

Trafficking in and smuggling of human beings

**Combating social fraud to prevent trafficking
in human beings**

ANNUAL REPORT 2010

Centre for Equal Opportunities and Opposition to Racism

Contents

PART I: DEVELOPMENTS OF THE PHENOMENON AND THE COMBAT AGAINST TRAFFICKING IN HUMAN BEINGS

CHAPTER 1: RECENT DEVELOPMENTS IN THE LEGAL AND POLICY FRAMEWORK..... 9

1.	DEVELOPMENTS IN THE EUROPEAN LEGAL AND POLICY FRAMEWORK.....	9
1.1.	<i>New European directive on trafficking in human beings.....</i>	9
1.1.1.	<i>Review.....</i>	9
1.1.2.	<i>Reasons for this new legislation.....</i>	11
1.1.3.	<i>The main provisions of the new directive.....</i>	12
A.	Provisions of substantive criminal law (articles 2 to 8 of the directive).....	12
B.	Jurisdiction and prosecution (articles 9 and 10 of the directive).....	16
C.	Assistance and support for victims (article 11).....	17
D.	Victim protection in criminal proceedings (article 12).....	18
E.	Child victims (articles 13 to 16).....	19
F.	Prevention (article 18).....	21
G.	Monitoring mechanisms (article 19).....	21
1.2.	<i>The Belgian Presidency of the European Union.....</i>	23
1.2.1.	<i>Multidisciplinary approach to trafficking in human beings.....</i>	23
1.2.2.	<i>Trafficking in human beings for the purposes of labour exploitation.....</i>	25
1.3.	<i>Implementation of the Stockholm Programme Action Plan.....</i>	26
2.	DEVELOPMENTS IN THE BELGIAN LEGAL AND POLICY FRAMEWORK.....	27
2.1.	<i>Social Criminal Code.....</i>	27
2.1.1.	<i>Preventing, recording and prosecuting offences.....</i>	28
2.1.2.	<i>Offences and penalties.....</i>	29
2.2.	<i>New Article 134quinquies of the new municipal law.....</i>	29
2.3.	<i>Action Plan to combat trafficking in and smuggling of human beings.....</i>	31
2.4.	<i>A National Parliament paying close attention to trafficking in and smuggling of human beings.....</i>	32
2.4.1.	<i>The Senate's working group on trafficking in human beings.....</i>	32
2.4.2.	<i>Parliamentary work.....</i>	37

CHAPTER 2: PHENOMENON ANALYSIS..... 45

1.	SEXUAL EXPLOITATION.....	45
1.1.	<i>Champagne bar in the city of Turnhout.....</i>	45
1.2.	<i>Champagne bar in the city of Tongeren.....</i>	47
1.3.	<i>Prostitution bar - champagne bar in the city of Tongeren.....</i>	49
1.4.	<i>Nigerian case.....</i>	51
1.5.	<i>Nigerian case in the city of Turnhout (related to a former massage parlour case in the city of Liège).....</i>	53
2.	LABOUR EXPLOITATION.....	56
2.1.	<i>Restroom services case.....</i>	56
2.2.	<i>Car wash case.....</i>	59
2.3.	<i>Construction case.....</i>	63
2.4.	<i>Champagne bar case.....</i>	66
2.5.	<i>Case involving minors selling in the street.....</i>	67
3.	SMUGGLING OF HUMAN BEINGS.....	68
3.1.	<i>Indo-Pakistani case of smuggling of human beings in the city of Tongeren.....</i>	68
3.2.	<i>Kurdish case of smuggling of human beings (code name: ISHTAR).....</i>	69
4.	CONCLUSION: STALEMATE FOR VICTIMS.....	75

CHAPTER 3: FIGURES AND STATISTICS..... 77

1.	POLICE DATA.....	78
2.	SOCIAL INSPECTION SERVICES DATA.....	80

3.	DATA ON PROSECUTIONS.....	80
4.	DATA FROM THE ALIENS OFFICE.....	83
5.	DATA FROM SPECIALISED VICTIM CENTRES	84
6.	JUDICIAL DATA.....	86
CHAPTER 4: CASE LAW REVIEW: 2010 TO EARLY 2011.....		88
1.	SEXUAL EXPLOITATION.....	88
2.	LABOUR EXPLOITATION	90
2.1.	<i>Butchers' shops</i>	90
2.2.	<i>Cleaning services</i>	91
2.3.	<i>Market trading</i>	91
2.4.	<i>Construction/renovation</i>	92
2.5.	<i>Hotel, restaurant and catering sector</i>	93
2.6.	<i>Horseback riding schools</i>	94
3.	EXPLOITATION OF BEGGING	95
4.	SMUGGLING OF HUMAN BEINGS	95
5.	RECOGNITION OF REFUGEE STATUS FOR A VICTIM OF TRAFFICKING IN HUMAN BEINGS.....	97
<i>PART II: FREE MOVEMENT AND LABOUR EXPLOITATION: THE CHAINLINK APPROACH</i>		
INTRODUCTION.....		99
CHAPTER 1: CASE STUDY		99
1.	RESTROOM FACILITIES	99
2.	CLEANING INDUSTRY	101
CHAPTER 2: NEW DEVELOPMENTS AS REGARDS FREE MOVEMENT....		102
1.	SHOULD THE TRANSITIONAL PROVISIONS FOR ROMANIAN AND BULGARIAN NATIONALS BE WITHDRAWN?.....	102
2.	THE EUROPEAN COURT OF JUSTICE EXAMINES THE LIMOSA DECLARATION.....	104
3.	THE INTERNAL MARKET INFORMATION SYSTEM – SIMPLIFYING ADMINISTRATIVE COLLABORATION UNDER THE SECONDED WORKERS DIRECTIVE.....	106
4.	DEVELOPMENTS IN PRACTICE: REGISTERING AS A SELF-EMPLOYED WORKER AS A MODUS OPERANDI	107
CHAPTER 3: TARGETING ALL LINKS IN THE CHAIN: FROM THE SUBCONTRACTOR TO THE PRINCIPAL EMPLOYER		111
CHAPTER 4: GOOD AND BAD PRACTICES		117
1.	TRAFFICKING IN HUMAN BEINGS, A PRIORITY FOR PROSECUTORS?	117
2.	TANGIBLE EVIDENCE – COLLECTING IT WHEREVER IT CAN BE FOUND	118
3.	PROVIDING SOCIAL INSPECTION SERVICES WITH EFFECTIVE WEAPONS.....	119
4.	LOCAL AUTHORITIES MADE AWARE OF TRAFFICKING IN HUMAN BEINGS	122
4.1.	<i>The example of the Netherlands</i>	122
4.2.	<i>The local approach in Belgium</i>	124
<i>PART III: EXTERNAL EXPERTS' VIEWS ON SPECIFIC ISSUES</i>		
1. TRAFFICKING IN HUMAN BEINGS AND THE INTERNET		127
2. TRAFFICKING IN HUMAN BEINGS AND THE EXPLOITATION OF DOMESTIC STAFF		131

3. THE EXPERIENCE OF A GUARDIAN OF AN UNACCOMPANIED FOREIGN MINOR 135

PART IV: RECOMMENDATIONS

1. TRANSPOSITION OF DIRECTIVE 2011/36/EU ON TRAFFICKING IN HUMAN BEINGS 142

- 1.1. *Updating the definition of trafficking in human beings 142*
- 1.2. *Effective investigation techniques..... 142*
- 1.3. *Developing support and assistance for victims..... 143*
- 1.4. *An appropriate approach for minors who are victims..... 143*
- 1.5. *More awareness and training for the 'front line' 144*
- 1.6. *Formal appointment of a National Rapporteur 145*

2. JOINT FINANCIAL LIABILITY OF MAIN CONTRACTORS 145

- 2.1. *Adoption of a law on the joint and several liability of principal employers 145*
- 2.2. *Raising the awareness of employers' organisations 145*

3. LOCAL AUTHORITIES 146

- 3.1. *Raising the awareness of local authorities and public welfare offices 145*

4. TRAFFICKING IN HUMAN BEINGS MUST REMAIN A PRIORITY 146

- 4.1 *In Parliament..... 146*
- 4.2 *For the magistracy 146*
- 4.3 *Raising the awareness of inspection services and international collaboration..... 147*

INTRODUCTION

This is the fourteenth annual report on trafficking in and smuggling of human beings published by the Centre for Equal Opportunities and Opposition to Racism (hereafter: the Centre). For the Centre, these annual reports act as a tool to assess and give impetus to Belgian policy in the fight against trafficking in and smuggling of human beings. The Centre thus fulfils its legal remit by taking on the de facto role of “national rapporteur on trafficking in human beings”.

In the wake of last year's annual report, the first to be devoted to trafficking in human beings for the purposes of labour exploitation, we now take a closer look at this topic. Undertaking to combat this form of exploitation means that existing tools need to be extended and refined, and new tools developed. The working hypothesis of this report is that combating social fraud can yield benefits for the fight against trafficking in human beings for the purposes of labour exploitation.

This hypothesis is based on two findings. The first is that when public authorities take targeted measures against breaches of social and labour legislation and against social and fiscal fraud, the fight against trafficking in human beings is specifically included in the goals being pursued. Secondly, it is often possible, when carrying out an in-depth analysis of court cases, to identify the different phases that transform systems of exploitation into situations of trafficking in human beings. A strategy for prevention or immediate intervention when practices of social exploitation are brought to light can help stop traffickers quickly. The above, amongst other things, emerges from an analysis of a case involving the exploitation of highway restroom facilities, in which the Centre brought a civil claim.

Between 1996 and 2010, the Centre made civil claims in more than 150 cases involving trafficking in and smuggling of human beings, concerning 18 districts. Brussels (37), Antwerp (23), Charleroi (15), Liège (14) and Tongeren (14) represent two-thirds of these cases. The monitoring of forty cases of trafficking in human beings for the purposes of labour exploitation, almost fifty cases of smuggling of human beings and nearly sixty cases of trafficking in human beings for the purposes of sexual exploitation has contributed to a better understanding of the issues and better means to combat such practices.

Even though this annual report once again highlights labour exploitation, the figures show that there are still many cases of sexual exploitation. It is for this reason that the phenomenon analysis also pays close attention to trafficking in human beings for the purposes of sexual exploitation, in particular a Nigerian prostitution case. This examination looks especially at the close links between this case and other cases. When we become aware of the nature of the offences in this case, we can understand the impact that they have on victims, and all the more so where the legal outcome of the case will not be known for several years.

Some cases of smuggling of human beings have also been the subject of a detailed study, such as the case involving a Kurdish gang. These cases are still very relevant: on the one side, an authoritarian organisation implementing counter-strategies and settling scores; and on the other, victims of serious physical abuse, who are sometimes taken hostage, whose money is sent, through well-oiled mechanisms, to the heads of a network established abroad. Court cases are one of the rare sources which enable us to take a closer look at the world of organised smuggling of human beings, without doubt one of the most callous criminal activities carried out in our country, engendering great risk for victims.

We have said, over and over again, both here and elsewhere, that the absence in Belgium of an operational and central database on trafficking in human beings gives us only a superficial and segmented knowledge of the issue and deprives us of tools to carry out strategic analysis and assessments of policies implemented. This is very regrettable.

When we try to find out who the victims of trafficking in human beings in Belgium are, one thing is undeniable – it is, above all, the law and the multi-disciplinary approach which define the framework under which we can determine whether a person can be legally recognised as a victim of trafficking in human beings (or, with aggravating circumstances, smuggling of human beings).

This framework will need to be redefined when Directive 2011/36/EU on trafficking in human beings is transposed. The Member States have until 6 April 2013 to do this. The forms of exploitation that can be considered as trafficking in human beings will need to be broadened, and standards of legal assistance and social support will need to be re-examined.

Reliable and exhaustive data on the evolution of trafficking in human beings phenomenon and on the effectiveness of measures taken to punish the offence are a key condition to adequately harmonise reforms of policies relating to victims and to prosecution. In countries where the issue of trafficking in and smuggling of human beings is not effectively tackled as regards prevention and prosecution, there will always be unprotected victims, however wide the legal definitions and however generous the systems for support and care.

The way in which victims should be approached needs to be examined carefully. Their legitimate needs may be expressed in terms of protection, support and/or legal aid, recognition of and compensation for damages suffered, health care and psycho-medical monitoring, residency status assistance, tracing members of their family, help to return home and to be reintegrated into society, etc. Victim statements will always be of key importance in detecting and obtaining convictions in cases of trafficking in human beings and therefore also in allowing the victims themselves to be adequately compensated.

The specialised reception centres and the Centre itself must complete the project of establishing standardised electronic case management in centres receiving victims. The above should also pave the way for reliable data collection using victim statements and

information about victims. The experimental phase of this project should be completed during 2011. It is hoped that it will contribute to defining what constitutes an adequate offer for victims.

As has also emerged from the interesting and useful Parliamentary work carried out within the Senate's working group on 'Trafficking in human beings', we need to closely examine, in the next few years, the question of how the central importance of victims' statements for prosecution policy can be sustainably reconciled with victims' needs, which differ considerably according to their nationality, family situation and the type of exploitation that they have suffered. The fight against trafficking in human beings, which is also a fight against organized crime, will always require appropriate victim protection.

During its Presidency of the European Union and on the occasion of the Anti-Trafficking Day on 18 October 2010, Belgium organised a conference during which our multidisciplinary model for cooperation between specialised services and organisations helped initiate debate and dialogue between EU partners. One of the challenges for the future will be to protect victims in situations of cross-border exploitation.

Lastly, in order to broaden our vision, we also give external experts an opportunity to express themselves in this report: Ms Goosse, a Chief police officer, analyses how the use of Internet leads to an increase in offences of trafficking in human beings and highlights various elements for the political authorities. Mr Deville discusses cases of exploitation of domestic workers, both by diplomats and by private employers, of which he became aware in his capacity as an inspector of the social inspectorate. He situates these cases in the context of the work of the International Labour Organization. The latter organisation succeeded in concluding a Convention which at last guarantees millions of domestic workers minimum standards as regards labour legislation. In his capacity as a guardian, Mr Lowyck describes the terrible ordeal experienced by a young unaccompanied minor seeking protection against abuse. The case highlights the amount of time needed to establish trust. Above all, it shows that there is still a long way to go before adequate protection of these extremely vulnerable minors is achieved.

We hope that you will find this report helpful and stimulating.

Edouard Delruelle, Deputy Director
Jozef De Witte, Director
Centre for Equal Opportunities and Opposition to Racism

PART I

DEVELOPMENTS OF THE PHENOMENON AND THE COMBAT AGAINST TRAFFICKING IN HUMAN BEINGS

CHAPTER 1: RECENT DEVELOPMENTS IN THE LEGAL AND POLICY FRAMEWORK

In this chapter, the Centre presents the latest developments in the legal and political framework concerning the trafficking in and smuggling of human beings both on a European (point 1) and Belgian (point 2) level.

At European level, the new Directive on trafficking in human beings will be the focus of our attention (point 1.1). Furthermore, since Belgium held the presidency of the European Union from 1 July to 31 December 2010, we will report on the achievements of the presidency as regards trafficking in human beings (point 1.2) and briefly describe the European Commission's Action Plan Implementing the Stockholm Programme (point 1.3).

At a Belgian level, the Centre discusses certain new legislative provisions and a brief status report of the Action Plan on trafficking in human beings (points 2 .1 to 2.3). And, for the first time, the Centre gives an overview of Parliamentary work in the field of trafficking in human beings (point 2 .4).

1. DEVELOPMENTS IN THE EUROPEAN LEGAL AND POLICY FRAMEWORK

1.1. New European directive on trafficking in human beings

A key aspect of 2010 and early 2011 at European level was the approval of directive 2011/36/EU on trafficking in human beings¹.

1.1.1. Review

This new European directive had already been mentioned in our previous annual report and in early 2011 it came to fruition. The proposal for the directive aimed at repealing and replacing Framework Decision 2002/629/JHA was adopted by the European Parliament on 14 December 2010². Adopted by the Council on 21 March 2011, the

¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, *O.J.*, L101 of 15 April 2011, pp. 1-11.

² See European Parliament legislative resolution of 14 December 2010 on the Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and

directive was published in the Official Journal of 15 April 2011. The Member States are required to take the necessary measures to comply with the directive by 6 April 2013.

This Directive is the first agreement between the Council and the European Parliament in the area of substantive criminal law since the entry into force of the Lisbon Treaty.

In March 2009 the Commission had already presented a new Proposal for a Council Framework Decision on trafficking in human beings, repealing the 2002 Framework Decision³. The Proposal was justified by a wish to implement a more effective and global policy to combat trafficking in human beings, and in particular to enhance prevention, as well as to provide protection and assistance for victims.

Following the entry into force of the Lisbon Treaty on 1 December 2009⁴, this text formed, in March 2010, the basis for a new legislative initiative – a Proposal for a Directive of the European Parliament and of the Council⁵. The content of the text is practically identical to that of the proposal made the previous year. Partly inspired by the Council of Europe Convention on trafficking in human beings⁶, and wishing to go even further, the Proposal for a Directive contains a more detailed definition of trafficking in human beings, and improved regard for victims' rights⁷. It also pays closer attention to measures to help, support and protect children who are victims of trafficking in human beings.

To a certain extent, the European Parliament made its mark on this new text. Among the main amendments made by the Parliament, following negotiations with the Council, we can mention: the issue of gender (new consideration 3 and Article 1 of the Directive); the possibility for Member States to seize and confiscate the resources and proceeds of offences committed; particular attention to victims, especially with regard to unaccompanied foreign minors.

protecting victims, repealing Framework Decision 2002/629/JHA, COM(2010)0095-C7-0087/2010-2010/0065(COD),T7-0471/2010.

³ Proposal for a Council Framework Decision of 25 March 2009 on preventing and combating trafficking in human beings and the protection of victims, repealing Framework Decision 2002/629/JHA, COM/2009/136/Final.

⁴ See Articles 79 and 83 of the consolidated version of the Treaty on the Functioning of the European Union, *O.J.*, C 115 of 9 May 2008. Trafficking in human beings is one of the areas in which the Council and the European Parliament can adopt measures by means of directives, pursuant to the ordinary legislative procedure.

⁵ Proposal for a Directive of the European Parliament and of the Council of 29 March 2010 on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM/2010/95/Final.

⁶ Council of Europe Convention No 197 on Combating Trafficking in Human Beings, Warsaw, 16 May 2005. The Convention entered into force on 1 February 2008 (for Belgium: 1 August 2009).

⁷ On this point, see P. LE COCQ & C. MEULDERS, 'Le statut des victimes de la traite des êtres humains', in Ch.-E. CLESSE et al, *Traite des êtres humains-Menshandel-Mensensmokkal*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, esp. pp. 77-80.

1.1.2. Reasons for this new legislation

The Framework decision adopted in 2002⁸ had the aim of meeting the need for a coherent approach at European Union level to fight against the serious criminal offence that trafficking in human beings entails. A European Union Plan on best practices, standards and procedures for preventing and combating trafficking in human beings⁹ was also adopted in 2005.

At the request of the Council, implementation of the EU Plan on trafficking in human beings was assessed. An impact analysis was carried out by the European Commission, in which Member States (through the dissemination of a questionnaire), a European group of experts on trafficking in human beings, and experts from various fields (NGOs, universities, etc.) were consulted. The following is the result of those consultations:

- the need for an appropriate legal framework in each country;
- the need to adopt a global, coordinated and integrated approach;
- the need to adopt specific measures in order to strengthen investigations and prosecutions and the essential role of assistance measures.

The question of introducing a specific obligation to invoke the criminal liability of clients who, in full knowledge of the facts, procure the sexual services of a person who is the subject of trafficking has been controversial.

In order to meet the objectives that have been set, namely more effective prevention of trafficking in human beings, more vigorous combating of this practice and better protection of victims, the Commission has examined several options¹⁰. Eventually a new framework decision (later a directive) was drafted, the existing framework decision was revised and new provisions were included. The new text was to be supplemented by measures other than legislative provisions, such as prevention in the departure and destination countries, training, and cooperation between law enforcement authorities.

The Directive was thus presented in the above context, with a particular focus on measures to assist and support victims, as well as on preventive measures. The text thus elaborates the Council of Europe Convention on combating trafficking in human beings whilst providing added value, in particular by laying down:

- a level of penalties in accordance with the seriousness of the offences,
- a wider and more restrictive extraterritorial clause,

⁸ Council Framework Decision of 19 July 2002 on combating trafficking in human beings, *O.J.*, L203/1 of 1 August 2002.

⁹ European Union Plan on best practices, standards and procedures for preventing and combating trafficking in human beings, *O.J.* C311 of 9 December 2005, p. 1.

¹⁰ The various options were as follows: no new EU initiative (option 1), measures other than legislative provisions (option 2), new legislation on prosecution, victim support, prevention and monitoring (option 3) and new legislation, as well as measures other than legislative provisions (option 4). The latter option was chosen.

- the extension of the provision on non-application of penalties to victims that have participated in criminal activities, whatever the illicit means used by smugglers.

1.1.3. The main provisions of the new directive

The key strengths of the new directive are as follows:

- the provisions of substantive criminal law;
- jurisdiction and prosecution;
- assistance, support and protection for adult victims and minors;
- preventive measures and control mechanisms.

Below we will take a closer look at each of these points.

A. Provisions of substantive criminal law (articles 2 to 8 of the directive)

Definition of the criminal offence

As previously mentioned, the criminal offence is characterised by three constituent elements, namely: an action, a *modus operandi* and exploitation as a purpose. Nevertheless, in order to cover recent developments in trafficking in human beings, the Directive has broadened the definition, including other forms of exploitation such as forced begging and the exploitation of criminal activities, as well as organ removal (article 2).

Trafficking in human beings is now defined as follows¹¹:

‘The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. (...)

Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. (...)

Forced begging covers all forms of labour or forced labour or services as defined in Convention No 29 of the International Labour Organization (ILO) on forced or compulsory labour of 29 June 1930. The directive states that exploitation of begging, including the use of a dependent person, a victim of trafficking, for begging, falls under the definition of trafficking in human beings, insofar as all the elements of forced labour or services are present.

¹¹ For the full definition, see article 2 §§1 to 6 of directive 2011/36/EU.

Exploitation of criminal activities covers, *inter alia*, the exploitation of pickpocketing, shoplifting, drug trafficking and other similar activities which are subject to criminal penalties and imply financial gain¹².

Consideration 11 of the directive states that the definition also covers trafficking in human beings for the purpose of the removal of organs (this purpose is explicitly mentioned among the forms of exploitation), and other behaviour such as illegal adoption or forced marriage insofar as all the constituent elements of trafficking in human beings are present.

Implications for Belgium

We know that in transposing the 2002 Framework Decision, the Belgian legislator chose only to retain exploitation as an action and as a purpose as constituent elements of the offence of trafficking in human beings. The *modus operandi* is one of the aggravating circumstances. The exploitation of begging and of criminal activities, as well as organ removal, were already included as purposes of exploitation.

Article 433*quinquies* of the Criminal Code (trafficking in human beings) covers five purposes with regard to exploitation:

- exploitation of prostitution or child pornography;
- exploitation through labour (*'put to work in conditions that are contrary to human dignity'*);
- exploitation of begging;
- organ removal;
- coercion to commit offences.

The Centre advises that:

- An examination should be carried out as to whether a new definition or, at the very least, an amendment of the existing definition is necessary. This would enable cases of illegal adoption and forced marriage to be covered where the constituent elements of trafficking in human beings (and in the future new forms of exploitation) are present. The Centre nevertheless petitions for clear boundaries to be established for these new forms of exploitation in the context of trafficking in human beings with respect to other, existing offences (for example marriage of convenience and forced marriage).
- A broadening of the definition of sexual exploitation should be envisaged to forms other than exploitation of prostitution (or child pornography).

Furthermore, the transposition of the directive is an occasion to remedy certain ambiguities that arose following difficulties interpreting the existing law in the field. A clear distinction with respect to article 380 of the Criminal Code (which covers the recruitment and exploitation of prostitutes) should be established. Certain trial judges

¹² Directive 2011/36/EU, consideration 11.

have held that article 433*quinquies*, 1° could only be applied in the context of a network and not where the person recruiting is also working for him- or herself. Such behaviour would then fall under Article 380 of the Criminal Code¹³.

Similarly, the current wording of purpose concerning organ removal should be revised, with a view to including therein a reference to the law of 19 December 2008 on the obtaining and use of human organs or tissue intended for human medical applications or for the purposes of scientific research¹⁴.

Penalties

In order to further harmonise penalties and to increase their severity within the European Union, the minimum level of penalties has been increased (Article 4 of the Directive). Furthermore, where an offence has been committed against particularly vulnerable persons such as children, the penalty is increased.

The maximum penalty cannot therefore be less than five years imprisonment (previously one year). In addition it cannot be less than 10 years (previously eight years) where aggravating circumstances are involved. The aggravating circumstances are:

- particularly vulnerable victims, in the least including children (article 4, 2a),
- committing an offence within the framework of a criminal organisation (article 4, 2b),
- endangering the life of the victim (article 4, 2c),
- the use of serious violence, such as acts of torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence (article 4, 2d and consideration 12).

We should also note as a specific aggravating circumstance the fact that the offence is committed by public officials in the performance of their duties. In the light of corruption issues existing in certain Member States¹⁵, the adoption of this provision is certainly a positive move in our opinion.

¹³ See in this regard the interventions of representatives of the magistracy in the Report on trafficking in human beings drafted on behalf of the Senate Committee for Interior and Administrative Affairs, *Doc.parl.*, Sénat, s.o., 2009-2010, 4-1631/1, pp. 39-42, pp.55-58 and pp.65-66. One member argued for the inclusion of article 380 in article 433*quinquies* of the Criminal Code.

¹⁴ Law of 19 December 2008 on the obtaining and use of human organs or tissue intended for human medical applications or for the purposes of scientific research, *Moniteur Belge* [Belgian Official Gazette], 30 December 2008. See in this regard the report of the Senate's working group, *op.cit.*, pp. 68-71, and Ch.-E. CLESSE and F. LUGENTZ, 'La traite des êtres humains', in *Les infractions*, volume 2, *Les infractions contre les personnes*, ed. H.D. BOSLY and Ch. DE VALKENEER, Brussels, Larcier 2010, pp. 618-620.

¹⁵ See in this regard the Centre's 2008 Annual Report on 'Trafficking in and smuggling of human beings: Enlisting people and resources to combat the phenomenon', p. 97 and the 2007 Annual Report, 'Trafficking in and smuggling of human beings: Public Policy as seen by a National Rapporteur', p. 66.

Implications for Belgium

Belgian legislation already provides for a maximum penalty that cannot be less than five years.

As regards the aggravating circumstances of trafficking in human beings, they are classified in three levels and appear in articles 433*sexies* to 433*octies* of the Criminal Code. The lowest maximum penalty for the first level is 10 years.

Furthermore, the position of a public official is already included among the aggravating circumstances for trafficking in human beings (article 433*sexies*, §1, 2°).

In the Centre's opinion, Belgian legislation does not seem to need adjustment in this regard.

As already mentioned, the European Parliament filed an amendment introducing a specific article which imposed upon Member States an obligation to take the necessary measures in order that their competent authorities be authorised to seize and confiscate the instruments and proceeds of trafficking in human beings (the new article 7) and to encourage the use thereof for the purposes of financing aid for victims and their protection, in particular compensation for victims and cross-border actions to combat trafficking in human beings (Consideration 13)¹⁶.

Implications for Belgium

Belgian law already provides extensive possibilities with regard to seizure and confiscation¹⁷. In practice however, it is not always easy to apply, especially if the case involves international collaboration¹⁸.

As for the allocation of confiscated amounts to parties seeking civil action for compensation or other victim protection purposes, these measures should be

¹⁶ See amendments 22, 23, 25 and 26 in E. BAUER, A. HEDH, *Draft report of the European Parliament on the proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA*, Committee on Civil Liberties, Justice and Home Affairs, Committee on Women's Rights and Gender Equality, 28 June 2010, PE442.887v01-00, pp. 23-24.

¹⁷ For the general framework relating to seizures under criminal law, see articles 35 to 39*bis*, 46*quater*, §2, b) and §3 and 89 of the Code of Criminal Procedure. Regarding confiscation, see articles 42 to 43*quater* of the Criminal Code and regarding special confiscation relating to trafficking in human beings, article 433*novies*, paragraph 3 of the Criminal Code. For an analysis of the issue, see F. LUTGENTZ, 'Le régime des saisies et des confiscations en matière de répression de la traite des êtres humains et des pratiques dites des marchands de sommeil', in *Traite des êtres humains, Mensenhandel-Mensensmokkel*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, pp. 157-189.

¹⁸ See in this regard the Centre's previous Annual Report on trafficking in human beings, 'In a haze of legality', pp. 110 and 134, and the Senate's working group report, *op.cit.*, point 2

encouraged. The Centre has already had the opportunity to examine this issue in a previous report¹⁹.

Lastly, the Directive provides for the possibility of a no-penalty clause applying to victims who, as a result of their position as victims, have been compelled to perform criminal activities such as the use of false documents or the offences laid down in legislation on prostitution or immigration (article 8 of the directive). Since the judicial systems of the Member States differ widely, there are States where the discretionary prosecution principle does not exist. It is for this reason that the Directive imposes upon Member States an obligation to take the necessary measures to ensure that the competent national authorities have the power not to prosecute victims of trafficking and not to apply penalties to them in such cases.

Implications for Belgium

The Centre recommends that the judicial authorities take great care not to prosecute victims of trafficking who, as a result of their position as victims, have been obligated to perform criminal activities.

B. Jurisdiction and prosecution (articles 9 and 10 of the directive)

The directive provides for a wider and stricter extraterritoriality clause than the former Framework Decision. The directive thus imposes upon Member States an obligation to prosecute their nationals if they are guilty of trafficking in human beings in a third country²⁰. They may extend their jurisdiction to offences committed outside their territory by persons habitually residing in their territory²¹, if the victim is a national or habitual resident of that State or if the offence was committed for the benefit of a legal person established in their territory (article 10, 2 of the directive and Consideration 16).

Implications for Belgium

In the field of trafficking in human beings, the Belgian courts benefit from the **rule of universal jurisdiction** (article 10^{ter} of the Preliminary Title of the Code of Criminal Procedure). The latter enables the Public Prosecutor's Office to prosecute, in Belgium, persons committing aggravated forms of trafficking in human beings, whatever the nationality of the offender and of the victim.

Belgium should not, therefore, need to adapt its legislation in this regard.

¹⁹ See in this regard the 2006 Annual Report 'Trafficking in human beings: Victims in the spotlight', pp. 67-70.

²⁰ Previously, the former article 6(2) of Framework Decision 2002/629/JHA enabled Member States to decide that it would not apply or that it would apply these jurisdiction rules only in specific cases and under certain circumstances.

²¹ In this regard, the final version of the directive is less stringent than the initial proposal made by the Commission, which had made it an obligation, in the same way as for nationals (see article 9 of the proposal for a directive, 29 March 2010, COM(2010)95 final).

The directive also obliges Member States to take the necessary measures in order to adequately train persons, units and services dealing with investigations and prosecutions (article 9, 3). Similarly, they must have available effective investigative tools, such as interception of communication or surveillance of bank accounts (Article 9, 4 and consideration 15).

Implications for Belgium

Efforts to train police departments, inspectorates and magistrates dealing with investigations and prosecutions should be maintained. In addition, whilst the latter have available a substantial arsenal of investigation resources (specific search methods, phone tapping, etc.), it is not always possible to use them, in particular because of financial reasons²².

The Centre recommends that those involved in investigations and prosecutions be equipped with the necessary resources to enable them to make efficient use of the investigative tools.

C. Assistance and support for victims (article 11)

This point is developed in considerable detail in the new directive. Emphasis is placed on the introduction of early identification mechanisms for victims and assistance to victims (article 11, 4 of the directive), assistance standards (higher than those laid down in the Council of Europe Convention) in particular concerning medical care (article 11, 5 of the directive²³), and greater attention is devoted to specific measures for children (articles 12 to 14).

With regards to the assistance standards, Member States must provide assistance and support for a sufficiently long period during and after the criminal proceedings have ended, to enable victims to exercise their rights. This assistance must also be provided as soon as the competent authorities have reasonable cause to suspect that a person may have been the victim of trafficking in human beings (article 11, 2 of the directive). Consideration 18 states that if the victim does not reside legally in the territory of the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or upon expiry of the reflection period, the victim is not considered eligible for a residence permit, assistance and support no longer have to be provided.

Assistance and support are subjected to victims receiving prior information and giving their consent. The assistance and support must at least give victims access to standards of living capable of ensuring their subsistence through measures such as (article 11, 5):

²² See in this regard point 2.4.1 below on the Senate's working group report.

²³ The directive indeed mentions 'necessary medical treatment whilst the Council of Europe Convention envisages only emergency medical care.

- the provision of appropriate and safe accommodation;
- material assistance;
- necessary medical treatment (including psychological assistance);
- counselling and information and where appropriate translation and interpretation services.

The obligation to provide information covers the communication of information on the reflection and recovery period and information on the possibilities of being granted an international protection status.

As regards victims' consent to the assistance and support measures, this relates to the fact that *'victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victim's refusal of assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures'* (Consideration 21).

Implications for Belgium

Assistance and support offered to victims of trafficking by the three specialised reception centres already include such measures. Nevertheless, the latter are one of the conditions for the status of a victim of trafficking in human beings, which is linked to the granting of residence permits.

The Centre considers it desirable that:

- **early warning mechanisms for the detection of victims should be further developed** (for example through accommodation inspections or inspections in the medical sector);
- **support** as it exists at present **should be re-examined**, in accordance with the victim's personal situation, in particular if the victim has other options to reside legally in Belgium. In consultation with the reception centres, a way of developing a diversified supply should be examined, corresponding as far as possible to the victim's specific needs.

D. Victim protection in criminal proceedings (article 12)

The directive also provides for measures on the treatment of victims in order to prevent secondary victimisation²⁴ and an obligation to have access to legal counselling. The aim of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them (consideration 19). Ideally, this counselling should be provided by a person that has received appropriate legal training, but the person does not necessarily have to be a lawyer (consideration 19).

²⁴ Article 12, 4 lists behaviours to be avoided. For example: unnecessary repetition of interviews with the victims during the investigation, prosecution or trial; and visual confrontations between victims and suspects.

According to the role given to victims in the judicial system concerned, Member States should also ensure that victims have legal representation, including for the purpose of claiming compensation (article 12, 2). The directive adds that such legal counselling and assistance should be provided free of charge where the victim does not have sufficient financial resources.

A key amendment on the European Parliament's initiative concerns the compensation of victims and an obligation for States to ensure that victims have access to existing schemes for the compensation of victims of intentional acts of violence (article 17).

Implications for Belgium

At the present time, legal counselling is provided by social workers at specialised reception centres or by a lawyer appointed for this purpose by the reception centre.

The **immediate appointment of a lawyer** should be considered for those victims who have made statements or lodged a complaint, and are thus recognised as victims of 'human trafficking'.

With regard to the compensation of victims of trafficking, the latter have, under certain conditions, access to the Commission to assist victims of intentional acts of violence. **The Centre has already, on several occasions, underlined in previous reports the need to interpret the notion of "intentional acts of violence" in a flexible way for victims of labour exploitation²⁵.**

E. Child victims (articles 13 to 16)

As already mentioned, the directive attributes great importance to the protection of child victims. The child's best interests must be a primary consideration when providing assistance, support and protection (article 13, 1).

The directive makes the same distinction as for adults, namely assistance and support measures on the one hand (article 14) and the protection of child victims of trafficking in criminal investigations and proceedings on the other hand (article 15).

Children must receive the necessary support and assistance during their physical and psycho-social recovery according to their personal situation, with a view to finding a durable solution for them. Both child victims and the children of victims receiving assistance must have access to the education system of the Member State concerned (article 14, 1).

The European Parliament added a requirement to appoint a guardian or representative for all children identified as victims of trafficking in human beings, where there is a conflict

²⁵ See the Centre's 2007 Annual Report on trafficking in and smuggling of human beings, '*Public policy as seen by a National Rapporteur*', pp.70-71.

of interest between the child victim and the holders of parental responsibility (article 14, 2). Such a representative must also be appointed in criminal investigations in these circumstances (article 15, 1).

Children are entitled, in principle, to free legal counselling and legal representation (article 15, 2). Other specific protection measures such as interviews with the child in appropriate premises by trained professionals (article 15, 3) or video recorded interviews (article 15, 4) must also be implemented.

Following negotiations with the European Parliament, a specific article was devoted to the situation of victims that are unaccompanied minors (article 16): the support and assistance offered must take due account of those personal circumstances. Reception measures appropriate to the needs of the child and procedural safeguards must be applied by the Member States as soon as an unaccompanied child victim of trafficking in human beings is identified, until a durable solution is found²⁶. Lastly, a guardian must be appointed if appropriate, as well as a person to represent the child during criminal investigations and proceedings.

Implications for Belgium

Special measures, such as video recorded interviews of child victims, already exist under Belgian legislation²⁷. The measure is, however, rarely used for child victims of trafficking and should be applied more frequently.

On the other hand, it seems to us that **the specific circumstances of child victims of trafficking have not been paid sufficient attention**, both with regard to detection and to reception and support of these minors. In some cases, malfunctions have been recorded (see the statement of a guardian of an unaccompanied minor in part 3 of the report).

More specifically concerning foreign unaccompanied minors, since many of these victims of trafficking come from Romania and Bulgaria, both Member States of the Union, the **appointment of a guardian for unaccompanied minors that are nationals of the European Union** (and not only for nationals of third countries outside the European Economic Area, as has been the case up to now) should be envisaged under the law on guardianship of foreign unaccompanied minors²⁸. A legislative proposal has already been drafted to this effect, with a view to adapt the definition of a foreign unaccompanied minor in the law on guardianship²⁹.

²⁶ Directive 2011/36/EU, consideration 23. This durable solution may consist of return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of another status in accordance with the national law of the Member States.

²⁷ See articles 91*bis* to 101 of the Code of Criminal Procedure.

²⁸ Article 479, Programme law of 24 December 2002, *Moniteur Belge* [Belgian Official Gazette], 31 December 2002.

²⁹ Legislative proposal of 29 October 2010 to amend Programme law (I) of 24 December 2002 on the guardianship of foreign unaccompanied minors, *Doc.parl.*, Chambre, 2010-2011, Doc 53, 0509/001.

F. Prevention (article 18)

This point is also new with respect to the former Framework Decision. In particular, it contains provisions to increase training for public officials who are likely to be in contact with potential victims (police officers, immigration officials, public prosecutors, labour inspectors, health care personnel, etc.³⁰) and concerning the need to carry out information and awareness-raising campaigns.

On the other hand, discouraging demand by punishing users that, in full knowledge of the facts, procure services provided by a person that is the subject of trafficking in human beings, was not, in the end, imposed upon Member States. The latter are therefore free to treat this behaviour as a criminal offence or not³¹.

Implications for Belgium

Training is provided on a regular basis to police officers, social inspectors and judges.

Nevertheless, some less specialised actors sometimes come into contact with potential victims. It is for this reason that it is **also important to raise the awareness of staff at closed centres, medical personnel and the local police (district), as the Centre has already recommended in the past**³².

Let us mention in this context an initiative in the Liège district, where awareness-raising actions for social workers at two large Liège hospitals have been carried out at the initiative of the local police and the Sürya specialised victim reception centre, in collaboration with the Public Prosecutor's Office. Furthermore, the Interdepartmental Unit to coordinate the combat against trafficking in and smuggling of human beings decided at its last meeting (July 2011) to raise awareness in the medical sector by publishing a newsletter.

G. Monitoring mechanisms (article 19)

Lastly, the directive obliges the Member States to establish national rapporteurs or equivalent mechanisms. The Member States are, however, free to establish this

³⁰ Consideration 25, directive 2011/36/EU.

³¹ Consideration 26 of directive 2011/36/EU states in this regard that regardless of the 'penalty' directive (2009/52/EC) (which provides for penalties to be applied against employers of illegally staying third-country nationals and who, while not having been charged with or convicted of trafficking in human beings, use work or services of a person with the knowledge that the person is a victim of this phenomenon), the Member States should consider the possibility of applying penalties to users of a person's services when they know that the person is a victim of trafficking in human beings. This might concern employers of third-country nationals staying legally and of citizens of the EU, as well as the users of sexual services provided by a victim of trafficking, regardless of their nationality.

³² See the 2008 Annual Report on trafficking in and smuggling of human beings, '*Human trafficking - enlisting people and resources to combat the phenomenon*', p.109 and the 2009 Annual Report on trafficking in and smuggling of human beings, '*In a haze of legality*', p.132.

mechanism in the way in which they consider the most appropriate according to their internal organisation³³.

Article 16 of the initial proposal from the Commission³⁴ specified the tasks – on a non-exhaustive basis – of the national rapporteur:

- determining trends in trafficking in human beings;
- evaluating the actions introduced to combat this phenomenon;
- reporting to the competent authorities.

The text ultimately adopted by the Parliament and the Council (article 19 of the directive) added to the tasks of the national rapporteur the gathering of statistics in close cooperation with relevant organisations from civil society that are active in this field. Moreover, the task of reporting is now defined in a much more general way, since the directive limits itself to stating that reports are to be drafted.

Let us also note that Parliament proposed, in an amendment, that the national rapporteurs be independent, which was not upheld in the final version of the legislation³⁵.

Implications for Belgium

Until now, the introduction of a national rapporteur or equivalent mechanism had been a recommendation made by various authorities (the Council of Europe, the OSCE, the European group of experts on trafficking in human beings, etc.). Its introduction has now been made compulsory. **Belgium will therefore have to officially appoint a national rapporteur or equivalent mechanism.**

On the basis of its legal mandate and its long experience, **the Centre has played the *de facto* role of national rapporteur**, essentially by publishing an annual assessment report, which outlines the trends in trafficking in human beings and evaluates the implemented policies. **The Centre is ready to continue to perform this task, independently and in a spirit of dialogue and collaboration** with all actors concerned (police, the judiciary, reception centres, academics, etc.).

³³ Consideration 27, directive 2011/36/EU.

³⁴ See also: Proposal for a directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, 29 March 2010, COM(2010)95 final, article 16 and consideration 17.

³⁵ Amendment 47 of the draft report of the European Parliament, *op.cit.*, p.36.

1.2. The Belgian Presidency of the European Union

From 1 July to 31 December 2010, Belgium held the rotating presidency of the Council of the European Union. It took over from Spain (which held the presidency during the first half of 2010) and passed on the task, six months later, to Hungary (which held the presidency for the first half of 2011). Belgium's term was part of the first tripartite presidency following the implementation of the Lisbon Treaty on 1 December 2009. The tripartite presidency introduced a joint 18-month programme³⁶. Continuing from the Stockholm Programme³⁷, this 5-year EU Programme (2010-2014) is intended to strengthen legal systems and internal affairs, trafficking in human beings is presented as a priority.³⁸ In line with the *Action Oriented Paper*³⁹ approved by the Council in late 2009, the successive presidencies should also pay attention to the external dimension of EU actions relating to trafficking in human beings.

Concerning the work of the Belgian presidency, we should mention the negotiations relating to directive 2011/36/EU on trafficking in human beings, subsequently adopted. The directive has been discussed in considerable detail earlier in this report. We shall simply say here that the negotiations relating to the Directive were carried out in a trialogue under the Belgian presidency and that the discussions led to political agreement between the Council (the Member States), the European Parliament and the European Commission⁴⁰. The directive was officially adopted in April 2011.

In this section, we will take some time to look at two conferences organised in October 2010 on trafficking in human beings, in the context of the fourth European Anti-Trafficking Day.

1.2.1. Multidisciplinary approach to trafficking in human beings

On 18 and 19 October 2010, the presidency organised a conference on a multidisciplinary approach to trafficking in human beings: *'Towards a multidisciplinary approach in prevention of trafficking in human beings, prosecution of traffickers and protection of victims'*. The conference dealt with the identification of areas for action and good

³⁶ Council of the European Union, '18 month programme of the Council, prepared by the future Spanish, Belgian and Hungarian Presidencies', 22 December 2009, doc.17696/09, 89 pp.

³⁷ Council of the European Union, 'The Stockholm Programme – An open and secure Europe serving and protecting the citizens', Brussels, 2 December 2009, doc 17024/09.

³⁸ Council of the European Union, '18 month programme...', *op. cit.*, p. 70.

³⁹ Council of the European Union, 'Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings', 19 November 2009, doc.11450/5/09 REV 5, 92pp.

⁴⁰ On 24 November 2010, the Member States reached an agreement at the PRC (Permanent Representatives Committee), on a text that had been the subject of debate with the European Parliament. On 3 December 2010, the Council of Justice and Home Affairs limited itself to examining the situation, whilst awaiting final approval from the European Parliament. Parliament confirmed its agreement on 29 November at the Committee on Civil Liberties, Justice and Home Affairs (LIBE) on the one hand and at the Committee on Women's Rights and Gender Equality (FEMM) on the other, and approved the text at a plenary session on 14 December 2010.

practices around the ‘four Ps’: *Prevention* of trafficking in human beings, *Protection* of victims, *Prosecution* of traffickers and *Partnership* with all those involved. Both internal and external dimensions to trafficking in human beings were covered. The conclusions of the conference were published by the Council on 27 January 2011.⁴¹ We have extracted a number of points that we present below. We will look in particular at those that the Centre itself put forward as agenda items for the conference.

Regarding protection, the greatest challenge is to offer victims cross-border protection. Protection of victims is a crucial element in combating trafficking in human beings, but is often problematic in cross-border situations. We are thinking here of victims that have been exploited in more than one Member State or who make a statement in a Member State other than the State where the acts occurred. During the conference the need to develop European protection status arose from this issue, as well as the need to establish national and cross-border structural networks among specialised reception centres. This also seeks the harmonisation of victim identification, obliging us to think about adequate compensation for victims in cross-border situations. We should also keep in mind the fact that today many victims are European citizens, a reality to which the current victim status and support models are not sufficiently well adapted.

Regarding the prosecution of traffickers, emphasis was placed on collaboration between the police and the judiciary. Trafficking in human beings is, by nature, a cross-border issue, and thus requires effective collaboration between the police and the judiciary both within and outside the EU. Although there are, at EU level, many legal instruments and special police officers, this collaboration is often beset with pitfalls in practice. Let us examine two points in particular: **seizures and confiscations** on the one hand, and **Joint Investigation Teams** on the other.

- Seizures and confiscations are more and more important when prosecuting criminal networks trafficking in human beings. It is in reaction to this that criminal networks intentionally transfer their income to their country of origin (whether or not it is an EU Member State), since this complicates seizure and confiscation procedures. A workshop at the conference examined the practical barriers and looked for ways to improve existing instruments⁴². The European Commission announced an impact assessment on the basis of which it should launch, during 2011, a Proposal aimed at adapting the European framework on confiscation.
- Joint Investigation Teams (JITs) are structures for collaboration within which police departments and magistrates can act in cross-border cases with the support

⁴¹ Council of the European Union, Presidency Conclusions from the conference ‘*Towards a multidisciplinary approach to prevention of trafficking in human beings, prosecution of traffickers and protection of victims*’ (Brussels, 18-19 October 2010), 27 January 2011.

⁴² Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, *O.J.*, 15 March 2005, L69/49; Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, *O.J.*, 24 November 2006, L328.

of EUROJUST, EUROPOL and FRONTEX. A JIT must be set up by at least two Member States. The competent departments enter into a convention and agreement relating to aims and time lines. A small number of joint investigation teams (JITs) were presented as examples of good practice, the implementation of which should be widened in order to combat trafficking in human beings. These JITs cannot, however, be transposed in third countries.

Lastly, let us also add that regarding prevention, the conference focused on exchanging good practices and fostering awareness-raising campaigns, whilst regarding partnership, the focus was rather on the role of the private sector.

1.2.2. Trafficking in human beings for the purposes of labour exploitation

The anti-trafficking week ended on 22 October 2010 with a conference organised by the Samilia Foundation and the support of the Belgian presidency. **Trafficking in human beings for the purposes of labour exploitation** was the central issue in discussions held. The problem was examined by speakers with many varying backgrounds: politicians, academics, NGOs, magistrates, inspectorates, the police, reception centres, employers from various economic sectors, trade unions, etc. As well as the personal statement of a businessman whose company went bankrupt due to aggressive competition from a company guilty of trafficking in human beings.

Labour exploitation in the context of the free movement of persons and services within the European Union – one of the Centre’s key focuses of attention – was examined throughout the conference. Many speakers highlighted practices in which traffickers set up juridical constructions enabling them to take advantage of weaknesses in legislation (false secondment/false subcontracting and bogus self-employed workers). A number of sensitive issues were examined in this regard. These included the limited control possibilities of inspection units and lack of information exchange in Europe, the ‘liberal’ case law of by the European Court of Justice, and the lack of interlinked approaches the consequence of which is that those who use the services of traffickers are too often exonerated. We covered these aspects in our previous annual report and they appear in this report once again.

All actors involved agreed on the importance of a multidisciplinary approach, good exchange of information and good collaboration. Whilst the Belgian model was highly praised, it could still be further improved in many respects. For example, some speakers called for the Federal Public Prosecutor's Office to be given a key role in combating trafficking in human beings⁴³.

Another point examined several times during the conference was the definition of trafficking in human beings for the purposes of labour exploitation. Belgian law leaves

⁴³ See the Centre’s 2008 Annual Report Trafficking in and smuggling of human beings: *‘Enlisting people and resources to combat the phenomenon’* and the 2009 Annual Report Trafficking in and smuggling of human beings: *‘In a haze of legality’*.

space for many interpretations. The lack of additional explanations on ‘*working conditions contrary to human dignity*’ means that the difference between employing a foreign worker and trafficking in human beings is far from clear. Several speakers reflected on the fact that coercion is not being considered by the Belgian legislator as a necessary element to find exploitation (instead it is an aggravating circumstance) represented an additional difficulty. One speaker feared that in this way Belgian legislation actually removes the substance from the concept of trafficking in human beings.

Another speaker stated that a clear definition of trafficking in human beings under Belgian law is crucial for the victim status. In this regard, she called attention to vague concepts leaving too much margin for interpretation. The latter could, in her opinion, lead certain judges to instrumentalise victims by granting them victim status only in exchange for the information provided by the victim for the purposes of the investigation.

We conclude with another key focus of the conference, namely the ‘**Penalty**’ **directive**⁴⁴. The Member States are to have transposed the Directive in their national legislation by 20 July 2011.

This directive is an instrument to combat illegal migration by prosecuting employers that hire persons residing illegally. The instrument therefore has no direct impact on trafficking in human beings, but is not devoid of interest in that context. We will come back to it later in this report.⁴⁵

1.3. Implementation of the Stockholm Programme Action Plan

In April 2010, the Commission published an Action Plan⁴⁶ aimed at implementing the Stockholm Programme, which contains various points relating to trafficking in human beings. In particular, the Plan provides for a new directive on trafficking in human beings (see 1.1) and an evaluation of the *Action Oriented Paper* cited above (see 1.2). It also adopts the aim of collecting comparable statistics on trafficking in human beings so as to propose, in 2011, a new overarching strategy to combat trafficking in human beings and to issue guidelines for consular and customs departments aimed at identifying the victims of trafficking in human beings.

The Action Plan also provided for the appointment of a European Coordinator to combat trafficking in human beings (Anti-Trafficking Coordinator, ATC). On 14 December 2010, it was the Cypriot Myria Vassiliadou who took up this position. Her role is to make an active contribution to a coordinated and coherent policy, aimed at combating

⁴⁴ Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, *O.J.*, 30 June 2009, L168/24.

⁴⁵ See Part 2: Free movement and labour exploitation: the chain link approach, in this report.

⁴⁶ European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Delivering an area of freedom, security and justice for Europe's citizens. Action Plan implementing the Stockholm Programme’, 20 April 2010, COM (2010) 171 final.

trafficking in human beings, among EU institutions and agencies, Member States, third countries and international actors. She reports directly to the Director-General of the Directorate-General (DG) Internal Affairs.

The Action Plan also announced an evaluation report⁴⁷ on the application of Directive 2004/81, which provides for the issue of residence permits to nationals of third countries who are victims of trafficking in human beings and who collaborate with the competent authorities. The report was published in October 2010 and calls attention to the enormous difference between the number of identified victims and the small number of residence permits issued on the basis of the directive, even if the fact that some of the identified victims do not fall within the scope of the directive is taken into account, insofar as they are not third-country nationals. The Commission is of the opinion that the directive's potential is not being sufficiently exploited.

You will find, later in this report and in previous reports, the figures for residence permits issued by Belgium prior to and during 2010 in respect of status as a victim of trafficking in human beings. These figures do not give a clear indication of the number of '*identified victims*'.

2. DEVELOPMENTS IN THE BELGIAN LEGAL AND POLICY FRAMEWORK

At the Belgian legislative level, we should mention the adoption of the Social Criminal Code and the new article 134*quinquies* of the new municipal law. The Centre also presents a brief overview of the Federal Action Plan on trafficking in human beings. Lastly, it looks, for the first time, at Parliamentary work on trafficking in human beings.

2.1. Social Criminal Code

Although this does not relate to trafficking in human beings in the narrow sense, we should still mention the adoption of the law of 6 June 2010 introducing a Social Criminal Code, published in the *Moniteur Belge* [Belgian Official Gazette] on 1 July 2010⁴⁸. The Code entered into force on 1 July 2011. This Code is the conclusion of extensive reforms of social criminal law, completing work initiated 10 years previously⁴⁹. The reform was

⁴⁷ European Commission, 'Report from the Commission to the European Parliament and the Council on the application of Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities', 15 October 2010, COM(2010) 493 final.

⁴⁸ The law of 2 June 2010 including provisions on social criminal law was published in the *Moniteur Belge* [Belgian Official Gazette] of the same day.

⁴⁹ The work of the Commission to reform social criminal law, set up by the Ministers of Employment, Social Affairs and Justice began on 11 January 2001. For a commentary on the new code, see M. DE RUE, 'Les lignes de force du nouveau Code pénal social', *J.T.*, 2011, No 6424, pp.101-109 and Ch.-E. CLESSE,

necessary, since social criminal law was suffering from a lack of clarity due to dispersed standards. Penalties applied for offences committed against social laws have thus been the subject of radical recasting, in particular to achieve coherency in the scale of penalties⁵⁰.

The Code is divided into two Books, the first dealing with the prevention, recording and prosecution of offences. The second concerns offences and penalties applying thereto.

Let us briefly present certain aspects of the new Social Criminal Code that may be of use in combating trafficking in human beings.

2.1.1. Preventing, recording and prosecuting offences⁵¹

Two points are particularly worthy of attention:

1. **The Public Prosecutor's right to order a requisition:** until now, labour inspectors had considerable liberty to decide on action to be taken when an offence was recorded (warning, period within which corrective action had to be taken, etc.), except in certain areas, such as trafficking in human beings, where they were obliged to make an official report. Now, both the Public Prosecutor and the investigative judge can order a requisition in respect to the services of the labour inspectorate (article 21 of the Code). The latter therefore lose, in this case, their discretionary power⁵².

2. **Competencies of social inspectors:** the Code confirms the role entrusted to social inspectors, whilst laying down a framework for their interventions and amending some of their competencies⁵³. They may have access to working premises, including residential areas (articles 23 and 24 of the Code). The legal framework for such access has, however, been amended. The Code determines situations in which access to residential areas is permitted. The most important amendment to the framework concerns the search warrant,

⁴⁹ 'Le Code pénal social – premiers commentaires des principales nouveautés', *J.T.T.*, 2010, No 1078, pp. 369-380.

⁵⁰ Whilst the legislator wished to present an exhaustive text, three notable exceptions were nevertheless made. These concern the regulations on well-being at work, collective bargaining agreements and the organisation of appeal procedures relating to the actions of social inspectors and decisions on administrative fines. These issues will still fall under other regulations. For further information, see M. DE RUE, *op.cit.*, pp. 103-104.

⁵¹ For a detailed analysis of novelties introduced by the Social Criminal Code concerning the investigation of offences and the competencies of social inspectors, see L. SMETS, 'Daar wordt aan de deur geklopt, hard geklopt, zacht geklopt: opsporing en controle in het nieuwe Sociaal Strafwetboek', *Oriëntatie* 10 December 2010, pp. 257-269.

⁵² Ch.-E. CLESSE, *op.cit.*, p. 369.

⁵³ For further information, see Ch.-E. CLESSE, *op.cit.*, pp. 370-375. Let us mention, for example, the right to search, the right of access to information systems, seizure and affixing of seals, and the right to make a record using images.

which now falls under the jurisdiction of the investigative judge and no longer the police judge⁵⁴.

Let us also note that the Code enables stricter compliance with fundamental rights, including the right to defence⁵⁵, the right to be assisted by a lawyer for administrative proceedings⁵⁶ and compliance with the principle of proportionality by inspectorates⁵⁷.

2.1.2. Offences and penalties

Book Two of the Code, which deals with offences and penalties relating thereto, constitutes the key new element in the Social Criminal Code. Offences are now classified into four levels depending on their seriousness, and the same penalty is laid down for all offences of the same category. Thus administrative fines (10 to 100 Euros) only apply to offences of the first category, whilst prison sentences are reserved for the most serious category of offences.

Among the most serious category of offences – which is of specific interest to us since it may, in some cases, pertain to trafficking in human beings – let us cite particularly:

- infringements of provisions on health and safety of workers where for example their consequence is a work-related accident (article 108, paragraph 2),
- failure to make a prior declaration to the competent social security organisation for seconded employees and independent workers (article 182),
- the employment of foreign workers residing illegally (article 175, §1).

On the other hand, the employment of foreign workers without a professional licence or work permit falls under the third category (article 175, §2).

Let us also mention that the Social Criminal Code introduces two criminal penalties that may prove to be dissuasive: a prohibition on running a business and the closure of a business (article 106), and a ban on working and the closure of a business (article 107). In some cases laid down by the law for offences of categories three and four, the judge may place a ban, for a term of between one month and three years, on running all or part of a business or establishment in which an offence was committed or even order its closure.

2.2. New Article 134quinquies of the new municipal law

With regard to developments in Belgian legal and policy framework, we may also mention the very recent adoption of article 134quinquies in the new municipal law⁵⁸. The

⁵⁴ On the procedure to obtain the warrant, see article 24, §§ 2 and 3 of the Social Criminal Code and Ch.-E. CLESSE, *op. cit.*, pp. 370-371.

⁵⁵ See amongst others articles 62 to 67 of the Social Criminal Code, on the minutes of statements and of the identification of infraction. For comments, see Ch.-E. CLESSE, *op. cit.*, pp. 375-376.

⁵⁶ Article 77 of the Social Criminal Code.

⁵⁷ Article 19 of the Social Criminal Code.

adoption of this article follows a legislative proposal submitted in the Senate on 10 November 2010⁵⁹. In fact, the same proposal had already been introduced in the Senate twice before but had never gone further than that stage⁶⁰. This is also the reason why the initial proposal was the subject of an amendment making it compliant with the provisions of the law of 10 August 2005 on trafficking in human beings⁶¹.

This article bestows special policing competencies upon the mayor – those of temporarily closing down an establishment where there is serious evidence that trafficking in or smuggling of human beings is taking place. This measure has a preventive purpose. It aims to protect public order and peace and may only be taken following prior consultation with the judicial authorities and after having heard the defence of the person responsible for the establishment. Closure cannot exceed a period of six months. The mayor may also affix seals in the event of non-compliance with the closure order.

The final version of the article – which was the subject of several amendments⁶² –, should be welcomed, in particular because it adds prior consultation with the judicial authorities. This consultation seems to us essential in order to avoid counter-productive overlap between administrative policing measures taken by the mayor and criminal measures taken by Public Prosecutor's Offices⁶³. The Centre has already highlighted in a previous report that administrative measures may sometimes compromise a judicial investigation in progress relating to trafficking in or smuggling of human beings⁶⁴. Indeed, trafficking in human beings is rarely mentioned in local plans relating to security. In some cases, the attention of the mayor has been focused on combating nuisance, which has complicated on-going judicial investigations.

We may, however, wonder what the actual scope of this article is. Trafficking in human beings is indeed a serious offence, which seems to us above all the affair of the judicial authorities. Furthermore, trafficking is not easy to identify. On what basis will the mayor decide on closure? It therefore seems to us that an administrative penalty measure might be useful to effectively combat trafficking in human beings, as long as it is carefully deliberation with the judicial authorities.

⁵⁸ The text was adopted on 12 May 2011 by the Senate (Doc 5-455/5) and on 16 June 2011 by the Chambre (Doc 53-1468/004). It was sanctioned and proclaimed by the King on 1 July 2011. It is still to be published in the *Moniteur Belge* [Belgian Official Gazette].

⁵⁹ Legislative proposal inserting an article 134*quinquies* in the new municipal law, on the policing competencies of the mayor in the context of combating networks of trafficking in human beings, *Doc.parl.*, Sénat, 2010-2011, 5-455/1.

⁶⁰ See also *Doc.parl.*, Sénat, s.o., 2003, 3-110/1 and *Doc. parl.*, Sénat, 2000-2001, 2-817/1.

⁶¹ Amendment No 1 by Ms Matz, *Doc.parl.*, Sénat, 2010-2011, 5-455/2.

⁶² See amendments 2 and 3 by Ms Matz et al, *Doc.parl.*, Sénat, 2010-2011, 5-455/2 and the report made on behalf of the Committee for Interior and Administrative Affairs by Mr Deprez, *Doc.parl.*, Sénat, 2010-2011, 5-455/3.

⁶³ A senator has also noted that the mayor should abstain from intervening when action by the Public Prosecutor's Office is envisaged (report, *Doc.parl.*, Sénat, 2010-2011, 5-455/3, p. 2).

⁶⁴ See in this regard the 2008 Annual Report on trafficking in and smuggling of human beings: '*Enlisting people and resources to combat the phenomenon*', pp. 91-92.

Lastly, let us note that the temporary or definitive closure of a company in which trafficking in human beings has taken place is also an additional penalty that the judge can apply (article 433*novies* of the Criminal Code). As we have already stated, this option is also available to the judge for certain offences under social criminal law.

2.3. Action Plan to combat trafficking in and smuggling of human beings

Before discussing Parliamentary work, we will give an overview of the **Action Plan to combat trafficking in and smuggling of human beings** adopted by the Federal Government in **2008**. We presented the main themes of the Action Plan in a previous report⁶⁵. The Plan is organised around five areas: legislative and regulatory developments, preventive aspects, victim protection, detection and prosecution, coordination and information collection.

Several aspects of the Action Plan have already been carried out, in particular the adoption of a multidisciplinary circular⁶⁶, and the publication of a multilingual information brochure for victims⁶⁷, as well as the organisation of training, and the drafting of an information flyer on the risks of exploitation⁶⁸. Others are still being carried out and examined, some even have not progressed at all. We will give some examples below.

At a legislative level, the adoption of a text **on penalties for users of traffickers' services is still pending**, despite the fact that several drafts have been discussed. This point is examined in more detail below (see part 2, chapter 3).

With regard to preventive aspects, a newsletter to raise awareness in the medical sector and help detect victims is to be produced. Let us note in this regard that in collaboration with the Public Prosecutor's Office, police departments and the Liège province, the Sürya reception centre is already participating actively in raising awareness of medical personnel in several hospitals in Liège.

Lastly, the question of **protection and rights of victims** and in particular of **minors**, as well as **information collection**, are two aspects of the Action Plan which should deserve specific attention.

⁶⁵ 2008 Annual Report on Trafficking in and smuggling of human beings: '*Enlisting people and resources to combat the phenomenon*', pp. 12-13. The Action Plan is available on the Centre's website (www.diversite.be/), in the human trafficking/documents section in Dutch and French).

⁶⁶ Circular of 26 September 2008 on the implementation of multidisciplinary cooperation concerning victims of trafficking in human beings and/or certain aggravated forms of smuggling in human beings, *Moniteur Belge* [Belgian Official Gazette], 31 October 2008.

⁶⁷ Multilingual brochure for victims of human trafficking, 2009 (available at: www.diversite.be/).

⁶⁸ This flyer is attached to visas issued by Belgian embassies in countries from where the majority of trafficking victims originate. The idea is to warn migrants of the risks of exploitation in the destination country. The flyer is currently distributed by Belgian embassies in China, India, Ecuador and the Philippines. Distribution has been extended this year to Morocco and Brazil.

Indeed, despite the adoption of the multidisciplinary circular described above (including specific provisions relating to diplomatic personnel and foreign unaccompanied minors), the issue of minors and their protection has not really moved forward. While a series of recommendations were made by the Task Force on minors travelling alone⁶⁹ and considerations are under way to assess the multidisciplinary circular, the adoption of the new European Directive on trafficking in human beings seems to us to provide an additional opportunity for progress in this regard. Similarly, **recognition and funding of reception centres** is another point in the Action Plan that is still to be applied. Texts on these points are under discussion at the Unit.

As for **data collection**, it still constitutes the major stumbling block. No progress has been made by the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (*CIATTEH*). However, at the last meeting of the interdepartmental coordination unit to combat trafficking in and smuggling of human beings (July 2011), the representative of the Minister of Justice spoke of a draft Royal Decree intended to remedy this situation. This text will be submitted to the next Government.

The Centre, for its part, is finalising a database and management system for cases of victims of trafficking in human beings, instituted in collaboration with the three reception centres.

2.4. A National Parliament paying close attention to trafficking in and smuggling of human beings

2.4.1. *The Senate's working group on trafficking in human beings*

On 1 December 2009, the Senate Committee for Interior and Administrative Affairs decided to create a working group on 'Trafficking in human beings'. It is essential that combating trafficking in and smuggling of human beings be given constant Parliamentary attention.

The task of the working group was twofold –to prepare a report on the current situation and to indicate critical areas at policy and legislative levels.

The status report on combating trafficking in human beings has been drawn up with people working on this issue in the field. The following have spoken during the hearings: the Minister of Justice, representatives of Public Prosecutors' Offices, specialised police departments, the social inspectorate and specialised reception centres. The Centre has also been heard.

⁶⁹ Final report of the task force 'minors travelling alone', *Towards effective protection of minors travelling alone*, presented to the Secretary of State for Migration and Asylum Policy and to the Members of the Belgian Government, June 2010.

The Senate Committee report of 4 May 2010 lists the strengths and weaknesses at policy and legislative levels, so as to be able to make a critical analysis of the policies introduced⁷⁰. Now follows a selection from the report⁷¹.

A. Combating trafficking in human beings with people and resources⁷²

The deadlock on the subject of the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (*CIATTEH/IAMM*) stops us from having a clear vision of time frame and perspectives as regards data collection for strategic analysis purposes. This has been the situation since 2004, the date at which the *CIATTEH/IAMM* was created by Royal Decree⁷³. The essential tasks, namely data collection, exchange and analysis, are more and more important both at European and international levels. However, the Royal Decree⁷⁴ itself makes the operation of the *CIATTEH/IAMM* impossible because it stipulates that the *CIATTEH/IAMM* may only use anonymous data. This restriction prevents any form of strategic analysis from taking place. In this regard, the interdepartmental unit made some proposals in the National Action Plan, which were also approved by the Council of Ministers in 2008.

Another point concerns collaboration between the various departments responsible for the investigation and prosecution of trafficking in and smuggling of human beings. Such collaboration is sometimes lacking. The police departments note that the results achieved in an investigation vary depending on the investigative judge in charge of the case. Thus, some investigative judges have little knowledge of trafficking in human beings and sometimes have little interest in the issue. It has also transpired several times that suspects have been freed prior to the start of the trial due to the slowness of judicial proceedings, enabling them to escape judgment, often by disappearing abroad.

As regards Public Prosecutors' Offices, prosecutors must sometimes simultaneously manage cases involving several types of offence, whereas the largest Public Prosecutors' Offices actually need a single prosecutor to deal exclusively with cases of trafficking in human beings, and not one with several responsibilities also acting as a specialised prosecutor in other cases. The example of West Flanders, where all cases involving trafficking in and smuggling of human beings are now allocated to a single specialised prosecutor, proves that the system can operate differently. This way of working leads to consistent and qualitative treatment of these cases.

⁷⁰ Committee for Interior and Administrative Affairs, Report on trafficking in human beings, *Doc.parl.*, Sénat, session 2009-10, No 4 – 1631/1.

⁷¹ Other aspects, such as legislation and the issue of principal employers' liability will be dealt with in other sections of this report.

⁷² See in this regard the 2009 Annual Report on trafficking in and smuggling of human beings, '*In a haze of legality*'.

⁷³ Royal Decree of 16 May 2004 on combating smuggling of and trafficking in human beings, *Moniteur Belge* [Belgian Official Gazette], 28 May 2004.

⁷⁴ Article 13 of the Royal Decree of 16 May 2004.

In terms of logistics, there is often barely enough support necessary for the specialised prosecutor—often no clerk or legal adviser is available on a full-time basis.

B. Applying the methods and resources available effectively

Sometimes, certain malfunctions arise concerning approval for **special investigation methods**. The legislative arsenal of investigation methods is good according to many speakers, but its implementation sometimes causes difficulties.

Phone tapping, for example, is not sufficiently used. In order to carry out phone tapping, authorisation from an investigative judge is required. However, lack of knowledge of the issue of trafficking in human beings means that some investigative judges do not always understand the necessity of using this method. The high cost and intensive work involved in phone tapping is also often put forward as a counter-argument. Furthermore, conversations often have to be translated. Nevertheless, the use of these special investigation methods is crucial, because they lead to good results. Without them, the identification of suspects in these cases is often very complicated.

The problems related to **seizures and confiscations** bring us to the complex issue of slum landlords. Following a recent Court of Cassation decision, it is no longer possible to confiscate property where this has not been laid down by the law, even when the property has been used to commit an offence⁷⁵. Confiscation of property will therefore no longer be possible for trafficking in human beings. Nevertheless, confiscation of property is mandatory, in particular with regard to slum landlords, even if the property does not belong to the convicted party.⁷⁶ However, the seizure of property in slum landlord cases sometimes causes problems for the trial judge.

It is for this reason that some legislative amendments in this area are required. It might thus be possible to carry out delayed confiscations in practice. This requires the introduction of a possibility to more precisely inform the persons involved with regard to the confiscation of their property. Lastly, the affixing of seals of confiscated property should be made optional, since it is often difficult to carry out in practice.

The reticence of the **Federal Public Prosecutor's Office to take on its role as coordinator, or to 'federalise' cases taking place in several judicial districts**, has also been criticised. According to the representative of the Federal Public Prosecutor's Office, the latter only has a subsidiary competency, and expertise in trafficking in human beings is already available to most local Public Prosecutors' Offices, in particular through prosecutors specialised in cases of trafficking in human beings. The intervention of the Federal Public Prosecutor's Office would therefore not provide any specific added value. This opinion is not, however, shared by the other parties heard by the Senate Committee. Thus, a police representative noted that problems arise specifically when investigations are extended beyond local level, or internationally, and when the Federal Public

⁷⁵ Cass. [Belgian Court of Cassation], 27 May 2009, AR P.09.0240.F.

⁷⁶ Article 433*decies* of the Criminal Code.

Prosecutor's Office has not taken on this role. Another speaker stated that, in his experience, cases of trafficking in human beings always extend beyond local level, which naturally causes problems of jurisdiction at the level of the Public Prosecutor's Office.

In the field of **international collaboration**, the Federal Public Prosecutor's Office also has a legal assignment. It is responsible for facilitating international collaboration. In this regard, the Federal Public Prosecutor's Office evokes its positive experience of collaboration with Bulgaria. In a case⁷⁷ in which the Federal Public Prosecutor's Office sent information on a criminal case to the Bulgarian authorities, the latter were able to successfully dismantle the underlying organisation. Most other speakers, however, highlighted a lack of collaboration with the Bulgarian authorities, both with the police and with the judicial authorities.

A chief inspector from Brussels stated on the contrary that collaboration with the Bulgarian police works well because his section has personal contacts with the local Bulgarian police that keep them informed. However, when collaboration passes through official channels such as Interpol, everything takes far too much time.

Generally, collaboration at an international level could certainly be improved: social inspection services, often confronted with fictitious international organisations during their investigations, come up against a lack of cooperation from foreign institutions. The main problem lies in the exchange of information and collaboration with the foreign authorities. If another European Union Member State does not wish to check the social status of a national seconded to Belgium at our country's request, the social inspection services cannot take any action.

C. Broader attention to trafficking in human beings leading to a more effective approach?

Some speakers examined the possibility of a more general approach to trafficking in human beings. The **essential role of front line actors**, such as local police departments, medical staff and fire fighters, who can be a precious source of information, is also highlighted. These actors should be given information about the signals to which they should pay attention. Several speakers also discussed the need for better knowledge of the issue of trafficking in human beings, at all levels. Awareness-raising is indeed necessary to combat this problem, in as many ways as possible. One speaker observed in this regard a lack of motivation, at various levels, to combat trafficking in human beings. Some mayors think, for example, only about prostitution when they hear the words trafficking in human beings. They are still not aware that victims of labour exploitation can also be victims of trafficking in human beings.

#

One speaker considers that **increasing the responsibility of the** so called “administrative enforcement” could play a key role in an approach to trafficking in human beings at the

⁷⁷ Known to the Federal police by the name of Mandev (Senate's working group report, *Doc.parl.*, Sénat, session 2009-10, No 4 – 1631/1, p. 34).

city and municipality level. This **local administration** enforcement starts with the observation that local services are directly involved in inspections, reports, permits or the issuing of documents. This leads according to the speaker to a possible complementary role in the intervention of the judiciary and police and inspection services. In order to achieve this, a solid legal basis and clear procedures are required, in order to among other things share information without contravening the principle of professional secrecy.

Another speaker is of the opinion that the labour inspection services should be encouraged to be more proactive and that social inspectors should be able to carry out investigations. They are currently unable to do so since they do not hold the status of police officers in a criminal investigation department. This is a sensitive issue, upon which specialists do not agree.

The report also lists some good initiatives at the administrative level that have already been put into practice. The mayors of the municipalities of Schaerbeek and Saint-Josse-ten-Noode have drafted a regulation, using the city of Antwerp's model, enabling prostitutes' working conditions to be examined.

In the city of Liège, a protocol agreement has been concluded, relating to slum landlords, between the Public Prosecutor's Office and various administrative departments, including the Public Health and Housing Department, the Town Planning Department and the fire fighters.

In addition, the active merging of data does not only relate to local and administrative levels. The social inspection services indicate that they send the results of their inspections to the National Employment Office, the National Institute for Illness and Incapacity Insurance and the National Institute for Social Security of the Self-employed, which greatly promotes collaboration.

D. Victims of trafficking in human beings

#

The main problems noted by speakers are as follows:

Firstly, there is a critical problem in terms of the people and resources available to look after victims. We thus note that in operations and cases involving a large number of victims, a problem of capacity arises in reception centres. Similarly, the risks of abuse of victim status are still very real.

The problem for victims of slum landlords is that they do not fall under the victim of trafficking in human beings status. However, in this regard opinions are divided. Some speakers consider that this should change, whereas other specialists do not find it a problem.

The problems of the language barrier and the high cost of reliable interpreters, who, in addition, are often overworked, are also raised.

Speakers also mentioned residual problems, such as loopholes in the legislation and support for minors.

The question of ‘market deals’ - in which foreign nationals are forced to sell drugs- also arises. In such cases, the Public Prosecutors' Offices are often reticent about considering the drug dealers as victims of trafficking in human beings.

It was also stressed that some guarantees should be offered to victims if prosecution of offenders is interrupted for reasons outside the victim's control.

To conclude this overview on a positive note: a good practice in the city of Liège was described, where a working group has been in place since 2009 to inform victims about their status. The idea originated from the finding that too few victims consider themselves or recognise themselves as victims.

The elements described above are just a small portion of the information available in the Senate Committee working group report. The report has enabled many issues to be brought to light, and we can only regret that the working group did not have time to complete its work due to a premature end of the legislative term.

The work was, however, continued in May 2011 by a new working group set up by the Senate Committee for Interior and Administrative Affairs.

2.4.2. Parliamentary work

Let us first look at the Proposal for a Resolution on combating trafficking in human beings, before examining the Parliamentary work on trafficking in and smuggling of human beings. We focus on issues and questions that relate to the specific duties of the Centre – to give impetus to policy on trafficking in and smuggling of human beings.

A. Proposal for a Resolution on combating trafficking in human beings

This proposal was originally introduced in December 2008, and subsequently systematically put on the Senate's agenda⁷⁸. Although the proposal was not adopted, it did lead to the setting up of the *Working Group on trafficking in human beings*.

Amongst others the proposal wishes to respond to the increasing professionalization of trafficking in human beings and its continued development as a criminal phenomenon. The recommendations of the proposed resolution reflect the sensitive issues that riddle the work of the Working Group for trafficking in human beings⁷⁹ and the Parliamentary interventions.

⁷⁸ Proposal for a resolution on combating trafficking in human beings, *Doc.parl.*, Sénat, 2008-2009, 4-1155/1.

⁷⁹ See above in this report, Chapter 1, point 2.4.1. The Senate's working group.

Moreover the proposal aims to end the limitation of the definition of sexual exploitation to prostitution and child pornography. It requests that the Federal Government analyses the possibility of extending the law to other forms of sexual exploitation. The proposal also states that the current definition of trafficking in human beings is based, too unilaterally, on exploitation. It therefore requests that the law takes greater account of the coercion component. According to those who filed the proposal, the law, as it exists today, leads to ideological dilution of the concept of trafficking in human beings.

The proposal also deals with the issue of principal contractors or employers in the context of trafficking in human beings for the purposes of labour exploitation, and requests an examination of whether the introduction of a law on the joint responsibility of such principal employers is called for.⁸⁰

In addition the proposal also includes a series of recommendations aimed at dealing more efficiently with trafficking in human beings at different levels and ensuring optimal collaboration and exchange of information. The proposal aims to implement all of the above, in particular by boosting collaboration between the Federal Public Prosecutor and the Board of Prosecutors General⁸¹ and making the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (*CIATTEH*) operational.

The proposal also requests that, after an evaluation has been made, additional resources should be provided to the Centre so that it may play its role as national rapporteur to maximum effect if it would be appointed to this task by the State.

B. Parliamentary questions and interpellations

Without wishing to be exhaustive, we will now examine a number of interesting questions that were asked during the Parliamentary activities. These questions reflect the challenges that accompany the various facets of the phenomenon of trafficking in and smuggling of human beings, as well as the necessity for a multidisciplinary approach.

The interpellations concern both structural issues and uncertainties relating to pending cases and prosecutions⁸². They reflect trends in trafficking in and smuggling of human beings, which also interest the Centre. The multidisciplinary facets of the problem also emerge in questions and interpellations addressed to Ministers. The questions are not limited to legal affairs, but also concern the jurisdiction of the Minister of the Interior, the

⁸⁰ The issue of principal employers is also dealt with later in this annual report. See Part 2, Chapter 3.

⁸¹ See also the report of the Senate's working group on trafficking in human beings regarding the sometimes problematic collaboration between the various services involved in investigation and prosecution, above, Chapter 1, point 2.4.1.

⁸² *Q. et rép(Q and A..* Chambre [Questions and Answers in the Belgian Chamber], 2009-2010, 12 January 2010 (Qu. No 499, R. Landuyt); *Q and A.,* . Chambre, 2010-2011, 1 December 2010 (Qu. No 224, R. Madrane); *Q. and A.,* . Chambre, 2009-2010, 22 December 2009 (Qu. No 61, H. Goyvaerts); *Q. and A.,*Chambre, 2010-2011, 3 May 2011 (Qu. No 4345, Z. Genot); *Q. and A.,* Chambre, 2009-2010, 29 December 2009 (Qu. No 238, M. Doomst).

Minister for Employment and Equal Opportunities, the Minister of Foreign Affairs or the Secretary of State for Migration and Asylum Policy, as well as the Secretary of State responsible for coordinating the combat against fraud.

Questions were often based on observations made in the Centre's annual reports.

Combating trafficking in and smuggling of human beings

The Parliamentary activities reflect an interest in combating trafficking in and smuggling of human beings, in the widest sense of the term. We will give some examples below.

One of the questions refers to the National Security Plan 2008-2011, in which smuggling of human beings is considered as a priority crime issue. In his answer, the competent Minister stated that, as part of the monitoring and coordination of the fight against smuggling, importance is attached not only to traditional smuggling of human beings through various modes of transport, but also to the improper use of legal means of entering and residing in the territory⁸³.

Another aspect concerns monitoring by the local police force, which does not seem to be a priority. This point was already raised in the Centre's 2009 Annual Report on trafficking in and smuggling of human beings and gave rise to a series of questions about the role of the local police and their collaboration with the Federal police⁸⁴. In this regard, the Minister of the Interior refers amongst other things to the directive of the Board of Prosecutors General on combating trafficking in human beings⁸⁵.

An important and sensitive issue (as also emerges from the Working Group on trafficking in human beings and the proposal for a resolution) concerns the question of how to make the *CIATTEH* functional. Parliamentarians have asked questions about the practical performance of the *CIATTEH* and the steps undertaken to amend the Royal Decree of 16 May 2004 in order to render the *CIATTEH* operational.⁸⁶

As regards the investigation of cases, and following a question in Parliament on the appointment of a specialised investigative judge to deal with trafficking in human beings, the Minister of Justice stated that such an appointment would indeed lead to increased specialisation, but that this does not mean that each district would receive an investigative judge having as their priority this type of case. In this context, the Minister referred to Article 79 of the Judicial Code, on the basis of which investigative judges specialised in terrorism have been appointed. By analogy, we may ask whether it is opportune to have

⁸³ *Q.and A. Chambre*, 2009-2010, 18 January 2010 (Qu. 402, G. D'haeseleer).

⁸⁴ *Q.and A. Chambre*, 2010-2011, 11 February 2011 (Qu. No 300, M. Delacroix-Rolin).

⁸⁵ Directive of the Board of Prosecutors General on trafficking in human beings (COL/1/2007). The directive provides for regular meetings in each judicial district between the parties concerned (liaison magistrate, labour tribunal, Federal criminal investigation police department, central human trafficking unit, Directorate-General Justice, local police investigation departments, social inspectorate services and social affairs inspectorate).

⁸⁶ *Q.and A. Sénat*, 26 May 2011 (Qu. No 5-2422, B. Anciaux).

specialised investigative judges available in each Court of Appeal district⁸⁷. The idea of appointing a specialised investigative judge for trafficking in human beings in each judicial district had already been proposed by various parties involved, as can be read in the Centre's 2008 Annual Report on trafficking in and smuggling of human beings.⁸⁸

Finally, concerning investigation techniques in practice, close attention has been paid during Parliamentary activities to the effectiveness and to the cost of phone tapping. This issue was also examined in the Centre's 2009 Annual Report on trafficking in and smuggling of human beings and earlier in this report, in the point devoted to the report of the Senate's working group.⁸⁹

Exchange of information and collaboration between Public Prosecutors' Offices

During the Parliamentary activities, reference was made to the Centre's 2008 Annual Report on trafficking in and smuggling of human beings, concerning the lack of exchange of information in social inspection services, Public Prosecutors' Offices and tribunals. We observe that the voids, which are the result of a lack of awareness, on the part of the various services, of the results of inspections and investigations carried out in other districts, are fully exploited by professional traffickers in human beings.

The Minister of Justice said that he was aware of this lack of communication and the resulting adverse consequences on prosecutions. Although, according to the Minister, several police chiefs questioned have explicitly stated that they were not aware of any double jeopardy prosecutions, practice shows us that this has already occurred and that the application of the principle *non bis in idem* has prevented a conviction being obtained for trafficking in human beings.

The Minister uses this opportunity to discuss some initiatives. Amongst other things, he explained that the Public Prosecutor's Office continues pursuing the integration of its operations, not only widening and fine-tuning partnerships, but also with regard to IT resources. In 2010, four pilot projects were carried out to improve collaboration in IT areas. The Public Prosecutor's Office is also collaborating actively in the development of an electronic statement, to be used consistently by social inspection services.⁹⁰ The statement will be uploaded to an electronic database which should facilitate and simplify interviews and exchange of information.⁹¹

The Centre's 2009 Annual Report on trafficking in and smuggling of human beings was also used during the Parliamentary activities to discuss the various failings in collaboration between the different Public Prosecutors' Offices and the Federal Public

⁸⁷ *Q.and A. Chambre*, 2009-2010, 15 December 2009 (Qu. No 161, B. Laeremans).

⁸⁸ Annual Report 2008, 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p. 94.

⁸⁹ See in this regard the 2009 Annual Report, 'Trafficking in and smuggling of human beings: *In a haze of legality*', pp. 106 and 133; *Q.and A. Sénat*, 26 May 2011 (Qu. No 2421, B. Anciaux); *Q.and A. Chambre*, 2010-2011, 11 February 2011 (Qu. No 300, M. Delacroix-Rolin).

⁹⁰ The electronic statement system is now operational.

⁹¹ *Q.and A. Chambre*, 2009-2010, 15 December 2009 (Qu. No 158, B. Laeremans).

Prosecutor's Office. One of the necessary measures to be taken is to aim at financial action against networks trafficking in human beings. Such cash flows can only be blocked at federal level. In addition, we can also read in the report that the Federal Public Prosecutor's Office generally does not grant applications from local Public Prosecutor's Offices to join different cases together. These observations generate the following question: What policy does the Federal Public Prosecutor's Office apply to trafficking in human beings, and what corrective measures are being applied to that policy?

The Minister of Justice indicated that the Federal Public Prosecutor's Office has jurisdiction to initiate proceedings for the offences listed in Article 144^{ter} of the Judicial Code (which include trafficking in and smuggling of human beings), if the latter is justified for the purposes of proper administration of justice. The idea is that the competency of the Federal Public Prosecutor's Office to initiate proceedings should become subsidiary to that of Public Prosecutors' Offices at the Courts of First Instance. The Federal Public Prosecutor's Office will therefore itself initiate proceedings only when doing so provides a manifest added value for the proper administration of justice. Such added value, for example, can be found in cases in which the Federal Public Prosecutor's Office has specific expertise that the local Public Prosecutor's Office does not possess. In the field of trafficking in and smuggling of human beings, such expertise is often to be found in local Public Prosecutor's Offices, where specialised magistrates are appointed to deal with trafficking in and smuggling of human beings. The Minister does not share the negative criticism on the workings of the Federal Public Prosecutor's Office and considers that we are remarkably well organised in Belgium as regards trafficking in human beings and that good initiatives have been taken. He also stressed the fact that Belgium takes the initiative at European level and that many hold its approach to combating trafficking in human beings in high esteem. He specifically cited in this regard coordination between the Federal Public Prosecutor's Office and the local Public Prosecutors' Offices, and, of course coordination with police departments and with other services.⁹²

However, if we refer to the Centre's annual reports, the Senate's working group report and the experience of the different actors involved, this collaboration still presents many difficulties.

Labour exploitation: secondment and labour-only subcontractors

An often mentioned theme during the Parliamentary activities, dealt with in detail in our 2009 Annual Report on trafficking in and smuggling of human beings⁹³, concerns dubious arrangements for secondment and labour-only subcontractors. Such arrangements typically demonstrate why coordination between the different competent authorities must be as close as possible to take appropriate action against this problem. The social affairs, anti-fraud and justice departments should all be involved.⁹⁴

⁹² *Q. and A. Chambre*, 2009-2010, 28 October 2009 (Qu. No 15484, R. Landuyt).

⁹³ See in this regard the 2009 Report, 'Trafficking in and smuggling of human beings: *In a haze of legality*', pp. 66-98.

⁹⁴ *Q. and A. Sénat*, 27 December 2010 (Qu. No 5-652, B. Tommelein).

In this context, it emerges from the Parliamentary activities that collaboration between European Union Member States still has several gaps, particularly in terms of exchange of information. Despite this, the Secretary of State for anti-fraud coordination highlighted several important collaboration procedures.⁹⁵ The Belgian presidency promoted the use of the *Internal Market Information System* (IMI), as a platform for data exchange between national authorities that are responsible for the implementation and monitoring of the European Directive on secondment.⁹⁶ The Secretary of State also referred to the GOTOT⁹⁷ database for matters relating to the National Social Security Office. The ICENUW⁹⁸ project has been up and running since 2010. This is an initiative for collaboration between high officials of inspection services and fiscal authorities in 12 European countries, focusing on operational opportunities for labour inspectorates and social inspectorates. The Secretary of State also refers to the work of the Belgian Social Intelligence and Investigation Service (SIRS)⁹⁹, which supports Federal social inspectorates in combating undeclared employment and social fraud.¹⁰⁰ Possibilities to better exploit the LIMOSA database¹⁰¹ are also being explored, by comparing data, for example, with data available from fiscal authorities and even from regional authorities. This allows problematic cases to be traced and leads to targeted and efficient inspections on the ground.

These initiatives, which fall under the wider framework of social fraud, are also important in detecting trafficking in human beings since criminal organisations abuse the opportunities offered by the free movement of services and workers.¹⁰²

Residency status for victims of trafficking in and smuggling of human beings

The recommendations issued by the United Nations Human Rights Committee¹⁰³ also have repercussions on the Parliamentary activities. The Human Rights Committee has

⁹⁵ *Q. and A. Chambre*, 2010-2011, 10 May 2011 (Qu. No 4516, K. Temmerman).

⁹⁶ Since 16 May 2011, competent authorities from all over the European Union can exchange information on an experimental basis using IMI under the Directive concerning the posting of workers (96/71/EC). In March 2011, the Council gave the go-ahead for this test phase in its conclusions, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/119621.pdf. See also Part 2, Chapter 2, point 3 of this report (The internal market information system – Simplifying administrative collaboration under the Seconded Workers Directive).

⁹⁷ See in this regard the 2009 Annual Report, 'Trafficking in and smuggling of human beings: *In a haze of legality*', p. 102.

⁹⁸ ICENUW stands for 'Implementing Cooperation in a European Network against Undeclared Work'. For further information, see the website <http://www.socialsecurity.fgov.be/en/conferences/icenuw/index.htm>

⁹⁹ The Belgian SIRS was created by the Programme-law of 27 December 2006 to replace the federal council and the committee to coordinate the fight against illegal employment and social security fraud. For further information, see the website <http://www.emploi.belgique.be/sirs.aspx>.

¹⁰⁰ *Q. and A. Chambre*, 2010-2011, 10 May 2011 (Qu. No 4516, K. Temmerman).

¹⁰¹ See also in this regard the 2008 Annual Report, 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p. 88 and the 2009 Annual Report, 'Trafficking in and smuggling of human beings: *In a haze of legality*', pp. 102-103. For further information on LIMOSA, see the website <http://www.limosabe.be>.

¹⁰² For example, the sale of false employment contracts to gain access to certain benefits.

requested that Belgium amends its legislation and issues residency permits to victims of trafficking in human beings without laying down the condition of collaboration with the judicial authorities.¹⁰⁴

In his reply, the State Secretary for Immigration and Asylum Policies declared that adopting the recommendations of the Human Rights Committee was not on the current agenda. He stated that the existing procedure was satisfactory with regard to the concerns of the United Nations.

Other Parliamentary questions also drew attention to the fragile nature of victims' residency rights. The positive progress of their criminal claim is in any case a determining factor in the granting of residence permits. There is nevertheless an unofficial procedure to regularise a residency status on humanitarian grounds (better known under the name of 'STOP proceedings') for victims where the criminal case is still pending and who have been supported by a specialised reception centre for at least two years.

The Centre has already dealt with the status of victims of trafficking in great detail in previous reports. The Belgian authorities have attempted to find a compromise to combat networks trafficking in human beings whilst offering protection to victims. While the Centre subscribes in general to the current Belgian system, it has nevertheless noted some shortcomings in the past.¹⁰⁵

Begging

During the Parliamentary activities, particular attention has been paid recently to parents begging with their children¹⁰⁶. Whilst this is not a criminal offence, the same does not go for those placing their child at the disposal of beggars. The Minister of Justice underlines the fact that the political and judicial authorities are fully aware that such cases should not be treated from a criminal point of view, but as a social issue, involving prevention and protection. In order to react appropriately, the Brussels Public Prosecutor's Office set up a working group a few years ago composed of political, judicial and social actors. The objective was to find solutions to the problem of begging by Roma children and to

¹⁰³ United Nations Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Draft concluding observations of the Human Rights Committee*, 100th session, Geneva, 11-29 October 2010, CCPR/C/BEL/CO/5, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs100.htm>.

¹⁰⁴ *Q. and A. Chambre*, 2010-2011, 18 November 2010 (Qu. No 49, E. Brems); *Q. and A. Sénat*, 2010-2011 (Qu. No 5-2009, G. de Padt); *Q. and A. Sénat*, 2009-2010, 24 November 2010 (Qu. No 5-402, B. Anciaux).

¹⁰⁵ For a description of the residency status and details of certain shortcomings see the 2006 Annual Report trafficking in and smuggling of human beings: *'Victims in the spotlight'*, pp. 15-24 and the 2007 Annual Report, 'Trafficking in and smuggling of human beings: *Public policy as seen by a National Rapporteur*', pp. 53-59.

¹⁰⁶ Questions were raised following the Centre's 2008 Annual Report, in which it was stated that the problem of organised begging in the context of trafficking in human beings was mainly found amongst Roma travellers. See in this regard the 2008 Annual Report, 'Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*', p. 34.

coordinate the approaches of the various different departments¹⁰⁷. Other forms of intervention concern approaches to the issue, aimed at placing child trafficking in a wider context than simply that of organised begging, and instituting partnerships between different cities¹⁰⁸.

¹⁰⁷ *Q.and A. Chambre*, 2010-2011, 10 February 2010 (Qu. No 680, X. Baeselen).

¹⁰⁸ *Q.and A. Sénat*, 2010-2011, 27 January 2011 (Qu. No 5-844, B. Tommelein) ; *Q.and A. Chambre*, 2010-2011, 18 January 2010 (Qu. No 2102, K. Temmerman).

CHAPTER 2: PHENOMENON ANALYSIS

In this annual report, we will limit our phenomenon analysis to examining a few cases of trafficking in and smuggling of human beings to which the Centre had full access when bringing civil action. These cases were dealt with by the Courts during the period 2010-2011. We also invite you to consult our previous annual report, still current, in order to supplement this examination and phenomenon analysis.

The analysis examines both the victims' position and the criminal system in place. The case analysis is based on the statements relating thereto. It includes a critical reading of the summary statements, in which investigators collect relevant information of the case, statements made during interviews of victims, suspects and witnesses, information statements, reports relating to rogatory commissions, etc. Specific case information is essential to analyse policy. This enables us to identify new trends and new *modus operandi*, to see how policy measures have been implemented in practice and to highlight stumbling blocks.

The examinations made are not simply descriptions of cases. In the introduction to each case, we paint a picture of the key points relating to the phenomenon and shortcomings in policy implementation in the field. These key points vary according to each case, and require a specific organisation and presentation depending on their individual features.

1. Sexual exploitation

1.1. Champagne bar in the city of Turnhout

The facts in this case date back to 2005 and 2006. They concern a champagne bar where customers were first pushed into giving out champagne to the girls and then retire to a bedroom with them. The accused were a Belgian couple running the bar. They had set up a dummy company to camouflage their prostitution activities. One of the victims was a minor and a drug addict.

The Turnhout Public Prosecutor's Office decided not to prosecute due to insufficient evidence. The Centre then lodged a civil claim, but the case was dismissed at the pre-trial hearing.

1.1.1. Start of the investigation

In March 2006, the police received information confirming that various women, including a minor, were working illegally in a prostitution bar. On these grounds, the magistrate at the Public Prosecutor's Office at that time ordered the police to watch the

bar. Identification of and interviews with several customers ensued.

During searches made of the premises, it turned out that the women were working illegally as prostitutes and without work permits. The bar manager obliged them to sign a document in which they declared that they were self-employed. The bar manager was a former Belgian prostitute who had been active in prostitution for more than twenty years. Her husband worked behind the scenes. Most of the prostitutes were 'allowed' to keep half of their earnings and therefore did not consider themselves to be victims. Per night spent on the premises 20 euros was deducted from their earnings.

The victims were mainly Polish. However, there were also Nigerian and Belgian women. One Nigerian victim was detected through an application for asylum and a lease agreement in France, and was also identified in another investigation in the city of Turnhout. The girl had run away and disappeared the day after the search of the premises. Subsequent investigations were unsuccessful. One of the Polish women, who had been placed in the bar by her pimp, has requested the victim of trafficking in human beings status.

1.1.2. Underaged girl

According to various statements made by the Polish women, one minor was also working in this prostitution bar. The police managed to find and interview her.

The minor had apparently already given birth to a baby girl at 17 years old. Two weeks after the birth, after having answered a small ad in a newspaper, of her own volition, she started to work at the bar. She presented herself to the owners as being of age. The accused had never asked for identification documents.

The young girl, who had previously worked in an escort agency, and who received ecstasy tablets at the bar so that she could work better, made the following statement to the police: *'You ask me if I work as a prostitute. It is true that I have had sex for money... In my daughter, I've found a reason for living. This time has been horrible for me. I just wanted to go home. I've gotten into an environment where lots of drugs were used, and I've seen with my own eyes the terrible consequences they can have. That's why I want to get away from all of this and go back to school.'*

Despite the statements made by a Polish woman and the young girl in question (who declared that she had worked at the bar for one week), the accused strongly denied ever having employed the minor in her bar.

1.1.3. Systems of bogus self-employed workers

At the outset, in 2005, the Polish women were working illegally. They did not have the required work permits. After several inspections, the bar manager then used Belgian women. However, the latter had no employment contracts either, and were not officially employed.

During this initial period, the managers of the bar were not listed on the Trade or Companies Register as a business for their commercial activities. In the meantime, the accused couple separated. In early August 2006, the female accused took over a dormant company, amended its articles of association and became the head of the company. One of the Polish women, who had previously worked for her as a prostitute, became her associate. The accused offered her 200 of the 1000 shares in the company, so that she could put her to work legally. One Belgian woman who, like the Polish woman had worked in the bar, started to work for this new company as a self-employed worker. According to the police, she was working, however, as a bogus self-employed worker.

1.2. Champagne bar in the city of Tongeren

The facts in this case occurred between 2005 and 2008. They concern a champagne bar in the city of Tongeren where women were employed illegally as hostesses to entice customers to buy drinks. The Antwerp Court of Appeal¹⁰⁹, unlike the Criminal Court in Tongeren, sentenced the accused for trafficking in human beings for the purposes of labour exploitation (working in conditions contrary to human dignity)¹¹⁰. The main defendants are a Belgian-Polish couple running a champagne bar in the city of Maaseik. Among the other defendants are the owner of the property and the former bar manager.

It should be noted that the Housing Inspectorate also brought civil action due to the absence of the required construction permit and the bad quality of accommodation of the property. This fact once again highlights the need to raise the awareness of local administrations and the Housing Inspectorate (see Part 2). Furthermore, in this case we can also observe some failings as regards the approach to victim status in trafficking in human beings.

1.2.1. Victim statements

In this champagne bar, at least fourteen Polish women were working illegally as hostesses. They did not have employment contracts or self-employed worker status. The young women were officially recruited to keep customers company and entice them to buy drinks. They were working illegally, as regards both social security contributions and tax.

The investigation began in 2007, on the basis of statements made by three Polish women who had filed a complaint with the local police in Maaseik concerning trafficking in human beings.

They declared that they had been contacted in Poland through an acquaintance. The latter

¹⁰⁹ Antwerp, 24 June 2010, 14th Chamber and Tongeren Criminal Court, 26 November 2009, 9th Chamber. These two verdicts were dealt with in our previous Annual Report ‘Trafficking in and smuggling of human beings: *In a haze of legality*’, p. 56. They are available on the Centre’s website: <http://www.diversite.be>.

¹¹⁰ Also see Chapter 4 (Case law review) of this Part.

then offered them the opportunity to work in Germany as kitchen aid in bars or restaurants. They were led to believe that they would be paid a wage of 50 euros per day. Their acquaintance, the recruiter, was to charge 100 euros, to be deducted from their wages.

The Polish women decided to accept the offer and purchased bus tickets to Aachen (Germany). They got the mobile phone numbers of the Belgian-Polish couple running the champagne bar in Maaseik. Once they had arrived and been collected in Aachen, the Polish women realised that they were being taken to Belgium, stopping on the way at the Maaseik bar. In the bar, other women told them that they had to keep customers company and persuade them to have plenty of drinks and buy as many rounds as possible. They themselves earned 0.20 euro per drink consumed. They would also earn 21 euros for each bottle of champagne consumed.

The victims had received explicit instructions to allow themselves to be sexually fondled by the customers and not to express any objections to this. Sex was possible, as long it was consented to by the girls and the bosses of the bar. The victims were warned that the boss had a nasty temper and that they were not to leave the bar under any circumstances without her authorisation. It was also forbidden to make telephone calls without her authorisation. It was only possible to return to Poland with permission from the bosses.

The victims were shocked by the direction that things were taking – they had not realised that they were going to have to do this sort of work and had therefore been brought into Belgium under false pretences. When the victims were left alone for a short time, they decided to escape and call for help from a public telephone. The victims were collected by the local police and were immediately granted victim status. As a result of the intervention of the Public Welfare Office in Maaseik, the victims were housed in a studio flat. The next day, the victims asked to return as soon as possible to Poland and made it known that they no longer wished to benefit from the status as victims of trafficking in human beings.

1.2.2. Start of the investigation

Following the complaint and the statements of the three Polish victims, the magistrate decided to call for bank transactions, tax declarations and data concerning property belonging to the managers of the champagne bar. It turned out that the accused had performed transactions amounting to 95,975 euros in the form of cash deposits and money transfers. The turnover of the champagne bar was 117,893 euros for the period between 2004 and 2006.

The phone tapping requested led to additional proof being obtained. It emerged from the phone tapping that the women were acting as hostesses to entice customers to drink and that there was also a question of sexual relations between the hostesses and customers.

On these grounds, the magistrate issued the local and federal police with a search warrant. The housing inspectorate of Limburg, social inspection services of Hasselt, the

Department of Alien Affairs and a Polish-Dutch interpreter also attended the search of the premises. During the search of the premises, five women were found in a locked shower room/toilet and only opened the door after some insistence. When interviewed, they denied having worked in the bar and claimed that they had been staying there on holiday.

To conclude, we should add that the housing inspectorate of Limburg carried out an investigation as to the quality of accommodation at the property concerned at the request of the investigative judge. As it turned out the property was unfit for habitation and did not comply with housing regulations or requirements.

1.3. Prostitution bar - champagne bar in the city of Tongeren

The facts in this case occurred between 2005 and 2007. The main defendants are a Dutch couple running a champagne bar as a prostitution bar, also in Maaseik. The Criminal Court of Tongeren acquitted the defendants in this case for trafficking in human beings¹¹¹.

This case was initiated following phone tapping carried out as part of another prostitution case. In addition, the police used the Internet for the purposes of the investigation. These two items make this case a remarkable and interesting one.

The bar itself seemed to be in the hands of a Dutch business manager. In reality, it was managed by his Dutch girlfriend. Around ten women were working in the bar, most coming from Eastern Europe. The women worked illegally as prostitutes, had to entice their clients to have drinks and offer them their sexual services. The victims worked according to a 50/50 profit-sharing arrangement. None of them had an employment contract or self-employed worker status. A Ukrainian woman was working with false Lithuanian papers that her Lithuanian pimp had provided her with. A Nigerian woman was working without any residence permit or identification documents. Both were given the status of victims of trafficking in human beings. In the meantime, the Ukrainian victim has disappeared on her own initiative from the specialised reception centre for victims of trafficking in human beings and lost her victim status.

1.3.1. Start of the investigation

The business manager denied any involvement in prostitution and claimed that the girls were customers and just paid him rent for rooms. He had the required permits from the municipality for managing the business, and presumed that a policy of tolerance would be applied.

The couple were making a considerable financial profit from running the bar. Accounting entries of no less than 301,450 euros were recorded for the bar, by Banksys and payment cards. The many cash payments, usual in this kind of business, were not included in this

¹¹¹ Tongeren Criminal Court, 10 February 2011, 9th Chamber. See in this regard this Part, Chapter 4 (Case law review).

amount.

The Federal police had gotten the bar in its sights following telephone surveillance and observations carried out as part of another judicial investigation in progress, in which there was a question of a black woman being taken to the bar in a car. The police checked the car that stopped at the bar. A young Nigerian woman was found inside, without identity papers or a residence permit. During her interview, the young woman declared that she was the victim of trafficking in human beings. She could only survive by working in bars. She felt herself to be the victim of her driver and the managers of the bar who were consciously and abusively taking advantage of her precarious situation.

1.3.2. *Victim statements*

The Nigerian victim declared that she had worked for one week as a hostess. During that week she earned 115 euros. When she went to the bar for the first time, she had no identification documents. The manager did not request any identification. She was able to start working immediately and did not have to fill out any papers. The woman told her that she had to entice customers to have drinks and to provide services of a sexual nature. She was allowed to keep half of her earnings and spend the night, free of charge, in the room where she received clients. The boss had given her instructions to inform her each time that she went up to her room with a client. She was not allowed to refuse any client. In the event of an inspection by the social inspection services or the police, the manager had told her to say that she worked on an autonomous and individual basis and that she kept all her earnings for herself.

When the bar was inspected, the social inspection service and the police also found a young woman with false Lithuanian identity papers. The woman declared that she had been taken from Ukraine to the Netherlands following false promises made by a former classmate, on the pretext that she could work as a maid for Russian families in the Netherlands. When she arrived in the Netherlands, she was met by a Lithuanian pimp, nicknamed "the Russian". He destroyed the victim's passport and gave her a false Lithuanian passport with her photograph. She received death threats and was forced to work as a prostitute through escort agencies. She got to know a regular client, who took her away and brought her to the city of Maaseik. In this bar, she was able to keep 40 % of her earnings. She had to work six days a week and could sleep in the house free of charge. The manager was aware both of her false Lithuanian passport and the fact that she was escaping from her Lithuanian pimp. When the inspection was made, the victim only had 50 euros in her pocket, which meant that she was considered as being in a position of financial dependency. For the police, she was therefore in conditions that were contrary to human dignity and in extreme poverty. The facts committed in the Netherlands were not the subject of further investigation in this case. The victim maintained regular contacts with the said regular client who had taken her away after she had obtained victim status. She continued to make ambiguous statements about the man, who was jointly accused with another person at a later stage. According to other victims, he was just a pimp who threatened to send "the Russian" if they did not pay their alleged debts.

1.3.3. Internet

The bar published advertisements on its own website. It turned out that the business was first and foremost a prostitution establishment, abusing many young foreign women.

The police made many targeted investigations on the Internet. On one specific website, where prostitutes' clients could share their experiences, one message from a client on the 2006 forum attracted the police's attention. The individual had already posted 47 messages on the forum, all describing his personal experiences in different bars. In his message about the bar concerned, he spoke of a young woman with false Lithuanian papers. It thus transpired that she had already been working in the bar in 2006 – a good year before the search in October 2007.

1.4. Nigerian case

This Nigerian prostitution case has just been heard in 2010 by the Criminal Court¹¹² of Turnhout. The actual facts date from 2002-2003. There are six defendants in all. Two of them are in Belgium, one in Spain and three in Nigeria. The defendants belong to two Nigerian families. A rogatory commission to Denmark gave rise to an investigation there. Three victims filed a complaint for trafficking in human beings.

1.4.1. Families with a pyramidal structure

These Nigerian prostitution networks are characterised by families set up according to a pyramidal structure. Families U. and E. carry out their prostitution activities in an organised way in Belgium, Germany, Denmark, the Netherlands and Spain. The two families come from Benin City, Edo State in Nigeria – and have great prestige in Benin City as a result of their prosperity.

Within the family, each member was responsible for a specific set of tasks. The mother of family U. and the father of family E. were working together to recruit victims. They were receiving the money from the prostitution in Europe and investing it in property construction and in bank accounts in Nigeria. They organised voodoo ceremonies in Nigeria (to impel the girls to be obedient) and sent their daughters to Europe to play the role of 'Madams' there. They looked after the reception, providing false documents, employment as prostitutes, controlling the girls and sending money back via money couriers or bank transfers sent through Spanish bank accounts. While the sons played the role of 'lover boys' to keep the victims under control. If necessary, they used physical violence against victims who did not earn enough money.

From the recordings of telephone calls it turned out that the parents had regular contacts in Nigeria to communicate and discuss all the details about their prostitution activities.

¹¹² Turnhout Criminal Court, 17 November 2010, 13th Chamber. This ruling is final. See also Chapter 4 (Case law review) of this Part.

The parents systematically had the last word. Most of the defendants were living in Nigeria or Spain. Only the daughter, the Madam, was arrested in Belgium. During action taken on the basis of rogatory commissions in Nigeria, the Nigerian authorities, contrary to previous agreements, refused to cooperate in order to find and interview the accused. Several questions thus remained unanswered.

1.4.2. Victims

Three victims filed a complaint for trafficking in human beings. The victims were contacted in Nigeria by the family of the accused staying in Belgium, who proposed that they could come to work or study in Europe. Victims were recruited within their own circle of acquaintances and/or friends. So apart from financial motivations, emotional reasons also played a part in recruitment. Various victims were recruited by 'loverboys', thus creating a situation of emotional dependency. Moreover, the victims were in a situation of religious dependency. They attended voodoo ceremonies before leaving their country. These rites convinced the victims that they would have serious problems if they disobeyed. Lastly, the victims were accompanied by members of the accused family, travelling with false papers which were then confiscated by their travel companion.

The Belgian rogatory commission witnessed the patrol of a gang of 'area boys', members of local gangs who are frequently recruited by traffickers in human beings. This gang was patrolling area market area with several muzzled hyenas on leads. They also had several baboons on leads to strengthen their demands. This kind of gang plays an important role. They take parts of Benin City under their wing and offer protection to the inhabitants in exchange for payment. The gangs can also be hired to 'teach someone a lesson'.

1.4.3. Victim statements

One of the victims had been working since November 1999 as a maid for family U. in Nigeria. She arrived in Belgium having been promised the opportunity to study and work. The victim was placed in a position of dependency through voodoo rituals. A trafficker, together with the son of the accused family, arranged her trip using false papers. The trafficker was paid by the Madam, the daughter of the family in question. Upon arrival, the victim was placed in a safe house in the prostitution area of Antwerp. Two other victims were staying there and were to initiate her into prostitution to enable her to repay her alleged debts amounting to 50,000 dollars. At first, the victim refused. She was then beaten by the Madam and threats were made against her family in Nigeria. The Madam promised her that the money she earned through prostitution would be used to build a house for her family. Then, the Madam provided the victim with documents in a false name, by means of which the victim was to make a false application for asylum in Brussels. The Madam came each week to collect the money earned from prostitution. The amounts varied between 1,250 and 1,750 euros.

After the decline of the prostitution area in Antwerp, the three victims were taken to Denmark to work there in prostitution. They were taken over by another Madam, a good friend of the accused. The accused went to Denmark once to collect money from

prostitution. Twice, the victim had to transfer money to the brother of the accused from Denmark using Western Union. After her stay in Denmark, the victim escaped, because she could no longer pay back her debts. Upon her return to Belgium, she herself contacted the Madam because she had no income and nowhere else to go. She was then taken on as a prostitute in Brussels and Charleroi. She was housed in a cellar in Brussels that she shared with another victim. It was during a police inspection in Charleroi that she was arrested.

In January 2009, the victim was interviewed again at her request. The investigation had then been in deadlock for several years. In her first statements, the victim had already mentioned the promises made by accused family U. to build a house in Nigeria for her family with the proceeds from prostitution. In fact, they had put the house in the name of the family U. In total, the victim paid the accused more than 42,000 euros between July 2001 and April 2002. In view of the slowness of the investigation in Belgium, the victim had contacted a Nigerian Court and had been given ownership of the house. Initially the Madam had, through bribes paid to another Nigerian Court, a transfer of ownership document drawn up in favour of her brother.

1.5. Nigerian case in the city of Turnhout (related to a former massage parlour case in the city of Liège)

In this case, the Public Prosecutor's Office of the city of Turnhout has requested, that the case be dismissed. The pre-trial hearing complied with the Public Prosecutor's Office's request and dismissed the case on 22 April 2011. The facts date back to 2000-2002.

One of the victims contracted HIV during her forced prostitution.

1.5.1. The problems of investigations that drag on

In this case, a Nigerian trafficking in human beings network was based on a small family company. It is a continuation of the Liège massage parlour case, in which the main defendant is the manager N., that we discussed in the 2007 annual report as an example of a type of large-scale business network. The Nigerian network in the Turnhout case was one of the providers of the women employed as prostitutes.

The victims appeared in three judicial investigations in the cities of Liège, Brussels and Antwerp, which, at the outset, were carried out separately. They had obtained victim status on the basis of statements used in the large Liège case. They no longer wished to act as witnesses, because it was likely to place them, as well as their families, in further danger. The judge appointed in the Turnhout case did not call for telephone surveillance. A rogatory assignment issued to Ireland, aimed at searching premises and questioning a joint defendant, took until 2009 to have an effect, leading to further interviews in 2010.

1.5.2. Background

The 2010 police summary statement outlines the context in which the Nigerian trafficking in human beings networks emerged and are still in operation today. The Nigerian national income is for 98% composed of oil proceeds. Wealth is not distributed fairly. Of the population, 91% has to live on less than two dollars a day. In 2007, 170,000 people died of AIDS and 3.1 % of the population aged between 15 and 49 years old is infected with HIV.

When oil production started in the 1980s, large agricultural areas were destroyed and with them the source of income for the rural population. Some women, most of them married, saw forced to become prostitutes for workers in the oil industry. In the Edo and Delta states, where most of them came from, prostitution is not socially acceptable. However, when a man loses his job and cannot provide for his wife's needs, she has to provide for herself and her children. Prostitution then becomes a quick way to make money and men are often willing to tolerate it. The traffickers in human beings first turned to girls and women in Benin City in the Edo State, but it appears that they then focussed on to the countryside in the same State.

Women who had been working as prostitutes in Nigeria moved to Europe because there was a great demand there for African prostitutes. They set up a lucrative trade which generated a flow of women working in prostitution being sent to Europe. They were the first Madams, who had themselves worked in prostitution and had been able to redeem themselves. In order to do this, they in turn introduced new victims to prostitution. These Madams came back from Italy, Spain, Belgium and the Netherlands with enough money to build a house, or even several houses in some cases. The consequence of this was that other, less poor, women also wanted to work in Europe, and that parents encouraged their daughters. They did not realise that it was highly unlikely that they would return rich. Many have no idea of what will be expected of them, or of the conditions in which they will have to work. Most of the victims will never achieve their goal and will find themselves in miserable, distressing and inhuman conditions. In Nigeria, the family is happy if the victim can send home 20 euros per month.

1.5.3. Victims

The 2010 summary statement describes Nigerian victims as follows: they are generally women, in their twenties, coming from Benin City and from a low-income family with many children. They have little education and little or no work experience. Generally, the women know that they are going to work as prostitutes, although in some cases victims have been promised jobs as waitresses, child minders or domestic helps.

In general, the victims travel together, accompanied by successive couriers, crossing different countries in Africa and Europe before arriving in Belgium. The trip sometimes lasts several months and involves crossing the desert and/or dangerous sea crossings on small boats. The victims often have to earn money on the way, in Africa, as prostitutes to pay for their trip. If they fall sick, they are abandoned and left to their own fate. It is

estimated that half of the women are picked up on the way and sent back to Nigeria.

When the victim arrives in Belgium, she is handed over to the head of the network, who places her in prostitution or resells her. The victim is then told the standard story that she has large travel debts to pay back and generally accepts this without complaint. She then works for years to pay them back, without being able to send any money at all to her family. Some of the women hope that, once their debts have been paid back, they may be able to work as Madams themselves and lead a prosperous life in Europe. Nigerian trafficking in human beings is characterised by its female management and also by its organisational structure that reproduces itself. Other victims prefer to return to Nigeria, but fear that they will be stigmatised and rejected by their families because they have not been able to accumulate enough wealth.

1.5.4. Victim statements

Two Nigerian victims lodged complaints for trafficking in human beings in the massage parlour case in the city of Liège. They were recruited in Nigeria by a businessman and were subjected to an initiation by a voodoo ritual. Once they arrived in Belgium, they had to make a false application for asylum under a false Sudanese identity through an Antwerp lawyer, who himself has since been convicted in a case of trafficking in human beings. They used these papers to work in the prostitution area in Antwerp and in the massage parlours in Liège. Half of their income from prostitution had to be paid to manager N. of the Liège massage parlours, and the other half to their Nigerian madam. According to their Madam, they owed 50,000 dollars for the trip, false papers and organisation of their work activities. If they did not bring in enough money, they were beaten violently by their Madam. Their families in Nigeria were threatened by the brother of the accused if the victims considered making a compromising statement against them. The victims were in the grip of fear and did not want to cooperate in identification of a photograph of their madam. A third victim who had lodged a complaint had, in addition to working at the Liège massage parlours, also been part of the prostitution world in the northern part of Brussels. All these victims had victim status.

When the additional investigation in this case took place, one victim declared in 2010, 10 years after her first statements in the Liège massage parlour case: *'Very recently, members of my family have been threatened after further investigations were made in this case, apparently by your department. I have just understood why – the interviews with X, Y and Z. To protect my family, I don't want to accept your request to have a confrontation with the people involved in the case. I never want to see her again. I know that we're safe here in Belgium, but you can't do anything in Nigeria. The families of X and Y are held in high esteem and enjoy a great deal of respect in Nigeria and are very rich. They own various properties and flats and have a lot of money. There, they can buy everything and everyone. My family, on the other hand, has no money and has to endure everything. I don't want to cause problems for them. From today on, I only want your department to contact me about the case through the Sürya centre, which will represent me. I would like to continue to cooperate for the rest of the investigation.'*

2. Labour exploitation

2.1. Restroom services case

A well-known catering-restaurant chain systematically exploited, as the principal contractor and through a system of subcontractors, victims working in the restroom facilities on the highway. The facts in this case occurred in 2008 in the judicial district of Ghent. The judge at the Ghent labour tribunal prosecuted both the principal contractor and the subcontractor. The trial will take place in the second half of 2011. None of the victims are recorded under the victims of trafficking in human beings status.

The case was preceded by various related cases in the judicial district of Turnhout, which are all in deadlock for the moment. In the different cases, we note how this catering company, as the organiser, developed a cascading system of exploitation, adapting and refining the system after each inspection made by the labour inspection and by the police. Since 2005, the catering company had been organising, in different districts and through various subcontractors (each time with a changed structure) a tailor-made system aimed at exploiting restroom staff. We will deal with this subject in more detail in Part 2.

In this case, the catering-restaurant chain developed a system by virtue of which the subcontractor who helped run the chain no longer worked with seconded employees, but with self-employed workers from Germany. During inspections by front line services, it turned out that these persons were not aware that they were working under self-employed status.

The victims were working 7 days a week, from 7 am to 9 pm or 10 pm. No agreements were concluded regarding remuneration, but in practice they received a gross wage of around 1,200 euros per month. For 15 hours work a day, 30 days a month, we can calculate that the victims ended up earning less than 3 euros an hour. If someone worked less, their wages were reduced proportionally. None of the victims have been recorded under the victims of trafficking in human beings status.

2.1.1. Victims' profiles

The workers are mainly of Russian ethnic origin, around fifty years old and most of them come from Kazakhstan, as does the family of the business owner. They have German passports, obtained in Germany at the time of the world wars, when they had the opportunity and right to obtain a German passport.

Their mother tongue is Russian, but they also speak German as a result of their German citizenship and their time in Germany (generally in the area around Berlin and former East Germany).

The declining economy and the high rate of unemployment, together with the vulnerability resulting from their age and origin, mean that they have trouble finding

work on the German labour market. They are therefore willing to accept any job at any wage.

In order to provide for their basic needs, they tolerate deplorable working conditions, like staying abroad for long periods, and the long work hours (seven days a week). Interviews with these workers showed that they are very submissive as regards their boss. Afraid of being dismissed, they refuse, whether or not resolutely and at the request of their boss, to sign their statements, and they do not want to express an opinion about their situation as to whether or not they are victims of trafficking in human beings. Their jobs and the low wage they earn are more important to them than collaborating with the competent authorities.

2.1.2. Victim statements

Most victims were recruited by word of mouth in the former Eastern bloc countries or these were their countries of origin. Some are found through classified advertisements published in a Russian newspaper in Germany or Moldavia. Belgian applicants were denied.

The victims' statements say it all: *'You ask me what the contract I signed says. For me, it is a work permit, I don't know any more about it. You tell me that I have documents saying that I am working as a self-employed person. That's not true. I'm not self-employed, I work for Company X. You show me a contract between Company X and my alleged own company. For me, it's a work permit. I have no company at all. If this is the case, I'll go back to Moldavia.'*

At the end of his statement, the victim stated that he did not want Company X (the subcontractor) to find out that he had declared that he had received 1,200 euros. In the past, other people had apparently been dismissed by the company for having made such statements.

2.1.3. False secondment papers

From the secondment papers, it transpired that fifty seconded self-employed workers were active in Belgium. Sixteen of them gave the same residence address in Germany.

The investigation report by the social inspectorate shows us that key questions can be asked as regards the legitimacy of the secondment:

- many anomalies were found on the forms;
- it can be questioned whether the workers really understood the content of the contract;
- many items in the forms, and also on the terrain, indicate that the self-employed worker status of the involved parties is very doubtful;
- it has been noted that the stamp and signature are in exactly the same place on various secondment forms;

- the German social security organisation that provided said forms has not answered any calls from the social inspectorate.

All of the above led the social security inspectorate to highlight the following in its report: how can you be a seconded self-employed worker if you only become a self-employed worker three months later? Why were two sets of secondment papers supplied to the same person for the same secondment period?

In order to be legally seconded, workers must be covered, before the secondment, by the social security organisation in the country of origin. According to the statements of victim X, he was not a self-employed worker. In the former Regulation EC No 1408/71, it was stipulated that self-employed workers could only be seconded if they had carried out meaningful activities on a continuous basis in the Member State to which they were attached prior to the secondment. The workers must therefore already have been performing his activities for a considerable time. Furthermore, throughout the period of their secondment, they must comply with the necessary procedures to perform their activities in the country of origin in order to be able to continue them when they return to their country (for example, keep their VAT number, pay social security contributions and taxes). The new Regulation EC 883/2004 stipulates that secondment of a self-employed worker is only possible where the activities carried out in the destination State are of a 'similar nature' to those performed in the State of origin.

2.1.4. Service station ends its collaboration as a new principal contractor

During new inspections of car park restrooms next to the highways, the social inspection services noted that the owners of a reputable service station had copied the same system with the same subcontractor. The social inspection services informed the managers that this was illegal. The managers declared that they had gotten into contact with the subcontractor through the catering chain: *'We asked them what they did to maintain their restrooms. They were apparently satisfied with the people from that company. That's why they also started to work for us.'* Following the intervention of the social inspectorate, the directorate of the service station immediately decided to end the contract with Company X.

2.1.5. Dubious subcontractor

The subcontractor is a German company, and the manager of the company is of Kazakh origin. His wife also runs a travel agency. The company is active all over the world. Some victims worked in Germany and in Belgium. Since 2005, the company has been under contract with the catering company in the regions of Liège, Turnhout and later on Ghent. The case revealed that the German subcontractor has made a profit of more than 1.2 million euros in Belgium.

2.1.6. International cooperation

The secondment papers were sent to Germany to check their authenticity. A rogatory commission was also sent to Germany. It was apparent from interviews with the local health insurance administrator in Germany that the secondment papers were issued without checking whether the persons concerned had any entitlement to them. For the local administrator an indication of membership of the local social security organisation was sufficient. No checks were therefore made as to whether the applicant had previously been active in Germany and whether they could pursue this activity upon their return. The local administrator was unaware that assignments had been given to self-employed workers.

In Germany, the company concerned can oppose cancellation of an administrative procedure time and time again. This happened in this case. Due to these administrative procedures, the secondment papers have not yet been formally withdrawn.

2.1.7. European exploitation phenomenon

This case is situated in a larger European phenomenon, accompanied by enormous profits. Late 2004, the German investigators ended these activities. At the height of its activities, the company was managing sixty German locations (all German highway concessions) and its turnover from German restroom ventures reached around 10 million euros. The claim against the company concerns illegal labour, fiscal fraud, offences against labour legislation, social security fraud and similar charges. Following the action taken by the German police, the manager of the company disappeared from circulation, but a new German company is now active led by the same rogue business manager. This shows that the operation of restrooms on the main European highways is a lucrative activity associated with high earnings.

2.2. Car wash case

The facts in this case go back to the period between May 2005 and February 2007 and were committed in the district of Turnhout, as well as the districts of Leuven and Hasselt. The defendants are the managers of car wash businesses and a former worker at the Afghan embassy in Brussels. In this case, several Afghan and Pakistani defendants were sent to the Criminal Court in the city of Turnhout to be judged for trafficking in human beings. The Court will pass judgment on the matter during the second half of 2011¹¹³.

In this case, the investigating officers highlighted the need for a federal approach, but the Federal Public Prosecutor's Office did not intervene. We have also noted some shortcomings in the application of the status as a victim of trafficking in human beings. Furthermore, we observed a system of bogus self-employed workers and welfare fraud, which we will cover in more detail in Part 2.

¹¹³ The drafting of this Annual Report was completed in August 2011.

The organisation is entirely Afghan/Pakistani. It is mainly devoted to operating car washes using the cheapest labour possible. Family members were also brought to Belgium and recruited into the organisation. The aim was also to avoid any form of social security or fiscal inspection. The income generated disappeared to an unknown destination.

2.2.1. Start of the investigation

The police and social inspection services were informed of the fact that the operators of car washes in the cities of Geel, Leuven and Hasselt were not very concerned with working conditions and were illegally employing workers with false identity papers or false passports. After consulting the prosecutors at the competent Public Prosecutor's Offices, it was decided that a multidisciplinary inspection would be organised, in these three districts, of the car washes concerned and their staff. Several observations made during this inspection led to a further investigation for trafficking in human beings, breaches of social security and fiscal regulations, false documents, false passports and gang formation.

It was established that several persons were working illegally under false identities. The workers concerned were passing themselves off as Afghans, but were in fact mainly Pakistanis, working as bogus self-employed workers. In addition, asylum seekers were also employed under the same system of bogus self-employed workers without the latter being aware which contracts they were signing or the scope thereof. The business managers feigned that this was the only way to be able to work officially in car washes.

2.2.2. Working conditions

The workers were not remunerated according to the terms of their contracts, but worked on average 10 hours a day earning 40 to 50 euros per day in undeclared wages. They had to pay 200 to 300 euros per month for food and lodging at the car wash. This amount was deducted directly from their wages. Their presence at the car wash at all times meant that they were always available for work, but they were only paid for work actually done. They thus earned no money when it was raining. Most were working under probationary contracts, which allowed the owners to keep the workers completely under their control.

The other workers (not self-employed) who could work legally were given part-time contracts. Their contracts showed a working time of four hours a day, a few days a week (around 20 hours). In fact, they were working ten hours a day at 40-50 euros per day, all paid in undeclared wages.

Even the food provisions were harrowing. When the car wash was searched, the investigating officers found three boxes of eggs in the kitchen, about 90 eggs. The manager explained that they were for the workers. He said that eggs contain a lot of nutrients and that they are cheap food. He also added, condescendingly, that he did not eat eggs himself, only meat, because he could afford it.

2.2.3. Victim statements

During the investigation, a large number of workers were identified and interviewed. Some of the workers who had been employed at the car wash as self-employed associates or as workers could however not be identified and/or interviewed, because they were not found through the Department of Alien Affairs (false identities – fictitious identities and/or papers).

One of the workers concerned lodged a claim for trafficking in human beings against the managers directly after his interview, claiming to be a victim. However, he did not wish to be assisted by any authority whatsoever, which meant that he could not obtain the victim status. In the meantime, his situation has been regularised, without him being a civil party in the case in which he was a key witness. Following the adjournment of the first sitting of the trial, he was threatened by some of the defendants, forcing him to withdraw his statements. Other workers were not considered for victim status because they were themselves guilty of corruption. Another victim was sent back to his country, because he had already, a few years previously, received a negative reply to his application to legalise his situation, together with an order to leave the territory (see part 1).

One anonymous witness declared: *'If they dared to protest or to ask for an increase in their wages, they were told that they could leave and that others were ready to take their place straight away. The fact is that Afghans have no other choice but to accept work at the car wash. They can't get work anywhere else. If the boss pays them 20 euros for working 10 hours, they are happy. In exchange, they can't say anything to the police.'*

On paper, they earned 750 or 1,000 euros a month, but in fact they were paid by the week and got whatever the bosses decided to give them. Payments were made according to the money made by the car wash and always in cash. There were 4 or 5 of them living at the car wash and they were always available for work. In bad weather, they stayed inside and the boss didn't pay them anything. In good weather, they had to work like dogs. The kitchen and the bedrooms were very dirty. Some workers got sick. They had skin infections, and had to see a doctor. Short-term illnesses weren't a problem, but if the workers were sick for too long, they didn't have to come around anymore. Several workers had no papers and had to work using other workers' papers. The police never noticed anything when they made their inspections.'

2.2.4. Fraudulent company arrangements

In addition, it emerged that the owners had made profits from the car washes that could not be found anywhere – the money had been sent through illegal channels. From the 'black books' it transpired that only around one third of the income had been declared. Wage entries were completely fraudulent. Police information often showed that money from the two companies had been sent by illegal money couriers to the cities of Antwerp, Mechelen and Brussels. In each case, the offences identified were identical to those

discovered at the car washes in the cities of Geel and Tessenderlo (illegal work, false papers), and a separate case was started for each one.

The managers of these car washes are part of a whole organisation of several companies. The companies change managers discreetly and the workers move from one company to another. The registered office of the company is moved from one region to another on a regular basis. The network of companies and managers started in Antwerp and continued into Brussels, Liège, Mechelen, Ghent and Sint-Niklaas. The same Afghan-Pakistani managers can be found in various companies, different combinations each time, running car washes, service stations, phone shops or night shops, and in the end declare fraudulent bankruptcy. They use Pakistani front men for companies that are in trouble. One of them is a shareholder in 16 firms. These managers and shareholders live in the same place. Three different registration addresses in Ghent, Brussels and Liège are the common thread here. Workers, shareholders and former shareholders are found living at these addresses. Some are in possession of stolen passports. Almost all those living there and the related companies are known to the police.

2.2.5. Corruption

Several workers have obtained false passports through an employee of the Afghan embassy in Brussels who is one of the defendants.

One of them declared that he arrived in Belgium in 2001, with no official Afghan identity papers. His application to have his status regularised was under way, but he had to be able to show an Afghan passport in his name. The embassy told him that issuing a passport would take some time, but the endorsement committee at the time needed it straight away. Fortuitously, an Afghan visitor, well known to the police for various criminal activities, came to renew his passport at the embassy and told him that he had a short-term solution for him. He sent him to the corrupt official at the embassy. There he ordered an Afghan passport from the man, paying 4,000 euros.

The Consul at the Afghan embassy in Brussels made a statement on a voluntary basis. In April 2006, several thefts of passports had been committed at the embassy. He then filed a complaint. On the basis of a description of the man, the Consul was able to confirm the man's identity to the police, about whom he had already had suspicions for some time.

2.2.6. CPAS/OCMW [Public Welfare Offices]

The defendants had set up a system of welfare benefit fraud. They were using it as a *modus operandi* in their criminal system to get rich and to further compromise the victims in fraudulent schemes.

Various workers/partners were working part-time and receiving benefits from the CPAS/OCMW that they collected depending on their income at the car wash. In this scheme, both the managers of the car wash and the workers/partners have an interest in keeping income as low as possible to avoid sacrificing other revenue such as welfare

benefits. They thus earned little in practice and received the benefit in addition to their wages.

It emerges from the case that the various local CPAS/OCMW offices sometimes follow completely opposite policies when it comes to judicial investigations. While one such office invoked professional secrecy in order not to collaborate in the investigation, another requisitions the repayment of the benefits received by a bogus self-employed worker.

2.3. Construction case

The facts in this case occurred in 2007 and 2008. The victims were working for different construction companies through a labour-only subcontractor. The pre-trial hearing in the city of Turnhout sent the defendants to appear on a charge of trafficking in human beings before the Criminal Court, which is to pass judgment in 2011¹¹⁴.

We note in this case, which involves seconded workers, that private interest groups can play a role in raising the awareness of the contractors. We will discuss this in more detail in Part 2. We also note that the housing inspection services play an active role.

The victims involved were working fictitiously as seconded workers for a Romanian construction company, which was in turn working for the Belgian subsidiary of an English firm. The latter hired the Romanian construction workers to work on its own site in Belgium or was operating as a subcontractor with the same workers on building sites for other firms (principal contractors).

The manager of the Romanian company was acting as a labour-only subcontractor and was a partner in the Belgian subsidiary of the English firm. The secondment papers from the Romanian company were false. In practice, it emerged that these false papers were produced using photocopies and copy/paste procedures. Moreover, the Romanian company was not entitled to make use of secondment because it had not had any activities or staff active in Romania since its creation in 2007. At the outset, the labour-only subcontractor had had another building subcontractor as its partner in Belgium in 2007, but a dispute had ended this collaboration. In 2008, the labour-only subcontractor got involved with the Belgian subsidiary of the English firm.

The same labour-only subcontractor is also known to the judicial authorities as the former manager of two companies that went into fraudulent bankruptcy, working with illegal Romanian workers and on the basis of which he was able to establish his current contacts in Romania.

¹¹⁴ The drafting of this Annual Report was completed in August 2011.

2.3.1. Start of the investigation

The case was initiated on the basis of statements from two victims who came to file a complaint with the police. They were working far too many hours, were not being paid and had to live in miserable accommodations. The victims were given the brochure for victims of trafficking in human beings¹¹⁵ and, having read it, asked to have some time to think it over. The next day, the police inspected the victims' accommodations and found other victims there, whose statements were taken. Like the first victims who, in the meantime, had come back, they saw the value in the victim status and were transferred to a specialised reception centre. In total, five Romanian victims were granted this status. Later, one of the victims voluntarily cancelled his victim status, since he wished to return home and had requested voluntary repatriation.

2.3.2. Victim statements

The victims came from Iasi, an underprivileged region of Romania. They were recruited with the help of acquaintances or family members, or through a local Romanian newspaper that carried classified advertisements seeking workers for Belgium. After an initial contact, they were invited to Iasi for a job interview, where the Romanian contact person and the Belgian labour-only subcontractor were selecting candidates. Some Romanian workers had already been employed in the construction sector in Spain and wanted to go and work in better conditions in Belgium.

Upon their arrival in Belgium, they were met by the labour-only subcontractor. In some cases, they were asked to hand over their identity papers for a couple of days so that a secondment document could be drafted in Romanian. Then, the building entrepreneur told them that they had to pay a monthly rent of 100 euros. They were housed in small, dirty accommodations with poor toilet and bathroom facilities (hot water only available at certain times, heating which didn't work properly). The police regularly had to attend the accommodations due to nuisance and drug abuse.

The labour-only subcontractor brought the victims to their accommodations and took them to the building site each day with his vehicle. The youngest victim (19 years old) had to get into the boot of the car every time. It was completely sealed off, with no air or light coming through. When he ran out of oxygen, the young man often had to repeatedly bang on the seats to stop the vehicle. He also had head injuries from banging against the bodywork each time the vehicle went over a speed bump. Later, he fell ill.

As for working conditions, the victims had to work from 9 am to 11 pm every day. Some only received part of their money and were still owed between 1,000 and 2,500 euros. Most of them, however, had to beg to receive the money owed to them. The wages promised were almost never paid, to the point that one of the victims had to borrow money from other Romanians so that he could survive. They were living in miserable conditions and did not have decent food – one of the victims contracted a stomach

¹¹⁵ Multilingual brochure for victims of human trafficking, available at: www.diversite.be.

infection after eating mouldy bread. Another victim had been abandoned to his fate when he got strong stomach cramps which forced him to lie down at work. On every occasion they were refused medical care. If they asked their boss questions, they were transferred to another place of work, where they were given the dirty work. Lastly, the victim was threatened by the entrepreneur when he refused to go on working. When a victim said that his rent had been charged twice, the entrepreneur threatened to call the police and have him taken away. Afterwards he threatened him physically and chased after him in the street. It was then that the victim went to the police.

2.3.3. Principal employers

The construction firms who use subcontractors include dubious principal employers as well as completely honourable companies. Some are known to the judicial authorities for cases of fraudulent bankruptcy, money laundering and exploitation of illegal workers. Other principal employers seemed to be acting in good faith. One of the principal employers immediately stopped working with the subcontractor as soon as he noticed that there were problems with the workers. This principal employer declared to the police that he was very satisfied with the work of the Romanian employees and that he would happily take them on if their work permits were in order.

Another principal employer stopped working with the subcontractor when the Construction Federation warned him that the Romanian labourers' work permits were not in order, that they were not being paid, and that they were badly housed. For another principal employer, putting an end to the collaboration took more time. After having heard about a document fraud, from a furious ex-partner of the labour-only subcontractor, this contractor told his accountant to check the information on the Romanian firm. According to the accountant, there was no problem, because the firm did indeed exist in Romania. In reply, the angry former partner provided various documents confirming that the secondment papers were false. The collaboration with the subcontractor was then terminated.

2.3.4. Slum landlords

When the premises were first searched, the police observed slum landlord activities and applied to the mayor of the city of Geel for a fire safety inspection to be made. They also contacted the housing inspectorate *RWO Flanders*. After a joint inspection carried out by the police, fire fighters and the housing inspectorate, the mayor declared the accommodation unfit for habitation on the basis of the reports made.

The labour-only subcontractor had set up a system by means of which he made exorbitant profits from renting insalubrious accommodations to the victims. The labour-only subcontractor was renting through an intermediary from a property owner. No lease agreement had been concluded between any of the parties involved. The owner was renting the 9-bedroom building for 1,500 euros a month to the intermediary who, in turn, was renting the nine bedrooms at prices of no less than 185 euros and up to 250 euros per room. Most of the rooms were occupied by persons receiving welfare benefits. The

labour-only subcontractor was renting two rooms for all of the Romanian workers. He decided who occupied which room. The accommodation rental was an inherent part of the employment. For the victims, abandoning the accommodation meant leaving their employment. The Romanian workers had to pay 300 euros a room to the labour-only subcontractor, who sometimes counted the rent twice. According to the rules of the house, the tenants could only use hot water in the morning and evening. During the day the hot water supply was switched off to limit costs.

2.4. Champagne bar case

The facts in this case date from 2007. They concern a champagne bar where the defendants were only prosecuted for offences of labour exploitation of the serving staff. In this case, two defendants were convicted of trafficking in human beings¹¹⁶. The main defendant was the bar owner. The other was a victim at the outset, but was later convicted of trafficking in human beings for having recruited other women in Romania in the knowledge that they would end up in a vulnerable situation.

The case was initiated in 2007 on the basis of statements made by a victim to the police. At the request of the owner of a Belgian bar, she had been recruited in Romania for a job as a waitress in an eating establishment in Belgium. She had to go to a travel agency in Arat (Bulgaria) that took her to Belgium by mini-bus and left her at the bar. The Belgian bar owner advanced the travel costs. In order to pay him back, the victim had to work for free the first two weeks.

An inspection of this bar had already been made in 2006 by the local police following a complaint. At that time a Polish victim had denied working there. On the basis of these two elements, a judicial investigation was carried out in 2007 and an investigative judge appointed. During joint inspections carried out subsequently by the federal police, the local police and the social inspection, yet another victim was discovered at the bar. The statements of this victim corresponded to those of the first. Phone tapping confirmed the stories of the victims. One of the defendants partially admitted the offences.

The victims were working 6 to 7 days a week as waitresses/hostesses in a grimy bar, where they had to entice the male only costumers to have drinks. The victims clearly felt that they were used as sexual objects, but had never received direct orders to consent to sexual relations with customers. They had stated, at the outset, that they would refuse to do so. They had come to Belgium for other reasons and for other sorts of work.

¹¹⁶ See in this regard Tongeren Criminal Court, 18 March 2010, 9th Chamber. This ruling was dealt with in detail in our previous Annual Report ‘Trafficking in and smuggling of human beings: *In a haze of legality*’ (p. 56). The Report can be consulted on the Centre's website (www.diversite.be). One of the defendants appealed against this ruling. The Antwerp Court of Appeal upheld the judgment in its verdict of 28 October 2010 (14th Chamber). In terms of the civil claim, the Court decided, without giving specific grounds, to grant the Centre mixed moral and material damages of 500 euros. At first instance, the Centre had received a token 1 euro as damages.

The ladies earned 3 to 4 euros per hour and had to be available at all times to please the customers or clean the bar. During police inspections, they were to deny working there and behave like customers. They were housed above the bar and three of them had to share two single beds. They were not allowed to switch on the heating.

The victims were in a position of dependency because they were obliged, upon arrival, to work, unpaid, for at least two weeks to pay back their transportation and mobile phone costs. Their freedom was also restricted. They were not able to leave the building. They always had to inform the main defendant of where they wanted to go. They were also threatened. The case file also contains suggestive photographs of the main defendant posing in the company of different young girls who were working for him as waitresses.

The total criminal profits from this arrangement amounted to approximately 80,000 euros.

2.5. Case involving minors selling in the street

A not-for-profit association and an Indian Sikh firm and its directors were prosecuted amongst others for trafficking in human beings, embezzlement and misuse of company assets. They were acquitted on the trafficking in human beings charges¹¹⁷. The main defendant was, however, convicted of embezzlement and misuse of company assets, given a fine of 16,500 euros and had property worth 140,000 euros confiscated. The textile firm was ordered to pay a fine of 33,000 euros for having put foreign workers to work illegally.

The facts occurred between 2005 and 2007 in the district of Tongeren. Through their company, the exploiters hired Sikhs staying in the country illegally as market stallholders. Amongst the workers were a minor aged 13 years old and another aged 16. They received 20 to 25 euros per day – an average monthly salary of 400 to 500 euros.

The case was initiated following a proactive investigation. It transpired that investments made by the head of the not-for-profit association were disproportionate with regard to its legal income. The person in question was using income from the not-for-profit association for his own purposes. On these grounds, it was decided to carry out phone tapping and a financial audit of the not-for-profit association and its directors. The police also noted that the parties in question were also involved in a firm the main activity of which was '*market and street sales of clothes*' and '*textile goods*'. Between 1 January 2005 and 1 January 2007 this firm made a turnover of 50,280 euros.

Phone tapping brought to light the first evidence of trafficking in and smuggling of human beings with regard to the employment of clandestine Sikh workers in market stalls. On these grounds, the police and the social inspection services made an inspection of a market stall belonging to the firm. They noted that a Sikh aged 16 years old was

¹¹⁷ Tongeren Criminal Court, 7 October 2010, 9th Chamber (final). In this regard see also this Part, Chapter 4 (Case law review).

working there without a residence permit. During a search of the premises, around ten Sikhs were also found, including one 13-year-old boy. They were living in deplorable conditions. The victims were not interested in obtaining status as victims of trafficking in human beings. As a result of an Aliens Office decision, the two minors were transferred to the Steenokkerzeel centre.

3. Smuggling of human beings

3.1. Indo-Pakistani case of smuggling of human beings in the city of Tongeren

In this case, the Antwerp Court of Appeal verdict of 17 November 2010 convicted the defendants for smuggling of human beings, with aggravating circumstances, and for money laundering practices¹¹⁸. The smuggling offences took place in 2007 in the Tongeren area, but a local investigation for money laundering had already been carried out in 2004 involving one of the defendants.

In June 2004, the local Antwerp police observed a suspect transaction in a public space – the handing over of an envelope containing 18,125 euros. Three persons of Sikh origin were involved, one of whom was implicated in a large Indo-Pakistani case of smuggling of human beings in Brussels. When interviewed, they declared that the money was a loan. The Antwerp Public Prosecutor's Office linked this with hawala banking¹¹⁹ and applied for the funds to be seized.

The case was referred to the Public Prosecutor's Office in Tongeren, where the defendants were living. Investigations were carried out into potential money laundering offences and offences of smuggling of human beings. It transpired from the financial investigations that there was a significant difference between the legal professional income of the person in question, as per his tax declarations, and the transactions sent abroad having a value in excess of 30,000 euros. He was unable to explain this discrepancy when interviewed by the police. The investigators presumed that he was responsible for the financial transfers between Belgium and India for the benefit of a Brussels Indo-Pakistani organisation involved in smuggling of human beings.

In 2007, the federal police of the city of Tongeren obtained new information about the person in question through the 'district information platform' (*Carrefour d'information*

¹¹⁸ Antwerp, 17 November 2010, 14th Chamber. In this regard see this Part, Chapter 4 (Case law review).

¹¹⁹ Hawala banking is a parallel banking system allowing money to be transferred from one country to another without leaving any trace of the transaction. The system is completely anonymous. See the 2008 Annual Report 'Trafficking in and Smuggling of Human Beings: *Enlisting people and resources to combat the phenomenon*', p. 48 for further information.

d'arrondissement or *CIA*) on the basis of which the Public Prosecutor's Office of Tongeren decided to requisition a judicial investigation for the purpose of obtaining phone tapping measures. It emerged from these recordings of telephone calls that the suspect was transferring money to India as part of smuggling of human beings activities. Between 30 March 2007 and 26 April 2007, financial transactions amounting to 248,377.50 euros sent from Belgium to India were thus traced. A business, a legal person that was a joint defendant during the trial, was acting as a cover for this. The suspects were aware that the telephone was being tapped and that they might be apprehended by the customs authorities at the border. When their vehicle was intercepted, 27,000 euros in cash was found on the wife of the person in question.

3.2. Kurdish case of smuggling of human beings (code name: ISHTAR)

The facts took place in the Brussels region between September 2009 and February 2010. In this case, the defendants were convicted by the Criminal Court of Brussels for smuggling of human beings¹²⁰. Most of the defendants were Iraqi Kurds. Among the joint defendants was one British truck driver.

This case involved a clandestine passenger who died, physical abuse against the smuggling victims and the attempted murder of a competing smuggler. One smuggling client, the victim of a stabbing when the smugglers were being chased, was not detected and identified as a victim of smuggling by the local police and was therefore not under the status of victim of trafficking in human beings.

3.2.1. Organisation of transport

The Iraqi-Kurdish criminal organisation involved was guilty of smuggling mainly Afghans, Kurds (from Iraq, Iran and Turkey) and Vietnamese people in trucks to England, and Scandinavia to a lesser extent. Chinese people, Indians, Pakistanis and Albanians were also smuggling victims, on an irregular basis. Clients were provided by several other organisations smuggling human beings, mainly from France. Smuggling victims were collected from the Brussels station, or from Paris or from Calais.

The Kurdish organisation provided transport 'with or without guarantees'. In non-guaranteed transport, clients were hidden in the goods compartment of the truck unbeknownst to the driver. The price demanded was between 1,200 to 1,500 euros. In guaranteed transport, clients were hidden with the agreement of the drivers, either under the windscreen or in the sleeping compartment of the cabin, or under the plastic hood on the roof above the driver's cabin. The price for guaranteed transport to England varied between 5,000 and 6,000 euros. Every day, ten to fifteen guaranteed trips were made

¹²⁰ Brussels Criminal Court, 9 February 2011, 51st Chamber. The prison terms handed down varied between 4 and 10 years (main defendant). One defendant was also prosecuted and convicted of attempted murder. Several defendants appealed, which is why the case is to be reheard by the Brussels Court of Appeal (October 2011).

from Calais. Sometimes, the smuggler also got into the truck and came back from the United Kingdom as a clandestine passenger in another truck later on.

The Belgian branch of the Kurdish organisation had control of several car parks along the E40 highway, in particular the Groot-Bijgaarden, Wetteren, Ghent and Drongen car parks, as well as plots of land in Calais and Dunkirk. The heavy goods vehicle drivers spent the night there before continuing their trip to the ports to embark on a ferry to the United Kingdom. The Kurdish organisation considered the car parks to be its territory and did not tolerate any competition. In order to maintain this control, they resorted to violence. However, this did not stop them renting the car parks to other smuggling organisations.

There was no transport during weekends, because trucks cannot be on the road on those days. During the week, checks were made, in particular to be sure that there were enough trucks on the highway. The reasoning was that with enough vehicles on the road, there would also be enough trucks in the car parks.

One of the gang members was operating out of Le Petit Château [immigrant reception centre in Brussels] on the basis of his application for asylum, where he stayed until his arrest. The mobile phone that he was still using for the smuggling of human beings was found during a search at Le Petit Château. In recorded conversations that he had had with the boss, he asked him in particular to come quickly to the asylum centre to find new candidates for smuggling.¹²¹

3.2.2. Authoritarian organisational structure

The Kurdish criminal organisation had a vertical hierarchical structure, of a strongly authoritarian nature. The leader gave orders and punished members if they disobeyed. One of the joint defendants declared during their interview that the leader had a lot of power in Iraq. It emerged from phone tapping that the leader had at a certain time dragged a smuggler along with a rope around his neck because the latter had worked without his authorisation.

The members of the hard core of the smuggling organisation were also working individually (for themselves), with different drivers, contact persons and truckers.¹²² On the one hand there were the clients of the organisation and on the other the clients of the individual smugglers. This led to a great deal of mutual mistrust and arguments between the smugglers. They did not know, for example, how many drivers were working for the organisation. Since the leader was not always aware of every transaction, there were regular internal conflicts, and consequently incidents involving knife stabbings.

¹²¹ When interviewed, he swore that he had never smuggled any human beings and made the following statement: *‘My mother has been sending me money for 8 months. My father lost his life as a martyr and my mother receives compensation for that. She sends me that money.’*

¹²² They have contacts with Afghan, Vietnamese and Chinese intermediaries in France and Belgium. They were also working with Turkish and English truck drivers.

3.2.3. Settling scores

The Iraqi-Kurdish smuggling organisation used violence both in France and in Belgium against competing gangs from a region in Kurdistan that had tried to take over their Vietnamese contact persons. In this case, firearms were used. These fights led to several people being injured. The Vietnamese contacts were also attacked and injured.

At the start, the Iraqi-Kurdish organisation was collaborating with the Indian trafficking organisation described in our last annual report¹²³. This collaboration ended following a dispute about the use of a car park. With the aim of obtaining absolute power over the car park, the members of the Kurdish organisation went to the car park with the intention of killing the Indian smuggler. The Indian smuggler was seriously injured and left for dead, but survived.

Another case of extreme violence took place in the Gentbrugge car park (E17 highway) against a Dutch heavy goods vehicle driver who was resting for the night. He was woken up in the middle of the night by members of the smuggling organisation who wanted to hide smuggling clients in his truck. When he went to see what was going on, he found himself face to face with two men who were behind the goods compartment of his trailer. A third man was in the goods compartment itself. The driver was threatened with a knife and punched in the face. He tried to escape to his cabin, but was chased by one of the criminals, who threatened to damage the cabin. The driver nevertheless managed to escape and call the police at the Gentbrugge roadside station.

3.2.4. Counter-techniques

The organisation worked in a very professional way. It made counter-observations and ensured that its members changed phone numbers all the time, and changed mobile phones, vehicles and domiciles. The Kurdish group was regularly provided with new unused SIM cards from the United Kingdom, so that the members of the organisation could change phone number regularly. They wrongly thought that the police could not tap these British phone cards.

The police noted during an interview with the suspects that the gang members were very afraid to say anything at all. They denied everything, even when they were confronted with irrefutable proof.¹²⁴ The leader had ordered all members of his gang to deny everything. One driver, who had made statements to the authorities, received death threats from the other defendants in the penitentiary complex before he appeared for the last time at the pre-trial hearing. During the hearing, he showed police officers the scars of two stab wounds in his back made with a table knife while he had been in prison.

¹²³ See the 2009 Annual Report on 'Trafficking in human beings: *In a haze of legality*', Part 1, Chapter 2: Phenomenon Analysis.

¹²⁴ According to the police, a defendant was very nervous when confronted with the evidence and when he could no longer deny responsibility. He then became verbally abusive and declared twice that he was going to kill Christians in Iraq: *'If that's how it is, I'm going back to Iraq. I don't give a damn, be careful, I want to go back to Iraq right now. I'm a Muslim, and we're going to kill some Christians, for money.'*

Because of a fear of reprisals against his family in Iraq (also threatened), he refused to answer questions about who was paying him. He answered affirmative to the police's question '*Does the leader have that much power in Iraq?*'.

3.2.5. Financial aspects

Income from the smuggling of human beings was not kept in Belgium, but transferred through an intermediary to the United Kingdom (using the hawala system) so as not to leave a trace. Recorded telephone calls revealed that income from smuggling had already reached 134,705 pounds sterling for the organisation in the last three weeks.

Smuggling clients were only freed when they had paid. Recordings of telephone calls revealed that in one case, Vietnamese smuggling victims were not freed as long as some Afghan smugglers from Paris, who had supplied them, had not paid the Kurdish smugglers. A Kurdish gang member also had the task of taking an Afghan hostage and beating him up.¹²⁵

A Kurdish trafficker accompanied Afghan smuggling victims on each occasion and had to ensure that payments were made. For this purpose, they recruited accomplices in London who had to deal with receiving the money. For transport to Sweden, the money also had to be deposited in the United Kingdom beforehand. A shop was designated for these money deposits.

3.2.6. Victim statements

A number of victims were granted status as victims of trafficking in human beings. One of them, a Pakistani, made a civil claim at the trial. This victim was questioned by the police in the presence of an assistant from the victim reception centre Pag-Asa. The man had been intercepted in a truck in the company of four Afghans. In his statements, he named the smugglers and the organiser. Through an intermediary in the United Kingdom, he contacted the leader of the organisation. He had to go the North train station in Brussels and was then blindfolded and taken to the Grimbergen car park. In the car park, he was put in a trailer with four Afghans that he did not know. When he tried, at the start, to refuse to get into the vehicle, he received death threats from the gang members. As the Afghans were demanding their own space, he had to remain standing in the trailer for eight hours.

Another victim, who was also able to apply for the victim status, told his whole story. In his area in Vietnam, many people had family in the United Kingdom who sent large sums of money home. He asked his parents if he could also go away to send them back money. His parents consented and, to collect the money necessary to pay for the trip, ran up debts with friends and family members, and sold land. He also borrowed money from a Vietnamese person already living in the United Kingdom. An acquaintance gave him the telephone number of a smuggler, and the amount of 18,000 euros was agreed on via a

¹²⁵ He received the order to take the Afghan into the bedroom, lift him up by the legs and beat him up.

telephone conversation in July 2009. He had to settle all the financial arrangements and wait for a phone call. On 13 October 2009 he received the call and instructions to take a taxi a bar at the Hanoi airport together with two acquaintances from his village. A contact person was waiting for him – he received a plane ticket and a passport in his own name.

At an airport in Russia, a Vietnamese person and a 'foreigner' were waiting for them, and they had to hand over their mobile phone, passport and all of their papers. They were taken by car to a forest where they spent the night in a tent under surveillance. After one week, they walked, under the surveillance of five people, along railroad tracks (bivouacking in the forest) for several days, arriving at a busy road where a car was waiting for them with two drivers. After 12 hours on the road, they were housed in a nice house, with every comfort, but they were not allowed to leave. After one week, two other drivers took them to Paris in a journey lasting 18-20 hours. They were housed there at a flat belonging to a Vietnamese person. A taxi took them, a few days later, to Calais, where they once again had to stay in a tent in a forest.

After two weeks (in early December 2009), they were told that the trip to England would cost another 3,000 euros, because the trip between Russia and France had not been done on foot, but in a car. Since the parents of the person in question could not get this money together immediately, he had to wait until early January 2010. The others had already left, because they were able to get the money more quickly.

The smuggling victims were hidden, three at a time, in a truck. The smuggler explained to them that if the truck in which they were travelling stopped after 15 minutes, that meant that it was going to England. If the truck continued driving after 15 minutes, this was not the case. They were then to bang on the partition until the driver, who did not know anything about the smuggling, heard them and stopped. There were four such unsuccessful attempts to take the person in question to England.

He was then told to leave from Belgium. He was taken by van to a car park along the E40 highway where he was put into a truck. However, this truck did not go towards England either. When it stopped, they slipped out of the trailer and the police intercepted them after a short while. They were released two hours later. The person in question then telephoned the Vietnamese person living in Paris, who gave him the address of the safe house, where he was once again intercepted a little later by police. In the meantime, his parents had had to pay the full amount due, through an intermediary in Vietnam.

3.2.7. Violence

The smugglers were very violent towards their clients. This was confirmed in particular by the story of a Vietnamese victim which was discovered through recordings of telephone calls. The federal police deduced from these telephone recordings that a stabbing had taken place. The victim was referred to as a '*diel*' in the conversations, meaning 'prisoner of war'. The person had arrived in Belgium by train, around 5 days before the events took place. He had been kidnapped in the North train station area in Brussels by four persons and tied up by the wrists with rope. One of the offenders had put

a knife to his throat to stop him from moving. From there, the victim was taken by a white van to a sort of tent in a forest. Seven or eight other people were there, companions of his kidnappers. The next day, the victim was transferred to another forest, where he was beaten and money was demanded.

On the fourth day, the victim was again in Brussels. He managed to escape on 31 October 2009 from the place where he was being kept, but was pursued by his kidnappers. In the city of Schaerbeek, he went into a florist's shop and asked for help from the police. The owner refused to call the police and asked him to leave his shop. At that moment, one of his pursuers also came into the shop. He tried to take the victim outside, but since he was resisting, he stabbed him. The victim was stabbed several times and was seriously injured. Emergency surgery was required. The victim also stated that the bag that he had had in his possession at the time, containing 700 euros, had been stolen. The federal police requested that this case be added to the case of smuggling of human beings, but the victim was found by local police officers who did not have sufficient knowledge of the issue of smuggling of human beings. For them, it was just a serious fight, nothing more. The victim was never able to obtain victim status.

According to a police report giving an overview of violent offences perpetrated against victims, it seems that this was not an isolated case. One telephone conversation concerns a person who was not to be freed or beatings would follow. According to another conversation, a child was kidnapped in the United Kingdom because three Afghan smuggling victims had not paid for their trip. Another telephone conversation between the leader of the organisation and the Vietnamese caretaker of a safe house, who kept Vietnamese people at his home, insisted *'tell the Vietnamese smuggling victims that no payment has been received for them and they will be killed tonight if they don't pay'*. Lastly, let us also note a telephone conversation in which the leader learns that a competing gang has taken clients away. He orders that the smuggling clients be beaten hard and says to tell them that they can't come back to Belgium because *'Belgium belongs to me'*.

3.2.8. Clandestine passenger dies

The central 'trafficking in human beings' department of the federal police sent in the following information about the discovery of an Indian clandestine passenger found dead. On 30 October 2009, a Slovenian truck with a Bosnian driver was inspected at the port of Calais using a heartbeat detector to find human beings hiding on board the vehicle. The detector showed that there were people in the trailer. The doors were then opened. Three Indian clandestine passengers were found between wooden pallets. Two of the three clandestine passengers came out of the vehicle when ordered to do so by the inspectors. The third remained there, huddled up and did not react. When a closer examination was made, it was then discovered that the person showed no signs of life. The emergency services were called and tried, in vain, to resuscitate him. The person had in his possession Belgian papers ordering him to leave the territory. On the basis of various telephone calls that were recorded, the police was able to demonstrate with certainty that the Kurdish group was actively involved in the smuggling of these three Indian

clandestine passengers. The French authorities arrested the two clandestine passengers and the Bosnian driver for offences against French law on aliens.

4. Conclusion: Stalemate for victims

In various cases, we have seen problems relating to the status as a victim of trafficking in human beings. In Chapter 1, we already looked at this aspect in our commentary on the new European Directive.

Some cases took so long that the victims lost all interest during the investigation and felt completely abandoned. Public Prosecutors' Offices and Labour Tribunals must deal with cases of trafficking in human beings as a priority. There is little sense in interviewing victims almost 10 years after events occur.

Other victims wanted to go back to their country of origin as quickly as possible on a voluntary basis and wrongly withdrew from or denied victim status. They thus lost any chance of being part of the trial later on. We could, however, stop this and guarantee that their rights be preserved – even in their absence – by appointing a lawyer for them at the right time. This is the only guarantee that can enable victims to maintain their entitlement to compensation.

Some victims did not wish to seek victim status because they were already living in rented accommodations with their families and did not see the point of being housed in a victim centre. The centres and front line services should therefore give the victims sufficient information on the fact that support can be flexible, adapted to their situation and does not automatically lead to housing in a residential centre. We will need to question soon whether the mandatory support system for victims does not go against the principles of the new EU Directive.

In cases of labour exploitation involving complex arrangements such as secondments and/or systems of bogus self-employed workers, we have noted that victims are not always detected in time by front line services and the competent judges. In the a key restroom services case, which will also be examined as a case study in part 2, no victims were detected or included in the status as the victims of trafficking in human beings at the right time. In the case of the bogus self-employed workers at the car wash, one victim was, wrongly, not granted victim status. The victim was sent back to his country because, some years previously, he had already received a negative reply to his application for residency, accompanied by an order to leave the territory. Here we should highlight that in such situations, many workers find themselves in a grey area and are found jointly responsible for welfare fraud or for having obtained their residence papers illicitly. For front line services, it is not always easy to identify and detect victims to enable them to benefit from victim status immediately.

In the smuggling cases, we have noted that one client, the victim of a stabbing when being pursued by the smugglers, was not detected nor identified as a victim of smuggling by the local police. This confirms the importance of raising the awareness of the local police in recognising victims that might be considered for the status as victims of trafficking in human beings.

Chapter 3: Figures and statistics

As at mid-2011, there is still no operational central database for offences of trafficking in and smuggling of human beings. The lack thereof has repeatedly been reduced to the absence of the implementation of the Royal Decree of 16 May 2004 setting up the Centre for Information and Analysis on Trafficking in and Smuggling of Human Beings (*Centre d'information et d'analyse en matière de trafic et de traite d'êtres humains: CIATTEH*). This *CIATTEH* has been placed under the supervision of the Ministers of Justice and of the Interior. Thus, two essential tasks are not being performed: the collection, centralisation and exchange of data on the one hand, and strategic analysis with the aim of policy, strategy and/or operational actions on the other.

In the meantime, few initiatives have been taken, leaving the *CIATTEH* aside, to develop alternatives or to work on better use of the data available to the different actors in multidisciplinary cooperation.

Between 2005 and 2010, the issues of social fraud, labour exploitation and trafficking in human beings for the purposes of exploitation through work required the particular attention of the authorities and necessitated specific investments. It is for this reason that we devoted a specific and critical report to this last year.

This Chapter gives the key figures from the various parties involved in multidisciplinary cooperation:

- maps giving data from the general national database, the *Banque de données Nationale Générale (BNG)*, managed by the Federal police;
- data made available to us by the social inspectorate at the Federal Public Service (FPS) Social Security and by the social legislation inspectorate at FPS Employment, Work and Social Dialogue;
- data from the Aliens Office;
- figures on prosecutions, made available by the Board of Prosecutors General;
- data from the specialised victim reception centres;
- figures on the number of convictions for offences of trafficking in human beings, which were communicated to us and commented on by the criminal policy department.

1. POLICE DATA

In reproducing these figures, we are using data from the general national police database. The police also made maps available in which the data has been transposed, giving a geographical presentation by type of offence.

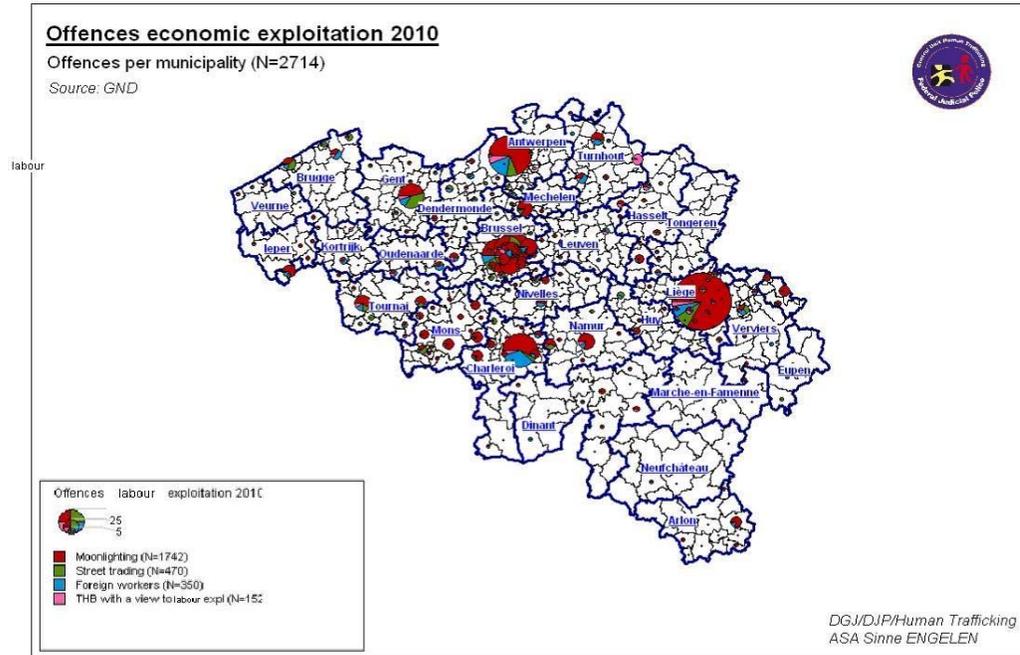
Before presenting this data in geographical form, it is useful to display the police data by dividing it into the different sectors of exploitation of trafficking in human beings, in order, in particular, to be able to compare the number of police reports over time. In this table we also give details of the category trafficking in human beings (THB) for the purposes of producing child pornography. However, we should mention that to our knowledge, no conviction for offences of trafficking in human beings for such purposes has yet been handed down.

Above all, what emerges from this data is the incredibly high number of offences of trafficking in human beings for the purposes of labour exploitation recorded in 2007, a figure that has never been reached since then.

Table 1: Sectors of exploitation (Source: General national police database)

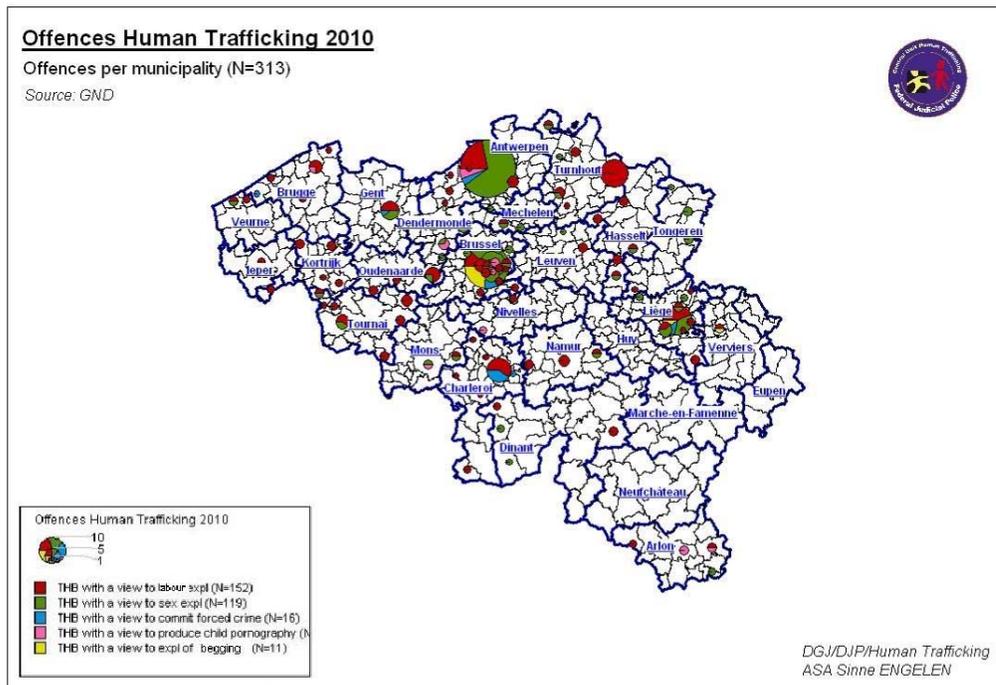
	2007	2008	2009	2010
THB for the purposes of sexual exploitation	118	115	130	119
THB for the purposes of producing child pornography	19	14	19	15
THB for the purposes of the exploitation of begging	11	15	8	11
THB for the purposes of labour exploitation	283	182	191	152
THB for the purposes of organ trafficking	0	0	2	0
THB for the purposes of coercion to commit an offence	8	10	11	16
Total	439	336	361	313

Map 1: Offences of labour exploitation in 2010 by municipality (n=2714).
 Source: General National Police Database.



Important note concerning Map 1: it is impossible to check whether, in reports of offences for labour exploitation other than trafficking in human beings, investigations have actually been carried out to seek indicators of trafficking in human beings.

Map 2: Offences of trafficking in human beings in 2010 by municipality.



2. SOCIAL INSPECTION SERVICES DATA

The aim of this short section is not to present figures, as we did of the data provided by the police, for offences of trafficking in human beings communicated by the social inspection service by means of *Pro Justitia* acts [i.e. a document intended for the judiciary]. Nevertheless, some data can be provided in order to demonstrate a trend, which may hopefully lead to the identification of some long-term developments.

In 2009, the social inspectorate at FPS Social Security issued four *Pro Justitia* acts (concerning five workers) and two criminal reports (concerning four workers) for offences of trafficking in human beings. In 2010, 16 *Pro Justitia* acts were issued (concerning 25 workers) and 18 criminal reports (concerning 95 workers). The criminal reports, contrary to *Pro Justitia* acts, don't have to be remitted to the offender, but are drafted for the Public Prosecutor's Office or the investigative judge. They do not have the same probative force as *Pro Justitia* acts. Their probative force has to be assessed by the judge, where necessary.

This means that the social inspectorate will increasingly communicate its reports to the Public Prosecutor's Office or the investigative judge directly and no longer in conjunction with police intervention. It may be useful to compare these findings and those drafted earlier in respect to the smaller number of findings made by the police in cases of trafficking in human beings for the purposes of labour exploitation.

One trend – the increasing use of criminal reports – has also been noted at the Social Intelligence and Investigation Service (*Service d'information et de recherche sociale, SIRS*), where offences against the Act of 30 April 1999 on the employment of foreign workers have been reported, without it being possible to give figures establishing a relationship between the use of criminal reports and findings of offences of trafficking in human beings.

3. DATA ON PROSECUTIONS

Here, we will present a selection of data provided by the Board of Prosecutors General. The statistical analysts at the Board have collected and analysed data of the cases that were dealt with by the correctional sections of Belgian public prosecutors' offices **during 2010**. We have also gathered the reasons for prosecutions not being made. This data comes from the correctional services of the Federal Public Prosecutor's Office and the 27 Public Prosecutor's Offices at the Courts of First Instance. Offences committed in the judicial district of Eupen have not been included. Offences committed by minors are not taken into account in these figures.

The units wielded here are criminal cases. Each case may involve one or several persons and one or several offences. The cases listed have been selected on the basis of the charge trafficking in or smuggling of human beings, whether as a primary or subsidiary charge. By including the figures for 2008, 2009 and 2010, we offer a basis for comparison. Unlike the two last years, the table only includes offences falling under the definition of trafficking in human beings in its strictest sense.

Only concerning the figures on offences against the law on aliens on the other hand, no distinction has yet been made between prosecutions for smuggling of human beings and prosecutions for offences of assisting illegal entry and unauthorised residence (which do not fall under the usual definition of trafficking in and/or smuggling of human beings).

The key trends that we see are the following: despite decreases in the districts of Mons and Liège, prosecutions for offences of trafficking in human beings for the purposes of sexual exploitation continue to follow the upward trend that we noted between 2008 and 2009. However, the stable number of prosecutions for trafficking in human beings for the purposes of labour exploitation in Mons and Liège cannot neutralise the significant decrease at national level of prosecutions for this form of exploitation.

The sharp fall in the number of prosecutions in the judicial district of Ghent for offences of smuggling of human beings, assisting illegal entry and unauthorised residence is in contrast with the figures from other districts, which are more variable.

Table 2: Board of Prosecutors General – statistical analysts (Source: Database of the Board of Prosecutors General – statistical analysts).

	ANTWERP			BRUSSELS			GHENT			LIEGE			MONS			FEDERAL PPO			TOTAL		
	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010
	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
THB Sexual exploitation Article 433, <i>quinquies</i> §1, 1°	58	53	49	27	61	76	18	24	29	22	42	17	13	8	4	3	1	0	141	189	175
THB Exploitation of Begging Article 433, <i>quinquies</i> §1, 2°	2	1	0	6	8	2	3	1	1	1	0	2	0	0	0	0	0	0	12	10	5
THB Labour exploitation Article 433, <i>quinquies</i> §1, 3°	53	43	31	37	41	21	69	42	39	22	18	22	20	29	23	1	0	0	202	173	136
THB Organ removal Article 433, <i>quinquies</i> §1, 4°	0	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0	0	0	1	1	1
THB Coercion to commit an offence Article 433, <i>quinquies</i> §1, 5°	8	3	2	5	3	2	4	3	4	11	9	10	2	2	1	0	0	1	30	20	20
Smuggling of human beings <i>77bis, 77ter, 77 quater, 77 quinquies</i> Law of 15 December 1980	11	34	21	71	80	61	366	242	228	7	5	13	3	1	2	4	0	0	462	362	325
TOTAL	132	134	103	147	193	163	460	312	301	63	75	64	38	40	30	8	1	1	848	755	662

4. DATA FROM THE ALIENS OFFICE

The *MINTEH* Department (minors/victims of trafficking in human beings) is composed of two units, each responsible for a separate area. One unit, the *MENA* unit, analyses and deals with cases of unaccompanied foreign minors that are not requesting asylum (on the basis of the Circular of 15 September 2005 on the residence of foreign unaccompanied minors). The latest annual report of the Aliens Office gives more detailed information in this regard.

The other unit, the trafficking in human beings unit, analyses and deals with **cases of minor and adult victims** of trafficking in human beings. The legal grounds can be found in articles 61/2 to 61/5 of the Aliens Law of 15 December 1980¹²⁶.

We can see that the general trend in **2010** involves a slight increase (+15) in the number of persons that have actually obtained victim status, following the overall decrease that we saw in 2009.

With regard to **labour exploitation**, the first cases of victims of labour exploitation appeared in **2006**. In **2007**, 114 cases out of 178 concerned labour exploitation. The relative increase in the number of cases of labour exploitation fell slightly in **2008**, and the downward trend became more general in **2009**. We can mainly attribute the slight overall increase in **2010** to the growing proportion of male victims of over 30 years old.

In terms of **smuggling of human beings**, let us note – after the remarkable increase in the number of victims of smuggling of human beings between **2007** and **2008** (from 9 to 21) – that the number of victims reached respectively to 17 and 14 in **2009** and **2010**.

Table 3: Sectors of exploitation and age ranges in 2010 (Source: Aliens Office)

	Misc.	Begging	Labour	Smuggling	Prostitution	Total
<18	1	1	0	1	6	9
18-25	1	0	6	5	21	33
26-30	3	0	25	4	7	39
>30	1	1	41	4	9	56
Total	6	2	72	14	43	137

It is possible that the underaged victims are included in this table as victims or as children of adult victims of smuggling of human beings for the purposes of sexual exploitation.

¹²⁶ Chapter IV Aliens who are victims of the offence of trafficking in human beings within the meaning of article 433*quinquies* of the Criminal Code, or who are victims of the offence of smuggling of human beings within the meaning of Article 77*bis*, in the circumstances described in Article 77*quater*, 1°, with regard only to unaccompanied minors, up to and including 5°, and who co-operate with the authorities.

Table 4: Sectors of exploitation and genders of victims in 2010 (Source: Aliens Office)

	Misc.	Begging	Labour	Smuggling	Prostitution	Total
Male	4	1	60	13	1	79
Female	2	1	12	1	42	58
Total	6	2	72	14	43	137

Table 5: Sectors of exploitation and most commonly occurring nationalities in 2010 (Source: Aliens Office)

	Misc.	Begging	Labour	Smugglin g	Prostitution	Total
Bulgaria	0	0	11	0	16	27
Romania	0	2	9	0	12	23
Morocco	3	0	17	0	0	20
China	1	0	10	0	2	13
India	0	0	4	7	0	11

5. DATA FROM SPECIALISED VICTIM CENTRES

The main source in order to understand the role of the specialised victim reception centres is the multidisciplinary circular. Specific information and figures on victim reception and support can be found in the annual reports from the centres. In order to interpret the following figures, it is important to understand that the registration of reports without any initiation of support may vary from centre to centre. It is also possible that a connection with trafficking in human beings could not be established and that a direct referral was made. The fact that support cannot be initiated is often due to a breakdown in contact or a lack of evidence. Sometimes, however, the cause is the fact that the offences were committed abroad. If, in the country concerned, there is no specialised authority or the victim comes to an authority in our country for protection and support, this creates problematic situations.

The figures on the new cases of support correspond to the typology laid down in the circular. As soon as the first phase (reflection period) has been initiated and an order to leave the territory has been issued, it is described as support. The organisation of psycho-social and legal and administrative support may vary depending on the centre.

On the basis of the tables below, we cannot establish an overview of occupation rates or residential capacity of the centres. The indicator concerning duration of support, a very important indicator, is not dealt with here, because it fits better into an analysis and description devoted to that subject. The latter cannot be provided in the context of this statistical overview.

The figures given on forms of exploitation, gender and age reflect quite faithfully the figures provided by the Aliens Office. This means we can maintain the main nationalities involved as: Bulgarian, Moroccan, Romanian, Chinese and Indian. Brazil should also be added to this list, as it is still a key country of origin. Attention should also be paid to the fact that victims from two recent members of the Union, Bulgaria and Romania, appear clearly under labour and sexual exploitation, whereas for other nationalities, the exploitation profile is more evident.

Table 6: Support provided by the specialised centres from 2006 to 2010

	2006	2007	2008	2009	2010
Pag-Asa (Brussels)					
New support	68	74	65	50	45
Reports without support being initiated	-	-	304	312	281
Discontinuation and referral	-	-	-	-	7
Payoke (Antwerp)					
New support	60	52	85	63	53
Reports without support being initiated	-	-	128	143	64
Discontinuation and referral	-	-	-	-	1
Sürya (Liège)					
New support	44	53	46	45	43
Reports without support being initiated	-	-	146	129	154
Discontinuation and referral	-	-	-	-	0
Total 3 Centres					
New support	172	179	196	158	141
Reports without support being initiated	-	-	578	584	499
Discontinuation and referral	-	-	-	-	8

Table 7: New cases of support provided by the three centres, by age and gender

	Male < 18	Female < 18	Male 18+	Female 18+	Total
Sexual exploitation	0	2	0	40	42
Labour exploitation	0	0	63	17	80
Exploitation through begging	0	0	0	1	1
Exploitation through coercion	0	0	3	0	3
Organ trafficking	1	0	3	0	4
Smuggling	0	0	10	1	11
Total	1	2	79	59	141

6. JUDICIAL DATA

The Criminal Policy Department has been gathering statistics on prosecutions, adjournments and internments since 1994. The statistics come from the Central Criminal Records. This database collects decisions having the force of *res judicata*. The judgments are sent to the Criminal Records by the court and tribunal registries. A few important details should be added to the figures given here:

- The figures correspond to the period from 2000 to 2009. Post-2005 data can only be considered provisional since the official records are still to be encoded for those years (for example: for 2009, 25% are still to be drafted and 10 to 15% are still to be drafted for 2006 to 2008). This means that the decrease in the number of judgments noted since 2005 should not lead us to the conclusion that the number of judgments for trafficking in human beings has decreased.
- The amendment of the law in 2005 had the particular aim of bringing the definitions of trafficking in and smuggling of human beings into line with the Palermo Protocols. The consequence of this was that offences of trafficking in human beings were from that time on defined in article 433*quinqüies* of the Criminal Code and offences of smuggling of human beings were defined in article 77*bis* of the Law of 15 December 1980. The database codes were only updated in 2009. It is for this reason that judgments from 2005 and 2010 are still classified under the former definition of the offence in article 380 of the Criminal Code and article 77*bis* of the Law of 15 December 1980, which concerned both trafficking in and smuggling of human beings.

The figures relating to Article 77*bis* may therefore relate to offences of trafficking in human beings or to offences of smuggling of human beings. Given, moreover, that the new articles resulting from the amendment of the law in 2005 were only introduced in the database in 2009, it will not be possible for the period 2005-2009 to obtain reliable information as to the number of convictions for trafficking in human beings. For example, some convictions relying on one of the elements of article 433*quinqüies* may not have been encoded whereas others may have been, but under the code relating to article 77*bis*.

The table below (table 8) presents the following information:

- the number of official conviction records referring at least once to Article 380 of the Criminal Code (exploitation of licentiousness or prostitution) but not to offences under article 77*bis* of the Law of 15 December 1980;
- the number of official conviction records concerning at least one offence under article 77*bis* (trafficking in and smuggling of human beings) but not under article 380 of the Criminal Code;
- the number of official conviction records concerning both offences under article 380 of the Criminal Code and under article 77*bis* of the Law of 15 December 1980.

Table 8: Convictions for trafficking in human beings (Source: Central Criminal Records)

<i>Condemnations</i>	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total	207	179	234	265	320	404	363	324	305	250	198	132
Art 380 uniquement	165	141	162	164	168	202	167	165	159	116	119	89
Art 77 bis uniquement	25	23	53	78	126	156	148	109	94	103	70	38
Art 380 et Art 77 bis	17	15	19	23	26	46	48	50	52	31	9	5

The table below shows convictions for offences of trafficking in human beings. An official conviction record may correspond to one or several main convictions, handed down for one or – more frequently – several offences. The penalties given here were handed down as part of a conviction in cases in which the defendants were found guilty of at least one offence against the law on trafficking in human beings.

Table 9: Penalties handed down for trafficking in human beings (Source: Central Criminal Records)

<i>Decisions</i>	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total THB	207	181	234	267	320	404	365	324	305	250	198	132
THB & prison sentence	204	177	228	256	318	381	350	307	290	229	189	115
THB & prison with suspended sentence	124	110	127	149	139	186	179	154	161	120	111	64
THB & fines	183	158	209	242	284	350	317	277	266	211	167	108
THB & community service	0	0	0	0	1	3	4	8	2	11	2	7
THB & confiscations	0	0	0	19	112	113	126	110	121	59	62	51
THB & withdrawal of certain entitlements	179	143	172	182	213	274	282	231	224	178	156	91
THB & withdrawal of titles, grades and	0	0	0	0	0	0	1	0	0	1	0	0
THB & ban on performing certain duties or activities	16	24	4	15	26	26	7	13	3	3	4	4
THB & referral to the government	0	0	0	1	0	1	1	1	2	1	1	0

CHAPTER 4: CASE LAW REVIEW: 2010 to early 2011

In this Chapter, the Centre will present a review of case law for 2010 and early 2011. This overview is a selection, mainly based on cases in which the Centre filed a civil claim, but also of decisions sent in by victim reception centres and those made available to the Centre by the Board of Prosecutors General.

The first point will examine some decisions relating to sexual exploitation. Several decisions handed down in relation to labour exploitation in different sectors will then be presented. We also describe a decision handed down concerning trafficking for the purposes of the exploitation of begging, and conclude with smuggling in human beings.

We should also mention an interesting decision handed down by the Aliens' Appeal Council, who awarded refugee status to a Macedonian woman who was the victim of a prostitution network.

1. Sexual exploitation

We will present a number of convictions handed down in several districts, as well as an acquittal in a champagne bar case.

The *Brussels Criminal Court*, in a judgment handed down on 2 February 2011¹²⁷, convicted three Bulgarian offenders for trafficking in human beings and various offences relating to prostitution. They were exploiting the prostitution of several young Bulgarian women in Brussels. The latter were obliged to hand over most of their earnings. The money from the prostitution was sent back to Bulgaria by minibus. One of the victims made a civil claim. She explained how she came to prostitute herself in Brussels under pressure and threat. The Court noted the particularly vulnerable situation of the Bulgarian prostitutes, subjected to arduous working conditions imposed by the pimps and bar managers. Most of them had left their country of origin in the knowledge that they were coming to prostitute themselves in Western Europe, generally without being aware of the actual and terrible conditions in which they would have to perform these activities.

The way in which Nigerian prostitutes are controlled emerges clearly in a *decision handed down by the Turnhout Criminal Court*. The case was already described earlier in this report¹²⁸. In this case of the sexual exploitation of young Nigerian women, the Court convicted the offenders for trafficking in human beings, on the grounds of detailed statements from the victims, supported by objective evidence. The defendants were

¹²⁷ Brussels Criminal Court, 2 February 2011, 54th Chamber (appeal pending).

¹²⁸ See this Part, Chapter 2, Phenomenon Analysis; Turnhout Criminal Court, 17 November 2010, 13th Chamber.

recruiting their victims in Nigeria under false pretences. Voodoo rituals were organised before their departure to ensure their loyalty. The victims then had to work as prostitutes and hand all of their earnings over to their pimps to buy their freedom (40 to 50,000 dollars). Some victims were also obliged to move to Denmark when prostitution in Antwerp was no longer lucrative enough.

A similar case in Brussels led the *Brussels Criminal Court* to grant 50,000 euros in material damages to the plaintiff in respect of a civil claim (the amount claimed was 300,000 euros) and moral damages of 5,000 euros¹²⁹. The young Nigerian woman had been recruited in Nigeria, under false pretences, to come and work as a maid. In fact she was obliged to prostitute herself, since she owed an alleged debt of 45,000 euros that she had to pay off. She was subjected to traditional voodoo rites.

A young woman with limited intellectual capacity was the subject of sexual exploitation in a case judged in Antwerp. The defendants were convicted by the *Antwerp Criminal Court* in a judgment of 4 October 2010¹³⁰, for, amongst others, trafficking in human beings. In this case they recruited the young woman and placed her in a hotel, bringing the clients to her or taking her to clients. They collected most of her earnings. The victim's statements are corroborated by the police officers' statements, telephone surveillance and financial evidence as well as statements made by the managers of the hotel where she was engaging in prostitution. The defendants argued that where the person being prosecuted is also the person carrying out the exploitation, this is not a case of trafficking in human beings for the purposes of exploitation of prostitution. According to them, trafficking should be interpreted as a charge concerning an offender making a person available to a person who exploits prostitution. The Court did not uphold these arguments. It emerged in this case that the defendants controlled most of this young woman's life, even when she was not being exploited in prostitution.

Lastly, let us mention a **champagne bar** case heard in the Tongeren Criminal Court in which young women, mainly from Eastern Europe, were made to prostitute themselves. We discussed this case already earlier in this Report¹³¹. The young women had to entice customers to buy drinks and offer them their sexual services. In a first *judgment of 25 March 2010* (confirmed by its *judgment of 10 February 2011* concerning the defendant that had lodged an appeal)¹³², the Court acquitted the defendants with respect to the charge of trafficking in human beings. It found, however, that they were guilty of the offences described in article 380 of the Criminal Code. The Court found that the law was not clear in this regard and that not all forms of exploitation of prostitution of others necessarily constitute offences of trafficking in human beings. Otherwise, the legislators would have included articles 379 and 380 of the Criminal Code in the new provisions on trafficking in human beings. The Court found that it did not emerge from the criminal

¹²⁹ Brussels Criminal Court, 26 November 2010, 46th Chamber.

¹³⁰ Antwerp Criminal Court, 4 October 2010, Chamber 4C. Since an appeal has been lodged, this case will be reheard by the Antwerp Court of Appeal.

¹³¹ See above, this Part, Chapter 2: Phenomenon analysis.

¹³² Tongeren Criminal Court, 25 March 2010 and 10 February 2011, 9th Chamber. In terms of the civil claim, the Centre has lodged an appeal that is to be concluded in 2012.

investigation that the young women from Eastern Europe and Africa had been trafficked, put to work or paid differently from young women from Western Europe (to whom only the offence under article 380 of the Criminal Code applies). Nor was it proven that they had been deprived of their freedom of movement. The Court found that the constituent elements of the offence had not been established since it was not sufficiently clear that the defendants had recruited, transported or housed the young women with a view of exploiting them. Similarly, the Court also found that trafficking in human beings for the purposes of labour exploitation was not applicable, since unacceptable working conditions had not been established¹³³. Furthermore, all forms of sexual exploitation do not automatically imply being put to work in inhumane conditions.

2. Labour exploitation

In addition to traditional sectors such as the hotel, restaurant and catering business and construction business, some interesting decisions have been handed down involving sectors such as butchers' shops, horseback riding schools, cleaning services or market trading.

2.1. Butchers' shops

In addition to offences under social criminal law, the *Brussels Criminal Court* convicted two Belgian defendants (a couple, of Moroccan origin) for trafficking in human beings (on the grounds of the former article 77bis of the Law of 15 December 1980 and the new article 433quinquies of the Criminal Code, because the facts took place between 2003 and 2006)¹³⁴. In their butcher's shop they were exploiting a Moroccan national who was residing in Belgium illegally. The latter was working 16 hours a day, six days a week with two breaks of 10 minutes a day to eat. He was paid between 80 and 90 euros per week, and his employers deducted anything he broke from his wages. He ate meat that was no longer fit to be sold. For two and a half months, he slept in the cellar of the butcher's shop, on a cardboard box and aprons. He also suffered a serious injury to a finger, for which he never received medical care.

In another case already described in the case law review of a previous report¹³⁵, the *Brussels Court of Appeal*, in a decision of 12 January 2011¹³⁶, upheld a sentence of trafficking in human beings handed down by Brussels Criminal Court against two defendants exploiting several workers in their butcher's shop¹³⁷. The charge of trafficking

¹³³ Let us note in this regard that other cases concerning champagne bars have been prosecuted and judged solely on grounds of trafficking in human beings for the purposes of labour exploitation. See in this regard the Centre's previous Annual Report 'Trafficking in and smuggling of human beings: *In a haze of legality*', pp. 56-57.

¹³⁴ Brussels Criminal Court, 28 April 2010, 58th Chamber (by default).

¹³⁵ See the 2007 Annual Report 'Trafficking in and smuggling of human beings: *Public policy as seen by a National Rapporteur*', p. 111.

¹³⁶ Brussels Court of Appeal, 12 January 2011, 11th Chamber.

¹³⁷ Brussels Criminal Court, 23 November 2007, 58th Chamber.

was upheld in respect of a worker that made a civil claim – a handyman. He slept in a storage space without windows or sanitation, hidden by a trapdoor, and the working hours were found to be contrary to human dignity and to correspond to humiliating working conditions. The Court stressed that the afterhours circumstances, namely that the claimant had a certain freedom of movement after work, were not of such a nature as to lessen the abuse of which he was a victim.

2.2. Cleaning services

The *Charleroi Criminal Court*, in a *judgment of 10 December 2010*, convicted the manager of a cleaning company, operating in certain fast-food restaurants, for trafficking in human beings. The owner was exploiting two illegal workers¹³⁸. The latter sometimes had to work up to 7 days in a row for a fixed wage of 25 to 35 euros a night (from 10 or 11 pm until 6 or 8 am the next day). The workers received at best 250 to 300 euros per month. The accused was abusing their illegal residence status and had promised that he would sign an employment contract for them. The Court also stressed, interestingly, that the offence of trafficking in human beings may involve one person acting alone and on their own behalf, without them necessarily being part of an organised criminal network or being the last link in such a chain.

Whilst the Court awarded moral damages to the claimants, it refused, however, to grant material damages, in particular compensation related to services provided. According to the Court of Cassation case law, receiving remuneration from undeclared work constitutes an illicit benefit the loss of which cannot give rise to compensation. The Court also held that circumstances under which an illegal worker is also the victim of an offence of trafficking in human beings does not bestow a licit character upon the work that they carry out, nor, therefore, give legitimacy to their claim.

2.3. Market trading

A case described earlier in this report concerns the sale of textiles on markets. Seven defendants, including several Indians, as well as their company and the not-for-profit association with which they were involved, were prosecuted for various offences. Four of them were charged with trafficking in human beings for the purposes of labour exploitation. The other offences concerned, in particular, money laundering, embezzlement and misuse of company assets. They were charged with having put to work as market stallholders, through their company, several illegally resident Indian nationals, including two minors.

The *Tongeren Criminal Court*, in a *judgment of 7 October 2010*¹³⁹, acquitted the defendants of charges of trafficking in human beings (and many other charges, including money laundering). The Court held that the only reliable evidence was that two minors

¹³⁸ Charleroi Criminal Court, 10 December 2010, 7th Chamber.

¹³⁹ Tongeren Criminal Court, 7 October 2010, 9th Chamber. This judgment is final.

had been intercepted at a stall run by the defendants, and that the latter had also illegally employed other unidentified young Indians. It found that their behaviour did not fall under the notions of 'recruitment, transport, etc.', a constituent element of trafficking in human beings. It also found that it was not proven that the work had taken place in conditions contrary to human dignity. Whilst the housing conditions of the young people identified were indeed inhumane, it was not proven that the defendants were linked thereto in any way whatsoever.

The Court did, however, uphold, with regard to the main defendant, the offences of embezzlement and misuse of corporate assets and with regard to other defendants (including the company), a number of other offences (amongst other the employment of illegally resident nationals).

2.4. Construction/renovation

In *a judgment of 18 March 2011*¹⁴⁰, the *Charleroi Criminal Court* convicted a defendant, a Moroccan national, for trafficking in human beings (employment in conditions contrary to human dignity) and for various offences against social criminal law. He legally brought in compatriots and then exploited them in his renovation firm. The Court found in this regard that the victims' statements were relevant, precise and corroborated. The workers had to work without being paid and without days off until the work had been completed. They were sometimes so short of money that they were not able to buy food for themselves. The Court also upheld the aggravating circumstance of abuse of a vulnerable situation. Indeed, to force them to be obedient, the defendant put pressure on the workers by threatening to use a document signed by each worker authorising him to take legal action against them in the event that the contract binding them was terminated. He also kept some of the workers' residence permits and work permits.

However, the defendant was acquitted of the charge of smuggling in human beings (article 77bis of the law of 15 December 1980) because the victims arrived in Belgium with a visa and thus legally. One of the constituent elements of the offence was therefore not demonstrated.

The *Tournai Criminal Court, in a judgment of 4 November 2010*¹⁴¹, heard a case in which several defendants, future restaurant managers, had had renovation work carried out by the same building and interior decoration company – operating in Wallonia and specialising in Chinese restaurants – the manager of which was one of the co-defendants. The workers employed were illegally resident Chinese nationals. In a detailed ruling, the Court upheld the offence of trafficking in human beings: the working and housing

¹⁴⁰ Charleroi Criminal Court, 18 March 2011, 7th Chamber. Since an appeal has been lodged, this case is to be reheard by the Mons Court of Appeal.

¹⁴¹ Tournai Criminal Court, 4 November 2010, 7th Chamber. Since an appeal has been lodged, this case is to be reheard by the Mons Court of Appeal.

conditions of the clandestine workers were very precarious; they were also entirely dependent on their employer; and their wages were insufficient and irregular. The hours were often far too long and depended entirely on the whim of the employer or the contractor. Furthermore, the workers had almost no entitlements whatsoever in this working relationship. The system put in place emerges from the following key element – one clause in the contract signed between the defendants stipulated that each of them were responsible for the clandestine workers that they put to work.

Finally, in a *judgment of 20 April 2010*, the *Brussels Criminal Court*¹⁴² acquitted a Portuguese contractor of the charge of trafficking in human beings. He was illegally employing several Brazilian workers in his renovation firm. The Court did, however, uphold charges against him relating to various offences under social criminal law. It found that employment in conditions contrary to human dignity was not sufficiently established. On the one hand, the workers made no statements about their working environment, and no evidence in the case was of such a nature as to establish that requirements relating to workers' well-being when carrying out their work had not been complied with. On the other hand, the Court found that working for 10 to 12 hours a day, five days a week and not being paid for all work done was evidence of abuse but therefore not necessarily of conditions contrary to human dignity.

2.5. Hotel, restaurant and catering sector

Two defendants were convicted for smuggling of and trafficking in human beings, in addition to offences under social criminal law, by the *Dinant Criminal Court in a judgment of 5 October 2010*¹⁴³. They were exploiting compatriots in their Chinese restaurant. The latter were sometimes working for more than 12 hours a day, in precarious conditions (housing, working environment, derisory wage). The Court also awarded the claimants an amount of 10,000 euros (as jointly material and moral damages) on a provisory basis.

In a *judgment of 17 June 2010*, the *Mons Criminal Court*¹⁴⁴ also upheld this charge against a defendant exploiting in his restaurant a Chinese compatriot who resided here illegally. The latter stated that she had had to work seven days a week, cleaning and working in the restaurant from 10.30 am to midnight during the week and until 2 am on the weekends, for a remuneration consisting of food and lodgings and 30 euros a day. She was in a situation of total dependency with respect to the accused.

On the other hand, the *Antwerp Court of Appeal* – judging a case of labour exploitation for the first time – in a *decision of 23 December 2010*¹⁴⁵ acquitted the defendants, shareholders in a Chinese restaurant, of charges of trafficking in human beings. The

¹⁴² Brussels Criminal Court, 20 April 2010, 58th Chamber. This judgment is final.

¹⁴³ Dinant Criminal Court, 5 October 2010, 10th Chamber. Since an appeal has been lodged, this case is to be reheard by the Liège Court of Appeal.

¹⁴⁴ Mons Criminal Court, 17 June 2010, 10th Chamber.

¹⁴⁵ Antwerp Court of Appeal, 23 December 2010, 14th Chamber.

Court found that the statements of the two alleged victims (bad working conditions, promises of regularising their situations) were not confirmed by the other workers in irregular situations that were intercepted during the inspection at issue.

The Court found that the fact that the two defendants were employing illegally resident workers who had to work 60 hours a week for three meals a day, free lodgings in a bedroom above the restaurant, where there were full washroom facilities, for a wage of 800 to 1200 euros a month for ‘full-time’ work depending on their duties and their seniority, was not sufficient enough to consider them guilty of trafficking in human beings. Amazingly, the Court found it irrelevant that cameras were installed in the restaurant to provide early warning of an inspection and that an emergency exit allowing workers to escape had been installed.

The *Dendermonde Criminal Court* handed down a similar decision in a *judgment of 15 March 2011*¹⁴⁶. The defendants, restaurant owners of Dutch nationality, were acquitted on charges of trafficking in human beings for the purposes of labour exploitation (article 433*quinquies* of the Criminal Code). The Court found that the investigations concerning the working environment and conditions did not contain objective elements indicating employment in conditions contrary to human dignity. It thus found that the wages paid (food and lodgings plus between 500 and 1,000 euros a month) were not so low as to constitute infringement of human dignity, that the workers’ movements were uninhibited, that they were not obliged to live on the premises but that the option was offered to them when they ended work late, and that it was not proven that the bell installed was used as an alarm (but rather for orders).

2.6. Horseback riding schools

The charge of trafficking in human beings was not upheld in a case in which two defendants were operating a horseback riding school. They were illegally employing several Brazilian nationals. The trafficking charge only concerned one worker. The *Tongeren Criminal Court* found, in a *judgment of 3 February 2011*¹⁴⁷, that it had not been demonstrated that the defendants had acted with the aim of employing these Brazilian nationals in conditions contrary to human dignity. The worker’s statements, in which he considered himself a victim, were not corroborated by statements made by other workers. On the basis of the statements from several workers and from the defendants, the Court found that long working weeks were involved (around 60 hours a week) for wages of 1,000 to 1,300 euros a month, with free lodgings, in conditions that were not contrary to human dignity.

The Court therefore found that the conditions described by the worker (more than 12 hours a day, sometimes at night, abrogation of the weekly day off, non-payment of wages and a climate of fear) were not proven. Consequently, whilst employment at the

¹⁴⁶ Dendermonde Criminal Court, 15 March 2011, 19th Chamber.

¹⁴⁷ Tongeren Criminal Court, 3 February 2011, 9th Chamber.

horseback riding school did not comply with social legislation conditions, the work was, however, not carried out in conditions contrary to human dignity.

3. Exploitation of begging

To our knowledge, the first decision concerning trafficking in human beings for the purposes of exploitation of begging has been handed down. The *Brussels Criminal Court* convicted, in his absence, a Romanian defendant¹⁴⁸ who had recruited a compatriot in Romania, who had a disability in his left leg, to get him to beg in Brussels. The defendant's father had paid for the bus ticket from Romania and had confiscated various documents from the victim (birth certificate, disability certificate and proof of payment of pension benefit). Every day, the defendant accompanied the victim to the place where he was obliged to beg and every evening, he came to pick him up. The victim earned between 17 and 25 euros a day, which he had to give to the defendant or his wife each evening.

4. Smuggling of human beings

Several decisions have been handed down in cases of marriages of convenience on the basis of article 77bis of the law of 15 December 1980 (smuggling of human beings).

The *Brussels Court of Appeal*, in a verdict of 15 December 2010¹⁴⁹, confirmed, for the most part, the judgment handed down at first instance¹⁵⁰ concerning the only defendant who lodged an appeal against a decision convicting him amongst others for smuggling of human beings. The case is one of marriages of convenience in which six defendants of different nationalities (including Pakistani, French and Belgian persons) were involved. They organised marriages of convenience in Scandinavian countries between European nationals and applicants for asylum or students mainly of Chinese origin, enabling the latter to obtain residence permits that were valid in Belgium. The amounts paid for the marriages ranged from 9,000 euros to 17-18,000 euros. The defendant used the services of two intermediaries (two co-defendants) who recruited European candidates. The defendant dealt with contacts with Chinese clients and organised their transport and lodgings in Sweden. Another co-defendant acted as a translator and interpreter.

In another case of marriages of convenience, the *Liège Court of Appeal* upheld, in a decision of 11 January 2011¹⁵¹, the judgment handed down at first instance by the Namur

¹⁴⁸ Brussels Criminal Court, 2 June 2010, 54th Chamber. The defendant has lodged an appeal against the judgment and the case is therefore to be reheard.

¹⁴⁹ Brussels Court of Appeal, 15 December 2010, 14th Chamber.

¹⁵⁰ Brussels Criminal Court, 15 April 2008.

¹⁵¹ Liège Court of Appeal, 11 January 2011, 4th Chamber.

Criminal Court on 18 January 2010¹⁵², convicting the defendants of, amongst others, smuggling of human beings. The case concerned a Pakistani criminal organisation that arranged marriages of convenience with Spanish or Portuguese women from underprivileged backgrounds for compatriots staying illegally or in precarious situations in Belgium. The latter thus obtained the right to stay as spouses of citizens of the Union. The women were promised the sum of 2,000 euros, whereas the candidates for marriage had to pay sums of between 6,000 to 10,000 euros for the assistance received in organising the marriage – ceremonies generally took place in Denmark or Sweden. In order to mask these practices and to facilitate them, some defendants managed night shops where their compatriots worked either whilst waiting for the marriage, or once the marriage had taken place but while waiting for their residence status to be granted and in particular for the cohabitation enquiry to be carried out by the local police.

Lastly, the *Antwerp Court of Appeal* heard a case consisting in fact of two cases: one concerning money laundering, the other smuggling of human beings and money laundering. In its decision¹⁵³, the Court confirmed the acquittal at first instance by the Tongeren Criminal Court¹⁵⁴ in the first money laundering case. However, it reformed the judgment handed down by the first court regarding the charges of smuggling of human beings and money laundering. Contrary to the first court, the Court of Appeal found that the offence of smuggling of human beings was indeed established. It gave an interpretation pursuant of the constituent element of article 77bis of the law of 15 December 1980: the law does not require that the persons that have been ‘smuggled’ be identified. However, the law requires these persons not to be Union citizens or nationals of a State party to an international convention on the crossing of external borders that is binding Belgium. The proof of this constituent element can be provided by identification of the victim if there is no other way to prove that the ‘smuggled’ persons are under no circumstances nationals of the Union or a State bound with Belgium. In this case, there was sufficient proof from the telephone investigation that the defendants had assisted the illegal entry of Indian nationals into a Union country (specifically the United Kingdom) in contravention of the legislation of that State. Furthermore, it was also established that the money transferred from Belgium to India using the hawala system was illegal income from Indians staying in Belgium illegally and income from the smuggling of human beings, this being the reason for which the Court upheld the charge of money laundering as well.

¹⁵² Namur Criminal Court, 18 January 2010.

¹⁵³ Antwerp Court of Appeal, 17 November 2010, 14th Chamber.

¹⁵⁴ Tongeren Criminal Court, 14 January 2010, 9th Chamber.

5. Recognition of refugee status for a victim of trafficking in human beings

The *Council for alien law litigation* heard an appeal lodged by a young Macedonian woman, the victim of a prostitution network, against the decision issued by the Commission for Refugees and Stateless Persons that had refused her refugee status¹⁵⁵.

The Council first noted that the appellant had been constant in her statements and had produced a detailed account with no contradictions in the substantive elements of her case. The alleged facts (several years of forced prostitution, limited freedom of movement, maltreatment suffered) were sufficiently serious by the repetitive nature and their repetitive character as to constitute persecution within the meaning of article 48/3, §2, paragraph 1, a) of the law of 15 December 1980. They may also be considered as mental and physical violence and acts directed against a person as a result of their gender within the meaning of article 48/3, §2, paragraph 2, a) and f) of the law of 15 December 1980. Furthermore, the maltreatment suffered by the applicant in her country should be considered as serious indications of the well-founded nature of her fear of persecution.

The Council then found that the persecution endured by the applicant fell under the criterion of membership of a particular social group, pursuant to the Geneva Convention of 28 July 1951 relating to the status of refugees. However, the scope to be given to this concept has significantly changed with regard to case law during the last few years. The latter tends to consider that a social group can be defined as the existence of innate or unchanging features, such as gender. The Council therefore found that the applicant had reasons to fear persecution as a result of her membership of the social group of women.

Lastly, the applicant could not be effectively protected by her national authorities. The applicant feared a non-State actor of persecution, namely her partner, a member of a prostitution network. In this case, the claimant's fear of not being able to benefit from effective protection by her national authorities was well founded, with regard in particular to links existing between the prostitution network and the authorities (corruption issues), which held her back from filing a complaint with the police department due to a fear of reprisals. The Council also considered that there was no alternative means of internal protection elsewhere in Macedonia. The applicant was thus recognised as a refugee, due to her fear of persecution as a result of her membership of the social group of Macedonian women.

¹⁵⁵ Council for alien law litigation, 20 October 2010, No 49.821, *Rev. dr. étr.*, 2010, No 160, pp. 501-505.

PART II

FREE MOVEMENT AND LABOUR EXPLOITATION: THE CHAINLINK APPROACH

INTRODUCTION

This year, the Centre has chosen to look in more detail at certain issues examined in the last Annual Report, in which the Centre focused on trafficking in human beings for the purposes of labour exploitation and demonstrated how the free movement of persons and services can sometimes be used to promote the exploitation of foreign labour. The traffickers set up different arrangements (legal, semi-legal or illegal) or make use thereof to facilitate practices of trafficking in human beings. The secondment of workers and the fraud to which it could be subjected – particularly in the context of complex subcontractor chains – as well as the issue of bogus self-employed workers was thus a key focus of attention.

In the first chapter, we give a few examples of cases of trafficking in human beings in which the principal employer turns to complex structures of subcontracting. We then examine recent developments in free movement and measures taken by Belgium in this regard, in particular to combat certain types of fraud. Before examining some *good and bad practices*, we summarise the issue of the adoption of a law enabling all links in the chain to be targeted whilst maintaining the joint liability of the principal employer. Finally, taking the example of the Dutch model, we will say a few words about the role that local authorities can play in combating trafficking in human beings.

CHAPTER 1: CASE STUDY

In this chapter, we present an example of a complex case of trafficking in human beings for the purposes of labour exploitation, in which subcontracting arrangements directed by principal contractors are involved.

1. Restroom facilities¹⁵⁶

In the case in question, a chain of roadside restaurants has systematically exploited victims through subcontractors managing the restroom facilities in their establishments next to the highways. As principal contractor and organiser, the chain developed a system of exploitation in stages, which could be adapted and refined after each police visit or inspection. The analysis of this example reveals the different phases of development of this exploitation system.

The case is composed of several interrelated cases. The Centre filed a civil claim in the last case, dealt with by the Ghent Labour Tribunal. The victims were systematically

¹⁵⁶ See also above, Part 1, Chapter 2: Phenomenon analysis.

recruited from vulnerable groups, whether in the light of their age or their ethnic minority background.¹⁵⁷

In the first phase of exploitation in 2005, there was only a verbal agreement between the restaurant operator and the subcontractor. The subcontractor illegally employed workers from an ethnic minority with German nationality. The victims had to pay in order to be able to work. In exchange, they could keep the money collected in the restroom facilities of the roadside restaurants.

Following inspections made by front line services (police, inspection services, etc.) the principal employer put in place a new organisation using written agreements concluded with the subcontractor, also stipulating that the latter had to pay the principal employer a fee to operate the restroom facilities. This new organisation launched the second phase of exploitation, in which the same group of victims had to work for the subcontractor as bogus self-employed workers. Officially, the principal employer was changing subcontractors, but in fact it involved the same businessman, with a new company.

Following further action taken by front line services, the restaurants hired a German firm of subcontractors. It was with the German subcontractor that the third phase of exploitation began, during which the organisation was based on a system of seconded workers. Other inspections were made, during which the secondment papers proved to be false. The victims were replaced every month and earned a gross wage of 450 euros. For that wage they worked 12 hours a day, seven days a week.

During the fourth exploitation phase, in 2007, the organisation became more sophisticated. The subcontractor was no longer working with seconded workers, but with self-employed workers seconded from Germany. During inspections made by front line services, it transpired that these persons were not aware that they were working as self-employed workers.

The chain of roadside restaurants claimed that it did not know of the existence of such exploitation practices. It is nevertheless suspected, insofar as it emerges from the case review, that the chain played an important role, as principal employer, in the continuity of the different forms of exploitation in phases. It is the common element in the various cases, through the different arrangements with the different operators as subcontractors.

A well-known chain of service stations which had used the same 'cheap' concept of exploitation of seconded self-employed workers and the same German subcontractor, has, unlike the accused employer, directly terminated these practices after the first inspections and warnings issued by the social inspectorate.

The different interrelated cases involved were nevertheless not joined. The Federal Public Prosecutor's Office did not grant the application made by the police and the Turnhout Public Prosecutor's Office and did not examine the cases or take over coordination

¹⁵⁷ See also above, Part 1, Chapter 2 (Phenomenon analysis) for further explanations in this regard.

thereof.¹⁵⁸ The cases relating to the first three phases of exploitation were initiated by the Turnhout Public Prosecutor's Office. No investigative judge was appointed. The merged case, concerning the first two phases of exploitation and involving the most serious offences, is still in deadlock at the time of writing of this report. The case relating to the third phase of exploitation was sent by the Public Prosecutor's Office to the Turnhout Labour Tribunal, but solely for the prosecution of illegal employment.

The last case, concerning the fourth phase of exploitation, was initiated and vigorously taken on by the Ghent Tribunal and the investigative judge in charge of the case. The Ghent Tribunal decided not to wait for the results of the rogatory commission any longer and successfully began the prosecution for offences committed in Ghent at the pre-trial hearing, both against the principal employer and the German subcontractor. The pre-trial hearing has already remanded the defendants to be brought before the Criminal Court. The case will be heard in late 2011.

2. Cleaning industry¹⁵⁹

The Centre has recorded problems of an identical nature to the above in the cleaning industry. Various reports, including last year's Annual Report on trafficking in human beings and the activity reports of the federal police¹⁶⁰, give examples of trafficking in human beings in the cleaning industry by means of arrangements set up by a criminal organisation. Firms, as subcontractors for large companies, employ illegally residing or bogus self-employed workers. These large companies act as the principal contractors in the system and encourage these situations of exploitation. The victims have to work free of charge for a few days, disguised as a probationary period. In addition to illegally residing African workers, particularly Moroccans, Brazilian women¹⁶¹ are also to be found among the victims. These are deplorable practices, spread throughout the country, aimed at employing victims in very bad conditions and even, in certain cases, without any remuneration whatsoever.

¹⁵⁸The duties of the Federal Public Prosecutor's Office are laid down in article 144*bis*, §2 of the Judicial Code. The law entrusts four key tasks to the Federal Public Prosecutor's Office: taking legal action for certain offences; coordinating legal action; facilitating international cooperation and exercising surveillance over the general and specific performance of the federal police. With regard to the initiation of legal action for the offences to which this jurisdiction applies, that include trafficking in human beings and smuggling of human beings if there are also aggravating circumstances, will be led by the Federal Public Prosecutor's Office 'if the proper administration of justice so requires'. See in this regard article 144ter §1 of the Judicial Code. The Federal Public Prosecutor's Office decides, *in fine*, who – the Federal Public Prosecutor's Office or the Public Prosecutor – shall take legal action. This decision, taken in consultation with the Public Prosecutor or the Prosecutor General is not subject to appeal (see article 144ter §1 of the Judicial Code). The duties and functioning of the Federal Public Prosecutor's Office are described in a joint circular of 16 May 2002 issued by the Minister of Justice and the Board of Prosecutors General (*Moniteur Belge* [Belgian Official Gazette], 25 May 2002).

¹⁵⁹ Practices of trafficking in human beings noted in the cleaning industry were previously described and analysed in last year's Annual Report on 'Trafficking in and smuggling of human beings: *In a haze of legality*'.

¹⁶⁰ Police, 2007 Federal Police Activity Report. This publication (FR or NL) can be consulted at http://www.polfed-fedpol.be/pub/jaarverslag/pub_jaarverslag2007_fr.php.

¹⁶¹ IOM, 'Awareness Raising for Brazilian and Belgian authorities on managing migration from Brazil to Belgium' 2nd Awareness-Raising Workshop 26-27 May 2010, Brussels.

CHAPTER 2: NEW DEVELOPMENTS AS REGARDS FREE MOVEMENT

Given that certain practices of trafficking in human beings utilise the opportunities offered by free movement within the EU, in this chapter we will briefly look at some recent developments in this regard¹⁶².

1. Should the transitional provisions for Romanian and Bulgarian nationals be withdrawn?

Within the European Union, the principle of the free movement of workers prevails. However, transitional provisions are still an option as regards Romanian and Bulgarian nationals. In Belgium, access to the labour market is subject to restrictions for the nationals of these countries, at least until 31 December 2011. In practice, this means that employers wishing to hire persons from these Member States still have to have an authorisation to employ and workers require a work permit. However, for a considerable number of professions in which there is a shortage of workers, an accelerated procedure not requiring a study of the labour market is in effect.

After 31 December 2011, the transitional provisions will probably be lifted and a work permit will no longer be necessary. In principle, Belgium may still extend the transitional provisions for a further two years (until 31 December 2013) for Romania and Bulgaria¹⁶³, but must, in order to do so, provide the European Commission with convincing arguments stipulating that the labour market is or is likely to be seriously disrupted.

The restrictions upon the free movement of workers have had the perverse effect of encouraging workers to become self-employed and has meant that work which could have been carried out under the free movement of persons has been transformed into

¹⁶² For a more detailed approach, we invite you to consult the 2009 Annual Report, 'Trafficking in and smuggling of human beings: *In a haze of legality*', Part 2, Chapter 1 (pp.66-99).

¹⁶³ Romania and Bulgaria joined the EU on 1 January 2007. The other EU Member States were able to introduce transitional provisions in three phases. A first 2-year phase ended in late 2009, and a second 3-year phase will be in force until the end of 2011. The Member States may extend the provisions for a third time for a 2 year period (until the end of 2013), but must in that case prove that the labour market is or is likely to be seriously disrupted. The Member States were also able to apply these transitional provisions to eight other Member States that joined the EU on 1 May 2004 (e.g. Poland). Belgium adopted the first two phases. The provisions have been withdrawn since 1 May 2009 in Belgium and since 1 May 2011 these provisions have been withdrawn throughout the EU for the Member States that joined the Union on 1 May 2004.

actions provided under the movement of services. Such a context could facilitate the exploitation of workers and even, sometimes, trafficking in human beings (see point 4).¹⁶⁴

On the other hand, some observers fear that withdrawal of the transitional provisions may lead to the elimination of an opportunity for detection, and that fewer cases of trafficking in human beings will be recorded among Romanian and Bulgarian workers. For the labour inspectorate, the presence or absence of a work permit does indeed contribute to the detection of potential victims.¹⁶⁵

Four conditions for the withdrawal of the transitional provisions

To conclude this Chapter, let us summarise the measures announced by the Belgian Government in 2006 to support the free movement of persons in the enlarged EU: it was established by Royal Decree that the transitional provisions relating to the free movement of workers could be lifted (in advance) for new EU Members insofar as **four conditions** were met.¹⁶⁶ Although there are still some problems of implementation, three of the four conditions have subsequently been fulfilled.

The first condition was the introduction of a system of prior registration for all cross-border employment, offering the inspection services a better view of migrant worker flows. The LIMOSA system¹⁶⁷, which fulfilled this condition, became operational on 1 April 2007.

Secondly, a '*protocol of cooperation*' was to be drawn up '*between the different inspectorates in order to combat abuse in cases of employment of foreign workers*'. With the programme-law of 27 December 2006, the Social Intelligence and Investigation Service (*SIRS*) was formed to act as coordinator, supporting the federal social inspection services in their combat against illegal employment and social fraud.

Thirdly, a '*right to take legal action in Belgian courts had to be established for workers organisations and for foreign workers, in order to guarantee the rights of foreign workers currently employed or having been employed in Belgium*' (for example to request the application of the Belgian minimum income). This right to take legal action was introduced in the law of 3 June 2007 laying down various provisions relating to employment (*Moniteur Belge*, 23 July 2007). Workers organisations were granted both the opportunity to apply to the courts to represent a foreign worker and the right to

¹⁶⁴ Centre for Equal Opportunities and Opposition to Racism, '*Flux migratoires en provenance des nouveaux États membres vers la Belgique, Tendances et perspectives*', 24 February 2006.

¹⁶⁵ 2008 Annual Report 'Trafficking in and Smuggling of Human Beings: *Enlisting people and resources to combat the phenomenon*', p. 28.

¹⁶⁶ Article 38*sexies* of the Royal Decree of 9 June 1999 on the employment of foreign workers (added by the Royal Decree of 24 April 2006).

¹⁶⁷ LIMOSA stands for "*Landenoverschrijdend Informatiesysteem ten behoeve van Migratie Onderzoek bij de Sociale Administratie*" (Cross-border information system for use by the social administration for the study of migratory flows). It was introduced by the law of 27 December 2006 (*Moniteur Belge*, 28 December 2006) and the Royal Decree of 20 March 2007 (*Moniteur Belge*, 28 March 2007).

require that justice be done on a personal level for all offences under the law of 5 March 2002¹⁶⁸ (transposing the seconded workers directive).

A fourth and last condition has not yet been met – it concerns the introduction of ‘*joint and several liability for principal contractors or employers regarding the fulfilment of conditions for the remuneration and employment of seconded foreign workers.*’ Many proposals have already been tabled by the Government and social partners in this regard but an agreement has not been reached. We will come back to this later in this chapter.

2. The European Court of Justice examines the LIMOSA declaration

In our last annual report, we explained how legal systems and arrangements such as secondment or the bogus self-employment system were utilised by traffickers of human beings. The LIMOSA declaration is a key tool in monitoring secondment (see above). LIMOSA is generally considered to be a good practice by actors in the field and by the International Labour Organization (ILO) and the European Commission.¹⁶⁹ Nevertheless, the European Court of Justice (henceforth ECJ) is currently examining the question of compatibility of certain aspects of the system with the free movement of services. Before looking at the current proceedings before the ECJ, let us briefly examine the ECJ’s judgment on the system which preceded the LIMOSA declaration.

On 7 October 2010, the ECJ ruled that the legislation then in force in Belgium, on the secondment of workers by an employer established in another Member State, was incompatible with European rules on the free movement of services (the *Santos Palhota* judgment).¹⁷⁰

The Antwerp Criminal Court requested that the ECJ hand down a verdict in a criminal proceeding against a Portuguese company employing workers at the port of Antwerp. Pursuant to the Belgian legislation in force at the time, the Portuguese employer had to make a declaration of employment to the Belgian administration in order to be covered by the simplified regime for the keeping of social documents. The Portuguese company had not completed this formality, and consequently fell under the normal regime, which was not complied with. The Antwerp judge did not, however, wish to pass judgement on

¹⁶⁸ Law of 5 March 2002 transposing directive 96/71/EC of the European Parliament and Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, introducing a simplified regime for the recording of social documents by companies posting workers to Belgium, *Moniteur Belge*, 13 March 2002.

¹⁶⁹ European Commission, ‘*Information provided on the posting of workers*’, September 2010, pp. 165-166. A study issued by the European Commission demonstrates that the LIMOSA online service provision is a pioneer in this field. Furthermore, the highest praise went to the collaboration between the different administrations concerned. Basically, subject to the claim made recently, the Commission declares that LIMOSA is generally considered to be good practice; ILO, ‘*Labour inspection in Europe: undeclared work, migration, trafficking*’, Geneva, January 2010, p. 10 and p. 15.

¹⁷⁰ ECJ C-515/08, *Dos Santos Palhota*, 7 October 2010.

the substance of the case, given that he was unsure about the compatibility of applicable legislation with the principle of free movement of services (in particular articles 56 and 57 of the TFEU).

Since Belgian legislation stated that a seconded worker could not begin working until the Belgian administration had received the declaration of intent to employ, and until the Belgian administration had replied favourably to this (within five working days), the ECJ found that this was equivalent to an administrative authorisation procedure. The ECJ also stated that such prior authorisation and the waiting period of five working days constituted a hindrance to the free movement of services. However, the ECJ found that the free movement of services would not be hindered if the documents simply had to be made available to the authorities during the period of employment and then submitted to the authorities.

In the meantime, the contested legislation on social documentation for workers seconded to Belgium has been replaced by the LIMOSA system.¹⁷¹ This does not, however, mean that the *Santos Palhota* judgment is no longer relevant. The judgment can indeed still be used as a basis to check whether the new LIMOSA system is actually compliant with European rules on the free movement of services. We can see here that the declaration of intent to employ, followed by approval by the Belgian administration, is replaced by a simple rule of declaration. Work may begin as soon as the employer has made this declaration. It therefore seems that this system can no longer be qualified as an irregular administrative authorisation procedure.¹⁷²

The LIMOSA system is the subject of new proceedings currently being heard at the ECJ.¹⁷³ These proceedings are dealing only with the application of the LIMOSA declaration for self-employed workers established in another Member State and wishing

¹⁷¹ The LIMOSA system was examined in detail in the 2009 Annual Report 'Trafficking in and smuggling of human beings: *In a haze of legality*'.

¹⁷² GRATIA, M., 'Note - Arrêt Dos Santos Palhota de la Cour de justice de l'Union européenne du 7 octobre 2010: l'ancien système de déclaration préalable au détachement de travailleurs en Belgique sous l'œil de la Cour de justice de l'Union européenne et les éventuelles conséquences de cet arrêt sur le régime dénommé LIMOSA', [Note : Dos Santos Palhota Judgement of the European Court of Justice of 7 October 2010 : the old declaration system prior to the posting of workers to Belgium under review by the European Court of Justice and the possible consequences of this judgement on the set-up referred to as LIMOSA], *Droit pénal social*, 2011/1, pp. 88-89.

¹⁷³ Appeal brought on 10 December 2010 - European Commission / Kingdom of Belgium (Case C-577/10). The Commission claims that the national legislation which imposes a prior declaration requirement on independent service providers established in other Member States (the 'LIMOSA' declaration), who wish to provide services in Belgium on a temporary basis, constitutes a restriction on the freedom to provide services.

The Commission points out, in the first place, that the provisions at issue constitute a discriminatory restriction insofar as, on the one hand, they impose significant additional and deterrent administrative formalities on the independent service providers at issue and, on the other hand, they establish a monitoring system that applies only to service providers established in another Member State, without any objective reasons to justify that difference in treatment.

In the second place, the applicant asserts that this restriction on the freedom to provide services, even if it is not discriminatory, is not justified by objectives in relation to the public interest, the maintenance of the financial balance of the social security system, the prevention of fraud or the protection of workers.

to provide services in Belgium. It was initiated by the European Commission, which considers that this procedure of obligatory declaration for self-employed workers is contrary to the free movement of services. Since the ECJ stated, in the *Santos Palhota* case, that such a declaration procedure was acceptable, but a series of judgments handed down recently clearly lean towards the free movement of services, it is difficult to predict the verdict of the ECJ judgment in this case. Some actors in the field consider ECJ case law to be very liberal. The result of this is, in particular, that efforts made to effectively combat labour exploitation are regularly compromised.

3. The Internal Market Information System – Simplifying administrative collaboration under the seconded workers directive¹⁷⁴

The *Internal Market Information System* (IMI) – an electronic exchange system – has enabled, since 16 May 2011, the competent authorities throughout the EU to exchange information on an experimental basis, in the framework of the seconded workers directive (96/71/EC). In March 2011, the Council gave the go-ahead for this pilot phase in its conclusions.¹⁷⁵

IMI is a secure online application enabling **local, regional and national authorities to communicate** quickly and easily with their partners abroad. At first, it was only used to exchange information in respect of the Directive on the recognition of professional qualifications¹⁷⁶. Since early 2010, the competent authorities can also use IMI to exchange information relating to economic activities covered by the Services Directive¹⁷⁷. IMI was designed in a flexible way so that it could be extended easily, in the future, to other legislative areas.

The decision to use IMI follows a report made by a committee of experts on the secondment of workers, set up by the European Commission, that is lobbying for an interactive information system, no longer limited to the exchange of predefined documents. Such a system should be sufficiently flexible and open for future extensions, particularly with regard to the competent authorities and lists of questions, whilst offering the guarantees of a stable and secure data protection environment.

To limit the expenses and save time, the adaptation of an already existing system was chosen which could also be used as a system to exchange information about the

¹⁷⁴ Apart from IMI, other projects have also been launched. For example: Cibeles (see in this regard the 2009 Annual Report, "Trafficking in and smuggling of human beings: *In a haze of legality*", pp. 108 -109).

¹⁷⁵ Council Conclusions on the further development of an electronic exchange system facilitating administrative cooperation within the framework of the posting of workers directive, *3073rd Employment, Social Policy, Health and Consumer Affairs Council meeting*, Brussels, 7 March 2011.

¹⁷⁶ Directive 2005/36/EC on the recognition of professional qualifications, *O.J.*, 30 September 2005, L255/22.

¹⁷⁷ Directive 2006/123/EC on services in the internal market, *O.J.*, 27 December 2006, L376/36.

secondment of workers. IMI also seemed to be the best solution to organise an operational and efficient exchange system quickly.

Belgium has been using the pilot project since 1 June 2011. Although it is too early to draw conclusions, the first exchanges of information have been successful and the results are considered advantageous.

Hopefully a successful pilot project will lead to simpler and smoother exchange of information at a European level.

4. Developments in practice: Registering as a self-employed worker as a modus operandi

All EU citizens are free to set up in Belgium as self-employed workers. In order to do this, there is no need for a professional permit, and no period of transition is required for citizens of new EU Member States. An EU firm or self-employed worker may also provide services freely in a Member State other than the State in which they live and may second their own staff abroad for this purpose.¹⁷⁸

Several towns have recently described problems involving EU citizens coming to set up in Belgium. Last year, especially, warning signals mainly came from the city of Ghent. This city has been confronted with an influx of nationals from new EU Member States and has also had to deal with an increasing number of infringements of the self-employed status. Criminal networks have also come into the area (in particular Turkish/Bulgarian labour-only subcontractors), putting in place ingenious arrangements to avoid paying contributions, to exploit people, and to unlawfully receive welfare benefits.¹⁷⁹

One method often used consists of nationals of the (new) EU Member States **obtaining residence permits by registering as a self-employed worker, but without carrying out any such work activities whatsoever**.¹⁸⁰ Nationals of the new EU Member States, who have few economic prospects in their country of origin, are thus brought to Belgium through front men. On paper, they are shareholders in a firm. Small businesses are thus

¹⁷⁸ In this section, we will examine the problems relating to setting up in Belgium, but the monitoring of firms located in another Member State is also rather complex. As we also saw in our previous Annual Report (*'In a haze of legality'* p. 83), cases of secondment fraud and, in some cases, of exploitation of workers, are not uncommon. The existence of chains of subcontractors does not make the labour inspectorate's task any easier.

¹⁷⁹ Panorama [Belgian television program], *'Bulgarije aan de Leie'*, Canvas, 3 April 2011; De Tijd [Belgian newspaper], *'En ze kwamen uit het Oosten'*, 2 October 2010; De Standaard [Belgian newspaper], *'Nieuwe koppelbazen doen gouden zaken'*, 5 May 2011; De Standaard [Belgian newspaper], *'De sociale inspectie over het gevecht tegen de bierkaai'*, 6 May 2011; De Tijd [Belgian newspaper], *'De Grot van Ali Baba'*, 4 June 2011.

¹⁸⁰ See in this regard the 2009 Annual Report Trafficking in and smuggling of human beings: *'In a haze of legality'*, p. 79 etc.

run by dozens of shareholders, or work is carried out by firms which are, in fact, nothing more than empty shells.

At the municipality EU nationals normally receive recognition of their residency (an “E” card). Three years later, this card can be replaced by an “E+” card as a mark of long-term residency (see text box below). Municipalities may sometimes suspect irregularities (certain company names coming up all the time, etc.) but have no powers to intervene. It might, however, be possible to involve local authorities in the detection of such practices¹⁸¹.

Since the workers in question are supposed to be working as self-employed workers, the labour-only subcontractors are free to carry out their exploitation practices – they are not bound by the working conditions for salaried workers, working times or break times. They are also often housed in precarious conditions, but the lack of money (since they are underpaid and/or awaiting back pay) does not leave them much choice. Nevertheless, they don’t often consider themselves as victims. The little that they earn is sometimes preferable to the wage that they would receive in their country of origin.

Self-employed workers and welfare benefits

Another form of abuse is the practice of using EU nationals who, **as a result of their self-employed worker status and the residence permit obtained on that basis, come to knock on the door of the Public Welfare Offices (CPAS/OCMW)(see text box)**. This sometimes takes place after a while, but sometimes almost immediately. In some cases the organisers of the underlying carousels also demand that a portion of the welfare benefit be transferred to them (debt bondage). A representative of the social inspectorate declared to the Senate Committee that he knew of one company which, in two years, had 70 Bulgarian and Romanian shareholders, each time dismissed shortly after they had registered with the municipality, who would then register with the welfare centre to get welfare benefits.¹⁸²

The secretary of state for anti-fraud coordination requested that this social fraud be examined¹⁸³, pursuant to the 2009-2010 action plan issued by the Board to Combat Social Security and Fiscal fraud. It is mainly Romanian and Bulgarian nationals who currently request self-employed worker status. Generally, they apply for this status as active shareholders or as assistants of self-employed workers.

¹⁸¹ See further in this Part, Chapter 4, point 4: Local authorities made aware of trafficking in human beings.

¹⁸² Committee for Interior and Administrative Affairs, ‘Rapport Traite des êtres humains’ [Report on trafficking in human beings], Sénat [Belgian Senate], session 2009-10, No 4 – 1631/1, p. 106.

¹⁸³ Written parliamentary question No 29 from the parliamentarian Leen Dierick to the Secretary of State for Anti-fraud Coordination Carl Devlies, 30 March 2011.

Regulations concerning residency and welfare benefit for EU citizens moving to Belgium as self-employed workers

Pursuant to European law, Belgian legislation provides that EU nationals working in Belgium as self-employed workers are authorised to stay in the country for more than three months. The residency procedure itself is composed of three stages: the application, the recognition of definitive but nevertheless conditional residency rights, and finally the recognition of long-term residency rights.¹⁸⁴

The regulations provide that at the moment of *application* – and provided upon presentation of valid identity papers from an EU Member State – the national shall receive an annex 19¹⁸⁵ from the municipality. In the three months following the application¹⁸⁶, the EU national must provide all of the documents attesting to his or her self-employed status. If the application is accepted, the municipality recognises the right of residency by means of a *registration certificate* (annex 8 or “E” card)¹⁸⁷ which is valid, in principle, indefinitely. For three years, however, the Aliens Office can end this entitlement if the conditions are no longer fulfilled. After three years of uninterrupted residency in Belgium, a *long-term residence permit* may be obtained (annex 8bis or electronic “E+” card). The municipality sends the application for a long-term residence permit to the Aliens Office, which makes its decision within five months. Once the long-term residence permit has been obtained, it can no longer be withdrawn, except in specific cases of fraud or offences of public disorder. Withdrawal of a residence permit does not stand in the way of the person in question making a new application.

In Belgium, all individuals are entitled to social services if they are not able to access a quality of life respecting human dignity. For persons residing illegally, this right is limited to urgent medical care. An EU citizen is, however, legally resident once they have introduced an application for registration (annex 19) and may seek help from the welfare centre immediately. Once they are in possession of the registration certificate (annex 8 or “E” card), the EU national may request a minimum income¹⁸⁸ (right to social integration) from the welfare centre, subject to their fulfilling other conditions: insufficient means, willingness to work, etc.¹⁸⁹

¹⁸⁴ Art.40 §4, 1° of the law of 15 December 1980 and art. 50 §2, 2° of the Royal Decree of 8 October 1981.

¹⁸⁵ Annex 19 is an application for a registration certificate. The municipality registers the person in question in a register of pending applications. As soon as the residency check has been completed, showing that the person in question does indeed reside at the address indicated, the latter is recorded in the Aliens Register. It seems that in practice, annex 19 is not always given immediately. See Annual Report, Migration 2010, p. 145.

¹⁸⁶ The municipality may extend this period by one month. If doubts remain concerning a document presented by the person in question, the municipality may send it to the Aliens Office. The latter will make its decision within the five months following the application as regards the issue of an “E” card or an annex 20.

¹⁸⁷ A registration certificate is provided in the form of an annex 8 (on paper) the validity of which is indefinite, or an electronic “E” card (valid for five years).

¹⁸⁸ Article 3 of the law of 26 May 2002 on the right to social integration.

¹⁸⁹ Prior to this, the person in question may apply for social assistance.

The fact that the person in question receives a minimum income may have an impact on his or her application for a residence permit. However, temporary aid is not incompatible with residency rights. Nevertheless, the Aliens Office may withdraw the residence permit within a 3-year period if the person in question is no longer a self-employed worker. In order to do this, the Aliens Office must carry out an individual examination of the case. Let us highlight in this regard that the Aliens Office is not systematically made aware that a foreigner is receiving minimum income payments. Most Public Welfare offices consider that sending this information to the Aliens Office is incompatible with the principle of professional secrecy.¹⁹⁰

As can be seen from the text box, an EU national wishing to obtain a residence permit (annex 8 or “E” card) based on their self-employed status must provide the proof that they are indeed a self-employed worker. This is possible by registering with the Enterprise Database [*Banque-Carrefour des Entreprises*] or by presenting any other proof of activities as a self-employed worker, such as registration with an accepted social security organisation for self-employed workers. The study carried out at the request of the Secretary of State for Anti-fraud Coordination illustrates that the problem is that registration with an accepted social security organisation for self-employed workers in no way proves that the person in question is actually working as a self-employed worker.

There has been a project under way since 1 October 2010, in which the Aliens Office is requesting that municipalities require that EU nationals wishing to register as self-employed workers provide a specific certificate of affiliation rather than a traditional certificate. The social security organisation informs the National Institute for the Social Security of the Self-employed (NISSE) that this specific certificate of affiliation has been issued. The EU national concerned receives a questionnaire to be completed within three months, which has to prove that activities as independent self-employed worker are indeed being carried out. It is on the basis of this questionnaire, and, if appropriate, additional investigations, that the NISSE makes its decision. The institute requests, if necessary, that the person's affiliation with the social security organisation be revoked and in such case informs the Aliens Office thereof. The objective is to enable the latter to withdraw the residence permit more quickly in cases of abuse, especially before a long-term residence permit has been issued.¹⁹¹

Free movement within the EU has contributed to increasing prosperity, but it is also very useful to criminal networks (including those trafficking in human beings). The Centre is perfectly aware that combating abuse in a European context whilst respecting the rights of (honest) EU citizens¹⁹² is like dancing on a tightrope. The Centre is, naturally, always willing to make an active contribution to considerations on this subject.

¹⁹⁰ See also the Annual Report Migration 2010, p. 147.

¹⁹¹ *Ibid.*

¹⁹² We are referring here to European regulations and case law, which leave little space for additional checks. Furthermore, we wish to highlight, in this regard, the problems and long waiting periods with which (honest) EU citizens are faced when registering in big cities and municipalities. See Annual Report Migration 2010, p. 145.

CHAPTER 3: TARGETING ALL LINKS IN THE CHAIN: FROM THE SUBCONTRACTOR TO THE PRINCIPAL EMPLOYER

The growing unification of Europe and the resulting increase in workers' mobility are reflected, in particular, by a rise in the number of seconded workers. Such seconding, in the context of sometimes complex arrangements (multiple subcontractor chains, subcontracting through employment agencies, or bogus self-employed workers), may be used as a cover for dubious practices and facilitate the exploitation of migrant workers. This theme was dealt with extensively in our last annual report¹⁹³. The International Labour Organization (ILO) has also noted that some companies may use subcontracting in precisely this way to avoid complying with regulations. It provides the example of Belgium, where subcontracting hinders action aimed at recovering unpaid social security benefits because there is no joint liability measure in place¹⁹⁴.

In cases of trafficking in human beings for the purposes of labour exploitation involving subcontractors, often only the entrepreneur or subcontractor are taken to court.¹⁹⁵ Whereas, whether in construction, cleaning services or other sectors (textile industry, etc.), it sometimes emerges that the principal contractor or employer could not be unaware of the deplorable working conditions in which work is carried out. This may be the case where a principal contractor accepts estimates that seem much too low or where they notice that foreign workers are on their site without making enquiries as to their status.

We have also demonstrated (see chapter 1) that subcontracting may sometimes take on very complex forms. It is for this reason that many actors in the field (social inspectors, magistrates, trade unions, etc.) are calling for legislation introducing joint and several liability of principal contractors, which would thus enable them to target all the links in the chain¹⁹⁶. This issue has been on the political agenda for many years.

¹⁹³ 2009 Annual Report Trafficking in and smuggling of human beings: *'In a haze of legality'*, Part 2.

¹⁹⁴ International Labour Organization, *'Labour inspection in Europe: undeclared work, migration, trafficking'*, Working Document No 7, January 2010, p. 22.

¹⁹⁵ See in particular Charleroi Criminal Court, 10 December 2010, 7th Chamber (cleaning in fast-food restaurants: only the manager of the cleaning firm was prosecuted) (see also above, Part 1, Chapter 4, Case law review).

¹⁹⁶ See in this regard the report of the Senate's working group, *op.cit.*, pp.28-29 & 72 and Samilia Foundation, *Anti-trafficking Day 2010, Trafficking in Human Beings for Labour Exploitation*, Actes du colloque, Chambre, 22 October 2010, pp.16, 20 and 26.

In 2003, 2007 and 2009, the Centre already recommended that a law introducing joint financial liability for principal contractors should be adopted in the context of trafficking in human beings for the purposes of labour exploitation.¹⁹⁷

This kind of system exists in France and seems to be an efficient tool in combating illegal employment. There, the Employment Code (Articles L 8222-1 to 7)¹⁹⁸ enables the civil or criminal liability of a professional or a private principal contractor who has recourse to undeclared employment to be incurred. The liability applies not only to fiscal and social security debts but also to financial support and any employment subsidies granted to a company. The company is then ordered to reimburse such sums. The overarching idea in this system is that the principal contractor must make checks and perform due diligence with regard to their co-contractor and must thus insist on being provided with various certificates (e.g. company registration, compliance with salary norms, etc.).

A chaotic and incomplete legislative pathway

Various initiatives have been taken in Belgium with a view to attempting to introduce an equivalent system, although agreement has not yet been reached.

Several legislative proposals have been tabled in the Chamber in the last few years, aimed at introducing the joint liability of the principal contractor – both criminal and civil liability¹⁹⁹ and liability for amounts owed to social security organisations²⁰⁰. These proposals have unfortunately never progressed beyond this stage.

Initiatives have also been taken at government level by successive Ministers of Employment, with a view to obtaining a consensus in this regard, so far to no avail.²⁰¹

¹⁹⁷ See the Trafficking in and smuggling of human beings 2003 Annual Report: ‘*Plaidoyer pour une approche intégrée*’ [‘Plea for an integrated approach’], pp. 30 to 31, the 2007 Annual Report ‘*Public policy as seen by a National Rapporteur*’, p. 120 and the 2009 Annual Report ‘*In a haze of legality*’, p. 134.

¹⁹⁸ Formerly articles L324- 9 and following. The Employment Code is available on the following website: <http://www.legifrance.gouv.fr>.

¹⁹⁹ See the legislative proposal of 16 March 2000 on combating undeclared work, introducing joint and several financial liability between principal employers and contractors or subcontractors and amending the Judicial Code and the law of 16 November 1972 on the Labour Inspectorate, *Doc. parl.*, Chambre, 1999-2000, No 0513/001. This proposition, aimed at introducing joint criminal and civil liability (as regards the payment of taxes, social security contributions and workers’ remuneration) for an employer that has had recourse directly or through an intermediary to the services of a person performing undeclared work. The same proposition was presented again by the same parliamentarians on 18 August 2003 (*Doc. parl.*, Chambre, s.e., 2003, No 0172/001) and an equivalent proposition was presented on 7 February 2006 (legislative proposal on combating undeclared work and introducing joint and several financial liability between principal employers and contractors or subcontractors, *Doc. parl.*, Chambre, 2005-2006, No 2262/001)

²⁰⁰ Legislative proposal of 7 November 2008 introducing joint and several liability between the principal employer and the subcontractor for the payment of amounts owing to social security organisations, *Doc.parl.*, Chambre, 2008-2009, 1557/001, reintroduced in 2010 (*Doc.parl.*, Chambre, 2010-2011, 0450/001).

²⁰¹ See in this regard in particular the 2003 Annual Report on trafficking in human beings, ‘*Plaidoyer pour une approche intégrée*’ [Plea for an integrated approach], pp. 30-31.

With regard more specifically to trafficking in human beings, the tabling of a legislative proposal enabling penalties to be applied to principal contractors commissioning work from subcontractors having recourse to the exploitation of clandestine labour was included in the measures envisaged to combat trafficking in human beings in the context of the 2003 governmental agreement²⁰².

A working group formed within the Inter-Departmental Unit to coordinate the combat against trafficking in and smuggling of human beings was appointed to examine this issue²⁰³. The latter was mandated to draft a **law** introducing joint and several civil (and criminal) liability for principal employers or contractors having recourse to intermediaries carrying out trafficking in human beings. The main aim was to dissuade principal employers from using such intermediaries and to require them to behave more diligently in their contractual relationships. Such joint liability was limited to cases of trafficking in human beings. The principles were as follows: the principal employer must require the intermediary to provide a number of documents certifying that they are compliant with social law and labour legislation. If, subsequently, an offence of trafficking in human beings committed by the intermediary is recorded and the principal employer has not performed due diligence in requiring the documents to be provided beforehand, the latter will be considered as jointly liable under civil law. The question of joint liability under criminal law was an additional avenue to be explored. The draft law, however, was never discussed during the previous legislature.

This **initiative has been reactivated in the current legislature** by the Minister of Justice. The declaration of general policy made by the Minister of Justice in April 2008 describes combating trafficking in human beings as a priority as well as combating social security and fiscal fraud²⁰⁴, and in particular states that efforts will be made, amongst other, to combat undeclared work, networks of labour-only subcontractors and the sale of false social security documents. This initiative is currently being managed in collaboration with the offices of the Minister of Employment and the Secretary of State for anti-fraud coordination. The first version of the text did not achieve the consensus hoped for, in particular as regards trade and industry representatives²⁰⁵.

A **new version of the text** was therefore drawn up. That new version lays down penalties relating to civil and criminal liability where the principal employer knew or should have known that workers were employed in working conditions contrary to human dignity²⁰⁶.

²⁰² Federal Government Agreement of 8 July 2003, *Une Belgique créative et solidaire, du souffle pour le pays* [A more creative Belgium showing more solidarity, some air for the country], chapter 7, point 6.

²⁰³ See in this regard the report by the Senate's working group, *op.cit.*, p. 21 and the Federal Government Action Plan on combating trafficking in and smuggling of human beings in Belgium, 2008.

²⁰⁴ Point 5.3, p. 67. However, the 2008-2011 Government Agreement (Government Agreement of 18 March 2008 concluded between the negotiators of CD&V, MR, PS, Open Vld, and cdH [Belgian political parties]) did not make explicit mention either of trafficking in human beings or of the adoption of a law to apply penalties to principal employers.

²⁰⁵ Report of the Senate's working group, *op.cit.*, p. 21.

²⁰⁶ *Ibid.*, p. 45.

When adopting a law introducing joint and several civil and criminal liability for principal contractors or employers, the Centre considers that it should be possible to incur the liability of a principal employer who couldn't have been unaware, has played a stimulating role in, or has participated in the organisation of the exploitation.

In the meantime...

Whilst the adoption of the law introducing the joint liability of principal employers could certainly have a dissuasive effect, certain sectors have not waited for such a law to come into force before putting in place *best practices*.

The **meat industry, for example**, is more and more often confronted with the issue of bogus self-employed workers. The meat industry is the second largest sector in the food industry. It includes 534 companies of which 65 % employ less than 20 persons. In this sector, the use of subcontractors is very common. Many firms call upon external employees, for example to produce cuts of meat or to debone meat. A common method used by certain companies consists of dismissing staff and then contacting the former workers, who are then employed on a self-employed basis. In fact, these subcontractors often have only a forwarding address instead of a registered office. In the event of bankruptcy, nothing can generally be obtained from such companies. The subcontractors often recruit among Eastern European migrants. The Ghent region, where many problematic situations are recorded, is an example of this. In the substantial Turkish community, many people play an intermediary role by recruiting, as subcontractors, new arrivals such as Bulgarians. The latter are sometimes obliged to work in conditions close to slavery (violence, threats, non-payment of wages, etc.)²⁰⁷. It was for this reason, at the end of last year, that the industry concluded a **protocol for collaboration with trade unions** in which it recognises **joint and several liability for employers** (if a company in the meat sector enters into a contract with an external firm, it must be possible to hold the company liable for the treatment of workers and, ultimately, the company must intervene financially in the event of offences being committed)²⁰⁸. The above is on condition that the authorities put in place a digital database where the companies can find out whether a subcontractor has paid his contributions. The protocol is still to be implemented, however, which is not easy under a government of current affairs.

In the **construction sector**, the construction federation [*Confédération Construction*] warned one of its members, when it enquired about the reliability of a firm that it was

²⁰⁷ J. Wets, '*Ils sont venus de l'Est... Nouveaux arrivants roumains et bulgares sur le marché belge du travail*' [They came from the East... New Romanian and Bulgarian arrivals on the Belgian employment market], Presentation made as part of the study day organised by the ACV [Belgian General Christian Union] on 10 May 2011.

²⁰⁸ De Tijd [Belgian newspaper], '*De grot van Ali Baba*', 4 June 2011. See also the website: <http://www.febv.be/news.php?id=2009> (Dutch and French only).

employing as a subcontractor, that the workers' papers were not in order, that the latter had not been paid, and were housed in bad conditions. The member then terminated the subcontractor's agreement immediately²⁰⁹. We should also mention the agreement that has just been concluded between employers' representatives and workers in the construction industry with a view to combating fraud and undeclared work²¹⁰. One of the measures laid down in this agreement – which is still to be put into law – is the joint and several liability of the principal contractor for the payment of a minimum salary when they call upon subcontractors. The agreement does not provide for joint and several liability in cases of fraud or illegal employment.

The '**Organisation for enterprises active in the fashion, clothing and textile industry**' (*Creamoda*) has concluded a charter of good practices with the trade unions concerning compliance with working conditions in the broadest sense. It has also recommended that its members, when entrusting work to subcontractors, impose upon them an obligation to make a sworn declaration as to working conditions in the contractual specifications²¹¹. Monitoring is, however, hypothetical, in particular if manufacturing takes place abroad.

In order to deal with the problems of clandestine workshops producing counterfeit clothing, the European organisation for **textile and clothing** (*Euratex*) participated with a Belgian anti-counterfeiting association in taking special action throughout the territory targeted at closing several clandestine workshops. The multidisciplinary coordination (between the police, the judiciary, and the social inspectorate) has worked very well²¹². This example demonstrates once again the importance of coordination and action at national level to target all links in the chain.

Better monitoring of subcontractors by the companies themselves, particularly where production takes place outside Europe, is also necessary (knowing who they are, how they work, and how they manage their employees, etc.).

Directive 2009/52/EC and the liability of the principal employers

We cannot close this chapter on the liability of principal employers without mentioning directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, better known under the name of the '**penalty directive**'²¹³. This directive contains preventive measures, as well as penalties and protective measures.

²⁰⁹ For further information, see above, Part 1, Chapter 2 (Phenomenon analysis).

²¹⁰ De Tijd [Belgian newspaper], '*Fraude in bouw harder aangepakt*', 25-26 June 2011, pp. 1-2; De Standaard [Belgian newspaper], '*Bouwfraude aangepakt*', 27 June 2011, pp. 36-37.

²¹¹ Samilia Foundation, *Anti-trafficking Day 2010*, *op. cit.*, p. 44.

²¹² *Ibid.*, p. 46.

²¹³ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, *O.J.*, 30 June 2009, L168.

- As regards **preventive measures**, employers must check, before hiring third-country nationals, that the latter have a valid residence permit or other equivalent authorisation to stay in the country. If employers have not performed the required checks before recruiting employees, they are liable to pay penalties and, if applicable, subject to other administrative measures (in particular exclusion from entitlement to subsidies).
- If these measures are not enough to dissuade certain employers, the directive also provides for **criminal penalties**, for five offences considered as being the most serious (including trafficking in human beings).

Member States must thus make it a punishable offence under their legislation for employers, even though they have not been prosecuted or convicted of trafficking in human beings, to use work or services exacted from an illegally staying third-country national in the knowledge that he or she is the victim of trafficking in human beings²¹⁴.

Example: In an actual case in which the Centre made a civil claim, an international oil company thus refused to continue to work with a subcontractor when it became aware of the conditions in which the persons cleaning highway restroom facilities were obliged to work. This is certainly an example of good practice²¹⁵.

- The directive also places an obligation upon Member States to introduce a **system of joint and several liability for financial penalties and back payments of wages in cases of subcontracting**.
- Lastly, **in the area of protection**, the employer is, amongst others, bound to pay all wages due.

This Directive was to be transposed by 20 July 2011. However, at the time at which this report was finalised, no outline for transposition was, in our knowledge, under discussion yet.

The Centre reiterates the importance of adopting a law introducing joint and several liability for principal employers or contractors, all the more so since European legislation now imposes the adoption thereof. It considers as praiseworthy but insufficient the isolated initiatives taken by some business sectors exposed to the risk of trafficking in human beings. The Centre therefore calls for the draft legislation currently under discussion to be given higher priority in the political agenda, in order that the legislative work begun in 2003 may finally come to fruition.

²¹⁴ Article 9, 1, d) of directive 2009/52/EC.

²¹⁵ For further information, see above, Part 1, Chapter 2 (Phenomenon analysis).

CHAPTER 4: GOOD AND BAD PRACTICES

1. Trafficking in human beings, a priority for prosecutors?

In order to effectively combat trafficking in human beings and target all links in the chain, trafficking must first of all be a prosecution priority for the magistracy.

In the example of the restroom facilities/services sector (see above), the Centre noted that the Public Prosecutor's Office was not treating the various cases of trafficking in human beings for the purposes of labour exploitation as a priority. The Federal Public Prosecutor's Office, in turn, was no more willing to take the initiative in these cases, while the offences had been committed in several judicial districts.

Only the Ghent labour prosecutor took the restroom services case to a pre-trial hearing for offences of trafficking in human beings committed in his judicial district and gave it the necessary priority for prosecution. Both the subcontractor and principal employer were remanded to appear before the Criminal Court to be judged on offences of trafficking in human beings. By referring the matter to an investigative judge, the Ghent labour prosecutor effectively used all means of investigation to achieve his aim. Regarding the charge of trafficking in human beings, he limited himself to the offences committed in his own judicial district. In the absence of initiative on the part of the Federal Public Prosecutor's Office, the complexity of a case that crosses the borders of a district represents an obstacle. Alas, serious offences of trafficking in human beings which were committed in other judicial districts by the same principal employer, but with other subcontractors, are very likely not to be prosecuted. It is for this reason that the Centre also made a civil claim in a case initiated in another district, in which the same principal employer was involved.

Magistrates are the point at which investigations and observations of indicators demonstrating trafficking in human beings carried out by inspection services and the police culminate. **Magistrates determine prosecution policy in matters of trafficking in human beings, to which front line services have to adhere.** If magistrates do not give enough priority to cases of trafficking in human beings for the purposes of labour exploitation, this has repercussions on the attitude adopted by front line services when faced with this issue and may have a negative impact on the detection of more complex cases with enmeshed arrangements.

For large-scale cases of labour exploitation, some labour auditors are petitioning to have a specialist in social legislation included among the magistrates at the Federal Public

Prosecutor's Office. This kind of specialisation can contribute to making them more aware of their responsibilities and encouraging them to treat this type of large-scale case at federal level.²¹⁶

2. Tangible evidence – Collecting it wherever it can be found

Cases of trafficking in human beings involving principal employers or contractors are often complex cases with all kinds of arrangements utilising subcontracting. This requires close attention, both to detect the problem and when collecting evidence.

The liability of the principal employer must be demonstrated by proving that they were aware of the system of exploitation or that they were involved in its continuity and/or the stimulation and/or organisation of practices of trafficking in human beings. This **requires an adapted investigation strategy**, with a **comprehensive approach beyond district level**, where all the pieces of the puzzle are collected together in order to provide proof of the principal employer's liability. One and the same principal employer may be involved significantly but not visibly in practices of trafficking in human beings in several districts through different subcontractors. If we limit ourselves to a simply local and individual approach, there is a great risk that the investigation will only concentrate on the subcontractor and that the principal employer will escape investigation. Collecting evidence from different districts may provide key added value in demonstrating the role (or awareness) of the principal employer as the party that continued, stimulated or organised a system of exploitation.

This kind of approach requires that trafficking in human beings be given **greater priority in prosecutions** and that the Federal Public Prosecutor's Office, with strengthened social criminal legislative grounds, plays an active role. Furthermore, it is essential to refer the matter swiftly to an investigative judge who has more extensive powers. Thus, investigation methods such as phone tapping or specific search methods, in which the police are specialised, can be better used, giving much added value to a case. This is all the more relevant for cases of principal employers involving complex arrangements through subcontracting.

The **Belgian Social Intelligence and Investigation Service (SIRS)** could also play a **role** in dealing with large cases of trafficking in human beings for the purposes of labour exploitation. The unit has the remit of coordinating and supporting social inspection services. It gives priority to the hotel, restaurant and catering sector and the construction industry. Since 2011, the *SIRS* has put in place **a database** to coordinate inspections all over the country (see '*Some good practices*' below). Labour prosecutors' services also have access to the database, which is new. The *SIRS* has also put in place a joint support unit with the police to combat serious and large-scale organised social fraud, and exchange information relating thereto. Since 2011, they have been cooperating very

²¹⁶ See in this regard recommendation 6 of the 2009 Annual Report Trafficking in and smuggling of human beings: '*In a haze of legality*'.

actively, which is essential to combat these complex cases. They also contribute to better international cooperation, for example with France. Through bilateral agreements, we are currently seeing excellent cross-border collaboration with the French inspection authorities. These measures give great impetus in combating complex large-scale arrangements of trafficking in human beings for the purposes of labour exploitation.

Lastly, the **local police can also play a crucial role** in detecting practices of trafficking in human beings for the purposes of labour exploitation. Here we consider a *good practice* the fact that when slum landlords are brought to light, the inspectors question the illegal inhabitants as to how they had to pay their rent and try to establish the nature of the relationship with the landlord/employer. In doing so, they can also check the employment situation and may discover cases of trafficking in human beings for the purposes of labour exploitation.²¹⁷ General residency inspections made by the local police are also an inestimable source of information in tracing trafficking of human beings and detecting its victims.

3. Providing social inspection services with effective weapons

One of the key players in detecting cases of trafficking in human beings is the social inspectorate. Each year, between 25 and 30 cases of victims of trafficking in human beings are directly initiated or dealt with by the social inspectorate and passed on to the judicial authorities. However, this number seems derisory with regard to the total number of inspections relating to the employment of foreign labour, which represent between 2,600 and 2,900 foreign workers²¹⁸. This observation is could be explained by the allocation of follow-up investigations between the police and social inspectorate, as well as by the fact that this is only one of their many duties.

In fact, the social inspection services play a key role in detecting indications of trafficking in human beings by sending their reports or statements to the labour prosecutor. In this context, it is important that they describe their observations made during their inspections of working and living conditions in detail. The observations included in reports or statements must in particular be used as a basis for further investigation. Imprecise statements lead to a lack of clarity for the labour prosecutor, who, at best, will have to ask the inspector for more details, leading to a waste of time. At worst, no further action will be taken because of a lack of evidence with regard to important indicators of trafficking in human beings.

Whilst in some inspectorates, inspectors have acquired expertise in the field of trafficking in human beings, **other inspectorates still have to be trained in detecting victims of trafficking.** Thus ‘cross-border employment’ units have as their main objective to check

²¹⁷ 2008 Annual Report ‘Trafficking in and smuggling of human beings: *Enlisting people and resources to combat the phenomenon*’, p. 80.

²¹⁸ Samilia Foundation, *Anti-trafficking Day 2010, op. cit.*, p. 16-17.

whether foreign workers who are staying temporarily in our country as part of a secondment meet the relevant regulations. In fact, they have to work on complex arrangements and new forms of cross-border fraud, such as contractors launching, via the Internet from Belgium, a temporary employment agency in Eastern Europe²¹⁹. These are often dummy companies that are recruiting foreign workers. Such temporary employment agencies pay the minimum wage in Belgium and social security contributions in the country where they are officially established. The special units may therefore not pay close attention to possible evidence of trafficking in human beings. It is important that these units are also made aware of these problems.

Another problem concerns **combating bogus self-employed workers** (a point also dealt with above). This issue was also examined in our last report. As with seconded workers, bogus self-employed status is sometimes, for those carrying out exploitation, a way to use cheap foreign labour. In the last few years, inspection services have been confronted more and more often with bogus self-employed workers when making inspections. The construction industry and night shops are particularly exposed to this. Thus it seems that Pakistanis running night shops employ bogus self-employed workers who hold no shares (or very few, without having paid for them). These so-called self-employed workers do not have access to the accounts, cannot fix the dates of their leave or their working times, and often sleep in the kitchen behind the shop or in cellars²²⁰. Sometimes these bogus self-employed workers are also affiliated with a social security organisation, whilst staying illegally on Belgian territory. The same problem occurs in the car wash sector²²¹.

In fact, the inspectorates lack the means to reclassify the accomplishments in an employment contracts. Indeed, under Belgian law, the parties are free to agree together the nature of the contract binding them. Nevertheless, the parties' behaviour during their professional collaboration must not contain actual elements that are incompatible with the classification used. The parties' wishes prevail. The latter may therefore continue to state that they are self-employed shareholders, except if the facts clearly demonstrate the contrary.

The aim of the law on employment relationships, adopted in 2006²²², was to provide inspectors with additional resources to reclassify employment relationships on the basis of general criteria (defined in the law) and specific criteria applicable to a sector, one or several professions or categories of professions (to be determined by Royal Decree). This list of specific criteria is to be established by a commission. The Royal Decrees aimed at implementing these commissions were published last year²²³. However, given that there

²¹⁹ Interview with Anja Scheerlinck, social inspector, *De Standaard* [Belgian newspaper], 6 May 2011.

²²⁰ Samilia Foundation, *Anti-trafficking Day 2010, op. cit.*, p. 54.

²²¹ See above, Part 1, Chapter 2 (Phenomenon analysis).

²²² Title XIII (articles 328 to 342) of the programme-law (I) of 27 December 2006, *Moniteur Belge* [Belgian Official Gazette], 28 December 2006.

²²³ Royal Decree of 14 December 2010 on the composition and operation of the chambers of the administrative division of the Commission on organizing employment relationships, *Moniteur Belge* [Belgian Official Gazette], 28 December 2010; Royal Decree of 14 December 2010 on the composition and operation of the prescriptive division of the Commission on organizing employment relationships, *Moniteur Belge* [Belgian Official Gazette], 28 December 2010.

is only a government of current affairs in place, the members of such a commission cannot be appointed.

Furthermore, as described earlier (see chapter 2, point 4) abuse of self-employed status has mainly been noted among citizens of countries that have recently become members of the European Union. It is for this reason that the Secretary of State for anti-fraud coordination has taken certain measures. Since 1 October 2010, more rigorous controls of the effective engagement in self-employed work by citizens of the Union have taken place.

Let us also note that the work of the inspectorates as regards secondment is likely to become more complicated in the future. As we have already explained (see chapter 2, point 2), the European Court of Justice condemned the LIMOSA system (former version) and similar proceedings relating to the current LIMOSA system are pending before the Court.

Some examples of good practices

As *good practices*, let us first note that the Social Intelligence and Investigation Service (*SIRS*) has developed a **management and statistical tool** (effective since January 2010) for the inspections made by various inspectorates. It can currently be accessed by the secretary of each district unit, an administrative clerk at the unit, labour prosecutors and the *SIRS*. It enables the activities of the district unit to be monitored (inspections made, companies inspected, offences recorded). Trafficking in human beings is one of the offences appearing in this database. Data consolidation is carried out within 45 days of the inspection. The tool does not allow developments in the case to be monitored. However, it covers all inspections made on Belgian territory. Four priorities have been defined: undeclared work, accumulation of benefits, labour exploitation, and the employment of foreign workers.

Another *good practice* is the **effective launch, since January 2011, of the activities of the joint support unit**. The latter resorts under the *SIRS* but is located at the offices of the federal police in Brussels. It is composed of two representatives of the federal police and four representatives of the *SIRS* inspection services (monitoring of social legislation, the social inspectorate, the NISSE, and the National Employment Office (ONEM/RVA)). The idea is to exchange information. Above all, the initiative targets serious and organized crime. The unit is active throughout the country. It is probable that this unit will work on several large cases, some involving labour exploitation.

Lastly, we must once again highlight **the importance of** strengthening and improving, from a structural point of view, **cooperation between the social security inspectorates of the Member States of the European Union**. Too often, personal contacts are the only way to obtain the information needed, official channels being too slow and even inefficient.

4. Local authorities made aware of trafficking in human beings

Combating trafficking in and smuggling of human beings has been a priority for a number of years for the police and the judiciary under the National Security Plan. Recently, more and more attention has been paid to an integrated approach to these issues (and to organized crime in general). Nevertheless, a key part of this approach has until now been underdeveloped – the involvement of local authorities. As part of the chain link approach described in this part, we are therefore going to discuss the possibility of involving local authorities in combating practices of trafficking in and smuggling of human beings.

4.1. The example of the Netherlands

In the Netherlands, the involvement of local authorities in this combat has been widely acknowledged and harnessed for a long time. The Dutch were inspired by the so-called double strategy successfully applied in New York – there, the jurisdictions of administrative and criminal authorities are considered to be complementary in combating organized crime.²²⁴

In 1999, the Netherlands established an institutional framework for this approach by virtue of the **BIBOP** law (*Bevordering integriteitsbeoordeling door het openbaar bestuur* - advancement integrity check by the public authorities). This law, in force since 1 June 2003, grants powers of screening, withdrawal or, if applicable, refusal of permits, tender bids and subsidies, to administrative bodies such as municipalities or provinces. Grounds for withdrawal or refusal are only acceptable if there is a risk that offences will be committed or a suspicion that offences have been committed in the past. In practice, this means that the local authorities can carry out profound investigations of persons or firms making applications for subsidies, permits and/or tender bids. The application may be refused if it transpires from the investigations that there is a history of criminal activities or that dubious financial arrangements are in place.

This law has the aim of ensuring that the public administration does not facilitate criminal activities in any way whatsoever. The law is sensitive to the principles of subsidiarity and proportionality. The first principle implies that the **BIBOP** law is an additional resource, supplementing other instruments. It is only when existing reasons for refusal and withdrawal seem insufficient that this law may be applied. In accordance with the

²²⁴ For further information on the approach to organized crime at an administrative level, see: D.VAN DAELE, T.KOOIJMANS, B. VAN DER VORM, K.VERBIST and C. FIJNAUT, *Criminaliteit en rechtshandhaving in de Euregio Maas-Rijn.Deel 3. De bestuurlijke aanpak van de georganiseerde criminaliteit in Nederland en België*, Antwerp/Oxford, Intersentia 2010, 494 pp.; See also: J. JACOBS in L. GOULDIN, “*Cosa Nostra: The Final Chapter?*”, in M. Tonry (ed.) *Crime and Justice: A Review of Research*, Chicago, The University of Chicago Press, 1999, vol. 25, pp. 129-189.

principle of proportionality, guarantees have also been incorporated to ensure a balance between the State's integrity and applicants' private lives.²²⁵

The Office of the Dutch National rapporteur nevertheless highlights the fact there are still great differences in the Netherlands among local authorities in terms of the approach used to combat crime. The lack of uniformity means that an approach adopted in one municipality may have consequences for others. For the moment, this problem has not yet been resolved.

For certain very specific issues, such as offences of trafficking in human beings, the Netherlands have moved on to a so-called programmatic approach – administrative, criminal and fiscal measures all play a role therein. Thus, six regional information and expertise centres (*RIECs*) have been created to act as nerve centres in exchanging information between local authorities and investigation units.

Another element of this programmatic approach is what is called the '**barrier model**'. This model was developed by the Dutch Social Intelligence and Investigation Service [*SIOD*]²²⁶ after it noted that criminal organisations were making use of legal entities for their activities. To avoid the mixing of the so-called legal "upper world" and the illegal underworld, this model tries to build strong barriers to hinder illegal activities (firstly, but not limited to, illegal work). This model uses the principle that effectively combating, amongst others, trafficking in human beings requires an integrated approach, and that criminal instruments (investigation and prosecution) must be combined with preventive and administrative measures.

The original barrier model aimed at drawing up an inventory of the barriers that can be put in place to combat illegal work. This model gives an overview of the issue and uses as its basis the four "obstacles" that a foreign person has to overcome in order to be able to work in the Netherlands: entering the country, accommodation, identity and employment. For each of these obstacles (barriers), a whole series of illegal facilitators (such as slum landlords) is listed, as well as investigation units and the services maintaining public order authorised to intervene with regard to these barriers. This makes it easy to identify potential partners one might collaborate with during the investigation and prosecution of the criminal activities in these areas.²²⁷

Since that time, the model has been amended several times. One barrier was added in 2005 for a large-scale investigation on trafficking in human beings and forced prostitution, namely the 'financial' barrier.²²⁸ Then, legal service providers²²⁹ were added

²²⁵ For further information, see the *Nederlandse Kamerstukken II* [Dutch Parliamentary documentation], 1999/2000, 26 883, n°3, p.8.

²²⁶ The Dutch *SIOD* cannot be compared to the Belgian *SIRS*. The Dutch *SIOD* has operational powers in this regard, which is not the case for the Belgian *SIRS*.

²²⁷ For the model and further information, see also the 2005 *SIOD* Annual Report, page 10, published online at <http://www.siod.nl/content/blogcategory/29/107/> (in Dutch only).

²²⁸ This investigation is known under the name of *Sneep*, for further information, see in this regard http://www.om.nl/onderwerpen/mensenhandel_en/@148766/schone_schijn/ (in Dutch only).

²²⁹ A service provider may be a method/a tool or a person.

to the model (since obstacles may be overcome both illegally and legally), as were illegal service providers, illegal activities and strategic partners. Thus the 'identity' barrier can be overcome legally, for example, through marriage, or illegally through a marriage of convenience. The service provider inventory also enables the degree of dependency to be analysed. When a person depends on the same dubious service provider to overcome, illegally, two or more barriers, we describe this as multiple dependency, which of course increases the risk of exploitation.

The strategic partners in combating criminal activity indicated in the models are those that can provide relevant information about perpetrators, facilitators and victims. Thus, amongst others, the following are named: municipalities, immigration and naturalisation services, housing foundations, fiscal intelligence and investigation services, the labour inspectorate and the *SIOD* itself. Cooperation and exchange of information with these partners is essential to investigate and combat such activities. The overview of legal or illegal facilitators of criminal behaviour as presented in the barrier models enables criminal and administrative measures to be taken to counter such procedures as well as to take preventive action. In the meantime, these models have been considerably extended, and are much used in the Netherlands, including for the trafficking in and smuggling of human beings, thus providing a very practical manual for the administrative and criminal approach of these offences.

4.2. The local approach in Belgium

In Belgium there have been attempts to use a local administrative approach to crime for a long time as well. This approach was initiated in 1996 in the Government Action Plan against organized crime.²³⁰ In the same year, a Parliamentary commission tasked with investigating organized crime was set up²³¹, and a few years later, the 1999-2000 Federal Security and Detention Plan²³² devoted attention to the issue, specifically in the context of trafficking in human beings. Although these reports have always recommended an administrative approach, it wasn't until the entry into force of the law on municipal administrative sanctions (*SAC*)²³³ that it was actually implemented. Even though this was clearly a way to move towards a local administrative approach to certain types of punishable actions, it did not target the more serious crimes such as trafficking in and smuggling of human beings. In some cases, the perverse effect of this law was that the attention of the local police was diverted towards nuisances, which could now be rapidly and severely sanctioned, to the detriment of more serious crimes such as trafficking in human beings.

²³⁰ Government Action Plan against organized crime, approved by the Council of Ministers on 28 June 1996, *not published*.

²³¹ Parliamentary Commission tasked with Investigating Organized Crime in Belgium, Final report, *Doc.parl.*, Sénat, 1998-99, No 1-326/9.

²³² The Federal Security and Detention Plan, *Doc.parl.*, Sénat, 1999-2000, No 2/461-1.

²³³ Law of 13 May 1999 on the implementation of municipal administrative sanctions in, *Moniteur Belge* [Belgian Official Gazette], 10 June 1999.

In addition to the legislative possibilities in Belgium, which are rather limited, there are also mutual agreements in use. Thus cooperation between the police and the administrative authorities is very successful in combating slum landlords. In the city of Liège, for example, a protocol agreement was concluded at local level between the Public Prosecutor's Office and the administrative authorities (public health and housing services, city planning and fire services departments, etc.) regarding exchange of information, coordination of the actions of administrative and judicial authorities and resources to be implemented for offences such as those relating to slum landlords.²³⁴

Throughout the territory, investigative judges also use one version of the Dutch barrier model to check which areas can be inspected and where such inspections can be made.

In the Netherlands, a specific, clear and comprehensive institutional framework is available to allocate an active role to local authorities in combating issues such as trafficking in and smuggling of human beings. This is still not the case in Belgium, but the integrated approach to crime has, however, benefited from closer attention in the last few years. The list above seems to demonstrate that in Belgium, despite the absence of a specific legal framework like the Dutch *BIBOP* law the local authorities can, in practice, undertake action under the integrated security policy. The fact remains, however, that it is the Dutch model that serves as a standard here.

In the Centre's opinion, at the very least the awareness of local authorities (including Public Welfare Offices) should be raised in order that they consider the possibility of detecting victims and/or identifying offences of trafficking in and smuggling of human beings in their daily duties. See also in this regard this part, chapter 2, point 4.

²³⁴ Committee for Interior and Administrative Affairs, Report on trafficking in human beings, *Doc.parl.*, Sénat, session 2009-10, No 4 – 1631/1, p. 64.

PART III

EXTERNAL EXPERTS' VIEWS ON SPECIFIC ISSUES

In this part of the report, the Centre has chosen to ask three external experts to briefly present an issue in their field, pinpointing certain difficulties they encounter on a daily basis and making, if appropriate, recommendations. We present the contributions from the Federal police (trafficking in human beings and the Internet) and a social inspector (trafficking in human beings and the exploitation of domestic staff), as well as the experiences of a former guardian of a foreign unaccompanied minor in a vulnerable situation.

1. Trafficking in human beings and the Internet

by Vinciane Goosse, Chief police officer, Team manager of the Internet Research on Trafficking and Smuggling team (RITT, Recherches sur Internet Traite et Trafic), Central human trafficking unit, Federal police

Discretion, anonymity (by using a proxy server²³⁵, hacked computers, etc.), easy and cheap access, ease of managing contacts, data that can easily be modified, extensive data storage capacity, obscuring techniques (encryption), fast exchanges, and the international dimension making identification of offenders difficult and slowing down judicial procedures. These are but a few of the factors that make use of the Internet so attractive. All these parameters make Internet an extraordinary tool for all sorts of illegal activities.

It is no longer a secret that the provision of goods and services has made a considerable shift in the last few years towards the Internet. The use of the Internet for the recruitment of victims of trafficking in human beings is not a new form of trafficking, but simply a new means used by traffickers to recruit their victims. We are all aware that a short while ago classified advertisements in the printed press were one of the many methods of recruitment (job offers, proposals of marriage, lonely hearts, etc.). As a result of recent technological advances, these same advertisements are now also published on the Internet. Neither the victims, nor the clients need to buy the newspaper any more, and the traffickers no longer need to pay to publish their illegal advertisements (even if certain newspapers were already offering to place advertisements free of charge). Internet does not, however, replace traditional methods of recruitment, but should be considered as an additional means used by traffickers. The rise of the Internet has simply led to a development in recruitment techniques in the same way as it has undoubtedly contributed to an increase in trafficking in human beings.

The Internet has considerably increased the number of offences. It is not uncommon to find specialised online guides for sex tourists and clients of prostitution, manuals for refugee-candidates describing step by step how to get to a country and how to establish themselves there, going as far as listing behaviour to be adopted to avoid police

²³⁵ A proxy server is a computer or a unit which serves as a link between a person surfing the web and the Internet. A proxy server is also used to carry out searches of web pages with a view to preserving anonymity.

inspections and controls. A large number of websites also offer the possibility to obtain false papers.

Similarly, the Internet also enables traffickers to obtain information describing a country (or town) precisely. Such information can bolster false statements made during police interviews (about their origins, the roads that they say they have used) or mislead investigations being carried out.

Today, we can say that, unlike in the past when each type of delinquency was specialised, globalisation has led to connections between different areas of criminality. Thus prostitution websites are now linked to other sectors of criminal activity.

Many websites used for recruiting by pimps are dissimulated behind innocuous fronts: classified ads for jobs, lonely hearts, false employment contracts, massages of all sorts, the fashion industry, etc. Even though at first glance it seems like nothing is wrong with these websites, such as online chat rooms, forums, and classified advertisements websites – easy accessible through any search engine –, they can also be very dangerous, particularly for minors who can get into contact with traffickers and thus be recruited for exploitation purposes.

Recruitment for the purposes of sexual exploitation does not necessarily take place through sexually explicit websites, but rather through sites recruiting for jobs, through classified ads. Communication thus takes place, amongst others, through chat forums where it is possible to post messages and exchange information without knowing who is on the other side of the screen. Social network sites are the favourite medium to recruit victims, mainly as a first contact between offenders and their victims. Offenders find enough information in their victims' profiles and then only have to choose which ones correspond best to their criteria. Once contact has been made through social network sites, the rest of the discussion generally takes place in private so that it is not visible to the rest of the Internet community.

The creation of websites of a sexual nature

Websites that mainly recruit victims for the purposes of sexual exploitation abroad are, at the creation stage, quite coherent. Traffickers can be classified into three categories according to their contribution to the creation of websites and use that they make of such sites:

1. Traffickers who develop their websites in the country of origin and therefore in the language of their future victims (for example a website in Bulgarian to recruit Bulgarian women). The first website, generally created in the language of the future victims, will be used as a model for other subsidiary websites created later. Generally they are designed according to market criteria and therefore follow trends in demand.
2. A second website is then created to attract future clients. Information about victims recruited is translated into English and into other languages according to the markets that

the traffickers want to conquer. Escort websites, for example, start subscriptions for their clients at this stage. The latter can then pay online, either to visit the women in their countries, or to 'reserve' a woman and have her come to them. The availability and location of each woman is often described on the site, as well as travel dates for when the women will be in different countries.

Not all services offered by escorts necessarily relate to trafficking in human beings. They may be provided by prostitutes working of their own free will.

When a client wants to have a woman come to his home, an intermediary (more and more women are now doing this) residing in the country of destination ensures that the woman gets into and out of the country 'safely'. The same procedure applies if a local trafficker wants to bring women presented on the Internet into his own trafficking organisation. In order to do this, he contacts the intermediary. This method is being applied to all forms of smuggling in human beings, labour and sexual exploitation.

3. The third category corresponds to traffickers recruiting victims (mainly models) and exploiting them without using intermediaries, by offering their services directly to clients through the Internet. It is, however, important to make a distinction between people profiting from the exploitation of victims and creating their own websites for this, and people making money by creating websites on behalf of traffickers. The latter are considered as accomplices in trafficking in human beings through the Internet and play an essential role, because they possess the necessary know-how to create fraudulent websites and dissimulate electronic evidence. It should be noted that traffickers creating websites may be the recruiters themselves.

Methods used by traffickers to recruit through the Internet

The two most commonly used methods by traffickers for recruitment through the Internet are:

- the use of false advertisements for jobs, marriage, lonely hearts, etc.
- the use of online chat rooms.

The types of websites that traffickers use to recruit their victims are:

- marriage bureau websites,
- escort websites,
- lonely hearts websites,
- websites publishing job offers for:
 - domestic staff, working from home,
 - waitresses/barmaids,
 - beauticians (hairdressers),
 - au pairs/home care givers,
 - models,
 - the entertainment industry - dancers/hostesses,
 - construction/factories/agriculture,
 - education,

- marriage proposals,
- tourism,
- the sex industry.

In order to clarify the exact role of the Internet in recruiting victims of trafficking for the purposes of sexual or labour exploitation, we need to have a clearer picture of the Internet infrastructure in the victims' countries of origin. Similarly, it would be interesting to have an idea of the total number of users and the number of frequent users, and to know what these users' motivations are – how many are looking for a job abroad, a husband or wife, etc. All of this by age and by gender.

Limitations of Internet investigations

Here are some points that make web-based investigations rather difficult:

- the international dimension of the Internet: websites hosted abroad (rogatory commissions which are tied to the time-frames of international procedures, offers spread to a very wide audience in different countries in a very short time);
- the boom of the various sex-related websites;
- personalised recruitment techniques (through online chat sites, Internet dating, etc.);
- the diversity of support and formats based on different Internet technologies (discussion forums, Web, email, Newsgroups, Bulletin Board System (BBS)²³⁶, Internet Relay Chat (IRC)²³⁷, Peer-to-Peer (P2P)²³⁸ etc.);
- ever-changing data: websites, profiles, and email addresses can be modified very quickly or even deleted;
- the absence of a Royal Decree defining a time-frame for data storage by internet providers and service providers;
- more and more technical knowledge is required;
- the mass of information available on the Internet makes it difficult to control;
- the languages used to create/use websites;
- it is difficult to differentiate websites offering 'private' sexual services from those dissimulating trafficking in human beings offences;
- the fact that several police departments (Belgian or foreign) may be investigating the same website at the same time.

²³⁶ The BBS (a precursor of the discussion forum) is a server equipped with software for the exchange of messages, storage and file exchange using one or several modems linked to telephone lines.

²³⁷ IRC enables instant communication to take place, mainly in the form of group discussions through discussion channels, but may also be used for one-to-one communication.

²³⁸ The peer-to-peer system enables several computers to communicate, share files, etc., through a network on the Internet.

Recommendations

In order to combat trafficking in human beings through the Internet more efficiently, there should be more space for:

- cooperation initiatives with different countries should be promoted (with a view to achieving a uniform legislative framework);
- collaboration with social networks should be accentuated;
- efforts should be focused on prevention (also online, in chat rooms, social network sites, etc.);
- potential clients should be made aware about certain types of offers being published on the Internet;
- awareness-raising campaigns should be developed in sensitive areas (high rate of unemployment, big wage gaps, etc.);
- systematic surveillance should be carried out of websites offering sexual services and job offers;
- prosecutions should be stepped up both at national and international levels;
- collaboration with search engines and internet providers should be developed in order to set up filters.

2. Trafficking in human beings and the exploitation of domestic staff

by Bruno Deville, social inspector – human trafficking unit, Federal social inspectorate

For some years now, social inspectors have been confronted with an increase in cases relating to the exploitation of live-in domestic staff (household staff and/or child minders working and living in their employer's homes) in the judicial district of Brussels.

Two main categories emerge from the cases that we have handled:

- domestic staff employed by diplomats posted to Belgium;
- domestic staff employed by ‘private employers’ and more specifically amongst these, ‘nannies’ (child minders also performing domestic duties).

Domestic staff employed by diplomats

This issue is specific to the judicial district of Brussels in the light of the large number of diplomatic representations or missions located in the Region’s territory (representations that are accredited by the Belgian state, European institutions or other international organisations).

The social security inspectorate is contacted more and more frequently, in particular by the labour prosecutor's office, to carry out investigations relating to offences of labour exploitation committed against domestic staff employed in diplomats' residences.

The extreme difficulty of such investigations is that tangible findings of the situation of exploitation are made impossible by the immunity granted by the Vienna conventions (Convention of 18 April 1961 on diplomatic relations and the Convention of 24 April 1963 on consular relations) which includes employers with a diplomatic status.

Often, the trigger in these exploitation cases is the escape of the servant from his or her place of exploitation. The authority the latter contacts next depends on the place of exploitation. For embassies or residences situated in Brussels, there have been several cases where the escaping victim went directly to the police station, but this is not general practice. For residences outside Brussels, a victim report is often made by third persons or associations who put the victim in contact with a reception centre, sometimes a long time after their escape.

Consequently, since cases relating to the employment and exploitation of domestic workers in diplomatic residences cannot, due to the immunity granted, lead to judicial prosecution, the main aim of the investigation made by the social inspectorate will be to collect as much information as possible to prove as that the exploitation took place and to enable the victim to benefit from special status as a victim of 'trafficking in human beings' (as laid down in a 2008 directive relating in particular to staff employed by diplomatic personnel²³⁹).

As regards the victim's profile, there are two main categories of domestic staff employed in diplomatic residences:

- workers of the nationality of the country of origin of the diplomat or those usually resident in said country of origin;
- workers of other nationalities mainly recruited through specialised agencies (domestic staff of Philippine and Indonesian origin forming the majority of this category).

In most cases dealt with by the social inspectorate, staff exploited had first been employed in the country of origin of the diplomat and had naturally followed the latter when he/she was posted to Belgium.

In the cases that we came across, we have noted that when employed in the country of origin, although that country does not of course have the same standards of working time or wages as those in force in Belgium, victims were generally working at strictly defined times and had days off.

²³⁹ Circular of 26 September 2008 on the implementation of multidisciplinary cooperation concerning victims of trafficking in human beings and/or certain aggravated forms of smuggling of human beings, *Moniteur Belge* [Belgian Official Gazette], 31 October 2008.

The situation deteriorates upon arrival in Belgium and it is not rare that victims describe working times of 16 hours a day (or even round the clock availability) seven days a week, without having any days off or leave at all.

According to statements collected, this deterioration of the situation could possibly be explained by the fact that in Belgium they are cut off from any social circle that they had in the country of origin. The problem of the language barrier is also often mentioned by the victims, who do not know where to go or who to turn to and report the exploitation.

An example of good practice put in place to combat these problems of exploitation should be credited to the 'Protocol' department at the Federal Public Service (FPS) Foreign Affairs, Foreign Trade and Development Cooperation. It is now common practice that in addition to checking the employment contracts of domestic workers arriving in Belgium, the workers, when given their special identity cards, have a personal interview with officials in that department and are given the direct contact details of the department in the event of 'problems' with their employer.

Similarly, another example of good practice on the part of the 'Protocol' department is the non-acceptance of new domestic workers for diplomats who have been the subject of complaints by former employees.

Domestic staff employed by private employers

One of the first observations that we can make in the light of cases dealt with by the social inspectorate is that exploitation issues are not limited to 'nice areas' or rich employers.

We have indeed noted that some serious cases of labour exploitation of live-in domestic staff, sometimes coupled with physical or sexual violence, are also committed by employers that were themselves from a working-class environment, low-skilled and had a low-income.

Cases detected mainly relate to the employment of child minders ('nannies') looking after small children, or adolescents with a physical or mental handicap.

This usually concerns the employment of young girls or single women of the same ethnic origin or nationality as the employer.

In some cases, we have observed actual 'imports' of these domestic workers from the country of origin.

Two types of cases may arise:

- either the child minder was already employed in the country of origin and was promised an opportunity to come to Belgium to continue their work at a higher wage;

- or the child minder was recruited especially to look after a child. It should be noted that these recruitments are sometimes carried out within the future exploiters' (extended) family unit or clan.

In most cases, the offer to come to Belgium is accompanied by a promise to get a residence permit and be paid a higher wage than in the country of origin (a wage that the employer sometimes agrees, from the outset, to pay in the country of origin and in local currency in order to provide for the needs of the family members who have stayed behind).

Generally, arrival in Belgium takes place under cover of a tourist visa, although we have brought to light cases of completely illegal entry to the Schengen area, either through organised smuggling networks or as part of a trip organised by the employer themselves, ('the little maid' brought along in the luggage after holidays in the country is unfortunately not a rare occurrence).

Once they have arrived in Belgium, the child minder is generally deprived of her passport (usually, according to the employers, it is kept in a safe place to 'avoid it being lost') and is assigned all domestic duties at the place of residence in addition to the main task of looking after the child.

Here too, the services provided by the maid *and* child minder go from dawn to the bedtime of all members of the family, 7 days a week.

The maid/child minder is housed in the same building as her employers (according to statements, housing conditions differ widely, going from sharing the bedroom of the child being looked after to a mattress placed on the floor), she is watched constantly by her employees and is at her 'masters'' disposal at any time of the day or night.

This situation of isolation and surveillance is often reinforced by the fact that the victim isn't allowed to use the telephone in the house and does not have any money to call the members of her family that stayed behind in her home country or to call anybody she might know in Belgium.

The heavy workload imposed upon them means that the domestic workers are almost imprisoned in their place of work.

The language barrier and the illegal nature of the stay also mean that the victim is deprived of her liberty to come and go, and finds herself in a psychological prison, which stops her from envisaging an escape from the place of exploitation. This psychological prison is often reinforced by the emotional ties which, over time, are formed with a child that the nanny is looking after. Several victims, when questioned, have confirmed that these ties with the child stopped them from escaping from the place of exploitation and reporting the treatment that they have been subjected to.

This 'imprisonment' in the workplace may be physical constraint (some victims we meet are actually locked in at their exploiter's residence), sometimes combined with the use of

physical violence or threats made against the victim's family that stayed in their country of origin. Sometimes the situation leads to attempted suicide by the victims.

I would like to describe here the case of one victim whose exploiters were recently convicted by Brussels Criminal Court.

A minor at the time of the offences, this young Moroccan woman had been recruited by a young couple. She had to look after the newborn child of her exploiters, who were working part-time for a cleaning company. The victim had to do all the housework, could not have any contact with the outside world, and if she made the slightest error, was subjected to physical violence by her employers. The only way out of the situation as far as she could see was to attempt suicide. One morning, when locked into her exploiters' apartment and after having taken care that the child she was looking after was safe, the young girl simply jumped out of the window of the flat located on an upper floor.

Seriously hurt, she was taken to hospital where she was threatened by her exploiters. The young girl did not speak any of the Belgian national languages. One member of the nursing staff who understood Arabic heard the threats made. It was only thanks to that member of staff that the young girl was taken to a reception centre and that judicial proceedings were initiated against her exploiters.

This example also reveals some of the difficulties with which the inspectorates and the police are confronted when detecting such exploitation, since they are in essence committed in a closed family environment, with no witnesses and in a domicile or place of residence that is by nature sacred.

If no information is provided or statements made in such cases of exploitation, by neighbours, the family members of the exploiters or third persons that might come to their domicile, we cannot detect or put an end to these situation of exploitation.

It is time that an information and awareness-raising campaign was organised for the general public, putting the spotlight on this issue of private exploitation and indicating the actions that witnesses of such situations can and must take.

3. The experience of a guardian of an unaccompanied foreign minor

by David Lowyck, Director at Minor-Ndako, former employee and guardian at Caritas International

Preliminary clarification from the Centre

Foreign minors' vulnerability, whether accompanied or not, in the light of the danger of trafficking in human beings, requires specific and professional attention on more than one

level. This state of affairs does not concern only illegally staying minors, it also applies to 'native' minors or those that have been living in this country for a long time, who may fall under the spell of individuals and organisations who instrumentalize the minors' vulnerability for the purposes of exploitation. When minors in precarious situations are involved, the attraction of a feigned environment of protection, freedoms and favours often leads them into a trap of control and exploitation.

To close this chapter devoted to external contributions, we hand over to a guardian who observed to what extent the minor (who was his ward) was for a long time in the hold of an adult male. It is likely that, after drugs were administered, combined with an offer of accommodation and other potential favours, the minor found herself in a situation where her person and/or visual images of her were made available to adult males for payment.

In 2004, I started working as a volunteer guardian, and in June 2005, I started working as an employee guardian for Caritas International. Since January 2011, I have been the director of the not-for-profit association *Minor-Ndako*, a reception centre for these unaccompanied foreign minors. My working life has thus been closely linked with this group of young people.

At present, I am still the guardian of one unaccompanied foreign minor, a young girl who is now 17 years old. I was appointed to be her guardian in late 2007.

I decided to continue to perform this duty as her guardian because, as her legal representative, I have made a civil claim in a case being dealt with by the Criminal Court. In this case, the minor -whose guardian I was and still am- is a potential victim of trafficking in human beings, sexual exploitation under the influence of drugs and rape and assault. The legal description of the suffering caused can sometimes differ. Although this case is still in progress and the legal battle is still uncertain and undecided, for me it is an established fact that this 'case' can -and has to- be a lesson to us all, insofar as it concerns the protection of child victims of trafficking in human beings.

As I said earlier, I was appointed as guardian of the young girl in question in 2007. The local police in Antwerp arrested her after a theft in a shop. When interviewed, it transpired that she was alone in the country. She said that she came from Russia but had no identity papers with her. The procedure for reporting an unaccompanied foreign minor to the guardianship service at Federal Public Service of Justice was initiated and the young girl was taken to an observation and orientation centre for unaccompanied foreign minors run by the federal service for reception of asylum-seekers (*Fedasil*) in the town of Steenokkerzeel.

It soon transpired that this young girl had more problems than she had spoken of at the start and more than I had been informed about. At the reception centre, her most striking behaviour was often non-verbal, which often reveals underlying problems. As a guardian and with experience, you learn to spot these signals.

During the following weeks, I visited her as often as possible, on the one hand to be able to create a picture of her situation and her story. On the other hand, also to form a relationship of trust. We do this always keeping in mind that the real story often differs from the story that is being told.

The experience that I have acquired working with many unaccompanied foreign minors has taught me that these young people do not lie on purpose. In fact, they protect themselves or tell an imposed story, which stops them revealing the truth. As guardians, we must quickly 'unlearn' the reflex which consists of pigeon-holing them as liars. A good working practice is to give them time and space to change their version without rejecting them. This space is necessary when working with unaccompanied foreign minors.

If you pin them down to the things they say when they make their first statement, and if you are not open to any changes or if you judge them for having 'lied', you lose any chance of being able to work with them later in your capacity as guardian on what may very well be the real story.

The first statements made by accompanied foreign minors are generally written down in contacts that are initiated with formal authorities and departments such as the police, the border police, the Aliens Office and/or the Guardianship service.

I registered the young girl to the Youth Assistance Department [*Service d'aide à la jeunesse (SAJ)*], requesting that they place her in a smaller reception centre. At that time, the reception system was still working as it should and a transfer from a *Fedasil* centre to a reception centre under the auspices of the Youth Assistance Department was not the obstacle course that it is today. She was taken to *Minor-Ndako*, a place where she was able to feel safe whilst working to piece together what she had suffered through.

Small-scale initiatives of this type offer the right level of support and protection for young people, particularly when they are potential victims of trafficking in human beings. Although they are not closed centres, the degree of protection and support provided by employees there is higher.

The signals that she was explicitly showing us were now translated into words. The topic was broached, and for the first time a small tip of the painful iceberg emerged. Sexual abuse, rape, a victim of barbaric practices while far too young, all of this was expressed for the first time in words. They were not necessarily the right words, not always coherent or targeted, and not enough to initiate legal action.

Who, what, where... everything was still too vague, too painful to express. This pain was later accompanied by self-harm, and many and repeated escapes from various reception centres.

When I think back to that time, and I look through the pages of the thick file on this guardianship, I note how the first clear signs of abuse emerged, abuse which in fact had still not ceased...

In one of the statements, written after the umpteenth disappearance, a *Minor-Ndako* employee said that he was concerned about a particular man whose name was often mentioned in conversations. The name came out for the first time but we still had to wait for two years before the man was brought into court.

After *Minor-Ndako*, the young girl stayed in three other centres. Her long absences had the consequence of losing her place at the centres. Disappearance after disappearance – I reported to the local police at the place where she had been living before she disappeared. Often in vain, but sometimes investigations were initiated after insisting over and over again – the use of her mobile phone was examined, the places where she was likely to stay, her circle was questioned, me as her guardian too.

Even though I always underlined the worrying nature of her disappearances, I was always confronted with the scepticism of each new police inspector.

However, the common theme in all of her behaviour, the list of disappearances and the terrified state in which she was found each time that she came back spoke volumes. The common theme could be found by trying to answer these questions: How can she run away for so long and still survive? Who houses her? Who gives her food? Who provides her with clothes?

An overview of the case was sorely lacking. All the information was elsewhere. Each time, it was seen as an isolated disappearance, nothing more than a difficult young girl, who runs away much too often.

The Public Prosecutor's Office in the place where I live was responsible for the case and the Public Prosecutor there did what he could. But it was the local police in the places where she ran away that carried out investigations and dealt with interviews. Sometimes, sporadically, the Antwerp Police Department intervened after a report, or to apprehend her at the station after a fortuitous identity check on a bus...

After numerous occasions, the *SAJ* file was finally referred to the juvenile court. In the meantime the young girl had become a danger to herself, and the escapes could no longer be handled by volunteer assistance services. Concern was growing, and there were more and more questions: Where was she staying during these long disappearances? Who was giving her food and lodgings? Who was providing her with clothes? More than once she ran away without taking anything with her. When found, she often said during interviews that she couldn't come back; she wasn't allowed to come back.

In consultation with the juvenile court judge, admission to a closed centre for delinquent youths in Beernem was agreed upon, which enabled the support unit to devote more energy to its work. The first days in Beernem were very difficult for her. Like the other young delinquents staying there, she had to go through an initial reception phase. The first five days of which are spent in isolation, meals are served in the room, with no contact with the other residents.

There is no specific regime for young girls needing protection. There is only one regime – the regime intended for young girls who have committed offences. There is no provision at Beernem to keep young girls away from a trafficking in human beings environment. However, the closed off character (involuntarily) contributed to the success of the assistance.

Looking back at it, Beernem was at the same time a blessing and a curse. For the first time, she was beyond the reach of outside influence. There was time to form relationships of trust, to start therapy and give intensive support.

After a long stay at Beernem, she was transferred to a reception centre reserved exclusively for young girls who have stayed at a closed centre for young delinquents. It was during this period that the details and the names were finally expressed, and with them the strength to make a complaint.

For the first time, the police believed her story. Statements were corroborated, evidence was found on computers that were seized. As for the offender's statements, they describe forced sexual relations at far too young an age. This finally led to a criminal court case that is still in progress at this time of writing.²⁴⁰

The protection of foreign minors against trafficking in human beings, whatever the form that it may take, calls for all possible action to be taken. The current system does not operate sufficiently well to protect potential victims.

European unaccompanied minors – young Romanians and Bulgarians – still do not get the assistance of a guardian.

The reception problems at *Fedasil* are having a particularly adverse effect on unaccompanied foreign minors who are not applying for asylum. Many young people end up on the street or in cheap hotels. Recently, the Guardianship service has stopped assigning guardians to this group of young people. The Department has a staff shortage and does not have enough guardians who wish to/are able to work with young people with no fixed address. It is precisely this lack of housing, combined with an increasing influx of unaccompanied foreign minors applying for asylum that has forced it to take this decision.

If the young people who are not entitled to housing do not even get the support of a guardian, the protection aimed for by the guardianship law at the time it was enacted has failed.

And even if most of these young people are not victims of trafficking in human beings, we will not be able to take action for those who are. They are out of range of the radars of our society, our support systems, and our attention.

Among the young people who do have guardians, only a small minority are victims of trafficking in human beings. The figures indicate that very few unaccompanied foreign

²⁴⁰ At the time of writing of this contribution, the ruling of the Antwerp Court of first instance was expected on 29 June 2011.

minors are recognised as victims. However, that small group is also entitled to all of our attention.

Disappearances of unaccompanied foreign minors are an everyday occurrence. The numbers of disappearances are reaching record highs, but by continuing to turn a blind eye to these worrying disappearances, we may no longer be able to detect potential victims of trafficking in human beings at all.

Guardians can play a key role in these cases, as can reception centres and social workers. They are often the people who know these minors best. Their assessment of disappearance cases that they consider worrying, should therefore not be overlooked.

It is crucial to find out the potential reasons for a disappearance. Often, young people make it known that they want to join members of their family, whether they are legally present on European territory or not. They sometimes say that Belgium is only a transit country for them and their final destination is elsewhere. It is for this reason that guardians must not be afraid to talk about these issues, and ask young people what their plans and intentions are. It is essential to ask these questions again and again and be persistent, to check whether the disappearance really is a surprise or whether it was announced beforehand.

For this young girl and her battle, that I described briefly here, help came in the end, but it was far too late. The many police departments, the fragmented information, the various public prosecutors, and the narrow-minded attitude of the authorities to the disappearances led to a loss of important information.

The way this young girl was looked upon was also often wrong: she was seen as an obstinate runaway – just a source of nuisance and problems.

It was only when she was interviewed by the federal criminal investigation department that she was finally considered as a victim and was approached in an open and respectful dialogue. Her statements were the subject of much attention and, when ambiguous, she was asked to explain further.

Three years have passed since then, and proceedings have finally been initiated at the court of first instance. It is now up to the court to pass a judgement regarding the offences which undeniably influenced the life of this minor²⁴¹.

²⁴¹ **Note from the Centre:** In its judgment of 29 June 2011, the Court handed down a suspended sentence of two years' imprisonment for the offender. It reclassified the charges of rape as indecent assault, for which the offender was sentenced. He was also convicted of supplying drugs to a minor. However, the Court acquitted the offender on the charge of trafficking in human beings, giving him the benefit of the doubt, since the case file did not contain sufficient evidence in this regard.

PART IV

RECOMMENDATIONS

1. Transposition of directive 2011/36/EU on trafficking in human beings

1.1. Updating the definition of trafficking in human beings

Recommendation 1. In the context of the transposition of the new directive on trafficking in human beings, the Centre considers that it is important to examine whether a new definition or, at the very least, an adaptation of the existing definition of trafficking in human beings, should take place.

The new directive states that the definition of trafficking in human beings also must include behaviour such as illegal adoption and forced marriages where these contain the constituent elements of trafficking in human beings. The Centre nevertheless calls for clear boundaries for these new forms of exploitation in the context of trafficking in human beings with respect to other existing offences (for example marriages of convenience and forced marriage). This is necessary to avoid the widening of the existing definition of trafficking in human beings so that it simply becomes an umbrella term.

The Centre also advises to consider an extension of the definition of sexual exploitation to other forms than exploitation of prostitution (or child pornography).

Furthermore the transposition of the directive also seems to us to be a good opportunity to remedy certain ambiguities that arose following difficulties interpreting the existing law in the field. The Centre is thus of the opinion, like other actors, that, at the very least, a clear distinction should be made between article 433*quinquies*, 1° of the Criminal Code (trafficking in human beings for the purposes of sexual exploitation) and article 380 of the Criminal Code (which covers the recruitment for the purpose of and exploitation of prostitution). In some court cases, acquittals have been handed down because the trial judges found that the law was not clear. Some judges have held that article 433*quinquies*, 1° could only be applied in the context of a network and not where the person recruiting is also working for him- or herself – such behaviour would then only fall under article 380.

1.2. Effective investigation techniques

Recommendation 2. The Centre recommends that the actors dealing with investigation and prosecution should be effectively equipped with the necessary resources to enable them to make use of appropriate investigation tools.

Indeed the European directive obliges the Member States to take the necessary measures in order that necessary investigation tools are made available to persons and departments responsible for investigation and prosecution. In Belgium, whilst the actors in the field do have a range of investigation techniques (specific search methods, phone tapping, etc.), it is not always easy to use them effectively, mainly for financial reasons. We should not forget that a lack of awareness of the issue of trafficking in human beings for some investigative judges has the consequence that the above resources are not deployed to a sufficient extent.

1.3. Developing support and assistance for victims

Recommendation 3. The Centre considers that:

- **early warning mechanisms to detect victims should be further developed** (for example through housing inspections or health care visits);
- **the current form of support should be reassessed**, according to the victim's personal situation, particularly when the victim has other means to stay in Belgium legally. In consultation with reception centres, a way to develop a diversified range of services should be devised, which should correspond as far as possible to the specific needs of the victim.

Consideration should also be given to the **immediate appointment of a lawyer** for victims who have made statements or lodged a complaint, as soon as they have been granted status as victims of trafficking in human beings.

1.4. An appropriate approach for minors who are victims

Recommendation 4. The Centre is of the opinion that the specific situation of child victims of trafficking in human beings receives too little attention, both in terms of detection and in terms of reception and support that these minors receive. This concerns both unaccompanied minors and other vulnerable groups of minors (for example young female minors of foreign origin or of Belgian origin who find themselves in precarious social situations, and are likely to be easy prey for 'lover boys', who recruit their victims by seducing them).

The directive makes the protection of child victims a priority. Children must receive the assistance and support measures necessary for their physical and psycho-social recovery, taking their personal situation into account, in order to find a durable solution for them. Specific protection measures such as interviewing the child on suitable premises, by trained professionals, and using video recorded interviews, should also be implemented.

Let us note that some specific measures, such as video recorded interviews of child victims, already exist under Belgian legislation.

Recommendation 5. The specific situation of child victims of trafficking in human beings requires a different approach to that adopted with adults. Both support and the conditions for granting the victim status should be adapted to this difference.

The testimony of a guardian, presented in the third part of this report, is an effective illustration of this.

Recommendation 6. With regard more specifically to the situation of unaccompanied foreign minors, and being aware that many victims of trafficking in human beings come from Romania and Bulgaria, both members of the European Union, **the appointment of a guardian for unaccompanied foreign minors that are citizens of the European Union (and not only for nationals of third countries outside the European Economic Area, as is the case at present) should be envisaged under the law on the guardianship of unaccompanied foreign minors.**

1.5. More awareness and training for the 'front line'

Recommendation 7. The Centre reiterates the importance of raising the awareness of, in particular, the staff at closed centres, medical personnel and the local police forces.

Awareness and training are key points in the new directive. The directive calls upon Member States to offer priority training for government personnel likely to come in contact with potential victims (police officers, immigration officials, public prosecutors, labour inspectors, health care personnel, etc.²⁴²).

In Belgium, training is already regularly given to police officers, social inspectors and magistrates.

It is of the utmost importance to continue to train professionals who are in regular contact with potential victims.

Furthermore, raising the awareness of persons who, as part of their duties, are likely to be in contact with victims must also be initiated or continued. Initiatives such as those aimed at raising the awareness of medical personnel taken at local level (such as in Liège) or by the interdepartmental coordination unit (awareness-raising through a newsletter) should be encouraged.

²⁴² Directive 2011/36/EU, consideration 25.

1.6. Formal appointment of a National Rapporteur

Recommendation 8. On the basis of its legal mandate, the Centre has been fulfilling the role of national rapporteur since 1995. It can thus be considered as a precursory national rapporteur and currently the *de facto* national rapporteur for Belgium. The Centre therefore hopes that this role will be formally recognised.

2. Joint financial liability of main contractors

2.1. Adoption of a law on the joint and several liability of principal employers

Recommendation 9. The Centre reiterates the importance of adopting a law introducing joint liability for principal contractors or employers. In this regard, the Centre considers that principal employers that, for example, are aware of, have provided impetus for, or have participated in the organisation of exploitation should be held liable. This may be the case when a principal contractor accepts estimates that seem much too low or when they notice that foreign workers are on their site without making enquiries as to their status.

2.2. Raising the awareness of employers' organisations

Recommendation 10. The business sectors at risk must be encouraged to take measures to raise awareness and to avoid the use of subcontractors acting in bad faith. The initiatives taken by some business sectors exposed to the risk of trafficking in human beings to raise the awareness of their members must be encouraged.

Thus, in the **construction industry**, we should mention as a *good practice* the reaction of a member of the construction federation that asked questions about the reliability of a firm that it was using as a subcontractor. When the federation warned the member that the workers' papers were not in order, that the latter were not paid and were housed in bad conditions, the member immediately terminated the subcontractor's contract.

At the end of last year, the **meat industry** concluded a protocol for collaboration with trade unions in which it recognises joint and several liability for employers (if a company in the meat industry enters into a contract with an external firm, it must be possible to hold the company liable for the treatment of workers and, ultimately, the company must ultimately intervene financially in the event of offences being committed).

3. Local authorities

3.1. Raising the awareness of local authorities and Public Welfare Offices

Recommendation 11. In the Centre's opinion, at the very least, the awareness of the local authorities (including Public Welfare Offices) should be raised in order that they are attentive to detecting victims and/or identifying offences of trafficking in and smuggling of human beings in the course of their daily duties.

The Centre recommends that Public Welfare Offices' staff should be made aware of how to spot indicators and signals from victims of trafficking in human beings, so that victims can be sent to specialised reception centres and situations of exploitation can be referred to the competent authorities.

4. Trafficking in human beings must remain a priority

4.1 In Parliament

Recommendation 12. Combating trafficking in human beings must remain a key focus for Parliament.

The Centre is delighted that a working group in the Senate has held discussions with actors in the field and published a report on the subject. Sustained attention from Parliament to monitor the issue of 'trafficking in human beings' is indispensable.

4.2 For the magistracy

Recommendation 13. Trafficking in human beings must remain a priority for prosecutions on the part of the Public Prosecutor's Offices and labour prosecutor's offices.

In order to effectively combat trafficking in human beings and target all links in the chain, trafficking must first of all be a prosecution priority for the magistracy.

Magistrates are the point at which investigations and observations of indicators of trafficking in human beings carried out by inspection services and the police culminate. **Magistrates determine prosecution policy in matters of trafficking in human beings, with which front line services have to comply.** If magistrates do not give enough priority to cases of trafficking in human beings for the purposes of labour exploitation,

this has repercussions on the attitude adopted by front line services when faced with this issue and may have a negative impact on detection of more complex cases with enmeshed arrangements.

Recommendation 14. An overarching approach beyond judicial districts is required on the level of Public Prosecutors' Offices and labour prosecutors when combating situations of exploitation with complex arrangements such as those involving principal contractors and several subcontractors. It is valuable when, upon request from a local Public Prosecutor's Office or labour prosecutor, the Federal Public Prosecutor's Office, backed up by a strong social criminal law department, plays an active role.

The liability of the principal contractor or employer must be demonstrated by proving that they were aware of the system of exploitation or that they were involved in its continuation and/or the stimulation and/or organisation of practices of trafficking in human beings. This requires an **adapted investigation strategy**, with a **comprehensive approach beyond district level**, where all the pieces in the puzzle are collected in order to prove the principal employer's liability.

Recommendation 15. The Centre requests that labour prosecutors and Public Prosecutors examining difficult or large cases of trafficking in human beings for the purposes of labour exploitation, appoint an investigative judge.

An investigative judge has more extensive competencies. Thus, investigation methods such as phone tapping or specific search methods, in which the police are specialised, can be better used, giving much added value to the case.

Recommendation 16. Investigations and judicial inquiries that drag on for too long should be avoided. All too often they have adverse consequences for victims and undermine the victims' trust in the victim status and the public authorities.

4.3 Raising the awareness of inspection services and international collaboration

Recommendation 17. The Centre recommends that inspection services should be made fully aware of the fight against trafficking in human beings, particularly as regards complex secondment or subcontracting arrangements.

Among the key players in detecting cases of trafficking in human beings are the social inspectorates. Whilst in some inspection services inspectors have acquired expertise in the field of trafficking in human beings, **other inspectorates still have to be trained in detecting victims of trafficking.** Thus 'cross-border employment' units have as their first objective to check whether foreign workers who are staying temporarily in our country as part of a secondment meet the relevant regulations. In fact, they come into

contact with complex arrangements and new forms of cross-border fraud, such as contractors creating, through the Internet from Belgium, a temporary employment agency in Eastern Europe. The special units may therefore not always be as vigilant about potential indicators of trafficking in human beings. It is important that these units are also made aware of these problems.

Recommendation 18. Priority must be given to instruments which, at structural level, lead to better exchange of information and collaboration between the authorities of Member States:

- the development of a European system of electronic registration for secondment documents;
- more stringent agreements relating to verifications between Member States in cases of monitoring and inspecting documents;
- as part of our recommendations, we repeat the wishes expressed by the Liège Public Prosecutor in an inaugural speech before the Liège Labour Court of Appeal: *'it would not be futile to dream of creating a social Interpol bringing together all European administrations concerned'*.

**Annual Report on Trafficking in and Smuggling of Human Beings 2010:
Combating social fraud to prevent trafficking in human beings
Brussels, October 2011**

Publisher and author:

Centre for Equal Opportunities and Opposition to Racism
Rue Royale 138, 1000 Brussels
Tel: +32 (0)2 212 30 00
Fax: +32 (0)2 212 30 30
epost@cntr.be
www.diversite.be

External contributors: Vinciane Goosse (Chief of the judicial police, Team manager of the *RITT* team); Bruno Deville (Social inspector, Human trafficking unit, Federal social inspectorate); David Lowyck (Director Minor-Ndako).

Translation: Juliette Scott and Monica Sandor (Intrasoft International)

Graphic design of cover: d-Artagnan

Printing: Maes Copy

Responsible Editor: Jozef De Witte

This report is also available in Dutch and French.

The Centre encourages the sharing of knowledge, but insists on the respect owed to the authors of and contributors to all texts in this publication. This text may only be used as a source of information if the author and source of the piece are mentioned.

No reproduction, commercial use, publication or adaptation, either in whole or in part, of texts, photographs, graphics, illustrations or any other items covered by copyright may take place without prior written authorisation from the Centre for Equal Opportunities and Opposition to Racism.

This Annual Report can also be downloaded in PDF or Word format from the website of the Centre for Equal Opportunities and Opposition to Racism: www.diversite.be