Part 1

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



Chapter 1
Recent developments in the legal and political framework

1. Developments in the European legal and political framework

1.1. | Human trafficking

Commission's third report on the progress of the Member States in the fight against trafficking in human beings

The European Commission published its third report on the progress of the Member States in the fight against trafficking in human beings on 20 October 2020[1]. This report must be compiled every two years in accordance with Article 20 of the European directive on trafficking in human beings[2].

It gives an overview of the progress made, outlines the trends and the challenges faced as well as the issues at stake in the fight against human trafficking in the EU. It is accompanied by a Commission staff working document[3] and a study of the criminal justice data for the years 2017-2018[4].

14.145 victims of human trafficking were recorded in the EU in 2017 and 2018[5]. Despite efforts, this represents a higher number than in the previous reference period. 72% of all recorded victims were women and girls, and half of the victims were EU citizens. Sexual exploitation remains the most common form of trafficking, accounting for 60% of recorded victims. The report notes an increase in human trafficking for labour exploitation. It concerns 15% of the victims in total, mainly men (68%), although in some sectors, the victims are mainly women (e.g. domestic work, care activities or cleaning services).

The criminal methods of traffickers have changed owing to the intensive use of the internet and social media, and the deployment of technology during many stages of the trafficking chain. Traffickers are increasingly using the internet to recruit their victims and are advertising more on the internet. They are increasingly exploiting their victims in private facilities.

It is still difficult to identify and detect human trafficking victims in mixed migration flows[6]. An increased risk of trafficking continues to exist in the context of migration, because the trafficking network

1 Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2020) as required by Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, 20 October 2020, COM(2020) 661 final: https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52020DC0661&from=GA

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

3 https://ec.europa.eu/anti-trafficking/sites/default/files/staff_working_document_2020.pdf

4 European Commission, Data collection on trafficking in human beings in the EU, September 2020: https://ec.europa.eu/anti-trafficking/sites/default/files/study_on_data_collection_on_trafficking_in_human_beings_in_the_eu.pdf

5 The report stresses that the real number of victims is probably much higher, because many of them are unknown.

6 The identification of trafficking victims among asylum seekers and their access to international protection is also one of the points discussed by GRETA, the European Council Group of Experts on Action against Trafficking in Human Beings in its last activity report: see Council of Europe, *10th general report on Greta's activities*, April 2021: https://rm.coe.int/10th-general-report-greta-activities-fr/1680a21621

continue to take advantage of the vulnerability of people and the asylum procedures, mainly for the purpose of sexual exploitation. In addition, Covid-19 has increased these vulnerabilities and the risk of trafficking for the purpose of sexual and labour exploitation.

The report highlights the fact that progress has been made in several areas, especially in transnational cooperation, particularly between law enforcement and judicial authorities, and in the establishment of national and transnational victim referral mechanisms. For instance, joint investigation teams have proven to be a particularly effective cooperation tool[7]. Nevertheless, the number of prosecutions and convictions remains low, even though the number of victims isn't decreasing. The shortcomings and limitations highlighted in the report call for a better implementation of the Anti-Trafficking Directive in the Member States and for a more adequate response to the evolution of crime, as well as for a new strategic approach to the eradication of human trafficking.

Other reports

To mark EU Anti-Trafficking Day on 18 October 2020, the Commission published two studies, one on the costs of human trafficking[8] and the other on national and transnational referral mechanisms[9]. Both studies were part of the Commission's 2017 Communication, which aimed to identify new concrete actions[10].

The first study focuses on measuring the cost of human trafficking in monetary form in order to improve the quality of decision-making when a cost-benefit analysis is required for decisions relating to the allocation of public resources. Three main types of costs associated with human trafficking have been identified: the use of services (coordination and prevention, specialised services, law enforcement services, health and social welfare services); the loss of economic output; and the loss of quality of life. The study identifies three phases: during the trafficking, in specialised services and after the trafficking.

The aim of the study on referral mechanisms was to provide information on the way formal and informal referral mechanisms work in the context of ensuring access to and enforcement of the rights of human trafficking victims. The report is the result of this EU-wide effort. It includes an extensive review of available sources and fieldwork in 28 EU Member States.

New EU Strategy on Combatting Trafficking in Human Beings (2021-2025)

On 14 April 2021, the European Commission presented its 2021-2025 strategy[11]. While progress has been made in the cooperation, prosecution and conviction of traffickers and in the identification and support of victims, human trafficking remains a serious threat in the EU. Traffickers take advantage of the economic and social vulnerability of people, exacerbated by the Covid-19 pandemic, to recruit their victims. Furthermore, the police and judicial response to this phenomenon has become more complex, as traffickers now operate mainly online to recruit and exploit their victims. The Commission underlines the link with the strategy on organised crime, also adopted for 2021-2025[12].

The Commission is committed to continuing to support Member States in the implementation of the EU Anti-trafficking Directive and, if necessary, will propose revisions to ensure that it is fit for purpose.

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7 Trafficking in human beings is one of the crime areas with the highest number of joint investigation teams: in 2019, 26 out of 103 joint investigation teams were set up for human trafficking cases.

8 European Commission, *Study on the economic, social and human costs of trafficking in human beings within the EU*, 2020 : https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_economic_social_and_human_costs_of_trafficking_in_human_beings_within_the_eu.pdf

9 European Commission, *Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms, 2020 :* https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_reviewing_the_functioning_of_member_states_national_and_transnational_referral_mechanisms.pdf

10 Communication from the Commission to the European Parliament and Council, *Report on the follow-up to the EU strategy to eradicate trafficking in human beings and definition and further concrete actions*, 4 December 2017, COM(2017) 728 final.

11 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021- 2025, 14 April 2021, COM(2021) 171 final : https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_ on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf

12 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025, 14 April 2021, COM(2021) 170 final. While the organised crime strategy adopts holistic priorities and key actions to combat organised crime, including trafficking in human beings, the trafficking strategy addresses specific aspects of this phenomenon.

The strategy emphasises the following points:

- **reducing the demand that fosters human trafficking**: reducing demand is part of the preventive measures. The Commission will therefore assess the possibility of establishing minimum EU rules criminalising the use of services resulting from the exploitation of trafficked persons. Awareness-raising campaigns are also a means of detecting and preventing human trafficking. In cooperation with national authorities and civil society organisations, the Commission plans to organise a prevention campaign targeting high-risk sectors. Member States will be encouraged to intensify their efforts with labour inspectors, social partners and EU agencies such as Europol or the European Labour Authority to carry out joint checks in risk sectors to detect potential victims and their exploiters. The development of public-private initiatives with companies active in high risk sectors will also be encouraged. The Commission is also considering reinforcing the directive on sanctions against employers and will propose legislation on corporate governance to clarify the responsibilities of companies.

- **breaking the traffickers business model**, online and offline: the Commission will initiate a dialogue with internet and technology companies to reduce the use of online platforms to recruit and exploit victims. It will promote systematic training of law enforcement officers and legal professionals on how to detect and combat human trafficking, especially through practical exercises.

- **protecting, supporting and empowering the victims, especially women and children**: the strategy aims to improve the early identification of victims and to better guide them so that they receive greater assistance and protection. The Commission wishes to strengthen the development of expertise and the sharing of best practices to identify trafficking victims, especially in vulnerable groups. It will strengthen cooperation with a view to setting up a European referral mechanism for victims.

- **encouraging international cooperation:** since half of the victims identified in the EU aren't EU citizens, cooperation with international partners is essential to combat human trafficking. The EU will use a range of foreign policy and operational cooperation instruments to help combat human trafficking in the countries of origin and transit countries. For instance, it envisages enhanced cooperation with the Council of Europe and its group of experts. According to the Commission, the future action plan against migrant smuggling will also help to disrupt the activities of traffickers in bringing victims to Europe for exploitation.

1.2. | Human smuggling

Pact on Migration and Asylum

In September 2020, the European Commission proposed a new Pact on Migration and Asylum[13]. It encompasses the elements necessary for a comprehensive European approach to migration. The pact is the result of extensive consultations and a comprehensive assessment of migration to the European Union. It proposes a new framework for fair, efficient and sustainable migration management, with more emphasis on a predictable and reliable migration management system than on ad hoc solutions. The Commission proposes improving the whole system, based on three pillars: more efficient and faster procedures; firm and fair rules on intra-EU solidarity; and a strong external dimension based on enhanced cooperation with third countries. The Commission hopes that these partnerships will help to tackle common challenges such as migrant smuggling, and to develop legal channels of access. This new pact is accompanied by a roadmap, a staff working document and legislative proposals[14].

Within the framework of reinforcing the fight against migrant smuggling, the Commission has announced that it will present a new EU Action Plan against this phenomenon for 2021-2025, examine how to

13 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new pact on migration and asylum, 23 September 2020, COM(2020) 609 final : https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0003.02/DOC_3&format=PDF

14 https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en

make the Employers' Sanctions Directive more effective and integrate the fight against migrant smuggling into partnerships with third countries.

The new action plan should focus on the fight against criminal networks, stimulate cooperation and support the work of law enforcement agencies in the fight against migrant smuggling, which is often linked to human trafficking.

The Commission has also indicated that a reflection is underway on the modernisation of the existing rules to combat migrant smuggling, as these have proven to be an effective legal framework to combat those who facilitate illegal entry, transit and stay[15]. The Commission also wishes to clarify the issue of criminalisation for private players by providing guidance on the implementation of anti-migrant smuggling rules. It will further clarify that the fulfilment of the legal obligation to rescue persons in distress at sea can't be criminalised.

2. Developments in the Belgian legal and political framework

The federal government agreement, presented on 30 September 2020, identifies the fight against human trafficking and smuggling as a priority[16]. In its previous report[17], Myria was pleased to note that the government wished to grant the necessary resources to all specialised services, magistrates, police and inspection services, and to focus on detection, i.e. on checks in the field.

The government has also planned to invest in victim detection, by focusing in particular on the lot of child victims and other vulnerable profiles. To achieve this, it intends to make the funding of reception centres for victims of trafficking recurrent.

The agreement also provides for the creation of a parliamentary committee or working group to evaluate the strategy and legislation.

2.1. | Human trafficking

New action plan 2021-2025

In June 2021, the Interdepartmental Unit for the Fight Against Trafficking and Smuggling in Human Beings adopted a new action plan for 2021-2025 on human trafficking[18].

It addresses the following points:

- **optimising legislative or regulatory instruments and ensuring their effective implementation**

  Various legislative measures were taken in the framework of the previous action plan (2015-2019), in particular to guarantee optimum compliance with the EU Anti-trafficking Directive[19].

  However, some issues received very little attention, such as the application of settlement or plea bargaining to human trafficking and the protection of the victims in these cases. Among other things, the action plan provides for the examination of the possibility of extending the hypotheses for issuing a permanent residence permit to trafficking victims in cases where no indictment is issued by the public prosecutor's office for reasons beyond the victim's control.

  In addition, given the growing concern about the phenomenon of "loverboys" recruiting and exploiting teenage girls, the action plan recommends the establishment of appropriate communication between youth magistrates and

15 Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, O.J, L328 of 5 December 2002.

16 https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf

17 Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind Closed Doors, p. 132.*

18 www.dsb-spc.be/doc/pdf/PAN_TEH_2021_2025_FR.pdf

19 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of the Council, *O.J.*, L101 of 15 April 2011. Of note is the extension of the aggravating circumstances provided for in Article 433*septies* of the Criminal Code to cover all the *modi operandi* mentioned in the 2011 European directive.

magistrates specialising in human trafficking, as well as training for youth magistrates in the domain of child trafficking.

Another positive point: the action plan makes explicit reference to the government agreement by providing for an increase in capacity and material support for the services in charge of identifying acts of trafficking, to ensure the implementation of the investigation and prosecution objectives.

- **ensuring training of specialised and non-specialised players**
  Numerous training courses have already been organised by the departments and partners involved in the fight against human trafficking in previous action plans. The new plan continues the organisation of these training courses for those concerned: NSSO Inspectorate, Supervision of Social Legislation - FPS Employment, the police, the judiciary, the Immigration Office, Fedasil, the youth support sector, diplomats. It also provides for the creation of an application dedicated to the implementation of the victim referral mechanism.

- **refining the protection status of victims and improving the situation of the reception centres**
  Recurrent funding of victim reception centres remains problematic. The federal government's agreement provides for their funding to be maintained. The action plan thus provides for the entire federal budget for victim reception centres to be included in the general expenditure budget, and to be renewed annually rather than through extraordinary budgets[20].

Between 2015 and 2019, the federal part of the funding of the centres was ensured through the recurrent budget of the general expenditure budget and an extraordinary budget from the interdepartmental provision (IDP) made available by the Minister of Justice and the Secretary of State for Equal Opportunities. This second budget was necessary in view of the lack of indexation for several years and the reorganisation of the Fonds d'impulsion à la politique des immigrés (FIPI).

In 2020, these budgets were centralised in the Department of Justice owing to the department's coordination tasks.

The IDP budget for the reception centres will be reintegrated into the general expenditure budget. This will speed up the delivery of the budget and secure the funding of the reception centres.

The action plan also provides for several measures to improve the identification and protection of victims. Hence, better identification of trafficked minors is needed. In July 2018, the Interdepartmental Coordination Unit for the Fight Against Human Trafficking adopted an addendum to the national action plan on the fight against human trafficking, specifically addressing the issue of minors. The addendum included an examination of how the current status of victim of human trafficking can be adapted to the specific situation of minors. Discussions in working groups with the federated entities were held, concluding that an adaptation of the multidisciplinary circular[21] would be useful for each community. It would concern the steps to be taken for minors in order to provide them with better protection and guidance, taking into account federal and community standards. This measure is provided for in the new action plan.

The other measures envisaged include the development of a child-friendly tool to inform minors about the trafficking procedure, the evaluation of the multidisciplinary circular of 23 December 2016 and the creation of an information brochure on the recovery of amounts due for victims of trafficking.

- **maintaining international vigilance in the fight against human trafficking**

Belgium is internationally active in the fight against human trafficking and cooperates with various organisations (United Nations, OSCE, Council of Europe, Benelux, etc.). Within the Benelux working group, the action plan provides for a concrete examination of the continuation of cross-border support for victims.

- **awareness-raising and informing**: an important point in the action plan concerns awareness-raising and information actions.

20 The Federal Government only contributes to the aspects related to contact with the authorities, the legal and administrative aspects of the centres' work; the reception and accommodation aspects are the responsibility of the federated entities, which each make a contribution.

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

The action plan therefore provides for continuous monitoring of the Belgian context and the figures on human trafficking, in particular the effects of a possible decriminalisation of pimping and its impact on the figures.

The action plan aims to continue to place the fight against human trafficking in the context of sustainable development and responsible business conduct. European measures will have regulatory support. The action plan also envisages amending the law[22] that provides for a mechanism for non-financial reporting by large companies including, in particular, their efforts regarding "human rights" issues. The proposed amendment aims to explicitly include human trafficking in the articles dealing with human rights and corruption.

The action plan aims to raise awareness among the general public through annual campaigns (such as the United Nations "blue heart" campaign) but also in specific sectors (medical sector, civil aviation, education and youth, public social welfare centres and hotels).

Lastly, the composition of the Interdepartmental Coordination Unit and its office will be screened with a view to updating their composition. For instance, the local police isn't currently represented.

2.2. | Human smuggling

New action plan 2021-2025

In June 2021, the Interdepartmental Unit for the Fight Against Human Smuggling also adopted a new action plan 2021-2025 regarding human smuggling[23].

Within the context of migration crises, many human smuggling situations with sometimes dramatic consequences regularly make the headlines. The most recent case was the discovery in Essex of 39 bodies in a refrigerated container that had passed through the port of Zeebrugge.

Illegal entry in lorries remains one of the most common ways for smuggling networks to bring migrants to the United Kingdom. However, since the end of 2018, North Sea countries have had to deal with a new way of getting there: crossing the North Sea by swimming, by kayak or in a small motor boat.

Human smuggling can take many forms: amateurs, small groups of criminals and international human smuggling networks. The line between perpetrator and victim is sometimes difficult to draw because "smuggled persons" may at some point have to contribute to the actions of the smugglers.

In the past, the elements of human smuggling were included in the human trafficking action plan. In 2015, the first specific action plan was drafted, for the years 2015 to 2018 and added as an addendum to the Action Plan to Combat Trafficking in Human Beings 2015-2019. It was an action plan in its own right, but was intended to be read in conjunction with what was planned for human trafficking. This action plan was updated in 2019.

The new action plan 2021-2025 aims to reinforce the approach to human smuggling in line with the government agreement, which states that "the fight against human smuggling will involve prioritising investment in the fight against smugglers and dismantling networks".

Special attention is paid to the detection of victims, especially minors and other vulnerable profiles.

This new action plan also includes measures from the previous action plan that haven't been implemented yet. It should be read in conjunction with the new Action Plan to Combat Trafficking in Human Beings 2021-2025.

The action plan stresses the following points:

- **improving the approach to human smuggling**, through an adequate referral of victims and increased investigations and prosecutions.
  Despite the existence of a specific protection status in case of aggravated smuggling, very few migrants who are smuggling victims benefit from it, and even fewer minors. In 2018 and 2019, the Immigration Office issued a residence permit to 19 and 10 victims of aggravated smuggling respectively.

22 Act of 3 September 2017 on the publication of non-financial and diversity-related information by certain large companies and groups, *B.O.G.*, 11 September 2019.
23 http://www.dsb-spc.be/doc/pdf/PAN_TRAFIC_2021-2025_FR.pdf

As for minors, there were only eight in 2018 and three in 2019 who requested this protection procedure, even though they appear in numerous smuggling cases. And yet, the number of unaccompanied foreign minors (UAM) reported to the Guardianship Department is constantly increasing: 3,111 (in 2017), 4,407 (in 2018) and 4,563 (in 2019)

The action plan therefore includes a special focus on human smuggling as part of the evaluation of the 2016 multidisciplinary circular[24]. It will also be necessary to ensure the proper application of the victim protection guidelines and to examine anything that may prevent smuggling victims lodging a complaint in order to remove these obstacles.

In the context of investigation and prosecution, an evaluation of the joint circular of the Minister of Justice, the Minister of the Interior and the College of Public Prosecutors on te policy of investigation and prosecution of human smuggling (COL 13/218) is planned.

An interactive meeting with professionals from the financial sector is envisaged in order to keep them informed and up to date regarding developments in the practices of offenders.

It will also be a question of strengthening the synergies between the administrative and judicial aspects: the discovery of illegally staying migrants involves an administrative procedure, i.e. drawing up an initial report of illegal stay and an administrative report for the Immigration Office. The latter decides what should happen to the migrants. However, if migrants are found in circumstances that indicate human smuggling, then the procedure shifts to the judicial side. When transit migrants are found, protection of victims must also be taken into account. The action plan therefore stresses the importance of ensuring the correct application of the criminal policy directives and the Circular of 23 December 2016, and of reiterating this in the context of organising checks and police training.

- **informing & raising awareness:** training the stakeholders is essential to ensure the proper application of the human smuggling directives and the measures to protect victims.

Subsequently, the action plan envisages that each department (judiciary, police, Immigration Office, Guardianship Service) will continue its training efforts. The action plan also envisages raising awareness in the transport sector and among social workers in contact with UAM.

Lastly, Belgium shall continue to be active internationally, especially through the federal prosecutor's office.

2.3. | Other measures: draft bill on the reform of sexual criminal law

In April 2021, in response to a parliamentary question[25], the Minister of Justice stated he was in favour of decriminalising sex work (*sic*). He subsequently presented a draft bill to the Council of Ministers amending the Criminal Code on sexual criminal law. This update was announced in his general policy note[26].

Furthermore, the government agreement prioritises the fight against sexual exploitation, while providing for a reflection process with players in the field in order to improve the living and working conditions of sex workers[27]. The minister also specified that the objective was to make sex work a regular economic activity, with its own rights, as long as it involves adults who freely choose this activity[28].

The draft bill, tabled in Parliament on 19 July 2021[29], is based on the work of the Criminal Law Reform Commission set up under the previous legislature to draft a new Criminal Code. A commission of experts drew up a proposal for a new Criminal Code.

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

25 Question from Marianne Verhaert to Vincent Van Quickenborne, Minister of Justice on "the decriminalisation and regulation of sex work", Full report, plenary session of 1st April 2021, *Parl. doc.*, Chamber, S.O. 2020-2021, Doc. 55- PLEN 097, pp. 19-20.

26 General policy note, Justice, *Parl. doc.*, Chamber, Doc 55-1580/016, 4 November 2020, p. 24.

27 https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf

28 Answer from the Minister of Justice to the question of Madame Marianne Verhaert, Full report, plenary session of 1st April 2021, *Parl. doc.*, Chamber, S.O. 2020-2021, Doc. 55- PLEN 097, p.20.

29 Bill amending the Criminal Code regarding sexual criminal law sexuel, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001.

This work led to a publication in May 2019[30] and resulted in legislative proposals[31].

At the same time, the minister wished to rewrite the chapter on sex crimes to incorporate it into the current Criminal Code without having to wait for the new Criminal Code to come into force.

The first draft bill was the subject of numerous adaptations (especially following the Council of State's opinion) before being tabled in Parliament, particularly with regard to the "decriminalisation of certain offences related to incitement to debauchery".

The draft bill includes a chapter of the text proposed by the Criminal Code Reform Commission adapted to the Criminal Code of 1867. It also introduces a specific chapter on the abuse of prostitution.

The draft bill aims to adapt sexual criminal law to our times (protection of sexual autonomy and not of moral order or honour, criminal law provisions focusing on abuse, tightening of sentences for non-consensual sexual acts, creating a new chapter that groups together sexual offences where the underage victim is an essential element, etc.).

The bill also intends to harmonise prostitution-related offences with the criminal law provisions on human trafficking and decriminalise certain offences relating to incitement to debauchery[32]. Hence, incitement to debauchery in a public place[33] or advertising sexual services[34] performed by the prostitute themselves no longer correspond to the spirit of our times, and would therefore be decriminalised for adults.

The minister also considers it unwise for the provisions relating to human trafficking (focusing on exploitation) and those relating to prostitution (offer of sexual acts in exchange for payment) to coexist in their entirety, as there would be an overlap (especially current Article 380 of the Criminal Code). Victims of pimping may indeed be victims of human trafficking if the punishable behaviour consists of one of the acts referred to therein (recruitment, transport, etc., for the purpose of sexual exploitation). The minister therefore considers that the current provisions of Article 380, § 1, 1° (hiring for prostitution), 2° (running a brothel), 3° (selling, renting, providing rooms or any other premises for the purpose of prostitution with the aim of making an abnormal benefit) and 4° (exploitation of debauchery or prostitution) of the Criminal Code can be removed, as they largely fall under the scope of human trafficking in the strict sense of the term.

However, the draft bill ultimately maintains the criminalisation of pimping by formulating it differently.

The first draft bill went further in decriminalising certain prostitution-related offences, since many forms of pimping were decriminalised[35] as well as all forms of advertising offering sexual services provided by adults.

However, in order to ensure the criminalisation of all forms of exploitation of prostitution, the first draft bill provided for a new charge regarding the exploitation of prostitution[36] which would only be applicable if there was no question of human trafficking. This provision requires a general intent ("knowingly and willingly"), whereas human trafficking requires a specific objective to be pursued.

Following the remarks of the Council of State, which considered that the title of the chapter of the first draft bill entitled "exploitation of prostitution" could possibly lead to confusion given the use of the word "exploitation", the title and the charge were changed to "abuse of prostitution". This is to ensure that all forms of abuse of prostitution are charged. The draft bill therefore provides for four new charges. It also takes into account the opinion of the College of Prosecutors General on the first draft bill by maintaining pimping as a punishable offence.

30 J. ROZIE, D. VANDERMEERSCH et J. DE HERDT, with the assistance of M. DEBAUCHE and M. TAEYMANS, *Un nouveau Code pénal pour le futur. La proposition de la Commission de réforme du droit pénal*, Case No. 27 of the "Revue de droit pénal et de criminologie", Brussels, La Charte, 2019, p. 575.

31 Prospect law introducing a new Criminal Code. Book 1 and Book 2, *Parl. doc.*, Chamber, S.O. 2018-2019, Doc. 54-3651/001; Proposed law instroducing a new Criminal Code. Book 1 and Book 2, *Parl. doc.*, Chamber, S.E. 2019, Doc. 55-0417/001; Proposed law introducing a new Criminal Code. (Books 1 and 2), *Parl. doc.*, Chamber, S.O. 2019-2020, Doc. 55-1011/001.

32 Articles 75 to 84 of the draft bill.

33 Currently covered by Article 380*bis* of the Crim. Code.

34 Currently covered by Article 380*ter* of the Crim. Code.

35 This included incitement or recruitment for prostitution, running a brothel or place of prostitution and hotel pimping. The only charge provided for was the exploitation of prostitution, consisting of obtaining an abnormal benefit from the prostitution of another adult person.

36 Article 74 of the first draft bill, introducing a new Article 433*quater*/1 in the criminal code.

According to the draft bill, a clear distinction is made with
the provisions on human trafficking aimed at exploitation. The draft states that "these criminal provisions shall be applied without prejudice to the application of the criminal provisions relating to human trafficking. The aim is to make the fight against trafficking more efficient by removing parallel and unnecessary criminal provisions. Abuses can't be considered as human trafficking if there is no evidence of recruitment, transportation, transfer, harbouring, reception of a victim, taking or transferring of control over a victim, but they are punishable under the draft[37]".

The four forms of abuse of prostitution envisaged are pimping (Article 433*quater*/1), advertising prostitution (Article 433*quater*/2), incitement to prostitution (Article 433*quater*/3)[38] and seeking an abnormal benefit through the prostitution of another person (Article 433*quater*/4). Closure of the establishment in which the acts took place may also be ordered (Article 433*quater*/7 of the draft).

As regards pimping (Article 433*quater*/1[39]), the draft mentions by way of example that there can be no question of incitement or coercion as referred to in 1° if an operator or agency enters into a legal agreement with a sex worker who is acting in a free and consenting manner.

Advertising for the sale of commercial sex services (Article 433*quater*/2 and 3) would remain forbidden, unless the person is advertising their own sex services, or in the cases provided for by law.

Finally, a fourth form of abuse, referred to in Article 433*quater*/4, requires the pursuit of an abnormal benefit through the prostitution of another person[40]. By this, the draft defines not only an abnormal financial benefit, but also any possible abnormal benefit (e.g. certain sexual services). The draft stresses that the benefit must be abnormal so as not to unnecessarily complicate the lives of those involved in prostitution[41].

For minors, on the other hand, incitement to debauchery or exploitation of minors for sexual purposes remains punishable, as does advertising for the debauchery and prostitution of minors or running a brothel where minors are prostituted[42].

Myria spoke to the Office of the Minister of Justice about the first draft bill in May 2021. It put forward its questions and concerns regarding the planned decriminalisation and its potential impact on human trafficking and victim protection. It stressed that it was concerned about the notion of abnormal benefit in the criminalisation of exploitation of prostitution in the first draft bill. Myria also wondered whether the proposed reform would cover all cases related to the exploitation of prostitution, in particular when the material or moral element of the offence of human trafficking couldn't be proven or if the benefit linked to the presumed exploitation of prostitution didn't appear to be significantly "abnormal". How would this notion of abnormal benefit be interpreted in the field?

The Council of State also questioned this notion of abnormal benefit, which it asked to be clarified. The preamble of the draft bill provides several examples. Hence, the draft bill specifies that the notion of "abnormal benefit" is an open notion, deliberately left to the discretion of the judges.

37 Explanatory memorandum to the bill amending the Criminal Code with regard to sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001, p. 72.

38 "**Incitement to prostitution consists of:**
- inciting the prostitution of an adult person, in public, by any means whatsoever;
- implicitly or explicitly inciting the exploitation of the prostitution of an adult, by any means of advertising.

This offence is punishable by a prison sentence of one month to one year and a fine of EUR 100 to 1 000."

39 "**Art. 433*quater*/1. Pimping**
Apart from the cases provided for by law and without prejudice to the cases referred to in Article 433*quinquies*, pimping, even with consent, consists of committing one or more of the acts listed below with the aim of obtaining a benefit:
- inciting or coercing an adult to provide or continue to provide commercial sexual services or inciting or coercing an adult to forego some or all of the income from such services;
- taking measures to prevent or make it more difficult for an adult to leave prostitution.

This offence is punishable by a prison sentence of one to five years and a fine of EUR 500 to 25 000.
Attempting to commit this offence is punishable by a prison sentence of six months to three years and a fine of EUR 100 to 5 000. The fine referred to in paragraphs 2 and 3 shall be multiplied by the number of victims."

40 "**Art. 433*quater*/4. Seeking an abnormal profit from the prostitution of another person**
Without prejudice to the cases referred to in Article 433*quinquies*, seeking an abnormal profit from the prostitution of another person, even with this person's consent, means seeking, directly or indirectly, an abnormal economic profit or any other abnormal profit from the prostitution of an adult.
This offence is punishable by a prison sentence of one to five years and a fine of EUR 500 to 25 000.
Attempting to commit this offence is punishable by a prison sentence of six months to three years and a fine of EUR 100 to 5 000. The fine referred to in paragraphs 2 and 3 shall be multiplied by the number of victims."

41 Hence, a prostitute should be able to hire an accountant to file their tax return and pay them for their services. Similarly, it should be possible for a prostitute to enter into legally valid agreements with a bank or insurer.

42 Articles 27 to 48 of the draft bill.

Benefits may be direct or indirect pecuniary benefits (such as exploiting a pseudo-legal self-employed or active partner status, or making prostitutes work in bad conditions to reduce operating costs). They might also be non-pecuniary benefits such as sexual relations requested by an accountant on top of their regular salary. Thus, all activities aimed at obtaining an abnormal benefit can be taken into account for the calculation of the illegally obtained capital gain.

On the other hand, running a brothel where only adults work and where there is no exploitation (sexual or financial) would no longer be punishable. This is a policy of tolerance already practised in some municipalities.

The draft also considers that by criminalising attempt as well, it would be possible to prevent exploitation. For instance, this would make it possible to prosecute a person who rents out rooms for the purpose of prostitution at exorbitant prices.

Article 433*quater*/5 criminalises the aggravated abuse of prostitution[43]. Sentences are increased when certain circumstances are present, such as abuse of the vulnerability of the adult owing to their illegal or precarious administrative situation, use of coercion, etc. These aggravating circumstances are inspired by Article 433*septies*, 2° and 7° in particular, relating to aggravated trafficking. The prison sentences foreseen (10 to 15 years) are identical to those in Article 433*septies* on trafficking. The fines differ: EUR 500 to 50,000 for aggravated abuse and EUR 1,000 to 100,000 for aggravated trafficking (Article 433*septies*). The preamble[44] states that the definition of the aggravated abuse of prostitution in the context of the new offence has no influence on the interpretations of the notion of "exploitation of prostitution or other forms of sexual exploitation" in Article 433*quinquies*, § 1, 1°, of the Criminal Code (trafficking in human beings), which is much broader. According to the draft bill, abuse would be different from exploitation since "it is the abuse of prostitution without the intention of taking control of the person, but with the aim of enriching oneself or obtaining a benefit of another nature"[45].

Nevertheless, Myria wonders how the distinction between these two offences will be made in practice, especially when (identical) aggravating circumstances are present.

Several examples are given in the preamble in order to clarify the distinction that should be made between the provisions on abuse of prostitution and those on human trafficking[46]. It is essentially the analysis of the acts that will determine under which article the acts fall. In some cases, prosecution may be considered on the basis of both provisions (combination of offences).

Myria would like to stress that this isn't without consequences for the victims. In the case of human trafficking, victims will be able to benefit from the specific provisions laid down[47] whereas the opposite is true in the case of (aggravated) abuse of prostitution. It therefore wonders if it is worth introducing new pimping offences when it might suffice to amend certain aspects of Article 380 of the Criminal Code, for which there is already a large body of case law. Moreover, such substantial changes require a (long) period of adaptation for frontline services and magistrates at all levels (databases, training, research, etc.). Myria also questions the legislator's intention to extend the provisions for victims of human trafficking to victims of abuse of prostitution, following the Minister of Justice's statements in the press concerning the extension of the competences of reception centres to victims of abuse of prostitution[48]. Therefore, to what extent could a sex worker who is a victim of (aggravated)

43 "Art. 433quater/5. Aggravated abuse of prostitution
Abuse of prostitution, referred to in Articles 433*quater*/ 1 to 433*quater*/4, is aggravated when:
- the offence was committed by taking advantage of the vulnerable situation of an adult person owing to their illegal or precarious administrative situation, precarious social situation, age, pregnancy, illness, infirmity or physical or mental deficiency;
- the offence was committed by direct or indirect use of fraudulent means, violence, threats or any other form of coercion;
- the activity concerned is a habitual activity

This offence is punishable by a prison sentence of 10 to 15 year and a fine of EUR 500 to 50,000.
The fine is multiplied by the number of victims."

44 Explanatory memorandum to the draft bill amending the Criminal Code as regards sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001, p. 75.

45 Explanatory memorandum to the draft bill amending the Criminal Code as regards sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001, p. 75.

46 Explanatory memorandum to the draft bill amending the Criminal Code as regards sexual criminal law, *Parl. doc.*, Chamber, S.O. 2021-2021, DOC 55 2141/001, p. 76.

47 Articles 61/2 to 61/5 of the Act of 15 December 1980 on access to the territory, stay, establishment and removal of foreigners and circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, *B.O.G.*, 10 March 2017.

48 Dépêche Belga of 23 July 2021: "Strengere aanpak van misbruik van prostitutie".

abuse of prostitution benefit from the provisions in favour of victims of human trafficking (support from a specialised reception centre, granting of a specific residence permit in case of collaboration with the justice department, etc.)? This would also have an impact on the intake capacity of reception centres for victims and on the work of frontline services (especially labour inspection services, which would have an (even) more important role to play in checking statuses). In any case, this would require an adaptation of the existing provisions[49] and consultation of the policy coordination body for the fight against trafficking and smuggling of human beings (Interdepartmental Coordination Unit)[50].

While this partial decriminalisation may have a positive impact on sex workers, it must be accompanied by a real social status, something the government would also work towards. The Covid-19 crisis has had major consequences for sex workers, who are sometimes forced to work illegally, with no emergency exit, in unsanitary conditions, in order to survive. Since sex work isn't recognised as a "profession", they have no social security and therefore work in a legal vacuum. And yet, it is estimated that some 25,000 men, women and trans people are active in this sector[51].

But these are also people who are vulnerable to exploitation. The minister therefore intends to tackle all forms of exploitation and abuse (human trafficking, child prostitution, forced prostitution, etc.)[52], which is positive.

Myria was heard by the Chamber Committee on Justice on 26 October 2021. It reiterated some of the concerns previously expressed during its meeting with the Office of the Minister of Justice.

It stressed that it was essential to consult players in the field (magistrates, police officers, associations). Myria is therefore pleased to note that Parliament is proceeding with these consultations.

Myria also considers that clear directives, as well as suitable training will be necessary for players in the field, especially regarding differences in interpretation between abuse of prostitution and human trafficking.

A key concern – for Myria – is linked to the fate of third-country nationals[53]. While the reform bill seems tailor-made for Belgian or European sex workers (with a legal status and not in a vulnerable situation), it seems unsuitable for third-country nationals, many of whom are vulnerable, and often without a residence status. If certain offences relating to prostitution are decriminalised and prostitution becomes more visible, and brothels can be established in plain sight, what about the status of sex workers without a right of residence: are they not at risk of becoming victims of an even more precarious underground exploitation? How can these risks be limited?

Myria therefore pleads in favour of maintaining a certain tolerance towards this category of sex workers, which include potential victims of human trafficking.

Myria also believes that increased checks and greater means for frontline services must be guaranteed, especially with regard to the internet. Given that advertising would be - partly[54] - authorised, we can expect an increase in advertisements via this channel. It will therefore be necessary to increase checks, in order to prevent and combat abuse (especially on client forums with a view to detecting human trafficking indicators). Formal agreements between internet service providers and the justice would also be essential. The first draft bill would have allowed this. Myria is concerned that by banning advertising through third parties (e.g. sites such as Redlights), the draft bill won't allow such agreements to be made.

49 Articles 61/2 to 61/5 of the Act of 15 December 1980, the circular of 23 December 2016 on the implementation of multidisciplinary cooperation concerning victims of human trafficking and/or certain aggravated forms of human smuggling, the social purpose of reception centres, etc.

50 Royal Decree of 16 May 2004 on the fight against the smuggling and trafficking of human beings.

51 Question from Marianne Verhaert to Vincent Van Quickenborne, Minister of Justice on "the decriminalisation and regulation of sex work", Full report, plenary session of 1st April 2021, *Parl. doc.*, Chamber, S.O. 2020-2021, Doc. 55- PLEN 097, p.19.

52 Minister of Justice's answer to Madame Marianne Verhaert's question, Full report, plenary session of 1st April 2021, *Parl. doc.*, Chamber, S.O. 2020-2021, Doc. 55- PLEN 097, p.20.

53 On this subject, also see the end of this chapter.

54 "**Art. 433quater/2. Advertising for prostitution**

§ 1. Advertising for prostitution should be understood as follows:

- making, publishing, distributing or circulating advertisements, directly or indirectly, by any means whatsoever, in any manner whatsoever, for an offer of services of a sexual nature by an adult, even if the offer is concealed by certain wording;
- making known that an adult is engaged in prostitution by any means of advertising, explicitly or implicitly;
- facilitating the prostitution of an adult by any means of advertising, explicitly or implicitly.

§ 2. Advertising the prostitution of an adult is forbidden, except in the following cases:

- when it is limited to advertising for one's own sexual services;
- when provided for by law.

This offence is punishable by a prison sentence of one month to one year and a fine of EUR 100 to 1,000."

Raising awareness among clients as a form of social control would also appear to be a good idea. According to the police, clients can be a source of information of potential abuse.

Lastly, the introduction of this new model should be accompanied by an analysis of the prostitution market (completely above ground or partly underground).

In the following external contributions, we hear from a number of stakeholders who, because of their position, are familiar with the prostitution sector, as well as a university professor specialising in the issue. They shed light on their work in the field and give us their opinion on this reform bill in passing.

External contribution Sex work and human trafficking: not to be confused[55]

Magaly Rodríguez García,
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Introduction

The recent pandemic has painfully demonstrated the highly precarious situation of sex workers. In countries where prostitution isn't recognised as a form of work, there is no safety net for sex workers. In Belgium, for instance, only a fraction of the prostituted population was able to benefit from financial support. To do so, it was necessary to be registered as self-employed. This meant a lot of work for support organisations. In no time at all, they developed a system to provide sex workers with food and limited financial support. The crisis prompted Justice Minister Vincent Van Quickenborne to work with stakeholders and experts on prostitution policy. In early April 2021, Mr. Van Quickenborne announced that he would submit a proposal to the Council of Ministers to decriminalise sex work. At the same time, the Interdepartmental Coordination Unit for the Fight Against Human Smuggling and Human Trafficking (ICU), under the chairmanship of the Minister of Justice, drew up the fourth action plan against human trafficking 2021-2025. The aim is to provide better protection for victims and to punish perpetrators more severely. With these two proposals, Mr. Van Quickenborne wants sex workers to be recognised and to put an end to "criminal vultures". But will he find sufficient support for this in the Belgian Parliament? At European level, the abolitionist approach has considerable support. Abolitionists make no distinction between voluntary and forced prostitution. Hence, they advocate the criminalisation of demand (clients and pimps) in order to eliminate prostitution and human trafficking.

55 Even though commercial sex work is being discussed from an employment point of view, the terms "prostitution" and "sex work" have been used interchangeably in this text. This is to indicate that I am restricting myself to one form of sex work, i.e. the provision of physical sexual services for money or payment in kind. Prostitution receives more attention from the authorities than pornographic work, webcam sex or striptease, which also justifies this separation.

In Belgium, too, many politicians and women's organisations are of this opinion. Therefore, the action plan to combat human trafficking 2021-2025 could well be adopted in our country, but not the proposal to decriminalise sex work.

This paper is primarily a reflection on the historical construction of prostitution as a synonym of human trafficking. I shall then go onto discuss the drivers behind sex work, and the stubborn refusal of national and international organisations to take into account the voices of sex workers. I conclude with a warning against the development of a policy that distinguishes between the "worthy" and "unworthy" poor.

The notion of prostitution as human trafficking

The sex trade has been considered problematic in the majority of historical periods and societies. However, the nature of the problematisation varies according to the period and the cultural context. Broadly speaking, Western Christian societies have experienced three forms of problematisation of prostitution. Despite overlaps, there has always been one dominant form, which has been reflected in the policies pursued[56]. In the Middle Ages, prostitution was considered a moral problem. The church fathers condemned prostitution, but feared the calamity that would ensue if it were banned. Prostitution was therefore tolerated as a "necessary evil". In some European cities, there was even talk of regulation by local authorities. With the rise of modern states, armies and new economic activities from the 17th century onwards, the number of independent sex workers grew in line with the increasing concentration of men. This made control difficult for local authorities, who feared the spread of venereal diseases. The elite were also concerned about the miserable living and working conditions that could lead to social revolt. From here on, prostitution was recognised as a social problem that needed to be better controlled. Already at that time, the "fallen woman" was seen not only in terms of sin, but also as a victim of socio-economic change. Two parallel systems emerged: 1) religious institutions became increasingly involved in the rehabilitation of prostitutes;

56 J. Rydström, 'What's the Problem with Prostitution? Shifting Problematisations of Men and Women Selling Sex', in M. Skilbrei & M. Spanger, *Understanding Sex for Sale. Meanings and Moralities of Sexual Commerce* (London & New York : Routledge, 2019), pp. 21-37.

2) local governments developed drastic measures to regulate the sector. From the beginning of the 19th century, the modern regulationist system was established to control all aspects of prostitution. Belgium was eager to cooperate and Brussels was even known as a "highly regulationist city"[57].

The regulationist system provoked strong reactions in Belgium and other countries. Feminist and abolitionist organisations spoke of "sexual slavery" when talking about prostitution (hence the link with the abolitionist movement). They described the system as immoral and ineffective, as it primarily targeted women. Without the control of women and men, the fight against the spread of venereal diseases could never succeed. The international abolitionist movement received a boost in the late 19th century as a result of two media scandals. In the early 1880s, a British journalist wrote a series of articles detailing the "white slave trade". These articles described horrific scenes of innocent young girls being lured into regulated brothels on the continent. Brussels was seen as one of the capitals of this trade, where corrupt police facilitated the sexual exploitation of underage girls[58]. A few years later, the murder of five women in London by Jack the Ripper reinforced the idea of male aggression and female vulnerability in the public sphere. These two scandals highlighted the danger of urban decay and its link to international crime[59]. It was then that the link between the regulation of prostitution and human trafficking was established. And prostitution was henceforth conceived as a gender issue.

After the First World War, the abolitionist movement succeeded in getting the League of Nations - the forerunner of the United Nations - to condemn the regulationist system. Regulationarisation was a national matter, but after a creative solution, the League of Nations claimed to have found "evidence" of the link between regulated brothels and the international trafficking of women and children[60]. Abolitionism then gained momentum and achieved the abolition of the regulationist system in countries like Belgium (in 1948). Decades later, abolitionists and radical feminists took this further in Sweden. They presented prostitution as a symbol of male domination and associated it with the fundamental suffering of women. This logic led to the criminalisation of the clients of prostitution at the end of the 20th century. The "Swedish model" has since inspired national and international activists, who have described prostitution as "gender-based violence". Women, they argue, are forced into prostitution by sheer coercion or as a result of a male-driven global economy[61].

The European institutions followed this line of reasoning, albeit with limitations. In 2014, the European Parliament adopted a non-binding resolution in favour of combating human trafficking and "sexual slavery". The aim was to penalise the demand for prostitution[62]. In February 2021, a report on the European Action Plan against Trafficking in Human Beings was submitted to Parliament. The evaluation report shall be used to shape future EU policy on human trafficking. Several NGOs, including the Belgian sex workers' organisation UTSOPI, are concerned. They feel that too much responsibility is placed on the "consumer". Even though the criminalisation of clients isn't included in the current report, aid organisations suspect that the focus on "consumers" in the European fight against human trafficking is a convenient way to enable the implementation of the Swedish model. It is quite clear that Europe is mainly targeting the sex industry, even though human trafficking is rife in many sectors of the economy. For the European rapporteur, Juan Fernando López Aguilar, it is crystal clear: anyone who pays a Nigerian woman for sexual services must know that she has

57 M. Rodríguez García, 'Ideas and Practices of Prostitution Around the World,' in P. Knepper and A. Johansen, eds., *The Oxford Handbook of the History of Crime and Criminal Justice* (New York : Oxford University Press, 2016), pp. 132-154 ; S. de Schaepdrijver, 'Regulated Prostitution in Brussels, 1844-1877. A Policy and its Implementation,' *Historical Social Research*, 3(1986), pp. 89-108.

58 J. Chaumont, « L'affaire de la traite des blanches (1880-1881) : un scandale bruxellois ? », *Brussels Studies*, 46(2011), https://doi.org/10.4000/brussels.835 : last consulted on 8 June 2021.

59 J. Walkowitz, 'Jack the Ripper and the Myth of Male Violence,' *Feminist Studies* 8:3(1982), pp. 542-574 ; P. Knepper, *The Invention of International Crime. A Global Issue in the Making, 1881-1914* (New York : Palgrave Macmillan, 2010).

60 M. Rodríguez García, « La Société des Nations face à la traite des femmes et au travail sexuel à l'échelle mondiale », *Le Mouvement Social*, 241(2012), pp. 105-125.

61 S. Jeffreys, *The Industrial Vagina. The Political Economy of the Global Sex Trade* (New York : Routledge, 2008) ; J. Raymond, *Not a Choice, Not a Job. Exposing the Myths about Prostitution and the Global Sex Trade* (Melbourne : Spinifex Press, 2013) ; R. Jean, 'Prostitution and the Concept of Agency,' in H. Marway & H. Widdows, eds., *Women and Violence. The Agency of Victims and Perpetrators* (New York : Palgrave Macmillan, 2015), pp. 52-70.

62 M. Honeyball, *Report on sexual exploitation and prostitution and its impact on gender equality*, Brussels, European Parliament, Committee on Women's Rights and Gender Equality, 3 February 2014, https://www.europarl.europa.eu/doceo/documentA-7-2014-0071_EN.html : last consulted on 8 June 2021.

been brought to Europe as a "sex slave",[63] but, as the following paragraphs show, it isn't that simple.

Push and pull factors

A persistent feature in the view of prostitution across time and space is the association of women with the sale of sex. Although male and transgender sex work was or still is far from being a rarity, the policies and actions of anti-prostitution groups have always targeted women[64]. While local and national governments sought to regulate so-called deviant female sexuality through various regulationistsystems, abolitionist organisations focused on women working as prostitutes. They treated them as helpless victims of male violence. This gendered view of commercial sex victimises women and reduces men to aggressive clients or pimps. When the presence of men and trans people in prostitution is acknowledged, they are presented as assertive sex workers[65]. This reasoning fails to take into account the complexity of the sex sector and ignores an important part of it. Women often act as intermediaries and may also be guilty of exploiting other women. And what about women who are clients of gigolos, male companions or (often underage) *sanky-pankies*[66]? An analysis of the sex industry as a whole allows us to better understand the economic and non-economic motivations of prostitution.

All studies emphasise the significance of economic factors. Both in the past and today, the sex trade pays better than most jobs available to low-skilled people[67]. Furthermore, the insecurity and poor quality of precarious jobs play an important role as push factor to leave the conventional labour market and as a pull factor towards the sex sector. This explains the high proportion of working-class men and women in prostitution in the past, as well as migrants (local and foreign) in the current sex industry[68]. However, prostitution isn't synonymous with survival sex. Although times of crisis (wars, individual or collective famines, high unemployment, epidemics, etc.) push people into prostitution, commercial sex mainly serves the needs of people who want to be part of the modern consumer society. Sex work is therefore often done on a part-time basis and in combination with other jobs or studies[69].

Non-economic benefits also contribute to the appeal of the sex industry: flexible working hours, distance from social control exercised by family and friends and a sense of adventure. "Easy money" and "independence" are two terms that are frequently used in analyses that focus on the viewpoint of sex workers[70]. This doesn't mean that sex work is easy or that pimps, loverboys or human traffickers are an invention of old-fashioned abolitionists and feminists; the relationship of sex workers with intermediaries is far more complex than the gendered analysis of commercial sex would have us believe.

63 D. Bauwens, 'Europees Parlement schuift verantwoordelijkheid mensenhandel door naar "consument"', 17 February 2021, https://www.mo.be/nieuws/europees-parlement-schuift-verantwoordelijkheid-mensenhandel-door-naar-consument : last consulted on 8 June 2021.

64 The list of scientific monographs and journal articles on male and trans-gender sex work is almost as long as that of female prostitution. The works cover both past situations and contemporary sex work around the world. E.g. see: "'Wouldn't a Boy Do?" Placing Early-Twentieth-Century Male Sex Work into Histories of Sexuality', *Journal of the History of Sexuality*, 18:3(2009), pp. 367-392 ; P. Aggleton & R. Guy Parker, eds., *Men Who Sell Sex : Global Perspectives* (Abingdon : Routledge, 2015).

65 T. O'Doherty & I. Waters, 'Gender, Victimization, and Commercial Sex : A Comparative Study', *Atlantis*, 40:1(2019), pp. 18-31, https://id.erudit.org/iderudit/1066418ar : last consulted on 9 June 2021. The contrast between the representation of women in the well-known Flemish series "Matryoshk" and "Red Light" and that of men in "Call boys" is striking. Also see: D. Bauwens, 'Red Light : sekswerk, uitbuiting en het juiste feminisme', *RektoVerso*, 26 February 2021, https://www.rektoverso.be/artikel/red-light-sekswerk-uitbuiting-en-het-juiste-feminisme : last consulted on 9 June 2021.

66 M. Durocher, 'Male Sex Work and the Female Client. Accounts from a Straight Male Escort', in J. Scott, Christian Grov & V. Minichiello eds., *The Routledge Handbook of Male Sex Work, Culture, and Society* (London : Routledge, 2021), pp. 329-338 ; H. Caldwell & J. De Wit, 'Female Clients of Male Sex Workers. Managing Stigma', in Scott, Grov & Minichiello, eds., *The Routledge Handbook of Male Sex Work,* 339-351 ; J. Sanchez Taylor, 'Female Sex Tourism : A Contradiction in Terms?', *Feminist Review*, 83:1(2006), pp. 42-59.

67 R. Frances, 'Working and Living Conditions', in M. Rodríguez García, L. Heerma van Voss & E. van Nederveen Meerkerk, eds., *Selling Sex in the City. A Global History of Prostitution, 1600s-2000s* (Leiden : Brill, 2017), pp. 677-706, free access: https://brill.com/view/title/33391.

68 M. Houlbrook, 'Soldier Heroes and Rent Boys : Homosex, Masculinities, and Britishness in the Brigade of Guards, circa 1900-1960, *Journal of British Studies*, 42:3(2003), pp. 351-388 ; K. Kempadoo, J. Sanghera & B. Pattanaik, eds., *Trafficking and Prostitution Reconsidered. New Perspectives on Migration, Sex Work, and Human Rights* (New York : Routledge, 2012).

69 S. Leclerc-Madlala, 'Transactional Sex and the Pursuit of Modernity', *Social Dynamics : A Journal of African Studies*, 29(2003), pp. 213-233 ; R. Roberts, T. Sanders, E. Myers & D. Smith, 'Participation in Sex Work : Students' Views', *Sex Education*, 10:2(2010), pp. 145-156.

70 L. Ann Jeffrey & G. Macdonald, "'It's the Money, Honey" : The Economy of Sex Work in the Maritimes', *Canadian Review of Sociology*, 43:3(2006), pp. 313-327 ; M. Ridder-Wiskerke & P. Aggleton, 'Lifestyle, Work or Easy Money? Male Sex Work in the Netherlands Today', in Aggleton & Parker, eds., *Men Who Sell Sex*, pp. 15-26.

Just as there are all sorts of cliches about male clients of prostitution, the same is true of intermediaries. The sensationalist image of the unscrupulous pimp or the exotic loverboy who lures naive young girls into prostitution doesn't correspond with the academic studies that place intermediaries in a broader socioeconomic context. Without seeking to romanticise the phemenon, the historian Julia Laite, for instance, places the actions of pimps and human traffickers from the beginning of the 20th century in the context of the global capitalist economy, growing competition and pauperisation.

Her brilliant analysis "allows us to see how these intermediaries in the sex industry were themselves often exploited and marginalised, even if their response to their experiences was to exploit others"[71]. Sociologists, political scientists, anthropologists and criminologists also provide useful bottom-up analyses that go beyond stereotypical images of sex workers and pimps[72].

Recruitment for prostitution isn't only one-way. The more closed and risky the environment, the more efforts people make to find intermediaries who can help them with papers, contacts and useful advice to avoid police checks. Furthermore, pimps aren't always men or strangers. Family members and friends often act as intermediaries[73]. Both in the past and today, it is often parents who send their children - usually women - into the sex industry in the capital or abroad with the help of intermediaries. The women in question were and are aware of the purpose of the trip. They perceive it as a "filial duty" and as a good opportunity to improve their standard of living and that of their relatives[74]. Submission to intermediaries is considered of minor importance when the economic benefits are clear.

However, far from home and without the necessary protection, migrant sex workers often find themselves in precarious working conditions. They feel compelled to develop new strategies. Many internalise the human trafficking narrative, while others deliberately use it to gain legal residence in the host country[75].

There are also many myths about the relationship with clients, often fed by popular media. They mainly focus on the most visible forms of prostitution and tend to romanticise or dramatise it. For instance, there is the "Pretty Woman" fairytale about the beautiful sex worker saved by a rich and attractive client; then there is the "Lilja 4-ever" drama about a victim of human trafficking who is abused by countless brutes[76]. Just as exploitation by pimps is a reality, there are aggressive clients who may even cause the death of sex workers. The tragic fate of Eunice, a 23-year-old Nigerian woman murdered by a young client in Brussels in 2018, is a painful example of this[77]. But as revealed in several scientific studies on sex work and publications by sex workers, the criminalisation of clients leads to an escalation of violence and marginalisation. Through fear of punishment, quieter clients stay away and sex workers feel compelled to make quick appointments surreptitiously with dubious clients[78]. They also point out that not all men are potential abusers and that there are often long-lasting and friendly relationships with different clients. Interviews and autobiographical material (diaries, autobiographies, blogs, etc.) also show that

71 J. Laite, 'Traffickers and Pimps in the Era of White Slavery', *Past & Present*, 237(Nov. 2017), pp. 237-269.

72 A. Marcus, A. Horning, R. Curtis *et al.*, 'Conflict and Agency among Sex Workers and Pimps : A Closer Look at Domestic Minor Sex Trafficking,' *The Annals of the American Academy of Political and Social Science*, 653:1(2014), pp. 225-246 ; F. Bovenkerk & M. van San, 'Loverboys in the Amsterdam Red Light District : A Realist Approach to the Study of a Moral Panic,' *Crime, Media, Culture*, 7:2(2011), pp. 185-199.

73 M. Pluskota, '"We Use our Bodies to Work Hard, so We Need to Get Legitimate Workers' Rights"' : Labour Relations in Prostitution, 1600-2010', in Rodríguez García, Heerma van Voss & van Nederveen Meerkerk, eds., *Selling Sex in the City*, pp. 654-676.

74 L. Heerma van Voss, '"The Worst Class of Workers" : Migration, Labor Relations and Living Strategies of Prostitutes around 1900', in M. van der Linden & L. Lucassen, eds., *Working on Labor. Essays in Honor of Jan Lucassen* (Leiden : Brill, 2012), pp. 153-170 ; S. Adeyinka, S. Samyn, S. Zemni & I. Derluyn, *Nigerian and Ghanaian Women Working in the Brussels Red-Light District* (London : Routledge, 2021).

75 N. Mai, "Too Much Suffering" : Understanding the Interplay Between Migration, Bounded Exploitation and Trafficking Through Nigerian Sex Workers' Experiences', *Sociological Research Online*, 21:4(2016), https://www.socresonline.org.uk/21/4/13.html : last consulted on 9 June 2021 ; K. Kay Hoang & R. Salazar Parreñas, eds., *Human Trafficking Reconsidered. Rethinking the Problem, Envisioning New Solutions* (New York : IDEBATE Press, 2014).

76 R. Campbell, *Marked Women. Prostitutes and Prostitution in the Cinema* (Madison : The University of Wisconsin Press, 2006) ; R. L. Dalla, 'Night Moves : A Qualitative Investigation of Street-Level Sex Work,' *Psychology of Women Quarterly*, 26(2002), pp. 63-73, doi 10.1111/1471-6402.00044.

77 'Pooierbende die vermoorde Eunice in prostitutie dwong veroordeeld,' *BRUZZ*, 16 January 2021, https://www.bruzz.be/justitie/pooierbende-die-vermoorde-eunice-prostitutie-dwong-veroordeeld-2021-01-16 : last consulted on 10 June 2021.

78 A. Krüsi, K. Pacey, L. Bird *et al.*, 'Criminalisation of Clients : Reproducing Vulnerabilities for Violence and Poor Health among Street-based Sex Workers in Canada – A Qualitative Study', *BMJ Open*, 4(2014), https://bmjopen.bmj.com/content/4/6/e005191 : last consulted on 10 June 2021 ; A. Dziuban & L. Stevenson, *Nothing About Us Without Us! Ten Years of Sex Workers' Rights Activism and Advocacy in Europe*, International Committee on the Rights of Sex Workers in Europe (ICRSE), 2015, https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/30042/dziuban_stevenson_nothing_about_us_without_us.pdf?sequence=1&isAllowed=y : last consulted on 10 June 2021.

clients often seek affection and friendly conversation, not just quick sex. For Sonia Verstappen, a sex worker in Brussels-North for 36 years, prostitution is "a space to talk"[79].

The complexity of the sex industry is thus reflected in various sources and was already being tackled by certain sex workers in the early 20th century. Some Argentinian women, for instance, protested against their working conditions and declared that they deserved respect, even though they were the "worst kind of workers". In the United States, and in the Weimar Republic, they managed to join trade unions to defend their rights[80]. However, national and internationals authorities only listened to the "experts" point of view, who presented prostitutes as "victims" or "depraved".[81] With the rise of the sex worker movement since the 1970s, their voice has become increasingly strong. Yet they have failed to convince the authorities of the need for a broad social policy that would include the most vulnerable. Many fear that the criminalisation of clients and strict policies on human trafficking are part of a secret agenda to discourage third-country sex workers from moving to the EU. "Unwanted migration" would thus be curbed. This is why sex workers' organisations are supported by international human rights and health organisations[82]. But while Amnesty International, Human Rights Watch, the World Health Organisation and UNAIDS support the decriminalisation of sex work (including clients), the International Labour Organisation (ILO) remains divided. One branch of the ILO follows the abolitionist logic and treats prostitution as forced labour and "modern slavery". On the other hand, there is the pragmatic attitude of ILO health staff.

In 2010, Recommendation 200 concerning HIV/AIDS was adopted, enabling the expansion of the ILO's health programme. The aim of the programme is to combat social exclusion, discrimination and stigmatisation of HIV-positive people, including HIV-positive sex workers[83]. Although this is good news, a programme such as this, just like the new action plans to combat human trafficking at national and international level, may lead to new forms of discrimination. Vincent Van Quickenborne's current plans could also lead to the discrimination of the most vulnerable.

The worthy poor vs. the unworthy poor

Minister Van Quickenborne's proposal to offer greater protection to sex workers and victims of human trafficking is certainly commendable. The question is what will happen to those who don't qualify for this protection. And if the decriminalisation of sex work in Belgium is adopted, how will the government position itself in relation to the European proposals that shift the responsibility for human trafficking for the purpose of prostitution onto the client?

If the decriminalisation of sex work is approved, Belgium could create a first in Europe. Such a policy would be a bold step in a European context that is moving more and more towards criminalisation. Although sex workers aren't targeted, criminalising their clients would push them into even more precarious and dangerous situations. With a well thought-out decriminalisation policy, Belgium would avoid this perverse situation. However, both decriminalisation and the new action plan to combat human trafficking 2021-2025 could create different categories of vulnerable groups. As in early modern times, there is a risk of creating a distinction between the "worthy" and "unworthy" poor. The first group included elderly, sick or disabled people who could benefit from the support of secular or religious authorities; the second group consisted of so-called "unruly", "lazy" or "deviant" people who were sent to workshops or back to their native region. Neither the personal situation nor the socioeconomic context were mentioned, only individual

79 Paying for It – Sonia Verstappen – Interview, https://www.youtube.com/watch?v=N43l1pjvJQ8 : last consulted on 10 June 2021.

80 Heerma van Voss, '"The Worst Class of Workers" ; Rodríguez García, 'Ideas and Practices of Prostitution around the World.'

81 M. De Koster, 'Los van God, gezin en natie. Problematisering en criminalisering van ongeoorloofde seks van jonge vrouwen in de vroege twintigste eeuw,' in J. Kok en J. Van Bavel (red.), *De Levenskracht Der Bevolking : Sociale En Demografische Kwesties in de Lage Landen Tijdens Het Interbellum*, (Leuven : Universitaire Pers Leuven, 2010), pp. 355–384 ; M. Rodríguez García, 'The League of Nations and the Moral Recruitment of Women,' *International Review of Social History*, 57(2012), pp. 97-128.

82 C. Giametta, 'The Synergy between Restrictive Sex Work and Migration Policies Targeting Sex Workers in France,' in Cirus Rinaldi, ed., *Quaderni del laboratorio interdisciplinare di ricerca su corpi, diritti, conflitti* (Varazze : PM edizioni, 2021), pp. 89-98, https://www.unipa.it/dipartimenti/cultureesocieta/.content/documenti/Quaderni-del-laboratorio-Interdisciplinare-di-ricerca-su-Corpi-Diritti-Conflitti-1.pdf#page=90 : last consulted on 10 June 2021.

83 M. Rodríguez García, 'The ILO and the Oldest Non-Profession,' in U. Bosma & K. Hofmeester, eds., *The Lifework of a Labor Historian. Essays in Honor of Marcel van der Linden* (Leiden : Brill, 2018), pp. 90-114, free access : https://brill.com/view/title/39412.

responsibility in the second case[84]. Although the terms employed are different, we shall be faced with a similar situation if the limits of the proposals put forward aren't taken into account. Sex workers who can't enjoy the benefits of a future Belgian decriminalisation policy and who don't qualify for asylum risk being even more marginalised. Non-EU sex workers already belong to the most vulnerable group within the prostitution population.

As representatives of aid organisations point out, it is therefore extremely important that the future policy "doesn't turn into a policy of persecution"[85]. Furthermore, assistance must be provided to all sex workers, regardless of their origin. This way, a minimum level of protection and monitoring can be guaranteed.

84 S. Romano, *Moralising Poverty : The 'Undeserving' Poor in the Public Gaze* (London & New York : Routledge, 2018).

85 E-mail correspondence between the author and representatives of Violett, 25 May 2021.

External contribution The role of a "prostitution" public servant in the prevention and fight against human trafficking

Lieve Huijskens,
"Prostitution" public servant
City of Antwerp

The city of Antwerp firmly believes in the importance of a "prostitution" public servant. The city has employed a full-time employee for the prostitution programme since 2000. Emphasis is placed on the contribution to the health and safety of sex workers. In addition, the programme is also proving useful in the fight against human trafficking.

In the past, no-one really thought that a local government could contribute to the fight against organised crime. Today, there is increasing cooperation with supra-local partners. The programmes or projects often show to what extent this cooperation can be fruitful and useful. A "prostitution" public servant can quickly get to work based on signals or observations in the field.

In Antwerp, we work alongside a "prostitution" team that is part of the Antwerp police district's neighbourhood service, which means they are very present and accessible. The team can work proactively with sex workers. We rely on Violett and Boysproject (CAW Antwerp) for assistance. The prostitution team and the social workers report new trends, phenomena and problems. The "prostitution" public servant is involved in the search for possible solutions and cooperates with a wide network of experts. These are often other cities, organisations or academics. The "prostitution" public servant draws up a proposal and presents it to politicians. After agreement, they implement the policy that has been decided upon.

A policy based on an integral approach to prostitution

The policy based on an integral approach to prostitution adopted by the city of Antwerp dates back to 1999. At that time, the window prostitution neighbourhood was reorganised, with certificates of compliance for the premises and the owners. The city opted for a visible form of prostitution, which enabled the local authorities to better manage and control it in terms of: health, work conditions, criminal influence, nuisance and the fight against human trafficking. This way of thinking continues to form the basis of our policy: "in the places where prostitution occurs, this must be done in such a way that it doesn't harm the health or social well-being of the sex worker and that it reduces or eliminates the negative impact of prostitution on society in general".

On a Belgian level, the city has little room for manoeuvre when it comes to organising health and safety in relation to prostitution. But Antwerp is creative in this respect. We mainly make use of the city's administrative power and that of the police to keep an eye on all branches, in addition to the public prosecutor's policy. Thanks to this overview, we can react in an appropriate manner and determine a strategy.

Combating teenage prostitution and results

In 2017 and 2018, the hospitality sector saw an increase in victims of teenage pimps (minors and young adults). Cooperation between the Antwerp police district, the city and the hotels in the neighbourhood information network (BuurtInformatieNetwerk- BIN) resulted in the "sensi hotels" approach. A few specific hotels received a warning call from the prostitution team and an information leaflet. The goal being that:

- owners give their staff specific training;
- guidelines on reporting be drawn up;
- attention be drawn to the issue of human trafficking and teenage prostitution.

Hotels that stubbornly refused to cooperate were temporarily closed. This approach gave very quick and effective results. The action had a major impact on the sector. Unscrupulous owners were

barred or their behaviour corrected. The downside of this approach is that the problem has shifted. Neighbouring police districts and municipalities have asked for our help because they have observed similar practices in their area. Conclusion: a local approach is effective, but to get to the root of a problem, supra-local cooperation and monitoring is necessary.

Rise of social media and apps for sex advertisements

Teenage prostitution continues to be a problem. We are seeing a move to hotels on the outskirts of Antwerp, as well as a shift from the usual websites for sex advertisements (e.g. redlights.be or afspraakjes.nl) to apps such as Snapchat, Instagram, Tinder, etc. Both the police and support services are reporting this feedback. This shift can also be seen in adult prostitution and was already present in male and transsexual prostitution. By investigating and cooperating with the police and support services, we are now looking for solutions to address this trend. This isn't easy because the coronavirus crisis and the closure of the visible sector of prostitution have accelerated this process.

The invisible sector with its advantages and disadvantages

Within the prostitution sector, the internet has probably also given sex workers greater power. They no longer need intermediaries to get clients or find a location. For instance, they use Airbnb and place the advertisements themselves. In the past, the presence of a man during an inspection of private prostitution often meant that he was the "boyfriend" (aka the pimp). These days, it isn't uncommon to see a group of girls asking a driver from their village, in Romania for instance, to accompany them and a business relationship is established. The driver is then paid EUR 1,000 to drive the girls safely in the car and is allowed to spend the night on the couch of the Airbnb. Nothing is black and white anymore.

We still see situations where intermediaries arrange accommodation and drivers, etc., and we keep track of this kind of thing. It is useful information that the police can use retrospectively when someone is found to be a victim in a criminal investigation. With the rise of Airbnb and other accommodation, a lot more things can be missed. A solution is required. Locally, we have started to assess the phenomenon and to involve the partners concerned in a common approach.

Our concern is that prostitution has become much less visible. Until now, we have been very pragmatic about escorts and private prostitution. We tolerate these activities if they don't cause any disturbances. This doesn't mean that we aren't doing anything. The police check the safety of the sex workers, the conditions, etc., through an administrative check. The city uses this opportunity to refer people to support and health services.

If supply in the invisible sector continues to increase to the detriment of the visible sector (window prostitution and sex work):

- we won't be able to reach as many sex workers to ensure their health and safety;
- and it become (more) difficult to build trust.

In this case, we can also expect more nuisance and all the related complaints. As a result, our administrative inspections will/must adopt a difference approach. If the prostitution team has to assume a more repressive role, we can expect far fewer reports from the sex workers themselves (e.g. concerning rape, theft, violence, trafficking, etc.).

Persons of South-American and Nigerian origin during checks on private prostitution

Regarding private prostitution, we have seen shifts in some phenomena, sometimes as an involuntary side effect. For instance, in 2017, we were concerned about a group of South-American women (with or without a Spanish residence permit). They only spoke Spanish and were helped by someone who provided them with accommodation/a "work room" for sex and organised appointments with clients over the phone. After investigation and coordination with other cities, we concluded that this generally wasn't exploitation or human trafficking. In Antwerp, this group of South American women rents entire flats (even though they don't know each other). This is in contrast to the situation in the Netherlands, where they are often housed in a small room with someone who, for instance, is living on benefits and is trying to earn extra income.

However, these South American women in Antwerp live in precarious conditions and their situation continues to be of concern.

Another example relates to the trend in 2018 of minors and Nigerian girls. At the moment, we hardly come across any minors and far fewer Nigerians in the private prostitution sector because the risk of being caught in the act is too great as a result of our administrative checks. This doesn't solve the problem of human trafficking in Belgium and contributes to a ripple effect. If all the Belgian police districts were to carry out administrative checks on the same basis as in Antwerp, this would help to get a clear picture of human trafficking in the invisible sector and to initiate criminal investigations.

Choice of window prostitution

In Antwerp's windows, there are no longer any minors, undocumented persons, or persons who have been forced to be there through subletting. A window occupancy scheme was set up in 2014, which became HookUp in 2020 (www.hookup.antwerpen.be). There is an online application which sex workers can use to register a rental directly with an owner using a QR code within the next 30 days. This way, the police know when someone new starts in the neighbourhood, and they will immediately go and introduce themselves. The police deliberately choose to do the intake at the workplace, away from prying eyes. The police also carry out sporadic checks based on HookUp and take these opportunities to try and build a relationship of trust with the sex workers. The application requires owners to meet with sex workers in person at least once a month and prevents any possibility of subletting. Offences on HookUp are punished by administrative measures (from administrative fines to closure). The city has also developed a help section on the HookUp platform with animated films, links to help services and even a link to the police mailbox, in the language of your choice to increase accessibility.

Massage parlour project

In 2014-2016, we saw the arrival of Asian massage parlours (mainly Chinese). We began to get a picture of the problem. Together with supra-local partners such as the Social Legislation Inspectorate, FPS Finance, the Social Inspectorate, the public prosecutor's office and the labour prosecutor's office, the Immigration Office, and others, we established the following:

- the majority of these masseuses were Chinese nationals;
- they had obtained their papers mainly through an arranged marriage (contrary to the Netherlands where they often stay through a student visa) ;
- the rogue operators were more interested in committing tax evasion than sexual exploitation. Chinese masseuses often pay a debt to the smugglers in the first few years, but the smugglers have no direct connection to the massage parlour owners. Because of their distrust of the government, their poor language skills and their multiple dependencies on their limited network in Belgium, they are particularly vulnerable. They often reply to advertisements in local Chinese newspapers and end up in the salons. They are set up to work as bogus self-employed workers and earn very little. They try to pay off their enormous debts by offering clients extra services.

Through cooperation and the development of local rules, we have been able to tackle the phenomenon at a local level. By focusing on support, we have tried to steer the masseuses towards other activities and to warn them about the consequences of working as a (bogus) self-employed person.

Deployment of administrative measures against human trafficking

A local prostitution policy and the appointment of a "prostitution" public servant aren't a cure-all. However, these are necessary links in a Belgian approach to human trafficking in order to take action more quickly, to approach or recruit the right people and to maintain order. The mayor can close a building for a maximum of six months if human trafficking is suspected. Thanks to this zero tolerance policy, the operator is immediately affected by the consequences of their misconduct. Other businesses are thus warned and made aware of their responsibilities, whether it is a hotel, an Airbnb, a sex business, a slum landlord or a massage parlour.

Police officers, inspectorates and magistrates certainly gain from a common approach. It means that a strong signal is sent out even before there is a court ruling.

Need for a federal and Flemish approach

During the coronavirus crisis, we unfortunately observed the limitations of federal regulations on prostitution once again. The prostitution sector is often overlooked and little is done for sex workers or operators. We quickly felt the consequences and were able to "put out fires" by handing out extra food parcels and vouchers, mediating in rent disputes, etc. But with no status, many sex workers have been forced to work in unsafe conditions, subject to dependency and vulnerability. This has undoubtedly had an impact on situations of exploitation and human trafficking. Despite our good relations with supra-local partners, we would welcome a Flemish and federal point of contact. We already have several ideas for cooperation at national level. For instance, an initiative to disrupt the online human trafficking market, combined with a joint administrative approach, finding ways to involve clients in the fight against exploitation, using open source internet searches in case of (anonymous) reporting or concerns, etc.

There is no lack of enthusiasm or ambition in Antwerp. Yes, a local authority can also play a role in the fight against human trafficking, and that shouldn't be limited to prevention and assistance.

External contribution Prostitution in Charleroi: the role and missions of Entre 2 Wallonie

Martine Di MARINO,
Coordinator
Entre 2 Wallonie

1. Roles & missions of the NPO

As a multidisciplinary group, we support prostitutes in order to find sustainable solutions from a legal, social and medical point of view.

Team composition: 6.4 FTE (social workers, educators, nurse).

2 departments and 3 branches:

HAINAUT	BRABANT WALLON
1 department Charleroi + 1 branch Extra Ring + 1 branch La Louvière	1 department Louvain-la-Neuve +1 branch Genappe

Areas of activity

1. Fieldwork

On the streets (street - squats - isolated areas - car parks, etc.)

Street work is an essential approach, firstly, to establish contact with people who don't drop into the NPO's offices and, secondly, to maintain a link.

It is also part of a prevention strategy, which involves the free distribution of condoms, hygiene kits and COVID protective equipment.

Since 2017, we have been taking our Médibus to the Heppignies and Fontaine-l'Evêque motorway service areas and to a car park in Charleroi.

We targeted these areas among those covered by the Médibus because they are often used for prostitution and sexual activities.

The goal of the Médibus isn't to carry out follow-ups but to **encourage the various people encountered to contact the various social and medical services**. We therefore only provide basic assistance: distribution of condoms, lubricants, masks, etc., information and referrals, screening, replacing equipment for users or even nursing care. Sometimes, people are only seeking social contact, which is why we have a reception area.

In bars

We try to establish contact and create a link in the bars in the Charleroi Baisy-Thy area.

In private

Our "SMS project" consists of making contact with prostitutes through specialised dating sites.

We stay within the limits of Walloon Brabant and the districts in Charleroi and La Louvière.

Together with some of these sites, we have been able to send out our message on a large scale and free of charge, by sending it directly by text message through the site managers. This text message invites anyone who is interested to contact us.

2. Day centre

The NPO Entre 2 Wallonie centre is open from Monday to Friday, from 09:00 to 12:00 and from 13:30 to 16:00.

3. Medical

A free medical service is available at the Charleroi headquarters, according to demand. A nurse is present throughout the week, assisting people with all sorts of medical formalities (accompanying people to medical appointments, medical follow-up, putting things in order, etc.).

4. Psychosocial support

We respond to requests and physically accompany people in a wide range of areas:

- Financial
- Housing
- Legal
- Employment
- Family
- Etc.

We work in partnership with the psychological, medical and social services in each region.

5. Prevention & raising awareness

It is part of our job to help change mindsets.

By talking about what we do and by informing the general public, young people and (future) social workers, we are trying to change perceptions and nuance the way the world considers prostitution and prostitutes.

Our mission to inform people concerns both our target group (prostitutes, clients, friends and family, etc.) and those who come to us with questions (press, schools, groups, conferences, social workers, etc.).

2. Prostitution in Charleroi

Prostitution has always existed in Charleroi. The Triangle, which is the red-light district in the lower part of Charleroi, is composed of three streets: Rue Desandrouin, Rue du Moulin and Rue de la Fenderie.

Prostitution in bars was widespread until the end of the 1990s.

Today, street prostitution is the dominant trend.

The Triangle used to be a socially diverse neighbourhood with a high level of activity, day and night.

Before May 2002, prostitution in Charleroi was divided between prostitution in bars and street prostitution.

Following the results of the work of the "Commission on Human Trafficking", requested by the Centre for Equal Opportunities, the City Council voted on 30 May 2002 for a regulation prohibiting the opening or reopening of establishments closed due to human trafficking in the area of Charleroi.

This led to the desertification and decline of the neighbourhood.

At this point, street prostitution began to increase.

The social mix that had been very much in existence disappeared.

In an effort to improve its image and encourage economic recovery, the city launched the "Phénix" and "Rive Gauche" projects in 2007-2008.

The first one was aimed at completely remodeling the lower part of the town and redeveloping the Triangle. The second one involved building a shopping centre in the same neighbourhood.

As a result, prostitution in the Triangle became incompatible with the renovation projects as far as the municipal authorities were concerned.

On 20 September 2010, a unilateral commitment signed by the Municipal Council of the City of Charleroi with SA Engelstein (a property developer who bought part of the lower town neighbourhood) demanded the eradication of street prostitution in Charleroi's lower town.

Associations in the field, including us, and the prostitutes decided to take action. The associations feared the development of underground prostitution, leading to a loss of contact with the people who needed it most.

At the same time, street prostitution was spreading to other areas in the lower town (Rue Léopold, Quai de Brabant, Quai de Flandres, etc.).

Despite action taken by the public concerned and the associations, a municipal order was voted on 27 June 2011, banning soliciting in the Triangle area as well as in Rue Léopold and along the quays.

It proposed moving prostitution activities to Rue du Rivage, Quai de Flandres, behind the Cité des Finances and the TEC.

This regulation imposed very strict hours, thus facilitating administrative arrests.

It soon became clear that the isolation of this new location for prostitution meant an increased lack of safety for prostitutes.

The women feared finding themselves in situations that were even more dangerous than in the Triangle neighbourhood, which had encouraged a certain collective vigilance.

Furthermore, new problems associated with the organisation and control of prostitution came to light.

A new municipal regulation has been in force since 2014.

Article 3 stipulates:

The mere presence on the public highway of persons actively engaged in prostitution (so-called street prostitution) is prohibited throughout the municipality.

As in other towns, streetwalking was tolerated in certain areas. The regulation, which is actually no more than a reminder of the law, put an end to this former tolerance.

The consequences of this municipal order are detailed in our activity reports:

- Geographic dispersal of the phenomenon
- Loss of contact with a certain number of prostitutes
- Increase in night-time and evening prostitution
- Lack of safe and hygienic conditions
- Rise in risk-taking (health, safety)

After extensive discussions within the Prostitution Commission (set up after the adoption of this municipal regulation), the issue of a tolerance zone in the city centre is finally being examined by the city of Charleroi.

Types of prostitution: prostitution in the street, in bars and in private. Occasional or regular.

General statistics 2020

Charleroi and Extra Ring branch		
N		**238**
Gender	Women	67%
	Men	30%*
	Transgender	3%
Average age		**35-49 years**
Nationalities	Belgian	50%
	EU	20%
	Non-EU	18%
	Unknown	12%
Income	Benefits	23%
	Professional income	18%
	No income	9%

*This percentage relates to the presence of a majority of men in one of the car parks involved in sexual activities (paid or not). However, our support work is mainly focused on women.

3. Human trafficking project

This request was submitted as part of the City of Charleroi's PCS (*Plan de Cohésion Sociale* - Social Cohesion Plan) project. It wasn't selected in the end.

This demonstrates the City of Charleroi's lack of interest in the human trafficking aspect.

The human trafficking section of the local police department has focused its actions on youth over time, mainly to the detriment of prostitution-related human trafficking.

Here is the description of our project entitled: **APVV** (*Accompagnement des Personnes Victimes de Violences* - Support for Victims of Violence).

Despite the major redevelopment of Charleroi's city centre and a regulation banning soliciting (in 2014), the city of Charleroi is still faced with the sexual exploitation of women (Belgian or foreign nationals), who are victims of pimps.

Reception centres (Sürya, Pag-Asa, Payoke) take care of these women when they are recognised as victims from a legal point of view (magistrate's decision according to certain conditions, e.g.: recruitment, transportation, harbouring for the purpose of exploitation of prostitution). These women don't always consider themselves as victims, even when the police investigation proves that they are. Based on observations and hearings, the police consider them to be victims of exploitation.

The police in Charleroi and specifically the human trafficking section, is powerless in the face of these female victims who are left to their own devices and who continue to work as prostitutes while their pimps are in prison. Our intervention is specifically aimed at establishing a real link with these people in order to provide them with psychological, medical, social and legal support.

This is the missing link: the police are powerless when faced with these victims who have been "returned" to their original situation (i.e. the street, bars, in private).

The victims can't access social support because they aren't familiar with Charleroi's social network. And as regards Entre 2 Wallonie, its work in the field would allow a truly effective approach and direct contact with this target group, which is so mistrustful and difficult to approach.

In practice, we aim to hold discussions with the police's human trafficking department regarding the action to be taken together so that our service is always accessible (e.g.: 24/24 mobile phone contact for the police). This implies immediate contact with the victim after the police hearing and in agreement with both parties (police and victim).

The follow-up initially consists of listening to the victim in order to establish an initial medical history and to set up psychosocial and medical assistance (through our nurse and our doctor), administrative support corresponding to their needs (return to their country or other) and legal assistance if necessary.

In addition, we can, over time, make them aware of the need to be recognised as a victim and thus benefit from the existing protection system (three reference institutions).

4. Which status?

Seeking a status could, on the one hand, enable certain victims of human trafficking to turn things around and, on the other hand, regularise the situation of those seeking a status as a sex worker.

It is important to remember that this recognition of status would be enshrined in law; however, let us not forget that the law is abstract and general.

We may still be faced with two major problems:

- The first is that even if victims were protected by a status, they wouldn't necessarily escape exploitation by a pimp or a network. Suppose that the prostitute has a wage and enjoys proper social protection, the person may still be forced to work for hours at a high pace, be exposed to violence, and made to hand over their earnings to their exploiter.
- Does the status fully guarantee the desired protection?
- With or without a status, effective protection is only possible if a defined perimeter is set up for prostitution, a tolerance zone, controlled through a social mix, social services, the police, etc.
- The second problem is that we lose sight of the diversity of the world of prostitution.

We are more in favour of the idea of improving and developing the self-employed status by making it clearer, more accessible, and better recognised. This way, people who want or need a recognised status for their work as a prostitute would be able to obtain it legally.

This legalisation and recognition as an economic activity in its own right would also contribute to a change in mindset and the way we look at prostitutes. The issue of victimisation could also disappear (as confirmed by the case law of the Court of Justice of the European Union in Luxembourg).

However, we do have reservations regarding street prostitution, which is occasional or often practised by vulnerable people (precarious situation, drug addiction, mental health problems, etc.). This public doesn't generally seek recognition or a particular status (employee, self-employed, etc.). They live from day to day and are faced with daily difficulties in order to manage their heavy debts and/or precarious situation.

Our task is to help stabilise their administrative situation and integrate them into the social protection system insofar as it is possible (social benefits, unemployment benefits, health insurance, etc.). Unfortunately, these people lack sufficient structure to build a basis that allows them to meet their basic needs. Imposing a status and the numerous regulations inherent in this status risks having the opposite effect, leading to major problems in terms of administration and management. A spiral of debt and other difficulties would be inevitable. On the other hand, social benefits would allow others to keep their heads above water. It is necessary to allow for a crucial period of transition for all these people who mustn't be forgotten.

However, by trying to save some of them, we could risk drowning them all.

3. CONCLUSION Sex work

The external contributions on the diversity of prostitution have touched on the positive points and the concerns of decriminalising pimping and granting a possible status to sex workers.

One important approach of this draft bill is to eliminate the negative atmosphere of stigmatisation surrounding sex work and to start moving towards a social status for some sex workers. In fact, when the coronavirus was already in full swing, members of the majority were arguing for a social status that better protects sex workers[86].

At the same time, Myria warns that this draft bill mustn't encourage a policy, in the future, that drives other sex workers underground, leading to new situations of human trafficking.

3.1. | Decriminalisation

The draft bill is based on a model of decriminalisation, not legalisation, as is the case in the Netherlands. In this regard, the Minister of Justice stated in parliament, "First of all, the comparison with the Netherlands is inappropriate. In the Netherlands, they have opted for legalisation, not decriminalisation as we would like to do. We have learned from the mistakes of the Netherlands, i.e. not to legalise. They imposed a strict legal framework for sex workers to operate within. For many sex workers in the Netherlands, the threshold to work within the legal framework was simply too high, so they fell off the radar and started working illegally. By imposing too strict a framework, people are pushed into illegality, where they are more likely to be exploited. We want to convey the message that a sex worker has the right, like any other ordinary worker in Belgium, to exercise their profession, without us imposing strict conditions or other strict requirements that we wouldn't impose on other workers"[87].

The Minister of Justice wants to lift the taboo on prostitution and refuses to associate it with human trafficking: "Thanks to this draft bill, prostitution is no longer in a grey area. Moral judgement has no place if these activities take place between consenting adults. However, they need a safer and more transparent framework. I don't agree with the link that is made between prostitution and trafficking. That said, it is obvious that we need to fight human trafficking. We have tried to find a balance between the fight against human trafficking and an opening to a status that provides a framework for the practice of prostitution"[88].

3.2. | No stigmatisation unlike the Swedish abolitionist model

The draft bill is a clear departure from the Swedish abolitionist model aimed at punishing sex clients. According to testimonies[89] from migrant sex workers in Sweden, this model stigmatises them and even gives them a feeling of racism. This is what emerges from a study conducted by Swedish and Italian researchers within the framework of a European project in cooperation with the International Centre for Migration Policy Development (ICMPD) and UNESCO. The study report is part of the *Insight* project, which examines the transit routes of trafficking victims between Nigeria, Italy and Sweden and their reception[90].

This study reveals that most sex workers in Sweden are migrants. Migrant sex workers are at risk of being repatriated.

86 Written question from Sophie Thémont (PS) to the Minister for Social Affairs, Public Health, Asylum and Migration, *Bulletin*, Chamber, S.O. 2019-2020, QRVA 55 014, 24 March 2020.

87 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

88 Minister of Justice's answer to the question of Séverine de Laveleye (Ecolo), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 545 of 7 July 2021.

89 Zoom meeting of 29 June 2021 on EU *Insight* project, The Swedish Anti-trafficking System and the Struggles of Sex Workers : shortsighted Solutions and Lack of Support, with testimonies from the Swedish organisation Red Umbrella Sweden (RUS) which supports and promotes the rights of sex workers.

90 www.insightproject.net/project/publications/ : INSigHT - Building Capacity to Deal with Human Trafficking and Transit Routes in Nigeria, Italy, Sweden. INSigHT AWARENESS RAISING - SSIMM international (unescochair-iuav.it)

There is only a temporary residence permit for victims of trafficking, usually for three months. The researchers and sex workers who attended the Zoom meeting therefore considered the policy concerning trafficking victims as a "deportation policy". It is possible to apply for asylum, but the outcome is usually negative. The temporary reception centres for victims of human trafficking are neither managed nor funded by the Swedish government but by organisations, usually Christian, who want to help sex workers get back "on the right track". Victims of human trafficking are thus forced to be taken in and look after according to a moral framework.

In terms of combating human trafficking, the Swedish model isn't effective. While very few human traffickers are convicted, the same isn't true of clients of the sex trade. In 2018, there were 12 convictions for human trafficking in Sweden, nine of which were for exploitation of begging and only three small cases regarding sexual exploitation, and none for labour exploitation[91]. The Swedish system and resources are mainly focused on the fight against clients of the sex trade, which in practice has a negative impact on the fight against the traffickers themselves. However, an analysis of the court cases in which Myria has acted as a civil party shows that international Nigerian networks operate not only in Belgium, the Netherlands, Italy and Spain, but also in Sweden[92], where they have little chance of being convicted.

In theory, Swedish policy and laws target clients, not sex workers. But in reality, they are both targeted as any form of support is criminalised. For instance, any landlord who suspects that the rented property is being used for sex work must report it to the authorities, or risk being prosecuted. This creates problems for sex workers in terms of accommodation, but also as regards any kind of assistance, for example transport, accounting, opening and managing a bank account and payments, which are also subject to reporting requirements. This means that sex workers sometimes aren't paid by the client. In fact, any type of assistance can cause problems. According to the participants, there is also a Swedish law that allows sex workers under the age of 21 to be locked up.

According to the Swedish expert who conducted the investigation and collected the testimonies, this policy also violates human rights and is, in fact, directed at migrants. In practice, these sex workers are stigmatised and persecuted in order to make sex work impossible for them. Police officers attempt to make contact with sex workers by posing as clients, a frequently used strategy that traumatises sex workers because of the consequences. Sex work (mainly involving migrants) is firmly associated with human trafficking in Swedish public opinion and often takes place in hotels. These hotels have to report any suspicion of sex work, which stigmatises the migrants. This also results in clients refusing to accept sex work from migrants out of fear. Hence, some migrants, even if they aren't associated with sex work, are afraid when they check into a hotel as they can easily be perceived as an informer. In addition, sex workers testified that not only they, but also their life partners, are perceived negatively by their environment and are socially excluded.

A Romanian sex worker confirmed at the Zoom meeting that in her country, which has copied the Swedish abolitionist model, the same stigmatisation problems have since increased. In Romania, many people of Roma origin are active in sex work, sometimes also as victims of human trafficking. This population is in a precarious situation and already highly discriminated against as a minority. It is feared that such a policy will do little to improve their situation.

3.3. | Level of implementation

While the sex work draft bill has the merit of removing the taboos surrounding sex work in an effort to avoid excesses such as the abolitionist model, it can lead to other serious problems in the fight against human trafficking. The draft bill raises a number of questions, especially in its implementation. It may give the impression of focusing mainly on sex workers who work (legally) in windows, possibly in a self-employed context or as employees, whereas in

91 Strengths and Weaknesses of the Swedish Anti-trafficking System, Michela Semprebon and Isabelle Johansson, Prepared by UNESCO Chair SSIIM, University of Venice (Italy), June 2021. http://www.unescochair-iuav.it/en/ or www.insightproject.net/project/publications/.

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

reality, this phenomenon is more diverse[93]. In their questions, members of parliament themselves refer to the existence of multiple forms of prostitution: "window prostitution, street prostitution (soliciting), prostitution in a private home, escort services, prostitution in bars and prostitution in massage parlours"[94].

In addition, there are sex workers who are legally resident here - such as Belgians, EU residents and documented third-country nationals - but there are also a number of sex workers without a residence permit who operate in tolerance zones. What will happen to them? Their fate will depend on how the (future) law is applied in the field and on the policy pursued by the Minister of Justice.

Myria provided the Office of the Minister of Justice with an opinion[95], which also emerged from its answers to parliamentary questions[96]. During the question of one member of parliament on the bodies and players consulted, reference was also made to the Samilia manifesto published in "Le Soir" on 22 June 2021[97]. The Minister replied that the specialised centres for victims of human trafficking, the College of Public Prosecutors, the Institute for the Equality of Women and Men, the sex workers' union UTSOPI and several other organisations had been consulted[98].

However, the specialised centres feel that they weren't sufficiently involved in the discussion of this draft bill[99]. The draft bill, which was still the subject of internal discussions within the government at the time, also failed to be mentioned during the discussion of the new Action Plan to Combat Trafficking in Human Beings 2021-2025 during the last meeting (31 March 2021) of the Interdepartmental Coordination Unit for the Fight Against Smuggling and Trafficking in Human Beings (ICU). Subsequently, a representative of the Office of the Minister of Justice explained the draft bill at the ICU Executive Board meeting. Several members made critical comments, including the specialised centres. The new action plan to combat human trafficking doesn't refer to the draft bill either. According to Myria, it is important to consult the stakeholders and the various civil society organisations on a much broader level regarding this issue.

3.4. | Tolerance zone[100]

In certain urban prostitution areas, there are tolerance zones where sex workers without residence permits are tolerated by the local authorities. This is only a small group, active locally and known to the police. Emphasis is on the fight against human trafficking and not illegal residence. The checks carried out by the local police forces' specialised human trafficking units focus on indicators of human trafficking and not on residence documents, as this is counterproductive in the fight against human trafficking. Police units specialised in human trafficking have developed expertise in gaining the trust of victims. This means that potential victims don't feel hunted down and, if necessary, they will also be ready to cooperate with the police and the judicial authorities.

Thanks to these administrative controls on human trafficking, specialised police services can more easily find out which sex workers (including undocumented sex workers) are active and where, what changes are taking place, and can better monitor indicators of human trafficking. This way, the police can better monitor, control and apprehend the phenomenon. This policy has already led to many successes and several trials and convictions for human trafficking, including cases in which Myria has acted as a civil party.

93 See the external contribution by Martine Di Marino.

94 Written question from Els Van Hoof (CD&V) to the Minister of the Interior, institutional reforms and democratic renewal, *Bulletin*, Chamber, S.O. 2020-2021, QRVA 55 036 of 27 January 2021.

95 During a consultation with the Justice Cabinet, Myria mentioned the positive points of this, but also expressed its concerns and asked questions.

96 Minister of Justice's answer to the question of Séverine de Laveleye (Ecolo), Chamber Committee on Justice, *Full report,* Chamber, S.O. 2020-2021, CRIV 55-COM 545 of 7 July 2021 ; Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, Full report, Chamber, S.O. 2020-2021, CRIV 55-COM 463 of 5 May 2021.

97 Minister of Justice's answers to the questions of Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

98 Minister of Justice's answer to the question of Séverine de Laveleye (Ecolo), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 545 of 7 July 2021 ; Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 463 of 5 May 2021 and 534 of 30 June 2021.

99 The specialised centres providing support for trafficking victims sent a letter to the member of the CIC.

100 Also see the introduction of the contribution by the Dutch rapporteur.

Initially, the Minister of Justice seemed to recognise this problem and to want to give it the necessary attention. In early May, he replied to Parliament: "The problem of undocumented sex workers isn't so much that they are vulnerable owing to the lack of a status for sex workers, but rather their illegal residence status. We must therefore focus on this status. We shall certainly discuss these concerns with the relevant Secretary of State and see together how this group of people can also be better protected or how we can prevent them from being here illegally. Again, this means focusing on the criminal networks behind the smuggling and trafficking"[101].

The answer of the Secretary of State for Asylum and Migration to Parliament was clear and much stricter: "As far as the residence permit for sex workers without Belgian nationality is concerned, I can only say that they can make use of the existing regulations. When they stay legally in Belgium, they can also work legally, depending on their status. They can' t work legally without a right of residence"[102].

In early June, the Minister of Justice responded to the tolerance policy: "We want to move from a policy of tolerance to an explicit decriminalisation of adult sex work"[103].

A few weeks later, the Minister of Justice said: "The current policy of tolerance has many drawbacks. It creates randomness. Under the guise of a policy of tolerance, towns and municipalities set their own rules. This results in very different working conditions within the same sector. Covid-19 has highlighted the painful situations that ensue. The aim is to create a situation where sex workers can work safely, not to eliminate red-light districts. However, the intention is to remove the tolerance zones. The word "tolerance" should in any case be eliminated. We have a criminal code, which must aim to punish effectively. The continued existence of criminal provisions that are tolerated in reality is an untenable and Kafkaesque situation for sex workers"[104].

It remains to be seen how this possible future law will be applied in practice. Towns and municipalities will retain their authority in this domain. But does the Minister's statement suggest that he wishes to promote a policy whereby only sex workers who legally reside in prostitution areas can work there, or will there be a certain margin? To what extent are some towns likely to feel supported by the Minister in their desire to adjust their policy by imposing a formal registration requirement on (legally staying) sex workers in premises located in an urban prostitution area, thereby forcing undocumented sex workers to work illegally, at lower costs and in even more dangerous conditions? In 1999, the city of Antwerp[105] adapted its model in this sense. The Minister of Justice referred to it in his answers as a relevant practical example, citing the Antwerp HookUp model, a digital application that registers all the leases concluded between owners of premises and sex workers[106]. Is this part of a decriminalisation model in which no additional conditions can be imposed on sex workers, compared to other workers, such as working in construction and having to register?

That said, decriminalisation could offer the possibility of maintaining tolerance zones where undocumented third-country nationals could also engage in sex work. This would allow the police to focus their checks on indicators of human trafficking, rather than administrative checks on residence status. Hopefully, undocumented third-country nationals would thus be less likely to engage in sex work illegally. By conducting more inspections of the visible prostitution of all sex workers in order to detect possible human trafficking, there is a chance of reducing exploitation. If tolerance zones were to disappear for all sex workers, this could lead to an increased risk of exploitation, because vulnerable undocumented sex workers would then probably have to work more underground and in precarious conditions.

It is important to reach agreements on implementation between the political levels and the different partners in order to be able to formulate a policy in the field that reduces - or at least doesn't increase - the risk of human trafficking by accepting local tolerance zones for all sex workers.

101 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 463 of 5 May 2021.

102 Answers of the Secretary of State for Asylum and Migration to the questions of Ben Segers (Vooruit), Chamber Committee on the Interior, Security, Migration and Administrative Affairs, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 503 of 4 June 2021.

103 Minister of Justice's answers to the questions of Cécile Thibaut (Ecolo), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 501 of 2 June 2021.

104 Minister of Justice's answers to the questions of Ben Segers (Vooruit),Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

105 See external contribution by the "prostitution" public servant in Antwerp.

106 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

Local authorities should also be allowed to retain their autonomy and be made aware of the importance of monitoring sex workers on the basis of trafficking indicators rather than residence status and on the basis of existing regulations for victims of trafficking.

3.5. | Assistance

There are various medical assistance programmes in the field for all sex workers, which allow sex workers who don't have a residence permit to be reached. These programmes serve the public interest and public health. It is therefore important to be able to approach all these sex workers and win their trust. Currently, many of these undocumented sex workers are still easily accessible in the tolerance zones of urban prostitution areas. This is another argument against promoting policies that could lead to these undocumented sex workers being hunted down. A policy that focuses on checks on human trafficking indicators and not on residence documents is therefore also socially important to ensure public health, especially in case of a pandemic.

3.6. | Clients and private prostitution via the internet

Prostitution through dating sites and social media is on the rise. During interviews, Myria learned that 60,000 people in Belgium visit websites every day in search of sex. The police can carry out checks, but these require resources and the task is sometimes complicated by special applications intended for and available to clients only. The latter can therefore be an important added value in the fight against human trafficking.

The Minister of Justice and the authorities are aware of the importance and role of the internet and social media: "In the digital domain, social media seems to play an increasingly important role in drawing underage and adult girls into the clutches of pimps. TikTok and Instagram seem to be the most popular social media platforms. Police investigation units are fully aware of these developments and are reorienting their activities to take this new reality into account"[107].

The Minister of Justice confirmed to members of parliament that the police use the internet and social media as investigative tools, but also that internet providers of sex dating sites are already cooperating: "'Specialised' websites such as X (anonymised by Myria) are indeed monitored by investigators, as are the classified ads that appear on other internet platforms and in paper publications (freely distributed magazines, etc.). The administrators of the website in question willingly cooperate with our services when classified ads may indicate suspicious situations. Unfortunately, this type of platform is only the tip of the iceberg"[108].

During its discussion with magistrates, Myria learned that internet service providers were also seeking memoranda of understanding with the judiciary in order to report abuse, but that this was impossible under the current legislation that prohibits advertising for prostitution. It would therefore be important for the new bill to allow this. The Minister of Justice made a commitment to members of parliament at the beginning of May[109], but the first draft bill has since been amended[110]. It is debatable whether digital advertising through third parties (companies such as internet service providers and website operators) will continue to be prohibited, because only offering one's own services on a digital platform would be allowed:

107 Written question from Emir Kir (independent) to the Minister of Justice, *Bulletin*, Chamber, S.O. 2020-2021, QRVA 55 043, 17 March 2021.
108 Written question from Emmanuel Burton (MR) to the Minister of Justice, *Bulletin*, Chamber, S.O. 2020-2021, QRVA 55 040, 25 February 2021.
109 This was confirmed by the minister in the Chamber Committee on Justice : see the answers to the questions from Ben Segers (Vooruit), Sophie Rohonyi (DéFI), *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.
110 See point 2.3. above on the draft bill on the reform of criminal sexual law.

"The decriminalisation of certain behaviours will in any case facilitate contact between the authorities and the managers of these sites. Some of them are ready to cooperate to prevent their platforms from being used as a base for criminal purposes. The decriminalisation of sex workers and the revision of the article of the law prohibiting sex ads will allow us to work with certain providers and other internet forums to better detect situations of exploitation"[111].

Clients can also play a relevant role in the fight against human trafficking, since they can, of course, identify certain abuses much more easily and quickly in places that aren't or are barely accessible to the police. The Minister of Justice sees this as one of the possible benefits of his draft bill:

"If we decriminalise, clients will also be more likely to report possible exploitation. They won't be doing anything illegal anymore, so help can be provided more quickly, if needed"[112].

The police consider awareness-raising among clients as an important form of social control in the fight against human trafficking in the framework of (increasing) private prostitution via the internet. According to the police, sex clients sometimes warn them anonymously about possible abuse. They aren't afraid of the police, but they don't want their names to be recorded so as not to damage their reputation. This is also a crucial aspect for the Minister of Justice:

"I think it is more important to inform clients of the signs of possible exploitation. We need to encourage them to report exploitation quickly through an accessible, effective and non-stigmatising reporting system. The police will be an important partner in this context"[113].

Raising clients' awareness of human trafficking and encouraging them to report possible abuse can reduce the demand for human trafficking for sexual exploitation. This is likely to make sex clients less likely to seek the services of trafficked persons.

With this fear of being reported by clients, some pimps could be less willing to take the risk of employing trafficking victims, which would also have a positive effect on the fight against human trafficking.

According to police, clients aren't afraid for themselves, but rather of negative reactions from their social circle. The police receive numerous anonymous calls from clients, but they often hang up when they are asked to identify themselves. The introduction of a law on sanctions against clients - even if it includes the notion of "knowingly and willingly" and thus exonerates clients who weren't aware of it - could therefore have a negative effect on the reporting behaviour of sex clients. These clients probably wouldn't want to run the risk of people in their neighbourhood finding out that they frequent prostitutes because of an investigation conducted within the framework of a law penalising clients and involving hearings and possibly a neighbourhood investigation. Such legislation, even if it clarifies the notion of "knowingly and willingly", will therefore only increase the threshold for clients to report abuse, as it still involves putting the client's identity on record. In this case, clients will no longer dare to take the risk of reporting abuse to the police, which is counterproductive in the fight against human trafficking.

111 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 463 of 5 May 2021.

112 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

113 Minister of Justice's answers to the questions of Ben Segers (Vooruit), Sophie Rohonyi (DéFI), Chamber Committee on Justice, *Full report*, Chamber, S.O. 2020-2021, CRIV 55-COM 534 of 30 June 2021.

Chapter 2
Case studies

1. Human trafficking

1.1. | Sexual exploitation

Case: running a bar from prison

Introduction

On 17 June 2015, Bruges Criminal Court examined a case of human trafficking for the purpose of sexual exploitation. The acts took place between September 2012 and May 2013[114]. The Albanian-Kosovan gang was also found guilty of theft and drug offences. Six defendants were prosecuted. Myria filed a civil suit.

The main defendant, a repeat offender[115], was sentenced by the criminal court to four years in prison. The court sentenced the bar manager (the main defendant's steady girlfriend) to a suspended prison sentence. The spouse of the main suspect, who was only prosecuted for forgery, was given a four-month prison sentence. One of the prison guards received a six-month suspended sentence, and the other was acquitted owing to a lack of evidence. Various sums of money (including money found in bank safes) were seized. Myria was awarded EUR 2,500 in compensation. The main defendant and the bar owner appealed against the decision. The convictions were upheld by the court of appeal, but the sentences were reduced[116].

114 Myria, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, pp. 138-139: West Flanders Crim. Court, Bruges division, 17 June 2015, 17th ch. The court decision is available on the Myria website: www.myria.be.

115 He has already been convicted of some 30 offences, including exploitation of prostitution and human trafficking.

116 Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online*, p. 19 : Ghent Appeal Court, 29 June 2016, 3rd ch. (unpublished).

1.1.1. | Network's structure and modus operandi

The main defendant was in prison for other offences at the time of the acts. The telephone investigation showed that he was still running his business from prison, using mobile phones smuggled in illegally, and that he was firmly in control. The criminal case file showed that several girls who worked in the main defendant's bar had to provide various services such as drinking with customers, dancing and undressing, "in-room" activities (erotic massage and sex) and escort services. In addition to his wife and steady girlfriend, he had relationships with various girls and had fathered several children. He used the *loverboy* technique to recruit victims (see "Analysis of the victims" section). One victim's testimony showed that the main defendant had been active as a pimp in the prostitution business since 1997.

The main defendant's steady girlfriend/mistress, in whose name the club was registered, was the manager. She was a "front man", acting on behalf of the main defendant. She worked behind the counter and was co-manager/shareholder, and had to follow his instructions and execute them in the workplace. She also had to report back to him. He also gave instructions to his wife, the third defendant. Both women were under his control.

A fourth defendant, a young woman working in the bar, was also actively involved in the exploitation. She was the contact between the waitresses and the boss.

In addition, two prison guards were prosecuted for passive corruption. With their help, the main defendant was able to continue his criminal activities from prison. They allegedly warned him about cell checks and turned a blind eye to the use of mobile phones and drug use.

The main defendant, his wife and the fourth defendant were of Albanian-Kosovan origin. The second defendant and his steady girlfriend were Romanian. The two prison guards were Belgian.

1.1.2. | Opening the case

The new owners opened the bar at the beginning of September 2012. The investigators noticed the presence of various defendants during a short period of surveillance.

The manager worked with four or five girls of Eastern European origin per night/day. A rotation system was used, in which new girls were regularly introduced.

The key figure was in prison and operating behind the scenes. An extensive telephone investigation showed that this didn't prevent him from having numerous phone contacts with members of his entourage.

On 11 December 2012, investigators from Bruges' local police force noticed, while on patrol, that two people were going from one shop to another. However, as soon as they entered the shop, they went their separate ways. They stayed longer in the shop and had little or no contact with each other. The suspicious behaviour led to their identification by the investigators. They were the manager and a girl who worked in the bar. At the station, their handbags were thoroughly searched and the investigators found a total of EUR 9,370 in them. Their phones were also checked, but no information was found to explain the suspicious behaviour.

1.1.3. | Investigation

a) Phone investigation and phone taps

The particularly dominant role played by the main defendant emerged from various phone tap fragments. From prison, he explained quite simply that he was the only 'boss': "I put it in her name: she's the boss, so to speak. But you know perfectly well what the deal is, don't you? (...)." And: "Let me explain something to you. There is only one boss, and that's me (...)".

His entourage also asked for his authorisation for certain things.

The phone taps also clearly revealed that the main defendant gave instructions and orders, which further confirmed his position as leader. Some instructions related to the price a certain client had to pay and the duration of the services. But he also took decisions about not declaring too much for tax purposes or about advertising for the bar. He also frequently checked on the members of his entourage and whether they had worked and how much they had earned.

He easily made threats and exerted a significant amount of pressure. The phone taps revealed that he often insulted the people he was speaking to. He used particularly derogatory language and even reproaches - even towards his wife or steady girlfriend. It wasn't uncommon for him to force the co-defendants to come and visit him or to send one of his victims: "Send the whore!", and: "Tell her she won't be having a good day!".

The phone taps also revealed that the main defendant used counter-intelligence techniques in relation to the justice system. During phone conversations, he ordered that certain things should only be discussed during the prison visit, and not over the phone, as he knew that it was tapped. The co-defendants followed these instructions to the letter: in a conversation between his wife and her niece (the fourth defendant), the wife of the main defendant explained that his name couldn't be mentioned.

Text messages between the bar manager and the convicted prison guard were also found. The text messages ended with the words "sleep well, see you...", proving that their relationship was more than a "prison officer - visitor" relationship. In addition, he informed the bar manager that they were going to carry out a cell check, but that the main defendant already knew this. He also repeatedly referred to a "small device" with which the main defendant would contact her. In exchange for these services, he could drink for free and use the services of the girls, just like the second prison guard[117].

117 In the court's opinion, the criminal information didn't contain sufficient objective and consistent data to determine with the certainty required by law that the sixth defendant had in fact engaged in passive corruption. Nevertheless, the court found the sixth defendant's visits to the main defendant's bar to be ethically questionable.

The content of the messages also proves that the prison officer knew what was going on in the bar.

b) Internet

Social media and the internet are modern investigation tools. In this case, the police used the Facebook accounts of people who had already been identified to detect a victim and identify a suspect.

On the subpage of a suspect's Facebook account, there was a photo of a pink bench with a text containing the name of the bar in question. The police studied the reactions and "likes" under the photo. One victim was identified among the "likes". According to the Facebook page, the victim lived in Romania and was friends with two people associated with the bar. The victim was also known to the police after being identified during a traffic check in a prostitution zone.

A second suspected prison guard was also identified through a Facebook account. The phone investigation provided strong evidence of the involvement of a second prison officer. During an authorised interception procedure, a first name was mentioned that was possibly the second prison guard. The Facebook friends list of the prison guard already identified was used to identify the second suspected prison guard.

c) Financial analysis

The main defendant changed his address to a campsite, where he ran one of his commercial establishments, a chip shop/pizzeria/sandwich shop. According to police intelligence, this site was considered to be the base from which the main defendant carried out his criminal activities. The prostitutes who worked for him had to hand over the money to him there. He acted as a kind of godfather and had certain accomplices who committed robberies on his behalf and made girls work in prostitution. The girls also had to buy their drugs there.

The co-partners and co-managers could all be linked to the prostitution industry. The third partner was already subjected to a check in 2010 in a bar in Rue d'Aerschot in Brussels. This place is known as a red-light district where girls are sometimes placed by traffickers. One of his female accomplices (fourth defendant, the wife's niece) worked in the chip shop/pizzeria.

According to the Financial Intelligence Processing Unit (FIPU - CTIF in French/CFI in Dutch), there were already serious indications of money laundering as a result of human trafficking, regarding both the co-partners and co-managers of this company and for a number of people associated with the network. In cases like this, there is a lot of cash in circulation, which is used in the criminal sector for money laundering activities.

The investigating judge requested the Western Union money transfers. The analysis showed that the bar manager had carried out 10 transactions for a total amount of EUR 2,220 during the period under consideration. The destination countries of the funds sent were Romania (eight transactions), Macedonia (one transaction) and Kosovo (one transaction).

A safe was also examined by the investigators. They found an envelope containing a total of EUR 11,500 in cash, which was confiscated. This money was suspicious and indicated the presence of prostitution activities.

A witness also explained how the main defendant had manipulated a client into paying the rent for the bar during the renovation works. The main defendant had instructed his wife to prostitute herself with the client to get money. The witness said, "It's like they had a relationship, but it was just about the money".

1.1.4. | Analysis of the victims

The girls employed were of Romanian or Belgian origin, except for a Franco-Algerian girl. The main defendant had already claimed other victims in the past, including a French girl seduced in 1997.

a) Victim statements

The statements of two victims revealed that the wages agreed in the employment contracts weren't what was paid in reality. Instead they were paid proportionally (60/40 for champagne and 50/50 for "in room" activities), and the girls weren't paid at all if they hadn't had a drink with the clients or hadn't "organised bedroom activities". One of the girls stated that once, they had worked at least 18 hours without getting paid.

One of the girls also spoke about the long working days. She explained to the investigators that the "service" started at 20:00 and ended at around 08:00 or 09:00 the next morning, when the last client left.

b) *Loverboy*

The main defendant had an intimate relationship with several women. The victims of prostitution were referred to as "his" daughters. The main defendant also made this clear in a phone conversation with a victim: "Don't listen to her (his wife, co-defendant). You don't have a relationship with her, you have a relationship with me".

Earlier French victim

A French victim explained how the main defendant seduced her with the *loverboy* technique when she met him in 1997, when she was working as a window prostitute: "At the time, T. (the main defendant) started playing with my feelings. He went so far that I fell madly in love with him. T. said that his relationship with D. was going very badly. He presented his whole relationship in a negative light, so I took a chance. During this period, T. had a relationship with D. and with me. I became pregnant after three months".

She stated that he not only played on her emotions[118], but also on those of his other girlfriend, who was unaware of their relationship. After she gave birth, the main defendant had a relationship with a third woman, which led to a suicide attempt by the girl with whom he was initially in a relationship. He played the women off against each other.

This victim's testimony also illustrates how the main defendant used the *loverboy* technique to play with the victims' feelings by making them pregnant[119]. The French woman explained that he manipulated her as the mother of his child by explaining that she was the only one of the three with whom he had fathered a child. He thus sweet-talked her into returning to prostitution. The French victim stated that she wasn't the only one he had had children with. She was almost certain that his wife's niece also had a child with him. In addition, he had a 13-year-old son with another ex. He also manipulated the French victim to transfer money. Her father and brother died the same week, entitling her to an inheritance. She transferred her entire inheritance of EUR 25,000 out of pity. He promised to pay it all back, but she only received EUR 10,000 in return. She also gave him EUR 3,000 for their daughter's education.

Romanian prostitution victim B.

He manipulated another victim. She was the only one who applied for victim status[120]. The victim stated that she went to the prison with a female friend in November 2012 to visit her husband. As the manager of the bar in the visitors' room, the main defendant went to sit at her table. During the next visit, the main defendant asked her friend for the victim's number. Shortly afterwards, he called her from prison. He told her that he thought she was beautiful, but that he wanted to get to know her better and asked her if she wanted to visit him.

During her hearing, the investigators confronted her with the truth that she could have been manipulated by this relationship to work in prostitution: "You're asking me whether my job in the bar could have been controlled by T., as the following statement proves: "Following my first visit to T., it should be noted that the nephew M. was also there, with whom I later had a relationship, following which I went to live at the address of T.'s entourage (above the bar). In the beginning, I was employed as a babysitter, but to increase my income, I ended up in the bar. I don't know what to say. It is extremely difficult to hear the truth. I persuaded myself otherwise. I know that the relationship with M. isn't really what it appeared to be. I can see everything from another angle now. I want to rest".

After discussions over the phone, the main defendant clearly indicated that he had brought the victim to Belgium for his own prostitution purpose and not for his cousin. She was supposed to continue working for him: "I brought her here for me and not for the nephew, M. Is that clear?".

c) *Violence*

The main defendant didn't hesitate to use violence on his girlfriends. According to a witness, for instance, he hit the French victim with a car jack until she was unconscious.

118 He promised to leave the other girl several times.

119 Myria, *2015 Annual Report Trafficking and smuggling of human beings: Tightening the links*, pp. 29-30.

120 The file didn't contain any additional information on the possible referral of the victim to a specialised centre for victims of human trafficking under the victim status procedure.

The French victim, who is also the mother of her daughter, stated that she had been hit several times. The first time was after going to a disco. He took what she said the wrong way and hit her. She then left, but he played on her emotions and she came back. The situation then escalated, and the beatings became commonplace. At one point she even was locked up in a shed with the dog.

In her statement, she later claimed that the beatings had resulted in her not being able to work on several occasions. She regularly feared for her life and later spoke about another event:

"He beat me for a long time at the bar. He hit me with a bottle: threw me right across the room, onto a glass table, ... he was always asking me for explanations. But every time I wanted to say something, he punched me. I couldn't do anything after that for four weeks. My face had become unrecognisable as a result of the blows. However, I was never taken to hospital, even though I needed medical attention".

She explained that she wasn't the only one in this situation. She witnessed him beating his friend who later tried to commit suicide. Her daughter later saw that his current wife was covered in bruises.

The violence wasn't only physical, but also psychological. The woman stated that he wanted to break her emotionally. The hearing had to be interrupted twice due to her emotional state. She stated that owing to her relationship with the main defendant, she was completely isolated from her family in France and that she had become addicted to alcohol and drugs.

d) Intimidation tactics

The women were intimidated by the main defendant and his entourage.

At the end of the hearing, the French victim expressed concern that she or her children might be the subject of reprisals.

The main defendant asked to hear from the mother of his 13-year-old son. She was one of his exes. She immediately said that she wouldn't say anything negative about him, for the sake of her son. She pointed out that if she said anything bad about the main defendant, it would turn against her. This had happened several times in the past when she had told the truth about her son's father.

Another victim of the main defendant, the Romanian woman F., said in a message to the bar manager that she wanted the niece of the wife of the main defendant (the fourth defendant) to leave her alone. She explained that she didn't want to be afraid of anyone coming to get her. In addition, the Albanian-Kosovan gang was also guilty of manipulating this victim. She stated that she had been contacted by the cousin of the main defendant to make a statement in his favour. She did this by making a statement to the lawyer of the first or second defendant. She was also contacted by the main defendant, from prison, who asked her not to lie about the club of which he was the boss, in her opinion.

1.1.5. | The non-punishment principle[121]

According to the non-punishment principle, victims shouldn't be punished for offences committed as part of or as a result of the process of human trafficking. The idea behind the concept of non-punishment is that, despite committing an offence, the victim acted without real autonomy, either because of the degree of control exercised by the traffickers, or because of the methods used by them[122].

The Romanian victim B. (see *Victim statements* section) was arrested after a search of the bar and initially questioned as a suspect for participation in human trafficking for the purpose of exploitation of a place of debauchery. She was working in the bar and the phone she lost was the very phone that had been brought into prison for the main defendant. She denied having any connection with these acts and stated that the main defendant's entourage knew her PIN code. In addition, she was in a relationship with the cousin of the main defendant's wife and had moved into the household of the main defendant's entourage. After her hearing, she wished to invoke the status of victim and was considered as such.

The interpretation and application of the non-punishment principle can sometimes be a grey area subject to interpretation by prosecutors, the police and judges. This non-punishment principle has been enshrined in the Criminal Code since the Act of 22 May 2019 on trafficking in human organs and on the principle of non-punishment of victims of human trafficking.

121 Myria, *2012 Annual Report Trafficking and smuggling of human beings: Building trust*, pp. 8-40.
122 Myria, *2015 Annual Report Trafficking and smuggling of human beings: Tightening the links*, p. 36.

According to this principle, the responsibility of the offender isn't contested, but no punishment can be imposed[123]. Among the victims of *loverboys* who work as prostitutes, three profiles can be established: the victims, the grey area and the perpetrators. There are different levels within the profiles[124]. These profiles correspond to the three defendants who were pressured by the main defendant and with whom they had an intimate relationship. He was married to the third defendant, the second defendant was his steady girlfriend and the fourth defendant was an ex-girlfriend.

The criminal case file shows that the three defendants were pressured and threatened by the main defendant. This became apparent when he called all three of them. He ordered them to listen, threatened them that people would be sent away and that they would be given a hard time during their visit. He threatened them as follows: "I'm going to break you, you filthy whore. Say it, because I'm going to break you as soon as you come to visit. It's up to you". But also: "When you come to visit, you'll see. I'll rip you apart, I don't care".

The wife of the main defendant (third defendant) had more characteristics of a victim than of a perpetrator (see *Victim statements* section). Therefore, she was only prosecuted for forgery. The court found that she had actively participated in degrading practices by drawing up false employment contracts. Since she was under pressure, and since an improvement was expected on her side, she was given a suspended prison sentence by the court. She had nevertheless been on remand for three months.

The file revealed that the main defendant met his wife when she was employed by a man as a "front man" in his bar and presented himself as her saviour. She stated that her husband wanted to get her out of the prostitution business and that they were going to start a catering business together. He seduced her using the *loverboy* method, married her and put her to work in his prostitution bar. According to witnesses, he used violence against her and, when she allowed the police to enter while he was in prison, he threatened to kill her: "I'll finish you off when you visit, and I'll get 20 years in prison for you, you filthy whore!".

123 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims*, p. 102.

124 Myria, *2015 Annual Report Trafficking and smuggling in human beings, Tightening the links*, pp. 36-44.

The potentially criminal actions of the niece of the main defendant's wife (fourth defendant) fell into the grey area. The main defendant also used the *loverboy* technique to have a child with her. She was seen as an intermediary between the girls and the main defendant. At the same time, the main defendant ordered an accomplice by phone to beat her, because she didn't pick up the phone when he called. The court only found her guilty of complicity in pimping with aggravating circumstances. Since she was under pressure, and since an improvement was hoped for on her side, she was given a suspended prison sentence by the court.

The bar manager (second defendant) engaged in acting as a of violent behaviour, making it clear that she was a perpetrator. A victim stated that she had to perform a striptease against her will and that she was beaten by the bar manager, after which she had to undress. She was mainly prosecuted for the same offences as the main defendant, but the court took into account the fact that she had acted under the influence of the main defendant. Her sentence was therefore lighter.

1.2. | Labour exploitation

Case: bogus posted worker scheme in the pallet sector

Introduction

This case concerns human trafficking for the purpose of labour exploitation, slum landlords and forgery[125]. Eight defendants, including several companies as legal entities, were prosecuted for acts dating from 2008 to 2011. Obviously, similar events could well have taken place before 2008. Several victims, Payoke and Myria, filed civil suits.

After the dismissal of a defendant's cassation appeal, the trial was finally completed in May 2019.

125 Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online*, p. 115: Antwerp Crim. Cour, Turnhout division, 18 January 2017, ch. TC1; Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims,* p. 123-124 : Antwerp Appeal Court, 24 January 2019, ch. 6 C. These decisions can be consulted on the Myria website: www.myria.be

Several defendants were convicted and sentenced at first instance, but the court of appeal decided that the reasonable time limit had been exceeded, so the sentences were reduced to suspended prison sentences and partially suspended fines. In addition, two defendants were acquitted. The amount confiscated was EUR 12,396.69. The victims were awarded non-pecuniary and pecuniary damages. Payoke and Myria were awarded one euro each in damages.

The defendants had set up a legal arrangement through companies with bogus postings to supply foreign workers to Belgian clients. The victims worked for (partly) undeclared wages, well below the Belgian minimum wage, and the work was sometimes accompanied by serious violations of human dignity.

1.2.1. | Structure of the network

a) Structure

The first Belgian defendant was the head of the pallet company. He had set up a legal arrangement and created a P.O. box company in Bulgaria without any substantial activity. This meant that he illegally posted Polish and Bulgarian workers to Belgium. He also worked with Polish and Romanian subcontractors who provided him with cheap labour. These subcontractors were also tried as co-defendants.

The Polish co-defendant was one of the subcontractors who provided the Belgian main defendant with cheap labour.

One of the perpetrators was initially a victim[126]. He first answered an advert in a newspaper offering a job in a pallet factory in Belgium. The more pallets he restored, the more money he would earn. In the beginning, he worked in production and then became a supervisor for the Polish main defendant. He would pick up the new workers at the bus station and take them to the place where they would stay during their employment. There they were informed of the rules regarding the rental arrangements and payment of wages, after which he took the workers to the pallet factory. On site, he was responsible for checking the pallets, distributing the work, monitoring and recording both the hours worked and the number of pallets repaired per worker. If the workers were ill, they had to inform him. He would decide if a worker was to be dismissed and would pass on the production figures to the Polish co-defendant in charge of wage calculations.

b) Modus operandi

The workers, recruited in Bulgaria through an online advertisement, were shown a promotional film in which working and living conditions in Belgium were presented in a more attractive light than they actually were. The posting company paid for transport and travel, but recovered the costs from the foreign workers' wages.

In Belgium, they worked for the Belgian company manager who repaired pallets for other companies.

The wage conditions were far from what they had been promised in Bulgaria. The Polish company owner sometimes withheld all or part of the money in order to coerce the foreign workers: "work or no pay". He also used invalid bank account numbers to prove that the wages of the foreign workers had been paid, which led to numerous complaints.

The working hours they were promised in Bulgaria were nothing like those in Belgium. Instead of eight hours, their working days often lasted 10 to 12 hours, not counting weekend work.

The Belgian company manager also collaborated with another subcontractor who brought Romanian workers to Belgium on a large scale through his Romanian company. He always acted as an intermediary for the employment of posted Romanian workers. This subcontractor also offered workers to other companies in Belgium.

1.2.2. | Start of the investigation/ initial police report

The case came to light on 29 January 2009 following the natural death of a Polish national who worked as a pallet maker/repairer for the main Belgian defendant. The victim died of a severe form of diabetes, for which he should have gone to a hospital in Poland in December 2008. He never made it as he had no money

126 The court found him guilty as a perpetrator in relation to the other victims and also recognised him as a victims of human trafficking with regard to the other defendants.

to pay for the trip or to buy the necessary food. At the time of his death, the defendant still owed him at least EUR 6,000.

The names of the Belgian main defendant and the Polish defendant had already been mentioned in a report by the local police of Ninove in November 2006; at the time, two Polish workers had returned home and made statements.

Four Bulgarians, who spoke poor German, went to the local police to lodge a complaint against their employer. The latter had deceived them and was withholding a large part of their wages. They also carried a handwritten letter asking for help and stating that they were victims of human trafficking. Eleven people had signed the letter by name. They were living in miserable conditions and were picked up by a person who took them to the pallet factory of the Belgian main defendant. They worked 12 hours a day for EUR 3 per hour. In addition, the company owner withheld EUR 215 per month from their wages to cover their living expenses.

The local police contacted the Labour Inspectorate (Social Legaslation Inspectorate department of FPS Employment, Labour and Social Dialogue) and asked whether the company had registered any of the complainants in Dimona[127], which turned out not to be the case. The local police contacted the human trafficking unit of the Federal Judicial Police (FJP) to continue the investigation, as well as the reference magistrate for human trafficking. In addition, they requested a Bulgarian interpreter for the subsequent hearing of the victims. Using the list on the back of the letter, the local police were able to identify several other people who had co-signed the letter and contacted them.

1.2.3. | Criminal investigation

In February 2009, the public prosecutor's office referred the case to an investigating judge and searches and arrests were carried out.

Based on the complaint and the questioning of the four Bulgarian workers who had presented themselves to the local police, five other Bulgarian workers were found during a check at the pallet company's site. They were all owed back wages but none of them wanted to file a complaint initially. A search warrant was issued for the accommodation of the foreign workers. Another five Bulgarian workers were found there, who were on strike for non-payment of wages and were ready to file a complaint.

a) Financial aspect

According to the police inspectors, the Belgian company manager invested the criminal proceeds in real estate and other luxury goods. In addition to the properties he rented, the main defendant owned a loft and a boat registered in the Netherlands. He regularly deposited cash with his parents.

The Polish subcontractor refused to cooperate with the investigation because the main Belgian main defendant had promised him a sum of money in exchange for his silence.

The Polish subcontractor invested the criminal proceeds in stays at exclusive ski resorts in Switzerland and France and in products such as flight simulators.

b) International cooperation

Several Polish workers had filed a complaint against their employer, the posting company, through the Polish embassy in Bulgaria on 17 February 2010. They asked for an investigation into the company's practices in Belgium. The Polish embassy asked the Bulgarian Ministry of Employment and Social Policy for an explanation regarding the Polish workers. At the same time, a request was made to continue the investigation in Belgium.

A group of Bulgarians who worked as posted workers for the Polish subcontractor, also lodged a complaint with the Bulgarian embassy in Brussels on 26 February 2010. The complaint concerned the non-payment of wages due and the unsanitary conditions of the accommodation. Further information was requested regarding the complaint, but the answers were patchy. One of the Bulgarian victims stated that after the complaint to the embassy, the Polish subcontractor suddenly paid the wages of the Bulgarians and most of them then returned to their home country.

The investigation by the Labour Inspectorate in Bulgaria and the conclusions in Belgium clearly showed that this company was a P.O. box company with no substantial activities.

127 Dimona (Déclaration IMmédiate/ONmiddellijke Aangifte - immediate declaration) is an electronic reporting system that allows employers to declare the start and end finish of a contractual relationship with a worker to the NSSO.

Consequently, FPS Social Security requested the withdrawal of all E101[128] documents in the name of the company concerned in Bulgaria.

After checking with the relevant Bulgarian authorities, the Bulgarian revenue department found no record of the names of the Bulgarian and Polish workers. In other words, the Bulgarian company used false documents and the declared workers were therefore not covered by social security in the sending state.

c) Internet search: email traffic

It appears from an exchange of emails that both the Belgian company manager and the Polish subcontractor were aware of the serious abuses committed against the Bulgarian workers regarding the non-payment of their wages as well as housing and rent collection.

Another email revealed that the Polish subcontractor and his wife were aware of the scheme. The Belgian main defendant asked them to withdraw cash from the bank.

1.2.4. | Analysis of the victims[129]

The victims were mostly Bulgarian but there were also several Romanian and Polish victims.

a) Victim status

The victims were informed of their status as victims of trafficking through the multilingual brochure and expressed interest. Twelve victims agreed to cooperate by filing a complaint for trafficking and wished to be referred to the specialised centres for victims.

Several Bulgarian victims wanted to return to their home country as soon as possible. They declined any legal assistance, but weren't sufficiently aware that doing so would reduce their chances of obtaining financial compensation. They also received information in the form of the multilingual victim brochure, but didn't wish to apply for victim status.

At the time of the statement, the FJP's human trafficking unit was unable to interview the victims owing to other priorities and informed the human trafficking reference magistrate and the specialised centres about this.

Owing to a lack of capacity, the specialised centres were temporarily unable to offer residential care at that time. Social services (CPAS) offered to accommodate all the Bulgarian workers concerned, on a voluntary basis, at a holiday centre.

A week later, two of the three specialised centres were able to accommodate the victims. Payoke admitted eight victims, Sürya the other four. They had broken off all contact with the company and were ready to participate in the required counselling in the specialised reception centres.

The victims' hearings took place at the specialised centres, an environment that made them feel more at ease. A member of staff from the specialised centres was allowed to assist the victims during their hearing.

A number of victims who had been granted the status also wished to be reunited with their families in their country of origin, i.e. Bulgaria, after a while. The specialised centres informed the police and the reference magistrate in writing that their assistance had been discontinued owing to the victims' return to Bulgaria. Further interviews with Myria revealed that the centres had put the victims in contact with a pro deo lawyer before their departure so that they would have the opportunity to be represented in subsequent proceedings. As a result, almost a decade later, several victims acted as a civil party in the proceedings.

b) Victim statements

In their complaint, the victims spoke of the appalling conditions in which they had been housed. They slept on the floor and there was only one bathroom with a toilet for 12 people. There was also only one kitchen area. The company manager deducted EUR 215 per month from their salary for their accommodation, which they hadn't necessarily been informed about in advance. The owner rented the property for EUR 1,000 per month from his Belgian client. The occupancy rate varied, but with a maximum occupancy of 15 people, he made a monthly profit of EUR 2,225.

Regarding wages, payment was per pallet, whereas in Bulgaria an hourly wage of EUR 7 had been promised.

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128 Documents confirming that the person is subject to the social security system of the Member State from which they are posted, now replaced by A1 documents.

129 Myria, *2019 Annual Report Trafficking and smuggling of human beings, Empowering victims,* pp. 77-80.

The Bulgarian workers received nothing if they fell ill. Sometimes the salary wasn't paid, sometimes only partially. The wages paid between November 2009 and February 2010 didn't compare with the income generated by the company in question during the same period. The Polish defendant's claim that he didn't have sufficient funds to pay the workers was therefore unfounded.

In addition to the deplorable housing conditions, working conditions were also extremely poor. The foreign workers worked long hours, usually six days a week, without extra compensation. They worked in extremely low temperatures in unheated rooms. Promised safety clothing wasn't provided. Investigations showed that the foreign workers had no social or health insurance in Bulgaria and that their wages weren't declared to the Bulgarian Ministry of Labour.

c) Empowerment

Two Bulgarian victims who had filed a complaint with the local police in Belgium took the initiative to raise awareness among other would-be workers about the misleading promises and abuses of the pallet company and the subcontractors involved.

One of the Bulgarian victims set up a website warning Bulgarian workers about the company's practices. According to several victim statements, the other Bulgarian who filed a complaint set up a website to unite all the workers who were deceived.

2. Human smuggling

Case: Syrian smuggling network with flights to countries in the Schengen Area

Introduction

In this case, a Syrian network put Syrian victims with fake documents ("look-alike" method)[130] on flights to several European countries, including Belgium, Germany, France, the Netherlands and Sweden in 2014 and 2015. The United Kingdom wasn't among the final destinations.

Several defendants were convicted by Ghent Criminal Court for human trafficking and criminal organisation[131]. A staff member of the Syrian embassy in Paris, who had temporary diplomatic immunity, was acquitted for lack of evidence (see *International cooperation* section).

2.1. | Structure of the network

The smuggling network operated internationally, smuggling Syrian victims from Turkey and Greece to European destinations on flights to Paris and Brussels. Fake Belgian, French, Hungarian and Swedish identity documents were used. The organisation had safe houses in Athens, Crete, Paris and Ghent. The smuggling network cooperated with other smuggling networks. The phone numbers of the network appeared structurally in several smuggling cases: two Hungarian, one German and one Finnish.

The smuggling victims were from the same region in Syria. One defendant was responsible for recruiting victims in Latakia, in Syria, a small Mediterranean town close to the Turkish border.

130 The "look-alike "method consists of using the identity document of someone who looks very similar.

131 East Flanders Crim. Court, Ghent division, 16 October 2017, ch. G28m. The case is definitively closed. Myria, *2016 Annual Report, Trafficking and smuggling of human beings, Minors in major danger*, p. 130-131.

Before their departure, the smugglers asked the victims to send their identity documents by DHL to a co-defendant in Belgium. This person was the brother of the recruiter in Syria. Upon arrival, their real identity documents were returned to them to enable them to apply for asylum in their destination country.

The smuggling victims had organised their own travel from Latakia to Turkey or had been taken by boat to Mersin in Turkey. In Mersin, they stayed in hotels at their own expense, while waiting to travel to the Schengen area. Some victims were taken to Istanbul airport and flown to Brussels using look-alike documents. But most of the smuggling victims were taken by ferry or dinghy from Bodrum (Turkey) to the island of Kos (Greece) and then to the airport in Crete or Athens. There, they also took a flight with look-alike documents to Paris or Brussels airport, where they were taken to their destination, or continued their journey by plane to Sweden.

2.2. | Start of the investigation

The police had obtained information showing that the main defendant had set up an international smuggling route from Syria with his brother, in which Zaventem airport played a role. Furthermore, the main defendant was known to the police for his contacts with Syrian fighters, so his activities were immediately noticed. In addition, the main defendant had contacts with drug dealers, roving gangs of criminals and the Hungarian prostitution scene.
The money laundering unit at FIPU (Financial Intelligence Processing Unit) had already reported suspicious financial transactions made by the main defendant to Syria to the public prosecutor.

Based on this, the public prosecutor's office launched an investigation into the phone contacts and an investigation into the money transfers, which revealed involvement in smuggling activities. An investigating judge was then appointed to conduct further investigations.

2.3. | Criminal investigation

A more detailed investigation involving searches, chat conversations and the analysis of smartphones and computers revealed that sums of money had been paid to the main defendant to smuggle people into Belgium (on average between EUR 4,000 and EUR 4,500).

Examination of the various data contained in the smartphones made it possible to identify numerous persons associated with smuggling activities on the basis of certain conversations.

2.3.1. | Social media

The judiciary and the police used social media as an investigative tool to gather evidence of smuggling and to identify the smugglers.

An examination of the main defendant's smartphone revealed numerous conversations about smuggling activities and photos of identity documents and passport photos (portrait photos) using the Viber application. It emerged from chat discussions that the smugglers asked if "the photos were similar enough" and used coded language to do so. The main defendant even asked another smuggler "if he had someone who looked like a boy whose photos he had sent". There were also discussions between the smugglers about the amounts of money asked for.

Detectives were able to identify a co-defendant in Crete by analysing a Facebook account through an open source investigation. The file showed that the main defendant had a key smuggling contact in Crete who managed their safehouse there. By analysing the friends list on the main defendant's Facebook account, the police were able to identify the person presented as the manager of a car company.

In addition, thanks to Facebook searches, investigators were able to identify a family with small children as victims of smuggling and trace them in Sweden, where they were later able to interview them. When examining the smartphone of the main defendant, photos of four original passports of a Syrian family with two young children aged two and six years old, received via Viber and WhatsApp, were found. Messages mentioning the amounts relating to the smuggling of this family were successfully intercepted.

In the end, only the father of the family was smuggled, and a fake French identity card was also found on his smartphone. Through open source searches, the police found the Syrian woman's Facebook page, which showed that the family was living in Sweden (Stockholm). The friends list included several people with the same surname as the victims. Several photos on the Facebook page perfectly matched the photos on the Syrian passports. Following a request sent to the Immigration Office, it emerged that Sweden had granted the father subsidiary protection in March 2015 and that his family had subsequently come to Sweden on the basis of family reunification.

2.3.2. | International cooperation

The investigating judge sent international requests for mutual assistance to France, Greece and Sweden.

The French part of the investigation into the role of a Syrian member of staff at the embassy in Paris had to be withdrawn for procedural reasons. The embassy staff member had diplomatic immunity when the French authorities conducted their investigation.

In Greece, searches and questioning led to new evidence on the role of the person responsible for the safe house in Crete, who was the manager of a car company.

In Sweden, the parents of the family traced via Facebook were heard (see *Social media* section). The father confirmed that the main defendant picked him up at Paris airport and took him to Ghent, where he stayed at the home of another defendant. The problem was that the original documents of the letters rogatory hadn't been translated and only a brief summary was available. The statements of the parents as victims could therefore not be read.

2.4. | Analysis of the victims

Based on chat conversations, investigators were able to establish that at least 291 victims of smuggling, including children accompanied by their parents, were involved in this case. Most of them couldn't be identified.

The Syrian smuggling victims applied for asylum in the countries of destination, i.e. Germany, Sweden and Belgium. They weren't interested in the victim of smuggling status in Belgium. Some of them were acquaintances of the smugglers. However, some of the smuggling victims were willing to make statements incriminating the smugglers.

2.4.1. | Victim statements, threats

Some smuggling victims were afraid and mentioned this in their statements.

Victim X

A Syrian smuggling victim was checked at Zaventem airport on arrival from Athens along with the main defendant. The police discovered that the smuggling victim's Hungarian documents were fake. The same documents had also appeared in a Hungarian smuggling case in which Syrians were smuggled into Europe.

The smuggling victim stated that he had met the main defendant at a friend's house in Athens and had paid him EUR 4,000 to be smuggled to Amsterdam (Netherlands) where his relatives were staying. As for the main defendant, he claimed that his companion was an old friend whom he had met in Crete and who lived in Hungary. According to him, they had flown together from Athens to Brussels because his friend wanted to go to Amsterdam for a few days. The police found that the main defendant was in possession of EUR 4,340. During the police check at Zaventem, the main defendant tried to have a discreet conversation with the smuggling victim. Subsequently, the smuggling victim stated during his hearing that he had asked him "if he had said anything about the money". After his hearing, the victim revealed to the police that he was afraid of reprisals and wanted to leave the airport discreetly.

He then disappeared without a trace. The investigators later approached immigration services for information on this subject. It emerged that the Immigration Office did have a file on the person intercepted at Zaventem airport, but that it had no record of an asylum application in relation to the identities provided.

In the Netherlands, no trace of the person concerned could be found either based on the identities used and declared. Further searches of the smuggling victim's fingerprints in the Eurodac system didn't yield any results either.

Smuggling victim Y

Another Syrian victim had meanwhile sought asylum in Germany where his family was located. He made the statements because he hadn't received the promised smuggling services for the amount he had paid and had been threatened when he demanded partial reimbursement.

He said he was brought from Turkey to the safe house in Crete by the smugglers in order to fly from Athens to Zaventem with fake documents. But the main defendant, who was arrested in the meantime, told the smuggling victim that he couldn't help him anymore and that he would have to fend for himself in Crete.

A few months later, the smuggling victim arrived in Belgium and phoned one of the smugglers to retrieve his real identity documents, which he had sent by DHL. When he reclaimed the money, he and his family were threatened by the smuggler.

2.4.2. | Minors

Fake identity documents of families with children were found on the main defendant's smartphone (see *Social media* section). According to the chat conversation, one of the smugglers sent photos of a family to the main defendant. One of the photos showed three young children under the age of 12. The parents were shown in the others. The smuggler informed the main defendant that they were undocumented and staying in Turkey. Agreements were then made, for instance on the prices for smuggling. These digital traces showed that the smuggling network also smuggled families with children.

External contribution Dutch rapporteur on trafficking in human beings and sexual violence against children

The view of the Dutch rapporteur on the Belgian and Dutch human trafficking situation

This year, Myria also requested an external contribution from the Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children as part of an international collaboration. This is crucial to fight a phenomenon such as human trafficking, which also involves the actions of various international networks. This contribution is an important first step in this direction.

Here, the Dutch rapporteur shares some interesting observations on the problems encountered in the approach to human trafficking in the field. Some parallels can be drawn with the situation in Belgium where similar difficulties have been identified, in particular with Nigerian networks (see below).

Several aspects have already been covered in the various focuses of previous annual reports on human trafficking by Myria, accompanied by a number of recommendations. In particular, there are the two annual reports dealing with the issue of victims of *loverboys*[132] and the role of technology[133]. The latter report examines how the police and the judiciary use social media as investigation tools. In addition, Myria's annual reports always contain a full chapter on case law, with a significant part dedicated to labour exploitation. The annual analysis of labour exploitation cases shows how social inspection services, the police, reference magistrates (labour prosecutor's office, public prosecutor's office) and investigating judges deal with them.

An interesting parallel can be drawn between the Dutch and Belgian situations regarding minor victims of human trafficking, in particular the difficulty of detecting unaccompanied minors. In addition, many of these minor victims do not receive adequate protection from the Belgian and Dutch authorities.

The focus in Myria's 2018 annual report[134] targeted the precarious situation of minor victims of trafficking. It includes specific recommendations for minor victims of human trafficking. Nigerian victims featured as an example.

In Belgian cases, it is possible to establish that the Nigerian prostitution networks operate internationally, resulting in several victims in the Netherlands and Belgium. The police identify very few underage Nigerian girls as presumed victims of human trafficking. Underage girls are forced by their exploiters to pretend to be of age. They have no documents and are therefore not detected by the police as minors. It is essential to raise awareness among the police about the methods and counter-strategies of the Nigerian networks, otherwise, very few Nigerian child victims can be detected.

Frontline services need to be made aware of the specific vulnerable situation of child victims such as these young Nigerian women. The police have only one chance to rescue a Nigerian victim from the clutches of her pimp and the prostitution network. Nigerian networks are very "professional", operate internationally and immediately move their victims to another prostitution location abroad. If a Nigerian victim is intercepted, the police's specialised human trafficking unit should be called in to further process the case.

Often, checks are carried out by local police officers who have little or no expertise in human trafficking and who aren't aware of the status of victim of human trafficking. Their attitude often consists of targeting undocumented migrants in order to have them transferred to a detention centre for repatriation or to have them issued with an order to leave the territory (OLT). It is precisely in the case of undocumented Nigerian victims that the police don't ask about their age. In parallel, the madams and their accomplices aren't worried when there is a check,

132 Myria, *2015 Annual Report, Trafficking and smuggling of human beings, Tightening the links.*
133 Myria, *2017 Annual Report Trafficking and smuggling of human beings, Online.*
134 Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger.*

because they have (fake) identity documents. Undocumented Nigerian victims should never be considered as "illegal immigrants who need to be repatriated", but as presumed victims of human trafficking who are eligible for victim status. This requires the local police and the authorities to be informed of this victim status.

Local authorities in towns and municipalities should be firmly advised that, according to the regulations in force, potential victims of human trafficking should be referred to specialised reception centres and not treated as undocumented migrants in the context of illegal stay. Although human trafficking is a federal matter, local authorities can't focus solely on combating nuisance.

This aspect is also relevant in relation to the discussion surrounding the sex work bill, as many undocumented Nigerian sex workers are currently working in local tolerance zones[135].

Interview with the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

National Rapporteur Herman Bolhaar reports to the government on the nature and extent of human trafficking and sexual violence against children in the Netherlands. The National Rapporteur monitors the effects of policy in the field and makes recommendations to improve the approach to human trafficking and sexual violence against children. Myria and the National Rapporteur have the same objective and cooperation is very important in this respect. In light of this, National Rapporteur Bolhaar was asked a number of questions.

How do you see the problem in the Netherlands?

"Every year, an estimated 5,000 people are trafficked into the Netherlands. Trafficking in human beings is a serious violation of on human dignity and integrity and a violation of personal freedom. Experiencing it can have lasting damaging effects and a significant impact on the lives of the victims. It is therefore very important that we try to prevent exploitation in the first place.

And if it does happen, it should be stopped as soon as possible, victims should be protected and offered help, and perpetrators should be found, prosecuted, convicted and resocialised. This can also prevent re-victimisation and re-offending by perpetrators".

"As National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, I am currently conducting independent research into the nature, scope and approach of these phenomena. It is my task to advise the Dutch government on how this approach can be improved. Last year, I met three target groups that I am particularly concerned about. They are:

1. young Dutch people who are victims and/or perpetrators of sexual violence and exploitation. Domestic sexual exploitation remains the most common form (about 50%) of human trafficking in the Netherlands. One in three perpetrators of domestic sexual exploitation is under 23 years of age at the time of the offence. It is estimated that half of the victims of domestic sexual exploitation are minors.
2. migrant workers who come to the Netherlands and who, because of their vulnerable position, are at risk of being exploited. Labour exploitation occurs mainly at the lower end of the labour market. This often involves low-paid, low-skilled and flexible labour in sectors such as construction, agriculture and horticulture, distribution, cleaning or the meat processing industry. In the Netherlands, more than 400,000 migrant workers are employed in these sectors. Migrant workers are more vulnerable if they don't speak Dutch, for instance, or if they are in the Netherlands illegally. It is unclear how many migrant workers are affected by labour exploitation.
3. other vulnerable people in migration flows, such as African migrants and refugees and unaccompanied minors from countries like Vietnam. They risk being abused and exploited on their migration route. The Netherlands can be both the country of destination and the country of transit. Undocumented migrants in the Netherlands are also subject to this vulnerability."

What do you think should happen?

"There are no simple solutions to these complex problems. Human trafficking is rapidly changing in nature and becoming less visible as it increasingly takes place online.

135 On this subject, also see the conclusion of Chapter 1, Part 1, on sex work.

More and more authorities and governments — at local, regional and national level — recognise the urgency of this problem. This is a significant development".

"Furthermore, our research and numerous contacts in the professional and administrative field show that the different forms of sexual exploitation and abuse are strongly intertwined and interrelated in different areas. In the context of a complex multi-problem environment and subversive crime, they can't be considered separately. The use of social media, the internet and technology is also a common thread. In addition, the coronavirus crisis has made the above-mentioned target groups even more vulnerable. This calls for a strong and integrated approach".

"Sexual violence and exploitation is a major social problem. Our recent investigations have shown that this affects many young people, whether they are victims or perpetrators. This is very serious, as sexual abuse has major, often long-term consequences. Moreover, when it comes to young victims and perpetrators, this puts the future prospects of these young people at risk, with all possible social consequences. However, there continues to be limited visibility concerning the group of child victims of sexual exploitation. Today, sexual exploitation in the Netherlands takes place almost exclusively in the less visible sectors, such as escorting, hotel and home-based prostitution".

"The internet and social media are playing an increasing role both in the contact between perpetrator and victim - such as approaching or threatening victims via social media - and in the exploitation itself. This requires a deeper understanding of victimisation and the practices of perpetrators of domestic sexual exploitation. Given the young age of victims and perpetrators, it is important to use this knowledge to reach this target group directly with preventive measures. Just as we give children swimming and road safety lessons, there should be structural programmes focusing on the prevention of sexual violence, in schools for example".

"Prevention also lies in measures to prevent repeat offending, such as the effective resocialisation of offenders. The efforts of all parties surrounding these young people are important. To effectively combat human trafficking, implementation must be effective. With support for professionals who are actually in contact with young people. Otherwise, it is both these young people and us, as society, who will soon pay the price".

You mentioned the risk of vulnerable migrant workers becoming victims of labour exploitation. What can be done to better protect these vulnerable migrant workers and these victims?

"Workers in low-paid, low-skilled jobs with flexible contracts, who are often migrant workers, are vulnerable to all kinds of abuse. In the worst cases, these abuses constitute labour exploitation. Migrant workers are often dependent (in many ways) on their employer and/or their temporary employment agency. Work, housing, transport and (health) insurance are offered in one package, so that the loss of work automatically leads to the loss of other basic needs. These relationships of dependency encourage abuse and, in some cases, are the basis for criminal earning models of dishonest employers and employment agents".

"In Dutch society and in case law, the line between serious disadvantage and labour exploitation still isn't sufficiently clear. Serious disadvantage often concerns cases of dishonest employers who seriously underpay their employees, make them work under poor conditions or commit other gross violations of labour law, but where, for instance, there is no demonstrable physical violence or abuse of a vulnerable position. Serious disadvantage isn't a term derived from criminal or administrative law, but is a concept that was introduced by the Social Affairs and Employment Inspectorate (ISZW - the Dutch Labour Inspectorate, editor's note)".

"The fact that there is still so much uncertainty about the position of these vulnerable people is worrying. However, more and more attention is being paid to the mechanisms that make workers and sectors vulnerable to labour exploitation. It is important to take stock of which workers and sectors are most vulnerable: this can vary considerably from one region or municipality to another. On the basis of a targeted local approach, labour exploitation can be effectively tackled".

What is the best way to combat cross-border human trafficking?

"The number of reports of foreign victims of human trafficking victims in the Netherlands is increasing.

The increase in the number of reports is mainly due to the growing number of victims, mainly Nigerians. Despite the large number of reports, little is known about the real problems behind them. As the reports often contain little or no evidence for a criminal investigation in the Netherlands, the cases almost always end prematurely or are transferred to foreign investigation services. So, we don't know what happened to this group of victims, what exactly they fell victim to, and how to prevent the occurrence of new victims".

"Furthermore, between 2015 and 2019, some 1,750 children disappeared from asylum centres in the Netherlands. We don't know where these children are or what is happening to them. What we do know is that they are at high risk of becoming victims of exploitation and sexual violence. Investigations carried out by the Expertise Centre on Trafficking and Smuggling in Human Beings (EMM) and the Migration Processes Analysis Laboratory (APM) show that there are indications of human trafficking and smuggling in connection with these missing persons. Given the international dimension of the problem, these studies should be conducted at European level, which is not yet the case. The urgency of this problem and the vulnerability of this group means that we must persevere. We need to shed light on the causes of this phenomenon and on how to tackle it".

How do you envisage international cooperation?

"An effective approach to human trafficking within migration flows doesn't stop at the Dutch border. Even if the exploitation itself doesn't take place in the Netherlands, this doesn't mean that the Netherlands has no responsibility. International treaties oblige the Netherlands to protect victims. In order to effectively combat human trafficking in migration flows, stop criminal organisations and thus protect (future) victims, it is necessary to understand how victimisation occurs in migration flows and what the causes are of the recent increase in the number of reports of human trafficking in this group. International cooperation and full collaboration between all Dutch parties involved in the approach (e.g. public prosecutor, police, NGOs, liaison officers) are essential in this respect".

"Furthermore, we see that sexual exploitation often takes place online: an app that recruits victims, a website where victims can be offered, a chat program that puts victims under pressure: all this is no longer limited to national borders. The changing nature of the problem also requires an international approach: who is concerned, what form do the problems take and what can we do to prevent, detect, stop, punish and provide appropriate help?"

"There is a good example, in my other area of responsibility, of a successful international approach regarding sexual violence against children. The networks behind images of child sexual abuse are often completely anonymous and English-speaking, which makes it difficult to trace the origin of the perpetrators. International cooperation is therefore necessary. It is clear that there is a great deal of cooperation between tracing services, who share information about suspects (for instance, if a person is suspected of having a certain nationality). They share their knowledge and expertise and, if necessary, arrests are coordinated and harmonised. This is an important development".

"An approach at local, national and international level is needed to effectively combat human trafficking. Cooperation with our closest neighbour, Belgium, and our partner organisation Myria is essential in this respect".

Chapter 3
Case law overview 2020 - start 2021

1. Trends

What were the main trends in case law in 2020 and at the start of 2021 in cases concerning the trafficking and smuggling of human beings? In this report, the overview is based on cases in which Myria filed a civil suit, on decisions it received from the victim reception centres and on those provided by magistrates. Myria also presents a recent decision of the European Court of Human Rights.

Myria was informed of 42 decisions rendered by the judicial authorities. Following, is a presentation of the most interesting ones, i.e. 34 relating to 33 cases[136] in the country's various jurisdictions[137]:

- 12 decisions (including 4 appeal decisions) relating to 11 cases concern **acts of sexual exploitation**. They were rendered in the jurisdiction of the courts of appeal of Antwerp (Antwerp division and Court of Appeal), Brussels (Dutch-speaking) and Liège (Liège division). Besides a decision rendered by the Criminal Court of Liège, the 11 other decisions were rendered in the Dutch-speaking part of the country or by the Dutch-speaking courts of Brussels.

Regarding **sexual exploitation**, as in recent years, there have been a large number of decisions concerning Nigerian networks. Several other decisions relate to young women recruited through the *loverboy* technique, including sex workers. One case of customary marriage which led to the exploitation of prostitution of a young Albanian women was retried. Lastly, one victim was detected in the education sector: the court reclassified the acts of attempted trafficking as an accomplished offence.

- 8 decisions (2 rendered in a court of appeal) concern **labour exploitation cases.** They are presented per sector of activity (construction, transport, bakery, nightshop, domestic work). A complex case of a posting carousel and manslaughter in the transport sector resulted in convictions for human trafficking. There was also a decision in an atypical sector: office work in a travel agency. These decisions were rendered in the jurisdictions of the following courts of appeal: Antwerp (Antwerp and Mechelen divisions), Brussels (Court of Appeal), Ghent (East Flanders (Dendermonde, Ghent), West Flanders (Bruges)) and Liège (Liège division).

Regarding **labour exploitation,** they are mainly small cases. We noted that to reach the conclusion that work conditions are contrary to human dignity - which is an element of human trafficking - judges took into account the presence of various elements, including: work conditions and work environment (excessive working hours, very low wages, no rest days), poor housing, deductions from wages on various pretexts, dependence on the employer (e.g. surveillance cameras). In many cases, courts give considerable weight to workers' statements, provided they are accurate, consistent and supported by other objective evidence. However, many courts still show a lack of knowledge about the provisions on human trafficking (by requiring some form of deprivation of freedom).

- 2 decisions concern **forced crime**, one rendered by the Court of Appeal in Antwerp and the other in Dendermonde. The victims were a Belgian man and a Romanian minor.
- 12 decisions (4 rendered in a court of appeal) concern cases of **human smuggling**. They were rendered in the jurisdictions of the courts of appeal of

136 Decisions have been rendered at first instance for several cases, and discussed in previous reports.

137 These decisions will also be published on the Myria website: www.myria.be.

Brussels (Brussels French-speaking and Court of Appeal), Ghent (East Flanders (Ghent, Dendermonde)), West Flanders (Bruges and Court of Appeal), Antwerp (Antwerp division) and Liège (Liège division).

Regarding **human smuggling**, the organisations are often well structured and even criminal. New operating methods have been identified, such as smuggling on small craft or sail boats. A major case of humanitarian visa fraud led to convictions for human smuggling.

2. Human trafficking

2.1. | European Court of Human Rights, V.C.L. and A.N. v. United Kingdom judgment of 16 February 2021

This judgment concerns the failure to adequately protect two potential victims of child trafficking who were forced to commit offences[138]. The Court found a violation of Article 4 (prohibition of forced labour) and a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

Police officers discovered two Vietnamese nationals, who were minors at the time of the acts, working on cannabis farms in the United Kingdom. They were arrested and charged with drug offences, to which they pleaded guilty.

Following their conviction, they were detained in juvenile detention centres. They were subsequently granted the status of victims of trafficking by the competent authority, responsible for recognising trafficking victims. Its task is to identify potential victims of modern slavery and ensure that they receive appropriate assistance.

However, after reconsidering its decision to prosecute them, the prosecuting authorities concluded that they weren't victims of trafficking, and the court of appeal found that the decision to prosecute them was justified, based on the facts of each case.

The applicants' main complaints concerned the authorities and the lack of protection provided after they had been trafficked, their failure to conduct an adequate investigation and the right to a fair trial.

This was the first time that the Court considered the relationship between Article 4 of the Convention and the prosecution of victims and potential victims of human trafficking.

The Court considered that the prosecution of victims or potential victims of trafficking is not necessarily a violation of Article 4 of the Convention.

Nevertheless, in this case, it concluded that Article 4 (prohibition of forced labour) of the Convention had been violated, finding that the national authorities had failed to take adequate practical measures to protect the applicants, both of whom had been potential victims of trafficking. In particular, it noted that, although the applicants had been caught in circumstances suggesting that they were victims of trafficking, they had been charged with an offence to which they had pleaded guilty on the advice of their lawyers, without their situation having been previously assessed by the competent authority. Although the competent authority subsequently recognised the applicants as victims of trafficking, the prosecuting authorities rejected this conclusion without providing sufficient reasons for their decision. On the basis of the same insufficient grounds, the court of appeal then ruled that the prosecution was justified.

The Court found that these decisions violated the state's obligation under Article 4 of the Convention to take concrete measures to protect the applicants, either immediately as potential victims of trafficking or subsequently, after the competent authority had recognised their status as victims of trafficking. Despite the existence of credible suspicions of trafficking, neither the police nor the prosecution authorities referred the applicants to a competent authority for assessment. Moreover, even though both cases were subsequently reviewed by the prosecution authorities, they rejected the conclusion of the competent authority without giving clear reasons to counteract its findings.

138 ECHR, judgment V.C.L. and A.N. v. The United Kindgom 16 February 2021, applications 77587/12 and 74603/12, available at: V.C.L. AND A.N. v. THE UNITED KINGDOM (coe.int)

Lastly, the court of appeal limited itself to examining whether the decision to prosecute had constituted an abuse of process.

The Court also considered that the proceedings hadn't been fair as a whole, in violation of Article 6 § 1 (right to a fair trial) of the Convention. Even if the authorities had made certain provisions for the applicants after their conviction, the absence of any assessment of whether they had been trafficked may have prevented them from obtaining important evidence that could have assisted their defence.

2.2. | Sexual exploitation

2.2.1. | Nigerian networks

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

Nigerian networks bringing over girls for other 'madams' as well

The **Dutch-speaking Criminal Court of Brussels** tried two cases relating to Nigerian networks.

In the first case, tried on 4 September 2020[139], six defendants were prosecuted for various offences of trafficking in human beings for the purpose of sexual exploitation with aggravating circumstances (in particular of minors and endangering the lives of the victims), exploitation of the debauchery or prostitution of adults and minors, and criminal organisation. Two defendants were also prosecuted for money laundering.

The first three defendants appeared in court, but the last three didn't.

Three victims filed a civil suit.

The case was initiated in August 2018 following information from the African prostitution scene at Brussels-North Station. A Nigerian woman, herself a professional prostitute, was alleged to have smuggled at least 35 Nigerian girls into Belgium via Italy with the intention of exploiting them in the red-light district of Brussels-North Station. She took orders from other "madams" who wanted girls brought over. The young girls transited through Italy via one of this woman's "sisters", who was arrested herself in Italy in 2018 with her boyfriend on suspicion of human trafficking. This was the fourth defendant in this case.

The investigation was carried out on the basis of prostitution window checks, the hearings of presumed victims, a phone investigation, phone tapping and searches.

Victims were recruited with false promises of employment as hairdressers, cooks or childminders and had to undergo a voodoo ritual in which they swore not to report their "madam" to the police. They had to reimburse their travel debt of approximately EUR 30,000 once they reached their destination. They went via the Libyan route. For the border crossing between Niger and Libya, false passports were used, which were later destroyed. Some of the girls were beaten and raped on the way. From Libya, they were taken to Italy where the brother of the main defendant (the third defendant) took them in. They were then taken to Belgium by train or, provided with false papers and put on a plane to Belgium. They were immediately taken to windows to be prostituted. They had to hand over at least half of their earnings to clear their debt. If any of them stopped paying before the debt was cleared, they were threatened or pressured to resume repayments.

Some victims were taken to France to apply for asylum. The financial support they received had to be handed over to the "madam".

The main defendant used the "yemeshe" system to occupy rented windows: as a professional prostitute, she allowed the girls to prostitute themselves in these windows, and the earnings were then divided equally between them.

The court accepted most of the human trafficking charges and the aggravating circumstances: it was established that between 1 September 2015 and June 2019, several Nigerian girls were brought to Belgium under the false promise of a legal job in Europe only to be forced into prostitution in Italy or Belgium.

The girls were recruited in Nigeria by the sister of the two defendants or an acquaintance of the main defendant or by the father and stepmother of another female defendant.

139 Brussels Dutch-speaking Crim. Court, 4 September 2020, 23rd ch (appeal).

Their lives were put in danger: during the journey, they were put in camps or made stops during which they had to prostitute themselves in order to eat, and were subjected to violence or rape.

The court also upheld the charge of exploitation of prostitution and criminal organisation.

The first defendant played a key role: she brought in girls for herself or other "madams". She gave instructions for recruitment, confirmed the false promises, facilitated the girls' journey to Europe, maintained contact with her family back home, who took care of recruitment and the African route, followed the victims' journey and received them in Belgium to direct them towards prostitution.

However, the court acquitted the defendant of the charge of money laundering: having worked as a prostitute herself for several years, it wasn't established that the money she transferred to Nigeria came from the exploitation of the prostitution of the victims.

The second defendant was acquitted of the acts of human trafficking and money laundering, but the court accepted the charge of criminal organisation: she used the organisation's network to bring over members of her family, including her daughter. She also actively contributed to the organisation's activities by providing accommodation for the girls or accompanying them to France to apply for asylum.

The third defendant received the girls in Italy and then put them on a plane to Brussels. The court emphasised that the fact that he didn't ask for direct payment from the girls for the services rendered was irrelevant. Article 433*quinquies* of the Criminal Code doesn't require the acts committed to have resulted in a profit. Nor is it necessary that the acts were carried out with a view to exploiting the victims oneself.

The fourth defendant confirmed the false promises for some of the victims, was the contact person during the journey and, once the girls had arrived in Italy, she arranged their reception in Italy and the onward journey to Belgium. She had already been convicted by the court in Bologna for similar acts.

The fifth defendant was a "madam" who used the services of the main defendant to bring over a victim.

The sixth defendant was given the benefit of the doubt and released of all charges.

The main defendant was sentenced to four years in prison and a (partly suspended) fine of EUR 64,000. The other defendants were sentenced to between 15 and 30 months in prison and fines of between EUR 8,000 and EUR 16,000.

The victims who filed a civil suit received a provisional euro.

The second case, tried on 12 January 2021, concerns four defendants, all Nigerians, including a brother and a sister[140]. They were prosecuted for the human trafficking of several young Nigerian women, with aggravating circumstances including the death of one of them, who was found lifeless in her window. They were also prosecuted, on various counts, for recruitment and the exploitation of prostitution of these young women, as well as for participation in a criminal organisation. Only one defendant appeared in court.

Three victims and Myria filed a civil suit.

The defendants recruited the victims in Nigeria. They reached Italy via the Libyan route. They were then sent to Belgium where they had to work as prostitutes to reimburse their debt (between EUR 25,000 and EUR 30,000).

The case started in November 2016 after the police carried out a check on one of the young women who was accosting clients. As she was staying illegally, she was taken to a detention centre. In January 2017, she filed a complaint for human trafficking. When questioned, she explained how she was recruited by one of the defendants who promised her a job as a sewing machine operator in Italy for EUR 25,000, to be repaid through her work in Europe.

After crossing Libya with other girls, they were picked up by the Italian coastguard and placed in a reception centre in Naples. From there, she made contact with the defendant who came to collect her and another girl. She was taken by train to Belgium while two other girls, destined to work for another defendant, arrived by plane in Belgium.

140 Brussels Dutch-speaking Crim. Court, 12 January 2021, 26th ch. (final).

Once in Belgium, she was taken to the apartment of a "mama" where she was told she had to work as a prostitute. She was intercepted by the police four days after she began work.

The investigation was carried out on the basis of a phone investigation, consultation of another Nigerian case, hearings of victims and witnesses, searches in the window in the Brussels-North station area and a bank investigation, among other things. The names of the various defendants appear during the investigation as being the organisers/participants in the human trafficking activities concerning these young women.

In March 2018, one of the victims, who was severely mutilated by a client, was placed in a specialised reception centre and made statements.

In June 2018, another victim was found dead in her window, having been stabbed by an unknown man.

The family was engaged in activities concurrent with the acts in another case (mama M.) and was involved in illegally bringing over girls also for other "madams".

The brother was an expert regarding the Libyan route and was in contact with intermediaries on that route. The young women would then be exploited by his sister in Brussels.

The court convicted the defendants of most of the charges. Between February 2016 and October 2018, several Nigerian girls were recruited under the false promise of legal employment in Europe or to work as prostitutes on their own account only to be forced into prostitution and exploited. They were required to hand over part of their earnings to the defendants to pay off their travel debt or to contribute to the "rent" of the flat where they had been housed.

The court also upheld the charge of criminal organisation: the arrival of the girls was well prepared and monitored throughout the journey. The organisation called on a series of people to recruit the girls in Nigeria, to issue false documents and to accompany the victims on their journey.

The court sentenced three defendants in absentia to between 40 months and four years in prison and fines of between EUR 8,000 and EUR 32,000. The fourth defendant, judged after trial, was sentenced to 33 months in prison and fined EUR 32,000.

One victim received EUR 5,000 in damages, while the others and Myria recived EUR 1.

Cases re-examined on appeal: confirmation and release

Antwerp Court of Appeal re-examined two cases examined at first instance by Antwerp Criminal Court, which were discussed in the 2020 annual report.

In the first case, tried on **20 November 2019 by Antwerp Criminal Court**[141], six defendants were prosecuted for the human trafficking and smuggling of several victims, two of whom filed a civil suit.

The investigation began following a message sent to the police by a French NGO that was supporting one of the victims. Both victims were recruited in Nigeria by the mother of the main defendant. They were able to travel to Europe for EUR 25,000 and EUR 20,000 respectively. Prior to this, they had to undergo a voodoo ritual. The first victim was only 17 years old when she set out on her journey. One victim was picked up in Italy by a man, the second defendant, and immediately put to work as a prostitute in order to pay off her debt. After a few months, he decided to send her to Belgium. Once in Belgium, she was put up in a house in the Antwerp area where she saw the second victim again. She worked in the Antwerp flat and in various other places in Belgium. In Brussels she worked in a window, for which she had to pay rent. She had to hand over her income to the first defendant and the second defendant, who were sister and brother.

At one point, she was sent to France to seek asylum and receive a monthly allowance of EUR 350, which she had to hand over in full. When she was evicted from the flat by the first defendant, she was housed with acquaintances of the defendants in France. It was there that she came into contact with the NGO.

One of the defendants was a prostitute who rented out her window to the first victim. Another defendant put his accommodation at her disposal.

The court found that the acts of trafficking and smuggling were proven. The defendants were part of a network that lured Nigerian women to Belgium and forced them into prostitution.

141 Antwerp Crim. Court, Antwerp division, 20 November 2019, ch. AC10: available at www.myria.be. Also see Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p.72.

The main defendants were sentenced to five and four years in prison and fined EUR 16,000. Several sums of money were confiscated. The civil parties received EUR 21,679 and EUR 8,500 respectively in compensation (pecuniary and non-pecuniary).

The first and main defendant appealed against all provisions of the judgment. The case was retried by **Antwerp Court of Appeal on 8 January 2021**[142]. It confirmed the earlier judgment. The court found completely implausible the defendant's allegation that the two victims had falsely accused her because she had put an end to their comfortable life by evicting them from the flat following the arrival of her partner and baby, and that they consequently hoped to obtain residence documents. The course and results of the investigation (especially the one into the redlights.be website, the examination of phone data, the notes in the victim's luggage, the statement by one of the defendant's friends, the police findings, the retroactive phone investigation, the information (from Italy and France)) correspond to the clear and detailed statements of the two victims. Consequently, the court considered that the acts of smuggling and trafficking in human beings were proven. The first judgment was confirmed with a slight adjustment of the description of the place and period of criminality.

The court also confirmed the sentences pronounced at first instance.

The second case resulted in a release on appeal.

In a **judgment of 30 March 2020**, Antwerp Criminal Court ruled on a case in which one defendant was prosecuted for trafficking in human beings for the purpose of sexual exploitation with aggravating circumstances[143].

The events took place from mid-2015 to early 2016. The victim had come into contact with smugglers in Nigeria, who could bring her to Europe. For this purpose, she was required to pay back EUR 52,000 over a period of six months. She flew to Turkey, from where she was smuggled to Greece by boat. The boat was intercepted by the Greek coastguard, who took her to a reception camp. She was picked up by the defendant and her friend and taken to Athens.

She was forced to prostitute herself on the street for EUR 10 per client. As the reimbursement took too long, she was advised to go to Belgium where she could earn more and live with an acquaintance of the defendant.

She had to transfer the money she earned to a bank account in Greece in the name of the defendant's friend. Before leaving Nigeria, the victim had undergone a voodoo ritual. This ritual is regularly used as a means of coercion. At the same time, threats were made to kidnap her children in Nigeria.

During the investigation, a request for mutual legal assistance was sent to Greece in order to obtain more information about the defendant and the people with whom she lived. A bank investigation also found proof of the transfers to the Greek bank account.

The defendant was convicted at first instance. The court found that the victim's statements were coherent, detailed and credible, and that they could be substantiated by a number of elements in the criminal file.

It was clear from the victim's statements that the defendant had forced her into prostitution under the influence of voodoo rituals. The victim was harboured by various people to engage in prostitution and had to hand over her income (by transferring it to the account of a friend of the defendant). It wasn't only the victim who was threatened, but also her sister and children in Nigeria. She was in a precarious situation, as she was an illegal resident and had no command of the language. On the basis of the victim's statements, supported by the police findings, the corresponding witness statements, the results of the request for legal assistance in Greece, the bank investigation and the retroactive phone investigation, the court considered that the acts of human trafficking with aggravating circumstances were established.

The defendant appealed against the decision. The case was retried by **Antwerp Court of Appeal on 10 December 2020**[144]. The defendant contested her guilt and the subsequent sentence.

The Court of Appeal declared the appeal admissible and ruled that the defendant's guilt in relation to the acts wasn't proven by the information in the criminal file.

142 Antwerp, 8 January 2021, ch. C6.

143 Antwerp Crim. Court, Antwerp division, 30 march 2020, ch. AC10, No. 2020/1876: available at www.myria.be. See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p.72.

144 Antwerp, 10 December 2020, ch. C6.

The investigation carried out by the Greek authorities - after a request for legal assistance was sent to Greece - didn't provide sufficient information to establish with certainty the defendant's guilt. The Court of Appeal therefore found her not guilty of the charges and released her.

2.2.2. | Loverboy technique

"Loverboys" exploiting minors

On **3 February 2021, Liège Criminal Court** had to try a major case involving *loverboys* exploiting minors, among others.[145].

Six defendants, including three women (one of whom was the main defendant's former partner and mother of his daughter) were prosecuted in various capacities for different offences: human trafficking of minors and adults, recruitment for prostitution and exploitation of prostitution of minors and adults, and criminal association. The main defendant, a French national, and another defendant were also prosecuted for advertising sexual services and, along with another defendant, for assault and battery. The main defendant, a repeat offender, was also charged with identity theft, malicious obstruction of traffic, illegal possession of a firearm, theft, disabling a vehicle, forgery and armed rebellion. Another defendant was also prosecuted for the kidnapping of a victim and two other defendants for handling stolen goods.

The case was initiated when the police were called to a hotel in Liège in September 2019 after staff discovered a weapon and ammunition in a room. The occupants had fled in a vehicle and were being chased. The occupants were identified as: a young French girl, who was a minor and had been reported as a runaway by her parents, the main defendant, also French, and another person who wasn't prosecuted in this case. The car was rented by the latter and the hotel room was rented by this person's brother. The main defendant managed to escape and was seemingly injured.

The underage girl was prostituting herself through the "redlights" website under various nicknames and, to validate her identity, used that of her sister, who wasn't a prostitute and lived with her parents in France.

On 15 January 2020, the police were informed that a young woman was engaging in prostitution in a studio apartment in Liège. People had been coming in and out of this building for several weeks. The girl was always accompanied by at least one of the four individuals who used rented vehicles. The French underage girl was also reportedly prostituting herself at this address. The young women were apparently supervised in their activities by two men.

Neighbourhood investigations were carried out as well as checks on the "redlights" website and the number of one of the defendants was tapped. It turned out that the underage girl was in a relationship with the main defendant. They both came from the same French municipality. They also travelled together to the south of France with another young woman where their prostitution activity continued. In February 2020, following a violent argument on the motorway on the way back from France, the underage girl returned to her family and filed a complaint with the French authorities against the main defendant for exploitation of prostitution.

Other young women who worked as prostitutes for the defendants in hotels in the Liège region were later identified.

The main defendant raised a number of procedural arguments, including the violation of fair trial and the rights of the defence, which were rejected by the court.

The court upheld most of the human trafficking charges against the main defendant. As regards the underage girl who was his girlfriend, it considered that the elements constituting this offence were present in this case, as the girl was unquestionably received, harboured, transported and controlled for the purpose of exploitation of prostitution. The court based itself on the following elements: "taking control" consisting of authority over the victim and adopting an attitude of romantic attachment. This taking control of the victim was proven by phone taps and the hearings of the victim, various witnesses and defendants. The defendant's ex-girlfriend explained that the defendant made the young victim believe that she was in a relationship with him so that she would become a prostitute. She would give him the money she earned and he would rent out Airbnbs and cars. He would drive her to different locations (clients' homes, flats and hotels). The victim was also abused by the defendant.

The main defendant used the same recruitment technique with other victims, using seduction and favourable comparisons with other pimps.

145 Liège Crim. Court, Liège division, 3 February 2021, 19th ch. (final).

The court also accepted certain human trafficking charges concerning another defendant. He transported the French underage girl and arranged room rentals, even though he didn't receive the money directly from the girl's work. He also drove and supervised other young women.

The court also accepted the charge for a third defendant who was recruiting and coercing young women into prostitution as well. He was present at the hotels and was seen in the screenshot photos of the hotel. He was also posting ads on Snapchat to recruit young adult women.

The court accepted the following aggravating circumstances: the fact that some of the victims were minors and abuse of their vulnerable situation due to their precarious social situation (isolated, runaway, homeless, etc.). It also noted that violence, threats and coercion were mentioned in the hearings of some of the victims and witnesses, as well as on the phone. The girls had little freedom of action, lived with the people who were monitoring them and were regularly moved from their place of work and accommodation. Similarly, it found the aggravating circumstances of habitual activity and association to be established.

The court convicted the male defendants of most of the recruitment for prostitution charges. It reiterated that the material element of this charge was the recruitment, training, enticement or detention, even with consent, of a person. This can refer to any material act, including giving advice or information, by which the perpetrator causes a person to engage in prostitution. The moral element is the intention to satisfy the desires of others. It isn't necessary for the perpetrator to act with the intention of making a profit for themselves or for another person. However, recruitment with a view to satisfying the desires of others doesn't exclude the purpose of making a profit.

For two of them, it also accepted most of the charges of exploitation of debauchery and prostitution.

The main defendant was convicted of most of the other charges against him.

On the other hand, the court released the defendants of the human trafficking charges, considering that a form of coercion to obtain consent, an abuse of vulnerability and a purpose, i.e. the sexual exploitation of the young girls in question, hadn't been demonstrated.

It also released them of the charges of recruitment and exploitation of prostitution.

The court sentenced the main defendant, a repeat offender, to eight years in prison, a fine of EUR 8,000 multiplied by the number of victims (six), i.e. EUR 48,000, a loss of rights, and the confiscation of an equivalent sum of EUR 30,000.

The other two defendants were given partly suspended sentences of 20 months and three years respectively, and fully suspended fines.

Myria, who filed a civil suit, received the final sum of EUR 1.

"Loverboy" method used to exploit sex workers

Two cases of exploitation of sex workers were tried in Antwerp.

In the first case, a Belgian defendant was prosecuted for human trafficking for the purpose of sexual exploitation in relation to five victims, all but one of them Belgian. His girlfriend was also prosecuted for the majority of these acts. The main defendant was also charged with the rape of some of the victims, assault and battery and harassment of one victim. A third defendant was also prosecuted, but only for the offence of assault and battery concerning the same victim.

Two of the victims filed civil suits.

The defendant's modus operandi was always the same. He used the services of sex workers (escorts) as a client. He would seduce some of them or convince them to provide him exclusively with their sexual services, in exchange for accommodation in his house or in a flat that he provided. The majority of victims were particularly vulnerable socially and/or economically, or suffered from mental health problems, living on the margins of society. Once the victims were under his influence, he forced them into prostitution. He would take pictures of the victims, which he or his girlfriend would then place on various websites. He would arrange appointments with clients. He provided some of them with drugs to make them dependent on him. They had to give him a large part of their earnings.

In a **judgment of 29 June 2020, Antwerp Criminal Court**[146] convicted the two defendants of human trafficking, based on the victims' detailed and consistent statements, supported by other elements of the case (retroactive phone investigation and analysis of advertisements for sexual services, results of searches, examination of mobile phones, statements from witnesses and the defendants).

The defendant did indeed exploit the prostitution of the victims, making them work for him (control), in his home (harbouring) and actively seeking new victims (recruitment).

The other defendant, his girlfriend, who was also a prostitute, contributed to the organisation and exploitation of the victims' prostitution: she placed the advertisements, managed the "professional" phone line, accompanied the clients, informed her boyfriend, and received and shared the profits.

The victims stated that after living with and working for the defendant, they were forced to provide different or more sexual services than when he was their client (e.g. anal sex). The court found that the victims' consent was irrelevant, given the fear they had (or might have had) of being thrown out on the street.

The court also accepted the charges of rape, assault and battery and harassment, except in the case of the third defendant, whom it released of the last charge.

It sentenced the defendant to seven years in prison and a fine of EUR 40,000 and the other defendant to three years in prison (fully suspended) and a fine of EUR 24,000 (partly suspended). The court emphasised that the latter was both a victim and co-perpetrator. She worked as a prostitute and was beaten by her boyfriend (the first defendant) when she didn't have enough clients. This kept her in the defendant's favour. The court took this into account and granted her a suspended sentence.

It ordered the defendant to pay one provisional euro to one victim and EUR 3,500 in non-pecuniary damages to the other. However, it refused to award her the EUR 15,000 in pecuniary damages that she was claiming, which corresponded to the earnings that the victim would have made from prostitution, considering that this activity can't serve as a basis for a claim for compensation.

146 Antwerp Crim. Court, Antwerp division, 29 June 2020, ch. AC10 (main defendant's appeal).

The **second case**, tried by **Antwerp Criminal Court on 14 May 2020**[147] concerned an Iranian defendant who recruited sex workers in a well-known red-light district in Antwerp. He was charged with human trafficking for the sexual exploitation of two young Romanian women, with aggravating circumstances. He was also accused of refusing to give the investigating judge the access codes to his mobile phone.

The case was initiated following a police report that window sex workers in Antwerp's red-light district (Schipperskwartier) were being forced to hand over part of their earnings to the defendant and another man. They were allegedly threatened with violence and a fight broke out because one of the victims and her friend refused to pay.

The defendant was a well-known figure in Antwerp's red-light district and had previously been convicted of offences committed in the same area (including a knife attack).

He used the *loverboy* method to recruit sex workers. He would enter into a relationship with them and then make a living from their prostitution and exert complete control over them. They had to hand over their earnings to him. He used threats and violence against them.

Under pressure from the defendant, one of the victims withdrew her previous statements, saying that she had made them under the influence of drugs. She said she didn't have to hand over her earnings and the defendant didn't use violence. The court considered these new statements as not credible, unlike the first ones, which were supported by other elements in the case (witness statements and phone taps)

The court convicted the defendant of all the offences. He was sentenced to seven years in prison and a fine of EUR 16,000 for human trafficking. The court based its decision on the findings of the police officers, the phone investigation, the phone taps, the statements of the witnesses and victims, the results of the search and the financial investigation, which showed that the defendant had no income.

The court granted the request of the public prosecutor's office to impose a ban on entering the Schipperskwartier.

147 Antwerp Crim. Court, Antwerp division, 14 May 2020, ch. AC4 (appeal).

As the defendant claimed to live/reside with his parents in Schoten, the court found that such a ban wouldn't jeopardise his reintegration. This is the first time that such a ban has been imposed on a suspect who has an official residence in Belgium.

The defendant appealed his conviction.

In a **judgment of 19 November 2020**, **Antwerp Court of Appeal** found that the defendant had indeed taken control of the two victims within the sense of Article 433*quinquies* of the Criminal Code in order to subsequently exploit them[148]. He won the trust of the victims by manipulating them, entering into a relationship with them and going to live with them. At this point, he was able to start to control, dominate and exploit them.

It confirmed the sentences handed down at first instance.

Exploitation of a young Bulgarian woman

Antwerp Court of Appeal re-examined a case concerning the exploitation of young Bulgarian women, judged at first instance by **Antwerp Criminal Court on 10 March 2020** and discussed in the 2020 annual report[149].

In this case, two defendants, a couple, were prosecuted for human trafficking for the purpose of sexual exploitation. The investigation was initiated after a victim, a prostitute who worked in the Schipperskwartier in Antwerp, filed a complaint against her pimp and the woman who had recruited her. She stated that the second defendant had persuaded her to come to Belgium from Bulgaria to work as a prostitute two years earlier. Once in Belgium, she first had to pay her travel expenses, then give up half of her income and finally all her earnings. Based on the WhatsApp and Facebook messages, the investigators deduced that there was a kind of romantic relationship between the victim and the first defendant. He was using the *loverboy* technique. The discussions then took on a more threatening tone. She had to prostitute herself in Antwerp, Amsterdam and Brussels. The defendants also arranged to find her a window.

The victim and her mother in Bulgaria had received death threats. The court found the facts to be true, also with regard to the second defendant.

The latter had also played an active role in the recruitment and exploitation of the victim. The court sentenced the defendant to four years in prison and a fine of EUR 8,000. His girlfriend, the second defendant, was sentenced to 30 months in prison and a fine of EUR 8,000. Their properties were confiscated.

The first defendant appealed against all the provisions of the judgment. This case was re-examined by **Antwerp Court of Appeal on 30 October 2020**[150]. The court upheld the earlier judgment. The defendant's statement that the victim was still working in prostitution and was therefore not forced into prostitution had no bearing on the facts. The defendant used the *loverboy* technique to control the victim and treated her like a slot machine. The victim and her family were threatened, even after she gave a statement to the police. His actions showed a total lack of respect for the victim's physical and psychological integrity. The court confirmed the sentences handed down at first instance.

Marriage of convenience

Antwerp Criminal Court also tried a case on **22 December 2020** involving the *loverboy* method, in which a marriage of convenience had been concluded[151].

Two defendants were charged with human trafficking and exploitation of the debauchery or prostitution of a victim, with various aggravating circumstances (use of fraudulent schemes, violence, threats or any other form of coercion). Together they formed a family with three school-aged children.

The victim filed a civil suit.

She stated on 3 August 2016 that between 2000 and 2012, she had been forced into prostitution and sexually exploited by her ex-boyfriend, the first defendant. She allegedly met him in Albania while she was studying there. Thanks to the *loverboy* technique, a relationship quickly developed. She came to Belgium to start a family and the first defendant took care of everything for her visa, her flight and then a marriage of convenience to obtain a residence permit. He then forced her to prostitute herself to pay back the costs incurred. The victim worked as a prostitute every day in Antwerp or Ostend with only one day off a month and was sometimes housed in the Netherlands.

148 Antwerp, 19 November 2020, ch. C6.
149 Antwerp Crim. Court, Antwerp division, 10 March 2020, ch. AC10, available at www.myria.be. See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p.78.
150 Antwerp, 30 October 2020, ch.C6.
151 Antwerp Crim. Court, Antwerp division, 22 December 2020, ch. AC10 (appeal).

She earned a lot of money, which she had to hand over to the defendants who invested it in property in Albania and Belgium. Together they manipulated her, prevented her from socialising and threatened her with a knife and their fists.

The defence argued that no offence had been committed and that the criminal proceedings were time-barred: there was apparently no concrete evidence. It asked for the defendants to be released.

The court considered that the acts weren't time-barred, that there was no infringement of the defendants' defence rights and that the charges were established. The victim was taken by the first defendant to Belgium for sexual exploitation and was forcibly controlled there. The complicity of the second defendant was also proven. She contributed to the manipulation of the victim and knowingly profited from the money the victim generated through her prostitution activities. The victim and the first defendant had a child, a tactic used as the ultimate means of pressure in the *loverboy* principle. The remarkable speed with which everything was organised clearly shows that these activities were planned.

The court considered the facts to be true on the basis of the victim's detailed statements, the police observations, the information from the Immigration Office, the financial investigation and the corroborating witness statements. The threats made to the victim, even on the day of the first defendant's hearing, also emerge from the call to emergency services.

The first defendant was sentenced to three years in prison and a fine of EUR 6,000. Financial benefits amounting to EUR 37,570 were confiscated with partial attribution to the civil party. The second defendant was sentenced to two years in prison, one year of which was suspended for five years, and a fine of EUR 6,000.

The two defendants were ordered jointly and severally to pay the civil party EUR 7,500 in non-pecuniary damages. The latter had also asked for pecuniary damages amounting to EUR 3,630,000 in relation to her work as a prostitute, but this request was rejected by the court.

2.2.3. | Customary marriage

Antwerp Criminal Court retried a case of trafficking associated with a customary marriage in which it had already convicted the defendant in absentia in a **judgment of 12 November 2019**[152].

In this case, a defendant was prosecuted for human trafficking for the purpose of sexually exploiting a victim. The case only came to light in 2017, but the acts dated back to 2015-2016. The victim, a divorced mother with a daughter, had entered into an unofficial marriage according to Albanian custom, under pressure from her parents. Her partner, the defendant, had been recommended to her by friends as a rich man living in Germany. Once the marriage had been arranged, he took her to Italy. While there, he forced her into street prostitution. He threatened to attack her younger sister if she didn't cooperate. She worked for EUR 20-30 per client and had to hand over all her earnings to the defendant. He monitored her with a friend. If she didn't earn enough, she was beaten. The defendant used drugs, was unpredictable and could suddenly become very aggressive.

The couple then travelled to Germany, where the victim had to work in a large brothel. She had to rent a room for EUR 140 and spend the night there. She earned EUR 20-30 per 20 minutes and had to hand over all the money. She became pregnant during this period.

The couple went to Belgium because abortion was cheaper there. A week after the abortion, the victim had to return to work despite the pain, this time in a club in Belgium. She lived in a flat with another woman who worked for the defendant. After being forced to work despite the constant bleeding, she managed to flee to her parents in Albania. She didn't dare tell them that she had been forced to work as a prostitute. When her presence in Albania was discovered by the defendant, the victim fled to a friend in the Netherlands and then to Sweden where she applied for asylum. Her application was rejected and she eventually returned to Belgium via Denmark.

In its **judgment of 23 February 2021**, the court found the defendant guilty[153]. The case file contained sufficient objective evidence to corroborate the credible statements made by the victim.

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152 Antwerp Crim. Court, Antwerp division, 12 November 2019, ch. AC10. (available at www.myria.be). See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p.80.

153 Antwerp Crim. Court, Antwerp division, 23 February 2021, ch. AC10 (final).

The defendant was sentenced to four years in prison and a fine of EUR 6,000. EUR 13,300 was confiscated. This amount corresponds to the remuneration of a sex worker for a certain period of time, at the rate of approximately EUR 140 per day, six days a week.

2.2.4. | Attempt reclassified as an accomplished offence: detection in a school

A case concerning attempted trafficking in human beings, reclassified as an accomplished offence of trafficking in human beings, was tried by the **Antwerp Criminal Court on 23 July 2020**[154].

A defendant was prosecuted for attempted human trafficking for the purpose of sexual exploitation: she had done everything possible to get the victim to prostitute herself and had insisted on receiving clients, but in the end nothing happened because the victim was ill or had pretended to be ill on the day of the meeting.

The case was initiated when the police was contacted by the (adult) victim's school, which was concerned. The girl was cutting her arms again and appeared to be very nervous. She was no longer able to complete her homework. According to the teacher who supported her during her internship, the girl intimated that she could no longer do the placement because a woman was arranging sexual appointments for her. The police then contacted the girl who appeared extremely nervous and anxious. She stated that she was self-harming due to stress and anxiety. She knew the defendant as a former schoolmate. The defendant again suggested that she receive clients, saying that she could earn a lot of money. She offered to arrange everything: clients, appointments, hotels and flats. The earnings would be divided between the two of them. The girl should have received clients for the first time the day before, but she had cancelled the appointment, saying she was ill.

The defendant stated that she wanted to help the victim by finding her more respectable clients than those she had had in the past.

At the request of the public prosecutor during the hearing, the court reclassified the acts as an accomplished offence of human trafficking.

154 Antwerp Crim. Court, Antwerp division, 23 July 2020, ch. ACV3. (définitif).

Based on the statements of the victim and the defendant, the findings of the investigating officers and the WhatsApp conversations, the court found that the defendant actively encouraged her to engage in prostitution, put her under pressure and controlled her. This was reflected in the coercive language used in the messages. The defendant's behaviour (asking the victim for nude photos and videos to recruit clients, arranging clients and meeting places) clearly constituted the commission of the offence of human trafficking. The fact that no appointment took place because the victim said she was ill was irrelevant.

The court handed the defendant a two-year prison sentence, half of which was suspended, and an EUR 8,000 suspended fine.

2.3. | Labour exploitation

2.3.1. | Construction

Handyman

Brussels Court of Appeal re-examined a case of human trafficking in the construction sector, tried at first instance by **Brussels Criminal Court on 26 June 2017**[155].

A Belgian, who was a company manager, and his company were both defendants in a case of human trafficking for the purpose of labour exploitation regarding a Tunisian worker, who filed a civil suit. They were also prosecuted, together with another defendant, the co-manager, for various criminal social law offences (employment of a foreign worker without a right of residence, no DIMONA declaration, failure to declare services to the NSSO, non-payment of salary).

The company, of which the main defendant was the manager, was active in the renovation of buildings and in renting them out, especially as apartment hotels. The defendant had always been the de jure or de facto manager of the company, but would appoint other managers at times when he was temporarily unable to work.

155 Brussels French-speaking Crim. Court, 26 June 2017, 89th ch., available at www.myria.be. See also Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger*, p. 113.

The case began with an inspection of the company's premises by the social inspectorate after it had received some "information". The worker was present and the inspectors noted the precarious nature of the accommodation (a room that served as a workshop and storeroom, a sofa for a bed, no water or toilet, no kitchen, damp, outdated and dangerous electrical installation). The worker explained that he worked as a handyman in the apartment hotels rented out by the main defendant (applying insecticide, carrying luggage or furniture), that he had been in this accommodation for a year and that he had to go to the local swimming pool to wash himself.

The defendant explained that he had met the worker, who had no residence permit or work permit, when he himself was living in the same building in precarious conditions and had told him he could live, rent-free, in a vacant office that he had been living in himself. The court found that the living environment was unsuitable for habitation. In addition, the worker, who had to be available whenever he was required, wasn't paid and received EUR 100 from time to time. The work then began to increase (maintenance work).

The court therefore held the main defendant and his company liable for human trafficking. He must have been aware that he was subjecting the worker to working conditions contrary to human dignity by housing him in an insalubrious place and by asking him to perform services that weren't remunerated in accordance with the legal scales, with no consideration for safety or hygiene in the workplace, no social protection, no working hours, and expecting him to be available whenever required. The court also held that the defendant and his company were guilty of the charges pertaining to social criminal law.

It handed him a 20-month suspended prison sentence and a fine of EUR 6,000 and the company a fine of EUR 12,000. It also ordered the reopening of the proceedings at a later hearing to rule on the civil claims (of the worker and the reception centre that took him in) insofar as the defendants had not explained themselves in their conclusions regarding the civil claims.

The manager and the company appealed the decision. The company failed to appear on appeal.

In a **judgment of 3 November 2020**, **Brussels Court of Appeal**[156] upheld the sentences handed down at first instance.

Renovation of a private house

In this case, **tried by Dendermonde Criminal Court on 18 September 2010**[157], three defendants were prosecuted for human trafficking for the purpose of labour exploitation and for failing to make a Dimona declaration. They were accused of having recruited two Moroccan workers, who were brothers, to renovate a private house and of having made them work in conditions contrary to human dignity.

The two workers filed a civil suit.

The case was initiated when the police were called to a house concerning a civil dispute. The two workers were found there. They had been staying at the house until they discovered that the locks had been changed and their belongings had been left outside.

One of them explained that he had left Morocco in 2005 to live in Spain, where he had a residence permit. He worked in the construction sector and had his own company. One of the defendants had found his firm through the internet and recruited him to carry out renovation work in a house in Belgium. It was agreed that he would earn EUR 25 per hour and his brother EUR 15 per hour. He worked 10 hours a day, also at weekends. He was paid EUR 500 and never received a contract. They had to pay EUR 1,500 for three months rent, which was deducted from their salary. The accommodation was dirty and only had a small water heater. There was no place to shower or cook.

The brother explained that he was promised EUR 10 per hour and that he would earn EUR 2,200, as well as a contract. He worked 10 hours a day, 70 hours a week, seven days a week, six weeks in total.

Things started to escalate when they asked one of the defendants for a copy of the contract and their money. They were threatened.

The workers were placed in a specialised reception centre for victims of trafficking.

156 Brussels, 3 November 2020, 11th ch.
157 East Flanders Crim. Court, Dendermonde division, 18 September 2020, ch. D13V (appeal).

The court found two defendants guilty of trafficking: they organised to bring the two workers over from Spain to Belgium and arranged their accommodation and work in conditions contrary to human dignity: they were exploited, they hardly received any wages, they were made to work the maximum possible amount of hours and their residence situation was suddenly interrupted.

However, the court acquitted the third defendant, as there was some doubt about his - minimal - role.

The defendants were sentenced to one year in prison (one suspended) and a fine of EUR 8,000 (one partly suspended).

The court ordered the defendants to pay the victims pecuniary and non-pecuniary damages amounting to EUR 7,120 and EUR 8,852 respectively.

2.3.2. | Transport

Carousel of fraudulent postings and manslaughter

A complex case in the transport sector resulted in convictions for human trafficking. It involved a carousel of fraudulent postings and manslaughter. It was tried on **27 November 2020 by Bruges Criminal Court**[158].

The case concerned six defendants, two of whom were natural persons (the first and sixth defendant) and four legal persons (limited companies). The second and third defendants were transport companies, which used mechanics and the first defendant for day-to-day management. The fourth defendant (company) was the managing director of the second, third and fifth defendants (also companies). The fifth defendant specialised in the sale of new and used pallets. The sixth defendant was the employer of the pallet repairers.

The six defendants (including the two transport companies) were prosecuted for the human trafficking of five Polish workers, two of whom died. The main defendant and two companies were also prosecuted for the manslaughter of the two Polish mechanics who died.

The main defendant and two companies were also prosecuted for the manslaughter of the two mechanics. The other charges concerned assault and battery, non-compliance with social criminal law (no Dimona declaration and non-payment of wages of 168 workers: mechanics, pallet repairers and drivers) and slum landlord offences. The public prosecutor's office also requested significant confiscations.

The mother of one of the deceased Polish mechanics, an intermunicipal gas and electricity company and Myria filed a civil suit.

On 1 April 2012, Tielt police were called concerning a fire in a warehouse. The warehouse was used not only as a workshop, but also as a dormitory for 16 people. At the time of the fire, nine Poles were in the warehouse. Two people died, two workers were seriously injured and two others suffered minor injuries. Although the ultimate cause of the fire couldn't be determined, the room certainly wasn't fireproof and wasn't known as a place of residence.

According to the Labour inspection, the various companies prosecuted had been placed in a postings carousel to fraudulently escape the application of Belgian law. The staff was fraudulently employed in Poland and Belgium simultaneously, and the Polish workers active in Belgium didn't even know which Polish company they were working for. The so-called Polish subcontractor was in reality a mere conduit for cheap labour employed only in Belgium and thus under the authority of the Belgian client. The Polish social security institutions didn't cooperate to withdraw the A1 posting documents.

The defence put forward a number of procedural arguments (exceeding a reasonable time limit, violation of the presumption of innocence, invalidity of some of the victims' hearings due to a dispute with the interpreters[159]), all of which were rejected by the court.

The court considered the facts established, including human trafficking. The court thus noted, in reference to a decision of the Court of Cassation of 8 October 2014, that in the absence of a legal definition or explanations in parliamentary works, the notion of "recruitment" in the charge of human trafficking must be understood according to its usual meaning. It is a matter of recruitment when the defendants or their companies have recruited the workers to provide them with their labour force.

158 East Flanders Crim. Court, Bruges division, 27 November 2020, ch. B17 (appeal).

159 The court rejected this application because the identity of the interpreters had been sufficiently clarified and they were sworn interpreters.

Similarly, the notion of "conditions contrary to human dignity" hasn't been specified by the legislator either, as it relates to the essence of human nature. The violation of human dignity is therefore the "reduction" of the human quality of a person or a group of persons, more precisely the "destruction" of that which characterises human nature, namely physical capacities (moving freely, providing for oneself, caring for oneself, etc.) and mental capacities (intellectual and social capacities to be used in society).

Working conditions that result in workers no longer being able to provide for their basic needs may be contrary to human dignity, such as wages that don't correspond to the number of hours worked or the provision of unpaid services, or a working climate that contradicts standards of well-being at work. Furthermore, it is the working conditions in Belgium that must be taken into account when assessing the situation of foreign workers.

The court found that there was no question of a real residential dwelling: the victims were housed in a warehouse, which had previously been used as a storage space for tarpaulins and a cheese factory, with no heating or real electrical installations or facilities. The accommodation was poor and dangerous.

The workers were in a precarious residence and social situation. They had to work very long hours (more than 65 hours a week, six days a week) without compensation and for insufficient pay.

The living conditions of the people involved also clearly pointed to the actions of a slum landlord. The defendants set up a construction in which it was obvious that the warehouse would be used as a living space, even though this wasn't permitted by the legislation in force. Many of the workers were also not registered in Dimona and/or were unable to provide correct posting documents.

The first defendant bore the main responsibility and was found guilty of manslaughter, unintentional assault and battery and human trafficking (labour exploitation) of several workers. He was also found guilty of being a slum landlord. He was sentenced to three years in prison with partial suspension and a fine of EUR 60,000, half of which was suspended for three years. He was also found guilty, with regard to social law, of the late declaration of no less than 182 employees in DIMONA and of numerous wage violations, for which he was separately fined EUR 655,200.

The income generated was confiscated, amounting to EUR 1,475,408.03.

The sixth defendant was given a partly suspended 15-month prison sentence and a fine of EUR 15,000, of which EUR 3,000 was suspended for three years.

The other defendants (companies) were given partly suspended fines of EUR 18,000 or EUR 45,000. The court also declared the special confiscation of profits from criminal activities for amounts sometimes reaching EUR 1,475,408.03.

The court declared the intermunicipal company's claim for damages unfounded.

The fire had damaged the low-voltage electricity network of this civil party. However, there was no prosecution for accidental fire. There wasn't necessarily a causal relationship between the offence of slumlordism and the fire, the exact origin of which couldn't be determined.

The mother of the deceased victim was awarded EUR 15,000 in pecuniary and non-pecuniary damages. Myria was awarded EUR 5,000 in pecuniary and non-pecuniary damages.

2.3.3. | Bakery

On **19 March 2021**, **Mechelen Criminal Court** ruled on acts of human trafficking in a bakery between 23 November 2020 and 23 January 2021[160]. A defendant and his company were prosecuted for various criminal social law offences involving four workers. The defendant himself was also prosecuted for human trafficking with aggravating circumstances in relation to three of them. His company was cited as civilly liable. One of the workers filed a civil suit.

During various checks by inspectors from the National Social Security Office (NSSO) and the National Employment Office (NEO - ONEM in French/RVA in Dutch) at a bakery, several social offences were observed, including workers who weren't registered in Dimona, who didn't have a valid Belgian residence permit and/or who were working without a student contract or employment contract.

160 Antwerp Crim. Court, Mechelen division, 19 March 2021, ch. MC7 (appeal).

The statements of the people employed there revealed that they were employed illegally, were paid very little for working long nights, had no form of social protection since the work was undeclared, were owed back wages and lived in a small room above the bakery with no facilities. Cameras were fitted to monitor whether the work was being done properly.

The court considered the facts established based on the social inspectors' findings and their investigations, the victims' statements and the defendant's statement, as well as the photographs in the file. The victims were also in a precarious situation, as they were in financial difficulty, didn't speak Dutch and didn't have a valid residence permit, which the defendant knew.

In his defence, the defendant argued that he hadn't recruited the workers. The court recalled that "recruitment" doesn't require the person hiring the worker to play an active role. The fact that the person hiring employed the worker concerned to provide labour is sufficient.

The defendant had a criminal record. He had already been convicted 34 times by the magistrate's court and had four criminal convictions, for social offences in particular. The defendant was handed a two-year conditionally suspended prison sentence and a fine of EUR 36,000. The company was given a partly suspended fine of EUR 64,000. They were both ordered to pay a provisional euro to the civil party.

2.3.4. | Night shop

On **2 April 2021**, **Liège Criminal Court** tried a case of human trafficking in night shops[161].

A defendant from Bangladesh was prosecuted for various criminal social law offences concerning several foreign workers employed in his night shops (no Dimona declaration, employment of workers without a right of residence, non-payment of wages).

He was also prosecuted for human trafficking of three of these workers, who were Indian, as well as for other social criminal law charges, together with his company.

Six workers filed a civil suit, two of them in relation to the charge of human trafficking.

The defendant was the manager of four night shops that operated through a company.

In February 2014, an inspection was carried out in various establishments run by the defendant. In June 2015, the NSSO inspectorate was contacted by a specialised reception centre because two people, both illegally staying, had come to the centre to report their working conditions. Further inspections were carried out between 2015 and 2018, during which several irregularities concerning the employment of foreign workers were found.

The defendant challenged the admissibility of the prosecutions, arguing that his rights of defence had been violated, an argument rejected by the court.

The court declared the social criminal law charges established (no Dimona declaration, employment of workers without a legal right of residence, non-payment of wages).

However, in a detailed (and debatable) reasoning, the court released the defendant of the charge of human trafficking, referring in particular to the six ILO indicators used to identify forced labour, which the court considered useful to understand the concept of work contrary to human dignity[162].

The three workers described a very long period of employment, for a ridiculously low salary given the particularly high number of hours worked, with no social or medical cover whatsoever, under camera surveillance and under pressure (they were waiting for their residency status to be regularised, there was the language barrier, the defendant had banned them from talking to each other about their situation, and they had been given an order to flee in the event of a shop inspection). One of them was also housed in a damp, unheated building belonging to the defendant.

161 Liège Crim. Court, Liège division, 2 April 2021, 18th ch. (appeal).

162 N.B.: threats or physical violence towards a worker, locking a worker up in a place of work or restricting their movement, debt bondage, confiscation or excessive witholding of wages, confiscation of passport or identity documents, and threat of reporting a worker to the police if they are staying illegally.

The court found that the workers had been paid less than the applicable wage rates and had not been regularly paid, and that the regulations on working hours hadn't been respected. However, it didn't appear, or not with sufficient certainty, that the workers were locked in their workplace: i.e. that they weren't free to come and go as they pleased or that they were threatened with being reported to the police because of their illegal stay.

It also noted that the back pain of one of the workers wasn't indicative of working conditions contrary to human dignity, but resulted from the nature of the work performed (involving the carrying of heavy loads).

However, according to the court, the fact that the workers' working conditions weren't acceptable (non-compliance with the applicable regulations on working hours, wages and probably accidents at work) didn't justify considering that these elements alone amounted to exploitation in conditions contrary to human dignity, at the risk of interpreting the concept of human trafficking too broadly.

The court therefore considered that there was a doubt, however slight, since the court couldn't rely solely on the statements of the employees, which weren't substantiated by other elements.

The court handed the defendant a one-year suspended prison sentence and a fine of EUR 95,200, suspended for the amount above EUR 15,000, and the company a fine of EUR 96,000, suspended for the amount above EUR 3,000.

It ordered the confiscation of the sum of EUR 3,803.50, the financial benefits derived from the offences and seized from the cash registers of the shops during the checks.

It awarded the workers who had filed a civil suit the sums claimed (mainly as back pay).

The court declared that it didn't have jurisdiction to hear the civil party claims based on the charge of human trafficking of the two workers, but awarded them EUR 49,471.36 and EUR 89,124.49 respectively as back pay.

2.3.5. | Domestic work

Brussels Court of Appeal partly reversed a decision of **Brussels Criminal Court of 24 November 2017**[163] concerning the domestic work of a minor.

A defendant was prosecuted for human trafficking for the purpose of labour exploitation and various social criminal law offences against a Congolese girl, who was a minor at the time of the events (12 years old when the acts began). The victim was living at the home of the defendant who was allegedly exploiting her. The defendant was also prosecuted for acts of violence at work, illegal employment of a child and intentional assault and battery.

In April 2014, the police were called to intervene on behalf of a minor in difficulty who was on the street. They discovered the young Congolese girl, aged 15, in tears and accompanied by a friend. The young girl, who was on the run, explained that she was living with the defendant, to whom she had been entrusted three years earlier by her father. She had no residence permit. The defendant suspected her of witchcraft and had therefore been violent towards her over the past month. That morning, she had been forced to stay on the balcony in the cold. She was taken by the police to the hospital where the doctor noted pain in multiple places due to bruises. Traces of violence were also visible in the photographs taken of the girl by the police. She was placed in a specialised centre for child victims of human trafficking.

She said that she had come to Belgium to continue her education after having attended primary school in Congo. Since her arrival, she had been staying with the defendant, a friend of a friend of her father. She attended the same school (secondary section) as the youngest of the defendant's four children, who was in the primary section. She had to do the housework, wash the child, prepare meals for her and take her to school. If she didn't obey, the defendant set upon her and hit her. She slept on a mattress on the floor in the room of the defendant and her youngest daughter.

The court had acquitted the defendant of the charge of human trafficking at first instance, as it considered there was some doubt concerning the conditions contrary to human dignity: the conditions of the accommodation were commensurate with the defendant's means, it didn't

163 Brussels French-speaking Crim. Court, 24 November 2017, 59th ch: available at myria.be. See also Myria, *2018 Annual Report Trafficking and smuggling of human beings, Minors in major danger,* p. 124.

seem abnormal that the defendant should have the girl's passport given her young age, and her precarious residence status hadn't facilitated her social life or her medical care. On the other hand, the court upheld the charges concerning social criminal law, the illegal employment of a child, and intentional assault and battery. The defendant was acquitted of the charge of violence at work.

The defendant was handed a one-year suspended prison sentence and was ordered to pay the girl, who filed a civil suit, the sum of EUR 2,000 in non-pecuniary damages and EUR 38,414 in pecuniary damages.

The public prosecutor and the civil party appealed.

In a **judgment of 2 December 2019 pronounced in absentia**, **Brussels Court of Appeal**[164] reversed the decision. Contrary to the court, it declared the charge of human trafficking, with all the aggravating circumstances referred to, and that of violence at work, also established.

As the defendant objected to the judgment, Brussels Court of Appeal re-examined the case.

As she didn't appeal and the public prosecutor's office limited its appeal to the releases pronounced at first instance, the **Court of Appeal, in its judgment of 2 March 2021**[165], declared the charges concerning social criminal law, illegal employment of a child, and intentional assault and battery definitively established.

It partly revised the judgment, declaring that the charge of human trafficking had been established, based on the evidence gathered in the criminal file, the victim's statements, testimonies, and the hearings of the defendant and members of her family.

The court considered that there was no doubt that the young girl, a minor, had been forced during her long stay with the defendant to carry out heavy domestic tasks and to look after her children, in conditions contrary to human dignity.

In this respect, the court noted: the fact the girl had to be available at all times, working hours that prevented a normal school life, the repeated use of violence, insults and threats, accommodation in inhuman conditions and confiscation of her passport.

The court handed the defendant a partly suspended two-year prison sentence.

It also revised the civil judgment: it ordered the defendant to pay the victim EUR 100,577.60 in pecuniary damages (corresponding to the loss of earnings and the loss of two school years) and EUR 5,000 in non-pecuniary damages.

Another case, tried by **Ghent Criminal Court on 7 October 2020**, concerns real acts of modern slavery in relation to three Bulgarian victims[166]. The acts were only identified as human trafficking at a late stage of the investigation, which had previously only focused on injury and illegal stay.

Two defendants (a father and his son), of Bulgarian nationality, were tried for human trafficking with aggravating circumstances (abuse of a person's vulnerable situation and abuse of authority over the victim) and social law offences (no Dimona declaration) against three Bulgarian victims between August 2018 and September 2019. One of the defendants (the father) was also prosecuted for assault and battery against one of the three victims.

Two of the victims, as well as a specialised reception centre, filed a civil suit.

The acts had already come to light at the beginning of the period of crime thanks to an investigation by the local police in Ghent on 17 August 2018 into the residential situation of the first defendant following a new report of automatic de-registration. A local resident had informed the police that the defendant was nevertheless still living here. The police found this suspicious and noted that the defendant appeared in several other files. During a neighbourhood investigation, several residents reported serious violence against a disabled resident, among others. The police closely monitored the situation and were able to trace one of the victims in September 2018 in the presence of the second defendant. Since the victim's identity card had expired, the police drew up a report on the victim's injuries and illegal stay. Because of his illegal stay, the victim was locked up in the municipal prison after his hearing, pending a decision by the Immigration Office. During the search, the police also found that his body was covered with old and recent scars such as marks, bruises, possible burns or (cigarette) burn marks.

164 Brussels, 2 December 2019, 11th ch, available at www.myria.be. See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p. 89.

165 Brussels, 2 March 2021, 11th ch.

166 East Flanders Crim. Court, Ghent division, 7 October 2020, ch. G29 (appeal).

The police assumed that these scars weren't caused by falls and that a thorough medical examination was necessary.

The defendants were heard in September 2018, as were the victims. Initially - especially in the presence of the defendants - the first victim attributed his numerous (unhealed) injuries and his outward appearance to his frequent drunkenness, his epilepsy and his persistently scruffy appearance. The defendants also put forward this argument as a defence and mentioned that they were only trying to help the victim by offering him shelter.

Following these findings and the content of this hearing, the prosecutor asked that the defendant be heard again, this time as a suspect, with an interpreter if necessary. Finally, after refusing several invitations, he was questioned at the end of February 2019: he denied everything and the police no longer considered him of interest.

In April 2019, a petrol station attendant informed the police that in the same van, a second man would always turn up with fresh open wounds, as though he was regularly beaten up, every time he came to pay. Thanks to the CCTV footage provided by the petrol station attendant, it transpired that it was the same Bulgarian victim. In the meantime, the police had received several new complaints from neighbours.

On 29 September 2019, the police launched a new neighbourhood investigation, during which several witnesses described the victims as the defendants' slaves. The police also observed the defendant hitting a victim with an iron bar during a random visit to the place. The victim stated that he slept with the dog, did chores when the defendant asked him to, was given leftover food, was often beaten when he didn't do something properly, and was forced to relieve himself outside. He stated that he met the defendants at a homeless shelter where the defendants came to recruit people to work under the pretext of offering help.

Further investigations in the neighbourhood also revealed that there was a second and third victim. The second victim also made similar statements. He apparently already knew the defendants in Bulgaria and had come to Belgium to supposedly get help with a cataract operation. Since the operation didn't take place, the man was unable to work in the defendant's (son's) company and was forced to help him with all sorts of other tasks, especially domestic ones. He was treated in the same way as the other victim and stated that the defendants terrified him.

According to the defence, the third victim was self-employed and occasionally carried out tasks for the second defendant's pitta business in exchange for shares in the business. However, the victim wasn't registered as a shareholder and didn't receive any shares. Moreover, he hadn't been informed of this alleged arrangement at all.

The defendants, together with members of their family, had set up a fraudulent business structure. They had set up several companies in the same locations with the same activities, such as a pitta bar, a café, a shop and a construction company, which often went bankrupt or into liquidation. Over the years, the managers and partners regularly changed, and there was no registered address in Belgium. They often came from the same region of Bulgaria as the defendants and often reappeared in the different companies. It was also noted that these Bulgarians were staying at the address of the pitta businesses.

On the basis of the police findings during the neighbourhood investigations and searches, the statements made by neighbours, the medical report on the victim's injuries, a photographic record, and the statements of the other parties involved, the court found the two defendants (father and son) guilty of human trafficking. The court also referred to "keeping compatriots in need in a system of modern slavery, using extreme and senseless violence".

The victims were undeniably employed in conditions contrary to human dignity. They lived in miserable conditions, were only given leftover food and were forced to look for food in the rubbish bins, they weren't allowed to use the bathroom in the house, they weren't paid for the work they did, and they were physically and verbally threatened. The first defendant was also found guilty of assault and battery.

The two defendants both have long criminal records. Both defendants were sentenced to four years in prison and a fine of EUR 24,000.

They were also both ordered to pay the civil parties compensation of EUR 21,232.62 to the first victim (consisting of material compensation for unpaid wages and material and moral compensation for the acts of human trafficking and intentional assault and battery), EUR 10,975.63 to the second victim (consisting of material compensation for unpaid wages and moral compensation for psychological exploitation) and EUR 2,500 to the nonprofit association Payoke. The immediate arrest of the two defendants was also ordered.

2.3.6. | Atypical sector: adminstrative work in a travel agency

In a judgment of **14 December 2020**, **Antwerp Criminal Court** decided on a case of human trafficking with the aggravating circumstance of abuse of a person's vulnerable situation[167], and social law offences. The period of crime ranged from 31 December 2017 to 7 December 2019. One defendant was prosecuted. The Moroccan victim filed a civil suit.

The case was opened after the Supervision of Social Legislation's inspection service (SSL - CLS in French) and the police carried out a surprise inspection on 7 December 2019 at a travel agency that was run as a one-person business by the defendant. During this inspection, the inspectors found the victim writing down the details of a customer in a book of luggage slips. When asked to identify himself, the plaintiff showed his accommodation in the basement of the building and said that he worked without a contract and no fixed salary but in exchange, he received accommodation (in a damp and mouldy basement without any amenities), bread, coffee and occassionally some money for cigarettes. He opened the agency at 10:00 and closed it at 17:00. He received the customers, weighed their luggage and took care of all the administration for the dispatch of the parcels. All transactions were recorded in notebooks. He stated that he had been living and working there for two and a half years. He was also not registered in Dimona and worked without the necessary work and residence permits, because he was in the country illegally and had already received an order to leave the country. The defendant promised to help him with his residence permit, but he never kept his promise.

During a previous police check on 30 June 2019, he had just received a new order to leave the territory and had been forced by the defendant to state that he wasn't working there and that he had only be given accommodation. During another check on 7 December 2019, the defendant told him in Berber to keep quiet.

The defendant - also of Moroccan nationality - argued that he had only been absent for a short time and that, as a favour to the plaintiff, he had allowed him to help out from time to time at work. He offered him accommodation after the plaintiff had begged him because of his illegal situation. Based on the analysis of the entries in the eight books of seized luggage slips, the detailed statements of the victim supported by the inspectors' findings, and the fact that the plaintiff was in possession of a telephone number on the company's business card, the court considered the facts to be established.

The defendant was found guilty of human trafficking with the aggravating circumstance of having taken advantage of a person's vulnerable situation and of social law offences (in particular, no registration in Dimona and the employment of a foreigner not authorised to work).

The defendant was sentenced to one year in prison and a fine of EUR 24,000.

The defendant also had to pay the plaintiff pecuniary damages of EUR 45,846.62 (salary calculation) and non-pecuniary damages of EUR 5,000.

2.4. | Forced criminality

Antwerp Court of Appeal re-examined a case of trafficking for the purpose of forced criminality, judged at first instance by **Antwerp Criminal Court on 30 March 2020**[168].

Five defendants, of Macedonian nationality, who formed a family, were prosecuted on various grounds, in particular for human trafficking, abuse of a person's situation of weakness, degrading treatment of a person and threats against persons. A victim, a Belgian man, and a specialised reception centre filed civil suits.

167 Antwerp Crim. Court, Antwerp division, 14 December 2020, ch. AC1 (appeal).

168 Antwerp Crim. Court, Antwerp division, 30 March 2020, no. 1879 (available at www.myria.be). See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors,* p.95.

The investigation began after several neighbours reported to the police in mid-2019 that an elderly man was sleeping on the terrace of a house every day regardless of the weather conditions. The police launched an investigation and indeed found a man in poor condition who needed help.

The investigation revealed that the victim's first contact with the family was in 2008, when he was working as a counter clerk at the post office. A relationship was immediately established and he was regularly invited to their home. This is how the victim became attached to the family. Very quickly, the family started to ask for money from time to time because they were in difficulty. In the beginning, he gave the family EUR 300 a month. Soon, he also gave them his bank cards and PIN codes, which made him automatically lose control of his money. The victim argued with his own brother and sister about his close contact with the family. As a result, he became even more socially isolated. He also resigned from the post office after stealing money from his employer at the request of one of the defendants.

In 2009-2010, the victim sold his flat at the family' s suggestion. A large part of the proceeds were used to pay off their debts. The balance was deposited in the account for which the family had the bank card and PIN code. Within a short space of time, the family had taken the money. The victim went back to work part-time, earning EUR 1,400 a month. As soon as his salary was paid, the family squandered it, notably to buy a car. The victim rented a studio from the CAW (social aid centre). He had given the key to the apartment to the family, who sublet it to an acquaintance and collected the rent. The victim lived with the family and paid weekly rent. He lived in very unhygienic conditions. The man was forced to eat and sleep outside. He had to wash himself at a tap. From time to time, the family allowed him to take a shower.

Over the last few months, he had also been involved in (about 20) shoplifting offences at the request of the defendants.

The family pressured him and threatened to throw him out on the street. The victim was easily influenced and emotionally dependent on the family. Meanwhile, he had accumulated a mountain of debt. A collective debt settlement was sought. The neighbours eventually alerted the police and were threatened by the family.

The investigation was carried out on the basis of a search, police findings, a bank investigation, detailed and consistent statements from the victim and the defendants' implausible statements.

At first instance, the court had found all the defendants guilty, each for the acts of which they were accused. Moreover, this was not the first time for some of them. They already had several convictions on their criminal records. One defendant had already been convicted of human trafficking in the past. The father, mother and one son were given prison sentences of five years (the parents) and 30 months (the son) respectively and fined EUR 20,000. The family's two other children were handed 10 and 18-month suspended prison sentences and (partly suspended) fines of EUR 8,000 and EUR 800. Their contribution to the acts was more limited.

The victim was awarded EUR 100,000 in pecuniary damages and EUR 2,500 in non-pecuniary damages. The reception centre was awarded EUR 2,500 in both pecuniary and non-pecuniary damages.

The defendants appealed.

In a **judgment of 27 November 2020**, **Antwerp Court of Appeal**[169] considered that the victim was indeed in a highly vulnerable situation. The parents lured a single man, without children and on a fixed income, with a view to making him totally dependent on them by isolating him socially and exploiting him financially. This left him in a particularly vulnerable situation, which they abused.

As for the charge of human trafficking, and contrary to the Criminal Court, the Court of Appeal only found the parents guilty, and not their daughter: she had no control over the victim and it wasn't proved that she had incited the victim to commit theft.

The parents, on the other hand, controlled the victim and offered him shelter in order to make him shoplift. The victim explained that he had to steal goods when they went shopping. This worked and he stole more and more because he wasn't detected. When he went alone, he was given a list of things to steal. If he refused, the defendants became aggressive.

169 Antwerp, 27 November 2020, ch. C6.

The victim was also forced to give the key to his social housing, which the defendants sublet without the knowledge of the housing company. The rent wasn't paid, as the defendants took the victim's income directly from his account using his bank card. The court noted that this was also an offence, facilitated by the control the couple exerted over the victim, forcing him to live with them during this period.

In all other respects, the court confirmed the judgment pronounced at first instance. However, it reduced certain fines. For the couple's daughter, who was released from the charge of human trafficking but convicted of abuse of weakness, the court put her on probation. One of the sons obtained a suspension of the sentence of the sentence.

The court confirmed the civil sentences handed down at first instance.

Another case of forced criminality was tried by **Dendermonde Criminal Court** on **8 December 2020**[170].

In this case, a Romanian defendant was prosecuted for human trafficking for the purpose of forced criminality of a Romanian girl, aged 14 at the time the acts began. She had to go shoplifting. He was also prosecuted for raping her, as well as for stealing clothes himself, accompanied by his then girlfriend.

The girl filed a civil suit through her guardian.

The victim was heard via an audiovisual hearing and had been placed by the youth judge in a centre for minors who are victims of human trafficking, the address of which is secret. She was reported in Romania as missing/abducted.

The defendant and the victim met in Romania. The defendant was an ex-boyfriend of her mother and lived with her and her children, including the girl. They separated. The defendant then came to Belgium. He paid someone EUR 1,000 to bring the girl over. She lived with him and they started a relationship. They had sex without contraception. He forced her to steal clothes from shops, which he then sold. The victim explained how the thefts were carried out, which shops were visited (all over Belgium) and where they sold the clothes.

Her statements were confirmed by the results of the examination of the defendant's mobile phone.

In the court's view, this was indeed a case of human trafficking: the defendant brought over the girl so they could shoplift together. The fact that he also directly involved his new girlfriend was a further indication. The girl was an illegally staying minor and was completely dependent on the defendant. The victim didn't consent. Physical violence or emotional coercion, in particular, don't necessarily have to be involved, there can also be abuse of the victim's vulnerable situation, which was the case here.

The court didn't uphold the rape charge, as the case showed that there was a romantic relationship between them and that it wan't proven that non-consensual sex took place. According to the court, the victim came to Belgium with full knowledge of the fact that she was in a relationship with the defendant, including sexual relations. It therefore reclassified the acts as indecent assault.

The court accepted the charge of theft: the defendant had been caught in flagrante delicto with his new partner.

The defendant, who was 30 years older than the victim, already had a long criminal record in Romania and Belgium, with convictions for theft and a release for human trafficking for the purpose of sexual exploitation.

The court sentenced the defendant to 30 months in prison and a fine of EUR 8,000, and ordered him to pay the victim EUR 1,500 in damages.

3. Human smuggling

3.1. | Iraqi networks

Two Iraqi networks resulted in convictions, one of which concerned smuggling acts associated with the death of the Kurdish girl Mawda in May 2018.

170 East Flanders Crim. Court, Dendermonde division, 8 December 2020, ch.D19D (final).

In the first case, judged on **25 November 2020** by **Antwerp Criminal Court**[171], ten defendants appeared for human smuggling with aggravating circumstances (some victims were minors, abuse of a position of vulnerability, use of coercion, endangering the lives of victims, habitual activity, participation in a criminal organisation). They were also prosecuted for their involvement in various capacities as members or leaders of a criminal organisation.

The acts took place between June and October 2019.

Two defendants failed to appear.

The organisation was involved in the smuggling of more than 230 people, always using the same modus operandi to smuggle migrants to the United Kingdom for large sums of money. The victims were contacted in Dunkirk, mainly via Facebook. They were taken by bus to the so-called Little Jungle, where they were placed in the cargo area of a small van and taken to a car park on the E34 (near Turnhout, Tessenderlo). They had paid between EUR 3,000 and EUR 5,000 for this purpose or had paid money through the hawala (underground banking) system that was handed over to the criminal organisation in the event of a successful crossing. The smuggled people were both adults and minors, sometimes even very young children and pregnant women. The smuggling victims were mainly from Iraq and some from Iran. They were intercepted by the police on several occasions. Several individual acts of smuggling were identified and were linked to the same organisation. The scale and continuity shed light on how the criminal organisation operated. Although most of the victims showed little or no willingness to cooperate with the investigation or to give statements, the file clearly showed (through observations, the phone investigation and the statements) the workings of the organisation in which each member had their own tasks and roles.

According to the findings made during the observations, there was no doubt that minors were being smuggled. There were about 40 minors, mostly young children with family and some unaccompanied minors. Some of them had been intercepted several times. The smuggled people were all in a desperate situation and were prepared to get into any lorry to reach the United Kingdom.

The defendants showed no respect for the people's well-being. They were put in refrigerated lorries, sometimes had to wait for hours in the woods, the vehicles used by the smugglers were in a very bad condition and drove at high speed, thus posing a danger on the road. Several victims claimed that the smugglers easily resorted to violence and threats. In addition, weapons were mentioned and knives were found. Some of the smugglers mingled with the migrants in the cargo area to keep an eye on them and prevent communication between them. This was also used as a means of pressure to prevent the police from obtaining a reliable statement from victims. In view of the many findings and the modus operandi, it became clear that the smuggling had become a regular activity that took place within the framework of a criminal organisation with international ramifications, which operated very professionally in order to be less visible to the police.

The first defendant was undoubtedly the leader of the criminal organisation: the second and third defendants disputed their involvement in the decision-making process. However, the court considered that, based on their contact with the leader, the vehicle supplier and the hawala bankers, they were actively involved. According to the court, they were to be considered as decision-makers.

The other defendants not only accepted an illegal situation, but also committed offences themselves through their actions within the organisation. They also recruited new clients and sometimes acted as supervisors during the illegal transportations. The court didn't agree with their arguments about the fine line between co-perpetrator and victim and found their statements totally implausible in light of the phone investigation. Furthermore, although they didn't receive any money, they were given free passage in exchange for their cooperation, which is a benefit in kind and therefore an indirect financial benefit.

The main defendant was sentenced in absentia to 10 years in prison and a fine of EUR 2,808,000. The second defendant was sentenced to eight years in prison and a fine of EUR 1,176,000, EUR 588,000 of which was suspended for three years. The third defendant was sentenced to eight years in prison and a fine of EUR 976,000, EUR 488,000 of which was suspended for three years. The other defendants were sentenced to prison terms ranging from 12 months to five years and partly suspended fines ranging from EUR 8,000 to EUR 512,000.

171 Antwerp Crim. Court, Antwerp division, 25 November 2020, ch. AC10 (appeal).

The court ordered the confiscation of various financial benefits as well as the seized vehicles and mobile phones.

The second case was tried by **Liège Criminal Court on 31 March 2021**[172]. It concerns the human smuggling part of the case linked to the death of Mawda, the Kurdish girl who died following a police shooting during a chase with the van transporting the migrants. On 12 February 2021, Mons Criminal Court ruled on the case of the fatal shooting.

Regarding the part of the case tried in Liège, six Iraqi defendants, three of whom didn't appear, were prosecuted for human smuggling with aggravating circumstances, including endangering the lives of the victims and the fact that some of them on the fatal night were children. The migrants transported were of various nationalities: Iraqi, Syrian, Pakistani, Iranian and Afghani. The alleged driver of the van (convicted in the Mons case) and the smuggler (released in the Mons case) were both prosecuted. The latter was also prosecuted for various other smuggling charges, as well as another defendant. All the defendants were prosecuted for participation in a criminal association and for illegal residence. The presumed driver of the van was a repeat offender regarding acts committed in France.

The parents of the deceased girl filed a civil suit on their own behalf and as legal representatives of their son. Myria also filed a civil suit.

The case was initiated when investigators from Liège federal police drew up an initial report at the beginning of May 2018, stating that an Iraqi-Kurdish group was actively smuggling human beings. The migrants transited through the Liège region. This smuggling of migrants from Syria and Iraq was organised between France, Belgium and other countries, with England as the destination. The modus operandi consisted of grouping the migrants in a camp near Dunkirk. Each group, accompanied by a smuggler, was then picked up in a van fitted with false registration plates. These vehicles were driven by two drivers, who would go round the various motorway parking areas during the night in order to find an opportunity to board lorries bound for the UK. During these searches, some migrants actively participated in associated tasks (siphoning fuel, cutting lorry tarpaulins, etc.). One vehicle was used as an "opening car".

Payment for the passage from Dunkirk to Britain was made on arrival. However, to make the crossing, migrants had to guarantee the sum via a money transfer "agency", such as Western Union, by providing the name of the beneficiary and the transaction code.

The investigation carried out by the police in Liège led them to believe that certain organisations bought vans in Liège, mainly from the same garage, which were then fitted out (removal of the dividing wall between the driver's area and the cargo area) and provided with false plates.

Several vehicles were intercepted and several cases were opened in different Belgian public prosecutor's offices.

On 17 May 2018, a chase took place on the motorway in the direction of Mons between the occupants of a van, which turned out to have false number plates, and the police, as the van was leaving a parking area at night. The driver of the van was allegedly behaving in a way that endangered other road users, the police and the other occupants of the vehicle and he refused to obey police orders. At some point during the chase, the rear windows (obscured by black paint) were broken by the occupants and various objects, clothing and accessories were thrown out in order to obstruct the vehicles in pursuit. A small child was held up in front of the window.

After a police officer fired, the van took an exit to a parking area and came to a stop right behind a lorry. About 30 people were found in the van. The wall between the driver's compartment and the cargo space had been removed, allowing the driver to mingle with the migrants. The Iraqi girl who had been shot died.

An investigation was initiated in order to identify the driver(s), supervisors, smugglers and organisers of these smuggling operations. Various means of investigation were used (open source searches on social media, mobile phone analysis, DNA and fingerprint analysis, etc.). Anonymous witnesses were also heard.

The court considered that this was indeed a case of human smuggling: some of the defendants had played a role in the illegal transportations, whether by taking the victims to the parking areas, opening

172 Liège Crim. Court, Liège division, 31 March 2021, 19th ch. (appeal).

and closing the doors of the lorries, helping the victims to embark with their luggage, finding out about the situation of the various motorway parking areas, collecting money from the victims or by buying the vehicles needed for their transportation.

The court found that the defendant, who was a repeat offender, was indeed the driver of the van. As regards the moral element of the offence (obtaining a financial benefit), no money was found on the defendant. However, the court considered that this element wasn't a deciding factor. The smugglers had set up a relatively constant modus operandi: illegally staying persons wishing to travel to England would contact one of the smugglers, either by phone or directly through acquaintances. The price of the journey was then negotiated and an appointment was arranged for the migrants, who were taken to the various parking areas where they were met by another smuggler who helped them to board the "right lorries" (i.e. those that were going to England) and then to close the doors. The price of the journey was partly guaranteed by a third party who paid the balance of the travel costs when the migrant arrived at the destination.

The court noted the active role of the smuggler played by the defendant released in Mons (designated as the one who broke the back window of the van and held up the child).

Another defendant was identified as the first driver of the van, having participated in the purchase of the vehicle.

The court also found the three defendants guilty: one gave orders to the migrants and drove the van at some point, and the other two were smugglers present in the van, one of whom participated in the purchase of the vehicle in Liège.

It accepted the aggravating circumstances of some victims being minors, abuse of a vulnerable situation, fraudulent schemes and threats, and endangering life.

It also accepted most of the other smuggling charges against certain defendants and the charge of illegal stay.

The court also found that there was criminal association: the investigation showed how the victims' passage was organised and how the tasks were distributed among the perpetrators (purchase of vehicles with false number plates, driving them, opening lorries, etc.), even if this distribution was variable, with different people performing the various tasks each time. Furthermore, the defendants were in constant and regular contact and were clearly linked to people involved in this activity abroad. They also regularly changed phone numbers and the phones were used by several people.

The court sentenced the driver of the van to an extra year in prison on top of the sentence handed down in Mons (four years) and a fine of EUR 208,000. The other defendants were sentenced to between three and five years in prison (one of which was partly suspended) and to fines of between EUR 208,000 and EUR 264,000 (one of which was fully suspended).

The court ordered the defendant against whom the girl's parents had filed a civil suit (one of the defendants who failed to appear) to pay them each a final sum of EUR 1,000 and EUR 2,000 for their son.

Myria received one final euro.

3.2. | Vietnamese network

In a **judgment of 22 April 2016**, **Brussels French-Speaking Criminal Court**[173] convicted five Vietnamese defendants, three of whom were convicted in absentia, of smuggling human beings, including minors. In addition to a sixth defendant, they were also convicted of being active in a criminal organisation in a variety of roles.

The defendants were involved in an international smuggling ring. People from Vietnam were smuggled for a substantial fee, mainly to Britain. Half of the journey was paid before leaving Vietnam and the other half was paid by the family when the passage had succeeded. The fare was approximately EUR 20,000 for Belgium or France, plus EUR 5 - 6,000 for England. The money was paid to the parents of the main defendant, who was the leader of the organisation. The defendant's family paid the costs, in particular those related to the transportation (drivers' wages).

173 Brussels French-speaking Crim. Court, 22 April 2016, 47th ch.: see www.myria.be and Myria, *2016 Annual Report Trafficking and smuggling of human beings, Beggars in the hands of traffickers*, p. 158.

Another defendant was the treasurer and the logistics manager of the organisation. The other defendants acted as intermediaries, drivers or providers of accommodation.

People wanting to reach England were put up in safe houses in Brussels and then taken to the Grand-Bigard parking area, where they were loaded onto lorries bound for Calais and then Britain (either in the cab of the lorry with the driver's complicity, or hidden in trailers, in the middle of the load, sometimes risking their lives).

The countries crossed by the immigrants were marked out by members of the organisation who ensured that contacts were made to enable the progress of the illegal immigrants through either Eastern Europe or Southern Europe from Ukraine.

The acts were uncovered following the discovery of several illegal immigrants in lorry trailers in Grand-Bigard and Calais, including minors. The various protagonists and the modus operandi were identified thanks to phone tapping. Observations were also made. The bank investigation revealed Western Union-type money transfers from Belgium and other Western European countries to Vietnam.

The leader of the organisation was sentenced in absentia to 10 years in prison and a fine of EUR 90,000.

Pag-Asa and Myria, who had filed a civil suit, each received EUR 1.

The head of the organisation was arrested in Germany and handed over to the Belgian authorities, where he opposed the judgment.

The defendant acknowledged the acts of smuggling, but denied that he was the leader of a criminal organisation.

In its **judgment of 25 November 2020**[174], the criminal court convicted the defendant for the alleged offences. The decision was based on the police findings and observations, phone taps and a computer search of the defendant's Facebook accounts. They provided information on his numerous conversations about this smuggling, the payments for the passage of the undocumented migrants, and also about the pressure put on the migrants' families in Vietnam to pay up.

It considered that the defendant was the leader of the Belgian branch of the criminal organisation of human smuggling: he organised the journeys, explained the possible routes, carried out the changes of accommodation, directed the migrants towards the safe houses, determined the prices and made discounts, ensured the collection of funds, and ordered the detention and subsequent release of the migrants after they had crossed the border, according to whether the money had been paid by the family back in Vietnam.

The court sentenced the defendant to eight years in prison and a fine of EUR 90,000. It ordered his immediate arrest.

Myria and Pag-asa received the final sum of EUR 1.

3.3. | Albanian human smuggling network with an undercover agent

In **a judgment of 6 January 2021**, **Ghent Criminal Court** ruled on a case of the human smuggling with aggravating circumstances in which the twelve defendants were all Albanian nationals[175]. The acts judged by the court took place between 1 August 2018 and 25 September 2019

Police information revealed that a hotel in Ghent was being used as a transit point/safe house for Albanians wishing to be smuggled into the United Kingdom. With the approval of the competent magistrate, undercover agents were used to further identify the possible criminal organisation(s). The undercover officer made contact with the fourth defendant, whose phone was tapped. Following the phone tap, a European investigation order and the defendants' hearings, 12 people were identified for trial in this case.

The defendants were charged with participation in the decision-making of a criminal organisation and/or being leaders in a criminal organisation, as well as smuggling and attempted smuggling of human beings with aggravating circumstances.

174 Brussels French-speaking Crim. Court, 25 November 2020, 47th ch. (final).

175 Ghent Crim. Court, Ghent division, 6 January 2021, ch. G28AH. Only the third defendant appealed. His conviction was confirmed by Ghent Court of Appeal in a judgment of 26 October 2021. However, the court reduced his sentence.

The court considered as proven that the defendants were part of two criminal organisations, with various links between them. The leaders were either in the United Kingdom, and in Belgium or even temporarily in Albania. From there they controlled a network that smuggled people across the border into the United Kingdom. The people were usually placed alone or in pairs in the cabins of lorries or in private cars, but the possibility of organising transport by boat and/or yacht was also mentioned. A sum of EUR 15,000 per person was charged for the entire illegal transportation from Albania to the United Kingdom.

The court convicted the defendants for the offence of smuggling human beings with aggravating circumstances. Since the aggravating circumstance of endangering the life of a victim intentionally or by gross negligence could only be determined on the basis of an objective fact and it wasn't possible to prove to whom this specific transportation could be attributed, this aggravating circumstance wasn't accepted.

The court also convicted the defendants who thought they were cooperating in exchange for their own transportation to the United Kingdom.

The defendants were convicted of smuggling human beings with aggravating circumstances and attempted smuggling of human beings and sentenced to prison terms ranging from 40 months to eight years, fines ranging from EUR 40,000 to EUR 1,632,000, part of which were suspended, and a special confiscation of financial benefits ranging from EUR 625 to EUR 194,000.

3.4. | Ethiopian network

On **23 June 2020**, **Dendermonde Criminal Court** examined a case of human smuggling involving an Ethiopian network[176].

Five defendants appeared for human smuggling with aggravating circumstances and for criminal organisation.

Acts of human smuggling had been reported since 1 January 2019, at regular intervals, at the parking area in Kalken, along the E17 motorway. More than 81 reports of smuggling activities were made between 1 January and 9 May 2019. The migrants in transit had to pay between EUR 600 and EUR 1,000 to be smuggled to the United Kingdom. Maximilian Park in Brussels was used as a contact point. When investigators found a group of migrants in the trailer of a lorry, they started to examine the contents of their mobile phones. Based on the information provided, it was possible to carry out a retroactive search and apply tapping measures to certain numbers. As a result of the tapping, searches were also ordered in two houses where money was found. As a result of the information obtained, the five defendants were identified.

The court accepted the charge of human smuggling for four of the five defendants. It reclassified the criminal organisation charge as criminal association, whereby each protagonist had the intention of committing offences and was pursuing their own interest, but each with a specific role in the system.

According to the court, the basic offence of human smuggling doesn't mean that every co-defendant has personally received money from each smuggling victim. It is sufficient to cooperate directly or through an intermediary and to participate in an organisation that has a history of abusing the precarious situation of smuggling victims.

The court found that the statement accompanying the charges listed 111 victims, but included some duplicates. The court estimated the total number of victims to be 104, i.e. 36 child victims and 68 adult victims. However, it isn't clear from the criminal record whether all the victims identified as minors were in fact minors. Consequently, this aggravating circumstance called for a release. On the other hand, the victims were indeed victims of human smuggling.

The court found that the aggravating circumstance of endangering the lives of the smuggling victims was established. In the parking area, the defendants placed the migrants in the cargo section of refrigerated lorries and tankers, without the drivers' knowledge. This type of transportation obviously presents a risk, since the illegal migrants sit among the cargo, which can shift in the event of an emergency stop or a road accident. Refrigerated lorries were targeted as they were less frequently checked. This only increased the danger for the victims: the temperatures were totally inappropriate and even dangerous, and oxygen was limited, leading to a risk of suffocation.

176 East Flanders Crim. Court, Dendermonde division, 23 June 2020, ch. D19D (final).

In addition, several attempts to smuggle migrants also took place during the heatwave of summer 2019. Placing migrants in locked lorries in extreme temperatures increases the risk of suffocation.

It was clear to the court that the first and second defendants were the kingpins of the smuggling activities, with the first defendant playing the biggest role and the second defendant replacing him in his nightly rotation in the parking area. The court considered this to be established based on the information from the phone taps, the photographs shown, the retrospective examination of various mobile phone numbers, the statements and the observations on site. During his hearing, the first defendant initially claimed to be a simple migrant in transit. However, the phone tap showed that he considered the parking area as his territory and that it was out of the question that smugglers from another group could be active here. Even during his detention at repatriation centre 127bis in Steenokkerzeel, the first defendant remained in daily contact with the others in order to keep himself informed of the activities of the smugglers, and he continued to decide what was to be done and by whom. The first and second defendants were sentenced to six and five years in prison respectively, and both were fined EUR 832,000, the majority of which was suspended.

According to the court, the third and fifth defendants acted as privileged transit migrants who contributed to the activities of the smuggling gang. In exchange for their help, they didn't have to pay the amount that transit migrants normally paid the smugglers to make the crossing.

The third defendant strongly denied being a smuggler and stated that he was only involved in smuggling activities in the hope of increasing his chances of being placed in a vehicle. During his hearing, he stated that he had stayed in a refugee camp or sometimes in Maximilian Park, or with families who offered shelter to migrants in transit. The phone taps revealed that he played an active role in the activities. He recruited clients in Maximilian Park, maintained contact with them, helped them hide in the lorry, and received and kept the payments for the smuggling. His role wasn't simply secondary, since he participated in the discussion of the smuggling rates, seeking to raise the price to a minimum of EUR 1,000, and helped to determine the penalty for smuggling victims who went to the parking area by themselves.

Furthermore, the court considered that the inhuman situation in which he found himself did not constitute duress as referred to by the defence within the sense of Article 71 of the Criminal Code. After his asylum procedure was rejected in Germany, he freely chose to circumvent this rejection by coming to Belgium with the aim of crossing to the United Kingdom. He was sentenced to a three-year suspended prison term and a fine of EUR 296,000, of which EUR 196,000 was suspended for three years.

The fourth defendant denied any role in smuggling. His phone wasn't tapped. Two of his conversations were recorded on the co-defendants' phone numbers. Although they suggest that he was involved in smuggling, there is no certainty about this. The court therefore gave the fourth defendant the benefit of the doubt and released him.

The fifth defendant stated that he and the co-defendants were a group of friends who helped each other in the parking area to get into lorries. The phone taps revealed that he was an intermediary between the transit migrants and the smuggling gang. He would go to the parking areas to open the lorries. His role was considered proven, but much more limited than that of the first and second defendants. He was conditionally released by the investigating judge and repatriated to Switzerland in October 2019. He was therefore sentenced in absentia in this case to 18 months in prison and a fine of EUR 208,000.

Large sums of money considered to be assets derived from criminal activities found on the defendants were confiscated.

3.5. | Eritrean network

Ghent Court of Appeal re-examined a smuggling case involving a gang of Eritrean smugglers, tried at first instance by **Dendermonde Criminal Court on 25 February 2020**[177] and discussed in the 2020 report[178].

This case concerns a gang of Eritrean smugglers consisting of eight defendants. The second defendant in this case appealed the decision. Myria filed a civil suit.

177 East Flanders Crim. Court, Dendermonde division, 25 February 2020, ch. D19D, published on: www.myria.be

178 Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p. 101.

His defence requested that not only 83 identified individuals be interviewed to disprove his role, but also that a professor specialising in migration flows provide the necessary insights. He also argued that he too was a migrant in transit seeking to reach the United Kingdom and a victim of the human smuggling gang, because during his frequent visits to the Kruibeke parking area, he didn't commit any act that could be considered punishable. The court didn't grant his request.

In its **judgment of 21 December 2020**, **Ghent Court of Appeal** agreed with the first judges in their assessment[179]. The facts and the available evidence clearly showed that the defendant participated in the illegal transportation of migrants in transit. However, the court released him of the aggravating circumstance of the victim being a child, as it wasn't sufficiently proven that the persons concerned were minors and that it was impossible for the defendant to establish this visually.

He was sentenced to five years in prison (instead of four previously) and a fine of EUR 664,000, of which EUR 564,000 was suspended for three years.

3.6. | Smuggling in small craft and sailboats

A new modus operandi of smuggling in small craft or sailboats was observed in two cases tried in Bruges.

In the first case, tried by **Bruges Criminal Court** on **6 May 2020**[180], four Albanian and Italian defendants were tried for human smuggling with the aggravating circumstances of abuse of the vulnerable situation of a person, endangering the life of the victim and an act of participation in the activity of an association.

The case came to light when the maritime police in Ostend received a report from the coastguard on 14 June 2019 about a sailboat with engine problems. The captain who had initially reported this to the coastguard had noticed that none of the crew were familiar with maritime customs or rules and none of them seemed to have a command of the English language.

There turned out to be nine people on board, none of whom appeared to be the skipper: all the passengers were Albanian nationals and stated that their intention was to sail from Antwerp to Lyon. After questioning one of the suspects, it emerged that the sailboat was in fact on its way to the United Kingdom. The Bruges public prosecutor's office then ordered arrests to be made, the Immigration Office to be contacted and an official report to be drawn up for smuggling, so that the investigation could be started the same day.

The sailboat was very poorly equipped (no navigation equipment, or food and drink, no legally required items, GPS, lifeboat, etc.). In addition, the sailboat was clearly overloaded, as it was only equipped for four people. The maritime police considered that the crossing wasn't safe and that life-threatening events could occur.

Through interviews with the vendor of the sailboat, photos taken by him and interviews with the director of the small port of Lillo and the marina master of Blankenberge, the first and second defendants were identified as human smugglers. In their statements they denied being present at the purchase of the boat or having any knowledge of sailing, but the above-mentioned evidence suggests otherwise. In a subsequent hearing, the second defendant admitted that he and the first defendant had smuggled people on the orders of others in order to be able to cross free of charge himself.

One smuggling victim stated that he was met at Brussels-North by facilitators whose aim was to bring Albanians to the United Kingdom. In the case of another victim, there was a chance meeting in a café in Brussels and they were picked up by a car afterwards. The agreement was that they would pay between EUR 10,000 and EUR 12,000 or pounds sterling on arrival in the United Kingdom, some of it in several instalments thanks to their work. According to the investigators, the smuggling victims weren't very cooperative with the investigation. For instance, one of them stated that he couldn't say who was operating the engine-powered sailboat, that he was "not free to say anything". He believed that "they" (the smugglers) hadn't let the group go to sea without "someone" experienced.

Pictures of very large sums of money were found on the main defendant's smartphone. In addition, photos of three gold bars were also found, which led investigators to suspect him of having invested in gold.

179 Ghent, 21 December 2020, 6th ch.

180 West Flanders Crim. Court, Bruges division, 6 May 2020, ch. B17 (final).

Thanks to a European arrest warrant, the third and fourth defendants were extradited from Italy. They claimed that they weren't guilty of smuggling. They were friends and the third defendant had accompanied the fourth defendant to buy a boat for a friend.

The court found the four defendants guilty of smuggling human beings. The statements of various persons, the photographs provided, the video of the rescue operation, the phone investigation, etc., established this.

The first defendant had no criminal record in Belgium, but he had already been definitively sentenced in Italy to six years and two months in prison, among other things, so that he was considered a repeat offender. He had put himself and the victims in a life-threatening situation and the court considered that it had been proven that he was more at the executive level of the association. He was sentenced to six years in prison and a fine of EUR 8,000 multiplied by the number of victims involved, i.e. seven.

The second defendant was sentenced to five years in prison and a fine of EUR 8,000 multiplied by the number of victims, as his role was considered somewhat less important than that of the first defendant.

The third and fourth defendants contested the aggravating circumstance of danger to life. The court considered that this was entirely justified, because the sailboat didn't have many structural defects. Danger of death was only conferred by the concrete circumstances that arose on the day of the smuggling, in which they weren't involved. The third defendant was sentenced to one year in prison, conditionally suspended for five years, and a fine of EUR 8,000. The fourth defendant was sentenced to two years in prison, conditionally suspended for five years, and a fine of EUR 8,000.

The second case was also tried by **Bruges Criminal Court, on 23 December 2020**[181].

Three defendants were prosecuted for smuggling human beings. This case involves a new smuggling phenomenon involving small craft that are transported from the Netherlands or Germany to France, via Belgium, to be used in France or at the border for smuggling migrants.

The case was brought to light by a local police patrol during the Covid-19 lockdown measures[182] in April 2020. Two vehicles were stopped in the middle of the night to check compliance with the lockdown measures. During this inspection - which took place in the coastal towns on the border with France - various items of equipment for crossing the English Channel were found in the individual cars (including a Zodiac-type inflatable boat, outboard motors, life jackets, a fuel tank, etc.). One of the vehicles had a space hidden by cardboard. Given the known problem of transit migrants crossing the Channel on boats in poor condition, this was considered suspicious. The people involved in these vehicles were immediately arrested.

The human trafficking and smuggling section of Bruges federal judicial police took over the investigation. They learned at around 05:00 that morning that the Westkust police zone had spotted a group of migrants in transit near the border crossing with France thanks to a drone. In addition, the French gendarmerie informed them that the same morning, they had found 11 migrants of Iraqi origin in transit with life jackets in Bray-Dunes, France. There were two families, consisting of seven children aged between two and 14, a woman six months pregnant and three men. Interestingly, one of the transit migrants in both groups was holding a similar red suitcase. Those arrested in the vehicules were also Kurds.

The same morning, a search was carried out at the address of the first defendant, but it didn't lead to anything. The first defendant stated that he had been instructed by an Iraqi friend to collect boats in the Netherlands. He was paid between EUR 600 and EUR 800 each time. The second and third defendants - who were in another car that was checked - admitted staying in the Dunkirk "jungle" and having the intention of migrating to the United Kingdom. In exchange for bringing certain goods to a certain location, the second defendant was to be smuggled for a smaller sum of money. The price of the smuggling, which cost between EUR 3,000 and EUR 4,000, would thus amount to EUR 800. The third defendant denied knowing that there was a boat in the car, but admitted that he had received money to drive the vehicle.

All the defendants denied the charges against them and argued in their defence that they could only be accused of a punishable attempt at most.

181 West Flanders Crim. Court, Bruges division, 23 December 2020, ch. B17 (final).

182 During the first coronavirus wave, non-essential travel to the coast was forbidden.

The court didn't agree with the defence and considered that it was clear that the occupants of the two vehicles were on the road with full knowledge of the facts that night to deliver boats to bring illegal immigrants from the Belgian coast or northern France to the United Kingdom. However, the criminal file didn't contain sufficient objective evidence to conclude that the first defendant had cooperated with the second and/or third defendant.

The court considered that the first defendant knew very well that he was engaged in smuggling human beings in return for payment, on the instructions of a human smuggler, and that he should have known better than to go to the coast himself in such highly compromising circumstances. He was handed a partly suspended three-year prison sentence and a fine of EUR 8,000.

The court considered that the statements of the second and third defendants were contradictory and implausible. It noted that they wanted to be smuggled into the United Kingdom themselves and had clearly committed the acts of smuggling so that they could be smuggled too. They were handed a three-year prison sentence and a fine of EUR 8,000. The vehicles used to commit the offences were confiscated as well as the money found on the defendants.

3.7. | Humanitarian visa fraud

On **12 January 2021, Antwerp Criminal Court**[183] tried a case of humanitarian visa fraud. The acts took place between 2017 and 2019.

In this case, 10 defendants (including the main defendant, his son and his wife) were prosecuted in various capacities for smuggling human beings with aggravating circumstances. The main defendant was also prosecuted for being the leader of a criminal organisation and other defendants for having been members. Several of them, including the main defendant, were also accused of passive corruption. Two defendants were also accused of attempted extortion.

The defendants allegedly helped third-country nationals to obtain humanitarian visas, limited in duration to one year and intended exclusively for an asylum application in Belgium, against payment of sums ranging from EUR 2,500 to EUR 7,500. They did this even though these people - contrary to the conditions of this visa - had settled abroad, an intention which the defendants were aware of, and/or hadn't asked for asylum since the visa had expired in the meantime.

The main defendant was alleged to have abused the authority or facilities granted by the then Secretary of State for Asylum and Migration. As a representative of the Assyrian Church in Mechelen, he was responsible for drawing up lists of Syrian candidates for such a visa in the context of a rescue operation, and for sending these lists to the Office of the Secretary of State.

After review by the Immigration Office, OCAD and State Security, and after approval by the Secretary of State, the humanitarian visa was issued by the Belgian Embassy in Beirut to Syrian refugees on the lists drawn up by the main defendant. The latter were either stranded in Lebanon or came from a war zone. Once in Belgium, the beneficiaries of the humanitarian visa had to follow the "ordinary" procedure, by sending their asylum application to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).

The main defendant, followed by several others, denied the charge of human smuggling, considering that there was "no legal obligation to apply for asylum" and therefore that "the fact that some people didn't apply for asylum within the framework of the asylum procedure in Belgium isn't contrary to Belgian law".

The court didn't accept this reasoning. The humanitarian visa issued was only intended for the purpose of an asylum application in Belgium (and therefore not in another European Member State). And yet, several documents in the file (statements, phone investigation) show that he was aware of this condition.

The defendant was therefore accused of being aware that some applicants didn't intend to stay or apply for asylum in Belgium, but would immediately go to another European Member State. It was precisely for this reason that the defendant asked (even) higher amounts (around EUR 7,500) than those asked of people he knew would stay in Belgium.

183 Antwerp Crim. Court, Antwerp division, 12 January 2021, ch. AC10 (appeal).

The defendant had actually stated on several occasions, after being confronted with a number of tapped conversations or audio recordings, that he wanted to introduce or had introduced a "system of sanctions" to ensure that applicants actually stayed in Belgium.

The court recognised that it wasn't up to the defendant to check whether each beneficiary of a humanitarian visa had applied for asylum after arriving in Belgium, or was staying there. However, the court considered that it was indeed a matter of human smuggling: the defendant had made it possible - in breach of the law - for people to enter the European Union with a humanitarian visa issued only for Belgium, without these people ever having the intention of staying and/or seeking asylum here, and instead going immediately to another EU Member State in order to stay or seek asylum there.

In response to the defendant's criticism of the flawed humanitarian visa system and other possible responsibilities, the court replied that it wasn't required to rule on the "knowledge, professionalism, competence and control" of the humanitarian visa system in relation to people other than those currently before the court.

The court considered that it was also question of a criminal organisation. A division of labour had taken place between the first two defendants (father and son) and others, through intermediaries who supplied the applicants and sometimes also shared the profits. The victims who didn't honour their promise of payment were threatened.

The court convicted the defendants on nearly all the charges. It based its decision on the phone investigation, the phone taps, the WhatsApp messages, the statements of some of the victims and defendants, the money found in a safe, the information from the Immigration Office and the statements of the main defendant, which weren't considered credible at all.

The second defendant, i.e. the son of the main defendant, helped compile the lists and made contact with a series of victims or their family members.

The other defendants were the wife of the main defendant (who rented a safe in which some of the criminal proceeds were hidden) and intermediaries.

The main defendant was sentenced to eight years in prison and a fine of EUR 696,000, as well as a ban on civil and political rights and the confiscation of EUR 450,000.

The other defendants were sentenced to between one and four years in prison (some suspended) and fines of between EUR 8,000 and 296,000 (some partly suspended).

The civil parties (including the Belgian state and Myria) received compensation.

3.8. | Human smuggling and aiding illegal immigration

In a decision of **28 June 2019**, **Bruges Criminal Court**[184] ruled on the case of an Indian network of smugglers.

Five defendants, including Indians and an Afghan, were tried for human smuggling (Article 77*bis* of the Aliens Act) with aggravating circumstances, namely that the offence was committed against minors, taking advantage of the vulnerable situation of a person, that the activity in question was habitual and that the offence was an act of participation in the activities of a criminal organisation to the detriment of an unspecified number of victims, but of at least 97 people. The sixth defendant, a Belgian of Hungarian origin, was prosecuted for aiding illegal immigration (Article 77 of the Aliens Act). The first, second and third defendants were also tried for illegal residence and the first defendant for identity theft.

The investigation was initiated based on a statement made on 26 April 2018 by a person who claimed that the first defendant had smuggled him. Apparently, this person had been regularly found in Belgium, with records dating back to 2008. Statements from other migrants in transit and photographic recognition also pointed to the same person each time. A wiretap was initiated. After being arrested on the train, two defendants were questioned and their mobile phones were inspected. Searches and further arrests followed.

184 West Flanders Crim. Court, Bruges division, 28 June 2019, ch. B17 (appeal).

Based on the overwhelming amount of consistent and objective evidence (i.e. phone taps, phone investigations, visual findings, statements made by the other defendants), the court considered the first defendant to be the main culprit despite his denials. He clearly played the role of organiser in smuggling human beings organised at international level. The court also considered the aggravating circumstances as proven. The frequency of the smuggling clearly showed that the activities were habitual. He also abused the vulnerable situation of the victims, some of whom were still minors.

The acts were also committed within the framework of a criminal organisation. The defendants worked under the orders of several major smugglers located in India and were in direct contact with their gang members who gave them instructions. The victims were also from India. They arrived in Zeebrugge via Paris (France) and Brussels. In the Belgian part of the smuggling network there were agreements on the distribution of roles and tasks. In addition to the chief coordinator, there were facilitators and helpers who took care of reception. Victims were often left on the coast for days and also had to cope with assaults and threats.

The second, third, fourth and fifth defendants were clearly part of a well-organised international smuggling organisation, controlled from India, of which the first defendant was a key figure, while the second, third and fourth defendants were his lieutenants.

The fifth defendant's role was more focused on "putting up illegal immigrants in his house". According to the court, he was guilty of participating in smuggling[185], at least in the sense of facilitating illegal residence, by subjecting illegal immigrants attempting to make the illegal crossing to the United Kingdom to pressure from the first defendant to sleep at his house while awaiting transport or between attempts. The court rejected his defence according to which he wasn't paid for his services (the law only requires a direct or indirect motive of profit). The phone taps show that he was paid, or at least that payment was promised. He was also paid in kind with food and medicine.

The role of the fifth defendant in the smuggling operations differed from that of the first four defendants, also in terms of the number of victims, which resulted in a more lenient sentence.

The sixth defendant, prosecuted for aiding illegal immigration (Art. 77 Aliens Act), wasn't acting for profit and wasn't paid for helping illegal foreign nationals. Instead, his assistance went so far that he not only provided support, shelter and (limited) medical assistance, but also collected money for illegally staying foreigners, transferred via "money senders". The question put to the court was whether these withdrawals of money for illegal foreign nationals could be qualified as humanitarian aid or not. According to the court, it couldn't be excluded that the assistance provided by the sixth defendant was for humanitarian reasons. The sixth defendant credibly stated that he had a 30-year career in the field of selfless assistance and it was clear that he had not sought to enrich himself, so that the withdrawals of money were not of a sufficiently suspicious nature to convict the sixth defendant in the specific circumstances of the case on the basis of section 77, paragraph 1, of the Aliens Act. In the opinion of the court, there remained a doubt, which weighed in favour of the sixth defendant. He was therefore released.

The first defendant was sentenced to five years in prison and a fine of EUR 8,000 multiplied by the number of victims, i.e. 97, and thus increased to EUR 776,000, of which EUR 388,000 was suspended for a period of three years.

The second, third and fourth defendants were sentenced to 30 months in prison and a partly suspended fine of EUR 8,000, also multiplied by the number of victims.

The fifth defendant was sentenced to 12 months in prison and a partly suspended fine of EUR 8,000 multiplied by four(victims).

The court also ordered a forfeiture of their rights.

The court also ordered the special confiscation of the financial benefits resulting from the offence.

The first defendant appealed. In its **judgment of 15 January 2020**, **Ghent Court of Appeal**[186] found that

185 The court stated that in order to be convicted as a co-perpetrator or accomplice to an offence, not all the essential elements of the offence have to be included in the participatory acts. It simply has to be established that the participant knowingly and willingly cooperated in the commission of the offence in one of the ways provided for in Art. 66, 2° and 3°, or 67 of the Criminal Code.

186 Ghent, 15 January 2020, 8th ch.

the sentence handed down by the first judge was too lenient. Instead, it handed down an eight-year prison sentence (instead of five years), with a partly suspended fine.

A human smuggling case that took place at Antwerp airport was re-examined by the court of appeal.

At the end of 2018, a woman with a British passport was stopped at the airport before boarding her flight to London. Her appearance didn't match the passport photo presented. Her statements were vague and contradictory. There were two men on the same flight, both British nationals but of Eritrean origin, one of whom had the same surname as her. All three swore they didn't know each other. The police then carried out an investigation. All three were interviewed, their mobile phones examined, airport camera footage analysed and a retrospective phone investigation carried out. The statements of the three individuals were contradictory: firstly, they didn't seem to know each other, then they declared that they were related. During the court proceedings, the defendants stated that they were the brother and nephew of the woman. Originally from Eritrea, she had reportedly been living in Sweden and had become homeless after her divorce. The Swedish immigration authorities had issued a negative opinion on her asylum application and she had been ordered to leave the country. The defendants were trying to help her get to the United Kingdom where her son and brother were staying.

In its **judgment of 30 March 2020, Antwerp Criminal Court** nevertheless reclassified the acts according to Art. 77 of the Aliens Act, because the moral element, the special fraud "with a view to obtaining, directly or indirectly, a financial benefit" provided for in Art. 77*bis* hadn't been demonstrated[187].

The court agreed with the defence that, given the specific context and family ties, there was no evidence of a direct or indirect financial benefit. The court didn't accept the argument that the defendants had provided assistance primarily for humanitarian reasons. The defendants were members of the same family and had specifically and deliberately travelled to Belgium to help organise and supervise the woman's journey to the United Kingdom. They weren't private individuals providing primary care or assistance to an undocumented person.

The two defendants were given a one-year prison sentence and a fine of EUR 13,000, both suspended.

This decision was confirmed by **Antwerp Court of Appeal** in a **decision of 10 December 2020**[188].

The Court considered that the defendants did assist, in this case a family member, with their illegal entry, transit or stay by giving them a valid British passport in the name of another person, and by preparing and accompanying this person when they checked in for their flight to London.

3.9. | Human smuggling and humanitarian aid

The Brussels Court of Appeal had to re-examine a case of human smuggling also involving citizens active in helping migrants.

Twelve defendants of Syrian, Egyptian, Sudanese, Eritrean, Tunisian and Belgian nationality were prosecuted for acts of human smuggling with aggravating circumstances: in particular, endangering the victims' lives, the fact that some victims were minors, and participating in the activities of a criminal organisation. Among the defendants were people who hosted migrants and were active in the citizen's platform for aid to migrants.

The defendants had initially been summoned to appear before Dendermonde Criminal Court, but had requested a change of language, which was granted. The case was then referred to the French-speaking Criminal Court of Brussels.

The investigation started following an initial police report in May 2017. It noted that the Wetteren motorway parking area was the place where migrants were being loaded into lorries, without the drivers' knowledge and in extremely dangerous conditions, by human smugglers, with a view to reaching the United Kingdom. Thanks to an analysis of the masts located in the vicinity of the Wetteren car park, it was possible to identify call numbers and telephones. Phone taps were set up, and searches conducted, especially in the homes of those people hosting migrants.

187 Antwerp Crim. Court, Antwerp division, 30 March 2020, ch. AC10, no. 2020/1877 (available at: www.myria.be): See also Myria, *2020 Annual Report Trafficking and smuggling of human beings, Behind closed doors*, p. 102

188 Antwerp, 10 December 2020, ch. C6.

The investigation revealed a fairly consistent modus operandi. Illegal staying persons wishing to travel to the United Kingdom would contact one of the defendants, either by phone or directly through acquaintances. The price of passage was negotiated and a meeting arranged at a railway station. They would go by train and then on foot to the parking areas. There they were picked up by another smuggler who would put them on the "right lorries" (those going to the United Kingdom) and close the doors. The price of the passage, ranging from a few hundred euros to EUR 2,000/2,500, was paid in cash or given as a partial guarantee to a third party who paid the balance when the migrant arrived at the destination.

In a **judgment of 12 December 2018**, **Brussels French-speaking Criminal Court**[189] had noted that some defendants had played a role in human smuggling, for instance, by taking the victims from a railway station to the parking areas, by opening and closing the doors of lorries, by helping the victims to board with their luggage, by finding out about the situation in the motorway parking areas, or by collecting money from the victims. The financial benefit can consist not only of collecting actual financial assets, but also of providing benefits in kind, such as free or reduced fares for passage.

The court considered most of the smuggling offences to be established in the case of the majority of the defendants: those who were present at the motorway parking areas in order to illegally place the migrants in lorries, those who took them to the parking areas where they were picked up by another defendant, or those who acted as their guide. This charge was also accepted in the case of a defendant who put victims in contact with smugglers and recuperated or guaranteed the money. He had previously been a smuggler himself in Calais.

However, the court released the four defendants who were active in helping migrants. In the court's opinion, apart from the fact that these defendants didn't receive any financial benefit, their complicity in the acts couldn't be established.

The court had split the case for a defendant convicted of similar offences in another case.

The court handed down suspended prison sentences ranging from one year to 40 months. Only the defendant who had travelled to the United Kingdom and was tried in absentia received a three-year prison sentence. The fines, which were suspended, ranged from EUR 48,000 to EUR 360,000, except for the defendant tried in absentia.

The prosecution had appealed against the provisions of the decision. Two convicted defendants also appealed, but too late. Their appeal was therefore declared inadmissible. One defendant didn't appear. However, at the hearing, the public prosecutor's office stated that it was no longer contesting the release of one of the people hosting migrants and was asking for the release of another. For the other two, it requested the status of accomplice in the smuggling acts.

In a **decision of 26 May 2021**, **Brussels Court of Appeal**[190] upheld the decision of the first judges. However, unlike the criminal court, it accepted the charge of criminal association for one of the defendants and habitual activity for another.

It confirmed the release of the people hosting migrants, considering that the mere fact that they had hosted people who were residing illegally and/or precariously in the country, had lent their mobile phones and/or had given the migrants who were staying with them access to their computer, wasn't sufficient to establish that they had participated in the punishable acts in the case in any way whatsoever[191].

The court also reduced the prison sentences handed down at first instance, considering that the defendants were primarily victims of smuggling networks.

189 Brussels French-speaking Crim. Court, 12 December 2018, 47th ch.: see www.myria.be and Myria, *2019 Annual Report Trafficking and smuggling human beings, Empowering victims*, p. 142.

190 Brussels, 26 May 2021, 14th ch.

191 Myria hoped that this case would be an opportunity to define the parameters of humanitarian aid and the acts that go beyond it, if necessary, excluding human smuggling, which unfortunately wasn't the case. It regrets this missed opportunity.