tapped. They used codes and arranged to continue their conversation on Skype, which is more difficult to tap³¹⁴.

b) Financial investigation³¹⁵

An investigation into various foreign exchange offices revealed that between January 2012 and May 2013, sums of money were transferred on behalf of the smugglers. A number of these sums were formally linked to the transportation of smuggling victims. The majority of the amounts were intended for the main defendant.

The phone taps revealed his method. In several conversations, he asked his “clients” to

³¹⁴ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 59-60.

³¹⁵ This part, Chapter 3, point 2.4.; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56.

pay the amount owed to him to a Belgian account, in the name of another person: an accomplice or even “clients” who were staying in Brussels while awaiting their passage to the United Kingdom. These people then took out the money and gave it to the main defendant. This way, he didn’t leave any trace of his identity should the police services investigate Western Union. No transactions were registered in his name. No link could be established between him and these transfers. He also used this procedure to send money to members of his family or collaborators in Albania³¹⁶.

There investigators were therefore forced to conclude that they didn’t have sufficient information concerning the flows of dirty money since the investigations were only based on the names of known smugglers.

2.1.4. Smuggling victims

Transportation in refrigerated trucks is extremely dangerous and very uncomfortable. Among the victims were unaccompanied foreign minors and families with young children who were already in an even more vulnerable position. In addition, they were freezing. When they sent text messages to inform the defendants, the latter said they were “over-sensitive” or replied that “you knew what to expect”!

a) Smuggling families

Phone taps revealed various transportations of families with young children and the way in which smugglers talked about them, as though they were goods. One smuggler called the defendant to ask if he could transport a family composed of a father, a mother and two children aged seven and eight. He answered that it wasn’t a problem but that the family would have to “take sleeping pills”.

In Belgium, there were also several interceptions of mothers with young children who subsequently received an order to leave

the territory³¹⁷. In Termonde, at the Kalken parking area along the E17, nine victims were extracted from a refrigerated truck, including an Albanian mother with her two children aged six and seven.

In France, an Albanian mother and her three children aged three, six and seven were intercepted on two successive occasions. The first time on 18 February 2013, when workers from a port company in Ernee (France) discovered the presence of a group of smuggling victims composed of two Iranians and nine Albanians, and called the police. A truck driver had stopped on the hard shoulder of the E17 and it was probably at this moment that the smuggling victims were hoisted into his truck’s cargo space. On 11 March 2013, the mother and her three children, accompanied by other members of the same group of smuggled victims, were intercepted a second time by the French police at Coquelles (France). This time, she had slipped into a refrigerated truck; there were six Albanian victims in total.

b) Unaccompanied foreign minor³¹⁸

During an interception in Zeebrugge, three people were extracted from a closed refrigerated container. The workers of a port firm discovered three smuggling victims when a refrigerated container containing food was unloaded, and called the maritime police in Zeebrugge. The victims were comprised of one Albanian, one Pakistani and an 11-year-old Afghan boy who had already been entrusted to the Guardianship Service, but had escaped from the youth centre where he had been placed. The police contacted the Immigration Office and the Guardianship Service came to recuperate the unaccompanied minor again. According to the file, however, the young boy escaped again two days later.

³¹⁶ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 24.

³¹⁷ This part, Chapter 3, point 2.2.

³¹⁸ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 65-68.

2.2. Indian / Pakistani human smuggling network in Brussels

The acts in this human smuggling case took place in Brussels between August 2011 and January 2012. They mostly involved an Indian / Pakistani network, which smuggled Indian victims to the United Kingdom. This case was tried by the Criminal Court³¹⁹ and the Court of Appeal in Brussels³²⁰.

2.2.1. Criminal network

An Indian/Pakistani human smuggling network was operating at different parking areas along the E40 in the direction of the Belgian coast. These parking areas were the scene of competition between Indian/Pakistani smugglers and Kurdish smugglers³²¹. The latter considered these parking areas as their territory and made them available to other smugglers in return for payment. Various Indian/Pakistani smugglers refused to pay which, in this case, led to major clashes in these parking areas.

The head of the Indian/Pakistani smugglers used “smuggling couriers”³²² who carried out all sorts of tasks for the smugglers. They gathered the clients in parking areas and helped to haul them into trucks or hide them in refrigerated trucks. These couriers are also usually future “clients” who receive payment for their services which is then used for their own transport. This is a form of illegal transportation at a reduced price or a free extra attempt.

The journey started in India. The clients took a plane to Moscow. They then had to take a car and continue on foot to reach the EU border. They were then taken by car or truck to Italy. They travelled from Italy to Brussels by car or by train. The final destination was usually the

United Kingdom, but it emerged from the phone taps that dozens of requests also related to journeys to Canada.

a) Sikh temple

A recurring detail in the Indian/Pakistani smuggling cases is the link with the Sikh temple in Vilvoorde, an important place for the Indian community. During the day, the worshippers can go there to eat, drink, wash and rest. Hence, it attracts Indians staying illegally or in transit. Because of the temple here, there are more Indians in Vilvoorde than in any other town. Subsequently, the presence of smuggling victims during the day is less noticeable.

This case revealed that the smugglers also made use of the facilities at the Sikh temple in Vilvoorde. The temple was a cheaper and more discreet safe house for the smuggling victims. Some of the defendants worked in the kitchen there. Several illegal immigrants who were attempting to reach the United Kingdom stayed at the temple and in the surrounding area. At night, the smugglers used the empty warehouses behind the temple as a safe house for the smuggling victims.

b) Criminal infiltration through victim status

One of the main defendants infiltrated the PAG-ASA reception centre through their status as a victim of human trafficking. They were placed there between December 2011 and January 2012 and during that time, their phone was tapped³²³. In May 2011, the Indian/Pakistani smugglers had placed him under a train going to the United Kingdom, which is a highly dangerous process. He was intercepted at Calais and obtained the status of victim.

It emerged from the phone taps that he was already in the process of organising smuggling activities whilst he was at the PAG-ASA reception centre and was spying on staff to

³¹⁹ Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, p. 80; Brussels Crim. Court, 11 September 2012, 51th ch., available at www.myria.be.

³²⁰ Brussels, 30 January 2013, 13th ch.

³²¹ See also this chapter, point 2.4.1. d.

³²² See also this chapter, point 2.4.1. c.

³²³ This part, Chapter 3, point 2.1.; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 33-34.

see what they were doing. Owing to his contact with the police as an alleged victim, he also knew that the police services were in the process of investigating Indian/Pakistani smugglers of human beings. He gave the names of the smugglers whose phones were being tapped over the phone.

The defendant was one of the two leaders of the smuggling network. It emerged from the phone taps that he was in charge of the finances. He was kept informed of the success or failure of the attempts to transport victims of human smuggling and he gave tasks to the smuggling couriers.

2.2.2. Opening the case

The case was opened on 29 August 2011, during the transport police's interception of two Indian/Pakistani men who had already been intercepted in the past and who had received an order to leave the territory. Their phone numbers were available, allowing calls to be traced³²⁴ on the basis of indications of human smuggling, in order to identify their contacts. In the meantime, it was possible to link a series of reports relating to interceptions of smuggling victims with the same human smuggling network. On the basis of all this information, a few new inquiries were requested, which revealed the links between phone numbers, events and people in order to identify the members of the human smuggling organisation. Phone taps were then carried out.

2.2.3. Investigation

a) Phone taps³²⁵

The data extracted from the phone taps served as a basis and provided evidence allowing the exact role of each defendant to be determined. Furthermore, the phone taps

revealed the precarious situation in which the transportation of smuggling victims was sometimes carried out and the way in which the payments were made.

b) Financial investigation³²⁶

Transportation was paid for through the *hawala* parallel banking system. According to this system, someone in the country of origin acts as guarantor for a *hawala* banker in the destination country, who proceeds with the payment³²⁷.

The *hawala* system is a parallel banking system allowing a sum of money to be transferred from one country to another without leaving any trace of the transaction. The system is completely anonymous. Here is how it works. The money is given to a *hawala* banker in Belgium (who generally has links with a night shop) for a payee abroad. The banker contacts a colleague in the beneficiary's region, in the destination country. The sender gives the transaction reference to the beneficiary who simply has to go to the *hawala* banker in the destination country to recuperate the funds. In reality, the money doesn't leave Belgium because the system works according to a credit system. The sender's banker keeps the money and the banker abroad gives the money in cash to the beneficiary. However, this banker notes that the banker in Belgium owes him money. The next time someone from this country wants to transfer money to Belgium, it will be deducted from this credit. Of course, a commission is retained every time to cover the services provided.

After the transportation of a smuggling courier to the United Kingdom, organised within the framework of the same case, his father assumed an important role in the United Kingdom: he took care of the smuggling victims' financial guarantees through the *hawala* banking system. It

³²⁴ Within the framework of this measure, the aim is to find contact details only, contrary to phone taps where the content of the conversations is recorded.

³²⁵ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 59-60; Trafficking and Smuggling in Human Beings, Annual Report 2009, *In a haze of legality*, p. 64.

³²⁶ This part, Chapter 3, point 2.4.; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56.

³²⁷ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 23.

emerged from the phone taps that the father maintained contact with the clients' families who remained in the country of origin. Their family had to give a guarantee, proving that it was capable of paying the journey. Often, it either had to give cash, or prove that the money had indeed been paid. The applicant was then under guarantee and their transportation could be organised. Once the person had been successfully transported and arrived in the agreed country of destination, the guarantor paid the sum to the smugglers through a *hawala* banker. It was the main defendant, infiltrated under the cover of victim status, who went to get the money from the local *hawala* Belgian banker.

2.2.4. Smuggling victims

The majority of transportations took place in refrigerated trucks, which is particularly dangerous. This is explained in a police report: "The refrigerated trucks are equipped with a hermetically sealed interior space which allows the air to stay cold. Considering the large size of this cooling installation, the clients often don't realise they are entering a hermetic space. After a while (depending on the size of the truck, the number of people, the load, the hermetic nature of the truck), a lack of oxygen may occur, endangering the physical integrity of the persons present".

The majority of smuggling victims prefer this type of transportation because it offers a better chance of success. Some, quite rightly, are afraid and refuse. In this case, reference is made to a transport company that equipped its refrigerated trucks with special security locks to prevent unauthorised third parties from entering them. This process helps rule out these perilous transportations.

In this case, the transportations involved several unaccompanied minors and families with young children. However, they weren't transported in refrigerated trucks.

a) *Smuggling families*³²⁸

Phone taps revealed that on 9 December 2011, two smuggling couriers had been illegally transported to the United Kingdom, together with a family, from the Drongen parking area along the E40. In the phone conversations, the courier explained that the family had started making a noise, which caused the driver to call the police.

b) *Unaccompanied minors*³²⁹

Within the framework of various transportations of smuggling victims, two 17-year-old Iranians and an Indian/Pakistani youth were intercepted by the police. They were handed over to the Guardianship Service through the Immigration Office.

The Indian/Pakistani youth explained his story in his statement. He lived in a small village just outside a town. At the end of 2010, he wanted to go to the United Kingdom to find a job. This was where part of his family lived. The smugglers asked for EUR 8,000 per transportation, which was to be paid by his family in the country of origin. He took a plane to Moscow, accompanied by a smuggler who confiscated his passport upon arrival. In Moscow, he was locked up for several days in the company of eight boys. On the day of their departure, they first walked a long way, crossing mountains and forests to cross over into Slovakia where they were taken to Italy on board a large truck. They were abandoned by the smuggler in Italy. With the help of the other boys, the teenager contacted a Pakistani smuggler in Italy, who agreed to drive him to Brussels by taxi for EUR 1,500. This is where he met Sikhs from the border between India and Pakistan who took him to the Sikh temple in Vilvoorde.

³²⁸ This part, Chapter 3, point 2.2.

³²⁹ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 65-68.

2.3. Iraqi/Kurdish human smuggling network in Ghent

In this case of human smuggling in Ghent, where the acts took place in 2012 and 2013, an Iraqi/Kurdish network was predominantly responsible for smuggling Kurdish victims to the United Kingdom. The case was dealt with by Ghent Criminal Court³³⁰. The case was opened following the interception at sea of illegal immigrants on a vessel flying the Danish flag, linking Ghent to Göteborg. Contrary to the defendants' lawyer, the court concluded that Belgian law applied given that the offence was committed in Ghent.

2.3.1. Criminal network

The network of Iraqi/Kurdish smugglers relied on different itineraries to organise the illegal transportations. The smuggling victims came from Iraq and Iran and were taken to Belgium and the Netherlands via Turkey and Greece. An alternative itinerary brought them to Belgium via Morocco. The network required false papers. In Belgium, the smugglers used parking areas along the motorway to haul their clients into trucks bound for the United Kingdom via Calais. Kurdish smuggling networks dominate the road leading to Calais, as well as the parking areas. There is an alternative itinerary via Rotterdam, which requires the complicity of a Dutch bus driver. Clients were also taken to Scandinavia via Calais. Contacts were also established with the United Kingdom and negotiations carried out concerning potential new itineraries for smuggling human beings.

This network of smugglers operated on an international level and had different contacts and smugglers abroad, including the United Kingdom, the Netherlands, France, Greece, Turkey, Iran, Iraq, etc. It was a British criminal organisation, which couldn't be identified in this case, that was at the head of the human smuggling network. It was only possible to break up the Belgian part of the Kurdish

human smuggling network. It was part of a criminal organisation that was also involved in drugs and arms trafficking.

2.3.2. Smuggling with guarantee

The smugglers offered their clients who wanted to go to the United Kingdom two options:

- *fa*, i.e. regular transport, for which the smugglers offered no guarantee of success. The price oscillated between EUR 1,500 and 2,500, to be paid in advance: either in cash, or by giving cash on deposit in Afghanistan, Greece or the United Kingdom, or through a Western Union transfer.
- transport with guarantee, meaning that the victim would be certain of arriving alive and well in the United Kingdom. In this case, the driver was aware of the clients present in his vehicle. This second option was the one most recommended by the defendants. The cost varied between EUR 5,000 and 6,000 to be paid on arrival at the destination. The full sum was given on deposit at the foreign exchange office of a hawala banker or a person of trust in London. Sometimes, part of it was paid in cash beforehand and the rest upon arrival.

The human smuggling network also offered smuggling options to countries further afield. For this purpose, they acquired fake papers which they gave to their clients. The phone taps revealed that they had found a supplier of fake Dutch passports who asked for EUR 500 per document, but the quality left a lot to be desired. With a passport such as this, the smuggling victim would find it easier to buy a plane ticket for the United Kingdom. According to the phone taps, a smuggler had bought a fake passport for EUR 500 and had sold it on for EUR 1,700 to the client who complained of the poor quality of the passport. The smugglers sold on a fake Bulgarian passport, or one from another country, for a sum varying between EUR 1,500 and 2,000. In their conversations, they also

³³⁰ Ghent Crim. Court, 19 June 2013 (final). See also this part, Chapter 4, point 2.

claimed that they could easily obtain a visa for Morocco. The cost of a Schengen visa from Iraq cost USD 18,000 dollars and a journey from Italy to Belgium cost EUR 2,000 more (EUR 4,000 more if the destination was the United Kingdom).

2.3.3. Opening the case

In January 2012, two stowaways were discovered on board a ship that was going to Göteborg (Sweden) and not the United Kingdom. They were discovered by two sailors who heard a noise coming from a mobile home registered in England. The two people were locked in a mobile home, which couldn't open from the inside. They were handed over to the maritime police in Ghent.

Based on the victims' statements and the phone numbers saved in the stowaways' mobile phones, a judicial investigation was opened. The main defendant was quickly identified, which led to a wide-scale phone investigation.

2.3.4. Investigation

a) Phone taps

The data from the phone taps revealed the dishonest role of an interpreter who, upon the smugglers' request, manipulated the interviews of smuggling victims organised by the Immigration Office³³¹.

The human smuggling organisation wasn't only active in human smuggling. It emerged from the conversations that the main defendant was involved in drug smuggling, which led him to collaborate with another Kurdish/Turkish/Iraqi criminal organisation active in arms smuggling and drug and human smuggling in Belgium, the Netherlands and France. According to the French police, this organisation played a key role in the smuggling of human beings in Calais and Dunkerque.

The smugglers were also in contact with the Kurdish armed resistance organisation, the PKK, and referred to the transportation of PKK clients in their conversations, in collaboration with the PKK; "A smuggler also thought of sending this young person [a client] with the PKK group. X. [main defendant] explained that they had agreed on a price... joining up with the PKK isn't possible seeing as he has to stay there for a week or two".

b) Financial investigation³³²

The phone taps also revealed several concrete financial agreements between the smugglers. The person executing the human smuggling operation was clearly the one receiving the majority of the income. In a conversation with the main defendant, one of the smugglers referred to their agreement and announced that he could "organise transportation for EUR 2,200 instead of EUR 2,500, from which he would retain EUR 1,700 [because he would also proceed with the execution] with EUR 500 going to X [the main defendant]".

The *hawala* bankers played an important role in the background regarding the financial transactions of the human smuggling network. A defendant ran a fruit shop where a lot of liquid assets circulated. He used his shop to finance the *hawala* system. It emerged from a conversation with the main defendant that "someone was going to bring GBP 15,000 to the shop.

2.3.5. Smuggling victims

Even if only two stowaways were intercepted, the information provided by the phone taps clearly revealed the different types of illegal transportation used. There were both adults and minors among the victims (men or women). The smugglers used ordinary trucks, refrigerated trucks and passenger vehicles.

One of the two stowaways stated that he had paid EUR 1,500 for his journey to the United Kingdom. In Pakistan, he had already paid EUR

³³¹ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 112 and 146.

³³² This part, Chapter 3, point 2.4.; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56.

6,000 for a journey to Europe. He took a plane from Peshawar to Karachi (Pakistan) and then a bus to Gawadar, another town in Pakistan. He then went to Turkey and Greece in various cars and on foot, via Iran. In Greece, the smugglers hid him in a truck going to Romania. He was intercepted by the police.

He requested asylum in Romania and stayed there for 15 months. Like the others, he received a purchase offer for the status of refugee for the sum of EUR 8,000. He was supposed to pay this amount to the Romanian immigration office. He refused but another person who accepted obtained refugee status this way.

In Romania, he was asked to go to a park in Brussels, located in front of the Immigration Office, where Kurdish and Afghan smugglers recruit clients for illegal entry into the United Kingdom. When he arrived in Belgium, he paid the sum of EUR 1,500 to these Kurdish smugglers to be taken illegally to the United Kingdom. Unfortunately, he was put in the wrong lorry and found himself on a boat for Sweden. After he was intercepted, he received an order to leave the territory.

a) Victim status

The other intercepted stowaway gave the police relevant information, such as the smugglers' phone numbers, and obtained the status of victim of human trafficking³³³. As regards his journey, he told the investigators that he had paid EUR 10,000 in Iran for his journey to the United Kingdom. When he left, he was hidden in the cargo space of a lorry going to Istanbul. He was met here by a Turkish smuggler and stayed a month in a safe house. From Turkey, he travelled in the cargo spaces of different trucks to get to Europe. The drivers were aware and even coordinated the transfer from one truck to another. At the end, he was left to his fate in Zeebrugge. He explained that after wandering around for a long time, he managed to contact Kurdish smugglers to organise a journey to the United

Kingdom, but he was hidden in a truck going to Sweden by mistake.

b) Children

The phone taps proved that there were negotiations during the journeys involving children. In a conversation on this subject between the main defendant and a smuggler, the latter explained: "X [smuggler] mentioned a road in the mountains in Kurdistan, to Iraq and Belgium and said to use cars going via Saudi Arabia and Morocco. When he was asked if children could make the journey, Y [the main defendant] explained that there was no problem".

2.4. Afghan human smuggling network in Brussels

In this Belgian human smuggling case, the acts date back to 2012. An Afghan network was mainly responsible for the smuggling of Afghan, Iranian and Pakistani victims to the United Kingdom and Scandinavia. The case was tried by Brussels Criminal Court³³⁴ and Court of Appeal³³⁵.

2.4.1. Criminal network

An Afghan human smuggling network was operating its human smuggling activities at various parking areas along the E40, in the direction of the Belgian coast. The clients were taken by the smugglers from Calais (France) to the Belgian parking areas so they could be hidden in trucks going to the coast and the United Kingdom.

The network was part of an international human smuggling organisation in charge of the supply routes for clients from Afghanistan and the surrounding countries to Europe. The route began in Afghanistan and crossed Iran, Turkey, Greece and Italy over land. The journey lasted five to six days. The journey

³³³ This part, Chapter 3, point 2.1.

³³⁴ Brussels Crim. Court, 7 August 2013, 51th ch.

³³⁵ Brussels, 12 February 2014, 13th ch.

from Afghanistan to Greece cost EUR 3,000, and EUR 4,500 from Greece to Italy.

In Italy, the clients had to contact the human smuggling network active in Belgium, which gave instructions on how to get to Belgium. Negotiations also took place concerning the extra travelling costs. In Brussels, they stayed in a safe house and were then gathered together in a park in an area surrounding the Drongen parking area along the E40.

The human smuggling network was a criminal organisation composed of a chief smuggler and two co-leaders. The trio had escaped from France where it was a suspect in various human smuggling cases. The leader had worked in France for a Kurdish human smuggling organisation and wasn't afraid to use violence. The trio carried out their activities like a true business unit and ensured the international supply of human smuggling victims. It was in contact with service providers and smugglers in Italy, France, Greece, Russia, Afghanistan, Iraq, Iran, Pakistan and the United Kingdom. In Afghanistan, these service providers were, for instance, able to provide tourist visas for Turkey or fake Italian passports. They sometimes collaborated according to exclusivity clauses. One of the co-leaders was only arrested later in Italy on the basis of an international arrest warrant and extradited to Belgium.

a) Power in the country of origin

The chief Afghan smuggler had firm headquarters in Afghanistan. He was a sergeant in the Afghan army in 2007 but he owed his prestige to his father, a general with a high position in the Afghan community. His father even played an important role in the organisation of human smuggling by laundering his son's dirty money³³⁶. He also organised for the family members of clients who hadn't paid or hadn't paid enough to be beaten up or threatened. No-one dared to

turn against them, not even the other defendants.

The smuggling of human beings is apparently deeply rooted in the Afghan community. The phone taps revealed that an Afghan police officer had taken advantage of his position to intercede in favour of his son, a client, so that he could benefit from a reduction. He didn't want to pay the smugglers because his son didn't reach the right destination and called the chief smuggler. "The client's father told the chief smuggler that he was a police officer. The smuggler told him that the rate was normally EUR 2,500 but that he was prepared to lower it to EUR 1,100. His son had been intercepted by the French police during his first journey. The second time it would work". According to the phone taps, the son of an Afghan colonel was also discovered.

b) Interpreter³³⁷

A defendant worked as an interpreter for the Commissioner General for Refugees and Stateless Persons and he was given three assignments every month. In the past, he worked as an interpreter in Afghanistan within the framework of an international peacekeeping mission and for the Canadian Ministry of Defence in Afghanistan. According to his statement, he also acted as interpreter for the personal security of former President Karzai who took refuge in the West. In January 2013, he started to work for the American army, at one of its military bases in Germany.

This defendant lived in the Afghan chief smuggler's house and was regularly referred to in the phone taps. His name also appeared in a case in Hasselt. An investigation revealed that in April 2012, while he was working as an interpreter, he helped an Afghan citizen who was seeking asylum during his interview at the Immigration Office. He didn't properly translate what the applicant was saying and gave the appropriate answers.

³³⁶ This part, Chapter 3, point 2.4.

³³⁷ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 112 and 146.

The phone taps also revealed that one of their clients, an 18-year-old boy, had worked as an interpreter for the American army in Jalalabad.

c) *Freelance smuggling couriers*³³⁸

The chief smuggler used smuggling couriers, who were human smuggling victims who had failed to cross the channel, and were waiting for another attempt. Faced with an influx of clients, the chief smuggler was looking for new smuggling staff to help him organise the journey of clients from France to Belgium and to take them to the parking areas.

The smuggling couriers had to go and fetch the clients in France and drive them to the parking areas. They were very familiar with the itinerary and the potential problems on the way. By using these intermediaries, the smuggling leaders were able to elaborate a system reducing the likelihood of interception and risk for the smugglers. The smuggling couriers received payment in exchange, thus reducing the amount they had to pay later for their illegal transportation.

d) *Criminal territory: parking areas*³³⁹ *and forests*

The Drongen parking area, not far from Ghent, was the main meeting point where clients were hidden in trucks by the smugglers. According to the conversations from the phone taps, the clients first had to hide in “the room”, as the smugglers called it. It was a secluded cottage in ruins, located near the Drongen parking area along the E40. The cottage served as a reception area for the clients. The actual smugglers avoided the place. At the beginning of the journey, when the clients were put in the trucks, they had to go into the corn field nearby.

These parking areas were the battlefield of different smuggling networks. One of the co-

leaders of the Afghan human smuggling network considered the Drongen parking area as his territory. He worked in close collaboration with the chief Afghan smuggler with whom he had agreed on the rent to pay for using the car park. Other smugglers refused to pay their rent for the use of the parking area, which led to serious incidents and clashes involving firearms.

The forests of Saint-Omer, in the north of France, were also a meeting point for human smuggling network active in Calais. This place was the scene of a major influx of potential clients. The co-leader considered that the criminal territory situated in these forests was his territory. This situation led to serious incidents, involving the use of firearms, after which a rival gang of smugglers managed to take over the territory. The chief smuggler considered the recapture of this territory as a major priority and even saw an opportunity to extend his human smuggling activities in collaboration with his co-leaders. He acquired new weapons and managed to get rid of the other gang of smugglers. Afterwards, the human smuggling leaders used guards to protect their territory.

e) *Guaranteed transportation*

Alongside the regular illegal transportations, the network of smugglers also offered guaranteed transportation. The price of guaranteed transportation to the United Kingdom was between EUR 7,000 and 8,000. The network attached a great deal of importance to its reputation among its clients. This is what emerged on the subject from the phone taps: “The service with guarantee that we provide must be reliable, to avoid our name being tarnished”.

The guarantee implied that in case of a failed attempt, a new illegal transportation would be organised. However, they had their own definition of a failed attempt. Clients could only benefit from a new attempt if they were intercepted by the police before entering Britain. Once in Britain, they had to fend for themselves and were no longer the responsibility of the smugglers.

³³⁸ See also this chapter, 2.2.

³³⁹ Also see this part, external contribution: *Combating international smuggling*, at the end of Chapter 3 of this part.

The smugglers also offered guaranteed transportation to Scandinavia, the United States and Canada. For this purpose, they collaborated with other smugglers. They knew a smuggler in Belgium who organised guaranteed transportation by plane allowing Indians and Pakistanis to go to Canada, and who was looking for Afghan clients. The smugglers, who had to pay them EUR 6,500 euros for guaranteed transportation to Canada, charged the clients EUR 12,000. There was also the possibility of illegal transportation to Canada via Spain. In Spain, the clients had to get a fake passport through the smugglers' contact people, a process which could take from one week to one month.

2.4.2. Opening the case

This case was initiated on the basis of police information showing that a new Afghan human smuggling organisation had filled a hole in the criminal market³⁴⁰ after the legal dismantling of a Kurdish human smuggling organisation dealt with in the chapter on jurisprudence in this report³⁴¹.

A phone investigation was organised and a direct link was established between several police reports concerning interceptions of human smuggling victims. In fact, two illegal transportations were identified as having links with this new human smuggling organisation. After these events, the police discovered three phone numbers with a clear link to the new Afghan human smuggling organisation allowing phone taps to be set up.

2.4.3. Investigation

a) Phone taps

The chief smuggler understood that his phone was being tapped and acted very cautiously. When he was at a parking area, he usually used one of the other smugglers' mobile

phones or one of the clients'. During the operations, he left his mobile phone at home or he switched it off. This way, he prevented the police from detecting his phone or number at the places used to smuggle human beings. In their conversations, they arranged specific times to continue the conversation on Skype, because they knew this was difficult to tap³⁴². When something needed to be sorted out urgently, they said: "Go on Skype. Ok, I'll be there in five minutes".

The analysis of the phone taps provided sufficient evidence concerning the smugglers' dishonest activity, whose sole goal was to make a maximum profit. They were perfectly well informed of the Belgian regulations and of the policy in place concerning human smuggling. For instance, this is what emerged from the conversation between the smugglers recorded during the phone taps: "Why smuggle human beings via Belgium? If a client is intercepted while passing through Belgium, they will be released after half an hour (comment: through an order to leave the territory³⁴³). I sent them via Belgium because they'll have no problem if they are intercepted, nothing will happen other than they will arrive later. You understand?"

The smugglers were also perfectly aware of how the existing system for unaccompanied foreign minors worked. They happily exploited this information: "If they are intercepted, no problem, tell them they have to say they are minors. They will be taken to a reception centre. They will have to look for a station and then escape from the reception centre. You have to clearly make them understand".

It also emerged from the phone taps that, following a request, the Afghan smugglers had illegally transported an Al-Qaeda sympathiser

³⁴⁰ *Ibid.*

³⁴¹ See this part, Chapter 4, point 2 (gang of Indian smugglers in close collaboration with other networks of smugglers).

³⁴² Human Trafficking, Annual Report 2013, *Building bridges*, p. 60; also see the external contribution on human smuggling at the end of Chapter 3 in this part.

³⁴³ Part 2, Chapter 3, point 2.1.; Bulletin of written questions and answers, *Parl. Doc.*, Chamber, QRVA 54/026, 26 May 2015, pp. 192-195, available at the following link: www.lachambre.be/QRVA/pdf/54/54K0026.pdf.

to the United Kingdom, at the same time as a family, free of charge. They considered this as a form of charity.

b) Financial investigation³⁴⁴

The smuggling leader earned approximately EUR 10,000 a week from his activity as a human smuggler. This is what he said in one of the recorded conversations. He used a *hawala* banker in London to transfer this income to his parents in Kabul (Afghanistan) who took care of laundering the dirty money and investing it mainly in real estate. In addition, the chief smuggler said in the tapped conversations that he had between GBP 20,000 and 25,000 in the United Kingdom. He had just bought a car wash in Ostend for EUR 95,000. According to him, a car wash owner could easily get a residence permit: “You’ll be considered as somebody reliable”.

The illegal transportations brought in a great deal of money. It emerged from the conversations that the “passengers first had to agree before the journey was organised”. This meant that they had to pay for the transport first. They had to deposit the money with a trustworthy intermediary acting as a go-between for the smugglers and the clients. In general, this intermediary was a *hawala* banker. Once the journey was successfully completed, the smuggler received the money that had been placed in deposit.

For the underlying financial transactions between the smugglers, the smuggling leader used Western Union. To do this, he used the identity cards of several members of the organisation with residence permits who, thanks to their status (subsidiary protection or refugee), had the necessary documents. An implicated co-defendant stated: “X. [smuggling leader] sent me this text message. Seeing as X. didn’t have a residence permit, he asked for the money to be paid to me. I then received a text message with the details needed to take out the transferred money”.

2.4.4. Smuggling victims

The data from the phone taps and observations confirmed that the human smuggling network was highly active. Sometimes, 16 people were smuggled in a single night. Complete families, with children, pregnant women and numerous minors, were among the clients. For the transportation, the smugglers used regular trucks, with a tarpaulin, and luxury cars, but also refrigerated containers and freezers. The smugglers said they worked in a client-oriented manner, especially with the Afghan clients, ensuring they had decent accommodation in Brussels and with no recourse to violence.

In reality, the smugglers weren’t always concerned about their clients’ fate, especially if they weren’t of Afghan origin. It emerged from the phone taps that the smuggling victims regularly complained of being cold and hungry, and of the fact that they were left to their fate. This was also the case of a family. The smuggling leaders simply reacted by making fun of these people who found themselves in this dire situation.

a) Discrimination

The Afghan smugglers adopted a discriminatory attitude towards their clients. The price of transportation from Belgium to the United Kingdom was determined according to their clients’ ethnic background. The smuggling leader asked Vietnamese people to pay EUR 3,000, between EUR 2,000 and 2,500 for Iranians and EUR 1,500 for Indians and Pakistanis.

The amount paid by Afghans depended on their family situation and their ethnic origin. The Afghan smugglers were Pashtuns and they gave fellow Pashtuns favourable treatment. They had to pay the least and they travelled in a group. Hazaras, another Afghan ethnic group, weren’t accepted as clients as they were considered as unreliable, and the smugglers feared they wouldn’t pay.

³⁴⁴ Part 2, Chapter 3, point 2.4.; Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44-56.

Older clients also had to pay more as they were less mobile. For instance, a 60-year-old man had to pay the sum of EUR 2,500 for transport without guarantee to the United Kingdom. A journey with guarantee, meaning the driver was aware, cost somewhere between EUR 6,000 and 7,000.

b) Protection of young women and boys against rape

It emerged from the phone taps that attractive young women risked being raped during their journey. The Afghan smugglers adopted special measures to protect young Pashtun women. They used a male travel companion or had the women accompanied by male fellow citizens responsible for looking after them. The smuggling leader spoke about this in a specific case: "It's a young woman and it's not a good idea to come with the Punjabi (Sikhs from the border region between India and Pakistan). I spoke with them and they explained that they didn't want to take this young woman in order to avoid problems on the way. There are Kurdish smugglers on the border, and anything can happen with them". The smuggling leader replied that if a male travel companion was present, nothing would happen. He continued by adding that the next day, two young boys from Laghman (same region as the Pashtun woman) were coming. "I'll get her to come with them".

Young Iranian women in a similar situation didn't benefit from the same protection. On the contrary, it emerged from the phone taps that the smugglers even made inappropriate remarks about them and laughed about their dire situation.

On top of that, the case gave indications of sexual violence against young underage boys during their illegal journey. Several conversations from the phone taps confirmed this. In a conversation concerning an illegal transportation, the following conversation was recorded: "Four people, including two young boys, is there one we can screw? [...] They're average. Can we screw them or not?"

In a conversation between a smuggler and the smuggling leader, reference was made to an 11-year-old boy who was crying. The smuggling leader asked: "Ok, but he was crying, no-one screwed him did they?"

Apparently, the smuggling leader also organised a free trip to France for a minor, a young boy who would pay in kind. A fellow smuggler called the smuggling leader on 13 August 2012, telling him: "There are a few nice-looking boys and I can send them to you if you like". The smuggling leader replied: "Why not, use Skype to show them to me and there's one whose trip to France will be totally paid. Ok, give my number to one of these two minors, the one that looks the most 'expensive'".

c) Smuggling families³⁴⁵

The travel costs for a family were higher because the family had to leave and travel together. The risks were also much higher if there were children as they could be discovered if they started crying.

This was revealed at length in the phone taps. One smuggler talked about it with the smuggling leader: "What shall we do with the two-year-old? Should we ask the full price as well?" To which the smuggling leader replied: "You have to ask for more money because the child is too young. That's what usually happens. If the child cries, this will complicate things. We can give him sleeping pills".

During a conversation, they also mentioned the journey of a young woman who was about to give birth at any moment: "She's eight or nine months pregnant and asked for only her husband to be sent." The smuggling leader said: "Tell them it's better if she doesn't give birth here because it's more difficult with a newborn, ask them to leave straight away".

The smugglers showed no respect for human life. This is what they said about a baby and its mother: "One of the mothers has a three or

³⁴⁵ This part, Chapter 3, point 2.2.

four month old baby that cries all the time. Should I get rid of the baby in the forest? I'm going to tell her: go and get screwed by a black man you'll have another baby".

The police also intercepted families with children in the United Kingdom: one of the smuggling acts that led to the case being opened was the journey of an Iranian family (father, mother and two children). They were discovered on 3 January 2012 in a closed container in Purfleet, on the outskirts of London. The driver had stopped for a break in the Grand-Bigard parking area where the family had climbed into his truck.

d) Unaccompanied foreign minors³⁴⁶

In the recorded phone conversations, the smuggling leader bragged of the high number of underage clients. He managed to shift 12 in one night. They considered child smuggling as a lucrative business, with success guaranteed owing to their vulnerable position. It regularly emerged from the phone taps that there wouldn't be any problem in case of interception because they would be released.

Different child victims travelling alone were intercepted by the police and normally, they were reported to the Guardianship Service as unaccompanied foreign minors (UFM). The result of these various interceptions wasn't always clear because this information or data³⁴⁷ concerning the follow-up of the normal procedure wasn't always available.

One of the interceptions led to the opening of this case. On 8 December 2011, four smuggling victims, including a minor travelling alone, were placed in a closed container by the smugglers. The smuggling victims were at risk of suffocation and were discovered after one of them called for help.

At the beginning of July 2012, a nine-year-old Afghan boy was intercepted after falling ill on

board a boat. It emerged from the phone taps that he had been hidden, by the smugglers, with five Afghan men during the night of 3 July in a truck heading for the United Kingdom. They were put onto a boat heading for Sweden by mistake. The boat had been sailing for 35 hours and the boy was suffering from sea sickness, so the Afghans reported themselves to the crew. When they arrived in Gothenburg, the Swedish authorities sent them back to Belgium where the victims were intercepted on 7 July 2012 by the maritime police in Zeebrugge.

2.5. Asylum office case involving a Belgian lawyer

The case dates back to 2004 and went through a whole procedure. One of the defendants was a Belgian lawyer. Besides Myria, which was the Centre for Equal Opportunities and Opposition to Racism at the time, the Belgian Minister of the Interior also instituted civil proceedings. The case was tried by Brussels Criminal Court on 2 October 2013³⁴⁸. The Belgian lawyer was only sentenced for forgery and acquitted for acts of human smuggling.

This case is based on the television programme *Panorama*, broadcast by Vlaamse Radio Televisie (VRT) in April 2004. Following the programme, the Belgian courts began a criminal investigation against the Belgian lawyer in question. Following a search of the lawyer's home, the police found various files.

Using advertisements, a travel agency in Russia recruited possible migrants who wished to emigrate to Western Europe. The travel agency offered special courses for future asylum seekers and had organised a network of lawyers in the destination countries to support them. The travel agency promised a permanent residence permit and even work in the country of destination.

The advertisements were put up in highly frequented places or at events. In Russia, the

³⁴⁶ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 65-68.

³⁴⁷ See also part 1, external contribution "SOS child victims of human trafficking".

³⁴⁸ Brussels Crim. Court (FR), 2 October 2013, 54th ch. (final).

travel agency worked especially with banks. There was even a set of brochures in the entrance hall to banks explaining how to request asylum in each country. Different nationalities were therefore put on sale.

A Russian journalist, who had infiltrated the system, endeavoured to test it and presented herself as a possible migrant. She went through the whole process, up to the procedure to apply for asylum in Belgium. The requested price was EUR 2,500.

The travel agency explained to the applicant that in some Western European countries such as Belgium, she would benefit from a complete source of income, free access to education and medical care. After being granted refugee status, she would definitely be able to get a job. They young girls were told they would later have the possibility of working in a bar. Furthermore, collaboration with a contact person was organised in the destination country to help the applicant when applying for asylum. This contact person would put the applicants in contact with a lawyer in the destination country who was well accustomed to the procedure. The latter would invent an appropriate story for the applicants. It was explained to the applicant that in her application for asylum, she had to state that she and her family had been threatened and beaten and that the police refused to protect them.

The travel agency worked in close collaboration with a company that assured applicants that a residence permit for Belgium could be quickly obtained. When the applicant went to this company to get information, it assured her that they had excellent relations with the Belgian embassy and that they could obtain a tourist visa. The applicant was also promised a fake work permit.

The undercover journalist entered the system as a migrant applicant and travelled to Belgium by bus, from Moscow, via Paris. A police check took place at the border of the Schengen zone, but there weren't any problems. In Belgium, the applicant had an appointment with the local contact person

who was supposed to put her in contact with the Belgian lawyer. The latter had worked for the civil service for many years and was responsible for asylum applications. Consequently, they knew everyone and was familiar with all the loopholes in the asylum application procedure.

During the appointment with the lawyer, the latter began to invent a new story for the applicant, a story that she had to learn by heart. In addition, she had to look for more information on the internet to reinforce her story and make it more realistic.

Besides the completely fabricated story, the lawyer highlighted the importance of documents, whether real or fake. The applicant was encouraged to buy fake documents through the contact person and ordered them. They cost her an extra EUR 800. The lawyer gave her the documents later. They included a paper from the court, a birth certificate and a driving licence.

The applicant was questioned three times by the competent authorities within the framework of her asylum application. The interviews lasted approximately two hours every time. About a month after the first interview, the applicant received a negative response and an order to leave the territory in five days.

The applicant arranged another appointment with the lawyer, who explained that new documents were necessary, proving that she had no means of subsistence when she arrived here. Of course, she was going to have to pay for these documents. The applicant was asked for EUR 500 every time she met with the lawyer.

In the end, the result of the asylum procedure was negative and the applicant was forced to leave Belgium.

Chapter 3: Best practices and experiences

In this chapter, we mean best practices among national players and international partners. As for experiences, they often refer to practices that are not as good, and even maybe bad, but from which we can often learn a lot.

This chapter is based on the analysis of cases where Myria instituted civil proceedings, and on interviews with the local and federal police, specialised centres for victims of human trafficking, reference judges in human trafficking, labour prosecutors and social inspection services. Confidentiality was maintained during all these interviews.

1. The fight against human trafficking

1.1. Reform of the judicial districts

The judicial districts reform plan is beginning to take shape in the field. Human trafficking and human smuggling reference judges have been appointed.

The reform may have an extremely positive impact on the fight against human trafficking and smuggling networks. These networks generally operate beyond different districts, and even different borders. The Belgian judicial structure has often been a problem during prosecutions and during investigations. Trafficking and smuggling in human beings are typically not restricted to a local level: small-scale districts can't always deal with the problem.

In West Flanders, this reform has been successfully applied over the past few years through a pilot project. It was agreed that the public prosecutor's office in Bruges, in collaboration with a judge seconded from the public prosecutor's office in Furnes, would take care of all the cases of trafficking and smuggling in human beings in the province. All the stakeholders are particularly positive in this respect. This reform is a real added value in the fight against the trafficking and smuggling of human beings: on the one hand,

owing to the economy of scale and, on the other hand, considering the countless possibilities for specialisation as a result, even among investigating judges and judges sitting in court. Hence, the court in Bruges appointed a judge specialising in the trafficking and smuggling of human beings. According to the reference judges, this resulted in better, uniform case law.

In practice, problems could arise in the police services. The federal police's specialised Human Trafficking Unit will also be centralised in the same place as the reference judge and will no longer be divided between the various former districts. The specialised units subsequently risk losing their local foothold and therefore a lot of essential information, especially in cross-border regions. Consequently, their information will depend fully on the good relations they maintain with the local police³⁴⁹ which doesn't always give priority to the fight against human trafficking. In many towns, this collaboration functions very well, but others are faced with a police war where the local police is limited to dealing with ordinary wrongdoing. To ensure the district reform is successful, it is essential that human trafficking remains a priority for local police in towns and that the latter collaborate closely with the federal police.

1.2. Victim status

In the Belgian system, multidisciplinary collaboration³⁵⁰ between frontline services (police and inspection services) and staff in specialised centres is essential. Subsequently, frontline services pay more attention to potential victims, and no longer consider them as illegal immigrants who have to be repatriated as quickly as possible. This has led to an atmosphere of mutual trust, where it is possible to convince victims to opt for victim status. In one case, the police succeeded in finding an underage victim of prostitution by

³⁴⁹ See also this part, Chapter 2, point 1.1.3.a.

³⁵⁰ See this part, Chapter 2, point 1.1.2.d. (victim status).

winning the trust of another victim, who was her friend³⁵¹. Staff at a specialised centre were also able to optimally inform victims, who were initially afraid to give evidence, to opt for victim status³⁵².

The cases examined revealed the presence of shortfalls in the Belgian victim status system, as well as rule breaches in several areas regarding its application in the field. It is above all crucial that frontline services fully and correctly apply the multidisciplinary circular. Which means that in the Belgian system, the victim doesn't have to file a complaint; a relevant statement is sufficient. Victims must always be put in contact with staff from specialised centres who must be available and are better placed to win the victims' trust.

In several cases³⁵³, we noted that some victims of human trafficking, who were also recognised as such by the court, never obtained victim status. We dealt with this problem in detail in last year's annual report, within the framework of the gap that exists between the presumed victim and the identified victim³⁵⁴. In general, the victims aren't interested in the status or are too afraid.

Several victims don't wish to be put directly in contact with staff in specialised centres. Furthermore, the intervention of frontline services often takes place at night, at a time when both the victims and field workers are tired. At this point, the victims are exposed to a multitude of factors and refuse contact with the centres.

For victims from European countries such as Hungary³⁵⁵, victim status is often no longer relevant to their stay. The other advantages of

the status, such as legal support and possible medical or psychological help, are often not sufficiently emphasised. This is why the victims are often no longer interested in the status. These victims, who feel exploited and want to go back to their home country as quickly as possible, may however need legal support to obtain financial compensation³⁵⁶.

Other victims are too afraid at the idea of accepting victim status and refuse to make relevant statements. They have been threatened by their exploiter, speak another language, have different cultural habits and have little, or no, trust in Belgian frontline services. Their perception of the police and the authorities is also different. They therefore wrongly assume that the latter are as corrupt as they are in their home country. In the case of these victims, it is essential that the frontline services or staff in specialised centres win their trust. This is why it is important for these centres to be easily accessible.

Some judges do indeed consider that the victim reception centres aren't sufficiently well distributed. In their opinion, victims discovered far from these centre have much less chance, in practice, of obtaining victim status than victims identified in Brussels, Antwerp or Liège, where these centres are established. According to a judge, for the majority of the time, they only benefit from phone contact with a member of staff in the short term, who informs them of the status and raises their awareness. Obviously, it isn't as easy to create a feeling of trust during a phone conversation as it is during direct contact. Some judges therefore decided to set up a sort of mobile team comprised of staff from the centres in charge of supporting victims who aren't close to any of the three centres. This approach requires a consolidation of the centres' resources. Moreover, we have asked for one of the reception centres to be present during district

³⁵¹ See Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 88-91.

³⁵² *Ibid.*, pp. 88-93.

³⁵³ See this part, Chapter 2, point 1.1.1.d. (victim status) and point 1.1.3c. (victim status).

³⁵⁴ Human Trafficking, Annual Report 2013, *Building bridges*, pp. 30-35.

³⁵⁵ See this part, Chapter 2, point 1.1.1.d. (victim status).

³⁵⁶ Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, pp. 54-56.

meetings within the framework of the COL on trafficking in order to facilitate contact.

The Belgian victim status system needs gradual and pragmatic improvement while maintaining its fundamental basic principles. If not, the system could well suffer erosion or be dismantled. Some judges plead in favour of opening potential access to victim status for specific vulnerable target groups who are too frightened to give evidence but are clearly victims of human trafficking practices. The reference judge with knowledge of the case's facts is the person best placed to take this decision in consultation with the other stakeholders.

The Belgian victim status system needs gradual and pragmatic improvement while maintaining its fundamental basic principles

1.3. Victim reintegration programme

The King Baudouin Foundation successfully set up the TVRP programme³⁵⁷. Thanks to this programme, which is a remarkable initiative, it supports the projects of local NGO to reintegrate victims in different Balkan countries³⁵⁸.

Following interviews, Myria learnt that Belgium had also initiated a reintegration programme for trafficking victims in Hungary. It was set up following the Hungarian human trafficking case involving sexual exploitation dealt with in the case studies³⁵⁹. This Belgian/Hungarian initiative led directly to the European RAVOT project³⁶⁰.

The Belgian judge concerned noted that at one point, only one Hungarian woman (with no children) was prepared to take part in this reintegration programme. After having obtained information from other victims, it transpired that the women were punished if they joined the programme. Prostitution is punishable in Hungary and the Hungarian authorities considered the victims of prostitution who followed the programme to be unfit mothers, and removed their custody of their children.

The Belgian judge reacted and refused to continue to collaborate under these conditions with the Hungarian authorities within the framework of this project. After consultation, the Hungarian authorities completely changed their stance and the Hungarian victims of prostitution who returned to their country were able to take part in the project, with no problem or risk of punishment. In the end, the programme turned out to be a success.

These kinds of reintegration programmes can be considered good practice if the victims returning to their country aren't at risk of being stigmatised or punished again. When programmes such as these are set up, it is important to ensure that the existing legislation on prostitution in the country concerned won't have a negative impact on victims returning to the country.

2. Combating human smuggling

2.1. A lack of coherence regarding victim status in the case of human smuggling

In order to be able to claim the status of victim of human smuggling, there must be certain aggravating circumstances. One of them is that the life of the victim of human smuggling is endangered. In this respect, the Belgian model adopts a stance that is unique on an international level. The Belgian stakeholders consider this as a good practice. Myria (which was the Centre for Equal

³⁵⁷ Trafficking Victims Re/Integration Programme.

³⁵⁸ *Beyond trafficking, The re/integration of trafficking victims in the Balkans, 2007 to 2014*, Final review report 2015, King Baudouin Foundation (Brussels), Nexus Institute (Washington).

³⁵⁹ See this part, Chapter 2, point 1.1.1.d. (victim status).

³⁶⁰ Referral of and Assistance for Victims of Human Trafficking, ISEC project, under the direction of the Hungarian Minister of the Interior, which the NGO Payoke participates in as a Belgian partner.

Opportunities and Opposition to Racism at the time) took steps in this respect after having noted in the cases in question, that some of the human smuggling victims had been the subject of considerable violence or that their parents had had to pay an extra amount to guarantee that their daughter wouldn't be raped during the journey³⁶¹. This system can only be applied to a certain extent, because the status of victim must remain, above all, a status that protects victims of human trafficking. In practice, this isn't a problem, according to the statistics³⁶², since the number of victims of human smuggling who have obtained victim status is still quite limited.

During the implementation of this regulation in the field, we noted that the approach to victims of human smuggling varied from one region to another. Some judges asked the police to systematically offer victim status of human trafficking to victims of human smuggling, while other judges chose to never do it because they wanted to exclusively reserve it for victims of human trafficking who had been exploited. Consultation is required with a view to harmonising these practices.

In practice, it also transpired that victims of human smuggling, who are confronted with an offer of status of victim of human trafficking, aren't interested in this status and wish to continue their journey to the United Kingdom as quickly as possible. In general, they subsequently receive an order to leave the territory.

The Immigration Office's (IO) statistics confirm this³⁶³. In 2014, the IO took 1,619 decisions after an intervention within the framework of human smuggling during a transit migration to

the United Kingdom or another country. In 1,240 cases, the interested party received an order to leave the territory; in 130 cases, the person who was the victim of smuggling was imprisoned and in 249 cases, they were able to leave.

It emerges from our analysis of the jurisprudence³⁶⁴ that certain victims of human smuggling who have obtained the status of victim of human trafficking, instituted civil proceedings during the trial and obtained moral reparation and material compensation amounting to EUR 2,500. It is thanks to the support and legal assistance provided by the specialised centres for victims of human trafficking that these victims of human smuggling were able to institute civil proceedings. This is also a good practice.

Attention should also be paid to possible criminal infiltrations through the status of victim of human trafficking. This is especially the case with victims of human smuggling. In several human smuggling cases, it was even question of the infiltration of specialised centres for victims of human trafficking, where the infiltrator was a threat to the real victims³⁶⁵. Some judges also reported this problem during interviews.

2.2. Smuggling of families

In the majority of cases of human smuggling³⁶⁶, it isn't uncommon for families with children to be transported in refrigerated trucks. Sometimes, three-year-old children or babies who tend to cry are given sleeping pills. This group of victims gets very little attention from political decision-makers and stakeholders. However, this extremely vulnerable and precarious group is subject to additional risks and deserves the necessary protection.

³⁶¹ Trafficking and Smuggling in Human Beings, Annual Report 2004, *Analysis from the victims' point of view*, pp. 18-25; Trafficking and Smuggling in Human Beings, Annual Report 2006, *Victims in the spotlight*, p. 40.

³⁶² See part 3, point 5.3.

³⁶³ Bulletin of written questions and answers, *Parl. doc.*, Chamber, QRVA 54/026, 26 May 2015, pp. 192-195 (question no. 116 of Deputy Renate Hufkens, of 21 April 2015, DO 2014201502661) available at the following link: www.lachambre.be/QRVA/pdf/54/54K0026.pdf

³⁶⁴ See this chapter, Chapter 4, point 2 (Iranian human smuggler).

³⁶⁵ See Trafficking and Smuggling in Human Beings, Annual Report 2009, *In a haze of legality*, pp. 38-41.

³⁶⁶ See this part, Chapter 2, point 2.1.4.a., point 2.2.4.a. and point 2.4.4.c.

Some judges also offered the status of victim of human trafficking to these families. In practice, they turned out not to be interested and were issued an order to leave the territory. In some cases, we noted that in the case of a new attempt to reach the United Kingdom, they were again intercepted by the police³⁶⁷.

The debate should be conducted on a national and international level, with the goal of demanding that greater attention be paid to the needs and vulnerability of this specific group of victims of human smuggling.

2.3. Action plan

Despite the fact that a governmental action plan has been in existence for years concerning the fight against human trafficking, nothing has ever been done to elaborate a specific governmental action plan to combat the smuggling of human beings. However, as a transit country, Belgium actively fights against the smuggling of human beings, with a focus on the interception of the smugglers³⁶⁸. Besides combating human trafficking, the Interdepartmental Coordination Unit for the Fight against the Smuggling and Trafficking of Human Beings is also involved in Belgium's policy on the smuggling of human beings and is responsible for it. It is important that the Interdepartmental Unit takes the initiative to develop a governmental action plan to combat the smuggling of human beings. This is the only way to make sure that a policy to combat the smuggling of human beings will be more uniform and effective in the field.

The Interdepartmental Unit takes the initiative to develop a governmental action plan to combat the smuggling of human beings

2.4. Financial battle

Human smuggling networks are led by criminal entrepreneurs who organise their criminal activities and manage them like a multinational. Their sole motivation is financial: they want to earn as much as possible in the shortest amount of time, dehumanising their victims and reducing them to goods. It isn't unusual for large international human smuggling networks to also be active in drugs and arms smuggling.

A quality international collaboration and a wide-scale financial investigation are the most efficient means to combat human smuggling networks and to dry up their finances. In Belgium, judges generally conduct a financial investigation³⁶⁹ within the framework of their inquiries into human smuggling, which we can qualify as a good practice.

This type of approach falls within the framework of an international chain approach, where all the links play a role. A faulty or weak link will cause the chain to collapse. Therefore, smugglers ensure, in practice, that the proceeds from their criminal activities are safely transferred and placed in their country of origin. The EU must endeavour to conclude as many agreements as possible with the countries of origin outside the EU as regards the seizure of criminal assets. Within the EU, Member States must learn to collaborate better if a Member State requests a seizure or a confiscation from another Member State. On an international level, the CARIN network³⁷⁰ plays an important role in

³⁶⁷ See this part, Chapter 2, point 2.1.4.a.

³⁶⁸ See hereafter, the contribution "Combating the international smuggling of human beings".

³⁶⁹ See this part, Chapter 2, point 2.1.3.b., point 2.3.4.b. and point 2.4.3.b.

³⁷⁰ Carin stands for the "Camden Asset Recovery Inter-agency Network". This informal regional network, which was set up in 2004, groups together the authorities in charge of recovering assets. It is responsible for all aspects associated with combating the proceeds of crime. The network is composed of officers from the investigation and law enforcement services, mainly from Europe but also North America. On an inter-institutional level, it is aiming for greater efficiency in the actions

the detection and seizure of criminal assets. The Central Organ for Seizure and Confiscation (COSC)³⁷¹ is the Belgian member of CARIN and the intermediary in investigations. Still relatively unknown, the network has already proven its worth³⁷².

Financial investigations are also an essential element in the identification of criminal organisations active in the smuggling of human beings. Financial analysis is an important method for tracking down the responsibilities of criminal organisations and their links with the legal world³⁷³. By monitoring monetary transactions, it is possible to search the legal social terrain for the leaders, who remain discreetly in the background, as well as their major contact persons, such as transport companies or companies active in the real estate sector (in the case of money laundering).

Myria is convinced that this type of international financial chain approach would be positive for the European action plan³⁷⁴.

undertaken by the network's members, whose goal is to cut off the criminals' access to illegal income.

³⁷¹ Central Organ for Seizure and Confiscation. The Central Organ for Seizure and Confiscation (COSC) falls within the scope of the public prosecutor. It was created by the Law of 26 March 2003 and has been operational since 1st September 2003. The COSC is a knowledge centre for the legal authorities in criminal matters, within the framework of the seizure of patrimonial assets. It offers assistance within the framework of public action, associated with confiscation, and the role of facilitator within the framework of executing judgements and orders involving confiscation (source: www.confiscaid.be).

³⁷² Human Trafficking, Annual Report 2013, *Building bridges*, pp. 44, 52-53 and 122; Trafficking in and smuggling of human beings 2011, *The money that matters*, pp. 42-43 et 142.

³⁷³ See this part, Chapter 2, point 2.4.1.a. and point 2.4.3.b.

³⁷⁴ See this part, Chapter 1, point 1.2.

EXTERNAL CONTRIBUTION: COMBATING THE INTERNATIONAL SMUGGLING OF HUMAN BEINGS

Frank Demeester

Reference judge as regards the smuggling and trafficking of human beings

Judicial district of West Flanders

Concerning the raison d'être of combating the smuggling of human beings

Nowadays, everyone has a view of what human smuggling is. Over the past few months, images of boats jam-packed with refugees have been seen all over the world. The island of Lampedusa, south of Sicily, has quickly become associated with the term human smuggling. The sheer audacity of the human smugglers has drawn the public's attention to the problem on an international level.

However, the phenomenon of illegal migration and human smuggling has been a problem for a very long time. For years, desperate people have been relying on smugglers, who masquerade as advisors and travel agents and demand considerable financial sacrifices from migrants and their families in order to embark on the journey to the promised land or continent, often risking their lives. Once on their way, the migrants are entirely at the mercy of the smugglers: the latter choose the means of transport and the itinerary, and the migrants have their papers taken from so that they run less risk of being sent back to their country of origin, owing to a lack of identity and nationality. Migrants who don't toe the line are threatened by the smugglers or are subject to violence, or are simply left to their fate. Since their family has already paid a large part of the cost for their journey, there isn't actually any going back and they are therefore prepared to do whatever the smugglers ask them to do. They receive instructions on how to behave when they are intercepted by the police.

But it isn't the migrants who are to blame, since they are the ones fleeing poverty and

violence. This is what immediately creates a paradox, which is what a public prosecutor or investigating judge is directly confronted with when conducting criminal investigations concerning human smuggling: why intervene in a system that allows these people to aspire to a better life?

In reality, the smuggling of human beings is just as present in our country as in the rest of Europe, even if, for the majority of people, it is still a very distant problem. This presence is particularly felt in motorway parking areas, industrial zones, ports and only to a lesser degree in town centres or villages. The Belgian situation is of course overshadowed by the large number of migrants attempting to cross the Mediterranean and the number of deaths as a result of these attempts. Migrants – and many are those who have never seen the sand on the beaches of Lampedusa – enter Belgium, stay here or cross it on their way to their final destination, and rely on the “services” of smugglers. Their presence in Belgium is often very short, and they have absolutely no desire to stay here. The “order to leave the territory” they receive from the Immigration Office is often a correct translation of what they want to say to the law enforcement officer: migrants in transit want nothing more than to leave Belgium as quickly as possible, very probably in the direction of their final destination. Which inevitably brings us to the questions which are very often asked: why intervene when our country is nothing more than a transit country for a large majority of migrants? Isn't the human smuggling problem of greater concern to the United Kingdom, which has an unbelievable power of attraction for numerous nationalities, or (the north of) France, where migrants stay by the thousands in camps, with smugglers simply using Belgian car parks to put migrants in trucks (via the French sea ports) heading for the United Kingdom?

As if that wasn't enough, the judges or investigators are often asked the frustrating

question of whether it is really of any use or simply a complete waste of time, as was the case last year in an article in the newspaper *De Tijd* (*De Tijd*, “De E40, miljoenenroute voor mensensmokkelaars”, April 2014).

They are only questions, to which there isn't always an immediate answer, providing there is only one answer. It is as though any judge or investigator who is involved in the fight against human smuggling, is bound to suffer a burnout sooner or later, if the focus is constantly on these questions.

But let us leave aside these difficult questions on an apparently hopeless situation and return to the field with a true story... *On 5 September 2013, in the middle of the night, the police surveillance team for the highways in West Flanders noticed several migrants hidden in a green Ford Transit van in the Jabbeke car park. This highway parking area is the favourite playground for smugglers of human beings and the highway police decided to follow the van to intercept it. When the police were spotted, the Ford Transit fled down the E40 highway in the direction of France and was pursued by the highway police. The Kurdish smugglers had one objective: to remain out of the reach of the police and cross the border between France and Belgium in order to reach the migrants' camp, where the Belgian police has no authority and where the French police no longer dares to go at night. The end justifies the means because they will do all they can not to be arrested. Several police vehicles arrived as reinforcement and joined the chase. The smugglers forced their way through the police vehicles and deliberately rammed them several times. They were driving at top speed. The police officers attempted to avoid direct contact as much as possible, because they knew that the vehicle they were chasing was filled with migrants, and that if an accident occurred at this speed, the result could be catastrophic. When the smugglers tried to overtake, their wheel hit a hole and they lost control of the vehicle, which crashed into a ditch. One of the smugglers ended up under the vehicle, while another one managed to escape. Warning shots were fired. Once the*

accident scene had been secured, the migrants were let out as quickly as possible. The first sound coming from the vehicle was a child crying. The seven-year-old was sitting at the back of the van with his mother and other migrants, with no safety belts. They had been tossed about, lights were flashing and sirens were wailing all over the place and everyone on board was in a state of panic. They suddenly found themselves, in a state of shock, in the ditch, hearing the groans of a man under the weight of the vehicle, accompanied by several shots. For several long minutes, they had the feeling they were in a war zone, whereas they were actually only in peaceful West Flanders, albeit in a runaway vehicle driven by human smugglers.

This story already gives an answer to the question of the need to invest the best means in the criminal phenomenon of human smuggling: it is intolerable and incomprehensible that such human suffering can exist in Belgium. The smugglers are in no way driven by any form of humanity, even though they claim the contrary when they have to answer for their crimes in court. They are only motivated by the lure of gain, and the victims of this smuggling must pay the toll. Up until now, no-one has taken the trouble to calculate the financial impact of this crime on our society: tarpaulins are slashed, freight is partly or completely contaminated and refused, insurance policies are increasingly expensive, fences are regularly severed and destroyed, 30 to 40 police officers are on night duty, assisted by sniffer dogs and helicopters, the costs associated with phone tapping and interpretation services soar as soon it is a matter of putting an organisation behind bars, etc.

And if this story isn't enough to convince some, there are plenty of other sickening stories of men, women and children stowed away in refrigerated trucks (in freezing temperatures), in gigantic piles of iron containers (under a scorching sun), in all sorts of slits and storage spaces, even in the dashboard of a vehicle to attempt to make the crossing. The tragedies of Dover (2000),

Wexford (2001) and recently Tilbury (August 2014) are still in our memories.

Collecting information

For the police and the law to be able to initiate the fight against a criminal phenomenon, it is essential they have precise information. Sometimes – although it is extremely rare – information relating to a human smuggling organisation falls into the hands of the police by chance, but in the majority of cases, it is the constant attention of the police services on this phenomenon that leads to a successful outcome.

The migrants intercepted by the police services are therefore an important source of information. However, it is very rare for the victims to spontaneously divulge correct and useful information on the smugglers. And you don't need to look far to understand why: the victims have already paid a fortune, they have already travelled far and are now only a stone's throw away from the United Kingdom. Therefore, they don't want to throw away their chance of reaching the promised land on the final stretch.

And yet, the information the migrants have, which comes to the surface thanks to a duly performed search, often appears very useful. It may be in the form of letters, notes, cards, tickets, signatures, phone numbers, etc., which can be hidden anywhere. The phone they might have must also be checked. When a police officer thinks a migrant might be able to provide useful information, they will conduct a hearing with an interpreter. It isn't feasible, either on a human level, or on a financial level, to systematically hear all the migrants discovered, and it wouldn't add any value in practice either, precisely because the majority of them aren't able to give correct information or give the smugglers away. Nevertheless, the role of the police officer at this precise moment is essential: it is often the same members of the police services who, on the basis of their experience and their empathy, are able to pick out and interview the right migrants. They can therefore provide information on the basis of which a new investigation can be launched. It is also often

these police officers who correctly assess these situations and decide to carry out an inspection owing to suspicious behaviour, there where others may not have taken action as quickly in similar circumstances.

It is the public prosecutor's responsibility to raise awareness and continuously stimulate police officers and emphasise the importance of their initial reports and the accuracy and meticulousness they must apply in these tasks. While the desire, at the level of the public prosecutor's office, is to perform quality investigations, which lead to convictions, it is necessary to ensure that all eyes and ears in the field – i.e. those of the police officers – are sufficiently focused on the phenomenon, and that people are aware that their initial report³⁷⁵ can make a difference in a case.

In return for precise information, the public prosecutor must also make sure the police officers involved are provided with a report on the consequences of their observations. In general, this is the case as regards investigators who have been involved in the criminal investigation, but sometimes, the initiators are completely forgotten even though the case was opened thanks to their observations and was conceived on their computer. Furthermore, police officers can learn a great deal about the way in which a court assesses a case. The judges analyse the facts based on what was written down on paper. What the police officer saw but didn't write down simply doesn't exist for the judge, and can't be taken into account during the trial.

It is therefore very important in practice that hierarchical superiors in the police force are aware of the interest of combating human smuggling and the way cases are created. Every police unit has its priorities, which allow it to refer to national and zonal security plans and to the strategic choices of the director or

³⁷⁵ The initial report is the basis for opening a case. The police officer notes down the facts of the infringement and the preliminary findings.

chief of police. If human smuggling isn't part of the priorities in a region where the phenomenon may appear one day, problems could occur. Of course, police officers who don't feel supported by their superiors or their chief of police won't be as motivated to arrest illegal immigrants on an administrative basis or to chase after suspicious vehicles and give it their best to fight this phenomenon.

Apprehending an illegal immigrant can't be done in a flash: besides the usual triptych, there is a great deal of paperwork, and as long as the police services haven't received a notice from the Immigration Office as to what should be done with the intercepted person, the intervention team is stuck in the office and the police officers are unavailable for other assignments. If a *group* of foreigners has been discovered, there is even more work for the police services. It goes without saying that the intercepted migrants are treated correctly and humanly by the police officers. They have the chance to freshen up or eat something, or at least rest on a mattress rather than in a tent pitched on pallets. When the decision is finally made to let the interested parties go, everyone wonders what the point of the intervention was. Hardly surprising then that some are sometimes tempted to look the other way and *not* notice the group of migrants. And yet, the missing piece in a big investigation is sometimes hiding in a corner: the police officer who does their duty and carries out an administrative arrest and a search, can very well unearth the key to a successful outcome, in the form of a letter, a note or a phone number. The investigation of the Wexford case (findings of 8 December 2001, eight migrants found dead in Wexford, Ireland) received a boost thanks to a police officer who found a letter, which initially seemed insignificant, and the investigators who decided to analyse this bit of paper.

The public prosecutor must specify their expectations to the police and, if necessary, confer with superiors so that everyone is looking in the same direction. Smugglers of human beings are highly mobile, and they quickly notice in which regions they are more actively pursued than in others, thus quickly

shifting their area of activity. The trucks sounded out by the smugglers for the crossing from Calais or Coquelles to the United Kingdom have already been chosen in the Belgian highway parking areas. And yet, the trucks still have to cover a long distance before arriving at the French sea ports, and the risk is very real that these trucks' load isn't always destined for the United Kingdom but for Belgium or France instead. Even in parking areas where the phenomenon of human smuggling hasn't yet been observed, groups of migrants suddenly seem to be displaced under the leadership of one or several smugglers. Closing our eyes to the phenomenon isn't actually an option, on the contrary.

Managing the information

If we base ourselves on the principle that everyone is on the same wavelength within a judicial district and that every police service has a part to play in the fight against human smuggling, the question we then need to ask is, who is going to manage all the information.

SICA (the district information and communication service, formerly the CIA) is the backbone of information management. Its role in the fight against human smuggling is essential. SICA in West Flanders (or Bruges CIA to be more precise) has been collecting all the information provided by the police services since 2003. The database has grown and been refined over the years.

As a result, the database is supplied with additional data every day, and every partner receives a *sitrep* (situation report) in their mailbox on a daily basis, with all the police reports concerning illegal immigrants and human smuggling. Even simple reports from heavy-goods drivers or citizens that didn't lead to a police report are included in the sitrep. Furthermore, overviews are written every month and every year. SICA therefore does much more than simply record: thanks to the incoming information, it endeavours to spot the links and the trends. When information from different cases matches up, the public prosecutor and the federal judicial police's anti-human smuggling team are contacted

directly, in order to make the most of this information.

The Bruges-based database is a user-friendly tool that is also used by the police services outside West Flanders. The smuggling organisations which operate from abroad often use the parking areas in West Flanders, owing to their proximity to the French border. Since the transportations are often thwarted by frequent police action, and as the police services draw up a police report every time concerning the migrants discovered, the national investigators can make good use of this information to find a link between the transportations and their investigation on the basis of their own data, and thus better inventory the organisation.

Integrated approach and collaboration

It goes without saying that combating a phenomenon of international crime such as human smuggling requires an integrated and coordinated approach.

Within a judicial district, all the police services play a part, without exception. Despite its international nature, human smuggling isn't the exclusive remit of the federal police. It is the responsibility of the public prosecutor's office to lay out the guidelines with a "made-to-measure approach" within the district, and the public prosecutor must manage the police according to this policy. The local police, which is in the field every day, must remain attentive to the increased presence of migrants in its area, and it must ensure that apartment blocks don't suddenly become safe houses. During checks relating to social fraud and human trafficking in high-risk sectors such as night shops, car washes and Asian restaurants, it is also necessary to pay attention to clues relating to the potential smuggling of human beings. Trafficking and smuggling of human beings are clearly separate offences, but they often go hand in hand.

Following the judicial reform, the majority of judicial districts, which have been reduced to 12, are now operating on a large scale. This means that the reference judge for human

smuggling must also now manage the police services of other divisions and ensure that their policy is also applied in these divisions. For the current West Flanders district, the reform didn't bring about many changes, since the cases of trafficking and smuggling of human beings had already been entrusted to the former district of Bruges some years ago, following partnerships between the public prosecutor's offices. In concrete terms, this means that the quarterly follow-up meetings on human smuggling, as well as meetings that were set up beforehand by the College of Public Prosecutors, were already taking place beyond the district borders before the judicial reform.

For large-scale actions, the public prosecutor's office will ask all the police services concerned to provide reinforcement during the action, thus allowing clear agreements to be concluded regarding the administrative processing of migrants who are discovered and the judicial treatment of the arrested smugglers. Small streams make big rivers, and every police service must fulfil a specific mission: the transport police knows the highways and has the appropriate vehicles for chases; the local police areas know the escape routes like the back of their hand; the federal judicial police maintains an overview of the investigations in progress and the modus operandi; the river and maritime police know how the ports function and the technical support team has tools allowing accurate observations to be made in all circumstances. If this mixed team has the support of the police dog handlers and helicopters, everything is in place to be able to keep several places under observation at the same time and to catch the smugglers. Of course, this is much easier said than done, especially since the police services aren't accustomed to collaborating as closely together in the field within the same district, but it is the only way to ensure the correct approach without the risk of weakening the human resources of a specific police service after the action.

The College of Public Prosecutors stipulated that to effectively combat the smuggling of human beings, there needs to be a synergy

between the administrative and judicial policies. In practice, this synergy is expressed above all in the administrative actions organised by the director-coordinator (Dirco) of the federal police. These actions are visible to the public: police officers enter the human smugglers' field of action with scanners, dogs and measurement devices to check trucks and remove the migrants from them. We should add that the governor can, within their competence, become a partner in the fight against human smuggling, since this subject can also feature at the provincial round table for security which takes place every four months, where the public prosecutor of the court of appeal acts as co-chairman. The competence of the mayor may also be recommended in the administrative framework. According to Article 134 *quinquies* of the new communal law, it is possible to close down an establishment for a maximum of six months if there are serious indications that acts of human smuggling are taking place there. To prevent this measure from having a counter-productive effect on the legal proceedings, closure can only be ordered after consultation with the judicial authorities. The text of Article 134 *quinquies* therefore underlines both the synergy between the administrative side and the judicial side. In concrete terms, this means that the public prosecutor must abandon their judiciary *niche* and – taking into account each person's competences and the regulations - contact the Dirco, the governor's office and, in specific cases, the mayors concerned.

The judges are sometimes forced to make contact with people even further afield. When the embankments along highway bridges have to be cleared or when a highway parking area has to be moved, this is a golden opportunity for the public prosecutor's office and the police services to make contact with the highways agency (agentschap Wegen & Verkeer (AWV)) or private partners so that the parking area's infrastructure can also be adapted according to security needs. In ports, the harbour master is present, as well as the port facility officers. They can say whether smugglers and migrants are entering the port.

This may sound like a cliché, but collaboration is essential to success, and not only within a judicial district. Collaboration must exceed the borders of the district and the country. This is the *modus operandi* of smuggling organisations: they can be compared to de facto associations of small groups of smugglers, some of whom only take care of part of the illegal transportation, and others of the next part. When some of them are arrested, others try to rapidly seize the territory or camp of migrants left free (with a weapon if necessary), and take the "vacant" space. Smugglers of human beings also choose the path with the least resistance and move their field of action very quickly: some of them have acquired the necessary skills in their country of origin to make counter-observations, and when they see they are running too many risks in a specific region, they go to other parking areas or regions to hide migrants in trucks. When a transportation fails, the damage is limited for the smuggling organisation, because the migrants return obediently to the migrant camp, where they can make new attempts, paying the organisation a supplement if necessary.

A consultation forum exists between the judicial districts situated along the E40 highway. It is organised once a year and the judges discuss the ongoing human smuggling cases, in the presence of the contact judge from the Federal Prosecution Service. This forum draws inspiration from the consultation meetings which have been taking place for a long time already between the federal judicial police's decentralised services. As a result, this prevents the same smuggling organisation from being the subject of several simultaneous criminal investigations, which would mean a loss in terms of capacity. Information is exchanged, and if necessary, joint actions are organised and debated at these forums.

Since the activities of human smugglers are international by definition, it is also necessary to be in contact with foreign police services and authorities with a view to a collaboration. *Joint Investigation Teams* (JIT) were set up on

several occasions within the framework of human smuggling cases under the aegis of Eurojust, which led to arrests in several countries.

Investigative procedures

In human smuggling cases, no *sui generis* investigation is carried out. The judge and the police services use traditional and special techniques that are also used in other criminal investigations and belong to the usual investigative range. The crime of human smuggling obviously also features in the list of crimes eligible for phone tapping (Art. 90ter of the Code of Criminal Procedure).

Quite often, there are convincing reasons to hold suspects of human smuggling in pre-trial detention, which allows the criminal investigation to continue by endeavouring to make it advance as quickly as possible and to conclude it within a reasonable timeframe. Hence, the accused may be summoned to appear before the criminal court, bound by the arrest warrant, where the punishment must be balanced against the severity of the acts and have a dissuasive effect on the defendants and other human smugglers.

For some time now, investigators have been paying special attention to the financial benefit generated as a result of the acts, with a view to seeking confiscation. With the Law of 27 November 2013 (brought into force on 1 March 2014), the legislator also created the possibility to have property confiscated within the framework of human smuggling. For instance, this could refer to safe houses or temporary shelters where migrants are housed while awaiting transportation to the promised land. Considering that human smugglers are motivated by the lure of gain, the goal of these measures is clearly to hit the organisation in its Achilles heel, especially in its wallet.

Everyday challenges

Global migration and human smuggling, which often go hand in hand, are age-old

phenomena and a *never-ending story*. It would be utopian to think, despite the efforts made every day in this country to combat human smuggling, that we could manage to wipe out this type of crime. The number of migrants is too high and human smuggling too profitable a business; here too, the law of supply and demand prevails.

Nevertheless, detecting human smuggling activities and the inventory of human smuggling organisations active in Belgium remains a challenge. The smugglers learn by their mistakes, they are becoming more professional, more cautious, but also more aggressive. They appear rational to their opponents and unscrupulous to their victims, thus forcing police services to lie in wait for an opportunity and be creative with the investigative methods at their disposal. It is extremely rare for them to admit to the acts they are accused of, thus forcing police officers to do all in their power to close all the doors on the basis of observations and objective evidence. Cases must therefore be brought to court with hard evidence, where there is no room for objection, and it is up to the impartial and independent judge to decide how to punish the perpetrators of a crime that is so destabilising for society.

The internet is becoming (or rather, is) one of the investigators' biggest challenges. The possibilities of accessing the internet are greater, better and cheaper, even if the tools the law and the police currently have to investigate and catch "surfers armed with bad intentions" via the same *worldwide web* are somewhat derisory and wanting. Everyone agrees on this. Internet searches should feature among the absolute priorities on our legislators' to-do list.

As long as there are still challenges, human smuggling remains a particularly fascinating subject.

Chapter 4: Case law overview (2014 - may 2015)

This chapter provides an overview of the relevant case law from 2014 to the beginning of 2015 (May 2015) concerning cases of trafficking and smuggling in human beings³⁷⁶. This year, the overview focuses on cases in which Myria instituted civil proceedings and on the decisions received from the specialised victim reception centres. A decision was also sent by an organisation working with illegal workers.

Myria was informed of 58 decisions rendered by the judicial authorities, two of which were pronounced by the Court of Cassation. There is also a decision from the Council for Alien Law Litigation, which granted the status of refugee to a victim of human trafficking.

The most interesting decisions are presented below³⁷⁷, i.e. 43 decisions relating to 35 cases in the country's different jurisdictions:

- 10 decisions concern cases of **sexual exploitation**. They were pronounced in the jurisdiction of the Courts of Appeal of Antwerp (Antwerp), Brussels (French-speaking and Dutch-speaking), Ghent (East Flanders (Ghent), West Flanders (Ypres)) and Liège (Liège).

In terms of sexual exploitation, there were several decisions concerning young girls, sometimes minors, in very precarious social situations. Several young Belgian women were also recognised as victims of human trafficking. Several decisions held companies liable, i.e. legal entities, which were set up with the intention of

concealing the exploitation. One decision concerns a case of polycriminality, in which both acts of sexual exploitation and coercion to commit a crime were prosecuted.

- 18 decisions relating to 15 cases concern **labour exploitation**. The decisions pronounced relate to a wide range of sectors and are presented per sector of activity (construction/renovation, agriculture/horticulture, car washes, riding schools, exotic shops, printing works, butcher's shops, domestic work and football). We should point out that this is the first time that Myria was informed of a decision pronounced regarding a printing works. Furthermore, several years have passed since Myria was informed of decisions concerning footballers. These decisions were pronounced within the jurisdiction of the Courts of Appeal of Antwerp (Mechelen, Turnhout division), Brussels (French-speaking Brussels, Walloon Brabant), Ghent (East Flanders (Ghent), West Flanders (Courtrai), Liège (Liège) and Mons (Charleroi division).

In terms of labour exploitation, we noticed, as in previous years, the existence of fraudulent structures to conceal the exploitation: cascade subcontracting, fraud in terms of posted workers or bogus self-employed workers. It is also sometimes a question of offences committed by slum landlords, in combination with labour exploitation. Moreover, it is interesting to note that, for the worker, the fact of having been the victim of a work accident that the employer completely ignored, was considered a determining factor establishing the existence of work conditions contrary to human dignity. The notion of recruitment was also the subject of a decision by the

³⁷⁶ Several case law decisions from the beginning of 2014 are also presented in the previous report (see Trafficking and Smuggling in Human Beings, Annual Report 2013, *Building bridges*, pp. 105 and following).

³⁷⁷ We consider that a decision is interesting when it appears relevant either on a legal level or in terms of the acts. These decisions are published on Myria's website: www.myria.be

Court of Cassation. This term must be understood in a general sense, since the employer wasn't required to take any active steps.

- a decision relating to acts of **exploitation** of disabled adults **for the purpose of begging** was pronounced by the Dutch-speaking Criminal Court of Brussels.
- 14 decisions relating to nine cases concern **human smuggling**. They were pronounced within the jurisdiction of the courts of appeal of Antwerp, Brussels and Ghent. Given that the previous report didn't give an overview of the case law in this domain, some of the decisions pre-date 2014.

In terms of human smuggling, it is usually a question of well-structured organisations with various nationalities collaborating with each other. Sham marriages are also used within this framework.

1. Human trafficking

1.1. Sexual exploitation

Wide-scale sexual exploitation by a gang of Hungarian perpetrators³⁷⁸

In a **judgement of 21 August 2014³⁷⁹**, **Ghent Criminal Court** charged a gang of Hungarian pimps with human trafficking for the purposes of sexual exploitation, in particular regarding a minor, for exploitation of prostitution, criminal organisation and money laundering.

At the end of 2012, beginning of 2013, the gang was active in the red-light district in Ghent. The case was opened when the police in Amsterdam raised a question regarding the forced prostitution of a Hungarian woman in

Ghent, whose family had been threatened. The investigation was conducted using phone taps and observations. It was carried out on an international level, in order to cover the Netherlands and Hungary as well. The defendants recruited young Hungarian girls looking for work to improve their daily lives. These girls were offered a job as a prostitute in Belgium, in a bikini in a bar, with an income of EUR 1,000 a day and the promise of being well treated. The victims were mainly vulnerable young girls from institutions, single mothers or young girls who were already prostituting themselves for their boyfriend (pimp).

Once in Ghent, the young women were housed in a low-rent hotel. They were then forced to prostitute themselves in prostitution windows. They were obliged to earn between EUR 500 and 800 a day and had to accept all sexual acts, including unprotected sex. If they earned too little or didn't do as they were asked, they were raped and/or beaten. The young girls worked 12 hours a day, and sometimes six or seven days a week. They were also drugged to optimise their services.

In order not to arouse the suspicions of the young girls' families, the defendants regularly sent small amounts of money to the young girls' families in Hungary. The young girls had to hand over half of their earnings. They also had to pay for the window, condoms and hotel costs themselves. They were left with almost nothing. They generally transferred the little bit that remained to their family or their boyfriend, often their pimp (under a subcontracting arrangement). One of the victims was expecting twins and, despite the fact that she wanted to keep the children, she was forced to abort. She had to go back to work in the window four days after the intervention.

A minor was also put to work, but just for one night. One of the defendants stated that he wasn't aware that she was underage and would have taken her to Charleroi as soon as he found out she was a minor. According to the phone conversations, it appeared that

³⁷⁸ See also this part, Chapter 2, point 1.1.1. and part 1, Chapter 2, point 1.1.

³⁷⁹ Ghent Crim. Court, Ghent division, 19th ch., 21 August 2014 (final).

there were other underage victims from time to time.

It was a very well structured network, where the only concern was to make a maximum profit. The organisation functioned on an international level and also employed girls in Germany, the Netherlands and Switzerland. In Belgium, the main defendants always used a dozen or so Hungarian girls in prostitution. They also hired a few Hungarian men to act as supervisors, bodyguards, drivers or cash carriers. The organisation also brought pimps to Ghent with the Hungarian girls to make them work there. Two older Hungarian women acted as *bottom girls*. They brought food and condoms to the Hungarian girls, collected their earnings and provided them with their dose of drugs. Furthermore, they didn't hesitate to use violence.

Nearly all the men involved in this case were unemployed and received unemployment benefit in their country of origin. Nevertheless, they had expensive cars and/or luxury villas. It emerged from various tapped phone conversations that the defendants made an average turnover of EUR 18,250 a month.

In the extensive judgement, the judge dealt with the revised definition of human trafficking brought into force in 2013. Since 2 August 2013, "taking control" is also included in the offence of human trafficking. The description must cover all forms of pressure or authority: attitude, shouting, sham relationships or sham marriages, isolation of the victims. All forms of sexual exploitation can also be punished as human trafficking. In this case, the girls knew they were coming here to work in prostitution, but they were misled in terms of the work conditions and the salary. In reality, they were exploited in dubious prostitution windows. To prevent them from leaving prostitution, the defendants employed all sorts of constraints and threats. This is why the court didn't hesitate to speak out in this case of human trafficking for the purpose of sexual exploitation.

The judge handed down prison sentences ranging between one and five years, together with fines from EUR 120,000 to 240,000. The court also ordered special confiscations for amounts varying between EUR 8,000 and 60,000, for a total of EUR 405,980. The court granted Myria, which instituted civil proceedings, compensation worth EUR 2,500.

Massage parlours

Several cases, in which Myria instituted civil proceedings, concerned acts of sexual exploitation in massage parlours.

On **12 March 2014, Brussels Court of Appeal gave its ruling**³⁸⁰ in a case where the Criminal Court of Leuven had acquitted the defendants in 2012³⁸¹ for acts of human trafficking for the purposes of sexual exploitation, but had nevertheless convicted the majority of the defendants for human smuggling with aggravating circumstances. In first instance, the court considered that it wasn't possible to establish whether or not the girls had been deceived regarding the nature of the activities they were going to perform in Belgium or that they had been exploited. Besides Myria, PAG-ASA and two victims also instituted civil proceedings.

The young girls were brought to Belgium from Thailand in an organised manner. Some of the girls were already active in prostitution in Thailand. One of the defendants took care of the plane tickets and the visas. A second defendant acted as an intermediary who put the young girls to work in a bar or massage parlour in Belgium. The two other defendants ran a bar or a massage parlour. One of them transferred part of the income from prostitution to Thailand, sometimes on behalf of the young girls, sometimes not. In Belgium, they received half of their income. Part of this money allowed them to reimburse their journey from Thailand. They were in possession of their identity papers and other

³⁸⁰ Brussels, 12 March 2014, 13th ch. (appeal).

³⁸¹ Louvain Crim. Court, 23 October 2012, available at www.myria.be. Also see: Trafficking and Smuggling in Human Beings, Annual Report 2012, *Building trust*, pp. 71-72 (Thai massage parlour).

documents. It emerged from the case that they had freedom of movement and that their work in Belgium was profitable.

The court of appeal adopted another stance and gave a broader interpretation of the charge of human trafficking than the criminal court. The court considered that the girls had been brought to Belgium from Thailand with the aim of exploiting them sexually. As a result, it emphasised the fact that the consent of the victims to the envisaged or actual exploitation was irrelevant, since the possible consent of the victim to her exploitation doesn't alter the fact that human trafficking is a punishable offence. Nevertheless, the court gave a reduced sentence given that the reasonable time limit had been exceeded. Six to 18-month prison sentences were handed down, as well as fines varying between EUR 2,750 and EUR 5,500.

On **23 March 2015**, the **Criminal Court of Ypres**³⁸² convicted three defendants, including a company, primarily for acts of human trafficking for the purpose of sexual exploitation, human smuggling and various breaches of the Social Criminal Code.

The defendants ran a Thai massage parlour, where foreign girls staying here illegally were employed under dubious circumstances. The prostitutes were actively recruited, housed and taken care of by the defendants. They were significantly underpaid, lived in seedy conditions and had no form of social protection. They had to hand over half of their earnings and pay various indemnities on top of that. The court considered that in view of their precarious circumstances, the young women didn't have much choice other than to work under these conditions.

The defendants were already tried in 2011 for similar acts. Consequently, the judge sentenced them to 30 months and four years in prison respectively, together with a EUR 18,000 fine (EUR 6,000 per victim). The company, for which the other two defendants

acted as agents, was also fined EUR 18,000. The court also ordered a special confiscation of EUR 3,750 and EUR 12,000 for the first and second defendant respectively. Myria, which instituted civil proceedings, received compensation worth EUR 2,500.

In a **judgement of 31 March 2015**³⁸³, **Antwerp Criminal Court** convicted a Thai woman, who ran a massage parlour, for the sexual exploitation of several compatriots. During various inspections carried out by the Social Inspectorate, Thai women were found there; they were working without valid documents. Although they stated in the beginning that they had come to Belgium on their own initiative and were working in the massage parlour on a voluntary basis, one of the victims gave a completely different version during a second hearing. One of the victims stated that she had arrived in Belgium through a smuggler for the sum of EUR 15,000. She worked in the massage parlour to pay off her debt. She had just started to work there when she was told that her debt was EUR 30,000. The massages went hand in hand with sexual relations. She had to give half of her earnings to the defendant. Once the initial debt had been paid off, the exploiter offered to get the victim official papers, which would cost her another EUR 10,000.

The court found that the defendant ran a brothel and took advantage of the fact that the victims were staying here illegally and in a precarious administrative situation. The court added that there was sufficient evidence to accuse the defendant of human trafficking with the aggravating circumstance of a business activity.

The court handed down a two-year suspended prison sentence, together with a EUR 3,000 fine. Myria, which instituted civil proceedings, was awarded a symbolic euro as compensation.

³⁸² West Flanders Crim. Court, Ypres division, 23 March 2015, 17th ch. (final).

³⁸³ Antwerp Crim. Court, Antwerp division, 31 March 2015, ch. AC4 (final).

Sham marriages

In a **judgement of 17 October 2014**³⁸⁴, the **Dutch-speaking Criminal Court of Brussels** convicted an Albanian pimp primarily for human trafficking for the purposes of sexual exploitation and money laundering. The defendant used fraudulent tactics to recruit victims and put them to work in Belgium as prostitutes. For instance, he organised a sham marriage between the victim and a Belgian national, making made the victim's stay completely dependent on the success of the sham marriage. One of the victims worked as a prostitute in Rue d'Aarschot in Brussels, then later in a bar in Ostend, and then in Ghent. The victim was taken to a specialised reception centre for victims of human trafficking, but refused victim status. She refused to make further statements through fear of reprisals against her child and her family.

The court sentenced the defendant to a four-year suspended prison sentence, together with a EUR 2,750 fine. The judge also ordered a confiscation amounting to EUR 60,000. Myria, which instituted civil proceedings in this case, received a symbolic euro as compensation.

Loverboys

A decision given by the **French-speaking Criminal Court of Brussels on 23 September 2014**³⁸⁵ concerns an Albanian loverboy³⁸⁶. The defendant was convicted for trafficking in human beings for the purposes of sexual exploitation. He exploited the prostitution of two young women whom he had seduced (he told them he was in love with them) and then forced them into prostitution. He had recruited and seduced them in Albania with the purpose of exploiting them through prostitution in Brussels. The court emphasised

that “after seduction, the promise of a reassuring life as a couple is a fraudulent tactic, even if it is indirect, as referred to in the charges”.

Cash courier

In a decision of **7 May 2014**, the **French-speaking Criminal Court of Brussels**³⁸⁷ accepted the charge of trafficking of human beings for the purposes of sexual exploitation and money laundering for a total sum of EUR 66,270 with regard to a defendant who was active in the transportation of goods, people and cash between Belgium and Bulgaria in relation to prostitution. The case (and more particularly, phone tracking) revealed that the defendant was in close contact with prostitution circles in Brussels and Antwerp. He also appeared as a contact in several cases opened in Belgium within the framework of acts of human trafficking. Cooperation with Bulgaria revealed that the defendant had crossed the Bulgarian border numerous times with women who were known to be involved with prostitution, and that he regularly travelled between Belgium and Bulgaria. The cost for travelling with the defendant was EUR 150 to go to Belgium and EUR 100 to return to Bulgaria. The defendant knew that the girls who travelled with him were going to Belgium to prostitute themselves. As regards the transportation of cash, the defendant took a commission on the transported sum. As for luggage, the price depended on the size.

The court sentenced the defendant to a five-year suspended prison sentence for the period exceeding pre-trial detention and a EUR 22,000 fine. It also ordered the special confiscation of the money resulting from the sale of the seized vehicle, as well as the sums that were in the defendant's possession or the subject of the offence of money laundering.

³⁸⁴ Brussels Dutch-speaking Crim. Court, 17 October 2014, ch. 46bis (final). Also see: Human Trafficking, Annual Report 2013, *Building Bridges*, p. 25.

³⁸⁵ Brussels French-speaking Crim. Court, 23 September 2014 (final).

³⁸⁶ Also see part 1, Chapter 2, point 1.1.

³⁸⁷ Brussels French-speaking Crim. Court, 7 May 2014, 54th ch. (appeal).

Belgian victims

A major case concerning Belgian victims in a precarious situation was tried by the **Criminal Court of Liège on 19 November 2014**³⁸⁸. In this case, five defendants, including a company, were prosecuted for trafficking several Belgian girls for the purpose of sexual exploitation. The majority of them, as well as two other co-defendants, were also charged with recruiting and exploitation of prostitution, as well as running a brothel. One of the defendants (recruiter) was also prosecuted for the rape of an underage girl, as well as two adult women. All the defendants (seven) were prosecuted either for being the leader or the member of a criminal organisation.

The case was opened following a police check in a champagne bar where several hostesses in skimpy clothing were identified. Once of waitresses, who was clearly nervous and ill at ease, was later summoned and heard. She explained how she was recruited, how the earnings were divided, as well as the role of several of the defendants. On the basis of her statement, investigations were carried out (phone tapping, searches, hearings with the other waitresses and questioning).

The court charged the five defendants with human trafficking: the girls in question were recruited, housed, and controlled for the purposes of prostitution within the framework of the champagne bar. The girls spoke of a similar *modus operandi*, i.e.:

- they were taken to the bar by one of the defendants (the recruiter), who then presented them to the people running the bar (a couple) whom he knew;
- the woman running the bar showed them round and explained the work conditions, the tariffs and showed them the gear;

- she particularly talked about sexual services;
- the girls were encouraged to do a trial;
- several days after they began work, the woman who ran the bar got them to sign a document saying that they were active partners in the company.

The girls' statements were confirmed by the initial statements of several of the defendants.

Recruitment took place primarily over the internet (fake Facebook profiles). The court pointed out for there to be recruitment, it didn't matter whether the worker was salaried or self-employed, whether the social regulations in force were respected or not or whether the contract related to a job contrary to public order or decency. Consequently, as to whether the victims were bogus self-employed workers, real or fake active partners or salaried employees was of little importance in this case. Regarding the application of Article 433*quinquies* of the Criminal Code, this didn't change anything.

One of the defendant's was the woman who ran the bar and was the manager of the company. Her husband was the co-manager and took care of maintenance in the establishment. The court also accepted the charge of the company's, i.e. the legal entity's, criminal liability³⁸⁹. The company was in fact founded exclusively to take over and run one or more hostess bars, including the one where the girls were exploited. Furthermore, the offence of trafficking was knowingly and intentionally committed by the persons who set up the company, i.e. the two defendants, i.e. natural persons whose role within the

³⁸⁸ Liège Crim. Court, Liège division 19 November 2014, 19th ch. (final except for the company convicted in absentia). The latter filed an opposition (see hereafter note 405).

³⁸⁹ Article 5 of the Criminal Code relating to the criminal liability of the legal entities states that "All legal entities are criminally liable for the offences intrinsically linked to the achievement of its objective or the defence of its interests, or for those whose concrete facts show that they were committed for their benefit. When the legal entity is held liable exclusively owing to the intervention of an identified natural person, only the person who has committed the most serious offence can be convicted. If the identified natural person knowingly and willingly committed the offence, they can be convicted at the same time as the liable legal entity".

company and the structure of the latter justified a joint conviction of the natural persons and legal entity.

The two other defendants (a man and a woman) were the recruiters. The man recruited the girls on the internet or accosted them in town. He generally approached young girls without any experience in prostitution, who were recruited on the basis of their appearance. He then took them to the bar where they were met by the couple managing the champagne bar. He also used young girls to canvass other ones. In addition, he managed an escort agency which had a website. During the first appointment with a young girl for the website, he asked them to take a “test”. The court emphasised that the control he exerted over these young girls was particularly marked by this sex test. The court also accepted the charge against him of rape, especially in the case of an underage girl whom he forced to take this famous “test”.

As for the woman, she acted as an intermediary and played the role of “secretary”. She managed the clients’ requests, answered calls and directed them towards her “colleague”. She was responsible for making the initial contact with the young girls through social networks (such as Facebook).

The charge of criminal organisation was changed to criminal association and accepted, except with regard to the defendant who played the role of “secretary”. There was indeed a certain distribution of the tasks but no strict hierarchy, or elaborate structure as required within the framework of a criminal organisation. The defendants were associated in the exploitation of the prostitution of young girls in the bar but they were all acting on their own account since the money collected wasn’t distributed among the perpetrators.

After due hearing of the parties, the court ruled against all the defendants, except the

company, which was sentenced in absentia (and filed an opposition)³⁹⁰.

The defendants who managed the bar were sentenced to two years in prison and a EUR 5,500 fine, with a partial suspension. The defendant who was the recruiter, and a repeat offender, was given an eight-year prison sentence and a EUR 5,500 fine. The other defendants were sentenced to community service. The company was sentenced to a suspended fine of EUR 3,000. Sentences involving the confiscation of assets of equivalent value were also handed down (EUR 23,960 in the case of the recruiter and EUR 45,682 in the case of the managers and the company). The underage victim was granted the provisional sum of EUR 2,500 and an expert neuropsychiatrist was appointed to assess the moral damage suffered.

Income from prostitution and shell companies: conviction of legal persons

Three defendants and two companies were prosecuted for various offences: trafficking of human beings for the purpose of the sexual exploitation of 22 victims, recruiting and exploitation of the prostitution of 161 prostitutes, running a brothel, pimping at hotels (this charge concerns a company). Some of them (including two other companies) were also charged with forgery of documents, money laundering, tax fraud and insurance fraud.

The main defendant bought out the majority of prostitution parlours in Liège to create, as he put it, a sort of “Villa Tinto” like the one in Antwerp. In reality, he didn’t present any such concrete project. On the contrary, after the departure of the Belgian prostitutes who refused the conditions imposed by this defendant, he put to work a large number of young women of African origin with Belgian or Spanish papers. He recruited these young women in Antwerp and Brussels. When he arrived, the shifts were reduced, which

³⁹⁰ However, the court confirmed the conviction of the latter in a judgement of 3 June 2015.

allowed him to bring in another tenant; nothing was done to renovate the building despite the promises made; fake employment contracts were drawn up, etc. Supplements were regularly demanded for cleaning, for the shower, etc., even though the tenancy included these services.

The companies set up were intended to conceal the profits from prostitution. His partner, the co-defendant, served as a nominee in this context. The third defendant looked after the parlours and rent collection for the main defendant.

In a **judgement of 20 March 2013**, which was dealt with in the previous report³⁹¹, the **Criminal Court of Liège**³⁹² accepted the charge of trafficking and other offences concerning prostitution in the first instance, but only with regard to the natural persons.

Through a detailed statement in its **judgement of 13 January 2015**, the **Court of Appeal of Liège**³⁹³ reversed the decision on this point, also convicting the companies, i.e. the legal entities. The court emphasised in effect that the material attribution of the offence to a legal entity implies that the acts which led to the prosecutions are linked, even indirectly, with this legal entity, either because the acts are intrinsically linked to the achievement of its business purpose, or because they have been committed in its interest or on its behalf. The legal entity isn't required to have benefited from the offence: the offence just needs to have been committed for this purpose. In this case, since the offences of which the defendants were accused were directly or indirectly linked, among other things, to the exploitation of the debauchery which took place in the buildings belonging to the companies concerned, the conduct under scrutiny is intrinsically linked with the achievement of the business purpose of the charged legal entity. In other words, the

exploitation of prostitution, running a brothel and laundering the profits from these activities are, in this case, the means chosen by the organs of the prosecuted companies to achieve their business purpose. Hence, regarding the two companies prosecuted for trafficking, it was a question of asset management. The court found that in view of the evidence, it was established that the two companies, managed in law or in fact by the two main defendants, had acquired several houses in full knowledge of the previous purpose of these properties. Through the endless rental of the prostitution windows located on the ground floor of these buildings, they ran brothels and exploited the prostitution of 161 people recruited for this purpose. The two defendants, who managed the two companies with the consent of the companies in the name of which and on behalf of which they acted, knowingly and willingly recruited 161 persons with a view to exploiting their prostitution. Through this conduct, they contributed to the achievement of the companies' business purpose.

As regards the charge of trafficking, the court emphasised that the envisaged or actual exploitation of the victims and the defendants' intention to exploit them resulted, above all, from the immediate replacement of the tenants who left the premises, by foreign prostitutes who were resigned to working in disgraceful conditions. The tenants refused to prostitute themselves in the conditions offered to them. The court also noted that fact that some prostitutes didn't explicitly complain about their working conditions or the rent to be paid, didn't alter the fact of the effective and intentional exploitation of these persons in a precarious situation owing to their social status. The court quite rightly added that their docility could be explained by the fear of reprisals or losing their means of subsistence which they could only earn through their prostitution. It therefore convicted the defendants of this charge as natural persons and legal entities.

³⁹¹ Trafficking and smuggling in human beings, Annual Report 2012, *Building trust*, p. 71.

³⁹² Liège Crim. Court, 20 March 2013, 8th ch., available at www.myria.be

³⁹³ Liège, 13 January 2015, 8th ch.

The court also accepted the charge of taking advantage of the vulnerable situation of the prostitutes of African origin and using fraudulent tactics, violence and coercion on them.

The court increased the sentences delivered in first instance for one of the defendants, from three to four years in prison. As regards the companies, they were sentenced to a fine of EUR 5,500, with a three-year suspension.

Confiscation orders for the sum of EUR 535,516 were made against the two main defendants and the four companies. A confiscation order for all the buildings was also made against the same two defendants and the two companies prosecuted for acts of trafficking.

Polycriminality

In this case tried by the **Criminal Court of Liège on 7 January 2015**³⁹⁴, ten defendants were prosecuted in the criminal court for various offences. Six of them were prosecuted for trafficking for the purpose of the sexual exploitation of several Belgian girls, as well as for recruiting and exploiting the prostitution of the same girls. Three defendants were prosecuted for trafficking for the purpose of committing a crime or offence, in this case, theft by a person placed in court order administration; and five for forging documents in order to force the same person to commit acts of fraud. The main defendant was also prosecuted for rape. The other charges in this case concern aggravated assault, harassment, fraud, inhuman and degrading treatment, threats, criminal association, breach of the Firearms Act, the sale of drugs.

The court accepted the charges of trafficking for the purpose of sexual exploitation, recruitment and exploitation of prostitution against the main defendant regarding three young women in a precarious social position. It also accepted the charge against the ex-

partner of this defendant concerning the first young woman. The defendant who recruited, transported and received her, made sure she was looked after and housed by people close to her and/or under her control, with the aim of exploiting her prostitution. She had to give half of her earnings to the owners of the bars where she was supposed to prostitute herself and the other half to the main defendant. The court accepted the aggravating circumstance of abuse of a position of vulnerability owing to the young woman's precarious social situation: she had no income, no property and was housed in an institution for the homeless.

As for his ex-partner, who was actually considered a victim herself in another charge of trafficking for the purpose of sexual exploitation (which the court didn't accept), she contributed to receiving the victim and housing her with another young woman, training her, taking her to her place of work, and agreeing to have her work in the same bar as her. In this respect, the court emphasised that she was under the main defendant's control, and was probably trying to win him back by making herself useful by committing the acts.

Concerning the second young woman in a precarious situation, the main defendant met her in a bar as she was just starting out in prostitution. He quickly took charge of her, taking her from her place of work to where was staying and vice versa. The aggravating circumstance of abuse of a position of vulnerability was also accepted: she started out in prostitution, which she was previously familiar with, because she had no income and was staying with her boyfriend's brother. The defendant told her that he would get her out of this situation and threatened her friends. He also used fraudulent tactics by making her believe that he was doing this to help her by getting her out of a difficult situation.

³⁹⁴ Liège Crim. Court, Liège division, 7 January 2015, 19th ch. (final).

Finally, the third young woman he seduced was still a minor³⁹⁵. She became his girlfriend and came to stay at his house so that he could encourage her to work in prostitution once she was an adult and then exploit her prostitution.

On the other hand, the charges of trafficking with a view to committing a crime or an offence weren't accepted. With regard to the man placed in court order administration, several of the defendants abused his naivety and his submissiveness towards the main defendant. In this respect, the court considered that the fact that he was placed in court order administration didn't prove that he wasn't able to assess the situation correctly or was in a position to refuse to carry out the acts the main defendant demanded of him. As regards the thefts this person was obliged to commit, the court noted that the criminal court record didn't include any element objectivising the thefts this person committed (such as the judgement which convicted him for the theft of metals or the police reports concerning other thefts). The presumed victim stated that the main defendant had a bad influence on him which, according to him, led him to do "stupid things". The court considered that, even if these thefts were recognised, it wasn't sufficiently established that the presumed victim had acted against his will, an essential element to accept the charge of human trafficking as it relates to the committing of a crime or offence. Consequently, the defendants were given the benefit of the doubt and acquitted from this charge.

The court maintained the same reasoning concerning the acts of fraud: the fact that the man believed to be a victim had been placed in court order administration for several years, didn't prove that he wasn't in a position to refuse to take out the loans envisaged by the defendants, or made to sign these credit contracts against his will. And yet, this is an essential element of the offence of trafficking in that it relates to the committing of the

crime or offence. Furthermore, it was agreed that he would receive part of the borrowed amounts. The defendants were subsequently given the benefit of the doubt and acquitted.

The main defendant was given the benefit of the doubt and acquitted from the charge of rape.

The main defendant was sentenced to five years in prison and a fine of EUR 5,500, and given a confiscation order for the sum of EUR 78,180 of which EUR 180 were attributed to the victim (a minor when she was recruited). The other defendants prosecuted were sentenced to 12 to 15 months in prison and fines ranging from EUR 2750 to 5500, with partial suspension.

The underage girl who instituted civil proceedings was granted the provisional amount of one euro out of damages estimated at EUR 5,000, with the deduction of EUR 180, attributed within the framework of the special confiscation³⁹⁶.

1.2. Labour exploitation

1.2.1. Construction/Renovation

In 2012, the **Criminal Court of Termonde** convicted a defendant for human trafficking in the construction industry³⁹⁷. The judge also convicted several other defendants for their role as slum landlords. The victims were Polish workers who were employed to carry out renovation works as bogus self-employed workers, even though they didn't understand what this status actually implied. Furthermore, they were housed in precarious conditions. Their salary fell far below the official rates, and they were paid at very irregular intervals, if they were paid at all. The court found that the defendant only set up

³⁹⁵ See also part 1, Chapter 2.

³⁹⁶ On compensation, see Human Trafficking, Annual Report 2013, *Building bridges*, pp. 55-56.

³⁹⁷ Termonde Crim. Court, 3 April 2012, available at www.myria.be. See also: Trafficking and Smuggling in Human Beings, Annual Report 2011, *The money that matters*, p. 136.

this legal arrangement to maximise his profits and that he paid no heed to the basic rights of his fellow human beings or to human dignity.

In a **decision of 6 June 2014**³⁹⁸, the **Ghent Court of Appeal** confirmed these convictions, as well as adding a number of specifications and corrections. The defendant was found guilty of human trafficking and was sentenced to a year in prison and a fine of EUR 4,500.

Another case in the same sector was judged by the **Criminal Court of Arlon** in a **judgement of 8 May 2014**³⁹⁹: two defendants were prosecuted primarily for human trafficking for the purposes of labour exploitation with regard to illegally-staying foreign workers and, one of them, with regard to Belgians as well. They were accused of making them work on house renovations seven days a week for more than nine hours a day, with no proper work or safety equipment, no bathroom facilities and low wages. Some of the workers slept on site in precarious conditions.

The case was opened following a complaint that was filed several months after the acts by workers who were placed under the protection of a specialised reception centre. These complaints were confirmed by numerous independent witnesses.

The court declared the charge established but only regarding the foreign workers: the defendants recruited, harboured and received them with the purpose of making them work in conditions contrary to human dignity (excessively low salary, no days off, highly precarious accommodation on site and a blatant lack of respect for the standards relating to the well-being of workers). The court didn't accept this charge regarding the defendant who was also prosecuted for the acts committed against the Belgian workers (one of them wasn't in a position of subordination, another one was only a tenant and the latter's job wasn't clear).

³⁹⁸ Ghent, 6 June 2014, 10th ch.

³⁹⁹ Luxembourg Crim. Court, Arlon division, 8 May 2014, 7th ch. (appeal).

The workers who instituted civil proceedings were granted the wages owed to them.

*Brazilian network and cascade subcontracting*⁴⁰⁰

A major case concerning a fictitious subcontracting system in the construction sector was tried by the **French-speaking Criminal Court of Brussels on 30 October 2014**⁴⁰¹. Illegal Brazilian workers, who had travelled to Europe from Brazil, were essentially recruited in Belgium to work on building sites all over Europe within the framework of a complex subcontracting chain.

Eight defendants (natural persons) and three companies (the client: company S, as well as two subcontractors: companies C. (main contractor) and E.) were prosecuted according to different degrees of involvement for criminal organisation, forgery and the use of forgeries (sham work contracts and fake identity papers), illegal employment of illegal foreign workers and the resulting breaches of the social criminal code (in particular, unpaid wages, non-payment of social contributions to the National Social Security Office (NSSO), etc.). Five of them and two companies (but not company S., the client) were prosecuted for human trafficking for the purpose of labour exploitation. They were accused of having recruited several illegal Brazilian workers, in Belgium and in other European countries, and making them work in conditions contrary to human dignity. Two workers instituted civil proceedings.

The case was initiated after Brazilian workers employed by a Portuguese company filed a complaint for unpaid wages. These workers worked on various building sites for company S. in Europe, under false papers. The work involved building and installing metallic partitions in warehouses and storage spaces

⁴⁰⁰ Concerning these acts of fraud and the Brazilian networks, see the external contributions in Trafficking and Smuggling of Human Beings, Annual Report 2011, *The money that matters*, pp. 31-36.

⁴⁰¹ Brussels French-speaking Crim. Court, 30 October 2014, 69th ch. (appeal).

which had been built all over Europe by company S. Company S. therefore entrusted the manufacturing and installation of these structures on various building sites to C., a specialised private limited company. Since the latter didn't have sufficient staff to meet S.'s request, it initially entrusted the works to a company that went bankrupt, then to another company, which was also prosecuted in this case (E.). This company was primarily composed of the former employees of the company that went bankrupt.

The Brazilian workers had to register with the tax office in a small town in Portugal, with a view to obtaining residence papers. A sum was deducted from their salary to supposedly pay the contributions in Portugal.

The court described the mechanism that was established: the works to install the partitions on the building sites of company S. entrusted to company C. were carried out, after resorting to a chain of successive subcontractors, by a certain number of illegal Brazilian workers. Within this subcontracting chain, company E. was in a privileged position because the main contractor, i.e. company C., went to them for all the works. As it didn't have any staff, company S. used subcontracting companies. Three Portuguese companies appear as the final link in the chain providing the labour force, which turned out to be essentially composed of illegal workers.

The companies concerned and their directors hid behind this subcontracting chain in order to maintain that they weren't in any way responsible for using these workers, who were exclusively managed by the company that employed them.

The court then examined the role played by each of the links in the chain:

- a. As regards company S. (not prosecuted for human trafficking): it is the first link in the chain (client). However, S. is actually part of a group, comprised of various companies with a separate legal personality. As for company S. Europe, a defendant, it was formed prior to the

subcontracting collaborations set up and it was other entities in the group that negotiated the service contracts. The court considered that it wasn't involved as the contracting party for the construction works and therefore wasn't the first link in the chain, for whom the works would have thus been done. As a result, it was acquitted from all the charges against it.

- b. Then there is the main contractor, the private limited company C. (defendant), which didn't place any workers at S.'s building sites since the works were subcontracted to company E.
- c. Company E. occupies a central position since it is through this company or its two main managers that:
 - the workers are recruited;
 - the instructions regarding the work to be done are given, through the team leaders;
 - the transportation of the workers from Belgium to the building sites abroad is arranged;
 - board and lodging for the workers is taken care of and they are paid on site by the team leaders;
 - the workers' wages are paid directly or indirectly.

The court deduced that far from being simply the main subcontractor who used other subcontractors on the building sites, company E. had all the characteristics of an employer in the sense of labour law.

- d. The two companies identified as being E.'s main subcontractors are actually fictitious.
- e. The last link: the subcontractor with the workers: they are companies under Portuguese law.

The court concluded from the analysis of the role of each of the links in the alleged subcontracting chain that a mechanism had clearly been set up, aimed at concealing the

fact that company E. had placed a significant number of workers, who were in fact illegal immigrants, on company S.'s building sites. By maintaining the totally fictitious appearance of this company's independence with officially no workers, it was able to hide behind this feigned good faith, since the end user (the last subcontractor) was solely responsible for its staff. The use of subcontractors was purely artificial and fictitious.

The court accepted the charges concerning social criminal law against the managing director of company E. and of another defendant who was in fact the *de facto* director of this company. On the other hand, the court acquitted the company, a legal entity, as it didn't act of its own free will or knowingly and independently of its director. Therefore, it can't assume its own individual criminal responsibility.

Likewise, the other charges were also accepted against the majority of defendants.

On the other hand, the court acquitted both company S. (charged with illegally employing foreign labour, the only thing it was accused of) and company C. (main contractor) and its director of the offences for which they were accused, since it wasn't possible to establish their knowing involvement in the fraudulent mechanism.

As regards the trafficking of human beings, the court accepted this charge against the defendants linked to company E. and its fictitious subcontracting companies. On the other hand, it acquitted company C. (main contractor) and its director (given the benefit of the doubt), as well as company E. since it couldn't be held personally liable. The working hours were very long (12 to 14 hours a day) with very few or no breaks, successive periods of work could last 30 to 45, and even 90 days, and six or even seven days a week; the wages were significantly lower than those specified by Belgian law, and they were paid randomly and not fully; sums were deducted from the salaries in order to reimburse the cost of the forged documents given to the workers or supposedly to pay Portuguese tax

contributions; the fake documents had to be handed back at the end of every job.

The prison sentences were suspended but the fines were firm.

The two workers who instituted civil proceedings were granted back payments fixed *ex aequo et bono* at EUR 15,000 and 50,000 respectively, as well as one final euro for immaterial damage. Concerning the latter, while the civil parties demanded significant moral damage, the court considered that while the defendants were found guilty of human trafficking, it was clear that the precarious situation they found themselves in, which was exploited by some of the defendants, resulted from a situation created by the civil parties themselves: they left Brazil with full knowledge of the facts to come and work in Europe in conditions they must have known would be difficult.

PAG-ASA, which also instituted civil proceedings, received one final euro.

False posted workers and bogus self-employed workers

In a **judgement of 22 April 2015**⁴⁰², the **Criminal Court of Turnhout** convicted the defendants, which included two companies, for trafficking in human beings for the purpose of labour exploitation and forgery (regarding taxes), among other things. The court case was opened after information was sent by the CTIF (unit responsible for handling financial information) regarding suspicions of money laundering.

One of the accused companies used a Polish firm to recruit Poles through a posting procedure. The investigation revealed that they were put to work with fake E101 forms⁴⁰³

⁴⁰² Antwerp Crim. Court, Turnhout division, 22 April 2015 (appeal).

⁴⁰³ An E101 certificate is a European form that allows workers to indicate in which country they benefit from social insurance. The major reform of European social security legislation which came into force in May 2010 scrapped the E forms, which had been used up until then by persons moving between EU countries. It was replaced by the simplified A1 form.

and that the Polish firm has no accounting. Later, the same accused company used a Romanian firm to get Romanians to work in Belgium within the framework of posting. These nationals were also in possession of falsified E101 forms and this Romanian firm didn't have any accounting either, plus its income was almost inexistent.

This collaboration came to an end and the Romanians were then employed as managing partners or sleeping partners in the structure of the second company, which also appeared as a defendant in this case. The latter acted as a subcontractor for the first accused company.

The defendants housed the Romanian workers. They deducted the rent directly from their salaries. A check by the housing inspectorate revealed that several Romanians were staying at the defendant's house, which didn't meet the minimum housing quality standards either. Regardless of the structure where they worked, the workers earned an average hourly wage of EUR 8, which was far lower than the amount the principal was paying the company, but the judge considered that the wages were in keeping with the market for posted workers. Nevertheless, the defendants didn't pay any social or tax contributions for the Polish or Romanian workers. The victims had forged E101 forms and consequently didn't benefit from any kind of cover. The court subsequently found that within this context, the wages were indeed abnormally low.

The *modus operandi* used when the Romanians were introduced into the company's structure was similar to the one used in the past. They provided the defendants with worksheets, on the basis of which the defendants paid them in cash, then on their bank account based on the same hourly rate, which was very low after the deduction of the social and tax charges. Later, it transpired that the Romanians were registered as self-employed workers, that they were partners and that they had signed papers written in Dutch without understanding a word. One of the defendants asserted that the Romanian workers were

perfectly aware of their status as self-employed workers and had agreed to this. However, it emerged from the hearings that the victims weren't aware, or only partly, and that they had no knowledge of the implications this had on a social or fiscal level. The defendant had an absolute power of decision over their job, their accommodation, etc. The victims were also obliged to sign fake loan and guarantee contracts, otherwise they wouldn't be able to retrieve their residence papers. Several victims were threatened after having filed a complaint against the defendants.

The judge didn't doubt the victims' credibility and considered the working conditions of these workers to be comparable with labour exploitation and that it was contrary to human dignity.

The judge handed down a confiscation order for the amount of EUR 359,877.29. Myria, which instituted civil proceedings, received a symbolic euro in damages. The victims who instituted civil proceedings each received immaterial damages ranging between EUR 2,500 and 2,600⁴⁰⁴. The judge handed down prison sentences varying between three months and four years, combined with fines ranging between EUR 6,000 and 90,000.

1.2.2. Agriculture/horticulture

Wide-scale exploitation and slum landlords in a mushroom farm

On **16 February 2015**, the **Criminal Court of Courtrai**⁴⁰⁵ convicted ten defendants, including several companies, for the trafficking of human beings for the purposes of labour exploitation, slum landlord activities and numerous social legislation breaches. The defendants primarily employed Bulgarians to work in a mushroom farm in conditions

⁴⁰⁴ On the compensation of victims, see Human Trafficking, Annual Report 2013, *Building bridges*, pp. 55-56.

⁴⁰⁵ West Flanders Crim. Court, Kortrijk division, 16 February 2015, 10th ch. (appeal).

contrary to human dignity. There was also a minor among these workers.

In 2008, the Social Inspectorate inspected the mushroom farm with the support of the police. They discovered 15 people there, all of foreign origin, with a precarious residency status, picking mushrooms. The workers stated that they were in their “trial period”. They earned very little and often didn’t know how much they would get. The Bulgarian workers were also caught stealing food in shops on several occasions. They were forced to since they hadn’t been paid for a while. They lived in houses belonging to the main defendant who deducted the rent directly from their wages. Other inspections and searches also revealed other similar acts.

The court emphasised that the crime of human trafficking was composed of two elements:

1. a material element composed of the recruitment, transportation, transfer, harbouring, reception of a person, including the exchange or transfer of control over that person;
2. an immaterial element: the objective of making someone work in conditions contrary to human dignity. The court pointed out that the notion of constraint wasn’t an essential element of the offence but an aggravating circumstance.

For the court, the conditions contrary to human dignity were based mainly on the fact that the victims wages fell well below the scales for that sector, that they were working illegally in precarious and dangerous conditions, and that they weren’t paid on a regular basis. These victims worked for hours on end, without being paid overtime for working at night or during the weekend. The court added that the fact that the victims would be satisfied with what they earned here, in their country of origin, shouldn’t be taken into account when considering whether or not the conditions are contrary to human dignity. The Bulgarian workers were made to work as bogus self-employed workers. This allowed the exploiters to avoid paying social

and tax contributions. The majority of the victims either didn’t have a contract, or the contract was written in a language they didn’t understand.

The judge also underlined the fact that the activities of the slum landlord were indissociably linked to the employment process and labour exploitation. This accommodation was unfit for habitation and dangerous. The victims were living in overcrowded spaces, slept on mattresses on the floor, used small electrical appliances for heating and had access to limited sanitary facilities. The majority of victims paid several hundred euros a month for this and the amount was deducted directly from their wages.

The court considered that the role of the different companies was clearly highlighted during the hearings of the various workers. It emerged from the searches, the companies’ assets that were inventoried, the hearings of the proxies and the coordinated inspections that the companies should be considered as the employer. The acts they were accused of were intrinsically linked to achieving their company’s goal and they transferred their material benefits by invoicing the various companies.

The court sentenced the main defendant to three years in prison, with a minimum of one year. The court also fined them and ordered the effective confiscation of EUR 100,00 and a suspended confiscation of EUR 169,637. His wife was given a 15-month prison sentence, with a minimum of six months. All the other defendants were also punished, natural persons included, with each forced to pay a fine of EUR 16,500, of which EUR 5,500 immediately. Myria, which instituted civil proceedings in this case, received EUR 2,500 in damages.

Exploitation of seasonal workers through “employment services”

On **21 January 2015**, the **Criminal Court of Mechelen**⁴⁰⁶ convicted a company director who acted as an intermediary to employ labour in the horticultural sector. He was convicted for trafficking in human beings for the purpose of labour exploitation in relation to at least nine seasonal Romanian workers.

According to the defendant, his sole-trader company was active in providing services to Romanian workers who were employed by his intermediary in some 15 or so horticultural businesses. He was responsible for finding accommodation for the workers, who mainly only lived and worked in Belgium for several months. He stated that he began providing these services in 2009 and had thus helped some 200 people or so to find work. He pointed out that they paid him a decent amount for his services.

Things started to move after an inspection carried out by the Social Inspectorate of one of the horticultural businesses, where workers were employed through him. None of them had their personal papers on them. It was the defendant who brought their identity cards and work permits. Fourteen Romanian workers were heard. It emerged from the hearings that the workers hadn't signed a rental contract with the defendant but that they paid him EUR 200 a month all the same. These dormitories were located in barely habitable buildings, with no facilities, and the workers were piled in there to spend the night. They had to pay EUR 200 for transport to and from the place of work, even if they went there by bicycle. Furthermore, the defendant also demanded money for transport to the shop (EUR 100 a month), costs for translations and other services (EUR 100 a month). If the workers wanted to come back the following year, they had to make a backhand payment of EUR 140 a month. All in all, the workers were left with only half their

wages, i.e. approximately EUR 500. The workers were dissatisfied with their situation but they didn't dare say so because they were afraid of the defendant, who came from the same region as them. Their families were threatened if they refused to pay.

The defendant had already been convicted in 2013 by the Antwerp Court of Appeal for illegal employment and prohibited employment services. However, in this case, the defendant was prosecuted for trafficking in human beings. The court considered that the defendant was being prosecuted for acts other than those for which he was convicted in 2013. This is why the court considered that the *non bis in idem* principle isn't violated when the essential elements of two offences aren't the same. Finally, the court sentenced the defendant to a two-year prison sentence, together with a EUR 49,500 fine. The judge also ordered the confiscation of patrimonial benefits amounting to EUR 25,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages.

1.2.3. Car wash

In a **judgement of 4 April 2014**, the **Criminal Court of Kortrijk**⁴⁰⁷ convicted two brothers and their company for the trafficking of human beings for the purposes of labour exploitation and for breaches of the social criminal code.

During the inspection of a car wash by the Social Inspectorate, two Indian men who were working there ran off. When they were intercepted, it turned out that they were illegal immigrants and that they had no source of income. One of the victims was living at the defendant's house. In exchange, he worked at the car wash and was given a bit of money, as well as food and drinks. The court expressed doubts concerning the fact that the victims lived with the defendant because a search gave no indication that this was the case. The other victim stated that he work there three days a week and earned EUR 25 a day. The

⁴⁰⁶ Antwerp Crim. Court, Mechelen division, 21 January 2015, ch. MC1 (appeal).

⁴⁰⁷ West Flanders Crim. Court, Kortrijk division, 4 April 2014 (final).

defendants stated that the victims often came to visit the car wash and worked there voluntarily. This way, they learnt the job so that they could find employment as soon as they received their Belgian residence permit.

The judge considered that they worked in conditions contrary to human dignity, given that they worked without really being paid and that there was abuse of their precarious situation. The court considered it irrelevant that the victims agreed to work under such conditions. It sentenced each of the defendants to a 12-month suspended prison sentence, together with a EUR 6,000 fine. The court also ordered the confiscation of EUR 10,000. The company, in which the other defendants were the director and partner, was fined EUR 18,000 and given a confiscation order of EUR 10,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages.

1.2.4. Riding schools

Two decisions concerning riding schools.

In a **decision of 6 May 2015**⁴⁰⁸, the **Criminal Court of Walloon Brabant** accepted the charge of trafficking for the purposes of labour exploitation and various charges relating to social criminal law (including the lack of workplace accident insurance and non-payment of wages) against a woman who illegally employed a Brazilian worker without papers in her riding school. The worker was the victim of a work accident (a horse stepped on her leg) and the injuries sustained as a result of this accident required hospitalisation on several occasions as well as surgery. The court considered that this was a case of work in conditions contrary to human dignity from the moment when the worker was the victim of a work accident, and the defendant showed complete disinterest in her worker's fate. She didn't call emergency services when the accident occurred and invented a story aimed at disguising the work accident by pretending

that a piece of furniture had fallen on the victim's leg during a house move. She didn't report the work accident, didn't pay what was due and showed no concern for the medical costs the worker was faced with owing to the accident even though she had no social cover. She also quickly threw her onto the street even though she could barely walk.

The defendant was sentenced to a year in prison and a fine of EUR 12,000, suspended for the entire prison sentence and half of the fine. The worker instituted civil proceedings and was granted the provisional sum of EUR 1,000.

In another case, already presented in an earlier report⁴⁰⁹, the **Liège Court of Appeal** was compelled to note the limitation period in a **decision of 26 June 2014**⁴¹⁰. This case relates to a dozen or so defendants who were prosecuted for multiple offences (forgery, falsification of the companies' annual accounts, criminal organisation, failure to file for bankruptcy, failure to comply with legal obligations concerning taxes and social security contributions to the NSSO, misappropriation of assets, money laundering, misuse of company assets, fraud, breaches of the criminal social law). Two defendants were also prosecuted for trafficking for the purposes of labour exploitation, regarding three illegally staying Brazilian workers whom they recruited and housed under the cover of a company to employ them in their riding school. They were convicted of this charge, among others, in first instance by the Criminal Court of Liège⁴¹¹. During the appeal, the court noted the statute of limitations of this charge and for the majority of the other charges. On a civil level, it confirmed the judgement as regards the civil proceedings of the two exploited Brazilian workers, holding that both offences concerning trafficking and criminal social law were established. They demanded

⁴⁰⁹ Trafficking and Smuggling of Human Beings, Annual Report 2012, *Building Trust*, p. 77.

⁴¹⁰ Liège, 26 June 2014, 6th ch.(cassation complaint submitted).

⁴¹¹ Liège Criminal Court, 26 March 2013, 14th ch., available at www.myria.be

⁴⁰⁸ Walloon Brabant Criminal Court, 6 May 2015, 6th ch. (final).

compensation corresponding to the payment of their wages (EUR 12,711.77 for one worker and EUR 27,082.86 for the other).

1.2.5. Exotic shops

In a **decision of 19 February 2015**, the **French-speaking Criminal Court of Brussels**⁴¹² accepted various criminal social law charges against a defendant, a Belgian of Pakistani origin, concerning several workers he employed in his shops. However, he was acquitted of human trafficking for the purposes of labour exploitation regarding an Indian national he employed in his shop. The defendant employed him for two years and only paid him EUR 500 on two occasions for 12 to 14 hours of work a day. The worker was provided with accommodation at the shop, in a room on the first floor above the shop. There was no heating and there was only a rug and a cover for a bed. He wasn't given any days off.

While the court considered that it could be established (in particular through witness statements) that the worker was employed by the defendant, it considered on the other hand that it couldn't safely be concluded that the worker's work conditions were contrary to human dignity. The case didn't contain any objective elements other than the worker's statement. There was no visit to his home which could have provided an objective view of the description of the accommodation and the worker refused a confrontation with his employer, which may have possibly reinforced the credibility of his statement.

The court thus reviewed the decision of **3 April 2014**⁴¹³ rendered in absentia, which had also convicted the defendant for human trafficking. He was sentenced to pay the civil

party EUR 29,480 in material damages and EUR 5,000 in non-material damages⁴¹⁴.

Notion of recruitment

In a **decision of 14 January 2013**⁴¹⁵, the **Criminal Court of Liège** convicted a defendant and his companies, i.e. legal entities, for trafficking in human beings and various charges concerning criminal and social law. He exploited several foreign workers in his exotic shops. In its **decision of 8 May 2014**⁴¹⁶, the **Court of Appeal in Liège** confirmed the conviction pronounced at first instance. It considered that it was indeed a matter of working in conditions contrary to human dignity: the workers worked more hours than those declared, when they were declared; the hourly rate was derisory, the workplaces didn't meet labour legislation (lack of bathroom facilities, place to eat, meal breaks, etc.). Furthermore, precise instructions were given in case of an inspection, employees were fired without notice and the workers were permanently monitored via surveillance cameras. The defendant's grip over them was further illustrated by the fact that he provided accommodation for some workers and personally intervened to undertake various administrative steps to supposedly regularise the residency situation.

The court emphasised that contrary to the defendant's opinion, the offence of human trafficking isn't reduced to situations where the worker is deprived of freedom or papers.

It also pointed out that the act of recruiting must be understood according to its usual meaning as is the case here since the workers concerned were recruited by the defendants to work for them.

The court granted the civil party EUR 500 in non-material damages and the provisional

⁴¹² Brussels French-speaking Criminal Court, 19 February 2015 (final).

⁴¹³ Brussels French-speaking Crim. Court, 3 April 2014 (in absentia).

⁴¹⁴ Since the defendant only opposed the criminal aspect, the civil provisions of the judgement given in absentia are final.

⁴¹⁵ Liège Crim. Court, 14 January 2013, available at www.myria.be.

⁴¹⁶ Liège, 8 May 2014, 6th ch. (appeal rejected).

sum of EUR 2,500 in material damages, reserving the right to decide on the surplus when a more precise and detailed calculation of the damages had been made.

The convicted defendant *filed an appeal* on points of law before the “Court of Cassation” (Supreme Court) against this decision. As the plaintiff, he referred to the violation of Article 433*quinquies* of the criminal code on a single ground.

On the one hand, he criticised the interpretation given by the Court of Appeal in Liège of the material element of the offence of human trafficking provided for in Article 433*quinquies*, §1, 3 of the criminal code. He maintained that according to the sense of this provision, the term “recruit” implied the active role of the person employing a worker. However, in this case, the workers presented themselves of their own accord. On the other hand, he considered that the contested decision didn’t show through any of the motives therein, the existence of special intent, the mental element required by the offence.

The **Court of Cassation**⁴¹⁷ threw out this plea. As regards the material element of the offence, it pointed out that “if there is no legal definition or explanation in the preparatory work, the term recruit must be understood in its usual sense. This doesn’t imply that the person recruited must be approached for this purpose”. Indeed, the Court of Appeal considered that the defendant recruited the workers in question by hiring them to work for him. The Court of Cassation consequently considered that the judgement legally justified its decision and rejected the plea.

The Court of Cassation also considered that the Court of Appeal found on the plaintiff’s (defendant) part, the existence of the moral element required by Article 433*quinquies*, §1,

3 of the Criminal Code. The Court of Appeal adopted the reasoning of the first judge who pointed out that the work carried out was done so in conditions contrary to human dignity and added that the plaintiff knowingly and with full knowledge of the facts decided to employ certain workers under such conditions. Consequently, the Court of Appeal legally justified its decision. On this point, the Court of Cassation subsequently rejected the plea.

1.2.6. Printing works

In a **decision of 11 February 2015**, the **French-speaking Criminal Court of Brussels**⁴¹⁸ convicted in absentia a defendant, who exploited several illegally staying Moroccan nationals at his printing works, for trafficking in human beings for the purposes of labour exploitation and various labour law charges. Some of them were staying at a refugee centre. The hours and work rates were soul-destroying (seven days a week and 10 to 14 hours a day), the wages ridiculous (EUR 5/hour), the accommodation was at the place of work in very precarious conditions (on boxes). The workers were shut up in the workshop with no view outside, and were insulted and threatened. The civil parties were granted considerable material damages (between EUR 6,000 and EUR 13,000) and immaterial damages of EUR 3,000 per person.

1.2.7. Butcher’s shop

In this case concerning a mini-market and a butcher’s shop, the **Liège Court of Appeal** reviewed, in a **decision of 12 March 2015**⁴¹⁹, the judgement rendered at first instance by Liège Criminal Court⁴²⁰. It involved a manager who exploited several workers of Algerian or Tunisian nationality who hadn’t been

⁴¹⁷ Cassation, 8 October 2014, no. P.14.0955.F. Regarding this judgement, see Ch.-E. CLESSE, “Le recrutement: une action active ou passive”, note under Cass., 8 October 2014, *R.D.P.C.*, 2015, pp. 695-701.

⁴¹⁸ Brussels French-speaking Crim. Court, 11 February 2015, 49th ch. (opposition to be examined in 2015).

⁴¹⁹ Liège, 12 March 2015, 6th ch. (an appeal was filed by the civil party).

⁴²⁰ Liège Crim. Court, 2 September 2013, 14th ch., available at www.myria.be; see Human Trafficking, Annual Report 2013, *Building bridges*, p. 121.

registered with the National Social Security Office (NSSO) and had no residence permit for Belgium. According to the worker in question, in return for the work done there was a simple promise of being taken on with the aim of supporting a request for regularisation, derisory wages, and basic food. The work was mainly carried out at night in unhealthy and dangerous conditions (genuinely dangerous non-standard electrical installation, a huge amount of gas bottles, a major lack of hygiene overall).

There were no fixed working hours and the defendant had given all the workers instructions in case of an inspection at the workplace. The hourly rate of pay was far below the applicable legal rate, and some workers weren't even paid. They had to work at night to avoid inspections and had a workload of up to 12 hours a day; they were only permanently hired after a trial period of several days with no guarantee of payment or employment. Furthermore, they didn't receive any medical care if they were injured at work.

Contrary to the court of first instance, which declared all the charges established, including human trafficking, the court acquitted the defendant of the charge of human trafficking, only accepting the social criminal law violations. The court thus considered that the circumstances of there being no signed employment contract, no set working hours, wages below the going rate, and no medical care provided by the employer in case of a work accident, weren't sufficient to accept the crime of trafficking.

The enforcement record shows that the workers were free to come and go, that they didn't live at the place of work, that it wasn't established that the workers were subject to mental pressures or that they were they deprived of their identity papers.

Consequently, the court declined jurisdiction to rule on the civil party's complaint based on the charge of trafficking. It declared it unfounded as it would have to be based on the charge of employing foreign nationals without a residence permit, and there is a lack

of a causal link between the fact of having allowed an illegally staying worker to work and the fact of not having paid him the correct wages.

1.2.8. Domestic work

In a case concerning an arranged marriage⁴²¹ and domestic work, both the Criminal Court of Charleroi (in first instance) and the Court of Appeal of Mons found that the charge of human trafficking for the purposes of labour exploitation wasn't established.

The defendants, a Serbian couple, were charged with human trafficking for the purposes of labour exploitation. They were accused of having exploited their daughter-in-law, a minor, within the framework of domestic work at their home. The latter instituted civil proceedings.

The facts presented in the judgement of the court of first instance reveal that the civil party married the defendants' son, who lived with his family in Belgium. This marriage allowed her to escape a particularly difficult life because her mother forced her to beg; she had already been married two or three times according to the local custom and her father-in-law interfered with her and forced her to have sexual relations. The marriage with the defendants' son appears to have been arranged by the defendants and the civil party's mother. In fact, they had to obtain a special authorisation since she was a minor.

In its **judgement of 13 October 2014**, the **Criminal Court of Charleroi**⁴²² considered that the facts concerning exploitation weren't established by the evidence in the case. The civil party did indeed have to perform domestic chores but she wasn't obliged to do all the household chores and her mother-in-law perhaps worked as much as she did. The court also emphasised that while the men were culturally exempt from doing household

⁴²¹ See also part 1, Chapter 1.

⁴²² Hainaut Crim. Court, Charleroi division, 13 October 2014, 10th ch.

chores, this didn't make the civil party the family's slave.

The court surprisingly found it irrelevant that she didn't go out alone, that she didn't have access to her passport and that she wasn't enrolled in school (nor were the defendants' other children either). They also didn't consider it a determining factor that she had been beaten by her husband.

The court also found that the mental element of the offence of trafficking was missing: even if it was understood that the conditions in which the civil party was living were contrary to human dignity, it wasn't proven that she was brought to live with the family for the purpose of being exploited by them; special intent is required for the charge. The defendants and their four children treated her according to her status as a young person, daughter-in-law and wife. The defendants maintained that they weren't aware that they had mistreated her or exploited her. However, the court accepted that much of what the defendants and their family did and said, as well as the way she was married, was offensive and even disgraceful and that it was possible that the defendants took advantage of the civil party's distress to bring her to Belgium with the goal of making her do all the domestic chores. Nevertheless, it considered that the case didn't provide proof that she was forced to work or that this was the defendants' intention when they brought her over from Serbia to come and live with them. Considering that a doubt remained concerning both the material element and the mental element of the offence, the defendants were acquitted.

During the appeal, the **Mons Court of Appeal**, in its **judgement of 24 February 2015**⁴²³, confirmed the acquittal for human trafficking pronounced at first instance.

The court considered that it wasn't immediately apparent that the defendants had encouraged their son's marriage with the

civil party, then brought her to live with them in Belgium with the intention of forcing her to do work contrary to human dignity. The court again emphasised that just because she was monitored by her in-laws, didn't mean that she was illegally confined to their house. It also added that the young woman had the chance to go to the police given that she was left alone for about 10 days when her in-laws went back to Serbia.

The court considered that there was insufficient proof regarding the material and mental elements of the offence of trafficking. The defendants were given the benefit of the doubt and acquitted.

1.2.9. Football

A case concerning young African footballers was tried by the **French-speaking Criminal Court of Brussels on 7 April 2014**⁴²⁴. Several defendants were prosecuted on several charges, two of them (one the chairman of a Brussels football club) for smuggling and trafficking of human beings. The latter were, along with the other defendants, also prosecuted for various charges of forgery and the use of forgeries. Another defendant, a local civil servant, was also prosecuted for assisting illegal residence and for fraudulently issuing certificates of inscription in the aliens register (CIRE).

The two main defendants were accused of having abused the situation of illegally staying young African footballers. They also forged the certificates of inscription in the aliens register to affiliate them with the Union Royale Belge de Football (URBSFA). These footballers didn't receive the sums they were promised and owed. Furthermore, when they were injured, they weren't reimbursed the hospital fees even though the club was reimbursed by the Federation. They were also sometimes insulted by one of the defendants.

⁴²³ Mons, 24 February 2015, 3rd ch.

⁴²⁴ Brussels French-speaking Crim. Court, 7 April 2014, 61th ch. (appeal).

The court accepted both the charge of smuggling and trafficking.

As regards the charge of human smuggling, the court found that it had been established. Even if the case didn't establish for certain whether the players with an illegal administrative status were less well paid than the others whose administrative situation was legal, it was nevertheless established that the main defendants made the players believe that they would hire them and obtain identity papers and regularise their situation. In reality, this never happened. The only identity papers obtained were forged ones and they only served to register the players with URBSFA. Furthermore, they treated these players as "trash" knowing that they wouldn't dare respond considering their situation. Therefore, they allowed these footballers to stay in Belgium. Moreover, by hiring the players they thought would help the team to win matches, the defendants had the intention of directly or indirectly obtaining a patrimonial benefit.

As for the charge of human trafficking, the court considered this also to be established: the defendants made these footballers work under conditions contrary to human dignity, even abandoning them socially and financially at the hospital when they were injured even though they thought all their care was covered. They also behaved arrogantly towards them.

The charges of forgery were also accepted against them.

The defendant who was a local civil servant was also convicted for the majority of charges brought against him. Concerning the charge of assisting illegal residence, the court declared this as established: through his involvement in the forgeries, he facilitated the stay in Belgium of several foreign nationals.

As the reasonable time requirement was exceeded, the court simply declared some of the defendants guilty and for the others, sentencing was deferred.

The court rejected one of the footballer's requests for material damages, because receiving wages from illegal work is an illicit benefit whose loss can't be compensated⁴²⁵. Based on a decision of the Criminal Court of Charleroi, it also pointed out that the fact of being a victim of human trafficking doesn't make the work performed legal or the complaint legitimate. In this particular case, the civil party knew that their situation was illegal even though they hoped the defendants would obtain valid papers for them.

1.3. Exploitation of begging

In a **judgement of 3 March 2015**, the **Dutch-speaking Criminal Court of Brussels**⁴²⁶ convicted four defendants for human trafficking for the purposes of exploitation of begging. The four Romanian defendants were from the same family and organised and exploited the begging of Romanian compatriots with a physical handicap. Their modus operandi was revealed thanks to observations. The defendants and the victims would go to a very busy public place. The defendants kept a constant eye on the victims from a bench at a bus or tram stop. The victims sometimes joined up with the defendants to discretely hand over their earnings. In exchange, they sometimes received something to eat or drink. They were housed with the perpetrators in precarious conditions. The defendants also brought over other beggars from Romania. The latter were exploited by the other members of the family.

The four perpetrators were all sentenced in absentia to five years in prison. In addition, they were fined and stripped of their rights. The court also handed down an effective confiscation order of EUR 39,868. This was the amount that the family had earned from begging over 15 months. Myria, which

⁴²⁵ Following a judgement of the Court of Cassation of 15 May 2004. On this point, see: Ch.-E. CLESSE, *La traite des êtres humains, Droit belge éclairé des législations française, luxembourgeoise et suisse*, Brussels, Larcier, 2013, pp. 745-751.

⁴²⁶ Brussels Dutch-speaking Crim. Court, 3 March 2015, 60th ch. (in absentia).

instituted civil proceedings in this case, received a symbolic euro in damages.

2. Human smuggling

Human smuggling along the E40

Over the past few years, Myria has instituted civil proceedings in different cases where the acts of human smuggling mainly took place in parking areas located along the E40. All these smugglers used trucks to fraudulently transport the victims, with or without guarantee, to the United Kingdom in general. We shall take a look, in turn, at the smuggling activities of Iraqi, Afghan and Iraqi/Iranian smuggling gangs, active along the E40.

Violent Iraqi smuggling gangs

In a **judgement of 27 June 2012**⁴²⁷, the **Criminal Court of Brussels** convicted a gang of Iraqis for human smuggling with aggravating circumstances. The judge handed down heavy prison terms without remission, referring in particular to the extremely violent nature of the group of smugglers. The main defendants received prison sentences ranging from nine to 12 years. One of the defendants was also charged with the attempted murder of police officers, but was acquitted of this charge.

The case relates to the smuggling of human beings organised by a group of Kurds who collaborated with each other. Their modus operandi was relatively classic: illegally staying persons of different origin, including children, were stuffed into trucks at night heading for the United Kingdom. They were placed in safe houses while they waited for their transportation. The transportations were organised with and without guarantee. Transportation with guarantee cost double the price of transportation without guarantee. For traditional transportation, the victims were loaded on board trucks in various parking areas in Belgium, such as Grand-Bigard, Wetteren or Drongen. Contrary to other cases, these smugglers also operated

from the Westkerke parking area. As there are no facilities as such in this parking area, tents were pitched in the surrounding corn fields to shelter the smugglers and the victims.

For transportation with guarantee, the organisation called on another gang of smugglers, which operated from the Netherlands. The first gang of smugglers brought the victims to De Panne, where they were handed over to the other gang. This one took them to Calais, where the truck driver was waiting for them. The victims were then hidden in the truck driver's sleeper berth. The victims were also hidden in refrigerated containers. They risked suffocating in them because it took a while for the air to get in. Violence wasn't only used on the victims, but also against smugglers who were in the wrong place at the wrong time, as well as the police.

In this case, we can distinguish between two large groups: on the one hand, the group linked to the first defendant and, on the other hand, the group linked to the second one. They operated independently from one another but worked together closely and even exchanged staff. The smuggling victims arrived through different channels. Each supplier had their own structure and their own safe houses.

In the court of first instance, the judge handed down prison sentences of three and a half to 12 years, together with fines of up to EUR 55,000. Myria, which instituted civil proceedings, received a symbolic euro in damages.

The **Brussels Court of Appeal**⁴²⁸ confirmed this judgement as well as making several amendments. The prison sentences were also reduced. Hence, the main defendant, who had been given a 12-year prison term at first instance, had the sentence reduced to seven years by the court of appeal.

⁴²⁷ Brussels Crim. Court, 27 June 2012.

⁴²⁸ Brussels, 16 January 2013, 13th ch.

Afghan smuggling gang

In a **judgement of 19 June 2013**⁴²⁹, the **Criminal Court of Ghent** convicted three Afghan defendants, one in absentia, for human smuggling with aggravating circumstances.

It emerged from numerous telephone conversations that the defendants were guilty of human smuggling. They brought several illegal immigrants to Ghent, including nationals from Sri Lanka, Afghanistan and Iran, who were then sent to Drongen, where they were mainly taken to Great Britain. To benefit from this transportation, the victims had to wrap themselves in plastic film.

The first defendant, who had probably just reached adulthood when the acts took place, played an important role in transporting people on several occasions, in particular to the United Kingdom. He played a major role in the organised smuggling of human beings. He thus gave instructions regarding the number of people that could be transported, the means of payment and the organisation of the transportations. The court gave him a five-year partly suspended prison sentence, together with a EUR 12,000 fine.

The second defendant served as a driver. He was well aware of the people he was transporting and also played a major role in the implementation of the smuggling. The court gave him a three-year partly suspended prison sentence, together with a EUR 6,000 fine.

The third defendant was also found guilty of participating in the organised smuggling of human beings. He was convicted in absentia and given a three-year prison sentence, together with a EUR 6,000 fine.

The court also ordered a special confiscation order amounting to EUR 19,000. Myria, which instituted civil proceedings in this case, received EUR 500 in damages.

On **27 October 2014**, **Antwerp Criminal Court**⁴³⁰ also convicted a gang of Afghans for human smuggling with aggravating circumstances, in particular for smuggling minors, within the framework of a criminal organisation. It emerged from the criminal investigation that the Afghan smugglers mainly transited compatriots via Belgium and France in order to get to Great Britain. In this particular case, the victims were taken to the Drongen parking area, where they were loaded on board a truck heading for Great Britain. Other victims were taken to De Panne, where they were transferred to Calais, where the smugglers put them in trucks also heading for Great Britain. It emerged from phone taps that there were also minors among the victims, sometimes even babies. It also emerged from the phone taps that the defendants didn't act out of humane reasons but purely out of the lure of gain. Sums of money were paid through an illegal payment system. The victims' families deposited money in Belgium, London, Afghanistan or Pakistan. They used a person of absolute trust for both parties, who only handed over the money when the transportation had taken place.

The tasks were broadly distributed between the different gang members. Some organised the transportation. They had contacts abroad with members of the family of the people being smuggled and/or managed the financial aspect of the activities linked with the smuggling. Others only offered their support and assistance. The organisation's goal was to organise large-scale international human smuggling, where people, particularly of Afghan or Iranian origin, would be taken fraudulently to Great Britain via several European countries. The organisation used specific means, such as fraudulent tactics and threats. It didn't hesitate to use violence either. Victims who couldn't or didn't want to pay were threatened with physical violence. This is why the court found that it was irrefutably a question of a criminal organisation.

⁴²⁹ Ghent Crim. Court, 19 June 2013, 19th ch. (final).

⁴³⁰ Antwerp Crim. Court, Antwerp division, 27 October 2014, ch. AC4 (final?).

The court handed down one to five-year prison sentences, together with fines of up to EUR 30,000.

Iraqi/Iranian human smuggling gang

In a case involving an Iraqi/Iranian gang of smugglers, in which Myria instituted civil proceedings, the judge convicted the gang for human smuggling with aggravating circumstances and criminal organisation, both at **first instance**⁴³¹ and in the **Court of Appeal**⁴³². The facts were revealed thanks to preliminary reconnaissance missions, counter-observations and phone taps.

The court found that it was a structured network, designed to last, for the purpose of organising the smuggling of human beings. The organisation's goal was to obtain a patrimonial benefit that was clearly of criminal origin, and it used all possible fraudulent techniques. The gang operated in parking areas along the E40 and in coastal ports. It didn't hesitate to use any form of violence and it clearly emerged from the investigation that it was question of a power struggle between the human smuggling organisations that operated from what they themselves referred to as "this jungle".

The victims, who mostly originated from Afghanistan, Syria, Turkey and Iran, were taken by van to the parking areas where the trucks were, so they could be transported to England. The smugglers offered this transportation with or without guarantee. Guaranteed transportation cost from EUR 7,000 to 8,000, and between EUR 1,500 and 2,000 without guarantee. There were also families with young children and pregnant women among the victims⁴³³. Hence, 10 % of the victims were children. They were perceived as mere goods so little attention was paid to their safety. For instance, transportation was organised in refrigerated trucks.

⁴³¹ West-Flanders Crim. Court, Bruges division, 2 April 2014, 17th ch.

⁴³² Ghent, 21 October 2014, 6th ch.

⁴³³ Also see this part, Chapter 3, point 2.2.

The defendants weren't new to the game. One of them had already been convicted in France for similar acts, albeit under another name. He was universally feared and settled conflicts with firearms. Another one had actually been a victim of human smuggling in the past⁴³⁴. But for the judge, this was no excuse. On the contrary: as a former victim of human smuggling, the defendant was well placed to know how it felt to be treated like cattle in appalling conditions.

The criminal court handed down prison sentences of two to eight years, together with fines ranging from EUR 6,000 and 24,000. It also pronounced a confiscation order of up to EUR 30,000. The Ghent Court of Appeal confirmed these sentences. Myria, which instituted civil proceedings, obtained EUR 2,500 in damages.

Gang of Indian smugglers in close collaboration with other smuggling networks

In a **judgement of 6 November 2013**⁴³⁵, the **Criminal Court of Brussels** convicted a gang of Indians for human smuggling with aggravating circumstances. The **Court of Appeal** confirmed this judgement – after making a number of amendments – in its **decision of 12 March 2014**⁴³⁶.

In this case, it involved the organised smuggling of human beings within Indian and Iraqi/Kurdish circles. The investigation began after the interception of several Indians at the Grand-Bigard parking area, which led to an Indian organisation that arranged transportation for illegal immigrants to the United Kingdom. Transportation was mainly organised "with guarantee".

The victims were essentially Indian men although children also featured regularly among the victims. The Indian organisation used different routes. One of these routes passed through the Netherlands to reach the

⁴³⁴ *Ibid.*, point 2.1.

⁴³⁵ Brussels Crim. Court, 6 November 2013.

⁴³⁶ Brussels, 12 March 2014, 13th ch.

United Kingdom. In the Netherlands, the victims were hidden in the boot of a car after which they took the boat to Scotland. A member of the organisation took care of them over there.

A second route was managed by an Indian organisation. The head operated from the United Kingdom. The passengers were picked up in Vilvoorde. Many victims stayed near the Sikh temple. During the day, they could go to the temple and at night, they slept in a warehouse nearby. They were transferred to trucks, whose drivers were aware of the smuggling, and crossed over to the United Kingdom.

A third route was managed from France by an Afghan/Kurdish organisation that was located both in Belgium and France. The victims took the train in Brussels to De Panne, where they took the bus to Dunkerque. From there, they went on foot to Tétéghe. They stayed in a camp there nicknamed “the jungle”⁴³⁷, until members of the Kurdish organisation put them in vans registered in Great Britain. From there, they returned to Belgium to a parking area along the E40 where they hid in trucks bound for the United Kingdom.

The fourth route was organised by a person of Russian origin, in collaboration with a Lithuanian organisation. The drivers, who were well aware of the facts, allowed victims to board the truck so they could be smuggled into the United Kingdom.

At first instance, the court handed down three to six-year prison sentences, together with fines ranging from EUR 6,000 to 30,000. Myria, which instituted civil proceedings in this case, received a symbolic euro in damages. The court of appeal reduced some of the defendants’ sentences, by pronouncing suspended sentences among other things.

⁴³⁷ This camp also appeared in other cases, see for instance the Iraqi/Iranian human smuggling gang along the E40.

Human smuggling through sham marriages

In a **judgement of 15 May 2014**, the **Antwerp Court of Appeal**⁴³⁸ confirmed the decision of **the Criminal Court of Hasselt**⁴³⁹, which had previously convicted two defendants for human smuggling with aggravating circumstances.

The defendants brought Indian men into Belgium illegally through sham marriages. The victims paid large sums for this, around EUR 15,000. Some of the victims came to Belgium legally because their papers were already in order thanks to a sham marriage. For other victims, a sham marriage was organised in Belgium. The victims’ statements played a key role in providing evidence.

One of the victims (a man), who was able to obtain a residence permit thanks to a sham marriage, had also worked for several months in one of the defendant’s night shop, but he had never been paid. The defendants had set up this structure to abuse the situation and take advantage of the victim by exploiting him for several months. When the victim demanded his wages, the defendant imposed three conditions on him:

- As long as he was officially married, he had to give the defendant all his wages;
- After three years, the victim had to divorce and enter into another sham marriage with a woman chosen by the defendant. The victim was supposed to give this money to the defendant;
- He couldn’t contact his family or send them any money.

The defendants were sentenced to 18 months and two years in prison respectively, and fined EUR 27,500.

⁴³⁸ Antwerp, 15 May 2014, 14th ch.

⁴³⁹ Hasselt Crim. Court, 25 October 2013. Payoke and three victims instituted civil proceedings in this case.

Iranian human smuggler

In a **judgement of 31 March 2015**⁴⁴⁰, the **Criminal Court of Antwerp** convicted an Iranian for human smuggling with aggravating circumstances. Three victims, who accepted the status of victim of human trafficking⁴⁴¹ and whose statements played a key role in providing evidence, instituted civil proceedings.

The judge ruled that there were indeed elements constituting the offence of human smuggling. The victims left their country to travel to Belgium, their end goal, without asking for asylum in any of the countries they crossed. Entering via Greece, they crossed the European Union without the required papers. They used forged papers given to them by the defendant and his associates. On the basis of the victims' statements, the judge found that the defendant had acted purely out of the lure of gain. For instance, one of the victims paid the defendant EUR 16,500 for his journey. He made his victims believe that he could help them get a residence permit. In reality, he only helped them to submit a request for asylum, principally by teaching them a fictitious story.

The defendant had a whole network that helped him to get victims into Belgium from Iran via Turkey, Greece, Italy and France. These intermediaries provided shelter, transport and forged identity papers. These acts were also confirmed in the victims' statements, who reported having been assisted by different people. These people were in contact with the defendant, especially in Istanbul and Athens.

The court sentenced the defendant to 40 months in prison, together with a EUR 5,500. The defendant also had to pay EUR 2,500 in material and immaterial damages to each of the civil parties.

⁴⁴⁰ Antwerp Crim. Court, Antwerp division, 31 March 2015, ch. AC4 (in absentia).

⁴⁴¹ The status of victim of human trafficking can also be granted to victims of human smuggling with aggravating circumstances.

Stowaways

In a **judgement pronounced by the Criminal Court in Ghent**⁴⁴², four of the five defendants were convicted for human smuggling with aggravating circumstances. The Iraqi gang were guilty of the organised smuggling of human beings and smuggled people staying illegally in Belgium to England or other European countries. Everything revolved around making a maximum profit⁴⁴³.

The acts were revealed in January 2012, when two stowaways were discovered on board a ship sailing from Ghent to Sweden. They were discovered after two sailors heard banging on the boat coming from a trailer registered in England. It emerged from the stowaways' hearing that they had been placed in the truck with the help of the defendants so they could enter England illegally. One of the victims said that he had paid EUR 1,500 to go to England, but that he had been put in the wrong truck.

An in-depth phone investigation allowed the activities to be recorded. For instance, one of the defendants advised on the routes and strategies to use. He was also actively looking for contact people in England (in particular his own brother), who could play a role in the organisation, such as truck drivers or people who could look after the money after a successful transportation. His shop served as a meeting point for people before they were transported and for the various people who were involved in human smuggling, as well as a place to deposit money.

According to the judge, "human smuggling must be described as an unauthorised form of organising travel, where someone helps an illegal immigrant to access the territory of a given country for lucrative purposes only". The court pointed out that by "entering, transiting or staying" the following should be understood: "inciting the immigration of foreigners to Belgium, organising transportation to allow them to enter the

⁴⁴² Ghent Crim. Court, 19 June 2013, 19th ch. (final).

⁴⁴³ Also see this part, Chapter 2, point 2.3.

country, providing them with transportation within the Kingdom, obtaining forged identity papers, putting a foreigner to work, harbouring foreigners in safe houses, etc.”

The defendants also abused the victims’ precarious situation. Regarding the latter, the judge pointed out that abuse doesn’t necessarily involve recourse to some sort of physical violence or psychological abuse. It can occur in a far more subtle way. The fact that the foreigner concerned tolerated the abuse, doesn’t mean that this treatment isn’t abusive. The fact that this situation endures is generally due to fear and the vulnerable position of the stowaway.

Four of the five defendants received partly suspended prison sentences ranging from four to five years. The judge also imposed fines of EUR 6,000. Myria, which instituted civil proceedings, received EUR 500.

Albanian smuggling gang

In a decision of 25 November 2013⁴⁴⁴, later confirmed by the **Brussels Court of Appeal in its judgement of 18 June 2014**⁴⁴⁵, an Albanian gang was convicted of human smuggling with aggravating circumstances. The gang was regularly guilty of smuggling illegal immigrants, fellow Albanians and children into Great Britain, with the help of another smuggling gang. Myria instituted civil proceedings in this case⁴⁴⁶.

This case began in 2013, when five Indians were discovered in a refrigerated truck at the Grand-Bigard parking area. The police also

found three Albanians there. A more in-depth investigation revealed that an Albanian human smuggling network was responsible. The four defendants ran a specific “travel agency”. Their Albanian “clients” arrived in Brussels legally via Charleroi airport or the Gare du Midi railway station, and were met there by the defendants’ organisation. Contrary to the Indian or Afghan smugglers, who used safe houses, the defendants used hotels in Brussels. The victims paid for the costs inherent to their stay themselves.

The defendants were contacted by members of their family in Albania. They paid for the transport and the amount to be paid, which varied between EUR 3,000 and 5,000. The smugglers kept between EUR 1,300 and 1,400 for themselves. After payment, contact was made with the Kurdish smugglers who were responsible for the crossing to England. The victims met up with the Kurdish gang in a café in Brussels, which took them to the parking area so that they could get into trucks, often refrigerated ones. When there wasn’t enough room in the trucks, the passengers had to get into a car boot by twos.

As soon as the victims had got into the trucks, the Kurdish gang sent a text message to the Albanian gang giving them the truck’s number plate and other information, so that the accomplices in the United Kingdom could find the right truck in the right place in order to get the victims out and take charge of them. The Albanian gang kept in contact with the victims during the entire crossing. There was also “guaranteed” transport. The truck driver was aware in this case, which increased the chances of success. The Albanian gang didn’t use violence, but it knew that those to whom they had transferred the victims were violent.

There were also a lot of minors among the victims, including very young children. They were also put in refrigerated trucks. The victims complained of being very cold and of not having enough oxygen, water or food⁴⁴⁷.

⁴⁴⁴ Brussels Crim. Court, 25 November 2013.

⁴⁴⁵ Brussels, 18 June 2014.

⁴⁴⁶ Also see this part, Chapter 2, point 2.1.

^{446 (bis)} Since 15 December 2010, Albanian nationals no longer need a visa to enter the Schengen area for a maximum duration of three months. However, this is on the condition that those concerned have a biometric passport (with a chip on which all the biometric data is recorded such as an identity photo and fingerprints). Therefore, they can regularly travel to Belgium. On the other hand, the United Kingdom isn’t part of the Schengen area. Therefore, the victims must contact a smuggling gang to help them get to the United Kingdom.

⁴⁴⁷ Also see this part, Chapter 3, point 2.2.

The court handed down prison sentences ranging between 14 months and seven years, together with fines between EUR 6,000 and 60,000. The Court of Appeal confirmed this judgement but reduced the sentence of the main principle by one year, i.e. six years in prison instead of seven.

3. Granting refugee status to a victim of human trafficking

In a **decision of 2 June 2014**, the **Council of Aliens Law Litigation (CALL) (Conseil du Contentieux des étrangers (CCE))**⁴⁴⁸ awarded refugee status to the applicant, a young man from Cameroon who was the victim of human trafficking.

After the death of his parents, the applicant went to live with his uncle. The applicant discovered that his uncle, and other village elders, were involved in child trafficking, of which the applicant was also a victim. While staying there, he was beaten several times, threatened, locked up and forced to work. In 2013, his uncle told him that he had decided to send him abroad without giving any explanation, an act which led him to believe that he was going to be involved in some kind of illegal activity. The next day, an acquaintance of his uncle came to the house with the purpose of taking him away and when he refused, he was beaten by his uncle. The latter told his acquaintance that in a month's time, he would have convinced him to comply. Finally, he was drugged and taken by his uncle's acquaintance to Belgium. When he arrived, he managed to escape and went to the Belgian authorities, where he requested asylum.

Contrary to the decision of the Commissioner General for Refugees and Stateless Persons (CGRA), the Council of Aliens Law Litigation (CALL-CCE) ruled that the applicant belonged to a "special group", as defined in Article 48/3, § 4, d), of the Law of 15 December 1980, concerning "persons who are the victims of

human trafficking". Furthermore, CALL-CCE found that the applicant sufficiently demonstrated that on account of his vulnerability – having been beaten and locked up, and illegally detained with the complicity of the police – it couldn't, in practice, ask for the protection of the Cameroonian authorities.

Consequently, CALL-CCE found that the applicant established that he had left his country of origin and that he should remain outside his country through fear of being persecuted in the sense of Article 1, section A, § 2, of the Geneva Convention, and granted him the status of refugee.

⁴⁴⁸ CALL-CCE, 2 June 2014, no. 125 148.

A close-up photograph of a woman with dark hair, wearing a red jacket, looking down at her hand. Her hand is holding several white, torn strips of paper. The background is a solid blue color.

PART 3: KEY FIGURES CONCERNING THE STAKEHOLDERS IN HUMAN TRAFFICKING AND SMUGGLING

Introduction

Myria received the following figures from six stakeholders likely to play a role in human trafficking cases in Belgium. If these stakeholders are also active in human smuggling, the related key figures are also mentioned.

Here are the six stakeholders in question:

1. the police, with information from the general national database;
2. the social inspection services;
3. the College of Public Prosecutors, with information relating to prosecutions led by the public prosecutors' offices;
4. the Immigration Office (IO);
5. PAG-ASA, Payoke and Sürya: specialised victim reception centres;
6. the Criminal Policy Service (CPS), with information relating to convictions.

For each of these data sources, we have provided:

- a description of the nature and origin of the data;
- a presentation of the data, together with a short commentary;
- if necessary: an analytical commentary concerning the section of data in question or additional information.

Given that this data is provided by the stakeholders themselves, it gives an accurate overview of their interventions and shows how they have evolved over time.

However, the data isn't harmonised between the stakeholders. The result is that this data isn't sufficiently useful to assess the policy and support strategic analyses. These shortfalls also have a significant impact on the possibilities of reporting to the European institutions.

1. Police data

1.1. Description of the data

The federal judicial police provides information in the form of maps, created by strategic analysts from the department involved in the fight against crimes against persons. These maps are elaborated on the basis of data available in the police's general national database (GND). The police has used the same syntax for the fourth consecutive year, which means it is possible to see the evolution of police interventions.

1.2. Data relating to human trafficking

1.2.1. Presentation of data relating to human trafficking

Figure 1. Human trafficking offences per commune and purpose of exploitation (Source: Police's general national database)

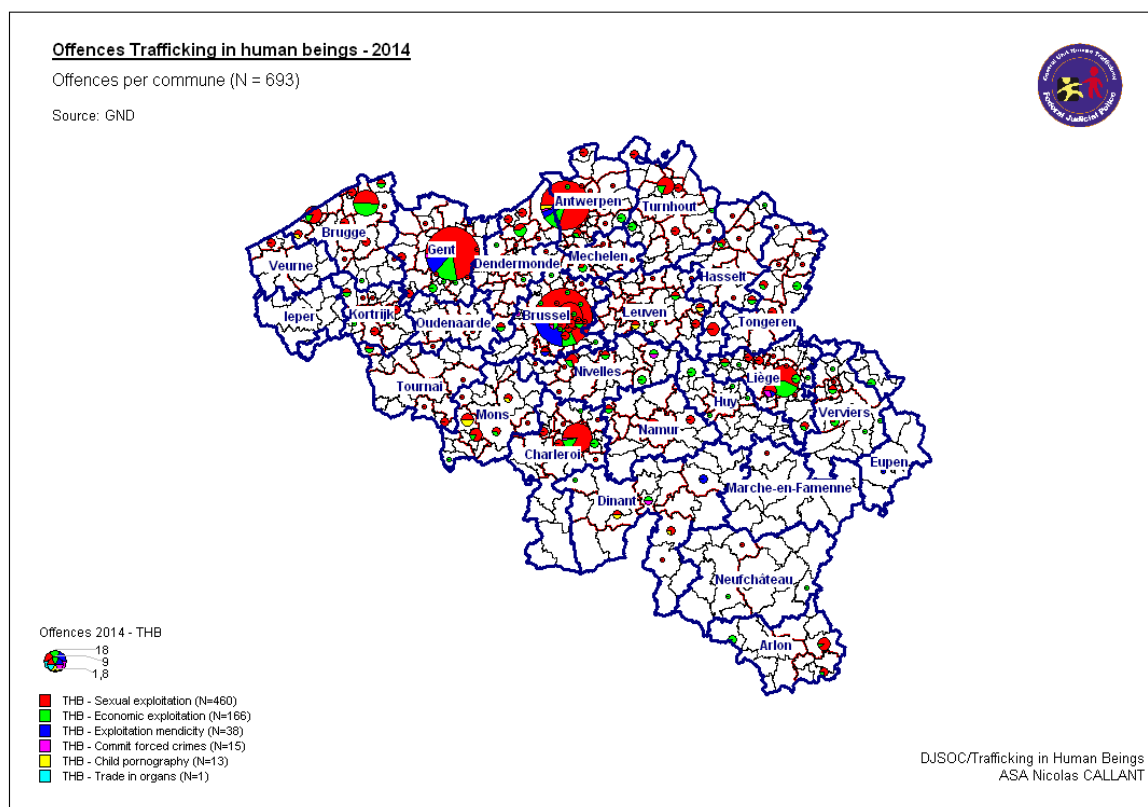


Table 1. Human trafficking offences per year and per purpose of exploitation (Source: Police's general national database)

Year	Sexual exploitation	Child pornography	Labour exploitation	Begging	Crime	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
2014	460	13	166	38	15	1	693

Reports and trends

- Sexual exploitation and forced labour remain the two most widespread forms of exploitation, but they are at their lowest since 2011. As regards sexual exploitation, there were 460 reports, which is less than in 2012. As regards forced labour, this has fallen by half compared with 2011.
- As regards begging and coercion to commit a crime, the two most recent forms of exploitation, the figures are relatively stable. Again, there were about 40 cases of exploitation of begging (38) and a slight increase (from 14 to 15) in coercion to commit a crime.
- Only one act of organ trafficking was reported again.
- The 13 reports establishing a link between human trafficking and child pornography show a sharp drop compared with 2013, but also compared with 2011 and 2012. In the 2013 annual report, Building bridges, we assessed this exceptional figure in 2013 in a commentary.
- Even without taking into account the acts of child pornography, 2014 is still the year with the lowest number of reports since the use of the current syntax in the general national database.

Contrary to 2013 (during the Termonde and Kortrijk period), no local figures stood out in 2014.

1.2.2. Commentary

The fall in the figures linked to labour exploitation runs parallel to the following evolution in the number of reports established by the social inspection services, and the clear increase in the Immigration Office's figures concerning the number of victims given victim status in 2014, mainly to persons aged between 26 and 30 years old.

Considering the lack of a systematic analysis, also between the stakeholders, it is impossible to attribute this phenomenon to, for instance, the hypothesis that more victims of labour exploitation spontaneously came forward than in the past. It is difficult to assess this hypothesis. This lack of analysis remains problematical.

Furthermore, the labour prosecutors don't systematically record incoming cases, which means that this section of data is also incomplete.

1.3. Data relating to human smuggling

1.3.1. Presentation of the data relating to human smuggling

The following map only mentions one figure concerning human smuggling. It encompasses not only human smuggling offences, but also assistance in entering the country or illegal residence (Article 77 of the Law on Foreigners) and even situations where illegal residence was reported in combination with an element of smuggling or exploitation.

Figure 2. Human smuggling offences per commune (Source: Police's general national database)

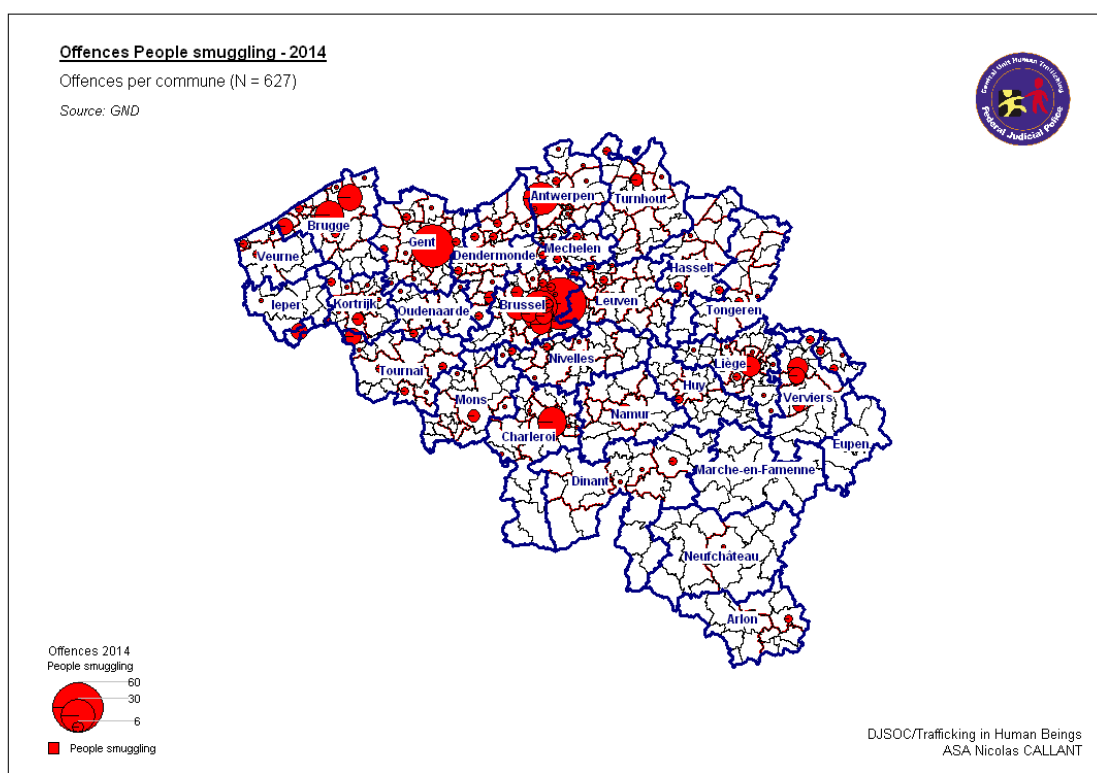


Table 2. Evolution in the number of acts of human smuggling according to the syntax (Source: Police's general national database)

Year	No.
2011	268
2012	233
2013	597
2014	627

1.3.2. Commentary on the data relating to human smuggling

Like human trafficking, the evolution in the figures concerning human smuggling is based on the GND maps. Above all, they illustrate the police's interventions, but don't offer an overview of the phenomenon's evolution.

More detailed figures are available concerning the reports of offences relating to human smuggling. Table 3 shows the evolution of the figures over the past three years.

Table 3. Evolution in the reports of offences relating to human smuggling (Source: Police's general national database)

Reports	Year		
	2012	2013	2014
# foreigner/ illegal residence assistance offences	274	260	194
# human smuggling offences	266	211	207
# interceptions of illegally staying foreigners	28,01	26,54	24,84

Of additional interest are the very recent answers given to parliamentary questions relating to people climbing into vehicles in peripheral parking areas. The first piece of additional information includes figures concerning reports of people climbing into vehicles and the second one includes figures

concerning reports following arrests during transit migration.

a) Climbing into vehicles in peripheral parking areas: several reports in West Flanders

The first piece of additional information is based on a parliamentary question⁴⁴⁹ relating to people climbing into vehicles in peripheral parking areas. The answer given by the Federal Police's Administrative Police Operations Department (DOP/Mig), shows that the interceptions in highway parking areas were only recorded in the district of West Flanders. It emerges that there has been an almost constant increase in the number of reports of people climbing into vehicles over the past seven years.

Table 4. Interceptions of people climbing into vehicles, carried out by the West Flanders police services (*Source: questions and answers, the Chamber*)

Interceptions of people climbing into vehicles	
2007	111
2008	154
2009	166
2010	246
2011	310
2012	309
2013	367
2014	375

We can deduce from the increase in the number of interceptions of people climbing into vehicles, carried out by the West Flanders police services and the fall in the total number of interceptions on a national level, that the police's interceptions have been increasingly focused on the phenomenon of people climbing into vehicles or that they have been increasingly confronted with it.

The answer to the parliamentary question provides us with details concerning the month during which the reports occurred, the police unit responsible for them and the communal area concerned. But since it has always been practically impossible up until now to establish a link between the reports and the people, we shall only mention the detailed figures of the nationalities.

⁴⁴⁹ Written question No. 314 of 21 April 2015 from Deputy Renate Hufkens, 2015, DO 2014201502660, see the Bulletin of written questions and answers, *Parl. doc.*, Chamber, QRVA 54/027, 2 June 2015, pp. 99-100, available via the following link: www.lachambre.be/QRVA/pdf/54/54K0027.pdf.

Table 5. Nationalities of the people intercepted by the West Flanders police services
(Source: questions and answers, the Chamber)

Nationality	2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
Iran	10	9	30	49	102	118	141	125	584
Syria		2			7	16	88	76	189
Afghanistan	3	48	77	65	96	55	57	64	465
Pakistan	1			1		15	3	26	46
India	44	37	15		1	4	24	23	148
Iraq	32	27	21	52	46	25	20	19	242
Eritrea	13	22	4	3	24		6	12	84
Albania					2		8	6	16
Egypt					3	1	1	6	11
Sudan	1			14				5	20
Kuwait					3	1	2	4	10
Vietnam	2		9	55	6	43	5	2	122
Bangladesh		1				2	2	2	7
Turkey					8	16	2	1	27
Georgia				2				1	3
Ukraine								1	1
Tunisia							1	1	2
Chad								1	1
Unknown	1		2		1				4
Belarus					2	1			3
Somalia							1		1
Serbia-Montenegro		1							1
Palestine	2	7	5	3	7	11			35
Nigeria							2		2
Morocco			1		1				2
Libya						1			1
Lebanon	1								1
Kosovo							2		2
Hungary							1		1
Bulgaria							1		1
Algeria	1		2	2	1				6
TOTAL	111	154	166	246	310	309	367	375	2,038

b) Arrests during transit migration, some national findings

This additional information is also based on a parliamentary question⁴⁵⁰ concerning people climbing into vehicles in peripheral parking areas, but it also offers an answer that includes much broader information, both in geographical terms and in terms of the type of findings during transit migration.

Table 6. Number of people arrested following transit migration, on a country-wide scale (*Source: questions and answers, the Chamber*)

	2010	2011	2012	2013	2014	2015 (Jan-April)
East Flanders	201	145	199	158	283	66
West Flanders	1,922	1,337	1,305	920	984	233
Antwerp	32	57	60	47	59	46
Brussels	96	49	138	144	370	106
Flemish Brabant	20	18	41	14	41	14
Limburg	—	—	—	4	—	—
Namur	12	6	13	6	9	6
Liège	4	5	25	12	81	25
Luxembourg	13	6	13	4	15	4
Hainaut	3	12	39	20	44	7
Walloon Brabant	0	0	0	0	5	0
Total	2,373	1,635	1,833	1,329	1,891	515

The table shows the number of people arrested following transit migration, especially when climbing into trucks in peripheral parking areas, discovery of people in the parking area or in the surrounding area, or during actions focused on transit migration.

⁴⁵⁰ Question No. 116 from Deputy Renate Hufkens, of 21 April 2015, DO 2014201502661. See the Bulletin of written questions and answers, *Parl. doc.*, Chamber, QRVA 54/026, 26 May 2015, pp. 192-195, available at the following link: www.lachambre.be/QRVA/pdf/54/54K0026.pdf.

Table 7. Nationalities of the people arrested in Belgium following transit migration (Source: questions and answers, the Chamber)

Nationality	2010	2011	2012	2013	2014	2015 (Jan-April)
Afghanistan	201	164	255	157	167	72
Albania	8	53	105	151	155	78
Algeria	678	508	490	159	113	35
Angola	1	0	0	0		0
Armenia		0	0	0		0
Bangladesh	2	21	7	6		2
Bosnia		0	0	0		0
Bhutan		0	0	0		0
Bulgaria		0	0	0		0
Burkina Faso		0	0	0		0
Cameroon		0	2	0		0
China	6	1	4	0	4	5
Colombia			3	0		0
DR of Congo	1	0	0	0		0
Egypt	2	20	4	6	9	1
Eritrea	34	52	49	89	236	18
Ethiopia	1	0	1	0	5	0
Georgia	2	0	1	0	1	0
Ghana		0	0	0		0
India	429	138	94	191	94	3
Undetermined	11	4	8	10	9	2
Indonesia		4	0	0		0
Iraq	181	70	58	30	37	41
Iran	235	267	302	229	290	73
Kosovo		0	1	4	4	3
Kuwait		14	5	5	23	3
Lebanon	2	0	0	0	3	0
Liberia	1	0	0	0		0
Libya	8	18	10	10	10	0
Macedonia		0	0	0		0
Mali	2	2	0	0		0
Morocco	96	74	71	74	121	36
Mauritania	4	2	1	0		0
Moldavia	3	0	0	0		0
Mongolia		0	0	0		0
Myanmar			1	1		0
Nepal		0	3	0		0
Nigeria		0	0	1		0
Pakistan	4	9	76	22	42	13
Palestine	204	78	48	15	11	3
Romania		0	0	0		0
Russia		1	0	0		0
Serbia		0	2	0		0
Somalia	15	24	0	6	8	2
Sudan	33	2	4	11	17	9
Sri Lanka	3	0	15	1	4	0
Syria	2	13	74	123	483	99
Tanzania		4	2	0		0
Tunisia	44	43	21	8	23	2
Turkmenistan			1	0		0
Turkey		7	16	10	9	2
Ukraine		0	4	1		0
Vietnam	160	42	95	9	13	13
Yemen		0	0	0		0
TOTAL	2,373	1,635	1,833	1,329	1,891	515

Table 8. Number of IO decisions in reaction to the police's administrative reports concerning people climbing into vehicles in peripheral parking areas

(Source: questions and answers, the Chamber)

Year	Allowed to leave	OLT	Detentions
2010	1,212	844	317
2011	65	1,101	115
2012	64	1,377	106
2013	114	939	109
2014	249	1,240	130
2015 (Jan-April)	54	162	58

Table 8 shows the number of decisions taken by the IO (allowed to leave, order to leave the territory and continued detention with a view to expulsion from the country) in reaction to the police's administrative reports received in relation to people climbing into vehicles in peripheral parking areas. However, there is no link between the arrest data and the expulsion data. It should be noted that overall, approximately one decision out of 10 leads to detention.

2. Data from the social inspection services

2.1. Description of the data

Inspections are carried out within the framework of COL 01/07 (ministerial directive of 14 December 2006 relating to the investigation and prosecution policy in terms of human trafficking) and are generally conducted by the Social Inspectorate (SI) of FPS Social Security, as well as the police services (federal police and local police) and sometimes also by the Social Legislation Inspectorate (SLI) of FPS Employment in certain sectors (exotic restaurants, cleaning companies, horticultural and agricultural companies, clothing manufacturers, the

prostitution sector)⁴⁵¹. The inspections are also sometimes carried out in places where people are employed (building sites, scrap merchants, forestry companies, markets, etc.) following information received by the police or inspection services concerning a potential case of exploitation (information provided by the labour prosecutor for instance).

The following data is based on a table from the social inspectorate of FPS Social Security, indicating five parameters: the victims' country of origin, the economic sectors, the types of offences, the number of offences and the number of workers who were reportedly victims of these offences.

This data is the result of the statistical processing of all the reports: on the one hand, the pro justitia (PJ) sent by the King's prosecutor and/or the labour prosecutor, and on the other hand, the criminal reports addressed to the labour prosecutor, the public prosecutor or the investigating judge when the latter conducted an investigation.

2.2. Presentation of the data relating to human trafficking

Table 9. Reports concerning human trafficking offences for the purposes of labour exploitation (Source: SI, calculations Stéphane Leo)

	2010	2011	2012	2013	2014
Police reports	34	33	38	29	37
Number of workers	120	46	123	69	48

In 2014, 37 reports were drawn up by the Social Inspectorate, in which it reported on human trafficking offences for the purposes of labour exploitation⁴⁵². The statistical data

⁴⁵¹ See: Annual Report 2010, Supervision of Social Legislation, Chapter 8. The fight against human trafficking: www.emploi.belgique.be.

⁴⁵² 37 reports, including four pro justitia concerning five workers and 33 criminal reports concerning 43 workers.

doesn't provide any information on the gender or age of the victims but, instead, information on their nationality or the sector in which they were working⁴⁵³.

Table 10. Reports on human trafficking in 2014 (n = 37) according to the economic sectors to which they apply, the number of workers and the main nationalities of the workers (Source: SI, calculations Stéphane Leo SI and the Federal Migration Centre)

Economic sector	Reports	Workers	Main nationalities of workers ≥ 2
Retail trade	9	7	Morocco 5
Hotel & catering	8	11	Egypt 5
Construction	7	9	Bulgaria/ China/ Morocco/ Romania 2
Domestic work	4	4	
Garages	2	2	
Wholesale trade	2	3	Morocco 3
Forestry	1	8	Romania 8
Cleaning	1	1	
Other	3	3	
Total	37	48	

Observations and trends

We would like to underline the nine reports concerning the retail trade and the fact that only seven workers were implicated. According to the social inspectorate, this could be because there were reasons preventing inspections. In these cases, a pro justitia or a criminal report is drawn up, but there is no mention of the number of workers who are victims.

Table 11. Workers who were reported as victims of human trafficking in 2014 (n = 48), nationalities and main sectors of exploitation (Source: SI, calculations Stéphane Leo SI and the Federal Migration Centre)

Nationality	Workers	Sector of exploitation
Morocco	15	Retail trade 5 / Wholesale trade 3 / Construction 2 / Hotel & catering 2
Romania	12	Forestry 8 / Construction 2 / Hotel & catering 2
Egypt	6	Hotel & catering 5
Bulgaria	3	Construction 2
China	2	Construction 2
Algeria	1	
Saudi Arabia	1	
Armenia	1	
Bangladesh	1	
Benin	1	
Burma	1	
Cameroon	1	
Ghana	1	
Togo	1	

Observations and trends

Compared with 2013, we noticed a drop in the number of sectors that were found to be the subject of human trafficking by the Social Inspectorate.

As regards nationalities, the trend over the past few years has been confirmed. Moroccans (15) and Romanians (12) are once again the two main nationalities of workers.

Again in comparison with 2013, the year during which 27 workers were concerned, the number of Romanian workers decreased significantly (in 2013, there was only one case in the meat processing sector, in which 17 workers were involved).

⁴⁵³ NACE-Bel, nomenclature of activities, www.statbel.fgov.be/fr/binaries/Frnace_2008_avec_notes_explicatives_tcm326-65642.pdf

However, we have again noted the presence of only one report concerning a very high number of workers: it concerns eight Romanian victims of human trafficking in the forestry sector. The acts took place in Wallonia, and one victim obtained the status of victim.

There were also six Egyptians, five of whom were discovered in the hotel & catering sector.

2.3. Data from the Social Legislation Inspectorate

The Social Legislation Inspectorate didn't note any human trafficking offences in 2014.

2.4. Commentary

Once again, Myria would like to underline the added value of joint reporting, among all the social inspection services, focused on human trafficking. As long as the labour prosecutors attached to the employment tribunals don't systematically record prosecutions in cases of human trafficking, it will be impossible, based on statistical information, to show the evolution of the approach to human trafficking for the purposes of labour exploitation.

We would also like to recommend that the social inspection services record the gender and age category of the victims/workers.

The SLI's lack of (reported) findings concerning human trafficking raises certain questions. The SLI is in charge of the employer/worker relationship and it is therefore the inspection service's responsibility to check that the directive on "sanctions" is being respected. When these findings are presented, cases of human trafficking in particular may be discovered.

3. Data from public prosecutors' offices

3.1. Description of the data

The data published in this report was provided by the statistical analysts of the College of Public Prosecutors. They reflect the information known to them on 10 January 2015 concerning the cases dealt with by the Crown Prosecution Service in 2013.

Note two intrinsic limitations: the cases only concern adults and data from the public prosecutor's office in Eupen is missing. The last point will be amended next year: on 1st April 2014, the new legal landscape saw the light of day, which is why the figures this year will be presented for the last time in accordance with the former breakdown into 28 judicial districts (the public prosecutor's office in Eupen is therefore not included).

More important still is the fact that cases dealt with by labour prosecutors are absent from this data. Despite the fact that the labour prosecutors have the opportunity to record this data in the REA/TPI system, which forms the basis of this data collection, this isn't done systematically. Consequently, cases concerning human trafficking for the purpose of labour exploitation dealt with in the labour courts are missing. This structural under-reporting concerning these prosecutions is a major shortfall.

3.2. Presentation of the data relating to human trafficking

Table 12. Cases brought before the public prosecution service in 2010, 2011, 2012, 2013 and 2014 concerning acts of human trafficking, according to the jurisdiction and the purpose of exploitation
(Source: College of Public Prosecutors – statistical analysts)

HUMAN TRAFFICKING		37L: Sexual exploitation (art. 433quinquies §1, 1°)	29E: Exploitation of begging (art. 433quinquies §1, 2°)	55D: Labour exploitation (art. 433quinquies §1, 3°)	55E: Illegal organ harvesting (art. 433quinquies §1, 4°)	55F: Coercion to commit a crime (art. 433quinquies §1,5°)	TOTAL
ANTWERP	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
	2014	26	2	26	1	1	56
BRUSSELS	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
	2014	26	3	25	0	7	61
GHENT	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
	2014	38	3	30	0	1	72
LIÈGE	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
	2014	14	6	25	0	7	52
MONS	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
	2014	6	0	9	0	0	15
FEDERAL PUBLIC PROSECUT OR	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
	2014	1	0	0	0	1	2
TOTAL	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
	2014	111	14	115	1	17	258

Observations and trends

- 258 cases were processed: this figure is at its lowest since 2008 and shows a 40 % drop compared with 2013.
- 174 cases less, i.e. a 64 % drop, in the jurisdiction of Brussels. This spectacular drop is mainly due to the low number of cases of sexual exploitation (the last time it was as low as this was in 2008).
- the jurisdiction of Ghent recorded the highest number of cases of human trafficking for the purpose of sexual exploitation and cases of human trafficking for the purpose of forced labour.
- in the jurisdiction of Ghent, it was the arrondissement of Bruges that initiated the most human trafficking cases: 27, i.e., three more than in the arrondissement of Ghent itself (24).

Once again, data was provided concerning the progress of the human trafficking cases and those that were closed without further action. An initial overview can be established according to the situation on 10 January 2015.

Table 13. Number of classified cases closed on 10 January 2015 dating from 2014 (Source: College of Public Prosecutors – statistical analysts)

Purpose of exploitation	Opportunity	Technical	Others	Total
Human trafficking for the purpose of sexual exploitation	5	23	2	30
Human trafficking for the purpose of exploitation of begging	2	3	0	5
Human trafficking for the purpose of labour exploitation	5	13	0	8
Human trafficking for the purpose of organ harvesting	0	1	0	1
Human trafficking for the purpose of coercion to commit a crime	2	4	0	6

Technical reasons refer to “insufficient evidence”, “unidentified perpetrators” and “no punishable act”. Reasons concerning opportunity can be listed because there were other priorities, because an illegal situation was regularised in the meantime or because there was disproportion between the consequences of the criminal prosecution and social disruption.

3.3. Commentary

This shows that there have never been so few cases submitted to public prosecutor's offices as in 2014, even though the number of victims who accepted the status of victim rose during the same period. The reduction in the number of cases of human trafficking for the purpose of sexual exploitation submitted in Brussels deserves special attention.

3.4. Presentation of the data relating to human smuggling

Table 14. Cases submitted to the public prosecutor's office 2010, 2012 and 2014 for acts of human smuggling and other offences, per jurisdiction (Source: College of Public Prosecutors – statistical analysts)

HUMAN SMUGGLING		55G (art. 77bis, 77ter, 77quater and 77 quinquies of the Law on Foreigners)
ANTWERP	2010	21
	2012	36
	2014	18
BRUSSELS	2010	61
	2012	138
	2014	114
GHENT	2010	228
	2012	129
	2014	177
LIEGE	2010	13
	2012	13
	2014	5
MONS	2010	2
	2012	3
	2014	3
FEDERAL PROSECUTOR	2010	0
	2012	4
	2014	0
TOTAL	2010	325
	2012	323
	2014	317

Observations and trends

- The number of cases submitted concerning human smuggling has remained relatively stable. This is particularly the case in comparison with the data from 2010 and 2012. In 2011 (515) and 2008 (462), the number of cases was indeed much higher.
- Ghent is still the jurisdiction with the most cases of human smuggling. Ghent only had fewer cases of human smuggling than Brussels in 2011.
- To find out more about the context, please see point 1 on police data and the related commentary.

4. Data from the Immigration Office

4.1. Description of the data

The Immigration Office (IO) has reported fairly extensively on its minors/victims of human trafficking unit's (MINTEH) intervention in its previous activity reports. This reporting was considerably limited in 2015. The unit established specific reporting for Myria, with a view to establishing this section devoted to the figures of the annual report.

In this section devoted to data, we shall first examine the information relating to the victims of trafficking and smuggling of human beings who received a residence permit for the first time in 2014. We shall then focus on the total number of residence permits issued in 2014 to all victims during the procedure. When there are aggravating circumstances, victims of human smuggling may also receive a residence permit.

Finally, in a separate section, we shall take a brief look at the data relating to the residence of victims who adopted this status in 2008.

4.2. Presentation of data concerning victims of human trafficking

Table 15. Victims of human trafficking who received a residence permit for the first time in 2014 (Source: Immigration Office, MINTEH Unit, Lionel Brackman)

2009	107
2010	123
2011	129
2012	127
2013	116
2014	138

In 2014, we observed the highest number of victims of human trafficking in six years. In point 4.3, you will also find the data linked to victims of human smuggling who received a residence permit.

Table 16. Top 12 of the victims of human trafficking who were issued an initial residence permit in 2014, according to gender, age and type of exploitation (Source: Immigration Office, MINTEH Unit, Lionel Brackman)

Age	Sexual exploitation			Labour exploitation			Other forms of exploitation			Total		
	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014
-18	9	4	1	2	0	1	0	0	3	11	4	3
18-25	31	15	19	9	19	18	1	0	1	41	34	37
26-30	6	8	12	11	13	26	2	0	0	19	21	38
30	6	10	11	43	47	41	2	0	5	51	57	52
Total	52	37	43	65	79	86	5	0	9	122	116	138
Men	5	1	5	55	67	74	4	0	5	64	68	84
Women	47	36	38	10	12	12	1	0	4	58	48	54

Observations and trends

- Since 2011 (15), the number of child victims of human trafficking has continued to fall.
- The number of men who obtained the status of victim has never been as high, both in absolute figures (84) and as a percentage (61 %).
- The high increase in the number of victims of human trafficking is practically entirely due to the increase in forced labour in the 26-30 age group.
- The relative proportion of new victims of sexual exploitation is on the rise again, after 2013, the year when the relative proportion of victims of forced labour was found to be higher than ever.

Table 17. Victims of human trafficking who were issued an initial residence permit in 2014, according to nationality and the type of exploitation (Source: Immigration Office, MINTEH Unit, Lionel Brackman)

Nationality	Sexual exploitation	Labour exploitation	Others	Total
Romania	9	22	8	39
Morocco	3	9	0	12
Bulgaria	4	5	0	9
Albania	6	0	0	6
Algeria	1	5	0	6
Benin	0	6	0	6
Nigeria	4	2	0	6
Brazil	2	3	0	5
Serbia	0	5	0	5
China	2	2	0	4
India	1	3	0	4
Ukraine	3	1	0	4

Observations and trends

- There were more than 50 victims from Morocco and Romania in 2014. In 2012 and 2013, these countries already featured among the main countries of origin, with more than 40 victims every time.
- There is an extremely high number of Romanian victims: the number of victims from the same country has never been as high as in the case of Romanians in 2014.
- The eight Romanians, who were victims of other forms of exploitation, were all victims of exploitation of begging.
- With 54 victims, EU citizens represent almost 40 % of new victims.
- Benin has appeared for the first time among the countries of origin, with more than five victims.

Table 18. Residence permits issued in 2011, 2012, 2013 and 2014 (Source: IO)

	2011		2012		2013		2014		Total			
									2011	2012	2013	2014
	M	W	M	W	M	W	M	W	M&W	M&W	M&W	M&W
OLT 45 days (THB)	20	10	18	18	18	12	22	11	30	36	30	33
Certificate of inscription (CI)	73	47	70	73	69	48	86	53	120	143	117	139
CI extension	1	11	4	8	8	7	6	5	12	12	15	11
Temporary CIAR (THB)	45	27	61	45	62	38	57	28	72	106	100	85
Temporary extension CIAR (THB)	282	180	285	158	293	168	300	150	462	441	461	450
Indefinite CIAR(THB)	31	20	15	20	25	21	16	17	51	35	46	33
Temporary CIAR (humanitarian)	0	1	2	2	1	1	1	1	1	4	2	2
Extension CIAR (humanitarian)	14	33	17	34	10	21	14	17	47	51	31	31
Indefinite CIAR (humanitarian)	5	6	7	4	14	12	10	12	11	11	26	22
Annex 13 (OLT)	3	4	3	4	7	4	5	9	7	7	11	14
Extension Annex 13	0	1	0	0	0	0	0	0	1	0	0	0
Total	474	340	482	366	507	332	517	303	814	848	839	820

This table is temporarily the only overview offering an indication of the number of people who have acquired the status of victim of human trafficking. A certificate of inscription in the alien's register (CIAR), which can be temporary and/or extended, is always a CIAR for a period of six months. Normally, the victims receive two a year as long as they have this status. The 450 extensions of a CIAR (THB) therefore concern approximately 225 individual victims.

Observations and trends

- The 820 decisions to issue or extend a residence permit concern both new victims in 2014 and those prior to 2014, who were in the victim status process and were subject to one or more decisions.
- The number of men has never been so high, representing 63 % of residence decisions.
- The number of authorisations for indefinite residence for humanitarian reasons is significantly higher than in previous years.
- The number of "status initiation documents" (45-day order to leave the territory and certificate of inscription) is rising again, after a fall in 2013.

4.3. Presentation of the data concerning victims of human smuggling

The victims of human smuggling with aggravating circumstances can also request victim status. In the case of these victims, a residence permit will only be issued if, for instance, there is a question of violence or if the victims are minors.

Table 19. Victims of human smuggling with aggravating circumstances for whom a residence permit was issued for the first time in 2014 (Source: MINTEH unit, Lionel Brackman)

2009	17
2010	14
2011	20
2012	30
2013	13
2014	18

There were 18 victims in 2014 (nine of which were male and nine female). Five of them were minors: three boys and two girls.

These are the main nationalities:

- four were from Iran;
- three from Afghanistan;
- three from Pakistan;
- two from China and two whose nationality couldn't be determined;
- one from Congo (DRC), one from Ghana, one from the Ivory Coast and one from Somalia.

4.4. Victims from 2008

Myria asked the MINTEH Unit to check what had become of the 171 victims of human trafficking and smuggling, from an administrative point of view (residence permits), who had received an initial residence permit in 2008 from the IO.

Table 20. Characteristics on 31 December 2008 of the victims who were issued an initial permit in 2007 (Source: IO, calculations Lionel Brackman, MINTEH Unit)

Age	Sexual exploitation	Labour exploitation	Exploitation of begging	Others	Smuggling	TOTAL
< 18	3	2	0	0	1	6
18-25	17	20	1	3	9	50
26-30	13	27	0	5	5	50
> 30	5	52	0	2	6	65
Total	38	101	1	10	21	171
Women	35	40	0	9	5	89
Men	3	61	1	1	16	82

Table 21. Administrative situation on 30 April 2015 of the 171 victims who were issued an initial permit in 2008 (Source: IO, calculations Lionel Brackman, MINTEH Unit⁴⁵⁴)

	M	W	Total
Certificate of inscription (family reunification)	0	1	2
Card A/temporary residence (human trafficking procedure)	2	5	7
Card A/temporary residence (regularisation procedure)	1	1	2
Card A/temporary residence (family reunification)	1	1	2
Card B/permanent residence (human trafficking procedure)	28	18	46
Card B/permanent residence (regularisation procedure)	7	9	16
Card B/permanent residence (asylum procedure)	1	0	1
Card E/establishment as an EU worker	2	3	5
Card F/conditional permanent residence family reunification	3	6	9
Belgian identity card	8	6	14
TOTAL ILLEGALLY STAYING PERSONS	53	50	103
No element found in the National Register			49
Return			17
Repatriation			1
Deceased			1
TOTAL PERSONS NO LONGER STAYING LEGALLY	29	39	68
TOTAL	82	89	171

⁴⁵⁴ The cards in the left-hand column of the table are electronic identity cards from A to F included. On this subject, see: <http://dofi.ibz.be/sites/dvzoe/Fr/pages/Cartes%C3%A9lectroniquespour%C3%A9tranger.asp>

Observations and trends

- Three of the five human trafficking victims who obtained the status in 2008 are still residing legally in Belgium in 2015, the majority having obtained a permanent residence permit. If we look at the proportion of victims of human trafficking for the purpose of forced labour among the population in 2008 (101 victims, representing 59 % of victims), we can see that in 2015, they maintained their legal residency more often than other victims. Two of the three victims of human trafficking for the purpose of forced labour still have a legal residence permit seven years later.
- The victims of human trafficking for the purpose of sexual exploitation from 2008, obtained or kept the status of legal resident in fewer than half the cases seven years later. The IO is still uncertain about 49 people who no longer appear in the National Register.
- The most striking observation concerning the victims from 2008 emerges from the following table. In no less than 90 of the 171 cases, the procedure was terminated before a Belgian residence permit was issued.

Table 22. Reasons for stopping the human trafficking procedure for victims of 2008

(Source: IO, calculations Lionel Brackman, MINTEH Unit)

Purpose of exploitation	Public prosecutor's office	Centre	Return/deceased/ etc.	Total
Sexual exploitation	14	8	6	28
Labour exploitation	19	7	17	43
Begging	0	0	1	1
Others	3	3	1	7
Human smuggling	8	1	2	11
Total	44	19	27	90

In the case of a decision rendered by the public prosecutor's office, the latter notifies the IO that it no longer considers the person as a victim of human trafficking. In the case of centres, it is one of the specialised centres that notifies the IO that support has ended, for instance, following a return, a failure to respect the conditions of the support, a disappearance, etc.

Not all the procedural decisions led to the departure of these people from our country, far from it. As illustrated in Table 21, a significant proportion benefited from a residence status for other reasons.

4.5. Additional information: examination of the figures concerning child victims of human trafficking

Table 23. Child victims of human trafficking and smuggling, according to age, the type of exploitation and whether or not they are accompanied (Source: IO, calculations Lionel Brackman, MINTEH Unit)

Sector/situation	<14 years	15 years	16 years	TOTAL
Labour exploitation				1
unaccompanied		1		
Begging				2
accompanied	1			
unaccompanied			1	
Prostitution				1
accompanied	1			
Others				1
unaccompanied			1	
Smuggling				5
accompanied	4			
unaccompanied			1	
Total	6	1	3	10

Table 24. Unaccompanied child victims of human trafficking and smuggling, according to the purpose of the exploitation, age and nationality (Source: IO, calculations Lionel Brackman, MINTEH Unit)

Nationality / purpose of exploitation	F		H	TOTAL
	15 years	16 years	16 years	
China				1
Smuggling			1	
Congo (DRC)				1
Forced labour	1			
Croatia				1
Various		1		
Romania				1
Begging		1		
Total	1	2	1	4

In the meantime, the young Romanian returned voluntarily, while the three other

unaccompanied child victims still benefited from the status in May 2015.

5. Data from the specialised victim centres

5.1. Description of the data

In this section, we shall report on the number of victims for whom the specialised centres initiated support in the course of 2014. The figures relating to new support programmes correspond to the typology established in the circular of 26 September 2008⁴⁵⁵. Once the initial phase (period of reflection) has begun, meaning an order to leave the territory has been issued, support is then organised. The type of psychosocial and legal and administrative support can vary depending on the centre.

Only the integrated tables feature in this report, one for human trafficking and the other for human smuggling, which show age, gender, nationality and the purpose of the exploitation. Every specialised centre provided the necessary figures, which Myria then compiled into a single table.

It isn't possible to form a picture of all the support activities or the centres' reception capacity based on the tables hereafter. The duration of the support, which is a very important indicator, isn't shown here because it is preferable to deal with it within the framework of an analysis and description of the support process. The Immigration Office figures relating to the extension of documents, within the framework of the human trafficking procedure, do however offer a potential indicator of the evolution between 2011 and 2014, which is reflected in Table 28.

⁴⁵⁵ On this subject, see: Circular of 26 September 2008 on the implementation of a multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling.

In addition, it isn't possible to report on and analyse reports of persons for whom no support was initiated, within the framework of this annual report, even if this would have been relevant to the policy and insight into the phenomenon of the trafficking and exploitation of human beings. Processing all the reports represents a huge workload and responsibility for the centres. For more information, please refer to the centres' annual reports.

The Belgian system is a closed one. The figures relating to support initiated by the specialised centres and the residence permits issued (IO) obviously reflect those of the IO, as illustrated in Table 16.

Table 25. New support programmes initiated by the specialised centres for victims of human trafficking and human smuggling, 2006-2014 (Source: centre's annual reports on human trafficking and smuggling)

2006	2007	2008	2009	2010	2011	2012	2013	2014
172	179	196	158	141	153	174	148	172

5.2. Presentation of the data relating to victims of human trafficking

Table 26. New support programmes initiated by the specialised centres, exclusively for the victims of human trafficking (Source: centre's annual reports on human trafficking and smuggling)

2010	2011	2012	2013	2014
130	133	143	133	156

Table 27. New support programmes initiated in 2014 for victims of human trafficking, according to the type of exploitation, gender and age range *(source: specialised centres, processed by the Centre)*

Nationality	Sexual exploitation				Begging				Labour exploitation				Crime				TOTAL
	Women		Men		Women		Men		Women		Men		Women		Men		
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	
Romania	0	8	0	2	2	1	1	7	0	1	0	24	0	0	0	0	46
Morocco	0	1	0	0	0	0	0	0	0	1	0	15	0	0	0	0	17
Bulgaria	0	3	0	0	0	0	0	0	0	3	0	2	0	0	0	0	8
Albania	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
Benin	0	0	0	0	0	0	0	0	0	0	0	6	0	0	0	0	6
Algeria	0	1	0	0	0	0	0	0	0	0	0	4	0	0	0	0	5
Belgium	0	4	0	0	0	0	0	0	0	0	0	1	0	0	0	0	5
Brazil	0	1	0	1	0	0	0	0	0	0	0	3	0	0	0	0	5
Pakistan	0	0	0	0	0	0	0	0	0	0	2	3	0	0	0	0	5
Serbia	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	0	5
China	0	2	0	0	0	0	0	0	0	1	0	1	0	0	0	0	4
Congo	0	0	0	0	0	0	0	0	1	2	0	1	0	0	0	0	4
Dominican Republic	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Nigeria	0	3	0	0	0	0	0	0	0	0	0	1	0	0	0	0	4
Hungary	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
India	0	1	0	0	0	0	0	0	0	0	0	2	0	0	0	0	3
Cameroon	0	2	0	0	0	0	0	0	0	0	0	1	0	0	0	0	3
Ukraine	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Burkina Faso	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Egypt	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Ghana	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Iran	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Ivory Coast	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Croatia	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	2
Poland	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Tunisia	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	2
Philippines	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Russia	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Slovakia	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Syria	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
SUB-TOTAL	0	44	0	4	2	1	1	7	1	9	2	84	1	0	0	0	156
TOTAL	44		4		3		8		10		86		1				

Table 28. Evolution of the nationalities of victims of human trafficking that have featured in the specialised centres' top 5 figures in the past four years (Source: specialised centres, processed by the Centre)

Nationality	2011	2012	2013	2014
Romania	22	24	24	46
Morocco	25	19	25	17
Bulgaria	11	10	3	8
Albania	3	5	4	6
Benin	0	0	0	6
India	10	3	2	3
Nigeria	8	17	7	4
Tunisia	3	6	6	2

Observations and trends

- Romanians constitute the largest group ever for which support has been initiated (46 people).
- With the number of Moroccans at 17, this is first time we have seen a drop, albeit minor, for this nationality.
- With six victims, this is the first time Benin has featured among the figures for victims.
- For the first time, there are five Belgians among the victims for whom the centres initiated support. They include four sexually-exploited adult women.

5.3. Presentation of the data relating to victims of human smuggling

Table 29. New support programmes initiated by the specialised centres, exclusively for victims of human smuggling (Source: specialised centres, processed by the Centre)

2010	2011	2012	2013	2014
11	20	31	15	16

6. Judicial data

6.1. Description of the data

At Myria's request, the Criminal Policy Department provided information relating to convictions for human trafficking and smuggling.

The statistics were compiled based on data from the central criminal records. The *res judicata* are recorded here; they are submitted to the criminal records by the court and tribunal clerks. The records are still compiled by hand (whereas the police and public prosecutor's offices use automated data processing). This explains why the figures must be continuously updated. In concrete terms, this means that what we are presenting here are updated figures for 2011, 2012 and 2013 and new figures for 2014.

The data provided contains the following information on the convictions: the aggravating circumstances determined for each conviction, the type and number of sentences pronounced for each conviction and the purpose of the exploitation for a number of the convictions in 2011.

6.2. Presentation of the data relating to convictions for human trafficking

The figures presented here reflect the number of final convictions, i.e. the convictions that couldn't be taken to the court of appeal. One conviction is associated with a person who was principally convicted for acts of human trafficking. The forms of exploitation haven't been sufficiently recorded to be used in the present annual report.

Table 30. Convictions for human trafficking (Source: Criminal Policy Department, according to findings from June 2015)

Year	Convictions
2011	81
2012	82
2013	90
2014	84

Table 31. Aggravating circumstances among the 84 convictions pronounced in 2014 for acts of human trafficking (Source: Criminal Policy Department)

Type of aggravating circumstances	Number
through the use of fraudulent tactics, violence, threats or some form of coercion	37
through the abuse of the particularly vulnerable situation of the victim	31
when the activity concerned is a habitual activity	30
when it involves participation in the main activity or accessory to an association, whether or not the guilty party is the director	16
the offence involves participation in the main activity or accessory to a criminal organisation	13
the victim is a minor	12
by a person who has authority over the victim, or by a person who has abused their authority or the facilities available to them through their position	5
Total	144

Table 32. Sentences pronounced among the 84 convictions pronounced in 2014 for acts of human trafficking (Source: Criminal Policy Department)

Decision	Number
Prison sentences	75
Suspended prison sentences	43
Fines	81
Suspended fines	29
Confiscations	52
Deprivation of rights	65
Professional ban	2
Community service	3
Declaration of guilt	1

Table 33. Main nationalities (A) and gender (B) of the 84 persons convicted for acts of human trafficking (Source: Criminal Policy Department)

A.		B.	
Nationality	Number	Gender	Number
Belgium	22	W	15
Romania	12	M	64
Hungary	9	Not mentioned	5
Bulgaria	5	Total	84
Albania	4		
Thailand	4		
Afghanistan	2		
Germany	2		
France	2		
Iraq	2		
Others	20		

6.3. Presentation of the convictions for human smuggling

The data presented here is much more limited than the data concerning human trafficking because when the information is recorded, errors still occur concerning the mentioning of the articles applicable to the Criminal Code.

There was a minimum of 45 final convictions for human smuggling in 2014.

6.4. Commentary

One of the main problems, on the one hand, is that the type of exploitation isn't recorded for human trafficking convictions and, on the other hand, the acts of human smuggling are recorded inaccurately.

Conclusion

Several sections reveal that this year, progress was made as regards the targeted and exhaustive nature of the data.

At the same time, the Interdepartmental Coordination Unit didn't take any initiative to coordinate the production of data or achieve greater harmonisation among the stakeholders, even in the reporting to the European institutions.

This is why Myria is encouraging the unit to promote coordination, the targeted nature of the data and an improvement to its production concerning the phenomenon of human trafficking and human smuggling, as well as the action of the public authorities and all the stakeholders concerned.

PART 4. RECOMMENDATIONS



1. The fight against human trafficking

1.1. Human trafficking must remain a priority at all levels

Addressees: judiciary, police, Minister for Justice, Minister of the Interior, Federal Parliament, mayors, Interdepartmental Coordination Unit

Myria insists that the fight against human trafficking should remain an absolute priority in the field, among magistrates and frontline services.

The reform of the judicial districts may turn out to be very positive for the fight against human trafficking and smuggling networks. It is therefore essential that the different local police services work closely with the centralised unit of the federal police and the reference magistrate competent in human trafficking, because the local police is, in fact, their eyes and their ears. In some places, this attention is tending to decrease. For a successful reform of the districts, it is vital that human trafficking also remains a priority for the local police in towns, so it must work closely with the federal police.

At a political level as well, attention on the fight against human trafficking must continue. We mustn't be tempted to think that because some battles have been won regarding human trafficking in Belgium, that we have also won the war in this domain, because this would only cause us to drop our guard and encourage a certain nonchalance among political leaders. Belgium is an example in terms of the fight against human trafficking and must remain so.

1.2. Adapting victim status to reality

Addressees: Interdepartmental Coordination Unit, specialised centres for victims

The victim support system in Belgium needs to be gradually and pragmatically refined, without interfering with its basic principles. Victim status doesn't pay enough attention to the specific problems and needs of the different profiles of victims and must also be oriented towards their needs.

The victims of loverboys are in a position of emotional dependence and sometimes need specific care which requires someone to be on duty. However, centres specialising in support for victims of human trafficking currently lack the means to satisfy this need. Furthermore, we found that the victims of loverboys are sometimes knowingly drugged by their pimp to maintain them in a position of complete physical and psychological dependency. These victims, who are turned into drug addicts, need specialised support programmes. There are also a number of Belgian girls among the victims, but the conditions of support particular to the status of victim of human trafficking are less applicable to them. A Belgian victim of a loverboy will be less rapidly perceived in the field as a victim of human trafficking.

For victims from EU countries, victim status is often no longer very relevant to their residency. The other advantages of the status, such as legal assistance and possible medical or psychological support, aren't sometimes sufficiently emphasised. This is why they aren't always interested in obtaining this status. These victims, who feel exploited and want to return home as soon as possible, may nevertheless need legal assistance to obtain financial compensation. They may be allocated a lawyer, who can continue to defend their interests here. However, for this

purpose, it is essential that the victim remains in contact with the lawyer during the investigation and the trial, either directly, or through a centre specialising in the reception of victims of human trafficking. In practice, this isn't always easy to do.

Other victims are too afraid to adopt the status of victim of human trafficking and refuse to make relevant statements. Some judges speak in favour making access to victim status more open to these vulnerable target groups. The reference judge, who knows the facts of the case, is therefore the best person to make this decision, in consultation with the other people involved. This possibility must be developed within victim status.

It is also necessary to analyse to what extent it is possible to optimise accessibility to the centres when victims are intercepted in places far away from the specialised reception centres. This is what has led some magistrates to express the idea of creating a sort of flying squad of staff from these centres to help victims who are too far away from one of the three reception centres. This requires increasing the resources of these reception centres.

Myria would like the Interdepartmental Coordination Unit for the Fight against the Smuggling and Trafficking of Human Beings to adapt the status of victim of human trafficking within the framework of the revision of the multidisciplinary circular of 2008⁴⁵⁶ and to develop an offer that better corresponds to the needs of different groups of victims in terms of protection, support and compensation.

To achieve this, the centres must benefit from greater resources allocated in a functional manner. More efficient cooperation with other specialised services, such as support for drug users, is also necessary.

In this respect, Myria is delighted that the Secretary of State for Equal Opportunities was able to grant the centres extra resources in 2015. These efforts deserve to be mentioned, even if they are still insufficient within the scope of structured funding.

1.3. Raising awareness about the youth protection sector and schools

**Addressees: Communities,
Interdepartmental Coordination Unit**

Since 2014, the communities have been part of the Interdepartmental Coordination Unit for the Fight against the Smuggling and Trafficking of Human Beings. Myria would like the youth care sector, at community level, to be made aware of the indicators of human trafficking. This link is completely missing in the fight against loverboys. The goal is to avoid, at all costs, young victims becoming a victim again by making them feel guilty or by stigmatising them for deviant behaviour. Indeed, an approach such as this would be totally counterproductive.

Myria is very pleased to see that awareness-raising actions are being carried out by different authorities and stakeholders in schools regarding loverboys, forced marriages and early marriages.

⁴⁵⁶ Circular of 26 September 2008 relating to the implementation of an interdisciplinary cooperation concerning the victims of human trafficking and/or certain aggravated forms of human trafficking, *Belgian Official Gazette*, 31 October 2008.

1.4. Raising awareness among police youth offending teams and the youth division of the public prosecutor's office concerning human trafficking indicators

Addressees: local police, youth and family magistrates, Minister for Justice, College of Public Prosecutors

Myria would like awareness to be raised among the local police's youth offending teams, as well as in the youth division of the public prosecutor's office.

The local police's youth offending teams have little knowledge of the indicators of human trafficking, in particular in cases involving a loverboy. Consequently, they aren't always inclined to consider child victims of sex offences as victims of human trafficking. Sometimes, these child victims even risk being stigmatised as problem children and are even held responsible for acts of vice. They are considered the guilty party.

Incomplete knowledge of the indicators of human trafficking and the status of victim of trafficking was also observed in the youth division of the public prosecutor's office. The policy took this on board and took an important new measure. According to the new COL⁴⁵⁷, the prosecutors for juvenile cases and the reference prosecutors in human trafficking have to work together better to detect and protect child victims of human trafficking. The positive point is that the youth division of the public prosecutor's office will systematically be invited in the future to coordination meetings relating to human trafficking within the judicial district.

⁴⁵⁷ COL 01/2015 relating to the investigation and prosecution policy in terms of human trafficking.

1.5. Raising awareness about early and forced marriages

Addressees: communities, Minister for Justice, Minister of the Interior

Little is known about the phenomenon of forced and early marriages and they are difficult to quantify. They concern the privacy of the couple and families. These marriages take place in the private sphere and the victims are reticent about reporting such acts to the authorities. It would also appear that as regards the Roma community, where many early marriages take place, there isn't enough support. Furthermore, the custom linked to traditional marriage in some Roma communities is sometimes abused by certain families or criminal groups to exploit young girls, especially within the framework of domestic work or to force them to commit acts of theft.

It would also seem that professionals in the field aren't always aware of the facts or have the tools to be able to detect potential cases of forced marriage.

This is why Myria, just like other authorities, recommends continuing efforts in terms of raising awareness, developing skills and training for professional categories faced with such situations (police officers, magistrates, civil registrars, teachers). Moreover, sharing information and models of cooperation within the various sections of the same public prosecutor's office (youth, domestic violence, human trafficking) must also be encouraged. The purpose is to be able to make the link, if necessary, between a suspicion of early or forced marriage and a potential case of human trafficking.

Finally, specific actions should be undertaken as regards the Roma community, through intercultural mediators for example. It would be useful to organise awareness-raising campaigns specifically aimed at these communities.

2. The fight against human smuggling

In its last few reports on migration and fundamental rights, Myria has regularly highlighted the fact that the definition of safe and legal migration routes is clearly one answer to the phenomenon of human smuggling.

2.1. The need for a governmental action plan relating to the fight against human smuggling

Addressee: Interdepartmental Coordination Unit

There is no governmental action plan devoted exclusively to the fight against human smuggling. As a transit country for migration, Belgium plays an active role in the fight against human smuggling by focusing attention on the approach to smugglers. Myria would like the Interdepartmental Unit to take the initiative to elaborate a governmental action plan to combat human smuggling, so that responsibility can be taken for several points of attention in a uniform manner. On an international level, this should help to better highlight and position the Belgian policy in terms of human smuggling.

2.2. The financial battle on a (inter)national level pays

Addressee: Interdepartmental Coordination Unit

Ideally, an international financial chain approach should lie at the centre of this new action plan in the fight against human smuggling. A good international collaboration and a wide-ranging financial investigation are the most efficient ways to impact and financially drain smuggling networks. All the links play a role in it. If a link is missing, the

chain breaks. Hence, smugglers ensure that their criminal proceeds are safely transferred to their country of origin. The EU must endeavour to conclude a maximum number of agreements with the countries of origin outside the Union regarding the seizure of criminal proceeds. Within the EU, the Member States must cooperate better when an EU Member State ask another Member State for a seizure or confiscation. Myria is convinced that an international financial chain approach such as this would indeed produce results for the EU action plan.

2.3. The smuggling of families requires special attention

Addressees: Interdepartmental Coordination Unit, State Secretary for Asylum Policy and Migration

More attention needs to be paid to the problem of smuggling families. In the cases concerning human smuggling, we have found that families with young children are regularly transported illegally in refrigerated trucks. Political decision-makers and stakeholders pay very little attention to this group of victims. And yet, it is a highly vulnerable target group which, owing to its precarious situation, runs extra risks and deserves the necessary protection. Myria would like a debate to be launched and conducted at a national and international level to ask for more attention to be paid to the needs and the vulnerability of this precise group of smuggling victims.

COLOPHON

Tightening the Links, Trafficking and Smuggling in Human Beings, Annual Report 2015
Brussels, January 2016

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Translation: Alice Cameron

Graphic design and layout: Myria

Printing: Identic

Editor-in-chief: François De Smet

Acknowledgements: Myria would like to thank its partners for providing it with access to data essential for the figures featuring in this report. Myria would particularly like to thank the members of its board of directors and the specialised reception centres PAG-ASA, Payoke and Sürya for having reread the report and provided comments. All the remarks were closely examined and taken into account in the final version, insofar as it was possible. Thanks also to Naomi Sluijs and Cécile Balty for rereading the document.

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