

# **HUMAN TRAFFICKING - SITUATION IN BELGIUM**

## **1 INTRODUCTION**

Human trafficking is nothing new. Many initiatives have been taken by the United Nations, the Council of Europe, the European Union, the OSCE, the IOM and so on in an attempt to fight this scourge.

Likewise, numerous international conferences have been organised, the outcome of which is always the same: "Human trafficking is international in scope. Prevention in the countries of origin must go hand in hand with a consistent, effective policy of prosecution. And we must always remain sensitive to the plight of the victims."

## **2 SITUATION IN BELGIUM**

Slavery, or human trafficking, can be found in differing forms and structures within Belgian society. Drawing a reliable international picture is difficult, but if we list all the forms that exploitation can take, we see that certain sectors provide more fertile ground for human trafficking.

The figures do not allow us to draw any conclusions as to the true magnitude of this problem in Belgium. The only victims we see are those uncovered by the police or other authorities during organised or surprise visits, or those referred by another partner, such as social welfare organisations active on the ground.

Some victims refuse help when **approached**, mainly because of fear and threats designed to keep them from testifying. This is especially true for the victims of Albanian and Nigerian gangs.

## **3 KEY LINKS IN THE HUMAN TRAFFICKING CHAIN**

Some 14,262 illegal immigrants were caught in Belgium in 2000, up slightly from 1999. In 2001, the number of illegals caught in Belgium jumped to 20,535. Ten countries are the source of the largest number of illegals caught: Russia, Yugoslavia, Afghanistan, Turkey, Algeria, Iran, Morocco, Macedonia, Albania and DR Congo.

'Pseudo-legal' immigration is on the rise. This is especially prevalent in the tourism sector, among students, in marriages and among au pairs.

Local agencies in the countries of origin play a key role in organising the traffic, helping obtain genuine, legal documents from diplomatic representations abroad.

In terms of recruitment in the countries of origin, 90% of immigrants were not recruited by the traffickers themselves, but were approached by family members or acquaintances. This creates a climate of confidence right from the start, thereby encouraging

recruitment. This initial intermediary does not know what the ultimate objective of recruitment actually is; they are simply trying to help the individual find honest work so that he or she can earn money.

During the voyage to western Europe, victims are often sold and re-sold, without necessarily meeting the trafficker.

The current tendency among traffickers is to work together in small groups when required, closely following demand. For instance, the person who provides counterfeit papers will be contacted by various groups of traffickers, but there will be no link directly between these groups. If housing has to be found, then the groups know who to contact.

These small groups work together without any hierarchy between them. They join forces in as dictated by demand and requirements. Supply and demand encourage the internationalisation of trafficking.

Recruitment among disadvantaged families or families in distress (financial difficulties, breakdown of family ties) encourages victims to leave.

At any rate, individuals who leave their friends and families behind are better off in the west than in their country of origin.

Traditions and values are different in the countries of origin.

Attitudes and perceptions of right and wrong also differ. The countries of origin are often plagued by corruption at all levels, especially among the police and social services, and as a result the victims are not really prepared to cooperate with the police and social services in western countries.

Perpetrators are using less physical violence. Traffickers are more cautious because they have noticed that physical violence encourages the victims to be more cooperative with the police.

On the other hand, emotional coercion (pressure on the family, the victim's reputation in his/her family or friends, and traditions) is on the rise.

Groups of traffickers are pursuing activities in areas other than prostitution. This trend is no doubt due to the financial requirements of the perpetrators.

#### **4 LEGISLATION AND CRIME POLICY IN BELGIUM**

Pursuant to the conclusions of the parliamentary committee on human trafficking in Belgium, the Belgian Parliament passed a new law (the law of 13 April 1995) with a view to stopping human trafficking and child pornography (also known as the 'Human Trafficking Act').

##### **4.1 Laws of 13 April 1995**

Three laws have been incorporated into the Penal Code in the section on corruption of minors and prostitution.

The key law here is the Human Trafficking Act.

#### 4.1.1 Preparatory work

The Human Trafficking Act is the result of the work and recommendations of the committee of inquiry responsible for drafting a structural policy with a view to stopping and abolishing human trafficking.

The committee found gaps in the legislative texts and suggested:

- *defining a separate offence for de facto slavery;*
- *making this a criminal offence;*
- *cracking down on the forced or misleading entry of foreigners into Belgium;*
- *reinforcing accessory penalties: **ban on the exercise of rights and duties**, closure of establishments and confiscation (broadened);*
- *giving a more explicit definition of the composition of the gangs involved;*
- *establishing **the judge's extraterritorial jurisdiction for these articles**;*
- *seeking a systematic application of provisional confiscation during the investigation;*
- *providing new resources for the labour inspectorate.*

#### 4.1.2 Main provisions of the law of 13 April 1995 on human trafficking

##### 4.1.2.1 Article 77a: trafficking of foreign nationals

This aims to crack down on any assistance, either direct or via an intermediary, that allows a foreigner to enter (transit) or reside in Belgium:

- Article 380 (formerly Article 380a) of the Penal Code: trafficking of adults  
This legal provision seeks to crack down on: hiring, training, abducting and holding an adult for the purposes of debauchery or prostitution, in order to satisfy the passions of others and even with said adult's consent; operating a brothel; selling, renting or making available for prostitution bedrooms or any premises with a view to gaining abnormal profit; running, in any manner whatsoever, the prostitution of another individual; those who make direct or indirect use of fraud, violence, threats or any form of constraint whatsoever; those who exploit the particularly vulnerable situation of an individual by virtue of the fact that said individual is in the country illegally, is in a precarious position, is pregnant, is ill, is infirm or suffers from a physical or mental handicap;
- Article 380b of the Penal Code: advertising  
This article censures anyone who "irrespective of the means used, directly or indirectly publishes, distributes or disseminates - or has published, distributed or disseminated by others - advertising, even if same conceals the nature of the services offered by means of linguistic devices, offering

services of a sexual nature having a direct or indirect aim of gaining profit, if said advertising is aimed specifically at minors or if it details services offered by minors or persons claiming to be minors."

- decriminalisation of the procurer  
The aim of the legislators is to avoid punishment for cohabiting with a prostitute.
- trafficking of minors
  1. the age of consent is 18 years, as set out in the Convention on the Rights of the Child.
  2. the debauchery, corruption and prostitution of minors
- Article 383a of the Penal Code: child pornography  
This article censures "anyone who displays, sells, rents or distributes emblems, objects, films, photographs, slides or other visual media representing sexual positions or acts of a pornographic nature involving minors under the age of 16 years of age, or anyone who, with a view to sales or distribution, manufacturers, holds, imports, has imported, or hands over to a shipping or distribution agent such materials."
- penalties and measures  
The law provides severe imprisonment or fines, including forced labour of up to 20 years and a fine of €2,500 (x 200).
- injunction  
The Human Trafficking Act introduces (in Articles 9 and 10) the concept of allowing the relevant ministers to apply to the Court of First Instance for an injunction *if there has been a violation of social legislation in the event that there is reason to suppose that the offences set out in Articles 379 and 380 of the Penal Code are being committed. (... debauchery, corruption or prostitution)*
- modification of the statute of limitations  
The statute of limitations only begins to run on the day that the victim reaches 18 years of age. This is a clear improvement in the status of the victims.
- extraterritoriality  
Article 10b of the Code of Criminal Procedure provides for the prosecution in Belgium of both Belgian nationals and foreign nationals in Belgium for **offences related to satisfying the passions of others**; Belgian and foreign nationals in Belgium for offences involving **the satisfaction of their own passions**, if the act was committed against the person of a minor who has not yet reached his or her 16th birthday.  
Likewise, Belgian or foreign perpetrators of offences in Belgium may be prosecuted for acts committed abroad, even if no constituent part of said offence was carried out in Belgium.  
However, the principle of double jeopardy is maintained so that the offence must also be punishable in the country where it was

committed so that the Belgian judge may take cognisance thereof.

## **5 ORGANISATION OF ADMINISTRATIVE SERVICES - CRIMINAL POLICY MEASURES: THE PLAYERS BEHIND THIS POLICY**

In the early 1990s Belgium began implementing a structure enabling a federal and local approach to the phenomenon by both the police and the judiciary.

The latest guidelines from the minister for justice concerning policy on investigating and prosecuting human trafficking and child pornography date back to 31 May 1999.

### 5.1 Federal Police Human Trafficking Unit - Directorate-General for the Judicial Police

A central Human Trafficking Unit was set up by the Federal Police - Directorate-General for the Judicial Police pursuant to a decision by the minister for the home department in November 1992.

The unit was initially given the following tasks:

- detecting human trafficking, trafficking in women, organised labour of illegals, and the underlying networks;
- sending signals, warnings and information to political decision-makers, consultation structures and relevant administrative bodies;
- developing specialised competence in these areas;
- serving as an operational police unit.

### 5.2 The College of Public Prosecutors

The College of Public Prosecutors was established by the law of 4 March 1997.

The College has national jurisdiction and takes decisions on the consistent implementation and coordination of criminal policy, as set out in orders from the minister for justice.

Criminal policy also includes policy on investigation and prosecution as well as policy on victims.

Accordingly, specific tasks have been conferred upon each member of the College.

For instance, the Liège public prosecutor is responsible for human trafficking issues.

### 5.3 National magistrates

the law of March 1997 also created the 'national magistrate'. In so doing, the law provided a legal foundation for a function originally conceived in 1990 in a ministerial circular.

National magistrates have national jurisdiction and coordinate investigations into organised crime. They are responsible for carrying out urgent requests for judicial cooperation.

They also have decision-making authority in cross-border operations (cross-border surveillance, surveillance of deliveries, undercover operations, etc.). In 1999, of the 368 cross-border operations authorised by my office, 17 involved human trafficking offences.

With respect to major national and international police operations, the national magistrate will be the key point of contact with the Federal Police's Directorate-General of the Judicial Police. The Human Trafficking Unit is part of the Directorate-General. The national magistrate structure will be incorporated into the Federal Public Prosecutor's Office, effective as of 21 May 2002 (during the implementation phase).

Indeed, the law of 22 December 1988, amended by the law of 21 February 2001, creates a Federal Public Prosecutor's Office. In addition to the powers formerly exercised by the national magistrates, the Federal Public Prosecutor's Office will have national jurisdiction to pursue legal action in certain areas set out by law. These areas include human trafficking. The Federal Public Prosecutor's Office is to be established on 23 May 2002.

#### 5.4 Liaison magistrates

In application of the decision of 14 November 1996 of the College of Public Prosecutors, a liaison magistrate for human trafficking has been appointed for each judicial district and each Public Prosecutor's Office.

Liaison magistrates have the following tasks:

- at the Public Prosecutor's Office
  1. serving as points of contact with the Public Prosecutor's Office;
  2. monitoring important cases handled by the Public Prosecutor's Office within their jurisdiction;
  3. drafting annual reports on actions taken and difficulties encountered within their jurisdiction;
  4. making useful suggestions to the College of Public Prosecutors that might allow the authorities to fight human trafficking more efficiently.
- at the judicial district level
  1. serving as the point of contact with outside parties (national magistrates, liaison magistrates from other districts, police, Human Trafficking Unit of the Directorate-General of the Judicial Police - Federal Police, Directorate of Police Cooperation, administrative inquiry authorities and services, centres for victims of human trafficking) ;
  2. performing the following within their judicial district: collecting and exchanging information from and with various departments or sections of the Public Prosecutor's Office as well as reviewing jurisdiction; monitoring the development of pending cases;

drafting an annual report for the Public Prosecutor's Office on trends in human trafficking and the actions taken within their district;  
informing the media as necessary, in conjunction with colleagues responsible for media relations.

3. keeping the public prosecutor up to date on all important cases.

In connection with the exercise of these powers, the liaison magistrate at the Public Prosecutor's Office associated with the Court of First Instance will hold a meeting - generally every two months, but at least every three months – attended by:

- labour auditors
- the federal police
- the local police
- a representative of the Social and Labour Inspectorate's district-level unit, as provided for in the agreement on cooperation between the various Social Inspectorate departments in order to coordinate investigations in the event of violations of the social and labour legislation of 30 July 1993.

The liaison magistrate may also, on a case-by-case basis, invite any person or department whose support he feels would be useful to the investigation into and prosecution of human trafficking, specifically the Aliens Office or the Special Tax Inspectorate. Likewise, he will make sure to cooperate with national magistrates in their role as coordinators of public prosecution and facilitators of international cooperation.

At least once per year the liaison magistrate will organise a meeting with associations on the ground specialising in accommodating victims of human trafficking. The aim of this meeting is to ensure that a dialogue can take place while respecting each party's role.

### 5.5 Other actors

This concerted approach includes regular contacts and exchanges with other institutions, such as the Aliens Office, the Ministry of Foreign Affairs, victim reception centres and so on.

### 5.6 Dynamic collaboration between reception centres, the police, the inspectorate, the Aliens Office and the justice authorities

How efficient action taken against human trafficking actually is will depend to a large extent on the development of dynamic cooperation between the police, inspectorates and Public Prosecutor's Offices, on the one hand, and special reception centres on the other.

It is only possible to dovetail actions taken by the various parties concerned if the victims (or alleged victims) of human trafficking are actually put in touch with special reception centres.

### 5.7 Task Force

When it was created the Task Force had two levels, divided between the Ministry of Justice and the Ministry of the Interior. The Task Force at the Ministry of the Interior focused on immigration, the aim being curb flows of immigrants and asylum-seekers.

The Task Force at the Ministry of Justice focused on human trafficking with a view to monitoring the results of the Senate's Committee of Inquiry on Human Trafficking.

In 2000 the decision was taken to merge the two Task Forces to ensure more efficient decision-making, to focus on exchanging information on human trafficking within each department, and to try to pool this information in order to further assist both ministries involved.

One example might be an Embassy office that has information on trafficking. This information will be passed on to the various investigators, taking account of each one's remit so as to ensure the most efficient and coordinated action.

The aim is to establish a structural link between the various ministries, **not between individuals**. An information exchange platform must be developed and this information analysed in collaboration with each relevant ministry. The information must then be restored.

The exchange of information must be guaranteed so that information can actually be used in operations.

### 5.8 Aid to victims

Parliament and the federal government, in cooperation with the Communities and Regions, have devised a policy designed to aid victims of human trafficking and to create more opportunities to combat traffickers and their networks.

Policy on aid to victims covers aid and support in Belgium as well as support in returning to the country of origin.

Provisions allowing victims to remain in Belgium legally owing to legal proceedings being carried against perpetrators help create more opportunities to carry out in-depth judicial investigations and give victims a chance to testify during trials.