Chapter 3
Case law overview 2022 - start 2023

1. Trends

What were the main trends in human trafficking and smuggling cases in 2022 and early 2023? In this report, the case law analysis is based on cases in which Myria filed a civil suit, on decisions Myria received from the three specialised victim reception centres and on the decisions provided by magistrates or other partners.

Like last year, Myria was informed of a particularly high number of decisions rendered by the judicial authorities: 100, 84 of which were Dutch-speaking and 16 French-speaking.

The 50[471] most interesting and most relevant decisions are presented below. They relate to 46 cases in the country's various jurisdictions[472].

- Among the decisions in this selection, 35 concern **human trafficking** and 15 **human smuggling**.
- It should be noted that in a number of French-speaking and Dutch-speaking cases this year, prosecutions by the public prosecutor's office or the labour prosecutor's office were brought for human smuggling (and not for human trafficking) even though they involved labour exploitation or sexual exploitation. Some of these decisions are described below[473].
- 19 decisions concerned acts of **sexual exploitation.** They were handed down within the jurisdiction of the courts of appeal of Antwerp (Antwerp division and court of appeal), Brussels (Brussels [French-speaking, Dutch-speaking], Leuven and court of appeal), Ghent (East Flanders [Ghent] and West Flanders [Bruges] and court of appeal), Liège (Liège division and court of appeal) and Mons (Charleroi division and court of appeal).

Once again, a large proportion of the decisions relating to sexual exploitation concerned Nigerian prostitution networks, with the acts occurring mainly in Antwerp and Brussels, in addition to one case in Liège.

Furthermore, many decisions involve the **loverboy method**. The victims are both adults and minors, often particularly young Belgian victims either from precarious family situations or who have run away from an institution for minors. When the victims are minors, this can also be referred to as pimping of teenagers.

In a French-speaking decision, a victim of a loverboy had been forced to adopt a lovergirl attitude in order to recruit other victims. The court acquitted her on the basis of **the non-punishment clause**[474].

Myria also noted a trend in the number of victims of sexual exploitation from **Latin American countries**, as much on the French-speaking side of the country as on the Dutch-speaking side. Those concerned are often **trans(gender)**.

471 For a number of cases, the judgment handed down at first instance was already mentioned in previous reports.

472 These decisions will also be published on Myria's website.

473 Myria discusses these decisions in the chapters on human trafficking for the purposes of sexual exploitation and labour exploitation. See West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal); West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal); Mons, 5 October 2022, 4th ch.

474 On the basis of Article *433quinquies*, § 5 of the Criminal Code.

When reading the various decisions relating to sexual exploitation, Myria noted that sexual services are increasingly offered online through a dating site, whether in the 'loverboy' cases or in the Nigerian cases in Antwerp. In addition, sexual services are often offered in private homes, hotels and Airbnb accommodation, which was especially the case during the coronavirus period.

A decision was reached concerning an **early marriage** that took place within the Roma community in Antwerp. The judgment and ruling date back to 2021, but Myria was only notified of them this year. Due to the exceptional nature of this case, it was decided to include it in this annual report.

A number of decisions relating to trafficking for the purpose of exploiting prostitution or other forms of sexual exploitation show that judges often refer to the new Criminal Code on sexual offences. When the public prosecutor's office brought charges of recruitment for prostitution, exploitation of prostitution and/or running a brothel[475], the courts examined the question of the application of the law over time. They specifically checked whether the acts in question were still punishable after the change in the law and, if so, reclassified them on the basis of the new article criminalising procuring[476], as provided for in the Act of 21 March 2022 amending the Criminal Code[477].

- 18 decisions relate to **labour exploitation** in various sectors. The reason why this number is remarkably high this year is because Myria also asked certain labour prosecutors for relevant decisions as part of its focus on labour exploitation. These are presented below by sector: construction, transport, hospitality industry, bakery, car wash, day and night shops, second-hand clothes sorting, agriculture and horticulture, domestic work, a football club and also atypical sectors (animal shelter). These decisions were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp and Mechelen divisions and court of appeal), Brussels (Brussels (French-speaking and Dutch-speaking), Walloon Brabant and court of appeal), Ghent (West Flanders (Bruges division), East Flanders (Ghent and Dendermonde divisions) and court of appeal), Liège (Liège and Namur divisions and court of appeal).

Myria was not informed of any French-speaking decisions concerning trafficking for the purpose of labour exploitation in the road transport sector. There are two Dutch-speaking decisions in this sector, one of which resulted in a conviction for trafficking in human beings.

Also worth noting are the decisions dealing with the complex set-up of companies established to employ people as bogus self-employed workers in day and night shops, car washes or, in one case, in the road transport sector.

Two decisions relating to labour exploitation concerned Belgian victims. In one case, an intellectually disabled person had been exploited in a café.

It should be stressed that Myria received a few decisions concerning labour exploitation in the construction sector this year. There was no information about any French-speaking decisions in this sector.

To determine the existence of working conditions contrary to human dignity - an essential element of human trafficking - Myria noted that judges take into account various factors such as working conditions and the working environment (excessive working hours, excessively low wages, lack of rest days), poor accommodation, withholding of wages on various pretexts and dependence on the employer (for instance, the use of surveillance cameras).

475 Formerly criminalised under Article 380 of the Criminal Code.

476 On the basis of new Article 433 quater/1 of the Criminal Code. In accordance with Article 2, §2 of the Criminal Code, "if the penalty established at the time of the judgment differs from the penalty that was imposed at the time of the offence, the lesser penalty shall be applied". In light of the moral component, the new provision should be considered as a more lenient criminal law, since a specific intent is now required; in fact, the acts must be committed with the aim of obtaining a benefit.

477 With regard to these charges, the various courts also took into account the fact that the aggravating circumstance of 'fraudulent tactics, violence, threats or any form of coercion', punishable under the former Article 380, § 3, 1° of the Criminal Code, had not been included in the new provision criminalising procuring. However, the aggravating circumstance of abuse of a vulnerable position was included in the new Article 433 quater/4 of the Criminal Code. A Dutch-language decision also took into account the legislative amendment decriminalising advertising for the prostitution of adults where measures have been taken to protect the sex worker and prevent the abuse of prostitution and trafficking in human beings (see the new Article 433 quater/2 of the Criminal Code).

- A decision concerning human trafficking for the purpose of **begging** was taken in 2022.
- The decisions on **human smuggling** originate from the jurisdictions of the courts of appeal of Ghent (West Flanders [Bruges division and court of appeal]) and Antwerp (Antwerp division and court of appeal).

Human smuggling often involves well-structured, even criminal, organisations such as the Vietnamese, Albanian and Iraqi Kurdish networks. Based on the decisions sent to Myria, it appears that these organisations sometimes cooperate with other nationalities. This is the case for Vietnamese smuggling networks that join forces with Kurdish smuggling networks to send boats across the North Sea, or Vietnamese smugglers who cooperate with Belgian and British taxi and lorry drivers. Myria is not aware of any decisions concerning Ethiopian, Eritrean or Sudanese smuggling networks this year.

A major case concerning the smuggling of Vietnamese nationals into the United Kingdom, which led to the deaths of 39 victims in 2019, was heard on appeal in early 2023. A total of 25 defendants were initially prosecuted in this case - in which Myria filed a civil suit - including Vietnamese smugglers and several Brussels taxi drivers who transported smuggling victims to lorries in West Flanders and northern France. A number of small Dutch-language rulings also concerned the smuggling of Vietnamese nationals, either by getting them into lorries or by taking them across the North Sea in makeshift boats. The modus operandi already observed in recent years of smuggling human beings aboard small inflatable boats, yachts and sailing boats is continuing. In addition, a large proportion of the decisions reached on smuggling involved logistical support for the crossing by small boat. Here, logistical equipment is transported from abroad via Belgium to Calais in France, where the majority of small boat crossings take place, as this is the shortest stretch of the North Sea separating Europe and the United Kingdom. These cases mainly originate from West Flanders. In particular, they concern vehicles containing equipment intended for illegal crossings: inflatable boats, outboard motors, life jackets and jerry cans of petrol. These vehicles are very often registered in Germany, and sometimes in the Netherlands or France. The defendants generally live in Germany, but are of Iraqi, Iranian and Syrian origin.

One major case involved a smuggling organisation which operations involved both small boats in the North Sea and lorries.

In addition, a decision was rendered on appeal concerning humanitarian visas, in a case where a politician had abused his position to allow Syrian Christians to come to Belgium in return for the payment of large sums of money, despite the fact that this administrative procedure is almost free of charge. The court of appeal partly upheld the judgment for the acts of human smuggling.

Furthermore, Myria was made aware of a striking decision concerning a travel agency that smuggled Surinamese nationals into Belgium under the guise of sham family reunification, fictitious marriages or cohabitation, bogus asylum procedures or bogus employment contracts.

It should be noted that, in almost all the decisions relating to smuggling, the defendants were prosecuted as perpetrators or co-perpetrators on the basis of Article 66 of the Criminal Code, which does not require proof of the existence of a personal financial benefit on the part of the defendant. It is often sufficient for the co-perpetrator to have been aware that they were helping to obtain a financial benefit through their actions, without having obtained it themselves.

Lastly, it should be noted that, in various cases, the charge of human smuggling[478] was reclassified as aiding illegal migration.

In several decisions, Myria found that the defendants were repeat offenders. At least six decisions related to sexual exploitation (loverboy cases and a decision relating to a Nigerian prostitution network), one related to labour exploitation and four related to human smuggling.

478 West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal); the Liège Crim. Court, Liège division, 2 November 2022, 19th ch.; Liège, 14 September 2022, 4th ch.

2. Human trafficking

2.1. | Sexual exploitation

2.1.1. | Nigerian networks

As in the case law overviews in previous annual reports, several decisions concern Nigerian networks. One of the judgments relates to a major case concerning an international network discussed last year. It should also be noted that one of the decisions concerns a case in which one of the perpetrators was Belgian.

Child victims in an international Nigerian network

The **Brussels Dutch-speaking criminal court delivered a judgment on 10 December 2021**[479] in a large-scale case involving a vast Nigerian prostitution network.

At first instance, five defendants of Nigerian and Belgian nationality were prosecuted for trafficking in human beings for the purpose of sexual exploitation, with aggravating circumstances including the fact that the victims were minors. Other charges included directing a criminal organisation, acquiring criminal financial benefits and possession of child pornography.

This was an international organisation that brought women from Nigeria to Europe to exploit them for prostitution. When the women arrived in Italy, they were distributed throughout Europe via the Turin organisation. The women were subjected to voodoo practices. According to the court, the dozens of girls involved in this case were just the tip of the iceberg. They had to repay debts of between EUR 30,000 and EUR 45,000. And if they slipped up, their debts were increased.

The defendants received harsh sentences ranging from three to ten years. One victim filed a civil suit and was awarded EUR 55,500 in compensation.

A defendant who had played a minor role and who had been sentenced in absentia lodged an appeal. This decision was reviewed by the court, which largely upheld the decision[480]. Three other defendants appealed against the judgment of 10 December 2021 and the **Brussels Court of Appeal** gave its ruling in a **judgment dated 30 June 2022**[481]. The court also assessed the acts in light of the new sexual criminal law that came into force on 1 June 2022.

The court largely upheld the judgment. Sentences were increased for several charges. One of the defendants was acquitted of certain offences against certain victims due to insufficient evidence. The defendants received prison sentences ranging from four to eight years and fines ranging from EUR 16,000 to EUR 64,000. The civil party's claim for compensation was confirmed.

Nigerian prostitution network in which the defendant exploited her own sister

In a **judgment of 11 October 2022**[482], **the Antwerp criminal court** ruled on a case in which a defendant was prosecuted for smuggling and trafficking in human beings for the purpose of sexual exploitation of two young Nigerian women, one of whom was the defendant's own sister.

The investigation was opened after Antwerp local police heard one of the girls who was giving evidence as part of another investigation. During this hearing, she stated that she herself was a victim of human trafficking and that she had been forced into prostitution.

The defendant had brought the two girls to Belgium on the pretext that they could work there as cleaners or nursery nurses. In Nigeria, they both had to take a voodoo oath. Once they arrived in Antwerp, they had to prostitute themselves to pay off their travel debt by working in windows in Brussels and cafés in Antwerp. One of the victims paid the defendant EUR 1,500 over several months, in addition to the rent for the flat. She repaid EUR 12,000 overall.

479 Brussels Dutch-speaking Crim. Court, 10 December 2021, ch. 23N: see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 64-66 and Myria's website (Case law).
480 Brussels Dutch-speaking Crim. Court, 10 June 2022, ch. 23N (final) (unpublished).
481 Brussels, Dutch-speaking, 30 June 2022, 15th ch.
482 Antwerp Crim. Court, Antwerp division, 11 October 2022, ch. AC10 (appeal).

She only stopped paying when the Oba (king)of Benin City[483] declared that victims of trafficking no longer had to pay. The other girl, the defendant's sister, had to pay less but was put under pressure by the voodoo priest who phoned her. The victims were also threatened by the defendant and her entourage during the investigation.

According to the court, the acts of human smuggling and trafficking were proven in view of the police officers' findings, the victims' statements, consultations with money transfer companies and the statement of a witness. The aggravating circumstance of the victims' vulnerability was also deemed to be proven, given their precarious social situation in Nigeria. The young women, who had no command of the Dutch language, were also staying illegally in Belgium and were therefore in an illegal administrative situation. They were in the country without any network and without any form of regular income or means of subsistence, which made them totally dependent on the defendant.

It emerged from the victims' statements that the defendant had played a coordinating role in their crossing to Belgium. She had recruited them by creating false expectations and had then called on numerous contacts in Libya and Italy to provide them with accommodation and accompany them to Belgium. When they arrived, the defendant picked them up and offered them shelter. She did this with a view to obtaining financial benefits.

The victims' statements were sufficiently similar and were sufficiently supported by objective evidence in the criminal file for the court to give them credence and consider them as essential evidence.

In the court's view, however, the reasonable time limit had been exceeded and this was taken into account in sentencing. The defendant was first heard in December 2020.

The defendant received a three-year suspended prison sentence and a partially suspended fine of EUR 16,000. She appealed against this decision.

The Antwerp Court of Appeal ruled on this appeal in a **decision of 9 March 2023**[484]. It also considered the facts to be true. The statements made by the two victims, who presented themselves separately to the police, were credible, detailed, coherent and supported by objective evidence in the case file.

The criminal case revealed that when the two victims were in Italy with a member of the smuggling organisation, the defendant made several payments to a person in Italy known to the police for their involvement in the smuggling of human beings. These payments were clearly intended to smuggle the two victims and bear witness to the international ramifications of the smuggling network. According to the court, this also enabled the charge of human smuggling to be retained. The fingerprints of the two victims were found in Italy and France. It also emerged that the girls had received money indirectly from the defendant during their stay in Libya.

The court found that the first judge had applied the criminal law too leniently. The acts of trafficking had been committed against two vulnerable victims over a particularly long period of time. The defendant was sentenced to four years in prison and a fine of EUR 16,000, half of which was suspended.

Sexual exploitation of a young Nigerian woman by a couple of Belgian and Nigerian nationality

The Liège criminal Court handed down a judgment on 2 November 2022[485] concerning the facilitation of residence, trafficking for the purpose of sexual exploitation and the exploitation of prostitution of a young woman of Nigerian nationality, by a husband and wife who were of Belgian and Nigerian nationality respectively. In January 2017, the victim, who filed a civil suit, was taken in by a French association specialising in supporting people in prostitution.

In 2016, the victim, who was in Benin City, was offered the opportunity of a better life in Europe by the defendant's sister, who was looking to bring over people leading a hard life in Nigeria. After crossing the desert starting in Niger and staying in a camp in Libya, the victim embarked on a crossing to Italy in a 'lappa-lappa' type boat with 150 migrants. An Italian ship came to their rescue. After the victim had spent two weeks in a refugee camp, the defendant picked her up and flew her to Belgium. She was asked to pay back EUR 15,000 to cover her travel costs.

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483 In Nigeria, the Oba is a person with a very important religious function and great moral authority. The Oba is the religious leader of the Edo culture and can be considered the king of Edo State.

484 Antwerp, 9 March 2023, ch. C6.

485 The Liège Crim. Court, Liège division, 2 November 2022, 19th ch. (appeal).

The victim was forced to prostitute herself in the street, in hotels, at clients' homes or in cars, until she was raped during a paid sexual service. Multiple threats of reprisals were made against the victim and her family. She lived with the couple for four months before they rented her a flat in Liège. She then stayed with friends before finally being taken in by a reception centre specialising in victims of human trafficking.

The defendants' home was searched. Based on an analysis of the defendants' phones showing that they had paid a smuggler in Italy following the arrival of the victim, the judge found that their statements were not credible. However, the judge considered that there was still some doubt as to whether they had initially intended to enrich themselves at the expense of the victim or her family, as the analysis of the defendants' bank accounts did not show any transfer of large sums of money. The court therefore reclassified the charge of smuggling as facilitation of residence, finding that the couple were guilty of knowingly helping the victim to enter Belgium.

The judge found that the victim's statements were accurate, coherent and corroborated by the investigation. The defendant had organised the victim's prostitution by dictating the rates and the repayment of her debt. The judge found the defendants guilty of exploitation of prostitution, having rented the flat to the victim so that she could continue to prostitute herself, with the sole aggravating circumstance of abuse of vulnerability[486].

The defendants were also convicted of trafficking for the purpose of sexual exploitation with aggravating circumstances. Analysis of some of the text messages showed that the defendant had taken control of the victim's schedule and productivity, with the aim of exploiting her prostitution. The court took account of the fact that the reasonable time limit had been exceeded. It sentenced the defendants to two and four years in prison respectively, and a fine of EUR 8,000 (both suspended in part), and ordered them to pay the plaintiff EUR 7,500 in non-pecuniary and pecuniary damages.

Sexual exploitation of a Nigerian victim as part of a larger case involving Nigerian sex networks

In a judgment of **16 February 2023, the Brussels French-speaking Criminal Court**[487] examined a case of smuggling and trafficking for the purpose of the sexual exploitation of a young woman born in Nigeria, in which two defendants were prosecuted[488]. The victim had been taken in by a human trafficking coordination centre in Amsterdam in 2018. The centre contacted the Belgian federal judicial police, which enabled the victim to be taken in by a specialised reception centre for victims in Belgium.

Fingerprints revealed that the victim had a false identity and was already known to the police for prostitution. As a civil party in the trial, she stated that she had been forced to use this false identity and to prostitute herself in a window in the Gare du Nord area from 2013 onwards, before fleeing to Holland in 2018. The court found that the victim's statements were consistent, concordant, detailed and credible. A medical certificate was drawn up by a psychologist describing the post-traumatic stress experienced by the victim.

The first Nigerian defendant was already known to the authorities[489] in connection with a large case in Antwerp involving the smuggling and trafficking of young Nigerian women[490]. The modus operandi of the Antwerp case corresponded to the one used in the present case. The defendant, an acquaintance of the victim's family, offered her a job in Europe before transporting her to Belgium and handing her over to the second defendant. According to the victim, the defendant had demanded EUR 45,000 for the transport and was putting pressure on her family by demanding more than the initial sum. The defendant denied receiving any money and travelling with the victim to Italy and Portugal to obtain false passports, before finally admitting to the charge of smuggling.

According to the hearings of the victim and the first defendant, the second Nigerian defendant exploited the prostitution of the victim. However, she denied the facts and denied knowing the first defendant, despite the fact that they were registered at the same address and that they had been in romantic relationship for many years. In view of her contradictory statements, the court convicted her of trafficking for the purpose of sexual exploitation, with the aggravating circumstance of abuse of vulnerability.

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486 Following the reform of sexual criminal law (Law of 21 March 2022 amending the Criminal Code), the aggravating circumstances of use of coercion, threats and violence provided for in the former legislation and applying to the acts in question are not included in the new article criminalising procuring.

487 Brussels French-speaking Crim. Court, 16 February 2023, 47th ch. (final).

488 One of the defendants had already been convicted in the past: twice for human trafficking and once for human smuggling.

489 The Payoke centre informed Myria of the fact that the defendant had already been convicted four times for human trafficking.

490 In particular, in a judgment handed down on 18 January 2017 by Antwerp Crim. Court.

Both defendants were convicted of smuggling with aggravating circumstances and ordered to pay EUR 5,000 in pecuniary and non-pecuniary damages to the young Nigerian woman. Considering that this case and the Antwerp case were linked by a single intention, the court referred to the sentence handed down to the defendant in the Antwerp case. It also sentenced the defendant to 200 hours of community service and a fine of EUR 8,000. Another victim filed a civil suit, but did not appear at the trial.

2.1.2. | Latin American victims

There were several decisions concerning mainly trans(gender) victims from Latin America.

South American victims in a massage parlour and a private brothel

In **a judgment of 6 December 2022**[491], **the Leuven Criminal Court** ruled on a case of human trafficking for the purpose of sexual exploitation of several women from South America. Three defendants were prosecuted in this case, naemly two women of Belgian nationality but of South American origin (Dominican Republic and Cuba), and a Belgian company. They were prosecuted for a number of offences, including running a brothel, exploiting prostitution and advertising prostitution. Only the first defendant was prosecuted for human trafficking, selling cocaine and money laundering. A victim of Dominican nationality filed a civil suit.

The criminal investigation revealed that a 'massage parlour' had been operating in a commercial building in Diest between 2016 and 2020. Initially, it was operated by a company, the third defendant. After the company declared bankruptcy, the first defendant took over the business in her own name. Statements from clients and the women who worked there showed that the parlour was used for illegal prostitution. Online platforms were used to advertise the business.

Between 2017 and 2020, prostitution also took place in a flat in Aarschot. The defendant rented it and clients were able to enjoy the sexual services of the girls in a bedroom.

The second defendant was involved in the practical organisation of the prostitution.

According to the court, the acts of human trafficking concerned 36 people. The sex workers had to be available every day of the week (7/7), from 9 or 10 in the morning until after midnight to receive clients, which meant that they could very rarely leave the premises. If they wanted to take a day off or leave the building for a few hours, they had to ask permission.

The sex workers were not obliged to perform any specific sexual acts, but were required to be sexually flexible. When a customer expressed dissatisfaction, the first defendant would get angry and shout. The proceeds from the services provided were shared equally between the first defendant and the sex worker concerned. The sex workers also had to pay a lump sum of EUR 20 for the placement of advertisements and ancillary costs (in particular sex toys and condoms). In the flat in Aarschot, the system changed to a fixed rent per room after a certain period, ranging from EUR 300 to EUR 400 per week. This enabled the defendant to collect an amount that far exceeded the cost of renting the flat (EUR 600 per month).

According to one estimate, the defendant's weekly income averaged EUR 6,000 from the massage parlour and EUR 1,800 from the flat. A 'successful' sex worker earned between EUR 1,000 and EUR 1,500 a week from their activities. In addition, the defendant provided board and lodging for many of the sex workers who had to pay for this which, in practice, left some of them with only a meagre income from their activities.

The defendant also closely monitored the performance and diligence of the sex workers. She collected payments from the clients herself. In her absence, this task was entrusted to someone she trusted. She was also able to exercise remote control through a system of cameras.

491 Leuven Crim. Court, 6 December 2022, ch. C2 (final).

Nor did she hesitate to use personal circumstances, such as a sex worker's virginity or pregnancy, to attract clients. She also supplied clients with cocaine. In addition, she used the sex workers' accounts to transfer illicit funds abroad. As she received a lot of cash, she could not carry out all the transactions in her own name.

One of the girls, who filed a civil suit, was the niece of the first defendant, and was clearly a victim of human trafficking. Her aunt had arranged a sham marriage in the Dominican Republic for her to come to Belgium, where she was almost immediately forced into prostitution, evidently against her will. She had to pay an alleged debt of EUR 8,500 to her aunt, on whom she was entirely dependent, both administratively and financially.

The court also ruled that the acts remained punishable after the entry into force of the new law on sexual criminal law. The acts could be considered as 'organising the prostitution of others with the aim of obtaining a benefit'. The exception to the criminalisation of the organisation of prostitution provided for by the law was not applicable.

The charge of advertising for prostitution remains punishable following the entry into force of the new law. The new regulations provide for a few exceptions to the ban on advertising, in particular where a person of legal age advertises their own sexual services on an online platform specifically designed for this purpose. However, according to the court, this provision was not applicable in this case, as the defendant was acting as an intermediary between the sex workers and the platform, and there were no guarantees to reduce the risk of abuse and exploitation.

The court sentenced the first defendant, for human trafficking and other offences, to five years in prison and a fine of EUR 288,000. She was deprived of her rights for five years and banned from working for five years. A substantial sum was confiscated on the basis of the calculation of the financial benefit obtained illegally, amounting to a total of EUR 602,330. Part of this sum was awarded to the plaintiff.

The victim was awarded compensation of EUR 60,583. The company was ordered, jointly and severally with the first defendant, to pay damages worth EUR 18,805.

Prostitution of trans(gender) persons in Flanders — exploitation by a former victim

In **a ruling of 10 June 2022, the Ghent Court of Appeal**[492] reviewed a case of human trafficking involving Latin American trans(gender) persons in West Flanders. The decision at first instance was discussed in a previous annual report.

Initially, nine defendants, including one company, were prosecuted for several offences. Four defendants, of Belgian, Dominican and Thai nationality, were charged with trafficking in human beings under aggravating circumstances. The first defendant and the fifth defendant were married. The second and third defendants were also in a relationship. In addition to these charges, the four defendants were prosecuted along with other defendants for other offences such as running a brothel and prostitution, pimping and child pornography.

The acts took place in various villas in West Flanders. Sexual services were offered on a sex dating website by Latin Americans (usually transgender), often staying illegally. The investigation revealed that the second defendant acted as an intermediary between the young girls and the first defendant. She was responsible for renting out the rooms, placing the advertisements, collecting the rent and answering the clients' phone calls. The girls had to pay a daily rent for the room. For some, it was EUR 30 and for others EUR 80 per day. If the second defendant supplied the client, the girls had to give up part of their earnings, up to 50 %. She collected the money for the first defendant. A bank investigation revealed that the first defendant's accounts showed large cash deposits and other transactions suspected of being income from prostitution. The second defendant had arrived in Belgium in 2010 and had been sexually exploited herself. She had obtained victim status through Payoke.

492 Ghent, 10 June 2022, 10th ch.

In its **judgment of 5 November 2021**[493], **the Bruges Criminal Court** had acquitted the fifth defendant at first instance, as she was in Thailand. The second and third defendants were found guilty of human trafficking. The first defendant died during the proceedings. The court found the second defendant guilty, even though she had to collect the proceeds for the main defendant and therefore did not make a large profit herself. She acted as a co-perpetrator in making an abnormal profit for the first defendant, even though the financial benefit she received as a result was rather small. In addition, the bank investigation showed that she benefited from a significant flow of income through cash deposits, at least for a certain period of time.

They received prison sentences ranging from 30 months to three years, some of which were suspended, as well as fines. Sums of money were also confiscated. The other defendants were sentenced for the other acts. An appeal was lodged and the court re-examined the case.

The court found the fifth defendant guilty as a co-perpetrator of human trafficking. Although she had been in Thailand permanently from May 2019, she had previously exploited several women. She was a sex worker herself and, moreover, co-responsible for the accommodation and control of the sex workers, along with the first defendant who was also her husband. The court found that the sex workers were clearly in a vulnerable situation because of their illegal or precarious administrative situation, or because of their precarious social status. Most of them were staying illegally in Belgium. As a result, they could not sign regular employment contracts in Europe and were at the mercy of pimps. They were not declared or registered anywhere and were therefore not entitled to social rights and protection. Some of them were trans(gender) and particularly vulnerable for this reason alone. All the sex workers had to pay a fee that was not in line with the market for prostituting themselves in places of prostitution: they either had to pay EUR 80 a day to rent a room (EUR 560 a week), or hand over half the income they earned from their sexual activities. Some of them even said that they paid the rent and also handed over half their income. The sex workers were not allowed to choose their own working hours or the price of their services. The defendant was aware of their vulnerability.

The second and third defendants were again found guilty of human trafficking.

The three defendants were sentenced to three years in prison and fines ranging from EUR 120,000 to EUR 304,000, some of which were suspended. Sums of money were confiscated. The other defendants, including the company, were convicted of the other charges. However, the confiscation of the two properties was annulled by the court on the grounds that their value was disproportionate to the calculated financial benefit.

The two victims who had filed a civil suit were once again awarded compensation of EUR 1,500 and EUR 3,000 respectively for pecuniary and non-pecuniary damages.

Sexual exploitation of trans(gender) victims in private rooms and champagne bars

In another case involving the sexual exploitation of several trans(gender) persons, it should be noted that the public prosecutor initiated proceedings for human smuggling and not human trafficking.

In this case, **the Bruges Criminal Court** convicted a couple of Belgian defendants in a **judgment rendered on 8 February 2023**[494] for procurement and smuggling with the aggravating circumstance of usual activity, in Ostend and Lede.

During a routine check of advertisements on the 'Redlights' website, Ostend police noticed a significant increase in the number of South American trans(gender) persons receiving people at a private address in order to offer them sexual services in return for payment. After making an appointment with one of them in a flat in Ostend, the police met a trans(gender) sex worker. They only spoke Spanish and were in possession of a Colombian passport and an order to leave Belgium. They had almost always worked as a prostitute since arriving in Belgium in 2019. They worked alone and independently. They had found the address through a Spanish friend and rented an apartment there for EUR 350 a week, handing over the money to the defendant.

493 West Flanders Crim. Court, Bruges division, 5 November 2021, ch. B15 (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 71-72 and Myria's website (Case law).
494 West Flanders Crim. Court, Bruges division, 8 February 2023, ch. B17 (appeal).

When the flat was inspected by the police, two illegal African women were also present. They were working as prostitutes through 'Redlights'. The lease contract signed provided for a daily rent of EUR 50. The defendant collected the rent from the first woman every week and from the second woman every day.

The phones of the victims and the defendants were examined (including WhatsApp conversations). A check carried out in the champagne bar in Lede belonging to the couple, revealed two illegal Thai trans(gender) people who were receiving their clients there. They managed the publication of their advertisements themselves and were allowed to keep the money from their prostitution.

During a search of the bar in Lede, another illegal immigrant was discovered. She had a residence permit valid only for Italy. She was renting a room for EUR 50 a day and working as a prostitute. She had found the address through an advert on 'Redlights'. She received her own clients and shared half of the profits with the defendant when the latter sent her clients who had come to her bar without using the advertisements.

A phone investigation revealed that one last person worked in the bar. She stated that she had been recruited by the defendant and worked as a prostitute there from 18:00 to 06:00. She earned 40 % of what the client ordered in drinks. For sexual contact, she charged EUR 100 for half an hour and EUR 150 for one hour. She kept half the money for herself. On one occasion, she provided an escort service for the defendant in Aalst. She received EUR 200 and gave EUR 50 to the defendant. It was the defendant who set the prices and the money was given to her by the clients.

The Belgian defendant owned the champagne bar in Lede. He advertised rooms for rent on 'Redlights' and was responsible for renting them out, both in Lede and in Ostend. The other defendant, a Belgian born in Haiti, was a self-employed sex worker. She admitted that she had also rented out the rooms in Ostend and Lede. A search was carried out at the couple's home, where the sum of EUR 4,140 was found in her wallet.

Concerning **the charge of smuggling**, the judge took the following factors into account: the couple were aware that they were renting out the rooms to people staying illegally, as they had been warned of this by their accountant on several occasions; they were mainly renting out to people of foreign origin; they did not ask the people to sign a rental contract or require them to register with the Belgian national register; they asked for the rent to be paid in cash; and the rent charged was not in line with market prices. The judge reclassified the charges brought by the public prosecutor's office of harbouring with a view to prostitution and running a brothel as pimping[495] following the reform of the sexual criminal law[496]. They took the following factors into account: the fact that the advertisements for rooms to let had been published on 'Redlights' for sex workers; and the abnormal financial benefit derived from the exorbitant rents received. The defendants were sentenced to one year in prison and fined EUR 48,000. A sum of EUR 4,140 was confiscated from the female defendant.

Exploitation of young South American women in private rooms

The Mons Court of Appeal re-examined a case of smuggling and exploitation of young Latin American women in flats. This case, which was heard at first instance by **the Charleroi Criminal Court on 27 October 2021**, was discussed in a previous report[497].

Fourteen defendants of various nationalities (Brazilian, Belgian, Peruvian, French and Moroccan) were prosecuted, most of them for exploitation of prostitution with aggravating circumstances, human smuggling with aggravating circumstances and criminal organisation. A number of defendants were prosecuted for pimping in hotels and one for possession and sale of narcotics. Two defendants were also prosecuted for human trafficking with aggravating circumstances. Three victims and Myria filed a civil suit. The case is composed of two parallel investigations that were joined together, bringing to light two prostitution networks. Regarding the first nine defendants concerned with the first network, **the Charleroi Criminal Court** convicted them on the majority of the charges against them. The court considered that the charge of smuggling had been established because the exploitation of the victims' prostitution had provided them with a means of subsistence and accommodation in Belgium. This exploitation had thus contributed to their stay in Belgium.

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495 On the basis of new Article 433 quater/1 of the Criminal Code.

496 Since the Law of 21 March 2022, amending the Criminal Code, came into force.

497 Hainaut Crim. Court, Charleroi division, 27 October 2021, 6th ch. (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 70-71 and Myria's website (Case law).

Three defendants acted as receptionists. They answered clients' phone calls, made appointments, directed them to the places of prostitution, informed the prostitutes and checked the duration and terms of the service, then reported back to the main defendant, a Brazilian woman, who was in charge of the first prostitution network and defined the roles of the various members, giving instructions on how to deal with the prostitutes.

The public prosecutor and two of the three defendants who acted as receptionists, one of whom was the daughter of the other one, lodged an appeal.

The charges related to smuggling and exploitation of the prostitution of others, with aggravating circumstances, and participation in a criminal organisation. The defendants were sentenced to two years in prison (with a five-year suspension) and a EUR 3,000 fine (with a three-year suspension). They did not contest the facts of the case but sought their acquittal, invoking the general legal principle of invincible error as a ground to justify the exclusion of criminal liability. They alleged that, being of Peruvian origin and unfamiliar with Belgian law, they were unaware that, by making a profit from the prostitution of others, they were participating in an unlawful activity.

In a ruling of 5 October 2022, the Mons Court of Appeal[498] took into account the fact that the defendants had been told that the WhatsApp application offered greater security with regard to the police, and the fact that they had continued their illegal activities after the arrest of a fellow receptionist by the police. The court found it implausible that they could have thought this was purely related to the failure to declare business activities and not to human smuggling, exploitation of the prostitution of others and participation in a criminal organisation. Following the reform of the sexual criminal law, the court reclassified the charge of exploitation of the prostitution of others as procuring and abuse of prostitution with aggravating circumstances, and upheld the sentences and confiscations handed down at first instance. The defendants were ordered to pay Myria EUR 1 in non-pecuniary damages.

2.1.3. | Loverboy method, including the application of the non-punishment clause

Once again this year, Myria was informed of several decisions relating to cases involving the loverboy method. The cases involved both Dutch-speaking and French-speaking victims from Antwerp, Bruges and Liège. In most cases, the victims were Belgian minors, often very young, barely 13 or 14, and often from vulnerable family backgrounds. The perpetrators were often very young themselves. The sexual services were generally offered via online advertisements and took place in hotels or Airbnb accommodation.

The Ghent Court of Appeal ruled on a case discussed in the previous annual report involving the loverboy method with underage girls and forced criminality. The girls had to carry out 'ripdeals', i.e. making an appointment with a client and running off with the money. The first judgment was upheld on appeal[499].

498 Mons, 5 October 2022, 4th ch.

499 Ghent, 18 February 2022, ch. 10. and West Flanders Crim. Court, Bruges division, 22 September 2021, B17. See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 73-74 and Myria's website (Case law).

The loverboy method involving very young Belgian girls

The Bruges Criminal Court[500] and **the Antwerp Criminal Court**[501] both ruled on cases in which the loverboy technique had been used on very young underage victims, aged 13 and 14. In one case, the defendant was a young Bulgarian man and in the other, a young Dutchman. In both cases, the victims were young girls from difficult family backgrounds (runaways from institutions or from home). In both cases, the police tracked down the girls thanks to advertisements on sexual dating websites. In one case, the defendant was prosecuted for human trafficking, but also for rape, exploitation of debauchery and prostitution, as well as for drug-related offences. He was convicted on the basis of the evidence in the case and the victim's reliable statements. In the other case, the defendant was also prosecuted and, on the basis of all the evidence in the case, convicted of rape with violence against a minor, indecent assault on a minor and distribution of child pornography.

In both cases, the defendants were sentenced to five years in prison, suspended on probation. For one of the defendants, the conditions imposed included a ban on contact with the victim and medical and psychological follow-up for his drug problem.

Another decision handed down by **the Bruges Criminal Court**[502] concerned two young Belgian girls, aged 15 and 16, who had run away from an institution. In the days following their escape, they went from one hotel to another in different towns in Flanders. Each time, they had sexual relations with different men. The clients were recruited via a sex dating website. The girls had to hand over the money they earned to their pimps. The defendant, one of the two pimps, repeatedly denied the facts. This was despite all the evidence, including a DNA sample. He was prosecuted and convicted for human trafficking and exploitation of prostitution. He was handed a two-year suspended prison on condition that he undergo psychological counselling by a specialist service and that he be forbidden to have any contact with the two victims.

Loverboy technique and application of the non-punishment clause

An interesting case involving young teenage girls exploited using the loverboy technique was tried in **Liège.** Four defendants (including one woman) were charged with various offences: human trafficking, incitement and exploitation of prostitution, advertising for the prostitution of minors, all with aggravating circumstances, as well as criminal conspiracy. The victims were four young teenage girls, minors at the time of the events, three of whom were under the age of 16. They were exploited in Liège, Arlon and Brussels between November 2019 and December 2020. The female defendant benefited from the non-punishment clause.

The case began when, in 2020, a client reported to Child Focus that he had made an appointment through an advertisement on the 'Redlights' website with a prostitute who appeared to be underage, in a flat in Liège. The girl was heard on video. Two searches were carried out. Two other teenage girls then lodged a complaint, stating that they had been prostituted through 'Redlights'. They said they had been introduced to the first teenager, who had convinced them to engage in prostitution and put them in contact with the defendants. In their hearings, the teenagers explained that they had met a fourth victim, which was corroborated by an analysis of one of the defendants' phones and the contact details and photographs linked to the advertisements published on the 'Redlights' website[503], although she denied having been a prostitute.

In **a judgment of 15 July 2021**, **the Liège Criminal Court**[504] upheld all the charges against the male defendants.

500 West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17, No. 1268 (final).
501 Antwerp Crim. Court, Antwerp division, 21 March 2022, ch. AC8 (final).
502 West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17, No. 1267 (final).
503 The court found that the fourth victim's denials lacked credibility in light of the evidence in the case file.
504 The Liège Crim. Court, Liège division, 15 July 2021, 19th ch. (appeal).

The first defendant, an Italian, exploited the prostitution of the first two teenage girls. The first victim had been put in touch with him via Snapchat by someone she had met in a square in Liège. He adopted the loverboy attitude, taking advantage of her romantic feelings towards him, and convinced her to prostitute herself by showing her the money she would make. He gave her instructions about prostitution and took her to places of prostitution (clients' homes, flats or hotels). He refused to let her stop prostituting herself when she expressed an intention to do so, demanding large sums of money from her (EUR 7,000 and then EUR 20,000). The rates were EUR 100 per half-hour, EUR 150 per hour, and she received between 10 and 15 customers per day. The defendant used the money to pay for car hire, food, Airbnb, cannabis and cocaine. Owing to the pressure and the grip he exerted on her, the victim lied about the role he had played before retracting her statement.

The court acquitted the second defendant, a Belgian woman, of all the charges, even though she admitted them. A former prostitute herself, she was in a relationship with the first defendant and was allegedly locked up and abused on several occasions when they were living together. The first teenager had been introduced to her by the first defendant. She was in charge of the photographs, advertisements and appointments on 'Redlights'. The teenager would give her half of her earnings and she gave half to the first defendant. On the basis of the non-punishment clause[505] and complaints in which the female defendant and her entourage had reported both mental and physical violence inflicted by the defendant, the court found that she had acted without any real autonomy as a lovergirl under the influence of the defendant, who had adopted the attitude of a loverboy. The court pointed out that lovergirls are themselves victims of loverboys. They commit punishable acts in order to remain in the good books of their loverboy. The first victim had played the role of lovergirl herself in order to help recruit the third teenager and then, together, convince the second teenager to prostitute herself.

The third defendant, a Belgian, was in a relationship with three of the four teenage girls after accosting them in the street. He had convinced them to prostitute themselves and exploited their prostitution. He managed the advertisements, surveillance, transport and accommodation. The third victim had run away with him for several weeks. When the victims changed their minds, the defendant used violence.

The fourth defendant, a Belgian, was a repeat offender who failed to appear at the trial. He exploited the prostitution of two of the girls, taking 20 % of their earnings. He was responsible for transport, advertising, clients and accommodation.

The court pointed out that the fact that the girls had not claimed the status of victim did not exclude the offence of human trafficking. As the girls had rebelled against parental authority, the court held that abuse of their situation of vulnerability was an aggravating circumstance. Using a specific modus operandi[506], the defendants collaborated in the recruitment, reception, surveillance, transport and accommodation of the teenage girls (through reservations in hotels and Airbnbs and in a brothel) with an organisation for the recovery of the profits and control of the services. Analyses of one hotel's phones and cameras revealed the relationship between the defendants.

With regard to human trafficking, the court found the aggravating circumstances of underage victims, habitual activity, abuse of a position of vulnerability, association and violence, threats and coercion to be present on the basis of the following elements: the girls being made to stay with people who monitored them, particularly when they received clients; the regular relocation of their place of work/ accommodation; the lack of freedom to come and go, and of autonomy in organising their work.

The sentences handed down ranged from three to seven years in prison and fines of between EUR 24,000 and EUR 32,000. Two victims were represented at the trial by their parents, the legal representatives of the civil parties (one of whom was absent), in their capacity as such and on their own behalf. The court ordered the three defendants jointly and severally to pay them EUR 1,000 each in their capacity as legal representatives, and EUR 500 in their own names.

The third defendant appealed. In a ruling delivered **on 15 March 2022, the Liège Court of Appeal**[507] found that all the charges against the defendant remained established and upheld both the fine and the civil judgment. However, the court increased the sentence to 10 years in prison (instead of seven), in particular because of the extreme seriousness of the offences and the number of victims.

505 On the basis of Article 433 quinquies, § 5 of the Criminal Code: victims of human trafficking who take part in offences as a direct consequence of their exploitation do not incur any penalty for these offences. When the defendant invokes the non-punishment principle, which is an absolute ground for acquittal, the defendant does not have to provide proof.

506 The court took into account the fact that the three defendants used the same vehicles, bought phone cards, booked in the same hotels and the same places of prostitution, regularly contacted each other by phone and travelled together in Liège, Arlon and Brussels.

507 Liège, 15 March 2022, 18th ch.

Hungarian loverboy and Hungarian victims

In **a decision of 28 April 2022**[508], **the Antwerp Court of Appeal** reviewed a case of human trafficking for the purpose of sexual exploitation, which the Antwerp Criminal Court had already ruled on in **a judgment of 14 December 2021**[509].

The defendant, a man of Hungarian nationality, had exploited several young Hungarian women in hotels in Antwerp and Brussels. Their sexual services were offered on a sex dating website.

He was known for human trafficking offences in the United Kingdom, where he was sentenced to five years in prison. Europol revealed that he had been convicted of similar offences in the Netherlands. Following an investigation involving phone calls, phone tapping, consultation of hotels and the sex dating website, the intervention services searched a hotel room.

The victim, also Hungarian, was his partner. She had already been working as a prostitute for two years. She and the defendant had initially lived on the streets, but her income had enabled them to sleep in hotels. Both used drugs on a daily basis. She gave all her income to the defendant so that he could buy the drugs. The investigation revealed that the defendant had used the loverboy technique. He had constant control over her and was aggressive.

The defendant was charged with human trafficking for the purpose of sexual exploitation, using fraudulent means, violence, threats and any form of coercion. The court reclassified the offence by adding the aggravating circumstance of having taken advantage of the victim's vulnerability.

According to the court, the victim was a particularly vulnerable young woman, given her precarious financial and administrative situation and the large age difference between her and the defendant.

She had no personal possessions, was socially isolated in Belgium, could not speak the language, was addicted to drugs and was effectively living on the streets. The defendant had used the loverboy technique, alternating coercion and kind remarks to get the victim to prostitute herself. He took all her income and demanded a high work rate. The fact that the defendant and the victim had a certain relationship did not detract from the fact that the defendant exercised control. The record also shows that the defendant had no source of income and was himself addicted to drugs. He deprived her of food, as is clear from the phone taps and the comparison of photographs over a period of six months, which show her significant weight loss.

The court sentenced the defendant to five years in prison and a fine of EUR 8,000. He was also stripped of his rights for ten years.

The court of appeal found that the facts were true and upheld the first judge's decision. The fact that the victim continued to engage in prostitution and visited the defendant in prison did not change anything. The victim's consent was irrelevant and, given her critical situation, it was clear that her free will had been impaired. The court upheld the sentence handed down by the court.

Loverboy technique used on adult women by a businessman and a former Belgian politician

The Antwerp Court of Appeal again reviewed a case of human trafficking in which the loverboy technique was used. This case had already been processed by the Antwerp Criminal Court in a **judgment dated 29 June 2020,** discussed in a previous annual report[510]. Three defendants of Belgian nationality were charged with various offences, including human trafficking, assault and battery, harassment and rape. Only the first defendant and the second defendant were prosecuted for human trafficking. The third defendant was prosecuted solely for assault and battery. The main defendant was a former politician and businessman. The third defendant was a well-known actor. Two victims filed a civil suit.

According to the court, the main defendant was guilty of exploiting the victims by making them work for him as prostitutes (control) in his home (harbouring), and by actively seeking new victims (recruitment). The other defendant, who was his partner and also a prostitute, helped to organise and run the prostitution business: she placed advertisements, answered the phone 'for work', accompanied clients and kept her partner informed. She was also responsible for collecting and distributing the proceeds.

508 Antwerp, 28 April 2022, ch. C6.
509 Antwerp Crim. Court, Antwerp division, 14 December 2021, ch. AC10 (appeal).
510 Antwerp Crim. Court, Antwerp division, 29 June 2020, ch. AC10. For more details, see Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, p. 66 and Myria's website (Case law).

The court ruled that the victims' consent was irrelevant, as they feared he would throw them out on the street. In addition, one of the victims had had a child with the defendant and he had threatened to take the child away from her.

The court also found them guilty of the other charges. The third defendant, who was charged solely with assault and battery, was acquitted.

The main defendant was sentenced to seven years' imprisonment and a fine of EUR 40,000. The other defendant was sentenced to three years in prison and a fine of EUR 24,000, part of which was suspended. The court took into account the fact that she was both a victim and a co-perpetrator. She worked as a prostitute and was beaten by her boyfriend, the first defendant, when she did not have enough clients. The plaintiffs received one provisional euro and EUR 3,500 in non-pecuniary damages respectively. The EUR 15,000 claimed for pecuniary damages was refused. According to the court, this sexual activity could not justify a claim for damages.

The main defendant lodged an appeal. In an interlocutory ruling, the Antwerp Court of Appeal summoned several witnesses and the two civil parties. They were heard at the hearing.

In **a decision of 16 June 2022**, **the Antwerp Court of Appeal**[511] reviewed a case in light of the new sexual criminal law. As former Article 380 of the Criminal Code had been repealed, the acts were reclassified as procuring on the basis of Article 433 quater/1:

- organising the prostitution of others in order to obtain a benefit, except in the cases provided for by law;
- promoting, inciting, encouraging or facilitating prostitution in order to obtain, directly or indirectly, an abnormal financial or other benefit;
- taking measures to prevent or make it more difficult to leave prostitution.

Consequently, the fact that the defendant had taken one of the girls to an appointment for prostitution was no longer punishable. He was therefore acquitted of all charges in respect of these acts.

The court also confirmed that the reasonable time limit had been exceeded despite the complexity of the case and the fact that there had been no periods of inactivity, and took this into account when sentencing.

The court did not question the credible and consistent statements of all the witnesses involved. The defendant deliberately sought out women who were in difficulty due to drug addiction, lack of money or homelessness. The defendant rushed to their aid by providing them with money, goods and/or shelter, and then exploited their weakness to have hard sex with them, whether or not in exchange for payment or compensation in kind.

Some of these women were then exploited in prostitution, having no other choice, given their precarious situation. When he became involved with the second defendant, he left her in charge of the practical aspects of exploiting the victims.

The court explained, for each woman, why it was a question of human trafficking. For instance, the defendant had recruited (from a centre for homeless people), received and harboured one of the victims in a hotel with the aim of exploiting her prostitution. He did this at a time when she was homeless and having financial problems, which enabled him to control her and abuse her precarious situation. The fact that the victim voluntarily contacted the defendant and asked him for help does not change anything. Nor does the fact that the victim had already engaged in sexual activities in the past. The court found that the acts of human trafficking were established.

The court amended the sentence to five years in prison, three of which were suspended, and a fine of EUR 18,000. The defendant was ordered to pay the two victims compensation of EUR 15,000 and EUR 3,500 respectively in pecuniary and non-pecuniary damages.

511 Antwerp, 16 June 2022, ch. C6.

Sexual exploitation of a Senegalese woman

The Liège Court of Appeal reviewed a trafficking case in which three defendants were prosecuted in various capacities in relation to different charges: trafficking for the purpose of sexual exploitation, human smuggling, criminal organisation, rape and assault and battery.

A fourth defendant was prosecuted solely for human smuggling. The victim, a Senegalese woman, filed a civil suit. She reported the acts of trafficking to the police in Liège in 2016, with the support of a reception centre for victims. Myria also filed a civil suit.

The first and main defendant, a Belgian, was a repeat offender[512]. He was the former manager of a prostitution network in Liège who had already been convicted of human trafficking in a previous emblematic case[513], mentioned in the 2007 annual report[514].

The prosecution stated that after several long-distance contacts, promising her a good life, the defendant convinced her to leave Senegal and come to Luxembourg and then Belgium. They first met in Morocco and got married there in a religious ceremony. During this period, the defendant and his partner in Belgium regularly sent her money. According to the victim, it was at his instigation that intermediaries and smugglers of African origin enabled her to leave Africa for Belgium using false identity documents. The defendant exerted control over her by adopting a loverboy attitude. She had to do the housework in the defendant's home and stated that he had encouraged her to prostitute herself via the 'Badoo' application. She was unable to leave because she was pregnant, staying illegally and had no money. She was also reportedly forced to have sex with several people. Lastly, she stated that she had been bullied, insulted and hit by the defendant and his partner if she refused.

The second defendant, a Belgian woman born in Nigeria, was the first defendant's partner and was in charge of the housekeeping and management of their home, where a third partner and the defendant's parents also lived. The third defendant, an Italian born in Seraing, was also a repeat offender. He dealt with false documents and was involved in the assets of the first defendant, as the latter's lawyer and right-hand man.

He had also been convicted in the emblematic Liège case of criminal organisation, trafficking and aiding illegal residence with aggravating circumstances. The fourth defendant, a Senegalese woman who failed to appear at the trial, was arrested by the Moroccan authorities when she attempted to get the victim across the border at Tangiers and was identified by the latter. An analysis of the defendants' multimedia devices showed she had received a plane ticket, consisting of a financial benefit.

In **a judgment of 20 October 2021**, **the Liège Criminal Court**[515] acquitted the main defendant of the trafficking offence, on the grounds that not all the essential elements of the offence were present in this case, in particular the purpose of sexual exploitation. It also acquitted the main defendant's partner and his right-hand man of this offence.

In the case of the first three defendants, the court reclassified the smuggling offence as facilitating residence[516]. It convicted the main defendant and his partner on this charge, but acquitted the third defendant, acceding to the latter's request to invoke an exception on humanitarian grounds.

The court also acquitted the defendants on the charges of rape, criminal organisation, which was reclassified as criminal association, and assault and battery. The latter charge was, however, declared to have been established in the case of the first defendant's partner, to the detriment of the plaintiff, although the court recognised the excuse of provocation.

In the civil suit, the main defendant and his partner were ordered to pay EUR 2,000 in damages to the plaintiff (the second defendant was also ordered to pay EUR 500 to the plaintiff, on the grounds of assault and battery)[517].

The fourth defendant was convicted in absentia of attempted smuggling with participation in a criminal association. She was required to pay a final EUR 500 to the prosecution and a final one euro to Myria.

512 Following the ruling of the Liège Court of Appeal of 2 December 2010.

513 He was also charged with smuggling human beings. The network was comprised of Albanian and Turkish pimps, Nigerian madams, Turkish and Belgian bodyguards and Italian owners of houses and windows. The case concerned his organisation's role in receiving stolen shares that the Sicilian mafia wanted to use as an investment in a bar in Liège. The defendant had also been involved in another case, during the period 2000-2002, concerning a Nigerian trafficking network based on a small family business, consisting of an offshoot of the case concerning salons in Liège (Myria, *Annual Report 2010, Trafficking and smuggling of human beings, Combating social fraud to prevent trafficking in human beings*, pp. 45-46 and Myria's website).

514 Liège, 18 January 2008, 4th chamber. See Myria, *Annual Report 2007, Trafficking and smuggling of human beings*, pp. 77-83, pp. 106-107 and Myria's website.

515 The Liège Crim. Court, Liège division, 20 October 2021, 19th ch. (appeal) (unpublished).

516 Due to the fact that the prosecution could not prove that they derived a personal financial benefit from having the woman come over.

517 Given the acquittal of the defendants for human trafficking and their conviction only for facilitating residence (and not for human smuggling), the court declared that it did not have jurisdiction to rule on Myria's application.

The public prosecutor and the first two defendants appealed. As the victim had died in the meantime, her son took over the proceedings, represented by his guardian. Myria was not involved in the appeal.

In **a ruling rendered on 14 September 2022**, **the Liège Court of Appeal**[518] overturned the majority of the court of first instance's judgment. Contrary to the criminal court, it found that trafficking for the purpose of sexual exploitation had been established in the case of the first defendant, his partner and the lawyer, who had knowingly played an active role. The main defendant used the loverboy method, which the court described in detail (recruitment, enticement, attachment), making the victim totally dependent on him. This was done in order to exploit her sexually, if only for his own benefit. The court noted that the law also criminalises anyone who exploits the victim in order to satisfy their own sexual desires. The defendant had control over the victim by using this method. The court based its decision on the victim's statements, which described a significant and well-practised modus operandi, the statements of the defendant's partner and witnesses, as well as the findings of the investigating officers (in particular the analysis of the defendant's computer). Confrontations were also organised. Finally, the court upheld the aggravating circumstances of abuse of vulnerability, coercion, violence or threats and criminal association.

The court also upheld the conviction of the main defendant and his companion on the smuggling charge, which was reclassified as facilitating residence. Unlike the criminal court, it also convicted the main defendant's right-hand man on this charge. The court considered that, although he had not participated in the victim's entry into Belgium, he had contributed to her illegal stay. It rightly rejected the benefit of the humanitarian exception, since the defendant's action was part of a primarily criminal approach, namely to satisfy the sexual desires of the main defendant, of which he was well aware.

Finally, the court confirmed the conviction of the fourth defendant for attempted human smuggling. She attempted to allow the victim to enter Belgium illegally in order to obtain a financial benefit.

It also found that all the defendants had committed the offences as part of a criminal association.

The sentences varied from one to three years in prison and the fines ranging from EUR 8,000 to EUR 80,000. A forfeiture of rights was also pronounced.

As the victim's son did not make his claim sufficiently clear in the civil proceedings, the court decided to reopen the case.

Sexual exploitation of a young Albanian woman

The Liège Court of Appeal was asked to re-examine a trafficking case involving an Italian defendant who had exploited the prostitution of a young Albanian woman in Italy and in several places in Belgium afterwards.

In **a judgment of 30 November 2021** rendered in absentia and analysed in the previous report[519], **the Liège Criminal Court** had convicted him of human trafficking and exploitation of prostitution, both with aggravating circumstances. The case was initiated when the victim filed a complaint with the federal judicial police. She explained that, as a young student in Albania, she had met the defendant while on holiday in Italy in 2012 and that he had seduced her. She then decided to stop her studies. The defendant then provided her with accommodation and locked her up, confiscating her passport and identity card, and forcing her into prostitution by telling her that he had money problems. She had to prostitute herself on the street, working at a high rate, and was beaten if she did not comply. The rates were set by the defendant and she was under his almost constant surveillance. She arrived in Belgium in 2015 with false documents and had to undergo an abortion. After her abortion, she was forced to work as a prostitute in bars in Sint-Truiden and Seraing, earning at least EUR 500 a day.

The defendant was sentenced to four years in prison, fined EUR 24,000 and ordered to pay the victim EUR 307,200 in damages.

The public prosecutor lodged an appeal and requested that the charges of exploitation of prostitution be reclassified following the sexual criminal law reform, as follows: procuring, abuse of prostitution with aggravating circumstances and violation of the bans on prostitution. In **a decision of 15 November 2022**, **the Liège Court of Appeal**[520], ruling in absentia, upheld the judgment on the charge of trafficking with aggravating circumstances, except that of endangering the victim's life.

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518 Liège, 14 September 2022, 4th ch.

519 The Liège Crim. Court, Liège division, 30 November 2021, 19th ch. (in absentia and on appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt,* p. 78 and Myria's website (Case law). 520 Liège, 15 November 2022, 18th ch.

It considered that this had not been established, based on the fact that the abortion had probably been performed in accordance with medical rules and without any adverse consequences for the victim. With regard to the charge of exploitation of prostitution, the court followed the public prosecutor in reclassifying it on the basis of the articles set out in the appeal. However, the court considered that the judgment did not meet the requirements of fair punishment, given the physical and moral violence exercised by the defendant against his partner, showing particular contempt for her, and the duration of the offence. The prison sentence was increased from four to six years.

2.1.4. | Exploitation of numerous victims by a Romanian criminal association

In **a judgment rendered on 15 July 2022**, **the Brussels French-speaking Criminal Court**[521] tried six defendants (a Belgian of Romanian origin and five Romanians). They were prosecuted for criminal association, human trafficking for the purpose of sexual exploitation with aggravating circumstances, recruitment and exploitation of prostitution with aggravating circumstances in relation to a large number of victims, some of whom remained unidentified. The acts were committed in several Brussels municipalities between May 2020 and June 2021. Following changes to sexual criminal law, the court reclassified the charges of recruitment with a view to the prostitution of others and exploitation of the prostitution of others as the charge of procuring[522].

The case was initiated on the basis of information obtained from police sources. In January 2021, the police learned that an organisation might be active in the exploitation of prostitution. A cross-check of information gathered through open consultation of Facebook profiles and police data led to the identification of various defendants and victims. The services that monitor prostitution activities via the 'Redlights' website, had contacted a phone number mentioned on one of the advertisements. The appointments that were arranged enabled the police to identify an apartment in a block of flats where three prostitutes and four men were living, and to take down identity and phone details.

The police were then able to link the phone numbers, accounts and reference email addresses to the advertisements published. An analysis of the phones ('retro-zoller'), a check on a vehicle used to transport the girls and verification photos also enabled other defendants and victims to be identified and links between them to be established. The use of phone taps confirmed the contacts between the various defendants and their varying degrees of involvement in the acts.

The court upheld the charge of trafficking for 11 identified victims. Ten of them were also affected by the reclassified offence of procuring, with seven other victims identified. The two charges also concerned an unknown number of victims.

The first defendant benefited from the trafficking of eight identified people. He was the partner of two of them, one of whom he had brought from the Netherlands. According to one of them, she gave the third defendant EUR 250 of the EUR 1,000 she earned and the rest to the first defendant, who drove her to the destination. An analysis of her phone and phone taps showed that he had used violence and made threats against her, particularly when they broke up. He played a central role in providing accommodation. The flat he rented was used as a place to receive clients. The victims were either accommodated in one of the flats rented by the defendant or prostituted themselves in a hotel, in connection with the advertisements on 'Redlights'.

The second defendant was the main driver of the vehicle carrying the girls. He benefited from the trafficking of two identified individuals. He was less involved in the association. One of the victims was present at his home, where she was staying, during a search carried out in July 2020. She gave him some of the money from the tricks to pay the rent. He was also living with a second victim who was prostituting herself in the flat.

The third defendant, a former partner of the second defendant, managed the advertisements on 'Redlights', made the appointments, negotiated the prices and paid for the services. She benefited from the trafficking of five identified individuals. She was in contact with the first defendant, who sent her the addresses where the prostitutes could work and be housed. A victim stated that she gave a fifth of her earnings to the defendant. The defendant was sentenced to 250 hours of community service.

521 Brussels French-speaking Crim. Court, 15 July 2022, 47th ch. (final).

522 New Article 433 quater/1 of the Criminal Code.

The fourth defendant, a repeat offender[523], appeared in custody pending extradition to Austria. The first defendant had hired him as a driver. The analysis of WhatsApp messages on his phone showed that he was involved in prostituting women on his behalf and trafficking an identified victim.

The fifth defendant, who failed to appear at the trial, had benefited from the trafficking of three identified individuals. He was the partner of one of the victims, with whom he lived, and was involved in the occupancy of the flats.

The sixth defendant benefited from the trafficking of two identified victims. He exercised control over one of the victims, with whom he lived.

The sentences handed down ranged from two to six years in prison and from EUR 8,000 to EUR 72,000 in fines, suspended for some of the defendants. The court ordered the return of the vehicle used to transport the victims (or its equivalent value) to its owner, the Romanian voluntary intervenor who appeared at the trial.

2.1.5. | Early marriage within the Roma community

In **a judgment of 5 March 2021**[524], **the Antwerp Criminal Court** examined a case of human trafficking involving a traditional early marriage in the Roma culture.

The case came to light after the youth court's social services department reported it to the public prosecutor's office.

The victim was a 14-year-old girl. Her uncle and grandfather married her off to a 16-year-old boy from a related family, 'in accordance with Roma tradition'. Her mentally fragile parents – the father was apparently deaf and dumb – were unable to resist pressure from the families and were forced to marry off their daughter. The uncle and grandfather were violent towards members of the family. The eldest sister had also been married off earlier. The victim's family was particularly afraid of revenge and reprisals.

The young girl had to live with her in-laws after the wedding, in accordance with Roma tradition. Initially, she was isolated from her family environment and had to engage in sexual acts with the underage boy. The expert report revealed that she had to become pregnant as quickly as possible. After her marriage, she was forced to change schools and regularly missed classes.

The criminal investigation was based on searches, multiple interviews with family members, access to the young woman's medical records and statements from social workers. The court relied on the young woman's initial statements, which she subsequently amended, but which could be corroborated by several objective elements.

The parents-in-law, uncle and grandfather, all Belgian nationals but originally from former Yugoslavia, were prosecuted and convicted of co-perpetrating rape, indecent assault, incitement to debauchery, degrading treatment, human trafficking for the purpose of exploitation of prostitution and culpable negligence. The evidence is that they forced the child to marry, consummate the marriage and have sexual relations. The girl's parents were also prosecuted, but acquitted because, according to the court, they were particularly vulnerable themselves and under psychological pressure from the family. In addition, the mother had sought help for her daughter.

523 He was already convicted in 2015 by Brasov court of first instance in Romania for fraud and scams.

524 Antwerp Crim. Court, Antwerp division, 5 March 2021, ch. AC8 (appeal).

The defendants received prison sentences ranging from three years to 40 months. The victim, who had initially filed a civil suit, withdrew her claim during the proceedings.

The uncle appealed against the judgment. **The Antwerp Court of Appeal** ruled on this appeal in a **judgment of 23 December 2021**[525].

The girl's uncle was also convicted on appeal of human trafficking for the purpose of sexual exploitation. The judgment stated that the acts of trafficking were proven, since the defendant had transported the child to the residence where her 'husband's' family lived and where she was forced to have sexual relations. However, the court ruled that the reasonable time limit had been exceeded and took this into account in setting the sentence.

The uncle was given a 30-month suspended prison sentence.

2.2. | Labour exploitation

2.2.1. | Construction

Myria was informed of two cases of human trafficking for the purpose of labour exploitation in the construction sector. The judgments in these cases were mentioned in previous annual reports. One concerned the renovation of a private house[526] and the other, several building sites in municipalities of Brussels[527]. In both cases, the court of appeal largely upheld the initial judgment.

2.2.2. | Road transport

Myria was informed of two decisions concerning the road transport sector. One case resulted in an acquittal, while the other led to a conviction for human trafficking.

Road transport with lorry drivers originating from Lithuania

In **a judgment of 10 March 2023**[528], **the Bruges Criminal Court** ruled on a case of human trafficking for the purpose of labour exploitation concerning 39 workers in the road transport sector.

A Lithuanian company and its director, a Lithuanian national, were prosecuted for human trafficking with aggravating circumstances, as well as for non-payment of wages and incorrect Dimona declarations. Eight workers filed civil suits.

On several occasions, West Flanders federal judicial police (FJP) saw lorries belonging to a Lithuanian company in a car park in the port of Zeebrugge, along with their drivers, whose living conditions did not meet minimum standards due to the lack of amenities. The FJP sought additional information from open sources and government databases, after which it carried out an inspection of the car park in collaboration with the social legislation inspectorate[529]. Thirteen lorries were seized on the orders of the labour prosecutor.

525 Antwerp, 23 December 2021, ch. C6.

526 Antwerp, 24 November 2022, ch. C6 and East Flanders Crim. Court, Dendermonde division, 18 September 2020, ch. D13V, see Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 70-71. The judgment at first instance is available on Myria's website (Case law. The defendant who lodged the appeal was the owner of the house to be renovated. He claimed not to know the victims, but the court disagreed and confirmed the first judge's analysis.

527 Brussels Dutch-speaking, 28 October 2022, 15th ch. and Brussels Dutch-speaking Crim. Court, 7 March 2019, 25th ch., see Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 82. The appeal concerned only one defendant, the founder of the company. The court largely upheld the judgment, but did not order a prison sentence, only a fine of EUR 60,000. The court considered that the reasonable time limit had been exceeded. The judgment at first instance is available on Myria's website (Case law.

528 West Flanders Crim. Court, Bruges division, 10 March 2023, ch. B17 (appeal).

529 The social legislation inspectorate of FPS Employment, Labour and Social Dialogue. These inspectors, like the NSSO's ECOSOC teams, are authorised to record human trafficking offences

The case revealed that the Lithuanian company organised domestic transport within Belgium and external transport from Belgium to France and the Netherlands. The workers were both Lithuanians and third-country nationals, posted from Lithuania to Belgium. The defendants took the view that Lithuanian labour legislation applied as the workers were posted. The court concluded that Belgium was the country of habitual employment of the lorry drivers, which meant that Belgian labour law was applicable to the employment contract in its entirety, including the rules on the minimum wage.

The findings revealed that the workers only visited the company's head office in Lithuania sporadically. Many workers did not even have Lithuanian nationality and were not actually resident in the country. In the case of posted third-country nationals, the company applied to the Lithuanian government for a work permit, even though they were not resident in the country. The address given was that of a hotel in Lithuania.

According to the court, the intention was clearly to make the lorry drivers work out of Western Europe and not Lithuania. At the end of their period of work, they returned to their place of residence in their country of origin outside the EU, and not in Lithuania. They had to load goods in Belgium and then transport them within Belgium or to the Netherlands, France, Germany or Italy. The lorry drivers had to stay and work in Belgium or neighbouring countries for periods of several weeks and regularly spent the night in a car park in the port. They were paid the Lithuanian minimum wage.

Regarding the charge of **human trafficking**, the court stressed that the offence of human trafficking requires a specific intent to exploit labour in inhumane conditions. This intent may be inferred from the material facts.

The mere fact that a job does not comply with (applicable) social legislation does not necessarily mean that it is contrary to human dignity. Other elements must be concomitant. The court found that the police and the inspection services had not carried out sufficiently concrete investigations into the (living) conditions in the car park. The fact that lorry drivers very often spend the night in their lorries without being able to return home amounts to arduous working conditions. However, according to the court, such working conditions are neither unusual nor prohibited in the international road transport sector. Moreover, it was compensated for by periods of leave lasting several weeks.

The defendants chose a business model that took advantage of the application of Lithuanian social legislation. This enabled them to offer more competitive prices. This competitive advantage was illegal, however, because the lorry drivers were actually entitled to Belgian wage conditions. However, this in itself does not indicate human trafficking.

The court ruled that the defendants had taken advantage of a loophole in Lithuanian regulations to obtain valid work permits for third-country nationals who were not actually living in the country. The case did not show that they had taken advantage of the precarious residence situation of these lorry drivers.

In view of the circumstances, the court concluded that if there had indeed been social dumping, it had not been sufficiently proven that the defendants had intended to employ their workers in conditions contrary to human dignity. They were acquitted of human trafficking, but found guilty of the other charges[530].

Road transport operations via Bulgarian 'letterbox' companies with Serbian drivers

In a **judgment rendered on opposition dated 13 January 2023** before **the Bruges Criminal Court**[531], a defendant of Belgian nationality residing in Serbia was prosecuted for human trafficking.

The defendant owned two companies, one in Bulgaria and the other in Poland.

He was prosecuted for human trafficking for the purpose of labour exploitation with regard to six people and for other offences under social criminal law (failure to make a Dimona declaration, non-payment of wages and illegal employment). He was also prosecuted for fraud under social criminal law, claiming that the companies organised their activities from Bulgaria, whereas in reality these companies were 'letterbox' companies, with the defendant organising everything from Belgium.

The defendant had set up several foreign 'letterbox' companies in Bulgaria to carry out road transport activities in Belgium and neighbouring countries. For this purpose, he used Serbian drivers. He had already done the same in the past with Polish 'letterbox' companies.

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530 See the chapter of this report on good practices and experiences: Part 1, Chapter 4, point 14: Raising awareness.

531 West Flanders Crim. Court, Bruges division, 11 March 2022, ch. B17 (opposition) and West Flanders Crim. court, Bruges division, 13 January 2023, ch. B17 (conviction confirmed on appeal: Ghent, 5 October 2023, 3rd ch.).

The case file revealed that PAG-ASA had been contacted by a Serbian NGO helping victims of human trafficking, which had informed it of the existence of anonymous complaints against the defendant. He lured Serbian workers to Belgium with the promise of legal work and a salary. In Belgium, however, they were employed illegally, had to work longer hours than permitted by law and had to drive lorries with falsified registration and safety certificates. In addition, their wages were only paid in part and late.

On the basis of the evidence in the case file, the court found the defendant guilty of all charges, except with regard to one person.

A Europol investigation revealed that the defendant had never lived at his Bulgarian address. He was only registered in Bulgaria because he needed a Bulgarian address to set up a company there. The staff had neither an employment contract nor the driver's certificate required by European legislation.

The police found several lorry drivers and the lorries in an open storage building, which had no sanitary facilities. The drivers had to relieve themselves in a plastic bag. In the past, they had been able to go to a garage belonging to the defendant to shower and prepare food, but in default of payment, they could not go there anymore.

The court found that all the lorry drivers involved were carrying goods on behalf of the defendant. The court also found that they had performed these tasks in vehicles they did not own, since these vehicles were supplied to them by the defendant, in his capacity as 'lessor', as he claimed.
Several drivers stated that the defendant was their boss and that he had brought them from Serbia to Belgium. They never had to load or unload in Bulgaria or Poland, but only in Belgium and neighbouring countries. They always slept in their lorries, even at weekends. There were no sanitary facilities. Some had never signed an employment contract. They were paid per kilometre travelled, with no payslip. Several victims still had not received a salary, even after several months.

The defendant had previously been convicted of similar offences. He was sentenced to one year in prison. A special forfeiture order of €81,963.97 was issued.

2.2.3. | Hospitality

Myria was once again informed of a number of decisions relating to human trafficking in the hospitality sector, concerning cafés, (exotic) restaurants, a snack bar and a pizzeria[532].

Exploitation of a Belgian victim suffering from a mental disability in a café

In **a judgment of 12 December 2022**[533], **the Antwerp Criminal Court** ruled on a case of human trafficking concerning a Belgian victim in a café.

Three defendants of Belgian and Dutch nationality and a company were prosecuted for human trafficking for the purpose of labour exploitation.

The company, the third defendant, ran a café in Stabroek. The second defendant was the manager. It was in this capacity that he managed the café. Due to a serious physical handicap, he had to call on the services of staff and was assisted by the first defendant, among others.

The defendants hired the victim for various tasks between October 2019 and January 2020. At the time, the victim was a 53-year-old man with a mental disability under guardianship.
The victim had to help clean the café, restock it and sort out the empty bottles. Sometimes he was asked to run simple errands. He was also expected to take part in a renovation project in which one of the defendants was involved. There was no clear structure to the job, nor was the pay determined. The job was also not declared, so that no normal social control was possible.

The acts came to light when the social inspection service and local police carried out an unannounced check at the café at 22:30 in January 2020. On the indications of a drug detection dog, a trap door was opened, giving the inspectors access to a hidden part of the basement. This is where the victim was found.

The victim was sleeping in an enclosed crawl space, where the police officers could not even stand up. The conditions in which the man was living were appalling and unsanitary. He had a dirty mattress and his belongings were in plastic bags. The basement was full of rubbish, had no heating and no sanitary facilities. The conditions in which he was found were dreadful.

532 Luxembourg Crim. Court, Marche-en-Famenne division, 17 March 2023, 14th ch. (unpublished). This judgment was, however, limited to civil interests. The court awarded the worker, the civil party, EUR 20,000 in pecuniary damages. In a previous judgment, relating to the same case, it had convicted the two defendants, who were running a pizzeria, of human trafficking with regard to this worker and ordered them to pay him, together with their company liable under civil law, EUR 1,500 for non-pecuniary damages and a provisional EUR 1 for pecuniary damages. See Luxembourg Crim. Court, Marche-en-Famenne division, 19 November 2021, 14th ch., No. 2021/277: Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 83-84 and Myria's website (Case law).
533 Antwerp Crim. Court, Antwerp division, 12 December 2022, ch. AC1 (appeal).

The investigating officers highlighted not only the lack of space and the clutter, but also the filth and stench. The victim and his belongings were also very dirty and gave off a foul odour.

The victim was very confused and communication was difficult. He explained that he was afraid in his own home and was allowed to sleep in the basement of the caf if he helped out. He said he was afraid of the defendants. He was reportedly paid in part, but also had to give back some of what he had earned. According to him, he had very little time to go to the shops and was not allowed to get his unemployment card stamped.

The court found that the facts were established, but reduced the period of criminal liability. It relied on the physical findings of the police, the statements of the victim's provisional administrator and witnesses.

The court also stated that human trafficking does not require physical confinement or absolute deprivation of liberty, but that in this case the victim's liberty was effectively restricted by the instructions he received, his social dependence and his limited mental capacity.

The court also pointed out that human trafficking for the purpose of labour exploitation does not necessarily mean that the work imposed on the victim has to be full-time or regular work; even adapted work (for instance, in a garment factory can be considered to be human trafficking. The compulsory nature of the victim's work and the total absence of social control illustrate the fact that he worked in conditions contrary to human dignity. Even if the victim had consented to the work imposed on him, the acts would still fall within the definition of human trafficking. Finally, the court emphasised that labour exploitation does not presuppose that the victim's employment is genuinely financially profitable.

The defendants received prison sentences of two years and 20 months respectively, the latter partly suspended, and fines of EUR 8,000. The court found that the company had limited liability and imposed a suspended fine of EUR 24,000.

'Exotic' restaurants with victims holding a single permit

In **a judgment handed down in absentia on 22 June 2022** by **the Brussels Dutch-speaking Criminal Court**[534], three defendants (two Dutch nationals and one company were charged with multiple breaches of social criminal law and human trafficking with regard to five people: four Indian nationals and one Afghan national.

The company recruited people, mainly of Indian origin, to work in Belgium as cooks, promising them a decent salary and a residence permit. The Afghan worker had a single permit[535] in Belgium. Two other workers were initially brought to Belgium with a single permit. After this was withdrawn, they continued to work there.

They lived in appalling conditions above the restaurants, in premises with virtually no sanitary facilities. They had to work and sleep alternately in different restaurants in Flanders (Liedekerke, Ostend, Antwerp. In the Antwerp establishment, one of the former workers had to sleep on a mattress on the floor and there was no shower. The accommodation at Liedekerke was also in a shabby state.

The workers thought they were working officially in Belgium with a valid residence permit and work permit.

They worked seven days a week without holidays and were not paid at all, or only partly (via a third party for their work, despite being promised a salary of between EUR 1,000 and EUR 1,200. The wage promises were not kept and prevented them from rebelling against the employer, for fear of losing both their stay and their wages.

During the investigation, it was found that the company employed a large number of workers who came with a single permit, while the company did not have enough capital to pay their wages. On the basis of this evidence, the court found the first and third defendants guilty of human trafficking in relation to four victims and of offences under social criminal law.

They were sentenced to two years in prison and fined EUR 12,000. Meanwhile, the second defendant, the company, had gone into liquidation. A forfeiture of EUR 41,326.61 was ordered.

534 Brussels Dutch-speaking Crim. Court, 22 June 2022, 25th ch. (opposition).
535 The single permit is a work permit combined with a residence permit for non-EU citizens who come to Belgium to work for a period of more than 90 days.

Several victims in a Chinese restaurant

The Bruges Criminal Court ruled in a judgment of 8 April 2022[536] on a case of human trafficking concerning three victims employed in a restaurant.

The defendants, two Belgian nationals from China and a company, were also prosecuted for other offences, including non-payment of wages and fraud.

The police had been informed by the bank of a suspicious situation involving three people who had to withdraw their wages and hand them over to their employer. The bank tellers had witnessed discussions between the employer and the workers on several occasions. According to information received, several people were staying at the employer's restaurant. The workers regularly moved between restaurants in Belgium and the Netherlands.

The investigation was conducted using CCTV footage, interviews with tellers, bank data searches, analysis of mobile phones and interviews with the defendants and victims. The bank statements revealed that the workers had to withdraw and hand over all the wages they had been paid. The victims had no knowledge of Dutch; they had been brought to Belgium through an intermediary. They had to sign documents whose content they did not understand, they did not know the Belgian system, they had to work an average of ten hours a day, six days a week, initially for a salary of EUR 900 a month (then for a salary of EUR 1,300 a month and they had to hand over their identity cards or residence documents.

They were told that the money did not belong to them. The victims had no choice but to hand over the money or risk losing their jobs.

On the basis of this evidence, the court ruled that this was indeed a case of human trafficking and that the other charges were also proven. The defendants were sentenced to one year in prison and fined EUR 24,000. The illegal financial benefit was estimated at EUR 40,614.11 and was confiscated. The company was held civilly liable.

Snack bar

In **a decision rendered on 26 April 2022**[537], **the Brussels Court of Appeal** ruled on offences under social criminal law and trafficking for the purpose of labour exploitation with aggravating circumstances, of a Moroccan worker in a snack bar in Brussels. The snack bar had been checked several times by the police and by inspection services (social and social legislation inspectorate. During the last inspection in 2017 by the social legislation inspection service accompanied by the police, a man had tried to escape. This man was the worker, who subsequently filed a civil suit. The worker stated that he had been living in Belgium since 2006, and that he had been present during an inspection in 2013, during which he had fled, being undocumented and staying illegally in Belgium. He stated that he had been working in the establishment for four years, between eight and nine hours a day (from 17:00-18:00 to 02:00, seven days a week with no days off, for a daily wage of EUR 30 paid in cash. He cooked and served the meals. The defendant, who was Moroccan, had never taken any steps on his behalf to obtain a work permit.

In **a judgment of 11 December 2018**, discussed in a previous report, **the Brussels French-speaking Criminal Court**[538] found that these were working conditions contrary to human dignity, with the defendant also taking advantage of the worker's precarious situation. The latter did not dare contact the police for fear of being repatriated. The court sentenced the defendant for trafficking with aggravating circumstances[539] and offences under social criminal law[540], 15 months in prison (suspended in full) and a EUR 12,000 fine. It awarded the plaintiff substantial compensation, namely EUR 10,000 in pecuniary damages and EUR 5,000 in non-pecuniary damages.

536 West Flanders Crim. Court, Bruges, 8 April 2022, 17th ch. (appeal).

537 Brussels, 26 April 2022, 11th ch.

538 Brussels French-speaking Crim. Court, 11 December 2018, 89th ch. (appeal). See Myria,, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims,* pp. 124-125 and Myria's website (Cas

539 The court upheld the aggravating circumstances of having authority over the victim, committing an offence against a minor, abuse of a position of vulnerability and the use of fraudulent tactics, violence, threats or any form of coercion.

540 The following are offences under social criminal law: failure to declare employment immediately (Dimona) and employment of a foreign worker without a residence permit for more than three months.

The defendant and the public prosecutor lodged an appeal. As regards guilt, the jurisdiction of **the Brussels Court of Appeal** was limited to the charge of human trafficking. The court also found that trafficking had been established. It took into account the fact that the victim was serving customers or trying to flee every time a check was carried out in the snack bar. According to the court, the defendant's explanations that he had come to the victim's aid in exchange for a hand in his snack bar from time to time lacked credibility. The court also took into account the low hourly rate of pay, the lack of days off over a long period and the working conditions that were contrary to the Code of Well-being in the Workplace, which the victim could not refuse given his precarious social and administrative situation. The prison sentences and fines were confirmed, but half of the fine was suspended for three years in view of the length of time the offences had been committed, the defendant's family responsibilities and the absence of any new offences. The court referred to the first judge's estimate of pecuniary and non-pecuniary damages[541].

2.2.4. | Bakery

In **a judgment handed down on 16 November 2022**[542], **the Bruges Criminal Court** ruled on a case of human trafficking involving two victims employed in a bakery. The defendants – a man of Turkish nationality and a company – were also prosecuted for other offences under employment law.

The bakery attracted attention during a police inspection to check compliance with coronavirus control measures in March 2020. It was found that people were working late into the night. In addition, an anonymous report had already been made about undeclared work in the bakery.

The bakery was observed on several occasions by the social inspection service and, on each occasion, it was established that people were present on the premises after closing time. During a social inspection check, two people escaped Both were illegal immigrants and one of the victims was the defendant's son-in-law, who claimed not to be working for money. Neither spoke Dutch.

They both had to work nights at the bakery. They were housed above the bakery workshop, in a small, damp and dirty space. An electric radiator, that was shoddily and unsafely connected, stood between the cupboard and the mattress. The accommodation was clearly unfit for human habitation. The property had already been declared uninhabitable, but this decision was lifted after permission was obtained to use it as a professional space.
On the basis of all these elements, the court decided that this was a case of human trafficking and that the conditions of employment were contrary to human dignity. The other charges were also upheld.

The defendant had previously been convicted of social criminal law offences in 2018. He received a two-year suspended prison sentence and a fine of EUR 16,000. The court declared the company civilly liable as the employer for payment of the fines.

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541 The court rejected the plaintiff's request concerning the evaluation of pecuniary damages at EUR 64,000 and non-pecuniary damages at EUR 10,000: since the plaintiff's conclusions had been excluded from the proceedings, the plaintiff was unable to justify why the court should depart from the evaluation made by the first judge.
542 West Flanders Crim. Court, Bruges division, 16 November 2022, ch. B17 (final).

2.2.5. | Car wash

The Liège Court of Appeal reviewed a case of trafficking in a car wash.

In this case, four defendants of Indian and Belgian nationality, the first two of whom were husband and wife and the fourth a limited partnership, were charged with trafficking a Romanian worker and with various social criminal law offences. The first two defendants were repeat offenders. The worker who was the victim filed a civil suit. The offences were concurrent with, or followed on from, those covered by a previous judgment handed down by the same court in 2017. The company managed a car wash in Andenne under the authority of the second defendant in their capacity as a limited partner. In reality, it was the first defendant who was the de facto manager, despite their status as a limited partner, which does not, in principle, authorise them to carry out acts of management.

The plaintiff was working on behalf of the company in the car wash in Andenne, which was checked by the social inspection service. The plaintiff was working there on the day of the check and spontaneously declared living in accommodation above the office. Two other workers, who were never identified, ran off.

In **a judgment of 22 January 2020**, the Namur Criminal Court[543] had found the first three defendants guilty of human trafficking and social criminal law offences. The plaintiff was working under a self-employed contract, which the court considered to be contrary to the evidence in the file. It found that there was indeed a verbal employment contract. The worker worked more than 10 hours a day. The court calculated his gross hourly wage as being EUR 1.86, i.e. 13 % of what he should have been paid (EUR 14.147 an hour. It also considered that the offence of human trafficking was established on the basis of the following factors: the inadequate wages, the fact that the worker was housed in premises that were clearly unfit for habitation, and his total dependence on the defendants. As regards the plaintiff and another worker, the court also upheld the social criminal law charges. The court acquitted the failing company of the charges against it, finding that the first two defendants had committed the most serious offence. The first two defendants were sentenced to 12 and four months in prison respectively, while the third defendant was given a six-month suspended prison sentence and fined EUR 8,000. The three defendants were ordered to pay the plaintiff EUR 48,504.65 ex aequo et bono for pecuniary and non-pecuniary damages.

The three defendants (natural persons) and the public prosecutor lodged an appeal. In a decision of 9 June 2022, the Liège Court of Appeal[544] upheld the judgment handed down by the court of first instance for the most part.

In the Court's view, the mere fact of having signed a self-employed contract, which corresponded neither to the relationship actually envisaged between the parties nor to that which actually existed, was insufficient to demonstrate that the defendants had not acted knowingly and in full knowledge of the facts in demanding work under the aforementioned conditions and for such low wages. In addition, the court stated that the defendants could not absolve themselves of liability by placing the burden on the plaintiff, who should not, in their view, have accepted the work without requiring a worker's contract.

Contrary to the 2020 judgment, the decision established that the sentences imposed by the judgment of Namur Criminal Court in 2017 were sufficient to punish all the offences committed by the first two defendants before 10 February 2017, which comprised a collective offence. The court limited the offence to the period from 10 February 2017 to 14 June 2017. As regards the third defendant, they were sentenced to six months in prison and a fine of EUR 8,000, with the sentence suspended for three years. The civil penalty was increased to EUR 49,621.52, plus EUR 1,500 for non-pecuniary damages. An amount of EUR 20,018 was confiscated.

541 The court rejected the plaintiff's request concerning the evaluation of pecuniary damages at EUR 64,000 and non-pecuniary damages at EUR 10,000: since the plaintiff's conclusions had been excluded from the proceedings, the plaintiff was unable to justify why the court should depart from the evaluation made by the first judge.
542 West Flanders Crim. Court, Bruges division, 16 November 2022, ch. B17 (final).

Exploitation of a victim of trafficking already recognised as such

In **a judgment of 22 April 2022, the Mechelen Criminal Court**[545] ruled on a case of human trafficking for the purpose of labour exploitation in several hand car washes.

Five defendants were prosecuted, including two companies who were the third and fourth defendants. Two of the defendants were born in India but had Belgian nationality. Another defendant was born in Surinam, but had Dutch nationality. Four defendants failed to appear in court.

The file consisted of four connected cases. Only one of the cases was classified as human trafficking. All the defendants were prosecuted for offences under social criminal law. Four of them, including the two companies, were also prosecuted for human trafficking against a victim.

Several checks were carried out in the car washes. One victim was found by NSSO social inspectors on two occasions in the car wash. As a victim of human trafficking (labour exploitation, the man had been entitled to permanent residence since 2009, but as he had been struck off automatically, his residence permit had also been withdrawn. He declared that he worked as a self-employed person in the car wash, but it turned out that he was not covered by social security as such.

The first defendant was the boss of the company on paper only, because the real boss was the second defendant.

The court found that the second defendant and the third defendant, i.e. the company, which was the actual exploiter, were guilty of trafficking. The other two defendants were acquitted for lack of evidence. The court upheld the charge of human trafficking on the basis of the following elements: the victim had to work every day from 08:00 to 19:00 without being paid. The man worked seven days a week. He slept at the car wash, in a dirty bed and in an unsecured room. He had no shower and had to wash with soap used for the cars, which caused rashes all over his body. He was not provided with any protective clothing to carry out his professional activities. In addition, the car wash was infested with rats. His Indian passport had been taken away by the defendant and his Belgian residence documents had been withdrawn. The victim, who could no longer work in the construction industry after an accident at work, found himself in a precarious financial situation.

According to the court, employing a foreign worker without a work or residence permit for variable and minimal wages, without social protection and without complying with regulations on working hours and Sunday rest, implies forced submission to arbitrary work in conditions contrary to human dignity. According to the court, this was part of a deliberate strategy on the part of the defendant. The court found that the company was both materially and morally responsible for the acts.

In addition, all the defendants were convicted of various breaches of social criminal law.

The second defendant was sentenced to 12 months in prison and fined EUR 8,000. The company was fined EUR 48,000, half of which was suspended.

543 Namur Crim. Court, Namur division, 22 January 2020, 12th ch. (appeal). See Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors*, p. 86 and Myria's website (Case law).
544 Liège, 9 June 2022, 6th ch.
545 Antwerp Crim. Court, Mechelen division, 22 April 2022, ch. MC7 (in absentia for four of the five defendants).

Exploitation at a car wash and human smuggling

In another case involving labour exploitation at a car wash, the defendants were prosecuted for **human smuggling**, and not for human trafficking.

In this case, judged by **the Bruges' Criminal Court on 13 January 2023**[546], two brothers with British nationality but of Pakistani origin, were prosecuted for social criminal law offences regarding

several people and for human smuggling in relation to one person. One victim and Payoke filed a civil suit.

A check by the police and the NSSO's social inspectorate found several people at a car wash in Jabbeke. One of these people was staying illegally. This person explained that everyone had to work at the car wash from 08:30 to 18:30, for EUR 40 a day. The man worked seven days a week. The boss (the first defendant instructed them to say, during an inspection, that they only worked four hours a day. Wages were always paid in cash and no payslips were issued. The man was housed free of charge, with another worker, in a flat belonging to the boss. He did not have the key to the flat, so the boss would take them there and take the key back.

During the investigation, the boss put pressure on the victim to make statements. The defendants did not contest the breaches of employment law, but did contest the charge of human smuggling. However, the court found that the defendants had allowed the victim to stay in very basic conditions in a room (covered in mould in the flat they rented. This way, they secured cheap labour supplied by the victim at the car wash. They thus knowingly, directly and in violation of Article 77 bis of the Law of 15 December 1980, helped the victim to reside illegally in Belgium. They did so in order to gain a financial benefit from his cheap labour.

The defendants were sentenced to one year in prison and fined EUR 4,000. The victim received compensation of EUR 4,959.77 in pecuniary damages (salary arrears and EUR 250 in non-pecuniary damages. Payoke was awarded pecuniary and non-pecuniary damages of EUR 2,750.

Set-up of companies to operate a car wash and night shops, with acquittal

The Ghent Criminal Court ruled in a judgment of 5 January 2022[547] on a case of human trafficking which involved company set-ups. Several case files were attached to this case. Three defendants were prosecuted. The first and second defendants, of Indian and Belgian nationality, were the company directors. The third defendant was a company. The company had already been dissolved at the time of the proceedings.

They were prosecuted for human trafficking with aggravating circumstances in relation to four people, and for other social criminal law offences with regard to several people. A victim of Indian nationality filed a civil suit.

During checks at a car wash and in several night shops in the Ghent region, illegally staying persons were found working there on several occasions.

In the beginning, it was difficult to know who was running these businesses. A tangle of different company set-ups had been created, with a constant alternation of active partners and managers. Often, these people did not understand what being a manager entailed and did not realise that they could be held liable in the event of bankruptcy.

Following these findings, the car wash was seized and placed under seal. It was at this point that the defendants came forward to request that the seizure be lifted. Both defendants were already known to the police, notably for human smuggling and trafficking for the purpose of labour exploitation.

During the ensuing investigation, emphasis was placed on the links between the various companies, in particular between the company referred to here as the 'third defendant' and the various companies linked to the first defendant.

The investigators believed that they had detected a pattern in the profiles of the managers and partners active in the company (the third defendant and the companies in which the first defendant was involved.

546 West Flanders Crim. Court, Bruges division, 13 January 2023, ch. B17 (appeal).

547 East Flanders Crim. Court, Ghent division, 5 January 2022, ch. G29 (final).

These companies operated night shops, among other businesses.

The investigation revealed a certain modus operandi:

- employment on unbalanced terms under a false status of active partner, resulting in exploitation;
- housing people always at the same addresses, in premises owned by the first defendant, from which he sought to derive abnormal profit from the rent and operating leases he entered into.

The various people involved in the case — defendants, victims and other people concerned — seemed to know each other through the 'temple'. In addition, the first defendant also seemed to take care of residence permits for his compatriots, which gave him a great deal of power. Sham marriages were also organised between Indians, Pakistanis and European women in return for payment, with the aim of obtaining a right of residence in Belgium. Almost all of these suspect marriages were contracted abroad (Denmark, Sweden, India and the United Kingdom).

In the first case, in which the victim was illegally employed at a car wash, the court found that the social criminal law offences were proven, unlike the offence of human trafficking. Although it was clear that the salary agreed and paid was insufficient, the specific intention (special intent to employ, recruit, transport or house the victim in inhumane conditions had not been demonstrated, according to the court. The victim was not obliged to work at the car wash; he had asked to do so himself. Nor was the man obliged to spend the night on the premises behind the car wash, which he only did voluntarily on a few occasions because he was homeless at the time. In addition, the court found that there was no other objective evidence in the criminal case file concerning the inhumane conditions in which the victim was allegedly employed. Photographs of the premises behind the car wash did not provide convincing evidence in this respect.

The other case concerned the fact that the first defendant rented out the car wash, through his company, on unreasonable terms to the company of two other victims.

The public prosecutor put forward the hypothesis that the first defendant had set up a scheme, whereby he pressured the two victims so that their company would sign two contracts, namely a lease and an operating lease for the car wash. According to this hypothesis, the resulting double financial obligation would, by definition, have prevented the car wash from being profitable. As a result, the two victims had to work in inhumane conditions because they had almost nothing left and this only benefited the first defendant.

On this point, the court ruled that it was necessary to prove the fictitious nature of the victims' company and therefore establish its legal personality, or at least prove that the first defendant was involved behind the scenes in the management and administration of this company. The criminal case file did not make it possible to establish the feigned and fictitious nature of the victims' company, or the feigned nature of the operating lease. It therefore could not be proved that the victims were working on behalf of or under the authority of the first defendant. Once again, the court ruled that the offence of human trafficking had not been established.

As regards the facts relating to another victim, the public prosecutor worked on the assumption that there was a fictitious situation, in which the partnership and co-management of this victim and the company, i.e. the third defendant, amounted to work in a subordinate relationship to the first defendant. The inhumane nature of the situation lay in the fact that the victim did not earn enough, that the second defendant was the one who decided everything, that the victim had not deliberately chosen to live in this way and that he had not been told what it meant to be a manager. The court ruled that there was no evidence that the job entailed a relationship of subordination, and that this was not a question of fictitious self-employment.

2.2.6. | Day and night shops

The Ghent Criminal Court ruled in a judgment of **7 December 2022**[548] on a large-scale case of human trafficking in day and night shops. Five defendants were prosecuted, including two companies. Only the first and third defendants and their company, the second defendant, were prosecuted for human trafficking.

The defendants were also prosecuted for other offences, including social criminal law offences (missing or incorrect Dimona declaration, illegal employment of foreign workers, fraud under social criminal law (sham self-employed status to avoid payment of social security contributions and subsidy fraud (under the Covid measures. Two victims and the Flemish Region filed a civil suit.

Both companies operated several (night shops. One company, the second defendant, had several subsidiaries in Ghent and Waregem. The first and third defendants belonged to the same family and alternated between being managers or shareholders of the company. The fourth defendant was the company's accountant.

Several checks were carried out in day and night shops. One of the checks took place following the opening of an investigation into theft. In all cases, the workers did not appear to have been registered with Dimona and were working as independent partners, holding 5 or 10% of the shares in the business. Several people were heard and made similar statements: they had been put to work as self-employed workers in the shops and were required by the first defendant to sign documents to this effect. They were often unaware of Belgian legislation and did not know the difference between an employee and a self-employed person. They had been promised a good monthly income, but ended up having to work long hours, sometimes seven days a week, with no holidays. They were only paid EUR 50 a day. Sometimes they had to give some of it back, supposedly for tax or social security contributions.

For those who were self-employed during the coronavirus crisis, the defendants had claimed a 'Covid' bonus, but they never saw any of it. The investigation revealed that several shops had remained open during the pandemic and that the bonuses had therefore been wrongly claimed.

A search was carried out at the home of the first defendant. He was living in a luxurious villa on the outskirts of Ghent. Large sums of cash were found there, as well as luxury cars.

During the hearings, the investigators noted that several people seemed to be afraid of the defendants, because they came from an important Pakistani family. During the investigation, one of the victims was threatened by the third defendant.

Fixed working hours were imposed, the workers could not choose their holidays, they performed purely executive tasks and had no freedom of organisation. The defendants kept a close eye on them, in particular by means of cameras. The court concluded that the employees were indeed working under the authority of the company. The employment relationships were thus reclassified as employment under authority. The purpose of the set-up was to avoid paying higher social security contributions for these people.

Concerning the charge of human trafficking, the court stated that the willingness of the victims to work in such circumstances was irrelevant. In addition, the treatment or income of the victims in their country of origin could not be considered a criterion either.

The court found that people of Pakistani or Afghan nationality with a precarious residence status had been used. They did not know the language or the regulations, but wanted to build a life here. As a result of their insecure residency status, they had limited access to housing and employment, making them vulnerable to exploitation as victims of human trafficking. The company's business concept took advantage of this situation by creating a certain dependency among these workers, which often led to a vicious circle. They wanted to work, but given their status and the language barrier, they had few opportunities to do so. As a result, they went to work, or even to live, with compatriots whom they could, at first sight, trust because of their similar culture and a familiar language in which they could communicate.

The criminal case also revealed that the company had initially paid the social security contributions. However, when the workers expressed their wish to end the collaboration, this proved impossible as they would then have had to pay back these social security contributions, which they could obviously only do by continuing to work.

The defendants deliberately took advantage of the vulnerable situation of their workers to obtain a financial benefit.

548 East Flanders Crim. Court, Ghent division, 7 December 2022, ch. G29 (appeal).

The court assessed the facts for each worker and calculated that they earned only between EUR 3.5 and EUR 6 per hour. The court therefore found that the business model on which the company operated involved labour exploitation. This was evidenced not only by the use of a bogus self-employed status to avoid having to pay social security contributions, but also by the observation that so-called 'active partners' had to work long hours in exchange for a meagre remuneration.

For one of the victims, the aggravating circumstance of abuse of his vulnerable situation was also deemed to have been established. The man needed accommodation and could only obtain it if he worked in the shop. Therefore, he had no real choice but to accept this abuse.

As regards one of the victims, the defendants were acquitted owing to a lack of evidence.

The defendants received prison sentences of one year and 18 months respectively, partly suspended, and fines of EUR 12,000 and EUR 40,000. Substantial sums of money were confiscated. The company was ordered to pay a fine of EUR 384,000. The victims were awarded EUR 21,289.60 in damages (including EUR 2,500 for non-pecuniary damages) and EUR 30,085.60 (including EUR 3,000 for non-pecuniary damages).

2.2.7. | Second-hand clothing sorting

The Brussels Court of Appeal reviewed a case of trafficking in the second-hand clothing sorting sector, with the aim of exporting to Africa.

In this case, a Belgian defendant, originally from Syria but domiciled in the United Arab Emirates, and his company (bankrupt and in default were prosecuted for the human trafficking of two Algerian workers who had filed a civil suit. They were accused of having recruited them to work in conditions contrary to human dignity (very low and irregularly paid wages, long working hours, lack of safety protection during dangerous work, threatening attitude of the employer, very difficult working conditions (fast pace, excessive dust causing respiratory problems, little or no heating, substandard accommodation They were also prosecuted for various social criminal law offences: non-payment of these two workers' wages; illegal employment of foreign workers without a right of residence; failure to file a Dimona declaration and failure to declare the two Algerian workers and several other African workers to the NSSO.

The acts came to light when one of the two Algerian workers was heard by the social inspectorate after having been in contact with a specialised reception centre. He explained his journey from Algeria and the working conditions (seven days a week, an average of one day off a month, trial period, irregular payment, death threats. The social inspectorate then visited the company's warehouse. It found that the warehouse was locked, that several workers did not have residence permits or work permits, that there was no ventilation, that it smelt of mould and damp, and that there was a huge amount of dust caused by the handling of clothes.

In **a judgment of 9 March 2020**, **the Brussels French-speaking Criminal Court**[549] declared that the criminal action against the defendant's company had lapsed after the bankruptcy had been concluded. As for the defendant, he put forward a number of procedural arguments (including infringement of due process), all of which were rejected by the court. Regarding this point, the court noted that there was nothing suspicious about the fact that the workers had been assisted in their efforts by a specialised reception centre, given that this non-profit association has a statutory mission to receive and support victims of trafficking, as set out by royal decree.

549 Brussels French-speaking Crim. Court, 9 March 2020, 69th ch. (in absentia and appeal). See Myria, Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors, p. 88 and Myria's website (Case law).

The court acquitted the defendant of the charge of human trafficking, finding that the investigation carried out had not sufficiently substantiated the plaintiffs' statements. It did, however, uphold the social criminal law charges for the workers found at work during the social inspectorate check. The defendant was handed a partially suspended fine of EUR 67,200 and banned from engaging in similar professional activities for three years.

All the parties lodged an appeal.

In **a decision of 3 October 2022, the Brussels Court of Appeal**[550] also rejected the procedural arguments put forward by the defendant, relating in particular to the infringement of due process in the context of the steps taken by the reception centre.

It confirmed the acquittal of the defendant on the charge of human trafficking, also noting that there was insufficient evidence to substantiate the statements made by the plaintiffs during the investigation[551]. It also upheld the decision of the original judges regarding the social criminal law charges. Considering that the reasonable time limit had expired, the court only handed down a simple guilty verdict. Considering the acquittal for the charge of trafficking, the court also declared that it had no jurisdiction to hear the claims of the civil parties.

2.2.8. | Agriculture and horticulture

Two cases of trafficking in the agriculture and horticulture sector were tried: one concerned a farm in the province of Liège and the other a tomato plantation, tried by Dendermonde Criminal Court.

In **a ruling of 19 January 2023, the Liège Court of Appeal**[552] overturned a decision rendered by the Liège Criminal Court. In this case, two Belgian defendants, a mother and her son, were prosecuted for exploiting a Belgian worker on their farm. In addition to the charge of trafficking in human beings for the purpose of labour exploitation brought against the two defendants, the son was prosecuted for various social criminal law offences.

The victim, who filed a civil suit, went to the police himself in 2017 to report the acts. The police went to the address and a search was subsequently carried out.

Homeless and suffering from financial problems, the worker had been recruited, received and housed in a former dairy, annexed to the farm. In addition to working full-time for a company, the victim carried out various types of unpaid work as part of the farm's agricultural activity: masonry and carpentry work; maintenance of the fields, yards and stables; looking after the animals, etc. The worker slept on an inflatable mattress with very thin covers and had to wash himself with cold water in a basin. The annex was a small room, not intended as a living space. It was poorly insulated, had no interior lock, was heated by an electric radiator and had no running water. The son had provided the worker with a prepaid phone card but did not top it up, so the worker was cut off from his family for several months. The worker stated that his post was also taken care of by the son, who had shouted at him on several occasions, grabbed him and threatened him.

The worker's bank card was found in a wallet in the parents' bedroom. An analysis of the bank transactions on the worker's account showed that payments had been made by another person, indicated by a certain change in purchasing behaviour. Hearings were held and investigations carried out in the shops concerned to check whether the staff recognised the protagonists.

550 Brussels, 3 October 2022, 11th ch.

551 In particular, social inspectors did not check working and housing conditions in person; there was no relevant phone investigation; there were no extensive hearings involving the witnesses.

552 Liège, 19 January 2023, 6th ch.

In **a judgment rendered on 15 February 2021, the Liège Criminal Court**[553] found that the card, voluntarily handed over to the son so that he could take care of the worker's financial problems, had been used by the two defendants to make payments and purchases that benefited them, and convicted them of breach of trust. The court also found that the social criminal law offences (failure to file a Dimona declaration; NSSO violations; non-payment of wages) were established against the son. However, it acquitted the defendants of the trafficking charge, finding that the misappropriation of a significant portion of the worker's salary and the absence of remuneration for his services were not sufficient to establish his employment in conditions contrary to human dignity.

The defendants were sentenced to one and two years in prison respectively, suspended for three years (for half or all of the sentence depending on the defendant) and fined EUR 800 and EUR 1,600.

The court was unable to determine the amount of unpaid wages, due to a lack of precise objective information about the hours and nature of the services provided. The plaintiff's claim for damages arising from the non-payment of wages was therefore evaluated at EUR 1 to be paid by the son. The court declared that it had no jurisdiction over the plaintiff's claim relating to the charge of trafficking, owing to the acquittal. By way of compensation for damages arising solely from the breach of trust, the court ordered the two defendants jointly and severally to pay EUR 32,768.55 to the plaintiff, with the sum of EUR 16,384.275 confiscated from each defendant. Regarding the non-payment of wages, the son was ordered to pay the unpaid amount, valued at one provisional euro. The court reserved judgment on the remainder, and in particular on compensation for non-pecuniary damages.

The defendants, the plaintiff and the public prosecutor lodged an appeal.

The Liège Court of Appeal upheld the conviction of the son for the social criminal law charges, and of the two defendants for the breach of trust charge. It found that the worker's statements appeared measured and credible, as they were supported on many points by the investigators' findings, by the results of the visit and search, by his daughter's statements and by certain statements made by the defendants. Contrary to the criminal court, the court of appeal considered that the charge of trafficking had been established. The court referred to the reasoning of the Court of Cassation, which considers that the term 'recruit' must be understood in its common sense, and does not imply that the person hired must be solicited for this purpose.

It also pointed out that there was no argument to be drawn from the fact that the defendants themselves lived in spartan conditions, as the farm was being renovated. Their own living conditions had no bearing on the exploitation of the plaintiff's labour in conditions contrary to human dignity. In this respect, the usual living conditions of other citizens at the time of the events must be taken into account.

According to the court, the plaintiff was totally dependent on the defendants for accommodation, food and any debts and expenses he might have incurred. He was not paid for his work on the farm and no longer had access to his own income because of his debts and the fact that the defendants had seized his bank cards. In addition, he was cut off from his family. Even though he was free to come and go and had social contact with third parties because he worked for his employer, he was dependent on the defendants and subject to their goodwill.

The court also found the two defendants guilty of the aggravating circumstances of authority, coercion, habitual activity and abuse of vulnerability. It fined them both EUR 4,000, and sentenced the mother to 15 months in prison, suspended for five years, and the son to 180 hours' community service. They were jointly and severally ordered to pay the plaintiff EUR 2,500 for non-pecuniary damages and EUR 5,000 for damages resulting from the lack of wages, the latter amount to be confiscated from the son and awarded to the plaintiff.

553 The Liège Crim. Court, Liège division, 15 February 2021, 18th ch. (appeal).

Identity fraud in the horticulture sector

In **a judgment of 20 May 2022, the Dendermonde Criminal Court** ruled on a case in the horticulture sector[554]. The defendant, a man of Nigerian nationality, had twice made other people work on his behalf. The first victim was never found. The man worked for a large Flemish logistics company. The second victim, who also had Nigerian nationality, was found working on a tomato farm. The man had been illegally resident in Belgium for 10 years. He filed a civil suit.

The defendant employed other people in his name. In return, they had to deposit their wages in his account and give him their payslips. The victim would keep between a third and a half of the total salary.
On the basis of this evidence, the court found that the second victim was the subject of human trafficking. The defendant had taken advantage of his precarious residence status and financial position. As the information concerning the first victim was insufficient, the court acquitted the defendant of the charges against him.

The defendant was sentenced to six months in prison and fined EUR 8,000.

A special confiscation order was issued for EUR 6,236.21, which was reserved for the victims. The plaintiff was awarded compensation of EUR 14,556.21 (including EUR 4,500 for non-pecuniary damages).

2.2.9. | Domestic work

The Brussels Court of Appeal reviewed a case of trafficking in the domestic work sector, judged at first instance on **2 October 2018** by **the Walloon Brabant Criminal Court**[555]. A British defendant was prosecuted for social criminal law offences and for human trafficking with aggravating circumstances against a Congolese woman, who filed a civil suit. She had recruited the worker in Kinshasa to take care of her seven-year-old son who had a mental disability.. The worker accompanied the defendant on these visits to Belgium on tourist visas, applied for on the basis of the care provided to the young boy. She continued to look after the young boy once the defendant had settled permanently in Belgium. The worker also had to look after the household (cleaning, cooking, washing up and laundry).

The court upheld the social criminal law offences as well as the charge of human trafficking. 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 pay was only 11 % of what she would have been entitled to on the basis of full-time work, i.e. EUR 1,604.45 gross. She had no social security cover. In addition, she lived in the laundry room, located in the cellar, on a sofa and without access to a bathroom. To wash, she had to fetch water from upstairs using a bucket. Her passport was also confiscated when she visited Belgium.

The court had given a great deal of credence to the victim's statements. It ordered that the defendant's sentence be suspended for five years and ordered her to pay the plaintiff EUR 1,500 in non-pecuniary damages and EUR 62,625 in pecuniary damages.

The defendant and the public prosecutor lodged an appeal. In a decision of **24 October 2022, the Brussels Court of Appeal**[556] upheld the conviction for human trafficking, including the aggravating circumstance of the defendant's vulnerability resulting from her precarious administrative and social situation leaving her no choice but to work for the defendant and live with her. The court took into account the fact that the defendant could neither read nor write, did not know how to take any administrative steps herself and gave her passport to the defendant each time she visited Belgium. It upheld the judgement concerning the offences under social criminal law, but limited them in time, and acquitted the defendant of the offence of failing to make a Dimona declaration.

554 East Flanders Crim. Court, Dendermonde division, 20 May 2022, ch. D13V (in absentia).
555 Walloon Brabant Crim. Court, 2 October 2018, 6th ch. (appeal). See Myria, *Annual Report 2019, Trafficking and smuggling of human beings, Empowering victims*, p. 134 and Myria's website (Case law).
556 Brussels, 24 October 2022, 11th ch. (cassation).

The defendant was sentenced to ten months in prison, with a three-year suspension, and a fine of EUR 2,400.

The order to pay EUR 64,125 in pecuniary and non-pecuniary damages to the plaintiff was confirmed.

2.2.10. | Football

Brussels Court of Appeal partly reversed a judgment handed down on **4 November 2019 by Brussels French-speaking Criminal Court**[557] in the football sector. A couple, including the former chairman of a Brussels football club, was prosecuted for the trafficking of a Nigerian football player.

They were accused of having recruited, harboured and received this footballer in order to make him work in conditions contrary to human dignity (inadequate pay, broken promises and withholding his passport). They were also prosecuted for forgery (having falsified a payslip to make it appear that the footballer was being paid in accordance with the agreements entered into with the football club) and, together with the non-profit association managing the football club, for various offences under social criminal law (failure to make an immediate declaration of employment, failure to take out employers' liability insurance, failure to make quarterly declarations to the NSSO, non-payment of wages).

In 2014, the football club, whose players until then had been exclusively amateur, considered taking on one or more professional players. It recruited a young Nigerian who had previously played for other clubs. The player was staying illegally. He lived at the defendants' family home and received a small amount of pocket money. He was never provided with staff accommodation and only received a small part of his salary. He twice received EUR 700. In addition, he had not been registered with the NSSO, worked without social security cover and was completely dependent on the defendants, who had confiscated his passport. In January 2015, he was thrown out of the defendants' home.

The court convicted the defendants on all counts. It found that the offence of human trafficking had been established. While the conditions of the accommodation were comfortable, the court nevertheless considered that other criteria undermined human dignity: no social security, the failure to pay the agreed salary (in this case a few payments far below the salary to which he was entitled and which made him dependent on the defendants, the withholding of his passport.

It handed the two defendants a 15-month suspended prison sentence and a fine of EUR 4,800. It also fined the non-profit association EUR 18,000 for the social criminal law offences. The court ordered the two defendants to pay the footballer EUR 2,500 for non-pecuniary damages associated with the charge of human trafficking; the two defendants and the non-profit association to pay one provisional euro for loss of earnings and EUR 1,500 for non-pecuniary damages associated with the failure to comply with social legislation.

One of the defendants lodged an appeal, followed by the public prosecutor. The co-defendant did not appeal. In **a ruling of 27 June 2022**, **the Brussels Court of Appeal**[558] upheld the convictions for the social criminal law offences. Only the period of the offence was revised, as the court considered that it began when the victim's contract as a paid sportsperson took effect. However, the court acquitted the defendant on the trafficking charge. According to the court, there was no criticism of the living conditions or of the work itself (sporting activities), or of the duration and conditions of the work, which had not been the subject of any comments or complaints. In addition, the court considered that the withholding of the passport was a neutral element with regard to trafficking insofar as it was an aggravating circumstance and not an essential element. The court granted the defendant a simple stay of the sentence.

The court upheld the civil judgment, with the exception of the payment of EUR 2,500 to the plaintiff for non-pecuniary damages relating to the charge of human trafficking, in view of the defendant's acquittal.

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557 Brussels French-speaking Crim. Court, 4 November 2019, 69th ch. (in absentia and appeal). See Myria, *Annual Report 2020, Trafficking and smuggling of human beings, Behind closed doors,* pp. 90-91 and Myria's website (Case law).~

558 Brussels, 27 June 2022, 11th ch.

2.2.11. | Other sectors

Animal shelter

The judgment rendered by the Walloon Brabant Criminal Court, on 4 October 2022[559], concerns a Belgian defendant accused of employing and housing an illegally-staying Moroccan on her farm in inhumane conditions. She had already been prosecuted in the past for an offence under the Animal Welfare Act, but acquitted by the Brussels Court of Appeal in 2018.

After meeting him in a shop, the defendant recruited the Moroccan worker to help her on a permanent basis in an animal shelter. She partly compensated him by giving him board and lodging in an unsanitary flat in precarious conditions.

In addition to the charge of human trafficking, the defendant was also prosecuted for a number of social criminal law offences: failure to submit a Dimona declaration; failure to send the NSSO the relevant documentation regarding the amount of social security contributions for the victim; employment of an illegally-staying foreign worker and the absence of an employers' liability insurance policy. The defendant's phone and photos taken by the plaintiff were analysed. The worker was taken in by a specialised reception centre for victims.

The court found that the charge of human trafficking, and the other charges under social criminal law, were established for a limited period of time. In particular, it relied on the defendant's statements acknowledging that she had recruited the worker for work purposes. The court referred to a Court of Cassation ruling to clarify that the term 'to recruit' must also be understood in its common meaning of 'to hire', since recruitment does not exclude the person hired from having requested the work. It sentenced the defendant to one year in prison, suspended for three years, and to a fine of EUR 4,800, as well as paying the plaintiff EUR 1,000, in the absence of calculations to establish the salary that should have been paid.

2.3. | Exploitation of begging

In **a judgment of 16 September 2022**[560] , **the Ghent Court of Appeal** examined a human trafficking case involving exploitation of begging in respect of one victim, exploitation of begging and swindling in respect of several other victims. The accused was a man of Polish nationality.

In **a judgment of 6 November 2019**, **the Bruges Criminal Court**[561] had sentenced him at first instance to two years in prison and a fine of EUR 8,000.

Between 2016 and 2017, West Flanders police intercepted several people selling wooden figurines or drawings door-to-door or in the street. During an intervention, the police noted that these people were always being picked up by a van registered in Poland.

Several people were found each time during various checks on the van, the defendant being the driver. According to the latter, the other occupants were deaf and dumb and therefore unable to make any statements. Personal belongings and cash were also found in the van.

One person did make statements. The woman said that the defendant had contacted her in Poland to come and work for him. She trusted him and needed money to pay for her studies.

Once in Belgium, she had to sell wooden figurines for the defendant. He drove her to different towns and picked her up at the agreed time. She had to show a placard on which it was written in Dutch that she was in need. She stayed with other men and women in a small house rented by the defendant. They also had to sell wooden handicrafts on behalf of the defendant. They had to sell these figurines for EUR 15 each, of which they had to pay EUR 9 to the defendant. In addition, they had to pay the rent and petrol, which left them with very little money.

The court found that human trafficking had been committed, with the aggravating circumstance that the defendant had taken advantage of the victim's vulnerable situation, and also upheld the judgment regarding sentencing. It also imposed a ban on professional activity.

559 Walloon Brabant Crim. Court, 4 October 2022, 6th ch. (appeal).

560 Ghent, 16 September 2022, 10th ch.

561 West Flanders Crim. Court, Bruges division, 6 November 2019, ch. B17 (appeal).

3. Human smuggling

The following sections successively present the case law concerning Vietnamese, Iraqi and Indian smuggling networks. These decisions show that these smuggling organisations use both lorries and boats for illegal transportation.

As regards human smuggling using lorries, vans or (semi-trailers, some decisions reveal the use of refrigerated containers, mainly involving Iraqi defendants[562] and Vietnamese defendants. In other cases, people were hidden in tarpaulin-covered semi-trailers or behind false walls[563].

Then there are the decisions relating to small boats in the North Sea. On the one hand, there are cases relating to logistical support, i.e. those who bought or transported small boats and other equipment. The nautical equipment was transported from abroad (Germany and the Netherlands via Belgium to the French coast, where the Channel crossing is the shortest way to reach the United Kingdom by boat. On the other hand, there are cases where small boats were found at sea[564]. Myria has chosen to present six of these decisions[565].

Like last year, but to a lesser extent, Myria was informed of decisions relating to the smuggling of Albanian nationals[566] by car via a ferry departing from Zeebrugge[567] or by sailing boat from marinas on the Belgian coast[568].

Finally, Myria adresses an appeal decision on the misuse of humanitarian visas and a striking decision concerning a travel agency that smuggled Surinamese nationals into Belgium

3.1. | Vietnamese smuggling networks

Two Vietnamese smuggling cases were reviewed on appeal.

Essex case concerning 39 victims who died in a refrigerated lorry

The first case concerns the Essex tragedy, a vast case of human smuggling by a Vietnamese network of smugglers, in which 25 defendants were prosecuted. At first instance, **the Bruges Criminal Court** handed down **a judgment on 19 January 2022**, which was discussed in the previous annual report[569]. The defendants were of Vietnamese, Belgian, Moroccan and Armenian nationality.

On 23 October 2019, 39 bodies were found in in the trailer of a lorry in the United Kingdom. The victims were all Vietnamese nationals who had been smuggled in a lorry container from Zeebrugge to the United Kingdom by sea.

At the time of the events, several criminal investigations were already underway in West Flanders for previous acts of smuggling of Vietnamese nationals. These investigations were combined with the one into the events of 23 October 2019. The investigation therefore covered both previous and subsequent events. On this basis, a whole series of activities and modi operandi of the Belgian branch of the smuggling network were identified.

The main defendants, several facilitators and taxi drivers from the Belgian cell, were convicted at first instance.

Two other defendants of Vietnamese nationality were prosecuted in a separate case. The judgement was handed down on **13 June 2022**[570] by **the Bruges Criminal Court.** As the two defendants could not be found initially, this case was separated from the other criminal case. They were eventually found and arrested in the United Kingdom, then extradited to Belgium. One of the defendants lodged an appeal.

562 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (see below); West Flanders Crim. Court, Bruges division, 25 May 2022, ch. B17 (unpublished).

563 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (see below); West Flanders Crim. Court, Bruges division, 1st September 2022, ch. B15 (unpublished); West Flanders Crim. Court, Bruges division, 8 March 2023, ch. B17 (unpublished); West Flanders Crim. Court, Bruges division, 25 July 2022, ch. B17 (unpublished).

564 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17 (appeal) (see below); Ghent, 15 February 2023, 8th ch. (see below); West Flanders Crim. Court, Bruges division, 9 February 2022, ch. B17 (appeal), see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 95-96; Ghent, 18 January 2023, 8th ch. (see below) and Myria's website (Case law).

565 In total, Myria received 11 decisions relating to nautical equipment and four decisions relating to small boats found at sea.

566 West Flanders Crim. Court, Bruges division, 25 July 2022, ch. B17 (final) (unpublished); West Flanders Crim. Court, Bruges division, 1 September 2022, ch. B15 (appeal) (unpublished).

567 In a judgment handed down on 1 March 2023, Bruges Criminal Court upheld the conviction of a defendant who had filed an opposition to the first instance judgment: West Flanders Crim. Court, Bruges division, 1 March 2023, ch. B17. (appeal) (unpublished); West Flanders Crim. Court, Bruges division, 8 December 2021, ch. B17. (opposition). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 101 and Myria's website (Case law).

568 West Flanders Crim. Court, Bruges division, 12 October 2022, ch. B17, No. 1962. (final) (unpublished); Ghent, 2 November 2022, 8th ch. (unpublished). West Flanders Crim.

569 Court, Bruges division, 19 January 2022, ch. B17 (appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 92 ff. and Myria's website (Case law).

570 West Flanders Crim. Court, Bruges division, 13 June 2022, ch. B17 (appeal).

Several (10) defendants and the public prosecutor appealed against the judgement of 19 January 2022. The appeal proceedings concerned a total of 16 defendants, namely the main defendants, the facilitators such as the owners of the safehouses and the taxi drivers who had transported the victims to the coastal region in Belgium and France. Myria, PAG-ASA and several relatives of the deceased victims again filed a civil suit in the case.

The Ghent Court of Appeal reviewed the case in two decisions of **23 February 2023**[571].

Several of the defendants requested a confrontation. The court agreed. The confrontation was organised between several taxi drivers and a number of Vietnamese smugglers.

As the defendants were prosecuted as co-perpetrators under Article 66 of the Criminal Code, the court analysed, on the one hand, co-perpetration and complicity (Articles 66 to 69 of the Criminal Code) and, on the other hand, intent for the offences of directing a criminal organisation, participating in the decision-making of a criminal organisation and participating in the preparation or execution of lawful activities within the framework of a criminal organisation. It also analysed participation in the offence of human smuggling.

The court held that co-perpetration and complicity (Articles 66 and 67 of the Criminal Code) were not applicable to the charge of **criminal organisation** because it requires necessary participation. The court stated that, in accordance with Article 324ter §2 and §3 of the Criminal Code, it was necessary to examine whether the defendant knew that they were contributing to the activities of the criminal organisation. This contribution to a criminal organisation may take the form of the (co-)commission of an offence or the provision of support and assistance. In addition, the court considered that, even if Article 324ter, §2 and §3 of the Criminal Code does not literally refer to a component of '**willingness**', doctrine considers that a person must indeed act with full knowledge of the facts. Nor should wilful ignorance be rewarded. The defendant's behaviour is compared to that of a normal person confronted with the same acts in the same circumstances.

The court ruled that aiding and abetting the offence of **human smuggling** was tantamount to being a co-perpetrator or accomplice to the offence. The same act of aiding and abetting can be considered as being committed as a perpetrator in one case and as an accomplice in another. The criterion that determines whether there is co-perpetration or complicity lies in the answer to the question of whether the assistance provided was **necessary or merely useful** for the execution of the offence of human smuggling. In this case, the prosecution relied primarily on Article 66 of the Criminal Code to prosecute the lessors of the safehouses and the taxi drivers as co-perpetrators. Criminal participation requires both **knowledge and intent (with full knowledge of the facts)** and a positive act of participation. The assistance provided must also have been necessary, regardless of whether it was on a large or small scale.

The court assessed the role and contribution of each defendant separately.

As regards the main defendant, the court found that it had been established that he headed the Belgian cell in contact with the Vietnamese branch and the coordinators in Berlin and France. He provided the necessary assistance during the final stages of the smuggling route. For instance, he ensured that migrants were hidden in safehouses and set the date for their departure for the United Kingdom. When they arrived in the United Kingdom, he decided when and how they should pay. The court examined which facts could actually be attributed to him and which could be proved. He was still found guilty, but the prison sentence was reduced from 15 to 10 years.

The court limited the period of crime regarding another defendant, whom the judge had considered to be in middle management. His sentence was reduced from 10 to four years in prison.

The defendant in the second case was also re-sentenced, but the period of crime and the number of victims were limited. Only the fine was reduced. The court found it established that he had continued to be part of the criminal organisation after moving to the United Kingdom and that he had been responsible for running the safehouses from abroad. Moreover, he organised for other members to escape to Berlin after the events of 23 October.

571 Ghent, 23 February 2023, 3rd ch, No. C/308/2023 and No. C/309/2023.

As regards the lessors of the safehouses, the court found that it was not established with certainty and beyond reasonable doubt that they knew that they were participating, as lessors, in the preparation and execution of the activities of the criminal organisation involved in the smuggling of Vietnamese people by making their property available. They were acquitted.

As regards the taxi drivers, the court found that the mere task of transporting people was not in itself immediately and automatically criminal in nature. However, taxicab drivers could be punished as co-perpetrators (Article 66 of the Criminal Code). According to the court, four taxi drivers (out of eight) were actually guilty of human smuggling, with or without aggravating circumstances.

The court specified the circumstances that proved they acted knowingly and intentionally. The fact that the destinations were near Calais, in the fields, on the west coast, that they were different people each time (supposedly acquaintances and relatives) and that it was always the same principals who paid and gave the instructions should at least have aroused the suspicions of the drivers. The court took into account the following circumstances: the principals were always Asians who paid and specified the destination, without there being any contact with the passengers being transported, who were unable to make themselves understood in a European language — furthermore, these 'principals' called from many different numbers; the destinations were neither tourist nor business destinations, but rather places known to be departure points for the organised smuggling of people to the United Kingdom; in any case, it was clear from the outset that the Asians' journeys to Calais were well paid – in fact, one of the taxi drivers had negotiated the price in advance.

The fact that these were worthwhile runs that could bring in a lot of money in a short space of time (the financial benefit in question) was decisive. According to the Court, the fact that these taxi rides from Brussels to other countries were actually carried out in these circumstances clearly showed that they had **acted knowingly and intentionally**, and not through negligence.

There is also the fact that, at one point, they tried to keep the runs within the restricted circle of three drivers, thus creating a close collaboration between the Asian principals and these three taxi drivers. The three defendants carried out a particularly large number of runs over a fairly long period of time. The defendants' wilful ignorance at the time of the events is therefore neither credible nor plausible. In view of all these findings, the court was convinced that a quasi-structured and organised form of provision of services to four members of a criminal organisation had been established between the three defendants over a long period of time.

The court examined whether the charge of human smuggling was proven for each run. In the case of the four taxi drivers, the court found that it had been proven that they were aware of the smuggling activities and were therefore guilty as co-perpetrators. The four taxi drivers received significantly lighter sentences than at first instance, namely fully suspended prison sentences of one or two years (instead of determinate prison sentences of three, four and seven years and almost fully suspended fines.

In the case of the three other taxi drivers acquitted at first instance, the court confirmed their acquittal. One taxi driver convicted at first instance was acquitted. According to the court, this taxi driver suspected, after three runs, that something was wrong and therefore immediately stopped collaborating.

The family members who filed a civil suit received between EUR 6,500 and EUR 13,250 in damages from the convicted offenders. Myria and PAG-ASA once again each received compensation of EUR 5,000.

British lorry driver involved in smuggling Vietnamese victims

In the second case, also discussed in the previous annual report, **the Ghent Court of Appeal** examined a case of human smuggling in a decision of **1 June 2022**[572] involving Vietnamese victims, in which a British lorry driver was prosecuted.

In a **judgment of 13 October 2021**[573], **the Bruges Criminal Court** ruled on the case at first instance. West Flanders FJP had police information showing that an organisation was active in bringing trailers to Belgium to transport transit migrants to the United Kingdom via the Zeebrugge-Purfleet route. Ten people were found in a trailer, including eight minors, all of Vietnamese origin. The defendant was the driver and denied any knowledge that stowaways were in the trailer.

The court found that the acts were established, with aggravating circumstances. The defendant already had a criminal record. He was sentenced to 37 months in prison and fined EUR 80,000. He appealed against this decision.

The court upheld his conviction. It found that the criminal investigation had established beyond reasonable doubt that the defendant, in return for a payment of GBP 600, had knowingly and intentionally assisted in the smuggling of 10 Vietnamese migrants in transit (including eight children) whom he had deliberately allowed to board the trailer with the intention of bringing them to the United Kingdom, hidden in a load of car tyres. The court upheld the sentence handed down by the first judge.

3.2. | Iraqi organisation involved in human smuggling by lorry

In a judgment handed down by the Bruges Criminal Court on 5 October 2022[574], 17 defendants were convicted of various acts of human smuggling with aggravating circumstances[575] committed in Zeebrugge, France, the Netherlands and the United Kingdom between 2017 and 2021. The organisation had a hierarchy, a structure and was continuously active. The defendants were of various nationalities: six Iraqis, three Belgians, one Briton, one Dutchman, all of Iraqi origin, two Iranians, two Syrians, and two of unknown nationality (one of whom was born in Iraq).

Four defendants[576] were repeat offenders, mainly for acts of human smuggling with aggravating circumstances. Some of the defendants had family links.

Four other defendants failed to appear and were judged in absentia[577].

This case concerns 36 smuggling operations carried out on different dates, around 10 of which involved the smuggling of minors. For the most part, migrants were transported in covered semi-trailers, hidden spaces or refrigerated containers from France to Zeebrugge, with the final destination being the United Kingdom. The acts concerned at least 45 unidentified victims, including a pregnant woman. More than 130 victims (including some from Iraq and Kuwait) were nevertheless identified.

The investigation began when, in October 2019, 20 illegally-staying persons, including women and children, were found in a tarpaulin-covered semi-trailer on the grounds of the port company ECS in Zeebrugge after having been there for three days. The first defendant was known to be involved in smuggling people and children and had been linked to the case thanks to information provided by the United Kingdom. This information made it possible to make the link with another transportation of Iraqi migrants, a few months earlier, found in the Port of Tilbury (part of the wider Port of London) coming from Zeebrugge. The defendant employed lorry drivers who mainly used the Port of Hull as part of their route. He charged between GBP 9,000 and GBP 11,000 per person and allegedly pocketed GBP 100,000 per week for the smuggling.

572 Ghent, 1 June 2022, 8th ch.

573 West Flanders Crim. Court, Bruges division, 13 October 2021, ch. B17 (appeal). See also Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, p. 96 and Myria's website (Case law).

574 West Flanders Crim. Court, Bruges division, 5 October 2022, ch. B17 (appeal).

575 The aggravating circumstances of smuggling minors, abuse of a vulnerable position, endangering the lives of victims, habitual activity and criminal organisation were upheld.

576 These were the fourth, fifth, sixth and fourteenth defendants.

577 These were the first, second, third and seventeenth defendants.

An extensive case file was compiled to link multiple smuggling incidents, based on the modus operandi and the location of the incidents: in each case, illegal immigrants were found in transport lorries, trailers or vans on the grounds of a port company in Zeebrugge. A link was also established with human smuggling by boat from the French coast to the United Kingdom, in which some of the defendants were also involved. Thanks to a phone investigation, other defendants were identified.

The investigation was carried out by means of phone records, a 'retro-zoller' examination of the defendants' phones and phones found on the victims, revealing communications (WhatsApp between the various defendants. Interviews and confrontations between the defendants and searches of their homes were also organised, as well as an analysis of notebooks, computers and SD cards found.

Belgian investigators actively collaborated with their British counterparts through the exchange of police information, a letter rogatory and the execution of a request for mutual legal assistance.

The first two defendants were respectively found guilty of 18 and nine counts of human smuggling as leaders of the criminal organisation. They used aliases in the United Kingdom. As the second defendant had already been convicted in the United Kingdom of human smuggling, the judge considered that the offences he was charged with in the present trial demonstrated the same criminal intent. They were sentenced to 10 and two years in prison respectively and to fines of EUR 272,000 and EUR 968,000.

The judge accepted the application of the principle of *non bis in idem* for the prosecution of the third defendant, who had already been convicted by a judgment of 25 March 2019 for the present offences of human smuggling, with the exception of an act of smuggling committed after the judgment, which the judge considered to constitute the same criminal intent. The third, fourth and fifteenth defendants were convicted of participation in decision-making within the criminal organisation. Their sentences ranged from one year to 50 months in prison (some suspended) and from EUR 8,000 to EUR 240,000 in fines (some suspended).

The 12 other defendants were convicted of participating in the preparation and execution of activities authorised within the framework of the criminal organisation. The sentences handed down to the 12 defendants, who had no decision-making powers, ranged from six to 18 months in prison(mostly suspended) and from EUR 8,000 to 304,000 in fines (mostly suspended).

The judge found that the ninth defendant's desire to ingratiate himself with the third defendant, who had decision-making power and would guarantee the smuggling of his family under favourable conditions, constituted an indirect advantage and a financial gain for him.

The sentences handed down to the eighth, eleventh, thirteenth and fourteenth defendants also included their conviction for money laundering. Of the smuggling offences in the case file, five were organised through the hawala system[578]. The judgment ordered several defendants to forfeit large sums of money representing financial benefits derived from smuggling.

The seventeenth defendant, an Iraqi who had failed to appear at first instance, lodged an objection to the judgement. He had been involved in two smuggling operations using inflatable boats, in collaboration with the seventeenth defendant. He was responsible for ensuring that the victims arrived at the agreed location. A boat had been delivered to him by the fifth defendant.

The judge referred to the phone investigation showing communications between the latter and the other defendants on the subject of smuggling. The defendant had used the hawala system: victims had deposited a sum of money in a foreign exchange office in Iraq in his name. Police information from the United Kingdom showed that the defendant had entered the country in a rigid-hulled inflatable boat (RHIB)[579] in 2020. On **14 December 2022, Bruges Criminal Court**[580] confirmed his sentence of two years in prison and a fine of EUR 32,000.

578 A hawala type of system can be considered as a parallel banking system to transfer money from one country to another without leaving any trace of the transaction. The system is completely anonymous.

579 Rigid hull inflatable boat.

580 West Flanders Crim. Court, Bruges division, 14 December 2022, ch. B17, No. 2509 (final).

3.3. | Indian human smuggling organisation

On **12 October 2022, the Bruges Criminal Court**[581] handed down a judgement convicting two Indian defendants, the main smugglers in a criminal organisation, of smuggling with aggravating circumstances, with regard to an unknown number

of people (at least 97), including several minors, in Zeebrugge.

The investigation began in April 2018 following a statement by an Indian man claiming to have been a victim of human smuggling. After travelling to Paris, he went to Brussels-Midi railway station, Blankenberge and then Zeebrugge via an Indian smuggler whom he identified. The smuggler's name was found in police databases. This smuggler, who was not mentioned at the trial in this case, had already been found and recognised in the Zeebrugge area during previous observations. In May 2018, after being found by the maritime police, another person stated that they had been approached in Brussels by the same smuggler before formally identifying him in a photo. They had travelled with him eight to ten times from Brussels to Zeebrugge, via Blankenberge, in the presence of other migrants, each time in a semi-trailer.

The investigation was carried out using phone tapping, a phone investigation, an examination of WhatsApp conversations, a forensic investigation of the phones and an examination of surveillance cameras in the railway stations. Investigators also carried out an analysis of people held at the Bruges detention centre who had had contact with the smuggler (who was not named at the trial). The investigation revealed that he was linked to a criminal organisation, along with other people. The two main smugglers were in India at the time of the events. However, the charges in the judgment in this case relate only to these two. During the investigation, other suspects were also interviewed. They stated that they had been provided with accommodation by other members of the organisation in return for payment, and that they had provided services without being aware of any link with human smuggling. Searches were also carried out at the homes of some of them.

The smuggling network organised the accommodation and the transportation by lorry of the victims to the United Kingdom. They were often abandoned for several days on the coast or in a park. They had to provide their own food and drink, potentially for several nights. The criminal organisation used threats. The victims were mainly Indian women, who were taken from India to the UK. One of the suspects[582] received money via Western Union from the United Kingdom, France and Germany. The activities were well organised: the people travelled in small groups; some members kept watch

in case the police showed up; clear instructions were given; the victims were looked after and accommodated in different safehouses. The members knew who had been picked up by the police, who had escaped and who had arrived in the United Kingdom.

The two defendants, who were the main smugglers for the criminal organisation, kept in direct contact with the members of the organisation and gave them instructions. They used numerous aliases in their communications with the victims and the other members of the criminal organisation.

The first defendant did not dispute the acts of human smuggling in this case. He performed a managerial and supervisory role within the criminal organisation. The judge pointed out that it was not necessary for the organisation to have been set up by the defendant for him to be the head of the structure. He was a repeat offender, following several convictions for similar offences[583]. He was arrested in Armenia before being transferred and arrested in Belgium in April 2021. As the defendant had already been convicted by Brussels Court of Appeal in June 2022 for human smuggling, the judge considered that the acts of which he was accused in this trial manifested the same intent, thus requiring additional sentencing.

The second defendant was also considered to be the main smuggler alongside the first defendant. He was repatriated from Belgium to India in 2014 and has not left India since. In this case, a default arrest warrant was issued in September 2018 and a request for mutual legal assistance was sent to India in October 2019, which was executed and returned in August 2021. In this case, a default arrest warrant was issued in September 2018 and a request for mutual legal assistance was sent to India in October 2019, which was executed and returned in August 2021.

581 West Flanders Crim. Court, Bruges division, 12 October 2022, ch. B17, No. 1961 (appeal).

582 This suspect was not a defendant at the trial.

583 He was convicted on 17 February 2010 by Brussels Court of First Instance and on 27 July 2011 by Dendermonde Criminal Court.

The execution of the mutual legal assistance request also mentions smuggling activities in the Ukraine-Poland region. He was also a repeat offender as he had already been convicted of similar offences by the Brussels Dutch-speaking Criminal Court on 29 June 2017. He failed to appear at the present trial and was sentenced in absentia.

Both defendants were sentenced to four and 10 years in prison respectively, and fined EUR 560,000. They were also stripped of their rights.

3.4. | Small boats on the North Sea

3.4.1. | *Small boats*

Two cases involving small boats concern well-structured Iraqi and Iranian organisations.

Iraqi/Iranian smuggling network with a small boat in distress at sea

In **a judgment of 22 June 2022, the Bruges Criminal Court**[584] examined a case of human smuggling by small boat across the North Sea, involving a network of Iraqi-Kurdish smugglers. A defendant of Iranian nationality was prosecuted as a perpetrator or co-perpetrator of aggravated human smuggling in October 2021. Three victims and Payoke filed civil suits. Three victims, all Iranian nationals, were granted the status of victims of human smuggling with aggravating circumstances.

In autumn 2021, following a distress call, a boat was located on the North Sea. A rescue operation followed, during which some of the passengers were taken by helicopter to hospital for emergency treatment. In all, 24 people were on board the boat, which appeared to have been at sea for more than a day off the coast of northern France.

Interviews with various people on board revealed that they felt they were victims of human smuggling, but one of them, the defendant, spontaneously declared that he had been involved in human smuggling practices. According to his account, the smugglers had told him who had paid in the camps and he had escorted the migrants to the beaches. According to him, around six smugglers were active on the beaches between Dunkirk and Calais. The number one in the organisation was based in London, while the number two was based in Turkey. As there were problems in the Calais 'jungle' camps, he wanted to leave for the United Kingdom himself. There were around 20 people on board and after 30 minutes the engine broke down. They then spent two days drifting at sea without food or drink. When they reached the wind farm, they were able to access the network again and make an emergency call.

When the man learned that he was considered a suspect for cooperating in the human smuggling operations, he retracted his statement. He was arrested and prosecuted for human smuggling. During the investigation, several mobile phones were found at his home, as well as cash.

The three victims were also questioned, a 'retro-zoller' phone analysis was carried out on one phone number, information was requested from abroad and the 16 mobile phones found were examined. It emerged from the victims' statements that around six smugglers were active on the beaches, using violence and pepper spray against those being smuggled. The defendant was identified by at least one victim as the man at the helm of the boat. He was known abroad for a number of criminal offences and had even been sentenced to 13 years in prison for armed robbery. The phone investigation revealed that the defendants often communicated about who had paid and was allowed on the small boats, about payment to the 'offices' in London and Turkey, about the asylum procedure in the United Kingdom, about hotel bookings in the Calais area, etc.

According to the court, the defendant should be considered a smuggler. The pursuit of a financial benefit is one of the constituent elements of the offence of human smuggling, not its actual execution. For there to be a conviction for co-perpetration, the defendant must have known that they were contributing to the smuggling by their act, without it being necessary to prove intent or the obtaining of a direct or indirect financial benefit. A benefit may also be defined as, for instance, the defendant's own passage free of charge or at a reduced rate.

The defendant endangered the lives of the people being smuggled. They spent two whole nights on rough seas in a boat that was totally unsuitable and taking on water, with a broken outboard motor. There was no navigation and no signalling. The life jackets were totally inadequate. It was perfectly plausible that the crossing would end fatally, as the North Sea is one of the busiest shipping lanes in the world. The victims had no other choice, given their precarious situation.

584 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1532 (appeal).

The only elements that were still somewhat in the defendant's favour were the fact that he was prepared to give the names of the (other) smugglers and that he had also put himself in mortal danger by embarking on the crossing.

He was sentenced to six years in prison and fined EUR 184,000. Two victims received compensation of EUR 500 for pecuniary damages and EUR 2,500 for non-pecuniary damages. One victim received pecuniary and non-pecuniary compensation of EUR 2,001 and Payoke received EUR 2,500 in damages.

The defendant lodged an appeal and **the Ghent Court of Appeal** reviewed the case in **a ruling of 15 February 2023**[585]. The court broadly upheld the judgment. The court considered that the fact that the defendant was being prosecuted as a co-perpetrator of the offence of human smuggling did not mean that all the acts of participation committed by him had to contain all the constituent elements of the principal offence. It is necessary, but sufficient, for the perpetrator of the act of participation to contribute to the offence in one of the ways set out in Articles 66 and 67 of the Criminal Code and for there to be an intention to participate, i.e. that they knowingly and intentionally collaborated in the organisation of human smuggling. It is sufficient for the offender to have knowledge of the offence without being aware of all the details of its execution. The investigation established that he had provided crucial assistance in organising the smuggling and that he had at least contributed to obtaining the financial benefit. It was clear that the defendant had an executive role in the smugglers' criminal organisation, as a lower middle manager.

The court sentenced him to five years in prison and upheld the rest of the sentence.

Small boats transporting Vietnamese victims and Iraqi human smuggling organisation

In **a decision of 18 January 2023**[586], **the Ghent Court of Appeal** ruled on a case of human smuggling by small boat across the North Sea. Bruges Criminal Court had already ruled on this case in a judgment of 9 February 2022[587], analysed in the previous annual report.

A defendant of Iraqi nationality was prosecuted. In May 2021, 43 people (mainly Vietnamese and five Kurds) were

intercepted on board an RHIB on the North Sea. According to statements made by some of the migrants, it was the person navigating the boat who had used his mobile phone to alert the emergency services.

A few days later, a patrol discovered a French-registered van parked in Koksijde with its doors open. The patrol observed several people fleeing into the sand dunes, and illegal smuggling using a small boat was suspected.

One of the people, the defendant, had the key to the car found with the French number plate. The investigation revealed that it had been intercepted several times by the ANPR588 system in Belgium. Heroin was also found in the vehicle. The defendant and several members of his entourage were arrested and their mobile phones analysed. Several transit migrants were heard and identified the defendant as one of the smugglers. Vehicles and the sand dunes were searched, and traces were found on the RHIBs and accessories, as well as on the vehicles. The mobile phones of the transit migrants were analysed.

The defendant was sentenced at first instance to seven years in prison and fined EUR 640,000. Payoke filed a civil suit and was awarded EUR 5,500 in damages.

The court of appeal ruled that the acts remained established. The criminal case file (and in particular information from various chat groups and audio clips) showed that the defendant was not at the top of the smuggling organisation, but that he was undoubtedly an enforcer and belonged at least to the middle management. He had international contacts through which he gave direct instructions to migrants and other smugglers, organised payments through the hawala system, agreed prices and indicated where migrants could be dropped off. Migrants were generally referred to as 'cows' or 'cargo'.

585 Ghent, 15 February 2023, 8th ch.

586 Ghent, 18 January 2023, 8th ch.

587 West Flanders Crim. Court, Bruges division, 9 February 2022, ch. B17 (appeal), see Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 95-96 and Myria's website (Case law).

588 Automatic Number Plate Recognition.588

According to the victims' statements, the defendant was responsible for plotting the routes and preparing the boats. Six of the migrants found were children. They were mainly Vietnamese migrants. Transit migrants paid between EUR 1,700 and EUR 2,000.

The court also found the fact that the victims' lives were endangered to be an aggravating circumstance. The court confirmed the sentence associated with the judgment. The compensation payable to Payoke was also upheld.

3.4.2. | Logistical support for North Sea smuggling

Smuggling organisations with links to Germany

Several decisions concern smuggling networks operating in a number of countries, including Germany.

In **the first case, the Bruges Criminal Court** ruled in opposition to a judgment handed down on **23 June 2021**, analysed in the previous annual report[589].

Five defendants, of Iranian or unknown nationality, were prosecuted. Several of them lived in Germany. Two of them failed to appear at their trial.

In May 2020, the federal judicial police's 'human trafficking and smuggling' section found two defendants in their car with equipment intended for human smuggling. Information from the German police revealed that other defendants had also been found with equipment in their cars. One of the boats purchased by one defendant had previously been intercepted by the British coastguard. The German police reported that several outboard motors had been purchased from a specific sports shop. In another shop, several boats had been sold to the same person. Police found photos of boats and life jackets on the defendants' mobile phones. One of the defendants had been buying boats and motors for a long time and organising smuggling operations, even with Vietnamese nationals.

The investigation revealed that between August and September 2020, he had bought boats worth EUR 10,000 from a shop.

The defendants were working with a person in Calais who was recruiting victims to be smuggled into the United Kingdom in inflatable boats in return for payment. The boats were in no condition to make the entire crossing. The court assessed the facts in the light of the ANPR camera search, the results of the 'retro-zoller' phone analysis, the results of the examination of the seized mobile phones, the WhatsApp conversations found, the mobile phone photos of inflatable boats and outboard motors, the Google Maps photos, the fact that some of the defendants had been caught in a car with smuggling equipment, and the implausible and contradictory statements made by the defendants.

The court ruled that the facts had been established and that the defendants were clearly part of a criminal organisation. They received prison sentences ranging from six to 12 years and fines ranging from EUR 96,000 to EUR 240,000.

As the third defendant had returned to Iran, he was sentenced in absentia to 12 years in prison and a fine of EUR 240,000. He filed an opposition to the judgment. During a hearing, he stated that he was a refugee, a victim and that he had worked for a principal in order to be able to cross to England free of charge. In **the judgment handed down in opposition** on **14 December 2022, the Bruges Criminal Court**[590] found that the defendant was the head of the supranational criminal organisation, given that he was responsible for contacts with the boatmen, sending out the locations, accompanying the victims to the beaches, controlling payments and recruiting people to work for him. Analysis of WhatsApp conversations showed that the former defendants were under his control and that he had real decision-making power.

The judge also took into account the fact that some of the smuggling victims were also minors. The period of incrimination was revised to take into account his return to Iran from June 2020. In the end, the court sentenced him to nine years in prison and a fine of EUR 80,000 for smuggling with aggravating circumstances, in particular involving minors. He was also stripped of his rights.

An appeal was eventually lodged against the first **judgment of 23 June 2021**. The appeal procedure involved only three of the five defendants, two of Iranian nationality and one of German nationality.

589 West Flanders Crim. Court, Bruges division, 23 June 2021, ch. B17 (opposition and appeal). See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt,* pp. 103-104 and Myria's website (Case law).
590 West Flanders Crim. Court, Bruges division, 14 December 2022, ch. B17, No. 2508 (appeal).

The Ghent Court of Appeal ruled in **a decision of 9 March 2022**[591] that the criminal case file showed that the three defendants operated within a criminal organisation with international ramifications, in which each had a clearly defined task in the organisation of human smuggling. The members of the organisation were in constant contact with each other, alternating locations where police checks could be avoided, purchasing equipment (motors, life jackets and fuel) and transporting it to the north of France, from where the crossing to the United Kingdom was organised. The three defendants each had a specific task to perform. In addition, the organisation was supranational in nature (purchase of boats in Germany in particular, meetings in Belgium and transport of equipment to northern France) and the members had the money needed to purchase the boats (an inflatable boat with a floor cost between EUR 2,000 and EUR 5,000 and an outboard motor easily between EUR 2,000 and EUR 4,000).

The court assessed the role of each defendant and sentenced them to between four and nine years in prison and fines of between EUR 40,000 and EUR 80,000.

Two other cases, also involving the transport of logistical equipment, were tried by **the Bruges Criminal Court on 22 June 2022**. In these two cases, the acts were committed in De Panne, France and Germany.

In the first case, the Bruges Criminal Court[592] convicted three Iraqi defendants residing in Germany of acts of smuggling with aggravating circumstances committed in 2021.

The investigation began in April 2021 when the police found a car with a German number plate containing nautical equipment in De Panne: a small boat made up of several pieces of rubber joined together with adhesive tape and glue. The model of motor was over 30 years old.

The investigation involved hearing the defendants, confrontations between them, an in-depth examination of their phones (including WhatsApp conversations and Facebook accounts) and an ANPR analysis of their number plates. The last two defendants were arrested in Germany before being extradited.

The judge took into account the danger of a North Sea crossing to the United Kingdom with small boats and totally unsuitable equipment.

The first defendant acted as an enforcer and was low in the criminal organisation's hierarchy. The investigation showed that he had informed the second defendant that he did not want to take part in the smuggling, after being contacted by the latter. At the latter's request, he provided an inflatable boat.

The second defendant, of Iraqi and German nationality, organised the transfer of nautical equipment from Germany to France and recruited the operatives from a Yazidi community. His telephone was linked to a false identity.

The third defendant was also a member of the criminal organisation's management. His fingerprint was found on a door of the first defendant's car, although he denied having been in the car, which the judge found not credible. Despite the absence of any substantial regular income, the investigation showed that he maintained a luxurious lifestyle (luxury cars, photos of holidays and bundles of cash, amounts of money on the phone, etc.).

The prison sentences handed down ranged from 37 months to five years, suspended (partially or fully, depending on the defendant), and fines of between EUR 12,000 and EUR 36,000 (some suspended). The defendants were also stripped of their rights.

The second case[593], involving three defendants, began when, in October 2021, the police checked two vehicles at night on a slip road off the E40 at De Panne. The first one was supposed to follow the second one, which was transporting nautical equipment. The three defendants and a fourth person were in the vehicles, which were registered in France and Germany[594]. One of the cars had previously been observed loading and unloading migrants and equipment on the French coast.

591 Ghent, 9 March 2022, 8th ch.

592 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1530 (final).

593 West Flanders Crim. Court, Bruges division, 22 June 2022, ch. B17, No. 1531 (appeal).

594 This person died shortly after their interception during the night, in a police cell.

A search of the two confiscated vehicles, fingerprinting and an ANPR analysis were carried out, as well as an examination of the phones found in the vehicles belonging to the defendants.

The first defendant, an Iranian, failed to appear at his trial. He had claimed to be a minor, but this was contradicted by a bone scan showing that he was 26-27 years old, with a margin of error of two to three years. According to the defendant, the people in the other vehicle were going to help him cross to the United Kingdom, at a cost of EUR 5,000. Unable to pay this sum, the defendant stated that he had agreed to cross free of charge, on condition that he drove the car, brought the motors to France and transported the nautical equipment. They had given him a phone and he was being watched by the other car.

The second defendant, an Iraqi, was in the first vehicle that was stopped. He had a more important role within the organisation.

The third defendant, an Iraqi, had been fingerprinted in several countries under different names. He worked day and night as a sub-manager in the criminal organisation, smuggling migrants into the United Kingdom using Turkish inflatable boats that were overloaded and known for their poor quality. As well as playing a logistical role, he checked the payments made by the victims via the hawala system and gave orders to his accomplices. He would go to Germany to collect motors and boats and prepare them on the beach. He was in contact with other traffickers and in particular with the head of the organisation, who was based in the United Kingdom.

The sentences handed down ranged from 30 months (suspended in some cases) to six years in prison and a fine of between EUR 20,000 and EUR 32,000 (partly suspended in the case of the first defendant). All the defendants were also stripped of their rights.

3.5. | Humanitarian visa fraud

In a **decision of 30 June 2022**[595], **the Antwerp Court of Appeal** ruled on a case of humanitarian visa fraud. At first instance, t**he Antwerp**

Criminal Court had ruled on this case in a **judgment of 12 January 2021**, mentioned in a previous annual report[596].

The acts date back to the period from 2017 to 2019. In this case, 10 defendants (including the main defendant, his son and his wife) were prosecuted for actively participating in human smuggling with aggravating circumstances in various ways. The main defendant was also prosecuted for having been the head of a criminal organisation and the other defendants for having been members of this organisation. Several of them, including the main defendant, were also charged with passive corruption, while two defendants were also prosecuted for attempted extortion.

In return for payment of sums ranging from EUR 2,500 to EUR 7,500, the defendants helped third-country nationals to obtain a one-year short-stay humanitarian visa with the sole aim of applying for asylum in Belgium. They did this despite the fact that these people had settled abroad - which is contrary to the conditions for obtaining the visa, of which the defendants were aware - and/or they had not applied for asylum, the period of validity of the visa having since expired.

The main defendant abused the authority or facilities granted to him by the State Secretary for Asylum and Migration at the time. In his capacity as representative of the Assyrian Church in Mechelen, he was responsible for drawing up lists of Syrians applying for this visa as part of a rescue operation and forwarding them to the office of the Secretary of State.

Humanitarian visas were issued by the Belgian Embassy in Beirut to Syrian refugees on lists drawn up by the main defendant, following investigation by the Immigration Office, OCAD and State Security, and the approval of the Secretary of State. Once in Belgium, beneficiaries of the humanitarian visa were required to follow the 'normal' procedure, by submitting an asylum application to the Commissioner General for Refugees and Stateless Persons (CGRS).

595 Antwerp, 30 June 2022, ch. C6 (appeal in cassation dismissed).

596 Antwerp Crim. Court, Antwerp division, 12 January 2021, ch. AC10 (appeal). See Myria, Annual Report 2021, Trafficking and smuggling of human beings, Visibly invisible, pp. 88 ff., and on Myria's website (Case law).

The defendants contested the charge of human smuggling on the grounds that "there is no legal obligation to apply for asylum" and that "the fact that some people have not applied for asylum as part of the asylum procedure in Belgium is therefore not contrary to Belgian law".

The court rejected this reasoning. The humanitarian visa issued was only for the purpose of applying for asylum in Belgium (and therefore not in another EU Member State). Several documents in the case file (statements, phone investigation) revealed that the main defendant was aware of this condition. The public prosecutor therefore accused the defendant of having been aware that some applicants had no intention of staying or applying for asylum in Belgium, but rather of travelling immediately to another EU Member State. This is exactly why the defendant demanded (even) higher sums (around EUR 7,500) than those demanded from people he knew would stay in Belgium.

After being confronted with several wiretapped conversations and other audio recordings, the defendant stated several times that he wanted to introduce, or had introduced, a 'sanctions regime' to ensure that applicants would actually remain in Belgium.

The court acknowledged that it was not the defendant's responsibility to check whether every beneficiary of a humanitarian visa had applied for asylum after arriving in Belgium, or whether they were resident in the country. Nevertheless, the court considered that there had been human smuggling: the defendant had - in breach of the law - allowed people to enter the European Union with a humanitarian visa issued solely for Belgium, without ever intending to reside there and/or apply for asylum, in order to be able to travel immediately to another EU Member State to reside or apply for asylum there.

According to the court, this was indeed a criminal organisation. The work was divided between the first two defendants (father and son) and others, through intermediaries who designated the candidates and sometimes shared the profits. Victims who failed to keep their promise of payment were threatened.

The court also found the main defendants guilty of almost all the other charges. The second defendant, the son of the main defendant, helped to draw up the lists and contacted a series of victims or their relatives. The main defendant's wife (who rented a safe in which part of the criminal proceeds were hidden) and intermediaries were among the other defendants.

The main defendant was sentenced to eight years in prison, fined EUR 696,000 and stripped of his civil and political rights. An amount of EUR 450,000 was confiscated. The other defendants received prison sentences ranging from one to four years (and fines ranging from EUR 8,000 to EUR 296,000, suspended for some of them).

The civil parties (including the Belgian State and Myria) were awarded compensation.

Five of the ten defendants lodged an appeal against this decision.

The court of appeal considered that, given that the humanitarian visas were issued on condition that the persons applied for asylum in Belgium, it was essential, in order to assess guilt for human smuggling, to know whether the defendants had **prior knowledge of the intentions of the refugees applying** for these visas. The main defendant was suspected of having demanded large sums from applicants for humanitarian visas and even larger sums if they intended to go abroad immediately and not report to the Belgian authorities. In the case of several people, the court found that this prior knowledge could not be sufficiently demonstrated. The defendant was therefore acquitted of the charge of human smuggling with regard to these people. If prior knowledge was proven, then the charge would remain.

Some of the defendants, including the main defendant, were also found guilty of passive bribery in relation to several people. On the one hand, he was found guilty of passive corruption with regard to the persons for whom human smuggling had been proven, given that the corruption, in his role as a public official, was carried out with a view to committing an offence (Article 247, § 3, of the Criminal Code). On the other hand, regarding those people for whom human smuggling was not proven, he was found guilty of bribery for the purpose of performing a lawful act (Article 247, § 1 of the Criminal Code). His son was found guilty of passive corruption as a co-perpetrator, and his wife of human smuggling and passive corruption.

According to the court, it was established that the main defendant, as leader, had set up an organisation in which his link with a government project, i.e. the rescue of Syrian Christians through manitarian visas, was used by him for human smuggling and/or passive corruption with the aim of achieving the greatest possible financial benefit. For this purpose, he structurally used intermediaries, his son and his wife, who were found guilty of participating in the decision-making of the criminal organisation. The other defendants were convicted of belonging to a criminal organisation.

In addition, the court also found that the main defendant and his son were guilty of attempted extortion. They threatened to withdraw the residence documents of certain people, who were in a precarious residence situation, if they did not pay them large sums of money.

The main defendant was sentenced to five years in prison and a fine of EUR 48,000. The other defendants received two-year prison sentences and fines ranging from EUR 32,000 to EUR 296,000, some of which were suspended. The court sentenced the tenth defendant to a full suspended prison sentence, because of her role as a whistleblower in this case.

Large sums of money were confiscated. The civil parties were awarded compensation.

An appeal in cassation was filed by the main defendant, his son and his wife, but was dismissed in a ruling of 6 December 2022[597].

3.6. | Smuggling of Surinamese migrants by a travel agency offering various residence options

The Antwerp Criminal Court ruled in **a judgment of 28 June 2022**[598] on a case involving the smuggling of Surinamese nationals. Nine defendants were prosecuted in this case, all of Surinamese nationality. One of the defendants, a company, was a travel agency. The three main defendants were brothers. They were prosecuted for human smuggling with aggravating circumstances and human trafficking for the purpose of labour exploitation with regard to one person. Among other things, they were also prosecuted for belonging to or leading a criminal organisation, rape, fraud and threats.

The case concerned a travel agency with branches in Belgium, the Netherlands and Surinam, which acted as a hub for smuggling human beings, both minors and adults, mainly of Surinamese origin.

The case was opened by Antwerp FJP following a number of reports from the Immigration Office and observations by the local police.

Every time, the organisation tried to get the people smuggled registered in Belgium. Depending on the situation and/or the preferences of the victim, various options were available, in return for payment. The people smuggled allegedly paid between EUR 10,000 and EUR 20,000 for this.

i) An option linked to an asylum application - often used as a means of taking other steps during the 'provisional legal situation' period.
ii) A family reunification option with a real family member - the family member living in the Netherlands was registered in Belgium and, in order to establish their solvency, had received a false employment contract from the criminal organisation. The criminal organisation provided registration and residence addresses and false documents to prove a relationship, for instance. The addresses of the places of residence were used until there were problems with the landlord or the neighbourhood police officer.
iii) A family reunification option with a partner or through legal or de facto cohabitation in which a fictitious partner was sought by the organisation: in this case, a person unknown to the victim would turn up and the organisation would provide false documents to prove the relationship.

597 Cass., 6 December 2022, No. P22.1026.N.
598 Antwerp Crim. Court, Antwerp division, 28 June 2022, Chamber AC10 (appeal).

iv) An employment-related option: the organisation
v) drew up false employment contracts with the travel agency.

The organisation also offered an 'all-in' option whereby victims were helped to obtain a tourist visa, a plane ticket, furnished accommodation, a registration address, practical and administrative support throughout the process and legal advice from lawyers.

The members of the criminal organisation all had different tasks and roles, ranging from direct contact and discussions with the victims to collecting the money and depositing it in the travel agency's account; searching for, visiting and renting suitable premises; compiling files, including communications and photographs; preparing for interviews at the Immigration Office and transport to Brussels; drafting and signing false employment contracts to establish solvency; and also providing vehicles.

The court found that it had been demonstrated that all the defendants had knowingly participated in and/or contributed to the smuggling activities and that it wasn't a question of sporadic contacts or fortuitous collaboration. The actions they had taken to support the victims weren't motivated by humanitarian considerations, since large sums of money had to be paid. Finally, the court emphasised that, even if some of the defendants hadn't received any financial benefits, the network's leaders had in any case made money thanks to the participation of the co-defendants in the smuggling activities.

The defendants were found guilty of human smuggling. The main defendant was also found guilty of human trafficking for the purpose of labour exploitation of a victim. The court found that the conditions of employment were indicative of labour exploitation, in particular the fact that she worked illegally, that she was in the country illegally, that she had no social protection and that she didn't receive a regular salary commensurate with the services provided, but only minimal and variable compensation. The consent of the person involved in the exploitation was irrelevant in this respect. The court also found that the victim had been raped.

Another defendant was also convicted of raping another victim, who was also a victim of human smuggling.

The three main defendants received prison sentences ranging from four to eight years and fines of EUR 448,000, some of which were suspended. The other defendants received prison sentences of between two and four years and fines of between EUR 440,000 and EUR 448,000, some of which were suspended. The company was fined EUR1,920,000. The court also ordered that the company be dissolved, as it had been deliberately set up to carry out criminal activities. The company had gone bankrupt in the meantime. A confiscation of the financial benefit amounting to EUR 115,000 was ordered.