

TRAFFICKING IN HUMAN BEINGS

ANNUAL REPORT

Belgian Policy on Trafficking in and Smuggling of Human Beings: Shadows and Lights

November 2005

Centre for Equal Opportunities and Opposition to Racism (CEOOR)

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INTRODUCTION

The European Commission announced in March 2003 that it had set up an Expert Group charged with the further elaboration of the Brussels Declaration (September 2002) on preventing and combating trafficking in human beings. The Expert Group issued a weighty, well documented final report in December 2004. This major undertaking addresses the entire multi-phase process for tackling this problem. For the purpose of this annual report on trafficking in and smuggling of human beings, we have "translated" the key chapters of this final report into the Belgian model for critically assessing the issue of trafficking in and smuggling of human beings: the definition of the concept of trafficking, reception facilities and assistance for trafficked persons, structures for co-ordinating and gathering information as instruments for combating trafficking, the link between people trafficking and migratory flows and the prevention component of trafficking issues. In practical terms, we sought to assess to what extent the Belgium anti-people trafficking policy was in line with the recommendations the Expert Group made in this issue. When shortcomings were discovered, a review was made to see whether we should subscribe to the recommendations of the Expert Group or if there were justified reasons for discarding them.

The report by the Expert Group justifiably stresses that one of the key challenges in combating human trafficking is the failure for an agreement to be reached on a definition of this issue: what is meant by trafficking in human beings. There is also a great deal of confusion between trafficking, smuggling and illegal immigration. The importance of a definition cannot be underestimated, because the status of the trafficked person is dependent upon this. With this in mind, the first chapter of this report considers the definitions now available, while making a detailed review of the new Law of 10 August 2005 amending various provisions in order to step up action against trafficking in and smuggling of human beings and the activities of slum landlords.

The second chapter compares Belgian model's approach to detection, identification, reception and assistance for trafficked persons with a number of operational models and in the light of the various international obligations Belgium has to meet. The chapter also features a number of statistics to help formulate the profile of trafficked persons.

The third chapter elucidates the role played by certain structures in co-ordinating action to combat people trafficking and smuggling. We assess their inputs, their effectiveness and, lastly, we make one or two recommendations.

The fourth chapter takes a look at a less familiar form of trafficking in human beings: economic exploitation. The usual perception of victims being exploited for the purposes of prostitution does not reflect the reality, as this is practised on a much wider scale. The link between immigration, the informal labour market and the informal economy is examined and a call is made for a consistent approach to be adopted by the social inspection services.

The fifth and final chapter of this annual report probes the law enforcement dimension of the policy being conducted to investigate the role organised crime plays in trafficking. The conclusions we draw are illustrated by examples of where the Centre has brought civil actions. What is clearly underscored is the crucial need to be able to rely on the co-operation of victims in the struggle to effectively combat people trafficking and smuggling.

Jozef De Witte

Director

Eliane Deproost

Deputy Director

CHAPTER I:

TRAFFICKING IN AND SMUGGLING OF HUMAN BEINGS: A NEW LAW, FOR A MORE EFFECTIVE CAMPAIGN?

Introduction

Human trafficking is not a new development. In view of its cross-border dimension, many international and European authorities have been grappling with the problem in recent years in a bid to formulate common provisions designed to crush this trade and protect the victims as far as possible.

Consequently, the United Nations, the Council of Europe and the European Union have all published new proposals. Against this background, Belgium's federal Government presented Parliament with a bill, on 14 January 2005, seeking to amend the current provisions, primarily so as to bring them into line with the new instruments. This was put on the statute books on 10 August 2005 at the end of the legislative process and then published in the Belgian Official Journal (*Moniteur Belge*) the following 2 September¹. However, questions have been raised about some of the adjustments, as we will see later on.

As underscored in the general introduction to this report, the European Commission has set up an Expert group in charge with the transmission of the Brussels Declaration (September 2002) on human trafficking into practice, chiefly by presenting the European Commission with relevant proposals about implementing the Brussels Declaration recommendations. The Experts Group unveiled its final report in December 2004². One of the early chapters in the report deals with the definition of trafficking in human beings and its background³.

1. Trafficking in human beings and smuggling of migrants: international and European definitions

The Expert group report quite rightly stresses that one of the key challenges in combating trafficking in and smuggling of human beings was the failure, until recently, to agree on a definition of what is meant by trafficking in human beings. The distinction between, trafficking, smuggling and illegal immigration was also a constant source of confusion.

¹ Law of 10 August 2005 amending various provisions in order to step up action against trafficking in and smuggling of human beings and the activities of slum landlords, *Belgian Official Journal*, 2 September 2005. The bill was tabled and considered together with the bill seeking to amplify criminal protection for minors, which was published on the same day in the *Belgian Official Journal*, 2 September 2005.

² European Commission, Directorate-General Justice, Freedom and Security, Report of the Expert Group on Trafficking in Human Beings, Brussels, 22 December 2004.

³ Chapter 2- trafficking in human beings: definition and current context, pp 47-59.

This was broadly settled on an international scale by the adoption of additional protocols to the United Nations Convention against Transnational Organised Crime ("the Palermo Convention"): the Trafficking Protocol and ⁴ and the Protocol against the Smuggling of Migrants⁵.

1.1. International

1.1.1 United Nations

a) United Nations Trafficking Protocol

In article 3 of the Protocol, trafficking in persons is defined as follows:

"For the purposes of this Protocol:

- a) " Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or reception of 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, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;;*
- d) "Child" shall mean any person less than eighteen years of age.*

The Protocol therefore offers a clear definition of trafficking, and its three key components⁶:

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁵ Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime.

⁶ Article 4 of the Protocol. See in this connection Legislative Guide for Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, par. 32.

- a) An act: recruitment, transport, transfer, harbouring or receipt of persons;
- b) The use of certain means: the threat of using or using force, coercion, deception, etc. An abuse of a position of vulnerability refers to positions where the relevant individuals have no real or acceptable alternative but to submit to the abuse involved
- c) For the purpose of exploitation (sexual exploitation or exploitative work) but this should at least involve the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery ⁷, servitude or the removal of organs.

Exploitation itself is not required⁸.

It does not matter whether the person consents to the intended exploitation or not when one of the aforementioned means has been used.

The Protocol applies only when trafficking takes place in the context of organised crime concerning cross-border violations⁹.

The definition of trafficking in human beings was the most controversial section of the Protocol¹⁰. Backing an approach aimed at acknowledging prostitution as employment and "voluntary" trafficking as migration for the purposes of becoming a sex worker, a small number of NGOs called for the definition to be confined to forced or coercive trafficking. They were therefore anxious to restrict the scope of the definition to women who might have been able to provide evidence that they were forced into trafficking. Some governments and organisations were also keen to separate trafficking and prostitution so as to avoid the debate on legalising/regulating prostitution. However, the latter forms a minority, as most parties sought a definition protecting all victims and not restricted to force or coercion. Lastly, the abuse of a position of vulnerability makes it possible to assert that exploitation (of prostitution) does not mean just on the basis of coercion but also an abuse of a position of vulnerability.

Immigrant smuggling has a cross-border dimension but trafficking may take place within the borders of one State. It is the purpose of the exploitation, which represents the key component of the trafficking process and not the border crossing.

Prosecution, protection and prevention mechanisms are also included in the Protocol.

b) United Nations Protocol on the smuggling of migrants

Article 3 of the Protocol offers the following definition of the smuggling of migrants:

⁷ It should be stressed that neither forced labour nor slavery is defined in the Protocol.

⁸ Legislative guide, *op. cit.*, par. 33 and F. GAZAN, "Trafficking and sexual exploitation, national and international trends, Custodes, Politeia, 2002, p. 71.

⁹ Legislative guide, *op. cit.*, par. 23 and F. GAZAN, *op. cit.*, p.70.

¹⁰ J. G. Raymond, Guide to the new United Nations Protocol on Trafficking

“For the purposes of this Protocol:

- a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;*
- b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;*

The reference to a financial or other material benefit was made in order to include in the definition activities undertaken by organised criminal groups for profit but to clearly exclude activities designed to provide assistance to immigrants for humanitarian reasons or owing to close family ties¹¹.

1.1.2 Council of Europe

A Convention on action against trafficking in human beings has been negotiated and concluded within the Council of Europe¹². It was adopted in Warsaw on 16 May 2005. This Convention features the definition of trafficking in human beings as stipulated in the United Nations Protocol on trafficking in human beings but goes further than the Protocol, particularly in the case of measures designed to protect and promote the rights of victims.

1.2. European

On a European scale the Council's Framework Decision on combating trafficking in human beings¹³ came into being on 1 August 2002. This also defines the precise content of trafficking in human beings. Consequently, each Member State is required to take steps to ensure the recruitment, transport, transfer, harbouring, or subsequent receipt of a person is punishable, including the hand over or transfer of the control over the person for the exploitation of the labour or services of the person¹⁴ or for the exploitation of the prostitution of others or other forms of sexual exploitation¹⁵, when different means are used (coercion, force or threats, including abduction; deception or fraud; an abuse of authority or a position of

¹¹ Interpretative notes for official documents (preparatory work) for the negotiations to the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Crime, General Assembly, 55th session, 3 November 2000, A/55/383/add. 1, par 88.

¹² Council of Europe Convention, of 16 May 2005, on action against trafficking in human beings.

¹³ Council Framework Decision of 19 July 2002, (2002/629/JHA), OJ L203 of 1/8/2002.

¹⁴ Article 1, 1 specifies that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

¹⁵ Including for pornography (article 1, 1 of the Framework Decision).

vulnerability, such that the person has no real and acceptable alternative but to submit to the abuse, or, alternatively, the giving or reception of payments or benefits to achieve the consent of a person having control over another).

As in the Palermo Protocol, the Decisions stresses that the consent of the victim of the intended exploitation shall be irrelevant when any of the means have been used. Similarly, in case of a child, trafficking is deemed to have occurred even when none of the aforementioned means has been used.

As the report by the Expert group rightly stresses the definition in the United Nations Protocol constitutes the underpinning of the European Framework Decision on trafficking. The definitions adopted on a European-wide basis broadly feature the same items. In the mould of the United Nations, the European Union makes a distinction between trafficking in human beings and the smuggling of migrants. However, the European Union's definition does not feature all the Protocol components, in particular trafficking for the purpose of the removal of organs. Some parts of the European Union definition are more specific (as in case of the abuse of a position of vulnerability and no real and acceptable alternative but to submit to the abuse involved). Another difference is the United Nations broader consideration of the issue of trafficking and smuggling, covering the protection, assistance and repatriation of victims, prevention, co-operation, border-related measures and security of documents, where the European instruments are chiefly European legislative acts in the contexts of criminal law and criminal procedures¹⁶.

A Council Directive¹⁷ and a Framework Decision¹⁸ on the facilitation of authorised entry, transit and residence are deployed to define and try to prevent trafficking of human beings. The Member States are required to take steps to clamp down on people knowingly helping a non-EU national to enter or pass in transit through a Member State, thereby violating the country's legislation on the entry or transit of aliens¹⁹, as well as any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens.²⁰

2. *Belgian Law: the Law of 10 August 2005 amending various provisions in order to step up action against trafficking in and smuggling of human beings and the activities of slum landlords*

¹⁶ European Commission, Directorate-General Justice, Freedom and Security, Report of the Expert Group on Trafficking in Human Beings, Brussels, 22 December 2004, Explanatory paper 1, definition of Trafficking: relation and differences between UN and EU definitions, the concept of exploitation, p.130.

¹⁷ Directive 2002/90/EC of 28 November 2002, defining the facilitation of unauthorised entry, transit and residence, *O.J.*, L 328 of 5.12.2002, p.17.

¹⁸ Framework Decision of 28 November 2002, on the strengthening of the penal framework to prevent the facilitation of authorised entry, transit and residence, *O.J.*, L 328 of 5.12.2002, p.1.

¹⁹ Article 1, 1, a) of the Directive. Article 1, 2 of the Directive nonetheless specifies that the Member States may decide against applying penalties when the aim is to offer humanitarian assistance to the person in question.

²⁰ Art 1, 1, b) of the Directive.

The Government announced on 14 January 2005 that it had presented the House with a bill making significant changes to current provisions so as get into line with new international and European instruments on trafficking in and smuggling of human beings. The amendments made by the bill were considered by a working group comprising a member of the Ministry of Justice's Office seconded from the industrial tribunal, a federal magistrate, specialist magistrates from the Liège and Bruges public prosecutor's offices, a representative of the Centre for Equal Opportunities and Combating Racism, and legal experts from the Directorate-General for Legislation, Fundamental Rights and Freedoms, and criminologists from the Criminal Policy Department of the Ministry of Justice's Federal Public Service. Within the context of this working group, the Centre made various observations, some of which are considered in point 3 of this chapter (prospects and challenges). From this point of view, various other comments appearing in this chapter are made with a view to ensuring a steady improvement in the instruments deployed to combat trafficking in and smuggling of human beings.

Amended at several points during the parliamentary proceedings, the bill became Law on 10 August 2005.

2.1. The main themes

The main themes of the new Law are as follows:

- a) Trafficking in human beings becomes an autonomous offence in the Criminal Code, comprising articles 433*d* to 433*h*. The Law defines what is meant by trafficking in human beings, while the offence is no longer confined to aliens but also covers Belgian nationals. In keeping with the European and international instruments, the initiative makes a distinction between trafficking in and smuggling of human beings. The latter offence remains in the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreign nationals (hereinafter referred to as: foreign nationals) and is now covered by articles 77*a* to 77*e* of the Law. The ex article 77*a* of the Law of 15 December 1980 has therefore been amended so as to cover this offence in particular. As in the case of trafficking, the Law defines what smuggling of human beings should be understood to mean. The definition of criminal organisation and the offence of participating in a criminal organisation are amended so as to be brought into line with the United Nations Convention Against Transnational Organised Crime.
- b) The criminal liability "slum landlords" (ex article 77*a* §1*a* of the Law of 15 December 1980) is regarded on an autonomous basis and no longer as a specific type of trafficking in human beings. A new chapter has therefore been incorporated into the Criminal Code, comprising articles 433*i* to 4*o*, thereby extending the protection to all, Belgian citizens or foreign nationals.
- c) Broadly reproducing what was featured in a bill tabled during the previous legislature²¹, the new Law sets forth the criminal liability of exploitation in begging.

²¹ This initially involved a bill tabled in the Senate (see the bill amending the Criminal Code and the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreign nationals so as to tighten up the penalties applied to people engaged in trafficking and smuggling unaccompanied minors, *Parl.*

- d) The new Law also features further amendments, and this applies in particular to the Criminal Code and the Criminal Procedure Code so as to adopt them to changes made in the case of trafficking in and smuggling of human beings. It also amends the Law of 13 April 1995 on trafficking in and smuggling of human beings²² and the Law of 15 February 1993 on the Centre for Equal Opportunities.

2.2. Details about the new criminal liabilities

We propose making a brief review of the new provisions for the exploitation in begging and slum landlords so as to be able to dwell more on the main thrust of the report: trafficking in and smuggling of human beings.

2.2.1 Exploitation in begging

The Law of 10 August 2005 incorporates the new articles 433*b* and 433*c* into the Criminal Code, with a view to punishing exploitation in begging. The explanatory memorandum states that the intention is not to recriminalize begging, an offence that was phased out pursuant to the Law of 12 January 1993, featuring a programme for a more solidarity-based society, but to punish people exploiting the begging of others. Hence the new article 433*b* is designed in the same way as article 380 of the Criminal Code, on the exploitation of prostitution. Punishable offences are now recruiting someone to take up begging, encouraging the person to beg or continue doing so, making a beggar available to be used to gain public sympathy (article 433*b*, 1°) as well as the exploitation in begging of others (article 433*b* 2°). The aggravating circumstances of the offence are covered in article 433*c*. This involves the minority, the abuse of a vulnerable position and the use of misrepresentation or a form of coercion.

During the parliamentary debate, amendments were tabled with a view to amending article 433*b*, because the sponsors of the amendment claimed the current wording did not make it possible to prevent someone using a person, particularly a child, from arousing public sympathy, but the text was not amended in the end²³.

Doc., Senate, 2002-2003, 2-1457/1). Adopted in the Senate and forwarded to the House, the text was broadly reproduced by the Law of 8 December 2003 (*Belgian Official Journal*, 19 December 2003). Consequently, the House still retains jurisdiction over the matter (*Parl. Doc.*, House, 2003-2004, 51-640/1).

²² Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography, *Belgian Official Journal* 25 April 1995.

²³ See amendment N° 1 tabled to the Senate, *Parl. Doc.*, Senate, 2004-2005, 3- 1138/2. The amendment was withdrawn in the end. Back in the House, a similar amendment was tabled (see amendment N° 34, *Parl. Doc.*, House, 2004-2005, 51- 1560/012). The author of the amendment withdrew it as well so as not to slow down the parliamentary process at this stage. For the debates on this question, see also the report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 16-17; For the issue of begging, see F. VAN HOUCKE, "Search for a social response to the begging of minors ", *J.D.J.*, May 2005, N° 245.

2.2.2 Slum landlords

The Law of 10 August 2005 incorporated the specific offence of slum landlords into the Criminal Code. Consequently, a new chapter entitled "*abusing the vulnerability of others by selling, renting or providing property with the aim of making an abnormal profit*" is included in the Criminal Code. It comprises articles 433i to 433o.

This involved reproducing the offence defined in article 77a, § 1a to extend it to all, Belgians and foreign nationals. To start with the bill covered only immovable property. It also featured the measures provided for in article 77a, § 4a (seizure of immovable property) and § 4b (right to rehouse victims) of the Law of 15 December 1980. In contrast, the Law included a new development in the Criminal Code, one not provided for by ex article 77a, § 1a: the fine multiplied by the number of victims.

In wake of the talks about this issue during the parliamentary debates, the original initiative was subject to significant changes. Consequently, the debates in the House focused on this question²⁴, while trafficking in and smuggling of human beings was considered only indirectly.

Several amendments to do with articles dealing with slum landlords were then tabled by various MPs²⁵. For example, the title of the bill was altered so it was more in keeping with the contents²⁶. The definition of the offence slum landlord (the new article 433i of the Criminal Code) was also adjusted: the Law no longer targets just real estate, rooms or other facilities, as featured in ex article 77a, § 1a, but also movable property, a part thereof or any other space referred to in article 479 of the Criminal Code, in reference to housing conditions incompatible with human dignity. The explanatory memorandum specifies that signs of a criminal offence are items such as the lack, poor standard or obvious dangerousness of sanitation facilities or electrical equipment or the fact that the premises are obviously too small in relation to the number of tenants being accommodated²⁷.

Another key change was the decision to extend the right to be rehoused to all, Belgian and foreign nationals (new article 433o)²⁸, whereas in the original bill, reproducing ex article 77a, § 4b of the Law on aliens, the right to be rehoused was provided solely for foreign nationals²⁹.

²⁴ See the debates on article 6 of the bill (on the articles applying to slum landlords): report by the House Justice Commission, *Parl. Doc.*, House, 2004-2005, 51-1559/004, p.29 and following. The talks focused in particular on the concept of abnormal profit. It should be noted in this respect that Liège Criminal Court presented the Court of Arbitration with an interlocutory question on two occasions and the Court of Arbitration was required to rule on the issue of whether the concept of abnormal profit, referred to in ex-article 77a § 1a did not violate articles 12 and 14 of the Constitution in the sense that the definition of this concept was left to the decision and the discretion of the judge. The Court of Arbitration said no (see judgements N° 92/2005 of 11 May 2005 and N° 117/2005 of 30 June 2005). These judgements are featured on the Court of Arbitration website: www.arbitrage.be

²⁵ See amendments N°5 (rejected), N°6, N°7 (rejected), N°15, N°16 (the latter 2 were rejected), *Parl. Doc.*, House, 2004-2005, 51- 1560/004, amendments N° 21 and 26 (rejected), *Parl. Doc.*, House, 2004-2005, 51-1560/005, amendments N° 30, 31, *Parl. Doc.*, House, 2004-2005, 51- 1560/006.

²⁶ See amendment N° 6, *Parl. Doc.*, House, 2004-2005, 51- 1560/004.

²⁷ Explanatory memorandum of the bill amending various provisions in order to step up action against the trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 26.

²⁸ See amendment N° 1, *Parl. Doc.*, *Parl. Doc* House, 2004-2005, 51- 1560/002 and the sub-amendment to this amendment: N°32, *Parl. Doc.*, House, 2004-2005, 51-1560/007.

The aggravating circumstances of the offence are referred to in article 433*k* (usual activity and association) and in article 433*l* (participation in a criminal organisation). Here, too, the fact that the fine shall be multiplied by the number of victims is specified.

Articles 433*m* and 433*n* reproduce §§4a and 5 of ex article 77a. The former refers to the special confiscation, as provided for in article 42, 1° of the Criminal Code, and the latter to the seizure of property. Several amendments were nonetheless made to article 433*m*, as regards confiscation (mandatory and not discretionary) with the aim of guaranteeing, in this case, the rights of third parties acting in good faith³⁰.

2.2.3 *Trafficking in and smuggling of human beings*

a) **Definition of the offences**

Trafficking in human beings

The new Law adds to the Criminal Code a new chapter, comprising articles 433*d* to 433*h* and uses the new article 433*d* of the Criminal Code to provide a definition of trafficking in human beings.

Unlike the international and European instruments, apart from several major differences, to be considered later on³¹, the new provisions do not make any distinction in terms of criminal liability, between trafficked adults and minors.

Article 433*d* therefore reads as follows:

"Trafficking in persons" shall mean the recruitment, transport, transfer, harbouring or receipt of persons, passing or transferring the control over them³² in order:

1° to allow the commission against these persons of the offences provided for in articles 379, 380, §1 and § 4 and 383a, § 1;

2° to allow the commission against these persons of the offences provided for in article 433b;

3° to employ these persons in conditions incompatible with human dignity or to allow them to be thus employed;

4° to remove from these persons or allow the removal from them of organs or tissues contrary to the Law of 13 June 1986 on the removal and transplantation of organs;

²⁹ The government tabled an amendment seeking to abolish draft article 77f, as this provided the right to be rehoused solely for foreign nationals (see government amendment N° 13, *Parl. Doc.*, House, 2004-2005, 51-1560/004, p.9).

³⁰ See in particular amendment N° 24, *Parl. Doc.*, House, 2004-2005, 51-1560/005.

³¹ See point 3 below, concerning the prospects and challenges.

³² This clarification was added subsequent to the advisory opinion delivered by the Council of State, so as to spell out the implications of the term "transfer" and to reproduce the terms of the Framework Decision more explicitly.

*5° or to have these persons commit a crime or offence against their will*³³.

Apart from the case referred to in point 5°, the consent of the person, referred to in paragraph 1, to the intended or actual exploitation is irrelevant ".

Consequently, as a result of forming part of the Criminal Code, the offence of trafficking in human beings, irrespective of the sector of exploitation, is extended to all victims, Belgian or foreign nationals.

Secondly, the sole component parts of the offence are an action (recruitment, transport, harbouring...) and a clear purpose as to the exploitation³⁴. The *modi operandi* (the threat, coercion, violence, etc...) featured in the Palermo Protocol and the European Framework Decision are not included in this but are featured in the aggravating circumstances of the offence. As for the forms of sexual exploitation, the new Law restricts this to offences involving prostitution and child pornography. Exploitation via labour has to take place "in conditions incompatible with human dignity ". The removal of organs was imposed by the Palermo Protocol.

Article 433*d* specifies two other forms of exploitation: begging, which was also included in the Criminal Code by means of the new Law (new article 433*b*) and the commission of offences against a person's will, in order to cater for new forms of smuggling emerging in case-law³⁵.

³³ The original bill proposed the following form of words: "compelling these persons to commit crimes or offences. The bill was amended because the term "coercion" was featured in the aggravating circumstances of the offence see government amendment N°29, *Parl. Doc.*, House, 2004-2005, 51-1560/006.

³⁴ It should be stressed that the exploitation need not have been actually carried out, Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 20.

³⁵ Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings,, *Parl. Doc.*, House , 2004-2005, 51-1560/1, p. 20.

Table 1: component parts

ACTION	PURPOSE
Recruitment	Exploitation of prostitution, child pornography
Transport	Exploitation of begging
Transfer	Employment in conditions incompatible with human dignity
Harbouring	The removal of organs
Receipt	Coercion to commit a crime or offence
Passing or transferring the control over a person	

Smuggling of human beings

The Law of 10 August 2005 also makes various amendments to the Law of 15 December 1980 on aliens. For example, it amends articles 77 (aiding illegal immigration) and 77a (smuggling of human beings) of this Law, while including the new articles 77b to 77e in the same Law. Included in the Law on Aliens via the Law of 13 April 1995, ex article 77a sought to prevent the smuggling of foreign nationals by clamping down on any abuse of the vulnerable position of a foreign national in an insecure situation.

Aiding illegal immigration (new article 77)

This difference between article 77 and article 77a (smuggling of human beings) is the aim of securing a pecuniary benefit. For example, article 77 seeks to prevent assistance to facilitate the entry, transit or residence of non-EU nationals, without a profitable purpose being involved. The term of imprisonment ranges from eight days to 12 months (and no longer three months as in ex article 77). The maximum sentence is increased to 12 months, in order to comply with the requirements of the Directive, the Framework Decision and the European Convention on Extradition.

Paragraph 2 of this article nonetheless specifies that if the assistance is given "*primarily for humanitarian reasons*", it is not punishable.

In this connection, the measures provided in the new Law differ significantly from the definitions in the Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Consequently, the Directive makes a distinction between the facilitation of entry or transit, where the lucrative purpose is not required as a component part of the offence and the facilitation of residence, which is punishable only if there is a lucrative purpose. However, the new Law uses the new article 77 of the Law of 15 December 1980 to make the facilitation of entry, transit or residence punishable even without there being a lucrative purpose.

Hence it is stricter than the Directive. The humanitarian clause is provided for the facilitation of entry, transit and residence, whereas the European Directive requires it solely for the facilitation of entry or transit, and it is worded on a broader basis than in the Directive³⁶.

In the light of these observations, the Council of State decided, when examining the bill, that the provisions should be reviewed, as they were not consistent with those featured in the European instruments³⁷. The Government did not, however, heed the Council of State's opinion, claiming the European instruments did not prohibit decisions to incriminate other types of behaviour in addition to those targeted by these instruments nor to extend the scope of the humanitarian clause³⁸.

Smuggling of human beings (new article 77a)

Article 28 of the Law of 10 August 2005 replaces the current article 77a of the Law of 15 December 1980 on aliens. A new criminal liability, specifically involving the "smuggling of human beings", is introduced. As in the case of trafficking in human beings, this new provision offers a definition of what is meant by the smuggling of human beings: the facilitation of unauthorised entry, transit or residence of foreign nationals for a profitable purpose. It should be stressed, that here, too, Belgium differs from what is provided for in the Directive, insofar as solely the facilitation of residence for a lucrative purpose is punishable. This prompted the Council of State to make the same observations as for article 77³⁹.

b) Sentences and aggravating circumstances

³⁶ Article 1, 2 of Directive 2002/90/EC proposes that the Member States should decide against applying penalties for facilitating the entry or transit of a non-EU national in the event the behaviour is designed to offer humanitarian aid to the person involved.

³⁷ Opinion the Council of State delivered on 22 July 2004, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 45.

³⁸ Explanatory memorandum for the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 29-30. An amendment was tabled in the Senate for the purpose of revamping the wording of the humanitarian clause (see amendment N° 8, *Parl. Doc.*, Senate, 2004-2005, 1138/3). This amendment reproduces the terms of European Directive 2002/90/EC proposing that the exception should apply when the behaviour is intended to offer humanitarian aid to the individual in question rather than the wording already featured in the earlier version of article 77 reproduced in the bill (assistance provided mainly for humanitarian reasons). The bill's current wording allows for a much broader and, consequently, less restrictive interpretation than the Directive. The amendment was withdrawn in the end. See the report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 10.

³⁹ Opinion of the Council of State delivered on 22 July 2004, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 45. The Government did not go along with the Council of State's opinion in this case either, using the same arguments as for article 77, see explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 29-30.

In view of the potential tragic implications of these two offences and with the aim of ensuring consistency, the sentences for trafficking and smuggling have been aligned⁴⁰ and the aggravating circumstances are similar for the two offences.

Three levels of aggravating circumstances are envisaged. The first level refers to the status of the perpetrator (person who has power over the victim, officer or civil servant)⁴¹. The second level puts various aggravating circumstances on the same footing: the minority of the victim⁴², the means of action (the use of violence or a type of coercion and taking advantage of vulnerability, which previously appeared as component parts in ex article 77a), the consequences of the offence (endangering the victim's life, permanent disability) and the circumstances surrounding the action (i.e. the aggravating circumstances in ex article 77a: usual activity and criminal organisation)⁴³. The third level applies to the criminal organisation and the unintentional death of the victim⁴⁴. The penalties have been adjusted so as to comply with the punishment applied by the new European instruments⁴⁵. Some aggravating circumstances were specifically imposed by European Law for trafficking in and smuggling of migrants: in the case of trafficking, this involves endangering the victim, the involvement of a criminal organisation, the specific vulnerability of the victim, the use of serious acts of violence or causing particularly serious harm to the victim (article 3 of the Framework Decision). In the case of smuggling, this involves endangering the victim's life and the involvement of a criminal organisation (article 1, 3 of the Framework Decision). Other aggravating circumstances, such as the status of the public employee committing the offence, are not laid down by any international obligation.

2.3. Other changes

One major amendment involves the definition of criminal organisation (article 324a of the Criminal Code) and the offence of involvement in a criminal organisation (article 324b of the same Code).

⁴⁰ Consequently, the basic infringement of trafficking in or smuggling of human beings is punishable by five years imprisonment and a fine of Euro 500 to 50,000.

⁴¹ See the new article 433e of the Criminal Code (trafficking) and the new article 77b (smuggling). The penalties provided for in this case are imprisonment from 5 to 10 years and fine of Euro 750 to 75 000.

⁴² It should be pointed out that the degree of the aggravating circumstances was amended subsequent to the comments made by the Council of State. The victim's minority previously appeared in the first level of aggravating circumstances, see the opinion the Council of State delivered on 22 July 2004, *Parl. Doc.*, House , 2004-2005, 51-1560/1, p.42-43.

⁴³ See the new article 433f of the Criminal Code (trafficking) and the new article 77c (smuggling). The penalties provided for in this case are imprisonment from 10 to 15 years and a fine of Euro 1000 to 100 000.

⁴⁴ See the new article 433g of the Criminal Code (trafficking) and the new article 77d (smuggling). The penalties provided for in this case are imprisonment from 15 to 20 years and a fine of Euro 1000 to 150 000 euros.

⁴⁵ Consequently, the Framework Decision of 19 July 2002 (article 3, paragraph 2, d) requires the Member States to punish the offence of trafficking in human beings with a custodial sentence, where the maximum may be no less than eight years when committed as part of a criminal organisation. The Framework Decision of 28 November 2002, seeking to strengthen the criminal law framework for preventing the facilitation unauthorised entry, transit and residence, applies, in particular, an identical penalty for the facilitation of irregular entry or transit if the offence is committed for lucrative purposes and when migrants' lives have been endangered (article 1, §3).

The rights of third parties have been specified in article 5b of the preliminary Title of the Criminal Procedure Code in the event of special confiscations as provided for in article 42, 1° of the Criminal Code (items that are the purpose of the offence or were deployed for its perpetration).

The Law of 10 August 2005 also amends certain provisions in the Criminal Code and the Criminal Procedure Code, so as to adapt them to the changes made in the case of trafficking in and smuggling of human beings. This applies to article 43c of the Criminal Code (confiscation of pecuniary advantages), article 10 b of the Preliminary Title of the Criminal Procedure Code (extra-territorial jurisdiction) and article 21a of the same Title (period of limitation for the publication). In the case of the Criminal Procedure Code, the amendments concern measures for phone- tapping (article 90 b) and hearing juvenile victims or witnesses of certain offences (article 91a).

Article 144b of the Judicial Code (jurisdiction of the federal prosecution service) is adapted on the same basis, as is article 81 of the Law of 15 December 1980

Through these new criminal liabilities of trafficking in and smuggling of human beings, the Law concerning the Centre also had to be revised as the Centre is charged with providing incentives for combating both trafficking in and smuggling of human beings. Consequently its power to go to Law also had to be changed along these lines.

The Law of 10 August 2005 also amends the title and certain provisions in the Law of 13 April 1995, relative to the prohibitory injunction and the follow-up to and implementation of the Law.

In the light of the new provisions for the exploitation of begging, the new Law drops article 82 of the juvenile protection Law.

Finally the Law on Public Welfare Assistance Centres (articles 57 and 57b) has been adapted subsequent to the changes made in the case of slum landlords.

2.4. Parliamentary debates

The Government presented its bill to the House on 14 January 2005. When the bill was being considered by the House's Justice Commission, few discussions focused on the new criminal liabilities of trafficking in and smuggling of human beings. Solely technical amendments and a few substantive amendments were adopted.

As has already been pointed out, the talks primarily focused on the issue of slum landlords, whereas the question of people trafficking and smuggling was considered very indirectly⁴⁶.

The Government itself tabled a set of amendments mainly so as to make good various omissions in the bill presented to the House. In the case of exploitation in begging, mention may be made of the addition of attempt in the new article 433b of the Criminal Code.

⁴⁶ As underscored by the report by the House's Justice Commission, stressing that the bill is in line with the chief concerns about trafficking in and smuggling of human beings and the sole problematic items were the articles to do with slum landlords, see the report drawn up on behalf of the House Justice Commission, *Parl. Doc.*, House, 2004-2005, 51-1559/004, p. 16.

In the wake of the questions she was asked during the debate, the Justice Minister finally decided to make an amendment on behalf of the Government seeking to spell out the concept of an abuse of vulnerability in the aggravating circumstances of trafficking in human beings, smuggling of human beings and exploitation in begging, as well as the criminal liability of slum landlords,. This was achieved by reproducing the terms of article 1, point 1, c) of the Framework Decision of 19 July 2002⁴⁷. The Law now specifies that an abuse of a person's vulnerability means that the person did not in fact have any other real and acceptable alternative but to submit to the abuse involved.

As one MP pointed out during the debate, proving such a no-option situation could be daunting and the Parliamentarian cautioned against allowing this type of clarification to make the victims' situations more difficult⁴⁸. The same message was conveyed by a speaker during the Senate debates, who justifiably pointed out that this addition could allow for a wide margin of interpretation and offered scope for pleading: hence abusing a vulnerable position is not automatically regarded as an offence⁴⁹. Ascertaining that someone is in precarious circumstances is no longer enough, it also has to be shown that the person had no other choice but to submit to the abuse in question⁵⁰.

Still on the issue of the aggravating circumstances surrounding the vulnerable position, both in the case of exploitation in begging (article 433c, 2°) and trafficking (article 433f, 2°), amendments were made to restrict the circumstances where people may find themselves in such a position as a result of removing the expression "in particular" which appeared in the original bill. This is line with the need for foreseeability, as these articles are featured in the Criminal Code⁵¹.

Lastly, as in the case of slum landlords, amendments were tabled and adopted on the confiscation (mandatory and not discretionary), and the guarantee of third parties acting in good faith. This applies in the context of trafficking in and smuggling of human beings⁵².

In the version amended by the House Justice Commission, the bill was then unanimously voted for during the House's 21 April 2005 plenary session.

The Senate then decided to refer to the bill. Here, too, various amendments were tabled, particularly in the case of begging⁵³, amending the Law on Public Welfare Assistance Centres, which has to be

⁴⁷ See government Amendments N° 10 (trafficking in human beings), N° 11 (begging), 12 (slum landlords) N° 14 (smuggling), *Parl. Doc.*, House, 2004-2005, 51-1560/004, p.8-10. Amendment N°12 was subsequently withdrawn, as the Minister believed the amendment 31 an MP had tabled summed up the arguments put forward during the debate on the concept of vulnerability, *see* the report drawn up on behalf of the House Justice Commission, *Parl. Doc.*, House, 2004-2005, 51-1559/004, p. 38.

⁴⁸ See *Parl. reports*, House, unabridged report, Criv 51, Plen. 131, p.19.

⁴⁹ Report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 13.

⁵⁰ *Parl. report* Senate, s.o. 2004-2005, plenary session of 2 June 2005, 3-114, p.17

⁵¹ Amendments N° 17 (begging) and 18 (trafficking), *Parl. Doc.*, House, 2004-2005, 51-1560/004, p.12 and 13. The text was also adjusted (technical correction) for smuggling, without an amendment being tabled. We see no justification for adding a precarious social situation to the list of positions of vulnerability to do with the smuggling of human beings, as the target is non-European Union foreign nationals, who, by definition, will find themselves in an illegal or precarious administrative situation.

⁵² See Amendments N° 24 (slum landlords), 23 (trafficking in human beings), 25 (smuggling), *Parl. Doc.*, House, 2004-2005, 51-1560/005.

brought into line with the changes concerning slum landlords⁵⁴ and "simple"⁵⁵ smuggling against the background of extraterritorial jurisdiction.

During the general debate, the issue of inconsistency with the European Directives, particularly in terms of the *modi operandi* of trafficking in human beings, was taken into consideration but no change was made to the bill on appraisal.

In the final analysis, the sole amendments adopted were those changing articles 57 and 57b of the organic Law on Public Welfare Assistance Centres.

The amended version of the text was adopted by the Justice Commission on 10 May 2005 and adopted as such during the 2 June 2005 plenary session.

The bill was referred back to the House, owing to the amendments made by the Senate, and was finally adopted during a plenary session, notwithstanding the tabling of two amendments⁵⁶. One of the amendments⁵⁷ sought to drop the reference to an acceptable alternative (even though the same Commission had asked for it to be added!) in the criminal liability involving slum landlords – but not in the case of trafficking in human beings. The MPs tabled the amendment owing to their concern that this wording would lead to myriad discussions, with victims having to prove that they had no other real and acceptable alternative. The Minister pointed out that this clarification was not designed to narrow the scope the offence now enjoyed, and the amendment was refused⁵⁸.

As the House did not make any changes to the text forwarded by the Senate, this text received the royal seal of approval and was published in the *Moniteur Belge* (Belgian Official Journal) on 2 September 2005.

⁵³ See note 23 below.

⁵⁴ Amendments 3 and 4, *Parl. Doc.*, Senate, 2004-2005, 3-1138/2.

⁵⁵ Amendment N° 11, *Parl. Doc.*, Senate, 2004-2005, 3-1138/3. The Senators tabling the amendment were anxious to broaden Belgium's extraterritorial jurisdiction in the case of "straightforward" smuggling and not just in the more serious case of this offence. Subsequent to the Minister's explanation, the amendment was withdrawn. The current article 10b provides for extraterritoriality solely in the most serious cases. However, the bill followed the same logic (see report by the Senate's Justice Commission, *Parl. Doc.*, Senate, 2004-2005, p 22).

⁵⁶ One amendment (N° 34) covered exploitation in begging (see note 23 below).

⁵⁷ Amendment N° 33, *Parl. Doc.*, House, 2004-2005, 51-1560/012.

⁵⁸ Report drawn up on behalf of the House Justice Commission, *Parl. Doc.*, House, 2004-2005, 51-1560/013, p.7.

3. Prospects and challenges

3.1. A definition of trafficking in human beings inconsistent with the international and European instruments: advantages and disadvantages

3.1.1 Distinction between trafficking and smuggling

The Law of 13 April 1995 failed to provide a definition of what is understood by trafficking in human beings. This gave rise to interpretation problems in practice, particularly in terms of making a distinction between trafficking in and smuggling of human beings. This analysis was revealed in an assessment of the Justice Minister's former directive COL 12/99 where a definition of this development was provided⁵⁹. Consequently, interpretation problems occurred at regular intervals in the various public prosecutors' offices⁶⁰, which would prompt them sometimes to include borderline cases in the definition or exclude them at other times. This was particularly true of illegal people smuggling, smuggling where no component of exploitation could have been ascertained, pure economic exploitation as part of illegal immigration⁶¹. Some magistrates took the view that a foreign national brought to Belgium by a network and living there illegally was a victim of trafficking, while others did not⁶². However, viewpoints conflicted most off all in making a distinction between trafficking and smuggling, with some public prosecutor's offices making a distinction between the two concepts and others not⁶³. For those making a distinction, smuggling means illegally transporting people for huge sums of money, whereas trafficking refers to the exploitation of the person⁶⁴.

This distinction between the two terms is also reflected in the answers to the questionnaires the Centre sent to various police forces, inspection services and special prosecutors in the major cities in the countdown to the annual report.

⁵⁹ COL 12/99 – Ministerial directive on investigations and legal action in the case of trafficking in human beings and child pornography. The definition of trafficking was as follows: "trafficking in human beings is understood to mean illegally submitting a person to one's own authority or that of other individuals by using violence, threats or abusing a position of authority or tactics, primarily so as to engage in the exploitation of the prostitution of others, in forms of exploitation and sexual violence or the exploitation types of work or working conditions incompatible with human dignity. An abuse of authority is also equated with any form of pressure applied so a person has no other alternative but to submit to the abuse involved. The victim's age, gender and nationality are component parts not taken into account at this stage".

⁶⁰ The industrial tribunals and police forces also have problems with interpretation, see I. AENDENBOOM, "De wetgeving tot bestrijding van de mensenhandel: roeien met de juridische riement die men heeft", *T.V.R.*, March 2003, p.9-10.

⁶¹ Criminal policy department, *Assessment of the directive on the policy for investigating and legal action in the case of trafficking in human beings and child pornography col 12/99*, October 2001, p.14.

⁶² *Ibidem*, p.14

⁶³ Consequently, 11 public prosecutor's offices make a distinction between the 2 concepts, 15 do not and one public prosecutor's office has failed to answer, *Ibidem*, p.16.

⁶⁴ *Ibidem*, p.16. When the tribunals make a distinction they also do so along these lines, *ibidem*, p 33.

The use of deception/or coercion, exploitation by means of violence, misrepresentation or the abuse of precarious circumstances are regarded as determining factors for trafficking, as well as payment for travelling from one point to another⁶⁵, the organisation of illegal immigration for payment, apart from any exploitation⁶⁶ for trafficking. Smuggling is sometimes regarded as a component of trafficking, with several cases showing that a matter originally dealt with as a case of smuggling may subsequently be addresses as trafficking⁶⁷.

A consideration of the case law issued in recent years on the basis of ex article 77a, shows that several decisions have been taken in the context of human trafficking on the basis of this article. The judges believe this charge is demonstrated, as the abuse of a vulnerable position involves creating false expectations, being transported in highly precarious circumstances⁶⁸, relying on the defendant s(having had to pay for journey, not having any travelling documents,...) ⁶⁹, but first and foremost owing to the huge sums involved and the dire conditions the victims have to suffer ⁷⁰.

The Expert group's review of the definition of trafficking in human beings in the United Nations Protocol on trafficking shows that the movement factor is primarily involved in the distinction between trafficking of people and smuggling of migrants. The aim of smuggling is to succeed in illegally crossing borders, whereas the purpose of trafficking is the exploitation of a person. Smuggling involves crossing borders, whereas trafficking does not specifically imply this: this may take place inside the same country. This is why one of the Expert group's recommendations was that the Member States should ensure that all types of trafficking, irrespective of their cross-border nature and/or the involvement of organised crime, should be duly prevented. Towards this end, the new definition of trafficking is a change for the better, as it provides a mean of punishing both cross-border trafficking and national trafficking, irrespective of the type of exploitation⁷¹.

The Expert group also stresses that the criteria for making a distinction between trafficking and smuggling is the existence of a victim: a person whose individual rights have been infringed, whereas the offence of smuggling does not in itself breach the individual's rights but the political interests of the State whose borders have been breached. This distinction is not that straightforward in practice. Smuggled persons are themselves often victims of human rights violations, such as the right to privacy. Moreover, during the movement, it is difficult to know whether a person is being trafficked or smuggled.

⁶⁵ Reply to the questionnaire, local police - Evere.

⁶⁶ Reply to the questionnaire, Charleroi district, local police - Antwerp.

⁶⁷ For example, people who have to work to pay for the travelling costs, questionnaire – Bruges local police.

⁶⁸ See under this heading several decisions mentioned and published in the "Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography", case-law, Centre for Equal Opportunities and Combating Racism, May 2002, pp. 23-24.

⁶⁹ See Centre for Equal Opportunities and Combating Racism, *Call for an integrated approach, review of the legislation and case-law*, annual report, December 2003, p. 64.

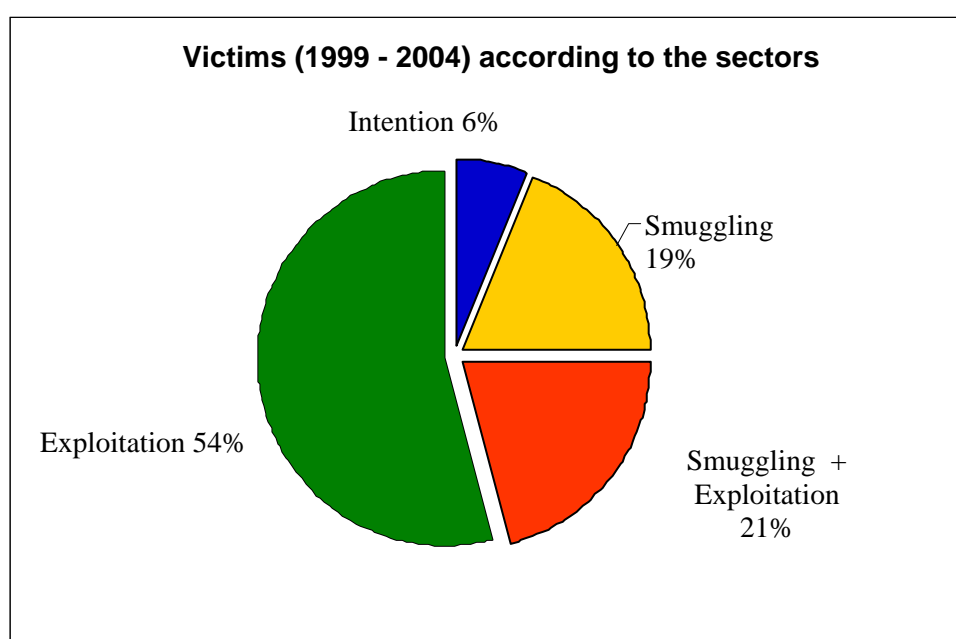
⁷⁰ See in particular various key cases involving smuggling of human beings, considered in our latest annual report, *Analysis of the victims' viewpoint*, December 2004, pp.89-98.

⁷¹ On the basis of the Law of 13 April 1995 sexual exploitation could be suppressed irrespective of the victim's nationality (in the light of articles 379 and 380 of the Criminal Code), but trafficking in human beings in the case of employment could be clamped down on only if the victim was a non-national (ex article 77a of the Law of 15 December 1980).

This means that cases that may first of all appear to involve smuggling could turn out to entail trafficking or include factors that may indicate a case of trafficking. This is what has happened in certain cases where the Centre brought a civil action. For example in a recent court case in Leuven⁷², involving an Indian smuggling ring generating huge sums of money, the statements by one of the suspects and phone-tapping revealed the network was also used to put in an "order" for a young girl from Bulgaria. Similarly, in cases concerning Chinese Triads, people turning to the organisation had to provide an advance and pay off the rest by working.

The profiles of the victims also showed the difficulties in discovering the borderline between trafficking and smuggling. For example, 21 % of all the victims helped by one of the three specialist reception centres between 1999 and 2004 were in fact the victims of both trafficking and smuggling.

Graph 1: Victims according to the issues (1999 – 2004)



Consequently the distinction made between trafficking in and smuggling of human beings as a result of the new definitions has to be looked upon as a welcome development, but the distinction should not result in the two processes being completely segregated during investigations, as they are closely intertwined. This could also adversely affect the victims.

3.1.2 Coercion or the abuse of a vulnerable position as an aggravating circumstance and not as a component part of the offence

a) Background to the earlier provisions

⁷² Louvain Criminal Court, 22 March 2005, 17th ch.

Ex article 77a of the Law of 15 December 1980 featured a material component: helping to facilitate the entry, transit or residence of a foreign national, with the moral component of the offence being the use of misrepresentation, violence, threats or some form of coercion or an abuse of the vulnerable position of non-nationals, primarily because of their illegal or precarious administrative situation. The text did not spell this out, but the possible consent of the foreign national was irrelevant.

In the light of ex article 77a, the consideration of the abuse of the vulnerable position and/or the existence of some form of coercion represented the key item for judges to decide if they were confronted with a case of human trafficking or otherwise.

In cases involving human smuggling, the defendants often asked for the facts to be recharacterised on the basis of ex article 77⁷³, believing no coercion or abuse occurred, because the victims freely approached the defendants with a view to emigrating and were willing to do anything to reach their destination⁷⁴.

In cases involving the exploitation of prostitution, the judges delivered judgements on the basis of article 77a (often in conjunction with article 380 of the Criminal Code) because the victims, often transported under false pretexts⁷⁵, were then compelled to prostitute themselves. The courts held that the abuse of a vulnerable position was established on the basis of the following factors: the withholding of earnings or a part thereof, no freedom of movement, controlling prostitution. The existence of coercion, violence or threats was also established in many cases⁷⁶.

As for economic exploitation in general, without additional facts pointing to an abusive situation (extremely low wages, accommodation unfit for habitation, obstacles for freedom of movement, etc.), merely failing to observe social legislation is not enough to believe human trafficking has taken place⁷⁷.

b) Coercion and exploitation

Coercion, force, deceit and the abuse of a position of vulnerability are components of the definition of trafficking included in the Palermo Protocol and the European Framework Decision. Against this background, the Expert group report stresses that trafficking is referred to owing to the coercive measures more than the type of work or the services themselves. These coercive components created confusion in many cases because although the workers appear to have agreed to what is in fact forced labour or activities similar to slavery, some parties may consider they are not trafficked persons.

⁷³ This provision cracked down on the act of helping a non-national to enter or reside in the Kingdom illegally, without there being a question of coercion or abuse.

⁷⁴ See in particular the key issue of Chinese Triads, reviewed in our annual report *Analysis of the victims' viewpoint*, December 2004, p. 90.

⁷⁵ See in particular a recent decision in Namur: Namur Criminal Court, 27 September 2004, 16th ch.: the two Moldavian victims were recruited by promising them work as cleaning ladies. They were then bought and subject to sexual abuse in order to compel them to prostitute themselves; Charleroi Criminal Court, 25 April 2005, 6th ch.: the victims were recruited because they thought they were going to work in Germany as waitresses or baby sitters.

⁷⁶ Including death threats or threats of reprisals, see Centre for Equal Opportunities and Combating Racism, *Call for an integrated approach, analysis of legislation and case-law*, annual report, December 2003, p. 66.

⁷⁷ See in particular the comments and decisions featured in the collection of case-laws (May 2002), pp.26-28 and our annual report, December 2003, pp.68-70.

Within this context, it appears to be of vital importance to consider the question of consent: this implies a scope for refusing an act the victim was supposed to carry out or accept, with genuine consent being feasible solely when all the factors are known and the individual is free to give his/her consent or otherwise⁷⁸.

As soon as people freely agree to emigrate, to carry false papers, prostitute themselves or illegally work abroad, there is no suggestion that they consent to forced labour or exploitation on a par with slavery, including in the sex industry. Consequently, this does not rule out that they are the trafficked persons. This may result in an incorrect distinction being made between victims regarded as "innocent" and others deemed to be "guilty". In the case of sexual exploitation, "innocent" victims would be those forced to prostitute themselves, while "guilty" victims would be those who were already prostituting themselves beforehand, knew that they were going to continue doing so and/or where willing to continue doing so without any coercion. Hence, they would be responsible for the consequences of their actions. It is no coincidence that a trafficker's typical defence is the claim the woman in question knew what she was doing or was supposed to have known, therefore she should have accepted that she would be abused with impunity. According to this interpretation, the coercive factor is misinterpreted, referring solely to the way in which a woman took up prostitution (the outcome of coercion or her own decision) and not to the coercion or slavery to which she might be subjected to later on⁷⁹.

This false distinction appears in several conflicting case-law decisions because the lack of consent was not explicitly referred to in article 77a of the Law of 15 December 1980⁸⁰.

This is why the report by the Expert group justifiably states that the key factor continues to be the forced labour or non-consensual exploitation, irrespective, in the final analysis, of how these individuals ended up in these circumstances.

c) The legislator's decision

The legislator decided against including the *modi operandi* in the component parts of the new offence of trafficking in human beings. When the bill was being presented and discussed, the Government put forward several arguments for not including the *modi operandi* among the component parts of the offence. The key reasons were to do with evidence and case law. References were also made to the fact that the European instruments compelled Belgium to forgo these *modi operandi* in the case of

⁷⁸ The Expert Group Report, *op. cit.*, p. 50.

⁷⁹ Lack of freedom may exist at the time of emigration, because a person has been deceived, but this may also occur at a later stage: the person knew she was going to prostitute herself but did not know she would be required to repay her debts, hand over her travel documents, have her freedom of movement restricted,...(J.A. NIJBOER, "De aanpak van internationale mensenhandel", *Delict en Delinquent*, 2004, p. 482.).

⁸⁰ Some courts acquit the defendants because the victim knew she would be required to prostitute herself in Belgium, whereas other claim this does not prevent article 77a being applied, see "The Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography", case-law, CECLR, May 2002, p. 34.

juveniles⁸¹ and the inclusion in criminal liability of the intended or actual exploitation as a new component part⁸².

During the debate within the Senate Justice Commission, the Commission members considered the issue of inconsistency with the European Directives, particularly in terms of the *modi operandi* of trafficking in human beings. One speaker said that the bill is more stringent than the Directive, as the aim is to reduce the burden of proof for the public prosecutor's office, but the bill is less strict than the Directive, as the list of sectors likely to come under the heading of trafficking was restrictive⁸³.

Questioned about this matter, the Minister stressed that the decision was taken after careful consideration of the issue and in the light of the case-law and the experience of the various stakeholders. It was noted that the legal debate generally focused on the *modi operandi* and people being acquitted and no proof was offered of such a component part of the offence. Consequently, the Minister preferred the discussions to take place in the context of aggravating circumstances so the concepts of trafficking and smuggling would be indisputable⁸⁴.

As a result of reducing the burden of proof for the public prosecutor's office, criminal liability becomes particularly broad in scope, as the act and purpose of exploitation suffice as component parts with coercion or abuse no longer having to be demonstrated. It is quite justifiable to point to a risk of being faced in practice with types of behaviour not identifiable as human trafficking but nonetheless being prosecuted on the basis of these provisions⁸⁵. This would be straying far away from the aims being sought in the international and European instruments.

Similarly, we also believe there is a risk that more important cases, involving violence and threats of reprisals, which are factors that are more difficult to prove and often mostly based on the victims' statements, may be dealt with in a limited way.

If the *modus operandi* is not included as a component part of the offence, this may also raise the question of what distinction can be made, in terms of sexual exploitation, with article 380 of the Criminal Code, as coercion and abuse are also featured there among the aggravating circumstances and not as a component part of the offence. The Government has been anxious to set the record straight here in one or two areas. Under this heading, the explanatory memorandum specifies that by using the expression "allow offences to be committed", the bill does not as such target the ones who recruit to exploit others. This type of behaviour is incriminated in article 380. However, a distinction has to be made between people exploiting others outside the context of trafficking and the exploiter at

⁸¹ Another option would have been to provide an autonomous offence of trafficking involving minors.

⁸² Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 21.

⁸³ Report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 11-12.

⁸⁴ *Ibidem*, p.15.

⁸⁵ See in this context, the report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 11. See also G. VERMEULEN, « Matroesjka's: tien jaar later, repressie en contrôle als speerpunten van het vernieuwde mensenhandelbeleid ? », *Panopticon*, 2005, 2, casting doubt on trafficking in human beings occurring without a coercive factor being involved.

the end of the chain who has therefore taken part in trafficking. These individuals may be prosecuted as a party to the offence on the basis of article 433d⁸⁶.

It should also be stressed that as the *modi operandi* now form part of aggravating circumstances, there is some justification for wondering if it was still relevant for the sake of the basic offence to continue mentioning that consent to the intended or actual exploitation is of no importance.

3.1.3 *The purpose of exploitation in specific sectors*

The Palermo Protocol and the Framework Decision set forth the purpose of exploitation involved in trafficking. This refers to the exploitation of the prostitution of others or other forms of sexual exploitation (including pornography), exploitative labour (and at a minimum forced labour or services), as well as the removal of organs (Palermo).

Consequently, the Expert group recommended that States should ensure that legislation and anti-trafficking policies should cover all types of trafficking in women, men and children.

The new article 433d strikes us as straying to some extent from this recommendation and the wording in the Protocol and the Framework Decision, because it offers a restrictive list of areas in which the exploitation may occur. In the case of sexual exploitation solely prostitution and child pornography are targeted; in the case of labour, this has to involve "employment in conditions incompatible with human dignity". The removal of organs has been added in order to comply with the Palermo Protocol. Exploitation in begging and the commission of offences against one's will are included as forms of trafficking, even though these are not provided for by the instruments in question.

Apart from begging not having been defined, some parties wonder if this purpose of exploitation may not be regarded as working conditions incompatible with human dignity⁸⁷. There is also a risk that anti-people trafficking measures serve as a pretext for conducting a policy aimed at eliminating the "inconveniences" caused by certain population groups.

In the case of committing a crime or an offence against one's will the explanatory memorandum specifies that this item is based on French Law, and also reflects new forms of human trafficking established by case-law (drug trafficking and theft)⁸⁸.

The MPs appear to welcome the decision to extend the scope of the new offence⁸⁹, but there is some justification for thinking this might not actually be the case. Hitherto the judges' key analysis, based on article 77a, revolved around the abuse of a precarious circumstance in order to be able to include other, non-exhaustively listed situations, such as sexual slavery outside the context of prostitution or

⁸⁶ Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 18-19.

⁸⁷ See in this connection G. VERMEULEN, *op.cit.*, p.6.

⁸⁸ Explanatory memorandum of the bill amending various provisions in order to step action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 20. This provision has nonetheless come in for criticism, see report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 11. Along the same lines, G. VERMEULEN, *op. cit.*, p. 6-7.

⁸⁹ See in particular *Parl., reports*, House, unabridged report, Criv 51 plen 131, p. 23.

bogus adoptions. Up to now these situations may have been regarded as trafficking in human beings but may not be in the future, with all the adverse circumstances this implies for the victims.

There is also a potential risk that this list could exclude from the definition of trafficking in human beings new forms that may arise in the future or certain cases that would fit into this context solely if the rules were more broadly interpreted⁹⁰?

3.2. The concept of human dignity, a solution for economic exploitation?

a) Ex article 77a and economic exploitation

The ex article 77a of the Law of 15 December 1980 allowed trafficking in human beings at economic level to be punished only if the victim was a foreign national (unlike the exploitation of prostitution, referred to by articles 379 and 380 of the Criminal Code). One of the problems in this context was the proof and the lack of any link between a) illegal employment and b) the contribution to the entry or residence⁹¹.

The case-law was the most divergent about exploitative labour with the interpretation of the abuse of a vulnerable position differing from one court to another⁹². There was the case of the Guinean lady employed as a home help whom the Liège Court of First Instance⁹³ ruled was in a vulnerable position, as she did not have any papers. These were kept in a safe to which she had no access. The abuse involved getting her to work without social protection in unacceptable living and working conditions. The Liège Court of Appeal set aside the decision⁹⁴, pointing to a lingering doubt about the abuse of the young lady's vulnerable position, primarily because she did have some freedom of movement and did receive a payment in kind.⁹⁵

The Liège Court of Appeal also set aside another decision in the context of a market gardening case, treating the intermediary, an Indian national, and the employer, a Belgian national differently, convicting the intermediary for trafficking in human beings but not the employer, whereas both had been convicted at first instance⁹⁶.

⁹⁰ See the report by the Senate Justice Commission , *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 11-12.

⁹¹ Speech delivered by the advocate-general L. Drubbel during the solemn opening of the Ghent Industrial Tribunal on 2 September 2003, "de rol, bevoegdheden en taken van de arbeidsauditoraten in de strijd tegen de " mensenhandel", *R.W.*, 2003-2004, Nr. 22, p.851.

⁹² For an analysis of the case-law in this context, see in particular our two latest annual reports *Call for an integrated approach, analysis of legislation and case-law*, December 2003 and *Analysis of the victims' viewpoint* , December 2004.

⁹³ Liège Criminal Court , 10 November 2000, Ch 11a (see the case-law collection , May 2002, p. 26 and p. 375 and following and our annual report , December 2003, p.68-69).

⁹⁴ Liège 25 April 2001, *ibidem*.

⁹⁵ For a commentary on these decisions, see P. LE COCQ, "Illegal employment and trafficking in human beings: Where is the limit ? ", *J.D.J.*, 2002,N° 218, pp.14-19.

⁹⁶ See Centre for Equal Opportunities , *Call for an integrated approach, analysis of legislation and case-law* , annual report , December 2003, p. 68.

The Brussels Criminal Court also applied a different treatment to a transport operator and the employers in a case of exploitation in the hotel/catering and construction industry: the Bulgarian transport operator was convicted for trafficking in human beings but not the employers⁹⁷.

The new Law hopes to remedy these situations by ushering in the concept of employment in conditions incompatible with human dignity.

b) The concept of human dignity

The concept of "human dignity" is not a new one. It has featured in the standard-setting texts for several decades now⁹⁸. In Belgian Law it is found in particular in the Constitution⁹⁹ and in the Law on Public Welfare Assistance Centres, where it is specified that social assistance is awarded to allow all individuals to lead a life consistent with human dignity¹⁰⁰.

The concept is also increasingly appearing in case-law, with the courts using the concept as a basis for justifying their decisions, but without interpreting any text that refers to it¹⁰¹. The concept has therefore become equal to a general principle of Law¹⁰².

This concept has come in for criticism: it is held to be vague, a-legal, capable of being manipulated, have moral connotations¹⁰³. As there is no exact outline, the concept of human dignity is allowed to become a flexible principle so a judge may interpret it "in the light of contemporary conditions"¹⁰⁴.

In common with the vulnerable position, as featured in ex article 77a, the concept of human dignity is not well defined in legal terms¹⁰⁵, thus paving the way for conflicting interpretations¹⁰⁶. The risk is the

⁹⁷ *Ibidem*, p. 69.

⁹⁸ J. FIERENS, "Human dignity as a legal concept", *J.T.*, 2002, p.578-579: the first reference to this concept was apparently made in the German Constitution on 11 August 1919. It is also a concept applied in international public law (see in particular the Universal Declaration of Human Rights of 10 December 1948 and specifically its article 23, §3, specifying that "Everyone who works has the right to a fair and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."). For an analysis of the provisions in French law see S. LICARI, "Working conditions and accommodation incompatible with human dignity resulting from a position of vulnerability or the dependence of the victim", *Rev. Sc. Crim. Dr. Comp.*, 2001, pp. 563-569.

⁹⁹ Article 23 of the Constitution provides that all individuals are entitled to lead a life consistent with human dignity and that economic, social and cultural rights are guaranteed towards this end. This includes the right to employment, the right to fair working conditions and remuneration. For an analysis in terms of social law, see the speech delivered on 3 September 2002, during the solemn hearing of the Brussels Industrial Tribunal, by the substitute general M. PALUMBO, "The dignity of the person in social law or the relativity of an absolute concept", *Chr. Dr. Soc.*, 2003/01, pp. 1-14.

¹⁰⁰ Article 1, al. 1 of the Law of 8 July 1976. The concept also appears in other legislative provisions, see in particular article 3 of the Decree of 4 March 1991 on youth care.

¹⁰¹ See J. FIERENS, *op. cit.*, who refers to several decisions, p.579.

¹⁰² *Ibidem*, p. 579.

¹⁰³ *Ibidem*, p.580. J. Fierens does not, however, subscribe to these criticisms, believing, conversely, that the concept should be retained and tightened up in law.

¹⁰⁴ In this connection, J. FIERENS, *op. cit.*, p. 582. It should also be stressed that this concept is not the only ones whose content is variable: this is also the case with concepts such as "good character" or public order.

judge will prepare the resulting laws from a subjective viewpoint¹⁰⁷, with the risk of failing to take account of the most flagrant circumstances where there is no possible doubt¹⁰⁸.

During the review of the directive COL 12/99, where the term was used in the definition of trafficking¹⁰⁹, interpretation-related problems were raised, because the term was regarded as too vague and subjective¹¹⁰. Some parties pointed to the fact that social and economic exploitation in inhumane circumstances may also be applied to people who are (no longer) foreign nationals and even have a work permit, while others believe the scope of trafficking should not be confined to cases where working conditions are incompatible with human dignity but it is sufficient that the conditions should be incompatible with social legislation (for example, when a non-national, owing to a precarious or illegal situation works in conditions (particularly in terms of wages) that a Belgian national or a foreign national legally residing in the country would not accept)¹¹¹.

However, the factors highlighted by Belgium's different tribunals to prove a violation of human dignity were as follows: no wage or too low a wage for the task undertaken, unhygienic and/or hazardous working conditions, rudimentary housing conditions. The failure to take account of human dignity applies to health, safety and the freedom of workers¹¹².

c) Human dignity and forced labour

In the case of exploitative labour, the Expert group report stresses this does not always take place after a movement and these people may have emigrated via a people smuggling ring and then ended up in an exploitative situation¹¹³. The recommendations of the Expert Group for transposing the definition of trafficking featured in the Protocol was that States should duly criminalise any exploitation of human beings in forced conditions producing conditions similar to slavery, regardless of whether the exploitation involved a trafficked person, a smuggled person, an illegal immigrant or a legal resident.

¹⁰⁵ See in this connection B. EDELMAN, "The dignity of the human being, a new concept", *Recueil Dalloz*, 1997, 23 ème cahier, chronique, 185, S. LICARI, *op.cit.*, p. 564.

¹⁰⁶ See in this connection, J. FIERENS, *op.cit.*, p 581.

¹⁰⁷ F. KURZ, "Applying the respect for human dignity concept: a challenge for the industrial tribunals", *J.T.T.*, 2002, p..273.

¹⁰⁸ S. LICARI, *op.cit.*, p. 565.

¹⁰⁹ COL 12/99 – Ministerial directive on the policy for investigating and prosecuting in the case of trafficking in human beings and child pornography, see note 59 above.

¹¹⁰ Criminal policy department, *Assessment of the directive on the policy for investigating and prosecuting in the case of trafficking in human beings and child pornography -col 12/99*, October 2001, p. 117.

¹¹¹ *Ibidem*, p. 31-32.

¹¹² *Ibidem*, p. 33.

¹¹³ Which primarily raises the question of knowing how forced labourers who have not been trafficked ended up in this situation. The Expert Group therefore believes that the argument could be used, on the basis of a legalist interpretation of article 3 a) of the Protocol, that any form of recruitment, transport, transfer, harbouring or receipt (such as transporting workers from their accommodation to the workplace or the receipt of workers so as to exploit their forced labour or services) could be regarded as trafficking.

Neither the Palermo Protocol nor the European Framework Decision sets the record straight on what was meant by the exploitation of another person's labour or services. However, the use of these terms clearly distinguishes them from other "standard" types of poor working conditions, even if a person is likely to suffer from social or economic exploitation¹¹⁴.

Most of these terms were used in earlier international instruments¹¹⁵. For example, the International Labour Organisation (ILO) singles out six factors that may point to a situation of forced labour: a threat and/or use of physical or sexual violence, restriction of movement, debts/working off debts, withholding earnings or no payment, holding passports and identity papers and threats to inform the authorities.

¹¹⁴ *Explanatory paper 1*, Definition of trafficking: Relation and differences between UN and EU definitions, the concept of exploitation, pp.130-132.

¹¹⁵ See the 1948 Declaration on Human Rights, the Slavery Convention, the 1966 International Covenant on Civil and Political Rights (art 8) and the European Convention on Human Rights The 1930 ILO Convention on Forced Labour, the Convention on the Rights of the Child and the ILO Convention on the Elimination of the Worst Forms of Child Labour (N° 182).

d) Working conditions incompatible with human dignity

The new article 433d is in line with the Expert group recommendation insofar as it seeks to provide a means of punishing human trafficking, regardless of the victim's status: legal resident, illegal immigrant, Belgian national or a foreign national. However, there is no certainty that all forms of exploitative labour may be punished via this new provision.

In the bill presented to Parliament, the Government decided against reproducing the terms included in the Palermo Protocol and the European Framework Decision. Deciding the *modi operandi* should be aggravating circumstances rather than component parts of the offence and opting for the term "working conditions incompatible with human dignity", the Government thought it had agreed to a field of application that was broader than the European Framework Decision. When considering the draft bill where the terms were featured, the Council of State was unable to accept this view. It could see no certainty that employing people in conditions incompatible with human dignity could be regarded as covering all forms of exploitative labour within the meaning of the Framework Decision¹¹⁶. According to the Council of State, employing people and abusing their precarious circumstances by seeking to make an abnormal profit even though the working conditions are not consistent with human dignity would not be punishable in Law. The Government nonetheless failed to amend the text, believing the Framework Decision called for the punishment of trafficking in human beings for the purpose of the exploitation of their labour or services only if the exploitation took the form of "forced or obligatory labour or services, slavery or activities similar to slavery or servitude". Focusing on employment in conditions incompatible with human dignity, the draft bill was held to be stricter than the minimum required by the Framework Decision, which explicitly allowed it, with the English version being worded more clearly than the French and Dutch ones¹¹⁷.

Confining exploitative labour to working conditions incompatible with human dignity might be thought to be running the risk of once again allowing the judges wide discretion, in the light of their own sensitivities, as the term is not a legal concept that is more effectively defined than the abuse of a vulnerable position.

Against this background, the Government was anxious to offer more information to the courts called upon to deal with these cases. The explanatory memorandum specifies that the bill does not seek to tackle illegal work but work "undertaken in working conditions incompatible with human dignity". Various factors could be taken into account to prove these working conditions are incompatible with human dignity in terms of the remuneration or the environment and the working conditions¹¹⁸.

¹¹⁶ Advisory opinion of the Council of State on 22 July 2004, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 43.

¹¹⁷ The English version reads as follows: "*for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others forms of sexual exploitation, including pornography.*" The Council of State would have liked to have considered the issue in depth but was unfortunately prevented from doing so as the Government wanted it considered as a matter of urgency.

¹¹⁸ Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House, 2004-2005, 51-1560/1, p. 19.

A wage that is obviously inconsistent with the long hours worked or unpaid services may be described as working conditions incompatible with human dignity. A sign of economic exploitation for the trial judge would be wages lower than the minimum level of monthly income, as referred to in a collective labour agreement or employing workers in a working environment that is obviously incompatible with the standards laid down by the Law of 4 August 1996 on the welfare of workers in the workplace.

In spite of the criticisms made during the assessment of the earlier COL 12/99, the term was nonetheless included in the Justice Minister's new COL 10/04 on the policy for investigating and prosecuting cases of trafficking in human beings (20 April 2004). The directive specifies that those interpreting the concept should refer to the European Union's standards, values and criteria. The explanatory note talks about the need to avoid transposing the conditions of the victim's country of origin in order to define this concept.

These clarifications are most welcome but we must consider if the new concept will help to avoid the pitfalls that were previously faced with the concept of the abuse of a vulnerable position.

It also has to be asked how the level of inconsistency with human dignity may be determined? In social assistance matters, industrial tribunals often encounter problems deploying this concept and filling this conceptual void¹¹⁹. Will it be any different for trafficking in human beings? In view of the restrictive interpretation of the criminal laws, there may be a risk once more of seeing only the most flagrant cases penalised, with borderlines cases escaping this fate¹²⁰

Similarly, as a speaker during the Senate debate justifiably asked: does the provision apply to work undertaken during coercion or an abuse of a precarious circumstance to compel the person to work, even though the conditions are not "incompatible with human dignity"¹²¹? Does this not exclude other forms of economic exploitation not involving working conditions incompatible with human dignity¹²² ?

Finally, as the use of coercion or the abuse of precarious circumstances are no longer component parts of the offence but aggravating circumstances, there may be a risk, on the other hand, of seeing prosecutions for trafficking in human beings being targeted on all cases of "straightforward illegal work" and missing the very essence of trafficking: the exploitation of a person made possible by a vulnerable situation?

As in the case of the abuse of a vulnerable position, as featured in ex article 77a, we feel that it will once again be up to case-law to decide the lineaments and fields of application of this new provision.

3.3. The concept of victim and the right to be able to enjoy the status of a "trafficked person"

¹¹⁹ For an analysis of this issue, see F. KURZ, *op.cit.*, p.273-278.

¹²⁰ In this context see. S. LICARI, *op.cit.*, p. 565.

¹²¹ See the report by the Senate Justice Commission , *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 11.

¹²² For example, fruit pickers working for a normal wage but possibly exploited by traffickers by having to reimburse the travelling expenses , *ibidem*, p.11.

One of the key implications of the criminal liabilities-related distinction now being made between people trafficking and smuggling is the status of the victims (non-nationals) of trafficking. These may qualify for a specific residence permit provided they leave the exploitative environment, co-operate with the legal authorities and agree to supervision by a specialist reception centre. These provisions have been spelled out in a circular and a ministerial directive ¹²³. These are on appraisal with a working group set up within the Interdepartmental Co-ordination Unit, which is considering ways of improving this status¹²⁴.

Those who can so far qualify for "trafficking" status, on the basis of ex article 77a, are foreign nationals whose vulnerable positions have been abused. In the case of sexual exploitation, this primarily involves victims of the exploitation of prostitution. Victims of various forms of economic exploitation (domestic work, catering and hotel industry, flower selling, fruit picking, ...) may also enjoy this status, along with smuggled persons, as many cases of this sort were judged on the basis of article 77a.

As a result of the new segregated criminal liabilities of trafficking (article 433d of the Criminal Code) and smuggling (new article 77a), there has to be a new definition of who is entitled to trafficked person status. As this offence now forms part of the Criminal Code, anybody, a Belgian national, an EU foreign national lawfully residing in the country, a non-EU foreign national lawfully or illegally residing in the country, is able to be regarded as a trafficked person. On the other hand, smuggled persons may no longer be regarded as trafficked persons, although this was previously possible¹²⁵. Adopted on 29 April 2004, a European Directive on residence status has to be transposed by 6 August 2006¹²⁶. This will also usher in various changes. It proposes that a residence permit should be issued, subject to certain conditions, to trafficked persons who are non-European Union nationals. The Member States are entitled to extend this entitlement to people who have been assisted during the illegal immigration process.

In the light of cases where the Centre has brought a civil action, particularly in the case of people smuggling, we consider it is important for the status to be maintained¹²⁷. Not only that, it also has to be of benefit to both trafficked persons and victims of the most serious cases of smuggling (i.e. articles 77 c ¹²⁸ and 77 d ¹²⁹ of the Law of 15 December 1980). The despicable treatment these migrants often have to endure is reflected in the case law and the cases the Centre has had to deal with¹³⁰.

¹²³ Circular of 7 July 1994 concerning the issuance of residence permits and employment authorisations (work permit) to foreign national trafficked persons, *Belgian Official Journal* , 7 July 1994; Directives of 17 January 1997 to the Aliens Office, the public prosecutor's offices, the police services , the social security law inspection services and the social inspectorate dealing with assistance to trafficked persons, *Belgian Official Journal* , 21 February 1997. These directives were amended on 17 April 2003, *Belgian Official Journal* , 27 May 2003.

¹²⁴ In this connection see the second part of this report.

¹²⁵ Obviously unless a form of exploitation (exploitive labour, for example) can be proved.

¹²⁶ Council Directive 2004/81/EC of 29 April 2004, 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 , *OJ*, L 261 of 6.8.2004, p.19.

¹²⁷ Subject to certain adjustments. In this context see the second part of this report.

¹²⁸ This primarily involved aggravating circumstances as regards the minority of the victim, the abuse of a precarious situation and the use of coercion or threats, as well as endangering the life of the victim.

¹²⁹ This refers in particular to the criminal organisation.

The question this raises has a direct bearing on the goals of the specialist reception centres. Mindful of the new offence of trafficking in human beings and the distinction made between trafficking and smuggling, the target group they are called upon to assist has to be redefined: should they confine themselves exclusively to assisting trafficked persons or are they also entitled to receive victims of (the most serious cases of) smuggling?

In the case of trafficked persons, should the centres accept the victims irrespective of their nationality, whereas Belgian victims, for example, or those from certain European Union Member States, presumably do not require the specific support of the centres, in the case of residence permits or social integration. Other services, such as victim support services, should ensure they can count on assistance. The European Directive on residence leans in the direction of support solely for non-European Union victims.

The criminal liability of slum landlords becomes an autonomous offence compared with trafficking. Their victims may no longer claim trafficking status, unless some other form of exploitation was involved (exploitative labour, for example).

Consequently, we are calling for the future legislation designed to transpose the Directive into Belgian law not to restrict the support from reception centres to trafficked persons from outside the European Union, as well as victims from the new Member States, which are not yet fully covered by the European Union policy of freedom of movement for people. The protection also has to be extended to victims of the most serious cases of smuggling, a provision that is also specified by the Directive.

Lastly, against the background of the new Law coming into force we have to consider how the public prosecutor's offices and tribunals will grant this trafficked person status. This raises the question of whether the status will be more easily granted, as the offence's field of application is broader. Moreover, as there is no longer any need to prove coercion or violence, factors that are often indicated in the victims' statements, there is some justification for thinking there may be a risk of the status being eroded in the future.

3.4. The ability of the Centre and reception centres to initiate judicial proceedings

Article 39 of the new Law revamps article 11, §1 of the Law of 13 April 1995¹³¹, in the wake of the new (separate) offences of trafficking in and smuggling of human beings.

First of all, the new § 1, 1° of this article specifies that, pursuant to this chapter on the implementation and follow-up of the Law, the new offences 433 *d* to 433 *g* and articles 379 and 380 of the Criminal Code are regarded as trafficking in human beings¹³².

¹³⁰ The fact that the victims of perpetrators, who may not be prosecuted on the basis trafficking, will not be able to enjoy residence status in future was considered during the Senate debates. Under this heading, the Justice Minister referred the matter to the Home Affairs Minister, stating that it was up to the latter to take decisions about this issue if the official were so inclined, see the report by the Senate Justice Commission, *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 15.

¹³¹ This article forms part of the chapter on the implementation and follow-up of the Law, featuring, in particular, provisions for initiating judicial proceedings.

Ex article 11 featured factual mistakes affecting the ability of the Centre for Equal Opportunities and the reception centres to take legal action¹³³. For example, the Centre could initiate judicial proceedings when an adult was recruited for the purposes of prostitution but not when this applied to juveniles¹³⁴. Covering the entire article 380 of the Criminal Code and not just some of its provisions, the new Law has now remedied this mistake¹³⁵.

However, now that the trafficking offence is clearly defined and added to the Criminal Code, we may ask what is the point of retaining articles 379 and 380 in this chapter¹³⁶. As article 433d defines what is involved in trafficking in human beings, itself referring in particular to article 379 and article 380, §1 (recruitment and exploitation of the prostitution of an adult) and § 4 (recruitment and the exploitation of prostitution of a juvenile), this leads to concepts such as trafficking in human beings covers the recruitment, transport, etc. of a person so as to allow the offence of trafficking in human beings to be committed against this person, which appears a bit odd, to say the least¹³⁷.

It should also be stressed that as the new offence of trafficking in human beings, as provided for in article 433d of the Criminal Code, refers solely to prostitution and child pornography in sexual exploitation matters, we have to consider whether the Centre will be entitled to take legal action in the case of sex tourism, for example. A few years ago, proceedings the Centre initiated over a case of this type, involving a Belgian national arrested in Thailand for the sexual abuse of a young boy, were dismissed¹³⁸.

The second amendment of article 11, § 1 applies to the addition of people smuggling. Article 11, §1, 2° specifies that the smuggling of human beings covers the offences referred to in articles 77a to 77 d of the Law of 15 December 1980 on aliens. It was important for the Centre to be able to take legal action in human smuggling cases as well. In the wake of the Royal Decree of 16 May 2004 on action

¹³² The two articles were referred to in the former version of article 11, in the same way as ex article 77 a.

¹³³ In this connection see the " Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography", case-law , Centre for Equal Opportunities and Combating Racism, May 2002, p. 15-16 and p.58 et seq.

¹³⁴ The ex article 11, §1, 2° of the Law of 13 April 1995 referred solely to certain parts of article 380 (formerly a) of the Criminal Code, i.e. §1, 1° (recruitment for prostitution) §§ 2 (attempt) and 3 (aggravating circumstances) but not § 4 (applying to juveniles).

¹³⁵ See Explanatory memorandum of the bill amending various provisions in order to step up action against trafficking in and smuggling of human beings, *Parl. Doc.*, House , 2004-2005, 51-1560/1, p. 32.

¹³⁶ Questioned in the Senate about this matter, the Minister answered the Centre wanted to be able to take action in cases where there was no trafficking or the public prosecutor's office had not described it as such. This is not quite correct. The Centre asked for the factual mistakes affecting its ability to initiate judicial proceedings to be corrected, but as far as we are concerned, with the appearance of the new trafficking offence, there is no need to retain articles 379 and 380 to article 11 (see the report by the Senate Justice Commission , *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 25- 26.). However, the Centre sought to be able to take legal action in the case of smuggling as well (see below).

¹³⁷ In this connection see G. VERMEULEN, *op. cit.*, p.8-9. This observation was also made during debates held by the Senate Justice Commission (see report by the Senate Justice Commission , *Parl. Doc.*, Senate, 2004-2005, 3-1138/4, p. 9.). An amendment seeking more consistency was tabled by the two Senators (see amendment N° 9, *Parl. Doc.*, Senate, 2004-2005, 3-1338/3, p.3). The amendment dropped the reference to article 379 but intended to retain in article 11, §1, 1° the §§ of article 380 to which article 433d does not refer. The amendment was rejected.

¹³⁸ In this connection, see the Centre's collection of case-laws published in May 2002, p. 60 et seq.

against the smuggling of and trafficking in human beings¹³⁹, the Centre has been expressly tasked with ensuring the follow-up of policies for combating people trafficking and people smuggling¹⁴⁰. Hence the importance of being able to initiate judicial proceedings in this area and effectively carry out its tasks.

The Law covering the Centre has therefore also been amended along these lines. The Centre is explicitly tasked with encouraging the campaign against trafficking in and smuggling of human beings¹⁴¹.

Article 39, 3° of the new Law also amends article 11, § 2 of the Law of 13 April 1995. This applies to measures the King may take in favour of trafficked and smuggled persons so as to help them during their judicial proceedings. This raises the question once more about the status of victims. Conversely, § 5 of the Law of 13 April 1995, on the ability of associations and organisations with a common public interest, has not been amended.

Lastly, the Law of 10 August 2005 also amends the title of the Law of 13 April 1995, which becomes the "Law of 13 April 1995 featuring provisions for the suppression of trafficking in and smuggling of human beings".

¹³⁹ *Belgian Official Journal*, 28 May 2004.

¹⁴⁰ Article 1 of the Royal Decree of 16 May 2004.

¹⁴¹ Article 2, paragraph 2 of the Law of 15 February 1993 creating a Centre for Equal Opportunities and Combating Racism.

CHAPTER II: DETECTION, IDENTIFICATION, RECEIPT AND ASSISTANCE FOR TRAFFICKED PERSONS

1. *The Belgian model*

1.1. *Procedure*

Current legislation on trafficked persons originated in the ministerial circular of 7 July 1994¹⁴² on issuing residence and work permits to foreign nationals, trafficked persons and in the ministerial directives of 13 January 1997¹⁴³ and 17 April 2003¹⁴⁴. The directives clarify the circular of 1994 and feature specific directive for all services involved in assisting trafficked persons (police, social inspectorate, and social laws inspection services, public prosecutor's offices, industrial tribunals, specialist reception centres and the Aliens Office). They seek to promote a dynamic form of co-operation between all these stakeholders, on the basis of a multidisciplinary and integrated approach to combating people trafficking.

The system that has been developed strikes a practical and pragmatic balance between a) the need to offer victims a package of aid and support measures (including mandatory reception and assistance by approved and specialist reception centres, social assistance, counselling, medical care, legal assistance, the issue of temporary residence and work permits) and b) and combating the people and organised networks responsible for the exploitation affecting the victims. The action against these perpetrators is applied via victims' (mandatory) co-operation with the legal inquiry. The provisions apply to all forms of exploitation, not just sexual exploitation, so they also cover other forms of economic exploitation.

The temporary residence and work permits are issued to third country trafficked persons in three phases in parallel with the stages involved in the judicial inquiry into the activities of the perpetrators.

In order to enjoy 'victim status', the victims have to meet three basic requirements:

- 1) leave their exploitative environment;
- 2) accept the mandatory assistance offered by an approved centre specialising in providing reception facilities and assisting trafficked persons (through **all** the phases of the proceedings);

¹⁴² *Belgian Official Journal* 7 July 1994.

¹⁴³ *Belgian Official Journal* 21 February 1997.

¹⁴⁴ Amendment of articles 8, 2° and 3° and 10, *Belgian Official Journal* 27 May 2003.

- 3) lodge a complaint or make statements concerning the people or the networks of traffickers who have exploited these victims.

The procedure unfolds in three key phases in practice¹⁴⁵ (reflection period, declaration of arrival and a Certificate of Registration in the Register of Aliens - CIRE):

- 1) Front-line services detecting and identifying the victims at field level, providing the victims with information and referring them to a specialist reception centre. These front-line services play a key role in detecting and identifying victims;
- 2) A 45-day reflection period (in the form of an **order to leave the territory**). This period of time is designed to enable trafficked persons to recover a peaceful frame of mind so as to be able to take carefully-thought-out decisions about their immediate future;
- 3) A provisional residence permit is issued to the victims, who make a declaration or lodge a complaint within 45 day, by way of a **declaration of arrival** (DA) valid for three months. During this phase, too, assistance from a specialist centre is mandatory and the victims may be provided with a C work permit entitling them to work;
- 4) The Aliens Office asks the Public Prosecutor or the Labour Auditor what follow-up has been given to the victim's declaration or complaint. The information provided to the Public Prosecutor's Office or the Labour Auditor has to answer two questions:
 - a) Is the inquiry still underway ?
 - b) Given the current status of the inquiry is the person in question regarded as a trafficked person ?

When the Public Prosecutor's Office or the Labour Auditor is unable to say yes to both questions, the victim's declaration of arrival is extended once for three months.

- 5) If the Public Prosecutor or the Labour Auditor can say yes to both questions, the victim is issued with a **Certificate of Registration in the Register of Aliens** (CIRE), which is valid for 6 months and may be extended until the end of the legal procedure.
- 6) When the complaint or statements lead to a conviction on the basis of the Law on trafficking in and smuggling of human beings, the victim is issued with an open-ended residence permit¹⁴⁶. This principle also applies when a conviction is handed down on the basis of

¹⁴⁵ Article 8, 1°, 2° et 3° of the Directive of 13 January 1997, amended on 17 April 2003, *Belgian Official Journal* 27 May 2003.

¹⁴⁶ The text of the 1997 Directive also specifies that an open-ended residence permit may not be requested solely when the victim's declaration or complaint leads to a summons to appear but also when this declaration results in a referral by the investigating court or an indictment or request for confinement before the investigating court. These clarifications were made to refer to cases where the victim has actively cooperated in the inquiry and where the perpetrator was not, in the end, able to appear before the criminal court, for example, because between the referral decision by the council chamber and the summons to appear before the criminal court, the perpetrator has died or left the country or alternatively the council chamber decided to confine the perpetrator. In these cases, too, the victim may therefore seek and obtain an open-ended residence permit.

another piece of legislation but where the Public Prosecutor's Office includes the component of trafficking in human beings in its indictment and where the complaint or the statements were of importance for the judicial proceedings. The basic thinking here is the fact that the victims have lodged a complaint or made statements against people who are much more powerful and better organised than the victims themselves. What is more, they run the risk of suffering from reprisals at any time, whatever the outcome of the trial.

1.2. Centres specialised in reception and assistance for trafficked persons

In order to be able to guarantee reception facilities and assistance for trafficked persons, three specialist centres have been approved and funded by the Government: Payoke in Antwerp, Pag-Asa in Brussels and Sürya in Liège. The three centres have specific facilities for receiving and assisting victims. Most of them have been referred to the centres by police services after the victims have been discovered during police checks. The other victims have been referred to the centres by other social services, public prosecutor's offices, labour auditors, the Aliens Office, individuals or, alternatively, the victims get directly in touch with the relevant centre.

The centres boast multidisciplinary teams of social assistants, care workers and criminologists. They offer victims a three-part assistance plan: (1) counselling and medical assistance, (2) administrative support and (3) legal assistance. They also have a reception centre (at a secret address) where victims may be accommodated if need be. Otherwise, the assistance is offered on a non-residential basis. Without going into details here, we can justifiably claim that thanks to the quality of the work and the expert knowledge built up over the last 10 years, the centres more than comply with the recommendations made by the Expert group¹⁴⁷.

¹⁴⁷ *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons', pp. 100-114 and Explanatory Paper 11 'Social assistance and the development of standards', pp. 177 – 186.*

a) Residential or non-residential reception and assistance

The centres offer victims residential reception facilities but if this is not necessary non-residential assistance is provided. Residential reception facilities are offered when victims have no accommodation opportunities other than the environment where they were being exploited or in a place where their personal safety may be in jeopardy. In this case, the victims are supposed to comply with the rules of procedure (including compliance with the need for confidentiality, involvement in activities, ...). The victims are encouraged to take an active part in the reception centre's community life (breakfast, keeping common parts of the building clean, looking after their own rooms, ...). The time spent in the reception centre may vary from one victim to another but a deadline is generally decided upon. However, the assistance-related aim of the centres involves providing victims with some level of independence as soon as possible so as to facilitate their social reinclusion. The average length of a stay in a reception centre is about 6 months.

b) Counselling

In common with all victims, trafficked persons have generally suffered a serious violation of their physical and mental well-being. These victims are also isolated in communicative (they do not understand the language of the country where they are being exploited) social and cultural terms. This isolation is primarily caused by their status as foreigners in Belgium and the distance travelled. Threats to the victims or family members in their countries of origin or debts they have incurred to pay for the trip are the kinds of factors that have to be duly taken account of in the assistance provided to victims.

All these victim-related characteristics call for specialist assistance to start with, a serious willingness to listen to the details of the exploitation suffered, to build up trust with the victim and lend support for the following stages of the procedure.

The three key components of counselling:

- Helping the victims to get over the exploitation and the associated traumas;
- Lending support to the victims in developing their own lives;
- Working with each victim individually to develop a realistic project, involving helping victims to enrol for language courses, vocational training or active jobseeking.

This takes place during regular meetings between the victims and the members of the assistance team. If the victims require extra counselling they are referred to a suitably adapted structure. It should be stressed here that the assistance programme is sometimes difficult to implement owing to the temporary nature of the victim's residence permits, the worries about whether the documents will be extended or not and uncertainty about the final phase of the specific protection status: regularisation.

c) Administrative support

This assistance chiefly involves requests for documents linked to trafficked person status: order to leave the territory (45 days, reflection period), declaration of arrival (3 months, may be extended), Certificate of Registration in the Register of Aliens (6 months, may be extended) and regularisation. If victims are anxious to return to their countries of origin, the specialist centre gets in touch with the IOM (International Organisation for Migration) so as to arrange for the voluntary return of the victims. Where appropriate, the family in the country of origin or local organisations are contacted to be sure the victim can count on reception facilities and assistance.

d) Legal assistance

This assistance is closely bound up with the progress of the judicial proceedings for people trafficking where the victim is offered support. The aim in this case is to guarantee the victim's rights and interests during the proceedings. This first of all involves providing the relevant person with information (details about entitlements and responsibilities and the structure and operation of the Belgian legal system). This is of central importance because the victims are not invariably aware of the implications of the requirement for them to agree, as part of the protection status, to make statements or lodge complaints about the people who exploited them. As victims do not always tell their stories during the first interview, it is vital for them to be well prepared for any other interviews. Victims are generally offered a lawyer, whereupon they are allowed to take an independent decision about whether or not to bring a civil action in the case. The specialist centres are also entitled to take legal action in cases involving people trafficking, on their own behalf or on behalf of the victims.

1.3 Profiles of trafficked persons

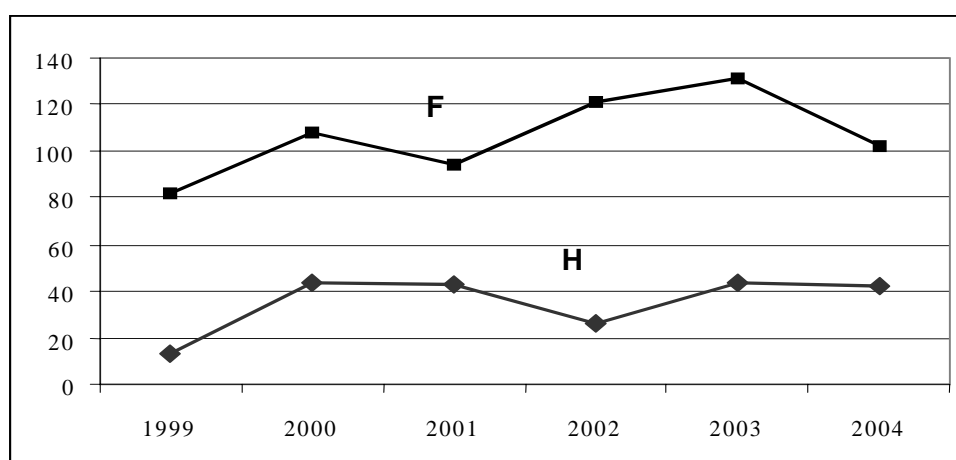
Table 2: Number of notifications per centre every year¹⁴⁸

	1999	2000	2001	2002	2003	2004	2005	Total
Pagasa	163	258	243	210	337	278	33	1,522
Payoke	72	106	222	183	196	228	31	1,038
Surya	0	0	3	0	134	80	48	265
Total	235	364	468	393	667	586	112	2,825

¹⁴⁸ Trafficked persons database. The registration project for Sürya got underway on 1 January 2003. Starting in 1999 in the case of Payoke and Pag-asa. It has to be remembered that there is invariably a certain level of under-registration. In the case of 2005, the information covers the period up to July 2005.

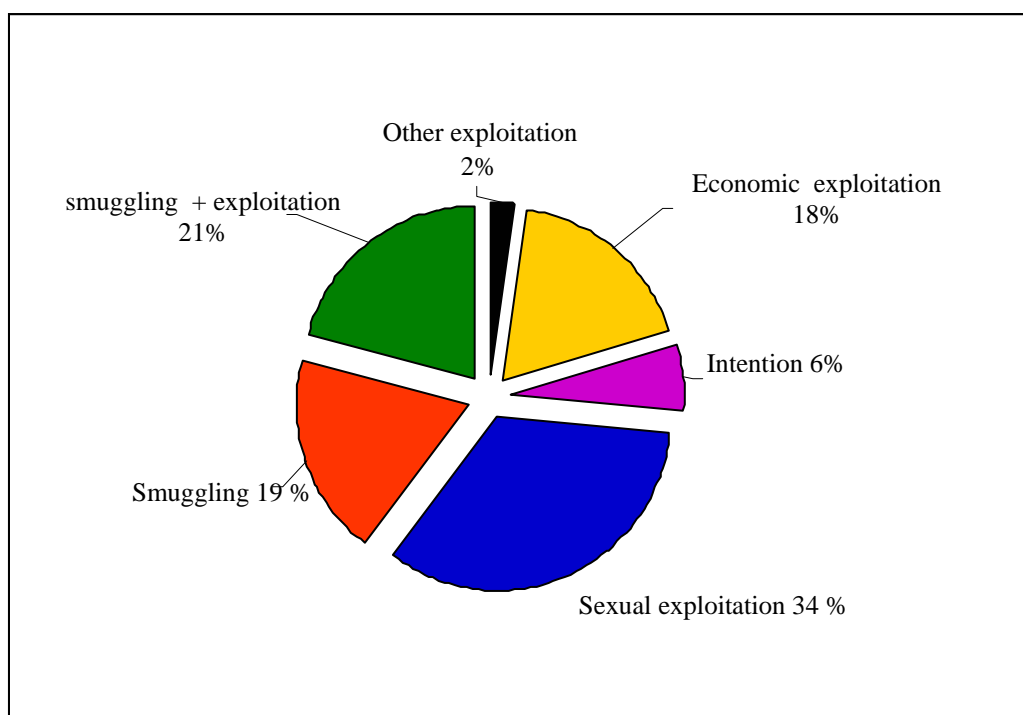
Table 3: Number of assistance schemes per centre every year

	1999	2000	2001	2002	2003	2004	Total
Pagasa	60	81	55	86	105	58	445
Payoke	36	71	82	61	47	43	340
Surya	0	0	3		23	43	69
Total	96	152	140	147	175	144	854

Graph: Assisted victims, by gender every year**Table 4: Assisted victims by nationality every year**

	1999	2000	2001	2002	2003	2004	Total
Nigeria	5	17	18	39	19	19	117
China	7	25	9	8	22	20	93
Romania	4	4	15	13	25	20	81
Bulgaria	6	4	5	9	33	16	78
Albania	19	21	9	7	11	8	75
Ecuador	1	14	16	7	5	0	43
Russia	3	9	7	5	10	7	43
Moldavia	6	15	11	1	1	0	36
Morocco	4	4	2	7	3	6	31
Ukraine	7	4	6	5	1	2	25
India	2	1	3	5	5	4	23
Iran	0		10	4	1	3	20
Poland	2	1	3	2	4	1	17
Ghana	2		2	1	8	2	15
Cameroon	2	1	2	3	3	2	13
Congo-Kinshasa	1	3	0	1	5	2	12
Others	25	29	22	30	19	32	168
TOTAL	96	152	140	147	175	144	890

Graph 2: Assisted victims according to the issues (1999 – 2005)



Graph 3: Motivation of trafficked persons

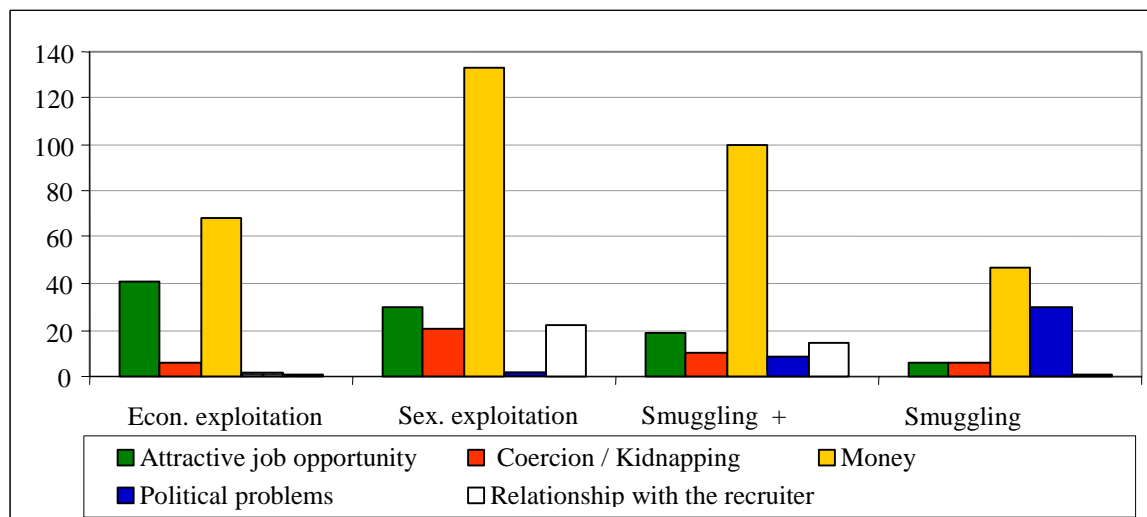


Table 5: Assisted victims by nationality and by issue

	Africa		America		Asia		Europe	
	H	F	H	F	H	F	H	F
Sexual exploitation	1	68	0	12	0	14	0	204
Economic exploitation	38	23	9	15	30	18	16	12
Other exploitation	0	6	1	2	0	0	4	7
Smuggling + exploitation	1	48		5	26	7	4	92
Smuggling	6	11	11	6	64	32	18	20
Intention	1	12	0	1	1	2	0	38
TOTAL	47	168	21	41	121	73	42	373

2. Italian model

In recent years, Italy has created legal instruments and forged a social policy to lend support to trafficked persons and combat this development. The NGOs play a key role under this heading, in addition to the national and local authorities, social institutions and police forces.

Article 18 of the Decree N° 286/98¹⁴⁹ of 1998 ushered in new rules for the status of trafficked persons. Under this heading a ‘Social Assistance and Integration Programme’ has been launched to pay for the ‘art. 18 projects’ focused specifically on trafficked persons. The Equal Opportunities’ department is in charge of the technical and financial management of the programme. When people are suspected of being trafficked persons, they are told about the opportunities for gaining access to the corresponding programme. Under the terms of the programme, victims are entitled to remain in Italy and work there (once the specific residence permit has been secured, see above).

222 ‘art. 18’ projects enjoyed financial support between 2000 and 2004: 48 (in 2000-2001), 47 (in 2001-2002¹⁵⁰), 58 (in 2002-2003) and 69 (in 2003-2004)¹⁵¹. A total of 5,577 people were involved in all the art. 18 projects organised between March 2000 and February 2001. 1,755 (31.5 %) of them joined an ‘*Individual Social Assistance and Integration Programme*’¹⁵². The reasons victims do not join this type of programme are similar to those reported in Belgium: fear of reprisals, pressure being put on families in the countries of origin, a failure to meet the programme's basic conditions, unwillingness to break away from the exploitative environment, ...

¹⁴⁹ European Commission DG Justice and Home Affairs, Hippocrates JAI/2001/HIP/023, *Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands, Country Report on Italy*, pp. 128 – 224.

¹⁵⁰ For a geographical breakdown of the art. 18 projects between 2000 and 2002 in Italy, see: Hippocrates JAI/2001/HIP/023, *op. cit.*, p. 143, table 5.

¹⁵¹ Hippocrates JAI/2001/HIP/023, *op. cit.*, p. 142.

¹⁵² *Ditto*.

The emphasis placed on outreach activities and street corner work is relevant for detecting potential trafficked persons¹⁵³.

Entitled '*Residence permit for social protection*', Article 18 specifies that a residence permit is issued for humanitarian considerations, providing protection and assistance to trafficked persons invited to take part in the programme. Even when this special residence permit is provided this **does not necessarily imply direct co-operation between the victim and the legal authorities**. The '*residence permit for social protection*' may then be converted into a standard work permit¹⁵⁴.

Two options are available:

- a) '*a legal option*', where the victim co-operates with the police and legal authorities. What this means in practice is the victim co-operates in producing charges against the traffickers.
- b) '*a social option*', where the victim is **not obliged** to make accusations against the exploiters but is nonetheless supposed to offer a minimum level of information to the police. The victims may subsequently be required to act as witnesses before a court.

The main NGOs are directly in touch with the victims, offering various services, such as counselling, health care, reception facilities, social support, vocational guidance and training, employment and possibly an assisted return in response to a request from the victim. There are about 5 types of organisations¹⁵⁵ operating in this field: (1) religious institutions (religious orders, Caritas, non-denominational associations and Catholic organisations of all types); (2) women's organisations; (3) NGOs, volunteers and social co-operatives; (4) action task forces (for example in the context of combating forced prostitution) and (5) public institutions (municipal, provincial and regional authorities and local medical-social welfare centres).

These organisations offer 6 different types of reception centres¹⁵⁶: (1) refuges and emergency drop-in centres for an initial short period where the motivation is scrutinised and the first outline of a customised programme is made; (2) emergency reception centres: for a stay of between 2 and 3 months during which the programme is implemented and all the stages required for regularisation are undertaken; (3) secondary centres: a stay between 2 and 6 months during which the programme is continued; (4) reception centres for accommodating women who are starting to work but do not have any personal accommodation; (5) juveniles are placed with families and (6) a non-residential programme where the assistance is provided by the organisations but where victims have their own accommodation. Not all victims travel through the entire range of reception centres and not all organisations offer all types of reception centres.

¹⁵³ Hippokrates JAI/2001/HIP/023, *op. cit.*, p. 144.

¹⁵⁴ *Ditto*.

¹⁵⁵ Hippokrates JAI/2001/HIP/023, *op. cit.*, p. 139.

¹⁵⁶ Hippokrates JAI/2001/HIP/023, *op. cit.*, pp. 142 – 143.

3. The EU model

The Council Directive 2004/81/EC¹⁵⁷ lays down a number of minimum standards (related to the period covered by the Member States' corresponding procedures) for granting fixed-term open-residence permits to third country nationals who agree to co-operate in combating people trafficking. The Member States have to apply the Directive to trafficked persons and *may* apply it to third country nationals who have received help in the context of an illegal immigration problem¹⁵⁸. However, each Member State may adopt or retain more favourable provisions for the people covered by this Directive¹⁵⁹. The Directive has to be transposed into the national laws of each Member State by 6 August 2006 at the latest.

The main themes of this Directive are:

- 1° The mandatory provision of information to the victim about the availability and contents of the current system of protection;
- 2° The mandatory use of a reflection period (period of time set by national law, 45 days in Belgium);
- 3° The procedure and conditions for issuing and extending temporary residence permits and the treatment provided to the recipients¹⁶⁰;
- 4° Access to welfare programmes and schemes for relevant third country nationals;
- 5° The procedure and cases involving a failure to extend or the withdrawal of a fixed-term residence permit¹⁶¹. When the conditions are not met or when the co-operation procedure with the authorities expires, the Member State's legislation relating to aliens is applicable.

¹⁵⁷ Council Directive 2004/81/EC of 29 April 2004 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, *OJ L* 261, 6 August 2004, pp. 19-23.

¹⁵⁸ Directive 2004/81/EC, article 3, 1°.

¹⁵⁹ Directive 2004/81/EC, article 4.

¹⁶⁰ Directive 2004/81/EC, article 8, paragraph 1: (a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and (b) whether he/she has shown a clear intention to cooperate and (c) whether he/she has severed all relations with those suspected of acts (...).

¹⁶¹ Directive 2004/81/EC, article 14: (...) (a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or b) if the competent authority believes that the victim's co-operation is fraudulent or that his/her complaint is fraudulent or wrongful; or c) for reasons relating to public policy and to the protection of national security; or (d) when the victim ceases to cooperate; or (e) when the competent authorities decide to discontinue the proceedings.

4. Expert Group report

Chapter 5 on *Assistance, protection and the social inclusion of trafficked persons*¹⁶² and the *Explanatory papers*¹⁶³ is the most important part of the final report. The chief aim here is to consider how trafficked persons should be accommodated and assisted. As we explained earlier on, both the Belgian (mandatory assistance by accredited centres) and Italian models (art. 18 projects) justifiably pay a great deal of attention to the need to detect, identify, and offer reception facilities and assistance to trafficked persons. The report 's premise differs somewhat from the models considered earlier on.

The human rights-based approach is central to the report¹⁶⁴. This means a trafficked person is primarily regarded as a person, whose fundamental rights have been seriously violated and secondly as a potential witness or an informer in judicial proceedings against traffickers. The violations of individual human rights in themselves imply a specific protection status and should be completely independent from any form of mandatory co-operation with the police or legal authorities. This avoids any manipulation of the victim, as this type of mandatory co-operation may be regarded as a 'second instance of exploitation'.

Consequently, the main components of this model are:

- 1) A separation between the protection status and mandatory co-operation with the legal authorities;
- 2) The sole central issue is protection for the victim;
- 3) It is of vital importance to identify and detect victims within a short space of time. This can be achieved by offering in-depth training to the services and institutions involved in the fight against people trafficking¹⁶⁵. The idea here is to provide general and specialist training to members of the police force, diplomatic staff, border police and customs officers, to the social inspection services, judges, and public prosecutors. Special training programmes have to be designed for the services and individuals in charge of unaccompanied juveniles, victims of trafficking in human beings. Emphasis is also given to the importance of easily accessible reception initiatives, hotlines¹⁶⁶ and street corner work in pinpointing victims¹⁶⁷.

¹⁶² *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons'*, pp. 100-114.

¹⁶³ *Explanatory Papers*, N° 3 'Human Rights as a paramount issue: Meaning and consequences of a human rights based approach', p. 137; N° 9 'Identification of trafficked persons: Channels for identification', p. 167; N° 10 'Reflection period and residence status', p. 171; N° 11 'Social Assistance and the development of standards', p. 177 and N° 12 'Witness protection and judicial treatment of standards', p. 187.

¹⁶⁴ *Explanatory Papers*, N° 3 'Human Rights as a paramount issue: Meaning and consequences of a human rights based approach', pp. 137 et seq.

¹⁶⁵ *Explanatory Papers*, N° 8 'Training: Recommended types of training', pp. 164 – 166.

¹⁶⁶ In Italy, for example: 'Numero Verde Nazionale contro la tratta 800-290.290'

¹⁶⁷ *Explanatory Papers*, N° 9 'Identification of trafficked persons: channels for identification', pp. 167 – 170.

The action against *trafficking in human beings* therefore involves protecting individual victims against any other exploitation and human rights violations¹⁶⁸. This is in contrast to the *smuggling of human beings* which involves protecting the interests of the State, against illegal immigration in this case.

Protection status involves 3 phases¹⁶⁹:

- 1) a 3-month reflection period (allowing a period of rest, carrying out risk analyses and access to the necessary reception and assistance facilities);
- 2) issuing a temporary and renewable residence permit covering at least 6 months, independent of any co-operation with the legal authorities and independent of the fact that exploiters are prosecuted, together with as much supervision as possible for the victims;
- 3) the issuance of a long-term or permanent residence permit as part of the regularisation process for humanitarian reasons, via the asylum procedure or on the basis of a successful pathway to integration;
- 4) scope for assisted return to the country of origin as part of a return programme.

5. Council of Europe Convention on trafficking in and smuggling of human beings

The reference here is to the Council of Europe Convention on action against trafficking in human beings, which was signed at the Council's 16 and 17 May 2005 Summit meeting in Warsaw¹⁷⁰. The Convention focuses on the rights and protection of trafficked persons plus action against trafficking in human beings in all its main forms. Articles 10 to 17 of the Convention specifically refer to measures and provisions for protecting the rights of victims, and more precisely to identification, protection of privacy, aid and assistance, reflection periods, the issuance of a residence permit, access to judicial proceedings and compensation and equality between men and women.

*1° Identification*¹⁷¹:

- a) All the competent authorities have to have staff who are trained and qualified in preventing and combating trafficking in human beings and in identifying and helping victims. The authorities must co-operate with one other as well as with the relevant support organisations.;
- b) Adoption of all legal and other measures to ensure victims are identified more effectively;
- c) Specific protective measures have been developed for unaccompanied juveniles (legal guardian, determining the identity and nationality and seeking family members).

¹⁶⁸ *Report of the Expert Group on trafficking in Human Beings*, p. 48.

¹⁶⁹ *Explanatory Papers, N° 10 'Reflection period and residence status'*, pp. 171 et seq.

¹⁷⁰ <http://www.coe.int/T/E/Com/Files/Themes/trafficking/>

¹⁷¹ , *Council of Europe Convention on action against trafficking in human beings*, CM (2005)32, art. 10, 1°, 2°, 3° and 4°.

2° *Help and assistance for victims* ¹⁷²:

a) minimum standards:

- cater for the needs in terms of reception counselling and practical support;
- access to emergency medical care, translation and interpretation services;
- provision of information in an understandable language about the rights and services made available;
- legal assistance in judicial proceedings against traffickers;
- the right to access to education for children

b) other standards:

- due regard to the security and protection requirements of victims;
- offering medical and other assistance to victims who are lawfully resident in a territory but do not have adequate resources towards this end;
- access to the labour market, vocational training and education for victims lawfully resident in the territory;
- co-operation with NGOs and other organisations engaged in victim assistance;
- ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

3° *Reflection period* ¹⁷³

- This period has to last at least 30 days to allow victims to recover and/or take decisions about co-operating with the competent authorities;
- No expulsion measure should be applied during this period and the interested parties are entitled to the minimum standards, as described above;
- This period does not have to be observed if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

4° *Residence permit* ¹⁷⁴:

- Mandatory issuance of a residence permit to the victim in one of the following cases:

¹⁷² Council of Europe, *op. cit.*, article 12, 1° - 7°.

¹⁷³ Council of Europe, *op. cit.*, article 13, 1° - 3°.

¹⁷⁴ Council of Europe, *op. cit.*, article 14, 1° - 5°.

- when the competent authorities believe the stay is required in the light of the personal circumstances of the interested party;
- when the competent authorities believe the stay is required owing to the need for co-operation as part of an inquiry or criminal proceedings.
- The non-renewal or the withdrawal of a residence permit is subject to the conditions provided for in national law;
- When the victims makes a request for another kind of residence permit, the decision has to take account of the victim benefiting or having benefited from a right of residence as a trafficked person;
- These provisions do not affect the right to seek asylum.

5° *Access to judicial proceedings and compensation*¹⁷⁵:

- Entitlement to information about the progress of the relevant legal and administrative proceedings in a language the victim can understand;
- Entitlement to assistance from a counsel for the defence or free legal aid according to the conditions set forth in the national legislation;
- Adoption of statutory or other provisions in the national legislation so as to guarantee compensation for the victims.

6. **Comments**

In spite of the variety of models available, they all share certain characteristics. In the case of the detection, identification, reception facilities and assistance for trafficked persons, the characteristics are as follows:

- Provisions for the detection and identification of victims;
- Reflection period for the victim with access to all the various rights (medical, welfare, employment ...);
- Temporary residence permit (with or without mandatory co-operation with the legal authorities) as long as the procedure lasts;
- Scope for authorisation to stay legally and without a time limit¹⁷⁶ (on the basis of a specific status for humanitarian reasons or in the light of the asylum procedure), a halt to the procedure and return to the country of origin.

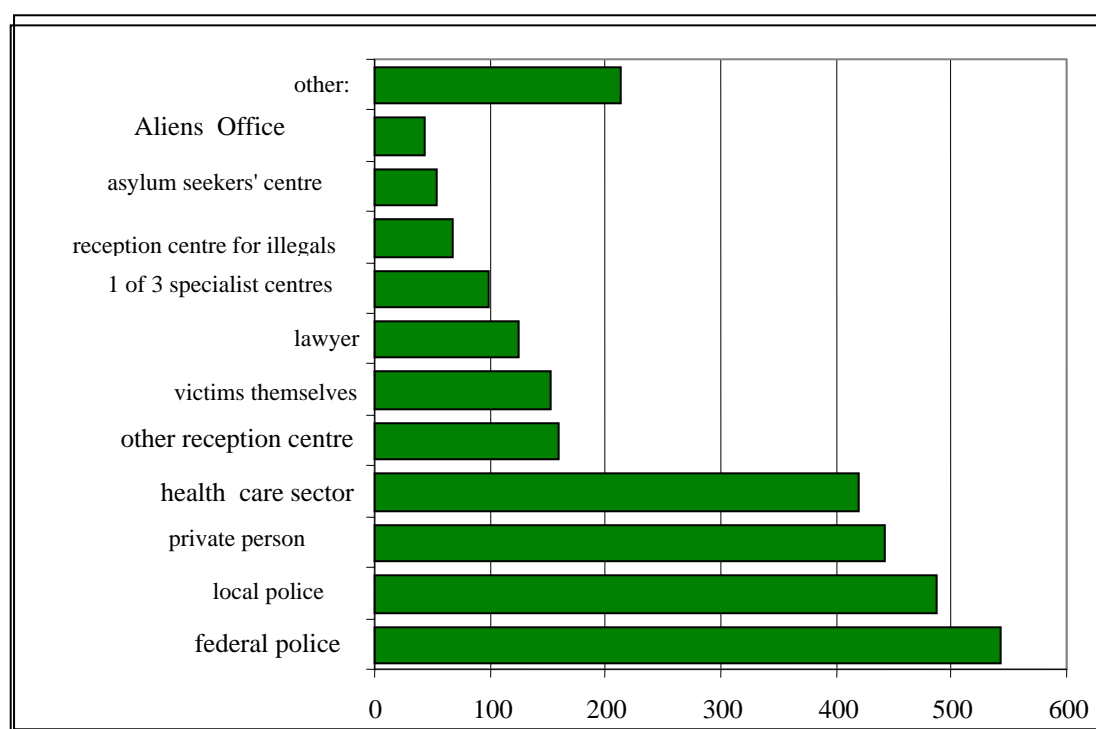
¹⁷⁵ Council of Europe, *op. cit.*, article 15, 1° - 4°.

¹⁷⁶ Conversely, Dutch legislation offers no opportunity for open-ended residence for trafficked persons when a case against traffickers is shelved or when it is closed without an opportunity to make an appeal. Victims may seek a residence permit for another purpose, may 'opt' for unlawful residence in the Netherlands or may return to their countries of origin. As far as the Dutch government is concerned, trafficked persons returning

6.1. Provisions for detecting and identifying victims

As we specified earlier on, the Belgian model places emphasis on a dynamic form of co-operation between all the stakeholders in detecting, identify and guiding victims towards specialist reception centres. The Italian model also attaches a great deal of importance to this co-operation, as it is regarded as a key link in the chain. The difference between the two models is that in the case of the Belgian one, most of the victims are discovered and identified by the police (or supervisory services), whereas in Italy many victims are detected by outreach activities, street corner work, reception centres or the national anti-people trafficking hotline¹⁷⁷.

Graph 4: Victims directed to specialist centres (99 - 05)



In any event, it is of vital importance for all the stakeholders to be trained so as to ensure potential victims are quickly detected and to avoid any abuse or manipulation of victims during judicial proceedings. Against this background, we may therefore lend our support to the recommendation made in the final report by the Expert group. This calls for extensive, continuing training to be offered to *all* front-line services that may be in contact with trafficked persons¹⁷⁸. Created by the "Interdepartmental Unit for the Co-ordination of Action against the smuggling of and trafficking in human beings, the activities of the ad hoc group on 'granting status and issuing residence papers to

to their countries of origin may be compared with the return of asylum seekers and illegal immigrants. What is involved here is the expulsion of 'undesirable foreign nationals', outside the Netherlands. Trafficked persons may also return voluntarily to their countries or be removed by force.

¹⁷⁷ European Commission DG Justice and Home Affairs, Hippocrates JAI/2001/HIP/023, *Research based on case studies of victims of trafficking in human beings in 3 EU Member States, i.e. Belgium, Italy and The Netherlands, Country Report on Italy*, p. 146, graph 1.

¹⁷⁸ *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons'*, p. 104, recommendations 90 et 92.

*trafficked persons*¹⁷⁹ have clearly showed that by and large improvements are still feasible. The hearings¹⁸⁰ by public prosecutors, police officers, NGOs, inspection services and labour auditors have demonstrated that not all victims enjoy the same treatment from the various actors on the ground, notwithstanding the harmonised rules that are available¹⁸¹. Sometimes the alleged victims are immediately referred to a specialist reception centre, and other times not, without there being any clear reason for the different treatment. In some cases, protection status is not offered, and the victims are regarded more as illegal immigrants than trafficked persons. Alternatively, protection status is offered solely when the statements have been made. Victims are sometimes referred to the centres according to the amount of information initially provided and its relevance, even though the reflection period is specifically used towards this end. Victims of sexual exploitation and victims of economic exploitation are also treated differently sometimes with the latter type of victims often being labelled as engaged in 'undeclared employment'. Some actors on the ground are apparently sometimes unaware of the specific protection status for trafficked persons. There is also room for improvement in terms of the availability of specialist centres at field level and their out-of-hours services at night and weekends. In the case of the on-call system, the Centre is scheduled to take the necessary steps, in the light of being tasked with co-ordinating the specialist centres¹⁸².

In any event, all the representatives agree with the analysis that the system is failing to detect some of the victims. The precise number of people 'slipping through the net' can only be guessed at. As a result of better training and more co-operation with the specialist centres, improvements can be made in this area. Changes for the better can also be made to the system of co-operation between the police forces and the reception centres in the case of providing information to victims, awareness-raising, and training for non-specialist police services that are less or not at all familiar with the issue of people trafficking and smuggling. The Centre has already taken the necessary initiatives on this score, working in co-operation with the federal police service and the Aliens Office, in order to find an answer to this issue.

6.2. *Reflection period*

The reflection period currently last 45 days, during which time victims recover their well-being in a specialist reception centre (assistance is a mandatory condition for qualifying for protection status) and take an appropriate decision about their futures, particularly whether or not to co-operate with the legal authorities. The recommendation the Expert group report made in this connection, a reflection period of at least 3 months¹⁸³, does not strike us as necessary or useful in this case¹⁸⁴. All the partners

¹⁷⁹ The ad hoc working group's remit was approved during the 27 January 2005 meeting of the Interdepartmental Coordination Unit.

¹⁸⁰ 18 May 2005: with representatives of the public prosecutor's offices; 7 June 2005: with the specialist reception centres and the local and federal police services, and 7 July 2005: with the supervisory services and the labour auditors.

¹⁸¹ Circulars of 1994, 1997 and 2003 featuring directives for all the relevant departments and the directive from Justice Minister on the policy for investigating and prosecuting in cases involving trafficking in human beings (COL. 10/04) and its annexes.

¹⁸² Royal Decree of 16 May 2004 on action against smuggling of and trafficking in human beings, art. 3, *Belgian Official Journal*, 28 May 2004.

¹⁸³ *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons'*, p. 106, recommendation 94.

involved agree that the 45-day time limit offers enough guarantees to the victims to allow them to make the first step towards securing protection status, in a calm and peaceful frame of mind. No extension is required here, partly because of the uncertainty surrounding this first phase. It has to be remembered that with a view to prosecuting perpetrators and gathering evidence, it is always best to have statements made within a short space of time. This is the case when the period of time between the exploitative activities and the victim's statements is not too long. Moreover, most victims that decide to drop the proceedings do so within the 45-day period. Extending the period to at least 3 months offers no further advantage to the victims, provided, of course, no problems are encountered with detecting and identifying the trafficked persons (see above). On the other hand, in the case of juvenile victims of trafficking in human beings, a longer reflection period apparently has to be offered to the people in question, so they gain a better understanding of what is involved and the implications of any co-operation with the authorities. See our previous annual report for a list of various potential lines of inquiry¹⁸⁵.

6.3. Temporary residence permit

According to the Belgian system, the various kinds of residence permits¹⁸⁶ are issued in parallel with the progress of the judicial proceedings. As we mentioned earlier on, co-operation with the legal authorities is a precondition for securing protection status. The link is less binding under the Italian system, but it is nonetheless there. According to the '*social option*' the victims are not obliged to co-operate in the charges laid against the traffickers but they are expected to provide the police with a minimum amount of information. In the Convention on action against trafficking in human beings¹⁸⁷ and the European Directive¹⁸⁸, there is also a relationship between protection status and a certain kind of co-operation with the competent authorities¹⁸⁹.

¹⁸⁴ The Council of Europe Convention on action against trafficking in human beings mentions 'at least 30 days', Council of Europe, Council of Europe Convention on action against trafficking in human beings, CM(2005)32, article 13, 1°-3° and Directive 2004/81/EC leave it up to the Member States to decide on the period of time.

¹⁸⁵ CECLR, *Report Trafficking in human beings: 'Analysis of the victim's point of view'*, pp.47-79.

¹⁸⁶ Arrival declaration valid for 3 months (may be extended once), Certificate of Registration in the Register of Aliens valid for 6 months (may be extended until the end of the judicial proceedings) and definitive regularisation on the basis of people trafficking status or in the light of the STOP procedure (via article 9 §3 of the Law of 15 December 1980).

¹⁸⁷ Council of Europe, *op.cit.*, Chapter III.

¹⁸⁸ Council Directive 2004/81/EC of 29 April 2004 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, article 8.

¹⁸⁹ In the Netherlands, for example, this issue is dealt with via *Regulation B-9 of the circular aliens*. The term '*Regulation B9*' refers to chapter B9 of the circular on aliens. This chapter sets forth the rules for offering facilities to the (potential) victims of trafficking in human beings and also to telltale indicators of this offence for the purpose of investigating and prosecuting perpetrators of trafficking in human beings and for offering reception services and protection to victims of this offence. The aim is to allow trafficked persons to make a declaration while removing the threat of immediate expulsion. In practice, regulation B-9 provides these foreign nationals with the opportunity to use certain protective instruments if and only if they make a declaration about people trafficking. This involves the possibility for lawful residence on a temporary basis in the Netherlands (3-month reflection period followed by temporary residence during the period covered by the judicial proceedings), enjoying the related reception and accommodation facilities, medical assistance, legal aid and special provisions for subsistence purposes.

The Expert group report ¹⁹⁰ spurns any form of mandatory co-operation between victims and the authorities in return for residence documents.

This is obviously a tricky issue where a balance has to be struck between a) the interests of an alleged trafficked person, whose fundamental rights have often been flagrantly violated and b) the interests of the authorities, which require law enforcement and legal information so as to be able to combat the traffickers' network as effectively as possible. We are quite aware of just how fine a balance it is, and there is always a risk of victims being manipulated during the judicial proceedings. See, for example, what is specified in article 8, first paragraph of the European Directive ¹⁹¹ already cited. This involves some risk of manipulation by stating that in the case of issuing and extending residence documents to trafficked persons, the Member States are entitled to consider how far it is necessary or useful for the judicial inquiry for the interested parties to reside in the territory. However, at this point, we would like to draw attention to the 'assistance' component of the people trafficking status. This has to be at least as important, if not more, than the law enforcement and legal components. We would also like to point out assistance to the victims does not cease as soon as they no longer serve a purpose for the judicial inquiry. Consequently, we trust that when the European Directive is being transposed into Belgian law, article 4 will be exploited to the hilt, as it allow the Member States an opportunity to formulate rules that are more favourable for people covered by the scope of the Directive.

However, provided that *all* the conditions concerning detection, identification, guidance and assistance for the victims are met, we are certain the Belgian model strikes a pragmatic, operational and fair balance between the humanitarian and law enforcement components of the policy: maximum supervision and assistance for trafficked persons and co-operation with the legal authorities by way of statements or a complaint against the exploiters. Without this weeding out process represented by the legal inquiry, we are concerned the protection status may be improperly used owing to its appeal and the potential false statements that might be made as a result.

These are soon revealed in the present system owing to the co-operation between the three 'filters': the police services, the specialist reception centres and public prosecutor's offices. Nor is it certain that the coercive nature of the co-operation would lead to an increase in the number of false statements.

Our annual report for 2003 ¹⁹² draws attention to the importance of victims' statements both for the victims themselves ¹⁹³ and for the progress of the proceedings. We also stressed the importance of victims enabling us to gain an understanding of the networks active in the large-scale international trafficking in and smuggling of human beings. These statements help us to build up a clear picture of the victims' experiences and this may have an influence on the sentences handed down.

¹⁹⁰ *Report of the Expert Group on trafficking in Human Beings, Explanatory Papers, N° 3 'Human Rights as a paramount issue: Meaning and consequences of a human rights based approach'*, pp. 137 et seq.

¹⁹¹ Directive 2004/81/EC, article 8, 1°: "After the expiry of the reflection period (...), the Member State shall consider: a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings" (...).

¹⁹² CECLR, *Report on Trafficking in human beings, Analysis from the victim's viewpoint*, p. 3.

¹⁹³ CECLR, *op. cit.*, pp. 18 e.s.

A review of case-law in recent years ¹⁹⁴ reveals that in sexual exploitation cases, for example, the statements by victims are vital for a conviction, provided they are substantiated by other items in the case. However, we are seeking a solution for the kind of victims for whom there are not enough facts to give credence to the suspicion of trafficking in human beings. This also refers to the types of victims who do not dare cooperate out of concern for reprisals against themselves or their families in their countries of origin or a lack of confidence in the legal system. A solution also has to be found for victims who have actively cooperated with the authorities but find the progress of the judicial proceedings is such that the case is nonetheless shelved within a period of less than 2 years, for all kinds of reasons. These people do not come within the scope of the 'Stop' Procedure. Consequently, no provision is made for them.

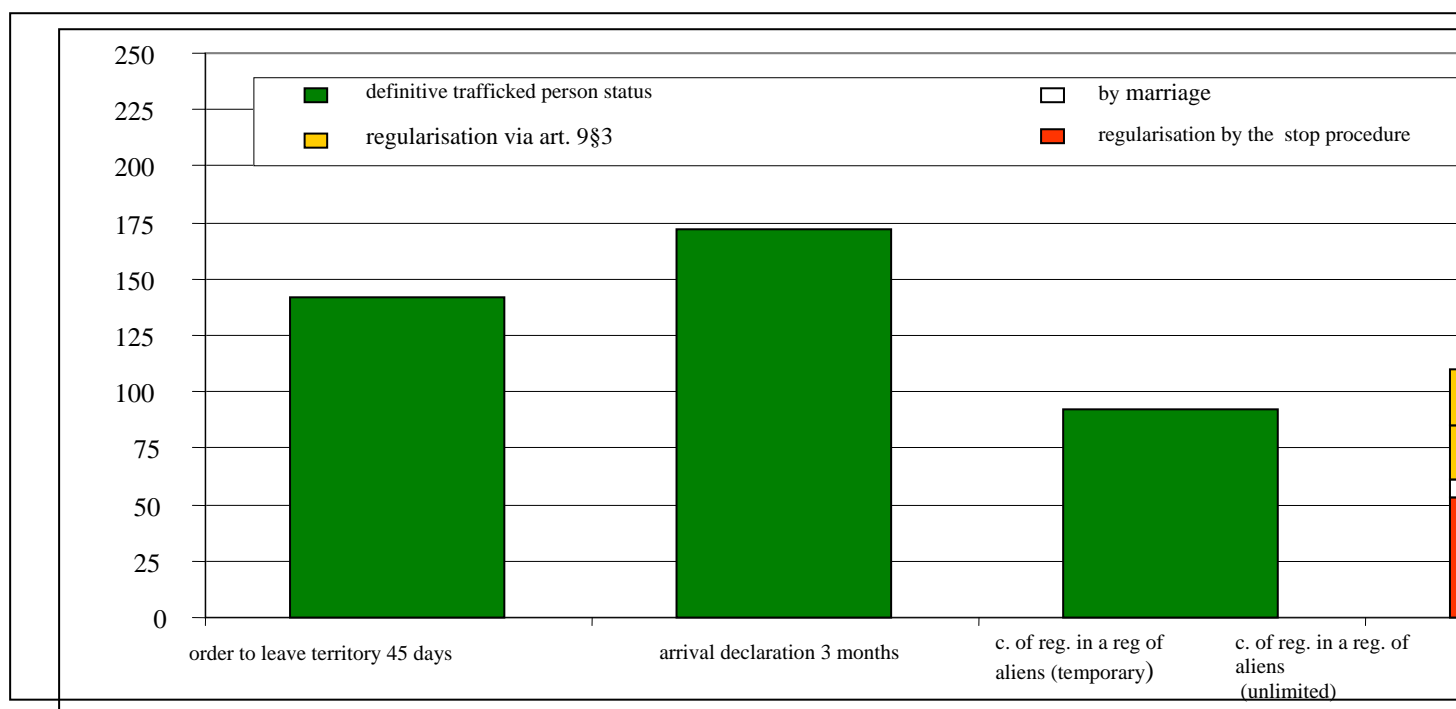
6.4. Definitive regularisation

This is one of the unique features of the Belgian protection status in the context of trafficking in human beings: victims are offered the possibility of securing a definitive residence permit in Belgium. The definitive regularisation process marks the end of the protection status. Here, too, the Belgian rules are consistent with the recommendations of the Expert group ¹⁹⁵ in this area.

¹⁹⁴ CECLR, *Annual report Trafficking in human beings: 'Call for an integrated approach, analysis of legislation and case-law'*, Part III, analysis of case-law 2001-2002, pp. 65 – 95 and CECLR, *Annual report on Trafficking in human beings: 'Analysis of the victims' viewpoint'*, Part III, review of case-law 2003, pp. 81- 104.

¹⁹⁵ *Report of the Expert Group on trafficking in Human Beings, Chapter 5: 'Assistance, protection and social inclusion of trafficked persons'*, p. 107.

**Graph 5: Status of trafficked persons
at the end of the assistance period (1999- 2005)**



CHAPTER III.

STRUCTURES FOR COORDINATING AND GATHERING INFORMATION AS PART OF THE ACTION AGAINST TRAFFICKING IN HUMAN BEINGS.

The Expert group report ¹⁹⁶ places emphasis on multidisciplinary co-operation between all the institutions and administration entities involved in combating trafficking in human beings. This is a key component of an integrated approach to trafficking in human beings. Co-operation between the authorities and NGOs initially applies at all levels involved in the detection, identification, reception and follow-up of trafficked persons so each victim enjoys the same treatment. The creation of national co-ordination structures forms part of this process. The report next¹⁹⁷ calls for co-operation in gathering information about trafficking in and smuggling of human beings. The report also recommends high-intensity international co-operation between the Member States, on the one hand, and the Member States and the Commission, the institutions of the Council of Europe, the OSCE, etc., on the other hand. Against this background, a European anti-trafficking network is proposed.

1. *Belgian co-ordination structures*

1.1. *Interdepartmental Unit for the Co-ordination of Action against trafficking in human beings*

1.1.1. Royal Decree of 16 June 1995

Owing to the complicated nature and the structural and progressive dimensions of international people trafficking, the policies applied have to be co-ordinated and bolstered in an effective way. The Parliamentary commission of inquiry into trafficking in and smuggling of human beings stressed the importance of continuing co-ordination and follow-up action. Focused exclusively on 'Guarantees for a continuing policy', the last chapter in the final report shows the Commission putting forward the idea of tasking a body with guaranteeing a co-ordinated policy¹⁹⁸. The Government went along¹⁹⁹ with the recommendation by adopting a Royal Decree to make the Centre for Equal Opportunities and

¹⁹⁶ *Report of the Expert Group on trafficking in Human Beings, Chapter 3, Guiding principles and cross-cutting themes*, pp. 71 – 82.

¹⁹⁷ *Op. cit.*, p. 71

¹⁹⁸ House of Representatives, *Doc. Parl.*, N°. 673/7-91/92 (S.E.), 18 March 1994, pp. 102 – 104.

¹⁹⁹ Government response to the report by the Parliamentary commission of inquiry into trafficking in human beings', House of Representatives, *Doc. Parl.*, N°. 673/9-91/92 (S.E.), 15 September 1994, Annexe V.

Opposition to Racism responsible for co-ordinating and following up the action against trafficking in human beings²⁰⁰.

The Royal Decree also provided for the creation of a permanent co-ordination structure²⁰¹, the 'Interdepartmental Unit for the Co-ordination of Action against trafficking in human beings'. The aim was to ensure the co-ordination and application of the policy, while guaranteeing the social and prevention components. The co-ordination unit was chaired by the Justice Minister²⁰², with the secretariat and general co-ordination responsible being assigned to the Centre for Equal Opportunities²⁰³.

The Co-ordinating Unit comprised representatives of all the federal Ministers and departments involved²⁰⁴ in combating people trafficking, both in humanitarian and prevention terms. The Interdepartmental Unit was tasked with facilitating the exchange of information between all the partners involved in action to counter trafficking in human beings. It was supposed to co-ordinate activities at field level and forge an effective policy. The Unit was also designed to act as a platform for making a discerning assessment of the achievements and developments on the ground. Depending on the case, it was entitled to table proposals and recommendations for tackling trafficking in human beings. The Unit also had the right to take initiatives to set up co-ordination structures in various judicial districts.

One practical outcome of the activities carried out by the Co-ordination Unit was the publication, in the Belgian Official Journal, of the directives dated 13 January 1997²⁰⁵ on assistance to trafficked persons, designed to set the record straight on the practical procedures for applying the measures specified in the circular of 7 July 1994²⁰⁶. Working groups were also set up to consider specific themes. For example, the working group on "Europe" lent its support to Belgium's position in the context of initiatives taken in 1996. Together with the Ministry of Foreign Affairs, this working group paved the way for Belgium's involvement in the Vienna conference, in June 1996, on the theme of trafficking in women. The same working group also formulated a joint action plan on trafficking in human beings, which was unveiled by the then Justice Minister during an informal meeting of the Council of Justice and Home Affairs Ministers, on 26 and 27 September 1996 in Dublin.

The Co-ordination Unit met for the first time in November 1995. Two plenary sessions were held in 1996, in April and December. The final meeting was staged on 20 December 1999. This was primarily

²⁰⁰ Royal Decree of 16 June 1995 on the remit and jurisdiction of the Centre for Equal Opportunities and Combating Racism in the case of combating the international trafficking of human beings, plus the implementation of article 11 § 5 of the Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography, *Belgian Official Journal*, 14 July 1995.

²⁰¹ Ditto.

²⁰² Article 4, Royal Decree 16 June 1995, *Belgian Official Journal*, 14 July 1995.

²⁰³ Article 1 and 4, Royal Decree 16 June 1995, *Belgian Official Journal*, 14 July 1995.

²⁰⁴ Article 5, Royal Decree 16 June 1995, *Belgian Official Journal*, 14 July 1995.

²⁰⁵ Directives of 13 January 1997 to the Aliens Office, the public prosecutor's offices, the police services, social law inspectorate and social inspection services and the social inspection services involved in providing assistance to trafficked persons, *Belgian Official Journal*, 21 February 1997, articles 8, 2° and 3° and article 10 amended on 17 April 2003, *Belgian Official Journal*, 27 May 2003.

²⁰⁶ Circular of 1 July 1994 concerning the issuance of residence permits and employment authorisations (work permits) to foreign nationals, victims of trafficking in human beings, *Belgian Official Journal*, 7 July 1994.

due to the lack of a fixed structure and the large number of participants. This Interdepartmental Co-ordination Unit's strength, gathering together all the services involved in combating international trafficking in human beings, was also its weakness.

Acknowledging that the Co-ordination Unit had reached a dead end to some extent, the Prime Minister decided in December 2000, to take the initiative to set up a Task Force on "Trafficking in human beings ". This was in line with his co-ordination and administration role within the government. The Task Force on "Trafficking in human beings" (having the same composition as the Co-ordination Unit), took over the Unit's tasks. The Task Force met every fortnight and the proceedings finally resulted in a draft Royal Decree on action against trafficking in and smuggling of human beings. Thanks to the creation of a bureau, the structure recommended by the Royal Decree was designed to ensure operations were carried on an ongoing basis.

1.1.2. Royal Decree of 16 May 2004²⁰⁷

The Royal Decree singled out three factors:

- a) the need to develop a (computerised) information network as a hub for the information available and for analysing the information and making it available to the various partners;
- b) the importance of giving a boost to the Interdepartmental Co-ordination Unit;
- c) the need to maintain, indeed even enhance the role of the Centre for Equal Opportunities and Combating Racism, assigned to the Centre as part of the Law of 13 April 1995 featuring provisions for the suppression of trafficking in human beings and child pornography²⁰⁸.

As we already pointed out, the Interdepartmental Co-ordination Unit had already taken several practical steps but its activities were relegated to the background somewhat. The Royal Decree of 2004 further enhanced the role of the Co-ordination Unit as the linchpin of an integrated policy on trafficking in and smuggling of human beings, by assigning it the task of **preparing and implementing this policy**. It may implement a streamlined policy in the light of:

- being a consultation body for all the stakeholders, so as to ensure the effective coordination of the policy;
- policy making for the Centre for Information and Analysis in Trafficking and Smuggling (CIATTEH), so as to achieve maximum effectiveness with the computerised system for exchanging information among the various partners;
- being a discerning assessor of the achievements made. The assessment will obviously also be used to prepare subsequent policies.

²⁰⁷ Royal Decree of 16 May 2004 on action against smuggling and trafficking in human beings (*Belgian Official Journal*, 28 May 2004).

²⁰⁸ *Belgian Official Journal*, 25 April 1995, err., *Belgian Official Journal*, 17 June 1995, err., *Belgian Official Journal*, 6 July 1995.

Representatives of policy makers, not least representatives of the Prime Minister and the Deputy Prime Ministers are now members of the Unit, so as to ensure the policies are prepared and applied with maximum effectiveness²⁰⁹.

A bureau²¹⁰, where services directly involved with CIATTEH are represented, has been planned. In its role as a technical organisation, the bureau will prepare the Coordination Unit meetings and apply its decisions. Against this background, the Experts Group is calling for the creation of a national round table²¹¹, where the various civil stakeholders and public services will be represented along with NGOs and international agencies. The Co-ordination Unit's broad-based and multidisciplinary composition extensively caters for the recommendations made. We should point out in this connection that the specialist centres are not represented in the Unit. Their views and opinions on the various issues will nonetheless be reflected by the Centre, which will completely fulfil its role as a co-ordinator of these specialist centres. The Centre is also organising regular meetings with the management teams of the relevant centres so as to expound upon the activities of the Co-ordination Unit and define common positions. In the case of international NGOs or international agencies, we see the need for a connection between them and Belgium's policy on trafficking in human beings.

1.2. *Co-ordinating the policy on smuggling and trafficking in human beings*

The following recommendation²¹² calls for a national (Government) coordinator to be created to focus on the issue of smuggling and trafficking in human beings. One of its duties would be to chair the round table. The Federal Public Service - Justice currently chairs the Interdepartmental Coordination Unit whereas the Co-ordination Unit's office is presided over by the Criminal Policy Department. However, neither the Federal Public Service - Justice nor the Criminal Policy Department are responsible as institutions for the operational co-ordination of the *entire* Government policy on trafficking in human beings. Nor does the Centre for Equal Opportunities, the people trafficking and smuggling expertise network within the Board of Attorney-Generals and the federal police service's central department on trafficking in human beings play a co-ordinating role. Each of these departments and institutes plays a co-ordinating role within its field but does not do so for the entire policy on

²⁰⁹ Composition: representative of the Prime Minister, of each of the Deputy Prime Ministers, Ministers for Justice, Home Affairs, Foreign Affairs, Employment, Social Affairs, Social Integration, Development Co-operation, the Board of Attorney-Generals, the federal public prosecutor's office, the criminal policy department FPS Justice, Directorate-General for criminal legislation and human rights FPS Justice, Trafficking in human beings unit of the federal police service, Security of the State, Aliens Office FPS Home Affairs, social laws Inspectorate, FPS Employment, Labour, Special tax inspectorate FPS Finance, social inspection service, FPS Social Security, FPS Foreign Affairs, Foreign Trade and Development Co-operation, Centre for Equal Opportunities and Combating Racism, Child Focus.

²¹⁰ Criminal policy department FPS Justice, Centre for Equal Opportunities and Combating Racism, Aliens Office FPS Home Affairs, FPS Foreign Affairs, Foreign Affairs, Foreign Trade and Development Co-operation, People trafficking unit of the federal police service, Security of the State, Social inspection service FPS Social Security, Social Laws Inspectorate FPS Employment, Labour and Social Dialogue.

²¹¹ *Report of the Expert Group on trafficking in Human Beings, Chapter 3, Guiding principles and cross-cutting themes*, p. 73.

²¹² *Op. cit.*, recommendation 31, p. 74.

trafficking in human beings. Consequently, it is by no means easy to harmonise the various political initiatives in this area²¹³.

This internal co-ordination is even largely non-existent in the case of proceeding against economic exploitation. It is not a good idea to assign this role to the Centre, as the responsibility for operational co-ordination could undermine its role as a participating observer and a discerning policy assessment agency. Towards this end, the situation in Belgium is out of step with the recommendations made. In the present institutional and administrative set up, it is also difficult to imagine a national co-ordinating body operating completely independently of the co-ordination structure that is available. It might be worthwhile in this context combining the role of president of the Interdepartmental Co-ordination Unit with national policy co-ordinator, so that Belgium would fully comply with the recommendations of the Expert Group. In this way, a contact point and clear responsibilities would be created in terms of the policy on combating smuggling and trafficking in human beings. This would be an added advantage that would help to further enhance the Co-ordination Unit's role and operations.

1.3. Centre for Equal Opportunities and Opposition to Racism

The Royal Decree of 16 May 2004²¹⁴ assigns the Centre the following tasks:

- a) encouraging, co-ordinating and following up the policy on smuggling and trafficking in human beings;
- b) co-ordination and collaboration between the various accredited private services specialising in assistance for victims of international trafficking of human beings;
- c) preparing an annual independent public assessment report²¹⁵ on the progress with and achievements of the action against the smuggling and trafficking in human beings, and forwarding the report to the Government;

The Centre's people trafficking-related tasks may be compared with that of the *Nationale Rapporteur Mensenhandel*²¹⁶ (NRM) in the Netherlands. The Rapporteur is assisted by a tiny Bureau, the *Bureau Nationaal Rapporteur Mensenhandel* (BNRM). Financed by five Ministries, the institution has its headquarters within the Ministry of Justice for the sake of convenience. It now enjoys standalone status.

²¹³ The lack of any genuine coordination on the ground recently came under fire from the three specialist centres, during a joint presentation of their annual report, on 13 April 1995, coinciding with the 10th anniversary of the Law on trafficking in human beings.

²¹⁴ Articles 1-3 Royal Decree of 16 May 2004 (*Belgian Official Journal*, 28 May 2004).

²¹⁵ Towards a common consensus policy (1996); Trafficking in human beings: still too much of a lax attitude and indifference (1997); More co-operation, support and commitment (1998); Attention to the victims (1999); Between policy and resources: the huge gap? (2000); Images of trafficking in human beings and case-law analysis (2001); Call for an integrated approach, analysis of case-law legislation (2002); Analysis of the victims' viewpoint (2003).

²¹⁶ During its Presidency of the European Union, in the first half of 1997, the Dutch government convened EU Ministers for a conference on the theme of trafficking in women. Recommendations were made during the conference for specific measures to be taken to combat trafficking in women, as defined in the Hague Declaration. One of the recommendations was to appoint national rapporteurs, a recommendation put into practice by the appointment of Ms A.G. Korvinus as *Nationaal Rapporteur Mensenhandel* (NRM) on 1 April 2000.

The *Nationaal Rapporteur Mensenhandel* is in charge of gathering intelligence and drawing up an annual report about people trafficking for the Dutch government. The report is supposed to feature information about preventing, investigating and prosecuting in cases of people trafficking, along with legislation, regulations and policies undertaken in this area.

In order to bring this initial assignment to a successful conclusion, the BNRM establishes a close relationship with the different stakeholders working in the field of preventing and combating trafficking in human beings. The recommendations featured in the NRM reports are addressed to the various key political players responsible for tackling people trafficking issues.

2. Intelligence gathering: Centre for Information and Analysis for Human Trafficking and Smuggling (CIATTEH)

The Royal Decree of 16 May 2004 set up the CIATTEH under the supervision of the Justice Minister and the Home Affairs Minister²¹⁷. The CIATTEH should be regarded as an 'information network' where the members of the Interdepartmental Co-ordination Unit co-operate for the purpose of sharing information, about people trafficking and smuggling, available in their department, service or institution according to a carefully defined information schedule. The CIATTEH's remit is not restricted to swapping information, however. The information available allows several strategic analyses and studies to be undertaken. The analyses and studies are more than just reactive reporting, as they provide a means of developing a preventive approach, while throwing some light on new trafficking and smuggling methods. The findings are forwarded to the various Unit members on the basis of which they take and lend support to their strategic and political decisions, according to their jurisdictions, purposes and goals. As the Unit members supply information to the CIATTEH and have the role of providing feedback and vetting the operations of the CIATTEH, they are obviously of vital importance for the smooth functioning of the project and its successful outcome. The Unit meets twice a year, so it cannot take care of the CIATTEH's day-to-day business. Hence a Management Committee²¹⁸ was set up to oversee day-to-day management.

A sound knowledge and a good understanding of the fight against trafficking in and smuggling of human beings are of key importance for making the decisions required at political and field level. Valuable and relevant information about the two processes are invariably spread amongst the various departments, services and institutions. As the information is also often sketchy and incomplete, this can lead to a loss of intelligence or a false picture of the situation.

The Expert Group report²¹⁹ also stresses the extent to which these major shortcomings are putting a break on the development, implementation and assessment of the people trafficking policy. According to the report, information originating with various sources and stakeholders first and foremost has to

²¹⁷ Art. 12 Royal Decree of 16 May 2004, *Belgian Official Journal* of 28 May 2004.

²¹⁸ Art. 16, ditto: a representative of the Criminal policy department in charge of chairing the Management Committee and responsible for its secretariat, a representative of the Aliens Office, a representative of the Board of attorney-generals, a representative of the Federal Police's Trafficking in human beings unit, a representative of the Security of the State, a representative of the federal public prosecutor's office, a representative of FPS Foreign Affairs, Foreign Trade and Development Co-operation, a representative of the social inspection service, a representative of the social laws inspectorate, a representative of the Centre for Equal Opportunities and Combating Racism and an analyst from the CIATTEH.

²¹⁹ *Report of the Expert Group on trafficking in Human Beings, Chapter 3, Guiding principles and cross-cutting themes*, p. 77.

be provided with a national focal point. This hub has to be a National Rapporteur or a similar system²²⁰. The information that is gathered then has to serve as a basis for national action programmes.²²¹ *The rapporteur, or a similar system, must, however, be independent and may not play a policy executive, operational and co-ordinating role at the same time.* A clear distinction has to be made between the tasks of gathering, analysing and assessing information, on the one side, and an operational co-ordinating role at national and political level, on the other. It also has to have a clear remit for accessing various sources of relevant information available from all the stakeholders involved. The findings of the analyses should, in the end, be forwarded directly to the Government or Parliament.

The question obviously remains whether the CIATTEH (as it currently stands) is consistent with the Expert Group recommendations.

First of all, the CIATTEH is not a natural person, nor a department within an existing institution nor a fully-fledged institution. Apart from the Management committee and one or two strategic analysts (that remain attached to their individual institutions), the CIATTEH exists only in a virtual sense: it does not have its own staff, resources, secretariat or physical location. For example, no line of command has been established between the co-ordination unit or the management committee and the strategic analysts seconded to the CIATTEH. Nor is it a national rapporteur or a similar institution with a carefully defined remit. The participants are not obliged to exchange information and the very concept of information is somewhat vague. In the final analysis, no attempt has been made to spell out what the participants should or may do with the strategic analyses.

Second, the CIATTEH's current operating procedures have led to confusion between the operational and policy review goals. Making the flow information between the various stakeholders more effective so as to improve the campaign is clearly an operational goal, along with detecting the new moduli of international people trafficking networks. A review of the quality of information flowing between the various departments' involved and assessing the findings, for example, should be regarded as a political goal. And problems are encountered even if the CIATTEH is considered from just an operational viewpoint, which is quite easy to do in the light of the composition of the Coordination Unit and the Management Committee. The CIATTEH's strategic analysts are able to convert the anonymous information gathered from the various partners into credible integrated strategic analyses *only on the basis of an integrated and standardised intelligence gathering programme*. This means the various partners having to adopt a harmonised, integrated approach to intelligence gathering so that the CIATTEH is more than just a post box for depositing various disparate pieces of quantitative information that are structurally different and incomparable, provided according to the ideas, standards and variables specific to each partner.

Absolute standardisation and the precise quality of the variables provided by the partners are preconditions for the smooth (operational) functioning of the CIATTEH. An operational objective also creates a different intelligence gathering programme, more than a policy review objective.

Third, the status of the ultimate findings continues to be unfocused. These items will obviously not be passed on directly to the Government or Parliament, and will not serve as a starting point for a national action plan on people trafficking.

To sum up, there are generally speaking a lot of unanswered questions about the CIATTEH's starting points and aims. This lack of clarity impairs the smooth functioning of the Centre, while preventing

²²⁰ *Op. cit.*, p. 77; recommendation 35, p. 78.

²²¹ The Dutch government proceeded, in December 2004, to act upon the recommendations set forth in the national rapporteur's third report by way of a national action plan on people trafficking.

Belgium from complying with the recommendations of the Expert Group. These uncertainties are the result of a confusion between the two roles. First of all, it is vital to ensure a comprehensive exchange of information between the various departments involved in combating trafficking in and smuggling of human beings, where the aim is to step up and, where appropriate, improve the action. The flow of information obviously has to be consistent with privacy protection laws²²². An operational CIATTEH would therefore be a key instrument in the hands of the national policy coordinator, who would have a political *tool* with which to wage an effective, coordinated and integrated struggle against traffickers of human beings. As we said earlier on, we believe this task should be assigned to the president of the Interdepartmental Coordination Unit.

As shown as by the Expert Group recommendations, it is vital to have a discerning policy reviewer, to play a role that is clearly different from the operational component. The reviewer's assessment report would present the achievements of the action against trafficking in and smuggling of human beings, point out the shortcomings, where need be, and make the necessary political recommendations. As we pointed out earlier on, there are strong similarities between the roles of the *Nationaal Rapporteur Mensenhandel* in the Netherlands and the Centre's responsibilities in the case of trafficking in human beings. The Centre broadly complies with the recommendations of the Expert Group, which calls for the creation of national rapporteurs or a *similar mechanism*, for performing duties on an autonomous basis, acting as a participating observer and not a political agent, drawing up an annual assessment report for the Government and Parliament and playing a part that is clearly different from that of an executive, operational or political body. The CEOOR's annual reports have ensured the trafficking in human beings issue has invariably been a key component of political and social debates in recent years. The sole shortcoming is a lack of a carefully defined remit for gathering and analysing information from the relevant organisations and institutions. As we said earlier on, the intelligence gathering programme prepared for policy review purposes differs from the programme²²³ drawn up for operational purposes.

It would be helpful to consider how the Centre's database on trafficked persons could be extended and improved upon to act as²²⁴ a policy review platform. Dividing the CIATTEH into operational and political components is the only way of ending this confusion, motivating the partners involved and developing a valid instrument for combating the highly flexible people smuggling and trafficking networks.

²²² *Report of the Expert Group on trafficking in Human Beings, Chapter 3, Guiding principles and cross-cutting themes, 'Data exchange' and 'Balancing Data protection, human rights concern and the interest of law enforcement'*, p. 77 -82.

²²³ In the case of the operational aims, there is a vital need, for example, to be able to make analyses according to the name of the perpetrators or other personal data. This implies other legal requirements for privacy. Personal data is not needed for policy reviews as the categorical data is sufficient.

²²⁴ The CECLR is the first of the various partners to have precise, standardised and centralised data on the various factors involved in people smuggling and trafficking. The CECLR and the three specialist centres have a wealth of anonymous raw information about trafficked persons, particularly in terms of social background, administrative status, travel documents, living conditions in the country of origin (prior to becoming a victim), route and journey, the recruitment process, smugglers, exploitation type and nature, debt situation, type of pressure put on the victim, progress of the judicial proceedings, victim assistance and level of integration.

CHAPTER IV.

TRAFFICKING IN HUMAN BEINGS AND ECONOMIC EXPLOITATION

BORDERLINE BETWEEN MIGRATION AND THE INFORMAL ECONOMY

1. Introduction

The authors of the “Expert Group report on trafficking in and smuggling of human beings” highlight the need for an integrated approach to be adopted to action against trafficking in human beings. According to the Expert Group, it is not enough for a human trafficking policy to focus solely on criminal prosecution. Mindful of the interaction between migratory flows and trafficking in human beings, an anti-trafficking policy cannot remain completely aloof from a migration policy: generally speaking (by paying attention to the key causes of trafficking in human beings) and more specifically by recommending transparent migration procedures (in the context of professional migration programmes or otherwise). The Expert Group also believes the campaign against trafficking in human beings may benefit considerably from focusing not only on sexual exploitation but also on the issue of forced labour.

From a human rights perspective, there is no reason to distinguish between forced labour involving ‘illegal migrants’, ‘smuggled persons’ or ‘trafficked persons’. States should criminalize any exploitation of human beings under forced labour slavery or slavery like conditions²²⁵.

The Expert Group is targeting an issue that has already been specifically addressed in the United Nations Protocol to prevent, suppress and punish the trafficking of persons:

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;²²⁶

Analyses of statements made by victims in reception centres show that the concern for the issue of forced labour is by no means an academic issue. An increasing number of victims of economic exploitation are being accommodated in reception centres as the years go by. 10 victims of economic exploitation turned up in 1999, compared with 32 in 2004.

In its 2004 annual report on trafficking in and smuggling of human beings “Analysis from the victims’ viewpoint”, the Centre reported that action against trafficking in human beings and the organised

²²⁵ Report of the Expert Group on Trafficking in Human Beings. Brussels, 22 December 2004.

²²⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

smuggling of human beings called for a two-tier policy. The migration process is a real concern in several countries around the world. Hence “*as part of the action to combat trafficking in human beings, it is important to offer a lawful alternative to the migration process [...]. Under this heading, hunting down illegal immigrants is counterproductive: the victims are faced with higher costs (which makes them run even more risks), while criminal organisations make higher profits and have more resources for spreading their activities and taking root in our society*²²⁷”.

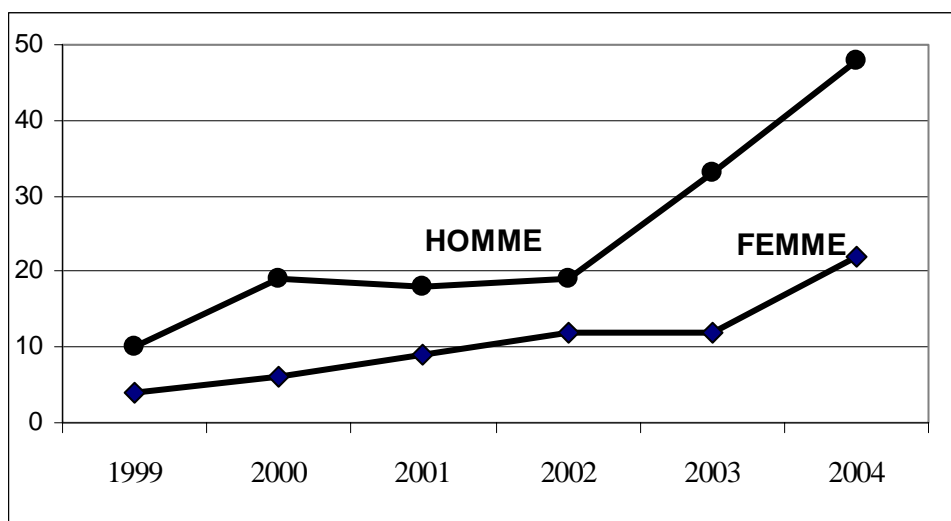
1.1. Profiles of trafficked persons

Table 6: Victims of economic exploitation by nationality and by year

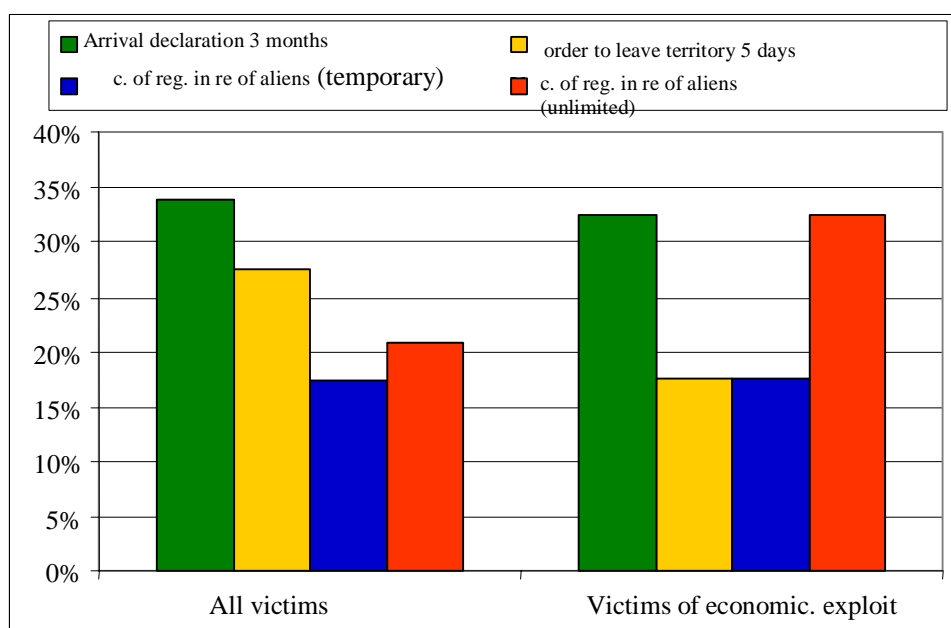
	1999	2000	2001	2002	2003	2004	Total
China	1	1		2	7	16	27
Equator	0	3	5	4	5		17
Nigeria	0	5	5			3	13
Morocco	2	1	1	5	2	1	12
Romania	0	0	2	2	3	5	12
Ghana	2	0	1		6	2	11
Cameroon	2	1	1	2		1	7
India		1		2	3		6
Congo-Kinshasa		1		1		2	4
Poland			2			1	3
Russia						3	3
Others	3	6	1	1	7	14	32
TOTAL	10	19	18	19	33	48	147

²²⁷ In its reaction to the green paper on economic migration, the Centre nonetheless stressed that making a link between the migration and people trafficking policies would not necessarily put a stop to trafficking in or smuggling of human beings but an alternative system of legal migration may partly reveal a process that is currently being unlawfully organised (outside the control of the authorities).

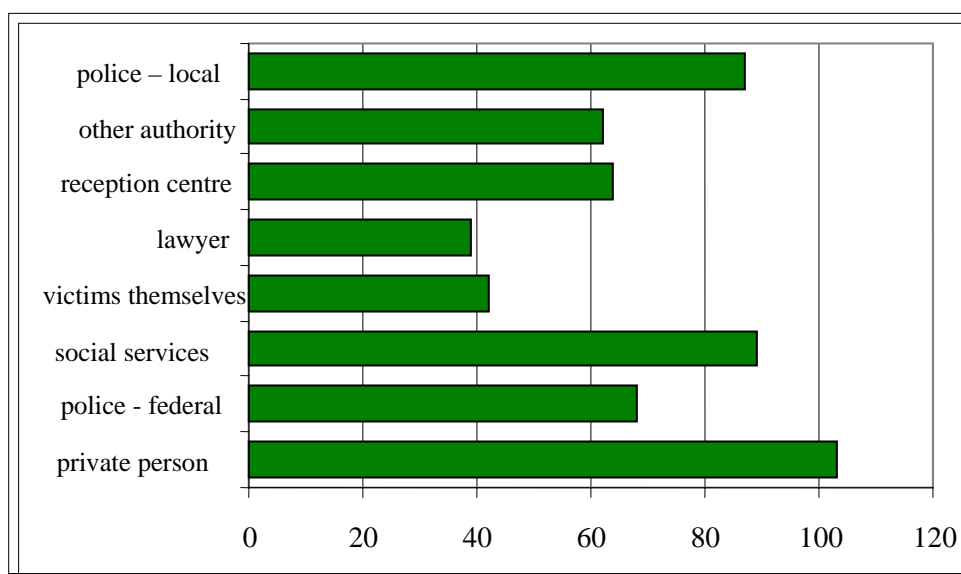
Graph 6: Assisted victims by gender and by year



Graph 7: trafficked persons status at the end of the assistance process(1999- 2005)



Graph 8: Referring victims to specialist centres (1999 - 2005)



1.2. Recommendation of the Expert Group: do not lose sight of prevention

Prevention is one of the cornerstones of a consistent and effective policy on trafficking in human beings, in addition to law enforcement and victim assistance. A preventive approach helps to prevent migrants falling into the clutches of traffickers or smugglers of human beings.

A preventive approach first of all involves a scientific investigation into trafficking in and smuggling of human beings, greater awareness, training for the police and legal services and administrative checks. Second, consideration has to be given to the key causes of migration, and we have to dare to confront the actual needs and requirements of the labour market. In other words: trafficking in human beings is not solely a supply-driven process²²⁸. There is also a demand for cheap illegal labour in the country of destination. The fight against the key causes of trafficking in human beings has to take place both in the country of origin and the country of destination.

The Expert Group has proposed specific measures in two areas: for migration policy and for the protection of immigrant workers. The Expert Group is urging the EU Member States to launch an immigration management programme, with due regard to the supply/demand situation, including the demand for unskilled labour. Against this background it is calling on the Member States to press on with applying the political agendas, as decided upon during the European Summits in Tampere, Thessaloniki and The Hague

In the case of protection for immigrant workers, the, Expert Group is anxious for the EU Member States to ratify the United Nations Convention on the Protection of the Right of all Migrant Workers

²²⁸ Anderson B.; O'Connell Davidson J. Is trafficking in human beings demand-driven? A multi-country pilot study. IOM (Geneva), *Migration Research Series*, 2003, n°15.

(18 December 1990). The Convention has been ratified by 25 States since it came into force, but no EU Member State has so far ratified it²²⁹.

The intention in the following sections is to throw some light on various issues and offer observations about the Expert Group report (in the light of the Belgian situation). Towards this end, we will base our analyses first of all on the legal cases the Centre has been able to consult, amplified with administrative reports and the scientific literature. First of all we will explain the link between migration, trafficking in human beings and forced labour. What form does this take at field level? We will also seek answers to a few other questions: What is meant by forced labour? Who are the victims? And we will consider the informal labour market and its relationship with forced labour. This review should enable us to gain an insight into the potential risks the victims of economic exploitation might face. We then consider the measures taken in recent years to counter economic exploitation in our country.

2. Link between migration and trafficking in human beings

2.1. Smuggling of or trafficking in human beings?

Various victims of economic exploitation turn to people traffickers to help them migrate. As a result of the restricted migration opportunities, together with the higher number of immigration controls in the countries of destination (and in the countries of transit and the countries of origin) many victims are unable themselves to arrange the migration process towards Europe or North America. A survey on the illegal community in the Netherlands shows that people migrating from Iran, Somalia or China almost all use traffickers, both to leave their countries and to reach Europe. This applies less to countries of the former Soviet Union, the former Yugoslavia, Turkey and Morocco. It is comparatively easier for these migrants to enter Europe: they organise the journey themselves by car or coach. Moreover, they generally have the right documents (tourist visas vouched for by friends or family)²³⁰.

However, migrants using the services of people traffickers run the risk of becoming victims during their journey. In its previous annual report - “Analysis from the Victims' perspective ”, the Centre for Equal Opportunities and Opposition to Racism also paid a great deal of attention to the coercion and control mechanisms to which the victims of smuggling networks are subject²³¹:

- The victims have to hand over their documents;

²²⁹ Vanheule D., Foblets, M-C. , Loones, S., Bouckaert S., De Betekenis van de Arbeidsmigrantenconventie van 18 December 1990 in het geval van een ratificatie door België, *Journal des tribunaux du travail*, 2004, 20, pp.341-358.

²³⁰ Engbersen G., Staring R., van der Leun, J., de Bomm J., van der Heijden P., Cruijf M. *Illegale Vreemdelingen in Nederland. Omvang, overkomst, verblijf en uitzetting*, RISBO Contractresearch, Rotterdam. 2002.

²³¹ The Centre for Equal Opportunities and Combating Racism. Report on Trafficking in human beings. *Analysis of the victims' viewpoint*, December 2004, Brussels.

- Promises are not kept;
- The victims suffer from physical violence;
- The traffickers put pressure on the victims' family members;
- Costs and repayment schedules are exceeded.

The Centre for Equal Opportunities and Opposition to Racism report on “Chinese immigration in Belgium: Main developments and prospects”, offers the following testimonies by a few Chinese people by way of illustration²³²:

Snakehead promised me a paradise. It would be easy to earn money and there would be a lot of work. He made believe that I could start working as a private teacher. Where I came from, I used to teach mathematics in a secondary school and my wife taught English. When I arrived in Belgium, I found out there was no opportunity at all to give private lessons. Consequently, I had to work in the kitchens of a Chinese restaurant.

I left China because at 16 years of age I wanted to try my luck abroad. However, the journey was so difficult and dangerous that I'm not certain I would go through all that again. Pay so much to run so many risks.

2.2. Migration and forced labour: more than just “Matrjoski”

The general public's usual image of trafficked persons, recruited in their countries of origin by evil traffickers then forced to prostitute themselves against their will, is not a totally accurate picture of what happens in practice²³³. We see that a number of women voluntarily get involved in the sex "business", sometimes with very specific aspirations and aims²³⁴.

Not all victims are directly recruited in their countries of origin by traffickers. Several victims of economic exploitation arrive here under their own steam or with the help of traffickers. A survey of the illegal labour markets in the United Kingdom and the Netherlands shows that to a large extent the victims reach the labour market via ethnic, social or kinship networks²³⁵. Access to the labour market is generally obtained on a voluntary basis. The supply is not focused exclusively on jobs in the sex "industry" (victims generally end up in sectors seeking low-skilled workers, such as small companies or the health sector.).

²³² Centre for Equal Opportunities and Opposition to Racism, *Chinese immigration in Belgium: main developments and prospects*, Analysis report. Brussels. 2005.

²³³ Vermeulen G. Matroesjka's: tien jaar later. Repressie en controle als speerpunten van het vernieuwde mensenhandelbeleid. In: *Panopticon. Tijdschrift voor Strafrecht, criminologie en forensisch welzijnswerk*. 2005.

²³⁴ International Labour Organisation (ILO). Forced Labour, migration and human trafficking. In *Global Alliance against forced labour*. Geneva. 2005.

²³⁵ Ram, M., Edwards P., Joner T., *Employers and Illegal Migrant Workers in the Clothing and Restaurant Sectors*. Department of Trade and Industry. London. 2003.

By way of illustration here are one or two accounts by employers in the textile and hotel/catering sectors in the United Kingdom:

According to E13, an employer of 18 workers, his four illegals "came in off the street". They either come from the streets or through family and friends, says E12. In a further variation on this theme, E17 (11 employees four of whom are undocumented) has "helped relatives who came illegally but I did not encourage them to come. "There is an obligation to employ them" an observation once more confirming the importance of kinship networks in chain migration. Perhaps this issue is best summed up by E15, "there is no reason to get involved in bringing people over, there is already large numbers of illegal workers we can employ.

In the BS case, involving exploitation in the context of a telephone store, we read the following:

The Indian victim is staying in Belgium as part of an asylum-seeking process. He got in touch with his fellow countryman M.S., who runs a telephone store. M.S. promised the victim a wage and help in reaching Italy or the United Kingdom. In the end, the victim was not paid for months. As the man needs to send money back to his family in India, he stole from his employees. When they realised what was going on, he was detained and mistreated for several days. He also received threats later on.

Several victims of economic exploitation decided themselves to emigrate and took the initiative to ask traffickers to make arrangements for the journey. However, the cases also show situations where victims are approached in their countries of origin with promises, and brought into Belgium illegally, where they are set to work. In the M.R. case, concerning a gang of Pakistani criminals running several night shops, the victims were lured to Belgium with false promises. One of the victims says that back in Pakistan, he was promised a stake in a night shop in Belgium. However, after he had worked for six months in the shop he had still not seen any reward for his labours or anything that vaguely resembled a wage. In the meantime his family back in Pakistan had been compelled to pay a further sum of money for the victims "stake" in Belgium.

The recruitment is often organised on a voluntary basis but more sophisticated systems are brought into play to persuade victims to work for low wages in dire conditions. Their uncertain administrative status (many victims have no residence papers) makes them extremely vulnerable, and therefore easy to exploit. One of the commonest ways of putting victims under pressure is to confiscate their residence documents and/or threaten to report them to immigration or police services so they end up being repatriated. The T. case offers a perverse example of how exploiters use uncertain administrative circumstances: this case centred on the exploitation of two Ecuadorian victims, two sisters. T. persuaded them to come to Europe by promising the tantalising prospect of earning \$70 a week. Under the terms of the contract they were supposed to work for T. for two years so as to pay back the Euro 2,000 cost of crossing Europe. They would then be free. One of the sisters was arrested as an illegal immigrant in the Netherlands and forcibly repatriated to Ecuador. T. made all kinds of threats against the family. The young girl had to return to Europe, otherwise the other sister would have had to work for T. for four years. With this threat hanging over her, the victim agreed after a few weeks to return to Belgium.

The victims are also subjected to terrible acts of violence. This is borne out by the aforementioned example of the Indian victims who were brutally attacked by the owner of a telephone store. Our previous annual report referred to a flower selling case where the victims were subjected to violence (a failure to hand over all the money earned to the defendant led to the victims being beaten). The victims were also raped: the defendant would assault the victims at night when they were worn out and desperate for sleep.

2.3. Forced labour: definition and signs

The definition of forced labour was agreed upon by the international community before the Second World War and enshrined in the ILO Convention 29 (1930). Ratified by Belgium the Convention describes forced labour as follows:

All work or service that is exacted from any person under the menace of any penalty and for which the said person has offered himself voluntarily.

The two key items in the definition are: 1) the threat of a penalty and 2) the concept of consent or willingness²³⁶. However, these two items may raise several interpretation issues: what type of penalty do victims have to be threatened with before forced labour is confirmed and how should consent or willingness be considered, as most victims barely have the opportunity to taken an informed decision. The ITO takes the view that a penalty does not necessarily express itself as a formal penalty, but it also covers the loss of rights or privileges. Consent and willingness become meaningless when employees have been hired on the basis of promises or have their documents confiscated.

Other ILO conventions protect migrants who are victims of forced labour²³⁷:

- The ILO Convention N° 97 on Migration for Employment (1949). The scope of the Convention is restricted to migrants who are authorised by the States to reside within their territories for professional reasons (art. 11). Belgium has ratified the Convention.
- The ILO Convention N°143 on Migrant Workers (1975). The first part of the Convention offers protection to illegal immigrant workers. Belgium has not ratified this Convention.

THE ILO singles out six factors that might offer evidence of forced labour²³⁸:

- Threats or actual physical harm to the worker;
- Restriction of movement and confinement, to the workplace or to a limited area;

²³⁶ Andrees B. and van der Linden, M., Designing Trafficking Research from a Labour Market Perspective: the ILO Experience. *International Migration*, vol 43. (1/2) 2005.

²³⁷ Kay, Mike (Anti-Slavery). *The Migration-trafficking nexus. Combating Trafficking through the protection of migrants' human rights*. 2003.

²³⁸ International Labour Organisation (ILO). *Human Trafficking and Forced Labour Exploitation: guidance for legislation and law enforcement*. 2005.Genève.

- Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
- Withholding of wages or excessive wage reductions, that violate previously made agreements;
- Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status;
- Threat of denunciation to the authorities, where the worker is in an irregular immigration status.

3. *Informal economy*

The Expert Group dwells at length on the link between the rapid pace at which economic activity is being globalised and the higher level of demand for immigrant workers, particularly unskilled labour. Several economic sectors are increasingly veering toward a grey area where the stakeholders pay no heed to current standards and working conditions (by means of subcontracting, for example). Against this background, the Expert Group refers to the 'informalisation of the workplace'. Several sectors, such as the entertainment, industry, farming or the construction industry rely heavily on immigrant workers (skilled or otherwise). They often work in dire conditions, as further underscored last year by one or two (fatal) incidents involving immigrants working unlawfully in Belgium²³⁹.

3.1. *Informal economy and migration: a few situations*

The informal economy-migrant bond may take various forms. In the light of the residence status, work permit and type of work (producing unlawful or lawful goods), six situations may be identified²⁴⁰:

- 1) Migrants (including asylum seekers and refugees) who are lawfully resident in the country and have a work permit but are unlawfully employed producing legal goods. In an illegal workshop making garments, for example;
- 2) Migrants (including asylum seekers and refugees) with legal residence status but no work permit, illegally employed in making legal goods;
- 3) Migrants (including asylum seekers and refugees) with legal residence status and a work permit, lawfully employed in producing illegal goods (manufacturing items such as narcotics or banned goods in a sweat shop);

²³⁹ Kosovaarse moeder van vijf komt om in landbouwoongeval. De Morgen. 17.05.2005. Zwartwerker in coma door baas gedumpt in berm. Het Laatste Nieuws 21.05.2005.

²⁴⁰ Samers M. *Underground Employment, Immigration and Economic Development in the European Union: an agnostic-sceptic perspective*. University of Nottingham. School of Geography. 2005.

- 4) Migrants (including asylum seekers and refugees) who are lawfully resident but do not have a work permit, unlawfully employed producing illegal goods;
- 5) Migrants who are unlawfully resident, do not have a work permit and are illegally employed in producing legal goods;
- 6) Migrants who are unlawfully resident, do not have a work permit and are illegally employed in producing illegal goods.

3.2. Growing informal economy and increasing demand for migrant workers

As for what the 'growing informalisation of the workplace' means exactly and what is the relationship with immigration, what the Expert Group considers the informal economy is also called undeclared employment, the black economy or grey economy. The term 'informal economy' was originally used to refer to certain activities in the less developed countries. This generally involved activities undertaken on an independent basis, requiring very little capital, knowledge or organisation. They tended to be labour-intensive and undertaken by families. As an example, the development of large communities of immigrants in major western cities led to similar activities in Europe or the United States. Not only immigrants but also members of the indigenous community who were struggling/are struggling to gain access to the labour market often turn to small-scale entrepreneurship for their salvation. In other words, the informal economy forms part of a survival strategy where the revenue-generating capacity is limited.

It is by no means easy to offer a conclusive definition of the "informal economy". There is no "black economy". It is more a question of a group of activities (often on the edge of the official economy). The borderline between the official and unofficial economies is often blurred and not always easy to detect.

Williams and Windebank defined the 'informal sphere' as follows²⁴¹:

Productive or work activities that are hidden from or ignored by the state for tax, social security, and/or labour law purposes but which are legal in all other respects.

Other observers also refer to the income accumulation process²⁴²:

By informal activities we mean activities aimed at producing a positive effect on income (for the person executing the activities and/or for the person receiving the results), for which the terms of legislation and regulations (planning requirements, social security legislation, collective labour agreements, and the like) applicable to the activities are not being met.

²⁴¹ Williams, C. en Windebank, J. *Informal Employment in the Advanced Economies*. London. 1998.

²⁴² Renooy, P.H. *The Informal Economy. Meaning, Measurement and Social Significance*. Geographical Studies, Amsterdam, 1990, 115.

From an administrative and/or criminal viewpoint, the following activities in the informal economy may generally be singled out:

- Activities designed to avoid paying income, VAT or other taxes;
- Activities designed to avoid paying social security contributions;
- Activities flouting labour laws.

Whether or not an informal labour market appears depends to a large extent on the growing internationalisation of economic activities. This much-trumpeted globalisation process makes itself felt in several ways on both the supply and demand sides of the economy. One of the most striking developments in the globalisation process is the reform of the industrial sector, which was the backbone of our economic system until a few decades ago. The time-honoured industrial sectors could survive only by opting for the inevitable automation process or cheap labour, which has often led to the drastic decision to relocate large production units to cheaper production sites elsewhere in Europe or in Asia: relocation process. This changing framework obvious has serious implications for labour relations. In the wake of these restructuring programmes, adjustments have been made to wages and working conditions and workers are required to be much more flexible. Many companies are currently calling on the services of subcontractors, who are not very scrupulous when it comes to working conditions. immigrant workers play a pivotal role within these structures.

In parallel with the de-industrialisation process the services sector has made an appearance²⁴³. The booming services sector has resulted in a growing demand for specialisation and flexibility, while creating new jobs for people graduating from the higher education system (the IT sector and advertising, for example). However, the services sector also covers a large number of low-skilled and easily available individuals (jobs generally carried out by immigrant workers²⁴⁴). The demand for cheap immigrant labour is apparent both in the case of formal profession services and informal personal services. Formal professional services cover sectors such as cleaning firms, security companies, correspondence sales firms and catering firms. Informal personal services are focused on households (as 'professionals' have higher education qualifications they are often involved precisely in providing professional services). "As many mainly young highly-skilled workers providing professional services are faced with a combination of huge financial resources and tight deadlines, many domestic activities are outsourced."²⁴⁵ When this principle is applied to Belgium's case we notice a tremendous level of demand for cheap domestic worker in the Brussels periphery²⁴⁶. The

²⁴³ Bell, D. *The coming of the post-industrial society: A venture in social forecasting*. 1973. London.

²⁴⁴ Tratsaert Katrien. *Zoek de gelijkenissen, vind de verschillen. Diversiteit en participatie naar nationaliteit op de arbeidsmarkt*. Steunpunt WAV. 2004.

²⁴⁵ Burgers, J. Rotterdam, wereldhaven. In: Burgers J. and Engbersen G , *De Ongekende Stad. Illegale vreemdelingen in Rotterdam*. Amsterdam. 2003.

²⁴⁶ Kesteloot C. and Meert H., Informal Spaces: the geography of informal economic activities in *International Journal of Urban and Regional Research*, Brussels, Tome 23, 1999, N°2.

demand for cheap domestic workers in the Brussels-Capital Region has increased because the city is one of the world's main diplomatic capitals²⁴⁷.

3.3 The size of the informal economy and the percentage of (illegal) migrants involved

Estimates about the size of the informal economy differ and vary according to the method used²⁴⁸. In any event, the various methods point to a clear increase in the size of the informal economy in the OECD countries. We do not know the exact scale of the informal economy in Belgium but several methods suggest that the informal economy in Belgium may be expected to account for between 15.3% and 20.8% of gross national product. In the wake of a recent conference on social security fraud and undeclared employment, Pacolet and Marchal made the following estimates for undeclared social security contributions²⁴⁹:

Source and purpose of the Estimate estimate		Applied
Social laws inspectorate, social security fraud; 1995	Between 6-15% of social security contributions	Between Euro 1.76 et 4.4 billion
Administration for Employment and Labour, Social Security Fraud, 1995		Euro 1 to 1.24 billion
ORSEU, black economy, 1995	12.9% of social security contributions	Euro 3.5 billion
Pacolet J. and Geeroms H., black economy, 1995	Between 12-20% of GDP	Between Euro 24.12 and 40.2 billion
Frank M. tax fraud.1998	Between 17.9 and 20,2% of total tax revenue	Between Euro 13.9 and 16.09 billion

Most undeclared employment is undertaken by Belgian nationals (making a bit on the side in addition to their regular working hours or as person entitled to benefits). We do not have any precise figures about the percentage of illegal or legal immigrants working in the informal sector. Reviews of the French labour market show that 8.7 % of welfare violations are linked to the employment of illegals (Report to Parliament on social security, 1999). Figures collected during the 2000-2003 period as part of the "Co-operation Protocol on combating trafficking in human beings", concluded between the social inspectorate and the social laws inspectorate" show that proportionally, the percentage of

²⁴⁷ Institute for International Research on Criminal Policy (IRCP). *International domestic workers in Belgium*, University of Ghent, 2003.

²⁴⁸ Schneider F., Enste, D., *Shadow Economies around the world: Size, Causes and Consequences*. IMF Working Paper WP/00/26. International Monetary Fund. 2000.

²⁴⁹ Pacolet J., Marchal A., *Social security fraud and undeclared employment in Belgium: searching for the indefinable? Revue belge de Social security*, 3rd quarter, 2003.

immigrant workers is on the increase, but this primarily concerns legally residents and employed immigrants.

	2001	2002	2003
Number of institutions vetted	1,013	983	912
Number of foreign nationals lawfully employed	845	1,303	1,464
Number of foreign nationals unlawfully employed	416	482	591
Number of offences reported	747	1,080	918

It is difficult to assess the size of the informal economy and the percentage of immigrant workers involved but even the most sceptical observers believe several economic sectors rely on illegal and often cheap immigrant workers. The cost is not always the most important factor in the demand for immigrant workers. The high productivity level of these workers, plus their *eagerness* to work in flexible conditions may be even more important.

An employer in the Netherlands reports: *By definition, an illegal immigrant who works is not ill. He does not opt for early retirement, he does not seek a tax refund because he is buying a house, in short nothing. He has no qualms about working hard and for long hours*²⁵⁰.

However, in some cases it is certainly not a cheap option to hire foreign labour. For example, there is a huge demand for Filipino domestic helps in Athens, notwithstanding the high rates. Reports from the work inspectorate, subsequent to large-scale vetting of foreign domestic staff, show that the price is not the chief reason for hiring these people²⁵¹. Their willingness to work plus their experience, together with an eagerness to take initiatives and a smooth social network are factors that count more in explaining their "success" in this branch of the labour market.

Another factor, but on the supply side in this instance, is the availability of a large pool of labour ready to work in difficult or precarious circumstances. These are individuals who regard such work (even in degrading conditions) as an opportunity to some extent. In the case of Belgium this involves several cases of asylum seekers, illegal immigrants and illegal workers from the former Soviet bloc²⁵².

As well as hiring illegal immigrant workers, employers increasingly resort to "hybrid systems" where they turn to legal immigrants via state-of-the-art social engineering. An example of this is the European legislation on secondment, thanks to which immigrant may be lawfully employed in our country (but subject to the social conditions pertaining in the country they are dispatched from). Employees do not necessarily have to have a work permit, just an "E111" form to prove the employer in the country of origin is paying social security contributions. However, according to the social

²⁵⁰ Van der Leun J., Kloosterman J.. Loopbanen onder het legale plafond. De arbeidsmarktpositie van illegale migranten in Rotterdam. In: *Illegale vreemdelingen in Rotterdam. De Ongekende Stad*. Amsterdam.2003

²⁵¹ Social inspectorate (FPS Social security), Control of welfare legislation (FPS Employment, Labour and Social Dialogue), The Belgo-clean express. Combating exploitation in the workplace and trafficking in human beings. Denouncing the unlawful employment of foreign domestic staff. An inventory of initiatives targeted on this process, April 2004, Brussels.

²⁵² Kesteloot, 1999.

inspectorate, it is almost impossible at present to carry out effective investigations. Another system is to seek self-employed status: many (illegal) immigrants register themselves as self-employed and offer their services with this status. As a result of these "hybrid" structures illegal immigrants are even losing their competitive edge over legal immigrants:

While undocumented immigrants traditionally provided firms with a cheap buffer against economic flux – they could be hired quickly and easily to meet temporary increases in market demand and then released without consequence when demand contracted – firms are increasingly adopting flexibility strategies that integrate better in their production operations. As a result, being an undocumented immigrant is no longer an advantage. In fact it has even become something of a liability because it means that they cannot work under semi-formal employment arrangements with one or more facets that are declared and above board²⁵³.

The impact this state-of-the-art social engineering makes on our labour market should not be underestimated. The percentage of illegal immigrants on the labour market has declined to the advantage of immigrants involved in 'hybrid structures'.

As a result of the legislation on secondment, 48,999 immigrants were reported to be working in our country in 2002²⁵⁴. The number of self-employed immigrants has grown exponentially over the last three years. 1,000 active self-employed people in 2002 compared with 3,187 and 5,042 in 2003 and 2004²⁵⁵.

3.4. The different sectors of the informal economy in Belgium

The informal economy exists in various sectors of our economy. The social inspectorate identifies several sectors involving a risk of trafficking in human beings and economic exploitation, broken down according to the provinces where they are located²⁵⁶.

The risk sectors broadly include:

- Ethnic restaurants (particularly Chinese restaurants and pita shops);
- The building industry (particularly repair work);
- Ethnic retail businesses;
- Night shops and telephone stores.

²⁵³ Iskander N., Immigrant workers in an irregular situation: the case of the garment industry in Paris and its suburbs. In: *Combating the illegal employment of foreign workers*, OECD, 2000.

²⁵⁴ These figures apply only to countries that are supposed to declare their workers.

²⁵⁵ Steeds meer Zelfstandigen uit Oost-Europa. *Brussel Deze Week*. 21.07.2005.

²⁵⁶ Social inspectorate (FPS Social security). Annual report MERI 2003, General report on the activities of the MERI (Mensenhandel en Risicosectoren, Trafficking in human beings and risk sectors) units in 2003 activities and observations during the period from 1999 to 2003. National Coordination Office for Trafficking in Human Beings.

The risk sectors by provinces are cited as follows:

- Farming and market gardening (West and East Flanders, Limbourg, Flemish Brabant, Namur, Luxembourg);
- Prostitution (West Flanders, Limbourg, Flemish Brabant, Namur, Luxembourg);
- The rage trade (East Flanders);
- Abattoirs and meat processing industry (East Flanders);
- Turkish pastry shops (East Flanders);
- Stallkeepers (Ecuadorians) (East Flanders, Walloon Brabant, Luxembourg);
- Domestic helps (Walloon Brabant);
- Car cleaning firms (Liège);
- Riding schools (Liège);
- Cleaning firms (Antwerp).

From this we can see that risk sectors are found in various sections of our economy (each with their own economic structure). Hence we are faced with people trafficking and economic exploitation in well-established major economic sectors, such as farming or building. We can also appreciate the significant risks of people trafficking and economic exploitation within the "ethnic economy", such as night shops or ethnic retail businesses.²⁵⁷.

It is obvious why it is so difficult assessing what percentage of immigrants is working illegally: the workers are often invisible to the immigration services or the social security authorities. However, the assessments made by the social inspectorate and the annual report on the Co-operation Protocol allow us to assume a certain number of features shared by foreign workers in Belgium. The figures are for 2003. Illegal workers from a total of 71 different countries were intercepted (a key indicator given the growing internationalisation of our labour market). The bulk of illegal workers hail from Eastern Europe, primarily Poland and Bulgaria. The second largest group originates from Asia: China, Turkey and India. Ecuadorians show up in the group of Latin American immigrants. Most illegal immigrants are males. Over 75% of the interceptions consists of male immigrants. Female illegal workers are involved in prostitution and domestic duties.

The following trends are noted in the risk sectors:

- **Construction industry:** the main source of employment for illegal workers. 24% of the people checked are working illegally (with employee or self-employed status). Most illegal workers are from Poland. Apart from East Europeans, the sector also attracts Brazilians.
- **Hotel and catering industry:** this accounted for 30% of illegal workers. there is no uniform pattern to the recruitment process (the immigrants are from all corners of the glob). The main

²⁵⁷ Blaschke J. e.a. , European Trends in Ethnic Business. In: Waldinger Roger, e.a., *Ethnic Entrepreneurs. Immigrant Business in Industrial Societies*. London. 1990.

groups are from Asia (Pakistan, China, Turkey), Eastern Europe (Bulgaria), North Africa (Egypt, Morocco).

- **Farming and market gardening:** most of the illegal workers who are discovered are from Eastern Europe: Poland, Romania and Bulgaria.
- **Prostitution:** the bulk of the sex workers are from Eastern Europe (Poland and Hungary). A number of African women also work in the sex industry.

3.5. Structural analysis of a few risk sectors and their employment relationships

A wide variety of sectors and activities are reported to be involved but we can still single out a number of shared features of a striking nature that have significant implications for employment relations. A careful assessment should help us to highlight the shortcomings of the professional situation where degrading constraints and control mechanisms may develop.

A survey on the informal market in the United Kingdom points us in the right direction to some extent²⁵⁸. A review of one or two sectors (building, market gardening and farming, cleaning) broadly shows that these are highly competitive businesses that are under pressure to drive costs down and productivity up. Moreover, these are very often economic sectors that cannot survive without a physical, low-skilled and very hard working labour force. Consequently labour accounts for a significant share of the cost structure. A more detailed review of the economic structure of all these sectors and its impact on employment relations reveals the following striking factors:

- Most of the risk sectors involved are key economic sectors in terms of their size and employment opportunities. They are very economically diverse, covering myriads multi-tier activities, for various kinds of employment contracts. The activities are carried out at various levels. In the building industry, they range from straightforward repairs to small dwellings to the construction of skyscrapers. In the light of this complicated situation, we may note that most of the work is "location-specific" and thus spatially limited (for example, a construction site, a cleaning site or an agricultural district). Economic restructuring and production relocation programmes have little impact. In other words, other cost-reduction options have to be sought.

²⁵⁸ Anderson B., Rogaly B., *Forced Labour and Migration to the UK*. Centre On Migration, Policy and Society (COMPAS.), 2005, University of Oxford. Study prepared by COMPAS in collaboration with the Trades Union Congress.

- The complicated nature of the activities is also reflected in the importance of the manufacturers operating in the relevant sectors. Consolidation has led to the creation of key entities but a series of small and medium-sized enterprises are also involved. The disparity between the various key players and the inconsistent distribution of power in relation to customers definitely has implications for in-house employment relations. The smaller entities are less able to rely on economies of scale or do not invariably have a human resources department or a trade union delegation to vet the application of employment laws.
- Most risk sectors are location-specific. However, production is also related to a time factor: activities are dependent upon one project (often beholden to strict deadlines or seasonal constraints, particularly in the building industry or farming). The significance of the time factor has a major impact on employment relations in all respects. As the demand for labour is periodical rather than steady, companies need to have the labour available quickly for a specific period of time. This has led to a “labour only-subcontracting market” in the construction industry. Preference is given to people ready to work on a bogus self-employed basis or via subcontracting. The farm sector is heavily dependent on seasonal workers. Cleaning firms often focus their activities on periods outside office or production hours. These staggered working hours often contribute the isolation of workers and provide a further opening for abuses.
- Virtually all the risk sectors are faced with significant staff shortages and a high staff turnover. We have already considered the reasons for this precarious professional situation: the work is often very physically demanding, low skilled and low status: the time-honoured 3-D jobs: *dirty, dangerous and difficult*. The work is location-specific, hence the workers often have to travel long distances or are more or less compelled to stay close to their places of work. Many potential candidates are put off by the distance and the possibility of having to stay on the site. These constraints are of little importance to immigrant workers: distance and travel are part and parcel of their occupational experiences.

3.6. *Methods of economically exploiting victims: coercion and control mechanisms*

Earlier on this chapter, we offered examples of the ways in which victims are manipulated (openly violent acts or abuse of immigrant status). We highlighted various other mechanisms traffickers deploy to manipulate their victims. Here we can see that victims are not always subject to open coercion or direct control mechanisms. The indirect and subtle means of pressure sometimes used may make it quite difficult to identify the victims.

3.6.1. *Accommodation and limited freedom of movement*

From the documentation and case files the Centre has studied in detail, we are constantly struck by the fact that victims are housed in cramped living conditions. Most of the time, the victims can hardly refuse, as there is no alternative (even when they are faced with atrocious sleeping facilities or ridiculous rents). The accommodation is sometime included in the system of payment, either a part of the wage is withheld (when a wage is actually paid, of course) or the accommodation is "offered" in

return for a job. In the M.R. case, the Pakistani victims were sleeping on the floor in tiny rooms at the rear of the various night shops. In the B. case, for example, the employee offered the individuals an apartment from his 'huge property holdings' (for a fee, of course). The offer of accommodation is not only a payment mechanism, it is also obviously a further means, in many cases, of bringing pressure to bear on the victims or using coercion.

The victims are completely dependent upon their employers-cum-owners. They are generally not allowed to leave the house (solely after receiving the consent of the trafficker, often only to do a job). In the O.T. case the victims were taken to stay for a week with a family in the Antwerp region, where they worked as domestic helps. They were properly treated in the friendly atmosphere there. During their supposedly free time on the weekend they had to travel to Brussels to stay in the trafficker's home, where they had to work in a workshop or were compelled to go around the markets, always accompanied by the trafficker.

3.6.2. Wages: various options

Inadequate terms of payment represent another means of pressure to compel victims to toe the line. In most cases, the already vague promises are not kept. In the T.M. case the Ecuadorian victims were promised they would earn Euro 80 a month. They never saw any money. In fact, the traffickers sent \$120 dollars to the victims' parents every three months. What generally happens when a wage is paid is most of it ends up in the pockets of intermediaries, who withhold the wages for a variety of reasons: repayment of the 'immigration fees' (travelling, visa or administrative costs); looking for or proposing work; accommodation; professional expenses (transport and equipment, for example).

3.6.3 Risky and degrading conditions: few alternatives

Another recurrent factor is the risky working conditions. The illegal workers often have no other choice but to work in precarious conditions. Against the background of this sometimes desperate situation (exacerbated or otherwise by a large supply of labour), the employer/employee relationship is changed into a "patron/client" relationship. In the context of this imbalanced and uneven relationship, mechanisms of dependence start to emerge. Moreover, some employees try everything to keep in favour with their employers so as to remain somewhat in the cross-hairs of the patron-employer, often the solely guarantee of securing employment and, by extension, a source of revenue.

3.7. Subcontracting and role of the networks

Subcontracting plays a key part in the employment of victims of economic exploitation. It is a rewarding opportunity for employers. The subcontracting system first of all offers a fast means of hiring people with specific skills at reasonable rates. In other words, one of the main aims is to cut costs. Another reason is tied up with the responsibility towards the employees, which may simply be passed onto the subcontractors. The longer the subcontracting chain the greater the risk of informality and exploitation.

In spite of the major risk of serious abuses linked to the subcontracting system, it does initially offer the victims a number of advantages. In view of their illegal status, the victims are often sidelined from the usual formal recruitment channels. They rely heavily on social and kinship networks to help find them employment. In this case, the networks are seen to blur in some respects with the networks of subcontractors. Engbersen refers to “gatekeepers to the informal economy” (also known in Belgium as labour-only subcontractors). The subcontracting chains are often the only way for victims to work, one of the sole means to allow victims to avoid becoming socially marginalised. What we see appearing here is a borderline between the formal and informal job centres and the social networks: *“social networks may become “commodified”, when friends and contacts start demanding money for their services.”* Similar to or an extension of the immigrants' social networks, the subcontracting chains may extend beyond borders.

In order to illustrate how the social networks operate and access to the labour market, let us take a look at the case of Kobra, a young Iranian-speaking Turkish girl in the Netherlands:

Kobra initially worked for an Iranian, who had a temporary employment agency. One fine day, he disappeared without leaving an address... He still owed Kobra the Euro 900 she had earned while in his employment but she could forget about the money. *“Where can I go ? As an illegal immigrant, I can hardly go the police and tell them my story.”* However, she managed to get in touch with a Turk (probably a labour-only subcontractor) through the temporary employment agency, who had some work for her cutting and planting mushrooms. However, she never knew where she was with this job. Sometimes she would work for a whole week and then no work again, a few days working and a few days not working. A Turk she met while doing this job introduced her to the owner of a Turkish bar. That is where she is working now... This man did help her. She also lived for a while in his house with his mother... The fact that he liked her a lot was shown by his decision not to present her to his brother who also had a café. He thought the place did not suit her, unlike the one where she now works... The average Euro 135 she earns every week enables her to pay for her rent and food. No more. *“If anything out of the ordinary were to happen, I would be in trouble”.*

4. Victims: difficult to identify

Economic exploitation is not necessarily organised by criminal gangs²⁵⁹. The documents and cases of economic exploitation the Centre has been able to consult also reveal that these criminal organisations are not openly involved in economic exploitation²⁶⁰. Most of the sectors involving forced labour are based on regular services for which there is a huge demand. And as we just explained, social or kinship networks play a leading role. However, the involvement of these networks does not mean the dignity of the victims is unaffected. The aforementioned documents and cases clearly show that

²⁵⁹ Dupuis B., *When human dignity is violated*, Inforevue Federal police, September 2004.

²⁶⁰ The 2003 annual report's review of a number of cases of prosecutions in the Law on criminal organisations shows that solely a minority of cases refer to economic exploitation. 23 of the 114 people trafficking cases were linked to economic exploitation.

economic exploitation may occur against the background of sometimes extreme acts of violence and threats. This may be compared with what was described earlier on for prostitution. However, detecting victims is a most daunting task. For one thing, they are not always willing to cooperate and second, experience has shown that they are rarely prepared to tell their stories to the social inspectorate²⁶¹. It is not always easy trying to realise what is involved in people trafficking cases. The federal police also acknowledge this to some extent, as underscored by its assessment of trafficking in human beings from Ecuador. In practice, police officers first of all approach Ecuadorian street sellers as illegal immigrants and then as undeclared workers²⁶². Consequently, they do not dwell on the fact that these Ecuadorian street sellers are forced to work in degrading circumstances. The issue is most acute in the case of local police services: district police officers are not always familiar enough with the issues associated with illegal immigration and employment, they do not have any investigatory experience in this area and they are not highly motivated²⁶³. As stressed earlier on in the report, it is vital for attention to be paid to the victims so as to ensure the most effective campaign possible against trafficking in human beings. The victims' statements are crucial for prosecuting the perpetrators, and for analysing the way the threats develop and their patterns

5. Combating economic exploitation on the ground

A few years ago, the House's Parliamentary Commission of Inquiry and the Senate sub-commission on Trafficking in human beings and Prostitution recognised the importance of a social and legal approach to the issue of trafficking in human beings. In line with these recommendations, the Government decided to conclude a Co-operation Protocol in 2001 between the relevant inspection services: the social inspectorate from the SPF Social Affairs and the social laws inspectorate from SPF Employment²⁶⁴.

The Co-operation Protocol provided the framework for preparing and carrying out joint initiatives in risk sectors for trafficking in human beings and undeclared work. The Protocol specified that an initiative should be applied every month in each judicial district. The initiatives are followed up by the national co-ordinators assigned to each of the services.

The co-ordinators oversee the timetable and the implementation of the initiatives. The Co-operation Protocol has also helped to improve the co-operation between the public prosecutor's office, labour auditors and other inspection services during COL 12 meetings in the various judicial districts.

²⁶¹ Social inspectorate (FPS Social security). Annual report MERI 2003, General report on the activities of the MERI (Mensenhandel en Risicosectoren, Trafficking in human beings and risk sectors) units in 2003 activities and observations during the period from 1999 to 2003. National Coordination Office for Trafficking in Human Beings.

²⁶² Federal police, Trafficking in Human Beings department, *Ecuadorians in Belgium: trafficking in human beings?*, Brussels, 2005, in-house document.

²⁶³ *Ibidem*, page 11.

²⁶⁴ Apart from this mini protocol, the supervisory departments are also cooperating in the context of the 1993 "General Co-operation Protocol", which was replaced by the Law of 3 May 2003 ushering in the Federal Council for Combating Undeclared Employment and Social Security Fraud, the Federal Coordination Committee and the District Units.

The powers of the inspection services have been extended in the context of the Law on aliens²⁶⁵ so that these services are able to ascertain people trafficking offences but they are not seen to draw up many reports on the basis of art. 77a²⁶⁶. This is generally because they are inexperienced in combating trafficking in human beings. Their basic task is to detect violations of employment laws. The inspection services take the view that any discovery of people trafficking activities is a responsibility of the police services.

The relevant inspection services themselves generally regard co-operation under the Protocol as good. The system for planning initiatives, co-ordination, the statistical follow-up and exchanges of information is reported to be operating smoothly. The Protocol has initiated a new dynamic process that should help to make the campaign against trafficking in human beings more effective in the future.

However, the Protocol implementation process is still beset by a number of shortcomings and structural flaws. These are generally attributable to differences between the two inspection services about the organisation and approach and hence the interpretation the two services give to the campaign against trafficking in human beings. For example, the social inspectorate reports a significant number of inter-service differences for such items as arranging checks (with or without the help of police officers), the support of interpreters, the deployment of inspectors specialising in people trafficking issues and a decrease in the number of detailed interviews.

Co-operation between the two services can be daunting in the case of consultations and exchanges of information. No joint inspection operations were carried out in certain judicial districts, such as Ypres and the Brussels-Capital Region in 2003. Carrying out co-ordinated inspection exercises is also extremely challenging in Brussels: problems are reported finding the whereabouts of contact people in the various inspection services. Some of them are reluctant to swap information. In the Brussels-Capital Region, the inspection services of FPS Employment and FPS Social Affairs even tend to operate as rivals more than partners in the case of undeclared work.

Another major issue is staff shortages. The schemes require a lot of preparation and efficient co-ordination. A well-equipped cadre of staff is the minimum requirement. This is a never-ending problem. The Centre's annual report for 2003 noted that *"politicians are prepared to combat this sort of parallel economy [...], but this has to be matched with a suitable level of resources."* In the case of the social inspectorate and the Social Laws Supervisory Board for the Brussels-Capital Region – Flemish Brabant, there are not enough resources to guarantee the administrative processing of the initiatives carried out under the Protocol.

Co-operation between the inspection services and police forces, the Aliens Office and the judicial services is generally good. The Aliens Office is consulted during inspections so as to check up on the residence status of the foreign nationals discovered. The inspection services may also consult the waiting register. In the case of violations of the legislation on the residence of foreign nationals, the police services get in touch with the Aliens Office.

On the basis of article 10 of the Law on labour inspection, the police are tasked with lending support to the inspection operations. Co-operation ranges from straightforward assistance to high-intensity joint efforts where operations are carefully planned and information is exchanged. This more intense

²⁶⁵ Programme Law of 2 August 2002, implementation measure, *Belgian Official Journal*, 29 August 2002.

²⁶⁶ Report on the meeting of the ad hoc working group on "Trafficked persons' status". 07.07.2005. Brussels

form of co-operation obviously has a welcome impact on the ground, particularly as the inspection services may work together with specialist people trafficking services that can count on well-trained and motivated officers. In spite of the new boost given to co-operation between the police and inspection services, a number of challenges continue to arise. The report on the Co-operation Protocol points to several organisational and training hurdles. The report says *“it has been reported that at certain locations (generally local ones) police officers are unwilling to be present during a planned operation owing to the close ties with the neighbourhood. Leaks have even been suspected in some cases, which jeopardises the process for organising the inspection and the involvement of many other participants”*.

We said earlier on that the police services are not always aware enough of the issue of people trafficking and economic exploitation, a shortcoming that may create victim detection problems. Awareness-raising shortcomings result in references to *“problems with police officers (generally at local level) reluctant to taken any action when we discovered foreign nationals with tourist visas working.”*

Co-operation with the legal services is undertaken during the Col 12 meetings. Introducing the Protocol and appointing national co-ordinators has definitely given a boost to the co-operation within the COL 12 meetings in the districts. Officials are now sufficiently aware of the key role the COL 12 meetings play. The meetings provide opportunities to swap information, discuss ongoing cases, define priorities and so on. The items on the agendas may vary significantly from one district to another. In some districts, specific initiatives are also organised during the COL 12 meetings. However, we have reports that the social inspection services are not invited to the COL 12 meetings in several districts. Consequently, there is no contact between the special prosecutor for trafficking in human beings and the social inspectorate in some of these districts. Improvements are on the cards in this case thanks to the provisions in the new COL 10/04 directive on the investigation and prosecution policy for trafficking in human beings. Replacing the Col 12, the new directive came into force on 1 May 2004.

In the case of the judiciary, we also note that art. 77a is often not used in the context of an economic exploitation. Further awareness-raising activities are important here, because not all judicial officers regard economic exploitation as a potential form of trafficking in human beings. It is often reported that *“the interested parties were paid low wages but in the final analysis, they nonetheless earned more than in their countries of origin”*²⁶⁷.

²⁶⁷ Report on the meeting of the ad hoc working group on “Trafficked persons' status”.

CHAPTER V.

TRAFFICKING IN HUMAN BEINGS AND ORGANISED CRIME

According to the Expert Group report, the huge economic profits organised crime generates from trafficking in human beings creates a tremendous risk factor.

The latest Europol report²⁶⁸ on organised crime refers to Euro 8.5-12 billion as the annual turnover produced by people trafficking worldwide.

Official reports caution against the interaction between trafficking in women, the sex industry and the lawful economic branches of the tourist industry.

*The expansion and consolidation of the sex industry with its trans-national linkages, and trafficking into this industry, has also been aided by its incorporation into and contacts with legitimate branches of the corporate sector – the tourism, entertainment and leisure industry, the travel and transport industry.*²⁶⁹

Our annual report for 2003 also refers to the part travel agencies play in the trafficking in and smuggling of human beings. The Ministry of Justice's annual report²⁷⁰ on organised crime mentioned how important travel agencies are for smuggling people to Kazakhstan.

The EU's Europol report (2002) on organised crime throws an interesting light on the operations of criminal gangs with a stake in human trafficking among other activities. Criminal organisations in Europe are generally involved in narcotics, illegal immigration, smuggling goods of all kinds, money-laundering, fraud and VAT carousels. It is still not common for criminal organisations to focus on just one activity. Several criminal organisations boast a huge European-wide network with several branches outside this region. They have several activities on the go at the same time: drug-trafficking, people trafficking, smuggling people and goods, car theft, etc. ...

This analysis is also reflected in our case file. In the Dendermonde judgement concerning a major Albanese network, M. and G. were named as the organisers with contacts in Albania. The previous year, the same G. was convicted by a court in Amsterdam (Netherlands) to 15 months in prison for violating the opium Law.

Our previous report cited the case of S., who was linked to the Chinese Triad cases. Against this background, the Albanian traffickers turned out to be involved in drug-trafficking as well. The Mercedes van they used to carry smuggled persons also served for drug-trafficking activities. When the police intercepted the vehicle they discovered three kilograms of cocaine stashed away. Four

²⁶⁸ Europol, 2004 European Union Organised Crime Report, available for consultation on the site:
<http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2004/EUOrganisedCrimeSitRep2004.pdf>

²⁶⁹ Report of the Expert group on strategies for combating trafficking of women and children, best practise, Commonwealth Secretariat 2002.

²⁷⁰ Justice, annual report 2001, *organised crime in Belgium in 2000*.

members of the Albanian gang were then arrested. After a search in one of the member's homes a bunch of keys was found for the same vehicle with the label of a Dutch firm. The fines for this van were previously paid by the company in the Netherlands. Six months later the van was spotted again in Brussels and when it was intercepted the police discovered 17 trafficked persons in the vehicle loading area. The two Albanian smugglers were arrested and the van was seized. Three months before reports about the van were made in the Netherlands in the context of passenger transport activities.

The Albanian gang were active on several criminal fronts. A search of a gang member's home was carried out as part of a judicial inquiry in Verviers into a conspiracy. The telephone conversations were also conducted in a similar vein. The Albanian gang member S. made 50 calls to one individual who said over the telephone that he had stolen a watch from a jewellery shop. The same S. made a call to arrange an appointment with the jewellery, along with a few companions: "*S. said they could visit the man about half past five so as to look at or buy the watches.*"

Other reports by Expert Groups also make a link between criminal drug syndicates and illegal immigration, money-laundering and fraud.

*Trafficking for sexual exploitation is closely linked to crime networks involving drugs and gunrunning, car thefts, burglaries, illegal hiring of illegal migrants, corruption, immigration criminality, visa and passport counterfeiting and money laundering*²⁷¹.

*Drug syndicates reportedly not only traffick women for prostitution, but also push them into the drug business, using them as carriers and users*²⁷².

The networks are becoming more flexible and more difficult to smash. Belgium's annual report on organised crime offers a good example of how the methods deployed by criminal organisations have changed and how they taken on board modern management techniques. Criminal organisations are reported to specialise in a specific part of a criminal network, such as transport²⁷³. This specialist crime unit may sell anything, such as drugs, people, cigarettes or weapons. Some groups also provide specific training²⁷⁴. This specialisation means criminal organisations are behaving like business operators²⁷⁵.

In common with all international companies, criminal organisations are anxious to create networks inside and outside the EU, with transport operators and other specialists forming part of the criminal organisation²⁷⁶. This approach calls for sound management and a business instinct, plus an ability to weigh up the risks and profits as the basis for the forthcoming operations²⁷⁷.

²⁷¹ International Centre for Migration Development Policy, *The Relationship between Organised Crime and Trafficking in Aliens: Study prepared by the Secretariat of the Budapest Group*, Vienna (Austria), June 1999.

²⁷² *Report of the Expert group on strategies for combating trafficking of women and children, best practise*, Commonwealth Secretariat 2002.

²⁷³ Ministry of Justice, annual report 2001, *Organised crime in Belgium in 2000*, p.96.

²⁷⁴ Ditto.

²⁷⁵ Ditto.

²⁷⁶ Ditto.

²⁷⁷ Justice, *Organised crime in Belgium in 2000*, annual report 2001, p. 96.

The only difference from the international corporate environment is that the mafia applies completely different rules. According to Europol²⁷⁸, violence, corruption and other systems for exerting an influence are part and parcel of the criminal "market" system of supply and demand.

Some organisations in Antwerp are reported to be focusing on specialities, such as the production of false documents or arranging a specific route for transporting human beings²⁷⁹. For example, our case files reveal a typical Albanian route between Brussels and the Belgian coast for smuggling people into England. One of the transport routes for Brussels passes through Antwerp after starting from Rotterdam (Netherlands).

As for the connection with other crimes, gangs from the Albanian, Bulgarian and Turkish communities in the main, who are involved in sexual exploitation and/or people trafficking, are also active in drug-trafficking²⁸⁰. We discovered that illegal car-trafficking gangs in Charleroi also recently joined the criminal market for people trafficking, mainly exploiting young girls from Eastern Europe²⁸¹.

1. Victims and prosecution policies

According to the Expert Group, victim protection forms an integral part of the prosecution policy. Victims enjoy both physical and social protection, while counting on suitable help in escaping from their exploitative situations. The victims need to benefit from this humanitarian right. This also forms the basis for securing key information from the victims so as to be able to prosecute the traffickers. Victims who have made statements about perpetrators must be provided with the extra protection they need to avoid being exposed to other risks.

Several cases show just how much of a challenge this really is. Victims are sometimes scared of making statements and testifying about threats against them or the families they have left behind in their countries of origin. Against this background, the law on anonymous testimonies might offer a solution but a debate has shown that this law is infrequently used for this purpose, if at all²⁸².

In the "Chinese Triad" case, which was dwelled upon at length in the previous annual report on trafficking in and smuggling of human beings²⁸³, one of the victims made a specific reference to the term 'snakeheads'. When the interview was over, the police officers explained to the person what the procedure was for trafficked persons, whereupon the individual suddenly became nervous, refusing to sign the statement²⁸⁴.

²⁷⁸ Available for consultation on the Internet: www.europol.eu.int

²⁷⁹ Questionnaire - Antwerp.

²⁸⁰ Questionnaire - Brussels.

²⁸¹ Questionnaire - Charleroi.

²⁸² Questionnaire - Charleroi, Brussels, Antwerp and Bruges.

²⁸³ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p. 12.

²⁸⁴ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p.12.

Sometimes more than threats are involved. In the case of the Bulgarian A.²⁸⁵, when one of the young girls caught up in prostitution managed to escape, the member of her family who remained in the country was savagely beaten up.

One of the case files also shows just how important information derived from victims' statements is for prosecuting the perpetrators. It is important not only for revealing the abuse of a precarious circumstance, as the "Chinese Triad" case underscores²⁸⁶. It was found that as soon as the victims made any noise or tried to go out, the perpetrators had no qualms about using violence. A Chinese victim, for example, reported that the Chinese traffickers nearly fatally wounded one of his unfortunate companions with a stick because he wanted to "escape" to buy some cigarettes.

The victims' statements also helped to show the different stages in the traffickers' patterns of violence. Against the background of the "Chinese Triad two" case, which is an extension of the "Chinese Triad" case, we were able to establish that violence was used extremely functionally. The victims were beaten only when they telephoned home to ask for more money. Otherwise, the trafficker given to fits of violence would spend his time peacefully watching the television.

In some cases, the information even succeeded in launching an operation for putting the members of a huge network behind bars.

A statement made by two smuggled persons, who were discovered in a van in Bruges, acted as the starting signal for the Federal Prosecution Service to start a major investigation in Brussels into a major Albanian criminal organisation involved in smuggling human beings. Owing to their fear of reprisals, the couple started off making conflicting statements but during a second phase they were shown photographs where they were able to point out a key member of the criminal organisation, a person whose name had also cropped up in other key cases. They were also able to give the name of the Brussels hotel they were kept in. In the light of this information, which was enough to call in the Federal Prosecution Service, the real inquiry got underway by listening in on telephone calls, observations and via a check of the lists available in the Aliens Office. A few months later the inquiry resulted in a major coordinated legal operation focused on several parking lots. The outcome was a huge report (30 cardboard) with which to initiate the proceedings leading to the demise of a key Albanian network that ran most of the people smuggling market from Brussels to England.

According to this report, several judicial inquiries have discovered various nationalities reaching Brussels through their own networks before being transferred to the Albanian one, which apparently dominates the market. The bulk of transport operations intercepted involve victims of several nationalities.

The victims are sometimes also able to provide valuable information about the networks. Our previous annual report²⁸⁷ cited the example of the Chinese Triad case to show how the crime network was continuing the operation. It has been discovered time and time again that the smuggling of Chinese people is an organised system that continues to operate even when a gang is under lock and key. In the "Chinese Triad two" case, a victim provided information about the network coordination centre in

²⁸⁵ *Annual report on trafficking in human beings*, CECLR, 2003, p.19.

²⁸⁶ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p.18.

²⁸⁷ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p.40.

Rotterdam. The Chinese Triad network was found to be the same as the one behind the operation to ferry people to Dover, when 58 people died. Sister P., who was convicted in the Dover case, has since been released and picked up where she left off as the organiser of people trafficking. In the wake of arrests in the “Chinese Triad” and “Chinese Triad two” cases, she kept a low profile for a while. Her associate P. is a former hired assassin in charge of settling accounts in the Chinese community. They are also involved in producing, selling and trading ecstasy in an operation extending from the Netherlands to Singapore and China.

Against the background of this case, the victims have also helped to provide valuable information about the smuggling routes, the operational procedures and the international branches of this network. The Chinese victims were apparently recruited in China via their own ethnic networks. They left China by train or plane to reach Moscow, where Russian and/or Chinese nationals were waiting for them. They confiscated their passports and took them and people of other nationalities to various safe houses. After another journey, these victims reached Ukraine where they were handed over to Russian traffickers. Interestingly, they were divided up and taken away in groups of nationalities to safe houses.

Our questionnaire²⁸⁸ also confirmed the role played by the victims. Some of the information would never have been discovered without their statements. They are able to offer additional details about the organisation of the network in the light of their points of departure.

The victims' statements may also offer an extra input into the proceedings. The Chinese Triad case included victims' statements plus testimonies about acts of violence, whereas such statements were not available in the Albanian case related to S.²⁸⁹, even though the defendants had abused the same victims arriving from the same safe house. Consequently, the defendants' lawyers were able to plead that they had merely fulfilled their contract with their smuggled clients, because when a journey did not succeed, the clients always voluntarily returned to the defendants' safe house, as a sign that they were be treated properly, according to the lawyers.

2. Need for co-operation, specialisation and co-ordination

People trafficking and smuggling cases are often connected to various international networks. In one case involving a major Afghan smuggling network, one of the gang leaders was known in the clandestine refugee community as far as Greece and Spain. The fingerprints of one of his henchmen were found in Austria and Turkey.

The Expert Group report draws attention to the need to promote international co-operation. Our case files show that one or two initiatives have already been taken. Partly the outcome of co-operation

²⁸⁸ Questionnaire - Charleroi.

²⁸⁹ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p.23.

between the Dutch and Belgian courts, the "Chinese Triad" case got underway in the Netherlands. The Belgian case had a Dutch component concerning the traffic between Rotterdam and Antwerp, sought via letters rogatory commission.

According to the Expert Group report, Europol should be deployed more, which means there is not enough information exchanged and opportunities for joint investigation teams.

It might be a good idea at this point to qualify the situation in Belgium. Cases where the CECLR has brought a civil action have often referred to co-operation with Europol. In the Federal Prosecution Service's Albanian case and a related Indian case, information was sought from Europol. The Indian case involved a trail leading to a key figure who turned out to be on the Europol hit list. The additional information about him that was revealed in this case was in turn forwarded to Europol via the central service.

The Expert Group report speaks of the need for proactive investigations designed to break up the network. The Group's recommendations stress the importance of developing proactive systems, while acknowledging the importance of continuing to concentrate on protection and assistance for trafficked persons.

Our case files show that techniques such as observation and phone-tapping are invariably key resources on which to base an investigation, and gather key evidence. In the Chinese Triad case²⁹⁰, eavesdropping on telephone conversations generated information that was analysed to offer further details about the network setup. A mobile phone number was discovered belonging to the organisation in China and used by both the Chinese and Albanian traffickers. The investigators were able to conclude from the messages that the number obviously belonged to the person running the show and deciding when the transport operation should be launched. Phone-tapping in an Indian smuggling case enabled the investigators to discover the network was also going to collect young girls to work as prostitutes. An order had been placed for these girls.

Victims also have a part to play in an investigation in the case of observations and eavesdropping on phone calls. For example, in practice agents may start tapping a phone after a suspect telephone number has been found on a victim who has been intercepted. The aforementioned Federal Prosecution Service's Albanian case is a concrete example of this. The police observation teams also discovered that gang members were using counter-observation techniques in this case..

Just one case where the CEOOR brought a civil action involved reports based on infiltration techniques. The case started off by means of an infiltration, followed up with phone-tapping and observations.

What we see in practice is lawyers often using procedural arguments to defend their clients. In these cases, the evidence is frequently based on observation and eavesdropping techniques and logically, any argument collapses if the procedure is not strictly applied. On the basis of case law, our previous annual report dwelled at length on the importance of being particularly attentive when we deploy these techniques²⁹¹.

²⁹⁰ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p.18.

²⁹¹ *Annual report on trafficking in human beings, Analysis of the victims' viewpoint*, CECLR, 2004, p. 81.

3. Anti-corruption strategies

The Expert Group report claims that international people trafficking networks are primarily controlled by criminal organisations turning to a kind of criminal trade offering low-risk, high-profit opportunities. The procedures used for the various existing definitions of organised crime may be changed into methods of persuasion by means of intimidation and/or corruption. "Investigations point to corruption as being one of the most common factors in trafficking in human beings"²⁹²,²⁹³

An example of this is seen in the "Chinese Triad two" case. One of the victims testified to entering Germany in a military van: *"When we arrived in Germany, the soldier driving the van called a 'snakehead' in Germany to say he could come and collect us. The snakehead then took us with him and locked us up in a safe house."*

A scientific survey by the University of Ghent describes corruption as an instrument for gaining a certain degree of power or direct financial advantages. Criminal organisations generally use people or recruit members with specific skills at various levels of governance. Corruption is a subtle way of exerting an influence on political figures and members of the police force²⁹⁴.

The Ministry of Justice's report on organised crime says one way of influencing people is to exploit the levelling of standards, such as social contacts being made between criminal rings and public servants so as to build up trust with a view to exploiting the relations in an underhand way at a later date²⁹⁵.

Drawn from a case in which the Centre brought a civil action, the following specific example raises one or two questions. One of the suspects knew a café owner with whom she had some problems to do with her papers. The café owner said during his cross-examination: *"So I took her straightaway to the police station... because I knew one or two officers. These men checked everything on the computer. We then found out that her case was being processed by the Aliens Department in Antwerp and it would be best to appoint a lawyer. Otherwise, no problem was mentioned. We just left"*.

In an earlier annual report, we took a detailed look at the issue of clamping down on corruption²⁹⁶. The problem is that the anti-corruption drive is not currently being addressed in an organised way. The report by the organised crime monitoring committee refers to statements by the relevant magistrate, Philippe Ullman, who is uncomfortable with the idea that the OCRC (Central Anti-Corruption Office), unlike the former Senior Monitoring Committee, *'may no longer conduct preventive investigations'*²⁹⁷. Consequently, the Public Prosecutor's Office learns about corruption cases only

²⁹² Wijers, M. and L. Lap Chew, *Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*, STV/Global Alliance Against Trafficking in Women, Utrecht/Bangkok, 1999.

²⁹³ Expert Group, p. 125.

²⁹⁴ Brice De Ruyver, Frederik Bullens, Tom Vander Beken, Natalie Siron, *'Anticorruptiestrategieën'*, University of Ghent, Ghent, 1999, p.135 and p. 183.

²⁹⁵ Ministry of Justice, annual report 2001, *Organised crime in Belgium in 2000*, p. 63.

²⁹⁶ *Annual report 2003*.

²⁹⁷ Senate, document 2-425-2, p. 63.

indirectly, in the wake of a major financial probe, for example. As a result, there is no longer any organised system for detecting corruption²⁹⁸.

However, the Ministry of Justice's report on organised crime²⁹⁹ showed that corruption was a counter-strategy the Russian Mafia coveted to infiltrate the State apparatus.

4. Expert Group anti-corruption recommendations

The Expert Group recommendations argue that anti-corruption strategies should be part and parcel of the entire policy for combating and preventing people trafficking.

Corruption is a multi-level process, hence there is not much point on focusing on just one level. An anti-corruption policy cannot be reduced to a scapegoat approach where corruption issues are confined to initial cases that are solved by removing the people involved. An effective anti-corruption policy has to apply on as many levels as possible simultaneously, forming part of a multidisciplinary approach covering both preventive and law enforcement strategies in keeping with an overall political programme.

Prevention: An important item here is the need to promote transparency, vetting on the basis of audits, the appointment of officials to act as ombudsmen and the creation of an open multi-level organisational culture. As for the level of structural organisation, a rotating system or incentives to facilitate a kind of social control thanks to teamwork can help to minimise the temptation for people to allow themselves to be corrupted, thereby depersonalising any corruption problems.

Law enforcement: in-house checks have to be made of the horizontal line of command (task-sharing) and the vertical one. Against this background, disciplinary measures are crucial, plus they significantly amplify the criminal proceedings, offering more scope to react swiftly and effectively, while requiring a lower burden of proof. However, a disciplinary policy has to be consistent with a general integrated anti-corruption programme, rather than focusing on isolated individual cases.

External inspection systems also have to be developed that have appropriate resources and an adequate knowledge of the service operating procedures, while boasting a suitable level of independence.

The Expert Group is calling for a specialist anti-corruption service police force to be created specifically for the purpose of carrying out inquiries. The Group stresses the crucial need for services to work together as much as possible with the internal inspection services and other services connected in some way to the anti-corruption policy. It has to be said that the Belgian situation does not really match up to these requirements.

The anti-corruption deployment process has to be flexible both in the private and the public sector. With this in mind, the specific features of each sector have to be factored in. A potential realistic approach involves starting with a group, selected from the target sectors, on to which the anti-corruption policy may be added.

²⁹⁸ Senate, *document 2-425-2*, p. 66.

²⁹⁹ Ministry of Justice, annual report 2001, *Organised crime in Belgium in 2000*, p. 65.

5. Corruption in the enlargement countries

The corruption issue is all the more problematic in the enlargement countries. The Expert Group report says European enlargement has created a key challenge in terms of combating corruption. Official confirmation has pointed to serious levels of corruption in countries such as Bulgaria and Romania. Our questionnaire³⁰⁰ reveals a disturbing problem focused on the prostitution networks in Bulgaria.

The 25 EU Member States proceeded in April to sign an agreement with Bulgaria and Romania to allow them to become members of the European Union on 1 January 2007 provided certain conditions are met, otherwise membership for the two countries would be delayed by 12 months. EU officials claim the pair still have to make a great deal of effort in many areas, such as anti-corruption measures and tackling organised crime.

The Council of Europe's PACO group³⁰¹, which is probing the issues of corruption and organised crime in South Eastern Europe, said in its 2002 report that corruption linked to trafficking in human beings is clearly an issue in these countries. It backs up the claim with reports on specific cases of corruption that have not led to judicial proceedings or convictions. According to the report, networks involved in smuggling and/or trafficking human beings cannot operate without the help of corrupt government officials.

It is highly significant that NGO representatives³⁰² in these countries, who wished to remain anonymous, were willing during the PACO conference to reveal that their government had put pressure on them to influence the way they referred to people trafficking and corruption issues.

Our annual report on trafficking in human beings for 2003³⁰³ made a detailed analysis of the situation in Bulgaria, on the basis of a few specific cases, thereby turning the spotlight on the impact organised crime has on the economy and society in Bulgaria.

The statements made by a witness in case A. show that several criminal organisations have joined forces to share out the territories and sectors: *“There are several criminal gangs in Bulgaria. There are lots of organisations of this type, well at least 10. The most well-known ones are VIS, set up by two brothers from Sofia, and SIK and 777. The head of the SIK is often in the newspapers. The mafioso S.K. has acquaintances in all these organisations.*

³⁰⁰ Questionnaire - Brussels and Charleroi.

³⁰¹ *Programme against corruption and organised crime (PACO), Corruption and Organised Crime, Report on the regional seminar, Portoroz, Slovenia (19 - 22 June 2002), Council of Europe, 2002.*

³⁰² “NGO Statement for the Conference Representatives of NGOs that participated in the Regional PACO conference from 19 – 22nd June would like to inform the Council of Europe as an organizer of the conference, about concerns that occurred during this seminar’.

Some of the NGOs have experienced the feeling of discomfort and pressure. Some of the NGOs were exposed to direct warnings by the government representatives of the countries before and during the conference. They have been instructed how to report on the situation considering the topics of trafficking and especially corruption. There is a concept that some of the NGOs avoided to speak openly about corruption cases facing the representatives of the governmental bodies. One would believe that the reason for such behaviour is the fear to confront the same governmental representatives who they have to cooperate with back in their home countries on the counter trafficking activities. We feel a great need to make you aware of the position of some NGO representatives during the conference that may have impacted on the final results of the conference. Thank you for your attention!

³⁰³ Annual report on trafficking in human beings 2003, p. 21-23.

These organisations had a kind of conference where they decided who should do what, meaning you take this sector and keep your nose out of my business and I'll keep out of yours. The sectors shared out included prostitution in Belgium and the Netherlands. Prostitution in Bulgaria is not covered by the same organisation operating in Belgium and the Netherlands. Hotels in Bulgaria are controlled by another organisation. Even the car smuggling business has been shared out"³⁰⁴.

This victim's testimony shows how far the corruption mechanisms are connected as a system to criminal networks. We should point out that her friend ran a travel agency in Bulgaria and she ran a clothing shop and a café:

"The organisation we call VIS started extracting money from bus companies in 1995, threatening them with problems if they failed to pay up. To start with they had to pay \$1500 a month. This went up to \$3000. My friend had to pay as well. In the end, the payment was \$5000. My friend paid up to \$3000. During 1997 he decided this was too expensive In front of this hotel, VIS members fired at my friend's bus with a machine gun because he refused to hand over any protection money. A bomb they planted in my friend's office blew up in front of his door. You ask me why my businesses folded. I had to pay \$300 a month for the clothes shop, and \$150 for the café. When I refused to pay SIK, my clothes shop was burned down and my café was smashed to pieces Everybody who had a business had to pay or close down. "

When you complain to the police, your complaint is passed on to the Mafia. So you have no idea at all what is going to happen.

He lends you money and takes your apartment as a guarantee. Even when you have paid the money back, you end up losing your apartment. Everything seems legal because he has contacts in the police force, the courts, the legal profession and in the banking sectors. His men are everywhere.

He also resorts to violence. He doesn't use it himself, he has his men for that, he sends them to deal with the victims in question."

6. Corruption and document trafficking

In the context of illegal immigration, corruption and bribery are chiefly focused on immigration checks and customs officials in the country of origin, transit and destination³⁰⁵. According to the PACO³⁰⁶, corrupt staff in Western embassies are sometimes involved. The corruption is connected to document trafficking. Both the Senate report on visa fraud and the annual report of the Comité I (committee which oversees intelligence service) make a root-and-branch analysis of this issue. Our previous annual reports on trafficking in and smuggling of human beings have often made a detailed examination of this theme in the light of one or two cases.

³⁰⁴ Annual report on trafficking in human beings 2003.

³⁰⁵ ANDREAS SCHLOENHARDT, *Organised Crime and The Business of Migrant Trafficking, An economic analysis*, AUSTRALIAN INSTITUTE OF CRIMINOLOGY, AIC Occasional Seminar Canberra, 10 November 1999.

³⁰⁶ Programme against corruption and organised crime (PACO), *Corruption and Organised Crime, Report on the regional seminar*, Portoroz, Slovenia (19 - 22 June 2002), Council of Europe, 2002.

In the Federal Prosecution Service's Albanian case, one of the defendants used to be an officer in President Berisha's republican guard in Albania. In late 1997, when the corrupt Berisha regime collapsed subsequent to the pyramid schemes scandal, the defendant was dismissed during the change of power. During his cross-examination, he explained how he had bought a visa via an acquaintance in the Greek embassy in Albania:

"I acquired the Greek visa in the following way. A man I knew, who shall remain nameless because I am frightened of him, has ties with the Greek embassy. I handed in my passport and he took steps to secure the visa. I paid him Euro 2500 for the Greek visa."

The case also involved trails leading to former Albanian security agents (paramilitaries). One of the Albanian defendants had also been a security agent under Berisha and used to have a diplomatic passport when he lived in Brussels. He had already been convicted over the Albanian case in Dendermonde and continued his criminal activities from prison. As for the Albanian gang, funds transferred to Albania for Berisha's Partia Demokratike were also discovered in the name of the same defendant and an accomplice. What is also striking is that one of the many Albanian victims in this case used to be a gunrunner for the Albanian Kosovo paramilitary organisation UCK, which enjoyed UN support during the Balkan conflict in the early 1990s.

7. Need for a financial and money-laundering investigation

An effective campaign against trafficking in human beings requires measures to attack the core feature of the criminal system. This is the most sensitive point. In common with other types of organised crime this refers to the cash flows in their system. Towards this end, the system has to undergo a financial audit. The human trafficking network and everything associated with it can be examined and put out of action.

The Expert Group report stresses that trafficking in human beings represents a growing source of illegal revenues, primarily in relation to cash transfers and money-laundering operations. The Expert Group conclusion reflects the observations made in the annual reports of the Financial Action Task Force on Money Laundering FATF³⁰⁷. Apart from the international, European and national money-laundering laws already available, the Expert Group also calls for legislation on seizure, in line with what already exists in Belgium.

In our questionnaire³⁰⁸, the respondents reported that subsequent to an inquiry about assets they often discovered officials transferring money to their countries of origin. In this case, when seizures are undertaken, a request has to be made for judicial co-operation. Under this heading, initiatives have already been taken in Brussels against Albania and Bulgaria and Nigeria but the legislation in these countries, just like their cultures, obviously cannot be compared with the situation in Belgium. Consequently, the co-operation has to be built up gradually. Our respondents also said the initiatives were often praiseworthy. Encouraging experiences are reported from Albania and Nigeria in this area.

³⁰⁷ See www1.oecd.org/fatf

³⁰⁸ Questionnaire - Brussels.

8. Financial investigation and criminal organisation

A financial probe can also help in preventing organised crime. In the A. case, the financial investigation showed how the organisation used business systems for criminal activities and a conviction was handed down for criminal organisation. This case included a background note on 'criminal organisation' with a reference to *'financial institutions for transfers sums of money to Bulgaria from prostitution'*.

In the Albanian case S., no financial investigation was launched into the gang's economic investments and the gang members were not convicted for criminal organisation. However, the phone-tapping in this case provided a means of showing that at least two members of the Albanian gang had invested their money in the economy. One of the gang members had companies in Germany and Kosovo. Another sought to invest his money in starting up an office in Albania. S. had called an office for this purpose, asking the price per square metre for office space on an avenue in the Albanian city of Durres. He also made inquiries about the prices for new buildings at the seaside. The woman promised to give an answer the following day.

In another conversation they spoke about the purchase and stock market price for their shares. They also had bank accounts in Belgium and Germany. The investigation into this matter did not go any further, so the court subsequently decided against opting for the charge of criminal organisation. The court ruled that there was no evidence that business or other structures were used when the offences were committed.

9. A profitable business

A UN report³⁰⁹ dating back to 2002 shows that trafficking in human beings is the third most profitable criminal activity, after drugs and arms trafficking. All these activities are intertwined. The profits generated by trafficking in human beings are used to finance drugs and arms trafficking³¹⁰. The financial interest is even higher when there is an interaction between people trafficking, drugs and arms³¹¹. The latest FATF report³¹², a report on international money-laundering, states that the criminal profits from narcotics, arms and human trafficking were at roughly the same level in 2004.

"The mafia makes billions of dollars from trafficking people.... The trafficking in people is the fastest growing transnational criminal activity.... Never before has there been so much opportunity for criminal organisations to exploit the system".

³⁰⁹ United Nations Children's Fund/United Nations Office of the High Commissioner for Human Rights/Organization for Security and Co-operation in Europe-Office for the Democratic Institutions and Human Rights (UNICEF/UNOHCHR/OSCE-ODIHR). (2002). Trafficking in Human Beings in South-Eastern Europe.

³¹⁰ Report of the Expert group on strategies for combating trafficking of women and children, best practise, Commonwealth Secretariat, 2002.

³¹¹ ANDREAS SCHLOENHARDT, Organised Crime and The Business of Migrant Trafficking, An economic analysis, AUSTRALIAN INSTITUTE OF CRIMINOLOGY, AIC Occasional Seminar Canberra, 10 November 1999.

³¹² Financial Action Task Force (FATF), Money laundering & terrorist financing typologies 2004-2005, 10 June 2005.

So said UN Under-Secretary General Pino Arlacchi for Drug Control and Crime Prevention, during a UN conference on organised crime, on 15 December 2000.

In the “Chinese Triad two” case, a victim had to pay Euro 13,000 to be transported from China to the Netherlands. Euro 10,000 was provided as a down payment, while the other 3,000 had to be handed over by the family when the victim found employment in Europe. Another Chinese victim had to pay Euro 22,000 to be brought from China to the United Kingdom. Halfway through the trip she had to provide half the sum. During a search of the homes of the Chinese ‘snakeheads’ police officers found a kind of manual on various items such as marriages of convenience: price Euro 8,500.

In the Federal Prosecution Service's Albanian case, the illegals transported by the Indian criminal organisation paid between Euro 2,000 and 2,500 per person to be taken to England. The price also included false documents.

The Indian organisation had an agreement with the Albanian one to hand over Euro 900 of this per person for the transport operation from Brussels to the United Kingdom, which also implied another form of subcontracting agreement between these organisations as part of their business management. The price for transporting illegals who themselves made their way assembly points in Brussels varied between Euro 800 and 1,200.

Other examples, such as the case of S.³¹³ who co-operated with the Chinese Triad, showed that Albanian traffickers, who controlled most of the Brussels-England transport route, were seeking something in the region of Euro 1,000. Huge sums of money must have been generated by these activities. At one time, during a conversation by mobile phone, 100 to 150 Chinese smuggled victims were still waiting in safe houses.

The Albanian case tried in Dendermonde also involved guaranteed transport to England where the lorry driver, too, participated in the smuggling operation. The transport fee was Euro 3,000 for the victims, with some of this earmarked for the lorry driver. One of the traffickers boasted over the telephone that he had earned Euro 5,000 in the space of an evening. The bulk of the criminal income was transferred to Albania.

Within the space of 10 months, one of the traffickers in the Albanian-Indian case had transferred about Euro 24,000 through Western Union.

Huge sums of money made from crime are circulating in the prostitution networks as well. For example, a victim in a people trafficking case involving a Nigerian prostitution network had to pay Euro 60,000 to buy her freedom.

In a case involving Thai nationals, where the victims were exploited as prostitutes in a Belgian operator's so-called massage parlours, a turnover of Euro 34,676 was achieved over a period of 202 days.

10. Money transfers

³¹³ Annual report on trafficking in human beings CECLR 2004, Analysis of the victims' viewpoint, p.20-23.

Payments are generally made in cash with the money being transferred to other countries through the Western Union network. This method of payment is primarily used by immigrants anxious to send money to their families back home but it also used in the context of people trafficking and smuggling by the traffickers themselves or by the victims' family members still sending money as payments. The Albanian-Indian case file specifies that: *“The final leg of the journey is the transport operation from Brussels to the United Kingdom. The money for this part of the journey has to be paid separately, paid by family members using the Western Union system”*. In the case involving the Afghan commander, money was even sent from Saudi Arabia by the family of traffickers using the Western Union network.

Western Union has roughly 100,000 outlets in 200 pays. When funds are transferred, the person making the transfer and that of the recipient are recorded and noted in a data file. However, the problem is traffickers often use false names for their activities.

The FATF report ³¹⁴ shows that income from crime is generally invested or sent to the country of origin by a money transfer. According to our questionnaire³¹⁵, the Albanian and Nigerian networks are said to be the main users of money transfer banks

In people smuggling cases traces of money being transferred via Western Union are almost consistently discovered. These are found during searches or the convening of money transfer banks such as Western Union and Goffin, with information about the identities of the traffickers' several aliases. The banks are always willing to supply the information. In the case of the Federal Prosecution Service's Albanian case, where all the financial institutions were convened as part of a financial investigation, the court calculated that one of the organisers had earned at least Euro 71,000 euros.

In the Chinese Triad case, a house search even turned up a Western Union booklet on arranging money transfers to Bulgaria. In human trafficking cases, traffickers also turn to Western Union. In the Bulgarian case A., the traffickers sent their money through Western Union to their organisation in Bulgaria.

Traffickers also rely on informal banking systems. In the case involving the Afghan commander, for example, the "Hundi system" was also used for money-laundering. A typical underground banking system in Pakistan, the Hundi is used by Pakistanis throughout the world.

11. Money-laundering and people trafficking /smuggling

The British Criminal Intelligence Service's annual report ³¹⁶ on 'organised crime' (2002) claims criminal organisations cannot operate exclusively in a criminal environment and have to cooperate with legitimate or semi-legitimate companies.

³¹⁴ Financial Action Task Force (FATF), money laundering & terrorist financing typologies 2004-2005, 10 June 2005.

³¹⁵ Questionnaire - Brussels.

³¹⁶ United Kingdom threat assessment 2002, the threat from serious and organised crime, National Criminal Intelligence Service.

According to the FATF report³¹⁷, Belgium indicated in 2003 that the number of cases reported of money from human trafficking and smugglings being laundered was 262, representing nearly 5% of the total number of cases reported for money-laundering. A rising trend in the number of these cases has been noted internationally over the last few years. Worldwide these cases even account for 11% of the total number of reports about money-laundering.

According to our questionnaire³¹⁸, revenues from crime in Belgium are mainly invested in hotel/catering, transport, construction, textiles, bakeries and street trading.

In Brussels³¹⁹, this mainly involves small or medium-sized enterprises run by compatriots. In several cases these are legal structures but they are not invariably consistent with the current laws. Managed by foreign nationals, some of these companies provide services to businesses which are in turn run by foreign nationals. This means they can employ illegal immigrants amongst themselves on a pseudo legal basis.

Small companies or one-person businesses are active in the student community specifically for the Asian community in Brussels³²⁰. They arrange for the registration and residence of potential students in Belgium. This involves a system of pseudo-legal migration for many students.

According to the FATF³²¹, a lot of dirty money from people trafficking / smuggling ends up in travel agencies. In the Bulgarian A. and T. cases considered in the annual report for 2003³²², laundering was undertaken via travel agencies. Foreign nationals are certainly not the only ones involved in laundering the proceeds from trafficking in / smuggling of human beings and setting up dubious companies towards this end. Belgian nationals are also participants. This was revealed by a judgement³²³ the Hasselt Criminal Court delivered in the wake of a prostitution case. Juvenile Bulgarian victims were discovered during a raid on a dozen or so prostitution bars. The 10 victims who were traced came from Bulgaria, Hungary, Morocco, Ukraine, Romania, Slovakia, Sierra Leone and Haiti. The Belgian business operator responsible and his company were prosecuted for prostitution of minors and for money-laundering. They invested the illegal revenues from prostitution in real estate. The Belgian business operator was sentenced to eight years in prison and had his businesses shut down. As a legal entity, the company was ordered to pay a fine of Euro 7,436.80. The authorities seized the real estate and a sum of Euro 211,733.

Interestingly, the FATF report³²⁴ notes that social inspection services worldwide are rarely cited as sources of reports or information about trafficking in or smuggling of human beings in the context of

³¹⁷ Financial Action Task Force (FATF), money laundering & terrorist financing typologies 2004-2005, 10 June 2005.

³¹⁸ Questionnaires - Brussels, Charleroi.

³¹⁹ Questionnaire - Brussels.

³²⁰ Questionnaire - Brussels.

³²¹ Financial Action Task Force (FATF), *Ditto*.

³²² Annual report on trafficking in human beings CECLR 2003.

³²³ Hasselt Criminal Court, 22 October 2004, 18th ch.

³²⁴ Financial Action Task Force (FATF), *Ditto*

money laundering. They are mentioned only occasionally as a sources of valuable information about the number of employees in a suspect company.

The FATF report³²⁵ also points to the limited role played by tax authorities worldwide as sources of reports on the laundering of proceeds from trafficking in / smuggling of human beings. According to this document, this issue is memorable because prostitution and the grey economy related to economic exploitation nonetheless come within the jurisdiction of these services in many countries.

Reports³²⁶ on organised crime have already argued that TVA carrousels are one of the illegal activities that appeal most to criminal organisations. These low-risk operations are difficult to trace, involve a highly convoluted legal process and do not result in any physical victims.

Cases of people trafficking involving economic exploitation where VAT carrousels play a key part have already been reported in Belgium. For example, a case referred to the Liège Criminal Court³²⁷ chiefly applied to a VAT carousel worth at least Euro 565,720 discovered during this economic exploitation case.

12. Increasing economic weight

A European Commission report³²⁸ argues that one the key reasons for criminals to launder their illegal earnings is to increase their economic weight. The new profits from money-laundering operations may in turn be invested in the economy. With this in mind, Donato Masciandaro an Italian professor of economics³²⁹ has developed an econometric model to study how money-laundering affects the economy.

What we see is a great informalisation of the economy. Europol³³⁰ claims that the mafia's widespread use of legal structures everywhere makes it difficult to discover a clear borderline between what is legal and what is not.

This issue is illustrated in the "Chinese Triad two" case, where one of the victims, who was a business manager in China, relates how he had been approached by the criminals. In the case of large-scale networks we find a connection between drugs and human smuggling and the interaction with the formal economy: *"Back then, when he had an import-export business in China, he had contacts with all kinds of people, including people from the criminal world with whom he would sometimes have a drink. These criminal contacts asked him if he would like to join them in the snakehead community. He did a lot of businesses in the Chinese province of Yunnan, where a lot of heroin and ecstasy is sold and he sent goods for his company in Guangdong. They were keen to use his company as a front for drug-trafficking."* When the victim had reached the safe house in the Netherlands, the snakehead who

³²⁵ Financial Action Task Force (FATF), *Ditto*

³²⁶ Senate Commission report on organised crime - 1997.

³²⁷ Liège Criminal Court, 22 December 2004, 14th ch.

³²⁸ European Commission, forward studies unit, *Organized Criminality and Security in Europe*, Fondazione Rosselli, working paper, 1999.

³²⁹ Professor of Economics, University of Bocconi, Milan.

³³⁰ Consultation on Internet: www.europol.eu.int

ran it said he was mixed up in the world of narcotics: *"He sold ecstasy pills for an underworld company in the Netherlands producing ecstasy pills in the Netherlands and transporting them to a country next to China. The crates of pills were transported into China only after one of the members of the underworld in China had called the Netherlands. The company in the Netherlands had to sell a specific quantity of pills every year."* He claimed several discothèques and places of entertainment in China are controlled by the underworld.

Surveys³³¹ have computed that in the East European transition countries, the informal economy is as high as 21 to 30 % according to the assessment. The informal economy in Georgia is even is high as 64 %. Our case files show that this economy is also a serious problem for Bulgaria, given its status as a transit country and a country eager to join the European Union.

The A. case has clear links to the informalisation of the economy in Bulgaria and there are indications of the stranglehold organised crime has on economic activities.

A European Commission research report³³² on organised crime and security reveals that 10 out of the 25 leading Russian banks have ties with organised crime. These banks use the services of the mafia to settle the debts of bad payers.

13. Joint financial liability of clients

Interestingly, the Europol report on trafficking in and smuggling of human beings refers to the involvement of major companies in a number of cases. As a specific example, an international fashion house is reported to have boosted its profits thanks to cheap labour³³³.

Our annual report on trafficking in and smuggling of human beings³³⁴ for 2003 cites a similar case involving the textile sector (Silkworm case) to draw attention to the importance of making customers accept joint financial liability.

France's system along these lines seems to be an effective instrument for combating undeclared employment. The Labour Law (articles 324-9 and following³³⁵) ensures that public and criminal liability may be invoked. The liability applies not only to tax and social security debts but also to the remuneration and any recruitment aid a company is ordered to repay. A judgement concerning economic exploitation does not necessarily have to be handed down in this case. A conviction for undeclared employment is enough. The underlying principle is that the client should find out the necessary information about the co-contracting party and seek the various certificates and evidence required.

³³¹ The Main Weaknesses of the Management System in the State Administration of Georgia as Supporting Factors for Corruption and Money Laundering, Shalva Machavariani, Transnational Crime and Corruption Centre, Georgia.

³³² European Commission, forward studies unit, Organized Criminality and Security in Europe, Fondazione Rosselli, working paper, 1999.

³³³ Available for consultation on the Internet: www.europol.eu.int

³³⁴ Annual report on trafficking in human beings CECLR, 2003, p.24-27.

³³⁵ These texts may be consulted on the following website: <http://www.legifrance.gouv.fr>.

On 16 March 2000, during the previous legislature, the Belgian MPs Giet and Frédéric presented the House with a bill on introducing a similar system in Belgium³³⁶ but unfortunately the proposal never got any further than this stage.

During the previous legislature, the Employment Minister also tried to push through a government agreement on developing a system of this type, but this initial failed. Under the proposed system, the arrangement for the construction industry would be applied on a wide scale, as this provides for solidarity in terms of social security and VAT payment matters when companies turn to non-registered contractors or subcontractors³³⁷.

However, the proposed system went further than this, because it also involved the ability to convict a company not only for criminal liability (because it is an offence to pay a wage in these circumstances) but (and this is the innovation) also for public liability as a result of the unpaid sums. Nonetheless, the system does not go as far the French one, because it does not cover financial solidarity for the private customer.

In the meantime, the present government has used its government declaration to include punitive measures for clients assigning activities to subcontractors exploiting illegal labour. A working group has now been set up within the Interdepartmental Unit for the purpose of examining this issue.

14. Review of the network

The Expert Group calls on governments to ensure that the relevant services are organised so as to focus effectively on trafficking in and smuggling of human beings as a serious form of crime. Towards this end, the Group mentions a specialist organisation comparable with the Italian DIA, which is incorporated into the anti-organised crime policy.

The recommendation is consistent with the call made in our previous annual reports³³⁸ with a view to undertaking a comprehensive financial review of the network. The reports argue that the fight against trafficking in human beings requires an integrated approach where consideration is given to the seriousness and complicated nature of the cases and the networks are probed so as to discover the interactions and the underlying system of coordination. Financial reviews also have to be made of the cases so as to be able to strike at the engine behind the network system.

This is shown once again in the various cases³³⁹ surrounding the Chinese Triad. The Chinese Triad two case, following on from Chinese Triad mark one, also established a clear link with the Dover tragedy when 58 Chinese victims suffocated to death as they were being transported to England. One of the victims of the Chinese Triad two case, who had been residing unlawfully in Belgium for four

³³⁶ Bill of 16 March 2000 on combating undeclared employment, establishing financial solidarity between customers and contractors or subcontractors and amending the Judicial Code and the Law of 16 November 1972 on the work inspectorate, *Parl. Doc.*, House, 1999-2000, N° 0513/001.

³³⁷ Art. 30a of the Law of 27 June 1969 on Social security for workers, Belgian Official Journal 25 July 1969.

³³⁸ Annual report on trafficking in human beings CECLR, 2003 and 2004.

³³⁹ Annual report on trafficking in human beings CECLR, 2004.

years and was anxious to go to England, said that he normally should have been part of the transport operation that ended in a fatal tragedy in Dover. However, he and another Chinese national were unable to go on the journey because the loading space was full.

We may conclude from this that the networks whose activities resulted in the Dover tragedy at the time are flexible and are still continuing to operate.

CONCLUSIONS

The highlight of the year for the campaign against trafficking in and smuggling of human beings was the introduction, last 12 September, of the Law of 10 August 2005, which significantly amends the provisions applied in this area. Belgium was required to align its legislation with the international and European systems being applied in these fields

The new law features several welcome components. First of all, the terms "trafficking" and "smuggling" of human beings are now clearly defined. The first offence is featured in the Criminal Code and the second one remains in the Aliens Law. Second, trafficking in human beings has been extended, in economic exploitation issues, to cover all victims, Belgian nationals and foreign nationals.

However, as we have seen, the provisions raise certain questions. For example, the legislator has decided not to regard the *modi operandi* (coercion, threats, abuse of vulnerable position, etc..) as the component parts of the offence but as an aggravating circumstance, so we have to consider whether there is a risk of various patterns of behaviour not identified as people trafficking being prosecuted. We also believe there is a risk that key cases, involving acts of violence and threats of reprisals, factors that are the most difficult to prove, and often mostly based on the statements of victims, may now be treated only in a limited way. One outcome could be an erosion of "trafficked person" status.

We have also seen in the case of exploitative labour how the legislator opted for the concept of human dignity to prove trafficking in human beings. Will this make it possible to avoid the pitfalls faced with the abuse of a vulnerable position concept in the ex article 77a?

Everything will now depend on the implementation of the new Law. Those working on the ground, public prosecution service magistrates, tribunals, police services and above all trial judges will once again be required to compensate for the lack of clarity and the limits of the new provisions.

Lastly, the new Law also has implications for victim status. As the Law has made a distinction between "trafficking" and "smuggling" and extended the offence to cover all parties, consideration will have to be given to the victims who will be entitled to this status and what the role of specialist reception centres will be. Under this heading, we are calling for "trafficking" status to be granted both to trafficked persons who are not nationals of an European Union Member State and to those from the new European Union Member States, along with the most serious cases of victims of smuggling, in line with the European Directive on residence status.

Unlike other countries, the main component of victim status in Belgium is the conditional granting of protection status. The victim's willingness to cooperate with the legal authorities is a precondition for securing this protection status. There is also the requirement for supervision by a specialist reception centre. The final key difference is the prospect of securing a permanent residence status at the end of the process.

A debate was recently held about the connection between justice and victim status. We have no qualms about calling for this link to be retained. Our concern is that without this connection, victim

status would be reduced to a kind of second chance asylum procedure and the actual target group of trafficked victims would no longer be reached. Retaining trafficked persons status in its current context implies a vital need to detect and remedy shortcomings in the system. There is no uniform approach to victims at field level. A victim with the same profile may receive a completely different treatment, depending on where the person is intercepted. Several victims fall through the net and risk never being considered for the status. Several victims are or feel under threat and so do not dare cooperate in an inquiry. Several services report problems with detecting victims of economic exploitation. The manipulation of victims during judicial proceedings. Hence our call for instruction and continuing training for all those who come into contact with trafficked persons. The first and most vital link in the chain is the detection of victims by the front-line services.

Statements by victims can also play a key role in the prosecution policy. Victims are able to offer relevant information about the networks, links with other underground systems, the routes used by traffickers and trends in the use of violence and corruption. In some cases, this type of information has signalled the start of the process for breaking up a network.

The lack of effective coordination at field level and a coordinated response by those working on the ground results in victims being treated differently. This is why the role of the Interdepartmental Coordination Unit has to be boosted by assigning the president the role of coordinating the entire people trafficking policy. Progress also had to be made on the intelligence-gathering front. With this in mind, we are calling for the present Centre for Information and Analysis of Trafficking and Smuggling (CIATTEH) to be split up into an operational component, to serve as an operational instrument for the national coordinator for trafficking issues (i.e. the president of the Interdepartmental Coordination Unit) and a policy review component. These two components have different goals. In this connection, consideration also has to be given to how the CECLR trafficked persons database may be developed into a computerised platform allowing such analyses to be made.

Lastly, economic exploitation is a complicated process that is not always easy to identify, hence several cases of economic exploitation do not come to light. The victims are frequently regarded as undeclared workers or illegal immigrants. A subtle form of coercion is often used on the victims or a combination of coercive methods might be brought into play. All of these problems mean identifying cases of exploitation is quite a daunting task.

The victims are not invariably recruited in their countries of origin. They often take it upon themselves to go and 'work' in the West and take the initiative to get in touch with the traffickers. They then end up in the informal employment sector via social or kinship networks.

Economic exploitation against the background of trafficking in human beings has to be thoroughly investigated in order for it to be identified. There is still not enough academic or administrative knowledge available about this issue. In any case, we realise that the economic structure in some risk sectors does not make the working conditions any easier. These analyses therefore must be made so as to be able to decide when we are faced with a genuine case of economic exploitation.

Economic exploitation requires a well-organised and coordinated approach. The Co-operation Protocol between the inspection services provides a framework for these services to undertake joint operations and smoothes the path of co-operation with other services also taking action against these kinds of offences. The anti-people trafficking policy also implies having clear agreements against the background of a multidisciplinary approach in the case of the roles of each partner involved and what is meant by economic exploitation in the context of trafficking in human beings. There has to be no confusion between a) the fight against people trafficking and economic exploitation and b) the campaign against illegal immigration. The measures that are taken must not be allowed to degenerate into an illegal immigrant witch hunt. This is why a distinction also has to be made between undeclared employment and human trafficking. A firm agreement must be reached so as to be in a position to share the responsibilities and skills for investigating and proceeding against the offence of people trafficking in the context of economic exploitation.

What we also see sometimes is work being outsourced from an initially legal economic sector, and the subcontractor setting foreign nationals to work in dire conditions in the informal economy in a bid to drive down the wage bill. Any attempt to eradicate these kinds of abuses definitely must include going after the sort of clients who turn to subcontractors exploiting illegal workers. Well aware of what is at stake in this issue, the politicians have now set up a working group within the Interdepartmental Unit in order to consider what steps to take next.