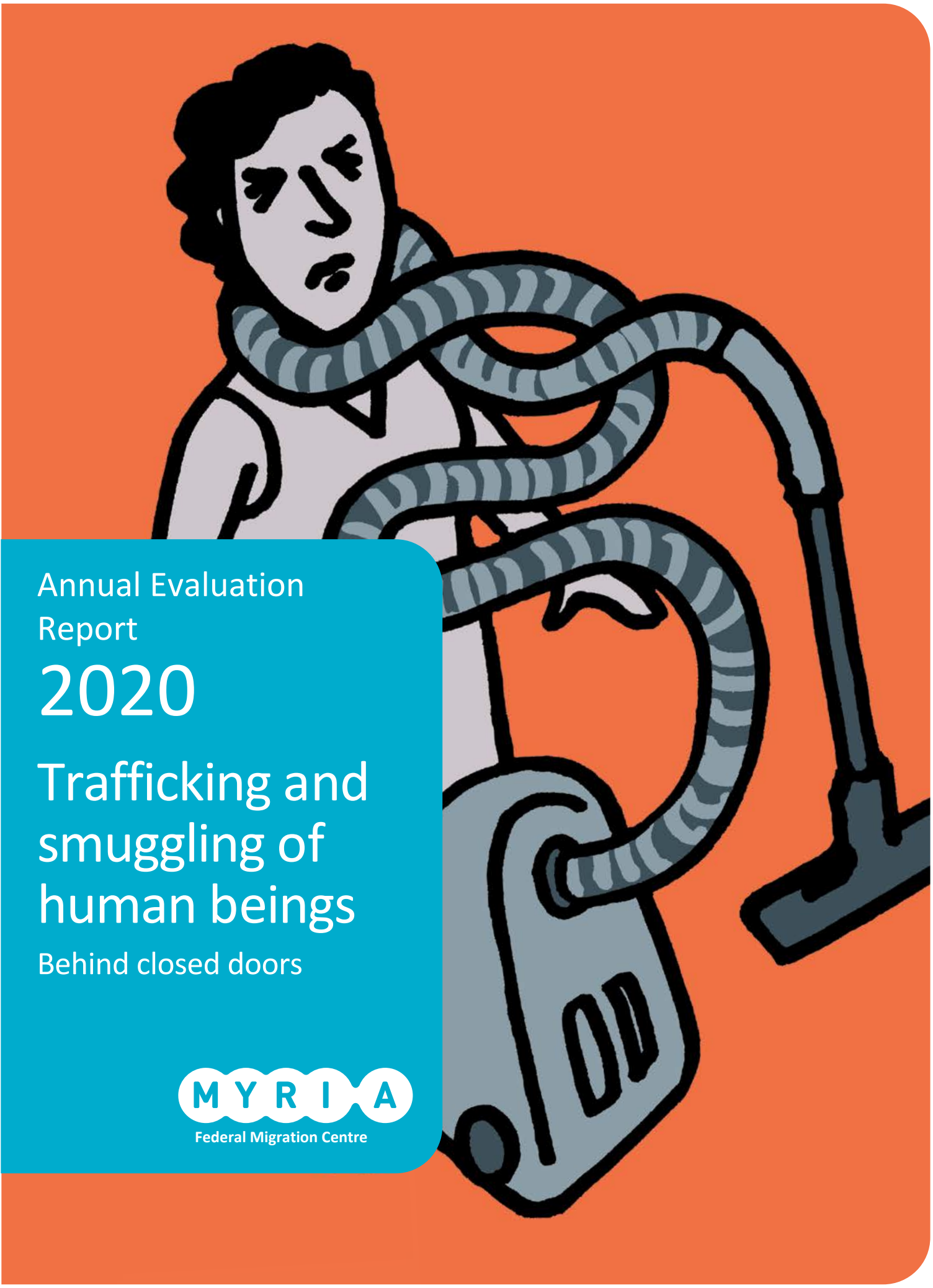


Annual Evaluation Report

2020

Trafficking and smuggling of human beings

Behind closed doors

MYRIA

Federal Migration Centre

Annual Evaluation Report

2020

Trafficking and smuggling of human beings

Behind closed doors

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INTRODUCTION

Behind closed doors is the title of Myria's *Trafficking and smuggling of human beings* 2020 annual report. As the Belgian rapporteur on human trafficking, Myria fulfils its legal mandate by compiling an independent and public report. The fight against human trafficking and smuggling is assessed and the phenomenon of trafficking and smuggling in human beings is discussed in detail.

Exactly ten years ago, the annual report's focus was summarised in its subtitle "Combating social fraud to prevent trafficking in human beings". This report was the central part of a triptych aimed at analysing human trafficking in the context of the free movement of persons and services, and the problem of fraudulent schemes. In the midst of the current COVID-19 pandemic, this premise is once again proving to be both topical and pressing: when the government tackles social and labour law violations with targeted measures, the fight against human trafficking is an explicit part of the objectives.

Recent observations made abroad, such as those concerning Tönnies in Rheda-Wiedenbrück (Germany), the clothing industry in Leicester (United Kingdom) and seasonal work in Catalonia, revealed living and working conditions that justly raise questions regarding the respect for human dignity. Similar findings were also made in Belgium, although it has yet to be determined whether or not acts of human trafficking are involved.

As a result of the COVID-19 pandemic, the title *Behind closed doors* is all the more relevant. The report focuses on the exploitation of domestic workers at a time when domestic staff, who work in exploitative conditions, are more than ever forced to work and live under the same roof as their employer.

There are many situations involving domestic staff working "behind closed doors", where acts of human trafficking are rarely brought to light unless the victims manage to find the right door and let themselves out. The Brussels-based social inspector Bruno Devillé explains the latest findings and the reasons for the lack of evolution in the results of the approach implemented thus far.

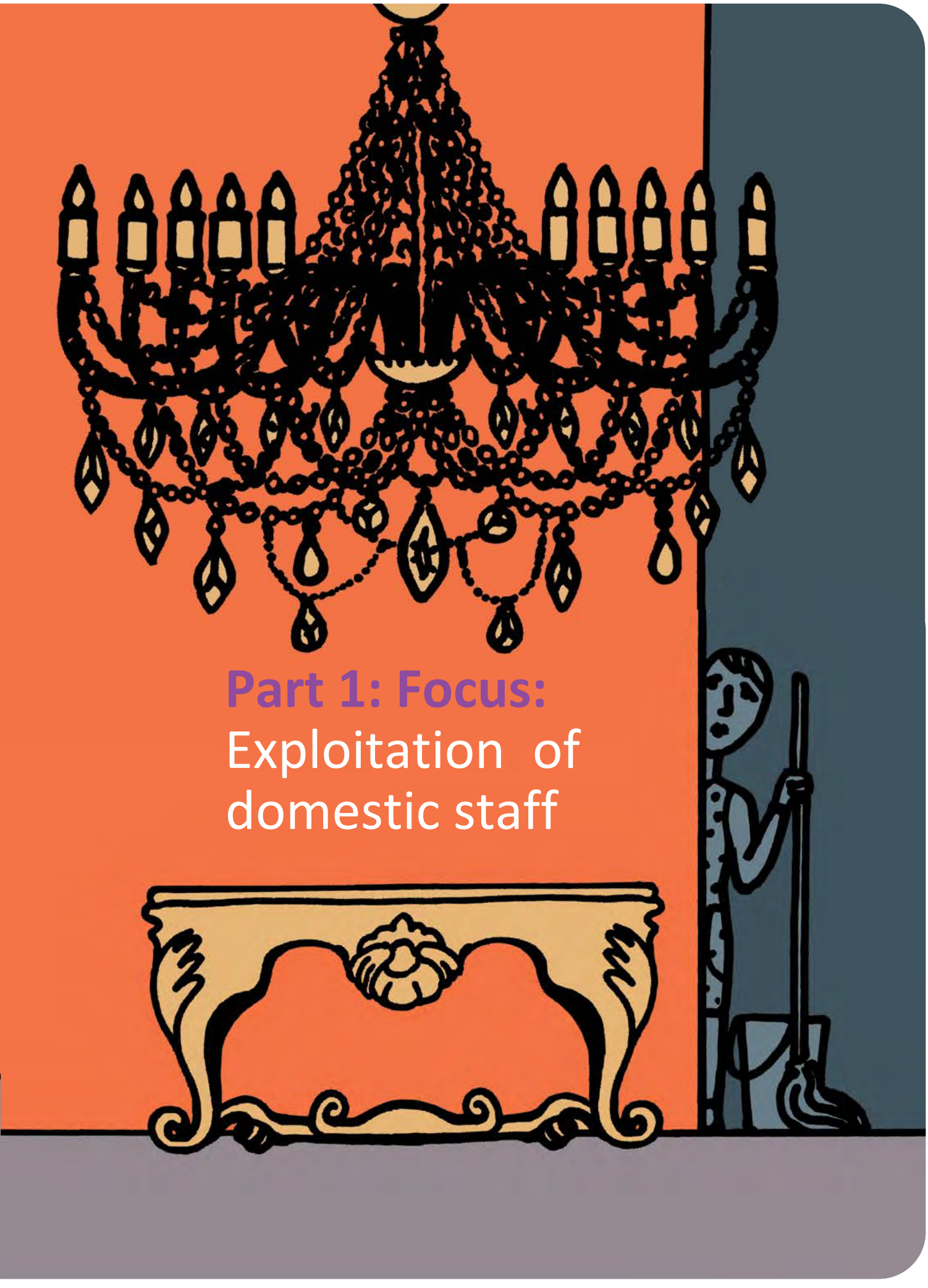
At the same time, Myria takes a broader look at the evolution of the phenomenon and the approach to human trafficking in situations of complete or partial lockdown, on the basis of a number of external contributions. The number of reports of victims of human trafficking has already fallen dramatically.

In the contribution by Johan Debuf, chief inspector of police of the Brussels-North zone, he explains what can be deduced from online advertisements for sexual services, at a time when prostitution has also repeatedly gone into lockdown. Even though cases are rarely opened for human trafficking, behind every working prostitute is the potential exploitation of a vulnerable situation.

The government's agreement reflects a certain ambition with regard to the fight against, human trafficking both in the field and through the structural funding of specialised centres, or via parliamentary monitoring. Regarding the latter, the mission is as follows: the greatest challenge is undoubtedly to develop an approach that consists of reacting in an appropriate and coherent manner every time a minor is reported as being in a vulnerable situation in the context of human smuggling or trafficking.

I hope you find this report a captivating and enriching read.

Koen Dewulf
Director



Part 1: Focus:
Exploitation of domestic staff

This year, Myria has dedicated the report's focus to a problem that is difficult to detect: the exploitation of domestic staff. Domestic work takes place in the private sphere and as a result, escapes spot checks by the labour inspectorate.

The focus successively examines the general legal aspects of domestic work (Chapter 1), human trafficking cases in this sector (Chapter 2) and the charge of human trafficking within the context of domestic work (Chapter 3). It is also supported by an external contribution by Bruno Devillé, social inspector and head of the NSSO Inspection Department's ECOSOC/THB team, which deals with the phenomenon in Brussels.

Chapter 1
Domestic work: legal framework

1. Status

Domestic work can take various forms: cleaning, cooking, gardening, childminding, etc. The worker may be working for one family (internally or externally) or different families. Their work status can also be very different (domestic worker, household staff, service cheque employee, diplomatic domestic staff). Furthermore, au pairs, who aren't workers, are also required to carry out certain domestic chores.

1.1. | Domestic workers and household staff

A domestic employment contract is a "contract by which a domestic worker undertakes, in return for payment, to carry out mainly manual household tasks, under the authority of an employer, for the needs of the employer's household or family"[1]. For instance, cooks, cleaners and nannies in the private service of an employer are considered domestic workers[2]. On the other hand, a worker who doesn't perform tasks considered as housework (driver, gardener, carer, etc.) or who performs mainly intellectual work (nurse, tutor, etc.), isn't a domestic worker but household staff, which is defined as "a worker who is mainly engaged in manual or intellectual tasks within the property, inside or outside the home, for the private needs of the employer or their family"[3]. Both the domestic worker and salaried household staff have an employment contract with their employer.

The employer of a domestic worker has several social obligations, and in particular, since 1 October 2014, the obligation to register them with the social security system[4]. Exemptions that previously existed for household staff have now been restricted[5]. These amendments were adopted in order to comply with the ILO Domestic Workers Convention[6]. The aim was to provide domestic staff with social protection similar to that enjoyed by other workers.

1 Art. 5 of the Employment Contracts Act of 3 July 1978 and Art. 353*bis*/11, para. 3 of the framework legislation (I) of 24 December 2002.

2 In September 2019, the social partners of joint committee 323 – on which domestic workers depend – signed a collective labour agreement establishing a new job classification and pay scale for domestic workers. This status is now divided into three different categories: cleaning, housework and childminding. The main task performed by the worker determines the category to which they belong. See Fairwork Belgium, *Travailleurs sans papiers, rapport annuel 2019*, pp. 24-26.

3 Art. 353*bis*/11, para. 2 of the framework legislation (I) of 24 December 2002.

4 Royal Decree of 3 July 2014 repealing Articles 5 and 18 and amending Article 16 of the Royal Decree of 28 November 1969 in implementation of the Act of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning social security for workers, *O.B.*, 28 July 2014.

5 Exemption from social security contributions is now limited to workers who carry out 'occasional' work. This means the activity or activities carried out for the needs of the employer's household or their family, except for manual household work, as long as the employee doesn't perform these occasional activities in this household professionally and in an organised manner, that they only receive limited compensation and that the activity doesn't exceed eight hours a week with one or more employers. These are services of an intellectual nature (e.g. baby-sitting, accompanying elderly persons, shopping for persons with reduced mobility, driving for persons with reduced mobility). See the report to the King of the R.D. of 3 July 2014 and: https://www.ucm.be/Actualites/Personnel-de-maison-assujetti-aux-cotisations-sociales-a-partir-du-01-10-2014

6 ILO, Convention No. 189 of 16 June 2011 concerning decent work for domestic workers, adopted in Geneva on 16 June 2011 by the International Labour Conference at its 100th session. This Convention was ratified by Belgium on 10 June 2015 and came into force on 10 June 2016.

Any private person who employs domestic staff for household services - on whatever scale - of a mainly manual nature (cleaning, ironing, laundry, gardening, etc.) is now considered an employer and is therefore required to pay social security contributions to the NSSO. From a social security point of view, there is therefore no longer any distinction between the status of domestic worker or household staff.

1.2. | Service cheques

The majority of home helps working a few hours a week for several private families in Belgium do this work under the service cheque system. It was originally designed to combat undeclared work in the domestic economy, to create additional jobs for the low-skilled and to make home help accessible to a wider part of society[7]. In this framework, the employer is an approved company, with the client (or user) being the family using the home help's services. The service cheque system is specific to each region[8]. The client has to register and order service cheques, which enable them to have household chores carried out at a favourable rate.

Home helps working under the service cheque system sign a written employment contract with an approved company. This guarantees them a minimum wage and social protection. Both Belgian and foreign workers can be employed under a service cheque employment contract. However, if necessary, they must have valid residence and work permits[9].

1.3. | Au pairs

Legally, au pairs[10] aren't considered as workers. These are young foreigners between 18 and 25 years of age, hosted by a host family for a maximum of two years. The aim is to enable them to broaden their cultural horizons and improve their language skills. They receive board and lodging as well as some pocket money (EUR 450/month)[11] in exchange for childminding and light housework. The participation of the au pair in family chores can in no way be the main purpose of the stay. They may not work more than 20 hours a week and four hours a day[12]. Au pairs don't have any social protection. However, host families must take out insurance that covers medical, pharmaceutical and hospitalisation costs in the event of accident or illness, as well as repatriation insurance.

If the young person is from a country that isn't a member of the European Economic Area or Switzerland, then it may be necessary to fulfil certain formalities to obtain a work authorisation, work permit or visa[13].

In the event of non-compliance with the conditions associated with the specific status of au pair, it is assumed that the latter is bound by an employment contract as a domestic worker, as referred to in Article 5 of the Employment Contracts Act of 3 July 1978, vis-à-vis the host family[14]. The regional labour inspectorate is competent in this area. However, the procedures are long and complicated[15].

Regulations were tightened several years ago to combat abuse. Nevertheless, in practice, this particular regulation seems to allow some families to recruit a domestic worker or nanny at low cost[16]. One of the problems relates

7 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 15 : http://www.orcasite.be/userfiles/file/ORCA_Domestique_FR.pdf

8 https://www.titre-service.brussels ; https://titres-services.wallonie.be ; https://dienstencheques.vlaanderen.be

9 See https://www.titre-service.brussels.

10 See Articles 24 to 29 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999, O.G., 26 June 1999.

11 Art. 26, 4° of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

12 Art. 27 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

13 https://emploi.belgique.be/fr/themes/international/travailleurs-etrangers/travail-au-pair-en-belgique et https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Les_jeunes_au_pair.aspx

14 Art. 29 of the Royal Decree of 9 June 1999 implementing the Foreign Workers Employment Act of 30 April 1999.

15 According to an interview with Fairwork Belgium. More often than not, it is a question of recuperating unpaid pocket money.

16 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 17 : http://www.orcasite.be/userfiles/file/ORCA_Domestique_FR.pdf

to the fact that host families aren't considered as employers, whereas in practice, they sometimes are[17].

There are therefore calls for the abolition of this regulation due to ongoing abuse[18] and the introduction of legal alternatives for regular child-minding at home[19].

1.4. | Diplomatic domestic staff

It is estimated that there are 303 diplomatic missions and consular posts in Belgium, employing more than 8,000 people[20].

A special category of domestic workers is therefore composed of domestic staff in the private service of diplomats. These are persons employed exclusively in the private domestic service of a member of the diplomatic mission, other than employees of the sending state[21]. A distinction must be made between the domestic staff in the private service of a diplomat and members of service staff, such as drivers, gardeners or cooks, sent to Belgium and who work in the domestic service of the mission or post of the sending state[22].

These domestic workers are generally from third countries, and are sometimes the same nationality as their employer.

Special identity card

These domestic workers don't need a work permit; instead, they receive a special diplomatic identity card through their employer[23].

Before the worker comes to Belgium, the employer and the worker conclude an employment contract for domestic staff, which will be executed in Belgium and subject to compliance with Belgian labour law. The Protocol Directorate of FPS Foreign Affairs offers standard employment contract[24] – which is outdated in terms of wages[25]. The worker must also meet certain conditions, such as not having Belgian nationality and not residing illegally in Belgium[26]. The employer must also fulfil a number of obligations that must be included in the employment contract, such as paying the agreed wage and providing the employee with accommodation in a clean and decent place.

In addition, since 1 October 2016[27], the salary mustn't be paid in cash. It must be paid in book money (into the worker's bank account) and in euros[28].

The diplomatic mission concerned asks the Protocol Directorate of FPS Foreign Affairs for its agreement to the principle of hiring a private domestic worker. This request is accompanied by certain documents, including the employment contract[29].

As soon as the domestic worker arrives in Belgium, an application for a special identity card must be submitted by the diplomatic mission to the Protocol Directorate of FPS Foreign Affairs. In principle, the worker is required to go and collect their card in person

17 *Ibidem.*
18 The Flemish labour inspectorate, in particular, (Vlaamse Inspectie Werk en Sociale Economie). Or.c.a (now: Fairwork Belgium) refers to the 2008 annual report of this inspection department.
19 In this sense, ORCA, Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 17.
20 Good Offices Commission (hereafter: GOC), *Personnel des ambassades*, December 2018, p. 3, available at: https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices
21 See Article 1, h) of the Vienna Convention on Diplomatic Relations of 18 April 1961, Article 1, i) of the Vienna Convention on Consular Relations of 24 April 1963, as well as point 2.7.1.1. of the guide to the protocol on immunities and privileges, published by FPS Foreign Affairs, available on its website: https://diplomatie.belgium.be/fr/Services/Protocole/guide_du_protocole/guide_du_protocole_immunites_et_privileges
22 Art. 1, g) of the Vienna Convention on Diplomatic Relations and Art. 1, f) of the Vienna Convention on Consular Relations. These people may also receive a special identity card under certain conditions.
23 Art. 4, 7° of the R.D. of 30 October 1991 concerning the residence papers of certain foreigners in Belgium, *O.G.*, 17 December 1991. However, this special identity card will only be issued if the domestic worker is in the service of a head of a diplomatic mission, a career head of a consular post or a head of a recognised international organisation with diplomatic status (see GOC, *Personnel des ambassades*, December 2018, point 7.1.1.).
24 See Annex 3 of Chapter 2 of the protocol guide: "immunities and privileges", p. 34.
25 While the protocol guide is regularly updated (last update: April 2020), unfortunately, just like Fairwork Belgium, the indicated salary scales (dating from 2013) are out of date. See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, p. 16.
26 For the whole procedure, see point 2.7. of the guide to the protocol on immunities and privileges.
27 Act of 23 August 2015 amending the Act of 12 April 1965 on the protection of workers' wages regarding payment of wages, *O.G.*, 1 October 2015.
28 GOC, *Personnel des ambassades*, December 2018, point 7.1.5.
29 *Ibid.*, point 7.1.2.

from the Protocol Directorate. It is valid for a year and the worker must renew it in person. This is an opportunity for the worker to be informed of their rights as a worker and to report any possible problems.

During interviews, Myria discovered that this check has been carried out less systematically over the past few years. What sometimes happens is that the diplomat's driver goes to fetch the domestic worker's special identity card, thus preventing the worker from having face-to-face contact with the Protocol Directorate. Nevertheless, the necessary improvements have apparently been made regarding this point.

Good Offices Commission

In the event of a dispute over the execution of the contract, the Good Offices Commission[30] may intervene at the request of the worker or the employer. This Commission was created by the ministerial circular of 23 May 2013 for staff employed in diplomatic missions[31]. Its main objective is to seek to solve problems that may arise between such staff and their employer. However, its role is limited to formulating an opinion in order to reach an amicable settlement in the event of a dispute[32]. The Commission also informs diplomatic missions and consular posts of their obligations[33].

This Commission is composed of representatives from the Directorate for Supervision of Social Legislation of FPS Employment, the Protocol Directorate of FPS Foreign Affairs, the NSSO, the International Relations Department of FPS Finance, FPS Social Security and trade unions[34].

According to some of the parties interviewed, the results of this Commission are mixed. It is indeed particularly difficult to reach a solution when the employer refuses to cooperate. According to other stakeholders, its intervention is useful, especially for the calculation of wages in the event of an amicable settlement.

30 See https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices.

31 Circular of 23 May 2013 on the creation of a Good Offices Commission, available at: https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices.

32 Art. 4, 1 of the Circular of 23 May 2013 on the creation of a Good fails, the employee may apply to the courts and tribunals.

33 In particular, it published an information leaflet on embassy staff: Offices Commission. If the attempt at conciliation between the parties GOC, *Personnel des ambassades*, December 2018, available at: https://emploi.belgique.be/fr/propos-du-spf/institutions-liees/commission-des-bons-offices.

34 Art. 5 of the Circular of 23 May 2013 on the creation of a Good Offices Commission.

Social security

Workers holding a special S-type identity card, such as domestic workers, should in theory not be subject to Belgian social security except in certain situations[35]. Fairwork Belgium has been advocating for a number of years that the private domestic staff of diplomats should automatically be subject to Belgian social security[36].

Domestic staff recruited locally

If the domestic worker is recruited locally[37], the Protocol Directorate of FPS Foreign Affairs doesn't issue a special identity card. Belgian labour and social security legislation applies in this case[38]. This staff doesn't benefit from a special status in accordance with the Vienna Conventions on diplomatic relations[39] and consular relations[40]. Since 15 February 2018, diplomatic missions, permanent representations and foreign consular posts established in Belgium employing locally recruited staff are obliged to respect the work and wage conditions laid down in the collective labour agreements concluded by the joint committee(s) (JC) to which they belong[41]: usually JC 337 (non-market sector) except for workers mainly engaged in gardening work (JC 145 for horticultural enterprises) or

35 Especially if they are subject to Belgian social security law in accordance with an international agreement or if they are not exempt from Belgian social security law in accordance with the Vienna Conventions on diplomatic and consular relations. For more details, see GOC, *Personnel des ambassades*, December 2018, Chapter VII: Personnel domestique, point 7.1.6 and Chapter III: Sécurité sociale.

36 See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, p. 16.

37 The Protocol Directorate defines locally recruited staff as: "staff recruited locally by diplomatic missions, permanent representations and consular posts who are in a position to work in Belgium and are subject to the provisions of Belgian labour law and Belgian social security laws".

38 GOC, *Personnel des ambassades*, December 2018, point 7.1.14.

39 Vienna Convention on Diplomatic Relations of 18 April 1961.

40 Vienna Convention on Consular Relations of 24 April 1963.

41 This amendment was made in Article 2 of the Act of 15 January 2018 containing various provisions in terms of employment, *O.G.*, 5 February 2018, known as the "Epis Act". This article amended Article 2, § 3 of the Act of 5 December 1968 on collective labour agreements and joint committees. According to Fairwork Belgium and Intersyndicale Missions Diplomatiques (collaboration between the ACV-CSC and ABVV-FGTB trade unions), these provisions on joint committees also apply to workers with a special "S" type identity card, including the private domestic workers of diplomats. See Fairwork Belgium, *Travailleurs sans papiers, Rapport annuel 2018*, pp. 14-17. However, this stance isn't shared by the Protocol Directorate of FPS Foreign Affairs.

JC 323 for workers recruited according to a domestic employment contract[42].

2. Abuse of domestic staff

It appears that a significant proportion of domestic work is carried out illegally by foreign domestic staff[43]. However, the employment of illegal workers is subject to heavy penalties, which sometimes leads employers to restrict the freedom of domestic workers for fear of such penalties[44]. They are sometimes also reluctant to make use of the possibilities to regularise the situation of the domestic worker, for fear that the earlier illegal situation will be discovered[45].

During Fairwork Belgium's French and labour law information classes for domestic workers on Sundays, stories of abuse are common but victims often don't want to take any action[46].

As for diplomats, members of the diplomatic mission benefit from criminal, civil and administrative immunity, the extent of which varies according to the category of staff[47]. This immunity presents an additional obstacle in the fight against abuse.

3. Conclusion

This chapter highlights the extensive fragmentation of the legal status of domestic work, which is liable to facilitate abuse. It is also very difficult to gather data on domestic staff in Belgium. According to Fairwork Belgium, there is a lack of knowledge about the true situation of domestic workers. A study would therefore be useful in order to have a better view of needs (who and how many people need domestic staff?), the current legal offering, people who want to be domestic workers (internal) and the reality of domestic work.

In addition, there is also a need to enhance the value of domestic work and raise awareness among clients. Some, such as Fairwork Belgium, are also advocating the abolition of the separate status of domestic worker and the development of a new system of employment of full-time domestic staff and home-based childminders[48].

For diplomatic domestic staff, Myria recommends that the Protocol Directorate of FPS Foreign Affairs effectively and systematically interview the domestic worker when issuing or renewing their special identity card in order to prevent or detect possible abuse. Similarly, the indicative salary scales in the standard employment contract for diplomatic domestic staff should be regularly updated.

42 GOC, *Personnel des ambassades*, December 2018, Chapter II: Personnel local-réglementation du travail en Belgique.

43 Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, p. 34.

44 *Ibid.*

45 *Ibid.*

46 According to an interview with Fairwork Belgium in March 2020.

47 Diplomatic agents and members of their family enjoy full immunity. These immunities are more limited for other categories of staff working for diplomatic missions, such as administrative and technical staff. Officials of international organisations have immunity from criminal, civil and administrative jurisdiction. International civil servants generally have functional immunity, i.e. for acts performed within the scope of their functions. See Articles 31, 32, 37, 38 and 39 of the Vienna Convention on Diplomatic Relations of 18 April 1961, Articles 43 and 53 of the Vienna Convention on Consular Relations of 24 April 1963 and points 5.2, 10.5.7, 10.7 and 12.7 of the protocol guide on "privileges and immunities".

48 Fairwork argues for an unsubsidised system similar to service cheques that meets the specificities of recruiting full-time domestic workers or childminders, which it calls the third-party system. See Or.c.a (now: Fairwork Belgium), *Le personnel domestique, un autre regard*, 2008, pp. 19 and 65.

Chapter 2
Domestic work and human trafficking

The most serious cases of abuse of domestic staff are sometimes considered as human trafficking, although there are very few cases. The victims' profiles are also varied.

For instance, in Brussels, the labour prosecutor's office deals with some 20 to 25 cases a year, barely 10 % of which involve domestic exploitation.

In the past three years (2017, 2018 and 2019), PAG-ASA, the specialised reception centre for trafficking victims in Brussels, organised support for seven new cases of victims of domestic exploitation out of a total of 101 new victims of labour exploitation[49].

In 2018, the NSSO's inspection department identified just two offences of human trafficking in the domestic sector[50].

The exploitation of domestic workers relates to situations that occur within the framework of private life and is therefore difficult to identify. Detection of a victim of human trafficking is thus sometimes complicated because a direct link with exploitation can't be established. Coincidence sometimes plays a role, such as if a random check takes place or information is obtained from neighbours or hospital staff.

According to the NSSO's inspection department, detection has become even more problematic owing to the coronavirus situation: domestic workers have become exceedingly isolated and invisible during the lockdown and left entirely at the mercy of their employer[51]. In order to better detect these victims, it is therefore necessary to inform the general public of the existence of these human trafficking situations through awareness-raising campaigns. This increases the likelihood that frontline services will receive reports from neighbours, individuals and the field. In the following examples of cases, we see that many of the acts were brought to light by informed external persons.

Which human trafficking cases concern domestic staff? The main categories are domestic workers in private homes and domestic staff working for diplomats. In addition there are child victims of child marriages[52].

1. Female domestic workers in private households

Cases of human trafficking in private households mainly involve female domestic workers employed outside any legal framework. Often, these victims don't have a residence permit. In some

49 In 2017, PAG-ASA began providing support for 45 new victims of of human trafficking, including one victim of domestic exploitation out of the 18 victims of labour exploitation; in 2018, it started providing support for 68 new cases, including five victims of domestic exploitation (two of the situations concerned diplomats) out of the 45 victims of labour exploitation; in 2019, support began for 63 new cases, including one victim of domestic exploitation out of the 38 victims of labour exploitation.

50 Myria, 2019 Annual Report Trafficking and smuggling of human beings: *Empowering victims, p. 152.*

51 See the external contribution by Peter Van Hauwermeiren and Stéphanie Schulze: Impact of the COVID-19 pandemic on labour exploitation - Experiences and observations of the NSSO inspection department's ECOSOC teams" in part 2, Chapter 1 of this report.

52 On this subject, see Myria, *2018 Annual Report Trafficking and smuggling of human beings: Minors in major danger*, p. 24 (profiles) and p. 151 (case law); Also see the focus of the 2015 annual report: Myria, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links,* pp. 13-22.

cases[53], the exploited person has escaped from their "private workplace". The victim is often alone and doesn't speak either French, Dutch or English. Detection of these victims is particularly difficult owing to their isolation. They have little contact with the outside world: they only go out on rare occasions, sometimes to go shopping or to take the children to school. Their isolation is sometimes reinforced by their ethnic origin, similar to that of their employer[54], which can be used as a means of pressure on them. In addition, there is a procedural difficulty of access to the home, which can only take place with the authorisation of an investigating judge (home visit or search).

The victims are often adults but, sometimes, minors are also involved[55].

Child victim

One example perfectly illustrates this situation: the case is discussed in detail in the case law section and is also mentioned in the external contribution[56]. Informed external persons had asked the police to intervene in the case of a young girl - a minor - who was found in difficulty on the street. The police discovered a 15-year-old Congolese girl, in tears, accompanied by a friend. The girl, who had escaped, had no residence permit. She said she was living with the defendant, to whom her father had entrusted her three years earlier. She was taken to the Esperanto centre for child victims of human trafficking.

Adult victims

In the "Conrad hotel princesses" case[57], the investigation started on the basis of the statements of a victim of Morroccan nationality, who had run away and was taken in by a family. At her hearing, she said she worked as a cook for a princess from the United Arab Emirates, who was staying in a prestigious hotel in Brussels. The working conditions there were particularly difficult. They worked seven days a week and 24 hours a day. They were nicknamed "bitches". The mother and seven of her daughters were staying at this hotel, each with two maids. The majority of the workers were of Filipino origin, but there were also Moroccan, Indonesian and Tunisian workers, as well as a Chinese worker and an Eritrean. The work conditions were as follows: available at all times, for seven days a week, some of them 24 hours a day and others with working hours well in excess of eight hours a day, with no weekly day off. The domestic workers couldn't leave the hotel, except in the company of the princesses, with their freedom of movement consequently limited to that of the princesses. The purpose of the security guards was to exert control. Lastly, the staff passports were withheld by the butler.

In another case[58], a British defendant was convicted of human trafficking. The Congolese victim filed a civil suit. The court awarded her EUR 1,500 in non-pecuniary damages and EUR 62,625 in pecuniary damages. The court based its decision on the victim's statements.

The defendant had recruited the worker in Kinshasa to take care of her seven-year-old mentally handicapped son. She regularly came to Belgium before moving here permanently. The worker accompanied the defendant during these stays on a tourist visa, requested on the basis of the care provided to the young boy. She continued to look after the young boy, even after the defendant settled permanently in Belgium. The worker also had to do the housework (cleaning, cooking, washing up and laundry). The victim had to work seven days a week, from 06:00 to 23:00 for a monthly salary of USD 200 (i.e. a daily wage of USD 6.6). According to the social inspectorate's calculations, her wages were therefore only 11 % of the amount to which she would have been entitled on the basis of full-time work, i.e. EUR 1,604.45. She had no social protection and lived in the laundry room, located in the cellar, on a couch and with no access to a bathroom. She had to fetch water in a bucket from upstairs to wash herself. Her passport was also confiscated when she came to stay in Belgium. The court also pointed out that "the possible consent of the civil party -

53 Interdepartmental Coordination Unit for the Fight Against Trafficking and Smuggling of Human Beings, *La lutte contre la traite et le trafic des êtres humains, Plan d'action 2012-2014*, point 3.3.: http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf.

54 For examples see: Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 127 (Romanian victims) and this report, Part 2, Chapter 3 (Case Law Overview), point 2.3.8. (Chinese victim).

55 This aspect was discussed in the profiles of the minors in the 2018 annual report: Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 24-25.

56 See further on, Part 2, Chapter 3 (Case Law Overview), point 2.3.8 and the external contribution by Bruno Devillé "Slavery behind the door - labour exploitation of domestic staff" at the end of this focus.

57 Brussels French-speaking Crim. Court, 23 June 2017, 59th ch. (final); Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online*, pp. 122-124. The decision is available at www.myria.be (case law).

58 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 136. The decision is available at www.myria.be (case law).

underpinned by a need for money and/or, as the case may be, by the hope of a better future in Europe - has no bearing whatsoever on the perpetration of the offence".

2. Domestic staff working for diplomats

According to the interviews conducted by Myria, the cases concerning the human trafficking of domestic staff exploited by diplomats, concern both diplomats from third countries and European officials who recruit domestic staff in the countries where they are based (Africa, Asia) and who then come to Belgium with this domestic staff.

Sometimes, the victims have already worked for the diplomat on a previous assignment. In some cases, the victims have the same nationality as the posted diplomat, which may reinforce their fears of threats against their family back home, due to the influential position of their employer.

Moreover, the employer generally invokes diplomatic immunity when a domestic worker reports the acts.

Invoking diplomatic immunity

The following in an example of human trafficking where domestic staff were exploited by a diplomat and diplomatic immunity was subject to discussion[59]. This case was dealt with by the Labour Court of Brussels[60].

A worker summoned her former employers, a Moroccan couple who had divorced in the meantime, to pay her damages equal to her wage arrears and a sum estimated at EUR 2,500 *ex aequo et bono* by way of compensation for the damages she had suffered as a result of the crime of human trafficking.

At the time of the events, the husband was vice-consul at the Moroccan embassy in Brussels. The worker had been contacted in Morocco through the wife's sister to come and take care of the couple's children (one of whom was autistic), in return for a salary of EUR 150 a month. She initially received a special passport. She lived with the family where she took care of the children, the cleaning, the cooking, the laundry and the ironing. Her employer had contacted the Protocol Directorate in Belgium to obtain a special residence permit for her (special identity card)[61], which was refused because vice-consuls don't benefit from such a privilege. The worker then submitted an application for a residence permit, which was also refused (absence of exceptional circumstances allowing the application to be made in Belgium). Finally, she filed a complaint with the social inspectorate, exposing her work conditions and asking to benefit from the status of victim of human trafficking, which was granted despite the case being dropped owing to her employer's immunity[62].

Her employers invoked immunity from jurisdiction before the labour tribunal and the labour court. While the labour tribunal rejected the plea of lack of jurisdiction[63], the labour court declared, in a detailed statement of reasons, that it had no jurisdiction to examine the employee's claim against her former employer. On the other hand, the court held that the consul's wife didn't have any immunity from jurisdiction.

Initially, the court found that as a consular officer, the employer's immunity from jurisdiction was limited to acts conducted in the exercise of consular functions[64]. However, the acts in question were conducted in the context of private life. Moreover, the Vienna Convention on Consular Relations doesn't grant immunity from jurisdiction to family members of a consular officer. The court therefore found that the employers didn't enjoy any immunity from jurisdiction in this context. Secondly, the court held that the employer did however benefit from immunity from jurisdiction

59 For older examples, see Brussels Lab. Trib., 20 April 2001 and Brussels Lab. Court, 25 November 2002 and 28 April 2003; Brussels Crim. Court 16 May 2003 in Myria (formerly CECLR), *Rapport annuel Traite des êtres humains 2003, Plaidoyer pour une approche intégrée, analyse de la législation et de la jurisprudence*, pp. 75-78: https://www.myria.be/files/Traite-rapport-2003.pdf

60 Brussels Lab. Court, 4 September 2017 (available on the Myria website (case law): www.myria.be). Also see Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 154-156.

61 See above, this part (focus), Chapter 1, point 1.4.

62 See below.

63 Brussels French-speaking Lab. Trib., 18 June 2015 (available on the Myria website (case law): www.myria.be). See also Myria, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 182-183.

64 Under Article 43 of the Vienna Convention on Consular Relations of 24 April 1963.

as a diplomat under the Vienna Convention on Diplomatic Relations of 18 April 1961. He had the status of diplomatic agent during his mission in Belgium. This immunity covers both acts carried out in the context of his mission and in private life[65]. On the other hand, when the diplomat leaves the host country at the end of their mission, immunity from jurisdiction only applies within the framework of their diplomatic functions. It was therefore possible to summon him before the Belgian courts for acts relating to the worker's employment. However, the worker didn't do this even though her application wasn't yet time-barred. In fact, she summoned him while he still had immunity from jurisdiction. The court therefore took a different stance to that of the labour tribunal. The tribunal held that it was necessary to consider things from the moment the judgment was handed down in order to determine whether or not a summoned person benefits from immunity from jurisdiction. The court didn't agree with this and considered that this immunity prevents not only the person in question from being tried but also the filing and pursuit of a civil suit against them.

The worker also considered that immunity from jurisdiction also adversely affected her right of access to a court of law. However, the court noted that the worker didn't establish that the immunity invoked by her former employer disproportionately restricted her right of access to a court in breach of Article 6 of the European Convention on Human Rights. Consequently, the court granted her former employer the benefit of immunity from jurisdiction and declared that it had no jurisdiction to hear the action against him.

As for the diplomat's ex-wife, the court emphasised that members of the diplomat's family only benefit from immunity from jurisdiction if they are part of his household. However, the spouses divorced and the ex-wife was no longer a member of the household at the time of the summons.

The court held that the ex-wife had to compensate the employee for the damage she had suffered as a result of the non-payment of her salary, as well as EUR 2,500 in compensation for the non-pecuniary damage as a result of the human trafficking.

65 Subject to three exceptions not relevant in this case. Moreover, Article 38.1 of the Vienna Convention on Diplomatic Relations, which limits immunity to official acts performed as part of the diplomatic functions where the diplomatic agent is a national or has permanent residence in the receiving state, also doesn't apply in this case. The vice-consul was indeed of Moroccan nationality and Belgium wasn't his permanent place of residence.

According to the court, both the diplomat and his spouse could be considered as employers. Moreover, the owed wages hadn't been paid. The court also considered that human trafficking was proven: the couple had recruited, accommodated and received the worker in order to make her work in conditions contrary to human dignity: approximately 90 hours a week for a salary of EUR 150 a month, with no social security and no private living space (she had to sleep in the children's bedroom and attend to their needs at any time during the night). The court also pointed out that the person concerned didn't need to be the victim of violence, deprivation of liberty or other abuses as well for the offence to be established.

However, the court ordered the reopening of the proceedings regarding the amount of the compensation owing to the non-payment of the salary. Furthermore, it ordered the ex-husband to stand surety for his ex-wife for half of the convictions handed down against her.

Residence status for victims of human trafficking in the private domestic service of diplomats

Several stakeholders highlighted the effectiveness of the Belgian system to protect victims of human trafficking working in the service of diplomatic staff. It can certainly be considered as an example of good practice. It is defined in the multidisciplinary circular on victims of human trafficking[66].

Besides the checks carried out by the Protocol Directorate of FPS Foreign Affairs when a domestic worker employed by a diplomat has their special identity card renewed every year[67], Belgium has also set up a specific system relating to the residence status of these victims. When it appears that one of these domestic workers is the victim of human trafficking, they will be referred to a specialised reception centre. If they are willing to make statements, to have no further contact with the presumed perpetrator and to accept the support offered by the specialised receception centre, they will be able to benefit from this special procedure. In this case, they are obliged to give up their status as a domestic worker and return their special identity card, if they have one, to allow the approved

66 Point 6.1. of the Circular of 23 December 2016 on the implementation of multidisciplinary cooperation regarding victims of human trafficking and/or certain aggravated forms of human smuggling, O.G., 10 March 2017.

67 See above this part (focus), Chapter 1, point 1.4.

specialised reception centre to apply to the Immigration Office for a residence permit. However, the issuing of residence permits within the framework of the "human trafficking" procedure is linked to the outcome of the criminal proceedings against the perpetrator. In view of the criminal immunity they enjoy, this is ruled out in practice in the case of diplomats. In this case the system has provided for the possibility of the prosecutor giving a favourable opinion on the reality of the situation of exploitation and human trafficking. The prosecutor compares the victim's statement with other specific elements in the case file, instead of simply checking whether or not the employment contract has been complied with. The prosecutor can take all useful initiatives in collaboration with the Protocol Directorate of FPS Foreign Affairs to prove the existence of the offence of trafficking in human beings, in compliance with the rules of diplomatic immunity. They then inform the Prosecutor General that a case is being opened, of the steps taken and the progress of the case.

Despite the absence of judicial proceedings, the system allows the victim to obtain a permanent residence permit on humanitarian grounds.

For instance, this special procedure was applied in the case of a domestic worker in the private service of a Sri Lankan diplomat and his wife[68], and for the Moroccan worker whose case is mentioned above.

However, during the interviews, another shortcoming came to light: one of the cases didn't fall within the scope of the multidisciplinary circular, thus complicating the issuing of residence permits to the victims concerned by the Immigration Office.

Why does this happen? The perpetrator is sometimes offered an amicable settlement, especially when prosecution is impossible owing to diplomatic immunity. This happened in a case concerning a diplomat from an African country, who applied the wage standards of his country of origin. The condition for the amicable settlement was to compensate the worker for her wage arrears. This worker was supported by a specialised reception centre. However, the amicable settlement didn't address the offence of human trafficking, which was a stumbling block for the Immigration Office.

68 The worker subsequently summoned her former employers before Brussels Labour Tribunal: see Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online*, p. 124.

Myria suggests that this point should be addressed in the evaluation of the multidisciplinary circular. An extension of the possibilities for issuing permanent residence permits should indeed be considered when a criminal case involving foreign victims ends in an amicable settlement, providing that the magistrate has confirmed that they are victims of human trafficking.

Chapter 3
Prevention of human trafficking in the domestic sector

This chapter deals with the prevention of human trafficking in the domestic sector. By prevention, we mean any measures aimed at preventing the exploitation of domestic staff. Why are domestic workers vulnerable to human trafficking (point 1)? A distinction is made between migrant workers who work as domestic staff and diplomatic domestic staff. All the prevention measures are reviewed according to four categories (point 2): raising awareness among the general public, empowerment of domestic staff, control mechanisms and the role of trade unions. For every category, examples from other countries are given and compared with Belgian measures. Point 3 deals with prevention measures specific to diplomatic domestic staff. To conclude, Myria makes its recommendations based on the information provided.

1. Vulnerability of domestic staff and the importance of prevention

Domestic staff are highly exposed to exploitation because their workplace is located in a private residence, which prevents the usual monitoring and checks from being carried out. Therefore, another approach is required to detect bad practices in the sector. To achieve this, the domestic work sector must benefit from clear regulations, combined with an efficient control mechanism. Another problem is the recognition of domestic work as a profession in itself. Often, domestic work isn't considered as a "real" job. As a result, domestic staff don't always benefit from the same rights as other workers[69]. A large part of domestic work is done by migrant workers. This group runs a bigger risk of becoming a victim of human trafficking and often opts for informal work for practical reasons[70]. For instance, language isn't important when it comes to getting a job. Undocumented persons or those whose papers are being processed, can find informal work and receive their salary in cash. The downside is that the worker isn't paid if they don't work, for instance, during the holidays. The wages of domestic workers in the informal sector are very low and often below the minimum wage. In addition, the informal sector isn't "burdened" with labour agreements or employment contracts. The work is negotiated orally with the employer; therefore, the latter may impose certain tasks that weren't agreed to in the beginning[71]. The employer can easily exploit their domestic staff since there is no written contract clearly describing the activities and wage conditions. In some cases, there is a contract, but it is written in a language the worker doesn't understand[72].

The first at-risk group is composed of *migrant workers*, recruited as live-in domestic staff, making them dependent on their employer for board and lodging. And even in precarious conditions, it is precisely because of this dependence that domestic staff continue to work

69 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude, 2010:* https://www.osce.org/files/f/documents/1/f/97443.pdf

70 J. Michielsen, ILO, International migration paper no. 116, *Promoting integration for migrant domestic workers in Belgium*, 2013.

71 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude, 2010:* https://www.osce.org/files/f/documents/1/f/97443.pdf

72 J. Michielsen, International migration paper no. 116, *Promoting integration of migrant domestic workers in Belgium, 2013.*

for the employer, for fear of ending up on the street[73]. Illegally staying workers are often told they will be repatriated if they don't continue to work. The result is a power struggle in which the employer can easily abuse their position.

If a worker does long hours or works in appalling conditions, they can ask the union for advice and file a complaint with the labour authorities. Domestic staff who are bound to the employer (especially live-in domestic workers) are prevented from exercising their rights[74]. Several factors are responsible for this. These workers are frightened of losing their job and are financially dependent on their employer. Employers often threaten their domestic staff to make them stay and to prevent them from going to a workers organisation. Those who do are often disappointed, because they aren't offered any help in a language they master. In addition, migrant workers don't always know who to turn to in case of a problem, because employers often provide false information and isolate their staff. As a result, they have little knowledge of labour rights and they are unable to ensure they are respected. This isolation also prevents workers from accessing training in order to improve their skills[75]. Hence, they can't take any language courses and are trapped in this situation.

Diplomatic domestic staff are a second at-risk group. Diplomats can request a visa or a special card so that their domestic staff can work. Once again, it is a matter of dependence between the employer and the worker, because the employer has a direct link with the residence status of their staff[76]. When the domestic worker stops working for the diplomat, the visa or special card expires. In addition, domestic staff can't change employer. Another aspect that makes diplomatic domestic staff vulnerable is their employer's immunity. Diplomats benefit from criminal immunity: their home can only be searched if their immunity is lifted[77]. A final risk factor is the nationality of the diplomat and the domestic staff. Diplomats are often influential and can abuse this power. Diplomats with the same nationality as their domestic staff can use their position of power in their country of origin to put pressure on their staff[78].

Domestic workers who are victims of human trafficking aren't always detected. The vulnerability of these workers makes them an easy target for abuse. It is therefore important to ensure that these people don't find themselves in a vulnerable position. It is essential to reduce vulnerability in the domestic sector in order to prevent exploitation. Prevention of human trafficking in this sector is addressed by raising awareness, empowerment and a monitoring mechanism. The measures are detailed below. The role of trade unions is discussed separately because they play an important part in the various preventive measures.

2. Preventive measures for migrant workers

In this section, the various preventive measures are presented alongside examples of good practices. The measures taken at national level are also discussed.

2.1. | Raising awareness among the general public

The first category consists of making the general public aware of the existence of human trafficking in the domestic sector. In particular, awareness is raised by sharing international information. Within this framework, countries share their good practices in terms of prevention regarding domestic staff. The aim is to improve the situation of these workers worldwide thanks to cooperation and an exchange

73 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014: https://www.osce.org/handbook/domesticservitude?download=true

74 OSCE, *Unprotected work, invisible exploitation: trafficking for the purpose of domestic servitude, 2010 :* https://www.osce.org/files/f/documents/1/f/97443.pdf

75 J. Michielsen, International migration paper no. 116, *Promoting integration for migrant domestic workers in Belgium*, 2013.

76 ILO, *Decent work for migrant domestic workers: moving the agenda forward*, 2016: https://www.ilo.org/global/topics/labour-migration/publications/WCMS_535596/lang--fr/index.htm

77 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014 : https://www.osce.org/handbook/domesticservitude?download=true

78 Interview with Pag-Asa.

of good practices on an international level. A broad definition of awareness-raising can also include training and coaching of people in the field.

The *Esclavage domestique* project[79] led by the *Comité Contre l'Esclavage Moderne* (CCEM) in France is an example of an awareness-raising campaign. The campaign's objective is to make the general public aware of the exploitation of domestic staff. The project consists of a photo exhibition of places in France where acts of human trafficking were committed against these workers. The victims' accounts were placed beneath the photos. The CCEM also organises information sessions aimed at people likely to come into contact with (potential) victims. It is also active on social media, where it posts information on the human trafficking of domestic workers[80]. And on an international level, CCEM has launched a series of projects together with international organisations and foreign authorities. The organisation aims to tackle human trafficking in the domestic sector at global level through the exchange of good practices with other countries.

In the United Kingdom, the Kalataan organisation is a key player. This charity offers training focusing on the detection of human trafficking in the domestic sector[81]. Kalayaan also organises campaigns in the interest of domestic staff. For instance, concerning the right for domestic staff to change employer and the right to permanent residence.

Belgium

In 2013, the NGO FOS, Centrale Vlaams ABVV (the Socialist union), Socialist mutual insurance associations, the not-for-profit association Thuiszorg and the Socialist party, got together to launch a campaign entitled "Recht op Waardig Huishoudwerk"[82] (Right to Decent Domestic Employment). The aim was to raise awareness and mobilise the general public, and encourage politicians to ratify and implement ILO Convention 189[83], which Belgium did on 10 June 2015. During the campaign, several problems in the domestic sector were highlighted: long working hours, no time for a private life, low wages and a lack of social protection[84].

In addition, the government at the time took initiatives within the framework of the 2012-2014 action plan again trafficking in human beings[85]. As a result, a letter was drafted to inform social services and hospitals about human trafficking and how to react to signs of human trafficking.

2.2. | Empowering domestic staff

Empowerment is the second prevention measure. It consists of reinforcing the position of domestic workers through emancipation. As such, the International Labour Organisation (ILO) suggests that campaigns should be held to inform domestic workers of their rights[86]. Since the target group is difficult to reach, these campaigns must be launched at an appropriate moment, for instance, on national holidays. The media can be used to distribute information. That relating to the rights

79 Filigranes, *Esclavage domestique*: https://www.filigranes.com/livre/esclavage-domestique/

80 CCEM, *Rendre visible l'invisible*, 2018: https://www.esclavagemoderne.org/wp-content/uploads/2019/04/RAPPORT-D-ACTIVITE-2018.pdf

81 M. Lalani, *Ending the Abuse: Policies that work to protect migrant domestic workers*, 2011: http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf

82 Vlaams ABVV, *Veeg hun problemen niet onder de mat!*: https://www.vlaamsabvv.be/art.cfm?pid=27211

83 ILO, Convention no. 189 of 16 June 2011 concerning decent work for domestic workers, adopted in Geneva on 16 June 2011 by the 100th ILC session.

84 FOS, *Veeg hun problemen niet onder de mat!,* 13 mars 2013: https://www.11.be/artikels/item/veeg-hun-problemen-niet-onder-de-mat

85 *Plan d' action : La lutte contre la traite et le trafic des êtres humains* (2012-2014) : http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf

86 ILO, *Effective protection for domestic workers: a guide to designing labour laws*, 2012: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173365.pdf

of domestic workers must be easily accessible in several languages. Call centres, helplines and websites can also be used. The ILO suggests information campaigns aimed at employers[87]. The goal of these actions is to inform potential employers about what human trafficking is and its consequences. Employers can also find help here for administrative tasks, including drafting an employment contract and how to apply for a work permit. This ensures that everything is organised on a regulatory and legal basis.

The ILO also points out that it is difficult for domestic workers to leave their employer. According to the ILO, there should be a body where these workers can lodge a complaint. This complaint procedure must be available in several languages and extra help must be provided if necessary. Furthermore, a mediation body must also be set up to resolve minor disputes between employers and employees. As regards serious situations, legal proceedings must always be brought before the courts.

For instance, in Great Britain, in cooperation with the British National Referral Mechanism (NRM), potential victims have access to support and protection, especially the police, a phone helpline on work and wages and labour tribunals[88]. Besides the labour inspectorate and the NRM, the Kalayaan organisation also strives to empower domestic workers. It advises, acts as a mediator and provides support to domestic staff. Kalayaan also organises training for migrant workers active in the domestic sector, on well-being and labour law, as well as English classes[89].

87 ILO, *Labour inspection in domestic work (Module 16)*, 2016: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_308907.pdf

88 Home Office, *Modern Slavery Bill, Factsheet: Overseas Domestic Workers*, 2014: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/372794/OverseasDomesticWorkers.pdf

89 M. Lalani, *Ending the Abuse: Policies that work to protect migrant domestic workers,* 2011: http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf

Belgium

In Belgium, the not-for-profit association Fairwork focuses on the prevention of exploitation in the domestic sector. Fairwork's services and activities are good examples of empowerment. For instance, Fairwork has compiled a leaflet aimed at domestic staff, available in Dutch, French, English, Spanish, Portuguese, Arabic and Russian[90]. This way, domestic workers can learn more about their rights, especially the minimum wage. The leaflet also contains advice on the best way to protect yourself against future exploitation. For example, the advice recommends keeping a written record of the working hours and the wages paid, and filming yourself while executing tasks. As well as the leaflet, information is posted on the website in Dutch, English, French and Spanish.

Since 2010, Fairwork has been specifically focusing on the empowerment of domestic workers. *Fairwork for domestic workers*[91] is a project devoted to the vulnerability of domestic workers in order to prevent their exploitation. The Fairwork project consists of a two-pronged approach to prevention: a secure helpline and activities on a Sunday. The secure helpline allows domestic staff to ask for help. If necessary, it offers help to file a complaint with the labour inspectorate. The secure helpline can be reached by email, phone, Facebook and WhatsApp in Dutch, English, French and Spanish. Fairwork points out that domestic workers often have general knowledge about labour law, but the organisation underlines the fact that residence status is of little importance here. Fairwork also works with au pairs and notes a big difference between the two groups. Au pairs don't come to Belgium as workers. They come especially to take care of children and can change host family. Hence, there is no relationship of dependence with the host family that would prevent them from making a complaint. On the other hand, domestic workers come to Belgium specifically to work and risk losing their

90 The O.R.C.A. passport, *WORK.* : http://orcasite.be/index.php?id=256

91 Fairwork Belgium asbl, Annual Report 2018: *Travailleurs sans papiers* : http://orcasite.be/userfiles/file/FAI%20jaarverslag%202018%20FR%20site.pdf

job if they file a complaint. This is why Fairwork emphasises the need for domestic workers to gather evidence to enable them to prove the work they do if necessary.

Sunday activities form the second part of the prevention project. On Sundays, participants can take part in activities such as French lessons, basic training in labour law, exchanges about empowerment and discussion tables. Fairwork Belgium's project therefore aims to ensure that domestic workers are aware of their rights and are able to assert them. The Sunday activities allow participants to build a network and develop their skills. Fairwork is also active on Facebook to inform anyone asking for help, but it also has a proactive approach[92]. In addition, the organisation contacts people who want to work as an au pair in Belgium through Facebook groups dedicated to au pairs. This provides Fairwork with the opportunity to provide information on exploitation with a focus on the legitimacy of agencies. Au pairs can therefore be informed if they aren't reliable. This is a *good practice* to prevent trafficking among au pairs.

Initiatives have also been taken within the framework of the "Trafficking of human beings" action plans at federal level. For instance, in some Belgian embassies, an information flyer is given to people applying for a work visa[93]. The flyer explains what human trafficking is. It also contains advice on important elements that should be checked before leaving. Among other things, it includes the details of useful points of contact in case of a dispute.

92 Interview with Fairwork.

93 *Plan d'action : La lutte contre la traite et le trafic des êtres humains* 2012-2014 : http://www.dsb-spc.be/doc/pdf/PLAN_TEH_FR_2012.pdf

2.3. | Control mechanisms aimed at preventing abuse

The final prevention measures fall under the category of control.

ILO and Fairwork would like to see the introduction of an alternative system in the domestic sector. The idea is to introduce a third-party system[94], whereby domestic staff work for an organisation. The latter is the third party and takes care of communication and placing workers. This means that a person in need of home help can contact this organisation, which will assign someone to do this work. This could be linked to a government registration system[95] that would keep track of the employment of domestic workers. In concrete terms, workers could register with the labour inspectorate and social security before starting their job and when they finish it. This way, domestic staff and the place of work would be registered, thus allowing targeted checks to be carried out. In addition, labour inspection services can provide examples of employment contracts, pay slips, work schedules and other documents, thus allowing employers to keep records and workers to have proof of possible exploitation. Making written contracts compulsory can help to regularise the domestic sector so that workers' rights are better protected.

In addition to an alternative system, there must also be clarity as regards employment contracts for domestic workers. In Belgium, it is compulsory to conclude a written contract with a migrant domestic worker. The employment contract must be drawn up before leaving the country of origin. The contract must be available in a language that the worker understands. The agreement must contain clear information on the terms of the accommodation for the domestic staff. According to the ILO, these terms must meet a number of conditions, such as a separate room with its own key and sufficient good quality meals that respect the worker's culture and religion[96]. Finally, it is important that the labour inspection services

94 J. Michielsen, Promoting integration for migrant domestic workers in Belgium, International migration paper, No.116, Geneva, ILO, 2013.

95 ILO, *Labour inspection and other compliance mechanisms in the domestic work sector*, 2015: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_542992.pdf

96 ILO, *Text of the recommendation concerning decent work for domestic workers: provisional record of the 100th session of the International Labour Conference*, 2011, p. 10.

clearly communicate their purpose: the protection of labour rights. Many migrant workers continue to work in appalling conditions out of fear of being deported if they lose their job. In order to protect them and win their trust, it is recommended they be given all the necessary information before their departure and upon their arrival. An example is a project in Romania that involves the collaboration of the German government on the *European Job Mobility Portal* (EURES)[97]. Romanian workers are informed of job vacancies and the requirements before their departure. Within this context, a handbook was written for Bulgarian and Romanian workers, with information on their labour rights, the labour markets and the main institutions.

Another prevention programme in Germany is the "Open for young women" project, which targets minors, young people and women. In cooperation with Romania, Ukraine and Russia, applicants are informed of jobs in Germany and the status of au pair. Applicants also benefit from information on safe and legal employment, the prevention of labour exploitation and the contact details of emergency services. In Germany, the Centrum für internationale Migration und Entwicklung (CIM - Centre for international migration and development) plays a preventive role by preparing potential workers. The CIM is a national organisation in Germany that contributes to international cooperation on the labour market. CIM's most important partner is the Federal Employment Agency. In terms of preparation, the CIM offers German lessons, to put the interested party in touch with the company where they will be working and to help them draw up their employment contract. Although these are general measures applied to migrant workers, these practices could also be of interest to the domestic sector.

In the United Kingdom, on the other hand, a link is made between the labour inspectorate and the employment contract. The employer must prove that it already has an employment relationship with the worker by including clear information on the salary, working hours, tasks to be performed and accommodation arrangements in the employment contract. Without this contract, the worker can't obtain a visa. When the migrant worker receives their visa, they are informed of their rights in the United Kingdom. They also receive information on the support services. In the United Kingdom, there is also the *Neighbourhood Watch*[98] scheme. People get together to ensure the safety of their neighbourhood by cooperating with local police networks. The members of the *Neighbourhood Watch* meet and share their ideas to fight local crime. *Neighbourhood Watch* encourages everyone to build relationships with their neighbours in order to more quickly detect possible exploitation in the domestic sector. Members provide social monitoring by reporting suspicious behaviour to the police. They are trained to detect signs of exploitation during their patrols. Findings of concern, such as never being allowed to eat with the family and not having a private room, are immediately reported to the police.

Finally, the ILO stresses the importance of the employers' responsibility[99]. Singapore is a good example. Persons convicted of the human trafficking of domestic workers can no longer recruit such workers. Furthermore, employers who have replaced four different migrant workers in one year, are required to follow an orientation programme before they can employ domestic workers again. If there is a new change in the workforce, there will be an interview with a member of the Ministry of Manpower. Not only must the employers be made to take responsibility, but also the agencies that recruit the workers. In 2015, the ILO launched the *Fair Recruitment Initiative*[100], which is still running today. With this project, the ILO aims to prevent human trafficking for labour exploitation, protect labour rights, reduce the costs of labour migration and improve outcomes for migrant workers. Special attention is paid to fraudulent and abusive practices during the recruitment and placement of workers. The initiators advocate the protection of vulnerable groups such as migrant workers and domestic staff. Under the Fair Recruitment Initiative, governments must establish specific procedures and minimum standards

97 U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*, 2014: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

98 West Yorkshire Police, *Domestic servitude*, 2020: https://www.westyorkshire.police.uk/advice/modern-slavery/modern-slavery-human-trafficking/domestic-servitude

99 ILO, *Labour inspection and other compliance mechanisms in the domestic work sector*, 2015 : https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_542992.pdf

100 ILO, *Fair recruitment initiative. Fostering fair recruitment practices, preventing human trafficking and reducing the costs of labour migration*: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_461325.pdf

for recruitment agencies[101]. Those who meet the requirements, will be allowed to recruit and place domestic staff. They will be monitored and sanctioned if they don't comply with the regulations. In South Korea, the *National House Managers Cooperative* is an agency that connects its members with employers on the internet. The agency also provides training for its members. Another example is the *Nirmana Society* in India, which offers assistance and training. The authorities must also ensure that recruitment and placement costs aren't deducted from the salaries of domestic workers. Lastly, Indonesia has developed a promising initiative called *RecruitmentAdvisor*[102]. This project enables workers in Indonesia, Nepal and the Philippines to share their experiences with recruitment agencies. The platform is also a form of empowerment, as it provides information on labour rights and looking for employment abroad.

Belgium

The inspection role of labour inspectorates is less widespread in Belgium compared with what is provided for in the ILO proposals. Hence, potential workers aren't subject to checks and aren't questioned about their employment contract. In some cases, it isn't compulsory to declare domestic staff to the National Social Security Office (NSSO). This is because of the status of domestic workers[103]. So, even if domestic workers must always be declared, this isn't always the case for other household employees. Besides domestic workers, there are two other categories of household staff: persons providing services of an intellectual nature (e.g. tutors) and those offering services of a manual nature (e.g. gardening). The second category must always be declared, just like domestic workers. On the other hand, no declaration is required for occasional services of an intellectual nature of up to eight hours a week[104].

101 ILO, *General principles and operational guidelines for fair recruitment and definition of recruitment fees* , 2019 : https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_568730.pdf

102 FRA, *Protecting migrant workers from exploitation in the EU: workers' perspectives*, 2019: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-severe-labour-exploitation-workers-perspectives_en.pdf

103 On this subject, see Chapter 1 of this part.

104 R.D. of 13 July 2014 repealing Articles 5 and 18 and amending Article 16 of the R.D. of 28 November 1969 (social security decree), *O.G.*, 28 July 2014.

2.4. | Role of trade unions in prevention

Myria discusses the role of trade unions in a separate part, since they are an important player in the field of prevention. Trade unions can inform workers of their rights and detect unlawful conduct. The ILO's recommendations, as well as the in-depth analysis of the contents of its "*Decent work for domestic workers*" report, are discussed first. We will then turn our attention to an EU project, including an explanation on the way other countries use trade unions to prevent human trafficking in the domestic sector.

The ILO stresses that domestic workers have the right to organise themselves and to join the union of their choice, regardless of their residence status. Countries must support workers' organisations in order to protect workers' interests. There are a number of ways in which trade unions can contribute to the prevention of human trafficking in the domestic sector. For example, they can encourage domestic workers to participate in vocational training to increases their chances in the labour market. Raising awareness among domestic workers about all rights and how to enforce them also helps with their empowerment. Through campaigns, trade unions can put the problem of the exploitation of domestic workers on the political agenda. By lobbying, they can also emphasise the interests of domestic workers and encourage the authorities to take measures. The achievements of trade unions in Ireland and the Netherlands are good examples and are discussed in more detail below.

The *"Decent work for domestic workers"*[105] report focuses on the interaction between domestic workers and trade unions, with Ireland and the Netherlands as good examples of good practices.

Ireland

The *Services, Industrial, Professional and Technical Union* (SIPTU) is the biggest trade union in Ireland. SIPTU doesn't conduct any actions related to the domestic sector, but it does collaborate with the *Domestic Workers*

105 K. Carls, *Decent Work for Domestic Workers: The state of labour rights, social protection and trade union initiative in Europe*, 2012: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_218133.pdf

Action Group (DWAG) and the *Migrants Rights Centre Ireland* (MRCI). DWAG organises meetings for domestic staff in Dublin in the presence of MRCI and SIPTU. DWAG is an independent group of domestic workers who wish to organise the sector, set up campaigns, conduct public actions, as well as provide a social network, collective defence and mutual support. It is supported by MRCI which provides it with political support, advice and infrastructures by participating in public actions and lobbying politicians. SIPTU is a legal partner and, thanks to its expertise in labour rights, and its lobbying in terms of balance of power in the labour market, it is also a source of help. Cooperation exists to increase the visibility of both domestic workers in society as well as the trade unions for domestic staff. Public campaigns have been launched to raise widespread awareness among the population.

Netherlands

In the Netherlands, the FNV Bondgenoten trade union is a major player in the prevention of exploitation in the domestic sector. It was set up in 2006 and the majority of its members are undocumented. FNV Bondgenoten organises awareness-raising campaigns and defends the rights of domestic workers. In 2012, it took part in a large-scale strike with the cleaning sector that lasted 105 days and increased the visibility of the domestic sector. The union considers domestic workers as employees in the cleaning sector and advocates a common statute. FNV Bondgenoten also promotes the interests of domestic workers and tries to involve them in this. The emphasis is on horizontal interaction through different channels such as Facebook groups, websites, emails and text messages. The idea is also to promote communication by organising cultural events. The FNV also offers training to domestic staff to help them negotiate with employers by placing emphasis on mutual respect and support. Lastly, awareness-raising is achieved through cooperation with partners such as churches, political parties and artists, and campaigns are organised to raise awareness among the police.

In many cases, domestic workers are prevented from joining trade unions and remain out of reach. In Berlin, efforts are being made to solve this problem by handing out posters or flyers in different languages[106]. Information is placed discretely on the packaging of certain household goods so that they reach potential victims without the employers' knowledge.

European project

The *European Federation of Food, Agriculture and Tourism Trade Unions*[107] wrote a report on the domestic sector with the contribution of certain Member States, including Belgium, France, Italy, the Netherlands and Germany. Switzerland also collaborated on this project. It examines the prevention measures set up to combat human trafficking. Trade unions play an important role here and can help prevent exploitation. It is difficult to persuade domestic staff to join a union because they don't always see the interest. For example, membership fees can be a barrier because their income is too low or because they don't have a bank account. In Belgium, France, Italy, Spain, Sweden and Switzerland, services are available to domestic staff for free in the beginning, and then for a fee. These services focus on advice and individual guidance. Another form of support is the standard contract, available online or in hard copy.

In Italy, the trade union FILCAMS has *patronati*, where workers can meet with their families. *Patronati* are support centres that provide workers with free advice on pension and healthcare rights. Migrant workers are helped through information campaigns where flyers in different languages are handed out. Meetings are also held every Sunday.

In Switzerland, SIT is a union committed to undocumented migrant workers in the domestic sector. The union provides free advice, information and individual guidance in several languages. Other services are available after workers join the union and pay the membership fee. Respekt is another independent organisation

106 U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*, 2014: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

107 EFFAT, *Domestic workers in Europe Getting Organised*!, 2015: https://www.effat.org/wp-content/uploads/2018/11/effat_booklet_domestic_workers_in_europe_en.pdf

dedicated to the domestic sector. It meets once a month for a discussion around a meal. This provides alleviation for the isolation caused by domestic work and the fear of reprisals is reduced. During these meetings, information on labour rights is shared and methods of empowerment discussed. Respekt also offers workers involved in legal proceedings the possibility of receiving legal assistance from a lawyer.

Belgium

In the past, trade unions in Belgium have helped to represent the interests of domestic workers. The "right to dignified domestic work"[108] is discussed in the section on awareness-raising. Within the framework of this campaign, the trade union endeavoured to raise awareness among the general public and politicians. The Confederation of Christian Trade Unions (CSC) also works closely with the International Trade Union Confederation and supports the latter's actions. One of the major campaigns on this subject was undoubtedly the domestic workers' "12 by 12 " campaign[109]. Conducted in 2011, it focused on the application of labour and social protection legislation to domestic workers. In Belgium, it is compulsory to declare domestic workers, but this isn't the case everywhere. In November 2019, the Belgian trade unions ACV, CSC and FGTB Horval conducted a wide-scale action. They demanded more subsidies for the sector and an increase in the price of service cheques[110]. In addition, an action was carried out on social media with hashtags, Facebook covers, posters and photos. All this information was also made available in public mode so that the population could share the documents. This increased the campaign's visibility among the general public.

108 Vlaams ABVV, *Veeg hun problemen niet onder de mat!* : https://www.vlaamsabvv.be/art.cfm?pid=27211

109 CSC, International actions: https://www.lacsc.be/la-csc/europe-international/mondial/actions-internationales

110 COLOMBI, *Domestic workers: time for a fair collective agreement for 140.000 in Belgium*, 2019: https://www.effat.org/featured/domestic-workers-time-for-a-fair-collective-agreement-for-140-000-in-belgium

3. Prevention for diplomatic domestic staff

Point 1 already laid out the reasons why diplomatic domestic staff form a specific risk group. Their vulnerability therefore requires special measures to be taken. The Organization for Security and Co-operation in Europe (OSCE) has issued recommendations. They relate to the Protocol Directorate and the preventive measures it can take to prevent the trafficking of diplomatic domestic staff[111]. It can thus raise awareness about national regulations among embassies and international organisations. In addition, it should issue explicit guidelines on the employment of diplomatic domestic staff to avoid abuses. The service should also develop a system of immunity for diplomats that allows a temporary suspension to be requested from sending states. The sending state is the country the embassy represents and isn't always the worker's country of origin. In such cases, the lifting of immunity relates to situations in which the employer has committed a serious offence. Lastly, an approach is advocated whereby diplomatic domestic staff receive information about their rights and obligations, and about the places they can go for support, when applying for a visa in the sending state. Domestic staff would also receive this information on arrival in the country of employment. The Protocol Directorate is responsible for monitoring compliance with the regulations and following up on any violations.

3.1. | Roadmap for the employment of diplomatic domestic staff

The OSCE has developed a two-stage strategy to regularise the employment of diplomatic domestic staff and prevent human trafficking.

111 OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers*, 2014: https://www.osce.org/handbook/domesticservitude?download=true

The first step concerns policy, in particular developing regulations and procedures for the employment of domestic staff. The OSCE stresses that employers must be informed of their obligation to comply with the regulations; this information is often distributed through circulars. Before a person can be recruited, the employer must be assessed to check their suitability. Then, a registration system is proposed, whereby the employee registers with the Protocol Directorate at the beginning and at the end of employment. This way, the Protocol Directorate has an overview of the people working as diplomatic domestic staff. In order to reduce the risk of human trafficking, many countries examine the worker's profile because they can't be related to the employer. Some countries have specific requirements, such as proficiency in the official language of the country of employment. A diplomatic domestic worker, who is the victim of trafficking, will be reluctant to report this if their work visa is dependent on a specific employer and they can't change employer. This is why some countries have chosen to offer the possibility of changing employer. As mentioned above, it is important that the worker can understand the information. Therefore, information leaflets and employment requirements must be available in the worker's language. The OSCE also mentions that the Protocol Directorate can conduct an individual interview to check the worker's living conditions. Domestic staff must renew their visa or work permit by going to the Protocol Directorate in person. The latter can then carry out an assessment. Lastly, the OSCE stresses the need to establish a body to which diplomatic domestic staff can turn to in order to file a complaint. Disputes with the employer would then be resolved through mediation. The OSCE also points out that this doesn't replace the legal procedure to be followed when an employer commits an offence.

The second stage of the roadmap concerns the development of rules and procedures for recruiting domestic staff. The OSCE has elaborated measures to be taken to prevent exploitation. As is the case for ordinary migrant workers, it is possible to check whether the domestic worker concerned has understood the employment contract, for instance, by going through it with them during the interview. This also allows the contents of the contract to be assessed in terms of completeness and accuracy.

Information on trade unions and the competent authorities can be provided when the worker comes to fetch their visa/work permit. Domestic staff are registered with the diplomat employing them. The employer must take out an accident and health insurance policy and open a bank account in the worker's name, into which their salary will be paid.

3.2. | Preventive measures aimed at diplomatic domestic staff abroad

An example of a good practice is a German project initiated by the German embassy in Sofia and the German government[112]. Workers who go to Germany to work there are informed about safety at work. The United Kingdom also has several good practices. For instance, the Kalayaan organisation recommends that border personnel interview diplomatic domestic staff before issuing a visa, with the aim of protecting them. Such an interview allows them to check whether the worker has read the employment contract and understands all the conditions. During the interview, a leaflet containing information on the rights of the persons concerned is also handed out. This leaflet has been criticised because it is only printed in English and therefore has little effect. Kalayaan wants to tackle the problem of the invisibility of exploitation and suggests bridging visas, like in Canada and Ireland[113]. A bridging visa is a temporary document that gives illegally staying persons three months to find a new job and then regularise their situation by applying for a migrant worker visa. However, their illegal stay must be due to an external cause.

112 U. Hoffmann, H. Rabe, *Severe forms of Labour Exploitation : Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States*: https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_de.pdf

113 M, Lalani, (2011). *Ending the Abuse: Policies that work to protect migrant domestic workers*: http://www.kalayaan.org.uk/documents/Kalayaan%20Report%20final.pdf

Belgium

Under Belgian law, diplomats must apply to the Protocol Directorate, through their diplomatic mission, consular post or a recognised international organisation, for authorisation to recruit domestic staff[114]. The Protocol Directorate then decides whether the person can be recruited. According to the regulations[115], the employer must ensure that the worker receives a copy of the contract in a language they understand properly. In addition, it is the Protocol Directorate that processes visa applications for domestic staff. Once the worker has arrived in Belgium, the employer must apply for a special identity card for their household staff. Again, this is done through their diplomatic mission, consular post or a recognised international organisation, which provides the Protocol Directorate with the necessary documents. In Belgium, the residence status of diplomatic domestic staff is linked to the length of the employer's stay: the worker must leave the country at the end of their contract. The person can't change employer and there is no temporary residence permit. In the event of a dispute over the execution of the employment contract, both the employer and the worker can apply to the Good Offices Commission. In Belgium, diplomatic domestic staff must renew and collect their identity card in person every year[116]. During this appointment, they can be asked in private about their job. This allows the Protocol Directorate to carry out a check and detect any signs of possible exploitation.

114 Also see Chapter 1 of this part.

115 Circular note, *Private employer: conditions and procedure for granting a special identity card*, 3 August 2015.

116 Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *O.G.*, 10 March 2017.

4. Recommendations

Recommendation 1: increase awareness-raising campaigns

Greater awareness needs to be raised concerning the problem of human trafficking in the domestic sector. Awareness-raising must target both domestic workers and employers by providing information on how to prevent exploitation. In order to better reach domestic staff, the information must be printed on the packaging of household goods. Employers can be prepared before recruiting domestic staff by providing them with administrative support, such as a standard contract.

Recommendation 2: raise awareness at municipal level

Municipalities can launch awareness-raising campaigns to raise the population's awareness of this issue. In addition, neighbourhood officers can be made aware of the signs of human trafficking in the domestic sector so that they can recognise them in the event of a complaint concerning abuse.

Recommendation 3: actively engage trade unions

As mentioned earlier, trade unions are far more active abroad than in Belgium. At national level, they need to draw greater attention to the position and interests of domestic workers.

External contribution: slavery behind the door - labour exploitation of domestic staff

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Myria already opened the pages of its annual report to me in 2010, to discuss the subject of "human trafficking and the exploitation of live-in domestic staff"[117].

In this article, I wrote that the two main categories of investigation we had to deal with in the jurisdiction of the judicial district of Brussels were:

1. domestic staff employed in the service of diplomats posted in Belgium;
2. domestic staff employed by "private employers", in particular "nannies" (childminders also doing domestic chores).

Unfortunately, nothing has changed since the article was published 10 years ago. We are still faced with the same types of investigation for these two categories of staff (although there has been a fall in the number of reports of cases of exploitation of domestic staff in the service of diplomats).

As regards domestic staff exploited in diplomatic circles, the remarks and considerations made in the 2010 article are still valid. They are as follows:

1. these investigations are especially difficult to conduct considering that, more often than not, finding material evidence of exploitation is rendered impossible owing to the immunity granted by the Vienna Conventions to employers who benefit from diplomatic status;
2. more often than not, the investigation is the result of the victim fleeing and the situation being reported, sometimes quite a long time after the period of exploitation, by third parties or associations who put the victim in contact with a specialised reception centre;
3. these investigations are often closed after the victim's hearing and, insofar as it is possible, the gathering of information (witness hearings, neighbourhood investigations, etc.) to prove the exploitation, by applying the measures provided for in the circular of 2016[118] and granting the special status of "trafficking in human beings without summoning the perpetrators before a court.

Two elements should be highlighted in the context of our investigations into the exploitation of domestic staff in diplomatic circles:

- The considerable pressure/intimidation that diplomatic employers sometimes exert on the family of the victim in the country of origin and sometimes also on the Belgian state, using "national security" as an argument, in order to find out what has become of the worker who has fled, their address and to portray them as someone who must absolutely be sent back to their country. This pressure is accompanied by "wanted notices" that some diplomats circulate informally among their compatriots living on Belgian soil in order to locate the domestic worker who has fled.
- Almost total lack of reports of exploitation by the Good Offices Commission. This commission was set up in 2013 and is presided over by the Director of the Social Legislation Inspectorate of FPS Employment, Labour and Social Dialogue. It is composed of representatives of the Protocol Directorate of FPS Foreign Affairs, FPS Finance, FPS Social Security, the National Social Security Office, and trade union representatives. Its mission, in the context of the employment of staff by diplomatic or consular missions established in Belgium, is to "inform employers and workers recruited locally about Belgian social and fiscal regulations, their rights and obligations, to help solve individual or collective problems through information, conciliation or mediation, and to provide opinions in order to find amicable arrangements, and make proposals to improve staff working conditions".

117 Myria (then Centre for Equal Opportunities and Opposition to Racism), *Annual Report 2010, Trafficking in and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 118-121.

118 Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling , O.G., 10 March 2017.

Concerning domestic staff employed by "private employers", we found that the investigations mostly involved young girls or women, sometimes minors, recruited as home-based childcare workers. However, their activities would ultimately involve all household chores and sometimes even involvement in their employers' professional activities.

Here are four examples:

1. An underage girl who had come from Africa to attend school in Belgium. She was sent to a "host family" who vaguely knew her father. This girl was indeed enrolled in school, the same one as that of the family's children, but arrived late every day because she had to take care of the family's youngest child. The girl didn't have a bedroom and had to sleep with the other children in the living room. She wasn't allowed to contact her father, who had returned to Africa, and was entirely under the control of her "host family", who also sometimes subjected her to violence[119].
2. A woman in her 40s who worked for a family in Africa with severely handicapped children. As the children had to come to Belgium for treatment, she was asked if she would accompany them to continue caring for them. While the mother and the children settled in Belgium on humanitarian grounds, the child carer came over on a simple tourist visa. As soon as she arrived, she was taken to the family's flat and her passport was taken from her. Throughout her stay, she had to be available around the clock to care for the two handicapped children, and also for household chores. To ensure she could be permanently available, even during the night, she had to sleep on a mattress on the floor next to the bed of the most severely affected child. She wasn't allowed to have any contact with her children in Africa, as her employer considered the cost of phone calls to be exorbitant. She wasn't paid a salary for her work in Belgium, since the agreed salary of USD 300 was to be paid directly to her children in Africa, according to the promise made by the employer. Her employer gave her €15 a month in Belgium to cover certain needs, such as buying soap or warm clothing[120].
3. A couple from Eastern Europe came to live in Belgium and worked as a builder (man) and a cleaner (woman). As the couple had two young children, they decided to get a child carer, who was a minor when she was recruited. The girl fled after a few months and made statements, as she was tired of the violence and insults inflicted on her by her employers . While our services were conducting the investigation, we learnt that a second young girl had been recruited by the couple in their country of origin, during the holidays. It turned out that this girl (an adult this time) was from an orphanage and suffered from mental disabilities. The two victims' accounts of their exploitation were identical. They both explained that as soon as they arrived in Belgium, their identity papers were confiscated by their employer. They were promised a salary of €250 a month. They had to look after the children (take them to and from school, supervise them at home, etc.) and do household chores in the flat where the family lived. While the children were at school, they had to help the mother with her cleaning jobs, who took public transport to go to work while she made the girls go there on foot. They didn't share meals with their employers and had to be satisfied with what they deigned to give them. The girls had no private space of their own and had to sleep with the couple's children, in the same bed. They were repeatedly insulted, bullied and sometimes beaten by their employer[121].
4. A wealthy couple moved into a house in quite an affluent neighbourhood. They returned from a mission abroad accompanied by the child carer, recruited over there so that she could continue to look after the children. The couple obtained a Belgian residence permit for the worker. Even though the house they were living in had enough bedrooms, the child carer was put in a room in the basement, next to the garage and the laundry. The room was kitted out and a hose with a shower head was installed in an area in the basement that was practically in the open air. The child carer's services were duly declared to the social security office by her employer and, when the employer was obliged to do so, they paid her salary, in accordance with Belgian rates, onto a bank account opened in the worker's name. The years passed and the children gradually left the family home. When the parents were offered a new mission abroad, they decided to let the child carer go. They told her she had to return to her country of origin with a small provision, i.e. a few

119 This case was tried by the French-speaking Criminal Court of Brussels on 24 November 2017 and by Brussels Court of Appeal (in absentia) on 2 December 2019. See www.myria.be, case law section.

120 This case was tried by the French-speaking Criminal Court of Brussels on 22 January 2013 and by Brussels Court of Appeal on 12 May 2015 (see www.myria.be).

121 A final judgment was handed down by Brussels French-speaking Criminal Court on 22 March 2018 (see www.myria.be).

thousand euros, which they decided to give her as a reward for her good and loyal services. Completely panicked about this situation, the child carer took fright and told a number of acquaintances about her situation.

The investigation revealed that the worker was unaware that her services had been declared in Belgium, thus giving her rights, in particular, unemployment benefit and a retirement pension as well as long-term residency in Belgium. It was also revealed that during all the years of uninterrupted employment in the family's service, including when they went on holiday abroad, the worker had never received her salary; she was simply given small sums. In fact, the bank account into which her salary was paid was entirely controlled by the wife of the couple employing her. This person was in possession of the debit card associated with this account and used the money mainly to make personal purchases in luxury shops.

Besides these situations worthy of a Dickens novel, we are also currently looking into another type of work that could be the subject of labour exploitation. For some time now, we have been seeing more and more adverts offering the services of carers for elderly or dependent persons, so that the latter wouldn't have to be placed in a retirement or nursing home. Those we consulted are keen to stress that the staff is available round the clock, seven days a week, for a daily fee paid to the agency for which they work. What surprises us in the adverts we consulted, or in the information given to the people who have approached these agencies, is that it is the actual user who becomes the official employer of their carer. The user is obliged to have the carer sign a contract in their name and to register them as such with the NSSO. However, in practice, the carer is under the authority of the agency that recruited them. The agency takes care of "all the necessary steps for their journey to Belgium" and promises that "if the person provided isn't suitable, they will be immediately replaced by someone else".

Finally, it isn't hard to imagine that, after the health crisis our country is going through, and especially the lockdown as a consequence of COVID-19, it is highly likely that reports of exploitation of domestic staff will increase, since being confined with one's exploiters - as also illustrated by the rise in domestic or intra-family violence - can only further worsen already difficult situations.

Part 2

Evolution of the phenomena and the fight against the trafficking and smuggling of human beings



Chapiter 1
Recent developments in the legal and political framework

Recent European and Belgian developments are summarised hereafter.

1. Developments in the European legal and political framework

1.1. | Human trafficking

There were no particular developments in the European anti-human trafficking policy in 2019. The mandate of Ms. Vassiliadou, the EU Anti-Trafficking Coordinator, expired end February 2020. At the close of this report[122], the Deputy Director General of the Directorate-General Migration and Home Affairs, Mr Olivier Onidi, had taken up the position.

COVID-19 and human trafficking

The start of 2020 was characterised by the measures taken on a global, European and national level to deal with the coronavirus pandemic. Several international and European agencies have drawn the authorities attention to their repercussions on human trafficking.

United Nations Office on Drugs and Crime (UNODC) warned states about the adverse effects of the coronavirus measures on victims of trafficking and the fight against it[123]. While, at first sight, their entry into force and the increased police presence at borders and in public spaces may have appeared to deter crime, they may also have driven criminals further underground. Criminals have adapted to the "new reality" created by the pandemic, especially through the misuse of new communication technologies. At the same time, the pandemic is having an impact on the ability of public authorities and non-governmental organisations to provide essential services to trafficking victims. The pandemic has also highlighted the systemic and deep-rooted economic and societal inequalities that are among the root causes of human trafficking.

UNODC therefore fears that the pandemic and its preventive measures will further complicate the identification of trafficking victims, increase their exposure to contracting the virus and limit their access to healthcare for the treatment of the disease. The pandemic has increased the precariousness of these already vulnerable people, with low incomes or working in the informal sector (illegally staying migrants, seasonal workers, sex industry workers, etc.). There is a risk of greater exploitation in sectors where trafficking is frequently detected, owing to the reduction in production costs caused by the economic difficulties encountered, as well as the drop in checks by the authorities. Similarly, for victims who are held by traffickers, the measures against COVID-19 are likely to worsen their situation, increase their isolation and reduce their chances of being identified.

Consequently, the mechanisms to identify and refer trafficking victims and give them access to their rights, have slowed down or have ceased to function. This

122 September 2020.

123 UNODC, *Impact of the COVID-19 pandemic on trafficking in persons: Preliminary findings and messaging based on rapid stocktaking*, May 2020: https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf

has also been observed in Belgium by the specialised reception centres. They noticed an abnormal drop in the number of reports of potential victims of human trafficking during the lockdown.

Other obstacles exist preventing access to services, assistance and support owing to the stay-at-home lockdown rules and the resulting closure of NGOs and government services. Identified victims who were receiving support form government services or NGOs may face difficulties, such as the renewal of their residence permit.

Furthermore, inspection services such as labour inspectorates or the police may also be affected. For instance, the police is required to enforce the lockdown or social distancing measures, which affects their normal operational capacity. Therefore, there is a risk that investigations into human trafficking will become less of a priority and that there will be fewer inspections of suspected sites and cases. This observation applies to Belgium, as shown by several players in the external contributions on the impact of the health crisis on human trafficking[124].

As a result, here are some of UNODC's recommendations to states:

- continuous monitoring of responses to COVID and the necessary adjustments to be made when they have a negative impact on vulnerable groups such as victims of trafficking;
- vigilance on the part of frontline services and magistrates regarding new crime patterns and their evolution;
- flexibility of support services;
- systematic collection and analysis of data on the impact of COVID-19 on human trafficking.

Europol has also analysed the effects of the pandemic on organised crime. The agency assesses the short-, medium- and long-term consequences of it. For human trafficking, it believes that if, in the long term, the pandemic is followed by a recession, it is likely that there will be an increase in the demand for sexual exploitation and labour exploitation, as well as a rise in intra-European trafficking[125]. The closure of businesses with reduced profit margins owing to an economic crisis, is indeed likely to open up the market to those offering illegal or cheap labour.

Moreover, the closure of establishments offering legal sexual activities can lead to an increase in the number of acts of illegal sexual exploitation. Similarly, travel restrictions complicate seasonal work in agriculture, likely increasing the demand for third-country migrants who are the victims of trafficking in this domain[126].

1.2. | Human smuggling

COVID-19 and human smuggling

Measures to combat COVID-19 also have an impact on migrant smuggling.

UNODC[127] therefore believes that restrictions on travel and movement don't impede the migration of people fleeing conflicts or violence. Often, these people have no other choice than to resort to smugglers. Migrant smuggling is therefore likely to increase owing to the closure of borders and the even greater need to use smugglers to cross them. These closures and restrictions also risk leading to more dangerous conditions and the use of more hazardous routes, as well as higher prices.

Europol has observed that smugglers adapt their *modi operandi* to border closures.

As a result of increased border control measures and travel restrictions within the EU, Europol has seen a shift in smuggling activites[128]: among other things, an increase in the use of the

124 See below.

125 EUROPOL, *Beyond the pandemic: how COVID-19 will shape the serious and organised crime landscape in the EU*, 30 April 2020: https://www.europol.europa.eu/publications-documents/beyond-pandemic-how-covid-19-will-shape-serious-and-organised-crime-landscape-in-eu

126 European Migrant Smuggling Centre, *4th Annual Report*, 2019: https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report-%E2%80%93-2019

127 UNODC, *How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America*, research brief, May 2020: https://www.unodc.org/documents/data-and-analysis/covid/Covid-related-impact-on-SoM-TiP-web3.pdf

128 European Migrant Smuggling Centre, *4th Annual Report*, 2019: https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report-%E2%80%93-2019

Central Mediterranean route[129] and the use of small boats to cross the Channel.

2. Developments in the Belgian legal and political framework

2.1. | Trafficking and smuggling of human beings

As the federal Belgian government has been in a state of flux since the political crisis of 2018, no major new political initiatives could be taken in 2019 (or at the beginning of 2020).

However, in the previous report, Myria mentioned, among other measures, the enshrinement of the principle of non-punishment of victims in the criminal code[130] and the updating of the 2015-2018 action plan on human smuggling in 2019[131].

In June 2020, the Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings adopted, in writing, through a silent procedure, an update of the 2015-2019 action plan on trafficking in human beings for 2020 and 2021.

As a result of the federal government being in a state of flux, it wasn't possible to adopt a new action plan. However, a detailed draft, covering the period 2020 to 2025, was drawn up by the bureau of the interdepartmental unit.

In order to ensure the continuity of the work started and to establish the perspectives during this transitional period, the previous action plan was subsequently updated. It takes into account the initiatives already launched with the federal entities. The emphasis is on continuing training and awareness-raising activities, especially for the police, money transfer agencies and bank compliance departments.

129 For this purpose, Europol has used figures provided by the IOM, showing a significant increase in the number of migrant arrivals by this route (3 366 arrivals on 25 April 2020, compared with 667 arrivals for the same period in 2019).

130 Act of 22 May 2019 on organ trafficking and the principle of non-punishment of victims of human trafficking, *O.G.*, 21 June 2019. See Myria, *2019 Annual Report, Trafficking and smuggling of human beings, Empowering victims*, pp. 99-101.

131 https://www.dsb-spc.be/doc/pdf/ACTIEPLAN_MS_2019_FR.pdf. See Myria, *2019 Annual Report, Trafficking and smuggling of human beings, Empowering victims*, pp. 101-102.

2.2. | Other measures

Even if they don't directly concern the fight against human trafficking, new measures adopted for the posting of workers and the fight against social dumping can nevertheless have an impact on it.

Transposition of the European directive on the posting of workers

The new Directive 2018/957 on the posting of workers[132] was supposed to be transposed by the Member States by 31 July 2020 at the latest. The Belgian law transposing the new directive on the posting of workers came into force on 30 July 2020[133].

The principle of the former directive on the posting of workers was that a posted worker could be sent by their employer to another Member State (host country) to work there for a certain period, within the framework of the free movement of services, but according to the conditions and rules of the country of origin. However, a hard core of mandatory minimum protection rules in the host country had to be respected. Now, posted workers who are doing the same work in the same company as their local colleagues, must benefit from the same working conditions and remuneration.

The directive introduces several important changes, such as the term "minimum wage" replaced by "remuneration". Hence, the remuneration of posted workers must not only comply with the minimum wage conditions, but also with the other binding rules on remuneration in the host Member State.

132 Directive (EU) 2018/957 of the European Parliament and Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *O.J.*, L173 of 9 July 2018.

133 Act of 12 June 2020 laying down various provisions concerning the posting of workers. See Myria, *La migration en chiffres et en droits, Les cahiers du rapport annuel 2020, Libre circulation, migration économique et étudiants*, pp. 35-36.

Fight against social dumping

In 2019, the Belgian government took various measures to combat social dumping and fraud[134]. As a result, a cooperation agreement concerning the fight against social fraud was concluded on 12 November 2019 between the police, the judiciary and the social inspectorates (of the NSSO, NISSE, FPS Employment, ONEM, INAMI). This agreement aims to jointly set up social fraud investigation teams throughout the country. Up until now, this has only existed in East Flanders. These joint investigation teams involving the police and social inspectorates, known as "MOTEMS", can be organised per district and cooperate in individual cases to combat social dumping, undeclared work, bogus self-employed persons and organised bankruptcies[135].

A 2020 federal action plan to combat social fraud was also approved by the Council of Ministers on 20 December 2019. Special attention will be paid to social dumping with the aim of controlling and penalising both illegally-posted workers and self-employed persons, and compliance by the foreign employer with the terms and conditions of employment imposed by law[136].

3. Impact of the COVID-19 crisis on human trafficking

Stakeholders active in the fight against human trafficking and in support and assistance to victims are concerned about the impact of the COVID-19 crisis on human trafficking.

This is why Myria would like their voices to be heard on this specific issue. The following external contributions were made by the NSSO's Inspection Department, a labour prosecutor, a police department and a reception centre for victims.

134 See Myria, *La migration en chiffres et en droits, Les cahiers du rapport annuel 2020, Libre circulation, migration économique et étudiants,* pp. 35-36.

135 https://www.siod.belgie.be/fr/signature-de-laccord-cadre-sur-les-motems

136 Federal action plan to combat social fraud 2020, p. 69, see: https://www.siod.belgie.be/fr/publications/plan-daction-2020

External contribution: impact of the COVID-19 pandemic on labour exploitation

Experiences and observations of the NSSO Inspection Department's ECOSOC teams

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The COVID-19 pandemic is having a considerable impact on our society and our economy. The scale and impact of the coronavirus crisis may only be apparent later. It will undoubtedly have consequences on labour exploitation and especially on the fate of victims. It is currently likely that vulnerable people are at greater risk of exploitation and that this crisis represents an "opportunity" for unscrupulous employers. This fear is all the more justified since the police and inspection services are also feeling the effects of the current crisis.

On the one hand, this contribution aims to provide a picture of the extent of the impact of the COVID-19 pandemic on the nature and the scale of labour exploitation in our country. We have monitored the situation in the field insofar as it is possible. We are trying to establish whether this fear is justified, in particular through feedback from the inspectors on our ECOSOC teams. On the other hand, we want to use this critical view of the present moment to detect new developments in our economy and our labour market in good time, and to respond appropriately.

Limited detection capacity

In the weeks following 16 March, the NSSO Inspection Department's ECOSOC teams[137] only carried out limited checks in the field. The usual checks in risk sectors didn't take place. On the one hand, the majority of companies were closed owing to the coronavirus control measures. On the other hand, it was important that checks be carried out safely. However, all the types of protective equipment — such as face masks, disinfectant gel and gloves — were unavailable at the time. Moreover, it often proved impossible to obtain help from the police, who had other priority tasks (ensuring respect for the lockdown and social distancing). The use of interpreters was also problematic.

In addition, the other teams of the NSSO Inspection Department were also less present in the field during this period. Hence, all the non-urgent and non-essential control actions within the framework of the district units were suspended until mid-March.

Inspection and cooperation were also difficult to achieve at international level. The Joint Action Day Labour Exploitation, scheduled for May 2020, during which the EU's Member States were to jointly set up coordinated controls in certain risk sectors, was postponed owing to the coronavirus crisis. The usual communication channels disappeared. Preparatory consultation meetings, exchanges between inspectors, etc., were made impossible by travel restrictions and border closures.

However, this hasn't prevented ECOSOC teams from effectively conducting control actions in several provinces, especially in night shops and pita restaurants or pizzerias that have stayed open for the collection or delivery of meals. Sometimes, we have done this on our own initiative or at the request of the local police, who have asked us to help them during "corona" checks. In addition, checks were conducted

137 An ECOSOC team is operational within every provincial department of the NSSO's Inspection Department. Their main task is two-sided and consists of investigating the illegal employment of foreign workers and detecting situations of human trafficking. They carry out targeted checks in high-risk sectors. In their investigations into human trafficking, and especially labour exploitation, when collecting evidence of criminal activity, they pay special attention to the interests of potential victims of human trafficking, who they try to refer to specialised reception centres.

in the horticultural sector, the construction sector (small building sites), in several second-hand clothing recycling companies, car washes, service stations, delivery companies, in the food distribution sector and transport sector. Necessary and urgent on-site checks still take place, especially when we receive information about possible labour exploitation.

As of 7 May, the NSSO's Inspection Department began systematic checks in every province of companies that weren't obliged to close but had decided to close completely and which, thanks to a sworn statement, were able defer their NSSO payments. The purpose of these checks was to verify whether these employers met the regulatory conditions allowing them to pay their social security contributions outside the legal deadlines. If failings regarding safety or social distancing were observed during these checks, the inspectors informed the Inspectorate for the Supervision of Well-Being at Work (Contrôle du bien-être au travail - CBE) of FPS Employment, Labour and Social Dialogue. At the same time, CBE inspectors also reported potential situations of labour exploitation in certain cases.

During these inspections (several hundred on-site visits per province), NSSO inspectors were explicitly instructed to be attentive to any signs of labour exploitation and to take appropriate action if necessary.

Regarding the checks that were carried out, the inspectors pointed out that it was particularly difficult to work efficiently in these circumstances. It was often difficult to maintain social distancing, and not touching the documents submitted wasn't easy either. It was difficult to talk to employers or workers while wearing a face mask. The hearings generally didn't take place, unless it was possible to hold them in safe conditions in the office. It was often impossible to organise a conventional briefing and debriefing. On top of that were the purely practical inconveniences: the inspectors had no access to sanitary facilities, and often couldn't wash their hands, etc.

Protective equipment was distributed to inspectors in the second week of May, thus allowing them to carry out more checks. Priority was given to the above-mentioned "COVID-19 checks".

In June, the number of checks almost reached the usual level again, especially in risk sectors where a large number of cases were pending at that time.

Police forces were increasingly available to assist us in our checks, even though there were still problems in several places.

In Brussels, the waiting list for hearings of presumed victims of human trafficking was still long, also because of a shortage of specialised inspectors. This problem isn't new, but it has become more acute during the coronavirus crisis (lack of rooms available to safely hear the numerous victims often accompanied by an interpreter, a lawyer, a representative from a reception centre, etc.). Currently, the ECOSOC team in Brussels has to organise between 50 and 60 hearings, mainly presumed victims, but also a certain number of other persons involved in illegal employment or human trafficking offences. Considering the number of inspections in the field that will further increase and the holiday period, the backlog of necessary hearings of human trafficking victims will rise again.

Almost no reports

During the period described, our service only received a very small number of reports of labour exploitation. These came from the labour prosecutor, the workers directly concerned, third parties or the point of contact for fair competition. The few reports received led to an on-site check, even during the first few weeks of the lockdown.

Labour exploitation findings

Below are several cases where ECOSOC teams detected indicators of human trafficking/labour exploitation during the period described. Besides these cases, inspectors were also confronted with potential situations of exploitation where they were unable to find sufficient indicators on the first visit. In these instances, a second inspection was planned and the contact details of the inspector were given to the workers. After that, the workers were contacted by the inspectors in their own language and the teams sought other sources likely to provide information on the situation.

In April 2020 already, indicators of the labour exploitation of a Romanian worker were detected at a **building site**. He was staying at the building site seven days a week and 24 hours a day, right in the middle of the coronavirus pandemic, in a caravan, in extremely basic and unhygienic conditions. There was no running water and he had to make do with a plastic toilet cubicle used by all the workers.

Inspectors had to give him a face mask during their inspection of the building site. The man had been staying there for several months and after working 50 hours as a labourer, he was also responsible for supervising the building site, and was therefore de facto available 24 hours a day, seven days a week. It turned out he was extremely isolated and didn't have a car. In any case, it was difficult for him to leave the building site because he didn't have the key for the caravan. He was alone on the site for several days. No authorities were informed of his stay.

In May and June, checks were carried out in several provinces in **nail bars**, which reopened on 18 May. Of the 19 nail bars checked, 18 were noted as violating social legislation and seven as employing illegal Vietnamese workers. Labour exploitation indicators were observed in two establishments concerning three Vietnamese victims. In both cases, the labour prosecutor was informed of acts suggesting human trafficking. A presumed victim was referred to a specialised reception centre. This 18-year-old Vietnamese boy was living in very basic conditions in the basement of the nail bar where he worked. He had no papers, was barely paid for his work from Monday to Saturday, had no bathroom or shower and not even any hot water. A young woman was found in another nail bar, who had arrived in Belgium following the closure of a nail bar in Budapest, where she was working, owing to the anti-coronavirus measures.

Another victim was found in a **car wash**. This Indian man was housed in a caravan parked inside the car wash. The owner forced the man to work during the lockdown. The car wash was only closed after a police check. He had to go back to work on 11 May, when car washes were able to open again. He worked long hours for a pittance, and wasn't declared to the social security office. He didn't have any protective equipment either, such as clothing, shoes or gloves. The man had no access to washing facilities or hot water, and had no identity papers or a residence permit.

A check was also carried out at a **farm**, following a "tip-off" about the possible exploitation of a Moroccan worker with no valid residence permit. It was found that the worker was housed on the farm in appalling conditions. His "living room" was actually a storeroom, which was extremely insanitary, dangerous and unfit for habitation (no electricity, no smoke detectors, no hot water, a smell of excrement and unstable stairs).

The worker was put in contact with a reception centre and the magistrate awarded him the status of presumed victim of human trafficking.

International road transport is a sector where exploitation is omnipresent. Drivers from outside the EU often drive for European transport companies. In general, they have contracts in Eastern Europe. They drive for several months at a time and sleep in the cab of their lorry. Following the coronavirus crisis, their hours have become even longer and their already low wages have been further reduced. As a result, their quality of life has deteriorated to an unacceptably low level.

During the month of June, our service checked and heard two drivers. A Ukrainian driving for a Lithuanian transport company with branches throughout Europe, was informed by his employer that his salary had been cut by a third. Workers who disagreed could leave, which was impossible owing to border closures during the coronavirus pandemic. In addition, the driver risked a fine if he abandoned his lorry without another driver taking over. After working non-stop for more than four months and living in his lorry, this driver was forced to continue driving as no replacement could be sent. The reduced salary wasn't even paid. Deductions and fines were far from exceptional. There was no protective gear, even for loading and unloading in northern Italy at the height of the coronavirus crisis. This driver was exhausted and said he couldn't continue to work.

A second driver, a Belarusian, found himself in a similar situation: extremely long work periods, reduced salary, non-payment of wages, isolation, harassment, and exhaustion, which made him a danger on the road.

Thanks to the intervention of the Social Legislation Inspectorate's Transport Unit, the wage arrears of these two drivers were paid.

We also received a report of the possible exploitation of a **Filipino au pair**, who couldn't leave the family with whom she was staying during the lockdown. We are expecting a wave of reports of exploitation of **domestic workers**, especially in Brussels. These workers have been very isolated and invisible during the lockdown and are therefore at the complete mercy of their employer.

Detecting exploitative situations is particularly difficult in this sector as the work is carried out in private homes.

In some cases, we found indications that human trafficking victims had arrived in Belgium through **human smuggling** (especially from Vietnam and India).

In several cases, it wasn't possible to refer the potential victims to a reception centre. Several factors made it difficult to contact the workers concerned and to refer them to a centre: it was impossible to find an interpreter, the workers didn't consider themselves as victims, they were satisfied with their situation, considered that were earning a decent living (even though they were paid below Belgian wage standards), and often refused to be put in contact with a centre.

One of the above-mentioned victims left the reception centre in the night after they had been admitted. In another case, a presumed victim who had made contact and supplied information on their exploitation during the lockdown, was no longer reachable afterwards. Several visits were made to a company (recycling of second-hand clothes), which ceased its activities in the meantime.

Conclusion

The more limited presence of inspections in the field and the reduction in proactive checks in high-risk sectors considerably reduced the possibility of detecting potential situations of exploitation during coronavirus crisis. Furthermore, we didn't receive any reports of possible cases of labour exploitation.

It has therefore been extremely difficult to get a sense of the reality in the field, so that the overall picture of the extent, the nature or the possible increase of labour exploitation during the COVID-19 period is somewhat vague. One thing is certain, this situation has taught us that a proactive and permanent presence of inspection services in risk sectors is essential.

Although the exact impact of the COVID-19 pandemic isn't yet clear, we can deduce from several observations from inspections in various sectors that the pandemic has indeed had an impact on the phenomenon of labour exploitation, especially on the fate of the victims. Many have been forced into their situation (of exploitation) and have found no way out. Their precarious working and living conditions have often become more dangerous and unhealthy. Keeping their distance in their cramped homes or on the way to work has been difficult, and the lockdown has made them even more isolated, thus making them more dependent on their employer and even less visible to inspection services. Detection, which is already very difficult in normal circumstances, has become even more complex.

In the exploitative situations observed, our inspectors found that the workers were required to do their work in circumstances where government measures to control the coronavirus were being violated. We believe that these findings, when added to the classic indicators, will provide further evidence that these are cases of human trafficking. It is highly likely that in the course of their investigations after the lockdown and the COVID-19 pandemic, our inspectors will find that in several cases, some employers abused the situation to make their employees work in unacceptable conditions.

After the coronavirus crisis, companies will be faced with economic difficulties. The pandemic could lead to an economic recession. For some employers, there will be an increasing temptation to save on wages and social contributions. The demand for cheap illegal labour and the accompanying risk of exploitation will increase. At the same time, the impending economic downturn will make those in a precarious situation even more vulnerable. They will even more easily agree to work in inhuman conditions.

Inspections will have to take this new socio-economic situation into account and adapt their strategy. It is essential that ECOSOC teams are quickly and once again present proactively and sufficiently frequently in sectors at risk. The challenge is to further increase detection capacity and to be able to detect more exploitative acts, so that perpetrators can be prosecuted and victims protected.

Finally, we believe it is of the utmost importance that the fight against human trafficking, and against labour exploitation in particular, remains a national political priority, in order to ensure that those who exploit others don't continue their criminal activities with impunity and that victims receive the protection they deserve. Policy-makers must provide adequate resources to specialised services in this area to enable them to continue their work under the special conditions created by the pandemic and its consequences.

External contribution: is non-compliance with the measures to tackle the coronavirus an additional indicator of human trafficking for the purpose of labour exploitation?

Charles-Eric Clesse

Labour prosecutor, Hainaut

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It may seem surprising at first sight to ponder on the impact that a pandemic, which has confined millions of people to their homes, has had on trafficking for the purpose of labour exploitation. All economic activity in most European countries, and especially in Belgium, which is of particular interest to us, has been at a standstill for more than two months. Workers who couldn't work from home became unemployed owing to force majeure.

However, this lack of activity hasn't put an end to undeclared labour and, in some cases, human trafficking.

After giving an overview of the impact of the pandemic on human trafficking at global level, and a reminder of the basis on which trafficking indices for labour exploitation is assessed in Belgium, we shall see how the COVID-19 crisis may have had an impact on the victims of trafficking and, finally, why it will undoubtedly be difficult to firmly confirm this observation.

1. | The impact of the COVID-19 crisis on trafficking at global level

Lockdowns, travel restrictions, work limitations and cuts in resources have a negative and often dangerous impact on the lives of these already vulnerable people.

According to the Executive Director of UNODC, Ghada Waly, "While Covid-19 restricts movement, diverts law enforcement resources and reduces social and public services, trafficked persons are even less likely to escape and find help. As we work together to defeat this global pandemic, countries must keep shelters and hotlines open, protect access to justice and prevent the most vulnerable from falling into the hands of organized crime. UNODC assists governments and non-governmental organization (NGO) partners around the world to enable anti-trafficking units to continue doing their vital work safely and to ensure that trafficked persons can get the assistance they need".

Partners working with UNODC have reported that in some countries, more children are forced to take to the streets in search of food and income, thus increasing their risk of exploitation.

According to Ilias Chatzis, chief of UNODC's Human Trafficking Section, "At the same time, new opportunities for organized crime to profit from the crisis are emerging. This means that traffickers can become more active and target people who are even more vulnerable than before because they have lost their source of income due to measures to combat the virus (...) We know that people in vulnerable situations are more likely to contract the virus and have less access to health care in case of illness. It is therefore alarming to hear that, in some places, trafficked persons no longer have access to shelters, with some refuges even having closed down because of the virus and others lacking protective equipment - putting victims and staff at risk".

The pandemic has clearly had a global impact on the labour exploitation of women, men and children.

2. | Trafficking for the purpose of labour exploitation in Belgium: can non-compliance with health regulations be an indicator of human trafficking?

As is well known, Belgium has diverged from international standards to criminalise, to a very large extent, trafficking for the purpose of work or services contrary to human dignity[138]. The violation of dignity, the cornerstone of the definition, must be sought especially in the case of non-compliance with social regulations. This particularly includes remuneration that doesn't comply with Belgian wage scales, working hours that exceed the rules in force, and a failure to declare the work thus preventing the worker from benefiting from social security.

However, the violation of human dignity may also be expressed through a serious breach of certain rules relating to work conditions. Case law holds that it is contrary to human dignity to work in a storage facility that is cold and smells strongly of mould, or in a warehouse covered in plastic to protect the clothes sorting tables from the rain[139], or to be forced to pick up the muck in a butcher's shop with bare hands and on all fours[140], or to be forced to remove asbestos from a yacht without any protective clothing[141].

Violation of a worker's dignity also includes that of their health: being forced to work when sick[142] or with a fever[143] or only receiving meat not suitable for sale in a butcher's shop as food[144].

Based on this case law, we can therefore say that the violation of human dignity can also consist of the obligation of working in conditions that don't allow compliance with the health obligations relating to COVID-19, such as the fact of being forced to work in places where there is no possibility of complying with social distancing, with no individual protection (mask) or collective protection (plexiglas). This point of view is in line with certain judicial decisions that base their assessment of the violation of a worker's dignity on evidence such as the absence of work equipment or work clothes[145], a helmet and safety shoes[146] or gloves and a protective apron to clean griddles and deep fat fryers[147].

Of course, the mere fact of exposing a worker to the risk of COVID-19 is insufficient proof of labour exploitation. This element must be supported by a body of consistent evidence demonstrating a violation of human dignity in the work performed.

3. | The impact of the COVID-19 crisis on trafficking for labour exploitation

As we have seen, UNODC highlights the global impact of human trafficking. In its communication of 2 April 2020, GRETA "draws attention to the particular difficulties faced by victims of trafficking in human beings, who generally find themselves in a situation of great insecurity and vulnerability. In addition to the psychological trauma and crippling physical injuries suffered, many of these women, men and children have no means of subsistence, and sometimes find themselves in situations of illegal migration or employment, without medical or social protection, and without documents or resources to enable them to return to their countries of origin. During the COVID-19 pandemic, their situation can only deteriorate and criminals can actively use this global crisis to exploit their vulnerability in order to increase the financial profit generated by human trafficking".

What is the situation in Belgium, especially with regard to trafficking for labour exploitation? Foreigners living illegally or precariously in Belgium, which constitutes a situation of vulnerability, have certainly been significantly affected by the pandemic. With no resources, and especially more vulnerable than Belgian citizens, they are forced to accept any work (conditions) to survive.

However, this state of affairs is not unique to this category of foreign nationals. Belgian workers have also faced unemployment due to force majeure such as we have never experienced before.

138 On this notion of dignity, see our article: "La notion de dignité humaine et son application pratique en matière de traite économique des êtres humains", *R.D.P.C.*, no. 9-10, 2013, pp. 854 to 877.
139 Mons Crim. Court, 26 June 2012, www.myria.be
140 Brussels, 12 January 2011, www.myria.be
141 Bruges Crim. Court, 25 April 2006, www.myria.be
142 Brussels, 26 October 2011, *unpub.*, Clerk's Office no.: 2011/BC/470. 143 Liège, 31 October 2005, *unpub.*, index no. 2848/05.
144 Brussels Crim. Court, 28 April 2010, www.myria.be.

145 Antwerp Crim. Court, Turnhout division, 18 January 2017, Myria, *2019 Annual Report, Trafficking and smuggling in human being , Empowering victims,* p. 125; Arlon Crim. Court, 8 May 2014, www.myria.be
146 Charleroi Crim. Court, 7 January 2011, *unpub.*, Clerk's Office no.: 62. In this case, these clothes were provided, which reinforced the absence of human trafficking in the court's view.
147 Charleroi Crim. Court, 10 December 2010,www.myria.be. In this case, one of the worker's forearm's was burnt.

More than 500,000 workers were laid off in the early days of the pandemic and another 1,313,127 between the start of the lockdown and 25 May 2020 (the start of phase 2 of the end to the lockdown). Unemployment benefit depends on the worker's income and is capped at EUR 1790.62 gross[148] per month, an amount increased by EUR 5.63 per day by ONEM (national employment office) when the worker is temporarily unemployed due to force majeure (in this case, "coronavirus"). Hence, many workers found themselves in a vulnerable situation - since they have loans to pay, children to feed, etc. – which may have led them to seek undeclared work where they could be exploited.

Admittedly, the vast majority of economic activity was at a standstill. However, internal building work was able to continue without attracting the attention of inspectorates or the police. Bakeries and butchers (where several cases of trafficking for labour exploitation have been discovered in recent years) were able to continue to employ illegal workers in their back rooms, etc. And as we shall see in point 4, these activities were unlikely to be controlled.

The health crisis has inevitably had an impact on human trafficking and has increased or aggravated the exploitation of certain workers. However, we will only really be able to assess the extent of the crisis in a few months' time, when testimonies are collected in the context of court cases. Nevertheless, it would be surprising if Belgium were not to be affected by this phenomenon. So much was at stake financially that the exploiters had every interest in taking advantage of the pandemic to "optimise" their profits from illegal activities.

4. | A finding difficult to confirm but a real risk

Our approach is difficult to confirm in practice, and the figures are difficult to interpret. In 2019, the labour prosecutors' offices in Belgium had 164 cases[149] of human trafficking for labour exploitation. These were distributed as follows:

Ghent (47), Antwerp (34), Halle-Vilvoorde (3), Louvain (5), Brussels (14), Hainaut (6), Walloon Brabant (9), Liège (46), Eupen (0).

Between 1 January 2020 and 30 May 2020, 20 acts of human trafficking were discovered. They are distributed as follows: Ghent (5), Halle-Vilvoorde (2), Brussels (1), Walloon Brabant (1), Liège (10), Eupen (1).

During the lockdown, evening of 13 March to 18 May 2020, five acts were discovered: Ghent (1), Antwerp (1), Liège (2), Eupen (1).

This shows that we have gone from 1.36 acts per week (15 acts discovered between 1 January and 12 March) to 0.55 acts per week (from 13 March to 18 May). The average in 2019 was 3.15 acts discovered per week.

The figures certainly don't reflect the reality in "the field" because the inspection services and the police were also disrupted by the pandemic. Hence, labour inspectorates were subject to the lockdown at the start of the crisis. The few checks they carried out in the field focused on social dumping. The ONEM and INASTI inspection services were called upon to answer the many questions from employers and the self-employed and to support internal services. When ONEM resumed its field inspections on 4 May, they focused on fraud concerning unemployment due to force majeure.

Added to this was the cancellation of all the checks carried out by district units, which were no longer operational until the beginning of May. Only emergency cases were dealt with.

The police were called upon to supervise compliance with the various special powers decrees ordering the lockdown, social distancing, working from home, the closure of shops, etc. Any other offences, which fell sharply as a result of the lockdown – except for domestic violence, which sadly increased – were incidental.

With all the inspection services virtually at a standstill, many exploiters inevitably fell through the (very large) gaps.

148 A withholding tax of 26.75% applies.

149 We looked at acts entered under code 55 – labour trafficking in MACH. We took into account the date of the discovery of the act of trafficking and not the date the court case was opened. These figures don't necessarily reflect reality as a reclassification may occur in the course of the case.

Conclusions

What conclusions can be drawn from these two months of pandemic? The figures show a fall in human trafficking acts regarding labour. However, we can't draw any conclusions from this as there have been no checks, so the statistics are biased.

We are therefore left with the following feeling: that of having certainly overlooked victims who are the subject of exploitation owing to a lack of checks. As we write[150], the lockdown is coming to an end, and the inspection services and the police will certainly discover situations of exploitation that began during the pandemic.

150 May 2020.

External contribution: checks on (private) prostitution and human trafficking during the coronavirus

Johan Debuf
First Chief Inspector of Police
Brussels-North police district

Prostitution was also partly brought to a halt during the lockdown. With the exception of private prostitution via online adverts. It therefore seems necessary to carry out checks on this type of prostitution. Even though a case is rarely opened for human trafficking, a situation of (exploitation of) vulnerability is potentially lurking behind every working prostitute.

1. | Start of measures — ban on prostitution

Prostitution has been banned in our police district since the measures to tackle the coronavirus came into force. Prostitution parlours and windows have been closed. As these are known places of prostitution, it is relatively easy to check whether or not this ban is being respected.

On the other hand, compliance with the measure is far more difficult to control and impose on private prostitution through adverts on websites and other media. And the very wide range of forms this activity assumes is one of the reasons:

- Massage parlours, with several sex workers. These places are often well known and most are closed.
- Escort services, in hotels or at clients' homes. As they aren't linked to a place, they are particularly difficult to control.
- Home reception. The sex worker receives clients in a private apartment; this practice can be controlled thanks to agreements made by specialised police services, followed by a standard prostitution check and a check on compliance with the measures to tackle the coronavirus. This type of double check is entirely possible, but would seem difficult owing to the large number of adverts in the Brussels-Capital Region. In normal times, there are about 1,200 a day, and about 700 since the beginning of the measures, according to the figures provided by the manager of website A[151].

2. | Checks performed by the Brussels-North police district — Observations and results

During April 2020, the human trafficking section of our police district verified 21 adverts on website A. offering business in our area. During these checks, 30 % of requests for an appointment by SMS went unanswered. On the other hand, 70 % of requests for physical contact within the framework of prostitution, i.e. 15 reactions to adverts, received an answer by SMS. Among the people involved in these 15 adverts, 40 %provided an address for an appointment outside our area. Another 20 % broke off contact just before the appointment. The addresses were in apartment buildings equipped with camera systems or where an open space made our arrival visible. This left six adverts where the address for the appointment was in our area and where a physical meeting took place. In these cases, a check was duly carried out. Five of the six adverts were deactivated after the check. An advert was probably put online again in a slightly modified form (different phone number, inversion of first name and surname, language of message changed from English to French, content of message slightly modified).

Strikingly, the majority of the prostitutes still active are of Latin American origin. They claim to be badly informed about the COVID-19 pandemic in general and about the specific measures taken in Belgium in particular. Apart from a few exceptions, there is no evidence that the sex workers usually active in street or window prostitution have moved into the private circuit.

After the check, hardly any new adverts were posted for two weeks. However, since 23 April, a few new ones were noted, 22 in Schaerbeek, 11 in Saint-Josse-ten-Node

151 Out of respect for the privacy of the persons concerned, a series of websites and a location were made anonymous in this contribution. The websites range from A. to E. The meeting place was changed to X.

and 23 in Evere. In view of these findings, it is recommended that we continue to look through the adverts on website A. and other similar websites, and carry out the necessary checks.

3. | Checks in other police districts in Brussels

We contacted our fellow colleagues working in human trafficking in the other police districts in Brussels to find out about their orders, actions and requirements in terms of checks on private prostitution as long as the coronavirus measures are in place. For instance, the Brussels-Capital/Ixelles district would like nothing better than to carry out checks, but would like orders to be given to the entire judicial district of Brussels regarding procedures. The Montgomery district also shares this point of view. The other districts don't carry out checks and/or don't request such checks.

4. | Opinion of the crown prosecutor's office in Brussels, reference magistrate

On the advice of the crown prosecutor's office in Brussels, the reference magistrate for trafficking in human beings, the judiciary established the principle that a first offence should only be followed by an administrative sanction or a standard report for non-compliance with the measures to combat coronavirus. **A case for human trafficking will only be opened if it concerns minors or if there is a threat to physical integrity** as a result of findings or complaints. However, in case of recidivism, the offences will be put to an end and an official report drawn up bearing note number 62, for immediate summons.

5. | Proposal

In order to ensure compliance with the measures taken by the National Security Council, the Brussels-Capital Region and the various municipalities, it would seem useful and even necessary to organise some form of control of private prostitution. All the more so since **the fact that a prostitute who is continuing to work willingly or forcibly during this health crisis is a potential indicator of the exploitation of her situation.**

Carrying out checks on a sample basis may already be sufficiently dissuasive, but this effort must be both consistant and generalised.

6. | Example

To illustrate the current online prostitution activities in the Brussels-Capital Region, a few sexual services websites have been examined below.

6.1. | Website A.

Representatives of the authorities contacted the webmaster to ask them to (temporarily) close down the website or, at least, to take as many measures as possible in view of the crisis. They weren't able to close it down, for various reasons — mainly economic — but they ensured that all possible measures were taken, both "online" (see later) and "offline" (e-mails sent to all the users. Users and visitors were made aware of the risks inherent to sexual contact during the pandemic. On the homepage, the header clearly mentioned the ban on physical encounters. Visitors were explicitly asked never to request this, let alone respond to such requests.

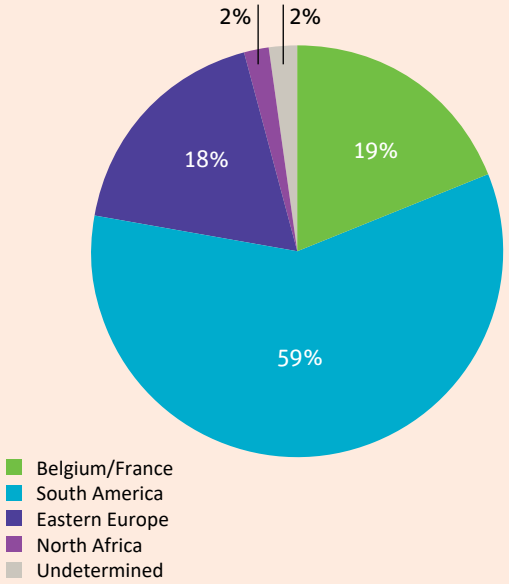
In addition, the webmaster specified under each advert on the homepage that the services offered were part of an adapted and virtual offer. The adverts were all accompanied by a caption indicating that the service was provided online, via Skype, WhatsApp or links. Nevertheless, when the website provided a link to activate an appointment directly via webcam, the prostitute's telephone number remained visible in most cases. The client could therefore call and arrange a physical meeting. In any case, there were very few adverts that only contained webcam links. As regards these adverts, there is another threat: various forms of computer fraud.

In any case, for someone who knows the website, it is very easy to bypass the homepage - which still shows a certain willingness to respect the measures - and quickly find the more classic prostitution adverts. The majority of them explicitly offer physical appointments. The webmasters don't block these adverts, but - it would appear - have activated filters so that they aren't too visible. Very few prostitutes say anything about COVID-19. And when they do, it is with a certain naivety.

In order to assess trends at user level, a representative sample of 122 profiles that posted an advert was examined on 7 April 2020. It is important to note that out of the 122 adverts examined, 82 were marked "gold". These are adverts for which the customer has paid in advance to receive automatic, daily updates for one month. However, it is likely that the proportion between "automated" and "voluntary" updates is about 50 %. All in all, we suspect that in at least 40 of the adverts in our sample, there is a clear willingness to post them and a real intention of receiving clients. These cases are also the most "interesting" in the fight against human trafficking and the exploitation of prostitution.

Is it a question of economic uncertainty or exploitation of a vulnerable situation? For instance, when we count girls working on a stormy night or on 31 December, we consider them to be the most exploited. The same applies to this period of crisis.

Then there is the question of the origin of the prostitutes currently active. On website A., there are mainly adverts for prostitutes from Latin America or Eastern Europe (Moldavia, Ukraine and, more so, Romania). Chinese girls have also been active on the website for several months. Added to this are Belgian prostitutes, occasionally or regularly, as well as young girls — sometimes minors — who have run away or are exploited by urban gangs. The latter group is a minority, but is an absolute priority.



This figure shows that many of the prostitutes currently active on website A. are from Latin America. The number of adverts for girls from Eastern Europe has clearly decreased. Several Moldovan, Romanian and Ukrainian groups of women may have ceased their activities or have even left. The same is true — and even more so — of the Chinese women.

During our "scan" of 7 April 2020, we found no trace of adverts involving underage presumed victims among the 122 profiles analysed. Barely 15 adverts were offering virtual services in accordance with the webmaster's request. In one profile, the prostitute astonishingly used the coronavirus as a "selling point", presenting her services as a remedy against the virus.

Thankfully, other prostitutes informed their clients that they were temporarily suspending their services.

Prostitutes from other sectors

Among the prostitutes currently present on the website (except for the 122 profiles scanned), only one was known for walking the streets or prostituting herself in a window before the implementation of the measures to tackle the coronavirus. She was a prostitute from Hungary who worked in Brussels red-light district. The exploitation of the interested party is currently the subject of an investigation by the Brussels-Capital police district. The information was sent to their services.

6.2. | The other websites

Website B.

The activity on this website was more difficult to analyse because the adverts posted weren't dated. Nevertheless, it was clear that activity had decreased considerably. For instance, in the "private massage" category — which generally contains a dozen or so adverts — there were barely 10 adverts on 7 April. No announcements or messages concerning the health crisis featured on the website. For the sake of completeness, it should be noted that it is well known "in the community" that this website is used less and less.

Website C.

Just like website B., the analysis wasn't easy because the adverts weren't dated. Likewise, there was a significant reduction of activities compared with the months preceding the coronavirus crisis. In addition, it is striking to note that different prostitutes who post adverts on website A. post the same advert on website C. While several "brothels" usually advertise here, only one of these adverts featured the "VIP" label. It concerned X. We aren't aware of the location of this "house" or "agency", just as we don't know whether the adverts are "automatically" renewed or whether they are posted deliberately because activity is continuing. A positive point to conclude: the website administrators have nevertheless posted a certain number of warning banners.

Website forums such as D. and E.

Prostitutes' clients use these forums to share "advice", "comments" and "evaluations". These comments are sometimes useful to assess the activity of residual prostitution in Brussels. On this point, the main observation is that the only part of this forum that is still active is entitled "Brussels region: independent escorts and masseuses". This is a reference to private prostitution, especially via the internet. Very recently, comments were made about several prostitutes who work in Brussels. It quickly became clear that a brothel in Woluwe-Saint-Lambert was still open. It is also possible, based on the comments posted by the users, to "detect" the prostitutes who are continuing to work despite the health crisis.

6.3. | Conclusion of the scan operation

Since the start of the measures to tackle the coronavirus, prostitution activity via the internet hasn't increased. On the contrary, the amount of adverts has fallen significantly and some websites have clearly reacted to this situation. There doesn't seem to be a large-scale shift from street or window prostitution to the internet. Girls from Eastern countries and especially China seem more conscious of the risk than the Latin American girls. In any case, we must remain vigilant because no-one seems willing to temporarily take these websites offline. And it is precisely behind these residual adverts that situations of exploitation of vulnerable people sometimes lurk.

External contribution: exploitation and slavery, the dangers of the impact of the economic crisis

Christian Meulders,
Director
Non-profit association Sürya

We have been faced with a new scourge since March 2020 that is affecting the whole planet: the spread of COVID-19. With the arrival of the pandemic, it would appear that the phenomenon of trafficking and smuggling of human beings has come to a halt, as though this form of crime no longer existed thanks to the appearance of this virus. Should we therefore rejoice at the fact that our specialised reception centres in Belgium didn't receive any requests for help during the lockdown? Are the exploiters so respectful of the social distancing measures that the victims have suddenly regained their rights?

Sürya has been active in Liège for the Walloon Region since 1995. We are involved in the humanitarian side of the fight against the trafficking and smuggling of human beings as a second-line service, just like our colleagues at Pag-Asa in Brussels and Payoke in Antwerp. Our mission is to receive, support and shelter presumed victims, and to raise awareness about exploitation. Our institutions support the police at both federal and local levels, inspection services (National Social Security Office, Social Legislation Inspectorate, the Walloon Region, etc.), social services in hospitals, Fedasil and Red Cross networks, etc.

In light of this health crisis, I would like to share a general reflection with you on the issue of exploitation and its economic stakes, as well as an overview of our social work during this somewhat turbulent period.

A consensus has emerged during this crisis: our society is changing or has changed, and our consumption habits are now focused at local level. But what about labour, and the profit to be made? The lockdown and the ban on the movement of workers have led to labour shortages in the agricultural sector, among others, even though a significant number of people have become temporarily unemployed in Belgium. This lack of "cheap" labour brings to mind the dozens of Romanian workers we met in the fruit sector. These people disagreed with the intermediary who had recruited them for an hourly wage well below the current rates and in conditions contrary to human dignity.

And then there are the pimps and clients who take advantage of the sexual exploitation of women and men in our country. This very lucrative business has increasingly been taking place out of view since the closure of all the prostitution parlours and windows.

Unfortunately, the reception centres for victims of trafficking and smuggling of human beings have no influence on the production methods and consumption habits of citizens, or on the organisation of work in society. In the face of this crisis, we believe it is important to mobilise and support the forces involved in order to put the fight against this scourge back at the centre of our concerns. A scourge that we are certain is constantly gaining ground, in all impunity.

All the work carried out by frontline staff has been delayed following the lockdown measures imposed by the National Security Council. Therefore, it is quite conceivable that new proactive initiatives will not be envisaged in the coming weeks, or even months.

During the lockdown, workers in the reception centres had to adapt or reinvent social work. Working from home has led to new practices for workers, both on a social and educational level, to the advantage of people who have been given shelter and/or support. For instance, there were the French lessons that were taught remotely, via WhatsApp, to compensate for the lack of face-to-face classes. These were useful and necessary for the people we support.

It was also important to continue to support these people, the majority of whom were alone, confined and finding it difficult or even impossible to cope with their situation. Workers were thus able to stay in permanent contact with victims over the phone or via social media, in order to be able to explain the National Security Council's measures on the one hand, and to continue supporting them or even bringing them food, medication, masks or hand sanitiser, on the other.

Access to information in a language that is easy to understand was a primary necessity in order to ensure that people were applying the various measures, making them active rather than passive during this entire period.

Being in lockdown at the shelter, without any possibility of organising activities either internally or externally, wasn't always easy for people to deal with every day. The fact that staff weren't present on a regular basis also had an impact on their well-being.

However, after the adaptation of our work and the checks on compliance with the compulsory measures in force in Belgium, we fortunately didn't have any COVID-19 victims.

As we gradually came out of the lockdown, social workers alternated face-to-face work and homeworking. The return of the whole team will be envisaged after the various holiday periods.

This crisis has therefore led us to adapt our work tools as well as our way of thinking and understanding the world. We remain convinced that it is of the utmost urgency to put the fight against the trafficking and smuggling of human beings back at the forefront of the political and legal agenda so that this doesn't become the number one crime in Belgium.

CONCLUSION: corona-virus and human trafficking

This chapter features several external contributions about the impact of the coronavirus crisis on human trafficking. The focus is both on the consequences for the victims and the fight against the phenomenon. Different players in the field gave their points of view including a labour prosecutor, the NSSO Inspection Department and a specialised reception centre for victims of human trafficking.

In terms of labour exploitation, certain worrying signs have already been noted. Myria fears that vulnerable people are at greater risk of labour exploitation during the coronavirus crisis. This period is a "golden opportunity" for unscrupulous employers who want to exploit people in a precarious situation. The number of vulnerable workers (unemployed) will increase and it is likely that some of them will end up in the grey economy or with employers who wish to circumvent coronavirus-related measures. Some unscrupulous employers may take advantage of this, replacing regular workers with people in a precarious situation. In recent months, it was already demonstrated that there was no way for cheap labour, including undocumented migrants employed illegally and undeclared, to work in a safe and healthy environment, with respect for social distancing. There is also a fear that, in the midst of the coronavirus crisis, several unscrupulous entrepreneurs continued their economic activities despite the protective measures imposed, and that the workers concerned were unable to defend their rights precisely because of their precarious situation.

This situation has since been confirmed in several European countries where new lockdown measures have been announced following the identification of new outbreaks. The link between the coronavirus and labour exploitation has been clearly established, because these new infections have occurred in economic sectors where foreign workers were employed and/or housed in precarious conditions, and where the health regulations associated with the coronavirus weren't applied. This was the case in slaughterhouses in Germany, in the textile sector in England (Leicester) and in the fruit-picking sector in Spain (Catalonia).

Businesses' failure to apply the measures to combat the coronavirus can also be considered as an additional indicator of human trafficking. If unscrupulous employers employ vulnerable workers during the coronavirus crisis without any guarantee of social distancing, they are seriously endangering the health of workers (and those around them) and potentially making them work in conditions contrary to human dignity, one of the essential elements of human trafficking for the purpose of labour exploitation.

During this health crisis, social inspectors from the NSSO's ECOSOC teams, who are specialised in human trafficking, weren't able to perform their checks as usual. Their capacity was severely limited, especially because they were unable to use law enforcement to the same extent as before the crisis, with police being deployed for other obvious tasks (checking compliance with the coronavirus measures). In addition, proactive checks performed by social inspectors were cut back and reduced as much as possible to remote checks. Workplace checks were avoided wherever possible and hearings reduced to a bare minimum. Consequently, the social inspectors' ability to detect potential victims of human trafficking was severely limited.

Since March 2020, several frontline services have checked for compliance with the necessary measures to combat the coronavirus in the workplace[152]. Whereas this was the sole competence of the Supervision of Well-Being at Work inspectorate (FPS Employment, Labour and Social Dialogue), many services were given this competence following amendments to the regulations[1]. In addition to their priority tasks, social inspectors from certain social inspection services have been authorised by the government to check, within companies, for compliance with the obligations laid down within the framework of the urgent measures aimed at limiting the spread of the coronavirus.

152 Legal and statutory references:
- Chapter 6 — Special Powers Order No. 37 issued in implementation of Articles 2 and 5 of the Act of 27 March 2020 granting powers to the King to take measures in the fight against the spread of the COVID-19 (II) coronavirus, aimed at supporting workers, signed by the King on 24 June 2020.
- Article 54 of the Social Criminal Code "Communication of information by social inspectors to other public services".
- Ministerial Order of 30 June 2020 on emergency measures to limit the spread of the COVID-19 coronavirus, *O.G.*, 30 June 2020.
- Ministerial Order of 22 August 2020 amending the Ministerial Order of 30 June 2020 on emergency measures to limit the spread of the COVID-19 coronavirus, *O.G.*, 22 August 2020.

In concrete terms, social inspectors from the Social Legislation Inspectorate (CLS), the Supervision of Well-Being at Work Inspectorate (CBE), the National Employment Office (ONEM), the National Social Security Office (NSSO), the National Institute for the Social Security of the Self-employed (INASTI), the National Institute for Health and Disability Insurance (INAMI) and the Federal Agency for Occupational Risks (Fedris) were authorised to check on the following:

- compliance with the rules concerning physical distancing;
- the application of appropriate prevention measures;
- the provision of a register containing identification data, place of residence, phone number and, if necessary, the names of the persons with whom the salaried or self-employed worker is working, by all employers or users who temporarily use a salaried or self-employed worker living or residing abroad to carry out activities in the building, cleaning, agriculture, horticulture, and meat sectors (Art. 2, § 1, para. 3 M.O. 22/8/2020);
- to ensure employers or users are complying with the obligation to fill out the *Passenger Locator Form* at the latest when the employee or self-employed person living or residing abroad starts working in Belgium in the building, cleaning, agriculture, horticulture and meat sectors (Art. 2, §2 M.O. 22-08-20).

A number of these frontline services aren't competent and have no expertise in the field of human trafficking. Myria urges inspection services to also be attentive to indicators of human trafficking during their checks.

In sectors at risk of human trafficking such as car washs and nail bars, but also the building industry, this problem will become even more acute and the importance of checks for human trafficking will become even greater. **The NSSO Inspection Department and the Social Legislation Inspectorate (FPS Employment), which are competent for human trafficking, must also have the resources, support and necessary protection equipment.** It is also essential that non-compliance with these protection rules be considered as an additional indicator of working conditions contrary to human dignity (human trafficking for the purpose of labour exploitation).

As regards sexual exploitation, we noted that several police departments couldn't carry out systematic checks on private prostitution. Prosecutors in cities instructed the police to only open an investigation for human trafficking if a child victim was involved and/or a person was physically threatened. In the meantime, the specialised centres for victims of human trafficking have alerted several authorities, because they have received proportionally too few reports during the coronavirus crisis, and therefore fear that many victims of sexual exploitation (but also labour exploitation) are going unnoticed. **It is therefore essential that police forces have sufficient resources to carry out checks to detect presumed victims of human trafficking.** Hence, for the police, the fact that sex workers are continuing to work during the coronavirus crisis (in private prostitution) is an indication of economic vulnerability and, in some cases, serious exploitation of their situation (and therefore human trafficking for the purpose of sexual exploitation).

Chapter 2
Case studies

In this chapter, Myria analyses the court cases concerning the trafficking and smuggling of human beings for which it filed a civil suit and thus has a complete view. This gives an accurate picture of the way an investigation is initiated and conducted in the field. In addition, this chapter provides an illustration of the phenomenon of trafficking and smuggling of human beings for each form of exploitation.

The analysis is based on the police reports of the cases and focuses above all on the criminal system and the victim's perspective. We shall first take an in-depth and critical look at the summary reports, in which the investigators sum up the case file. A lot of attention is also paid to the initial reports, which indicate on what basis the case was actually initiated and whether the victims were intercepted and detected. In addition, the case file includes the minutes from the hearings of victims, suspects and witnesses, information reports, files containing transcripts from phone taps, observation reports and, lastly, reports of rogatory commissions.

The study of concrete cases is a cornerstone of policy evaluation. It provides better insight into the implementation of the investigation and prosecution policy in the field as well as the thorny issues that accompany it. Once gathered, these findings also constitute an important source of information for the focus of the annual report and an essential basis to formulate recommendations.

1. Human trafficking

1.1. | Sexual exploitation

Nigerian Mama Leather case

The network led by Mama Leather (her nickname in the community) exploited young Nigerian girls for years in Brussels' red-light district. The defendants mainly focused on girls "ordered from Nigeria", including minors. The period during which the criminal acts featured in the case were committed was between 2013 and 2017, even though the network had probably already been active since the 2000s.

The 11 defendants were convicted of human trafficking and several of them also for criminal organisation[153]. It was a family network whose main figures were relatives of Mama Leather and her assistant. They operated internationally and had contacts in Nigeria, Niger, Libya, Italy, France, the Netherlands, Germany, Spain, Denmark and Sweden, which facilitated their operational activities.

153 Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch.; Brussels Court of Appeal, 3 April 2019, 13th ch. (available at www.myria.be); Myria, *2019 Annual Report, Trafficking and smuggling of human beings, Empowering victims,* p. 118.

1.1.1. | Network

a) Structure of the network

As leader of the international network, Mama Leather was in charge of ordering and organising the recruitment and transportation of the girls from Nigeria to Belgium. She managed 26 *windows*[154] in Brussels' red-light district next to Brussels-North railway station, and also sublet them to other Nigerian madams in a position of strength. She worked with two Nigerian madams who were sisters. Madame B. operated in Brussels and Spain before being extradited to Spain on the basis of a European arrest warrant. Her sister, Madame L., operated in Brussels and Germany, and was extradited to Belgium.

Mama Leather owed her nickname to the black leather outfits she invariably wore during her prostitution activities, and to her "specialisation" in sexual services in the "sadomasochistic circle". Between 2000 and 2017, the Brussels federal police had already heard several rumours about this from the community, but didn't have sufficient concrete evidence to carry out an investigation. Owing to her many years of presence and experience in the red-light district of Brussels, she often presented herself as a leading and influential figure in the Nigerian prostitution scene. This regularly gave rise to discussions, quarrels and mutual settling of scores. These incidents were almost never reported or revealed, owing to the closed nature of the Nigerian community.

Mama Leather had several accomplices. A. was her direct assistant and was responsible for receiving the girls from Italy, accompanying them in their prostitution activities, placing them in the prostitution windows and collecting the money from their activities. It was also her responsibility to supervise the girls, acting as the "eyes and ears" and reporting everything to her superior. In consultation with Mama Leather, she also collaborated with other madams and with a male pimp in Germany.

Another important accomplice was Lo, a cocaine dealer and friend of Mama Leather, who housed the girls in his safe house. He took them to the windows, sorted out their residence papers and supervised their work. He worked with an expert in Spain for the residence permits.

154 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-73.

Entourage for smuggling and transporting the girls

Mama Leather, with the help of various accomplices, also organised the recruitment and smuggling of the victims from Nigeria via the "desert route", which crosses Libya in the direction of Europe. For the smuggling from Libya to Italy, Mama Leather paid her henchmen EUR 20,000 per girl, and EUR 2,000 per girl for the transportation to Italy.

In Nigeria, J., Mama Leather's brother and local support, recruited the young victims. He paid voodoo priests to perform rituals on the chosen victims. He also exacted reprisals, on behalf of Mama Leather, against family members and/or runaway girls who didn't repay their debts. This could range from extortion to homicide, destruction of property, assault and battery, and kidnapping. His entourage in Nigeria usually had free rein to do so thanks to significant corruption and even "accommodating police forces"[155]. According to phone taps, all this cost Mama Leather a lot of money: "The money I have to collect is used to pay for fights".

The victims' perilous journey from Nigeria to Libya and the boat crossing to Italy were organised by the brother of assistant A. in collaboration with Mama Leather. They organised the smuggling of the girls by the desert route and made agreements with different smugglers. They worked not only for Mama Leather, but also for other Nigerian madams.

Mama Leather had several other henchmen to transport the girls across Europe. The most important one was "Mister Lyca". He got his nickname from the fact that he always sold the girls Lyca prepaid cards. He transported the Nigerian victims using a "black taximan" company[156] on behalf of several madams. He was one of the defendants who picked up the girls in refugee camps in Italy and then drove them to Lille (France), where he had a house, before taking them to Belgium and the Netherlands. Phone conversations revealed that he also regularly made appointments in Sweden to pick up Nigerian girls and that he also sent girls to Denmark.

155 Myria, *2018 Annual Report Trafficking and smuggling of beings, Minors in major danger*, pp. 72-73.

156 An unofficial taxi company that allows its drivers not to declare their work.

According to the testimony of his ex-girlfriend, Mister Lyca had brought three girls to the Netherlands at least once in his car to find a place for prostitution. His car was then stopped by the Dutch police in October 2016 following a traffic offence on the A4 motorway heading towards Vlissingen, which led to the identification of three young Nigerian women working in the Brussels-North district. Another time, according to the same witness, he accompanied two girls on a train to the Netherlands. One of the victims and his ex-girlfriend also stated that an underage Nigerian girl, whom he had made pregnant, was living at his home in Lille. The 16-year-old girl was one of the seven girls he had picked up in Italy for the madams in the Brussels-North district, but he had "kept" her.

b) Corruption at the embassy

Phone taps revealed that Mama Leather regularly paid bribes to various corrupt members of the Nigerian embassy in Brussels[157]. The Nigerian V., who formed a couple with the Nigerian madam B., was an important intermediary who operated both in Brussels and in Spain. He was a pimp from Brussels who owned a *window* and collaborated with Mama Leather. Thanks to his export company dealing in communication equipment, he was in contact with numerous members of the Nigerian embassy. He even revealed the names of these corrupt embassy officials in his conversations. The ambassador's personal guard was his best friend. In addition, he arranged his shady business with the embassy liaison officer and the consul.

During one of the conversations, Mama Leather promised to sell a girl to V. if he managed to block her deportation procedure to Nigeria thanks to the embassy's intervention, by not sending the deportation documents. In one conversation, Mama Leather asked V.:"A girl has been intercepted and will be repatriated to Nigeria. Can you arrange for this girl not to be deported?" His answer was clear: "Yes, I can block the procedure. Do you know how many deportations of girls I've already blocked?"

Mama Leather then offered: "I'll sell her to you. She isn't expensive. She's on her way. It's 5,000 (euros). She's 19-20 years old. She'll be brought over there (to the embassy) on Friday". V. responded positively to her proposal: "Give me the girl's name, I'll ask the consul to block her return. The deportation document won't be issued, the girl will be freed instead". This is how the girl ended up having to work as a prostitute for her new pimp, V.

Mama Leather had to pay embassy staff numerous bribes and complained about it in a discussion with her friend Lo., when the latter was arrested and threatened with deportation to Nigeria. Mama Leather said: "These people (at the embassy) are always asking me for money. I told them I'd already given them enough". Lo. replied: "The boss (....)
(at the embassy) doesn't need to worry. I'll give him more (bribes)". To which Mama Leather emphatically retorted that he should pay for it out of his own pocket: "I said I wouldn't given any more money... I've already spent 5,000 (euros) in one month. That's enough".

1.1.2. | Investigation

a) Start of the investigation

In January 2017, informers informed the federal judicial police (FJP) of Brussels that in the African prostitution community, a well-known Nigerian prostitute, nicknamed Mama Leather, was exploiting about 15 Nigerian girls in prostitution, some of whom were probably minors. An investigation was initiated on the basis of this information.

Two months earlier, one of the child victims had already gone to the local police in Brussels during the night but, owing to language problems and a lack of expertise, she wasn't referred to a specialised centre for victims of human trafficking and she fled to France[158]. It was only several months later that FJP was able to questions her thoroughly in the place she had found refuge and where, according to our information at the beginning of 2020, she was still living.

On the basis of phone taps and international rogatory commissions, the investigation was able to demonstrate that Mama Leather's network was a criminal organisation. It turned out that the network had many contacts and collaborations worldwide, with a large number of victims. The defendants were constantly consulting each other by phone to organise the girls' itineraries and set up prostitution activities. They often changed phone number to make phone tapping more difficult, used coded language and advised radio silence about sensitive subjects during calls.

157 No further action was taken in this case.

158 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-71.

b) *Financial investigation*

Phone taps revealed that criminal proceeds were being invested in real estate in Nigeria. One of Mama Leather's accomplices made some very enlightening statements on this subject: "People who bring girls over from Nigeria to Europe don't build more than four buildings". Mama Leather was also investing, according to her conversations: "I'll send money if you find a piece of land, I'll send money in installments to Nigeria".

The police phone taps also revealed that the defendants were using the services of a cash courier, who was transferring money to Nigeria through the *Black Western Union*[159]. This financial system has nothing to do with the Western Union company. It is based on a system that allows money to be transferred to the country of origin without leaving a trace. The cash courier would travel to Nigeria, on a very regular basis, with the collected cash (hidden in his luggage; probably sums between EUR 25,000 and 35,000). In Nigeria, the cash courier ran a shop/office where the beneficiaries of the funds would come to collect the agreed amount. A 10 % commission was charged on each amount sent.

The federal police's specialised *plukteam*[160], whose objective was to dry up the criminal network as much as possible with the help of a vast financial investigation, calculated the illegal assets of this criminal network. The criminal earnings were estimated at a minimum of EUR 2,931,099.60. The *plukteam* also carried out an investigation into assets based on information provided by financial institutions, the special tax inspectorate and the land registry. It led to the seizure of several of the defendants' properties in Belgium, a large part of which was confiscated[161] by the court.

c) *Social media*

The defendants used social media to organise their criminal activities. At the same time, social media also served as a (search) tool for the judiciary and the victims when giving evidence.

The defendants used social media to recruit their victims. This is what transpired from the phone taps of conversations between Mama Leather and her brother in Nigeria: "I don't need an old lady... First send me their photos on A.'s WhatsApp (her assistant and co-defendant)... I want to see their photos first".

The criminal network had also developed an alternative method of communication via social media to offset the phone taps. The conversations recorded during the phone taps were clear about this: "Everything we say is tapped, so WhatsApp is the only solution. Call me when you're online on WhatsApp".

The police succeeded in identifying a defendant thanks to a search program whereby photos from their database can be compared with those from Facebook profiles. The report describes it in detail. "When we looked on Facebook, we found the profile of X. The man behind this profile appears on several photos linked to this profile. When we compared the man on the photos of the Facebook profile with the man on the photo in the national general database (NGB), it was clear that this was one and the same person. We can therefore be sure that X is (...)".

Victims can forward messages from social media to the police as evidence. Payoke, one of the three specialised centres for victims of human trafficking, informed the police that one of its victims was threatened via Facebook. This victim was a relative of Mama Leather and had discovered that her own aunt had posted her picture on Facebook with the following caption: "This girl has put a large part of her family in jail". Some 200 people were identified in this photo. The day it was posted on Facebook, the victim also received threatening phone calls from Germany.

The same victim shared the Facebook profiles of the members of her family involved in her exploitation. This information was successfully verified by the police and one of them appeared as a defendant at the trial.

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159 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger,* pp. 92-93.

160 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims,* p. 61.

161 Brussels Dutch-speaking Crim. Court, 31 May 2018, 60th ch.; Brussels Court of Appeal, 3 April 2019, 13th ch. (available at www.myria.be); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims,* p. 118.

1.1.3. | Victims

The police managed to detect a total of 57 Nigerian victims as presumed victims of human trafficking[162]. They were found during house searches and were traced through phone taps and information from foreign police forces. According to recorded phone conversations, several girls were still on their way. The police determined the true identity of 38 victims. Several victims had French or Spanish residence permits.

Several victims refused to make statements or provide relevant information for fear of reprisals against themselves or their families in Nigeria. According to the case file, Payoke took care of at least one of the victims within the framework of victim status. Some of the victims were also supported by the organisation Mouvement du Nid in France. For the sake of completeness, it should be added that in Belgium in 2017, a total of 42 new Nigerian victims of sexual exploitation were supported by the specialised centres within the framework of victim status, which is exceptionally high (68 % of new victims of sexual exploitation in 2017)[163]. This was probably linked to the dismantling of a vast criminal network, like Mama Leather's, which also managed the victims of other Nigerian madams.

a) Girls to order, smuggled by the Libyan route

The summary report of the case details how Nigerian victims were recruited and smuggled into Europe. "The girls were actually recruited "to order" by henchmen at the request of the madam in Europe, mainly in the region of Benin-City (Edo State). They were offered a bright future in a Europe that was paradise in their eyes. Before their departure, the girls had to attend a ceremony at a local voodoo shrine[164]. During this ceremony, they had to swear to an oath of silence or face deadly reprisals if they didn't obey their madam. They had to promise to repay their madam an agreed sum of money, that varied between EUR 35,000 and 65,000, before they could go their own way.

During these ceremonies, the girls were stripped of their clothes and had to hand over bodily items (nails, hair, menstrual blood, pubic hair) so that the voodoo priest could cast a spell on them and keep them in the sanctuary".

"After taking this oath, the girls (destined for several madams) were usually transported in groups by Nigerian smugglers (*connectionmen*) via the Nigeria-Niger-Libya desert route, to the Libyan coast. This journey, involving a succession of hardships and mortal dangers, took several weeks. Once they had arrived at the Libyan coast (usually in Tripoli), the girls were housed in ghettos, managed by Nigerians once again. They provided them with board and lodging until a suitable "refugee boat" was found to take them to Italy. If they were rescued by the Italian coastguard and put in a refugee camp in Italy, the girls had to contact their madam or a *connectionman* to confirm their arrival and where they were staying. The madam's henchmen would then take the necessary steps to collect the girls from the various refugee camps and transport them to the madam in their final destination country. Once there, they were almost immediately taken to the local red-light district and had to give their madam the full amount of the prostitution fee initially agreed upon."

The phone taps revealed that the defendants were well aware that people's lives were at risk, of the appalling journey and the complete lack of respect for the victims. Mama Leather's friend, the defendant Lo., told her: "More people die on the way. For instance, E. (defendant) said that this isn't a route (Libyan route) you'd want to take twice. They (the girls) know what they went through there. Anyone who falls in the water is eaten by the fish, or rather the sharks."

The victim who filed a complaint and was granted victim status at Payoke spoke about her departure and her experience on the Libyan route. "On 6 May 2016, early in the morning, D. took my smartphone and gave me a small Nokia phone instead. She also replaced the SIM card. She told me that this phone was to be used to contact her or G. (defendant), later on, when I arrived at the refugee camp in Italy." "I went with several other girls by bus and by car to Abuja and Kano, where we were taken across the border to Niger by an Arab smuggler after a phone call. In Niger, other Arab smugglers took us by truck (Hilus) on the desert road via Agadez (Niger) and Sebha (Libya), then by car to Tripoli."

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162 Myria (formerly Centre for Equal opportunities and Opposition to Racism), *2013 Annual Report Trafficking and smuggling of human beings, Building bridges,* p. 28.

163 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger,* p. 179.

164 *Ibid.,* pp. 66-67.

"We travelled several long days across the desert with neither food nor water. Arab men raped some of the girls, including my friend B. I wasn't raped because I was on my period. They don't touch girls who are on their period. However, they hit me with a blade. I've still got a scar on my right arm". "I stayed in a ghetto in Tripoli for a month, where more than 400 people were living, including Nigerian, Senegalese, and Gambian women. We were regularly beaten. My friend B. found a "boyfriend" to bring us food. I didn't want to because I was a virgin."

"At the end of August 2016, we all had to board inflatable boats for the crossing to Europe. There were 271 of us on my boat. There were women, men and children from different countries. We spent three days at sea. The boat was taking on water. I was sick and I stayed near B. A baby and two pregnant women lost their lives on the boat because we were all squashed together. An Italian rescue boat spotted us after three days. But our boat sank before it reached us. We were all in the water. My friend B. and I knew how to swim, but many people drowned. The rescuers dived in to get us out of the water. Only 70 of us survived."

b) *Forced abortions during the illegal transportations*

Girls who became pregnant on the way, often following a rape or a possible fling (to survive) (see the victim's statement), were forced to have an abortion in Libya before being authorised to cross the Mediterranean to Italy by boat. Mama Leather spoke about it to her brother J., the key person in Nigeria, telling him that "the girl M., who almost drowned and was taken back to Libya, was pregnant". To which her brother replied: "If she (M.) is pregnant, her pregnancy will be terminated as soon as she arrives there (in Libya)". Before adding: "Wasn't the one pregnant too? Didn't we terminate it?"

One of the victims said that one of the defendants, who had picked up the girls from the refugee camps in Italy, had received an additional sum to pay the smuggler in Tripoli to have the pregnant girls forcibly aborted. "He received between EUR 2,000 and 5,000 from the madams for each girl. The price depended on the girl's physical condition, I mean whether she was pregnant or not. If she was pregnant, the madam had to send money to F. (defendant) who, in turn, transferred it to the smuggler K. in Libya. This money was to pay for the abortion to be performed. The girl could only make the crossing once it was done."

c) *Asylum procedure for victims in France*

The victims brought to Mama Leather from Italy were usually taken to an asylum centre in Lille to start an asylum procedure in France, in order to temporarily protect them against the risk of deportation to their country of origin. This strategy was used deliberately by the network, as confirmed by the phone tap following the check and administrative arrest of some of the Nigerian girls. During a conversation, Mama Leather can be heard trying to reassure her assistant A. on this point: "The girls will return soon because they're in possession of *French documents*."

Mister Lyca's role was to bring young girls from an Italian refugee camp to the asylum centre in Lille and to collect their asylum seeker's allowance. The girls received a bank card from the French government when they applied for asylum, so they could benefit from the asylum seeker's allowance, i.e. EUR 320 per month. According to the victim's statements, Mister Lyca kept these bank cards, including the PIN code. When he was arrested in France a few months later, he was found in possession of several bank cards and their corresponding PIN codes, belonging to these asylum seekers.

d) *Violence and threats*

The victim who had filed a complaint within the framework of victim status, stated that she had often been beaten before finally admitting that she began to work as a prostitute after G. (defendant), still active in prostitution, had "initiated" her. "I was still a virgin. When a client arrived, I had to follow them and she told me to observe them. She performed fellatio before going onto the sexual act. I looked away because I felt uneasy and angry. After the man left, G. told me I had to do that. I told her that I couldn't. She then hit me again and returned to her window". "When another client arrived, G. pushed me in the room with him. He got undressed and asked me to do the same. I refused. He spoke to me, insisted, but I continued to refuse. In the end, he left. G. hit me and wanted to throw boiling water on me. However, it only reached my left arm. I still have a scar. The next morning, we returned to G.'s place. She refused to give me anything to eat for two days."

A witness who knew the Nigerian girls emphasised the impact of Mama Leather's threats. "The mother of the young Nigerian girl B. begged me on the phone to bring her daughter back to Mama Leather, "because people are going to kill me if my daughter doesn't come back".

I heard on the phone that the woman was beaten by a third person and shouted at. The same day and the following days, I was called again and again by the same Nigerian number. But I didn't pick up because I didn't want to be involved in Mama Leather's affairs."

Even after her arrest, Mama Leather continued to threaten the victims. She phoned the Nigerian victims active in prostitution in Brussels from prison, and threatened to have their family kidnapped in Nigeria if they said anything against her. Many Nigerian girls were "scared stiff" even though she was in prison. When she phoned, Mama Leather spoke in her mother tongue so the wardens present couldn't understand what she was saying on the phone.

1.1.4. | Victims of human trafficking: unaccompanied minors

Several testimonies mentioned victims who were minors. For example, informants told the police that Mister Lyca had brought three Nigerian girls from Italy and that he had been spotted the same day in the immediate vicinity of the red-light district in Brussels. The appearance of two of these girls clearly suggested they were minors.

Madame B., who also operated in Spain, worked with Mama Leather and had placed underage girls in her windows in Brussels. A 16-year-old girl filed a similar complaint in another Nigerian case. The explanations of said Madame B. about the minors speak volumes. During one phone call, she said: "The little witches (young girls) are already in the window." To which the other one replied: "The girls are no more than 14 years old."

The other madams were able to use the "Yemeshe"[165] system to place their girls, including minors, in the windows at night when the usual girls were sleeping. There were a lot candidates for few places, which made them even more vulnerable. In return for this "favour" from the contractual tenants, most of whom were adult Nigerian victims, the girls had to hand over 50 % of their earnings, which was a win-win situation for both parties, certainly for the madams to whom they had to pay their earnings from prostitution.

Mama Leather was thus able to make extra money off the backs of underage girls from other madams. She was constantly on the look-out for "Yemeshe" girls to make them work for her at night so that she could make the most out of her *windows*.

Many of these underage girls were still virgins and their exploiters made them pretend to be adults. These assertions appear again and again in the victim statements. One of the child victims who had escaped from Mama Leather confirmed this in her statements. She had already received clear instructions in Italy to say she was an adult. It was difficult to detect the victim owing to the lack of knowledge of the local police and the duty magistrate. The local police took her to the Nigerian embassy where certain employees had been corrupted by Mama Leather. The 14-year-old girl then escaped to France where she was given shelter. Her mother was seriously mistreated by order of Mama Leather in a police station in Nigeria, and her brother was killed. Her statements and the acts of violence were widely detailed in a previous annual report[166].

1.2. | Labour exploitation

Horticultural case

The case concerns acts of human trafficking for the purpose of labour exploitation, committed by an intermediary involved in the recruitment of Romanian seasonal workers. They took place between 1 January 2008 and 11 May 2011 in various horticultural businesses. They led to a conviction for human trafficking[167].

165 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 74-75.

166 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 70-73.

167 Myria, *2015 Annual Report Trafficking and smuggling of human beings , Tightening the links*, p. 118; Myria, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 169; Mechelen Crim. Court, 21 January 2015, Antwerp Court of Appeal, 4 February 2016, 14th ch.

1.2.1. | Structure

The defendant was a Romanian businessman who ran three one-man businesses, and was active as a middleman for the recruitment of seasonal Romanian workers in 15 horticultural businesses in the region of Lier, Mechelen and Sint-Katelijne-Waver. The defendant employed a large number of seasonal workers. The organisation operated on a large scale with the recruitment of 100 seasonal workers in 2009, 206 in 2010 and 225 in 2011.

In addition, the defendant provided these Romanian workers with various services for which fees were charged. The services provided were: employment in various companies in the horticultural sector, accommodation in small, insanitary buildings - where many people lived together in "dormitories" -, transport to and from the workshop or warehouse, administrative assistance, help with translations and "reserving" continued employment in return for bribes. The workers came to Belgium expecting to find work to support their families in Romania, but once they arrived, they were charged ridiculous sums for the services rendered. The wages were rarely laid down in a contract.

1.2.2. | Opening the case

During a joint inspection by the social inspectorates and the local police on 10 May 2011, nine workers were found and identified as victims of human trafficking. The police also heard the defendant at the time. During the inspection, the police found that the Romanian workers' identity papers were in the possession of the defendant. This allowed the defendant to keep control of the victims since they simply couldn't escape.

The workers' hearings revealed that they had to pay EUR 200 per month for transport to and from the workshop, even those who travelled there by bicycle. In addition, the defendant demanded money for transport to the warehouse (EUR 100 per month), interpretation and administration (EUR 100 per month). If the workers wanted to come back the following year, they had to pay "bribes" (EUR 140 per month). The victims earned EUR 6.5/7 per hour, paid directly by the employer, the owner of one of the horticultural businesses. After deducting the various payments, the workers were left with only half of their monthly salary, i.e. around EUR 500.

The defendant used the pretext of administrative assistance to put pressure on his compatriots and abused their precarious social situation.

1.2.3. | Judicial investigation

On 3 October 2011, a judicial investigation was initiated, based mainly on observations and the hearings of the victims and the defendant, who denied most of the facts. The observations focused on the defendant and on one of the places where the victims were housed.

The defendant's accounts were frozen and proved to be totally unclear. The accounting figures didn't match the defendant's own statement. In his accounts, EUR 200 were always allocated to rent collection, whereas this amount varied between EUR 100 to 200 in his statements. A financial analysis was carried out to calculate the minimum amount of illegal assets for 2009, 2010 and 2011. The result was EUR 79,900, EUR 165,059 and EUR 145,500 respectively.

The housing where the Romanian workers lived in large numbers was declared unfit by the housing inspectorate. It emerged from the hearings that the workers hadn't signed a rental contract with the defendant, but that they were paying approximately EUR 200 a month per person.

1.2.4. | Victims

The Romanian victims came from the same region as the defendant, which made it easy for the defendant to put pressure on them. They were recruited in the context of personal contacts, through family members and friends of the defendant who were looking for victims in Romania. In Belgium, the defendant was involved in all aspects of the victims' lives, thus making them completely dependent.

Several victims reported being afraid of the defendant. They would have been sent back to Romania if they had told the truth about him. They had been threatened with reprisals against their families in Romania. Some victims stated that they would only tell the truth if they were assured that the defendant would no longer pose a threat. The conditions under which the Romanian workers were working were contrary to human dignity.

During a hearing, one victim first stated that their employer, the owner of the horticultural business where they were employed, had paid them in cash for overtime for undeclared work (EUR 5/hour). The defendant informed the owner of the horticultural business, who was furious. The victim then asked to be questioned again in order to change this statement and suddenly claimed that all the payments had been officially declared. The victim justified this by saying that they didn't want to lose their job and that they wanted to show the defendant that they hadn't said anything about the undeclared work in order to win back their trust. In addition, other victims also repeatedly said that they didn't want a copy made of their contracts and invoices for fear that the defendant would no longer help them and would subsequently fire them.

The police informed the victims of their status before every hearing, but they didn't express the wish to be put in contact with a staff member of a specialised reception centre. None of the victims acquired victim status.

2. Human smuggling

Sechmet case

In this case, a Syrian-Egyptian human smuggling network was smuggling victims from Syria, Eritrea, Sudan, Ethiopia and Afghanistan to the United Kingdom in 2016. The smugglers were mainly active along the E40. The defendants were convicted of smuggling and criminal organisation[168]. Some of the defendants denied any involvement and claimed to be victims themselves, while others admitted that they were indeed active as smugglers to earn large sums of money.

168 East Flanders Crim. Court, Dendermonde division, 3 November 2017, ch. vac.; Ghent Court of Appeal, 17 December 2018, 6th ch. (cf. www.myria.be); Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims,* p. 139; Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 159.

2.1. | Smuggling network

The smuggling network operated from the camps in Calais. The smuggling victims were put on a train to Brussels-North and Brussels-South railway stations, where they were picked up by the smugglers. The latter would then take them to the Wetteren, Drongen, Heverlee or Groot-Bijgaarden parking areas along the E40, where they were loaded at night, and in secret, onto (refrigerated) lorries bound for the United Kingdom.

The police found that this criminal organisation often carried out simultaneous night-time actions in the different parking areas along the E40 and sometimes up to six nights a week, in every parking area. The number of victims per parking area and per night was particularly high. This unusually high frequency of smuggling and the large number of acts of smuggling, characteristic of this group of perpetrators, had never been observed in Belgium before. This is an important conclusion of the summary report, which was reiterated by the court in its judgment.

The smugglers worked on the basis of an obligation to achieve a result, according to which victims could come back to the network after a failed attempt, to make a new one. Once successful, the smugglers were paid in the UK.

Indicative prices for a crossing ranged from GBP 1,000 to GBP 3,000, depending on nationality and the composition of the household. One smuggler said at his hearing: "We were trying to get as high a price as possible. The Sudanese, for example, have less means than the Syrians. These are the indicative prices: GBP 1,200 for Egyptians, GBP 2,000 to 3,000 for Syrians and GBP 1,000 for Sudanese. Very exceptionally, we sometimes granted a slightly lower rate. We never offered our services for free. (...) The price was higher for families: EUR 3,000 or more per person. This is because they never want to be separated." If the money had been guaranteed in Belgium, it was in euros, and in Great Britain, it was in pounds sterling (see below).

a) Structure of the smuggling network

The smuggling network was a professional organisation whose composition and leaders would change. Every defendant had a specific role in the system, as a recruiter, collecting the

guarantee, head of the parking area, enforcer, escort or driver, with the common goal of earning as much money as possible. At Brussels-South station, unlicenced taxi drivers also had to transport clients in "black taxis". All the defendants had made human smuggling a habitual activity and their livelihood. Some of the defendants had already been active in this domain for several years. It even emerged that some had been active in France.

There were four network managers: two parking area managers, a coordinator for international transport routes and one to collect the guarantee.

b) *Smuggling leaders / parking area managers*

Two smuggling leaders managed the motorway parking areas as their criminal territory and regarded them as their property, which they had to protect by force. If other smugglers wanted to use them, they had to pay rent or were chased away. This was also the case for anyone wanting to illegally cross the border, who was attempting to board a lorry by themselves.

These smuggling leaders already had a lot of experience in this field and had previously been active in France. Like some of the other leaders, they were appointed by other smugglers. They also used the Drongen parking area as a training facility for new smugglers.

During his hearing, one smuggler explained the instructions he received when some Algerians wanted to use one of the parking areas for smuggling activities without their authorisation: "There were six of these Algerians. They tried to seize the parking area. What I mean is, they wanted to use it for their human smuggling activities. They were armed with knives and sticks. I waited for help from (...) among others. Not everyone was at the parking area yet. It wasn't that late. The clients present also had to help us push back these Algerians. We all grabbed sticks and went for those Algerians as a group. They ran off and they never returned to the parking area."

During his hearing, (S.) one of the network managers, who had threatened victims who were suffocating in a refrigerated lorry (see below), initially presented himself as a victim: "I'm originally from Syria, I fled the war. I left Syria to come here. First I went to France, where I tried to get to England several times. I'd heard from friend that it was easier to get to England from Belgium.

I lived on the street in Brussels for almost four months. Since then, I've been trying to leave every day but I haven't succeeded yet. (...) I've got nothing to do with the human smuggling. I'm a victim. I tried to get to England, like the other victims. The others are also victims. I had contact with smugglers. By phone. The agreed places were Brussels-North railway station or a park not far from there." (Also see below concerning the recruiters). During a later hearing, he admitted: "It's true. I've decided to make a confession. I'm aware of the evidence in your possession. I'm aware of (co-defendant X's) statement in particular. I don't want to lie anymore."

c) *Leader of smuggling / transportation routes*

Another smuggling leader, who also claimed to be a victim during the hearing, dealt with the transportation of clients from Europe and North Africa to the camps in Calais. This involved maintaining international contacts with other smuggling networks and picking up clients in Spain, Germany and Italy, where he was regularly located and conducted his operations. He also stayed at a camp in Calais and Maximilian Park for a while.

During his hearing, he was confronted about his conversation concerning smuggling human beings from Egypt to Italy. "X. (his contact person) is my best friend in Egypt. He lived in Greece with me. I prefer not to say anything else. You say that this conversation is about developing human smuggling activities between Egypt and Italy. I'd rather not say anything about this." The police then played him the recording of the conversation: "M. (the smuggling leader) said, 'Call these people, so they come to talk to you to arrange everything. Maybe the people could still leave this week'." X. asks: "Where to? Italy or Greece?" M. answers: "Italy." M. asks X to make sure that everything is okay and wants to be kept informed. X. says that everything will be all right. M. says: "And the money? Ask the people to guarantee their funds. You have to know where the money is, because you're responsible for it." X. says: "They don't know anyone in Italy except for you." "You're going to take them and drive them to the place where they're staying. None of them leave there until they've paid." M. says: "You know where they're arriving." X. says: "They're arriving in the south." M. explains that Italy isn't like Greece. M. explains that these people will probably be taken by the Red Cross as soon as they arrive. They will be put in a camp where they will have to prove that they are Syrian. M. therefore considers that it is important that these people acquire some knowledge of Syria, so they can pass as real Syrians.

d) The smuggling leader / guarantee collector

The smuggling prices were determined by the guarantee collector in Brussels, who owned a restaurant located behind Brussels-North railway station. The people recruited in Maximilian Park for smuggling were sent to the restaurant. The guarantee collector received and kept the money paid by these people. He paid the smugglers their share once the crossing had succeeded.

Based on the phone taps, the police found that the guarantee collector in Brussels played a major role in the smuggling organisation. His restaurant served as a meeting place for the smuggling leaders and for the smugglers and their clients. He also dealt with the lawyers in case of legal problems. According to one defendant's statement, he recruited the smugglers and also paid Belgian and Egyptian lorry drivers to obtain guaranteed transportation with the obligation to achieve a result, for a price varying between EUR 5,000 and 8,000 per client.

The smuggling organisation also worked with a guarantee collector in France and one in the UK. The brother-in-law of smuggling leader M. was, for example, the guarantee collector in the United Kingdom. According to the system, the guarantee collector, i.e. the middleman, keeps the client's money and pays the smuggler once the illegal transfer has succeeded.

e) Recruiters

The recruiters were active in the camps in Calais, at Brussels-North station and Maximilian Park in Brussels.

During his hearing, a smuggler stated that: "The operations centre is located in the Calais jungle. If you have money and you want to go to England, you just have to go to the jungle. That's where you'll find us. There were women, children and whole families with babies. (...) I confirm that I recruited people in the camp. (...) A. is a Syrian who stayed in the camp. He regularly sent clients to be smuggled to England. I know A. from the 'jungle'."

A driver from the smuggling network confirmed this for Brussels: "I know that the smugglers also had recruiters in the area surround Brussels-North station. These recruiters looked for clients there who wanted to be smuggled to England. I was witness to this."

According to his statement, one of the smugglers who recruited clients, stayed in Maximilian Park for several months: "There's a park close to Brussels-North where I often sleep. I don't sleep there alone. People bring us things to eat and drink. I've been sleeping there for 5 to 6 months. I don't always sleep in the same place."

During the hearing, he denied the charges against him: "I tried to get to the United Kingdom myself, and I helped people who wanted to do the same. I put them in contact with smugglers who could help them. My goal wasn't to make money from smuggling human beings. I confirm that I had meetings with the smugglers G., Y., A., S. and H."

During the trial, his lawyer subsequently requested a recharacterisation of the acts of smuggling of human beings under Article 77 of the Alien's Act (aiding illegal immigration). However, according to the court, it clearly appeared that "the defendant was involved in the human smuggling system and was making money out of it. The phone investigation revealed that he was active or involved on no less than 47 nights in 771 acts of human smuggling, including 13 times at the Wetteren parking area and 34 times at the Groot-Bijgaarden parking area. He was also identified as a smuggler by several other defendants." Based on the calculations of the financial investigation, this smuggler made a personal financial profit of more than EUR 200,000.

Some of the other defendants with executive functions were former smuggling clients. A recruiter from Maximilian Park explained this at his hearing: "I was a client before I became a smuggler because I needed money. I'm aware there is evidence. So I admit that I quickly moved onto the role of smuggler. My initial goal was to reach the United Kingdom. However, I didn't succeed, I found myself without any money. So I slept at Brussels-North station. When it wasn't raining, I also slept in the park near the station. Hence, a lot of people got to know me, people who wanted to enter the United Kingdom illegally. That's how I gradually became a smuggler. I did it for the money. Money I need to live on. I slowly became addicted to the money I made." According to the court, he was involved in 63 acts of human smuggling and, based on the calculations of the financial investigation, had made a personal financial profit of almost EUR 200,000.

2.2. | Investigation

a) Opening the investigation

On 21 July 2016, the East Flanders traffic police detected human smuggling activities at the E40 parking area in Wetteren, in the direction of Ostend. That same night, the police received a call from a lorry driver who was located on the paying part of the parking area. The police found three victims of human smuggling in the trailer. A few days earlier, the police had received notifications from lorry drivers about the same parking area that people were attempting to slip into their lorries. On the basis of this information, the federal judicial police concluded that a group of perpetrators were using this parking area to smuggle people to the United Kingdom. Based on this evidence, the police analysed the base station traffic around this parking area. A few suspicious numbers were revealed. This discovery led to a phone investigation, various observations of the suspects and a criminal investigation into human smuggling.

b) Financial investigation

According to the investigators, the smugglers made a profit of at least EUR 594,000, although probably a multiple of this figure. The calculation was based on various parameters. For the Groot-Bijgaarden, Wetteren, Drongen and Heverlee/Leuven parking areas, the police analysed the minimum number of nights during which the smugglers were active at the parking areas and the minimum number of victims per night and per parking area. The result indicated at least 1,994 acts of human smuggling for the group of perpetrators, multiplied by the lowest amount paid for the smuggling.

c) Social networks

The defendants used social media to organise their criminal activities. It was also a (investigative) tool for the judiciary and the victims when they testified.

One of the smuggling leaders used WhatsApp to manage the human smuggling activities. A smuggling leader had contacted an expert to subcontract the production of fake or falsified travel documents. This expert used photos of look-alikes for travel documents and sent them via WhatsApp. This is what emerged from a recorded conversation: "110 (expert) explains that he will also look through the identity photos he has. He asks whether he should transfer the photos of the documents he has. 143 (smuggling leader) says that he agrees: "send". The same day, several other conversations are recorded which reveal that 110 (expert) sent messages via WhatsApp to 143 (smuggling leader)."

The smugglers were aware of the fact that the police could listen to them so they used social media as a counter-strategy against the police and judicial investigations, in order to better protect their human smuggling activities. The smuggling leaders gave clear instructions to communicate via social media instead of by phone. They gave preference to Viber or WhatsApp, which can't be tapped. This is what emerged from a conversation in which X. explained that he didn't have Viber on his new phone and that Y. should use WhatsApp instead. The smugglers also took into account the investigations that the judicial authorities could carry out on smartphones. For instance, they received the following instruction from a smuggling leader: "The photos you've got on your phone, from G. and A., you have to delete them. And if A. has photos on his phone, he has to delete them." Y. replied OK and explained to someone next to him: "Ask A. to delete the photos on his phone."

The police and the judicial authorities examined the messages on the smugglers' social media to collect evidence. In the Viber and WhatsApp messages, a defendant asked for EUR 6,000 to smuggle two people.

One victim stated having met a smuggler through Facebook, without having met them before. The smuggler insisted that they delete this message so that the police couldn't ever find it on their smartphone, which they didn't actually do. The police asked the victim for their written consent to carry out a network search[169] in the cloud so they could read the conversation, which they accepted. The suspect had a Facebook profile under the name (...). The interpreter confirmed the victim's account and that the user of the Facebook profile was asking for EUR 3,000 to smuggle the person to the United Kingdom. The police found that the photo of the user of the Facebook account looked very similar to the arrested smuggler (...).

169 Myria, *2017 Annual Report Trafficking and smuggling of human beings, , Online*, p. 57.

2.3. | Victims

The police were able to determine the identity of 495 victims. Among them were many minors and women with children, as well as a large group of young men from Syria, Sudan, Eritrea and Egypt. Victims traced in France through phone tapping weren't taken into account. The police had already come across most of the identified victims three times, during previous interceptions associated with human smuggling. Ninety-two of them had already been intercepted four times, or even more.

Clients who had made agreements with a smuggler then belonged to that person and weren't allowed to have contact with any other smugglers. One smuggling leader made this clear in his hearing: "I confirm that I said during a conversation that clients couldn't speak to another smuggler, as I would find out about it and I would tell that smuggler to leave it."

a) Violence towards the victims

The investigation revealed that it was common to threaten the victims and their families in the countries of origin: both regarding their actions in the parking areas and when they didn't pay or not enough. The smugglers didn't limit themselves to threats but also used violence.

One of the smuggling leaders admitted during their hearing that they had hit a victim on the head with a spanner. He spoke about it in a recorded conversation: "It doesn't matter who it is, whether they're Egyptian or Sudanese, if anyone makes a mistake in the parking area they have to pay for it. There's a discussion or they get punished." But that's not all: "If I see them again, I'll behead them." He confirmed in his hearing that he had added the following: "I hit him because I was frustrated."

Clients can't go to a parking area by themselves to hide in a lorry. The same smuggling leader admitted to the police that he had threatened these people: "I'm here talking to a client of smuggling leader S. who is already in the parking area. He says that there are already two clients in the parking area. I confirm that I told the client that S. would come and take care of them. Within the context of the conversation, "taking care of them" should be understood as the use of violence. When S. arrived, these people ran away because they understood what was going to happen to them. I witnessed it.

b) Threats in a life-threatening situation in a refrigerated lorry

The smugglers used life-threatening refrigerated lorries. Certain conversations were recorded, which revealed that the victims were at risk of death. During his hearing, the smuggling leader concerned confirmed that the victims had warned him that they were dying and that he had threatened them: "I confirm that I forced them to stay in this refrigerated lorry. It's correct that I threatened them. I regret it now. We regularly used refrigerated lorries. These lorries were good because there weren't checked so often. They don't go through the scanner and it's also much more difficult for the sniffer dogs. I acknowledge that afterwards, there were sometimes problems with a lack of oxygen in these lorries."

Regarding this incident, another smuggler stated that he had found out afterwards that "the smuggling had almost ended badly: they had almost died. They were found in the port of Bruges."

It was possible to trace the conversations about this incident thanks to the phone taps. They speak for themselves. A smuggling leader (S.) made a phone call to a victim in the refrigerated lorry that was in the vicinity of Saint-Josse-ten-Noode (Brussels). To illustrate the smugglers' complete disregard for human life, this conversation is given in full.

"A man can be heard in the background. He's speaking English on another phone. The man can be heard saying, "We are in the trucks. We are in one truck". Throughout the conversation, we can also hear loud banging inside the refrigerated lorry. S. asks, "Who called the police?" 492 (victim in the refrigerated lorry) says, "The fair-haired Syrian". S. asks 492 to pass the phone to the man who is warning the authorities. S. gets angry and shouts, "Pass me that bastard!" Another man comes to the phone. S. says, "Are you the one who's talking to the police?" The victim replies, "They all told me I had to call". S. shouts and swears, "Which bastard told you you had to call the police? Who? Bastard!" The victims replies, "They were cold and they were crying". S. shouts, "Who was cold? Bastard! Bastard! Do you think I spend EUR 1,000 a day just so that you can stop the lorry?" The victim talks to the people next to them in the lorry and explains, "It's not my fault". He picks up the call again and says, "Everyone is asking me to call the police. Everyone!" S. asks, "Who's everyone? Who?" The victim repeats, "Everyone" and begs, "Come and open the door, we're dying! Open the lorry door".

The victim talks to the people next to him and tells them, "Talk to him. This man's crazy. Talk to him, we're dying". S. reacts, "Make sure they don't make any noise. You inside, don't call the police and stay in the lorry. Anyone who stops the lorry will have me to deal with. I swear, I'll get them! I swear I'll tie them up and beat them to death". The victims replies, "Ok". Someone is heard saying in the background, "People are dying". S. repeats, "Tell them what I said. If the lorry stops, they day will get difficult for you. I swear, I'll take all your money. I'll tie you up until you give me all your money. The cooling system has been activated and you're not going to die. You're not going to die. It will just be cold, that's all". In the meantimes, Banging can be heard in the lorry. S. shouts, "Why is there noise?! Get them and hit them. Hit them". S. asks 492 (victim) to give the phone to the person who is making a noise. S. asks, "Why are you making a noise?" The victim answers, "Open the lorry. We're dying". S. shouts, "What, dying?! You escaped the bombs in Syria you know". The victim starts to beg him but is interrupted by the smuggling leader. S. says, "Do not stop the lorry and do not make any noise. Stay where you are until you reach your destination". The victim answers, "What?! No, I don't want to. I don't want to. Take what I gave you and let me out. Do what you want, I'm ready for anything. Please let me out. We're dying. People are dying". Another man comes to the phone and says to S., "What's your problem? Are you nuts or what? Open the lorry, open it!" People are talking in the background in the lorry. One of them says, "He wants to kill us". Another man begs for the door to be opened. S. hears that the man has asked for the door to be opened and says, "Hit the bastard! Tie him up! Tie him up so that he doesn't make any noise. You're going to be ok". S. then says, "I asked him again beforehand if he was frightened, and he answered no. I asked him if he was frightened of getting in the lorry and he said no". S. says, "Tell this man: if you make any noise, I'm taking GBP 10,000 off you". S. swears at this man for a moment. End of the conversation".

c) *A victim's statement and offer of victim status*

The 25-year-old Syrian victim (a man), who had made statements after another smuggling-related interception and had given permission for his Facebook account to be examined, was offered victim status but wasn't interested in being put in contact with a specialised centre for victims. He also wanted to get to the United Kingdom as quickly as possible, where his family was living.

An audiovisual recording was made of the victim's hearing, during which the victim stated using Facebook to arrange to meet smuggler B. at Brussels-North station, where he contacted him by Messenger. After waiting for two hours, the smuggler came to fetch him and he had to wait outside with a group of men. They were mainly Syrians from the same region as the victim. After a while, the smuggler took the train in the direction of Ghent with the group. They got off at the wrong station and had to walk for about an hour to the parking area, where someone was coming to get them. On the way, a second smuggler joined the group. Based on photo recognition, the victim identified the two smugglers and through a two-way mirror, he confirmed the role of another arrested smuggler.

During his audiovisual hearing, the victim explained the method of payment: "My brother lives in England and there, he got in contact one of B.'s (smuggler) middlemen. I think this person received EUR 50 for their work. My brother was supposed to pay EUR 3,000 upon my arrival in England. My brother had to pay B.'s middleman this sum who, in turn, had to send it to smuggler B. after deducting a commission of EUR 50. My brother got in touch with B.'s middleman because I gave him his number. It was B. who gave me the number of his contact in England via Facebook. B.'s middleman in England is called (...)."

d) *Minors*

One smuggler stated that their clients included women, children and entire families. The police managed to identify 93 child victims. It wasn't possible to determine from the case file exactly how many unaccompanied foreign minors were involved. The youngest victim of a smuggled family was a 19-month-old baby from Eritrea, who was travelling with its mother. Families were usually intercepted several times. The majority of the smuggling victims were foreign unaccompanied minors. Based on Myria's analysis of the case, the numbers were estimated at about 50 Syrians, approximately 15 Sudanese, a dozen or so Eritreans and about a dozen Afghans. The majority were 17 years old but there were also several Syrians aged 14 and 15 who were intercepted several times by the police. For instance, a 16-year-old Syrian was intercepted no less than 14 times.

Chapter 3
Case law overview 2019 - start 2020

1. Trends

What were the main trends in case law in 2019 and at the start of 2020 in cases concerning the trafficking and smuggling of human beings? In this report, the overview is based on cases in which Myria filed a civil suit, on decisions it received from the victim reception centres and on those provided by prosecutors. Myria also presents two decisions of the European Court of Human Rights, including one from the Grand Chamber.

Myria was informed of 58 decisions rendered by the judicial authorities. Following, is a presentation of the most interesting ones, i.e. 42 relating to 41 cases[170] in the country's various jurisdictions[171]:

- 13 decisions (including 4 appeal decisions) relating to 12 cases concern **acts of sexual exploitation**. They were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division and Court of Appeal), Brussels (French-speaking and Dutch-speaking), and Ghent (East Flanders (Oudennaarde) and Court of Appeal). Besides a decision of the French-speaking Criminal Court of Brussels, the 12 other decisions were rendered in the Dutch-speaking part of the country or by the Dutch-speaking courts of Brussels.

Regarding sexual exploitation, as in recent years, there have been a large number of decisions concerning Nigerian networks. Most of these cases were judged in Antwerp. Several decisions relate to young women from Eastern Europe recruited through the *loverboy* technique. One case deals with the forced marriage of a Somalian minor, where the judges convicted her husband for human trafficking, among other things. Lastly, a customary marriage also led to the exploitation of an Albanian victim in prostitution.

- 19 decisions (9 rendered in a court of appeal) concerning **labour exploitation cases** in various sectors. They are presented per sector of activity (construction, hotel and catering industry, retail trade, car washes, poultry farming, bakeries, second-hand clothes sorting, domestic work, football). Decisions were also rendered in atypical sectors: lumber industry and newspaper delivery. One decision concerns acts committed within a religious congregation. These decisions were rendered in the jurisdiction of the following courts of appeal: Antwerp (Court of Appeal), Brussels (Brussels French-speaking and Dutch-speaking, Walloon Brabant and Court of Appeal), Ghent (East Flanders (Ghent) and Court of Appeal), Liège (Namur (Namur division) and Court of Appeal) and Mons (Court of Appeal).

Regarding **labour exploitation,** it appears that in order to conclude that working conditions are contrary to human dignity - which is an element of human traffiking - courts have to consider several elements: working conditions and environment (excessive working hours, very low wages, no rest days), bad housing conditions, wage deductions under various pretexts, dependence on the employer. In many cases, the court lends considerable weight to workers' statements, as long as they are accurate, consistent and supported by other objective elements. Unfortunately, the reasonable time for trial was exceeded on several occasions. One court of appeal even had to rule that the acts were time-barred.

170 Several cases were already decided at first instance and discussed in previous reports.
171 These decisions will also be published on Myria's website: www.myria.be.

- One decision concerns the **exploitation of begging**. Rendered in Brussels in a case judged in absentia, it involves a young woman who exploited her nephew, a minor.
- One decision concerns **forced crime**. Rendered in Antwerp, it refers to the exploitation of a Belgian victim by a family.
- 8 decisions concern **cases of human smuggling**. They were rendered in the jurisdiction of the courts of appeal of Brussels (Dutch-speaking Brussels), Ghent (East Flanders (Ghent, Dendermonde) and Court of Appeal) and Antwerp (Antwerp division).

Regarding **human smuggling**, the organisations are often well structured and even criminal. In several cases, migrants who wish to be smuggled actively participate in the smuggling in order to pay for their passage to the United Kingdom. Courts consider this as an indirect financial advantage, one of the essential elements of human smuggling.

2. Human trafficking

2.1. | Judgments of the European Court of Human Rights

2.1.1. | European Court of Human Rights, judgment of the Grand Chamber, S.M. v. Croatia case, 25 June 2020

In this case, the Grand Chamber of the European Court of Human Rights ruled that there had been a violation of Article 4 of the European Convention on Human Rights, which prohibits slavery and forced labour[172].

The applicant, Ms. S.M., is a Croatian national born in 1990 who resides in Croatia. In September 2012, she lodged a criminal complaint alleging that a man, a former police officer, had forced her into prostitution for several months in mid-2011. He had first contacted her via Facebook, presenting himself as a friend of her parents and promising to help her find a job. He allegedly took her to clients to perform sexual services and forced her to give him half of her earnings. He apparently threatened to punish her if she didn't comply with his demands.

At the end of 2012, the man was charged and the applicant was officially recognised as a victim of human trafficking. In 2013, following an investigation, the man was tried for forcing the applicant into prostitution, but was acquitted. The courts found the applicant's testimony to be inconsistent and unreliable. They concluded that there was insufficient evidence to support a conviction and that the applicant had provided sexual services of her own free will.

The public prosecutor's office appealed against the decision, but the appeal was rejected in January 2014. The same year, the applicant filed a constitutional appeal, which was declared inadmissible.

Referring in particular to Article 4 of the European Convention on Human Rights, the applicant claimed that the authorities had failed to provide an adequate procedural response to her allegations.

In its Chamber judgment of 19 July 2018, the European Court of Human Rights found that there had indeed been a violation of Article 4 of the Convention. On 3 December 2018, the panel of the Grand Chamber accepted the Croatian government's request to refer the case to the Grand Chamber.

The Court took the opportunity to clarify its case law on trafficking in human beings for the purpose of the exploitation of prostitution. It reiterated that trafficking in human beings falls within the scope of Article 4 of the Convention. However, according to Article 4 of the Convention, for an act or situation to qualify as trafficking in human beings, the three elements of the international definition (action, means and purpose) must be present. The definition in international law must therefore be used as a basis for deciding whether Article 4 of the Convention can be applied to the particular circumstances of a case.

172 ECHR, Grand Chamber judgment SM. v. Croatia, 25 June 2020, application no. 60561/14. The Grand Chamber judgment definitively closes this case. The judgment is available at: https://hudoc.echr.coe.int. A first Chamber judgment was rendered on 19 July 2018: see Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 114-115.

In addition, the Court states that "forced or compulsory labour", within the meaning of Article 4 of the Convention, is intended to provide protection against cases of serious exploitation, such as cases of forced prostitution, irrespective of whether or not, in the particular circumstances of the case, they have occurred in the specific context of trafficking in human beings.

The Croatian government argued that the case didn't fall under the scope of human trafficking, as the person concerned had not, for example, been subjected to threats, use of force or other forms of coercion, which would fall within the notion of "means" as envisaged in the international definition.

The Court disagreed and rejected the government's argument on the applicability of Article 4 of the Convention. The man had indeed contacted the applicant via Facebook, a channel often used by traffickers to recruit their victims. He had allegedly promised to get her a job. He also found accommodation for her to provide paid sexual services, thus evoking one of the "acts" that constitute trafficking. In addition, the personal situation of the applicant (a child in care from the age of 10) suggests that she belonged to a vulnerable category, while the position of the alleged perpetrator (a former police officer) suggests that he was in a position to dominate her and abuse her vulnerability.

The Court therefore considered that the applicant had presented an arguable complaint of treatment contrary to Article 4. In addition, there was prima facie evidence to indicate that she had been subjected to such treatment, namely trafficking in human beings and/or forced labour.

The Court considered that this situation placed the domestic authorities under an obligation, in accordance with the Convention, to investigate the applicant's allegations. This implies initiating and carrying out an investigation to establish the facts, identify and - where appropriate - punish those responsible. However, the prosecuting authorities (the police and the competent public prosecutor's office) neglected certain obvious leads in their investigation, such as looking into the exchanges between the applicant and the man on Facebook, or hearing all possible witnesses. On the contrary, they relied to a large extent on the applicant's statements. The judicial proceedings therefore took the form of a confrontation between the applicant's words and those of the alleged perpetrator of the acts.

In conclusion, the Court considered that these shortcomings in the handling of the case had fundamentally undermined the domestic authorities' ability to determine the true nature of the relationship between the applicant and the alleged perpetrator and whether the latter had genuinely exploited the applicant. Consequently, there had been a breach of the state's procedural obligation under Article 4 of the Convention.

The Court awarded the applicant EUR 5,000 for non-pecuniary damage.

2.1.2. | European Court of Human Rights, judgment T.I. and others v. Greece, 18 July 2019

The European Court of Human Rights also ruled that there was a violation of Article 4 of the European Convention on Human Rights in another case of human trafficking for the purpose of sexual exploitation involving three Russian nationals[173].

The three applicants arrived in Greece in 2003 after obtaining visas through the Greek Consulate-General in Moscow. According to them, employees of the consulate were allegedly bribed by Russian traffickers and issued visas to enter Greece for the purpose of sexual exploitation. All three were recognised as "victims of human trafficking" and the authorities initiated two criminal proceedings against those suspected of exploiting them. Proceedings concerning the issuing of the visas were also initiated. Some of the presumed perpetrators were convicted and others acquitted. In particular, criminal proceedings were initiated against several persons, including three consulate employees, for human trafficking.

Referring in particular to Article 4 (prohibition of slavery and forced labour), the applicants alleged a failure by Greece to fulfil its obligations to criminalise and prosecute acts of trafficking in human beings. They also complained about the inadequacy and shortcomings of the investigation and the judicial proceedings, which were particularly lengthy.

The Court ruled that there had been a violation of Article 4 of the Convention, holding that the legal framework of the proceedings had proved ineffective and insufficient to punish the traffickers and to ensure the effective prevention of trafficking in human beings. In particular, the Court noted that the competent authorities hadn't dealt with the case with

173 ECHR, judgment T.I. and others v. Greece, 18 July 2019, application no. 40311/10. The judgment is final and available at: https://hudoc.echr.coe.int

due diligence and that the applicants hadn't been involved in the investigation to the extent required by the procedural aspect of Article 4. The criminal proceedings had in fact lasted more than seven years regarding one of the applicants. Two other applicants had been subjected to nine years of criminal proceedings concerning two accused persons. Moreover, the proceedings were still suspended 15 years after the accusation of a third person. The Court therefore considered that the two applicants hadn't benefited from an effective investigation and that there had been a violation of the procedural aspect of Article 4.

Similarly, as regards the effectiveness of the proceedings concerning the issuing of visas, the Court considered that an effective investigation should have been carried out to determine whether the competent authorities had carried out a rigorous check of the applicants' files before issuing the visas. However, this was not the case owing to certain shortcomings.

The Court ordered Greece to pay each of the applicants EUR 15,000 for non-pecuniary damage.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

As in previous case law overviews, there are several decisions concerning Nigerian networks that exploited minors, among others.

Child victims

A case involving a Nigerian network, discussed in the 2019 report[174], was re-examined by the Antwerp Court of Appeal. In a judgment of **14 November 2018, Antwerp Criminal Court** had examined the case involving a branch of a Nigerian prostitution network active in Antwerp[175]. Six people were prosecuted but several of them failed to appear. Some of them were staying in Italy.

One of the victims was a minor. Brought from Nigeria to Belgium when she was only 16 years old, the victim made several statements. She had been approached by one of the defendants to go to Europe to attend school. She travelled from Benin City to Libya, via Niger, before taking a boat to Europe. She and other passengers were rescued from the Mediterranean Sea by an Italian ship. Four other girls on the same ship drowned. In Italy, one of the defendants was waiting for her and told her that she had to repay a debt of EUR 35,000 for her journey to Europe. She had also had to undergo a voodoo ritual. Another defendant drove her from Italy to Antwerp, Belgium. She was taken to the flat of one of the defendants, which she shared with another young girl who was in the same situation. She had to hand over the money she earned from prostitution to her landlady, one of the defendants, to pay off her debt. In addition, she was charged EUR 25 a month for food and drinks. In her statements to the police, she mentioned another victim, the girl with whom she shared the flat. The latter was found and made similar statements.

Initially, the two girls were threatened repeatedly because they didn't earn enough, and then because they refused to continue handing over their money. Their family in Nigeria was also threatened.

The defendants were sentenced, some in absentia, to prison terms ranging from two to six years together with fines ranging from EUR 6,000 to 15,000. They were deprived of their rights for five years and funds were confiscated. At the hearing, their immediate arrest was ordered. One victim had filed a civil suit. She received non-pecuniary and pecuniary damages of more than EUR 13,000. She was awarded the confiscated amount.

Two defendants and the public prosecutor's office appealed. In its **judgment of 3 October 2019**, **Antwerp Court of Appeal** acquitted one of the defendants[176], namely, the person who had sublet a room to the two girls after being contacted by a friend. According to the court, it was possible that, at the beginning of the tenancy, this person was unaware of the girls' activities and that they were victims. This defendant was acquitted because there was still some doubt as to whether their intention was conscious and deliberate. Moreover, they didn't make an abnormal profit.

For the other defendant, the charges were upheld. It appears from the case file that he collected payments from the victims, was present when the victims were threatened and also made threats himself. It was clear to the court that he was part

174 See Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 117-118.

175 Anwerp Crim. Court, Antwerp division, 14 November 2018, ch. AC10 (available at: www.myria.be (case law)).

176 Antwerp, 3 October 2019, ch. C6.

of an association of human traffickers, together with his partner and family members, who had remained in Italy. His six-year prison sentence was confirmed, as well as the fine of EUR 15,000. Compensation of the victim amounting to EUR 13,280 was also confirmed.

Another case of smuggling and trafficking of human beings for the purpose of sexual exploitation led to a decision rendered by **Antwerp Criminal Court on 20 November 2019**[177]. Six defendants appeared in this case. Two victims filed civil suits.

The investigation began following a message sent to the police by a French NGO that was supporting a victim.

Both victims were recruited in Nigeria by the mother of the main defendant. They had to pay EUR 25,000 and EUR 20,000 respectively for their journey to Europe. Before leaving, they had to undergo a voodoo ritual. The first victim was barely 17 years old when she began her journey. They left Nigeria in mid-2016 for Niger and Libya, from where they crossed the Mediterranean by boat. One of the victims was picked up in Italy by a man, the second defendant, and immediately put to work as a prostitute in order to pay off her debt. After a few months, he decided to send her to Belgium. Once there, she was lodged in a house in the Antwerp region. It was there that she saw the second victim again. She worked in the Antwerp flat and in various other places in Belgium. In Brussels she worked in a window, for which she had to pay rent. She had to hand over her earnings to the first defendant and the second defendant, who were sister and brother.

At a certain point, she was sent to France to apply for asylum and receive a monthly allowance of EUR 350, all of which she had to hand over. When she was thrown out of the flat by the first defendant, she was lodged with acquaintances of the defendants in France. It was there that she came into contact with the NGO. In Nigeria, her family was repeatedly threatened by the second defendant. He demanded a monthly reimbursement of EUR 1,000. The story of the second victim is fairly similar. During the investigation, the victims were approached by one of the defendants to make false statements.

One of the defendants was a prostitute, who rented her window to the first victim. Another defendant made their lodgings available to them.

The investigation was carried out on the basis of an analysis of a dating site, a phone investigation, transmitting antennas, a house search, a bank investigation, the formal recognition of the victims and the defendants' implausible statements.

The court found that the facts were proven. The defendants were part of a network that lured Nigerian girls to Belgium and forced them into prostitution. Each defendant made a crucial contribution, to varying degrees, to the development of human trafficking. The court also found that the dangerous smuggling of girls from Nigeria had been proven.

The main defendants were sentenced to five and four years in prison and fined EUR 16,000. The other defendants were sentenced to prison terms of 20 to 40 months and fines of EUR 16,000.

Several sums of money were confiscated. The civil parties received EUR 21,679 and EUR 8,500 respectively in compensation (pecuniary and non-pecuniary).

Collaboration with Greece

Antwerp Criminal Court ruled in a **judgment of 30 March 2020**[178] on a case in which a defendant was prosecuted for human trafficking for the purpose of sexual exploitation. The acts date from mid-2015 until the beginning of 2016. In 2013, the victim came into contact with smugglers in Nigeria who could take her to Europe. For this, she would have to repay EUR 52,000 over six months. Before her departure, she had to undergo a voodoo ritual. She flew to Turkey with her own passport. Smugglers then transported her by boat to Greece. At the beginning of February 2015, she was taken off the boat by the Greek coastguard and ended up in a reception camp. There she was picked up by the defendant and her boyfriend. She lived in their flat in Athens and had to work the streets at EUR 10 per client to pay off her debt. As repayment was taking too long, she was advised to go to Belgium where she could earn more. She was regularly threatened via the voodoo ritual.

In Belgium, she lived on the outskirts of Antwerp with an acquaintance of the defendant. She had to transfer the money she earned to a bank account opened in Greece in the name of her "madam's" friend.

177 Antwerp Crim. Court, Antwerp division, 20 Nov. 2019, ch. AC10 (appeal).

178 Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1876 (appeal).

She was forced to do this as they threatened to kidnap her children in Nigeria if she didn't comply.

During the investigation, a request for mutual legal assistance was sent to Greece in order to obtain more information about the defendant and the persons with whom she lived. A bank investigation also confirmed the transfers to the Greek bank account. A Belgian friend of the victim was also questioned. He proved that he had made several payments for his friend, the victim, to her family in Nigeria and to her "madam" in Greece.

During the investigation, the victim's sister in Nigeria, with whom the victim's children were living, was threathened to repay the debt. If she defaulted, something bad would happen to the children. A retroactive phone investigation was carried out and information was also obtained from an examination of the defendant's mobile phone, as well as from discussions on Facebook and Badoo.

The court found the victim's statements to be consistent, detailed and credible, and that they could be objectified using a number of elements from the criminal case file. Furthermore, the defendant provided no plausible explanation as to the presence of the victim at her side and the reasons for providing her with board and lodging when there were no ties of friendship or family. The defendant was assisted by several people, but the investigation was unable to identify them. The defendant was sentenced to three years in prison with a five-year suspension, and a fine of EUR 6,000. The court took into account her clean criminal record and the time that had elapsed since the acts.

Victim's changing statements

In a **judgment of 26 June 2019**[179], **Antwerp Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation and human smuggling in which two defendants were prosecuted. The acts took place between June 2017 and February 2018.

The victim was arrested during a police check following their response to an advert on a dating site. The victim stated that she was forced into prostitution.

She had been approached in Nigeria by a woman who could help her find work in Europe with her sister who lived there. The victim had incurred a debt of EUR 25,000 for this journey, which she then had to repay. During a voodoo ritual, she had to promise that she would pay back the money and not say anything to the police. She travelled from Nigeria to Libya, where she stayed in a camp for a while, before taking a boat to Italy. The boat was intercepted and she found herself in a camp again. She later went to France to stay with a friend of the first defendant. After a few weeks, she was taken to Belgium. She lived in the Antwerp region and had to prostitute herself there to pay off her debt. The first defendant took photos of the victim and posted them on a dating website. The victim was given a mobile phone so that clients could contact her. She also had to prostitute herself at a private address, in a bar in Germany and in the street in Strasbourg. She lived with the defendants in a small room, for which she had to pay EUR 450 as well as EUR 50 for groceries. Initially, the second defendant, the boyfriend of the first defendant, was unaware of the victim's activities and her dependence on his girlfriend. Afterwards, the victim also had to give him money.

The investigation was based on the hearings of the victim, the defendants, the owner of the bar in Germany, and the friend in France. The victim changed her statements several times. It later turned out that she and her family in Nigeria had been threatened by the first defendant. A phone investigation was carried out and online chats were analysed. The dating site was also investigated. During a search, some sort of accounting system was discovered.

The court found the first defendant guilty on the basis of the evidence in the criminal case file. Regarding the second defendant, the court considered that the evidence in the criminal case file was insufficient to find him guilty of human smuggling. On the other hand, he was charged with human trafficking. Although he was not informed about these activities at the beginning, there was sufficient evidence indicating that he was indeed aware of them after a certain time.

The first defendant was sentenced to four years in prison and handed a fine of EUR 8,000. The second defendant was sentenced to two years in prison and handed a fine of EUR 8,000.

One victim and Payoke filed a civil suit. The victim received one symbolic euro as compensation and Payoke received non-pecuniary and pecuniary compensation of EUR 2,500.

179 Antwerp Crim. Court, Antwerp division, 26 June 2019, ch. AC10, no. 2019/3379 (final).

Victim previously held in a detention centre

In a **judgment of 14 June 2019**[180], **Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation. One defendant was prosecuted for acts of human trafficking committed between 2015 and 2016 involving at least four victims, for the exploitation of debauchery and prostitution, for belonging to a criminal organisation and for illegal residence. One victim was arrested during a police check because of her prostitution activities and placed in a detention centre. She was then identified as a victim of human trafficking and sheltered by Payoke, where she made statements.

The defendant would bring several young girls over from Nigeria to Europe via Libya to prostitute themselves in Italy and Belgium. She provided them with board and lodging and exerted control of them, for instance, by making them take a voodoo oath and making them promise to repay a debt of EUR 30,000 to 40,000. She also threatened the victims and their families in Nigeria. According to the court, the defendant was part of a criminal organisation. The investigation involved victim statements, phone investigations and access to other criminal case files which revealed that she was possibly linked to other gangs involved in smuggling young girls from Nigeria. She was also possibly associated with the "Mama Leather" gang[181].

The defendant was sentenced in absentia to four years in prison and a fine of EUR 60,000.

2.2.2. | Chinese private prostitution

Ghent Court of Appeal reviewed a case of human trafficking for the purpose of sexual exploitation of Chinese women in a **judgment of 10 April 2019**[182]. This case had previously been judged by **Bruges Criminal Court on 17 May 2017** and discussed in a previous report[183]. In this case, a Chinese defendant and a Belgian defendant were prosecuted for human trafficking for the exploitation of prostitution. Charges of attempted rape, indecent assault and false imprisonment, as well as social criminal law were also brought against them. The victims were all Chinese nationals. One victim filed a civil suit.

The Chinese defendant appealed against the decision.

The acts took place in different flats on the coast, where Chinese girls were prostituting themselves. Clients were put in contact with private escort girls through adverts on the internet. At a first hearing, all four victims denied the prostitution activities. During a subsequent search of the defendant's home, the victims' Chinese passports were found. One month after the first hearings, PAG-ASA contacted the local police by phone on behalf of one of the victims to report attempted rape, false imprisonment and indecent assault. At the second hearing, the victim stated that when she was in China, she had been put in contact with a person who could bring her to Europe to work in massage parlours. This had cost her EUR 10,000 and the person in question threatened to kill her if she didn't pay. Once in Belgium, she was forced to prostitute herself. If she refused, the defendants would lash out at her. Her passport was taken from her. The investigation revealed that the first defendant also offered women in Dubai.

The court found both defendants guilty of the offence of human trafficking for the purpose of sexual exploitation of Chinese girls. The court acquitted the two defendants of attempted rape, indecent assault and false imprisonment in view of the lack of objective evidence supporting the victim's statements. The first defendant was sentenced to three years in prison and given a suspended fine of 4 x EUR 6,000. The second defendant was sentenced to 18 months in prison and given a fine of 4 x EUR 6,000, both of which were suspended. The court confiscated several pieces of evidence and also ordered a confiscation of EUR 6,487.50.

The victim, who filed a civil suit, received EUR 10,000 for pecuniary and non-pecuniary damages.

The Court of Appeal confirmed the defendant's guilt for the charges of human trafficking for the purpose of exploitation of prostitution, running a brothel

180 Brussels Dutch-speaking Crim. Court, 14 June 2019, 23rd ch. (in absentia).
181 On this subject, see this report, Part 2, Chapter 2, point 1.1.
182 Ghent, 10 April 2019, 8th ch.
183 East Flanders Crim. Court, Bruges division, 17 May 2017, 17th ch. See Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger,* p. 132.

and social law breaches. The acquittals for attempted rape, indecent assault and false imprisonment were upheld. However, the prison term was reduced to a two-year suspended sentence. The fine of 4 x EUR 6,000 was maintained, but partly suspended. A confiscation order for EUR 7,000 was also pronounced.

The court recalculated the damages for the civil party, reducing them to EUR 2,500 for pecuniary damages and EUR 500 for non-pecuniary damages. It awarded part of the confiscated sums to the plaintiff for pecuniary damages.

2.2.3. | Thai prostitution network

In a **judgment of 8 November 2019**, **Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking involving Thai women[184].

Two defendants, a couple, were prosecuted for human trafficking for the exploitation of prostitution, the exploitation of debauchery or prostitution, being a member (the second one, male) or leader (the first one, female) of a criminal organisation, and money laundering. The acts took place between 2007 and 2016 and involved several victims. The defendants were prosecuted for both the acts committed in Belgium and Thailand (Articles 10 *ter* and 12 of the Preliminary Title of the Code of Criminal Procedure).

The case was opened when the federal judicial police of Brussels was informed of the existence of a young Thai girl who was allegedly recruited in a bar close to Brussels-North railway station by a Thai man who usually lived in Thailand. The police found the girl and launched an investigation during which it questioned prostitutes in the neighbourhood above all. Several young Thai girls were thus identified, as well as the first defendant. The latter was allegedly in contact with the girls and had put a window at their disposal by negotiating with the other prostitutes in the neighbourhood. The girls had to hand the money over to her (EUR 100 a day).

The investigation was conducted by means of a tax investigation into the taxable income of the defendant. The (professional) income of the defendant turned out to be minimal. However, an investigation of Western Union and the banks revealed that she had transferred large sums of money abroad. In addition, observations were conducted, Facebook profiles were examined, a phone investigation was carried out, other prostitutes in the neighbourhood were interviewed and the various young Thai girls were questioned. This is how the second defendant also came into the picture. The defendants' phones were tapped and five young Thai girls were found thanks to a search of their home. Mobile phones and a computer were also seized.

The young women stated that they had travelled from Thailand to Belgium with the help of a middleman or through the first defendant. The defendants picked them up at the airport in Belgium. They had been warned that they were going to work in prostitution. According to one of the victims, it was common knowledge in the region where she was from that the first defendant organised such activities. They had to repay a debt to the defendants, ranging from EUR 12,500 to 30,000, to cover the costs of travel, visa, stay, etc. The "stay" costs amounted to EUR 7,000 per six-month period. The young women thought they had a genuine residence permit but in reality, it was just a letter from the lawyer who had applied for regularisation. Every six months, this letter was replaced by another one. The young women were instructed to present this letter if there was a check. In addition, they also had to pay the first defendant EUR 600 for board and lodging, and they had to pay several hundred euros a day to use the windows at Brussels-North railway station. Several young women also stated that to pay for their journey, they had taken out a loan from someone in Thailand at an interest rate of 3 to 5 % per month, often with a family title deed as a guarantee. They mentioned several other intermediaries in Thailand, probably from the first defendant's entourage. Some of the young women were distraught at the hearings because they didn't know how they would repay these debts now, and would therefore have problems. The analysis of the first defendant's mobile phone revealed that she was in contact with several people in Thailand about the arrival, the plane tickets and the papers of the young Thai girls, the payment of the young girls' debts, the transfer of large sums of money to Thailand, the tasks which she had entrusted the young Thai girls with in Belgium and contacts with other prostitutes concerning the available windows at Brussels-North railway station. The bank investigation showed that the first defendant had transferred large sums of money to Thailand for the young girls.

184 Brussels Dutch-speaking Crim. Court, 8 November 2019, 23rd ch.

A search was also carried out at the home of a third person with whom the defendant often had phone contact about the young women. The person was heard. They turned out to be a Thai/French interpreter and an intermediary between the defendants and the lawyer who had sorted out the Thai girls' residence papers.

The lawyer, who was also heard, had her home searched as well. The defendants also turned out to be addicted to gambling and regularly visited the casino. The management and staff at the casino were also questioned.

Information was requested from Thailand about several people who had repeatedly appeared in the investigation and to whom the young women had been referred. These people were identified. One of them was a man who played a major role in this Thai network and had been the subject of an arrest warrant in the past for illegally employing people abroad. However, the Thai authorities were unwilling to comply with the request to question these persons.

Several young women were supported by Payoke and benefited from the status of victims of human trafficking.

The court considered that there was indeed criminal organisation. The criminal case file revealed that it was an internationally organised association which, over a long period of time, brought young Thai girls over to Belgium to exploit them in prostitution. Their journey was well prepared and organised. They were taken care of and accompanied as soon as they arrived. The organisation's mastermind used intermediaries. The international context, the frequency of the activities, the large number of victims, the cooperation between the different people involved in the network, the mutual consultation and the clear distribution of roles within the network, are all evidence that demonstrate the existence of a well-established criminal organisation. The court considered that it could be inferred from the criminal case that the defendant clearly played a leading role in the organisation.

The court also accepted the charge of human trafficking for the purpose of sexual exploitation against the first defendant. She brought the girls over from Thailand, housed them and made them work in prostitution. Aggravating circumstances were also considered to be proven.

For the charge of exploitation of debauchery and prostitution, the court found that the evidence in the criminal case file was insufficient to establish that the first defendant profited from the employment of the young girls in prostitution. The girls did indeed have to pay the first defendant their debts associated with their visa, in particular, the lawyer's fees. However, in the criminal case file, it is only mentioned once that the girls had to pay EUR 100 a month to the first defendant. There was no further investigation into this matter and no-one else was questioned about it. As a result, the court was unable to determine whether or not the defendants had exploited the victims. The first defendant was also found guilty of money laundering.

The court considered that there was insufficient objective evidence in the criminal case to conclude that the second defendant was aware of the specific activities of the young women and his girlfriend, the first defendant. Owing to the language barrier, he often didn't understand what was going on. His ignorance of the girls' prostitution was questionable, but he didn't know that they had to repay their debts. According to the court, he was a naive man who allowed himself to be blinded by his feelings. He was given the benefit of the doubt.

The conviction takes into account the fact that the reasonable time limit was exceeded.

The first defendant was sentenced to 36 months in prison and a fine of EUR 80,000, both partly suspended. A sum of approximately EUR 160,000 was confiscated. The second defendant was acquitted of all charges.

2.2.4. | Loverboy technique

Several cases concerning the trafficking of young women from Eastern Europe, recruited through the '*loverboy*' method, were tried in Brussels and Antwerp.

The first case, tried by **Brussels Criminal Court** on **28 June 2019**, concerns the trafficking of young Albanian women[185].

Seven Albanian defendants were prosecuted for human trafficking for the purpose of sexual exploitation with aggravating circumstances regarding seven young Albanian women, for forgery and use of false passports, and for criminal association. One defendant was absent.

185 Brussels French-speaking Crim. Court, 28 June 2019, 47th ch. (appeal).

The first six were also prosecuted for the recruitment and exploitation of the prostitution of these young women.

The young women, who prostituted themselves in windows, all came from the same Albanian town or from nearby villages. The main defendants were siblings from the same town, where a neighbourhood is named after them and where the family is said to have a strong influence.

The money earned through prostitution was brought back to Albania in cash so as not to leave any traces of transfers through agencies or banks.

The court convicted the defendants for all of the alleged offences. It considered that human trafficking was established: the defendants recruited their victims using the "loverboy" technique; they participated in their transportation from Albania to Belgium, took care of them upon their arrival and provided them with accommodation. The victims were constantly monitored and their earnings were used to maintain the defendants and/or to pay off their debts (real or supposed).

The court accepted the aggravating circumstances of abuse of the victims' vulnerable situation owing to their precarious financial, social and family situation, as well as habitual activity and participation in an association. The investigation was able to demonstrate the links between the defendants, the organisation set up to transport the victims, their collaboration in monitoring them and housing them.

In addition, the defendants had set up a system to obtain forged documents through a particular forger enabling the victims to reside in Belgium.

The six main defendants were sentenced to five years in prison and fined EUR 84,000. The defendant who failed to appear was sentenced to four years in prison and fined EUR 42,000.

A confiscation of sums of money, i.e. assets derived directly from the offences, was pronounced against two of the defendants.

Myria, who filed a civil suit, received the final sum of EUR 2,500.

Two other cases were tried in Antwerp.

Antwerp Court of Appeal re-tried a case of trafficking for the purpose of sexual exploitation of young Romanian women, previously examined by **Antwerp Criminal Court on 7 November 2018**[186].

In this case, five defendants were prosecuted for human trafficking with the aggravating circumstances of leading and participating in a criminal organisation.

The main defendant brought young women, often from financially precarious backgrounds, from Romania to Belgium with promises of a large income. Once in Belgium, the young women had to work in prostitution through a dating site. They worked as escorts or in windows. They often had to prostitute themselves without a condom. He took a large part of their income. To achieve his goal, he used the *loverboy* technique. He kept the victims under his control thanks to a clever mix of love and anxiety. He could suddenly become aggressive and dominant. The young women spoke only Romanian, which also made them dependent on the defendants. Two of them became pregnant by the main defendant.

The money he made by exploiting the young women was sent to Romania, where he was building a house. He also squandered part of it on gambling.

He was assisted by friends and acquaintances. His regular girlfriend, also brought to Belgium as a victim, watched over the girls and collected the money as well. Other acquaintances from Romania came to Belgium with their spouse; the wives were forced into prostitution, while the men offered their services to the main defendant as drivers or supervisors of the young women. The friends and their spouses had to pay the main defendant some sort of protection premium, as well as the rent.

The defendant resided in Belgium, Romania and the United Kingdom, where he also had links with the prostitution industry. His friends replaced him when he went abroad.

The investigation was carried out on the basis of findings, the data provided by the adverts on the website, a phone investigation, phone tapping, a financial investigation, hearings of victims and defendants, and house searches. The court found the 5 defendants guilty. The main defendant was considered the mastermind of a criminal organisation.

186 Antwerp Criminal Court, 7 november 2018, AC10 ch. (unpublished)

The main defendant was sentenced to seven years in prison and fined EUR 144,000. His girlfriend was sentenced to four years in prison and fined EUR 40,000. The other defendants were sentenced to four and two years in prison and fined EUR 32,000.

The house in Romania was confiscated, as well as several other properties. According to the court, it was clear that the house had been built with criminal earnings.

Several defendants and the public prosecutor's office appealed against this decision.

The main defendant and his girlfriend argued that their right to privacy and family life had been violated. They claimed to be in a polygamous relationship and that they lived in a sort of community with other girls who knew and helped each other in daily life. The court didn't accept this version. According to the case file, there was sufficient evidence to show that he was exploiting and controlling the girls. He had set up an international network of people to channel the money from prostitution activities from Belgium to Romania without anyone noticing, in order to build a luxury villa there. His girlfriend, the second defendant, also knowingly participated in the activities of the criminal organisation.

In its **judgment of 25 April 2019**, **Antwerp Court of Appeal** confirmed the defendants' guilt[187]. The defendants were only acquitted of the exploitation of the main defendant's sister-in-law owing to insufficient evidence.

The main defendant's prison sentence was increased to eight years instead of seven. The fine was reduced to EUR 120,000. The prison sentences of the two other defendants, his girlfriend and his half-brother were confirmed, but half of the sentence was suspended.

The court also confirmed the confiscation of the villa in Romania.

The second case, judged by **Antwerp Criminal Court on 10 March 2020**, concerns young Bulgarian women[188].

In this case, two defendants, who formed a couple, were prosecuted for human trafficking for the purpose of sexual exploitation.

The investigation was opened after a victim, a prostitute working in the red-light district (Schipperskwartier) in Antwerp, filed a complaint against her pimp and the woman who had recruited her.

She stated that two years earlier, the second defendant had persuaded her to leave Bulgaria and come to Belgium to work as a prostitute. Once in Belgium, she first had to pay for her travel costs, then hand over half of her earnings and, in the end, all of her income.

On the basis of WhatsApp and Facebook messages, the investigators deduced that in the beginning, there was some sort of romantic involvement between the victim and the first defendant. The latter used the *loverboy* technique. The discussions then took on a more threatening tone. She had to prostitute herself in Antwerp, Amsterdam and Brussels. The defendants also managed to find her a window. Every two months, the defendant came back to Belgium from Bulgaria to collect the money.

Several witnesses, including several young women working in prostitution, confirmed the victim's statements. Another young woman who allegedly worked for the defendant was mentioned. She was threatened, mistreated and eventually fled to Spain.

According to information from the Bulgarian police, the defendant wasn't really known there. He had no income over there. However, it was established that he had been seen, in the past, in the company of prostitutes during border controls. According to the investigators, this indicated that he had been employing young Bulgarian girls for quite some time. An investigation into his assets in Bulgaria showed that he owned a house, partly registered in the victim's name. In addition, it seemed that each time he was arrested in connection with the case, he ensured that all the assets were put in the name of the second defendant and other members of her family.

The victim and her mother in Bulgaria received death threats. Police forces also observed this in the course of the investigation. She was threatened with an acid attack if she didn't retract her complaint.

The court found that the facts were proven, also with regard to the second defendant. She had also played an active role in the recruitment and exploitation of the victim.

187 Antwerp, 25 April 2019, ch. C6.
188 Antwerp Crim. Court, Antwerp division, 10 March 2020, ch. AC10 (appeal).

The court sentenced the first defendant to four years in prison and a fine of EUR 8,000. His girlfriend, the second defendant, was sentenced to 30 months in prison and fined EUR 8,000. Their properties were confiscated.

2.2.5. | Forced and customary marriages

In these two cases of human trafficking, one concerns the forced marriage of a minor and the other a customary marriage.

Oudenaarde Criminal Court and Ghent Court of Appeal accepted the charge of human trafficking in a case of early and forced marriage of a minor.

In this case, a Somali defendant was prosecuted for the rape of a minor aged approximately 14 to 16 years with aggravating circumstances; human trafficking for the purpose of exploitation of prostitution or other forms of sexual exploitation with aggravating circumstances; assault and battery with aggravating circumstances; inhumane treatment with aggravating circumstances; forgery and the use of forgeries; false imprisonment.

He was accused of forcing his wife, a minor, to have sexual relations. The girl's date of birth on her identity documents, as well as the Somali marriage certificate were forged.

The girl filed a civil suit through her guardian.

The case began when the girl called the police in July 2018. They found her on the balcony of the flat where she lived with her partner, the defendant. She stated that she had to marry against her will in 2016, at the age of 15, by phone. She arrived in Belgium from Somalia in 2017. Her mother supposedly arranged for her to be given a passport with a false date of birth. Her husband allegedly forced her to have sex and she wasn't allowed to leave the flat.

An age test revealed that the girl was about 14.5 years old, give or take two years. A visa application for family reunification with her husband had been made in 2016 (on the basis of a religious marriage that supposedly took place in 2011).

She was heard several times, including audiovisually. She had been circumcised in Somalia at the age of seven (type 3 circumcision, involving narrowing of the vaginal orifice), which made sexual contact with her husband very painful. Apparently, her husband refused to take her to the doctor to have her vaginal orifice enlarged. Since her husband's arrest, she and her family had been threatened. Her husband reportedly arranged for her to come to Belgium via Uganda with the help of a smuggler. The papers were supposedly sorted out in Uganda. She went to school part-time.

The defendant was also heard. He stated that he had married the girl in Somalia in 2011, but that the marriage certificate was only issued in 2016, because he wanted to bring her to Belgium. He paid his mother-in-law EUR 1,500 for the marriage and paid all the travel costs. According to him, his wife was well and truly an adult. He denied forcing her to have sex.

In a **judgment of 30 August 2019**, **Oudenaarde Criminal Court** considered several charges to be established[189]. For the forgeries, the court found that the Somali documents had been drawn up in 2016, i.e. when the defendant was already in Belgium. They were necessary in order to bring the girl to Belgium, who was presented as being his adult fiancée. It was established that the date of birth and the name on the Somali identity certificate, the Somali birth certificate, the date of marriage and the name on the marriage certificate, as well as the name on the Belgian residence permit were forged.

Rape was also established: the marriage didn't take place in 2011 but in 2016, when the defendant was already in Belgium. The first sexual relations took place in 2017, after the girl's arrival in Belgium. The girl didn't consent to this. She had never seen her partner before. The court based its decision on repeated statements by the victim, by neighbours who regularly heard shouting and the statements of the defendant who considered that sexual relations were a conjugal duty.

As regards human trafficking, the defendant actively contributed to the girl's arrival in Belgium, presumably for a (forced) marriage, by paying the related costs. He took her in and sexually exploited her himself. The court reiterated that in this respect, the law doesn't require any particular form of exploitation. Given the fact she was a minor, isolated and dependent, she was therefore in a precarious social situation.

189 East Flanders Crim. Court, Oudenaarde division, 30 August 2019, ch. vac.

It also accepted the charge of inhuman treatment, but acquitted the defendant of the charges of intentional assault and battery and false imprisonment.

The court sentenced the defendant to eight years in prison and he was stripped of his rights. It also ordered him to pay the plaintiff EUR 5,000 in non-pecuniary damages.

In a **judgment of 28 February 2020**, **Ghent Court of Appeal**[190] confirmed the convictions and acquittals handed down at first instance. However, it rectified the judgment on one point: the first judges had no jurisdiction and therefore wrongly convicted the defendant of the charge of rape of a minor over 16 years old (as the victim was considered to be under 16 years old), for which the pre-trial chamber had decided that there were no grounds for prosecution.

The court increased the sentence to 12 years in prison.

In another case, **Antwerp Criminal Court** ruled in absentia in a **judgment of 12 November 2019**[191] on a case in which a defendant was prosecuted for acts of human trafficking for the purpose of the sexual exploitation of a victim. The case only came to light in 2017, but the acts date back to 2015-2016. The victim, a divorcee and mother of a daughter, had been pressured by her parents to enter into an unofficial marriage according to Albanian custom. Her partner, the defendant, had been recommended to her by friends as a rich man living in Germany. Once the marriage had been contracted, he took her to Italy. Once there, he forced her into street prostitution. He had threatened to go after her younger sister if she didn't cooperate. She charged EUR 20 to 30 per client and had to give all her earnings to the defendant. He monitored her with a friend. If she didn't earn enough, she was beaten. The defendant took drugs, was unpredictable and could suddenly become very aggressive. The couple then went to Germany. There, the victim had to work in a large brothel. She had to rent a room for EUR 140 where she had to spend the night. She earned EUR 20 to 30 per 20 minutes. She had to hand over all the money. During this period, she became pregnant. The couple went to Belgium because it was cheaper to have an abortion there. The victim had to go back to work a week after the abortion, despite the pain, this time in a club in Belgium. She lived in a flat with another woman who worked for the defendant. After having been forced to work even though she was constantly bleeding, she managed to flee to her parents' home in Albania. Her parents didn't dare tell anyone she had been forced to work in prostitution. When the defendant discovered she was in Albania, the victim fled to a friend in the Netherlands, then to Sweden where she applied for asylum. Her application was rejected and she ended up coming back to Belgium via Denmark.

The court found the defendant guilty. The case contained sufficient objective evidence to corroborate the credible statements made by the victim. The defendant was sentenced in absentia to four years in prison and fined EUR 6,000. An amount of EUR 13,300 was confiscated. This amount corresponds to the remuneration of a sex worker over a certain period of time, at a rate of approximately EUR 140 per day, six days a week.

2.3. | Labour exploitation

2.3.1. | Construction

The courts of appeal of Brussels, Liège and Ghent re-tried certain human trafficking cases in this sector, discussed in previous reports.

In a judgment of November 2016[192], the **French-speaking Criminal Court of Brussels** accepted the charge of human trafficking and various social criminal law charges concerning a French defendant of Malian origin, who exploited Tunisian workers in his building renovation company. These workers were employed at various building sites for very low wages (EUR 800 for four months of work), and housed in unfit conditions.

The defendant contested all of the charges against him on appeal. In its **judgment of 6 May 2019**[193], **Brussels Court of Appeal** considered there was little truth to the defendant's denials. Like the first prosecutor, it confirmed the similarities between the workers' statements concerning the defendant's description, their recruitment and, for three of them, their unfit accommodation in a building owned by the defendant.

190 Ghent, 28 February 2020, 10th ch.

191 Antwerp Crim. Court, Antwerp division, 12 November 2019, Ch. AC10 (in absentia).

192 Brussels French-speaking Crim. Court, 24 November 2016, 59th ch. See *Myria, 2017 Annual Report Trafficking and Smuggling of Human Beings, Online*, pp. 114 and www.myria.be (case law).

193 Brussels, 6 May 2019, 11th ch.

The court confirmed the convictions handed down at first instance. It thus considered that the similar and detailed statements made by the workers, corroborated by various pieces of material evidence in the case file, made it possible to conclude with certainty that the defendant took advantage of the precarious residence status of three of these workers to hire them in conditions contrary to human dignity.

The court confirmed the sentences pronounced at first instance, although the prison sentence was only partly and not fully suspended. It confirmed the civil sentences overall.

Another case, tried in Liège, concerned two Belgian defendants of Romanian origin, a brother and sister, prosecuted for human trafficking for the purpose of labour exploitation and for various criminal social law offences. They were accused of making two Romanian workers (a couple) work in conditions contrary to human dignity, for which they filed a civil suit (abnormally low pay, insanitary housing, abnormally long working hours, dependence of the workers on external aid for food, lack of medical care in the event of an accident at work). They had to carry out renovation work, mainly in a building in Huy, owned by the defendant.

In a **decision of 2 October 2017**, **Liège Criminal Court**[194] acquitted the male defendant of all charges against him. However, the female defendant was convicted for all the charges against her.

The case began following a phone call from neighbours complaining about the work being carried out by a Romanian couple who lived in appalling conditions in a building in Huy. The local police went to the premises and met the female worker. Both Romanian workers were heard and described their working conditions.

In a **judgment of 23 January 2020**, **Liège Court of Appeal** confirmed the conviction of the female defendant for all the charges brought against her, in particular, human trafficking[195]. In a detailed statement of reasons, it considered that the essential elements of the offence were established, especially with respect to the following elements: renovation work for derisory wages (approximately EUR 111 per month, seven days a week, with hours sometimes exceeding 12 hours a day, extremely precarious housing conditions on site, dependence on the female defendant for food).

The court also accepted the aggravating circumstances of abuse of a vulnerable situation, coercion (the defendant kept the identity papers of the victims, who were also dependent on them for means of subsistence such as food) and habitual activity.

The court of appeal confirmed the acquittal of the other defendant for the charge of human trafficking. Like the criminal court, it considered that there were shortcomings in the criminal case file concerning the defendant as regards the situation of the civil parties. On the other hand, it accepted the social criminal law charges for one of the civil parties: the male defendant had gone to Romania to pick up the worker in order to carry out work, which did indeed take place at the defendant's home.

The court confirmed the 12-month suspended sentence for the female defendant, but added a EUR 3,000 suspended fine. It also confirmed the confiscation of the building and the confiscation of assets of the equivalent value of almost EUR 24,000, awarded to the civil parties.

The male defendant was sentenced to a suspended fine of EUR 6,000 and the confiscation of assets of the equivalent value of EUR 6,030.32.

The court confirmed the non-pecuniary damages of EUR 1,250 awarded to the civil parties. It also sentenced the female defendant to pay each one of them the final sum of EUR 15,000 euros for the economic damage.

In a **judgment of 24 April 2019**[196], **Ghent Court of Appeal** examined a case of labour exploitation in which **Bruges Criminal Court** had rendered a judgment on **21 March 2018**[197]**.** In this case, a defendant of Belgian nationality was prosecuted for trafficking for the purpose of the exploitation of labour of a Ghanaian victim and for a social criminal law offence regarding three victims.

The police had been called by a man who was deeply distressed and asking for help. He spoke very bad English and said that someone wanted to kill him. The investigators rapidly traced the case back to the defendant's real estate agency. The victim confirmed

194 Liège Crim. Court, Liège division, 2 October 2017, 18th ch. (available at www.myria.be); see Myria, *2018 Annual Report Trafficking and smuggling in human beings, Minors in major danger*, pp. 137-138.

195 Liège, 23 January 2020, 6th ch.

196 Ghent, 24 April 2019, 3th ch.

197 East Flanders Crim. Court, Bruges division, 21 March 2018, 17th ch. See Myria, *2018 Annual Report Trafficking and smuggling of human beings,* p. 138-139 and www.myria.be (case law).

that he worked in the construction industry for the defendant. He received board and lodging in exchanged for his services (cleaning, painting, etc.). He had been made to hand over his papers to the defendant and had no residence permit. This defendant was linked to a real estate company, which had been under investigation for quite a while. Owing to suspicions of human trafficking, the public prosecutor's office had been informed and the victim was transferred to PAG-ASA.

The investigation was based on the reading of the victim's mobile phone, the hearings of several witnesses and house searches.

The court found the defendant guilty and sentenced him to 30 months in prison and a fine of EUR 6,000. The victim was awarded EUR 7,500 in non-pecuniary damages. The defendant appealed against this decision.

The court of appeal decided that the point of the judgment concerning the charge of human trafficking should be rejected because neither the public prosecutor nor the judge had correctionalised the offence. Consequently, the court had to re-try these charges.

The court found that the victim had to work in circumstances contrary to human dignity. Due to the precarious nature of his residence and social situation, he had no choice but to comply with the situation imposed by the defendant. He received no pay for his work, only board and lodging. The victim's papers were also confiscated by the defendant for a period of time. The defendant promised help, support and papers in exchange for work.

The court found the defendant guilty of both charges. He was sentenced to one year in prison and a fine of EUR 6,000, both partly suspended. The victim was awarded EUR 2,500 in non-pecuniary damages.

Lastly, in a **judgment of 7 March 2019**[198], **Brussels Dutch-speaking Criminal Court** ruled on a case in which two Iranian defendants appeared for human trafficking for the purpose of exploitation of labour in the construction sector, among other things. They were also prosecuted for the illegal employment of foreign workers, failing to make a Dimona declaration, and non-payment of wages.

Several persons were recruited for building sites in variuous municipalities of Brussels.

The acts go back to the period 2012 to 2015. The victims, of Iranian nationality, had to work and live on a building site for several weeks. They were paid very low wages, sometimes only EUR 500 a month for long days of 10 to 14 hours, six days a week. One victim reported that he wasn't paid when he was ill. The defendants still owed him his wages. Another victim reported having worked on three building sites. He worked long days of more than 10 hours for a miserable wage. He slept at the building sites on the ground, on a blanket, in inhuman conditions, with no sanitary facilities. When the victims knocked on the door of one of the defendants to receive their wages, they were sent to the other one and vice versa.

The second defendant was the founder, while the first defendant was a partner in a construction company. The first defendant worked as a foreman on the various building sites. The second defendant claimed that the first defendant was employing illegally staying workers without his knowledge. The first defendant stated that the second defendant knew about it and paid the wages. The victims knew the defendants from the Iranian community. They weren't residing legally in Belgium and were therefore in a vulnerable position. They were promised work and wages again and again, making them dependent on the defendants.

The court found that the facts were established. The victims' statements were consistent. Moreover, the company had no other employees, so the work on the building sites had to be carried out by the victims. In addition, an inspection in 2015 revealed another illegally employed foreign worker.

Owing to the proven acts of human trafficking with aggravating circumstances, the other charges were also accepted.

However, the court found that the reasonable time limit had been exceeded. In the course of the investigation, there was a period of three years during which no investigative action was taken without justification. An effective prison sentence was therefore considered disproportionate.

The defendants were given a one-year suspended prison sentence and a fine of EUR 60,000.

One victim was assisted by PAG-ASA and filed a civil suit. He obtained EUR 8,681.73 in pecuniary damages and EUR 1,000 in non-pecuniary damages.

[198] Brussels Dutch-speaking criminal court, 7 march 2019, 25th ch. (appeal).

2.3.2. | Hotel and catering industry

Two cases in the hotel and catering industry sector, discussed in previous reports, were reviewed on appeal in Liège and Ghent respectively.

In the case reviewed in Liège, a Belgian defendant of Indian origin was prosecuted for human trafficking for the purpose of labour exploitation regarding three Indian nationals whom he allegedly exploited in his restaurant. These workers filed a civil suit. One of them, the son of one of the workers, was a minor (16 years old) at the time of part of the acts. The defendant was also prosecuted for human smuggling and various social criminal law offences (notably, non-payment of wages, failure to declare the work to the NSSO, no accident insurance). He was also prosecuted, alongside another defendant, for aiding illegal residence (he housed eight Indian nationals).

The restaurant was subject to three successive inspections by the social inspectorate (one in 2012 and the other two in 2015). During the first inspection, two people fled, clearly as instructed by the defendant. They were two of the three workers who filed a civil suit, and who were also present in the kitchen during the subsequent checks. They were the uncles of the main defendant. The third worker (a minor at the time of the first inspection) served the customers. The families of two of the workers (including the minor) lived in the basement of the restaurant.

At first instance, in a **judgment of 22 November 2017**, **Namur Criminal Court** considered all the charges established[199].

The main defendant and the public prosecutor lodged an appeal.

In a **judgment of 13 February 2020, Liège Court of Appeal** confirmed the judgment at first instance overall[200]. The court found that the essential elements of human trafficking were all present, and that the defendant had indeed recruited, harboured and received his uncles and their families to exploit them in his restaurant. The exploitation was confirmed by the detailed and consistent statements of the civil parties and their relatives, as well as by the investigators' findings. Violation of human dignity was established on the grounds of the wages (EUR 500 per worker per month), the working hours which could be up to 67 hours a week, the undeclared work done by illegally staying persons without a work permit, extremely difficult living conditions (totally unsuitable accommodation for a family in the restaurant's basement), complete dependence on the defendant (the victims passports were hidden in a chimney flue).

The court considered it irrelevant that the defendant had also slept in the basement, that he had taken steps concerning schooling and lawyers (unsuccessfully), and reminded him that Belgian standards prevailed over Indian ones.

Even if the civil parties' statements changed over time, the court explained this by the evolving context of their lives: their flight during the first inspection; the need to maintain contact on site with the defendant who was exploiting them, as they were dependent on him owing to their illegal residence situation during the second inspection; the fact they were sheltered by a specialised reception centre after the third inspection, where they were explained their rights, of which they were unaware until then.

The court accepted the aggravating circumstances of authority and abuse of a vulnerable situation, and added the fact that one of the victims was a minor, in light of which the defendant had to defend himself.

The court considered that the charge of human smuggling also remained established: the defendant had allowed the civil parties and their family, who were non-EU nationals, to stay in Belgium. The defendant obtained a financial advantage by employing them for a salary well below the minimum wage while evading the various social contributions.

The court confirmed the civil convictions and the sentences pronounced at first instance (but granted a full reprieve for the entirety of the fine).

In Ghent, in a **judgment of 11 September 2019**[201], Ghent Court of Appeal considered the decision of **Kortrijk Criminal Court** of **25 June 2018**[202] in a case of human trafficking and smuggling in a Chinese restaurant. The two defendants were also prosecuted for forgery and various offences under the Social Criminal Code.

199 Namur Crim. Court, Namur division, 22 November 2017, 12th ch. See Myria, *2018 Annual Report Trafficking and smuggling in human beings, Minors in major danger*, pp. 142-143 and www.myria.be (case law).

200 Liège, 13 February 2020, 6th ch.

201 Ghent, 11 September 2019, 3th ch.

202 East Flanders Crim. Court, Kortrijk division, 25 June 2018, 11th ch. See Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 129-130.

The criminal court had found the defendants guilty of human trafficking and that there was clear evidence of labour exploitation. The victims made credible, detailed and consistent statements. The Chinese victims were seriously underpaid, they were completely at the mercy of the defendants' whims, working almost seven days a week, for long hours. They slept in undesirable conditions and were totally dependent on the defendants owing to their precarious situation and the fact that they were obliged to give them their residence papers.

According to the first judge, they were guilty of the charge of human smuggling, even if the defendants weren't personally responsible for the victims' journey from China. Facilitating illegal residence in Belgium by providing accommodation and work is also punishable.

However, the criminal court found that the reasonable time limit had been exceeded and took this into account in the conviction. The defendants were sentenced to 12 months in prison and a fine of EUR 6,000, both suspended.

One victim had filed a civil suit and obtained EUR 5,000 in non-pecuniary damages and EUR 5,900 in pecuniary damages.

Both defendants appealed.

The defendants only contested the charges for one victim, who had filed a civil suit. According to the defendants, the victim's statements weren't credible and they had never been to the restaurant. According to the defendants, the only goal of the victim's statements was to regularise their stay in Belgium. The court accepted this. Although the victim's statements were detailed, no objective evidence could be found in the case file. They weren't there when the inspection services visited and none of the other workers recognised them in the photographs. The defendants were acquitted of the charges relating to this victim. The court found them guilty of all the other charges.

However, the court of appeal found that the reasonable time limit had been exceeded and that it could therefore only hand down a sentence that was below the statutory minimum. For both defendants, the court reduced the sentence by dropping the main prison sentence. They were given partly suspended fines of EUR 3,000 and EUR 4,500 respectively. The compensation of the victim who had filed a civil suit was declared unfounded, since the defendants were acquitted of the related charges.

2.3.3. | Retail trade

A case concerning a shop was reviewed by Mons Court of Appeal.

In this case, a Belgian defendant of Pakistani origin was prosecuted for human trafficking with aggravating circumstances and various social criminal law charges. Charges of psychological harassment in the workplace and false imprisonment of a worker, illegally employed in his shop, were also brought against him. Two other defendants (the brother and the nephew of the main defendant) were prosecuted for the assault and battery of the same worker and another one. The first defendant's company was cited as civilly liable.

In a **judgment of 4 December 2017**, **Charleroi Criminal Court**, at first instance, had acquitted the main defendant of the charge of human trafficking, as well as for the acts of psychological harassment in the workplace and false imprisonment[203]. It only accepted the social criminal law charges.

The criminal court also acquitted the two other defendants of the charge of assault and battery.

The public prosecutor's office appealed against the judgment, and against the acquittal of the defendant for the acts of human trafficking, psychological harassment in the workplace and false imprisonment.

Contrary to the criminal court, **Mons Court of Appeal**, found the acts of human trafficking to be established in a **judgment of 11 March 2020**[204].

In a detailed statement of reasons, in which it listed the essential elements of the offence, the court found that they were present on the basis of several elements:

- the detailed statements of the worker who explains that he was taken care of by the defendant when he arrived at Charleroi station, that he was housed at the back of the shop, that he worked for him every day and for many hours a day (from 5 a.m. to late in the

203 Hainaut Crim. Court, Charleroi division, 4 December 2017, 8th ch. (unpublished).
204 Mons, 11 March 2020, 4th ch.

evening), that he was unable to leave the shop except for work, in particular to go to work in the defendant's other shop, that he was locked in his room every night by the defendant, that he wasn't given a work contract, that he wasn't paid except for a small amount of cash from time to time, and that he was beaten up if he complained;
- witness statements (especially concerning the fact that the worker slept in a room locked with a padlock);
- the findings of the police (especially the configuration of the workplaces and the victim's accommodation) and the inspectors from the Social Legislation Inspectorate;
- the shop's video surveillance images that proved the worker worked many hours, and the fact that the defendant took him back to his accommodation and followed him to lock the gate;
- the statements of the defendant and members of his family, as well as the implausible, changing and contradictory nature of the defendant's statements.

Consequently, the court considered that the worker had indeed been recruited, harboured and controlled by the defendant for the purpose of being put to work in conditions contrary to human dignity — to be assessed according to Belgian standards and not Pakistani ones (long working hours, various Social Criminal Code offences, the victim's living and housing conditions) —. The court of appeal also noted, contrary to what had been accepted by the criminal court, that the fact the victim was allowed a certain freedom of movement during the day and had a phone, didn't alter the fact that the offence had been committed.

The court also accepted the aggravating circumstances of abuse of a vulnerable situation, coercion (by being obliged to live at the workplace without being able to leave it), and authority over the victim.

The court also reviewed the judgment concerning the charges of psychological harassment at work and false imprisonment, which it declared established.

The court sentenced the defendant to a two-year suspended prison sentence and a fine of EUR 6,000. It also prohibited him from exercising certain civil and political rights.

2.3.4. | Car wash

Two car wash cases led to convictions for human trafficking, one in Brussels and the other in Namur.

In a **judgment of 18 December 2019**[205], **Brussels Dutch-speaking Criminal Court** ruled on a case of human trafficking for the purpose of labour exploitation in a car wash. The acts date back to the period 2010 to 2018. It involved two separate cases that were merged. In the first case, five defendants of Belgian, Indian and Pakistani nationality appeared in court. They were all directors of the original company. In the second case, the first two defendants as well as a company were prosecuted as the civilly liable party. The defendants were prosecuted for acts of human trafficking with aggravating circumstances, slumlord activities, illegal employment of foreign workers, failure to file a Dimona declaration, failure to declare amounts owed to the NSSO, non-payment of statutory wages, etc.

The car wash was inspected on a number of occasions over a long period of time. At the end of 2017, during an inspection of the car wash, the inspection services found a living space with a mattress, an electric plate and personal belongings in a room off the shed. This space was clearly inhabited. The person of Pakistani nationality who was living there stated that they worked in the car wash six days a week, from 8 a.m. to 7 p.m. for a daily wage of EUR 40. He had been promised residence status through a job. After that, several more checks were carried out, and each time, people were found to be working illegally. At one point, the defendant's company was dissolved. A new company was set up and work continued.

The court ruled that some of the acts committed before 2011 were time-barred. There were two major periods of investigation, one up to 2011 and the other starting in 2017. As a result, the last three defendants, who could only be linked to the oldest acts, could no longer be prosecuted. On the other hand, it was possible to prosecute the first two defendants and their new company for a certain number of older offences owing to the unity of intent.

The court found the first two defendants guilty of human trafficking and certain

205 Brussels Dutch-speaking Crim. Court, 18 December 2019, 25th ch. (appeal).

social law offences. They were acquitted of other charges, including some also concerning social law, owing to insufficient evidence. The court took into account the fact that the situation had persisted despite the various interventions and checks carried out by the inspection services and the police. The defendants systematically used new companies to continue the car washing business regardless of the most fundamental social law obligations. According to the court, the risk of recidivism was high. In the first case, the defendants were sentenced to an 18-month suspended prison sentence and a fine of EUR 16,000. In the second case, they were sentenced to a fine of EUR 4,800. The court also ordered the complete closure of the car wash for a period of three years. The company was declared civilly liable for the payment of the fines and legal costs of the defendants in the second case.

The other case was tried by **Namur Criminal Court on 22 January 2020**[206].

In this case, four defendants of Indian and Belgian nationality (the first two of whom were husband and wife and the fourth a company) were prosecuted for the human trafficking of a Romanian worker and for various social criminal law offences. The first two defendants were repeat offenders. The worker who was the victim filed a civil suit.

The acts were related to or followed on from those on which the same court had already ruled in the past. The company ran a car wash in Andenne under the authority of the second defendant, who was a general partner. In reality, it was the first defendant who was the de facto manager, despite his capacity as a limited partner, which, in principle, didn't authorise him to carry out managerial acts.

The civil party worked for the company in the Andenne car wash, which was inspected by the social inspectorate. On the day of the inspection, the civil party was working and spontaneously declared that they were living in a room above the office.

The court accepted the human trafficking and social criminal law charges for the three defendants. The civil party was working under a self-employed contract, which, in the court's opinion, was contrary to the evidence in the case file. It considered that there was indeed a verbal employment contract. The worker worked more than 10 hours a day. The court estimated his gross salary to be EUR 1.86 per hour worked, i.e. 13 % of what he should have received (EUR 14.147 0 per hour).

The court considered the charge of human trafficking established on the basis of the following elements: the indecent wages, the worker's accommodation in a clearly uninhabitable room and his complete dependence on the defendants.

The court also accepted the social criminal law charges for the civil party and another worker.

The court acquitted the company of the charges against it, as it considered that the first two defendants had committed the most serious misconduct.

The first two defendants were sentenced to 12 and four months in prison, and the third defendant a six-month fully suspended sentence and a fine of EUR 8,000.

The three defendants were ordered to pay the civil party EUR 48,504.65 *ex aequo et bono* in pecuniary and non-pecuniary damages.

2.3.5. | Poultry farming

In a **judgment of 13 November 2019**[207], **Antwerp Court of Appeal** ruled on a case of human trafficking at a poultry farm. This case, tried at first instance by **Turnhout Criminal Court on 20 December 2017**, was discussed in a previous annual report[208]. One of the seven defendants lodged an appeal. Myria intervened again as a civil party.

In this case, seven defendants, namely one Belgian, four Bulgarians and two companies, had been convicted of human trafficking for labour exploitation, various social and tax offences and renting rooms that didn't comply with requirements. The acts took place between 2004 and 2012 at a poultry farm that employed some 40 Bulgarians. The managers had set up various constructions: the workers were employed as bogus self-employed workers or through a fake posting. When sentencing, the court took into account the fact that the workers

206 Namur Crim. Court, Namur division, 22 January 2020, 12th ch.(appeal).

207 Antwerp, 13 November 2019, ch. C6.

208 Antwerp Crim. Court, Turnhout division, 20 December 2017, ch. TC1. See Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 146-147 and www.myria.be (case law).

didn't see themselves as victims because of their precarious living conditions in their own country and their cultural affinities with it. In addition, the court stated that the reasonable time limit had been exceeded to a limited extent.

The defendants were handed a main prison sentence ranging from 18 months to five years (partly) suspended and fines of up to EUR 110,000.

The court of appeal considered that regarding the defendant, the criminal case file didn't prove the existence of human trafficking. The various workers didn't consider themselves as victims of human trafficking. Furthermore, the court considered that "the fact that no social security contributions were paid for the workers, that they were paid less than the minimum wage in Belgium and that several social law offences were identified, isn't sufficient in itself to conclude that they are victims of human trafficking". The court therefore acquitted the defendant.

2.3.6. | Bakery

Brussels French-speaking Criminal Court tried a case of trafficking in the bakery sector on **3 February 2020**[209].

In this case, four Belgian defendants, including a company, were prosecuted for human trafficking with aggravating circumstances of a Moroccan worker, who filed a civil suit. They were accused of making him work in their bakery in conditions contrary to human dignity: pay ranging from EUR 100 to EUR 250/month, accommodation at the workplace in conditions contrary to human dignity (cramped room with damp walls, folding bed, toilet with a sink with cold water only), at least 12.5 hours of work a day, seven days a week.

The main defendant and the company were also prosecuted for various social criminal law offences.

The main defendant was the manager of the company, a bakery, and the other two defendants were partners.

Several checks, two of them at night, were carried out at two of the company's sites.

During the first check, a worker tried to escape through the back, but the police managed to find him hiding behind a container. He gave a false identity and had no identity papers on him. It later became apparent that it was the worker who was the victim. During another check this same worker was discovered working on site with a torn t-shirt serving as work clothing. He also lived on site, on a mattress on the floor in a room with traces of damp. When he was heard by the social inspectorate, he stated that he had arrived in Belgium in 2002 and had asked to be regularised without success; he was employed in both of the defendants' workshops and always slept in the place where he prepared the bread; he worked more than 12 hours a day, never received any leave and was sometimes paid EUR 100, 200 or 250 a month. He received an SMS every evening from one of the defendants telling him how much bread to prepare. He reported respiratory problems and allergies related to his work conditions. A neighbourhood and phone investigation confirmed the worker's statements.

The court found that the defendants should indeed be considered as employers as defined by social criminal law. In a detailed statement of reasons, it convicted all the defendants of human trafficking. It identified a number of elements that established the work conditions were contrary to human dignity: arduous work at night; lack of safety and hygiene equipment at work; working hours and work pace (seven days a week, at night); non-payment of wages making the worker dependent and forcing him to accept inappropriate housing conditions; poor housing conditions at the workplace; no possibility of having a social or family life; lack of social protection.

The court also accepted the aggravating circumstances of authority over the victim and abuse of a vulnerable situation. On the other hand, fraudulent tactics, threats and coercion weren't supported by objective elements in the case file.

The court also accepted the charges concerning social criminal law against the main defendant and his company.

It handed the main defendant a 15-month fully suspended prison sentence and a EUR 6,000 fine; the two other defendants were handed a one-year suspended prison sentence and a EUR 3,000 fine respectively and suspended sentencing. The company was sentenced to a partly suspended fine of EUR 36,000.

[209] Brussels French-speaking criminal court, 3 February 2020, 69th ch. (final).

The four defendants were sentenced to pay the civil party EUR 4,000 in non-pecuniary damages. The court has yet to rule on the remainder of the claim, since the civil party has to specify the net pecuniary damages they are claiming.

2.3.7. | Secondhand clothes sorting

Brussels French-speaking Criminal Court tried a case of trafficking in the secondhand clothes sorting sector on **9 March 2020**[210].

In this case, a Belgian defendant, of Syrian origin, and his company (bankrupt and insolvent) were prosecuted for the human trafficking of two Algerian workers who filed a civil suit. He was accused of having recruited them to put them to work in conditions contrary to human dignity (very low and irregularly paid wages, long working hours, no safety protection when doing dangerous work, employer's threatening attitude, very difficult work conditions (fast pace, a lot of dust causing breathing problems, little or no heating, substandard housing conditions)). They were also prosecuted for various charges concerning social criminal law: non-payment of the two workers' wages; illegal employment of foreign workers with no residence permit, no DIMONA declaration and failure to declare the work to the NSSO regarding the two Algerian workers and several other African workers.

Through his company, the defendant was involved in sorting secondhand clothes that were then exported to Africa. The acts were revealed when one of the two Algerian workers was heard by the social inspectorate after having been in contact with a specialised reception centre. There, he explained his journey from Algeria and his work conditions at the defendants' company (seven days a week, an average of one day off a month, a trial period, irregular pay, death threats). The other Algerian worker was also heard by the social inspectorate following contact with the same specialised reception centre. The social inspectorate then went to the workshop where the company's activities took place. Apart from the fact that the workshop was locked, it found several workers without residence or work permits, no ventilation, a smell of mould and damp and an enormous amount of dust, due to the handling of the clothes. The defendant was also heard.

He explained how his business worked: large quantities of secondhand clothes were purchased, which were then sorted in the warehouse. The best pieces were sold in his shop or other secondhand clothes shops, and the rest was exported to Africa.

The court found that the criminal proceedings for the defendant's company, which had been declared bankrupt, had lapsed. The defendant put forward several procedural arguments: the fact that he had been heard without a lawyer (although he had the opportunity to consult one), the violation of the right to a fair trial and exceeding the reasonable time limit. The court rejected these arguments. As regards the violation of the right to a fair trial, it particularly emphasised that there was nothing suspicious about the fact that the workers were assisted in their procedures by a specialised reception centre, since the legal function of this non-profit organisation is precisely the reception and support of victims of trafficking, established by royal decree royal.

The court acquitted the defendant of the charge of human trafficking, considering that the investigation conducted did not sufficiently objectify the plaintiffs' statements. The social inspectors weren't able to see their working and/or housing conditions for themselves; no witnesses were heard; it wasn't checked whether it was possible to open certain rooms with the keys in one of the plaintiff's possession; it was impossible to deduce from the difficult working conditions during the inspection whether the plaintiffs had previously worked in these conditions.

Since the court considered that the employment of the two Algerian workers who filed a civil suit was insufficiently proven, it also acquitted the defendant of the social criminal law charges against them. However, it accepted these charges for the workers found at work during the social inspectorate's check.

The defendant was handed a partly suspended fine of EUR 67,200 and a three-year ban on this type of professional activity.

The court declared that it wasn't within its jurisdiction to hear the civil parties' claims, since the defendant was acquitted of the charges against them.

210 Brussels French-speaking Crim. Court, 9 March 2020, 69th ch. (appeal).

2.3.8. | Domestic work

Brussels Court of Appeal reviewed a case of trafficking in the domestic work sector, discussed in a previous report[211].

The Congolese defendant was prosecuted for human trafficking for the purpose of labour exploitation and various social criminal law offences against a young Congolese girl who was a minor at the time of the acts (12 years old at the beginning of the acts). The girl was living with the defendant who allegedly exploited her. The defendant was also prosecuted for acts of violence at work, illegal child labour and intentional assault and battery.

In a **decision of 24 November 2017**, **Brussels Criminal Court** acquitted her at first instance of the charges of human trafficking and violence at work[212]. It only accepted the charges concerning social criminal law, illegal child labour, as well as intentional assault and battery.

The public prosecutor's office and the civil party appealed but the defendant failed to appear. Since she didn't appeal, and the public prosecutor limited its appeal to the acquittals pronounced at first instance, **Brussels Court of Appeal**, in a **ruling of 2 December 2019**, declared the charges concerning social criminal law, illegal child labour and intentional assault and battery definitively established[213].

Contrary to the criminal court, it also declared established the charges of human trafficking, with all the related aggravating circumstances, and violence in the workplace.

For the trafficking offence, it considered that the material and moral elements of the offence were established. Contrary to the criminal court, the court of appeal considered that there was no doubt that during her long stay with the defendant, the young girl, a minor, was forced to perform arduous household chores and to take care of her children, in conditions contrary to human dignity. On this point, the court noted: she had to be available at all times; her working hours prevented her from regularly attending school; there was repeated use of violence, insults and threats; the conditions of her accommodation were inhuman and her passport was confiscated.

The court increased the sentence pronounced at first instance: two years in prison, without suspension. It also reviewed the civil judgment: it ordered the defendant to pay the victim EUR 100,577.60 in pecuniary damages (corresponding to the loss of remuneration and two years of schooling) and EUR 5,000 in non-pecuniary damages.

In another case, tried by **Walloon Brabant Criminal Court on 2 April 2019**[214], two defendants, a Belgian-Chinese couple, were prosecuted for human trafficking and various other charges concerning social criminal law with respect to an illegally staying Chinese worker who was taking care of their children. They were also accused of not having declared a work accident suffered by the worker. One of the defendants and their company were also prosecuted for forgery and social criminal law charges concerning other workers active in the restaurant they ran.

The court accepted the social criminal law charges. The investigation revealed that the worker had been in the the couple's service for almost four years, her duties consisting mainly of looking after their two children. She was never declared. In January 2017, she was knocked down by a car on her way to the children's school to pick them up, causing various injuries and requiring hospitalisation for several days. The defendants had no work accident insurance and didn't report the worker's work accident. The defendants terminated the work relationship on the day of the accident and went to look for a new nanny.

The court also accepted the charge of non-payment of wages. This amounted to EUR 1,200 per month, part of which was deducted by the defendants as a guarantee to protect them from a possible unexpected departure. The worker's net salary was therefore reduced to EUR 700 or 600 per month. However, part of these deductions from her salary was returned to her by the defendants. The average sum of EUR 1,100 per month was, however, lower than the applicable rates.

On the other hand, the court gave the defendants the benefit of the doubt concerning the charge of human trafficking, and acquitted them. There were indications of labour exploitation: the wages paid to the worker were insufficient in relation to the number of hours worked, even with the addition of benefits in kind; although she received

211 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, pp. 152-154.

212 Brussels French-speaking Crim. Court, 24 November 2017, 59th ch. (available at: www.myria.be).

213 Brussels French-speaking Court of Appeal, 2 December 2019, 11th ch. (in absentia).

214 Walloon Brabant Crim. Court, 2 April 2019, 6th ch. (final).

board and lodging, she had no social security cover. However, the court considered that they weren't sufficient to conclude that she had been made to work in conditions contrary to human dignity. It noted, among other things, that the nature of the work wasn't demeaning, she shared meals and bathroom facilities with the family, she had kept her passport and was allowed out, and she had been able to save money, etc.

In addition, the court accepted the social criminal law and forgery charges concerning the employment of workers in the restaurant of one of the defendants and their company.

The court handed the defendants fines of EUR 12,000 and EUR 4,800 respectively, partly suspended. The company was also given a suspended fine of EUR 24,000.

The court sentenced the two defendants to pay the worker EUR 17,140.72 for the non-payment of their salary.

2.3.9. | Football

Two decisions in the domain of football were pronounced by the courts in Brussels, one of them by the court of appeal.

The first case was the subject of a ruling by **Brussels Court of Appeal on 8 May 2019**[215].

In this case, several Belgian defendants were prosecuted for various offences, two of them (one the chairman of a Brussels football club) for smuggling and trafficking in human beings. Together with the other defendants, they were also prosecuted for various offences concerning forgery and use of forgeries. Another defendant, a municipal civil servant, was also prosecuted for aiding illegal residence and for fraudulently issuing certificates of immatriculation in the aliens' register (CIAR).

The two main defendants were accused of abusing the situation of young illegally staying African footballers. They also allegedly forged certificates of immatriculation in the aliens' register in order to enrol them in the Royal Belgian Football Association (URBSFA).

At first instance, **Brussels French-speaking Criminal Court** accepted the charges against them of smuggling and trafficking in human beings, as well as the forgery charges, in a **decision of 7 April 2014**[216]. As regards human trafficking, the court found that the defendants had employed these footballers in conditions contrary to human dignity: they went so far as to completely abandoned them, socially and financially, at the hospital when they were injured. The footballers thought that all their care was covered. In addition, they were very arrogant towards them.

The municipal civil servant was also convicted of the majority of charges against him.

As the reasonable time limit had expired, a simple guilty verdict was pronounced against certain defendants and a suspended sentence against others.

The municipal civil servant and the public prosecutor appealed against the criminal and civil provisions of the judgment against this defendant.

Two footballers, who filed a civil suit, also appealed against the civil provisions of the judgment. The criminal court had awarded each of them EUR 500 in non-pecuniary damages. However, it had rejected the claim for compensatory damages, on the grounds that the receipt of wages for undeclared work is an unlawful benefit, the loss of which can't give rise to compensation.

The footballers, who filed a civil suit, didn't appear at the court of appeal.

The court found that the criminal proceedings against the municipal official were time-barred. For the civil provisions, the court upheld the judgment of first instance .

In the other case, tried by **Brussels French-speaking Criminal Court on 4 November 2019**[217]**,** two Belgians, the former chairman and former vice-chairman of a football club, were prosecuted for human trafficking with aggravating circumstances of a Nigerian footballer, as well as for forgery and use of forgeries. They were accused of the recruitment, harbouring, and receipt of this footballer to make

215 Brussels (French-speaking), 8 May 2019, 11th ch.

216 Brussels French-speaking Crim. Court, 7 April 2014, 61 ch. See Myria, *2015 Annual Report Trafficking and smuggling of human beings, Tightening the links, p. 123-124 and www.myria.be.*

217 Brussels French-speaking Crim. Court, 4 November 2019, 69th ch. (appeal).

him work in conditions contrary to human dignity (insufficient wages, broken promises and withholding his passport). They also allegedly falsified a pay slip to make it appear that the footballer had been paid in accordance with the agreements made with the football club. They were also prosecuted, together with the non-profit association managing the football club, for various social criminal law offences concerning this footballer (no immediate declaration of employment, no work accident insurance, no quarterly NSSO declaration, non-payment of wages).

In 2014, the football club, whose players were exclusively amateurs until then, considered taking on one or more professional players. The club recruited a young Nigerian player who had previously played for other clubs. However, the player was staying illegally. He was housed in the defendants' family home and received a bit of pocket money. In May 2014, he signed his first contract with the club as a paid player, covering several seasons, for a gross salary of EUR 4,000. He returned to Nigeria in order to regularise his administrative situation in Belgium, and returned in November 2014 when everything had been sorted out. A new contract was then signed with the club, for a salary of EUR 7,000 gross per month, with accommodation provided by the club. He resumed training and matches between November 2014 and January 2015. However, he was never provided with the accommodation and only received a small part of his salary; the payslips were falsified by the defendants. In fact, he received the sum of EUR 700 twice. In addition, he wasn't registered with the NSSO, worked without social protection and was completely dependent on the defendants who had confiscated his passport. In January 2015, he was thrown out onto the street.

The court convicted the defendants of all the charges, and held that the charge of human trafficking was established. Although he had been provided with comfortable accommodation, the court considered that there were other criteria contrary to human dignity: no social security cover, failure to pay the agreed salary (in this case, a few payments far below the salary to which he was entitled, making him dependent on the defendants), withholding his passport. The defendants thus saved on the contributions relating to the player's salary, while hoping that the player's value would help the club to improve its ranking.

The court also accepted several aggravating circumstances (authority over the victim, abuse of a vulnerable situation, coercion (by withholding the player's passport)).

It sentenced the two defendants to a 15-month suspended prison sentence and a fine of EUR 4,800. It also convicted the non-profit association in absentia for the social criminal law offences and fined it EUR 18,000.

The court ordered the two defendants to pay the footballer EUR 2,500 in non-pecuniary damages in relation to the charge of human trafficking; the two defendants and the non-profit association a provisional euro in relation to the loss of salary and EUR 1,500 in non-pecuniary damages in relation to the failure to comply with social legislation.

2.3.10. | Other sectors

Decisions were rendered in atypical sectors: lumber industry, newspaper delivery and a religious congregation.

a) Logging

Namur Criminal Court tried a case of trafficking in the lumber industry on **26 June 2019**[218].

A Belgian defendant and a company were prosecuted for the human trafficking and smuggling with aggravating circumstances of a Burkinabe worker who filed a civil suit. They were also prosecuted for various social criminal law offences against this worker and other Romanian workers.

The defendant bought lots of standing timber for firewood at auctions, whose felling was initially sub-contracted by the defendant. The sawing and delivery of the logs were done under his authority. He paid the wages of his undeclared workers in cash and made an undeclared turnover by reselling the wood to pizzeria owners, among others, who paid him in cash.

The defendant had recruited the Burkinabe worker near Petit Château. He had to go and chop firewood for the defendant in the Sonian Forest.

The defendant also recruited Romanian workers on the quiet near a Brussels metro station. They also worked under his authority for wages paid in cash.

218 Namur Crim. Court, Namur division, 26 June 2019, 12th ch. (final).

The court declared the charge of human smuggling to be established because by recruiting the Burkinabe employee, the defendant contributed to his illegal stay in the country. The defendant took advantage of the employee's vulnerable position to gain a financial advantage by not paying the salary and related costs, and thus saving money. Consequently, the court also considered proven the social criminal law charges with regard to this employee.

It also accepted the limited social criminal law charges relating to the Romanian workers.

However, the court acquitted the defendant of the charge of human trafficking, considering that it wasn't sufficiently established. It pointed out, among other things, that the testimonies of people working in the Sonian Forest weren't always direct testimonies, and sometimes contradictory, especially regarding the Burkinabe worker's working hours.

The court acquitted the company of all the charges, as the defendant was the only natural person within the legal entity to whom the charges could be attributed.

The defendant was sentenced to six months in prison (fully suspended) and fined EUR 6,000 (partly suspended). He was also sentenced to pay the plaintiff EUR 9,750 in pecuniary damages and EUR 3,000 in non-pecuniary damages.

b) Newspaper delivery

On **15 January 2020, Ghent Criminal Court**[219] ruled on a case of human trafficking for the purpose of labour exploitation within the context of newspaper deliveries. In this case, a Belgian defendant of Slovakian origin was prosecuted for human trafficking and the lack of, or an inaccurate, Dimona declaration.

The case came to light after an elderly couple found the Slovakian victim begging and took him to a homeless shelter. Payoke contacted the social inspectorate to open an investigation for human trafficking for the purpose of labour exploitation.

The investigation revealed that the victim had been recruited in Slovakia by the defendant in 2015. At the time, this man was homeless. When he arrived in Belgium, the victim was (falsely) registered as self-employed, without his knowledge. The defendant confiscated his Slovakian identity card and went with him to the town hall to apply for a residence permit, which the defendant kept. The victim was put in contact with a distribution company: he and the defendant were to distribute leaflets and letters in different areas around Ghent. Initially, the money for the hours worked was paid onto the defendant's account. A bank account was only opened in the victim's name in June 2016. However, the defendant kept the bank card and the PIN code. The victim was very poorly paid. Some months he received nothing, others between EUR 20 and 500. He worked very long days, from 05:00 or 06:00 to 15:00, delivering brochures. Afterwards, he sometimes had to fold leaflets until 22:00.

The victim lived with the defendant and his family. When he became ill and soiled a carpet, he was evicted from the house and had to sleep in the garage. The victim had to buy himself a mattress to sleep on the floor. There was no water or electricity. He had to use a plastic bag as a toilet. He fetched water from another Slovakian family. The defendant occasionally brought him food. After a few weeks he was able to return to the family home to sleep. However, he was still regularly locked up in the garage. In addition, the defendant and the family were often physically aggressive towards the victim. He was often ill, but had no money to go to the doctor. When he fell ill again during his working hours at the end of 2016, the defendant locked him in the garage again. That night, the victim managed to escape and wandered the streets for three weeks. He was eventually found by a couple who took him to a shelter for the homeless. After a few weeks, the defendant discovered that the victim was in this centre and took him by force to the town hall. He had to hand over his residence permit. The defendant then took him to the bus station and bought him a bus ticket to Slovakia.

A bank investigation was carried out, observations were made and a neighbourhood investigation took place. An investigation was carried out by the NSSO's services.

A doctor was appointed as an expert by the labour prosecutor. He stated that the victim had had a difficult childhood, suffered from depression and had a lower than average IQ. This was the reason why the man was very easily influenced and vulnerable.

The victim filed a civil suit.

219 East Flanders Crim. Court, Ghent division, 15 January 2020, ch. G29 (final).

Based on the elements of the criminal case file, the court found the defendant guilty of human trafficking with the aggravating circumstance that he had abused the victim's vulnerable situation.

The defendant was given an 18-month suspended prison sentence and a fine of EUR 12,000. The victim was awarded compensation of EUR 20,000 in pecuniary damages and EUR 3,000 in non-pecuniary damages.

c) Religious congregation

An important case concerning acts committed within a religious congregation was tried by **Ghent Criminal Court on 26 June 2019**[220]. In this case, the Augustinian Fathers of Ghent and their superior, as well as the non-profit association through which events were organised at the monastery, were prosecuted for several social criminal law offences (employment of foreign nationals staying illegally or work permit, failure to declare employment immediately), human trafficking, aiding illegal immigration, and forgery. The Augustinian Fathers and their superior were also prosecuted for having sent the NSSO an inaccurate or incomplete declaration of the amount of contributions due for two workers.

According to the labour prosecutor's office, the superior of the Augustinians recruited young seminarians in Africa, to whom he promised an official position within the Catholic Church (training for the priesthood) whereas in reality, it was a question of recruiting cheap labour for the commercial activities of the monastery. The young seminarians were mainly from Benin, Togo and the Ivory Coast. The charge of human trafficking related to 13 of them, who filed civil suits.

The defendants also allegedly drew up and used false invitations, certificates and sponsorship declarations in order to obtain residence permits for these young African seminarians, falsely indicating the latter were monks and that they had received prior training as monks in the country of origin.

The case began when a young Beninese postulant filed a complaint, accusing the Augustinian Fathers of having made him work without any regard for social obligations. Following this testimony, many other people were heard. These testimonies revealed that the superior paid the the plane ticket and the visa, that the seminarians had a private room in the monastery, that they first had to learn Dutch, ask for authorisation to leave the monastery, and that they weren't paid for their work. They received EUR 30 in pocket money and EUR 300 - 400 for clothes.

Searches were carried out at the monastery, among other things.

The superior was also heard. He explained that the non-profit association had been set up to optimise the monastery's profitability, by using the ground floor for parties, conferences, etc.

In a long and detailed statement of reasons, the court acquitted the defendants of the charge of human trafficking, aiding illegal immigration, forgery and the majority of social criminal law offences.

For the social criminal law offences, the court found that the foreign postulants did indeed provide services in the monastery of the Augustinian Fathers in Ghent (maintenance of the cloister, the garden, preparation of the celebrations, help and care for the older brothers), but that these activities were part of the life of a religious community and the postulants' commitment to the monastery. The court also noted that various commercial events for third parties not connected with pastoral work were organised in the monastery buildings, which is why a specific non-profit association was set up; the postulants were mainly responsible for emptying and cleaning up the rooms, participating in the Ghent Festival, sometimes guarding the entrance or serving beer at the abbey. The court considered that it wasn't established that the activities carried out by the postulants during these events exceeded those carried out by the Augustinian Fathers within the community, nor that they performed these services under the authority of the Fathers or the non-profit association.

As regards the human trafficking, the court found that the postulants (and their families) were correctly informed that they were going to be part of a religious community, where all income goes to the monastic community and that they had to live according to its rules. They did receive training as promised and the work they did in the monastery was within the framework of monastic life. Furthermore, all the expenses relating to their stay (travel, visa, the stay itself and meals) as well as their training were paid by the Augustinian Fathers. They received monthly pocket money and an allowance for clothing. They were allowed to go out with permission. It was also possible to permanently leave the monastery and the monks made sure that they could

220 East Flanders Crim. Cout, Ghent division, 26 June 2019, ch. G29 (appeal).

return to their country of origin, at the cost of the Augustinian Fathers.

Concerning the charge of aiding illegal immigration, the court considered that the criminal case failed to establish that the defendants knowingly aided non-EU nationals to enter or stay in Belgium in contravention of the law.

The court only accepted a number of social criminal law charges concerning volunteers whose services went beyond that of pure voluntary work, as well as the non-declaration of overtime (paid unofficially) of two workers.

It handed the Augustinians' superior a partly suspended fine of EUR 10,800, and the Augustinian Fathers non-profit association and the events non-profit association a partly suspended fine of EUR 36,000.

In view of the acquittals pronounced, it declared that it had no jurisdiction to rule on the plaintiffs' claims.

2.4. | Exploitation of begging

Brussels French-speaking Criminal Court tried, in absentia, a case of trafficking for the purpose of exploitation of begging on **6 November 2019**[221].

A young Romanian woman was prosecuted for human trafficking for the purpose of exploitation of begging, for recruitment and exploitation of begging, and for intentional assault and battery against her nephew, a minor. All these charges were accompanied by aggravating circumstances.

The defendant didn't appear in court and her nephew filed a civil suit through his guardian. The reception centre that was sheltering the minor also filed a civil suit.

The case started when, in July 2018, a child, the minor in question, aged 12, came to the reception of a police station barefoot, wearing a dirty track suit and holding a note in English mentioning the need for an interpreter and the fact that he had problems with his uncle. Through a Romanian interpreter, he explained that his aunt, the defendant, suggested to his mother that she bring him to Belgium for a three-week holiday. They came by coach. He was then made to beg near a casino and a cinema for several hours in the morning, afternoon and weekend, and even at night during the weekend. He specified that it was his aunt's partner who forced him to beg and that he was beaten if he refused. He said that he had been living on the street for several weeks and that he stayed in a shop entrance. He said that his aunt always had his passport on her, as well as his birth certificate and a letter from his mother authorising him to leave Romania.

Following the hearing, the police took the child by car to identify the places where he and his aunt stayed. The latter was identified on the basis of her identity card; during the search, the passport of the boy, and of the little girl (her daughter) with whom she was begging, were found in her bag. The police also found the defendant's money and a Western Union transaction slip for EUR 1,500 addressed to a man, whom she claimed to be her sister's husband.

During her hearing with the police, the defendant explained she had been in Belgium for almost a month to beg there. She pointed out that her nephew also begged but that she didn't receive his earnings. She confirmed that she slapped him because he wasn't listening, and that his head hit a wall. She denied forcing her nephew to beg. She confirmed that she, her husband, her daughter and her nephew slept on the ground.

When she was heard by the investigating judge, she confirmed the statements she had made to the police and the fact that her nephew and his mother had been told why he was coming to Belgium, namely to beg.

The court accepted all the charges against the defendant based on the disclosure of the facts, the police findings concerning the young boy, the hearings of the victim and the defendant, and the money and documents found on the defendant during the search. The court found that the defendant was the young boy's guardian and therefore had authority over him while he was a minor, that he was in a vulnerable situation, that he was subjected to violence and threats to make him beg, that she acted together with her partner to force her nephew to beg and that she transferred the money from begging to third parties.

The court sentenced the defendant in absentia to five years in prison and a fine of EUR 16,000, and to pay both the victim and the reception centre the final sum of EUR 1. It also ordered the immediate arrest of the defendant.

221 Brussels French-speaking Crim. Court, 6 November 2019, 47th ch. (in absentia).

2.5. | Forced criminal activities

In a **judgment of 30 March 2020**, **Antwerp Criminal Court** ruled on a case of the human trafficking of a Belgian victim for the purpose of criminal activities[222].

Five defendants, of Macedonian nationality, who were part of the same family, were prosecuted for various offences including human trafficking, abuse of a person's vulnerable situation, degrading treatment of a person and threats against persons. One victim, a Belgian man, and the non-profit association Payoke filed civil suits.

The investigation began when the police received a report from several neighbours, mid-2019, concerning an elderly man who was sleeping on the terrace of a house on a daily basis, regardless of the weather. The police began an investigation and indeed found an unkempt man in need of help.

The investigation revealed that the victim's first contact with the family was in 2008, when he worked at the counter in the post office. He immediately established a relationship with them and was regularly invited to their home. This is how the victim became attached to the family. Very quickly, they began to ask him for money from time to time because the family was in difficulty. In the beginning, he gave the family EUR 300 a month. Soon, he also gave them his bank cards and PIN codes, which meant that he actually lost control of his money. The victim argued with his own brother and sister about his close contact with the family. As a result, he became even more socially isolated. He also resigned from the post office after stealing money from his employer at the request of one of the defendants.

In 2009-2010, the victim sold his flat at the suggestion of the family. A large part of the income was used to pay their debts. The balance was deposited on the account for which the family had the bank card and PIN code. The money was withdrawn by the family in no time. The victim then started working part-time for a monthly salary of EUR 1,400. As soon as he received his salary, the family squandered it, in particular to buy a car. He rented a studio flat from the CAW (social aid centre). He gave the key to the family, who rented the studio to an acquaintance and pocketed the rent. The victim lived with the family and paid weekly rent. The victim lived in extremely unhygenic conditions. The man was forced to eat and sleep outside and had to wash under the tap. He could take a shower from time to time, when the family allowed him.

Over the past few months, he also had to go shoplifting (about 20 times) at the request of the defendants.

The victim himself didn't understand how it could have come to this. He was talked into it and pressurised, and was unable to say no. The family was difficult and got angry when he refused to do something, and threatened to throw him out on the street. It seemed like a hopeless situation to him. He was easily influenced and emotionally dependent on the family. Meanwhile, the victim had accumulated a large amount of debts. A collective debt settlement was requested. The neighbours, who eventually alerted the police, were threatened by the family.

The investigation was carried out on the basis of a search, police findings, a bank investigation, detailed and consistent statements by the victim, and the defendants' statements that lacked credibility.

The court found each of the defendants guilty of the acts they were accused of. In addition, this wasn't the first time for some of them, who already had several convictions on their criminal records. One defendant had already been convicted of human trafficking in the past. The father, mother and a son of the family were respectively sentenced to five years (the parents) and 30 months (the son) in prison and fined EUR 20,000. The other two children of the family were given 10- and 18-month suspended sentences and fines of EUR 8,000 (partly suspended) and EUR 800. Their contribution to the acts was more limited.

The victim obtained compensation of EUR 100,000 in pecuniary damages and EUR 2,500 in non-pecuniary damages. Payoke obtained compensation of EUR 2,500 in pecuniary and non-pecuniary damages combined.

222 Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1879 (appeal).

3. Human smuggling

3.1. | Recruitment in Maximilian Park

A case of human smuggling was tried by **Brussels Dutch-speaking Criminal Court on 5 September 2019**[223].

Three defendants, two Iraqis and one Iranian, were prosecuted for human smuggling, the first two in relation to two Iranian nationals, the third in relation to one of these two Iranians. One of the defendants was a repeat offender. The first two defendants recruited their clients in Maximilian Park, and hid them in a lorry going to Germany for the sum of EUR 3,000. The third one smuggled one of these nationals from Italy to Belgium via France, for the sum of EUR 32,000. One of the defendants was also prosecuted for the attempted extortion of one of the Iranians and for illegally carrying weapons. The first two defendants were also prosecuted for illegal stay.

The case started when the two victims filed a complaint against their smugglers with the local police. They made similar statements: they arrived in Belgium separately and met each other at Maximilian Park. They spent a few nights together at the reception centre for transit migrants in Haren. A few days later, they were approached by the first two defendants while they were at Maximilian Park; they offered to smuggle them to the United Kingdom for EUR 3,000 per person. They then left together and took public transport to the Groot-Bijgaarden parking area, where the defendants put them in a lorry that was there. Twenty-four hours later, they realised they were in Germany and had therefore gone in the wrong direction. They managed to attract the driver's attention and return to Brussels. A new appointment was made with the first two defendants. One of the Iranians asked for a reimbursement and they both accompanied the two defendants to their home, where they were threatened with a knife. Following these acts, they decided to file a complaint. During his hearing, one of the two defendants admitted having intentionally put the two victims in a lorry that was going in the wrong direction, because he didn't dare go to the right place, which was in the hands of the Sudanese.

One of the victims explained they had tried to reach the United Kingdom several times and had contacted a smuggler living in Italy, who was identified as the third defendant.

The court accepted the charge of human smuggling against the three defendants. It stressed the fact that it was indeed a transit, even if the victims arrived in Germany instead of the United Kingdom. It also accepted the charge of illegal stay. However, it acquitted the defendant of the charge of extortion and illegally carrying a weapon, owing to a lack of evidence.

The defendants were convicted for the acts of smuggling and respectively received prison sentences of 12, 20 and 30 months. The court ordered the immediate arrest of the third defendant.

3.2. | Extremely violent Iraqi networks

In a **judgment of 16 April 2019**, **Dendermonde Criminal Court** ruled on a case of human smuggling with aggravating circumstances, in which seven of the defendants were Iraqi nationals[224]. The acts tried by the court dated from January to April 2018. It concerned a group of smugglers who were very active in the parking areas along the E17. The group continued to be very active even after its members had been replaced. The case came to light following the pursuit of a van by the French police as part of a French investigation. After it crossed the border, the van was followed by the Belgian police. It ran into the police car and several other vehicles. The perpetrators escaped, but migrants in transit were found in the cargo space. The Belgian and French investigators concluded a cooperation agreement.

The investigation was conducted on the basis of analyses of ANPR (*Automatic Number Plate Recognition*) cameras and other camera images, searches of the defendants' Facebook profiles, observations, phone

223 Brussels Dutch-speaking Crim. Court, 5 September 2019, ch. vac. (final except for the defendant convicted in abstentia).

224 East Flanders Crim. Court, Dendermonde division, 16 April 2019, ch. D19D (appeal).

investigations, photos on mobile phones, DNA searches, phone tracking and migrants' statements. The group of perpetrators was mainly composed of Iraqi Kurds. They operated out of the Calais "jungle", where they recruited the victims. The defendants used anonymous British SIM cards and phones, which they changed regularly. They communicated mainly using mobile internet services, making it difficult to connect the phone numbers with the perpetrators. It was also almost impossible to use phone tapping to obtain incriminating information. Some information was recovered from mobile phones abandoned on the spot during interceptions. This made it difficult to identify the defendants.

The vehicles used were quickly swapped and bore false Belgian or British number plates. The partition was usually removed so that, in the event of interception, the smugglers could quickly mix with the migrants in transit.

The court found that there was indeed evidence of criminal association. The defendants knew each other and got together again when they were back in Italy. They all played a specific role in the system as a recruiter, logistical support, dispatcher, enforcer, escort or driver. In addition, it seems that they were given orders from Iraq or Syria.

The group brought transit migrants from France to Belgian parking areas five times a week to board lorries bound for the United Kingdom. It was estimated that there were between three and 40 migrants per night. The majority of the victims came from Syria or Iraq. The victims paid between EUR 3,000 and EUR 4,000 for the crossing, which they often paid through their families in Kurdistan or with funds they deposited while waiting for the crossing. In some cases, the amount was already paid before they left their country of origin.

The defendants often used refrigerated lorries, which put the victims at great risk. They were perfectly trained to professionally dismantle and reassemble the locking system. All possible seals remained intact, giving the impression that everything was in order. Refrigerated lorries are almost never checked at the border because of the perishable load. Transport to motorway parking areas in overloaded vans also puts victims at risk. The smugglers weren't afraid to use violence and threats. One lorry driver said he was threatened with a knife when he discovered the smugglers. They also resorted to violence during police chases. They would collide with the police car or another car, drive the wrong way down the motorway, etc.

After a violent confrontation between two groups of smugglers in April 2018, it was noted that the members of the criminal association were gradually replaced by others. The majority then went to stay in Italy (in Rome). Hence, the period of incrimination for this case was limited to the period prior to this incident.

The court didn't follow the reasoning of some of the defendants that they were actually transit migrants and were authorised to make a crossing to the United Kingdom in return for smuggling activities. This wasn't credible because several defendants had already stayed in the United Kingdom.

The court handed the defendants four, five and six-year prison sentences and fines between EUR 640,000 and EUR 2,480,000. Large sums of money were confiscated.

In another case of human smuggling **tried on 26 June 2019** by **Antwerp Criminal Court**, 15 defendants, some of Iraqi nationality and others of Iraqi origin with British nationality, were prosecuted[225]. The case involved a well-organised international Kurdish network with associates in Belgium, France, Spain, England and Kurdistan.

The case was put together based on observations, police findings, phone investigations, examinations of mobile phone content, information from the French investigation file (especially phone tapping), contacts on Messenger or Facebook profiles, photos and video fragments on mobile phone, DNA investigations, analysis of evidence (fingerprints in a van used for smuggling), searches, statements by victims and co-defendants and confessions, and offenders caught in the act.

In general, the victims weren't willing to cooperate in the investigation. Often, they had no intention of applying for asylum in Belgium.

225 Antwerp Crim. Court, Antwerp division, 26 June 2019, ch. AC10, no. 2019/3380 (appeal for the first defendant, final for the others except those convicted in absentia).

The gang had been organising the transportation of around 60 people per night to England, three to four nights a week, since November 2017. The defendants were prosecuted for human smuggling and rebellion. The victims paid between EUR 3,500 and 1,000 for guaranteed transportation, depending on the method of smuggling. The organisation hid the victims in lorries where the drivers were completely unaware of the situation.

Most gang members were said to be armed and didn't hesitate to use violence against victims and the police. The victims were threatened verbally and physically and there was talk of weapons. During several police interceptions, vehicles were used as weapons to drive into the police. Smugglers also jumped out of a moving vehicle while victims were still on board. During one interception, the police noticed that a van was overloaded. They urged the driver to stop, but the he refused. The police therefore shot at one of the back tyres. There were 31 people in the van, including six minors. The smugglers had removed the partition separating them from the victims and mixed with them to avoid being identified as smugglers. The investigation and interceptions often took place across borders, in cooperation with the French and Dutch police services.

Another victim confirmed they had been threatened with a Kalashnikov after having made statements to the police.

In addition, they endangered the victims by transporting them in refrigerated lorries, and even in a tank containing iron sulphate powder. The victims consequently needed medical attention when they were freed.

The victims were often of Iraqi origin and were generally taken to the Calais "jungle". They were approached through social media, especially Facebook, and often included pregnant women and young children, sometimes even small babies. Payment was made through a foreign exchange office in Iraq. Once a deposit of funds was confirmed, the victims were directed to a van driver. If the transaction to the UK was successful, the deposited funds were released to the smuggling organisation.

The organisation was very "professional", using coded language on less traceable communication channels and pseudonyms. To make identification difficult, they used hire cars and vehicles delivered via the United Kingdom that were only used a few times.

There was a hierarchy in the organisation and the main defendant was considered the leader. Three other people were involved in the decision-making within the organisation. They also recruited victims in the Calais "jungle". Sometimes, those recruited for departure were involved in the criminal organisation's network. In addition, they ensured the smuggling operations in the parking areas ran smoothly.

Some of the defendants claimed that they had cooperated in smuggling activities in order to pay for their own crossing to the United Kingdom. They didn't have sufficient financial resources and therefore had to work for the organisation. They asked that a nuance be made regarding the fine line between co-perpetrator and victim. The court didn't follow the defendants in this reasoning. The case revealed, among other things, that they never stayed with the other victims and had no luggage. After dropping off the victims, they immediately returned to the north of France to take part in new transportations the next day. In addition, they regularly changed their SIM cards. Some of the defendants argued that they never received any financial benefit. The court considered that the free passage they received in exchange for their cooperation could be considered an indirect financial advantage, a benefit in kind.

The defendants were handed prison sentences of 11 years, nine years, six years, five years, four years, two years, 40 months and 30 months. The fines ranged between EUR 80,000 and EUR 720,000.

One of the defendants was acquitted. He had legal residence status in the United Kingdom and was active there as a car dealer. He allegedly brought two cars over to Calais from Dover. The court found that there wasn't sufficient objective evidence in the case file to prove that this defendant was knowingly and intentionally involved in the human smuggling activities. Three defendants were convicted in absentia.

Various goods, vehicles and EUR 89,934 were confiscated.

3.3. | Albanian network

Ghent Court of Appeal[226] ruled in a **judgment of 20 November 2019** on a case of human smuggling involving an Albanian gang operating in motorway parking areas along the E40, in the direction of France. This case was discussed in a previous annual report[227]. During the proceedings at **Bruges Criminal Court on 14 December 2018**[228], 13 of the 14 defendants were found guilty of human smuggling with aggravating circumstances. They were handed prison sentences ranging from 30 months to 10 years and heavy fines of EUR 1,000 (partly suspended), multiplied by the number of victims. Large sums of money were confiscated.

Several defendants and the public prosecutor's office appealed.

Five defendants had their cases reviewed by the court of appeal.

The investigation revealed that the organisers of the human smuggling were based in the United Kingdom, where the prices were set and the drivers sought. On the European mainland, the victims were recruited either in Albania or in a hotel in the Ghent region. The organisation specialised in guaranteed human smuggling, often involving the participation of the lorry drivers. This cost between GBP 8,000 and GBP 13,000. Three of the defendants were lorry drivers. Life-threatening transportations were also organised in refrigerated lorries. The investigation revealed that the organisation had been involved in smuggling for five years. Several members of the gang were related to each other.

The investigation was carried out on the basis of hearings of the arrested persons, a phone investigation, observations, the examination of mobile phone content, phone tapping and information sharing with the British police.

Three defendants were arrested in the United Kingdom, but had opposed their extradition to Belgium. Another defendant was arrested in Hungary.

On appeal, the defendants denied that they were part of a criminal organisation. The court of appeal ruled that there was indeed a criminal organisation, i.e. an enduring structured association of more than two people, with the intention of committing crimes and offences in a concerted manner. The first defendant was clearly the leader of the organisation and arranged everything from the United Kingdom. Besides all sorts of associates, there were genuine smugglers and several drivers.

The court more or less confirmed the first judge's verdict. It increased the sentences of several defendants by sentencing them respectively to 10 years instead of eight, and eight years instead of six. For other defendants, the confiscated amounts were adjusted.

Myria filed a civil suit and obtained EUR 5,000 in pecuniary and non-pecuniary damages.

3.4. | Eritrean networks

Dendermonde Criminal Court tried two Eritrean networks.

In the first case, **Dendermonde Criminal Court** ruled on a large smuggling network in **a judgment of 26 November 2019**[229]. In this case, 14 defendants were prosecuted for human smuggling with aggravating circumstances, running a criminal organisation, participating in decision-making concerning the activities of a criminal organisation, and the preparation and execution of the criminal organisation's activities from October 2017 to August 2018. The smuggling activities took place in the parking areas along the E40 motorway, in the direction of the coast.

This network was mainly composed of Eritrean and Ethiopian smugglers, who smuggled people of Sudanese and Eritrean origin to the United Kingdom by hiding them in lorries.

The investigation revealed that the gang used to operate in a parking area in France, but after this area was closed, it moved its activities to Belgium. Some of the defendants had residence status in Belgium or France.

226 Ghent, 20 November 2019, 8th ch. (partial cassation for one defendant, to be reassessed by Antwerp Court of Appeal).
227 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 139-140.
228 East Flanders Crim. Court, Bruges division, 14 December 2018, ch. B 17 (available at www.myria.be (case law)).
229 East Flanders Crim. Court, Dendermonde division, 26 November 2019, ch. D19D (appeal).

They affirmed they "bought" the parking area for EUR 40,000 from another gang.

The investigation consisted of a phone investigation, observations, phone tapping, a discreet visual check in a squat, searches during which belongings were seized, a financial investigation, hearings of transit migrants and defendants.

The normal price for illegal transportation was EUR 800, but sometimes it was different. Victims sometimes paid lower prices, between EUR 400 and 500, and sometimes higher amounts, up to EUR 1,000 per crossing. For this price, victims were allowed to try their luck as often as necessary until they finally managed to make it to the United Kingdom. If victims no longer wanted to make the crossing, they didn't get their money back. Sometimes, the payment was made through an intermediary. The smugglers would help the victims to get into the lorries in the car park. During the day, they hid in safe houses. Some of the defendants also operated from a café-restaurant in Antwerp where they kept the funds, made (illegal) monetary transactions and also used the "Hawala" banking system so that the authorities couldn't trace the transfers.

The smugglers used unregistered SIM cards from the Netherlands, which one of the defendants went to buy there. In Belgium, it isn't possible to buy a SIM card without identifying yourself. These unregistered SIM cards were used to contact transit migrants without being traceable. A large number of them were found during a search.

The organisation smuggled people on a very frequent basis. The smuggling activities took place four to five nights a week in the parking areas.

Some of the defendants were responsible for bringing in new "clients". They usually did this in Maximilian Park in Brussels or in the Calais "jungle". The victims were promised they would be put in contact with the "fastest" smuggler and that they could spend the night in a "safe house" close to the parking areas. The intermediaries were compensated and received part of the sum the victim had to pay. The phone taps revealed that some of the defendants also accompanied people who wanted to travel from Eritrea to Europe, or who were trying to get to Belgium from Greece.

The smugglers weren't afraid to use violence, both against the victims and against the lorry drivers who spotted the smuggling, other gangs and the police. They sometimes used metal bars and batons. Fights between gangs of smugglers regularly broke out in the parking areas.

Children were also smuggled and refrigerated lorries often used for this purpose as they are less meticulously checked.

During the hearings, the defendants initially denied they were smugglers. They all claimed they wanted to go to the United Kingdom themselves. They maintained that they were helping each other.

According to the court, there was clear evidence of a criminal organisation. The hierarchy and division of labour was clear. First there were the "footmen", who took care of the work in the parking area. They supervised the victims and accompanied them to the parking area. Some of them also wanted to go to the United Kingdom. Then there were the intermediaries. They rarely came to the parking areas, but they performed other useful tasks, such as bringing new transit migrants and looking after the money. In addition, there were three defendants who were part of the gang's core. They would take turns and otherwise spend the rest of the time in France. Most of the money was meant for them. The organisation also had an ingenious system for keeping the funds safe. There were two treasurers, one for the victims from Antwerp and one for the victims from Brussels. They kept the money so that the smugglers didn't have to carry too much around with them. The victims also preferred to pay their money to the treasurers so that the smugglers couldn't run off with their money.

The court found most of the defendants guilty of the charges. For some, the period of incrimination was limited, and for a number of them, so was the number of victims. Three defendants were given the benefit of the doubt and were acquitted. In the course of the investigation, one defendant only entered the scene for a short period of time, during which he bought the SIM cards in the Netherlands. According to the judge, the criminal case didn't prove that he had knowingly and voluntarily contributed to the smuggling of human beings. Another defendant was acquitted on the basis of reasonable doubt. He was only in contact with the smugglers in relation to the smuggling of his two "sisters" and his nephew. According to the judge, the criminal case didn't prove that he knowingly and voluntarily provided the assistance necessary for smuggling human beings.

The main defendants were handed prison sentences of five years, six years and 40 months and heavy fines that were partly suspended. The other defendants were handed prison sentences of 20-30 months and heavy fines, some of which were partly suspended. Two defendants were sentenced to community service and fines. Several defendants were sentenced in absentia. Sums of money were confiscated.

In the second case, **Dendermonde Criminal Court** ruled on a gang of Eritrean smugglers composed of eight defendants, **in a judgment of 25 February 2020**[230]. They were prosecuted for smuggling with aggravating circumstances between 2016 and early 2019. The smuggling gang was mainly active in the parking areas along the E17 in the direction of the coast, at bus stops in and around Kruibeke.

The investigation was carried out with the help of observations, in particular those of a night shop and the home of one of the smugglers, phone analyses, analysis of images from surveillance cameras in railway stations, phone tracking, phone tapping, statements by the defendants, and the analysis of Facebook profiles. Only one victim could be questioned. The various defendants were identified thanks to IMEI numbers and SIM cards.

The smugglers used tactics to avoid being seen in public at the same time as the transit migrants. They avoided direct contact with these migrants and went through intermediaries, travelling separately to to the parking areas and taking a different route to get there.

The investigation showed that victims paid EUR 800 to travel to the United Kingdom. From November 2018, the fare was increased to EUR 1,000. They calculated that the smugglers earned a total of EUR 300,000.

The victims were also smuggled in refrigerated vehicles. During one of the phone taps, the Belgian police learned that people were dying and informed the British police, who intercepted the refrigerated van. The smuggler, who was aware, hadn't contacted emergency services. The 27 victims on board were in a state of severe hypothermia. There were also smugglers among the transit migrants who were attempting to get to the United Kingdom themselves.

The main defendant was seen as the central figure and the boss of the parking area. He denied being a smuggler and stated that he was a transit migrant who wanted to go to the United Kingdom. He had already been convicted of smuggling in France. The other defendants acted as intermediaries. They informed the transit migrants, helping them to get to the parking areas, telling them about the transportations, etc. Some of the defendants enjoyed a privileged position and were slightly closer to the main defendant. They were allowed to collect the money.

Based on the criminal case file, the court wasn't able to establish whether or not the activities had been committed with the aggravating circumstance of violence and threats. The court acquitted the defendants of this aggravating circumstance.

The court also considered that this wasn't a criminal organisation, but rather a criminal association. Criminal organisations are more complex than simple gangs. They have (inter)national ramifications. They have a more complex, better organised and more resistant structure within which legal and illegal activities can take place, even if not all members necessarily intend to contribute to committing offences. This group of criminals had no international ramifications. However, it is clear that each defendant intended to commit an offence and to benefit from it by doing so. The leaders acted purely for profit, while the others cooperated to ensure their own crossing to the United Kingdom. The court reclassified the aggravating circumstance of criminal organisation as the aggravating circumstance of criminal association. The main defendant was sentenced to seven years in prison and fined EUR 1,824,000. The other defendants were handed prison sentences ranging from 20 months to five years and fines ranging from EUR 152,000 to EUR 1,088,000. Six of the defendants were sentenced in absentia, five of whom were in the United Kingdom at the time. EUR 70,000 were confiscated.

Myria filed a civil suit and obtained EUR 1 in non-pecuniary damages.

230 East Flanders Crim. Court, Dendermonde division, 25 February 2020, ch. D19D (appeal set for 12 October 2020).

3.5. | Afghan smuggling network - joint investigation team (JIT)

Ghent Court of Appeal ruled in a judgment of 21 January 2020[231] on a case of human smuggling discussed in the previous annual report[232]. At first instance, 16 people were prosecuted for human smuggling within the framework of a criminal organisation with a large network active in several European countries. Myria filed a civil suit. In a **judgment rendered on 25 March 2019 by Ghent Criminal Court,** several defendants were handed heavy prison sentences, while others were acquitted[233].

One of the defendants lodged an appeal.

The criminal organisation had an enormous network in Europe and smuggled people of different nationality into the United Kingdom. The organisation illegally transported people in vans and small lorries that had been fitted with hidden compartments. During interceptions, links were established with Belgium, in particular thanks to documents and examinations of phone data. Based on this information, a criminal investigation began in Belgium. When it transpired that there was also regular contact with Bulgaria and the United Kingdom, a European collaboration was set up involving the police, the public prosecutor's office and the investigating judge, within the context of a judicial investigation by a joint investigation team (JIT). It emerged from all these investigations that an organisation had been constructed, that it had mainly been facilitated by Afghans and that it was led by two specific people in the United Kingdom and Bulgaria. The network mostly smuggled people from Afghanistan, Syria and Iraq to the United Kingdom. Belgium served as the crossroads where people were loaded into vehicles with hidden compartments. Migrants had to pay EUR 10,000 for a complete journey.

The two main defendants and several others were found guilty, respectively, of being the leader and co-perpetrators of a criminal organisation involved in human smuggling with aggravating circumstances. They were handed prison sentences ranging from eight months to seven years, and fines between EUR 24,000 and EUR 760,000.

Several other defendants were acquitted owing to a lack of evidence.

Myria was awarded a lump sum of EUR 2,500 as compensation.

At the court of appeal, the defendant argued that he only had a subordinate role in the criminal organisation. The court didn't agree and upheld the first judge's decision.

3.6. | Human smuggling reclassified as facilitation of illegal immigration (Article 77 of the Act of 15 December 1980)

On **20 March 2020, Antwerp Criminal Court** ruled on a case of human smuggling involving acts that took place at Antwerp Airport[234]. Two people were prosecuted.

End 2018, a woman with a British passport who wanted to take a flight to London was stopped at the airport. Her face didn't match the photo on the passport she presented. Her statements were vague and contradictory. There were two men, of British nationality but of Eritrean origin, on the same flight, one of whom had the same surname as her. All three swore that they didn't know each other. The police then carried out an investigation. All three people were questioned, their mobile phones were examined, images from the airport cameras were analysed and a retroactive phone investigation was carried out. A photo of the British passport was found on the mobile phone of one of the defendants. The woman and the two men had arrived separately from the station by taxi, but only a few minutes apart. In addition, the statements of the three individuals were contradictory: at first, they appeared not to know each other, then they stated they were related.

231 Ghent, 21 January 2020, 4th ch. (appeal to the Court of Cassation rejected).

232 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, pp. 137-138.

233 East Flanders Crim. Court, Ghent division, 25 March 2019, 28th ch.

234 Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1877 (appeal).

During the court proceedings, the defendants stated that they were, respectively, the brother and nephew of this woman. Originally from Eritrea, she had allegedly lived in Sweden and become homeless after her divorce. The Swedish immigration services rejected her asylum application and she was ordered to leave the country. The defendants had tried to help her get to the United Kingdom where her son and brother were staying. The court stated that it couldn't rule on these statements but had to rely on the criminal case file. The court found that the defendants were acting as *smugglers*.

The court nevertheless reclassified the acts according to Art. 77 of the Act of 15 December 1980, because the mental element, the special intent "with a view to obtaining, directly or indirectly, a financial advantage" provided for in Art. 77 bis, hadn't been proven. The court agreed with the defence that, taking into account the specific context and the family ties, there was no evidence of a direct or indirect financial advantage.

The court didn't accept the argument that the defendants had provided assistance primarily on humanitarian grounds. The defendants belonged to the same family and had specifically and deliberately travelled to Belgium to help organise and accompany this woman on her journey to the United Kingdom. They weren't individuals providing primary care or assistance to a person in an illegal situation.

The two defendants were handed a one-year prison sentence and a fine of EUR 13,000, both suspended.

Part 3
Data



Introduction

This part contains the key figures given to Myria by the six stakeholders likely to play a role in a human trafficking or smuggling case in Belgium. It presents data on human trafficking and on human smuggling. This chapter ends with an external contribution by the NSSO inspection service.

The six stakeholders who provided this data are:

- the police, with information from the National General Database (NGD) ;
- the NSSO Inspection Department (Thematic Directorate for Trafficking in Human Beings, ECOSOC teams) ;
- the College of Prosecutors General, with information on the prosecutions made by the public prosecutor's office;
- the Immigration Office (IO) ;
- PAG-ASA, Payoke and Sürya: the specialised victim reception centres;
- the Criminal Policy Service of FPS Justice, with information on the convictions.

There is a lack of harmonisation between the figures from these stakeholders. Therefore, they aren't sufficient as a basis for policy evaluation or to support strategic analyses. This lack of harmonisation also significantly restricts the possibilities of reporting to the European institutions. Myria works with these stakeholders on a daily basis in order to obtain figures of the best possible quality.

Warning

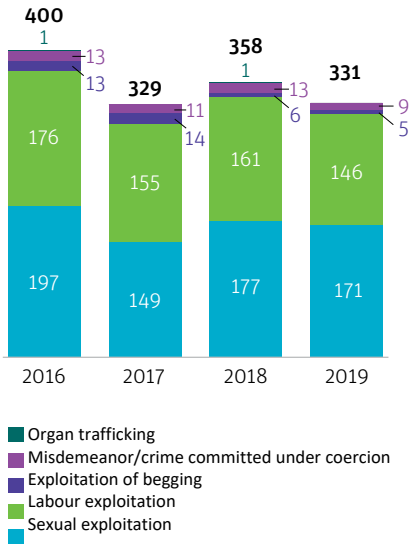
- The figures in this report don't reflect the true extent of the phenomenon of human trafficking and smuggling. They only indicate the acts and the victims identified by the authorities. There are currently no estimates on unidentified acts and victims.
- These figures and their evolution provide more information on the actions of the authorities to combat human trafficking and smuggling than on the phenomena as such.

The figures available on human trafficking and smuggling only show the visible tip of the iceberg. The real extent of the phenomenon is unknown.



1. Human trafficking

Human trafficking offences (police data)

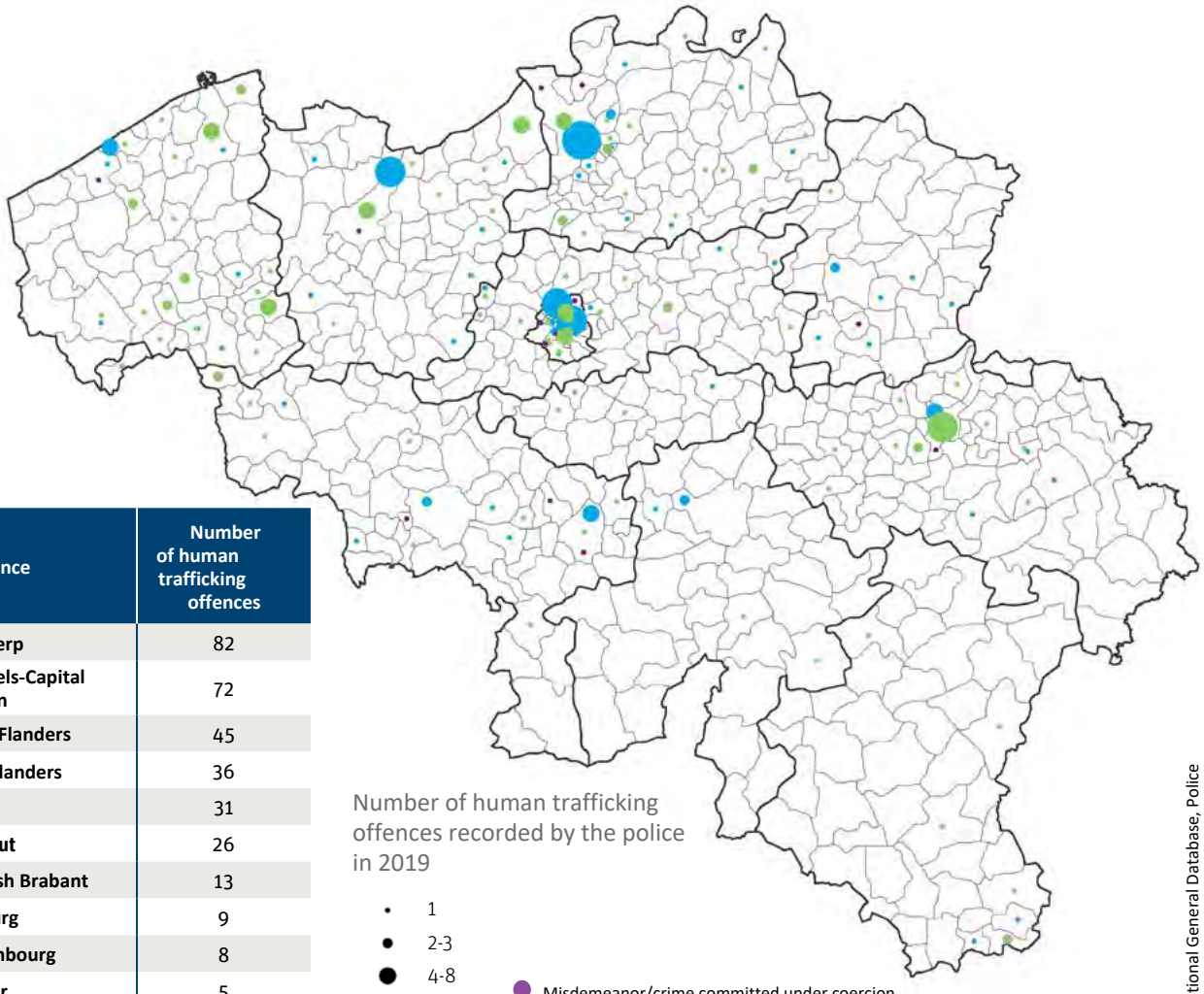


Since 2016 , the number of offences is below 400 and fluctuates from one year to the next. In 2019, there were slightly less than in 2018.

In 2019:

- The police recorded a total of **331 human trafficking offences**, mainly concerning sexual exploitation (52%) and labour exploitation (44%). Nevertheless, there were 9 offences involving misdemeanors or crimes committed under coercion and 5 involving exploitation of begging. There were no organ trafficking offences in 2019.
- There were more offences concerning human trafficking in big cities, mainly in the capital (72 offences in total in the 19 municipalities) and in the municipality of Antwerp (with 52 offences recorded) .
- The province of Antwerp and the Brussels-Capital Region accounted for 60% of the offences associated with sexual exploitation at national level. Concerning labour exploitation, the offences were mainly recorded in the provinces of West Flanders (31), Antwerp (24), Liège (21) and in the whole of the Brussels Region (20).

Province	Number of human trafficking offences
Antwerp	82
Brussels-Capital Region	72
West Flanders	45
East Flanders	36
Liège	31
Hainaut	26
Flemish Brabant	13
Limburg	9
Luxembourg	8
Namur	5
Walloon Brabant	4
Total	331



Source : National General Database, Police

Reports from the NSSO Inspection Department (ECOSOC units)

Among the investigations closed in 2019:

- The NSSO Inspection Department drew up 58 reports on human trafficking (Art. 433 *quinquies* of the Criminal code).
- 82 presumed victims of human trafficking were referred to the judicial authorities and the specialised reception centres by the NSSO Inspectorate through criminal reports or reports (compared with 65 in 2018).
- The most represented sectors of activity were hospitality, construction and retail.

For more information, see the external contribution by the NSSO Inspection Department at the end of this part.

Sector of activity and nationality of workers identified as presumed victims of human trafficking by the NSSO Inspection Department in 2019

Country	Agriculture and horticulture	Food industry	Construction	Garages	Wholesale trade	Retail trade	Land transport	Hospitality	Cleaning	Sports, recreational and leisure activities	Others	Total
Poland			7			2					7	16
Morocco		1	2		2		1	4	1			11
Egypt								8				8
Romania			2		1	1	2	1				7
Vietnam											5	5
Afghanistan				3		1						4
Pakistan						4						4
Belgium						1		1		1		3
Ghana	1										2	3
Cameroon											2	2
China								2				2
Ivory Coast						1					1	2
Kosovo								2				2
Rwanda						1		1				2
Ukraine			2									2
Brazil								1				1
Burkina Faso						1						1
Lithuania			1									1
Mali											1	1
Niger											1	1
Nepal								1				1
Portugal			1									1
Tunisia								1				1
Turkey								1				1
Total	**1**	**1**	**15**	**3**	**3**	**12**	**3**	**23**	**1**	**1**	**19**	**82**

Source: NSSO Inspection Department (ECOSOC units)

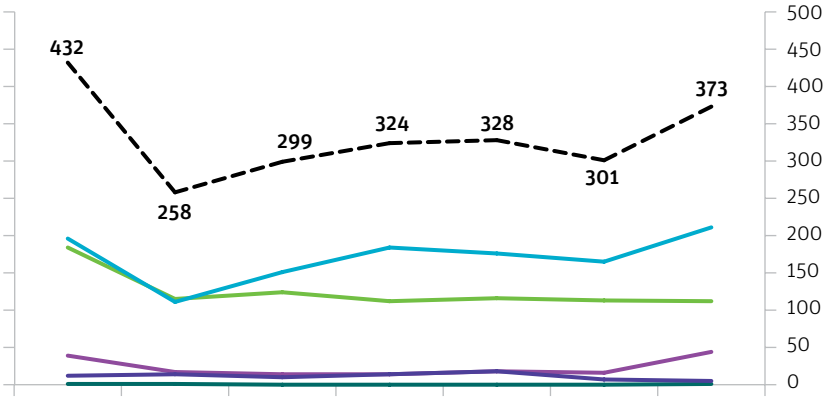
Human trafficking cases dealt with by the public prosecutor's office

In 2019,

- **373** human trafficking cases were dealt with by the public prosecutor's office.
- After remaining stable for several years, this marks an increase of 24% compared with 2018.
- 57% of these cases concerned sexual exploitation, 30% labour exploitation, 12% misdemeanors or crimes committed under coercion and 1% exploitation of begging.

Between 2018 and 2019, there was an increase in the number of cases linked to sexual exploitation. This rose from 165 in 2018 to 211 in 2019. Similarly, cases linked to misdemeanors or crimes committed under coercion more than doubled between 2018 and 2019.

A **new case** is opened on the basis of the initial report (subsequent reports won't lead to the opening of a new case). A case can also be opened on the basis of a complaint or a civil action.



	2013	2014	2015	2016	2017	2018	2019
Sexual exploitation	196	111	151	184	176	165	211
Labour exploitation	184	115	124	112	116	113	112
Exploitation of begging	12	14	10	14	18	7	5
Coercion to commit a misdemeanor/crime	39	17	14	14	18	16	44
Organ smugglging	1	1	0	0	0	0	1
Total	**432**	**258**	**299**	**324**	**328**	**301**	**373**

Methodological remarks

- This data corresponds to the status on 9 May 2020 and comes from the College of Prosecutors General database.
- It represents the number of cases submitted to the crown prosecution service (including the federal prosecutor's office) in 2019.
- It is limited to offences committed by adults and doesn't include cases dealt with by the labour prosecutor.
- The cases submitted to the public prosecutor's office of Eupen have only been included since 19 February 2019. They weren't included in the data in previous years due to a harmonisation problem regarding the computer system.
- For cases sent to another district, or when they are sent to another division in the same judicial district, there is a risk they will be counted twice.
- Each criminal case can involve one or more defendants.

Increase in the number of cases dropped

	Cases dropped	Total
Sexual exploitation	78	211
Labour exploitation	28	112
Exploitation of begging	3	5
Misdemeanor/forced crime	30	44
Total	**139 (37%)**	**373**

- **37%** of human trafficking cases submitted to the public prosecutors' offices in 2019 were dropped on 9 May 2020. This percentage has continued to increase over the last few years, from 24% in 2017 to 28% in 2018.
- In 2019, of the 139 cases dropped, more than half of them involved sexual exploitation.
- Among these 139 cases, 31 were dropped on discretionary grounds and 108 for technical reasons (70 cases owing to insufficient charges, 23 owing to "unknown perptrators" and 15 for other reasons).

source: College of Prosecutors General database, analysts

Jurisdiction: Extent of a jurisdiction's territorial competence. Belgium is divided into five major jurisdictions, which each have a court of appeal. Every court of appeal is responsible for several judicial districts.

- Antwerp → Antwerp and Limburg
- Brussels → Brussels (Brussels and Halle-Vilvoorde), Leuven and Walloon Brabant
- Ghent → East Flanders and West Flanders
- Liège → Liège, Eupen, Namur and Luxembourg
- Mons → Hainaut

Jurisdiction of Antwerp

- **Antwerp is the jurisdiction in which the most human trafficking cases were submitted in 2019.**
- Increase in the number of cases submitted in the jurisdiction of Antwerp, owing to an increase in the number of cases concerning sexual and labour exploitation.
- Majority of cases opened for sexual exploitation (72%).

Jurisdiction of Brussels

- Recent increase in the total number of cases related to the increase in the number of sexual exploitation cases, which more than doubled between 2018 and 2019.
- Majority of cases concerning sexual exploitation (58 cases out of 88 in 2019).

Jurisdiction of Ghent

- Slight decrease compared with 2018.
- This is the only jurisdiction where there was a decrease in the number of sexual exploitation cases in 2019.
- The number of sexual exploitation cases is on par with labour exploitation cases (33).

Jurisdiction of Liège

- Slight rise between 2018 and 2019.
- There were more cases of labour exploitation (25) than sexual exploitation (20) in 2019.

Jurisdiction of Mons

- After a period of stability, the total number of cases rose again, mainly due to the increase in the number of cases concerning crimes or misdemeanors committed under coercion.
- In 2019, the latter was the most common form of exploitation (26 out of 37).

Federal public prosecutor's office

- In 2019, there were five cases of sexual exploitation and one of labour exploitation.

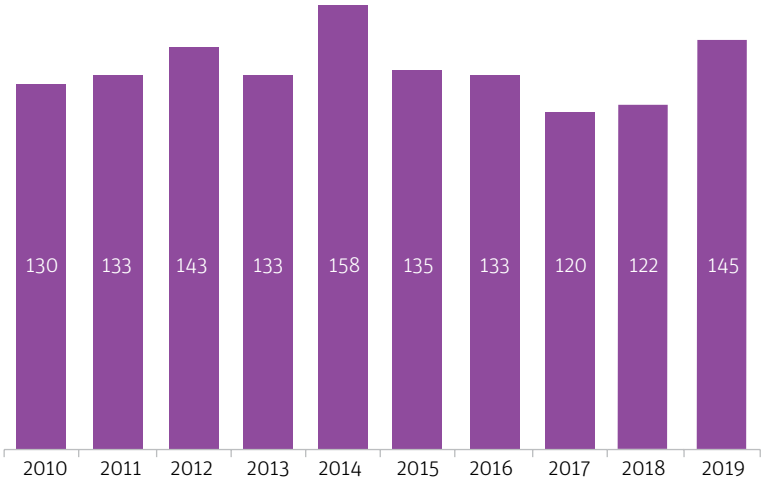
Classification of charges

Sexual exploitation	37L	art.	433*quinquies*	§	1	1°C.C.
Labour exploitation	55D	art.	433*quinquies*	§	1	3°C.C.
Exploitation of begging	29E	art.	433*quinquies*	§	1	2°C.C.
Forced misdemeanor/crime	55F	art.	433*quinquies*	§	1	5°C.C.
Organ trafficking	55E	art.	433*quinquies*	§	1	4°C.C.

Antwerp
Brussels
Ghent
Liège
Mons
Federal public prosecutor's office
Sexual exploitation
Labour exploitation
Exploitation of begging
Forced crime/ misdemeanor
Organ trafficking
Total per jurisdiction
2013 2014 2015 2016 2017 2018 2019
26 26 45 56 50 73 89
38 26 30 20 31 19 30
1 2 2 3 0 3 0
2 1 2 3 1 6 3
0 1 0 0 0 0 1
67 56 79 81 82 101 123
116 26 25 66 41 24 58
35 25 23 17 19 28 19
5 3 2 2 8 1 2
14 7 4 3 7 4 9
1 0 0 0 0 0 1
171 61 54 88 75 57 88
22 38 47 41 48 45 33
52 30 27 52 20 30 33
2 3 6 6 6 0 1
6 1 5 4 2 0 2
0 0 0 0 0 0 0
82 72 85 103 76 75 69
43 14 20 11 29 18 20
43 25 26 13 33 22 25
4 6 0 2 4 3 1
15 2 3 3 7 0 4
0 0 0 0 0 0 0
84 52 48 29 73 43 50
9 6 14 10 8 5 6
16 9 18 9 12 13 4
0 0 1 0 1 0 1
1 1 2 1 1 6 26
0 0 0 0 0 0 0
26 15 33 22 21 24 37
1 1 0 0 0 0 0
0 0 0 1 0 0 0
0 0 0 0 0 0 0
1 1 0 1 1 1 1
0 0 0 0 0 0 0
2 2 0 1 1 1 6
1 1 0 0 0 0 5
0 0 0 0 0 0 0
0 0 0 0 0 0 0
0 0 0 0 0 0 0
0 0 0 0 0 0 0
Source: College of Prosecutors General database, analysts

New support for victims of human trafficking initiated by the specialised reception centres

145 victims of human trafficking began receiving support in a specialised reception centre in 2019



- Clear increase compared with 2018. In 2019:
- Of the 145 victims, **87 were victims of labour exploitation** (79 in 2018) and **52 of sexual exploitation** (38 in 2018).
- Among the new cases of support, there were also 3 victims who were the subject of exploitation of begging and 3 victims of offences committed under coercion. No new support was organised for victims of organ trafficking.
- There were 75 male victims compared with 70 female ones.

- There were 26 Moroccan victims, 16 Nigerians and 13 Egyptians. These are the top 3 nationalities concerning victims of human trafficking who began receiving support in one of the 3 specialised centres in 2019.

Support is organised once the initial phase (period of reflection) has begun, i.e. as soon as an Annex 15 has been issued.

It isn't possible to evaluate the extent of the specialised centres' work based on the data on new support

- The indicator for the duration of the support isn't discussed here. The Immigration Office's figures on the extension of documents, within the framework of the human trafficking procedure, do however offer a potential indicator.

  See documents issued by the Immigration Office to victims of trafficking and smuggling of human beings
- Reports of persons for whom no support was initiated aren't mentioned here either.

Source: Payoke, Pag-asa, Sürya

Among the 87 victims of **labour exploitation**:

- 23 were Moroccan nationals and 13 Egyptian nationals.
- Women were in the minority.
- There were 4 minors among these victims.

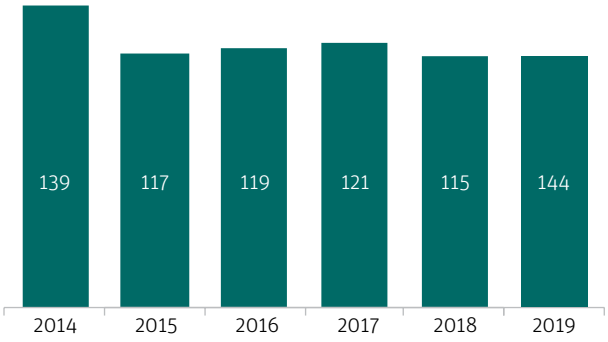
Among the 52 victims of **sexual exploitation**:

- The main nationality was Nigerian (15 victims).
- They were almost exclusively women (except for 2 Brazilians).
- There were 2 minors.

Nationality	Sexual exploitation				Exploitation of begging				Labour exploitation				Misdemeanor/crime committed under coercion				Total
	Women		Men		Women		Men		Women		Men		Women		Men		
	Min.	Maj.	Min.	Maj.	Min.	Maj.	Min.	Maj.	Min.	Maj.	Min.	Maj.	Min.	Maj.	Min.	Maj.	
Morocco		1								3		20					24
Nigeria		15								1							16
Egypt												13					13
Brazil		5		2						2		2					11
Romania		7				1				2		1					11
Bulgaria		4										3					7
Algeria		1										4					5
Vietnam									1	1	2	1					5
China										1		3					4
Hungary		3						1									4
Belgium	1	1														1	3
Burkina Faso												3					3
Spain												3					3
India												3					3
Macedonia		2							1								3
Pakistan												3					3
Armenia										1				1			2
Ecuador												2					2
Serbia					1					1							2
Afghanistan												1					1
Albania		1															1
Cuba		1															1
Ivory Coast										1							1
Italy		1															1
Iraq												1					1
Guinea		1															1
Kazakhstan		1															1
Mali												1					1
Montenegro												1					1
Uganda		1															1
Philippines												1					1
Poland		1															1
DR Congo										1							1
Rwanda														1			1
Somalia	1																1
Ukraine		1															1
Tunisia												1					1
Turkey												1					1
Venezuela		1															1
Yemen												1					1
Total	**2**	**48**	**0**	**2**	**1**	**1**	**0**	**1**	**2**	**14**	**2**	**69**	**0**	**2**	**0**	**1**	**145**

Source: Payoke, Pag-asa, Surya

Victims of human trafficking who entered the procedure (IO data)



- In 2019, Brazilians and Moroccans were the two main nationalities of victims of human trafficking who entered the procedure (for all types of exploitation).
- Between 2018 and 2019, the number of Brazilian victims rose from 2 to 21. The number of Moroccan victims remained stable.
- Specifically regarding labour exploitation, there were 19 Moroccans and 16 Brazilians.
- Among all the victims of sexual exploitation, Nigeria was the most represented nationality (16 people).

For the pas few years, the number of new residence applications submitted on the basis of the human trafficking procedure remained stable. In 2019, the number increased, especially for victims of sexual exploitation.

In 2019:

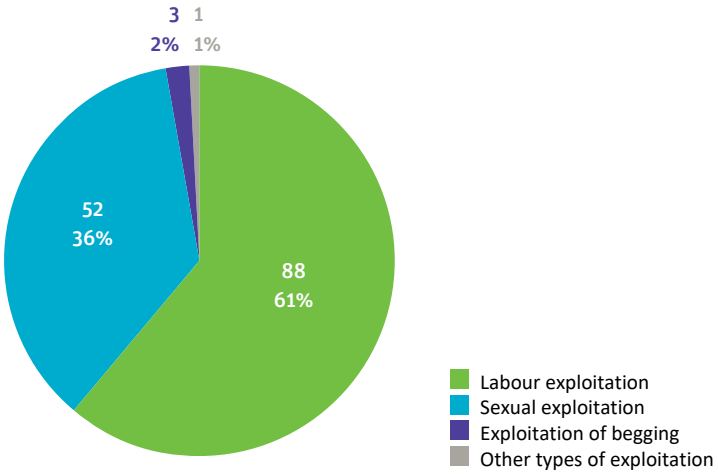
- **144 victims** of human trafficking entered the procedure (increase compared with 2018).
- More than **60%** of victims were exploited **economically**. More than a third of the victims were trafficked for the purpose of sexual exploitation and only 2% were exploited in the begging sector.
- No victims of organ trafficking or misdemeanors committed under coercion entered the procedure in 2019 according to IO data. However, this data refers to one victim of "another type of exploitation".

In Belgium, trafficking victims who agree to collaborate with the judicial authorities can benefit from a specific residence status.

Ranking of the main nationalities of trafficking victims in Belgium

Nationality	2019
Brazil	21
Morocco	20
Nigeria	16
Egypt	11
Romania	9
Bulgaria	8
Algeria	4
Vietnam	4
Hungary	4
Spain	4
Others	43
Total	144

Victims of human trafficking who entered the procedure per type of exploitation



source: IO

Age		0-17	18-25	26-30	31 years +	Total	Men	Women
Sexual exploitation	2018	3	20	7	3	33	0	33
	2019	3	28	12	9	52	3	49
Labour exploitation	2018	1	14	25	35	75	66	9
	2019	7	13	11	57	88	65	23
Exploitation of begging	2018	3	1	0	0	4	2	2
	2019	1	1	0	1	3	1	2
Other types of exploitation	2018	0	0	0	3	3	3	0
	2019	0	0	1	0	1	0	1
Total	2018	**7**	**35**	**32**	**41**	**115**	**71**	**44**
	2019	**11**	**42**	**24**	**67**	**144**	**69**	**75**

In 2019, there were slightly more female victims (52%) than male ones (48%).

In 2019:

- There were 75 female victims and 69 male victims. In 2018, it was the opposite.
- There were more victims of labour exploitation (88 out of 144), especially men, two-thirds of whom were over 30 years old (57 people).
- Victims of sexual exploitation were practically all women (49 out of 52). Among them, 28 were aged between 18 and 25, and 3 were minors.

The category "**Other types of exploitation**" corresponds to cases for which the type of exploitation hadn't been clearly identified when the first application was made.

11 child victims of human trafficking entered the procedure in 2019:

- 7 victims of labour exploitation, 3 victims of sexual exploitation and 1 victim of exploitation of begging;
- Some of them are unaccompanied foreign minors (UFM). A UFM who is a presumed victim must also be reported to the Guardianship Service. After they have been identified by the latter, they will be assigned a guardian.

source: IO

Documents issued by the Immigration Office to victims of trafficking and smuggling of human beings

		2012	2013	2014	2015	2016	2017	2018	2019
OLT 45 days (human trafficking)		36	28	32	17	10	3	0	0
Annex 15		0	0	0	0	0	20	44	43
Certificate of immatriculation (CI)		140	117	133	114	116	112	113	136
CI extension		12	15	11	22	26	31	19	16
Human trafficking	**Temporary CIAR (Card A)**	104	98	84	90	84	97	91	108
	Extension Card A	437	458	443	425	413	383	348	370
	Unlimited CIAR (Card B)	35	44	33	36	49	50	61	42
Humanitarian	**Temporary CIAR (Card A)**	4	2	2	6	2	0	3	3
	Extension Card A	44	31	30	29	20	29	20	26
	Unlimited CIAR (CarD B)	11	24	21	36	22	23	18	26
Annex 13 (OLT)		7	11	14	2	2	4	0	0
Total		**830**	**828**	**803**	**777**	**744**	**752**	**717**	**770**

In 2019:

- The data presented here concerns both vicitms of **trafficking** and certain aggravated forms of human **smuggling**.
- The **770** decisions to issue or extend a residence permit concern both new victims from 2019 and those from the previous year, who are in the process of being granted victim status and for whom one or more decisions were taken in the past.

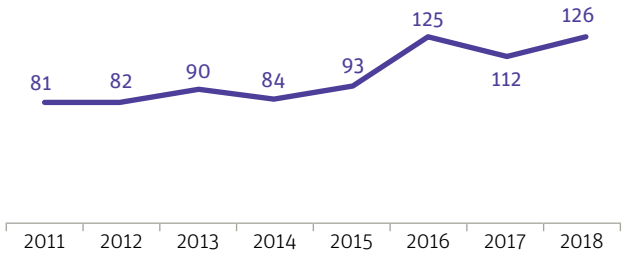
The total number of documents issued to victims of trafficking and smuggling in human beings rose slightly in 2019 (+7% compared with 2018).

- A certificate of immatriculation in the aliens register (**CIAR**), which can be temporary and/or extended, is always issued for a period of six months. Normally, victims receive two a year until the end of the legal proceedings.
- Annex 15 has replaced the 45-day OLT since 21/05/2017. The legal basis and the requirements haven't changed, only the type of document. This document is issued during the period of reflection. If the victim lodges a complaint directly or makes statements against the perpetrators, this document won't be issued. The victim will directly receive a certificate of immatriculation (CI).

source : IO

Convictions for human trafficking (Justice Department data)

Number of convictions



In 2018:

- **126** convictions were pronounced. Numbers have increased overall in the past few years.
- These convictions led to 428 decisions, 93 of which were suspended. The most common sentences were fines (29%), incarceration (28%) and the deprivation of rights (24%).
- Almost half the prison sentences pronounced in 2018 ranged from 1 to 3 years (59% suspended).

Every **conviction** concerns a convicted person (convictions are different from judgments, which can include several convictions).

1 conviction = 1 person

Sentences correspond to the decisions of the convictions. For one conviction, several sentences may be pronounced at the same time (prison, fine, etc.). As a result, one category doesn't exclude the other (with a few exceptions) and the total number of sentences is higher than the total number of perpetrators/convictions.

Sentences	Decisions	Suspended (fully or partly)
Fine	124	40
Incarceration	118	53
Deprivation of rights	101	/
Confiscation	67	/
Professional ban	3	/
Community service	1	/
Other bans	14	/
Total	**428**	**93**

As in 2017, it was mainly Belgians who were convicted in 2018. However, there was an increase in convicted persons of Nigerian origin, a result of the increase in activity of certain criminal networks in Europe in terms of sexual exploitation. According to FPS Justice, *the phenomenon of the exploitation of Nigerian minors in prostitution has led to numerous investigations and interventions over the past few years, which is ultimately reflected in the data on convictions.*

Main nationalities of persons convicted of human trafficking in 2018

Nationality	2018
Belgium	32
Unknown	25
Nigeria	22
Bulgaria	7
Pakistan	5
Romania	5
Others	30
Total	**126**

Methodological remarks

- These figures show the number of final convictions, i.e. convictions that couldn't be appealed.
- The data were extracted in March 2020.
- The database doesn't provide the type of exploitation for all the convictions.
- The Department of Criminal Policy of FPS Justice once again corrected its data for 2017.
- A certain number of cases are only entered in the database after several months. This is why the data for 2018 is also likely to be corrected in the future and the data for 2019 isn't available yet.

source: Department of Criminal Policy, FPS Justice

2. Human smuggling

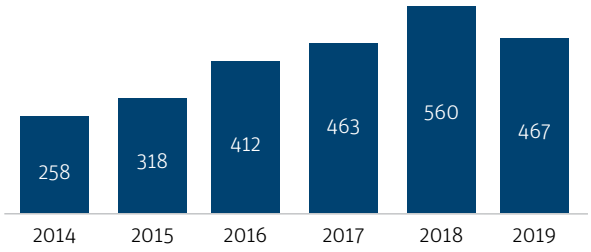
Human smuggling offences (police data)

In 2019, 467 human smuggling offences were recorded by the police. 82% of these cases were in Flanders.

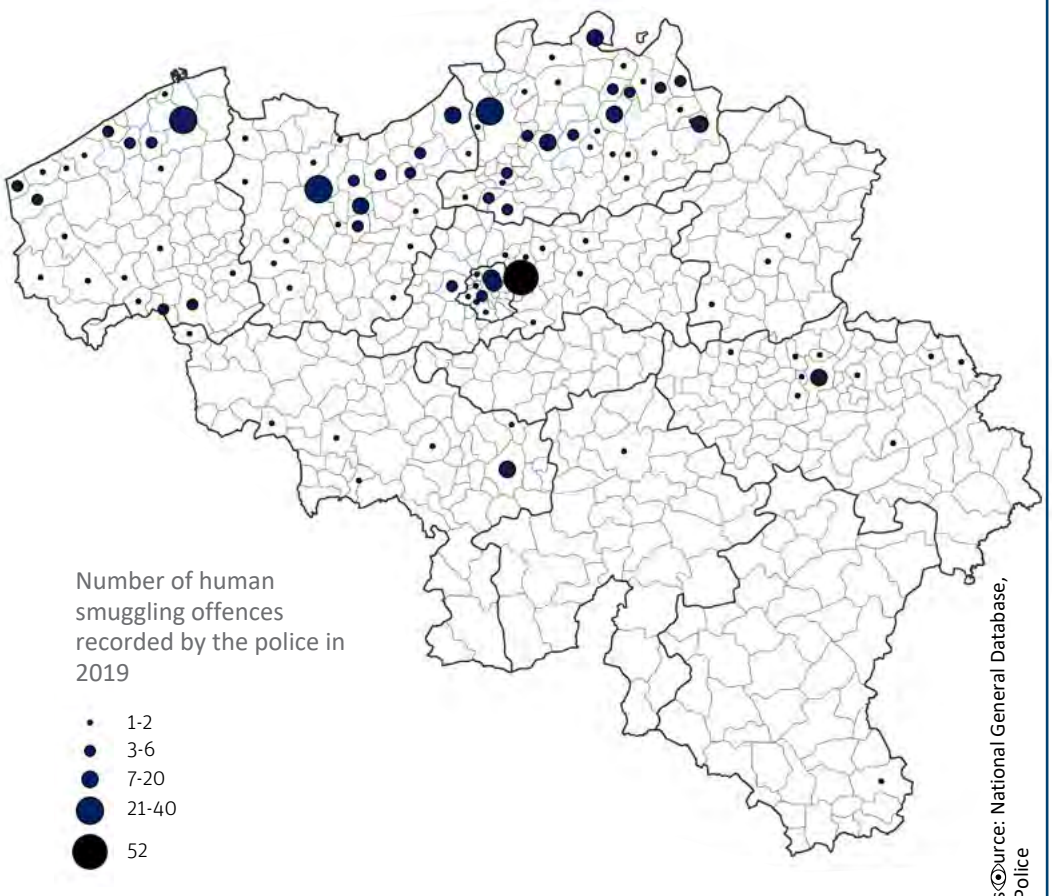
- In 2019, 82% of human smuggling offences were recorded in Flanders, 10% in Wallonia and 7% in the Brussels-Capital Region.
- The province of Antwerp recorded the highest number of offences, i.e. 30% of the total.
- At municipal level:
  - In Flanders, Zaventem (53) is in first position. The police there recorded almost all the offences at the airport (52). Bruges (40) and Antwerp (37) are in second and third position respectively in the ranking.
  - In Wallonia, Liège is the municipality with the most offences (15).
  - In the Brussels-Capital Region, there were 13 offences in the city of Brussels, placing it at the head of the 19 municipalities.

Recent developments:

- Since 2014, the number of offences recorded has continued to rise, reaching 560 in 2018 (i.e. more than double than in 2014). For the first time in 5 years, this figure fell in 2019 thus matching the level in 2017.
- Between 2018 and 2019, the number of offences fell (-44%) especially in the province of East Flanders, which had 167 in 2018 (and 93 in 2019).
- The big annual differences can chiefly be explained by police interventions within certain criminal cells, which make the statistics go up.

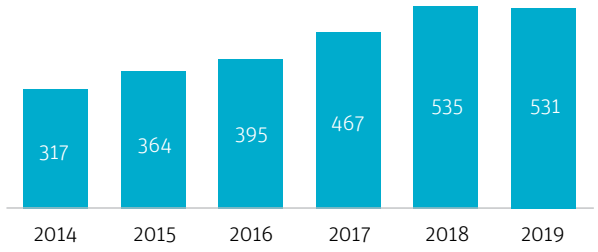


Province	Number of human smuggling offences
Antwerp	139
East Flanders	93
West Flanders	86
Flemish Brabant	63
Brussels-Capital Region	34
Liège	26
Hainaut	17
Limburg	4
Luxembourg	2
Namur	1
Walloon Brabant	0
Unknown	2
Total	467



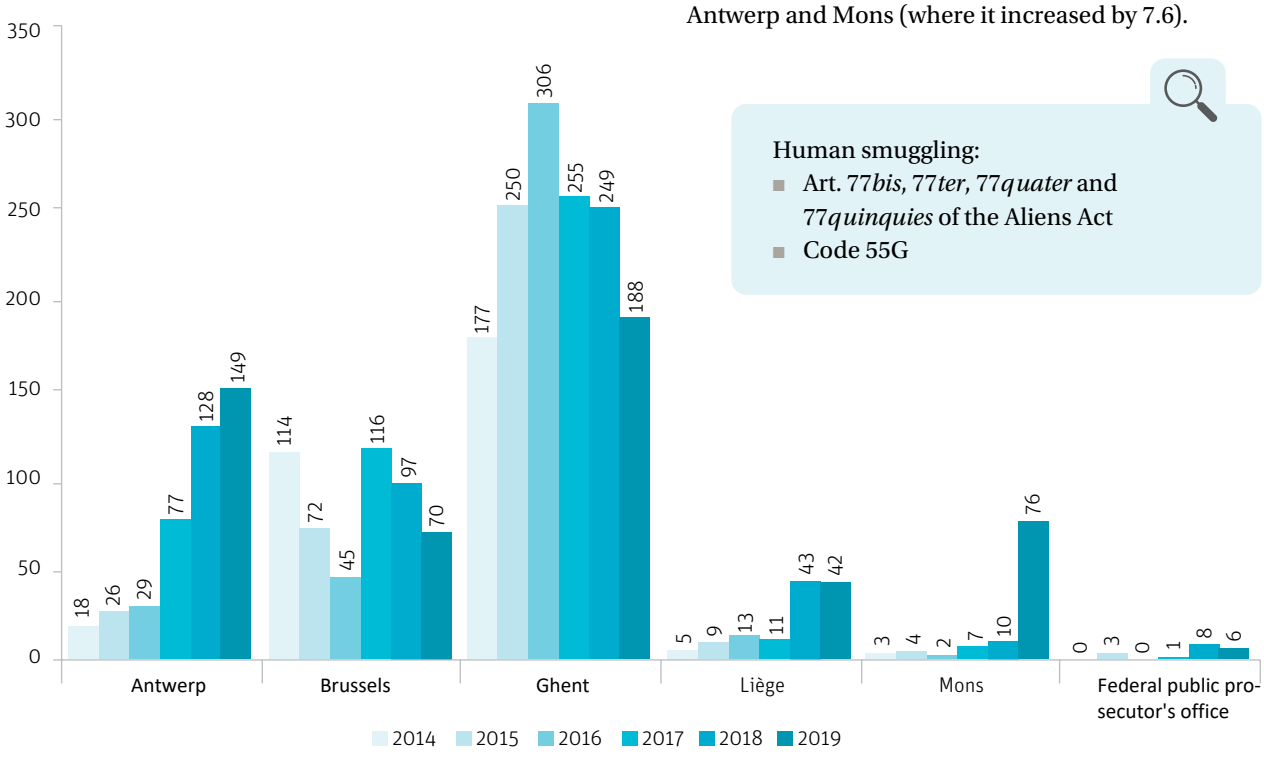
Source: National General Database, Police

Human smuggling cases submitted to the public prosecutor's office



In 2019, **531** cases were submitted to the crown prosecution service.

- After a continuous rise, the number of cases submitted to the public prosecutors offices for human smuggling has been stable since 2018.
- In 2019, it was the jurisdiction of Ghent that had the highest number of human smuggling cases (with 188 cases, i.e. 35% of the total), followed by the jurisdiction of Antwerp (with 149 cases).
- Between 2018 and 2019, the number of cases submitted fell in nearly all jurisdictions except those of Antwerp and Mons (where it increased by 7.6).

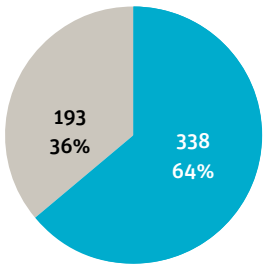


Human smuggling:

- Art. 77*bis*, 77*ter*, 77*quater* and 77*quinquies* of the Aliens Act
- Code 55G

Difficulty in bringing successful prosecutions for human smuggling

Cases submitted to the public prosecutors offices in 2019 for human smuggling and dropped on 9 May 2020



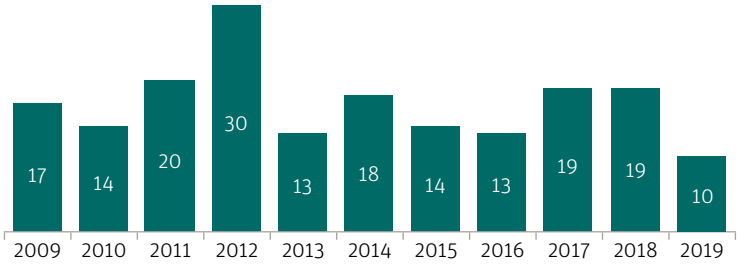
- Of the 531 human smuggling cases submitted to the public prosecutors offices in 2019, 338 were dropped on 9 May 2020, i.e. 64%. In 2017, this percentage was only 40%.
- Among the 338 cases dropped, 83 were on discretionary grounds and 255 for technical reasons (187 because the perpetrator(s) was(were) unknown and 60 owing to insufficient charges).
- More than half of the cases were dropped because the offences were committed by perpetrators who couldn't be identified.

Source: College of Prosecutors General database, analysts

Victims of an aggravated form of human smuggling who entered the procedure (Immigration Office data)

Just like victims of human trafficking, victims of an aggravated form of human smuggling can also apply for victim status.
Aggravated forms of human smuggling are mentioned in Article 77 *quater* 1° to 5° of the Act of 15/12/1980. They mainly concern the fact that the victim is a child and that their life is endangered, etc.

In 2019, there were **10 victims of human smuggling** with aggravating circumstances for whom a residence permit was issued for the first time by the IO. This figure has never been so low in 10 years.



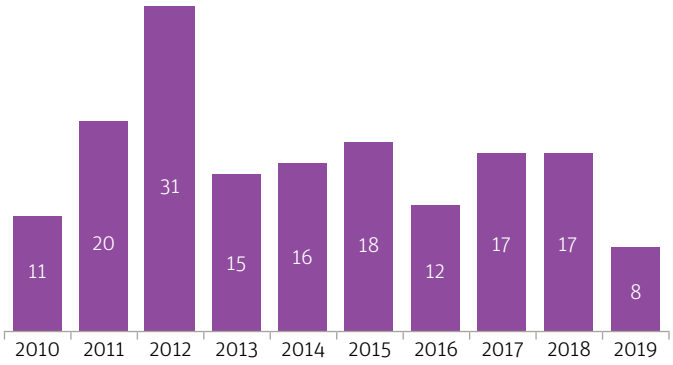
3 child victims of human smuggling entered the procedure in 2019.

Among all the smuggling victims, there were:
- 6 men and 4 women;
- 3 victims under 18 years old;
- 4 Vietnamese, 3 Moroccans and 3 victims with another nationality.

Human smuggling	0-17	18-25	26-30	31 and over	Men	Women	Total
2018	8	5	4	2	**12**	**7**	**19**
2019	3	2	3	2	**6**	**4**	**10**

source: IO

New support for victims of human smuggling initiated by the specialised reception centres



n 2019:

- **8** victims of aggravated smuggling began receiving support in one of the three specialised centres in Belgium. This number hasn't been as low since 2010.
- There are as many women as men among these victims.
- Of the 8 victims, 4 were Vietnamese.

3 child victims of smuggling began receiving support from a specialised centre in 2019:

- 3 Vietnamese minors:



Nationality	Women		Men		Total
	<18	≥18	<18	≥18	
Eritrea				1	1
Morocco		1		1	2
Sudan				1	1
Vietnam	2	1	1		4
Total	2	2	1	3	8

source: Payoke, Pag-asa, Sürya

Convictions for human smuggling (Justice Department data)

In 2018, **181 final convictions** were pronounced for human smuggling. This is double the amount of 2015.

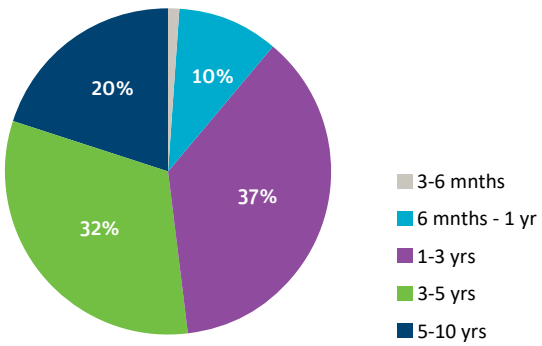
- Several decisions can be taken per conviction. The total number of decisions therefore differs from the number of convictions. In 2018, these convictions led to 607 decisions, 130 were suspend (in full or partly). Among the 607 sentences handed down, both prison sentences and fines (176) were at the top.
- In 2018, the prison sentences handed down (including suspended sentences) were mainly for a duration of 1 to 3 years (37%), followed closely by those of a duration of 3 to 5 years (32%).

Methodological remarks

- These figures show the number of final convictions, i.e. those that can't be appealed.
- A certain number of cases are only entered in the database after several months. This is why the data for 2019 isn't available yet.

Main sentences	Decisions	Suspended (in full or partly)
Incarceration	176	63
Fine	176	67
Community service	5	/
Confiscation	110	/
Deprivation of rights (Art.31 of the C.C.)	130	/
Others	10	/
Total	**607**	**130**

Duration of prison sentences pronounced (suspended or not)



- Nigerians (11%), Belgian (10%), Egyptians (8%), and Albanians along with Syrians (7%) are the top 5.
- However, in 18% of cases, the nationality of the convicted parties was unknown in 2018. Nevertheless, this is less than in 2017 (33 convicted parties of unknown nationality in 2018 compared with 43 in 2017).

Nationalities of those convicted of human smuggling in 2018

Nationality	2018
Unknown	33
Nigeria	20
Belgium	19
Egypt	15
Albania	13
Syria	13
Algeria	8
Romania	8
Iraq	7
Afghanistan	6
India	5
Iran	5
Morocco	4
Pakistan	4
China	3
United Kingdom	3
Georgia	2
Ghana	2
Palestine	2
Netherlands	2
Brazil	1
Bulgaria	1
DR Congo	1
Ivory Coast	1
Greece	1
Lithuania	1
Sudan	1
Total	**181**

source: Department of Criminal Policy, FPS Justice

External contribution: explanation of the statistical data relating to the investigations into human trafficking conducted by the NSSO Inspectorate's ECOSOC teams in 2019

Stéphanie Schulze

Peter Van Hauwermeiren

NSSO Inspection Department
Thematic Directorate for Trafficking in Human Beings

1. | Introduction

This report concerns the NSSO Inspection Department (Thematic Directorate for Trafficking in Human Beings and ECOSOC teams).

Besides the purely statistical data, this contribution aims to provide qualitative information on the performance of the NSSO Inspection Department's ECOSOC teams in 2019.

The data included in this report stems from two sources:

1. The internal file management system (Pegasis), from which the data relating to the cases closed in 2019 was extracted. This data concerns 82 potential victims.
2. The analysis of the checklists drawn up by the social inspectors in 2019 in accordance with Chapter VIII of the Joint Circular of the Minister of Justice, the Minister for Employment, the Minister for Security and the Interior, Secretary of State for the fight against social fraud and the College of Prosecutors General on the policy of investigation and prosecution regarding trafficking in human beings (COL 01/2015).

NSSO inspectors draw up a checklist as soon as possible after making observations and as long as there are sufficiently precise indications of a potential situation of human trafficking.

In 2019, 120 checklists were established, which means that 120 potential victims were discovered. The fact that the data from the Pegasis management system only relates to 82 potential victims is because not all the cases for which a checklist was drawn up in 2019 were closed that year.

A specific analysis report based on these checklists is submitted annually by our Thematic Directorate to the Department of Criminal Policy, FPS Justice.

Another source of qualitative information is the information sharing relating to investigations into the trafficking of human beings (THB) set up with the ECOSOC team leaders.

2. | Statistics from reports and criminal reports (Pegasis)[235]

According to the statistics received (internal departmental statistics – Pegasis) concerning the **investigations closed in 2019** (investigations begun in 2019 or before 2019):

- **During 2019**, the NSSO compiled **58 reports and/or criminal reports** (82 potential victims) for THB (Art. 433 *quinquies* of the Criminal Code). In addition, following investigations carried out with other inspection or police services, the pro justitia or criminal report on THB were sometimes compiled by another service (generally by the police); 17 criminal reports or reports were written by other services within the framework of a collaboration with the NSSO.

235 These statistics are based on closed investigations.

Provincial departments	R/CR compiled by the NSSO	R/CR compiled by another service[236]
West Flanders	2	3
East Flanders	6	5
Antwerp	4	0
Limburg	0	0
Hainaut	4	1
Namur-Luxembourg	10	0
Liège	4	1
Flemish Brabant	4	1
Brussels	23	6
Walloon Brabant	1	0
Total	**58**	**17**

- **82** presumed victims of THB were referred to the judicial authorities by the NSSO Inspection Department through criminal reports or pro justitia.
- The most represented nationalities are: Polish (16 people), Morocco (11), Egypt (8), Romania (7) and Vietnam (5). Also note that among these 82 presumed victims, 27 were EU nationals, 3 of whom were Belgians.
- The most represented sectors of activity were hotel and catering industry, construction and trade (retail).

3. | Analysis of the checklists

3.1. | Introduction

In accordance with the stipulations of COL 01/15, a checklist was established **in 2019** as soon as there were **sufficiently precise indications** of a potential situation of human trafficking, whether the investigation was ongoing or closed.

In total, **120 checklists** were established (1 checklist per potential victim; hence, several checklists may concern the same employer/exploiter); they are distributed as follows:

Provincial departments	
West Flanders	11
East Flanders	20
Antwerp	11
Limburg	7
Hainaut	4
Namur-Luxembourg	39
Liège	4
Flemish Brabant	4
Brussels	20
Walloon Brabant	0
Total	**120**

3.2. | Geographic distribution per sector of activity (2019)

	Namur-Luxembourg	Brussels	Liège	Hainaut	Limburg	Walloon brabant	Flemish brabant	Antwerp	East Flanders	West Flanders	Total
Butcher/ Abattoir							3				**3**
Bakery		1							2		**3**
Car wash and Truck wash	2			1							**3**
Hairdressing and beauty		2								2	**4**
Retail trade		2	1								**3**
Construction		2			5				12	3	**22**
Hotel and catering industry	1	13	3	3	1			2	2	6	**31**
Horticulture/ Fruit production	34				1						**35**
Logistics								9			**9**
Riding school	1										**1**
Cleaning	1						1				**2**
Haulage									1		**1**
Sorting/Recycling									3		**3**
Total	**39**	**20**	**4**	**4**	**7**	**0**	**4**	**11**	**20**	**11**	**120**

236 Within the framework of an investigation conducted in collaboration with the NSSO.

3.3. | Distribution according to age, gender and nationality of the presumed victims 2019

Nationalité	Men	Women
Afghanistan	2	0
Algeria	1	0
Belgium	2	2
Brazil	0	1
China	2	0
Ivory Coast	1	0
Egypt	10	0
Equador	2	0
Spain	3	0
Ghana	5	0
Hungary	3	2
India	2	0
Italy	3	0
Morocco	14	1
Nepal	1	0
Nigeria	5	0
Pakistan	3	0
Philippines	1	0
Romania	25	14
Turkey	1	0
Ukraine	12	0
Vietnam	1	1
Total	**99**	**21**

Age	Men	Women
Minors (-18 years)	1	0
Between 18 and 30 years	43	8
Between 30 and 40 years	26	4
Between 40 and 50 years	25	4
More than 50 years	8	1
Total	**103**	**17**

A quick analysis of the table above leads to the conclusion that 85% of the potential victims of labour exploitation are men (103/120). As regards age, 42% of the presumed victims are between 18 and 30 years old, and a quarter between 30 and 40 years old. Women are mainly active in hotel and catering industry, horticulture and nail bars. The exploited minor (Vietnamese), aged 17 years old when the check took place[237], was employed in a nail bar in Brussels.

As regards the nationality of the victims, more than half of them (66/120) are from third countries (non-EU). Among the 54 EU nationals, 4 are Belgian and 39 Romanian[238].

3.4. | Indicators of human trafficking found and aggravating circumstances

Appendix 5 of COL 01/2015 includes several human trafficking indicators under the point 'Circumstances'. The analysis of the checklists received in 2019 led to the following findings:

Identity papers

Very often (in approximately 80% of cases), third country nationals were staying illegally in Belgium. Either they had no identity papers or travel documents, or they had their national passport. Among the Europeans, only 20% were established in Belgium and had a Belgian residence permit. The others were generally in possession of their national identity papers.

In approximately 25% of the cases encountered, the potential victims didn't have their own identity papers or travel documents. In some cases, they only had copies.

Financial aspect – social security – social documents

In terms of income: in almost all the situations encountered, wages were low, very low, and even non-existent. Sometimes, the potential victim also has to hand over part of their wages, or they were promised wages that were never paid.

Several victims said they had to reimburse their travel expenses either in part or in full.

A dozen or so presumed victims had to hand over a large part of their wages. Some of them

237 In the course of the investigation, this worker stated that they had another identity and that they weren't a minor. They also denied all the indications of labour exploitation stating, for instance, that they received high wages. 238 An investigation into the horticulture/fruit production sector concerned 34 Romanians.

had to work under the identity of their exploiters who thus obtained social protection. The salary due for the work was paid onto the account of the exploiters, who only paid the victims two-thirds of the money they received. One victim was even asked to reimburse the sum of €1,000 to regularise their situation and €5,000 to pay the exploiter's fines.

Here are several concrete examples encountered in 2019, in cases where victims were actually paid: €1.92/hour; €2,90/hour; €3.85/hour; €4.50/hour; €5/hour; €30/17 hours; €10/14 hours; €50/56 hours; €150 per week; €15/night; €400/month for 63 hours/week.

In terms of social security and social documents: approximately 10% of workers were informed about Dimona; 25% were the subject of a Limosa declaration but within the context of a fraudulent posting. The others were employed illegally and no steps were taken in terms of social security or social documents. As regards foreign workers, among the third country nationals, only some of them were authorised to work in Belgium (work permit/single permit).

Circumstances of the exploitation

The checklist includes the indicators listed below. Some are recurring, such as squalid housing conditions or excessive work hours. Details and examples are provided below for each one.

- **The victim has no appropriate equipment/work clothes**
- **The victim works in dangerous/squalid conditions**
  Indicators relating to work protection (health and safety of workers: hygiene measures, clothes and workplaces, etc.) concern approximately 20% of the presumed victims encountered.
- **The victim isn't allowed to be in contact with the outside world**
- **The victim's freedom of movement is restricted**
  Approximately 40% of the presumed victims encountered had no contact with the outside world and had limited freedom of movement.
- **The victim lives in squalid conditions**
  In many potential situations of human trafficking, the victims are housed in substandard or insanitary accommodation. This was the case for 72 people, i.e. for 60% of the presumed victims.
- **The victim is deprived of medical care**
  Four presumed victims were deprived of medical care.
- **The victim works for long periods**
  Almost 80% of the presumed victims encountered worked for abnormally long periods. Here are a few examples encountered in 2019: working 13h/d, 7d/wk; 14h/d, 6d/wk; 17h/d, 6-7d/wk; 8-12h/d, 7d/wk; 84h/wk; 80-90h/wk; etc.

Aggravating circumstances

Appendix 5 of COL 01/2015 includes several aggravating circumstances of human trafficking. Several were noted in the cases encountered in 2019:

- **Relating to the victim's situation**
  Among the victims listed, a 17-year-old Vietnamese boy was exploited in a nail bar.
- **Relating to the perpetrator**
  In the majority of cases, the perpetrator abuses the victim's vulnerable situation, has authority over them or abuses their position.
  None of the checklists describe a law enforcement officer performing their duties as a perpetrator.
- **Relating to the circumstances and consequences of trafficking**
  Among the 120 victims concerned by the 2019 checklists, 20 explained they had suffered threats, acts of violence or coercion at the hands of the perpetrator. The lives of several presumed victims were put at risk. Among them, two are permanently unable to work as a result of their exploitation. In the large majority of cases, the activity concerned is a usual activity.
  Several victims were exploited as part of a criminal association.

3.5. | Referral of victims to a specialised reception centre in 2019

Among the 120 checklists recorded, **73** concerned presumed victims who were put in contact with or supported by a specialised reception centre (Sürya, Payoke or Pag-Asa).

Some of them were already there; the investigation therefore focused on the hearing of these persons and/or more in-depth searches into THB.

Among these 73 presumed victims, 1 minor was sheltered by Esperanto.

The distribution per provincial department is as follows:

Provincial department	Number of presumed victims referred	Nationality and gender
Namur-Luxembourg	37	1 Belgium (M) 1 Pakistan (M) 1 Afghanistan(M) 34 Romania (22M-12W)
Brussels	20	7 Morocco (M) 9 Egypt (M) 2 Pakistan (M) 2 Vietnam (1M-1W)
Liège	3	1 Morocco (M) 1 Belgium (M) 1 India (M)
Hainaut	1	1 India (M)
Walloon Brabant	0	
Antwerp	1	1 Ghana (M)
Flemish Brabant	4	4 Morocco (3M-1W)
East Flanders	1	1 Philippines (M)
West Flanders	0	
Limburg	6	1 China (M) 2 Ecuador (M) 3 Spain (M)
Total	**73**	

4. | Joint Action Days *labour exploitation*

In April 2019, the Belgian social inspection services took part in the *Joint Action Days (JAD) labour exploitation* for the fourth consecutive year.

This EU initiative is part of the European EMPACT project (European multidisciplinary platform against criminal threats), with human trafficking as one of its priority areas of crime. The EMPACT project is part of the EU action plan against human trafficking. Europol offers its infrastructure and expertise to allow social inspection services in the different Member States to implement this initiative.

Labour exploitation in 1 workplace out of 10

The working and housing conditions of workers were targeted during these actions, as well as compliance with social legislation. Fifty-three workplaces, 140 employees and 41 self-employed persons were checked. Workers were questioned in depth about their working and housing conditions.

Indications of labour exploitation were encountered in 6 workplaces. Inspectors identified **6 potential victims of human trafficking** who were working in inhuman conditions and, in some cases, they were housed by the employer in appalling conditions. A report was written for the attention of the labour prosecutors concerned.

Support from the police and the justice department

In Belgium, the National Social Security Office's Inspection Department organised and implemented actions, in which many other federal and regional inspection departments participated. The Federal Police's central department for the fight against serious and organised crime, the provincial departments of the Federal Judicial Police and local police districts gave their active support. The initiative was also actively supported by labour prosecutors.

Cooperation with the Netherlands and Slovenia

This action also had a **significant international aspect**. The Dutch and Belgian inspection services worked closely together in a joint action concerning foreign workers from Dutch interim agencies housed in Belgian holiday parks close to the Dutch border.

In a second joint action, Dutch and Belgian inspectors from both countries checked the establishments of a beauty salon where foreign beauticians were employed.

Lastly, a check was carried out in the construction sector to detect fraud in the posting of Serbian workers by a Slovenian company. For this purpose, Belgium collaborated with the Slovenian labour inspectorate.

Europol support

Europol extended its traditional scope by also giving social inspection services a role in coordinating action against labour exploitation. It was possible for participating Member States to send "special requests" to another Member State, in particular to ask foreign inspectorates to provide information or carry out additional investigations. As a result, several investigations into labour exploitation will be launched in cooperation with labour inspectorates in other European countries. The exchange of information isn't limited to the duration of this JAD period. Indeed, even after these actions, information will still be exchanged in ongoing cases.

5. | Highlights from the THB investigations conducted in 2019

During 2019, ECOSOC teams closed 207 THB investigations. On 31 December 2019, 151 investigations were open, i.e. in progress.

Approximately 20 to 25% of the THB investigations initiated by the specialised ECOSOC teams don't lead to the discovery of potential situations of labour exploitation. This is mainly because the evidence in the investigation isn't relevant or the THB indications are too insignificant, bearing more of a resemblance to illegal work rather than labour exploitation.

It is also important to underline that several investigations are follow-up investigations of acts previously detected and reported to the judicial authorities.

To carry out their investigations, the ECOSOC teams' social inspectors use specific investigation techniques such as:

- aerial reconnaissance;
- phone investigations;
- use of video-surveillance images;
- use of mobile phones;
- searches in "open-source intelligence" (internet, social media).

These investigation techniques are employed in collaboration with the federal police's specialised services, usually upon the request of the labour prosecutor. Techniques such as these can help to identify and hear potential victims, identify potential witnesses, corroborate victims' statements and also ascertain the employment of other workers/victims, identify perpetrators and reveal links between individuals or companies.

In the investigations conducted in 2019, it was observed that the exploitation phenomena already known in certain high-risk sectors are still very much present, for instance:

- a fruit farm in the province of Namur: 34 presumed victims;
- a vegetable farm in the province of Limburg: 1 presumed victim;
- various building sites including 2 in East Flanders with 6 presumed victims at each site;
- various hospitality establishments throughout Belgium;
- etc.

Emerging or growing phenomena, such as the exploitation of presumed victims in nail bars, hookah lounges, domestic staff, the logistics and haulage sector, were also noted in 2019. It should be pointed out that in the international haulage sector, more and more workers from third countries are turning to Belgian or foreign trade unions to report acts of exploitation that aren't always easy to detect, because these drivers are always on the move and there are special rules that apply to them, especially as regards periods of rest.

In addition, several investigations revealed that workers assumed the identity of another person and had to pay part of their wages to this person, or that the money paid into the victim's bank account was withdrawn by the exploiters.

6. | Conclusion

The cases of exploitation in 2019 occurred both in urban and rural environments and involved mostly men.

In the large majority of cases, one, two, or possibly three people were concerned. Nevertheless, several investigations led to the detection of several potential victims exploited by the same person or the same network.

Some of the presumed victims encountered, who are included in this summary, weren't supported by a specialised reception centre mainly because they were complacent with their situation and refused any kind of support. In some cases, our department contacted the presumed victims after they had approached this type of centre, either at the request of the centre itself or at the request of the labour prosecutor.

This report includes figures from two different channels:

- the file management program concerning investigations that were closed in 2019, regarding 82 presumed victims;
- the analysis of the checklists established in 2019 as soon as the ongoing or closed investigation showed sufficiently precise indications of a potential situation of human trafficking; this concerns 120 presumed victims.

The most commonly encountered sectors of activity in the analysis of the 2019 checklists were horticulture/fruit production, hotel and catering industry, the construction industry and logistics.

The most common practices were: undeclared work (no DIMONA), illegal employment of foreign workers and illegal stay.

Among the human trafficking indicators, the most common were :

- low wages or none at all
- abnormally long working hours
- squalid housing conditions
- abuse of a vulnerable situation
- use of threats / violence
- limitation of freedom of movement and contact with the outside world

Lastly, it is important to emphasise that during the last few years, we have seen an increase in the number of presumed victims encountered during our investigations.

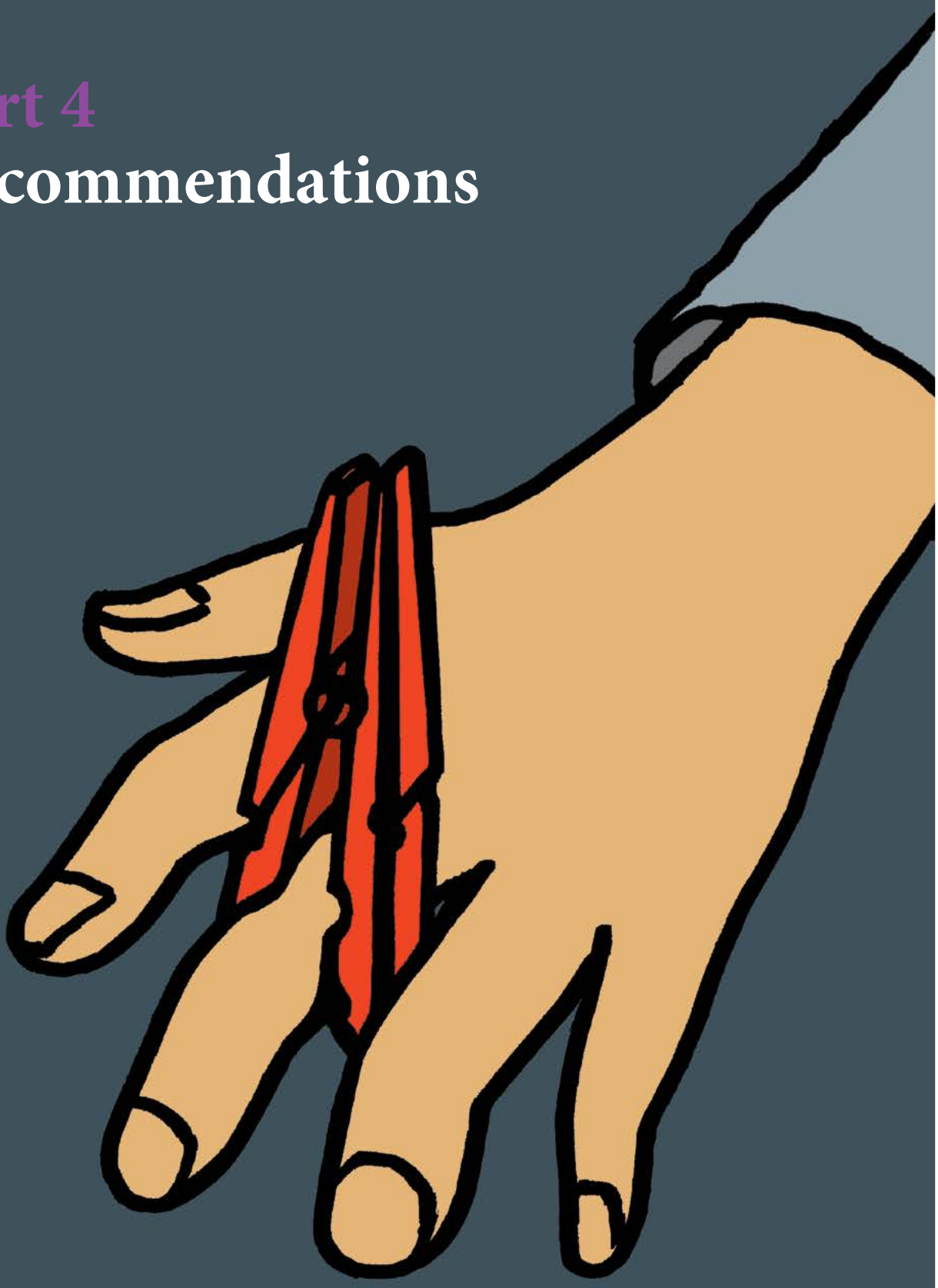
	2017	2018	2019
Number of potential victims involved in the closed investigations	65	65	82
Number of potential victims according to the checklists	119	78	120
Number of victims who benefited from the intervention of the reception centres	25	39	73

The number of checklists in 2017 has no significance insofar as a checklist was established as soon as one or more indications of THB were found and not as soon as there were sufficiently precise indications of a potential situation of human trafficking.

THB is a hidden phenomenon. It is difficult to define and estimate the extent of it. Thanks to checks by social inspectors specialised in or aware of THB, it is possible to bring to light situations of exploitation. The greater the human resources, the greater the awareness among frontline inspection services, and the stronger and more effective the fight against this phenomenon will be.

During 2018 and 2019, the Thematic Directorate for Trafficking in Human Beings organised quite a number of training sessions on labour exploitation and the detection of THB indicators, both for the social inspectors of the NSSO Inspection Department and for external services wishing to make the most of their presence in the field to detect THB situations. By raising awareness, the Thematic Directorate for Trafficking in Human Beings hopes to have contributed – even if modest – towards an increase in the detection of THB cases!

Part 4
Recommendations



1. | Make the fight against human trafficking a priority

Recommendation 1: make the fight against human trafficking a continuous priority at all political levels, in the field, at judicial level and within parliament.

In accordance with international standards, countries must consider the fight against human trafficking as well as the detection and protection of victims as a priority.

The action plans of frontline services and the various public prosecutors offices must continue to include the fight against human trafficking as an absolute priority.

For this purpose, it is essential that a parliamentary commission examine, monitor and evaluate the anti-human trafficking policy at political level and in the field. Myria hopes that this point of the government agreement can be achieved quickly.

The multidisciplinary circular on human trafficking[239] must also be effectively applied in the field and be considered as a priority.

The police, the judiciary and the inspection services must have sufficient human and technical resources to be able to fight this phenomenon more efficiently. Better training for frontline services is essential to enable them to detect trafficking victims.

Myria is delighted that the federal government agreement provides for the release and allocation of sufficient human and financial resources to the police, the inspections services and the judiciary. It hopes that this will help to make the fight against human trafficking a real priority.

2. | Domestic staff

2.1. | Prevention and awareness-raising

Recommendation 2: launch awareness-raising campaigns aimed at the general public in order to better detect trafficking victims in the domestic sector. This way, citizens will be better able to recognise the signs of abuse and to inform the authorities about it more quickly.

The exploitation of domestic workers occurs in the private sphere, which is why victims are difficult to identify. Luck sometimes plays a role in their identification, for instance, during a chance inspection or following information provided by neighbours or hospital staff.

Here, prevention also plays an important role, in addition to awareness-raising:

- On the one hand, among potential employers and the people employed in the domestic sector: raise awareness among all the organisations and parties involved about the existence of human trafficking, its significant consequences and how to prevent people becoming victims.
- On the other hand, it is important to reach the general public, especially in and around urban areas, through awareness-raising campaigns that inform them of the existence of trafficking situations. This awareness-raising increases the likelihood of frontline services receiving more reports about it, especially from neighbours, private individuals and civil society.

Recommendation 3: raise awareness at municipal level and among local police forces.

Municipalities and towns located in and around urban areas can play an important role in raising awareness. Local police officers play a role, during home visits, in the detection of signs of human trafficking in the domestic sector, for instance, in case of complaints about disturbances.

239 Circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *O.G.*, 10 March 2017.

Recommendation 4: encourage trade unions to be more actively involved and to share good practices in prevention on an international level.

Trade unions in other countries are far more active than in Belgium regarding prevention practices. On a national level, trade unions must draw more attention to the situation and interests of domestic staff. It is also important to share good practices in prevention regarding domestic workers from different countries on an international level.

2.2. | Diplomatic domestic staff

Recommendation 5: reinforce controls regarding the potential abuse of diplomatic domestic staff

As regards diplomatic domestic staff, Myria recommends that the interview of the Protocol Directorate, FPS Foreign Affairs, with the domestic worker when their special identity card is issued or renewed, be effectively and systematically carried out with a view to preventing or detecting possible abuse. In addition, the indicative pay scales in the standard employment contract for diplomatic domestic staff must be regularly updated.

2.3. | Regulations

Recommendation 6: envisage the extension of the conditions for issuing a permanent residence permit when evaluating the multidisciplinary circular on the trafficking and smuggling of human beings.

During discussions with Myria, several stakeholders pointed out a loophole: one situation isn't covered by the multidisciplinary circular, making it difficult for the Immigration Office to issue a permanent residence permit to victims. This is especially true in cases, such as those concerning diplomatic domestic staff, where it is difficult to bring a case to court.

What does this mean? Sometimes the perpetrator is offered a settlement, mainly when prosecution is impossible owing to diplomatic immunity. This was the case of a diplomat from an African country who applied the wage standards of his home country. The condition of the settlement was that the worker should be compensated for the wage arrears. The worker was supported by a specialised reception centre. However, the settlement didn't relate to the offence of human trafficking, which was a stumbling block for the Immigration Office.

Myria suggests discussing this point during the evaluation of the multidisciplinary circular. An extension of the conditions for issuing a permanent residence permit should indeed be envisaged for foreign victims where the criminal case culminates in a settlement, providing that the magistrate has confirmed that the person is a victim of human trafficking.

3. | Coronavirus crisis and human trafficking

The application of preventive measures against the coronavirus remains relevant and may have consequences for the fight against human trafficking. Several problems have been identified in this respect in recent months.

The specialised reception centres for victims of human trafficking have sounded the alarm at various levels, as they have received relatively few reports during the current coronavirus crisis. They fear that even more victims of human trafficking "than usual" have gone undetected.

3.1. | Reception centres for victims of human trafficking

Recommendation 7: ask political stakeholders to develop measures adapted to crisis situations such as the one caused by the coronavirus pandemic – for as long as necessary – to help the specialised centres provide emergency shelter for human trafficking victims.

This pandemic can have serious repercussions on the referral and care of victims of human trafficking. During this crisis, reception centres for victims of human trafficking have been forced to handle the registration and counselling of victims digitally and therefore remotely. They have had to try to protect the reception facilities and the victims already present as much as possible from the risk of contamination by the coronavirus. As a result, they have been unable to admit new victims to their reception facilities - or only to a very limited extent -, or they have had to seek a temporary alternative solution. Finding a safe and healthy alternative to accommodate new victims proved to be impossible on several occasions, and created an additional problem.

3.2. | Coronavirus crisis and sexual exploitation

Recommendation 8: ensure that, in times of crisis like these, magistrates and frontline services remain sufficiently vigilant to detect victims of sexual exploitation, and to achieve this by increasing internet checks to detect situations of exploitation in private prostitution.

As regards sexual exploitation, it was noted that a number of police units weren't able to carry out systematic checks on private prostitution. Prosecutors in cities instructed the police to only open an investigation into human trafficking if a child victim and/or physical threats were involved. Nevertheless, frontline checks remain necessary to detect presumed victims of human trafficking. During a crisis, such as the COVID-19 pandemic, special attention must be paid to private prostitution activities offered through dating sites and adverts on the internet for a private appointment. The police must be trained and made aware, and the necessary resources must be allocated to increase monitoring of the internet.

3.3. | Coronavirus crisis and labour exploitation

Recommendation 9: in these exceptional times, the various frontline services must also pay sufficient attention to human trafficking indicators and the detection of presumed victims of human trafficking during health checks of workplaces and workers' accommodation in potentially high-risk sectors.

Frontline services such as the police and social inspectors from the Social Legislation Inspectorate (CLS), the Supervision of Well-Being at Work Inspectorate (CBE), the National Employment Office (ONEM), the National Social Security Office (ONSS), the National Institute for the Social Security of the Self-Employed (INASTI), the National Institute for Health and Disability Insurance (INAMI) and the Federal Agency for Occupational Risks (Fedris) have carried out inspections in recent months to check that the necessary health measures are being applied in the workplace. Several of these frontline services aren't competent in terms of human trafficking and have no expertise in this domain.

Myria fears that during a health crisis such as the coronavirus pandemic, vulnerable people are at greater risk of labour exploitation. "Cheap" workers, including undocumented migrants working illegally in clandestine conditions, do not always have the opportunity to work and be housed in a safe and healthy environment that respects physical distancing.

This worsening situation has been confirmed in recent months in several European countries, where new lockdown measures were announced following the identification of new outbreaks. The link between the coronavirus and labour exploitation situations has been clearly established, because these new infections appeared in economic sectors where foreign workers had to work and/or were housed in precarious conditions, and the health regulations associated with the coronavirus weren't applied. This was the case in abattoirs in Germany, in the textile sector in England (Leicester) and in the fruit-picking sector in Spain (Catalonia).

During 'Covid' checks in workplaces in high-risk sectors, Myria is calling on frontline services to also pay attention to the different indicators of human trafficking and to the detection of victims of human trafficking.

Frontline services with little or no experience in human trafficking should receive basic training in this field. If they observe situations of exploitation during checks associated with COVID-19, they must inform the services that are competent in human trafficking. If presumed victims of human trafficking are detected, the competent frontline services must refer these victims to the specialised reception centres.

Recommendation 10: provide the social inspectorates that are competent in human trafficking with the necessary social inspectors, additional resources and support to carry out thorough checks in terms of human trafficking.

The NSSO Inspection Department's ECOSOC teams don't have enough resources either. For several years now, members of staff who leave the department aren't replaced. Moreover, police forces are unable to provide social inspectorates with assistance during checks owing to staff shortages.

Recommendation 11: consider the failure to respect measures to combat the coronavirus by companies in sectors that are high-risk in terms of of human trafficking as a potential indicator of human trafficking.

If unscrupulous employers in at-risk sectors employ vulnerable workers during a health crisis without offering any guarantee of protection, they are seriously endangering the health of workers (and their entourage) and potentially making them work in conditions contrary to human dignity, an essential element of human trafficking for the purpose of labour exploitation.

Recommendation 12: in such a period of crisis, increase the vigilance of frontline services to detect very isolated victims of human trafficking in the domestic sector.

According to the NSSO Inspection Department, detection is even more difficult as a result of the coronavirus crisis, because domestic staff were very isolated and invisible during the lockdown, and completely at the mercy of their employer.

Summary of the recommendations

	Recommendation	Recipient
2020/7	Make the fight against human trafficking a continuous priority at all political levels, in the field, at judicial level and within parliament.	- Federal government - Federal parliament - Police - Justice Department
2020/8	Launch awareness-raising campaigns aimed at the general public in order to better detect trafficking victims in the domestic sector. This way, citizens will be better able to recognise the signs of abuse and to inform the authorities about it more quickly.	Interdepartmental Coordination Unit
2020/9	Raise awareness at municipal level and among local police forces.	- Interdepartmental Coordination Unit - Local police units in cities
2020/10	Encourage trade unions to be more actively involved and to share good practices in prevention on an international level.	Interdepartmental Coordination Unit
2020/11	Reinforce contols regarding potential abuse of diplomatic domestic staff.	- Interdeparmental Coordination Unit - Foreign Affairs (Protocol Directorate
2020/12	Envisage the extension of the conditions for issuing a permanent residence permit when evaluating the multidisciplinary circular on the trafficking and smuggling of human beings.	Interdepartmental Coordination Unit
2020/13	Ask political stakeholders to develop measures adjusted to crisis situations such as the one caused by the coronavirus pandemic – for as long as necessary – to help the specialised centres provide emergency shelter to victims of human trafficking.	Interdepartmental Coordination Unit
2020/14	Ensure that in times of crisis like these, magistrates and frontline services remain sufficiently vigilant to detect victims of sexual exploitation, and to achieve this by increasing internet checks to detect situations of exploitation in private prostitution.	- Judiciary's Human Trafficking Network of Expertise - Public prosecutors - Minister of the Interior
2020/15	In these exceptional times, the various frontline services must also pay sufficient attention to human trafficking indicators and the detection of presumed victims of human trafficking during health checks of workplaces and workers' accommodation in potentially high-risk sectors.	- Interdepartmental Coordination Unit - Federal and regional inspection services
2020/16	Provide the social inspectorates that are competent in human trafficking with the necessary social inspectors, additional resources and support to carry out thorough checks in terms of human trafficking.	- FPS Social security - FPS Employment, Labour and Social Dialogue (Social Legislation Inspectorate)
2020/17	Consider the failure to respect measures to combat the coronavirus by companies in sectors that are high-risk in terms of human trafficking as a potential indicator of human trafficking.	- Labour prosecutors - Inspection services
2020/18	In such a period of crisis, increase the vigilance of frontline services to detect very isolated victims of human trafficking in the domestic sector.	- Inspection services - Police

COLOPHON

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Myria, the Federal Migration Centre, is an independent public institution. It analyses migration, defends the rights of foreign nationals and combats human trafficking. Myria advocates a government policy based on factual knowledge and respect for human rights.

The purpose of the report on *Trafficking and smuggling in human beings* is to provide an independent evaluation of the evolution and results of the fight against the trafficking and smuggling of human beings.

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